

Docket Item #3
BZA CASE #2011-0009

Board of Zoning Appeals
July 14, 2011

ADDRESS: 122 PRINCE STREET
ZONE: RM, RESIDENTIAL
APPLICANT: JAMES AND CHRISTINE GARNER, OWNERS, BY M. CATHERINE PUSKAR, ATTORNEY

ISSUE: Variance to construct a new single family house in the required east side yard and rear yards.

CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
3-1108(C)(1)	Side Yard*	5.00 ft	2.00 ft	3.00 ft
3-1106(A)(3)(a)	Rear Yard**	16.00 ft	3.00 ft	13.00 ft

* Measured from the western edge of a private alley

**Based upon a building height of 23.33 feet to the eave line of the rear shed roof.

Staff **recommends approval** of the variances because the applicants have demonstrated a hardship.

If the Board grants the requested variance, the applicant must comply with the code requirements included under the department comments and must submit the following prior to the release of a Certificate of Occupancy: (1) a survey plat prepared by a licensed surveyor confirming building footprint, setbacks, and building height compliance from average preconstruction grade and (2) certification of floor area from a licensed architect or engineer. The variance must also be recorded with the deed of the property in the City's Land Records Office prior to the release of the building permit.



BZA CASE #2011-0009 CONTEXT MAP



I. Issue

The applicants propose to build a two-story single-family dwelling located in the required east side and south rear yards at 122 Prince Street. The case has a long history, including two prior variance requests, a BZA appeal and litigation against the City.

II. Background

The subject property, a lot of record as of February 10, 1953, has 36.00 feet of frontage facing Prince Street, a depth of 44.33 feet and a lot area totaling 1,773 square feet.¹ A private alley 8.00 feet wide abuts the property along the east property line. An existing curb cut is located near the east side property line. It provided access to a recently demolished metal garage structure which at one time provided off-street parking for the property at 130 Prince Street. The curb cut will be closed as part of this project.

III. History of BZA Variance Applications, BZA Appeal, Litigation and Settlement

This case originated in 2003 when the applicants' sought to build a single-family house on the only vacant building site on the 100 block of Prince Street.

Variance Applications

Applications for variances were filed in 2003 and 2005 associated with a proposed new house at 122 Prince Street. In each of those cases, staff recommended denial of the applications. Because a reasonably sized house could be built without a variance, and based on the prior hardship standard of "approaching confiscation," staff was unable to find the requisite hardship. The BZA cases were subsequently withdrawn. The two prior cases involved the following requests for variances:

1. BZA # 2003-0064: A request for a rear yard variance of 16 feet was filed. After a hearing, the matter was deferred and an additional variance was added for a 5 foot east side yard. The applicant deferred the case prior to a decision in order to resolve legal issues regarding ownership of the alley.
2. BZA # 2005-0023: A request for a side yard variance of 5 feet and rear yard variance of 14 feet was filed. After a hearing, the applicants withdrew the case, again, because of the legal issues raised regarding the alley.

In each of the above cases, and despite requests for side yard variances, there was discussion regarding the ability of the applicants to use land within the alley as a side yard. The applicants claim their deed and survey show that their lot extends to the center of the alley; they therefore claim the right to use alley land as the required side yard for the new house and to comply with the RM zone requirements.

¹ The size of the lot and the property lines being used in this report are part of a settlement staying litigation. The applicants have agreed to consider the lot as terminating at the west edge of the alley for purposes of this BZA application only. More information about the settlement is provided under the following "History" discussion.

BZA Appeal

The applicant then asked for a zoning determination about their ability to use land within the alley as the required setback. The Director of Planning and Zoning issued a determination on February 19, 2010, explaining that the zoning ordinance requirements for side yards preclude the use of alley land because a side yard must remain open, unoccupied and unobstructed, and a private alley used by adjoining owners does not meet this test. The applicants appealed the Director of Planning's decision. The BZA denied the appeal and upheld the Director of Planning and Zoning's determination

Litigation and Agreement to Stay Litigation

Subsequently, the BZA's decision was appealed by the applicants to the Circuit Court. Prior to trial, the parties met and determined that there was a mutually agreeable goal: the design and construction of a legally permissible house on the subject property. From the City's perspective, the lot is buildable; staff has a strong interest in working with an applicant to achieve the best design, orientation and siting of a new house at this important location. Without the settlement agreement, staff might have had much less input into the design and massing. In addition, under the settlement agreement the applicant has agreed to consider the east property line of the lot as terminating at the west edge of the alley. The lot, frontage, FAR, and open space dimensions change if the lot extends to the center of the alley.

From the applicants' perspective, if they can achieve a suitable house, even though it may be smaller than legally permitted (e.g., as to height and FAR), then they too avoid the time and expense of an unnecessary trial. Thus the parties agreed to delay litigation while they met to discuss a potentially mutually agreeable design of a new house. As to the side yard setback, the parties compromised on the dimension. The applicants agreed not to assert their arguable right to use the alley land for the set back, and to set the house back 2.0 feet instead of 1.0 foot from the western edge of the alley. The City Staff agreed that a side yard variance of 3.0 feet in this location could be acceptable *if* the applicants designed a house that staff otherwise could support – both as to BZA and BAR issues. The Staff's agreement in this regard is limited to staff support and does not and cannot in any way affect the BZA's ability to make a decision in this case.

The parties have worked through several iterations of a design for a single family home. The applicants have modified the size, location, height, roof form and architectural detail to reach the proposal now before the BZA and scheduled for BAR hearing on July 20.

IV. Description

The proposed house will be a two-and-one-half story, three-bay, brick townhouse in a late Federal architectural style. The design of the house takes architectural cues from existing historic buildings on the block.

The proposed single-family detached dwelling, as shown on the submitted plat, is located on the front property line facing Prince Street, 2.00 feet from the west edge of the private

alley, 11.00 feet from the west side property line and 3.00 feet from the rear property line. A variance of 3.00 feet from the west edge of the private alley and 13.00 feet from the rear property line is required.

As seen from Prince Street, the house is 28.75 feet in height to the mid-point of the gable roof; the overall building height as seen from Prince Street is a little over 34.00 feet to the roof ridge. The zoning allows a house of the proposed design to be 45 feet in height.

The proposed house will comply with the floor area, west side yard setback, building height and open space requirements for a new detached single-family dwelling in the RM zone.

In the Old and Historic District, parking requirements are waived if access to off-street parking for a new house is not feasible from an alley or court. In this case, although there is an adjacent alley, vehicular access from the alley to the lot is not feasible given the narrow 8 feet width of the alley, and its historical use for pedestrian access only. The City typically requires a minimum of 10 feet of width for vehicular access. The applicants propose to close an existing curb cut apron on Prince Street to be consistent with the development pattern along the 100 block of Prince Street. New curb and gutter to match the adjacent sidewalk surface/character will be required.

V. Historic Location

The 100 block of Prince Street, also known as “Captain’s Row,” has original cobblestones in the street, and some of the few extant frame 18th-century houses found in the City. Initial research on the subject property and the surrounding properties in the 100 block of Prince Street reveal that this is one of the most historic blocks in the City, with every building except one dating from the 18th or 19th centuries. Early *Sanborn Fire Insurance Maps* beginning in 1885, depict both the north and south sides of Prince Street in a configuration similar to what exists today with buildings heights at two, three or three and one-half stories.

Although this block was devastated by fire in 1827, several façades and materials likely date from the 18th- and early 19th-centuries because original bricks and other materials were reused during post-fire reconstruction. Therefore, this block is an excellent representation of architecture and materials from the City’s early period; maintaining and protecting the existing historic buildings, materials and context is of paramount importance in this particular location.

Significantly, the lot immediately west, at 126 Prince Street, includes one of the City’s only remaining examples of late 18th-century rough sawn wood siding. It is a very simple, two-story frame house and, while portions of the siding have been repaired, the east elevation, facing the new proposed house at 122 Prince, exemplifies historic building techniques. Specifically, during the late 18th and early 19th century, it was common practice in Alexandria to paint only the front, more refined facade of a frame dwelling,

leaving the utilitarian stained or unpainted siding on side and rear sides of a house. The new house at 122 Prince Street is placed 11.00 feet from the east elevation of the house at 126 Prince Street in order to provide the greatest reasonable view of the historic adjacent building wall.

Staff examination of the house indicates that at least portions of the house survived the January 1827 fire. There is evidence of charring of some timbers, but the structural system appears to be largely intact. The weatherboard siding on the east elevation appears never to have been painted. Several years ago, restoration work was undertaken on this siding; severely deteriorated siding was partially replaced with siding that was salvaged from the rear elevation and the rear of the house was re-sided with new replacement siding.

When the BAR reviews new construction in the historic district, it is concerned with the retention of historic fabric and the compatibility of new construction with nearby buildings of historic merit. In this case, attention will be made to ensure that any new construction is compatible with and does not overwhelm the adjacent historic buildings. Any new construction should not call attention to itself or detract from character-defining features of the adjacent historic buildings by being more ornate or of a higher style than they are. Thus in this case, for both BAR and BZA purposes, staff has been concerned that a new house at 122 Prince Street respect the importance of its neighbor to the west, at 126 Prince Street, and generally the 100 block of Prince Street as a whole.

With these concerns in mind, staff has met with the applicants on multiple occasions and, encouraged the applicants to change their design in significant ways. At staff's urging, they have reduced the height of the house from three stories to two-and-one-half stories, reduced the height of the rear ell from three stories to two, and simplified the architectural ornamentation. The negotiations yielded a building that both the BAR and zoning staff could support.

VI. A Series of Evolving Building Elevations and Potential Solutions

After eight years, two variance cases, one BZA appeal and one court case, the opposing parties have negotiated a building design which staff finds to be appropriate for the 100 block of Prince Street from the standpoint of both zoning and historic preservation.

From 2003 to the present the building height of the proposed house has been reduced by over 5.00 feet, reduced in depth by 3.00 feet and reduced in floor area by 146 square feet. The building has remained 23.00 feet wide facing Prince Street.

Attached is a table and building elevations that illustrate the change over time in the proposed 122 Prince Street house as to size and location.

VII. Master Plan/Zoning

The subject property was zoned RM, residential and has been so zoned since adoption of the Third Revised Zoning Map in 1951. In 1992 the property is identified in the adopted Old Town Small Area Plan for residential land use.

VIII. Requested Variances

Section 3-1108(C)(1), Side Yard:

The RM zone requires a lot that is 35 feet or wider to provide two side yards of a minimum of 5.00 feet each. The proposed dwelling is located 2.00 feet from the western edge of a private alley. The applicants request a variance of 3.00 feet.

Section 3-1106(A)(3)(a), Rear Yard:

The RM zone requires a detached residential dwelling to provide a minimum rear yard setback of 16.00 feet or two feet of building height for each foot of setback whichever is greater. The proposed dwelling is located 3.00 feet from the rear property line. Based on a building height of 23.33 feet to the eave line of the shed roof facing the rear property line a rear setback of 16.00 feet is required. The applicants request a variance of 13.00 feet.

IX. Criteria for Variances of section 11-1103

To grant a variance, the Board of Zoning Appeals must determine that a unique characteristic exists for the property. Section 11-1103 of the zoning ordinance lists standards that an applicant must address and that the Board believes exists and thus warrants varying the zoning regulations.

- a. The particular physical surroundings, shape, topographical condition or other extraordinary situation or condition of the specific property involved would effectively prohibit or unreasonably restrict the utilization of the property or would constitute a clearly demonstrable hardship, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. The conditions upon which the petition for a variance is based are not applicable generally to other property within the same zoning classification;
- c. The property was acquired in good faith and any hardship produced by the ordinance was not created by the owner of such property;
- d. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located, or diminish or impair the values thereof;
- e. The proposed variance will not impair an adequate supply of light and air to adjacent property, or cause or substantially increase congestion in the public streets, or increase the danger of fire or the spread of fire, or endanger the public safety;
- f. The variance, if granted, will not alter the essential character of the area or be a substantial detriment to adjacent property;
- g. The strict application of this ordinance would produce undue hardship;

- h. Such undue hardship is not shared generally by other properties in the same zone and vicinity; and
- i. No other remedy exists whereby the same relief was, is or may be available from another approval body of the city as part of its review of a site plan or other development application.

X. Applicant's Justification for Hardship

The applicant argues that because the property is an atypical lot in the RM zone, being wide and shallow as compared to others, a new house with the two side yards and rear yard setbacks will create a footprint different from most houses in the RM zone and in the Old and Historic District particularly along the 100 block of Prince Street. Further, placing the house consistent with the RM side yard requirement on the east side will negatively impact the view of the historic, original, unpainted wood siding on the adjacent house to the west (126 Prince Street) and potentially prevent BAR approval of the house's development. To meet the requirements of both the RM zone and the Old and Historic District would prevent reasonable use of the property as the desired footprint of the house envisioned under these two sections of the zoning ordinance.

XI. Staff Analysis

It is an understatement to say that Captain's Row is an especially important street in Alexandria. The streetscape, its buildings and the street itself typify the best of Old and Historic Alexandria Historic District, and contain key examples of the City and nation's architectural history. Because of the importance of the location, building a new single family house on the 100 block of Prince Street presents a significantly difficult challenge requiring professional sensitivity.

The current case is the result of 10 years of disputes, appeals and litigation. The City has vigorously opposed earlier proposals; it has opposed the property owners' legal and zoning interpretations and is willing to litigate them. Staff's steadfast interest over the history of this case reflects its understanding of the need for careful treatment of any proposed development at the subject location. The current case before the BZA shows the result of staff's efforts over time. It also shows the applicants' willingness to compromise their desires for the sake of the important context in which the new house will be located. The result is a proposed new house that requires the two variances outlined above.

Staff supports the two variances, not only because the result is a good development compatible with its historic context, but also because the applicants' case meets the legal standards for the grant of a variance. Those standards, as set out in detail above, can be summarized in this case by the following questions:

Are this property and its circumstances unique?

The fact that this case concerns a new house in Old Town and on the 100 block of Prince Street, by definition, makes it unique from other situations. The zoning regulations and

requirements in the Old and Historic District are designed to apply to *old* buildings. Therefore, although there have been a few instances of new houses over time, this case presents one of the rare instances of that circumstance. As concerns the BZA, with its focus on the application of zoning, it is important to note that the RM zone regulations have been designed especially for Old Town and its historic buildings. Thus they are especially intended to apply to additions to historic buildings, and are rarely used for new houses on vacant lots.

Not only is the new house construction unusual, the lot at 122 Prince Street has a different size and configuration than most others in Old Town, the RM zone, and Captain's Row. The lot is, for example, wider (36') than the other lots on the 100 block of Prince Street, which range from 15 to 29.5 feet wide. The lot is also shallower (44') than most others. A typical Old Town residential lot in the southeast quadrant is 115-125 feet deep. On the 100 block of Prince Street, two-thirds of the lots are deeper than the subject property. There are rear yards as part of some of the longer lots; however, while corner conditions typically result in shorter, shallow lots, on the 100 block of Prince Street, a full 50% of the shallow lots have no rear yard whatsoever. As to side yards, they are an anomaly on the 100 block of Prince Street, although there are a few alleys and prior horse alleys providing for separation. No other lot on the block includes one side yard, let alone two side yards.

Thus, there is little that is typical about this case and the conditions to which the zoning applies are not applicable generally to other property.

Will the proposal alter the essential character of the area, be a substantial detriment to adjacent property or the public welfare, or be harmful to other property in the neighborhood?

BZA vs. BAR criteria

Some have suggested that staff's support for the requested variances in this case relates to the BAR and historic district criteria, and that those criteria should not be considered as part of the BZA case. While it is true that staff sought to find a design solution that would work for both BZA and BAR, it is not true that the BAR issues are irrelevant to the BZA question. Section 11-1103 (f) specifically requires that the BZA determine whether "the essential character of the area," will be negatively affected if variances are granted. Section 11-1103(d) requires a finding that the new house will not diminish the public welfare, property values or the neighborhood generally before granting a variance. Both legislative criteria ask the BZA to review the neighborhood character and ensure that any variance be compatible with the surrounding area. It is not unusual to have variance cases arise in Old Town in the RM zone and that the BZA is asked to be cognizant of historic district concerns. Whether the case arises in Beverly Hills, Del Ray, or Old Town, the question relates to character, compatibility and neighborhood and not to the BAR specifically.

In this case, of course, the neighborhood is the Old and Historic Alexandria District and the 100 block of Prince Street, one of the most history blocks in the City. The attached BAR Comments recount the history of the block and the fact that it is largely historically intact. The house to the immediate west is especially important historically because it survived the 1827 fire and demonstrates building techniques of the time.

As a general matter, when considering any changes to 122 Prince Street, careful attention must be made to ensure than any new construction is compatible with and does not overwhelm the adjacent historic buildings. Further any new construction should not call attention to itself or detract from the character-defining features of the adjacent historic buildings by being more ornate or high style than they are. Therefore, any new house must be compatible from the standpoint of location, design, massing, height, and perceived importance.

East side yard

The variance requests in this case both relate to yard requirements. As to the side yard variance of three feet, historic development patterns in Alexandria often did not have any side setbacks, as the majority of houses were townhouses constructed on the lot line and often attached to their neighbor on at least one side. This pattern, without side yards, is clear on the 100 block of Prince Street. Therefore, having two side yard setbacks of at least five feet, as required by the zoning ordinance, would actually call more attention to the proposed house because it would appear to be the only single family detached house on a block of row houses. Detached houses in Alexandria were generally the more grand buildings in the historic district. By reducing the side yard setback on the east side and placing the house adjacent to the existing private alley, more traditional development patterns are achieved and the position of the new house is diminished.

In addition, the proposed house location will maintain the historic sense of open space immediately adjacent to 126 and 130 Prince Street and allow the historic rough sawn siding on that east wall to be clearly visible. This space between the new townhouse and the existing late 18th-century buildings to the west emphasizes these well-preserved historic buildings while minimizing the visual impact of the new house.

Rear yard

Staff supports the variance to the rear yard setback noting that it is far preferable to have the public view of a house with a narrower, more historically appropriate width and depth, than a shallow house with an architecturally grand, four-bay wide frontage. A house with a width significantly greater than what exists on the street would significantly detract from the historic development patterns of this block.

The lot for the proposed house is unusual in that it is wider (36') and shallower (44') than most lots throughout the historic district. The shallowness of the lot means that in order to achieve a reasonably sized house, and keep the open space adjacent to the historic wall at 126 Prince Street, the house must extend to the rear. As to house size, the average

width of houses on the south side of the 100 block of Prince Street is approximately 20.5 feet, with a range from 15 to 29.5'. At a proposed width of 23', the new house, although slightly wider than the average, is generally appropriate for the block. A house that is significantly wider than others that exist on the street, as the zoning would allow, would detract from the historic building patterns on this block. Staff supports the variance to the rear yard setback because it is far preferable to have a house with a narrower, more historically appropriate width and depth, than a wide, shallow house that could be built under the RM zone. Traditionally, rear additions on shallow lots in the historic district are supported even if close to the rear property line because it is preferable to have them there than in a side yard facing the street.

Although there are a few other shallow lots in the vicinity, the depth of the proposed house is similar to most of its neighbors.

Height

At 28.75 feet, and two stories, the proposal is similar to most of the nearby historic buildings on Prince Street. The applicant has reduced the height from its earlier submissions, including the rear portion of the house. The roof style and orientation is also similar to other buildings on the street.

Staff supports the proposed reduction in the required east side and rear yard setbacks because the variances will result in a more compatible house with respect to height, scale, mass and location than would result under existing zoning, and because the house will be a more appropriate background building on this historic block.

Does the proposal diminish light and air or become a substantial detriment to the adjacent properties?

There are neighbors close to the proposed house, and they must be protected consistent with the expectations of RM property owners. Here the applicant proposes to provide a two foot instead of five foot side yard setback to the east. With the reduced side yard dimension, there will still be a 10 foot separation from the east neighbor's property boundary, which is more than generally found in Old Town and the RM zone. Especially next to alleys, it is common to have homes built to the alley edge, with the width of the alley providing the only separation. Here, the applicant is willing to extend the separation farther and staff would not support anything more than the current proposal for a three foot variance.

As to the rear property setback requirement, there is a significant variance requested. The applicant's house extends to a point three feet from the rear property line, and this dimension and variance were not part of the City's settlement with the property owner. Nevertheless, staff supports the variance of 13 feet, because it finds that the overall structure is well designed, well sited on a difficult parcel, and compatible with its historical context. The shallow lot, when all factors are considered, adds to the need for a

rear yard variance. Furthermore, the immediate neighbor to the east is the only neighbor seemingly affected and already has his afternoon, western light blocked by buildings in close proximity (130 Prince and 206 South Lee St). While the rear of the new house will add some to that diminished late afternoon sun, the change is not substantially detrimental. Finally, Staff worked with the applicant over time to reduce the size and especially the height of the rear portion of the house, with the neighbors to the east and the south in mind. The construction was lowered significantly from 33 feet to 24 feet tall, a full nine feet, so that its impact will not, in staff's judgment, be detrimental.

Are the conditions of the property such that complying with zoning constitutes a hardship or an unreasonable restriction?

The subject property suffers from several unusual conditions that unreasonably restrict the placement of a house and use of the property. First, although the proposal is for a new house, not an addition, it must comply with zoning designed to be applied in the main to additions to historic structures. Second, it is located on one of the most historic streets in Old Town, and any building must respect the historic development pattern there. It is adjacent to one of the rare frame walls that survived the 18th Century Alexandria fire. Finally, the lot is half the depth of a standard RM lot. The combination of these zoning constraints limits severely the placement of a house on the lot consistent with the historic neighborhood, and constitutes a hardship if the strict letter of the regulations were applied.

Staff has changed its position since the last variance application for this property was considered in 2005, and there are reasons for the change. Significantly, the test for a variance was changed legislatively from a hardship "approaching confiscation," to a hardship that amounts to an unreasonable restriction. In the past, the mere fact that a house *could* be built demonstrated that there was no hardship approaching confiscation. Now, the test for hardship is more nuanced and this case demonstrates the difference. Additionally, the applicant has changed its application in important ways. Since 2005, the house has been moved away from the alley and the height of the house has been reduced by almost four feet. In addition, the depth and floor area of the house have been reduced and the rear yard increased. While individually small changes, in combination, they result in a much more supportable house, and one that comports with its historic location.

If the house were built in compliance with the RM zone yard requirements, it would be centered on the lot; it could be a much wider house and could extend in height above many of its neighbors. The result would make it much grander than the other houses on the 100 block of Prince Street. It would thus fail to respect the historic buildings and development pattern on the block, would be out of character, and a serious detriment to the important historic context. It would therefore be difficult, if not impossible, for the owner to comply with the historic district expectations; it is likely the proposal would not be approved by the BAR. If the house were modified to meet both zoning and BAR

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requirements, it would be very small relative to the other houses on the block. While the RM zone provides for such dimensions, it was not designed primarily for the construction of new houses. The BZA through the variance procedure provides a safety valve to rectify unreasonable zoning results like this one.

Based upon the above factors the staff recommends **approval** of the variances.

DEPARTMENTAL COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

* The applicant is advised that if the variance is approved the following additional comments apply.

Transportation and Environmental Services:

- R-1 The building permit plans shall comply with requirements of City Code Section 5-6-224 regarding the location of downspouts, foundation drains and sump pumps. Refer to Memorandum to Industry dated June 18, 2004. [Memorandum is available online at the City web site under Transportation\Engineering and Design\Memos to Industry.]. (T&ES)
- R-2 Applicant shall be responsible for repairs to the adjacent city right-of-way if damaged during construction activity. (T&ES)
- R-3 Applicant shall be responsible for repairs to the public right-of-way, if removal is necessary; it recommended that the applicant retain any cobblestone that is removed during any excavation for this project. Please note that the City does not maintain cobblestone streets and has no replacement material on hand. (T&ES)
- R-4 Applicant shall comply with weight limit requirements set for the 100 block of Prince Street for delivery of materials. (T&ES)
- R-5 All improvements to the city right-of-way such as curbing, sidewalk, driveway aprons, etc. must be city standard design. (T&ES)
- R-6 No permanent structure may be constructed over any existing private and/or public utility easements. It is the responsibility of the applicant to identify any and all existing easements on the plan. (T&ES)
- R-7 An erosion and sediment control plan must be approved by T&ES prior to any land disturbing activity greater than 2,500 square feet. (T&ES)
- R-8 Compliance with the provisions of Article XIII of the City's zoning ordinance for stormwater quality control is required for any land disturbing activity greater than 2,500 square feet. (T&ES)
- R-9 The building permit must be approved and issued prior to the issuance of any permit for demolition. (T&ES)
- R-10 Construction of a new driveway entrance, or widening of an existing driveway entrance, requires separate application to; and approval from, the Department of Transportation and Environmental Services. (T&ES)

F-1 An approved grading plan shall be required prior to approval of building permit applications.

In summary, City Code Section 5-6-224 requires that a grading plan be submitted to and approved by T&ES prior to the issuance of building permits for improvements involving:

- the construction of a new home;
- construction of an addition to an existing home where either
 - the addition exceeds the area of the existing building footprint by 100% or more;
 - or, the construction of the addition results in less than 50% of the existing first floor exterior walls, in their entirety, remaining;
- changes to existing grade elevation of 1-foot or greater;
- changes to existing drainage patterns;
- land disturbance of 2,500 square feet or greater.

Questions regarding the processing of grading plans should be directed to the T&ES Site Plan Coordinator at (703) 746-4064. Memorandum to Industry No. 02-08 was issued on April 28, 2008 and can be viewed online via the following link. **<http://alexandriava.gov/uploadedFiles/tes/info/gradingPlanRequirements.pdf>**

C-1 The applicant shall comply with the City of Alexandria's Solid Waste Control, Title 5, Chapter 1, which sets forth the requirements for the recycling of materials (Sec. 5-1-99). (T&ES)

C-2 The applicant shall comply with the City of Alexandria's Noise Control Code, Title 11, Chapter 5, which sets the maximum permissible noise level as measured at the property line. (T&ES)

C-3 Roof, surface and sub-surface drains be connected to the public storm sewer system, if available, by continuous underground pipe. Where storm sewer is not available applicant must provide a design to mitigate impact of stormwater drainage onto adjacent properties and to the satisfaction of the Director of Transportation & Environmental Services. (Sec.5-6-224) (T&ES)

C-4 All secondary utilities serving this site shall be placed underground. (Sec. 5-3-3) (T&ES)

C-5 Pay sanitary sewer tap fee prior to release of Grading Plan. (Sec. 5-6-25) (T&ES)

C-6 Any work within the right-of-way requires a separate permit from T&ES. (Sec. 5-2) (T&ES)

Code Administration:

C-1 Building and all trades permit will be required prior to the start of any work on this site

C-2 Five complete sets of sealed drawings will be required to be submitted for review along with the building permit application

C-3 A soils reports shall also be submitted for review with the application. At a minimum the report shall show the number and location of borings, classification and bearing value of soils, depth, if applicable, at which groundwater is encountered.

Recreation (Arborist):

F-1 No trees are affected by this plan.

Historic Alexandria (Archaeology):

Archaeology Findings:

Given the location of this lot on the 100 block of Prince Street, where 18th-century structures are still extant, there is high potential for this property to yield archaeological resources that could provide insight into activities in the 18th and 19th centuries.

Archaeology Recommendations

*1. The applicant/developer shall call Alexandria Archaeology (703/838-4399) two weeks before the starting date of any ground disturbance so that a monitoring and inspection schedule for city archaeologists can be arranged.

*2. The applicant/developer shall call Alexandria Archaeology immediately (703-838-4399) if any buried structural remains (wall foundations, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during development. Work must cease in the area of the discovery until a City archaeologist comes to the site and records the finds.

*3. The applicant/developer shall not allow any metal detection or artifact collection to be conducted on the property, unless authorized by Alexandria Archaeology.

4. The statements in archaeology conditions above marked with an asterisk "*" shall appear in the General Notes of all site plans and on all site plan sheets that involve demolition or ground disturbance (including Basement/Foundation Plans, Demolition, Erosion and Sediment Control, Grading, Landscaping, Utilities, and Sheeting and Shoring) so that on-site contractors are aware of the requirements.

Other Requirements brought to the Applicant's Attention (Planning and Zoning):

C-1 A wall check survey plat shall be submitted to Planning and Zoning when the building footprint is in place, pursuant to Alexandria City Code section 8-1-12.

ATTACHMENTS

Attachment 1: Changes to Proposed House at 122 Prince Street

	<u>Height*</u>	<u>Width</u>	<u>Depth</u>	<u>Floor Area</u>	<u>Side Yard****</u>	<u>Rear Yard</u>
2003	34.50 ft	23.00 ft	44.33 ft	2,382.34 sq ft**	1.00 ft	0 ft
2005	34.00 ft	23.00 ft	42.33 ft	2,304.17 sq ft**	1.00 ft	2.00 ft
2011(#1)	34.41 ft	23.00 ft	41.33 ft	2,271.83 sq ft***	2.00 ft	3.00 ft
2011(#2)	28.75 ft	23.00 ft	41.33 ft	2,119.96 sq ft***	2.00 ft	3.00 ft
2011(#3) variance submission	28.75 ft	23.00 ft	41.33 ft	2,236.81 sq ft***	2.00 ft	3.00 ft
RM Zone	45.00 ft	26-30 ft**	28.33 ft	2,393.83 sq ft***	1.0-5.0 ft	16.00 ft

-
- * Building height as required by the zoning regulations is measured from grade to the midpoint of the gable roof.
 - ** Maximum allowed floor area on a lot of 1,773.2 square feet (includes the alley land) is 2,659.80 square feet.
 - *** Maximum allowed floor area on a lot of 1,595.89 square feet (does not include the alley land) is 2,393.83 square feet.
 - **** Setback from the western edge of private alley.

Attachment 2: Evolving Front Building Elevations and New House That Meets RM Zoning



Attachment 3: Existing street elevations for the 100 block of Prince Street



100 Block, Prince Street, North Side

122 Prince Street



100 Block, Prince Street, South Side

File copy

BZA Case #, 2011-0009



APPLICATION
BOARD OF ZONING APPEALS

VARIANCE

Section of zoning ordinance from which request for variance is made:

Section 3-1106 (A)(2)(a), Side-Yard*
Section 3-1106 (A)(3)(a), Rear-Yard

PART A

1. Applicant: Owner Contract Purchaser Agent

Name James and Christine Garner

Address c/o 121 North Pitt Street
Alexandria, VA 22314

Daytime Phone (703) 549-8700

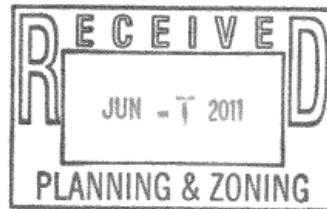
Email Address cghomes@hotmail.com

2. Property Location 122 Prince Street

3. Assessment Map # 075.01 Block 11 Lot 03 Zone RM

4. Legal Property Owner Name James and Christine Garner

Address see above



5

BZA 2011 0009

OWNERSHIP AND DISCLOSURE STATEMENT
Use additional sheets if necessary

1. Applicant. State the name, address and percent of ownership of any person or entity owning an interest in the applicant, unless the entity is a corporation or partnership, in which case identify each owner of more than ten percent. The term ownership interest shall include any legal or equitable interest held at the time of the application in the real property which is the subject of the application.

	Name	Address	Percent of Ownership
1.	James Garner	see above	100%
2.	Christine Garner	see above	100%
3.			

2. Property. State the name, address and percent of ownership of any person or entity owning an interest in the property located at 122 Prince Street (address), unless the entity is a corporation or partnership, in which case identify each owner of more than ten percent. The term ownership interest shall include any legal or equitable interest held at the time of the application in the real property which is the subject of the application.

	Name	Address	Percent of Ownership
1.	The Garners	see above	100%
2.			
3.			

3. Business or Financial Relationships. Each person or entity listed above (1 and 2), with an ownership interest in the applicant or in the subject property is required to disclose **any** business or financial relationship, as defined by Section 11-350 of the Zoning Ordinance, existing at the time of this application, or within the 12-month period prior to the submission of this application with any member of the Alexandria City Council, Planning Commission, Board of Zoning Appeals or either Boards of Architectural Review.

	Name of person or entity	Relationship as defined by Section 11-350 of the Zoning Ordinance	Member of the Approving Body (i.e. City Council, Planning Commission, etc.)
1.	None		
2.			
3.			

NOTE: Business or financial relationships of the type described in Sec. 11-350 that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings.

As the applicant or the applicant's authorized agent, I hereby attest to the best of my ability that the information provided above is true and correct.

6/1/11 M. Catharine Puskar *M. Catharine Puskar*
Date Printed Name Signature

BZA 2011-0009

Alexandria City Council

William Euille
Kerry Donley
Frank Fannon IV
Alicia Hughes
Redella "Del" Pepper
Paul Smedberg
Rob Krupicka

Planning Commission

John Komoroske
H. Stewart Dunn
Jesse Jennings
Mary Lyman
J. Lawrence Robinson
Eric Wagner
Donna Fossum

Board of Zoning Appeals

Mark Allen
Geoffrey Goodale
John Keegan
Stephen Koenig
David Lantzy
Jennifer Lewis
Eric Zander

**Board of Architectural Review
Old and Historic District**

Chip Carlin
Oscar Fitzgerald
Thomas Hulfish
Arthur Keleher
Wayne Neale
Peter Smeallie
John Von Senden

Board of Architectural Review

Parker-Gray District

William Conkey
Theresa del Ninno
Robert Duffy
Christina Kelley
Douglas Meick
Philip Moffat
Deborah Rankin

Updated 5/12/2011

Definition of business and financial relationship.

Section 11-305 of the Zoning Ordinance defines a business or financial relationship as any of the following:

- (1) a direct one;
- (2) by way of an ownership entity in which the member or a member of his immediate household is a partner, employee, agent or attorney;
- (3) through a partner of the member or a member of his immediate household;
- (4) through a corporation in which any of them is an officer, director, employee, agent or attorney or holds 10 percent or more of the outstanding bonds or shares of stock of a particular class. In the case of a condominium, this threshold shall apply only if the applicant is the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium;
- (5) not as an ordinary customer or depositor relationship with a professional or other service provider, retail establishment, public utility or bank, which relationship shall not be considered a business or financial relationship;
- (6) created by the receipt by the member, or by a person, firm, corporation or committee on behalf of the member, of any gift or donation having a value of more than \$100, singularly or in the aggregate, during the 12-month period prior to the hearing on the application from the applicant.

BZA Case # 2011-0009

5. Describe request briefly:

The applicant is requesting a three-foot variance from the side-yard setback of five-feet and is requesting a 13 foot variance from the rear-yard of 16 feet. The applicant is proposing to build a home on the lot and the proposed siting allows for the open space to be located to the side of the home nearby permitting a continued view shed to the adjacent historic facade.

6. If property owner or applicant is being represented by an authorized agent, such as an attorney, realtor or other person for which there is a form of compensation, does this agent or the business in which they are employed have a business license to operate in the City of Alexandria, Virginia? N/A

Yes — Provide proof of current City business license.

No — Said agent shall be required to obtain a business prior to filing application.

THE UNDERSIGNED HEREBY ATTESTS that all of the information herein provided including the site plan, building elevations, prospective drawings of the projects, etc., are true, correct and accurate. The undersigned further understands that, should such information be found incorrect, any action taken by the Board based on such information may be invalidated. The undersigned also hereby grants the City of Alexandria permission to post placard notice as required by Article XI, Division A, Section 11-301(B) of the 1992 Alexandria City Zoning Ordinance, on the property which is the subject of this application. The applicant, if other than the property owner, also attests that he/she has obtained permission from the property owner to make this application.

APPLICANT OR AUTHORIZED AGENT:

James and Christine Garner, Applicant/Owner

By: M. Catharine Puskar, Attorney/Agent

M. Catharine Puskar

Print Name

Signature

(703) 528-4700

6/1/11

Telephone

Date

Pursuant to Section 13-3-2 of the City Code, the use of a document containing false information may constitute a Class 1 misdemeanor and may result in a punishment of a year in jail or \$2,500 or both. It may also constitute grounds to revoke the permit applied for with such information.

For the purposes of this application, the Applicant is assuming that the side yard setback should be measured from the edge of the 8' wide alley consistent with the Zoning Administrator's determination of January 10, 2010, as opposed to property line which is the centerline of such alley. The applicant makes this assumption without waiving its contention that the Zoning Administrator's determination was incorrect.

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PART B (SECTION 11-1102)

NOTE: The Board of Zoning Appeals may grant a variance only if the applicant can clearly demonstrate a hardship. A demonstrated hardship refers to the shape and topographical conditions, or to some other unique characteristic of the property; for example, if a rear yard has sharp drop-off or hilly terrain where an addition could otherwise be located legally, or if the property has three front yards.

A demonstrated hardship is NOT, for example, having a large family in a two-bedroom house, or that you need a first-floor bedroom and bath. (These are good personal reasons for a variance, but do not constitute a hardship having to do with specific conditions of the land.)

APPLICANT MUST EXPLAIN THE FOLLOWING:
(Please print clearly and use additional pages where necessary.)

1. Does strict application of the zoning ordinance to the subject property result in a hardship to the owner? (Answer A or B).

A. Explain how enforcement of the zoning ordinance will amount to a clearly demonstrable hardship.

Please see attached statement of justification.

B. Explain how enforcement of the zoning ordinance will prevent reasonable use of the property.

Please see attached statement of justification.

2. Is this hardship unique to the property?

A. Explain if the hardship shared by other properties in the neighborhood.

Please see attached statemetn of justification.

BZA Case # 2011-0009

B. Explain how this situation or condition of the property (on which this application is based) applies generally to other properties in the same zone.

Please see attached statement of justification.

Four horizontal lines for text entry.

3. Was the hardship caused by the applicant?

A. Did the condition exist when the property was purchased?

Please see attached statement of justification.

Four horizontal lines for text entry.

B. Did the applicant purchase the property without knowing of this hardship?

Please see attached statement of justification.

Four horizontal lines for text entry.

C. How and when did the condition, which created the hardship, first occur?

Please see attached statement of justification.

Four horizontal lines for text entry.

D. Did the applicant create the hardship and, if so, how was it created?

Please see attached statement of justification.

Four horizontal lines for text entry.

BZA Case # 2011-0009

4. Will the variance, if granted, be harmful to others?

A. Explain if the proposed variance will be detrimental to the adjacent properties or the neighborhood in general.

Please see attached statement of justification.

B. Explain how the proposed variance will affect the value of the adjacent and nearby properties.

Please see attached statement of justification.

C. Has the applicant shown the proposed plans to the most affected property owners? Has that neighbor objected to the proposed variance, or has the neighbor written a letter of support of the proposed variance? If so, please attach the letter or submit at the time of the hearing.

Please see attached statement of justification.

D. Explain how the proposed variance will change the character of the neighborhood.

Please see attached statement of justification.

BZA 2011-0009

STATEMENT OF JUSTIFICATION

The enforcement of the Zoning Ordinance will amount to a clearly demonstrable hardship that will prevent reasonable use of the Property. The Zoning Ordinance includes requirements applicable to the RM District and requirements applicable to the Old & Historic District. The Property is an atypical lot in the RM zone in the Old & Historic District in that its width is greater than its depth. As such, the house that would fit on the Property in accordance with the Zoning Ordinance requirements for the RM zoning district, with two side yard setbacks and a rear setback, would result in an atypical footprint from most houses in the RM zone in the Old & Historic District. More specifically, it would represent a departure from the footprint of other homes located in the historic 100 block of Prince Street where the Property is located. Every house on the block, except for the northeast corner of Prince and Lee Street, has a long narrow lot and is either built up to the adjacent lot and/or the adjacent alley. In addition, to orient the house according to the RM requirements would place open space to the rear and to the side of the house, which is also an atypical configuration in the Old and Historic District where open space is usually found at the rear or on the side of the house, not in both locations. Finally, BAR staff and the BAR have previously discussed the significance of the historic, original, unpainted wood siding on the adjacent house to the west of the Property as it is one of two such properties that we are aware of in the Old & Historic District. They have also made clear their desire to maintain the viewshed from Prince Street through the Property to that historic façade. As such, placement of the house in accordance with the RM District provisions of the Zoning Ordinance would not only result in an atypical home that is not in keeping with the requirements in the Zoning Ordinance for the Old & Historic District, but would negatively impact the desired viewshed to the adjacent historic façade and therefore, potentially prevent development of the lot as the proposed home would not be able to meet the expectations/conditions of the BAR staff and BAR. To meet the requirements of both the RM District and the Old & Historic District would prevent reasonable use of the Property as the desired footprint of the home on the Property envisioned under those two sections of the Ordinance are in conflict for the reasons mentioned above.

This hardship is unique to the Property. Other properties in the neighborhood do not share this hardship as their construction predates the setbacks envisioned in the 1992 Zoning Ordinance provisions for the RM District and are not located adjacent to a façade with historic, original unpainted wood siding, which further impacts the location and design of the home.

The hardship was not caused by the Applicant. The Applicant purchased the Property without knowing of the hardship. They purchased the Property with the understanding, based on title and a survey, that their lot extended to the center line of the alley and that the 5' side yard setback would be from the centerline of the alley. After they purchased the Property, they became aware of an adjacent property owner's claim to the contrary. As such, for purposes of this Application, they are assuming that they own to the west side of the alley and are requesting a 3' side yard variance. They were also unaware of the significance of the adjacent historic, original, unpainted wood siding façade and the desire to maintain a sizable viewshed through their Property to that facade. As such, they are requesting the 3' rear yard variance to allow them to design the house in a manner that places the open space to the side of the home to accommodate this new information that was not known before acquisition of the Property.

BZA CASE #2011-0009

BZA 2011-0009

The variance, if granted, will not be harmful to others. If granted, the variance would actually ensure that the Property is developed in accordance with the historic precedent along the block of long narrow lots with homes built to the lot line and/or alley. The alley provides a reasonable setback to the neighbor to the east whose home is built adjacent to the alley and a reasonable setback to the neighbor to the south whose yard abuts the area of the lot where the home will be built. In addition, the proposed location of the home will maintain the historic viewshed which has been discussed above. The value of adjacent and nearby properties will be enhanced by the addition of a home on this lot that is in keeping with the pattern of development that exists on this block and in the neighborhood. Proposed plans for the Property have been shared with the adjacent neighbors in the past. We intend to share the information in this Application, which has been revised from previous plans, with the adjacent neighbors, Old Town Civic Association, and the Historic Alexandria Foundation and will keep staff apprised of any meetings that are scheduled.

There is no other administrative or procedural remedy to relieve the hardship that we are aware of.

Alternative solutions have been considered over the last seven years and, for the reasons mentioned above, no design meeting all of the competing requirements has been deemed viable. Previous variance requests have also been documented in prior BZA staff reports. Given the various competing requirements impacting the Property, the Applicant has continued to work with staff over the years to find an acceptable, compromise solution to both the layout and design of the home that would permit development of this buildable lot. In the spirit of those efforts, the Applicant submits that the requested variances represent the best layout for the lot.

BZA 2011-0009

Revised



DEPARTMENT OF PLANNING AND ZONING
FLOOR AREA RATIO AND OPEN SPACE CALCULATIONS

A. Property Information

A1. Street Address 122 Prince St. Zone RM
 A2. 1595.89 x 1.5 = 2393.82
Total Lot Area Floor Area Ratio Allowed by Zone Maximum Allowable Floor Area

B. Existing Gross Floor Area

Existing Gross Area*		Allowable Exclusions	
Basement		Basement**	
First Floor		Stairways**	
Second Floor		Mechanical**	
Third Floor		Other**	
Porches/ Other		Total Exclusions	
Total Gross *			

B1. Existing Gross Floor Area *
Sq. Ft.
 B2. Allowable Floor Exclusions**
Sq. Ft.
 B3. Existing Floor Area minus Exclusions
Sq. Ft.
 (subtract B2 from B1)

C. Proposed Gross Floor Area (does not include existing area)

Proposed Gross Area*		Allowable Exclusions	
Basement	876.49	Basement**	876.49
First Floor	876.49	Stairways**	154.5
Second Floor	876.49	Mechanical** Mechanical	22.5
Third Floor	468.25	Other**	138.66
Porches/ Other	4	Total Exclusions	1192.15
Total Gross *	3022.97		

C1. Proposed Gross Floor Area *
3022.97 Sq. Ft.
 C2. Allowable Floor Exclusions**
1192.15 Sq. Ft.
 C3. Proposed Floor Area minus
Exclusions 1830.82 Sq. Ft.
 (subtract C2 from C1)

D. Existing + Proposed Floor Area

D1. Total Floor Area (add B3 and C3) 1830.82 Sq. Ft.
 D2. Total Floor Area Allowed by Zone (A2) 2393.82 Sq. Ft.

*Gross floor area is the sum of all gross horizontal areas under roof, measured from the face of exterior walls, including basements, garages, sheds, gazebos, guest buildings and other accessory buildings.

** Refer to the zoning ordinance (Section 2-145(B)) and consult with zoning staff for information regarding allowable exclusions.

If taking exclusions other than basements, floor plans with excluded areas must be submitted for review. Sections may also be required for some exclusions.

F. Open Space Calculations

Existing Open Space	
Required Open Space	
Proposed Open Space	

The undersigned hereby certifies and attests that, to the best of his/her knowledge, the above computations are true and correct.

Signature: [Signature] Date: 7.5.11

Revised from 6-1-11
 Updated July 10, 2008



122 Prince
Front view facing South to lot showing existing shed

Garner Residence

122 Prince Street

BZA Submission Hearing

July 14, 2011



View 1:
View along East property line



View 2:
View along West property line



View 3:
View across Prince Street facing North



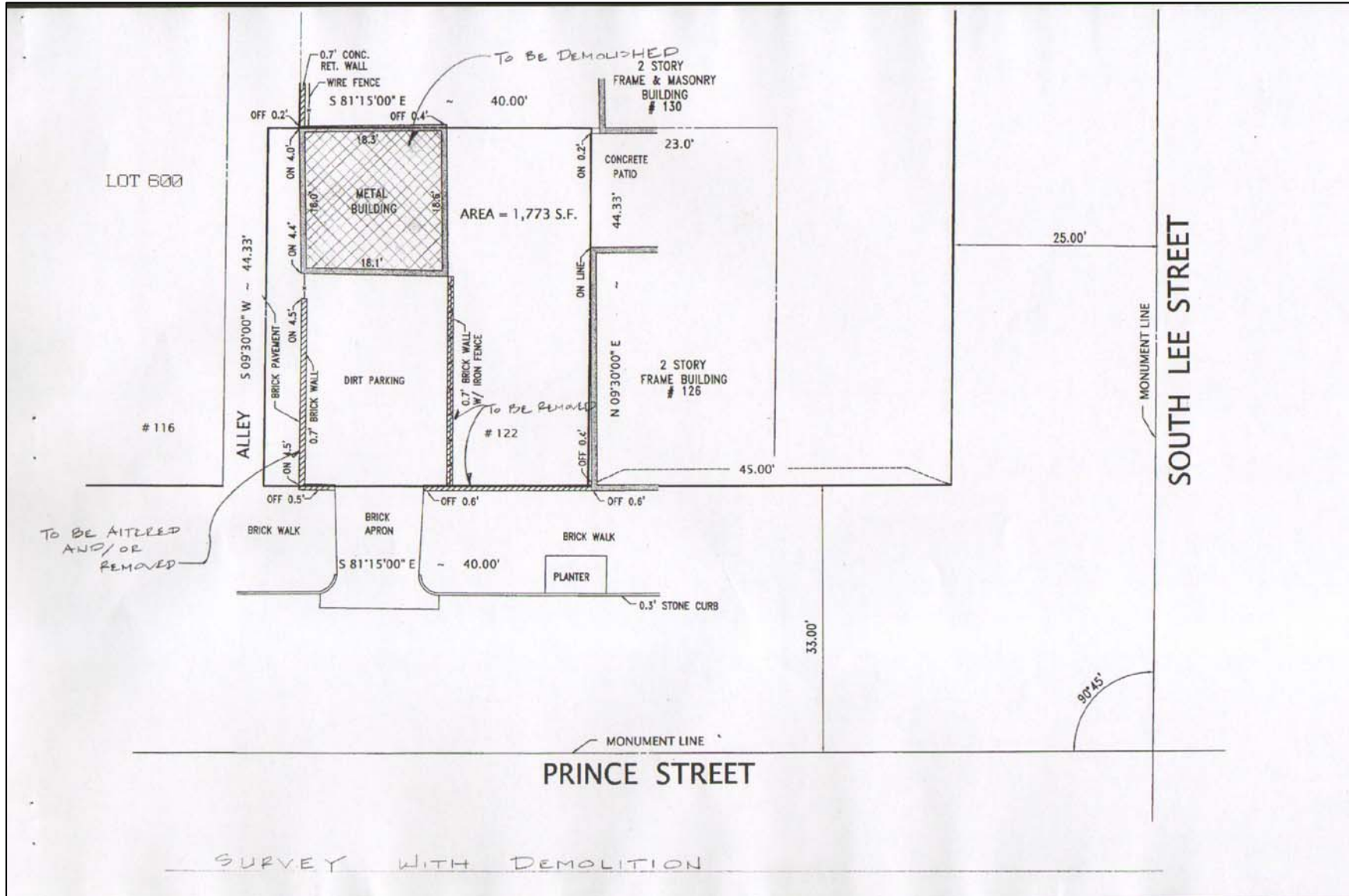
View 4:
View into property toward Southwest

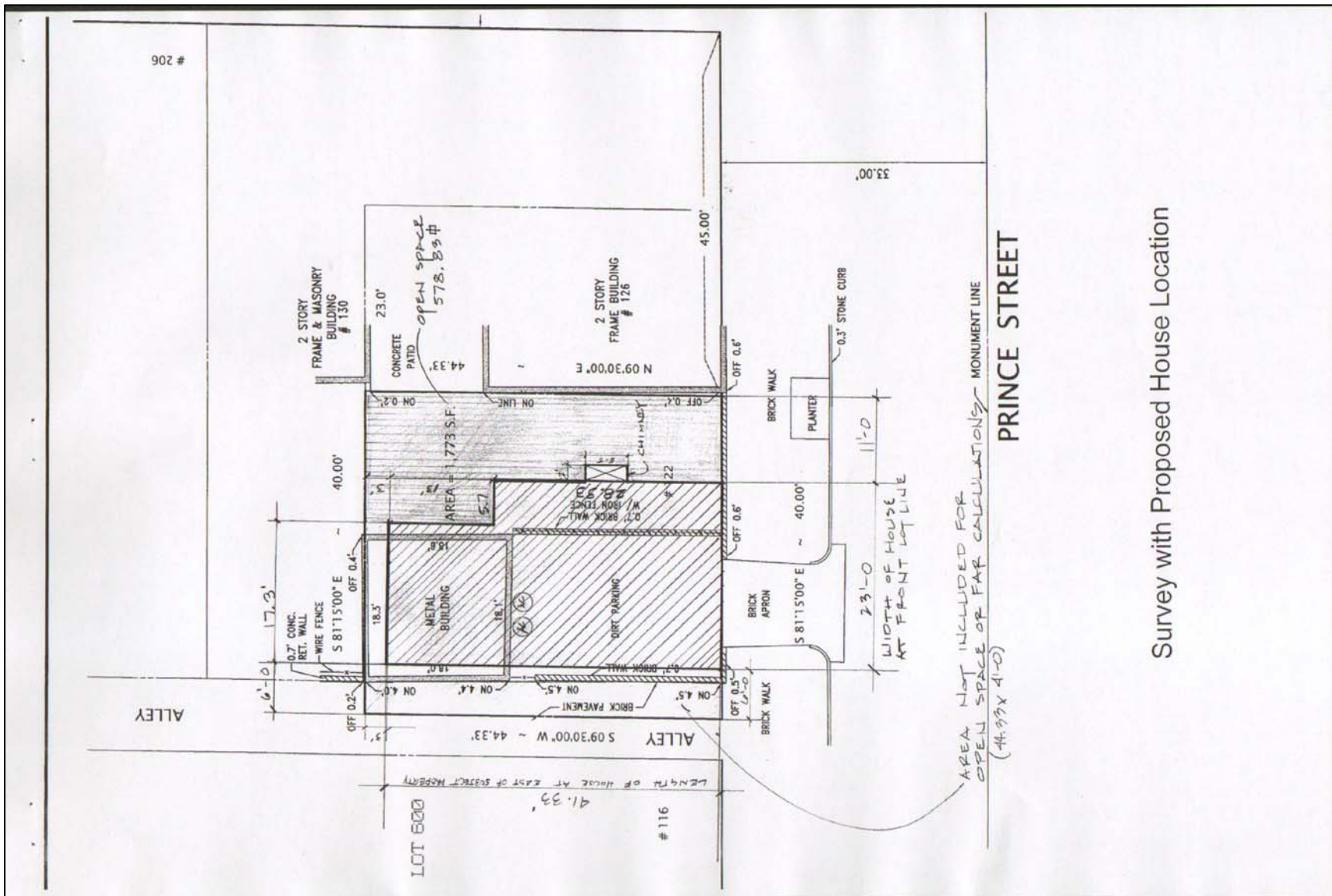


View 5:
View across Prince Street facing Northwest

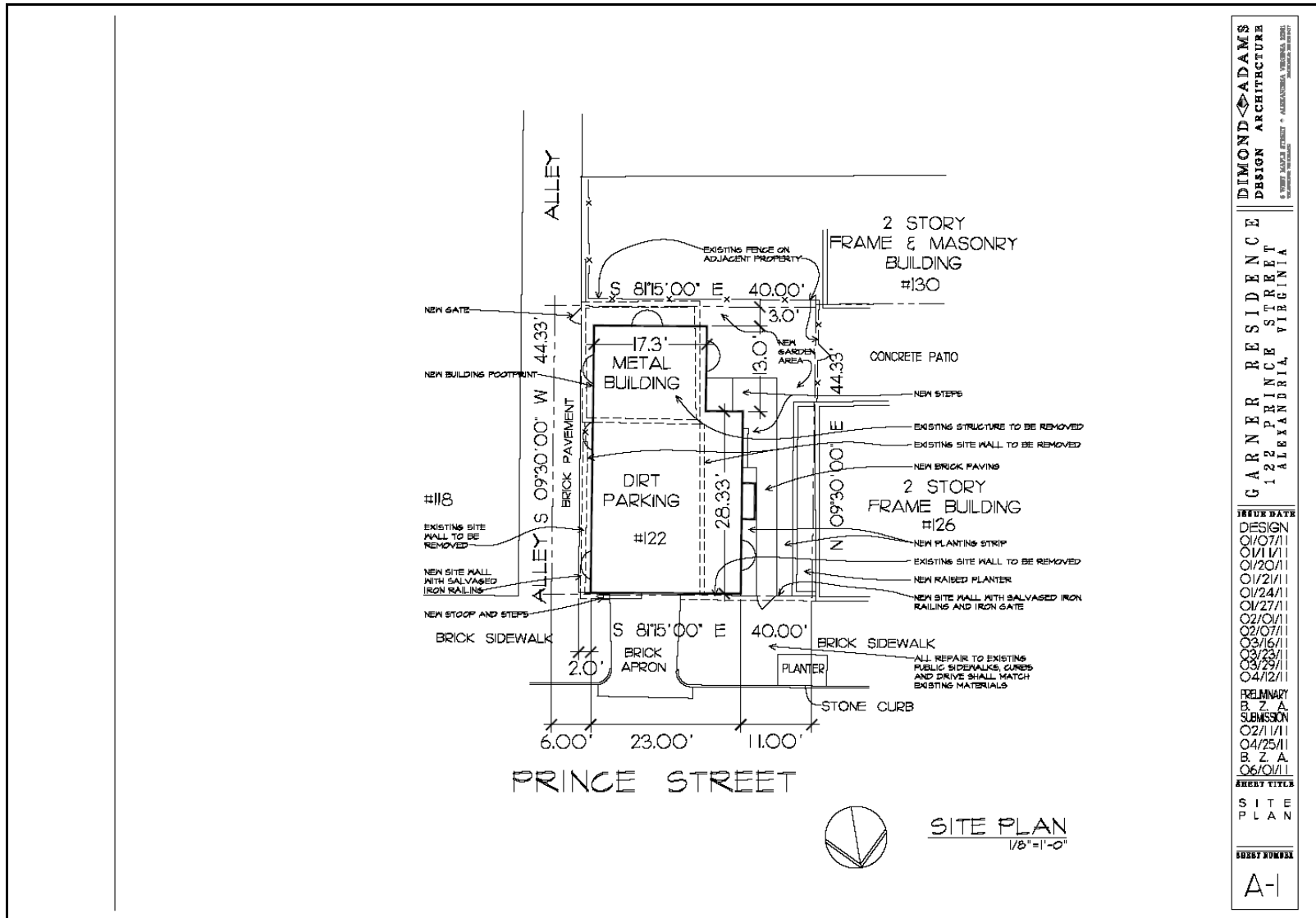


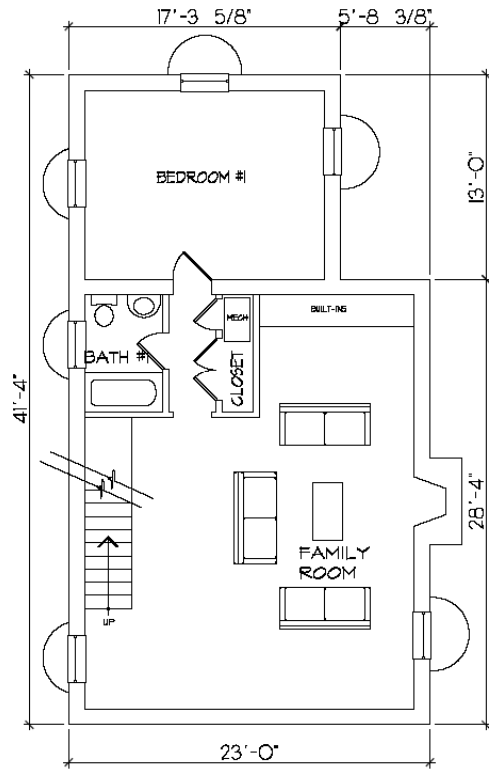
View 6:
View across Prince Street facing North



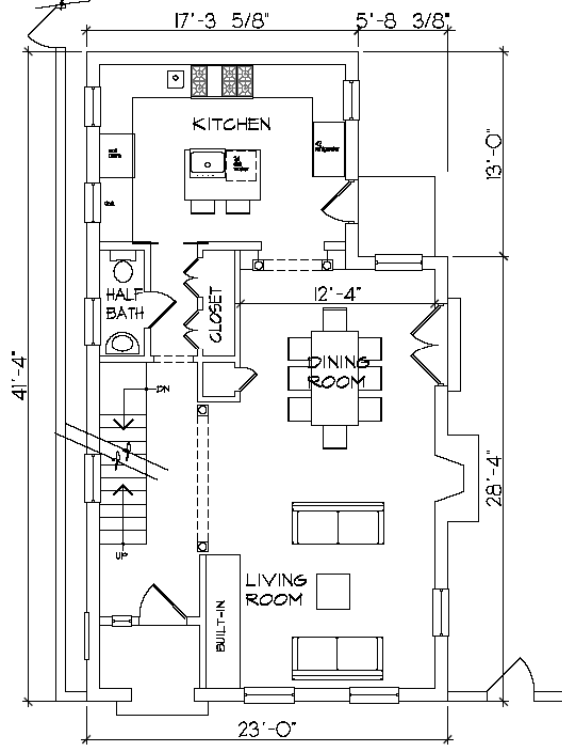


Survey with Proposed House Location





BASEMENT
1/4"=1'-0"



FIRST FLOOR
1/4"=1'-0"

DIMOND & ADAMS
DESIGN ARCHITECTURE
© 2011 MARK B. STRIBBE & ASSOCIATES, VIRGINIA, INC.
A PROFESSIONAL CORPORATION

GARNER RESIDENCE
122 PRINCE STREET
ALEXANDRIA, VIRGINIA

ISSUE DATE

- DESIGN 00/07/11
- 00/11/11
- 00/20/11
- 00/21/11
- 00/24/11
- 00/27/11
- 02/01/11
- 02/07/11
- 03/16/11
- 03/23/11
- 03/29/11
- 04/12/11

PRELIMINARY

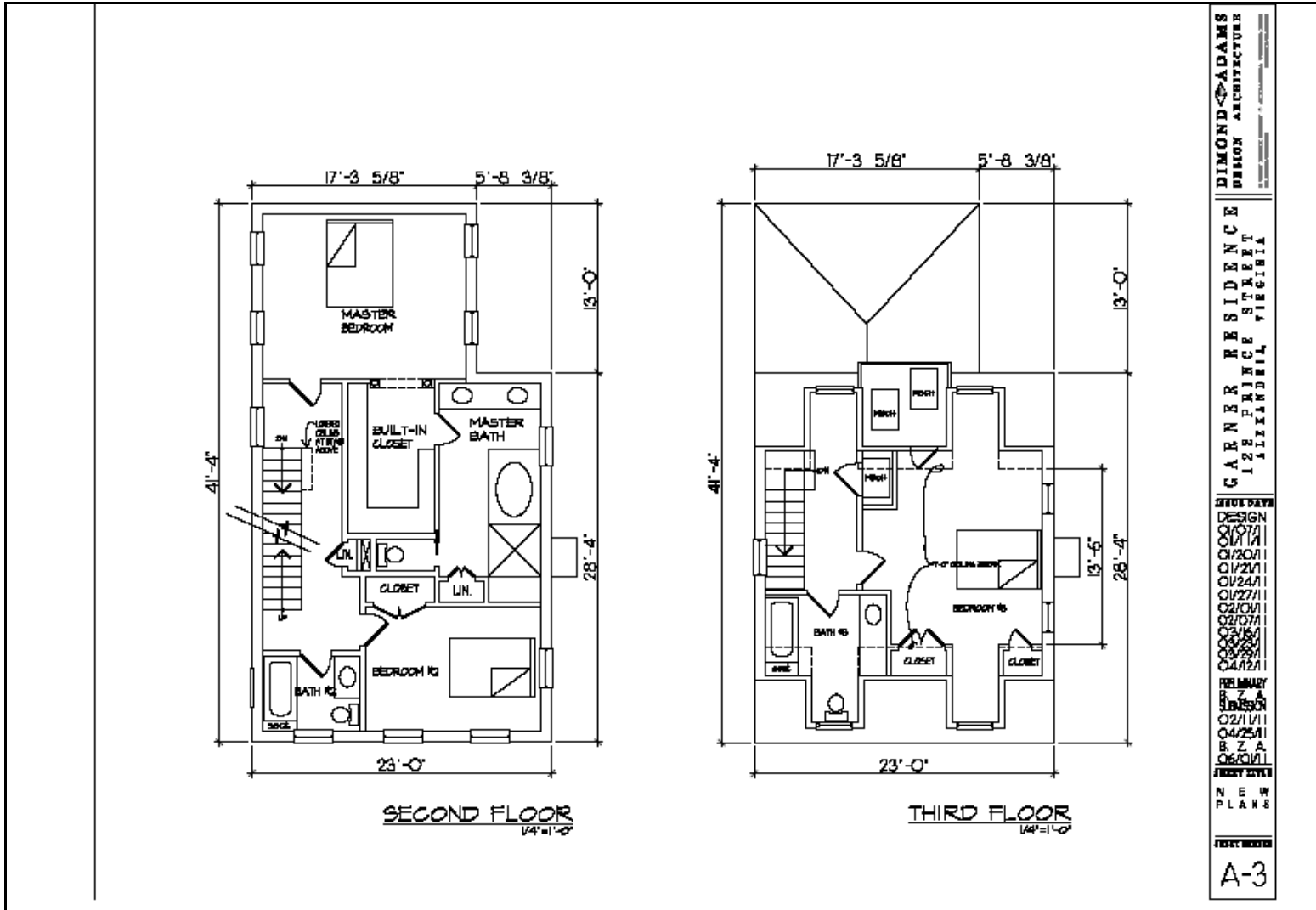
- B. Z. A. SUBMISSION 02/11/11
- 04/25/11
- B. Z. A. 06/01/11

ARCHITECT

NEW PLANS

ARCHITECT

A-2

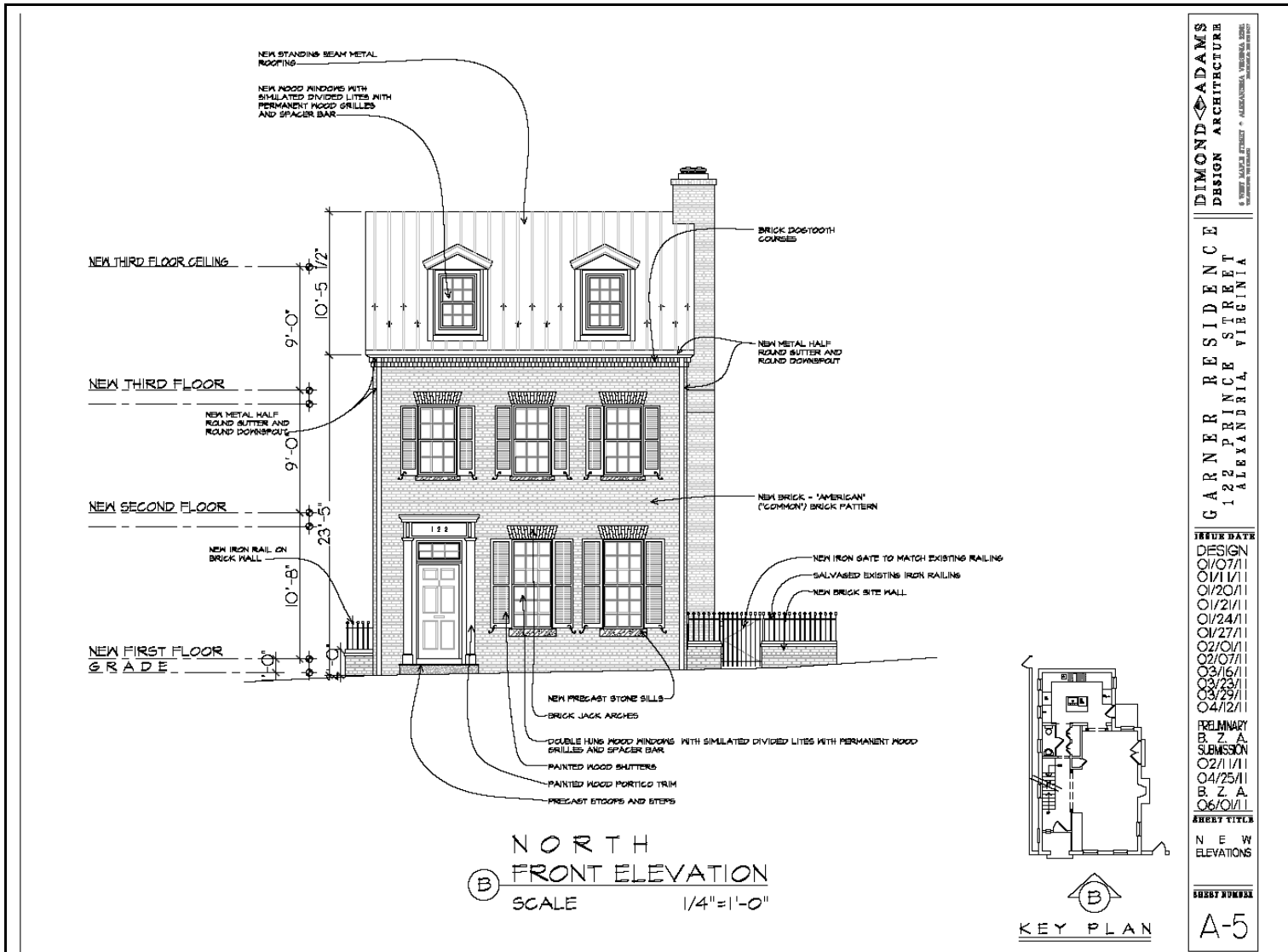


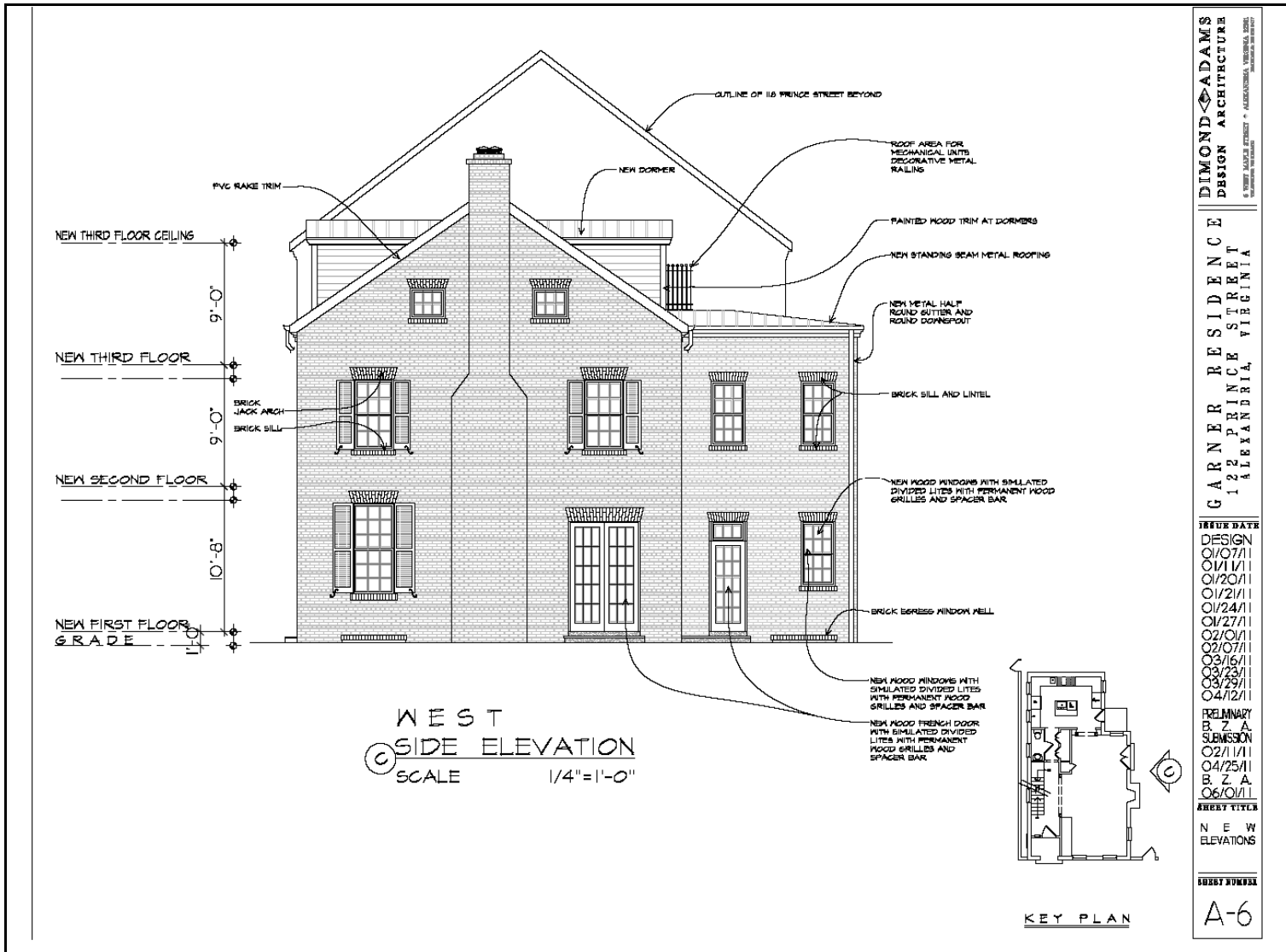


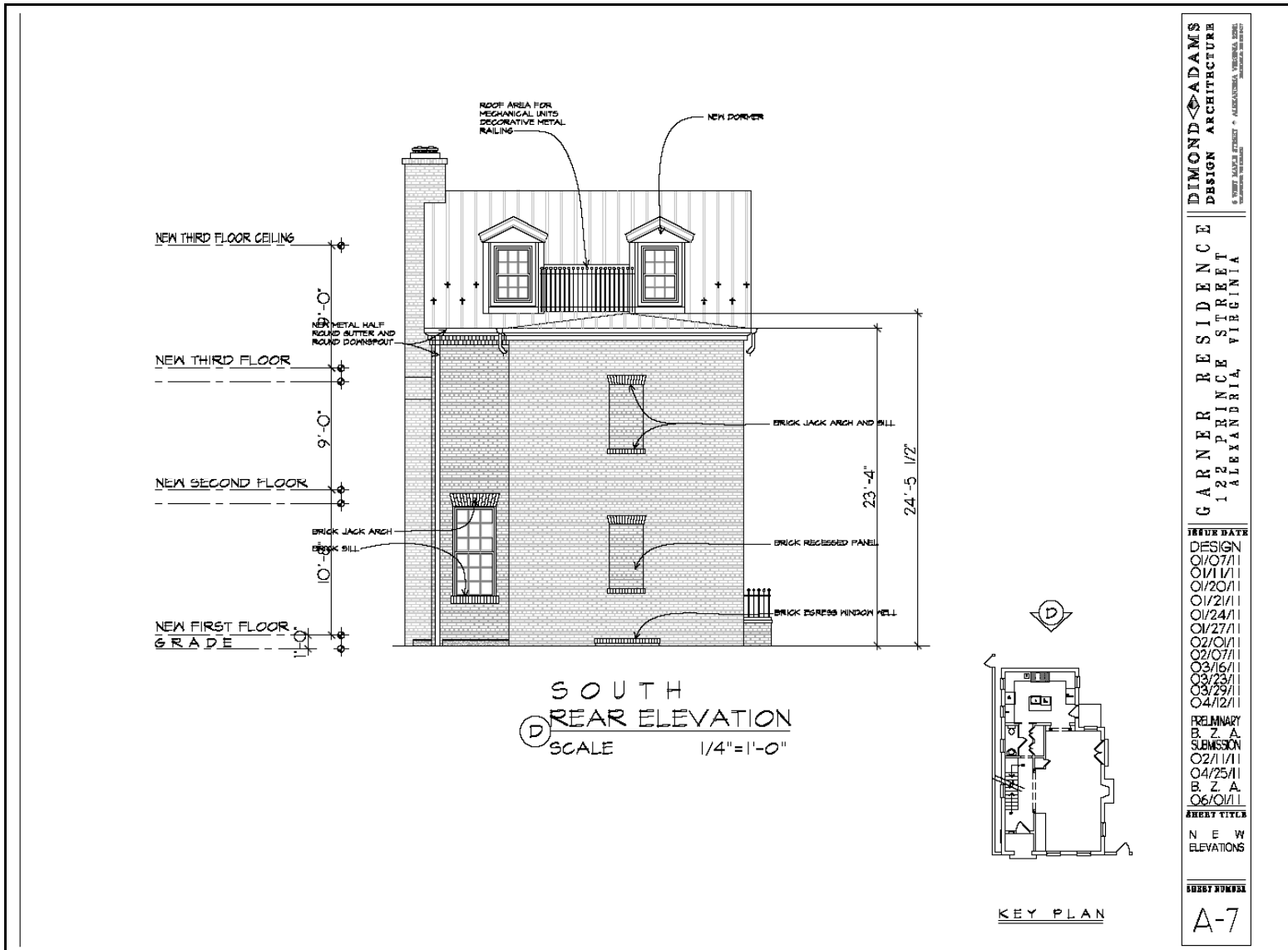
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DESIGN ARCHITECTURE
1000 W. MARKET STREET • ALEXANDRIA, VIRGINIA 22304
GARNER RESIDENCE
 122 PRINCE STREET
 ALEXANDRIA, VIRGINIA

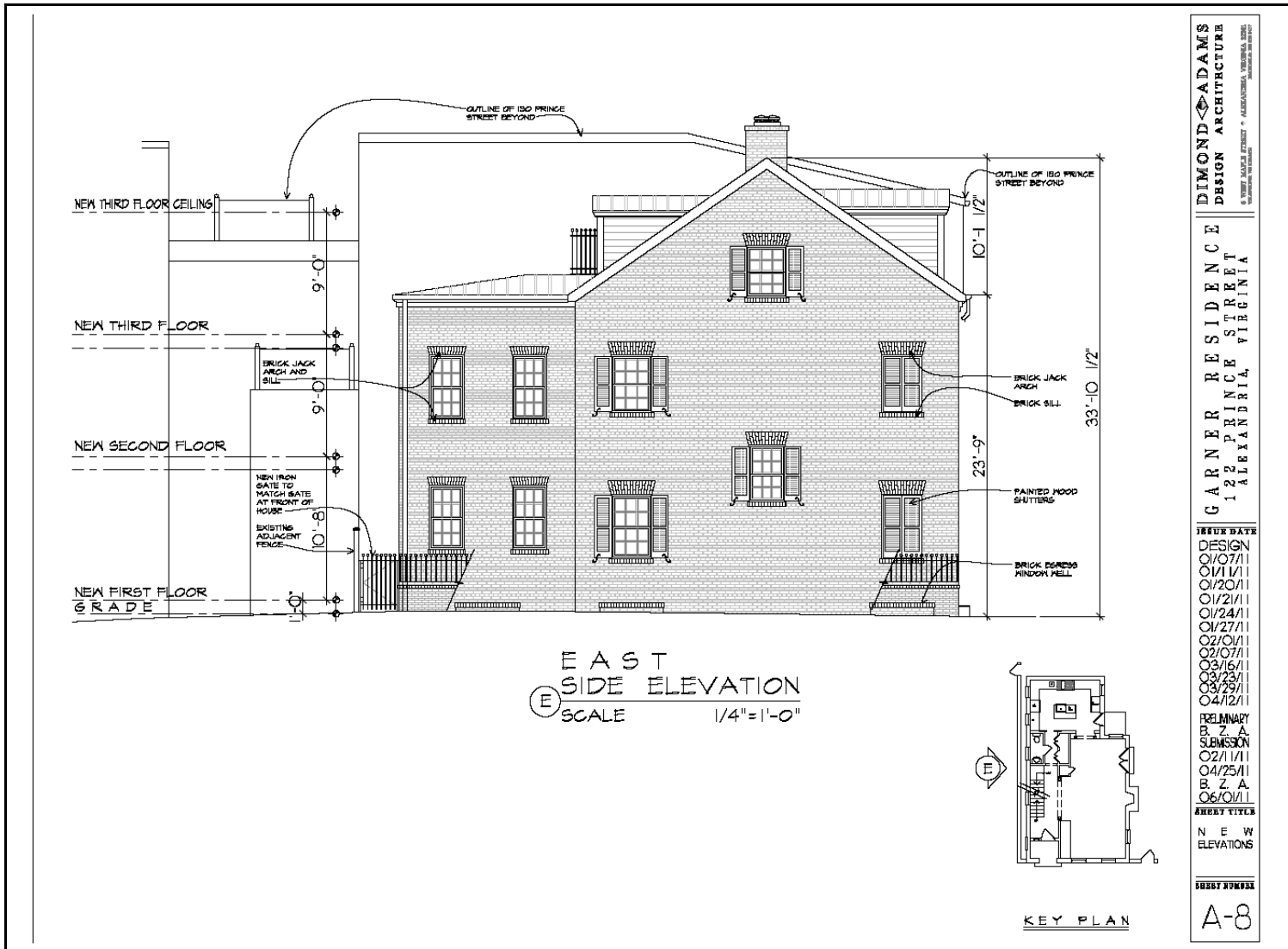
ISSUE DATE
DESIGN
01/07/11
01/11/11
01/20/11
01/21/11
01/24/11
01/27/11
02/01/11
02/07/11
03/16/11
03/23/11
03/29/11
04/12/11
PRELIMINARY
BY Z. A.
SUBMISSION
02/11/11
04/25/11
BY Z. A.
06/01/11

NEW ELEVATIONS
SHEET NUMBER
 A-4

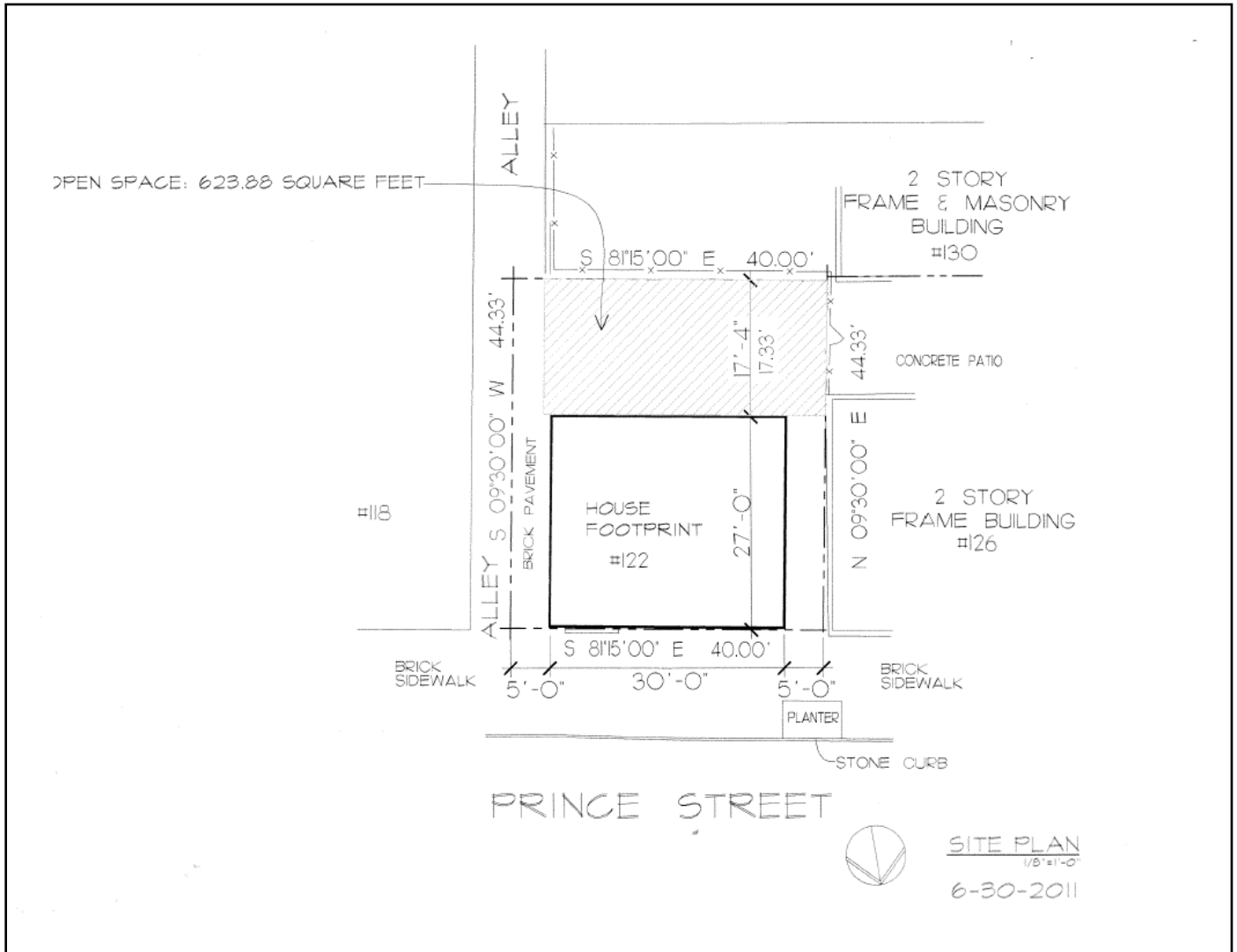




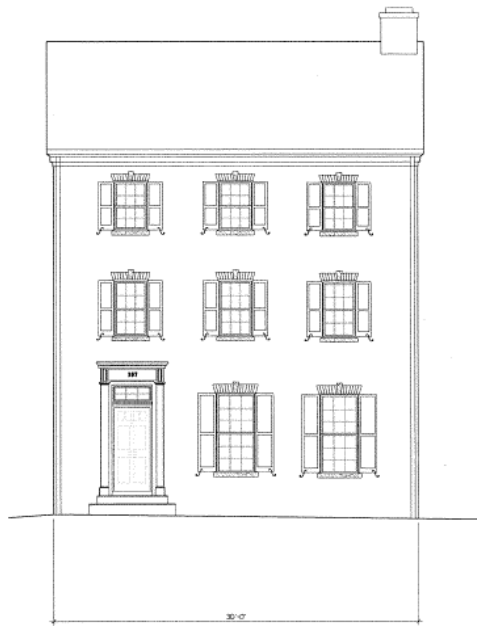




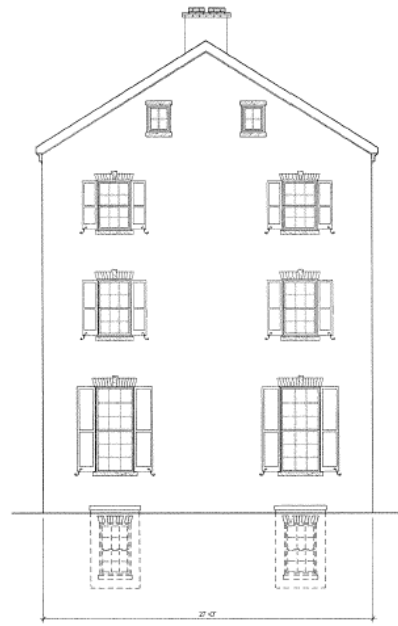
Applicant's Submission for New House that Meets RM Zoning



Applicant's Submission
Building Elevations for New House That Meets RM Zoning



NORTH
FRONT ELEVATION
SCALE 1/4"=1'-0"



WEST
SIDE ELEVATION
SCALE 1/4"=1'-0" 6-30-2011