

(Amended by CPC 9-10-92)

SACRAMENTO CITY PLANNING COMMISSION
1231 "I" STREET, SUITE 200, SACRAMENTO, CA 95814

APPLICANT	Hackard & Taylor, 1435 River Park Dr. Ste. 300, Sacramento, CA 95815				
OWNER	Richard Barbeau, 901 28th Street, Sacramento, CA 95816				
PLANS BY	Applicant				
FILING DATE	06-11-92	ENVIR. DET.	Negative Declaration	REPORT BY	Jeanne Corcoran
ASSESSOR'S PCL. NO.	007-0044-004				

- APPLICATION:**
- A. Negative Declaration
 - B. Planning Commission Determination:
 - 1. To allow a home occupation to have clients, customers and employees come to the home;
 - 2. To allow employees other than residents of the dwelling unit; and,
 - 3. To allow the business to occupy more than 10 percent of the gross ground floor area of the dwelling unit on 0.07 \pm developed acres in the Multiple Family (R-3A) zone (*Withdrawn by applicant 9-10-92*).

LOCATION: 901 28TH Street
(District 3)

PROPOSAL: The applicant is requesting the necessary entitlements to allow a waiver of specific restrictions of Section 11 (Home Occupation Regulations) of the Zoning Ordinance.

PROJECT INFORMATION:

General Plan Designation:	High Density Residential
Community Plan Designation:	Multi-Family Residential
Existing Zoning of Site:	R-3A
Existing Land Use of Site:	Single Family

Surrounding Land Use and Zoning:

North:	Residential & Office; R-3A
South:	Residential, Commercial & Office; R-3A, C-2
East:	Residential & Commercial; R-3A, C-2
West:	Park & Residential; R-3A

APPLC. NO. P92-180

MEETING DATE September 10, 1992

ITEM NO. 16

002229

Parking Required:	1
Parking Provided:	1
Property Dimensions:	40' X 80'
Property Area:	0.07 \pm acres (3200 sq. ft.)
Square Footage of Building:	1,376 \pm sq. ft. (total area) 767 \pm sq. ft. (Office area)
Height of Building:	25'
Topography:	Flat
Street Improvements:	Existing
Utilities:	Existing
Exterior Building Materials:	Wood Siding
Roof Materials:	Wood Shingle

Background Information Prior to 1980 the property was zoned R-5. An office use in the R-5 zone required a Special Permit issued by the Planning Commission. The owner of the property never requested or received special permit approval to occupy the structure as an office. In 1980, the Central City Plan rezoned the property (a single family residence) from R-5 to R-3A. Under R-3A zone, office use is not permitted. In 1990, a complaint was filed on this property as well as another site at the southwest corner of 27th & I Street. A representative for both properties contacted City staff regarding the zoning information and history so as to decide what avenues to pursue as far as making an application for rezoning (Exhibit D). Since this time, the property at 27th & I Street has ceased the office use and resumed the residential use as allowed under the zoning. Action was taken by the City Attorney's Office requiring the property owner of 901 28th Street to cease the office use of the property. On October 29, 1991 the property owner consented to the entry of a permanent injunction against the use of the property as an office (Exhibit E), which was endorsed by the Superior Court of the State of California on December 12, 1991 (Exhibit F). The City agreed not to enforce the injunction against the owner for a period of nine months, during which the owner would seek some relief from the Planning Department, in the form of rezoning, special permit, etc. On June 11, 1992, the applicant submitted this request for a Planning Commission determination of a Home Occupation Permit.

Project Evaluation: Staff has the following comments:

A. Land Use And Zoning

The subject site consist of one lot developed with a single family house on 0.07 \pm acres in the Multiple Family (R-3A) zone. The site is located in the Central City Design Review Area and is a listed structure. The site is also located in the recently adopted Alhambra Corridor District. The General Plan designates the site as High Density Residential. The 1980 Central City Plan designates the site as Multiple Family Residential. The surrounding land uses and zones are residential and office, R-3A to the north, residential and commercial, R-3A and C-2 to the east; residential, office and commercial, R-3A and C-2 to the south; and, park and residential, R-3A to the west.

B. Applicant's Proposal

The owner of the property is proposing to move into the house and operate his law office under a Home Occupation Permit until he chooses to retire. The applicant has informed staff that most

of his work is done by phone, and in an average week less than four clients come to the office. A Planning Commission determination is being requested since under this Home Occupation Permit the owner, Mr. Barbeau proposes to have clients come to the home, employees who do not reside at the home and use more than 10 percent of the ground floor area for the office. Before a favorable determination could be made the Planning Commission is required to find that a waiver of these restrictions involves a very unusual situation of hardship and that the general health, safety and general welfare will not be adversely affected.

C. Policy Consideration

The General Plan and the 1980 Central City Plan designates the site as residential. The site is zoned residential. Office uses are not permitted under the zoning and plan designations. Although the law office itself does not appear to have a negative impact on the surrounding neighborhood, it nevertheless represents the further encroachment of office uses in midtown, along with the gradual reduction of residential structures still used for housing.

The Central City Housing Strategy, adopted by the City Council in December 1991, recommends the preservation of residential structures, neighborhood character, and the enhancement of housing opportunities in the Central City. This proposal is inconsistent with the Housing Strategy, since it would be no different from any other office use which conducts business with clients and employees on the premises and the applicant/owner fails to reside full-time in the house.

D. Staff Analysis

The applicant has informed staff that in 1972, Mr. Barbeau purchased the site and renovated the house. In 1974, the owner Mr. Barbeau obtained building permits to renovate the home. According to the applicant's statement, the owner informed the building inspector that he would be using the home as an office. However, the building permits which were obtained for the renovation were for a dwelling unit (Exhibit G), thus requiring the inspector to inspect the renovations as a dwelling not as an office. Mr. Barbeau also applied for and received a Business Operations Tax Certificate for the last 18 years to operate a law office at this location. The tax certificate issued by the Revenue Division of the Finance Department does not grant city approval to operate a business, it is merely a tax. The issuance of a Business Operations Tax Certificate to any person does ". . .not entitle the holder to carry on any business unless he has complied with all other applicable laws of the City" (Exhibit H). Thus it was Mr. Barbeau's responsibility to pursue the proper permits to allow him to use this site as a law office.

The Central City is an area with mixed zoning and uses. One property could be zoned commercial or office while the property immediately adjacent to the property could be residential. This mixed use and zoning area fosters a greater possibility for prohibited uses occurring in residential zones without proper planning or building approvals. This problem occurs frequently in the Central City. Enforcement of such violations is mainly through neighborhood/citizen complaints.

Mr. Barbeau has stated in his application, that he will move into this home, if this determination is approved. However, Mr. Barbeau has made no effort to live at this site for the last 18 years.

Staff finds that it would be difficult for the City to confirm and enforce this requirement.

The applicant's hardship statement asserts that Mr. Barbeau would be "forced to end his legal practice prematurely, and will lose his livelihood" if the Home Occupation Permit with the waiver is not approved. This statement does not justify a hardship, since there are different options available to the owner. Mr. Barbeau could relocate his office to a legal office/commercial area and rent the house as a residential use or conform to the Home Occupation Regulations by living in the home and conducting his business at this house, without employees, and meeting clients at a public place or at his clients home/work.

The legal practice occupies approximately 55 percent (767± sq. ft.) of the ground floor area, this area is designated as living room/reception, dining room/conference, entry and office. If this office use were to locate in a commercial area the use would require two parking spaces. However, under the home occupation permit additional parking is not required, since additional traffic is not anticipated. This area appears to have adequate on-street parking, however, any other non-residential use would be required to provide the necessary parking on the site. By not providing the necessary parking on the site this use could contribute to possible future parking impacts as well as encroach further into the residential character of the neighborhood.

Lastly, this request would set a precedent for existing and future applicants of a home occupation permit to request similar exceptions. The City of Sacramento issues approximately 1,500 home occupation permits annually. The Home Occupation Permit provides an outlet for people who are unable to afford the overhead of an office or whose business is small enough so as not to require an office. The regulations are such so as not to disturb the residential flavor of the area and prevent the erosion and encroachment of non-residential uses in the neighborhood. This site is located one block north of J Street, which is a commercial street. However, I Street, where this site is located is a quiet, well maintained residential neighborhood. Although, the law office itself does not appear to have a negative impact on the surrounding neighborhood, it nevertheless represents the further encroachment of office uses in Midtown, along with the gradual reduction of residential structures still used for housing.

E. Agency Comments

This project was reviewed by Traffic Engineer, Engineering Division - Development Section, Building Inspections. The following comments were received:

Building Inspections

As a priority structure, eave fire sprinklers would be required.

Design Review

Design Review staff inspected the site and observed the stairs to have been poorly repaired without Design Review approval. Staff would recommend that the owner/applicant be required to repair the stairs with approval of the Design Review staff.

F. Neighborhood Comments

This project was reviewed by Sacramento Old City Association (SOCA), Midtown Business Association and Marshall School Neighborhood Association. Letters have been received from Marshall School Neighborhood Association and SOCA opposing this request (Exhibits I & J).

Environmental Determination

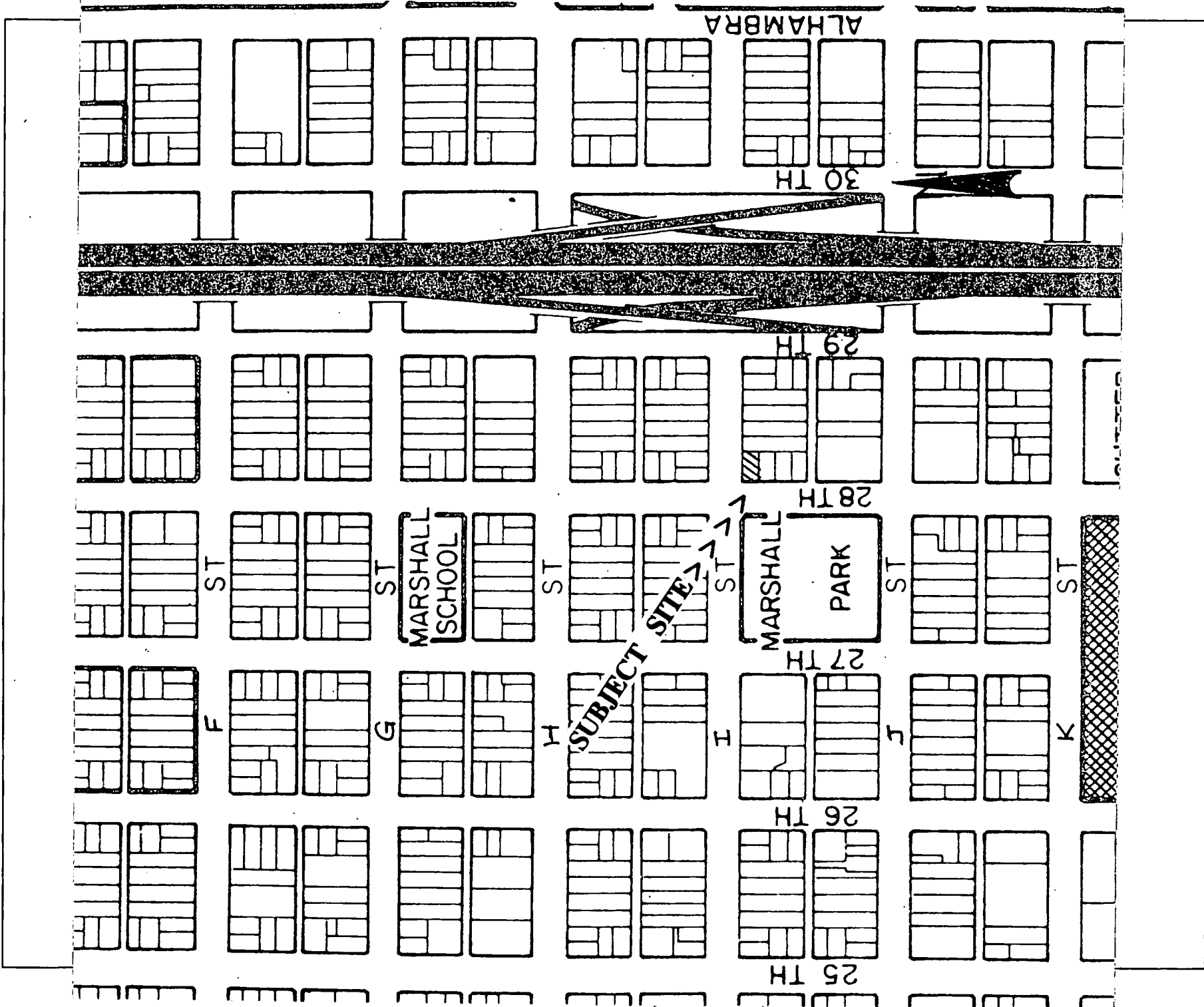
The Environmental Services Manager has determined that the project, as proposed, will not have a significant impact to the environment; therefore, a Negative Declaration has been prepared in compliance with Section 15070(a) of the California Environmental Quality Act Guidelines.

Recommendation Staff recommends the Planning Commission:

- A. Ratify the Negative Declaration;
- B. Deny the Planning Commission Determination to:
 - 1. allow a home occupation to have clients, customers and employees come to the home, based on findings of fact which follow;
 - 2. allow employees other than residents of the dwelling unit, based on findings of fact which follow; and,
 - 3. allow the business to occupy more than 10 percent of the gross ground floor area of the dwelling unit, based on findings of fact which follow (*Withdrawn by Applicant 9-10-92*).

Findings of Fact

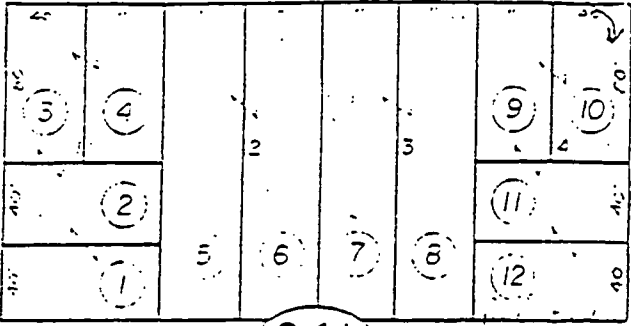
- 1. The project is not based upon sound principles of land use in that:
 - a. the site is zoned residential,
 - b. the site does not have adequate parking and
 - c. the project would set a precedence for existing and future applicants of home occupation permits.
- 2. The project will be detrimental to the surrounding residential neighborhood, in that
 - a. the office use is an encroachment into the residential neighborhood and
 - b. the office use is an erosion of the residential stock in the Central City.



VICINITY MAP

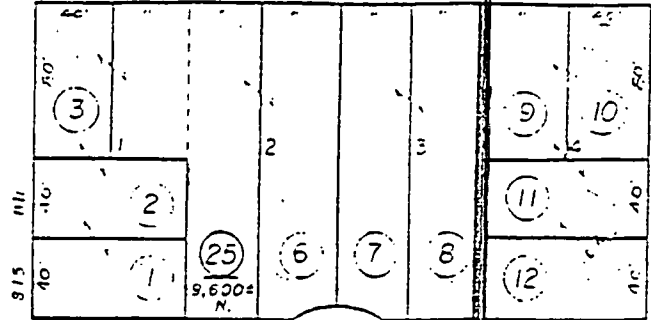
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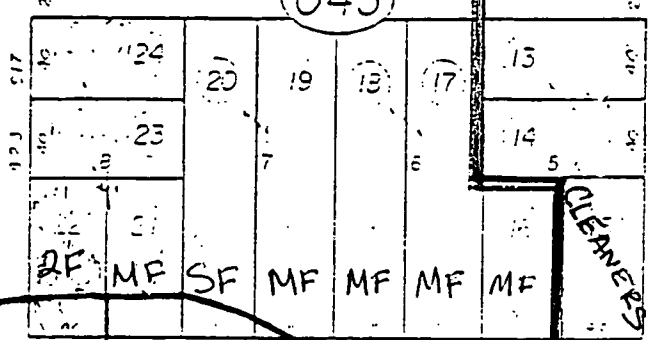
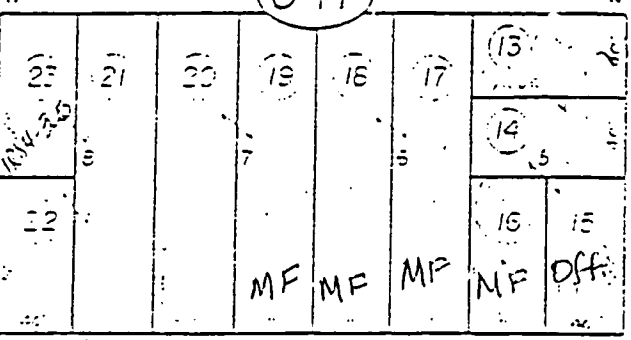


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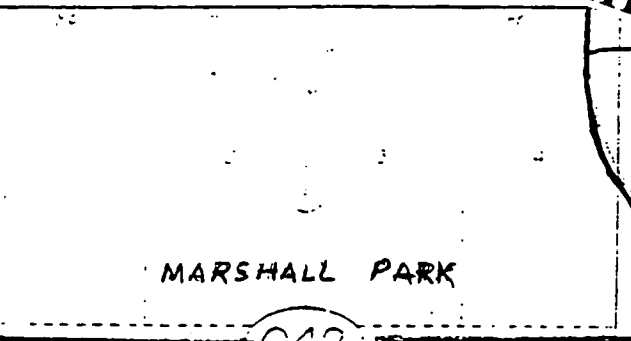


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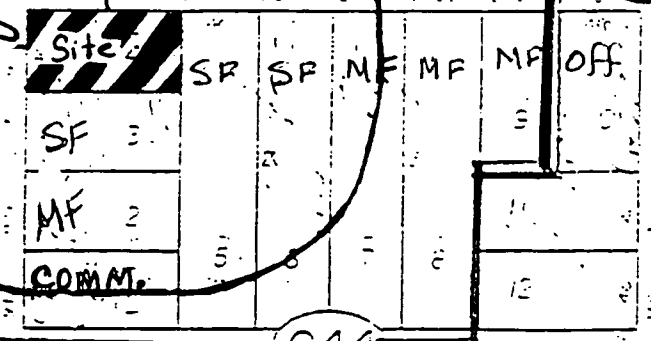
SUBJECT SITE

R-3A

C-7

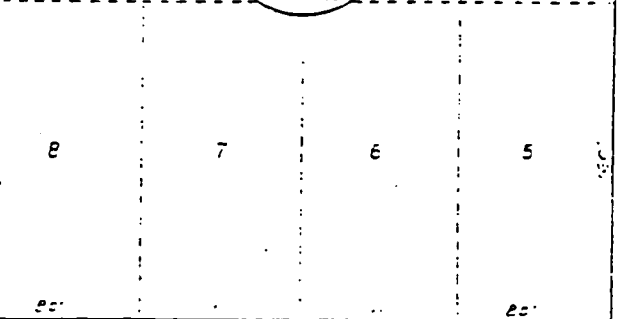


MARSHALL PARK



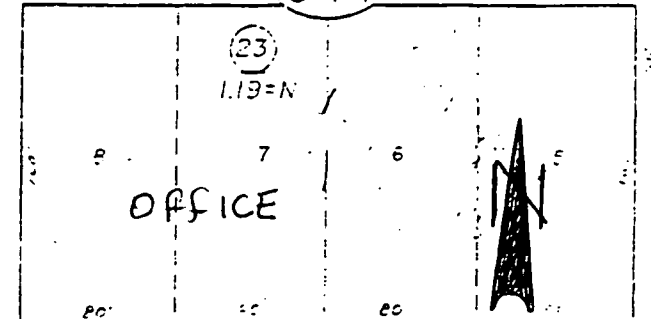
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28th



OFFICE

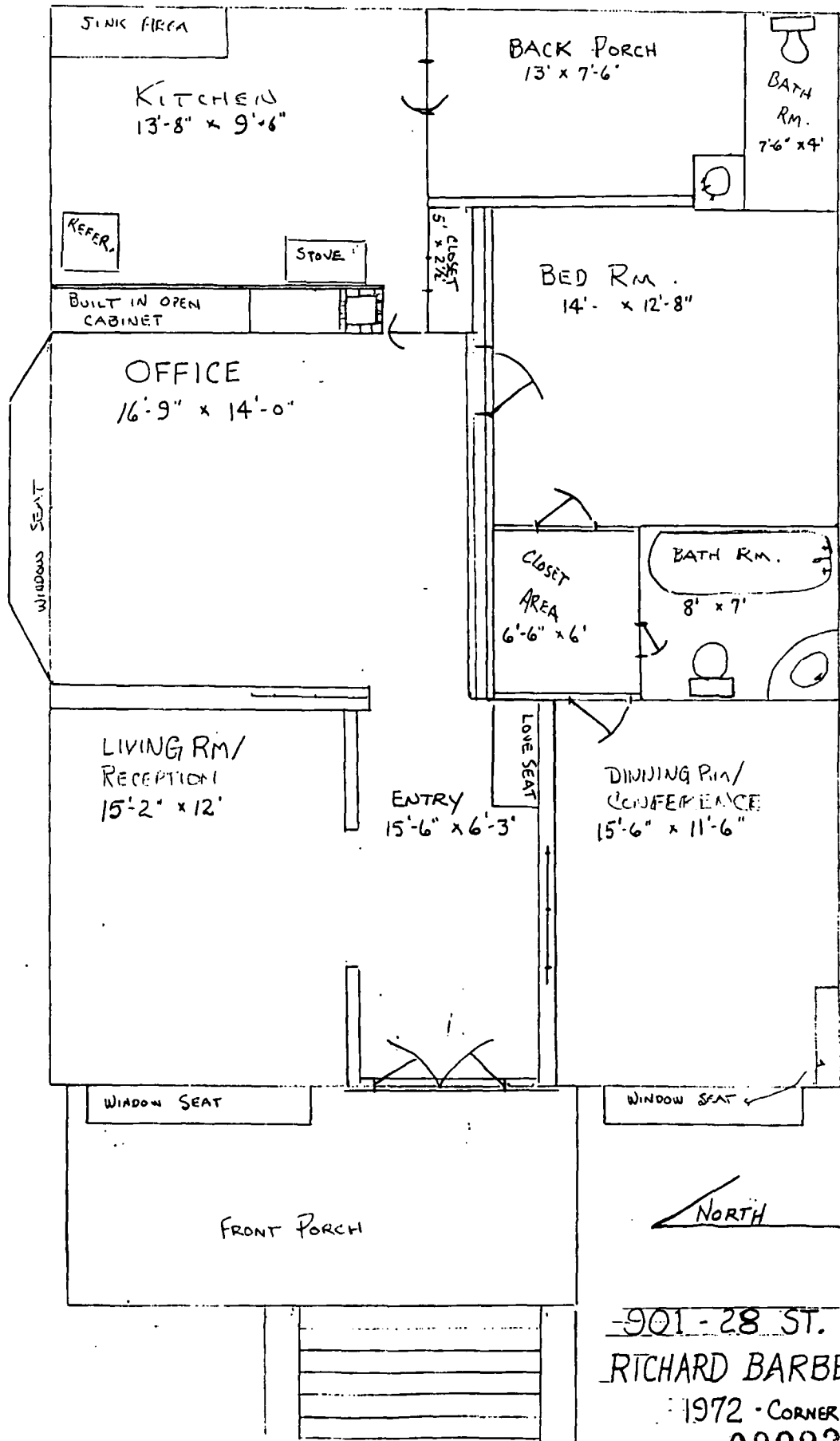
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LAND USE AND ZONING MAP

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SITE PLAN

SCALE = $\frac{1}{4}$ " = 1 FT.

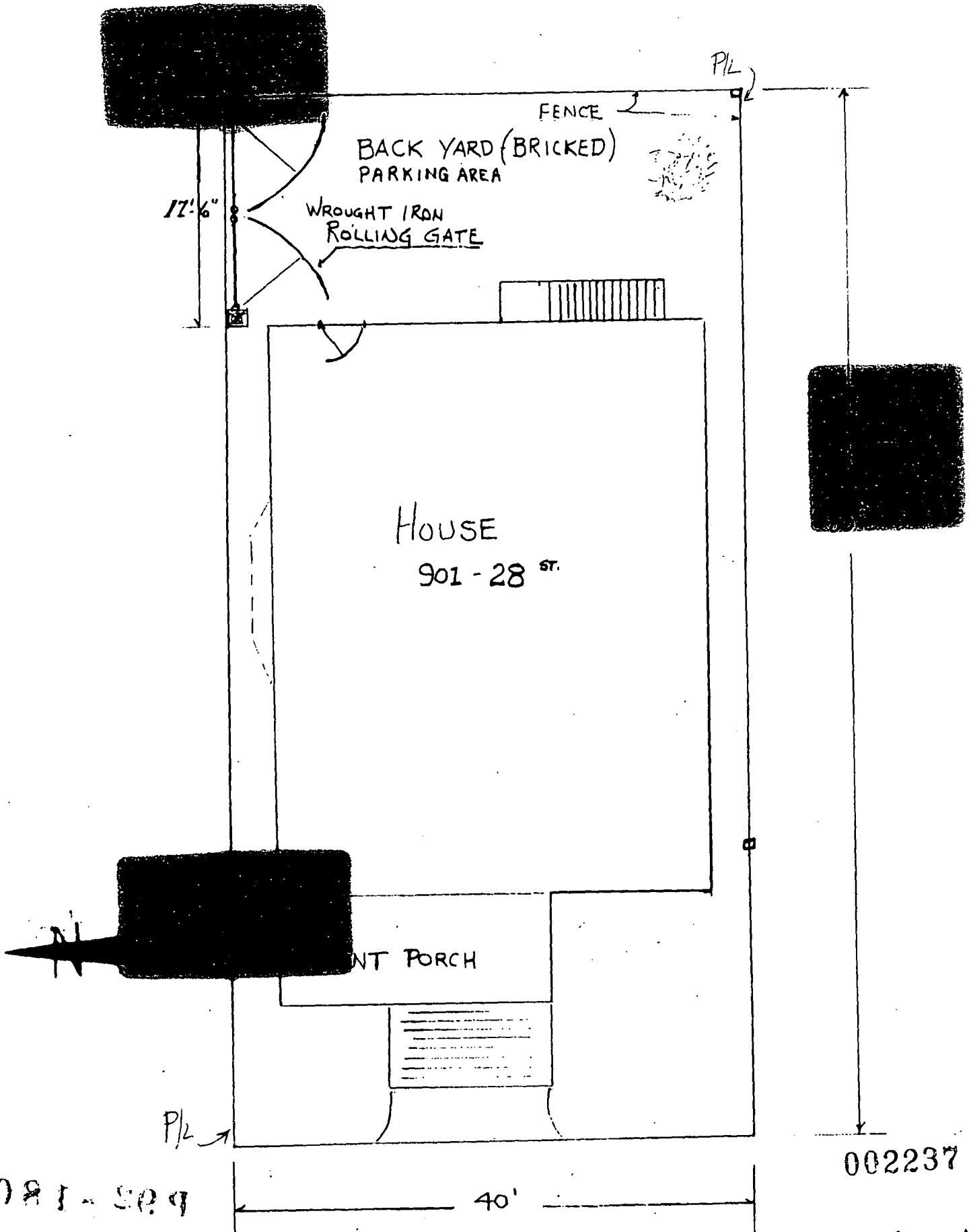


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901-28 ST.
RICHARD BARBEAU OWNF
1972 - CORNER LOT 40'
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PLOT PLAN
SCALE 1/8" = 1 FT.

SITE PLAN



081-509

40'

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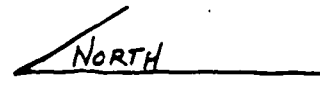
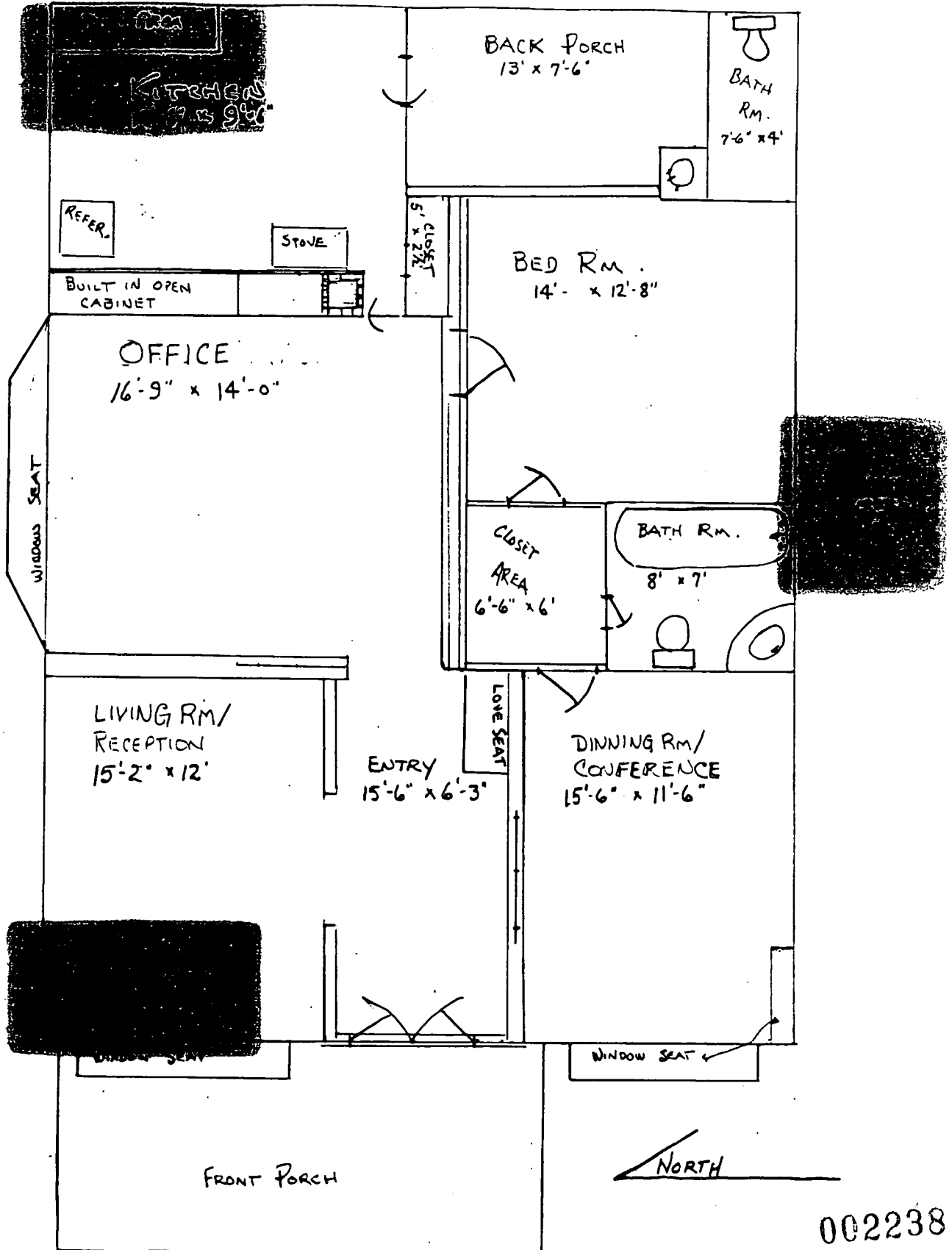
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ITEM NO. 16

SCALE = 1/4" = 1 FT.

EXHIBIT B

FLOOR PLAN



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901--28 ST.

RICHARD BARBEAU OWNER

1972 - CORNER LOT 40' x 80'

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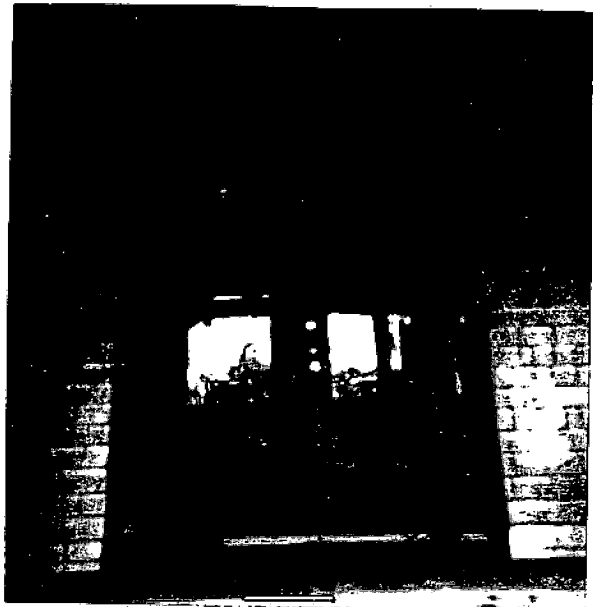
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EXHIBIT C
ELEVATIONS



Front
WEST



Entrance



Backyard / Parking
EAST



OFFICE

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TITELING 16

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MAP

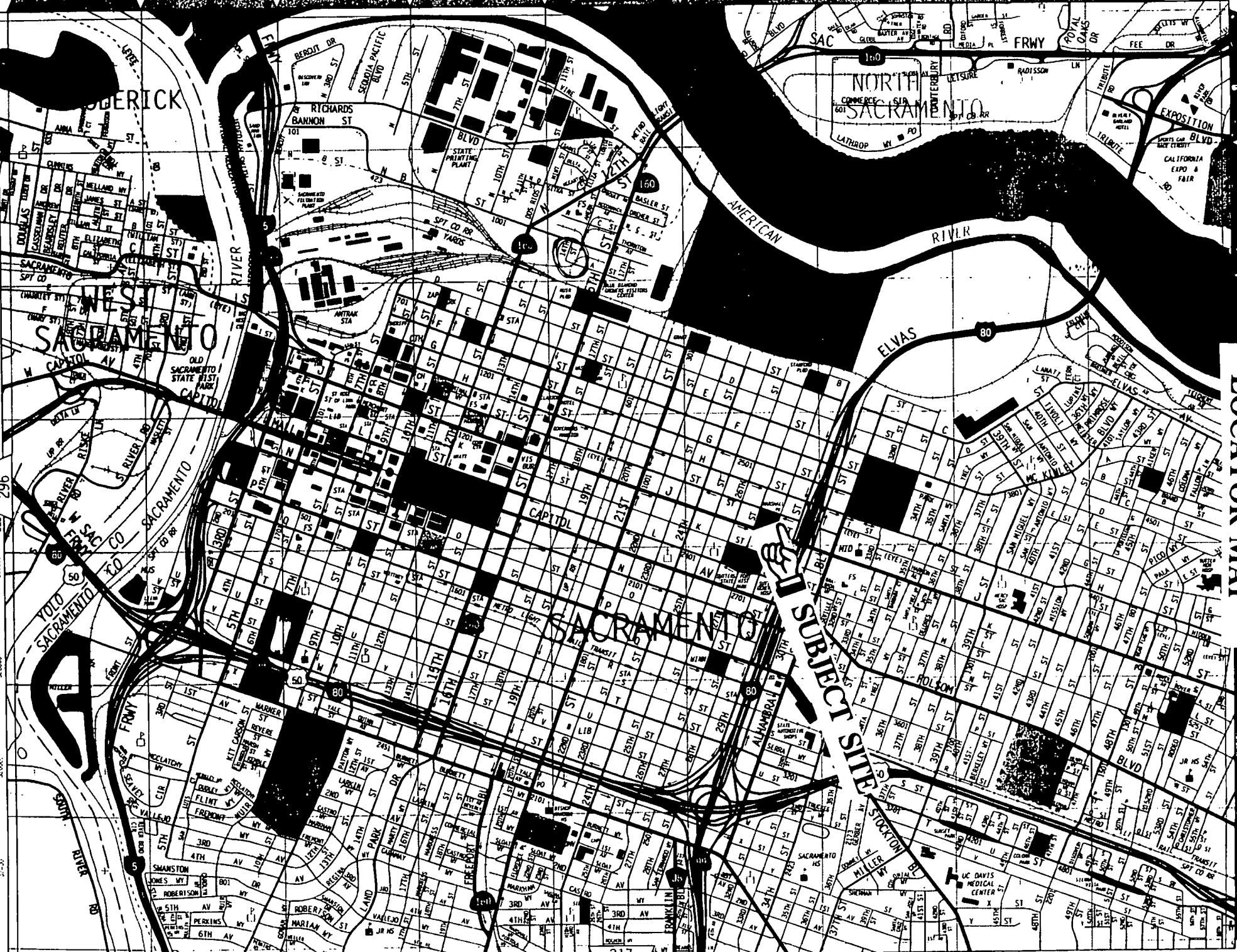
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LOCATOR MAP

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CITY OF SACRAMENTO
CITY PLANNING DIVISION

JUN 25 1992

RECEIVED

OFFICE OF THE
CITY ATTORNEY

SHARON SIEDORF CARDENAS
CITY ATTORNEY

CITY OF SACRAMENTO
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SUITE 700
SACRAMENTO, CA
95814-2717

PH 916-264-5346
FAX 916-264-7455

June 24, 1992

MEMORANDUM

TO: Jeanne Corcoran, Assistant Planner (3523)
FROM: Catherine H. Brown, Deputy City Attorney *CHB*
RE: City v. Barbeau

I understand that Mr. Barbeau submitted an application for a variance and that this matter is now assigned to you. For your information, I have enclosed a copy of the Stipulation for Judgment that was agreed to by Mr. Barbeau in this matter. The stipulation is the settlement agreement that was entered into by the City and Mr. Barbeau, settling litigation in which the City sought to prevent Mr. Barbeau from maintaining his office in a residential zone.

Basically, Mr. Barbeau agreed that he would apply to the City for a variance (or other relief) from the applicable zoning that forbids the use of his house located at 901 - 28th Street for an office. If Mr. Barbeau fails to obtain relief from the zoning by July 28, 1992, the City can take action in court to force Mr. Barbeau to cease the office operation.

Please let me know what action is taken on the application. Feel free to call me if you would like any other information about this matter.

CHB:rmm

chb\nuisance\corcoran.mem

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SHARON SIEDORF CARDENAS, City Attorney
California State Bar No. 60011
CATHERINE H. BROWN, Deputy City Attorney
California State Bar No. 99387
CITY OF SACRAMENTO
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Sacramento, California 95814
Telephone: (916) 449-5346

FILED
Filed
DEC 9 1991
By BARBARA VAUGHN, Deputy

Attorneys for Plaintiff
CITY OF SACRAMENTO

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

CITY OF SACRAMENTO, a)
municipal corporation,)
)
Plaintiff,)
vs.)
)
RICHARD F. BARBEAU, and)
DOES I through XX, inclusive,)
)
Defendants.)

Case No. 519323
STIPULATION FOR JUDGMENT

Plaintiff, CITY OF SACRAMENTO, and defendant, RICHARD F. BARBEAU, stipulate and agree as follows:

1. The Court will enter judgment in this action, pursuant to this stipulation, on the request of the City of Sacramento, in the form attached.
2. On entry, the judgment will be final.
3. The judgment will not be enforced by the City of Sacramento prior to July

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28, 1992.

4. Before July 28, 1992, defendant may seek relief from the Sacramento Planning Department, or other appropriate city authorities, from the current zoning regulations applicable to the property at issue, located at 901 28th Street (herein "the property").

5. If the defendant brings his use of the property into conformity with the law by July 28, 1992, the judgment against him in this action will be vacated.

Dated: 12/9, 1991

Catherine H. Brown
Attorney for City of Sacramento
Plaintiff

Dated: 12-2, 1991

Donald Clark
Attorney for Richard F. Barbeau
Defendant