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Durbin Law Offices, P.L.L.C.

Derek R. Durbin, Esq.
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*Also admitted in MA

BY: HAND DELIVERY & VIEWPOINT

January 29, 2020

City of Portsmouth
Zoning Board of Adjustment
Attn: David Rheame, Chairman
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application(s) of Robert MacDonald
132 Middle Street and 134 Middle Street**

Dear Chairman Rheame,

On behalf of Robert, MacDonald, please find twelve (12) copies of the following materials relative to his variance applications for 132 and 134 Middle Street.

- 1) Landowner Letters of Authorization;
- 2) Applicant Letter of Authorization
- 3) Narrative to Variance Application;
- 4) ZBA Site Plan;
- 5) Existing Floor Plans;
- 6) Proposed Floor Plans;
- 7) Elevations;
- 8) Tax Map Image of Property; and
- 9) Photographs of Property.

Please note that there is one common set of materials that applies to both variance applications. The applications pertain to the renovation of a building that is partitioned between the two properties. With the Board's permission, it would be my intent to present the two applications together given the fact that they are interrelated and will be less confusing to understand than if presented separately.

Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

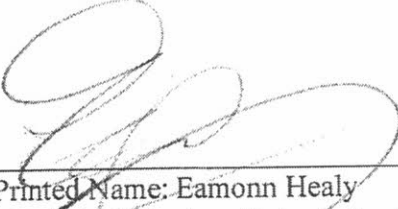
Sincerely,

A handwritten signature in blue ink, appearing to read "Derek R. Durbin", is written over a large, loopy blue oval that serves as a decorative flourish or part of the signature.

Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

132 Middle Street LLC, of 21 Madbury Road, Durham, NH 03824, owner of property located at 132 Middle Street, Portsmouth, New Hampshire 03801, identified on Tax Map 127, as Lot 12 (the "Property"), hereby authorize **Robert MacDonald**, of 209 Gosport Road, Portsmouth, NH 03801, and his representatives, to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property. This Letter of Authorization shall be valid until expressly revoked in writing.



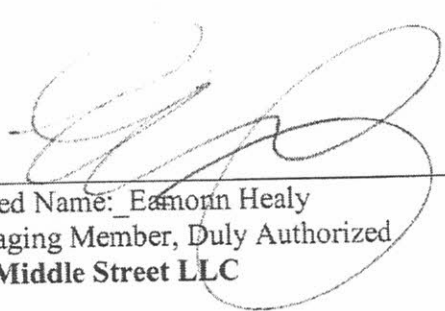
Printed Name: Eamonn Healy
Managing Member, Duly Authorized
132 Middle Street LLC

Date

1/27/2020

LETTER OF AUTHORIZATION

134 Middle Street LLC, of 21 Madbury Road, Durham, NH 03824, owner of property located at 134 Middle Street, Portsmouth, New Hampshire 03801, identified on Tax Map 127, as Lot 11 (the "Property"), hereby authorize **Robert MacDonald**, of 209 Gosport Road, Portsmouth, NH 03801, and his representatives, to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property. This Letter of Authorization shall be valid until expressly revoked in writing.



Printed Name: Eamonn Healy
Managing Member, Duly Authorized
134 Middle Street LLC

Date

1/27/2020

LETTER OF AUTHORIZATION

Robert MacDonald, of 209 Gosport Road, Portsmouth, NH 03801, hereby authorizes **Durbin Law Offices PLLC**, of 144 Washington Street, Portsmouth, New Hampshire 03801, to act as his agent and representative in connection with the filing of any building, zoning, planning or other municipal permit applications with the City of Portsmouth for properties located at 132 and 134 Middle Street, Portsmouth, NH 03801 (the "Properties"). This Letter of Authorization shall be valid until expressly revoked in writing.



Robert MacDonald

January 28, 2020

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT
APPLICATION NARRATIVE**

132 Middle Street LLC
134 Middle Street LLC
21 Madbury Road
Durham, NH 03824
(Owner)

Robert MacDonald
209 Gosport Road
Portsmouth, NH 03801
(Applicant)

INTRODUCTORY STATEMENT

The Properties

The foregoing Narrative pertains to the properties located at 132 and 134 Middle Street (the "Properties"). The Properties contain one partitioned building (the "Building"), as shown on the site and floor plans submitted herewith. One half of the Building is located on the property at 132 Middle Street. The other half of the Building is located on the property at 134 Middle Street. The Properties are located within the CD4-L1 Zoning District.

The Building

The Building presently contains 20 residential dwelling units with 9 being located on 134 Middle Street and the other 11 being located on 132 Middle Street. The half of the building located on 134 Middle Street also contains the former Dinnerman dental office (706 square feet), which was vacated in 2017. The existing units in the Building are located on the 1st, 2nd and 3rd floors. The basement is partially finished space. From the Applicant's inspection of the Building, the basement appears to contain 2 other residential units which must have been abandoned at some point in the past.

The residential units in the Building are physically and functionally obsolete. The Building needs a global renovation to bring it into conformance with current life safety and building codes.

Surrounding Area

The Building contains the largest residential complex in this area of Middle Street, which makes it particularly unique. The surrounding properties on this side (the western side) of Middle Street are residential in nature, with exception of 116 Middle Street (Lot 127-13) which is a mixed used building containing 2 residential units and a small real estate office (McMaster).

Proposed Building Renovation

The Applicant is proposing to renovate both sides of the Building to bring it into current code compliance. As part of the renovation plan, the Applicant will be adding a dwelling unit to the Building by integrating the vacant commercial unit and a portion of the basement into his re-configured floor plan.

Need for Relief

Because each of the Properties already exceed the lot area per dwelling unit and maximum number of dwelling units¹ limitations set forth in the Ordinance, variance relief is necessary to add a dwelling unit to the Building and to expand the residential use of the Building into areas where it does not presently exist.

SUMMARY OF ZONING RELIEF

134 Middle Street (Lot 127-11)

Section 10.331/10.333: To allow a lawfully existing non-conforming use to be extended or enlarged on the Properties without conforming to the requirements of the Ordinance.

Figure 10.5A41.10A: To allow lot area per dwelling unit of 590.00 square feet (+/-) where 3,000 square feet is the minimum required and 655.00 square feet exists (+/-).

132 Middle Street (Lot 27-12)

Figure 10.5A41.10A: To allow lot area per dwelling unit of 499.90 square feet (+/-) where 3,000 square feet is the minimum required and 499.90 square feet exists (+/-).

Section 10.331/10.333: To allow a lawfully existing non-conforming use to be extended or enlarged on the Properties without conforming to the requirements of the Ordinance.

VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

The Building is entirely residential and has been since 2017 when Doctor Dinnerman vacated the dental office space. The predominant surrounding use on the western side of Middle Street where the Properties are located is residential. Therefore, this is the most appropriate use of the Building with the least impact upon adjacent properties and occupants of the Building. The proposed expansion of the residential use within the Building will certainly not negatively impact the light, air and space of abutting properties or otherwise alter the essential character of the neighborhood. The introduction of a new commercial use to the former dental office is likely to

¹ Section 10.440 (1.50) limits the number of dwelling units in a Building in the CD4-L1 Zoning District to eight (8).

have a greater impact upon surrounding property owners and occupants of the Building than the addition of a dwelling unit. Thus, the spirit of the Ordinance is observed by granting the variances.

Because the Applicant is proposing to renovate the entire Building and re-configure its floor plan, he will have to bring it into conformance with current life safety and building codes. The general health, safety and welfare of the public will be benefited by the renovation given the age of the Building and many of the physical and code-related deficiencies that it suffers from.

Substantial justice will be done by granting the variance relief.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. *New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102 (2007).

There would be no gain to the public in denying the Applicant the variances necessary to expand the residential use in the Building as proposed, however, there is a benefit to granting the variance relief. Historically, the half of the Building that is on 134 Middle Street contained a dental office, which is a use permitted only by special exception in the CD4-L1 District. A dental office use is an inherently more intense use than a small-scale residential use given the frequency of daily visitor traffic associated with it. The same can be said of most, if not all, of the permitted commercial uses that could be made of the former dental office. The expansion of the residential use into the vacant dental office and a portion of the basement to accommodate an additional dwelling unit is minimally impactful. Any impact it does have is offset by the gain to the public in seeing that the Building is brought into current code compliance.

The reconfigured floor plan with the additional dwelling unit and elimination of the commercial unit is critical to the financial feasibility of the top-to-bottom renovation of the Building that is proposed. If the variances were denied, the landowner would be left with a Building that is physically and functionally obsolete and in need of significant repair. The vacant commercial space has limited marketability considering its small size (706 square feet), location (in an otherwise residential Building), and what uses are permitted in the CD4-L1 District. The loss to the landowner in denying the variance relief is not outweighed by any corresponding gain to the public.

The values of surrounding properties will not be diminished by granting the variance relief.

The Properties at 132 and 134 Middle Street have always been predominantly used for residential purposes. This is consistent with the use of surrounding properties on the same side of Middle Street and the properties to the rear on State Street. The top-to-bottom renovation of the Building and the conversion of the vacant dental office and a portion of the basement to residential space can only serve to maintain and/or benefit surrounding property values.

Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

The Properties have special conditions that distinguish them from surrounding properties. The most obvious special conditions are associated with the Building. The Building is partitioned between the Properties with one half being located on 134 Middle Street and the other half being located on 132 Middle Street. The Building is the largest multi-unit residential complex in the surrounding area. There are no surrounding properties that are similarly situated.

The Properties are non-conforming with respect to lot area per dwelling unit and maximum number of dwelling units per lot. There are 9 residential units in the half of the Building that is located on 134 Middle Street and 1 vacant commercial unit. There are 11 residential units in the half of the Building that is located on 132 Middle Street. Thus, the total unit count between the two buildings is 21. The unit count will remain at 21 after the proposed renovation of the Building, except that the commercial unit will be eliminated and replaced with a residential unit. If the variance relief were denied, the existing non-conformities associated with the Properties would remain and the landowner would be left with a building that contains serious deficiencies and flaws that are cost-prohibitive to remedy. Accordingly, there is no fair and substantial relationship between the general provisions of the Ordinance and their application to these Properties.

The proposed use is reasonable.

The expanded residential use of the Building is its highest, best and most reasonable use. The conversion of the vacant dental office space to residential space promotes uniformity and consistency in the Building which presently contains 20 residential units and no other commercial units. It is also consistent with the prevailing uses being made of buildings on surrounding properties along the same side of Middle Street and to the rear on State Street.

CONCLUSION

In conclusion, the Applicant has demonstrated that it has satisfied the five (5) criteria for granting each of the variances associated with the applications for 132 and 134 Middle Street. The Applicant respectfully requests that the Board approve the applications.

Respectfully Submitted,

Dated: January 29, 2020

Robert MacDonald, Applicant

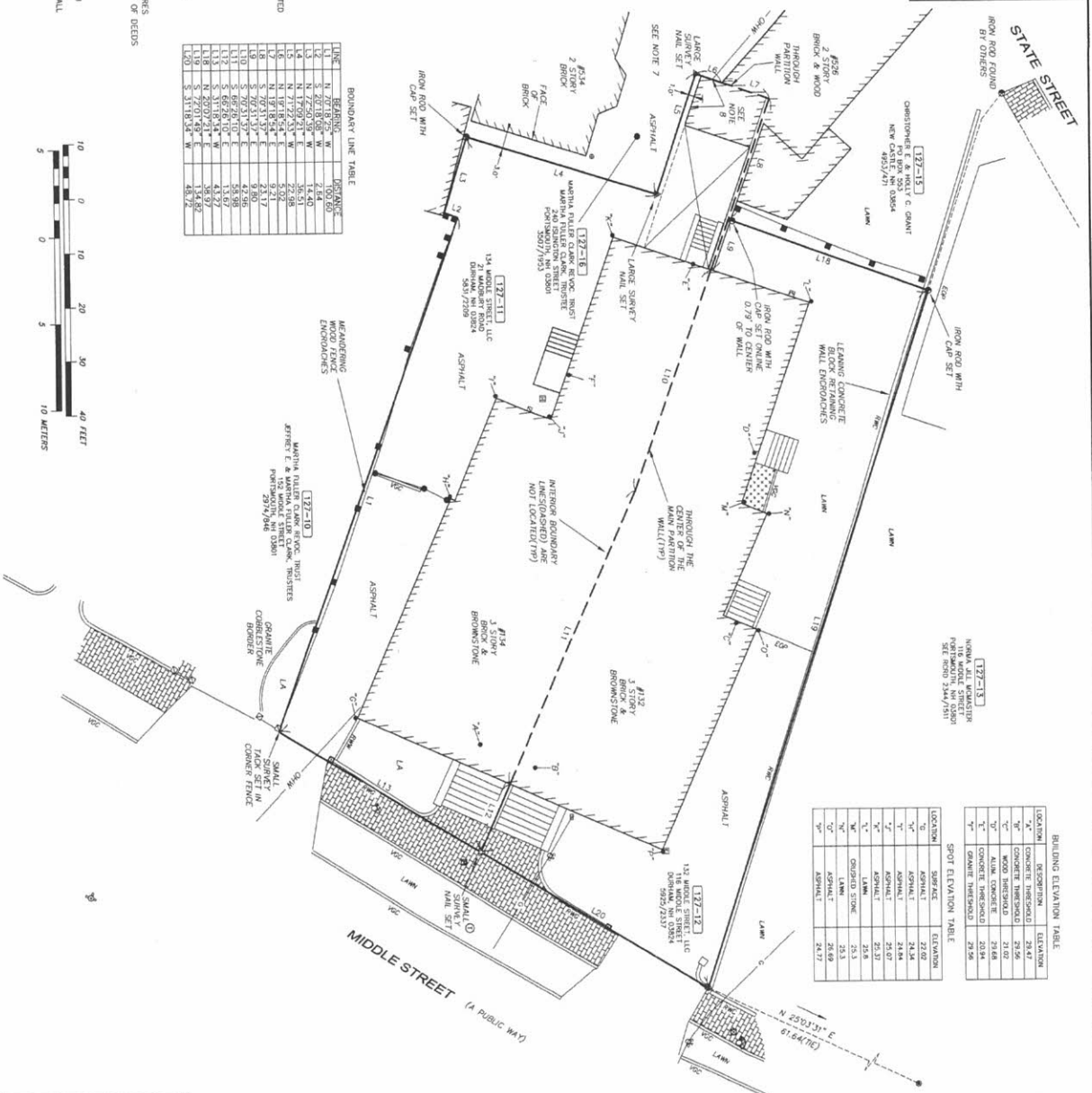


By: Derek R. Durbin, Esq.
DURBIN LAW OFFICES PLLC
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A street map showing the intersection of State Street, Middle Street, Porter Street, and Mark Street. A shaded area labeled 'SITE' is located on Middle Street between State Street and Porter Street.

LINE	BEARING	DISTANCE
1	N 70°18'25" W	100.00
2	S 20°18'05" W	2.84
3	N 72°50'59" W	14.40
4	N 71°09'21" E	36.51
5	N 71°22'23" W	50.82
6	N 18°18'54" E	9.21
7	S 70°51'37" E	23.17
8	S 70°51'37" E	9.80
9	S 70°51'37" E	42.96
10	S 66°26'10" E	55.98
11	S 66°26'10" E	13.67
12	S 31°18'34" W	43.37
13	S 31°18'34" W	38.97
14	S 70°01'21" E	48.72
15	S 70°01'21" E	134.62
16	S 31°18'34" W	48.72

LINE	BEARING	DISTANCE
1	N 70°18'25" W	100.00
2	S 20°18'05" W	2.84
3	N 72°50'59" W	14.40
4	N 71°09'21" E	36.51
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8	S 70°51'37" E	9.80
9	S 70°51'37" E	42.96
10	S 66°26'10" E	55.98
11	S 66°26'10" E	13.67
12	S 31°18'34" W	43.37
13	S 31°18'34" W	38.97
14	S 70°01'21" E	48.72
15	S 31°18'34" W	134.82
16		48.72



LOCATION	DESCRIPTION	ELEVATION
"A"	CONCRETE THRESHOLD	29.47
"B"	CONCRETE THRESHOLD	29.56
"C"	WOOD THRESHOLD	21.02
"D"	ALUM. CONCRETE	29.68
"E"	CONCRETE THRESHOLD	20.94
"F"	GRAVIT. THRESHOLD	29.56

LOCATION	SUBGRADE	ELEVATION
"0	ASPHALT	22.02
"1"	ASPHALT	24.34
"2"	ASPHALT	24.64
"3"	ASPHALT	25.07
"4"	ASPHALT	25.37
"5"	LANE	25.6
"6"	CRUSHED STONE	25.3
"7"	LANE	25.3
"8"	ASPHALT	26.69
"9"	ASPHALT	24.77

[illegible]

1. PLAN OF LOT FOR N. SASSANUM HILLS, PORTSMOUTH, ROCKINGHAM COUNTY, NH DATED JUNE 1, 1942, URBINED TO 17-42-42, ROAD PLAN #01253
2. PLAN OF LOT 55 STATE STREET, PORTSMOUTH, NH
3. PLAN OF LOT 55 STATE STREET, PORTSMOUTH, NH
4. PLANNED SITE PLAN, MAPS 17-23-LOT 14, MANAGER'S CONSENT/DRAWN FOR TROOP HEALTH MANAGEMENT, INC. 4680 STATE STREET, PORTSMOUTH, N.H. DATED MARCH 2004, ROAD PLAN #0-1794
5. EXISTING CONDITIONS PLAN, THE WILDER STREET, PORTSMOUTH, NH, OWNED BY TROOP HEALTH MANAGEMENT, INC. NOT RECORDED.
6. MONASTERY DATED 3/15/79 BY NORTHWESTERN SHREINERT, INC. NOT RECORDED.

James Verra
JAMES VERRA
5-31-2019
DATE



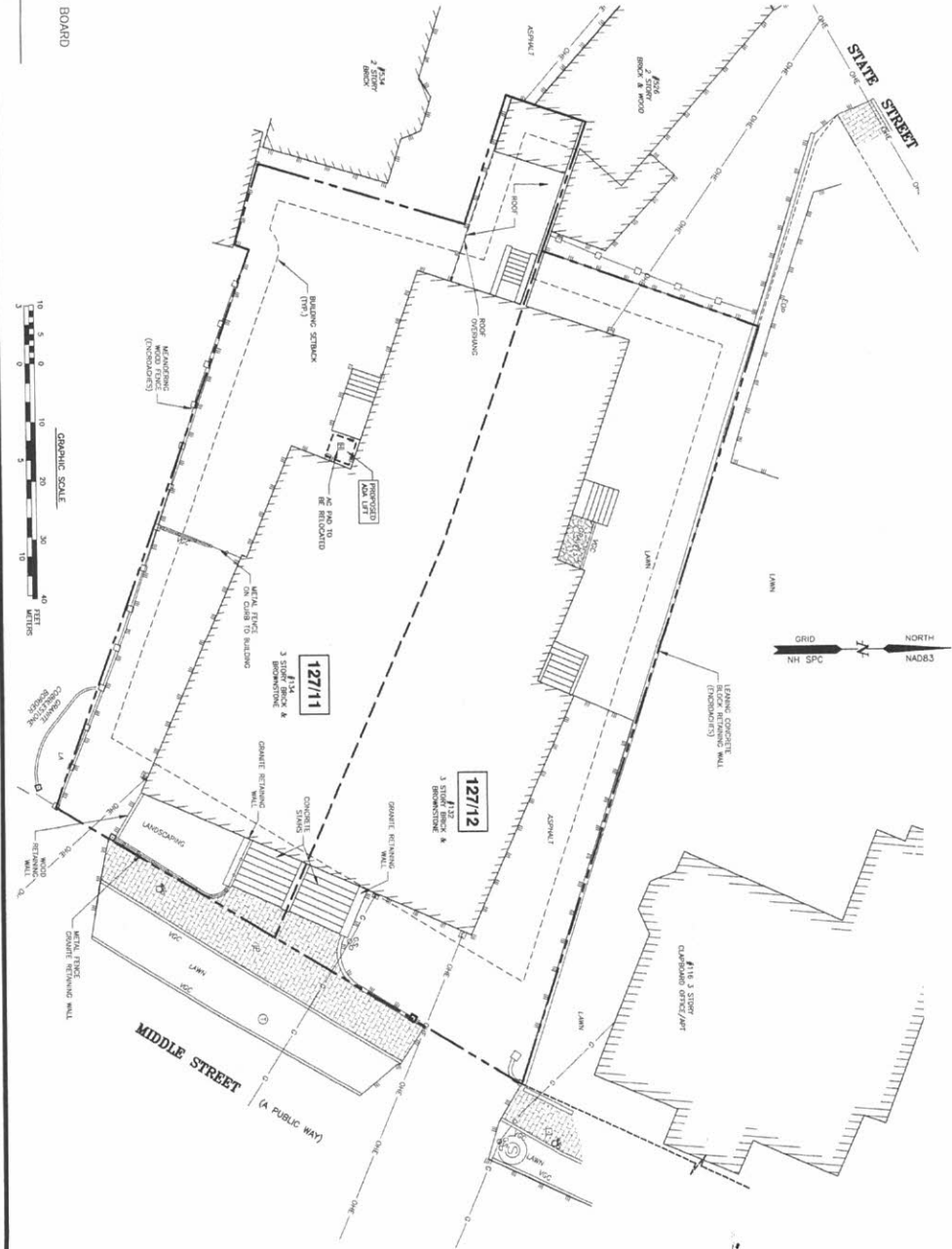
132 & 134 MIDDLE STREET
PORTSMOUTH, NEW HAMPSHIRE
ASSESSOR'S PARCELS 127-12 & 127-11
for 132 MIDDLE STREET, LLC.
& 134 MIDDLE STREET, LLC.

JAMES VERRA and ASSOCIATES, INC.

JAMES VERRA and ASSOCIATES, INC.		DATE:	5-31-2019
101 SULLYCROFT WAY SUITE E NEWTON, MA 02459-3076 617-552-3597		JOB NO:	23804
CED	GTM	SCALE: 1" = 10'	
PROJECT AND CONTRACT NO.	DRAWN BY	DWG NAME:	23804
DESIGNED BY JAMES VERRA and ASSOCIATES, INC.	CHECKED BY	PLAN NO:	23804
	SHEET:		1 of 1

REQUESTED VARIANCES:
 1) VARIANCE TO LOT 11 PROPOSED LOT AREA PER
 MAP 127 AS SHOWN ON THE CITY OF PORTSMOUTH
 ASSESSOR'S MAP 127 AS LOTS 11 & 12.
 2) THE PURPOSE OF THIS PLAN IS TO SHOW THE
 PROPOSED RENOVATIONS ON
 MAP 127 LOTS 11 & 12.
 3) PARCEL IS LOCATED IN THE CHARTERED DISTRICT 4 -
 LIMITED (CDA-4) AND THE EXISTING DISTRICT.
 4) EXISTING/PROPOSED USE:
 LOT 11:
 EXISTING: 9 RESIDENTIAL & 1 COMMERCIAL UNIT
 PROPOSED: 10 RESIDENTIAL UNITS
 LOT AREA: 5,902 S.F.
 LOT 12:
 EXISTING: 11 RESIDENTIAL
 PROPOSED: 12 RESIDENTIAL UNITS
 LOT AREA: 5,499 S.F.
 5) NO CHANGE IN THE BUILDING COVERAGE OR OPEN
 SPACE IS PROPOSED.

APPROVED BY THE PORTSMOUTH ZONING BOARD
 CHAIRMAN _____ DATE _____



NOTES:

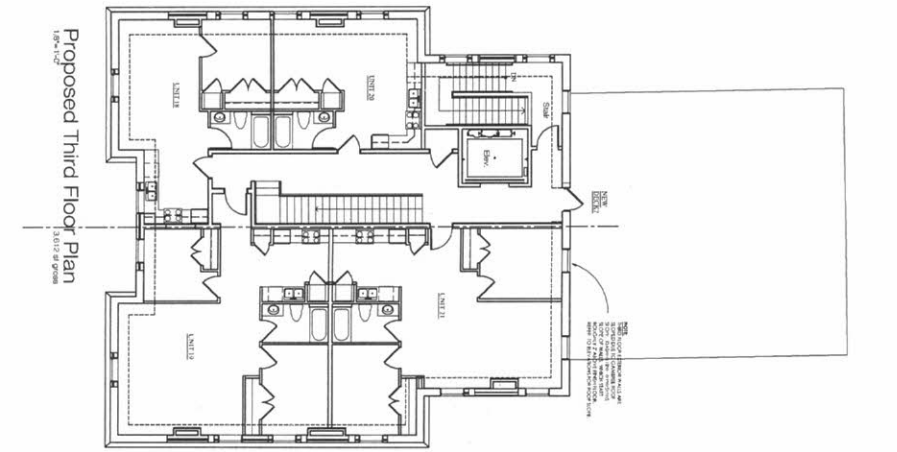
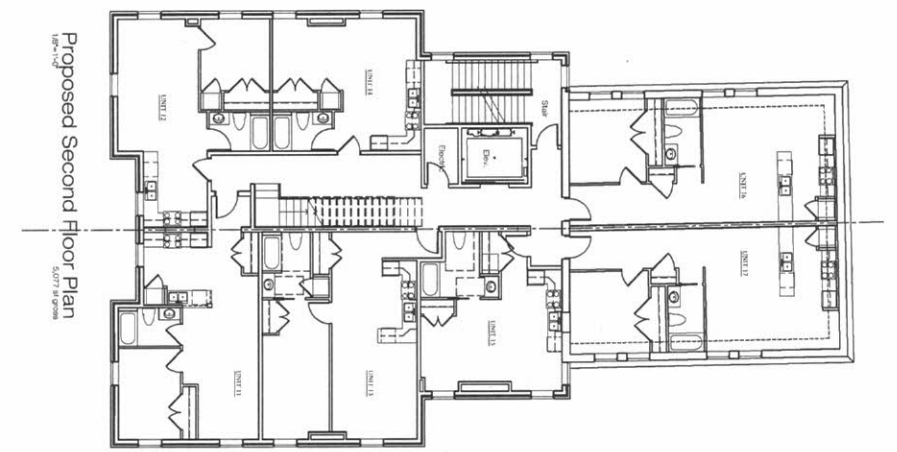
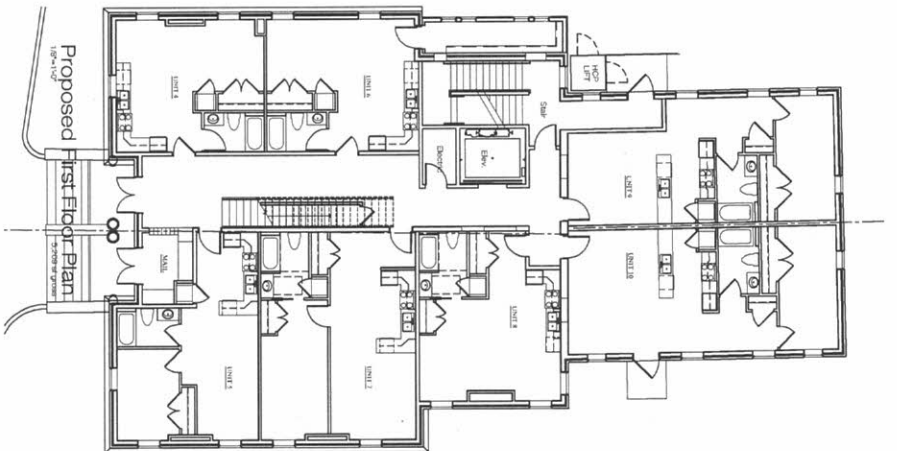
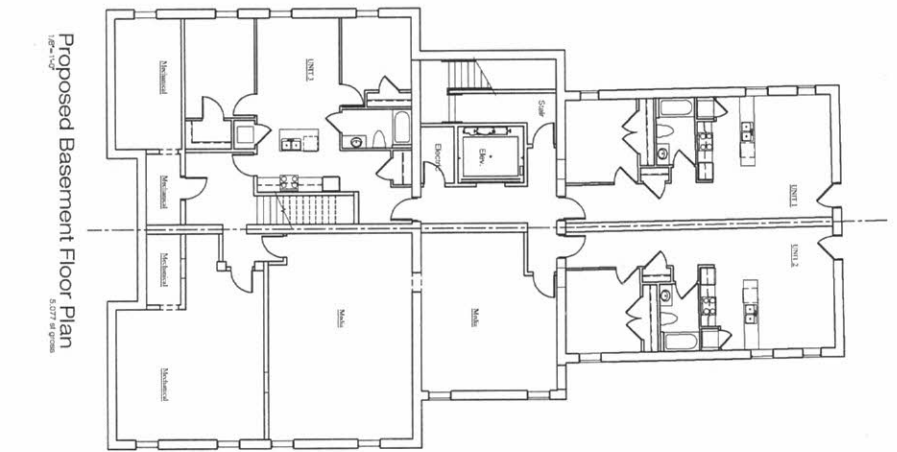
- 1) PARCELS ARE SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 127 AS LOTS 11 & 12.
- 2) THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED RENOVATIONS ON MAP 127 LOTS 11 & 12.
- 3) PARCEL IS LOCATED IN THE CHARTERED DISTRICT 4 - LIMITED (CDA-4) AND THE EXISTING DISTRICT.
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 LOT AREA: 5,902 S.F.
 LOT 12:
 EXISTING: 11 RESIDENTIAL
 PROPOSED: 12 RESIDENTIAL UNITS
 LOT AREA: 5,499 S.F.
- 5) NO CHANGE IN THE BUILDING COVERAGE OR OPEN SPACE IS PROPOSED.

**PROPOSED RENOVATIONS
 132 & 134
 MIDDLE STREET
 PORTSMOUTH, N.H.**

NO.	DESCRIPTION	DATE
1	ISSUED FOR APPROVAL	1/28/20
0	ISSUED FOR COMMENT	1/14/20
	REVISIONS	



SCALE: 1"=10'
 JANUARY 2020
VARIANCE APPLICATION PLAN
C2



132 - 134 Middle Street Portsmouth, New Hampshire January 29, 2020

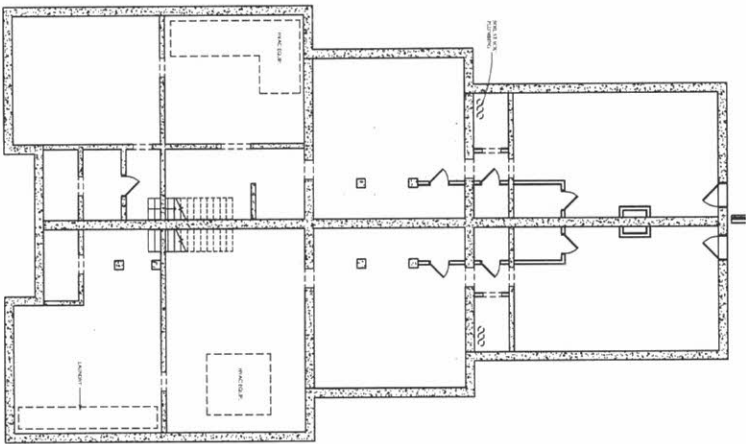
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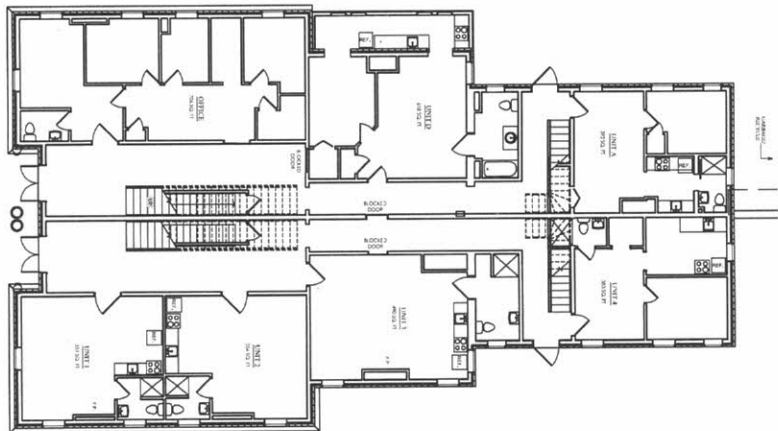
THA ARCHITECTS, LLC
 ARCHITECTURE • PLANNING • CONSULTING • INTERIOR DESIGN

89 WILLOWBROOK AVENUE • STRATTHAM, NH 03885
 TEL: (603) 770-2491 • FAX:
 WWW.THAARCH.COM

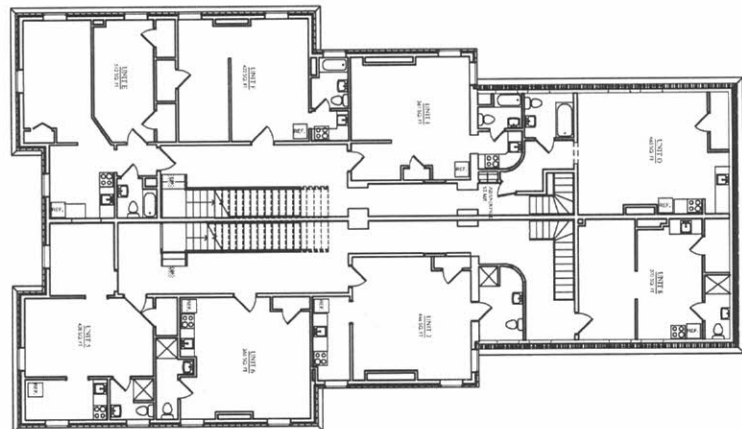
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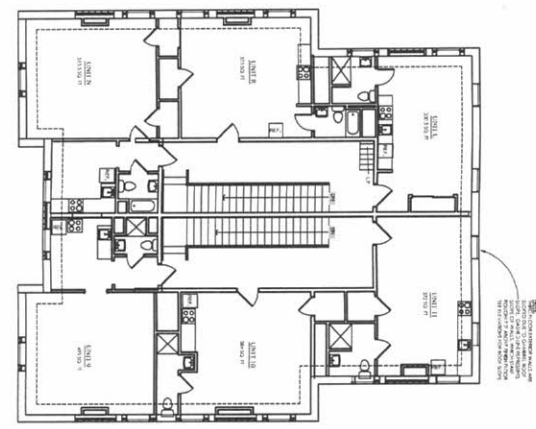
Existing Basement Floor Plan
1,078 sq ft
5,000 sq gross
2,595 sq net



Existing First Floor Plan
1,078 sq ft
4,000 sq gross
4,000 sq net



Existing Second Floor Plan
1,078 sq ft
4,000 sq gross
4,000 sq net



Existing Third Floor Plan
1,078 sq ft
3,444 sq gross
3,444 sq net

132 - 134 Middle Street
Portsmouth, New Hampshire
January 18, 2020

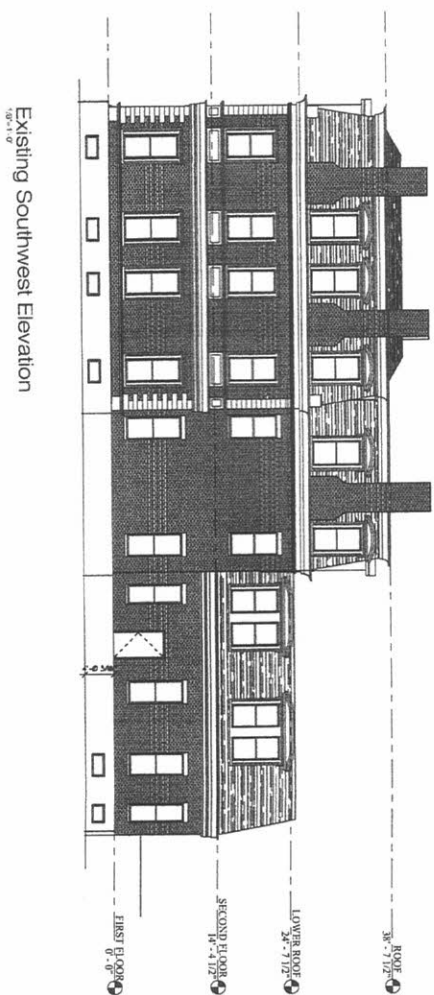
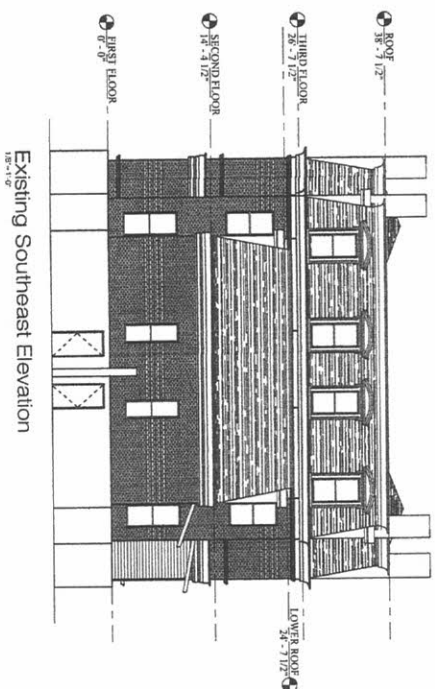
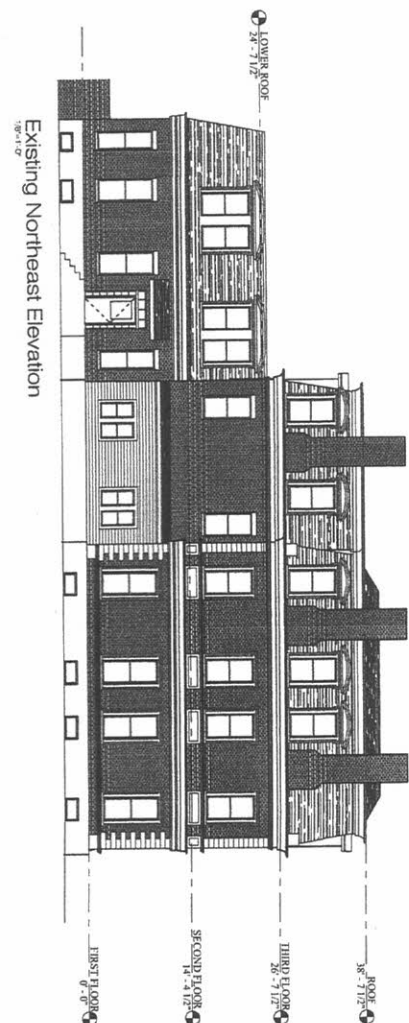
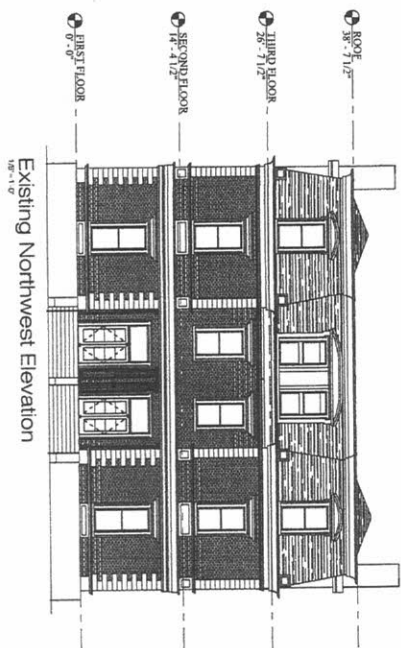
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132 - 134 Middle Street
Portsmouth, New Hampshire
January 18, 2020

Progress Print



THA ARCHITECTS, LLC

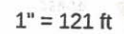
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89 WILLOWBROOK AVENUE • STRATTHAM, NH 03885

TEL: (603) 770-2491 • FAX: (603) 770-2492

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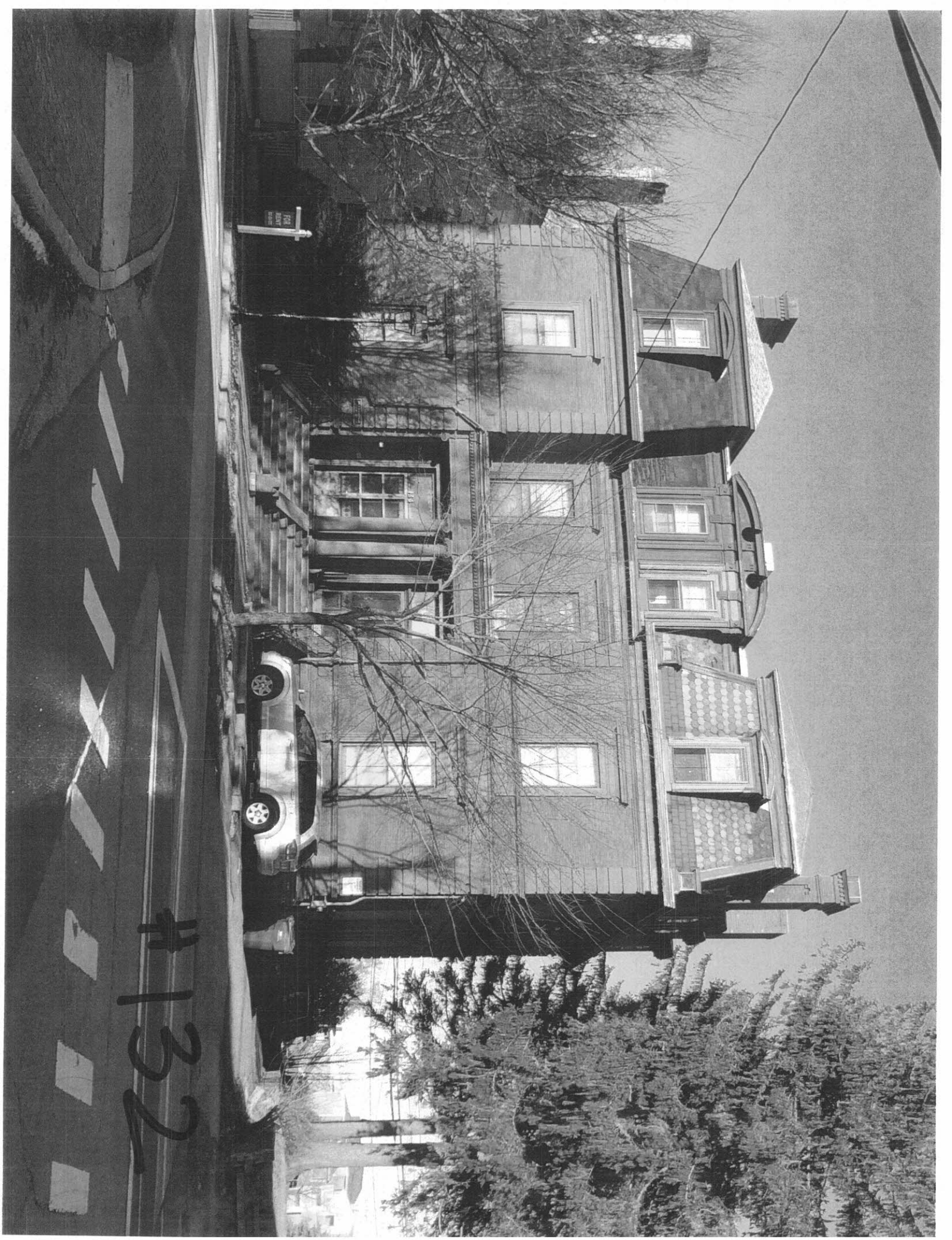
Property ID 0127-0011-0000
Location 134 MIDDLE ST
Owner 134 MIDDLE STREET LLC



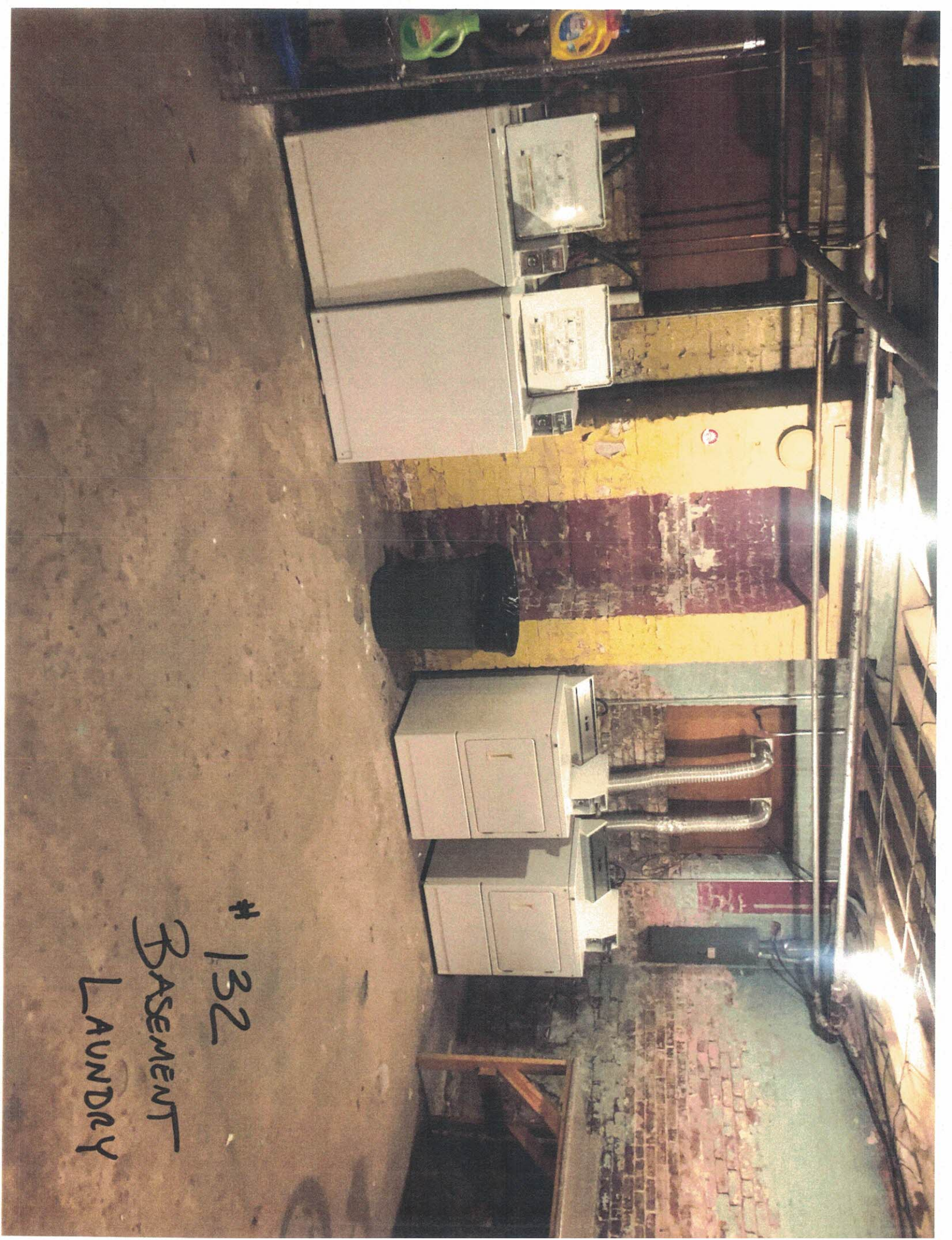
MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

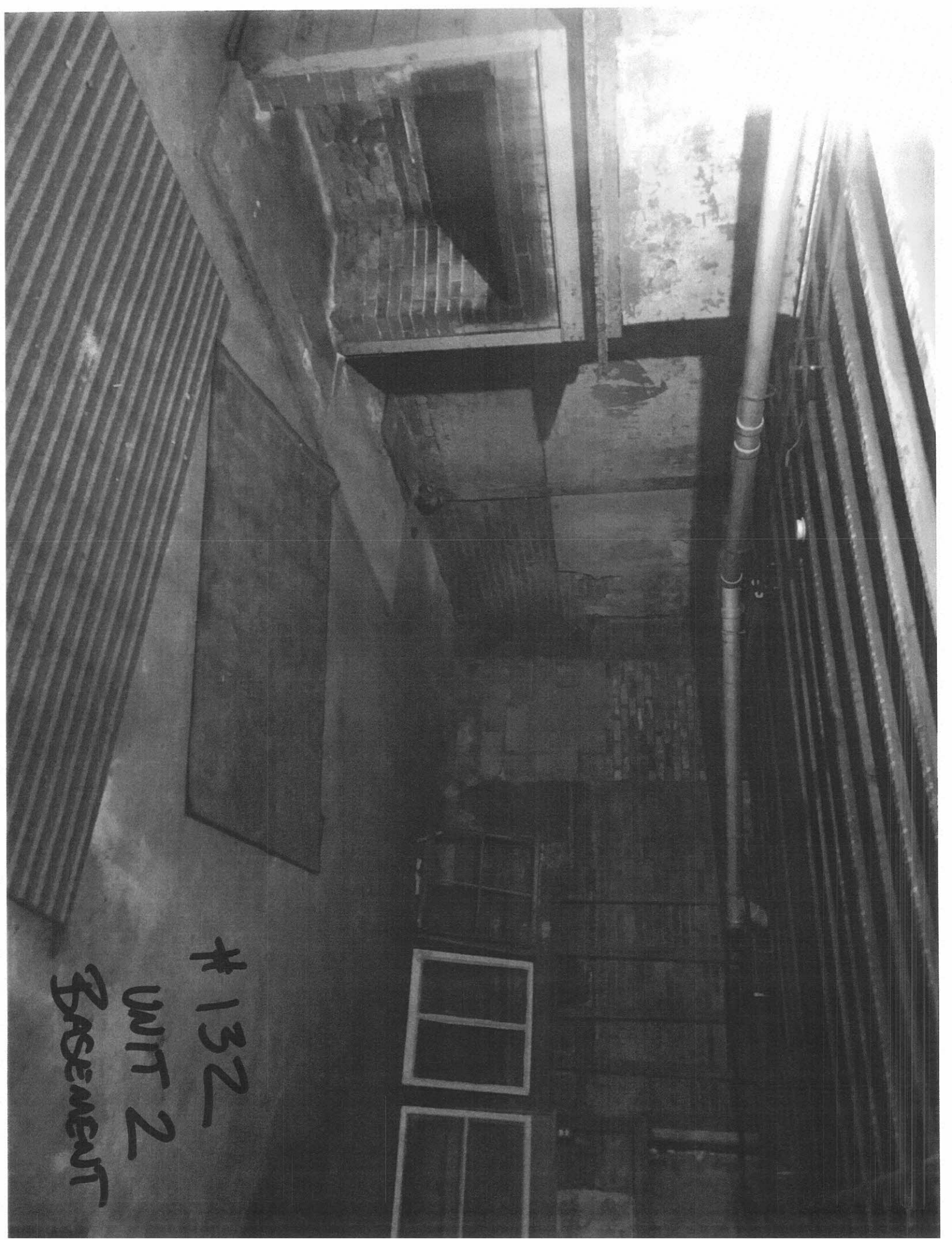
Geometry updated 4/1/2019
Data updated 7/17/2019



#132



132
Basement
Laundry



#132

UNIT 2

Basement



#132

UNIT 2

Basement



#132
UNIT 4 EXISTING
UNIT 10 PROPOSED
KITCHEN



#132

UNIT 4 EXISTING
UNIT 10 PROPOSED
BATH

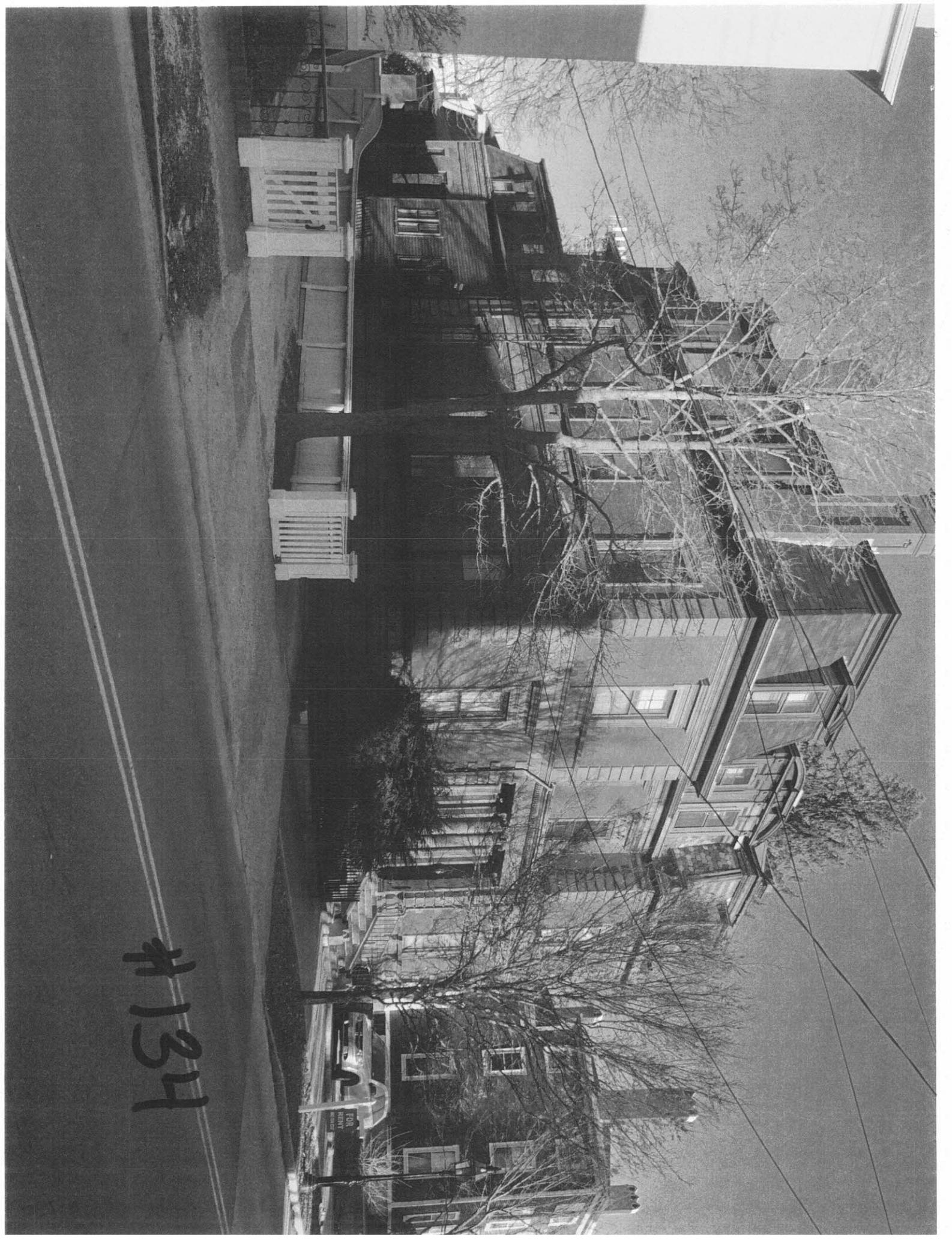


#132

UNIT 4 EXISTING

UNIT 10 PROPOSED

BDRM



#134



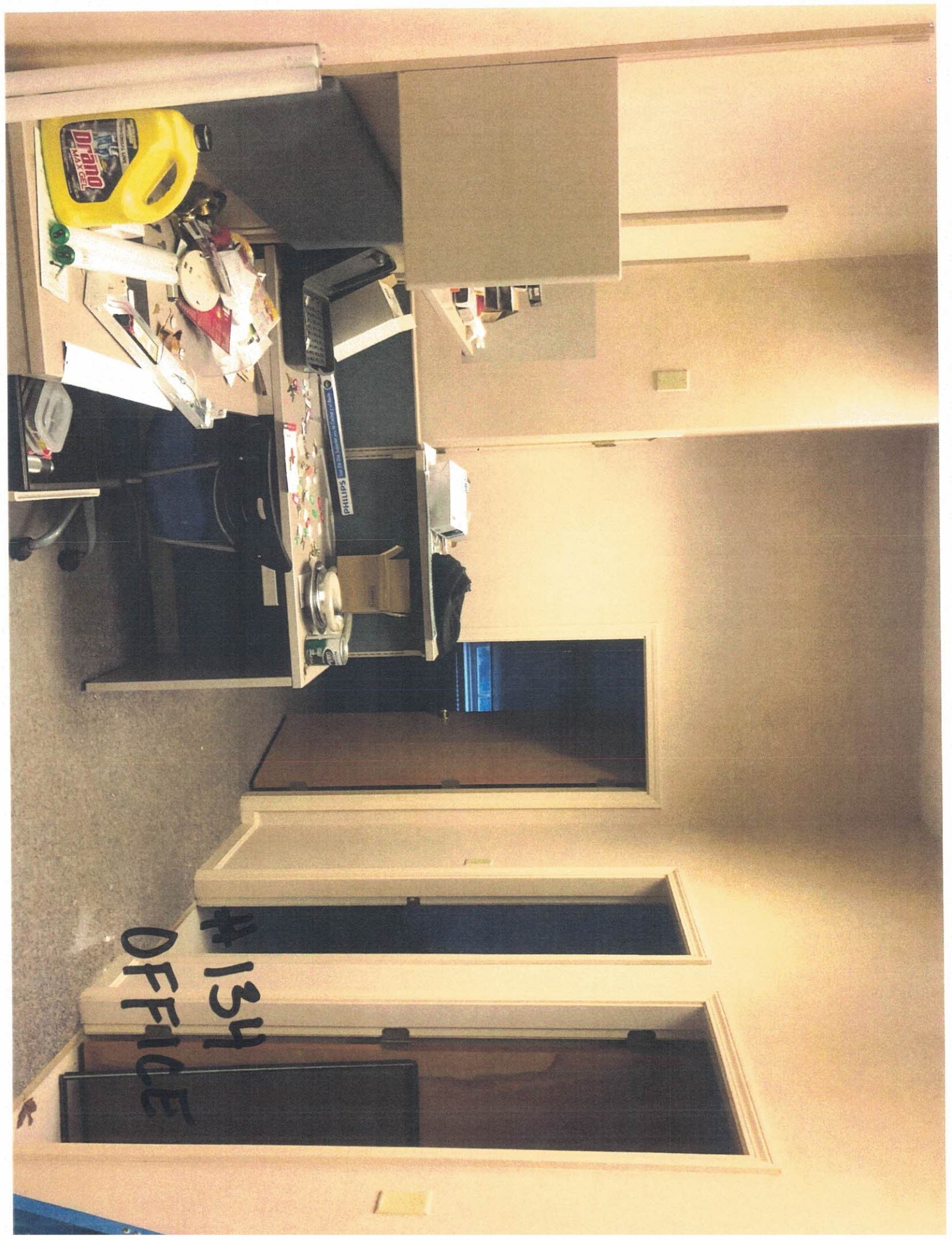
Basement

UNIT 1

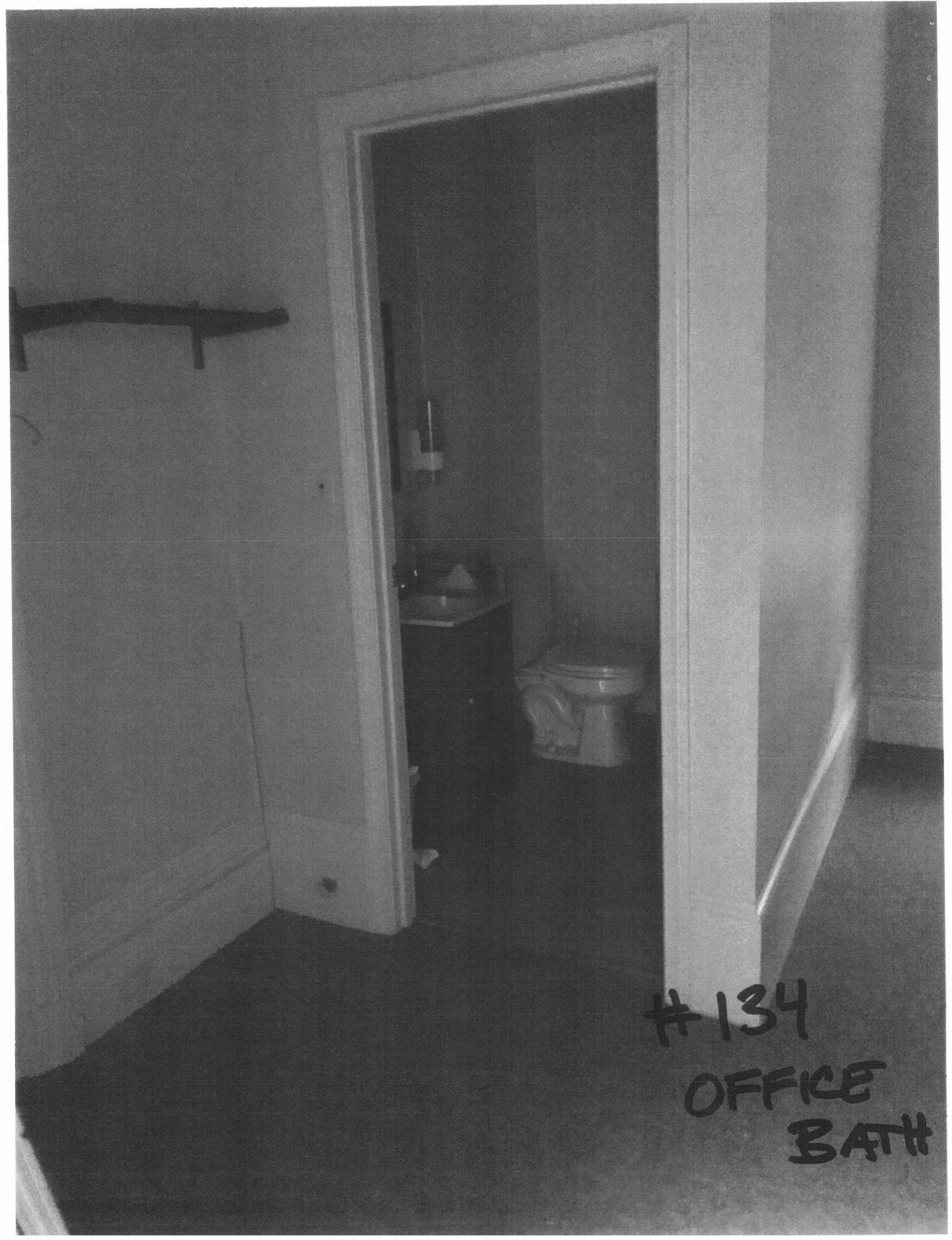
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134
UNIT 1
BASEMENT





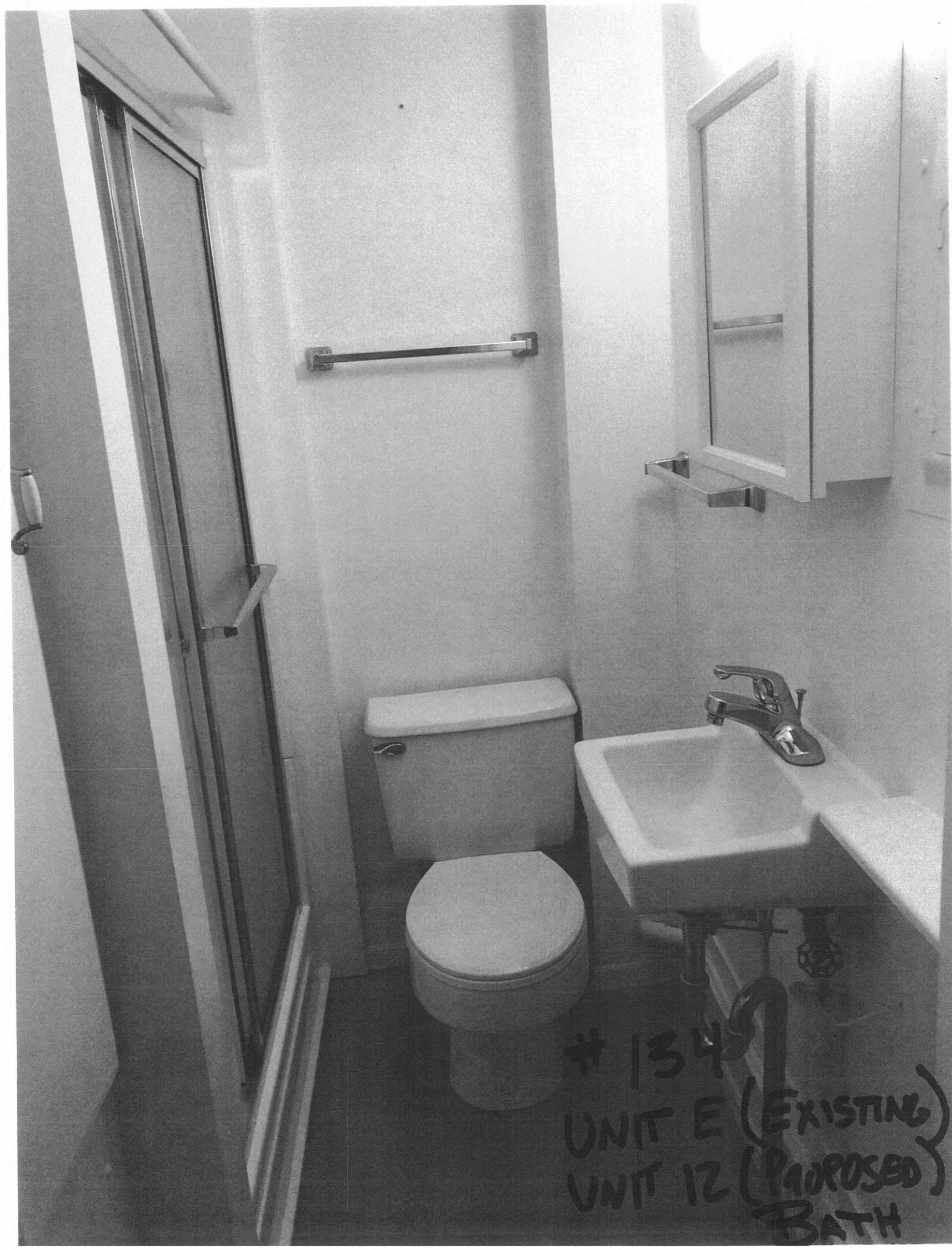
#134
OFFICE

A black and white photograph showing a doorway into a small bathroom. The bathroom contains a toilet, a sink, and a shower area. The doorway is framed by a white trim. The floor is dark. The walls are light-colored. A dark shelf is visible on the left wall.

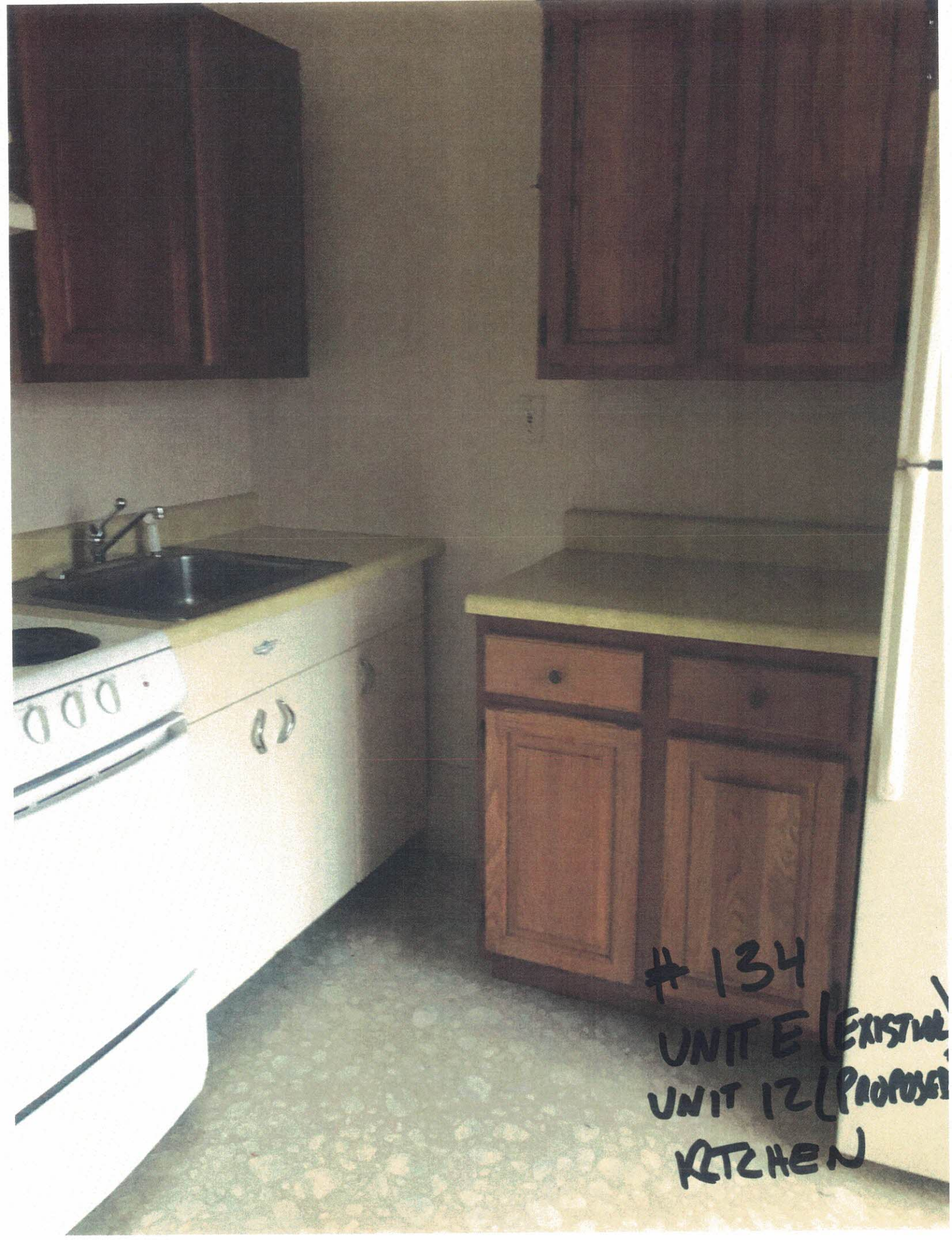
#134
OFFICE
BATH



#134
OFFICE
KITCHEN

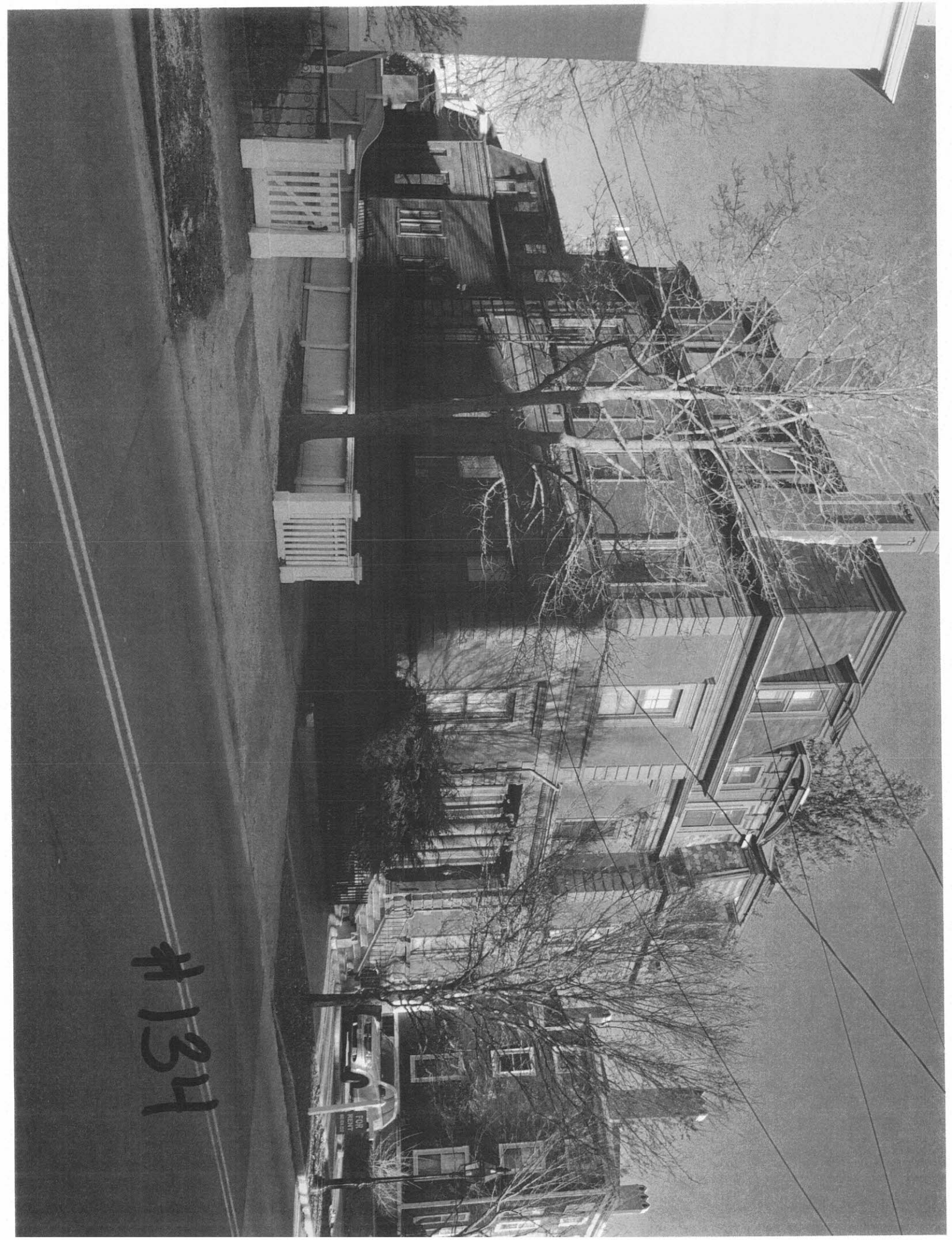


134
UNIT E (EXISTING)
UNIT 12 (PROPOSED)
BATH



134
UNIT E (EXISTING)
UNIT 12 (PROPOSED)
KITCHEN

#134





Basement

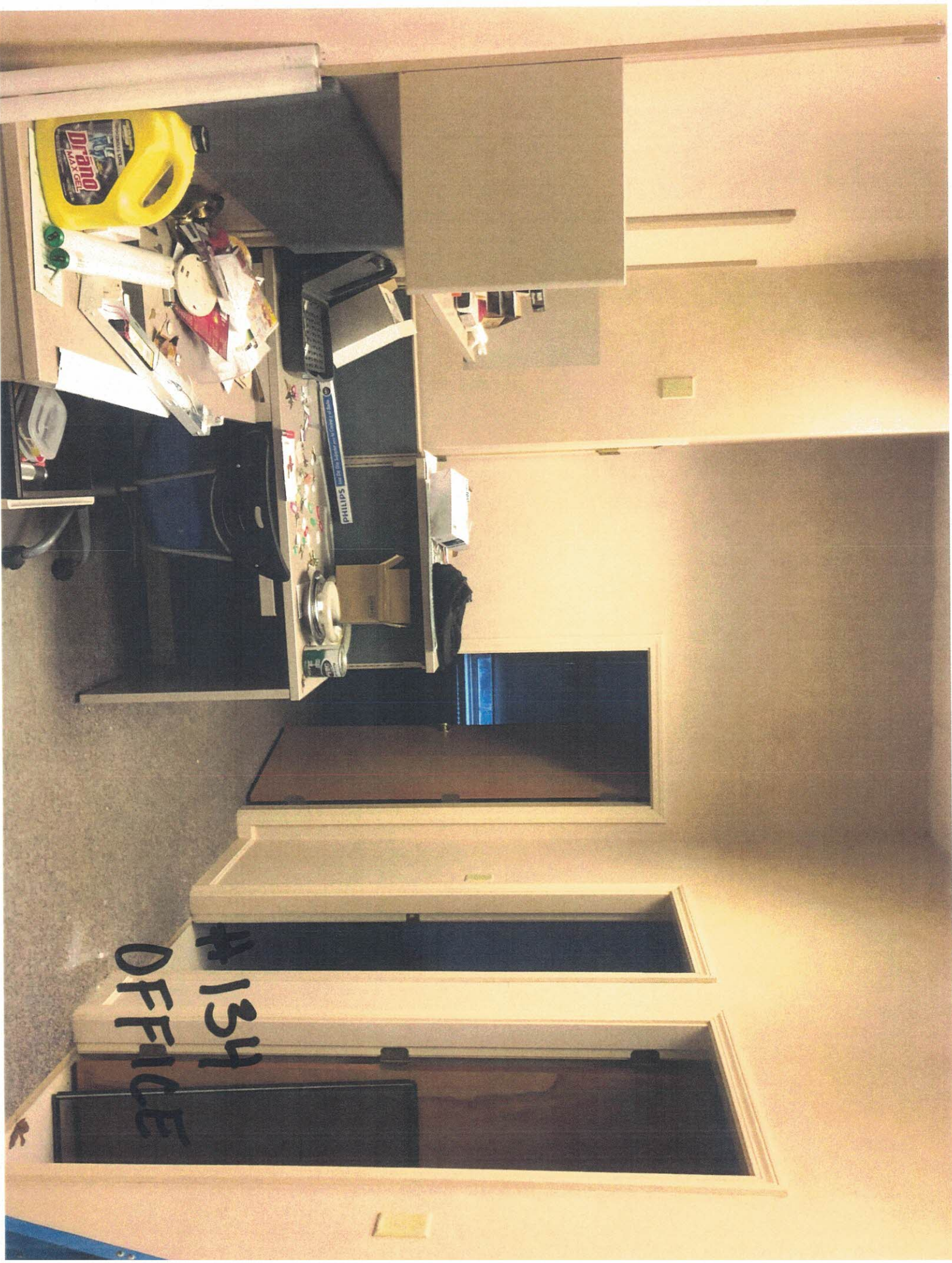
Unit 1

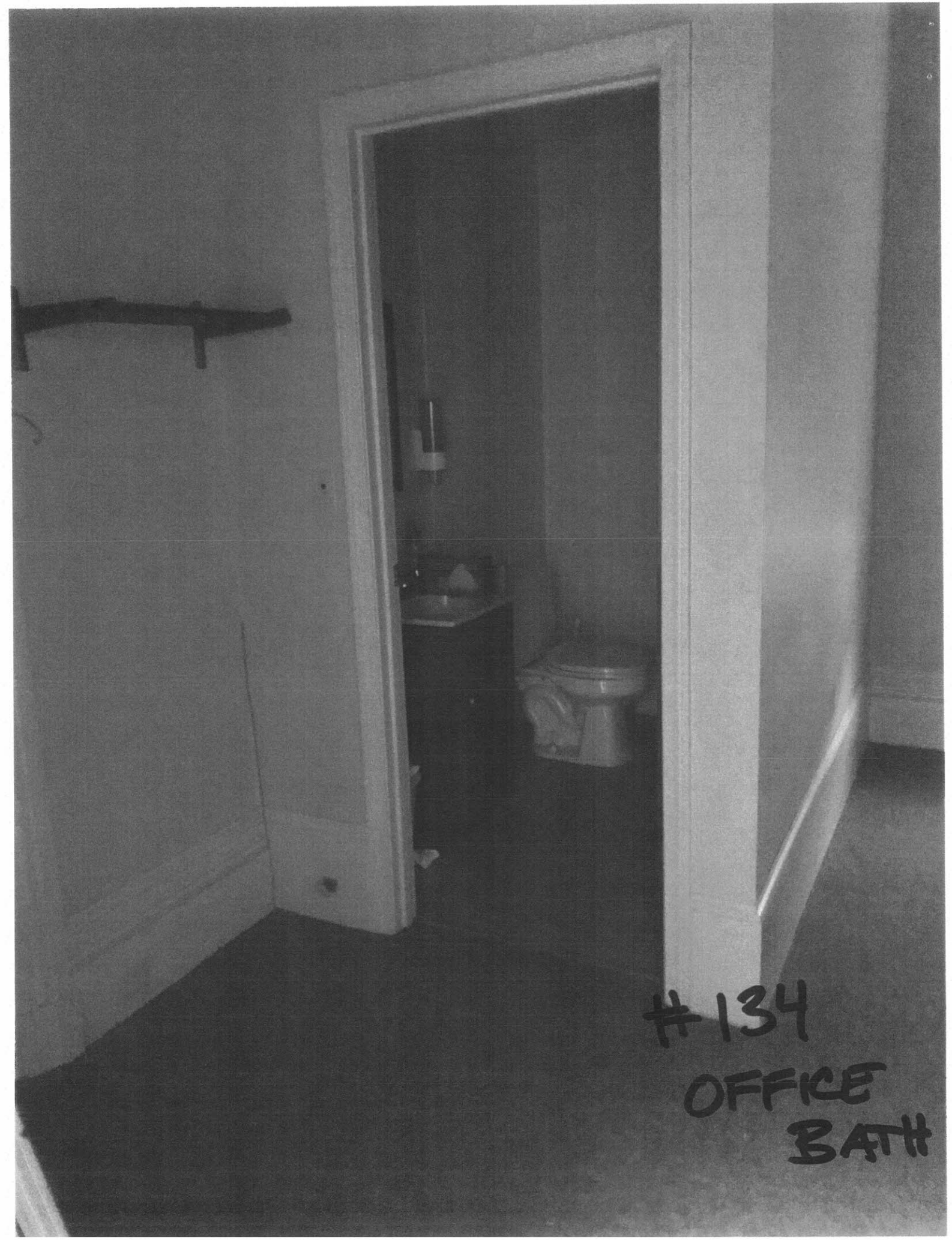
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134
UNIT 1
BASEMENT



#134
OFFICE

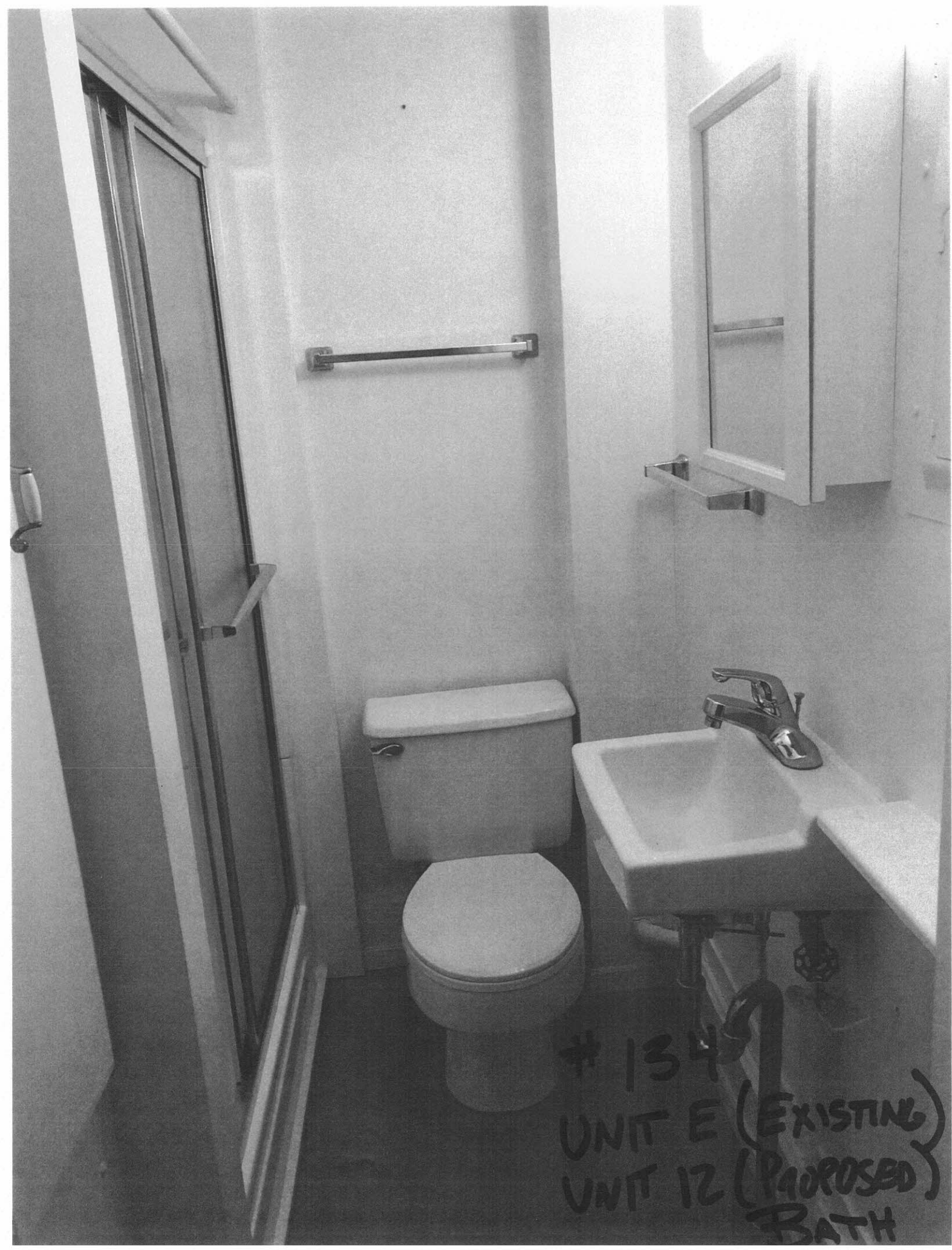




#134
OFFICE
BATH



#134
OFFICE
KITCHEN



#134
UNIT E (EXISTING)
UNIT 12 (PROPOSED)
BATH



134
UNIT E (EXISTING)
UNIT 12 (PROPOSED)
KITCHEN