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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Appellate Case No. 2016-001530

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

v.

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

**RESPONDENTS' MOTION TO DISMISS AND MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO DISMISS APPEAL AS MOOT**

RECEIVED
APR 11 2018
SC Court of Appeals

BACKGROUND

Respondents Eugene M. Woodard and Janice S. Woodard (The “Woodards”) hereby move to dismiss this appeal on the ground of mootness. This case involves a challenge to a municipal board’s approval of the aesthetic design of an improvement to an existing house. The improvement has been fully constructed and is now in use. A decision on the appeal will have no practical or meaningful effect. The question of whether the municipal board should have approved the plans in the first place is now moot.

The Woodards are the owners of 107 King Street Charleston, South Carolina 29401 (the “Property” or “107 King”). (**Woodard Aff., ¶ 2**). In 2015, the Woodards applied to City of Charleston Board of Architectural Review (“BAR”) to approve plans to demolish an addition to the rear of their house that was constructed in the 1960s and to replace it with a new addition. (**R.p.105:12-15**); (**R.p.338**). After two meetings, the BAR granted conceptual approval of the Woodards’ plans for the new addition. (**R.pp. 203:22-204:17**).

On November 13, 2015, Appellants, who are neighbors of the Woodards, filed an appeal of the BAR’s decision granting conceptual approval. (**R.pp.11-18**). The Circuit Court heard the appeal on March 30, 2016 and issued an Order affirming the decision of the BAR on May 4, 2016. (**R.pp.499-541**). This appeal followed.

Appellants did not move for supersedeas at any time during the appeal. Under South Carolina law, “[t]he filing of an appeal in the circuit court from any decision of the board [or architectural review] does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.” S.C. Code § 6-29-920(B). As such, the Woodards were free to proceed with their residential renovation as authorized by valid approvals and permits while the matter has been on

appeal. (Woodard Aff., ¶ 4). In fact, the Woodards have received all necessary approvals/permit(s) and fully constructed the addition. (Woodard Aff., ¶ 4). On February 26, 2018, the Woodards received a Certificate of Occupancy. (Woodard Aff., ¶ 6).

Attached to this motion and made part of the record herein is the affidavit of Eugene M. Woodard, numerous photographs of the completed addition that is the subject of this appeal, and the Certificate of Occupancy showing that the addition is completed. As explained below, because the new addition to 107 King has been completed, the appeal of the approval of the aesthetic design of the addition is moot, and this Court should dismiss the appeal.

ARGUMENT

The only issues raised by Appellants in this appeal challenge the BAR's conceptual approval of pre-construction design plans for the addition at 107 King. See (Appellants' Br., 1). Appellants seek through this appeal to reverse the decision of the Circuit Court affirming the BAR's granting of conceptual approval, or, alternatively, to remand to the BAR for reconsideration. See (Appellants' Br., 19). Neither of those remedies would have any practical effect because the addition has already been completed.

Simply put, because the addition is fully constructed, occupied, and in use, whether the BAR should have granted conceptual approval of the plans is now moot, and the appeal should be dismissed. Perhaps Justice Holmes said it best in Wingert v. First Nat. Bank, a case seeking to enjoin the construction of a new bank building, which was built while the case was pending: "*It is enough to say that the whole case is disposed of by the erection of the new bank.*" 223 U.S. 670, 32 S.Ct. 391 (1912) (double emphasis added).

South Carolina courts recognize that "[a] threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy." Holden v.

Cribb, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (S.C. Ct. App. 2002) (citing Lennon v. S.C. Coastal Council, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (S.C. Ct. App. 1998). “A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.” Id. (quoting Byrd v. Irmo High Sch., 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996). “The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing.” Id. (citation omitted). “A case becomes moot when judgment, if rendered, will have no practical effect upon [an] existing controversy.” Seabrook v. City of Folly Beach, 337 S.C. 304, 306, 523 S.E.2d 462, 463 (1999) (quoting Mathis v. S.C. State Highway Dep’t, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)).

South Carolina judicial precedent on mootness supports the position that even if Appellants had a justiciable controversy when they initiated this appeal, the completion of construction of the addition at 107 King has rendered any relief moot. For example, the South Carolina Court of Appeals has found that the demolition of a building that was the subject of the controversy rendered a case moot because a decision in the plaintiff’s favor would have no practical effect on an existing controversy:

McMillan argues Judge Thomas erred in denying his motion for a preliminary injunction. Specifically, he contends he had “a valid, enforceable long-term lease and met the test for issuance of a preliminary injunction.”

* * *

Here, McMillan sought a preliminary injunction to restrain BCG from demolishing the building, turning off the utilities, and otherwise interfering with his quiet enjoyment of the property. The parties, however, both state in their briefs that the leased premises at issue in this appeal have been demolished. Thus, even if we were to find Judge Thomas erred in denying McMillan’s motion, ***it would have no practical effect on this controversy.*** Because a decision on this issue would not grant McMillan any effectual relief, we hold the issue is moot.

McMillan v. BCG Properties, LLC, 2007 WL 8326632, *3 (Ct. App. 2007) (double emphasis added).

Similarly, in Mathis v. South Carolina State Highway Dept., the plaintiff brought an action against the Highway Department seeking an order directing the department to revoke the suspension of his driver's license (which was suspended on March 23, 1972). 260 S.C. 344, 345-46, 195 S.E.2d 713, 714 (S.C. 1973). The Court held that the plaintiff's claims were moot because by the date of the hearing, the suspension was no longer in place:

Upon the call of the case, we were advised that the respondent would be entitled to the return of his driver's license on March 23, 1973. This date now having passed, and the respondent being entitled to the return of his driver's license, has rendered the issues made by this appeal, moot and academic.

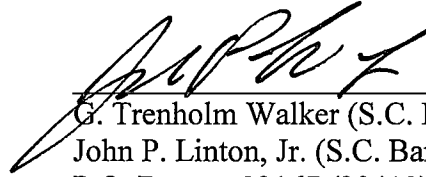
Id. at 346, 195 S.E.2d at 714. See also, Treasured Arts, Inc. v. Watson, 319 S.C. 560, 563, 463 S.E.2d 90, 92 (1995) (finding plaintiff's claim for injunctive relief moot because "a[n] order for injunctive relief would have no practical legal effect upon the existing case. . . [Therefore,] although Treasured Arts had a justiciable controversy when it brought the action, events occurring subsequent[ly] . . . have rendered any injunctive relief moot.").

CONCLUSION

For the reasons stated above, the appeal should be dismissed as moot.

Respectfully Submitted,

WALKER GRESSETTE FREEMAN & LINTON, LLC



G. Trenholm Walker (S.C. Bar #5777)

John P. Linton, Jr. (S.C. Bar #79130)

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April 10, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Appellate Case No. 2016-001530

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and Martha T. Dougherty Appellants,

v.

City of Charleston, City of Charleston Board
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and Janice S. Woodard Respondents.

**AFFIDAVIT OF EUGENE M. WOODARD IN SUPPORT OF RESPONDENTS'
MOTION TO DISMISS APPEAL AS MOOT**

RECEIVED
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PERSONALLY appeared before Eugene M. Woodard, who, being duly sworn, avers and states as follows:

1. I am over eighteen years of age and, excepting any matters stated upon information and belief, make this affidavit upon my own personal knowledge.

2. I am a resident of Charleston County, South Carolina.

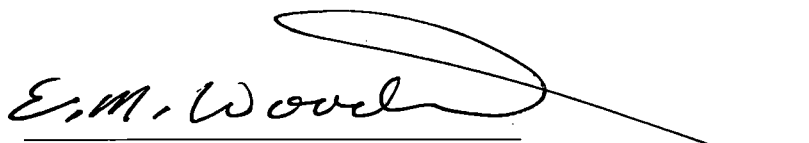
3. My wife, Janice S. Woodard, and I are the owners of 107 King Street Charleston, South Carolina 29401 (the "Property" or "107 King"). The architectural plans for an addition to the Property are the subject of this appeal.

4. After the City of Charleston Board of Architectural Review ("BAR") granted conceptual approval of our plans for an addition to 107 King Street at its meeting on October 14, 2015, and after the circuit court entered its order affirming the decision of the BAR approving our plans, we obtained a building permit for the renovation, constructed the addition, obtained all the necessary inspections and approvals, and have now completed the project.

5. Attached hereto as Exhibit 1 are true and accurate copies of photographs of the completed addition.

6. On February 26, 2018, we received a Certificate of Occupancy for the renovation that is the subject of this appeal. Attached hereto as Exhibit 2 is a true and accurate copy of the Certificate of Occupancy.

FURTHER AFFIANT SAITH NOT!

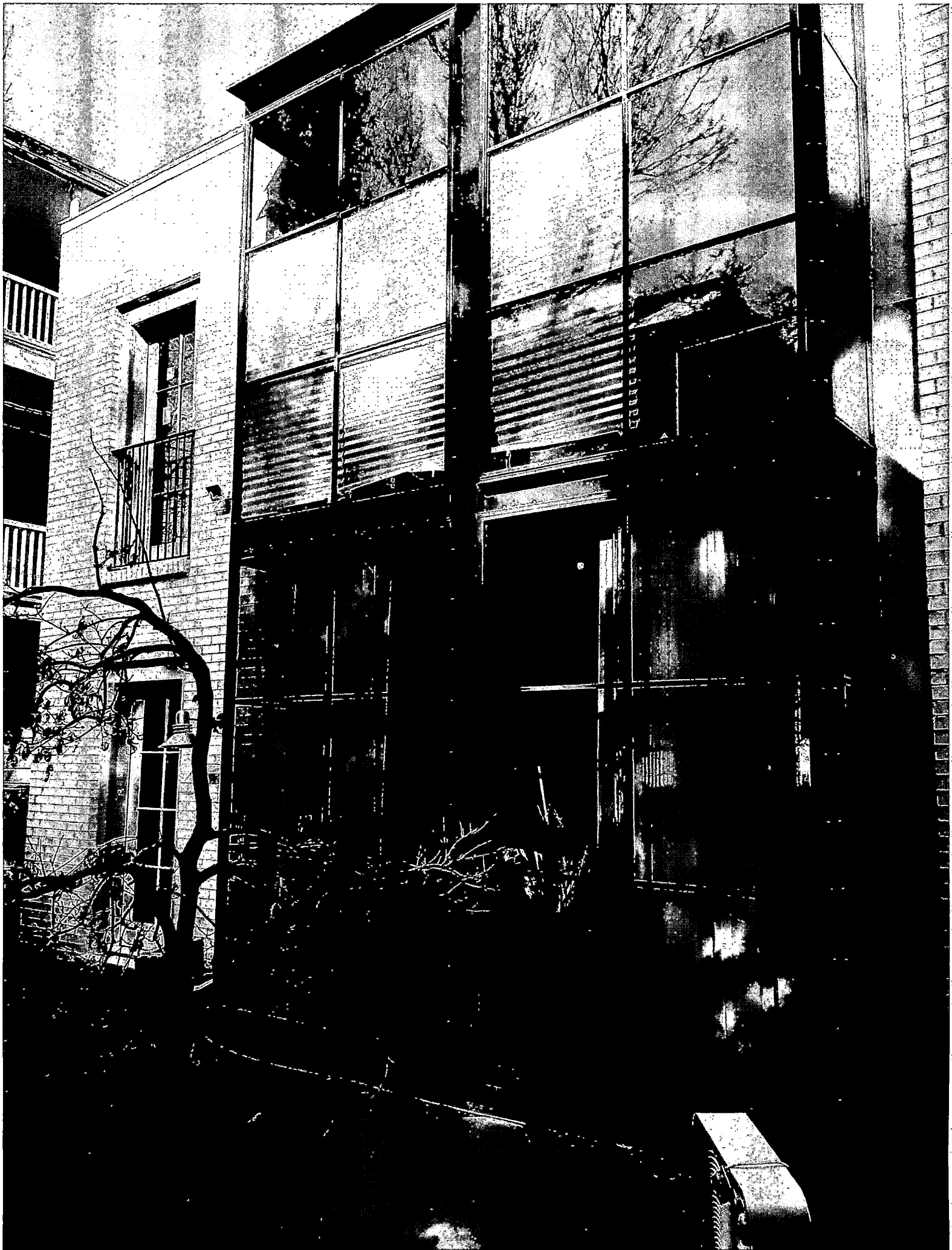

Eugene M. Woodard

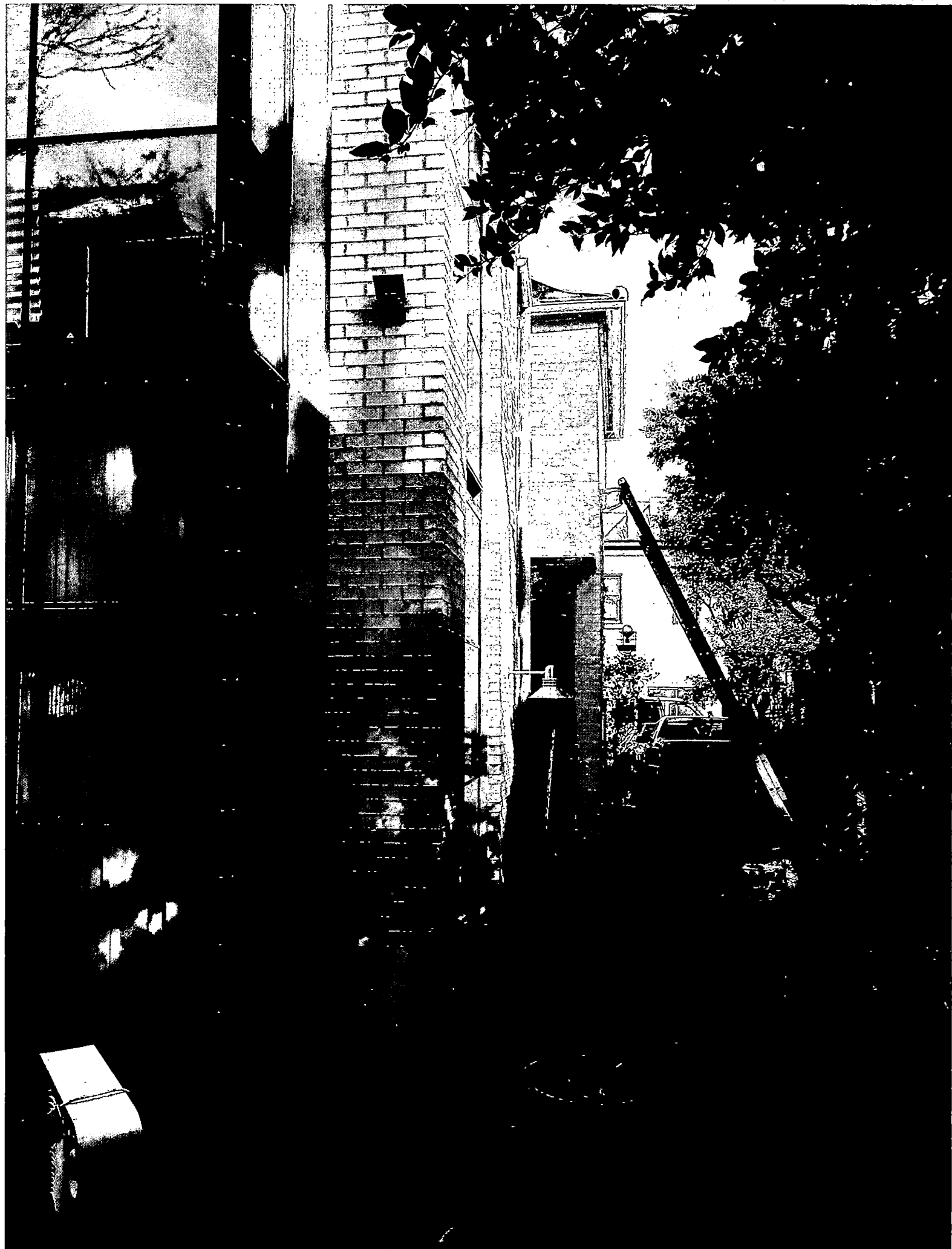
Subscribed and sworn to me
this 5 day of April 2018.

Sherry R. Roper
(Notary Public)

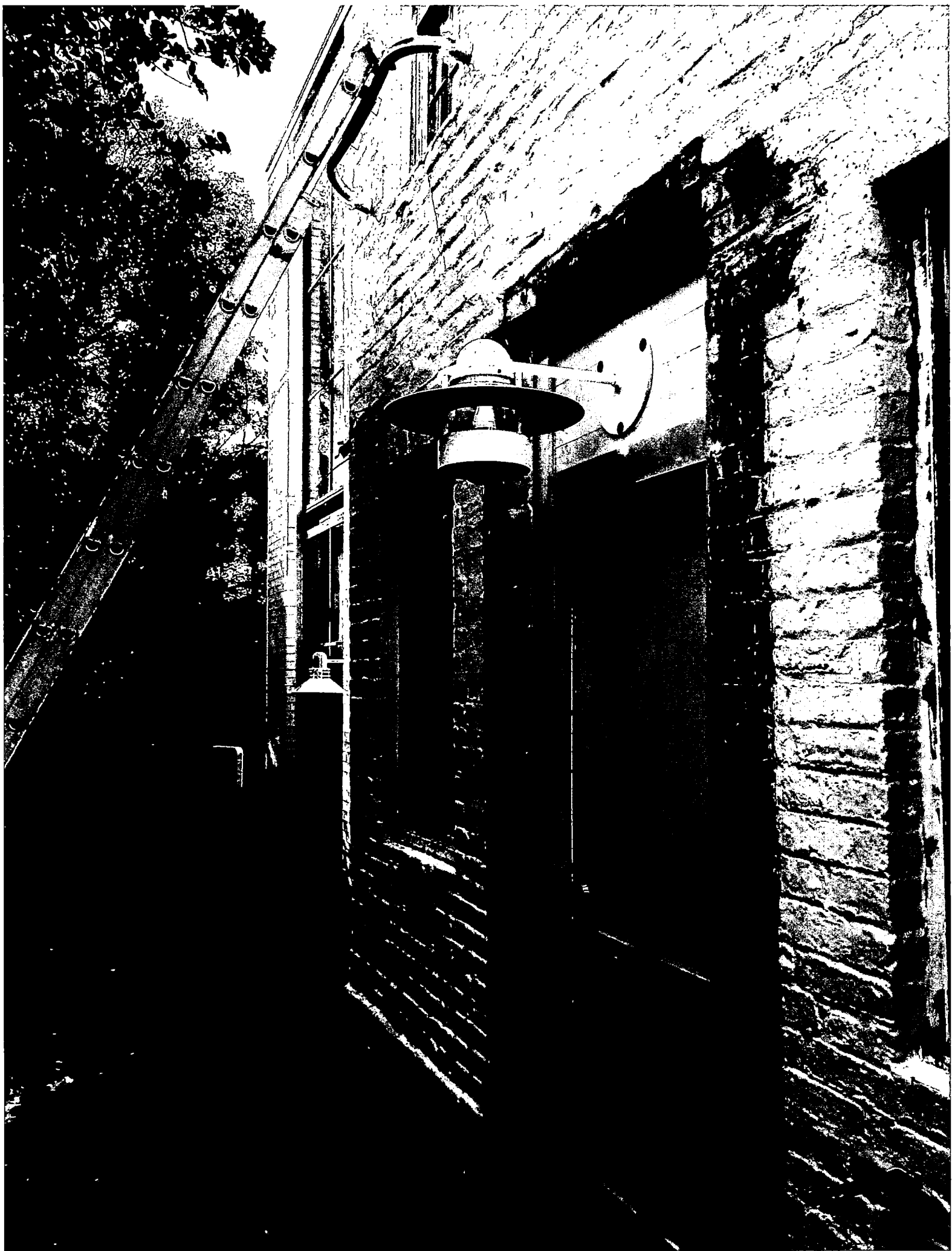
My commission expires: Aug. 11, 2026

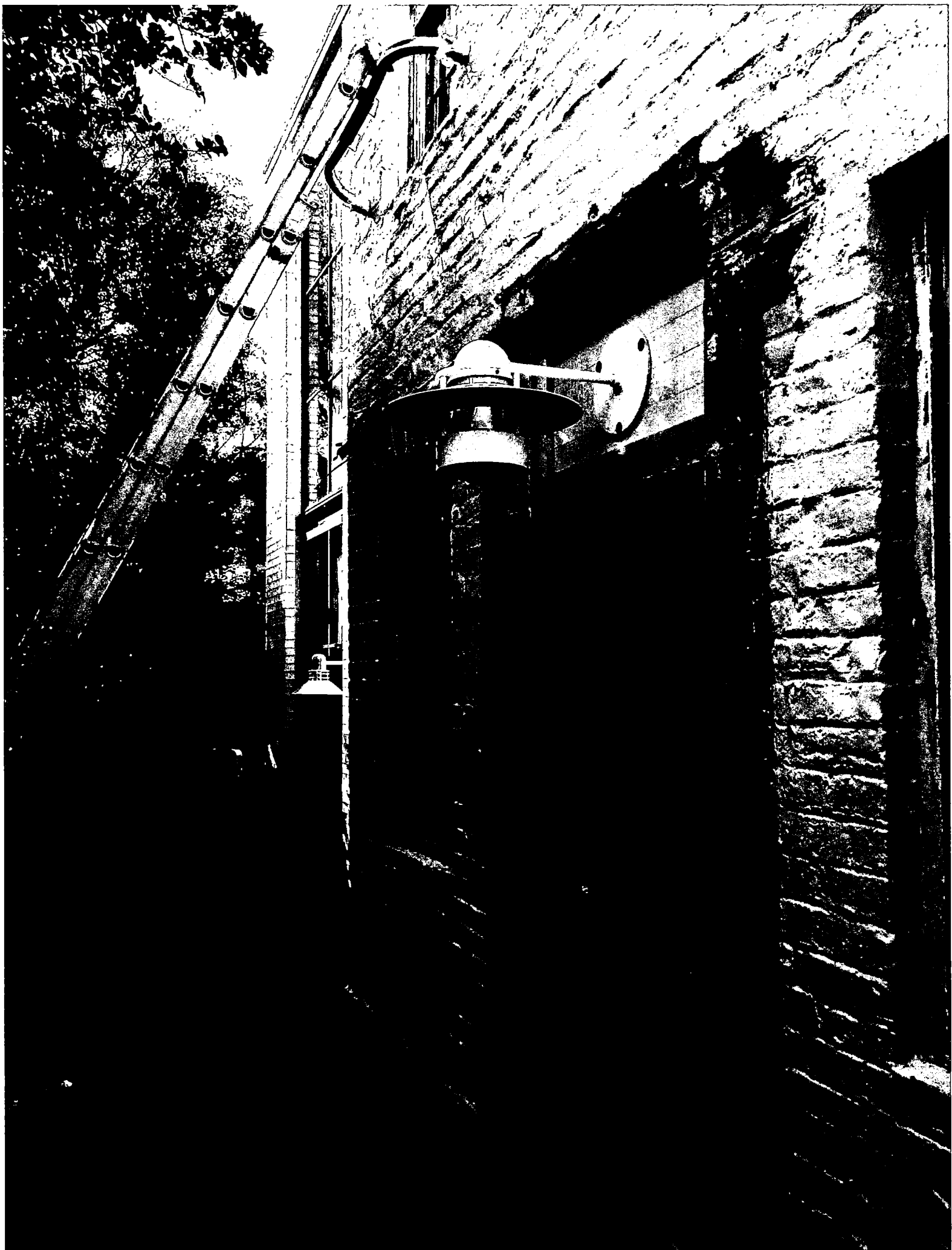
Exhibit 1

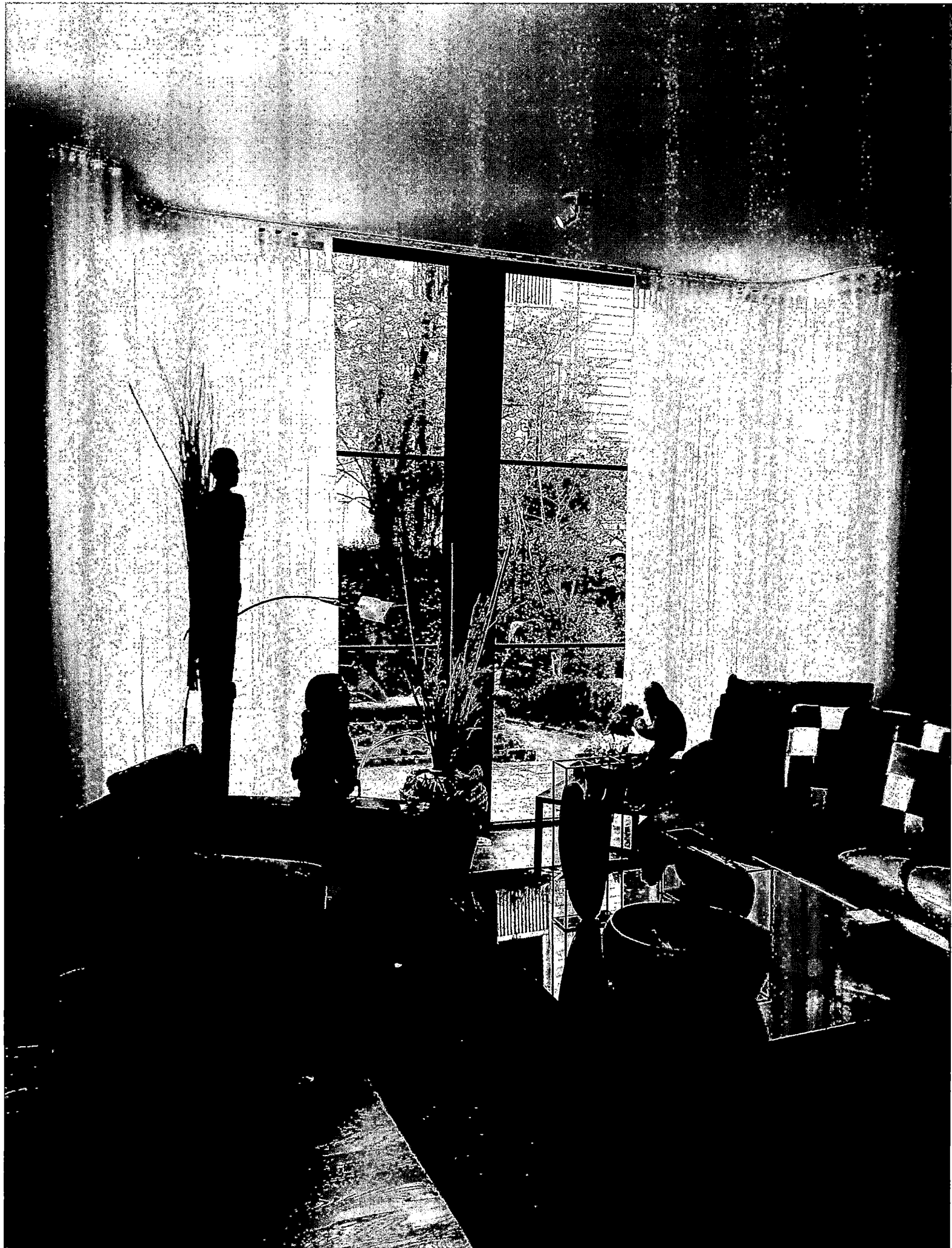




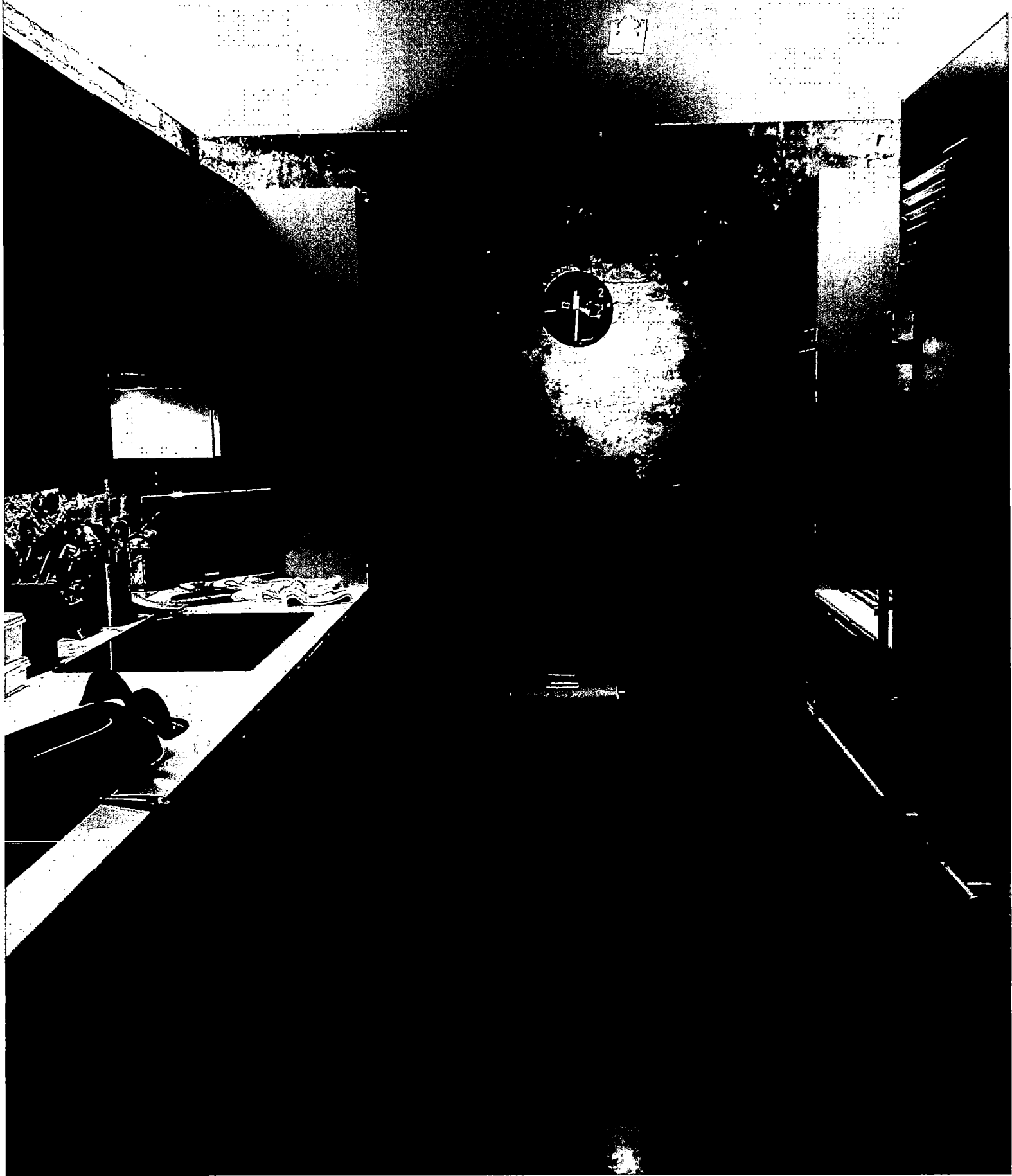














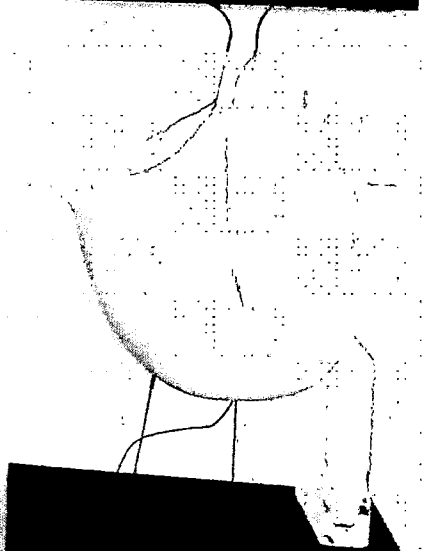


Exhibit 2



CITY OF CHARLESTON

Certificate of Occupancy



This certificate issued pursuant to the requirements of the International Codes certifying that at the time of issuance this structure was in compliance with the various ordinances of the Jurisdiction regulating building construction or use. For the following:

Use Classification BLDG-RES TMS #: C4571204054 Building Permit No: BR16-18361

Group R-3 and IRC Residential, one and two family Contractor Tupper Builders Inc

Owner of Building Eugene Woodard

Address 107 King St

City, State, Zip Charleston, SC

Code Edition _____ Code Series _____ Special Stipulations + Conditions _____

February 26, 2018
Date


Building Official

Please Post in Plain View

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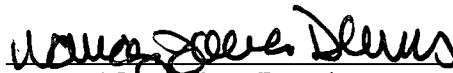
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of Architectural Review, Eugene M. Woodard
and Janice S. Woodard..... Respondents.

PROOF OF SERVICE

I certify that I have served **RESPONDENTS' MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS APPEAL AS MOOT AND AFFIDAVIT OF EUGENE M. WOODARD IN SUPPORT OF MTOION TO DISMISS APPEAL AS MOOT**, by depositing a copy of same in the United States Mail, postage prepaid, this 10th day of April, 2018, addressed to the following:

Capers G. Barr, III
Barr, Unger & McIntosh
11 Broad Street
Charleston, SC 29401
Attorney for Appellants

Timothy A. Domin
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492
Attorneys for Respondents City of
Charleston and City of Charleston
Board of Architectural Review


Nancy Jane Dennis

Charleston, South Carolina

JOHN P. LINTON, JR.
Direct: 843.727.2252
Email: Linton@WGFLAW.com

April 10, 2018

U.S.MAIL[X] EMAIL[]

Hon. Jenny Abbott Kitchings
Clerk of Court
Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
APR 11 2018
SC Court of Appeals

Re: Thomas S. Tisdale, et al. v City of Charleston, et al.
Appellate Case No. 2016-001530
Our File No. 7886.001

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Respondents' Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss Appeal as Moot with Affidavit of Eugene M. Woodard in Support of Motion, Proof of Service, and \$25 filing fee.

Your courtesies in filing this with the court are greatly appreciated.

Yours very truly,


John P. Linton, Jr.

Enclosures (Motion, Affidavit, Proof of Service, Check)

c: Capers G. Barr, III, Esq.
Timothy A. Domin, Esq.

**WALKER
GRESSETTE
FREEMAN
LINTON** LLC

66 Hasell Street, Charleston, SC 29401
PO Box 22167, Charleston, SC 29413

PRIORITY MAIL



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