GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16863-A of S & P Properties, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow the conversion of a single-family dwelling and carriage house into a **six (6)** unit apartment house in the DD/R-5-B District at premises 420 M Street, N.W. (Square 514, Lot 863).

Note: The Board during the course of the public hearing concluded that variance relief from the rear yard requirements was not needed, and amended the application accordingly.

HEARING DATE(S): May 21, 2002, September 17, 2002
DECISION DATE: November 5, 2002 (Bench Decision)

CORRECTED SUMMARY ORDER*

* This order corrects BZA Order No. 16863, by changing the number of apartment house units considered and approved by the Board from five to six (6).

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2C, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 2C. ANC 2C submitted a letter in support of the application. The OP submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR § 3103.2. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

BZA
Case No. 17331
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO. 17331
EXHIBIT NO. 28

FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY,
SEPTEMBER 17, 2002

The public hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 9:52 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
DAVID ZAIDAIN	Board Member

ZONING COMMISSION MEMBERS PRESENT:

JAMES HANNAHAM	Commissioner

COMMISSION STAFF PRESENT:

Sheri M. Pruitt, Secretary, BZA
Beverly Bailey, Office of Zoning
John Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Stephen Cochran, Office of Planning
John Moore, Office of Planning
David McGettigan, Office of Planning
Joel Lawson, Office of Planning
Karen Thomas, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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a difference, but that picture shows, if I'm not mistaken, something that looks to be vacant.

MR. ZAHN: Well, these photos actually were taken close to a year ago.

CHAIRPERSON GRIFFIS: Right. Okay. As I say, it doesn't --

MR. ZAHN: Many of the large townhouses have been converted into four-unit apartments.

MS. GIORDANO: I just want to add that it's an R-5 zone.

CHAIRPERSON GRIFFIS: Right, which means we don't have to track those homeowners down is what you're saying, right? Okay.

MS. GIORDANO: It's an apartment district. I also wanted to add on the light and air issue that the trellis, which, of course, is counted in lot occupancy, is actually open. So if you remove the trellis from the equation, it would really even further reduce the lot occupancy issue.

CHAIRPERSON GRIFFIS: Can you give me a brief opinion about why a trellis would go to lot occupancy?

MS. GIORDANO: Well, it's considered a structure.

CHAIRPERSON GRIFFIS: Is it?

MS. GIORDANO: Yes, because it has a roof on it.

CHAIRPERSON GRIFFIS: You're putting a roof on the trellis?

MS. GIORDANO: This whole trellis issue is a real curious one, but there has been at least one BZA case on whether this kind of structure is sufficient to connect buildings and, therefore, make them one building.

This is just something that has been adopted over the years as being an accepted structure to connect two buildings like this and make them one building. It's considered a structure like any other part of the building.

MR. ZAHN: With the provision that it's 51 percent solid.

CHAIRPERSON GRIFFIS: It looks pretty close together if that's 51 percent.

Ms. Renshaw?

VICE CHAIRPERSON RENSHAW: Mr. Chairman, I just wanted to be clear if this has a solid roof on it. Is that what makes it 51 percent solid?

MR. ZAHN: No. It would be a lattice. There will be wooden members going in both directions. So they're equally spaced to both directions. That's

50 percent.

VICE CHAIRPERSON RENSHAW: But this is not really a breezeway.

MS. GIORDANO: I don't know what the definition -- why don't you just describe it?

MR. ZAHN: The --

CHAIRPERSON GRIFFIS: I think Ms. Renshaw is getting to, can you walk under this and have some provision of shelter or sun shading?

VICE CHAIRPERSON RENSHAW: If it's a connection.

CHAIRPERSON GRIFFIS: Right.

MR. ZAHN: Yes.

MS. GIORDANO: Sun but not rain.

CHAIRPERSON GRIFFIS: Right, right. I don't know.

VICE CHAIRPERSON RENSHAW: Well, I always --

MS. GIORDANO: I know it's curious, but there have been --

CHAIRPERSON GRIFFIS: Well, I'm concerned in which direction --

MS. GIORDANO: This has been really debated.

CHAIRPERSON GRIFFIS: -- it takes us

because I don't buy that. What it seems to me in looking at this is that there was a structural modification to the shed that maintained the connection from the main structure to the carriage house.

If I'm not mistaken, that is allowable under our regulations, but to say that one is substituting a trellis as a structure is just a little difficult. But I don't think it's going to impede us.

VICE CHAIRPERSON RENSHAW: Mr. Chairman?

CHAIRPERSON GRIFFIS: Yes?

VICE CHAIRPERSON RENSHAW: I have another question. In the drawings, it shows a car that is outside of the two-story brick carriage house, where underneath you would be parking several cars. If that has to be left open for fire, correct, because the carriage house has to take its address from the front of the building, then you would not be able to park a car there? Am I right?

MR. ZAHN: This is the front door. The dotted line shows the passage. Then this is the entrance. The entrance to the unit above the parking is right here.

VICE CHAIRPERSON RENSHAW: But it is on the other side of the car?

MR. ZAHN: Right.

VICE CHAIRPERSON RENSHAW: It's right here.

MR. ZAHN: It's here.

VICE CHAIRPERSON RENSHAW: But I thought that it would have to be from this way.

CHAIRPERSON GRIFFIS: I don't think the direction on the entrance makes any difference. It's coming in from the front. What you need to do is have access. What the testimony today is indicating they need to have access from the street front and street through to this area.

VICE CHAIRPERSON RENSHAW: And it's going this way?

CHAIRPERSON GRIFFIS: Correct.

VICE CHAIRPERSON RENSHAW: Thank you.

MS. GIORDANO: Mr. Griffis, on the issue of the connector, there have been a couple of BZA cases on these kinds of connectors, which I can provide to the Board. Also, Mr. Bello, who is on your staff, might be a good resource on that issue as well because I know he is very familiar with the interpretations on that.

It is a very curious interpretation, but it is one that is well-established.

MR. ZAHN: Might I throw out, is there any reason why? In my opinion, there isn't any reason why it couldn't be solid. What we were trying to accommodate is a little bit more of the light, the air, green space, and mitigate the impact of the structure.

So since there is precedence for the trellis, that is how the trellis arrived.

CHAIRPERSON GRIFFIS: Too bad for that homeowner who wants to add a trellis and they're maxxed out on lot occupancy. That's not our case today. So let us move ahead. I think unless there are other questions on that, I am clear on what is happening in this situation. So I think we can move ahead.

Anything else on the drawings, any other questions from Board members? Does everyone understand exactly what is being proposed here?

VICE CHAIRPERSON RENSHAW: Would you explain, Mr. Zahn, how a trellis becomes solid if it's 51 percent? How do you measure that?

MR. ZAHN: Again, this is an interpretation that has come from the zoning administrator. If you have two-inch, let's just say two-inch, slats of treated wood and you space them

every two inches and then you lay over that two-inch slats, actually, you're over 50 percent.

Two-inch slats every two inches by themselves equal 50 percent. If you introduce two-inch slats in the opposite direction spaced at two inches, I don't know. I don't know if you're at 75 percent or 67.6 percent, but that's how it works. A detail, simple detail, of how the trellis works can illustrate that it's 51 percent.

VICE CHAIRPERSON RENSHAW: And how do the length and width factor into that 51 percent?

MR. ZAHN: The length and width.

VICE CHAIRPERSON RENSHAW: Of the trellis.

CHAIRPERSON GRIFFIS: It wouldn't matter.

VICE CHAIRPERSON RENSHAW: It wouldn't matter.

MR. ZAHN: It can be as big as --

CHAIRPERSON GRIFFIS: You can look at a square foot, Ms. Renshaw, and that would be replicated across, no matter what the dimension of the trellis would be, if I'm not mistaken.

VICE CHAIRPERSON RENSHAW: All right. Interesting.

MR. ZAHN: Right.

CHAIRPERSON GRIFFIS: See, who knew that

normal-day applications of simple math would be important in one's life.

MS. GIORDANO: There actually was a BZA case where a homeowner wanted to build a trellis to get from his house to his garage so he could get there without getting rained on. He came in for a rear yard variance.

He had a hard time making a variance case based on uniqueness and whatever. So I remember the staff actually worked with him to open it up so that he wouldn't need the rear yard variance.

CHAIRPERSON GRIFFIS: And so he'd get rained on.

MS. GIORDANO: But not too much.

CHAIRPERSON GRIFFIS: Without digressing terribly --

MS. GIORDANO: There was an opening in the middle, I think it was.

CHAIRPERSON GRIFFIS: I see.

MS. GIORDANO: And part of it remained covered.

CHAIRPERSON GRIFFIS: I see.

MS. GIORDANO: Do you recall that?

MS. BAILEY: Sort of.

MS. GIORDANO: I can provide the Board

with that decision because I used it for research purposes.

VICE CHAIRPERSON RENSHAW: I think we should accept Ms. Giordano's offer to give the Board a couple of cases that establish this in greater detail.

CHAIRPERSON GRIFFIS: Okay. Let me also just get clarification that as far as your investigation of the history of this building, this was developed as a row dwelling. Is that correct?

MR. ZAHN: The existing structure?

CHAIRPERSON GRIFFIS: Yes.

MR. ZAHN: Again, the most information we have to go on is the fact that it's relatively typical, even in Victorian houses, that two townhouses share a passage to the rear yard.

So it is apparent from the inside of the house that the house has been extended 18 inches to match the current. So there is evidence of what was previously a dividing wall.

CHAIRPERSON GRIFFIS: A common wall.

MR. ZAHN: A common wall.

CHAIRPERSON GRIFFIS: Which would indicate that there was a structure on the other side also, which would have been also a row dwelling. Is that correct?