BOARD OF ZONING ADJUSTMENT
APPLICATION NO. 16987

REPORT OF PARTIES OPPONENT
CONCERNING LINEAR AND AREA MEASUREMENTS
AND OTHER CHARACTERISTICS AS THEY RELATE TO ZONING REQUIREMENTS

Larry Ewers and Robert Stofferson, parties opponent to the above-referenced Application, present for the Board's consideration the following linear and area measurements and accompanying analysis of their significance for zoning compliance purposes.

RECEIVED
D.C. OFFICE OF ZONING
2003 MAR 25 PM 4:41

INTRODUCTION

Applicant Pablo Martinez seeks a special exception under 11DCMR 3104.1 from the area requirements of 11DCMR Sections 403, 404, and 406, to allow a rear deck addition to an existing flat (two-family dwelling) in an R-4 District at 1207 Clifton St., N.W. (Square 2865, Lot 41). Dimensions provided by the applicant and by the D.C. Office of Planning are inaccurate, incomplete, and / or misleading (for example, the Office of Planning states that the deck addition is nine feet above grade, neglecting to mention that the height referred to is for the floor of the deck, but that the railings rise almost another four feet above that, and that the height is in fact as much as fourteen feet above grade at the alley).

REQUIRED AND ACTUAL LINEAR AND AREA MEASUREMENTS

The requirements of the above-referenced sections, and the deviations therefrom which would result from the granting of the application, are summarized in the following table:

Section	Item		Required	Provided	Deviation
403	% Lot Occupancy		[≤1242 sq. ft.] ≤60%	[1530 sq. ft.] 73.91%	[288 sq. ft.] +13.91 %
404	Rear Yard		20 ft.	0	20 ft. -100%
406	Courts:				
		Width:	15 ft.	3.6 ft. (at narrowest point)	11.4 ft. –76%
		Area:	350 sq. ft.	110 sq. ft.	240 sq. ft. –68.6%

Note: Differences between the above figures and those contained in the report of the D.C. Office of Planning are attributable to:

BZA
Case No. 16987
Exhibit No. 33

Board of Zoning Adjustment
District of Columbia
CASE NO. 16987
EXHIBIT NO. 33

a) **measurement discrepancies**; for example, the D.C. Office of Planning reports, based on the applicant's representations, a court width of 5 feet; the parties opponent contend that the actual width is 3.6 ft. (or 4.8 ft. if the court is considered to be non-rectangular [however it should be noted that the applicant's plat represents the court as being rectangular]), pursuant to definition of "width of court" (11 DCMR §199);

b) **calculation discrepancies**; for example, the D.C. Office of Planning failed to include the following in its lot occupancy calculations:

   1) that portion of the [covered] front porch which is within the lot and building lines (possibly omitted by the Office of Planning because the applicant's plan, contrary to the express language of the applicant's signed certification on the face of the plat, does not dimension the covered front porch (identified by the letter "P" on his plat) or clearly include it as part of the building, and the plat submitted with his Application easily leads one to erroneously conclude that an added solid line, rather than the broken line on the original plat, is the building restriction line); approximate dimensions of covered front porch: 8' by 15' (120 sq. ft.), 2.5' (37.5 sq. ft.) of which lies within the lot and building lines, and 5.5' (82.5 sq. ft.) of which, plus two 4.5' high masonry buttresses (9 sq. ft.) lie outside the building restriction line and arguably are not includable in the percentage of lot occupancy calculation;

   2) open courts less than 5 feet (5') in width and closed courts less than 6 feet (6') in width, per 11 DCMR §199 definitions of "building area" and "percentage of lot occupancy;" notably the closed court (width: 3.6' [or 4.8' if considered non-rectangular]; area: 110 sq. ft.) between the building and the west lot line;

   3) portion of the lot lying within lot lines and building lines which is not occupied as building area, but which may be occupied as building area under the provisions of Title 11 (such as courts and /or court niches flanking the covered front porch and [assuming the Application is granted and the rear yard requirement is effectively eliminated] rear deck), pursuant to definition of "percentage of lot occupancy" (11 DCMR §199); (resulting additional area increment: 47 sq. ft.).

c) **code construction discrepancies**; for example, the Office of Planning concludes that a [closed] court width of 5 ft. is required; but the party opponents assert that a 15 ft. minimum width is mandated by 11 DCMR §406.1 for other than one-family dwellings [while the existing court may have complied with zoning requirements when the original structure was built, 11 DCMR §101.5 provides that "[n]o building, structure, or premises shall be used, and no building, structure, or part of a building or structure shall be constructed, extended, moved, structurally altered, or enlarged except in conformity with this title."];

d) **plan errors, omissions, and inconsistencies**; for example,

1) the applicant's plat shows a setback of the front porch of approximately two feet inside the (dashed) building restriction line. The parties opponent contend that the covered front porch actually extends 5.5 ft. beyond the building restriction line, and that the 4.5 foot high masonry buttresses extend another 4 feet beyond that, for a total projection beyond the building restriction line of 9.5 feet.

2) the applicant's plat shows a five foot wide court, while his accompanying plans show (in Plan Sheet A) a court width (for the same court) which, based on the indicated [3/8"=1'-0"] scale, appears to be less than three feet, thus impeaching his signed certification on the face of the plat and therewith the reliability of all of his plans, drawings, and dimensions;

3) most of the applicant's drawings appear to characterize the deck addition as being at the same level as the main floor of the building (e.g. see Plan Sheets B and C). In fact, the deck is elevated above the level of the main floor of the building; a fact which is betrayed in the applicant's plans only by the depiction of the two-step rise (labeled "step") from the main floor level, shown in Plan Sheet A. Furthermore, the vertical dimensions shown (i.e. on Plan Sheet B), while purporting to document the height of the deck, do not show the point of maximum height, which is fourteen feet above the driveway below it at the alley. [Plan Sheet C reveals plans to add a second story to the deck in the future, making it even larger—the applicant doesn't say, nor do the plans specify, whether that level will also extend to the alley, occupying the entirety of what would, but for the granting of a special exception, be the required rear yard, so one can only speculate as to how that will affect light, air, privacy, and the character, scale,

and pattern of houses along the street frontage as viewed from the alley and public ways, but presumably, if the Application is approved, the applicant will then have the right to pyramid his creation further skyward, based on the Board's implicit approval of the future construction provisions of his plans (see 11 DCMR §§ 3125.7, 3125.8), which are sufficiently vague as to arguably cover almost any construction scenario; the regulations don't appear to define the term "future," but logically it could mean as early as tomorrow; thus might the neighbors learn the meaning of the term "Trojan Horse".]

ANALYSIS

The applicant has requested a special exception which would allow him to use the entire otherwise-required rear yard area (20' by 18,' or 360 square feet) as building area. This would be in addition to the 65' (measured back from the building restriction line) by 18' (lot width), or 1170 square feet, that he is already allowed full use of in an R-4 zone (no side yard required). Granting of the application would therefore provide 1530 square feet percentage lot occupancy based on the definition of "percentage of lot occupancy" contained in 11 DCMR §199, and that does not even include the 97 sq. ft. that the structure occupies outside the building restriction line—if that additional building area were added, it would bring the percentage of lot occupancy to 78.6% (1627 sq. ft.)

Granting the Application would effectively entirely eliminate the requirement of a rear yard, would allow a court less than one-third the required width and less than one-third the required area, and, fatally to the Application, would permit the percentage of lot occupancy to be increased to 73.91%, thus exceeding the Board's authority (see 11 DCMR §223.3). Even assuming however that the Board did have such authority, granting the application would be inconsistent with the intent of the zoning regulations, in that it would allow what would have been, but for the granting of a special exception, the entire required rear yard area to be occupied by a structure, in derogation of 11DCMR §199, which provides that a rear yard "shall be for the full width of the yard and shall be unoccupied, except as specifically authorized in this title," and that "a yard required by the provisions of this title shall be open to the sky from the ground up, and shall not be occupied by any building or structure, except as specifically provided by this title. No building or structure shall occupy in excess of fifty per cent (50%) of a yard required by this title." All of the other houses along the subject street frontage comply with this requirement. If the special exception is granted,

the Applicant will indeed be a "special exception" in the neighborhood, with nothing clearly appearing to warrant such special treatment.

CONCLUSION

The report of the D.C. Office of Planning must be rejected as based on unreliable and incomplete data provided by the applicant, on erroneous interpretations of the zoning regulations, and on a selective and apparently biased reading of the Comprehensive Plan (for example,

1) it ignores Section 102, titled STABILIZING AND IMPROVING THE DISTRICT'S NEIGHBORHOODS, and identified in Section 101.1 as the first of the ten major themes of the Comprehensive Plan, which states (Section 102.2) that "[m]any city neighborhoods are historic or possess social, economic, and physical qualities that make them unique and desirable places in which to live. These qualities can also lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods desirable. These pressures and potential adverse impacts must be controlled to ensure that the character of our neighborhoods is preserved and enhanced."

2) it ignores Section 1222.1(c), which cites as a policy in support of urban design objectives:

"To design Ward 1's buildings to include the use of appropriate arrangements of building materials height, scale, massing, and buffering to complement the immediate areas" (both the Office of Planning report and the Application for Special Exception fail to demonstrate why the subject deck addition must be so high and so large);

3) the objectives it cites are irrelevant to the instant case—the deck addition was built after the house had been renovated, sold, and returned to housing use (occupied). Chairperson Griffis ruled that what happened before is irrelevant and immaterial (had he not so ruled, the parties opponent would have offered extensive testimony to rebut the presumptions implicit in the Office of Planning report). Therefore, all of the references in the Office of Planning report to the Comprehensive Plan must be disregarded, as must its recommendation based (at least in part) thereon.

The Board should require, as a condition of further consideration of his Application, that the applicant provide adequate plans and drawings (including complete plans for the "future" second-story level of the deck as detailed in Plan Sheet C of the Application if such "future" construction will be implicitly sanctioned by the granting of the Application), certified for accuracy by a licensed surveyor and / or architect.

Respectfully submitted,

Larry Ewers
1205 Clifton St., N.W.
Washington, D.C. 20009
(202) 332-0834

Robert Stoffierson
1209 Clifton St., N.W.
Washington, D.C. 20009
(202) 387-4502

Attachments:

Plat (believed to be reasonably accurate, but not prepared by licensed professional and subject to any necessary amendment or correction) p. 10

Landtech Plat of 1209 Clifton St, also showing outline of 1207 Clifton St. p. 11

Table of Rear Yard Depths p. 7

Key to Photographic Exhibits pp. 8-9

Photographic Exhibits

TABLE OF REAR YARD DEPTHS

1201 Clifton St.		17.5 ft.
1203 Clifton St.		17.5 ft.
1205 Clifton St.	22.5 ft.= distance from alley to building wall, reduced by extended eaves to effectively =	17.5 ft.
1207 Clifton St.		0
1209 Clifton St.		13 ft.
1211 Clifton St.		17.5 ft.
1213 Clifton St.		40 ft.
1215 Clifton St.		37 ft.

KEY TO PHOTOGRAPHIC EXHIBITS

A. Rear yard (enclosed by fence) of 1201 Clifton St., viewed from alley at 12th St.

B. Rear yard of 1203 Clifton St., viewed from alley

C. Rear yard of 1205 Clifton St., viewed from alley

D. Deck addition occupying former rear yard of 1207 Clifton St., viewed from alley looking east toward 12th St.; note scale and contrast with open rear yards of 1201, 1203, and 1205 Clifton St. (at lower right)

E. Party opponent Robert Stofferson (approx. 6 feet tall) dwarfed by 1207 Clifton St. deck addition

F. Deck addition to 1207 Clifton St., viewed from alley looking east toward 12th St., showing visual intrusion upon character, pattern, and scale of houses along subject street frontage (open rear yards of [from left] 1201, 1203, and 1205 Clifton St., respectively, are to left of subject deck addition)

G. View from alley behind 1203 Clifton, showing rear yard of 1205 Clifton, deck addition to 1207 Clifton

1201, 1203, and 1205 Clifton St. to left of subject deck addition

H. Deck addition to 1207 Clifton St., viewed from 1205 Clifton St. rear yard at alley; note elevation of main deck structure above main floor level of house

I. [omitted]

main floor level of house

J. Deck addition to 1207 Clifton St. overlooking and thereby defeating "privacy fence," viewed from rear yard of 1209 Clifton St. at alley

K. Deck addition to 1207 Clifton St. overlooking "privacy fence" into 1209 Clifton St. rear yard and house, viewed from 1209 Clifton St. 1st floor window

L. Deck addition to 1207 Clifton St. overlooking "privacy fence" into 1209 Clifton St. rear yard and house, viewed from 1209 Clifton St. 2nd floor window

M. Deck addition to 1207 Clifton St., overlooking rear yards of 1205 (obscured from view by deck in foreground), 1203, and 1201 Clifton St. (fenced in background), respectively; view is toward 12th St. (east)

N. View toward west from 1209 Clifton St., showing rear yards of 1211, 1213, and 1215 Clifton St. (fenced, in background), respectively

O. Rear yard of 1209 Clifton St., viewed from alley; deck addition to 1207 Clifton St. is at left

P. Rear yard of 1211 Clifton St., viewed from alley

Q. Rear yard of 1213 Clifton St., viewed from alley

R. Rear yard of 1215 Clifton St., viewed from within yard

S. Covered front porches of 1209 (foreground), 1207, 1205, 1203, and 1201 Clifton St., respectively

T. Close-up of image shown in Exhibit "R," showing scale (tape measure reading "7 ft." at point one foot short of outside edge of brick support pillar)

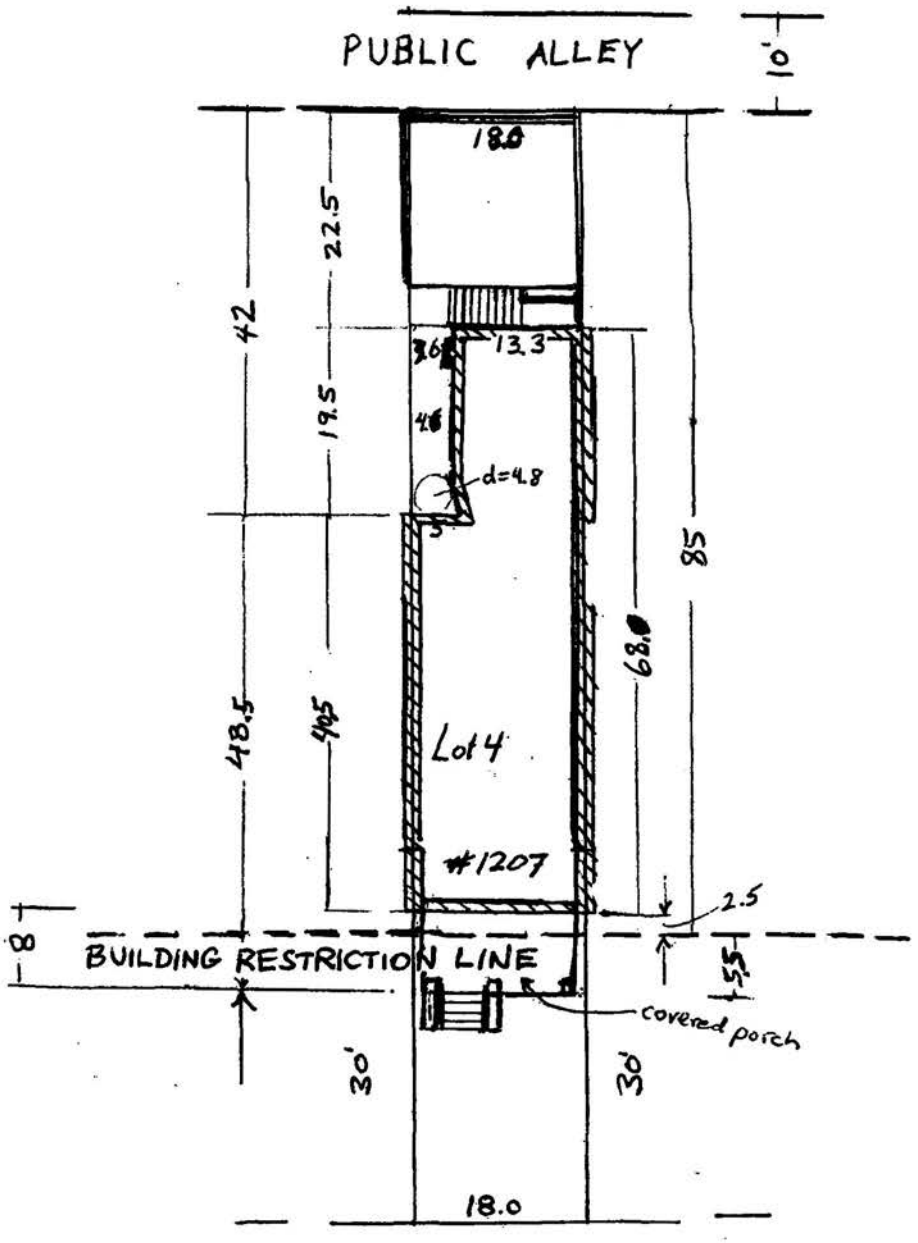
U. Court of 1207 Clifton St. (at lower right in photo)

V. Court of 1207 Clifton St.

SQUARE 2865 LOT 41

Scale: 1 inch = 20 feet

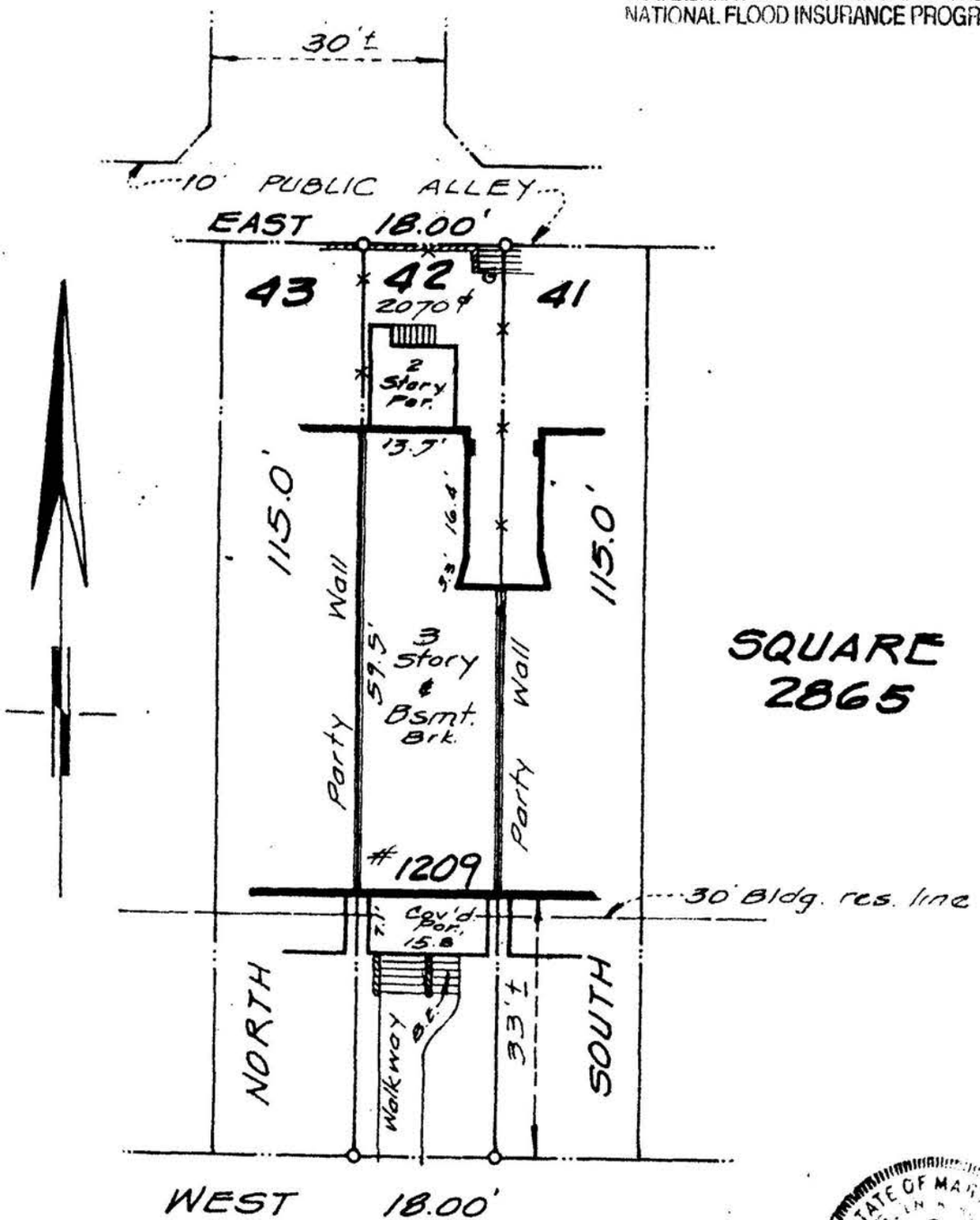
PLAT



CLIFTON STREET

LANDTECH ASSOCIATES, INC.
7307 BALTIMORE AVENUE SUITE 214
COLLEGE PARK, MARYLAND 20740

NOTE: THIS PROPERTY LIES IN FLOOD ZONE C, AN AREA OF MINIMAL FLOODING AS DELINEATED ON THE MAPS OF THE NATIONAL FLOOD INSURANCE PROGRAM



SQUARE 2865

STATE OF MARYLAND
PROPERTY LINE SURVEYOR

NO TITLE REPORT FURNISHED

LOCATION SURVEY OF 1209 CLIFTON STREET, N.W. WASHINGTON, D.C.	LOT: 42	SQUARE: 2865
	LIBER: COUNTY 24	FOLIO: 33
	DATE: 10-19-99	SCALE: 1" = 20'
	CASE NO: T-9540	FILE NO: SC99203

CERTIFICATION: I hereby certify that the position of all the existing visible improvements on the above described property has been carefully established in relation to the apparent title lines and that, unless otherwise shown, there are no visible encroachments. This is not a property line survey and should not be used for the erection of fences or any other improvements or for permit applications.

GRADEN A. ROGERS ~ PROP. L.S. MD. LIC. NO. 119



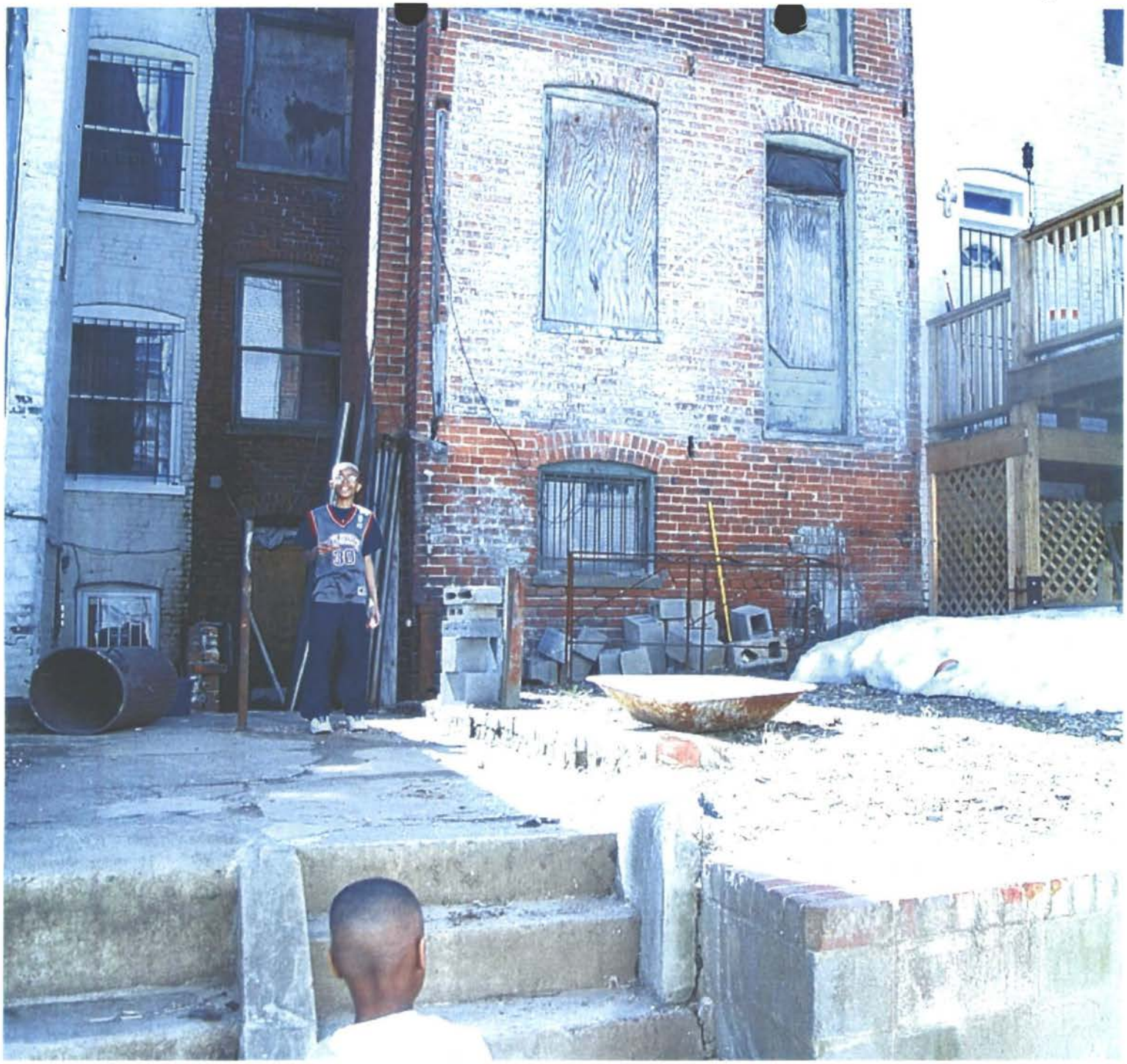
A

(201



B

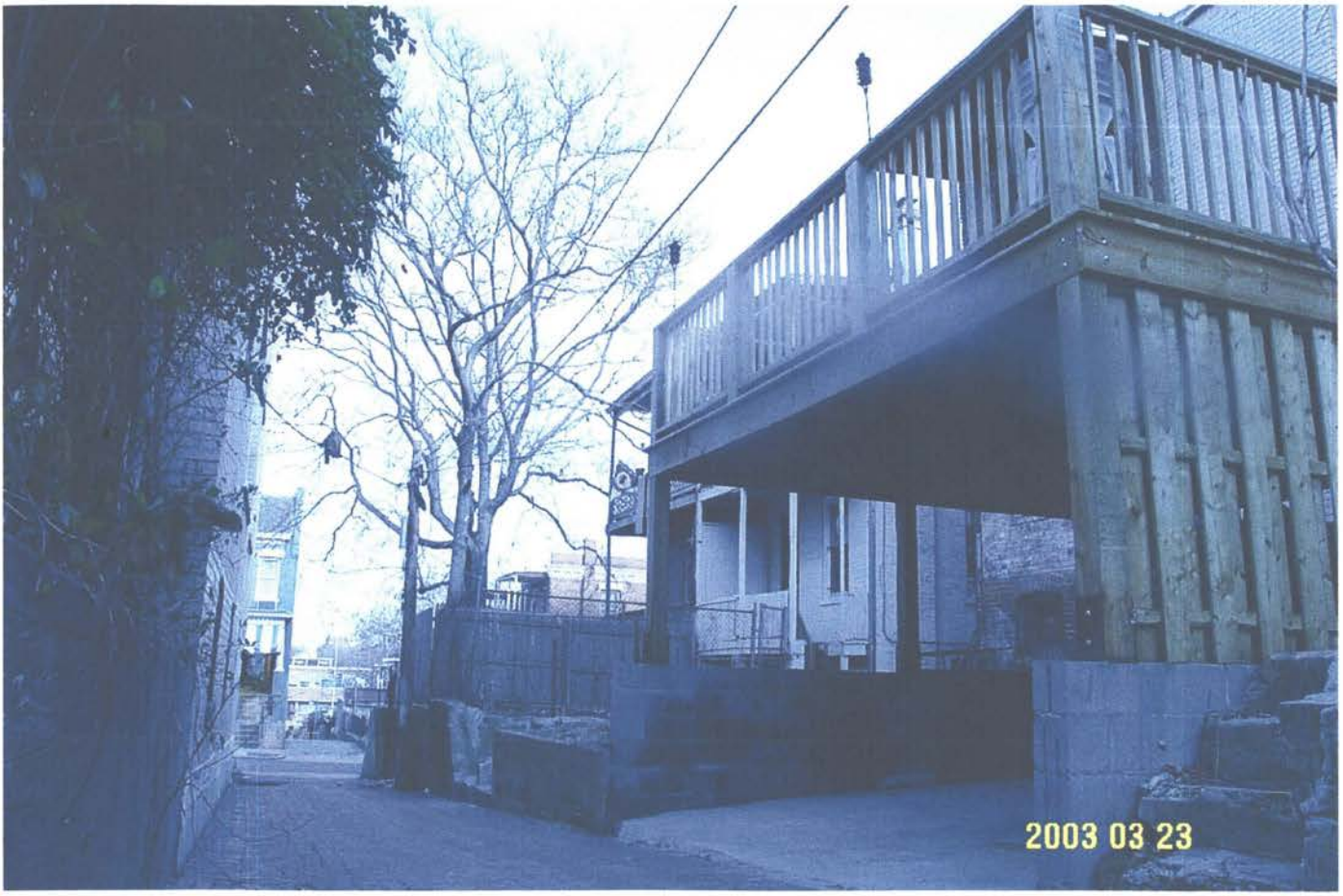
1203



C

D

E



F

F



G



H → [skip to "J" - "I" has been omitted]



J



K



L



M

Σ



N

N



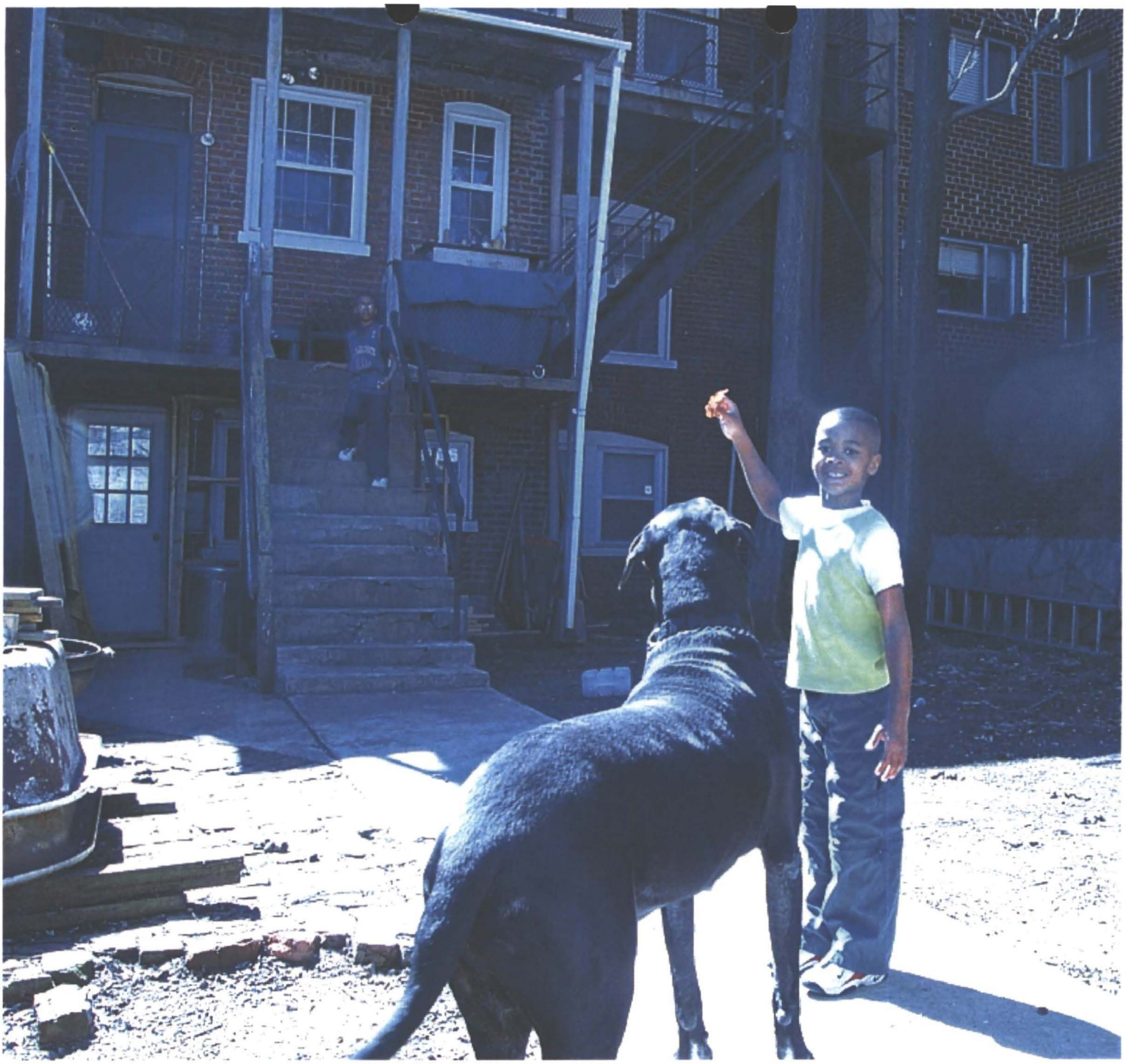


P



Q

1213



R

1215

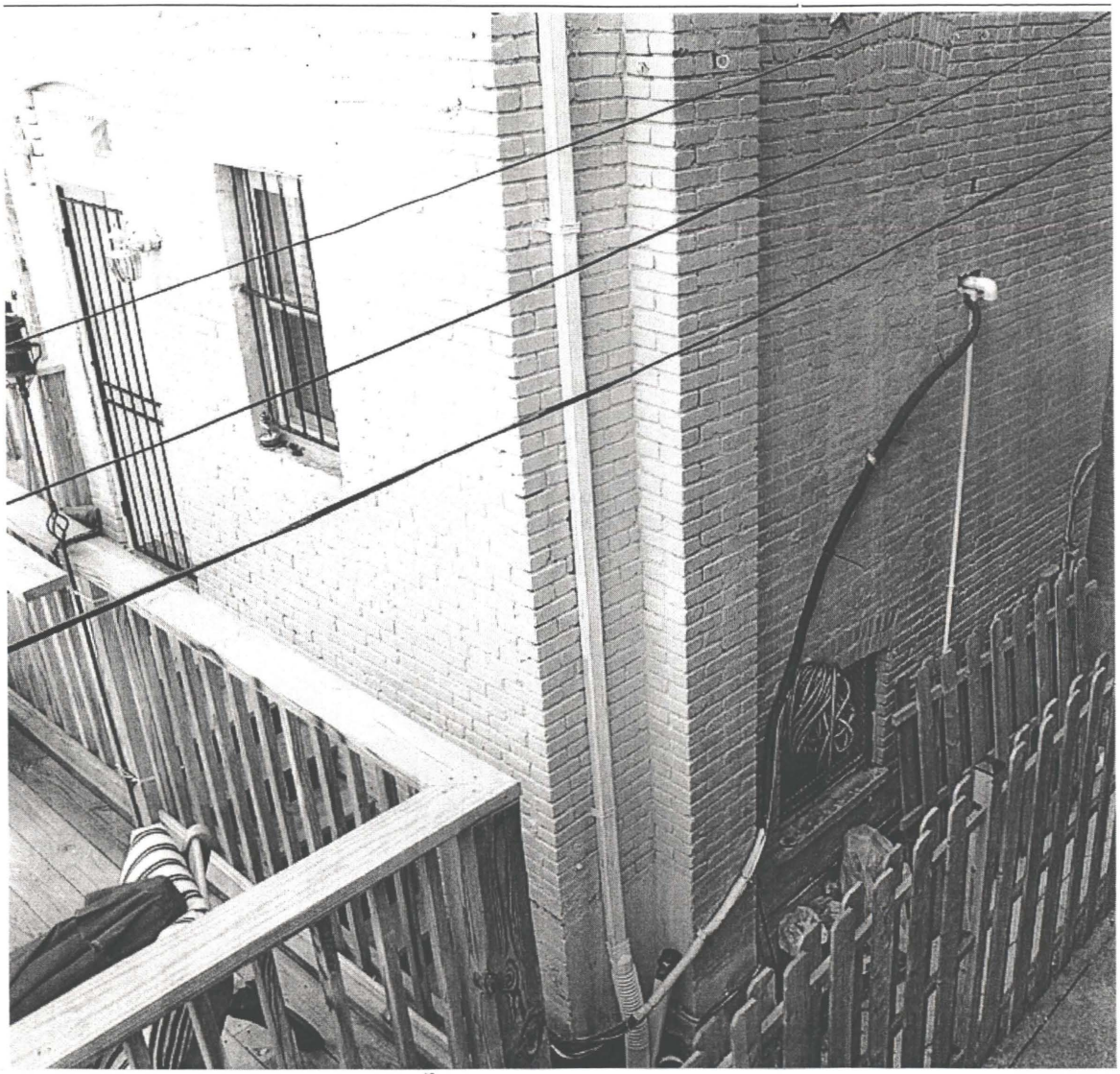


S

S



T



2003 03 23

CERTIFICATE OF SERVICE

I, Larry Ewers, hereby certify that I mailed this 25th day of March, 2003, first class postage prepaid, a copy of the foregoing REPORT OF PARTIES OPPONENT CONCERNING LINEAR AND AREA MEASUREMENTS AND OTHER CHARACTERISTICS AS THEY RELATE TO ZONING REQUIREMENTS, with attachments, to Pablo Martinez, 1207 Clifton St., N.W., Washington, D.C. 20009; and additionally that I hand-delivered a copy addressed to Pablo Martinez to premises 1207 Clifton St., N.W., Washington, D.C. this 25th day of March, 2003.

_____