



City of
Peterborough

COMMITTEE OF ADJUSTMENT

HEARING DATE: April 7, 2009

Staff Comments Regarding Files: A9/09, B5/08, A10/09, A11/09, A11/09, A12/09, A13/09 and A14/09

A9/09 – 601 Homewood Avenue - Brian Bulger

The proponent would like to construct a 2.4 metre (8 ft) by 3.35 metre (11 ft), one storey addition on the east side of the dwelling as illustrated on the Plan attached as Exhibit A. A variance is therefore requested to reduce the minimum building setback from the centre line of the Monaghan Road road allowance from 16 metres (52.4 ft) to 13.5 metres (44.29 ft) to permit the proposed addition.

The subject property is located on the south west corner of the intersection of Homewood Avenue and Monaghan Road two blocks north of Charlotte Street. Monaghan Road is an arterial with a road allowance width of 20 metres in relation to the subject property while the Official Plan requires that the width of Monaghan Road be 26 metres.

Staff visited the property and considered the standard of development of the subject properties and other properties in the vicinity in relation to the anticipated development and use of Monaghan Road. While it is expected that Monaghan Road will be widened some day, the practical need for widening on the short term would be at intersections such as Charlotte Street where road width would be required for turning lanes. It is not anticipated that road widening in relation to the subject property would be required as a priority unless Monaghan Road was to be completely reconstructed.

The dwelling is located 6 metres (21.6 ft) from Monaghan Road unlike other dwellings in the vicinity such as 599 Homewood Avenue and 599 Gilmour Street that are much closer to the street line. Staff noted that the front of the dwelling faces Homewood Avenue and the side yard is separated from Monaghan Road by a high board fence offering protection for any building that may be established as proposed. Staff also considered the functionality of the dwelling on the property in relation to accessibility from the yard and garage located to the south and can appreciate the reason for the proposed addition.

The variance requested would result in a one storey, 2.4 metre (8 ft) by 3.35 metre (11 ft), addition to the side of the dwelling. Considering the neighbourhood context and the anticipated road widening requirements the variance would permit development that would not be a significant departure from the setback of other buildings in the area and would not compromise any future road widening that may be required.

Subject to concerns from neighbouring property owners, Staff would not object to the Committee granting the variance as described.

B05/09 – 530 Maniece Avenue - Lorne's Slinger Service Ltd.

The subject property is a 1.76 Ha, 4.37 acre parcel of land on Maniece Avenue. The northerly portion of the property is zoned A.1 Agricultural and the southerly 76.3 metres (250 ft) is zoned R.1 Residential under the Otonabee Township zoning, the same as the adjacent property at 538 Maniece Avenue.

Referring to the plan attached as Exhibit B, the owner would like to convey a 10 metre (32.8 ft) wide by 76.25 metre (250 ft) deep parcel of land located at the south east corner of 530 Maniece Avenue to the owner of the adjacent residential lot to the east being 538 Maniece Avenue. The purpose would be to add a spatial separation to preserve the privacy of the established residential development at 538 Maniece Avenue in relation to the potential future development and use of the subject property.

Because the zoning of the portion of the property to be severed matches the R.1 zoning of the property to which it will be merged the result of the conveyance would have no effect on the development potential of either property. Maniece Avenue is a high capacity collector street with a width of 18 metres. The Official Plan indicates that the road allowance for Maniece Avenue should be 26 metres.

Staff would not object to the conveyance of the property as described subject to the following conditions:

- 1) the provision of a survey to the satisfaction of the City Planner,
- 2) conveyance to the City free of encumbrances and at not cost to the City, of a 4 metre wide strip of land across the severed and retained parcels for the purpose of the future road widening of Maniece Avenue, and
- 3) the property is merged with 538 Maniece Avenue and Section 50 (5) of the *Planning Act* would apply to any subsequent transaction involving the parcel of land being conveyed.

A10/09 – 1525 Ravenwood Drive - Tracey White & Clark McCourt

A 3.96 metre (12.9 ft) by 3.35 metre (13.28 ft) addition, had been constructed by the previous owner at the southwest corner of the dwelling as illustrated on Exhibit C. This application has been initiated by the solicitor for the vendor requesting a variance to reduce the minimum building setback from the rear lot line from 7.6 metres (24.9 ft) to 5.65 metres (18.5 ft) to acknowledge the location of the structure as established.

The property is a mid block lot in a relatively new subdivision developed in 1997. Staff visited the site and noted that while many of the properties appear to have elevated decks in the rear yards, building setbacks of dwellings from rear lots along Ravenwood appear to be consistent, conforming with the zoning regulations.

The dwelling is a raised design which results in the addition being of substantial height and massing that would be an imposition on the neighbour to the rear if the building on the neighbouring property to the rear was developed to its rear yard limit. In this

particular case, the saving grace is that the building on the property to the rear at 1176 Wildlark Drive is located close to the street with liberal rear yard that provides for the adequate sense of spatial separation between buildings as intended by the rear yard setback regulations of the zoning district.

Considering this unique situation, Staff is of the opinion that the spatial separation between buildings is maintained and that the impact of the variance would be minor. Subject to concerns raised by neighbouring property owners, Staff would not object to the Committee granting the variance as described to acknowledge the existing area of the structure as established limiting the setback to the 3.96 metre (12.9 ft) by 3.35 metre (13.28 ft) structure and descending stairs as established.

A11/09 – 769 Bordon Avenue - Lansdowne Place Inc.

A variance is requested to Section 6.4 of the by-law to permit a temporary structure on the property as a component of a seasonal garden centre located at the southerly, north west corner of the site, as illustrated on Exhibit D. The elements of the proposed installation will consist of three structures with steel framework covered by vinyl awnings.

Staff considered the following issues regarding the proposed garden centre on the site:

- The building division will be issuing a temporary permit for the structures so it will conform to engineering standards as temporary structures to be erected during the summer months only.
- The location of the garden centre and structures is represented in the approved site plan agreement for the property and will not disrupt the flow of traffic on the site.
- The entire mall site provides a total of 2,023 parking spaces while the by-law requires 1,732 parking spaces. The area to be fenced off for the garden centre will occupy an area of 83 parking spaces and the covered retail area may generate a demand for 26 parking spaces. There would therefore still be a surplus of 182 parking spaces on the entire mall site.

Staff received comments from the Otonabee Conservation on Friday April 3, 2009 requesting a decision on this application be deferred. The reason would be to permit time to investigate new information regarding the definition of the limits of the Byersville Creek flood plain. In that there may be some time involved to determine the limits of the flood plain, staff cannot advise the Committee to grant the variance requested on an annual basis unless new information regarding the limits of the flood plain would exclude the area to be occupied by the garden centre.

Staff would therefore suggest that the Committee may consider granting the variance to permit the annual installation of temporary structures associated with the seasonal garden centre on the property located as illustrated on the site plan for the property from April 1 to August 31 provided it is determined that the area occupied by the garden centre is not impacted by the flood plain otherwise the decision would be null and void.

A12/09 - 16 Lansdowne Street West - Kal Ojamee

The proponent is seeking relief from the zoning by-law to permit a temporary building on the easterly portion of the property for a period of one year. The purpose would be to allow a temporary sales office for a period of time for the business to become established before constructing a permanent building on the site. The business is the sale of prefabricated structures of which some samples will also be located on the property as illustrated on the concept site plan attached as Exhibit E.

The subject property is a part of the City's inventory of Service Commercial properties located in a high profile segment of a major arterial roadway. For this reason staff must be careful with permitting temporary structures and development. While staff can appreciate the cautious approach of the proponent in establishing a business during the current economic climate, staff would consider it reasonable to support the variance to permit a temporary building on the property for a period of time no greater than one year provided that the building is connected to municipal services and the property is subject to a site plan agreement with the City.

Subject to concerns raised by neighbouring property owners, staff would support the variance that would lapse on April 30/ 2010, provided that the temporary sales office is connected to Municipal water and waste water services and the property upon which the building is located is subject to a site plan agreement with the City.

A13/09 - 296 Stewart Street - John Hunter

The subject property is located on Stewart Street, south of Charlotte Street within the Charlotte Street Business District of the Central Commercial area. The property is zoned C.5 Commercial but has been developed and used for residential purposes. City records recognize there being eight residential units and one commercial unit on the main level of the building. The records include a number of complaints regarding the living conditions the standard of maintenance and disrepair of the units dating from 1995 through to the present. It was recently reported that an additional unit was being constructed in the basement without a building permit.

The applicant would like to increase the number of residential units within the building on the property from 8 to 11 including the conversion of the one commercial unit that was cited by municipal records. No expansion to the exterior of the building is being proposed. The C.5 Commercial District zoning regulations require that a dwelling be located on the second storey or higher. A variance is therefore requested to permit the use of all levels of the building for residential purposes. A variance to section 6.25 of the by-law is also required to permit two new dwelling units in a basement where the ceiling is less than one metre above grade.

Referring to the survey and floor plans accompanying the application, the building consists of four levels including the basement. The plans illustrate the proposal to create two new units within the basement. The plans also illustrate the conversion of the front of the building on the main level from a commercial unit to an apartment and the

construction of a third new unit in the attic. Staff have visited the site and examined the drawings and are concerned with the practical feasibility of creating the two units in the basement in accordance with the Building Code, that would be facilitated by the variance requested. In addition, staff is concerned with the existing development from a fire safety perspective. It should also be noted that the Peterborough Utilities services Inc. commented requiring that the existing 5/8 inch water service to the property be upgraded to serve the proposed number of units in the building.

The site survey (Exhibit F), illustrates that the building occupies most of the property with an asphalted area in the front and to the south side of the building. The asphalted area may accommodate accessible parking spaces for up to five motor vehicles across the front of the property associated with the legal non-conforming use of the building for the eight dwelling units and the one, former commercial unit. There is no landscaping on the property or amenity space on the property associated with the residential use.

The Business District designation of the Official Plan anticipates residential uses in the area. New construction should be designed to be compatible with adjacent residential uses and have a pedestrian scale and orientation. In the case of the subject property it may be appropriate to permit the use of the entire building for residential purposes and the impact may be minor from a land use perspective, however it is unfortunate that the number of units that have already been created have resulted in an incompatible development standard and possibly and unsafe conditions from a fire safety stand point and no landscaping or pedestrian orientation to the street front as is required by the Official Plan. The access to parking specifically five motor vehicles across the front of the property is unacceptable. Staff would recommend that an urban landscaping plan for the street front profile be prepared for the property and the property be subject to site plan control to implement the design. Staff would also recommend that a variance be granted to reduce the number of motor vehicle parking spaces on the property by one to allow space in relation to the street front for appropriate landscaping to be established subject to site plan approval.

Staff is of the opinion that it may be premature to grant the variances described to permit any more apartment units before it can be demonstrated that the building can be developed to building and safety design standards for both the existing and new units. Staff is recommending that the application be adjourned to a future meeting of the Committee to allow the proponent to provide complete set of architectural drawings, approved by a qualified professionals to demonstrate how the fire safety and building code can be complied with regarding all units within the building before variances are granted to permit any new apartments.

Should the Committee choose to grant the variances as described, Staff would recommend that the variances be granted subject to the following considerations as conditions:

- 1) Application for a building permit based on drawings prepared by qualified professionals to demonstrate how all apartment units within the building will be brought into compliance with the Ontario Building Code and Fire Safety Standards.

- 2) The property be subject to site plan approval to address parking and landscaping in relation to the streetscape.
- 3) The existing water service to the building be upgraded to the satisfaction of the Peterborough Utility Services Inc. considering the number of units in the building.
- 4) Payment of a Parks Levy to be determined by the Parks Levy review Committee for the additional apartment units and the conversion of the one commercial unit within the building.
- 5) Payment of cash in lieu of parking in an amount of \$5,199.65 required in relation to each of the additional residential apartment units.

A14/09 – 2501 Armour Road - Dawson & Catherine Bick

The subject property is located on the west side of Armour Road adjacent to the Otonabee River. The Official Plan designates the subject property Major Open Space. The subject property was identified, under Schedule C of the Official Plan, as a Natural Area by way of a major open space and natural areas policy initiative completed in October 2000. The property was also zoned OS.2 Open Space as a part of the same initiative. The subject property was acquired by the current owner in August 2005.

The owner would like to expand the existing one and one half (1/1/2) storey dwelling on the subject property located next to the Otonabee River. The proposed expansion contemplates erecting a full second storey on the building, a finished basement, a two-storey connection and finished basement between the dwelling and the existing one storey garage. Given the current OS.2 Open Space zoning, the following variances would be required:

- i. relief from Section 6.2.2 of the by-law in that other variances to regulations of the zoning district are required to expand the non-conforming, residential use of the property;
- ii. reduce the minimum building setback of the proposed 2 storey connection from 9 metres (29.5 ft) to 4.8 metres (16 ft) in relation to the south side lot line;
- iii. reduce the minimum building setback of the proposed expansion of the second storey from 9 metres (29.5 ft) to 6.45 metres (21.16 ft) in relation to the street line;
- iv. reduce the minimum width of landscaped open space from the south side lot line from 9 metres (29.5 ft) to 4.8 metres (16 ft) considering the loss of landscaped open space replaced by the proposed connection and between the buildings and the proposed new deck;
- v. increase the maximum building coverage from 5% to 15%; and
- vi. reduce the minimum setback from the centre line of Armour Road road allowance from 24.4 metres to 19.45 metres (63.81 ft).

Section 45 (1) of the *Planning Act* permits the Committee of Adjustment to grant minor variances from the provisions of the zoning by-law as in its opinion are desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee, the general intent and purpose of the by-law and the Official Plan are maintained.

The Official Plan provides direction with the intention of protecting land that is designated as Major Open Space and identified as a Natural Area by zoning such land as Open Space. In October 2000, the subject property was designated Major Open Space and identified as being located within a Natural Area. At the same time, the property was zoned OS.2 Open Space to comply with, and implement, the Official Plan designation notwithstanding the existence of a dwelling. This change in zoning created the existing "non-conforming use" on the subject property. The OS.2 Open Space zoning was applied with the intention to impose: (1) significant restrictions on the potential use(s) of the subject property; and (2) regulations which restrict the subject property's development potential.

Regarding non-conforming uses, Official Plan policy 3.2.1 states that non-conforming land uses are "normally expected to change to uses in accordance with the expectation of the Official Plan. However, to avoid undue hardship for the owner of the property, the non-conforming use may be recognized and or permitted to enlarge provided that it does not adversely affect the residents and other properties in the area."

When the current owner purchased the subject property in August 2005, the Official Plan designation and OS.2 zoning were both in place. The Official Plan Open Space Policy initiative envisions subject property becoming part of a connected system of open space. While the legal non-conforming use is acknowledged, the "primary objective" and intent of the Official Plan, according to Policy 4.5.2.2, is to "preserve areas designated as Major Open Space and identified as Natural Areas from incompatible development and where feasible, integrate such areas within the City's network of parks and open space." Official Plan policies anticipate that the long-term use of the property will eventually become public open space and a part of the continuity of linked open space along the Otonabee River as cited under policy 4.5.2.3. Official Plan policy 4.5.2.5 considers the expansion of non-conforming uses and suggests such uses may be expanded provided they do not compromise the objectives stated under policies 4.5.2.2 and 4.5.2.3. It is Staff's opinion that the variances required to facilitate the proposed development would compromise the objectives stated under policies 4.5.2.2 and 4.5.2.3 of the Official Plan.

To implement the intent of the Official Plan, the zoning of the subject property sets out the list of permitted uses that should be anticipated by a property owner and decision makers regarding considering applications for development. The list of permitted uses does not include a residence nor does the design of the zoning district include regulations that would anticipate development on such a small parcel of land and hence the numerous variances required as a part of this application.

The property is identified as a Natural Area, a part of a corridor of land located within 120 metres of the Otonabee River. In accordance with Natural Areas Policies 3.3.6 and 3.3.7, an environmental study has been prepared by Oakridge Environmental Ltd. on March 25/09 and provided with the application. The study is required to demonstrate "that there will be no negative impacts on the natural feature or ecological function for which the area was identified." The Study was circulated to Otonabee Conservation who have not been able to provide a comment on the proposal other than a request for a deferral in order to do so.

Staff reviewed the Environmental Study that provides opinions but no demonstrative evidence of there being no impact from the proposed expansion in terms of storm water run off. The study addresses a need to control storm water runoff from the property considering there will be an increase in lot coverage by building. It cites storm water run off as a potential impact but provides no measurements of the gain or loss of permeable surface area as a result of the proposed development. The report does make recommendations to manage storm water run off from the property during and after construction. It identifies the need to construct "French Drains" and new swales on the property. It recommends that a "soakaway pit" be constructed at the end of swales on site to reduce the impact of storm water that would run directly into the river. The environmental study also encourages the construction of a "green roof" as an effective means of improving water quality runoff but offers no calculations that would demonstrate how the feature may improve the storm water management on site.

Currently there is a one and one half storey dwelling on the property with a foot print of 66.8 sq metres (720 sq ft) excluding a one storey, covered verandah on the back. There is also a 22.2 sq metre (240 sq ft) detached garage to the south side of the dwelling. The garage is connected to the dwelling by an exterior stairway and patio stones. Building plans attached to the staff report illustrate: (1) a proposal to construct a full second storey over the existing dwelling; (2) a two-storey addition connecting the garage to the dwelling which encloses a staircase; (3) the excavation and creation of a full basement between the dwelling and the garage. Staff considered the existing structure built in 1955, in comparison to the proposed development. Considering modifications to the basement including windows on the north side, the additional basement below the connection, the second storey addition and the likely need to upgrade the superstructure to support the weight of a *green roof* design and second storey balcony, Staff is of the opinion that the proposal will likely result in the complete reconstruction of the existing dwelling.

Policy 3.2.1 describes the premises upon which expansion of a legal nonconforming use building may be considered. It considers the "undue hardship for the owner of the property". In this case it appears to Staff that the owner purchased the subject property knowing the limitations imposed by the Open Space designation and OS.2 zoning. The owner has never represented any undue hardship to warrant the proposed expansion of the dwelling. Although the proposed expansion is represented to be only (1) a connection between a existing garage and a existing dwelling and (2) an expansion of the second storey, it has been the experience of staff that such expansions to older buildings involve a complete reconstruction of the building. With this in mind, it is the opinion of staff that the purpose for the variances requested would result in development that would undermine the general intent and purpose of the Official Plan.

The variance to Section 6.2 of the zoning by-law is required because the proposed expansion involves five other variances to regulations of a zoning district. It is the intent of Section 6.2 to permit the expansion of a non-conforming building if two conditions are satisfied: (1) the expansion complies with other regulations of the zoning district and (2) the building is to be used for a purpose permitted by the OS.2 Open Space zoning district.

Considering the design of Section 6.2 of the by-law and the number of variances which would also have to be addressed in relation to the zoning district, Staff is of the opinion that a variance contingent upon so many additional variances would not maintain the general intent and purpose of Section 6.2 of the by-law and would undermine the purpose of the OS.2 Open Space Zoning applied to the property.

Staff considers the proposed expansion of the existing dwelling as a significant departure from what currently exists on the subject property and regards the request for the proposed expansion to be considered as a minor variance to be a serious precedent with respect to all lands within the city designated and zoned similarly. Staff is of the opinion that the variances to facilitate the proposed expansion of legal non-conforming dwelling located on lands designated, identified and zoned in anticipation of a conversion for use as open space would not maintain the general intent and purpose of the Official Plan.

The proponent and his consultants have advanced a proposal that if permitted, would be subject to the requirement of a Raw Water Impact Analysis from a qualified professional. Though no specific Raw Water Impact Analysis has been provided, the Environmental Study states that no threat to the City's raw water will result provided that the recommended mitigation measures are implemented. The environmental study references the need to address storm water management from the property during and after construction and cites need for additional plant material and the "green roof" as part of the solution regarding water quality perspective.

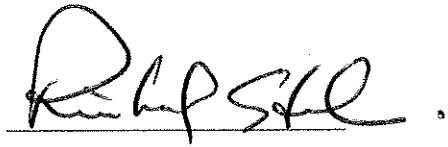
The Scoped Environmental Study was circulated to Peterborough Utility Services Inc. (PUSI) for comment regarding the impact on raw water quality. The response was that while the report did not constitute an acceptable Raw Water Impact Analysis, the impact of the proposed development would be minor provided that all landscaping describing "sod or seed" be required to be only sod. The PUSI commented further advising that the property is not connected to municipal water services but relies on a private well.

Staff would suggest that the proposed development would result in a potential impact such that it would be recommended that the property be subject to a site plan agreement with the City in order to fully implement the recommendations contained in the study including the recommendations from PUSI.

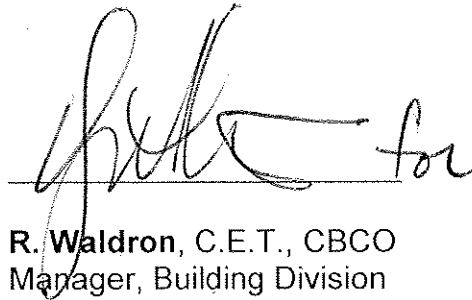
Finally, a test of a minor variance is the opinion of the Committee on whether the result of the proposed variances is considered desirable for the appropriate use and development of the land, building or structure. Although this is not a residentially designated area, it is a normal practice of the City when it is a party to new development involving a variance, that the proposed design is respectful of and compatible considering the established standard of development in a neighbourhood subject to the discretion of the Planner of Urban Design. Staff would suggest that the proposed design of the dwelling is a significant departure from what exists on the property and the established standard of development in the vicinity.

Staff is of the opinion that the variances described to facilitate the proposed development do not maintain the general intent and purpose of the by-law and of the Official Plan. The variances do not maintain the intention of Section 6.2 of the zoning by-law regarding the purpose to permit expansion of legal non-conforming buildings where appropriate and the variances do not respect the intent or purpose for which the property was zoned. Staff is recommending that the variances as described be denied.

Respectfully submitted,

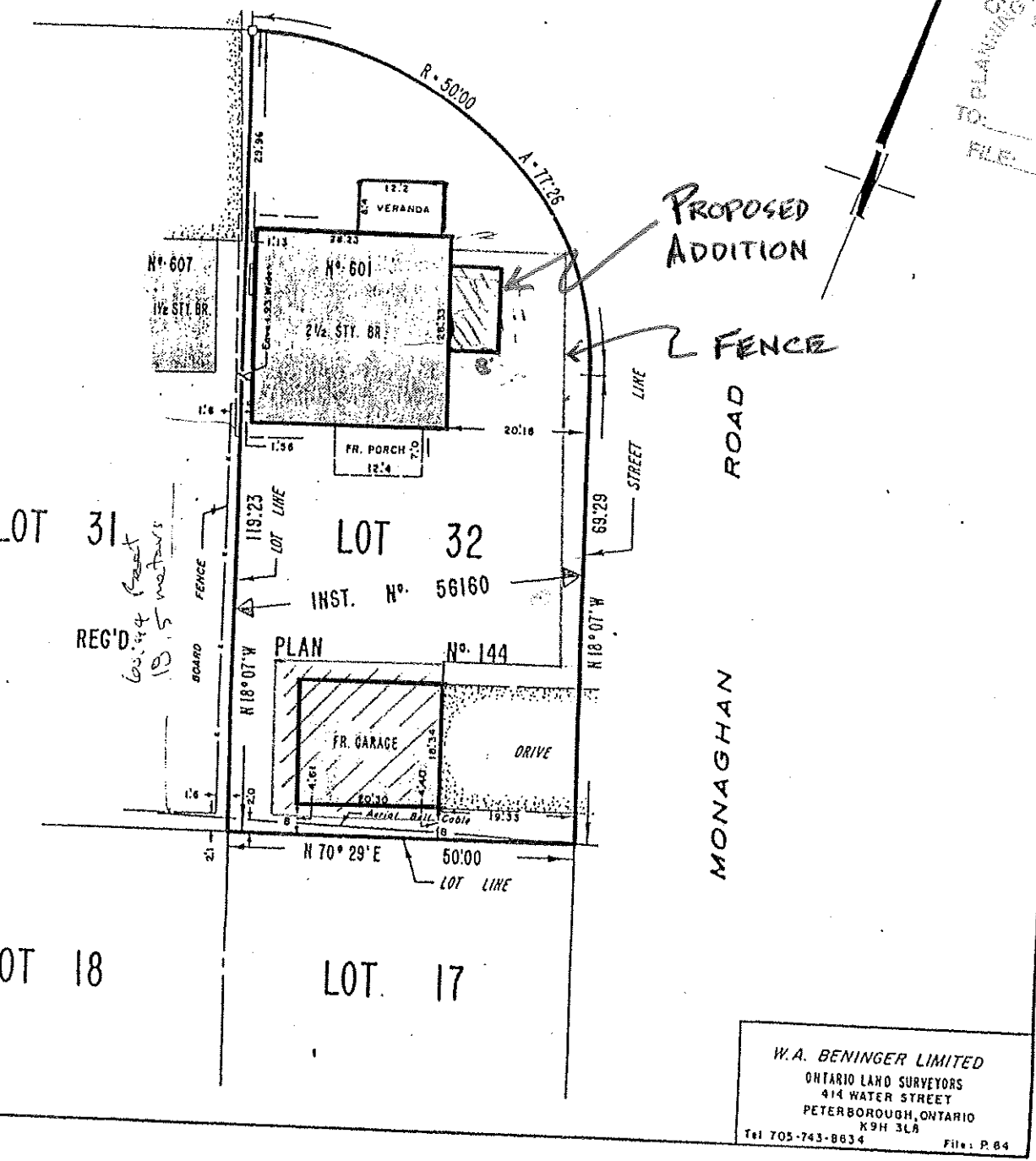


Richard Straka
Planner Policy & Research



R. Waldron, C.E.T., CBCO
Manager, Building Division

OMEWOOD AVENUE



- PROPOSED ENTRY WAY. 8' x 11'



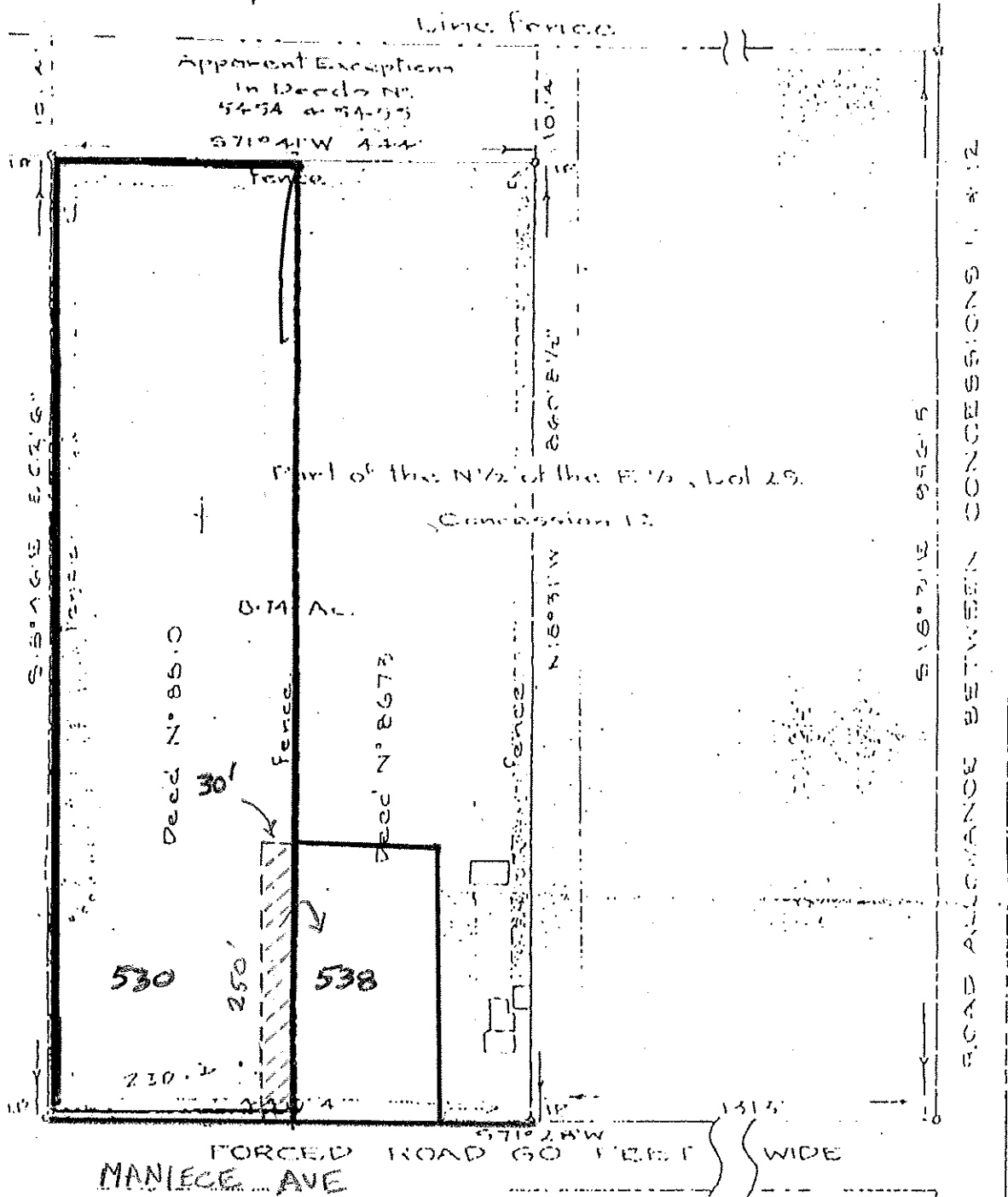
- EXISTING GARAGE

PETERBOROUGH ONT.
January 1950

EXHIBIT B
SHEET 1 OF 1

Bearings are astronomic.

Lot 30



W.B. GORDON ESQ.
295 GEORGE ST.
PETERBOROUGH,

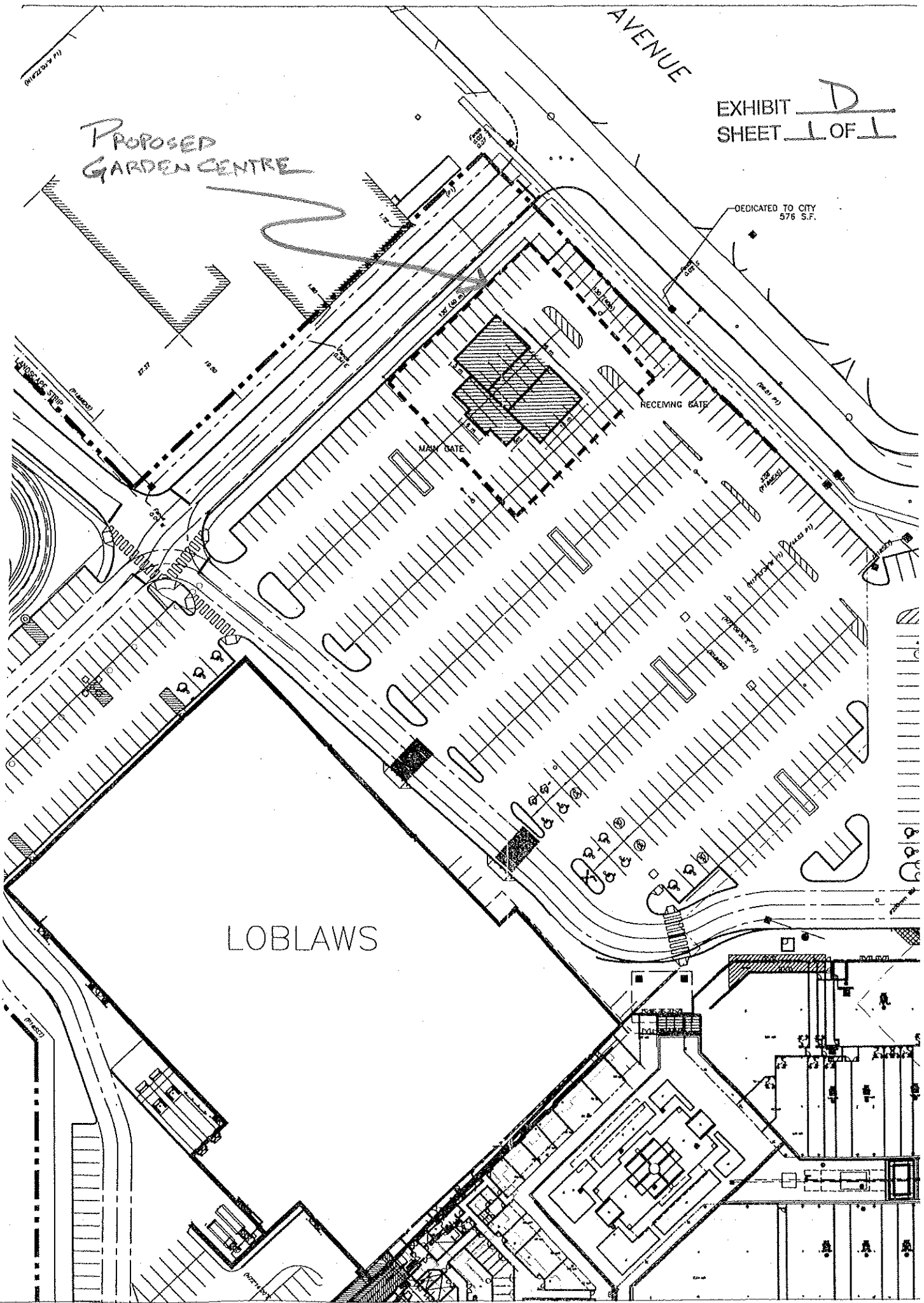
PT.

AVENUE

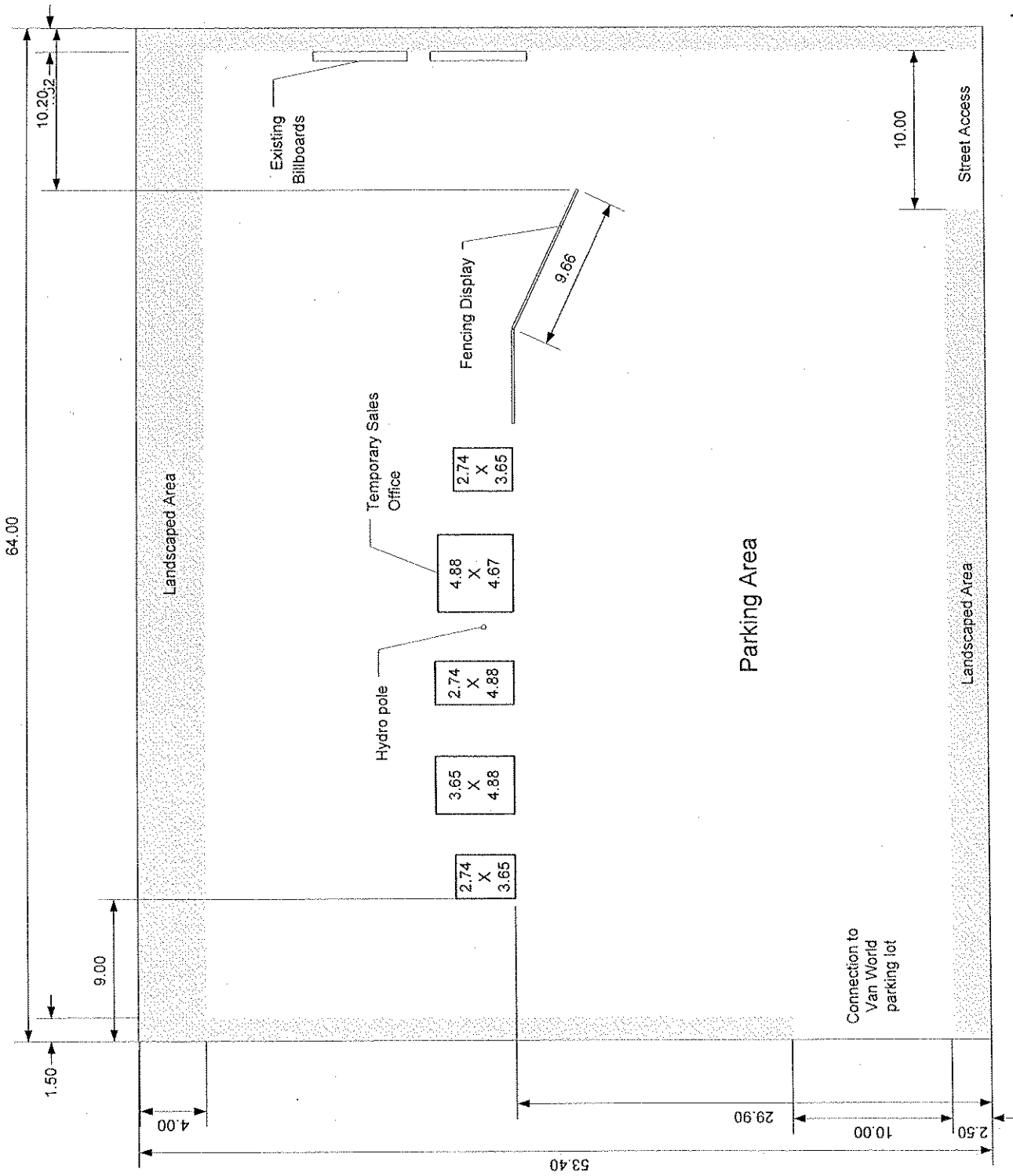
EXHIBIT D
SHEET 1 OF 1

PROPOSED
GARDEN CENTRE

DEDICATED TO CITY
576 S.F.

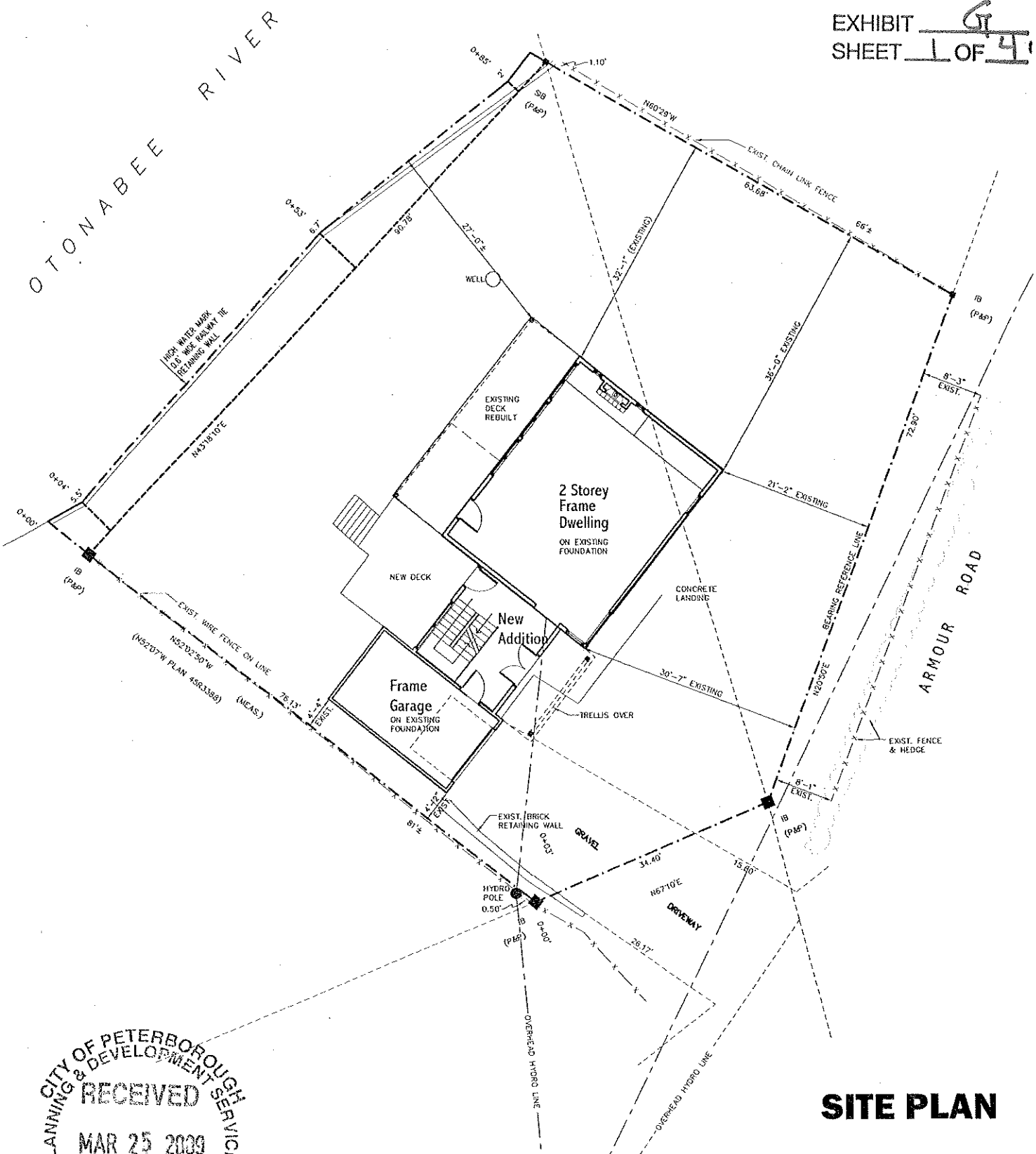


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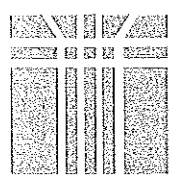
Lot Layout
 16 Lansdowne St. East
 Peterborough, ON K9J 1Y1
 Scale: 5mm = 1.75m

Edward Street

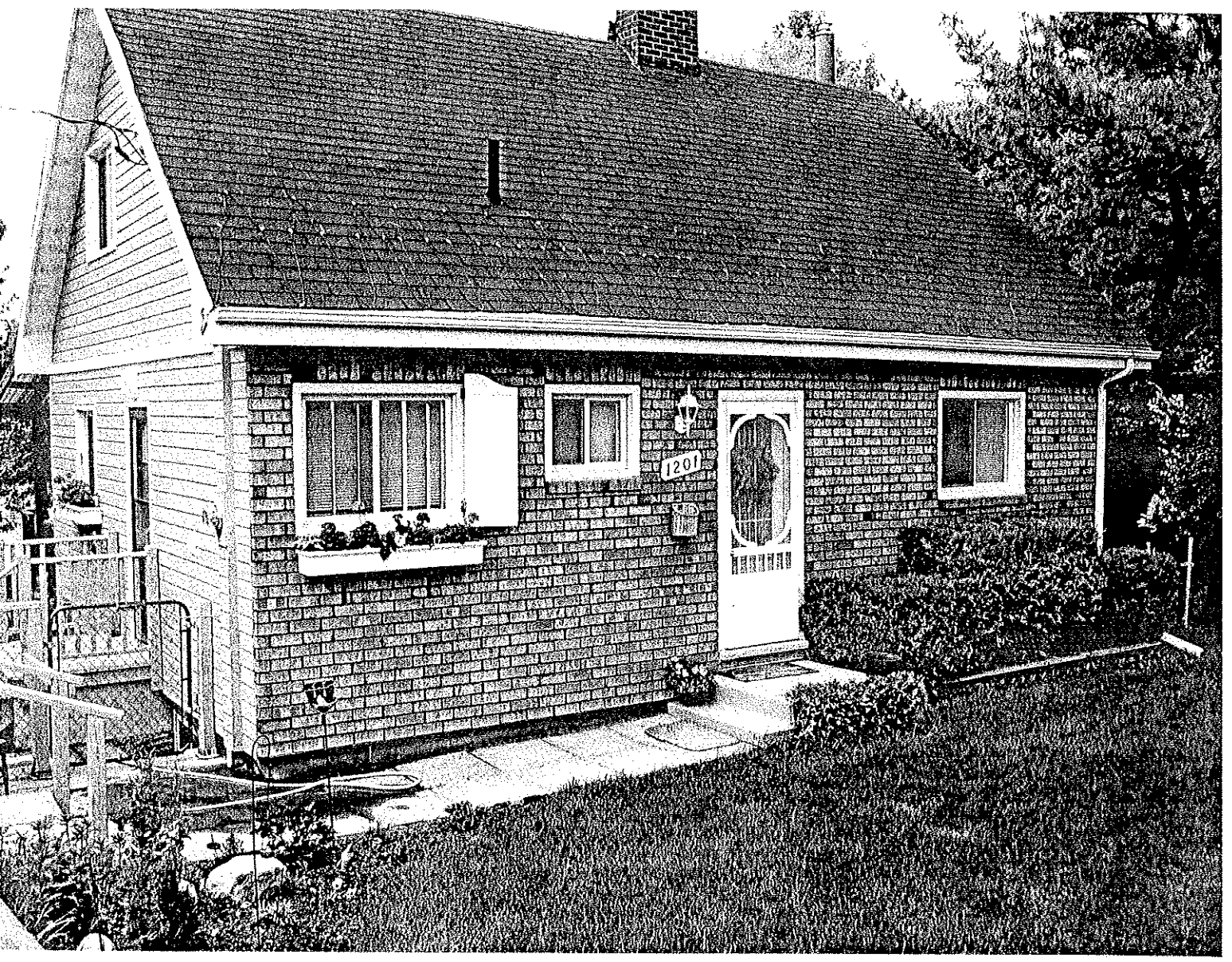


SITE PLAN

CITY OF PETERBOROUGH SERVICES
PLANNING & DEVELOPMENT
RECEIVED
MAR 25 2009
TO: _____
FILE: _____

 TREVELYAN ARCHITECT INC.
Suite 201- 379 George Street North
Peterborough, Ontario K9H 3R2
mail@trevelyan.ca
p. 705 745 7055 f. 705 745 3318

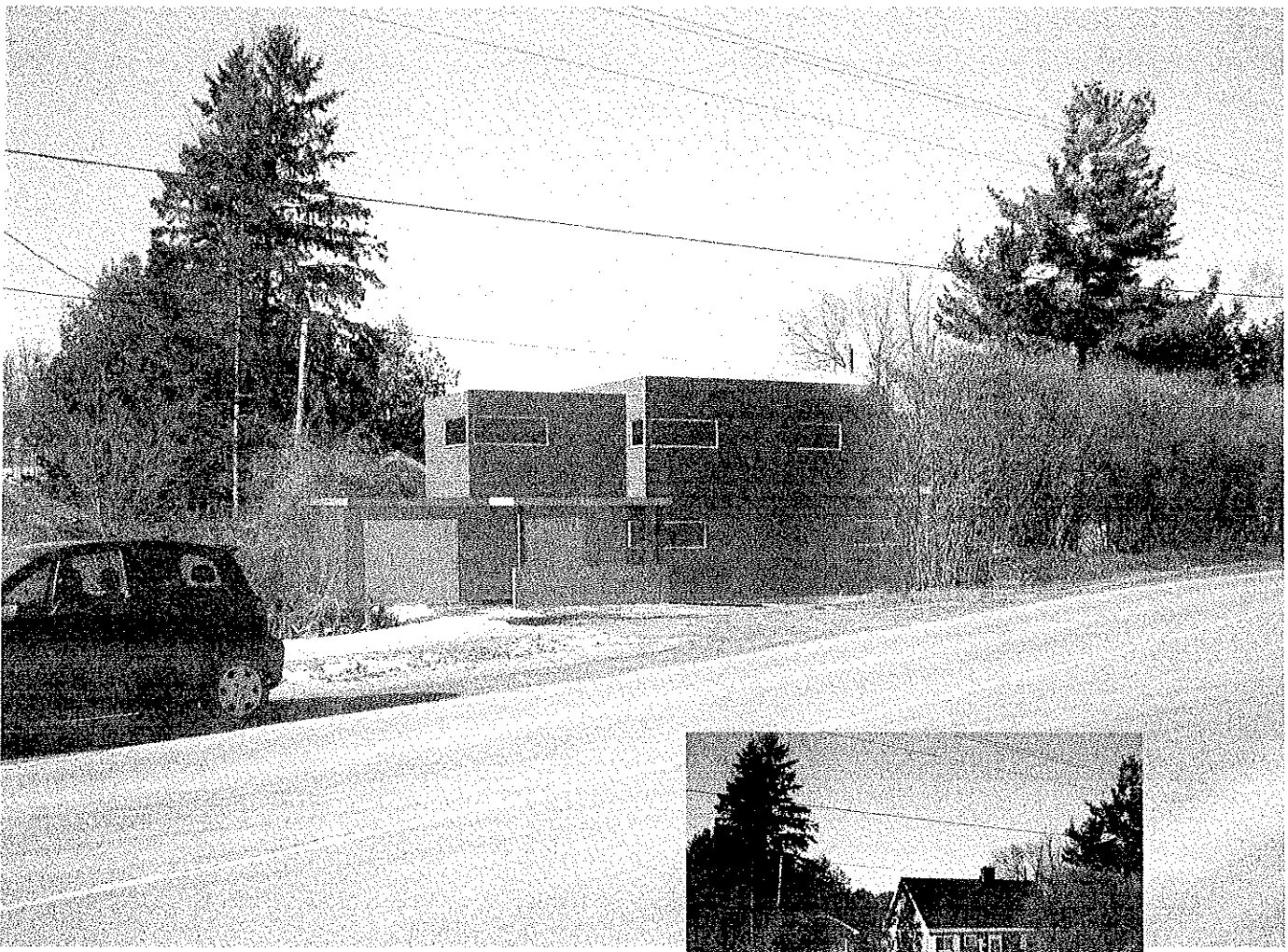
1201 Armour Road proposed addition
March 16, 2009



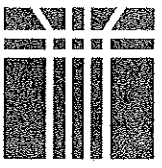
CITY OF PEABODY
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CITY OF PETERBOROUGH
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TREVELYAN ARCHITECT INC.
Suite 201- 379 George Street North
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p. 705 745 7055 f. 705 745 3318

1201 Armour Road proposed addition
March 16, 2009