BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Jacobsen Builders, Inc.

BZA Application No. 16740
Public Hearing: July 31 and October 9, 2001
ANC 3D

STATEMENT OF THE APPLICANT

I. Nature of Relief Requested

This is an application by Jacobsen Builders, Inc. ("Applicant") pursuant to 11 DCMR 3104.1 for a special exception to allow the removal of trees under sections 1568 and 1569 in conjunction with the construction of a new single family dwelling in the CB/UT/R-1-A District at premises 2989 Arizona Avenue, N.W. (Square 1426, Lot 17).

II. Jurisdiction Of The Board

The Board has jurisdiction to grant the requested special exception relief pursuant to Section 3104.1 of the Zoning Regulations. The Applicant's clear satisfaction of the burden of proof is set forth below.

III. Background Of The Application

The subject property, 2989 Arizona Avenue, N.W., is a vacant lot. The property has a lot area of 9,279 square feet and is currently zoned CBUT/R-1-A. By Zoning Commission Order published in the D.C. Register on July 30, 1999, the property was simultaneously rezoned from R-1-B to R-1-A and made subject to the newly established restrictions in the Chain Bridge Road/ University Terrace ("CBUT") Overlay district.

BZA
Case No. 16740
Exhibit No. 74

Board of Zoning Adjustment
District of Columbia
CASE NO.16740
EXHIBIT NO.74

The Applicant, Jacobsen Builders, Inc., purchased the vacant lot in July 1999. Both before and after settlement, the Applicant on several occasions verified with the D.C. Zoning Administrator's Office that the property was zoned only R-1-B notwithstanding information provided by the Seller. Applicant reasonably relied on the information provided by the Zoning Administrator's Office, first in acquiring the property; second, in obtaining a building permit; and third, in starting construction. Applicant, then a first time builder in the District, would not have purchased the property had he been informed of the CBUT Overlay by the Zoning Administrator's Office.

On January 20, 2000, the Applicant filed a building permit application for construction of a single-family detached dwelling. On July 6, 2000, Mr. Toye Bello in the Zoning Administrator's Office "signed off" on the permit based on the District's records which showed the property zoned R-1-B. Finally, on October 30, 2000 (after more than nine (9) months), the District issued Building Permit No. B430537 ("Building Permit") for construction of a "New Single Family Home" and again confirmed the zoning as R-1-B. The issued Building Permit and Application as processed and approved by the District were attached to the BZA Application.

As authorized by the Building Permit, the Applicant began site clearing activities in mid-November, 2000, including tree and brush removal and grading which were in no way restricted by the permit or R-1-B zoning. Almost immediately, the District issued a Stop Work Order on December 1, 2000 upon discovering that the property was actually zoned CBUT/R-1-A. No work has occurred at the site since then – almost ten (10) months ago.

As originally filed, the Applicant sought this special exception in order to allow the previously approved construction of a single-family detached dwelling. The previously approved project complied with all the new restrictions imposed by the CBUT and R-1-A zone, except the tree removal limitations. A September 20, 2001 report was prepared by Mr. Keith C. Pitchord, and ISA Certified Arborist and Maryland Licensed Tree Expert, on the reforestation plan ("Reforestation Report"). Exhibit A, attached. This report also surveyed the trees that were removed initially pursuant to the Building Permit that was issued by the District. A total of thirteen (13) trees covered by the CBUT Overlay were removed, including three (3) trees which would have been authorized to be removed. Six (6) of the trees removed were located within the currently proposed building footprint.

IV. Community Outreach and Participation

Although a victim of these unfortunate circumstances like the community, the Applicant readily accepted responsibility, at great and ongoing expense, for compliance with the CBUT Overlay and the special exception process, rather than seeking to find blame or challenge the Stop Work Order. Almost immediately, Applicant sought to bring the community into the planning process in order to respond early and directly to its concerns. Unfortunately, the community chose not to meet with the Applicant prior to the filing of this Application. Without any specific input from the community, the Applicant filed this application based on the single-family dwelling originally approved by the District with an enhanced landscaping plan. Again, this plan complied with all the CBUT Overlay restrictions, except tree removal limitations.

In response to the BZA Application, the community expressed strong opposition, but offered little, if any, in the way of specific guidance (more and larger indigenous trees; smaller building). Under the circumstances, Applicant offered the community an unprecedented opportunity to participate in the creation of a revised development plan for the site. Again, only very general comments were provided by the community which gave the Applicant little or no assistance in attempting to come up with a specific revised plan which would meet the concerns.

Finally, Applicant in good faith developed a revised proposal based on the limited feedback received. This revised plan was presented to the community at a meeting in late August. Applicant desperately sought and encouraged specific comments at the meeting or afterwards in order to continue to respond to community concerns. Again, through counsel, the community provided the same almost meaningless general comments forfeiting another opportunity to make specific comments and changes to the proposal, concluding that [Applicant's] modified proposal does not present a basis for discussion at this time." The community's counsel seemed more interested in assigning blame than working cooperatively to reach a mutually agreeable resolution.

V. Revised Reforestation and Development Proposal

Even without any specific guidance or cooperation from the community, Applicant went back to the drawing board and produced another revised plan which reduces the footprint and bulk of the proposed house, further reduces the impervious surface coverage, reduces the elevation of the structure and incorporates a new and substantially enhanced reforestation plan that preserves and protects the existing trees and maximizes the new plants that the site can

accommodate successfully. Reforestation Report, Exhibit A; New Proposal Elevation, Exhibit B; Planting and Reforestation Plan (including Site Plan), Exhibit C; and Lot Occupancy and Impervious Surface Calculation Sheet, Exhibit D. Specifically, the Applicant's revised proposal includes:

1. Eliminates proposed sun-room yielding a ten percent (10%) smaller house footprint;

2. Maximizes open space for planting;

3. Decreases the driveway (impervious surface) to twenty-five percent (25%) which is half of the maximum allowed;

4. Finds optimal location of house on site to preserve and protect existing trees and maintain existing topography;

5. Minimizes retaining walls to preserve and protect existing trees and maintain existing topography;

6. Reduces elevation of house to lower scale and improve visibility from the rear property at 2953 Arizona Avenue.

7. Increases the number of new trees planted to thirty-four (almost three times the number of trees removed) which is the optimal number and type that the site can accommodate.

8. Locates the new plants to achieve the random pattern of a natural forest stand;

9. Establishes a comprehensive program for existing tree preservation.

VI. Applicant Meets The Requirements For The Requested Special Exception

Uses that are allowed by special exception are deemed compatible with other uses permitted in that particular zoning classification provided certain requirements are met. In reviewing applications for a special exception under the Zoning Regulations, the BZA's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites of the Regulations are satisfied, the Board ordinarily must grant the application. See, e.g., Bakers' Local Union No. 118 v. District of Columbia Board of Zoning Adjustment, 437 A.2d 176, 178 (D.C. 1981).

As set forth in greater detail below, approval of special exception relief in this case meets or exceeds all of the applicable requirements and is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use of nearby properties.

In addition to the applicable R-1-A restrictions which the Applicant fully complies with the CBUT Overlay also imposes the following additional area requirements.

A. Lot Occupancy: For lots of 9,000 square feet or more, lot occupancy is limited to 30%.

Compliance: The proposed lot occupancy is 22.8% or 2116 square feet. Under the CBUT, the proposed house could have a footprint of 2,783.70 square feet or 667.7 square feet larger.

B. Impervious Surface: A maximum impervious surface coverage of 50% of the lot or 4,639.5 square feet is permitted.

Compliance: The total impervious surface of the revised proposal is 25% or 2,256 square feet.

C. Minimum Lot Size: For lots subdivided after effective date of CBUT Overlay, a minimum of 9,500 square feet is required.

Compliance: The subject property, Lot 17 (9,279 square feet) was an existing Record Lot prior to enactment of the CBUT Overlay, and therefore, the minimum lot size is not applicable. 11 DCMR 1565.4 as enacted by the Zoning Commission specifically references the then existing Lot 17 as being subject to the new CBUT.

A special exception which involves tree removal, including tree removal which occurred prior to the BZA Application,[1] is also subject to the following enumerated criteria set forth in 11 DCMR 1569.1, including:

(a) Tree removal, grading and topographical change shall be limited to the maximum extent consistent with construction of a building permitted by the standards of this chapter.

Compliance: The Applicant's revised proposal includes construction of a building that falls well below the lot occupancy, impervious surface and other applicable restrictions in the CBUT/R-1-A zone. In fact, the CBUT would allow construction of a substantially bigger and taller house with greater lot occupancy and impervious surface coverage. The tree removal and grading which has already occurred under the District approved building permit can not be changed or undone. However, the revised proposal does not involve any additional tree removal

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[1] 11 DCMR 1568.3 specifically contemplates and provides for a situation similar to this one when tree removal occurred before seeking a special exception from the Board.

and minimizes the grading and topographical changes to the site. As proposed, the Applicant has achieved the optimal siting of the house to maximize the open space available for reforestation, minimize the use of retaining walls and preserve and protect the existing trees.

(b) The applicant shall demonstrate that there are specific physical characteristics of the lot that justify the exception.

Compliance: Unfortunately, the trees that were removed under the mistakenly issued building permit can not be duplicated. However, the Applicant has acknowledged the removal of the trees and the additional unique topographical (steeply graded lot that is wide (125 feet), but relatively shallow (75 feet deep)) conditions in creating a revised proposal that attempts to respect the nature of the site and provide large-scale reforestation. This plan minimizes changes to the existing site conditions, plants almost three times as many new and indigenous trees than were removed, and ensures that the new and existing trees can be sustained by the site.

(c) The excepted building and overall site plan of the lot shall be generally consistent with the purposes of the CB/UT Overlay District and not adversely affect the neighboring property. The CBUT Overlay, 11 DCMR 1565.2, specifically sets for the following purposes:

- To preserve the natural topography and mature trees to the maximum extent feasible in a residential neighborhood.

Compliance: The Reforestation Report establishes a comprehensive plan to respect the existing topography, preserve and protect the existing mature trees and replant three times as many indigenous trees as were removed in the context of the existing and proposed single-family residences.

- To prevent significant adverse impact on adjacent open space, parkland, stream beds, or other environmentally sensitive areas.

Compliance: Applicant has substantially increased the amount of open space beyond the level required under the CBUT Overlay in order to ensure the survivability of the existing trees and maximize the reforestation which the site can reasonably accommodate and is in keeping with the surrounding residents and neighborhood.

- To limit permitted ground coverage of new and expanded buildings and other construction, so as to encourage general compatibility between the siting of new buildings or construction and the existing neighborhood.

Compliance: Applicant's ground coverage has been further limited and relocated consistent with existing houses immediately adjacent on Arizona Avenue and at the rear of the property. The proposed side and rear yard dimensions exceed the minimum required in an R-1-A zone.

(d) To limit the minimum size of lots so as to prevent significant adverse impact on existing infrastructure, especially on traffic and pedestrian safety and to achieve the other purposes listed in this subsection.

Compliance: The subject lot greatly exceeds the minimum established in a R-1-A zone and is consistent with larger sizes sought for "new" lots under the CBUT Overlay. The single-family dwelling proposed is consistent with, if not smaller than, some existing houses on this side of Arizona Avenue and will have no real impact on infrastructure or traffic and pedestrian

safety. Any increase in traffic or other infrastructure demands will be limited to a single-family occupying the house to be constructed.

As revised, the Applicant's proposal is in harmony with the general purpose and intent of the Zoning Regulations and Map and when implemented will enhance, not adversely impact the neighborhood. The CBUT Overlay, as enacted, was not intended to prohibit the construction of a new single-family dwelling on this site, but simply to impose specific restrictions. This revised proposal abundantly complies with the area requirements applicable in the CBUT/R-1-A district. In correcting the tree removal mistakenly authorized by the District, the reforestation plan achieves the purposes of the CBUT tree removal provisions by protecting the existing forest and replacing the plants which were removed.

VII. Witnesses

The following witnesses will testify in support of this Application:

1. Mr. Edwin F. Jacobsen, Jacobsen Builders, Inc.
2. Ms. Christine Poulos, Jacobsen Builders, Inc.
3. Mr. Keith C. Pitchford, Pitchford & Associates
4. Ms. Cynthia Ferranto, Landscape Designer

VIII. Exhibits In Support Of Application

Exhibit A: Reforestation Report.

Exhibit B: New Proposed Elevation.

Exhibit C: Planting & Reforestation Plan (including Site Plan).

Exhibit D: Lot Occupancy and Impervious Surface Calculation Sheet

IX. Conclusion

For the reasons set forth above, the requested special exception relief can be granted without impairing the intent, purpose and integrity of the Zoning Regulations.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

September 25, 2001

By: _____
John Patrick Brown, Jr.

Counsel for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Statement of the Applicant was served by hand-delivery, this 25th day of September, 2001, upon:

Eleanor Roberts Lewis, Esq.
Chairperson
Advisory Neighborhood Commission 3D
5034 ½ Dana Place, N.W.
Washington, D.C. 20016

Ms. Maxine Brown-Roberts
Office of Planning
801 North Captiol Street, N.E.
Fourth Floor
Washington, D.C. 20002

Richard B. Nettler, Esq.
Robins, Kaplan, Miller & Ciresi L.L.P.
1801 K Street, N.W.
Suite 1200
Washington, D.C. 20006-1301

John Patrick Brown, Jr.

167032



PITCHFORD AND ASSOCIATES
Environmental Consultants

2213 40th Place, N.W., # 1, Washington, D.C. 20007
(202) 333-3851 (phone) • (202) 333-3859 (fax) • kpenvironment@mindspring.com

September 20, 2001

Mr. Ed Jacobsen
Jacobsen Builders
840 Golden Arrow St.
Great Falls, VA 22066

Dear Mr. Jacobsen:

This report reflects findings of my survey of #2989 Arizona Ave, N.W., Washington, D.C. At present, this site is vacant. This survey was undertaken on Monday, September 17, 2001.

The purpose of this survey was to assess the existing vegetation on site and to address best management practices available to preserve the existing vegetation. The results of this survey were used to develop recommendations for optimal siting of the house and the best possible strategy for reforestation on the vacant portion of the site.

I have also reviewed the Chain Bridge Road/ University Terrace Tree and Slope Protection Overlay Regulations and have used these as a guideline for the recommendations made in this report.

Existing vegetation

Based upon a site map provided by your staff, I surveyed the large trees on site [>8" diameter at breast height (dbh)]. I was able to find the larger trees that remained on the site, and also identified several larger trees that were not located on your map. The majority of the trees are concentrated on the right hand side of this lot. There are several large specimen trees at the right rear of the lot and a line of smaller trees that provide a buffer along the existing driveway. There is no vegetation along the rear property line and only several larger trees on the left hand side of the lot.

Specimen trees on the right hand side include a 47" dbh Southern red oak (*Quercus falcata*). This tree is in good to excellent condition with several large pieces of dead wood found at the lowest portion of the crown. I surmise that this deadwood is the result of shading from the previously surrounding vegetation, and not the result of an insect infestation. The base of this tree is in good condition with no visible defects. My only concern for this tree is its exposed location. A tree of this size, with such a large sail area in the crown, and located on a high exposed site is now vulnerable to windthrow.

Other notable trees along the right hand side of the site include a twin-stemmed tulip poplar (*Liriodendron tulipifera*) located behind the red oak. This tree measured 15" dbh and is also in good condition. It is more protected from the wind because of the buffeting effect of the red oak and surrounding vegetation. Behind this tree is a twin-stemmed Black oak (*Quercus velutina*) that measured 18" dbh.

The remaining trees along the right side are a mixture of tulip poplar, red maple (*Acer rubrum*), black locust (*Robinia pseudoacacia*), Mockernut hickory (*Carya tomentosa*) and Scarlet oak (*Quercus coccinea*). These trees are in the 8"-16" diameter range and in good to fair condition. None of the trees in this strip are specimens, but together they provide good screening from the existing driveway.

Along the left hand side of this site are several nice trees. The first is a tulip poplar near the top of the site. This tree measured 18" dbh and is in good condition. Further down the hill, and on the opposite side of an old fence, is a large tulip poplar. This tree measured 28" dbh and is in good to excellent condition.

Review of the Tree and Slope Overlay Regulations and House Siting Recommendations

A brief review of the proposed site plan showing the proposed house siting illustrates limitations inherent in this particular site. I understand that retaining walls are required in the rear of the lot in order to terrace the steep slopes as the lot falls sharply from back to front. In addition, the location of the existing mature trees places additional constraints on the house siting.

However, it is not the purpose of this report to discuss in detail the Tree and Slope Overlay Regulations as they apply to this lot prior to any development work. It was necessary, however, to try to best determine how many trees were removed. To try to do so, I reviewed the tree survey shown on the site plan that located the trees on the site prior to clearing. As can best be determined from this map, and my own survey, it appears that thirteen (13) trees covered by the regulations were removed. Of these, at least six (6) were located within the proposed building footprint. I understand that the regulations allow the removal of up to three (3) trees. This leaves a total of ten (10) additional trees, covered by the regulations, which appear to have been removed.

Given the small lot size, and pre-existing physical limitations of the site including slope and close proximity of the remaining mature trees, an optimal house siting and a planting and reforestation plan have been proposed. I feel that the house siting, as proposed, and the revegetation plan as submitted best address the mitigation of the ten (10) trees removed above that allowed under the regulations.

Tree preservation recommendations

Although it is important to preserve all remaining vegetation on this site, the focus of your tree preservation efforts should be the Southern red oak on the right and the larger tulip poplar on the left hand side of the site. Given the present orientation of the house, construction would take place within 25' of the Southern red oak, to the right, and 40' of the larger tulip poplar on the left. This distance from the red oak is sufficient for a tree of this size and species. And, the 40' distance for the 28" diameter tulip poplar is more than needed for effective tree and root zone preservation.

I am also concerned about potential root loss sustained to the red oak during the cutting of the switchback road through the center of the site. Because the majority of the critical feeder roots are found in the upper 24" of soil, many of these roots may have been lost on the down hill side of this tree. This would most certainly be true if it were found growing in an open landscape situation. However, because it was growing in a dense forest situation, it's likely that the feeder roots have dispersed in a random pattern throughout the forest floor and may be intermingled with other root systems. If so, the damage done to the root system of the red oak may not be as extensive as originally thought.

Tree protection would have to be comprehensive on this site due to the large specimen trees and small site size. Tree protection should include substantial tree protection fencing (6'-8' tall wire mesh set in concrete blocks), mulching of the root protection zone, mycorrhizal treatments, deadwood removal, and monitoring of soil moisture and tree protection zones.

Planting and reforestation plan

The most important aspect of the reforestation plan is to provide the basis for a new forest on the remaining undeveloped portion of this site. This new forest stand must be consistent with surrounding native vegetation. All species included in this plan must be native and, by definition, not an introduced or invasive species. Furthermore, the reforestation plan should include adequately sized trees of both overstory and understory species consistent with the existing forest stand association. And, finally, the planting pattern must be random to best approximate a natural forest stand.

Given these parameters, the recommended species include the following:

Overstory species: (All plantings shall be 2"-2.5" caliper.)

Northern red oak (*Quercus rubra*), White oak (*Quercus alba*), Scarlet oak (*Quercus coccinea*), Tulip poplar (*Liriodendron tulipifera*), Mockernut hickory (*Carya tomentosa*), Red maple (*Acer rubrum*) and American beech (*Fagus grandifolia*).

Understory species: (All plantings shall be 1" caliper, or 10-gallon containers.)

Spicebush (*Lindera benzoin*), Allegheny Serviceberry (*Amelanchier laevis*), Red bud (*Cercis canadensis*), Mountain laurel (*Kalmia latifolia*), American holly (*Ilex opaca*), Maple leaf viburnum (*Viburnum acerifolium*), Nannyberry (*Viburnum lentago*).

The recommended planting spacing for overstory plantings is 25'-30', and 5'-10' for understory species. This spacing is especially important for the shade trees in order to allow for full canopy development. Tighter spacing is acceptable for understory species because their canopies are smaller at maturity and often intermingled in natural forest stands. It should also be noted that several species, including red maple, hickory and beech, are often found growing in small groupings in the natural forest. I believe that this clumped pattern may be copied here with good results.

Based upon the planting recommendations, a total of eleven (11) shade trees (2 street trees and nine reforestation trees) and twenty-three (23) understory trees are proposed. This is a total of thirty-four (34) new trees installed on this lot. These numbers were calculated based upon the recommended spacing mentioned above. I feel that this is the maximum number of new plantings that can be accommodated given the small lot size. Furthermore, I feel that this plan best achieves the purposes of the Tree and Slope Protection Overlay by preserving the existing topography and remaining mature trees to the maximum extent feasible.

Summary

I feel that if the footprint of the proposed home were sited as shown on the planting and reforestation plan this would greatly increase the likelihood that the remaining specimen trees would survive construction activities. However, a comprehensive tree protection plan will be very important in order to insure a high level of survivability.

I also feel that the planting and reforestation plan shows the maximum revegetation that the site can accommodate. This sets the stage for an excellent forest stand to develop on the cleared portion of this site. The forest mix recommended is reflective of the native

tulip poplar forest association surrounding the site, and the recommended spacing is consistent with nursery standards for optimal growth for both overstory and understory species. And, finally, all additional standards for proper planting, as specified by the American Nurserymen's Association, should be followed when executing the re-forestation plan.

Thank you for the opportunity to provide these observations and recommendations. Please feel free to call me with any questions you may have concerning this report.

Sincerely,

Keith C. Pitchford
ISA Certified Arborist, MA-0178
Maryland Licensed Tree Expert, #589



EXHIBIT 74B

FROM

CASE 16740

IS AN OVERSIZED DOCUMENT

PLEASE SEE AT OFFICE

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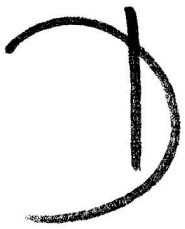
EXHIBIT 74C

FROM

CASE 16740

IS AN OVERSIZED DOCUMENT

PLEASE SEE AT OFFICE



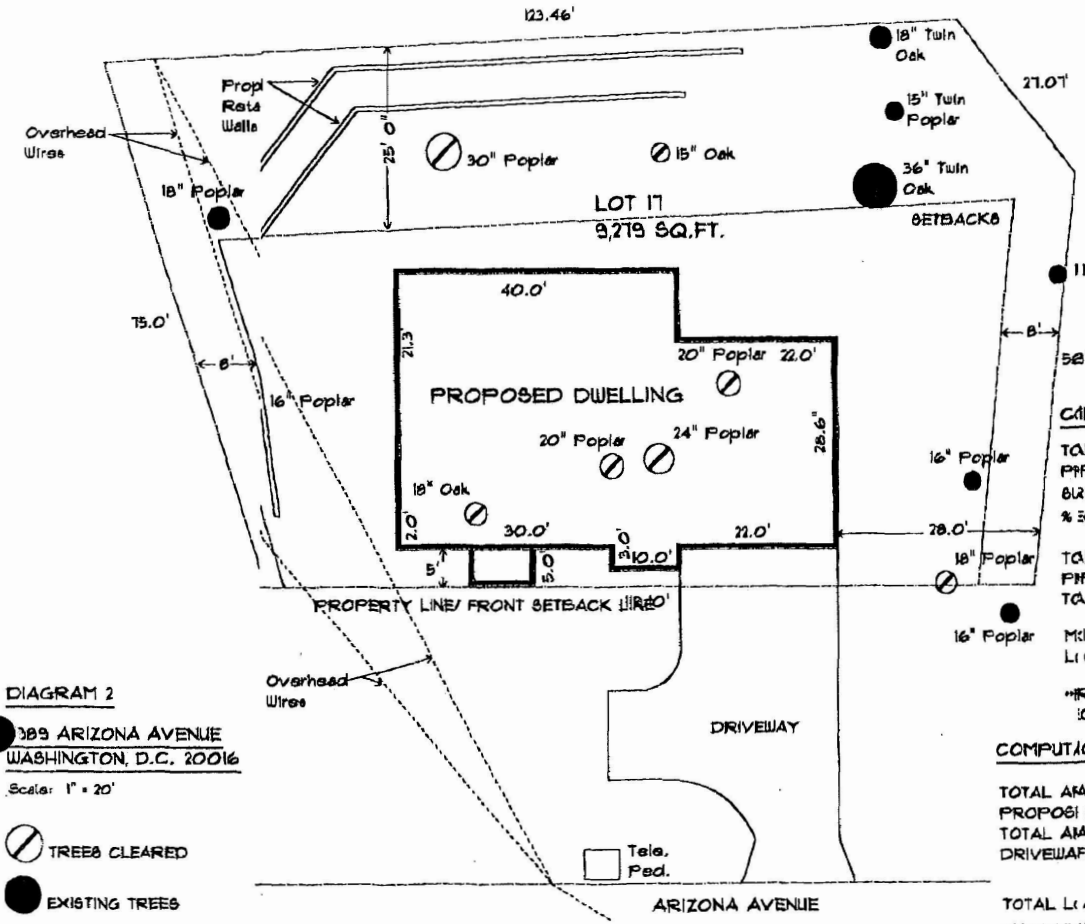


DIAGRAM 2

389 ARIZONA AVENUE
WASHINGTON, D.C. 20016

Scale: 1" = 20'

TREES CLEARED

EXISTING TREES

NOTE:
ALL TREE DIMENSIONS ARE IN DIAMETER

COMPUTATION OF LOT OCCUPANCY:

TOTAL AREA OF OLD PROPOSED BUILDING:	2328 sf	
SUNROOM REMOVED:	212 sf	
% INCREASE IN FOOTPRINT:		10%
TOTAL AREA OF NEW PROPOSED BUILDING:	2116 sf	
TOTAL LOT AREA:	9279 sf	= 22.8%
MAXIMUM PERMITTED LOT OCCUPANCY		= 30.0%

**IR ZONING REGULATION TITLE II, SECTION 1567.1

COMPUTATION OF IMPERVIOUS AREA:

TOTAL AREA OF PROPOSED BUILDING:	2116 sf	
TOTAL AREA OF DRIVEWAY/FRONT STOOP:	+ 140 sf	
	2256 sf	
TOTAL LOT AREA:	9279 sf	= 25%
MAXIMUM SURFACE AREA COVERAGE =		50.0%

**PER ZONING REGULATIONS TITLE II, SECTION 567.2