# CITY OF BLOOMINGTON

# BOARD OF ZONING APPEALS

May 18, 2017 @ 5:30 p.m.
COUNCIL CHAMBERS #115
CITY HALL

**CITY OF BLOOMINGTON**
**BOARD OF ZONING APPEALS**
**May 18, 2017 at 5:30 p.m.** ***Council Chambers - Room #115**

**ROLL CALL**

**MINUTES TO BE APPROVED:** 4/27/17

**REPORTS, RESOLUTIONS, AND COMMUNICATIONS:**

**PETITIONS CONTINUED TO:** June 22, 2017

- UV-04-17 **Lewis Development Company**
  200 S. Washington St., 114 E. 4th St., 121 E. 3rd St.
  Request: Use variance to allow the use "drive through" in the Commercial Downtown (CD) zoning district.
  *Case Manager: Jackie Scanlan*

## PETITIONS:

- V-09-17 **Alisan Donway**
  1302 E. 2nd St.
  Request: Variance from maximum fence height standards.
  *Case Manager: Amelia Lewis*



******Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call 812-349-3429 or e-mail human.rights@bloomington.in.gov.***

**BLOOMINGTON BOARD OF ZONING APPEALS** **CASE #: V-09-17**
**STAFF REPORT** **DATE: May 18, 2017**
**LOCATION: 1302 E. 2nd**

**PETITIONER:** **Alisan Donway**
**1302 E 2nd, Bloomington**

**REQUEST:** The petitioners are requesting a variance to allow a fence in excess of the Unified Development Ordinance maximum height requirements.

**REPORT SUMMARY:** The petitioner owns the single family home at the southeast corner of S. Highland Avenue and E. 2nd Street. The property is zoned Residential Core (RC) and located within the Elm Heights Neighborhood.

The petitioner proposes to construct a 6 foot tall privacy fence along the west side of the property, along S. Highland Ave. The standards for maximum height in the UDO state that "forward of the front building wall of the primary structure, fences and walls shall not exceed 4 feet in height." The "front building wall" is defined as "the building elevation which fronts on a public street." Located on a corner, this property has frontages along both S. Highland and E. 2nd Street, while the functional front of the house is along E 2nd St. The area between the house and the street can be fenced with a 4-foot fence, but not the 6-foot fence that is proposed.

The proposed fence would begin 8 feet from the southeast corner of the house, extending approximately 13 feet west meeting the property line and extending 132 feet south along the property line.

Located in the Elm Heights Historic District, the petitioner was required to receive a Certificate of Appropriateness from the Bloomington Historic Preservation Commission. On March 29, 2017 the BHPC issued COA-17-20 for the following work on the property, "Removal of the Evergreen trees along Highland Avenue and construct a 6' wooden fence along the back of the property and along Highland Avenue only 8' from the rear of the house."

The BZA has on occasion approved fence height variances when the property is at a corner, when the fence would be along a classified street, when the fence does not block the functional front of the house, and when the fence does not loom over the street by use of a setback or lattice top above 4 feet. In this instance, the proposed fence is not along a classified street.

## CRITERIA AND FINDINGS

**20.09.130 (e) Standards for Granting Variances from Development Standards:**
A variance from the development standards of the Unified Development Ordinance may be approved only upon determination in writing that each of the following criteria is met:

1. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.*

**Staff's Finding:** The use and value of the area adjacent to the property would be impacted by the placement of a 6 foot tall fence as it would change the existing landscaping and visibility along a significant portion of the lot.

2. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community.*

   **Staff's Finding:** The proposed fence would not run directly adjacent to Highland Avenue and would leave a portion of the right of way vacant. There is no sidewalk on either side of Highland Street, creating a greater need to protect pedestrian safety. Staff finds potential injury to the general welfare as this could be dangerous for anyone cycling or walking along Highland Street.

3. *The strict application of the terms of the Unified Development Ordinance will result in practical difficulties in the use of the property; that the practical difficulties are peculiar to the property in question; that the variance will relieve practical difficulties.*

   **Staff's Finding:** There are no peculiar conditions on this property. The property in question is on a corner lot, this is not a peculiar condition as there are many corner lots throughout the city facing the same issue. In addition, Highland Street, the street along the "non-functional side" of the house is not a classified street with heavy traffic. The only practical difficulty on this site is protecting the existing, mature walnut tree located along Highland Street. The UDO does not prohibit a fence in this location and the tree could still exist with a 4 foot fence as permitted by the UDO.

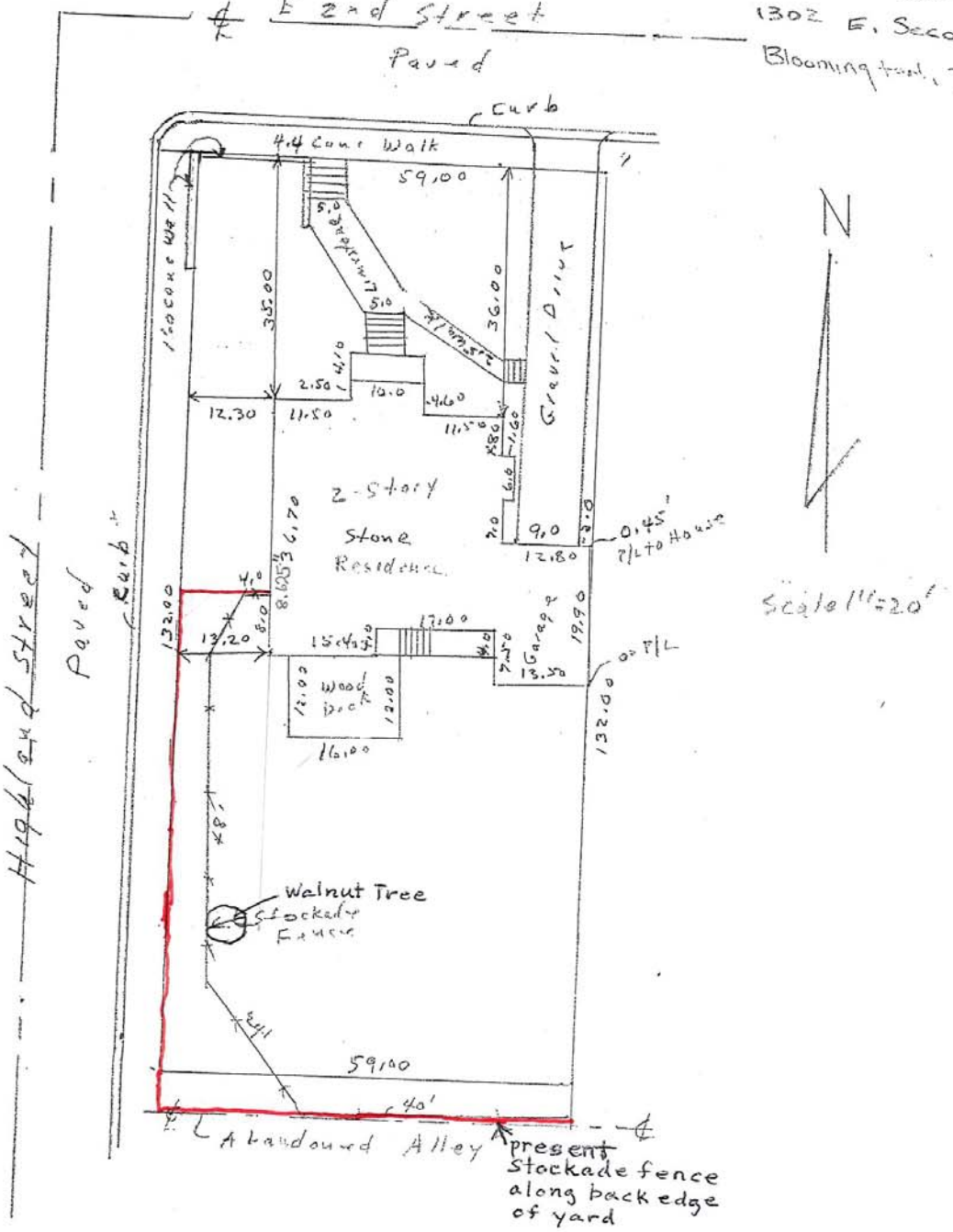
---

**RECOMMENDATION:** Based on the written findings, staff recommends denial of the variance.

S BALLANTINE RD
S HIGHLAND AVE
S JORDAN AVE
E 2ND ST
RC
City of Bloomington
Planning & Transportation
Scale: 1" = 100'
By: lewisa
11 May 17
100 0 100 200 300 400
For reference only, map information NOT warranted

628
13
131
1216
1302
1304
1308
1310
610
HIGH AND AVE
RC
By: kwisa
11 May 17
50
0
50
100
150
200
For reference only, map information NOT warranted.
N
City of Bloomington
Planning & Transportation
Scale: 1" = 50'

Lot #1 Parkview Addition
1302 E. Second Street
Bloomington, Indiana




DESCRIPTION;
Lot #1 Parkview Addition as recorded in The Office Of The Recorder, Bloomington, Indiana.

ENGINEER'S CERTIFICATION:

I hereby certify that the plat shown is a true and complete survey of the described property, and further certify that all improvements are wholly within the boundaries of said property, and that the said improvements do not encroach upon any other property, nor are there any encroachments from any other property on said surveyed property.

Raymond Graham
Raymond Graham
R.P.E. 8409 R.L.S. 9978 Indiana
3215 N.Smith Pike
Bloomington, Indiana
October 10,1984

RAYMOND GRAHAM REGISTERED No. 8409 STATE OF INDIANA PROFESSIONAL ENGINEER

petitioner's site plan

## Petitioner's Statement

In January 2016, I. Alisan Donway, purchased my current home at 1302 E. 2nd Street, on the corner of E. 2nd Street and Highland Avenue. The lot is approximately two-tenths of an acre. It has an attached garage on the east side of the house and a deck (12-feet by 16-feet) on the rear south side. A dilapidated fence remains at the back of the lot. The neighborhood is completely residential, some houses being owner-occupied and some rental. All are currently occupied.

**Petition**

For a number of reasons, I would like to petition for a variance to build a backyard fence closer to Highland Avenue (on the west) and for the height of the proposed fence to be 6 feet.

1) Without a variance, the fence would have to be built from the southwest corner of the house back to the fence along the south property line. This cut off an enormous percentage of the backyard, and it would take the fence 2 feet east of a large (4-foot in diameter) black walnut tree. The tree is the center of a long-established landscape design in the backyard, and such a fence would put the tree outside of the yard. Moreover, putting fence posts so close to the tree could prove fatal for this very beautiful tree, which is a desirable part of this neighborhood.

2) Because the land slopes sharply downward from Highland Avenue, to the other side of the property, a 6-foot fence set so far back from Highland Avenue would not provide any more privacy or noise reduction than a 4-foot fence near Highland Avenue.

3) A 6-foot fence on the property line would also screen a compost pile in the backyard's southwest corner.

4) A hedge on the Highland Avenue property line is not a feasible alternative to a 6-foot fence for a number of reasons. (a) Black walnut trees produce juglone in their leaves, twigs, and roots, which the rain washes into the soil. Many plants are intolerant of this chemical and will wither and die when subjected to it. I have provided a table listing some common hedge plants and their relative tolerance to juglone. (b) Some hedge plants also do not grow well with so much shade as the walnut tree cases. These are also listed in the table. (c) Some hedge plants can be severely damaged by deer (which are already a problem to many of our backyard plants). (d) Only two hedge plants are likely to grow on the property under the black walnut tree: [i] Boxwood is one such, but it has many diseases and pests and it will grow only about 3 inches per year; the tallest boxwood that the local nursery has is 30 inches. It would take 10 years to reach just 5 feet in height. As I am elderly, I might not live long enough to see it reach even that height. [ii] Canadian hemlock is another plant and is what we have now on Highland Avenue. But it was never pruned so that it became a good screen. They grow rapidly and need shearing every year, which I cannot do nor afford as a retiree.

5) I have submitted pictures of fences from the Elm Heights Historic District and have received a certificate of approval for both of them. So, the approval will not be injurious to the public health, safety, morals, and general welfare of the community. The strict application of the Unified Development Ordinance will result in practical difficulties in the use of my property, and

these practical difficulties are peculiar to my property The Development Standards Variance will relieve these practical difficulties.

The need for the Use Variance arises from a condition peculiar to my property itself, while strict application of the terms of the Unified Development Ordinance will constitute an unnecessary hardship if they are applied to my property. The approval of the Use Variance does not interfere substantially with the goals and objectives of the Growth Policies Plan.

| Hedge Plants | Tolerance to Black-Walnut Toxicity | Tolerance to Shade of Walnut Tree | Frequency of Deer Damage |
|---|---|---|---|
| Yews | Not Tolerant | Yes | Frequently Severely Damaged |
| Arborvitae | Tolerant | No | Frequently Severely Damaged |
| Chinese Holly | Not listed as tolerant of black-walnut juglone | Yes | Occasionally Severely Damaged |
| Japanese Holly | Not listed as tolerant of black-walnut juglone | Yes | Occasionally Severely Damaged |
| Boxwood | Not listed as tolerant of black-walnut juglone | Yes. Grows very slowly | Rarely (but has many diseases and pests) |

| Hedge Plants | Tolerance to Black-Walnut Toxicity | Tolerance to Shade of Walnut Tree | Frequency of Deer Damage |
|---|---|---|---|
| Juniperus chinensus | Tolerant | No | Seldom Severely Damaged |
| Ligustrum Privet | Not Tolerant | Tolerant of Partial Shade | Occasionally Severely Damaged |
| Amur Honeysuckle | Not Tolerant | Prefers Full Sun | Seldom Damaged |
| Rosebay Rhododendron | Not Tolerant | Yes | Occasionally Severely Damaged |
| Canadian Hemlock (needs shearing for hedge; gets very large and tall; rapid growth) | Tolerant | Tolerant of Light Shade | Occasionally Severely Damaged |

# CERTIFICATE OF APPROPRIATENESS

Issued by
Staff to the
Bloomington Historic Preservation Commission

**ADDRESS** 1302 E. 2nd St.: Elm Heights

For the following work:

Removal of Evergreen trees along Highland Ave. and construct a 6' wooden fence along the back of the property and along Highland Ave. only 8' from the rear of house.

A copy of the complete approved plans may be obtained from the City of Bloomington, 401 N. Morton, Department of Department of Housing and Neighborhood Development under case number COA-17-20
This Certificate is effective for two years following the date of issue. Exterior work outside the scope of this approval is not permitted and subject to fines outlined in Municipal Code, Title 8, Chapter 8.16.020.

Bethany M Emenhiser

Bethany Emenhiser, staff
Bloomington Historic Preservation Commission

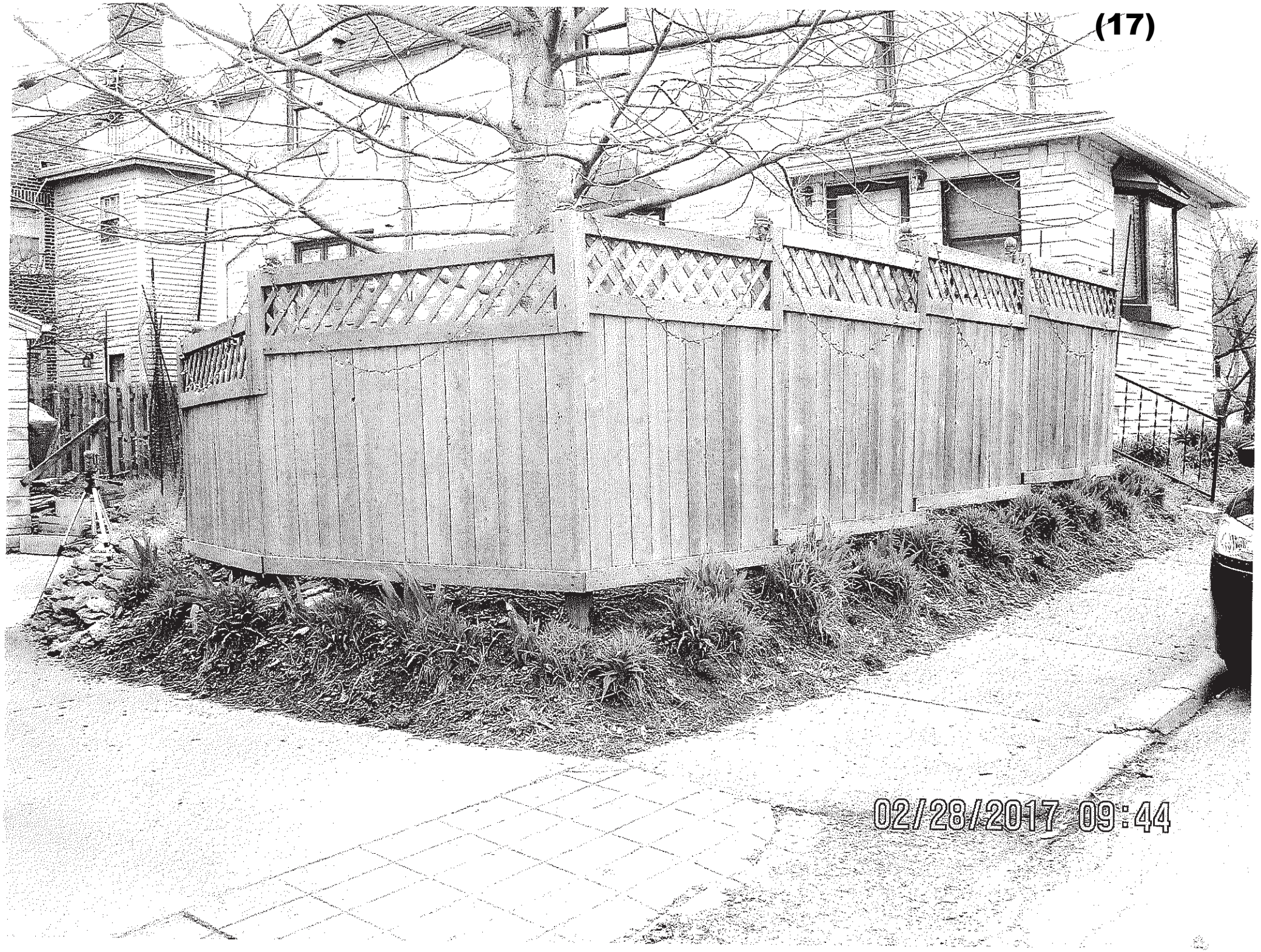
**Approved: March 29, 2017**

(13)

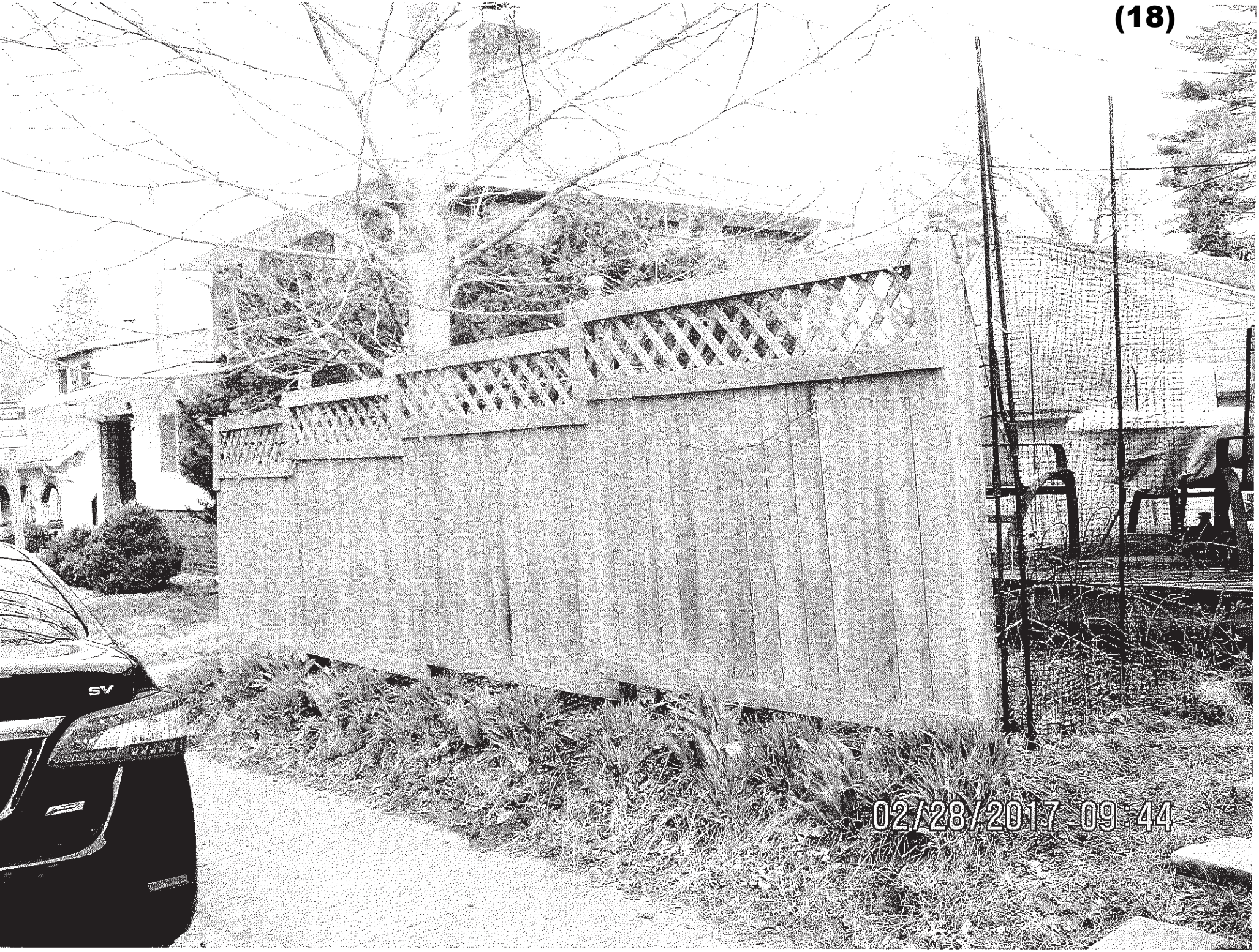
See downward slope toward the area between foot of tree and stone planting bed edge

02/28/2017 09:27

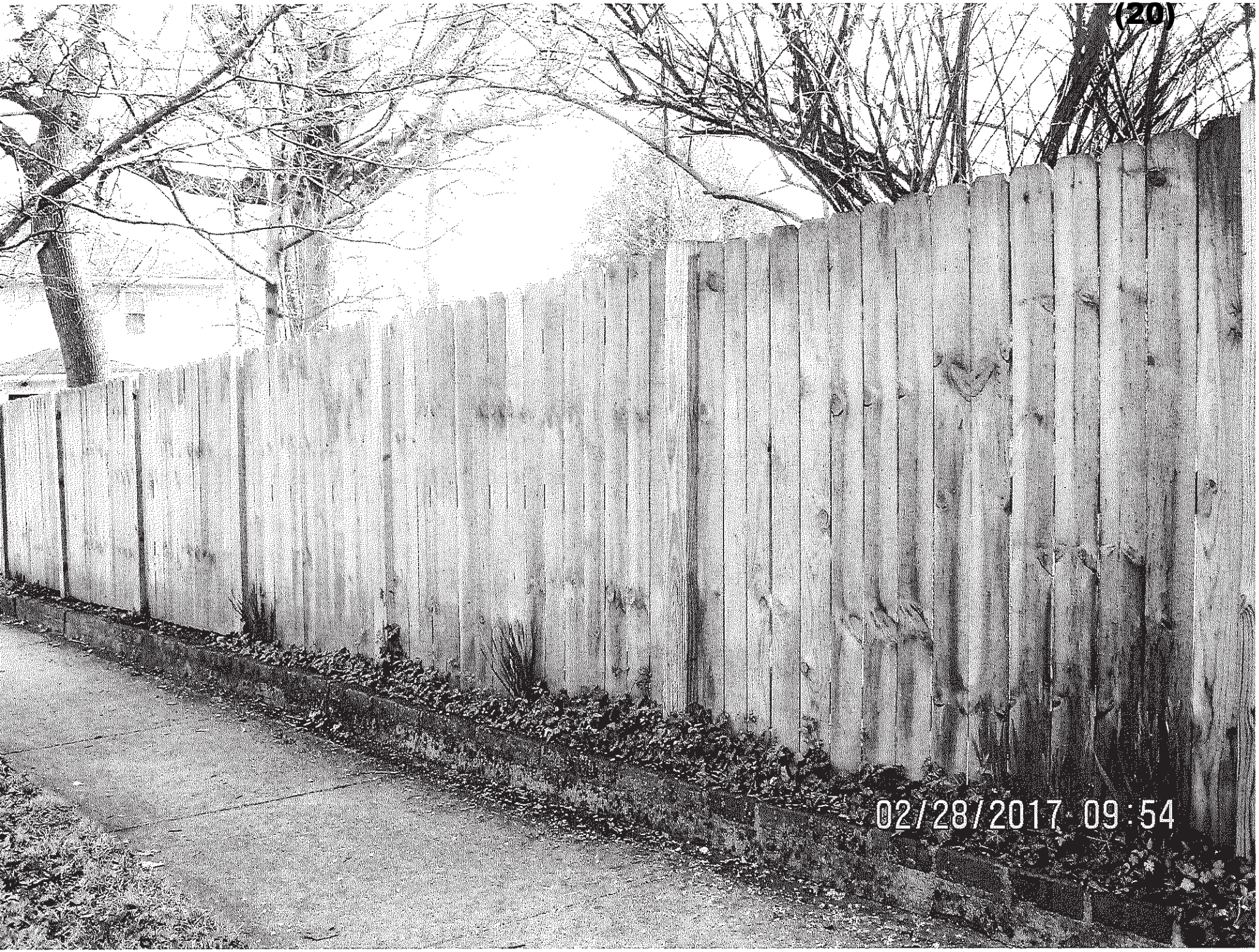
02/28/2017 09:29

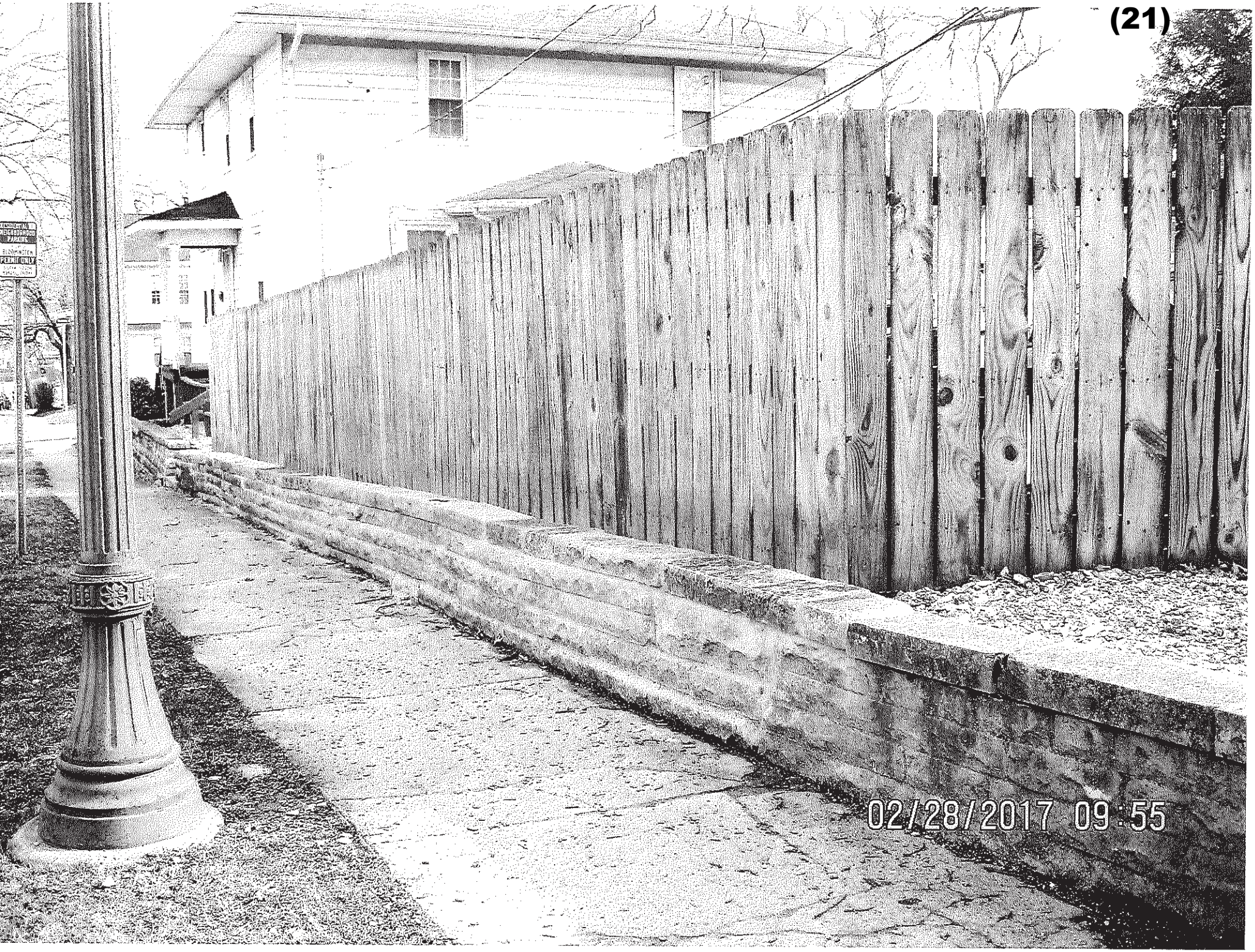

02/28/2017 09:44

(18)

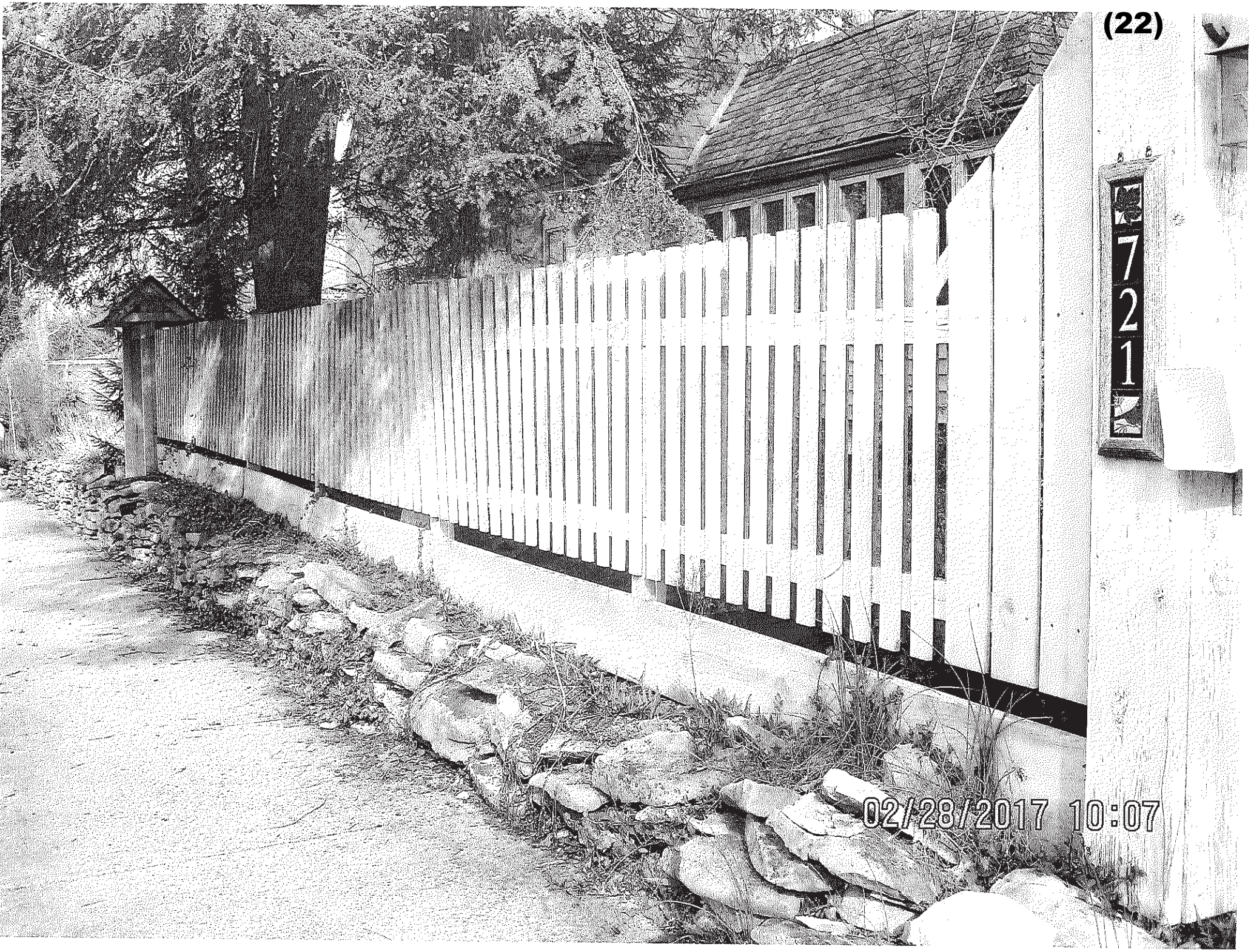


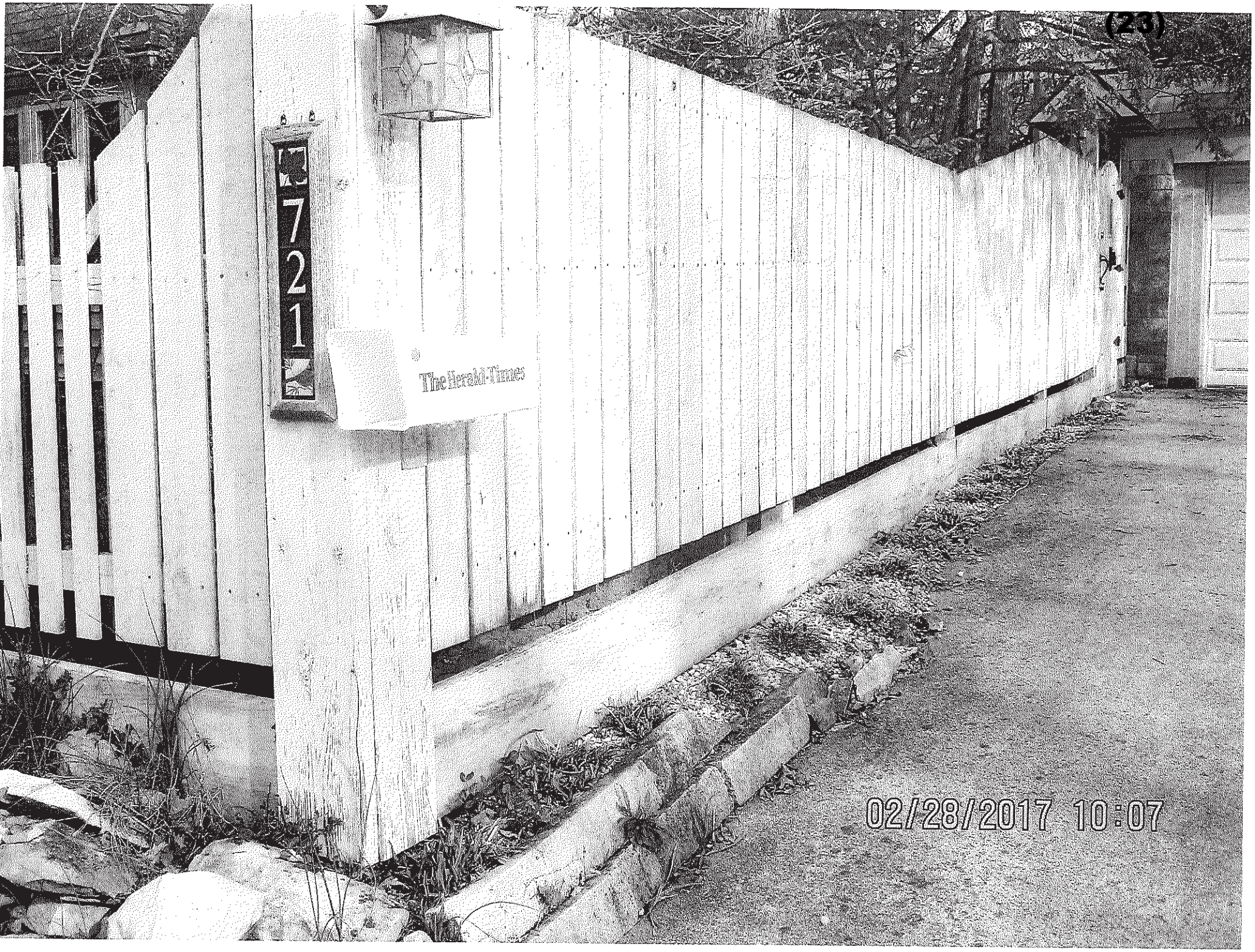
02/28/2017 09:54


02/28/2017 09:54

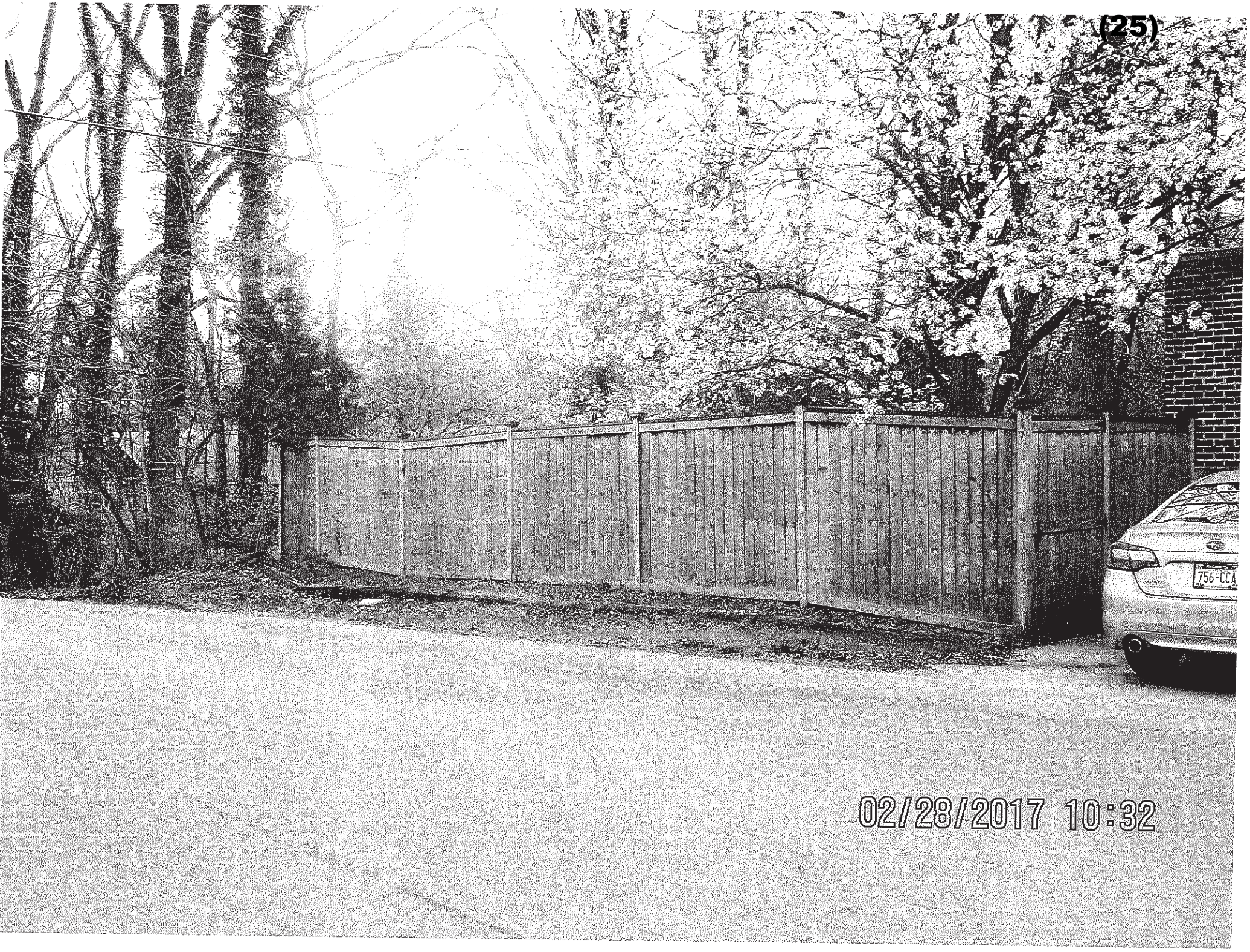

(21)
02/28/2017 09:55

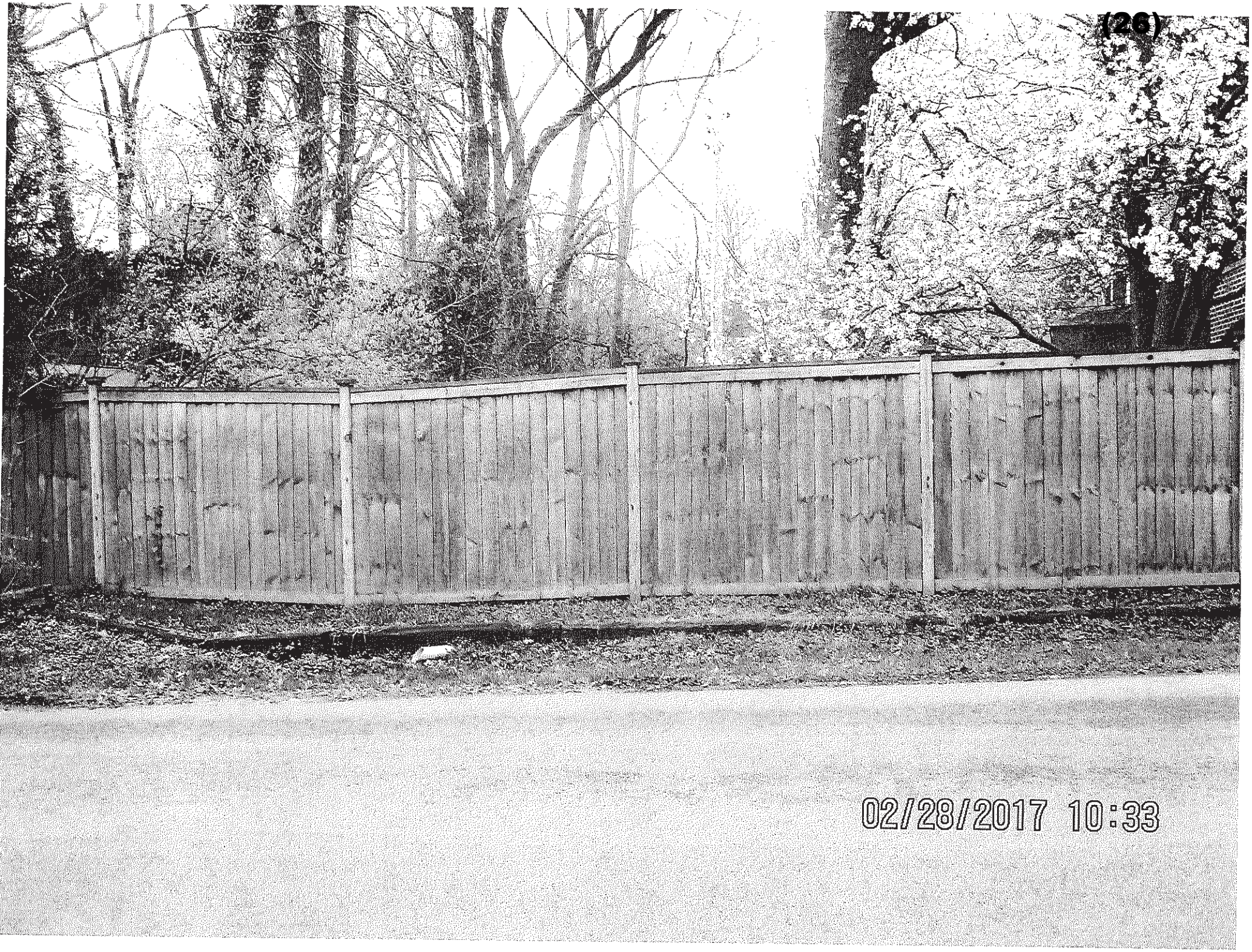
(22)

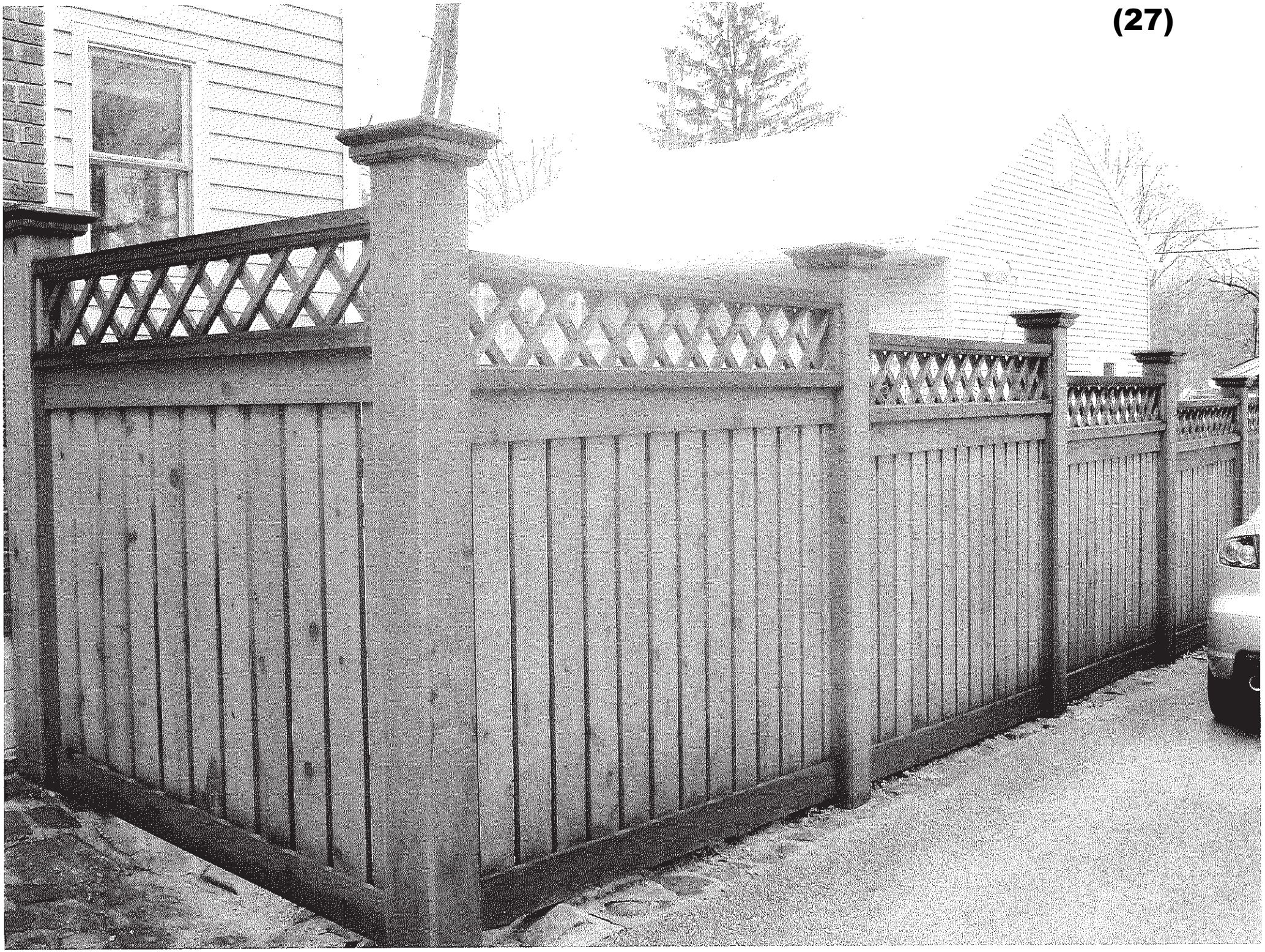


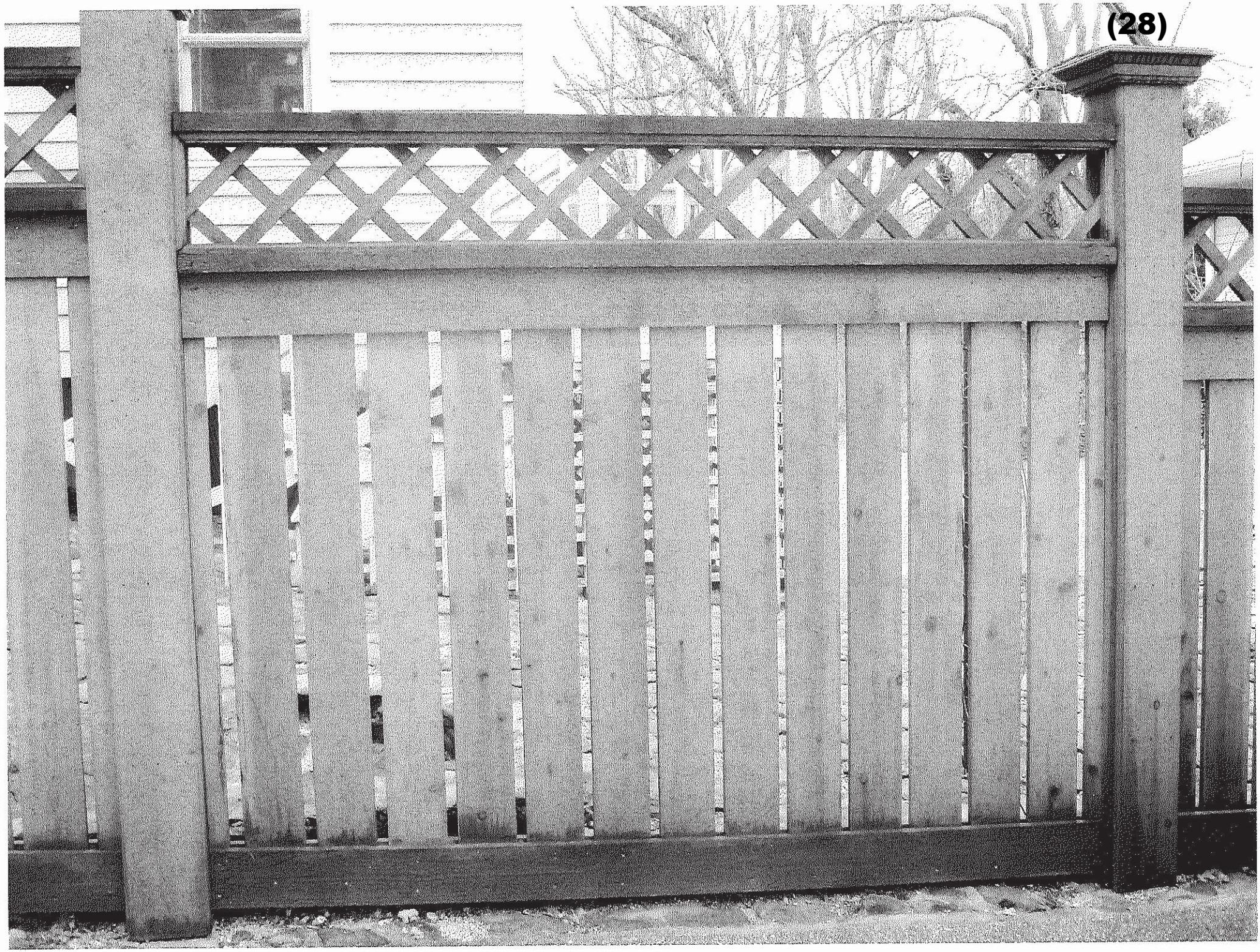

(23)
721
The Herald-Times
02/28/2017 10:07

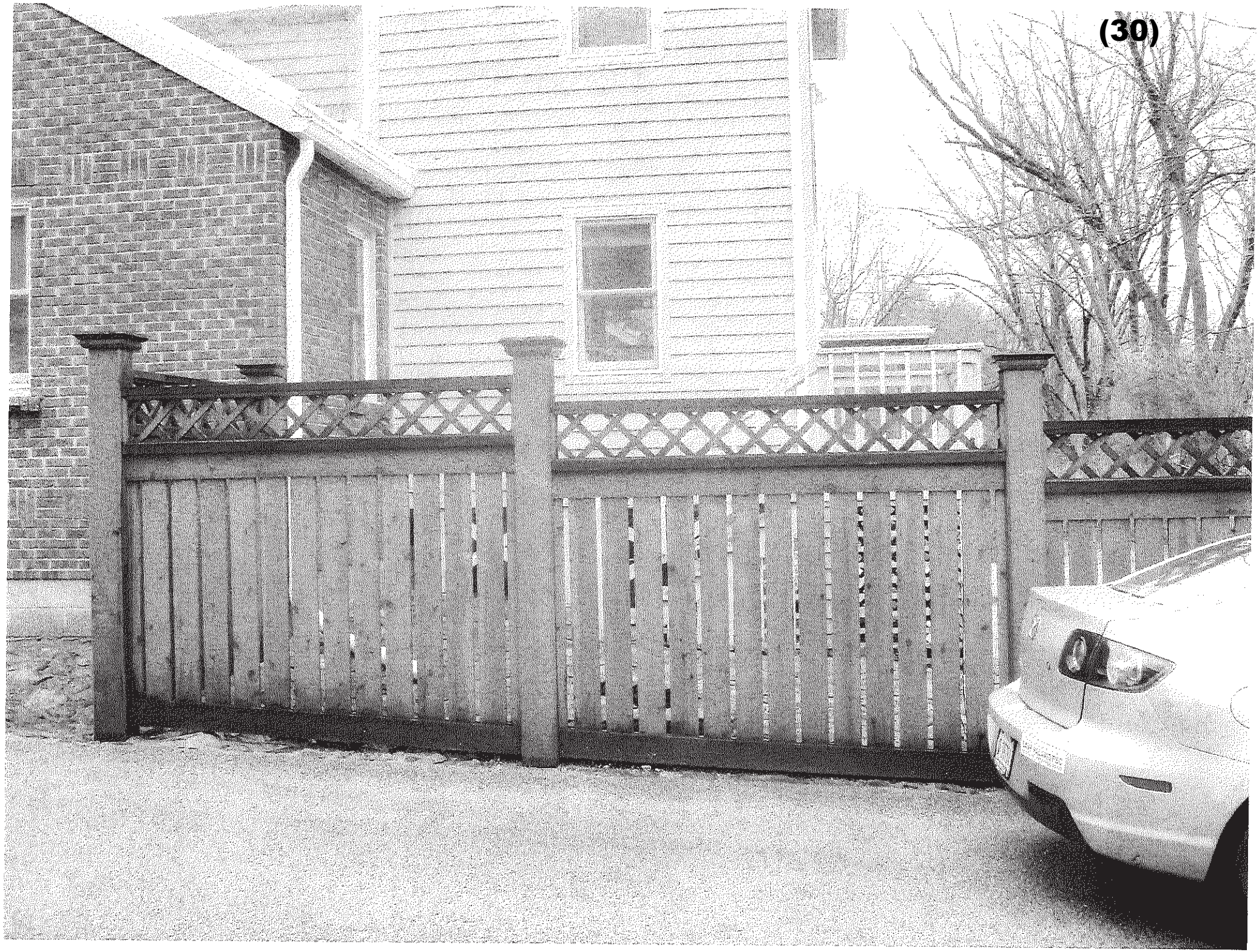
02/28/2017 10:08


02/28/2017 10:32


(26)
02/28/2017 10:33






(30)