

DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT  
441 4th Street, N.W.  
Washington D.C. 20001

Appeal of James Hill, Amir Afkhami, and Robert Uth

Appeal No. 18851

---

**DCRA'S MOTION TO DISMISS**

This Appeal arises out of the issuance of a permit to construct a rear deck addition at 1536 T Street N.W. The permit was issued only after the BZA granted the property owner's Application for variances to build the deck in Case No. 18725. The Appellants in this case opposed the relief granted in Case No. 18725. This case attempts to relitigate the issues decided in Case No. 18725. As a result, it is essentially an improper successive motion for reconsideration. Therefore, the Appeal should be dismissed.

**FACTS**

Rafael Romeu owns the home located at 1536 T Street N.W. He filed an Application for a variance from the occupancy, rear yard, and nonconforming structure requirements to build a rear deck. See Exhibit 1, BZA Decision in Case No. 18725. The Appellants in this case, James Hill, Amir Afkhami, and Robert Uth, were granted party status in that case. *Id.* They opposed the requested relief. *Id.* Ultimately, the Board granted Romeu's Application. *Id.* Appellants moved for reconsideration of that decision. It appears that the Board is in the

process of preparing an order denying the motion for reconsideration.

Appellants state that they will appeal that decision to the D.C. Court of Appeals.

In reliance on the BZA decision, Romeu applied for a building permit to construct the deck. DCRA issued the permit on July 3, 2014. Exhibit 2, Building Permit B 1409246. Appellants filed this Appeal challenging the issuance of the permit.

### ARGUMENT

Appellants contend that DCRA should not have issued the building permit for the rear deck. But they admit in their prehearing materials that the permit was issued based on the Board's decision in Case No. 18725. And Appellants do not appear to raise any issues that were not already decided in Case No. 18725. Rather, it seems that the sole basis for this Appeal is that Appellants are concerned that they would be deemed to have abandoned their opposition to the rear deck if they did not appeal the issuance of the building permit.

Since the sole legal basis of this Appeal is the claim that the BZA erred in Case No. 18725, this Appeal is essentially a successive motion for reconsideration. Appellants should not be allowed to proceed with a second motion for reconsideration, particularly since motions for reconsideration must be filed within 10 days of an order and the BZA's decision in Case No. 18725 was issued months before this Appeal was filed. See 11 D.C.M.R. § 3126.2

It should also be noted that contrary to Appellants' fears, dismissing this appeal will not prohibit them from appealing the decision in Case No. 18725 to the D.C. Court of Appeals. They are perfectly free to pursue such an appeal. And if they are successful in that appeal, they will have successfully challenged the

decision in Case No. 18725, which is what they are attempting to do with this case.

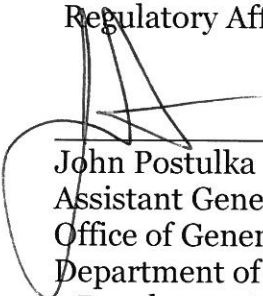
### CONCLUSION

For the reasons stated above, this appeal should be dismissed.

Respectfully Submitted,

MELINDA BOLLING  
General Counsel  
Department of Consumer and  
Regulatory Affairs

Date: 10/29/14



---

John Postulka  
Assistant General Counsel  
Office of General Counsel  
Department of Consumer and  
Regulatory Affairs  
1100 4<sup>th</sup> Street, N.W., Suite 5266  
Washington, D.C. 20024  
(202) 442-8403 (office)  
(202) 442-9447 (Fax)  
[john.postulka@dc.gov](mailto:john.postulka@dc.gov)  
*Attorney for Department of  
Consumer and Regulatory Affairs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of October 2014, a copy of the foregoing Brief was served via e-mail to:

Martin P. Sullivan  
MSullivan@sullivanbarros.com


Counsel for Romeu

AND

Stephen Truitt  
Truittsm@gmail.com

Counsel for Appellants

Date:

  
\_\_\_\_\_  
John Postulka  
Assistant General Counsel

# DCRA Exhibit 1

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 18725 of Rafael Romeu**, pursuant to 11 DCMR §§ 3103.2, for a variance from lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, and a variance from the nonconforming structure requirements under subsection 2001.3, to allow the construction of a rear deck in the DC/R-4 District at premises 1536 T Street, N.W. (Square 191, Lot 98).

**HEARING DATE:** March 11, 2014  
**DECISION DATE:** March 11, 2014

**DECISION AND ORDER**

Rafael Romeu (the “Applicant”), the owner of the subject property, submitted this self-certified application on December 30, 2013, seeking a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, and a variance from the nonconforming structure requirements under subsection 2001.3, to allow the construction of a rear deck in the DC/R-4 District at premises 1536 T Street, N.W. (Square 191, Lot 98).

The Board of Zoning Adjustment (the “Board”) held a hearing on the application on March 11, 2014, at which it voted 4-0-1 to grant the requested relief.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Public Hearing. By memoranda dated January 6, 2014, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 2; Advisory Neighborhood Commission (“ANC”) 2B, the ANC for the area within which the subject property is located; and the Single Member District ANC 2B-09. Pursuant to 11 DCMR § 3112.14, on January 10, 2014, the Office of Zoning mailed notice of the hearing to the Applicant, ANC 2B, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on January 10, 2014 (61 DCR 219).

Request for Party Status. The Applicant and ANC 2B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application to a

---

441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: [dcoz@dc.gov](mailto:dcoz@dc.gov)

Web Site: [www.dcoz.dc.gov](http://www.dcoz.dc.gov)

**BZA APPLICATION NO. 18725**  
**PAGE NO. 2**

group of persons that included individuals James Hill of 1538 T Street, N.W., Washington, D.C. 20009, Amir A. Afkhami of 1540 T Street, N.W., Washington, D.C. 20009, and Robert Uth of 1839 16<sup>th</sup> Street, N.W., Washington, D.C. 20009.

Applicant's Case. The Applicant provided evidence and testimony from Rafael Romeu, the owner of the subject property, and Bill Morris, the architect for the Applicant. They described the Applicant's plans to construct a rear deck on the subject property, and provided testimony and evidence to show that the application satisfied all requirements for approval of the requested zoning relief.

OP Report. By report dated March 4, 2014, and through testimony at the public hearing, OP noted that OP would not ordinarily support a proposal to increase nonconforming lot occupancy and a further reduction to an already nonconforming rear yard. However, given the fact that the Applicant began construction of the deck in good faith reliance upon THE Department of Consumer and Regulatory Affairs ("DCRA") approvals that were later rescinded, OP concluded it could support the grant of variance relief for a smaller deck or for the proposed deck if the Applicant could identify the practical difficulty that would prevent it from modifying its proposal to provide for a smaller deck. OP made no finding as to whether the current proposal would substantially impair the public good, but noted that the sun study submitted by the Applicant showed little impact on the light enjoyed by the adjacent properties. However, OP concluded that granting the Application would substantially impair the intent, purpose and integrity of the Zoning Regulations and Map given the extent of the increased nonconformities proposed.

DDOT Report. By memorandum dated February 28, 2014, DDOT indicated no objection to the application, noting that the proposal will have no adverse impacts on the District's transportation network.

ANC Report. By letter dated February 20, 2014 the Chairman of ANC 2B indicated that at a regular, duly noticed monthly public meeting held on February 17, 2014, with a quorum present, the ANC voted 4-2-1 to recommend approval of the Application, contingent on plans and a project that protects and demarcates the easement in the rear of the property, including assurances that vehicles or other objects cannot impede easement. In his written and oral testimony, the ANC Chairman clarified that the ANC's regular meeting was to be held on February 12<sup>th</sup>. Originally, the February 17<sup>th</sup> meeting was added to accommodate agenda items that might not be reached on the 12<sup>th</sup>. However, the regular meeting was cancelled due to a weather event, and the ANC gave notice that the entire agenda would be considered on February 17<sup>th</sup>.

Persons in Support. The Board received a letter in support of the application from Mr. Jochen R. Andritzky, of 1534 T Street, N.W., stating that he thought the deck would be an overall positive for the neighborhood.

Party in Opposition. The Board heard testimony from members of the group of residents that were granted party status (the "Opposition Party"), including James Hill, Amir Afkhami, and



**BZA APPLICATION NO. 18725**  
**PAGE NO. 3**

Robert Uth. The Board also heard testimony on behalf of the Opposition Party from Mr. Edward Hanlon of 1523 Swann Street, N.W., Washington, D.C. 20009.

**FINDINGS OF FACT**

1. The subject property is located at 1536 T Street, N.W. (Square 191, Lot 98).
2. The subject property is a rectangular property 16.83 feet wide by 54.73 feet long; with a land area of 921 square feet.
3. The subject property is located in the R-4 Zone District and is also included in the Dupont Circle Overlay District.
4. The subject property is currently improved with a three-story structure built around 1900. The structure is currently used as a flat, including an English basement and the main part of the dwelling occupied by the Applicant. The English basement is accessed from the front of the structure, on T Street.
6. The rear of the structure, at the ground level, has a door that provides access to a utility room. This door provides no access to the English basement unit or to the Applicant's residence in the structure.
7. The subject property currently has a patio at the ground level in the rear, with no steps or other available access to the rear door of the main level of the structure. The Applicant has no way of accessing their rear yard from the rear of the building.
8. The subject property is nonconforming as to lot area, width and occupancy and also as to rear yard depth.
9. The lot on the subject property has a land area of 921 square feet and is 16.83 feet wide. Subsection 401.3 requires at least 1,800 feet of land area and a minimum width of 18 feet. The structure on the subject property occupies 72% of the lot. The maximum lot occupancy permitted in an R-4 zone by § 403.2 is 60%, while a maximum lot occupancy of 70% may be allowed as a special exception pursuant to § 223.3. The rear yard has a depth of 15 feet, whereas a depth of 20 feet is required by § 404.1
10. The rear – south - of the subject property abuts, and is perpendicular to, a property that fronts on 16<sup>th</sup> Street, N.W. The subject property abuts a garage located on this adjacent property for approximately half of the width of the rear yard. The remaining portion of the rear yard abuts open space adjacent to the north-south alley located just east of the subject property.
11. The adjacent garage encroaches approximately eight inches onto the south edge of the subject property.



12. The subject property is encumbered by a recorded easement that grants use of a three-foot wide space at the rear of the subject property, along its entire width, "for alley purposes." According to the deed for the subject property, the easement was given for the benefit of three properties to the west, including Lot 97 (1538 T Street), Lot 96 (1540 T Street), and Lot 93 (1837 16<sup>th</sup> Street).
13. The subject property is bounded by T Street to the north; the row dwelling at 1538 T Street to the west; the property located on 16<sup>th</sup> street to the south (rear), and a 10-foot wide public alley to the east.
14. The adjacent public alley runs in a north-south direction between T Street and Swann Street.
15. The subject lot is one of six small lots in the northwest corner of Square 191 that were created by dividing three larger lots when the current structures on these six properties were built around 1900. The large majority of lots in the subject square are nearly twice the size of the subject property.
16. The Applicant purchased the subject property in September 2012, and shortly thereafter began investigating whether or he could construct a rear deck addition as a matter-of-right.
17. In November 2012, the Applicant hired an architect to perform a zoning analysis and to inquire of DCRA whether a rear deck would be permitted as a matter-of-right. As part of its investigation, the Applicant discovered plans from a 2010 permit application, aerial photo evidence, and a letter from the previous owner, all which demonstrated that a full-sized rear deck had existed in this location as recently as 2011, as early as 1951, and at various times in between those dates.
18. In February, 2013, a DCRA zoning technician informed the Applicant's architect that the Applicant was permitted to build a rear deck to 97% lot occupancy as a matter-of-right as the replacement of a legally nonconforming structure.
19. Based on such representation from the DCRA zoning technician, the Applicant proceeded to further engage his architect to design the rear deck and prepare plans to accompany a building permit application. The Applicant paid the architect approximately \$11,000 for this phase of the work.
20. On July 26, 2013, DCRA issued Building Permit No. B1309278 to the Applicant, allowing the construction of a rear deck on the subject property that would take the subject property's lot occupancy to approximately 97%, and eliminate all but about eight inches of the Applicant's rear yard.

**BZA APPLICATION NO. 18725**  
**PAGE NO. 5**

21. The Applicant relied in good faith both on the initial oral approval from the DCRA zoning technician in February 2013, as well as on Building Permit No. B1309278 issued in July, 2013, in taking certain actions toward construction of the approved rear deck.
22. In September 2013, the Applicant entered into a contract with a contractor to construct the deck, and paid \$32,500 to the contractor as the first and second installments on that contract. The Applicant has not received any refund of this money, some of which is for custom-ordered materials that are difficult to return or redeem.
23. The Applicant commenced construction of the rear deck pursuant to Building Permit No. B1309278, including removing the existing rear patio pavers and digging holes for installation of the footings for the proposed deck. According to an estimate provided to the Applicant, the Applicant would have to expend about \$7,800 to restore the rear patio to the condition it was in prior to the issuance of the Building Permit and commencement of the deck construction.
24. On October 2, 2013, the Applicant learned that Appeal No. 18677 had been filed by his neighbor, James Hill, owner of the property immediately to the west, at 1538 T Street, N.W., and by a Mr. Edward Hanlon, owner of a house located on Swann Street. The Applicant then halted construction of the project.
25. On December 6, 2013, the D.C. Zoning Administrator issued a Notice to Revoke Permit for Permit No. B1309278, effectively rescinding his office's approval of the application for Building Permit No. B1309278. The notice indicated that it would become effective in 60 days unless the Applicant appealed the proposed revocation to the BZA.
26. The Applicant did not appeal the proposed revocation within the period allowed, but instead submitted this application for variance relief to allow the construction of the rear deck substantially as it was approved in Building Permit No. B1309278. Because the revocation had become final, the Board dismissed Appeal No. 18677 as moot on February 25, 2014.<sup>1</sup>
27. The Applicant is proposing to construct a deck at the rear of the subject property. The proposed deck will extend from the rear of the structure to the edge of the abutting garage. The deck will occupy all but about eight inches of the property's rear yard and will cause the subject property to have a lot occupancy of 97%. Thus the Applicant requires variance relief from the lot occupancy requirements under § 403 and a variance from the rear yard requirements under § 404. In addition, because the addition will increase the existing lot occupancy and lot area nonconformities, relief is required from § 2001.3.
28. After filing the initial BZA application, the Applicant revised his plans for the proposed deck, moving two supporting columns so that the columns would not be located within

---

<sup>1</sup> A Board order dismissing the appeal has not been issued as of the date of this Order.

the area of the three-foot wide easement at the rear of the subject property. The Applicant also revised the proposed plans to include wooden louvers above the railing of the deck where the deck abuts the neighbor's property at 1538 T Street, N.W.

29. Shadow studies provided by the Applicant showed a minimal impact on sunlight from the proposed deck to the neighboring property to the west.

### **CONCLUSIONS OF LAW**

The Applicant requests variances from §§ 403.2, 404.1, and 2001.3 to permit the construction of a rear deck at the main level (first floor) of the subject property in the DC/R-4 Zone at 1536 T Street, N.W. (Square 191, Lot 98). The Board is authorized to grant variances from the strict application of the Zoning Regulations where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property ...." D.C. Official Code 6-641.07(g)(3) (2012 Repl.); (11 DCMR § 3103.2.)

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship" must be made for a use variance. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The Applicant in this case is requesting area variances; therefore, he had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. Lastly, the Applicant had to show that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." (11 DCMR § 3103.2.)

The "exceptional situation or condition" of a property can arise out of "events extraneous to the land," including the zoning history of the property. See, e.g. *De Azcarate v. Board of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978), and see *Monaco v. Board of Zoning Adjustment*, 407 A.2d 1091, 1097, and 1098 (D.C. 1979). See also *Application No. 17264 of Michael and Jill Murphy* (2005). The "exceptional situation or condition" can also arise out of the structures existing on the property itself." See, e.g., *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974).

In order to prove "practical difficulties," an applicant must demonstrate first that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. See *Association For Preservation of 1700 Block of N St., N.W., and Vicinity v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978).

Based on the above findings of fact, the Board concludes that the Applicant has satisfied the burden of proof and that the application should be granted.

The subject property faces several exceptional situations or conditions. Among these is the recent zoning history for this property; specifically, the Applicant relied in good faith on actions of DCRA officials in approving the proposed rear deck by first indicating that the deck could be built as a replacement and then issuing a building permit for its construction as a matter-of-right.

The DCRA decision was not made in haste. Rather, the issuance of the building permit in July of 2013 was made only after the Applicant provided evidence to DCRA permitting officials showing the existence of a rear deck in a similar footprint to the one requested by the Applicant here. Such evidence included not only aerial photos which clearly showed the deck occupying virtually the entire rear yard of the property, but also, 2010 building permit plans from a previous owner requesting demolition of an existing deck that clearly occupied virtually the entire rear yard, and a parking pad underneath that deck. Having apparently accepted the Applicant's view that the deck could be constructed as a matter of right, the Applicant in July of 2013 had no reason to suspect that DCRA would propose to revoke the permit five months later. The actions of DCRA in approving the Building Permit, and the actions of the Applicant in relying on that approval to its detriment, constitute an exceptional condition.

That detrimental reliance took several forms. First, after receiving an initial approval from DCRA zoning division staff, the Applicant spent a significant amount of money for his architect to design the proposed deck, prepare plans for a building permit application, and pursue that application. After being issued a building permit for construction of the deck, the Applicant engaged a contractor, to which he paid a considerable amount of money; none of which has been returned to the Applicant and some of which is for custom-made materials which may be difficult to return or redeem. In addition, the Applicant actually commenced construction pursuant to the Building Permit, including removal of the existing patio on the ground floor and digging holes to hold the footings for the deck. Such work included several days of work, and the Applicant has received an estimate of \$7,800 just to restore the patio back to its original condition. The Board further notes that once the Applicant learned of the appeal of the permit, he halted the work. Although this prevented further loss, it could not reverse the detriment the Applicant would suffer should these variances be denied.

The practical difficulty that arises from these circumstances is both the waste of time and money that would result in not proceeding with the project and the costs of having to restore the property to its preexisting condition. There is no doubt that to incur this waste and cost would be unduly burdensome to the Applicant.

In addition to the zoning history, the Board finds a further confluence of factors constituting exceptional situations or conditions with the subject property, including the small size of the subject property, the encroachment of a neighboring garage on the rear yard of the subject property, a three-foot wide easement burdening the rear portion of the property, the location of the property along an internal alley in the square, and the internal configuration of the structure

on the subject property such that the Applicant cannot access his rear yard without exiting the building through the front door and walking through the alley, as there is no access from the Applicant's living space within the structure to the rear yard.

The Board further finds that requiring strict compliance with the Zoning Regulations would also be unnecessarily burdensome to the Applicant because of the effects of the internal configuration of the dwelling on the subject property, and because of the already restricted use of the Applicant's rear yard as a result of the small size of the lot, the encroachment from the neighboring garage, and the three-foot wide easement.

The Board concludes that the requested variances can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. The Applicant's sun study demonstrated only a minor impact on the sunlight to the neighboring property to the west, and the Applicant will provide louvered wooden slats above the deck railing to address the west neighbor's privacy concerns.

As to the private easement, the Board has no authority to determine whether the proposed deck violates this private agreement. The Board's jurisdiction is defined by Section 8 of the Zoning Act, which allows it to decide applications for special exceptions and variances, appeals from zoning decisions, and special questions put to it by the Zoning Commission. The Court of Appeals has stated repeatedly that it is "reluctant to read into a statute powers for a regulatory agency which are not fairly implied from the statutory language, since the agency is statutorily created." *See Spring Valley Wesley Heights Citizen Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 434, 436 (D.C. 1994) (citing *Chesapeake & Potomac Tel. Co. v. Public Service Comm'n of District of Columbia*, 378 A.2d 1085, 1089 (D.C. 1977)). The Commission's authority is thus limited to and controlled by its statute, which neither expressly nor implicitly permits the Board to resolve a dispute as to the scope of an easement. If the Opposition Party believes that the proposed deck violates their private rights, its resort is to the courts.

Nor would the impact of any claimed violation likely be relevant. The easement was not in favor of the public, but was to provide alley-type access to certain property owners. The Board's role is not to determine whether the grant of a variance affects one private property owner's enjoyment of another person's property. Rather, the Board decides whether granting a variance on one piece of private property will impair an adjoining property owner's use of his or her own property. The Board has already concluded that no such impairment will result.

Nevertheless, the Board notes that the Applicant amended the Application to move two small columns out of the easement area. The moving of these columns not only leaves the easement area clear, but it provides a barrier between the easement area and the Applicant's parking space, addressing one of the main concerns of the party in opposition that a car would be likely to block access to the easement area.

Finally, granting the variance will not impair the purposes of the Zoning Regulations or Map. The R-4 District is designed to include those areas now developed primarily with row dwellings,



but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) The “primary purpose” of the zone is stabilization of remaining one-family dwellings. (11 DCMR § 330.2.) The Dupont Circle Overlay serves similar goals, (*see* 11 DCM 1501.4), including that the scale of development be consistent with the nature and character of the Dupont Circle area in height and bulk. (§ 1501.4 (a).) There is nothing about the proposed deck that could result in destabilizing the remaining one family-dwellings in the zone district. It simply allows a deck to occupy more of a very small lot than is otherwise permissible. Neither the existing structure nor the proposed deck is out of character with the neighborhood, and in fact it appears that a prior deck of the same size previously existed on the property.

The Board is required to give great weight to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)). Great weight means acknowledgement of the issues and concerns of the Office of Planning. In this case, OP stated in its report that the Applicant demonstrated that the zoning history exhibited an exceptional condition, but thought that the Applicant should build a smaller deck or demonstrate the practical difficulty of building a smaller deck.

The Board agrees with OP that the zoning history, among several other items, was an exceptional condition. The Board disagrees, however, with OP’s position that the Applicant should build a smaller deck, or that the Applicant has not demonstrated the practical difficulty in building a smaller deck. Part of the practical difficulty demonstrated by the Applicant involves the limited amount of space available to the Applicant as a result of the garage encroachment and the three foot easement. Decreasing the deck size further limits that space, thereby increasing the practical difficulty. In addition, the Applicant demonstrated that it had taken certain actions in good-faith detrimental reliance on the approval by DCRA, and those actions relied on a deck size approved in the subject Building Permit.

As to whether granting the variance would cause substantial detriment to the public good, the Board agrees with OP that the shadow study demonstrated that the deck would cause limited impact on the light of adjacent properties. The Board however disagrees with OP’s view that granting the variances will substantially impair the intent, purpose, and integrity of the Zoning Regulations and Map. OP points to no purpose served by the R-4 Zone or the Dupont Circle Overlay that would be violated by a grant of the variances, but simply argues that the deck should be smaller so as to limit the extension of the existing nonconforming lot occupancy and the further reduction of the rear yard. OP thus appears to contend that because it believes that the Applicant has not shown the practical difficulty in building a smaller deck, then the deck the Applicant proposes to build must cause substantial detriment to the zone plan. The Board disagrees. The existence of practical difficulties and the question of whether there will be substantial detriment are two different tests. For the reasons stated earlier, the Board has concluded that exceptional circumstances created practical difficulties in constructing anything other than the deck as proposed and that no purpose of the R-4 Zone District or the Overlay is contravened by the grant of the relief requested.

**BZA APPLICATION NO. 18725**  
**PAGE NO. 10**

The Board is also required to give great weight to issues and concerns raised by the affected ANC (D.C. Official Code § 1-309.10(d).) To satisfy the great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. ANC 2B submitted a resolution in support of granting the variances contingent on plans and a project that protects and demarcates the easement in the rear of the property, including assurances that vehicles or other objects cannot impede easement. As noted, the issue of whether the easement will be impaired by the addition is of no legal relevance to the Board. However, the Board notes that the revisions made to the plans by the Applicant adequately address the ANC's concerns.

The Party in Opposition argued that ANC 2B had not provided proper legal notice for its February 17, 2014 meeting at which the Applicant presented its request and the ANC voted to recommend approval. Whether that is correct depends upon an interpretation of the ANC statute and the bylaws of ANC 2B. Both the Chairman and the Vice-Chairman (also the SMD in this case) attended the BZA hearing and provided testimony that offered a reasonable interpretation that the ANC's recommendation in this case was duly and validly issued. This Board is only charged with interpreting the Zoning Regulations and will defer to the ANC with respect to the laws and bylaws that govern its procedures.

However, the Board also concludes that even if it had found the ANC's recommendation to not be valid, the Board would still approve this Application. The Board found that the Applicant met the burden of proof for being granted the variances independent of anything stated by the ANC, and therefore even if the ANC letter had never been received, the result would have been the same.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED, SUBJECT to** Exhibit 29, Tab S (Revised Plans).

**VOTE: 4-0-1** (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Anthony J. Hood to Approve; Marnique Y. Heath not present, not voting.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

The majority of the Board members approved the issuance of this order.

**ATTESTED BY:**

  
**SARA A. BARDIN**  
Director, Office of Zoning

**FINAL DATE OF ORDER:** May 7, 2014



**BZA APPLICATION NO. 18725**  
**PAGE NO. 11**

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

# DCRA Exhibit 2



## Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



# B


## BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF  
WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 07/03/2014

PERMIT NO. **B1409246**

Expiration Date: **07/03/2015**

Address of Project: <b>1536 T ST NW</b>		Zone:	Ward: <b>2</b>	Square: <b>0191</b>	Suffix:	Lot: <b>0098</b>
Description Of Work: <b>New rear deck and stairs, new concrete slab on grade at rear of existing structure.</b>						
Permission Is Hereby Granted To: <b>Rafael Romeu</b>		Owner Address: <b>1536 T STREET NW 20009</b>		PERMIT FEE: <b>\$1,181.07</b>		
Permit Type: <b>Alteration and Repair</b>	Existing Use: <b>Flat (Two Family)</b>		Proposed Use: <b>Flat (Two Family)</b>		Plans: <b>Yes</b>	
Agent Name: <b>Paula Morris</b>	Agent Address: <b>60 Market Street 20878</b>	Existing Dwell Units: <b>2</b>	Proposed Dwell Units: <b>2</b>	No. of Stories: <b>3</b>	Floor(s) Involved: <b>1</b>	
Conditions/ Restrictions:  Historic Preservation Clearance for Exterior Work. Scope of approved exterior work is restricted only to drawings stamped by HPO.  This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.  Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to <a href="http://ddoe.dc.gov">http://ddoe.dc.gov</a> , Lead and Healthy Housing.						
Director: Rabbiah A. Sabbakhan 		Permit Clerk <b>Keith Hawkins</b>				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						