

Zoning & Subdivision Report

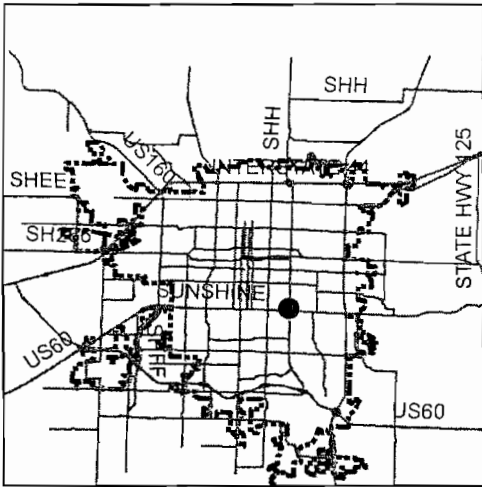
Planning & Development - 417/864-1611
840 Boonville - Springfield, Missouri 65801

Appeal A-58 Exhibit A

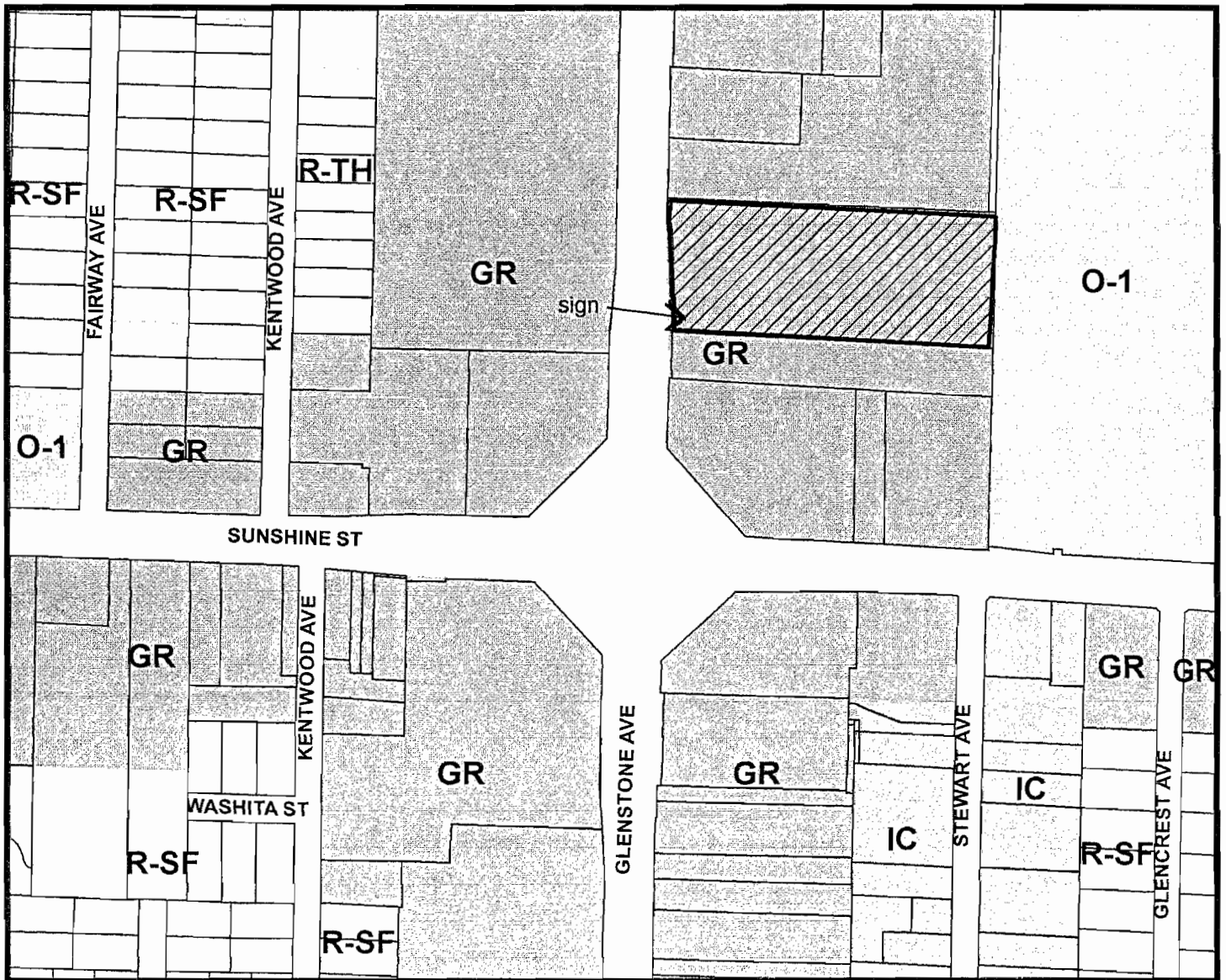
Location: 1742 S. Glenstone Ave.

Current Zoning: GR

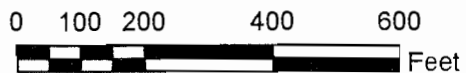
Proposed Zoning: N/A



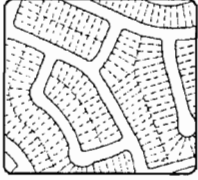
LOCATION SKETCH



- Area of Proposal



1 inch equals 300 feet



Planning & Development Department ~ 417/864-1611
840 Boonville Avenue ~ Springfield, Missouri 65801

ADMINISTRATIVE APPEAL NUMBER A-58

DATE: July 30, 2007

PURPOSE: To appeal the decision of a City of Springfield administrative official stating that it was unlawful to alter a Legal Nonconforming Sign by replacing its existing manual message board with a new electronic message board. Also under appeal is the City's assertion that the Zoning Ordinance requires that the sign in question has lost its status as a Legal Nonconforming Sign and must therefore be removed from its current site.

BACKGROUND:

LOCATION: 1742 South Glenstone Avenue

APPLICANT: Pinnacle Sign Group

BOARD'S AUTHORITY: Subsection 3-3400

In this appeal, the Board of Adjustment exercises appellate jurisdiction as a quasi-judicial body, and its task is to determine what the particular section of the ordinance means and how the Ordinance applies to a particular fact situation. In this particular case, the Board of Adjustment must review the facts regarding proposed work on a detached sign and determine whether the decision of an administrative official was consistent with Sections 5-1403, 5-1407, and 5-1412 of the Zoning Ordinance.

EXTENT OF THE BOARD'S POWERS IN APPEAL CASES:

1. Reverse the Director's decision;
2. Affirm the Director's decision wholly or in part;
3. Modify the Director's decision;
4. Make such new decision as the Board deems appropriate.

RECOMMENDATION:

Affirm wholly the decision of the Director of Building Development Services.

FINDINGS:

1. Both the party appealing the administrative decision and City staff agree that the sign in question is a legal, nonconforming sign.
2. The Zoning Ordinance does not allow the materials of legal, nonconforming signs to be changed.
3. Because the subject sign has been modified in a way that violates section 5-1407 of the Zoning Ordinance, the sign has lost its status as a legal nonconforming sign and has lost its vested right to remain standing; therefore, the sign must be removed from the premise on which it is currently located.
4. The Zoning Ordinance states that a person wanting to modify the structure of a sign must first obtain a sign permit.
5. If the Board of Adjustment finds in favor of the applicant and approves the replacement of a marquee-style sign with a similar sign with an electronic message center attached, such decision will set a precedent for future interpretations of this part of the zoning ordinance.

STAFF CONTACT PERSON:

Bob Reed
Associate Planner
(417) 864-1091

APPEAL NUMBER A-58
EXHIBIT C

1. **ORDINANCE AUTHORIZATION:** The following excerpt from the Zoning Ordinance lists the limits of the Board of Adjustment's authorization in this instance:
 - 3-3401. **Appeals from Administrative Ruling.** The Board of Adjustment shall be empowered to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this Article. In this capacity, the Board exercises appellate jurisdiction as a quasi-judicial body, and its task is to determine what the Article means and how the Article applies to a particular fact situation.
 - 3-3402. **Extent of the Board's Appeal Powers.** In exercising the authority herein granted, the Board may, in conformity with the provisions of this Article, reverse or affirm wholly or partly or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as the Board deems appropriate and to that end shall have all powers of the administrative official from whom the appeal is taken.
 - 3-3403. **When Appeals May Be Taken.** Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board or agency of the City of Springfield affected by a decision of an administrative officer. Appeals shall be taken within thirty (30) days after the decision has been rendered by an administrative officer, by filing with the officer from whom the appeal is taken and with the Secretary of the Board of Adjustment a notice of appeal specifying the grounds of the appeal. The officer from whom the appeal is taken shall forthwith forward to the Secretary of the Board all the papers constituting the record upon which the action appeal from was taken.
 - 3-3404. **Burden on Applicant.** The applicant for an appeal shall bear the burden of producing evidence establishing the grounds of the appeal.
2. **ZONING ORDINANCE:** The following excerpts from the *Springfield Zoning Ordinance* list the Landmarks Board's authority in this instance and provide background information.
 - 5-1407. **Legal Non-Conforming Signs.**
 - A. **Continuation of Legal non-Conforming Signs.** Any sign which was lawfully erected or affixed prior to such time as it came within the purview of this Article and which sign complied with all regulations in force at the time it was erected or affixed, but which fails to conform to all applicable regulations and restrictions of this Article, shall be considered a legal non-conforming sign. A legal non-conforming sign may be continued and shall be maintained in good condition, but shall not be:
 1. Structurally altered (except to meet safety requirements) so as to prolong the life of the sign. The type of materials used in the construction of the sign shall not be changed after the date the sign becomes a nonconforming sign;

2. Altered so as to increase the degree of nonconformity of the sign;
3. Expanded in size or effective area;
4. Relocated, or repaired by expenditure of more than seventy-five (75) percent of the depreciated value of the sign in place for materials and labor for repair of any deteriorated or damaged nonconforming sign in any continuous twelve-month period. Upon written request, the sign owner must submit to the Director of Building Development Services specified substantiating information or documentation sufficient for the Director of Building Development Services to determine the percentage of value expended for repair;
5. Abandoned or discontinued. Abandonment or discontinuance occurs whenever:
 - a. The sign for a continuous period of twelve (12) months or more advertises services or products no longer available to the traveling public because the services or products have been discontinued or cannot be obtained at the destination or by the directions indicated on the sign; or
 - b. The sign for a continuous period of twelve (12) months or longer is maintained without an advertising message. The following signs are signs maintained without an advertising message: A sign with a message which is partially obliterated so as not to identify a particular service or product; a sign which is blank or painted out; or a sign with a message consisting solely of the name of the sign owner on any part of the sign.

B. Signs which are non-conforming because of their illumination shall be brought into compliance with this Article within sixty (60) days after the effective date of this Article. Non-conforming temporary signs shall also be brought into compliance within sixty (60) days.

C. The sign for a legal non-conforming use shall be legal non-conforming if the sign (1) was erected or attached prior to the effective date of this Article, (2) is on-premise, and (3) would have been legal if the use had been located in the most restrictive zoning district where the use is allowed by right.

5-1403. **Exempt Operations.** The following operations shall not require the issuance of a sign permit:

- A. Changing of the copy describing products or services on an existing permitted sign which is specifically designed for the use of manually or automatically changeable copy including billboard panels and posters; but not including changes in the structure, size, placement, or location of the sign.
- B. Maintenance, including repainting, cleaning, or other normal repair of a sign not involving structural changes. Maintenance includes all face changes, but does not include changes in the structure, size, placement, materials or location of the sign.

5-1405. **Provisions for Signs in Business Areas.** (G.O. 5178, 4/22/02)

A. **General Provisions.** These provisions shall apply to all permanent signs in business areas as defined in this Article.

1. A sign in a business area shall conform to regulations for a sign in a non-business area if any part of the sign or sign structure is within twenty-five (25) feet of a non-business area.
2. Flashing lights or animation on signs in business areas shall be placed at least ten (10) feet above street grade.
3. On-premise signs shall be allowed in business areas.
4. Sign regulations enforced by the Missouri Highway and Transportation Commission along the interstate and primary highway system in the city shall take precedence over any less restrictive requirements of this Article.
5. Each premise with frontage on any street shall be allowed at least one permanent detached sign.
6. Premises which have more than four-hundred-twenty-five (425) feet of frontage along a street may have one additional detached sign for each additional four-hundred-twenty-five (425) feet of frontage or fraction thereof, provided a minimum of three-hundred (300) feet of separation is maintained between all detached signs on a given premise, any off-premise sign meets the requirements of Section 5-1405.F, and a setback of twenty-five (25) feet from adjacent property lines is maintained for all detached signs on the premise, except the twenty-five (25) foot setback does not apply to off-premise signs. This three-hundred (300) foot spacing of all detached signs on a given premise shall be measured radially from the nearest portion of the signs or sign structures.
7. A premise with frontage along both an expressway and an arterial, an expressway and a freeway, a freeway and an arterial, two (2) expressways, two (2) freeways or two (2) arterials as designated by the Major Thoroughfare Plan, shall be allowed one (1) detached sign per street provided such location meets the separation requirements of Subsection (6) above. In the event a second detached sign is permitted by the application of Subsection (6) above, this Subsection shall not be construed to allow any additional detached signs.
8. Each premise containing more than one (1) business shall reserve one (1) detached sign to identify either the entire premise, or businesses therein desiring to be identified, unless the businesses have an agreement to the contrary.
9. No part of the detached sign or sign structure shall exceed a height of forty (40) feet from the grade of the highest paved portion of right-of-way adjacent to the property where the sign is installed or located except where the natural grade of the sign structure location is more than twenty (20) feet higher than the adjacent street grade in which event no part of the sign or sign structure shall exceed a height of twenty (20) feet maximum from natural grade.
10. All sign illumination shall conform to Section 6-1400.
11. Outdoor signs advertising retail and personal service uses located in an office building in an O, Office, District (*Section 4-2002.V.*) are limited to wall signs on the walls of the office building and to a directory of building tenants on a ground sign not over five (5) feet in height. (G.O. 5425, 11/15/2004)

B. On-premise Detached Signs. On-premise detached signs are allowed in business areas, based upon the classification of the street they front upon as designated in the *Major Thoroughfare Plan*, as follows:

1. A premise fronting on a local or collector street shall be allowed an On-premise detached sign with an effective area determined by adding fifty (50) square feet to a ratio of one (1) square foot of effective area per lineal foot of frontage along the local or collector street.
2. A premise fronting on an arterial, expressway, or freeway shall be allowed an On-premise detached sign with an effective area determined by adding one-hundred (100) square feet to a ratio of two (2) square feet of effective area per lineal foot of frontage along the arterial, expressway, or freeway.
3. The maximum effective area for any on-premise detached business sign shall be three hundred fifty (350) square feet.

5-1412. **Sign Permits and Inspection.**

A. Permits Required.

1. Except as otherwise provided in this code, it shall be unlawful for any person to erect, repair, improve, maintain, convert, or manufacture any sign or cause the same to be done, without first obtaining a sign permit for each such sign from the Director of Building Development Services. No sign permit shall be issued except to a person licensed to do business in the City of Springfield or to a person exempt from the City licensing provisions.
2. Temporary sign owners shall secure a permit for each temporary sign prior to its use. Within three-hundred-sixty-five (365) days after the effective date of this Article, a permit shall be obtained for all temporary signs in use at that time.
3. Every sign permit issued by the Director of Building Development Services shall become null and void if work on the sign is not commenced within one-hundred-eighty (180) days from the date of such permit. If work authorized by such permit is suspended or abandoned for ninety (90) days after the work is commenced, the sign shall be considered abandoned unless a new permit shall be first obtained to proceed with the work on the sign, and the fee will be one-half (½) the original fee, provided that no changes have been made in the original plans.

B. License. No person shall perform any work or service for any person or for any government entity in connection with the erection, repair, improvement, maintenance, conversion, or manufacture of any sign in the city, or any work or service in connection with causing any such work to be done, unless such person shall first have obtained a business license and paid the license fees provided for by the City, or shall be represented by a duly licensed person.

C. Application for Permit. Application for a permit shall be made to the Director of Building Development Services upon a form provided by the Director of Building Development Services, and shall be accompanied by such information as may be required to insure compliance with all appropriate laws and regulations of the City, including, but not limited to:

1. Name, address, and business license number of permit applicant.
2. Name and address of owner of sign.
3. Name and address of the owner and the occupant of the premises where the sign is located or to be located.
4. Clear and legible drawings with description showing the precise location of the sign which is the subject of the permit and all other existing signs on the same premise or as otherwise specified by the Director of Building Development Services.
5. Drawings showing the dimensions, construction supports, sizes, materials of the sign, and method of attachment and character of structural members to which attachment is to be made.

The Director of Building Development Services shall issue a permit for work to be done on a sign when an application therefor has been properly made and the sign complies with all appropriate laws and regulations of the City.

- D. **Denial or Revocation.** The Director of Building Development Services may, in writing, suspend, deny or revoke a permit issued under provisions of this section whenever the permit is issued on the basis of a misstatement of fact, fraud, or noncompliance with this Article.

When a sign permit is denied by the Director of Building Development Services, he shall give written notice of the denial to the applicant, together with a brief written statement of the reason for the denial. Such denials shall have referenced the section of the sign code, or other pertinent code used as a standard for the basis of denial.

APPEAL NUMBER A-58
EXHIBIT D
BACKGROUND REPORT

APPLICANT'S PROPOSAL:

On June 8, 2007, the City informed the appellant that a detached, nonconforming sign on his client's property had been altered without that alteration being authorized by a sign permit and that the sign in question must therefore, as per the Zoning Ordinance, be removed from the property. The appellant contends that the sign was not altered and also that no permit should be required because the appellant was merely changing the sign's copy. The appellant wants the Board to allow the subject sign to remain as is or, failing that, wants permission to return it to the configuration it had before the work in question took place.

ADJACENT PROPERTY OWNER COMMENTS:

Ten (10) property owners are within 185 feet of this site and have been notified of this action. No comments have been received as of this writing.

STAFF COMMENTS:

1. The applicant agrees that the sign is a nonconforming sign. The reason for the nonconformity is that too many detached signs are located in too small a frontage area on the subject premise.
2. The applicant states (Exhibit E, page 2) that "Pinnacle Sign Group replaced one set of changeable letter faces with another set of changeable letter faces." But if one looks at the sign, one sees that structural members have been added to the original sign face to allow a message box to be built on top of the original face. For photographic details, see Exhibit G, pages 3, 4, and 6.
3. The City contends that replacing part of the subject sign with an electronic message center amounts to structurally altering the sign and to changing the materials used in the sign. As can be seen above at Section 5-1407.A.1, the *Springfield Zoning Ordinance* does not allow such changes to be made to nonconforming signs. It states that such signs may not be "structurally altered" except to meet safety requirements, and that "the type of materials used in the construction of the sign shall not be altered after the date the sign becomes a nonconforming sign."
4. The applicant asserts (Exhibit E, page 2) that Section 5-1407.A.1, which states that sign materials on nonconforming signs may not be changed, is "very vague and unclear." The City disagrees with that assertion.
5. Referring to Section 5-1407.A.1, the applicant states that "the changing of marquee letters from a ladder has become an extreme safety issue for David Bauer the owner of Coyote's Adobe Café and his employees" (Exhibit E, page 2). The applicant also states he is concerned about the possibility of "electrical shock." City staff interprets this part of the

zoning ordinance as referring to the fact that a sign's components might become weakened to the point that they were in danger of falling to the ground, and at that point in time strengthening the components of a nonconforming sign would become legal under the Zoning Ordinance. Staff does not believe that the ordinance addresses the types of safety issues raised by the applicant.

6. The applicant asserts (Exhibit E, page 2) that he was complying with Section 5-1403 because he was merely replacing "one set of changeable sign faces with another set of changeable sign faces." The City disagrees. The City interprets the ordinance section that reads "maintenance includes all face changes, but does not include changes in the structure, size, placement, materials or location of the sign" (5-1403.B) as meaning that replacing stick-on letters with a box containing electronic equipment is not allowed; that is, what the applicant did is a clear example of changing the *structure* of a sign.
7. The applicant asserts that he was changing the subject sign's face and therefore his actions fall under Section 5-1403 and he did not need to obtain a sign permit before modifying the sign. The City asserts that the applicant's modifications amounted to changing the structure of the subject sign and the applicant thus violated Section 5-1412 by performing structural work on a sign without first obtaining a sign permit.
8. The City interprets the zoning ordinance as stating that, once a sign has lost its legal, nonconforming status, it must be removed from its premises. Section 5-1701.C states that the goal of designating certain structures as nonconforming is "to enhance the probability that" such structures will "eventually be converted into conforming" structures. Moreover, Section 5-1407.A states that there are five conditions under which nonconforming signs may continue to exist—the implication being that once a sign has violated one of those conditions, it will thenceforth *not* be allowed to exist.



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EXHIBIT E
p. 1 of 5

Case Number: A-58
Date Filed: 7-6-07
Received By: rece
Application Fee: \$590.00 670.
Recording Fee: \$27.00
Total Fee: \$617.00 697
4293

APPLICATION FOR BOARD OF ADJUSTMENT APPEAL OF ADMINISTRATIVE DECISION

The signers of this application appeal to the Board of Adjustment of the City of Springfield, Missouri, that the determination of SHARON KOLKMEYER
(name and position of administrative official)
made on the 8th day of JUNE, 20 07, is in error because of the following facts:
SEE ATTACHED

(attach separate sheets if necessary)

This appeal involves the following described property:

LAND DESCRIPTION (an attached sheet may be used):
SEE ATTACHED

This property is located at 1742 S GLENSTONE

It is requested that a hearing be held in this matter, in which the applicant may appear in person or by agent or by attorney, and present to the Board sufficient evidence so that the Board may reverse the decision of the administrative official. **We, the undersigned, do attest to the truth and correctness of all facts and information presented with this application.**

APPLICANT'S NAME:

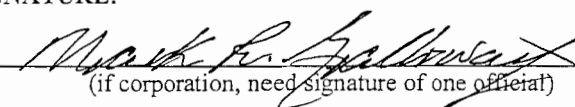
Name of Applicant: PINNACLE SIGN GROUP c/o MARK GALLOWAY
(please print)

If corporation: Corporate Official: MARK GALLOWAY, PRESIDENT
(please print name and title)
(Corporate Seal)

Mailing address: 505 N GLENSTONE, SPRINGFIELD MO Zip Code 65802

Telephone number: 417-869-6468 Fax number: 417-869-1545

APPLICANT'S SIGNATURE:


(if corporation, need signature of one official)

Zoning and Subdivision Services
Planning and Development Department
840 Boonville, P.O. Box 8368, Springfield, MO 65801
(417) 864-1611 Fax (417) 864-1882

PINNACLE SIGN G R O U P

July 5, 2007

City of Springfield, Missouri
Board of Adjustment

Pinnacle Sign Group would like to appeal the decision of Land Inspector Sharon Kolkmeier in the Department of Building Development for the following reasons:

Zoning Ordinance Section: 5-1403

- A) It is allowed to make copy changes describing products or services of a nonconforming sign. This is exactly what Pinnacle Sign Group has done in changing from one marquee changeable letter sign to another.
- B) Regular maintenance is allowed on a nonconforming sign including replacement of sign faces. Pinnacle Sign Group replaced one set of changeable letter faces with another set of changeable letter faces.

Zoning Ordinance Section 5-1407

The nonconforming sign may not be structurally altered. Pinnacle Sign Group did not change or alter the structure we simply added message faces to the sign. This section of the Ordinance also addresses an issue of materials used in the sign may not be changed. This is very vague and unclear. The materials used in the replacement of the sign were no different than what existed. Both signs have aluminum plastic and electrical components. This section also mentions the sign may be structurally altered to meet safety issues. What safety issues is not addressed. The changing of marquee letters from a ladder has become an extreme safety issue for David Bauer the owner of Coyote's Adobe Café and his employees. It has in the past resulted in near falls and requires employees act in a very unsafe environment. The letters can be changed from the ground with a suction cup change arm. Mr. Bauers sign however has exposed neon. Changing the letters with one of these could result in electrical shock as the poles are and have aluminum on them. These sign face change outs are being done on a huge national scale for these same reasons.

Zoning Ordinance Section 5-1412

This ordinance calls out that permits are required to install signs. In the past a permit has never been required to change out sign faces unless the name was changing. This was not the case therefore no permit was applied for. We can offer several examples of this same service being performed in the Springfield area without a permit.

It seems extremely unjust and unfair not to allow a business owner who has a nonconforming sign make a standard maintenance upgrade. Both improving his marketing ability thereby creating more revenue, tax dollars and allowing him to greatly improve the safety of his sign.

Should the Board of Adjustment not agree with Pinnacle Sign Groups interoperation of these ordinances we would ask that you allow the removal of the new signage and the sign be returned to its original state. It seems extremely unreasonable and unwarranted to ask for the complete removal of all of the signage due to a misinterpretation of the ordinances. Pinnacle Sign Group would like to thank you for your understanding in this manner.



June 8, 2007

Coyote's Adobe Café & Bar, Inc.
David Bauer, Register Agent
4243 E. Whitehall
Springfield, MO 65809

Pinnacle Sign Group, Inc.
Mark Galloway, Register Agent
505 N. Glenstone
Springfield, MO 65802

RE: 1742 S. Glenstone

Dear Sirs:

It has been brought to the attention of this department that the legal non-conforming sign at the above location has been altered without first obtaining a sign permit.

The alterations to the nonconforming sign does not fall under the exempt operations of **Zoning Ordinance Section 5-1403:**

- A. Changing of the copy describing products or services on an existing permitted sign which is specifically designed for the use of manually or automatically changeable copy including billboard panels and posters; but not including changes in the structure, size, place, or location of the sign
- B. Maintenance, including repainting, cleaning, or other normal repair of a sign not involving structural changes. Maintenance includes all face changes, but does not include changes in the structure, size, placement, materials or location of the sign.

Following are the main sections of the **Zoning Ordinance** applicable to this situation. The listed sections are not all inclusive of all ordinance sections that may apply to this situation:

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EXHIBIT E
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Section 5-1407 sets forth authority for a legal nonconforming use to continue and shall be maintained in good condition, but shall not be:

2. Structurally altered (except to meet safety requirements) so as to prolong the life of the sign. The type of materials used in the construction of the sign shall not be changed after the date the sign becomes a nonconforming sign;

Section 5-1412 Sign permits and Inspection:

A. Permits Required.

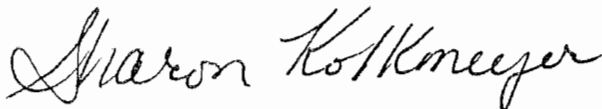
1. Except as otherwise provided in this code, it shall be unlawful for any person to erect, repair, improve, maintain, covert, or manufacture any sign or cause the same to be done, without first obtaining a sign permit for each such sign from the Director of Building Development Services. No sign permit shall be issued except to a person licensed to do business in the City of Springfield or to a person exempt from the City licensing provisions.

This property has been found to be in violation of **Sections 5-1407** and **5-1412** of the Zoning Ordinance resulting in the termination of the legal nonconforming sign. The property must be brought into compliance by the total removal of the nonconforming sign by July 9, 2007.

You have the right to appeal this decision to the Board of Adjustment within 30 days of the date of this notice. Application for appeal is made through the Planning Department. You may contact Planning at 864-1611 if you have questions regarding the appeal procedure, fees, etc.

Your cooperation will be appreciated. If you have any questions you may contact me at 864-1440.

Sincerely,



Sharon Kolkmeyer
Land Development Inspector



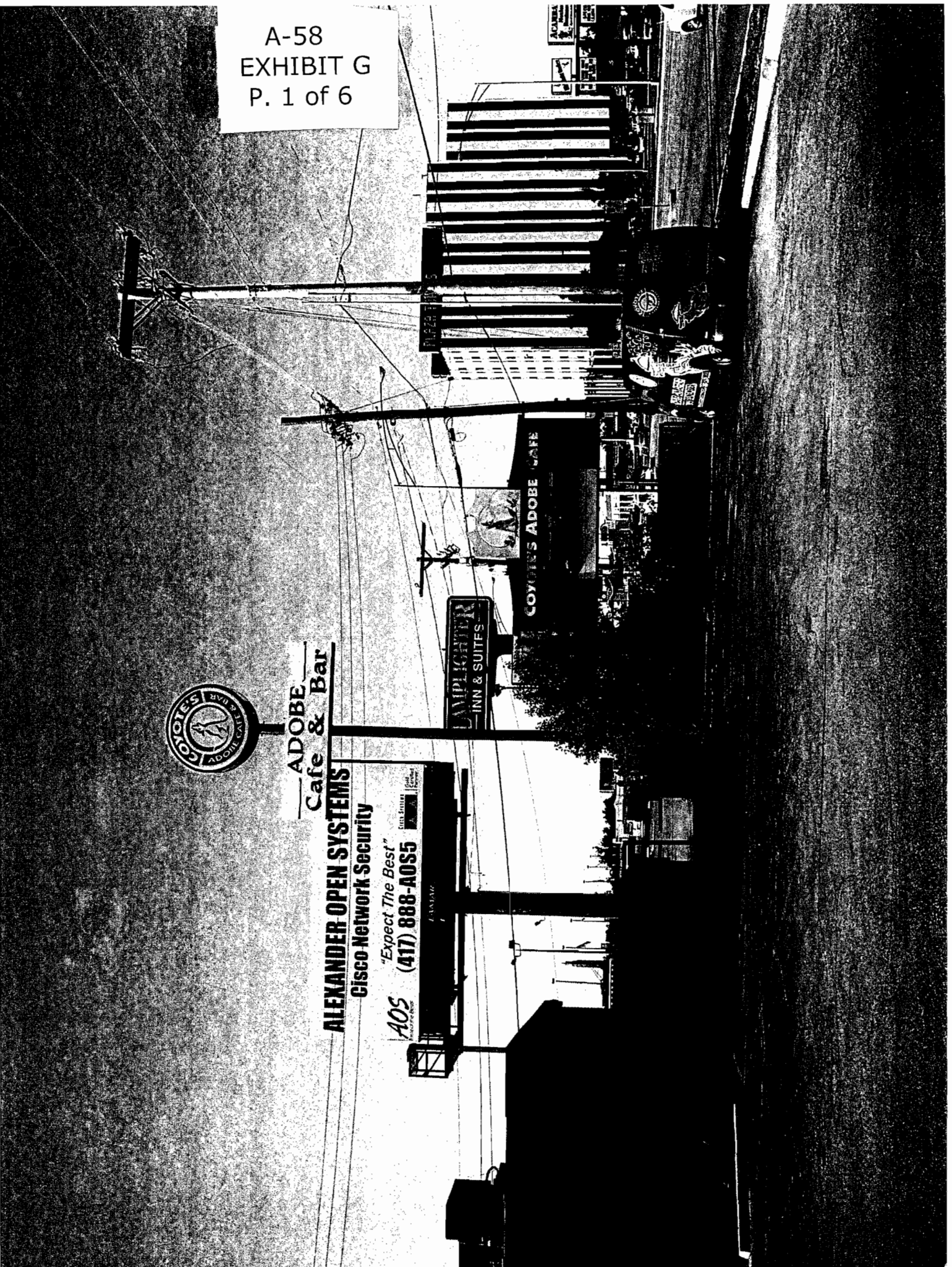
APPEAL NUMBER A-58
EXHIBIT F

PROPERTY DESCRIPTION:

(The appellant has not yet submitted a valid legal description for the tract of land holding the sign that is the subject of this appeal. If the Board of Adjustment rules in favor of the appellant, no Certificate of Decision formalizing that ruling will be issued until the appellant has provided the City a valid legal description, and the subject sign will continue to be deemed in violation of the zoning ordinance.)

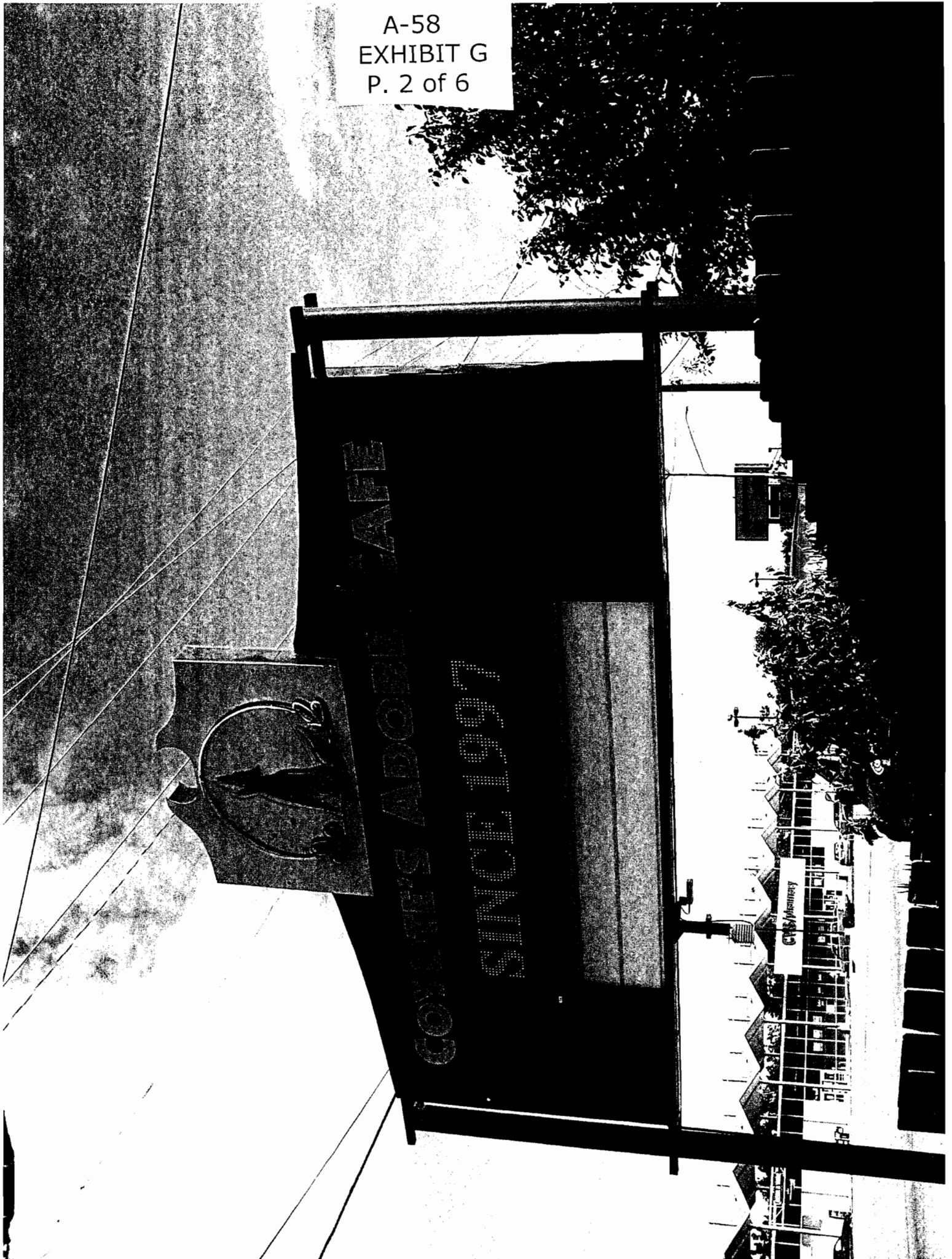
A-58
EXHIBIT G
P. 1 of 6

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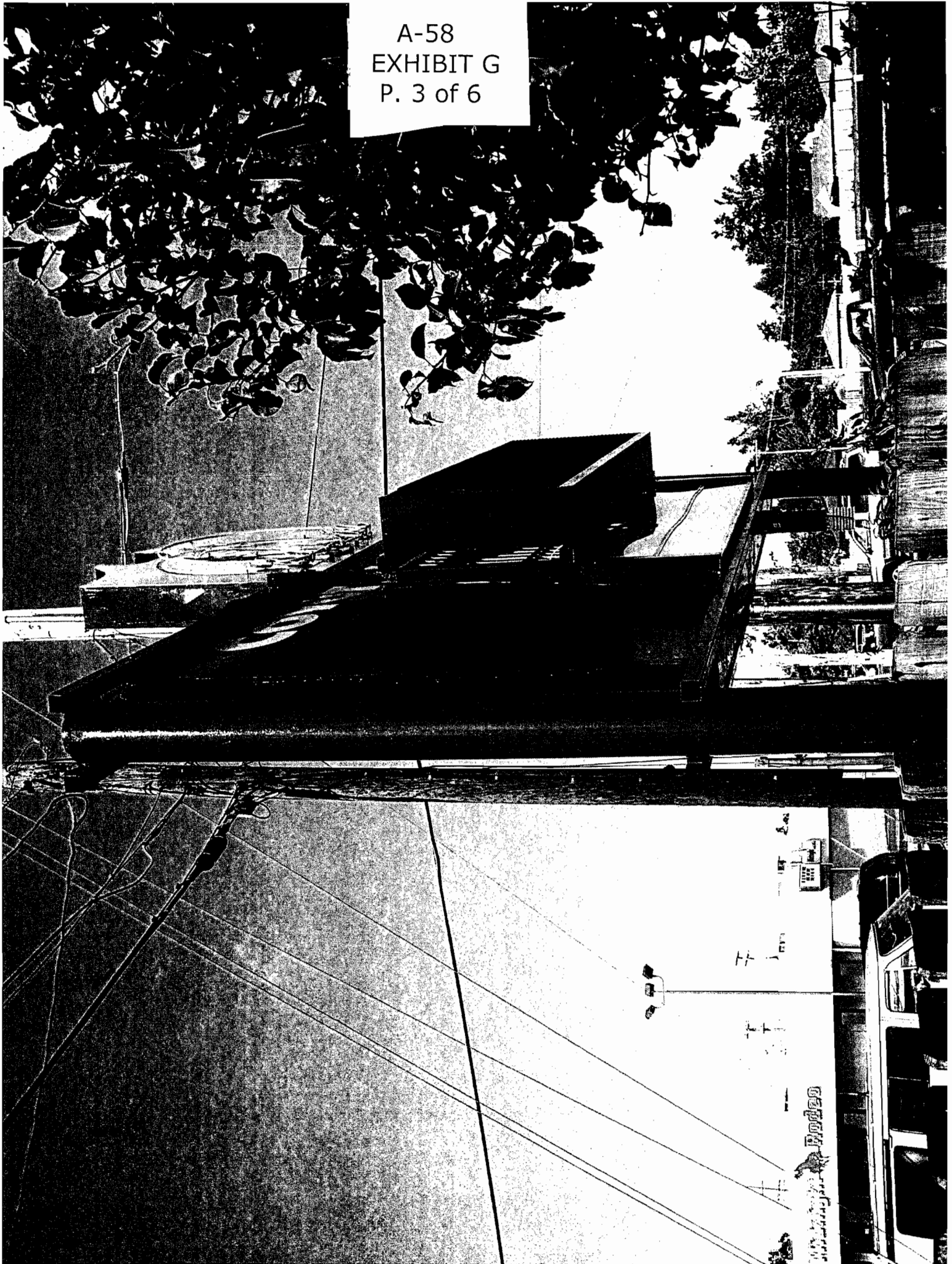
A-58
EXHIBIT G
P. 2 of 6

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A-58
EXHIBIT G
P. 3 of 6

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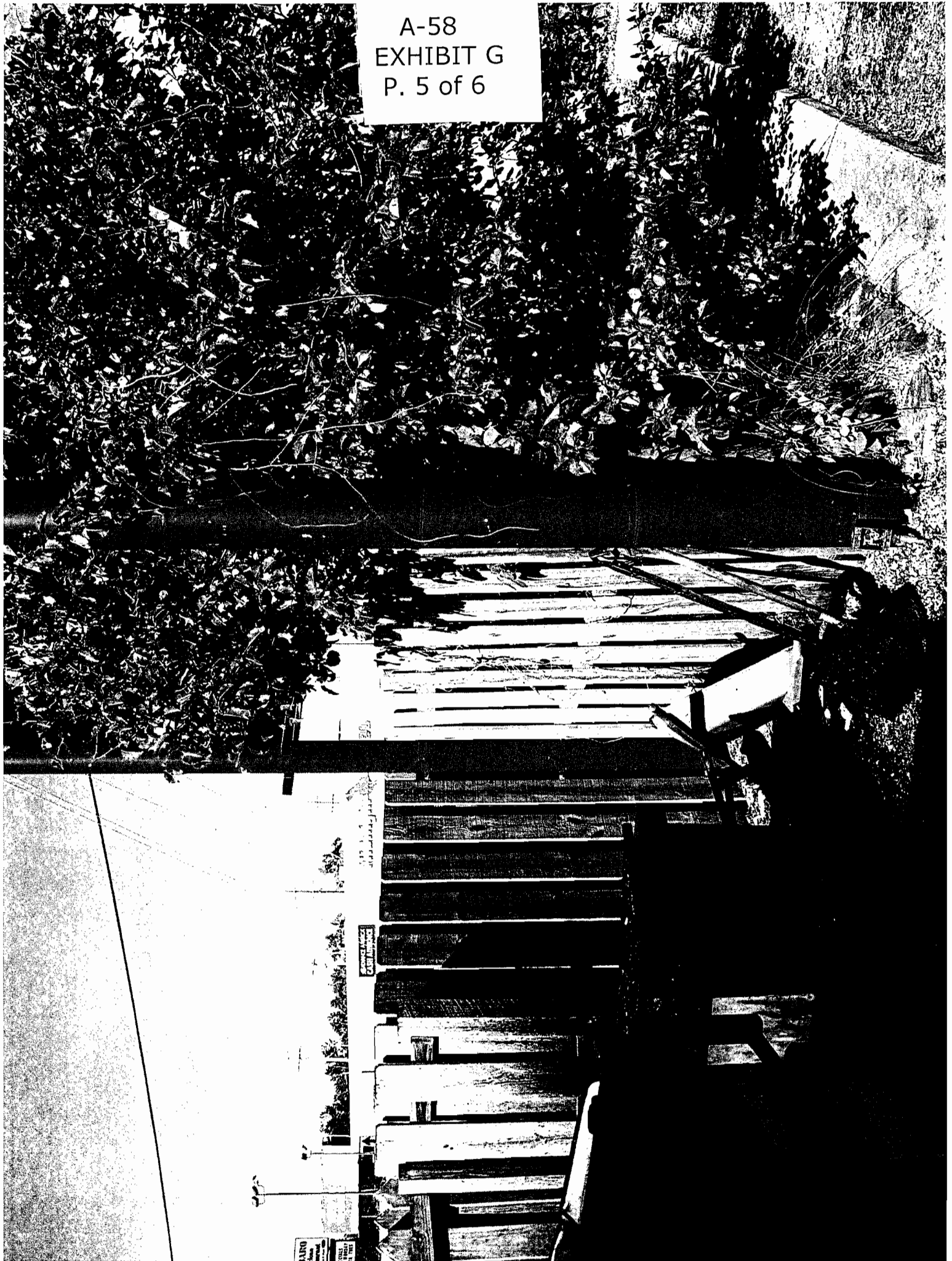
A-58
EXHIBIT G
P. 4 of 6

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EXHIBIT G
P. 5 of 6

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of the
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CONCRETE
CENTRAL

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EXHIBIT G
P. 6 of 6

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