

A | R | B | H
ABERNATHY ROEDER
BOYD HULLETT
EST. 1876

Robert H. Roeder
roeder@abernathy-law.com

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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 303 S. Kentucky Street; COA Case #HP2024-0026

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 303 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

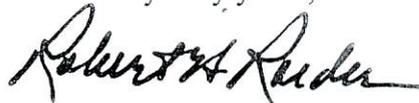
June 7, 2024

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,

A handwritten signature in black ink, appearing to read "Robert H. Roeder". The signature is written in a cursive style with a prominent loop at the end.

Robert H. Roeder

cc: Mr. Jeremy Jones

EXHIBIT A



August 17, 2022

Jeremy Jones
303 S Kentucky Street
McKinney, TX 75069

HP2022-0051 Request for relocation of a single-family residence as part of
redevelopment effort at 303 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 303 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!" <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

Certificate of Appropriateness
Approved with conditions

Cassie Bumgarner
08/17/2022

RE: Letter of Intent for Certificate of Appropriateness Application – 303 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 303 S. Kentucky St, McKinney, TX 75069 (“Residence”) on behalf of Barratt Properties, LLC, the current legal owner. The Residence is located on approximately 0.087 acres and approximately 95 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"**

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: 303 S. Kentucky St., McKinney, Texas 75069

APPLICANT/CONTACT PERSON:		OWNER: Attach additional sheets for Multiple owners and/or addresses.	
NAME (Print):	<u>Jeremy Jones</u>	NAME (Print):	<u>Barratt Properties, LLC</u>
ADDRESS (line 1):	<u>2150 S. Central Expwy, Ste. 360</u>	ADDRESS (line 1):	<u>P.O. Box 913</u>
ADDRESS (line 2):	<u></u>	ADDRESS (line 2):	<u></u>
City, ST, ZIP:	<u>McKinney, Texas 75070</u>	City, ST, ZIP:	<u>McKinney, Texas 75070</u>
Phone:	<u>972-422-2000</u>	Phone:	<u></u>
E-mail:	<u>jeremyjones@americanequity.net</u>	E-mail:	<u>carol@surreyhs.com / mark@surreyhs.com</u>
Signature:	<u></u>	Signature:	<u></u>
Date:	<u>5/13/2022</u>	Date:	<u>5/13/2022</u>

For Office Use Only		Date Received:	<u>July 18, 2022</u>
COA Case #:	<u>HP2022-0051</u>	Type of Project:	<u>Relocation</u>
Preservation Priority:	<u>Low</u>	Built Circa:	<u>1910</u>

<input type="checkbox"/> Approved. Please release the building permit.	Certificate of Appropriateness Approved with conditions <i>Cassie Bangarner</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.
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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: 303 S. Kentucky St., McKinney, Texas 75069

Type of Request:

Proposed Use:

- Alteration of building/structure
- New Construction
- Demolition
- Fencing
- Signage
- Other: Relocate - preferably within City boundary

- Single-Family Use
- Multi-Family Use
- Commercial
- Office
- Restaurant
- 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 # HP2022-0051

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)



W Davis St

Davis St

Davis St

S Kentucky St

S Tennessee St

Kimley

Caton Law Firm

Daydream Hair Studio

Henry St

303 S Kentucky St,
McKinney, TX 75069
7 min drive - work

S Kentucky St

Partners Publishing

S Kentucky St

S Tennessee St

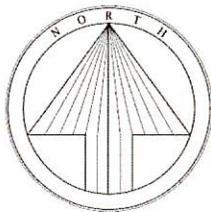
Howell St

Surrey House and
Gardens Wedding &...

homes

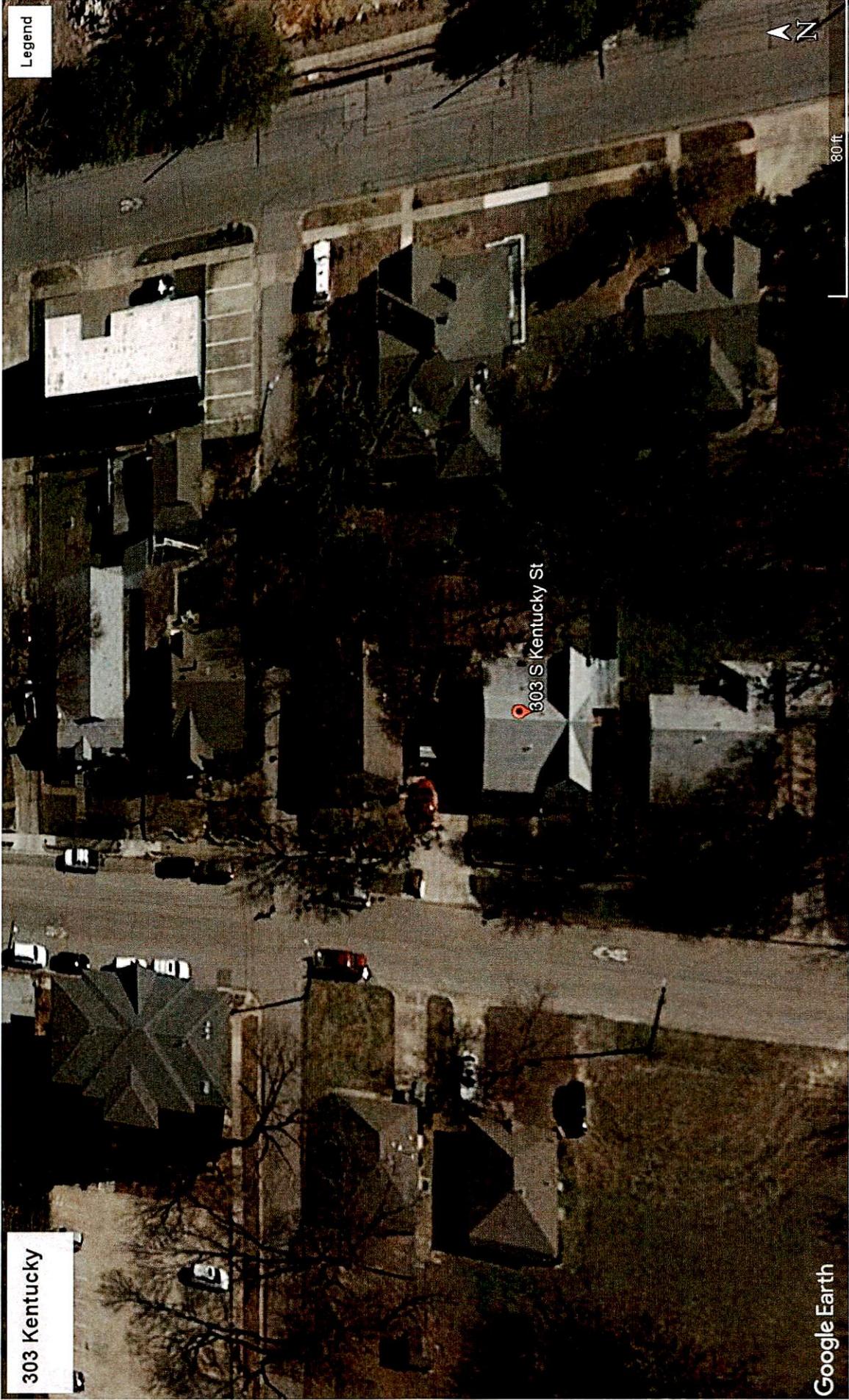
S Kentucky St

Anthony St



Spa ZaZa
Google

Sam Patel DDS, PA



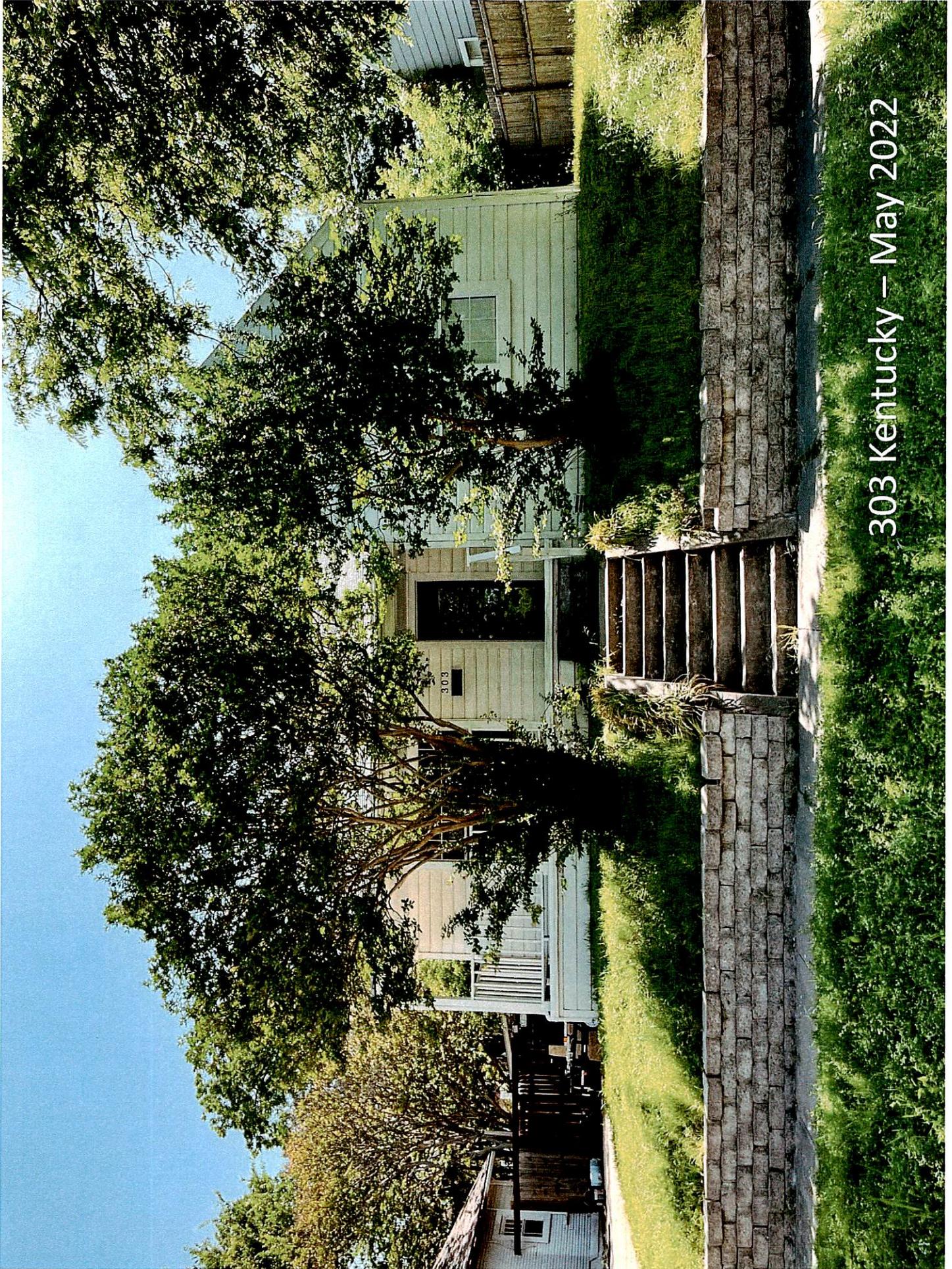
Legend

303 Kentucky

303 S Kentucky St

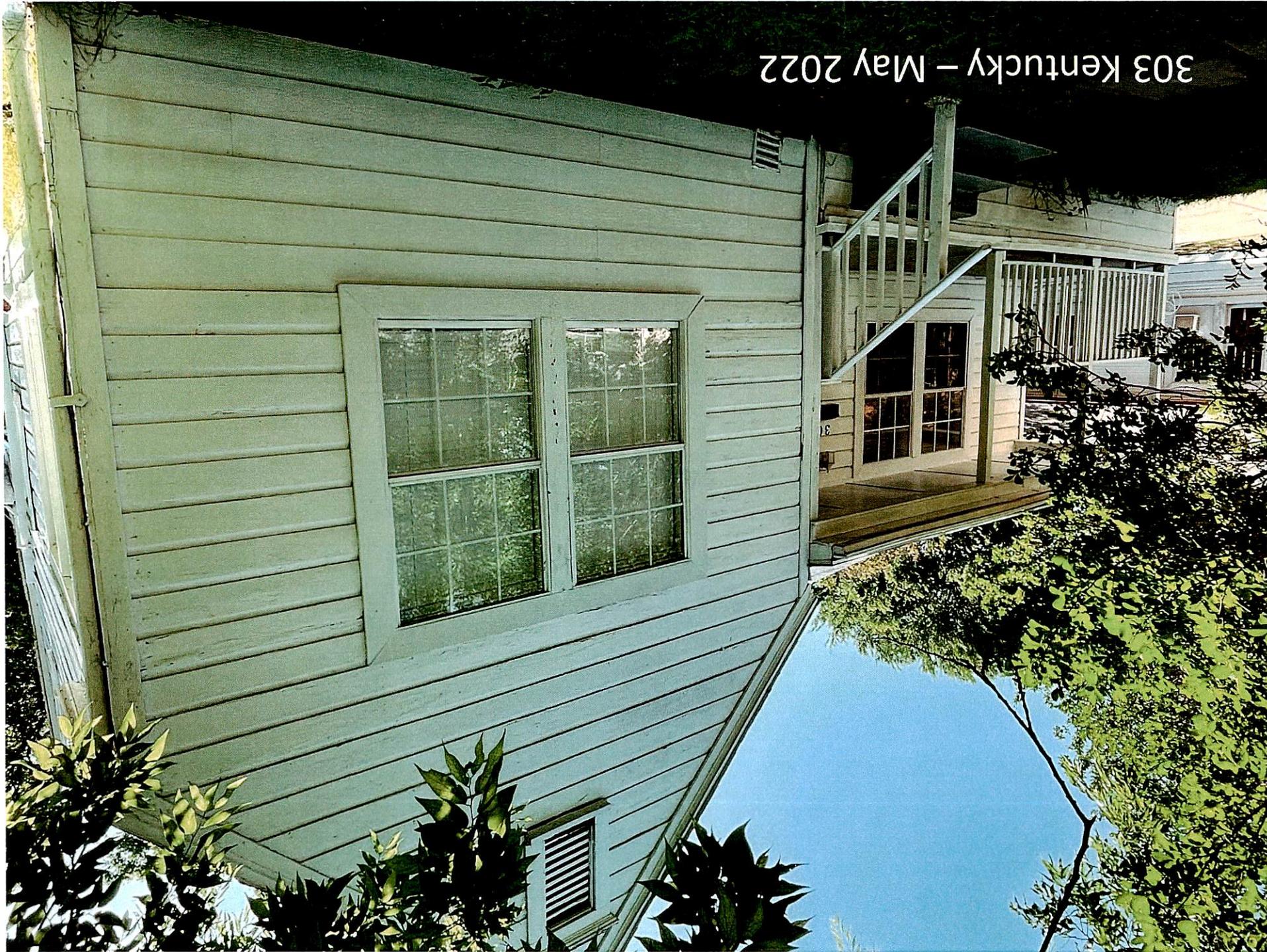
80 ft

Google Earth



303 Kentucky – May 2022

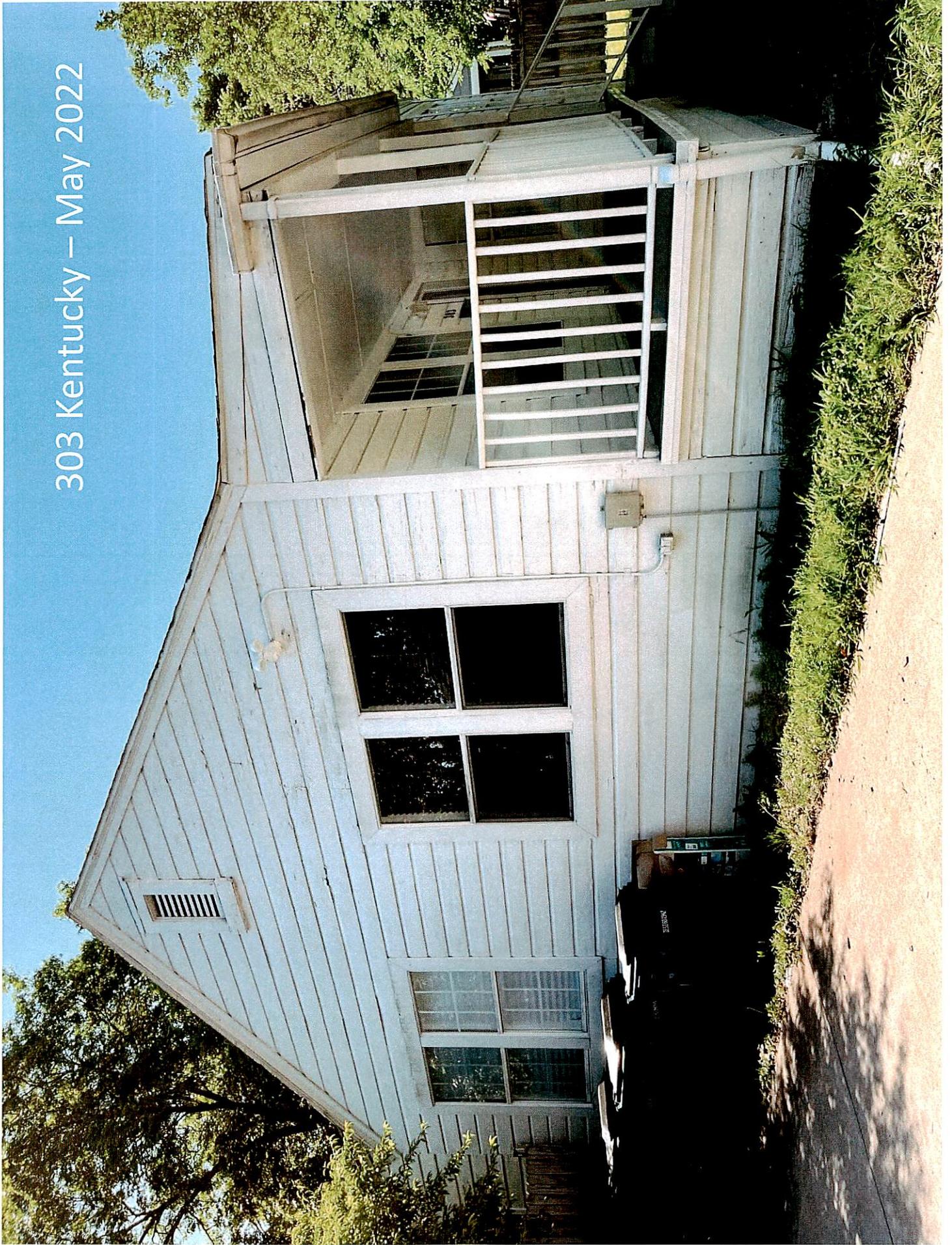
303 Kentucky – May 2022





303 Kentucky - May 2022

303 Kentucky – May 2022

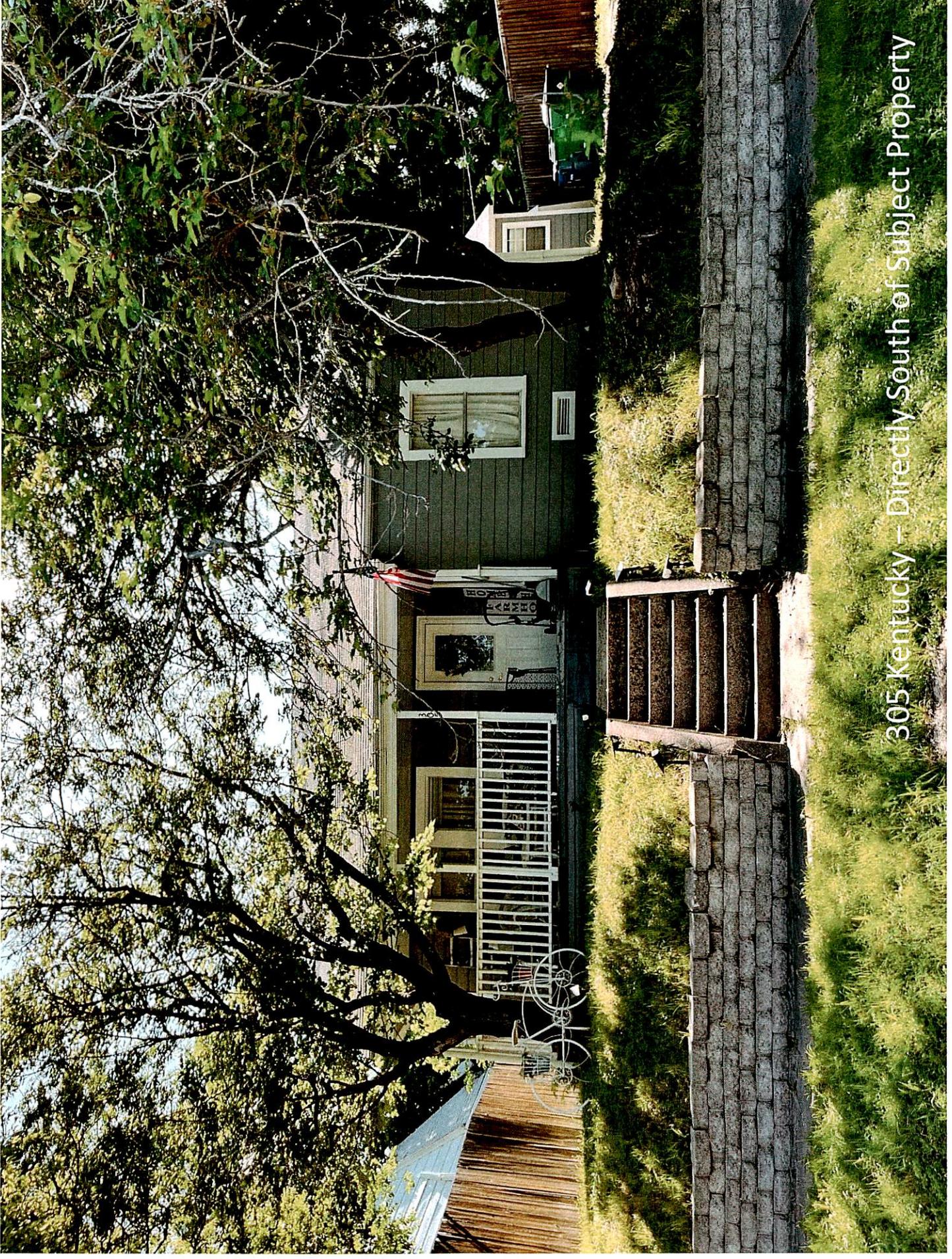




301 Kentucky -- Directly North of Subject Property

302 Tennessee – Directly East of Subject Property



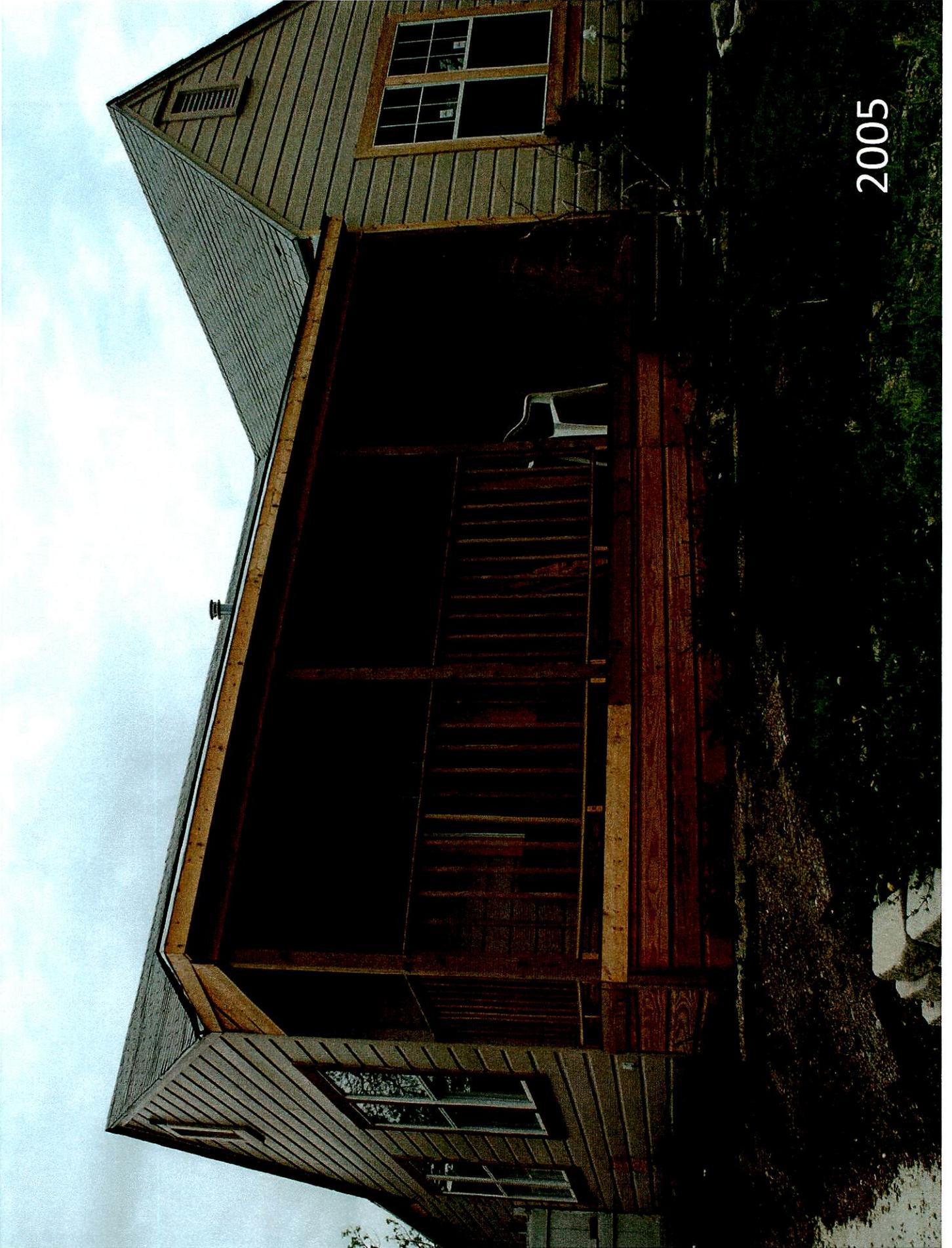


305 Kentucky – Directly South of Subject Property



303 Kentucky - Historic Photo

Date Unknown



2005



2015

W Davis St

Davis St

Davis St

S Kentucky St

S Tennessee St

Kimley

Daydream Hair Studio

Caton Law Firm

Henry St

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

S Kentucky St

Partners Publishing

S Kentucky St

S Tennessee St

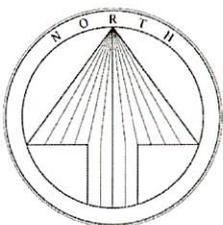
Howell St

Surrey House and
Gardens Wedding &...

homes

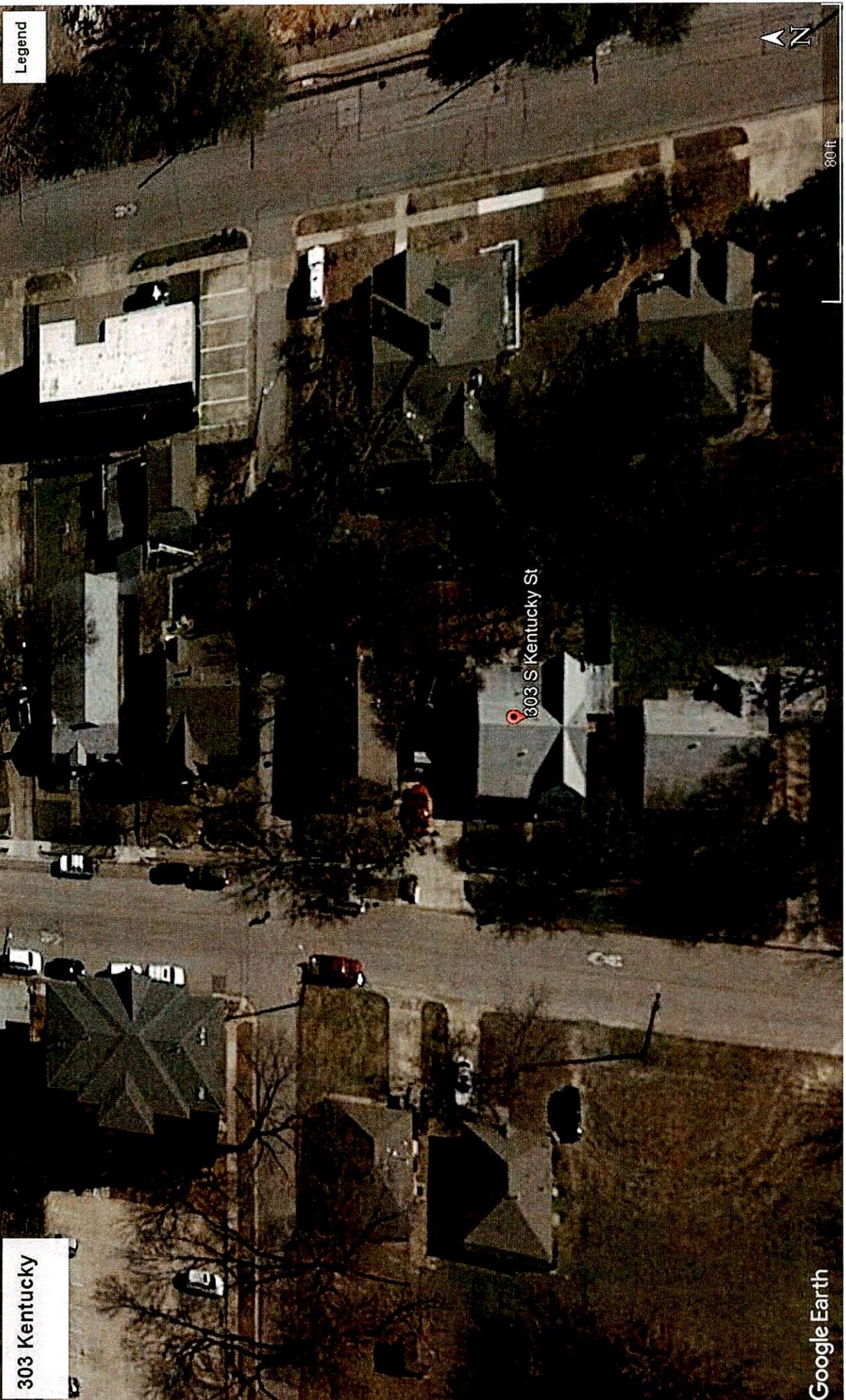
S Kentucky St

Anthony St



Spa ZaZa
Google

Sam Patel DDS, PA



303 Kentucky

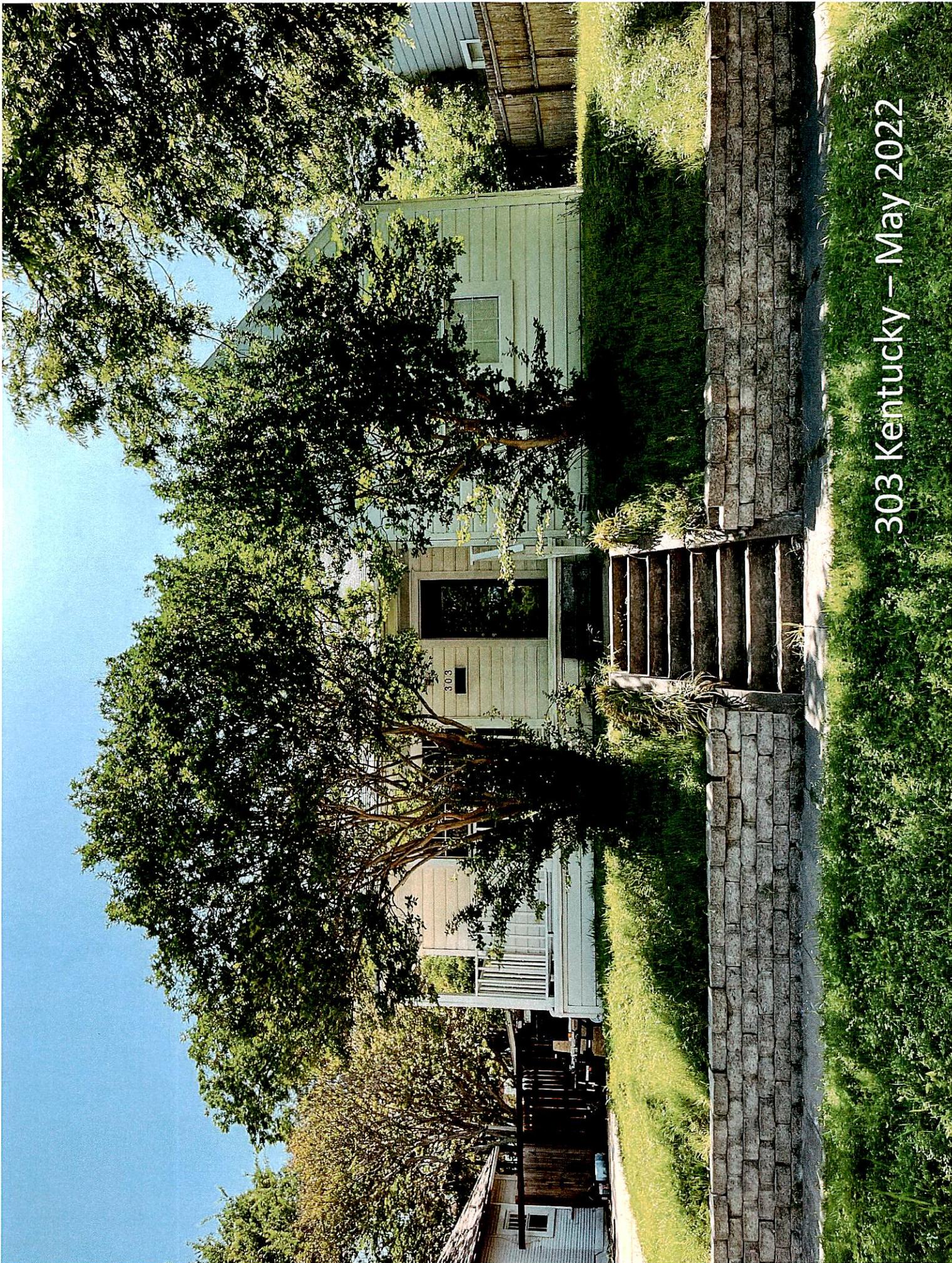
Legend

303 S. Kentucky St

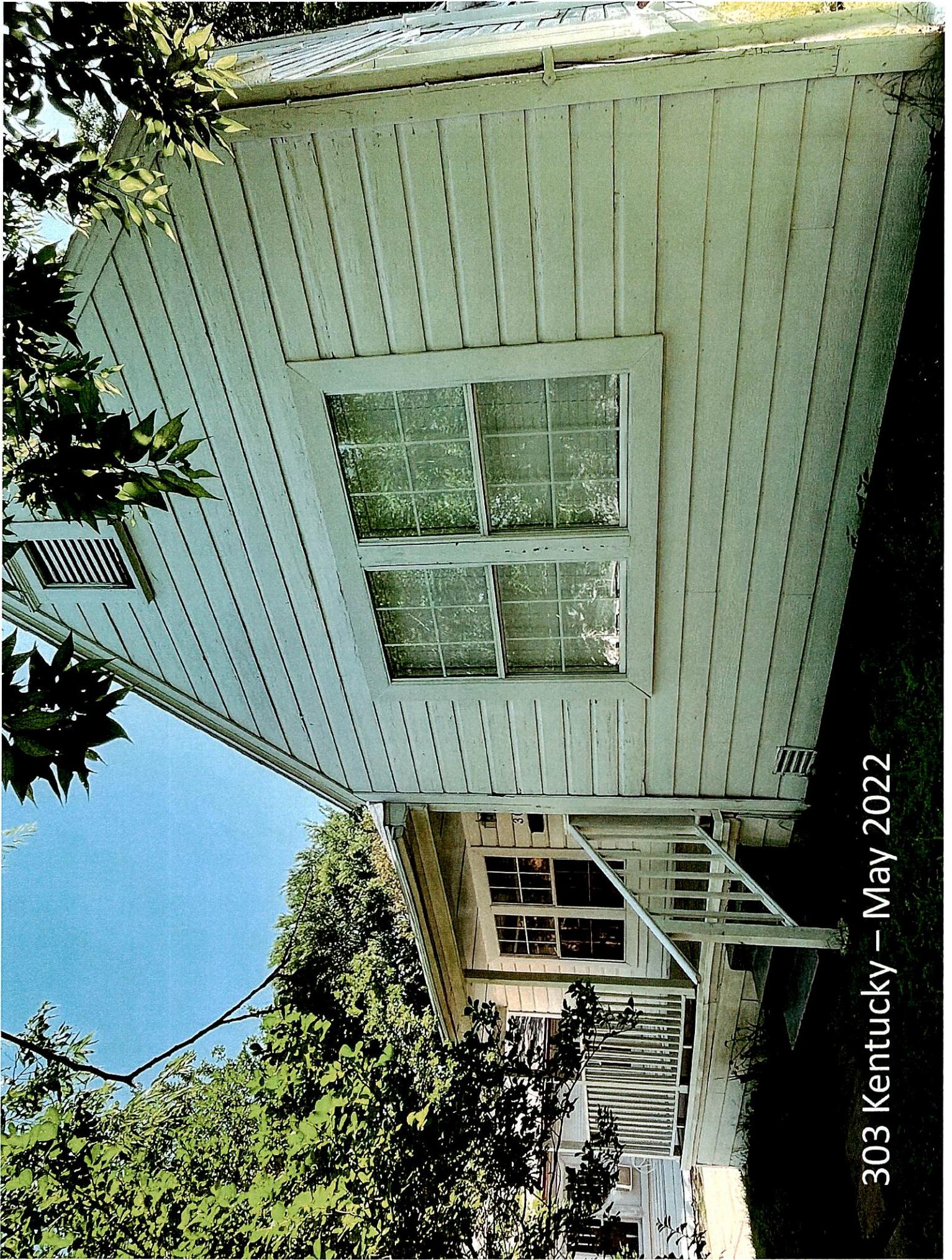
Google Earth

80 ft





303 Kentucky – May 2022



303 Kentucky – May 2022



303 Kentucky - May 2022

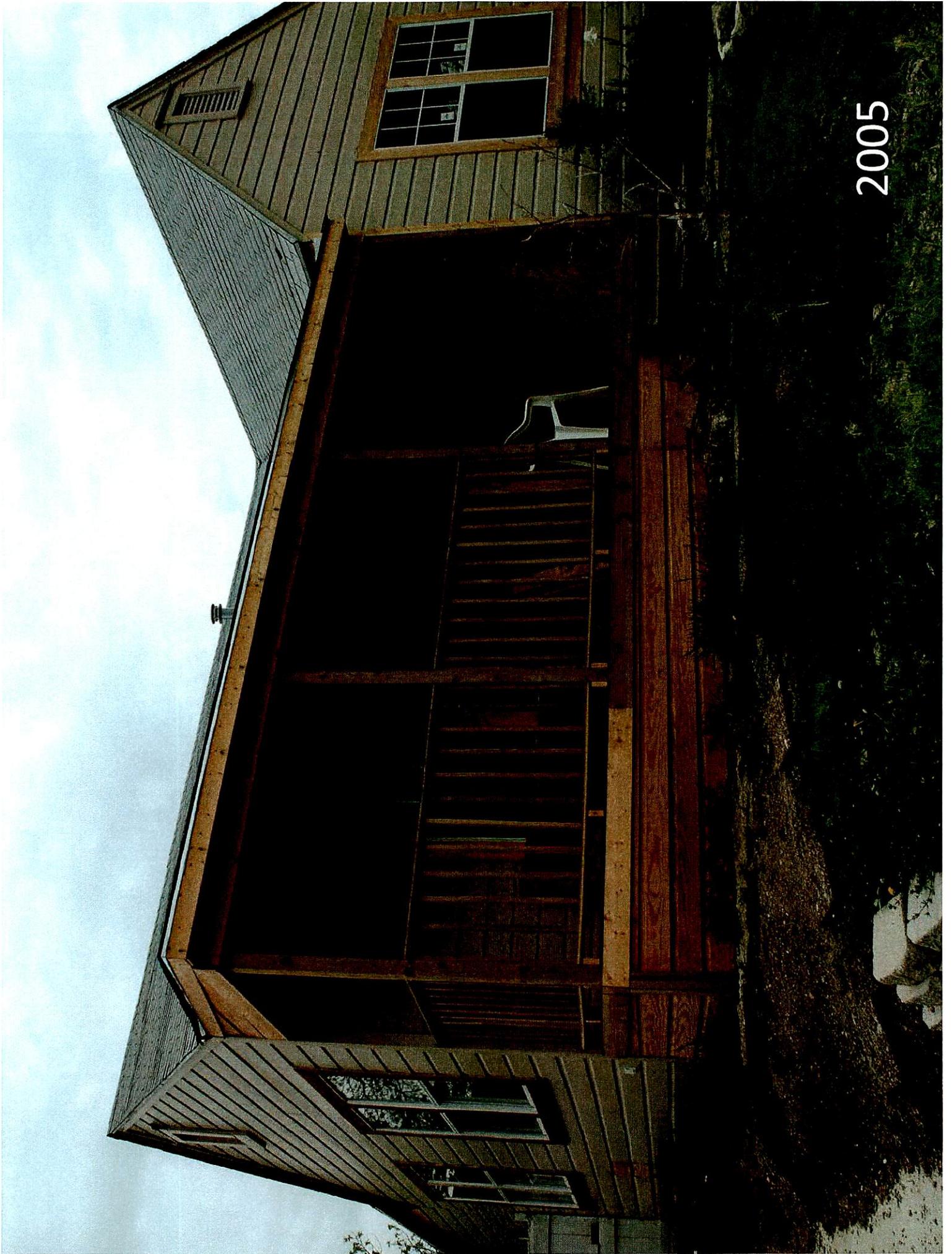


303 Kentucky – May 2022



303 Kentucky – Historic Photo

Date Unknown



2005



2015



301 Kentucky – Directly North of Subject Property

302 Tennessee – Directly East of Subject Property





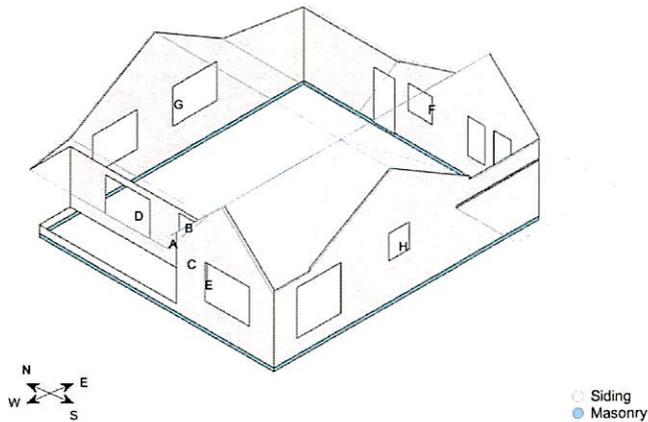
305 Kentucky – Directly South of Subject Property

Report Content

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Structure Number Labels	4
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Elevation Diagrams.....	8
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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	=	1522.6 ft ²
Siding	=	1451.3 ft ²
Masonry	=	71.3 ft ²

General Totals

Wall Facets	=	8
Windows & Doors	=	12
Window & Door Area	=	273.9 ft ²
Window & Door Perimeter	=	229.0 ft
Fascia (Eaves + Rakes)	=	215 ft



Satisfaction Guaranteed
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IMAGES – TOP VIEW

Top Image



303 S Kentucky St, Mckinney, TX 75069

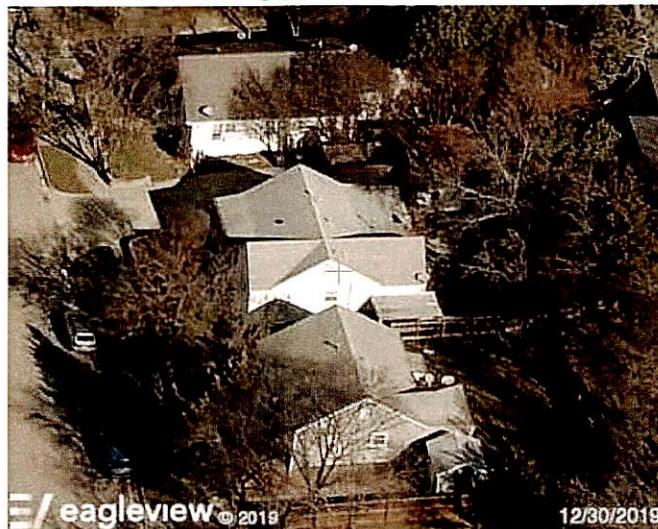
Report: 58340545

IMAGES – NORTH & SOUTH

North Side



South Side

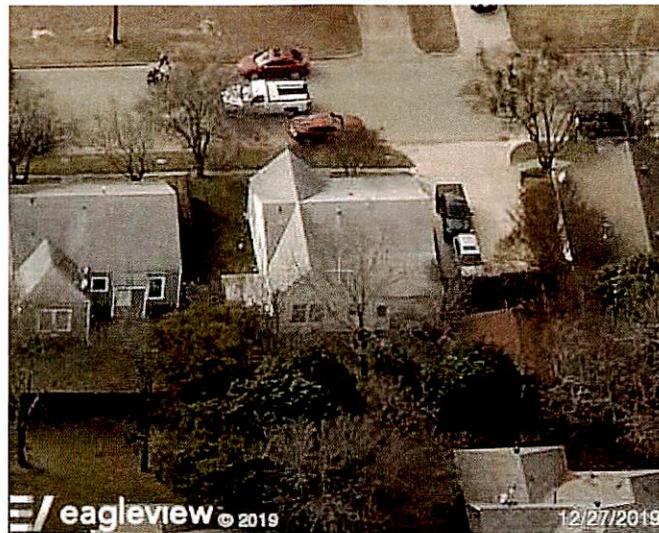


303 S Kentucky St, Mckinney, TX 75069

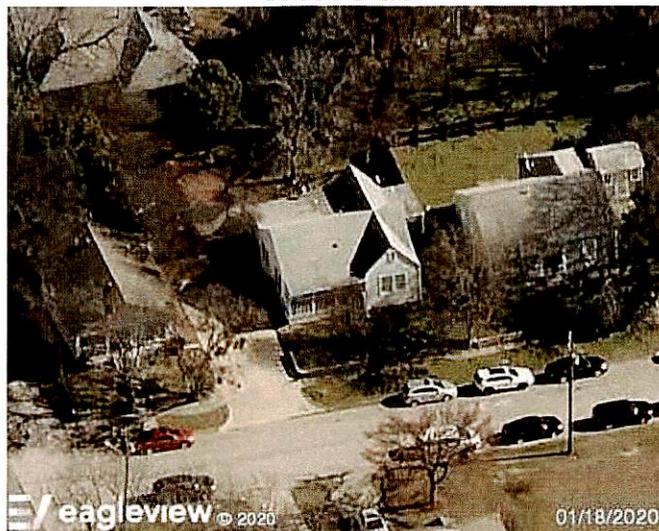
Report: 58340545

IMAGES – EAST & WEST

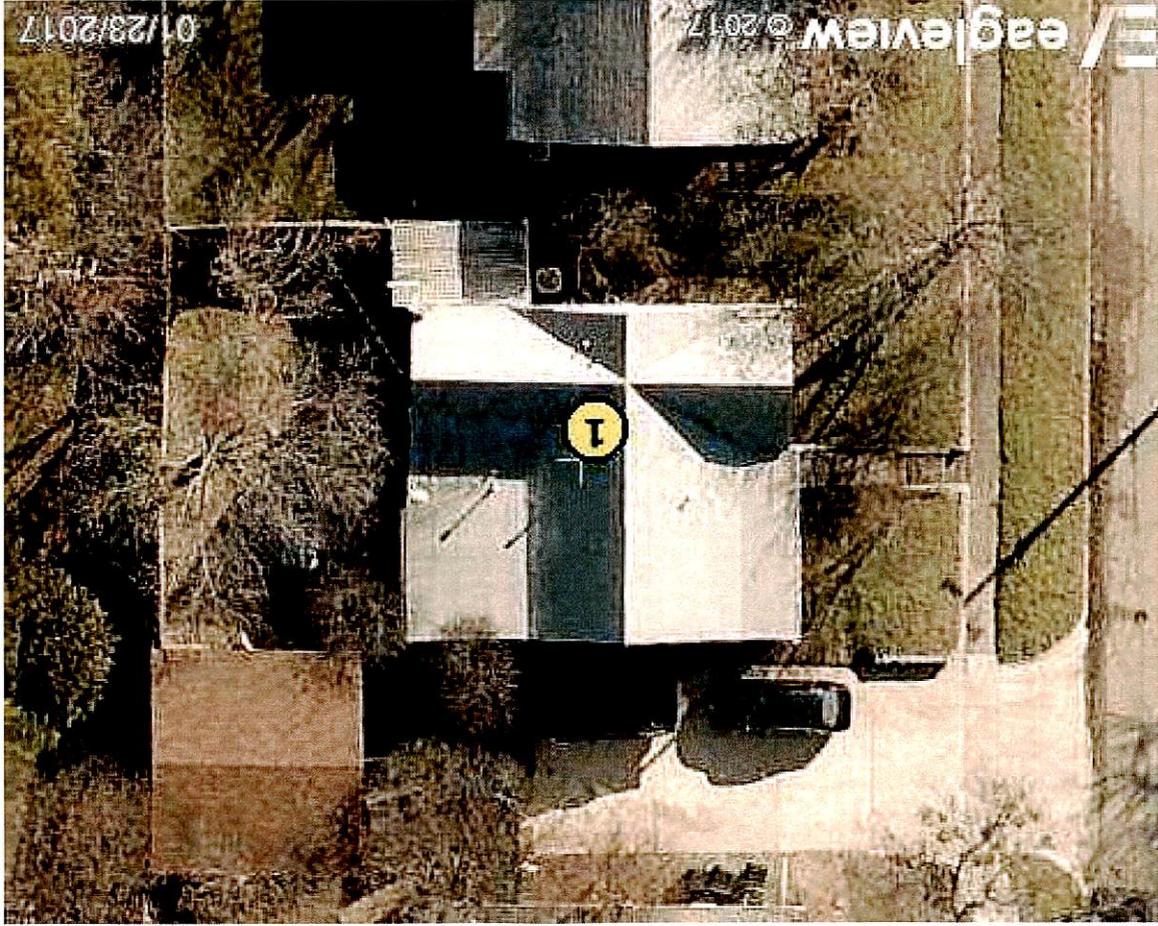
East Side



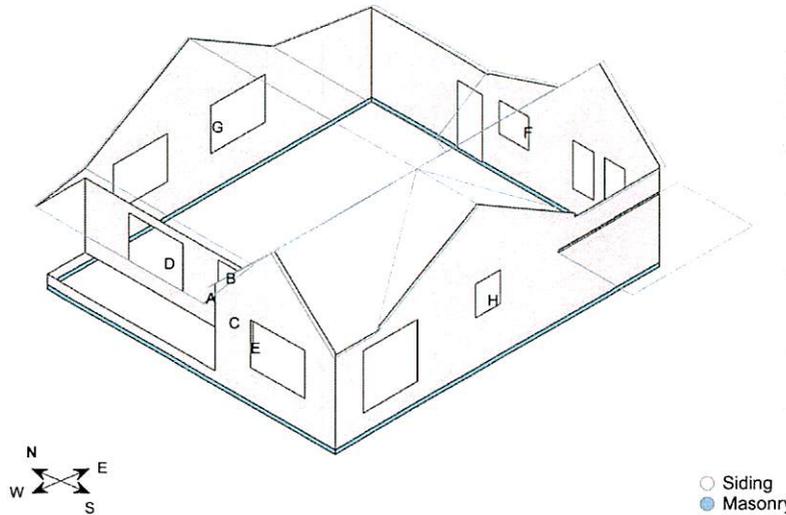
West Side



STRUCTURE NUMBER LABELS



WALL AREA DIAGRAM



North

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
C	23.7	0.0
G	378.1	19.0
B	1.8	0.0
Total	403.6	19.0

East

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
F	336.2	16.5
Total	336.2	16.5

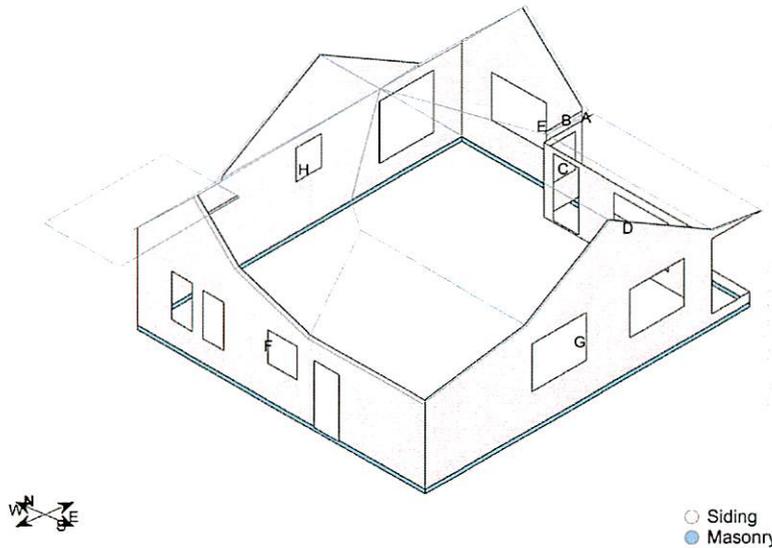
South

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
A	0.2	0.0
H	420.5	19.0
Total	420.7	19.0

West

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
E	186.9	16.8
D	103.9	0.0
Total	290.8	16.8

ALTERNATE WALL VIEW



North

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
C	23.7	0.0
G	378.1	19.0
B	1.8	0.0
Total	403.6	19.0

East

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
F	336.2	16.5
Total	336.2	16.5

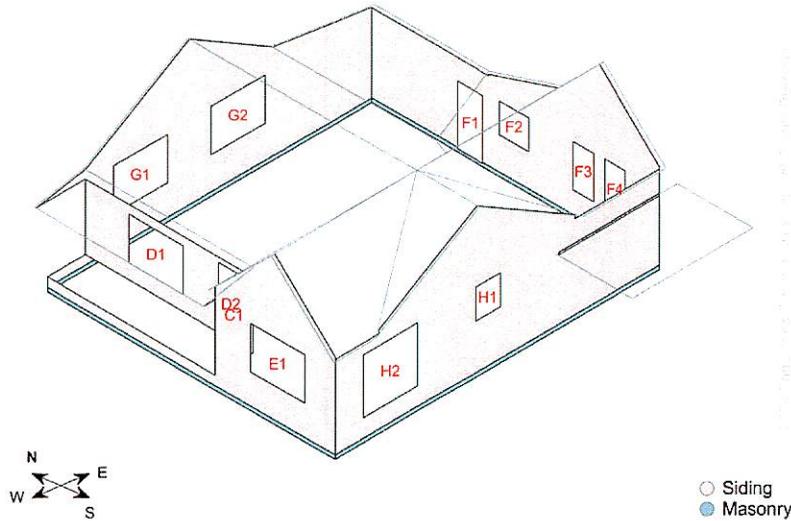
South

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
A	0.2	0.0
H	420.5	19.0
Total	420.7	19.0

West

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)
E	186.9	16.8
D	103.9	0.0
Total	290.8	16.8

WINDOW & DOOR DIAGRAM



Note: Window & door measurements include trim.

North

Window/Door	Area (ft ²)	Perimeter (ft)	Dimensions W x H (ft)
C1	12.0	14.0	3.0 x 4.0
G1	32.5	23.0	6.5 x 5.0
G2	32.5	23.0	6.5 x 5.0
Total	77.0	60.0	n/a

East

Window/Door	Area (ft ²)	Perimeter (ft)	Dimensions W x H (ft)
F1	21.0	20.0	3.0 x 7.0
F2	12.2	14.0	3.5 x 3.5
F3	12.5	15.0	2.5 x 5.0
F4	12.5	15.0	2.5 x 5.0
Total	58.2	64.0	n/a

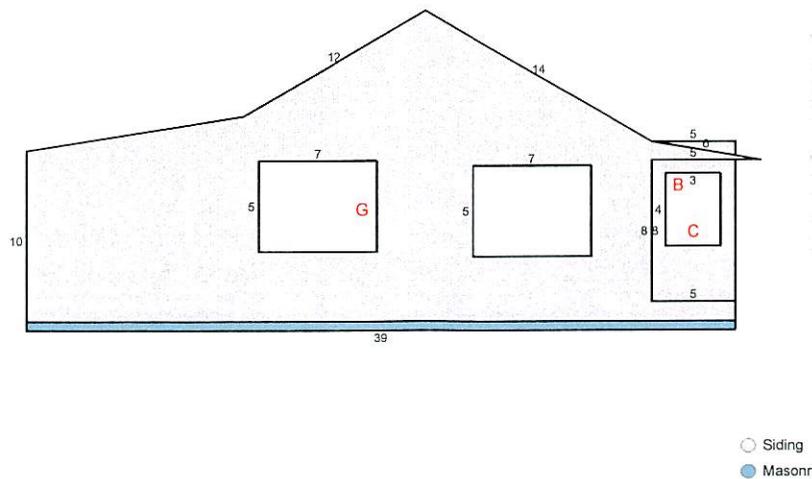
South

Window/Door	Area (ft ²)	Perimeter (ft)	Dimensions W x H (ft)
H1	10.5	13.0	3.0 x 3.5
H2	42.2	26.0	6.5 x 6.5
Total	52.7	39.0	n/a

West

Window/Door	Area (ft ²)	Perimeter (ft)	Dimensions W x H (ft)
D1	32.5	23.0	6.5 x 5.0
D2	21.0	20.0	3.0 x 7.0
E1	32.5	23.0	6.5 x 5.0
Total	86.0	66.0	n/a

NORTH ELEVATION DIAGRAM



Top of Siding Walls = 53.4 ft
Bottom of Siding Walls = 58.8 ft

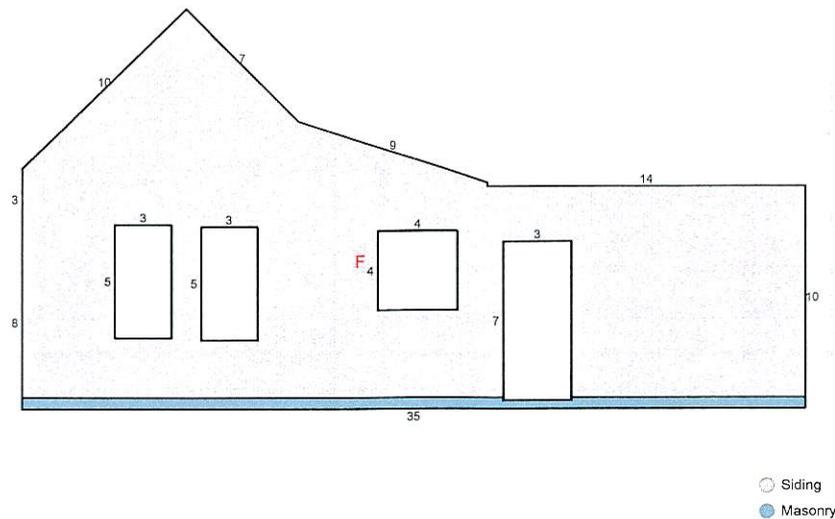
Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)	Window & Door Area (ft ²)	Window & Door Perimeter (ft)	Window & Door Count
C	23.7	0.0	12.0	14.0	1
G	378.1	19.0	65.0	46.0	2
B	1.8	0.0	0	0	0
Total	403.6	19.0	77.0	60.0	3

Note: On-site verification of yellow shaded areas is needed. Details are on the Wall Measurement Summary Page. This diagram shows segment lengths rounded to the nearest whole number. The window & door and wall area in square feet (rounded to the nearest tenth) is based on the actual (non-rounded) value of each segment length.

303 S Kentucky St, McKinney, TX 75069

Report: 58340545

EAST ELEVATION DIAGRAM

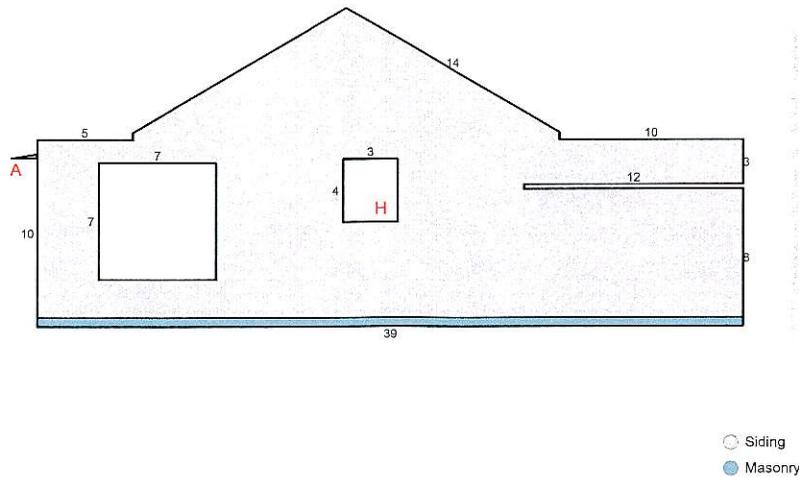


Top of Siding Walls = 40.0 ft
Bottom of Siding Walls = 34.7 ft

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)	Window & Door Area (ft ²)	Window & Door Perimeter (ft)	Window & Door Count
F	336.2	16.5	58.2	64.0	4
Total	336.2	16.5	58.2	64.0	4

Note: On-site verification of yellow shaded areas is needed. Details are on the Wall Measurement Summary Page. This diagram shows segment lengths rounded to the nearest whole number. The window & door and wall area in square feet (rounded to the nearest tenth) is based on the actual (non-rounded) value of each segment length.

SOUTH ELEVATION DIAGRAM

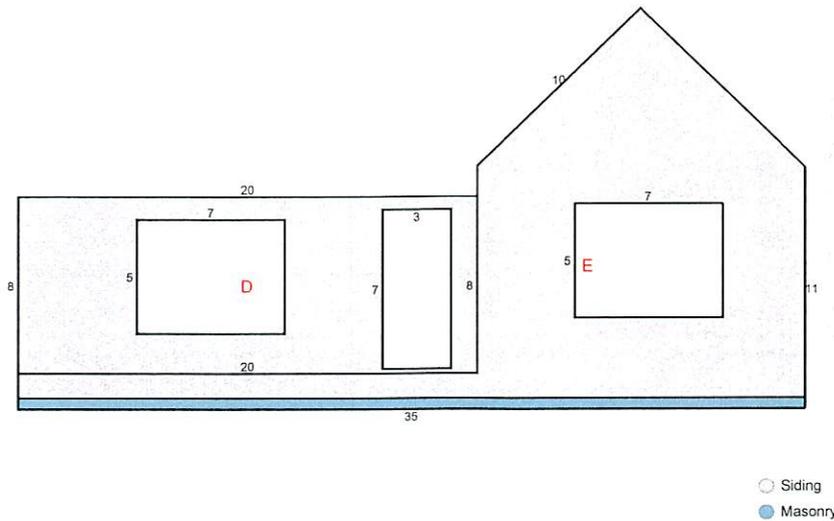


Top of Siding Walls = 51.2 ft
Bottom of Siding Walls = 52.5 ft

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)	Window & Door Area (ft ²)	Window & Door Perimeter (ft)	Window & Door Count
A	0.2	0.0	0	0	0
H	420.5	19.0	52.7	39.0	2
Total	420.7	19.0	52.7	39.0	2

Note: On-site verification of yellow shaded areas is needed. Details are on the Wall Measurement Summary Page. This diagram shows segment lengths rounded to the nearest whole number. The window & door and wall area in square feet (rounded to the nearest tenth) is based on the actual (non-rounded) value of each segment length.

WEST ELEVATION DIAGRAM



Top of Siding Walls = 20.1 ft
Bottom of Siding Walls = 95.3 ft

Wall	Siding Wall Area (ft ²)	Masonry Wall Area (ft ²)	Window & Door Area (ft ²)	Window & Door Perimeter (ft)	Window & Door Count
E	186.9	16.8	32.5	23.0	1
D	103.9	0.0	53.5	43.0	2
Total	290.8	16.8	86.0	66.0	3

Note: On-site verification of yellow shaded areas is needed. Details are on the Wall Measurement Summary Page. This diagram shows segment lengths rounded to the nearest whole number. The window & door and wall area in square feet (rounded to the nearest tenth) is based on the actual (non-rounded) value of each segment length.

WALL MEASUREMENT SUMMARY

All Structures

Wall Area Waste Calculations

Siding Material

Waste %	0%	10%	11%	12%	13%	14%	15%	20%
Area (ft ²)	1,451	1,596	1,611	1,625	1,640	1,654	1,669	1,742
Squares	14.5	16	16.1	16.3	16.4	16.5	16.7	17.4

Masonry Material

Waste %	0%	10%	11%	12%	13%	14%	15%	20%
Area (ft ²)	71	78	79	80	81	81	82	86
Squares	0.7	0.8	0.8	0.8	0.8	0.8	0.8	0.9

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 = 1522.6 ft²

Siding = 1451.3 ft²

Masonry = 71.3 ft²

General Totals

Wall Facets = 8

Windows & Doors = 12

Window and Door Area = 273.9 ft²

Window & Door Perimeter = 229.0 ft

Fascia (Eaves + Rakes) = 215 ft

Top of Siding Walls = 164.7 ft

Bottom of Siding Walls = 241.3 ft

Property Location

Longitude = -96.6156361

Latitude = 33.1950618

Corner Totals

	Siding to Siding	Masonry to Masonry	Siding to Masonry	Total
Inside Corners	8.3 ft	0.0 ft	0.0 ft	8.3 ft
Outside Corners	47.2 ft	2.0 ft	0.0 ft	49.2 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.