



## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Paul Goldstein, Case Manager  
Joel Lawson, Associate Director Development Review

**DATE:** March 4, 2014

**SUBJECT:** BZA Application #18725 – Request for area variances pursuant to §§ 403, 404, and 2001.3 at 1536 T Street NW

### **I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) is supportive of the proposal in concept for a rear deck addition to a row dwelling located at 1536 T Street NW, but OP cannot recommend approval of the project as presented. OP evaluated the following relief:

- § 403.1, area variance relief to exceed maximum lot occupancy (97% proposed, 60% max.);
- § 404.1, area variance relief for a non-conforming rear yard (8" proposed, 20' min.);
- § 2001.3, area variance relief for the expansion of a non-conforming structure.

OP notes that the Property is presently non-conforming to lot occupancy and lot width, although no change is proposed to these conditions.

OP typically would not be supportive of a deck addition that would extend the already non-conforming lot occupancy and diminish the existing non-conforming rear yard. But as a result of the the exceptional situation of this case as discussed below, OP would be supportive of a deck that presents: 1) a more conforming solution (for example, a smaller deck); or 2) the Applicant demonstrating the practical difficulty in modifying the deck design to preserve a larger rear yard and lower lot coverage.

### **II. AREA AND SITE DESCRIPTION**

Address:	1536 T Street NW
Legal Description:	Square 191, Lot 98 (hereinafter, the "Property")
Ward/ANC:	2/2B
Lot Characteristics:	The lot is rectangular in shape and measures approximately 921 square feet in lot area. It has frontage on T Street to the north and abuts a 10' wide public alley to the east. According to a deed on the Property, an easement exists for the benefit of neighbors west of the site as follows: "SUBJECT TO a right of way over the rear 3 feet by the full width of lot, the same to be used for alley purposes for the benefit of Lots 93, 96, and 97 in said Square 191."
Zoning:	DC/R-4: R-4: row dwellings (single-family and flats) DC: Dupont Circle Overlay District
Existing Development:	The Property is developed with a three-story plus cellar row building. An existing rear fence denotes the edge of the easement approximately 3' inside the Property's southern lot line. A neighboring garage to the south encroaches about 8" in depth for about 8' width into the subject rear yard.
Historic District:	Greater U Street and Sixteenth Street Historic District

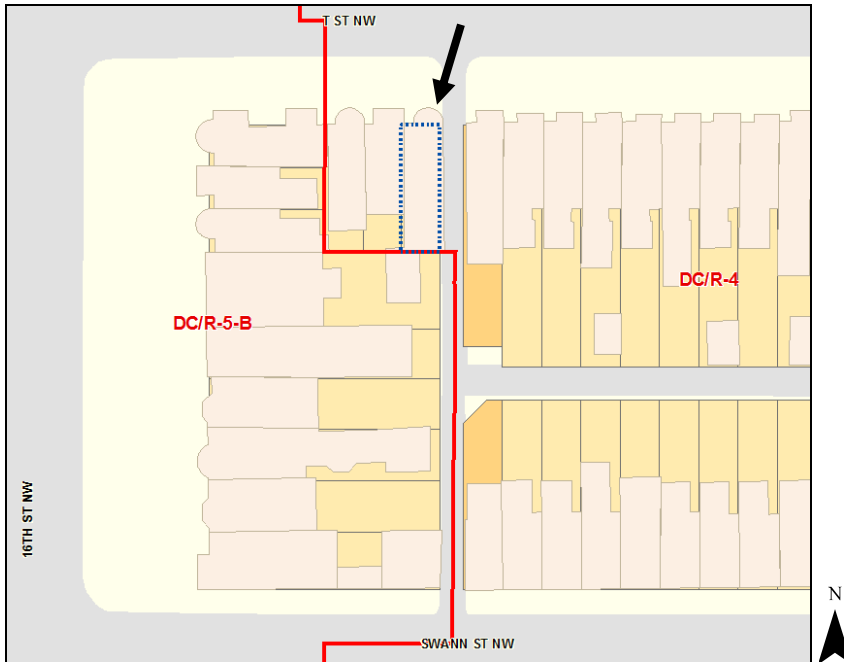


Adjacent Properties:	The Property is adjacent to a row dwelling to the west. To the south, the Property borders the rear yard and garage of a residential building fronting 16 <sup>th</sup> Street NW. To the east, across the public alley, are row dwellings.
Surrounding Neighborhood Character:	The surrounding neighborhood has a variety of residential building types. Commercial corridors are located a couple blocks to the north and east of the Property along U Street and 14 <sup>th</sup> Street, respectively.

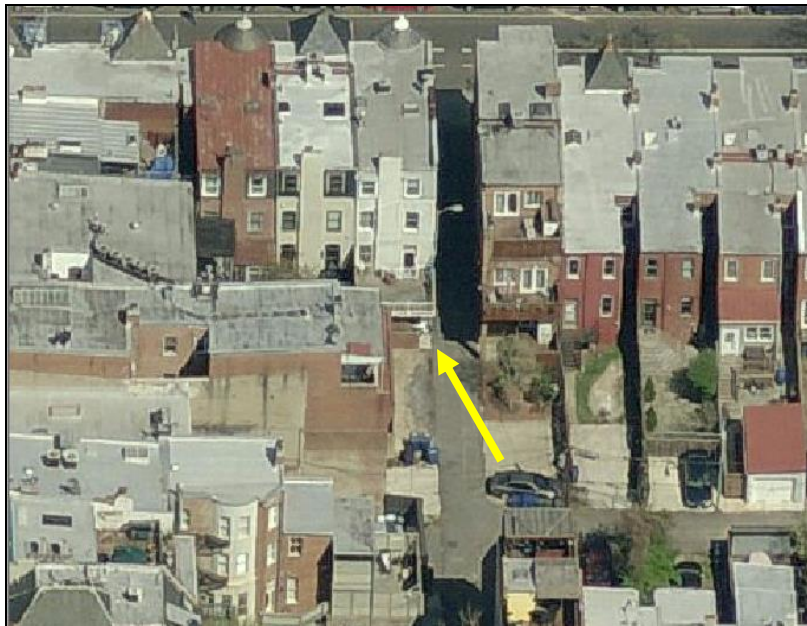
**III. PROJECT DESCRIPTION IN BRIEF**

Applicant:	Rafael Romeu
Proposal:	<p>The Applicant proposes to construct an approximately 11' x 17' elevated rear deck. It would connect to a new rear door on the dwelling's first floor and an approximately 3' to 4' landing with stairs leading up to the deck and down to the ground level. The deck would be elevated approximately 7' above the ground and, when the floor of the deck and railing are included, it would reach about 11' in height. There appears to be no gating or fencing beneath the deck along the exposed southern or eastern edges. The deck would be constructed above a 3' wide passage crossing the rear of the Property intended for alley access for the neighbors to the west.</p> <p>Other aspects of the proposal include the following features. Two posts rising from the deck would have light fixtures attached, which the Applicant indicated would contain downward facing lights. The deck would contain a louvered 2.5' tall wooden screen above the railing on its west side. Plans indicate space for a car to park beneath the deck, although the parking space would fall below the minimum dimension standards under zoning (and no parking spaces seem to be required under zoning). The Applicant's latest design plans, as found in the Supplemental Filing, appear to have modified the location of two supporting deck columns, moving them from the southern property line to the northern edge of the easement.</p> <p>As background to the filing of the application, it appears that a substantial and possibly similarly sized deck occupied the site for some length of time beginning the early 1950s to approximately 2011 (either continuously or interrupted), when a previous Property owner razed it. The Applicant was issued a building permit by DCRA for the proposed deck addition on July 26, 2013, but the permit was revoked by DCRA on December 6, 2013. An intervening appeal of the issuance of the building permit (Case No. 18659) was rendered moot following the revocation of the permit.</p>
Relief Sought:	<p>§ 403.1, area variance relief to exceed maximum lot occupancy                  § 404.1, area variance relief for a non-conforming rear yard                  § 2001.3, area variance relief for the expansion of a non-conforming structure</p>

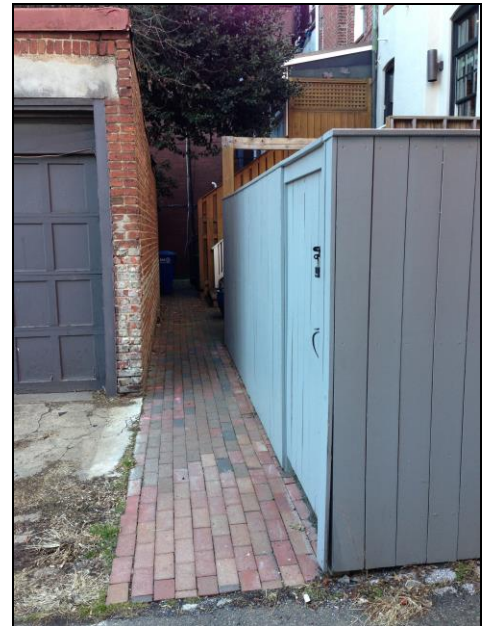
**IV. IMAGES AND MAPS**



Aerial view of the site (highlighted)



View of the rear of the subject Property looking north toward T Street; earlier (now removed deck) shown in the photo (2009)



View of the rear of the Property and subject pathway looking west (2014)

**ZONING REQUIREMENTS**

The following table, which reflects information supplied by the Applicant, summarizes certain zoning requirements for the project and the relief requested.

<i>R-4 Zoning</i>	<i>Restriction</i>	<i>Existing</i>	<i>Proposed</i>	<i>Relief</i>
Lot area (sq. ft.)	1,800 min.	991	991	Non-conforming; no change proposed
Lot width (ft.)	18' min.	~ 17'	~ 17'	Non-conforming; no change proposed

Lot occupancy (building area/lot)	60% max.	72%	97%	Relief needed
Rear yard (ft.)	20' min.	~ 15'	~ 8"	Relief needed

In R-4 zones, deck additions are permitted subject to applicable zoning constraints. The proposal would construct an elevated deck to within half a foot of the rear property line, increasing the site’s lot occupancy from 72% to 97%. As a result, rear yard, lot occupancy, and expansion of a non-conforming structure zoning relief is needed.

**Area Variance Relief** (§§ 403, 404, & 2001.3)

- **Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions, and does the extraordinary or exceptional situation impose a practical difficulty which is unnecessarily burdensome to the applicant?**

Due to the unusual zoning history, the Property exhibits an exceptional situation leading to a practical difficulty with respect to constructing any rear deck. The Applicant appears to have acted in good faith in accordance with the regulations and reasonably relied on the issuance of the building permit by DCRA. The Applicant applied for and received a building permit to construct a deck and began the construction process. According to the application, based on this permission, the Applicant purchased expensive pre-cut custom Brazilian IPE wood, removed an existing patio, and dug foundational footers prior to the revocation of the permit. As demonstrated by the itemized expense list and deposited checks in the supplemental filing, the Applicant already has incurred considerable expense toward the deck’s creation. For example, the Applicant purchased \$32,500 in wood for the deck and incurred other associated expenses between the time of permit issuance and revocation. The Applicant has stated that the wood cannot be returned or resold for value and the preparation of the rear yard has already commenced. Denying the Applicant the ability to build a deck would impose an unnecessary burden on the owner.

Other features of the Property, such as the rear easement as well as the 8" encroachment from a neighboring garage, are unusual but do not appear to lead to a practical difficulty related to the deck addition. Other observed conditions of the Property, including the Property’s 921 square foot size and the present lack of rear access from the dwelling to the yard, appear less compelling regarding any uniqueness or related practical difficulty.<sup>1</sup>

However, while supporting the building of a deck in this circumstance, OP does not find that the Applicant has demonstrated a practical difficulty in constructing a smaller deck. Such a design would be less non-conforming to both lot occupancy and rear yard and reduce the intensity of development on the site. OP encourages the Applicant to explore a more conforming deck design. Alternatively, the Applicant could further expound on the practical difficulty referenced, but not evidenced in the application with any cost estimates or other assistive information, that “re-sizing Brazilian IPE is extremely difficult, as it is tremendously dense wood that requires special equipment to cut and drill the wood.”<sup>2</sup>

<sup>1</sup> The Applicant indicates in the Applicant’s Supplemental Filing that “there is no access from the main living floor without building at least a landing and stairway, which would also need variance relief.” (page 17). As provided in § 2503, it appears that relief would not be needed for a landing and stairway. Section 2503 provides: “Stairs leading to the ground from a door located on the story in which the principal entrance of a building is located may occupy any yard required under provisions of this title. The stairs shall include any railing required by the provisions of the D.C. Construction Code.”

<sup>2</sup> See Applicant’s Supplemental Filing, page 18.

- **Can the relief be granted without substantial detriment to the public good?**

OP is aware that there is opposition to the proposal from the neighbor immediately to the west (1538 T Street NW) as well as two other neighbors who use the easement. OP notes that Applicant's latest design appears to relocate two columns out of the southern portion of the 3' easement to the northern edge of the easement, which the Applicant also indicates would "help guarantee that a car would not encroach on the easement."<sup>3</sup> This modification may respond to one aspect of neighbor concern regarding obstruction to alley access. But as a general matter, OP has no opinion concerning the validity of the proposed design as it relates to legally obeying the terms of the easement.

Concerning other project impacts on the public good, the Applicant has submitted a shadow study to demonstrate that there would be limited additional impact on light caused by the deck to the neighboring properties. The Applicant also has included a louvered screen in the latest design as an attempt to enhance the privacy of the adjoining neighbor. The proposal further contains two poles with lighting fixtures; OP encourages the Applicant to further address how this proposed lighting design would not be unnecessarily impactful.

- **Can the relief be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?**

As presently proposed, granting relief would impair the intent, purpose and integrity of the Zoning Regulations and Map. The Applicant should explore a more conforming design or provide additional evidence satisfying the variance test.

## **V. ANC/COMMUNITY COMMENTS**

It is OP's understanding that ANC 2B voted to support the application subject to the project protecting and demarcating the easement at the rear of the Property. To date, OP has reviewed a letter in support of the project filed by a neighbor to the Property's east (across the public alley) (1534 T Street). OP is aware of three party status applications in opposition to the project filed by neighbors at 1538 and 1540 T Street and 1839 16<sup>th</sup> Street.<sup>4</sup>

## **VI. AGENCY COMMENTS**

The Historic Preservation Office staff has indicated to OP that they have no objection to the project in concept and that the proposal likely would be reviewed at staff level for permit approval.

JLS/pg  
Paul Goldstein, case manager

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<sup>3</sup> Applicant's Supplemental Filing, page 19.

<sup>4</sup> OP notes that the property at 1839 16<sup>th</sup> Street NW is not listed as a party to the easement.