

09/05/00 TUE 15:38 FAX 301 893 1830



ELLYSON CORP

002

To: Board Of Appeals for Montgomery County
 From: Jeanis Ahearn
 Casey Hoobler
 Date: September 5, 2000
 Re: Appeal number: A5330
 3922 Baltimore Street
 Kensington, MD 20895

We hereby withdraw the above referenced appeal.

Thank you for your consideration and the cooperation of your staff and personnel.


 Jeanis Ahearn

 Casey Hoobler

Post-It [®] Fax Note	7671	Date	9-6-00	# of pages	1
To	E. BASAMAN	From	Beannie JACO		
Co./Dept.	CITY ATTY OFFICE	Co.	BOA		
Phone #		Phone #			
Fax #		Fax #			



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

TELECOPIER TRANSMITTAL

DATE: 9/6/2000
TO: Gwen Wright ; Robin Zick
FAX NO. (301) 563-3412
FROM: Eileen Basaman
FAXED BY: _____

Cover Sheet Plus: 1 pages

DESCRIPTION/COMMENTS/SPECIAL INSTRUCTIONS:

CONFIDENTIALITY NOTICE

This transmission contains confidential information belonging to the sender, which may be legally privileged information. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, or an employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of the facsimile documents is strictly prohibited. If you have received this transmission in error, please immediately notify the sender by telephone.

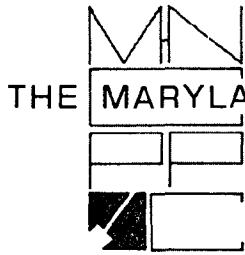
Please FAX to / 9/5

① Jeannie Ahearn

(301) 907-7997

② Eileen Kasaman

(240) 777-6705



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

September 5, 2000

Jeannie Ahearn
3920 Baltimore Street
Kensington, MD 20895

Dear Jeannie:

This letter serves as our agreement that we will meet prior to October 1, 2000 to work out the exact language - acceptable to all parties - for an "Agreement of Limitations" that will be entered into the land records for the new house at 3922 Baltimore Street. This "Agreement of Limitations" will meet the intent of the Historic Preservation Commission's condition #4 that was a part of their approval of the Historic Area Work Permit for the new house at 3922 Baltimore Street (see attached conditions.)

The "Agreement of Limitations" will serve to notify any future buyer of the property at 3922 Baltimore Street as to the existence of the Kensington Historic District, the implications of inclusion within the district, and the guidelines which govern the district. It will clearly reference the "Vision of Kensington Long Range Preservation Plan" and the guidelines for lot coverage included in that document.

However, the document will also be clear that, if the Kensington Historic District or the Historic Preservation Commission ceases to exist or if the Commission's guidelines for Kensington change at any point in the future, then limitations on the footprint size for the house at 3922 Baltimore Street would be removed.

I look forward to meeting with you to work out the final language prior to October 1, 2000, and will call you to set up a meeting date as soon as possible. To signify your agreement to this plan of action, please sign on the line below and send a copy of this letter back to me.

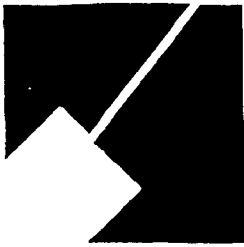
Sincerely,

Gwen Wright

Historic Preservation Coordinator

I concur with the issues detailed in the letter above.
Jeannie Ahearn

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Date: April 19, 2000

MEMORANDUM

TO: Robert Hubbard, Director
Department of Permitting Services

FROM: *GW* Gwen Wright, Coordinator
Historic Preservation

SUBJECT: Historic Area Work Permit #31/6-00C (Permit #212943)

The Montgomery County Historic Preservation Commission has reviewed the attached application for a Historic Area Work Permit. This application was:

Approved Denied **Approved with Conditions:**

- 1) The historic garage will be moved to the back of Lot 25 and restored, using the original doors and materials (clapboard siding). Special care will be given to retention of the structural members which have been stamped by Sears and Roebuck.
- 2) The existing driveway on Lot 25 will be modified as per the tree survey (attached) with a small area of macadam removed. The driveway will not be extended any further back on the lot.
- 3) Scheme 2 will be used for the new house on Lot 25, with a footprint which is no greater than 862 sf.
- 4) At no time in the future will any additions to the house on Lot 25 which increase the footprint above 862 sf be approved for this site. This will be stipulated by deed by the current property owner prior to transfer of the lot.
- 5) A new grading plan for this site will be provided to HPC staff.
- 6) A landscape proposal for Lot 25 will be provided for HPC approval which includes replacement trees for those being removed as well as sidewalk details.

- 7) A clear tree survey for Lot 25 will be provided to HPC prior to submitting for a building permit for use in reviewing the landscape proposal.
- 8) The doors and windows will be wood, True-divided-light (TDL) or Simulated TDL.
- 9) The porch railing will utilize in-set pickets.
- 10) The shutters will be operable and sized to fit the window opening.
- 11) Any proposal for a new driveway on Lot 27 will need to come back to the HPC as a separate HAWP, with a full tree survey and information on the impact of the driveway construction on existing trees.
- 12) The new house will be one foot lower in absolute elevation than the absolute elevation of the height (roof ridge line) of the house at 3920 Baltimore Street, to be certified by an independent surveyor.

and subject to the general conditions that 1) HPC Staff will review and stamp the construction drawings prior to the applicant's applying for a building permit with DPS; and 2) after issuance of the Montgomery County Department of Permitting Services (DPS) permit, the applicant arrange for a field inspection by calling the DPS Field Services Office at (301) 217-6240 prior to commencement of work and not more than two weeks following completion of work.

THE BUILDING PERMIT FOR THIS PROJECT SHALL BE ISSUED CONDITIONAL UPON ADHERENCE TO THE APPROVED HISTORIC AREA WORK PERMIT (HAWP).

Applicant: Ellison Corporation (Cary Hoobler, Agent)

RE: 3922 Baltimore Street, Kensington MD 20895
(Kensington Historic District)



HISTORIC PRESERVATION COMMISSION
301/563-3400

APPLICATION FOR
HISTORIC AREA WORK PERMIT

Contact Person: George Myers
 Daytime Phone No.: 301 942 9622
 Tax Account No.: 1315 3186925
 Name of Property Owner: ELLISON CORP. (INDENT) Daytime Phone No.: _____
 Address: 10907 JAEBOB AVENUE Silver Spring, Md. 20901
Street Number City Street Zip Code
 Contractor: same as above Phone No.: _____
 Contractor Registration No.: 14099-2657
 Agent for Owner: George Myers Daytime Phone No.: 301 942 9622

LOCATION OF BUILDING/PREMISE

House Number: 3422 Street: Rockledge St.
 Town/City: Kensington Nearest Cross Street: Corn Ave.
 Lot: 25 Block: 11 Subdivision: Kensington Park
 Liber: _____ Folio: _____ Parcel: _____

PART ONE: TYPE OF PERMIT ACTION AND USE

1A. CHECK ALL APPLICABLE: Construct Extend Alter/Renovate A/C Slab Room Addition Porch Deck Shed
 Move Install Wreck/Raze Solar Fireplace Woodburning Stove Single Family
 Revision Repair Revocable Fence/Wall (complete Section 4) Other: garage
 1B. Construction cost estimate: \$ 200,000
 1C. If this is a revision of a previously approved active permit, see Permit # Y/D

PART TWO: COMPLETE FOR NEW CONSTRUCTION AND EXTEND/ADDITIONS

2A. Type of sewage disposal: 01 WSSC 02 Septic 03 Other: _____
 2B. Type of water supply: 01 WSSC 02 Well 03 Other: _____

PART THREE: COMPLETE ONLY FOR FENCE/RETAINING WALL

3A. Height _____ feet _____ inches
 3B. Indicate whether the fence or retaining wall is to be constructed on one of the following locations:
 On party line/property line Entirely on land of owner On public right of way/easement

I hereby certify that I have the authority to make the foregoing application, that the application is correct, and that the construction will comply with plans approved by all agencies listed and I hereby acknowledge and accept this to be a condition for the issuance of this permit.

George Myers (George Myers) 3-2-2000
 Signature of owner or authorized agent Date

Approved: w/conditions For Chairperson, Historic Preservation Commission
 Disapproved: _____ Signature: [Signature] Date: 4/10/00
 Application/Permit No.: 212943 Date Filed: 3/6/00 Date Issued: _____



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

TELECOPIER TRANSMITTAL

DATE: 9/5/2000

TO: Gwen Wright, Robin Zick

FAX NO. (301) 563-~~3412~~ 3412

FROM: Eileen Basaman

FAXED BY: _____

Cover Sheet Plus: 5 pages

DESCRIPTION/COMMENTS/SPECIAL INSTRUCTIONS:

Draft. Please make comments. I'll
be out of the office until about 4:00 p.m.

CONFIDENTIALITY NOTICE

This transmission contains confidential information belonging to the sender, which may be legally privileged information. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, or an employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of the facsimile documents is strictly prohibited. If you have received this transmission in error, please immediately notify the sender by telephone.

**BEFORE THE BOARD OF APPEALS
FOR MONTGOMERY COUNTY, MARYLAND**

**APPEAL OF JEANNIE AHEARN
AND CARY HOOBLER**

Case No. A-5330

MOTION TO DISMISS APPEAL

The Historic Preservation Commission of Montgomery County, Maryland, Respondent (the "Commission"), through undersigned counsel, files this motion to dismiss the captioned appeal filed by Jeannie Ahearn, the Property Owner (the "Owner"), and Cary Hoobler, the developer of the Owner's property (the "Co-Applicant"), and for reasons states the following:

- 1.) The instant appeal is from the denial by the Commission of an application for the issuance of a Historic Area Work Permit ("HAWP") on November 10, 1999 (the "1999 Appeal"). The Appeal was filed on December 10, 1999. The basis for the Commission's denial was that the structure that the Co-Applicant proposed to build on the Owner's lot was too large for the lot and did not conform to the regulations for building in the Kensington Historic District, where the property is located.
- 2.) The 1999 Appeal is an appeal from the second of three considerations of an application for a HAWP submitted by this Owner and the Co-Applicant for the property located at 3922 Baltimore Street, Kensington, MD 20895 (the "Property"). A 1997 Application for a HAWP was denied by the Commission, and the Owner and the Co-Applicant filed an appeal. While

that appeal was pending, the Co-Applicant submitted the 1999 application, which made slight modifications to the original proposal. After the Commission denied that application, the 1999 Appeal was filed, and a hearing date of April 19, 2000, was set by the Board of Appeals.

- 3.) The Board continued the hearing at the request of some of the intervenors who were unable to be present during the scheduled hearing date. During the pendency of that appeal, the Owner and the Co-Applicant submitted a third application for a HAWP for the Property (the "2000 Application"). One week before the Board's scheduled hearing on the 1999 Appeal, the Commission approved the 2000 Application, finding that it was the first of the applications that conformed to the Kensington regulations.
- 4.) At the April 12, 2000, hearing on the 2000 Application, the Owner testified that it was her intention to voluntarily dismiss the instant appeal upon approval of the 2000 Application by the Commission, since it is her intention to build the structure approved by the Commission on the Property.
- 5.) Although the actions on the 1997 application and the 2000 application should be irrelevant to this appeal, they are not. That the Co-Applicant considers them to be inextricably intertwined is made clear by his August 25, 2000, submission which includes the April 5, 2000, Commission staff report on the 2000 Application, as well as the Commission's opinion approving the application for the HAWP. The Commission has no objection to the inclusion of materials from the 2000 Application action by the Commission in the appeal from the 1999 Application for informational purposes only.

However, the Commission would object to any consideration of a back door appeal by the Co-Applicant and the Owner from the Commission's action on the 2000 Application, since there was no timely appeal filed from the decision on the 2000 Application, which is now a final administrative decision.¹

- 6.) As late as August 25, 2000, the Owner was contending that she would voluntarily dismiss this appeal after issuance of a debris removal permit by the Town of Kensington. The Owner believed that the permit would be issued by the Town on August 28, 2000.
- 7.) It appears that this Appeal is moot, and that the Board is being asked to function in this matter not as a decisionmaker, but rather as an advisory panel.
- 8.) The Owner and the Applicant have taken and continue to take action to build the structure approved by the Commission at its April 12, 2000, session. Through their continued efforts to obtain the required permits to construct the dwelling approved by the Commission on April 12, 2000, it is clear that the Owner and the Applicant have abandoned any intention to construct the home they proposed constructing in the 1999 Application, the subject of the 1999 Appeal.

¹ In addition to obtaining the HAWP pursuant to the 2000 Application approval, the Co-Applicant has obtained several other permits to build the single family dwelling approved by the Commission on the Property. Copies of the HAWP (Permit No. 212943, Issued 5/2/2000, Expires 5/3/2000) and other permits issued for construction of the dwelling unit approved pursuant to the 2000 Application are attached to this Motion for the Board's convenience, and incorporated into this Motion.

- 9.) The motivation for continuing to pursue an appeal on a proposal that they have abandoned is unclear. The apparent intent is to have this use this Board to vindicate a proposal that has twice been found rejected by the Commission while pursuing the proposal that they submitted to the Commission which was approved by the Commission. That use of the Board's time and resources is both inappropriate and not permitted.²
- 10.) This appeal has been rendered moot by the Commission's approval of the 2000 Application for a HAWP to construct a single family dwelling unit on the Property, and the pursuit of permits for construction by the Owner and the Co-Applicant.
- 11.) No timely appeal was filed from the Commission's approval of the 2000 Application.
- 12.) The Owner and the Co-Applicant have evidenced their abandonment of the prior appeal by their pursuit of permits to construct the single family dwelling that they proposed in the 2000 Application.

FOR THE FOREGOING REASONS, the Commission respectfully requests that this Board grant the Commission's Motion to Dismiss the instant appeal.

² The Owner and Co-Applicant are seeking to use the Board to render an advisory opinion. The opinion that they are seeking is somewhat similar to the decisions made by courts in declaratory judgment actions, except that courts can only decide actual cases and controversies. In this case, if there is no longer a need to review the Commission's decision because the Owner and Co-Applicant have abandoned the proposal that was the subject matter of the instant appeal, then there is no case or controversy, or any real decision to be made by this Board.

RESPECTFULLY SUBMITTED,

CHARLES W. THOMPSON, JR.
COUNTY ATTORNEY

Eileen T. Basaman
Assistant County Attorney
Executive Office Building
101 Monroe Street, 3rd floor
Rockville, Maryland 20850
(240) 777-6700
Attorneys for Respondent Historic
Preservation Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this ____ day of September, 2000, copies of the foregoing Motion of Respondent Montgomery County to Dismiss the Petition on Appeal were mailed, first-class, postage prepaid to:

Jeanie Ahearn
3920 Baltimore Avenue
Kensington, MD 20895

Cary E. Hoobler, President
Ellison Corporation
10907 Jarboe Avenue
Silver Spring, MD 20901

TO: GWEN WRIGHT
FROM: JEANIE AHEARN

FAX NUMBER: 301-563-3412
PAGES: 1

Seller represents and purchaser acknowledges that this property is subject to provisions and limitation of Montgomery County Historical Preservation Commission as detailed in permit # (????) It is further noted that if at any time in the future the property should not be subject to the Montgomery County Historic Commission or any changes in the guidelines or jurisdiction of that body should be changed, the limitation on the size of the footprint will be waved or revised and that any future building plans would be subject to guidelines and limitations of the appropriate municipal zoning body.

Additional points

1. Limiting time of restriction or new application for Historic Work Permit *Doesn't meet*
increasing footprint ~~#~~ *intention of HPC condition*
2. Consideration of mitigating circumstances for owner of property which would
necessitate expanding footprint *for the duration of that owner's title/use/occupation*
of the property.

Please call me with any questions or when you have any feed back from attorney or Chairman of Commission.

Thank you for your reasonable attitude and spirit of co-operation.

Fax 301-563-3412

240-777-6744 eileen baseman
parkside 240-472-2328 lady

y may not exceed footprint of 862 square feet as approved in original building permit

(301) 907-7997



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

TELECOPIER TRANSMITTAL

DATE: 9/5/2000
TO: Gwen Wright, Robin Zick
FAX NO. (301) 563-3412
FROM: Eileen Basaman
FAXED BY: _____

Cover Sheet Plus: 5 pages

DESCRIPTION/COMMENTS/SPECIAL INSTRUCTIONS:

Copies of permits issued for 3922 Baltimore Street.

CONFIDENTIALITY NOTICE

This transmission contains confidential information belonging to the sender, which may be legally privileged information. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, or an employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of the facsimile documents is strictly prohibited. If you have received this transmission in error, please immediately notify the sender by telephone.



DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

Robert C. Hubbard
Director

BUILDING
PERMIT

Issue Date:

Permit No: 201837
Expires:
X Ref.
Rev. No:
ID: AC544365

THIS IS TO CERTIFY THAT:

ELLISON CORP
10907 JARBOE AVENUE
SILVER SPRING MD 20901

HAS PERMISSION TO: ALTER

PERMIT CONDITIONS:

PREMISE ADDRESS:

3922 BALTIMORE ST
KENSINGTON MD 20895-

LOT 25
LIBER
FOLIO
PERMIT FEE: \$0.00

BLOCK 11
ELECTION DISTRICT 13
TAX ACCOUNT NO.:
SUBDIVISION

ZONE R-60
PLATE

GRID
PARCEL
PS NUMBER 0

Director, Department of Permitting Services



DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

Robert C. Hubbard
Director

BUILDING
PERMIT

Issue Date: 8/9/2000

Permit No: 223012
Expires: 8/10/2001
X Ref.
Rev. No:
ID: 299127

THIS IS TO CERTIFY THAT:

CARFY HOOBLER
10907 JARBOE AVE
SILVER SPRING MD 20901

HAS PERMISSION TO:

CONSTRUCT

SINGLE FAMILY DWELLING

PERMIT CONDITIONS:

PREMISE ADDRESS:

3922 BALTIMORE ST
KENSINGTON MD 20895-

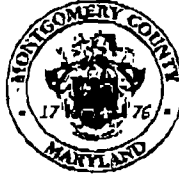
LOT 25
LIBER
FOLIO
PERMIT FEE: \$770.00

BLOCK 11
ELECTION DISTRICT 13
TAX ACCOUNT NO.;
SUBDIVISION

ZONE R-60
PLATE

GRID
PARCEL
PS NUMBER 0

Director, Department of Permitting Services



DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

Robert C. Hubbard
Director

BUILDING
PERMIT

Issue Date: 5/2/2000

Permit No: 212943
Expires: 5/3/2001
X Ref.
Rev. No:
ID: 269271

THIS IS TO CERTIFY THAT:

ELLISON CORP
10907 IARBOE AVE
SILVER SPRING MD 20901

HAS PERMISSION TO:

CONSTRUCT

PERMIT CONDITIONS:

*HAUP -
But without
Conditions ---- ?*

PREMISE ADDRESS:

3922 B
KENSINGTON MD 20895

LOT 25
LIBER
FOLIO
PERMIT FEE: \$0.00

BLOCK 11
ELECTION DISTRICT 13
TAX ACCOUNT NO.:
SUBDIVISION

ZONE R-60
PLATE

GRID
PARCEL
PS NUMBER 0

Director, Department of Permitting Services



DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

Robert C. Hubbard
Director

SEDIMENT CONTROL
PERMIT

Issue Date: 6/30/2000

Permit No: 201367
Expires: 7/1/2002
Ref. No:

THIS IS TO CERTIFY THAT: ELLISON CORP
10907 JARBOE AVE
SILVER SPRING MD 20901

HAS PERMISSION TO: DISTURB 8,625 SQUARE FEET

PURPOSE: CONSTRUCTION

PREMISE ADDRESS 3922 BALTIMORE ST
KENSINGTON MD 20895-

LOT 25

BLOCK 11

The permittee must contact the Department of Permitting Services at (240) 777-6366 to obtain an inspection prior to:

1. Commencing land-disturbing activity;
2. Installing sediment-control basins or stormwater-management structures;
3. Removing sediment-control devices; and
4. Changing ownership of the permitted area.

LIBER	PARCEL
FOLIO	ELECTION DISTRICT 15
PERMIT FEE: \$1,810.00	SUBDIVISION KENSINGTON PARK

Director, Department of Permitting Services



DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

Robert C. Hubbard
Director

RIGHT-OF-WAY CONSTRUCTION
PERMIT

Issue Date:

Permit No: 205777
Expires:

THIS IS TO CERTIFY THAT:

ELLISON CORPORATION
010907 JARBOE AVE
SILVER SPRING MD 20901-
(301)681-1411 x

HAS PERMISSION TO: CONSTRUCT DRIVEWAY

Special Notes:

The proposed work must comply with the conditions of this permit and with the provisions of the Montgomery County Road Construction Code and the "Standards and Specifications" adopted by the County Council for Montgomery County.

Notify: Field Inspector at 48 hours prior to starting construction and upon completion of the work for final inspection and bond release.

PREMISE ADDRESS 3922 BALTIMORE ST
KENSINGTON MD 20895-

LOT 25 BLOCK 11
LIBER TAX ACCOUNT NO.:
FOLIO SUBDIVISION

PARCEL
PS NUMBER: 0

Director, Department of Permitting Services



Montgomery County, Maryland

MINI-MEMO

DATE: 8/25/2000

TIME: _____

TO: Gwen Wright

BY: _____

FROM: Eileen Basaman

- Phoned
- Rtrn'd. Call
- Please Call
- Stopped By
- Will Call Again
- Wishes To See You

PHONE: _____

This was hand-delivered to me today by Cary Hoobler; I did not meet with him. I spoke to Ms. Ahearn yesterday; she did not say this would be coming to me. Eileen

Mont Co 2657
MDHIC 14099

CAREY E. HOOBLER

ELLISON CORPORATION
Builders

10907 Jarboe Avenue
Silver Spring, MD 20901

301 681-1411

Statement of Case:

I believe that the H.P.C. has improperly and unfairly decided against my application for a Historic Area Work Permit to build a new house at 3922 Baltimore St., Kensington.

I believe that there was errant and misleading information as well as improperly and arbitrarily applied standards used by the H.P.C. in rendering their decision.

Exhibits

1. Refer back to all exhibits and records related to Board of Appeals under case A-4771.
2. All exhibits listed by Montgomery County in this case.
3. HAWP case #31/6-00C staff report 04/05/00
4. Memo 4/19/2000 and attachments #31/6-00C H.P.C. approval with conditions (Permit #212943)

CTY. ATTORNEY

5 AUG 00 10: 1

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Date: April 12, 2000

MEMORANDUM

TO: Historic Area Work Permit Applicants

FROM: *GW* Gwen Wright, Coordinator
Historic Preservation Section

SUBJECT: Historic Area Work Permit Application - Approval of Application/Release of
Other Required Permits

Enclosed is a copy of your Historic Area Work Permit application, approved by the Historic Preservation Commission at its recent meeting, and a transmittal memorandum stating conditions (if any) of approval.

You may now apply for a county building permit from the Department of Permitting Services (DPS) at 255 Rockville Pike, second floor, in Rockville. Please note that although your work has been approved by the Historic Preservation Commission, it must also be approved by DPS before work can begin.

*** When you file for your building permit at DPS, you must take with you the enclosed forms, as well as the Historic Area Work Permit that will be mailed to you directly from DPS. These forms are proof that the Historic Preservation Commission has reviewed your project. For further information about filing procedures or materials for your county building permit review, please call DPS at 240-777-6370.

If your project changes in any way from the approved plans, either before you apply for your building permit or even after the work has begun, please contact the Historic Preservation Commission staff at 301-563-3400.

Please also note that you must arrange for a field inspection for conformance with your approved HAWP plans. Please inform DPS/Field Services at 240-777-6210 of your anticipated work schedule.

Thank you very much for your patience and good luck with your project!

c:\hawpr.wpd

STAFF NEEDS TO STAMP YOUR PERMIT SET. PLEASE CALL FOR AN APPOINTMENT
PRIOR TO APPLYING TO DPS FOR YOUR BUILDING PERMIT, @ 301-563-3400.

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Date: April 19, 2000

MEMORANDUM

TO: Robert Hubbard, Director
Department of Permitting Services

FROM: *GW* Gwen Wright, Coordinator
Historic Preservation

SUBJECT: Historic Area Work Permit #31/6-00C (Permit #212943)

The Montgomery County Historic Preservation Commission has reviewed the attached application for a Historic Area Work Permit. This application was:

Approved Denied **Approved with Conditions:**

- 1) The historic garage will be moved to the back of Lot 25 and restored, using the original doors and materials (clapboard siding). Special care will be given to retention of the structural members which have been stamped by Sears and Roebuck.
- 2) The existing driveway on Lot 25 will be modified as per the tree survey (attached) with a small area of macadam removed. The driveway will not be extended any further back on the lot.
- 3) Scheme 2 will be used for the new house on Lot 25, with a footprint which is no greater than 862 sf.
- 4) At no time in the future will any additions to the house on Lot 25 which increase the footprint above 862 sf be approved for this site. This will be stipulated by deed by the current property owner prior to transfer of the lot.
- 5) A new grading plan for this site will be provided to HPC staff.
- 6) A landscape proposal for Lot 25 will be provided for HPC approval which includes replacement trees for those being removed as well as sidewalk details.

- 7) A clear tree survey for Lot 25 will be provided to HPC prior to submitting for a building permit for use in reviewing the landscape proposal.
- 8) The doors and windows will be wood, True-divided-light (TDL) or Simulated TDL.
- 9) The porch railing will utilize in-set pickets.
- 10) The shutters will be operable and sized to fit the window opening.
- 11) Any proposal for a new driveway on Lot 27 will need to come back to the HPC as a separate HAWP, with a full tree survey and information on the impact of the driveway construction on existing trees.
- 12) The new house will be one foot lower in absolute elevation than the absolute elevation of the height (roof ridge line) of the house at 3920 Baltimore Street, to be certified by an independent surveyor.

and subject to the general conditions that 1) HPC Staff will review and stamp the construction drawings prior to the applicant's applying for a building permit with DPS; and 2) after issuance of the Montgomery County Department of Permitting Services (DPS) permit, the applicant arrange for a field inspection by calling the DPS Field Services Office at (301) 217-6240 prior to commencement of work and not more than two weeks following completion of work.

THE BUILDING PERMIT FOR THIS PROJECT SHALL BE ISSUED CONDITIONAL UPON ADHERENCE TO THE APPROVED HISTORIC AREA WORK PERMIT (HAWP).

Applicant: Ellison Corporation (Cary Hoobler, Agent)

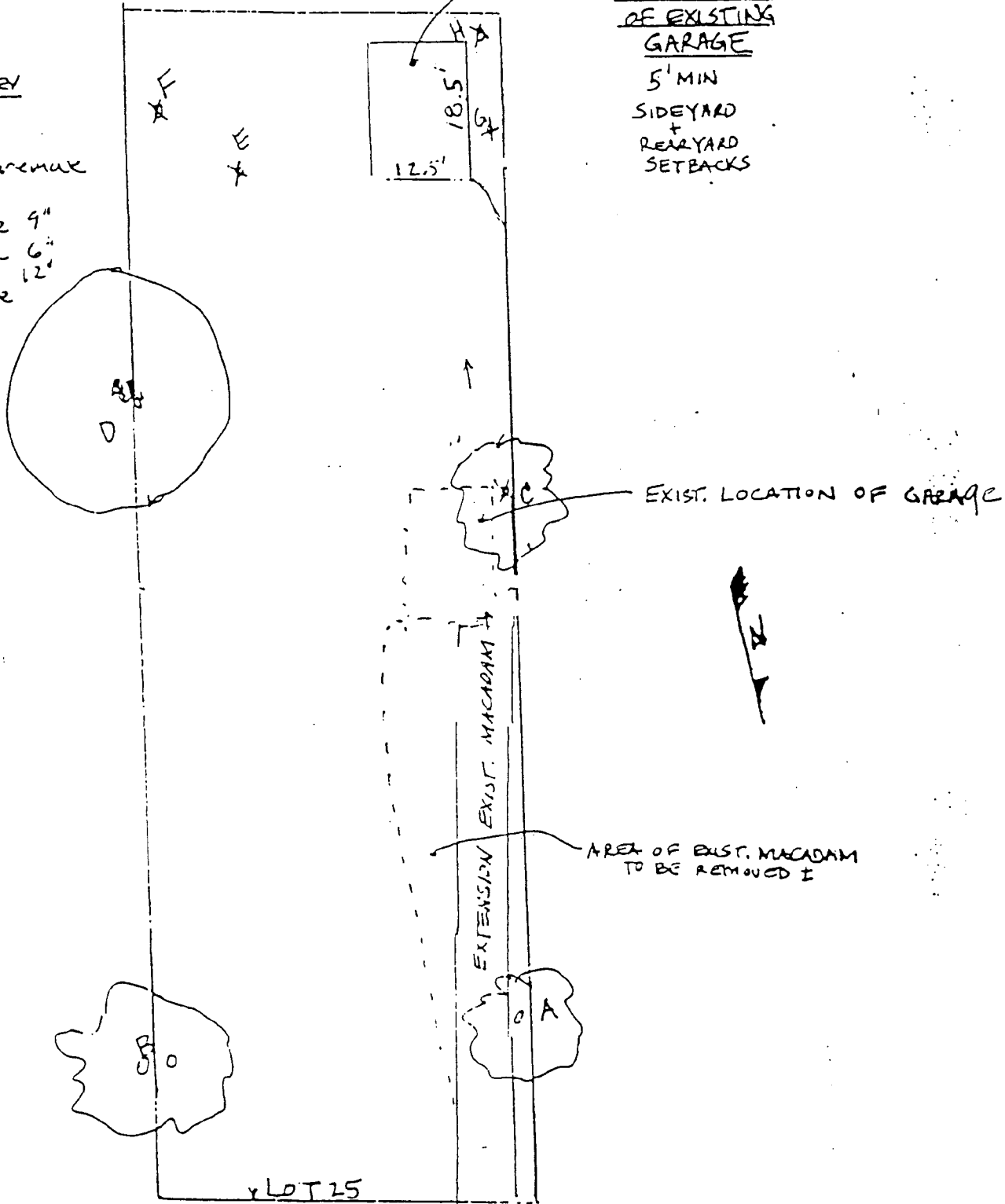
RE: 3922 Baltimore Street, Kensington MD 20895
(Kensington Historic District)

PLAN/SURVEY

- r SAVE
- y SAVE
- zerry SAVE or remove
- lbuld SAVE
- Walnut remove 9"
- " remove 6"
- Cherry remove 12"
- berry remove
- (+trunk)

PROPOSED
RELOCATION
+
RESTORATION
OF EXISTING
GARAGE

5' MIN
SIDEYARD
+
REARYARD
SETBACKS



3922
BALTIMORE ST.

TREE SURVEY (from previous
- 1/26/55.m)



RETURN TO: DEPARTMENT OF PERMITTING SERVICES
250 HUNGERFORD DRIVE, 2nd FLOOR ROCKVILLE, MD 20850
301-217-6376

DPS - #8

HISTORIC PRESERVATION COMMISSION
301/563-3400

APPLICATION FOR
HISTORIC AREA WORK PERMIT

Contact Person: George MYERS

Daytime Phone No.: 301 ~~681-1111~~ 942 9062 ext. 13

Tax Account No.: 1315 3186525

Name of Property Owner: ELLISON CORP. (INDIRECT) Daytime Phone No.: _____

Address: 10907 JABOR AVENUE Silver Spring, Md. 20901
Street Number City State Zip Code

Contractor: same as above Phone No.: _____

Contractor Registration No.: 14099-2657

Agent for Owner: George MYERS Daytime Phone No.: 301 942 9062 x1

LOCATION OF BUILDING/PREMISE

House Number: 3922 Street: Baltimore St.

Town/City: Kensington Nearest Cross Street: Conn. Ave.

Lot: 25 Block: 11 Subdivision: Crawlingta Park

Liber: _____ Folio: _____ Parcel: _____

PART ONE: TYPE OF PERMIT ACTION AND USE

- 1A. CHECK ALL APPLICABLE:
- Construct
 - Extend
 - Alter/Renovate
 - Move
 - Install
 - Wreck/Raze
 - Revision
 - Repair
 - Revocable
- CHECK ALL APPLICABLE:
- A/C
 - Slab
 - Room Addition
 - Porch
 - Deck
 - Shed
 - Solar
 - Fireplace
 - Woodburning Stove
 - Single Family
 - Fence/Wall (complete Section 4)
 - Other: garage

1B. Construction cost estimate: \$ 200 000

1C. If this is a revision of a previously approved active permit, see Permit # NO

PART TWO: COMPLETE FOR NEW CONSTRUCTION AND EXTEND/ADDITIONS

2A. Type of sewage disposal: 01 WSSC 02 Septic 03 Other: _____

2B. Type of water supply: 01 WSSC 02 Well 03 Other: _____

PART THREE: COMPLETE ONLY FOR FENCE/RETAINING WALL

3A. Height _____ feet _____ inches

- 3B. Indicate whether the fence or retaining wall is to be constructed on one of the following locations:
- On party line/property line
 - Entirely on land of owner
 - On public right of way/easement

I hereby certify that I have the authority to make the foregoing application, that the application is correct, and that the construction will comply with plans approved by all agencies listed and I hereby acknowledge and accept this to be a condition for the issuance of this permit.

Signature of owner or authorized agent: (George Myers) Date: 3.2.2000

Approved: w/conditions For Chairman, Historic Preservation Commission
Disapproved: _____ Signature: [Signature] Date: 4/10/00
Application/Permit No.: 212943 Date Filed: 3/6/00 Date Issued: _____

**THE FOLLOWING ITEMS MUST BE COMPLETED AND THE
REQUIRED DOCUMENTS MUST ACCOMPANY THIS APPLICATION.**

1. WRITTEN DESCRIPTION OF PROJECT

a. Description of existing structure(s) and environmental setting, including their historical features and significance:

3922 is a separate building lot sold by
BH Warner in 1903.

(see previous HAWP applications
on this property.)

b. General description of project and its effect on the historic resource(s), the environmental setting, and, where applicable, the historic district:

New construction of "cottage" style dwelling
restore + relocate existing garage, and
build an additional single car garage.

2. SITE PLAN

Site and environmental setting, drawn to scale. You may use your plat. Your site plan must include:

- the scale, north arrow, and date;
- dimensions of all existing and proposed structures; and
- site features such as walkways, driveways, fences, ponds, streams, trash dumpsters, mechanical equipment, and landscaping.

3. PLANS AND ELEVATIONS

You must submit 2 copies of plans and elevations in a format no larger than 11" x 17". Plans on 8 1/2" x 11" paper are preferred.

- Schematic construction plans**, with marked dimensions, indicating location, size and general type of walls, window and door openings, and other fixed features of both the existing resource(s) and the proposed work.
- Elevations (facades), with marked dimensions, clearly indicating proposed work in relation to existing construction and, when appropriate, context. All materials and fixtures proposed for the exterior must be noted on the elevations drawings. An existing and a proposed elevation drawing of each facade affected by the proposed work is required.

4. MATERIALS SPECIFICATIONS

General description of materials and manufactured items proposed for incorporation in the work of the project. This information may be included on your design drawings.

5. PHOTOGRAPHS

- Clearly labeled photographic prints of each facade of existing resource, including details of the affected portions. All labels should be placed on the front of photographs.
- Clearly label photographic prints of the resource as viewed from the public right-of-way and of the adjoining properties. All labels should be placed on the front of photographs.

6. TREE SURVEY

If you are proposing construction adjacent to or within the dripline of any tree 6" or larger in diameter (at approximately 4 feet above the ground), you must file an accurate tree survey identifying the size, location, and species of each tree of at least that dimension.

7. ADDRESSES OF ADJACENT AND CONFRONTING PROPERTY OWNERS

For **ALL** projects, provide an accurate list of adjacent and confronting property owners (not tenants), including names, addresses, and zip codes. This list should include the owners of all lots or parcels which adjoin the parcel in question, as well as the owner(s) of lot(s) or parcel(s) which lie directly across the street/highway from the parcel in question. You can obtain this information from the Department of Assessments and Taxation, 51 Monroe Street, Rockville, (301)279-1355.

PLEASE PRINT (IN BLUE OR BLACK INK) OR TYPE THIS INFORMATION ON THE FOLLOWING PAGE.
PLEASE STAY WITHIN THE GUIDES OF THE TEMPLATE, AS THIS WILL BE PHOTOCOPIED DIRECTLY ONTO MAILING LABELS.

HISTORIC PRESERVATION COMMISSION STAFF REPORT

Address:	3922 Baltimore Street	Meeting Date:	04/12/00
Resource:	Kensington-Historic District	Report Date:	04/05/00
Review:	HAWP	Public Notice:	03/29/00
Case Number:	31/6-00C	Tax Credit:	N/A
Applicant:	Ellison Corporation (Cary Hoobler, Agent)	Staff:	Robin Ziek
PROPOSAL:	New Construction	RECOMMEND:	Approval w/Conditions

PROJECT DESCRIPTION

RESOURCE: Kensington Historic District, Primary Resource (1880s, 1910-1930)

(DEEDS: SEE CIRCLE 41-46)

PROJECT PROPOSAL

1. Construct a new house at Lot 25 Block 11. This will be a major alteration to the property associated with the Primary Resource at 3920 Baltimore Street (see Circle 10, 33) as it will develop the house's west side yard.
2. Move the existing historic garage on Lot 25 to an alternate site: either at the rear of Lot 25, or on Lot 27 (see Circle 11, 12). The historic garage would be rehabilitated at either location. The proposal to move it to Lot 27 also includes the installation of a new driveway.

The applicant has submitted a proposal and an alternate which reflects concerns about the size of the footprint and lot coverage. The one proposal has a foundation of 944 sf (Scheme 1 - see Circle 14-21); and, the alternate has a foundation footprint of 859.3 sf (Scheme 2 - see Circle 22-29). Either measurement excludes the square footage for the front porch (83 sf in Scheme 1; or, 100 sf in Scheme 2), the rear stoop (25 sf in Scheme 1 and 2), and for the chimney (10 sf).

The new house will have a full basement (with the potential for two rooms and a full bathroom as well as a mechanical room), and a first and second floor. The building is designed as a cottage with no attic story. The materials include wood clapboard and wood shingles, wood trim, and asphalt shingles for the roof. There are no details on the windows or doors, or the porch railings.

BACKGROUND FOR EVALUATION OF THE APPLICATION

Kensington has been protective of its historic significance for a long time, as evidenced by the work undertaken by its civic groups (Kensington Historical Society, Kensington Local Advisory Panel, Kensington Land Trust), by its listing in the National Register of Historic Places (1980), and by its designation on the County's *Master Plan for Historic Preservation* (1986). There are nomination forms and documentation available in support of the National Register listing, and the County's designation.

In further support of the district, the HPC commissioned a planning study in 1992, *The Vision of Kensington: A Long-Range Preservation Plan (Vision/Plan)*, to evaluate Kensington in terms of its special characteristics. This was commissioned to aid in future decisions which might affect the district, especially new construction. The planning study evaluated specific qualities of the historic district, such as open space, distance between structures, and patterns of development, which all contribute to the sense of "place" of the district. Two areas were identified in the district: the Historic Residential Core, and the Peripheral Residential area; the subject property is in the Historic Residential Core. The *Vision/Plan* was included in the Executive Regulations for the HPC adopted by the County Council in 1997, and the HPC is directed by these Regulations to use it when considering HAWP applications.

The *Vision/Plan* was also adopted by the Town of Kensington and is available at the Kensington Town offices, at the Kensington library, and at the HPC offices.

APPLICATION BACKGROUND

The applicant, Ellison Corporation, is a contract purchaser with the property owner, Ms. Jeannie Ahearn. Staff and the HPC have reviewed several proposals for residential development of Lot 25 in the past five years, from two separate developers. None of the previous proposals met the development standards outlined in the *Vision/Plan* (page 58), and the applicants have been directed, with consistency, to review these standards and comply with them. Previous staff reports on construction proposals for this lot are available through the HPC, and provide in-depth discussion on relevant issues such as the history of Kensington, and "integrity" as a component of a historic district.

STAFF DISCUSSION

This is the first proposal to come before the HPC which comes close to meeting the development standards outlined in the *Vision/Plan*. The character-defining features of the district include the broad range of late 19th and early 20th century architectural styles, the extensive spacing between individual homes in the Historic Residential Core, and the effect of the generous amounts of open space which have been developed as gardens, such that the district is characterized as a "Victorian Garden Suburb" (National Register nomination).

The development standards were arrived at by analyzing existing conditions in the historic district in 1992, noting that the Kensington Historic District was designated by the County Council in 1986 and that alterations undertaken prior to 1986 were **not** reviewed by the HPC. The existing conditions reflect the unique environment in Kensington in 1992, which retained a high level of integrity and late-19th and early 20th century character-defining features despite many alterations and changes prior to that date.

The development standards for the Kensington Historic District, Historic Residential Core, are:

- 1: *Utilize a minimum of two lots, or 15,000 sf.*
- 2: *There should be a maximum lot coverage of 10%.*
- 3: *The minimum front yard setback should be 35';
The side yard setbacks should be 25'.*

With regard to the current application, staff notes the following:

RE: 1 In several locations in the district, it would be possible for someone to accumulate two adjacent lots (from two separate owners, typically), or 15,000 sf to meet the first standard. In the case of Lot 25, this is not possible as the lot in question is located between two lots with existing dwellings (both Primary Resources). While not meeting the letter of the standard, the applicant strives to maintain the effective open space by setting the proposed new house 70' back on the lot in contrast with the existing 40' setback for the historic structures. In addition, the applicant proposes to maintain the existing driveway, and add a small walk along the front of the house so that there will be no direct link between the house and street (see Circle //). This will contrast to the typical historic resource which has a strong and highly visible front sidewalk leading from the public right-of-way to the front door of the house. The front yard of the new house will continue to serve, visually, as a side yard between both of the Primary Resources.

RE: 2 Lot 25 has 8,625 sf. The stipulated 10% lot coverage amounts to a footprint of 862 sf. In the past, staff has evaluated proposed lot coverage as a guide which stipulates 90% of the lot to be open space, and available for garden development. This approach has been taken because the character-defining features of Kensington include elements of the environmental setting, such as the wide spacing between houses, and available garden space for trees, shrubs, and lawn. This is not the same approach taken by DPS for building permits, where lot coverage is computed in terms of enclosed area, exclusive of porches. This difference has been debated by the staff and applicant. That said, it is important to note that the proposed house in Scheme 2 comes close to the 10% lot coverage if one excludes the porch and stoop and chimney (as well as the historic garage, which will be further discussed below).

Staff notes that the effort to reduce the lot coverage of the "footprint" from Scheme 1 to 2 involves some real reductions as well as some apparent expansions. Staff feels that this

illustrates flexibility on the part of the applicant and a willingness to work with his architect to develop a proposal which will respond to the development standards.

RE: 3 The front yard set back can be achieved in the proposal. The applicant, however, proposes to achieve the side yard setbacks through the retention of apparent open space between the Primary Resources with the additional 35' front yard setback beyond the stipulated 35'. Staff feels that the open space between the Primary Resources is accentuated by not installing a sidewalk from the street to the front door of the new house, and by leaving the front yard in its present state.

Staff feels that the applicant should combine the best features of Scheme 1 and 2, and come to the HPC with a proposal that meets the 10% lot coverage stipulated in the *Vision/Plan* because the current proposal is *very* close. Staff notes that the proposal will not meet the exact 10% lot coverage anyway, because the calculation excludes the historic garage (231 sf), the front porch, and back stoop and the chimney. None of these areas could be planted and might easily be included in the calculation for lot coverage. It should be noted, too, that the applicant has calculated the footprint based on the foundation perimeter only, and is not counting bay windows which are projected over the ground in the square footage.

A very positive part of the proposal in Scheme 2 is that the house is narrow (24') at the front edge, and slightly wider (28') at the middle of the house. The house then is reduced in width at the rear of the house, so that the roof is accentuated rather than the wall. The front porch is set under the roof, so that it doesn't project towards the street. In this way, this is not a prominent element, although porches are characteristic of the district and a modest porch provides a sense of compatibility. The house is proposed as 4' above grade, providing a typical condition in the district, which also permits adequate light in the basement to make that space desirable. The height of the house is 28' to the ridge lines, including the 4' foundation. This is similar to the overall height of the adjacent house at 3920 Baltimore Street, but no greater. Staff feels that the narrow width of the proposed house, as well as the use of the front-facing gable, will serve to reduce the sense of height of the house.

Staff supports the retention of the historic garage on Lot 25 rather than moving it to the opposite side of the associated residence because it will then continue to reflect the historic unity of property associated with the Primary Resource at 3920 Baltimore Street. If the garage were moved to Lot 27, it would look as if it had always been there and there would be no evidence of the existing three-lot conformation. In addition, staff notes that a requested tree survey has not been provided for HPC consideration of a proposed new driveway on Lot 27. Field inspection of the property indicates that there are two mature trees along the edge of the property in this vicinity which would be affected by the proposed driveway (see Circle //), and these are the only two remaining trees on this side of the property by the edge of the road. Several dead or dying trees have been removed under the HPC procedures, but no replacement trees were planted (or mandated) in this area.

Given the small size of the historic garage, staff feels that the existing driveway should not be extended to the rear of the yard. This will help to minimize the loss of garden space, and

promote a green space between the new house and the adjacent house to the west. The historic garage will serve for storage or a garden shed, as is typical behind many homes in the district. The location at the rear of the yard will require the removal of several trees (see Circle 13), and the HPC may wish to stipulate the need for replacement trees for this property. This could be done through the mechanism of a landscape plan for the newly developed lot. This will also provide a means of reviewing the impact on its neighbors vis-a-vis the environmental setting of this property in the historic district.

Staff notes that proposals for new construction in any historic district require careful scrutiny because the preservation of the overall character and feel of the district are key. Within a district, each proposal must be evaluated for its effect on both its immediate neighborhood and on the overall district. At this site, and working with the *Vision/Plan*, staff has consistently advised that only a small structure will work without compromising the character-defining features of Kensington. It should be clear, from the explicit regard to elements such as foundation height, footprint, width of the house, and roof height, that this proposal should not be regarded as merely the first step towards achieving a large house on this lot. In fact, given the efforts that have gone into assuring that any construction on this lot be modest in size, staff feels that there should be protections in place to assure that this is the final size and form of construction on this lot. Historic districts are different than those parts of the county which have not been designated as historic, and the protection of the character of these small historic portions of the county is a value which benefits everyone.

STAFF RECOMMENDATION

Staff recommends, **with the following conditions**, that the Commission find this proposal consistent with the purposes of Chapter 24A-8(b)2:

The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site, or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter;

and with Secretary of the Interior's Standards for Rehabilitation #2:

The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

CONDITIONS:

- 1) The historic garage will be moved to the back of Lot 25 and restored, using the original doors and materials (clapboard siding). Special care will be given to retention of the structural members which have been stamped by Sears and Roebuck.
- 2) The existing driveway on Lot 25 will be modified as per the tree survey (on Circle 13), with a small area of macadam removed. The driveway will not be extended any further back on the lot.

- 3) The new house on Lot 25 will be built with a footprint which is no greater than 862 sf.
- 4) At no time in the future will any additions to the house on Lot 25 which increase the footprint above 862 sf be approved for this site. This will be stipulated by deed by the current property owner prior to transfer of the lot.
- 5) A new grading plan for this site will be provided to HPC staff.
- 6) A landscape proposal for Lot 25 will be provided for HPC approval which includes replacement trees for those being removed as well as sidewalk details.
- 7) A clear tree survey for Lot 25 will be provided to HPC prior to submitting for a building permit for use in reviewing the landscape proposal.
- 8) The doors and windows will be wood, TDL or simulated TDL.
- 9) The porch railing will utilize in-set pickets.
- 10) The shutters will be operable and sized to fit the window opening.
- 11) Any proposal for a new driveway on Lot 27 will need to come back to the HPC as a separate HAWP, with a full tree survey and information on the impact of the driveway construction on existing trees.

and subject to the general condition that, after issuance of the Montgomery County Department of Permitting Services (DPS) permit, the applicant arrange for a field inspection by calling the DPS Field Services Office at (240)777-6210 prior to commencement of work and not more than two weeks following completion of work.



HISTORIC PRESERVATION COMMISSION
301/563-3400

APPLICATION FOR HISTORIC AREA WORK PERMIT

Contact Person: George Myers
 Daytime Phone No.: 301 947 9062
 Tax Account No.: 1315 3186925
 Name of Property Owner: ELLISON CORP. (CORPORATE) Daytime Phone No.:
 Address: 10907 JACOBSON AVENUE Silver Spring, Md. 20910
Street Number City State Zip Code
 Contractor: Sawco abac Phone No.:
 Contractor Registration No.: 14099-2657
 Agent for Owner: George Myers Daytime Phone No.: 301 947 9062

LOCATION OF BUILDING/PREMISE

House Number: 3922 Street: Baltimore St.
 Town/City: Kensington Nearest Cross Street: Camden Ave.
 Lot: 25 Block: 11 Subdivision: Kensington Park
 Liber: Folio: Parcel:

PART ONE: TYPE OF PERMIT ACTION AND USE

1A. CHECK ALL APPLICABLE:

<input checked="" type="checkbox"/> Construct	<input type="checkbox"/> Extend	<input type="checkbox"/> Alter/Renovate	<input type="checkbox"/> A/C	<input type="checkbox"/> Slab	<input type="checkbox"/> Room Addition	<input type="checkbox"/> Porch	<input type="checkbox"/> Deck	<input type="checkbox"/> Shed
<input checked="" type="checkbox"/> Move	<input type="checkbox"/> Install	<input type="checkbox"/> Wreck/Raze	<input type="checkbox"/> Solar	<input type="checkbox"/> Fireplace	<input type="checkbox"/> Woodburning Stove	<input type="checkbox"/> Single Family		
<input type="checkbox"/> Revision	<input checked="" type="checkbox"/> Repair	<input type="checkbox"/> Revocable	<input type="checkbox"/> Fence/Wall (complete Section 4)		<input type="checkbox"/> Other: <u>garage</u>			

1B. Construction cost estimate: \$ 200,000

1C. If this is a revision of a previously approved active permit, see Permit # 216

PART TWO: COMPLETE FOR NEW CONSTRUCTION AND EXTEND/ADDITIONS

2A. Type of sewage disposal: 01 WSSC 02 Septic 03 Other:
 2B. Type of water supply: 01 WSSC 02 Well 03 Other:

PART THREE: COMPLETE ONLY FOR FENCE/RETAINING WALL

3A. Height _____ feet _____ inches
 3B. Indicate whether the fence or retaining wall is to be constructed on one of the following locations:
 On party line/property line Entirely on land of owner On public right of way/easement

I hereby certify that I have the authority to make the foregoing application, that the application is correct, and that the construction will comply with plans approved by all agencies listed and I hereby acknowledge and accept this to be a condition for the issuance of this permit.

George Myers 3-2-2000
 Signature of owner or authorized agent Date

Approved: _____ For Chairperson, Historic Preservation Commission
 Disapproved: _____ Signature: _____ Date: _____
 Application/Permit No.: 212943 Date Filed: 3/6/00 Date Issued: _____

7

3016.00C

**THE FOLLOWING ITEMS MUST BE COMPLETED AND THE
REQUIRED DOCUMENTS MUST ACCOMPANY THIS APPLICATION.**

1. WRITTEN DESCRIPTION OF PROJECT

- a. Description of existing structure(s) and environmental setting, including their historical features and significance:

3922 is a separate building lot sold by
Bill Warner in 1903.
(See previous H.A.U.P. applications
on this property.)

- b. General description of project and its effect on the historic resource(s), the environmental setting, and, where applicable, the historic district:

New construction of "cottage" style dwelling.
restore + relocate existing garage, and
build an additional single-car garage.

2. SITE PLAN

Site and environmental setting, drawn to scale. You may use your plat. Your site plan must include:

- the scale, north arrow, and date;
- dimensions of all existing and proposed structures; and
- site features such as walkways, driveways, fences, ponds, streams, trash dumpsters, mechanical equipment, and landscaping.

3. PLANS AND ELEVATIONS

You must submit 2 copies of plans and elevations in a format no larger than 11" x 17". Plans on 8 1/2" x 11" paper are preferred.

- Schematic construction plans**, with marked dimensions, indicating location, size and general type of walls, window and door openings, and other fixed features of both the existing resource(s) and the proposed work.
- Elevations (facades)**, with marked dimensions, clearly indicating proposed work in relation to existing construction and, when appropriate, context. All materials and fixtures proposed for the exterior must be noted on the elevations drawings. An existing and a proposed elevation drawing of each facade affected by the proposed work is required.

4. MATERIALS SPECIFICATIONS

General description of materials and manufactured items proposed for incorporation in the work of the project. This information may be included on your design drawings.

5. PHOTOGRAPHS

- Clearly labeled photographic prints of each facade of existing resource, including details of the affected portions. All labels should be placed on the front of photographs.
- Clearly label photographic prints of the resource as viewed from the public right-of-way and of the adjoining properties. All labels should be placed on the front of photographs.

6. TREE SURVEY

If you are proposing construction adjacent to or within the dripline of any tree 6" or larger in diameter (at approximately 4 feet above the ground), you must file an accurate tree survey identifying the size, location, and species of each tree of at least that dimension.

7. ADDRESSES OF ADJACENT AND CONFRONTING PROPERTY OWNERS

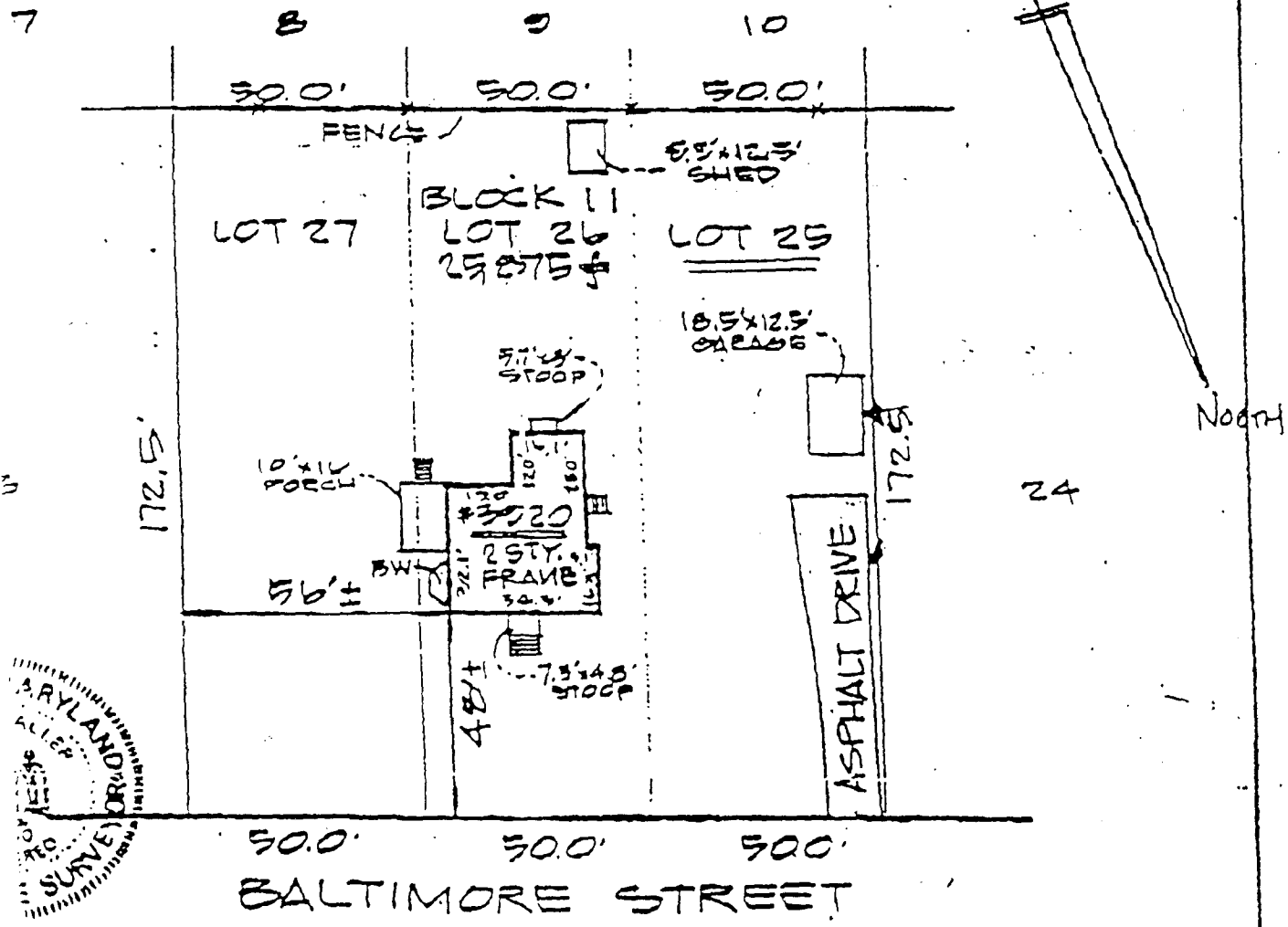
For **ALL** projects, provide an accurate list of adjacent and confronting property owners (not tenants), including names, addresses, and zip codes. This list should include the owners of all lots or parcels which adjoin the parcel in question, as well as the owner(s) of lot(s) or parcel(s) which lie directly across the street/highway from the parcel in question. You can obtain this information from the Department of Assessments and Taxation, 51 Monroe Street, Rockville, (301/279-1355).

PLEASE PRINT (IN BLUE OR BLACK INK) OR TYPE THIS INFORMATION ON THE FOLLOWING PAGE.
PLEASE STAY WITHIN THE GUIDES OF THE TEMPLATE, AS THIS WILL BE PHOTOCOPIED DIRECTLY ONTO MAILING LABELS.

33

LOCATION FOR THIS PURPOSE ONLY - NOT TO BE USED FOR DETERMINING PROPERTY LINES. PROPERTY COORDINATES NOT GUARANTEED BY THIS LOCATION

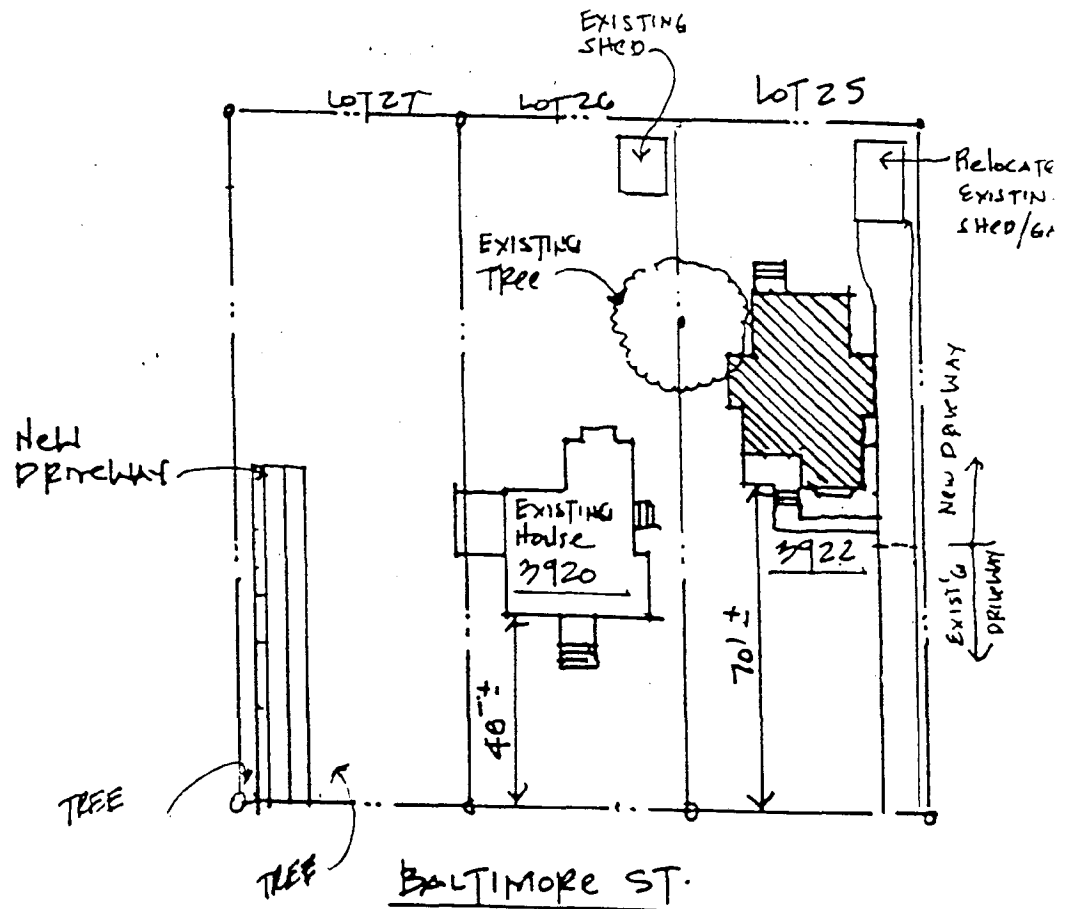
HOUSE LOCATION LOTS 25, 26 & 27 BLOCK 11 KENSINGTON PARK MONTGOMERY COUNTY, MD.



CERTIFICATE THAT THE POSITION OF ALL THE POINTS ON THE ABOVE DESCRIBED IS CAREFULLY ESTABLISHED BY A SURVEY AND UNLESS OTHERWISE NOTED NO ENCROACHMENTS	REFERENCES PLAN BK B PLAN NO 4		ALLEN ASSOCIATES P.O. BOX 8263 SILVER SPRING, MARYLAND 20906 301-871-2154	
	LIBER FOLIO	DATE OF SURVEY WALL CHECK NEAR LOC. 5-25-88 BOUNDARY	SCALE 1" = 40' DRAWN BY BA JOB NO. 801188	

A purpose only - not to be used for determining property lines. This is not a flood plain per existing records unless otherwise shown, was obtained from MNCSP, & P.C.

10



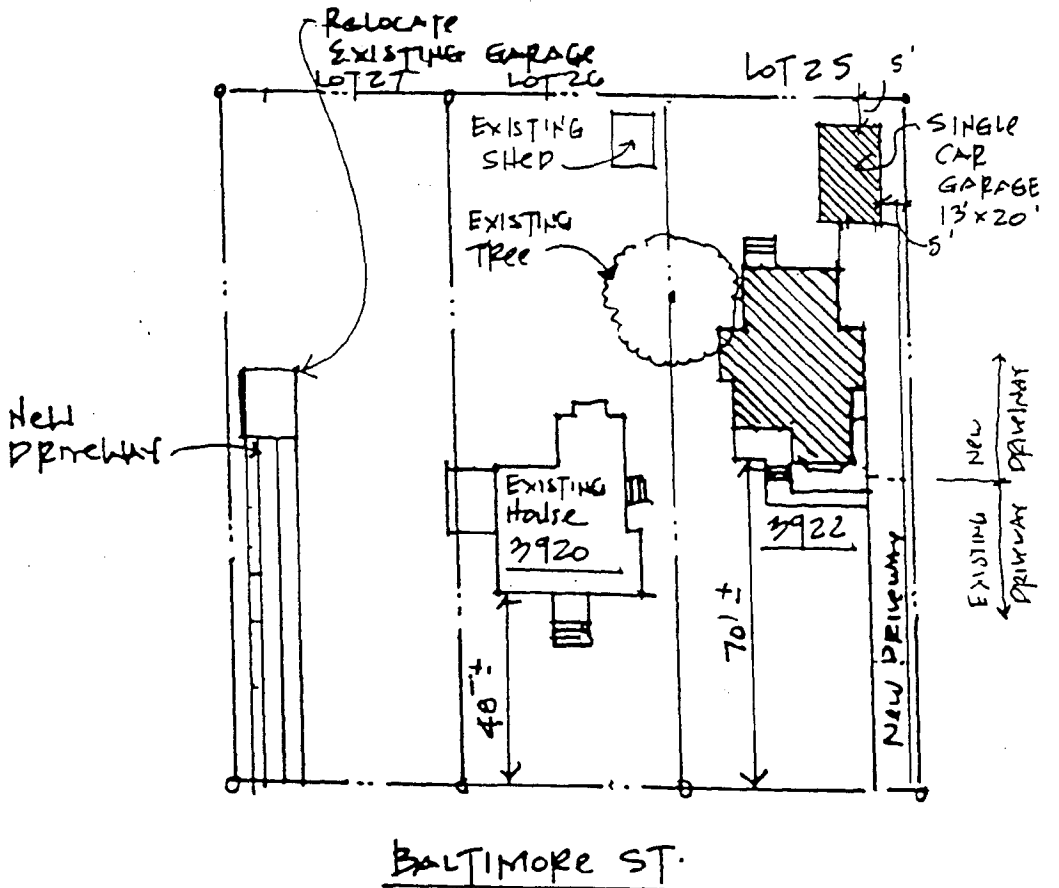
SITE PLAN: OPTION # 1

3-2-2000

1" = 40'

GTM ARCHITECTS
 10415 Armory Avenue
 KENSINGTON, MARYLAND 20895
 (301) 942-9062

(11)



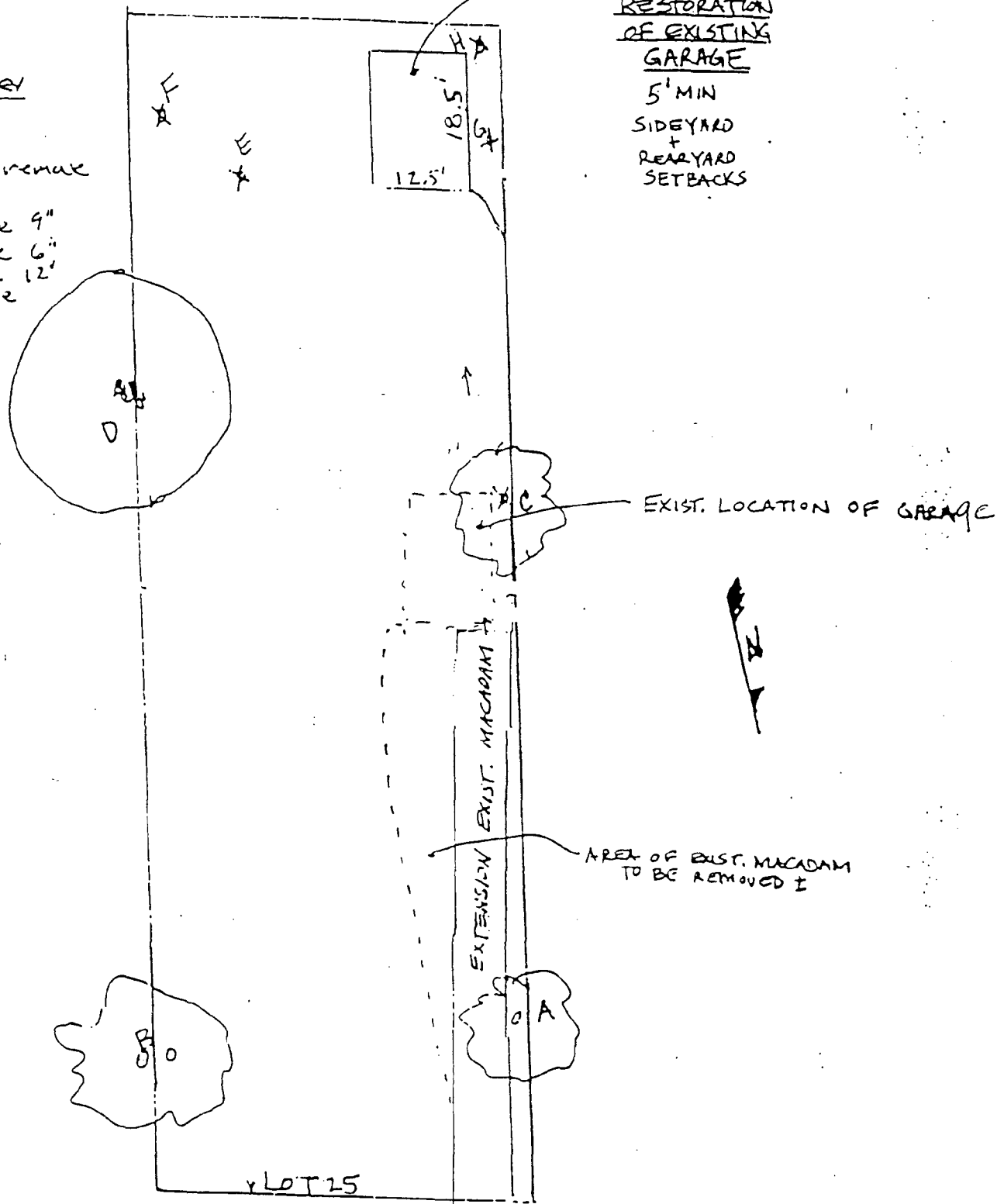
SITE PLAN - OPTION # 2

3.2.2000. 1" = 40'

GTM ARCHITECTS
 10415 Armory Avenue
 KENSINGTON, MARYLAND 20895
 (301) 942-9062

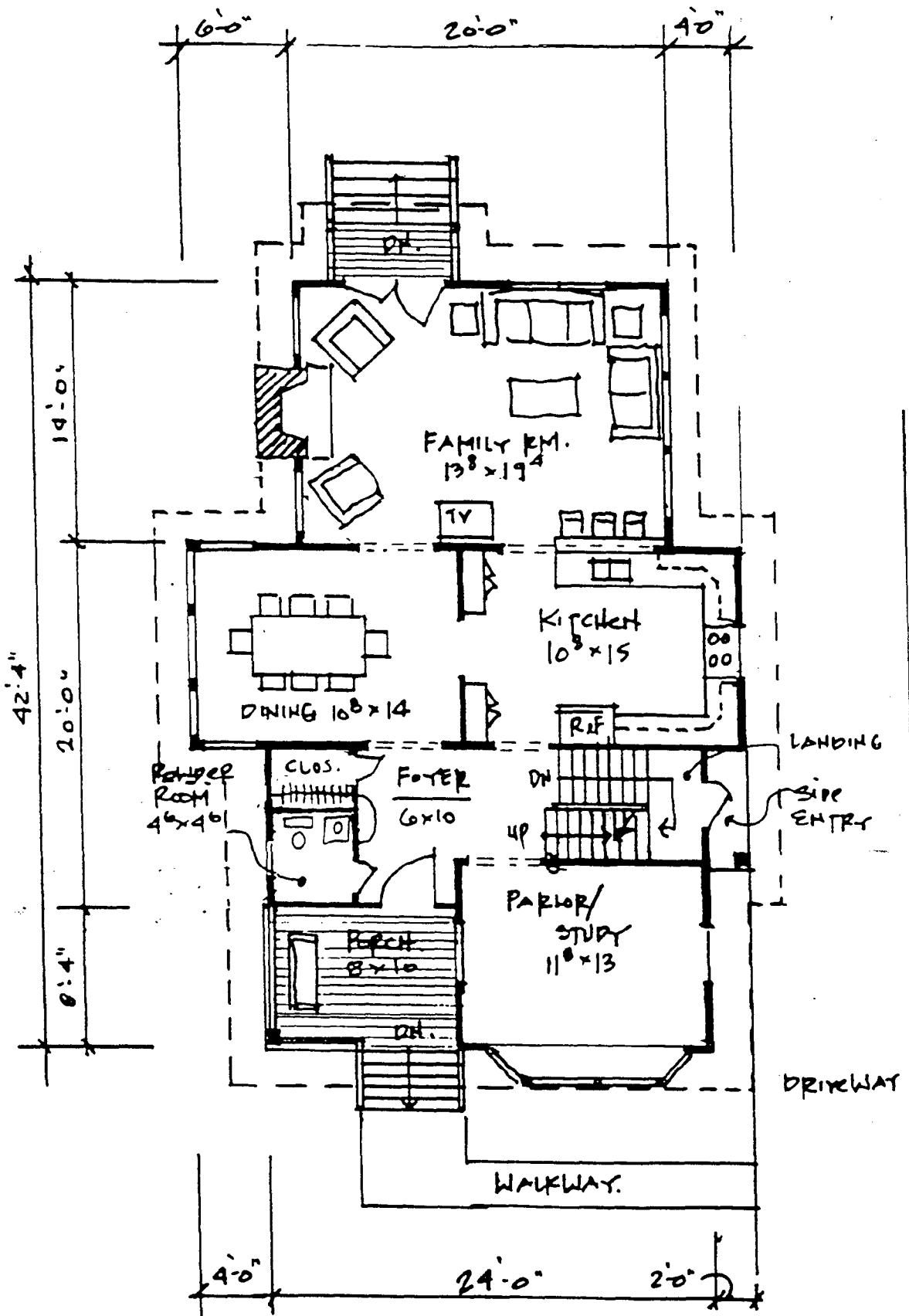
PLAN/SURVEY
 SAVC.
 SAVC
 any save or remove
 old save
 Walnut remove 9"
 " remove 6"
 Cherry remove 12'
 xerry remove
 (trunk)

PROPOSED
RELOCATION
 +
RESTORATION
OF EXISTING
GARAGE
 5' MIN
 SIDEYARD
 +
 REARYARD
 SETBACKS



3922
 BALTIMORE ST.

TREE SURVEY (from previous submission)



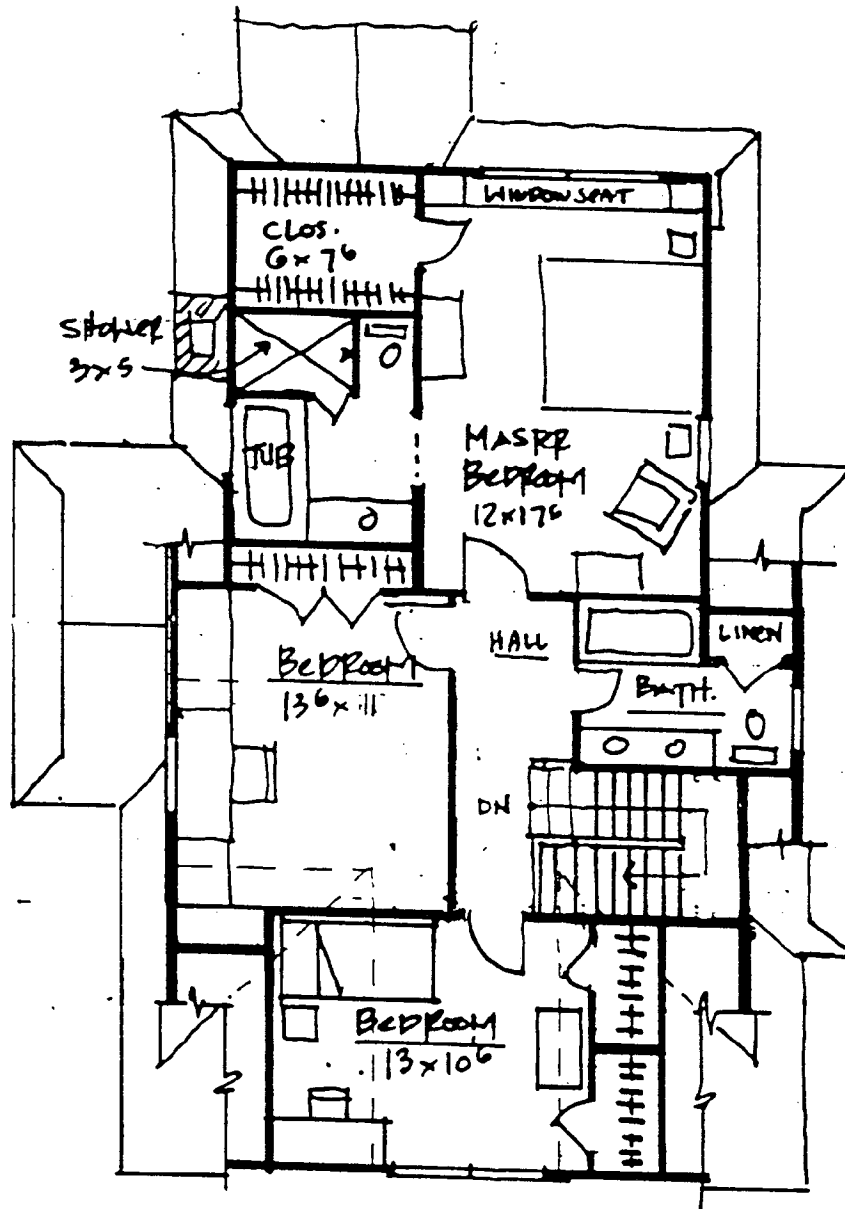
FIRST FLOOR PLAN

1/8" = 1'-0"

944'± FOOTPRINT
(FOUNDATION)

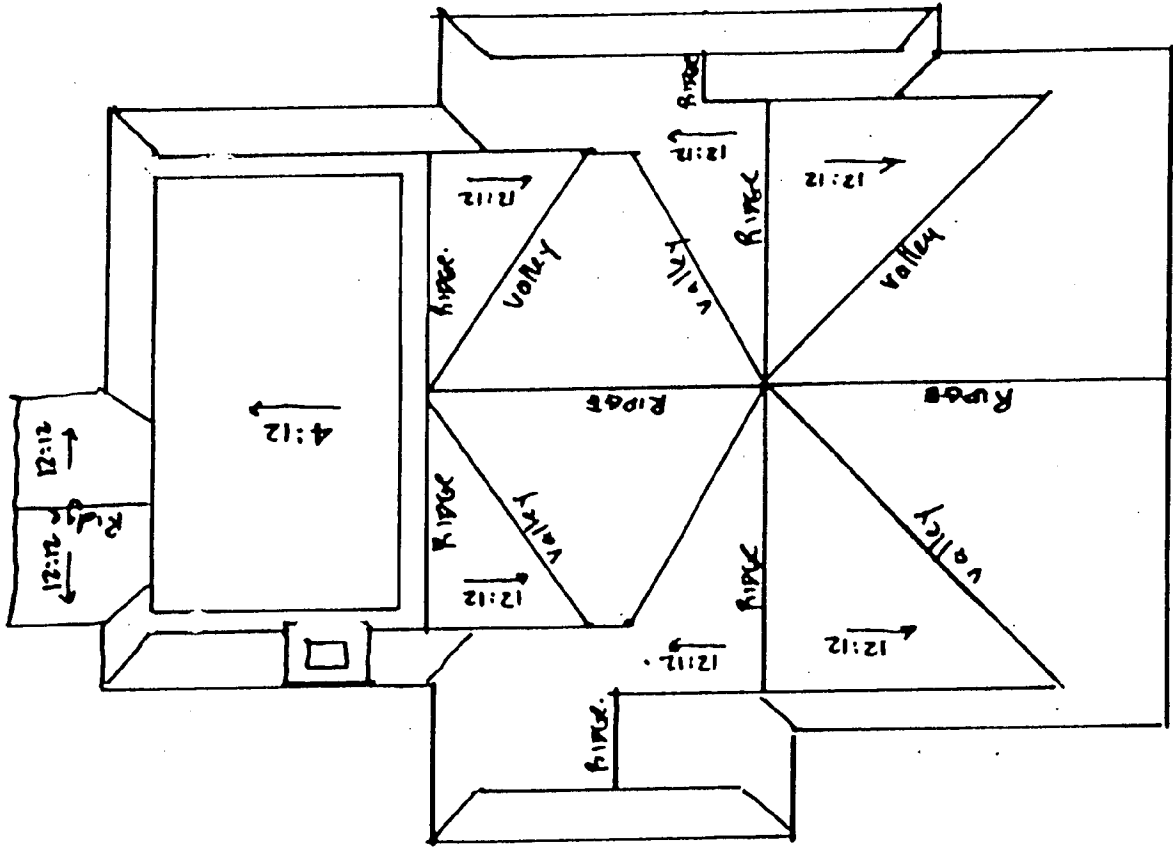
83'SF (FRONT PORCH)
25'SF (REAR STAMP)

14

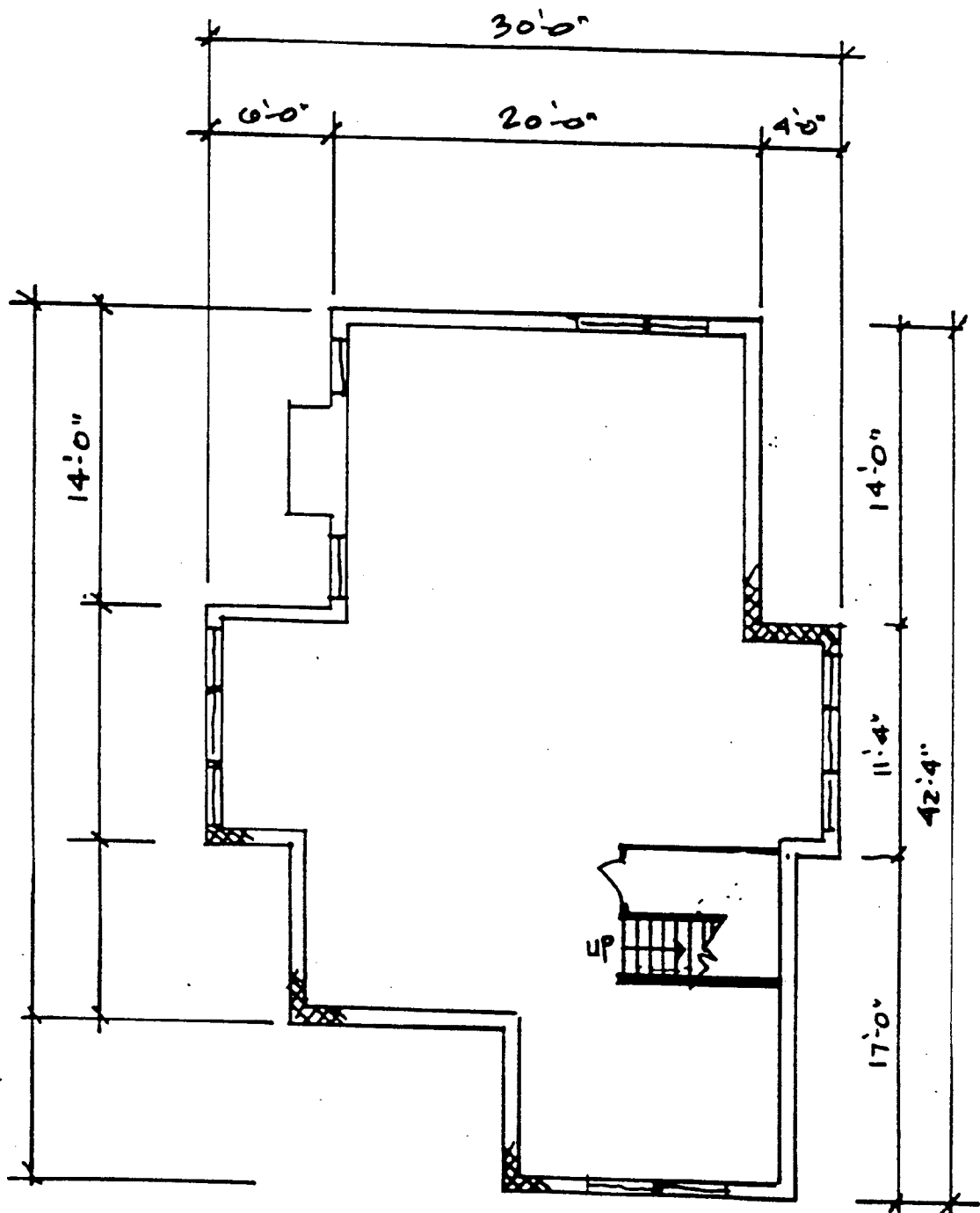


SECOND FLOOR PLAN

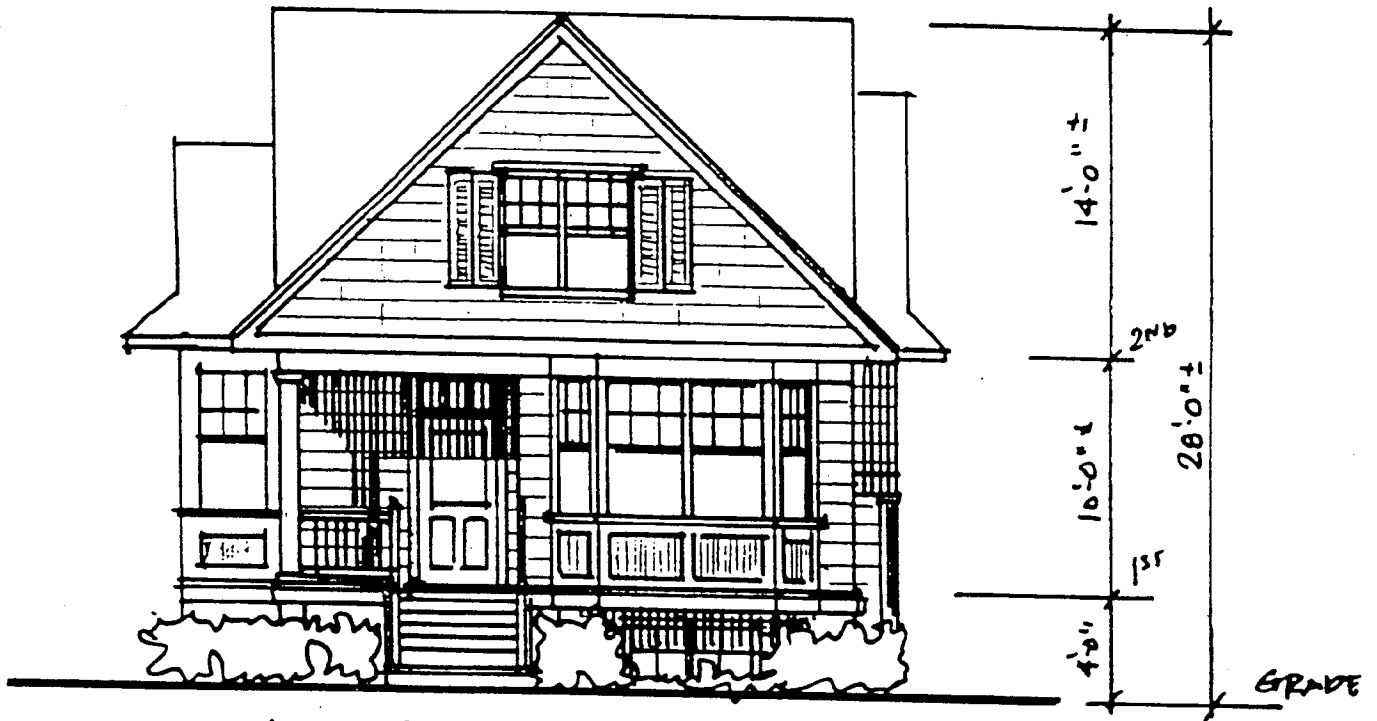
$\frac{1}{8}'' = 1'-0''$



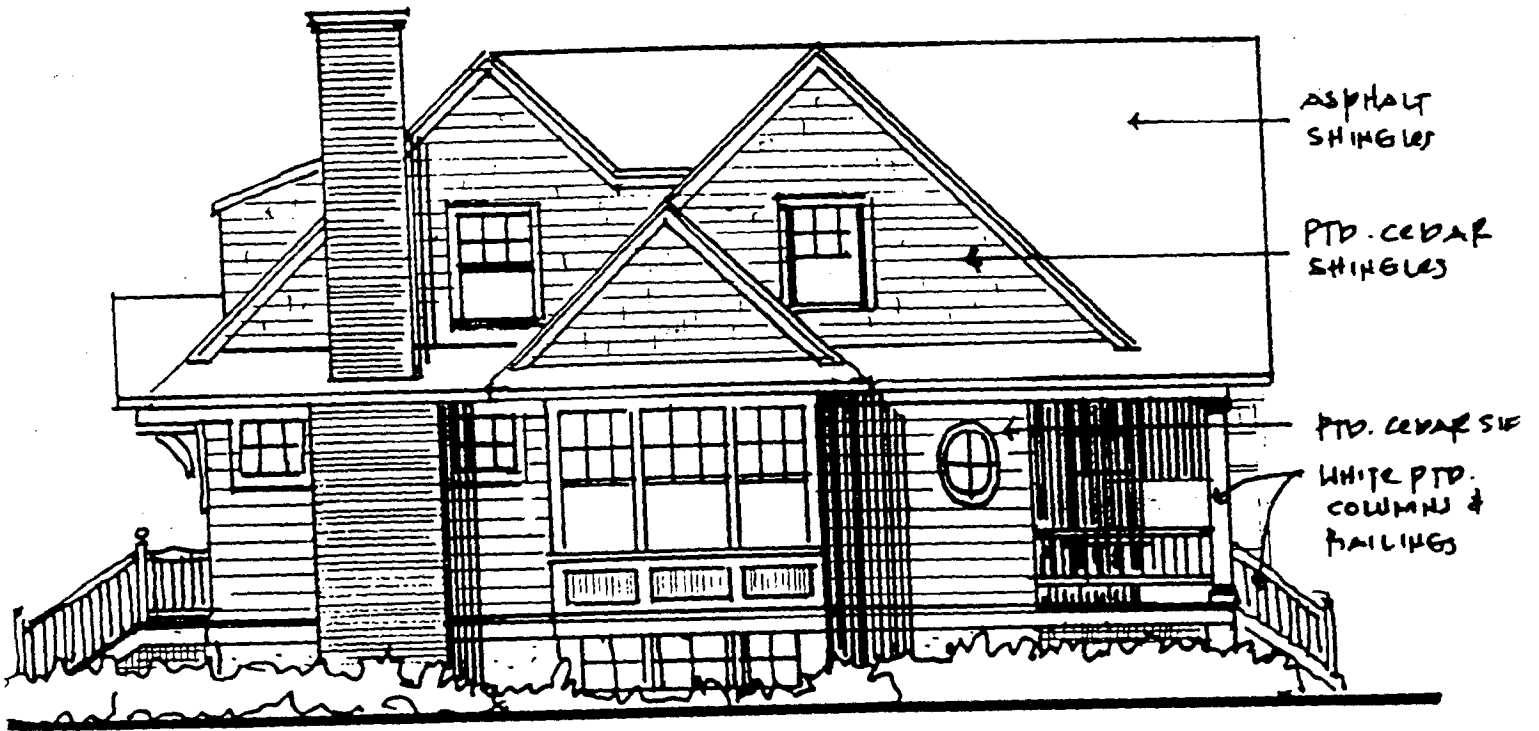
ROOF PLAN
 "2-1=5/8"
 1/6=1/8"



BASEMENT/FOUNDATION PLAN
 1/8" = 1'-0" 944 SF FOOTPRINT



FRONT (NORTH) ELEVATION
 $\frac{1}{8}'' = 1'-0''$



EAST (SIDE) ELEVATION

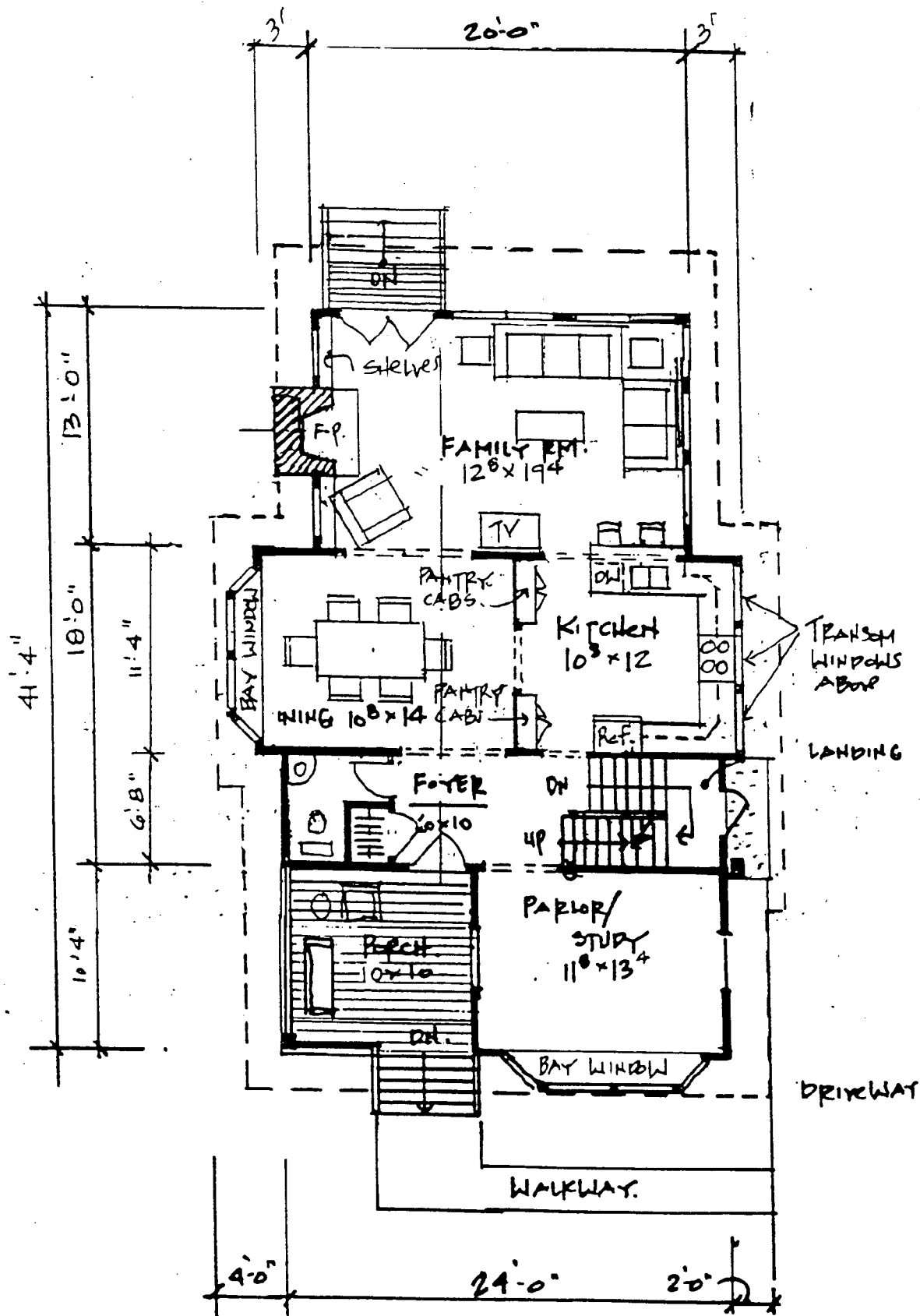
$\frac{1}{8}'' = 1'-0''$



SIDE (WEST) ELEVATION
1/8" = 1'-0"



REAR (SOUTH) ELEVATION
 $\frac{1}{8}'' = 1'-0''$

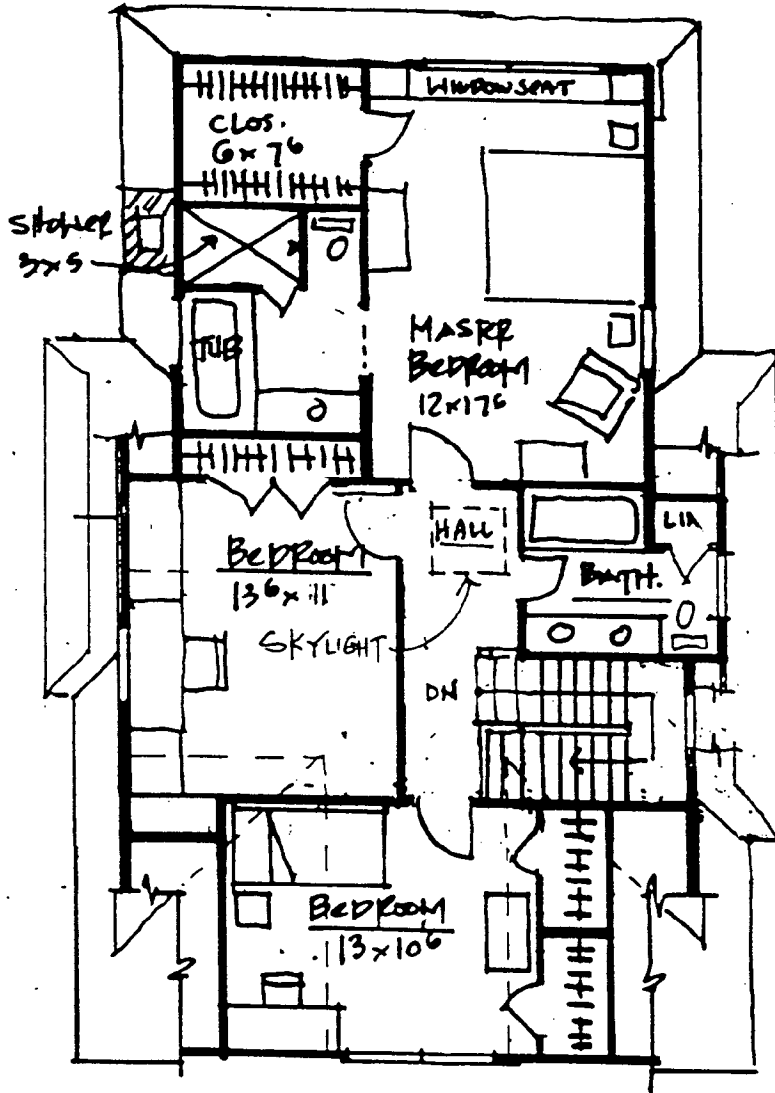


SCHEME 2
869 SF FOOTPRINT

FIRST FLOOR PLAN
 1/8" = 1'-0"

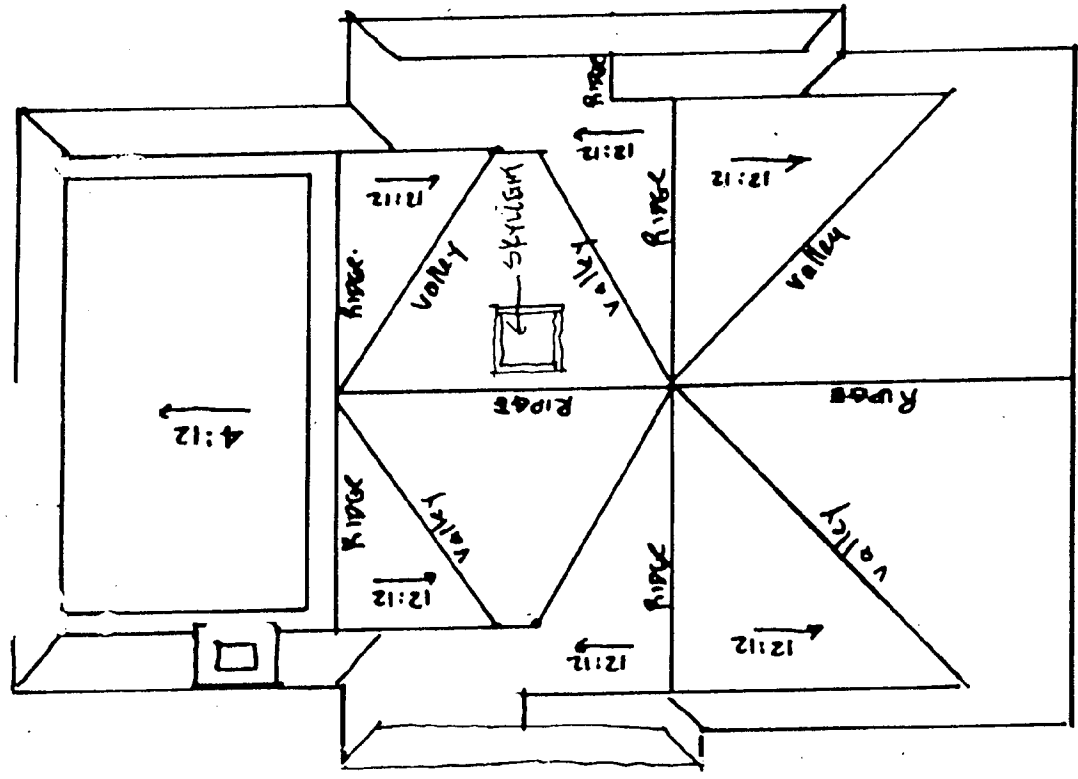
Revised 3-22-2000
 859-4" SF. FOOTPRINTS
 (EXCLUDES PORCHES + BAY
 WINDOWS)

72

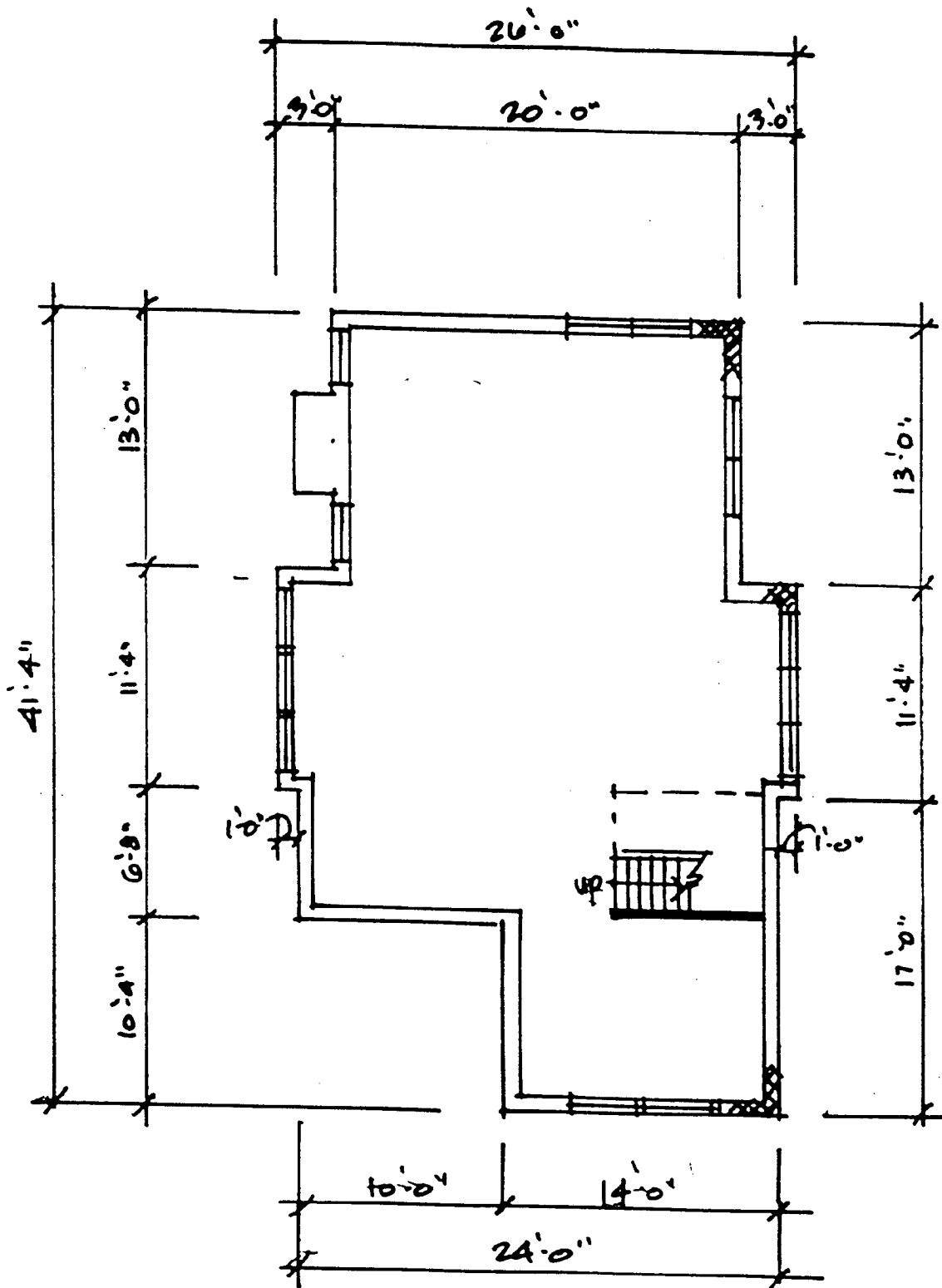


SECOND FLOOR PLAN (REVISED 3.22.2000)
 $\frac{1}{8}'' = 1'-0''$

Scheme 2



ROOF PLAN
1/8" = 1'-0"



Scheme 2

BASEMENT/FOUNDATION PLAN
 $\frac{1}{8}'' = 1'-0''$ 869.4" SF

(Revised 3-22-2000)

25

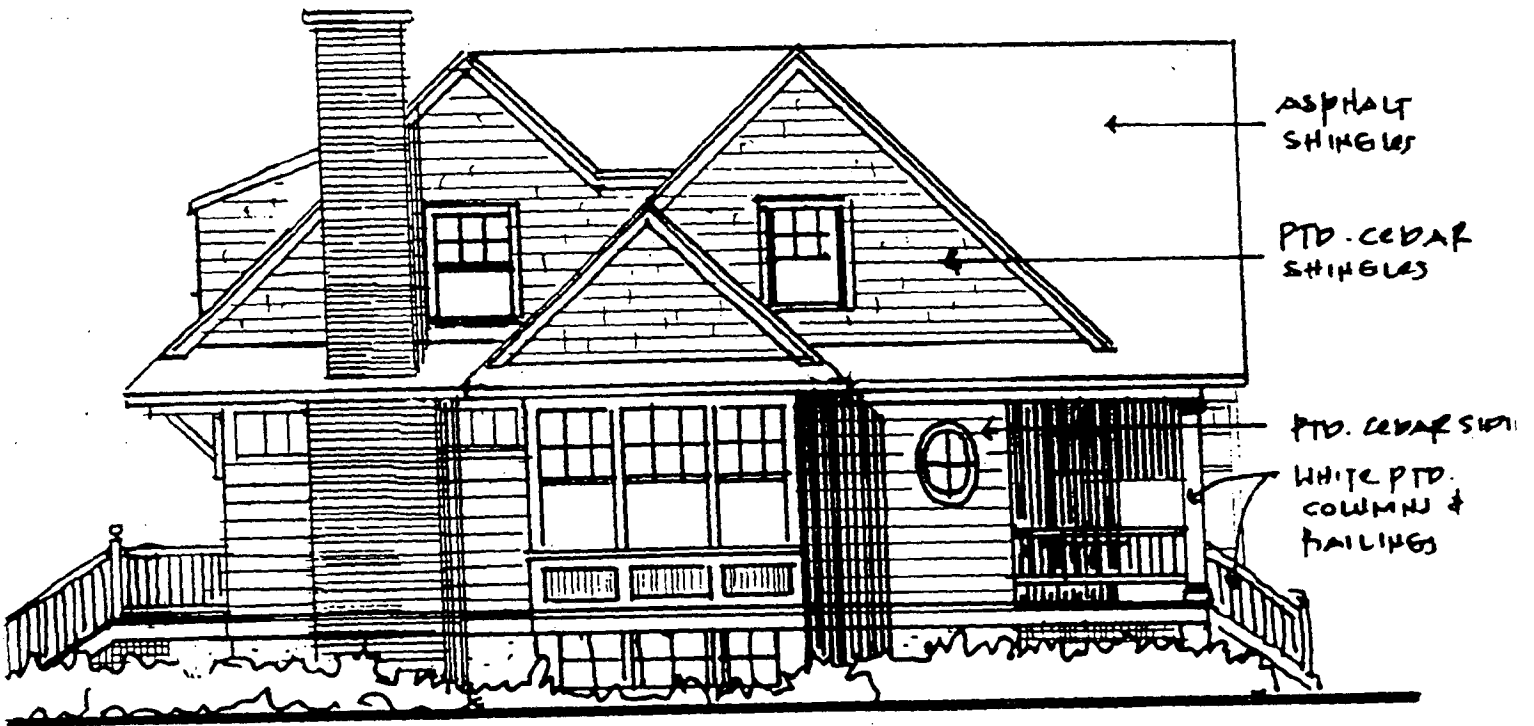


FRONT (NORTH) ELEVATION

REVISED 3-22-2000

$\frac{1}{8}'' = 1'-0''$

Scheme 2

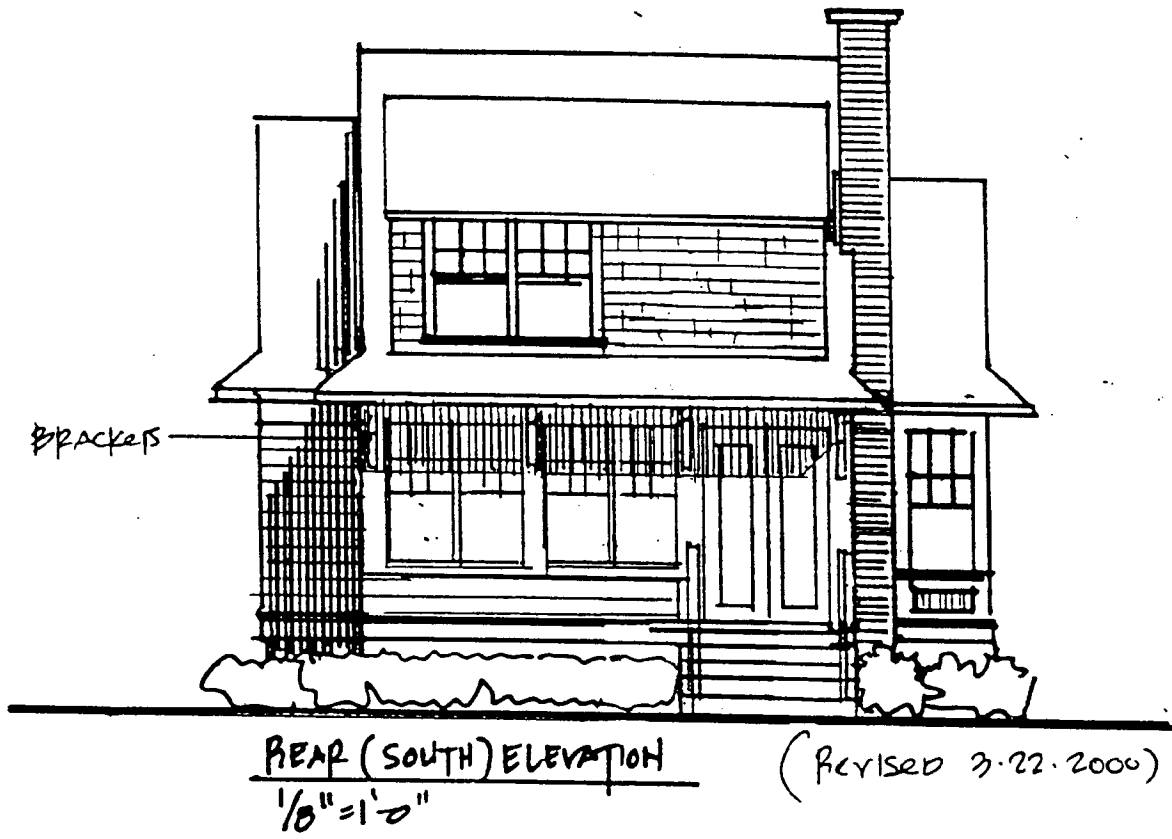


EAST (SIDE) ELEVATION
1/8" = 1'-0"

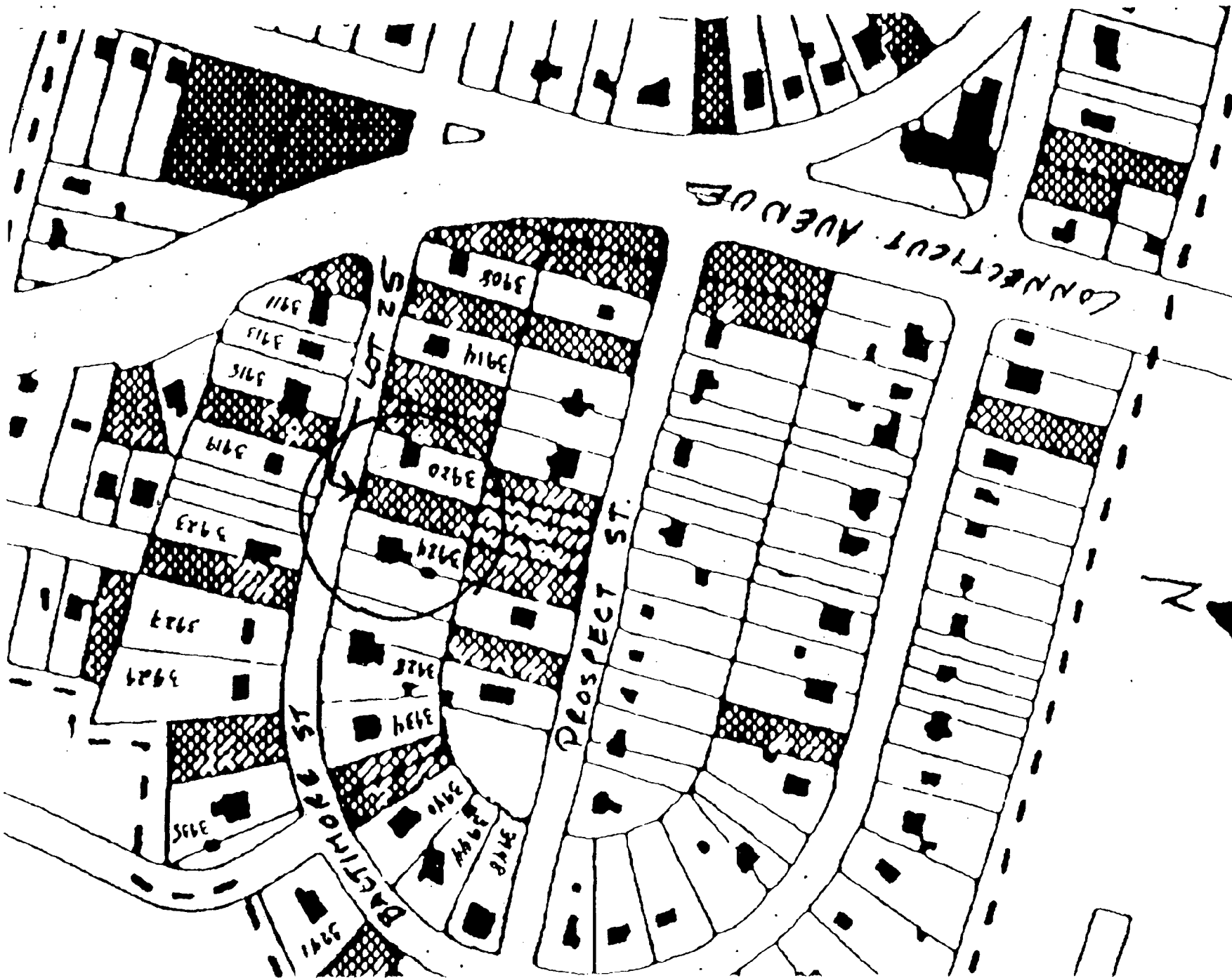
Scheme 2

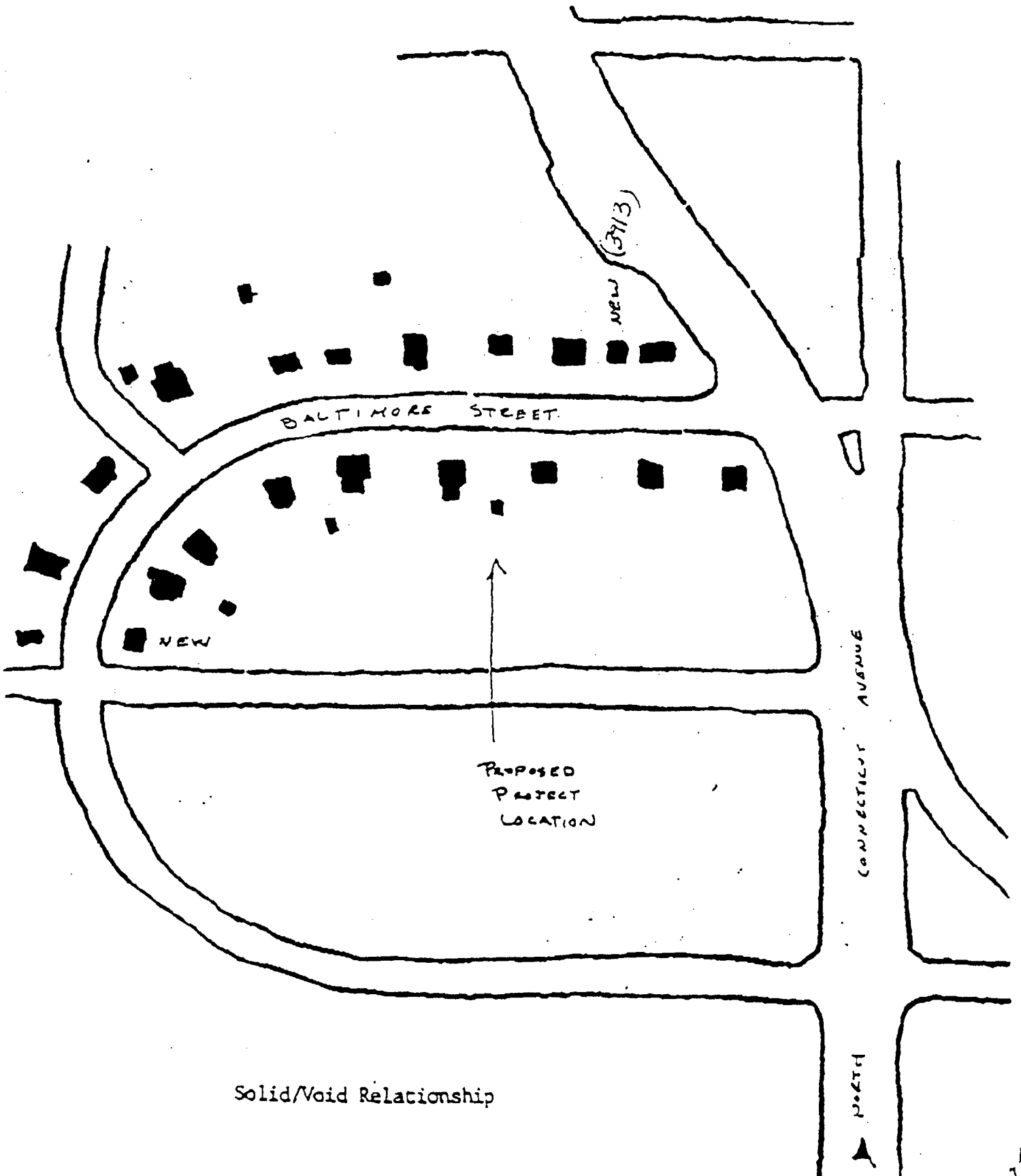


Scheme 2

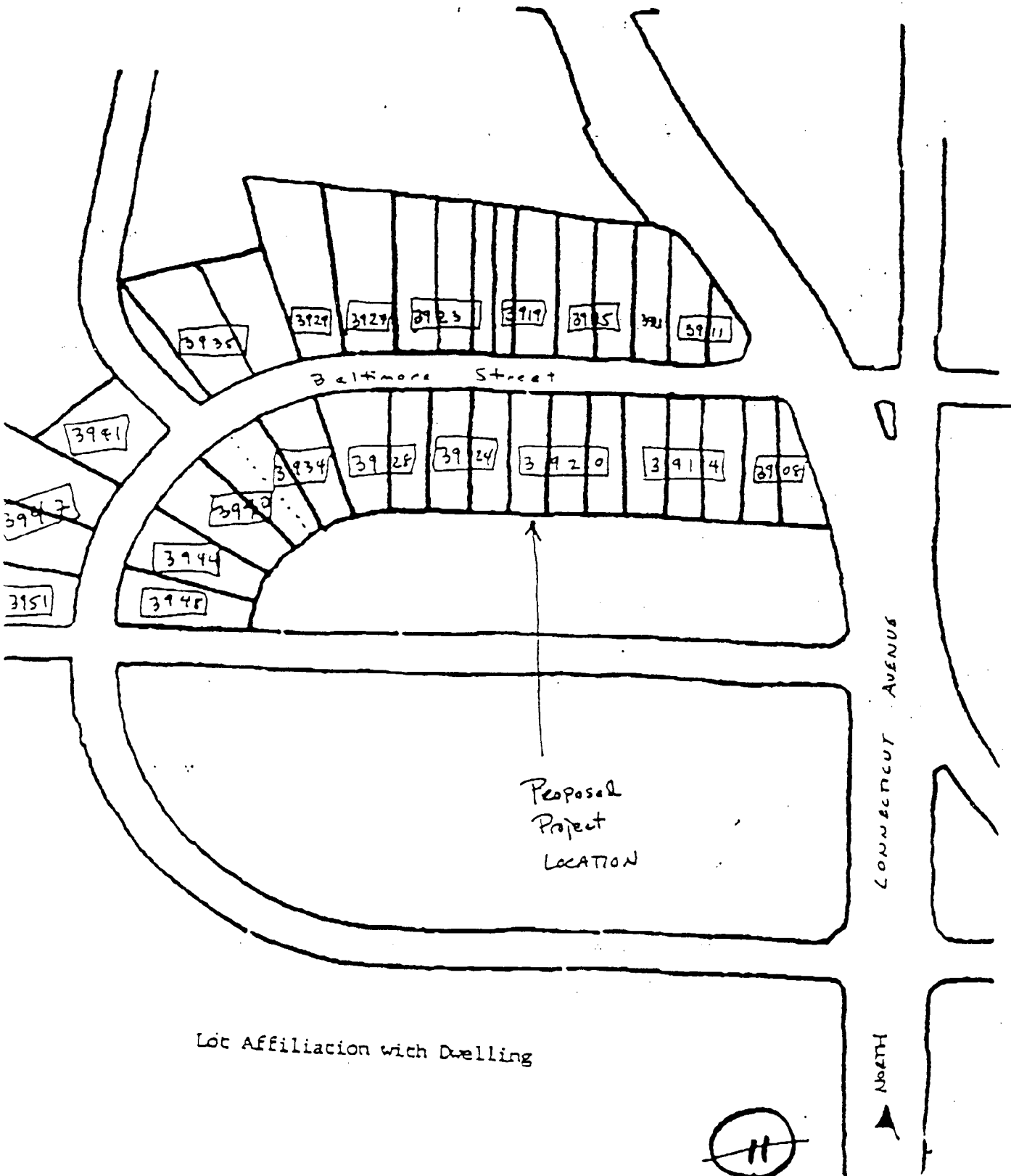


Scheme 2





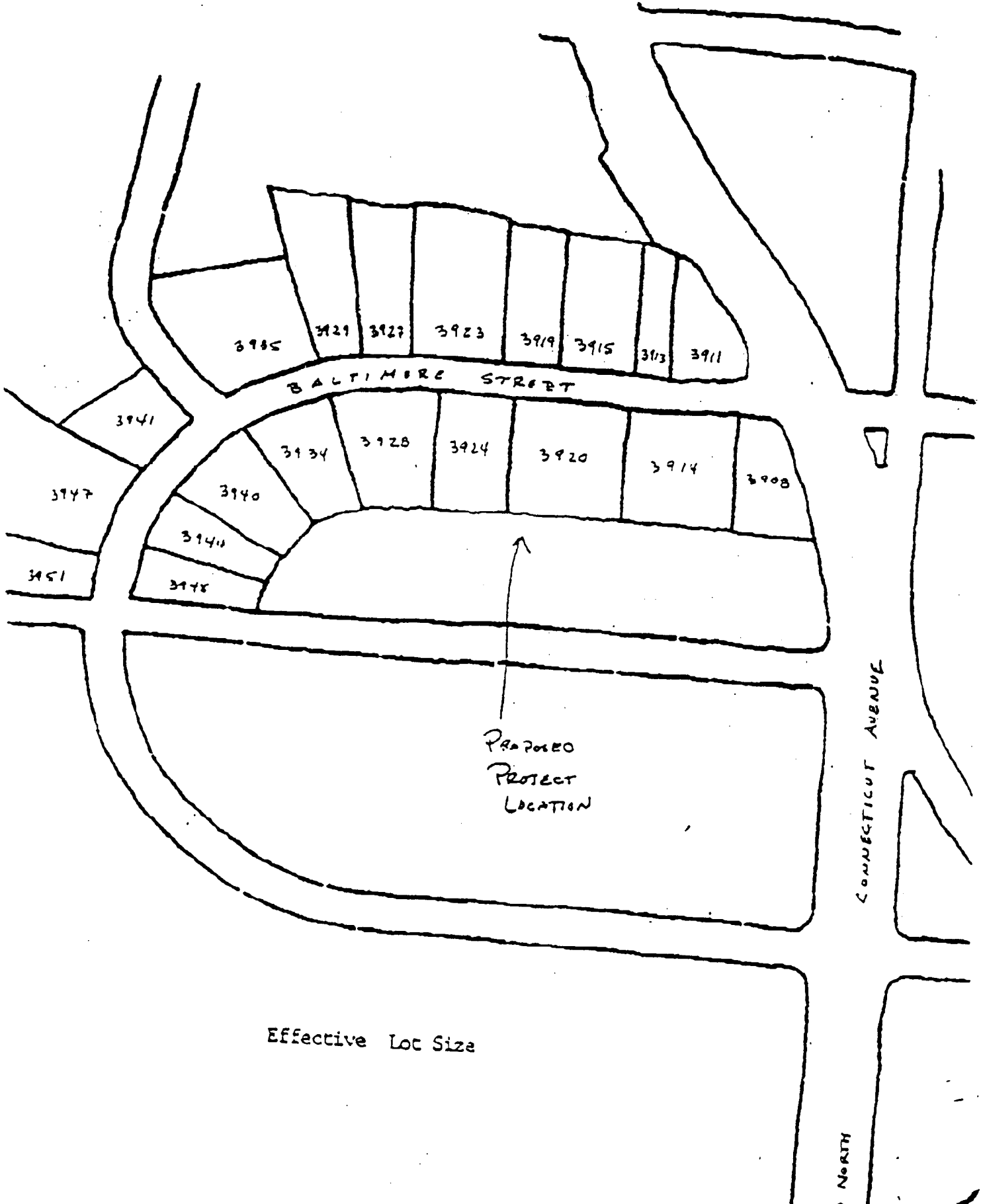
Solid/Void Relationship



Lot Affiliation with Dwelling

11

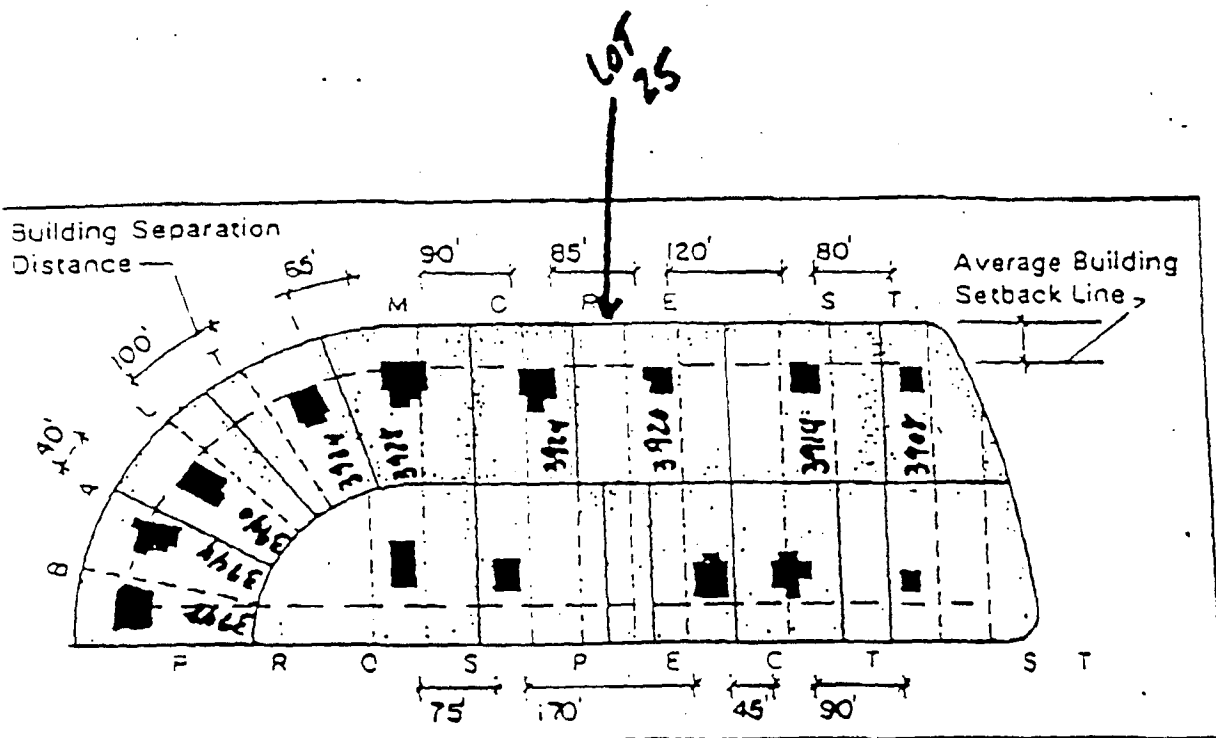
CONNECTICUT AVENUE
NORTH



Effective Lot Size

Relationships of Front Yard Setback and Building Separation

The front yard "setback" is the distance a building is set away or back from the property line on a street or road which it fronts. The front yard setback determines how prominent a building is in the streetscape of a community. When many buildings are involved, a pattern can be established which helps to define the character of the streetscape through the width of sidewalks, the amount of green space (lawns or vegetation area) between street and building, the apparent scale of the buildings in relation to pedestrians, and other subtle qualities of the community. In combination with setbacks, building separation distances establish the openness and visual porosity of the streetscape. Buildings which are separated allow for view and escape elements in the interstitial space. These relationships are illustrated in the map titled Kensington Historic District Vacant Land and Open Space (Figure 34).



Pattern of Building Setbacks and Separation Distances for Block #11

Lot Coverage Patterns

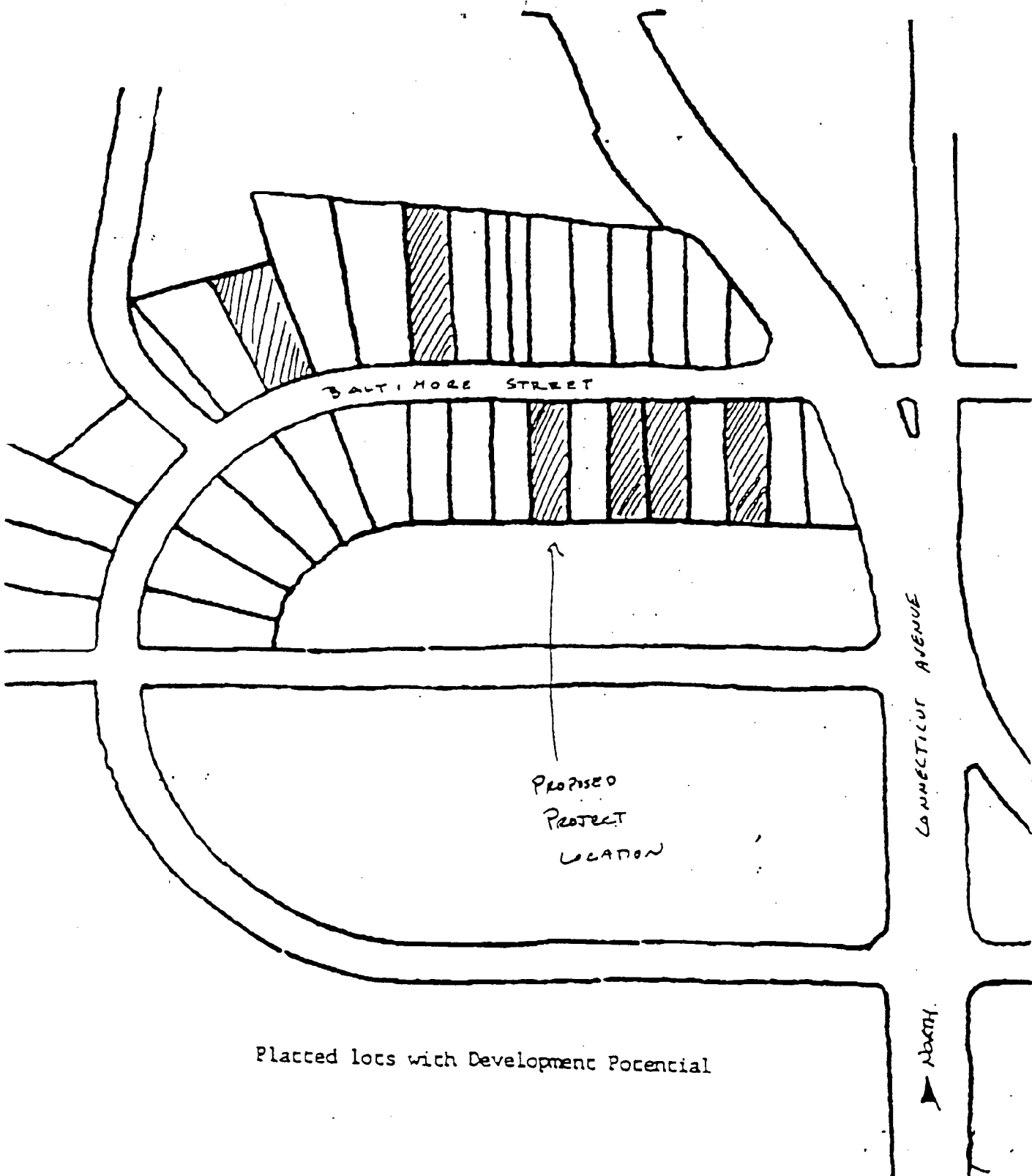
Lot coverage is the ratio of the building footprint area to the overall lot area, and it reflects the intensity of development on a given parcel of land. Lot coverage was identified using planimeter measurements of the building footprint area from the County's topography maps and compared with other lots to determine percent of coverage as given in the table Kensington Historic District Lot Characteristics. Analysis of lot coverage in Kensington reveals that the density of development is lower for the overall district than in the areas where the primary resources are located. This is related to the inclusion of the commercial district for the calculation, as well as the use of larger lots per dwelling for post-1930s' construction. The lower lot coverage figures for primary resources reflects the pattern of using multiple lots for the older primary resource buildings.



Kensington Historic District Lot Characteristics

Category		Entire District	All Primary Resource Properties	1890 - 1910 Properties
Lot Area	Maximum	3.3 acres	3.3 acres	3.3 acres
	Average	0.40 acres	0.38 acres	0.42 acres ←
	Minimum	0.15 acres	0.15 acres	0.18 acres
Lot Coverage	Maximum	25%	25%	25%
	Average	15%	10%	8% ←
	Minimum	5%	5%	5%
Front Yard Setback	Maximum	65 ft	65 ft	65 ft
	Average	33 ft	35 ft	38 ft ←
	Minimum	0 ft	20 ft	20 ft
Building Separation	Maximum	170 ft	170 ft	170 ft
	Average	40 ft	55 ft	75 ft' ←
	Minimum	15 ft	20 ft	50 ft

35



Platted lots with Development Potential

CONNECTICUT AVENUE

North



Kensington LAP
Frank O'Donnell, Chair

FAX COVER PAGE

To: Robin Ziek 301-563-3412

From: Frank O'Donnell

Date: April 3, 2000

Kensington LAP
Frank O'Donnell, Chair

MEMORANDUM

To: Montgomery County Historic Preservation Commission

From: Frank O'Donnell, Kensington LAP

Date: April 3, 2000

Re: Case Number 31/6-00C (3922 Baltimore Street, Kensington)

Summary:

The Kensington LAP prefers that this project meet all of the guidelines enumerated in the *Vision of Kensington: A Long-Range Preservation Plan*.

The LAP notes that of the various plans proposed for this property, the plan described as "Scheme 2" comes closest to meeting the guidelines. The LAP believes it is up to the Historic Preservation Commission to decide on the merits of this project, but several specific recommendations follow.

Discussion:

The LAP notes that the applicant in Case Number 31/6-00C has submitted other HAWPs that the Historic Preservation Commission has rejected as being incompatible with the guidelines noted in the *Vision of Kensington*.

To review the latest HAWP submission, the LAP met March 29. All LAP members were present, as was the applicant, the applicant's architect, and a member of the HPC staff. In this open and constructive process, the LAP examined the project and possible alternatives.

The submitted HAWP included a proposed house with a footprint of approximately 944 square feet – a size in excess of the 10 percent maximum lot coverage recommended by the *Vision of Kensington*. (The lot in question is approximately 8,600 square feet.) In response to questioning, the applicant's architect noted that the 944 square feet did not include the proposed fireplace – which would take the size to approximately 954 square feet – nor did it include the proposed front porch. The LAP noted that a proposed new garage would add to the lot coverage, and expressed concern about possible additional driveway paving.

It should be noted that the LAP praised the architect for working to design a house that not only appears attractive, but also strives to be compatible with the guidelines of the *Vision* and the overall ambience of the Kensington Historic District. Even so, LAP members questioned whether the project could be reduced in size. In response, the architect produced an alternative plan labeled "Scheme 2" with a footprint of 859 square feet. LAP members unanimously agreed this alternative appeared preferable to the official proposal. One LAP member remarked "for an infill house [in the Kensington Historic District] this is probably as good as you can get."

The LAP decided not to go on record either in opposition or support of the proposal, but to note that it:

- Prefers that the proposal meet all the *Vision* guidelines;
- Believes "Scheme 2" comes closest to meeting those guidelines;
- Prefers that any proposed fireplace or porch be counted in reckoning the footprint of the house;
- Opposes construction of a new garage and a new driveway on the lot; and
- Wants the existing garage preserved and protected. If it falls apart for any reason, the LAP does not want it to be replaced with a new structure.

Should the HPC grant conditional approval to this HAWP, the LAP hopes the applicant will drop his prior appeal to the Board of Appeals.

The LAP would like to thank HPC staff, the applicant, and the applicant's architect for participating in this process.

Ex 201 to
Grant
no. 13th 1877.

26
The request of Arthur Hendricks the following
Deed was recorded June 12th 1899 9 A.M. to wit:

This Indenture, made this Twentieth (20th) day of
May in the year of our Lord one thousand eight hundred
and ninety nine and between Erainard H. Warner
and his wife Mary H. Warner of Montgomery County,
Missouri of the first part, and Arthur Hendricks of
Kingsington City Mo. party of the second part:

Witnesseth that the said parties of the first part,
in and in consideration of the sum of Three Thousand
Five Hundred (\$3,500) Dollars, in lawful money of the
United States, to them in hand paid by the said
party of the second part, at and before the sealing
and delivery of these presents, the receipt whereof is
herein acknowledged, have granted, bargained, sold,
aliened, conveyed, released, and conveyed, and
as in these presents grant, bargain, and sell, alien,
convey, release and come unto the said party of
the second part his heirs and assigns, forever,
The following described real estate situate in the
County of Montgomery State of Maryland to wit:

All those certain pieces or parcels of land and
premises known and distinguished as and being Lots
numbered Twenty six (26) and Twenty seven (27) in
Block numbered Eleven (11) in B. H. Warner Sub-
division of land now known as "Kingsington Park"
and according to a plat duly recorded among
the land records of said County.

Together with all the improvements, ways, easements,
rights, privileges, appurtenances, and hereditaments
to the same belonging, or in anywise appertaining,
and the remainders, reversions, rents, issues, and
profits thereof; and all estate, right, title, interest,
claim and demand whatsoever, either at law
or in equity, of the said parties of the first part,
in, to or out of the said pieces or parcels of land
and premises:

To Have and to Hold the said pieces or parcels of
land and premises, with the appurtenances, unto
the said party of the second part, his heirs and
assigns, to his and their sole use, benefit, and behoof,
forever.

And the said parties of the first part for themselves

1899 Deed for Lots 26, 27

and for their heirs, executors, and administrators, as they may lawfully come, and agree to and with the said party of the second part his heirs and assigns that they the said parties of the first part and their heirs shall and will warrant and save defend the said prices or values of the said party of the second part, his heirs and assigns, heirs and assigns the claims of all persons claiming in a claim the same, or any part thereof in, from, under, or through them the said party of the first part.

And the said parties of the first part further warrant, promise and agree to and with the said party of the second part, that they the said parties of the first part, and their heirs, shall and will at any and at times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make, execute, deliver, and acknowledge all such other deeds or deeds, or other assurances in law, for the more certain and effectual conveyance of the said piece or pieces of land and premises and appurtenances, unto the said party of the second part, his heirs or assigns, as they or anyone, or their executors, or assigns, shall advise, devise, or require.

In Testimony Whereof, The said parties of the first part, part, their heirs and assigns and their heirs and assigns, have hereunto set their hands and seals the day and year first hereinbefore written.

Edward H. Warner Seal
 in presence of Seal
 Henry A. Warner Seal
 Henry A. Warner (not being a party)

Judicial + Commission SS:

I Henry A. Warner, a Notary Public in and for the District of Columbia, do hereby certify that Edward H. Warner and his wife Mary H. Warner parties to a certain deed, bearing date on the 19th day of May, A. D. 1899, and hereto annexed, originally appeared before me, in the District of

said, the said Elizabeth H. Warner and wife Mary H. Warner being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary H. Warner being in the presence of me and apart from her husband and having the said deed shown fully explained to her acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.



Given under my hand and Notarial seal, this Thirtieth First day of May, A.D. 1899.

Henry J. Cross
Notary Public

Examined

by J. H. H. H.
Notary Public
District of Columbia

At the request of Lawrence A. Chiswell the following deed was recorded June 12th 1899 to wit: This deed, made this 10th day of June in the year 1899, in me William J. H. Lawson, of Frederick County in the State of Maryland, Witnesseth: that in consideration of the sum of Twelve Hundred Dollars, the receipt whereof is hereby acknowledged, & the said William J. H. Lawson do hereby grant and convey, in fee simple, unto Lawrence A. Chiswell of Montgomery County, in said State, all the following described piece of land, situated at Dickerson Station in said Montgomery County, to wit: Beginning in the center at a stone planted near the North-east corner of a stone building belonging to J. E. Jorlin and now occupied by the said Lawrence A. Chiswell, the said stone being on the South side of, and about 33 feet from the main track of the Metropolitan Branch Railroad, measuring from midway between the rails thereof, and running thence from said stone, (1) South $8\frac{1}{2}$ East 20 $\frac{7}{10}$ perches to a stone planted along along the South margin of the land of said rail-road, thence (2) South $2\frac{1}{2}$ West 28 perches to a stone planted, thence (3) North $7\frac{1}{2}$ West 16.92 perches, to a willow bush and stump in or near the spring branch, thence (4) South $6\frac{1}{2}$ West $9\frac{1}{2}$ perches to a stone standing

State of Maryland, Montgomery County, to wit:

I hereby certify that on this 29th day of June in the year nineteen hundred and three before the subscriber a Justice of the Peace of the State of Maryland, in and for Montgomery County, personally appeared Charles W. Souder, Collector of State and County taxes for the Second Collection District of Montgomery County, in the State of Maryland, and did acknowledge the foregoing and annexed deed to be his act.

Rufus K. King J.P.

=====

At the request of Ida V. Hendricks, the following deed was recorded August 6th 1903, 9'15 A.M. to wit:

This Indenture, Made this 1st day of August in the year of our Lord one thousand nine hundred and three, by Brainard H. Warner and Mary H. Warner, his wife, of Montgomery County, Maryland, but now in Washington, District of Columbia,

Witnesseth, That in consideration of the sum of Five Hundred (500) Dollars, the receipt whereof is hereby acknowledged, and the further consideration of certain covenants of the grantee, which are to run with the title, the same being attached hereto, made a part hereof, and signed by the grantee herein, we, the said Brainard H. Warner and Mary H. Warner, do grant, bargain, sell and convey unto Ida V. Hendricks, wife of Arthur Hendricks of Kensington, County of Montgomery State of Maryland heirs and assigns, forever, the following-described real estate situate in the County of Montgomery and State of Maryland, to wit: All that certain piece or parcel of land and premises known and distinguished as being lot numbered Twenty five (25) in Block numbered Eleven (11) in B. H. Warners' Subdivision of a tract of land in said County of Montgomery known and designated as "Kensington Park" the same being surveyed and described in the Plat thereof on file and of record in the Office of the Clerk of the Circuit Court of the County and State aforesaid.

Together with all and singular the improvements thereon, and all the rights, ways, easements, privileges, and appurtenances thereunto belonging or in anywise thereunto appertaining.

To Have and to hold the said above described lot of ground, hereditaments and premises hereby granted or mentioned and intended to be, with the appurtenances, unto the grantee her heirs and assigns, to and for the only proper use and behoof of the grantee her heirs and assigns, forever under and subject to the covenants and restrictions hereinafter contained.

And the said Ida V. Hendricks for herself for her heirs and assigns, owners occupiers of the said above-described lot of ground, doth hereby covenant and agree with the grantor his heirs and assigns, that she the said Ida V. Hendricks her heirs and assigns, shall at all times hereafter forever leave unbuilt upon or unobstructed, except by steps, cellar doors, fences, trees, or shrubbery thereupon, the front Thirty (30) feet of the hereby granted lot fronting on the Baltimore Street and, further, that neither she, nor any nor either of them, shall or will at any time hereafter, erect or build or cause or permit to be erected or built, upon the hereby granted lot of ground, or upon any part thereof, any hotel tavern, drinking saloon, blacksmith, carpenter

1903 Deed for Lot 25

44

or wheel wright shop, steam mill,, tannery, slaughter-house, skin dressing establishment, livery stable, glue, soap, candle, or starch manufactory, or other building for offensive purpose or occupation; nor shall any building thereon erected be converted into a hotel tavern, drinking saloon, blacksmith, carpenter or wheel-wright shop, steam Mill, tannery, slaughter-hose, skin- dressing establishment, livery stable, glue, soap, candle, or starch manufactory, or used for any offensive purpose or occupation hereafter forever. And, moreover, it is further covenanted and agreed by and between the said parties hereto, for themselves respectively and for their respective heirs and assigns, that if any buildings shall at any time hereafter be put, placed, erected, or used or occupied, upon the hereby granted lot or any part thereof, contrary to the true intent and meaning of these presents, and if the grantee her heirs or assigns, shall fail to remove the same on receiving thirty days' notice, in writing, so to do from the grantor his heirs and assigns, or from any other owner of any other lot, part of the lots known and designated as Kensington Park, then and in such case it shall and may be lawful for the grantor his heirs and assigns, or for any of the said owners of any of the said lots, part of the said Kensington Park, with their workmen, tools and implements, to enter into and upon the hereby granted lot of ground, and into the buildings thereon to be erected, and at the cost of the grantee her heirs or assigns, owners or occupiers of the said hereby granted lot, to tear down, remove, and abate all such buildings or manufactories as may be erected or constructed or used contrary to the true intent and meaning of these presents, and without being subject to any writ, action, or proceeding, civil or criminal, for any thing reasonably done by him, them, or any of them, by reason thereof, or for any entry thereon for the purpose aforesaid, anything hereinbefore contained to the contrary thereof notwithstanding. Also, that the grantee her heirs or assigns, shall and will build on the said hereby granted lot a substantial brick, stone, or frame dwelling-house of not less value than Twenty five hundred (2500) dollars Also, to maintain the foot way in front of the said lot of at least ten feet also; that no privy, well, drain or cesspool shall be sunk or constructed on the premises, unless the same shall be built with bricks or stone laid in cement, and thoroughly lined and entirely covered with the same, or made of iron, or such other material as may be agreed upon between the parties hereto, and kept in repair, so that it shall be at all times water tight, and kept from overflowing or leakage, and subject at all times to the inspection and approval of the grantor or his agents.

And we, the said Brainard H. Warner and Mary H. Warner, his wife, do hereby covenant that we will warrant and defend the lands and premises hereby conveyed from and against the claims of all persons claiming or to claim the same or any part thereof, by, from, under or through them or either of them.

Witness our hands and seals.

✓ 411 Brainard H. Warner (seal)

Attest:

✓ 333 Mary H. Warner (seal)

S. A. Terry

45

District of Columbia County of Washington, To wit;
I hereby Certify, That on this 1st day of August, A.D. 1903, before the subscriber, a Notary Public of the District of Columbia, in and for said County, personally appeared Brainard H. Warner and Mary H. Warner, his wife, the grantors named in the foregoing and annexed deed to Ida V. Hendricks and did each acknowledge said Deed to be their respective act.

S. A. Terry
Notary Public,
District of
Columbia.

IN Testimony Whereof I have hereunto subscribed my name and affixed my official seal, this 5th day of August, A. D. 1903,

S. A. Terry
Notary Public.

*Witnessed
S. A. Terry
to Hendricks
1st of 21 1903*

#####

At the request of Wilmer G. Platt, the following Deed was recorded August 7th 1903, 8:30 A.M. to wit:

This Deed, made this Third day of August in the Year of our Lord one thousand nine hundred and three by and between Vina Garrigus of Washington, D.C. party of the first part, and Wilmer G. PLatt of Takoma Park, D.C. party of the second part:

Witnesseth, That in consideration of one dollar, lawful money of the United States of America the party of the first part does grant and convey unto Wilmer G. Platt party of the second part, his heirs and assigns, in fee simple, all that piece or parcel of ground situate, lying and being in Montgomery County State of Maryland, being the same land which the said party of the first part obtained from Wilmer G. Platt and Clara M. Platt ux. by deed dated the eighth day of July 1899, recorded in in the Land Records of Montgomery County, Maryland, in Liber E. D. No. 17 at folio 71 and being described as follows, to wit: Lot numbered six (6) in Block numbered seventy three (73) of The Takoma Park Loan and Trust Company's subdivision of Takoma Park near Washington, in the District of Columbia, reference being hereby made to a plat of said subdivision which is duly recorded among the Land Records of said County, in Liber J. A. No. 27, folio 193. Together with the buildings and improvements thereon, erected, made, or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

To have and to hold the said piece or parcel of ground and premises above described or mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the only proper use, benefit and behoof forever of the said Wilmer G. Platt, his heirs and assigns.

And the said party of the first part covenants that she will warrant specially and generally the property hereby conveyed; that she is seized of the land hereby conveyed; that she has a right to convey said land; that the said party of the second part shall quietly enjoy said land; that she has done no act to encumber said land; and that she will execute such further assurances of said land as may be requisite.

Witness my hand and seal
Test:
Arthur R. Colburn

V. 47 Vina Garrigus (seal)



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

TELECOPIER TRANSMITTAL

DATE: 9/5/2000
TO: Gwen Wright, Robin Zick
FAX NO. (301) 563-~~3412~~ 3412
FROM: Eileen Basaman
FAXED BY: _____

Cover Sheet Plus: 5 pages

DESCRIPTION/COMMENTS/SPECIAL INSTRUCTIONS:

*Draft. Please make comments. I'll
be out of the office until about 4:00 p.m.*

CONFIDENTIALITY NOTICE

This transmission contains confidential information belonging to the sender, which may be legally privileged information. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, or an employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of the facsimile documents is strictly prohibited. If you have received this transmission in error, please immediately notify the sender by telephone.

**BEFORE THE BOARD OF APPEALS
FOR MONTGOMERY COUNTY, MARYLAND**

**APPEAL OF JEANNIE AHEARN
AND CARY HOOBLER**

Case No. A-5330

MOTION TO DISMISS APPEAL

The Historic Preservation Commission of Montgomery County, Maryland, Respondent (the "Commission"), through undersigned counsel, files this motion to dismiss the captioned appeal filed by Jeannie Ahearn, the Property Owner (the "Owner"), and Cary Hoobler, the developer of the Owner's property (the "Co-Applicant"), and for reasons states the following:

- 1.) The instant appeal is from the denial by the Commission of an application for the issuance of a Historic Area Work Permit ("HAWP") on November 10, 1999 (the "1999 Appeal"). The Appeal was filed on December 10, 1999. The basis for the Commission's denial was that the structure that the Co-Applicant proposed to build on the Owner's lot was too large for the lot and did not conform to the regulations for building in the Kensington Historic District, where the property is located.
- 2.) The 1999 Appeal is an appeal from the second of three considerations of an application for a HAWP submitted by this Owner and the Co-Applicant for the property located at 3922 Baltimore Street, Kensington, MD 20895 (the "Property"). A 1997 Application for a HAWP was denied by the Commission, and the Owner and the Co-Applicant filed an appeal. While

that appeal was pending, the Co-Applicant submitted the 1999 application, which made slight modifications to the original proposal. After the Commission denied that application, the 1999 Appeal was filed, and a hearing date of April 19, 2000, was set by the Board of Appeals.

- 3.) The Board continued the hearing at the request of some of the intervenors who were unable to be present during the scheduled hearing date. During the pendency of that appeal, the Owner and the Co-Applicant submitted a third application for a HAWP for the Property (the "2000 Application"). One week before the Board's scheduled hearing on the 1999 Appeal, the Commission approved the 2000 Application, finding that it was the first of the applications that conformed to the Kensington regulations.
- 4.) At the April 12, 2000, hearing on the 2000 Application, the Owner testified that it was her intention to voluntarily dismiss the instant appeal upon approval of the 2000 Application by the Commission, since it is her intention to build the structure approved by the Commission on the Property.
- 5.) Although the actions on the 1997 application and the 2000 application should be irrelevant to this appeal, they are not. That the Co-Applicant considers them to be inextricably intertwined is made clear by his August 25, 2000, submission which includes the April 5, 2000, Commission staff report on the 2000 Application, as well as the Commission's opinion approving the application for the HAWP. The Commission has no objection to the inclusion of materials from the 2000 Application action by the Commission in the appeal from the 1999 Application for informational purposes only.

However, the Commission would object to any consideration of a back door appeal by the Co-Applicant and the Owner from the Commission's action on the 2000 Application, since there was no timely appeal filed from the decision on the 2000 Application, which is now a final administrative decision.¹

- 6.) As late as August 25, 2000, the Owner was contending that she would voluntarily dismiss this appeal after issuance of a debris removal permit by the Town of Kensington. The Owner believed that the permit would be issued by the Town on August 28, 2000.
- 7.) It appears that this Appeal is moot, and that the Board is being asked to function in this matter not as a decisionmaker, but rather as an advisory panel.
- 8.) The Owner and the Applicant have taken and continue to take action to build the structure approved by the Commission at its April 12, 2000, session. Through their continued efforts to obtain the required permits to construct the dwelling approved by the Commission on April 12, 2000, it is clear that the Owner and the Applicant have abandoned any intention to construct the home they proposed constructing in the 1999 Application, the subject of the 1999 Appeal.

¹ In addition to obtaining the HAWP pursuant to the 2000 Application approval, the Co-Applicant has obtained several other permits to build the single family dwelling approved by the Commission on the Property. Copies of the HAWP (Permit No. 212943, Issued 5/2/2000, Expires 5/3/2000) and other permits issued for construction of the dwelling unit approved pursuant to the 2000 Application are attached to this Motion for the Board's convenience, and incorporated into this Motion.

- 9.) The motivation for continuing to pursue an appeal on a proposal that they have abandoned is unclear. The apparent intent is to have this use this Board to vindicate a proposal that has twice been found rejected by the Commission while pursuing the proposal that they submitted to the Commission which was approved by the Commission. That use of the Board's time and resources is both inappropriate and not permitted.²
- 10.) This appeal has been rendered moot by the Commission's approval of the 2000 Application for a HAWP to construct a single family dwelling unit on the Property, and the pursuit of permits for construction by the Owner and the Co-Applicant.
- 11.) No timely appeal was filed from the Commission's approval of the 2000 Application.
- 12.) The Owner and the Co-Applicant have evidenced their abandonment of the prior appeal by their pursuit of permits to construct the single family dwelling that they proposed in the 2000 Application.

FOR THE FOREGOING REASONS, the Commission respectfully requests that this Board grant the Commission's Motion to Dismiss the instant appeal.

² The Owner and Co-Applicant are seeking to use the Board to render an advisory opinion. The opinion that they are seeking is somewhat similar to the decisions made by courts in declaratory judgment actions, except that courts can only decide actual cases and controversies. In this case, if there is no longer a need to review the Commission's decision because the Owner and Co-Applicant have abandoned the proposal that was the subject matter of the instant appeal, then there is no case or controversy, or any real decision to be made by this Board.

RESPECTFULLY SUBMITTED,

CHARLES W. THOMPSON, JR.
COUNTY ATTORNEY

Eileen T. Basaman
Assistant County Attorney
Executive Office Building
101 Monroe Street, 3rd floor
Rockville, Maryland 20850
(240) 777-6700
Attorneys for Respondent Historic
Preservation Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this ____ day of September, 2000, copies of the foregoing Motion of Respondent Montgomery County to Dismiss the Petition on Appeal were mailed, first-class, postage prepaid to:

Jeanie Ahearn
3920 Baltimore Avenue
Kensington, MD 20895

Cary E. Hoobler, President
Ellison Corporation
10907 Jarboe Avenue
Silver Spring, MD 20901