EST. 1876 -

Robert H. Roeder rroeder@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 relocate Improvements on 305 S. Kentucky Street; COA Case #HP2024-0027

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 relocation of improvements on 305 S. Kentucky Street to Anna, Texas. 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 relocation of improvements on the Property to Anna, Texas, 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 remove and relocate the improvements on the lot to Anna, Texas, 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

Ms. Jennifer Arnold, Director of Planning June 7, 2024 Page 3

the 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 relocation of improvements to Anna, Texas.

Very truly yours,

Robert H. Roeder

cc: Mr. Jeremy Jones

#### **EXHIBIT A**



August 17, 2022

Jeremy Jones 305 S Kentucky Street McKinney, TX 75069

HP2022-0052

Request for relocation of a single-family residence as part of redevelopment effort at 305 South Kentucky Street.

Dear Mr. Jones:

This letter shall serve as approval with conditions of a Certificate of Appropriateness (COA) for the proposed relocation of the low priority, single-family residence at 305 S. Kentucky Street to Anna, Texas. 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!" <a href="https://www.surveymonkey.com/r/McKinneyPlanningFeedback">https://www.surveymonkey.com/r/McKinneyPlanningFeedback</a>



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

**Certificate of Appropriateness** 

Approved with conditions

Cassie Bumgarner 08/17/2022

RE: Letter of Intent for Certificate of Appropriateness Application – 305 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 305 S. Kentucky St, McKinney, TX 75069 ("Residence") on behalf of Barratt Properties, LLC, the current legal owner. The Residence is located on approximately 0.11 acres and approximately 140 ft. south of the southeast corner of Henry St. and S. Kentucky Street (see COA application for maps showing exact location).

The COA requests approval to relocate 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 are not requesting any changes to the architectural features of the Residence as part of the COA.

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



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

### 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: 305 S. Kentucky St., McKinney, Texas 75069

APPLICANT/CONTACT PERSON:		OWNER: Attach additional sheets for Multiple owners and/or addresses.	
NAME (Print):	Jeremy Jones	NAME (Print):	Barratt Properties, LLC
ADDRESS (line 1):	2150 S. Central Expwy, Ste. 360	ADDRESS (line 1):	P.O. Box 913
ADDRESS (line 2):		ADDRESS (line 2):	
City, ST, ZIP:	McKinney, Texas 75070	City, ST, ZIP:	McKinney, Texas 75070
Phone:	972-422-2000	Phone:	
E-mail:	jeremyjones@americanequity.net	E-mail:	carol@surreyhs.com / mark@surreyhs.com
Signature:		Signature:	
Date:	5/13/2022	Date:	5/13/2022
For Office Use Only		Date Received:	July 18, 2022
COA Case #:	HP2022-0052	Type of Project:	Relocation
Preservation Priorit	y: Low	Built Circa:	1930
Approved. Plearelease the build permit.	Approved with conditions	review	arded to HPAB for w. Do Not release ng permit.  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.

GEN	IERAL INFORMATION		
Pro	perty Address: 305 S. Kentucky St., McK	inney,	Texas 75069
	Type of Request:		Proposed Use:
	Alteration of building/structure		Single-Family Use
	New Construction	X	Multi-Family Use
	Demolition		Commercial
	Fencing		Office
	Signage		Restaurant
X	Other:Relocate - preferably within City		Other:
	boundary		N/A - no proposed architectural chnages at the
Wri	tten Description of Proposed V	Vork	time
			architectural elements and how the change
will b	e accomplished. Please provide a detaile	d broci	hure or samples of new materials.
1 Cr	tructural Work		
1. 3	inditional Work		2.
-			
-			
2. R	oof and Roofing Systems		
2	CONTRACTOR		
_			
_			
3. W	/indows		
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4. D	oors	lau 67a	
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5. Ex	xterior siding		
J. E	ALEITOI SIUITIK		
_			AND COMPANY OF THE PROPERTY OF
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ase t	# HP2022-0052		Date Received: July 18, 2022

PREPARED BY THE PLANNING DEPARTMENT

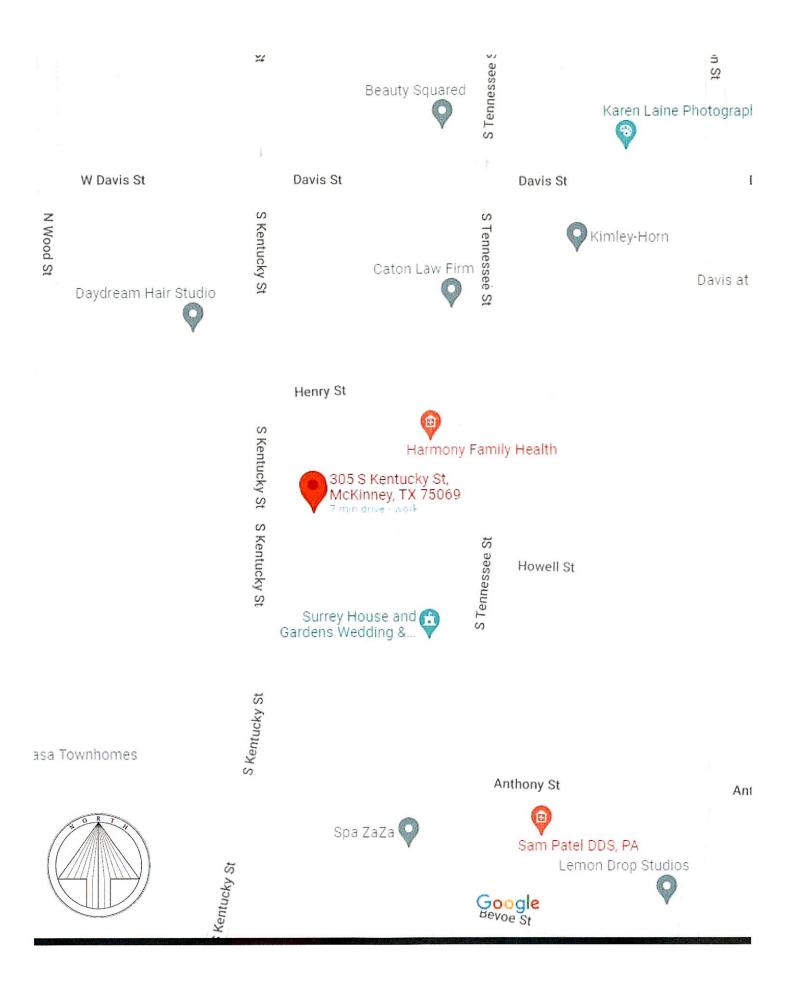
221 N. TENNESSEE STREET, MCKINNEY, TEXAS 75069 972-547-2000

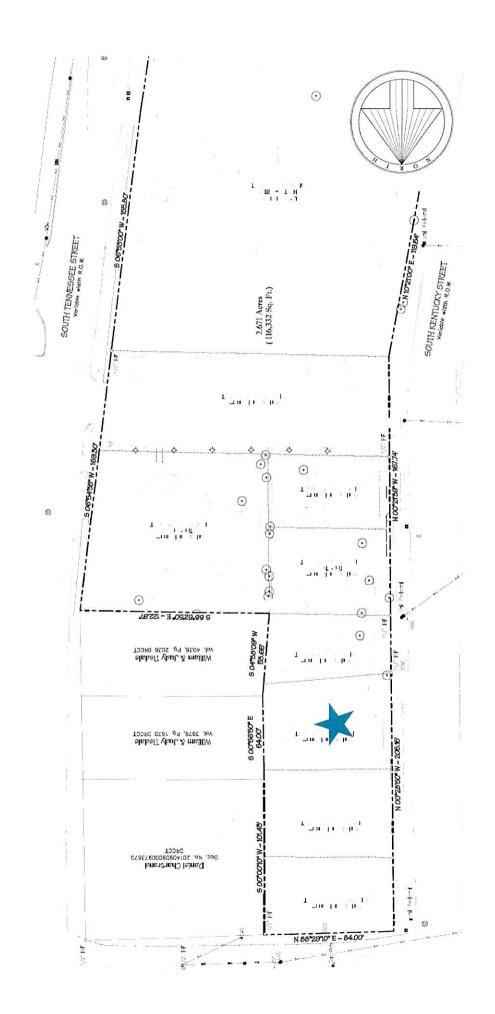


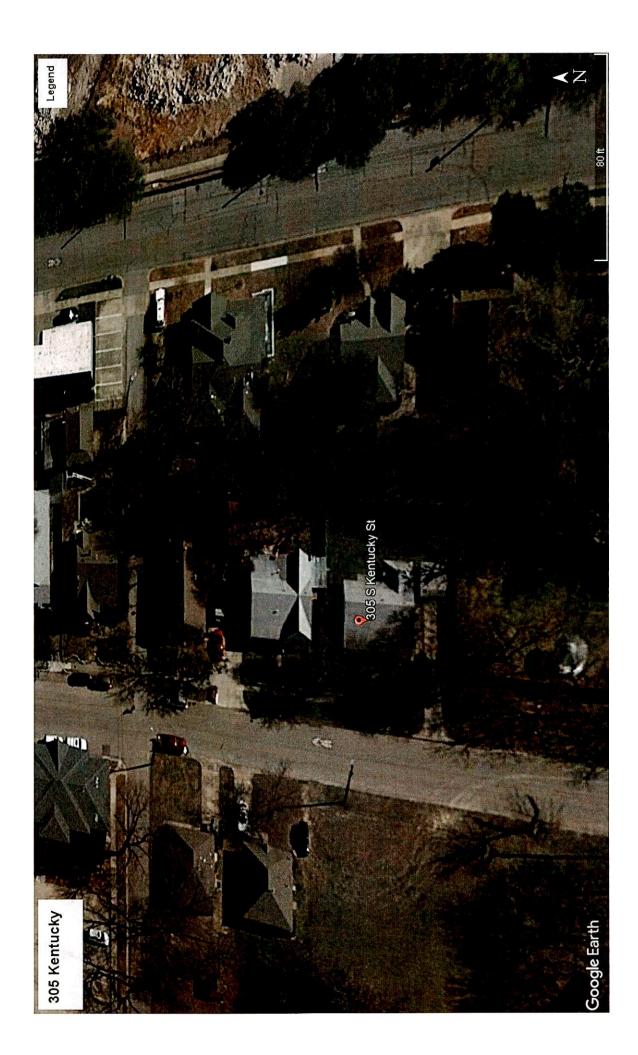
### Written Description of Proposed Work (continued):

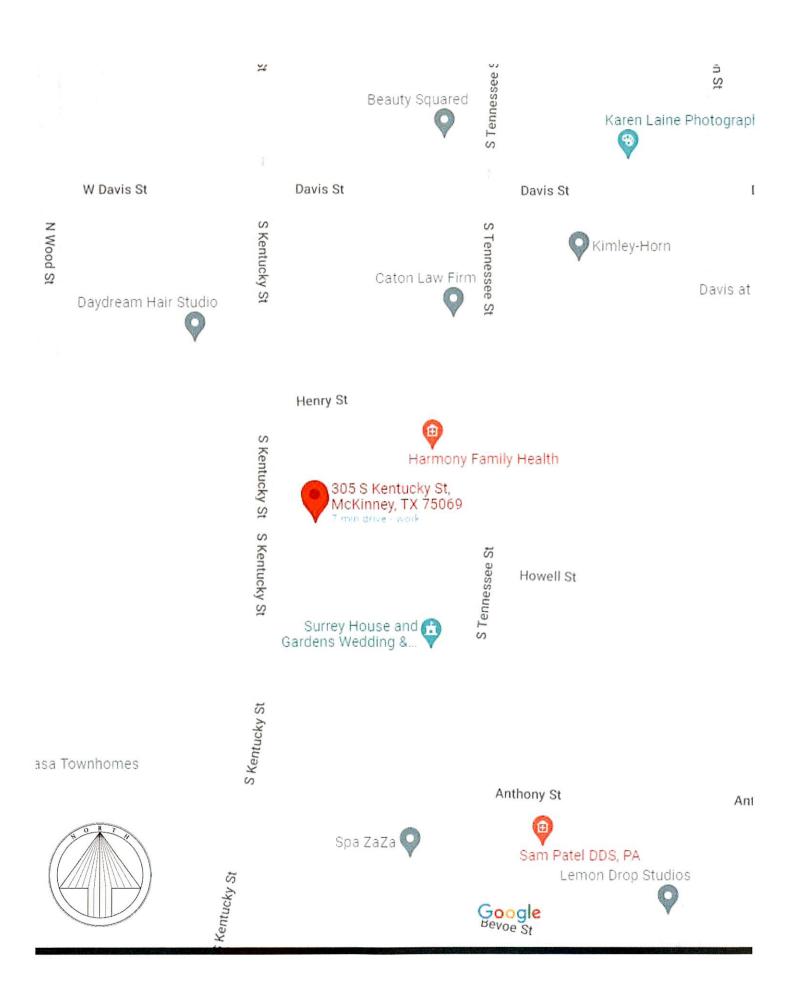
Explain what changes will be made to the following architectural elements and how the changes will be accomplished. *Please provide a detailed brochure or samples of new materials.* 

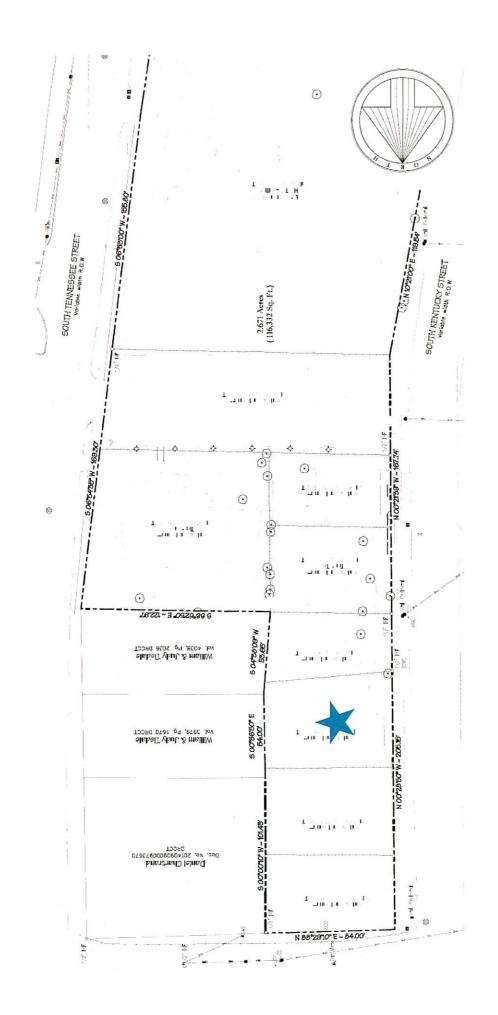
6.	Decorative elements (window and door trims, ornamental trims, brackets, lighting):
7.	Porches, Carriage Houses, Patio, Carport, and Steps:
8.	Outbuildings:
9.	Fencing:
10.	Other:
11.	Painting (Commercial Historic District Only)
	ritten Description of Proposed Work for which applicant is questing advice but CoA approval is not required:
12.	Landscape, parking, sidewalks, garden features
13.	Painting (Historic Overlay District only)

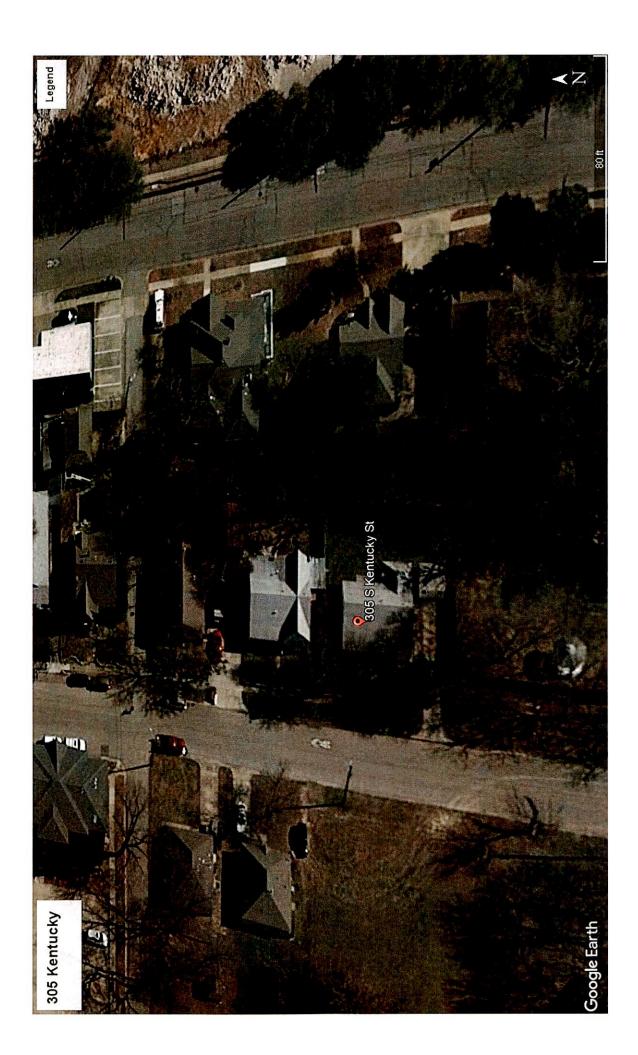


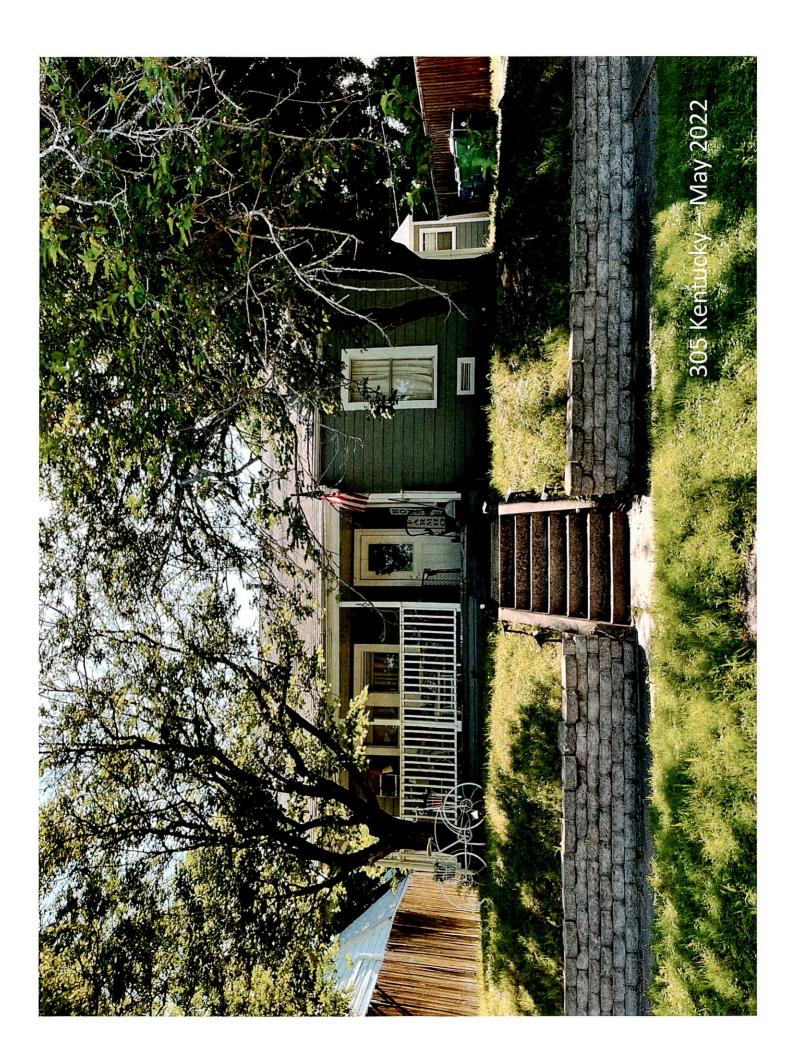


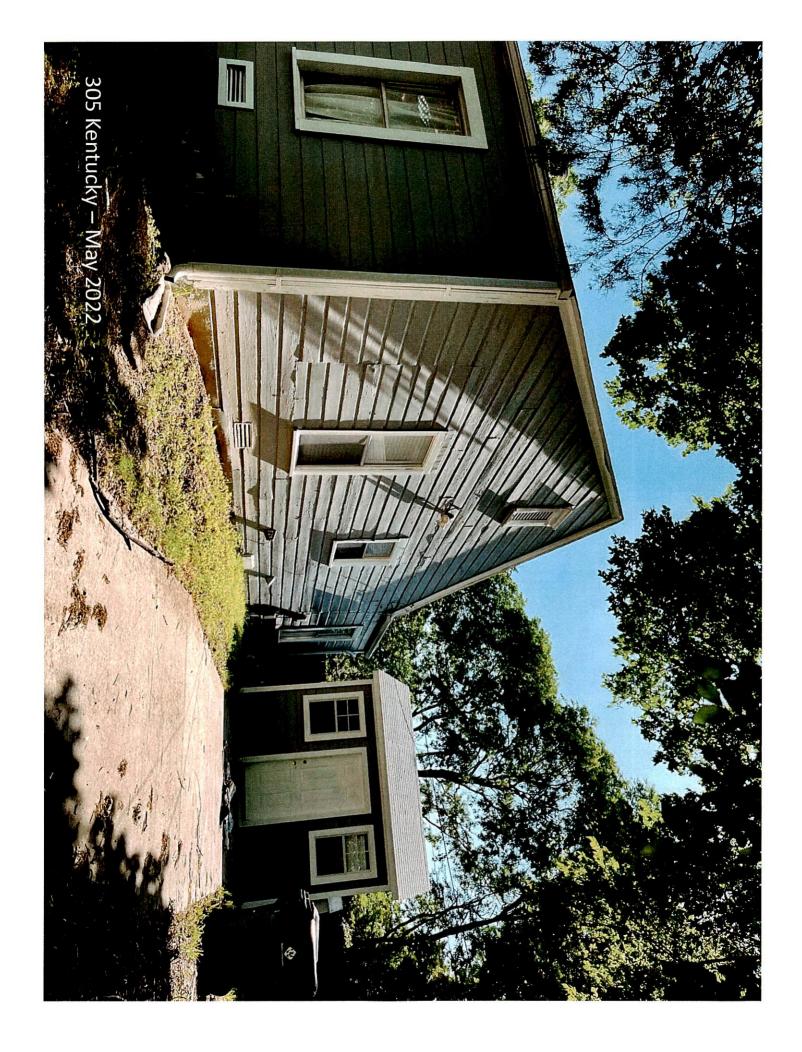


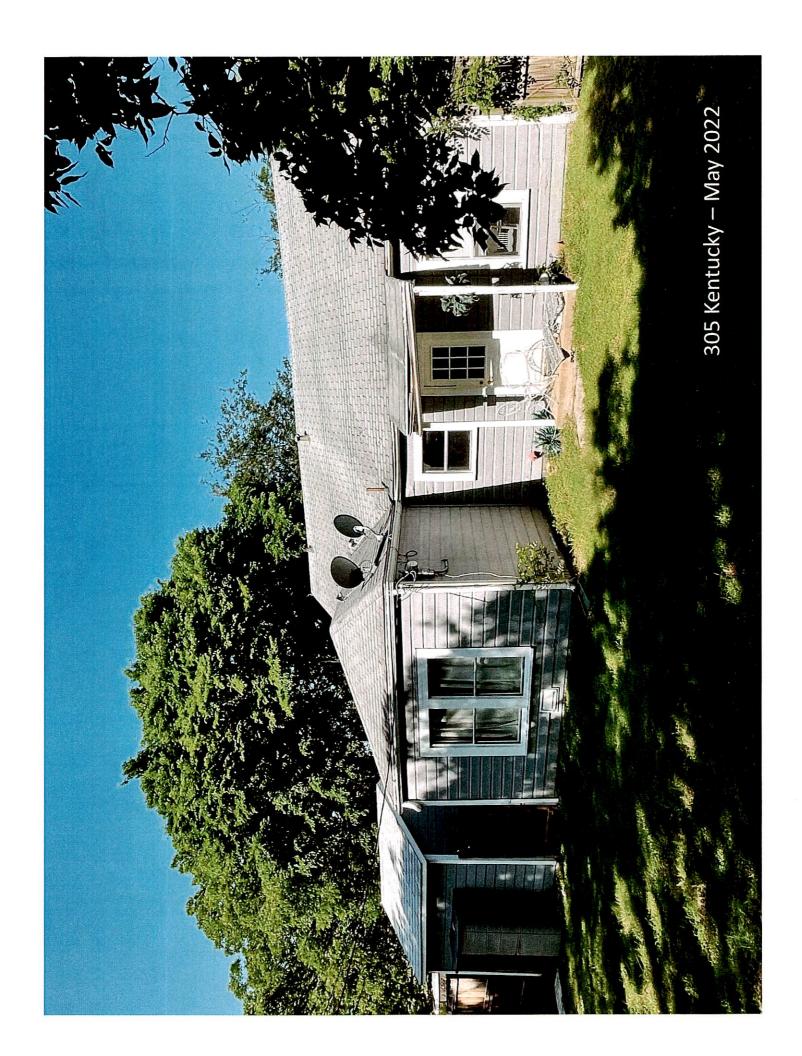






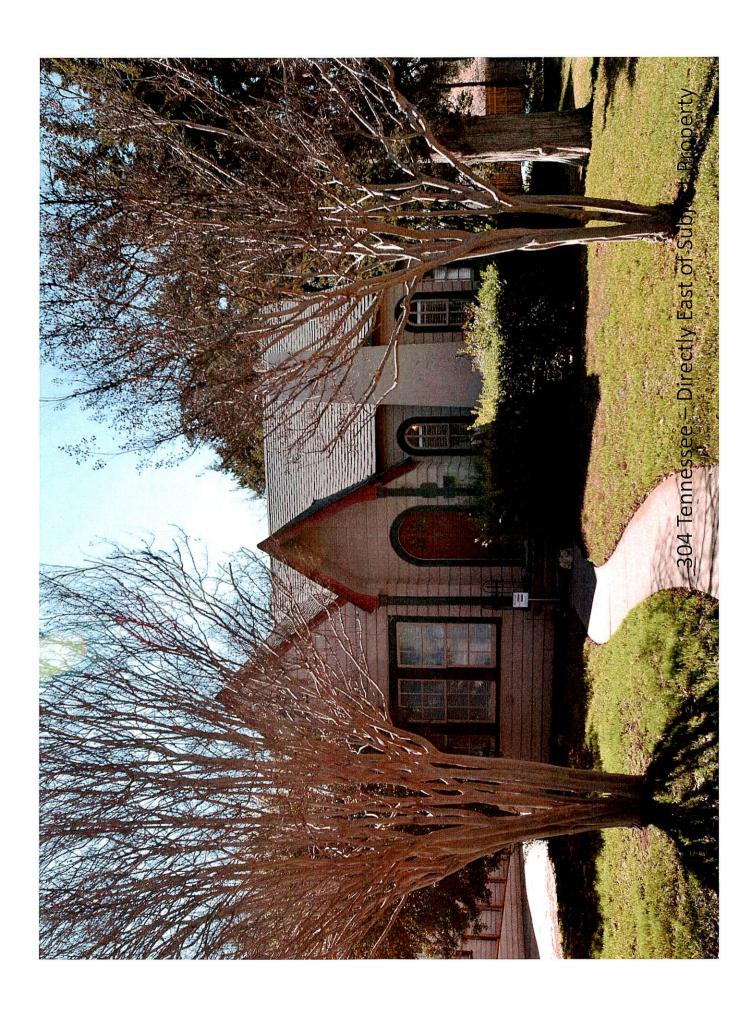




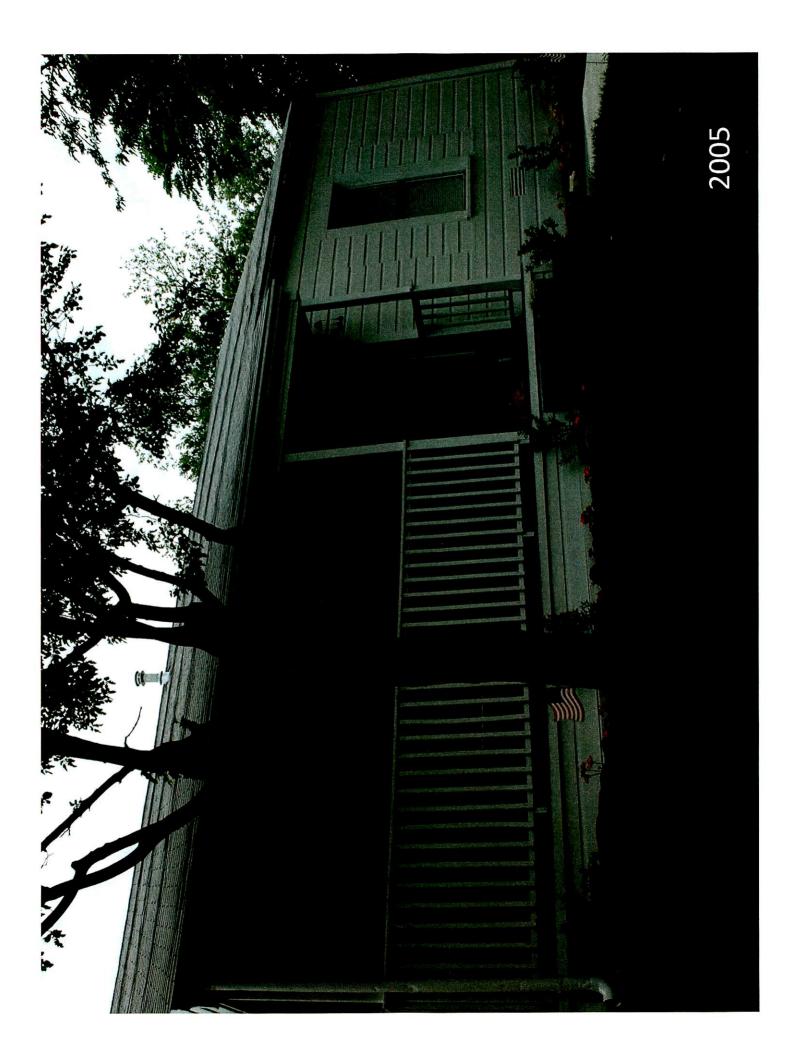


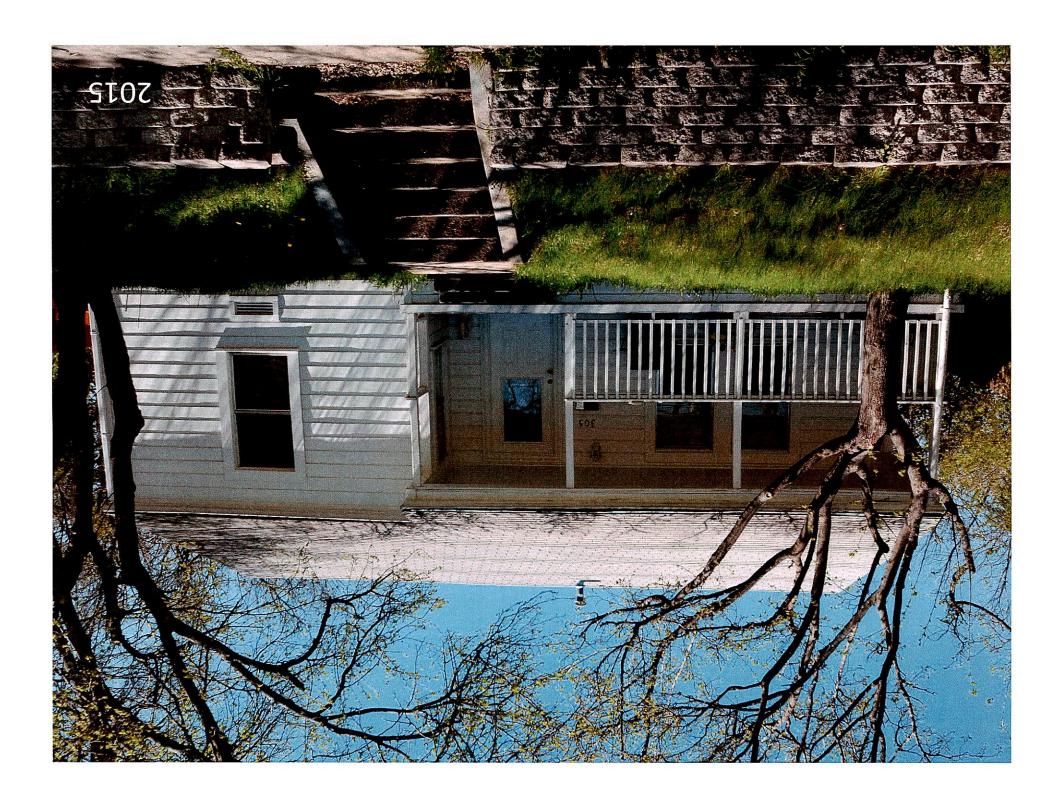


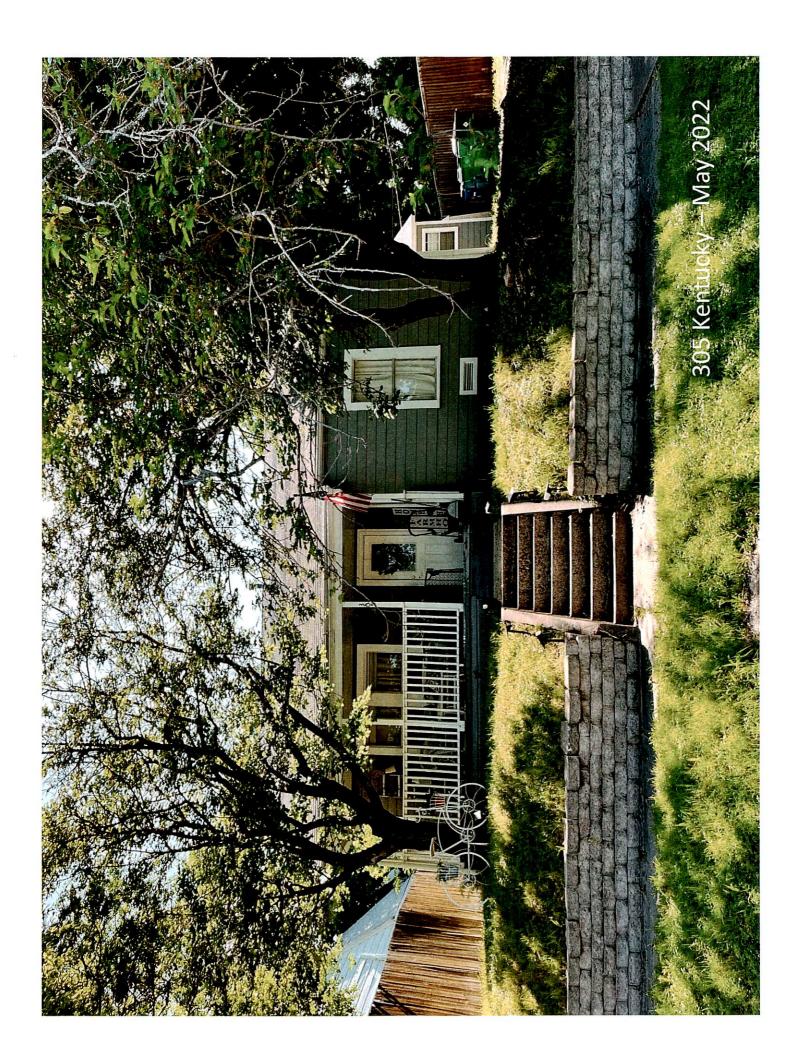


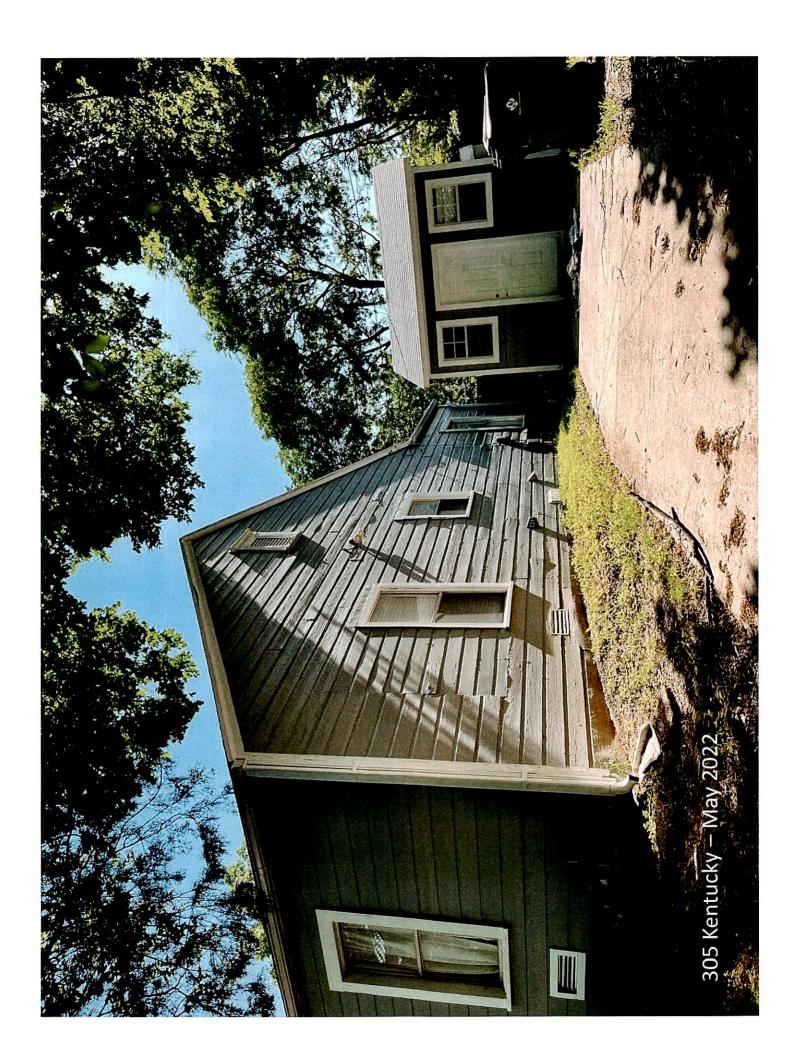


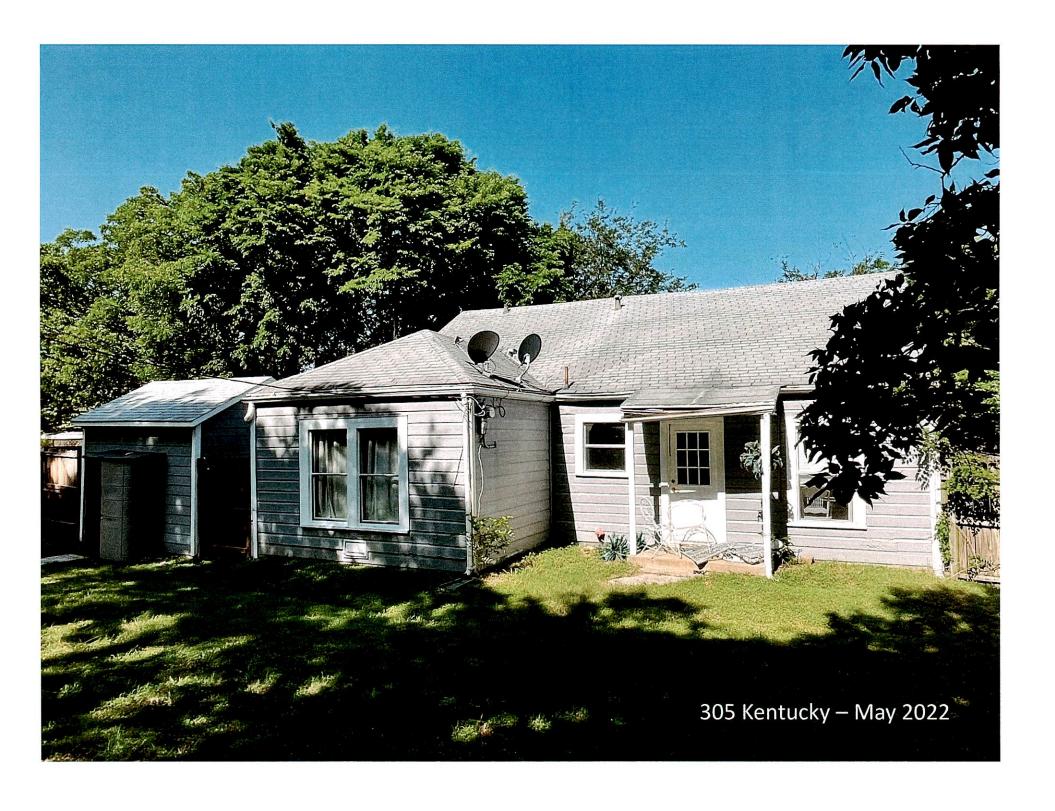


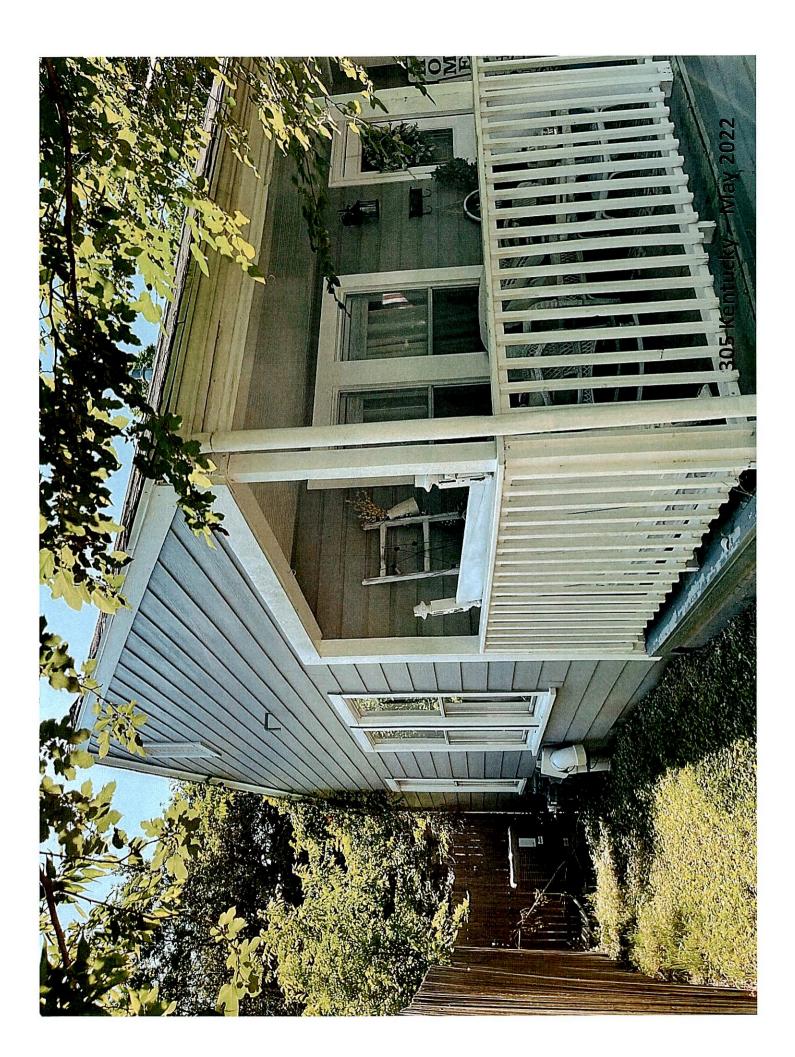




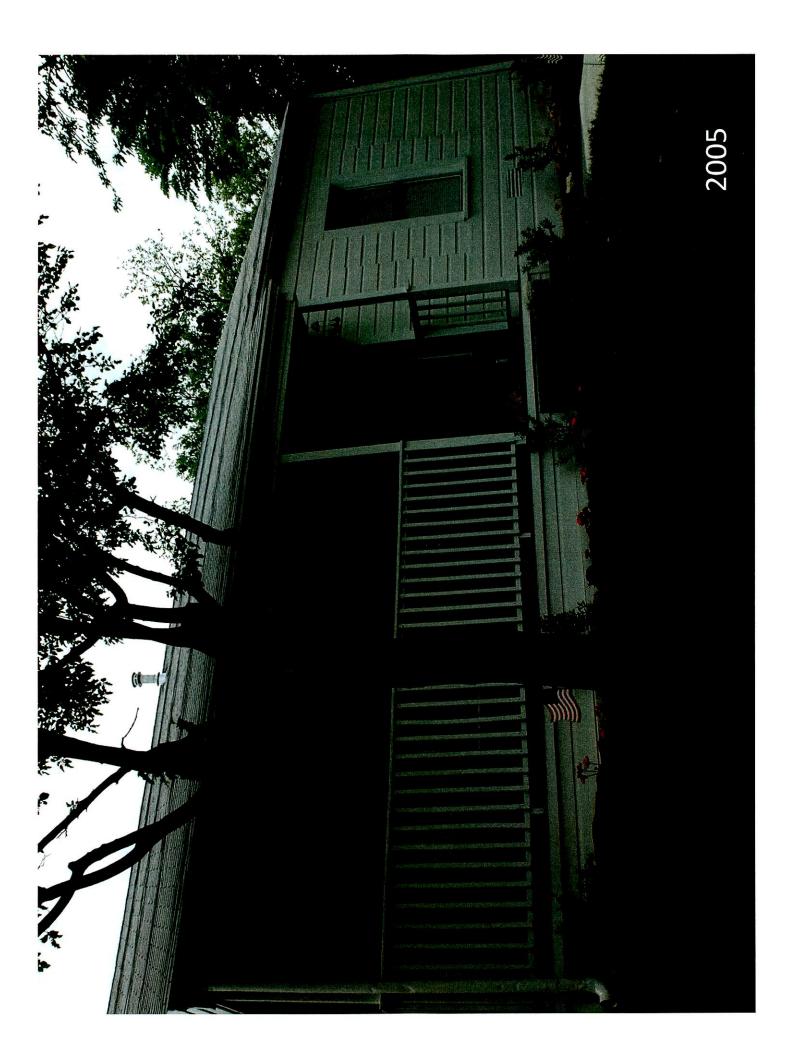


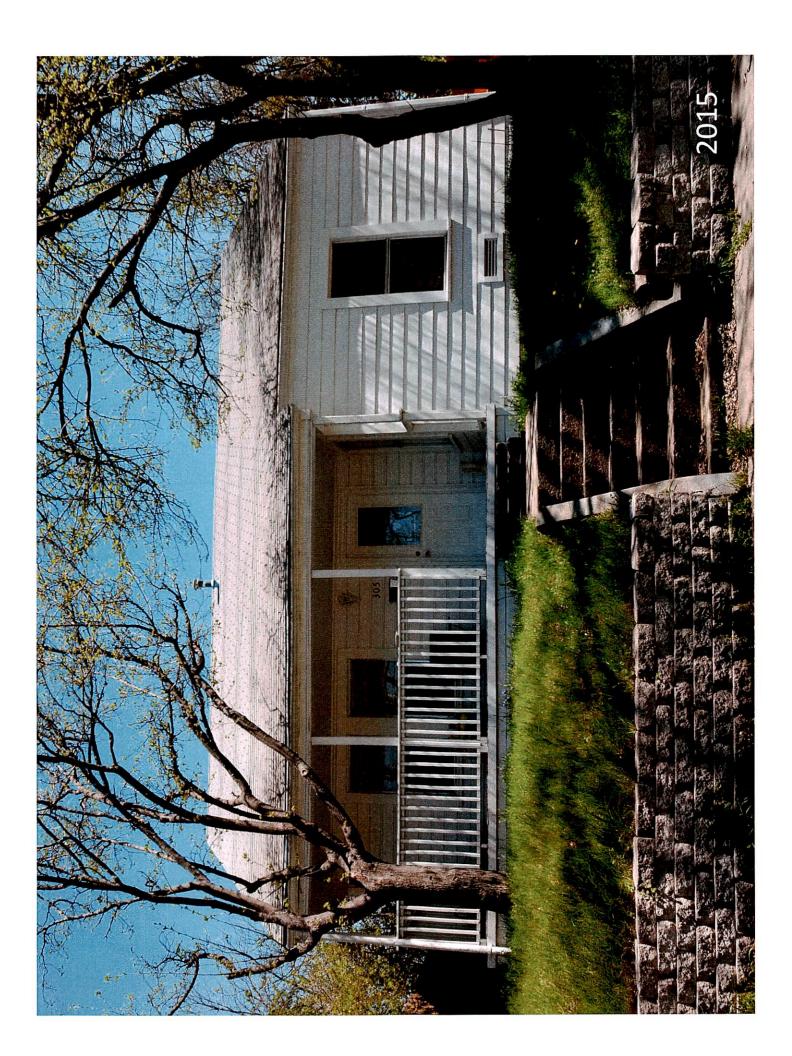


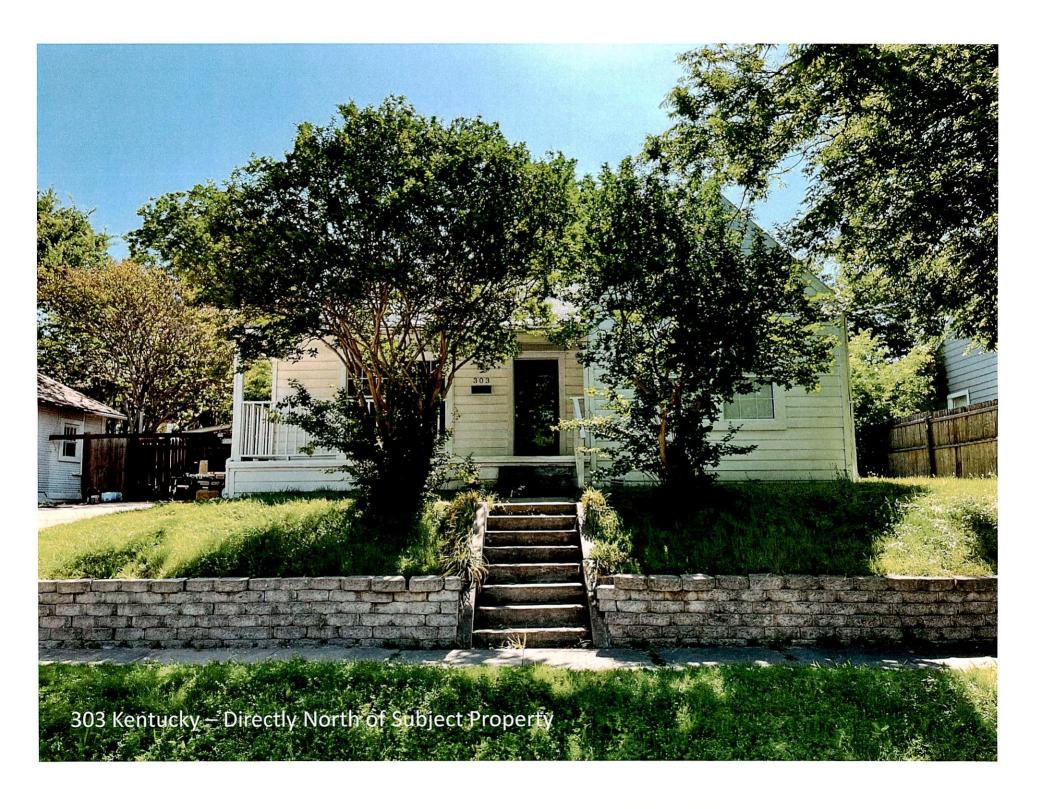


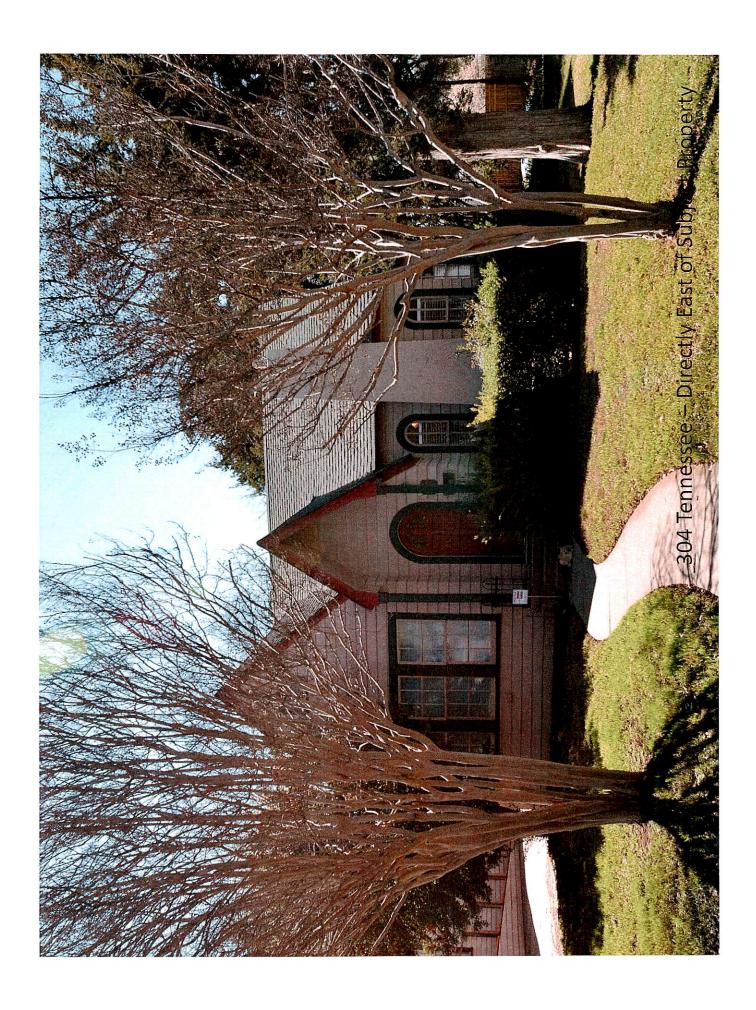
















305 S Kentucky St, Mckinney, TX 75069

# Report Content

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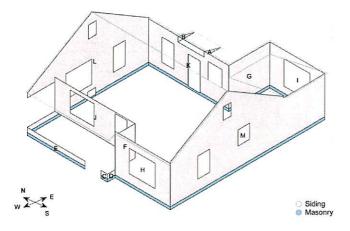
# Prepared For

Contractor: Jeremy Jones
Company: American Equity

Address: 2150 S Central Expy Ste 360

Mckinney, TX 75070-4070

Phone: 972-422-2000



### **Total Lengths & Areas**

### **Wall Area excluding Windows & Doors**

Total =  $1458.3 \text{ ft}^2$ Siding =  $1363.6 \text{ ft}^2$ Masonry =  $94.7 \text{ ft}^2$  **General Totals** Wall Facets = 13

Wall Facets = 13
Windows & Doors = 14
Window & Door Area = 270.1 ft²
Window & Door Perimeter = 240.0 ft
Fascia (Eaves + Rakes) = 180 ft





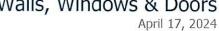
305 S Kentucky St, Mckinney, TX 75069

Report: 58340996

# **IMAGES - TOP VIEW**

### **Top Image**







305 S Kentucky St, Mckinney, TX 75069

# **IMAGES - NORTH & SOUTH**





South Side







305 S Kentucky St, Mckinney, TX 75069

# IMAGES - EAST & WEST





**West Side** 

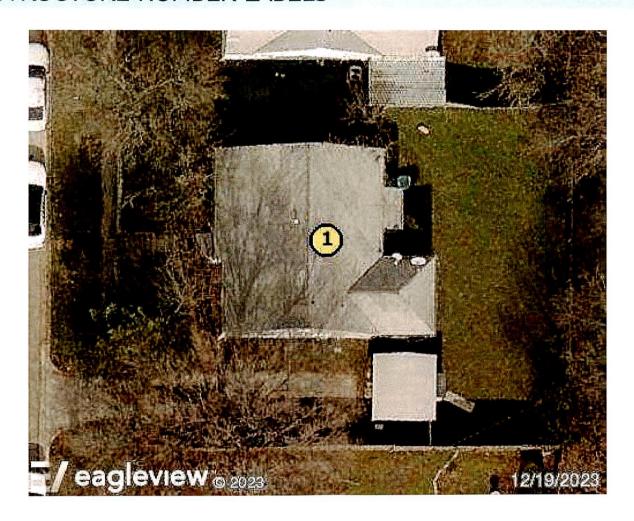




305 S Kentucky St, Mckinney, TX 75069

Report: 58340996

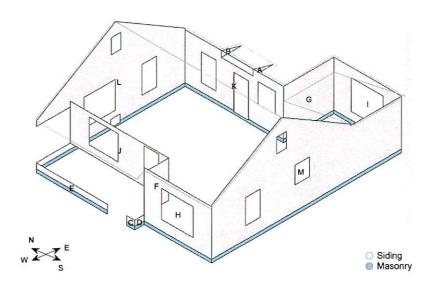
# STRUCTURE NUMBER LABELS





305 S Kentucky St, Mckinney, TX 75069

### WALL AREA DIAGRAM



North

Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)	
G	98.2	6.8	
F	37.9	0.0	
В	2.5	0.0	
L	312.3	19.4	
Total	450.9	26.2	

East

Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)
I	92.9	9.1
K	132.9	12.7
Total	225.8	21.8

South

Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)
M	467.2	25.6
D	2.1	1.3
Α	2.5	0.0
Total	471.8	26.9

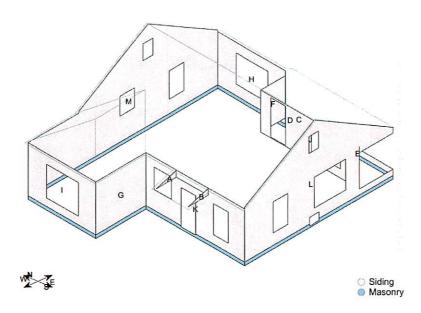
West

Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)
Н	95.7	9.1
С	1.8	1.1
E	16.1	9.6
J	101.5	0.0
Total	215.1	19.8



305 S Kentucky St, Mckinney, TX 75069

# ALTERNATE WALL VIEW



N	0	Н	-
IV	U	u	_

Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)
G	98.2	6.8
F	37.9	0.0
В	2.5	0.0
L	312.3	19.4
Total	450.9	26.2

#### East

Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)
I	92.9	9.1
K	132.9	12.7
Total	225.8	21.8

#### South

Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)
M	467.2	25.6
D	2.1	1.3
Α	2.5	0.0
Total	471.8	26.9

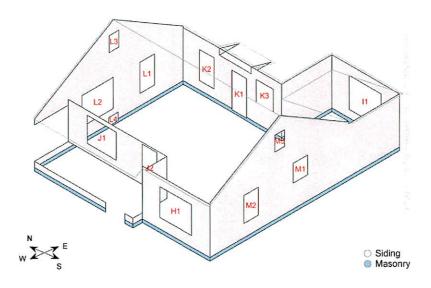
#### West

Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)
Н	95.7	9.1
С	1.8	1.1
E	16.1	9.6
J	101.5	0.0
Total	215.1	19.8



305 S Kentucky St, Mckinney, TX 75069

# WINDOW & DOOR DIAGRAM



Note: Window & door measurements include trim.

North

Window/Door	Area (ft²)	Perimeter (ft)	Dimensions W x H (ft)
L1	16.5	17.0	$3.0 \times 5.5$
L2	35.8	24.0	$6.5 \times 5.5$
L3	6.0	10.0	$2.0 \times 3.0$
L4	3.0	7.0	$2.0 \times 1.5$
Total	61.3	58.0	n/a

East

Window/Door	Area (ft²)	Perimeter (ft)	Dimensions W x H (ft)
I1	39.0	25.0	$6.5 \times 6.0$
K1	21.0	20.0	$3.0 \times 7.0$
K2	16.5	17.0	$3.0 \times 5.5$
K3	14.0	15.0	$3.5 \times 4.0$
Total	90.5	77.0	n/a

South

Window/Door	Area (ft²)	Perimeter (ft)	Dimensions W x H (ft)
M1	10.5	13.0	$3.0 \times 3.5$
M2	15.0	16.0	$3.0 \times 5.0$
M3	6.0	10.0	$2.0 \times 3.0$
Total	31.5	39.0	n/a

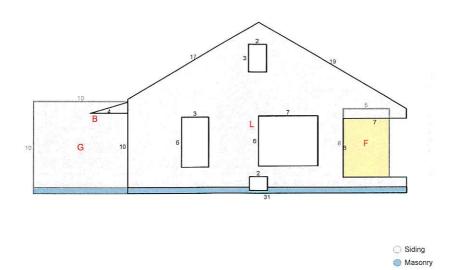
West

Window/Door	Area (ft²)	Perimeter (ft)	Dimensions W x H (ft)
H1	35.8	24.0	6.5 x 5.5
J1	30.0	22.0	6.0 x 5.0
J2	21.0	20.0	$3.0 \times 7.0$
Total	86.8	66.0	n/a



305 S Kentucky St, Mckinney, TX 75069

# NORTH ELEVATION DIAGRAM



Top of Siding Walls = 69.4 ft Bottom of Siding Walls = 50.3 ft

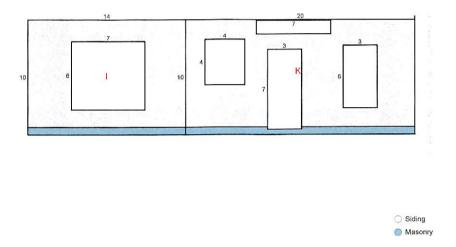
Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)	Window & Door Area (ft²)	Window & Door Perimeter (ft)	Window & Door Count
G	98.2	6.8	0	0	0
F	37.9	0.0	0	0	0
В	2.5	0.0	0	0	0
L	312.3	19.4	61.3	58.0	4
Total	450.9	26.2	61.3	58.0	4





305 S Kentucky St, Mckinney, TX 75069

### EAST ELEVATION DIAGRAM



Top of Siding Walls = 40.9 ft Bottom of Siding Walls = 40.9 ft

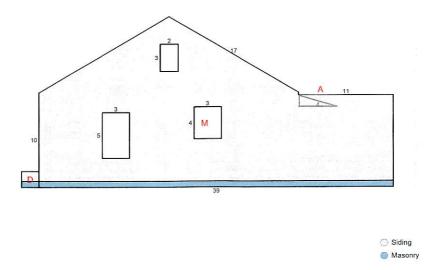
Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)	Window & Door Area (ft²)	Window & Door Perimeter (ft)	Window & Door Count
I	92.9	9.1	39.0	25.0	1
K	132.9	12.7	51.5	52.0	3
Total	225.8	21.8	90.5	77.0	4





305 S Kentucky St, Mckinney, TX 75069

### SOUTH ELEVATION DIAGRAM



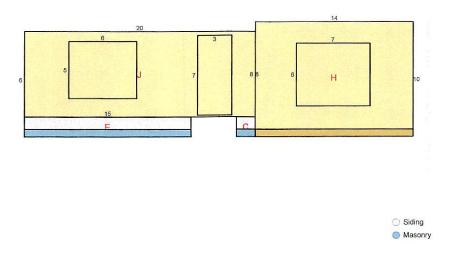
Top of Siding Walls = 49.9 ft Bottom of Siding Walls = 45.2 ft

Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)	Window & Door Area (ft²)	Window & Door Perimeter (ft)	Window & Door Count	
М	467.2	25.6	31.5	39.0	3	
D	2.1	1.3	0	0	0	
Α	2.5	0.0	0	0	0	
Total	471.8	26.9	31.5	39.0	3	



305 S Kentucky St, Mckinney, TX 75069

### WEST ELEVATION DIAGRAM



Top of Siding Walls = 50.6 ft Bottom of Siding Walls = 50.6 ft

Wall	Siding Wall Area (ft²)	Masonry Wall Area (ft²)	Window & Door Area (ft²)	Window & Door Perimeter (ft)	Window & Door Count
Н	95.7	9.1	35.8	24.0	1
С	1.8	1.1	0	0	0
E	16.1	9.6	0	0	0
J	101.5	0.0	51.0	42.0	2
Total	215.1	19.8	86.8	66.0	3



305 S Kentucky St, Mckinney, TX 75069

### Report: 58340996

### WALL MEASUREMENT SUMMARY

### **All Structures**

#### **Wall Area Waste Calculations**

#### Siding Material

Waste %	0%	10%	11%	12%	13%	14%	15%	20%
Area (ft²)	1,364	1,500	1,514	1,527	1,541	1,555	1,568	1,636
Squares	13.6	15	15.1	15.3	15.4	15.5	15.7	16.4

### **Masonry Material**

Waste %	0%	10%	11%	12%	13%	14%	15%	20%
Area (ft²)	95	104	105	106	107	108	109	114
Squares	0.9	1	1.1	1.1	1.1	1.1	1.1	1.1

The tables above show the total wall area excluding windows and doors, based upon different waste percentages. The waste factor is subject to the complexity of the structure, image quality, siding techniques and your experience. Please consider this when calculating appropriate waste percentages. Note that only the wall area is included in these waste calculations. Accessories may require additional material.

### **Total Lengths & Areas**

#### Wall Area excluding Windows & Doors

Total = 1458.3 ft<sup>2</sup> Siding = 1363.6 ft<sup>2</sup> Masonry = 94.7 ft<sup>2</sup>

#### **General Totals**

Wall Facets = 13 Windows & Doors = 14 Window and Door Area = 270.1 ft<sup>2</sup> Window & Door Perimeter = 240.0 ft Fascia (Eaves + Rakes) = 180 ft Top of Siding Walls = 210.8 ft Bottom of Siding Walls = 187.0 ft

#### **Property Location**

Latitude = -96.6156318 Latitude = 33.1949309

#### **Corner Totals**

	Siding to Siding	Masonry to Masonry	Siding to Masonry	Total
Inside Corners	24.0 ft	2.8 ft	0.0 ft	26.8 ft
Outside Corners	55.8 ft	4.2 ft	0.0 ft	60.0 ft
Inside Corners > 90	0.0 ft	0.0 ft	0.0 ft	0.0 ft
Outside Corners > 90	0.0 ft	0.0 ft	0.0 ft	0.0 ft

#### Notes

There were no changes to the structure in the past four years.

#### **Report Comments**

Due to obstructions in available images of this property, please verify measurements on portion of structure highlighted in yellow.