

APPEAL

Notice: [Click Here for Appeal Form Instructions](#)

Pursuant to Section (s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the administrative decision of: * DCRA made on* 12/26/06 , to the effect that*

DCRA improperly issued the following permits: Permit # 101584 for 4319 Fessenden Street, N.W., Permit # 101585 for 4319 ½ Fessenden Street, N.W., Permit # 101587 for 4321 Fessenden Street, N.W., and Permit # 101588 in violation of DCMR Sections 401.6, 403.2, 2, 2101.1, 2116.1 (see attached)

Address(es)* of Affected Premises	Square(s)*	Lot(s)*	Zoning Districts*
4319, 4319 ½ Fessenden Street, N.W	1655	20, 18	R-2
4321, 4321½ Fessenden Street, N.W.,	1655	17, 19	R-2

Present Use of Property:* single family dwelling

Proposed Use of Property:* single family dwelling

Owner of Property:* Dunn, Whiskey, LLC

Telephone No.:* (202)332-8449

Name, address and telephone number of lessee:

Name, address and telephone number of appellant, if other than owner:

Todd Boley, 4324 Garrison Street, NW, Washington, DC 20016 (202)362-4500

Advisory Neighborhood Commission 3E, c/o Lisner Home, 5425 Western Ave., N.W. Wash. DC 20015 (anc3e.org)

State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation).

Please use a separate piece of 8 ½" x 11" to respond and attach it to the Form 125 Appeal.

Date:* 02/23/07

Signature: 

To be notified of hearing and decision:
(Appellant or Authorized Agent)*

Name:* Andrea C. Ferster

Address:* 1100 17th St., N.W. 10th Fl.

City:* Washington

State:* DC

Zip:* 20036

Phone No.:* (202)974-5142

Fax No.:* (202)331-9680

E-Mail: aferster@railstotrails.org

Board of Zoning Adjustment
District of Columbia

CASE NO.

17631

EXHIBIT NO.

1

Board of Zoning Adjustment
District of Columbia
CASE NO. 17631
EXHIBIT NO. 1

Attachment to Form 125 – Appeal of Todd Boley and ANC 3E

This appeal challenges the decision by the D.C. Department of Consumer & Regulatory Affairs (DCRA), Zoning Administrator, approving a series of building permits issued to Dunn Whiskey, LLC, for the construction of four single family houses on recently-subdivided lots that formerly were occupied by two single family dwellings.

Background

On or about March 2006, the D.C. Office of Surveyor approved the subdivision of two lots with street addresses of 4319 and 4321 Fessenden Street, in Square 1644. These lots were subdivided into four separate lots: Lot 17 (4319 ½ Fessenden Street), Lot 18 (4321 ½ Fessenden Street), Lot 19 (4319 Fessenden Street), and Lot 20 (4321 Fessenden Street). According to the subdivision plan (attached), Lots 19 and 20 front directly on Fessenden Street. Lots 17 and 18 are located directly behind Lots 19 and 20. The subdivision plan shows that two, side-by-side panhandle driveways leading from each of the rear lots to Fessenden Street, each of which is 14 feet wide.

Following the subdivision, the owner proceeded to completely demolish the two single family homes previously located at 3219 and 4321 Fessenden Street, and to also cut down numerous mature trees previously on the properties, and construct a fence around the newly-subdivided lots.

Appellants learned in January 2007 that four permits to construct four single-family dwellings on each of the four subdivided lots had been issued by DCRA on December 26, 2006. According to DCRA, these permits are as follows:

Permit No. 101584 for 4319 Fessenden Street, N.W.
Permit No. 101585 for 4319 ½ Fessenden Street, N.W.
Permit No. 101587 for 4321 Fessenden Street, N.W.
Permit No. 101588 for 4321 ½ Fessenden Street, N.W.

Appellants were further advised that Permit No 101588 was for “alteration and repair,” even though there are no longer any structures on the properties.

Appellants have made repeated attempts to obtain copies of these permits, the permit applications, and the associated building plans, to no avail. Each time Appellants or their representatives went to DCRA to review the permitting documents, they were told that the permitting files could not be located. Mr. Crews, DCRA Zoning Administrator, apparently reviewed the permits for three of the properties after neighbors complained, but the permit for 4321 ½ Fessenden Street (alteration and repair) has never been located and Mr. Crews indicated that he had “no idea” where it is. In mid-January, neighborhood representatives were told by DCRA that the permits had been “checked out.”

Issues Raised in Appeal

According to the site plan provided to Appellants by the owner, the construction actually contemplated by the permits differs from the subdivision plan in one material respect: rather than having two, side-by-side 14-foot panhandle driveways to provide Fessenden Street access and street frontage for the two rear lots (Lots 17 and 18), as shown on the subdivision plat, the site plan shows a single, 14-foot “common driveway” providing

access to the two rear lots, leading to a shared “parking court.” (see site plan, attached). The area that was shown on the subdivision plat as a second, 14-foot access is now, according to the site plan, incorporated into the side yard for Lot 19. As a result of this new configuration, only one of the rear lots has separate access from a public way.

The Zoning Regulations requires that “[e]ach lot created after February 15, 1966, to be used and occupied by a one-family detached dwelling . . . have a street frontage measured along the street a distance equal to at least forty percent of the required minimum width of the lot and no case less than fourteen feet (14ft).” 11 DCMR § 401.6 (emphasis added). The Zoning Regulations further provide that “each required parking space shall be accessible at all times direct from improved alleys . . . or improved public streets, via graded and unobstructed driveways that form an all-weather surface.” *Id.* § 2117.4 (emphasis added). The single, 14-foot “common driveway” depicted on the site plan does not satisfy the plain language of these regulations. Instead, the only circumstances under which a single point of ingress and egress can be used for multiple dwellings is where it is approved by this Board as a theoretical lot subdivision. *Id.* § 2516.

On February 15, 2007, Mr. Crews met with Mr. Boley and several other neighbors about the construction at 4319-4321 Fessenden Street. Mr. Crews stated that the zoning reviewer had requested that the plans for 4319 and 4321 Fessenden Street (lots 19 and 20) be revised because the dwellings on both of these lots exceeded 40% of the maximum lot occupancy, but the builder failed to correct the drawings prior to the issuance of the permits. Mr. Crews advised the appellants that the builder has been asked to submit revised plans correcting the dimensions for the two houses so as to be within the maximum lot occupancy. However, given the BZA’s rigid application of the 60-day deadline for filing an appeal, an appeal on this issue is necessary to protect the Appellants in the event the owner attempts to profit from the zoning reviewer’s apparent error and proceeds with construction of the houses per the previously-approved plans. See BZA Appeal No. 17411 of Paul A. Basken and Joshua S. Meyer, (March 23, 2006)).

Due to the inability of Appellants to obtain copies of the drawings, it is also not possible to determine whether the structures satisfy other area zoning requirements such as rear and side yard and parking requirements. The site plan indicates that the four lots share a single “parking court” that appears to overlap lot lines, with no parking space on Lot 20, and a shared parking court overlapping Lots 17, 18 and 19. In fact, Mr. Boley was able to view the permit drawings, which indicated that Lot 19 has four parking spaces within the lot, and Lot 20 has one parking spot. Under the Zoning Regulations, a single family dwelling in a residential zone must have one parking space for each dwelling unit. 11 DCMR § 2101.1. Moreover, unless approved as a special exception by this Board, “all parking spaces shall be located on the same lot with the buildings or structures they are intended to serve.” *Id.* § 2116.1. The parking court depicted in the site plan and building plans does not conform to this requirement.

Appellants’ Interests

The Appellants will be more significantly, distinctly, and uniquely adversely affected and aggrieved by the construction of these nonconforming properties than the general public. Appellant Todd Boley resides and owns property at 4324 Garrison Street, N.W. The rear lot line of his property directly abuts the rear lot line of Lot 17. Mr. Boley purchased his property primarily because of the privacy and tranquility of the extended yard, which stretches 175 feet from Garrison Street, in which he built a swimming pool. By contrast,

Garrison Street is very busy with shoppers at Rodman's and with traffic due to the close proximity of the Friendship Heights Metro and the nearby commercial shopping district on Wisconsin Avenue.

Before the construction began on the Fessenden Street lots, Mr. Boley's rear yard was secluded and not visible to any neighbors, and the heavily wooded neighboring lots gave little or no visibility into his yard in the spring, summer and fall. The single-family home previously located on 4321 Fessenden Street was 120 feet from Mr. Boley's rear lot line and was only partially visible from his rear yard during leafy seasons. However, as a result of the construction now underway, there will be an 84-foot wide mansion more than 30 feet tall within approximately 35 feet of Mr. Boley's rear property line, directly visible from Mr. Boley's rear yard. Mr. Boley believes that having this towering structure shading his backyard will significantly lower the value of his house, and interfere significantly with his use and enjoyment of his property.

Appellants are also concerned about the bad precedent that would be established by permitting the builder to evade parking and street frontage requirements.

A copy of ANC 3E's resolution joining the appeal is attached, as is a letter from Mr. Boley authorizing the undersigned to file the appeal.

Certificate of Service

I hereby certify that the foregoing appeal was served on the following persons by First Class, United States mail, on February 23, 2007:

William Crews, Zoning Administrator
D.C. Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.W.
Washington, D.C. 20002

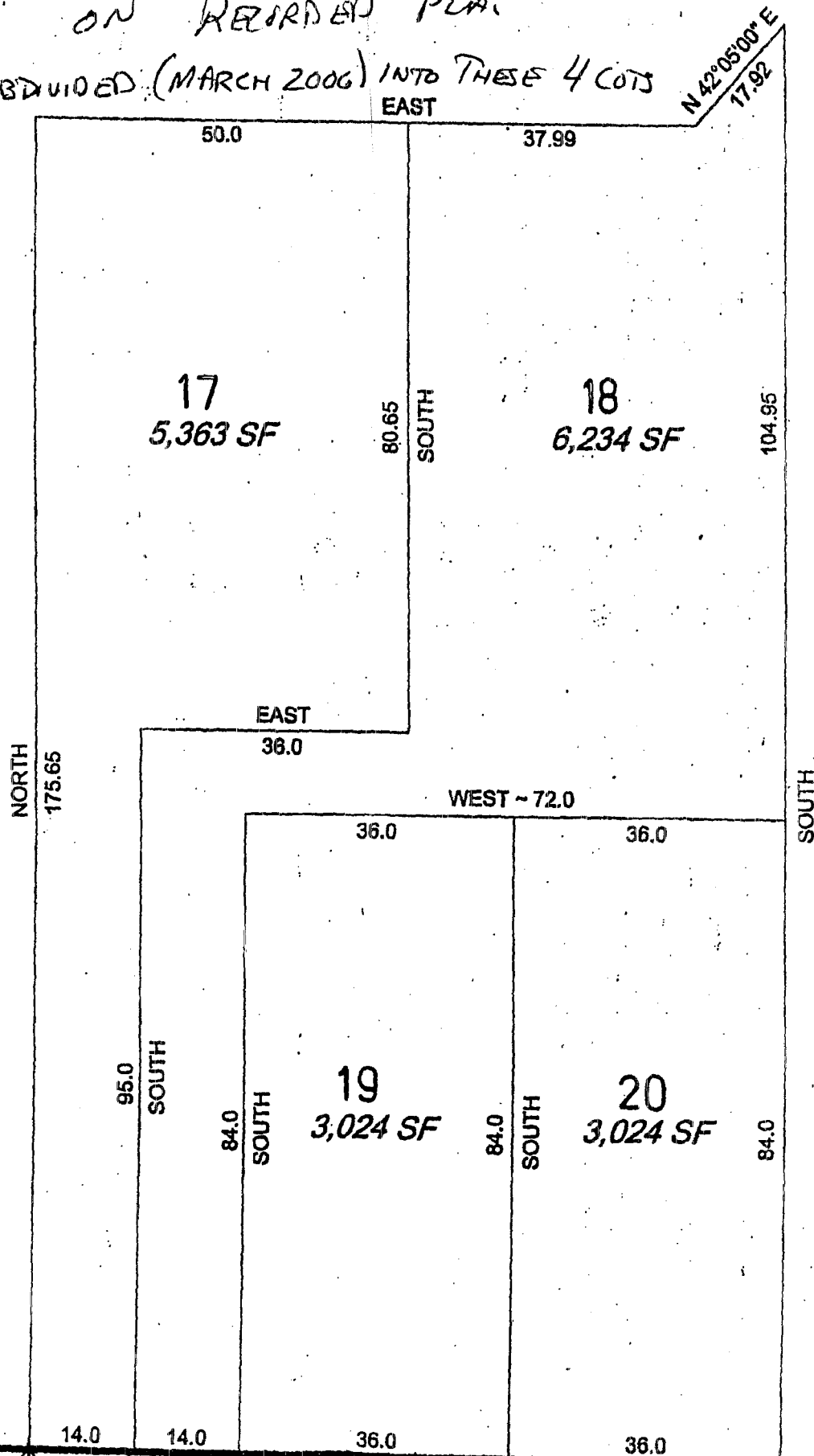
Reid Dunn
Dunn Whisky, LLC
1711 Connecticut Ave., N.W.
Washington, D.C. 20009



Andrea C. Ferster

NEWLY SUBDIVIDED (MARCH 2006) INTO THESE 4 COTS
EAST

Fessenden



A hand-drawn compass rose with four arrows pointing towards the cardinal directions. The word 'NORTH' is written above the top arrow, 'S' is written below the bottom arrow, 'E' is written to the right of the right arrow, and 'W' is written to the left of the left arrow.

5

4323

4321

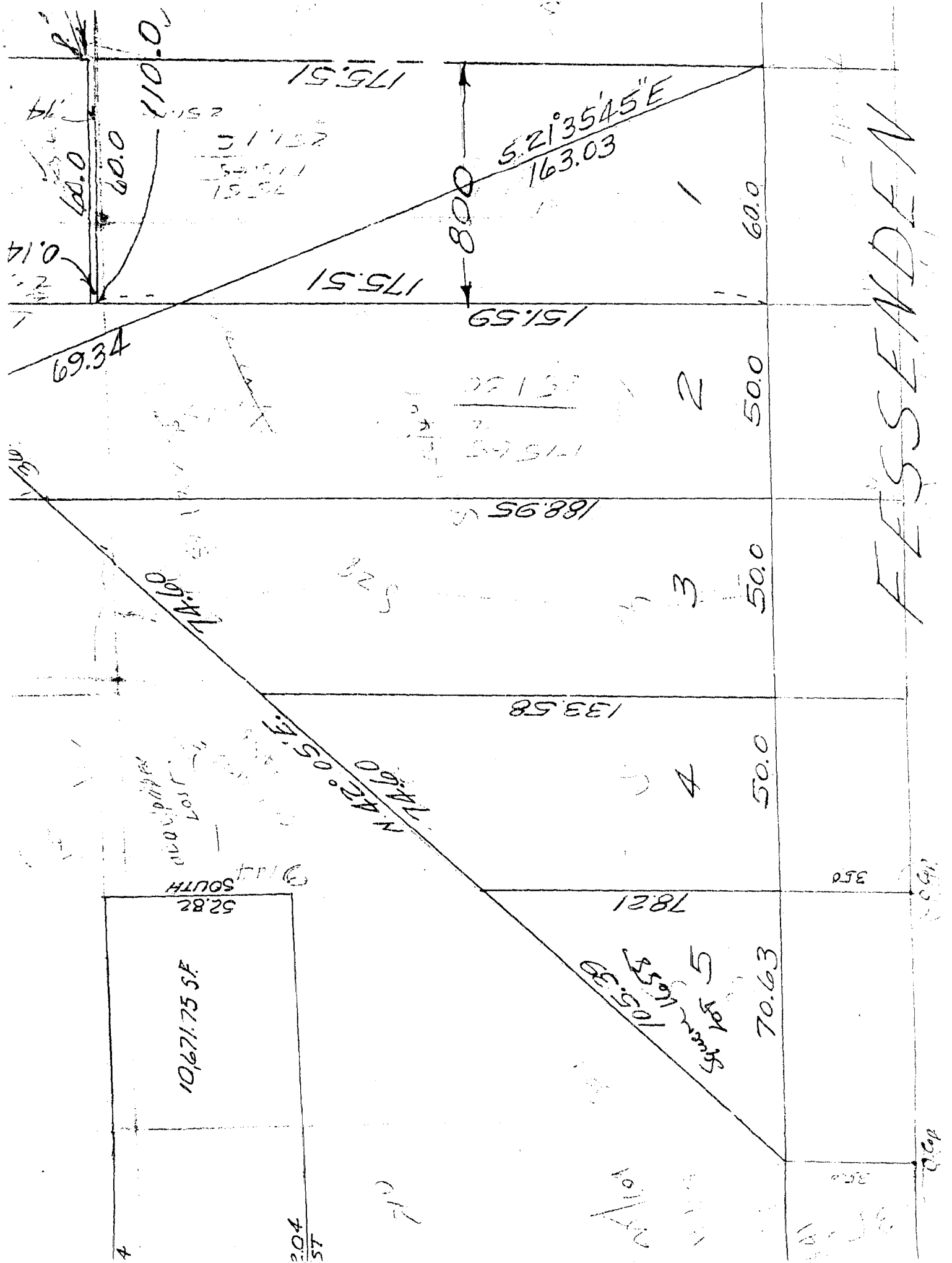
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4319

4317

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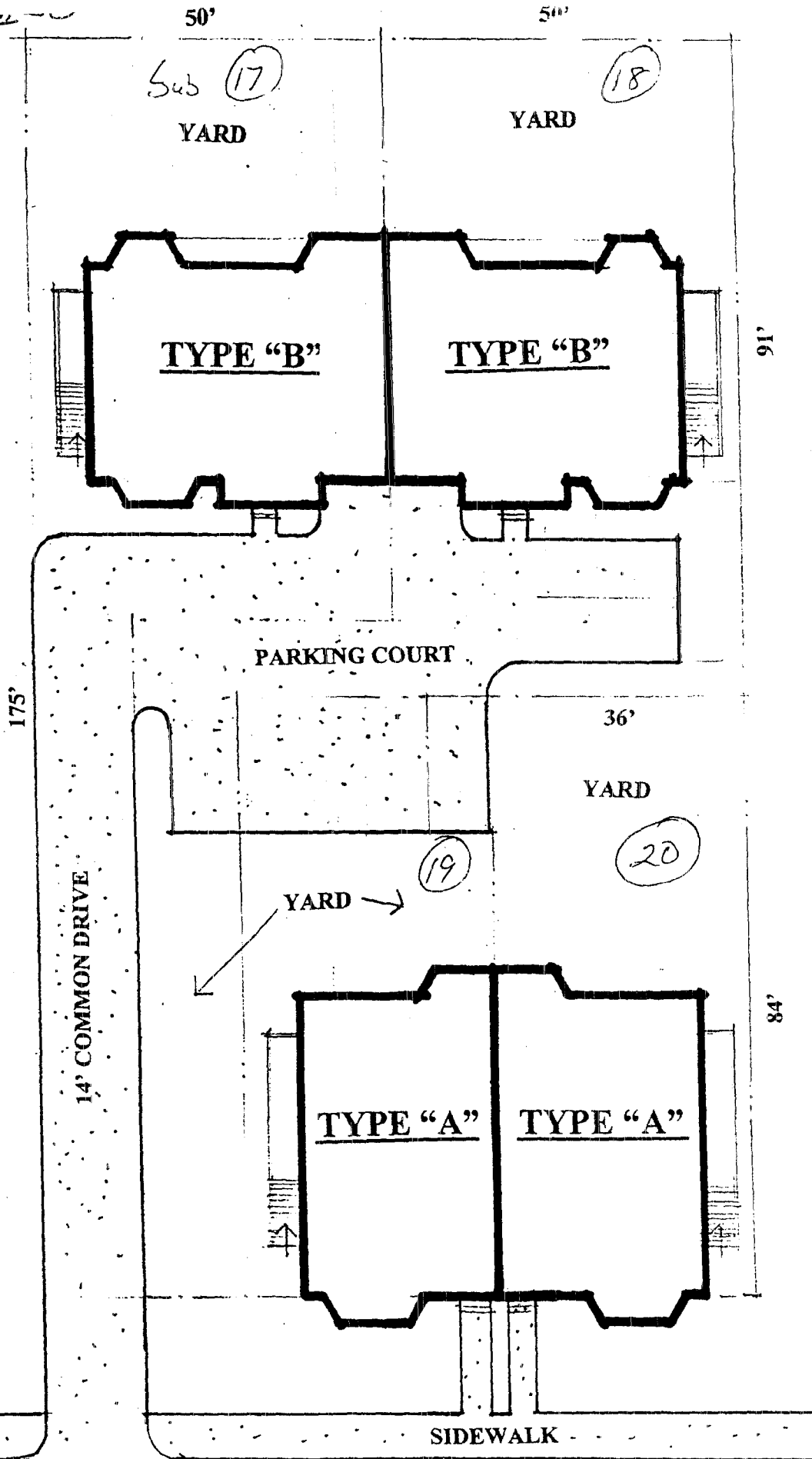
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SUBDIVISION
LOTS 17, 18
19, 20

4319-4321 FESSENDEN STREET NW

SITE PLAN
1"=20'



FESSENDEN STREET NW