BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Charles A. Sisson

'00 MAY 22 P4:32

BZA Application No. 16521
Hearing Dates:
December 8, 1999, May 3, 2000,
May 16, 2000 and May 24, 2000
ANC 3D

MRS. MILDRED R. CRARY'S MOTION TO DISMISS AND/OR DENY THE APPLICATION WITH PREJUDICE

Mrs. Mildred R. Crary has owned the property immediately adjacent to the subject property since the 1960s and is a long recognized party in opposition to this remedial Application. Mrs. Crary was also the Appellant in BZA Appeal No. 16405, in which the Board found that improvements to the subject property (covered front porch, rear addition, and new garage) were constructed illegally in violation of numerous Zoning Regulations.

I. Relief Requested

Mrs. Crary, through counsel, respectfully and urgently, moves the Board to DISMISS and/or DENY this Application WITH PREJUDICE. More than seven and a half (7½) months after it was originally and prematurely filed and on the eve of an

BZA
Case No. 16521
Exhibit No. 42

Board of Zoning Adjustment
District of Columbia
CASE NO.16521
EXHIBIT NO.42

unprecedented fourth (4th) hearing date, this remedial Application remains fatally defective and without any reasonable basis for the Board to proceed. It cannot be disputed that this Application remains premature and is incomplete, misleading, increasingly inconsistent, confirms additional and greater zoning violations and directly contradicts (or simply ignores) the Board's detailed findings of fact and conclusions of law in the underlying BZA Appeal No. 16405. The Applicant, through his counsel, bears the sole responsibility to file and prosecute a complete and an accurate Application. Having failed to meet its burden, this Application must be DISMISSED and/or DENIED WITH PREJUDICE pursuant to 11 DCMR 3126.11.

II. THE BOARD'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE BINDING

In addition to numerous specific zoning violations (front yard setback, lot occupancy, private driveway access, required off-street parking and garage height of 16 feet), the Board's detailed findings of fact and conclusions of law issued on December 28, 1999 stated:

- The [Applicant's] project was **developed in a piecemeal manner and the various applications were often incomplete or otherwise misleading in that they did not**

always reflect the [Applicant's] plans for the garage, rear addition and front porch consistently and accurately. BZA Appeal No. 16405 ("Appeal Order"), Findings of Fact No. 8 (emphasis added).

- Although the second permit authorized an addition to an existing garage, **the garage was demolished without authorization**, purportedly because the [Applicant's] contractor discovered that the footings to the existing garage were decayed. Appeal Order, Findings of Fact No. 10 (emphasis added).

- **A new garage was constructed on the subject property that was larger than the approved garage addition**. The second permit approved a garage with dimensions of 20 feet in length and 14 feet in height, but the dimensions of the new garage were approximately 23 feet long, 21 feet wide and **16 feet high**. Appeal Order, Findings of Fact No. 11 (emphasis added).

- The third permit, for a new garage in the same location as the previous garage, was issued after the new garage was already substantially completed. **The large size of the new garage also exceeded the dimensions allowed by the third permit**. Appeal Order, Findings of Fact No. 12 (emphasis added).

- The Zoning Regulations require that off-street parking spaces must be accessible at times directly from improved streets or alleys or **accessible from improved streets and alleys via graded and unobstructed private driveways**. 11 DCMR §2117.4. Appeal Order, Findings of Fact No. 13 (emphasis added).

- A driveway providing access to required parking spaces must meet certain standards, including that a driveway serving more than one (1) parking space must be at least 12 feet wide if designed for one-way circulation or at least 14 feet wide if designed for two-way circulation. 11 DCMR §2117.8. Appeal Order, Findings of Fact No. 14.

- A private easement extends from Hawthorne Street along the rear of four neighboring properties, and terminates at the [Applicant's] property. Following construction of the new garage, **the easement is eight feet wide**. Appeal Order, Findings of Fact No. 15 (emphasis added).

- The [Applicant's] new garage is accessible **only** by means of the [eight foot] private easement. Appeal Order, Findings of Fact No. 16 (emphasis added).

- The [Applicant's five (5)] permit applications **contained errors of omission or were otherwise misleading** in that they did not reflect all existing and planned improvements accurately and consistently. Appeal Order, Conclusions of Law, Page 6 (emphasis added).

- Moreover, **some work was performed beyond the scope of the permit[s]**, as with the demolition of the existing garage and the construction of the new garage larger than the dimensions specified on the permit, **and two of the permits (the third and fifth) were issued for work that was undertaken prior to receiving the permits**. Appeal Order, Conclusions of Law, Page 6 (emphasis added).

- **[T]he full scope of the worked planned for the [Applicant's] property was not depicted consistently and accurately on all permit applications**, thus precluding an assessment of each individual permit application within the context of all existing and planned improvements. Appeal Order, Conclusions of Law, Page 7 (emphasis added).

- As Mr. Nunley acknowledged at the public hearing, the permits for the garage should not have been issued if the garage did not provide access in conformance with the zoning regulations. **The two-car garage is accessible only through an easement that, at a width of eight feet, is narrower than the minimum width of 14 feet specified in the zoning regulations for a driveway with two-way circulation serving a parking space**. 11

DCMR §2117.8 (emphasis added).

III. THE APPLICATION IS PREMATURE, INCOMPLETE, MISLEADING, INACCURATE AND DIRECTLY CONTRADICTED BY THE BOARD'S BINDING DECISION IN THE UNDERLYING APPEAL

A. The Original Application Was Premature.

This remedial Application was filed on October 7, 1999 almost three (3) months before the Board's written decision in the underlying Appeal No. 16405. In order gain procedural and substantive advantage, the Applicant, through counsel, acted at his own risk by prematurely filing the Application and based on a self-certification of the required zoning relief required. At the last minute before the scheduled December 8, 1999 hearing, the Applicant was forced by Mrs. Crary to admit that it was premature, did not request the required zoning relief and that the Applicant was not able to proceed as scheduled. Ideally, the Applicant sought Board approval of the remedial Application prior to a written decision in the underlying Appeal No. 16405. In allowing the requested continuance, the Board gave the Applicant a second chance, but did so to the prejudice of Mrs. Crary and Advisory Neighborhood Commission 3D both of which have been active participants in the underlying Appeal and this remedial Application.

The Applicant is also simultaneously pursuing a Court of Appeals challenge to the Board's decision in Appeal No. 16405. While the Applicant is seeking to relitigate the Board's Appeal decision in the Court of Appeals, he has sought to simply ignore that decision in this remedial Application. The Applicant can not have it both ways. Any further action on this remedial Application must await resolution of the Court of Appeals appeal.

B. The Revised Application is Again Based On Incomplete, Inconsistent and Misleading Information.

Having been forced to admit that the original Application was defective, the Applicant submitted the original 1998 construction drawings (which the Board found incomplete, inaccurate and misleading) and a Surveyor's Plat (Exhibit A) purporting to have the as-built dimensions of the illegally constructed improvements to Mr. Nunley, Chief of the Zoning Review Branch. This information was submitted prior to the Board's written decision in the underlying Appeal. Mr. Nunley has confirmed to the undersigned that his zoning review and computations were completed **without** reference to the Appeal No. 16405 decision and was the best he could do without sufficient information that he had requested from the Applicant.

On May 18, 2000, the Applicant has at the last minute produced yet a third set of drawings (Exhibit B-1, B-2, B-3 and B-4) in a desperate attempt to rescue this clearly defective Application. Taken together, the three (3) versions of the illegally constructed improvements proffered at different times by the Applicant are inconsistent, misleading, incomplete and produce an even more confusing state of affairs. However, the Applicant's May 18, 2000 submission did serve, amidst increased confusion, to conclusively admit and confirm Mrs. Crary's claim (and the recently filed Appeal of Mr. Nunley's February 29, 2000 administrative decision by the Spring Valley-Wesley Heights Citizen's Association) that additional and greater zoning violations exist.

C. **The Applicant Has Admitted New and Greater Zoning Violations**.

Having protested in response to claims that the original house and the illegally constructed rear addition improvements violated the minimum side yard requirements and that the magnitude of the front-yard setback was incorrect, the Applicant has provided clear evidence establishing that both claims are correct and that this remedial Application is further defective.

1. **Side Yard Violation**: The Applicant now admits that the

previous dimensions on the garage area were incorrect (Exhibit B-1) and provides a new Garage Site Plan (Exhibit B-2) which shows a north side yard (adjacent to Mrs. Crary) of only 4.6 feet (not 6.50 feet as shown of the Surveyor's Plat (Exhibit A)). On the same Surveyor's Plat, the original house is shown with the same side yard dimension as the garage. Therefore, the original house also had a north side yard dimension of 4.6 feet which is less than the 5.0 foot minimum required under 11 DCMR 405.8. Also, the illegally constructed rear addition is stated as 7.87 feet (the measurement is actually closer to 6.0 feet based on the new side yard dimensions provided) which violates the applicable 8.0 foot minimum. Accordingly, this remedial Application requires an additional side yard variance for the rear addition.

2. **Front Yard Variance Understated**: The Applicant now admits in Exhibit B-3 that the illegally constructed front porch extends into the 21.0 foot minimum front yard by 9.80 (not 7.66 feet shown on the Surveyor's Plat (Exhibit A) and calculated by Mr. Nunley based on the incorrect information he was provided). Therefore,

the porch results in a front yard of 15.15 feet requiring a variance of 5.85 feet (27.9%), not 3.3 feet (15.7%) or almost double the zoning violation.

D. **The Application Ignores the Board's Order in Appeal No. 16405.**

This Remedial Application must proceed in accordance with the Board's detailed findings of fact and conclusions of law, which found the following zoning violations:

1. **Front Yard Setback**: As noted above, the Applicant has failed to seek the correct variance in this Application.

2. **Lot Occupancy**: Given the increasing and continuing discrepancies in the building dimensions and the use of the wrong lot width in the zoning calculations, the amount of this variance may not be accurate.

3. **Garage Height**: The Board found that the illegally constructed new garage was 16.0 feet high which exceeds the 15.0 maximum permitted. The Applicant's last minute claim of a 14.2 foot garage (by the same architect who originally said the garage was 16.0 feet) is self-serving and simply not credible. Exhibits B-1

and B-4. Under the Applicant's new dimensions, the roof structure of the garage must now be almost 2 feet less in height. As shown on the attached Exhibit C (comparison of original garage plans which the Applicant submitted as correct and "as-built" to Mr. Nunley and the "new" dimensions), this produces a dramatic and absurd change in the roof design or pitch which is not supported by actual field conditions.

4. **Garage Accessible By Required Private Driveway**: The Board's Appeal order is clear that the 8.0 foot private easement provided is not sufficient. The Board also noted that the private driveway must be properly graded. The Applicant has produced no evidence to show compliance with the applicable width or grade requirements set forth in 11 DCMR 2117.4, 2117.8.

5. **Required Off-Street Parking**: Without the required access to the illegally constructed garage, the Applicant can not provide the minimum one (1) off-street parking space and an additional variance is required.

IV. CONCLUSION

For the foregoing reasons, it is the Board's clear responsibility to DISMISS and/or DENY this clearly defective Application WITH PREJUDICE pursuant to 11 DCMR 3126.11.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

136981

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss and/or Deny was transmitted by first-class mail, prepaid postage this 23rd day of May 2000 to:

Eleanor Roberts Lewis, Esq., Chairperson
Advisory Neighborhood Commission 3D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

Allison C. Prince, Esq.
Wilkes, Artis, Hedrick & Lane, P.C.
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006
(Also via telecopier)

Mr. Michael D. Johnson
Zoning Administrator
Board of Zoning Adjustments
941 North Capitol Street, N.E.
Second Floor
Washington, D.C. 20002

Mr. Edgar T. Nunley
Chief, Zoning Review Branch
Board of Zoning Adjustments
941 North Capitol Street, N.E.
Washington, D.C. 20002

Mr. George Watson, President
Wesley Heights Historical Society
4323 Cathedral Avenue, N.W.
Washington, D.C. 20016

John Patrick Brown, Jr.

136981

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D. C., 5-12-99

Plat for Building Permit of SQUARE 1621 LOT 70

Scale: 1 inch = 20 feet Recorded in Book 172 page 95

Receipt No. 61122

Furnished to NICK

Surveyor, D.C.

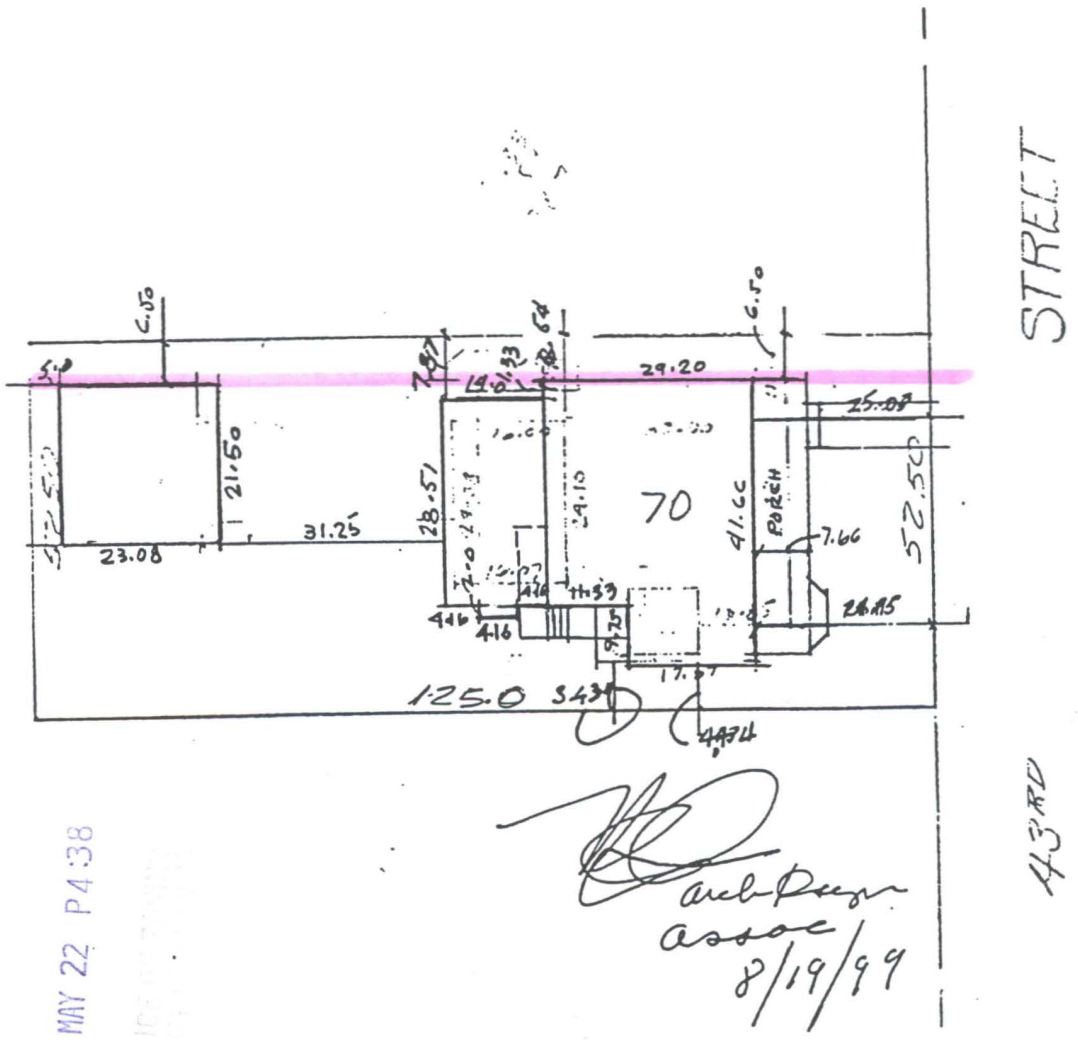
By: DA D

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plan as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb or alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property).

Date 5/12/99

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



'00 MAY 22 P4:38
OFFICE OF THE SURVEYOR
DISTRICT OF COLUMBIA

EXHIBIT
A

PENGAD-Bayonne, N. J.

Cedar Design

Christian Engineers Designers and ARchitects
Architecture - Design/Build - Construction Management
9200 Basil Court, Suite 510, Largo Maryland 20774
(301) 883-8600 * (301) 883-8605 fax *
Website: www.cedardesign.com*Internet: info@cedardesign.com

MEMORANDUM

TO: Allison C. Prince

FROM: Darren D. Comedy, AIA

DATE: May 17, 2000

RE: **SITE VISIT**

As per your request dated May 17, 2000, our office conducted a site visit to verify the dimensions of the existing conditions to those on the permit set of drawings, provided by your office. Please find attached a schematic drawing illustrating our findings.

Please Note:

1. The height of the garage from the finish elevation at the alley measures 15'-5". This measurement was taken from the finish floor to the top of the ridge vent (which is the highest elevation at the garage). The measurement from the garage side that faces the house measures 14'-2" from the finish grade at the yard to the top ridge vent.

2. Measurements at the side yard: Each of the measurements appears to be consistent with the dimensions described on the permit (with the exception of the measurements at the garage area). The measurements are detailed on the attached plan.

3. The existing porch dimensions are all accurate with the dimensions that are shown on the permit drawings.

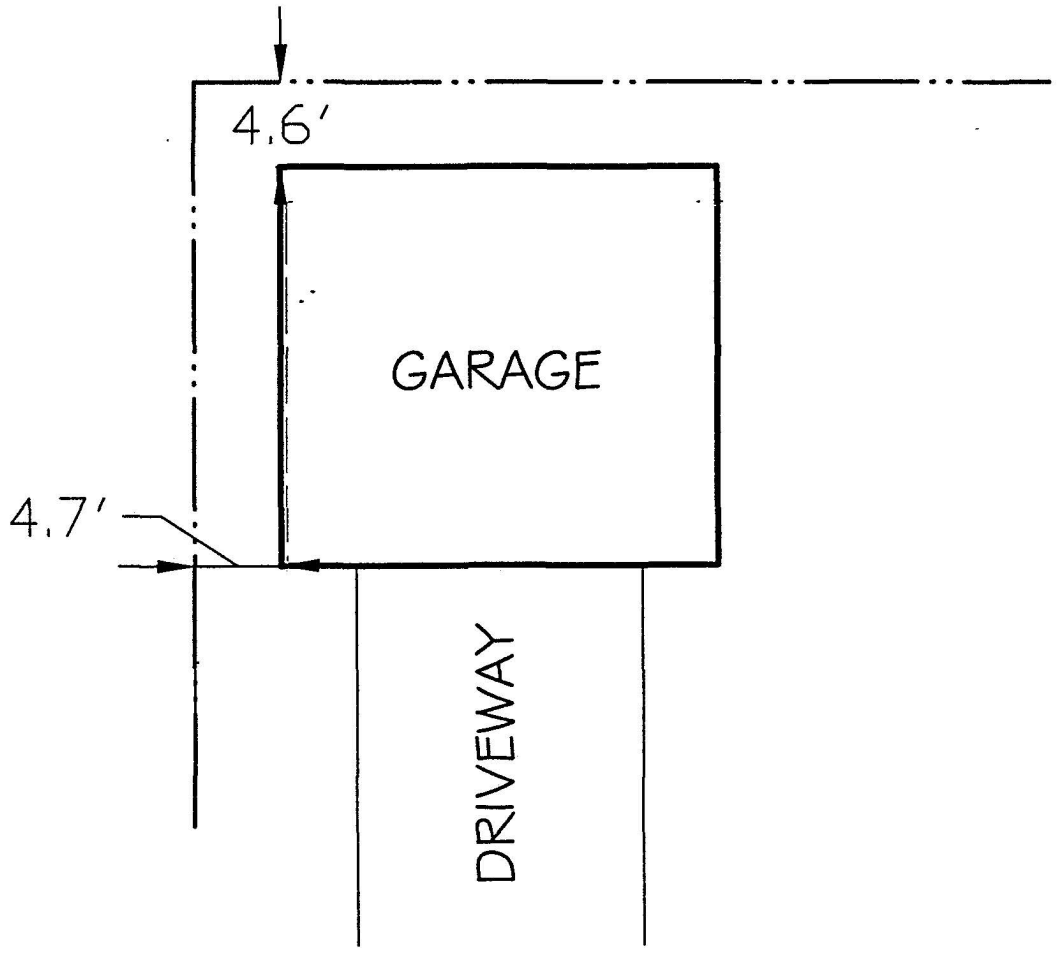
4. Should you have any questions, please feel free to contact me at once.

Very Truly Yours,

Darren D. Comedy, AIA
Principal

Enclosures

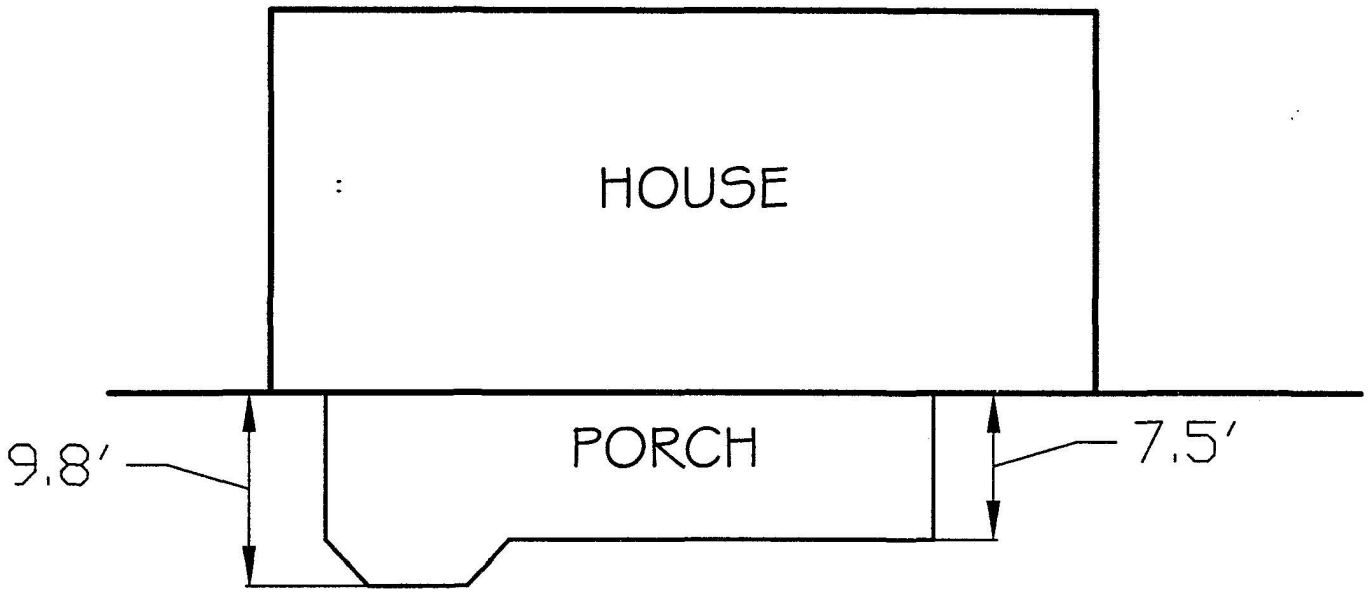
PENGAD-Bayonne, N. J.
EXHIBIT
B-1



GARAGE PLAN

N.T.S.

PENGAD-Bayonne, N. J.
EXHIBIT
B-2

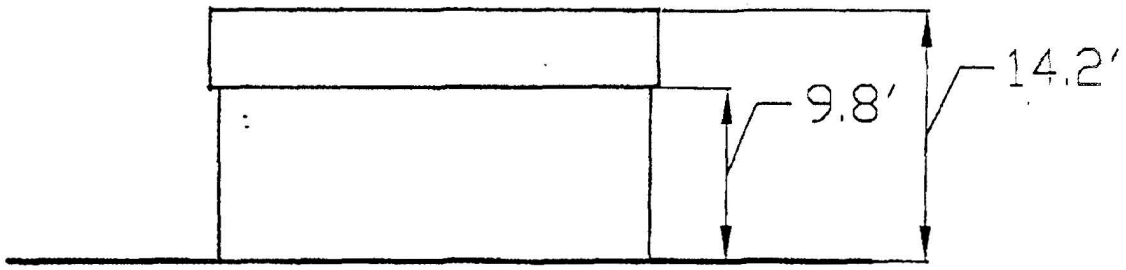


43rd STREET

PORCH PLAN

N.T.S.

PENGAD-Bayonne, N. J.
EXHIBIT
B-3



GARAGE ELEVATION FROM HOUSE

N.T.S.

PENGAD-Bayonne, N. J.
EXHIBIT
B-4