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407 E Street, N.E.
Washington, DC 20002

Form 120

STATEMENT – APPLICATION MEETS SPECIFIC TESTS

This statement is made pursuant to D.C. Code § 6-641.07(g)(3) and 11 D.C.M.R. § 3103.3 and in conjunction with Form 120. As will be demonstrated below, the following request meets the statutory requirements and should therefore be granted.

First, the removal of the current structure would create a financial burden for the owner. When the property conveyed to the current owner on February 21, 1997, the dwelling was segmented into two separate units. The lower unit consisted of the first floor and the upper unit consisted of the second and third floors. The owner rented the first floor from 1997 through 2003 and occupied the upper unit from 1997 through the present with the exception of the time of the current remodeling.

The basic infrastructure for the separate units was retained during the current remodeling (*e.g.*, separate electric meters and panels) although the entire unit will be owner occupied upon the completion of the current remodeling.[2] The current remodeling project was premised on the existence of the deck – a structure that had been in place without complaint since at least 1997 (and likely long before then based on the condition of the structure). There would be a significant ripple effect in the current plans if the deck were caused to be removed. There is currently a doorway that leads out to the deck from the second floor and the floor plan for the kitchen was designed with the presence of the door. The kitchen cabinets were built to the use the space and the removal of the doorway would cause us to scrap several cabinets and countertops at a cost of several thousand dollars. These items have already been built and paid for by the owner.

Moreover, although the current owner intends to occupy the dwelling for the foreseeable future, the removal of the deck would significantly depress resale value or potential rental value for the upper unit. It is also important to stress that the owner has already paid nearly $4,000 and that the deck has been complete for approximately two years.

Second, current structure does not cause a substantial detriment to the public good. The current structure is approximately 40% square footage of the previous structure and build to code. The structure does not prevent the ingress or egress and does not impinge upon anybody's property. In fact, the structure is identical in size and scope

[2] The current remodeling was approximately one week from completion when the owner was served with a "Stop Work Order" for "Working Without a Permit, despite having obtained permits B465450 and B464311 to complete the work. *See* Exhibit 2. Although the owner has received the necessary inspections and approvals to begin the close-in in order to move back in. *Id.* The stop work order prevented this process from being completed in a timely fashion. Consequently, the temporary lease under which the current owner has been living expires on October 31, 2004, and temporary housing arrangements will have to be made.

BZA
Case No. 17264
Exhibit No. 5

EXHIBIT 5

Board of Zoning Adjustment
District of Columbia
CASE NO. 17264
EXHIBIT NO. 5

to two other decks on the 400 block of E Street and similar to numerous other decks on Capitol Hill.

Third, granting this application would not be inconsistent with the general intent and purpose of the District of Columbia's zoning regulations. The "general purpose and intent of the zoning regulations and maps, and that the project would not have an adverse effect on the local community." *See Foggy Bottom Ass'n v. D.C. Bd. of Zoning Adjustment*, 791 A.2d 64, 69-70 (D.C. 2000). The deck is identical in size and scope to numerous other decks in the Capitol Hill neighborhood and, specifically, on the 400 Block of E Street, N.E. (*e.g.*, 413 E Street, N.E., 415 E Street, N.E.).

In fact, The owners never had any discussion about the structure until my neighbor approached me on April 18, 2004 to tell me that my current renovations (which had yet to begin) were causing problems with his house, *see* Exhibit 3 (affidavit from the owner detailing this conversation), and again on July 27, 2004 when the owner received a letter asking me to dismantle the deck. *See* Exhibits 4. As a result of this complaint, the owner's contractor submitted the deck to and passed a building inspection (Harry Meyers) and a plumbing inspection (name unknown) on August 13, 2004. *See* Exhibit 5. Moreover, the complaining neighbor lived in the house in 1997 while the previous two-story structure was in place and never complained.

For the reasons discussed above, this request for a variance should be granted and the structure should not be dismantled. Should a hearing be necessary, the owner reserves the right to supplement this application and to submit live testimony or affidavits concerning the previous and current structures.