



APPLICATION ACCEPTED: April 12, 2010
DATE OF PUBLIC HEARING: June 30, 2010
TIME: 9:00 a.m.

County of Fairfax, Virginia

June 23, 2010

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2010-MV-029

MOUNT VERNON DISTRICT

APPLICANT: Timothy D. Kelly

OWNERS: Timothy D. Kelly
Debra A. Kelly

LOCATION: 1604 Old Stage Road

SUBDIVISION: Riverside Gardens

TAX MAP: 102-4 ((12)) (1) 4

LOT SIZE: 12,247 square feet

ZONING: R-3

ZONING ORDINANCE PROVISION: 8-914

SPECIAL PERMIT PROPOSAL: To permit reduction to the minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 6.5 ft. from side lot line and 1.7 ft. from the rear lot line and accessory structures to remain 3.9 ft. and 2.6 ft. from side lot line and 0.3 ft. from rear lot line.

A copy of the BZA's Resolution setting forth this decision will be mailed within five (5) days after the decision becomes final.

O:\dhedr\Special Permits\6-30 SP 2010-MV-029 Kelly\SP 2010-MV-029 Kelly staff report.doc Deborah Hedrick

The approval of this special permit does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505.**

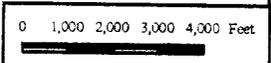
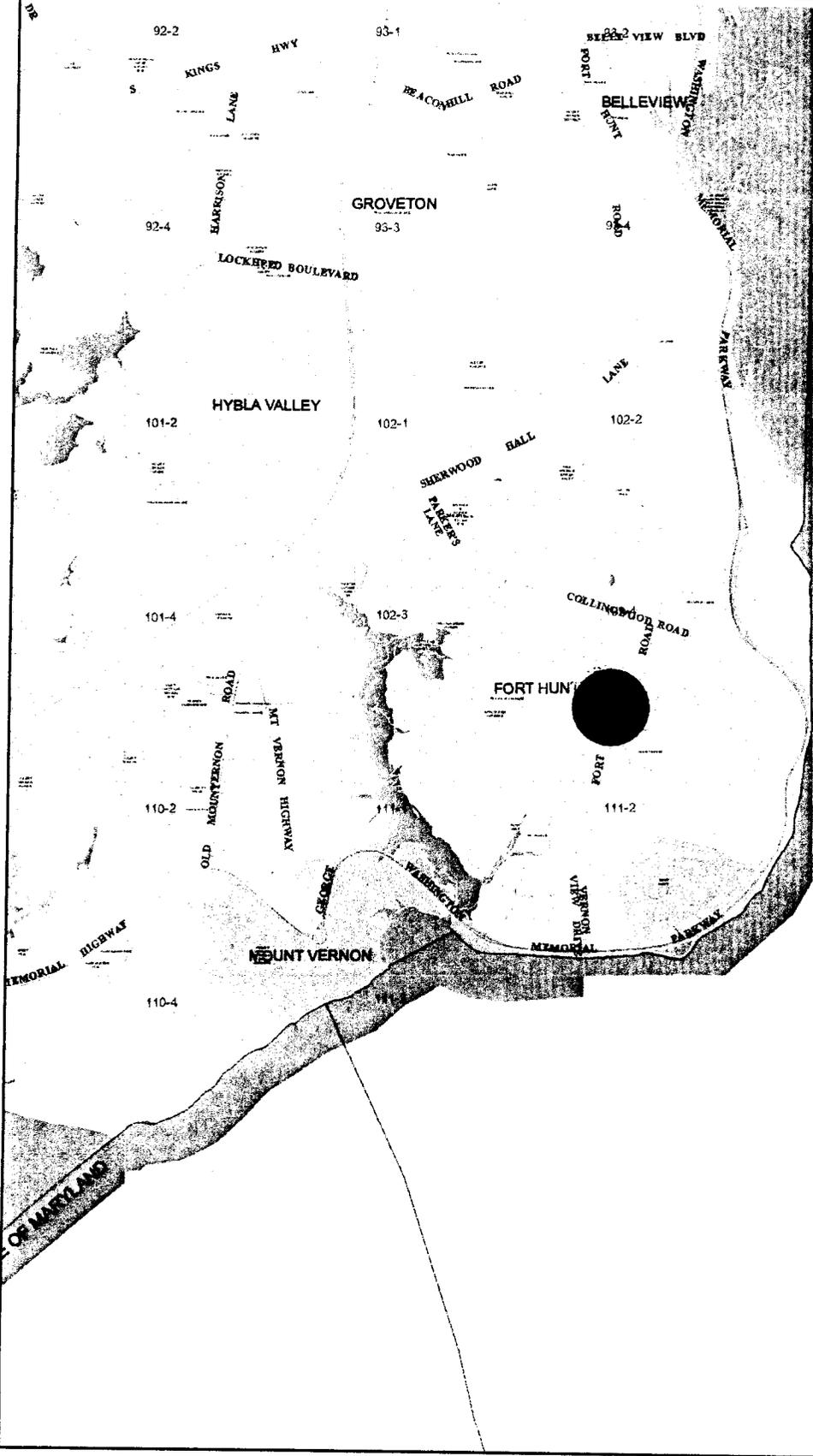


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Special Permit

SP 2010-MV-029

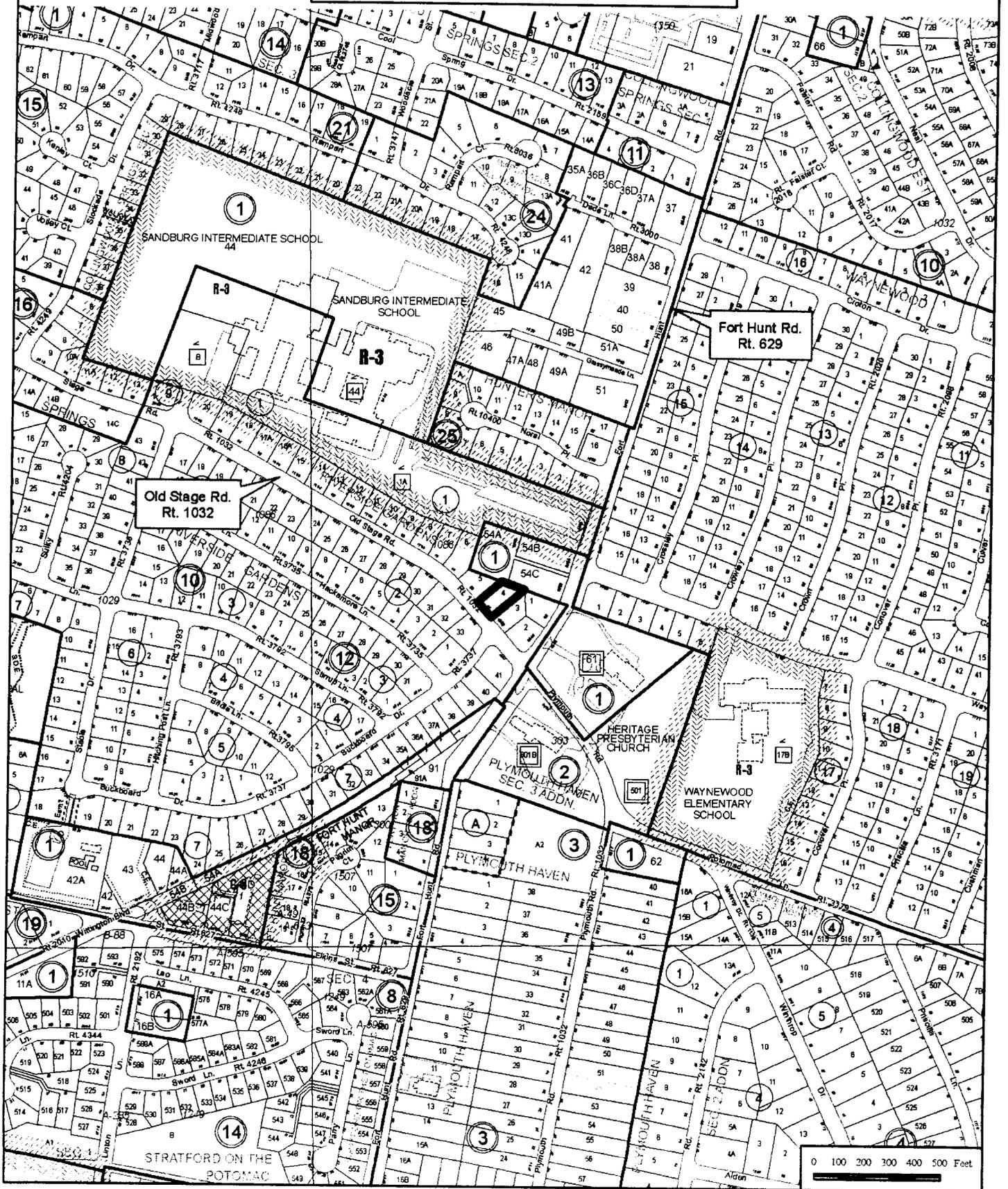
TIMOTHY D. KELLY



Special Permit

SP 2010-MV-029

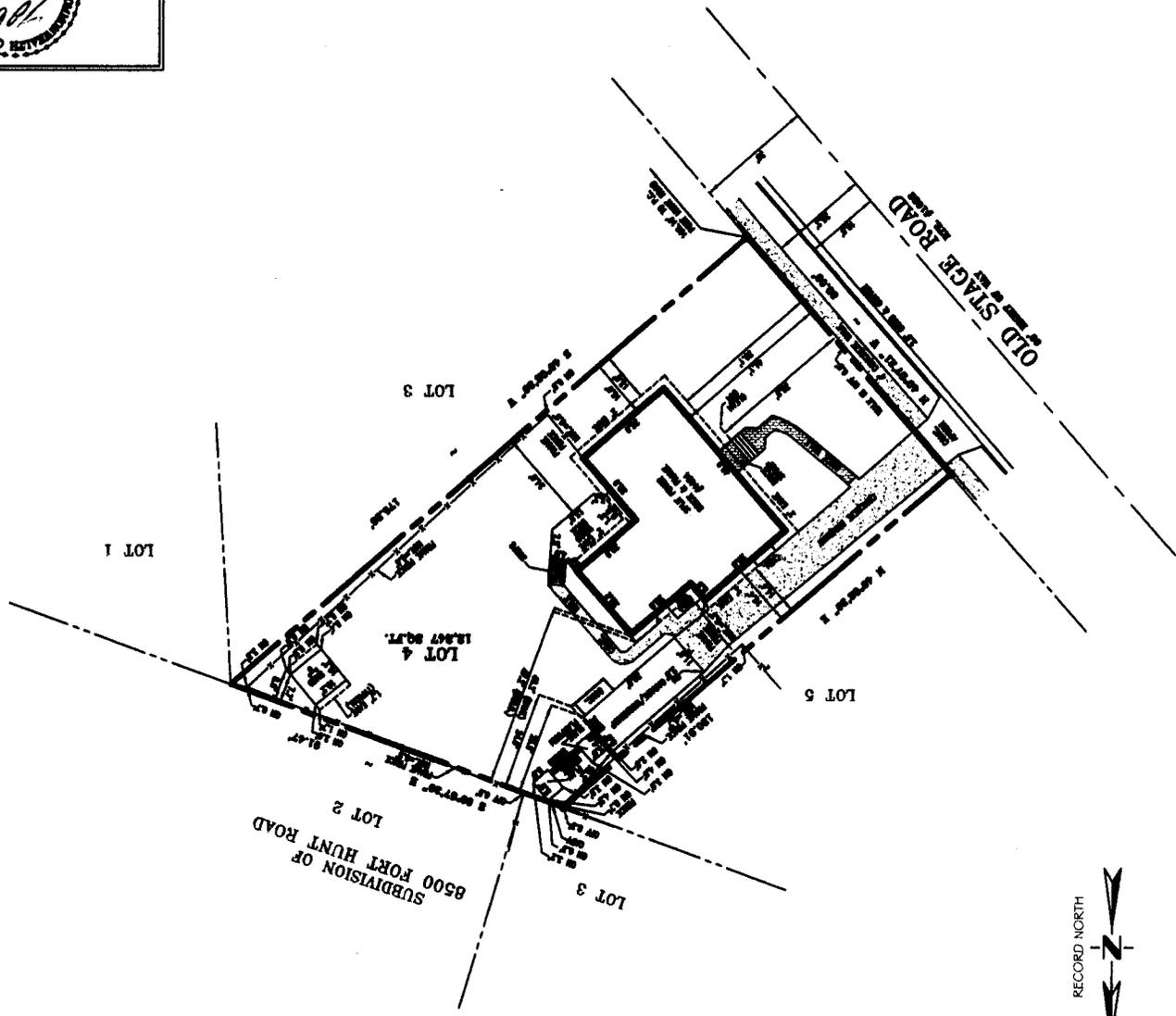
TIMOTHY D. KELLY



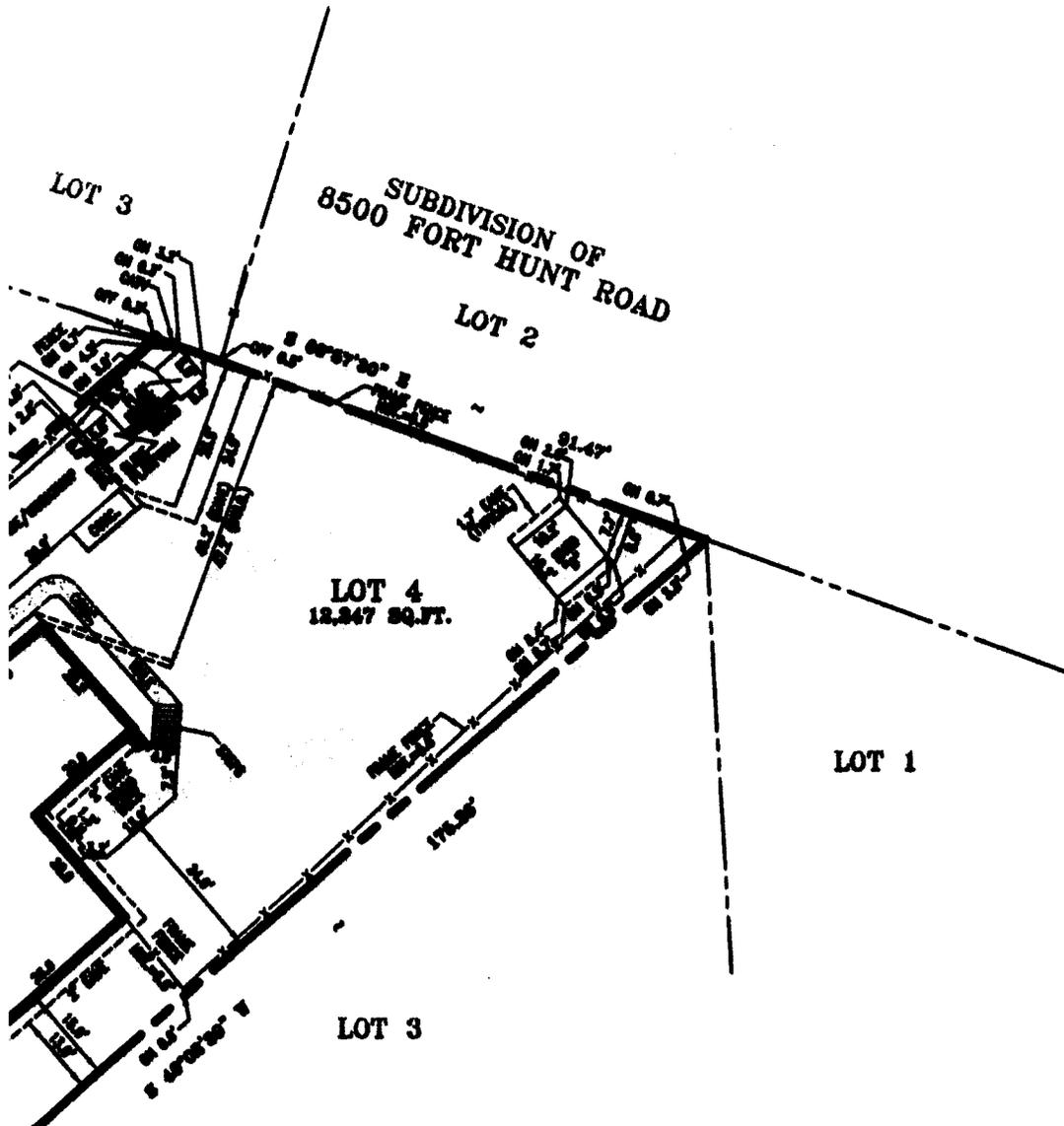
1988 GEORGE WASHINGTON ROAD FOR THE RECORD, 1988-0000-0000
 SAM WHITSON LAND SURVEYING, INC.

OWNER: THOMAS D. KELLEY

SPECIAL PERMIT PLAT
 LOT 4 BLOCK 1
 RIVERSIDE GARDENS
 NEWBORN ROAD PAGE 101
 NORTH WASHINGTON COUNTY
 NOVEMBER 24, 2010 (RECORD)
 MAY 17, 2010 (ISSUED)



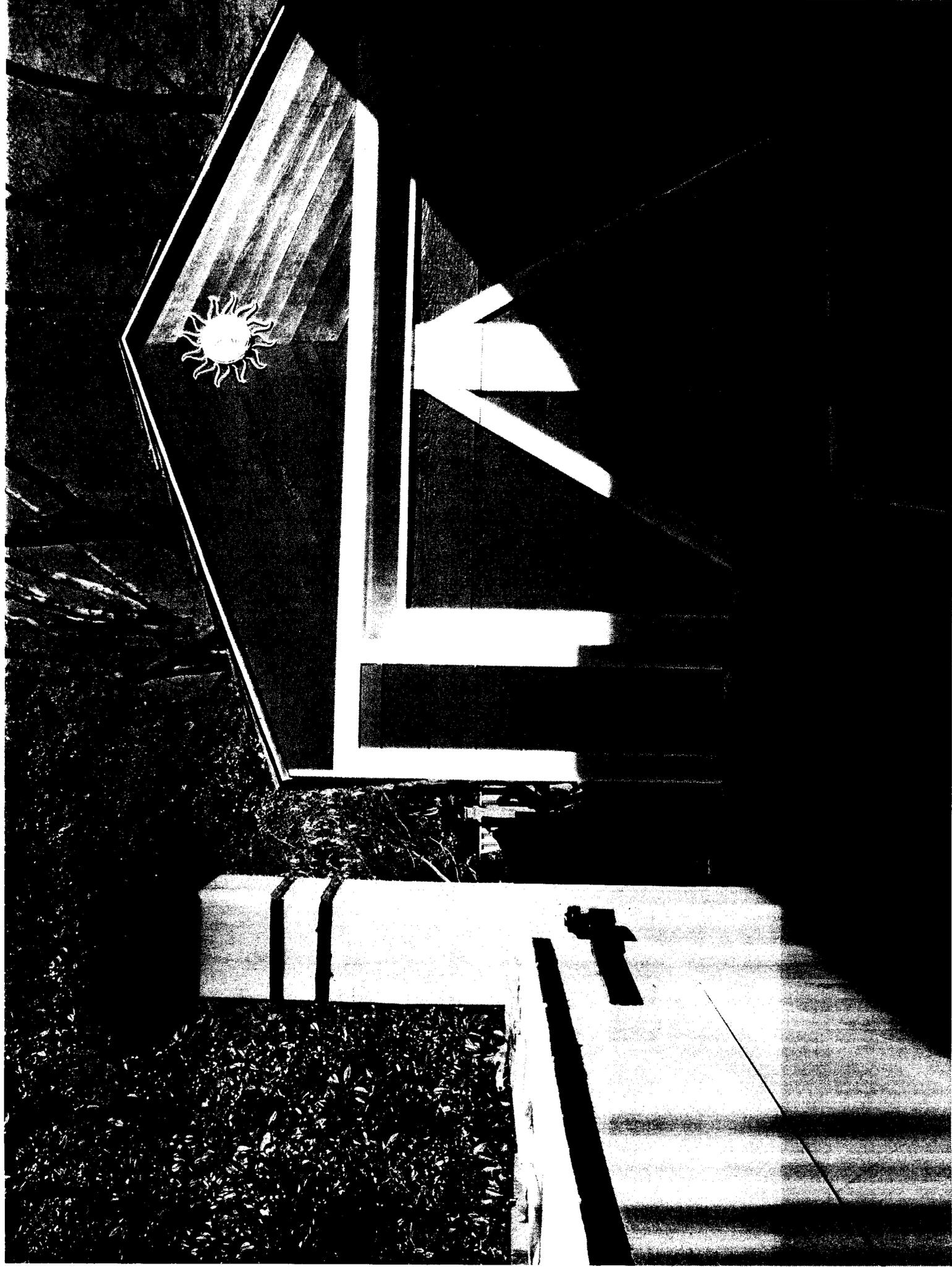
- NOTES:**
1. THIS PROJECT IS LOCATED IN THE PART 102-A ZONE OF CC&M AND IS ZONED R-3.
 2. PROJECT OWNER IS THOMAS D. KELLEY AND RECORDED IN DEED BOOK 15810 AT PAGE 2018 OF THE FARMER COUNTY LAND RECORDS.
 3. THIS PROPERTY IS SERVED BY PUBLIC SEWER AND WATER.
 4. NO TITLE REPORT PROVIDED AND ALL ENCUMBRANCES OR RECORD MAY NOT BE SHOWN.
 5. ZONING YARD REQUIREMENTS:
 FRONT = 20 FEET SIDE YARD = 12 FEET REAR = 25 FEET
 6. HEIGHT REQUIREMENT: 25 FEET
 7. PERMIT:
 DWELLING = 10.0 FEET
 GARAGE/WORKSHOP = 12.0 FEET
 SHED = 12.0 FEET
 DECK = 10.0 FEET
 PORCH/PATIO = 10.0 FEET
 SLIDE PLATFORM = 12.0 FEET
 8. THERE IS NO EVIDENCE OF A BURIAL SITE ON THIS PROPERTY.
 9. THERE ARE NO ENCUMBRANCES OR 25 FEET OR MORE IN WIDTH THAT AFFECTS THIS PROPERTY.

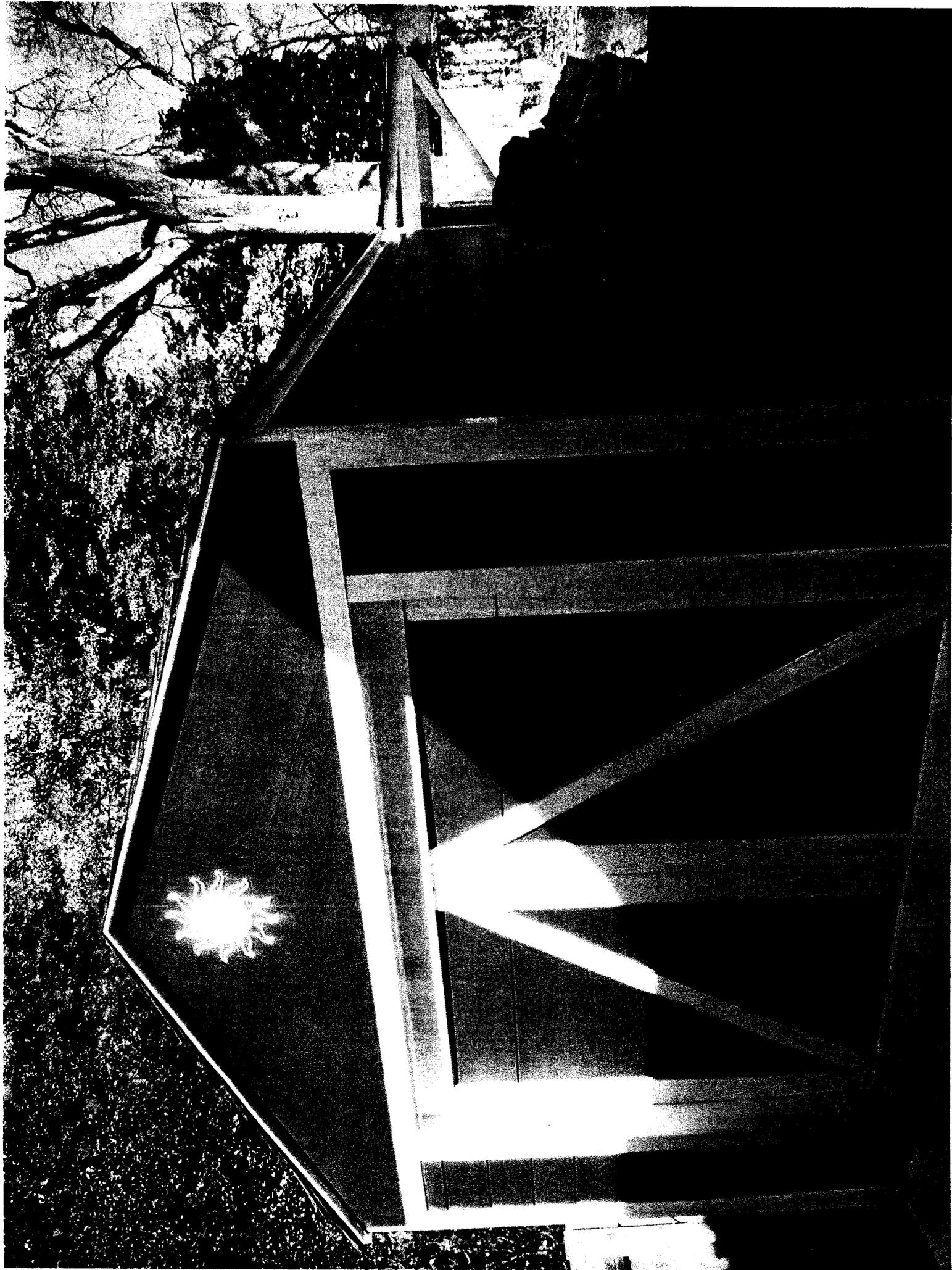


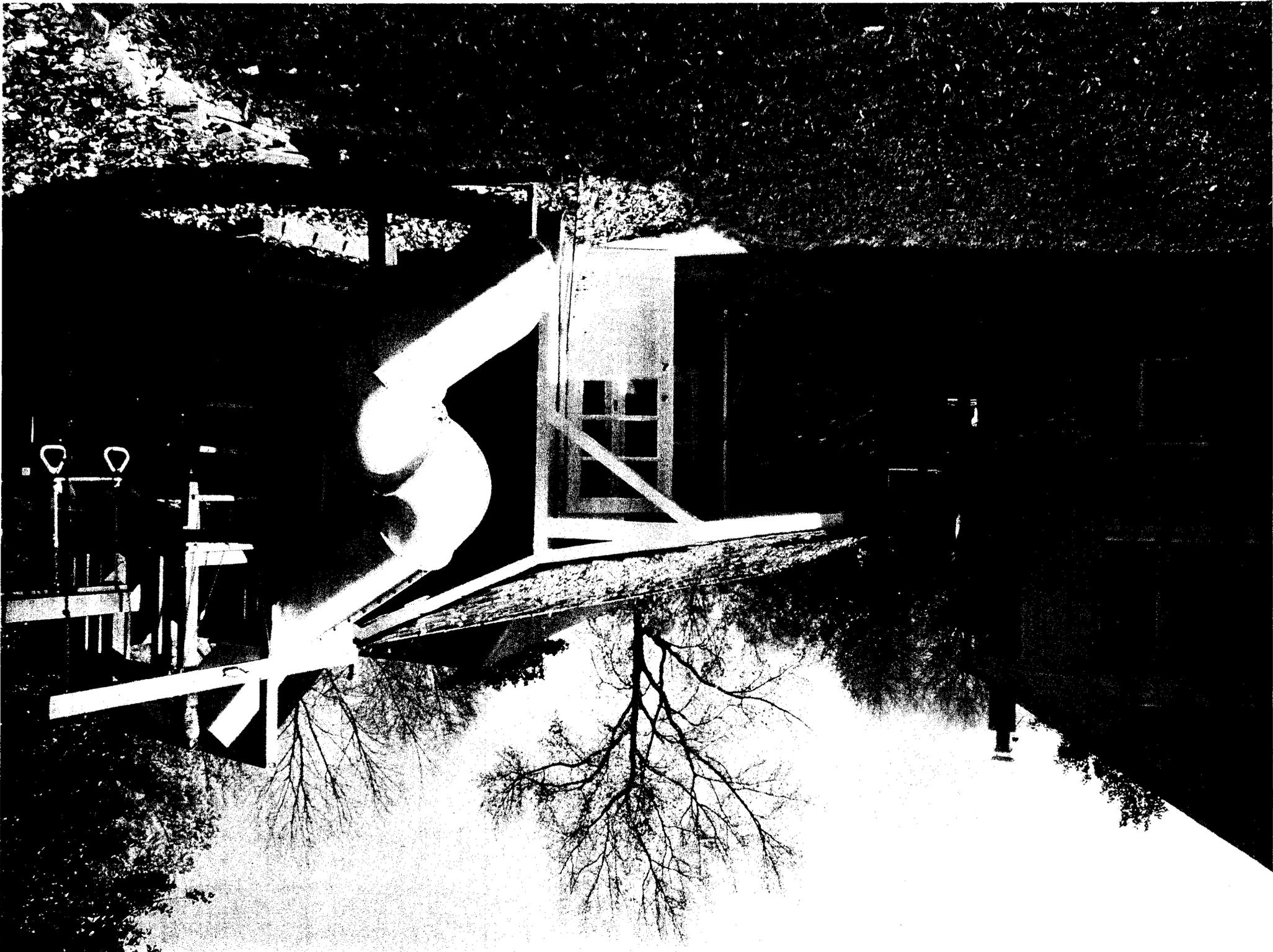
NOTES:

1. THIS PROPERTY IS LOCATED IN TAX MAP: 102-4-0012-01-0004 AND IS ZONED R-3.
2. PROPERTY OWNER IS TIMOTHY D. KELLY AND RECORDED IN DEED BOOK 19810 AT PAGE 2019 OF THE FAIRFAX COUNTY LAND RECORDS.
3. THIS PROPERTY IS SERVICED BY PUBLIC SEWER AND WATER.
4. NO TITLE REPORT FURNISHED AND ALL EASEMENTS OF RECORD MAY NOT BE SHOWN.
5. ZONING YARD REQUIREMENTS:
FRONT = 30 FEET SIDE YARD = 12 FEET REAR = 25 FEET
6. HEIGHT REQUIREMENT: 35 FEET
7. HEIGHTS:

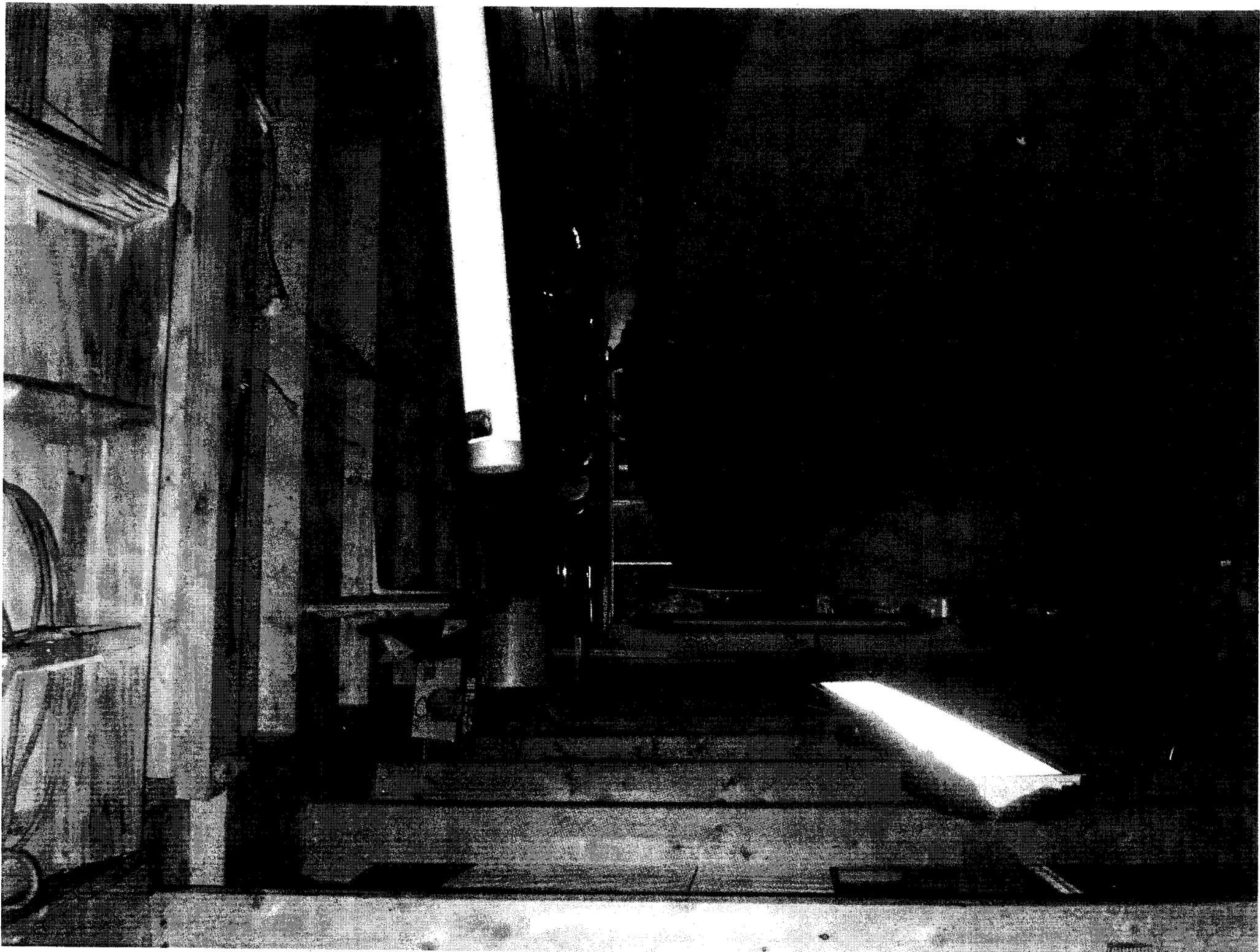
DWELLING	= 18.0 FEET
GARAGE/WORKSHOP	= 10.0 FEET
SHED	= 12.3 FEET
DECK	= 6.3 FEET
PLAYHOUSE	= 10.2 FEET
SLIDE PLATFORM	= 12.0 FEET
8. THERE IS NO EVIDENCE OF A BURIAL SITE ON THIS PROPERTY.
9. THERE ARE NO EASEMENTS OF 25 FEET OR MORE IN WIDTH THAT AFFECTS THIS PROPERTY.

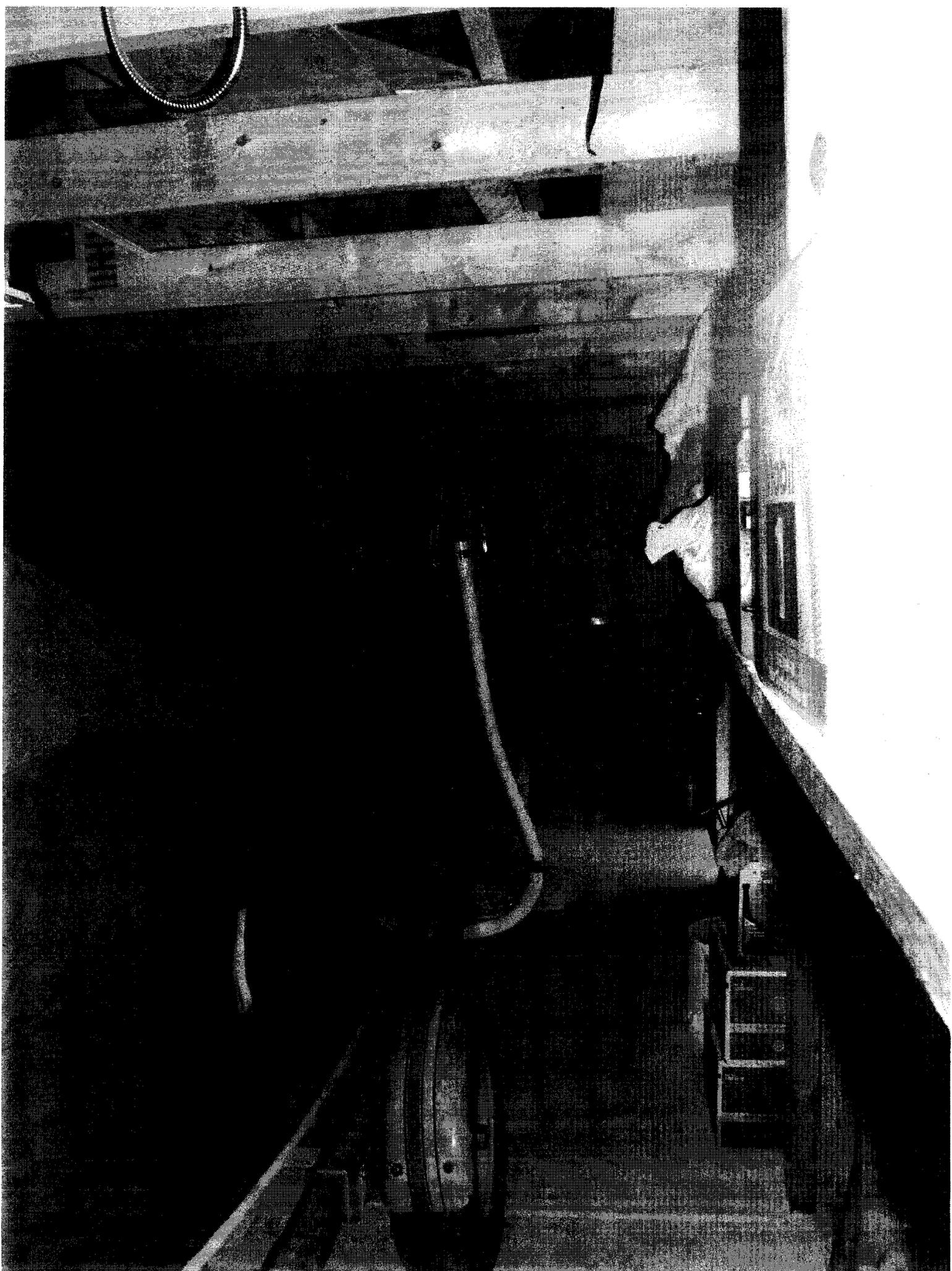


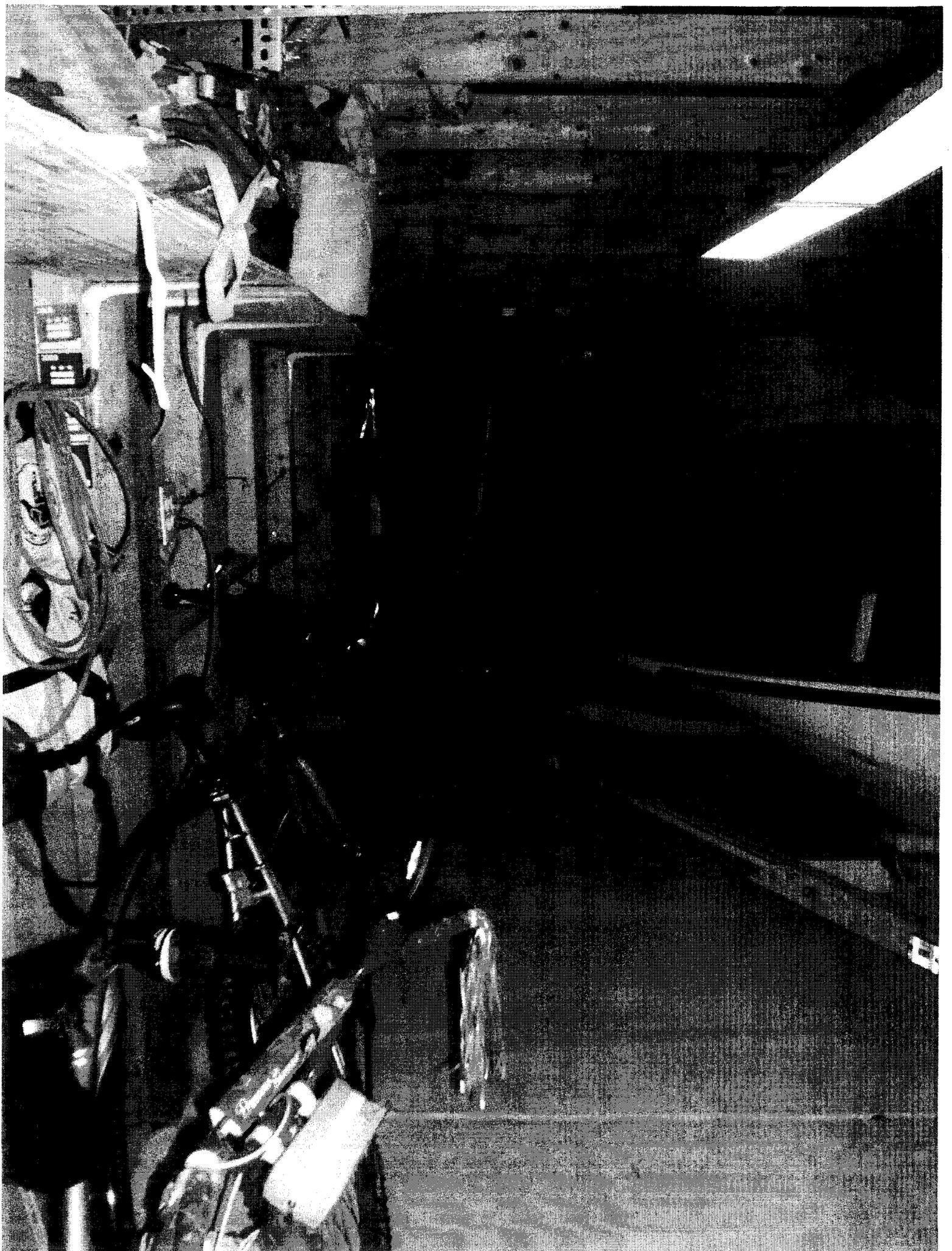


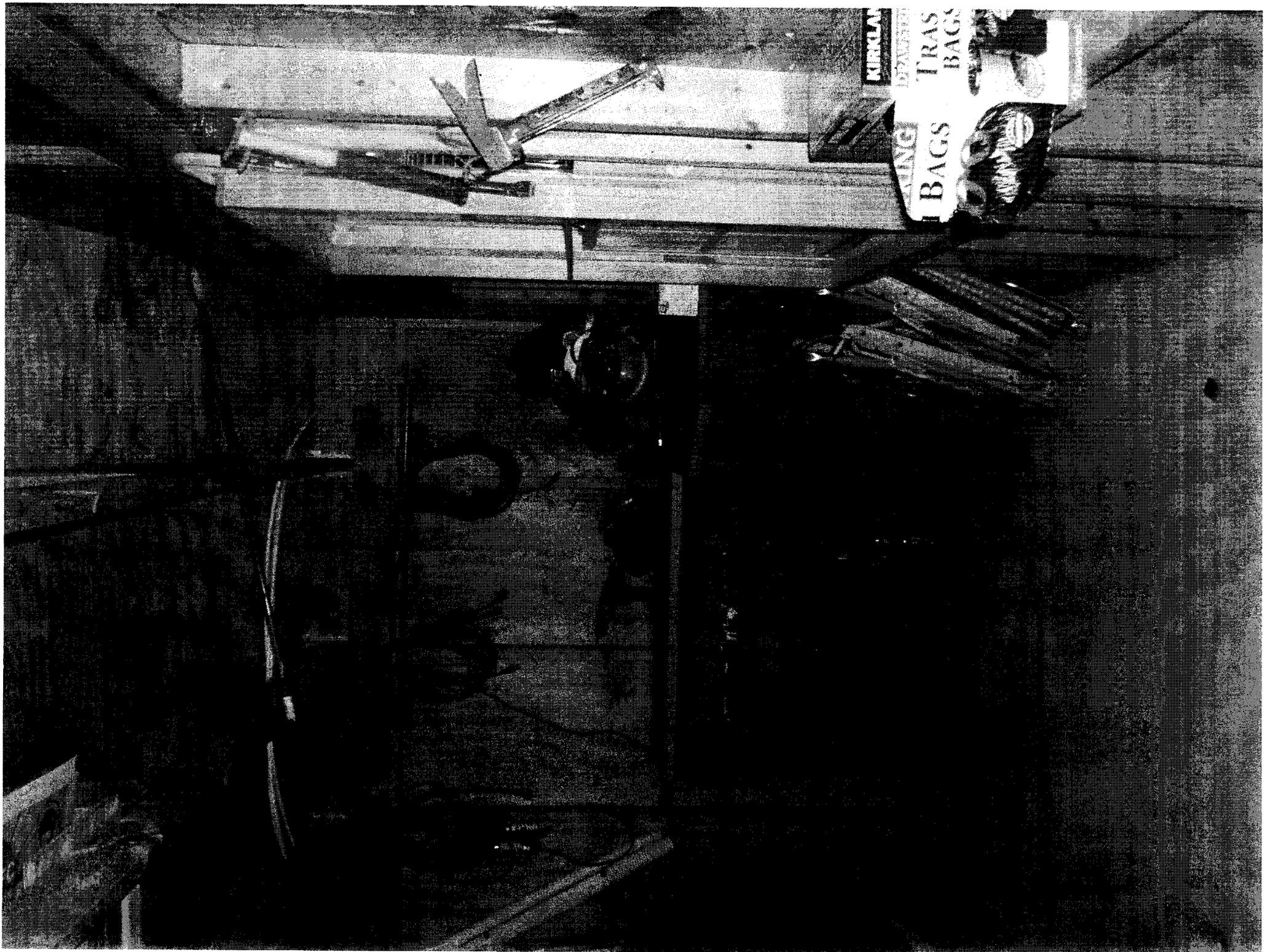


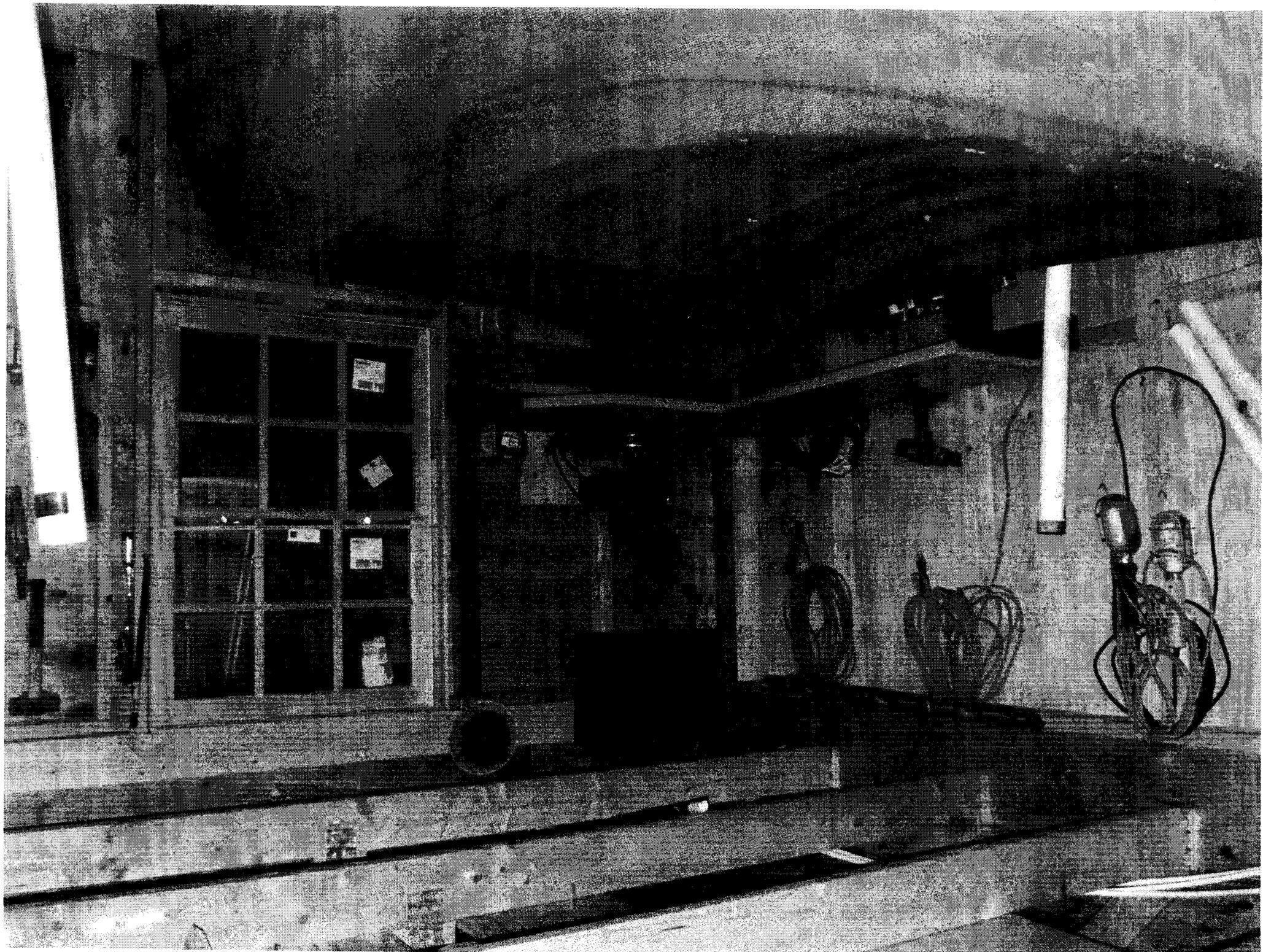


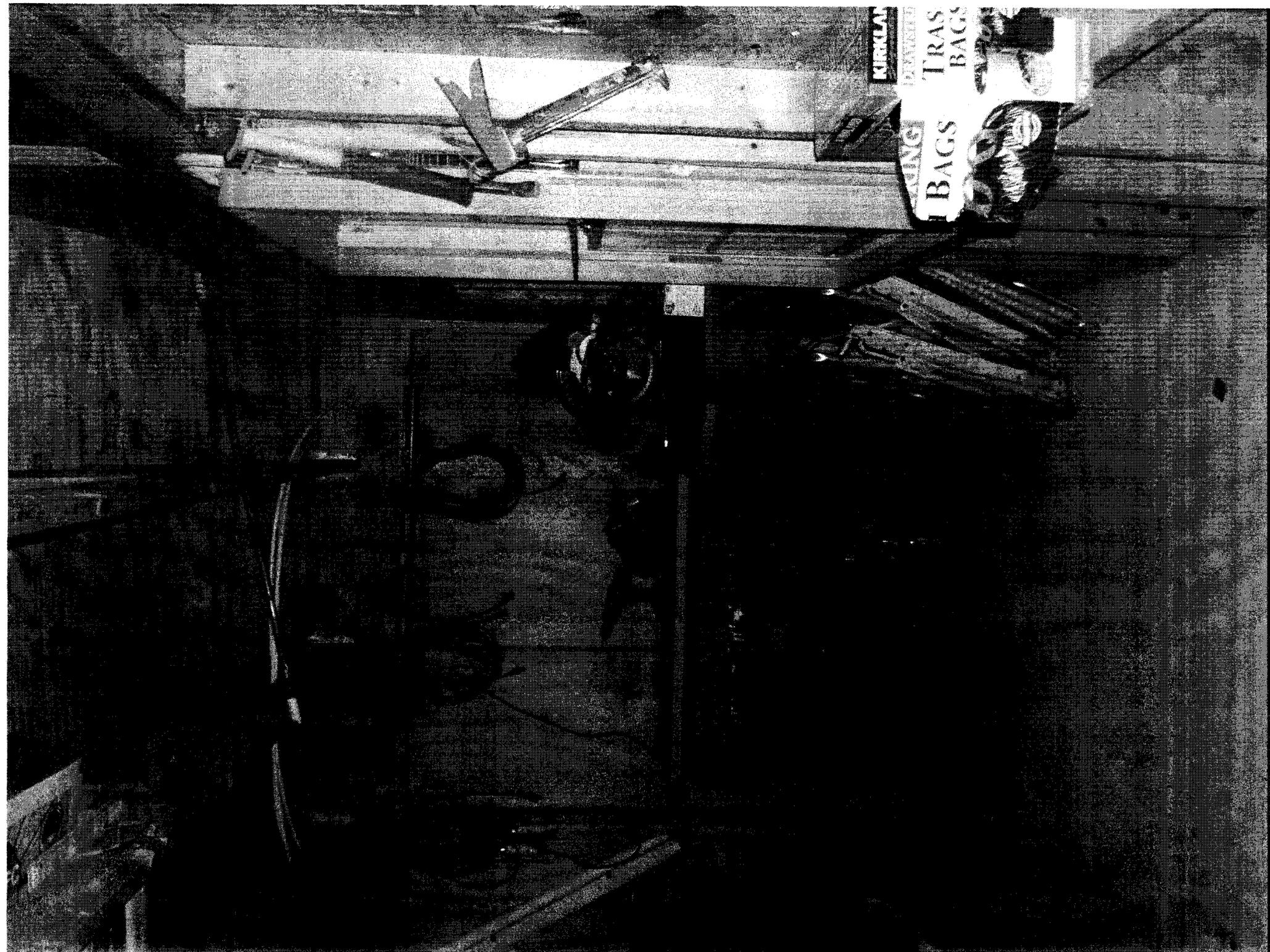


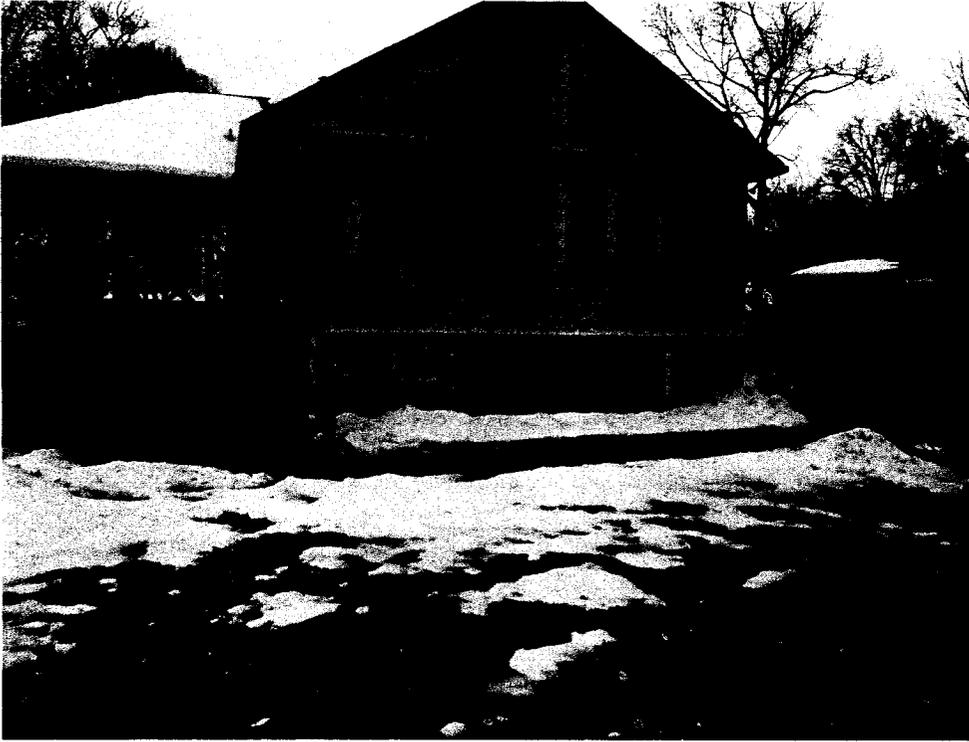












1.

From back yard toward back of house.



2.

From back yard toward back of house.



3.

From back yard looking across property line toward northeast.



4.

From front yard looking east toward the back yard.



5.

From front yard looking east toward front of house.



6.

From front yard driveway looking east toward backyard.



7.

From side yard looking west toward front of house.



8.

From back yard looking west toward back of house.



9.

From center of back yard looking west toward back of house.



10.

From center of back yard looking east away from the house.



11.

From center of back yard looking south toward adjacent property.



12.

From front side yard looking south and east to adjacent property.



13.

From side front yard looking west toward Old Stage Road .



14.

From front yard looking west toward adjacent property.



15.

From front side yard and driveway looking west toward Old Stage Road.



16.

From front side yard looking north toward adjacent property.



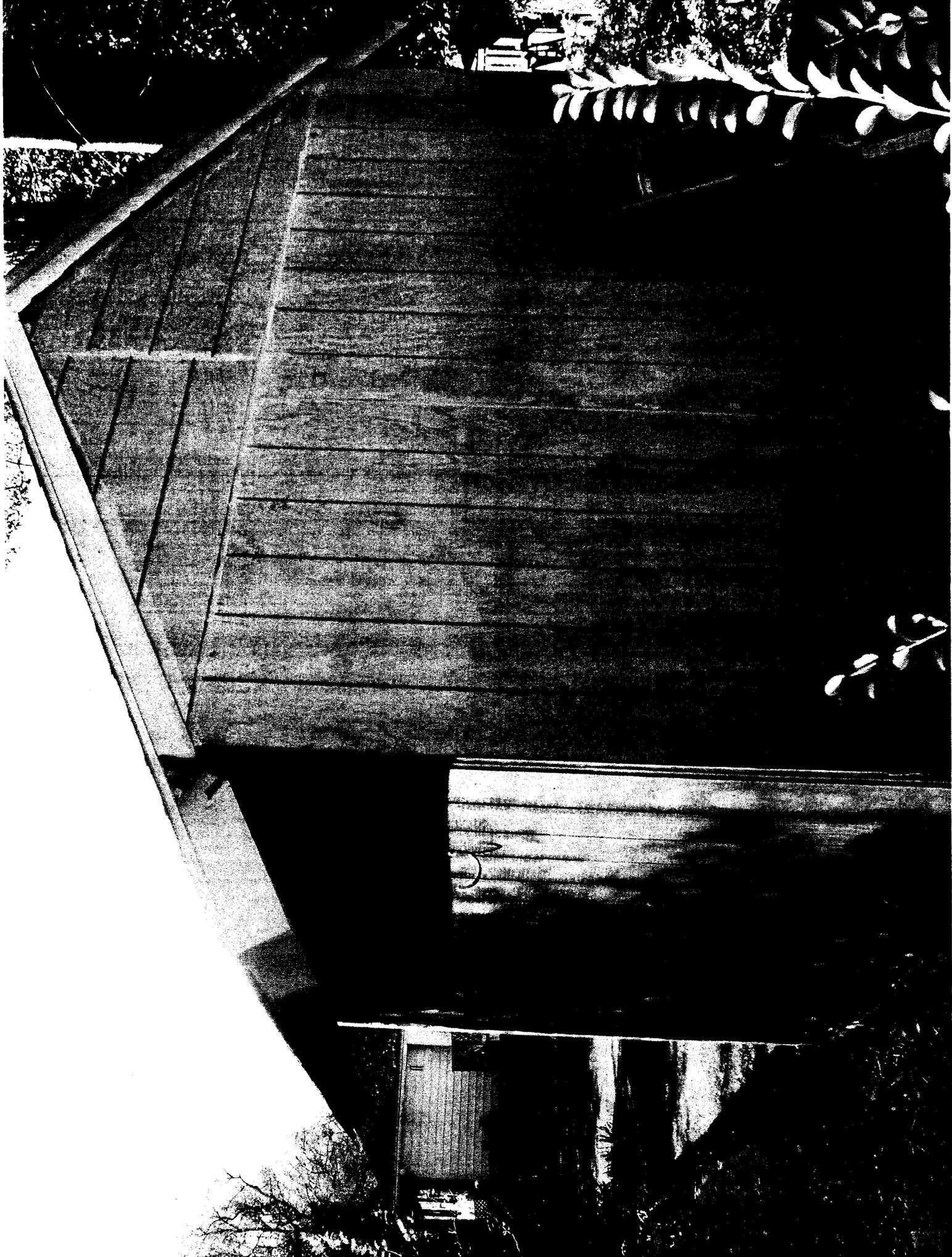
17.

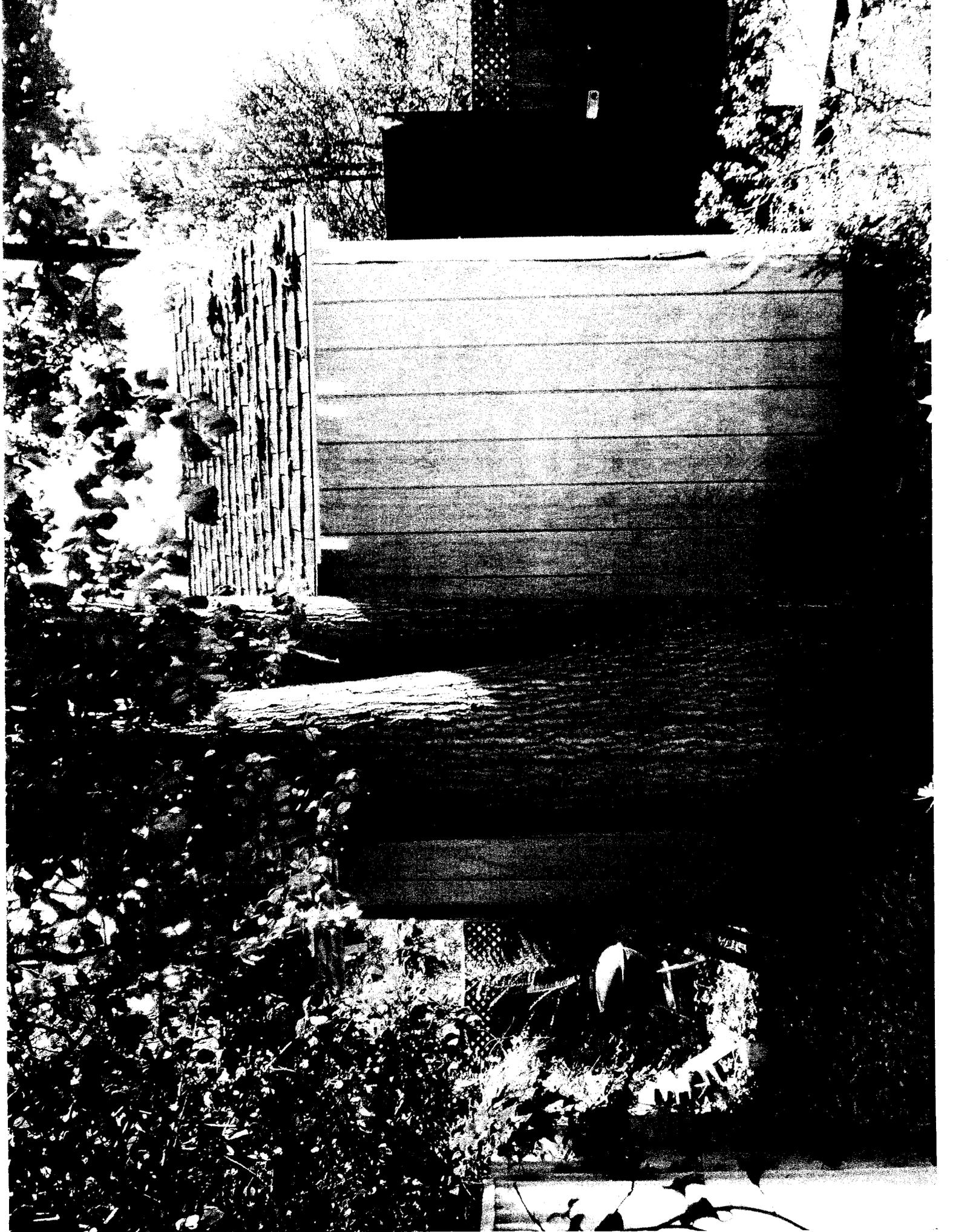
From back side yard looking west and north toward adjacent property.

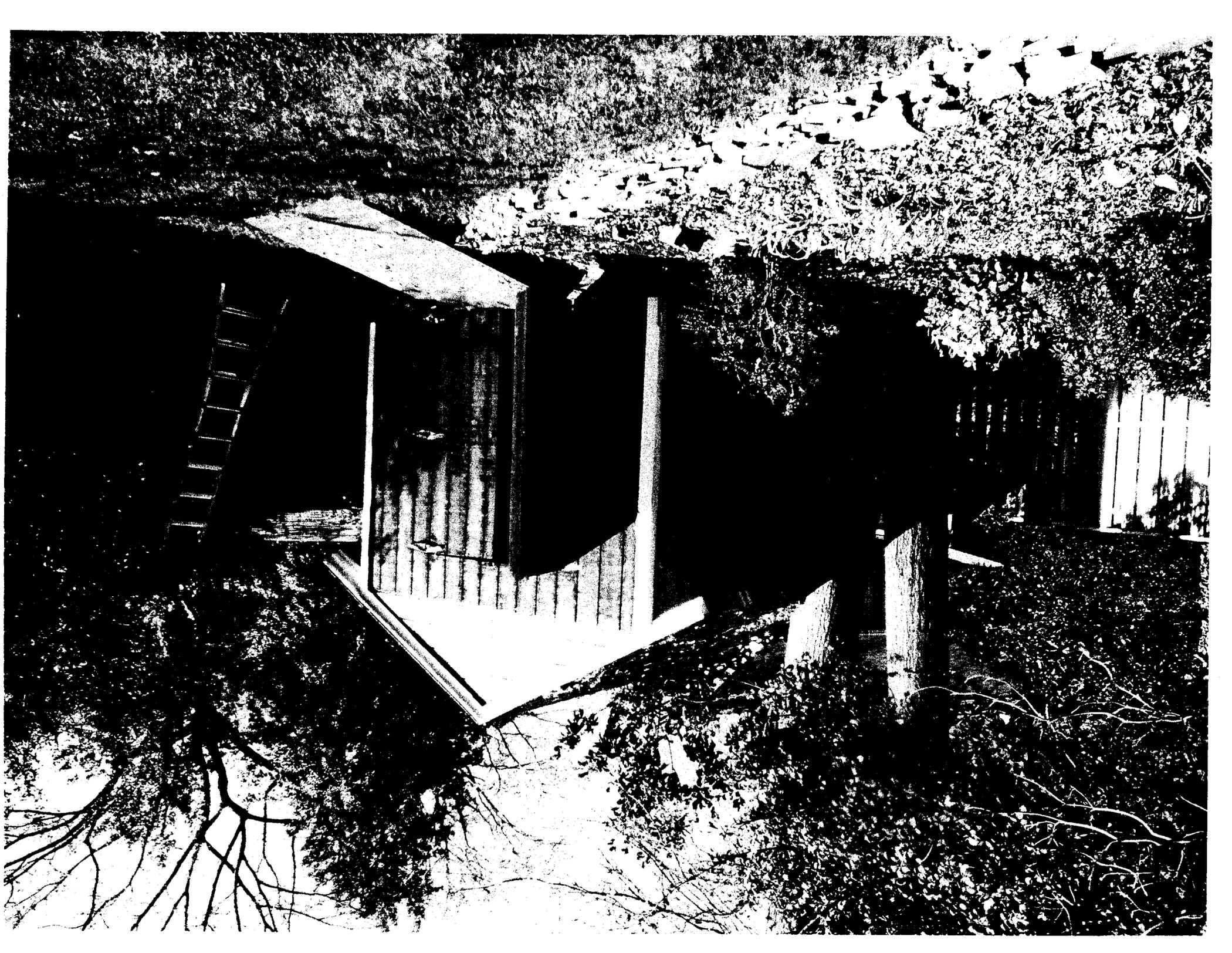


18.

From backyard looking north and east toward adjacent property.









DESCRIPTION OF THE APPLICATION

To permit reduction to the minimum yard requirements based on errors in building locations to permit 1) an accessory storage structure, depicted as Shed B on the plat, measuring 12.3 feet in height, to remain 6.5 feet from the southern side lot line and 1.7 feet from the rear lot line; 2) to permit an accessory structure, a playhouse, measuring 10.2 feet in height, to remain 3.9 feet from the northern side lot line and 0.3 feet from the rear lot line; and, 3) to permit an accessory structure, garage/workshop, measuring 10.0 feet in height, to remain 2.6 feet from the northern side lot line.

	Structure	Yard	Min. Yard Required	Structure Location	Amount of Error	Percent of Error
Special Permit #1	Shed "B"	Side	12.0 feet	6.5 feet	5.5 feet	46%
Special Permit #1	Shed "B"	Rear	12.3 feet	1.7 feet	10.6 feet	86%
Special Permit #2	Playhouse	Side	12.0 feet	3.9 feet	8.1 feet	68%
Special Permit #2	Playhouse	Rear	10.2 feet	0.3 feet	9.9 feet	97%
Special Permit #3	Garage / Workshop	Side	12.0 feet	2.6 feet	9.4 feet	78%

* Minimum yard requirement per Sect. 10-102

ANALYSIS OF THE APPLICATION

- **Title of Plat:** Special Permit Plat, Lot 4, Block 1, Riverside Gardens
- **Prepared by:** Sam Whitson Land Surveying, Inc., dated November 20, 2009, as revised through May 17, 2010

- **Building Permits required:** Yes, for the garage/workshop, since it measures 358.44 square feet in size. Building permits would not have been required for the other structures since they measure less than 150 square feet in gross floor area.
- **Errors Made by:** The previous homeowners with regard to the garage/workshop and Shed B. The applicant constructed the playhouse structure.

CHARACTER OF THE AREA

	Zoning	Use
North	R-3	Single Family Detached Dwellings
South	R-3	Single Family Detached Dwellings
East	R-3	Single Family Detached Dwellings
West	R-3	Single Family Detached Dwellings

BACKGROUND

Records indicate that the two-story, split foyer, brick and frame single family detached dwelling was constructed in 1963, with an addition constructed by building permit in 1990. The applicant purchased the property in 2008 and states that both the garage/workshop and Shed B existed on the property at that time. The applicant constructed the playhouse with swing and slide platform.

County records do not indicate that either a building permit was obtained, or that taxes have been paid on the garage/workshop structure, although the applicant states that it has existed for at least 15 years.

On January 21, 2010, the applicant was issued a Notice of Violation (NOV) for the location of the structures. The NOV is attached as Appendix 4.

Records indicate there were no other similar applications for properties in the vicinity of the application site heard by the BZA.

ZONING ORDINANCE REQUIREMENTS (See Appendix 5)

- General Special Permit Standards (Sect. 8-006)
- Group 9 Standards (Sect. 8-903)
- Provisions for Approval of Reduction of the Minimum Yard Requirements Based on an Error in Building Location (Sect. 8-914)

CONCLUSION

If it is the intent of the BZA to approve this application, staff suggests the BZA condition its approval by requiring conformance with the conditions set forth in Appendix 1 of this report, Proposed Development Conditions.

The approval of this special permit does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

APPENDICES

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Notice of Violation dated January 21, 2010
5. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2010-MV-029

June 23, 2010

1. This special permit is approved for the location of the accessory structures (garage/workshop and playhouse) and accessory storage structure (Shed B) as shown on the plat prepared by Sam Whitson Land Surveying, Inc., dated November 20, 2009 as revised through May 17, 2010, as submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, all applicable permits and final inspections shall be obtained for the detached accessory structure (garage/workshop) or the structure shall be removed or brought into compliance with Zoning Ordinance requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Application No.(s): SP 2010-MV-029
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: April 20, 2010
 (enter date affidavit is notarized)

I, Timothy D. Kelly, do hereby state that I am an
 (enter name of applicant or authorized agent)

(check one) applicant
 applicant's authorized agent listed in Par. 1(a) below 108058a

and that, to the best of my knowledge and belief, the following is true:

1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS, and LESSEES** of the land described in the application,* and, if any of the foregoing is a **TRUSTEE,**** each **BENEFICIARY** of such trust, and all **ATTORNEYS** and **REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(NOTE: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
Timothy D. Kelly	1604 Old Stage Rd Alexandria VA 22308	Applicant / Title Owner
Debra A Kelly	1604 Old Stage Rd. Alexandria, VA 22308	Title Owner

(check if applicable) There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

Application No.(s): SP 2010-MW-029
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: April 20, 2010
(enter date affidavit is notarized)

108058a

1(b). The following constitutes a listing*** of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(NOTE: Include **SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES, and REAL ESTATE INVESTMENT TRUSTS** herein.)

CORPORATION INFORMATION

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

DESCRIPTION OF CORPORATION: (check one statement)

- There are 10 or less shareholders, and all of the shareholders are listed below.
- There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF SHAREHOLDERS: (enter first name, middle initial, and last name)

(check if applicable) There is more corporation information and Par. 1(b) is continued on a "Special Permit/Variance Attachment 1(b)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s): SP 2010-MW-029
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: April 20, 2010
(enter date affidavit is notarized)

108058a

1(c). The following constitutes a listing*** of all of the PARTNERS, both GENERAL and LIMITED, in any partnership disclosed in this affidavit:

PARTNERSHIP INFORMATION

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, and zip code)

(check if applicable) The above-listed partnership has no limited partners.

NAMES AND TITLE OF THE PARTNERS (enter first name, middle initial, last name, and title, e.g. General Partner, Limited Partner, or General and Limited Partner)

(check if applicable) There is more partnership information and Par. 1(c) is continued on a "Special Permit/Variance Attachment to Par. 1(c)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until: (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s): _____
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: April 20, 2010
(enter date affidavit is notarized)

108058a

1(d). One of the following boxes **must** be checked:

In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land:

Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land.

2. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on the line below.)

None

(check if applicable) There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

Application No.(s): SP 2010-NW-029
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: April 20, 2010
(enter date affidavit is notarized)

108058a

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.)

None

(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(check if applicable) [] There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:

(check one) [x] Applicant [] Applicant's Authorized Agent

Timothy D. Kelly

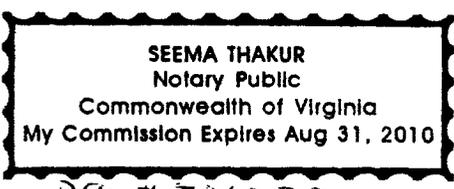
Timothy D. Kelly

(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 20th day of APRIL 2010, in the State/Comm. of VIRGINIA, County/City of ARLINGTON.

Seema Thakur
Notary Public

My commission expires: 8/31/2010



269 71 7062 313

Special Permit Statement of Justification

May 18, 2010

Property Address: 1604 Old Stage Road, Alexandria, VA 22308

A. Existing Garage/Workshop and accessory storage structure, constructed by previous home owner are submitted by special permit. The accessory storage structure is used to store household equipment (gardening tools, lawnmower, etc.). The Garage/Workshop is used for protection of 1962 "15 foot" wood runabout boat and trailer, and household projects. Both the storage structure and Garage/Workshop were constructed approximately fifteen years ago, and existed when owners purchased property in March, 2008.

Play equipment that has been located in the back corner of the property by the current owner, is also submitted for special permit via this application.

B. The accessory storage structure is used for continuous shelter of lawn equipment; the Garage/Workshop shelters the boat and provides space for household projects.

C. The accessory storage structure and the Garage/Workshop are for household use only.

D. N/A

E. No traffic impact results from the use of the accessory storage structure and the Garage/Workshop. The wood boat is removed from the Workshop two – three times per summer.

F. Accessory Storage structure is located in the rear of the property, accessed by foot. The Garage/Workshop is adjacent to the driveway, accessible by vehicle. The play equipment is located in the back left yard.

G. Accessory Storage structure and Garage/Workshop are constructed of wood framework, weatherboard siding, and cedar shake roofing. They are of similar material and architecture to the similar storage sheds and Garage/Workshop's located throughout the neighborhood. Play equipment consists of swing, sliding board, and playhouse.

H. Hazardous or toxic substances include lawnmower gasoline, lawnmower oil, weed eater mixture oil. In addition car motor oil and exterior paint is stored in the Storage shed.

I. The proposed use of the Garage/Workshop, accessory storage structure, and play equipment conforms to the provisions of all applicable ordinances, regulations and adopted standards. A waiver is being sought for Reduction to minimum yard requirements based on previous owner error in Garage/Workshop and Storage structure location; to permit accessory storage structure to remain 6.5 feet from side lot line and 1.7 feet from the rear lot line, and Garage/Workshop to remain 2.6 feet from other side lot line and play equipment to remain 0.3 feet from rear and 3.9 feet from side lot line.

Property Ownership Statement

The Fairfax County property located at 1604 Old Stage Road, Alexandria, VA 22308 is owned by Mr. Timothy D. Kelly and Debra A. Kelly, purchased from Ms. Susan Engle in March, 2008. The home and exterior tool and boat shed structures are planned for household use only by the property owners.

TD Kelly 12/2/09

Timothy D. Kelly

Debra A. Kelly 12/2/09

Debra A. Kelly

RECEIVED
Department of Planning & Zoning
DEC 04 2009
Zoning Evaluation Division



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

NOTICE OF VIOLATION

DATE OF ISSUANCE: January 21, 2010

CERTIFIED MAIL #: 7008 1140 0004 1809 0131

CASE #: 200906240

SR#: 54912

SERVE: Timothy D. Kelly
Debra A. Kelly
1604 Old Stage Road
Alexandria, VA 22308

LOCATION OF VIOLATION 1604 Old Stage Road
Riverside Gardens, Lot 4, Block 1
Alexandria, Virginia 22308-2227
Tax Map Ref. #: 102-4 ((12)) (1) 4
Zoning District: R-4

Dear Property Owners:

An inspection of the above referenced property on November 4, 2009 revealed the following violations of the Fairfax County Zoning Ordinance.

§ 10-104 (10D) Accessory Storage Structure Location
§ 2-302 (6) Accessory Use must comply with Article 10:

The inspection finds an accessory storage structure (Shed "A") in the left side yard which measured approximately 11'6" wide by 30'9" in length and approximately ten feet (10') in height, is approximately three hundred fifty three (353') square feet in area and is located approximately two feet six inches (2'6") from the left side lot line.

Also, an accessory storage structure (Shed "B"), as shown on the plat prepared by Sam Whitson Land Surveying, Inc., which is located in the right rear corner of the lot which measures approximately ten feet two inches (10'2") wide by approximately ten feet two inches (10'2") in length and was approximately twelve feet three inches (12'3") in height, is approximately one hundred three (103') square feet in area and is located approximately two feet six inches (2'6") from the rear lot line.

Timothy D. Kelly
Debra A. Kelly
January 21, 2010
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The Fairfax County Zoning Ordinance permits accessory storage structures to be located in minimum required yards; however, if the structure exceeds eight and one-half (8½) feet in height, it must be located on the lot so as to comply with Par. 10D of Sect. 10-104 of the Zoning Ordinance which states:

An accessory storage structure which exceeds eight and one half (8 ½) feet in height shall not be located in any part of any minimum required side yard.

The minimum required side yard distance in the R-3 District is twelve feet (12') as detailed in Par. 3-307 of the Zoning Ordinance.

Therefore, as both of the accessory storage structure exceeds eight and one-half (8 ½) feet in height and they are not located in accordance with the provisions of Par. 10D of Sect. 10-104 above, they are in violation of Par. 10D of Sect. 10-104 and Par. 6 of Sect. 2-302 of the Zoning Ordinance which states:

No accessory structure or use, as defined in Article 20, shall hereafter be built, moved, remodeled, established, altered or enlarged unless such accessory structure or use complies with the provisions of Par. 1 of Article 10.

You are hereby directed to clear this violation within thirty (30) days of the date of this Notice. Compliance can be accomplished by:

- Removing both of the storage structures from the property in their entirety; or
- Reducing the height of the accessory storage structure (Shed "B") to eight and one-half (8 ½) feet or less to allow it to remain at its present location; or
- Relocating the accessory storage structure (Shed "B") to a distance from the side lot line in accordance with Par. 10D of Sect. 10-104 of the Zoning Ordinance as outlined above.

As an alternative, you may apply to the Fairfax County Board of Zoning Appeals (BZA) and actively pursue and ultimately obtain approval of a Group 9 Special Permit for an error in building location to allow the accessory storage structure, Shed "A", "Shed "B", and the play house, to remain at their present heights and at their present locations. For information and answers to any questions regarding this application process, you may contact the Zoning Evaluation Division at 703-324-1290.

Timothy D. Kelly
Debra A. Kelly
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Further, as an alternative you may apply to the Fairfax County Board of Zoning Appeals (BZA) and actively pursue and ultimately obtain approval of a Variance to allow the accessory storage structure, Shed "A", to remain at its present height and at its present location. For information and answers to any questions regarding this application process, you may contact the Zoning Evaluation Division at 703-324-1290.

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

You may have the right to appeal this Notice of Zoning Violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, a written statement setting forth the decision being appealed, the date of decision, the grounds for the appeal, how the appellant is an aggrieved party and any other information that you may wish to submit and a \$2455.00 filing fee. Once an appeal application is accepted, it will be scheduled for public hearing and decision before the BZA.

Should you have any questions or need additional information, please do not hesitate to contact me at (703)324-1323 or 703-324-1300.

Sincerely,



Chuck Cohenour
Senior Zoning Inspector

8-006 General Standards

In addition to the specific standards set forth hereinafter with regard to particular special permit uses, all special permit uses shall satisfy the following general standards:

1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.
6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

8-903 Standards For All Group 9 Uses

In addition to the general standards set forth in Sect. 006 above, all Group 9 special permit uses shall satisfy the following standards:

1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.
2. All uses shall comply with the performance standards specified for the zoning district in which located.
3. Before establishment, all uses, including modifications or alterations to existing uses, shall be subject to the provisions of Article 17, Site Plans, or other appropriate submission as determined by the Director.

8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location

The BZA may approve a special permit to allow a reduction to the minimum yard requirements for any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected, but only in accordance with the following provisions:

1. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. Location of all existing structures, with dimensions, including height of any structure and penthouse, and if known, the construction date(s) of all existing structures.
 - E. All required minimum yards to include front, side and rear, and a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of well and/or septic field.
 - I. For nonresidential uses, a statement setting forth the maximum gross floor area and FAR for all uses.
 - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
 - K. Seal and signature of professional person certifying the plat.

In addition, the application shall contain a statement of justification explaining how the error in building location occurred and any supportive material such as aerial photographs, Building Permit applications, County assessments records, a copy of the contract to build the structure which is in error, or a statement from a previous owner indicating how the error in building location occurred.

2. The BZA determines that:
 - A. The error exceeds ten (10) percent of the measurement involved, and
 - B. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
 - C. Such reduction will not impair the purpose and intent of this Ordinance, and
 - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
 - E. It will not create an unsafe condition with respect to both other property and public streets, and
 - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
 - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
3. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
4. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
5. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.