



County of Fairfax, Virginia

MEMORANDUM

DATE: October 7, 2015

TO: John F. Ribble, III, Chairman
Members, Board of Zoning Appeals

FROM: Paul S. Yoon, Staff Coordinator
SP/VC Branch, Zoning Evaluation Division, DPZ

SUBJECT: SP 2015-DR-103
Sheila E. Frace, Trustee of the Sheila E. Frace Trust dated April 20, 2005
Deferred for Decision Only

The applicant originally submitted the above application on May 28, 2015. At the public hearing on September 23, 2015, the Board of Zoning Appeals (BZA) requested additional information from staff regarding the applicant's Statement of Justification, Notice of Violation appeal regarding the applicant's shed, subsequent litigation history, and a court order from the Fairfax Circuit Court. The BZA voted to defer decision to October 7, 2015 and request staff to consult with the Office of the County Attorney (OCA) and to include all pertinent information.

The applicant was originally served a Notice of Violation (NOV) from the Department of Code Compliance on May 24, 2013 for the presence of an accessory storage structure greater than 8.5 feet in height located 2.5 feet from a side lot line, and 1.9 feet from a rear lot line (as shown in Appendix 4 of the staff report dated September 16, 2015). On June 20, 2013, the applicant submitted an Application for Appeal (A 2013-DR-018), claiming that several abutting properties had accessory storage structures of similar or even greater height that were not selected for inspection.

The BZA heard the Appeal Application (A 2013-DR-018) on October 9, 2013, and took action to uphold the determination of the Zoning Administrator, who took the position that the applicant's shed must not be located in the minimum required side yard, and must be located a minimum distance equal to its height from the rear lot line. On November 21, 2013, the applicant appealed the BZA decision to the Circuit Court; however, the Circuit Court dismissed the certiorari proceeding because the petitioner failed to timely name the Board of Supervisors of Fairfax County as a party.

The applicant appealed the judgment rendered by the Circuit Court, and on February 26, 2015, the Supreme Court of Virginia heard and decided that the Circuit Court did not err in its dismissal of the certiorari proceeding. The case was then returned to the Circuit Court. The Court directed the applicant to either remove the offending structure or seek a Special Permit from the BZA. At the September 23, 2015 hearing, the BZA requested the formal written order. The County Attorney and the applicant's attorney presented the written order to the Circuit Court on October 2, 2015.

Attachments

1. Notice of Violation dated May 24, 2013
2. Appeal Application dated June 20, 2013
3. Appeal Staff Report dated October 9, 2013
4. BZA Clerk's Letter dated October 18, 2013
5. Fairfax County Circuit Court Summons dated November 21, 2013
6. Virginia Supreme Court Opinion dated February 26, 2015
7. Attachments and Exhibits to original Statement of Justification



County of Fairfax, Virginia

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

Return Copy

NOTICE OF VIOLATION Fairfax County Zoning Ordinance

DATE OF ISSUANCE: May 24, 2013

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: The Sheila E. Frace Trust
ADDRESS: c/o Shelia E. Frace Trustee
1836 Cherri Drive
Falls Church, Virginia 22043

LOCATION OF VIOLATION: 1836 Cherri Drive
Falls Church, Virginia 22043-1072

TAX MAP REF: 0401 03 0311

ZONING DISTRICT: R- 4

CASE #: 201303186 **SR #:** 94382

POTENTIAL CIVIL PENALTIES UNDER ZONING ORDINANCE

§ 18-903(1):	Zoning Violation	First Offense	Each Subsequent Offense
	§10-104 (10E)	\$ 200.00	\$ 500.00
	§10-102 (24)	\$ 200.00	\$ 500.00
	TOTAL:	\$ 400.00	\$ 1000.00

Dear Responsible Party:

The purpose of this letter is to rescind the previous Notice of Violation dated May 22, 2013, and issue a new Notice of Violation regarding zoning violations on the above referenced property.

Inspections of the above referenced property on May 21, 2013 and May 23, 2013 revealed the following violations of the Fairfax County Zoning Ordinance

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-324-9346
www.fairfaxcounty.gov/code

The Sheila E. Frace Trust
c/o Shelia E. Frace Trustee
May 24, 2013
SR 94382
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§ 10-104 (10E) Accessory Storage Structure Location
§ 2-302 (6) Accessory Use must comply with Article 10:

The presence of an accessory storage structure which measured approximately 9 feet 6 inches in height, is approximately 200 square feet in area and is located approximately 2 feet and approximately 1 foot respectively from the side and rear lot lines.

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. 10E of Sect. 10-104 of the Zoning Ordinance which states:

An accessory storage structure which exceeds eight and one-half (8½) feet in height shall not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line.

The minimum required side yard distance in the R- 4 District is 10 feet as detailed in Par. 2A (1) (b) (c) of Sect. 3-407 of the Zoning Ordinance.

Therefore, as this accessory storage structure exceeds eight and one-half (8½) feet in height and is not located in accordance with the provisions of Par. 10E of Sect. 10-104 above, it is in violation of Par. 10E 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 fifteen (15) days of the date of this Notice. Compliance can be accomplished by:

- Removing the storage structure from the property in its entirety; or
- Reducing the height of the structure to eight and one-half (8½) feet or less to allow it to remain at its present location; or
- Relocating the structure to a distance from the rear and side lot lines in accordance with Par. 10E of Sect. 10-104 of the Zoning Ordinance as outlined above.

The Sheila E. Frace Trust
c/o Shelia E. Frace Trustee
May 24, 2013
SR 94382
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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 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.

§ 10-102 (24) Outdoor Storage
§ 2-302 (6) Accessory Use must comply with Article 10:

An inspection has determined that you are allowing storage in the front, side and rear yards of the address listed above. These items consist of, but are not limited to, the following:

A tool box, ladder, wheels, tires, fish tank, propane tank, bicycles, tricycles; punching bag, dart board, animal cages and other miscellaneous junk and debris.

This outdoor storage:

- Exceeds 100 square feet in area, and
- Is not located in the rear half of the lot, and
- Is not screened from view from the first story window of any neighboring dwelling.

This outdoor storage is in violation of Par. 24 of Sect. 10-102 of the Fairfax County Zoning Ordinance that states in part:

Storage, outdoor in R districts, provided such storage is located on the rear half of the lot, is screened from the view from the first story window of any neighboring dwelling, and the total area for such outdoor storage does not occupy more than 100 square feet.

Therefore, you are in violation of Par. 6 of Sect. 2-302 of the Zoning Ordinance that 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 Part 1 of Article 10.

You are hereby directed to clear this violation within fifteen (15) days of the date of this Notice. Compliance can be accomplished by the following:

The Sheila E. Frace Trust
c/o Shelia E. Frace Trustee
May 24, 2013
SR 94382
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- Removing all outdoor storage from this lot; or
- Relocation of the outdoor storage to the rear half of the lot, and
- Screening it from the view from the first story window of any neighboring dwelling, and
- Limiting it to a total area not exceeding 100 square feet.

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 which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$200.00 for each violation of the Zoning Ordinance cited herein for the first violation and \$500.00 for each violation of the Zoning ordinance cited herein for any subsequent violation, in accordance with Zoning Ordinance §18-903(1).

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, any other information that you may wish to submit and a \$600.00 filing fee. Once an appeal application is accepted, it will be scheduled for public hearing and decision before the BZA. For information regarding an appeal contact:

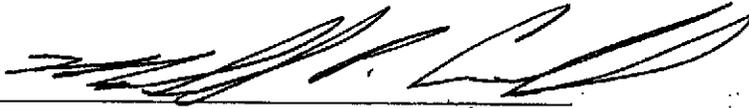
Zoning Administration Division
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035
Office: (703)324-1314

Information and forms can also be obtained at <http://www.fairfaxcounty.gov/dpz/bza/appeals/>.

The Sheila E. Frace Trust
c/o Shelia E. Frace Trustee
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If you have questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-9327. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:



Signature

Michael Caudle
Code Compliance Investigator
(703)324-9327

PERSONAL SERVICE Sheila Frace

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
- Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

Sgt. F.H. Cameron
SERVING OFFICER Stan G. Barry, Sheriff
for Fairfax County, VA

5/24/13
DATE

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SERVING OFFICER _____
for _____

DATE _____

PERSONAL SERVICE _____

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Served on a Secretary of the Commonwealth.

Not found.

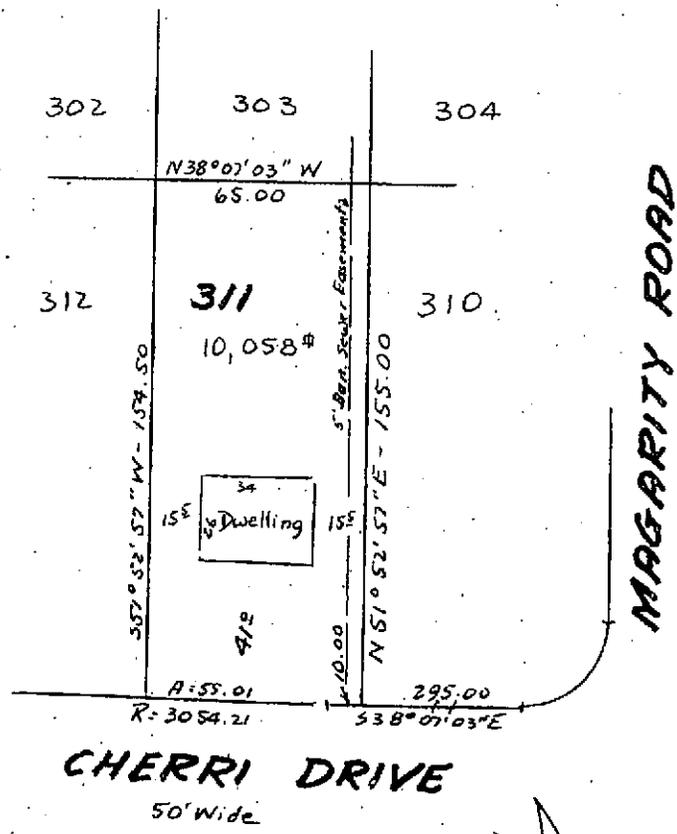
SERVING OFFICER _____
for _____

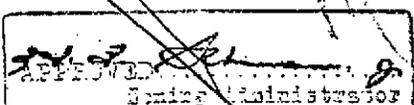
DATE _____

ZONING ORDINANCE PROVISIONS

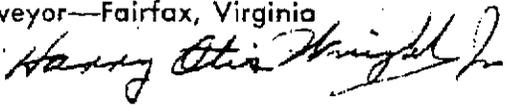
10-104 Location Regulations

10. The following regulations shall apply to the location of freestanding accessory storage structures:
 - A. For purposes of determining height, the height of an accessory storage structure shall be measured in accordance with Par. 4 of Sect. 10-103 above.
 - B. An accessory storage structure shall not be located (a) in any minimum required front yard on any lot or (b) in any front yard on any lot containing 36,000 square feet or less.
 - C. An accessory storage structure which does not exceed eight and one-half (8 ½) feet in height may be located in any part of any side yard or rear yard, except as qualified in Sect. 2-505.
 - D. 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.
 - E. An accessory storage structure which exceeds eight and one-half (8 ½) feet in height shall not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line.




 APPROVED
 Planning Administrator
 Date..... MAR 11 1953

House Location Survey
 LOT 311 SECTION SIX
PIMMIT HILLS
PROVIDENCE MAGISTERIAL DISTRICT
FAIRFAX COUNTY, VIRGINIA

Scale 1" = 50' Dec. 17, 1952
 HARRY OTIS WRIGHT, JR.
 Certified Civil Engineer and
 Land Surveyor—Fairfax, Virginia
 Certified 

COUNTY OF FAIRFAX, VIRGINIA
OFFICE OF THE BUILDING INSPECTOR
Application for Building Permit

MAP REFERENCE		PARCEL OR LOT	
PLAT NUMBER	BLK. NO.	BLK. NO.	SECTION
4011	3		211

CENSUS TRACT NO.	21792
DATE	19 64
PERMIT NO.	

To: BUILD Alter or Repair Add to Demolish Move

JOB LOCATION	C-2534 DIRECTIONS Route _____ Street <u>2413 CHERRY DR</u> Lot No. <u>311</u> Block <u>6</u> Section _____ Subdivision <u>PERMIT HILLS</u>	DESCRIPTION	For: Residential <input type="checkbox"/> Institutional <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> No. of Bldgs. _____ Type <u>SCREEN PORCH</u> No. of Units _____ Est. Const. Cost \$ <u>150.00</u> No. of Kitchens _____ No. of Stories _____ No. of Baths _____ Ht. of Building _____ Ft. No. of Rooms _____ Total Area _____ (Exclude Kit. & Bath) Basement <input type="checkbox"/> Slab <input type="checkbox"/> Crawl <input type="checkbox"/> FILL <input type="checkbox"/> SOIL <input type="checkbox"/> Soil Footing Size _____ Depth from Finish Grade _____ Ft. Material of Exterior Walls _____ Basement _____ 1st Floor _____ 2nd Floor _____ Other _____ Material of Interior Walls _____ HEAT: Gas <input type="checkbox"/> Oil <input type="checkbox"/> Hot Air <input type="checkbox"/> Hot Water <input type="checkbox"/> Boiler <input type="checkbox"/> Air Conditioner <input type="checkbox"/> Sprinkler <input type="checkbox"/> ROOF: Flat <input type="checkbox"/> Pitch <input type="checkbox"/> Shed <input type="checkbox"/> SEWAGE: Public <input type="checkbox"/> Community <input type="checkbox"/> Septic Tank <input type="checkbox"/> Pit Privy <input type="checkbox"/> None <input type="checkbox"/> WATER: Public <input type="checkbox"/> Individual Well <input type="checkbox"/> None <input type="checkbox"/> Remarks: _____
	OWNER		Name <u>NORMAN L. ARNOLD</u> Address <u>2413 CHERRY DR</u> City <u>FALLS CHURCH, VA 22034</u> Tel. No. _____
ARCHITECT ENGINEER	Name _____ Address _____ City _____ State Reg. No. _____		
CONTRACTOR	Name <u>OWEN</u> Address _____ City _____ State Reg. No. _____		

AUTHORIZATION
I hereby certify that I have the authority to make this application, that the information given is correct, and that the use and construction shall conform to the County Health Regulations, the Building and Zoning Ordinances, and private deed restrictions, if any, which are imposed on the property.
 893-5299 8 JUNE 64
 Phone No. Date Signature of Owner or Auth. Agent Norman L. Arnold

PLAN APPROVAL
 Use Group of Building L3 Area of Bldg. @ _____ per Sq. Ft. \$ _____
 Type of Construction 4B Area of Bldg. @ _____ per Sq. Ft. \$ _____
 Fire District _____ Total Each Bldg. \$ _____
 Date Checked 6/8 1964 By MEM TOTAL FEE \$ 5.00
 Approved by Building Inspector Charles W. Ward

ROUTING	OFFICE	Rm. No.	DATE	APPROVAL	REMARKS
V	Land Office	112	6-8-64	<u>MEM</u>	
V	Zoning Administrator	210	6-8-64	<u>MEM</u>	
	Health Officer	Rt. 237			Health and Welfare Bldg. on Rt. 237
	Sanitary Engineer	Bsmt	6-8-64	<u>MEM</u>	
V	Finance Office	120			
V	Building Inspector	203			Return to secure Bldg. Permit

CERTIFICATION
 Supervisor of Assessments
 Property is listed in name of Norman L. Arnold
 Magisterial District Draxeville-17 Deed Book Reference 2388-242
 Authorization John W. Ferguson

ZONING
 Subdivision Permit Hills Lot No. 311 Block _____ Section 6 Zone R-1.5
 No. Acres or Sq. Ft. _____
 Street Address Cherry Dr
 LOT SIZE: Front _____ Right Side _____ Left Side _____ Rear _____
 Use of Bldg. Screen Porch Use after Alteration _____ No. Families _____
 Set Back: Front 40' Rt. Side 15' Left Side 5' Rear 25'
 Authorization _____

RETURN THIS COMPLETED APPLICATION TO THE BUILDING INSPECTOR'S OFFICE FOR ISSUANCE OF BUILDING PERMIT.

approved 6-8-64 JWB

DOUMAR MARTIN PLLC
LAW OFFICES

2000 N. 14TH Street, Suite 210
Arlington, VA 22201
Telephone 703-243-3737
Facsimile 703 -524-7610
E-mail kbudd@doumarmartin.com
www.doumarmartin.com

1629 K Street, N.W., Suite 300
Washington, D.C. 20006
Telephone 202-349-1674
Facsimile 202-331-3759

June 20, 2013

VIA UPS

Clerk, Board of Zoning Appeals
Zoning Evaluation Division
Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035

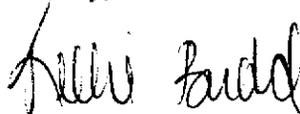
Re: Appeal of Notice of Violation

Dear Ms. Moran:

Please find enclosed a copy of The Sheila E. Frace Trust's appeal of the May 24, 2013 Notice of Vioation received.

Please feel free to contact our office if you have any questions or concerns.

Sincerely,



Kellie Budd



Please type or
Print in Black Ink

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
APPLICATION FOR APPEAL

APPLICATION NO. _____
(Assigned by Staff)

NAME OF APPELLANT: The Sheila E. Frace Trust

NATURE OF THE APPEAL:

See attached document, Exhibit A

DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS SUBJECT TO THE APPEAL May 24, 2013

HOW IS THE APPELLANT AN AGGRIEVED PERSON?:

Sheila E. Frace is the owner of the property and will incur the cost of any changes to the shed.

IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 1836 Cherri Drive, Falls Church VA 22043

TAX MAP DESCRIPTION: 0401030311

The undersigned has has not (circle one) the authority to allow and does does not (circle one) authorize Fairfax County staff representatives ~~on~~ official business to enter on the subject property as necessary to process the application.

Type or Print Name of Appellant or Agent

Kelly Budd

Signature of Appellant or Agent

Kelly Budd

Address

2000 North 14th Street, Suite 210, Arlington, VA 22201

Telephone No.

703-243-3737

Home

Work

Please provide name and phone number of contact person if different from above.

NA

DO NOT WRITE IN THIS SPACE

Subdivision Name: _____

Total Area (Acres/Square Feet): _____

Present Zoning: _____

Supervisor District: _____

Date application received: _____ Application Fee Paid: \$ _____

Date application accepted: _____

EXHIBIT A

This is an appeal of a May 24, 2013 Notice of Violation of the Fairfax County Zoning Ordinance. The purported violations are of Accessory Storage Structure Location and Outdoor Storage.

The nature of this appeal is as follows:

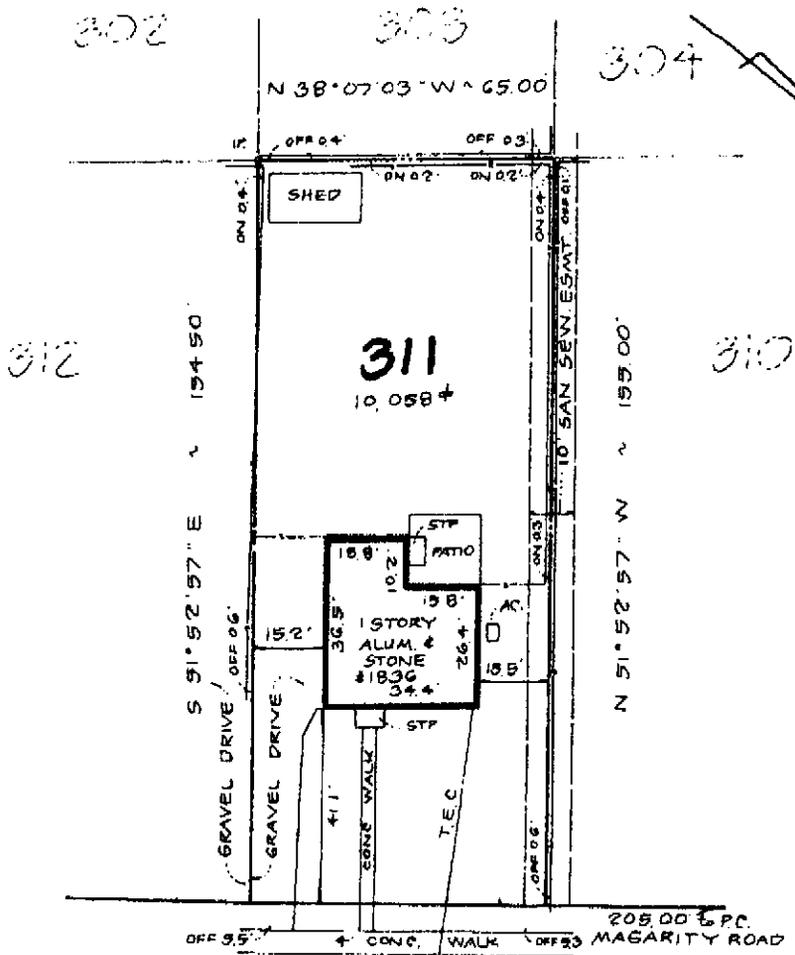
- The shed in question was already in place, in the same size, manner and location when Ms. Frace purchased the property in 1993. (See plat attached clearly showing the shed.) The shed has remained on the property, untouched and without a single complaint until the property was targeted for inspection and ultimately cited for violations. The targeting and issuance of violation notices was completely arbitrary.
- The owner prior to Ms. Frace purchased the property in 1988. A Google Earth photograph from 1988 shows a similar looking shed structure on the property at that time. Accordingly, the shed most likely predates the 1988 purchase as well.
- Further, the accessory structures of the abutting properties- the property to the southeast, and the property due south, are not only placed equal distances as Ms. Frace's shed from their respective side lot and rear lot lines, but on the southeast property the building looks to be as much as three feet (3') or more higher than Ms. Frace's shed, while the property due south (catty-corner to Ms. Frace's property) appears to be the height equal to Ms. Frace's shed. The fact that these properties very closely located to Ms. Frace's property have similar accessory structures but were not singled out for a violation further evidences the arbitrary and capricious nature of this investigation and subsequent violation notice. The zoning department is apparently selectively enforcing its ordinance.
- Notably, an inspector came out at least two times for the purposes of inspecting the property and ultimately issuing the notices. The first inspection by a single inspector, Code Compliance Investigator Michael Caudle, occurred May 21st, followed by a second inspection by Mr. Caudle on the evening of May 23rd accompanied by a second investigator. A May 22, 2013 violation was then rescinded after a second trip, and replaced with a May 24, 2013 violation notice. A final third notice was dated May 30, 2013. It's unclear why two separate trips and two different inspectors were necessary unless Zoning Enforcement was actively looking for possible violations.
- In fact, when Mr. Caudle was contacted by telephone by Ms. Frace's husband, Glenn Heller, early the morning of May 23rd (the day after Ms. Frace received the May 22nd NOV), Mr. Caudle was specifically asked by Heller if it would be possible to make an appointment with him to come out to the property at his convenience and go over exactly

what items were generating Zoning Enforcement's concern. However, Mr. Caudle indicated that coming to the property at the request of the owner was not normal procedure and that regardless he did not have the time to come back to the property anytime soon. He further added that Heller should give him a call once the objects had been removed and he would then make time for an appointment for a re-inspection. Mr. Caudle indicated he would look to hear from them within the next fifteen days (the time specified in the NOV within which to act).

- In that same conversation Mr. Caudle indicated that the only matter at issue was outdoor storage in the front yard, and that the main items of concern were bicycles, a small bench, a vinyl truck bed, and some miscellaneous items strewn about the front yard. In fact, as to the truck bed, bench, and miscellaneous items, Mr. Caudle specifically recommended simply placing them behind the property's back yard fence so that the items would be out of sight. Mr. Caudle listed no other concerns even when asked to elaborate if there was anything else that needed to be done to satisfy his department. What made the second inspection the evening of May 23rd even more unusual was that when Mr. Heller initially contacted the Zoning Administration Division the morning of May 22 (just after the NOV was first served) he was told that Mr. Caudle works an early shift starting at 7:30 a.m., is out in the field most of the day, and finishes up around 3:30 p.m., and that therefore the best time to reach Mr. Caudle would be around 7:30 a.m. the next morning or any weekday morning. Yet around 7:30 p.m. the evening of May 23 (after speaking with Heller by phone earlier that same day), Mr. Caudle arrived unannounced at the property, accompanied by a second inspector, both of whom then proceeded to inspect the property's rear yard, with the second inspector also taking photos during the inspection, including pictures of the exterior of the house.
- Based on the May 23 telephone conversation, Mr. Heller understood Mr. Caudle was complete in his analysis and inspection of the Frace property. However, Mr. Caudle still decided to make another visit that evening accompanied by a second inspector and ultimately issued three separate notices.
- Ms. Frace has obtained contractor estimates for changing the shed and the cost is significant and overly burdensome. Given that the shed has existed on this property for more than 20 years, pre-dating Ms. Frace's ownership, that several abutting properties have storage units of similar and even greater height that have not been singled out for inspection, and that the cost of lowering the shed height is very costly and will unfairly burden Ms. Frace, we request the notice be rescinded.

Please be advised the §10-102(e) and §2-302(6) violation regarding accessory use has been abated as the items have been moved from the front, side and rear yards.

NOTE: CHAIN LINK & STOCKADE FENCES



R · 3,054 21' A · 95 01' S 38°07'03" E
10.00'

CHERRI DRIVE
50' R/W

PLAT

SHOWING HOUSE LOCATION ON
LOT 311 SECTION 6

PIMMIT HILLS
FAIRFAX COUNTY, VIRGINIA

SCALE 1" = 30'

APRIL 13, 1993

THIS PROPERTY IS NOT LOCATED IN A
SPECIAL FLOOD HAZARD AREA.

PLAT SUBJECT TO RESTRICTIONS OF
RECORD

TITLE REPORT NOT FURNISHED

I HEREBY CERTIFY THAT THE POSITIONS OF
ALL THE EXISTING IMPROVEMENTS HAVE BEEN
CAREFULLY ESTABLISHED BY A TRANSIT TAPE
SURVEY AND UNLESS OTHERWISE SHOWN,
THERE ARE NO VISIBLE ENCROACHMENTS.

Kenneth W. White
KENNETH W. WHITE 15



CASE NAME

KIMBALL & FRACE

TRI-STATE TITLE &
ESCROW, INC.

ALEXANDRIA SURVEYS INC
6343 SOUTH KINGS HIGHWAY
ALEXANDRIA, VIRGINIA 22306
103 680 6615
FAX 703 768 7754

2346549

JUN-20-13 10:35 AM



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 Fairfax County Zoning Ordinance

DATE OF ISSUANCE: May 24, 2013

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: The Sheila E. Frace Trust
ADDRESS: c/o Sheila E. Frace Trustee
1836 Cherri Drive
Falls Church, Virginia 22043

LOCATION OF VIOLATION: 1836 Cherri Drive
Falls Church, Virginia 22043-1072

TAX MAP REF: 0401 03 0311

ZONING DISTRICT: R-4

CASE #: 201303186 **SR #:** 94382

POTENTIAL CIVIL PENALTIES UNDER ZONING ORDINANCE

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Inspections of the above referenced property on May 21, 2013 and May 23, 2013 revealed the following violations of the Fairfax County Zoning Ordinance

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-324-9316
www.fairfaxcounty.gov/code

DOUMAR MARTIN PLLC
LAW OFFICES

2000 N. 14TH Street, Suite 210
Arlington, VA 22201
Telephone 703-243-3737
Facsimile 703 -524-7610
E-mail kbudd@doumarmartin.com
www.doumarmartin.com

1629 K Street, N.W., Suite 300
Washington, D.C. 20006
Telephone 202-349-1674
Facsimile 202-331-3759

June 26, 2013

RECEIVED
DEPARTMENT OF PLANNING
AND ZONING

JUL 01 2013

SPECIAL PERMIT &
VARIANCE BRANCH

VIA FIRST CLASS MAIL

Clerk, Board of Zoning Appeals
Zoning Evaluation Division
Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035

Re: Appeal of Notice of Violation

To Whom it May Concern:

Please find enclosed one copy of The Sheila E. Frace Trust's May 24, 2013 Notice of Vioation received. The appeal package was previously submitted.

Please feel free to contact our office if you have any questions or concerns.

Sincerely,


Kellie Budd



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 Fairfax County Zoning Ordinance

RECEIVED
DEPARTMENT OF PLANNING
AND ZONING

DATE OF ISSUANCE: May 24, 2013

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO:
ADDRESS: The Sheila E. Frace Trust
c/o Sheila E. Frace Trustee
1836 Cherri Drive
Falls Church, Virginia 22043

LOCATION OF VIOLATION: 1836 Cherri Drive
Falls Church, Virginia 22043-1072

TAX MAP REF: 0401.03.0311

ZONING DISTRICT: R-4

JUL 01 2013

SPECIAL PERMIT &
VARIANCE BRANCH

CASE #: 201303186 SR #: 94382

POTENTIAL CIVIL PENALTIES UNDER ZONING ORDINANCE

§ 18-903(1):	Zoning Violation	First Offense	Each Subsequent Offense
	§10-104 (10F)	\$ 200.00	\$ 500.00
	§10-102 (24)	\$ 200.00	\$ 500.00
	TOTAL:	\$ 400.00	\$ 1000.00

Dear Responsible Party:

The purpose of this letter is to rescind the previous Notice of Violation dated May 22, 2013, and issue a new Notice of Violation regarding zoning violations on the above referenced property.

Inspections of the above referenced property on May 21, 2013 and May 23, 2013 revealed the following violations of the Fairfax County Zoning Ordinance

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-324-9316
www.fairfaxcounty.gov/code

The Sheila E. Frace Trust
c/o Sheila E. Frace Trustee
May 24, 2013
SR 94382
Page 2

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

The presence of an accessory storage structure which measured approximately 9 feet 6 inches in height, is approximately 200 square feet in area and is located approximately 2 feet and approximately 1 foot respectively from the side and rear lot lines.

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. 10E of Sect. 10-104 of the Zoning Ordinance which states:

An accessory storage structure which exceeds eight and one-half (8½) feet in height shall not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line.

The minimum required side yard distance in the R-4 District is 10 feet as detailed in Par. 2A (1) (b) (c) of Sect. 3-407 of the Zoning Ordinance.

Therefore, as this accessory storage structure exceeds eight and one-half (8½) feet in height and is not located in accordance with the provisions of Par. 10E of Sect. 10-104 above, it is in violation of Par. 10E 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 fifteen (15) days of the date of this Notice. Compliance can be accomplished by:

- Removing the storage structure from the property in its entirety; or
- Reducing the height of the structure to eight and one-half (8½) feet or less to allow it to remain at its present location; or
- Relocating the structure to a distance from the rear and side lot lines in accordance with Par. 10E of Sect. 10-104 of the Zoning Ordinance as outlined above.

The Sheila E. Frace Trust
 c/o Shelia E. Frace Trustee
 May 24, 2013
 SR 94382
 Page 3

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 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.

§ 10-102 (24) Outdoor Storage
§ 2-302 (6) Accessory Use must comply with Article 10:

An inspection has determined that you are allowing storage in the front, side and rear yards of the address listed above. These items consist of, but are not limited to, the following:

A tool box, ladder, wheels, tires, fish tank, propane tank, bicycles, tricycles, punching bag, dart board, animal cages and other miscellaneous junk and debris.

This outdoor storage:

- Exceeds 100 square feet in area, and
- Is not located in the rear half of the lot, and
- Is not screened from view from the first story window of any neighboring dwelling.

This outdoor storage is in violation of Par. 24 of Sect. 10-102 of the Fairfax County Zoning Ordinance that states in part:

Storage, outdoor in R districts, provided such storage is located on the rear half of the lot, is screened from the view from the first story window of any neighboring dwelling, and the total area for such outdoor storage does not occupy more than 100 square feet.

Therefore, you are in violation of Par. 6 of Sect. 2-302 of the Zoning Ordinance that 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 Part 1 of Article 10.

You are hereby directed to clear this violation within fifteen (15) days of the date of this Notice. Compliance can be accomplished by the following:

The Sheila E. Frace Trust
c/o Shelia E. Frace Trustee
May 24, 2013
SR 94382
Page 3

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 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.

§ 10-102 (24) Outdoor Storage
§ 2-302 (6) Accessory Use must comply with Article 10:

An inspection has determined that you are allowing storage in the front, side and rear yards of the address listed above. These items consist of, but are not limited to, the following:

A tool box, ladder, wheels, tires, fish tank, propane tank, bicycles, tricycles, punching bag, dart board, animal-cages and other miscellaneous junk and debris.

This outdoor storage:

- Exceeds 100 square feet in area, and
- Is not located in the rear half of the lot, and
- Is not screened from view from the first story window of any neighboring dwelling.

This outdoor storage is in violation of Par. 24 of Sect. 10-102 of the Fairfax County Zoning Ordinance that states in part:

Storage, outdoor in R districts, provided such storage is located on the rear half of the lot, is screened from the view from the first story window of any neighboring dwelling, and the total area for such outdoor storage does not occupy more than 100 square feet.

Therefore, you are in violation of Par. 6 of Sect. 2-302 of the Zoning Ordinance that 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 Part 1 of Article 10.

You are hereby directed to clear this violation within fifteen (15) days of the date of this Notice. Compliance can be accomplished by the following:

The Sheila E. Frace Trust
c/o Shelia E. Frace Trustee
May 24, 2013
SR 94382
Page 4

- Removing all outdoor storage from this lot; or
- Relocation of the outdoor storage to the rear half of the lot, and
- Screening it from the view from the first story window of any neighboring dwelling, and
- Limiting it to a total area not exceeding 100 square feet.

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 which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$200.00 for each violation of the Zoning Ordinance cited herein for the first violation and \$500.00 for each violation of the Zoning ordinance cited herein for any subsequent violation, in accordance with Zoning Ordinance §18-903(1).

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, any other information that you may wish to submit and a \$600.00 filing fee. Once an appeal application is accepted, it will be scheduled for public hearing and decision before the BZA. For information regarding an appeal contact:

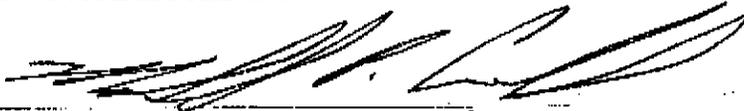
Zoning Administration Division
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035
Office: (703)324-1314

Information and forms can also be obtained at <http://www.fairfaxcounty.gov/dpz/bza/appeals/>.

The Sheila E. Frace Trust
c/o Shelia E. Frace Trustee
May 24, 2013
SR 94382
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If you have questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-9327. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:



Signature

Michael Candle
Code Compliance Investigator
(703)324-9327



**FAIRFAX
COUNTY**

BOARD OF ZONING APPEALS

PUBLIC HEARING DATE: October 9, 2013
TIME: 9:00 a.m.

V I R G I N I A

October 2, 2013

STAFF REPORT

APPEAL APPLICATION A 2013-DR-018

DRANESVILLE DISTRICT

APPELLANT: The Sheila E. Frace Trust

LOCATION: 1836 Cherri Drive, Falls Church, VA 22043

TAX MAP REF: 40-1 ((3)) 311

ZONING DISTRICTS: R-4

SITE AREA: 10,058 square feet

NATURE OF APPEAL: Appeal of a determination that the appellant is maintaining an accessory storage structure that does not meet location requirements on property in the R-4 District in violation of Zoning Ordinance provisions.

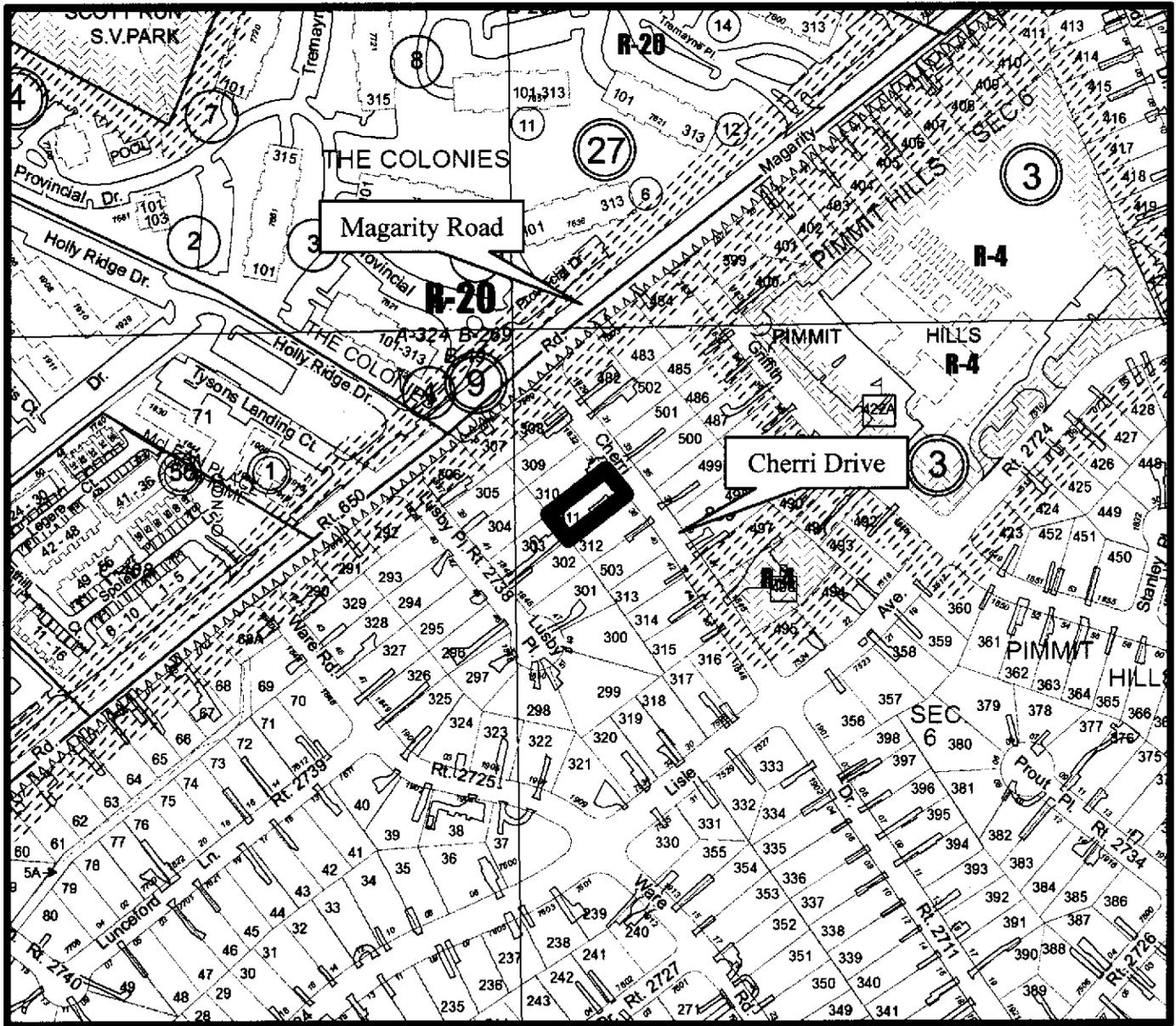
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For information, contact the Zoning Administration Division, Department of Planning and Zoning,
12055 Government Center Parkway, Suite 807, Fairfax, Virginia 22035-5505,
703-324-1314.

APPEAL APPLICATION

A 2013-DR-018

THE SHEILA E. FRACE TRUST, A 2013DR-018 Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining an accessory storage structure that does not meet location requirements on property in the R-4 District in violation of Zoning Ordinance provisions. Located at 1836 Cherri Dr., Falls Church, 22043 on approx. 10,058 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((3)) 311.



0 65 130 260 390 520 Feet

DESCRIPTION OF APPEAL

- Appellant:** The Sheila E. Frace Trust
- Issue:** Appeal of a determination that the appellant is maintaining an accessory storage structure that does not meet location requirements on property in the R-4 District in violation of Zoning Ordinance provisions.
- Property Description:** The property is located at 1836 Cherri Drive, approximately 230 feet southeast of the intersection of Magarity Road and Cherri Drive, in the Pimmit Hills Subdivision. The property is zoned R-4 Residential District, Four Dwelling Units/Acre, contains a lot area of 10,058 square feet and is developed with a single family detached dwelling and an accessory storage structure. A copy of the zoning map showing the subject property is provided on the previous page.
- Appellant's Position:** The appellant's application and basis for appeal are set forth in Attachment 1.

ZONING ORDINANCE PROVISIONS

The provisions of the Zoning Ordinance which are germane to this appeal are listed below. The complete text of these provisions is enclosed as Attachment 2.

- Par. 10 of Sect. 10-104, Location Regulations

BACKGROUND

- According to Department of Tax Administration (DTA) records, the single family detached dwelling on the referenced property was built in 1953. Although the Building Permit could not be located, the house location plat of the original dwelling is included as Attachment 3.
- On June 8, 1964, Building Permit #P21792 was approved for a rear screen porch. A copy of the Building Permit application and plat is included as Attachment 4.
- The property was originally conveyed to the appellant on May 3, 1993. The property was subsequently conveyed to the appellant, Sheila E. Frace, Trustee and successor trustees under The Sheila E. Frace Trust on April 30, 2005. Copies of the deeds are provided as Attachment 5.

- On May 21, 2013, in response to an anonymous complaint for excessive play equipment in the front yard, a vehicle in the rear yard, a pool with no surrounding fencing and grass height, Michael Caudle, Code Compliance Investigator for the Department of Code Compliance (DCC), inspected the property. Mr. Caudle only gained access to the front yard during this inspection and found noncompliant outdoor storage. Evidence of the outdoor storage in the front yard can be seen from Google Street View Images, which are included as Attachment 6.
- On May 22, 2013, a Notice of Violation (NOV) was issued for outdoor storage in the front yard.
- On May 23, 2013, Mr. Caudle inspected the rear yard of the property and found a 9.5 tall, approximately 200 square foot accessory storage structure (shed) in violation of Zoning Ordinance location regulations. Photos of the front and sides of the shed are provided as Attachment 7. The inspection also found additional outdoor storage in the front, side and rear yards, including a tool box, ladder, fish tank, bird cage, dart board, punching bag, tires, propane tanks, and 14 bicycles. Subsequently, the NOV was rescinded and reissued on May 24, 2013 to include the shed and outdoor storage in the front, side and rear yards.
- On May 30, 2013, a separate NOV was issued for violation of the Virginia Maintenance Code, as the inspections found the exterior of the dwelling on the property not maintained in good repair.
- On June 21, 2013, the appellant filed the subject appeal for the Par. 10 of Sect. 10-104 portion of the NOV dated May 24, 2013, which was accepted on July 18, 2013 and scheduled for public hearing on October 9, 2013. As for the violation of the outdoor storage regulations, the appellant has indicated to staff that the outdoor storage violations have been abated and are therefore not part of this appeal.

ZONING ADMINISTRATOR'S POSITION

It is the position of the Zoning Administrator that the appellant is maintaining a 9.5 foot tall accessory storage structure (shed) in violation of Par. 10 of Sect. 10-104, which states that a shed greater than 8.5 feet in height must not be located in the minimum required side yard (10 feet in the R-4 District) and must be located a minimum distance equal to its height from the rear lot line. Given the shed's height of 9.5 feet, it must be located at least 10 feet from the side lot line and 9.5 feet from the rear lot line. However, the inspector found the shed located approximately two (2) feet from the left side lot line and one (1) foot from the rear lot line. His determination is substantially confirmed by the plat provided with the appellant's application and basis for appeal (Attachment 1), which shows the shed approximately three (3) feet from the left side and rear lot lines.

APPELLANT'S POSITION

The appellant makes several arguments in support of the appeal; stating that the shed has been in the same location for many years, that there are similar sheds in the area and that the appellant has been "singled out" for enforcement. The appeal statement also indicates that the inspections were conducted in an "unusual" manner. Nowhere in the appellant's statement is this shed violation refuted with respect to the applicable Zoning Ordinance provisions.

While staff does not dispute that the shed has been on the property for many years, a review of aerial photographs show that there was originally a shed built around 1974 that was replaced (or enlarged) between 1990 and 1996 in violation of Par. 10 of Sect. 10-104 of the Zoning Ordinance.

With regard to accessory structures on other properties, records indicate that the accessory structure on property to the southeast (1838 Cherri Drive, which the appellant noted in the appeal statement) consists of two components. The first component is a shed built in 1968 that predated the regulations of the current Zoning Ordinance and therefore is not subject to those regulations. The second component is a garage built onto the shed under Building Permit #92366B0360, which was issued on December 31, 1992 and passed final inspection on July 7, 1993. The plat associated with the Building Permit approval shows the garage located ten (10) feet from the side lot line, which equals the minimum required side yard in the R-4 District. Regarding the property directly to the south (1843 Lusby Place, also specifically noted in the appeal statement), aerial photos show that an accessory structure existed on that property in 1997 very close to the rear property line, but was removed by 2003. Aerial photos currently show a detached garage on this property, which was approved to be built ten (10) feet from the side lot line and fifteen (15) feet from the rear lot line under Building Permit #01269B0130, issued on October 15, 2001. Although this permit never had a final inspection and there is no survey confirming its final location, aerial photos appear to show it located further away from the rear lot line than the previous structure.

With respect to the appellant's assertion of being "singled out" for enforcement action, the appellant's property was inspected only after an anonymous complaint regarding excessive play equipment in the front yard, a vehicle in the rear yard, a pool with no surrounding fencing, and grass height. In fact, a similar complaint on a nearby property also resulted in a NOV. Those violations were subsequently abated.

Regarding the appellant's concerns about the inspections related to the enforcement case, during the first inspection on May 21, 2013 that yielded a NOV for noncompliant outdoor storage in the front yard, the inspector was unable to gain entry to the rear of the property. As the anonymous complaint raised concerns about possible violations in both the front and rear yards, including the potential life safety issue of a pool without a surrounding fence, the inspector believed that it was necessary to return to the property for a second inspection. As that second inspection on May 24, 2013 found additional violations, including the shed, the May 22, 2013 NOV was rescinded and reissued on May 24, 2013 to address the noncompliant shed and additional outdoor storage. As for the other NOV issued on May 30, 2013, this notice was for violation of the Virginia Maintenance Code, not the Zoning Ordinance, and was therefore provided as a separate notice.

It is therefore staff's position that the appellant is in violation of Par. 10 of Sect. 10-104 of the Zoning Ordinance. Furthermore, the appellant makes no specific argument to refute the fact that the shed violates these Zoning Ordinance provisions. Staff therefore recommends that the BZA uphold the determination of the Zoning Administrator dated May 24, 2013. It is noted that, assuming that the shed is equal to or less than 200 square feet in size, the appellant could have applied for a special permit for reduction to the minimum yard requirements based on error in building location in attempt to resolve this violation, as noted in the NOV.

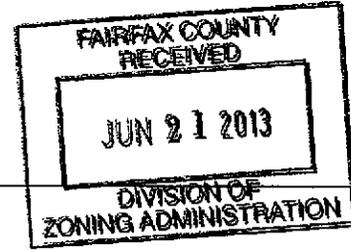
ATTACHMENTS:

1. Appellant's Application and Basis for Appeal
2. Zoning Ordinance Provisions
3. House Location Plat of Property
4. Building Permit #P21792 and Plat for Screen Porch
5. Deed Book 8542, Page 1239 and Deed Book 18440, Page 510
6. Google Street View Images
7. Property and Inspection Photos

Print in Black Ink



COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
APPLICATION FOR APPEAL



APPLICATION NO. A 2013-DR-018
(Assigned by Staff)

NAME OF APPELLANT: The Sheila E. Frace Trust

NATURE OF THE APPEAL:
See attached document, Exhibit A

DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS SUBJECT TO THE APPEAL May 24, 2013

HOW IS THE APPELLANT AN AGGRIEVED PERSON?:

Sheila E. Frace is the owner of the property and will incur the cost of any changes to the shed.

IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 1836 Cherri Drive, Falls Church VA 22043

TAX MAP DESCRIPTION: 0401030311

The undersigned has has not (circle one) the authority to allow and does does not (circle one) authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

Type or Print Name of Appellant or Agent

Kelley Budd

Signature of Appellant or Agent

Kelley Budd

Address

2000 North 14th Street, Suite 210, Arlington, VA 22201

Telephone No.

703-243-3737

Home

Work

Please provide name and phone number of contact person if different from above.

NA

DO NOT WRITE IN THIS SPACE

Subdivision Name: Pimmit Hills Lt. 311 Sec. 6

Total Area (Acres/Square Feet): 10,058 sq. ft.

Present Zoning: R-4

Supervisor District: Dranesville

Date application received: 6/21/13

Application Fee Paid: \$ 600⁰⁰

Date application accepted: 7/18/13

EXHIBIT A

This is an appeal of a May 24, 2013 Notice of Violation of the Fairfax County Zoning Ordinance. The purported violations are of Accessory Storage Structure Location and Outdoor Storage.

The nature of this appeal is as follows:

- The shed in question was already in place, in the same size, manner and location when Ms. Frace purchased the property in 1993. (See plat attached clearly showing the shed.) The shed has remained on the property, untouched and without a single complaint until the property was targeted for inspection and ultimately cited for violations. The targeting and issuance of violation notices was completely arbitrary.
- The owner prior to Ms. Frace purchased the property in 1988. A Google Earth photograph from 1988 shows a similar looking shed structure on the property at that time. Accordingly, the shed most likely predates the 1988 purchase as well.
- Further, the accessory structures of the abutting properties- the property to the southeast, and the property due south, are not only placed equal distances as Ms. Frace's shed from their respective side lot and rear lot lines, but on the southeast property the building looks to be as much as three feet (3') or more higher than Ms. Frace's shed, while the property due south (catty-corner to Ms. Frace's property) appears to be the height equal to Ms. Frace's shed. The fact that these properties very closely located to Ms. Frace's property have similar accessory structures but were not singled out for a violation further evidences the arbitrary and capricious nature of this investigation and subsequent violation notice. The zoning department is apparently selectively enforcing its ordinance.
- Notably, an inspector came out at least two times for the purposes of inspecting the property and ultimately issuing the notices. The first inspection by a single inspector, Code Compliance Investigator Michael Caudle, occurred May 21st, followed by a second inspection by Mr. Caudle on the evening of May 23rd accompanied by a second investigator. A May 22, 2013 violation was then rescinded after a second trip, and replaced with a May 24, 2013 violation notice. A final third notice was dated May 30, 2013. It's unclear why two separate trips and two different inspectors were necessary unless Zoning Enforcement was actively looking for possible violations.
- In fact, when Mr. Caudle was contacted by telephone by Ms. Frace's husband, Glenn Heller, early the morning of May 23rd (the day after Ms. Frace received the May 22nd NOV), Mr. Caudle was specifically asked by Heller if it would be possible to make an appointment with him to come out to the property at his convenience and go over exactly

what items were generating Zoning Enforcement's concern. However, Mr. Caudle indicated that coming to the property at the request of the owner was not normal procedure and that regardless he did not have the time to come back to the property anytime soon. He further added that Heller should give him a call once the objects had been removed and he would then make time for an appointment for a re-inspection. Mr. Caudle indicated he would look to hear from them within the next fifteen days (the time specified in the NOV within which to act).

- In that same conversation Mr. Caudle indicated that the only matter at issue was outdoor storage in the front yard, and that the main items of concern were bicycles, a small bench, a vinyl truck bed, and some miscellaneous items strewn about the front yard. In fact, as to the truck bed, bench, and miscellaneous items, Mr. Caudle specifically recommended simply placing them behind the property's back yard fence so that the items would be out of sight. Mr. Caudle listed no other concerns even when asked to elaborate if there was anything else that needed to be done to satisfy his department. What made the second inspection the evening of May 23rd even more unusual was that when Mr. Heller initially contacted the Zoning Administration Division the morning of May 22 (just after the NOV was first served) he was told that Mr. Caudle works an early shift starting at 7:30 a.m., is out in the field most of the day, and finishes up around 3:30 p.m., and that therefore the best time to reach Mr. Caudle would be around 7:30 a.m. the next morning or any weekday morning. Yet around 7:30 p.m. the evening of May 23 (after speaking with Heller by phone earlier that same day), Mr. Caudle arrived unannounced at the property, accompanied by a second inspector, both of whom then proceeded to inspect the property's rear yard, with the second inspector also taking photos during the inspection, including pictures of the exterior of the house.
- Based on the May 23 telephone conversation, Mr. Heller understood Mr. Caudle was complete in his analysis and inspection of the Frace property. However, Mr. Caudle still decided to make another visit that evening accompanied by a second inspector and ultimately issued three separate notices.
- Ms. Frace has obtained contractor estimates for changing the shed and the cost is significant and overly burdensome. Given that the shed has existed on this property for more than 20 years, pre-dating Ms. Frace's ownership, that several abutting properties have storage units of similar and even greater height that have not been singled out for inspection, and that the cost of lowering the shed height is very costly and will unfairly burden Ms. Frace, we request the notice be rescinded.

Please be advised the §10-102(e) and §2-302(6) violation regarding accessory use has been abated as the items have been moved from the front, side and rear yards.



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 Fairfax County Zoning Ordinance

DATE OF ISSUANCE: May 24, 2013

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: The Sheila E. Frace Trust
ADDRESS: c/o Sheila E. Frace Trustee
1836 Cherri Drive
Falls Church, Virginia 22043

LOCATION OF VIOLATION: 1836 Cherri Drive
Falls Church, Virginia 22043-1072

TAX MAP REF: 0401.03.0311

ZONING DISTRICT: R-4

CASE #: 201303186 **SR #:** 94382

POTENTIAL CIVIL PENALTIES UNDER ZONING ORDINANCE

§ 18-903(1):	Zoning Violation	First Offense	Each Subsequent Offense
	§10-104 (10F)	\$ 200.00	\$ 500.00
	§10-102 (24)	\$ 200.00	\$ 500.00
	TOTAL:	\$ 400.00	\$ 1000.00

Dear Responsible Party:

The purpose of this letter is to rescind the previous Notice of Violation dated May 22, 2013, and issue a new Notice of Violation regarding zoning violations on the above referenced property.

Inspections of the above referenced property on May 21, 2013 and May 23, 2013 revealed the following violations of the Fairfax County Zoning Ordinance

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-324-9316
www.fairfaxcounty.gov/code

The Sheila E. Frace Trust
c/o Sheila E. Frace Trustee
May 24, 2013
SR 94382
Page 2

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

The presence of an accessory storage structure which measured approximately 9 feet 6 inches in height, is approximately 200 square feet in area and is located approximately 2 feet and approximately 1 foot respectively from the side and rear lot lines.

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. 10E of Sect. 10-104 of the Zoning Ordinance which states:

An accessory storage structure which exceeds eight and one-half (8½) feet in height shall not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line.

The minimum required side yard distance in the R-4 District is 10 feet as detailed in Par. 2A (1) (b) (c) of Sect. 3-407 of the Zoning Ordinance.

Therefore, as this accessory storage structure exceeds eight and one-half (8½) feet in height and is not located in accordance with the provisions of Par. 10E of Sect. 10-104 above, it is in violation of Par. 10E 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 fifteen (15) days of the date of this Notice. Compliance can be accomplished by:

- Removing the storage structure from the property in its entirety; or
- Reducing the height of the structure to eight and one-half (8½) feet or less to allow it to remain at its present location; or
- Relocating the structure to a distance from the rear and side lot lines in accordance with Par. 10E of Sect. 10-104 of the Zoning Ordinance as outlined above.

The Sheila E. Frace Trust
c/o Sheila E. Frace Trustee
May 24, 2013
SR 94382
Page 3

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 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.

§ 10-102 (24) Outdoor Storage
§ 2-302 (6) Accessory Use must comply with Article 10:

An inspection has determined that you are allowing storage in the front, side and rear yards of the address listed above. These items consist of, but are not limited to, the following:

A tool box, ladder, wheels, tires, fish tank, propane tank, bicycles, tricycles, punching bag, dart board, animal cages and other miscellaneous junk and debris.

This outdoor storage:

- Exceeds 100 square feet in area, and
- Is not located in the rear half of the lot, and
- Is not screened from view from the first story window of any neighboring dwelling.

This outdoor storage is in violation of Par. 24 of Sect. 10-102 of the Fairfax County Zoning Ordinance that states in part:

Storage, outdoor in R districts, provided such storage is located on the rear half of the lot, is screened from the view from the first story window of any neighboring dwelling, and the total area for such outdoor storage does not occupy more than 100 square feet.

Therefore, you are in violation of Par. 6 of Sect. 2-302 of the Zoning Ordinance that 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 Part 1 of Article 10.

You are hereby directed to clear this violation within fifteen (15) days of the date of this Notice. Compliance can be accomplished by the following:

The Sheila E. Frace Trust
c/o Sheila E. Frace Trustee
May 24, 2013
SR 94382
Page 4

- Removing all outdoor storage from this lot; or
- Relocation of the outdoor storage to the rear half of the lot, and
- Screening it from the view from the first story window of any neighboring dwelling, and
- Limiting it to a total area not exceeding 100 square feet.

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 which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$200.00 for each violation of the Zoning Ordinance cited herein for the first violation and \$500.00 for each violation of the Zoning ordinance cited herein for any subsequent violation, in accordance with Zoning Ordinance §18-903(1).

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, any other information that you may wish to submit and a \$600.00 filing fee. Once an appeal application is accepted, it will be scheduled for public hearing and decision before the BZA. For information regarding an appeal contact:

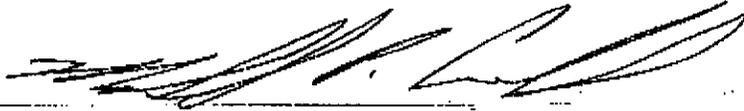
Zoning Administration Division
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035
Office: (703)324-1314

Information and forms can also be obtained at <http://www.fairfaxcounty.gov/dpz/bza/appeals/>.

The Sheila E. Frace Trust
c/o Sheila E. Frace Trustee
May 24, 2013
SR 94382
Page 5

If you have questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-9327. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:



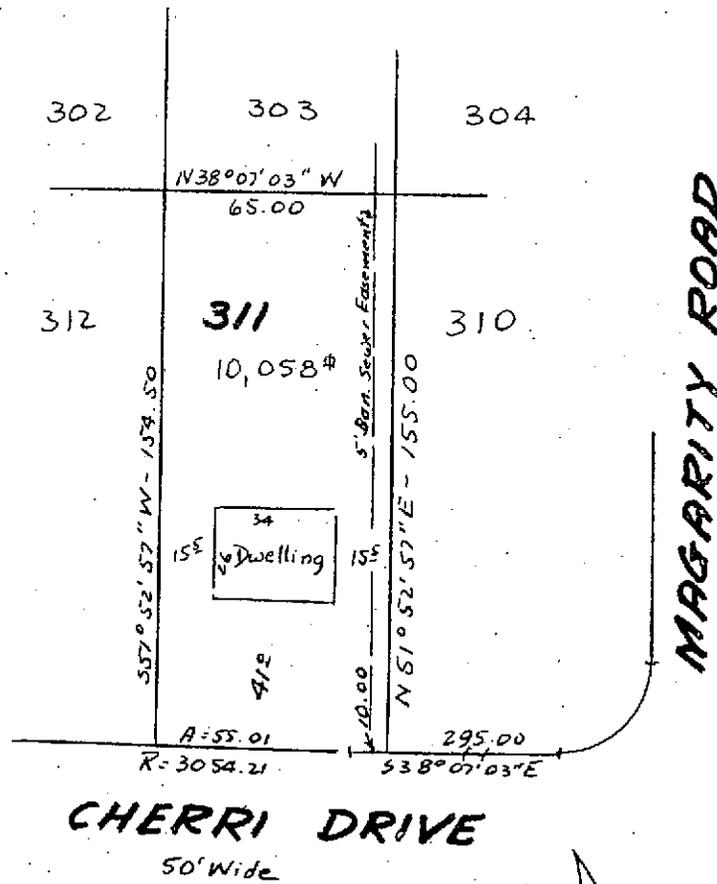
Signature

Michael Caudle
Code Compliance Investigator
(703)324-9327

ZONING ORDINANCE PROVISIONS

10-104 Location Regulations

10. The following regulations shall apply to the location of freestanding accessory storage structures:
 - A. For purposes of determining height, the height of an accessory storage structure shall be measured in accordance with Par. 4 of Sect. 10-103 above.
 - B. An accessory storage structure shall not be located (a) in any minimum required front yard on any lot or (b) in any front yard on any lot containing 36,000 square feet or less.
 - C. An accessory storage structure which does not exceed eight and one-half (8 ½) feet in height may be located in any part of any side yard or rear yard, except as qualified in Sect. 2-505.
 - D. 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.
 - E. An accessory storage structure which exceeds eight and one-half (8 ½) feet in height shall not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line.



[Signature]
 APPROVED
 zoning Administrator
 Date..... **MAR 11 1953**

House Location Survey

LOT 311 SECTION SIX

PIMMIT HILLS

**PROVIDENCE MAGISTERIAL DISTRICT
FAIRFAX COUNTY, VIRGINIA**

Scale 1" = 50' Dec. 17, 1952

HARRY OTIS WRIGHT, JR.

Certified Civil Engineer and
Land Surveyor—Fairfax, Virginia

Certified *Harry Otis Wright Jr*

COUNTY OF FAIRFAX, VIRGINIA

OFFICE OF THE BUILDING INSPECTOR

Application for Building Permit

MAP REFERENCE			
FLAT NUMBER	BLK. OR DIST. OF REG.	DIST. OF REG.	PARCEL OR LOT
4011	3		211

CENSUS TRACT NO.	2
DATE	7-21-92
PERMIT NO.	

To: BUILD Alter or Repair Add to Demolish Move

JOB LOCATION	C-2534 DIRECTIONS		DESCRIPTION	
	Route		For: Residential <input type="checkbox"/>	Institutional <input type="checkbox"/>
OWNER	Street	2413 CHERI DR	Commercial <input type="checkbox"/>	Industrial <input type="checkbox"/>
	Lot No.	311	No. of Bldgs.	Type SCREEN PORCH
ARCHITECT ENGINEER	Subdivision	PINNAC HILLS	No. of Units	Est. Const. Cost \$ 150.00
	Name		No. of Kitchens	No. of Stories
CONTRACTOR	Address	2413 CHERI DR	No. of Baths	Ht. of Building
	City	FALLS CHURCH, VA 893-5299	No. of Rooms	Total Area
			Basement <input type="checkbox"/>	Slab <input type="checkbox"/>
			Crawl <input type="checkbox"/>	FILL <input type="checkbox"/>
				SOLID <input type="checkbox"/>
				Soil
			Footing Size	Depth from Finish Grade
			Material of Exterior Walls	
			Basement	1st Floor
			2nd Floor	Other
			Material of Interior Walls	
			HEAT: Gas <input type="checkbox"/>	Oil <input type="checkbox"/>
			Hot Air <input type="checkbox"/>	Hot Water <input type="checkbox"/>
			Boiler <input type="checkbox"/>	Air Conditioner <input type="checkbox"/>
			Sprinkler <input type="checkbox"/>	
			ROOF: Flat <input type="checkbox"/>	Pitch <input type="checkbox"/>
			Shed <input type="checkbox"/>	
			SEWAGE: Public <input type="checkbox"/>	Community <input type="checkbox"/>
			Septic Tank <input type="checkbox"/>	Pit Privy <input type="checkbox"/>
			None <input type="checkbox"/>	
			WATER: Public <input type="checkbox"/>	Individual Well <input type="checkbox"/>
			None <input type="checkbox"/>	
			Remarks:	

I hereby certify that I have the authority to make this application, that the information given is correct, and that the use and construction shall conform to the County Health Regulations, the Building and Zoning Ordinances, and private deed restrictions, if any, which are imposed on the property.

893-5299 Phone No. 8 JUNE 94 Date

Signature of Owner or Auth. Agent

PLAN APPROVAL

Use Group of Building L3 Area of Bldg. @ per Sq. Ft. \$

Type of Construction 4B Area of Bldg. @ per Sq. Ft. \$

Fire District Total Each Bldg. \$

Date Checked 6/8 1994 By MEM TOTAL FEE \$ 5.00

Approved by Building Inspector Charles W. Wood

ROUTING	OFFICE	Rm. No.	DATE	APPROVAL	REMARKS
<input checked="" type="checkbox"/>	Land Office	112	6-8-94	MAH	
<input checked="" type="checkbox"/>	Zoning Administrator	210	6-8-94	JTB	
	Health Officer	Rt. 237			Health and Welfare Bldg. on Rt. 237
	Sanitary Engineer	Bsmt	6-8-94	JTB	
<input checked="" type="checkbox"/>	Finance Office	120			
<input checked="" type="checkbox"/>	Building Inspector	203			Return to secure Bldg. Permit

CERTIFICATION

Supervisor of Assessments

Property is listed in name of Norman L. Arnold

Magisterial District Oranewille-17 Deed Book Reference 2388-242

Authorization John W. Ferguson MAH

ZONING

Subdivision Pinnac Hills Lot No. 311 Block 6 Section 6 Zone R-10

No. Acres or Sq. Ft. 1/4

Street Address Cheri Dr

LOT SIZE: Front 40' Right Side 15' Left Side 15' Rear 25'

Use of Bldg. REAR PORCH Use after Alteration REAR PORCH No. Families 2

Set Back: Front 40' Rt. Side 15' Left Side 15' Rear 25'

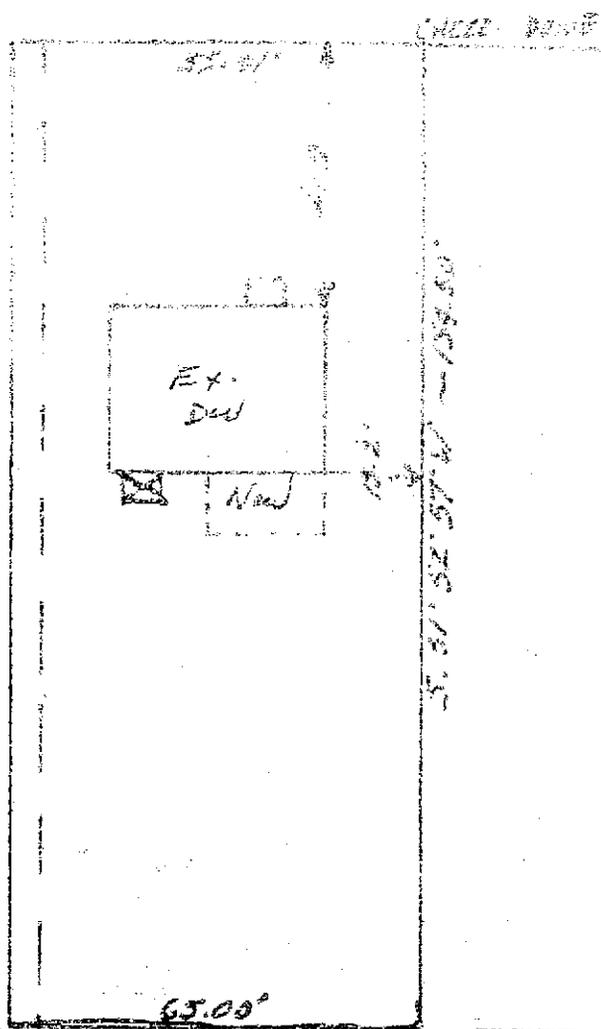
Authorization JTB

RETURN THIS COMPLETED APPLICATION TO THE BUILDING INSPECTOR'S OFFICE FOR ISSUANCE OF BUILDING PERMIT.

approved 6-8-94 JTB

LOT 211
Salem Co.
Pine Hill Hills

C-2534



Approved for proposed location of building as shown. Final approval subject to wall check.

Date JUN 8 1984

J. Woodson
Zoning Administrator

Department of Public Works
Fairfax County, Virginia
Application Number C-2534

I hereby certify that this plot plan and structure shown hereon conform to the requirements of Section 22.1-14 of The Fairfax County, Virginia Building Code.

Director of Public Works

JUN 8 1984

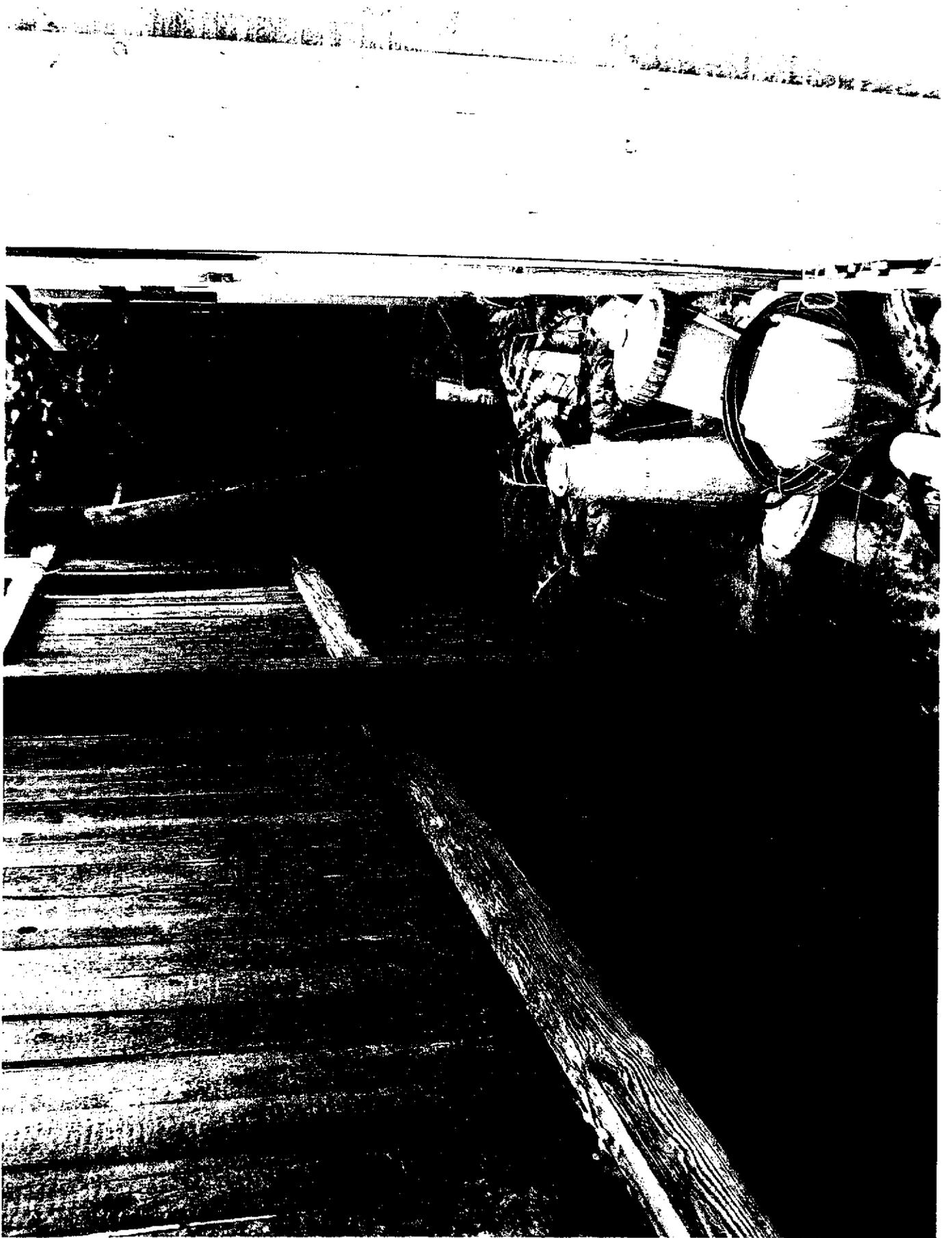
[Signature]
By: [Name]

Date









05/20/2010





County of Fairfax, Virginia

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

October 18, 2013

Kellie Budd
 Doumar Martin PLLC
 2000 North 14th Street, Suite 210
 Arlington, Virginia 22201

Re: Appeal Application A 2013-DR-018
 The Sheila E. Frace Trust

Dear Ms. Budd:

At its October 9, 2013 meeting, the Board of Zoning Appeals took action to **UPHOLD** the determination of the Zoning Administrator for the above-referenced appeal application.

If you have any questions, please contact Matthew Mertz, Staff Coordinator, at 703-324-1314.

Sincerely,

Kathleen A. Knoth
 Clerk to the Board of Zoning Appeals

CC: John W. Foust, Supervisor
 Dranesville District

Mavis Stanfield, Deputy Zoning Administrator for Appeals
 Zoning Administration Division

Matthew Mertz, Staff Coordinator
 Zoning Administration Division

Diane Johnson-Quinn, Deputy Zoning Administrator
 Zoning Permit Review Branch

Michael Caudle, Code Compliance Investigator
 Department of Code Compliance

Department of Planning and Zoning
 12055 Government Center Parkway, Suite 801
 Fairfax, Virginia 22035-5509
 Phone 703 324-1280
 FAX 703 324-1207
www.fairfaxcounty.gov/dpz/



COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNTY
4110 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030
703-691-7320
(Press 3, Press 1)

Sheila E Frace vs. John F Ribble III

CL-2013-0017108

TO: John F Ribble III
Chair of the Fairfax County Zoning Board of Appeals
2103 Stirrup Lane
Alexandria VA 22308-2252

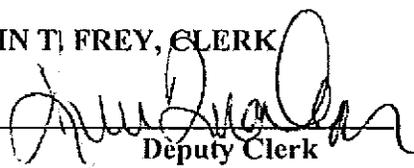
SUMMONS – CIVIL ACTION

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 30 days after such service, response is made by filing in the Clerk's office of this Court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment or decree against such party either by default or after hearing evidence.

APPEARANCE IN PERSON IS NOT REQUIRED BY THIS SUMMONS.

Done in the name of the Commonwealth of Virginia, on Thursday, November 21, 2013.

JOHN T. FREY, CLERK

By: 

Deputy Clerk

Plaintiff's Attorney Kellie M. L. Budd

11/13

VIRGINIA: IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In RE: October 9, 2013 Decision of the Board of Zoning Appeals of Fairfax County

2013, 17108

WRIT OF CERTIORARI

Based on a review of Petitioner Sheila E. Frace Trust's ("Petitioner") Petition for Writ of Certiorari, and pursuant to § 15.2-2314 of the Virginia Code, the Petition is GRANTED, and that this Writ of Certiorari shall be served upon the Board of Zoning Appeals ("BZA") requiring a verified return be made within thirty days of service of this Writ and Petition, together with the original or certified copies of all exhibits, transcripts, correspondence and other records or papers contained in the application filed or considered by the BZA in making its decision in the Appeal No. 2013-DR-018, and that such further return shall concisely relate such facts that may be pertinent and material to show grounds of the decision that is appealed.

IT IS SO ORDERED.

Jonathan Trache
JUDGE
Fairfax County Circuit Court

DATE: 11/19/13

FILED
CIVIL INTAKE
2013 NOV -8 PM 2:28

In RE: October 9, 2013 Decision of the Board of
Zoning Appeals of Fairfax County

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

2013 17108

Serve: John F. Ribble, III
Chair of the Fairfax County Zoning Board of Appeals
2103 Stirrup Lane
Alexandria, Virginia 22308-2252

PETITION FOR WRIT OF CERTIORARI

COMES NOW Petitioner Sheila E. Frace, Trustee of the Sheila E. Frace Trust ("Petitioner"), by counsel and pursuant to VA Code §15.2-2314 *et. seq.*, hereby appeals from and requests a Writ of Certiorari be granted (as required by statute) to review the final decision of the Fairfax County Zoning Board of Appeals ("BZA") decision of October 9, 2013 in the Appeal Number 2013-DR-018. In support of this petition, Petitioner respectfully states as follows:

Nature of the Case

1. This is a Petition for a Writ of Certiorari brought pursuant to the provisions of VA Code §15.2-2314, challenging the validity, under relevant state law, of the decision of the BZA in denying Appeal No. 2013-DR-018 submitted by Petitioner Sheila E. Frace Trust, at the BZA's October 9, 2013 hearing. The Petition challenges the BZA's decision as being contrary to law and/or plainly wrong based on the zoning administration staff testifying that no tax had been paid on the accessory structure at issue, when in fact, a preponderance of evidence shows that Petitioner has paid tax on the accessory structure for an excess of 20 years.

9. Until the Inspector's visit and the subsequent May 24, 2013 Notice of Violation, no questions or concerns regarding the Shed size or location had ever been raised by Fairfax County or any neighboring property owners. In fact, several of the nearby properties have sheds or outbuildings similar in size and location in their backyards and the neighbors understand this to be the norm.

10. Further, since 1993 annual taxes have been assessed and paid to the County for the Property, including for the Shed which is listed by the County as an "outbuilding." The payment of taxes for that length of time exempts the Shed from any action to remove it by the zoning administration. Va. Code Ann. §15.2-2307(ii).

11. Petitioner's hearing was held in front of the BZA on October 9, 2013. At the hearing, the Investigator testified that the Shed was not part of the initial complaint the Zoning Administration Division received about the Property. He further noted that but for Ms. Frace permitting him to enter the backyard upon his request; he would not have been aware of the Shed and would therefore have been unable to cite the Petitioner for purported violations of the zoning ordinance.

12. Moreover, at the hearing the Board asked the Staff Coordinator, Matthew Mertz, "and tax wise, did we check the tax assessment records to see if the shed's been shown over 15 years?" to which Mertz responded "Yes, Mr. Chairman, I did check the tax records and I did not find any taxation on this shed." Mertz' statement was incorrect.

13. After the hearing, Petitioner obtained records from the Fairfax County Department of Tax Administration, Real Estate Division ("Tax Dept.") that clearly indicate taxes have been assessed and paid on the shed structure since purchasing the Property in 1993. See

18. In the two photographs taken in 1994, it is evident that the shed near the property line was now bigger and longer. See Exhibit D, true and accurate aerial photographs of the Property from the Fairfax County GIS and Mapping Services Branch (a notation has been made for clarity purposes).

19. Notably, current maps obtained via a property search on the Fairfax County Real Estate Division Website show the present Shed prominently displayed in the County's own web images and in aerial photos. See Exhibit E, 11/7/2013 images of the Property depicting the Shed near the backyard's rear southwesterly boundaries obtained from the Fairfax County Real Estate Division Website.

20. As Exhibits A through E demonstrate, the tax records show annual assessments for a shed and photographs show a shed was continuously on the property and taxed.

21. Again, it is clear that the Property has been assessed for an outbuilding shed since the Property was purchased in 1993. This is contrary to Mertz' statements at the hearing which led the Board to believe no tax had ever been assessed nor paid on the structure.

COUNT I

22. The preceding paragraphs are incorporated herein by reference.

23. Due to the Staff Coordinator's erroneous testimony at the hearing, the BZA was unaware that in fact tax has indeed paid on the Shed since 1993. Pursuant to Va. Code Ann. §15.2-2307(ii), when "the owner of the building or structure has paid taxes to the locality for such building or structure for a period in excess of 15 years, a zoning ordinance may provide that

the building or structure is nonconforming, but shall not provide that such building or structure is illegal and shall be removed solely due to such nonconformity.”

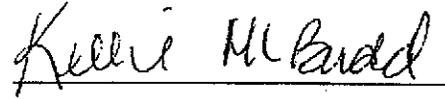
24. Here, Petitioner attaches documentation that confirms that a tax has been assessed and paid on the shed for a period in excess of 15 years. Accordingly, the Board’s decision was based on a misrepresentation of the facts. The decision to uphold the Zoning Administrator contradicts the plain language of the applicable statutes. Accordingly, the decision should be overruled.

WHEREFORE, Petitioner respectfully requests the following:

- a. That a Writ of Certiorari be granted and that the same be served upon the BZA requiring a verified return be made within thirty days of service of this Petition together with the original or certified copies of all exhibits, transcripts, correspondence and other records or papers contained in the application filed or considered by the BZA in making its decision in the Appeal No. 2013-DR-018, and that such further return shall concisely relate such facts that may be pertinent and material to show grounds of the decision appealed;
- b. That the Court make a determination that taxes have been assessed and paid on the Shed in excess of 15 years pursuant to VA Code §15.2-2307;
- c. That the Court reverse the determination of the Board of Appeals (“BZA”) decision of October 9, 2013 as contrary to law and without factual basis;
- d. That the Court grant such other relief as is necessary and appropriate.

Dated: November 8, 2013

Respectfully Submitted,



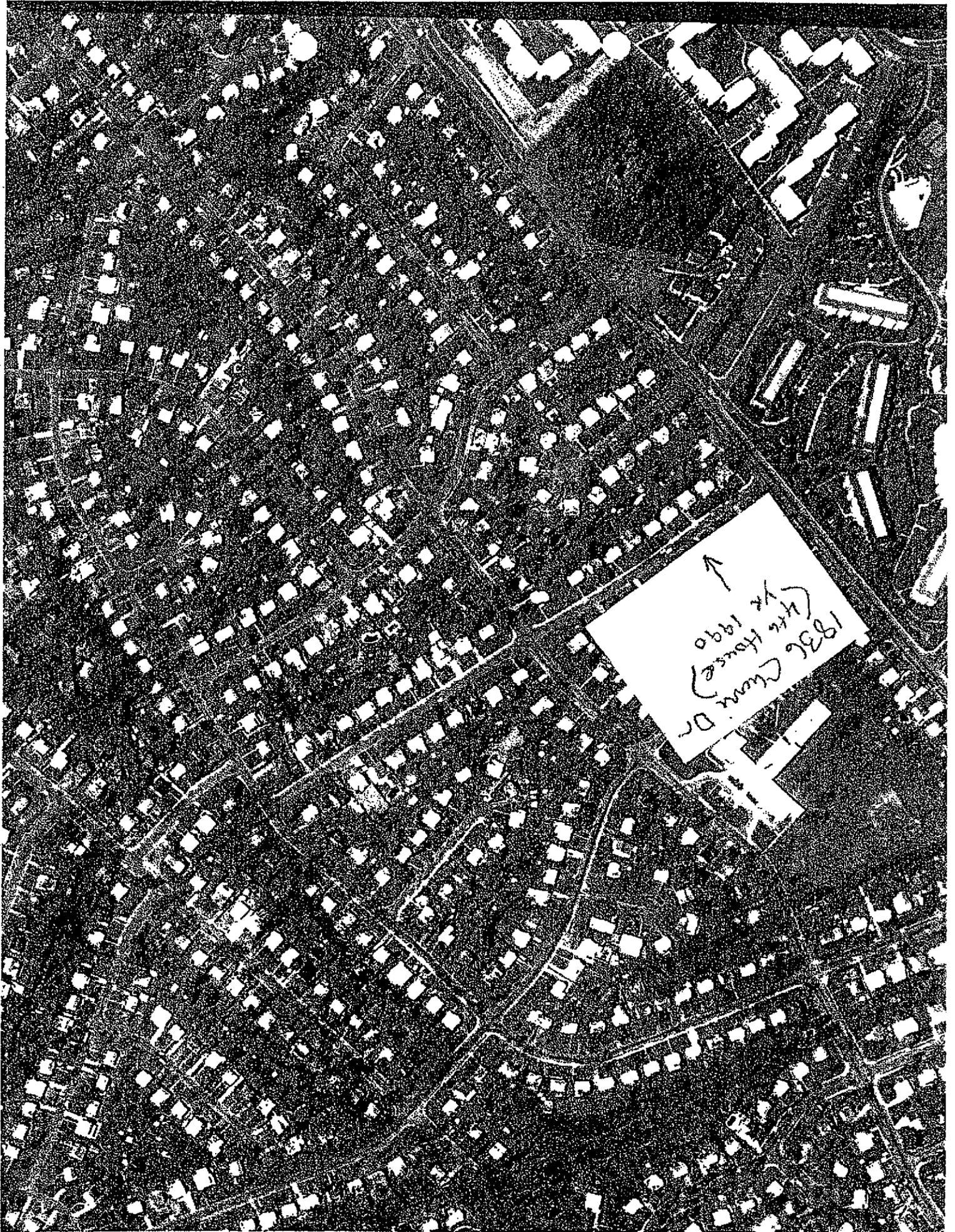
George R. A. Doumar (VA #26940)
Kellie M.L. Budd (VA #72084)
Doumar Martin, PLLC
2000 N. 14th Street -- Suite 210
Arlington, VA 22201
(703) 243-3737
Kbudd@doumarmartin.com

ATTORNEYS FOR PETITIONER

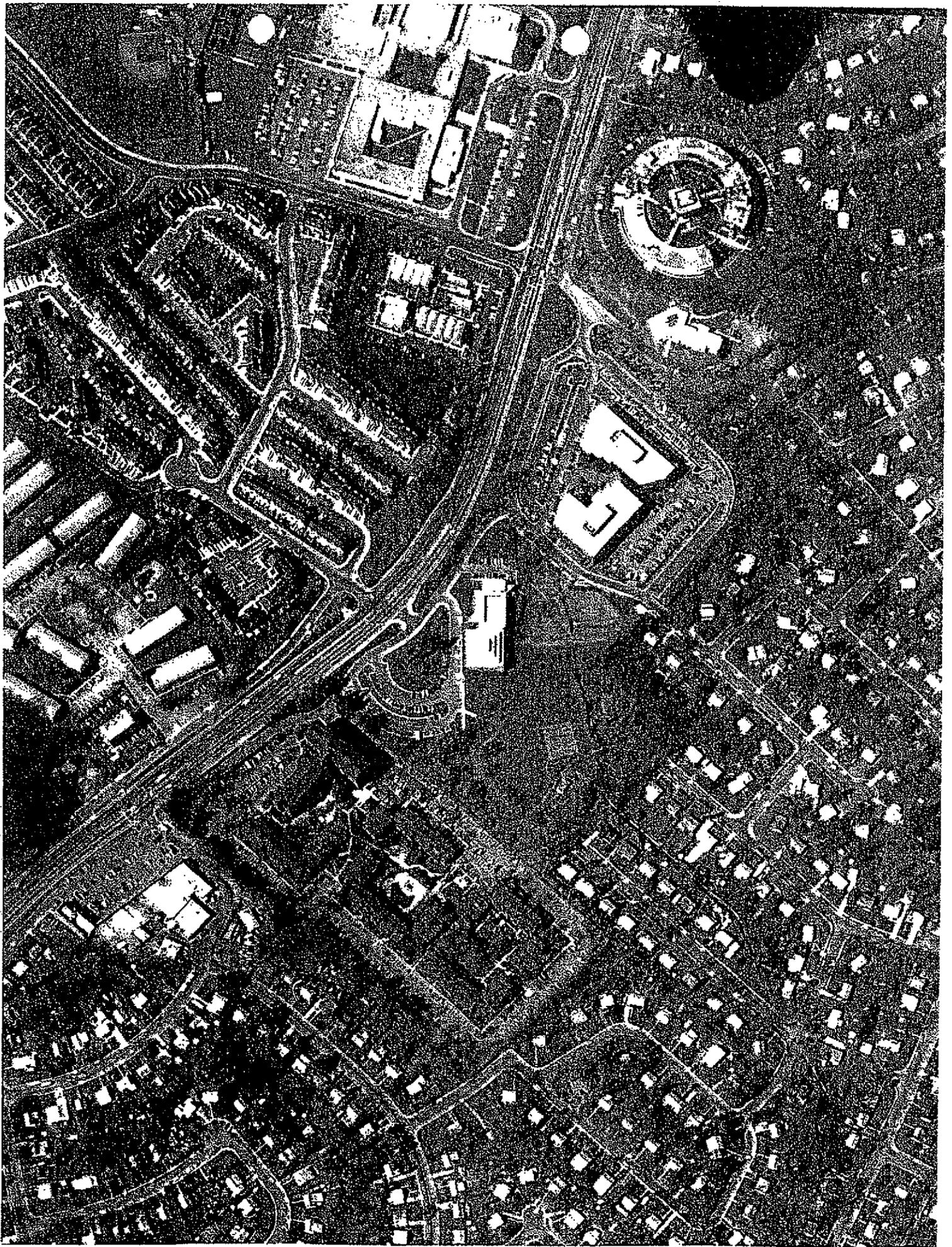
EXHIBIT A

EXHIBIT B

EXHIBIT C



↑
1836 (Crown Dr)
(4th House)
1/2 1990





1836 Chover Dr.
(4th House)
↑
KR 1990

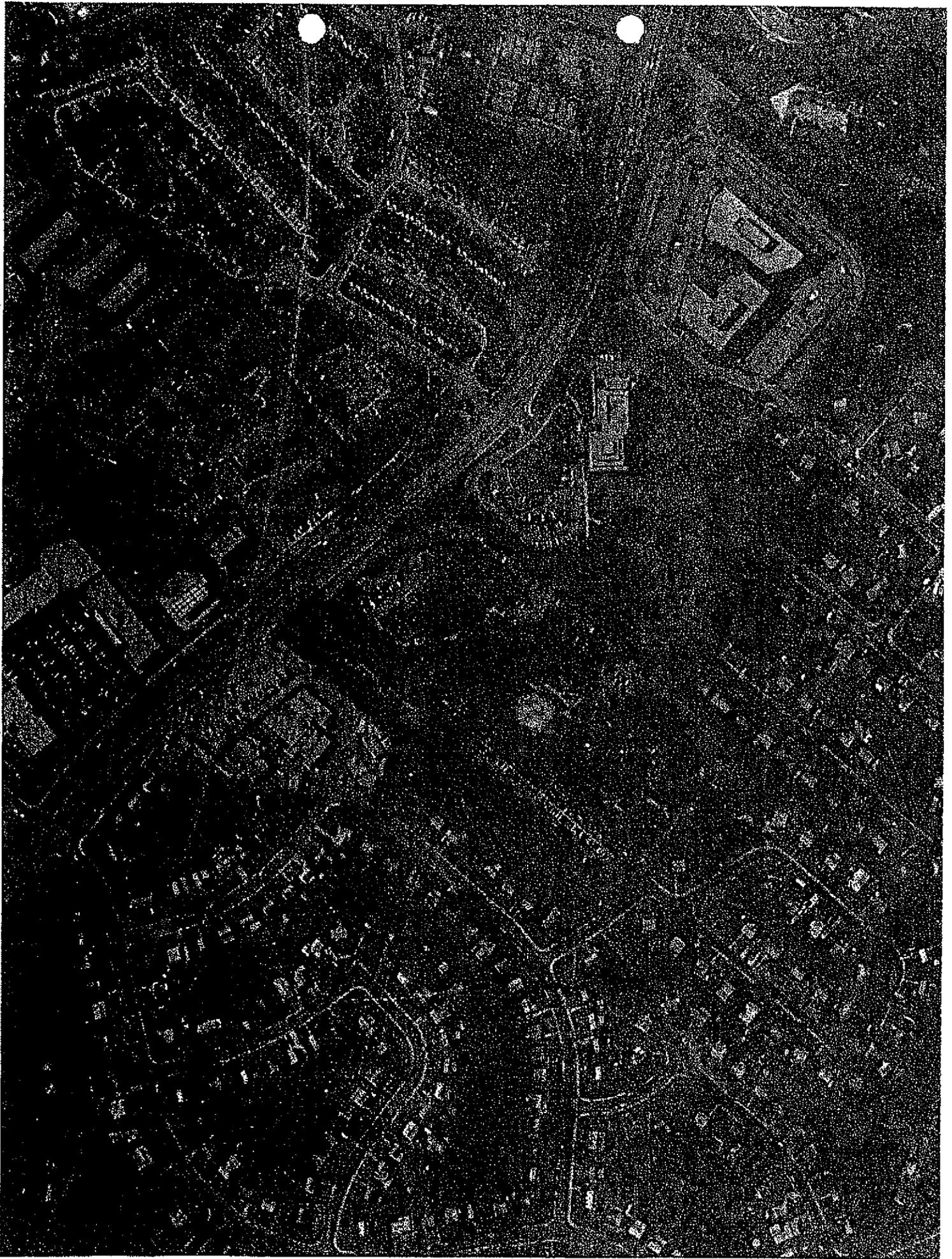
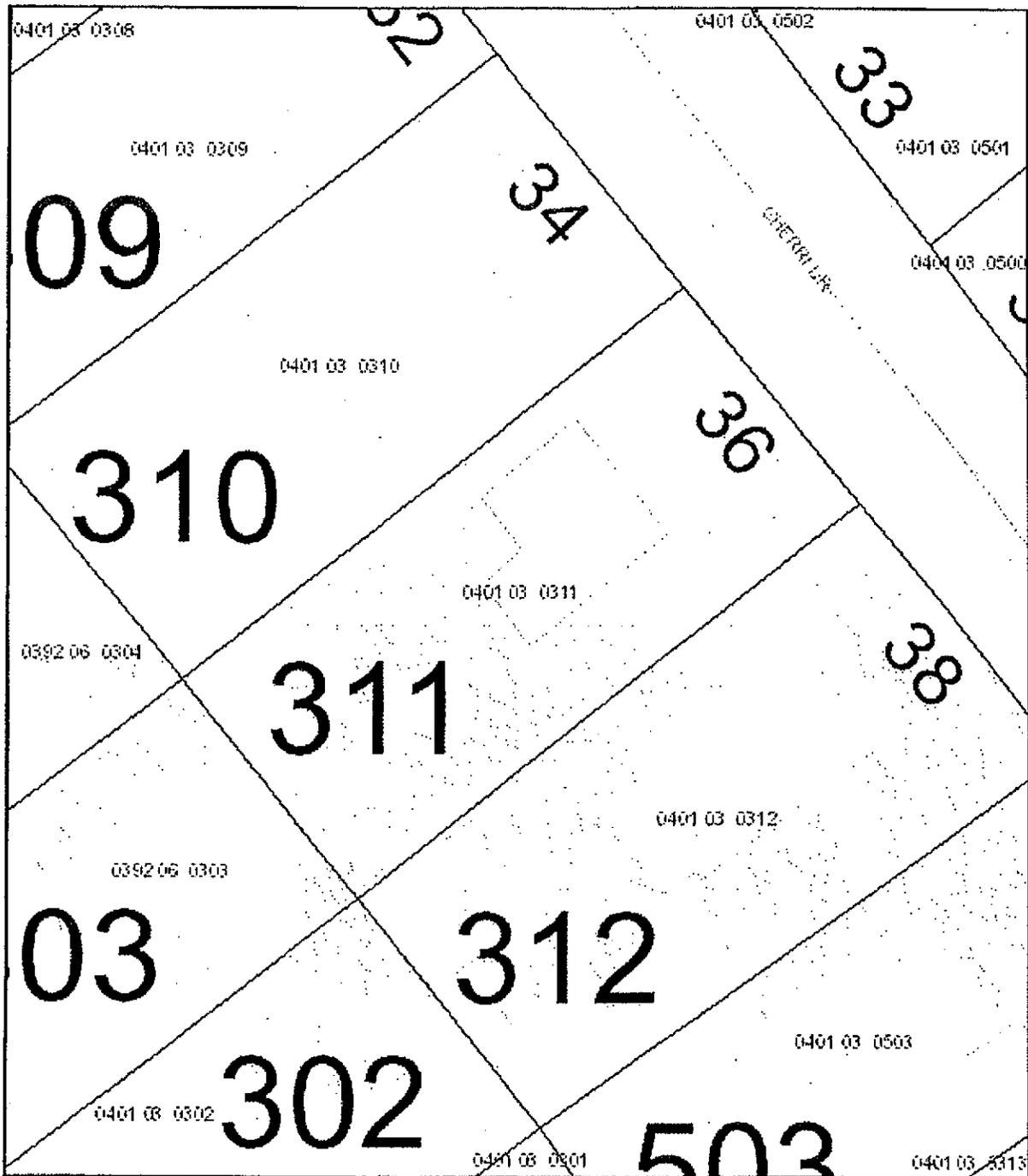


EXHIBIT E

MAP #: 0401 03 0311
FRACE SHEILA E TR

1836 CHERRI DR



Aerial Imagery Copyright 2007 Commonwealth of Virginia

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Thursday the 26th day of February, 2015.*

Sheila E. Frace, Trustee of the
Sheila E. Frace Trust, Appellant,

against Record No. 140676
Circuit Court No. CL-2013-0017108

Leslie B. Johnson, Fairfax County
Zoning Administrator, Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the circuit court did not err when it dismissed the certiorari proceeding because the petitioner failed to timely name the Board of Supervisors of Fairfax County ("Board of Supervisors") as a party. Therefore, the Court will affirm the judgment of the circuit court.

On May 21 and May 23, 2013, a Fairfax County Code Compliance Investigator responded to an anonymous complaint regarding the property of Sheila E. Frace ("Frace")¹ and subsequently issued a Notice of Violation. Frace requested and obtained a hearing before the Board of Zoning Appeals of Fairfax County ("BZA") to contest the Notice of Violation. On October 9, 2013, the BZA upheld the violation determination of the Zoning Administrator of Fairfax County ("Zoning Administrator").

¹ The record owner of the property is the Sheila E. Frace Trust.

On November 8, 2013, Frace filed a petition for writ of certiorari in the Circuit Court of Fairfax County pursuant to Code § 15.2-2314, which permits a person "aggrieved by any decision of the board of zoning appeals" to seek judicial review in the appropriate circuit court within 30 days of the final decision of the board of zoning appeals. Consistent with the first paragraph of Code § 15.2-2314, Frace styled her petition as follows:

In RE: October 9, 2013 Decision of the Board of Zoning Appeals of Fairfax County.

She did not name the Board of Supervisors or any other party. She served a copy of the petition on the Chair of the BZA; she did not serve any other entity or person.

Subsequently, the circuit court permitted the Zoning Administrator to intervene. On January 10, 2014, the Zoning Administrator filed a motion to dismiss, arguing that Code § 15.2-2314 made the Board of Supervisors a necessary party to the proceeding. Thus, Frace was required to name the Board of Supervisors as a party within the 30-day period.

On January 24, 2014, the circuit court held a hearing on the Zoning Administrator's motion to dismiss. After hearing argument from counsel, the circuit court granted the motion, ruling that:

The code section is crystal clear that the governing body is a necessary party to the proceeding.

It is the basic rule of appellate procedure that you have to serve all necessary parties. . . . Failure to serve, and the matter fails for that reason.

On appeal, Frace argues that the circuit court erred because she styled the petition precisely as required by the first paragraph of Code § 15.2-2314 and because the 30-day period is not jurisdictionally fatal. For these reasons, she contends that the circuit court should have allowed her to add the Board of Supervisors as a party to the proceeding after the 30-day statutory period, rather than dismissing the case.

A certiorari proceeding is "purely statutory in nature." Board of Supervisors v. Board of Zoning Appeals, 225 Va. 235, 238, 302 S.E.2d 19, 20 (1983) ("Board of Supervisors I"). Therefore, the provisions of Code § 15.2-2314 govern "the proper institution of a proceeding thereunder." Id. The interpretation of a statute presents a question of law that the Court reviews de novo. Perreault v. The Free Lance-Star, 276 Va. 375, 384, 666 S.E.2d 352, 357 (2008).

In Board of Supervisors I, the Court interpreted the predecessor statute to Code § 15.2-2314, former Code § 15.1-497, and concluded that "until return on the writ of certiorari is made by the board of zoning appeals, the only necessary parties . . . are the aggrieved person and the board [of zoning appeals]." 225 Va. at 238, 302 S.E.2d at 21. Accordingly, the Court permitted the petitioner to add necessary parties identified after the return was made. Id. at 239, 302 S.E.2d at 21. However, unlike Frace, the petitioner in Board of Supervisors I had made the necessary party identified by former Code § 15.1-497 – the board of zoning appeals – a party to the proceeding within the 30-day statutory period. Id. at 238, 302 S.E.2d at 21 ("No party other than the aggrieved person and the board of zoning appeals is mentioned in connection

with the petition"). Thus, the petitioner had properly instituted the proceedings under the statute.

In 2010, the General Assembly amended the first paragraph of Code § 15.2-2314 to prescribe the proper styling of the petition. 2010 Acts ch. 241. The General Assembly also inserted a paragraph (now the third unnumbered paragraph) explicitly providing that "[a]ny review of a decision of the board [of zoning appeals] shall not be considered an action against the board and the board shall not be a party to the proceedings." Id. Instead, the General Assembly provided that the "governing body," defined in Code § 15.2-102 as "the board of supervisors of a county," is a necessary party to proceedings initiated pursuant to Code § 15.2-2314. Id. As amended, Code § 15.2-2314 provides:

Any person . . . aggrieved by any decision of the board of zoning appeals . . . may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: [date] Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings The governing body, the

landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings.

The several paragraphs of Code § 15.2-2314 must be "read and considered as a whole . . . to determine the intent of the General Assembly from the words contained in the statute." Department of Med. Assistance v. Beverly Healthcare of Fredericksburg, 268 Va. 278, 285, 601 S.E.2d 604, 607-08 (2004). Moreover, if practicable, each paragraph must be given "sensible and intelligent effect." Id., 601 S.E.2d at 608. As amended, Code § 15.2-2314 clearly signals that boards of zoning appeals are not necessary parties to certiorari proceedings. In effect, the third unnumbered paragraph substitutes the "governing body" for the board of zoning appeals as the necessary governmental party. The substitution reflects a governing body's interest in defending its zoning ordinances and the status of a board of zoning appeals as a quasi-judicial entity, the decisions of which are subject to review by a circuit court.² When read as a whole, the first three paragraphs provide for the proper institution of the proceeding in the circuit court, while the following paragraphs describe what must be contained in the return, standards for conducting the proceeding, and standards for rendering the decision.

Although the 2010 amendments changed the necessary parties to a certiorari proceeding, the rationale behind the decision in Board

² Although Frace suggests that the term "governing body" is ambiguous or contradictory, it is plainly defined in Code § 15.2-102 as "the board of supervisors of a county." Further, Code § 15.2-102 plainly states that the definitions contained therein apply throughout Title 15.2.

of Supervisors I remains valid. To properly institute proceedings under Code § 15.2-2314, an aggrieved person must give timely notice to the necessary parties identified by statute. See Board of Supervisors I, 225 Va. at 238, 302 S.E.2d at 21. Nothing in Code § 15.2-2314 suggests otherwise. Rather, the General Assembly expressly identified parties with an interest in the proceeding and who must be given notice and an opportunity to protect such interest.

Moreover, while the 30-day period "is not an aspect of the circuit court's subject matter jurisdiction," timely compliance with Code § 15.2-2314 is nonetheless required to trigger the circuit court's "active jurisdiction." See Board of Supervisors v. Board of Zoning Appeals, 271 Va. 336, 340, 343-44, 626 S.E.2d 374, 376, 378-79 (2006) ("Board of Supervisors II"). As stated in Board of Supervisors II, the 30-day filing requirement is a "statutory prerequisite" that could be considered "notice jurisdiction, [requiring] effective notice to a party" before a circuit court may exercise its subject matter jurisdiction. Id. at 345 & n.3, 626 S.E.2d at 379 & n.3 (internal quotation marks and citation omitted).

Although the 30-day filing requirement may be waived, no waiver occurred in the present case. See id. at 347-48, 626 S.E.2d at 381. In fact, the Zoning Administrator timely filed a motion to dismiss the present case, because Frace failed to name any necessary adverse party within the 30-day period. Frace never served the Board of Supervisors or otherwise attempted to make the Board of Supervisors a party to the proceeding, even after the Zoning Administrator filed the motion to dismiss.

Finally, compliance with the styling requirement in the first paragraph is only one of the statutory prerequisites that an aggrieved person must satisfy to obtain judicial review pursuant to Code § 15.2-2314. To rule, as Frace argues, that an aggrieved party can comply with the first paragraph, but fail to timely name or serve the necessary parties identified in the third paragraph, and still preserve his or her right to obtain judicial review, renders the third paragraph superfluous. It would also be contrary to our rulings in Board of Supervisors I and Board of Supervisors II. An aggrieved party may comply with Code § 15.2-2314 by formatting the style of the petition as provided in the first paragraph and then naming the governing body as a necessary party in the body of the petition.³

For these reasons, we affirm the judgment of the Circuit Court of Fairfax County. The appellant shall pay to the appellee two hundred and fifty dollars damages.

This order shall be published in the Virginia Reports and shall be certified to the said circuit court.

A Copy,

Teste:

Pat L. Hamigton

Clerk

³ While ordinarily the names of all parties will be found in the caption, the statute dictates a different style in this case.

List of Attachments and Exhibits

Attachment '1' -- Deed, 1836 Cherri Drive, signed April 30, 2005, recorded with Fairfax County May 10, 2006

Attachment '2'-- Declaration of Sheila E. Frace Trust dated April 20, 2005

Exhibit 'A' -- Survey Plat by Kenneth W. White, Land Surveyor, dated April 13, 1993

Exhibit 'B' -- Survey Plat by James D. Thurber, Land Surveyor, dated April 2, 2015

Exhibit 'C' -- Statement of Dorothy Wine, 1834 Cherri Drive, Falls Church, VA

Exhibit 'D' -- 'Report of Inspection on Structural, Electrical and Mechanical Grading and Drainage' by Robert L. DuBose, Professional Engineer, dated March 22, 1993

Exhibit 'E' -- Deed, 1836 Cherri Drive, filed May 4, 1993, platted and recorded with Fairfax County

Exhibit 'F' -- Itemized Estimate, 'Rebuild Shed', from No Va Tech Services, Co., dated May 6, 2013

Exhibit 'G' -- Estimate, 'Shed Roof Work', from Fred Home Repairs, dated July 12, 2013

Exhibit 'H' -- Photographs, varies. Printed, and also on CD-R Disk.

Exhibit 'I' -- 'Google Earth' aerial image: subject property and abutting properties.

Attachment '1'

GRANTEE: SHEILA E. FRACE, TRUSTEE
1836 CHERRI DRIVE
FALLS CHURCH, VA 22043

DEED

(Exempt §58.1-811 a-12)

THIS DEED OF GIFT is made and entered into this 30th day of April, 2005, by and between SHEILA ELAINE FRACE, "Grantor" and SHEILA E. FRACE, TRUSTEE, and successor trustees under THE SHEILA E. FRACE TRUST declared on the 20th day of April, 2005, "Grantees".

W I T N E S S E T H:

That the Grantor for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, the receipt of which is hereby acknowledged, do hereby give, grant, and convey unto the said Grantees, all of that certain lot or parcel of land situate, lying and being in the County of Fairfax, Virginia, and more particularly described as follows:

Lot 311, Section 6, Pimmit Hills, as the same appears duly dedicated, platted and recorded in Deed Book 960 at page 446, among the land records of Fairfax County, Virginia.

AND BEING THE SAME property conveyed to the Grantor by Deed dated May 3, 1993, by Jeffery David Kimball and Elizabeth A. Kimball, and recorded in Deed Book 8542 at Page 1239 among the aforesaid land records.

This conveyance is made expressly subject to any and all recorded easements, conditions, restriction, rights of way and agreements as they may lawfully apply to the real estate hereby conveyed or any part thereof.

WITNESS the following signature and seal.

Sheila Elaine Frace
SHEILA ELAINE FRACE

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

The foregoing Deed was signed and acknowledged before me this 30 day of APRIL, 2005, by SHEILA ELAINE FRACE.

Jeffery D. Kimball
Notary Public

My Commission Expires: 12/31/2009

Tax Map No. 040-1-03-0311

No Consideration ✓

When recorded, return to:

Porter & Gair, P.C.
3815 Plaza Drive
Fairfax, VA 22030
(DRAFTER)

Attachment '2'

DECLARATION OF THE SHEILA E. FRACE TRUST

SHEILA E. FRACE (hereinafter known as "Settlor") of Falls Church, Virginia, desiring to create a trust this 20th day of April, 2005, hereby names herself as Trustee of the trust herein declared, provided, that in the event she becomes incompetent, resigns or for any other reason cannot act as Trustee, Pamela D. Longacre, presently of Danielsville, Pennsylvania, shall be the successor Trustee, and, provided further, that if Pamela D. Longacre becomes incompetent, resigns or for any other reason cannot act as Trustee petition may be made by an interested party to a court of competent jurisdiction to appoint a suitable person to act as Trustee.

The Settlor is not married. In the event the Settlor should have any children, all references herein to the "children of the Settlor" shall refer to those children. The term "Settlor's child" or "child of the Settlor" shall refer to one of the children of the Settlor. Any child born to the Settlor within six months of the signing of this Declaration shall be included in the above terms.

ARTICLE I. Creation of Trust

The Settlor hereby declares the "SHEILA E. FRACE TRUST" and has caused or may cause certain accounts, securities, personal or real property, proceeds of life insurance upon her life, all as set forth in Schedule "A" attached hereto as part of this Declaration, to be designated in the name of or payable to the trust created by this Declaration. The Trustee will now or hereafter be named as the primary or contingent beneficiary of the proceeds of the assets or policies in the event of the death of the insured. The Settlor or any other person may add other property or insurance policies to the trust hereby created by making such insurance payable to or transferring such property to the Trustee. All insurance proceeds or other assets received by the Trustee shall be held in trust and managed and distributed in accordance with this Declaration.

ARTICLE II. Concerning Insurance Policies

A. The Settlor will, to the extent she wishes, pay all charges required to continue the insurance policies in force, and the Trustee shall have no duty to pay these charges. The Trustee is under no duty to stay informed with respect to the insurance policies or with respect to the performance of any act necessary to keep the said policies in force. The Trustee shall not be liable to anyone if for any reason the policies, or any of them, shall lapse or otherwise be uncollectable. The Trustee shall have no duties or obligations hereunder until the maturity of any policies, or the death of the insured.

B. The Settlor reserves the right, without anyone's consent, to change the beneficiary of, assign or borrow against, and exercise options under the policies over which she has such power. She may, if she chooses, receive all payments, dividends, surrender values, proceeds of matured endowments or other benefits under the policies that accrue while she is alive. This Declaration shall be in effect as to the proceeds of the policies flowing from loans taken against them or otherwise. The Trustee shall not seek reimbursement from the Personal Representative of the Settlor's estate on account of any such loan or charge made against the proceeds of the policies.

C. Upon the death of the Settlor, the Trustee shall collect the proceeds of such policies as are payable to the Trustee and may execute receipts and releases required by the insurance companies. The Trustee may institute any proceeding at law or equity in order to enforce the

payment of any proceeds and may do and perform any and all acts and things which may be necessary or proper for the purpose of collecting any sums which may be due and payable under the terms of such policies, but shall not be required to enter into or maintain any litigation or enforce payment of such policies until the Trustee shall have been indemnified by the estate of the insured or by a beneficiary of this Trust against all expenses and liabilities to which the Trustee might be subjected by any such action.

ARTICLE III. Rights to Add, Withdraw, Amend and Revoke

The Settlor reserves to herself and any other person the right to make other policies of insurance payable to the Trustee and to transfer to the Trustee other assets that are acceptable to the Trustee. Any assets transferred to the Trustee by a third person may be withdrawn by such third person at any time during his or her lifetime, and the Trustee, so that this may be accomplished, shall if necessary, segregate the assets upon the books of the trust for accounting purposes, but need not separate them physically. The Settlor reserves the right to amend or individually revoke this Declaration by a signed writing (other than a will). But the duties or compensation of the Trustee shall not be changed without the consent of the Trustee. If this Declaration has been revoked but at the death of the Settlor a policy of insurance is still payable to the Trustee, the Trustee shall be authorized to pay over the proceeds of any such policy of insurance to the Personal Representative of the Estate of the Settlor.

ARTICLE IV. Provisions Governing Trust Benefits.

The Settlor desires the trust to benefit any children who may be born to the Settlor in the future and to benefit Glenn Martin Heller (to the extent the Trustee determines it is appropriate). Following the death of the Settlor, the Trustee shall administer the Trust upon these directions:

A. The Trustee shall apply and distribute the net income and principal of the Trust Estate, established during the life of the Settlor or increased under her will, for the benefit of the Settlor's children who survive her, if any, and of Glenn Martin Heller, as follows:

1. The trustee shall divide the assets of the trust into two shares, one comprised of 50% of the asset value to be designated as "Share A" and the other comprised of 50% of the asset value to be designated as "Share B" or the "Children's Share".

a. Share A: The net income of Share A of the trust may be distributed outright to Glenn Martin Heller in such amounts as the Trustee in the Trustee's sole and absolute discretion as the Trustee deems proper at such intervals as shall be convenient to the Trustee. Any income not so distributed shall be added to the principal of Share A from time to time as the Trustee shall determine. The purpose of Share A shall be to provide ultimately for the Settlor's children as may survive her, provided that distributions from the principal of Share A may be made from time to time to Glenn Martin Heller in such amounts and at such times as are determined in the sole and absolute discretion of the Trustee to be appropriate and necessary for the health and support of Glenn Martin Heller, taking into account other financial resources as may from time to time be available to Glenn Martin Heller and his own capacity to produce income from his own efforts. The forgoing is subject, however, to the proviso that no distributions may be made to Glenn Martin Heller for the purpose of the payment of debt he has incurred at any time before the date of distribution and that portion of the principal shall be not liable to attachment, execution or garnishment by any private or governmental creditor of Glenn Martin Heller since such distribution would impair the future financial interest of the children of the Settlor or other beneficiaries of this

trust.

The principal of Share A shall also be distributed in the sole and absolute discretion of the Trustee for the benefit of the living children of the Settlor who are under the age of twenty-two (22) for their maintenance, support, health and education in such amounts as the Trustee shall deem appropriate, provided, that upon the death of the youngest of the Settlor's children, all others being over twenty-two (22) years of age, or upon the youngest of the Settlor's children attaining the age of twenty-two (22), whichever is later, the Trustee shall distribute to Glenn Martin Heller one-third (1/3) of the principal balance of Share A as of that date, five years later the Trustee shall distribute to Glenn Martin Heller one-half (1/2) of the principal balance of Share A as of that date and five years later the Trustee shall distribute to Glenn Martin Heller the remaining principal balance of Share A. In the event of the death of Glenn Martin Heller the remaining balance of Share A shall be paid over to Share B and administered as a part thereof. If at that time Share B no longer exists the remaining balance of Share A shall be paid one-half (1/2) to the living heirs of the Settlor as determined by the Virginia law of intestate succession then in effect and one-half to the living heirs of Glenn Martin Heller as determined by the Virginia law of intestate succession then in effect. Share A shall then terminate.

b. Share B or the Children's share:

(1) Until the youngest of the Settlor's children attains the age of twenty-two (22) years, the Trustee shall pay to or apply for the benefit of the Settlor's children, so much of the net income retained in the Children's share up to the whole thereof as the Trustee in its sole discretion may from time to time deem necessary or advisable for their proper care, maintenance, support or education, taking into account other resources available to them including support by their father and income from their own earning capacity after age eighteen. The balance of the said net income retained in the Children's share, if any, shall be accumulated by the Trustee and from time to time added to the principal of Share B. The Trustee shall keep in mind that a significant purpose of the Trust is to provide for the care of the Settlor's children while they are minors and supplementary income during the period they are gaining post high school education or training. The Trustee is reminded that the intent of the Settlor is to meet the children's needs in much the same manner as those needs would have been met had the Settlor lived, at the same time giving due consideration to other resources that may be available to them in terms of support from their father during their minorities and support derived from their own efforts during their post high school years.

(2) Though it is the desire of the Settlor that the principal of the trust remain intact for investment and reinvestment, in the event the Trustee, in its sole discretion, determines that the income from the assets allocable to Share B is not sufficient to meet the needs of the Settlor's children while they are under the age of twenty-two (22) years even after taking into consideration other resources available to meet those needs (as above stated), and should they or any one child of the Settlor for any reason be in need of funds for his or her proper care, maintenance, support or education after considering all resources including the child's earning ability, the Trustee may pay to or apply for a their benefit, in addition to the payments hereinabove provided, such amounts from the principal as the Trustee may from time to time deem necessary or advisable for the needs and benefit of that child or those children.

(3) Given that the Settlor's children may have different needs it is possible that the distribution of benefits between them may be unequal over the years (as might have been the case had the Settlor survived). While the Trustee shall endeavor to apply the same standard

to all children, the Trustee is under no obligation to maintain equality of benefits between the children during the period covered by sub-paragraphs (1) and (2) immediately above.

(4) The term "education" as used in sub-paragraphs 1 and 2 immediately above shall include primary and secondary education, industrial, trade or vocational school, college or university and graduate study including law school, medical school or educational preparation for other professions.

(5) Upon the youngest of the Settlor's children attaining the age of twenty-two (22) Share B shall be divided into as many sub-shares as there are children of the Settlor then living and a sub-share shall be designated for each child. Each sub-share shall then be distributed as follows:

One-third of the principal balance shall be distributed outright and free of trust to the child for whom the sub-share is designated.

One-half of the principal balance shall be distributed outright and free of trust to the child for whom the sub-share is designated when that child attains the age of twenty-seven (27) or immediately if he or she has already attained age 27.

The balance of the principal shall be distributed outright and free of trust to the child for whom the sub-share is designated when that child attains the age of thirty-two (32) or immediately if he or she has already attained age 32.

Notwithstanding the above distribution scheme, in the event the Trustee, after taking into consideration other resources available to a child for whom a sub-share is held, determines in its sole discretion that during the period of five years between disbursements, the child for any reason would be in need of funds for that child's proper care, maintenance, support or education, the Trustee may pay to or apply for that child's benefit, in addition to the payments hereinabove provided, such amounts from the principal as the Trustee may from time to time deem necessary or advisable for that child's use and benefit.

(6) In the event a child of the Settlor dies after Share B is divided into sub-shares, that child's sub-share shall be paid over to his or her issue *per stirpes* but if none, shall be added to the other sub-shares of his or her siblings and administered as part of those sub-shares or distributed to other siblings who have already attained ages allowing outright distribution of all or a part of their sub-shares as would have been the case if the addition to the sub-share had been made at the time of the youngest of the children attaining the age of twenty-two (22).

(7) In the event all children of the Settlor predecease Glenn Martin Heller without leaving issue surviving, the balance of Share B shall be paid over to Share A and shall be administered and distributed as a part thereof as would have been the case if the addition to the Share had been made at the time of the Settlor's death. In the event all children of the Settlor survive Glenn Martin Heller and thereafter die without issue surviving the balance of Share B shall pass to the then living heirs of the Settlor determined by the Virginia law of intestate succession then in effect. Share B shall then terminate.

ARTICLE V. Administrative Powers of Trustee

In addition to the powers granted by law, the Settlor grants to the Trustee those powers set forth in Section 64.1-57 of the Code of Virginia, and incorporate that Code Section in this

Declaration by this reference. Subject to the requirements of the preceding sentence, the Trustee shall:

A. Hold, possess, manage, and control the Trust Estate for the purposes and uses herein set forth;

B. Invest and reinvest all or any part of the Trust Estate in such stocks, bonds, securities, investment trusts, investment companies, or other property, real or personal, as in its discretion it shall deem proper, without regard to statutes limiting the property the Trustee may purchase;

C. Sell, transfer, exchange, or otherwise, dispose of, any part of the Trust Estate, for cash or on terms at public or private sale, and to pledge or encumber the same;

D. Lease any real estate held hereunder for any term, notwithstanding the duration of the Trust;

E. Execute and deliver any deeds, leases, assignments, or other instruments as may be necessary to carry out the provisions of the Trust;

F. Make any distribution hereunder either in kind or in money. Distribution in kind shall be made at the market value of the property distributed, and the Trustee may, in its discretion, cause the share to be transferred to any distributee to be composed of property like or different from that transferred to any other distributee.

G. Remove the trust assets to another state to facilitate administration.

H. Pay directly or make funds from the trust available to the Personal Representative of the Settlor's estate for the payment of obligations owed by her at the time of her death, her funeral expenses, costs of her last illness and the cost, if any, of a marker upon her grave.

ARTICLE VI. Inapplicability of the Uniform Principal and Income Act.

The provisions of the Uniform Principal and Income Act presently codified as Title 55, Chapter 15.1, of the Code of Virginia of 1950, as amended, (Sections 55-277.1 – 55-277.33), any reenactment of any law of similar import, as well as similar enactments in jurisdictions other than Virginia, shall not apply to this trust.

ARTICLE VII. Alienation.

No beneficiary of this Trust shall have any right to alienate, encumber or anticipate his or her interest in the principal or income of the Trust in any manner, nor shall such interest of any beneficiary be subject to claims of his or her creditors or liable to attachment, execution, or other process of law.

ARTICLE VIII. Matters of Interpretation.

This Trust has been created under the laws of the Commonwealth of Virginia, and its validity, construction, and administration shall be determined by the laws of that State. For simplicity, pronouns and other terms are sometimes expressed in one number and gender, but where appropriate to the context these terms shall be deemed to include the other numbers and

genders. The underlined headings are for convenience and shall not affect interpretation.

ARTICLE IX. Trustee Liability.

Neither the Trustee named in this Declaration nor the successor Trustee named herein shall be personally liable for acts or omissions in the administration of this Trust except in the event of bad faith, gross negligence or willful misconduct.

WITNESS the following signature and seal:

Sheila E. Frace
Sheila E. Frace

COMMONWEALTH OF VIRGINIA)
COUNTY OF FAIRFAX)

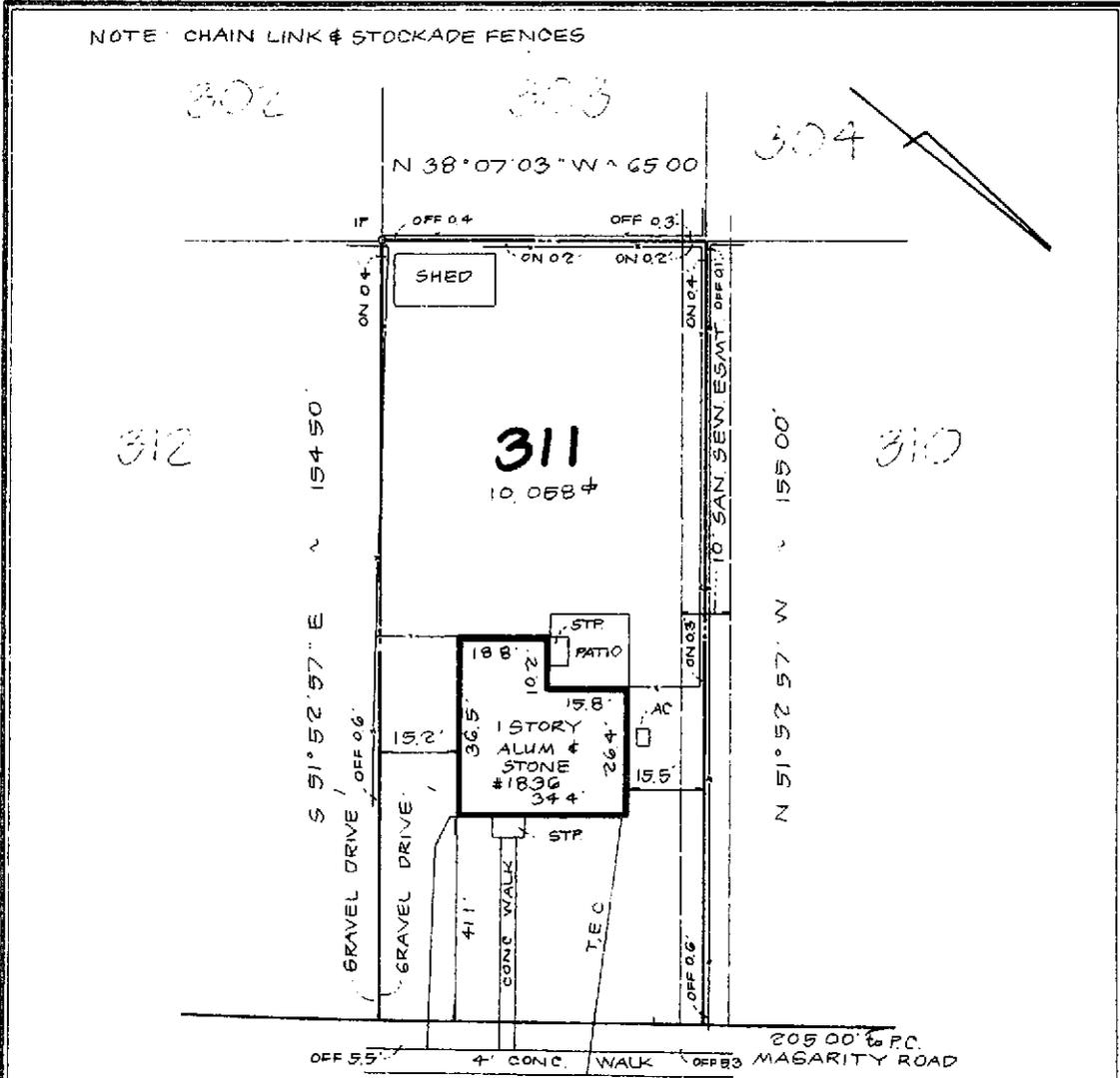
The foregoing instrument was signed and acknowledged before me this 20th day of April, 2005, by Sheila E. Frace.

Eleonor P. Reese
Notary Public

My Commission Expires: 5/31/05

Exhibit 'A'

Original Application
 - Filing was 8 1/2 x 14"



R: 3,054 21' A: 95 01 S 38° 07' 03" E 10 00'

CHERRI DRIVE
 50' R/W

PLAT
 SHOWING HOUSE LOCATION ON
 LOT 311 SECTION 6
PIMMIT HILLS
 FAIRFAX COUNTY, VIRGINIA
 SCALE 1" = 30' APRIL 13, 1993

THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA

PLAT SUBJECT TO RESTRICTIONS OF RECORD

TITLE REPORT NOT FURNISHED

I HEREBY CERTIFY THAT THE POSITIONS OF ALL THE EXISTING IMPROVEMENTS HAVE BEEN CAREFULLY ESTABLISHED BY A TRANSIT TAPE SURVEY AND THAT OTHERWISE SHOWN THERE ARE NO ENCROACHMENTS

Kenneth W. White
 KENNETH W. WHITE L.S.



CASE NAME
 KIMBALL & FRACE
 TRI-STATE TITLE & ESCROW, INC

ALEXANDRIA SURVEYS INC
 6343 SOUTH KINGS HIGHWAY
 ALEXANDRIA, VIRGINIA 22306
 703-660-6615
 FAX 703-768-7764

Exhibit 'B'

Exhibit 'C'

Exh. 'C'

May 25, 2015

My name is Dorothy Wine.

I live at 1834 Cherri Drive, Falls Church, VA 22043, and I live next door to Sheila Frace.

I have lived next door to the property since July of 1973.

The shed in Sheila Frace's backyard was placed there by the previous owner of her home.

The shed is not a problem as far as I am concerned.

Dorothy A Wine
Dorothy A. Wine

Exhibit 'D'

Exh. 'D'

DuBOSE REAL ESTATE INSPECTION, INC.

Homes, Buildings & Factories

7007 GIRARD STREET • McLEAN, VIRGINIA 22101

(703) 356-8110



Report of Inspection

on

Structural, Electrical and Mechanical Grading and Drainage

located at

1836 Cherry Dr
Falls Church VA 22043

for

SHEILA FRACE
3501 PERRY PENNY DR
ANNANDALE VA 22003

Description of House

Rambler

Front Exposure (NEWS)

East

Reported Age

42

Weather

cloudy

This report of inspection has been prepared at your request for your sole confidential and exclusive use and possession, for the purpose of ascertaining the present physical condition of the premises and/or installed equipment. The report covers only those portions of the subject premises and equipment that could be visually inspected and does not include any portion not actually seen or capable of being seen. The report as to present condition is not to be construed as a guarantee or warranty and is not intended for the purpose of fixing a value or as an opinion as to the advisability or inadvisability of purchase.

This written report covers the items of interest found during the inspection. Full value from this inspection can be obtained from your notes and the discussions during the walk through, study of this written report pages 1, 3, 5, 7, 9 and 11, and the general supplemental information on the back of each page of this report, pages 2, 4, 6, 8, 10 and 12. And by adhering to the enclosed suggestions for maintaining your home by the American Society of Home Inspectors. We strongly recommend a "walk through" a day or so before settlement, during which your agent and you can recheck everything, especially all of the mechanical equipment such as heating, A/C, plumbing, major appliances, such as dishwasher, refrigerator, range, garbage disposal, exhaust fan.

DuBose is a member of the American Society of Home Inspectors and conforms to its ethical code and its Inspection Standards. We have no interest, present or contemplated, in the property inspected and no involvement with tradespeople or benefits derived from any sales or improvements.

Any controversy or claim arising out of this agreement shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

The Purchaser's signature constitutes acceptance of the terms stated above. Inspection fee of \$175.00 is due when inspection is completed.

Client/Client's Representative Signature

[Signature]

Date

3/22/92

1. ROOFING, GUTTERS, DOWNSPOUTS AND CHIMNEYS

a. The most common type roof shingles used today is asphalt shingles with a life expectancy of 15 to 20 years. Only two layers of asphalt shingles should be applied. The second layer should be applied over the first layer when the shingles just begin to curl, cup and crack (15 to 17 years). It is more economical to apply a second layer than to wait too long and remove old shingles and start over. After the second layer of asphalt shingles is applied you can wait as long as you wish since both layers have to be removed when it starts to leak. Tile and slate roofs last three to four times as long but cost five to nine times as much. Slate requires some periodic repairs during its lifetime. Heavy grade wood shingles may last 25 to 30 years; cheap, thin wood shingles have about the same life expectancy as asphalt shingles, 15 to 20 years. Asbestos-cement shingles are intermediate in life and cost, but are very brittle. The steeper the roof slope, the longer its leak-free expectancy.

b. Flashings are extremely important and should be checked and repaired, if required, every 3 to 5 years.

c. Copper gutters are best, but expensive factory painted seamless aluminum is used most often today. Galvanized steel is inexpensive but corrodes through easily. All should be kept clean and have a good straight slope towards downspouts. The water must be carried away from the house by pipe or splash blocks and sloping grades. Since leaks at the joints of the gutter cannot be detected unless it is raining, we recommend you inspect the gutters during a rainstorm to see if the leaders or gutters leak anywhere. If this is not possible, get a representation from the seller that the downspouts and gutters are not clogged, broken or in need of repairs.

d. Problems in flat roofs are common and more difficult to diagnose than pitched roofs because the path of the water leakage through flat roofs is often quite hard to trace. Flat roofs are expensive to repair. Built up flat roofs vary greatly in life span and it is difficult to predict with any accuracy when a leak will develop.

e. The concrete chimney cap over the brick must not be allowed to have cracks in it during winter months. If water gets into the brick during freezing weather, it may destroy the chimney.

2. EXTERIOR OF THE HOUSE

a. The sillplate should be at least 8" above the ground. Woodwork touching or close to the ground is more subject to rot and termites.

b. Storm windows and doors provide protection as well as energy savers. Houses busy with many corners, angles and decorative trim cost more to maintain. You can expect more deterioration of roofing, siding and paint, on that portion of the house facing south.

c. Peeling, flaking or bubbling paint may indicate moisture under the surface from condensation, i.e., lack of a vapor barrier in the wall. Water is a house's worst enemy; good roofs (see above), generous overhangs with soffit ventilators, good gutters and grades around foundation that slope down and away from the house at all points, prevent water from causing problems in and around the foundations. Heavy summer rainstorms and freeze-thaw cycles following snow occasionally result in water penetration into the house through roofs or walls.

d. Aging brick walls sometimes have softening mortar which makes them more vulnerable to water leaks.

e. If screens and storm windows are stored in the basement, we recommend you obtain a representation from the seller that there is one screen and one storm window for each window of the house and that they are all in good working condition.

f. Condensation between sheets of insulated glass on sliding patio doors that do not have adequate doorstops is a particular problem. When the door is thrown open and badly shaken at the end of its run, it can crack the seal between the sheets of glass and moist air can enter the cavity. The only remedy is to replace the glass unit. In some cases, this need for replacement can occur with a very high percentage of all of the windows in the house.

g. Hardboard siding is quite prone to failure. As it absorbs moisture it expands and pulls away from the wall and bulges out in a time period of a couple of years. Wet rot occurs around the nails. Only paints with a sun block should be used, other type paints will deteriorate hardboard siding. Hardboard siding must be maintained in a well painted condition at all times.

1. ROOFING, GUTTERS, DOWNSPOUTS AND CHIMNEYS

- 1.1 Roof Type: Gable Gambrel Hip Mansard _____ Pitch: Steep Shallow Medium Flat _____
Material: Asphalt Shingles Wood Shingles Slate Mounted Rolled Roofing Other _____ Approaching end of useful life
 Field Glass Will need repairs & replacement
Condition: Good Acceptable Poor Needs Repairs Evidence of patching
- 1.2 Flashing: Aluminum Other _____ see page 2, par. 1-b
- 1.3 Gutters and Downspouts: None Galvanized Copper Wood Aluminum
Condition: Good Adequate Poor Needs Repair
 see page 2, par. 1-c
Water run off or splash blocks Yes
- 1.4 Roof Soffits, Fascia and Eaves OK
- ~~1.5~~ Cornice _____
- ~~1.6~~ Chimney _____ see page 2, par. 1-e
- 1.7 Vent Stacks Adequate
- 1.8 Roof Vents Adequate
- 1.9 Skylights and Other/Roof Accessories Exhaust fan
- Remarks: _____

2. EXTERIOR WALLS, SIDINGS, WINDOWS, DOORS - PORCHES OR DECKS

- 2.1 Foundations (Visible) (see 5.3) Brick
- 2.2 Exterior Walls: Frame Masonry see page 2, par. 2-b, c, d & g
Siding: Brick Stucco Asbestos Wood Aluminum _____
Condition: OK
- 2.3 Exterior Paint: Good Acceptable Needs Repainting
- 2.4 Windows: Wood Double Hung Sliders Number Broken _____
 Metal Casement Other Condition: Window glazed
Putty: Good Acceptable Needed
Caulking: Good Acceptable Needed
Screens: Yes No Good Acceptable Need Repairs Missing
Storm Windows: Yes No Good Acceptable Need Repairs Missing
- 2.5 Doors: Number 2 Weather Stripped: Yes No Needs Repairs
Putty: Good Acceptable Needed
Caulking: Good Acceptable Needed
Locks Working Needs Repairs
- ~~2.6~~ Porch: Open Screened Glazed
Front, Rear or Side: Good Acceptable Needs Repairs
- 2.7 Railing, lights, hose bibs, etc. OK
- ~~2.8~~ Deck: Acceptable Needs Repairs Pressure Treated Not Treated
- Remarks: _____

3. GROUNDS AND APPURTENANCES

a. Tree or shrub limbs should not brush against the roof or walls. Vines should not be allowed to grow on the walls.

b. Air conditioner compressor should be 1.8" away from any obstruction and kept level.

c. Detached gargaes are often neglected and, along with wood fences, fall prey to rot or termite activity.

d. Good drainage is most important; all surface grades, particularly near the house, must slope downward away from the walls at a minimum rate of 1" per foot for a distance of at least six feet.

e. Window wells should be covered with plastic bubbles. Soil level in window wells must be gravel or sand and should be well below the window sills.

f. If a house is located at the bottom of a slope on hill, a swale must be maintained to drain water away from and around the house. Otherwise there is a high possibility that water will seep into the basement or crawl spaces.

g. Termites eat all cellulose products. They are attracted by any untreated wood left in the yard. Firewood should not be stacked against the house. They will eat untreated fence posts in the ground, porches, trees, old garages, as well as the house.

4. ELECTRICAL SERVICE

Most codes call for at least 150 amperes with both 120 and 240 volts in all new work. Total electric homes should have 200 amps. Medium size houses should have 10 to 15 circuit breakers or fuses. Houses built between 1960 and 1975 may have small gauge #12 and #10 aluminum wiring. If the small gauge (#14, #12 and #10) wiring is aluminum the Comsumer Product Safety Commission (CPSC) sponsored research, Laboratory for testing, identified a method of repairing existing aluminum wire circuits which meet CPSC criteria. That modification is known as "copalum crimp connector" which splices a copper wire to the end of the aluminum wire to connect to the outlet. The larger gauge aluminum wiring, 40 amp and above, is still being installed in new houses and approved by the local municipal authorities. Circuit capacity - In order to operate efficiently, electrical equipment must be supplied by branch circuits of sufficient size. When a branch circuit becomes overloaded, excessive power loss occurs and the wire heats up and becomes a fire hazard. Common signs of an overloaded circuit are:

- Fuses "blow" frequently or circuit breakers must often be reset;
- Toasters, irons and other heat-producing appliances heat up slowly, sometimes never reaching desired temperatures;
- Motors overheat and run slowly;
- Television picture shrinks when appliances are in use.

The power loss in a circuit increased four times when the load is doubled. The cost of power which is wasted by overloaded circuits will more than pay for an additional branch circuit. Outlets with reversed polarity can damage some appliances.

3. GROUNDS AND APPURTENANCES

3.1 Driveway: Concrete Gravel Asphalt _____
Condition: Acceptable Needs Repairs

3.2 Walks: Concrete Gravel Brick Asphalt Flagstone _____
Condition: Acceptable Needs Repairs

3.3 Patios: Concrete Brick Flagstone _____
Condition: Acceptable Needs Repairs

3.4 Garage: Yes No No. Cars _____ Attached Detached
 Heat Electricity Storage Space Water see page 6,
 Fire resistant separation of walls, ceiling par 6-f
and door between unit & attached garage
 see page 3, par. 3-c

3.5 Drainage: Good Satisfactory Poor Needs Correction *Where the*
Grading: Good Satisfactory Poor Needs Correction *storm water*

3.6 Slope away from house walls (see Par. 3, Page 4) _____ *is running into crew*

3.7 Fencing: Wood Steel Condition: OK

3.8 Retaining Walls: Brick Block Mortar Dry Stone
 _____ Condition: _____

3.9 Shrubbery, Lawn, Trees, etc.: see page 4, par 3-a _____

3.10 Window Wells: Yes *Need to drain water away from exterior*
Remarks: Wall at all points around the house

4. ELECTRICAL SYSTEM

4.1 Type Service: Overhead Underground
Number of Wires 3 Voltage 120/240 Cable Current Available 3/4" *in 1/4" by 2"*

4.2 Panel Service: No. Circuits 17 Adequate Yes Condition Good

4.3 Type: Circuit Breaker Ground Fault Interrupters Grounded to Pipe
 Fuses

4.4 Conduction: Service cable Copper Aluminum
Large Gauge Copper Aluminum Small Gauge Copper Aluminum

4.5 Lights in basement or utility room: Adequate Yes No

4.6 Electrical receptacles in each room: Adequate Yes No

4.7 Switch and light fixtures: Adequate Yes No

Remarks: see page 4, par. 4 _____

5. BASEMENT, SLAB, CRAWL SPACE

Houses with full basements built in areas where the water table (during the wet season) is above the level of the basement floor on all sides invariably result in water penetration into the basement. A sump pump system will assist in solving a lot of water problems, but the outdoor preventive measures (see above Sections 1, 2 and 3) should be taken first. Crawlspace should be watched carefully for signs of rot and termites. A termite checkup and warranty by a reputable termite company should be included in every property transfer. Some cracks in foundation walls are to be expected but sometimes they indicate a serious problem. The garage floor and driveway should slope away from the house to insure drainage out of garage. Crawl space should have R-13 between floor joists, which can be obtained with 4" glass fiber batts. The vapor barrier should be up next to the floor. The ground in the crawl space should be kept dry and covered with a vapor barrier to keep the moisture out of the building. It is important for the ground to slope away from the foundation wall to keep the storm water from seeping into the crawl space. If you cannot keep water out of crawl space, a sump pit and sump pump should be installed to pump water out of crawl space. Excessive droughts prevent a thorough determination of dry basements or potentially wet basements. The water table, for example, may be unusually low during a drought.

6. HEATING SYSTEM

Forced water is faster than gravity water system. Warm air furnaces should last 20 to 30 years, the furnace electric motor 5 to 15 years. Cast iron boilers should last 30 years. Furnace efficiencies usually run from 30% to 80% depending on age and maintenance. With oil burning systems, annual cleaning is required. Humidifiers also require cleaning each fall. If they are mounted so they can leak onto heat exchanger, it can reduce the life expectancy of the furnace. Heat distribution is often imperfect, every room may not heat or cool uniformly. Winter-summer adjustment of registers or branch valves or dampers may be necessary. An oil fired steel boiler has a life expectancy of 12 to 15 years. Although a furnace or boiler whose life expectancy has expired still heats the house and is functioning, it has no useful life left and the potential buyer will in the near future have to replace the furnace or boiler. It would not need to be replaced, of course, until required. All warm air systems require a good humidifier to add moisture to the air in the winter to avoid dry throats and coughs. Bedrooms or rooms built over garages will be colder. You need 3/4" clearance under the bedroom and bath doors for heating and air conditioning to permit recirculation of warm or cool air, but heat pumps require a full 1" under cut of doors because the air flow is far more critical.

5. BASEMENT, SLAB, CRAWL SPACE

- 5.1 Ventilation: Window Fan Adequate Inadequate
- 5.2 Basement Finish: Mostly Partly Condition _____
- 5.3 Walls: Concrete Block Other _____ Insulated
 Condition: Acceptable Needs Repairs *To keep water out of crawl space*
- Cracks: Fine Large
- 5.4 Floor: Concrete Wood Finish Tiles Other *Earth covered with Polyethylene.*
 Condition: Acceptable Needs Repairs
- 5.5 Girders: Steel Wood None Not Observable
 Condition: Good Acceptable Needed Slab on Grade: Yes No
- 5.6 Columns: Steel Wood None Not Observable *Block*
 Condition: Good Acceptable Needed Slab below Grade: Yes No
- 5.7 Floor Joists: Spacing (16") Size (2"x10")
 Probe Wooden Members Suspect.
 Condition: Good Acceptable Poor Not Observable
- 5.8 Crawl Space: Ventilation: Adequate Inadequate None Marginal
 Entered Insulation: Adequate Inadequate None Marginal
 Not entered Vapor Barrier: Concrete Plastic Condition OK
- 5.9 ~~Wet Basement~~ ^{1st floor space} Conditions, Drainage
 Sump Pump None Sump Pit None Adequate Drains None
 Evidence of: Moisture Leaks Water
 Walls Floor Ceiling _____ Conditions should be eliminated

Remarks: See par 3.1b page 5.

6. HEATING SYSTEM

- 6.1 Furnace/Boiler: Manufacturer Faappan
 Condition Appears to Be: Good Serviceable Poor
 Operational with Normal Controls Evidence of Rust: Yes No
 Automatic safety controls
- 6.2 Output Capacity 85000 Btu or _____ Kw
 Adequate Inadequate Approaching end of useful life
 Flue Pipe Tight Will need repairs and replacement.
 Combustion air supply: Yes No Clearance to combustibles: Yes No
- 6.3 Fuel: Gas Oil Coal Electric
- 6.4 Type: Hot Water Steam Hot Air Heat distribution system -
 Ducting: Adequate Inadequate blowers, pumps, ducts, piping,
 Heat source in each room: Yes No radiator, connectors, registers
 air filters
- 6.5 Humidifier: Scars Electronic Air Filter No
 see page 6, par. 6-d
- 6.6 Hot Water Heater:
 Capacity: Gallons (40) Recovery Rate (38⁵) Gal. per hr or
 Manufacturer _____ wattage _____
- 6.7 Fuel: Electric Gas Instant with Heat System
- 6.8 Condition: Good Serviceable Poor Approaching end of useful life
 Will need repairs & replacement
 Adequate Inadequate Rusting: Yes No

Remarks: _____

7. COOLING

Many more electric air conditioners are now in use than gas. The outdoor section usually contains the compressor and condenser. Compressors last from about 6 to 12 years and may give no warning of failure. A/C units should not be turned on when outdoor temperatures are below 65 degrees; this can cause serious damage. We, therefore, can do no significant assessment out of season. The best time for evaluation is in very hot weather. A medium-sized house needs about 3 to 3-1/2 tons but this may vary significantly with characteristics of the house and its residents. Temperature differences between rooms, especially between upper and lower stories, may be expected. (See page 6, par. 6). Heat pumps should not be operated out of mode; i.e., it should not be set on cool when temperature is below 65 F; nor set to heat when outside temperature is 65 F, or above.

8. PLUMBING

a. Domestic water piping may be galvanized steel, copper or plastic. Galvanized pipes can be expected to develop leaks and to be badly clogged up after about 40 years, depending on type of water. Drain pipes, which may be cast iron or any of the three above, usually last much longer but breaks are not as obvious because the drains are not usually under pressure.

b. Houses sited low relative to the street level may have a bare minimum slope to the sewer distribution line, making it more vulnerable to stoppage.

c. The county or city should be asked about the history of a well or a septic system and should provide a purity check on the well water. The buyer should have an attorney verify sewer hook-up. Recommend the buyer have a septic tank cleaning contractor inspect the sewer system to determine whether or not cleaning or replacement is necessary. Most septic tanks cannot be inspected unless they are dug up. Septic tanks should be inspected every three years. They usually need cleaning once every three to six years. Fairfax County inspects all wells and septic systems.

d. Some of the sewer pipes between house and street is made of orangeburg, which has a life expectancy of 20 to 25 years. We cannot inspect because it is underground. The life expectancy of a new gas hot water heater is 7 to 10 years; 10 to 15 years for electric hot water heaters. A medium size house needs at least a 40 gallon, gas fired, hot water heater; 50 to 60 gallon if it is an electric hot water heater.

CAUTION: Plumbing supply lines, drains, shower/tub walls require constant care and continuous maintenance. Lack of maintenance, careless use, or misuse can cause costly plumbing problems. Reinspect carefully day prior to "taking title" to make certain no problems have developed from time of this inspection until taking title.

9. ATTIC

a. Eight inches of fiberglass blankets or batts provides R-26. Seven to seven-and-a-half inches of loose cellulose fiber provides R-26. Loose glass fiber requires 12 inches to provide R-26, loose rock wool only requires 9" to provide R-26. The vapor barrier should be between insulation and the sheet rock ceiling, or on the warm side of the insulation in the winter. If there is no vapor barrier, the easiest way to obtain one is to apply two (2) coats of vapor barrier paint, and covered with a coat of flat paint, on the ceiling of the top floor. If your walls have no vapor barrier they should also be painted with a vapor barrier paint to keep the moisture out of the walls. Attic entrances such as scuttle-hole hatches or pull-down stairways should be insulated to conserve energy and improve comfort.

b. Good attic ventilation is required to prevent excessive condensation leading to rot. Soffit ventilation and ridge ventilation provides the most complete attic ventilation.

c. Some staining and dirt is often present on the underside of the roof deck, perhaps dating back to construction period when boards lay in the mud or were uncovered, or from prior leaks.

d. Condensation is also a common problem with skylights. During winter months, even double dome plexiglass will collect condensation.

7. COOLING

- 7.1 Type: Central Air Electric Heat Pump
 Room Units Gas Manufacturer Paypan
 Presence of cooling system in each room Air handler in furnace
- 7.2 Approximate Capacity 2 Tons Adequate Inadequate Marginal
- 7.3 Condition (No test below 65 for A/C or above 65 for H/P.) 45°F
- 7.4 Air Distribution Ducts Registers Air Filters Condition: _____
 Open readily operable access panels

Remarks: _____

8. PLUMBING

- 8.1 Service Pipe: Copper Plastic Galvanized Lead
Size 1" Location Front wall where sewer enters on S side
- 8.2 Interior Water Pipe: Copper Brass Galvanized Plastic
Pressure-Condition: OK
 Visible supports
- 8.3 Waste Pipe: Copper Galvanized Cast Iron Plastic
Condition: _____
- ~~8.4~~ Well System: Fairfax County are exclusive inspectors of private water supply.
- ~~8.5~~ Septic System: Fairfax County are exclusive inspectors of septic tank.
- 8.6 Laundry Tub: None Double Single Concrete Plastic
Condition: _____
- 8.7 Hookup: Washer Gas Dryer Vented Machines None
 Electric Dryer Washer Dryer

Remarks: _____

9. ATTIC

- 9.1 Roof Leaks: Evidence of: Yes No
- 9.2 Insulation: 5 1/2 inch between joist
 Roof Floor Walls None
Condition: Good Acceptable Poor
- 9.3 Framing: Size 2x6" Spacing 24" Good Acceptable Below Standard
- 9.4 Joists: Size 2x6" Spacing 24" Good Acceptable Below Standard
- 9.5 Flooring: None Partial Complete
- 9.6 Storage: Good Poor Light Objects
- 9.7 Vents (Plumbing): None Poor Adequate
- 9.8 Ventilation: Adequate Inadequate
Ventilator Fan: Yes No Condition too cool, not tested
Reported to be 1 year old
- 9.9 Condensation: Evidence of: Yes No
- 9.10 Access: Stairs Scuttle Pull-down

Remarks: _____

10. BATHROOMS

The modern home should have at least a bath and a half, two and a half is about average. Tile joints should be kept grouted and other joints (tub to floor, spigots and handles to wall or tile, etc.) should be kept caulked. Bathroom floors are not fully waterproof and water on the floor may result in stains or water damage to the ceiling below. Poor water pressure will show up in baths due to piping problems such as old galvanized pipes. Baths that rely on windows present a ventilation problem. Very few people open windows for ventilation in the winter because of the cold draft. This results in mildew. A ceiling exhaust fan provides much better ventilation for baths. The exhausted air should be vented to the exterior and not blown into the attic.

11. KITCHEN

Our check of kitchen appliances is very limited unless otherwise noted. Please check operation of all appliances for satisfactory working order on the walk-through the day before closing, or have your attorney get you a suitable representation or guarantee that all appliances are in satisfactory working order. The modern kitchen should have five appliances: oven/range, refrigerator, disposal, dishwasher and fan/hood, with some counter space adjacent to each appliance. Some staining, rot and other indications of past leaks, sloppiness, may be expected under and below the sink and near the dishwasher. Kitchen remodeling is usually much more expensive than new homeowners realize because it involves many trades and appliances. Kitchen designs and layouts vary and should suit the personal taste of the purchaser. The life expectancy of an electric range is 12 to 15 years; gas range is 13 to 15 years; refrigerator is 15 to 20 years; dishwasher is 10 to 15 years; disposal, 1/3 horsepower, is 5 to 10 years, 1/2 horsepower is 8 to 12 years; trash compactor, 5 to 12 years. The stainless steel filter in the range hood should be kept clean to keep the grease out of the exhaust fan motor. The stainless steel filter will not catch the grease unless it is shiny clean.

12. GENERAL INTERIOR

Most houses develop some wall and ceiling settling or shrinkage cracks and, since a structure moves somewhat with wind pressure, vibration and seasonal changes in temperature and humidity, small cracks should be expected to reappear from year to year; the movement of one load of furniture and household effects out and another in, may speed up the appearance of such cracks. With wood floors some creaking and minor irregularities may also be expected. Doors may need some adjustments from time to time and the upper section of double hung windows are likely to be painted shut. Mechanical casements are a problem thermally and mechanically. They are leaky and drafty and difficult to close. As a long-time objective it will pay to replace them with double hung wood or vinyl windows and storm windows.

10. BATHROOMS

- 10.1 MBR Bathroom: Tank age _____ Tile _____ Fixtures _____ Plumbing _____
 Ventilation _____ Pressure Adequate: Yes No Drainage Adequate: Yes No
- 10.2 Hall Bath: Tank age _____ Tile Ceramic Fixtures 3 Plumbing OK
 Ventilation Fan Pressure Adequate: Yes No Drainage Adequate: Yes No
- 10.3 Powder Room: Tank age _____ Tile _____ Fixtures _____ Plumbing _____
 Ventilation _____ Pressure Adequate: Yes No Drainage Adequate: Yes No
- 10.4 Other Bathrooms: _____

Remarks: _____

11. KITCHEN

- 11.1 Cabinets & Counter: Good
- 11.2 Sinks, Plumbing & Pressure: Good
- 11.3 Range: Gas Electric Oven: Gas Electric
- 11.4 Refrigerator: Montenard Disposal: 15F 1/2 HP Dishwasher: Kitchen aid
- 11.5 Hood/Fan: Exhaust Recirculating Condition: OK
- 11.6 Additional Equipment: _____

Remarks: _____

12. GENERAL INTERIOR

- 12.1 Ceiling: Good
- 12.2 Walls: Good
- 12.3 Floors: Good
- ~~12.4~~ Stairs: _____
- 12.5 Doors (Spot Check): Good
- 12.6 Windows and Storms (Spot Check): Antenna Window - Good
- 12.7 Closets: OK
- 12.8 Electrical Fixtures & Outlets: Adequate, Inadequate
 Condition (Spot Check): OK Ground Fault in Kitchen shows
 Reversed polarity, Needs New GFI

13. SUMMARY AND GENERAL CONDITIONS

a. Some important parts of the house are concealed in the walls and ceilings, etc., and are not visible, and it is impossible during a several-hour inspection to find everything that may be wrong with a house. Some of the items missed may show up later as you use and grow familiar with the house. We have made every effort, in the limited time available, to find at least every major problem or defect that might seriously affect the investment value and fundamental utility of the property. Please do not hesitate to call us with questions or report problems; we need information for our continuing education and to improve our services.

b. MACAP life expectancy of appliances is:

Electric Range	- 12 years
Gas Range	- 13 years
Refrigerator	- 15 years
Freezer	- 20 years
Dishwasher	- 11 years
Electric Clothes Dryer	- 13 years
Gas Clothes Dryer	- 12 years
Trash Compactor	- 10 years
Disposal	- 10 years
Microwave oven	- 11 years
Dehumidifier	- 15 years

12.9 Fireplaces: Yes No Needs Repairs Needs Cleaning
 Damper operational Get representation that fireplace is operational
and does not smoke

12.10 Safety:

Remarks:

13. SUMMARY AND GENERAL CONDITIONS

The house is in good condition except:

The G.F.I. in the kitchen shows reversed polarity.
It should be replaced.

The storm water is pouring into crawl
space through the window well next to
downspout. Ground should be sloped away
from the window well to keep the storm water
out of crawlspace.

See par 3. page 4 Ground should slope
away from the house foundation wall
at all points.

Since some important parts of the house are concealed in the walls, ceilings, etc., and are not visible, the fact that we did not detect major problems in some of the areas listed below does not mean that they do not exist. We, therefore, suggest for your further protection, you attempt to have your attorney obtain from the seller suitable guarantees and representations concerning these areas.

It is important to try to obtain a guarantee covering the entire house, certifying that there are no problems or defects, hidden or otherwise, that everything is functioning well, and that the house has been maintained in good condition.

Roof and Sidewalls - Get a representation that the roof, flashing, gutters, leaders, chimneys, etc., do not leak and that there are no leaks through windows, doors, sidewalls, etc.

Heating - Obtain a representation that the Furnace is in good working order, operates satisfactorily. Find out by whom the is guaranteed and serviced. Determine whether or not any existing service contracts are transferable. It is important to know whether or not the thermostats and zone controls are working properly. Obtain a representation that there are no cold rooms on zero degree days.

Air Conditioning - Obtain a representaiton that the air conditioning is in good working order, operates satisfactorily. Find out when it was installed and by whom. Find out who serviced it and if it is guaranteed. Determine whether or not any existing contract is transferable. It is important to know whether or not the thermostats and controls are working properly. Obtain a representation that there are no hot rooms when the outside temperature is 95 F.

Electrical Service - Get a guarantee that the electrical service is adequate, that the circuits are not overloaded, that they handle all heavy appliances adequately, and that there is no small gauge aluminum wire in the house.

Plumbing - Obtain a representation that all plumbing is in satisfactory condition; that there are no leaks; that no temporary repairs were made; that water pressure is adequate to all fixtures at all times, especially during peak use periods; that drains function and are not clogged or sluggish; that there is no rust in the water; that the water main provides a satisfactory supply.

Appliances were not tested unless otherwise noted. Check operation for all appliances for satisfactory working order just prior to closing, or have your attorney get you a suitable representation or guarantee that all appliances are in satisfactory working order.

The above suggested representations and guarantees to be obtained from the seller are not all-inclusive, nor are they intended to be. They are not written in legal language, do not imply legal protection, nor are they intended to be legal advice. These representations are only suggestions, which should be suitably amplified, augmented, and modified by your attorney. We are certain that your attorney will also recommend other representations to you.

Date 3/22/93
Time Started 8:45
Completed 11:40

Inspector Robert J. Boer
Received \$ 175.00
Signed Robert J. Boer

This report of inspection has been prepared at your request for the purpose of ascertaining the present physical condition of the premises and/or equipment. The report covers only those portions of the subject premises and equipment as were capable of being visually inspected and does not include any portion not actually seen or capable of being seen. The report as to present condition is not to be construed as a guarantee or warranty and is not intended for the purpose of fixing a value or as an opinion as to the advisability or inadvisability of purchase.

Exhibit 'E'

Exh. 'E'

93-090831

93MAY-4 8:30

BK 8542 1239

THIS DEED, made this 3rd day of May, 1993, by and between JEFFREY DAVID KIMBALL and ELIZABETH A. KIMBALL, married, Grantors; and SHEILA ELAINE FRACE, unmarried, Grantee:

W I T N E S S E T H:

THAT for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, receipt of all of which is hereby acknowledged, the Grantors hereto do hereby grant, bargain, sell and convey, with GENERAL WARRANTY and ENGLISH COVENANTS OF TITLE, unto the Grantee, all that certain lot or parcel of land, together with improvements thereon, lying and being situate in the County of Fairfax, State of Virginia, and more particularly described as follows:

Lot 311, Section 6, Pinmit Hills, as the same appears duly dedicated, platted and recorded in Deed Book 960 at Page 446, among the land records of Fairfax County, Virginia.

AND BEING the same property conveyed to the grantors by Deed recorded in Deed Book 7969 at Page 1353 among the said County land records.

THIS CONVEYANCE is made subject to all easements, restrictions, rights-of-way, covenants, conditions and deeds of trust contained in the deeds forming the chain of title to this property.

WITNESS the following signatures and seals:

Jeffrey David Kimball
JEFFREY DAVID KIMBALL

Elizabeth A. Kimball
ELIZABETH A. KIMBALL

MAY -4 93
RECORDED FAIRFAX CO VA
TERRELL
J. Frace
CLERK

Grantee's Address:
1836 Cherri Drive
Falls Church, VA 22043

Tax Map No. 040-1-03-0311
Consideration = \$125,000.00

After recording return to:
Tri-State Title & Escrow Inc.
3921 Old Lee Highway, #716
Fairfax, Virginia 22030-2401
Land Records Box 187

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that JEFFREY DAVID ^{LDK} KIMBALL and ELIZABETH A. KIMBALL, whose names are signed to the foregoing deed, bearing date on the 3rd day of May, 1993, have acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 3rd day of May, 1993.

Sheila B. Frace
NOTARY PUBLIC

My commission expires:
April 30, 1994

Exhibit 'F'

Exh. 'F'

NO VA TECH SERVICES, CO

14923 cloverdale rd
woodbridge va 22193

571-259-0491

MARIO JURADO

PROPOSAL SUBMITTED TO <u>Glen Howard</u>		PHONE, CELL <u>202-277-4474</u>	DATE <u>5-6-13</u>
STREET <u>1836 choiry st</u>		JOB NAME	
CITY, STATE AND ZIP CODE <u>F.C. VA, 22043</u>		JOB LOCATION	
PHONE #	DATE	TENANT'S	JOB PHONE

* REBUILD SHED:

DEMO 1 Feet DOWN FROM EXISTING DESIGN

SAME DESIGN, REBUILD SAME DESIGN

LABOR 2500⁰⁰

MATERIALS APPRO: 700⁰⁰ With Receipts

* INSTALL FENCE 2800⁰⁰ LABOR
MAT AT COST

* Painting EXT, facia boards, gables, Windows, Door
ply & paint white ~~2300⁰⁰~~
2300⁰⁰

NORTHERN VIRGINIA TECH SERVICES, CO. 571-259-0491 Remodeling - Interior/Exterior Baths - Kitchens - Basements Roofs - Build Backs - Painting Drywall - General Carpentry mariojurado1963@aol.com mario jurado 571-259-0491	_____ dollars (\$ _____)

	Signature _____
	Signature _____

Exhibit 'G'

Exh. 'G'

www.homeblue.com/Roofers

Roof Cost Estimates | homeblue.com - Free Estimates From Pre-Screen...

Sponsored

Shed Roof Work

Friday, July 12, 2013 7:34 PM

From: "Steve Magill" <smagill@ScheduleFred.com>

To: "hottomato@rocketmail.com" <hottomato@rocketmail.com>

Hi Glenn,

For us to remove your shed roof with associated electrical relocation and to rebuild it at the lower height with new shed doors would be in the neighborhood of \$14,500 complete with shingles and hauling away of all debris and clean up. Of course the shed would have to be cleared of all items prior to work starting. How is your case coming?

Thank you.

Steve Magill, CLC, CKBR

Remodeling Consultant

fredSM - the first name in home repairs

Direct: 301-229-0476

Mobile: 703-861-2169

Fax: 301-229-4989

smagill@ScheduleFred.com



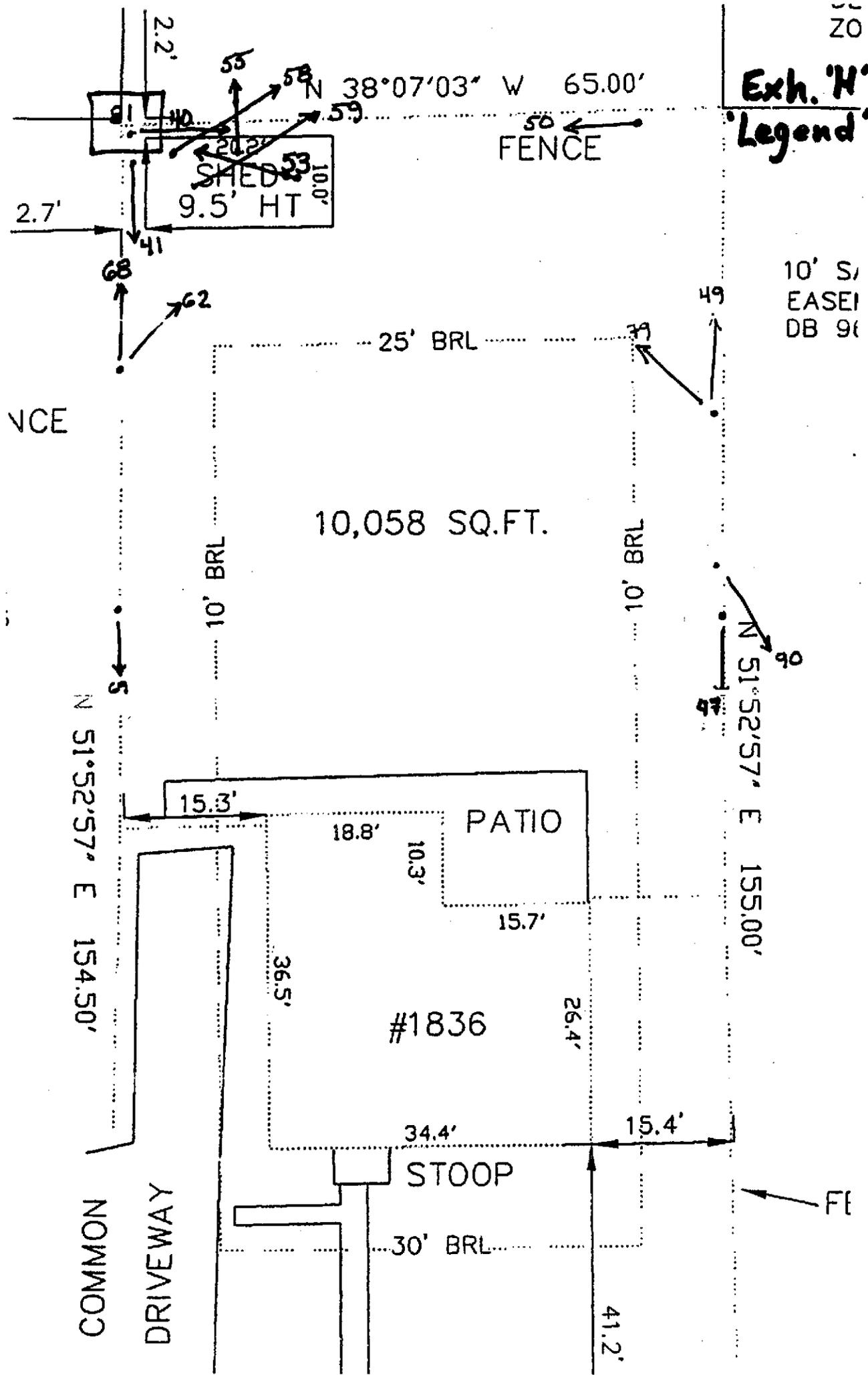
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Exhibit 'H'

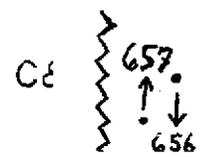
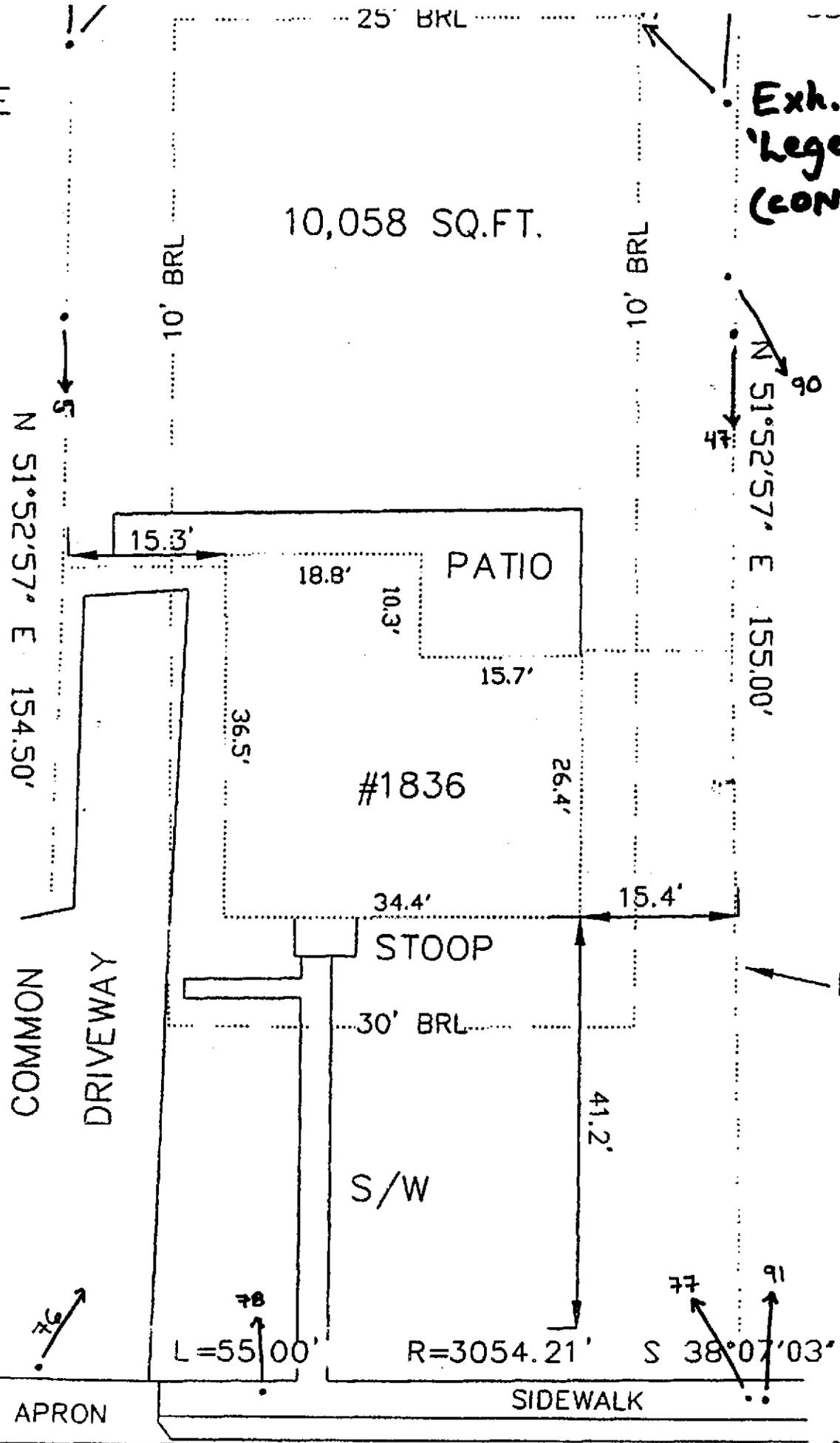
Exh. 'H' Legend



VCE

Exh. 'H'
'Legend'
(CONT'D)

10,058 SQ.FT.



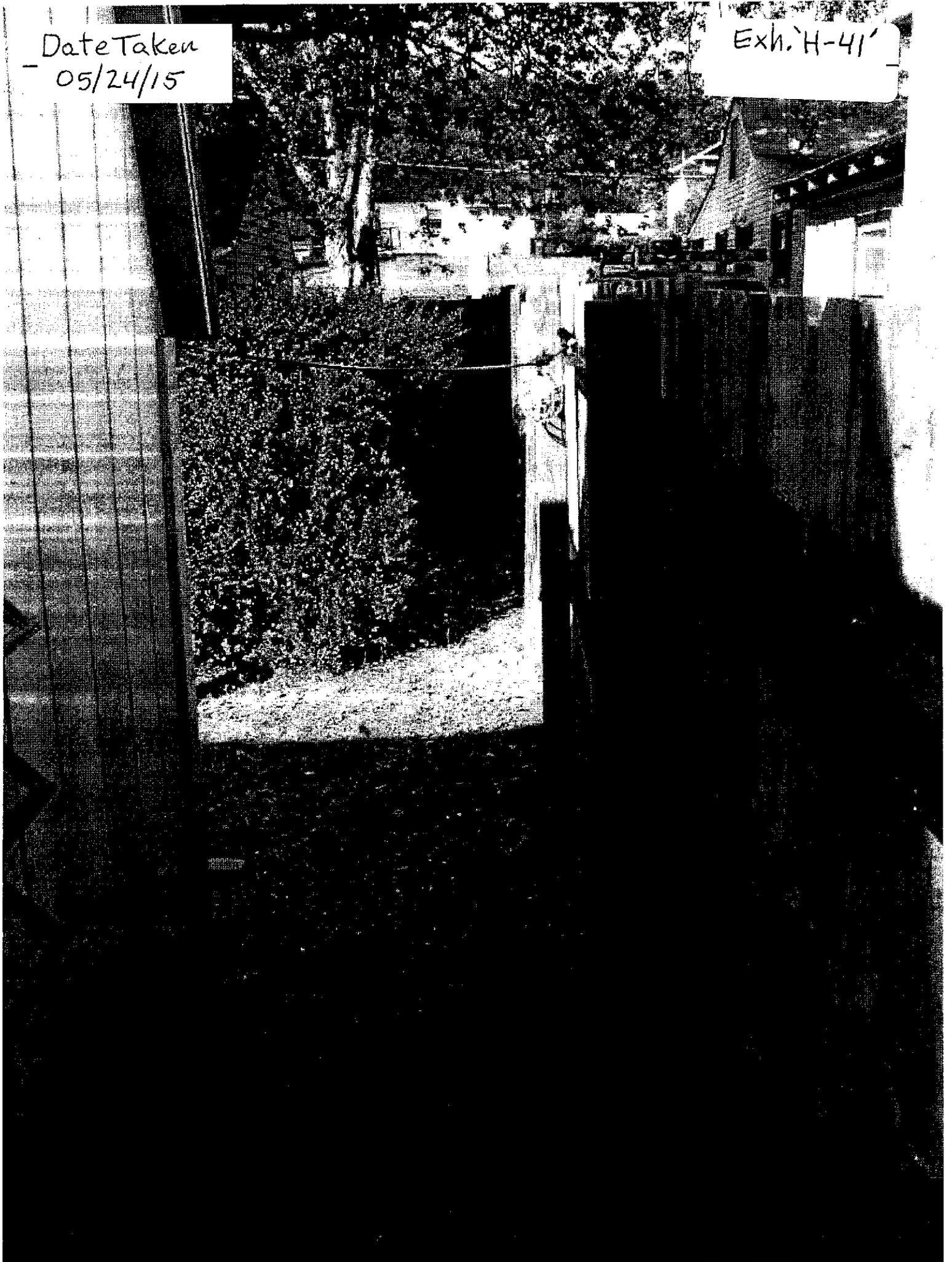
Date Taken
05/24/15

Exh. 'H-40'



Date Taken
- 05/24/15

Exh. 'H-41'



Date Taken
05/24/15

Exh. 'H-47'



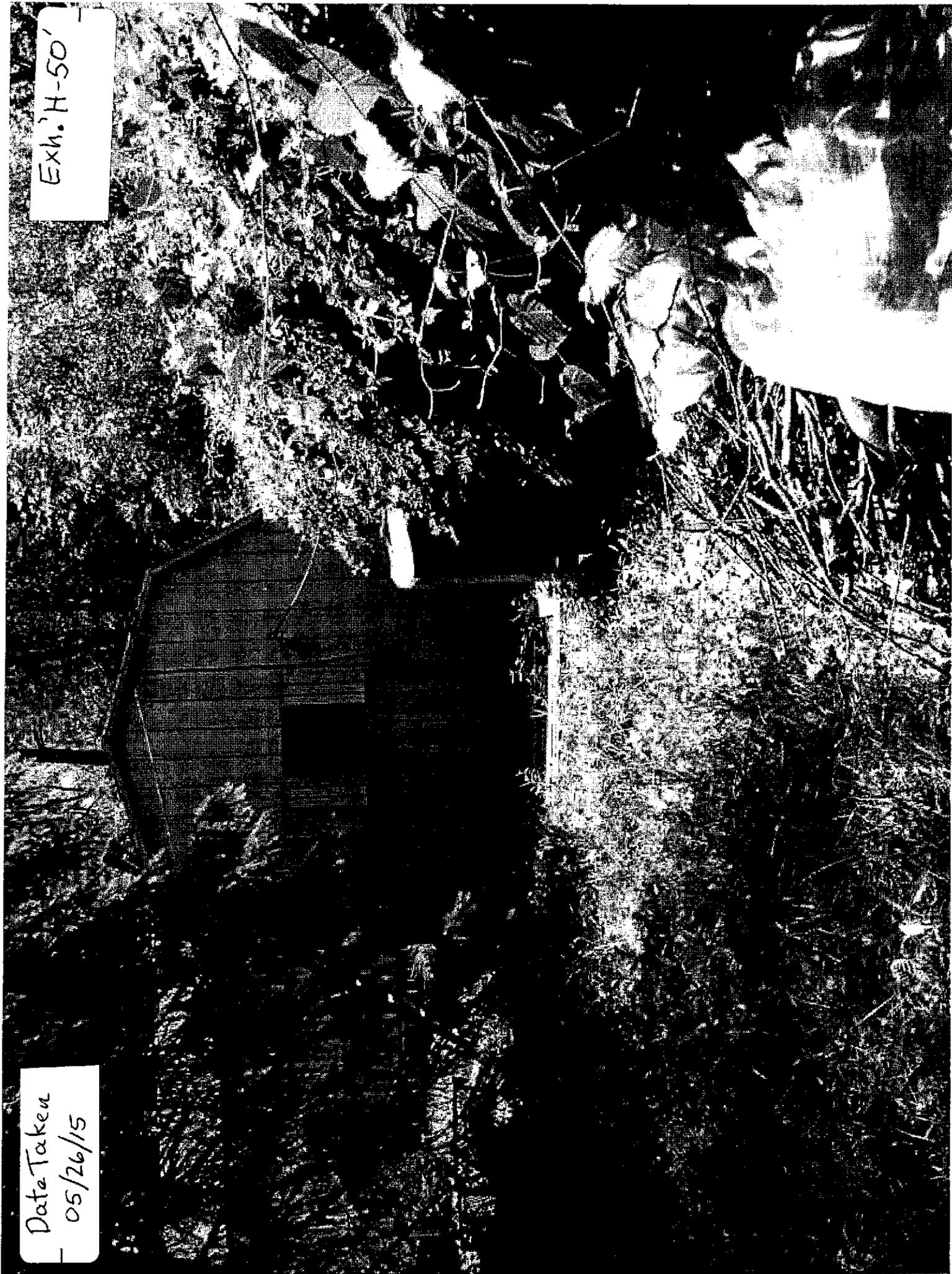
Date Taken
- 05/26/15

Exn. 'H-49'



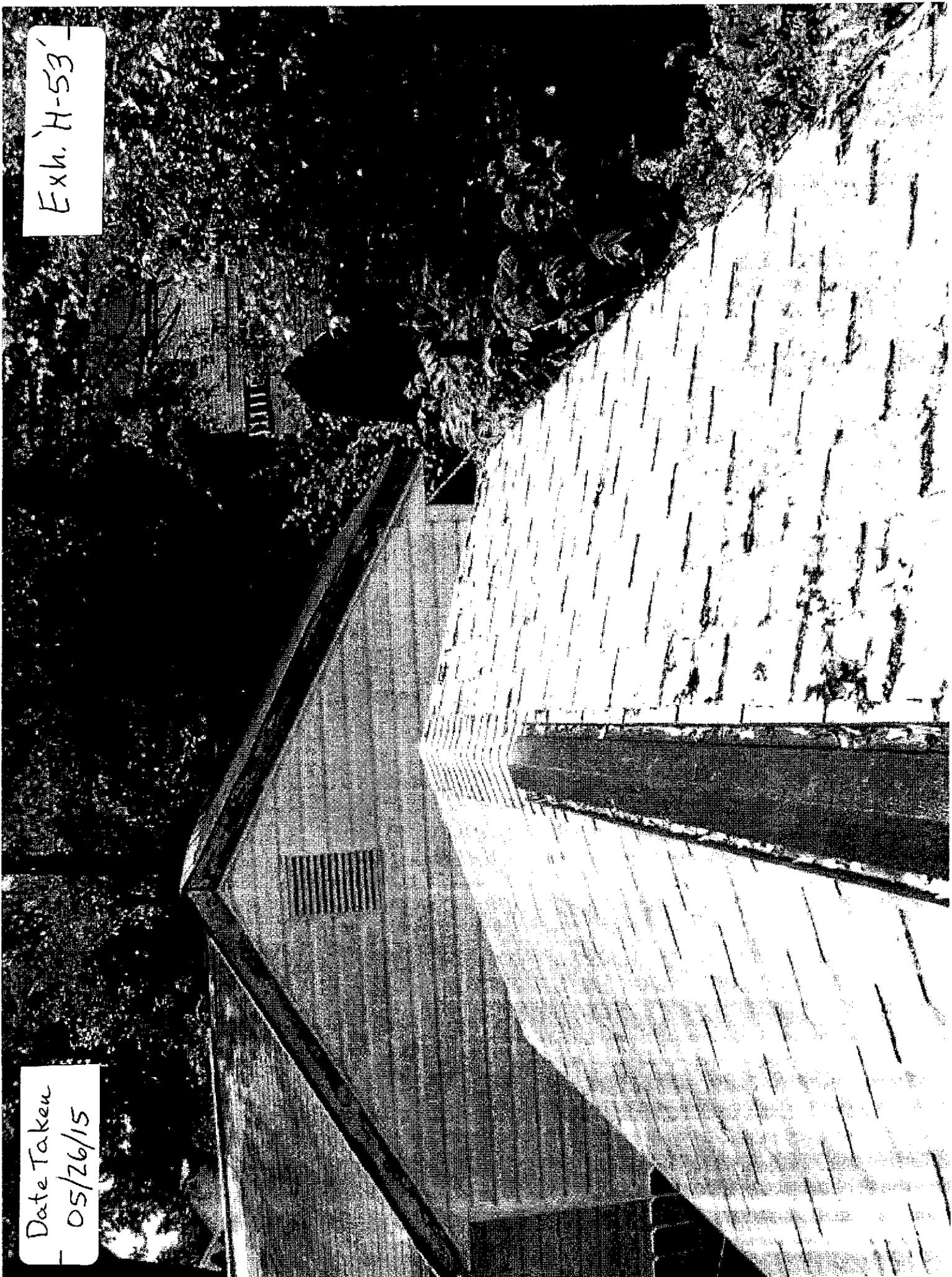
Exh. H-50'

Date Taken
05/26/15



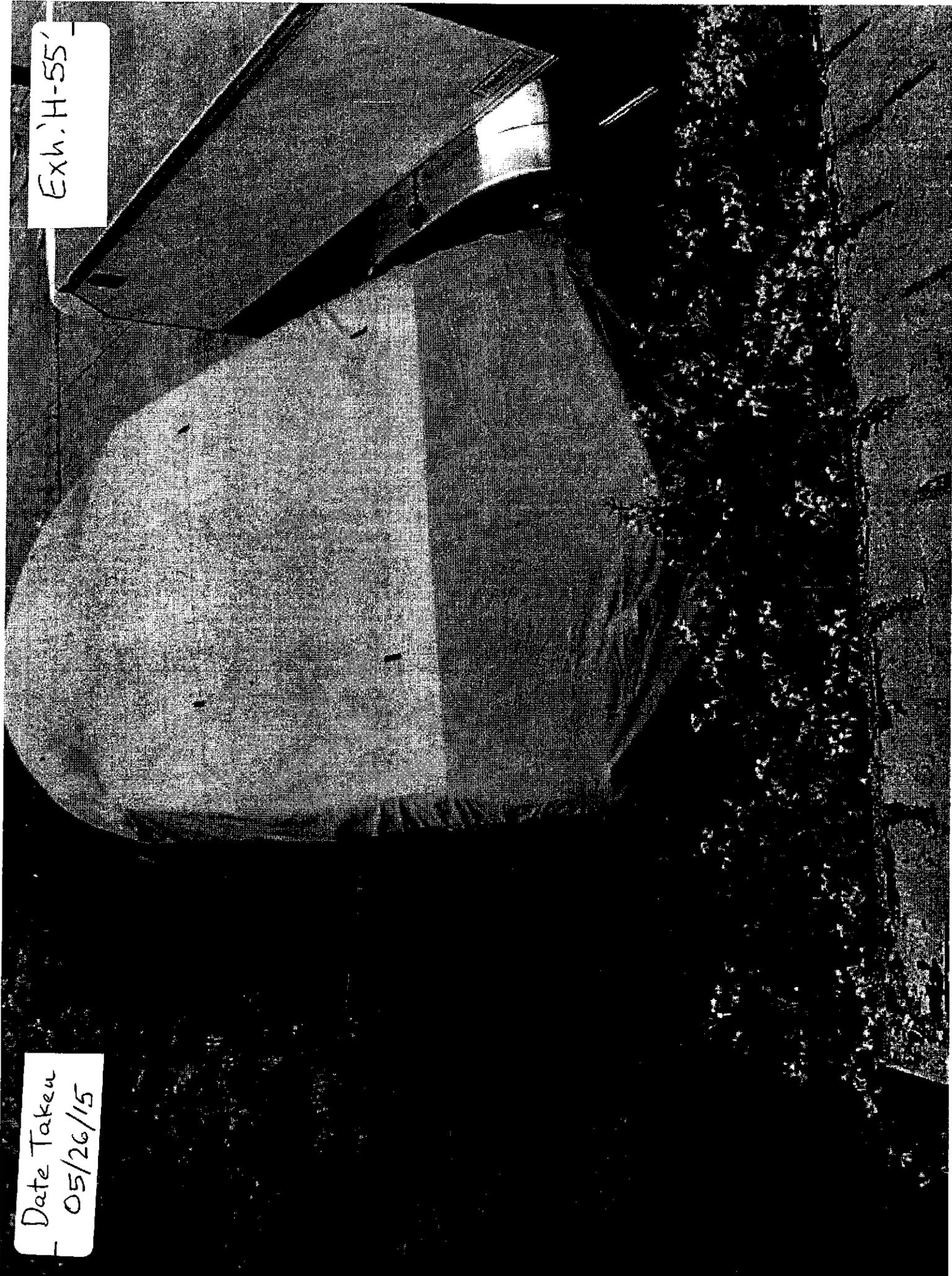
Date Taken
05/26/15

Exh. H-53'



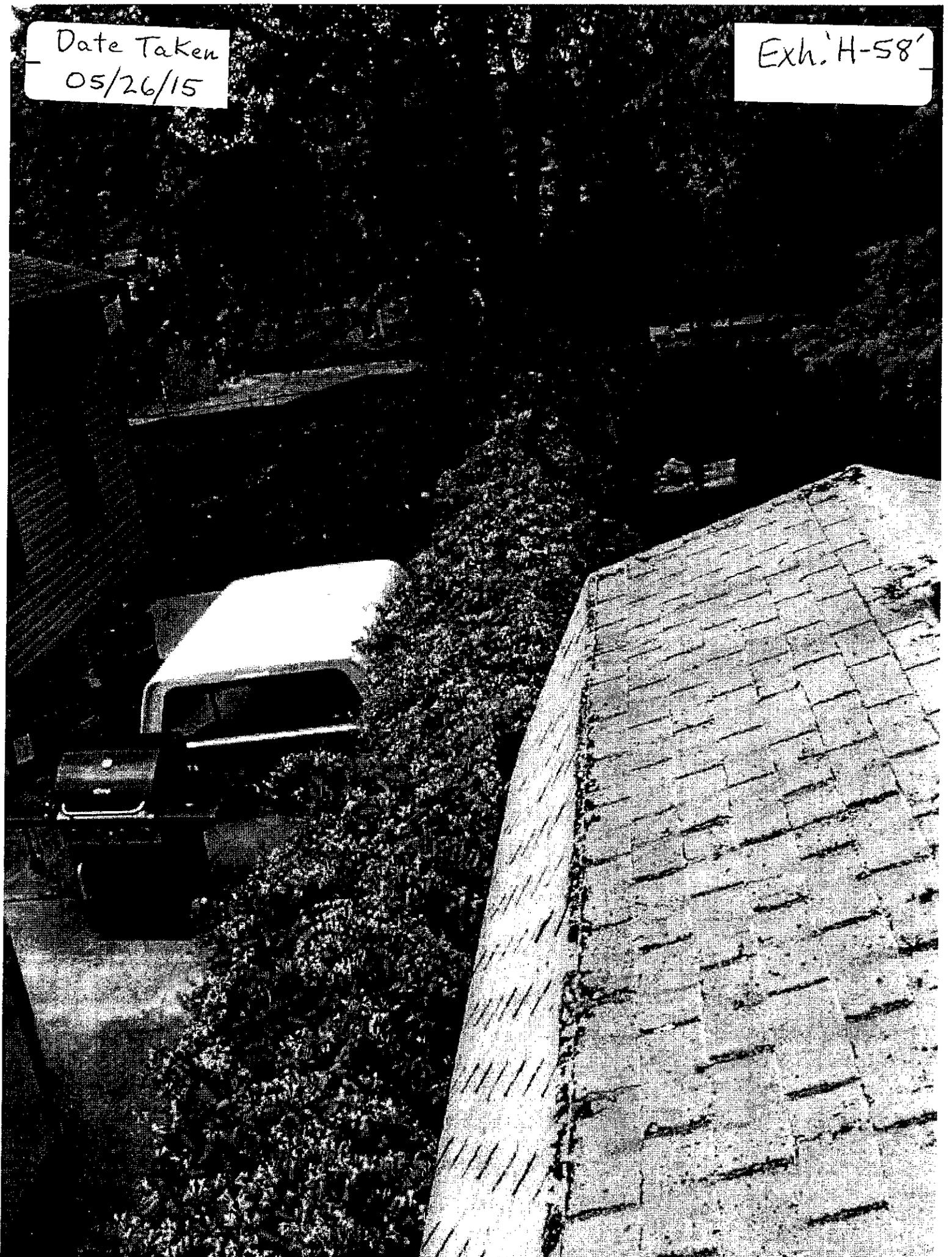
Exh. H-55'

Date Taken
05/26/15



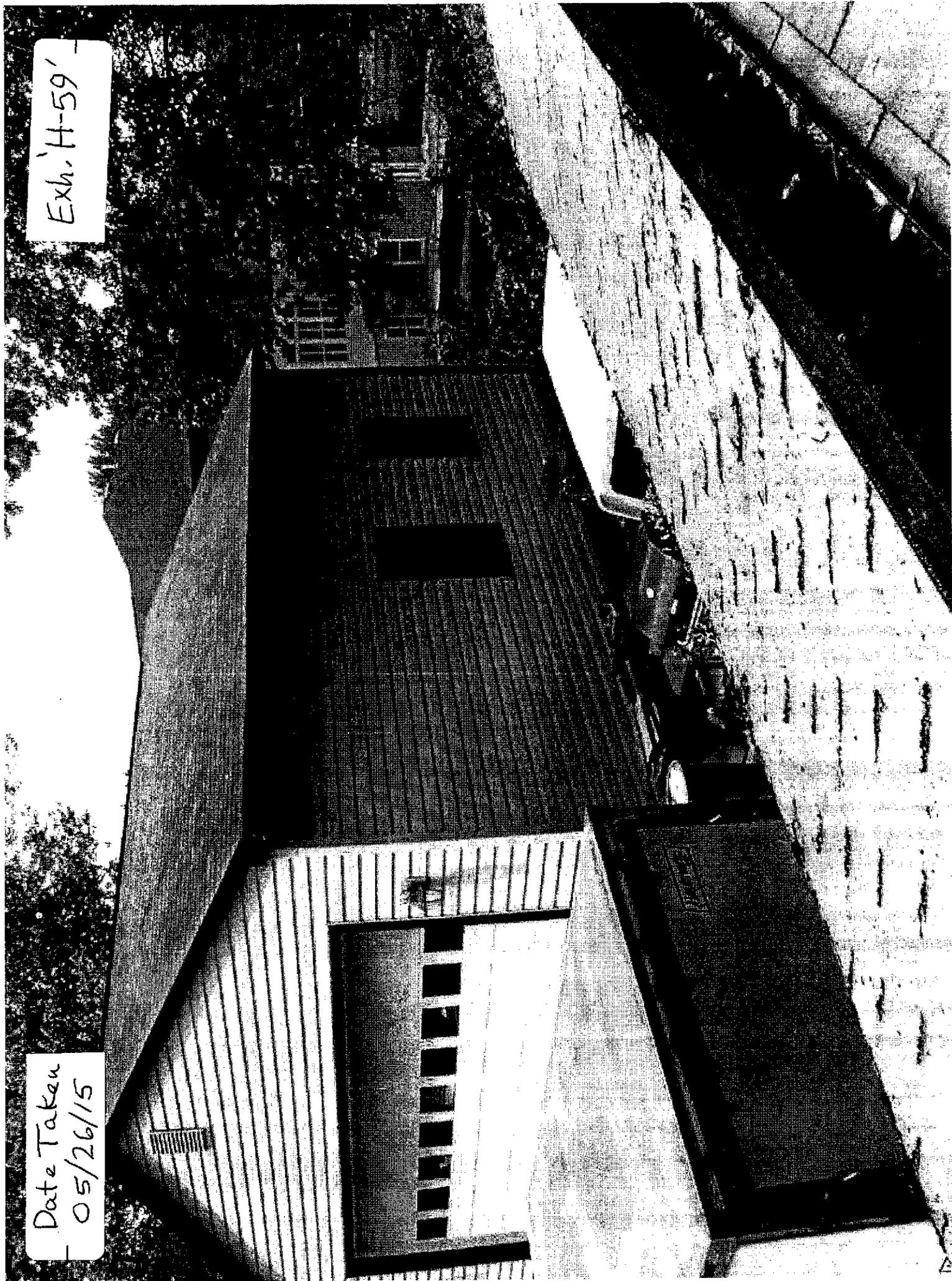
Date Taken
05/26/15

Exh. 'H-58'



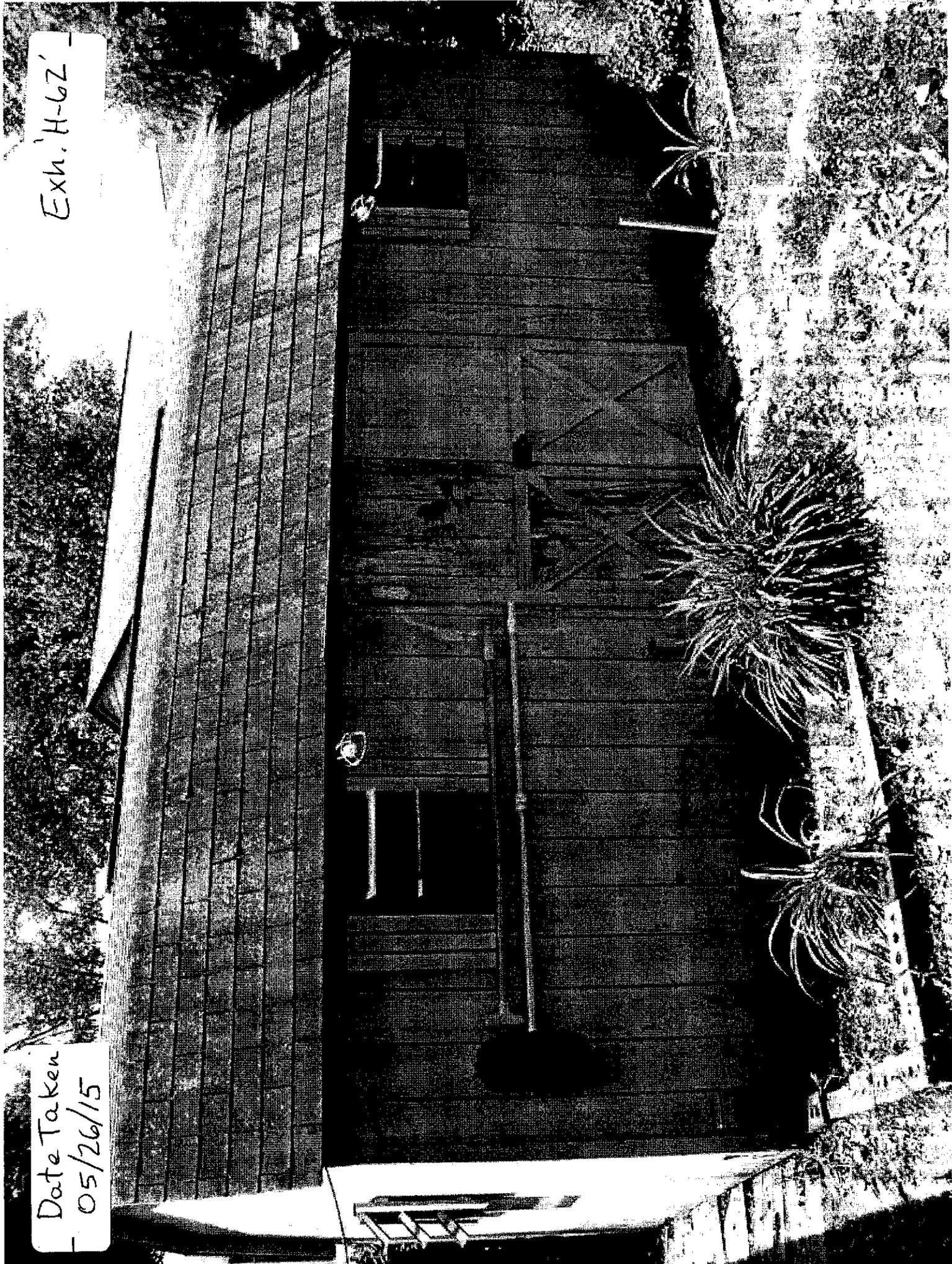
Date Taken
05/26/15

Exh. H-59'



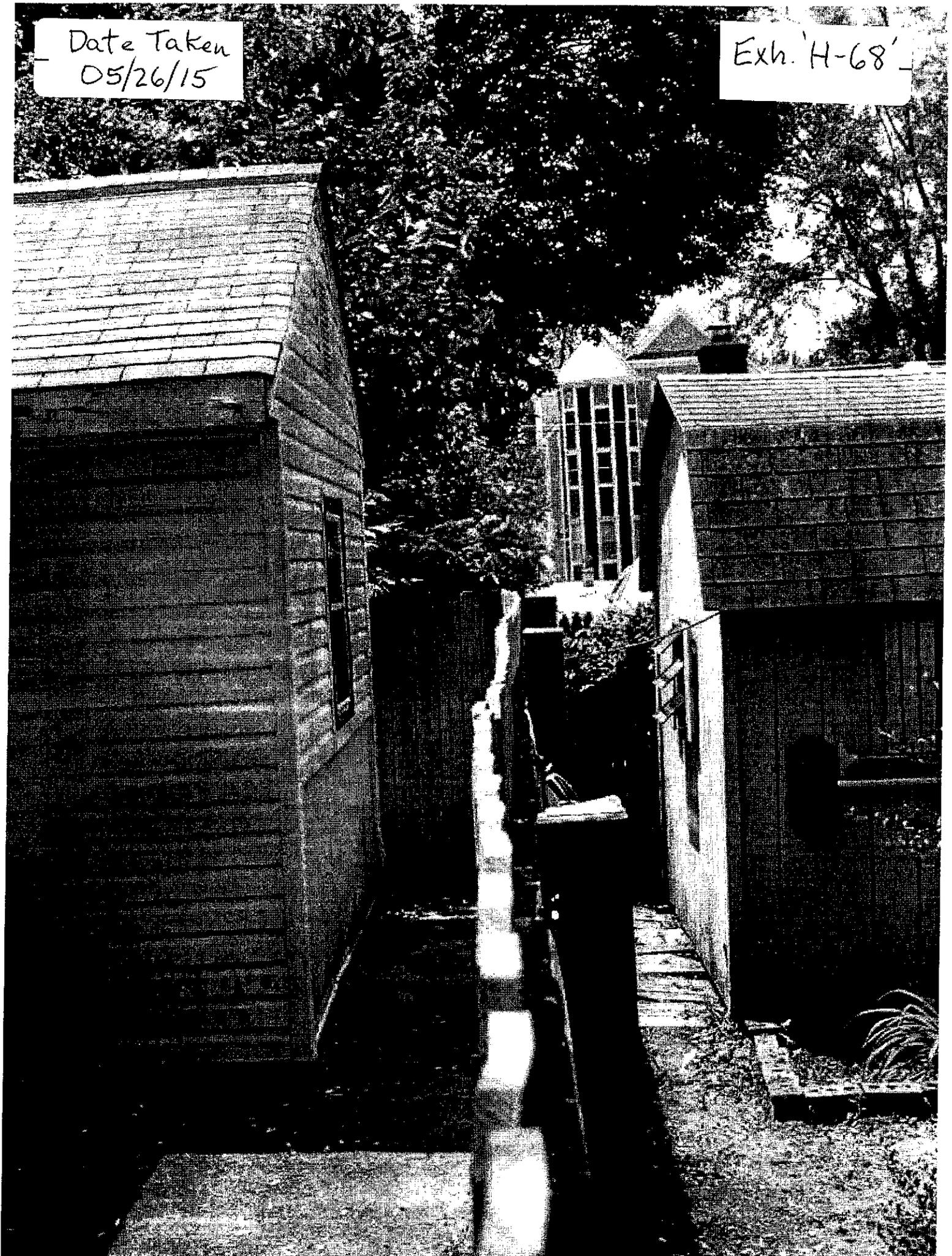
Date Taken
05/26/15

Exh. H-6Z



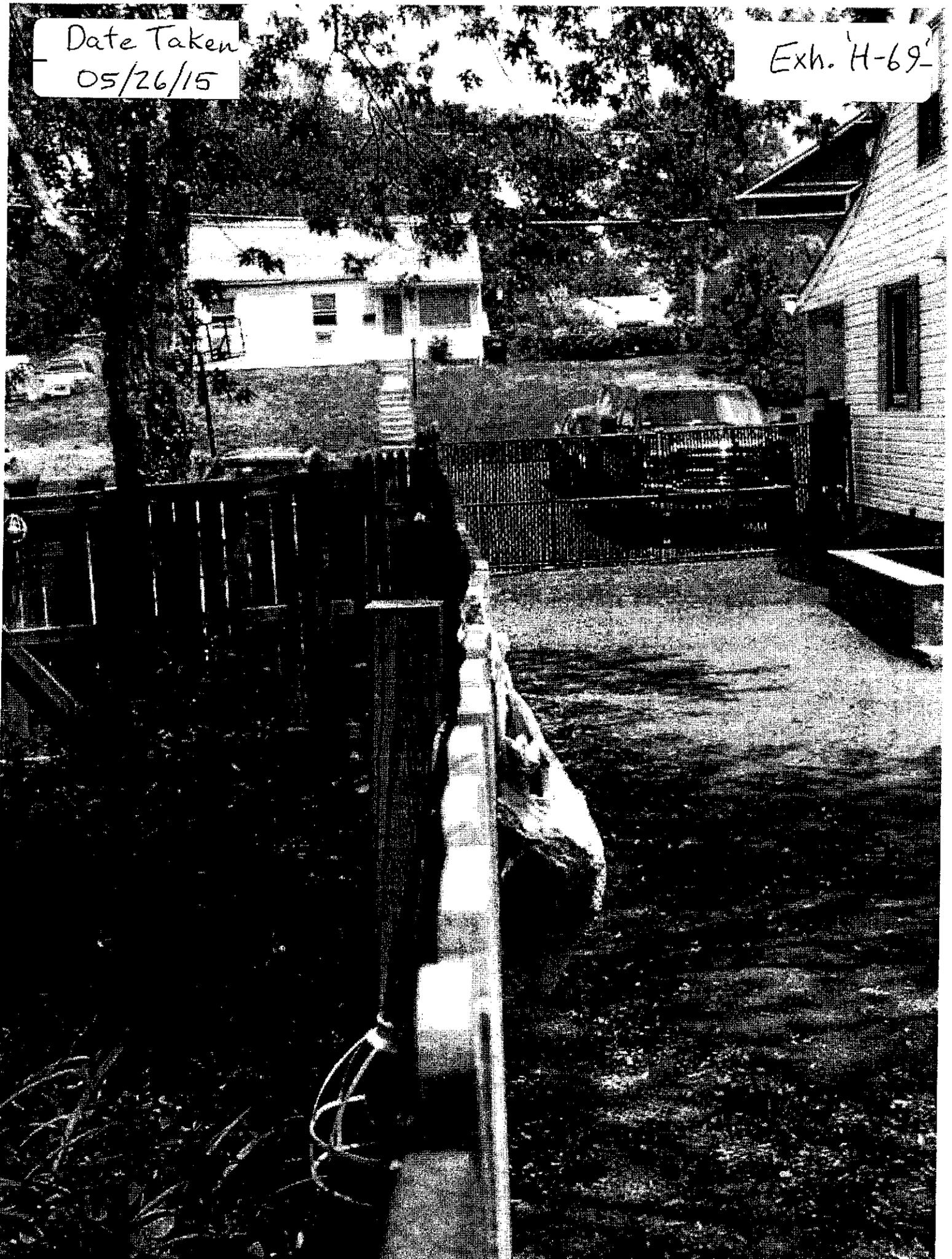
Date Taken
05/26/15

Exh. 'H-68'



Date Taken
05/26/15

Exh. 'H-69'

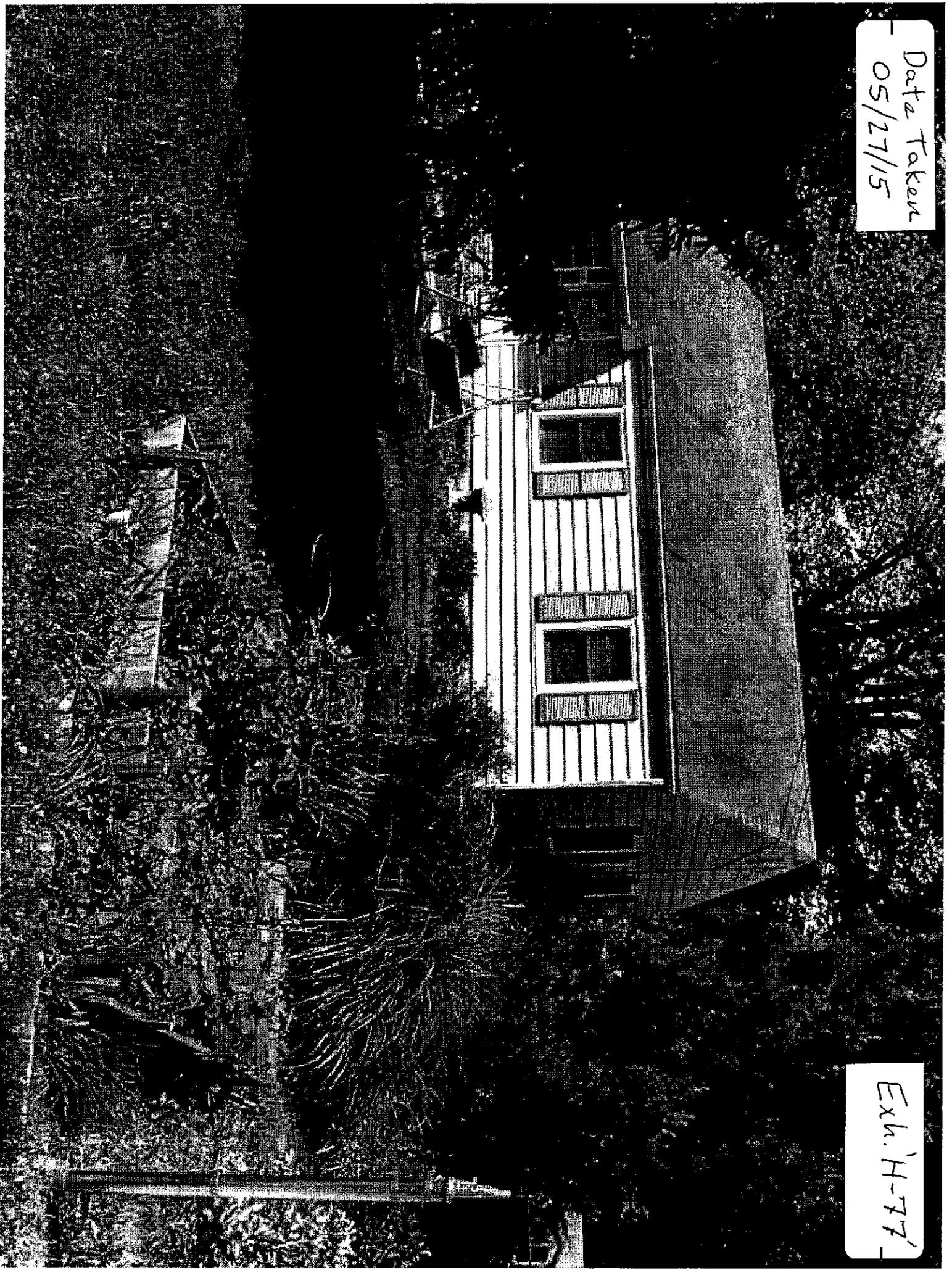


Date Taken
05/27/15



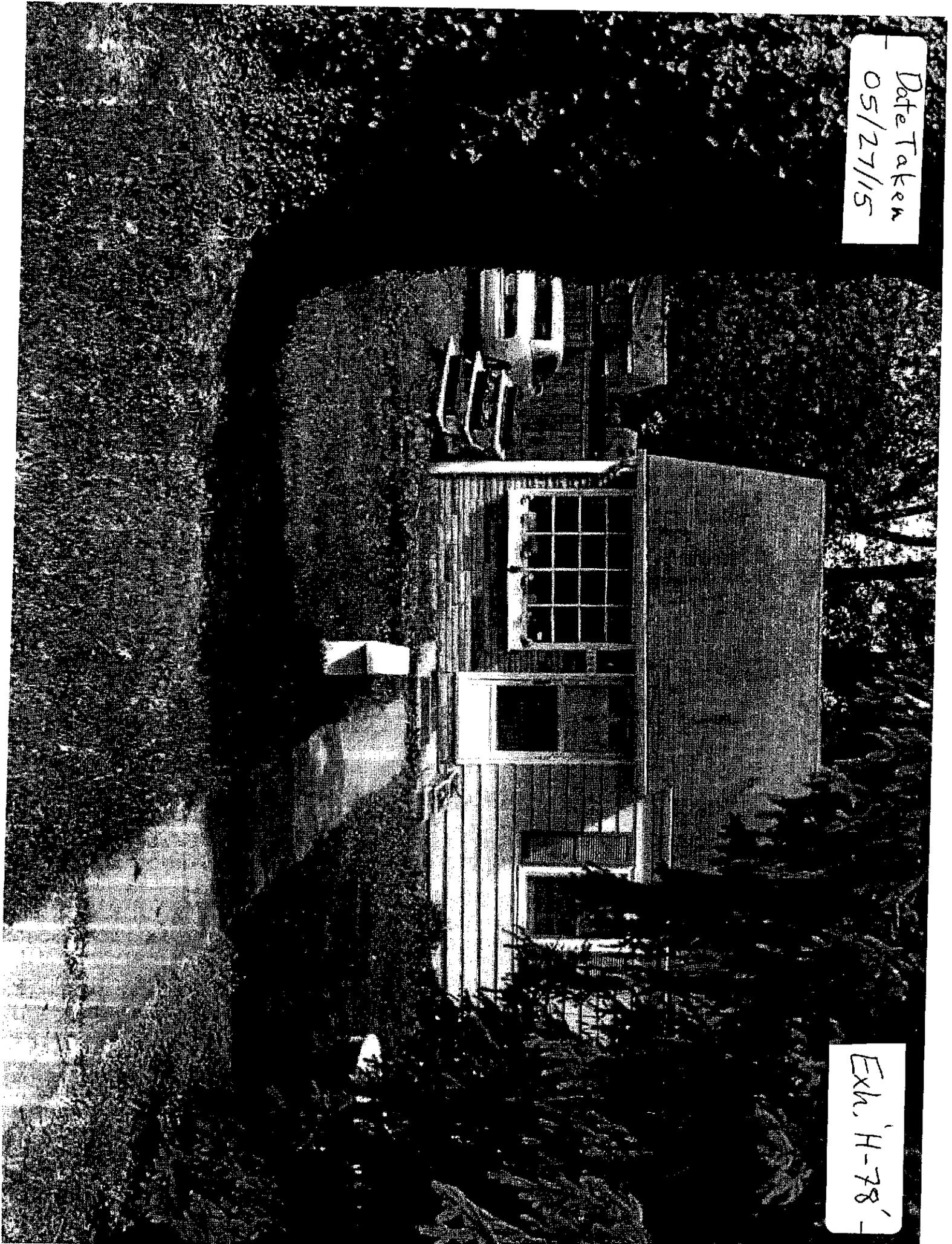
Exh. 'H-76'

- Data Taken
05/27/15



Exh. H-77

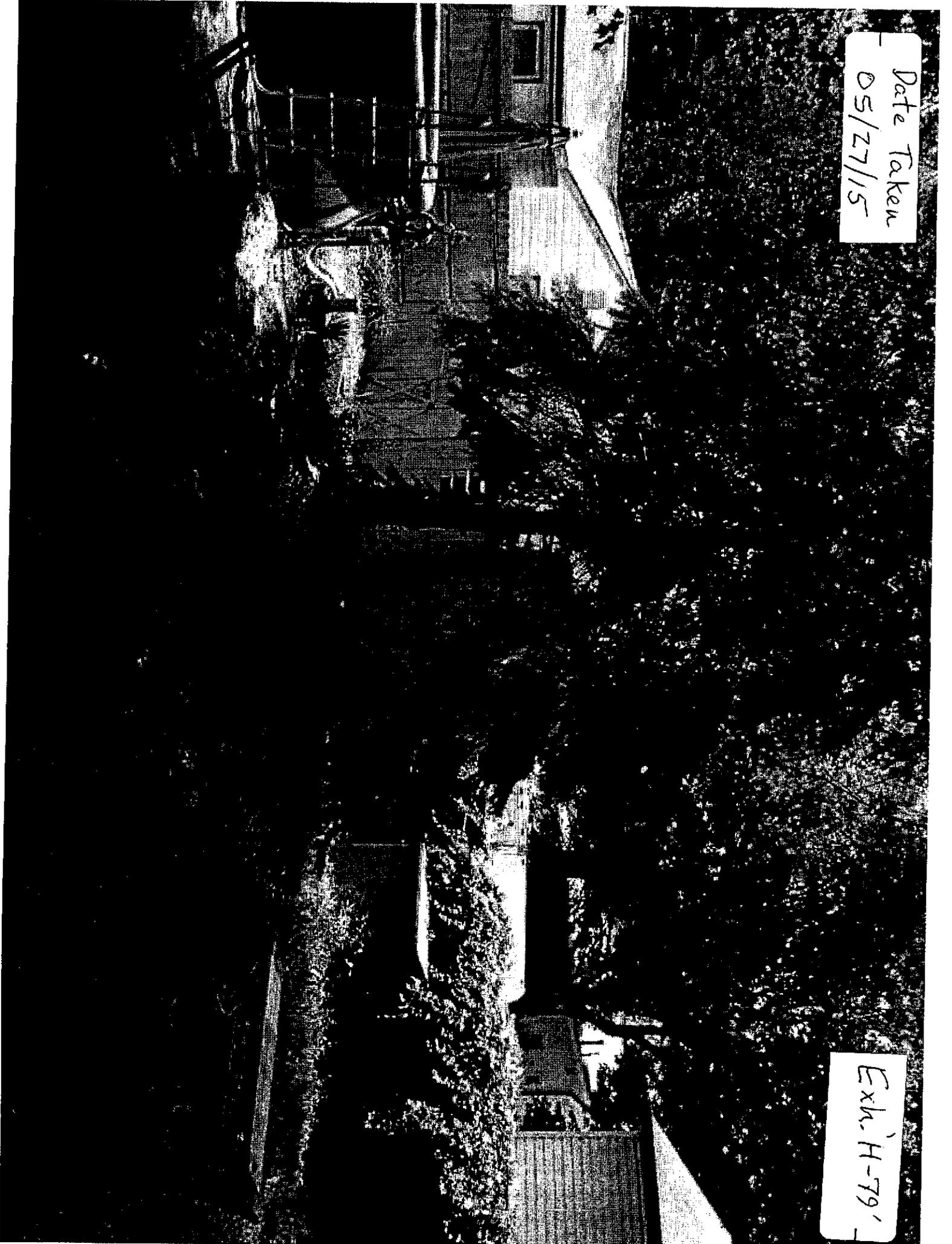
Date Taken
05/27/15



Exh. 'H-78'

Date Taken
05/27/15

Exh. H-79'



Date Taken
05/27/15

Exh. 'H-81' -



Date Taken
05/28/15

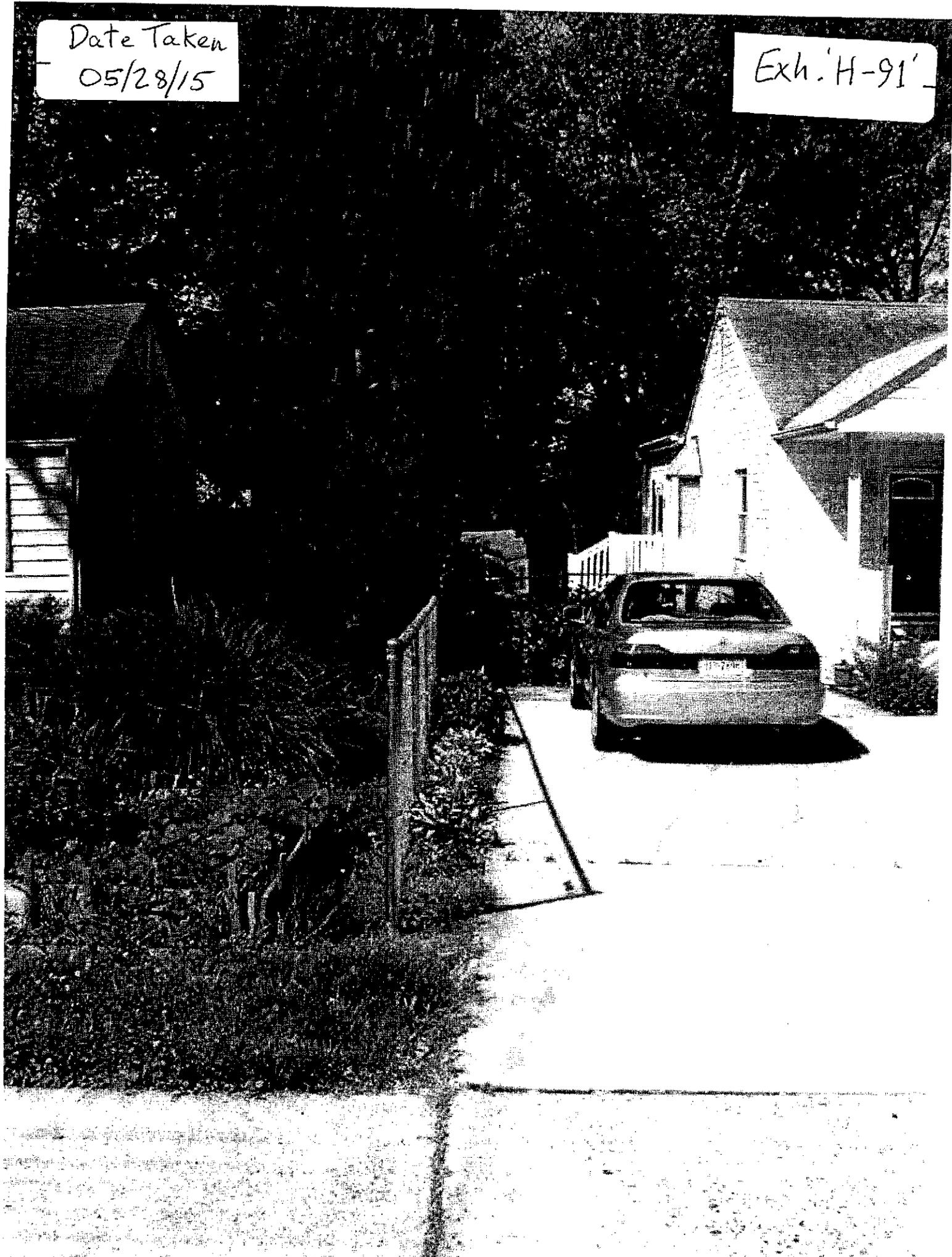
Exh. 'H-90'



Date Taken

05/28/15

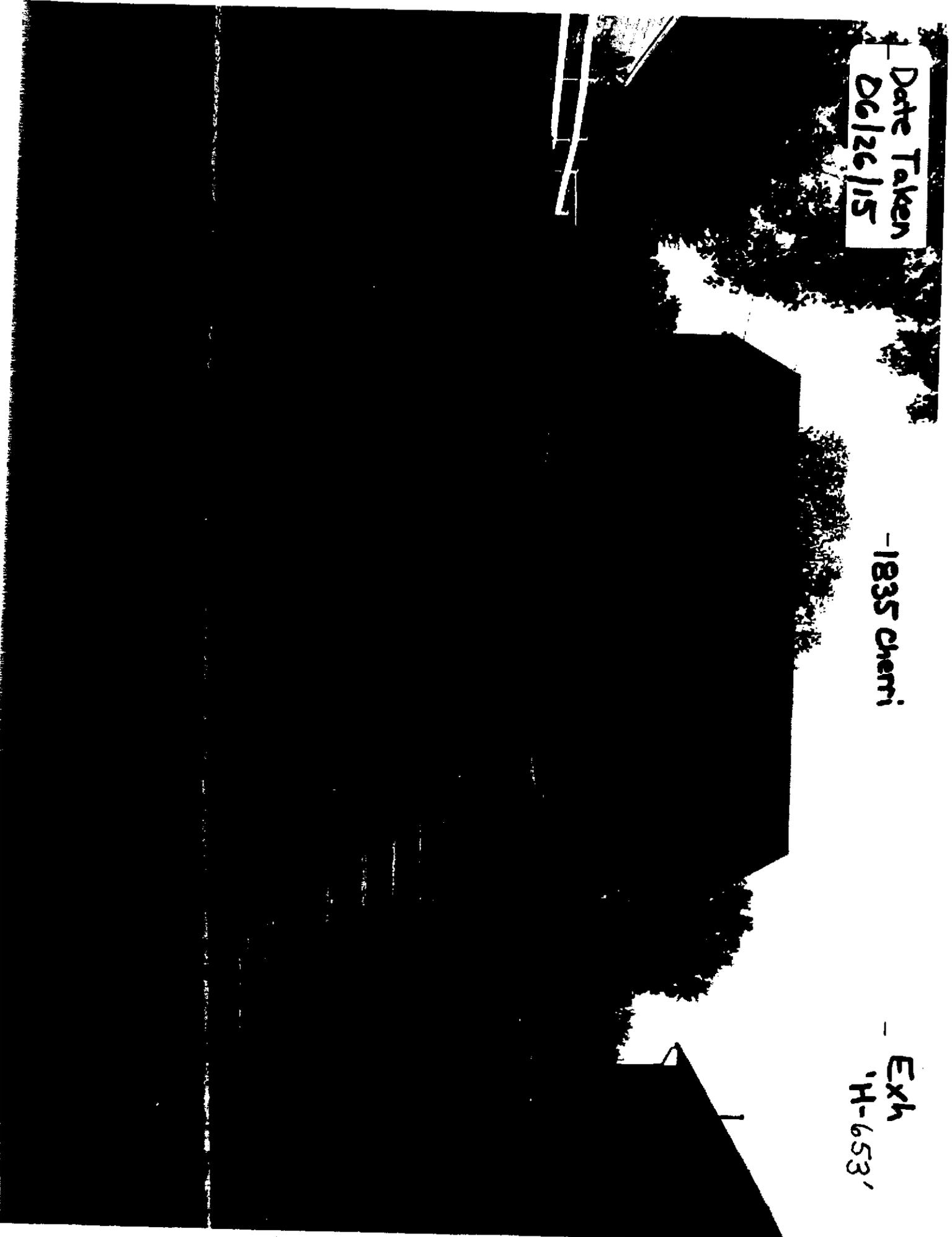
Exh. 'H-91'



Date Taken
06/26/15

-1835 Cherrri

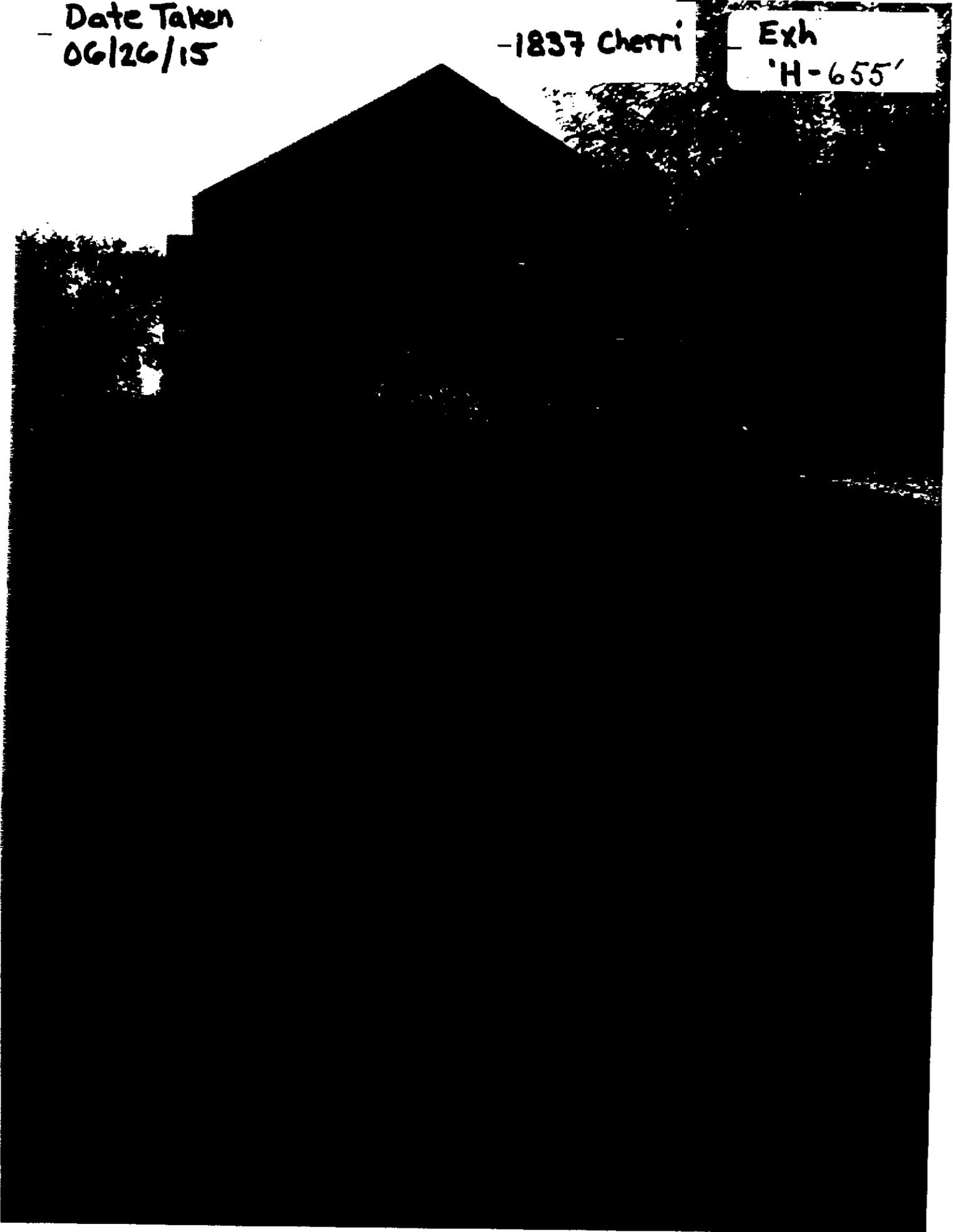
-Exh
'H-653'



- Date Taken
06/26/15

-1837 Cherri

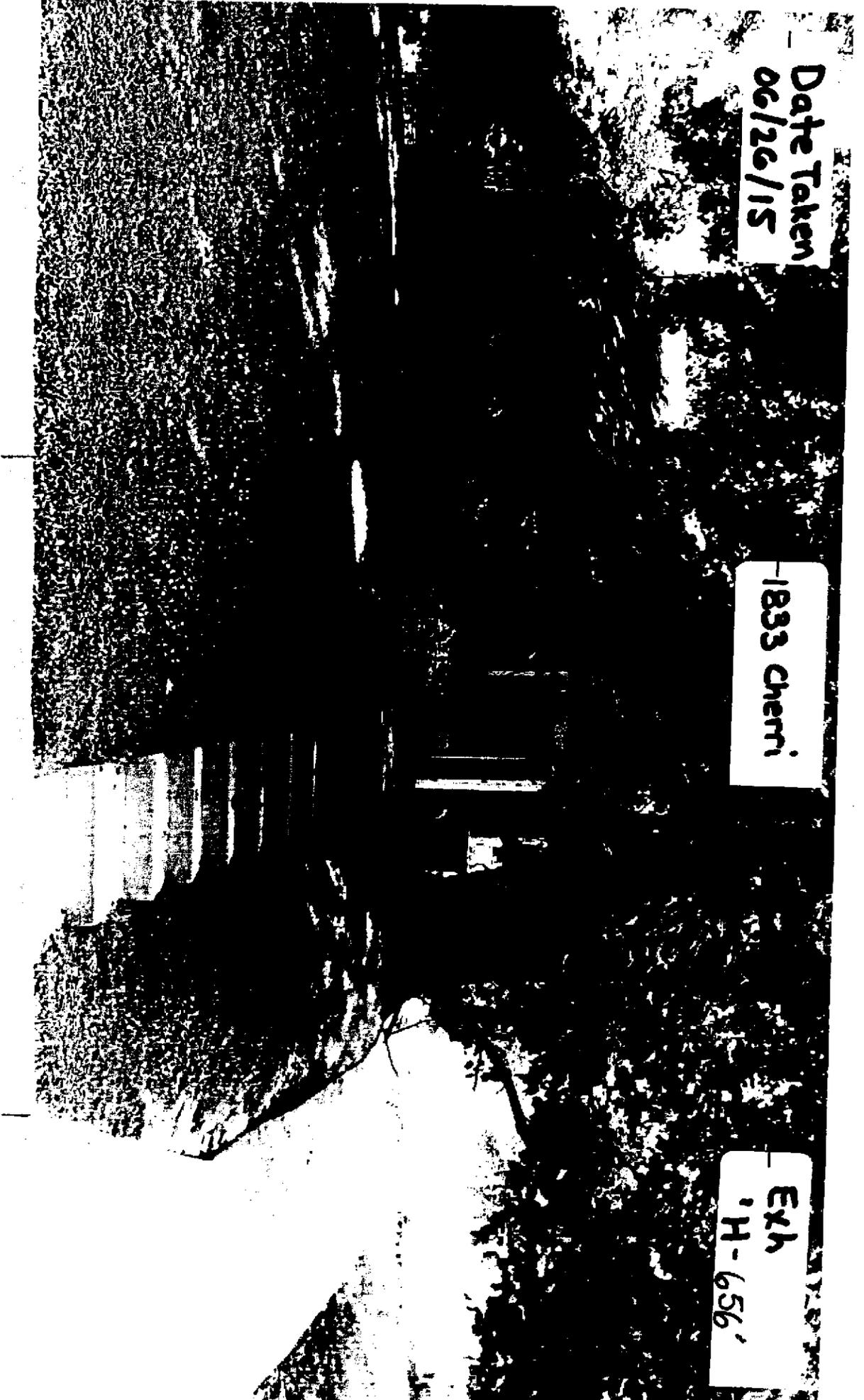
Exh
'H-655'



Date Taken
06/26/15

1833 Cherni

Exh
'H-656'



Date Taken
06/26/15

1834 Chemi

Exh
H-657



Date Taken
06/26/15

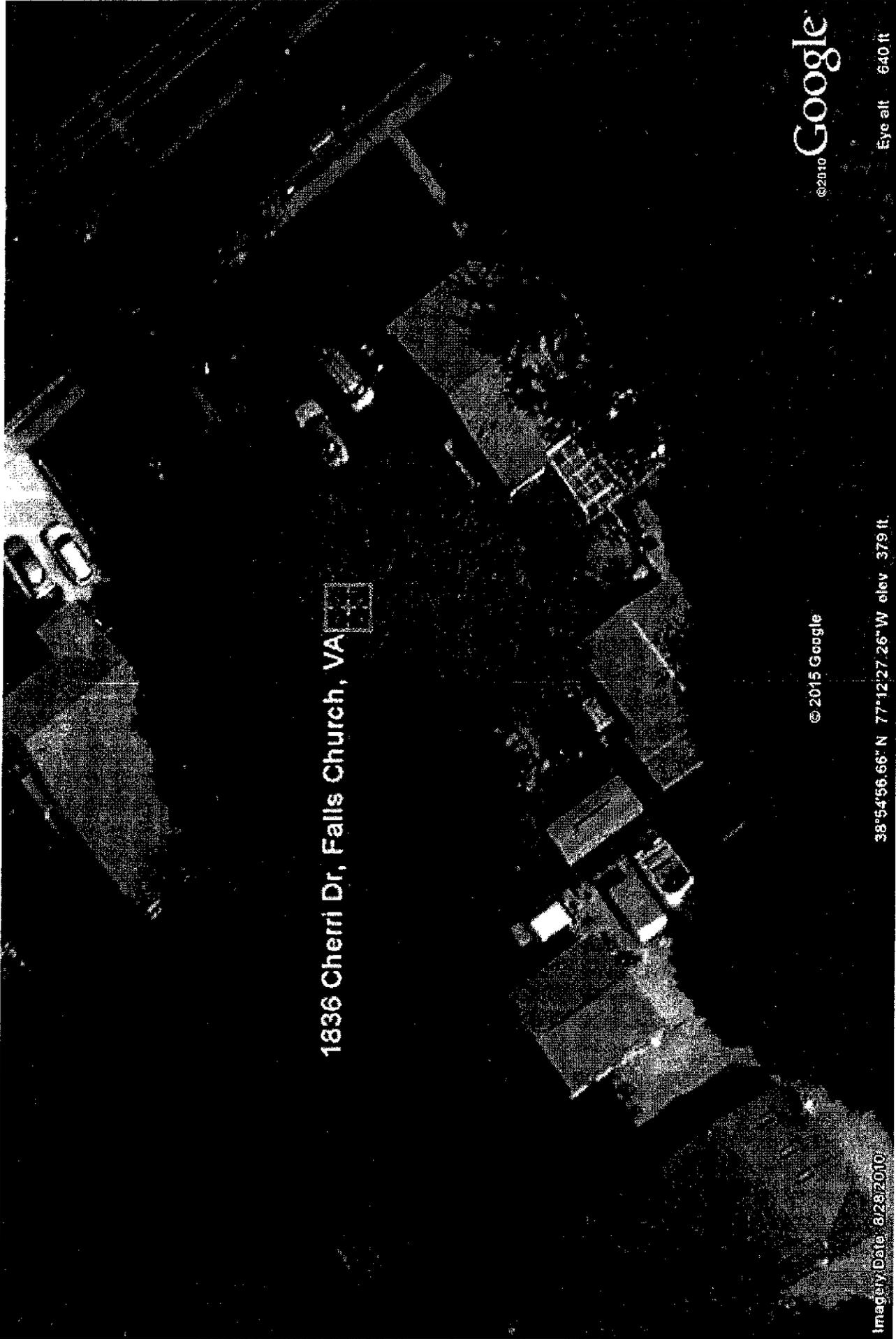
1838 cherri

Exh
'H-658'



Exhibit 'I'

Exh. I



1836 Cherri Dr, Falls Church, VA

©2010 Google

Eye alt 640 ft

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38°54'56.66" N 77°12'27.26" W elev 379 ft

Imagery Date: 8/28/2010