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ABERNATHY ROEDER
BOYD HULLETT

EST. 1876

Robert H. Roeder
roeder@abernathy-law.com

1700 Redbud Boulevard, Suite 300 | McKinney, Texas 75069
Main: 214.544.4000 | Fax: 214.544.4044

June 7, 2024

Ms. Jennifer Arnold, Director of Planning
City of McKinney
221 N. Tennessee Street
McKinney, Texas 75069

Re: Supplement to Appeal of Denial of Certificate of Appropriateness by Historic Preservation Advisory Board to demolish 301 S. Kentucky Street; COA Case #HP2024-0024

Dear Ms. Arnold:

This letter shall serve as a supplement to my letter of May 22, 2024, appealing the denial of a Certificate of Appropriateness (“CoA”) by the Historic Preservation Advisory Board (“HPAB”) for the demolition of 301 S. Kentucky Street. This supplement and the accompanying materials are filed more than seven days prior to the scheduled appeal before the City Council on June 18, 2024.

In addition to the grounds of appeal set forth in my May 22 letter, I submit the following as additional grounds for consideration:

- 2022 CoA Approval by the Historic Preservation Officer (“HPO”) Created a Vested Right and Should Be Reinstated and Extended. On August 17, 2022, the HPO issued a CoA for the demolition of improvements on the Property with three conditions set forth therein (the “2022 CoA”), a copy of which is attached hereto as Exhibit A. Pursuant to Section 203E of the Uniform Development Code of the City of McKinney (“UDC”), *Certificates of Appropriateness for Residential Areas with the Historic Overlay District* are permits. Section 203E6 sets out the applicability, submittal requirements, approval procedure, approval criteria and appeal procedure for obtaining a CoA, and upon approval of the same, the CoA creates a vested right in the applicant. Unlike the other permits created by Section 203E, a Certificate of Appropriateness is the only permit for which no expiration period is provided (site plans – 2 years; landscape plans - 2 years; tree preservation permit – expiration of building plans; tree permit – 2 years; façade plan – 2 years). Given the fact that expiration periods are expressly provided for all other permits, the absence of a provision for an expiration period for a CoA should be interpreted that expiration periods for CoAs are not appropriate or authorized. The acceptance page of the 2022 CoA that sets out an expiration if authorized construction is not commenced within one year is

contrary to the authority of Section 203E of the UDC and is an invalid exercise or extension of authority by the HPO. Accordingly, the 2022 CoA should be determined to be in full force and effect without any expiration condition. In the instant case and upon inquiry by the applicant following the end of the first anniversary date of the 2022 CoA, the applicant was advised by the HPO that it must reapply for a new CoA. Based upon that direction from the HPO, the applicant resubmitted the application that was then forwarded to the HPAB for review and was denied. The fact that the applicant submitted a reapplication at the direction of the HPO should not create a subsequent overriding application or decision that would invalidate the 2022 CoA.

- The One Year Expiration Period Imposes a Condition that is Impossible to Satisfy. From a purely administrative standpoint, it is virtually impossible to obtain a building permit for a complex project within the McKinney Town Center within one year from the issuance of a CoA. Obtaining a building permit for a project of this magnitude requires (1) the creation of an initial conceptual architectural design that addresses the general site and pedestrian requirements of the McKinney Town Center zoning district (“MTC”), (2) an investigation of the site and surrounding conditions, (3) the preparation of a detailed site plan that conforms to the requirements of the MTC, (4) submittal of the site plan for staff review and comment, (5) the preparation of complete building plans by the architect and engineer to demonstrate, among other matters, that the elevations conform to the requirements of the MTC, (6) staff review and approval of the complete building and site construction plans and (7) the negotiation with, and engagement of, a contractor which would then apply for a building permit for construction. In the best of circumstances, the combined time required to get from CoA approval to a building permit is well in excess of 18-24 months. Therefore, any provision for the expiration of a CoA at the end of a 12 month period for a major project such as the applicant’s creates a condition that is impossible to satisfy and should be considered void.
- Denial Intentionally Prevented Multi-Family Use of Property. The predominant subject of discussion among the members of the HPAB during the hearing on this matter on May 2 centered around the fact that approving the CoA would allow the owner to demolish and remove the improvements on the lot with the resulting vacant property being incorporated into a planned urban-style multi-family development that would extend from Henry Street to Standifer Street. The Property is located within the Town Center area as defined in the McKinney Town Center Ordinance No. 2013-04-045. The McKinney Town Center Ordinance was enacted by the City Council in 2013 for the express purpose of creating a framework within which properties within the Town Center area, including the subject property, could be redeveloped using time-tested principals of urban design that encouraged compact, efficient and walkable developments, more pedestrian activity and enhanced shopping, employment, housing and business activities within the historic downtown area, in large part to insure the viability and economic success of the Town Center area. The Property lies within the Downtown Core as defined in the MTC and multi-family development is a **permitted use**. Absent a denial of the CoA, the applicant had the authority to proceed with the construction of the development subject only to the conditions of the McKinney Town Center Ordinance. The fact that the HPAB made no determination that the Property had any significant historical value leads invariably to the conclusion that its refusal to approve the CoA was an attempt to override the

Ms. Jennifer Arnold, Director of Planning

June 7, 2024

Page 3

redevelopment policies of the City Council and as such the HPAB's action overstepped the intended and express authority granted to it.

I have included herewith the complete application for the CoA submitted for this Property on which the HPO granted the CoA for demolition.

Very truly yours,



Robert H. Roeder

cc: Mr. Jeremy Jones

EXHIBIT A



August 17, 2022

Jeremy Jones
301 S Kentucky Street
McKinney, TX 75069

HP2022-0050 Request for demolition of single-family residence as part of redevelopment effort at 301 South Kentucky Street.

Dear Mr. Jones:

This letter shall serve as approval with conditions of a Certificate of Appropriateness (COA) for the proposed demolition of the low priority, single-family residence at 301 S. Kentucky Street. This approval letter is one of the requirements used to obtain a permit from the Building Permits/Inspections Department. The approval is conditioned as follows:

1. The applicant does no further work than that which was received by the Historic Preservation Office on July 18, 2022 and approved with conditions on August 17, 2022.
2. The applicant will be responsible for meeting all applicable City ordinances and obtaining all necessary building permits. Please contact Building Inspections and Permits to obtain your building permit at 972-547-7400.
3. Any changes to the property beyond the scope included in this application may require a new Certificate of Appropriateness.

If you have any questions about the approval of this item, please contact me at 972-547-2000.

Sincerely,

Cassandra Bumgarner

Cassie Bumgarner
Planner, Historic Preservation

"The Planning Department consistently strives to provide quality, professional customer service to our applicants. In an effort to evaluate and improve the service we provide, we ask that you complete this brief customer service survey. We sincerely appreciate your responses and opinions!" <https://www.surveymonkey.com/r/McKinneyPlanningFeedback>



AMERICAN EQUITY

Friday, May 13th, 2022

Historic Preservation Office
Attn: Paula Nasta, Planning Manager
221 N. Tennessee Street
McKinney, Texas 75069
E: pnasta@mckinneytexas.org
P: (972) 547-7416

RE: Letter of Intent for Certificate of Appropriateness Application – 301 S Kentucky St,
McKinney, Texas 75069

Ms. Nasta,

As a follow-up to our in-person meeting held on Tuesday, April 12, 2022, please see enclosed the Certificate of Appropriateness (“COA”) application pertaining to 301 S. Kentucky St, McKinney, TX 75069 (“Residence”) on behalf of Barratt Properties, LLC, the current legal owner. The Residence is located on approximately 0.096 acres on the southeast corner of Henry St. and S. Kentucky Street (see COA application for maps showing exact location).

The COA requests approval to demolish the Residence as part of a greater redevelopment effort. The redevelopment of this lot (and various surrounding lots) will provide additional multifamily housing within walking distance of the Downtown Square and allow more people to enjoy and support the rich nature of the downtown area. The Surrey House will be the namesake and historical focal point of the future multifamily community.

The current condition of the Residence is fair (exterior photos included in COA application) and the Historic Resource Inventory Survey identifies the Residence as “Low” priority.

We appreciate your consideration and kindly request your approval of the COA application as part of a continued effort to revitalize and celebrate Downtown McKinney.

Regards,

Jeremy Jones

Manager of JBJ Equity Surrey House Apts, LLC

Manager of Surrey House Apts, LLC

E: JeremyJones@americanequity.net

P: (972) 422-2000

cc: roeder@abernathy-law.com; contact-historicpreservation@mckinneytexas.org

**INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED.
REFER TO THE "LIST OF REQUIRED SUBMITTALS"**



Certificate of Appropriateness Application, p1

By signing this Certificate of Appropriateness (COA) application, the applicant affirms:

- All submitted information for this application represents an accurate description of the proposed work.
- The applicant certifies that the project described in this application will be constructed in exact accordance with aforesaid plans and specifications.
 - The applicant agrees to conform to all conditions of approval.
- It is understood that approval of this application by the Historic Preservation Officer or the Historic Preservation Advisory Board in no way constitutes approval of a building permit or other required City permit approvals.
- Filing an application does not guarantee approval.
- The COA becomes null and void if authorized construction is not commenced within one year. This will require receiving a new CoA approval.
 - Work completed in deviation from this Certificate of Appropriateness or without a Certificate of Appropriateness may result in fines and/or misdemeanor charges.
 - Work proposed in this application may also be eligible for the City's tax exemption program or impact fee waiver program. To see if you qualify, please contact the Historic Preservation office.

ADDRESS OF SUBJECT PROPERTY: 301 S. Kentucky St, McKinney, Texas 75069-5440

APPLICANT/CONTACT PERSON:

NAME (Print): Jeremy Jones

ADDRESS (line 1): 2150 S. Central Expwy, Ste. 360

ADDRESS (line 2): _____

City, ST, ZIP: McKinney, Texas 75070

Phone: 972-422-2000

E-mail: jeremyjones@americanequity.net

Signature: _____

Date: 5/13/2022

OWNER: Attach additional sheets for Multiple owners and/or addresses.

NAME (Print): Barratt Properties, LLC

ADDRESS (line 1): P.O. Box 913

ADDRESS (line 2): _____

City, ST, ZIP: McKinney, Texas 75070

Phone: _____

E-mail: carol@surreyhs.com / mark@surreyhs.com

Signature: _____

Date: 5/13/2022

For Office Use Only		Date Received: <u>July 18, 2022</u>
COA Case #: <u>HP2022-0050</u>	Type of Project: <u>Demolition</u>	
Preservation Priority: <u>Low</u>	Built Circa: <u>1913</u>	
<input type="checkbox"/> Approved. Please release the building permit.	Certificate of Appropriateness Approved with conditions <i>Cassie Bungarner</i> 08/17/2022	<input type="checkbox"/> Forwarded to HPAB for review. Do Not release building permit.
		<input type="checkbox"/> Denied. Do Not release the building permit.



All applications must provide justification for the requested Certificate of Appropriateness based on the criteria set forth in the City Code of Ordinances. These criteria are based upon the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties (available on-line at http://www.nps.gov/history/hps/tps/standards_guidelines.htm). Please type or print clearly. Illegible responses will not be accepted. Please use additional sheets if necessary.

GENERAL INFORMATION

Property Address: 301 S. Kentucky St, McKinney, Texas 75069-5440

Type of Request:

Proposed Use:

<input type="checkbox"/>	Alteration of building/structure
<input type="checkbox"/>	New Construction
<input checked="" type="checkbox"/>	Demolition
<input type="checkbox"/>	Fencing
<input type="checkbox"/>	Signage
<input type="checkbox"/>	Other: _____

<input type="checkbox"/>	Single-Family Use
<input checked="" type="checkbox"/>	Multi-Family Use
<input type="checkbox"/>	Commercial
<input type="checkbox"/>	Office
<input type="checkbox"/>	Restaurant
<input type="checkbox"/>	Other: _____

Written Description of Proposed Work: ^{N/A - No proposed architectural changes at this time}

Explain what changes will be made to the following architectural elements and how the changes will be accomplished. *Please provide a detailed brochure or samples of new materials.*

1. Structural Work _____

2. Roof and Roofing Systems _____

3. Windows _____

4. Doors _____

5. Exterior siding _____

Case # HP2022-0050

Date Received: July 18, 2022

Certificate of Appropriateness Application, p2



Written Description of Proposed Work (continued):

Explain what changes will be made to the following architectural elements and how the changes will be accomplished. *Please provide a detailed brochure or samples of new materials.*

6. Decorative elements (window and door trims, ornamental trims, brackets, lighting): _____

7. Porches, Carriage Houses, Patio, Carport, and Steps: _____

8. Outbuildings: _____

9. Fencing: _____

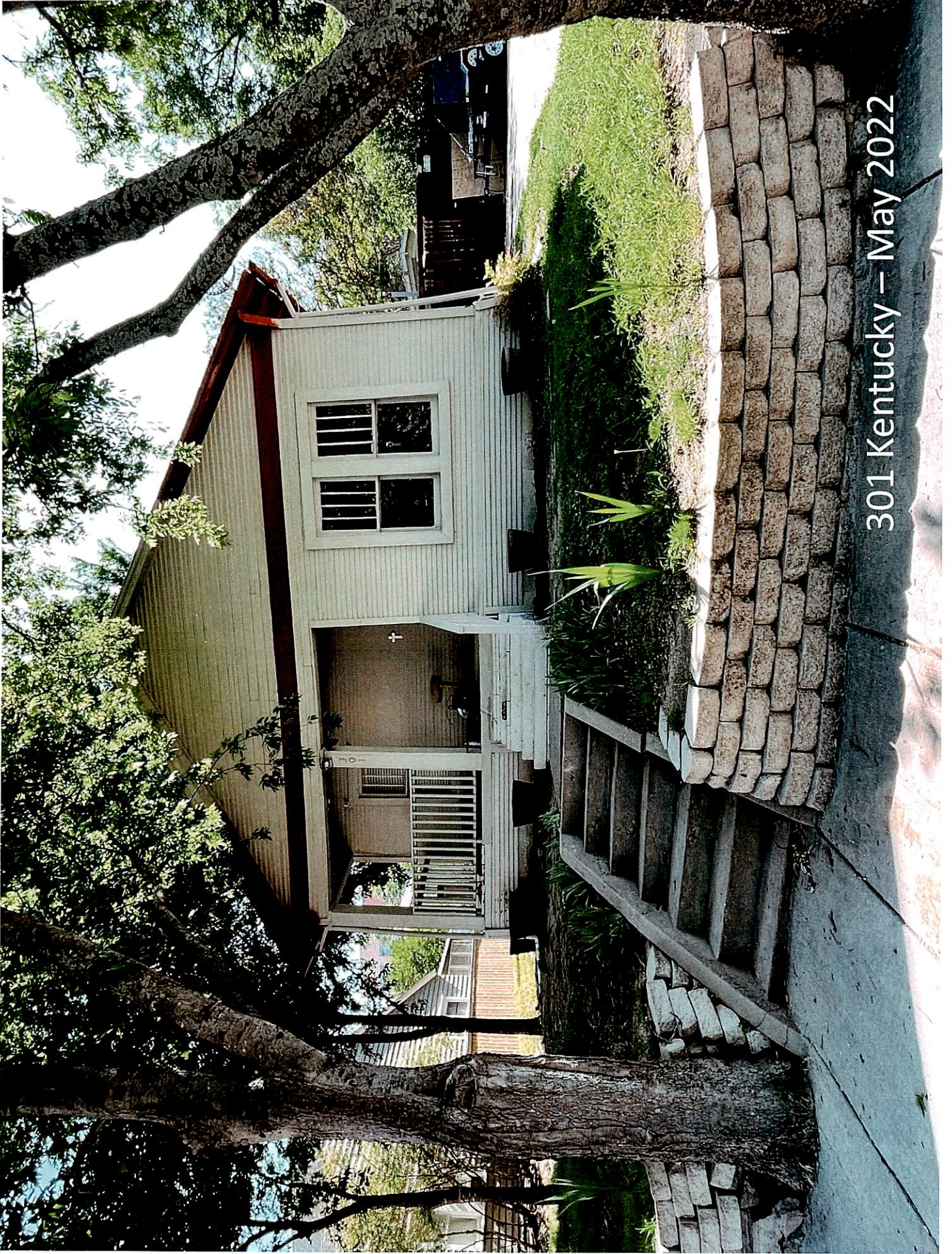
10. Other: _____

11. Painting (Commercial Historic District Only)

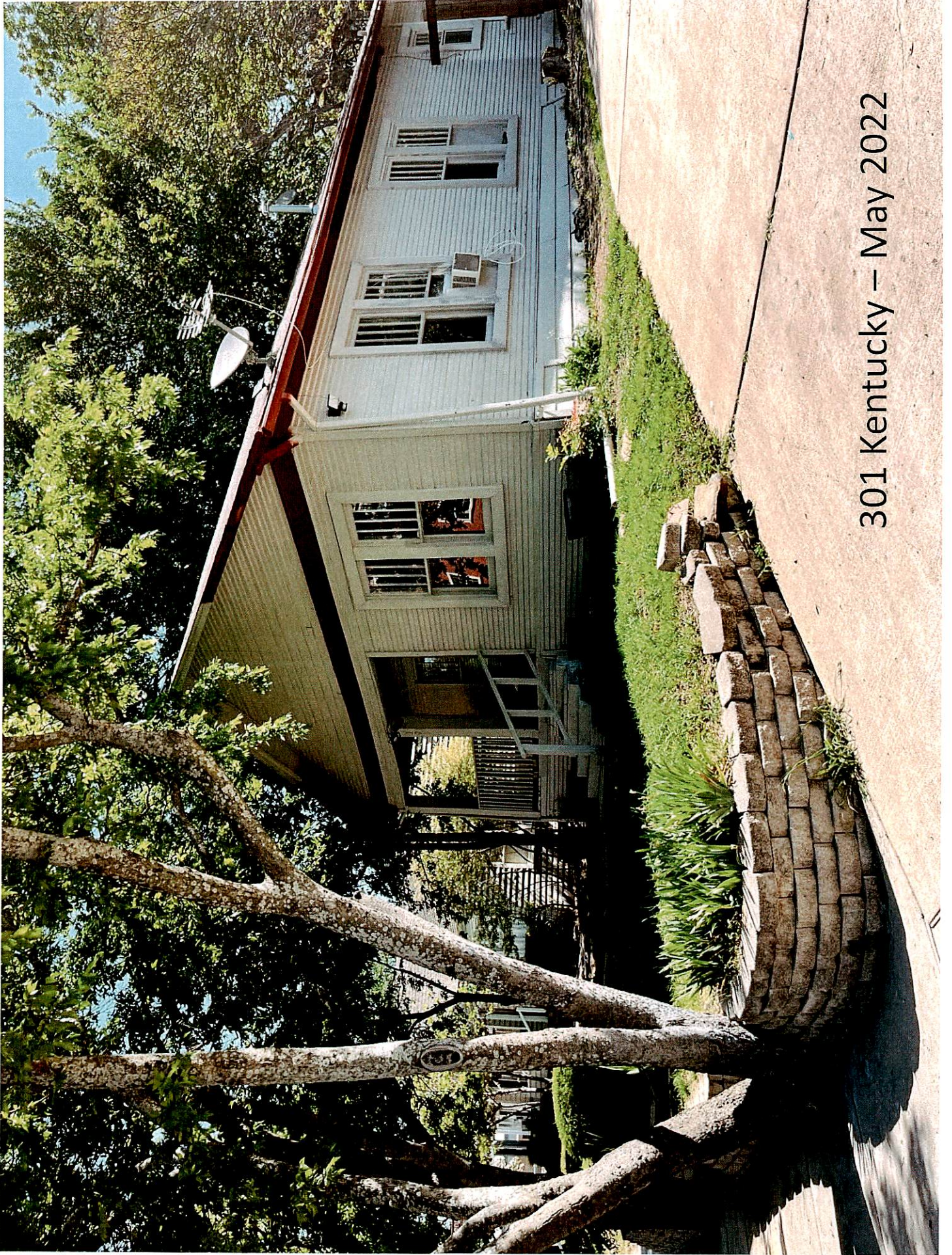
Written Description of Proposed Work for which applicant is requesting advice but CoA approval is not required:

12. Landscape, parking, sidewalks, garden features

13. Painting (Historic Overlay District only)



301 Kentucky – May 2022



301 Kentucky – May 2022



301 Kentucky - May 2022



301 Kentucky - May 2022



301 Kentucky - May 2022



"1985"

301 Kentucky – Historic Photos from McKinney Historic Survey Site



2005



2015

Street View – Looking North



303 S Kentucky St

Exit Street View

N

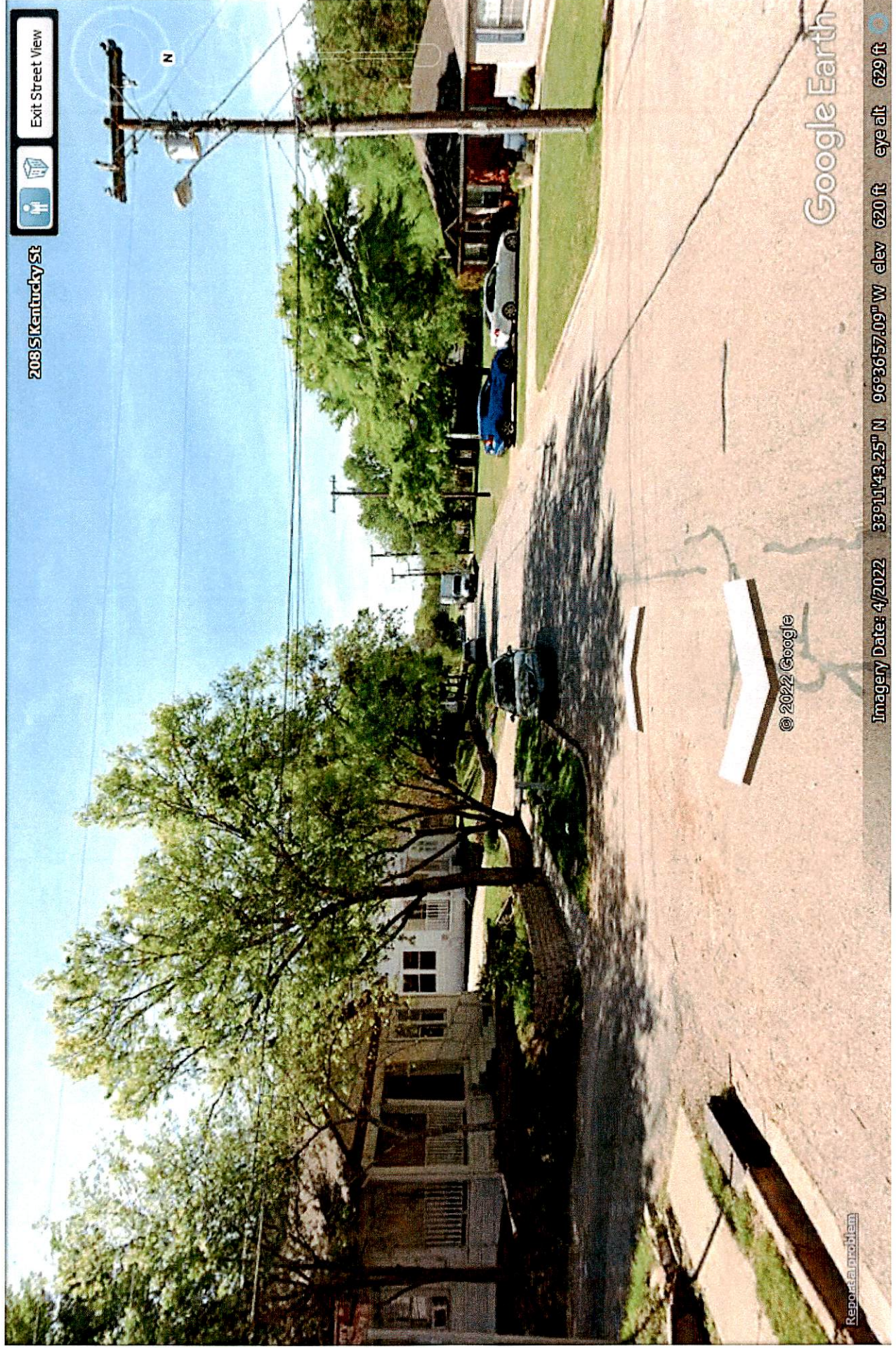
© 2022 Google

Google Earth

[Report a problem](#)

Imagery Date: 4/2022 33°11'42.69" N 96°36'56.72" W elev 619 ft eye alt 627 ft

Street View – Looking South



Adjacent Properties



302 Tennessee – Directly East of Subject Property



303 Kentucky – Directly South of Subject Property

Free Delivery on 1st Order

McKinney TX

Emporium Pies

Amity Insurance C
Insurance agency

E Cloyd St

E Cloyd St
Cadence Cyclery
of McKinney
Bicycle store

Chris Fritchie Studi

Davis St

Davis at the Square

301 S Kentucky St,
McKinney, TX 75069
7 min drive · work

Howell St

Surrey House and
Gardens Wedding &...

Old-world communit

omes

S Kentucky St

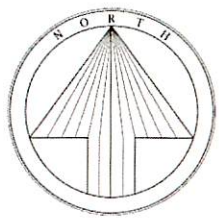
Sam Patel DDS, PA

Anthony St

Lemon Drop Studio

Bevoe St

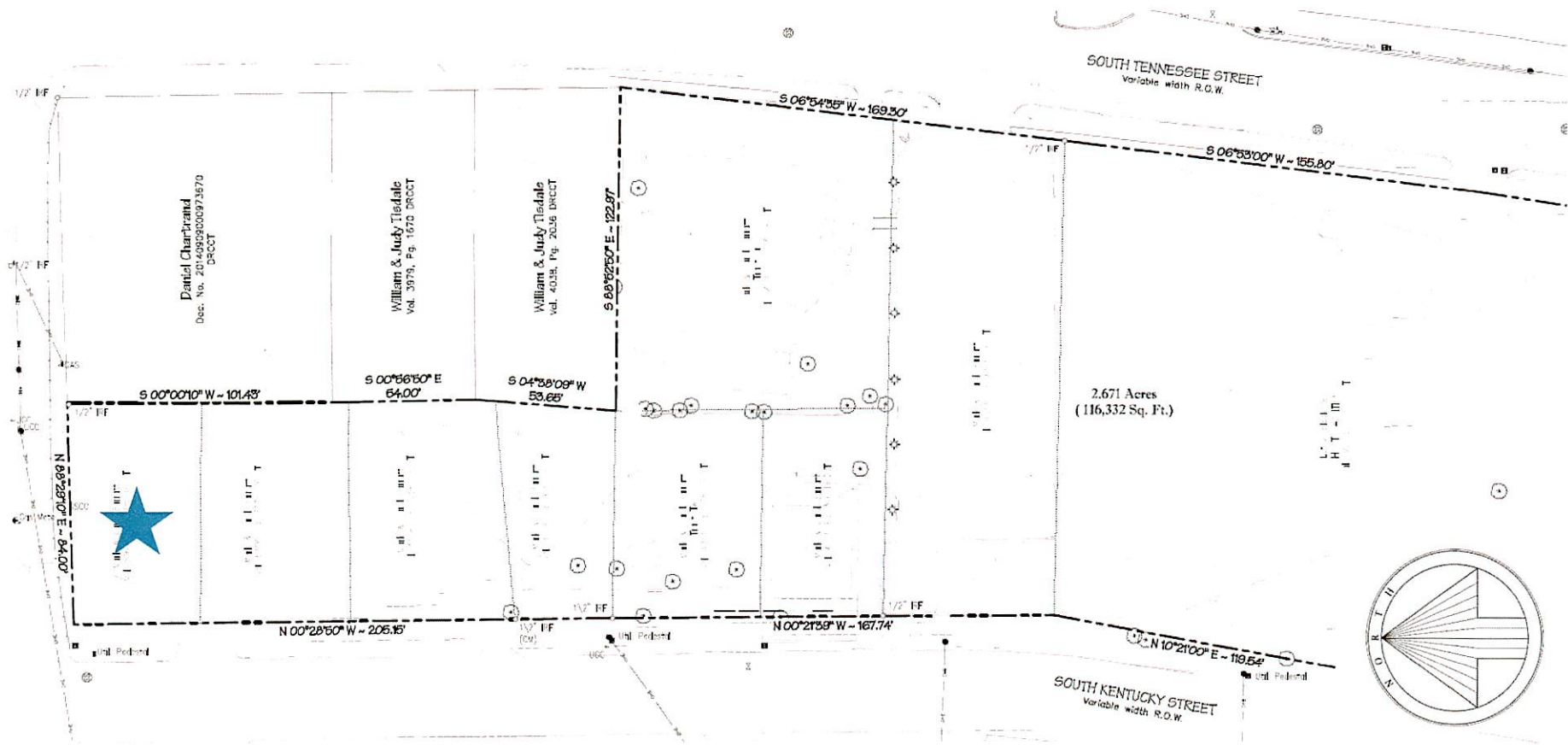
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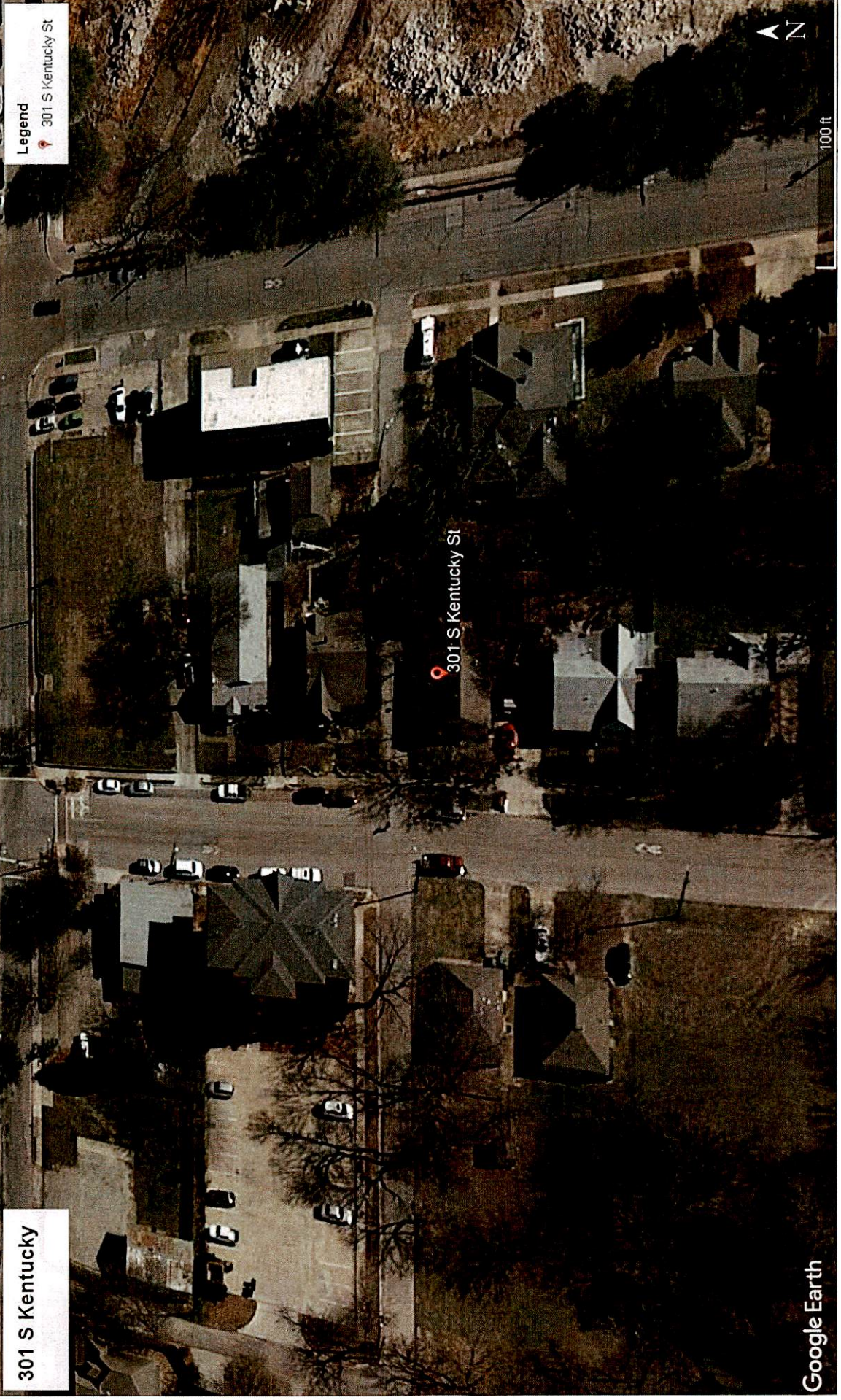


E Standifer St

Kentucky St

Johnson St





301 S Kentucky

Legend
301 S Kentucky St

301 S Kentucky St

Google Earth

100 ft



DBA
ARCHITECTS, LLC

Date: 7/1/2022

To: Jeremy Jones
2150 S. Central Expwy, Ste. 360
McKinney, TX 75072
(972) 422-2000

www.americanequity.net

From: DBA Architects, LLC
111 South Kentucky St. Ste. 210
McKinney, TX 75069

Reference: Field Observation Report

Address: 301 S. Kentucky St.
McKinney, Texas 75069

Mr. Jeremy Jones,

Per your request DBA Architects, LLC (Mr. Bryan Moore), on June 22nd, 2022, visited the above referenced property at 301 S. Kentucky St. in McKinney Texas to evaluate the condition of the house, with the primary goal of seeing if the structure would be a good candidate to be relocated (moved). A few bullet point observations:

- The house exceeds the 13'6" height requirement to be moved. Therefore, the roof would need to be removed to relocate it
- The house has sustained considerable termite and dry rot damage
- Evidence that the house had begun racking forward on the lot in the past. A substantial structural retaining wall was added to the west (street front) side of the house to limit this movement, but damage was already done.
- Structural damage is evident at door, and window openings

With the above referenced findings, it is our opinion that the house would be very difficult if not impossible to move and that the structure would never survive the moving process.

If you have questions, please feel free to contact me at 469-667-5095

Sincerely,



Bryan Moore, AIA, NCARB
CEO/President
DBA Architects, LLC
Email: bryan@dba-architects.com

Hampton Roads, Virginia

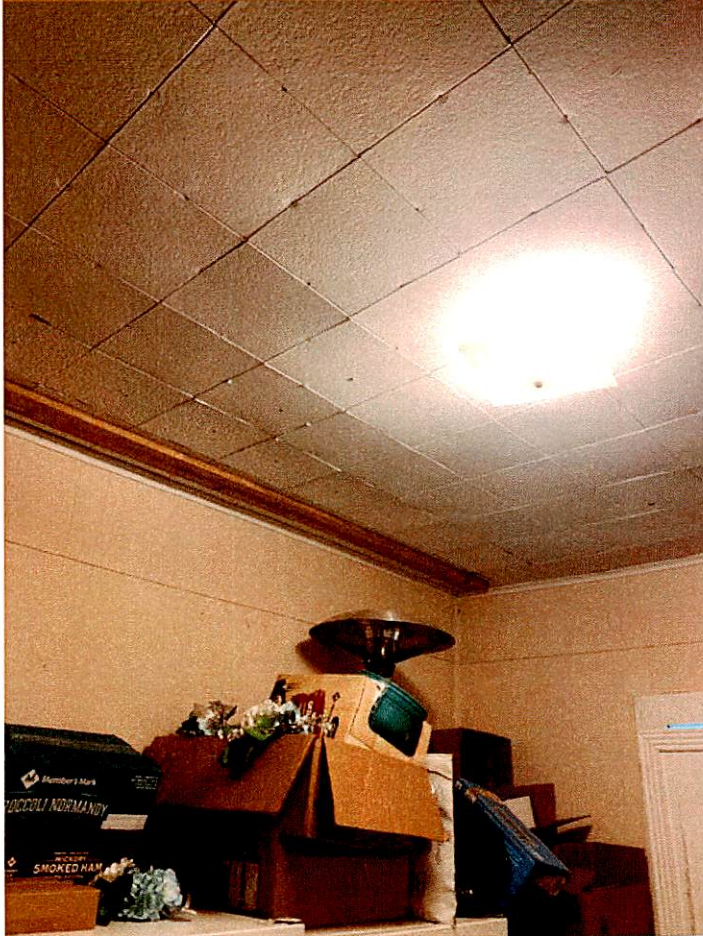
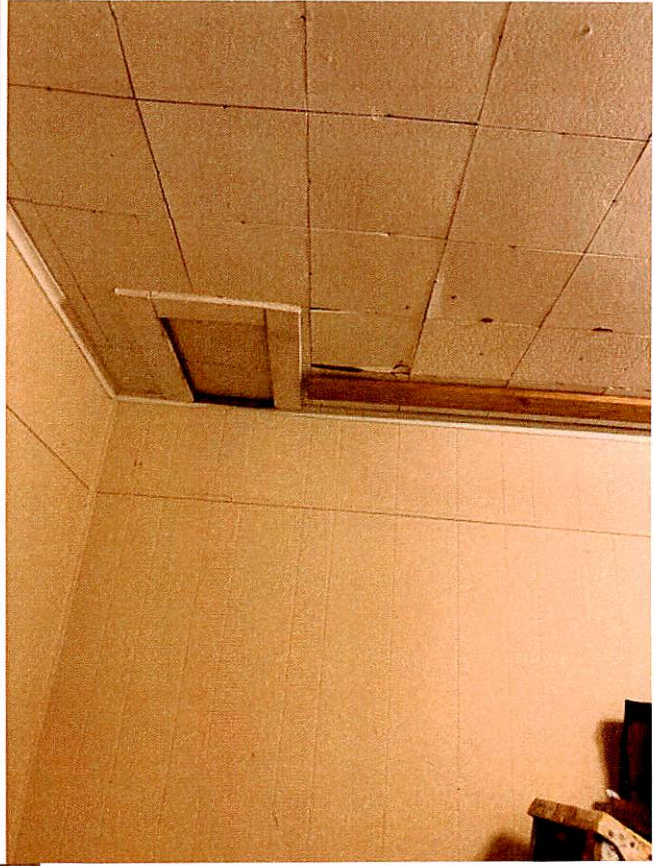
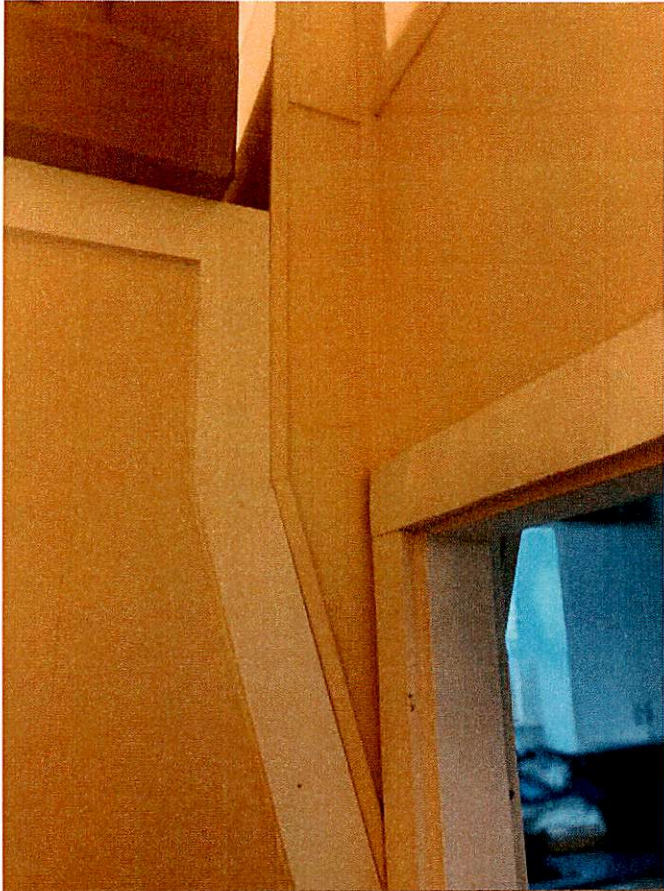
Dalla/Ft Worth Metroplex

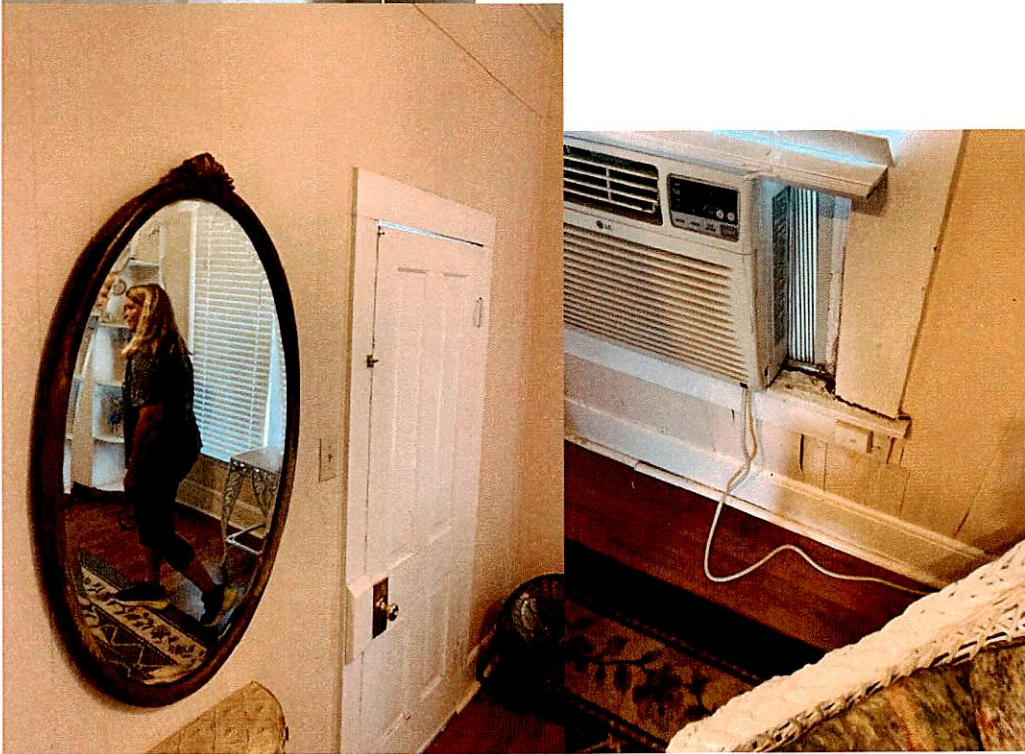
Emerald Coast, Florida

Via; email.

Jeremy Jones, Mark Barrat, Carol Barrat, Jay Jones

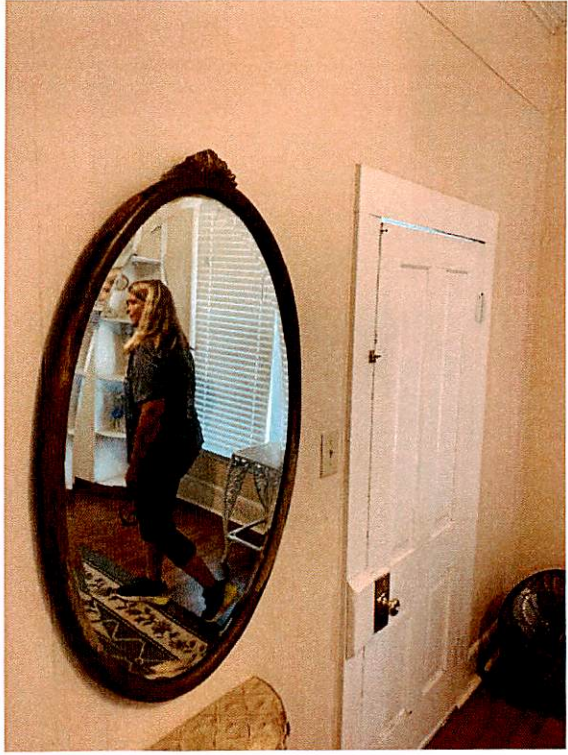












Owner Notes from Mark Barratt

301 S. Kentucky St., McKinney TX 75069

As of June 1, 2022

- a. 301 is a tiny house, 924 sf, 2bd, 1bath
- b. The only bathroom in this house is through the master bedroom
- c. All the rooms are tiny
- d. Window ACs
- e. The biggest problem is that the house is spreading on the bottom on both sides. I have had to fill about a 1 in gap between wall and floor across the dining room & bedroom. You can see the spread on the exterior picture if you study it for a moment.

Proposal

Page # _____ of _____ pages

Cunningham House Movers

301 E Finley BLVD

Anna, TX 75409

cell 972-658-2320

PROPOSAL SUBMITTED TO: Carrol Barrett	JOB NAME	JOB #
ADDRESS	JOB LOCATION Kentucky St, McKinney, TX	DATE OF PLANS
PHONE # 214-923-0370	DATE 6-21-2022	ARCHITECT

We hereby submit specifications and estimates for: Moving Four Structures in good condition located at 303/305 Kentucky St. in McKinney, TX, and 400/312 S. Tennessee, McKinney, TX. There are two more structures that has no value to move, these are located at 301/311 Kentucky St. McKinney, TX.

Approximate moving cost For 303/305 no more than \$490,000.00 Each to be move across st. to the west from present location.

400 Tennessee could be move away if owner decides to For Free, and would be able to save a demolition Fee, or any of the other structures such as 303 or 305.

Note: if relocation occurs For present owner Mover doesn't do any Remodeling or Finish Foundations. IN bid,

We propose hereby to furnish material and labor - complete in accordance with the above specifications for the sum of: \$ _____ Dollars

with payments to be made as follows: _____

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Respectfully submitted _____

Note - this proposal may be withdrawn by us if not accepted within _____ days.

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature _____

Date of Acceptance _____

Signature _____

Report Content

Images 1
 Wall Area Diagram 4
 Elevation Diagrams..... 5

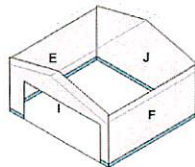
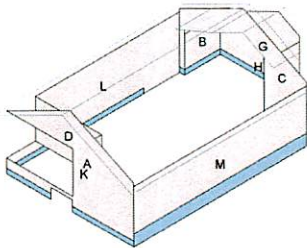
Prepared For

Contractor: Jeremy Jones
 Company: American Equity
 Address: 2150 S Central Expy Ste 360
 Mckinney, TX 75070-4070
 Phone: 972-422-2000

Wall Details

Wall Area including Windows & Doors	=	2433.0 ft ²
Total Siding Area	=	2204.6 ft ²
Total Masonry Area	=	228.4 ft ²

***Calculation Note: Garage door surface areas are subtracted from the total; window and door surface areas are not.**



Satisfaction Guaranteed
www.eagleview.com/Guarantee.aspx

IMAGES – TOP VIEW

Top Image



301 S Kentucky St, Mckinney, TX 75069-5440

Report: 47020823

IMAGES – NORTH & SOUTH

North Side



South Side



IMAGES – EAST & WEST

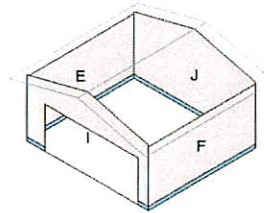
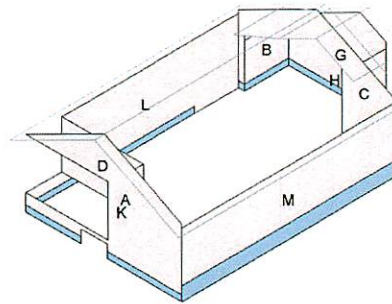
East Side



West Side



WALL AREA DIAGRAM



○ Siding
● Masonry

North

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
E	163.7	11.8
B	48.6	8.1
A	50.1	0.0
L	322.4	31.0
Total	584.8	50.9

East

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
J	219.3	13.3
H	199.2	10.7
G	172.8	17.8
Total	591.3	41.8

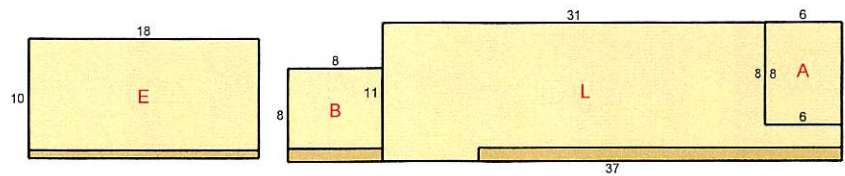
South

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
F	163.7	11.8
C	72.8	8.1
M	314.3	89.0
Total	550.8	108.9

West

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
I	118.1	3.1
K	245.2	23.7
D	114.4	0.0
Total	477.7	26.8

NORTH ELEVATION DIAGRAM

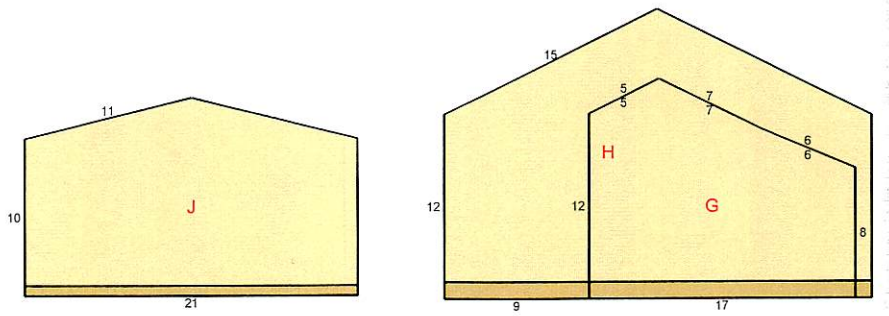


○ Siding
 ● Masonry

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
E	163.7	11.8
B	48.6	8.1
A	50.1	0.0
L	322.4	31.0
Total	584.8	50.9

Note: On-site verification of yellow shaded areas is needed. This diagram shows segment lengths rounded to the nearest whole number. The wall area in square feet (rounded to the nearest tenth) is based on the actual (non-rounded) value of each segment length. Windows and doors have not been subtracted from these measurements.

EAST ELEVATION DIAGRAM

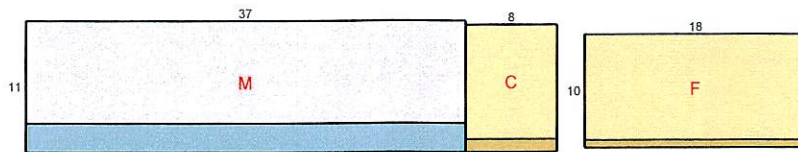


○ Siding
 ● Masonry

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
J	219.3	13.3
H	199.2	10.7
G	172.8	17.8
Total	591.3	41.8

Note: On-site verification of yellow shaded areas is needed. This diagram shows segment lengths rounded to the nearest whole number. The wall area in square feet (rounded to the nearest tenth) is based on the actual (non-rounded) value of each segment length. Windows and doors have not been subtracted from these measurements.

SOUTH ELEVATION DIAGRAM

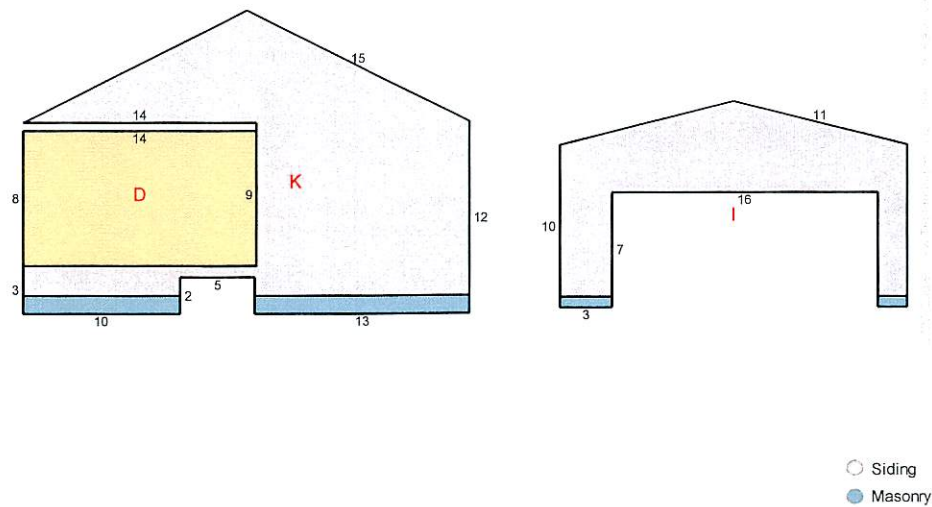


○ Siding
 ● Masonry

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
F	163.7	11.8
C	72.8	8.1
M	314.3	89.0
Total	550.8	108.9

Note: On-site verification of yellow shaded areas is needed. This diagram shows segment lengths rounded to the nearest whole number. The wall area in square feet (rounded to the nearest tenth) is based on the actual (non-rounded) value of each segment length. Windows and doors have not been subtracted from these measurements.

WEST ELEVATION DIAGRAM



Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
I	118.1	3.1
K	245.2	23.7
D	114.4	0.0
Total	477.7	26.8

Note: On-site verification of yellow shaded areas is needed. This diagram shows segment lengths rounded to the nearest whole number. The wall area in square feet (rounded to the nearest tenth) is based on the actual (non-rounded) value of each segment length. Windows and doors have not been subtracted from these measurements.