BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Spring Valley-Wesley Heights
Citizen's Association, Appellant

BZA Application No. 16679
Hearing Date: June10, 2003
ANC 3D

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APPELLANT'S PRE-HEARING STATEMENT

I. Introduction

The Appellant, the Spring Valley-Wesley Heights Citizen's Association, by and through its *pro bono* counsel, respectfully submits the following Pre-hearing Statement in support of this Board of Zoning Adjustment ("Board") Appeal.

The Appellant brings this Appeal pursuant to 11 DCMR §§ 3100 and 3101 from the decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs ("DCRA"), for the issuance of an after-the-fact Building Permit No. B430091, dated October 11, 2000, to Mr. Charles Sisson ("Mr. Sisson") for a "2 Sotry (sic) Rear Addition (Previous Permit B413166, Attached). New Garage (Previous Permit B415675, Attached). Removal of Roof Over Front Porch (See Previous Permit B419108 For Construction of the Roof Over Front Porch, Attached)..." (the "Remedial Permit") *See* Permit and Permit Application attached as Exhibit A.

The Remedial Permit was issued in error for at least the following reasons:

1. The Remedial Permit was specifically contingent upon Mr. Sisson removing the roof over the front porch, which violated the front yard and lot occupancy restrictions of the Wesley Heights Overlay District ("WHOD"). Two and half years later, Mr. Sisson has stubbornly refused to remove the illegal roof over the front porch. Further, Mr. Sisson's request to the Board for a variance to allow the

BZA
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Board of Zoning Adjustment
District of Columbia
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EXHIBIT NO. 33

covered front porch to remain was unanimously denied in Application No. 16521 by Order dated December 13, 2001.

2. The Remedial Permit Application is unsigned by Mr. Sisson or an authorized agent and therefore is invalid on its face.

3. The Remedial Permit is inconsistent with the Board's Order in Appeal No. 16405.

4. The Remedial Permit is inconsistent with the Board's Order in Application No. 16521.

5. The Remedial Permit violates the Non-conforming structure provisions of 11 DCMR § 2003 and therefore requires a variance, which was not obtained.

6. The Remedial Permit violates the front yard requirements of the WHOD.

7. The Remedial Permit violates the lot occupancy requirements of the WHOD.

8. The Remedial Permit violates the applicable R-1-A side yard requirements.

9. The Remedial Permit violates the applicable R-1-A off-street parking requirements and the garage is not permitted.

10. The Remedial Permit violates the applicable R-1-A private driveway access requirements and the garage is not permitted.

II. Background

Mr. Sisson, a small-scale real estate developer, purchased 3020 43rd Street, N.W. (Square 1621, Lot 70) (the "Subject Property") in late 1997. Beginning in January 1998, Mr. Sisson obtained the first of five (5) separate building permits related to the two-story rear addition, two-car accessory garage and covered front porch, including:

1. Permit No. B413166 (January 29, 1998) for a two-story addition on the rear. Without authorization, Mr. Sisson demolished the small existing front stoop and began construction of a covered front porch across the entire front of the house (41.68 feet).

2. Permit No. 413424 (February 9, 1998) for an addition to an existing one-car garage (20' x 20'). Without authorization, Mr. Sisson demolished the one-car garage and began construction of a new two-car garage. DCRA issued a Stop Work Order for this illegal construction.

3. Permit No. 415675 (May 27, 1998) for a new two-car garage (20' x 20') to be located on the same spot as the previous garage. The garage was substantially completed before this permit was issued. As later determined, the garage was constructed considerably larger (23' x 21.50') than authorized. The new location of the garage blocked the long-standing access by Mrs. Mildred R. Crary ("Mrs. Crary") to her rear yard.

4. Permit No. 417814 (August 17, 1998) for repair of an existing roof over the front porch, roof in place. Although authorized for only repair of existing roof, Mr. Sisson constructed a new roof not previously authorized.

5. Permit No. 419108 (October 5, 1998) to build a new porch roof. At the time this permit was issued, Mr. Sisson had already completed the roof.

In September 1998, Mrs. Crary filed BZA Appeal No. 16405 challenging the issuance of all five (5) permits. The Board granted the Appeal as to all five (5) permits finding that the permits had been illegally issued in violation of the WHOD/R-1-A zoning. The Board also found that Mr. Sisson had submitted misleading, piecemeal, incomplete and inaccurate building

permit applications and had done substantial work without authorization and exceeded the limited scope of the permits issued. At the hearing, Mr. Edgar T. Nunley ("Mr. Nunley"), the then Chief of the Zoning Review Branch, testified that he had been "knowledgeably misled" by Mr. Sisson in the building permit process. *See* BZA Order No. 16405 attached as Exhibit B. The Board's decision in Appeal No. 16405 was affirmed by the D.C. Court of Appeals. Mr. Sisson's request for reconsideration and *en banc* review by the Court was denied.

Even before the Board could issue its written Order in Appeal No. 16405, Mr. Sisson, on October 7, 1999, filed a self-certified remedial BZA Application No. 16521 seeking after-the-fact zoning relief for the illegally constructed improvements. After the Board's issuance of Appeal Order No. 16405 on December 28, 1999, Mr. Sisson was forced to withdraw the original zoning self-certification and seek guidance from the Zoning Administrator. Identification of the correct remedial zoning relief was made more difficult by the inaccurate and conflicting property and as-built information provided by Mr. Sisson. Frustrated, the Board ordered Mr. Sisson to provide accurate as-built information in order to allow the Zoning Administrator to identify the correct remedial zoning relief required.

In the midst of the process, Mr. Sisson inexplicably managed to obtain the Remedial Permit (October 11, 2000) which he sprung on the Board and parties without notice at one of the Board's five (5) hearings required in this application.

Eventually, the Board was able to identify the after-the-fact remedial zoning relief and proceeded with this application. After a lengthy hearing, the Board denied variance Application No. 16521. In its Order, the Board found Mr. Sisson had not demonstrated that the Subject Property was unique or exceptional and that Mr. Sisson was the victim of his own "self-created"

hardship and had acted in bad faith. *See* BZA Order No. 16521 attached as Exhibit C. Mr. Sisson has not appealed the Board's decision in Application No. 16521.

Over the last five (5) years, Mr. Sisson has repeatedly referred to the Subject Property as his home. In fact, the Subject Property is just one of several real estate development projects undertaken by Mr. Sisson, each of which appears to be mired in controversy and litigation. Mr. Sisson has never resided at this property, although he improperly received the owner-occupied Homestead real estate tax discount for several years. Mr. Sisson has effectively abandoned the Subject Property. He has failed to properly maintain the improvements and yard and allowed it to be used for transient purposes and storage of an inoperative and unlicensed commercial vehicle.

I. Zoning Calculations

The Subject Property is zoned WHOD/R-1A. The Subject Property, without the illegally constructed covered front porch is a non-conforming structure based on lot area, lot width, side yards, and front yards which do not comply with the applicable restrictions in the WHOD/R-1-A zone. *See* BZA Order No. 16521, Finding of Fact No. 15, Exhibit C. The continued existence of the illegal front porch extends the existing non-conformity for lot occupancy and front yard purposes in violation of 11 DCMR §2003.

Zone: WHOD/R-1A	Required	Provided	Violation
Lot Area	7,500 sf	6,562.50 sf	937.50
Lot Width	75	52.50	22.50
Lot Occupancy (Front Porch)	2,000	2,501.14 sf (336.89) sf	501.14 sf (2,164.25) sf

Front Yard	28.0	15.0	13.00
Side Yard	8.0/5.0	4.89/5.69	3.11/0
Parking	1	0	1
Private Driveway	14' width 12% grade	8' width greater than 12%	6' width tbd

See BZA Order Nos. 16405 and 16521, attached as Exhibits B and C.

IV. Argument

A. The Remedial Permit is Invalid on its Face

Neither Mr. Sisson, nor any authorized agent signed the permit application as required under the Building Code, 12 DCMR 107.1.2. Accordingly, the building permit is invalid and does not comply with the requirement to obtain a valid permit under the Zoning Regulations, 11 DCMR 3202. Under the circumstances, the failure of Mr. Sisson to certify to the completeness and correctness of the application and plans is significant given the well-established history of misleading, incomplete, piecemeal and inaccurate permit applications in this matter.

B. The Remedial Permit is Based on a False Assumption

The Remedial Permit is specifically contingent on Mr. Sisson removing the illegally constructed roof over the front porch. More than two and half years later, the roof has not been removed by Mr. Sisson. Additionally, Mr. Sisson's variance application to retain the covered front porch was unanimously denied by the Board in Order No. 16521. As shown above, the continued existence of the covered front porch constitutes a clear violation of the applicable front yard and lot occupancy requirements in the WHOD zone. Beyond the zoning violation that exists, Mr. Sisson has failed to satisfy the specific condition or contingency in issuing the permit and therefore the permit is invalid and of no force or effect.

C. The Remedial Permit Is Inconsistent with BZA Order Nos. 16405 and 16521

Over the last five years, the Board has reviewed and determined all of the relevant and applicable zoning restrictions and conditions related to the Subject Property. Based on the Board's findings, the Remedial Permit must be judged. As more fully set forth in the Zoning Calculations above and more fully discussed below, Mr. Sisson (and the Zoning Administrator in reviewing and approving building permits) is subject to the determinations previously made by the Board and affirmed by the Court of Appeals and cannot relitigate those issues once again in the hopes of obtaining a more favorable result.

D. The Remedial Permit Required A Variance from 11 DCMR 2003

The Subject Property without the covered front porch is non-conforming for front yard (3.15 feet violation), lot occupancy (greater than 2,000 square feet), lot width (52.50 feet), and side yard (4.89/5.69 feet). Under 11 DCMR 2003, an enlargement or addition to a non-conforming structure can only be made if each of the following three criteria are satisfied, including:

2003.3 (a): The structure shall conform to the percentage of lot occupancy requirements;

2003.3 (b); The enlargement or addition shall:

(1) Conform to use and structure requirements; and

(2) Neither increase or extend any existing, non-conforming aspect of the structure; nor create any new nonconformity of structure and addition combined.

The continued existence of the illegally constructed covered front porch extends the existing violation and non-conformity of the structure for front yard and lot occupancy purposes. Additionally, the illegal demolition of the existing one-car garage and illegal construction of a

new two-car garage creates a new conformity with respect to lot occupancy, off-street parking, private driveway access, and the garage itself. Accordingly, the Remedial Permit, in addition to the other specific zoning violations, violates 11DCMR 2003.3 and requires a variance from that provision.

E. The Remedial Permit Violates the WHOD Front Yard Requirement

It is well established by the Board that the applicable WHOD front yard requirement is 28 feet. 11 DCMR § 1543.4, 39 DCR, 6827, 6831 (1992). Without the covered front porch, the Subject Property has a front yard setback of 24.85, which violates the applicable restriction. With the illegally constructed covered front porch remaining in place, the front yard is only fifteen (15) feet, which extends the prior violation.

F. The Remedial Permit Violates the WHOD Lot Occupancy Requirement

In the WHOD, lots with an area from 5,000 to 6,667 square feet have a maximum lot occupancy of 2,000 square feet. 11 DCMR § 1543.2(a). The Board has established that the lot occupancy of the Subject Property with the illegally constructed and retained covered front porch is 2,501.14 square feet which exceeds the maximum permitted by more than 500 square feet. *See* Exhibit C. Significantly, removal of the covered front porch (approximately 270 square feet) will not eliminate the violation of the lot occupancy restriction.

G. The Remedial Permit Violates the Side Yard Restrictions

In the R-1-A zone, the Zoning Regulations require a minimum side yard of eight (8) feet on both sides of the structure. Under 11 DCMR 405.8, an exception exists for structures existing before May 12, 1958 which have a side yard of five (5) feet or greater. In this case, the exception is not applicable because after the Remedial Permit was issued, Mr. Sisson provided information to the Board that the existing side yard was only 4.89, not the six (6) feet he had

earlier claimed. Accordingly, any improvements to the Subject Property must maintain the required eight (8) foot side yards, not the 4.89 provided. At the time the Remedial Permit was issued, the Zoning Administrator could have not exercised his discretionary authority (12 inches) under 11 DCMR § 407 because Mr. Sisson had provided inaccurate information on the property dimensions which overstated the side yard dimensions (and understated the size of the two-car garage). Under the circumstances, no after-the-fact exercise of this discretion is appropriate or warranted. In BZA Application No. 16521, the Board required Mr. Sisson to provide accurate as-built drawings which identified the side yard violation for the first time and the larger size of the garage constructed.

H. The Remedial Permit Violates the Off-Street Parking, Private Driveway and Garage Requirements

In the R-1-A zone, a single-family dwelling is required to maintain one (1) off-street parking space. 11 DCMR § 2101.1. In order to comply, the off-street parking space must be accessible from a public street or alley or a private driveway. 11 DCMR § 2117.4. It is well established by the Board that the subject property does not satisfy the off-street parking space requirement. The illegally constructed two-car garage (containing the off-street parking) is located at the rear of the property and is only accessible by an eight (8) foot private driveway running from Hawthorne Street across the rear of several properties, including Mr. Stein's at 3016 43rd Street, N.W., whose residents also simultaneously must use the private driveway. *See* Exhibit D. As a result, traffic on the private driveway is by definition and practice required to be two-way.

Under 11 DCMR § 2117.8, a private driveway providing access to more than one parking spaces must be twelve (12) feet wide for one-way traffic and fourteen (14) feet for two-way

traffic. The existing two-car garage (off-street parking) fails to meet the private driveway widths for both one or two-way traffic. Additionally, visual observation makes it clear that the private driveway exceeds the maximum 12% grade restriction under 11 DCMR § 2117.8. Having illegally and without authorization demolished the pre-existing one-car garage and begun construction of the new two-car garage also without authorization, any grandfathering of the pre-existing condition was lost and extinguished and the current restrictions are fully applicable.

As a result, the illegally constructed two-car garage, itself, lacks the required access and is not authorized and must be removed. At the hearing in BZA Appeal No. 16405, Mr. Nunley testified that the permit for the garage should not have been issued if it did not provide the required access. *See* BZA Order No. 16405, page 7, Exhibit B.

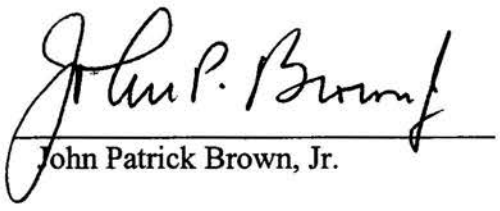
IX. Conclusion

For the foregoing reasons, the Appellant respectfully requests the Board to grant this Appeal and revoke the Remedial Permit.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

June 10, 2003

By: 
John Patrick Brown, Jr.

206917

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Appellant's Pre-Hearing Statement was served by first-class mail, postage prepaid, this 27th day of May, 2003, upon:

Mr. Denzil Noble
Interim Zoning Administrator
941 North Capitol Street, N.E.
Room 2000
Washington, D.C. 20002

Mrs. Mildred R. Crary
3010 New Mexico Avenue, N.W.
Washington, D.C. 20016

Robert J. Stein, Esq.
3016 43rd Street, N.W.
Washington, D.C. 20016

Ms. Beverly Monroe
ANC 3D
Ernst Auditorium
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

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

Maureen E. Dwyer, Esq.
Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037-1128

John Patrick Brown, Jr.

206917

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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. B430091

PERMIT

Date 10/11/00 (Type) MISC.

Address of work 3020 43RD STREET NW

Lot 70 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.

NO.

TOTAL PERMIT FEE $

FILING FEE $

DATE

FEE PAYABLE $ 75.00

Authorized work and conditions of performance thereof:

FOR INSPECTIONS CALL [illegible]442-4641

2 SOTRY REAR ADDITION, (PREVIOUS PERMIT B413166, ATTACHED). NEW GARAGE (PREVIOUS PERMIT B415675, ATTACHED). REMOVAL OF ROOF OVER FRONT PORCH (SEE PREVIOUS PERMIT B419108 FOR THE CONSTRUCTION OF THE ROOF OVER FRONT PORCH, ATTACHED). SEPARATE ELEC. AND PLUMB. INSTALLATION PERMITS ARE REQUIRED.

Value $ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories 2

Zone WHOD/R1A To be occupied as SFD

Height of terrace above grade Projections:

Address of owner 3020 43RD ST NW

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Chief, Permit Issuance Branch

By [signature] Permit Clerk

L. JORDAN 32301

DIRECTOR

00-07 '06 · FS (5) pgs N

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
A.D.C. No.:	O.G. No.:	WHOD/R-1-A			By:
P.A. No.:	S.L. No.:	Ward No.:	Receipt No.:	Date:	Receipt No.:

★ ★ ★ GOVERNMENT OF THE DISTRICT OF COLUMBIA

BLRA-33 (Rev. 10/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (727-7050)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY

(PRINT IN INK OR TYPE; DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

CLEARANCE TO FILE Date

ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

Address of Proposed Work:	Suite No.:	2. Lot:	3. Square:	4. Application Date:
3020 43RD STREET NW		70	1621	

Owner of Building or Property:	6. Address: (include Zip)	7. Phone:
CHARLES SISSON	3020 43RD ST NW WASHINGTON DC	(202) Work: 623-7113 Home:
Agent for Owner: (if applicable)	**9. Address: (include Zip)**	**10. Phone:** Work: Home:

11. Type of Proposed Work (check all applicable boxes):

- ☐ New Building
- ☒ Addition
- ☐ Alteration and Repair
- ☐ Raze Building
- ☐ Retaining Wall
- ☐ Fence
- ☐ Shed
- ☐ Awning
- ☒ Garage
- ☐ Sign
- ☐ Other (Specify) _____

12. Description of Proposed Work:

- 2 STORY REAR ADDITION (PREVIOUS PERMIT # B4131666, ATTACHED)
- NEW GARAGE (PREVIOUS PERMIT # B415675, ATTACHED)
- REMOVAL OF ROOF OVER FRONT PORCH (SEE PREVIOUS PERMIT # B419108 FOR THE CONSTRUCTION OF THE ROOF OVER FRONT PORCH, ATTACHED)

13. Existing Use(s) of Building or Property:	14. Ex. No. of Stories of Bldg.:	15. Ex. No. of Dwelling Units:	Official Use Only: Miscellaneous FEE $75 — By: Date: 10/7/06
SINGLE FAMILY RESIDENTIAL	2	1	
16. Proposed Use(s) of Building or Property:	**17. Prop. No. of Stories of Bldg.:**	**18. Prop. No. of Dwelling Units:**	
SINGLE FAMILY RESIDENTIAL	2	1	

19. Starting Date of Work:	20. Completion Date of Work:	21. Method of Removing Construction Debris:	22. Does the proposed work involve disturbing the earth or razing a building?
ASAP	ASAP	☐ Pick-up Truck ☒ Dumpster ☐ Other (specify):	☐ Yes, answer q. 23 ☒ No, SKIP q. 23-27

23. Is the area of disturbed earth more than 50 sq. ft.?	24. Soil Erosion Control Methods:	25. Area of Offsite Drainage:	26. No. of Footings or Columns:	27. Size of Footings of Columns:
☐ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25	SILT FENCE	N/A sq. ft.	N/A	N/A sq. ft.

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION I).

Complete Section B if the proposed work is **new building, addition or alteration.** (Page 2)
Complete Section C if the proposed work is **razing a building.** (Page 2)
Complete Section D if the proposed work is a **retaining wall.** (Page 2)
Complete Section E if the proposed work is a **fence.** (Page 3)
Complete Section F if the proposed work is a **shed/garage.** (Page 3)
Complete Section G if the proposed work is an **awning.** (Page 3)
Complete Section H if the proposed work is a **sign.** (Page 3)

OFFICIAL USE ONLY

	R	P	H	A	
M					
P					
E					W: ☐ Yes ☐ No
F					PLANS:
S					☐ No ☐ Sm ☐ Lg

007 wd-375

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

28. Architect's Name:	29. Lic. No.:	30. Architect's Address: *(include Zip)*	31. Phone:
CEDAR DESIGN		9200 BASIL CT # 514 LARGO MD 20774	(301) 883-8600
32. Engineer's Name:	33. Lic. No.:	34. Engineer's Address: *(include Zip)*	35. Phone:
36. Building Contractor's Name:	36A. Lic. No.:	37. Contractor's Address:	38. Phone:

39. Type of Construction	40. Fire Suppression:	41. Booster Pump:	42. Total Lot Area:	43. Breakdown of Lot Area (= 100%):
☐ Masonry ☐ Steel ☐ Wood ☐ Other: ☐ Concrete	☐ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☐ None ☐ Other:	☐ New ☐ Existing ☐ None	sq. ft.	a. Building: % b. Paved Area: % c. Greenery: %

44. Present Gross Floor Area of Bldg.:	45. Proposed Gross Floor Area of Bldg:	46. Floors involved in this permit:	47. Projection beyond building line?
sq. ft.	sq. ft.	☐ All ☐ Floors	☐ Yes, answer q. 48-52 ☐ No, SKIP q. 48-52

48. Number and type of projection:	49. Distance of projection:	50. Width of projection:	51. Width of building frontage: ft. 52. Signature of Owner (projection only):

53. Water or Sewer Excavation?	54. Driveway Construction?	55. Sheeting/Shoring Necessary?	56. Elevators involved?	57. No. and type of elev.:	58. Plans Certified by Engineer?
☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes, answer q. 57 ☐ No, SKIP q. 57		☐ Yes, cert. is attached ☐ No

59. Estimated Cost of Work:
(a) New/Add.: $ _____
(b) Alt/Rep.: $ _____
Total: $

60. Volume of New Bldg. or Addition: cubic ft.

OFFICIAL USE ONLY

Alter/Repair FEE	By:	Date:	New Const. FEE	By:	Date:	Filing Fee	By:	Date:	TOTAL PERMIT FEE	By:	Date:
$			$			$			$		

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

61. Raze Contractor's Name:	62. Contractor's Address: *(include Zip)*	63. Phone:

64. Insurance Company:	65. Policy or Certif. No.:	66. Expir. Date:	67. Raze Method:

68. Building Material:	69. Raze Entire Building?	70. Building Condemned?	70A. Building Vacant?	71. Public Space Vault?	72. Disconnect Water and/or Sewer?	73. Size of Water Connection:
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	in.

74. Plumber's Name:	75. Lic. No.	76. Length:	77. Width:	78. Height:	79. Volume:	80. Party Wall?
		ft.	ft.	ft.	cu. ft.	☐ Yes ☐ No

81. Asbestos in the Building?	82. Raze Contractor Signature:	OFFICIAL USE ONLY		
☐ No ☐ Yes, Location _____	83. Owner's Signature:	FEE	By:	Date:
		$		

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations

84. Cost of Work:	85. Material:	86. Height:	87. Color:	88. Location:
$		ft.		☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application.

89. Signature of Adjoining Owner:	90. Phone: Work / Home	OFFICIAL USE ONLY		
		FEE	By:	Date:
91. Address of Adjoining Owner:	92. Lot:	93. Square:		

(E) FENCE (COMPLETE ITEMS 94 THRU 102)

The fence will not obstruct any accessible parking required by D.C. Zoning Regulations

Material and type:	95. Height: ft.	96. Color:	97. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land *

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application.

Signature of Adjoining Owner:	99. Phone: Work Home	OFFICIAL USE ONLY: FEE $	By:	Date:
Address of Adjoining Owner:	101. Lot:	102. Square:		

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

Number:	104. Length: ft.	105. Width: ft.	106. Area: sq. ft.	107. Height: ft.	108. Volume: cu. ft.	109. Estimated Cost of Work: $	OFFICIAL USE ONLY: FEE $
Material of Roof:	111. Material of Sides:	112. Wall thickness:: ☐ External ( ) inches ☐ Party ( ) inches		113. Color:			By: Date:

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

Number:	115. Color:	116. Type: ☐ Folding ☐ Fixed	117. Projections: Beyond bldg. line ____ in. Beyond pt. of attachm. ____ in.	118. Height of lowest part of awning: (a) ____ ft above sidewalk (b) ____ ft above parking (c) ____ ft above grade	OFFICIAL USE ONLY: FEE $	By: Date:
Material of Frame:	120. Material of Covering:	121. Lettering on Awning? ☐ Yes ☐ No	122. Fixed posts? ☐ Yes ☐ No	123. Over sidewalk cafe? ☐ Yes ☐ No		

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

Number:	125. Electric Signs? ☐ Yes, answer q. 126-132 ☐ No, SKIP q. 126-132	126. Type: ☐ Incandes. ☐ Fluoresc. ☐ Neon	127. Power ____ VA	128. Electrical Contractor: Lic. No.:

Address of Electrical Contractor *(include Zip)*	130. Signature of Licensed Electrician:	131. Phone:	132. License No.:

Height relative to building and ground: ____ ft ____ in above sidewalk ____ ft ____ in above roof ____ ft ____ in is bldg height ____ ft ____ in above projection or window ____ ft ____ in from roof to sign's bottom	134. Material of Sign:	135. Type of Sign:	136. Color:
	137. Width: ft.	138. Length: ft.	139. Area of Sign: sq. ft.	140. Width of Business Frontage: ft.

C of O Number for Building:	142. Sign Contractor Lic. No.:	OFFICIAL USE ONLY: Sign FEE $	Elect. FEE $	Total FEE $ 110
Sign Contractor's Address:	144. Phone:	By: Date:	By: Date:	BY: Date:

(I) APPLICANT'S SIGNATURE:

A. OWNER: I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner:_____ Address:_____ Date:_____

B. AGENT: I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent:_____ Address:_____ Date:_____

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):

A. PERMIT CONTROL

- ☐ 1. Fine Arts by: _____ Date: _____
- ☐ 2. Historic by: _____ Date: _____
- ☐ 3. PADC by: _____ Date: _____
- ☐ 4. Cap. Gateway by: _____ Date: _____
- ☐ 5. W.H./ Obs. Precinct by: _____ Date: _____
- ☐ 6. Flood Control by: _____ Date: _____
- ☐ 7. WMATA by: _____ Date: _____
- ☐ 8. Condem. by: _____ Date: _____
- ☐ 9. RLA by: _____ Date: _____
- ☐ 10. Rental Accom. by: _____ Date: _____
- ☐ 11. Chinatown Distr. by: _____ Date: _____
- ☐ 12. Utility Clearance by: _____ Date: _____
- ☐ 13. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- ☐ 1. Zoning by: _____ Date: _____
- ☐ 2. DPW – Permit and Records Division
  Access to Parking Street ☐ Street ☐ Alley
  Cleared by: _____ Date: _____
- ☐ 3. DPW - Consumer Engineer
  Cleared by: _____ Date: _____
- ☐ 4. ERA - Erosion Control
  Cleared by: _____ Date: _____

Restrictions of the Permit:

SEPARATE ELECTRICAL, PLUMBING AND ~~MECHANICAL~~ INSTALLATION PERMITS ARE REQUIRED.

C. PLANS AND APPLICATION APPROVAL

- ☐ 1. Information Counter by: AM Date: 9-22-00
- ☐ 2. Information Center by: _____ Date: _____
  - ☐ (a) ABC Board by: _____ Date: _____
  - ☐ (b) Noise Control by: _____ Date: _____
  - ☐ (c) Industrial Safety by: _____ Date: _____
  - ☐ (d) Vector Control by: _____ Date: _____
  - ☐ (e) D.C. Animal by: _____ Date: _____
  - ☐ (f) Police Dept. by: _____ Date: _____
- ☑ 3. Zoning by: SD Date: 9/22/00
  Zoning Update by: _____ Date: _____
- ☐ 4. DPW - Permit and Records Division/Deposit #
  Sidewalk Deposit $_____ Driveway Deposit $_____
  by: _____ Date: _____
- ☐ 5. Water/Sewer Design Branch
  Consumer Eng. by: _____ Date: _____
- ☐ 6. Environmental Regulation Administration
  - ☐ Environmental Policy Review
    Control No.: _____
    by: _____ Date: _____
  - ☐ Erosion Control by: _____ Date: 9/24/00
  - ☐ Storm Water Mgmt. by: _____ Date: _____
  Plan No. _____
- ☐ 7. Mechanical Eng. Review by: _____ Date: 9/24/00
- ☐ 8. Plumbing Eng. Review by: _____ Date: 9/24/00
- ☑ 9. Electrical Eng. Review by: _____ Date: 9/24/00
- ☐ 10. Health Plan Review
  - ☐ (a) Food Plan Review by: _____ Date: _____
  - ☐ (b) Medical X-ray Plan Rev. by: _____ Date: _____
- ☐ 11. D.C. Fire Dept. (Fire Prevention Plan Review Section) by: _____ Date: _____
- ☐ 12. Elevator Plan Rev. Sec. by: _____ Date: _____
- ☐ 13. Plumbing Insp. Rev. by: _____ Date: _____
- ☐ 14. Construction Insp. Branch (Field Check) by: _____ Date: _____
- ☐ 15. Historic Pres. Div. by: _____ Date: _____
- ☐ 16. Structural Eng. by: _____ Date: 10/7/00
- ☐ 17. Permit and Certificate Issuance Counter By: _____ Date: _____
- ☐ 18. Q.C. By: _____ Date: _____

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY D.C. GOVERNMENT OFFICE OR OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639

ZONING

C of O Number _____ Date _____

Existing Use(s) _____

SD

- ☐ New bldg.
- ☐ P.O.D.
- ☐ File in room 329

Job No.:	BZA Case No.:	PUD Order No.:

DPW — PUBLIC SPACE

Street Name: _____

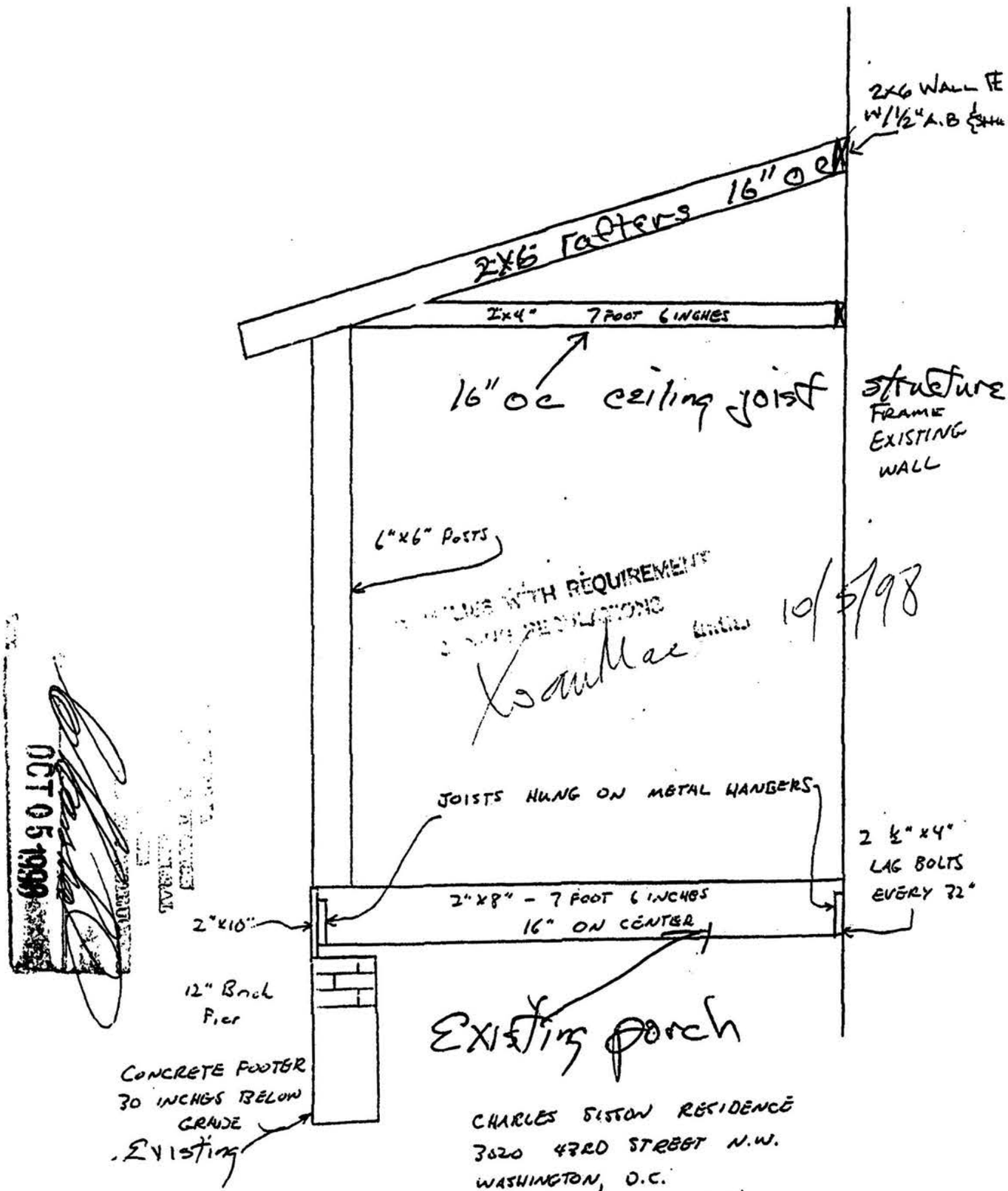
Street Width: _____

Road Width: _____

Sidewalk Width: _____

Parking: _____

Restrictions: _____



10/5/98

OCT 05 1998

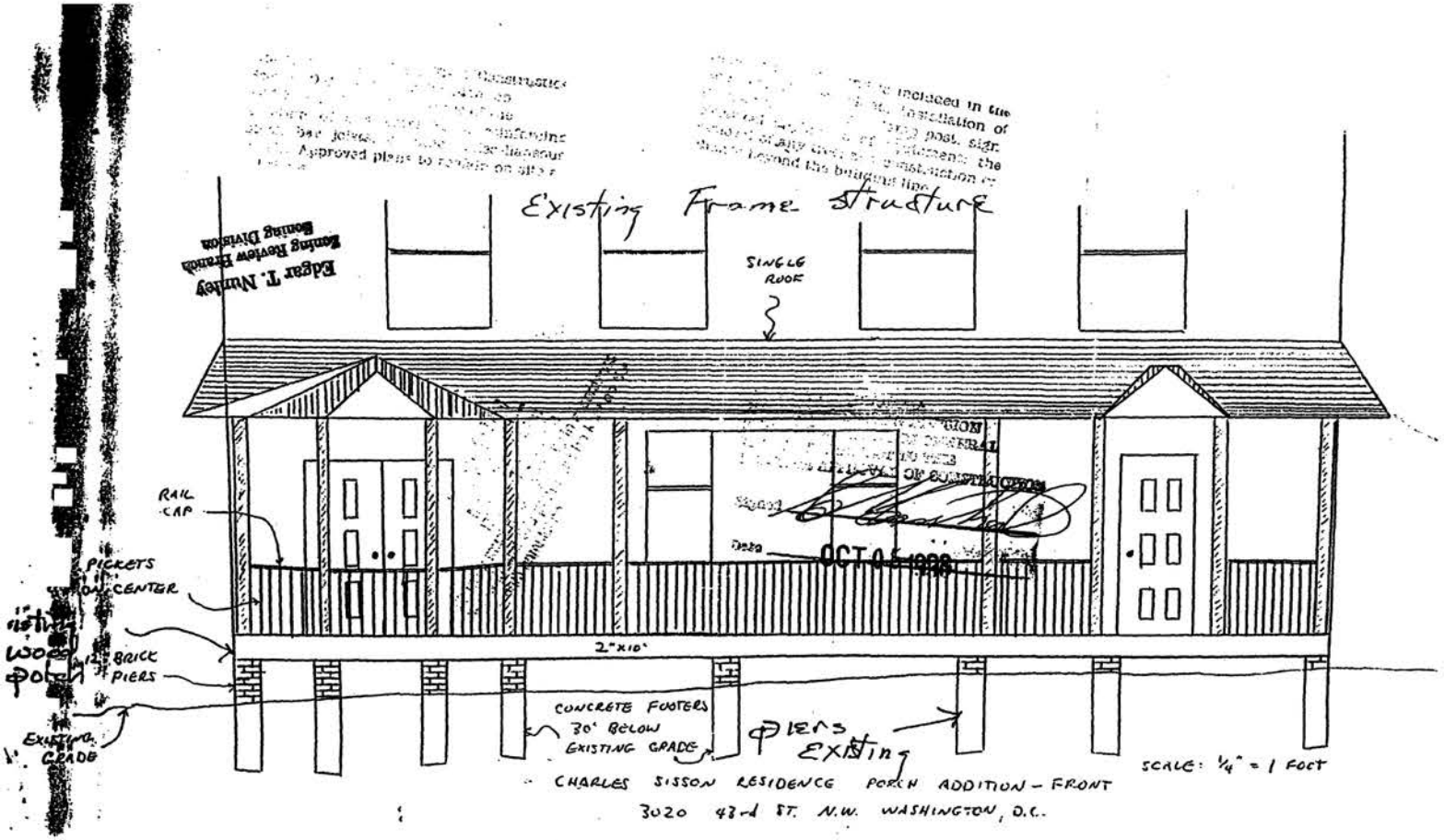
Edgar T. Nunley
Zoning Review Branch
Zoning Division

CHARLES SISTON RESIDENCE
3020 42ND 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


Existing Frame Structure
SINGLE ROOF
RAIL CAP
PICKETS 4" ON CENTER
2"x10"
BRICK PIERS
CONCRETE FOOTERS 30" BELOW EXISTING GRADE
EXISTING GRADE
Piers Existing
SCALE: 1/4" = 1 FOOT
CHARLES SISSON RESIDENCE PORCH ADDITION - FRONT
3020 42nd ST. N.W. WASHINGTON, D.C.
Edgar T. Mutley
Zoning Review Branch
Zoning Division
OCT 05 1998

2 Story Addition and Garage
for

Charles Sisson Residence
3020 43rd Street, N.W.
Washington, D.C.

OFFICIAL

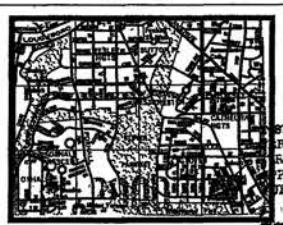
Abbreviations

@V	ABOVE	CYL.	CYLINDER	GALV.	GALVINIZED	O.A.	OVERALL
.F.F.	ABOVE FINISHED FLOOR	D	DEEP	GI	GALVINIZED IRON	O.C.	ON CENTER
~C	ACOUSTIC OR ACOUSTICAL	DET./DTL.	DETAIL	GA.	GAUGE	O.D.	OUTSIDE DIAMETER
ADH	ADHESIVE	DIA. ø	DIAMETER	G.L.	GLASS	OFF.	OFFICE
ADJ	ABOVE FINISH FLOORING	DIM	DIMENSION	GB	GRAB BAR	O.H.	OVERHEAD
AL.	ALUMINUM	DR	DINING ROOM	GR.	GRADE	OPNG.	OPENING
ALT.	ALTERNATE	D.O.	DOOR OPENING	GYP.	GYPSUM	O.R.	OUTSIDE RADIUS
&	AND	DBL	DOUBLE			P.L.	PROPERTY LINE
ANG	ANGLE	DN.	DOWN	H/C	HANDICAPPED	PL.	PLATE
ANOD	ANODIZE (D)	DS.	DOWNSPOUT	HDWE.	HARDWARE	P. LAM.	PLASTIC LAMINATE
APPROX.	APPROXIMATE	DWG.	DRAWING	HD	HEAD	PLYWD.	PLYWOOD
ARCH.	ARCHITECTURAL	D.F.	DRINKING FOUNTAIN	HTG	HEATING	PTD.	PAINTED
@	AT			HVAC	HEATING, VENTILATION AND AIR CONDITIONING	⊥	PERPENDICULAR
BA	BATHROOM	EA.	EACH			R	RISER
BD.	BEDROOM	EF	EACH FACE	HDWD.	HARDWOOD	RAD.	RADIUS
BEL	BELOW	EW	EACH WAY	HT.	HEIGHT	R.D.	ROOF DRAIN
BFF	BELOW FINISH FLOOR	E	EAST	HR.	HOUR	RECEP.	RECEPTACLE
BIT	BITUMINOUS	ELEC.	ELECTRIC OR ELECTRICAL	HC	HOLLOW CORE	REINF.	REINFORCED
BLK	BLOCK	E.W.C.	ELECTRIC WATER COOLER	HM	HOLLOW METAL	REQ'D.	REQUIRED
BLK'G.	BLOCKING	ELEV.	ELEVATION	HORIZ	HORIZONTAL	RESIL.	RESILIENT
BD	BOARD	ELEC.	ELECTRICAL			RM.	ROOM
BOT.	BOTTOM	ENTR	ENTRANCE	IN	INCH	R.O.	ROUGH OPENING
BOD	BOTTOM OF DECK	EQ.	EQUAL	INCL.	INCLUDE		
BLDG.	BUILDING	EQUIP.	EQUIPMENT	I.D.	INSIDE DIAMETER	S.C.	SOLID CASE
BLKHD	BULK HEAD	EST	ESTIMATE	INSUL.	INSULATION	SCHED.	SCHEDULE
BM	BY DOME MANUFACTURER	EXH	EXHAUST	INTER	INTERMEDIATE	S.D.	SOAP DISPENSER
		(E)	EXISTING	INT	INTERIOR	SECT.	SECTION
		EXP	EXPANSION	INV	INVERT	SHT.	SHEET
CAB	CABINET	E.J.	EXPANSION JOINT	JAN.	JANITORS CLOSET	SIM.	SIMILAR
CPT	CARPET (ED)	EXP.	EXPOSED	JNT.	JOINT	SPECS.	SPECIFICATIONS
CE	CARPET EDGE	EXT.	EXTERIOR	KIT.	KITCHEN	SQ.	SQUARE
CI	CAST IRON	E.I.F.S.	EXTERIOR INSULATION AND FINISH SYSTEM			SST.	STAINLESS STEEL
CLG.	CEILING			LAM.	LAMINATE	STD.	STANDARD
CEM	CEMENT			LP	LAMINATE PLASTIC	STL.	STEEL
CTR	CENTER	FAS	FASTEN (ER)	LAV.	LAVATORY	STOR.	STORAGE
CL	CENTER LINE	FT	FEET OR FOOT	LH	LEFT HAND	SUSP.	SUSPENDED
CER.	CERAMIC	F.E.C.	FIRE EXTINGUISHER CABINET	LIN	LINEN CLOSET		
CHAN	CHANNEL	F.H.C.	FIRE HOSE CABINET	LR	LIVING ROOM	T	TREAD
CLR.	CLEAR	FIN	FINISH	LVR	LOUVER	TEL.	TELEPHONE
CLO	CLOSET	F.F.	FINISH FLOOR			THK.	THICK
COL.	COLUMN	FC	FIRE CODE	MISC.	MISCELLANEOUS	T.O.	TOP OF.
COMB	COMBINATION	F.E.	FIRE EXTINGUISHER	MAINT	MAINTENANCE	T.P.D.	TOILET PAPER DISPENSER
CONC.	CONCRETE	FP	FIRE PROOFING	MFR.	MANUFACTURER	TYP.	TYPICAL
CONSTR.	CONSTRUCTION	FLASH	FLASHING	MET.	METAL	U.O.N.	UNLESS OTHERWISE NOTED
CONT.	CONTINUOUS OR CONTINUE	FLR.	FLOOR	MAS	MASONRY	V.C.T.	VINYL COMPOSITION TILE
CMU	CONCRETE MASONRY UNIT	FLUOR.	FLUORESCENT	M.O.	MASONRY OPENING	VERT.	VERTICAL
CG	CORNER GUARD	FTG.	FOOTING	MIN.	MINIMUM		
CORR	CORRIDOR	FND.	FOUNDATION	MAX.	MAXIMUM	W.	WIDE
CS	COUNTER SINK	F.S.	FULL SIZE	MECH.	MECHANICAL	W/	WITH
CRS	COURSE	FURN	FURNISH	MTD.	MOUNTED	WD.	WOOD
CU	CUBIC	FURR.	FURRING	N.A	NOT APPLICABLE	W/O	WITHOUT
CU. FT.	CUBIC FEET	FUT.	FUTURE	N.I.C.	NOT IN CONTACT	WT.	WEIGHT

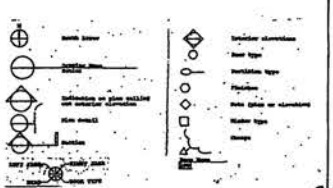
Zoning

[redacted]
WASHINGTON, DC 20016

Site Plan



Symbols



Index Drawings

ARCHITECTURAL

A-1	COVER SHEET
A-2	SITE PLAN
A-3	DEMOLITION PLAN
A-4	ARCHITECTURAL PLAN
A-5	FINISH SCHEDULES, DOOR AND WINDOW SCHEDULES
A-6	EXTERIOR ELEVATIONS
S-1	STRUCTURAL PLAN

DISTRICT OF COLUMBIA
PERMIT PROCESSING DIVISION
STRUCTURAL WORK IN GENERAL
APPROVED SUBJECT TO THE
LETTER APPROVAL OF CONSTRUCTION
(CCM)

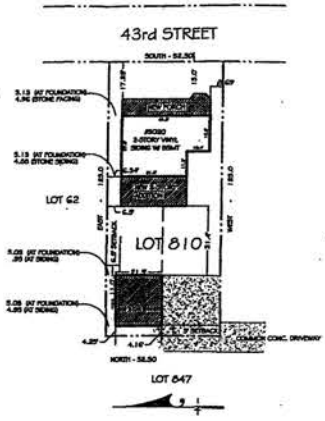
Complies with requirements of Zoning Regulations
5/22/00

Cedar Design

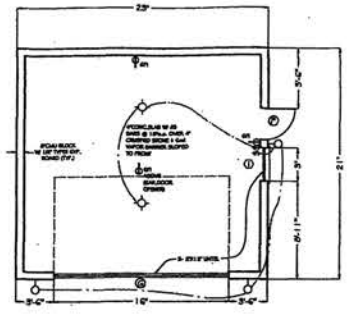
Sisson Residence
2 Story Addition & Garage

Cover Sheet

A-1

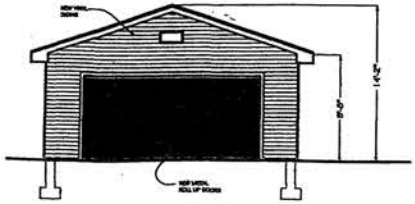


Site Plan
scale: 1"=30'

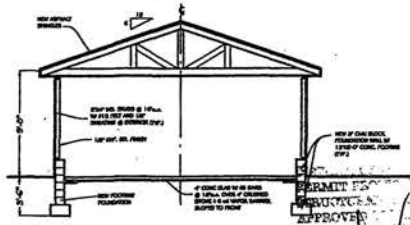


Garage Plan
scale: 1/4"=1'-0"

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
PURSUANT TO CURRENT D.C. CONSTRUCTION CODES REQUIREMENTS.
THIS ELECTRICAL PLAN IS REVIEWED AND APPROVED FOR PERMIT, AND
THEREFORE, ACTUAL INSTALLATION WORK AND FIELD INSPECTION
SHALL BE BASED ON IT.
DATE: SEP 29 2000
SIGNED: MOHAMMED ALI, CHIEF
ELECTRICAL ENGINEERING SECTION



New Garage South Elevation
scale: 1/4"=1'-0"



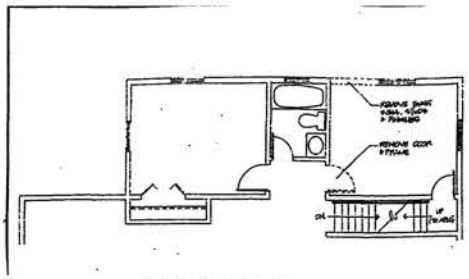
New Garage Cross Section
scale: 1/4"=1'-0"

PERMIT FOR
APPROVED
PURPOSES
(CH)

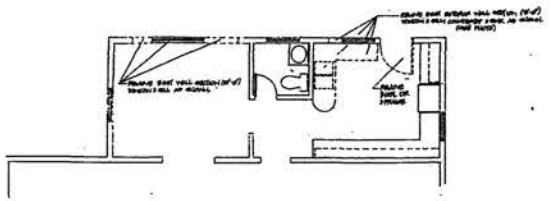
Cedar Design
Christie Stephenson
Designer
And
Architect

Sisson Residence
3020 43rd Street N.W. Washington DC
Site Plan/Garage Plans

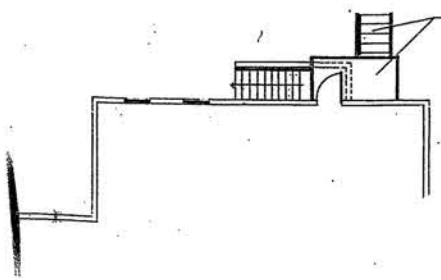
A-2



1/A-5 Second Floor Demolition
scale: 1/4" = 1'-0"



2/A-5 First Floor Demolition
scale: 1/4" = 1'-0"



3/A-5 Basement Demolition
scale: 1/4" = 1'-0"

DEMOLITION NOTES:

1. THE DEMOLITION WORK INCLUDES ALL WORK REQUIRED TO CONSTRUCT THE PROJECT SHOWN ON THE CONSTRUCTION DOCUMENTS. THIS SHEET SHOWS MOST GENERAL AREAS OF DEMOLITION BUT IS NOT INTENDED TO BE A COMPLETE LIST OF ALL DEMOLITION WORK. THE CONTRACTOR REMAINS RESPONSIBLE FOR BEING FULLY ACQUAINTED WITH THE EXISTING CONDITIONS AND THE PROPOSED WORK IN ORDER TO FULLY UNDERSTAND THE COMPLETE SCOPE OF THE DEMOLITION WORK. THE BASIC CONTRACT INCLUDES DEMOLITION WORK REQUIRED TO CONSTRUCT THE BUILDING.

2. THE CONTRACTOR IS RESPONSIBLE FOR PROCEEDING WITH DEMOLITION IN A SAFE MANNER, PER DISTRICT OF COLUMBIA CODE TO ASSURE THE SAFETY OF THE DEMOLITION WORKERS.

3. PROVIDE TEMPORARY SUPPORT (WALL FROFFING, BRACING, ETC.) FOR ALL STRUCTURAL MEMBERS TO REMAIN, UNTIL THEY CAN BE RECONNECTED TO THE NEW STRUCTURE.

4. REFER TO THE PROJECT SPECIFICATIONS FOR ADDITIONAL DEMOLITION INSTRUCTIONS AND SCOPE.

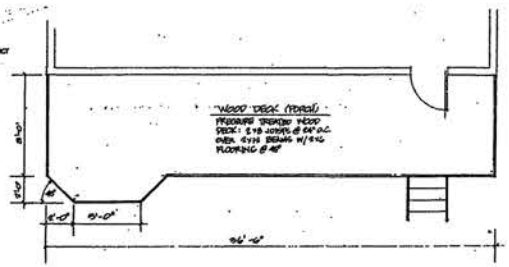
5. THE WORDS 'DEMOLITION' AND 'REMOVE' INCLUDE THE LEGAL DISPOSAL OF ALL MATERIALS OFF THE SITE.

6. THE DEMOLITION WORK INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING:

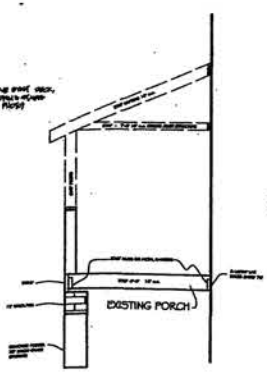
   A. REMOVAL OF ALL DOORS AND WINDOWS.
   B. REMOVAL OF ALL PLUMBING FIXTURES AND EXPOSED PIPING.
   C. REMOVAL OF ALL ELECTRICAL FIXTURES AND EXPOSED WIRING.
   D. TRENCHING FOR NEW PLUMBING WASTE LINES AND OTHER UTILITIES.
   E. REMOVAL OF ALL INTERIOR PARTITIONS.
   F. REMOVAL OF ALL MECHANICAL EQUIPMENT.
   G. REMOVAL OF ALL COLUMNS, BEAMS, ROOF DECK, ROOF JOISTS, AND ROOFING MATERIALS.
   H. REMOVAL OF ALL GUTTERS AND DOWNSPOUTS.

7. WHERE ROOF JOISTS ARE REMOVED, FILL ALL JOIST POCKETS WITH SOLID MASONRY.

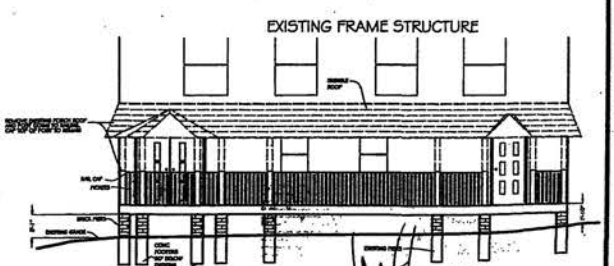
8. WHEN REMOVING EQUIPMENT THAT CONTAINS ASBESTOS, COMPLY WITH DISTRICT OF COLUMBIA CODE REQUIREMENTS FOR ASBESTOS REMOVAL. DISPOSE AS PERMITTED BY CODE.



Porch Plan
scale: 1/4" = 1'-0"



Typical Cross Section
scale: 1/2" = 1'-0"



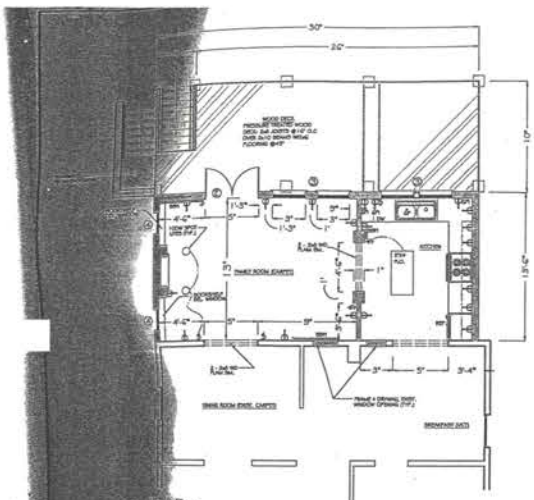
Porch Elevation
scale: 1/4" = 1'-0"

Cedar Design
Christine Raphaux
Designer
And
Architect

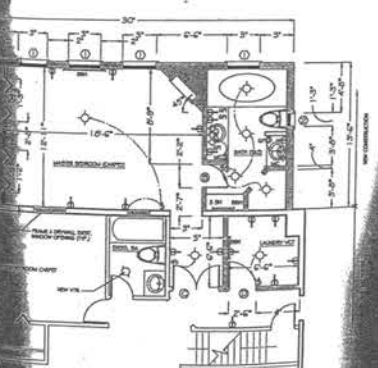
Sisson Residence
3020 43rd Street N.W. Washington DC

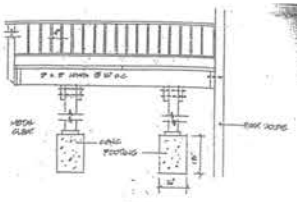
Demolition Plan

A-3



Plan



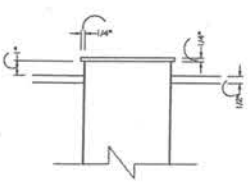


Section



Deck Framing Plan

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



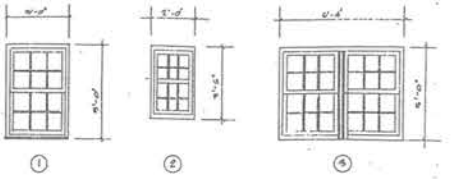
Post Cap-Detail

scale: 3" = 1'-0"

Sisson Residence
3020 43rd Street N.W. Washington DC

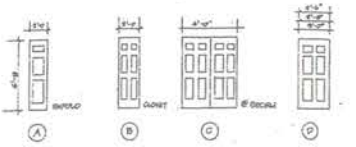
Architectural Plan

A-4



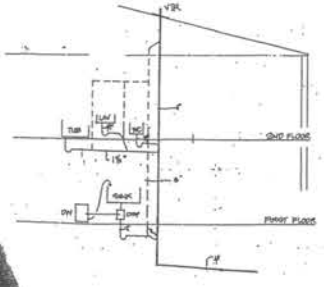
Typical Window Types

scale: 1/2" = 1'-0"



Typical door Types

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



Sanitary Diagram

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

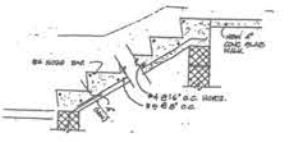
ITEM	RM	WATTS A	WATTS B
DEVICE	LVL		
LIGHTS			
LIGHTS			
LIGHTS			
OUTLETS			
HVAC	MBR		
	BM		
SPARE			
SPARE			
SUBTOTALS	LOWER		
	FLOOR		
	BASE		
TOTALS			
ASSUMED			

WATTS A	WATTS B	RM	ITEM
		KIT.	RANGE
		MBR	HVAC
		MBR	HVAC
		KIT.	DISHWASHER
			GARAGE
			GARA. DISP.

THE GENERAL LAYOUT OF THE GAS PIPING AND/OR PLUMBING SYSTEMS (Water, Sanitary and Storm) SHOWN ON THESE DRAWINGS HAS BEEN REVIEWED FOR COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE D.C. CONSTRUCTION CODES AND IS APPROVED

Date 4/28/11

Mechanical Engineering Section



Extenor Stair Detail

@ Rear of Addition

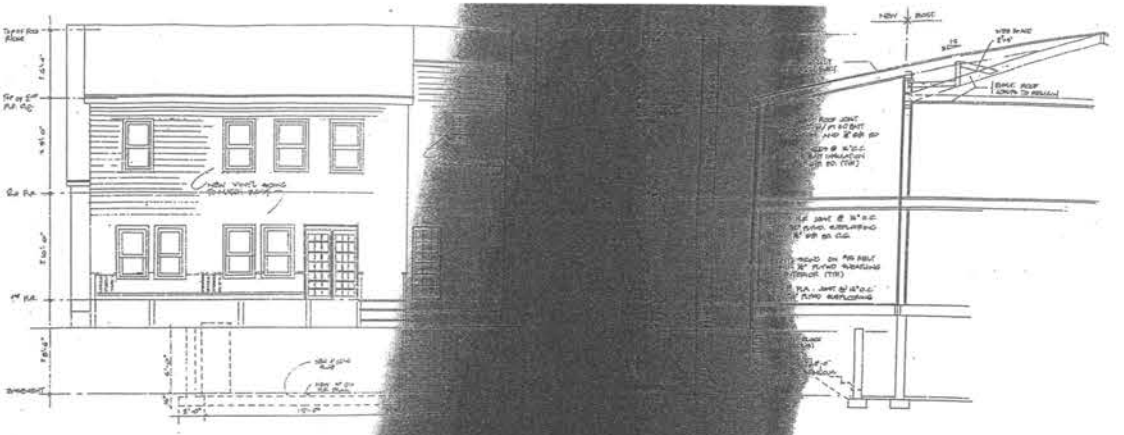
(CM)

Cedar Design

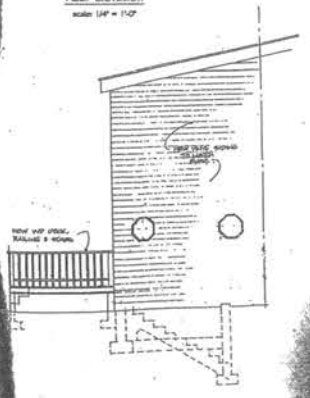
Stason Residence

3020 43rd Street N.W. Washington DC

Finish Schedules, Door and Window Schedules



Rear Elevation
scale: 1/4" = 1'-0"



Side Elevation
scale: 1/4" = 1'-0"

DISTRICT OF COLUMBIA
FINANCE AND REVENUE
OCT 07 2008

Sisson Residence
3020 45rd Street N.W. Washington DC

Exterior Elevations

A-6



GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 16405 of Mildred Rodgers Crary, pursuant to 11 DCMR § 3105 (new 3100.2), from the administrative decision of the Zoning Administrator to issue the following building permits allowing various alterations and additions to the subject property: Permit No. B413166, dated January 29, 1998, for a two-story addition on the rear; Permit No. B413424, dated February 9, 1998, for an addition to a garage, length 20 feet, width 20 feet, height 14 feet; Permit No. B415675 dated May 27, 1998, for a new garage to be located on the same spot as previous garage, length 20 feet, width 10 feet 9 inches, height 8 feet; Permit No. B417814, dated August 17, 1998, for repair of existing roof, roof in place, no structural change; and Permit No. B419108, dated October 5, 1998, to build new porch roof as per plans. The Appellant also challenges the R-1-B zoning classification attributed to the property by the Zoning Administrator. These permits were issued for property located at premises 3020 43rd Street, N.W. (Square 1621, Lot 810).

HEARING DATES: December 16, 1998, February 17, 1999, April 21, 1999, May 5, 1999, May 19, 1999 and May 26, 1999

DECISION DATE: June 16, 1999

ORDER

PRELIMINARY AND PROCEDURAL MATTERS:

This Appeal was brought by Mildred R. Crary, the owner of property abutting the subject property. At the Board's December 16, 1998 public hearing, Charles Sisson, owner of the subject property, requested Intervenor status and postponement of the hearing because of a previously scheduled overseas trip. The Board granted both requests.

At the hearing held February 17, 1999, the Appellant sought to amend the Appeal to include two building permits that were discovered after the Appeal, which initially challenged three permits, was filed. The Board determined that the two newly discovered building permits were germane and directed readvertisement of the Appeal to include all five permits. Also at the February 17, 1999 hearing, the Intervenor requested dismissal of the Appeal because it was not timely filed and was also barred by the doctrines of laches and estoppel. The Board denied

Intervenor's estoppel claim on May 5, 1999,[1] but determined that the facts of the case must be heard before addressing the issues of timeliness and laches.

The Appeal was heard on May 26, 1999. Testimony was received from Mr. Edgar Nunley, chief of the Zoning Review Branch in the Department of Consumer and Regulatory Affairs, Advisory Neighborhood Commission ("ANC") 3D, and Mr. George Watson, president of the Wesley Heights Historical Society, in addition to the Appellant and the Intervenor.

FINDINGS OF FACT

1. The subject property is located at 3020 43rd Street, N.W. (Square 1621, Lot 810) in the Wesley Heights neighborhood of Ward 3. The streets that surround the property are Cathedral Avenue to the north, New Mexico Avenue and 43rd Street to the east, Hawthorne Street to the south, and 44th Street to the west.

2. The property contains 6,563 square feet of land area and is developed with a single-family, detached dwelling that was constructed in 1926. The building contains a gross floor area of 2,876 square feet.

3. The subject property is zoned WHOD/R-1-A. The Wesley Heights Overlay District (WHOD) was established to preserve and enhance the low-density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area. 11 DCMR § 1541.1. The purposes of the WHOD are: (1) to preserve in general the current density of the neighborhood; (2) to allow reasonable opportunities for owners to expand their dwellings; and (3) to preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood. 11 DCMR § 1541.3.

4. The WHOD zoning requirements apply in combination with the requirements of the R-1-A District. 11 DCMR § 1542.1. The zoning requirements applicable to the Intervenor's property are summarized in the following chart:

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[1] The elements of estoppel are: (1) expensive and permanent improvements, (2) made in good faith, (3) in justifiable and reasonable reliance upon, (4) affirmative acts of the District government, (5) without notice that the improvements might violate the zoning regulations, and (6) equities that strongly favor the party asserting the defense. *Wieck v. District of Columbia Board of Zoning Adjustment*, 383 A.2d 7, 11 (D.C. 1978). In denying Intervenor's estoppel claim, the Board relied upon the principle that an innocent third party properly cannot be estopped from challenging the government's mistaken issuance of a permit, even when there has been reliance by the permittee. The Board has previously held that estoppel cannot bar a neighboring property owner (as distinct from the District government) from asserting rights under the zoning regulations. The Court of Appeals has noted that the Board has adopted this position in *Beins v. District of Columbia Board of Zoning Adjustment*, 572 A.2d 122, 125 (D.C. 1990.) This position has been accepted in other jurisdictions as well. *See Lithe v. Hidalgo*, 536 S.W.2n 898, 901-02 (Mo.App. 1976) ("unconscionable to hold that aggrieved private parties could be prejudiced by the conduct of city officials with whom they are not in privity"); *Boyd v. Donelon*, 193 So.2d 291, 298 (La. App. 1966) (citations omitted) ("neighboring property owners . . . are not estopped by any permission or representations made by the municipal employees"): *Pascale v. Board of Zoning Appeals of City of New Haven*, 186 A.2d 377, 380 (1962) (assuming that a city may be estopped from enforcing a regulation because it issued a building permit, such estoppel will not defeat the rights of an aggrieved property owner).

Zoning Requirements	R-1-A	WHOD/R-1-A	Site
Minimum Lot Area	7,500 s.f.	7,500 s.f.	6,563 s.f. (existing)
Minimum Lot Width	75 ft.	75 ft.	53 ft. (existing)
Lot Occupancy	40%	2,000 s.f., where lot size is between 5,000 s.f. and 6,667 s.f.	2,145 s.f. (existing)
Floor Area Ratio	None Prescribed	Gross floor area shall not exceed the sum of 2,000 s.f. plus 40% of lot area, with exceptions for open porches and garages	2,876 s.f.
Minimum Front Yard	None Prescribed	Equal to or greater than the average setback of all structures on the same side of the street in the same block; 21 ft. in this case	25 ft. (prior to addition); 17 ft. (after porch construction)
Minimum Rear Yard	25 ft.	25 ft.	N.A.
Minimum Side Yard	8 ft. each	8 ft. each	6 ft. each (existing)
Off–street parking	One space, accessible directly from improved street or alley or via a graded and unobstructed private driveway	One space, accessible directly from improved street or alley or via a graded and unobstructed private driveway	

5. The subject property is nonconforming because its lot area, lot width, and setbacks are smaller than the minimums prescribed in the WHOD/R-1-A zone, and because its lot occupancy is higher than the prescribed maximum.

6. The Appeal challenges five permits issued between January and October 1998 for construction at the subject property, whose main elements were a covered front porch, a rear two-story addition, and a new garage. The five permits at issue are:

(1) Building Permit No. B413166, dated January 29, 1998, for a two-story addition on the rear;
(2) Building Permit No. B413424, dated February 9, 1998, for an addition to a garage, length 20 feet, width 20 feet, height 14 feet;
(3) Building Permit No. B415675, dated May 27, 1998, for a new garage to be located on the same spot as previous garage – length 20 feet, width 10 feet 9 inches, height 8 feet;
(4) Building Permit No. B417814, dated August 17, 1998, for repair of existing roof, roof in place, no structural change;
(5) Building Permit No. B419108, dated October 5, 1998, to build new porch roof as per plans.

7. The first permit, pertaining to the rear addition, incorrectly identified the zoning classification applicable to the subject property as R-1-B instead of WHOD/R-1-A.

8. Plans submitted by the Intervenor as part of his application for the first permit did not reflect all of the construction work that the Intervenor planned to perform at the site. The Intervenor'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 Intervenor's plans for the garage, rear addition, and front porch consistently and accurately.

9. The second permit, pertaining to an addition to the existing garage, also applied the wrong zoning classification, this time R-1-A instead of WHOD/R-1-A.

10. Although the second permit authorized an addition to an existing garage, the garage was demolished without authorization, purportedly because the Intervenor's contractor discovered that the footings to the existing garage were decayed.

11. 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.

12. 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 building permit.

13. The Zoning Regulations require that off-street parking spaces must be accessible at all times directly from improved streets or alleys or accessible from improved streets and alleys via graded and unobstructed private driveways. 11 DCMR § 2117.4.

14. A driveway providing access to required parking spaces must meet certain standards, including that a driveway serving more than one 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.

15. A private easement extends from Hawthorne Street, along the rear of four neighboring properties, and terminates at the Intervenor's property. Following construction of the new garage, the easement is eight feet wide.

16. The Intervenor's new garage is accessible only by means of the private easement.

17. The fourth permit, pertaining to roof repair, again applied the wrong zoning classification, in this instance R-1-B instead of WHOD/R-1-A.

18. The fourth permit was issued for repairs to an existing roof over the porch but, at the time the permit was issued, the porch was open and did not have a roof. The Intervenor was instructed to obtain a new building permit after DCRA discovered that there was no roof in place.

19. The fifth building permit authorized construction of a new porch roof.

CONCLUSIONS OF LAW AND OPINION:

An appeal to the Board may be taken by any person aggrieved by any decision of DCRA granting a building permit, or any other administrative decision based on the Zoning Regulations. D.C. Code § 5-424; 11 DCMR § 3202.2. The Board's powers with regard to appeals include to decide allegations of error in any decision made by DCRA in carrying out or enforcement of any zoning regulation. D.C. Code § 5-424.

The Zoning Regulations provide that an appeal must be "timely." 11 DCMR § 3315.2. Because the Board's rules do not adopt a specific time limit on appeals, a standard of reasonableness is applicable to determine whether an appeal is timely. *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 923 (D.C. 1980). In applying the reasonableness standard, courts have consistently held that the time for filing an appeal commences when the party appealing is chargeable with notice or knowledge of the decision complained of. *Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment*, 490 A.2d 628, 636 (D.C. 1985). *See also, e.g., Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994).

The Board concludes that the Appeal was timely with respect to all five permits. The Intervenor submitted five separate applications for building permits that all related to work performed on a single property. Because of the cumulative, piecemeal nature of the applications, the full extent of the Intervenor's construction project could not be discerned as each individual permit was issued and therefore they must be considered as a whole. The Appellant has alleged violations of the zoning regulations, such as failure to comply with lot occupancy and setback requirements, that pertain to the full extent of the work performed on the Intervenor's property, rather than merely concerning the individual components of the project. The Board is not persuaded that the first permit put the Appellant on notice of all the work to be done on the Intervenor's property or, therefore, that the work allegedly violated the Zoning Regulations.

Other factors also support our conclusion that the Appellant was not "chargeable with notice" as soon as the first permit was issued. The Intervenor's various permit applications contained errors of omission or were otherwise misleading in that they did not reflect all existing and planned improvements accurately and consistently. For example, the garage was not depicted accurately on the first application, concerning the rear addition, and the fourth application indicated that the front porch was not open but had an existing roof. Because of these errors, zoning violations arising from the failure to comply with lot occupancy and setback requirements of the Wesley Heights overlay, in particular, were not apparent until the work was substantially completed on the Intervenor's property. Moreover, some work was performed beyond the scope of the permit, as with the demolition of the existing garage and the construction of a 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. Therefore, the Board concludes that the Appellant was not chargeable with notice of the entire scope of work performed at the Intervenor's property until all of the permits were issued.[2]

The Intervenor argues that the Appeal is barred by laches. "Laches is a species of estoppel, being defined as the omission to assert a right for an unreasonable and unsatisfactorily explained length of time under circumstances prejudicial to the party asserting laches." *Wieck v. District of Columbia Board of Zoning Adjustment*, 383 A.2d 7, 11 (D.C. 1978), *quoting* 3 RATHKOPF, LAW OF ZONING AND PLANNING, at 67-1 (3d ed. 1972). "Laches is the principle that 'equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant." *American University Park Citizens Association v. Burka*, 400 A.2d 737, 740 (D.C. 1979), *quoting Russell v. Todd*, 309 U.S. 280, 287, 84 L. Ed. 754, 60 S. Ct. 527 (1940). The two elements of laches are the unreasonableness of the delay and the resulting prejudice to the party asserting the defense. *See, e.g., American University Park Citizens Association v. Burka*, 400 A.2d at 741. The "entire course of events," not merely the period from the zoning official's decision to the filing of an appeal, is relevant when determining the validity of a laches defense. *Goto v. District of Columbia Board of Zoning Adjustment,* 423 A.2d at 925, n.16.

The Board finds no merit in the Intervenor's argument. As discussed above with respect to timeliness, the Appellant did not unreasonably delay the filing of the Appeal. Rather, the Appeal was filed as soon as Appellant realized the entire scope of work being performed at the Intervenor's property. The Board concludes that the Appellant did not omit to assert her right to appeal for an unreasonable and unsatisfactorily explained length of time. Any delay in filing the appeal was not unreasonable but resulted from the fact that the Intervenor applied for separate building permits for each component of the construction on his property. Thus, there was no "unexcused delay." Accordingly, because the Intervenor failed to demonstrate the first element of laches – an unreasonable delay in bringing the appeal – the Board denies Intervenor's motion to dismiss the Appeal on grounds of laches.

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[2] The fifth permit, which was issued after the appeal was filed, authorized construction of a new porch roof. That permit was purportedly issued to correct the fourth permit, which had authorized repairs to an existing porch roof, but in fact no roof was in existence when the permit was issued.

Turning to the merits of the Appeal, the five permits issued to the Intervenor violate the zoning regulations in several respects. The applicable zone district was misidentified on three of the five permits. Twice, the underlying zone was incorrectly identified as R-1-B; however, because of the similarity between R-1-A and R-1-B requirements that mistake likely had no substantive effect. A more significant oversight was the failure to recognize that the Intervenor's property is located within the Wesley Heights Overlay District. Thus, the more stringent WHOD provisions were not applied, and permits were issued that purported to allow work that does not comply with relevant lot occupancy and setback requirements. This oversight was compounded by the fact that the full scope of the work planned for the Intervenor'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.

Moreover, the Intervenor's property is nonconforming because its lot area, lot width, and setbacks are smaller than the minimums prescribed in the WHOD/R-1-A zone, and because its lot occupancy is higher than the prescribed maximum. Structural alterations to nonconforming structures are permitted. 11 DCMR § 2001.2. However, enlargements or additions made to nonconforming structures must comply with certain conditions, including that the structure must conform to percentage of lot occupancy requirements, and the addition or enlargement itself must not increase or extend any existing, nonconforming aspect of the structure, or create any new nonconformity of structure and addition combined. 11 DCMR § 2001.3. The Board concludes that the work performed on the Intervenor's property increased its nonconforming aspect with respect to setbacks and lot occupancy.

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.

The Board concludes that the Zoning Administrator erred in issuing the five building permits to the Intervenor. The Zoning Administrator's decisions were not based on complete and accurate information about the Intervenor's property, reflecting all existing and planned improvements. The Zoning Administrator also failed to apply the correct zoning classification, which resulted in the issuance of permits that did not conform to applicable zoning provisions, especially the Wesley Heights Overlay District, in several material respects. The violations stemming from erroneously issued permits were compounded in this case by the fact that some work, with respect to the garage and front porch, was not performed strictly in compliance with the permits.

The motion to **DISMISS** the Appeal based on timeliness and laches is **DENIED.**

VOTE: 4-0 (Angel Clarens, Betty King, Sheila Cross Reid and Jerry Gilreath to deny.)

The Zoning Administrator erred in issuing Building Permit Nos. B413166, B413424, B415675, B417814 and B419108. Therefore, it is hereby **ORDERED** that the Appeal be **GRANTED.**

VOTE: 4-0 (Angel Clarens, Betty King, Sheila Cross Reid and Jerry Gilreath to grant.)

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

ATTESTED BY: _____
JERRILY R. KRESS
DIRECTOR

FINAL DATE OF ORDER: DEC 28 1999

UNDER 11 DCMR 3103.1 "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."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPEAL NO. 16405

As Director of the Office of Zoning, I hereby certify and attest that on DEC 28 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

John Patrick Brown, Jr.
Greenstein DeLorme and Luchs, P.C.
1620 L Street, N.W., Suite 900
Washington, D.C. 20036-5605

Maureen E. Dwyer, Esq.
Wilkes, Artis, Hedrick and Lane
1666 K Street, N.W.
Washington, D.C. 20006-2897

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
DIRECTOR



GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16521 of Charles A. Sisson, pursuant to 11 DCMR § 3103.2, for a variance from the allowable percentage of lot occupancy of a dwelling under § 1543.2, the front yard setback requirements of § 1543.4, and the nonconforming structure requirements of § 2001.3, for the construction of a front porch, rear addition, and accessory garage in the WHOD/R-1-A District at premises 3020 43rd Street, N.W. (Square 1621, Lot 70).

HEARING DATES: December 8, 1999; May 3, 2000; May 16, 2000; May 24, 2000; June 20, 2000; October 17, 2000; and December 5, 2000

DECISION DATES: January 2, 2001; July 3, 2001; July 31, 2001; November 6, 2001; December 4, 2001

DECISION AND ORDER

Charles A. Sisson, the owner of Lot 70 in Square 1621, with a street address of 3020 43rd Street, N.W., is seeking after-the-fact zoning relief from the Board of Zoning Adjustment in order to retain a roof over a front porch addition to a one-family dwelling in the WHOD/R-1-A District. Mr. Sisson was represented at various stages of these proceedings by the law firm, ShawPittman. After a public hearing, the Board denied the application for the reasons stated herein.

PRELIMINARY AND PROCEDURAL MATTERS

Application. Charles A. Sisson filed an application with the Board on October 7, 1999, seeking a special exception under 11 DMCR § 223.1 and a variance from the front yard setback requirements of § 1543.4 to allow, after-the-fact, the construction of a two-story rear addition, an accessory private garage, and a front porch addition in the WHOD/R-1-A District. The zoning relief requested in the application was self-certified. The applicant filed this application following the Board's June 16, 1999, decision meeting in BZA Appeal No. 16405, at which the Board determined that the Zoning Administrator erred in approving the issuance of five building permits relating to the rear addition, garage, and porch.

On October 11, 2000, the Department of Consumer and Regulatory Affairs issued the applicant an after-the-fact, remedial building permit for the construction of the rear addition and garage and for the removal of the roof over the front porch.[1]

As a result of the remedial building permit, the applicant is only seeking zoning relief to retain the roof over the front porch. The Board therefore amended the application to consist of requests for area variances from the requirements of §§ 1543.2 and 1543.4, the maximum percentage of lot occupancy and minimum front yard setback requirements in the Wesley Heights Overlay District; and from the requirements of § 2001.3, which restricts additions to nonconforming structures.

Party Status. The Board granted Mildred R. Crary, an adjacent property owner and the appellant in BZA Appeal No. 16405, party status to oppose the application. Mrs. Crary is represented in these proceedings by Greenstein, DeLorme & Luchs, P.C.

Notice of Application and Notice of Hearing; Procedural History. By memoranda dated October 26, 1999, the Office of Zoning advised the Zoning Administrator; D.C. Office of Planning; and Advisory Neighborhood Commission (ANC) 3D, the ANC for the area within which the property that is the subject of the application is located, of the filing of the application.

The Board scheduled a public hearing on the application for December 8, 1999. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on October 28, 1999, mailed the applicant, the owners of all property within 200 feet of the subject property, ANC 3D, and the affected ANC Single-Member District Commissioner and Ward Councilmember notice of hearing. Notice of hearing was also published in the *D.C. Register* on October 29, 1999, at 46 DCR 8738. The applicant's affidavit of posting indicates that on November 19, 1999, a zoning poster was placed in front of the property, in plain view of the public.

On November 24, 1999, the applicant requested a continuance of the hearing pending receipt of a Zoning Administrator's memorandum confirming the required zoning relief. By letter dated December 8, 1999, the Zoning Administrator also advised the Board that it would be premature to proceed with the application until the issuance of the Board's written decision in BZA Appeal No. 16405. Mrs. Crary requested the Board to dismiss the application as premature or, alternatively, to deny the application on the grounds that the application was incomplete and that the applicant had not demonstrated that he could meet his burden of proof. On December 8, the chairperson postponed the hearing pursuant to 11 DCMR § 3117.3 to allow for the issuance of the Decision and Order in BZA Appeal No. 16405 and the preparation of the Zoning Administrator's memorandum.

The Board issued its Decision and Order in BZA Appeal No. 16405 on December 28, 1999.[2] On March 16, 2000, after the Zoning Administrator and the applicant advised the Board that variance relief was required from the maximum percentage of lot occupancy requirements of

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[1] On May 5, 2000, the Spring Valley – Wesley Heights Citizen's Association appealed the issuance of the remedial permit in a separate case, BZA Appeal No. 16679. The Board has not as yet heard the appeal.

[2] The applicant has appealed this Decision and Order to the District of Columbia Court of Appeals.

11 DCMR § 1543.2 and the minimum front yard set back requirements of § 1543.4, the Board rescheduled the public hearing for May 3, 2000, and re-noticed the hearing by mailing a copy of the notice to the applicant, the owners of all property within 200 feet of the subject property, and ANC 3-D. Notice of hearing was also published in the *D.C. Register* on March 17, 2000, at 47 DCR 1895. The applicant re-posted the property on April 18, 2000.

At the May 3, 2000, public hearing, the Board continued the case to May 16 due to the fact that the ANC had not received timely mailed notice of the hearing, and neither the ANC nor Mrs. Crary had received any information from the applicant concerning the revisions to the application. Mrs. Crary again requested the Board to dismiss the application as premature. On May 4, the applicant re-posted the property.

On May 15, 2000, the applicant requested a postponement of the May 16 hearing to May 24, to provide an opportunity for the Zoning Administrator, the applicant and his attorney, and the attorney for Mrs. Crary to meet to determine the necessity of additional zoning relief. Mrs. Crary agreed to the continuance. At the May 16 hearing, the Board continued the case to May 24 to allow for the joint meeting. The meeting, however, did not take place. On May 22, 2000, Mrs. Crary filed a Motion to Dismiss and/or Deny the Application with Prejudice on the grounds that the application was premature, incomplete, misleading, inaccurate, and contrary to the Board's findings in BZA Appeal No. 16405.

On May 24, 2000, the Board directed the applicant to provide the Board, the Zoning Administrator, the ANC, and Mrs. Crary an as-built survey and a drawing or plat with sufficient detail to determine the correct zoning data of the property. The Board continued the hearing to June 20, and deferred making a decision on Mrs. Crary's motion to dismiss.

At the June 20, 2000, public hearing, ANC 3D and Mrs. Crary requested that the hearing be postponed to allow for additional review. The Board continued the case to October 17 and requested a final report from the ANC as well as a report from the Zoning Administrator identifying the necessary zoning relief.

On September 8, 2000, the Office of Zoning provided notice of the October 17, 2000, hearing by mailing the applicant, all owners of property within 200 feet, and ANC 3D notice of hearing. Notice of hearing was also published in the *D.C. Register* on August 25, 2000, at 47 DCR 6887. While the ANC filed its report, the Zoning Administrator did not submit the requested letter concerning the required zoning relief. At the October 17 hearing, Mrs. Crary again argued for dismissal or denial of the application. The applicant announced that the Department of Consumer and Regulatory Affairs had issued him a sixth building permit on October 11, 2000 (Permit No. B430091), a remedial permit that encompassed all the improvements he had made to the property pursuant to the five permits invalidated in BZA Appeal No. 16405, with the exception of the front porch. The permit approves the removal of the roof over the front porch. The applicant then presented his arguments for the variances that would be required in order to retain the roof over the front porch. As neither Mrs. Crary nor the ANC had had an opportunity to review the permit, the hearing was continued to December 5. Notice of the hearing was published in the *D.C. Register* on October 27, 2000, at 47 DCR 8630. At the conclusion of the hearing, the Board scheduled a decision meeting for January 2, 2001.

On January 2, 2001, the Board denied Mrs. Crary's Motion to Dismiss the Application, finding that the remedial permit covered many of the alleged zoning violations that were the subject of the motion. The Board also decided to request further clarification from the Zoning Administrator related to the required zoning relief.

At its July 3, 2001 meeting, the Board continued the decision meeting to July 31 to afford the members who had not personally heard the evidence in the case additional time to review the entire record. The Board requested additional clarification from the Zoning Administrator, with the parties provided the opportunity to review and respond to any new information submitted by the Zoning Administrator. The Board also directed that the application be re-advertised to include variance relief from 11 DCMR § 2001.3, with the record re-opened to accept additional comments.

Notice of the July 31, 2001 decision meeting was published in the *D.C. Register* on July 13, 2001, at 48 DCR 6332, and interested persons were given until July 23, 2001 to submit written comments relating to the newly identified variance from 11 DCMR § 2001.3. The Office of Zoning also provided written notice to Mrs. Crary, ANC 3D, and the Office of Planning on June 6, 2001, as well as to the applicant on July 3, 2001, and to all owners of property within 200 feet of the subject property on July 5, 2001. The applicant reposted the property on July 18, 2001, with notice of the public meeting.

At its July 31, 2001 meeting, the Board denied the application, finding that the applicant had not met his burden of proving that he would encounter practical difficulties in complying with the Zoning Regulations as a result of unique or exceptional conditions of the property.

Applicant's Case. Mr. Sisson presented his case for the variances required for the front porch roof. He argued that his property was unique and exceptional due to the building permit history of the improvements, as well as the fact that his dwelling with the front porch would set back farther from the street than similar properties to the south. He indicated that the strict application of the Zoning Regulations would cause him practical difficulties in that he had relied in good faith on the actions of the zoning officials during the permitting and construction process, and that removal of the front porch would require a new design approach for the front of the house. He argued that the requested variance relief could be granted without substantially impairing the public good or the zone plan since the additions had improved the property, and since many similar dwellings have shorter front yards than required.

Zoning Administrator Reports. On October 1, 1999, the Zoning Administrator signed a letter prepared by the applicant's attorney confirming that the applicant required a special exception under 11 DCMR § 223.1 for the rear addition and front porch, as well as a variance from the front yard setback requirements of § 1543.4. However, on December 8, 1999, the Zoning Administrator advised the Board that in order to prepare a zoning memorandum concerning the application, he required its written decision in BZA Appeal No. 16405, as well as-built construction drawings and other materials from the applicant.

On February 29, 2000, the Zoning Review Branch submitted a zoning memorandum and computations sheet indicating that the applicant required variance relief from the Wesley Heights Overlay District percentage of lot occupancy and front yard setback requirements, 11 DCMR §§ 1543.2 and 1543.4.

On April 23, 2001, the Zoning Administrator submitted a letter to the Board, confirming the need for the variances from the percentage of lot occupancy and front yard setback requirements in §§ 1543.2 and 1543.4, and adding a variance from the provisions of § 2001.3 relating to additions to nonconforming structures. The Zoning Administrator also stated that the applicant had "constructed the front porch addition outside the scope of DCRA permits and Zoning approval" and that "DCRA/OZA staff reviewed and approved permits based upon misinformation provided by the applicant."

On July 23, 2001, the Zoning Administrator submitted a final report, stating that relief was not required from § 2001.3 since the dwelling, without the front porch, does not exceed the maximum allowed percentage of lot occupancy. The Zoning Administrator also clarified that the applicant had demonstrated good faith in applying for the remedial building permit, and that his previous comments related to the prior permits. The Zoning Administrator also confirmed that in his opinion, the remedial permit was correctly issued.

ANC Reports. ANC 3D, in its report dated November 30, 1999, indicates that at a duly-noticed public meeting with a quorum present, the ANC voted to recommend to the Board that the remedial application was premature, since the Board had not yet issued its written decision in BZA Appeal No. 16405. The ANC stated first that the Board's findings of fact and conclusions of law would be critical to the consideration of the application. Second, the ANC argued that the materials submitted by the applicant - the application form, surveyor's plat, and self-certification form - do not provide sufficient information to evaluate the application. Third, the ANC indicated that it was greatly concerned about the impact of this case on the adjacent neighbor and on neighborhood character, which is protected through the Wesley Heights Overlay District. Finally, the ANC argued that granting zoning relief would set a dangerous precedent for future development in the Wesley Heights Overlay District with respect to after-the-fact approval of improvements constructed without proper permits.

The ANC submitted a report dated May 14, 2000, indicating that at its regularly scheduled May 8, 2000, meeting, with a quorum present and having provided two types of notice of the meeting, the ANC determined not to take action on the merits of the application, but to confirm its earlier position that further action would be premature. The ANC indicated that the applicant had not as yet provided as-built drawings or accurate information regarding the construction; that the complete nature of the zoning violations of the improperly constructed improvements must be identified based on as-built drawings before proceeding with remedial zoning relief; that the application is premature pending the Court of Appeals decision involving BZA Appeal No. 16405; that the application is inconsistent with the Board's finding and conclusions in BZA Appeal No. 16405; and that the ANC required complete, timely, and accurate information from the applicant for a meaningful review and decision.

The ANC submitted a third report dated June 13, 2000; however, the ANC acknowledged that it did not have a quorum present when it discussed the report. The ANC urged the Board to suspend any consideration of the application until resolution of the Court of Appeals case; or, alternatively, to postpone the case to a date after June 20, 2000, to afford the ANC the opportunity to review and comment on the case and to allow the Zoning Administrator time to determine the required relief.

In its fourth report dated October 6, 2000, the ANC stated that at a duly-noticed meeting with a quorum present, it voted unanimously to oppose the application. The ANC endorsed the Board's findings and conclusions in BZA Appeal No. 16405, and again argued that the application is premature. The ANC asserted that the application is inconsistent with the Board's decision in BZA Appeal No. 16405 and incomplete in that it fails to include relief from the side yard requirements, minimum driveway width requirements, driveway access requirements, and off-street parking requirements. The ANC also argued that the applicant did not meet his burden of proof with respect to the practical difficulties test. The ANC asserted that the applicant's need for the variance stems from self-created hardship brought about by having submitted five permit applications found misleading, incomplete, and inconsistent and by having constructed improvements without the required permits or beyond the scope of the permits that were issued. The ANC also argued that, given the large front yard and lot occupancy variances required, approval of the application would undermine the Zoning Regulations, the Wesley Heights Overlay District, and the zoning enforcement process.

In its fifth report dated November 28, 2000, the ANC stated that at a duly-noticed public meeting with a quorum present, the ANC voted unanimously to oppose the application. The ANC incorporated its previous filings, and in addition questioned the issuance of a sixth building permit. The ANC stated that the front porch was highly unusual in the immediate vicinity and throughout the Wesley Heights Overlay District, and that failure to strictly enforce the front yard setback would be inconsistent with the surrounding neighborhood.

Steven Griswold presented the ANC's reports at the October 17 and December 5, 2000, hearings.

Persons in Support of the Application. There are no persons or parties in support of the application.

Parties and Persons in Opposition to the Application. Mrs. Crary described the history of the construction of the porch, and explained how the applicant's overall construction has affected her interests. George Watson, president of the Wesley Heights Historical Society, and one of the principal persons involved in the adoption and enforcement of the Wesley Heights Overlay District, also presented testimony. He described the purpose of the overlay, which is to allow reasonable additions that do not adversely affect the open, well-wooded character of the neighborhood or the quality of life of the immediate neighbors. He also discussed the construction of the improvements and their failure to comply with zoning requirements.

Closing of the Record. The record closed at the conclusion of the public hearing on December 5, 2000, with the exception of the specific materials subsequently requested by the Board during the course of its decision meetings on the case.

Decision Meetings. On July 31, 2001, the Board, voting 4 – 0 – 1, denied the application. Since a majority of the Board had not personally heard the case, the Board, on November 6, 2001, issued a Proposed Decision and Order pursuant to the District of Columbia Administrative Procedure Act, D.C. Code § 2-509(d) (2001), affording the parties the opportunity to submit written exceptions and arguments concerning the Proposed Decision and Order.

On December 4, 2001, after reviewing the applicant's exceptions and arguments dated November 19, 2001, the Board voted 4 – 0 – 1, with the third mayoral appointee not present, not voting, to issue the final Decision and Order. All of the members voting to issue the Decision and Order had reviewed the transcripts and record in this case. The Board finds that this Decision and Order fully addresses the issues and arguments presented by the applicant relating to the requested variances. The remaining issues, including application of the doctrines of laches and estoppel, were addressed in the related appeal, BZA Appeal No. 16405, which is presently under review by the District of Columbia Court of Appeals. The Board will adhere to its decision in BZA Appeal No. 16405 unless and until directed otherwise by the Court of Appeals.

FINDINGS OF FACT

The Subject Property

1. The subject property is a one-family detached dwelling located at 3020 43rd Street, N.W. (Square 1621, Lot 70 (formerly Lot 810)), in the Wesley Heights neighborhood.

2. After acquiring the property in 1997, the applicant constructed a two-story rear addition, accessory private garage, and front porch addition.

3. The dwelling without the applicant's improvements predates the 1958 Zoning Regulations and the establishment of the Wesley Heights Overlay District in 1992.

4. The property is zoned WHOD/R-1-A. The Wesley Heights Overlay District zoning requirements apply in combination with the R-1-A District requirements. 11 DCMR § 1542.1. When the requirements of the underlying R-1-A District and the overlay differ, the more restrictive requirements apply. *Id.* § 1542.3.

5. Under § 401.3, the required minimum lot area for all structures in the R-1-A District is 7,500 square feet, and the required minimum lot width is 75 feet. The subject property, rectangular in shape, has a lot area of 6,562.50 square feet and a lot width of 52.5 feet. *See* Ex. 63.

6. Since the lot area falls between 5,000 square feet and 6,667 square feet, the maximum percentage of lot occupancy permitted in the Wesley Heights Overlay District under § 1543.2(a) is 2,000 square feet.

7. According to the Zoning Administrator's April 23, 2001 computations (Exhibit 75), the last set of computations submitted after the applicant's June 15, 2000 survey (Exhibit 63), the dwelling has a lot occupancy of 1,968.75 square feet without the front porch. With the porch, the lot occupancy is 2,501.14 square feet.

8. The dwelling has side yards of 5.69 feet and 4.89 feet, which are less than the minimum 8-foot side yards required under §§ 405.1 and 405.9. *See* Ex. 63.

9. Pursuant to § 1543.4, the required front yard setback as depicted on the map entitled "Required Front Yard Setbacks," which is incorporated into the overlay district, is 28 feet. *See* 39 DCR 6827, 6831 (1992).

10. The depth of the front yard without the front porch is 24.85 feet. Ex. 63.

11. The porch is 41.68 feet wide. Ex. 63.

12. The porch is 7.6 feet deep for most of its width, except for the part leading to the front door, which is 9.85 feet at its maximum depth. Ex. 63.

13. The entire porch projects into the required front yard.

14. As measured under § 2503.2, the porch without the roof is not more than four feet above grade.

15. The dwelling without the porch is a "nonconforming structure" as defined in § 199.1, because its lot area, lot width, side yards, and front yard are smaller than those prescribed in the WHOD/R-1-A District.

The Front Porch Roof

16. The applicant obtained five building permits related to the rear addition, accessory garage, and front porch. The Board invalidated all five permits in BZA Appeal No. 16405, in its Decision and Order dated December 28, 1999.

17. On October 11, 2000, the Department of Consumer and Regulatory Affairs issued the applicant a remedial or after-the-fact building permit (Building Permit No. B430091, Exhibit 64) for the construction of the rear addition and garage and the removal of the roof over the front porch.

18. This permit, the sixth permit related to the improvements, approves as matter-of-right construction all the improvements made pursuant to the five invalidated permits, with the exception of the porch roof.

19. The applicant is seeking zoning relief to retain the porch roof.

Extraordinary and Exceptional Condition of the Property

20. The applicant had intended to make improvements comparable to other dwellings on his block to the south, but did not realize at the time that those improvements had been made before the establishment of the Wesley Heights Overlay District.

21. He stated that his property was affected by extraordinary or exceptional conditions in that he believed he had valid building permits for the improvements.

22. The applicant employed an architect and builder in connection with the construction, both of whom are licensed in the District of Columbia, and both of whom were aware or should have been aware of District zoning and permitting requirements.

23. Mrs. Crary testified that the applicant began construction of the porch in July 1998 by demolishing the existing covered front stoop and excavating the front yard to construct the supporting structure for the porch.

24. The applicant obtained Building Permit No. B417814 (Permit No. 4) on August 17, 1998, for "Repair of existing roof, roof in place, no structural change."

25. On October 5, 1998, the applicant obtained Building Permit No. B419108 (Permit No. 5) to "Build new porch roof as per plans."

26. Regardless of whether the applicant began construction of the porch before or after obtaining Permit No. 4, the applicant did not demonstrate good faith in obtaining the permits relating to the porch.

27. First, the applicant did not apply for a permit to demolish the stoop and construct the front porch addition.

28. Moreover, the applicant misrepresented to the Department of Consumer and Regulatory Affairs the scope of work to be performed. With respect to Permit No. 4, the applicant did not repair an existing roof, but rather demolished a small covered stoop and replaced it with a new front porch addition that extends the full width of the dwelling. This is a structural change that increases the nonconformity of the dwelling with the respect to the front yard setback and creates a new nonconformity with respect to the percentage of lot occupancy. With respect to Permit No. 5, the applicant did not build a new roof for an existing structure, but an entirely new structure that that increases the existing front yard nonconformity and creates the new lot occupancy nonconformity.

29. There is no evidence that would demonstrate that the property is unique or exceptional.

Practical Difficulties – Self-Created Hardship

30. The applicant states that his practical difficulties are that he added a stone façade to the front of the dwelling, and that if the front porch roof has to be demolished, he will have to reconsider the entire design of the porch.

31. Any redesign of the porch results from the applicant's affirmative actions in demolishing the existing stoop and constructing the porch without first obtaining a valid building permit.

32. There is no other evidence that would demonstrate that the applicant would confront practical difficulties if the Zoning Regulations are strictly applied.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code § 6-641.07(g)(3) (2001)), to grant variances from the strict application of the Zoning Regulations. Charles A. Sisson is seeking area variances from maximum percentage of lot occupancy and front yard setback restrictions of 11 DCMR §§ 1543.2 and 1543.4, as well as from the provisions of § 2001.3(b) and (c) restricting additions to nonconforming structures, in order to retain a roof over a front porch addition to a one-family detached dwelling in the WHOD/R-1-A District. The notice requirements of 11 DCMR § 3113 for the public hearing on the application have been met.

The Zoning Requirements

As stated in 11 DCMR § 1541.1, the Zoning Commission established the Wesley Heights Overlay District to preserve and enhance the low density character of Wesley Heights by regulating the construction and alteration of residential and other buildings in the area. The purposes of the overlay, listed in § 1541.3, are to (a) preserve in general the current density of the neighborhood; (2) allow reasonable opportunities for the expansion of dwellings; (3) preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood.

Maximum Percentage of Lot Occupancy. Subsection 1543.2 provides:

> No structure, including accessory buildings, shall occupy an area in excess of thirty percent (30 %) of the lot; except that the following apply:
>
> (a) Structures on lots of between five thousand square feet and six thousand six hundred and sixty-seven square feet (5,000 sq. ft. and 6,667 sq. ft.) may occupy up to two thousand square feet (2,000 sq. ft.); and

(b) Structures on lots of less than five thousand square feet (5,000 sq. ft.) may occupy up to forty percent (40%) of the area of the lot.

With a lot area of 6,562.5 square feet, the subject property is allowed a percentage of lot occupancy equivalent to 2,000 square feet. Since the dwelling with the front porch addition occupies 2,501.14 square feet of the lot, the applicant requires a variance from § 1543.2.

Front Yard Setback. Under § 1543.4:

All residential buildings shall have a front yard setback equal to or greater than the average setback of all structures on the same side of the street in the block where the building in question is located. The required setbacks are depicted in the map entitled, "Required Front Yard Setbacks," which is part of this overlay district and located in the Office of Zoning and in the Zoning Division of the Department of Consumer and Regulatory Affairs.

The map indicates that the subject property has a required front yard setback of 28 feet. 39 DCR 6827, 6831 (1992).[3] Since the porch was built in the required front yard, the applicant requires a variance from § 1543.4.

Minimum Side Yard Requirements. The dwelling, without the improvements, predates the 1958 Zoning Regulations. Under § 405.8, an addition may be made to a dwelling that predates the 1958 Zoning Regulations and that has a side yard less than eight feet wide, provided the width of the existing side yard is at least five feet and the width of the existing side yard is not decreased. The porch does not decrease the width of the existing side yards. The width of one side yard at 5.69 feet complies with the requirements of § 405.8, while the width of the other side yard at 4.89 feet does not. However, the Zoning Regulations in § 2522.1(c) authorize the Zoning Administrator to permit deviations not to exceed the greater of ten percent or twelve inches of the minimum side yard requirements, provided the deviations will not impair the purpose of the requirements. With respect to the five-foot side yard requirement in § 405.8, the Zoning Administrator may thus approve up to a 12-inch deviation. The applicant therefore does not require a variance from the minimum side yard requirements for the 4.89-foot side yard, since the Zoning Administrator has approved a 0.11-foot (1.32-inch) deviation.

Nonconforming Structure Provisions. The dwelling, without the porch, is a "nonconforming structure" as defined in 11 DCMR § 199.1 because its lot area, lot width, side yards, and front yard are smaller than the minimums prescribed in the WHOD/R-1-A District. Additions may be made to a nonconforming structure pursuant to § 2001.3, provided:

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

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

---

[3] In BZA Appeal No. 16405, the Board erroneously found that the minimum required front yard to be 21 feet. Subsection 1543.4 expressly states that the required setbacks are depicted on the map entitled "Required Front Yard Setbacks." The map shows that the minimum required front yard is 28 feet.

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

The dwelling, with the rear addition and garage, but without the front porch addition, conforms to percentage of lot occupancy requirements, as required by § 2001.3(a). However, the applicant requires a variance from § 2001.3(b) and (c) since the porch does not conform to front yard requirements, increases the existing front yard nonconformity, and creates a new nonconformity with respect to percentage of lot occupancy.

Removal of Roof. With the removal of the roof over the front porch, effectively making the porch a deck, the applicant would no longer require variance relief for the porch. Under § 2503.2:

> A structure, not including a building, no part of which is more than four feet (4 ft.) above the grade at any point may occupy any yard required under the provisions of this title. Any railing required by the D.C. Building Code shall not be calculated in the measurement of the height.

The term "building" is defined in § 199.1 to mean "a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel." Therefore, the porch, which is not more than four feet above grade, may occupy the front yard without zoning relief, provided the roof is removed.

Similarly, the term "percentage of lot occupancy" is defined in § 199.1 to consist of the portion of a lot that is or that may be occupied under the Zoning Regulations as "building area," which in turn, is defined in § 199.1 as "the maximum horizontal projected area of a building and its accessory buildings." The term does not include projections into open spaces authorized under other provisions of the Zoning Regulations, such as decks meeting the requirements of § 2503.2. Since the porch without the roof is not a "building" as defined in § 199.1 and is authorized under § 2503.2 as a projection into an open space, it would not contribute to percentage of lot occupancy.

Finally, removal of the roof would also eliminate the need for a variance from § 2001.3(b) and (c), since the dwelling would conform to percentage of lot occupancy requirements; the porch without the roof would conform to use and structure requirements; and the porch without the roof would neither increase nor extend any nonconforming aspect of the structure nor create any new nonconformity of structure and addition combined.

The Variance Test

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the subject property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) as a result

of the unique situation or condition of the property, the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Board of Zoning Adjustment,* 579 A.2d 1164, 1167 (D.C. 1990).

In reviewing a proposed variance, the Board is required to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. *See* D.C. Code § 1-309(d) (2001). The Board has carefully considered the ANC reports in this case; however, does not agree that it is premature to decide the application before the Court of Appeals decision in BZA Appeal No. 16405, since the effectiveness of the Board's order in BZA Appeal No. 16405 is not stayed pending appeal. *See* 11 DCMR § 3130.5. Moreover, with the issuance of the remedial building permit, the zoning issues relating to the front porch can be addressed as a discrete matter. Other concerns raised by the ANC, such as the minimum driveway width, driveway access, and off-street parking requirements, are the subject of a related appeal, BZA Appeal No. 16679, and can be reviewed separately. For the reasons stated below, the Board concurs with the ANC that this application should be denied.

The Board concludes that the applicant failed to meet the variance test with respect to uniqueness and practical difficulty. While the subject property does not meet the 7,500 square feet minimum lot area requirement of the underlying R-1-A District, the Wesley Heights Overlay District regulations provide adjustments to the maximum percentage of lot occupancy restrictions for substandard lots. Thus, the applicant is limited to 2,000 square feet of lot occupancy, slightly more than the 30 percent lot occupancy allowed under § 1543.2 for lots that meet or exceed the 7,500 square foot minimum. Therefore, the applicant does not confront a practical difficulty in complying with the lot occupancy requirements as a result of lot size.

Moreover, the applicant has not demonstrated that redesigning the front of the dwelling is unnecessarily burdensome or that it rises to the level of "peculiar and exceptional practical difficulties" required for variance relief. As in *Barbour v. District of Columbia Board of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976), the "fact that an expansion requiring a variance is personally preferable to other methods not requiring a variance does not constitute a unique property situation."

Finally, any practical difficulties encountered by the applicant are entirely self-created. The self-created hardship doctrine precludes variance relief where the circumstances rendering the property incapable of use in accordance with the Zoning Regulations were caused or created by the property owner. *See Murray v. District of Columbia Bd. of Zoning Adjustment,* 572 A.2d 1055, 1058 (D.C. 1990). Thus in *Carliner v. District of Columbia Board of Zoning Adjustment,* 412 A.2d 52, 54 (D.C. 1980), the court recognized that the affirmative action of an applicant in making his property nonconforming can justify denial of variance relief.

In the case before the Board, the applicant employed in connection with the construction an architect and a builder, both licensed in the District of Columbia, who knew or should have known of the applicable Zoning Regulations. The applicant did not apply for a building permit to demolish the small existing front stoop or to construct the front porch addition. The two permits he sought relating to the porch did not completely or accurately reflect the nature and

scope of the work to be performed. The applicant constructed the porch, which spans the entire width of the dwelling, entirely within the required front yard, significantly increasing the existing front yard nonconformity and creating a new percentage of lot occupancy nonconformity. The Board concludes therefore that the affirmative actions of the applicant preclude variance relief with respect to the front porch.

Since the applicant has failed to meet the first two prongs of the variance test, it is not necessary to consider whether the requested variances would result in substantial detriment to the zone plan or the public good.

ORDER

For the reasons stated above, the Board concludes that the applicant has not met his burden of proof. It is hereby **ORDERED** that the application is **DENIED.**

Vote taken July 31, 2001, to deny the application for the variances relating to the front porch. addition.

VOTE: 4 – 0 – 1 (Carol J. Mitten, Anne M. Renshaw, Geoffrey H. Griffis, and David W. Levy, to deny; Sheila Cross Reid, abstaining).

Vote taken December 4, 2001, to issue the final Decision and Order, after exceptions and argument pursuant to § 2-509(d) of the D.C. Administrative Procedure Act:

VOTE: 4 - 0 - 1 (Carol J. Mitten, David W. Levy, Geoffrey H. Griffis, and Anne M. Renshaw, to issue the final Decision and Order; the third mayoral appointee not present, not voting).

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: Jerrily Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 13 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL AND EFFECTIVE UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16521

As Director of the Office of Zoning, I hereby certify and attest that on DEC 13 2001, a copy of the foregoing Decision and Order in BZA Application No. 16521 was mailed first class, postage prepaid, to each party and public agency who appeared and participated in the public hearing and who is listed below:

Charles A. Sisson
3020 – 43rd Street, N.W.
Washington, D.C. 20016

Maureen Ellen Dwyer
Allison C. Prince
ShawPittman
2300 N Street, N.W.
Washington, D.C. 20037-1128

John Patrick Brown, Jr.
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, N.W., Suite 900
Washington, D.C. 20036-5605

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

Honorable Kathleen Patterson
Councilmember Ward 3
1350 Pennsylvania Avenue, N.W., Room 107
Washington, D.C. 20004

Ellen McCarthy, Deputy Director
Development Review Division
D.C. Office of Planning
801 North Capitol Street, N.E., Suite 4000
Washington, D.C. 20002

Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director



WILKES, ARTIS, HEDRICK & LANE
CHARTERED
ATTORNEYS AT LAW
SUITE 1100
1666 K STREET, N. W.
WASHINGTON, D. C. 20006-2897
(202) 457-7800

CABLE ADDRESS: WILAN
FAX: 202-457-7814

MAUREEN E. DWYER
202-457-7860

ANNAPOLIS, MARYLAND
BETHESDA, MARYLAND
FAIRFAX, VIRGINIA
GREENBELT, MARYLAND
WALDORF, MARYLAND

June 7, 1999

Ms. Sheri M. Pruitt-Williams
Interim Director, Zoning Commission
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: BZA Appeal No. 16405

Dear Ms. Pruitt-Williams:

At the conclusion of the public hearing on the above referenced case, the Board asked Mr. Sisson to provide for the record information concerning the private easement across Mr. Sisson's property (Lot 810). For the record, enclosed please find the following:

1. A copy of the Deed dated November 24, 1997 for 3020 43rd Street (Mr. Sisson's property) which contains a deed restriction for a "right of way for all general purposes of ingress and egress over the west 8 feet of the east 125 feet of Lot 54 for a distance of 20 feet from the south line from said Lot." As described, this easement continues for a depth of 20 feet into Mr. Sisson's property but does not connect through his property to Mrs. Crary's.

2. A copy of the plat from the Office of the Surveyor found in Liber No. 77 at Folio 53 showing the private easement at the rear of the properties fronting on 43rd Street.

3. A copy of a document from the Surveyor's files describing the right of way for ingress and egress over parts of Lots 56 (formerly Lot 65), 57 and 58.

The Surveyor's records indicate that the same easement restriction applies to Lot 55 (which is just south of Mr. Sisson's property).

This information completes the record in the above referenced case. We are hopeful that the Board can decide the appeal at its public meeting on June 16, 1999.

Respectfully submitted,

Wilkes, Artis, Hedrick & Lane, Chartered

Maureen Dwyer

By: Maureen Ellen Dwyer

MED:lm/147027

cc: Mr. Patrick Brown, by mail
ANC 3D, by mail

D.C. CODE DEED

After Recording, Return to:
Charles Sisson
700 19th Street, NW-Room IS3-600
Washington, DC 20431

This Deed, made this 24th of November, 1997 , by and between CHRISTOPHER DEVAN and MARGARET BRICE DEVAN, his wife, who joins in to convey her dower interests, as to his 4/15th share, WINIFRED DEVAN, Trustee of the WINIFREDE DEVAN REVOCABLE TRUST dated August 4, 1994, as to her 4/15th interest, and WINIFREDE DEVAN and CHRISTOPHER DEVAN, Co-Trustees of the MARY A. DEVAN REVOCABLE TRUST, dated August 4, 1994, as to her 7/15th interest, (The said Mary A. Devan died on or about 1/30/97), parties of the first part, and
CHARLES A. SISSON, Married, party of the second part:

97000760501

97 DEC -2 AM 10:57

Witnesseth that in consideration of
the parties of the first part do hereby grant unto the parties of the second part, in fee simple as Sole Owner, all that piece or parcel of land, together with the improvements, rights, privileges and appurtenances to the same belonging, situate in the District of Columbia, described as follows, to wit:

The East 125 Feet of Lot 54 in Square 1621 in a Subdivision made by William C. And Allison N. Miller of lots in Block 12 "Wesley Heights", as per plat recorded in Liber No. 77 at folio 53 among the Records of the Office of the Surveyor for the District of Columbia.

NOTE: At the date hereof the above-described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 810 in Square 1621.

SUBJECT to the right of way for all general purposes of ingress and egress over the West 8 feet of the East 125 feet of Lot 54 for a distance of 20 feet from the South line of said lot.

Property Address: 3020 43rd Street, NW, Washington, DC 20016

And the said parties of the first part covenant(s) that they will warrant specially the property hereby conveyed; and that they will execute such further assurances of said land as may be requisite.

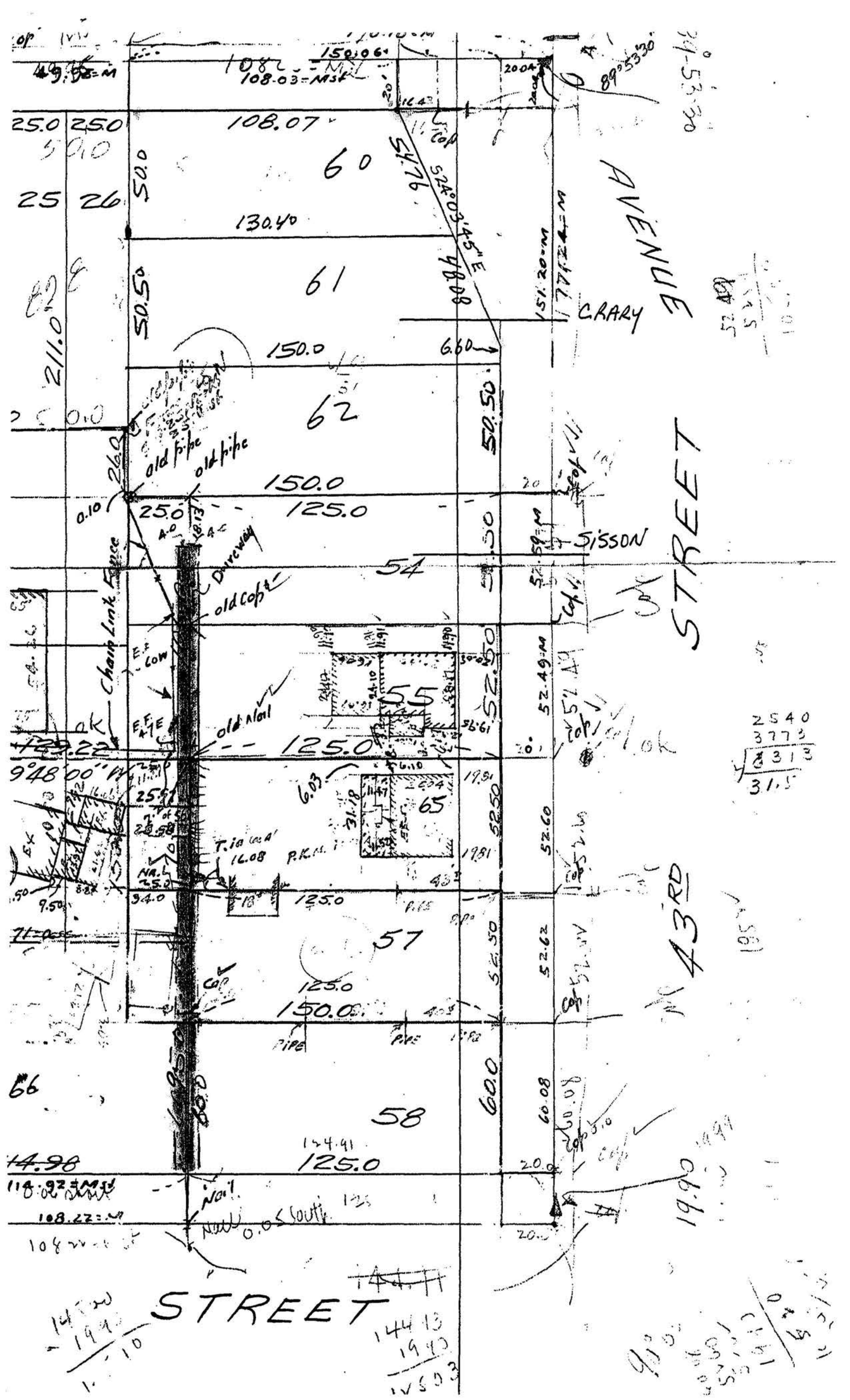
Witness my hand and seal the day and year hereinbefore written.

IN PRESENCE OF--

_____ [Seal]
CHRISTOPHER DEVAN

_____ Margaret Brice Devan (Seal)
MARGARET BRICE DEVAN

_____ Winifrede Devan (Seal)
WINIFREDE DEVAN


108.07
108.03=NASH
150.06
89°53'30"
60
61
62
54
55
65
57
58
66
130.40
150.0
125.0
54.76
S24°03'45"E
40.08
151.20=M
CRARY
AVENUE
STREET
SISSON
43RD
STREET
50.0
50.5
211.0
old pipe
old pipe
Chain Link Fence
Driveway
old Cob
old Nail
E.F. Low
E.F. High
Cob
Pipe
Nail
0.0 South
52.49=M
52.50
52.60
52.62
60.0
60.08
19.90
19.81
2540
3773
31.5
9°48'00"
+29.22
118.92=M
108.22=M

383-209
#112

William C. Miller,
Allison N. Miller,
Joint Tenants,

to

Charles S. DuLaney, Jr.
wf Cora E.,
Joint Tenants

Deed 6486-175

Sept. 17/30

Sept 24/30

Parts of lots 41 to 45, incl in Blk 12 in Waggaman's sub known as "Wesley Hts" (Co. 7-117), also parts of lots 56 and 57 in Miller and Miller's sub of lots in Blk 12 "Wesley Hts" (77-53), desc in acc. with plat of sur compt rec as Map #1530, Beg. at a nail on the N line of sd lot 56 at a pt dist. 125' W of the N.E. cor thereof, and rung - ~~W 25' to the N.W. cor of sd lot~~ - with a radial line of a circle shown on said plat, N 89 deg 48 min W 129.22' to a peg in arc of a circle, dist. 59' E from the center thereof - S.Wly on arc of sd circle, deflecting to the rt the radius of which is 59' an arc dist of 39.15' to a peg - S 78 deg 23 min 20 sec E 144.83' to a gas pipe - N 65' to beg; tog. with r of w for all gen. purps of ingress and egress over pts of sd lots 56 and 57 and over part of lot 58 in Sq. 1621 in Miller and Miller's sub of lots in Blk 12 Wesley Hts (91-167) Beg at S.W. cor of sd lot 58 and rung - N with W line of sd lot 58 and prolongation thereof, 165' to the N line of sd lot 56 - E with sd N line 8' - S 165' to the S line of sd lot 58 - W with sd S line 8' to beg.

Cons $10.

* Now Lot 65.