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23067

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

FEB 13 2017

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson. Jr., Circuit Court Judge

Trial Court Case No. 2015-CP-10-6186
Appellate Case No: 2016-001530

Thomas S. Tisdale, Park R. Dougherty
and Martha T. Dougherty.....Appellants,

v.

City of Charleston, City of
Charleston Board of Architectural Review,
Eugene M. Woodward and
Janice S. Woodward.....Respondents.

RECORD ON APPEAL

VOLUME II

Capers G. Barr, III
SC Bar No: 00542
Barr, Unger and McIntosh
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P.O. Box 1037
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Attorney for Appellants

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(843) 722-2867 (Fax)
tdomin@clawsonandstaubes.com
Attorney for City of Charleston, City of
Charleston Board of Architectural Review

G. Trenholm Walker, Esq.
John P. Linton, Jr., Esq.
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Walker@WGFLAW.com
Linton@WGFLAW.com

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Thomas S. Tisdale, Park R. Dougherty and
Martha T. Dougherty,

Plaintiffs,

vs.

The City of Charleston, City of Charleston
Board of Architectural Review, Eugene M.
Woodard and Janice S. Woodward,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

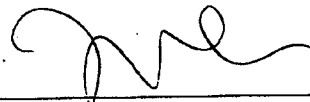
CASE NO.: 2015-CP-10-6186

**NOTICE OF FILING BOARD OF
ARCHITECTURAL REVIEW PLANS,
DRAWINGS AND ADDITIONAL
MATERIALS**

PLEASE TAKE NOTICE that the Defendants, The City of Charleston and City of
Charleston Board of Architectural Review, have this day filed the following:

1. Plans and drawings;
2. Presentation to BAR dated August 26, 2015;
3. Presentation to BAR dated September 9, 2015; and
4. Presentation to BAR dated October 14, 2015.

CLAWSON AND STAUBES, LLC



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Bar No.: 65264

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

Fax: (843) 722-2867

Email: tdomin@clawsonandstaubes.com

Attorney for The City of Charleston and City of
Charleston Board of Architectural Review

Charleston, South Carolina
February 1, 2016

FILED
2016 FEB -2 AM 10:34
JULIE J. ARMSTRONG
CLERK OF COURT

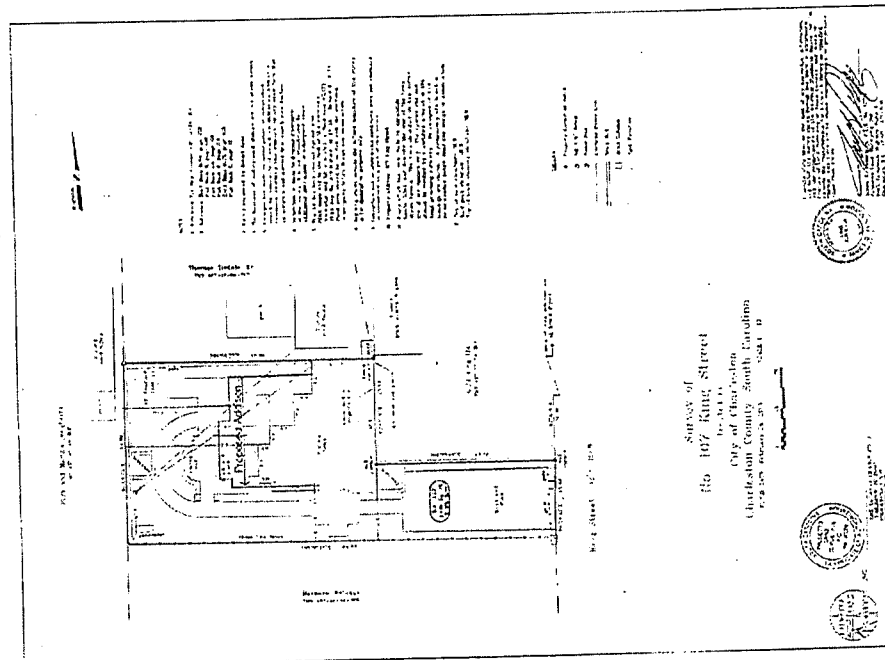
102107

BOARD OF ARCHITECTURAL REVIEW
 APPLICATION # 159-09-4 REQUEST: Addition to roof
 of property; minor modifications to existing structure
☐ APPROVED ☐ AS SUBMITTED ☒ NEW CONSTRUCTION
☐ DENIED ☒ WITH CONDITIONS ☐ ALTERATION
☐ DEFERRED ☐ DEMOLITION

NOTED: Deferral for review based on staff comments 1-5
 and Board comments to reconsider a smaller total footprint; decrease

DATE 4/11/15 *LMH*
 PRESERVATION (OR DESIGNATE)
 THIS APPROVAL, EXPIRES IN TWO YEARS, IT DOES NOT CONSTITUTE APPROVAL BY
 OTHER CITY DEPARTMENTS OR DEPARTMENTS.

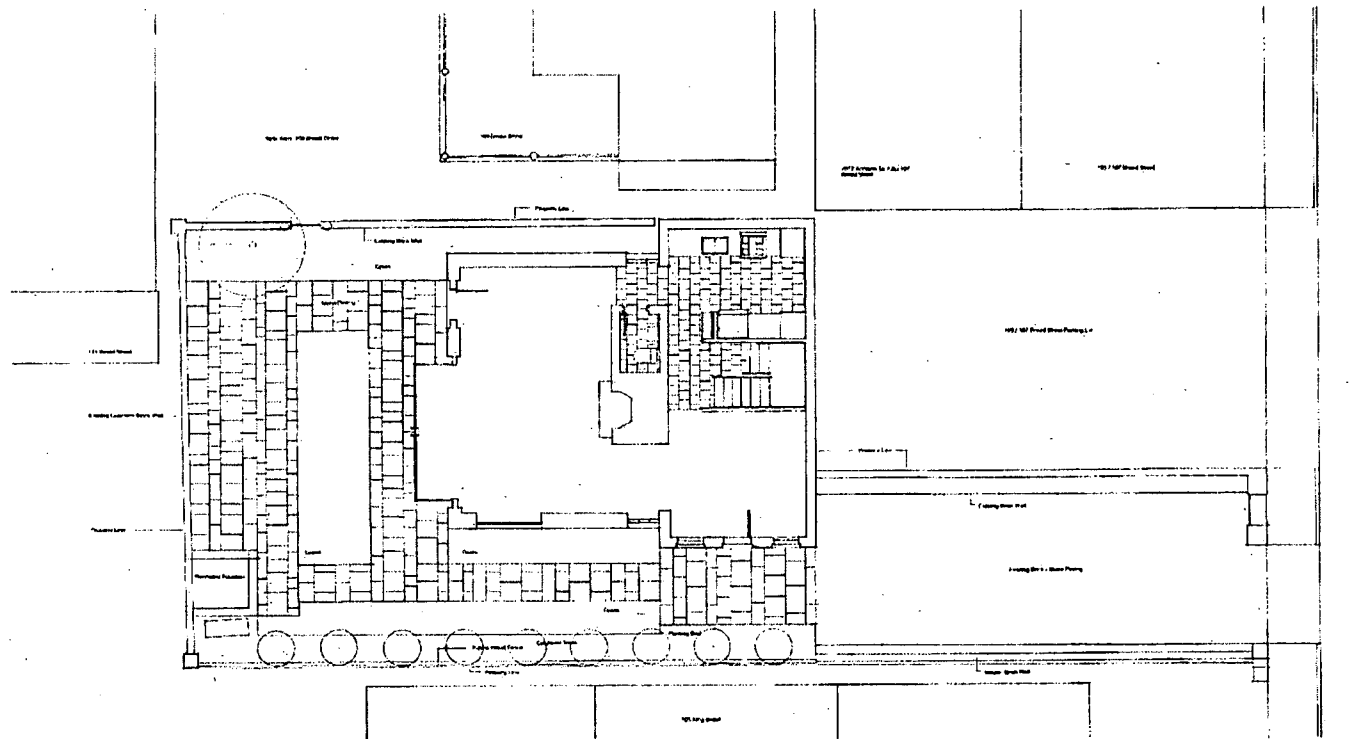
height
 & design
 of "wind
 wall"



- ⊗ Lot of historic fabric & how of house being removed
- ⊗ Not great from Preservation point of view but of these notes are not visible.
- Req: c/a w/conditions

"CITY SET"

Zoning
 24-5: 25% of Property 3,470 SF
 Proposed Improvement 1,755 SF
 Area (Min.) 3,470 SF
 Court Yard: 0
 Plot: 3,470 SF
 Existing Building Footprint 672 SF
 Proposed Footprint 1,010 SF



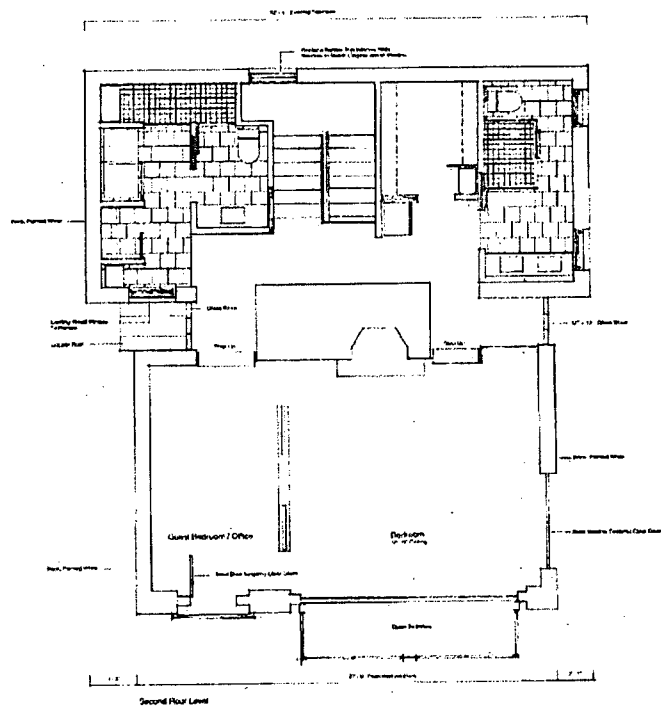
Site Plan

$$V_T = 1.0$$

Addition And Modifications to
 107 King Street
 Charleston, South Carolina
 Board Of Architectural
 Review - Design Concept
 Submission

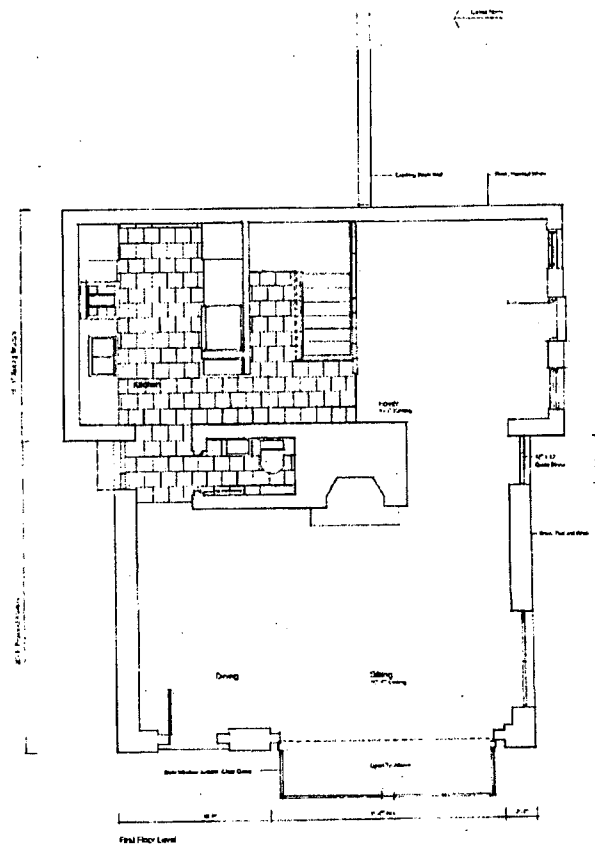
EPPS ARCHITECTURE

10/10/2006
10/10/2006



Floor Plan

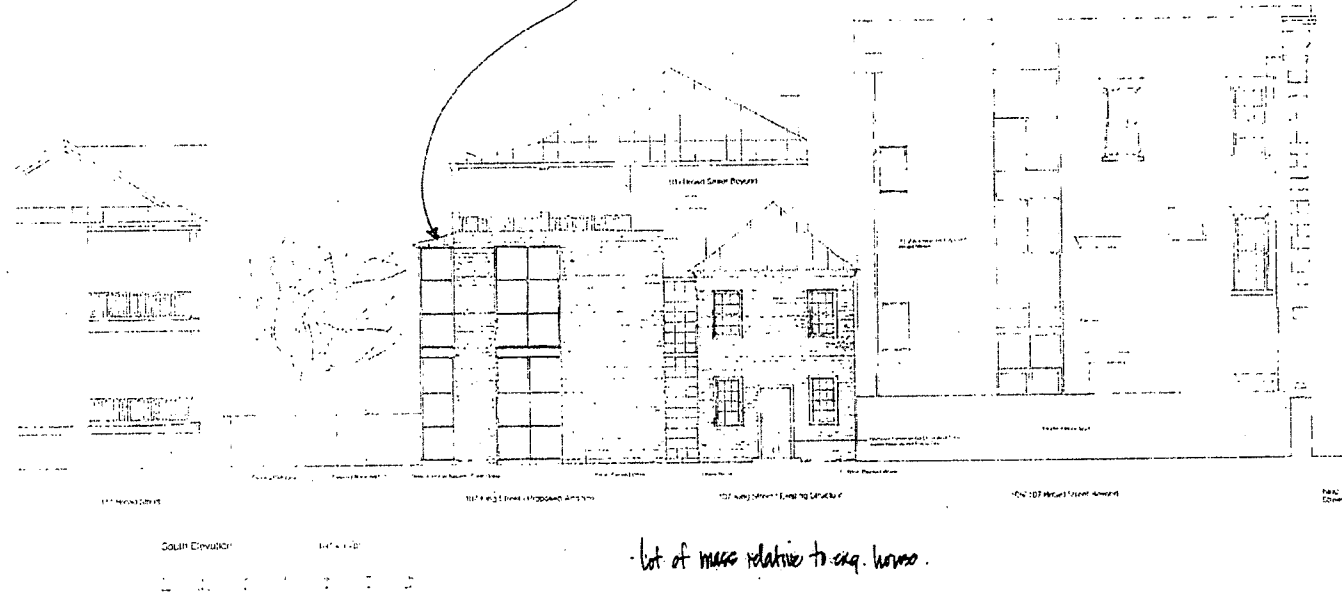
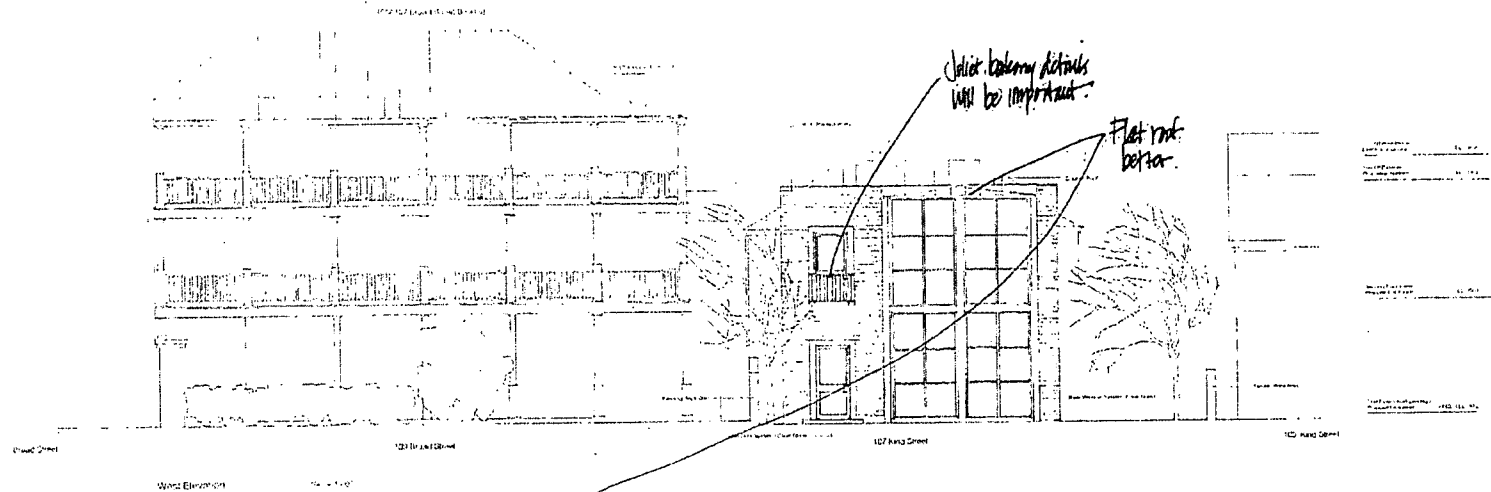
3/4" = 1' 0"



Addition And Modifications to
107 King Street
Charleston, South Carolina
Board Of Architectural
Review - Design Concept
Submission

EPHS ARCHITECTURE

Sheet 2 of 3
August 13, 2016

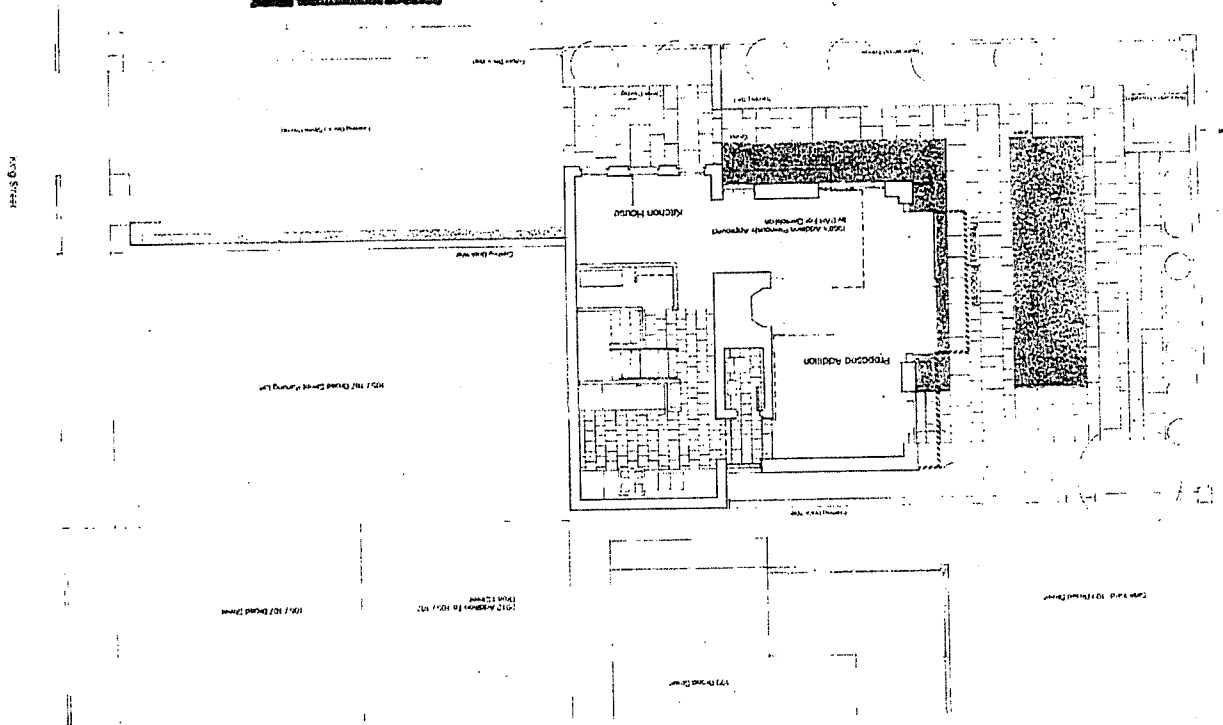


Approval and Modifications to
107 King Street
Charleston, South Carolina
Board of Architectural
Regulation - Design Concept
Submission
JPPS ARCHITECTURE

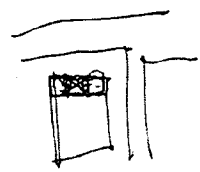
Board Of Architectural
Review - Design
Concept Submission
EPOS ARCHITECTURE
10/14/15
107 King Street
South Carolina
Charleston
Addition And
Modifications To

"CITY SET"

10/14/15
107 King Street
South Carolina
Charleston
Addition And
Modifications To



* Mention cannot see mass id. to eq.
They have brought down height and reduced footprint.
Do a walk on the brick, not opaque paint.
Pls. c/r w/ conditions + F&Bs.



Total Gross Area
Existing: 1152 S.F.
Proposed: 1764 S.F.
Area of Proposed
Addition: 612 S.F.

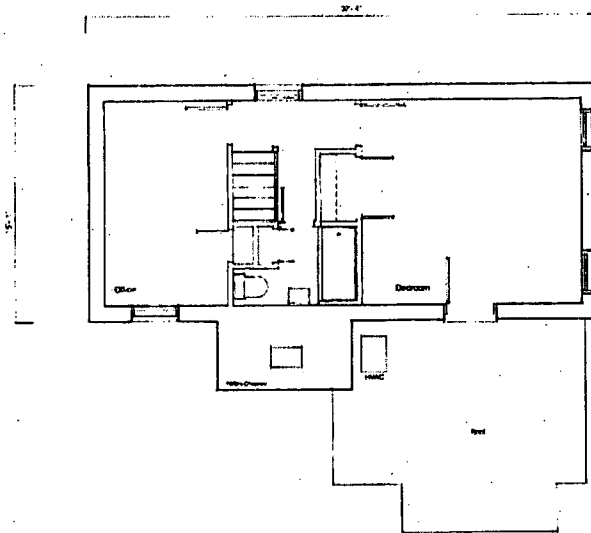
First Level Proposed Floor Plan

Addition And
Modifications to
107 King Street
Charleston
South Carolina

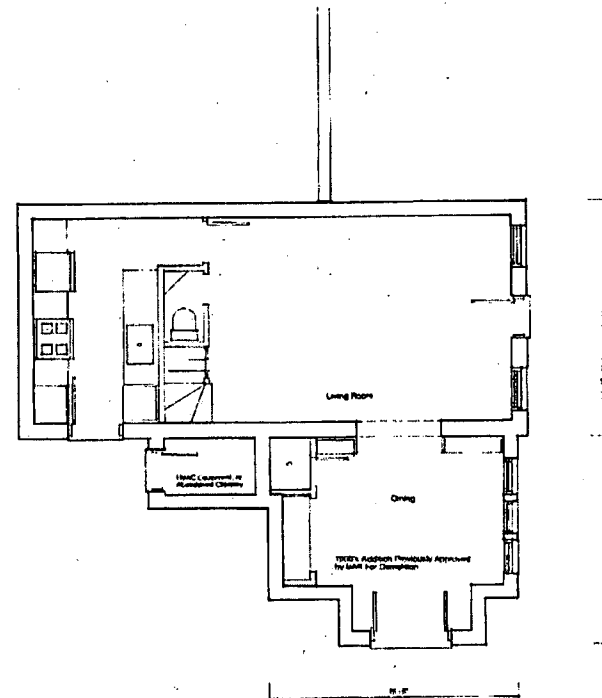
Board Of Architectural
Review - Design
Concept Submission

EPPS ARCHITECTURE

Sheet 2 of 2
October 9, 2019



Existing Second Level Floor Plan Of "Kitchen House"



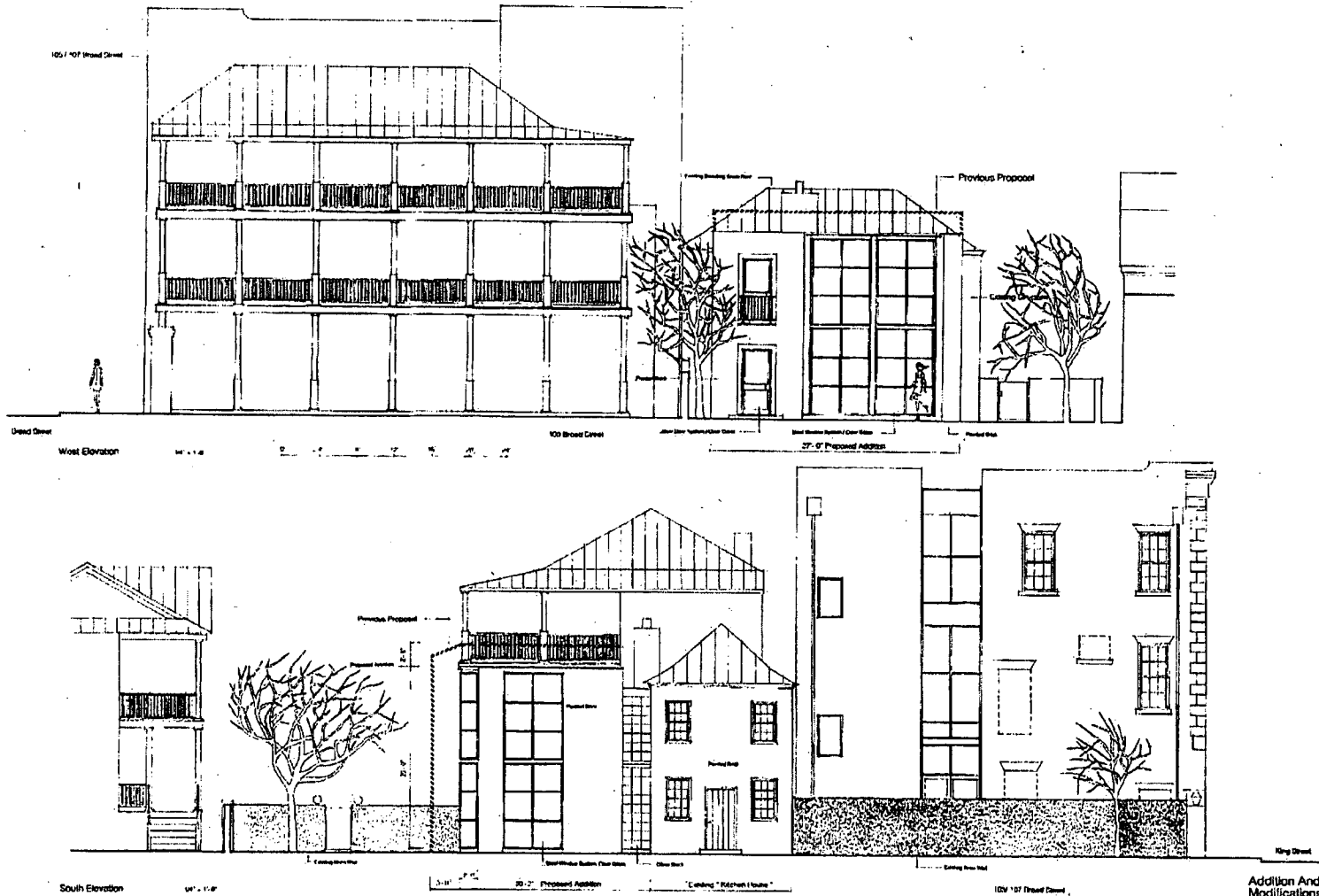
Existing First Level Floor Plan Of "Kitchen House"

Addition And
Modifications to
107 King Street
Charleston
South Carolina

Board Of Architectural
Review - Design
Concept Submission

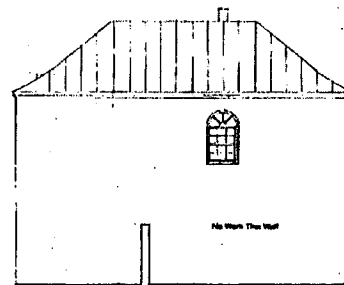
EPSS ARCHITECTURE

Sheet 3 of 6
October 5, 2010



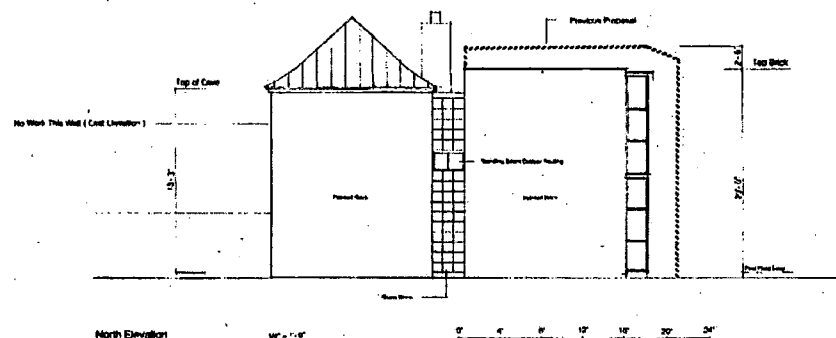
Addition And
Modifications to
107 King Street
Charleston
South Carolina
Board Of Architectural
Review - Design
Concept Submission
EPFS ARCHITECTURE

Sheet 4 of 5
October 8, 2015



East Elevation

1/4" = 1'-0"



North Elevation

1/4" = 1'-0"

Addition And
Modifications to
107 King Street
Charleston
South Carolina

Board Of Architectural
Review - Design
Concept Submission

EPFS ARCHITECTURE

Sheet 5 of 6
October 5, 2015



City of Charleston

Board of Architectural Review

August 26, 2015

DEPARTMENT OF PLANNING, PRESERVATION & SUSTAINABILITY

Agenda Item 17:

107 King Street

**Request conceptual approval for new construction of rear addition
and modifications to existing structure.**

Not Rated / (Charlestowne)/ c. 1800/ Old and Historic District

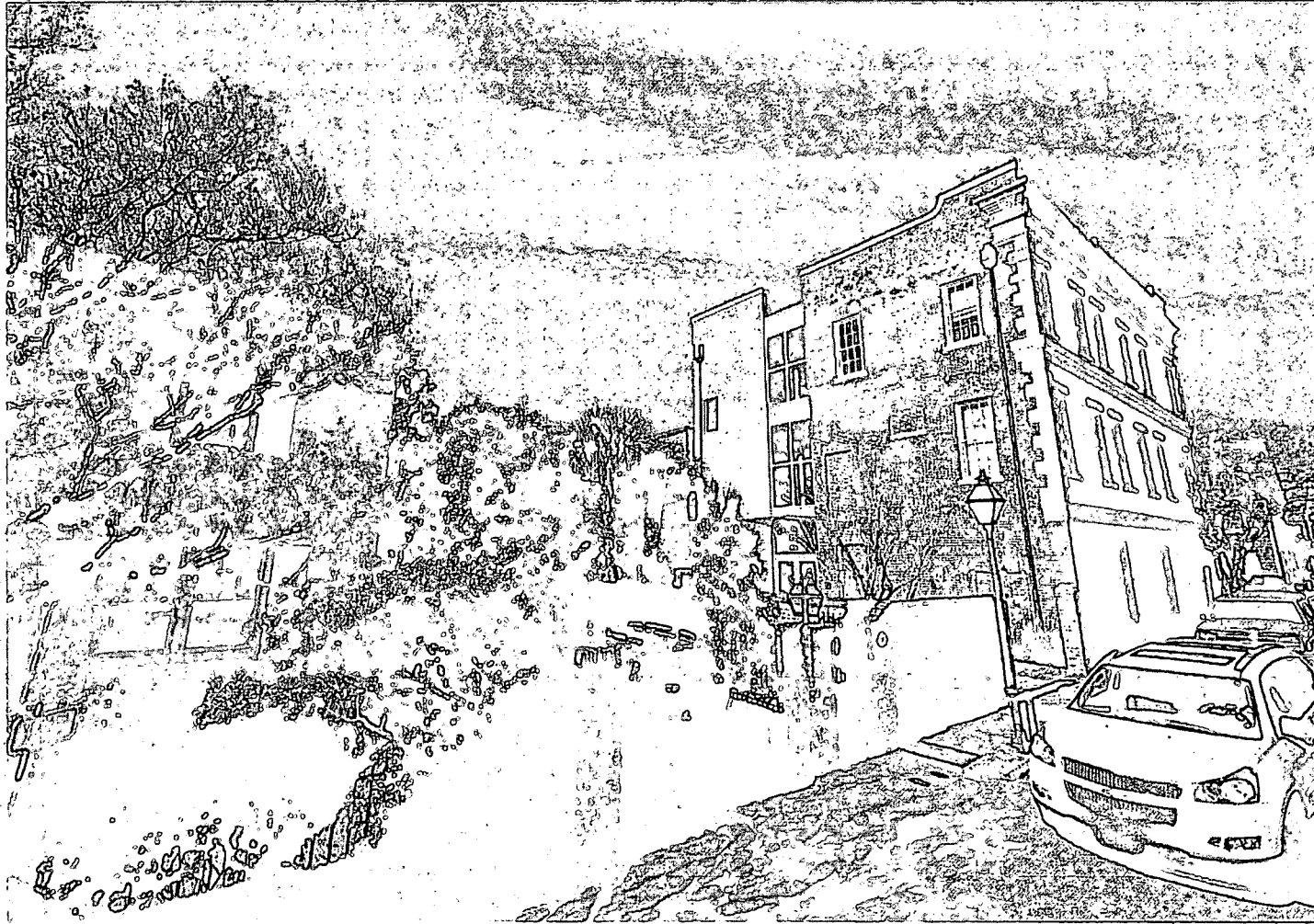


CONTEXT



LOOKING WEST

EXISTING SITE PHOTOS



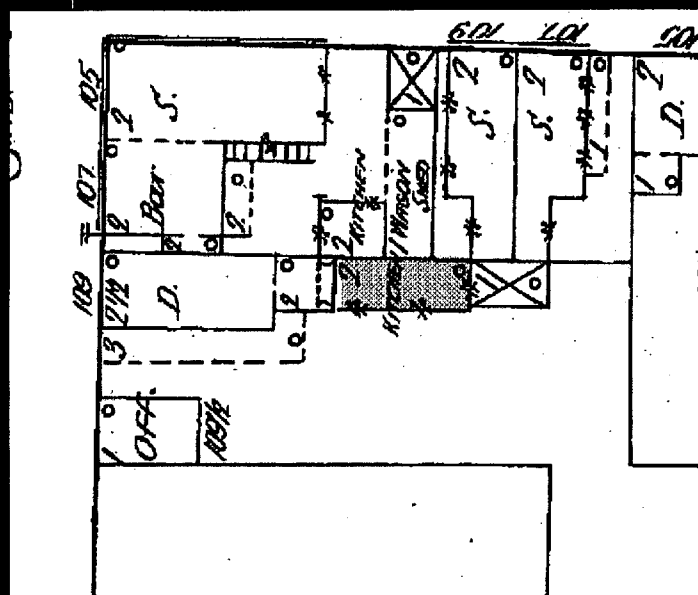
LOOKING NORTH WEST

EXISTING SITE PHOTOS

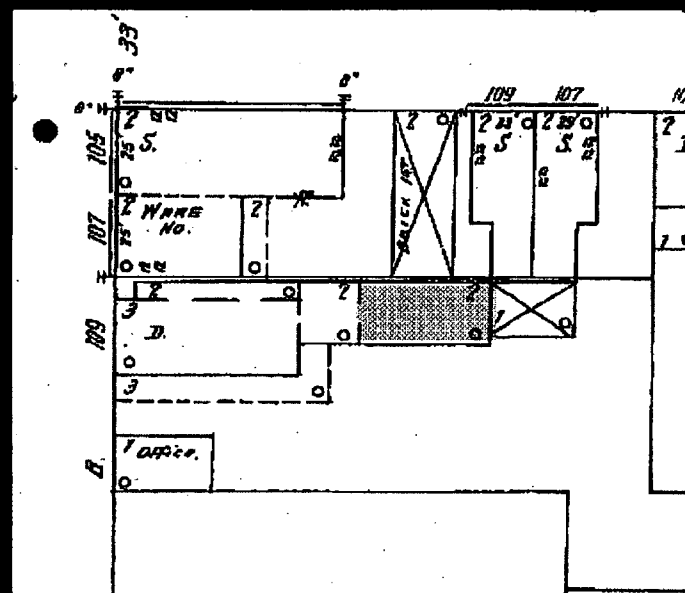


LOOKING SOUTH

EXISTING SITE PHOTOS

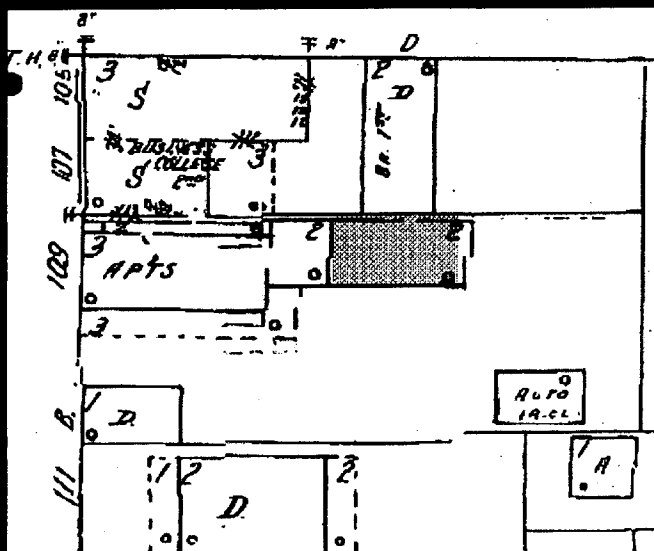


1888

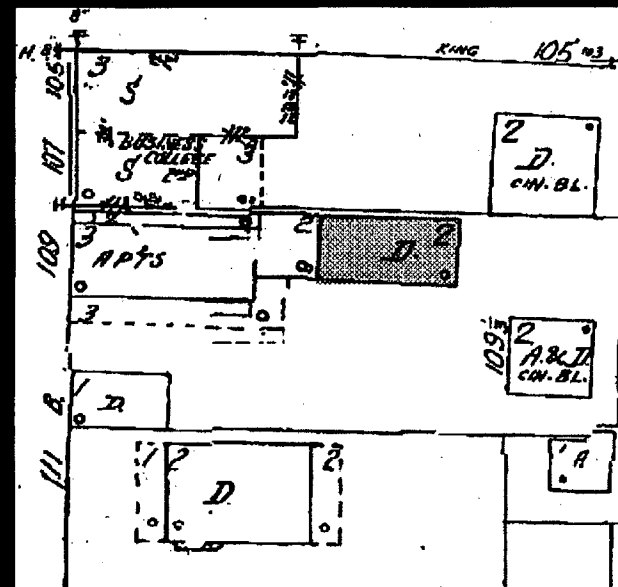


1902

SANBORN MAPS



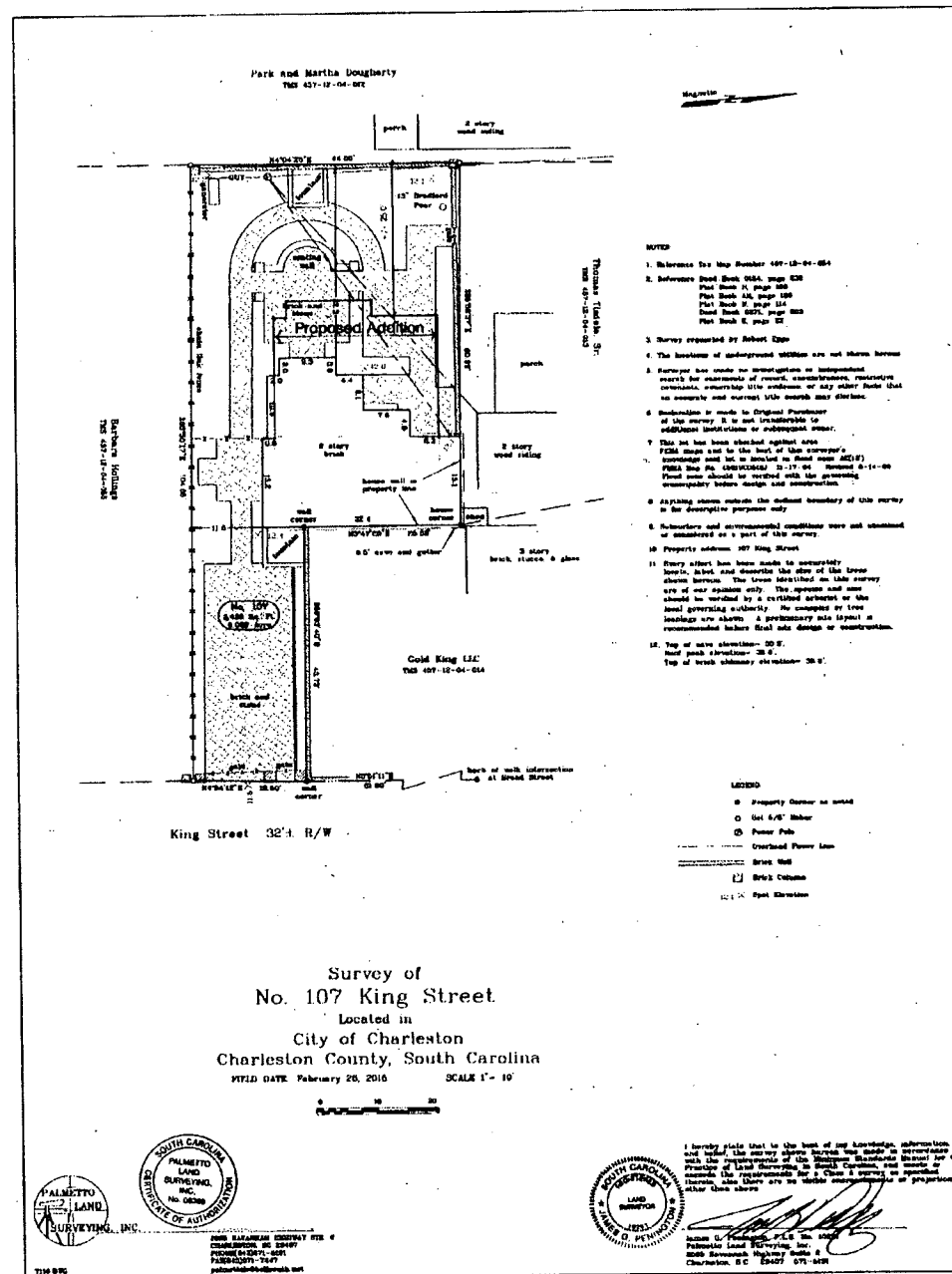
1944



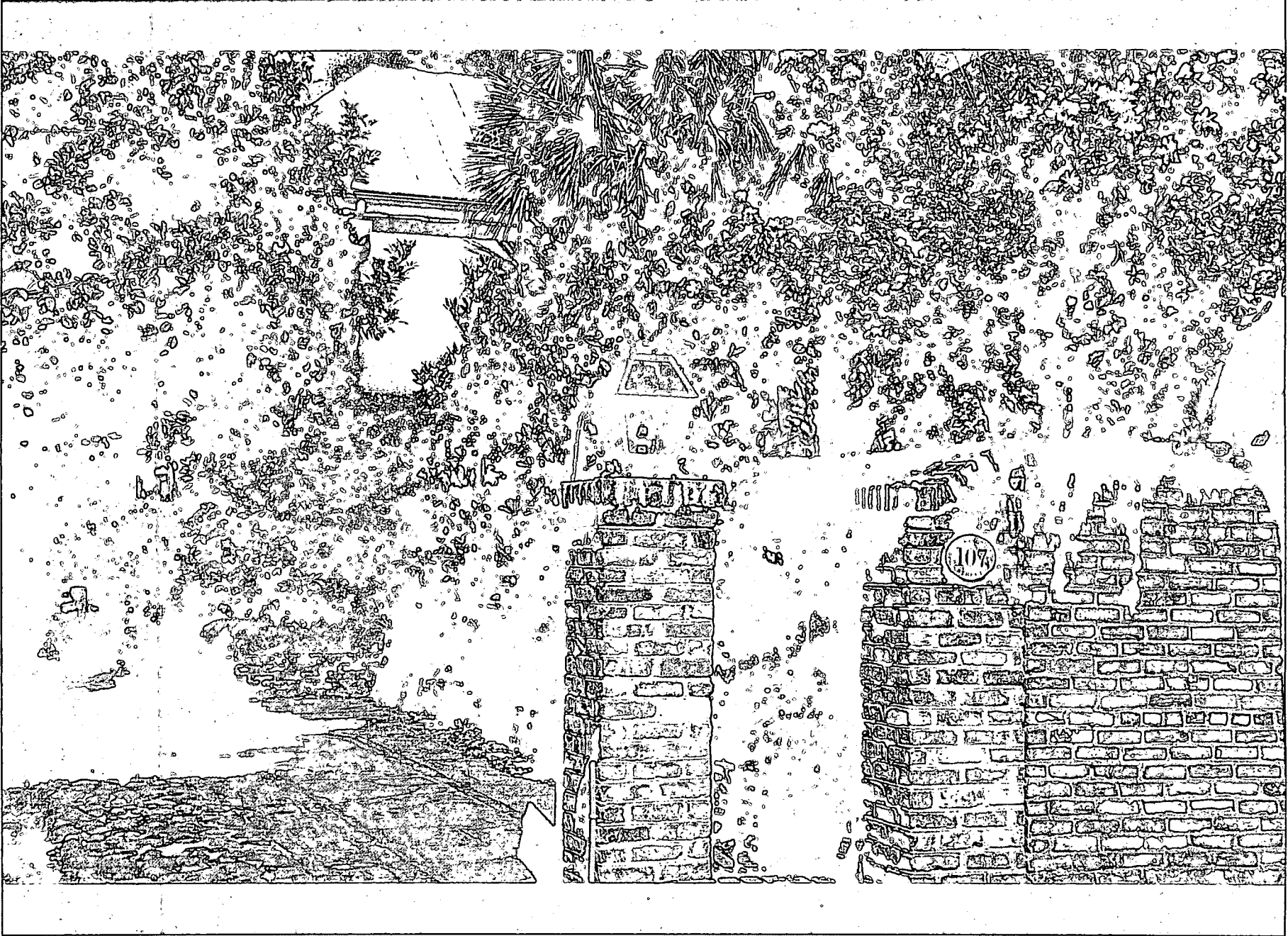
1951

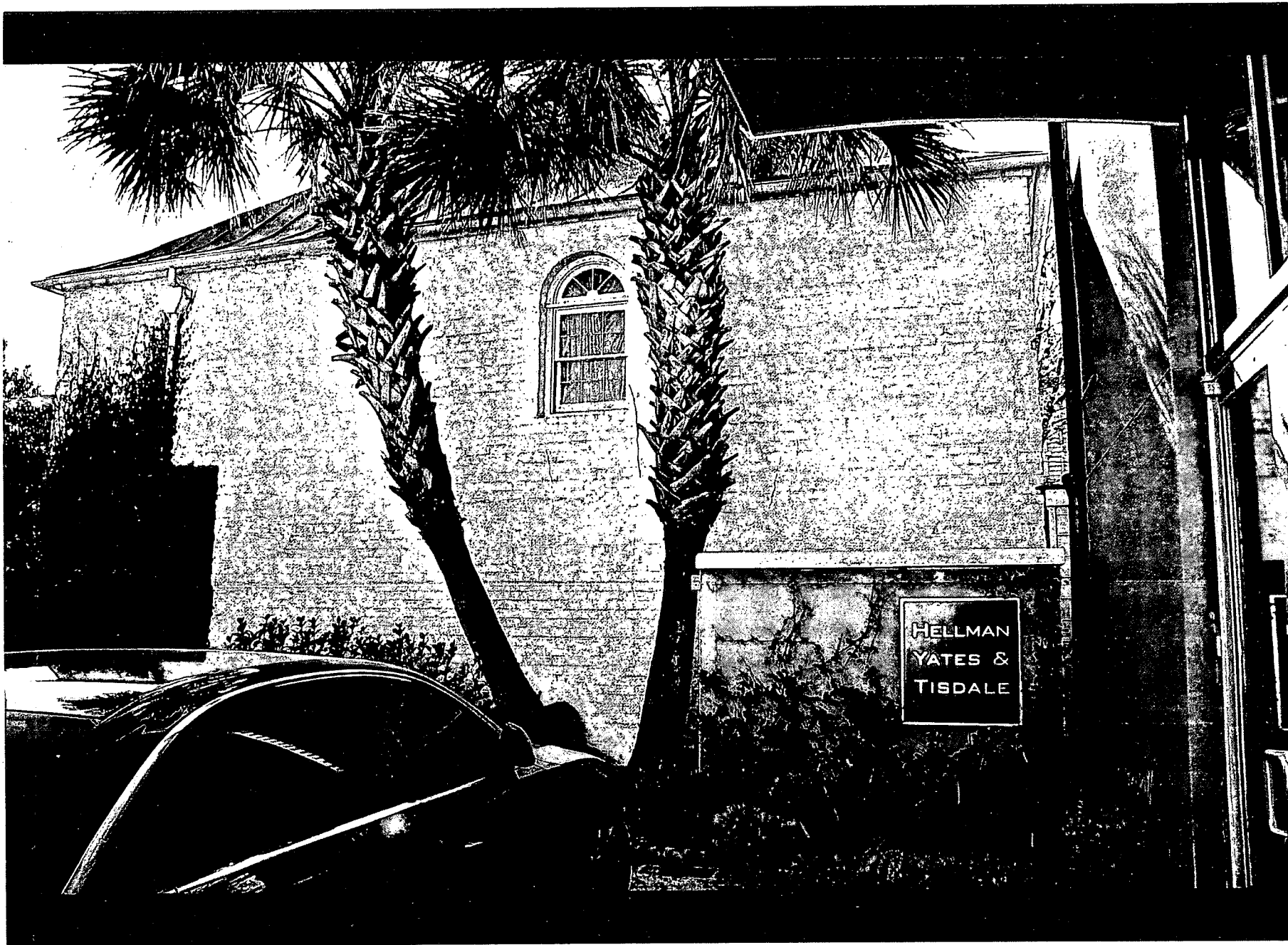
SANBORN MAPS

**APPLICANT
PRESENTATION**











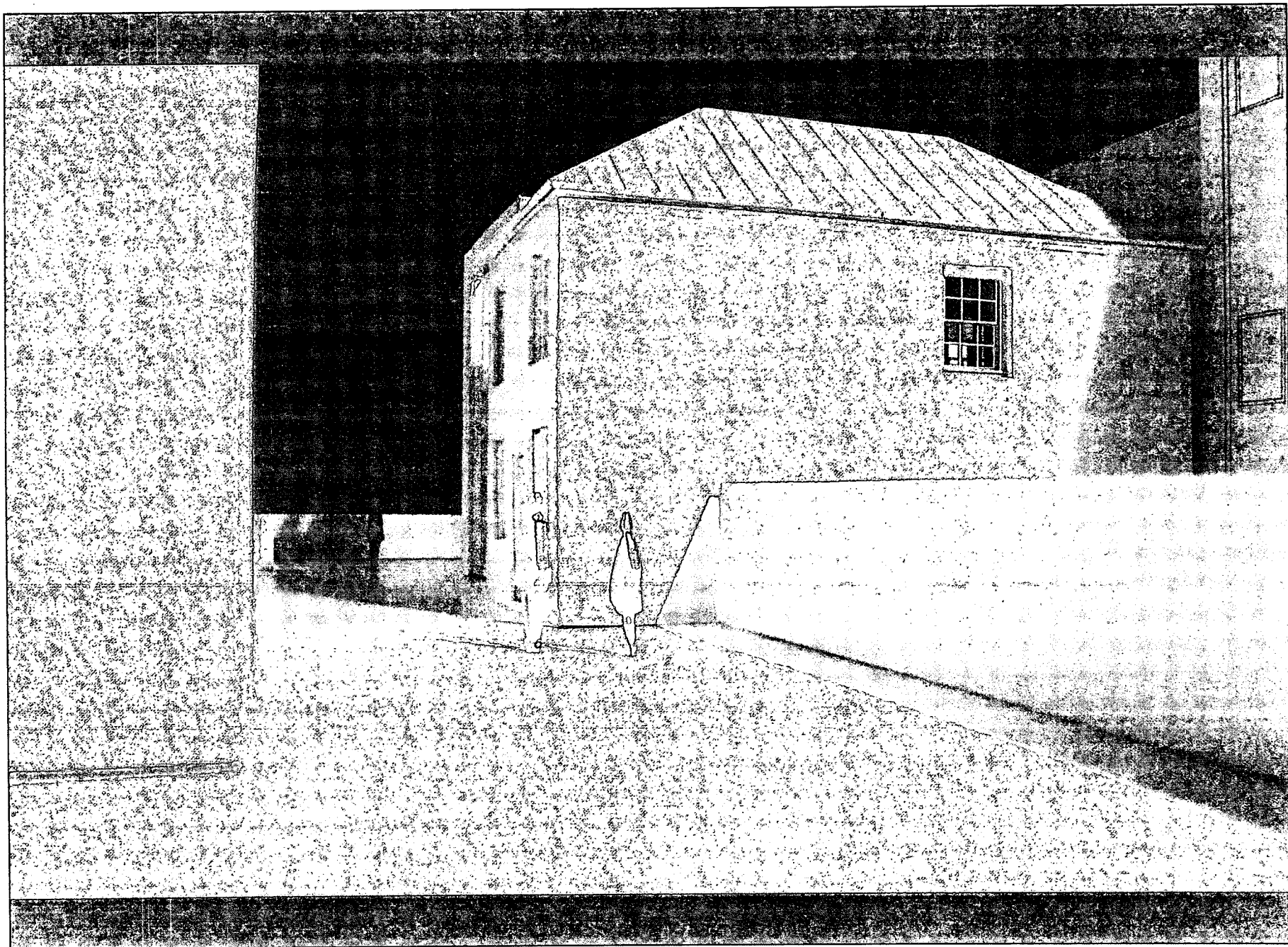


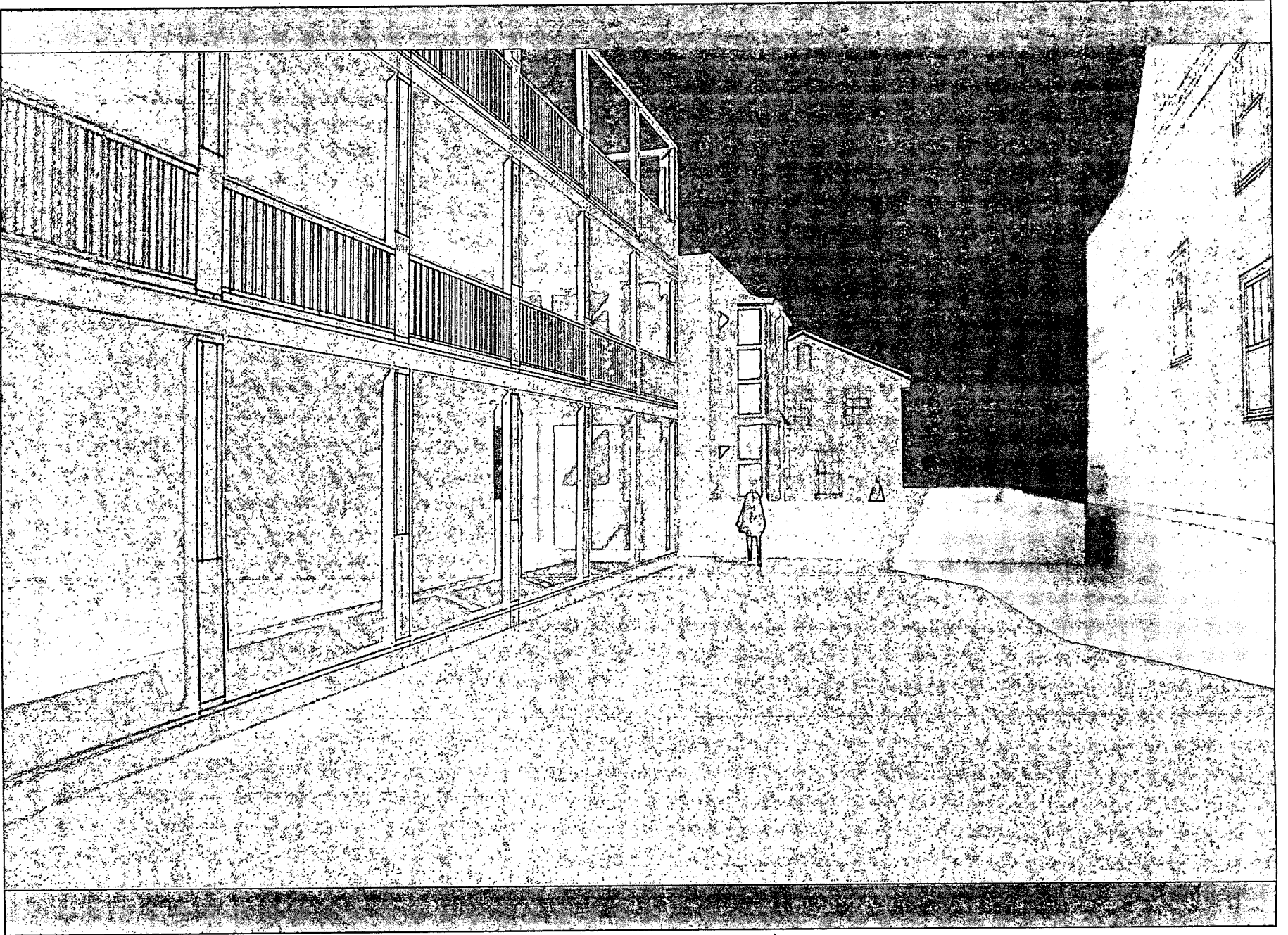


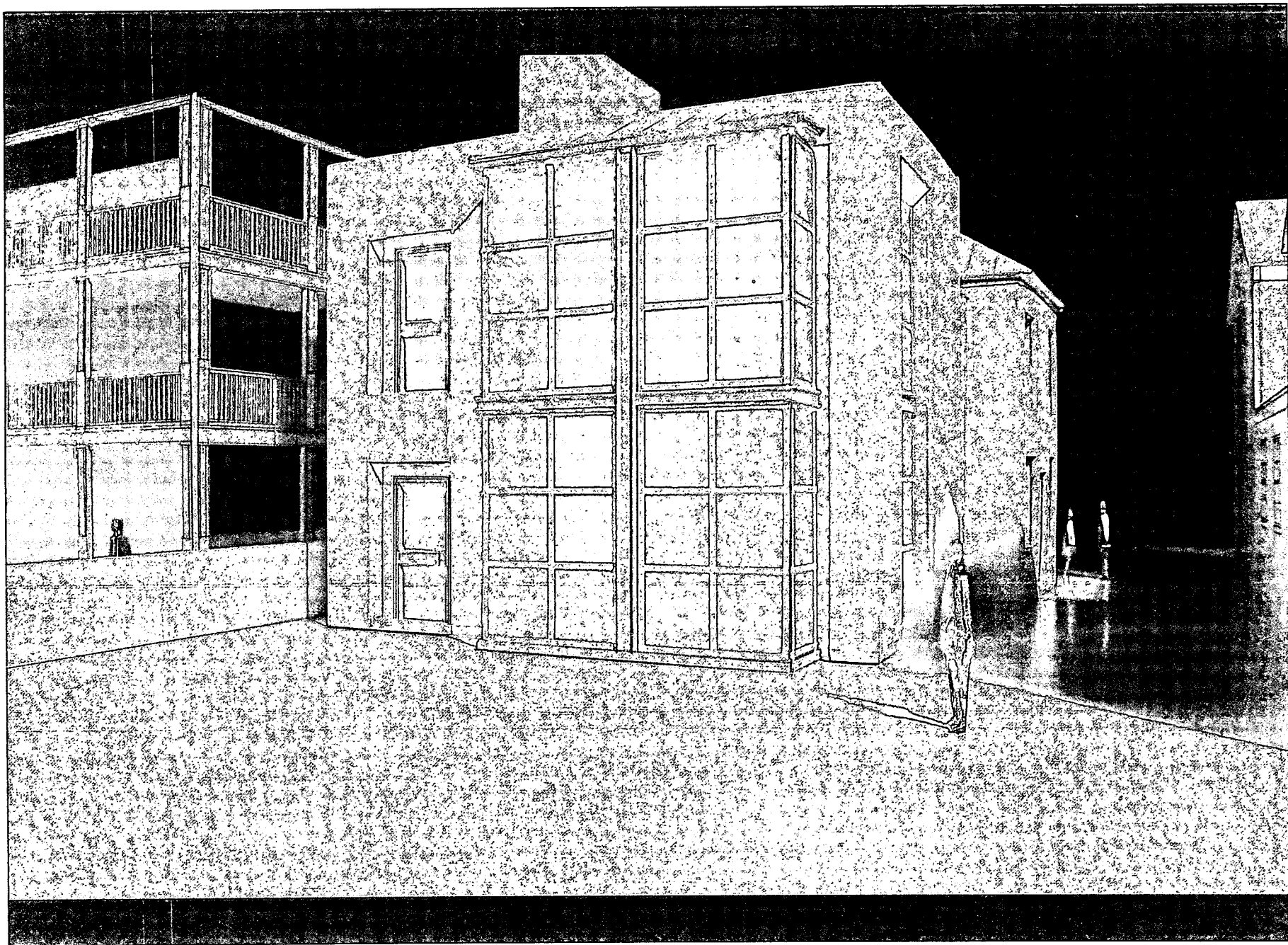












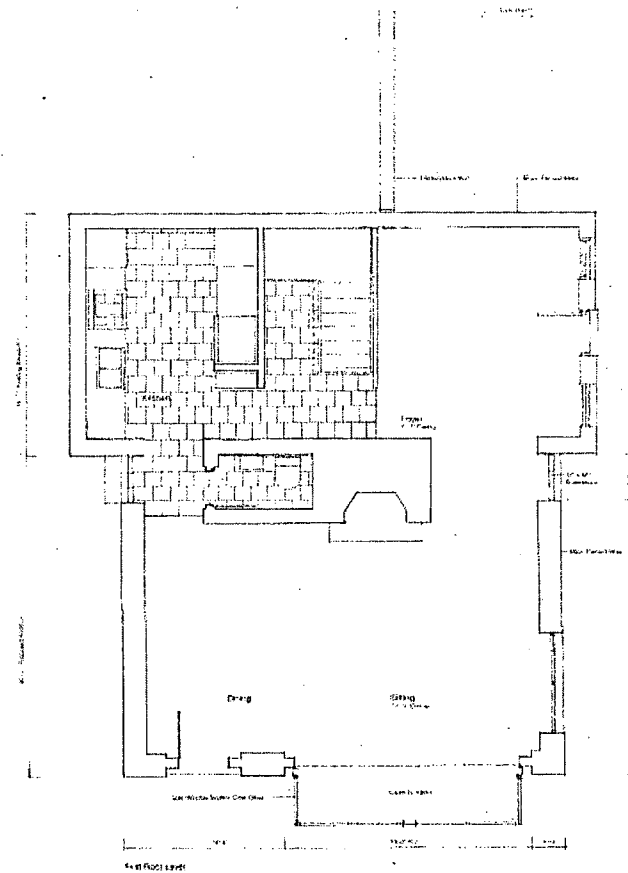
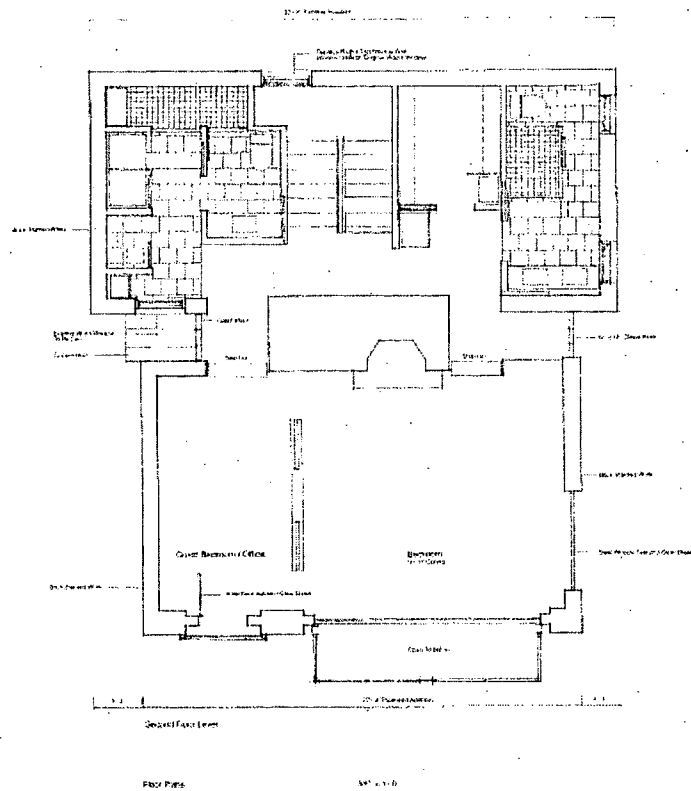
San Juan

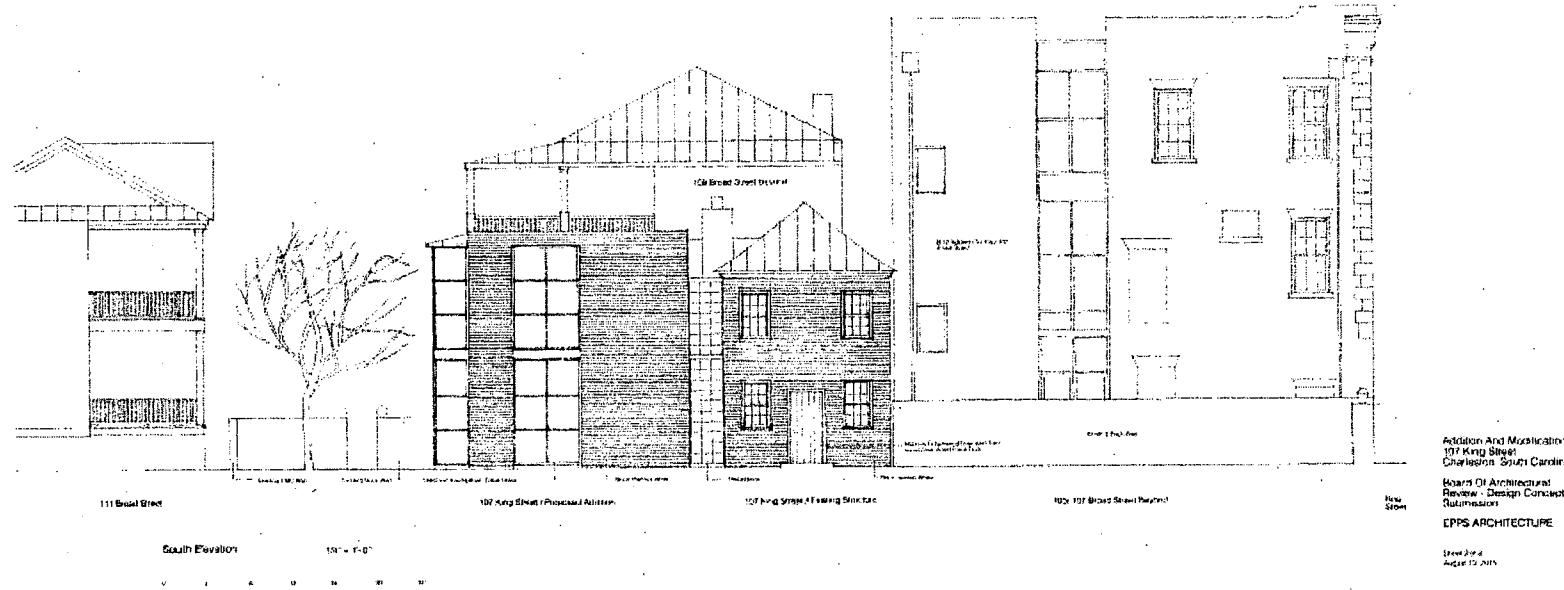
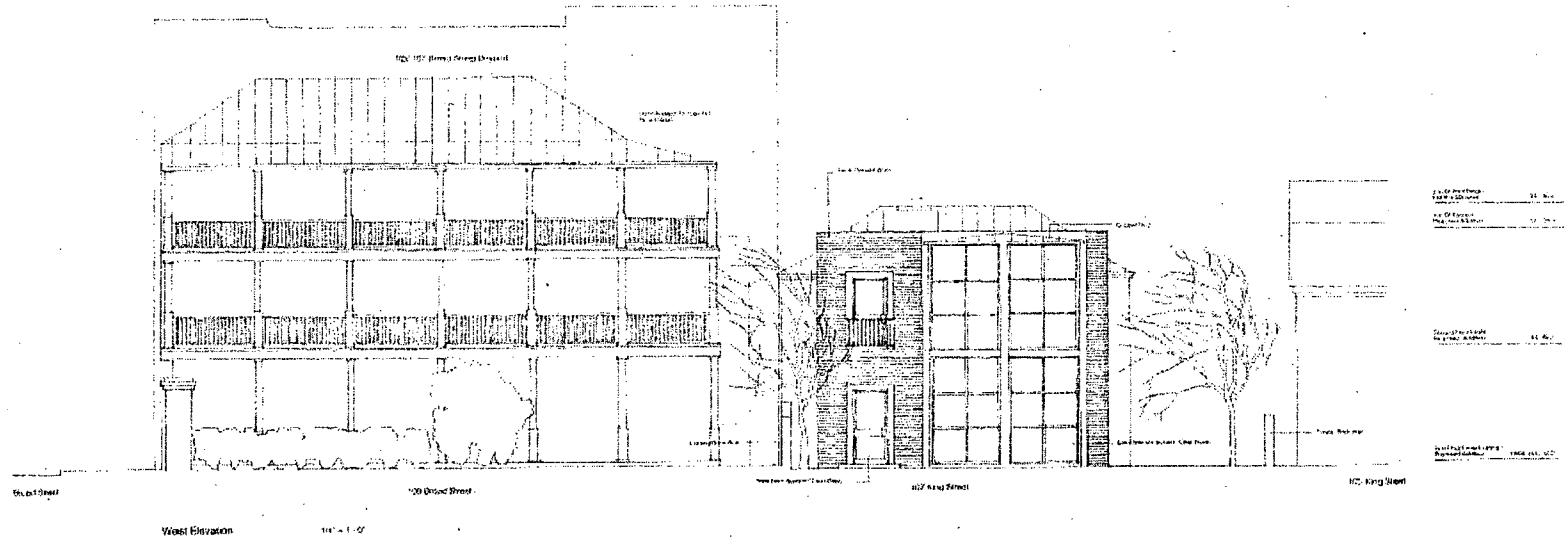
Address: And M. Sheehans Inc
167 King Street
Charleston, South Carolina

Board Of Architectural
Review - Design Concept
Submission

EPPE ARCHITECTURE

Phone: 1-800-
222-2222





Addition And Modifications to
107 King Street
Charleston, South Carolina
Board Of Architectural
Review - Design Concept
Submission
EPDS ARCHITECTURE
Drawn by
August 15, 2015



City of Charleston

Board of Architectural Review

September 9, 2015

DEPARTMENT OF PLANNING, PRESERVATION & SUSTAINABILITY

Agenda Item 5:

107 King Street

**Request conceptual approval for new construction of rear addition
and modifications to existing structure.**

Not Rated / (Charlestowne)/ c. 1800/ Old and Historic District



CONTEXT



LOOKING WEST FROM KING



EXISTING SITE PHOTOS



LOOKING NORTHWEST FROM KING



LOOKING SOUTH FROM BROAD



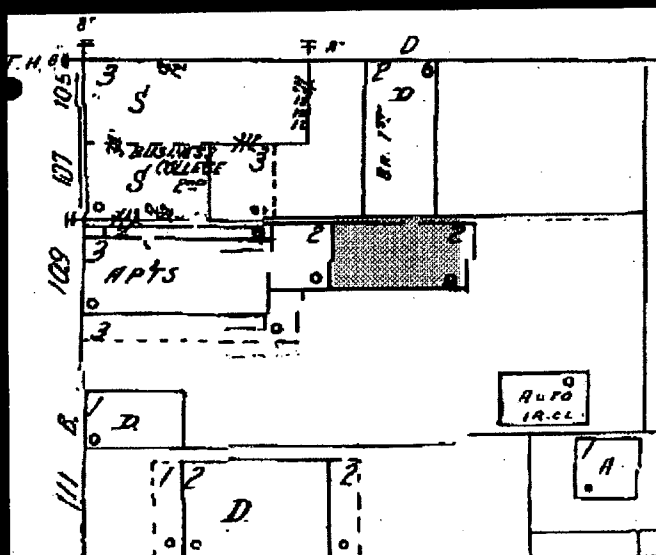
LOOKING SOUTH AT 109 BROAD



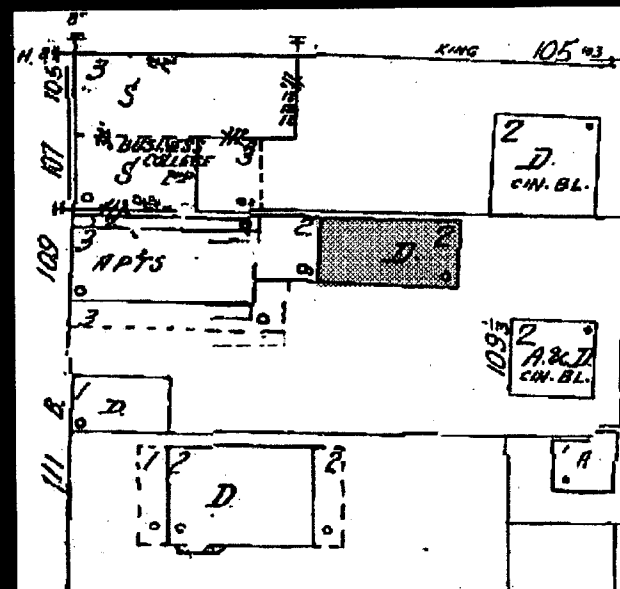
LOOKING EAST FROM ORANGE

[illegible]

SANBORN MAPS



1944



1951

SANBORN MAPS

**APPLICANT
PRESENTATION**



Survey of
No. 107 King Street
Located in
City of Charleston
Charleston County, South Carolina

FIELD DATE February 20, 2016 SCALE 1" = 10'

• • •



0000 SAFARIWAY HIGHWAY BOX #
CHANDLER, AZ 85007
PHONE (602) 971-0001
FAX (602) 971-7407
palmrich@earthlink.net

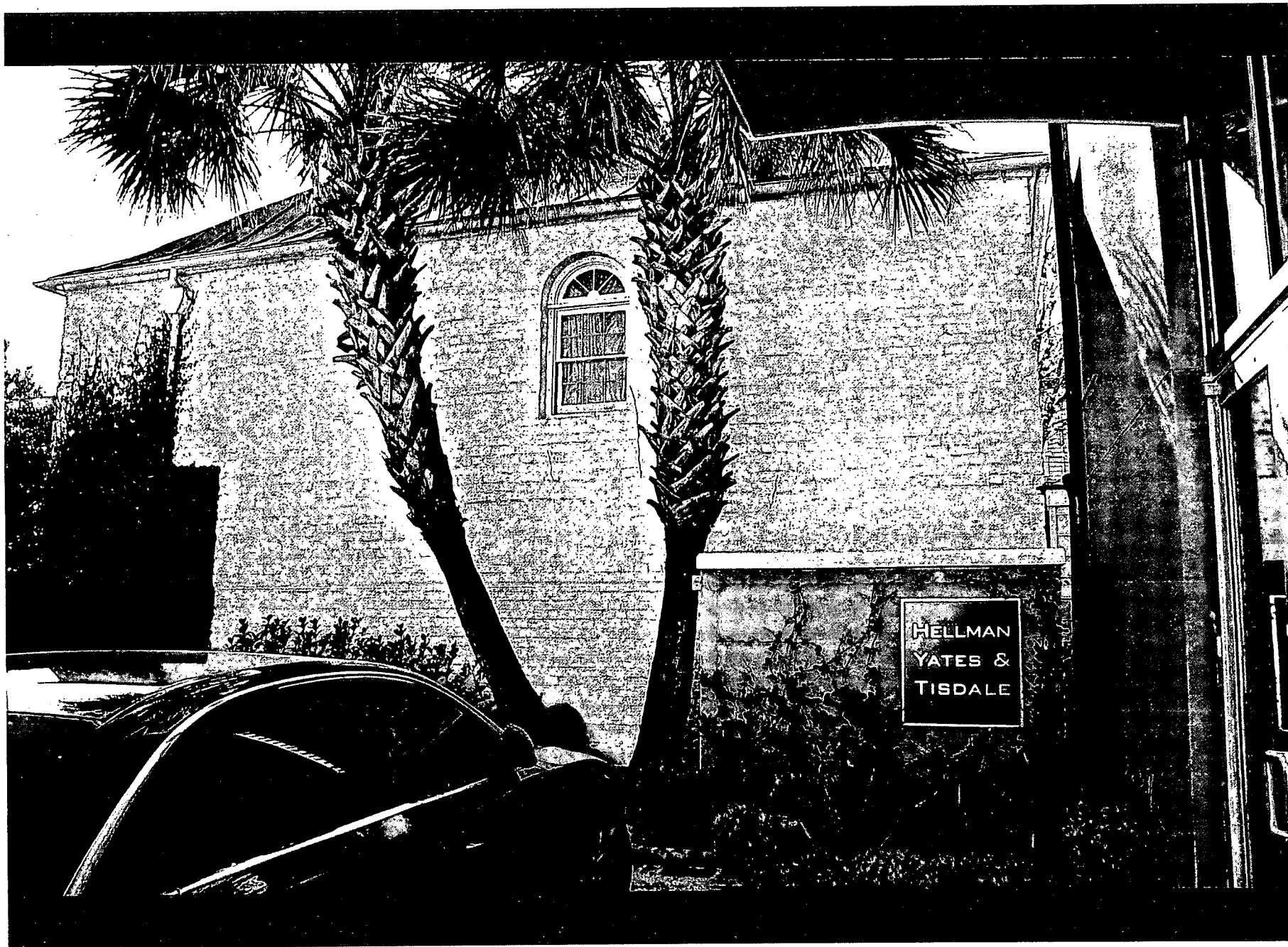


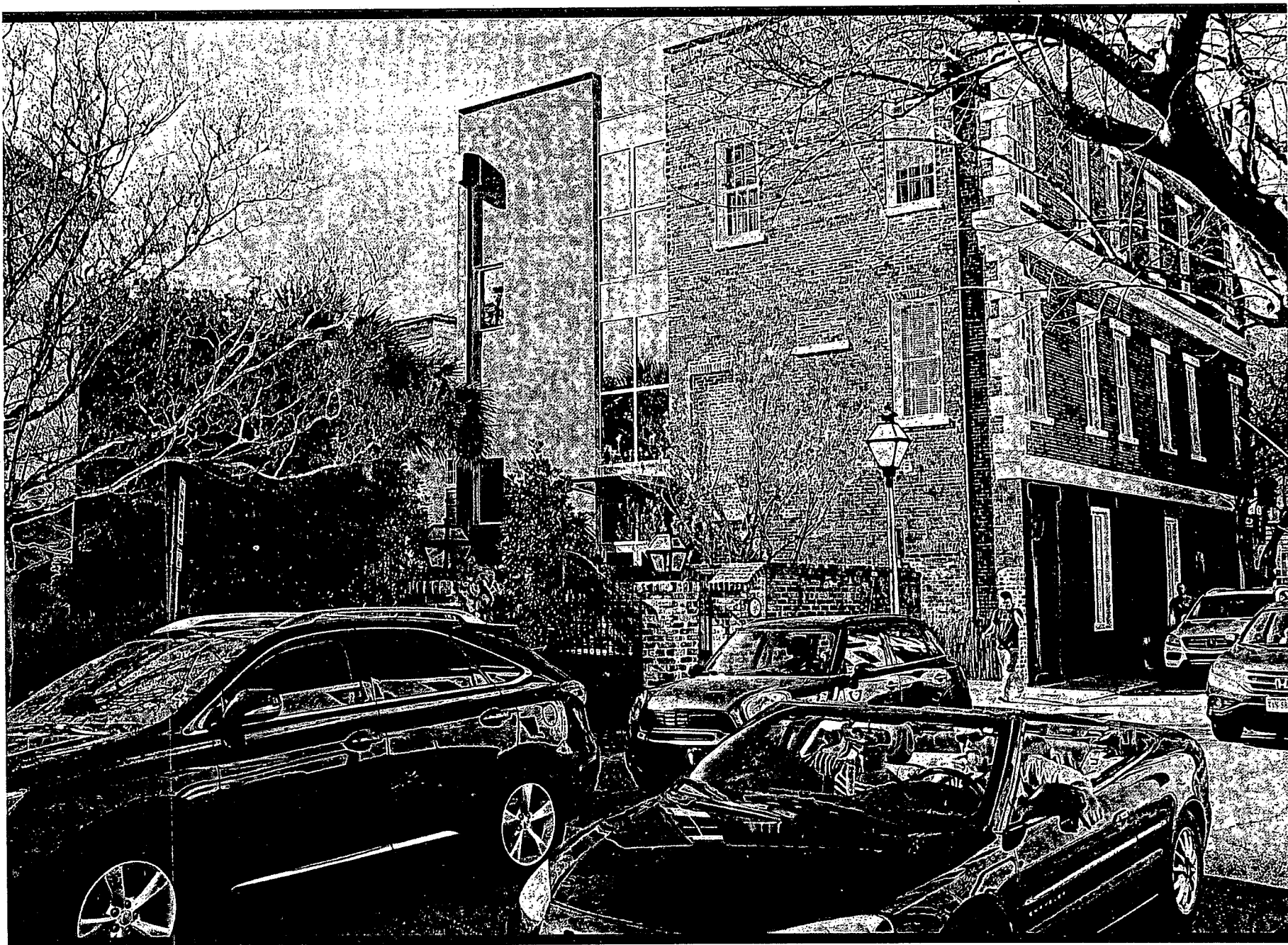
I hereby state that to the best of my knowledge, information and belief, the survey above herein was made in accordance with the requirements of the Washington Standards Manual for the Practice of Land Surveying in North Carolina, and meets the requirements for a Class A survey as specified therein, also there are no valid encroachments or projections other than shown.

James G. Thompson, P.E. No. 102
Palmate Land Surveying, Inc.
2008 Seawoods Highway Suite B
Chapel Hill, NC 27607 919-619-1111





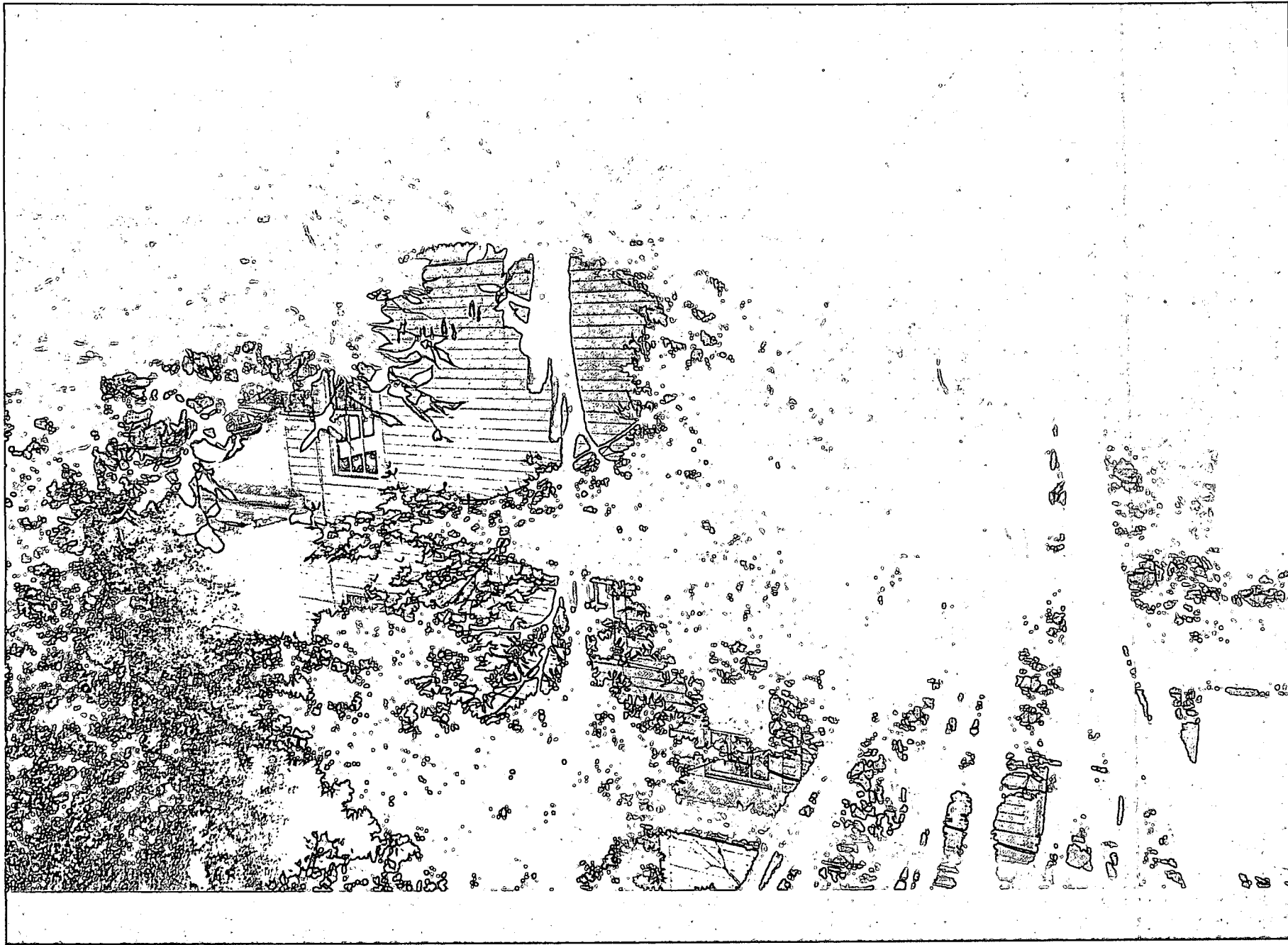




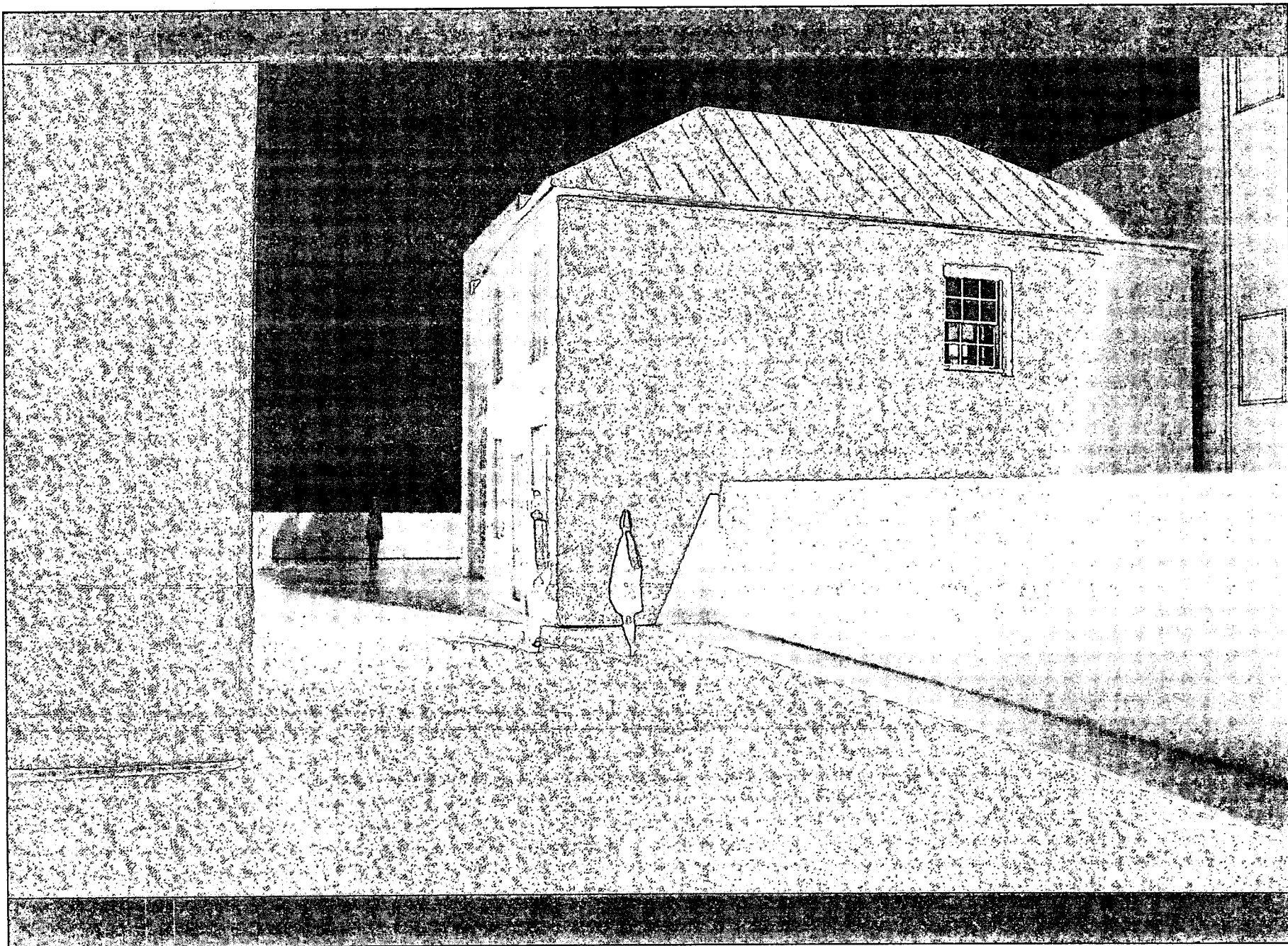


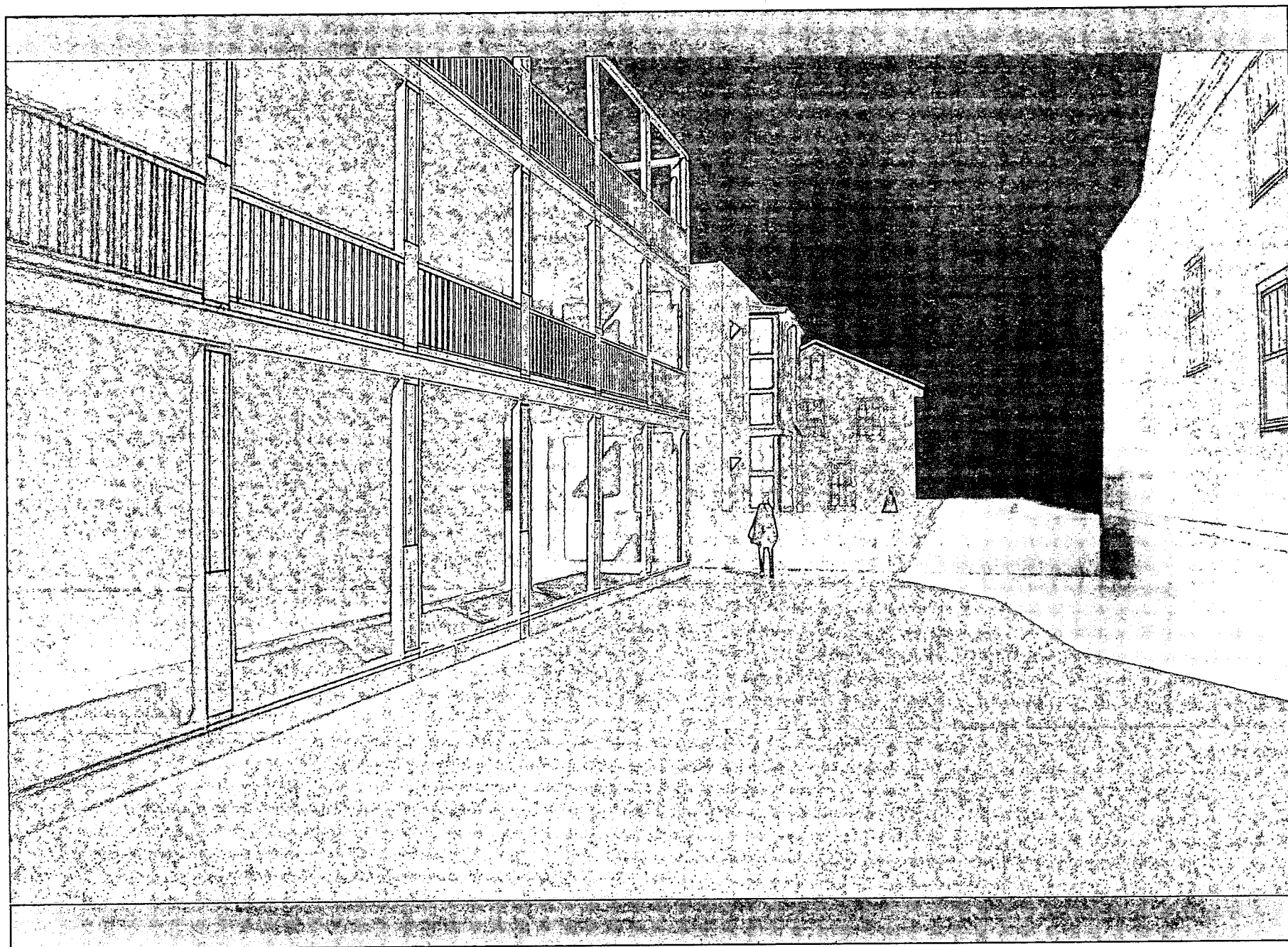


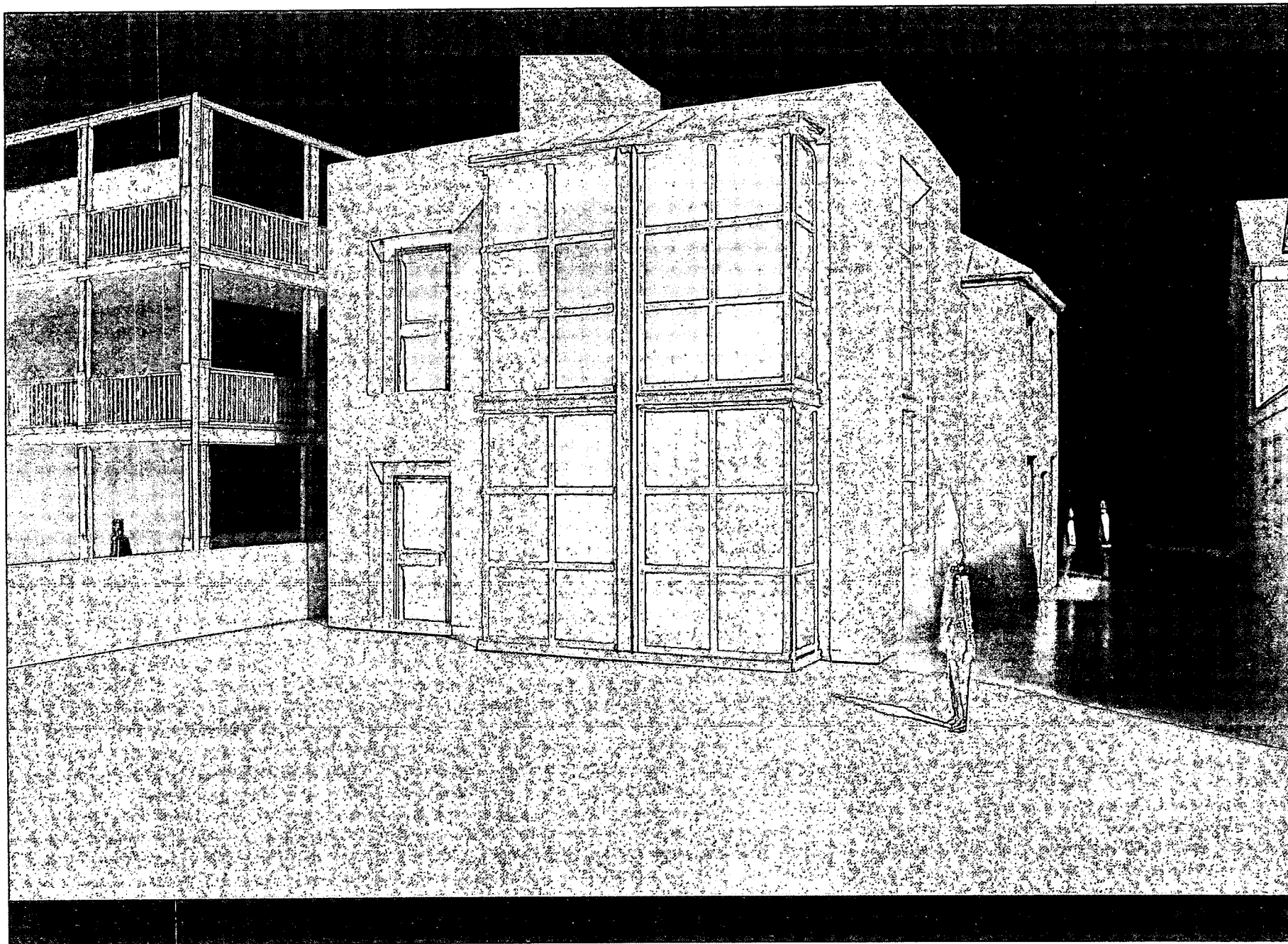


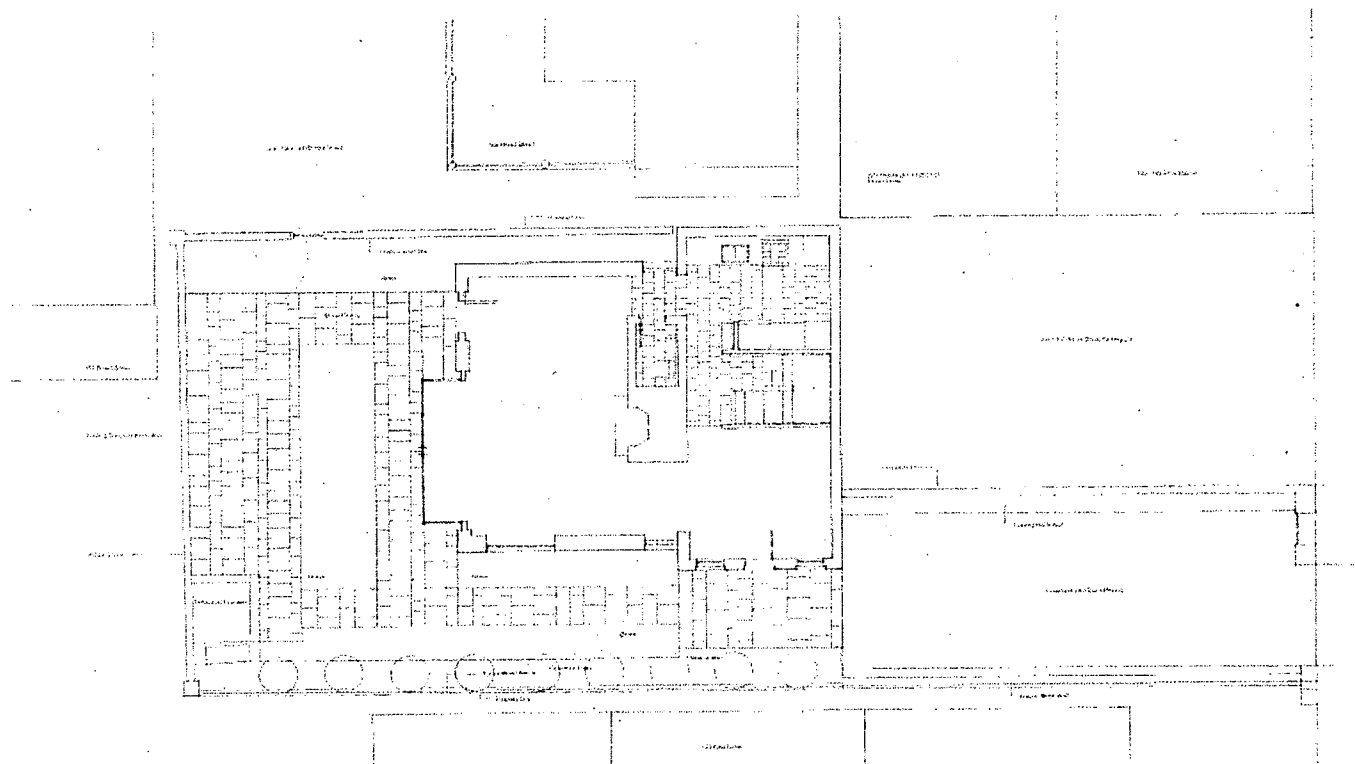










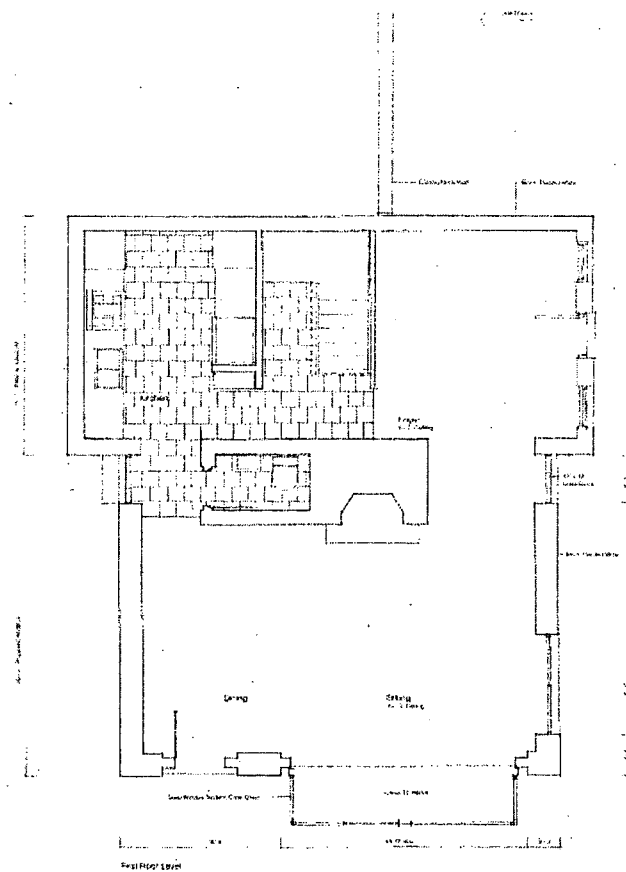
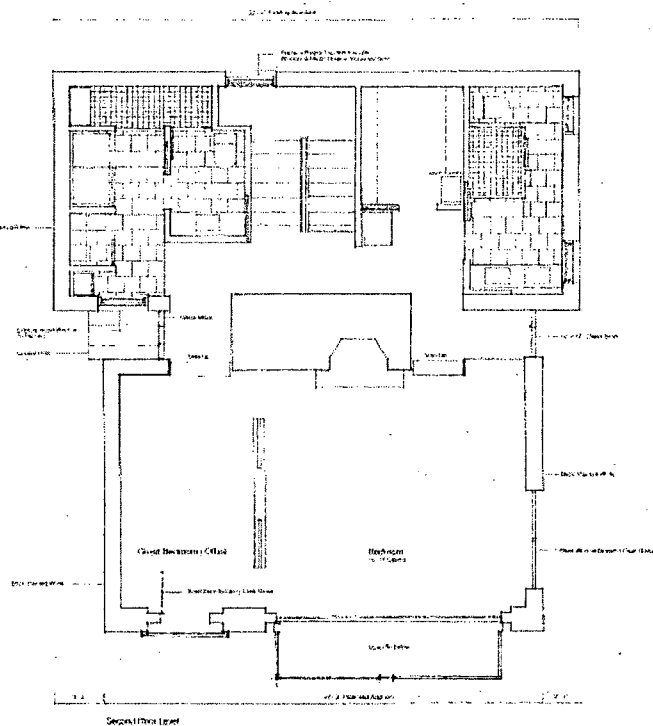
[illegible]

Site Plans

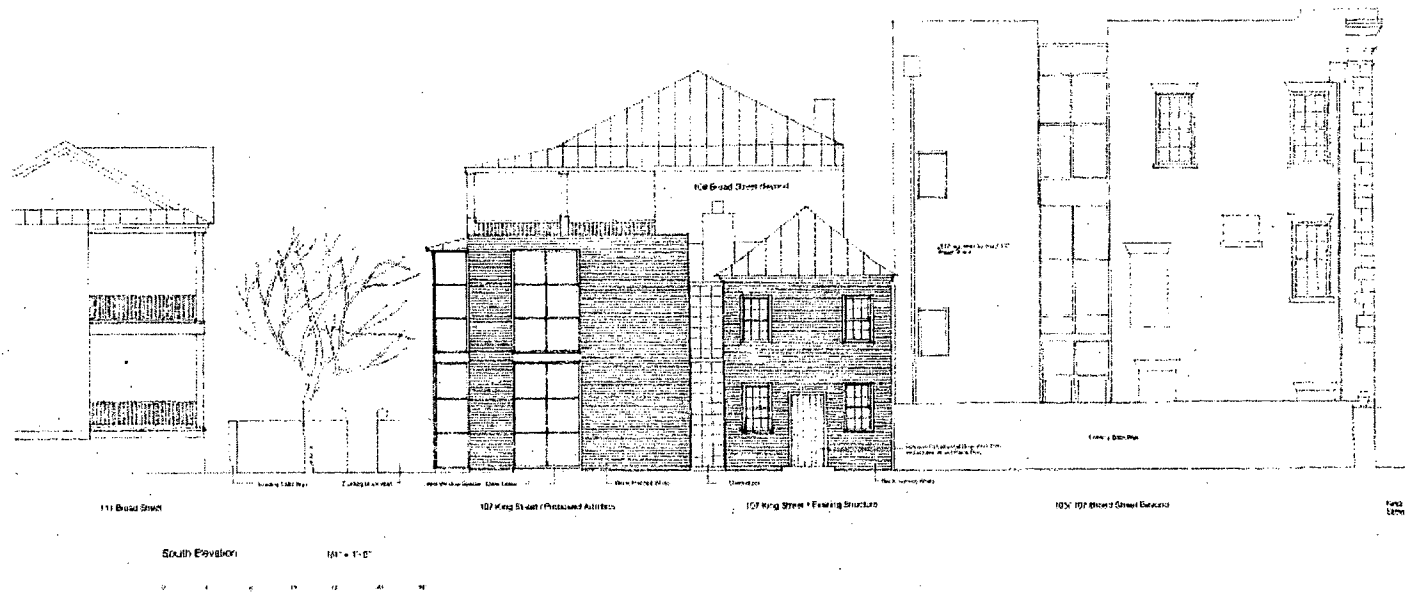
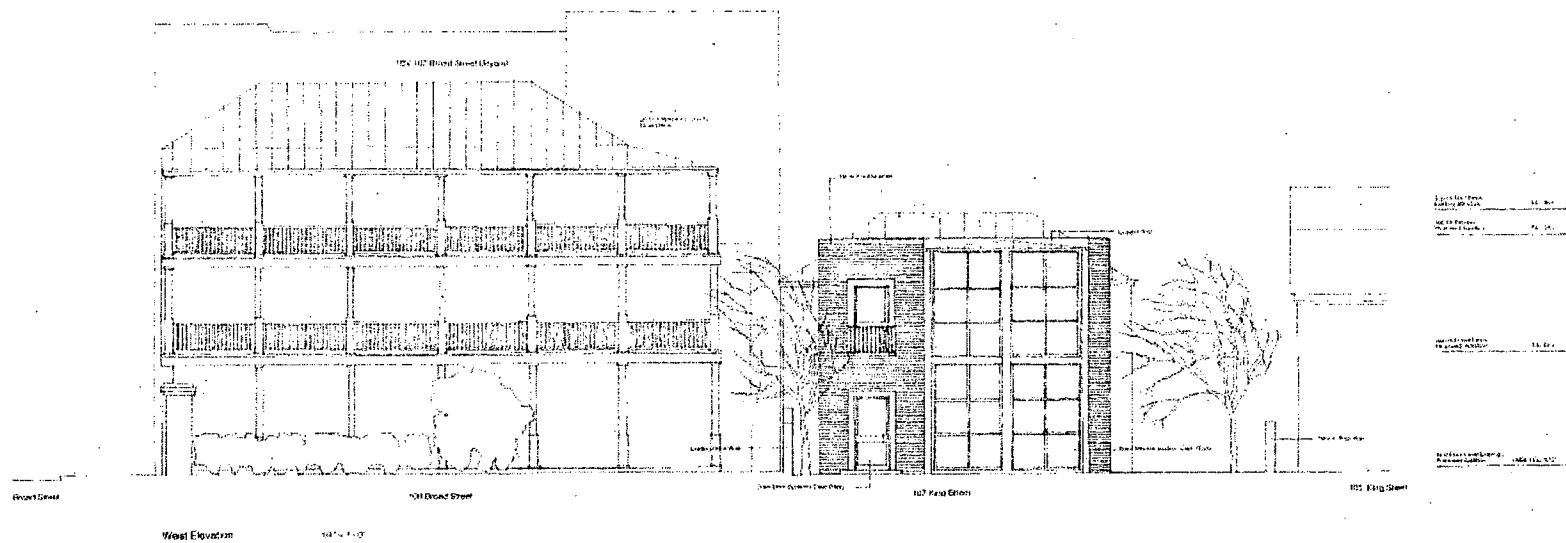
24

Admission And Modifications to
107 King Street
Charleston, South Carolina
Board Of Architectural
Review - Design Concept
Submission
EPBS ARCHITECTURE

Volume 12(3)
Pages 173-204



And Not And Modifications to
167 King Street
Charleston, South Carolina
Board Of Architectural
Review - Design Concept
Submission
EPFS ARCHITECTURE
Sheet 1 of 2
August 12, 2015



Project Name: 107 King Street
 Location: Charleston, South Carolina
 Date: 10/1/2019

Scale: 1/4\"/>

Author: EPPS ARCHITECTURE
 Reviewer: [Name Redacted]

Approval And Modifications to:
 107 King Street
 Charleston, South Carolina
 Board Of Architectural
 Review - Design Concept
 Submission
 EPPS ARCHITECTURE
 Date: 10/1/2019
 Author: [Name Redacted]



City of Charleston

Board of Architectural Review

October 14, 2015

DEPARTMENT OF PLANNING, PRESERVATION & SUSTAINABILITY

Agenda Item 7:

107 King Street

**Request conceptual approval for new construction of rear addition
and modifications to existing structure.**

Not Rated / (Charlestowne)/ c. 1800/ Old and Historic District



LOOKING WEST FROM KING



EXISTING SITE PHOTOS



LOOKING NORTHWEST FROM KING



LOOKING SOUTH FROM BROAD



LOOKING SOUTH AT 109 BROAD

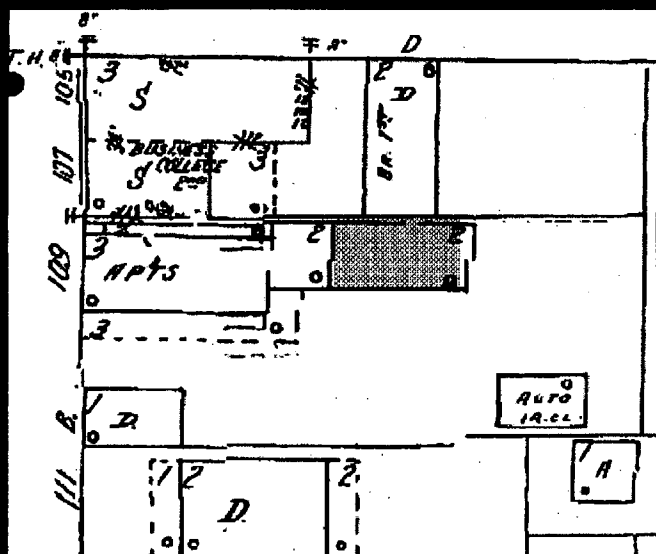


LOOKING EAST FROM ORANGE

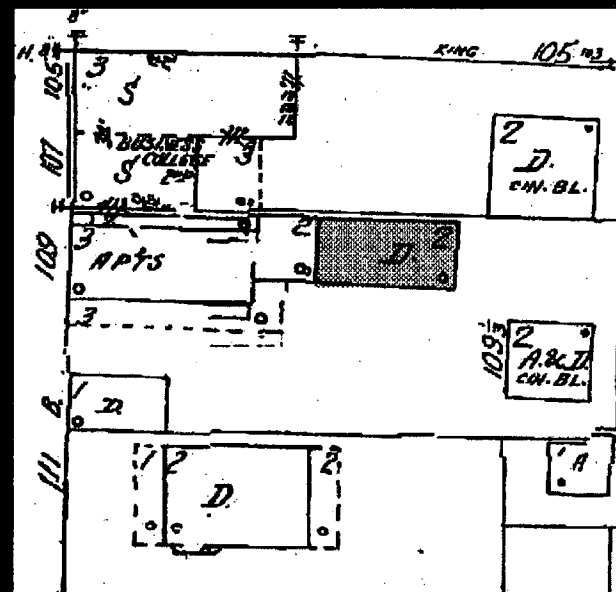
The diagram is a site plan of a building complex, likely a military installation. It shows various structures, courtyards, and surrounding terrain. Key features include:

- Buildings:** A large central building labeled "HALL" and "KITCHEN". To its right is a smaller building labeled "BARRACKS". Further right is a large open area labeled "COURT".
- Courtyards:** A large central courtyard labeled "COURT". To the left of the main building is a smaller courtyard labeled "COURT".
- Gate and Wall:** A "GATE" is located on the left side of the main building. A "WALL" runs along the top and right sides of the complex.
- Labels and Dimensions:** Various labels and dimensions are present, including "105", "107", "109", "110", "111", "112", "113", "114", "115", "116", "117", "118", "119", "120", "121", "122", "123", "124", "125", "126", "127", "128", "129", "130", "131", "132", "133", "134", "135", "136", "137", "138", "139", "140", "141", "142", "143", "144", "145", "146", "147", "148", "149", "150", "151", "152", "153", "154", "155", "156", "157", "158", "159", "160", "161", "162", "163", "164", "165", "166", "167", "168", "169", "170", "171", "172", "173", "174", "175", "176", "177", "178", "179", "180", "181", "182", "183", "184", "185", "186", "187", "188", "189", "190", "191", "192", "193", "194", "195", "196", "197", "198", "199", "200".
- Other Features:** A "GATE" is located on the left side of the main building. A "WALL" runs along the top and right sides of the complex.

SANBORN MAPS



1944



1951

SANBORN MAPS

Previous motion:

Deferral for restudy based on staff comments 1-5 and Board comments to reconsider a smaller total footprint, decrease in height, and design of "window wall."

Staff comments:

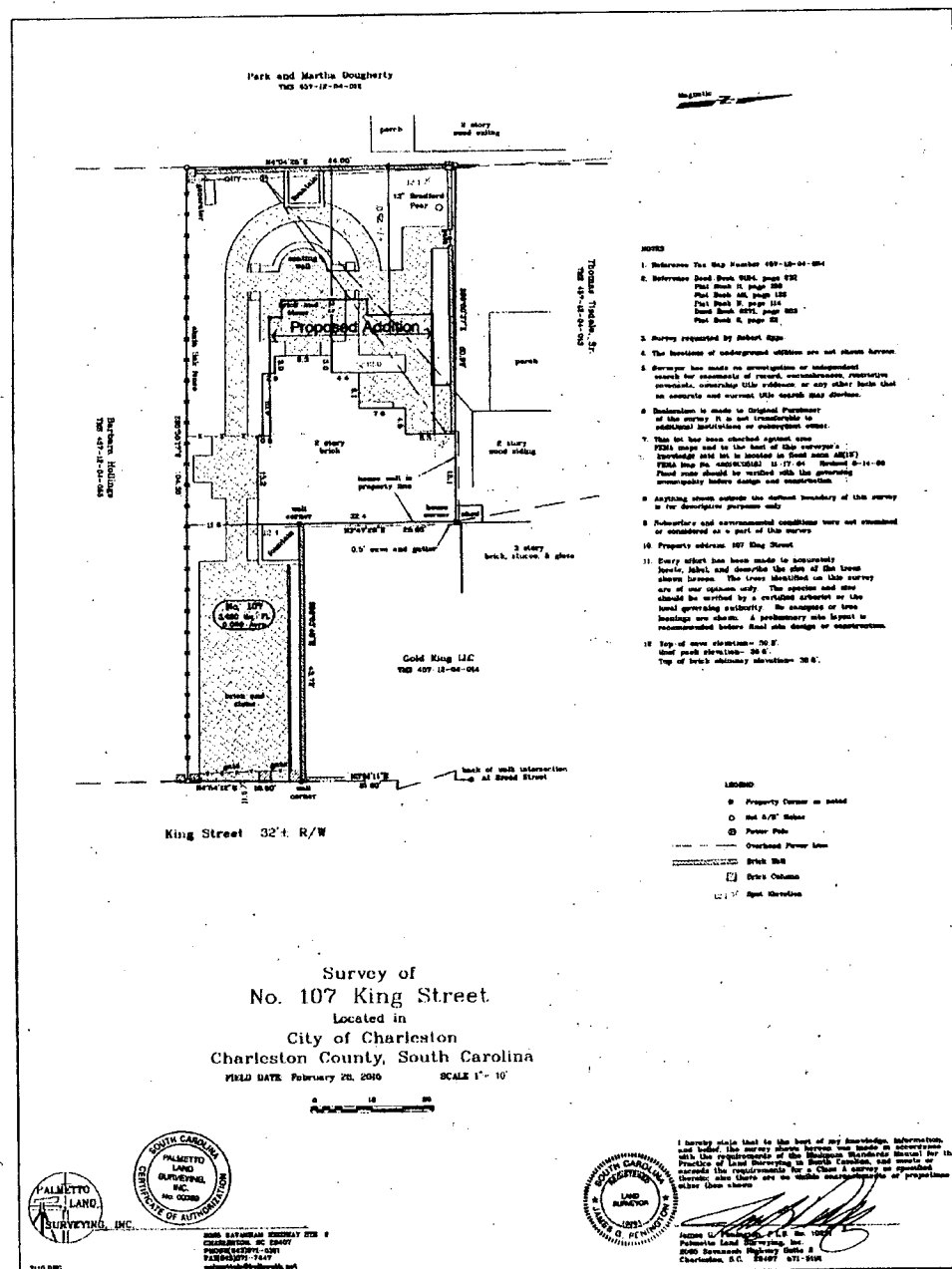
- 3 issues:
 - Visibility
 - Submittal Requirements
 - Preservation Standards/Appropriateness
- Visibility is from north through the piazza of 109 Broad St., from west from Orange St. above 6' high wall and without vegetation.
- Submittal requirements not met. Elevations of the north and east sides and existing floor plans have not been provided.
- Lot of mass to addition, taller than the original kitchen house. Not preferred but minimally perceptible from King St.
- Reconsider proposal to paint addition brick white to match existing.
- The step back in plan and transitional hyphens are good moves, but addition could be much less contrasting stylistically and still be differentiated.

Board comments:

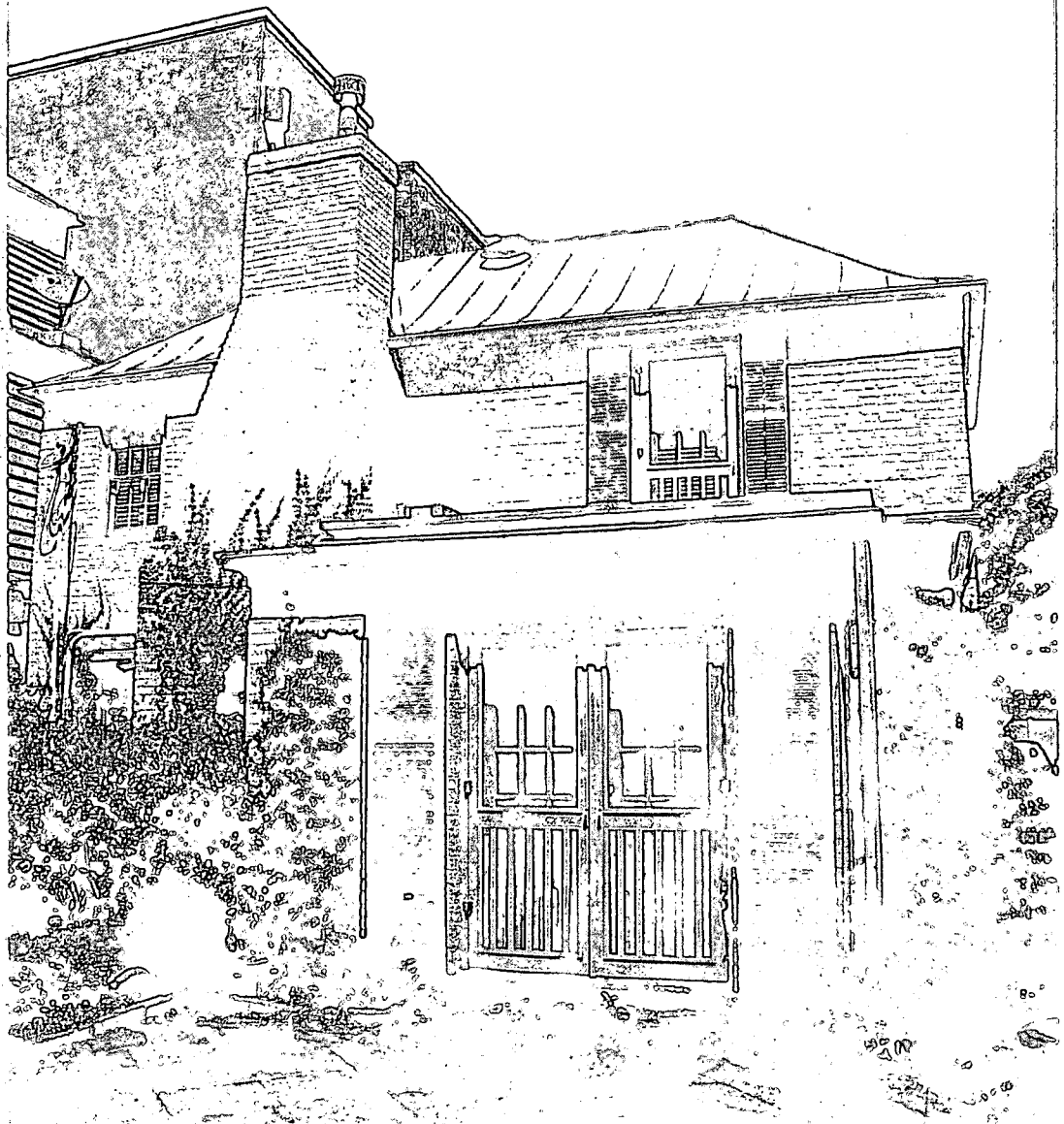
- Don't see arresting effects. Bay is not a glassy wall, it's a bay with large windows.
- Architecturally interesting, takes inspiration from W.G. Clark.
- Could be a little less stylistically contrasting.
- Plan could be compacted to address neighbor's concerns.
- Should not extend beyond piazza of 109 Broad.
- How the neighbor uses the porch is irrelevant, how it relates to 109 Broad is crucial.
- Addition is taller than original.
- Needs to be reduced in height and be smaller in footprint.

**APPLICANT
PRESENTATION**

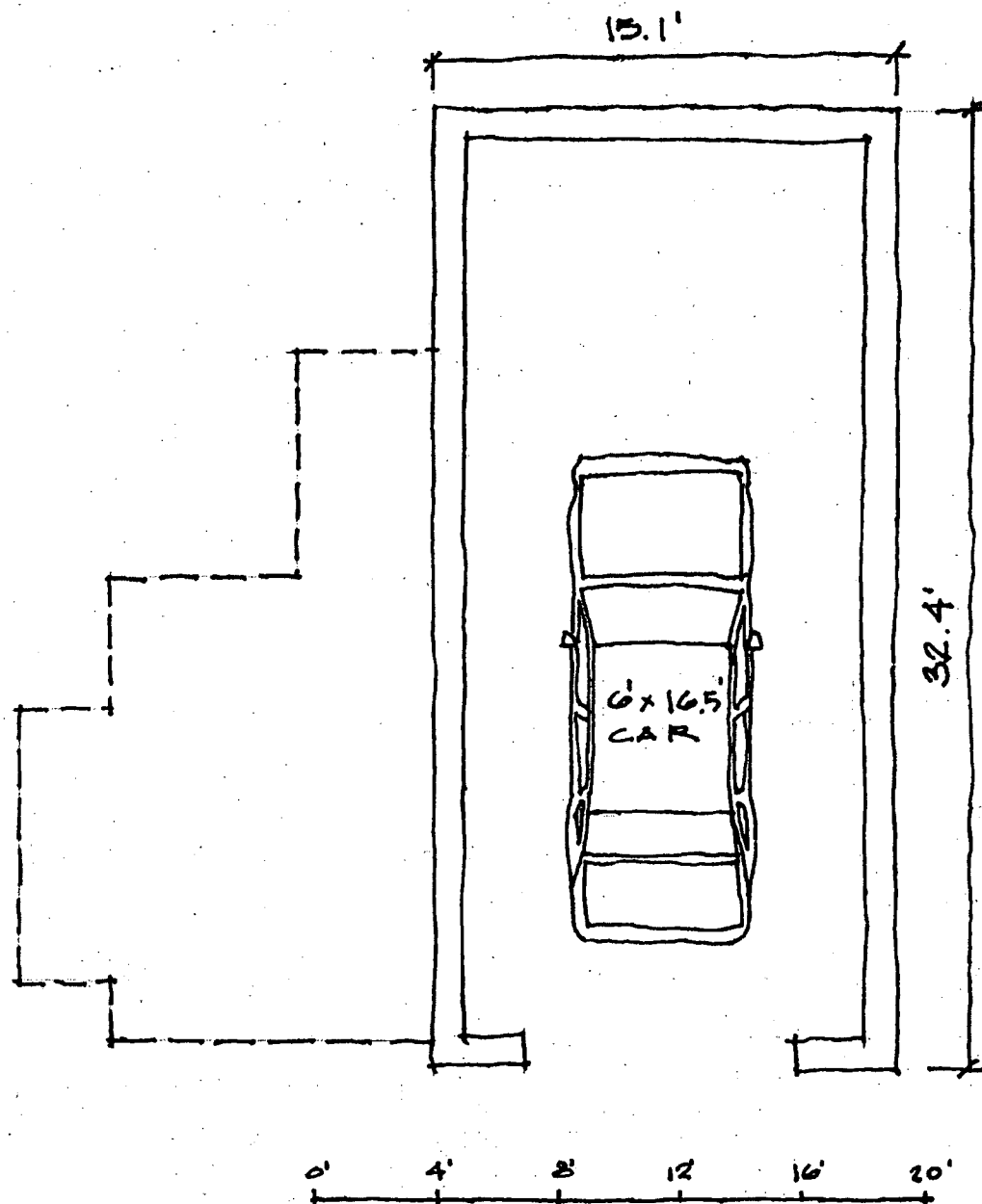


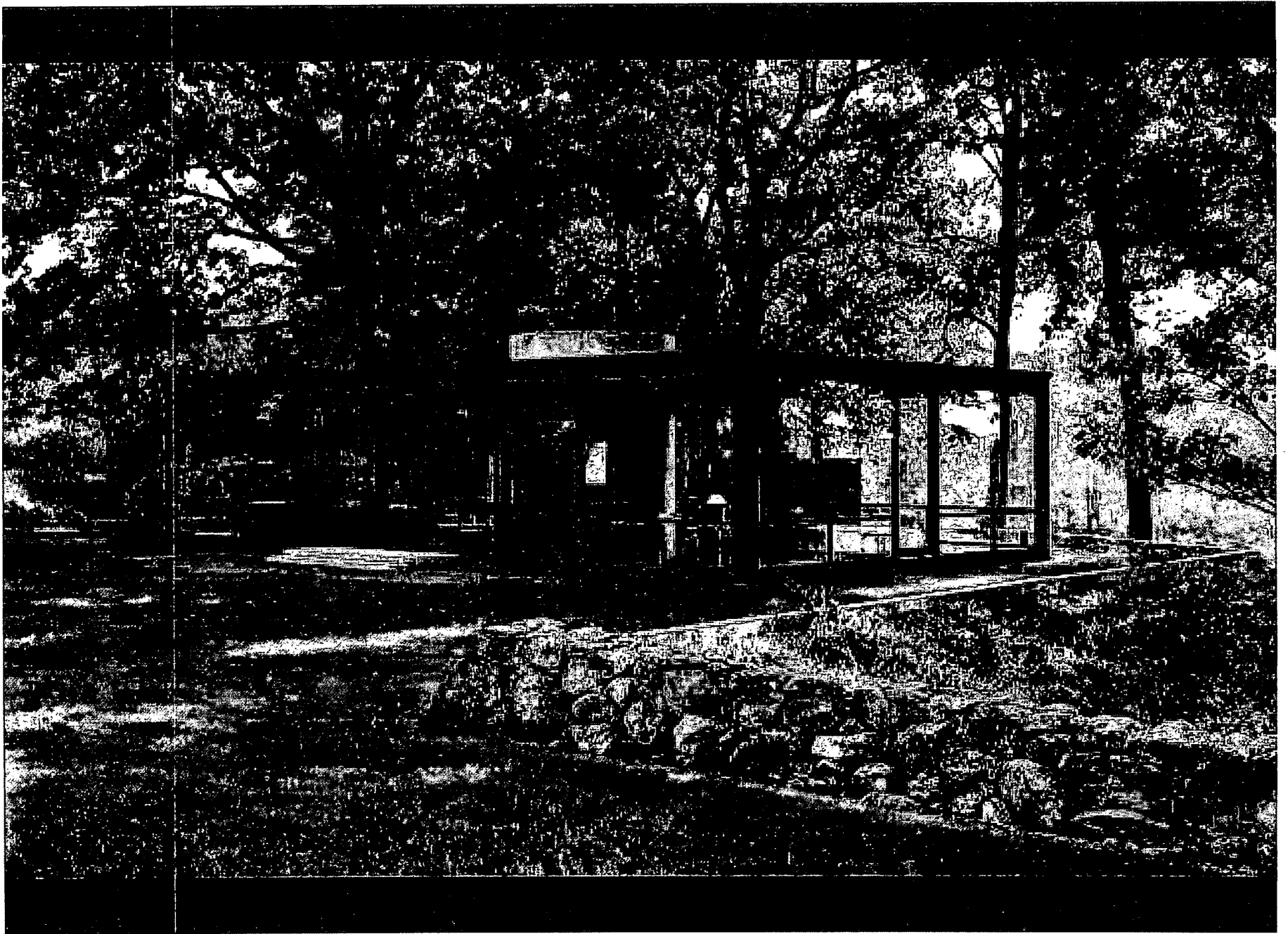




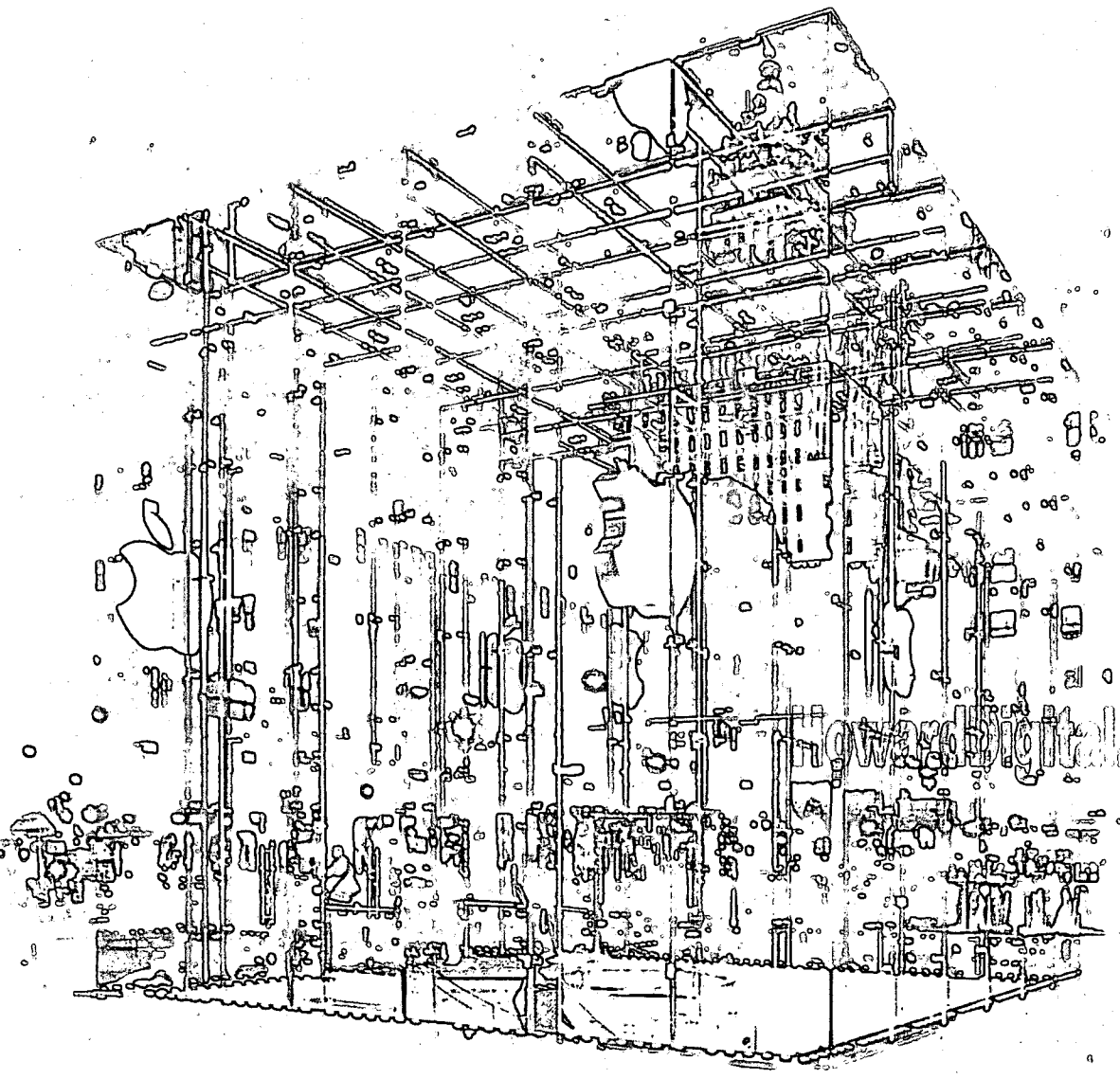




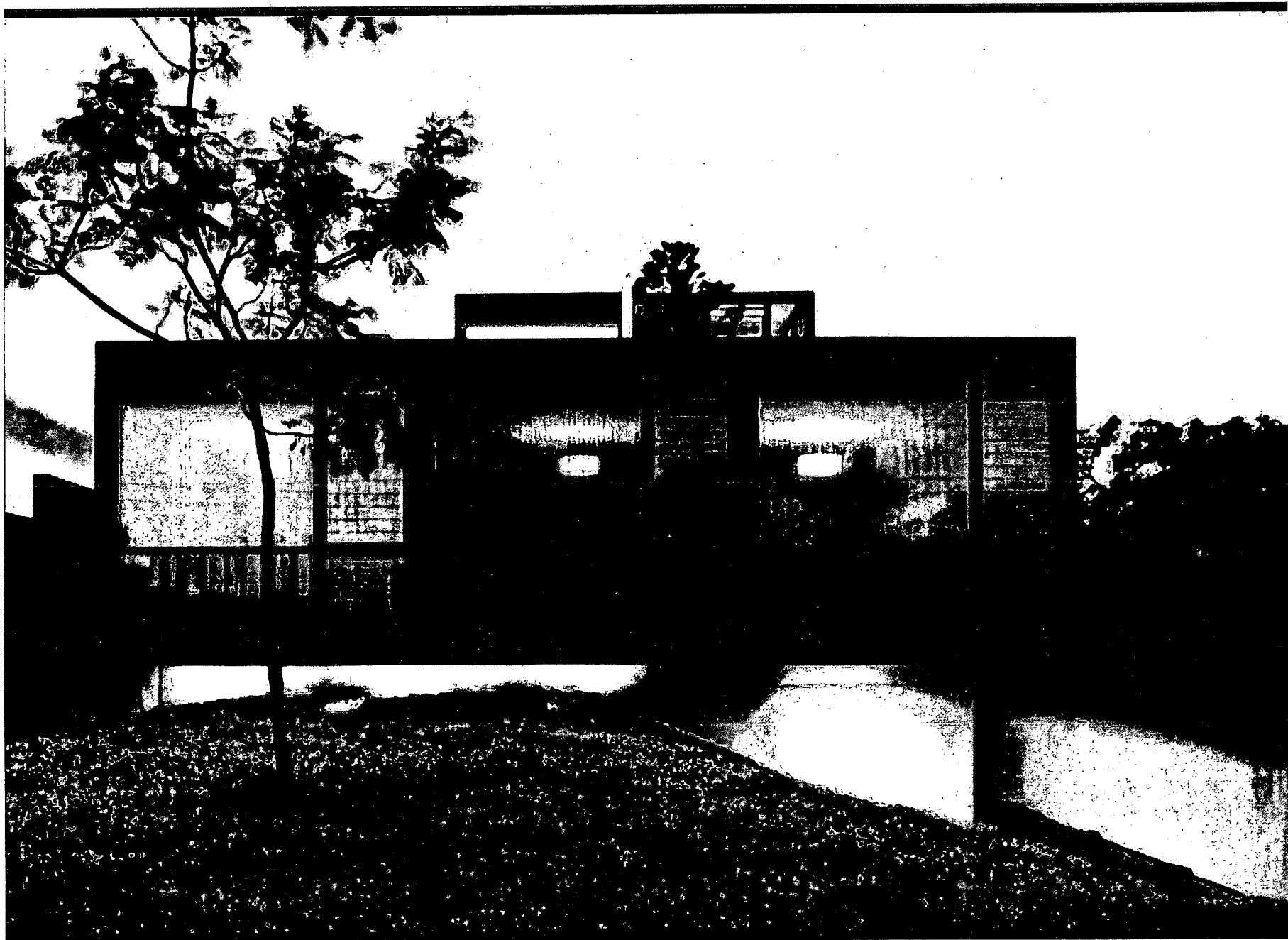




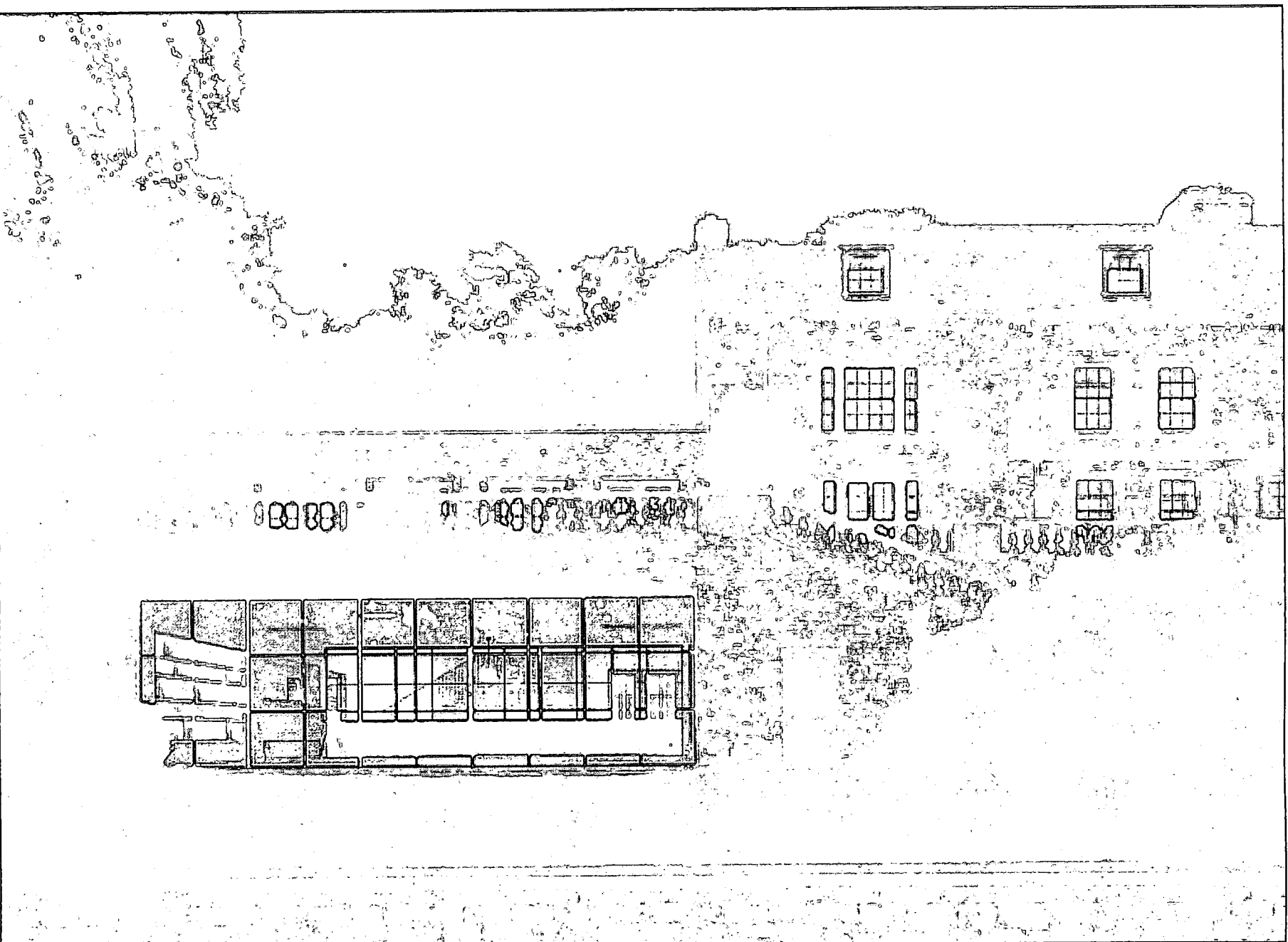


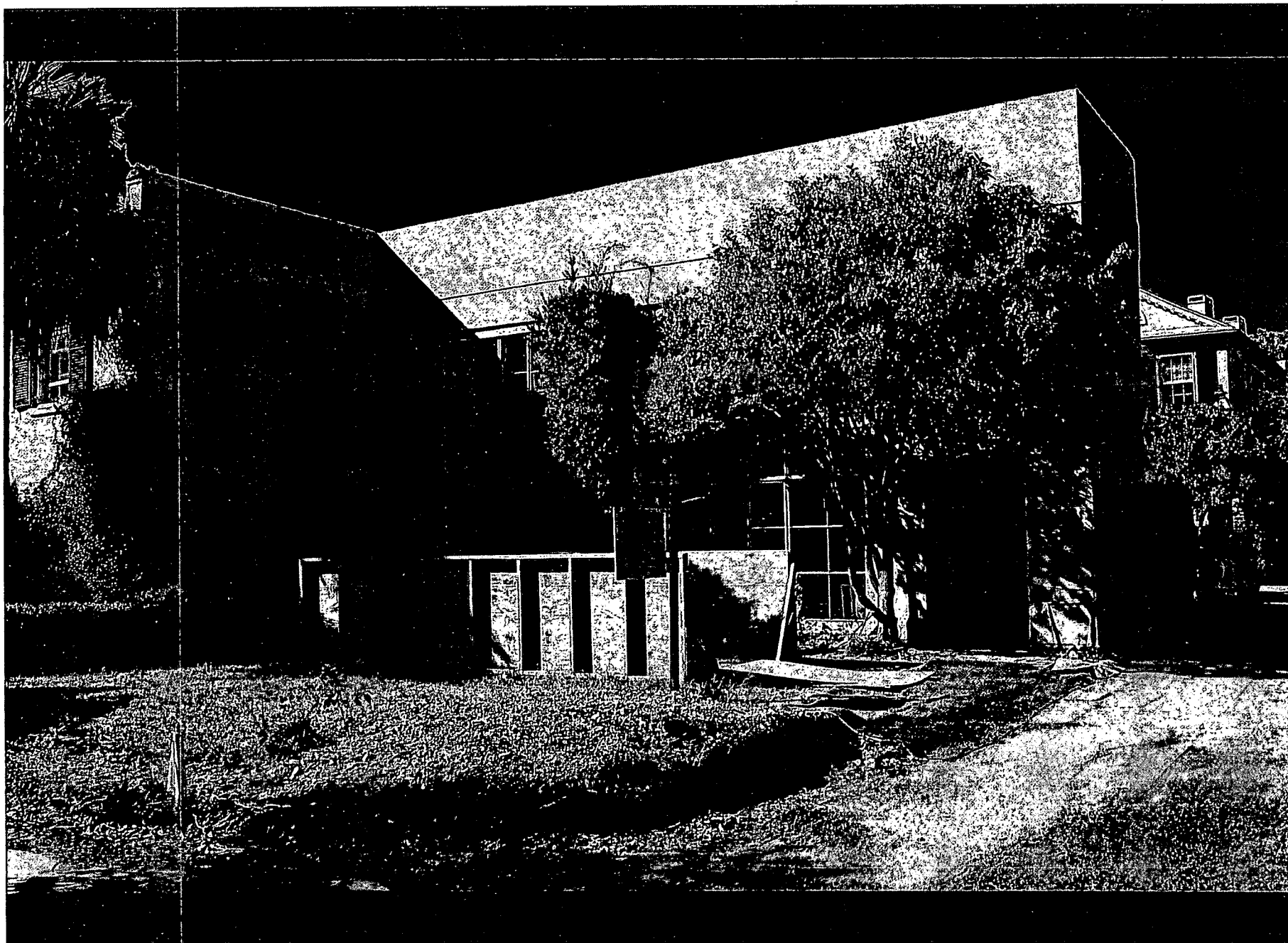


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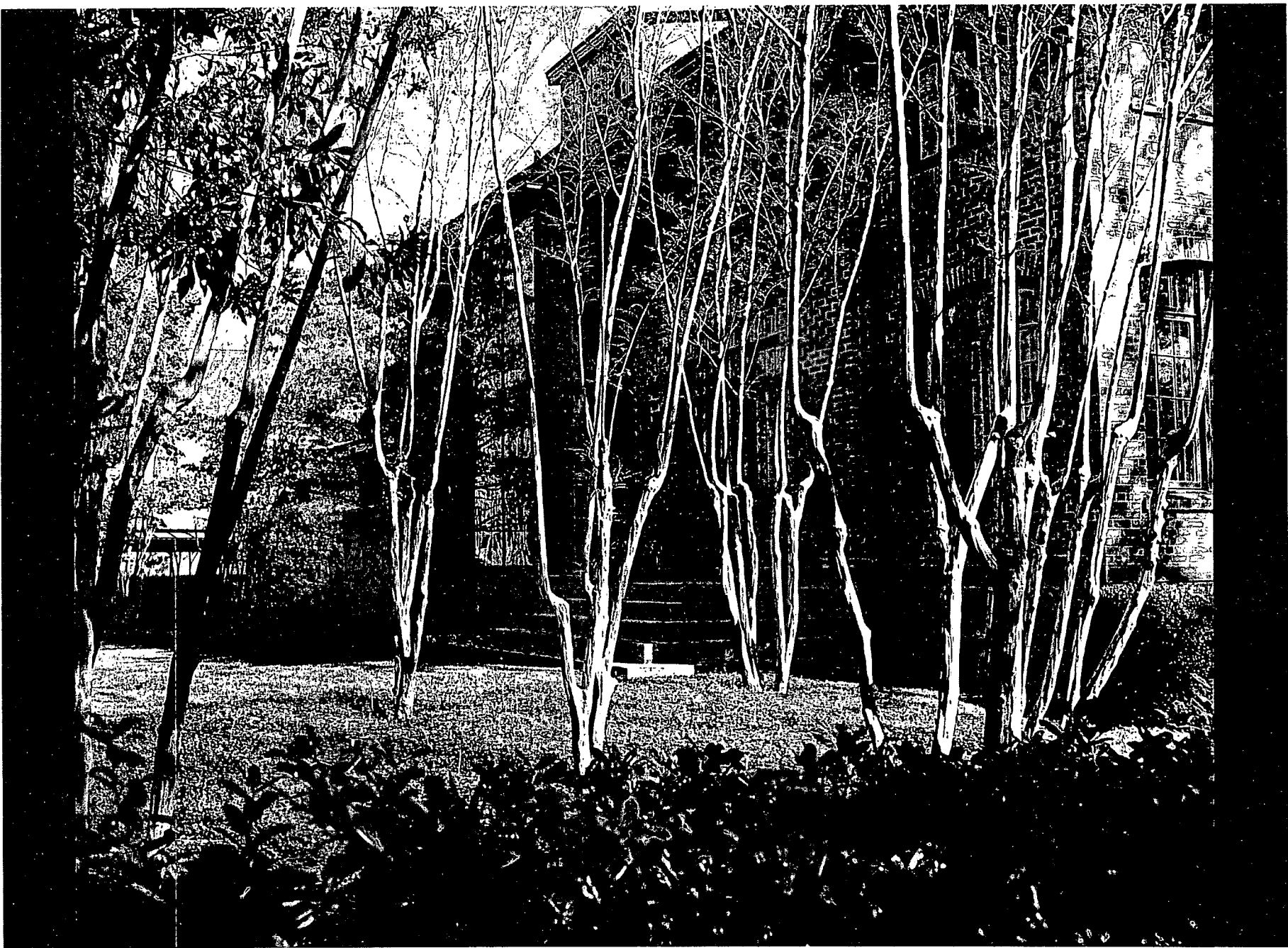








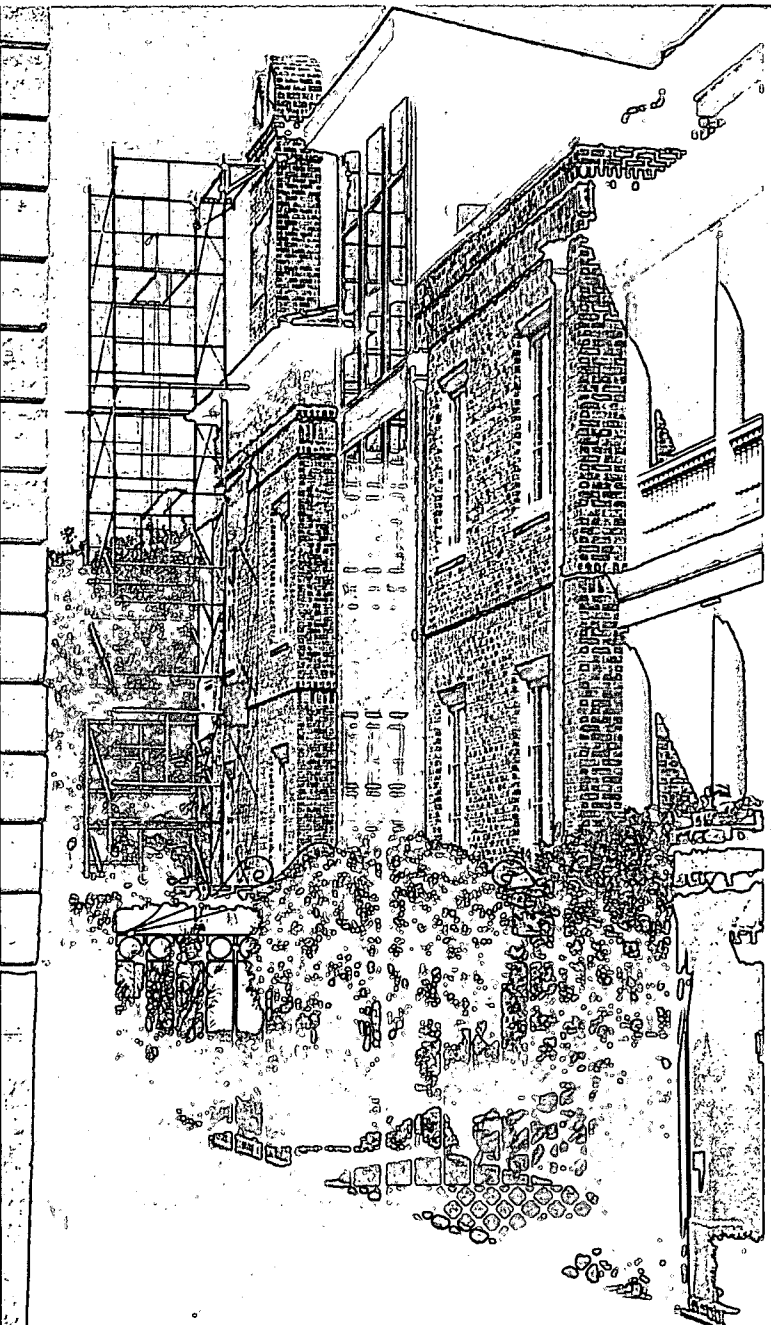




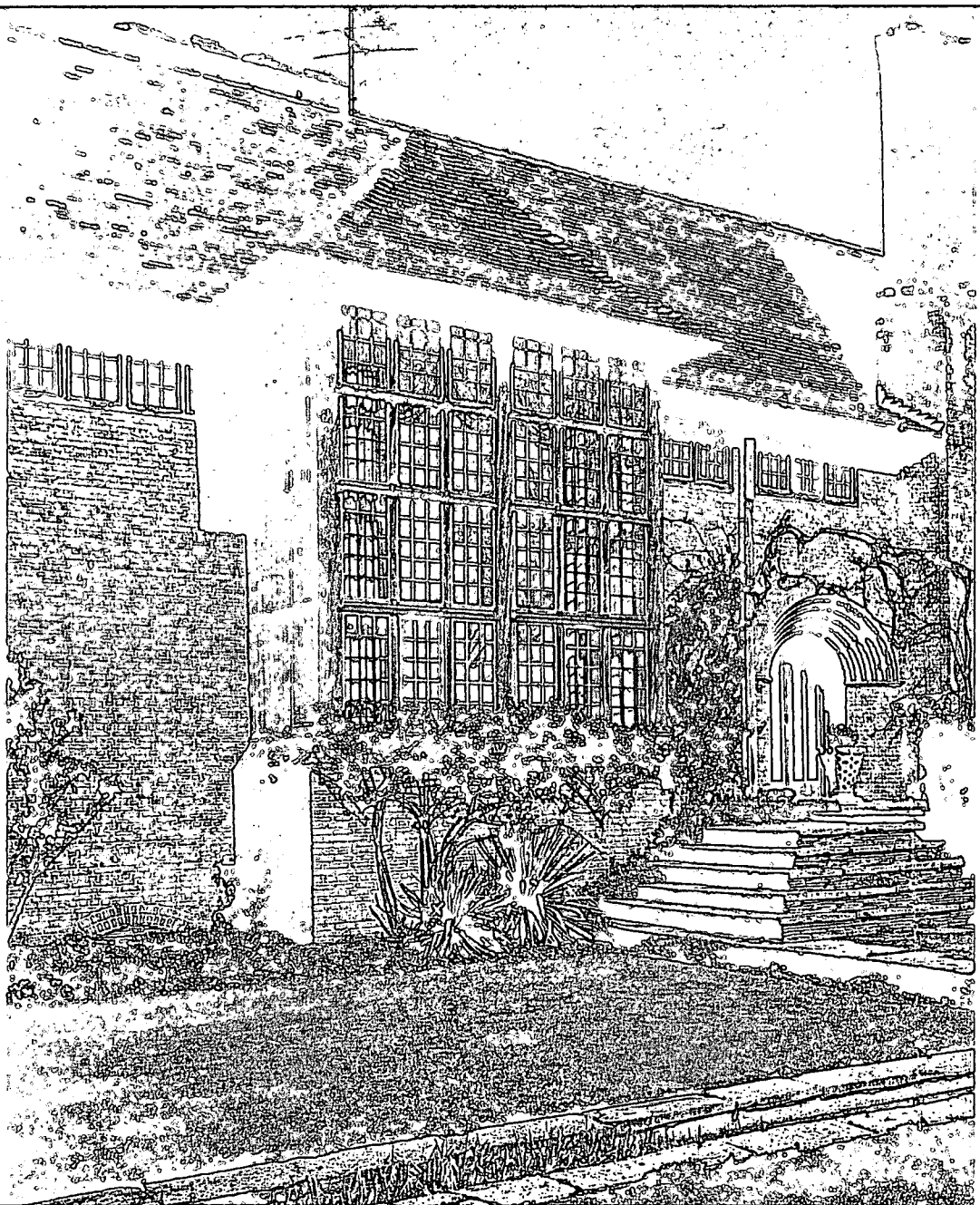




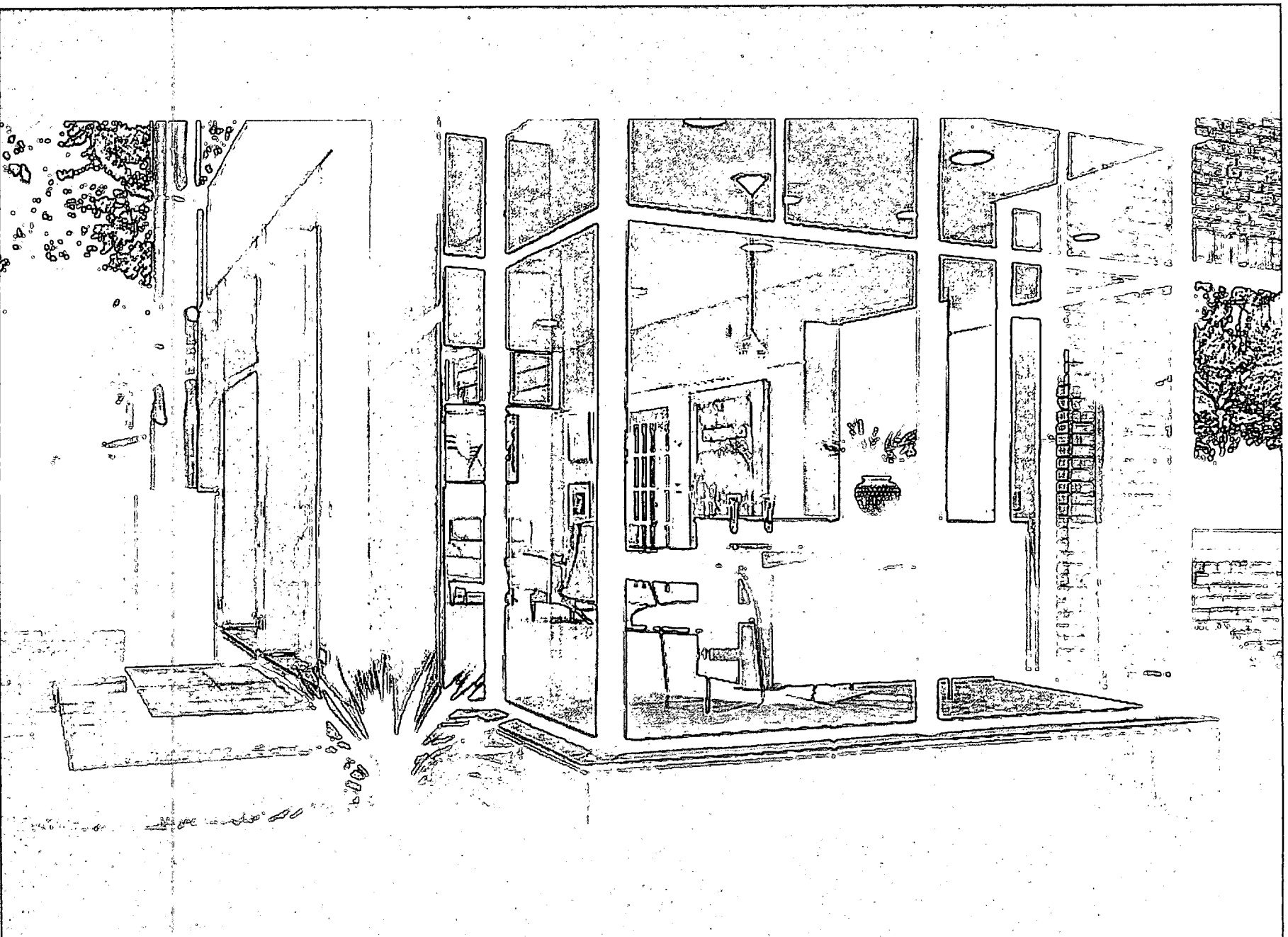


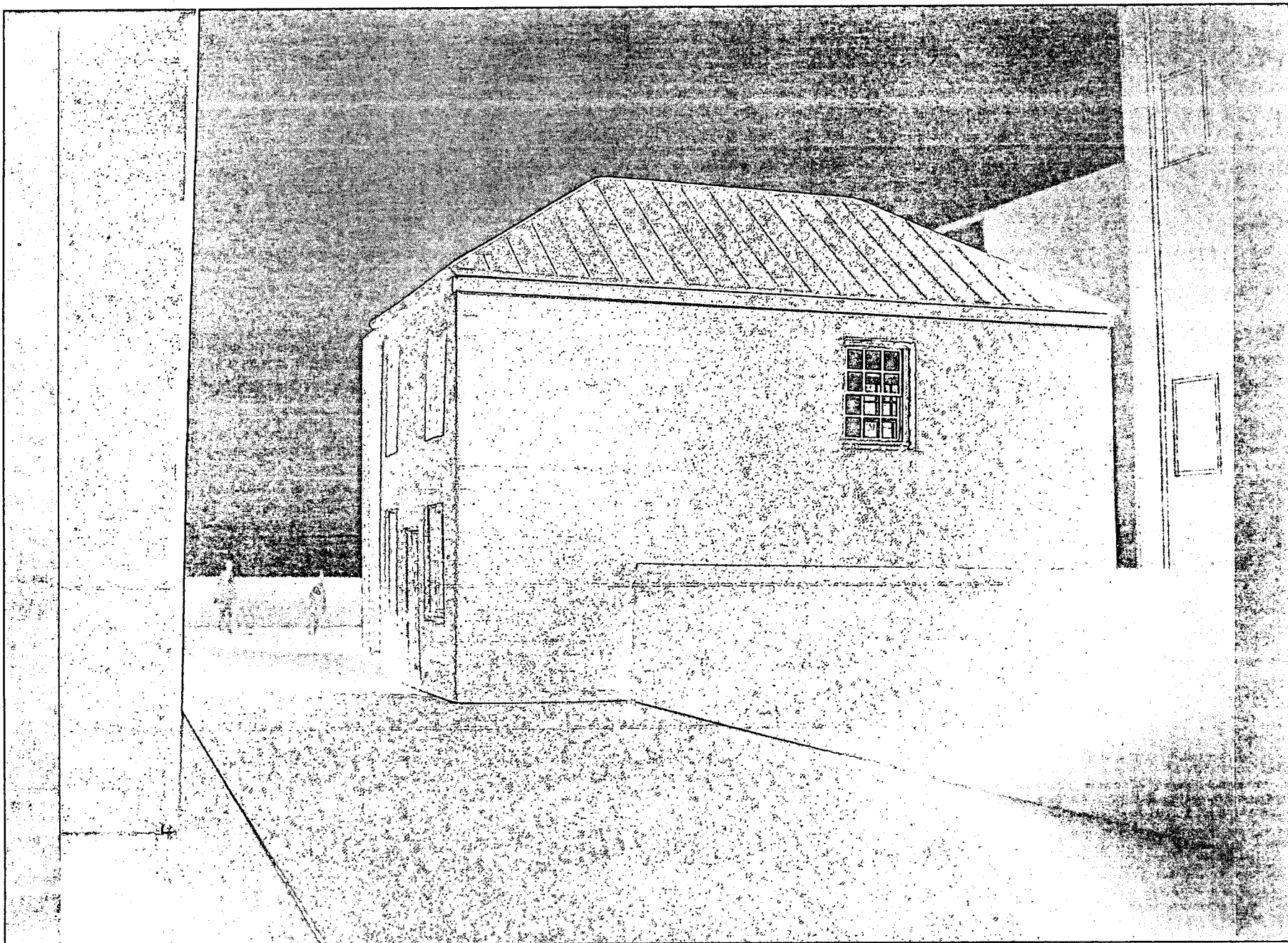




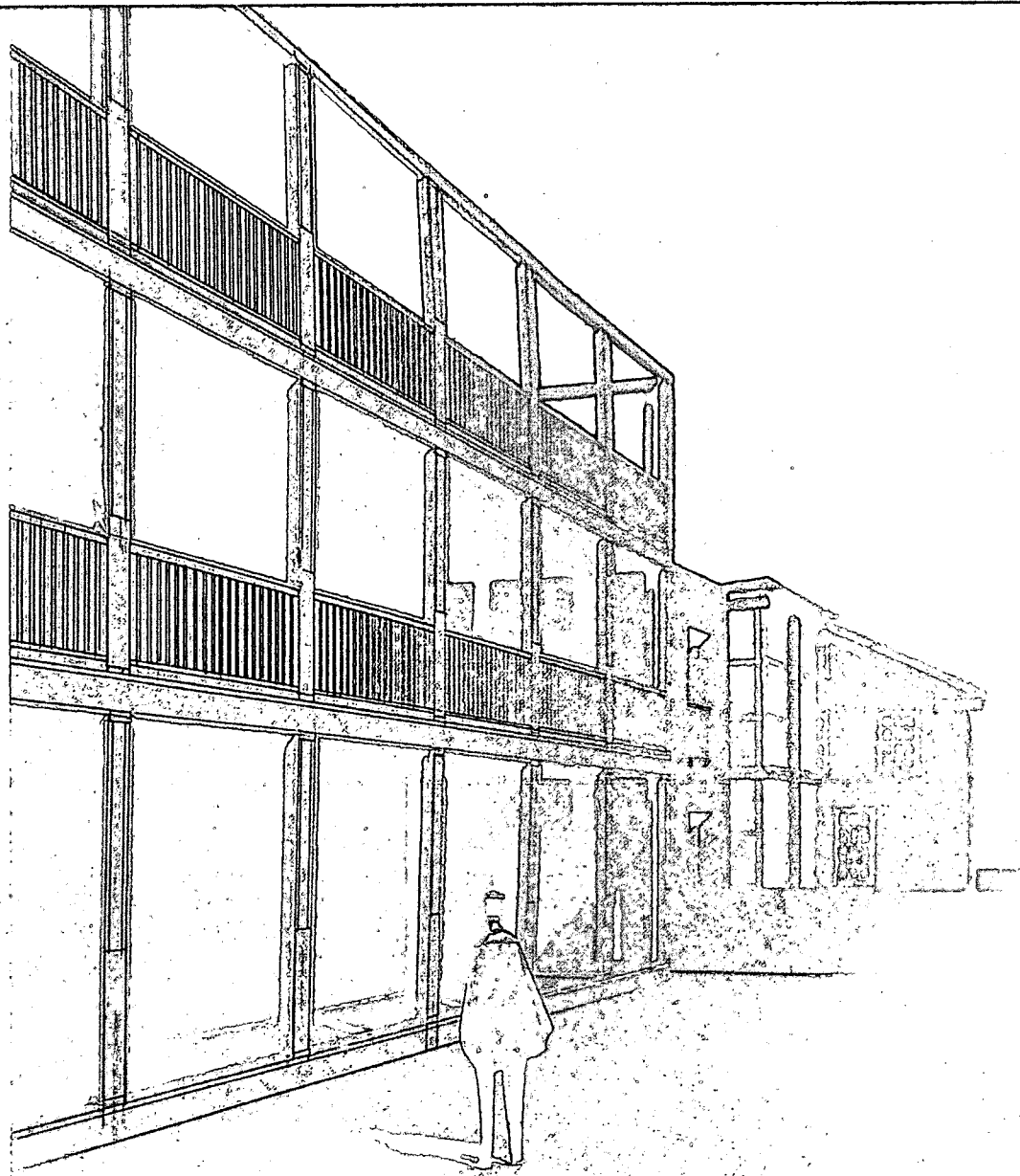


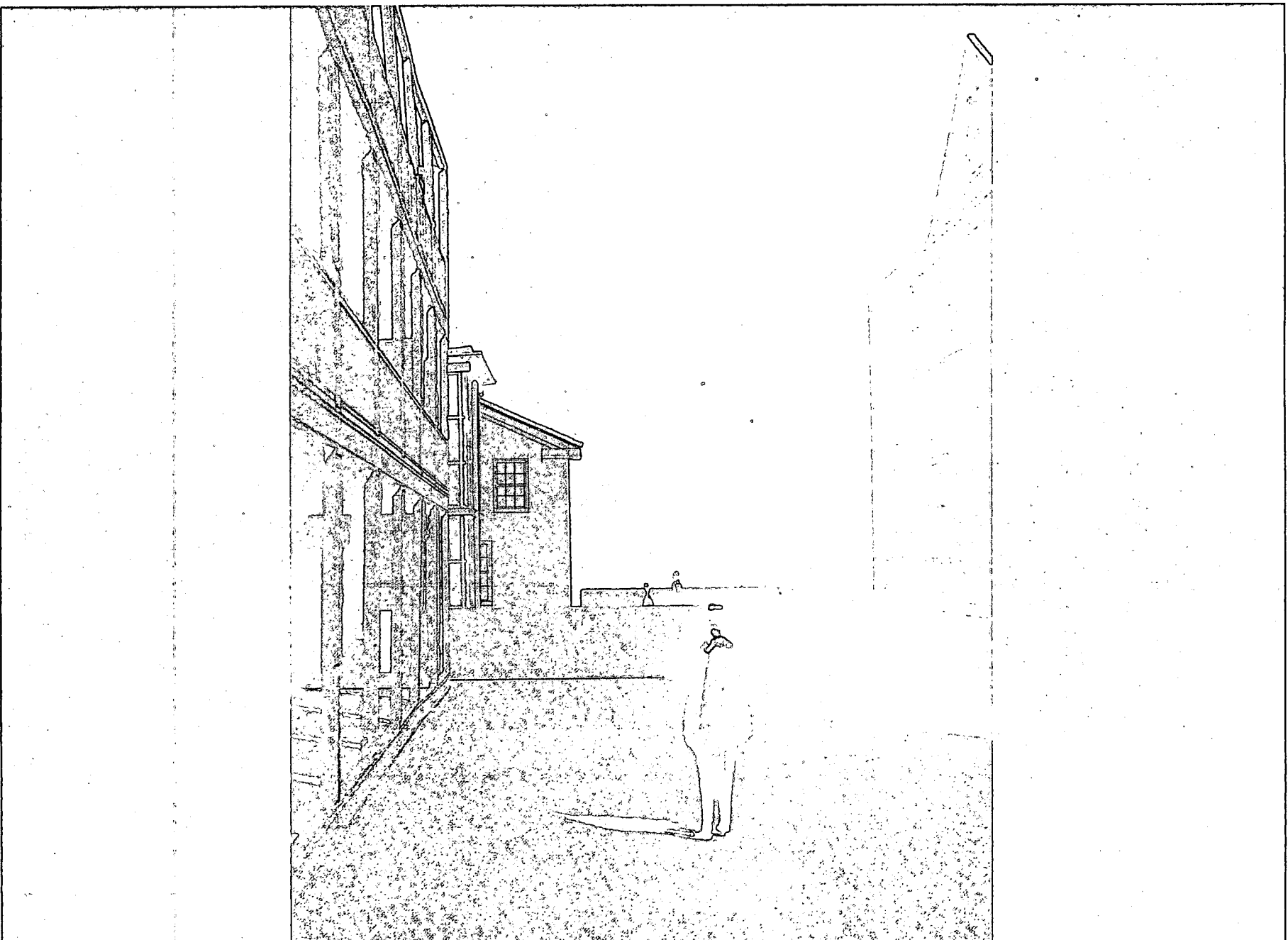


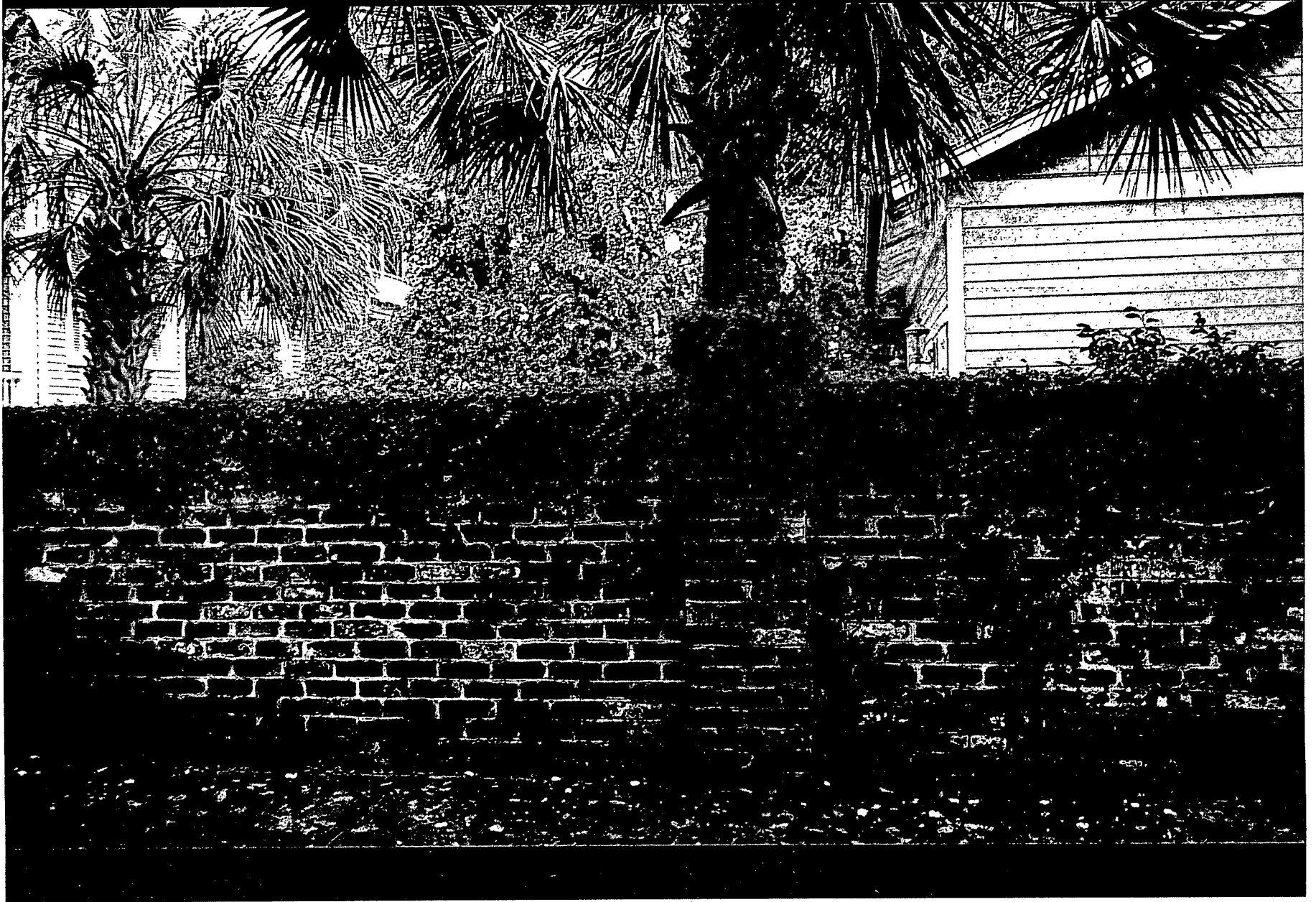


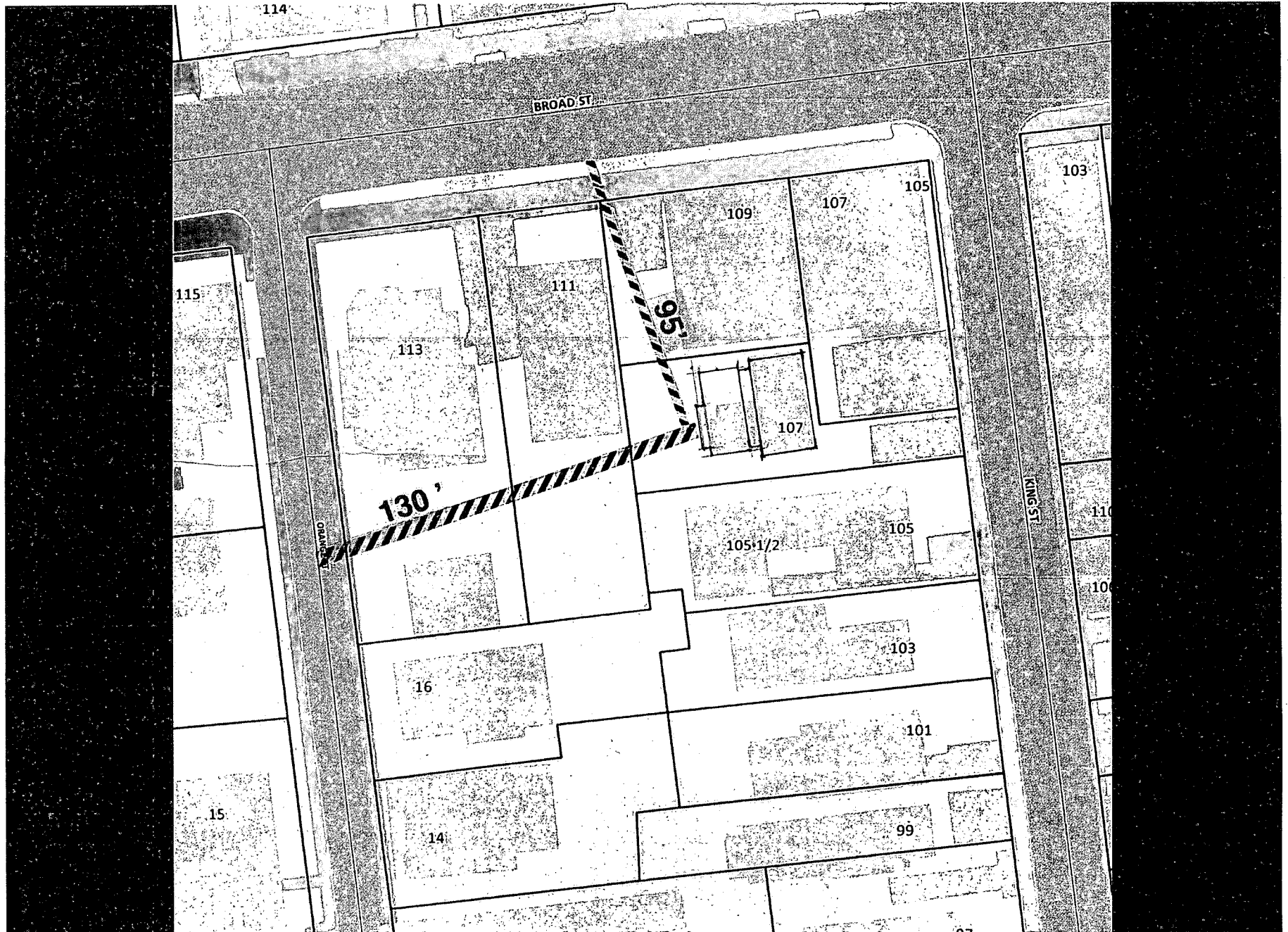


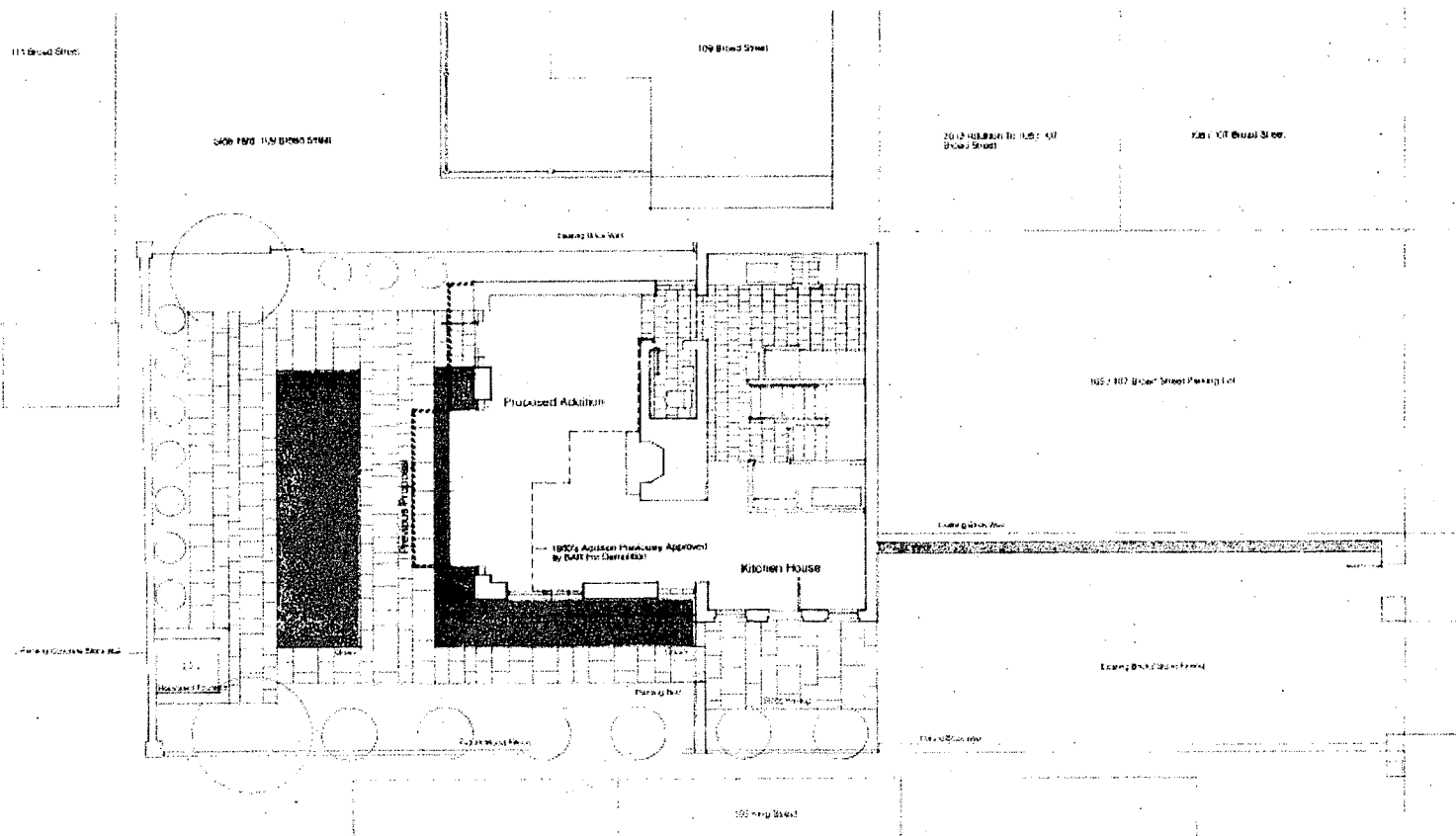












Site Plan

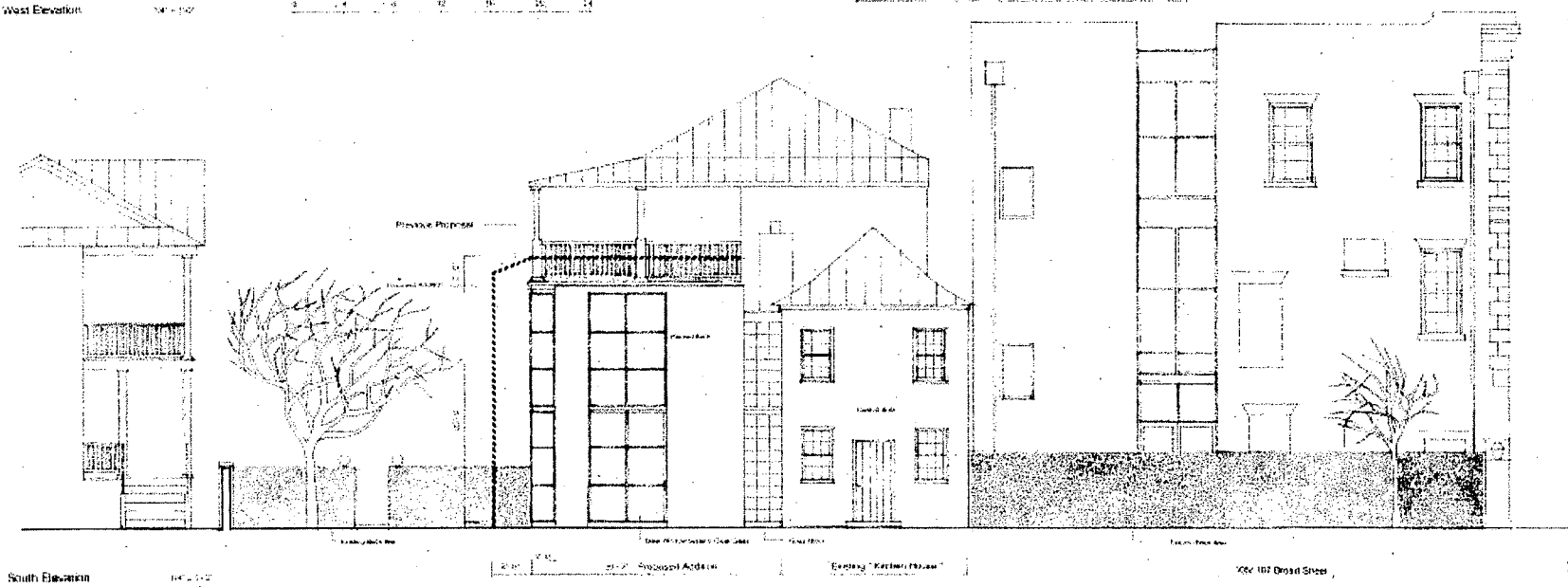
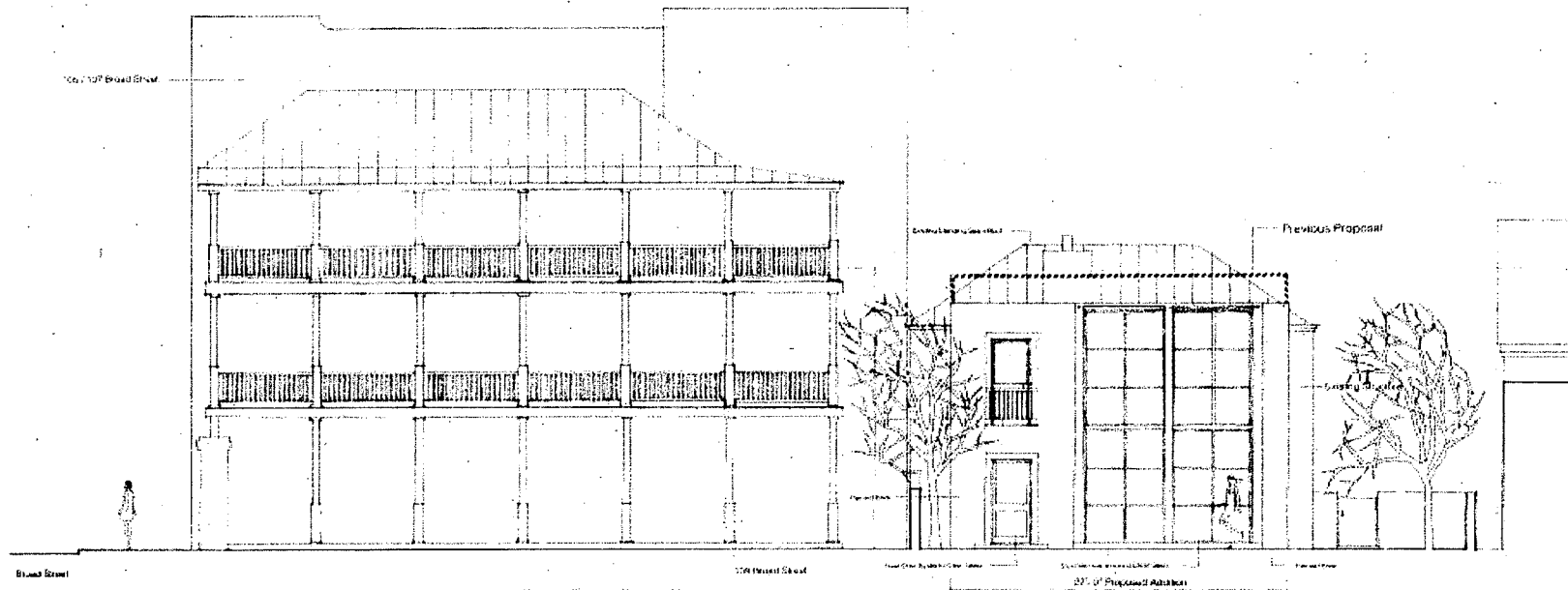
$10^4 \times (T - T_0)$	11	4	0	16	20	24
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Addition And
Modifications to
107 King Street
Charleston
South Carolina

Board Of Architectural
Review - Design
Concept Submission

EPPS ARCHITECTURE

September 1973
October 6, 1973



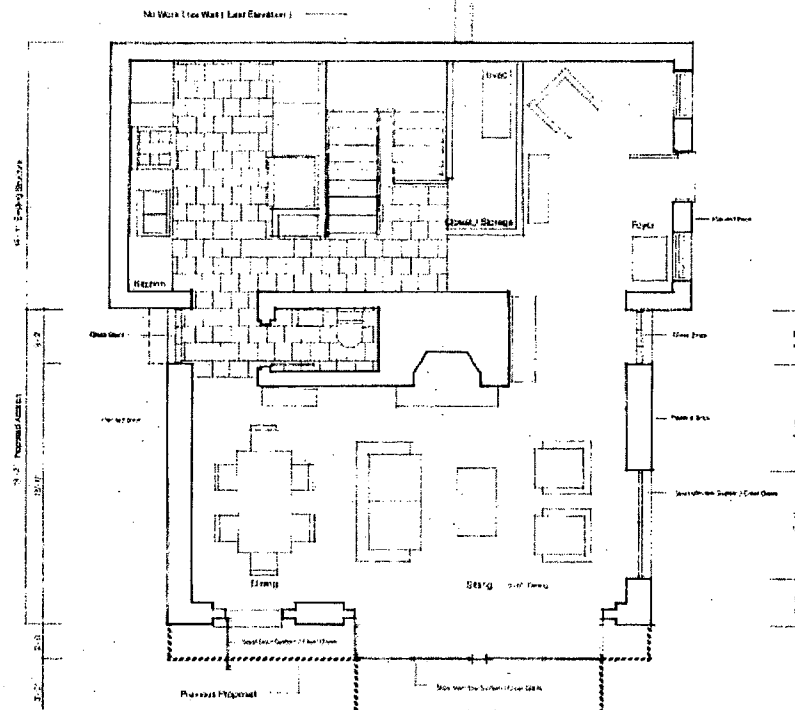



$$114^{\circ} \approx 170^{\circ}$$

Q' 4' Q 12' 10' 20' 2

October 5, 2015

Total Gross Area
 Existing: 1148 A.F.
 Proposed: 1268 S.F.
 Area of Proposed
 Addition: 824 B.F.



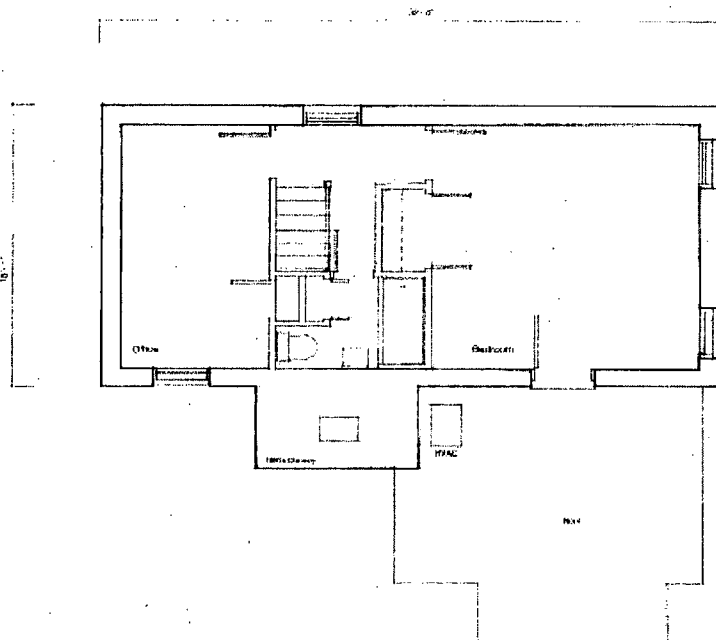
First Level Proposed Floor Plan 28' x 73' ft

Addition And
Modifications to
107 King Street
Charleston
South Carolina

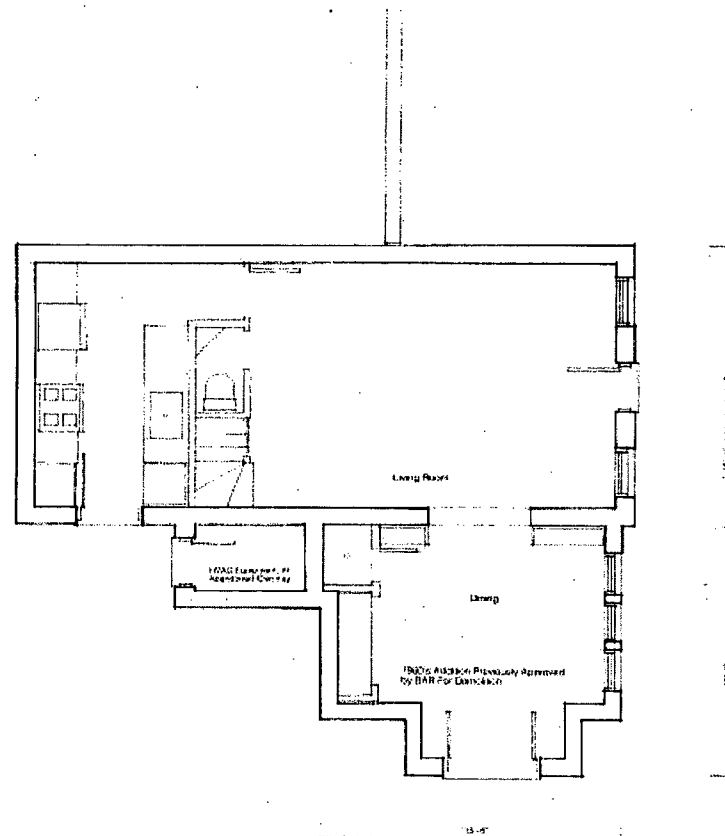
Board Of Architectural
Review - Design
Concept Submission

EPPS ARCHITECTURE

Page 2 of 5
October 5, 2015



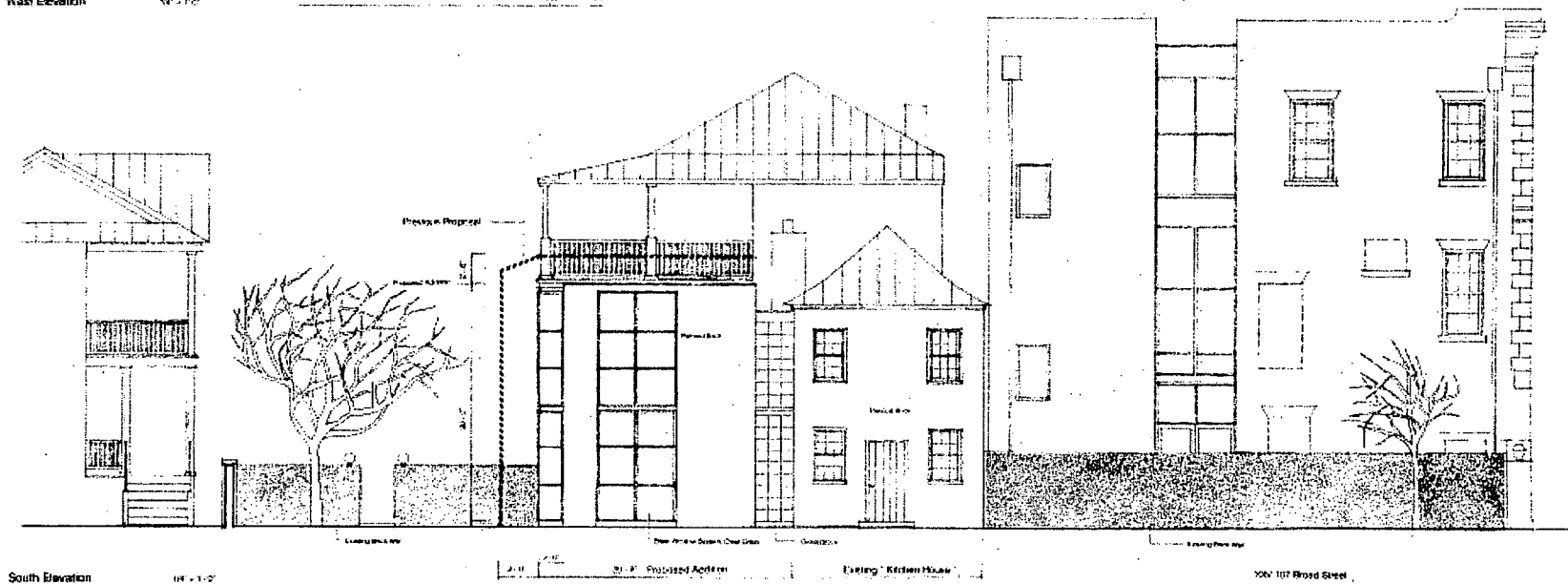
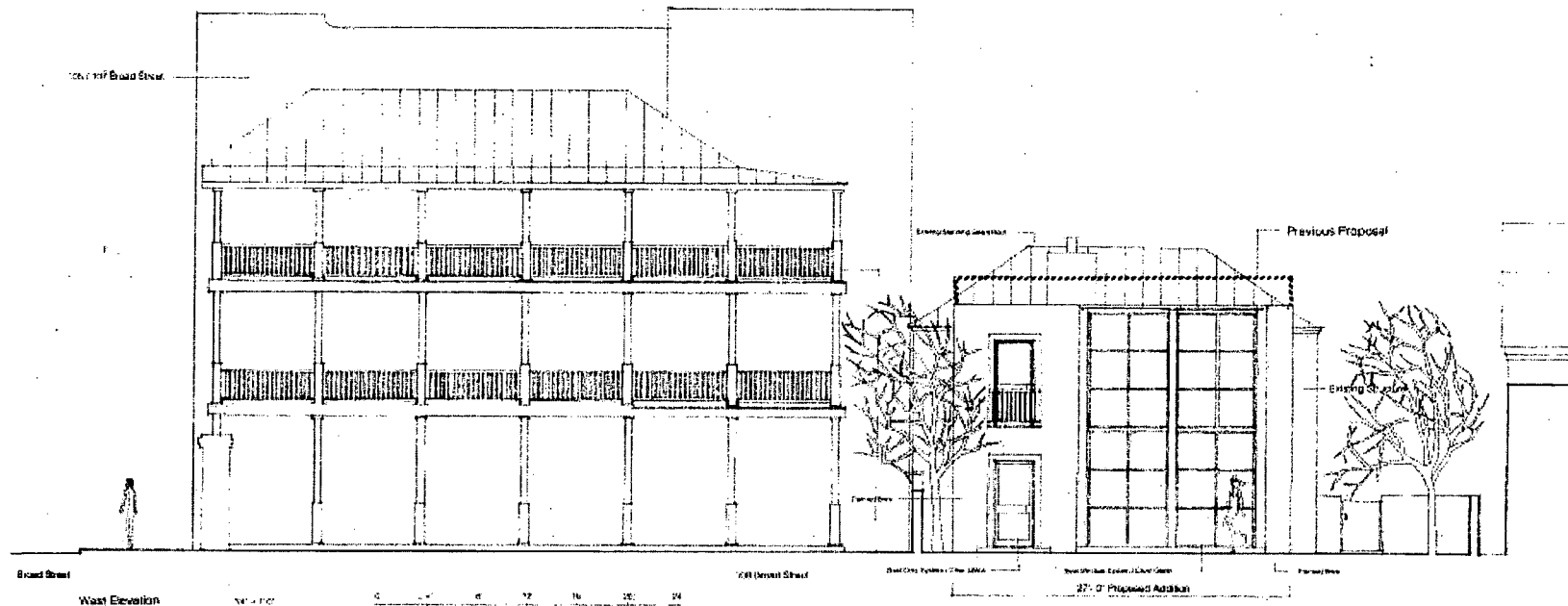
Existing Second Level Floor Plan Of "Kitchen House"

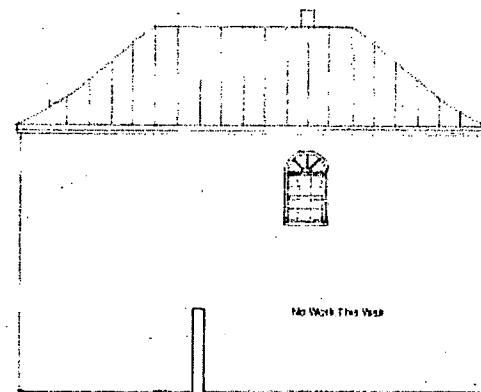


Existing First Level Floor Plan Of "Kitchen House"

36'-0"

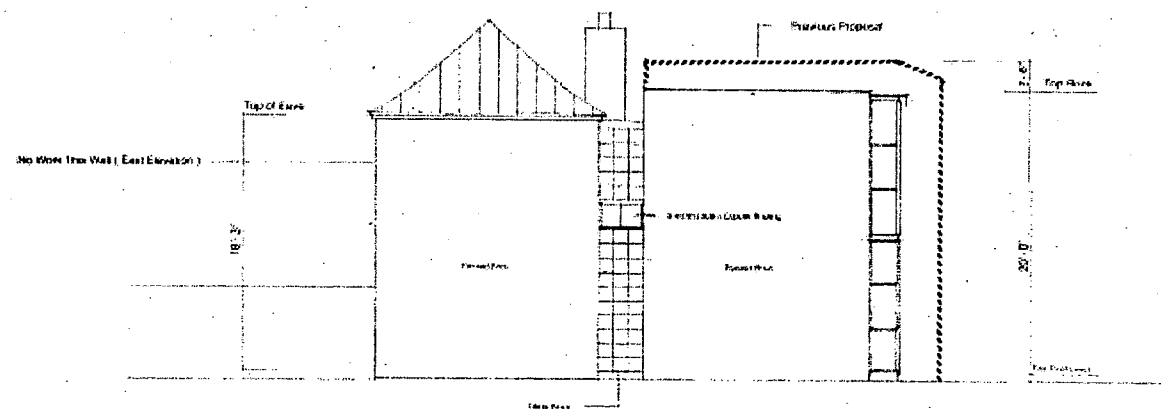
31'-0"





East Elevation

1/4" = 1'-0"



North Elevation

1/4" = 1'-0"

0' 4' 8' 12' 16' 20' 24'

Previous motion:

Deferral for restudy based on staff comments 1-5 and Board comments to reconsider a smaller total footprint, decrease in height, and design of "window wall."

Staff comments:

- 3 issues:
 - Visibility
 - Submittal Requirements
 - Preservation Standards/Appropriateness
- Visibility is from north through the piazza of 109 Broad St., from west from Orange St. above 6' high wall and without vegetation.
- Submittal requirements not met. Elevations of the north and east sides and existing floor plans have not been provided.
- Lot of mass to addition, taller than the original kitchen house. Not preferred but minimally perceptible from King St.
- Reconsider proposal to paint addition brick white to match existing.
- The step back in plan and transitional hyphens are good moves, but addition could be much less contrasting stylistically and still be differentiated.

Board comments:

- Don't see arresting effects. Bay is not a glassy wall, it's a bay with large windows.
- Architecturally interesting, takes inspiration from W.G. Clark.
- Could be a little less stylistically contrasting.
- Plan could be compacted to address neighbor's concerns.
- Should not extend beyond piazza of 109 Broad.
- How the neighbor uses the porch is irrelevant, how it relates to 109 Broad is crucial.
- Addition is taller than original.
- Needs to be reduced in height and be smaller in footprint.

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2015-CP-10-06186

THOMAS S. TISDALE,	)	
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
	)	MARCH 30, 2016
CITY OF CHARLESTON,	)	CHARLESTON, SC
	)	
DEFENDANT.	)	

B E F O R E:

HONORABLE J. C. NICHOLSON, JUDGE

A P P E A R A N C E S:

Capers G. Barr, ESQUIRE
Attorney for the Plaintiff

TIMOTHY A. DOMIN, ESQUIRE
Attorney for the Defendant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

1 (The following proceedings were held
2 March 30, 2016, Charleston County, South Carolina,
3 @ 4:08 p.m.)

4 THE COURT: Tisdale versus City of
5 Charleston. Whose here representing who?

6 MR. BARR: Good afternoon, Your Honor.
7 Capers Barr representing the petitioner Thomas
8 Tisdale, Park Dougherty and Martha Dougherty.
9 Present at counsel table with me are Mr. Tisdale
10 and Mr. Dougherty.

11 MR. DOMIN: Tim Domin. I represent the
12 City of Charleston, City of Charleston Board of
13 Architectural Review. Seated over here next to me
14 are Mr. and Mrs. Woodward. They are the permit
15 applicants. Their permit was granted by the BAR.
16 I do not represent them. They are pro se in the
17 case proceeding.

18 THE COURT: Is Mr. Randolph Pelzer
19 here?

20 MR. BARR: He is not. I know he sent
21 in a motion and brief, Judge.

22 THE COURT: That's what I was going to
23 address first. He sent in some kind of brief. He
24 didn't bother to show up?

25 MR. BARR: Well, I don't think it was

1 quite that casual. He had a commitment out of town
2 and he called me on the way out before he left,
3 sent me a copy of it and told me that he was filing
4 it. Just asked --

5 THE COURT: He filed a motion to leave
6 to file a brief. If y'all don't have any objection
7 I will be happy to receive his memo and file it.

8 MR. DOMIN: Your Honor, I don't have
9 any objection to him filing an amicus brief.

10 THE COURT: He has asked to be a party.

11 MR. DOMIN: Understood.

12 THE COURT: He has filed on behalf of
13 the Charlestowne Homeowners Association.

14 MR. BARR: Yes, sir.

15 THE COURT: Which is all homeowners
16 below Broad Street.

17 MR. BARR: That's correct.

18 THE COURT: I don't have any problem
19 accepting it if you two parties don't.

20 MR. BARR: I have no objection.

21 THE COURT: I will accept it and mark
22 it as Court's Exhibit No. 1. Be glad to hear you.

23 MR. BARR: Your Honor, may it please
24 the Court, this is an appeal from the City of
25 Charleston Board of Architectural Review. Your

1 Honor, I know you have probably heard more about
2 the BAR in the past several months than the Court
3 would ever want to hear. The good news is that we
4 are not here to challenge it, that is to say we
5 don't attack the Board of Architectural Review or
6 its constitutionality. I had sent up a memo and
7 some exhibits, I don't know -- I apologize that it
8 was at the last minute. I don't know if Your Honor
9 had time to see them. If I may approach, Judge.
10 Exhibit 1 through 18 or so.

11 THE COURT: Let me just ask you one
12 question before we get started. I haven't read
13 your brief. I read the city's brief and memo. I
14 read this brief. I haven't read yours. I
15 apologize, I just didn't have time to do it. Is
16 this an apartment-type cottage behind the primary
17 house?

18 MR. BARR: Well --

19 THE COURT: Or is it attached to the
20 house?

21 MR. BARR: It's formerly one, Your
22 Honor, and I was going to start by orienting you if
23 you would like.

24 THE COURT: So my question is is it
25 viewable from the street?

1 MR. BARR: Yes.

2 THE COURT: Okay. Go ahead.

3 MR. BARR: That is really -- that
4 becomes the essence of our case. You know, I have
5 been involved in only a few BAR cases. I have been
6 in many board zoning appeal cases.

7 THE COURT: Well, the BAR is a little
8 bit different.

9 MR. BARR: Exactly. You learn the BAR
10 is a little bit different. But there is a central
11 legal issue in this case. If I may digress with a
12 slight anecdote. Several years ago, my wife and I,
13 we live on Barre Street, decided to add onto the
14 back. We engaged Sandy Logan, an architect who
15 might have even then been on the BAR. And I said
16 Sandy, is this going to require BAR approval? His
17 response was no, it cannot be seen from the street,
18 the BAR does not have jurisdiction.

19 And as I'll invite the Court's
20 attention in just a minute, that becomes the legal
21 essence of this case. Now, it is clear that the
22 neighbors and the neighborhood association are not
23 pleased with the appearance of the house with all
24 deference to the Woodward's and to Mr. Epps, the
25 architect, who is here present. They just don't

1 like the way that it looks. But we understand that
2 that is not a legal argument to set aside the
3 judgment or decision of the Board of Architectural
4 Review. And so the visibility from a public street
5 or way is the essence of the case.

6 But if I may orient you, Judge, if you
7 can find Exhibit 2. The first exhibit is the
8 original appeal that was filed and then maybe eight
9 or ten pages back you will see an Exhibit 2 which
10 ought to be an aerial photograph.

11 If I can walk you through just so you
12 will know where you are here, that Exhibit 2 is an
13 aerial view of the intersection of King Street and
14 Broad Street. You will see it ought to read
15 proposed demolition, it's pointing one arrow and
16 then 107 King Street. That is the subject
17 property. That's the property of the Woodwards
18 that's at issue in this case. Immediately to the
19 left, this would be north by way of compass, is Mr.
20 Tisdale's house, Tom Tisdale, who is one of my
21 clients.

22 THE COURT: So Mr. Tidsale's house, the
23 front is on Broad Street.

24 MR. BARR: Correct. In fact, the 107
25 King Street was formerly a kitchen house associated

1 with 107 Broad Street -- I am sorry, 109 Broad
2 Street. I might have got some street numbers mixed
3 up in all this configuration. But it's 109 Broad
4 Street. So they were once a part of the same
5 property, but many years ago were subdivided.

6 Mr. Dougherty is the house right below
7 Mr. Tisdale's. And then the next photograph is a
8 longer shot which ought to be horizontal which is
9 Exhibit 3, that's a longer shot of the same
10 intersection. You see the red rectangle. And up
11 to the top right, Judge, is right where we are
12 right now. It's the judicial center. So this is
13 less than a block away from where we stand.

14 THE COURT: Okay.

15 MR. BARR: Exhibit 4 is a photograph of
16 the west elevation of the existing home at 107 King
17 Street. And what is proposed to be demolished is
18 that small addition that you see in the front and
19 the chimney. We will get to the addition in just a
20 minute. To the left you can see a house there.
21 That's Mr. Tisdale's house. And if you go to
22 Exhibit 5, you will see that the camera was turned
23 and you are looking at the back of Mr. Tisdale's
24 house. And to the right is then the corner of that
25 section that was going to be demolished. Exhibit 6

1 is the view of 107 King, the Woodward's property,
2 from King Street. That's the east elevation as you
3 look at it from King Street. That's what you see.
4 Exhibit 7. Are you with me?

5 THE COURT: Yes.

6 MR. BARR: Seven is Mr. Tisdale's house
7 looking from Broad Street and immediately through
8 the piazzas or the porches of Mr. Tisdale's house
9 and behind them is the Woodward's house. That's
10 where it exists. Exhibit 8 is another shot, but in
11 Exhibit 8 you can see both Mr. Tisdale's house to
12 the left and Mr. Dougherty's house to the right.

13 Now, Exhibit 9 is an architectural
14 rendering, I think that's the correct term, of the
15 proposed addition. So they propose to take down
16 that little addition you saw in the earlier
17 photograph and substitute for it this addition
18 which consists of a glass wall. And I will
19 represent to the Court that there were 36 windows
20 in this glass wall, 24 are facing west, six face to
21 the north and six face to the south. So that's the
22 proposed addition.

23 Exhibit 10 is an architectural drawing
24 as opposed to a rendering of both the addition
25 which is to the right in the drawing and Mr.

1 Tisdale's house to the left at the top. So it
2 shows the relationship of the properties looking
3 from the west. That's the west elevation. And the
4 lower portion is showing the southern, south
5 elevations, in other words, looking at them from
6 behind. Again, you can see the -- in the top
7 portion of Exhibit 10 you see 24 windows in that
8 window wall juxtaposed to the architectural style,
9 Mr. Tisdale's house to the left.

10 Exhibit 11, now we get to visibility
11 from the street. Exhibit 11 is an architectural
12 rendering provided by Mr. Epps at the BAR hearing.
13 And this shows the perspective from the Tisdale
14 driveway, addresses visibility in other words.

15 THE COURT: That's the driveway looking
16 from Broad Street?

17 MR. BARR: Correct. So from --

18 THE COURT: Is that Mr. Tisdale
19 standing in the picture?

20 MR. BARR: That's a rough
21 approximation.

22 THE COURT: He doesn't have any gray
23 hair.

24 MR. BARR: Right. That's why it's a
25 rough approximation. So from slightly farther

1 removed, this is the view looking from Broad Street
2 itself. And then Exhibit 12 is rotated slightly to
3 the west and shows a similar perspective showing
4 the Dougherty house to the right. Exhibit 13 is a
5 diagram Mr. Epps submitted at the BAR hearing which
6 lines up to sight lines from the public
7 right-of-way. The red line showing 130 feet is
8 from Orange Street which is to the west of the
9 property and the 95 feet is the line from Broad
10 Street.

11 THE COURT: But can you see it from
12 Orange Street?

13 MR. BARR: Yes, you can. Not as well
14 as from Broad Street, but on Orange Street there
15 was a wall there on Orange Street, you can see it
16 over the wall. And as I understand it, the
17 standards don't take into account vegetation. That
18 is not only seasonal, but it dies, it comes and
19 goes.

20 Then the other exhibits at least in
21 terms of orienting Your Honor to the neighborhood,
22 those are the exhibits that I would invite for a
23 tour of the neighborhood so you have an idea,
24 Judge, of how this lies.

25 Now, I'm going to continue with the

1 exhibits somewhat. Exhibit 18, Judge, is the city
2 ordinance that's at issue.

3 THE COURT: No. 18.

4 MR. BARR: 18, it's probably the last
5 exhibit in your stack. The BAR is vested with
6 jurisdiction over the exterior architectural
7 appearance of structures in the city. In
8 Section 54-231 9(a) 2 if you are on that page there
9 is the definition of exterior architectural
10 appearance and gives the elements, but it
11 emphasizes those elements to divest jurisdiction
12 with the BAR must be in the last phrase visible
13 from a street or public thoroughfare.

14 Now, noteworthy, Judge, in 54-231 (b)
15 in the articulation of architectural appearance it
16 lists architectural character, general composition,
17 general arrangement of the exterior including the
18 kind, color and texture of building material. Then
19 the next phrase particularly applies here, and the
20 type and character of all windows, doors, light
21 fixtures, signs and pertinent elements.

22 So the -- in the section preceding the
23 one I just cited, city council states its
24 legislative intent in creating in Section 54-230 at
25 the top of the page, it states its legislative

1 intent in creating the old and historic district,
2 and the old city district. And the purpose of
3 creating the districts include the interests in
4 presenting a harmonious outward appearance of
5 structures in the historic district for the
6 purpose, among other things, of -- I am looking for
7 the phrase, about the fourth line down, for the
8 purpose of preserving property values and
9 attracting tourists and residents alike be
10 preserved. The legislative intent down at the
11 bottom about the third line up from the bottom of
12 54-230 states that such purpose is advanced through
13 the preservation and protection of the old historic
14 or architecturally worthy structures and quaint
15 neighborhoods impart a district aspect to the city
16 and in which serve as visible reminders of the
17 historical and cultural heritage.

18 Now, those phrases, of course, address
19 the matters of perhaps you might say an artistic
20 judgment. But those standards are to be evaluated
21 and applied in the jurisdiction of the BAR to
22 architectural elements which are visible from a
23 street or public thoroughfare.

24 So in my anecdote for example, my
25 architect who did my house was doing a rear

1 addition and because it was in the rear it did not
2 require BAR approval. So that architectural
3 harmony is one of the goals of the ordinance and
4 it's accomplished by addressing properties that are
5 within visibility of a public right-of-way.

6 It's clear, Your Honor, from a reading
7 of 54-230 and 54-231 that 54-231 is in essence
8 jurisdictional. In other words, the jurisdiction
9 of the BAR is vested if the property is visible
10 from the public right-of-way. The section says
11 nothing to limit that jurisdiction if the
12 visibility is not total and complete or front or at
13 an angle. It simply says if it is visible the BAR
14 has jurisdiction and it shall apply to these
15 standards.

16 That gets somewhat to the essence of
17 the issue before the Court. In this case the BAR
18 introduced the notion that if the exterior
19 architectural appearance is not completely or fully
20 visible, then perhaps some -- the same degree of
21 scrutiny need not apply. So in essence what
22 happened in this case, Judge, is that BAR adopted a
23 standard of -- trying to remember the phrase they
24 used now -- of less than full visibility. I will
25 get to it in just a minute.

1 THE COURT: Where did they make those
2 findings?

3 MR. BARR: I will take you right there.

4 THE COURT: In the minutes?

5 MR. BARR: It's in the transcript and
6 I'm going to invite Your Honor to that. Part of
7 the filings from the city are two transcripts of
8 hearings. There were three hearings on this
9 application. I don't remember what happened at the
10 first one, but at the second hearing, which was on
11 September the 9th of 2015, the Board of
12 Architectural Review deferred its decision and
13 remanded the matter back to the architect to do
14 more work.

15 The final hearing was on October
16 the 14th of 2015. There are transcripts filed on
17 this record as to both of those. Your Honor,
18 perhaps for convenience, if you have my memorandum
19 handy, if you go to page 4 of my memorandum, and I
20 will walk you through the record which supports the
21 position that the BAR improperly interprets
22 visibility to be something -- if it's something
23 less than full visibility, a different standard
24 applies.

25 On page 4 I recite from the record the

1 BAR colloquy regarding visibility. Mr. Epps who
2 was the architect, you will see in paragraph --
3 subparagraph one there on page 4 addressed the
4 board. This is after all the public comments were
5 heard and he says. "I'm trying to gather up if I
6 can make a collection of everyone's concern first
7 of all, the comparison of the existing building to
8 the proposal. You cannot distinguish -- you cannot
9 perceive that in any way from any public
10 right-of-way. And as the board has expressed over
11 and over again their concern about what's visible
12 from the public right-of-way, well, the comparative
13 masses of the two buildings are not. They simply
14 are." And then he continues. I cited the
15 transcript page. Then Mr. Epps continued. I write
16 it subparagraph two.

17 "The idea that the simple box is
18 inappropriate for the existing house which is a
19 simple box is certainly an unfair comment. I don't
20 know. I show the visibility from the various
21 points of public space," that's that earlier chart
22 I showed you with the distances, Judge, "simply put
23 it's just not evident that this has any negative
24 impact on the neighborhood or the city whatsoever."
25 In paragraph 3 Mr. Dowd, who is the staff

1 architect, said, "Well, I would agree with one
2 point and would point out to the board that the
3 mass of the addition relative to the mass of any
4 existing building is really not apparent from any
5 street or right-of-way and so it should not be a
6 consideration of the board. I point out a few
7 things I mentioned previously. Visibility is from
8 the north through the piazza of 109 Broad Street
9 from the west from Orange Street above the six foot
10 high wall and discounting vegetation. The step
11 back in plan designed, the transitional hybrids are
12 good moves, that's an aside. I think visibility is
13 really the issue here. I have to say we went out
14 and looked at it on the site. This is really
15 marginally visible."

16 So there you see the first appearance
17 of this concept of marginal visibility. And this
18 is coming from the city staff architect who advises
19 the BAR. The areas that are visible are the areas
20 that are under purview according to the ordinance.
21 So we are recommending conceptual approval.

22 In paragraph 4 Mr. Faust, who is a BAR
23 member, says, "Anyway I think it's an inappropriate
24 design because you can see it from the street.
25 It's a curtain wall and it's totally inappropriate

1 for the neighborhood and I can't support it."

2 THE COURT: What's a curtain wall?

3 MR. BARR: He's talking about the
4 window wall. He is saying -- I'm calling it a
5 window wall. I think there's a reference to it as
6 a bay window in the record, a bay window, curtain
7 wall, window wall, it's all referring to that big
8 glass wall with 36 --

9 THE COURT: Okay. I understand. You
10 agree that's what he's talking about, the windows?

11 MR. DOMIN: That's what they are
12 talking about in that passage, a curtain wall. A
13 big wall of windows. They were referring to it
14 various ways.

15 MR. BARR: Then the next board member
16 in paragraph 5 also talks about the visibility. I
17 don't want to beat this up too much, then in
18 paragraph 6 the chairperson goes on and talks about
19 it as well. I won't read that entire litany of
20 what the chairperson had to say.

21 So the context there, Judge, was a
22 conversation about the relative mass. In other
23 words, I think what Mr. Dowd was saying is you
24 really can't tell that the addition is bigger than
25 the main house because you can't see the main

1 house, the point being that the addition overwhelms
2 the main house. But in any event, he's saying you
3 can't tell that from the street and it is only
4 again Mr. Dowd is the one who injects the phrase
5 marginally visible.

6 Now, I think it's helpful, Judge, to
7 also consider what happened at the earlier hearing
8 at this point.

9 THE COURT: What did they recommend at
10 the first hearing where they remanded it? What did
11 they recommend?

12 MR. BARR: I am getting to it.

13 THE COURT: Did they talk about the
14 glass or curtain wall?

15 MR. BARR: I am getting to exactly that
16 point, Judge. They did. They told them that the
17 addition was too large. They told them that the
18 addition was too high. And if you take a look
19 back --

20 THE COURT: How far down do they reduce
21 it?

22 MR. BARR: Well, if you take a look at
23 Exhibit 10 that you looked at earlier, the
24 architectural drawing, that's a horizontal exhibit;
25 is that correct? If you look at the addition you

1 see the dotted lines. The dotted lines at the top
2 were its original height. The dotted lines at the
3 bottom are its original protrusion to the west.

4 THE COURT: I don't know what the scale
5 is.

6 MR. BARR: Correct.

7 THE COURT: But they did move it some.

8 MR. BARR: And they lowered it and
9 brought it in. But your question is a good one
10 because what did they decide at the first hearing
11 is quite important. In the first hearing a
12 neighbor was present and the transcript is in the
13 record.

14 THE COURT: I am sorry? Who was
15 present?

16 MR. BARR: A neighbor.

17 THE COURT: Mr. Tisdale?

18 MR. BARR: No, another neighbor,
19 someone -- a gentleman named Lou Perella. Lou
20 Perella was present. He lives at 99 King Street so
21 he's on the King Street side. And he objected. He
22 spoke against the project. And he says -- Mr.
23 Perella says let me ask you this, BAR. Would you
24 have allowed this if this was right there on King
25 Street? Would you have allowed this window wall on

1 King Street, because Perella lived on King Street.
2 If the building faced King Street would you have
3 let it in on King Street? And BAR member Mr.
4 Wallace said this, and this becomes important. By
5 Mr. Wallace. Mr. Wallace said in answer to Mr.
6 Perella's question, "If that were on Broad Street,
7 if that were 111 Broad Street," he was addressing
8 the question was King Street. The answer came to
9 Broad Street. He said, "If that were 111 Broad
10 Street instead of the existing house and that
11 facade was there, that facade, the window wall, I
12 would not approve it." That's what Mr. Wallace
13 said.

14 Now, interestingly the transcript says
15 unidentified voice. We wouldn't like it.
16 Unidentified voice. I would not approve it. The
17 chairperson then said Mr. Epps, Mr. Epps, this is
18 board time. One of those statements was made by
19 the applicant's own architect. So the applicant's
20 own architect said I would not have designed this
21 window wall on Broad Street.

22 Now, if visible from a public street
23 vests jurisdiction in the BAR and the architect
24 himself would not have designed it on Broad Street,
25 you can see it from Broad Street, what is the

1 difference? And that's the legal essence of the
2 case. Mr. Dowd, the city architect, introduced
3 this idea of marginal visibility improperly and the
4 code of ordinance says absolutely nothing about the
5 degree of visibility.

6 My friend Mr. Tisdale equates it to
7 being pregnant. You are either pregnant or not.
8 You are not part pregnant. You are not marginally
9 pregnant. So there is not marginal visibility.
10 There's visibility or there's no visibility. Once
11 there's visibility you don't relax the standard.
12 You can say we can almost see it. Well, we
13 wouldn't have put this on Broad Street, but there's
14 only marginal visibility.

15 Judge, I would ask the Court to take
16 note of the fact that that corner of Broad Street
17 and King Street is at times, if not all times,
18 notoriously slow with traffic. So what you have is
19 eastbound traffic coming down Broad Street. You
20 have tourists walking and running, they're a class
21 that the ordinance is intended to serve by
22 statement of legislative purpose. You have folks
23 walking down Broad Street. And if you look at
24 photographs 7 and 8 which were the photographs you
25 might remember of the Tisdale and Dougherty homes,

1 they are walking mighty slowly or they are riding
2 on a horse carriage where they are elevated or a
3 tour bus.

4 THE COURT: Did they -- I haven't read
5 -- did they make a decision because it wasn't
6 visible or did they make a decision because the
7 design was okay or both?

8 MR. BARR: In the final analysis they
9 don't say -- in the final analysis in the BAR
10 hearing that issue is just simply overlooked.

11 THE COURT: Because if, in fact, you
12 couldn't see it from the road they didn't have
13 jurisdiction to begin with.

14 MR. BARR: They all agree they have
15 jurisdiction. Mr. Dowd in his statement says --

16 THE COURT: If they got jurisdiction
17 you can see it from some a public right-of-way.

18 MR. BARR: That's exactly right. And
19 if you can see it from public right-of-way it
20 doesn't matter whether those 36 windows --

21 THE COURT: Does it make any difference
22 whether you see three feet up or four feet up?

23 MR. DOMIN: Yes, because --

24 THE COURT: Tell me why. I don't mean
25 to interrupt you, but the question is on my mind.

1 I mean if you can see Charleston, if you can see
2 some of it, the test can be compatible.

3 MR. DOMIN: That part --

4 THE COURT: As to design, windows,
5 doors, texture.

6 MR. DOMIN: Anything that you can see
7 has to then be compatible and harmonious per the
8 BAR's determination.

9 THE COURT: Obviously this glass is not
10 harmonious to what's in that neighborhood.

11 MR. DOMIN: Well, it's actually the
12 finding of four members of the board that it
13 absolutely is harmonious with that neighborhood and
14 with the structure that it is attached to and they
15 make some eloquent discussion about an orchestra
16 being comprised of more than just one type of
17 instrument. And that there are designs which are
18 complimentary which do not in way any take away
19 from the --

20 THE COURT: They made the decision they
21 thought the design was okay.

22 MR. DOMIN: They did. They made that
23 decision.

24 THE COURT: That's all I wanted to
25 know.

1 MR. DOMIN: At least four who voted for
2 it.

3 MR. BARR: As I say, Your Honor, the
4 colloquy is clear. In both hearings, the colloquy
5 is clear that it's an angular view, its marginal
6 view was an element that was considered by the BAR.
7 We would not have designed it on Broad Street.
8 Even again its own architect acknowledged that.

9 So if we are going to be met with
10 varying degrees of visibility determining what's to
11 be permitted --

12 THE COURT: Let me ask you this:
13 Assuming -- I understand your argument about
14 visibility. I haven't looked at what they approved
15 and what they put in their approval for the
16 building. If, in fact, they approved the design
17 itself, four votes to two votes?

18 MR. BARR: Yes, sir. Four to two.

19 THE COURT: Four to two. How could
20 this Court substitute its opinion that it's a bad
21 design? Because the law says I can't do that.

22 MR. BARR: I agree with that. The
23 answer is because they committed legal error when
24 they considered this issue marginal visibility.
25 That's the answer. They are saying in essence the

1 record supports --

2 THE COURT: From what I understand,
3 even though it wasn't marginal they still approved
4 the design itself as being compatible with the
5 neighborhood. Yes or no?

6 MR. BARR: However, they would not have
7 permitted it on Broad Street and so the point is
8 what they have done is introduced this marginal
9 visibility issue which is a legal question because
10 it's -- it is what is set forth in the statute
11 which not only authorizes, but requires the BAR to
12 decide. And so they concluded -- improperly they
13 concluded that there is some less than total
14 visibility that has some bearing on what they can
15 and cannot approve. Now, just think about that,
16 Judge. If there is such a marginal standard, there
17 is a fluid standard, then we are right on a
18 slippery slope of well, if it's only partially
19 visible, then what's going to happen in the next
20 case?

21 THE COURT: The whole thing is on a
22 slippery slope. It was designed 1931 and it's
23 never been updated, but go ahead.

24 MR. BARR: You mean the --

25 THE COURT: The ordinance.

1 MR. BARR: That part might have been,
2 but I'm not sure.

3 THE COURT: It's 1931, I promise you.

4 MR. BARR: I know Your Honor has every
5 reason to know exactly when it was adopted. But
6 that's the answer. That's the answer. We are not
7 asking you to second guess stylistic issues.
8 That's --

9 THE COURT: If you take your marginal
10 visibility issue a step further, they agree you can
11 see it from different angles. I don't remember the
12 other street, from the lines you can see it. But
13 they said that's okay, the design is okay.

14 MR. BARR: They did, but what they
15 said, what the record supports is that they said
16 that it is okay because it's only marginally
17 visible. And that's what is the legal error.

18 THE COURT: So your position is if it's
19 marginally visible it's got to be the same standard
20 as completely visible.

21 MR. BARR: Precisely. That is the
22 jurisdictional fact, they are vested with authority
23 and responsibility to decide. So that's the
24 essence of that point. I have one additional legal
25 point, Judge. It is this: At the September 9th

1 hearing the matter as you might remember was
2 deferred. And at the time the exchange of the
3 deferral board member Wallace, on transcript
4 page 44 lines 13 to 21 said I move for a deferral
5 based on staffs comments one through five. I don't
6 think they are -- they are in the record, but I
7 need not address this. Based on comments one
8 through five. And based on the fact that the
9 addition could possibly be smaller. As you know,
10 they did that. It needs to be reconsidered for the
11 total footprint of the addition and that could be
12 slightly less tall as well. Then here is the point
13 I make.

14 Mr. Wallace said and the architecture,
15 while it can be contemporary, should especially
16 reconsider the window wall in the rear of the
17 building. Reconsider the window wall. So the
18 chair --

19 THE COURT: Reconsider the window wall.
20 Is that part of the referral back?

21 MR. BARR: That was what the --

22 THE COURT: Lower the height and
23 reconsider the wall?

24 MR. BARR: That's correct.

25 THE COURT: Did they reconsider the

1 wall or change the wall?

2 MR. BARR: They did not. That's why I
3 am getting there. Then -- just to make sure, the
4 chairperson then says we have a comment by Mr.
5 Wallace.

6 THE COURT: Hold on just a second.

7 (Brief pause.)

8 MR. BARR: We were talking about the
9 earlier hearing, deferral hearing. And the
10 chairperson then says we have a motion by Mr.
11 Wallace for deferral and restudy based on staff
12 comments one through five, reconsider the total
13 footprint, reconsider the height, possibly step
14 back western elevation and reconsider the window
15 wall, that's been seconded by Mr. White, all in
16 favor signify by saying aye and then it passed.

17 That issue of reconsidering the window
18 wall as a part of what was decided by the BAR on
19 September 9th dropped out of sight.

20 THE COURT: They didn't say change it,
21 they said reconsider. Apparently the architect
22 reconsidered and didn't change it.

23 MR. BARR: Well, I suppose you can make
24 that argument, Judge, but when it went back on the
25 15th, if you take this in context, BAR, these

1 people are volunteers. They have lives to live and
2 they are appointed and they catch Holy H for what
3 they do.

4 THE COURT: They sure do. And they
5 need to be commended.

6 MR. BARR: And I'm on a more private
7 public commission that's not -- doesn't catch all
8 that fodder, but they do. But they don't know what
9 their agenda is until they arrive at the meeting.
10 They are handed a packet. And at that time they
11 look through the packet, they hear the first case,
12 they hear the second case and they are not going to
13 have the institutional memory.

14 THE COURT: Sounds like a hundred
15 motions I have heard this week.

16 MR. BARR: Exactly. And so they are
17 not going to have the institutional memory of what
18 it was deferred for from September 9th to October
19 the 14th and the ground of reconsidering that
20 window wall, was not mentioned once. It was not
21 purported by staff because staff gives them a
22 report and one of my exhibits shows the staff
23 comments. That's not on there.

24 So the issue of reconsidering the
25 window wall which I would suggest should be

1 interpreted as meaning let's take another look at
2 those 36 contemporary glass windows that don't fit
3 with this neighborhood, that's stylistic, that's
4 not within your decision or mine, but I think
5 that's what they were saying and then just drops
6 out of sight.

7 But that was the legal basis for the
8 deferral. So, Judge, in summary, thank you for
9 your patience. I know the time is late. I think
10 there are two glaring legal errors, not stylistic,
11 two legal errors and one is Mr. Dowd's introduction
12 of this less than complete -- I can't remember his
13 phrase.

14 THE COURT: Partial.

15 MR. BARR: Marginal visibility. His
16 marginal visibility standard. That was a legal
17 error. There was no area for interpretation --
18 there is no basis for interpreting the city
19 ordinance to allow it. That's a legal error. And
20 then the second legal error is the deferral was to
21 reconsider the window wall and that was not taken
22 out.

23 So we suggest Your Honor simply reverse
24 the decision of the BAR on the basis of their first
25 legal error. At the very least it should be

1 remanded to the BAR to ask them to reconsider, that
2 is to say, to address this issue of marginal
3 visibility as to the first issue and while -- the
4 issue of reconsidering the window wall is the
5 second issue. These are legal issues, Judge. We
6 are not asking you to second guess Mr. Epp's
7 design. It's obvious that the neighbors and the
8 neighborhood don't like it, clearly doesn't fit in
9 with the neighborhood, not compatible, but that's a
10 judgment for architects and artists to make.

11 But here they make a mistake by saying
12 well, because it is marginal we can judge it
13 differently. And they shouldn't have done it.
14 That's a legal error.

15 THE COURT: Thank you very much.

16 MR. DOMIN: Your Honor, if any part of
17 the decision of the board said we don't have
18 jurisdiction because it's barely visible I would
19 agree with Mr. Barr. If it said --

20 THE COURT: If the board had said we
21 don't have jurisdiction because it's barely
22 visible.

23 MR. DOMIN: That would be an error. I
24 wouldn't be standing here in that situation. If
25 the board had said it's barely visible, therefore

1 we don't have to really follow the rules, we can
2 give it a different treatment, that would be
3 concerning to me, but that's not what they did.
4 They said we find that this is compatible and, Your
5 Honor, specifically in my memo I quoted at length
6 from the four board members who were voting for the
7 project, and that's at pages three through five of
8 my brief and it's largely at sections and pages 43
9 through 48 I believe of the decision, and each
10 board member who voted for the project ultimately
11 concluded that this was a compatible structure,
12 that this structure was compatible with the
13 surrounding neighborhood as well as the structure
14 itself.

15 They made a good point of saying that
16 they have to make a finding that it is harmonious
17 and that harmony can be thought of like an
18 orchestra. You don't have an orchestra of all
19 violins. You have different instruments and
20 commented how there are different architectural
21 styles and that how the Charleston BAR has not
22 adopted one architectural style as the only style
23 that can be used. It in no way rejected modern
24 architectural styles in the old and historic
25 district. You just to have compatibility. If the

1 board members --

2 THE COURT: Along that line, let me ask
3 you a question. If I'm a developer and I come into
4 Charleston from Charlotte, North Carolina, I want
5 to build something, where would I look to determine
6 what type of modern type of architecture has been
7 approved by BAR? Where would I look to see
8 guidelines?

9 MR. DOMIN: Well, one, there are the
10 Charleston standards which I know that you are
11 familiar with.

12 THE COURT: For texture, that sort of
13 thing. But where would I look to see what have
14 they approved? They tell me they have got files
15 that are preserved so you got to come down and go
16 through some old files.

17 MR. DOMIN: To George Street now. You
18 can go to George Street, you can go through their
19 files to see what --

20 THE COURT: So if I am a developer from
21 Charlotte and want to look I got to come down here
22 and look at all these files and find out what they
23 have approved.

24 MR. DOMIN: Your Honor, as with many
25 things aesthetic, it is always difficult to capture

1 on a piece of paper exactly.

2 THE COURT: What did the Justice of the
3 Supreme Court say? I can't define pornography but
4 I know it when I see it.

5 MR. DOMIN: If you ask me how can I get
6 a painting in the Metropolitan Museum, how can I
7 get my art work there, I would say well, you can go
8 study all of those different kinds of paintings.
9 There's not one style. There are a lot of
10 different styles, but you may want to look at some
11 of those as being guiding points.

12 THE COURT: You have answered my
13 question. That's aside from what we are talking
14 about today. I just wanted to see what your
15 opinion was on that particular issue. Doesn't have
16 anything to do with this case, okay?

17 MR. DOMIN: As it relates to this case,
18 Mr. Barr is attempting to use an exchange that
19 happened between an unidentified female voice and
20 others as suggesting that that is somehow something
21 that the board used as a basis for that decision.

22 THE COURT: I thought Mr. Epps did the
23 margin visibility.

24 MR. DOMIN: Well, there is an inference
25 that one of the speakers is Mr. Epps saying I

1 wouldn't design it like that. I don't know who
2 actually spoke those words, but there is an
3 unidentified voice saying well, we wouldn't approve
4 it. Well, I don't know. That could have been one
5 of the two members who voted against this project,
6 Ms. Ewing or the other person Faust, the two who
7 voted against this.

8 And so there's no way -- just like you
9 have a hearing for several minutes. There's lots
10 of discussion, but when it comes down to it you
11 have to render your decision and give the reasons
12 for the decision. And when they got to that point
13 in the hearing they gave the reasons the decision
14 was compatible and it was consistent
15 architecturally with the surrounding community and
16 with the structure itself. They didn't say we are
17 only going to approve this because it's marginally
18 visible or we don't care because it is marginally
19 visible.

20 THE COURT: But didn't they also say if
21 it had been facing King Street they wouldn't have
22 approved it?

23 MR. DOMIN: No. Someone -- I think if
24 you look at Mr. --

25 THE COURT: I haven't read the minutes.

1 But I thought that was what Mr. Barr said.

2 MR. DOMIN: If you look at Mr. Barr's
3 brief that's quoted on page 9 of his brief, that
4 might be the easiest place to go, I believe that's
5 during the discussion by the way in the meeting
6 they have deferred it. That's in the prior
7 meeting.

8 THE COURT: Assuming that statement was
9 made, isn't that sort of a double standard?

10 MR. DOMIN: Well, I want to be very
11 clear. It's not any indication that the board who
12 voted for this said anything at the time. This is
13 unidentified female voice, unidentified voice,
14 unidentified voice and Mr. Ball is responding to
15 Mr. Perella's question. He is saying that he would
16 not approve that. That was a larger structure at
17 the time.

18 So back at that time they are saying
19 well, if this were facing on Broad Street we are
20 not going to approve. That's one board member
21 saying that. At that meeting they said reduce the
22 structure, reduce the size of it which they did and
23 therefore reduce the amount of glass. They said
24 reconsider the glass, which they reconsidered it,
25 but did not change it other than to reduce its

1 overall footprint. And then it came back before
2 the board for a decision.

3 Much in the same way, again, something
4 comes before you on a second hearing, you get to
5 make the decision, you get to make the call and at
6 the end of that hearing you are going to make the
7 reasons for your decision.

8 And the four members at the time based
9 on the structure that was in front of them decided
10 that the structure was compatible. And that means
11 there's no legal error there.

12 And that also deals with the second
13 argument which is the suggestion that there was
14 some requirement to change the window wall as it
15 was described. Again, not correct --

16 THE COURT: That's sort of what they're
17 talking about, isn't it?

18 MR. DOMIN: Well, Judge --

19 THE COURT: Reconsider the design of
20 these windows because the board has specific
21 authority over the windows and doors and paint and
22 texture.

23 MR. DOMIN: You said a few times during
24 the hearing refer it back or remand it. That's not
25 what happened. This comes before the board. The

1 board talks about it and says you may want to
2 consider these things. We are not going to make a
3 decision today. We're going to defer it.

4 Well, there's nothing binding on the
5 applicant at that point in time and there's nothing
6 binding on the board at that point in time. They
7 have simply decided that they're not hearing
8 anything more on that application that day.
9 They're giving some suggestions to the architect.
10 The architect can take those suggestions or not
11 take those suggestions. Obviously the client can
12 take those suggestions or not take those
13 suggestions and they did take the suggestion to
14 make it smaller. They did do that. That reduces
15 the amount of glass that is there on the structure.
16 They decided not to do anything more with regards
17 to the glass. They found it and the clients
18 thought it was appropriate to go ahead and submit.
19 And then the board at the second meeting decided,
20 which they have a right to do, and they decided
21 with all of the evidence in front of them and
22 there's no suggestion in the record that they did
23 it because of marginal visibility.

24 Now, I do want to be clear if -- it is
25 the City of Charleston's position that if because.

1 of walls or because of other structures you can
2 only see the top foot of a building from a street
3 or right-of-way, that's the only part over which
4 the BAR has jurisdiction. There are -- you can do
5 whatever you want below that. You can make a
6 design that is not compatible below that. And so
7 to say there there's a different standard for
8 marginally visible structures, we agree that's not
9 what we do. That's not appropriate. However, it
10 is true to say we only need to look at that portion
11 which is visible from a right-of-way. We are not
12 obliged and have no jurisdiction candidly to
13 address that which is not visible, that which is
14 below that mark I just drew.

15 Your Honor, ultimately these are
16 decisions best left to the board. The law is very
17 clear --

18 THE COURT: I'm sorry, what?

19 MR. DOMIN: Decisions best left to the
20 board. The courts are very clear that we have to
21 defer to the decision of the board.

22 THE COURT: I think I have already said
23 that. Whether I like the design or don't like the
24 design, that's immaterial.

25 MR. DOMIN: And that's where I will

1 largely stop, which is when you talk about
2 compatibility with the neighborhood and
3 compatibility with the structure itself, that is an
4 aesthetic decision which I think is only
5 appropriate for the board to make. The four of
6 them have said I think it is compatible. That ends
7 this case. This is, in fact, the essence of this
8 case and that's what they did find based on the
9 record. That's what they said verbally on the
10 record that they were finding and I think that ends
11 it.

12 THE COURT: Thank you so very much.
13 Mr. Barr, very briefly reply.

14 MR. BARR: That's what they said. They
15 said that after the city architect who is charged
16 with a duty to advise them said and this is really
17 marginally visible and the areas that are visible
18 are the areas that under purview according to the
19 ordinance. There's no question but that Mr. Dowd
20 told the board that.

21 So what must be inferred from that is
22 that the BAR took that as their charge from the
23 city architect and they acted accordingly. Combine
24 that with the fact that the board member at the
25 first hearing said I would not approve that on

1 Broad Street.

2 THE COURT: Which board member was
3 that?

4 MR. BARR: That was Mr. Wallace. He
5 said that. He said I would not have approved it.
6 I don't think there is any question but Mr. Epps
7 echoed that at the first hearing, this architect
8 did. My clients tell me that that's who it was and
9 the record says unidentified voices said we
10 wouldn't like it. I would not approve it. And
11 then the chairperson admonishes Mr. Epps. Mr.
12 Epps, Mr. Epps, this is board time. That was Mr.
13 Epps who said that. Mr. Epps said I wouldn't have
14 designed it on Broad Street either. So if you are
15 not going to design on Broad Street you cannot also
16 design it where you can see it from Broad Street.
17 That's what they permitted because the architect
18 says it's only marginally visible. At the very
19 least the board ought to address this, the BAR
20 ought to address this. Thank you, Judge.

21 THE COURT: Okay. Thank you all so
22 very much. Give me an opportunity to take a look
23 at the briefs. I looked at them very briefly
24 before I walked in here. I want to read the
25 transcript of what transpired at the hearing. And

1 then I will give you a decision as soon as I arrive
2 at that decision.

3 (These proceedings were concluded at
4 5:04 p.m., March 30, 2016, Charleston County, South
5 Carolina.)
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CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomate
Reporter for the State of South Carolina at Large,
do hereby certify that the foregoing transcript is
a true, accurate, and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 29th day of August 2016 at
Charleston, Charleston County, South Carolina.

Ruth C. Weese

Ruth C. Weese

Registered Diplomate

Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Case No: 2015-CP-10-6186

Thomas S. Tisdale, et. al.
Petitioners,

vs.

The City of Charleston, et. al.
Respondents.

FILED
2016 APR -1 AM 8:43
JULIE J. ARMSTRONG
CLERK OF COURT

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

To assist this Court in resolving the issues presented in this case, the Charlestowne Neighborhood Association (CNA) respectfully moves this Court for permission to participate as *amicus curiae*. If leave to file an *amicus* brief is granted, then CNA will file the *amicus* brief attached to this Motion addressing the following issues: (1) the historical background and significance of the Charleston Board of Architectural Review Ordinance not only to our neighborhood but also the city, state, and nation; and (2) the significance of the Board misapplication of the underlying ordinance in this case to the architectural integrity of Charleston's National Historic Landmark District.

I. INTERESTS OF *AMICUS CURIAE*

CHARLESTOWNE NEIGHBOHOOD ASSOCIATION

CNA is a South Carolina nonprofit corporation formed and operated to protect the integrity and livability of the neighborhood in Charleston known as South of Broad. It is a membership organization supported by the dues and contributions of its members, who must be residents who live south of Broad Street in Charleston, SC. It is recognized by the City of Charleston as one of the neighborhood associations. It has over 1,000 residents who are members of CNA. CNA is governed by a Board of Directors who are elected annually by its members.

The property in question in this matter (107 King St.) is located south of Broad St. The entire neighborhood located south of Broad St. is in the Charleston National Historic Landmark District. Our neighborhood is proud to be the location of many of the individual National Historic Landmark and National Register properties in the City. The Department of Interior has recognized the Charleston Historic District as a National Historic Landmark District and Charleston was the first city in this country to establish in 1931 an historic district. Our neighborhood is a primary focus and draw for Charleston's tourism industry that attracts over 5,000,000 visitors annually. Most tourists who come to Charleston want to visit our neighborhood, which attracts buses, cars, carriages, pedicabs and walking tours.

Our membership maintains at great expense the stewardship of its historic houses because of their beauty and graciousness and their place in history. Our neighborhood allows residents and visitors alike feel like they are stepping back in time to the earliest days of our nation. All South Carolinians know this and therefore this Motion does not need to dwell on the obvious.

Our membership owns their residences and have a significant financial stake in the preservation of the historic architectural integrity of our historic neighborhoods. In most cases, they bought their residences with the belief and expectation that the historical architectural integrity of this neighborhood would be protected by the Board of Architectural Review. Our membership is very concerned about the gradual erosion of that integrity by Board of Architectural Review approval of modifications of structures such as that proposed for 107 King

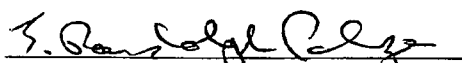
St. that would gradually diminish the neighborhood as a desirable and unique place to live and visit. If this type of modification is allowed to continue, others will inevitably follow and the very patina of the historic district will be irreversibly damaged as it has been in other historic cities like Boston, New York, and Baltimore.

The collective experience of CNA and its members and its unique insight into the concerns about 107 King St. enables it to assist the Court in its analysis of the issues related the history of the BAR ordinance and its proper interpretation and application. CNA can assist the Court in understanding the historical importance of the Ordinance and the present importance of its proper interpretation and application.

CONCLUSION

For the reasons discussed above, the proposed *amicus curiae* believes that its participation would be useful to this Court in its consideration of the pending lawsuit, and in resolving the important issues of law presented here.

Respectfully submitted,



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March 28, 2016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Case No: 2015-CP-10-6186

Thomas S. Tisdale, et al.

Petitioners,

vs.

The City of Charleston, et al.

Respondents.

FILED
2016 APR -1 AM 8:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

AMICUS BRIEF OF CHARLESTOWNE NEIGHBORHOOD ASSOCIATION

The Motion For Leave To File *Amicus Curiae* Brief of the Charlestowne Neighborhood Association (CNA) explains its interest in the subject matter of this Appeal concerning a property located in its historic neighborhood. These facts will not be repeated in this Brief but will be assumed by reference.

I. HISTORIC IMPORTANCE OF THE CHARLESTON PRESERVATION ORDINANCE.

The attached article by Stephen Neal Dennis, Executive Director for the National Center for Preservation Law, is good secondary background on the history of the Charleston

Preservation Ordinance. CNA affirms that this Ordinance has played the critical role in preserving the historic architectural integrity of our neighborhood, a National Historic Landmark District. CNA is concerned about the erosion of that architectural integrity by the approval of projects such as the one under appeal at 107 King Street. CNA applauds the efforts of the Petitioners to protect the architectural integrity of their immediate neighborhood and shares their concerns and objections to the proposed addition to 107 King Street.

II. THE ADDITION AT 107 KING STREET LACKS UNITY AND COHERENCE IN COMPOSITION WITH THE PRESENT STRUCTURE

Sec. 54-240(i) of the Charleston Preservation Ordinance attached hereto governs the proper approval by the Board of Architectural Review of additions such as the one proposed for 107 King Street. In relevant part, it provides as follows:

Among other grounds for considering a design inappropriate and requiring disapproval and resubmission are the following defects: . . . the absence of unity and coherence in composition not in consonance with the dignity and character of the present structures (in the case of repair, remodeling or enlargement of an existing structure

While there are other tests in the Ordinance for new structures such as 107 King Street, the above criteria for repair, remodeling or enlargement proved a clear basis that the decision by the Board of Architectural Review was against the plain language of the Ordinance and common sense, and was therefore arbitrary and capricious. The decision by the Board of Architectural Review is at variance with the plain language of the Ordinance above as well as the overall statement of the purpose of the Charleston Preservation Ordinance in Sec. 54-230 attached

hereto that is deemed essential to the orderly development of the City to retain an "harmonious outward appearance of structures which preserve property values and attract tourists and residents alike"; "continued construction of structures in the historic styles and a general harmony as to style, form, color, proportion, texture and material between structures of historic design and those of more modern design"; and "preservation and protection of the old historic or architecturally worthy structures and quaint neighborhoods which impart a district aspect to the city and which serve as visible reminders of the historical and cultural heritage of the city, the state, and the nation."

CNA will not go into detail on why the design for the addition to 107 King Street clearly fails to satisfy the mandatory criteria of Sec. 54-240(i) regarding unity and coherence of composition, as the Petitioners will undoubtedly do so, except to note that the proposed addition to a slightly modified traditional carriage house in larger and therefor out of scale to the present structure, has modernistic large window walls out of unity with the much smaller windows on the present structure, and has an exterior of modern appearance lacking in unity with the brick exterior of the present structure.

The Policy Statement of the Board of Architectural Review titled "Charleston Standards" generally elaborate on the standards in the Ordinance. In reaching its decision on 107 King Street, the Board of Architectural Review may have been mistakenly influenced by the two sentences of the Charleston Standards at paragraph 7, which in full reads as follows:

7. Additions or exterior alterations to historic properties should be sympathetic to historic materials, features, and spatial relationships that characterize the property. The new work should be compatible with the historic materials, features, size, scale, proportion, and massing to protect the integrity of the property and its setting. To respect the authenticity of the historic structure and its context and setting, the new alterations or

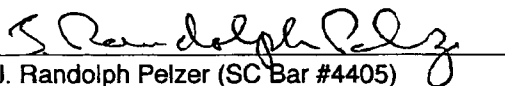
addition should be clearly discernible from the old. The differentiation may or may not be stylistic, and may be subtle as a change in building footprint, material, or other means."

The Board of Architectural Review in approving 107 King Street despite the mandatory language in the Charleston Preservation Ordinance requiring a unity and coherence in composition with the present structure may have been influenced by the Charleston Standards calling for additions to be clearly discernible from the old, present structure. However, there is nothing in the Charleston Preservation Ordinance calling for additions to be clearly discernible from the old, existing building. In fact, the Charleston Preservation Ordinance instead calls for new construction to be in historic styles, not styles clearly discernible from the old. And it calls for unity and coherence of composition with the present structure, which a person of common sense instead of persons with modernistic architectural background and leanings could only reasonably understand not to be the case with design for 107 King Street in this case.

CONCLUSION

CNA as a neighborhood agrees with the Petitioners that the Board of Architectural Review was clearly erroneous and acted arbitrarily and capriciously in approving the design for 107 King Street, which clearly lacks a unity and coherence in composition with the present structure. Under Sec. 54-240(i), disapproval of the design for 107 King Street was mandatory.

Respectfully submitted,

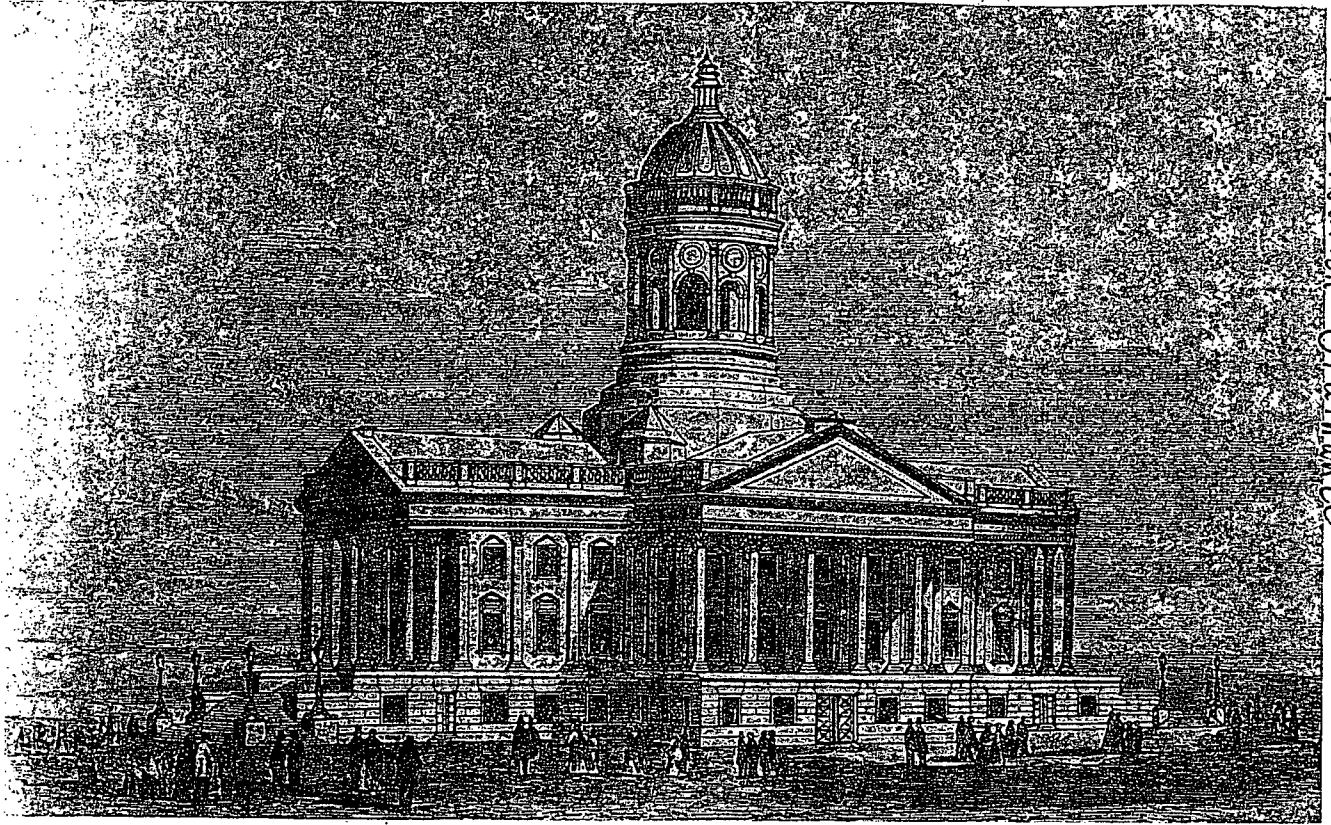

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March 28, 2016



"The Genius of the Place":

Charleston Discovers How to Protect "The Circumstances and the Locality"

by Stephen Neal Dennis,
Executive Director - National Center for Preservation Law

When the full history of the American historic preservation ordinance is finally written, the creation of the Charleston Board of Architectural Review ("BAR") will be highlighted as one of the most visionary actions taken by any American city during the first fifteen years of zoning ordinances. What is quite remarkable about the "Charleston Ordinance" is that it was *not* originally a separate ordinance, as is often assumed today, but was merely a highly innovative (and relatively brief) section in the city's *first* municipal zoning ordinance.

In 1931, when the Charleston City Council enacted the original version of the Charleston Preservation Ordinance, it had been only five years since the U.S. Supreme Court had affirmed the constitutional validity of zoning as a use of the municipal police power in *Village of Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926).

Justice Sutherland's opinion in the *Euclid* case, after stating the facts, opened

with a magnificent statement about the breadth of the police power:

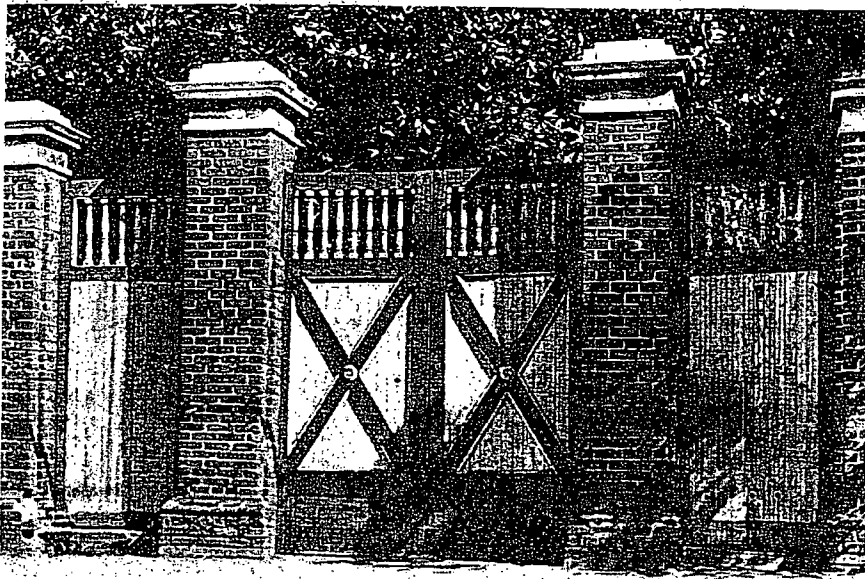
"Building zone laws are of modern origin. They began in this country about 25 years ago. Until recent years, urban life was comparatively simple, but, with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and

unreasonable. And in this there is no inconsistency, for, while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted, not to the *meaning*, but to the *application* of constitutional principles, statutes and ordinances, which, after giving due weight to the new conditions, are found clearly not to conform to the Constitution, of course, must fall."

Justice Sutherland then suggested that the law of nuisance should be looked to for guidance in determining whether the Village of Euclid's challenged regulation could be upheld as an appropriate use of the police power "asserted for the public welfare."

"The ordinance under review, and all similar laws and regulations, must find their

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justification in some aspect of the police power, asserted for the public welfare. The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities....And the law of nuisances, likewise, may be consulted, not for the purpose of controlling, but for the helpful aid of its analogies in the process of ascertaining the scope of the power. Thus the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality....A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control."

It is tempting to think that the germ of the Charleston Preservation Ordinance was already lurking within Justice Sutherland's suggestion that "the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use" requires a consideration of "the circumstances and the locality."

Perhaps it is difficult to imagine today a time when important structures were routinely neglected because there was little hope for their immediate economic rehabili-

tation and less money for their eventual restoration. But in Charleston where memories of the War Between the States lingered long, and local families with roots stretching in some cases well into the eighteenth century were for several temporary decades "too poor to paint and too proud to whitewash," disaster lurked too near for comfort as one major structure after another was lost in the 1920s.

The Society for the Preservation of New England Antiquities published in the October 1930 issue of its bulletin *Old-Time New England* an anonymous article titled "Preserving Historic Buildings Intact" which reveals how national attention had been focused on a problem common to many cities, but a dilemma to which no city had yet found a possible solution: Everywhere, it seemed, major historic structures were being casually destroyed or "mutilated."

"The desire to possess antique rooms to be used as backgrounds for collections of antique furniture has now reached such a stage as to endanger buildings of historic beauty and the American Institute of Architects has appointed a committee on the Preservation of Historic Monuments, to arouse public sentiment in the hope of preserving the nation's landmarks in their original settings. A systematic inquiry conducted by this Committee indicates that there is a national scramble to acquire parts of eighteenth-century and other historic buildings. The report of this Committee, in part, follows:

"The Colonial houses of New York, New Jersey, New England and the South, have, in many instances, been stripped of irreplaceable cabinet work, including

mantels, stairways, panelling and also wrought iron—removed as from a quarry and built into apartments and country homes, or set up in museums to satisfy the period-room craze. The houses thus mutilated become a loss to their own community and add a very doubtful benefit to another. Such old work placed in a new setting with new materials bears with it the element of deception and inconsistency; and the historical value of these unrelated fragments is destroyed....

"The removal of woodwork and the transplacement of entire buildings and gardens, not alone from our American towns but from England to this country, are acts of vandalism that cannot be justified. Moved from their natural settings, these works of art lose as truly as do sentences lifted from the sequence of a play, a poem or an essay. The nation suffers for the satisfaction of single individuals.

"The Committee on Historic Monuments has been informed by an architect [Albert Simons] of Charleston, South Carolina, that every Spring during the tourist season great quantities of old furniture, silver, china and other objects are bought and carried away. In recent years iron balconies, fences and gates have been deported. Two extremely fine paneled rooms were purchased last year and sent to a museum in the Middle West. The house from which the interiors were removed was occupied at the time and in an excellent neighborhood.

"At the time of writing, the interior of an entire house was being removed by a private collector, although citizens of Charleston vainly tried to purchase it so that it might remain in the city. There are other similar instances of depredation that will soon diminish the value of any of our landmarks and leave a gap that can in no way be filled.

"The Americans are a nation spending much time on the road. It comes as a shock to discover a Colonial dwelling stripped of hardware and woodwork or to pass the denuded foundations of old buildings that once were fine and then at the end of the trip to look for their poor bones in cold storage in a city museum."

Combining Justice Sutherland's suggestion in the *Euclid* opinion that under the police power a municipality might appropriately consider "the circumstances and the locality" in deciding whether to forbid certain private actions that might damage the public interest with the growing concern of architects and architectural historians that a nation's heritage was being

eroded quite unnecessarily, Charleston leaders were obviously emboldened to insert into what we would view now as a fairly routine zoning ordinance a totally unprecedented provision.

The provisions of Charleston's 1931 zoning ordinance which described the boundaries for an "Old and Historic Charleston District" and created a Board of Architectural Review to consider applications for certain changes in the new district broke the spell for Charleston and signaled a new approach to other American cities with significant numbers of historic buildings. It would be four years before the Federal Government would create the Historic American Buildings Survey, and thirty-five years before the Federal Government would create the National Register of Historic Places. Even the National Trust for Historic Places was more than fifteen years away.

Charleston led the nation in devising a form of land use regulation that has now been sanctioned by the United States Supreme Court in a key case involving the Grand Central Terminal in New York City, *Penn Central Transportation Company v. New York City*, 438 U.S. 104 (1978). Initially, though, great uncertainty surrounded the Charleston Board of Architectural Review, whose powers were quite limited. (Though the BAR could "pass upon the appropriateness of exterior architectural features of buildings and structures hereafter erected, reconstructed, altered, restored or used," it had absolutely no power with regard to potential demolition of structures under its jurisdiction.) And the district within which structures would come under the jurisdiction of the new BAR was originally quite small.

As partial justification for its pending approval of the city's first zoning ordinance, the Charleston City Council quoted in the minutes of its October 13, 1931 meeting from a report of the city's Joint Committee on Ways and Means:

"The Joint Committee on Ways and Means reports favorably upon the pending bill to zone the City of Charleston, recommending its passage. These joint committees realize that any comprehensive plan of this sort can hardly be drawn to meet everybody's views and that if the City wishes to enter upon an experiment in planning, it must be satisfied to accept as a basis, the experience of other communities as summarized for it by an expert organization and to so modify it as its experience may later direct. The work which has been done represents the technical knowledge of the engineers who were employed, to which was

added the direct and active supervision of a group of local men who understand Charleston's traditions, atmosphere and conditions."

The proud reference to an understanding of "Charleston's traditions, atmosphere and conditions" was perhaps but a translation of Justice Sutherland's reference to "the circumstances and the locality" in the *Euclid* opinion.

Charleston's 1931 Zoning Ordinance divided the city into five use districts, eight height and area districts and the Old and Historic Charleston District (covered by Article X of the ordinance). Because of the extreme significance of Article X and the

"The term 'Certificate of Appropriateness' has now been copied in hundreds of local preservation ordinances around the country."

obvious impact it has now had across the nation, it is worth quoting key portions in their original texts.

Article X opened with a purpose clause (much as historic preservation ordinances now do routinely wherever enacted):

"In order to promote general welfare through the preservation and protection of historic places and areas of historic interest, applications for building permits and for Certificates of Occupancy in the Old and Historic Charleston District must be approved as to exterior architectural features which are subject to public view from a public street or way, before a building permit or Certificate of Occupancy may be issued by the Administrative Officer. Such requirement is in addition to the other provisions of this ordinance."

Article X created a five-member Board of Architectural Review, with limited powers. There was, as noted above, absolutely no control over demolition. Article X repeatedly emphasized that only features "subject to public view from a public street or way" would be regulated. (The next local historic preservation ordinance in the United States, the Vieux Carre Ordinance in New Orleans, contained slightly different wording and was construed by the Supreme Court of Louisiana in a 1941 court decision as permitting the regulation of *all* exterior facades of structures within the French Quarter, not simply those visible to the public.)

The approach of the Charleston

Ordinance, which may have permitted the alteration of many side and rear portions of important structures, has influenced states, enabling statutes for local historic preservation ordinances in states such as Massachusetts and Connecticut. It has continued to cause problems in the drafting of local preservation ordinances in states whose enabling statutes omit such a restriction, particularly in communities where heavy existing vegetation is the only thing obscuring the public view of a portion of a protected structure. Communities with the power to designate local landmarks have often solved this problem by opting to designate an entire structure.

Quite sensibly, Article X required the Board of Architectural Review to follow clearly (if briefly) stated criteria in reaching its decisions:

"The Board of Architectural Review in passing upon cases, shall consider, among other things, the general design, arrangement, texture, material and color of the building or structure in question and the relation of such factors to similar features of buildings in the immediate surroundings. The Board of Architectural Review shall not consider detailed design; relative size of buildings in plan; interior arrangement; or building features not subject to public view, nor shall it make requirements except for the purpose of preventing developments obviously incongruous to the old historic aspects of the surroundings."

Though historic preservation ordinances have often been challenged as containing "vague" criteria, courts have consistently ruled that such criteria are sufficient, particularly in light of the need for a local preservation commission to apply its developed expertise to specific situations involving individual structures and the contexts within which they function. We are returned once again to Justice Sutherland's concern for "the circumstances and the locality."

The original Charleston Board of Architectural Review was to consist of one architect, one member of the Carolina Art Association, one member of the city's Planning and Zoning Commission, an engineer and a realtor. For more than sixty years, American preservation ordinances have been drafted to ensure a suitable mixture of viewpoints, experience and professional expertise so that multiple perspectives can be brought to bear when a local preservation commission decides whether to grant or deny a requested Certificate of Appropriateness. (The term "Certificate of Appropriateness" has now

been copied in hundreds of local preservation ordinances around the country, though the name "Board of Architectural Review" was soon supplanted in most jurisdictions by the broader term "historic district commission" and eventually by the generic term "historic preservation commission.")

Is it possible to measure the impact of the Charleston ordinance on other cities? When New Orleans considered enacting a preservation ordinance similar to Article X of Charleston's zoning ordinance, Louisiana attorneys could not be convinced that such an ordinance would pass constitutional muster. As a way around this problem, the city of New Orleans asked the Louisiana legislature to authorize a referendum to approve a constitutional amendment permitting the City of New Orleans to take steps to protect the city's Vieux Carre (French Quarter). The referendum passed in 1935, New Orleans enacted a local ordinance to protect the Vieux Carre, and New Orleans proceeded to preserve structures in the French Quarter. Technically, the New Orleans Preservation Ordinance was probably the first *separate* preservation ordinance in the country.

Several years later San Antonio, Texas, acted to protect the La Villita area, and in 1946 Alexandria, Virginia, enacted the fourth local historic preservation ordinance in the country. In fifteen years, only four cities had been bold enough to create local historic preservation commissions.

Today, it is estimated that more than 1,800 local historic preservation ordinances exist, in all states. A national organization, the National Alliance of Preservation Commissions, was created in 1980 to represent the viewpoints of local preservation commissions in Washington. The Federal Government has created the Certified Local Government Program to permit qualified communities to apply for modest preservation grants from state historic preservation offices. The National Park Service now refers proudly to a "federal/state/local" preservation partnership. Charleston's 1931 innovation has reshaped municipal planning strategies across the country and has deeply influenced Federal preservation policies.

Like many good ideas, the Charleston Preservation Ordinance provided a model and inspiration for continual improvements in other locations. For this reason, it is difficult to assess the impact of the Charleston Ordinance on the other cities after, say, 1975. Prior to 1975, when the first national survey of local historic preservation commissions was undertaken by the National Trust

for Historic Preservation, only sporadic information was available about local preservation ordinances. The New Orleans attorney Jacob Morrison had painstakingly assembled information about a number of ordinances for his *Historic Preservation Law* publication, but estimates are that even by 1955 perhaps only twenty or so communities had adopted the Charleston approach to protecting and preserving historic neighborhoods. After 1955, when the Massachusetts legislature enacted bills to create historic districts for Nantucket and Beacon Hill in Boston, many communities may not have realized that they were in fact adapting for local enactment other preservation ordinances based ultimately on the Charleston model.

In 1955, Philadelphia adopted a local preservation ordinance which deviated in a startling manner from the Charleston ordinance. Instead of permitting the creation of a local historic district, the Philadelphia ordinance permitted *only* the designation of individual local landmarks. The Philadelphia ordinance was the first *citywide* preservation ordinance in the country. Ten years later, New York City was to adopt a local preservation ordinance (still widely regarded as one of the strongest in the country) which permitted *both* the designation of local historic districts and the designation of individual landmarks.

In the mid-1970s, the National Trust for Historic Preservation often mailed copies of the Charleston ordinance to communities asking for basic information about preservation ordinances. But preparation of the Trust's so-called "model ordinance" revealed the existence of highly innovative provisions in many other ordinances and probably led to increasing focus on newer and bolder ordinances. Certainly the U.S. Supreme Court's 1978 decision in the *Penn Central* case triggered the thinking of many preservation attorneys about how strongly the powers which the Supreme Court had sanctioned could be asserted. After the *Penn Central* decision, which upheld a challenged "landmark" decision, an ordinance like the Charleston Ordinance, which still does not permit the designation of individual structures outside of designated historic districts, no longer attracted national attention.

The relatively limited impact of the Charleston Ordinance in the 1970s and 1980s is also due to the development of a body of strong court precedents in *other* jurisdictions. Surprisingly, there is still no decision by the Supreme Court of South Carolina involving the Charleston Preserva-

tion Ordinance. The lack of a reported appellate decision from South Carolina involving *any* of the state's many local preservation ordinances has meant that attorneys in other jurisdictions doing legal research have been encouraged by developments in preservation law in states other than South Carolina.

Today, the Charleston Ordinance is certainly in need of some careful revision and fine-tuning to bring it once again to the forefront of national preservation legislation. Newer preservation ordinances carefully define key terms, and experience in other states has revealed provisions that should be clarified lest a challenge to a BAR decision result in any limitation of the BAR's essential powers. Almost ten years ago, a survey of property owners who had applied to the BAR for certificates of appropriateness revealed an overwhelming support for the concept of the BAR, though suggestions for better articulation of necessary procedures for applicants and the BAR itself did surface.

One of the great puzzles of the Charleston Preservation Ordinance is that, though several writers have noted that its enactment was caused by growing local concern that important architectural woodwork was being removed from the city, the ordinance has never granted protection to Charleston's extraordinary wealth of important interiors. The Charleston Ordinance begins to appear particularly archaic on this issue.

Often whitewashed with constructive amendments, the Charleston Preservation Ordinance might now be rethought and restored to a condition of logical consistency as a clear statement of the BAR's powers and the necessary responsibilities of affected property owners.

One must believe the original Charleston Ordinance to have been a product of what Alexander Pope termed "the genius of the place." Just as Charlestonians had built magnificently throughout much of the city's history, so Charlestonians dreamed significantly and created, simply and almost innocently, model legislation without which all parts of the nation would now be poorer. But first and foremost, the achieved function of the Charleston Preservation Ordinance has always been to protect Charleston's own unique architectural heritage. ♦

PART 6 - OLD AND HISTORIC DISTRICT AND OLD CITY DISTRICT REGULATIONS

Sec. 54-230. - Purpose of creating districts.

In order to promote the economic and general welfare of the city and of the public generally, and to insure the harmonious, orderly and efficient growth and development of the municipality, it is deemed essential by the city council of the city that the qualities relating to the history of the city and a harmonious outward appearance of structures which preserve property values and attract tourist and residents alike be preserved; some of these qualities being the continued existence and preservation of historic areas and structures; continued construction of structures in the historic styles and a general harmony as to style, form, color, proportion, texture and material between structures of historic design and those of more modern design; that such purpose is advanced through the preservation and protection of the old historic or architecturally worthy structures and quaint neighborhoods which impart a district aspect to the city and which serve as visible reminders of the historical and cultural heritage of the city, the state, and the nation.

(Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-231. - Designation of Old City District and Old and Historic Districts; definitions.

- a. For the purpose of this article, two types of special districts are established, as follows:
 1. Old and Historic District and Old City District. The boundaries of the Old and Historic District and Old City District are as delineated upon the zone map, a part of the zoning ordinance of the city.
- b. For the purposes of this article, "exterior architectural appearance" shall include architectural character, general composition and general arrangement of the exterior of a structure, including the kind, color and texture of the building material and type and character of all windows, doors, light fixtures, signs and appurtenant elements, visible from a street or public thoroughfare.
- c. For the purposes of this article, "structure" shall include walls, fences, signs, light fixtures, steps or appurtenant elements thereof.

(Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-232. - Construction or demolition of structures in districts; permit required; certificate of approval.

- a. No structure which is within the Old and Historic District shall be erected, demolished or removed in whole or in part, nor shall the exterior architectural appearance of any structure which is visible from a public right-of-way be altered until after an application for a permit has been submitted to and approved by the Board of Architectural Review.
- b. No structure in the Old City District that is either more than 50 years old or listed in Categories 1, 2, 3 and 4 on the Inventory Map as adopted by Sec. 54-235 shall be demolished, removed in whole or part, or relocated until after an application for a permit has been submitted to the Board of Architectural Review and either has been approved by it or the period of postponement in the case of application for partial or total demolition hereafter provided for in Section 54-240, d., has expired.
- c.

The exterior architectural appearance of any structure, either more than one hundred years old or listed in Groups 1, 2, 3 and 4 on the historic inventory map adopted by 54-235, which is within the Old City District and which is visible from a public right-of-way, shall not be changed until after an application for a permit has been submitted to and approved by the Board of Architectural Review; provided however, in the designated corridors north of Fishburne and Line Streets all structures shall be reviewed for exterior architectural changes, residential structures with fewer than eight units shall be exempt from this requirement.

- d. Within the Old City District no new structure which will be visible from a public right-of-way upon its completion shall be erected until after an application for a permit has been submitted to and approved by the Board of Architectural Review.
- e. Evidence of the approval required above shall be a certificate of appropriateness issued by the Board of Architectural Review as created herein. Such certificate shall be a statement signed by the chairman of the Board of Architectural Review or administrative officer, as applicable, stating that the demolition or the changes in the exterior architectural appearance of the proposed construction, reconstruction, alteration or restoration for which application has been made are approved by the Board of Architectural Review. Provided, however, that repairs and renovations to existing structures which do not alter the exterior appearance and are so exempted by the administrative officer as herein provided need not be approved by the Board of Architectural Review.
- f. Any person requesting a permit under this section and article shall be entitled to a hearing on such request before the Board of Architectural Review.

(Ord. No. 2003-93, §§ 1, 2, 9-23-03; Ord. No. 2012-385, § 2(Exh. B), 10-23-12; Ord. No. 2013-70, § 1, 7-16-13)

Sec. 54-233. - Board of Architectural Review created; composition; appointment and terms of office.

- a. A Board of Architectural Review is hereby established.
- b. The Board of Architectural Review shall consist of seven (7) citizen members and three (3) alternates who do not hold any other public office or position in the City of Charleston and are appointed by City Council. Board members shall be citizens of the City of Charleston, with the exception of the professions required by this ordinance whom may be non-citizen owners or principals of a business within the City of Charleston. These members shall have a demonstrated interest in, and a competence and knowledge of architecture, landscape architecture and urban design, and shall include at least two (2) registered architects, one (1) professional engineer and one (1) attorney. The board shall elect one of its members chairman, who shall serve for one year or until he is re-elected or his successor is elected and qualified. The board shall appoint a secretary who may be an officer of the governing authority. The board shall adopt rules of procedure.
- c. The initial terms of three (3) of seven (7) members first appointed shall expire on the date of the first regular City Council meeting in January following their appointment, and initial terms of the other four (4) of the seven (7) members first appointed shall expire on the date of the first regular City Council meeting in January two years thereafter. Following the initial term, the terms of all members shall be four years. No member shall serve more than two successive four-year terms. An appointment to fill a vacancy shall be only for the unexpired portion of the term. Terms of alternate members shall be subject to the same conditions as those of regular members.
- d.

The board (excluding alternates) shall elect one of its members chairman, who shall serve for one year or until he is re-elected or his successor is elected and qualified. The board shall appoint a secretary who may be an officer of the governing authority or of the Board of Architectural Review. The board shall adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to this chapter.

- e. Meetings of the board must be held at the call of the chairman and at such other times as the board may determine. The chairman or, in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating the fact, and shall keep records of its examinations and other official actions, all of which immediately must be filed in the office of the board and must be a public record.
- f. Alternate members, when seated, have all the powers and duties of regular members. Alternate members may always attend meetings but shall only participate in board deliberations and debate, make motions and vote in the absence or voting disqualification of a regular member or the vacancy of a regular member's seat. The alternate member shall continue to serve until a final determination is made in the matter to which the alternate member was initially called to serve.

(Ord. No. 1999-54, § 2A, 4-27-99; Ord. No. 2000-35, § 1, 3-14-00; Ord. No. 2007-60, § 1, 3-6-07; Ord. No. 2012-385, § 2(Exh. B), 10-23-12; Ord. No. 2013-49, § 1, 5-14-13; Ord. No. 2014-17, § 2, 2-11-14)

Sec. 54-234. - Meeting of board.

- a. The Board of Architectural Review may meet at any time upon call of the chairman and, in addition, shall within fifteen (15) days after notification by the administrative officer of the filing of an application for a permit to demolish any structure in whole or in part, hold a public hearing upon each application. At least five (5) days' notice of the time and place of each such hearing shall be given by the administrative officer as follows:
 - 1. In writing to the applicant.
 - 2. In writing to all persons or organizations who have filed an annual written request for such notices and have paid an annual fee, not to exceed twenty-five dollars (\$25.00), to cover the costs involved.
 - 3. By publication in the form of an advertisement in a newspaper of general circulation within the city.

(Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-235. - Adoption of inventory map; procedure for revision.

In order to identify structures within peninsula Charleston south of Highway 17 which should be preserved, maintained and protected in the public interest and to provide guidance for the Board of Architectural Review there hereby is adopted as an official public document the inventory map entitled "Historic Architecture Inventory, 1972-73, Peninsula City, Charleston, S.C.," prepared for the city by Carl Feiss, FAIA, AIP, City Planning and Architectural Associates, and Russell Wright, AIP, consisting of peninsula Charleston south of Highway 17, said additional sheets being dated September 4, 1973, with revisions September 11, 1973, October 16, 1973, November 14, 1973, February 20, 1974 and March 27, 1974, as amended by the inventory map entitled "South Carolina Inventory of Historic Places Survey Report, City of Charleston, S.C." prepared for the city by Geier Brown Renfrow Architects and dated August 1985, and as amended by the inventory entitled "A Historic Architectural Resources Survey of

the Upper Peninsula, Charleston, South Carolina" prepared by Brockington and Associates, dated 2004 consisting of the peninsula Charleston north of Line Street and south of Mount Pleasant Street (collectively "Inventory Map"). The original of the said Inventory Map shall be filed in the Department of Planning and Urban Development as a public record and shall be available for public inspection during normal business hours. Based on changed conditions, the Board of Architectural Review from time to time may recommend to the City Council additional revisions of said Inventory Map, but none shall become effective until the Zoning Ordinance has been appropriately amended.

(Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-236. - Guidance standards; maintenance of consistent policy.

In order to provide guidance and insight into desirable goals and objectives for the Old City District and the Old and Historic Charleston District or for desirable types of development, and for the maintenance of consistent policies in guiding the building public toward better standards of design, the Board of Architectural Review shall maintain a file containing records of all applications brought before the board for review, the action taken by the board, drawings submitted and amendments of drawings approved pertaining thereto, and drawings and photographs or reproductions thereof showing structures in authentic Charleston character which, in its opinion, may serve as general guides to appropriateness or as expression of objectives to prospective developers or property owners. Such documents shall remain the property of the city but be held in the custody of the Board of Architectural Review.

(Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-237. - Preapplication review of plans by board required; procedure.

Prior to the preparation of working drawings and specifications or calling for proposals or bids from contractors, prospective property developers, owners or agents shall prepare preliminary scale drawings and outline specifications, including color samples for outside work, for review and informal discussion with the Board of Architectural Review. The purpose of this review shall be to acquaint the developer, owner or agent with standards of appropriateness of design that are required of his proposed development.

The required preapplication review shall not require formal application but does require notice to be given to the administrative officer and subsequent notification of the chairman of the Board of Architectural Review at least ten (10) days before the date of the meeting at which the preliminary drawings are to be discussed. All documents submitted at this meeting shall be in triplicate prepared in a form suitable for filing in a standard size office filing cabinet.

In the case of very minor projects involving repair or alterations to existing structures, the Board of Architectural Review, if the preliminary drawings and other data are sufficiently clear and explicit, may grant preliminary and final approval at one review session. Should said data indicate alterations, remodeling, or repairs not changing the exterior appearance, the administrative officer may exempt the application from provisions of this section and approve a permit.

(Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-238. - Contents of application.

Contents of applications for demolition, relocation, new construction, or alterations and/or additions or renovations to existing structures shall include such drawings, photographs or other information as may from time to time be adopted by Resolution of the Board of Architectural Review, copies of which shall be maintained in the Office of Planning, Preservation and Sustainability or such successor office thereto.

(Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-239. - Public notice requirements.

Upon the filing of an application with the Board of Architectural Review for property within the corporate limits of the city of Charleston, the property to which such application applies shall be posted with a sign at least five (5) days prior to any public hearing when the application will be considered and said sign shall specify the appropriate city department to contact concerning information regarding the application. The Board of Architectural Review shall adopt and implement rules of procedure by which the posting of signing shall be conducted, and may make recommendations to City Council of fees to be charged therefore. Any fee schedule established hereunder shall be approved by City Council.

(Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-240. - Board of Architectural Review; powers and duties.

- a. In passing upon an application to demolish, or demolish in part, or remove, or alter the exterior architectural appearance of any existing structure, the Board of Architectural Review shall consider, among other things, the historic, architectural and aesthetic features of such structure, the nature and character of the surrounding area, the use of such structure and the importance to the city.
- b. In passing upon an application for new construction in the Old and Historic District or Old City District, the Board of Architectural Review shall consider, among other things, the general design, the character and appropriateness of design, scale of structures, arrangement, texture, materials and color of the structure in question, and the relation of such elements to similar features of structures in the immediate surroundings. The Board of Architectural Review shall not consider interior arrangement or interior design; nor shall it make requirements except for the purpose of preventing developments which are not in harmony with the prevailing character of Charleston, or which are obviously incongruous with this character.
- c. The Board of Architectural Review may refuse a permit or Certificate of Appropriateness for the erection, reconstruction, alteration, demolition, partial demolition, or removal of any structure within the Old and Historic District, which in the opinion of the Board of Architectural Review, would be detrimental to the interests of the Old and Historic District and against the public interests of the city.
- d. Upon receiving an application concerning the demolition or removal of a structure over fifty years old and within the limits of the Old City District, the Board of Architectural Review, within forty-five (45) days after receipt of the application, shall either approve or deny such application, or find that the preservation and protection of historic places and the public interest will best be served by postponing the demolition or alteration for a designated period, which shall not exceed one hundred eighty (180) days from the receipt of the application, and notify the applicant of such postponement.
- e. In all applications involving the demolition or partial demolition of a structure, provision shall be

made for a public hearing as set forth in this article.

- f. In any case involving the demolition or partial demolition of a structure, before granting approval or requiring a postponement, the Board of Architectural Review may call on the chief building official to provide it with a report on the state of repair and structural stability of the structure under consideration.
- g. Within the period of postponement of such demolition or alteration of any structure, the Board of Architectural Review shall take steps to ascertain what the City Council can or may do to preserve such structure, including consultation with private civic groups, interested private citizens and other public boards or agencies and including investigation of the potential use of the power of eminent domain when the preservation of a given structure is clearly in the interest of the general welfare of the community and of certain historic and architectural significance. The Board of Architectural Review shall then make such recommendations thereabout to the City Council as the board may determine to submit.
- h. In case of disapproval, the Board of Architectural Review shall state the reasons therefore in a written statement to the applicant and make recommendations in regard to appropriateness of design, arrangement, texture, material, color and the like of the property involved.
- i. Among other grounds for considering a design inappropriate and requiring disapproval and resubmission are the following defects: Arresting and spectacular effects, violent contrasts of materials or colors and intense or lurid colors, a multiplicity or incongruity of details resulting in a restless and disturbing appearance, the absence of unity and coherence in composition not in consonance with the dignity and character of the present structure (in the case of repair, remodeling or enlargement of an existing structure) or with the prevailing character of the neighborhood (in the case of a new structure).
- j. The Board of Architectural Review may refuse to approve a permit for demolition, removal or alteration of any structure within the Old and Historic District or within the Old City District, if it deems the structure of such architectural or historical interest that the removal will be detrimental to the public interest.
- k. The Board of Architectural Review shall have the power to delay for a period of 180 days or deny outright the demolition or removal of a structure over 50 years old in the area bounded to the north by Mount Pleasant Street or the extensions thereof into the waters of the Ashley and Cooper Rivers, to the east by the waters of the Cooper River to the south by the Old City District and to the west by the waters of the Ashley River.
- l. The approval of an application for the use of land by the Board of Zoning Appeals—Zoning or the Board of Zoning Appeals—Site Design shall not deprive the Board of Architectural Review of any power granted to it in this ordinance, or in any manner diminish such powers.

(Ord. No. 1998-148, § 1, 8-18-98; Ord. No. 1999-54, § 4, 4-27-99; Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-241. - Powers of board to require repair of structures.

The Board of Architectural Review, on its own initiative, may file a petition with the chief building official requesting that said officer proceed under the public safety and housing ordinance to require correction of defects or repairs to any structure covered by this article so that such structure shall be preserved and protected in consonance with the purpose of this article and the public safety and housing ordinance.

(Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-242. - Exemptions from article.

Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior elements of any structure described in section 54-232; nor shall anything in this article be construed to prevent the construction, reconstruction, alteration or demolition of any such elements which the chief building official shall certify as required by public safety.

(Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-243. - Report to administrative officer; issuance of certificate of appropriateness.

Upon approval of the plans, the Board of Architectural Review shall forthwith transmit a report to the administrative officer stating the basis upon which such approval was made and cause a certificate of appropriateness to be issued to the applicant. If the Board of Architectural Review shall fail to take final action upon any case within forty-five (45) days after the receipt of application for permit, the application shall be deemed to be disapproved, except where mutual agreement has been made for an extension of time limit.

When a certificate of appropriateness has been issued, a copy thereof shall be transmitted to the city building inspector, who shall from time to time inspect the alteration or construction approved by such certificate and shall make a weekly report of such inspection to the Board of Architectural Review listing all work inspected and reporting any work not in accordance with such certificate or violating any ordinances of the city.

(Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-244. - Time limitations on certificates of appropriateness.

Conceptual and Preliminary approvals, as may be set out in the Rules of Procedure of the Board of Architectural Review, and Certificates of Appropriateness shall remain valid for two (2) years from the date of approval, unless extended in accordance with Section 54-962 hereof.

(Ord. No. 1999-24, § 1, 3-10-99; Ord. No. 2005-99, § 2, 6-21-05; Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-245. - Appeals to Board of Architectural Review.

Appeals to the Board of Architectural Review may be taken by any person aggrieved or by any officer, department, Board or bureau of the city. Such appeal shall be taken within a reasonable time as provided by the rules of the Board by filing with the officer from whom the appeal is taken and with the Board of Architectural Review a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(Ord. No. 1999-54, § 2B, 4-27-99; Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-246. - Effect of an appeal.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Architectural Review or a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(Ord. No. 1999-54, § 2B, 4-27-99; Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-247. - Hearing an appeal.

The Board shall fix a reasonable time for the hearing of the appeal, or other matter referred to it, and give public notice of it, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or by attorney.

(Ord. No. 1999-54, § 2B, 4-27-99; Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-248. - Appeal from Board of Architectural Review to Circuit Court.

A person who may have a substantial interest in any decision of the Board or any officer or agent of the appropriate governing authority may appeal from a decision of the Board to the circuit court in the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the Board.

(Ord. No. 1999-54, § 2B, 4-27-99; Ord. No. 2012-385, § 2(Exh. B), 10-23-12)

Sec. 54-249. - Reserved.



BOARD OF ARCHITECTURAL REVIEW

POLICY STATEMENT CHARLESTON STANDARDS

CITY OF CHARLESTON
75 Calhoun Street, Third Floor

DEPARTMENT OF PLANNING, PRESERVATION AND SUSTAINABILITY
Charleston, South Carolina 29401 843-724-3781 Fax: 843-724-3772 www.charleston-sc.gov

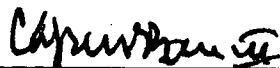
(A clear vision and strong design principles will help guide the Board of Architectural Review in its decisions. Recognizing that Charleston is unique in its collection of historically and architecturally significant buildings, the standards below have been adapted from the Secretary of the Interior's *Standards for the Treatment of Historic Properties*. These basic principles were created to help preserve the distinctive character of a historic building and its site, while allowing for reasonable change to meet new needs.

The Charleston Standards apply to historic buildings of all periods, styles, and types. They are intended to be applied in a reasonable manner, taking into consideration economic and technical feasibility; they are not hard and fast rules, but rather are meant to serve as principles to assist in determining appropriate treatments for historic buildings.)

1. The historic character of a property should be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property may negatively impact the historic character and should be avoided.
2. The buildings of Charleston provide a physical record of their time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, obscure that record and are not encouraged.
3. Many of Charleston's buildings have evolved over time. Changes to a property that have acquired historic significance in their own right should be retained and preserved as a part of its history.
4. Charleston has a tradition of expert craftsmanship in even its simplest structures. Examples of craftsmanship such as distinctive materials, architectural features, finishes, and construction techniques should be protected.
5. It is important to maintain the historic fabric of Charleston as much as possible; therefore, deteriorated historic features should be repaired rather than replaced. When deterioration is so severe that replacement is necessary, the new feature should match the old in design, color, texture, and, where possible, materials. Wherever possible, replacement of missing features should be substantiated by documentary and physical evidence.
6. Chemical or physical treatments should be matched to the period of the building on which they are used. They should be undertaken using the gentlest means possible. Modern treatments that may cause damage to historic materials should not be used.
7. Additions or exterior alterations to historic properties should be sympathetic to historic materials, features, and spatial relationships that characterize the property. The new work should be compatible with the historic materials, features, size, scale, proportion, and massing to protect the integrity of the property and its setting. To respect the authenticity of the historic structure and its context and setting, the new alterations or addition should be clearly discernible from the old. The differentiation may or may not be stylistic, and may be as subtle as a change in building footprint, material, or other means.
8. New construction should be sympathetic to the historic features that characterize its setting and context. To respect the significance of the historic context, the new work should respect the historic materials, features, size, scale, proportions, and massing of its setting.
9. Additions, adjacent or related new construction, and modifications should be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its context and setting remain unimpaired.

CERTIFICATE OF COUNSEL

I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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