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November 20, 2001

HAND DELIVERED

Jerrily R. Kress
Director
Office of Zoning
Room 210
441 Fourth Street NW
Washington, D.C. 20004

Re: BZA Appeal No. 16764

Dear Ms. Kress:

Enclosed for filing in the above case are ten copies of "Appellant's Response to Filings of Intervenor and the Zoning Administrator".

Please return a date-stamped copy to us with our messenger.

Thank you for your assistance.

Sincerely,

James T. Draude

James T. Draude

BZA
Case No. 16764
Exhibit No. 44

Board of Zoning Adjustment
District of Columbia
CASE NO.16764
EXHIBIT NO.44

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

In re: Appeal of Darrel J. Grinstead) Appeal No. 16764
) ANC 3F

APPELLANT'S RESPONSE TO FILINGS OF
INTERVENOR AND THE ZONING ADMINISTRATOR

This memorandum addresses issues raised by the filings of the Intervenor and the Zoning Administrator on November 13, 2001.

Front of the Building
(Height and Number of Stories)

The permissible height and permissible number of stories are measured "from the finished grade level at the middle of the front of the building to the ceiling of the top story" (11 DCMR 199.1, "Building, height of" and "Story").

The front of the subject building is the facade that is shown on the drawings as 35 feet wide (10/16 Tr. 43-46; Ex. 23A, Shts, CS, A-1.1, and A-3)[1]. The middle of that facade is in front of the garage, and the finished grade at that location is the driveway (Id.). The height of the building from that point to the ceiling of the top story is forty-three feet eight inches[2] and the number of stories is four (10/16 Tr.43; Ex. 23A, Sht. A-3). Mr. Bello admitted that the garage is a "basement", not a "cellar", and that a basement counts as a story (10/16 Tr. 126-

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[1] "Ex. ___" refers to the exhibits marked and filed in the record in this case. "10/16 Tr. ___" refers to the transcript of the hearing in this case on October 16, 2001. "10/23 Tr. ___" refers to the transcript of the hearing in this case on October 23, 2001.

[2] Mr. Gresham testified that the height from the finished grade in front of the garage doors to the peak of the roof is forty-six feet eight inches (10/23 Tr. 270). Mr. Lessard testified that the ceiling of the top story is three feet below the peak of the roof (10/23 Tr. 258-259).

129).

The Zoning Administrator's decision (and Intervenor's position) on height and number of stories depends on including the north facade of the rear wing as part of the front of the subject building, producing a front that is 46 feet wide (10/16 Tr. 85-90; Int. Sub., pp. 2-3)[3].

The Zoning Regulations use the word "front" in contexts that indicate that the word refers to that part of a building that abuts the street (see 11 DCMR 199.1, "Building, height of" and "Street frontage"). Mr. Bello testified, based on a dictionary definition of "front", that "the front is that portion of the building that faces the property line that abuts the street" (10/23 Tr. 187, 189). As illustrated at the hearing (10/16 Tr 63-64; 10/23 Tr. 279-280) and shown on Attachment A hereto,[4] the north facade of the rear wing faces the western property line that abuts Mr. Grinstead's property.

Mr. Bello testified that the rear wing is part of the front of the building because it can be seen from the street at any point of the front of the lot (10/16 Tr. 114). As the photos introduced by all parties illustrate, what can be seen from the street depends on where one stands (Affidavit of Stephen W.

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[3] "Int. Sub. _____" refers to "Intervenor's Post-Hearing Submission", filed in this case on November 13, 2001. "Int. Ex. ___" refers to the exhibits attached to that submission.

[4] Attachment A is a copy of the site plan shown on Sheet CS of the permit drawings (Ex. 23A) marked with a red line along the western side of the house.

Gresham; Int. Ex. B, C, and D; Z.A. Ex. B, C, and D)[5]. The Zoning Administrator (Mr. Johnson) testified that the "front" of the building is that part of the building that one can see from the middle of the front property line (10/16 Tr. 111-113). As shown on Attachment B hereto,[6] one cannot see the rear wing from the middle of the front property line.

The Zoning Regulations refer to "Webster's Unabridged Dictionary" for definitions of terms not defined in the Zoning Regulations (11 DCMR 199.2(g)). As noted above, the Zoning Regulations use the term "front" in contexts that indicate the front of the subject building does not include the north facade of the rear wing. Thus, resort to the dictionary is unnecessary. In addition, there is more than one unabridged Webster's dictionary. Intervenor introduced excerpts from two dictionaries that include definitions that are consistent with the conclusion that the north facade of the rear wing is not part of the "front" of the subject building. Webster's Encyclopedic Unabridged Dictionary of the English Language (1989) (Int. Ex. E) includes the following definitions of "front":

> 1. the foremost part or surface of anything.
> 2. the part or side of anything, as a house, which seems to look or be directed forward:
> * * * 5. a property line along a street or

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[5] "Z.A. Ex. ___" refers to the exhibits attached to the "Post-Hearing Submissions of the Zoning Administrator", filed herein on November 13, 2001.

[6] Attachment B is a copy of the site plan shown on Sheet CS of the permit drawings (Ex. 23A) marked with two red sight lines from the middle of the front property line.

> the like: the entire block front; a fifty-foot front. (Emphasis added).

Webster's Third New International Dictionary of the English Language Unabridged (1980) (Int. Ex. F) includes this definition of "front": "2. something that confronts or faces forward; as a(1) a face of a building; esp. the face that contains the principal entrance" (emphasis added). The rear wing does not include the principal entrance to the subject house. The principal entrance is in the facade that is shown on the site plan as 35 feet wide.

Minimum Lot Dimensions

The subject property does not comply with the requirements for minimum lot size and minimum lot width in the R-1-A zone. The required minimum lot size is 7,500 square feet, and the required minimum lot width is 75 feet (11 DCMR 401.3). The actual lot size is 6,723 square feet (Ex. 23A, Sht. CS), and the actual lot width is 67.80 feet (10/23 Tr. 257-258). The Zoning Administrator's decision (10/16 Tr. 84) relies on a reduction of those requirements allowed by 11 DCMR 401.2 as follows:

> [I]n the case of an unimproved lot in single ownership on November 1, 1957, which has an area or width of lot less than that specified in [11 DCMR 401.3] for the district in which it is located and which does not adjoin another unimproved lot in the same ownership, a structure may be erected on the lot if both the area and width of the lot are at least eighty percent (80%) of the area and width of lot specified under [11 DCMR 401.3]; Provided that the structure shall comply with all other provisions of this title. (Emphasis added).

As shown above, the subject house violates the limits on height and number of stories. It also exceeds the maximum permissible lot occupancy for this site.

The site is in a Tree and Slope Protection overlay district (Ex. 2), and the maximum allowable lot occupancy is thirty percent (30%) (11 DCMR 1513.1). In its letter to Mr. Grinstead addressing the subject building, DCRA exercised its permitted two percent flexibility (11 DCMR 407.1) to allow a lot occupancy of 30.4% for the subject building (Ex. 2). Intervenor's architect testified that the actual lot occupancy is 32.1% (10/23 Tr. 23[illegible]), and the Location Survey recently submitted by Intervenor (Int. Ex. A) confirms that the actual lot occupancy is at least 32.1%[7].

Since the subject building violates the requirements regarding height, number of stories, and lot occupancy, the subject building is not entitled to the reduction of minimum lot dimensions relied upon by the Zoning Administrator and Intervenor (11 DCMR 401.2).

In addition, the subdivision information recently filed by Intervenor (Int. Ex. G, H, and I) does not include any information on ownership or improvements of the relevant lots as of November 1, 1957, both of which are requirements for the reduction of minimum lot dimensions allowed by 11 DCMR 401.2.

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[7] This appeal, when initially filed, challenged compliance with lot occupancy limits (Ex. 1). There was no evidence available as to actual lot occupancy until the architect's testimony in Intervenor's case and the recently filed Location Survey.

Rear Yard

Intervenor admits that the bay on the rear of the house impermissibly encroaches on the required rear yard space (Int. Sub., p. 3). Intervenor asserts that he will cure this violation by altering the existing construction of the bay (Id.). The Board's decision in this case should include that alteration as a requirement.

Dated: November 20, 2001 Respectfully submitted,

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Attorney for Appellant

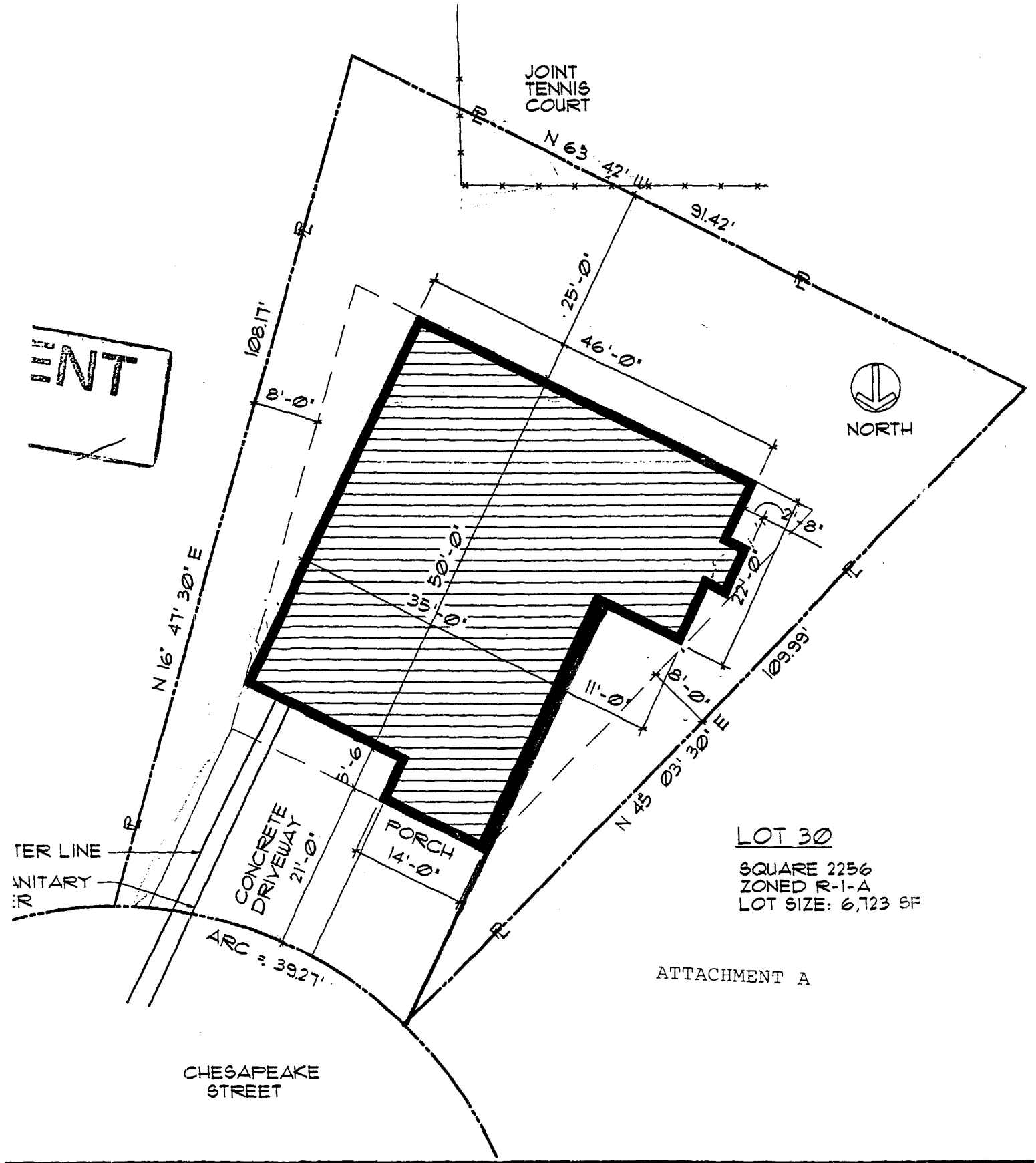
CERTIFICATE OF SERVICE

I hereby certify that copies of the attached "Appellant's Response to Filings of Intervenor and the Zoning Administrator" were hand delivered on November 20, 2001 to:

John Patrick Brown, Jr.
Greenstein Delorme & Luchs
Suite 900
1620 L Street NW
Washington, DC 20036

Marie Claire Brown
Office of Corporation Counsel
Room 450N
441 Fourth Street NW
Washington, DC 20001

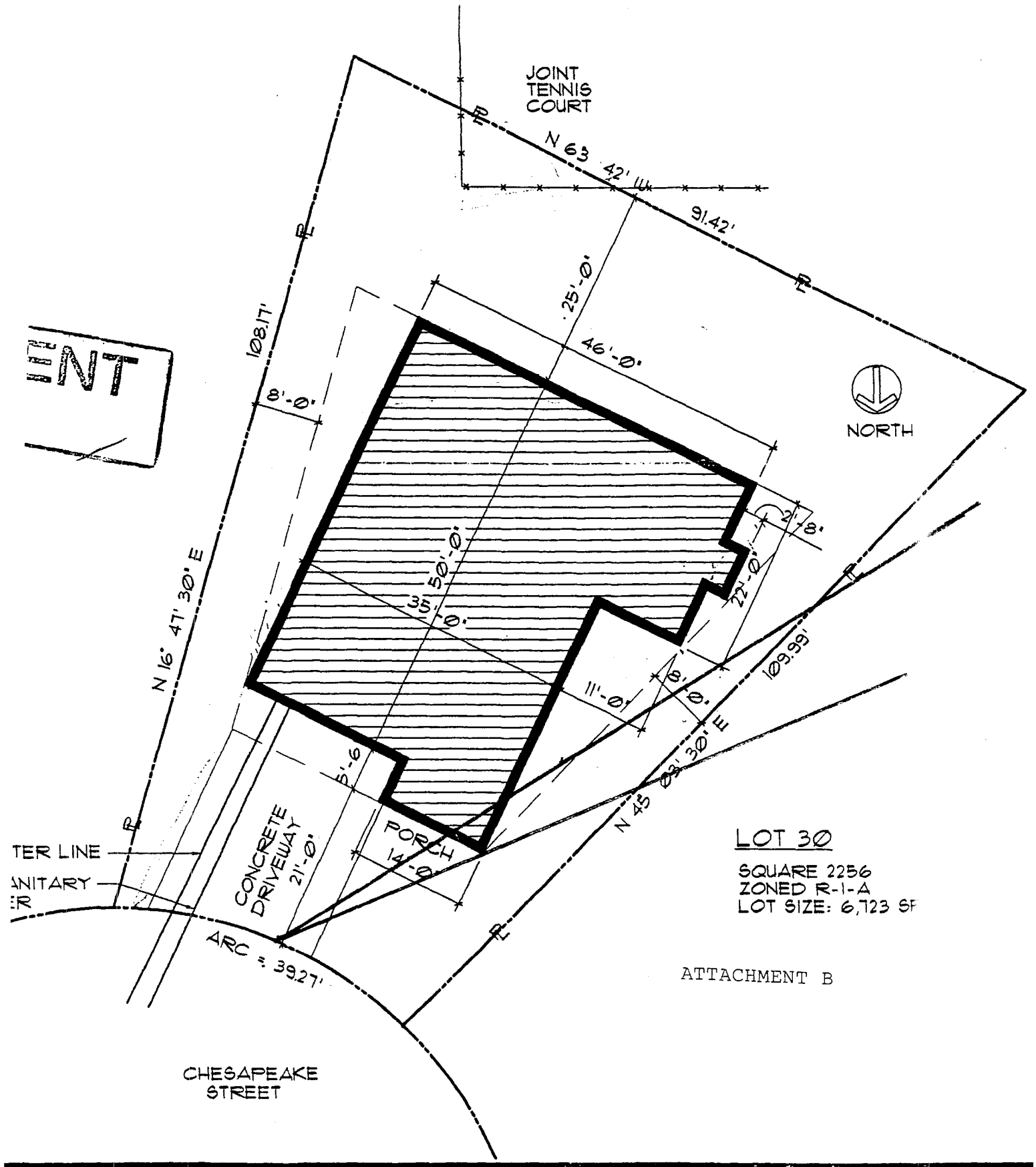
JAMES T. DRAUDE



ATTACHMENT A

THERMAL AND MOISTURE PROTECTION

1. MIN. R-11 INSULATION IN EXTERIOR WALLS BETWEEN EXTERIOR SHEATHING



ATTACHMENT B

THERMAL AND MOISTURE PROTECTION

1. MIN. R-11 INSULATION IN EXTERIOR WALLS BETWEEN EXTERIOR SHEATHING