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VIA IZIS

Marnique Heath, Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

May 13, 2016

**Re: Application No. 17535-A — 3254 O Street NW (Square 1230, Lots 125 and 825)
Applicant's Response to ANC 2E's Supplemental Submission**

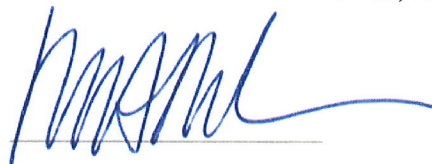
Chairperson Heath and Honorable Members of the Board:

On behalf of Mary Goodman, please find enclosed the Applicant's Response to ANC 2E's Supplemental Submission for the above-referenced application. At the conclusion of the hearing on April 5, 2016, the Board directed the Applicant and ANC 2E to file a Supplemental Submission by May 6th and a Response by May 13th. The Board set the case down for continued hearing on May 17th.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP



By: Meredith H. Moldenhauer

CC (via email): Jeff Jones, SMD 2E03
Stephen Mordfin, Office of Planning
Richard Murphy, Jr., ANC 2E Counsel

Board of Zoning Adjustment
District of Columbia
CASE NO. 17535A

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF
MARY GOODMAN**

**3254 O STREET, NW
ANC 2E**

APPLICANT’S RESPONSE TO ANC 2E’S SUPPLEMENTAL SUBMISSION

This Response is submitted on behalf of Mary Goodman (the “Applicant”), in response to supplemental submission (“Submission”) filed by the Advisory Neighborhood Commission 2E (“ANC 2E”).

I. THE PRIOR CASE HISTORY IS NOT GERMANE TO THE PRESENT CASE

The number of times an applicant has been before the Board or cases requesting relief under different zoning provisions has no bearing on a request for special exception relief pursuant to a completely different provision of the Zoning Regulations. Each application before the Board must rest on its own facts and must be evaluated pursuant to the *applicable standard* associated with the relief being requested.

A. Findings in reference to the prior plans are immaterial to the present case

Notwithstanding the above, given ANC 2E’s repetitive citation of and great reliance on BZA 16696, the Applicant notes an important distinction. The plans reviewed by ANC 2E, the Office of Planning, and the Board in 2000 are entirely different than the plans in the subject case, *see* Architectural Plans circa 2000 at **Tab A**. As the attached plan demonstrates, the design and character of the proposed addition in 2000 is wholly different from the addition currently planned. A cursory review of the old, suburban style, alley dwelling plan elucidates the Board’s finding that the proposed addition “would drastically alter the character of the zone district.” *BZA Order 16696 of Craig and Ann Goodman* at 23 (2002). Now, 16 years later, the Applicant has proposed a *completely* different design, under a *different* provision of the Zoning Regulations, and naturally has a different set of plans. The addition in the

proposed plans, see **BZA Exhibit 8**, was specifically designed to match the historic carriage house directly across the alley and to be compliant with the intent of the zoning regulations.

In addition to having a completely different design, the previous case requested relief pursuant to a different provision of the Zoning Regulations and the Board reviewed that case under a different legal standard. In 2000, the Applicant sought a variance from § 2500.4 but the Board concluded that the proposed project would require a use variance. A use variance has the highest burden of proof. “To qualify for such a variance, an applicant must meet the heavier “undue hardship” burden of proof.” *BZA Order 16696 of Craig and Ann Goodman* at 18, quoting, *Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 233 (D.C. 1973).

The current project request special exception relief. Special exceptions are expressly provided for in the District of Columbia Zoning Regulations, and unlike a variance, relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. The two cases are not analogous. The relief requested, the burden of proof, the standard of review, and the plans are all different. Furthermore, 16 years have passed and the Applicant’s marital and financial circumstances have changed. We understand that personal circumstances are not germane to the Board’s review of the zoning relief requested, but simply note this in response to ANC 2E’s continued intention to dwell on the Applicant’s prior goals and previous statements.

II. THE PROPOSED PROJECT COMPLIES WITH THE INTENT AND MEANING OF § 202.10

ANC 2E accuses the Applicant of seeking to circumvent the Board’s prior decisions or the Zoning Regulations. See Submission at 3. These allegations are false and unwarranted. Times change. Circumstances change. The previous BZA cases were filed in 2000 and 2006, 16 and 10 years ago respectively. The Zoning Regulations anticipates and recognizes that projects can be modified. Section

3126.11¹ of the Zoning Regulations allows appellants or applicants to institute a new appeal or application on the *same facts* after one year from the order of denying the appeal or application. Over the course of a decade, the Applicant's circumstances have changed and she has filed a new application, under a different provision of the Zoning Regulations, and the application contains new facts. This is not the re-litigation of an old case, previously decided. This is the first time the Applicant is requesting to have an accessory apartment at her Property and it is within the Board's purview to review this request on its own merits.

III. A WAIVER OF ONLY TWO OF THE REQUIREMENTS OF § 202.10 ARE BEING REQUESTED

ANC 2E posits that the Applicant is seeking relief from several provisions of § 202.10. This is false. The Applicant seeks relief from the detached dwelling provision of § 202.10's preamble and paragraph (d) of § 202.10. Apart from the preamble and paragraph (d), the Project complies with all other provisions of § 202.10. The Property is currently improved, the proposed project shows an accessory unit within a single existing structure, and the Project does not *convert* garage space. The Property contains 5,400 square feet of land area, the house has and will have more than 2,000 square feet of gross floor area, the accessory apartment will not occupy more than 25% of the gross floor area of the house, no additional entrances to the house will be created, the Applicant intends to occupy either the principle dwelling or the accessory apartment, and the Applicant does not operate a home occupation at the premises. The Project, even though it is requesting relief from two of the requirements, will be able to add an accessory apartment without changing the single-family character or appearance at all.

Further, if the Zoning Commission wished to create 8, 10, 15, or 20 requirements, then they would have separated them into multiple alphabetical paragraphs- they did not. The provision for lot occupancy or gross floor area is in one paragraph and it is one requirement.

¹ Section 3126.11: An appellant or applicant whose appeal or application has been denied shall not institute a new appeal or application on the same facts within one (1) year from the date of the order upon the previous appeal or application.

IV. THE PROPOSED PROJECT MAINTAINS A SINGLE-FAMILY RESIDENTIAL APPEARANCE AND CHARACTER IN THE NEIGHBORHOOD

The Project maintains the single-family residential appearance and character of the neighborhood. The ANC 2E's contention that the proposed project runs counter to § 202.10 because the "house and the garage apartment would appear to be separate structures" is unfounded. Submission at 6. The proposed structure will resemble a carriage house, many of which exist throughout Georgetown, see Examples of Georgetown carriage houses at **BZA Exhibit 36, slides 17-18**. ANC 2E goes on to assert that the proposed structure "would be the only structure on the alley with a full two-story façade, the only structure with a roof line as high as 20 feet, and most importantly, the only dwelling on the alley-with residents and their guest accessing the apartment through the alley and the adjoining streets." Submission at 8. These claims completely ignore the fact that the proposed project's design copied the design of the historic carriage house across the alley and the proposed structure is only one foot taller than the historic carriage house across the alley. In addition, three properties with balconies and/or residential windows face the alley. More importantly, *accessing* the proposed accessory apartment through the alley will not change the character of the neighborhood at all since most of the residents with carriage houses or garages facing the alley access their dwelling from the alley.

The Project was conscientiously designed with the appearance and character of the neighborhood in mind. Thus, while it will need relief from the preamble of § 202.10, the appearance of the Property and character of the neighborhood will not change. The view from the front will remain the same, and the view from the rear will be like that of other two-story garages/carriage houses in the neighborhood.

V. OFFICE OF PLANNING AND COMMUNITY SUPPORT

The Project has received the support of the Office of Planning (OP), which found that the "requested waivers represent minimal areas which would not change the principal use as a one-family residential structure" and the proposed design, would maintain "the character of the neighborhood." See, OP Report at **BZA Exhibit 30**. As requested by the Board, the Applicant also obtained the support of

several of her neighbors. While the neighbors she received support from may not be her adjacent neighbors, a majority of the letters (23 out of 27) come from neighbors that live within 200 feet of the Property. ANC 2E's assertion that a tenants' interest concerning this project "diverge significantly from homeowners" and the insinuation that there is a distinction between renters and homeowners, directly conflicts with the District's and the Board's long standing goal of establishing that all District residents, whether tenant or homeowner, are equal members of the community who's opinions are weighed the same. The Applicant went to her neighbors that live within the immediate vicinity and obtained letters of support from residents that are valuable members of the community and that contribute to the character and richness of Georgetown.

Respectfully submitted,

GRIFFIN, MURPHY,
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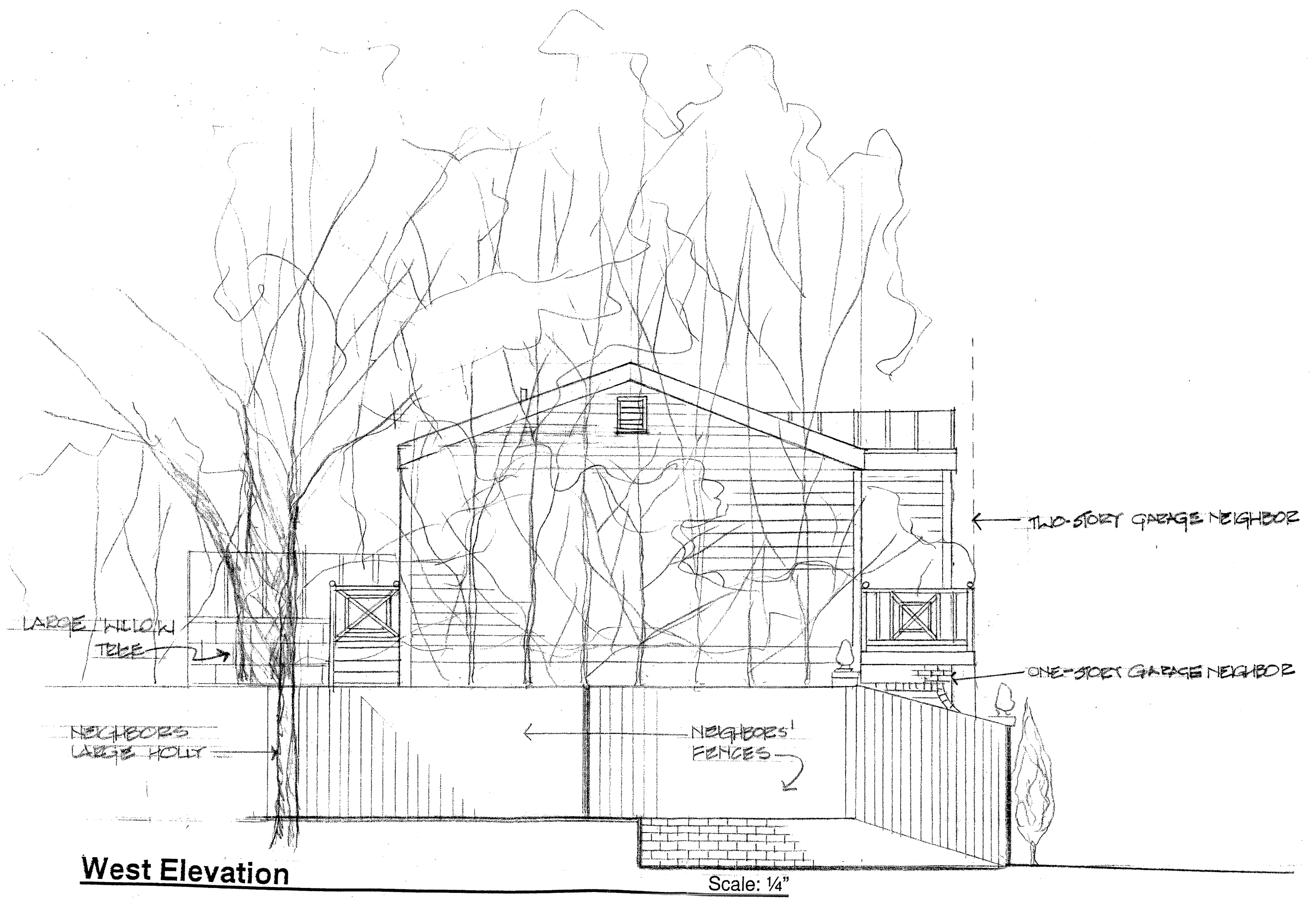
TAB A

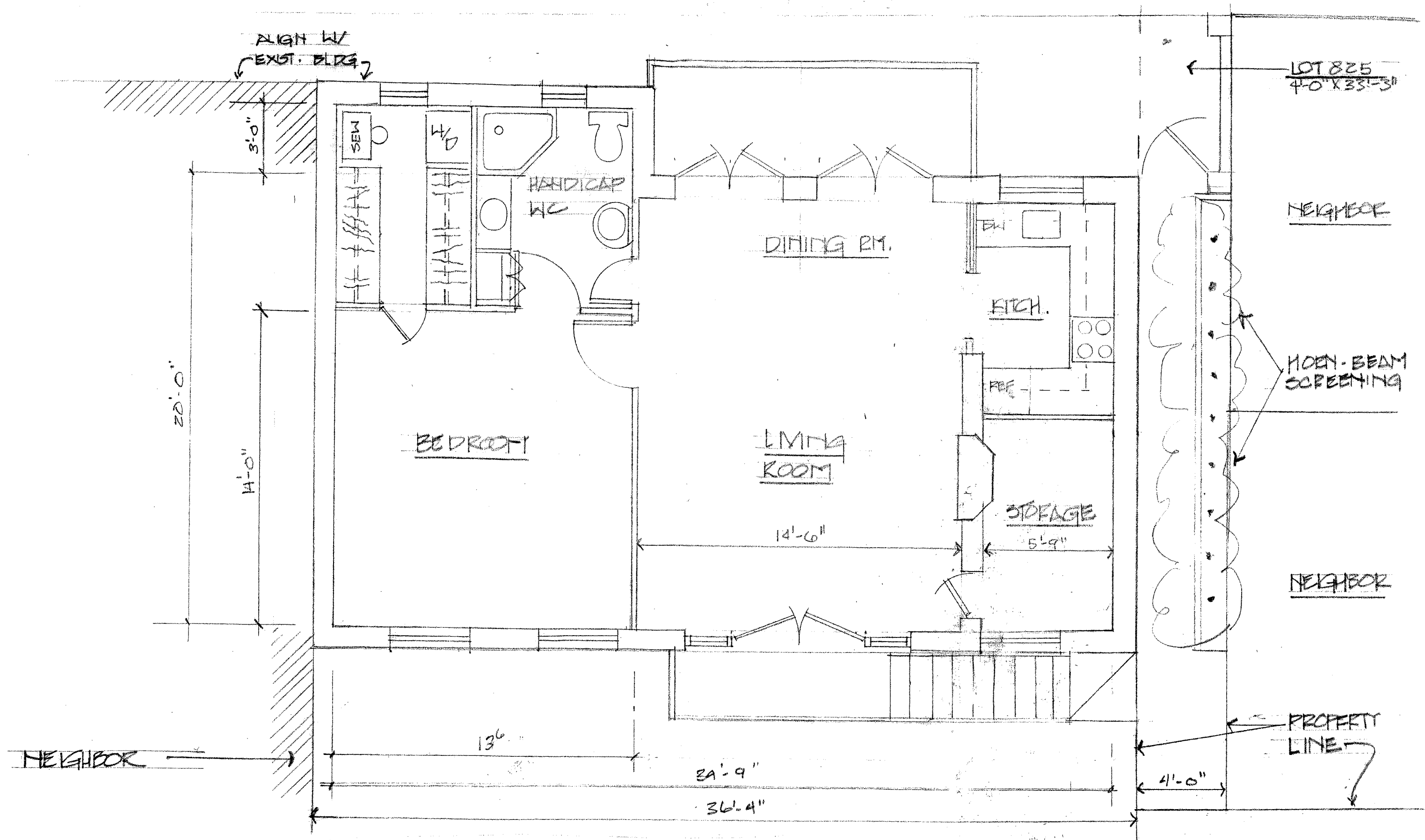


South Elevation

NOT HISTORIC

Scale: 1/4"





Floor Plan

Scale: 1/4"

NEIGHBOR