Board of Zoning Adjustment
District of Columbia
CASE NO.16521
EXHIBIT NO.33A2

PERMIT

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

Form BLRA-16 (Rev. 8/30/91)

BUILDING PERMIT — PERMIT NO. B413166

Date 1/29/98 (Type) ADDITION
Address of work 3020 43rd ST, NW.
Permission is hereby granted to CHARLES SIGSON (Owner)
who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.
Authorized work and conditions of performance thereof.

Lot 810 Square 1622
TOTAL PERMIT FEE $
FILING FEE $
NO. DATE
FEE PAYABLE $ 221.20
FOR INSPECTIONS CALL 727-7862

2-STORY ADDITION ON REAR.NO CROSSING SIDEWALKS WITH CONST. VECHILE, SEPERATE ELECTRICAL, PLUMBING INSTALLTION PERMITS ARE REQUIRED.

Builder—
Width of Bldg. Length Height No. of Stories 2
Zone To be occupied as
Height of terrace above grade Projections: SFD
Address of owner 3600 LIVINGSTON RD. SE.
Deposit No. Amount $
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Value $ No. of Bldgs. 1
Chief, Permit Issuance Branch
By D.MINOR E.C. Permit Clerk

DAVID WATTS
DIRECTOR

PERMIT

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

Form BLRA-15 (Rev. 8/30/91)

BUILDING PERMIT — PERMIT NO. B413424

Date 2/9/98 (Type) GARAGE
Address of work 3020 43RD ST. N.W.
Permission is hereby granted to CHARLES SIGSON (Owner)
who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.
Authorized work and conditions of performance thereof.

Lot 810 Square 1621
TOTAL PERMIT FEE $
FILING FEE $
NO. DATE
FEE PAYABLE $ 50.00
FOR INSPECTIONS CALL 727-7862

ADDITION TO GARAGE LENGTH 20 FT. WIDTH 20 FT, HEIGHT 14 FT.
MAT. OF ROOF SHINGLE, MAT. OF SIDES SIDING.
NO BLOCKING PUBLIC ALLEY WITH TRUCKS.

Builder—
Width of Bldg. Length Height No. of Stories
Zone R-1-A To be occupied as
Height of terrace above grade Projections: SFD/GARAGE
Address of owner 36003600 LIVINGSTON RD. N.W.
Deposit No. Amount $
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Value $ 1 No. of Bldgs.
Chief, Permit Issuance Branch
D.MINOR
By Permit Clerk

DAVID WATTS
DIRECTOR

PERMIT

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

Form BLRA-16 (Rev. 8/30/91)

BUILDING PERMIT GARAGE — PERMIT NO. B415675

Date 05-27-98 (Type) ALTERATION/REPAIR
Address of work 3020 43rd STREET, NW
Permission is hereby granted to
who is CHARLES SIGSON (Owner)
authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.
Authorized work and conditions of performance thereof.

Lot 0810 Square 1621
TOTAL PERMIT FEE $
FILING FEE $ 50.00
NO. DATE
FEE PAYABLE $ 50.00
FOR INSPECTIONS CALL 727-7862

NEW GARAGE TO BE LOCATED ON SAME SPOT AS PREVIOUS GARAGE! NO CROSSING SIDEWALK WITH CONSTRUCTION VEHICLES! LENGTH: 20 FEET, WIDTH: 10'9", HGT: 8 FT!

Builder—
Width of Bldg. Length Height No. of Stories
Zone SHOD/R1A To be occupied as
Height of terrace above grade Projections: 2
Address of owner
Deposit No. SAME AS ABOVE Amount $ GARAGE
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Value $ No. of Bldgs.
Chief, Permit Issuance Branch
SHIRLEY IVEY
By Permit Clerk

DAVID WATTS
DIRECTOR

PERMIT

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

Form BLRA-16 (Rev. 8/30/91)

BUILDING PERMIT — PERMIT NO. B417814

Date 8/17/98 (Type) ALTER AND REPAIR
Address of work 3020 43RD ST. N.W.
Permission is hereby granted to CHARLES SIGSON (Owner)
who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.
Authorized work and conditions of performance thereof.

Lot 810 Square 1621
TOTAL PERMIT FEE $
FILING FEE $
NO. DATE
FEE PAYABLE $ 25.00
FOR INSPECTIONS CALL 727-7862

REPAIR EXISTING ROOF, ROOF IN PLACE , NO STRUCTURAL CHANGE. AS PER PLANS. THIS PERMIT DOES NOT AUTHORIZE CROSSING PUBLIC SIDEWALK WITH TRUCKS.

Builder—
Width of Bldg. Length Height No. of Stories 2
Zone R-1-B To be occupied as
Height of terrace above grade Projections: SFD
Address of owner 3020 43RD ST. N.W.
Deposit No. Amount $
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Value $ No. of Bldgs.
Chief, Permit Issuance Branch
D.MINOR
By Permit Clerk

D. REEVES
DIRECTOR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
(Rev. 9/30/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B419108

PERMIT

Date 10/05/98 (Type) A/R

Address of work 3020 43RD STREET, N.W.

Lot 810 Square 1621

Permission is hereby granted to CHARLES SISSON (Owner)

who is authorized to perform the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit.

Authorized work and conditions of performance thereof:

TOTAL PERMIT FEE $

FILING FEE $

NO. DATE

FEE PAYABLE $ 50.00

FOR INSPECTIONS CALL 727-7562

BUILD NEW PORCH ROOF AS PER PLANS. PORCH IN PLACE.

Builder—

Value $ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories

Zone WHOD/R1A To be occupied as 2

Height of terrace above grade Projections:

Address of owner

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Chief, Permit Issuance Branch

By

Permit Clerk

JORDAN



DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
BUILDING INSPECTION DIVISION

APPROVED

Address: [illegible]

Type of Inspection: [illegible]

☐ Construction Branch 727-7562 ☒ Electrical Branch 727-7532 ☐ Plumbing Branch 727-7519 ☐ Elevator Branch 727-7544 ☐ Boiler Branch 727-7554

Time 12-3-98 Date [signature] Official

8-0390 wd.231

BLRA-66
(Rev. 10/87)

BUILDING INSPECTION DIVISION

APPROVED

Address: 3020 43 st nw

Type of Inspection: garage footing + walls

☒ Construction Branch 727-7562 ☐ Electrical Branch 727-7532 ☐ Plumbing Branch 727-7519 ☐ Elevator Branch 727-7544 ☐ Boiler Branch 727-7554

Time 7/13/98 Date [signature] Official

LBA-66
(Rev. 10/87)

BUILDING INSPECTION DIVISION

APPROVED

Address: 3020 43 St NW

Type of Inspection: Porch Roofing + Deck Framing

☐ Construction Branch 727-7562	☐ Electrical Branch 727-7532	☐ Plumbing Branch 727-7519	☐ Elevator Branch 727-7544	☐ Boiler Branch 727-7554

Time | 7/13/98 Date | R Shesta Official

GOVERNMENT OF THE DISTRICT OF COLUMBIA
LBA-66
Rev. 10/87)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
BUILDING INSPECTION DIVISION

APPROVED

Address: 3020 43rd St. N.W

Type of Inspection: Rough Waste Vents Water Cap

☐ Construction Branch 727-7562	☐ Electrical Branch 727-7532	☑ Plumbing Branch 727-7519	☐ Elevator Branch 727-7544	☐ Boiler Branch 727-7554

Time | 8-21-98 Date | M Mackelvon Official

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
BUILDING INSPECTION DIVISION

APPROVED

Address: 3020 43rd St NW

Type of Inspection: Conclusion

☐ Construction Branch 727-7562 ☒ Electrical Branch 727-7532 ☐ Plumbing Branch 727-7519 ☐ Elevator Branch 727-7544 ☐ Boiler Branch 727-7554

Time 9-19-98 Date K Campbell Official

2-0390 wd-251

BUILDING AND LAND REGULATION ADMINISTRATION
BUILDING INSPECTION DIVISION

APPROVED

Address: 3020 43rd St N.W

Type of Inspection: Framing + Insulation

☒ Construction Branch 727-7562 ☐ Electrical Branch 727-7532 ☐ Plumbing Branch 727-7519 ☐ Elevator Branch 727-7544 ☐ Boiler Branch 727-7554

Time 8/21/98 Date R. Shaffer Official

1

★★★ GOVERNMENT OF THE DISTRICT OF COLUMBIA
BLRA-56
(Rev. 10/87)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
BUILDING INSPECTION DIVISION

NOTE
WATER TEST STRIP
NOT TESTED

APPROVED

Address: 3020 43rd St NW

Type of Inspection: Final Footing

☒ Construction Branch 727-7562	☐ Electrical Branch 727-7532	☐ Plumbing Branch 727-7519	☐ Elevator Branch 727-7544	☐ Boiler Branch 727-7554

Time	3/6/98 Date	Peter Nugent Gwin Official

8-0390 wd-251

★★★ GOVERNMENT OF THE DISTRICT OF COLUMBIA
BLRA-56
(Rev. 10/87)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
BUILDING INSPECTION DIVISION

APPROVED

Address: 3020 43rd St NW

Type of Inspection: Final Footprint

☒ Construction Branch 727-7562	☐ Electrical Branch 727-7532	☐ Plumbing Branch 727-7519	☐ Elevator Branch 727-7544	☐ Boiler Branch 727-7554

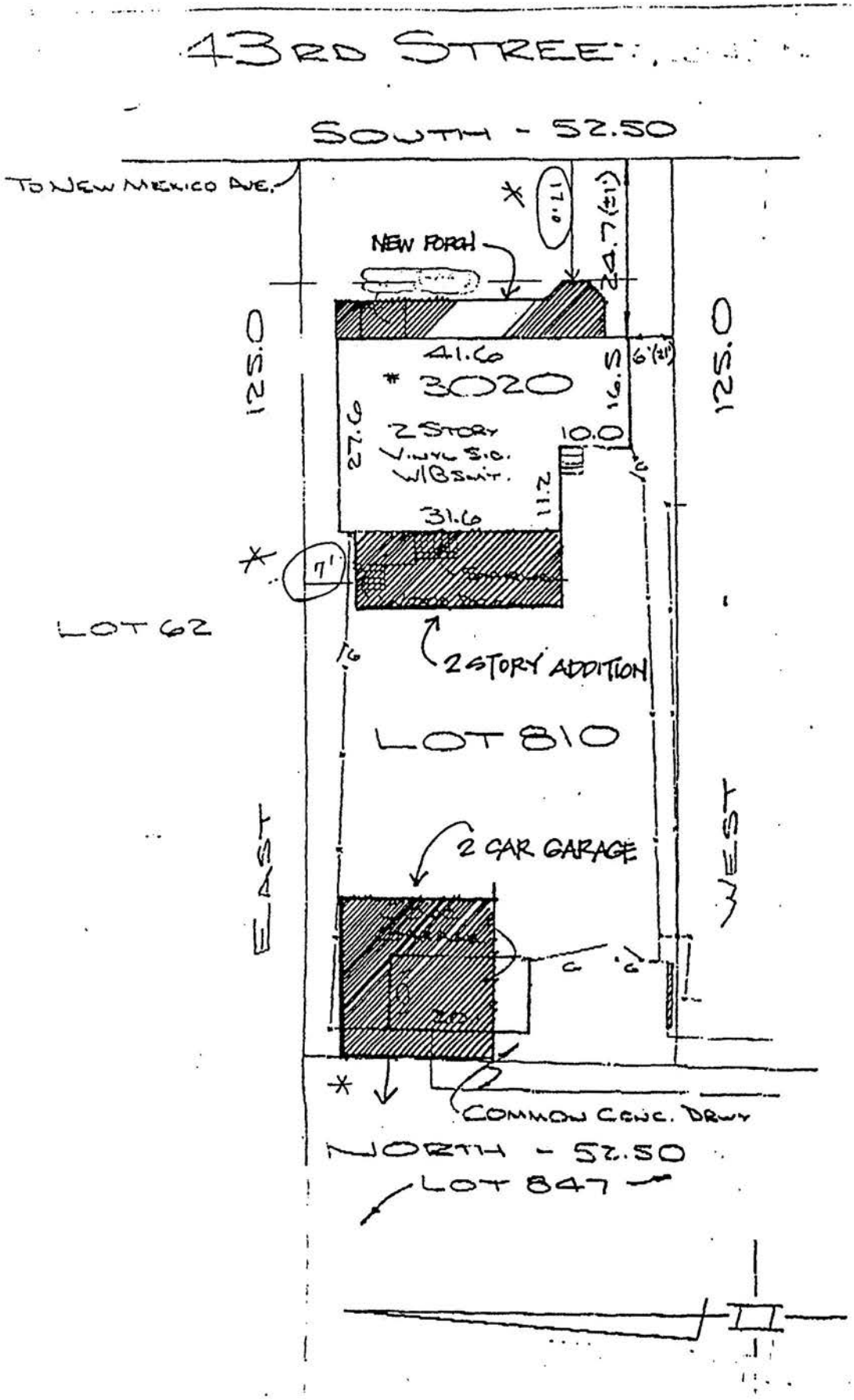
Time	12/1/98 Date	R. Shelton Official

NOTES AND COMPUTATIONS

ADDRESS: **3020 43rd Street, NW** LOT(S): **70** SQUARE: **1621**

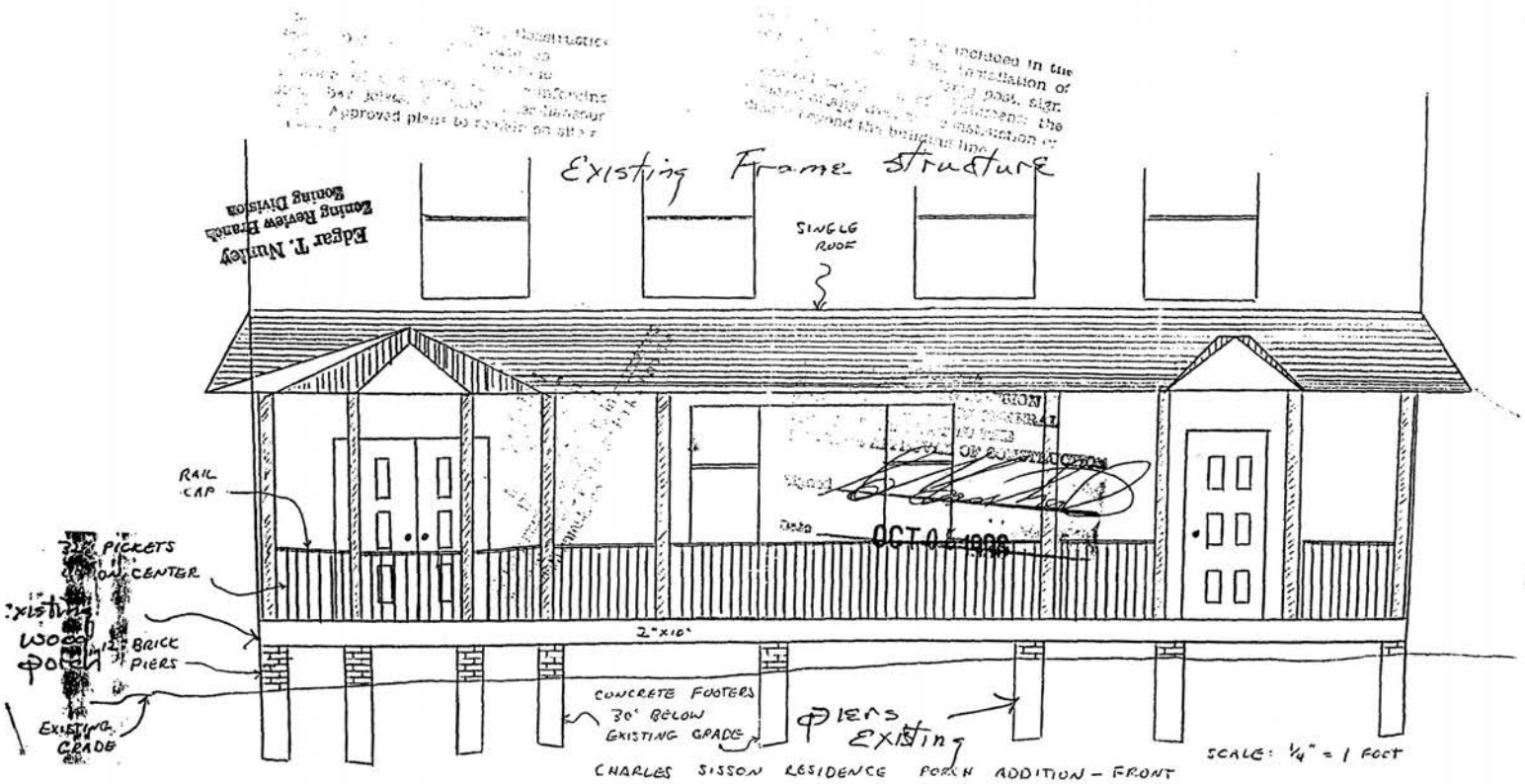
ZONED: **WHOD/R-1-A**

	REQUIRED	ALLOWED	PROVIDED	VARIANCE
LOT AREA	7500 sq. ft.		6562.5 sq. ft. (existing)	937.5 (existing)
LOT WIDTH	75 feet		59.33 feet (existing	15.67 feet (existing)
LOT OCCUPANCY (%)		2000 sq. ft. (Sec. 1543.2)	2253 sq. ft.	253 sq. ft. (12.7%)
GROSS FLOOR AREA		4625 sq. ft. (Sec. 1543.3)	3448.64 sq. ft.	
PARKING SPACES	1		2	
LOADING BERTHS	N/A			
FRONT YARD	21 feet		17.7 feet	3.3 feet (15.7%)
REAR YARD	25 feet		59.33 feet	
SIDE YARD	8' x 8'		6.5' x 4.34' (existing)	1.5' (19%) x 3.66' (45.7%) (existing)
COURT, OPEN	N/A			
COURT, CLOSED	N/A			



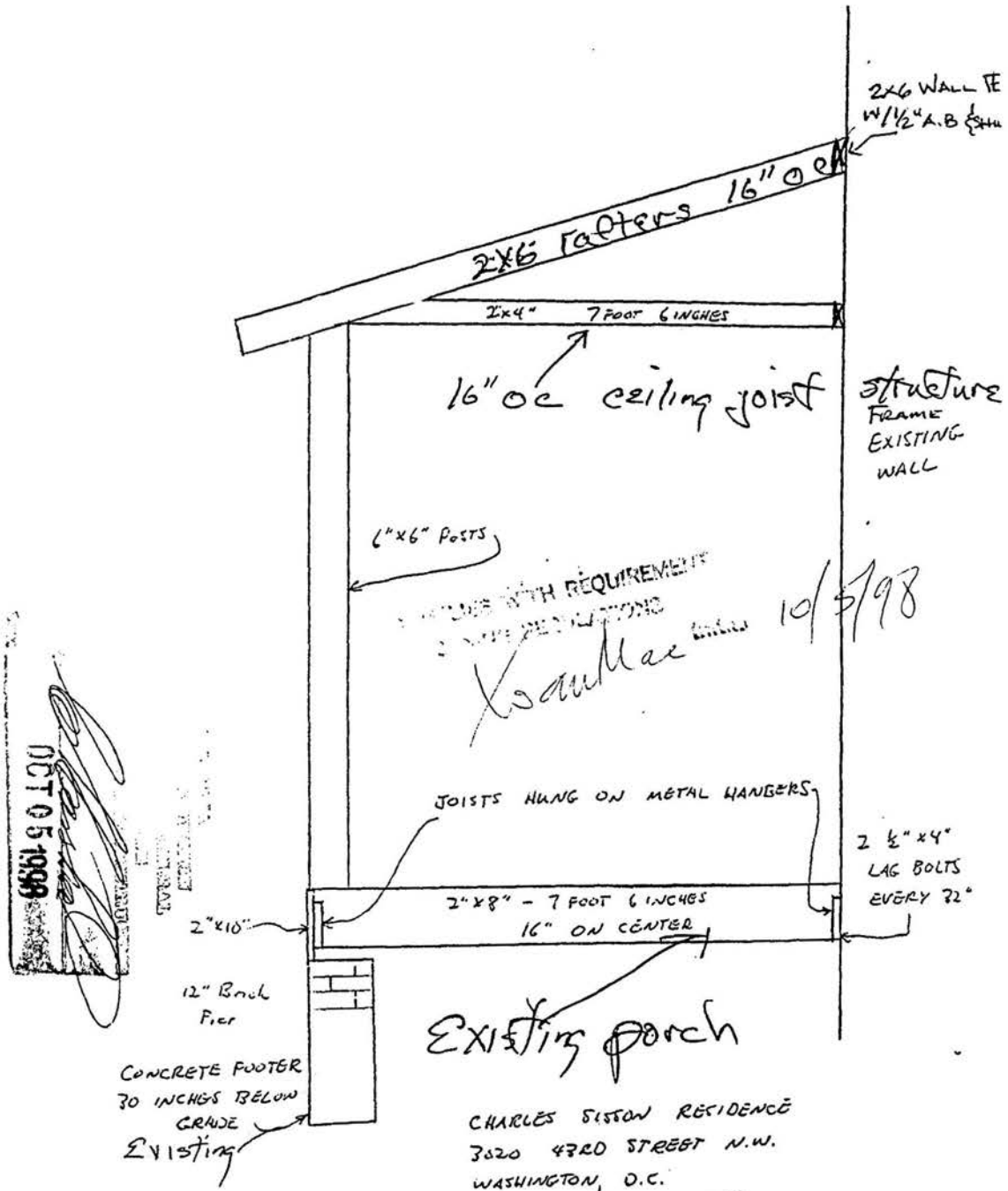
Sisson Residence: 2 Story Addition and Garage
3020 43rd Street, N.W. Washington D.C.
project name:

project no.
scale: AS
date: 12/2
drawn by:
revisions:



CHARLES SISSON RESIDENCE PORCH ADDITION – FRONT

3020 43rd ST. N.W. WASHINGTON, D.C.



10/5/98

OCT 05 1998

Edgar T. Nunley
Zoning Review Branch
Zoning Division

CHARLES SISSON RESIDENCE
3520 47TH STREET N.W.
WASHINGTON, D.C.
FRONT PORCH ADDITION

TYPICAL CROSS SECTION

SCALE: 1/2" = 1 FOOT

NOTE: SECTION IN FRONT OF DOUBLE DOORS EXTENDS TWO ADDITIONAL FEET TO PROVIDE BAY AREA

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      2. No "self-created hardship".
   B. Practical Difficulties.
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191296

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- C. Variance may be granted without detriment to the public good and without substantially impairing the purpose and integrity of the zone plan.
  1. Addition is similar to and compatible with other additions in immediate area.
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15414 of Maureen Flanagan and William Merritts, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that now exceeds the minimum side yard requirements [Paragraph 2001.3(c)], and a variance from the side yard requirements (Sub-section 405.9) for an addition to an existing nonconforming single-family dwelling in an R-1-B District at premises 3417 Lowell Street, N.W., (Square 2089, Lot 2).

HEARING DATE: **January 16, 1991**
DECISION DATES: **February 6 and March 6, 1991**

FINDINGS OF FACT:

1. The property is located on the north side of Lowell Street between 34th and 35th Streets and is known as premises 3417 Lowell Street, N.W. It is zoned R-1-B.

2. The property is rectangular in shape with a frontage of 45 feet along Lowell Street and a depth of 135 feet for a total lot area of 6,075 square feet.

3. The property is currently improved with a two-story detached single-family dwelling which was constructed circa 1919 and an accessory garage at the rear of the site.

4. The area surrounding the subject site is characterized by large single-family dwellings on large lots. The Washington Cathedral is located one block southwest of the site at Wisconsin Avenue and Woodley Road.

5. The applicants are seeking appropriate variance relief to legitimize the construction of a one-story addition to the rear of the dwelling which consists of an extension of the existing kitchen and den, a deck, and a roof deck above the addition accessed from a second story bedroom. The addition is flush along the western side of the dwelling and does not extend farther into the side yard than the existing structure.

6. The applicants entered into a contract to purchase the subject site in April of 1989 with the intention of constructing the subject addition. At closing, the applicants were furnished a survey of the property dated December 9, 1958, and identified as "Surveyor's Certificate". The survey established the western side yard as being 5.3 feet in width.

7. In June of 1989, construction drawings for the addition were prepared by the applicants and submitted to the Historic

Preservation Review Board (the "HPRB"). On June 22, 1989 the HPRB granted conceptual design approval. Final approval, which was delegated to the staff, was granted on August 7, 1989.

8. The HPRB transmittal, dated August 7, 1989, indicated that the work complied with the Zoning Regulations and directed the applicants to apply for a building permit. At the time the zoning technician "signed-off" on the transmittal, the plans for the addition were on file with the HPRB, as were all the records in the Surveyor's Office regarding the subject site.

9. The applicants applied for a building permit on August 9, 1989. The plans on which the building permit was based were stamped to indicate that they complied with zoning. The applicants were directed by District officials in the building permit office to indicate the relationship of the proposed addition to the property lines based on existing plats. The applicants had two existing plats. The first was the 1958 plat prepared by a private surveyor showing a side yard of 5.3 feet. The second was a private survey ("Landtech survey"), dated June, 1989, showing a side yard of slightly more than 5 feet in width when scaled, thereby confirming the 5.3 feet figure.

10. Based on the 1958 plat and the Landtech survey, and the fact that no other plats or documents available to the applicants at the Surveyor's Office indicated the subject site's side yard dimension, including the canvas survey papers on record at the Surveyor's Office, the applicants indicated on a plat dated July 26, 1989, that the side yard was 5.3 feet. The applicants testified that an "eyeballing" of the distance between the house on the subject site and a stockade fence that previously existed between the subject site and the neighboring property to the west was consistent with the assumption that the side yard distance was approximately 5 feet. The fence was subsequently replaced by another fence which was located farther to the east.

11. The District issued building and electric permits on August 9, 1989. Shortly thereafter, construction commenced, and the applicants met with the immediate neighbors to their east and west to review the plans. A public space permit was issued for the use of the dumpster on the street on August 17, 1989, and a plumbing permit was issued on August 22, 1989.

12. On September 3, 1989, the applicants original contractor reported to the applicants that a wall check for the addition had been performed. The original contractor subsequently left the job. The newly hired contractor proceeded with construction on the addition with the understanding that a wall check had been completed.

13. In October of 1989, the foundation and walls were inspected by the City, and a sticker dated October 27, 1989, stamped "APPROVED" was issued. A copy of the inspection sticker was submitted at the hearing of the applicants. In November of 1989, the District conducted further inspections and issued approval for the plumbing and electrical work.

14. Section 405.8 of the Zoning Regulations provides that in the case of a building existing on or before May 12, 1958, with a side yard less than eight feet wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased and shall be a minimum of five feet.

15. In November of 1989, the neighbors immediately adjacent to the subject site to the west, contacted Advisory Neighborhood Commission (ANC) 3C, contending that the addition did not comply with the 5 foot side yard requirement. The applicants testified that they were unaware of a problem related to the width of the side yard prior to being contacted by the Single Member District ANC representative. The applicants contacted their real estate attorney on November 9, 1989 regarding the side yard dispute and were advised that, based on his review of the plats and the approved building permit, they were within their legal right to proceed with construction.

16. On November 21, 1989, the Surveyor's Office conducted a wall check of the subject premises. The applicants were verbally advised by the staff member who conducted the wall check and by telephone conversation with a city inspector that the addition appeared to be legitimate.

17. A plat was prepared by the Surveyor's Office indicating a side yard dimension of 3.5 and 3.44 feet, and noting disapproval on December 1, 1989. The applicants testified that not until December 4, 1989, did they know that the wall check revealed some discrepancies in the side yard width. At that time, all of the interior work and 99 percent of the exterior work on the addition had been completed at a cost of approximately $52,000. A stop work order was issued on December 4, 1989 and construction on the addition ceased.

18. The Zoning Administrator's Office, relying on the November 21, 1989 wall check, determined that the existing structure is 3.5 feet from the property line and directed the applicants to file for a variance relief. By memo dated July 18, 1990, the Zoning Administrator's office indicated the specific zoning relief necessary for construction of the addition. The applicants filed the instant application on August 23, 1990.

19. The subject property was developed prior to the adoption

32. The Single Member District Representative for the subject site, testified at the public hearing in support of the application. The Single Member District Representative was of the opinion that the applicants acted in good faith and relied on city assurances and permits in building the addition. He noted that equitable adjudication should not penalize the applicant and force dismantlement of the addition and recommended that the variance be granted with conditions designed to resolve the issues relative to privacy for the adjoining property, such as removal of side windows and the door to the upper deck.

33. The record contains several letters and a petition from nearby property owners in support of the application. Several nearby property owners testified at the public hearing in support of the application. The support was generally based on the significant improvement to the neighborhood as a result of the addition to and the renovation of the subject property; the applicants' good faith reliance on Government issued permits; and the minimal nature of the variance relief requested.

34. The record contains several letters and a petition in opposition to the application. The opposition was generally based on the applicant's failure to comply with the Zoning Regulations, the loss of privacy for the adjacent property owner, and because the granting of the request after completion of construction in violation of the Zoning Regulations would be precedential in nature.

35. The owners of the adjacent property at 3419 Lowell Street appeared at the public hearing in opposition to the application. The opposition submitted an analysis of law, marked as Exhibit No. 57 of the record, which argued that the granting of a "retroactive" variance is not allowed under applicable law; that the applicants' arguments purporting to satisfy the required burden of proof for variance relief do not meet the requisite test standards; and that the doctrine of equitable estoppel is inapplicable in the subject case.

36. With respect to the addition, the opposition expressed the following concerns:

a. The addition reduces light and air to the rear of 3419 Lowell Street.

b. The addition, particularly the upper deck and additional windows, infringes upon the privacy of his residence and rear yard.

c. The proposals offered by the applicants to reduce the impact of the addition with regard to privacy are generally cosmetic and unenforceable.

d. The narrowness of the subject site, the need for driveway access to the rear, and the narrow side yard are not uncommon in the area.

e. The applicants failed to demonstrate that an addition could not be constructed in compliance with the side yard requirements, nor that a narrower addition would present a practical difficulty for the applicants.

f. The applicants did not rely reasonably on administrative action, in that the applicants provided and certified incorrect dimensions when applying for a building permit; did not obtain a new survey prior to construction; did not obtain footing or wall checks at the appropriate time; and failed to obey stop work orders issued related to the addition.

g. The granting of the application would be detrimental to the public good and undermine the integrity of the Zoning Regulations by encouraging miscertifications and efforts to expedite construction that does not comply with the applicable provisions of the Zoning Regulations.

37. The record contains a letter from Vincent L. Ford, Program Manager, D.C. Department of Consumer and Regulatory Affairs, Building and Land Regulations Division, dated January 14, 1991, setting forth the chronology of Stop Work orders issued pertaining to construction at the subject site. Counsel for the applicant objected to its inclusion in the record because Mr. Ford was not present at the public hearing and available for cross-examination.

38. The opposition submitted a plat of the property at 3419 Lowell Street which indicates eastern side yard dimensions of 10.69 and 10.70 feet. The opposition contended that by subtracting these dimensions from the 14 foot distance between the two dwellings, the applicants should have been aware that their side yard was less than five feet in width. The opposition further submitted a plat of the subject site purporting to show the width of the side yard as 3.5 feet.

39. At the conclusion of the public hearing, the Board left the record open to allow the parties to the case an opportunity to respond to the January 14, 1991 letter from Vincent Ford, the Office of Planning report, and the plats submitted by the opposition.

40. Counsel for the applicants filed a post-hearing submission on January 24, 1991. With regard to the letter from Vincent Ford, counsel requested that the letter be excluded from the record because Mr. Ford was not available for cross-

examination, the letter does not address the merits of the application, and the letter relates to a time period and events subsequent to the stop work order which were not addressed in the applicants' testimony.

41. With regard to the plats of 3419 Lowell Street, submitted by the opposition, counsel for the applicants argued that the applicants had no reason to explore the dimensions of the neighboring property when applying for a building permit, particularly since the applicants were unaware of a possible discrepancy related to the dimensions of their side yard prior to substantial completion of the addition. Further, the applicants never had reason to physically measure the distance between the two dwellings. In addition, counsel noted that subtracting the dimensions of the side yard of 3419 Lowell Street from the stated fourteen foot distance between the two houses results in further confusion relative to the actual dimensions by providing side yard dimensions of 3.3' and 3.31' which are not consistent with any other figures submitted for the record.

42. With regard to the plat submitted by the opposition relating to the subject site, counsel for the applicants stated that the plat is incomprehensible: there is no notation that the 3.5 figure on the plat applies to the side yard, and no corresponding drawing to so indicate. Counsel for the applicants argued that since there have been no changes with regard to the configuration of the lots or the location of the dwellings on their respective lots, the applicants were entitled to rely on the 1958 survey plat with respect to the side yard dimension of the subject site.

43. The Vice-Chairman of ANC-3C, by letter dated January 25, 1991, requested that the Board accept its post-hearing submission one day late. With regard to the OP report, the ANC representative was of the opinion that OP failed to support the position of other Government agencies and only superficially reviewed the case with respect to the standards for variance relief. Counsel for the applicants objected to the inclusion of the ANC submission in the record because the contents of the January 25, 1991 submission were not adopted by ANC resolution and were untimely filed.

44. The opposition filed post-hearing submissions on January 23, 1991. With regard to the OP report, the opposition was of the opinion that the finding of uniqueness relative to the subject property is improper for the following reasons:

a. OP relied on information that is not sufficient to demonstrate the physical uniqueness of the subject property.

b. OP did not provide any credible information supporting its conclusion that the applicants demonstrated "good faith" during the construction period and that the applicant relied on actions taken by the Government to their detriment.

c. It is not the responsibility of OP to make findings concerning the "good faith" of the applicants in applying to the Board for variance relief.

45. With regard to the letter from Vincent Ford, the opposition was of the opinion that the letter relates directly to certain statements made by the applicants and contains information known personally by the opposition. The opposition further submitted a chronology of the events relative to the wall check and stop work orders.

46. By letter dated January 31, 1991, the representative of ANC 3C submitted a response to the applicants' post-hearing submission which is generally summarized as follows:

a. The validity and relevence of a boundary dispute can not constitute an "extraordinary or exceptional condition" of the property is not uncommon; and can easily be created.

b. The arguments relative to the burden of proof were previously presented and rebutted.

c. The letter from Vincent Ford may be accepted if the Board finds "the document to be full and complete on its face."

47. By letter dated January 30, 1991, the opposition responded to the applicants' post-hearing submission as follows:

a. The applicants have not proven that their reliance on the 1958 plat and the Landtech survey was reasonable or in good faith. The applicants proceeded with substantial construction without obtaining a new detailed survey and were responsible for the incomplete or erroneous information used to certify the plat submitted for the building permit.

b. The Court decisions cited in support of the applicant's case are not on point in the instant case.

c. The applicants do not contest the substance of the letter from Vincent Ford but simply assert that the letter was inadmissable under certain provisions of the Administrative Procedures Act. Since the letter merely represents correspondence from a person with particular knowledge of the case, rather than a report or

recommendation of a Government agency, the provisions of the Administrative Procedures Act do not apply.

48. The Board notes that the January 14, 1991 letter from Vincent Ford was addressed to the Chairperson of the Board, does not represent a report of a Government agency, and will be afforded whatever consideration it is due based on its relevance to the merits of the subject application only.

49. The Board deferred consideration of the application at its public meeting of February 6, 1991, to allow the parties to submit evidence certifying service of the post-hearing submissions on all parties to the application. Such proof of service was submitted to the Board prior to its public meeting of March 6, 1991.

50. In order to obtain variance relief, an applicant must demonstrate that the property is unique because of some physical aspect or other exceptional or extraordinary situation or condition inherent in the property; that the strict application of the Zoning Regulations would result in an undue hardship or practical difficulty upon the applicant; and that the granting of the requested relief would not harm the public good nor impair the zone plan.

51. With respect to the concerns expressed by the ANC and the opposition, the Board finds that the applicants have not come before the Board with an appeal of the Zoning Administrator's determination that variance relief is required in the instant case, nor have the applicants contended that the District was estopped from issuing a stop work order relevant to the addition based on the November, 1989 wall check performed by the D.C. Surveyors Office. The Board finds that the applicants' assertions of good faith reliance on affirmative acts of District Government officials in their proceeding to construct a permanent and expensive improvement to the existing dwelling seem to partially invoke the elements necessary to support the consideration of the doctrine of estoppel. However, in the instant case such assertions appear to simply lay the groundwork explaining the history of the proposed construction, the reason that the applicants sought variance relief with a substantially completed structure already in place, and to establish those facts as additional support for the applicants' claim of an exceptional or extraordinary condition of the subject property.

52. The Board finds that a showing of practical difficulty which inheres in the land at issue is not necessary to prove uniqueness and that such uniqueness may result from a condition inherent in the structures built on the land itself existing at the time of the adoption of the Zoning Regulations. In addition, the extraordinary or exceptional condition necessary to justify the

uniqueness of a property can be caused by subsequent events extraneous to the land at issue. However, the Board finds that the extraordinary or exceptional condition must uniquely affect a single piece of property.

53. The Board finds that the subject site is affected by an extraordinary or exceptional condition based on its narrow width and the siting of the existing dwelling on the lot at the time of the adoption of the Zoning Regulations in 1958; the location of the driveway necessitated by the need to maintain access to the existing parking garage due to the lack of alley access to the rear of the lot; the inconsistent information available related to the discrepancies in the side yard dimensions of the subject site shown on various documents; and the applicants' good faith reliance on the approvals given by officials of the District of Columbia during the renovation and construction process which includes the issuance of the building permit as well as various construction permits and inspections of the site.

54. The Board recognizes the argument expressed by the ANC and the opposition which asserts that the applicants were responsible to provide competent, accurate information, or to engage professional help to ensure the provision of reliable information in certifying the correct dimensions on the plat initially submitted for the building permit process. However, the same can be said for the officials who approved the plans and further conducted inspections of the site without themselves discovering a possible discrepancy. Therefore, the Board does not consider the applicants' reliance upon the approval of the building permit application to have been unjustified. While the facts offered do not seem to seek or to warrant the application of estoppel in this case, the actions of the officials of the government may be considered under variance law, which is designed to avoid harsh and unjust results in extraordinary situations.

55. The Board finds that the strict application of the Zoning Regulations in the instant case would result in practical difficulty upon the applicants in that (a) the applicants would be unable to reconfigure a feasible extension of the existing small kitchen elsewhere on the site due to the existing location of the building on the site, the location of the existing kitchen facilities and openings in the existing building; (b) the reduction in width of the existing addition to meet the requisite eight foot side yard requirements would result in a room of approximately five feet in width which would serve no practical purpose; and (c) the applicants would suffer an economic loss and temporary unsafe living conditions if required to demolish the addition.

56. The Board finds that the requested relief can be granted without substantial adverse impact upon the neighboring property owners as hereinafter conditioned. The addition contains

approximately 137 square feet of floor area located at the rear of the existing dwelling. The addition does not result in any further encroachment into the existing side yard nor does it extend into the required rear yard so its affect on light and air should be minimal. In addition, with regard to privacy, the applicants have agreed to prohibit access to the upper deck and to provide landscaping in order to further screen the addition from the adjoining property.

57. The Board notes that each individual application is considered based on its merits and is not considered to be precedential in nature.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires proof through substantial evidence of a practical difficulty upon the owner arising out of some exceptional or extraordinary condition inherent in the property itself. The Board further must find that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan.

The Board concludes that the applicant has met the requisite burden of proof. The property is unique based on its physical size and configuration which predates the Zoning Regulations in conjunction with the extraneous events relative to the issuance of and reliance upon building permits for the subject addition. Even though similarly configured properties may exist in the area, the instant case is unique with respect to its physical condition when combined with the effects of the applicants' reliance on information and approvals given by D.C. Government officials. The addition is minor in nature, complies with all other applicable provisions of the Zoning Regulations and, as hereinafter conditioned, is not likely to adversely impact on neighboring and nearby property owners.

The Board concludes that the strict application of the Zoning Regulations would create a practical difficulty upon the owner as set forth in Findings of Fact No. 26 and 55. The Board further concludes that the application can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is hereby **ORDERED**, that the application is **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. The exterior door to the second story deck shall be physically altered to prevent access to the deck except for repair purposes.

2. The site shall be landscaped in accordance with either of the alternate proposals set forth in Exhibit No. 61 of the record.

VOTE: 3-0 (Sheri M. Pruitt, Charles R. Norris and Carrie L. Thornhill to grant; John G. Parsons and Paula L. Jewell abstaining).

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

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: 19 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ODER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ord15414/LJPA

ord15414/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15414

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated JUL 19 1991 and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and to is listed below:

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EDWARD L. CURRY
Executive Director

DATE: JUL 19 1991