BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Jeffrey L. Kraskin, O.D.

BZA Application No. 16605
Public Hearing: July 25, 2000
ANC 3D

2000 JUL 11 P 3:11

STATEMENT OF THE APPLICANT

I. Nature of Relief Requested

This is an application pursuant to 11 DCMR 3103.2 for a variance under Subsection 2001.3(a) for a proposed addition (enclosure of an existing roof deck) to a single-family dwelling that currently exceeds the allowable percentage of lot occupancy in an R-1-B District at premises 4601 Tilden Street, N.W. (Square 1557, Lot 37).

II. Jurisdiction Of The Board

This Board has jurisdiction to grant the requested variance relief pursuant to Section 3103.2 of the Zoning Regulations. The requested variance is an area variance and the Applicant's clear satisfaction of the burden of proof is set forth below.

III. Background Of The Application

The subject property is located at 4601 Tilden Street, N.W. (Square 1557, Lot 37). A copy of the Sanborn Map is attached as Exhibit 1. Lot 37 is irregularly shaped and contains 7,611 square feet of lot area. The subject property is zoned R-1-B and is located at the intersection of Tilden Street and Massachusetts Avenue, N.W. The Zoning Map is attached as Exhibit 2.

BZA
Case No. 16605
Exhibit No. 22

Board of Zoning Adjustment
District of Columbia
CASE NO.16605
EXHIBIT NO.22

The subject property is improved with a single-family detached dwelling that was built in approximately 1960. In 1985, the Applicant's parents received a lot occupancy variance from the Board to allow construction of an addition to the original house, including the current roof deck which is proposed to be enclosed. BZA Order No. 14288 is attached as Exhibit 3. The Board unanimously and without condition or objection from any person or party granted the requested lot occupancy variance. The single-family dwelling with the completed addition remains a single structure, not two separate dwelling units. The Applicant occupies that portion of the property added in 1985. The Applicant's mother resides in the original portion of the existing single-family detached dwelling. After his father's death, the Applicant continued his father's optometric medical practice in the lower level of the original structure.

The addition constructed under the Board's approval included the existing roof deck with a footprint of approximately 243 square feet. *See* Exhibit 4. The proposed enclosure of the existing roof deck does not involve any expansion of that deck or any other zoning violation. Specifically, the proposed enclosure involves incorporating the existing walls around the deck, addition of several windows and a door to the existing exterior staircase from the deck, and construction of a roof with several skylights. The proposed roof will extend and be compatible with the existing roof for the second floor. Proposed Roof and Floor Plan, Roof Elevation and Stair Elevation are attached as Exhibit 5.

However, under the Zoning Regulations, the existing single-family dwelling as approved by the Board is a "non-conforming structure" solely as a result of the lot occupancy variance that was approved. Any addition to a non-conforming structure must comply with the provisions of 2001.3 which imposes three requirements, including:

(a) The structure shall conform to percentage of lot occupancy requirements; and

(b) The addition or enlargement itself shall conform to use and structure requirements; and

(c) The addition or enlargement itself shall not increase or extend any existing, conforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined.

The provisions of 2001.3 create a "Catch-22" situation in which the existing and Board approved non-conformance (lot occupancy) is in itself a violation of the Zoning Regulations requiring this variance Application.

IV. Applicant Meets The Requirements For Requested Variance

The burden of proof for an area variance is well established. The Applicant must demonstrate that the subject property is affected by extraordinary or exceptional conditions, that the strict application of the Zoning Regulations will result in practical difficulties to the Applicant and that granting the variance will not cause substantial detriment to the public good nor impair the intent, purpose or integrity of the zone plan. *Palmer v. Board of Zoning Adjustment,* 287 A.2d 535, 541 (D.C. 1972).

A. The Subject Site Is Affected by Extraordinary or Exceptional Situations or Conditions.

The subject property is affected by several extraordinary conditions. First, in 1985, the Board recognized the irregular shape of Lot 37 and the practical difficulties in designing the addition which resulted. Second, as approved by the Board, the subject property is non-

conforming as to lot occupancy. Both these unique circumstances are inherent in the subject property and make this variance unavoidable.

B. Strict Application Of The Zoning Regulations Results in Practical Difficulties To The Applicant.

Under the Zoning Regulations, this non-conforming structure (lot occupancy) cannot as a matter-of-right be enlarged, modified or added to in any way. This absolute prohibition imposes a substantial difficulty and hardship on the Applicant. No change, however minor or in compliance with the Zoning Regulations to the subject property, is permitted without obtaining a variance. This limitation is especially onerous to the Applicant in this situation where one of the principal reasons for enclosure of the existing roof deck is to eliminate the leaking flat membrane roof over the first floor of the dwelling. Repeated attempts to repair this flat roof have been costly and unsuccessful. Water damage continues to occur to the house from the flat roof formed by the existing deck. Enclosure of the roof deck is only practical and effective solution to this problem.

C. The Requested Variance Can Be Granted Without Detriment To The Public Good and Without Impairing The Intent, Purpose And Integrity Of The Zone Plan.

This minor proposal to enclose the existing roof deck does not create or extend any violation of the Zoning Regulations. In all zoning and design respects, the status quo is maintained by incorporating the existing roof deck and walls in a manner that complements and is compatible with the existing structure. Advisory Neighborhood Commission 3D, at its regularly scheduled meeting on July 10, 2000, voted unanimously to support this Application for

a variance. Additionally, each of the adjacent property owners has registered support for this Application in the Petition attached as Exhibit 6.

V. Witnesses

The following witness will testify in support of this Application:

1. Jeffrey L. Kraskin, O.D., Applicant.

VI. Exhibits In Support Of Application

Exhibit 1: Sanborn Map.

Exhibit 2: Zoning Map.

Exhibit 3: BZA Order No. 14288.

Exhibit 4: Surveyor's Plat with footprint of existing structure and roof deck.

Exhibit 5: Proposed Roof and Floor Plan, Roof Elevation and Stair Elevation.

Exhibit 6: Neighbors' Petition in Support of Application.

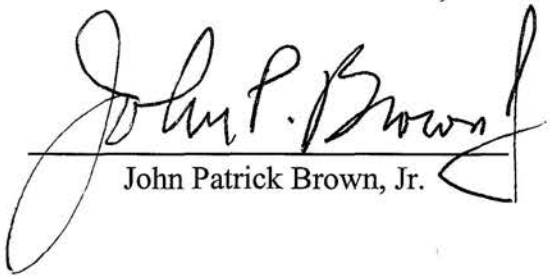
VII. Conclusion

For the reasons set forth above, the requested variance relief can be granted without impairing the intent, purpose and integrity of the Zoning Regulations. This Application is supported by ANC 3D and the adjacent property owners. To date, no persons or parties in opposition have identified themselves. Accordingly, the Applicant respectfully requests the Board to render a Bench Decision and Summary Order.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

July 11, 2000

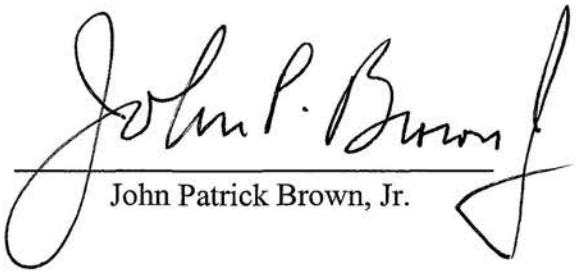
By: 
John Patrick Brown, Jr.

139761

CERTIFICATE OF SERVICE

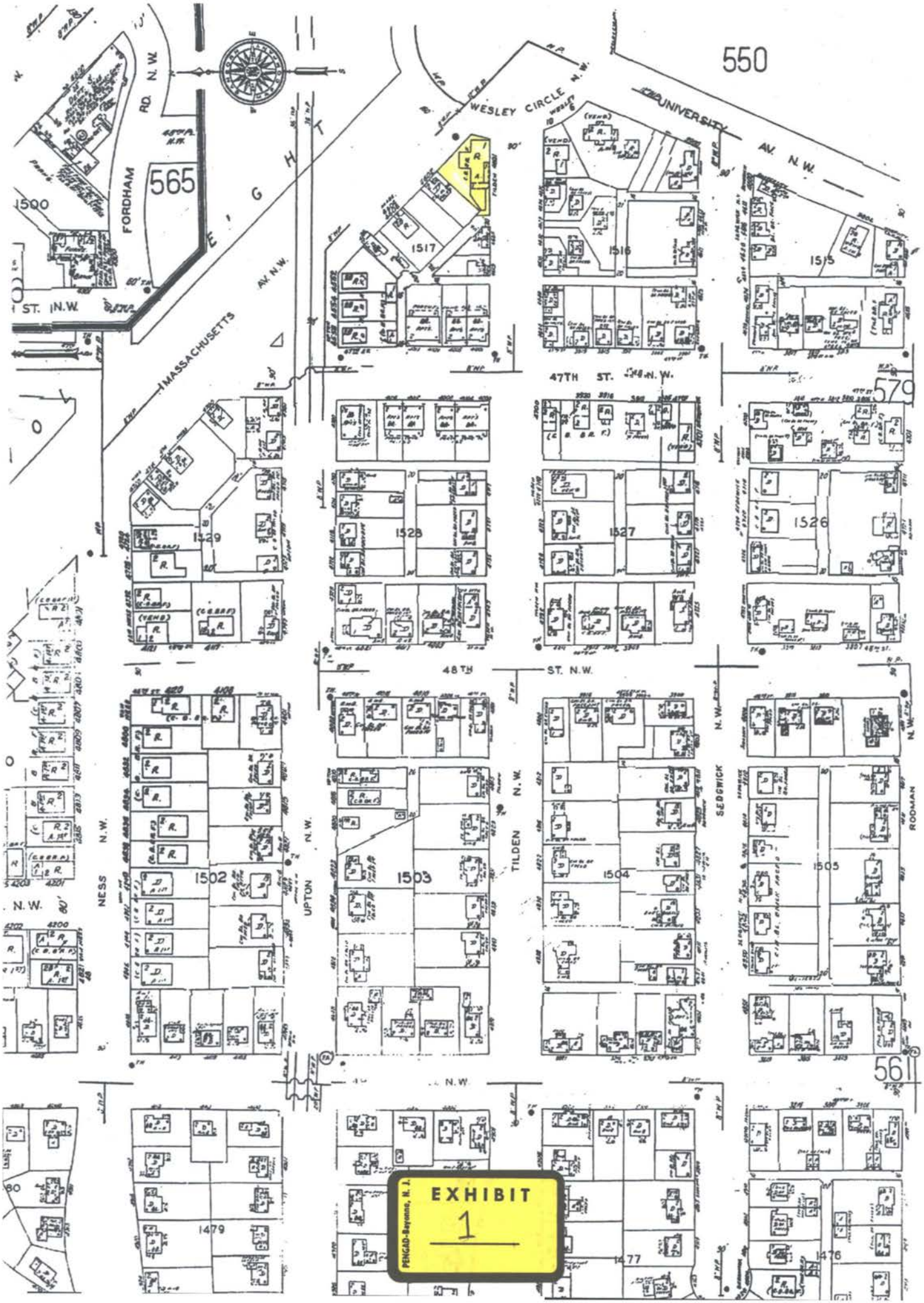
I HEREBY CERTIFY that a true and correct copy of the Statement of the Applicant was served by first-class mail, postage prepaid, this 11th day of July, 2000, upon:

Advisory Neighborhood Commission 3D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

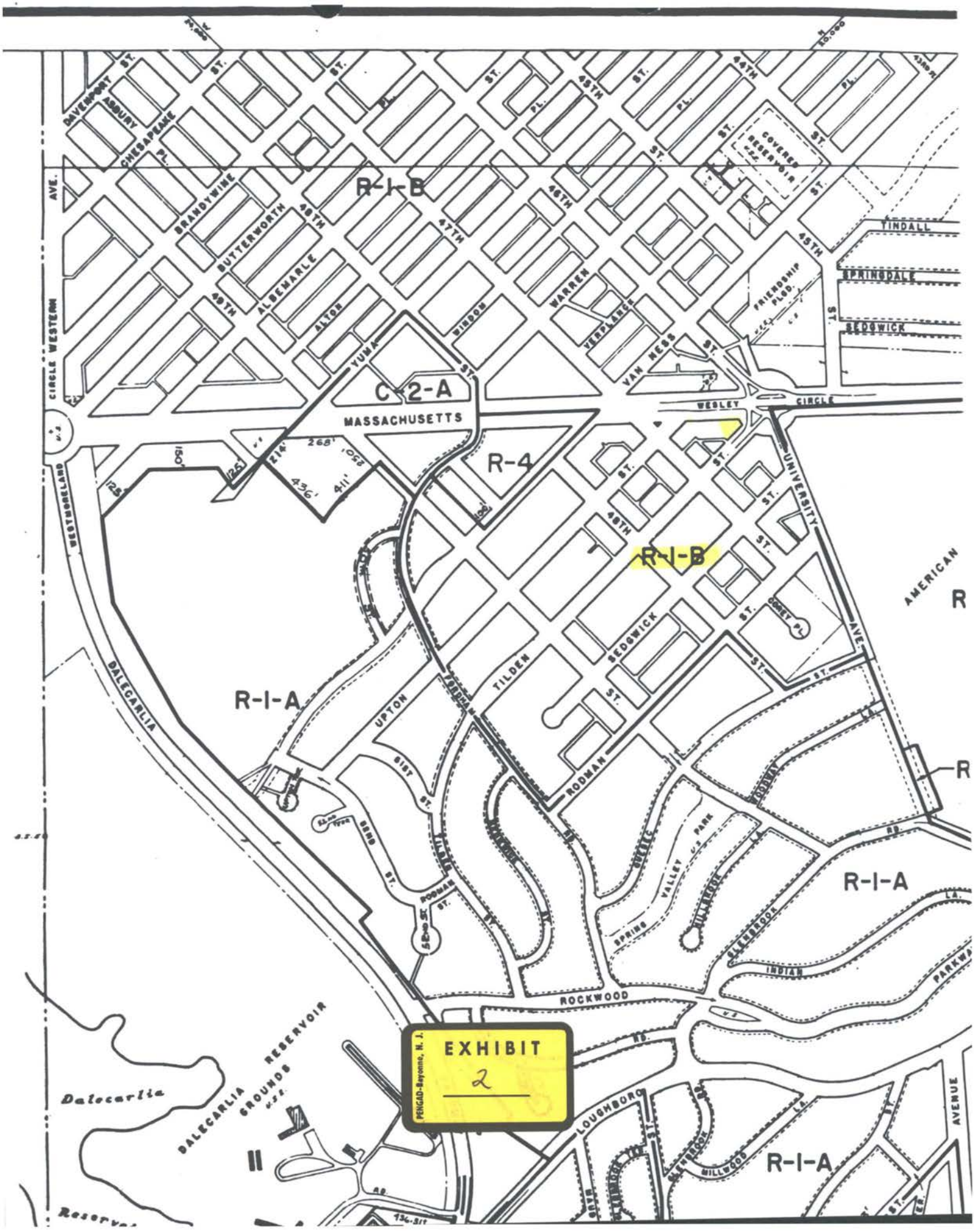


John Patrick Brown, Jr.

139761


550
WESLEY CIRCLE
UNIVERSITY AV. N.W.
565
FORDHAM RD. N.W.
E I G H T
MASSACHUSETTS AV. N.W.
ST. N.W.
1500
1517
1516
1515
47TH ST. N.W.
579
1529
1528
1527
1526
48TH ST. N.W.
1502
1503
1504
1505
NESS N.W.
UPTON N.W.
TILDEN N.W.
SEDGWICK
RODMAN
561
1479
1477
1476
EXHIBIT
1
PENGAD-Bayonne, N. J.

WESLEY CIRCLE
MASS. AV
UNIVERSITY (Dor.)
ST.
SEDGWICK
(Dor.)
1557
1516
1515
47TH
ST.
ST.
ST.
1528
TILDEN
(Dor.)
UPTON
SEDGWICK
48TH
ST.
47TH
MASS. AV
ST.


R-1-B
C-2-A
MASSACHUSETTS
R-4
R-1-B
R-1-A
R-1-A
R-1-A
EXHIBIT
2
PENGAD-Bayonne, N. J.
DAVENPORT
ASBURY
CHESAPEAKE
BRANDYWINE
BUTTERWORTH
ALBEMARLE
ALTOD
YUMA
BIRDOW
WARREN
VERPLANCK
VAN NESS
TINDALL
SPRINGDALE
SEDGWICK
FRIENDSHIP PLOT
COVERED RESERVOIR
WESLEY CIRCLE
CIRCLE WESTERN
WESTMORELAND
UNIVERSITY
AMERICAN
SEDGWICK
TILDEN
UPTON
RODMAN
BALEGARLIA
BALEGARLIA GROUNDS RESERVOIR
ROCKWOOD
LOUGHBORO
SPRING VALLEY PARK
INDIAN
MILLWOOD
268'
230'
436'
411'

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14288, of Robert and Marion Kraskin, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the lot occupancy requirements (Sub-section 3303.1) to construct an addition to a single family dwelling in an R-1-B District at premises 4601 Tilden Street, N.W., (Square 1557, Lot 37).

HEARING DATE: May 15, 1985
DECISION DATE: May 15, 1985 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located at the the northwest corner of the intersection of Tilden Street and Massachusetts Avenue at Wesley Circle and is known as premises 4601 Tilden Street, N.W. The site is zoned R-1-B.

2. The original lot consisted of two pie-shaped pieces of land that were combined into one lot. The site has 84.51 feet of frontage on Massachusetts Avenue, 130.60 feet of frontage on Tilden Street and 17.0 feet of frontage on Wesley Circle. The composite site is a quadrilateral of four unequal sides.

3. A number of lots in the immediate area are rectangular in shape.

4. The land slopes from front to rear. To the rear of the site is a twenty foot wide public alley.

5. The site is improved with a single family detached dwelling. Within the structure is the office of an optician, the profession of the applicant Robert Kraskin. The applicants occupy the dwelling.

6. The applicant's son also resides on the premises. He has joined his father's practice.

7. The existing dwelling occupies 2,908 square feet of the lot. The applicants propose the construction of an addition which would occupy 1,085.5 square feet. The total lot occupancy of the existing dwelling and addition will be 3,993.5 square feet, which exceeds the forty percent lot occupancy allowed in the R-1-B District by 929.1 square feet. The applicants seek a variance from the lot occupancy requirements of 30.32 percent.



8. The proposed construction is an addition to the present residence. The addition will expand the present living area and provide a modified style "in-law suite." for the applicant's son. The number of household units will remain one.

9. The addition is not a separate dwelling unit.

10. The proposed addition is to the residence. It is not an expansion of the office use. There is no direct access from the addition to the doctor's office.

11. The proposed addition will be of conventional residential construction type, utilizing typical concrete spread footings with masonry foundation. The superstructure will match that of the present structure and consist of masonry/stud veneer and stud and siding with wood joist and rafters. An overgrowth of bamboo and other greenery will be maintained and will act as a buffer from the neighboring properties.

12. The proposed addition will still maintain side yards of more than eight to ten feet and a rear yard of more than twenty-five feet.

13. The structure was constructed approximately twenty-five years ago. At the time, it occupied less than the forty percent lot occupancy permitted.

14. Different styles and concepts of design for an addition were viewed, as was the idea of raising the present roof and adding an additional level. These ideas were rejected for many reasons ranging from aesthetics to overall cost. The resulting design meets all of the needs of the applicants, indicating space, aesthetics, continuity and cost.

15. Advisory Neighborhood Commission 3D filed no report on the application.

16. The applicants contacted all property owners in the area closest to the site and did not find any opposition to the proposed addition.

17. Five neighbors living nearest the site signed a petition stating that they had reviewed the plans and they did not oppose this application.

18. There was no opposition to the application at the public hearing or of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicants are seeking area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The Board concludes that the applicants have met their burden of proof. The practical difficulty is inherent in the land because of its physical conditions as to shape and size.

The Board further concludes 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. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 4-0 (Maybelle T. Bennett, William F. McIntosh, Charles R. Norris and Carrie L. Thornhill to grant; Douglas J. Patton not present, not voting).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: -6 AUG 1985

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER 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.

14288order/LJPF

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D. C., August 30, 19 H

Plat for Building Permit of SQUARE 1557 LOT 37

Scale: 1 inch = 20 feet Recorded in Book 175 page 112

Receipt No. 6514

Furnished to KHI INC

Surveyor, D. C.

By: R.E.D.

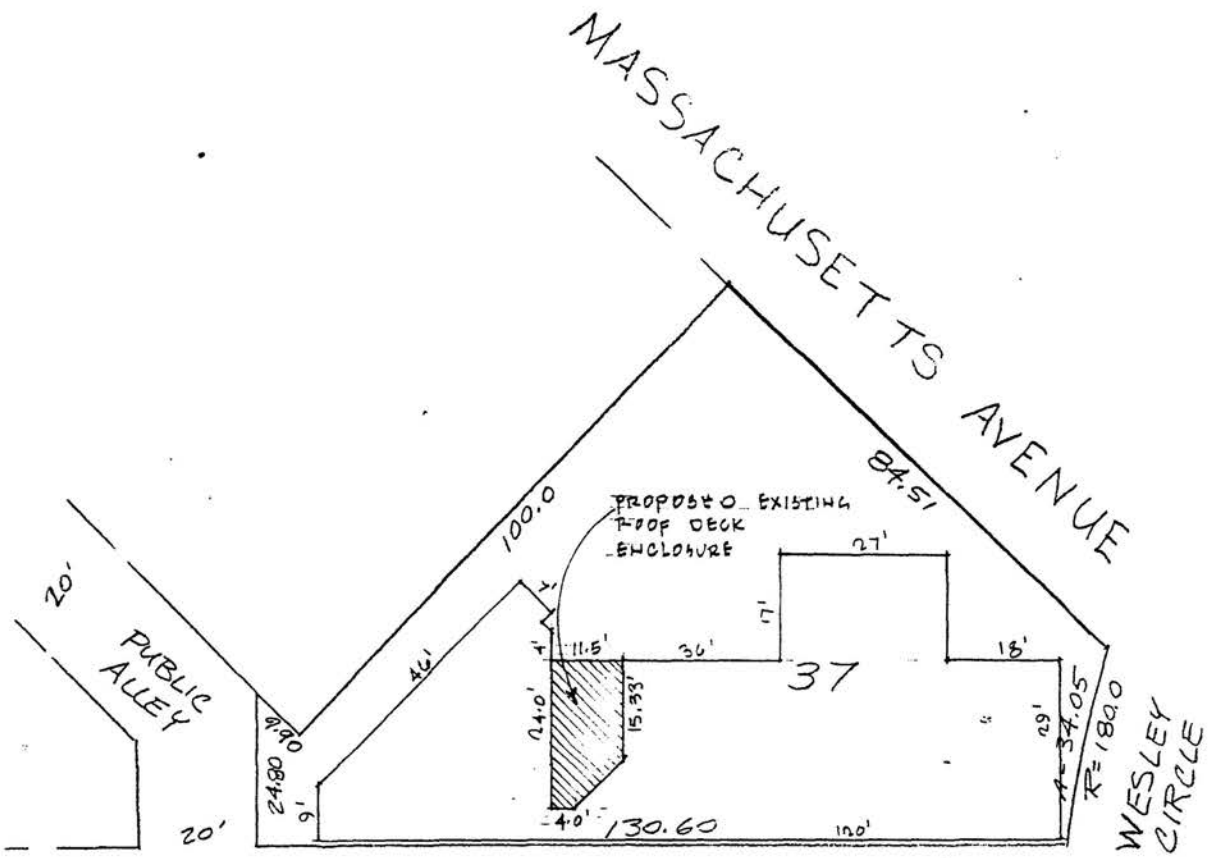
D.M.S.

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 10/16/81

(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.



Edgar T. Nunley
Zoning Review Branch
Zoning Division

J-93270

S. O. Form 12.0

EXHIBIT 4

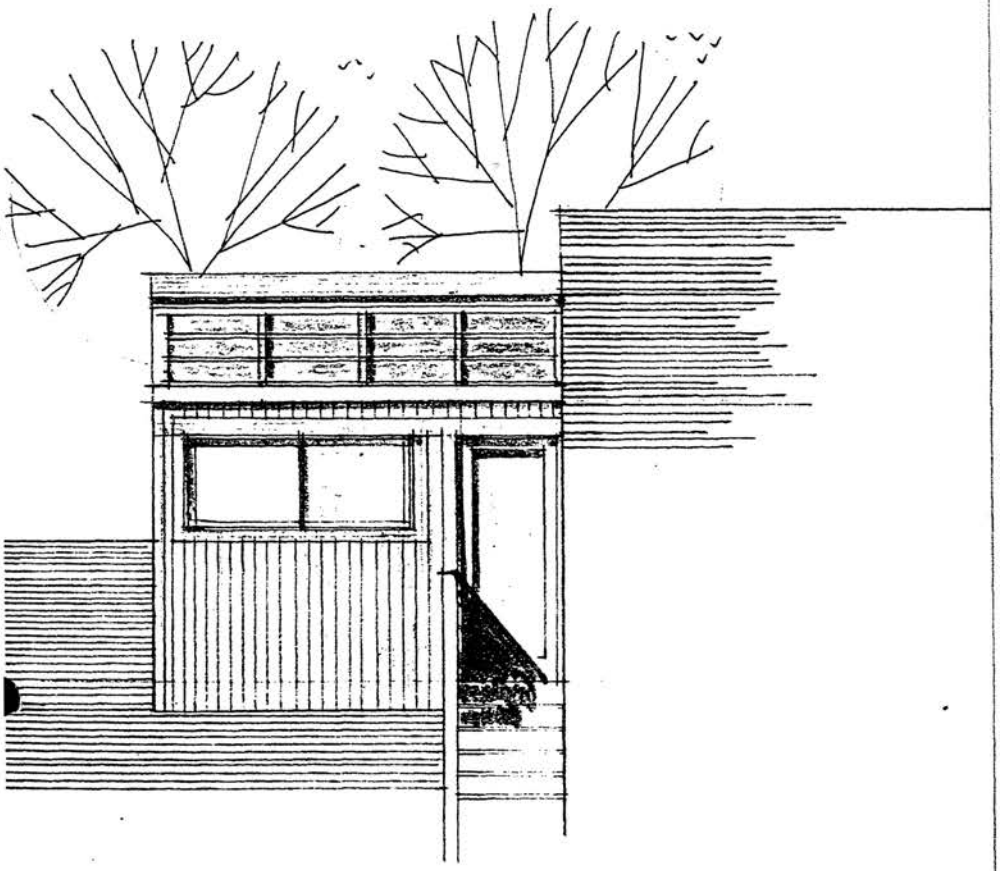
PENGAD-Bayonne, N. J.

Roof Deck Enclosure for Kraskin Residence

4601 Tilden Street NW
Washington, D.C.

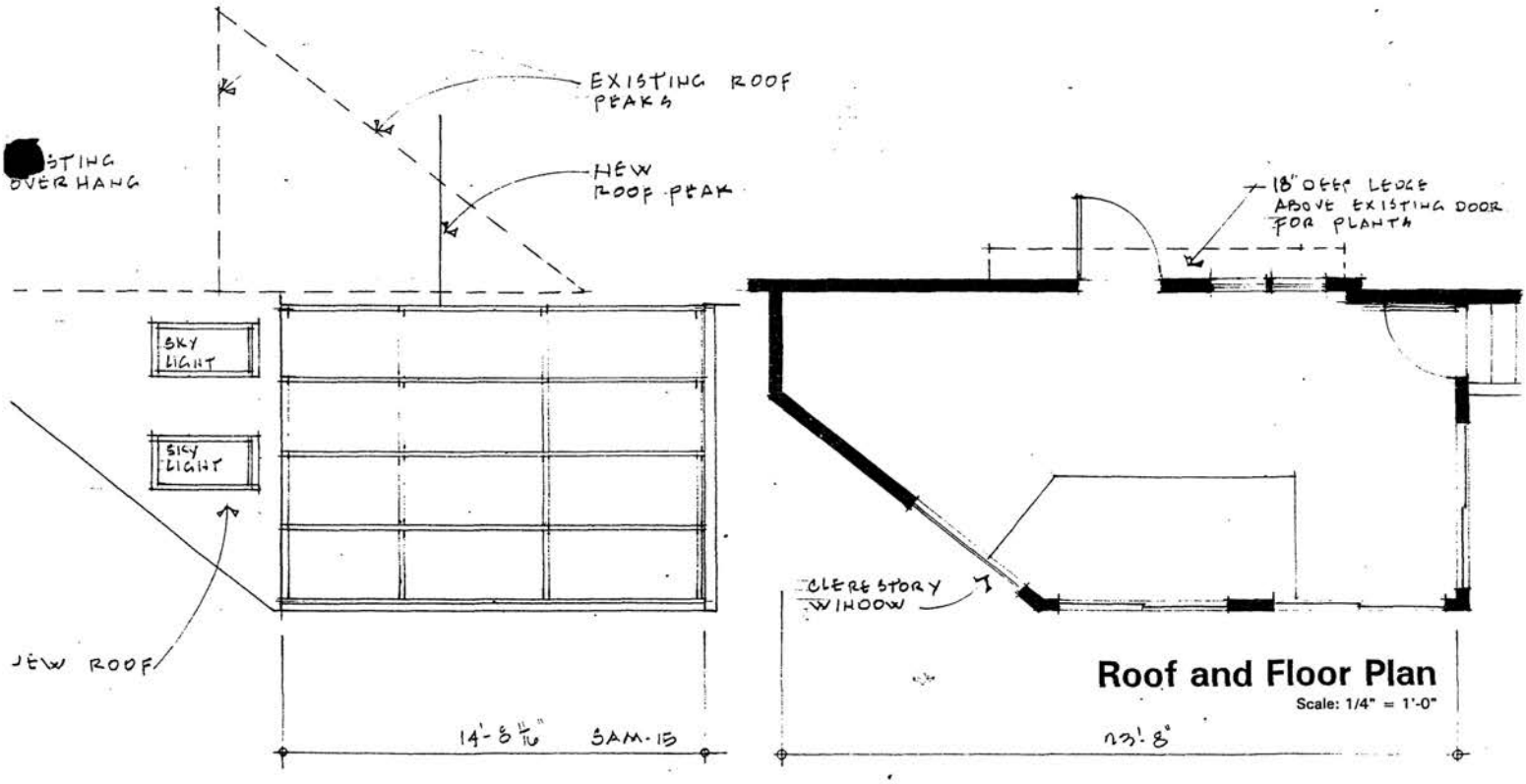


K.H.I., Inc. 427 N. Maple Avenue Falls Church Virginia



Stair Elevation

Scale: 1/4" = 1'-0"



Roof and Floor Plan

Scale: 1/4" = 1'-0"

JEFFREY L. KRASKIN, O.D.
4601 Tilden Street., NW
WASHINGTON, D.C. 20016-5617

DR. JEFFREY L. KRASKIN
OPTOMETRIST

TELEPHONE 202-364-7130
FAX 202-363-4452
E-MAIL JLKraskin@aol.com

July, 2000

Board of Zoning Adjustment
Zoning Secretariat
441 4th Street, NW Suite 210-S
Washington, DC 20001

RE: BZA Application No. 16605

To the Board of Zoning Adjustment:

Dr. Jeffrey L. Kraskin has discussed and answered my questions regarding BZA Application No. 16605. I understand that Dr. Kraskin intends to complete the enclosure of his existing roof porch/deck into a sunroom area at the premises 4601 Tilden Street, NW (Square 1557, Lot 37), and that the intended enclosure will not increase the present lot occupancy, alter the existing use of the structure, or add/extend the existing space.

Please accept my signature below as an indication that I support BZA Application No. 16605.

DATE	SIGNATURE	PRINT NAME	ADDRESS/SQUARE/LOT
7/1/00	[signature]	William F Kraska	4628 Tilden St NW
7/1/00	[signature]	DeAnne Nehra	4625 Tilden NW
7/1/00	[signature]	Grace Gionfriddo	4616 Mass., NW
7/1/00	[signature]	Carol Lloyd	4624 Tilden St NW
7/1/00	[signature]	Janet Taylor	4602 Mass Ave, NW
7-1-00	[signature]	BERTRAM F. VUENTRAUB	4640 TILDEN ST. N.W.
7-4-00	[signature]	RUBY HAGERTHEY	4636 Tilden St NW
7-4-00	[signature]	ELISABETH N. SPECTOR	6 WESLEY CIRCLE, NW
7/6/00	[signature]	Eileen Duan	4642 Tilden NW

EXHIBIT 6

PENGAD-Bayonne, N. J.