

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600**

**[www.montgomerycountymd.gov/mc/council/board.html](http://www.montgomerycountymd.gov/mc/council/board.html)**

**Case No. A-5891**

**PETITION OF MAGRUDER/REED COMMUNITIES, LLC**

**(Hearing held June 18, 2003)**

**OPINION OF THE BOARD**

**(Effective Date of Opinion, August 21, 2003)**

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.732(c)(1). The petitioner proposes propose to construct a townhouse that requires a 5.83 foot variance as it is within 4.17 feet of the side lot line setback. The required setback is ten (10) feet.

Scott Reed of Magruder/Reed Communities, LLC, appeared at the public hearing and was represented by Anne C. Martin, Esquire, James McDonald, architect, and Trini M. Rodriguez, land planner and landscape architect.

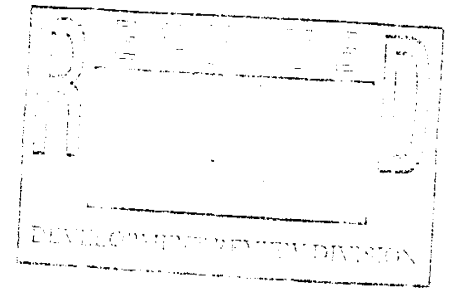
The subject property is Lot 7, Block 3, Rosedale Park Subdivision, located at 4714 Chestnut Street, Bethesda, Maryland, 20814, in the RT-12.5 Zone, (Tax Account No. 03384863).

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The subject property currently consists of 20,000 square feet on four lots that were reclassified from the R-60 Zone to the RT-12.5 Zone by the County Council on March 11, 2003, in Case No. G-797. Case No. G-797 permitted the construction of a new six townhouse development that is comprised of three townhouses facing Chestnut Street, three townhouses facing Rosedale Avenue, and a park area in front of the Rosedale Avenue townhouses. See, Exhibit No. 4 [site plan], No. 10(a) [Zoning Text Amendment G-797], and No. 12 [rendered site plan].
2. Mr. Reed testified that the concept for the townhouses was to be a transition use from the high density use on Wisconsin Avenue. A public park is also proposed on the subject property. Mr. Reed testified that during the review of Case No. G-797, the Department of Public Works and Transportation (DPWT) and the Department of Permitting Services (DPS) required that at the time of subdivision, six feet of the property would need to be dedicated to widen the existing 10-foot alley for the portion of the alley that is accessed from Chestnut Street to provide the access to the proposed townhouses.

(13)



3. Vehicular access to the townhouses will be through rear entrance garages for each townhouse. The garages that are to be accessed by a public alley located to the west of the property which connects with Chestnut Street and Rosedale Avenue. The alley widening is depicted on the Schematic Development Plan [See, Exhibit No. 4/site plan].
4. Ms. Rodriguez testified that the townhouse development was also intended to form an urban design edge by provision of the park and to achieve the Bethesda CBD Master Plan objective of providing a residential transition area. See, Exhibit No. 17 [master plan excerpt]. The park is a part of the 57.3 percent green area required for the subject property pursuant to the binding elements of the Schematic Development Plan in Case No. G-797. See, Exhibit No. 10(b) [development standards].
5. Ms. Rodriguez testified that DPWT and DPS required the widening of only a portion of the alley to access the townhouses in order to maintain the right-of-way as an alley, not a street, and to conform to the goal of the community to deter cut-through traffic through the neighborhood. Ms. Rodriguez further testified that the grant of the variance would be consistent with this goal because the narrow alley would maintain the appearance of an alley from Chestnut Street.
6. Mr. Reed testified that the location of the townhouse that would be adjacent to the alley would be set back almost nine feet further from the alley than the existing dwelling on the property.
7. Mr. McDonald testified that the widening of the alley creates the need for a 5.83 foot variance to maintain the proposed alignment of the row of the three townhouses on Chestnut Street. The area west and opposite of the alley is an office condominium development in the CBD-1 Zone that is located on the property line of the alley. The office condominium project has no windows facing east toward the proposed townhouses. See, Exhibit No. 5a [Chestnut Street and park elevation] and No. 14 [photograph].
8. Mr. McDonald testified that the variance request is necessary to maintain the alignment of the townhouses and in order to provide proper vehicular circulation for townhouse garage access.

### **FINDINGS OF THE BOARD**

Based upon the petitioner's binding testimony and the evidence of record, and the Board finds that the variance can be granted. The requested variance complies with the application standards and requirement set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

14

The subject property has been reclassified by the Montgomery County Council from a R-60 Zone to an RT-12.5 Zone on March 11, 2003, in Case No. G-797. The Schematic Development Plan in Case No. G-797 required that the six feet of the property be dedicated to the widening of the existing alley.

The widening of the alley would maintain the alignment of the proposed townhouses that are to be constructed on the property. The proposed development will be a transition use from the high density use on Wisconsin Avenue and will provide a park, which is proposed on the subject property.

The Board finds that these are exceptional circumstances and that the strict application of the regulations would result in practical difficulties for the petitioner were the variance to be denied.

- (b) *Such a variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the proposed construction of a townhouse is the minimum reasonably necessary.

- (c) *Such a variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan. The Board further finds that the variance request is consistent with the Bethesda CBD Master Plan and that the property will be maintained as a residential transition area.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction will be setback further from the alley than the property's existing dwelling and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

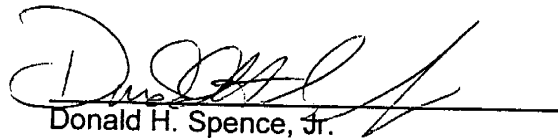
Accordingly, the requested variance of 5.83 feet from the required ten (10) foot side lot line setback for the construction of a townhouse is granted, subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and the representations of his attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction shall be completed according to the plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(c).

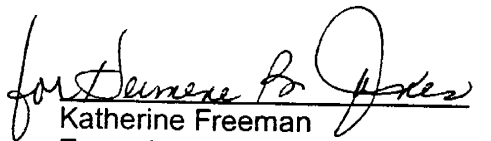
The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Louise L. Mayer was necessarily absent and did not participate in the Resolution. On a motion by Donald H. Spence, Jr., Chairman, seconded by Angelo M. Caputo, with Donna L. Barron and Allison Ishihara Fultz, in agreement, the Board adopted the following Resolution.

  
Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 21st day of August, 2003.

  
Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days of after the date the Opinion is mailed and entered into the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's rules of Procedure for specific instructions requesting reconsideration.

Tax id # 07-00529850  
07-00529115  
07-00529672  
07-00528902

RETURN TO LINOWES + BLOCHER - A. MARTIN

23251 775

DECLARATION OF COVENANTS TO RESTRICT  
DEVELOPMENT STANDARDS

THIS DECLARATION is made on this 6<sup>th</sup> day of Dec, 2002, by W. Bradley Edelblut, Trustee of the Edelblut Family Trust, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in the County of Montgomery, State of Maryland, consisting of approximately 20,000.4 square feet, known as Rosedale Park, Lots 33 and 34, Block 3, recorded on October 1, 2002 at Plat No. 22318 and Rosedale Park, Lots 16 and 17, Block 3 recorded in 1908 at Plat Book 1, Plat No. 92, which is more particularly described on the Identification Plat attached hereto and made part hereof as Exhibit "A" (the "Property").

WHEREAS, on or about March 14, 2002, the contract purchaser of the Property, Magruder/Reed Communities LLC ("Magruder/Reed"), filed a local map amendment application (the "Rezoning Application"), as provided in Section 59-H-2.4 of the Montgomery County Code (the "Zoning Ordinance") requesting rezoning of the Property from the R-60 Zone to the R-T 12.5 Zone.

WHEREAS, pursuant to Section 59-H-2.53 of the Zoning Ordinance, Magruder/Reed submitted a Schematic Development Plan illustrating and specifying how and to what extent the Rezoning Application would bind the Property to the information provided on the Schematic Development Plan pertaining to use, development density, maximum building coverage, green area, maximum building height, building setback from street, building setback from detached residential unit (setback from east property line) and building footprint, with the exception of a possible increase in setback from the west property line, which Schematic Development Plan was amended and is attached hereto and made a part hereof as Exhibit "B".

NOW THEREFORE, Declarant hereby declares that all of the real property described on Exhibit "A" hereto shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to the following covenants, which shall run with such real property and be binding on all parties having any right, title or interest in all or any portion of the real property described on Exhibit "A" hereto, their heirs, personal representatives, successors, transferees and assigns, unless the Property is rezoned or the Schematic Development Plan is amended and an amended covenant is executed and recorded among the Land Records of Montgomery County, Maryland, in accordance with Section 59-H-2.54 of the Montgomery County Code:

Density: Pursuant to Section 59-C-1.731(b) of the Zoning Ordinance, the maximum density of development in the R-T 12.5 Zone is 12.5 units per acre of "usable area" as defined in Section 59-C-1.523 of the Zoning Ordinance. As demonstrated on the Schematic Development Plan, the usable area of the Property is 24,733.8 square feet and thus 7 units would be permitted pursuant to the R-T 12.5 Zone development standards; however, as depicted on Exhibit "B", the Schematic Development Plan, the development on the Property will not exceed 6 units (or 10.6 units per acre of usable area).

RECORDING FEE 20.00  
INF FD SURE \$ 5.00  
TOTAL 25.00  
RCPT # 72583  
BLK # 4722  
MAR 11 2003 02:42 PM

2. Limit Uses: Pursuant to Section 59-C-1.71 of the Zoning Ordinance, numerous uses are permitted by right in the R-T 12.5 Zone. Pursuant to the Schematic Development Plan, only the following uses shall be permitted on the Property: townhouse, home occupation - no impact (as defined in Section 59-A-6.1 of the Zoning Ordinance), and open space/park.
3. Green Area: Pursuant to Section 59-C-1.734(b) of the Zoning Ordinance, the minimum green area required in the R-T 12.5 Zone is 50 percent. Pursuant to the Schematic Development Plan, 57 percent of the Property must be devoted to green area.
4. Building Coverage: Pursuant to Section 59-C-1.734(a) of the Zoning Ordinance, the maximum building coverage permitted in the R-T 12.5 Zone is 35 percent. Pursuant to the Schematic Development Plan, the maximum building coverage on the Property is 26 percent.
5. Building Height: Pursuant to Section 59-C-1.733(a) of the Zoning Ordinance and the Schematic Development Plan, the maximum building height on the Property is 35 feet.
6. Building Setback from Street: Pursuant to Section 59-C-1.732(b) of the Zoning Ordinance and the Schematic Development Plan, the minimum building setback from the street is 25 feet.
7. Building Setback from Detached Residential Unit: Pursuant to the Schematic Development Plan, the minimum setback from the adjacent property classified in a one-family, detached residential zone is 10 feet.
8. Building Footprint: Pursuant to the Schematic Development Plan, the building footprint is binding on the Property, with the exception of a possible increase in setback from the west property line adjacent to the alley.
9. Architectural Elements: The townhouse development on the Property shall comply with the following architectural elements: brick veneer on three sides of unit/row; 30-year non-wood siding material on the rear/garage side of unit/row; and featured architectural elements including architectural door entry features, jack arches, cornice trim molding, railing at stoop entry, architectural shingles on roof and rowlock masonry banding. The number of windows on the front of each unit and combination of architectural elements for each unit must conform to one of the elevations depicted on attached Exhibit "C" or Exhibit "D".

All provisions of this Declaration of Covenants, including the benefits and burdens, shall touch, concern and run with the land and shall be binding upon and inure to the benefit of Montgomery County, Maryland, Maryland-National Capital Park and Planning Commission, the Declarant, and their respective successors, transferees, assigns, heirs and personal representatives.

LEGAL DESCRIPTION OF LAND TO BE RECLASSIFIED  
FROM R-60 TO R-T 12.5

EDELBLUT PROPERTY  
BETHESDA (7<sup>TH</sup>) ELECTION DISTRICT

Being all thoses parcels of land conveyed by W. Bradley Edelblut to W. Bradley Edelblut, Trustee of the Edelblut Family Trust Agreement, by deed dated February 10, 2000, recorded among the Land Records of Montgomery County, Maryland in Liber 17884 at Folio 304, said land also being (i) all of Lots 16 and 17 in Block numbered 3 in the subdivision known as "ROSEDALE PARK" as per plat thereof duly recorded among said land records in Plat Book 1 at Plat 92; and (ii) Lots 33 and 34 in Block numbered 3 in said subdivision of "ROSEDALE PARK" as per plat thereof duly recorded among said land records in Plat 22318, more particularly described as follows in accordance with a survey by Dewberry & Davis LLC. as follows:

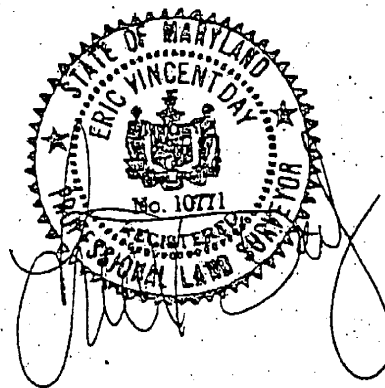
Beginning for the outline of said land at a point of intersection between the northerly right-of-way line of Rosedale Avenue (40' wide) and the easterly line of a public alley (10' wide) as shown on said Plat Book 1 at Plat 92, said point also being the southwesterly corner of said Lot 16; thence running with the easterly line of said alley

- 1) North 00°00'00" West, 240.00 feet to the southerly right-of-way line of Chestnut Avenue (40' wide), said point also being the northwesterly corner of said Lot 33; thence running with said southerly line of Chestnut Avenue
- 2) North 90°00'00" East, 86.67 feet to the northeasterly corner of said Lot 34; thence running with the line between said Lot 34 and Lot 29 in Block numbered 3 in said subdivision of "Rosedale Park", recorded in Plat Book 8 at Plat 618
- 3) South 00°00'00" East, 120.00 feet to a point; thence
- 4) North 90°00'00" West, 6.67 feet to the division line between said Lot 17 and Lot 18 of said Plat Book 1 at Plat 92; thence running with said line

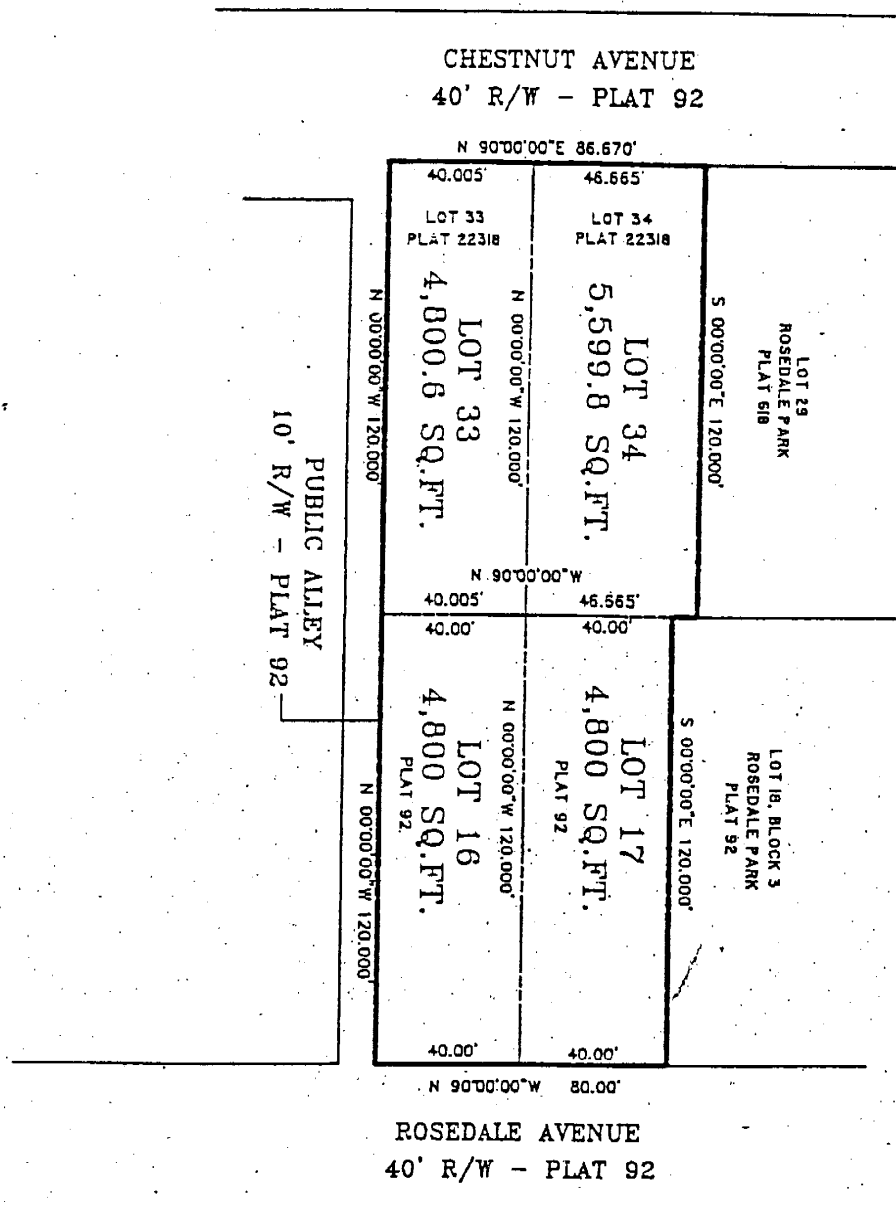
PAGE 2

LEGAL DESCRIPTION OF LAND TO BE  
RECLASSIFIED FROM R-60 TO R-T 12.5  
EDELBLUT PROPERTY  
BETHESDA (7<sup>TH</sup>) ELECTION DISTRICT

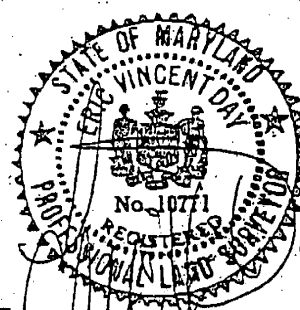
- 5) South 00°00'00" East, 120.00 feet to a point on said northerly line of Rosedale Avenue, said point also being the southeasterly corner of said Lot 17; thence running with said line of Rosedale Avenue
- 6) North 90°00'00" West, 80.00 feet to the point of beginning, containing 20,000.4 square feet or 0.4591 acres of land.







TOTAL AREA =  
20,000.4 SQ.FT.



# IDENTIFICATION PLAT

## ROSEDALE PARK - LOTS 16, 17, 33 & 34, BLOCK 3

SCALE: 1" = 50'

**Dewberry & Davis LLC**  
A Dewberry Company  
804 East Diamond Avenue, Suite 300  
Catharsburg, MD 20878-1414  
(301) 948-6306 Fax: (301) 258-7607  
www.dewberry.com

Engineers  
Planners  
Surveyors  
Landscape Architects

23251 777

IN WITNESS WHEREOF, the undersigned, being the DECLARANT herein, has executed this instrument this 6 day of December, 2002.

WITNESS:

DECLARANT

BY:

W. Bradley Edelblut

Title:

Trustee

[CORPORATE SEAL]

STATE OF

COUNTY OF

Norfolk  
Carroll

\* \* \*

\*

\* to wit:

\*

I HEREBY CERTIFY that on this 6 day of December, 2002, before me, a Notary Public in and for the State and County aforesaid, personally appeared W. Bradley Edelblut, known to me (or satisfactorily proven) to be W. Bradley Edelblut, Trustee of the Edelblut Family Trust, and being authorized to do so, executed the foregoing and annexed instrument on behalf of such corporation for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Kim Shaff Gulmon  
Notary Public

My Commission Expires: 11-01-05

[NOTARIAL SEAL]

(22)

\* \* \*

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing instrument was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.

  
Anne C. Martin

IMANAGE:306897 v.4 04284.0003 Curr: 12/03/02 02:46pm  
Orig: 12/3/02 2:37:47 PM Ed: 12/3/02



ROSEDALE TOWN HOME  
MAGRUDER - REED COMMUNIT  
FRONT ELEVATION STYLE #1

ARCHITECTURAL SHINGLES

GABLE DORMER

CORNICE TRIM

JACK ARCH, TYPICAL

PANELED SHUTTERS, TYPICAL

ROWLOCK MASONRY BAND, TYPICAL

DOOR ENTRY FEATURE

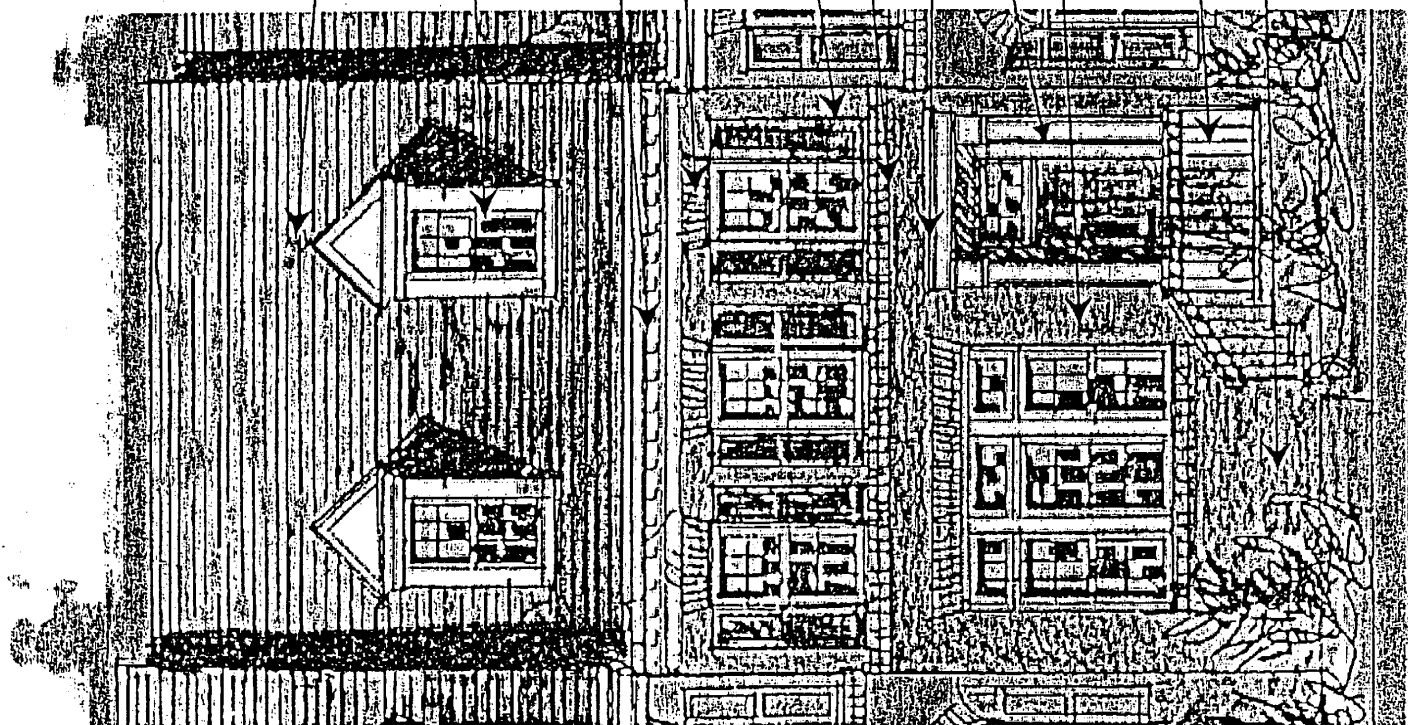
BRICK VENEER

RAIL ON STOOP ENTRY

ENGLISH BASEMENT WINDOW WHEN GRAJ

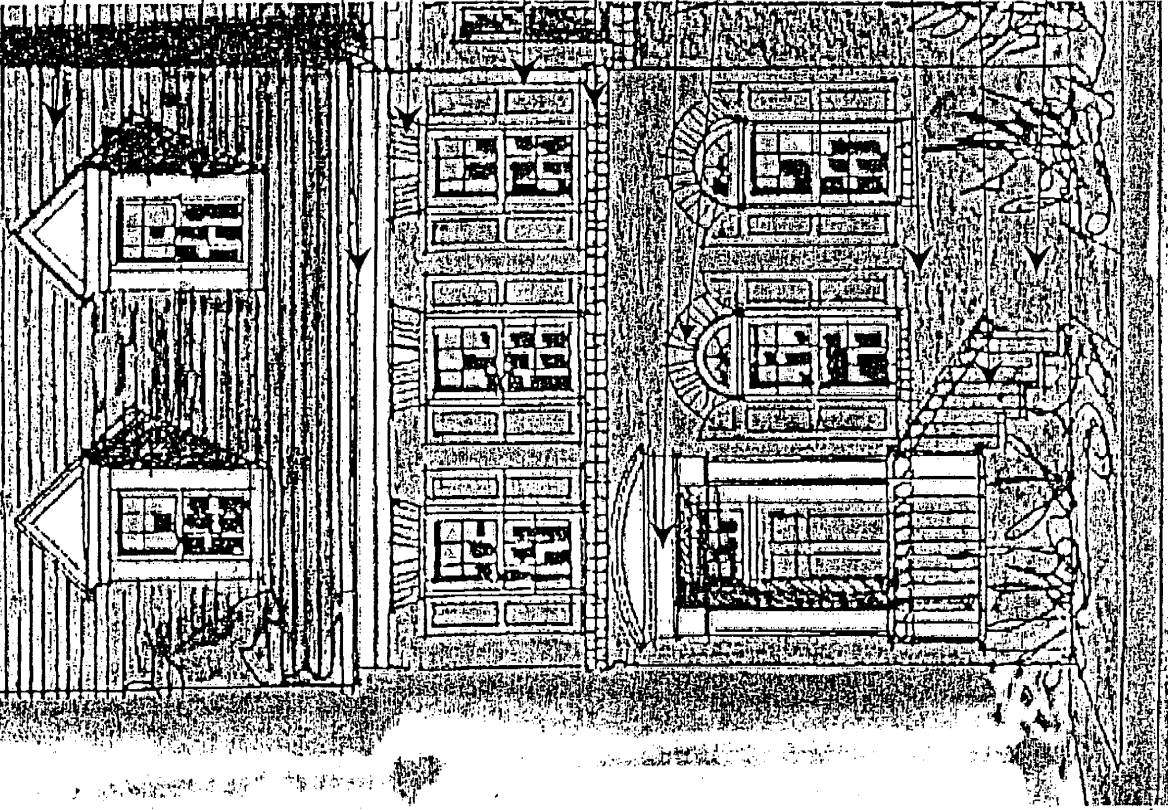
The Lessard Architectural

October 29, 2002



ROSEDALE TOWN HOM  
MAGRUDER - REED COMMU  
FRONT ELEVATION STYLE #

2



ARCHITECTURAL SHINGLES

GABLE DORMER

CORNICE TRIM

SPLAYED JACK ARCH WITH PRECAST  
KEYSTONE, TYPICAL.

PANELED SHUTTERS, TYPICAL.

ROWLOCK MASONRY BAND, TYPICAL.

DOOR ENTRY FEATURE

ARCHED SOLDIER COURSE WITH PRECAST  
KEYSTONE, TYPICAL.

BRICK VENEER

RAIL ON STOOP ENTRY

ENGLISH BASEMENT WINDOW WHEN GRA

The Lessard Architectural

October 29, 2002