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June 20, 2000

BY HAND DELIVERY

Ms. Sheila Cross Reid
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W., Room 210
Washington, D.C. 20001

DISTRICT OF COLUMBIA
JUN 20 00
A9:18

Re: BZA Application 16521
3020 43rd Street, N.W.

Dear Ms. Reid:

This firm is counsel for Mildred R. Crary. Mrs. Crary was the Appellant in the underlying Appeal No. 16405 and is a long-recognized party in opposition in the above-referenced Remedial Application which is scheduled for an unprecedented **FIFTH** hearing date on Tuesday June 20, 2000.

Mrs. Crary, through counsel, respectfully requests that her pending Motion to Dismiss and/or Deny this Application With Prejudice be **GRANTED**. More than eight (8) months and five (5) hearing dates later, the Applicant has still been unable and/or unwilling to produce a complete application in this matter and provide for timely and informed participation by Mrs. Crary, the Zoning Administrator, Advisory Neighborhood Commission 3D, Spring Valley-Wesley Heights Citizen's Association, Wesley Heights Historical Society, and most importantly, the Board itself.

On May 24, 2000 (fourth hearing date), the Board made it clear that this application was still not ripe for consideration based on the incomplete, inconsistent, and constantly shifting information provided by the Applicant and the continued inability of Advisory Neighborhood Commission 3D to receive timely and reliable information and meaningfully participate in this matter. As a result, the Board ordered the Applicant to obtain an As-Built Survey of the illegally constructed improvements to be provided in a timely manner to all the parties and to appear before Advisory Neighborhood Commission 3D at its June 12, 2000 meeting.

BZA
Case No. 16521
Exhibit No. 51

Board of Zoning Adjustment
District of Columbia
CASE NO.16521
EXHIBIT NO.51

On June 8, 2000, the Applicant produced a survey ("Survey No. 1", attached as Exhibit A) purporting to be As-Built to the undersigned about one hour before a scheduled meeting with the Zoning Administrator. Without an opportunity to adequately review this information, this meeting did not occur. Upon review of the survey and a site visit, it was apparent to the undersigned that the information provided with respect to the north side yard facing Mrs. Crary was misleading (intentionally or not) because it failed to properly measure the depth of the side yard. Measured properly, as later admitted by the Applicant, the original structure and the illegally constructed porch and rear addition violated the applicable side yard restrictions under 11 DCMR 405.8. In addition to the previously noted deficiencies in this Remedial Application, a additional variance from the provisions of Section 405.8 is required.

On Monday, June 12, the Applicant appeared before Advisory Neighborhood Commission 3D based on the admittedly incorrect Survey No. 1. At the meeting, the required quorum was not present and the Commission was unable to take any official action, but did submit the attached letter. Exhibit B. In its letter, the Commission requested that the Board postpone the June 20 hearing because it "has not had an opportunity [to] review a properly prepared case before it comes before the BZA."

During the afternoon of Friday, June 16, 2000, the Applicant provided a revised survey ("Survey No. 2", attached as Exhibit C) which confirmed the correct measurement of the north side yard. Specifically, it now showed that the existing structure had a side yard less than five (5) feet and that the illegally constructed porch and rear addition have a side yard of less than eight (8) feet as required under 11 DCMR 405.8. In a cover letter (Exhibit D) and related e-mail (Exhibit E), the Applicant's counsel admitted that the original survey (Survey No. 1) was incorrect and that for zoning purposes that the new (less than 5 foot) measurement is the correct method.

For the foregoing reasons, as well as those set forth in Mrs. Crary's original Motion, this Remedial Application must be **DISMISSED AND/OR DENIED WITH PREJUDICE**.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

Enclosures
138640

cc: Advisory Neighborhood Commission 3D
Spring Valley-Wesley Heights Citizens Association
Wesley Heights Historical Society
Mr. Michael D. Johnson, Zoning Administrator
Allison C. Prince, Esquire

LOCATION SURVEY
LOT 801 SQUARE 1621

SCALE: 1" = 20'

3020 43RD STREET N.W.
WASHINGTON, DISTRICT OF COLUMBIA

43 STREET, N.W.

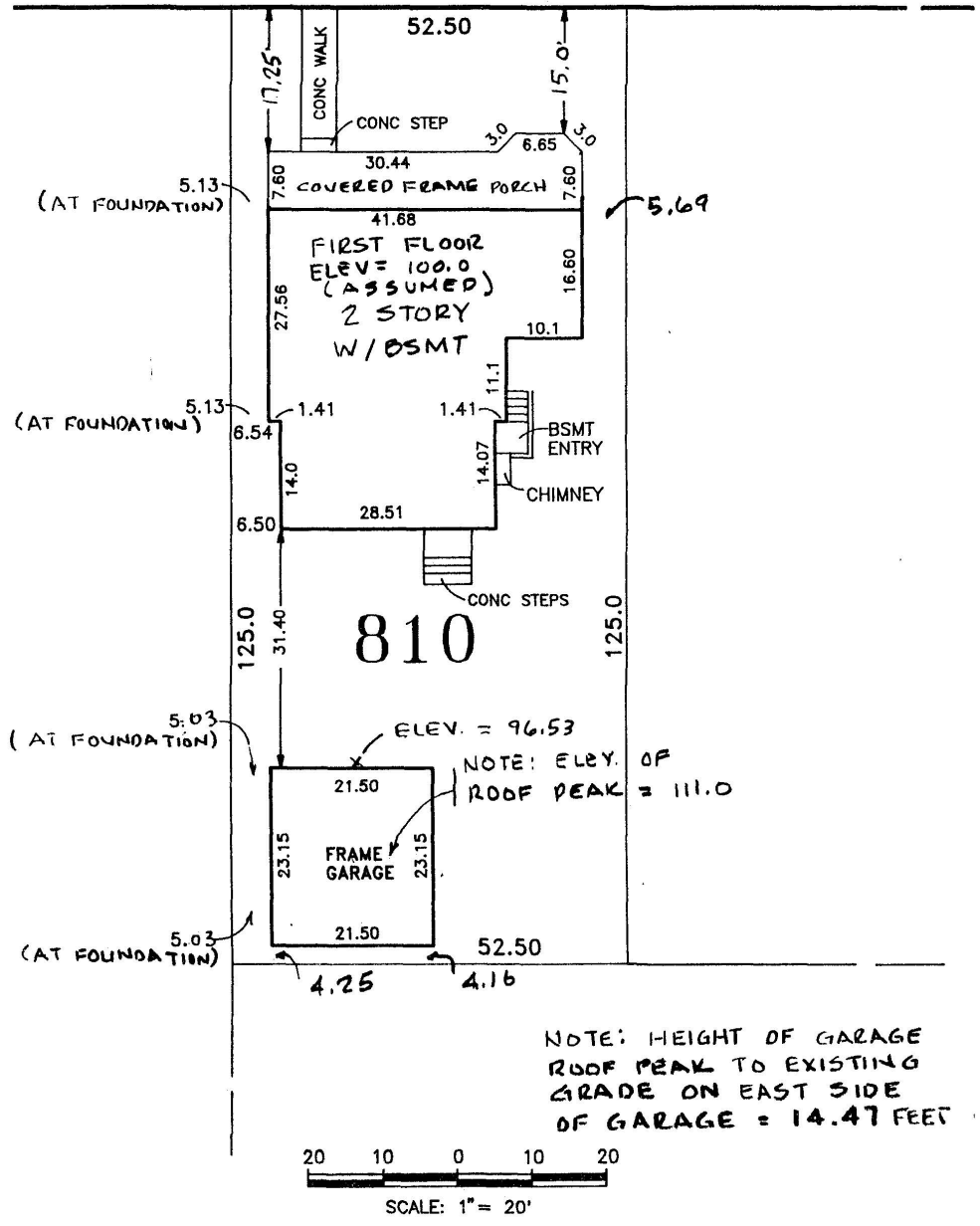


EXHIBIT A

PENGAD-Bayonne, N. J.

THIS PROPERTY IS SUBJECT TO RESTRICTIONS OF RECORD.
THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT

CERTIFICATION

I HEREBY CERTIFY THAT THE POSITION OF ALL THE EXISTING IMPROVEMENTS ON THE ABOVE DESCRIBED PROPERTY HAS BEEN CAREFULLY ESTABLISHED BY A TRANSIT-TAPE SURVEY.

KEN WEST P.L.S.
PROFESSIONAL LAND SURVEYOR No. 96-7

REFERENCES	
PLAT BK.	
PLAT No.	
LIBER	
FOLIO	
FIELD BOOK	
PAGE No.	

WEST CONSULTING GROUP, INC.
4424 MONTGOMERY AVENUE,
BETHESDA, MARYLAND 20814
(301) 654-7907 654-7908 (FAX)

DATE OF SURVEYS	SCALE: 1" = 20'
WALL CHECK	DRAWN BY:
HOUSE LOC.	
BOUNDARY	JOB No. 00-089

Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

June 13, 2000

Ms. Sheila Cross Reid, Chairperson
Board of Zoning Administration
441 4th Street NW Room 210
Washington, DC 20001
Attention: Ms. Sherri Pruitt

BY Facsimile

Re: BZA # 16521 3020 43rd Street NW - and BZA 16405

Dear Ms. Reid:

Advisory Neighborhood Commission 3D held its regularly scheduled monthly meeting on Monday June 12, 2000 at Sibley Memorial Hospital. Proper notice of this meeting was given through the local paper and in each single member district. One of the items on the agenda was a discussion about the above listed BZA application and appeal. Although a quorum of Commissioners was not present, the attorneys for Mr. Sisson and Mrs. Crary once again reiterated their clients' position in this ongoing case.

On behalf of the three commissioners who were present at this meeting, I would like to reiterate that ANC3D has consistently and repeatedly opposed any course of action which undermines the force and effectiveness of the zoning regulations and, in particular, the Wesley Heights Overlay. The Wesley Heights Overlay was put in place to preserve and enhance the low density residential character of our neighborhood. Sanctioning violations of the Overlay would render it meaningless and threaten the very character of our neighborhood.

Furthermore, although a hearing is scheduled for June 20 by the BZA, we urge the BZA to suspend any consideration of any "remedial" variance until the appeal to the District of Columbia Court of Appeals from the BZA order # 16521 has been concluded. Any other action would discourage settlement and prompt resolution of the case. Further consideration of this matter by the BZA while the appeal is pending also undermines enforcement of the Overlay District and the finality of BZA orders.



In the alternative, should the BZA decide that it is appropriate to proceed in this matter notwithstanding the pending appeal before the Court of Appeals, we urge that you do so only after this matter has been postponed to a date after June 20, 2000. This ANC has not had an opportunity review and comment on a properly prepared case before it comes before the BZA. On Thursday of last week, an as-built survey of the property was completed and the parties agreed that another meeting with the Zoning Administrator is now necessary to resolve what variances are required in this matter. Until the Zoning Administrator resolves what variances are actually required, the ANC is not in a position to make any specific recommendations in this matter. Accordingly, we urge the BZA to continue this matter to give the parties an opportunity to meet with the Zoning Administrator, and for the parties to then appear again before the ANC so that we may make a meaningful recommendation regarding the necessary variances in this case.

Sincerely,

Ann F. Heuer

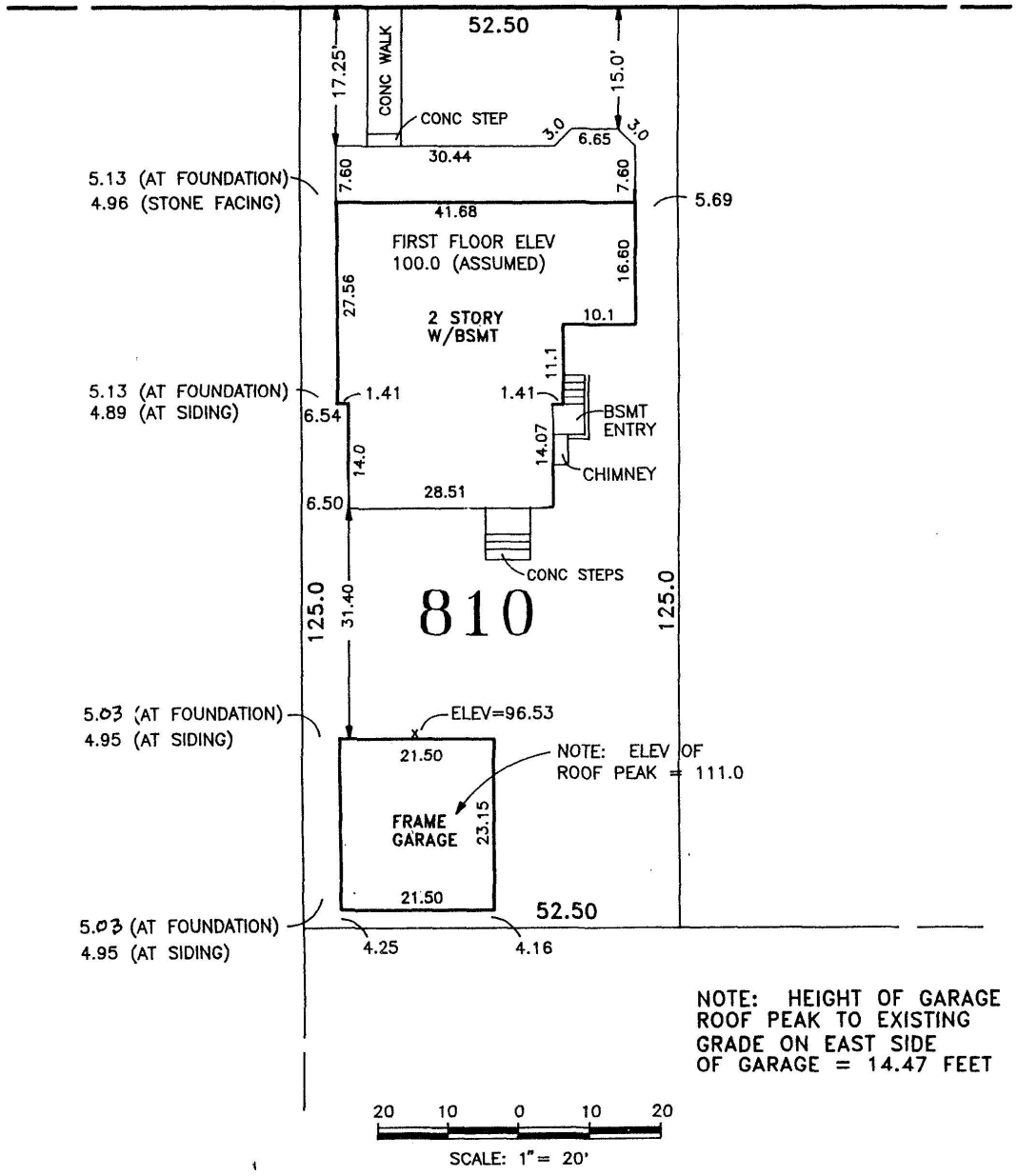
Ann F. Heuer
Vice-Chair
Advisory Neighborhood Commission 3D

LOCATION SURVEY
LOT 801 SQUARE 1621

SCALE: 1" = 20'

3020 43RD STREET N.W.
WASHINGTON, DISTRICT OF COLUMBIA

43RD STREET, N.W.



REVISED 6-15-00 TO SHOW DISTANCES TO SIDING

THIS PROPERTY IS SUBJECT TO RESTRICTIONS OF RECORD.
THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT

PENGAD-Bayonne, N. J.
EXHIBIT
C

CERTIFICATE

I HEREBY CERTIFY THAT THE POSITION OF ALL THE EXISTING IMPROVEMENTS ON THE ABOVE DESCRIBED PROPERTY HAS BEEN CAREFULLY ESTABLISHED BY A TRANSIT-TAPE SURVEY.

Ken West PLS
DC # 96-7

KEN WEST P.L.S.
PROFESSIONAL LAND SURVEYOR No. 96-7

REFERENCES
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Allison C. Prince
202.457.7849
aprince@wilkesartis.com

Wilkes Artis

Chartered
Attorneys at Law

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Washington, DC 20006-2803
202.457.7800
Fax: 202.457.7814

June 16, 2000



J. Patrick Brown, Esq.
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, NW, Suite 900
Washington, DC 20036

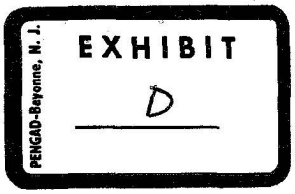
Re: 3040 43rd Street, NW

Dear Pat:

I received a puzzling call from a surveyor yesterday. Apparently, your client has asked a private surveyor to prepare a survey of my client's property. Clearly, such a survey is unnecessary since West Consulting Group, a highly regarded firm, recently completed a survey that I provided to you. Accordingly, please inform your client that my client will not consent to her request for access to his property. However, we would be pleased to have our surveyor address any of her issues or concerns.

We asked the West Consulting Group to respond to the issue that you raised in your memorandum to Steve Griswold of ANC 3D. Specifically, you indicated that the survey does not address the encroachment of the siding into the northern side yard. Your estimate of the depth of the siding appears to be reasonably accurate. According to West Consulting, the side yard is 4.86-4.89 feet as measured from the outer face of the siding to the northern lot line.

To eliminate any confusion, the survey has been updated to reflect the side yard measurement from the siding. I apologize for the omission in the earlier survey, and I appreciate your picking up an issue that both the surveyor and I had overlooked. West Consulting regularly performs wall checks on behalf of the District of Columbia and performed this measurement consistent with the procedures that are used for wall checks. I agree with you, however, that for zoning purposes, the measurement must be made from the face of the siding.



We will be prepared to proceed with the hearing on Tuesday. I greatly appreciated your sharing our settlement offer with Mrs. Crary and would prefer spending Monday on settlement discussions rather than hearing preparation.

Very truly yours,

Allison C. Prince

Allison C. Prince

ACP/slr/199889

John Patrick Brown Jr.

From: aprince@wilkesartis.com
Sent: Friday, June 16, 2000 1:19 PM
To: John Patrick Brown Jr.
Subject: RE: Sisson BZA 16405/16521

I am pleased that you shared our settlement offer with Mrs. Crary. I met with Mr. Sisson yesterday and he remains convinced that your client will not respond. Please prove him wrong and get me something that I can begin to work with. Any response would at least serve as a starting point, will help to break down the mistrust between your client and mine and will help me convince my client that settlement is a possibility.

Does Mrs. Crary really want to spend hundreds of dollars on a re-survey of Sisson's property? Why does she have reason to question West? Michael McKenna told us to use West when we contacted him after the last hearing date. McKenna told me she would be wasting her money on a re-survey. West told me that there are several copper points in 43rd Street and that he is very confident in his findings.

I completely agree that West should have measured the side yard to the siding and not the foundation and I have a new survey coming to you that conveys that measurement. There as no intent to mislead. I told West to measure the side yard as accurately as possible and he did so as if he was conducting a wall check. The siding issue did not even occur to him or to me but it is a valid point and we have addressed it. (You must admit that it is quite a nuance and this case seems to be filled with them.) Now Michael Johnson needs to rule on the impact of this information.

I will await information on the meeting.

