BOARD OF ZONING ADJUSTMENT
OFFICE OF ZONING

Pablo Martinez

Petitioner ) Application Number 16987

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**BRIEF IN SUPPORT OF APPLICATION NO. 16987 FOR A SPECIAL EXCEPTION**

Mr. Pablo Martinez submits this brief in support of his application for a special exception pursuant to 11 DCMR 3104.1 to keep his already existing rear deck at 1207 Clifton Street, NW. Granting the special exception application is consistent with the general intent and purpose of the Zoning Regulations. The deck neither interferes with the residential character of the community nor substantially adversely affects his neighbors. Both the Office of Planning and the Advisory Neighborhood Commission have submitted their unqualified support for the Martinez Application. Their recommendations are entitled to great weight.

Attracted by renovations to a formerly abandoned property in the Columbia Heights section of the city, Mr. Martinez purchased this home encouraged by the DC government's support of neighborhood revitalization. Although several properties in the surrounding neighborhood are considered abandoned by the tax assessors (including one of the adjacent homes), Mr. Martinez believes that home renovations like his will eventually contribute to what the Office of Planning has called "the enhancement and revitalization of residential

BZA
Case No. 16987
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO. 16987
EXHIBIT NO. 35

neighborhoods in the District." See, Office of Planning letter supporting the Martinez application, February 18, 2003. ("Planning Letter").

As noted in the Planning Letter, the north side of Clifton has a thirty-foot right of way in the front of the lot. Therefore, the addition of the deck accomplishes two separate goals; it creates off street parking, and creates a usable space in the rear yard. The deck is built an average of 9 feet off grade to accommodate the off street parking structure. It should be noted that the alley is on an incline, as shown in Exhibit A, so the height of the base of the deck is varied as to remain level. The deck is off the first floor kitchen.

Additions to one family dwellings are governed by 11 DCMR 223, which notes that structures that do not comply with the requirements of §§ 403, 404 and 406 shall be permitted if that addition does not have a "substantially" adverse effect on immediate neighbors. The code further instructs us to consider three areas in making this determination: light and air, privacy of use and enjoyment of neighbors, visual effect on the neighborhood.

**A. Light and Air**

Section 223.2(a) requires that the light and air available to neighboring properties shall not be unduly affected by the addition. The Planning Letter indicates that:

> The deck is elevated approximately nine feet above grade to accommodate a parking area. **The elevated and open structure will not unduly affect the availability of light and air to adjoining properties**... *(Emphasis added).*

Planning Letter at 3. The Office of Planning clearly agrees that the deck poses no undue affect to the light and air of the flanking neighbors.

Mr. Martinez hereby submits time stamped photographs supporting the Office of Planning's position. These photographs, Exhibits B, C and D, taken hourly for twelve hours on March 27, 2003, show the position and amount of sunlight from both front and rear views of

1205 and 1209 Clifton St. NW. As the homes sit on the north side of Clifton Street, they enjoy full frontal sun all day and as Mr. Ewers said in his party application "Direct sunlight is already scant in the rear yard." Exhibit B shows the motion of the sun in front of all the homes through the course of the day.

The photographs in Exhibits C and D show that the primary source of shadows for the rear yards of the 1200 block of Clifton St. NW is the homes themselves. In addition, a higher structure, the Highview Castle Manor apartments at 2505 13th St. on the northeast corner of 13th and Clifton Streets, NW, which sits on higher ground at the end of the block also impedes the amount of sunlight these yards receive in the afternoon. This structure is shown in Exhibit E. As the sun moves east to west in front of the homes, the shadows in the rear yards created by each house in relation to the sun are clearly visible.

As evidenced in Exhibit C page 9, at 2:30 PM a small shadow is cast over the rear yard of 1205 Clifton, right next to the alley. This shadow is cast by the portion of the Martinez deck closest to the building itself. By 3:30 PM, the entirety of the rear yard at both 1205 Clifton and Mr. Martinez' property is shadowed in by the respective buildings themselves. In other words, the small shadow cast by the deck for that short period of time, would have been cast by a deck only a few feet from the building. The non-conforming area of the deck does not substantially contribute to the shadow at 1205 Clifton at all or at any time.

Similarly, because the sun moves east to west, and 1209 Clifton is located west of 1207 Clifton, by the time the rear yard at 1209 enjoys full sun at 10:30 AM, as shown in Exhibit D page 5, the shadow cast by the deck on this property is marginal and is only visible in a small left corner of the yard. For the rest of the day Mr. Stofferson's yard receives uninhibited sunlight relevant to the position of the sun with no impact whatsoever from Mr. Martinez' deck. As the

photographs clearly show, the availability of light and air for either rear yard is not unduly affected by the Martinez deck.

**B. Privacy**

Section 223(b) requires that the "privacy of use and enjoyment of neighboring properties shall not be unduly compromised." The Planning Letter indicates that:

> Adjacent and nearby rear yards have elevated deck structures. **This addition of this elevated deck to nearby existing decks will not unduly compromise the privacy of use and enjoyment of neighboring properties.** *(Emphasis added).*

Planning Letter at 3.

In a hearing before the Board on March 11, 2003, neighbor Robert Stofferson indicated the size of the Martinez deck invades his privacy because it allows people to look inside his dining room. *(Transcript not yet available).* This argument is fundamentally flawed. If Mr. Martinez had a rear addition of any size, including a deck smaller than Mr. Stofferson's deck on the same level, someone would be able to look in the window. Similarly, if Mr. Martinez didn't have a deck, you would be able to look in the window from the ground floor. Being able to look in a neighbor's window is a fact of urban living, and has nothing to do with the size of the Martinez deck. If you follow Mr. Stofferson's argument to its logical conclusion, the high school across the street would have to board up its windows to prevent students from "invading his privacy." Stofferson's proper remedy is curtains.

Also attached, as Exhibits F, G and H, are photographs of the back of 1211 Clifton Street, Mr. Stofferson's other adjoining neighbor, and 2516/2518 12th St. NW, the neighbors across the alley. All show structures that would enable them to see into the windows of 1209 Clifton Street. Furthermore, Exhibits C & D show that any person walking through the alley at any time has the unfettered ability to look into the windows of 1209 Clifton Street. The

same analysis holds true for 1205 Clifton. There is simply nothing unique about the Martinez deck that unduly compromises the privacy of use and enjoyment of Mr. Martinez' neighbors.

**C. Visual Effect**

Section 223(c) requires that the addition "not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage." The Planning Letter indicates that:

> The deck is located to the rear of the property and is not visible from the street frontage along Clifton Street or 12th Street.

Planning Letter at 3. The rear deck has no effect of the character or scale on the street frontage.

Although the statute does not require conformity along the alley, we note that the alley behind the Martinez home has a wide variety of deck sizes and or other structures, including off street parking accommodations and garages. There simply is no conformity on the alley. Furthermore, the deck conforms in size and character with other structures in the neighborhood. As evidenced by Exhibits I and J, structures at 1204, 1206 and 1208 Euclid St. NW and 1114 Euclid St. NW are similar. Owners of those properties have also been permitted to build enclosed garages under their decks.

**Conclusion**

Mr. Martinez' application for a special exception should be approved. As noted by the Planning Letter, the Applicant has met the burden of proof required by §223. The deck does not substantially affect the light and air, or privacy of use and enjoyment of the neighbors, nor does it have a substantial visual effect on the neighborhood.

Dated: March 30, 2003

Respectfully submitted,



Pablo Martinez

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief in Support of Application No. 16987 for a Special Exception was served on April 1, 2003 by hand delivery and Federal Express, upon the following parties:

Robert Stofferson
1209 Clifton Street, NW
Washington, DC 20009

Larry Ewers
1205 Clifton Street, NW
Washington, DC 20009

Board of Zoning Adjustment
Office of Zoning
441 4th St, NW
Washington, SC 20001



Pablo Martinez



Exhibit A: Rear Alley

Exhibit B

**1205 - 1209 Clifton St. NW – Front View March 27, 2003 6:30 AM**



**1205 - 1209 Clifton St. NW – Front View March 27, 2003 7:30 AM**



**1205 - 1209 Clifton St. NW – Front View March 27, 2003 8:30 AM**



**1205 - 1209 Clifton St. NW – Front View March 27, 2003 9:30 AM**



**1205 - 1209 Clifton St. NW – Front View March 27, 2003 10:30 AM**



**1205 - 1209 Clifton St. NW – Front View March 27, 2003 11:30 AM**



**1205 - 1209 Clifton St. NW – Front View March 27, 2003 12:30 PM**



1205 - 1209 Clifton St. NW – Front View March 27, 2003 1:30 PM



**1205 - 1209 Clifton St. NW – Front View March 27, 2003 2:30 PM**



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**1205 - 1209 Clifton St. NW – Front View March 27, 2003 3:30 PM**



1205 - 1209 Clifton St. NW – Front View March 27, 2003 4:30 PM



1205 - 1209 Clifton St. NW – Front View March 27, 2003 5:30 PM



**1205 - 1209 Clifton St. NW – Front View March 27, 2003 6:20 PM**



Exhibit C

**1205 Clifton St. NW – Rear View March 27, 2003 6:30 AM**





**1205 Clifton St. NW – Rear View March 27, 2003 7:30 AM**





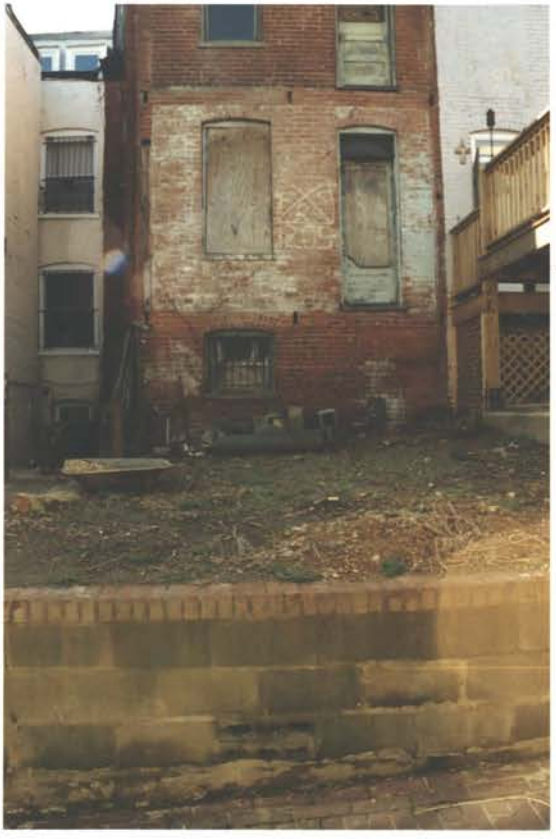
**1205 Clifton St. NW – Rear View March 27, 2003 8:30 AM**





**1205 Clifton St. NW – Rear View March 27, 2003 9:30 AM**





**1205 Clifton St. NW – Rear View March 27, 2003 10:30 AM**





**1205 Clifton St. NW – Rear View March 27, 2003 11:30 AM**





**1205 Clifton St. NW – Rear View March 27, 2003 12:30 PM**

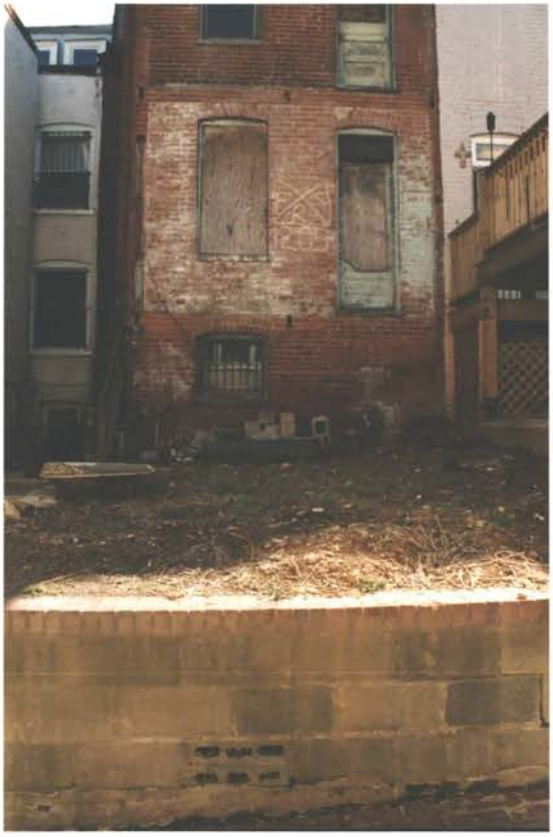




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**1205 Clifton St. NW – Rear View March 27, 2003 1:30 PM**





**1205 Clifton St. NW – Rear View March 27, 2003 2:30 PM**





**1205 Clifton St. NW – Rear View March 27, 2003 3:30 PM**





**1205 Clifton St. NW – Rear View March 27, 2003 4:30 PM**





**1205 Clifton St. NW – Rear View March 27, 2003 5:30 PM**





**1205 Clifton St. NW – Rear View March 27, 2003 6:20 PM**





Exhibit D

**1209 Clifton St. NW – Rear View March 27, 2003 6:30 AM**



Exhibit D

**1209 Clifton St. NW – Rear View March 27, 2003 7:30 AM**





**1209 Clifton St. NW – Rear View March 27, 2003 8:30 AM**





**1209 Clifton St. NW – Rear View March 27, 2003 9:30 AM**





**1209 Clifton St. NW – Rear View March 27, 2003 10:30 AM**





**1209 Clifton St. NW – Rear View March 27, 2003 11:30 AM**





1209 Clifton St. NW – Rear View March 27, 2003 12:30 PM

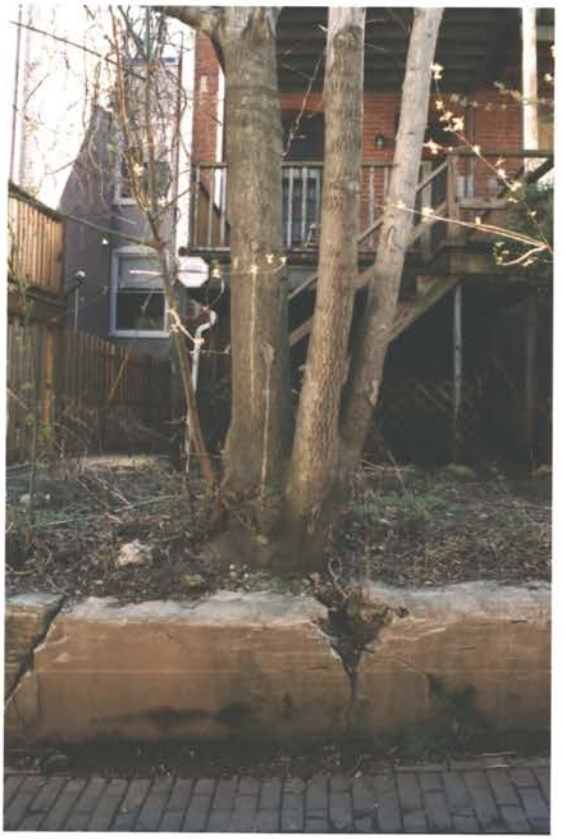




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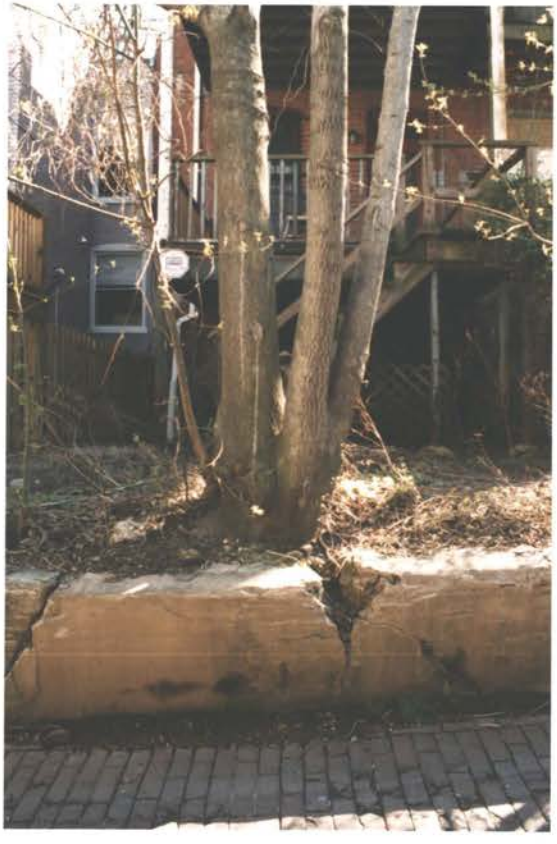
**1209 Clifton St. NW – Rear View March 27, 2003 1:30 PM**





**1209 Clifton St. NW – Rear View March 27, 2003 2:30 PM**





**1209 Clifton St. NW – Rear View March 27, 2003 3:30 PM**





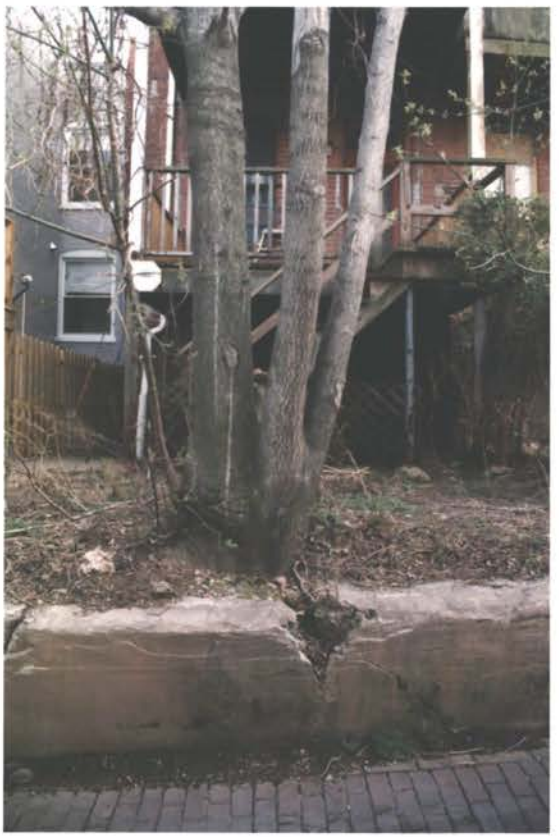
**1209 Clifton St. NW – Rear View March 27, 2003 4:30 PM**





**1209 Clifton St. NW – Rear View March 27, 2003 5:30 PM**





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**1209 Clifton St. NW – Rear View March 27, 2003 6:20 PM**



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Exhibit E : Highview Castle Manor Apartments



Exhibit F; Structures at 1211 and 1209 Clifton st. NW



Exhibit 6: Rear view 1207-1211 Clifton st. NW (L-R)



Exhibit H: structures at rear of 2516 + 2518 12th St. NW








Exhibit I : 1208-1204 Euclid St. NW (L-R)







Exhibit. 1: rear structure at 1114 Euclid st. NW