Mr. Permit

By Hand

October 7, 2002

Mr. Geoffrey Griffis, Chairman
District of Columbia Office Of Zoning
Board of Zoning Adjustment
441 4th Street, NW
Second Floor South
Washington, DC 20001

Re: Board of Zoning Adjustment Case No. 16863 - S & P Properties - 420 M Street, NW - Square 514 Lot 863, additional comments requested by the Board.

Dear Chairman Griffis and Members of the Board of Zoning Adjustment:

At the hearing for the above case, the Board requested some additional information to be supplied for the record. The information requested is as follows:

1. There was a question with respect to minimum driveway width in the rear yard of the property. In the Zoning Regulations, Chapter 21, Section 2117.8 (c)(2) which reads: "(From 2117.8) A driveway which provides access to required parking spaces shall meet the following standards: (From 2117.8 (c)) A driveway serving any use other than a one-family dwelling or flat, or which serves more than one (1) parking space shall be as follows: (from 2117.8 (c)(2)) Not less than twelve feet (12 ft.) In width if designed for one-way circulation or fourteen feet (14 ft.) If designed for two-way circulation. In the case of 420 M Street, NW, we have a driveway which is 15'-2", which is one and one-half feet wider than the minimum standard.

2. There was a question with respect to the parking issue non-conformity. Per the zoning regulations, section 2100.5, in an R-5-B zone it is required that there be one parking space for every two units. Since this proposal calls for 6 residential units, 3 parking spaces are required. There is a lack of street parking in this neighborhood (the street is one way, from west to east. At 4th Street, NW, only a right turn is allowed. After making the turn, there is no street parking on 4th Street, NW. The next intersection is New York Avenue, NW, where there is no street parking allowed. The intersection that follows is 5th Street, NW, that has on-street

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BZA
Case No. 16863
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO.16863
EXHIBIT NO.35

parking, but the parking on 5th Street is a good distance away from the subject property. After that, the driver again arrives at the subject street, 4th Street, NW.)

Due to the fact that on-street parking is scarce in this neighborhood, the owner desires to establish as much on site parking as possible. There is also a strong customer preference to have on-site parking spaces as opposed to street parking spaces. Thus, the project has been designed to contain four (4) parking spaces, the maximum that will fit in the rear yard and at the same time provide for recreational space as well as parking.

3. There was a question concerning the principal entry to the rear carriage house unit occurring from the front of the lot. Section 123.0 of the District of Columbia Building Code Supplement of 1999 (District of Columbia Municipal Regulations, Title 12) "STREET NUMBERING AND ADDRESSES OF STRUCTURES, BUILDINGS, AND PREMISES" states the following (underline added for emphasis on one portion of the paragraph):

"123.2 General: The code official shall designate the street number of all structures and is authorized to order changes in the numbering of any structure previously numbered if it is determined that the street numbers being used may endanger the public health and safety. Structures fronting more than one (1) street or avenue shall be assigned a number based on the location of the face of the structures containing the principal entrance. Street numbers are required on all structures new and existing and shall be approved by the code official."

It is the administrative policy of DCRA to require that units access the front of the building to provide for police, fire and emergency rescue to gain access to all parts of a project, and not to customarily and incidently allow the entry from an alley or from a non-street face part of a lot.

Thus, we have designed the structure in accordance with this administrative policy, and therefore have a passageway that leads from the street frontage to the rear yard, and thus to the carriage house portion of the building.

4. There was a question about the trellis connection, and the Board asked for some BZA reference cases about a connector be supplied to the Board for its review. Part of this question relates to the request for a rear yard variance.

The Applicant wishes to replace the roof of the existing connector with a trellis, that covers at least 51 percent of the area underneath the trellis with solid materials. The Applicant wishes to retain the existing party line wall portion of the connector, which is constructed of cinder block, and "parge" it to improve its appearance.

Provided that the BZA rules that the East wall of the existing connecting structure is a

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substantial part of the connector, which will remain, and that the roof of the connector can be rebuilt without a variance due to the fact that the East wall is remaining, the rear yard variance request can be dropped from the application. Two BZA orders which were referenced by Ms. Giandano at the hearing are resubmitted herewith. These orders support the Applicant's assertion that the trellis constitutes a connection between the house and the carriage house which ties them together for zoning purposes and renders them a single building.

5. There was a request by the Board to clarify and shorten the Variance Rationale Statement. See the attached Variance Rationale Statement, attached.

6. The Board requested a copy of the display exhibits by Greg Zahn. We have attached copies of the exhibits. Note that the plan has been slightly revised to show the passageways in the connector, which were not readily apparent in the block diagrams previously submitted.

This concludes the list of information requested by the Board. If there are any questions, please do not hesitate to have zoning staff contact me.

Sincerely,

James F. Smith
"Mr. Permit"

encl.

cc: David McGettigan, AICP, Office of Planning

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16508 of Gilbertson Dick, pursuant to 11 DCMR 3103.2, for a variance under Section 404.1 from the minimum rear yard setback requirements; and a variance under Section 405.9 from the minimum side yard setback requirement for a proposed covered walkway to connect the existing single-family dwelling to an existing garage in an R-1-B District at premises 901 Butternut Street, N.W. (Square 2967, Lot 16).

HEARING DATE: October 20, 1999
DECISION DATE: February 2, 2000

DISMISSAL ORDER

The case involved property located in Square 2967, on Lot 16, at premises 901 Butternut Street, N.W. The site is developed with a single-family, detached, dwelling and garage. The Applicant, Gilbertson Dick, is the property owner.

The Applicant proposed to construct a covered walkway to connect the garage and the dwelling. The purpose of the walkway is to allow the Applicant to walk from the dwelling to the garage in inclement weather, without getting wet.

The site is zoned R-1-B. The Zoning Regulations require a minimum rear yard depth of 25 feet; and, a minimum side yard depth of 8 feet, each (Subsections 404.1 and 405.9, respectively.) The Applicant requested zoning relief for 20 feet 5 inches from the rear yard set back requirement. Also, the request included a variance for 4 feet 4 inches from the west side yard set back requirement.

As directed by 11 DCMR 3119.2, the Board required the Applicant to satisfy the burden of proving the elements which are necessary to establish the case for variance pursuant to 11 DCMR Subsections 404.1, 405.9 and 3103.2. No person or entity appearing as a party to this case testified at the public hearing. Accordingly, a decision by the Board would not be adverse to any party.

The Board could not determine that a practical difficulty exists at the site. In an effort to assist the Applicant to construct the covered walkway, staff was instructed to review the project. The staff, with the assistance of the Department of Consumer and Regulatory Affairs, has worked with the applicant. With modification of plans, the Applicant will be able to construct the walkway as a matter-of-right.

BZA
Case No. 16508
Exhibit No. 19

ATTACH PHOTOGRAPH(S) HERE (SEE INSTRUCTION NO. 7)

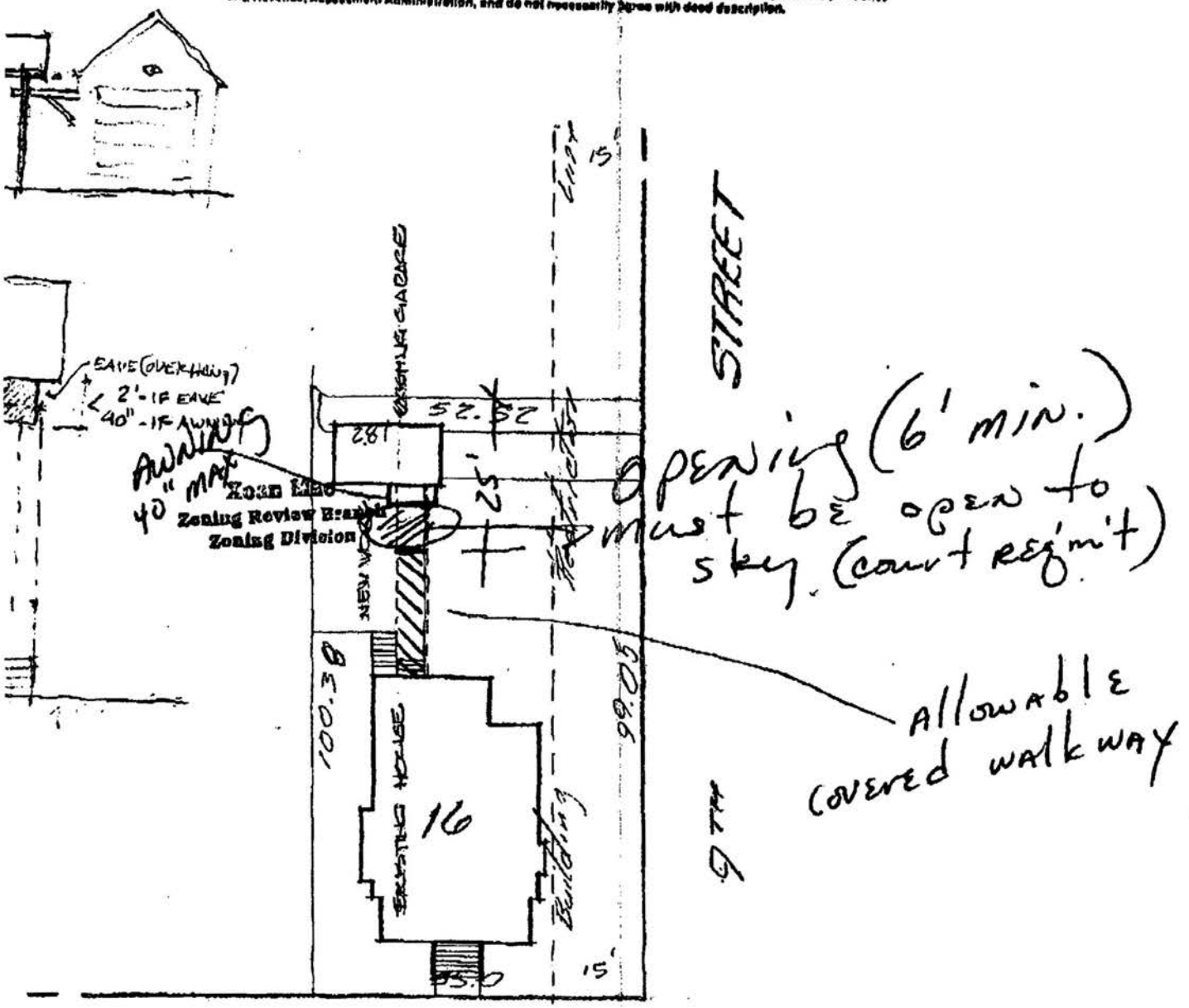
Surveyor, D. C.

By: D.A.

Date 8-20-99

(Signature of owner or his authorized agent)

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

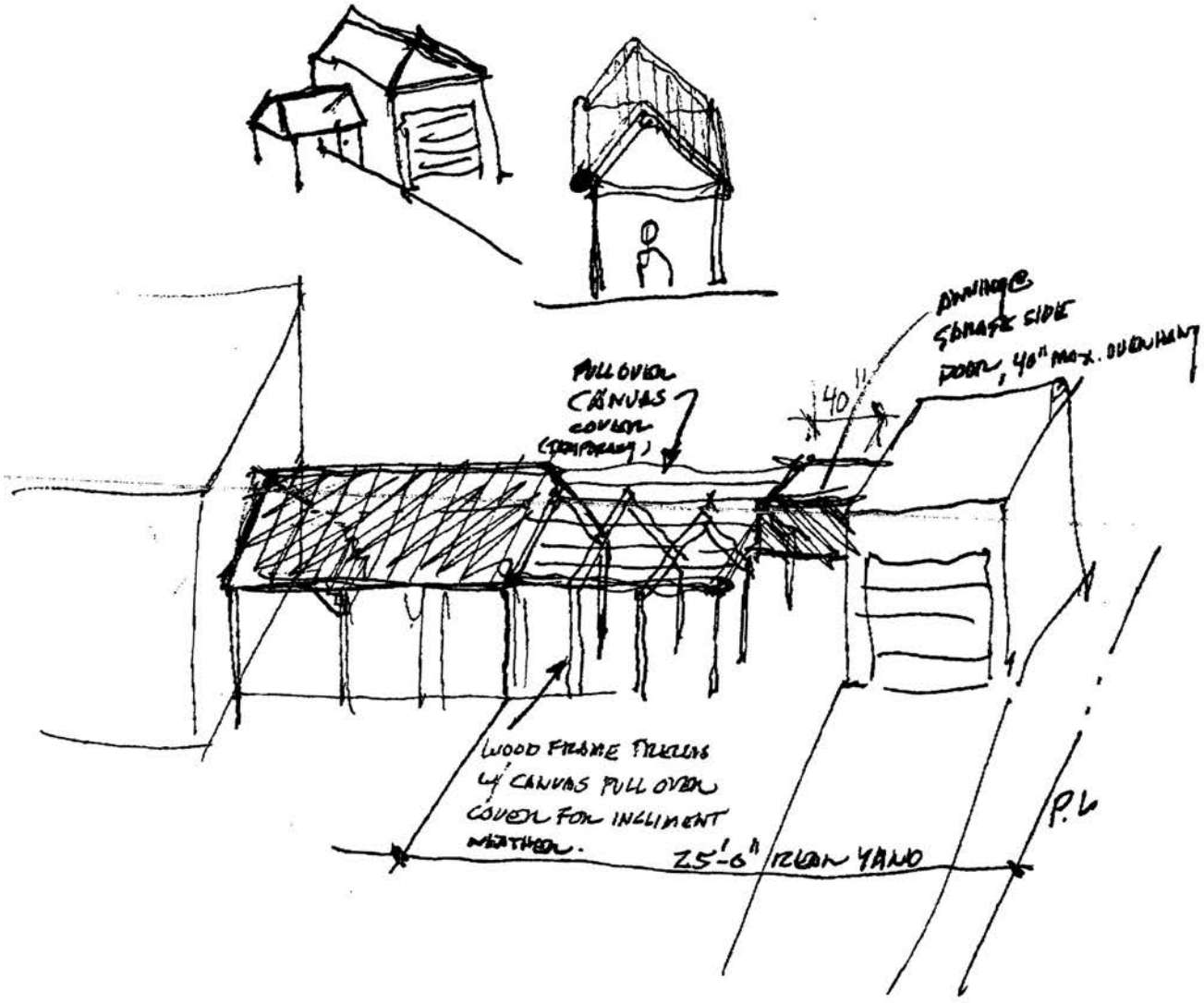


BUTTERNUT STREET

NOV 2 - 1999

Zoning Review Division

S. O. Form 12.1


PULL OVER CANVAS COVER (TEMPORARY)
40"
AWNING @ GARAGE SIDE DOOR, 40" MAX. OVERHANG
WOOD FRAME TRELLIS W/ CANVAS PULL OVER COVER FOR INCLIMENT WEATHER.
25'-0" REAR YARD
P.L.

received
4-2-01

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Appeal No. 16646 of Daniel Serwer and James W. McBride, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of Michael D. Johnson, Zoning Administrator, Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs, made approximately April 18, 2000 (Building Permit No. B426044), to approve a two-story garage addition and on August 8, 2000 (Building Permit No. B428648), to approve a covered walk connection. Appellants allege that the construction of the garage addition and covered walk connection and the unauthorized commercial use of the addition do not conform to the Zoning Regulations in an R-1-A District at premises 5655 Moreland Street, N.W. (Square 2307, Lots 801 and 802).

HEARING DATE: December 19, 2000

DECISION DATES: February 6, 2001; February 20, 2001

DECISION AND ORDER

Daniel Serwer and James W. McBride filed an appeal with the Board of Zoning Adjustment on September 14, 2000, from the decision of the Zoning Administrator to approve building permits for a two-story garage addition and a covered walk connection in an R-1-A Zone District at 5655 Moreland Street, N.W., property owned by Thomas and Linda Shiner. Mr. McBride represented himself and Mr. Serwer in these proceedings. Toye Bello, from the Department of Consumer and Regulatory Affairs, Zoning Review Branch, appeared on behalf of the Zoning Administrator. The Shiners are represented by Arnold & Porter. After a public hearing, the Board granted the appeal in part as to the necessity for Department of Public Works review and clearance prior to the issuance of the building permits, since the lot upon which the garage addition is constructed is an assessment and taxation lot encumbered by the highway plan. The Board denied the appeal in part as to whether the garage addition constitutes an accessory building.

Preliminary and Procedural Matters

Notice of Appeal and Notice of Public Hearing. By memoranda and letters dated September 28 and 29, 2000, the Office of Zoning advised Messrs. Serwer and McBride, the appellants; the Zoning Administrator; the Shiners, owners of the subject property; D.C. Office of Planning; Advisory Neighborhood Commission (ANC) 3G, the ANC for the area within which the subject property is located; the affected single-member district ANC commissioners; and the Ward 3 councilmember of the filing of the appeal.

The Board scheduled a public hearing on the appeal for December 19, 2000. Pursuant to 11 DCMR § 3112.14, the Office of Zoning, on November 9, 2000, mailed the appellants, the Zoning Administrator, the property owners, and ANC 3G notice of the hearing. Notice of hearing was also published in 47 DCR 9019 (Nov. 10, 2000).

Appellants' Case. The appellants focused on three arguments: first, they argued that since the subject property is not a record lot, the Zoning Administrator erred in approving the building permit applications; second, that the garage addition is actually an accessory building that is constructed in the front yard, that it is too tall, and that it will be used for commercial purposes, in violation of the Zoning Regulations; and third, that the property is encumbered by the District of Columbia highway plan. The appellants complained that the Zoning Administrator should have referred the application to the Department of Public Works (DPW) for review and clearance before approving construction on assessment and taxation lots encumbered by the highway plan.

Zoning Administrator's Case. Mr. Bello responded to Board questions concerning the permits. He described the Zoning Administrator's practices regarding assessment and taxation lots and the distinction between an addition and an accessory building.

Property Owners' Case. Mr. Shiner discussed the design and construction of the garage addition and covered walkway, and gave an account of the permitting process. The Shiners, through counsel, objected to testimony and argument regarding the highway plan and the necessity of DPW approval as outside the jurisdiction of the Board. The Board declined a request to recognize Mr. Shiner as an expert witness as any opinion testimony on the ultimate issues of this case would have been self-serving.

Public Agency Reports. There are no public agency reports in this case.

ANC Report. There is no ANC report in this case.

Closing of the Record. The record closed at the conclusion of the December 19, 2000, hearing, with the exception of documentation from the appellants to substantiate their contention that prior DPW approval is required and the Shiners' response.

After the appellants submitted their Record Supplement dated January 16, 2001, the Shiners filed a response on January 24, 2001, that contained additional arguments related to the glass-covered walkway. The appellants then moved to strike this material as unrelated to the DPW referral issue. The Board agrees that the arguments contained on page 3 of the Shiners' response relating to the walkway are beyond the scope of the information requested by the Board and orders them stricken from the record. *See* 11 DCMR §§ 3121.5, 3121.9.

Decision Meeting. On February 6, 2001, the Board continued its decision meeting to February 20, 2001, to allow additional time for Board Member Anne M. Renshaw to review the transcript, since she had been absent for part of the public hearing. Board Member Susan

Morgan Hinton, who was not present for the public hearing, also reviewed the transcript and record in order to participate in the decision meeting. *See* 11 DCMR §§ 3105.15.

At the February 20, 2001, decision meeting, the Shiners, through counsel, objected to Mrs. Renshaw's participation in the decision due to her knowledge of the facts of the case derived from earlier ANC meetings. The Shiners had first raised their objection towards the conclusion of the December 19, 2000, hearing. The Board's decision must be based upon the exclusive record of the proceedings before the Board, D.C. Code § 1-1509(c) (1999); 11 DCMR § 3127.2; and there was no practical means of affording the parties the opportunity to cross-examine or respond to matters discussed at the ANC meetings. After Mrs. Renshaw declined to recuse herself, the Board voted 4:1:0 to recuse her from participating in the decision meeting.[1]

The Board then voted 3:1:1 to grant the appeal in part as to the necessity of prior DPW review and clearance for purposes of invoking the highway plan exception to the record lot requirement; and 4:0:1 to deny the appeal in part as to whether the garage addition constitutes an accessory building.

FINDINGS OF FACT

The Subject Property

1. The property that is the subject of this appeal is located at 5655 Moreland Street, N.W. (Square 2307, Lots 801 and 802), in an R-1-A District.

2. The property is developed with a one-family dwelling and a two-story structure identified as a "garage addition." The dwelling and the garage addition front on Moreland Street. A wall and a covered walkway connect the dwelling to the garage addition.

3. Lots 801 and 802 are "assessment and taxation" lots.

4. Lot 801 is encumbered by the District of Columbia highway plan.

5. Lot 801 protrudes into Northampton Street, with a portion of the lot under paved roadway.

6. The garage addition appears to be located within the portion of Lot 801 that is encumbered by the highway plan.

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[1] The Court of Appeals recently upheld this procedure in *Dupont Circle Citizens Association v. District of Columbia Board of Zoning Adjustment*, No. 98-AA-1452, 2001 D.C. App. Lexis 18 (Jan. 25, 2001), a case involving the recusal of a member of the Alcoholic Beverage Control (ABC) Board who had served as an ANC chairman during ANC proceedings involving an alcoholic beverage license application that was subsequently heard by the ABC Board.

The 1992 Building Permit

7. When the Shiners purchased the property in 1992, it was vacant. Mr. Shiner is an architect, and he designed the dwelling as well as the structures in question.

8. To accommodate a large tree near the center of the lot, Mr. Shiner sited the garage away from the dwelling and connected it to the dwelling with a wall, a walkway, and a gate.

9. In October 1992, Mr. Shiner completed the design work and applied to the Office of the Surveyor to combine Lots 801 and 802 into a record lot. The record lot application did not proceed because Lot 801 is encumbered by the highway plan.

10. Mr. Shiner next met with Zoning Administrator Joseph Bottner and his assistant, Gladys Hicks. They advised Mr. Shiner that even though he could not combine the two lots, he would be able to build on them. Mr. Bottner and Ms. Hicks advised Mr. Shiner that the walkway connecting the garage and the dwelling would have to be covered in order to constitute a connection or "communication" between the dwelling and the garage. Otherwise, the garage would be considered an "accessory building" and not an addition to the dwelling.[2] While Ms. Hicks believed that a trellis incorporating columns would suffice as a connection, Mr. Bottner and Ms. Hicks also discussed a glass-covered walkway.

11. On October 13, 1992, Mr. Shiner filed a building permit application with DCRA to construct a one-family dwelling on the subject property. The Zoning Administrator signed off on the permit application and the surveyor's plat. The DPW Permits and Records Division and the Consumer Engineer also signed off on the application.

12. The Shiners completed the dwelling and connecting wall in June 1993. However, they were unable to build the one-story garage addition as planned due to financial constraints. Permission to construct the garage addition pursuant to the 1992 permit thus lapsed by 2000 when the Shiners were ready to proceed with construction.

The 2000 Building Permits

13. On March 22, 2000, Mr. Shiner applied for a building permit to construct a two-story garage addition. The application was not referred to DPW for review. The Zoning Administrator provided zoning approval of the application and plans on April 18, 2000. Permit No. B426044 issued on the same day.

14. Construction began in May 2000. On July 17, 2000, Mr. Serwer complained to the Shiners about the construction and threatened legal action.

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[2] As an accessory building, the garage could not be located in the front yard. 11 DCMR § 2500.2. It would be limited in height to 20 feet, *id.* § 2500.6; and the second-story could not be used for a home occupation. *Id.* § 2500.5. As an addition to the main building, it would not be subject to these restrictions. *See id.* § 203.2 and 400.1.

15. The DCRA Building Inspector issued a stop work order on July 27, 2000. The Shiners subsequently hired land use counsel and met with Edgar Nunley of the Zoning Administrator's Office to review the stop work order. Mr. Nunley requested a drawing showing a detail of the connection.

16. On August 8, 2000, the Shiners met with Mr. Nunley and their attorney and reviewed the requested construction detail on site. They provided Mr. Nunley with the 1992 plat that had received zoning approval. The Shiners submitted the requested detail and a revised permit application to DCRA on the same day, applying to connect the dwelling and the garage addition with a glass-covered walkway connection. The application was not referred to DPW for review. The Zoning Administrator approved the application and plans on August 8, 2000. DCRA issued Permit No. B428648 on the same day to add the detail of the glass-covered walk connection and lifted the stop work order. As of the time of the hearing, the glass installation was under contract.

17. Mr. Bello testified that for "communication" to exist, there must be a functional purpose for the connection; for example, to provide shelter between the nearest doors of the dwelling and the garage addition.

18. Mr. Bello also stated that once a trellis connection is covered, depending on the sturdiness and structural integrity of the connection, the Zoning Administrator would not consider an addition to be an accessory building.

19. The subject dwelling and the garage addition are approximately 19 feet apart. The walkway leads from the first floor of the garage to a basement entrance of the dwelling. The only way to access the second floor of the garage is from an outside staircase.

20. The glass-covered walkway connection is held up by walls and columns and by the garage wall.

21. The roofed connection physically touches the dwelling and the garage addition.

22. The garage addition is over 20 feet high.

23. Mr. Shiner intends to use the second story of the garage addition for his architecture and furniture design business. He has obtained home occupation permits to allow this use.

24. There are discrepancies between the permit applications as to gross floor area of the building, with the 1992 application showing the gross floor area as 3,200 square feet; the March 22, 2000, application showing the present gross floor area as 4,200 square feet and the proposed gross floor area as 5,200 square feet, and the August 8, 2000, application showing the present gross floor area as 247.72 square feet and the proposed gross floor area as 2304.73 square feet.

25. The appellants also allege that the permit applications show the dwelling and garage addition six feet deeper into the property than is in fact the case.

The Highway Plan

26. Ordinarily, the DCRA intake engineer determines whether an application should be referred to another department or agency for review.

27. The Office of the Surveyor confirms whether a lot is encumbered by a highway plan.

28. The highway plan designation on the base map of the District of Columbia indicates a long-standing proposal to complete the highway system. The current need to implement or construct these designations or plans varies by location.

29. According to DPW, the case-by-case process for making the determination whether to implement or construct a particular designation or plan involves review and clearance by the DPW Division of Transportation (DOT) through the building permit process.

30. According to DPW, the District of Columbia began condemnation proceedings in 1965 to acquire the portion of the subject property encumbered by the highway plan, but DPW has not yet determined whether the proceedings were completed or, if not, what prevented the transfer of land.

31. DPW, DOT states that prior notification of the proposed addition and covered walk connection would have alerted DOT of the need to complete condemnation proceedings or to acquire the land by purchase or dedication pursuant to D.C. Code § 7-422.

32. In a letter to Mr. McBride dated January 12, 2001, DPW, DOT states that:

> The land under the paved roadway is needed for roadway purposes and being used for the public good to provide access. Dedication of the paved area, plus additional land for a sidewalk, needs to be accomplished immediately. The owner of the land under the paved area retains liability until the land is transferred and is responsible for maintenance and care of the land. It would be in the best interest of the property owner to work with the District toward expedited transfer. DPW, DOT does not need all of the land within the highway plan designation area for the roadway purposes, but the established building restriction line that has been created on all adjacent parcels due to pre-existing right-of-way designation may present other reasons for the need for a set-back.

Ex. 33.

33. Mr. Serwer testified that two separate zoning officials, Mr. Bello and Edgar Nunley, had advised him that no building permit could be issued for construction for property encumbered by the highway plan unless DPW signed off on the construction.

34. Mr. Bello testified that he and Zoning Administrator Michael D. Johnson may have advised Mr. Serwer that a DPW signature was necessary on the application.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code § 5-424(g)(1) (1994)), to hear and decide appeals where it is alleged by an appellant that an administrative officer erred in carrying out or enforcing the Zoning Regulations. This appeal is properly before the Board pursuant to 11 DCMR §§ 3100.2, 3101.5, and 3200.2. The notice requirements of 11 DCMR § 3112 for the public hearing on the appeal have been met.

The Board is required under D.C. Code § 1-261(d) (1999) to give the affected ANC's recommendation great weight. ANC 3G did not to make a recommendation in this case. The Board is therefore unaware of any specific issues or concerns that ANC 3G may have had with respect to this appeal and unable to afford ANC 3G the great weight to which it is entitled.

The Highway Plan and DPW Review Issues

Under the Zoning Regulations, DCRA may not issue a building permit for the proposed construction of a principal structure or an addition to a principal structure unless the structure will be located on a record lot. Subsection 3202.3 provides:

> Except as provided in § 2516 [relating to the construction of two or more buildings on a single lot in a Residence District] and the Act of Congress of June 28, 1898 (30 Stat. 520, chapter 519, § 5) [relating to construction on lots encumbered by the highway plan], a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record; except buildings and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure.

The full citation for the cross-reference to the 1898 Act is § 5 of An Act To amend an Act of Congress approved March 2, 1893, entitled "An Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," and for other purposes, approved June 28, 1898 (30 Stat. 519, 520, as amended; D.C. Code § 7-114 (1995)). D.C. Code § 7-114 provides in pertinent part that:

> The owner or owners of land over or upon which any highway or reservation shall be projected upon any map filed under §§ 7-107 to 7-111 [the

> permanent highway plan] shall have the free right to the use and enjoyment of the same for the building or any other lawful purpose, and the free right to transfer the title thereof, until proceedings looking to the condemnation of such land shall have been authorized and actually begun.

Section 3202.2 of the Zoning Regulations thus provides an exception to the record lot requirement for land encumbered by a highway plan "until proceedings looking to the condemnation of such land shall have been authorized and actually begun." D.C. Code § 7-114. The other two exceptions provided in § 3202.2 relating to the construction of two or more buildings on a single lot and mass transit system facilities are not applicable in the instant case.

Since the Zoning Regulations provide an exception to the record lot requirement for land encumbered by a highway plan, the Board concludes that it has jurisdiction over the highway plan and DPW referral issues presented in this appeal. When the Zoning Administrator invokes the highway plan exception to approve a building permit application involving an assessment and taxation lot, the Zoning Administrator must, in the absence of reliable information provided by the applicant,[3] refer the application to DPW to determine whether condemnation proceedings have been authorized and actually begun. In the instant case, only DPW could have provided the information necessary to make a proper determination of the status of the property. Any condemnation proceedings or other measures to acquire the property through purchase or dedication would affect the lot lines. Without accurate information as to the location of the lot lines, a proper zoning review cannot take place. *See, e.g., Parr Warehouse Co. v. Peebles*, 108 A.2d 161 (D.C. 1954), a case involving a tract of land in Maryland where a requested zoning was approved on the condition that the property owner agree to dedicate a strip of property that was encumbered by a highway plan.

The Zoning Administrator's decision to approve the issuance of the two building permits in question is therefore reversed. Following the issuance of this decision and order, the Zoning Administrator is to refer the permit applications to DPW, DOT for review and clearance. Upon clearance by DPW, DOT, the Zoning Administrator is to review the applications for compliance with the area restrictions of the Zoning Regulations, taking into account whether changes in the lot lines or the establishment of a building restriction line, if any, would affect zoning compliance. The Zoning Administrator's review should also address the discrepancies that came to light during the hearing involving the gross floor area of the building and its siting on the lot.

The Accessory Building Issues

The Zoning Regulations define the term building as:

> [A] structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up

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[3] Under 11 DCMR § 3202.2(b)(3), in addition to an official building plat prepared by the Surveyor of the District of Columbia marked to show all existing and proposed structures and parking and loading spaces and facilities, the applicant must submit "[o]ther information necessary to determine compliance with the provisions of this title."

> or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.

11 DCMR § 199.1. An "accessory building" is defined as "a subordinate building located on the same lot as the main building, the use of which is incidental to the use of the main building." *Id.*

The glass-covered walkway connection, constructed above grade and supported by walls and columns, provides sheltered access from a basement entry of the dwelling to the first floor of the garage addition. The walkway thus constitutes a "communication" between the dwelling and the garage addition, such that the dwelling and the addition are considered one building for purposes of zoning. As observed in *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 927 n.1 (D.C. 1980), the word "communication" is typically used as an equivalent term for the word "access." The Board thus concludes that the garage addition is not an accessory building. Since the garage addition is not an accessory building, it is not necessary to reach the appellants' remaining arguments regarding accessory building area and use restrictions.

For the reasons stated above, it is hereby **ORDERED** that the appeal is **GRANTED IN PART** as to the necessity of prior referral to DPW for review and clearance for purposes of invoking the highway plan exception to the record lot requirement and **DENIED IN PART** as to whether the garage addition constitutes an accessory building. Pursuant to D.C. Code § 5-424(g)(4), the Zoning Administrator's decision to approve Building Permits B426044 and B428648 is **REVERSED** for failure to refer the applications to DPW for review and clearance.

VOTE: 3 – 1 – 1 (Carol J. Mitten, Susan Morgan Hinton, Robert N. Sockwell, to grant the appeal as to the necessity of prior DPW review and clearance; Sheila Cross Reid, to deny; and Anne M. Renshaw, not voting, having been recused).

VOTE: 4 – 0 –1 (Carol J. Mitten, Robert N. Sockwell, Sheila Cross Reid, and Susan Morgan Hinton, to deny the appeal as to whether the garage addition constitutes an accessory building; Anne M. Renshaw, not voting, having been recused).

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: MAR 2 8 2001

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL 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

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BZA APPEAL NO. 16646

As Director of the Office of Zoning, I hereby certify and attest that on MAR 2 8 2001, a copy of the foregoing Decision and Order in BZA Appeal No. 16646 was mailed first class, postage prepaid, to each party and public agency who appeared and participated in the public hearing concerning this matter and who is listed below:

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Councilmember, Ward 3
Council of the District of Columbia
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Washington, D.C. 20001

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D.C. Office of Planning
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ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

Notes:

1. There has to be a 6-foot opening, court, between garage and proposed structure.
2. The could be an awning extended 40-inches out from the garage
3. There has to be a 25-foot rear yard from property line; cannot build in the rear yard

B. Bailey, Conversation with Mr. Nunley November 2, 1999.

HISTORIC PRESERVATION REVIEW BOARD
STAFF REPORT AND RECOMMENDATION

Property Address:	**420 M Street, NW**	X	Agenda
Landmark/District:	**Mt. Vernon Square Historic District**		Consent Calendar
		X	Concept Review
Meeting Date:	**October 25, 2001**	X	Alteration
H.P.A. Number:	**01-551**		New Construction
Staff Reviewer:	**Steve Callcott**		Demolition
			Subdivision

The applicant, architect Greg Zahn for owner Brad Sligh, seeks continuing conceptual design review for rehabilitation of an existing frame dwelling and construction of a multi-unit residential building on an adjacent vacant parcel. The properties occupy a single lot.

Since being presented last month, the project has been revised in accordance with the Board's direction. The passage between the rowhouse and vacant lot has been eliminated, allowing the new construction to assume the full width of the vacant parcel. The additional floors proposed behind and above the frame building have been entirely eliminated.

The new infill building's top floor mezzanine has been redesigned so as not to be visible from the street. Rather than facing out toward the street, the mezzanine will be located at the rear of the building under a slightly pitched metal roof, with doors and windows opening to a rear balcony. Two large, traditionally-styled oriel windows are proposed for the side of the building, which would be cantilevered over the frame house. A small roof addition is also proposed for the two-story carriage house facing the rear alley.

The project has made substantial progress since last month. As it continues to evolve, the appearance of the two oriels on the side of the building should continue to be studied. While the oriel feature is certainly found within the historic district, its use here – cantilevered over another property – is unorthodox and might come across as visually confusing. While the rear oriel may be recessive enough so as to not be prominently visible from the street, the front oriel should probably be eliminated entirely, or replaced with regular flush-mounted windows in the same location, set back from the front facade. The front fenestration pattern should also be given another look, as buildings of this width rarely have four vertical bays of windows; three window bays, or a projecting bay, would be more consistent with fenestration patterns in the neighborhood.

The staff recommends that the Review Board approve the revised proposal in concept, and direct the applicant to continue to work with staff as suggested above. The staff would recommend that final approval be delegated.

Board approved without oriels, and with modified three-bay fenestration plan.

HISTORIC PRESERVATION REVIEW BOARD
STAFF REPORT AND RECOMMENDATION

Property Address:	**420 M Street, NW**	X	Agenda
Landmark/District:	**Mt. Vernon Square Historic District**		Consent Calendar
		X	Concept Review
Meeting Date:	**September 26, 2001**	X	Alteration
H.P.A. Number:	**01-551**		New Construction
Staff Reviewer:	**Steve Callcott**		Demolition
			Subdivision

The applicant, architect Greg Zahn for owner Brad Sligh, seeks conceptual design review for rehabilitation of an existing frame dwelling and construction of a multi-unit residential building on an adjacent vacant parcel. The two properties occupy a single lot.

The existing frame house was constructed in 1873 as one of a matching pair. Of particular interest is the covered exterior passageway that ran between them. Sometimes called "horse alleys," these passages are relatively rare in Washington; they provided access to rear yards (often even when there was a rear alley, such as in this instance) and may have been related to the collection of garbage or "night soil." While the house has been altered with asbestos shingle siding, a concrete and brick porch, and window and door replacements, it retains its overall form and is a contributing building to the historic district.

The proposal – which is extremely conceptual and intended merely to gauge the Board's parameters for redevelopment of this site – calls for a three-story building above a raised basement to be constructed on the vacant parcel. The portion of the existing house containing the passage, as well as a two-story brick rear addition, would be removed. The new construction would rise up to four floors in the back of both buildings. The two-story carriage house at the rear of the lot would be rehabilitated into parking on the first floor with living space above.

The "horse alley" passage is an original and character-defining feature of the building; as such, it should be retained. While a taller building immediately adjacent to this house is not uncharacteristic of the varied height of rowhouses on this block, it should be lowered as much as possible (possibly by lowering the basement) so as to not overwhelm the frame house. The impact of the four stories of new construction in the rear is difficult to determine; while the form of the building (with a higher block in the back) is unorthodox, the 28'6" set back from the front facades may be sufficient to mitigate it. Nevertheless, it is quite possible that the four stories of new construction behind the frame building would not only be visible but appear looming as seen from the street. This aspect of the proposal would best be studied in three dimensions to determine the impact of this new construction on the streetscape.

The staff recommends that the Review Board direct the applicants to continue working on the concept as outlined above, and return for further review.

Board modified staff report, allowing removal of the passage between the buildings, directed that top floor mezzanine should be removed entirely, and that no new construction behind frame building should be seen from the street.

DRAWING KEY

BUILDING DATA

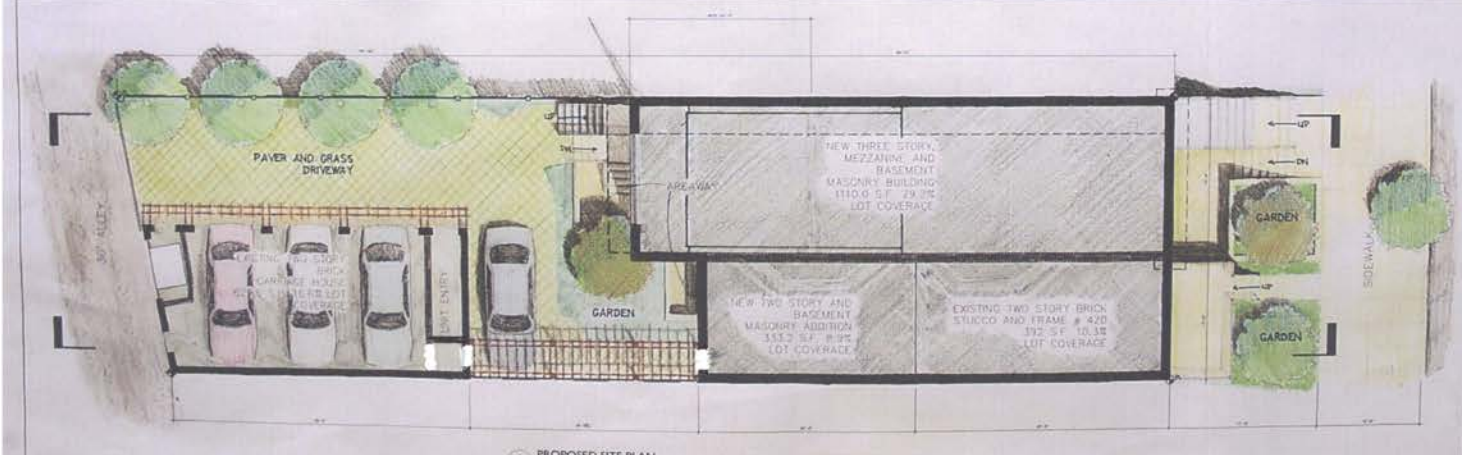
LOCATION:	LOT 863 SQUARE 514
APPLICABLE CODES:	1996 BOCA 1996 D.C. RESIDENTIAL
USE GROUP:	R3
CONSTRUCTION TYPE:	5B TABLE 503

ZONING DATA

LOCATION:	LOT 863 SQUARE 514
ZONING:	R-5-B/GD
FAR:	1.8
LOT AREA:	3795 SF
ALLOWABLE LOT OCCUPANCY:	60 % (2464.8 SF)
EXISTING LOT OCCUPANCY:	54.9% (1328.2 SF)
PROPOSED LOT OCCUPANCY:	65 % (2454.8 SF)
ALLOWABLE FAR:	6835 SQ. FT.
EXISTING FAR:	2078.2 SQ. FT.
PROPOSED FAR:	6438 SQ. FT.
ALLOWABLE HEIGHT:	50'-0"
EXISTING HEIGHT:	18'-0"
PROPOSED HEIGHT:	50'-0"
REAR YD. 4" PER VERTICAL FT.	16'-4"

GENERAL NOTES

ALL WORK TO BE DONE IN ACCORDANCE WITH LOCAL & NATIONAL CODES. ALL SUB CONTRACTORS MUST BE LICENSED AND OBTAIN THEIR OWN WORK PERMIT. CONTRACTOR AND ALL SUB CONTRACTORS MUST SUPPLY PROOF OF INSURANCE, LIABILITY AND WORKMAN'S COMPENSATION. DRAWINGS ARE FOR PERMIT AND BIDDING PURPOSES ONLY. CONTRACTOR IS SOLELY LIABLE FOR INSTALLING ALL MATERIALS IN ACCORDANCE WITH ACCEPTED STANDARD CONSTRUCTION PRACTICES AND MANUFACTURERS SPECIFICATION. CONTRACTOR TO FIELD VERIFY ALL FRAMING MEMBERS FOR SIZE AND DEAD LOAD SUPPORT. CONTRACTOR TO VERIFY ALL DIMENSIONS FOLLOWING DEMOLITION. ANY INCONSISTENCY SHOULD BE BROUGHT TO THE OWNER OR ARCHITECT'S ATTENTION IMMEDIATELY. CONTRACTOR IS RESPONSIBLE FOR SECURING SITE FROM WEATHER AND THEFT FOR DURATION OF THE PROJECT. ALL MATERIALS AND METHODS MUST COMPLY WITH LOCAL CODES AND ACCEPTED CONSTRUCTION PRACTICES. ANY INCONSISTENCIES SHOWN ON DRAWINGS ARE IN ERROR. IT IS THE CONTRACTOR'S RESPONSIBILITY TO BRING THESE INCONSISTENCIES TO THE ATTENTION OF OWNER AND ARCHITECTS IMMEDIATELY FOR CORRECTION. THE CONTRACTOR IS RESPONSIBLE FOR MAKING ALL REMOVALS REQUIRED IN ORDER TO COMPLETE THE WORK. THE CONTRACTOR SHALL COORDINATE ALL TRADES AND PROVIDE OPTIMUM WORKING CONDITIONS. THE SITE SHALL BE KEPT CLEAN AND ORDERLY AT ALL TIMES. TRASH SHALL BE REMOVED ON DAILY BASIS. CONTRACTOR TO SUPPLY ALL INSPECTION APPROVALS AND LIEN WAIVERS PRIOR TO RELEASE OF RETAINAGE. CONTRACTOR TO SUPPLY ALL APPROVALS AND LIEN WAIVERS PRIOR TO RELEASE OF RETAINAGE.



PROPOSED SITE PLAN

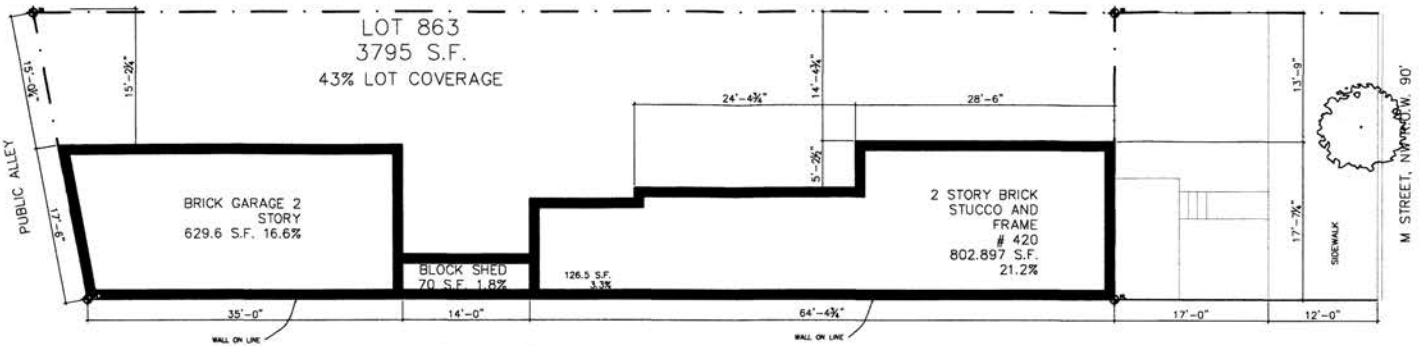
RENOVATION TO
420 M ST

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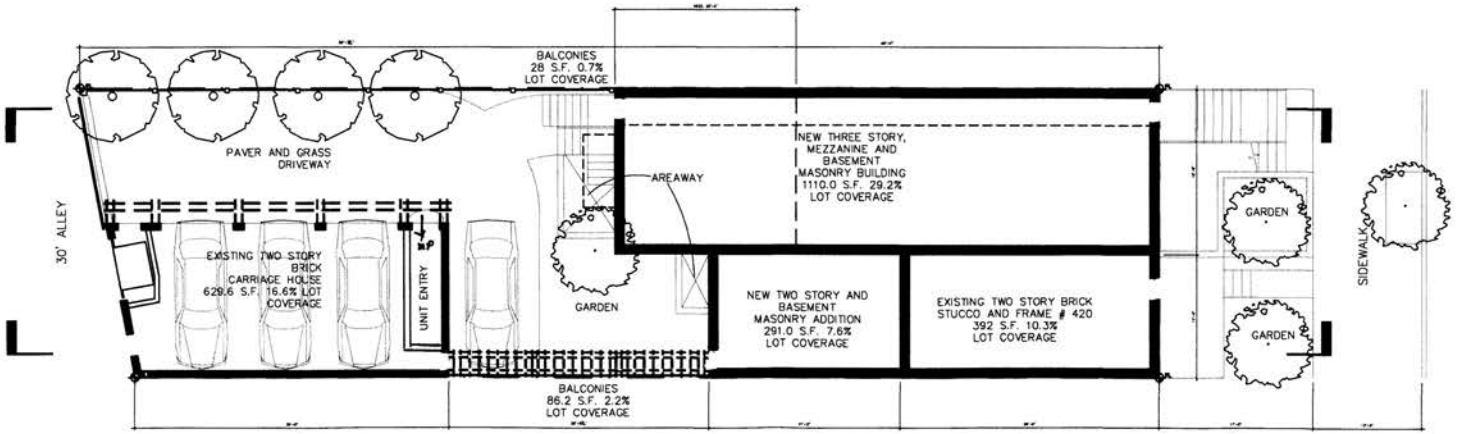
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10/25/01

CO



1 EXISTING SITE PLAN
3/16" = 1'-0"



2 PROPOSED SITE PLAN
3/16" = 1'-0"

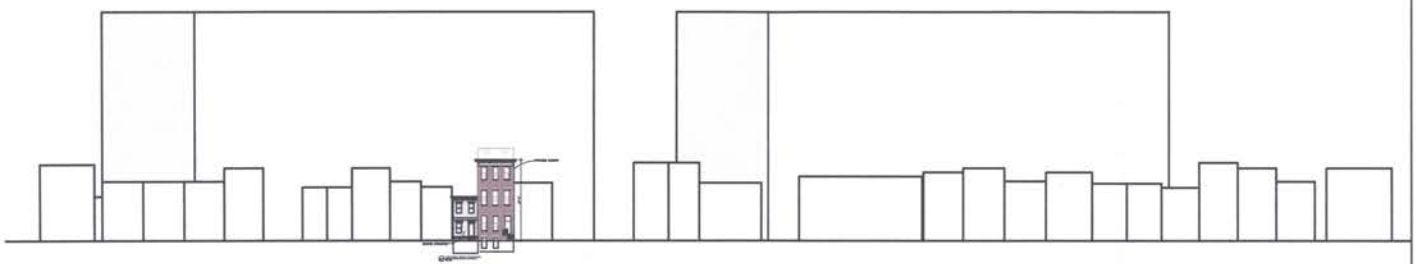
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09/16/02

CO



1 PROPOSED STREET SCAPE

N.T.S

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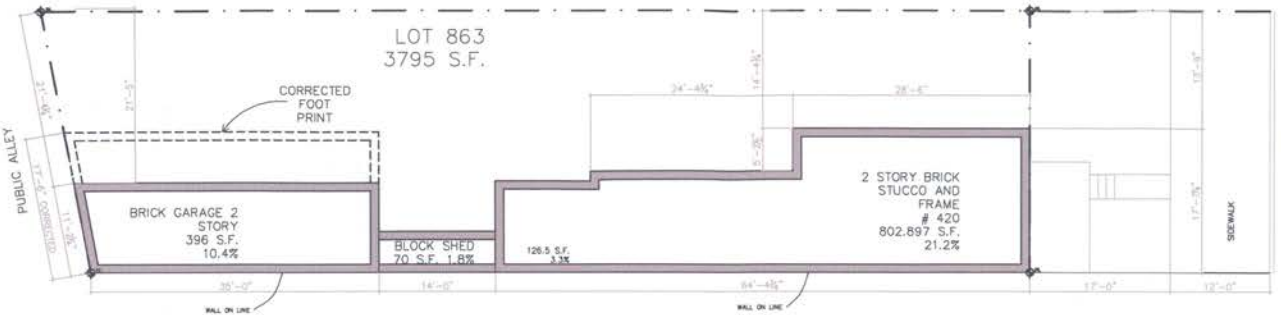
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ISSUED: 09/18/02

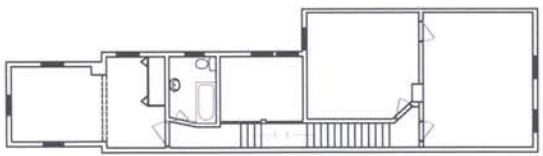
REVISED:

SHAP/ALL PROJECTS/

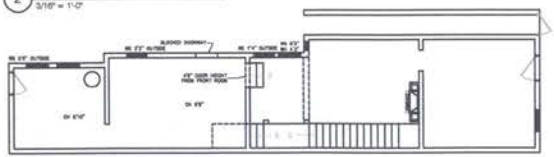
SHEET:



1 EXISTING SITE PLAN
3/16" = 1'-0"



2 EX. SECOND FLOOR PLAN
3/16" = 1'-0"



3 EX. SECOND FLOOR PLAN
3/16" = 1'-0"



4 EX. FRONT ELEVATION
3/16" = 1'-0"



5 EX. REAR ALLEY ELEVATION
3/16" = 1'-0"

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