



CITY OF LOS ANGELES
DEPARTMENT OF CITY PLANNING
City Hall 200 North Spring Street Los Angeles CA 90012
NOTICE OF PUBLIC HEARING

To Owners:

☐ Within a 100-Foot Radius
☐ Within a 500-Foot Radius
☒ Abutting a Proposed Development Site

And Occupants:

☐ Within a 100-Foot Radius
☐ Within a 500-Foot Radius
And: ☒ Interested Parties/Others

This notice is sent to you because you own property or are an occupant residing near a site for which an appeal from a Department action was filed with the Department of City Planning. All interested persons are invited to attend the public hearing where you may listen, ask questions, and/or present testimony regarding the project. The environmental document, if applicable, will be among the matters considered at the hearing. The decision-maker may consider all the testimony presented at the hearing, written communications received prior to or at the hearing, and the merits of the project as it relates to existing environmental and land use regulations. **Please note that your attendance at the hearing is optional.**

Project Site: 3113 South Yale Avenue

Case No.: DIR-2015-4415-BSA-1A
CEQA No.: N/A
Hearing Held By: West Los Angeles Area Planning Commission
Date: Tuesday, June 27, 2017

Time: After 4:30 p.m.
Place: Henry Medina West LA
Parking Enforcement Facility
2nd Floor, Roll Call Room
11214 West Exposition Blvd.
Los Angeles, CA 90064
Staff Contact: Harold Arrivillaga, Commission Executive
Assistant
200 N. Spring St, Rm 532
Los Angeles, CA 90012
APCWESTLA@lacity.org

Council No: 11 - Bonin
Plan Area: Venice
Zone: R1-1
Plan Overlay: Venice Coastal Zone, Oxford
Triangle, Los Angeles
Coastal Transportation
Corridor, Transit Priority Area
Land Use: Low Residential
Applicant: Forest L. Poorman
Representative: Laurie J Butler, Esq
Appellant: Katherine Conway & Amir
Tabar
Representative: Sabrina Venskus, Venskus &
Associates, A.P.C.

PROPOSED PROJECT:

A 1,905 square-foot second story addition to an existing one-story single-family dwelling.

APPEAL:

Pursuant to Los Angeles Municipal Code (LAMC) Section 12.26-K, an appeal of the Planning Director's determination to deny an appeal from the determination of the Department of Building and Safety (LADBS) to approve an administrative slight modification from the requirements of Sections 12.08-C,2(a) and (b) of the LAMC to allow a side yard setback of 3.71 feet in lieu of the required 4 feet.

Puede obtener información en Español acerca de esta junta llamando al (213) 978-1300

GENERAL INFORMATION

FILE REVIEW - The complete file is available for public inspection between the hours of 8:30 a.m. to 4:00 p.m., Monday through Friday. Please call or email the staff identified on the front page, at least three (3) days in advance to assure that the files will be available. **Files are not available for review the day of the hearing.**

AGENDAS AND REPORTS- Commission agendas are posted for public review in the Main Street lobby of City Hall East, 200 N. Main Street, Los Angeles, California, and are accessible online at planning.lacity.org. Appeal Recommendation Reports will be available on-line seven (7) days prior to the public hearing and will be accessible at planning.lacity.org, by selecting "Commissions & Hearings". Appeal Recommendation Reports are hyperlinked to the case numbers on the agendas. If you are appealing a determination of an Associate Zoning Administrator (AZA), please note that the letter of determination is the report which is forwarded to the Commission. Appeal Recommendation Reports are not prepared for AZA appeals. The Commission may consider the entire action even if only a portion of the action has been appealed.

TESTIMONY AND CORRESPONDENCE - Your attendance is optional; oral testimony can only be given at the hearing and may be limited due to time constraints. Written testimony or evidentiary documentation may be submitted prior to the hearing. Commissions function in a quasi-judicial capacity and therefore, cannot be contacted directly. Any materials submitted to the Department or Commission become City property and will not be returned. This includes any correspondence or exhibits used as part of your testimony.

REQUIREMENTS FOR SUBMISSION OF MATERIALS - Written testimony may be submitted via email, in person or by U.S. mail to the staff identified on the front of this page. Correspondence should be presented on letter size (8 ½ " x 11") or legal size (8 ½ " x 14") paper. All oversized exhibits must be folded to fit into a legal-sized folder. Plans (i.e. site plans, floor plans, grading plans) must be presented on paper size not smaller than ledger size (11" x 17"). The case number must be written on all communications, plans and exhibits. **To the extent possible, please also submit all materials electronically (flash drive, CD or via email).**

Regular Submissions - Written materials not limited as to volume must be received **ten (10) days** prior to the hearing date. Provide an **original** plus **twelve (12) copies** of all correspondence or exhibits. You may submit written testimony to the Commission Office directly at **200 North Spring Street, Room 532, Los Angeles, CA 90012** in attention to the Commission Secretariat.

Rebuttal Submissions - All written materials in response to the Appeal Recommendation Report and/or additional comments must be submitted no later than **48 hours** before the public hearing. Submissions, including exhibits, shall not exceed ten (10) pages.

Day of Hearing Submissions - Submissions less than 48 hours prior to, and including the day of the public hearing, must not exceed two (2) written pages, including exhibits. Photographs do not count toward the page limitation.

Non-Complying Submissions - Submissions that do not comply with these rules will be stamped "*File Copy. Non-complying Submission*". Non-complying submissions will be placed into the official case file, but they will not be delivered to, or considered by the Commission.

EXHAUSTION OF ADMINISTRATIVE REMEDIES AND JUDICIAL REVIEW - If you challenge these agenda items in court, you may be limited to raising only those issues you or someone else raised at the public hearing agenzized here, or in written correspondence on these matters delivered to this agency at or prior to the public hearing. If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

ACCOMMODATIONS - As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability. The hearing facility and its parking are wheelchair accessible. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or services may be provided upon request. Other services, such as translation between English and other languages, may also be provided upon written request submitted a minimum of seven (7) working days in advance to: per.planning@lacity.org. Be sure to identify the language you need English to be translated into, and indicate if the request is for oral or written translation services. If translation of a written document is requested, please include the document to be translated as an attachment to your email.

ORIGINAL



APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☒ City Planning Commission ☐ City Council ☐ Director of Planning

Regarding Case Number: DIR 2015-4415(BSA)

Project Address: 3113 South Yale Ave, Marina Del Rey, CA 90292

Final Date to Appeal: 04/20/2017

Type of Appeal: ☐ Appeal by Applicant/Owner
☒ Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
☐ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Katherine Conway and Amir Tabar

Company: _____

Mailing Address: 3109 Yale Avenue

City: Marina Del Rey State: CA Zip: 90292

Telephone: (310) 422-7490 E-mail: kconwayt@yahoo.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

☒ Self ☐ Other: _____

- Is the appeal being filed to support the original applicant's position? ☐ Yes ☒ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Sabrina Venskus

Company: Venskus & Associates, A.P.C.

Mailing Address: 1055 Wilshire Blvd., Suite 1660

City: Los Angeles State: CA Zip: 90017

Telephone: (213) 482-4200 E-mail: venskus@lawsv.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? ☒ Entire ☐ Part

Are specific conditions of approval being appealed? ☐ Yes ☒ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

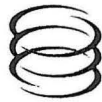
Appellant Signature: *K. Conway*

Date: 4/19/17

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

| This Section for City Planning Staff Use Only | | |
|--|--|---|
| Base Fee: <u>425.00</u> <u>500.00</u> | Reviewed & Accepted by (DSC Planner): <u>JOHN DACEY</u> | Date: <u>4/19/17</u> |
| Receipt No: <u>36537</u> | Deemed Complete by (Project Planner): | Date: |
| <input checked="" type="checkbox"/> Determination authority notified | | <input type="checkbox"/> Original receipt and BTC receipt (if original applicant) |



Venskus & Associates
A PROFESSIONAL CORPORATION

1055 Wilshire Blvd., Suite 1660
Los Angeles, CA 90017
Telephone (213) 482-4200; Facsimile (213) 482-4246
www.lawsv.com

ATTACHMENT A

RE: APPEAL FROM DECISION (CASE NO. DIR 2015-4415(BSA))

Katherine Conway and Amir Tabar (“Appellants”) hereby appeal the Associate Zoning Administrator’s Decision dated April 5, 2017 decision (hereinafter the “Decision”) denying “an appeal that the Department of Building and Safety erred or abused its discretion in granting a request for an administrative Slight Modification from the requirements of Sections 12.08-C,2(a) and (b) of the Municipal Code to permit a side yard of 3.71 feet in lieu of 4 feet” for a project located at 3109 Yale Avenue (“Project”).

Appellants hereby reserve the right to augment this attachment, including the reasons for the appeal, at any time prior to the hearing before Area Planning Commission. The entire record on this Project, both at the Los Angeles Department of Building and Safety and the Department of City Planning, is hereby incorporated by reference in the instant appeal.

I. Appellants are Aggrieved Parties

Appellants are adjacent landowners to the subject property. The Project and the City’s conduct has substantially and detrimentally impacted Appellants’ use and enjoyment of their property, has detrimentally impacted their property values, and has caused them emotional distress.

II. Reasons for Appeal.

The Section 12.26K,4 Finding is legal error and not supported by substantial evidence. Despite the fact that the ZAA finds, as a matter of policy, that the City Department of Building and Safety (DBS) does not need to follow their own guidelines for implementing the Planning and Zoning Code, the ZAA finds that his determination has no Citywide impact. This is legal error. The determination concerns issues connected with other zoning matters which are NOT unique to the affected site and which WOULD generally apply to other sites in the City, or WOULD result in changes in the

application of Chapter I of the Municipal Code and other land use ordinances to other sites. Thus, the ZAA's finding was error and this appeal should be heard before the City Planning Commission, pursuant to L.A.M.C., 12.26.

The ZAA's decision is not based upon the evidence. A reasonable person could not reach the conclusion reached by the agency. Sierra Club v. CCC (1993) 12 Cal.App.4th 602.

The ZAA's decision is error as a matter of law because the mandatory findings required by Section 562 of the Los Angeles City Charter were never made either by DBS or the ZAA for the Project's exception from generally applicable zoning laws.

The ZAA's decision is also legal error because the City never followed the procedural steps required by Code and the City Charter, including providing notice and hearing prior to approving the "Slight Modification" and the subsequent "Notice of Correction."

The ZAA's decision is not supported by substantial evidence because there is no evidence that the building is not constructed beyond the building envelope and zoning code-required side yard. The downspouts are a projection into a required side yard and are not an "architectural detail" and there is no substantial evidence to the contrary.

Appellants hereby reserve the right to augment this attachment, including the reasons for the appeal and documentary evidence in support of their appeal.

DETERMINATION LETTER

**DEPARTMENT OF
CITY PLANNING**

CITY PLANNING COMMISSION

DAVID H. J. AMBROZ
PRESIDENT

RENEE DAKE WILSON
VICE-PRESIDENT

CAROLINE CHOE

RICHARD KATZ

JOHN W. MACK

SAMANTHA MILLMAN

MARC MITCHELL

VERONICA PADILLA-CAMPOS

DANA M. PERLMAN

ROCKY WILES
COMMISSION OFFICE MANAGER
(213) 978-1300

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

EXECUTIVE OFFICES
200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801

VINCENT P. BERTONI, AICP
DIRECTOR
(213) 978-1271

KEVIN J. KELLER, AICP
DEPUTY DIRECTOR
(213) 978-1272

LISA M. WEBBER, AICP
DEPUTY DIRECTOR
(213) 978-1274

JAN ZATORSKI
DEPUTY DIRECTOR
(213) 978-1273

<http://planning.lacity.org>

April 5, 2017

Katherine Conway and Amir Tabar
(Appellants) (Neighbor)
3109 Yale Avenue
Marina Del Rey, CA 90292

Forest L. Poorman (Builder O)
11285 Sardis Avenue
Los Angeles, CA 90064

Jason Teague (Current O) (Subject Property)
3113 South Yale Avenue
Marina Del Rey, CA 90292

Laurie J. Butler, Esq. (R)
The Butler Law Firm
601 South Figueroa Street, Suite 4050
Los Angeles, CA 90017

Department of Building and Safety

CASE NO. DIR 2015-4415(BSA)
BUILDING AND SAFETY APPEAL
3113 South Yale Avenue
Venice Planning Area

Zone : R1-1

D. M. : 105B149

C. D. : 11

CEQA : N/A

Legal Description: Lot 127, Tract 8167

Pursuant to the provisions of Section 12.26-K of the Municipal Code, I hereby DENY:

an appeal that the Department of Building and Safety erred or abused its discretion in granting a request for an administrative Slight Modification from the requirements of Sections 12.08-C,2(a) and (b) of the Municipal Code to permit a side yard of 3.71 feet in lieu of 4 feet.

I find that the Department of Building and Safety DID NOT ERR OR ABUSE THEIR DISCRETION in making a determination regarding its granting the request for an administrative Slight Modification to permit a side yard of 3.71 feet.

FINDINGS OF FACT

After thorough consideration of the statements contained in the appeal, the information provided by the Department of Building and Safety, the statements made at the public hearing conducted on the matter on April 21, 2016 and the applicable provisions of the Municipal Code, I find that the Department of Building and Safety (LADBS) did not err or

abuse their discretion in this case based on the following findings of fact:

BACKGROUND

The property is a level, rectangular-shaped, interior, 4,016 square-foot, parcel of land with an even width and depth of 40 feet and 101 feet, respectively, with the street frontage on the southwest side of the street. The property is located within the Venice Community Plan Area, Los Angeles Coastal Transportation Corridor, Oxford Triangle, and Venice Coastal Zone Specific Plans, Transit Priority Area in the City of Los Angeles (ZI-2452), Director's Interpretation of the Venice SP for Small Lot Subdivision (ZI-2406), Calvo Exclusion Area, Coastal Zone Commission Authority, Methane Buffer Zone, 6 kilometers from the Santa Monica Fault, and Liquefaction area.

The project is the development of a 1,905 square-foot second-story addition to an existing one-story single-family dwelling, using the existing side yards.

Properties to the north, south, east, and west are zoned R1-1 and developed with one- and two-story single-family dwellings.

Note, the Hearing Notice states that the Slight Modification were from the requirements of Sections 12.08-C2(a) and (b). However, (b) does not apply because the lot is within the Coastal Zone. This error does not affect the project or appeal.

Yale Avenue, adjoining the property on the southwest side of the street, is a designated Local Street-Standard, dedicated a width of 60 feet, and improved with asphalt roadway, concrete curbs, gutters, and sidewalks, landscaped parkways.

Alley, adjoining the property on the northeast side of the alley, improved to a width of 15 feet, improved with asphalt roadway with a center concrete gutter.

Subject Property:

Department of City Planning Cases

Case No. DIR 2014-2824(DI) – On August 14, 2014, the Director issued a Director's Specific Plan Interpretation regarding Small Los Subdivision within the Venice Coastal Zone Specific Plan.

Case No. YD 11307 – On June 17, 1960 the Zoning Administrator approved a reduced rear yard of 23.5 feet including one-half of the abutting alley.

The following describes the actions, dates and permit numbers for the subject site:

On May 6, 1952, LADBS issued a Building Permit for the construction of a 46X32 foot, one-story, single-family dwelling and attached garage on a lot measuring 40X106 feet.

On October 24, 1952, the Certificate of Occupancy was issued for the single-family dwelling and attached garage.

On April 14, 1965, LADBS Permit No. 57075W was issued to repair fire damage to

the garage portion of the single-family dwelling with attached garage.

On June 27, 2013, an application for electrical plan check and inspection no. 13041-90000-17105 was issued for electrical work on the house.

On October 9, 2013, LADBS Building Permit No. 13014-10000-01084 was issued to construct a new 1,903 square-foot two-story addition to an existing one-story single-family dwelling.

On February 4, 2014, LADBS approved a Request for Modification of Building Ordinances Under Authority of LAMC Section 98.0403 to allow a side yard setback of 3.71 feet in lieu of the required 4 feet per LAMC Section 12.08-C2(a). A letter of consent was also received from John Tabor – Lot 126, Ron Rasbeary – Lot 128, Tia Ardran – Lot 149, and Matthew Goldstein – Lot 105.

On March 19, 2014, a letter was submitted by Amiar Tabar stating that the letter of consent was not signed by him and that the letter was forged.

On March 21, 2014, LADBS issued a Notice of Intent to Revoke letter to Forrest Poorman stating that the request for a modification for a reduced side yard setback was based on consent letters from the adjoining property owners. Since the modification was based on the validity of such letters, the modification is determined to be approved erroneously. In addition, the Building Permit No. 13014-10000-01084 was based on the modification and is also determined to be issued in error.

On May 14, 2014, LADBS determined that LAMC Section 12.26 does not include a requirement that a written consent from the adjoining neighbors be obtained in order to approve a slight modification of the side yard requirements per LAMC Section 12.08-C2(a). Therefore, Building Permit No. 13014-10000-01084 was not revoked.

On December 11, 2014 LADBS Building Permit No. 13014-10001-01084 was issued as a supplemental to Permit No. 13014-10000-01084 to approve framing detail for dumbwaiter shaft.

On March 13, 2015, LADBS issued Permit No. 15047-30000-00280 for a new pool per LA city standard plan #268.

On June 24, 2015, a letter was sent by The Butler Law Firm, Laurie Butler to the Los Angeles Department of Building and Safety, Mr. Colin Kumabe regarding the subject property and associated permits. This letter was accompanied by 11 attachments supporting her clients (the appellants in the subject BSA case) position that the slight modification issued by the LADBS was issued in error.

On June 29, 2015, another letter was sent by The Butler Law Firm, Laurie Butler to the Los Angeles Department of Building and Safety, Mr. Colin Kumabe regarding the subject property and associated permits. This letter was accompanied by four certified attachments supporting her clients (the appellants in the subject BSA case) position that the slight modification issued by the LADBS was issued in error.

On July 7, 2015, an appeal of the issuance of the Building Permit No. 03014-10000-

01084 was filed.

On October 2, 2015, a Correction Notice was issued by LADBS because the roof deck guardrails are constructed beyond the building envelope and are not an allowed projection into a required side yard. Guardrails are to be reconstructed within the building footprint.

On November 19, 2015, LADBS issued a letter of determination stating that LADBS did not err or abuse its discretion in granting a request for modification for a reduced side yard.

On December 4, 2015, the subject Building and Safety Appeal case to the Director of Planning was filed to appeal the November 19, 2015 LADBS letter of determination that LADBS did not err or abuse its authority in granting a request for modification for a reduced side yard.

On February 9, 2016, LADBS issued a Building Permit No. 13014-30002-01084 as a supplemental to permit No. 13014-10000-01084 to change the contractor to the current owner, Jason Teague.

STATUTORY PROVISIONS OF AUTHORITY

Section 12.26-A of the Los Angeles Municipal Code addresses the functions of the Department of Building and Safety and provides in part: "The Department is granted the power to enforce the zoning ordinances of the City."

Section 12.26-K of the Los Angeles Municipal Code provides in part, "The Director of Planning shall have the power and duty to investigate and make determination upon appeals where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases..."

The applicable Los Angeles Municipal Code (LAMC) sections relative to this matter are as follows:

ZONING CODE PROVISIONS

SECTION 12.08. "R1" ONE-FAMILY ZONE.

C. Area (Development Standards). (First Para. Amended by Ord. No. 179,883, Eff. 6/29/08.) No building or structure nor the enlargement of any building or structure shall be erected or maintained unless the following yards, lot areas, and floor area limitations are provided and maintained in connection with the building, structure, or enlargement:

2. Side Yards. (Amended by Ord. No. 169,775, Eff. 6/2/94.)

- (a) For a main building not more than two-stories in height, there shall be a side yard on each side of the building of not less than five feet, except that where the lot is less than 50 feet in width, the side yard

may be reduced to ten percent of the width of the lot, but in no event to less than three feet in width. For a building more than two-stories in height, one-foot shall be added to the width of each yard for each additional story above the second story.

- (b) In lieu of the additional one-foot side yard for each story above the second story as required above, for new construction of a main building or a ground floor addition to the main building on a lot not located in a Hillside Area or Coastal Zone, one-foot shall be added to each required side yard for each increment of ten feet or fraction thereof above the first 18 feet.
- (c) Side yard requirements in specific plans, Historic Preservation Overlay Zones or in subdivision approvals shall take precedence over this subdivision. This subdivision shall apply in these areas, however, when there are no such side yard requirements.

SECTION 12.22. EXCEPTIONS.

20. Projections Into Yards. (paragraphs (a) and (b) only)

(a) A canopy above an entrance and extending over a driveway which leads to a detached garage or a parking space not abutting a dwelling, for the temporary shelter of automobiles, commonly referred to as a porte-cochere, may project into a required side yard, but not nearer than 30 inches to any lot line, provided such structure is not more than one story in height and 20 feet in length, and is entirely open on at least three sides except for the necessary supporting columns and customary architectural features. (Amended by Ord. No. 138,685, Eff. 7/10/69.)

(b) Cornices, belt courses, sills, or other similar architectural features (not including bay windows or vertical projections), may project into a required side yard, other than the side yard adjoining the street lot line of a corner lot, not more than two inches for each one foot of width of such yard, and may project into a required front yard, rear yard, side yard adjoining the street lot line of a corner lot, passageway, or other open space not more than 30 inches, except as provided in Section 12.08.5-C,1(c), provided the width of a side yard adjoining the street lot line of a corner lot is not reduced to less than three feet. Eaves may project into a required side yard, other than the side yard adjoining the street lot line of a corner lot, not more than four inches for each one foot of width of such side yard, provided the width of such side yard is not reduced to less than two and one-half feet. Eaves may also project into a required front yard, rear yard, side yard adjoining the street lot line of a corner lot, passageway, or other open space not more than 30 inches, provided the width of a side yard adjoining the street lot line of a corner lot is not reduced to less than two and one-half feet. Chimneys may project into a required passageway not more than one foot and may project into a required front yard, rear yard, side yard, or other required open space, except as provided in Section 12.08.5-C,1(c), not more than two feet, provided the width of any required side yard is not reduced to less than three feet. (Amended by Ord. No. 138,685, Eff. 7/10/69.)

SECTION 12.26. DEPARTMENT OF BUILDING AND SAFETY.

- B. Yard Area Modifications (Amended by Ord. No. 170,141, Eff. 1/2/95.) – Section 98.0403.1(a)11. of the Los Angeles Municipal Code provides in part that:

“The Department shall have the power to hear and determine requests for slight modifications for individual cases in the yard area requirements of the zoning ordinance, provided that in each such modification, the Superintendent shall first find that a special, individual reason makes the strict letter of the ordinance impractical and that the modification is in conformity with the spirit and purpose of the ordinance involved. Any action granting a modification shall be recorded and entered in the files of the Department.

“For structures and additions constructed after January 1, 1995, slight modifications from the yard requirements shall be limited to deviations permitting portions of buildings to extend into a required yard or other open space a distance of not to exceed 20 percent of the width or depth of such required yard or open space. However, for structures and additions existing prior to January 1, 1995, slight modifications may be granted for yard deviations slightly over 20 percent.

“Except as expressly provided herein, the Superintendent of Building shall not grant deviations from the lot area, height, or density requirements. Further, the Superintendent shall not grant deviations from the yard requirements relating to the height of fences and walls, or including those for tennis or paddle tennis courts and other game courts.

“If the yard regulations cannot reasonably be complied with or it is difficult to determine their application on lots of peculiar shape or location, then the regulations may be modified or determined by the Superintendent of Building. The Superintendent may also waive all or part of the required loading space on unusually shaped lots, oddly located lots, or hillside lots, when such space cannot reasonably be provided or utilized.

“Requests for yard modifications as provided in this subsection shall be made in accordance with the procedures established in Section 98.0403.2 of the Los Angeles Municipal Code.”

SEC. 98.0403.1. POWERS OF THE DEPARTMENT (LADBS) AND THE BOARD.
(Former Sec. 98.0403 Redesignated by Ord. No. 165,310, Eff. 12/31/89.)

(a) Powers of the Department.

11. (Added by Ord. No. 170,141, Eff. 1/2/95.) The Department shall have the power to hear and determine requests for slight modifications for individual cases in the yard area requirements of the zoning ordinance, provided that in each such modification, the Superintendent shall first find that a special, individual reason makes the strict letter of the ordinance impractical and that the modification is in conformity with the spirit and

purpose of the ordinance involved. Any action granting a modification shall be recorded and entered in the files of the Department.

For structures and additions constructed after January 1, 1995, slight modifications from the yard requirements shall be limited to deviations permitting portions of buildings to extend into a required yard or other open space a distance of not to exceed 20 percent of the width or depth of such required yard or open space. However, for structures and additions existing prior to January 1, 1995, slight modifications may be granted for yard deviations slightly over 20 percent.

Except as expressly provided herein, the Superintendent of Building shall not grant deviations from the lot area, height, or density requirements. Further, the Superintendent shall not grant deviations from the yard requirements relating to the height of fences and walls, or including those for tennis or paddle tennis courts and other game courts.

If the yard regulations cannot reasonably be complied with or it is difficult to determine their application on lots of peculiar shape or location, then the regulations may be modified or determined by the Superintendent of Building. The Superintendent may also waive all or part of the required loading space on unusually shaped lots, oddly located lots, or hillside lots, when such space cannot reasonably be provided or utilized.

DEPARTMENT OF BUILDING AND SAFETY'S ACTION

On November 19, 2015, the Los Angeles Department of Building and Safety (LADBS) issued a notification of a determination and attached report in response to the appeal filed by Katherine Conway and Amiar Tabar. The determination and report concluded that LADBS did not err or abuse its discretion by granting a request for modification of building ordinance for a reduced side yard.

The Department of Building and Safety's report is included below, highlighted in bold. It references exhibits attached to the DBS report which are attached to the case file.

**REPORT ON APPEAL FROM LADBS DETERMINATION TO THE DIRECTOR OF PLANNING
PURSUANT TO L.A.M.C. § 12.26 K (Ordinance No. 175,428)
REPORT NO. DBS-15006-DCP**

| | |
|--|---|
| JOB ADDRESS: 3113 SOUTH YALE AVENUE | DATE OF REPORT: October 20, 2015 |
| ZONE: RI-1 | EFFECTIVE DATE OF DETERMINATION: November 19, 2015 |
| CD: II (MIKE BONIN) | DEADLINE TO APPEAL TO DCP: December 4, 2015 |
| PLANNING AREA: VENICE | APPEAL FEES: \$500.00 |
| APPEAL: | |

Determine that the Department of Building and Safety (LADBS) erred or abused its discretion in granting a request for, modification of building ordinance for a reduced side yard on February 4, 2014.

EXHIBITS:

- EXHIBIT A: ZIMAS (Zone Information and Map Access System) vicinity map and Parcel Profile Report
- EXHIBIT B: Building Permit No. 13014-10000-01084
- EXHIBIT C: Administrative Approval for a reduced side yard, dated February 4, 2014
- EXHIBIT D: Written Statement by Amir Tabar
- EXHIBIT E: Photograph of Down drains and Guardrail
- EXHIBIT F: LADBS Correction Notice, dated October 2, 2015

APPENDIX: Appeal dated July 7, 2015

BACKGROUND:

The subject property is a 40-ft by 101-ft rectangular shaped lot and measures approximately 4,016 square feet in area (*Exhibit A*). The property was developed in 1952 with a one-story single family dwelling and attached garage (Building Permit No. 1952VE04430 and was issued a Certificate of Occupancy on October 24, 1952).

On October 9, 2013 the LADBS issued Building Permit No. 13014-10000-01084 to construct a 1,905 square foot two story addition to an existing one story single family dwelling (*Exhibit B*). The addition is located with the same side yard setbacks as the existing single family dwelling.

On February 4, 2014, the LADBS granted a slight administrative modification from the requirements of Section 12.08-C2(a) and (b), allowing a side yard setback of 3.71-ft in lieu of 4-ft. (*Exhibit C*).

On March 19, 2014, one of the adjoining property owners, Amir (John) Tabar provided the LADBS with a written statement that the signature on the "Letter of Consent Yard Reduction" for his property is not his; that he did not sign the letter dated May 6, 2013 (*Exhibit D*).

On March 21, 2014 the LADBS sent a Notice of Intent to Revoke an Approved "Request for Modification of Building Ordinance" for a reduced side yard, dated February 4, 2014 and Building Permit No. 13014-10000-01084 for a second story addition to an existing one story single family dwelling located at 3113 S. Yale Avenue.

On May 14, 2014, the LADBS determined that LAMC Section 12.26 does not include a requirement that a written consent from the adjoining neighbors be obtained in order to approve a slight modifications to the yard area requirements of the zoning ordinance and that Building Permit No 13014-10000-01084 would not be revoked.

On July, 7, 2015 an appeal was filed challenging the LADBS approval of the request for Modification of Building Ordinance for a reduced side yard granted on February 4, 2014.

DISCUSSION:

The following is a summary of the land use issues identified in the appellant's brief (*Appendix*) along with the corresponding responses from the LADBS:

- Issue No.1

The 3113 Yale Avenue wall reduces the setback at its furthest point to as little as 3'-6 and 15/16" Therefore, without even including the structural posts, the wall has encroached into the required set back.

LADBS Response to Issue No. 1:

According to the approved plans the width of the yard between the property line and the exterior wall of the building is 3.71-ft. LADBS Inspection will verify that required side yard setback is provided.

- Issue No. 2

The steel posts on the structure are necessary structural elements, as opposed to decorative designs, and constitute a necessary structural and integral part of the structure. As such any measurements of the size of the side yard setback between 3113 Yale and 3109 Yale Avenue would have to start from the face of the steel posts, not from the wall of the 3113 Yale Avenue house.

LADBS Response to Issue No. 2:

According to the approved plans the steel post serve as downspouts for the roof drains of the building and are not structural elements for the support of the building. Photographs provided of the actual construction of the building show the roof drains continuing above the roof line of the building and which also serve as the required guardrail for the roof deck (*EXHIBIT E*). Section 12.22-C,20 of the Los Angeles Municipal Code (LAMC) lists allowable projections into required yards. The guardrails at the roof deck are not included in LAMC Section 12.22-C,20. The guardrails were not constructed in accordance with the approved plans and a correction notice has been issued to the building owner (*Exhibit F*) stating that the guardrails at the roof deck are not allowed to project into the required side yard.

- Issue No.3

The side yard reduction of 3113 Yale Exceeds 20%.

LADBS Response to Issue No. 3:

The building plans approved with Building Permit No. 13014-1000-01084 show a side yard of 3.71-ft. LAMC Section 12.08-C,2(a) requires a side yard of 4-ft The reduction in side yard is 7.25% which is less than 20 % allowed for slight modifications granted in accordance with LAMC Section 12.26-B.

- Issue No. 4

LADBS approval of the 3113 Yale Avenue side yard setback must be revoked since the reduction in the required side yard exceeds 20% and at least one consent form contains forged signatures.

LADBS Response to Issue No. 4:

As stated above, the side yard shown on the approved plans is 3.71-ft, the approved side yard reduction of 7.25% is allowed for slight modifications granted in accordance with LAMC Section 12.26-B. The modification was granted based on the fact that the requested side yard reduction was very slight and the subject project is located on a lot with a narrow width. The letter of consent from adjacent property owners are not a requirement of the LAMC 12.26-B.

CONCLUSION

The LADBS did not err or abuse its discretion in granting a request for modification of building ordinance for a reduced side yard on February 4, 2014, because of the following:

- The steel posts are roof drains, not structural posts of the building. The guardrails constructed at the roof deck and which project in to the required 3.71-ft side yard were not constructed in accordance with the approved building plans and a correction notice from LADBS Inspection has been given to the building owner.
- The side yard setback shown on the approved plans is 3.71-ft and is within the allowable 20% for slight modifications granted in accordance with LAMC Section 12.26-B.
- LAMC Section 12.26 does not include a requirement that a written consent from the adjoining neighbors be obtained in order to approve a slight modifications to the yard area requirements of the zoning ordinance.

APPEAL TO THE DIRECTOR OF PLANNING

An appeal of the Department of Building and Safety's November 19, 2015 action was filed by appellants Katherine Conway and Amiar Tabar, to the Director of Planning, pursuant to the provisions of Section 12.26-K of the Municipal Code, as to whether the Department of Building and Safety erred or abused its discretion in its granting a request for modification of building ordinance for a reduced side yard, which the Building Permit No. 13014-10000-01084 was based on.

APPELLANTS' POINTS

The appeal submittal indicates all issues set forth in the Determination for DBS-15006-DCP action dated November 19, 2015 are being appealed as the original relief sought remains revocation of the Building Permit No. 13014-10000-01084. The following points were included in the appeal to the Director of Planning.

1. LADBS Inspection will verify that required side yard setback is provided.

Nothing in its Determination provides evidence of a measurement being made, attested to and/or attached to the Determination to prove that the actual side yard setback approved by LADBS is the current setback. As is set forth below, the required setback is not as stated by LADBS.

2. The steel posts serve as downspouts for the roof drains and are not structural elements for the support of the building.

There is no factual basis provided by LADBS for the determination that the steel posts, beams or columns are not structural. The claim that the steel posts are shown on the approved plans as downspouts for roof drains does not preclude the steel posts from being structural, or even that they are used as downspouts for roof drains. The only factual information presented by LADBS to the Department is that the steel posts are structural, and no facts are provided to show that the posts are not structural. If the steel beams or columns are included in the measurement of the 3113 South Yale Avenue structure from the boundary, then that structure is as close as three feet, one inch (3'1") from the 3109 south Yale boundary line, which is a modification of more than twenty percent (20%) from the normally required four feet (4').

3. The side yard reduction of 3113 Yale Avenue exceeds 20%.

If the modification is more than twenty percent (20%), which appellants maintain is the case, then a different process including and requiring the neighbor consent form is required. Here, as is proven by appellants, the signature of Amiar Tabar to the neighbor consent form was forged. Forgery of the neighbor consent form is a proper basis to revoke the permit. No proof or ruling has been made by LADBS to contradict or challenge the fact and proof of the forgery of Amiar Tabar's signature to the neighbor consent form, or that the owner of the 3113 Yale Avenue property submitted such forged neighbor consent form to LADBS to obtain his building permit.

4. The approval of the side yard setback must be revoked. The side yard setback shown on the plans conforms to LAMC Section 12.26B.

Appellants dispute this issue as determined by LADBS. The LADBS statement that the steel posts are not structural and were set forth on the approved plans is not supported by admissible or competent evidence.

PUBLIC HEARING

A Notice of Public Hearing was sent to the owners of property adjacent to the subject site for which an application, as described below, had been filed with the Department of City Planning. All interested persons were invited to attend the public hearing at which they could listen, ask questions, or present testimony regarding the project.

The hearing was held on April 21, 2016 at approximately 10:00 a.m., at in the West Los Angeles Municipal Building, Second Floor Hearing Room, 1645 Corinth Avenue, Los Angeles, CA 90025, before an Associate Zoning Administrator from the Office of Zoning Administration.

The project site was identified as being at 3113 South Yale Avenue and being within the bounds of Council District No. 11, and the Venice Community Plan Area. The property is zoned R1-1.

The public hearing was attended by the appellant (who is the neighbor), the current owner of the subject property, the previous owner of the subject property (who sold the property to the current owner), a representative from Los Angeles Department of Building and Safety, and two other stakeholders. The following is a summary of the points noted at the hearing:

Katherine Conway, Appellant, adjacent neighbor.

- The Slight Modification is more than 20% reduction of the required side yard, and is more like 25%
- As built, the side yards are 4-feet
- She went into some detail in the miscalculations by the applicant and LADBS regarding the metal “thing” attached to the building
- She contended that the signature for her property that was given to LADBS was forged, and not hers
- That the signatures that LADBS were relying on were falsified
- Further, the Director of Planning did not make a sound judgement in allowing the yard modification

Peter Kim, Chief Inspector, LADBS

- Mr. Kim clarified the technical calculations for the yard setbacks
- The yard setbacks on the plans are shown as 3.71 and 3.89 feet in lieu of the required 4 feet side yard
- The rain gutters are not considered structural elements and are allowed to project into the required yards
- A separate correction notice for the height of the roof rails was issued.
- In March 2014, the LADBS issued a Notice of Intent to Revoke the “Slight Modification” for the second story addition, based on the neighbor not signing the consent letter
- In May 2014, the LADBS made the determination not to revoke based on the fact that the Code does not require signatures from neighbors
- The LADBS Information Bulletin – Guidelines for Consideration of Yard Reduction Requests are only guidelines and LADBS can default to the Code
- When considering Yard Reduction, Slight Modifications, LADBS also relies on other City departments, such as Planning, Fire, Bureau of Engineering when their expertise is needed

Jason Teague, Current owner of the subject property

- He bought the subject property earlier in the year, and was not involved in the permitting
- The focus of his comments was that someone kept putting up signs for an appeal hearing that looked like BTC’s posting on their property
- He contacted City staff to inquire if the City had put up the signs
- The owner spoke about wanting to create a livable environment for his family
- The experience has not been peaceful with the neighbor

Robin Rudisill, Stakeholder

- She spoke as an individual, not as a spokesperson for the Venice Neighborhood Council
- She brought up that LADBS had previously followed their own protocol on Slight Modifications, but not in this case
- This could be misleading
- The public relies on policies of the City to look for rules and how they are complied with

Correspondence received after the Public Hearing.

After the public hearing on April 21, 2016 seven email communications were received by staff. Of the seven communications, six were from Ms. Katherine Conway, the appellant in this Building and Safety Appeal, and one was from Ms. Robin Rudisill, a stakeholder and previous Chair of the Venice Land Use and Planning Committee of the Venice Neighborhood Council.

Katherine Conway, April 22, 2016 – Email to staff requesting a copy of the one page survey diagram submitted at the hearing by Mr. Teague.

Katherine Conway, April 25, 2016 – Email to staff again requesting a copy of the one page survey diagram submitted at the hearing by Mr. Teague. Ms. Conway further referenced that the subject appeal also has a related issue regarding a forged signature.

Katherine Conway, April 26, 2016 – Email to staff establishing that the survey is the same document provided in 2014. The date of the survey was April 29, 2014.

Katherine Conway, April 27, 2016 – Email to staff requesting that the email thread be included in the case file as it shows discussions between Jason Teague, and City Planning staff. An additional thread was attached including communications between the developer and Building and Safety staff.

Robin Rudisill, April 28, 2016 - Email to staff outlining her experience with developers trying to obtain the neighbor's consent on yard modification. She understands that the LADBS protocol requires the signatures of consent from the neighbors, and is part of a formal official protocol. She also believes that the inspector should have provided a copy of the form to the appellant.

Katherine Conway, May 3, 2016 – Email to staff forwarding a Declaration from the Land John S. Henderson, Professional Land Surveyor. In his declaration Mr. Henderson refers to "Declaration of Steven G. Cohen", dated June 22, 2015. Also attached to this email was a copy of the email sent by Robin Rudisill of April 28, 2016.

Katherine Conway, August 25, 2016 – Email to Ms. Lisa Webber, Deputy Director of Planning, noting her concern with the efforts of Mr. Jim Tokunaga, Associate Zoning Administrator. She believes Mr. Tokunaga has a strong bias approving projects, and asks that an alternate Administrator review their appeal.

DISCUSSION

In the instant case, the action is restricted to considering whether the Department of Building and Safety erred or abused its discretion in granting the request for modification of building ordinance for a reduced side yard on February 4, 2014.

The Department of Building and Safety's action to deny the appeal was issued on November 19, 2015. Said Department's report is quoted in this determination and includes the Department's discussion and conclusion regarding this matter. The appeal targets the Department of Building and Safety's granting of a request for modification of building ordinance for a reduced side yard. The requested slight modification was to reduce the required 4-foot side yard down to 3.71 feet. The applicant supplied LADBS with signed consent forms as provided for in the LADBS Information Bulletin, Document No. P/ZC 2002-005, effective February 5, 1998 and revised October 31, 2012.

As previously stated, the slight modification was issued on February 4, 2014. After this date, the neighbor established that the signature attributed to their property ownership consent form, was a forgery. By establishing that their consent form was a forgery, they argue that all adjacent property owner consent wasn't achieved. The appellant asserts that without all of the neighbors' consent, that LADBS cannot issue the slight modification, and that they erred or abused their authority.

A primary point made by the appellant is that LADBS has not verified the "as built" encroachments into the side yard. Further, no confirmation that the square steel pipes, are in fact downspouts for the roof drains and are not structural elements for the support of the building. Although the plans specify that the side yards will measure 3.71 feet, what was actually built may have been different.

If as the appellant suggests, the steel downspouts are structural, the side yard reduction would exceed 20% and the modification should be revoked. However, if the square steel downspouts are in fact downspouts, and are not structural, they are allowed to project into the side yard width, within the 3.71-foot approved side yard.

Appellant's Issues and Director's Responses

Appellant's Issue No. 1

1. *"LADBS Inspection will verify that required side yard setback is provided.*

Nothing in its Determination provides evidence of a measurement being made, attested to and/or attached to the Determination to prove that the actual side yard setback approved by LADBS is the current setback. As is set forth below, the required setback is not as stated by LADBS."

Note: The attachment referenced above is in the 8-page "Grounds for Appeal to the Director of Planning", dated December 3, 2015, submitted by the appellant's representative and is attached to the case file.

Director's Response No. 1:

During the Director's review and research on the instant BSA case, contact was made with

Mr. Jeff Napier, Chief Inspector with the LADBS. Based on complaints from the neighbors that the builder had encroached into the reduced side yard of 3.71 feet, he decided to visit the site and verify the actual side yard and as built conditions. In an email dated March 21, 2017, Mr. Napier communicated the follow regarding the subject project:

On October 2, 2015: "A site inspection revealed that downspouts for a rain gutter system had been added to the structure and that the vertical elements of the gutter system also served as supports for the guardrail encompassing the roof deck above. I issued a written correction notice to the builder to:

- 1. Have the land surveyor Yoshiaki Miyamoto return to the site to provide reference points at the North side yard in order for me to verify that the survey provided on 4/29/2014 is correct.*
- 2. Have the guardrail removed and re-constructed within the building envelope.*

I returned to the site (unsure of date) and verified the side yard and dimensions are per the survey provided by Yoshiaki Miyamoto on 4/29/2014 are correct. Field reference markers were made at the site with the surveyor's markings indicating the north side yard boundary. The measurements were taken from the existing and new foundation edges, to the side property line.

For clarification, the downspouts attached to the structural steel supporting members are not being considered as a structural element of the building as long as they do not support the guardrail for the roof deck above. If the guardrail is cut away from the downspouts and moved to within the building envelope, then it is LADBS' opinion that the side yard in question will be in compliance with reduced side yard approved by modification on 2/3/2014.

The correction notice is still valid and the building has not been granted a final approval."

Based on the "Correction Notice" issued by LADBS on October 2, 2015, prior to granting a final approval, the guardrails must be removed as they are not permitted to be in the side yard setback, and must be relocated to observe the same setback that the building envelope is authorized to occupy. In this case, the guardrail must be moved back to observe a minimum 3.71-foot side yard. Any structural support provided for the non-permitted guardrail by the downspouts will no longer occur once the guardrail is relocated, and the downspouts will solely function as a means of conveying water from the roof to the ground. The guardrail/downspout integration was not permitted and is specifically the subject of the "Correction Notice" issued by LADBS. The Director of Planning determines that the LADBS did not err or abuse its discretion.

Appellant's Issue No. 2

- 2. "The steel posts serve as downspouts for the roof drains and are not structural elements for the support of the building.*

There is no factual basis provided by LADBS for the determination that the steel

posts, beams or columns are not structural. The claim that the steel posts are shown on the approved plans as downspouts for roof drains does not preclude the steel posts from being structural, or even that they are used as downspouts for roof drains. The only factual information presented by LADBS to the Department is that the steel posts are structural, and no facts are provided to show that the posts are not structural. If the steel beams or columns are included in the measurement of the 3113 South Yale Avenue structure from the boundary, then that structure is as close as three feet, one inch (3'1") from the 3109 south Yale boundary line, which is a modification of more than twenty percent (20%) from the normally required four feet (4')."

Director's Response No. 2:

The permits for this single family dwelling were issued on October 9, 2013, under Plan Check Information System (PCIS), Clearance Summary worksheet 13014-10000-01084, under permit number 2013WL54486. The plans that were attached to that permit did include downspouts, but did not include the guardrail. The downspouts are an architectural projection that are allowed to project into the side yard. The structural calculations associated with permitting this project would not have included the downspouts. As discussed in the Director's Response No.1 above, LADBS states:

"For clarification, the downspouts attached to the structural steel supporting members are not being considered as a structural element of the building as long as they do not support the guardrail for the roof deck above. If the guardrail is cut away from the downspouts and moved to within the building envelope, then it is LADBS' opinion that the side yard in question will be in compliance with reduced side yard approved by modification on 2/3/2014."

The assertion that these downspouts provide any structural value is not valid, and they do not define the boundary of the structures footprint, nor its setback requirements. Since the subject lot is 40 feet wide, the LAMC requires side yards of 10% of the lot width. Therefore, the code required side yard is 4 feet.

The limit to LADBS's authority in granting slight modifications is 20% of the required side yard. The maximum authorized slight modification of 20% of the required 4-foot side yard equals a maximum side yard reduction of 9.6 inches, with a result of a minimum required side yard of 3.2 feet. The requested slight modification was a request to provide a minimum side yard of 3.71 feet. The requested deviation was for a reduction of .29 of a foot or a reduction of 3.48 inches. This represents a reduction of 7.25 %, and is well within the 20% (9.6 inches) that are authorized by the LAMC.

Additionally, architectural projections are allowed by the LAMC. Section 12.22-C.20(b) of the Zoning Code allows projections into required side yards. Based on the provisions of said Code section, architectural features may project into the required yard 2-inches for each one foot of width of such yard. With the slight modification down to 3.71 feet in lieu of the 4-foot side yard otherwise required by the code, the allowable maximum projection would be a maximum 7.42 inches into the required 3.71 foot side yard.

Based on the "Correction Notice" issued by LADBS on October 2, 2015, prior to granting a final approval, the guardrails must be removed as they are not permitted to be in the side

yard setback, and must be relocated to observe the same setback that the building envelope is authorized to occupy. In this case, the guardrail must be moved back to observe a minimum 3.71-foot side yard. Any structural support provided for the non-permitted guardrail by the downspouts will no longer occur once the guardrail is relocated, and the downspouts will solely function as a means of conveying water from the roof to the ground. The guardrail/downspout integration was not permitted and is specifically the subject of the "Correction Notice" issued by LADBS. The Director of Planning determines that the LADBS did not err or abuse its discretion.

Appellant's Issue No. 3

3. *"The side yard reduction of 3113 Yale Avenue exceeds 20%.*

If the modification is more than twenty percent (20%), which appellants maintain is the case, then a different process including and requiring the neighbor consent form is required. Here, as is proven by appellants, the signature of Amiar Tabar to the neighbor consent form was forged. Forgery of the neighbor consent form is a proper basis to revoke the permit. No proof or ruling has been made by LADBS to contradict or challenge the fact and proof of the forgery of Amiar Tabar's signature to the neighbor consent form, or that the owner of the 3113 Yale Avenue property submitted such forged neighbor consent form to LADBS to obtain his building permit."

Director's Response No. 3:

As discussed in Response No. 2 above, the downspouts are not structural, and are architectural projections, which are allowed to project into the side yard as provided in the LAMC Section 12.22-C, 20(b) of the Zoning Code. Based on the provisions of said Code section, architectural features may project into the required yard 2-inches for each one foot of width of such yard. With the slight modification down to 3.71 feet in lieu of the 4-foot side yard otherwise required by the code, the allowable maximum projection would be a maximum 7.42 inches into the required 3.71-foot side yard. LADBS did not err, abuse or exceed their authority.

The applicant supplied LADBS with signed consent forms as provided for in the LADBS Information Bulletin, Document No. P/ZC 2002-005, effective February 5, 1998 and revised October 31, 2012, and the slight modification was issued on February 4, 2014. After this date, the neighbor established that the signature attributed to their property ownership consent form, was a forgery. By establishing that their consent form was a forgery, they argued that the applicant hadn't secured valid consent forms from all of the adjacent neighbors, and therefore the LADBS couldn't issue the Slight Modification, and that they erred or abused their authority.

The LADBS guidelines for issuing a Slight Modification instructs the applicant to provide consent forms from the adjacent property owners prior to formally filing for the Slight Modification, though this is not in the LAMC. The input from adjacent owners is a guideline and not required by the Code. Further, according to Colin Kumabe of the LADBS, they have issued minor yard reductions without having at least one of the neighbor's consent. The subject Slight Modification is for a reduction of .29 of a foot, which equates to 3.48

inches, in an otherwise required 4-foot side yard.

The argument that the forgery invalidates the associated consent form, does not supersede the authority of the LADBS from issuing a valid slight modification. Even without the one consent form which was forged, the LADBS still can, within its authority, issue a slight modification under 20 percent. LADBS did not err or abuse its authority in issuing the slight modification reducing the side yard to 3.71 feet in lieu of the 4-foot side yard otherwise required for the subject property.

Appellant's Issue No. 4

4. *"The approval of the side yard setback must be revoked. The side yard setback shown on the plans conforms to LAMC Section 12.26B.*

Appellants dispute this issue as determined by LADBS. The LADBS statement that the steel posts are not structural and were set forth on the approved plans is not supported by admissible or competent evidence."

Director's Response No. 4:

The permits for this single family dwelling were issued on October 9, 2013, under Plan Check Information System (PCIS), Clearance Summary worksheet 13014-10000-01084, under permit number 2013WL54486. The plans that were attached to that permit did include downspouts, which are an architectural projection that is allowed to project into the side yard. The structural calculations associated with permitting this structure would not have included them. The assertion that these downspouts provide any structural value is not valid, and they do not define the boundary of the structures footprint, nor its setback requirements. Since the subject lot is 40 feet wide, the LAMC requires side yards of 10% of the lot width. Therefore, the code required side yard is 4 feet.

The limit to LADBS's authority in granting slight modifications is 20% of the required side yard. The maximum authorized slight modification of 20% of the required 4-foot side yard equals a maximum side yard reduction of 9.6 inches, with a result of a minimum required side yard of 3.2 feet. The requested slight modification was a request to provide a minimum side yard of 3.71 feet. The requested deviation was for a reduction of .29 of a foot or a reduction of 3.48 inches. This represents a reduction of 7.25 %, and is well within the 20% (9.6 inches) that are authorized by the LAMC.

Additionally, architectural projections are allowed by the LAMC. Section 12.22-C,20(b) of the Zoning Code allows projections into required side yards. Based on the provisions of said Code section, architectural features may project into the required yard 2-inches for each one foot of width of such yard. With the slight modification down to 3.71 feet in lieu of the 4-foot side yard otherwise required by the code, the allowable maximum projection would be a maximum 7.42 inches into the required 3.71 foot side yard.

A survey of the setbacks was conducted on April 29, 2014 by Becker and Miyamoto, Licensed Land Surveyors, and submitted to the LADBS. Further, on October 2, 2015 LADBS, Chief Inspector, Mr. Jeff Napier field checked the subject property, specifically to confirm that the setback in the field matched the plans, and slight modification of 3.71 feet

Based on complaints from the neighbors that the builder had encroached into the reduced

side yard of 3.71 feet, he decided to visit the site and verify the actual side yard and as built conditions. In an email dated March 21, 2017, Mr. Napier communicated the following in regards to the subject project:

On October 2, 2015: "A site inspection revealed that downspouts for a rain gutter system had been added to the structure and that the vertical elements of the gutter system also served as supports for the guardrail encompassing the roof deck above. Mr. Napier issued a written correction notice to the builder to:

1. Have the land surveyor Yoshiaki Miyamoto return to the site to provide reference points at the North side yard in order for me to verify that the survey provided on 4/29/2014 is correct.
2. Have the guardrail removed and re-constructed within the building envelope."

The field review of the setback "as built" confirmed that the structure observes the minimum 3.71 foot setback. It also confirmed that the vertical elements (downspouts) project up above the roof, in alignment with the downspouts. As noted in the elsewhere in this letter of decision, the vertical projection above the roof top is not allowed in the side yard.

"For clarification, the downspouts attached to the structural steel supporting members are not being considered as a structural element of the building as long as they do not support the guardrail for the roof deck above. If the guardrail is cut away from the downspouts and moved to within the building envelope, then it is LADBS' opinion that the side yard in question will be in compliance with reduced side yard approved by modification on February 3, 2014." Further, on October 2, 2015 a Correction Notice was issued by LADBS because the roof deck guardrails are constructed beyond the building envelope and are not an allowed projection into a required side yard. Guardrails are to be reconstructed within the building footprint.

The correction notice is still valid and the building has not been granted a final approval."

The LADBS did not err or abuse its discretion.

Citywide Impact

Pursuant to the requirements of Section 12.26-K,4 of the Los Angeles Municipal Code, the determination herein has no Citywide impact as the matter concerns only the use of the specific property.

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after April 20, 2017, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the

Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at <http://cityplanning.lacity.org>**. Public offices are located at:

Figueroa Plaza
201 North Figueroa Street,
4th Floor
Los Angeles, CA 90012
(213) 482-7077

Marvin Braude San Fernando
Valley Constituent Service Center
6262 Van Nuys Boulevard, Room 251
Van Nuys, CA 91401
(818) 374-5050

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final

pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Inquiries regarding this matter shall be directed to Nora Dresser, Planning Staff for the Office of Zoning Administration at (213) 978-1346.

VINCE P. BERTONI, AICP
Director of Planning



DAVID S. WEINTRAUB
Associate Zoning Administrator

DSW:ND:lmc

cc: Councilmember Mike Bonin
Eleventh District
Adjoining Property Owners

MASTER LAND USE APPLICATION

Application:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☐ City Planning Commission ☐ City Council ☒ Director of Planning

Regarding Case Number: DBS-15006-DCP

Project Address: 3113 South Yale Avenue, Marina Del Rey, Ca. 90292

Final Date to Appeal: 12/04/2015

Type of Appeal: ☐ Appeal by Applicant
☐ Appeal by a person, other than the applicant, claiming to be aggrieved
☒ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Katherine Conway and Amiar Tabar

Company: _____

Mailing Address: 3109 South Yale Avenue

City: Marina Del Rey

State: CA

Zip: 90292

Telephone: _____

E-mail: _____

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

☒ Self

☐ Other: _____

- Is the appeal being filed to support the original applicant's position?

☒ Yes

☐ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Laurie J. Butler, Esq.

Company: The Butler Law Firm

Mailing Address: 601 South Figueroa Street, Suite 4050

City: Los Angeles

State: CA

Zip: 90017

Telephone: (213) 330-3364

E-mail: Laurie@thebutlerlawfirm.com

City: Los Angeles

State: CA

Zip: 90017

Telephone: (213) 330-3364

E-mail: Laune@thebutlerlawfirm.com

CP-7769 appeal [revised 5/16/2015]

Page 1 of 2

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed?

☒ Entire☐ Part

Are specific conditions of approval being appealed?

☐ Yes☐ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: K. ConwayDate: 12/2/15

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- Original Applicants must pay mailing fees to BTC and submit a copy of receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered original applicants and must provide noticing per LAMC 12.26 K.7
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council, persons affiliated with a CNC may only file as an individual on behalf of self
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. (CA Public Resources Code § 21151 (c)). CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

| This Section for City Planning Staff Use Only | | |
|---|--|------------------------|
| Base Fee: <u>500.00</u> | Reviewed & Accepted by (DSC Planner): <u>Eric Claros</u> | Date: <u>12/4/2015</u> |
| Receipt No: <u>27132</u> | Deemed Complete by (Project Planner): _____ | Date: _____ |
| <input type="checkbox"/> Determination authority notified and BTC receipt (if original applicant) | | |

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed?

☒ Entire ☐ Part

Are specific conditions of approval being appealed?

☐ Yes ☐ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: *Thomas B. Fisher*

Date: 12/2/2015

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- Original Applicants must pay mailing fees to BTC and submit a copy of receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered original applicants and must provide noticing per LAMC 12.26 K.7.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, OPC, etc.) makes a determination for a project that is not further appealable. (CA Public Resources Code § 21151 (c)). CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

| This Section for City Planning Staff Use Only | | |
|---|---------------------------------------|---|
| Base Fee: | Reviewed & Accepted by (DSC Planner): | Date: |
| Receipt No: | Deemed Complete by (Project Planner): | Date: |
| <input type="checkbox"/> Determination authority notified | | <input type="checkbox"/> Original receipt and BTC receipt (if original applicant) |

BOARD OF
BUILDING AND SAFETY
COMMISSIONERS

VAN AMBATIELOS
PRESIDENT

E FELICIA BRANNON
VICE PRESIDENT

JOSELYN GEAGA-ROSENTHAL
GEORGE HOVAGUIMIAN
JAVIER NUNEZ

CITY OF LOS ANGELES

CALIFORNIA



ERIC GARCETTI
MAYOR

DEPARTMENT OF
BUILDING AND SAFETY
201 NORTH FIGUEROA STREET
LOS ANGELES, CA 90012

RAYMOND S. CHAN, C.E., S.E.
GENERAL MANAGER

FRANK BUSH
EXECUTIVE OFFICER

November 19, 2015

Katherine Conway and Amiar Tabar
3109 Yale Avenue
Marina Del Rey, California 90292

3113 SOUTH YALE AVENUE; DBS-15006-DCP

You are hereby notified that the Los Angeles Department of Building and Safety ("LADBS") has rendered a written determination in response to your appeal concerning the above-referenced matter. The Department's determination is effective **November 19, 2015**. The report, dated October 20, 2015, is enclosed.

Pursuant to L.A.M.C. §12.26 K, the determination made by LADBS may be appealed to the Director of Planning within 15 days of the effective date of the written determination. If you choose to appeal the determination, you must file the appeal at the public counter of the Department of City Planning no later than **December 4, 2015**. Please refer to L.A.M.C. §12.26 K (1) through §12.26 K (3) for specific filing instructions. The appeal fee is \$500.00.

If you have any additional questions, you may contact me at (213) 482-0472.

CORA JOHNSON, P.E.
Structural Engineering Associate IV
Permit and Engineering Bureau

Enclosure

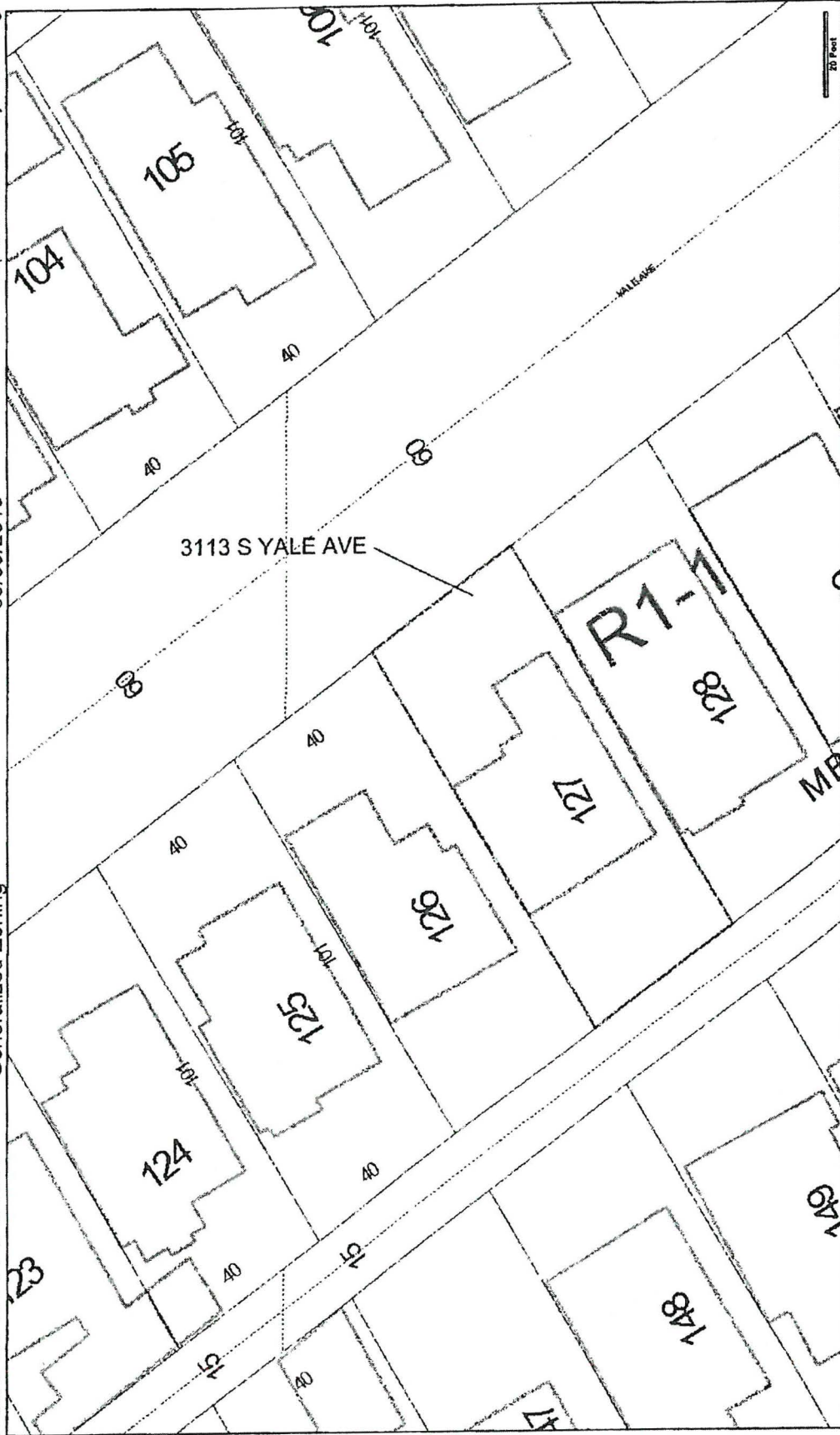
c: Siavosh Poursabastian, Senior Structural Engineer
Ifa Kashefi, Permit and Engineering Bureau Chief
Ken Gill, Assistant Bureau Chief
Forest L. Poorman
Laurie Butler, The Butler Law Firm Attorneys at Law

RADIUS MAP

09/09/2015

Generalized Zoning

ZIMAS INTRANET



Address: 3113 S YALE AVE
APN: 4229007055
PIN #: 105B149 67

Tract: TR 8167
Block: None
Lot: 127
Arb: None

Zoning: R1-1
General Plan: Low Residential

CORRESPONDENCE



Venskus & Associates
A PROFESSIONAL CORPORATION

1055 Wilshire Blvd., Suite 1660
Los Angeles, CA 90017
Telephone (213) 482-4200; Facsimile (213) 482-4246
www.lawsv.com

VIA HAND DELIVERY & FILING

June 16, 2017

West Los Angeles Area Planning Commission
Planning Department for the City of Los Angeles
201 North Figueroa Street #600
Los Angeles, California 90012

RE: SUPPLEMENTAL SUBMITTAL FOR APPEAL FROM DECISION (CASE NO. DIR 2015-4415(BSA))

Honorable Commissioners:

Katherine Conway and Amir Tabar (“Appellants”) hereby augment their appeal, dated April 20, 2017, of the Associate Zoning Administrator’s Decision of April 5, 2017 (hereinafter the “Decision”) denying an appeal that the Department of Building and Safety erred or abused its discretion in granting a request for an administrative Slight Modification from the requirements of Sections 12.08-C(2)(a) and (b) of the Los Angeles Municipal Code to permit a side yard of 3.71 feet for a project located at 3109 Yale Avenue (“Project”). The entire record on this Project, both at the Los Angeles Department of Building and Safety and the Department of City Planning, is hereby incorporated by reference in the instant appeal.

I. Appellants are Aggrieved Parties

Appellants are adjacent landowners to the subject property. The Project and the City’s conduct has substantially and detrimentally impacted Appellants’ use and enjoyment of their property, has detrimentally impacted their property values, and has caused them emotional distress.

II. Reasons for Appeal

- A. The Associate Zoning Administrator’s (“ZAA”) Decision is Error as a Matter of Law, because neither the DBS nor the ZAA ever made Findings Required by Section 562 of the City Charter.**

The “Slight Modification” that DBS provided to Forest Poorman, Owner and Developer of 3113 Yale (the “Applicant”), is, a variance by another name.¹ “[A] variance is a permit to build a structure or engage in an activity that would not otherwise be allowed under the zoning ordinance.” (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1007; see *Hamilton v. Board of Supervisors* (1969) 269 Cal.App.2d 64, 66; Continuing Education of the Bar, *California Land Use Practice* § 7.2 [“A variance is a zoning exception [that] provides an applicant relief from a zoning regulation and allows the applicant to... use its property in a way that varies from the otherwise applicable zoning code”].) “Typical of [variances] are those relating to *setback lines*, proportion of building size to lot area, and similar deviations.” (*Hamilton, supra*, at 66 [emphasis added].)

DBS provided the Applicant with a permit to construct a development Project in a manner that is not allowed under Los Angeles Municipal Code (“L.A.M.C.”) section 12.08, which requires side yards to be a specific width from the property line. The DBS Form completed by the Applicant is titled “Request for Modification of Building Ordinances,” and asks that the Applicant identify both the “code section” and the “request.” (Exhibit A, p. 1.) This *per se* demonstrates that the use requested and obtained by the Applicant is not typically allowed under the zoning ordinance.

Furthermore, the Applicant claims that his structure is two stories high. If this is correct, L.A.M.C., section 12.08 (C)(2)(a) requires that side yards are no less than four feet. As explained herein, Section 12.08 (C)(2)(a) in fact requires the side yard setback to be no less than five feet for this particular Project. However, DBS permitted the Applicant to construct a Project with a mere 3.71 foot side yard, authorizing the Applicant to use his property in a manner that deviates from Section 12.08 (C)(2)(a).

L.A.M.C., section 12.27(D) requires that, before issuing a variance, the City make findings required by City Charter section 562. City Charter section 562 requires that the City make the following findings:

- (1) that the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations;
- (2) that there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity;
- (3) that the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question;
- (4) that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located; and
- (5) that the granting of the variance will not adversely affect any element of the General Plan.

¹ As discussed in Section II. H., herein, the side yard setback requested by the Applicant is actually more than a 20% reduction in the side yard setback requirements. As discussed in Section II. E., herein, DBS’s own Guidelines for Consideration of Yard Reduction Requests (“Guidelines”) state that if a side yard reduction request exceeds 20% of the required side yard, the reduction is a “variance” and the Applicant must apply to City Planning for approval. (See Exhibit D, pp. 1, 2.) Therefore, even under DBS’s own Guidelines, this side yard reduction is a variance.

Neither DBS nor the ZAA, in its review of DBS's determination, made any of the findings required by City Charter section 562. Even if DBS or ZAA had made these findings, such findings would not be supported by the evidence.

For a Charter City, such as the City of Los Angeles, "Any act that is not violative or not in compliance with the charter is void." (*City of San Diego v. Shapiro* (2014) 228 Cal.App.4th 756, 789.) DBS's and the ZAA's decision to allow the Applicant to reduce his side yard without the support of findings required by City Charter section 562 is void. Therefore, the ZAA's decision to uphold DBS's determination and allow the Project to proceed without making the required findings is legal error and must be reversed.

B. The ZAA's Decision is Error as a Matter of Law, because DBS did not Provide Adjacent Landowners with Notice or an Opportunity to be Heard Before It Permitted the Applicant to Construct a Reduced Side Yard.

- i. Neither DBS nor the Applicant provided adjoining property owners and occupants with notice of the proposed "Slight Modification" nor did DBS hold a hearing, as required by L.A.M.C., section 12.27(B) and City Charter Section 562.**

L.A.M.C., section 12.27(B) requires:

An application for a variance shall be set for public hearing unless the Chief Zoning Administrator or, in his or her absence, an Associate Zoning Administrator performing his or her functions, makes written findings, a copy of which shall be attached to the file, that the requested variance: (i) will not have a significant effect on adjoining properties or on the immediate neighborhood; or (ii) is not likely to evoke public controversy.

Neither the Chief Zoning Administrator, nor the Associate Zoning Administrator made written findings that the variance would not have a significant effect on adjoining properties or on the immediate neighborhood, nor that the variance would not be likely to evoke public controversy. (See Exhibit A.)² The L.A.M.C., therefore, required DBS to hold a public hearing. Prior to doing so, DBS was required to: "mail[] a written notice at least 24 days prior to the date of the hearing to the owner or owners of the property involved, and to the owners [and occupants] of all property... that is within 500 feet of the exterior boundaries of the property involved." (*Id.* § 12.20.7 (C)(i)-(ii).) The Applicant was required to "post[] a notice of the public hearing in a conspicuous place on the property involved at least ten days prior to the date of the public hearing." (*Id.* § 12.20.7 (C)(i)-(iii).) Likewise, Los Angeles City Charter section 562 (a) and (b) required the City to hold an initial hearing, and provides aggrieved persons with the right of appeal. DBS did not mail notice to adjoining property owners or occupants, hold a hearing on the variance application, or provide an appeal process, nor did the Applicant post any type of notice regarding the variance on or around the property. (*Ibid.*) DBS failure to do so violated L.A.M.C., section 12.27(C) and Los Angeles City Charter section 562 (a) and (b), and the ZAA's decision to uphold DBS's denial of Appellants' appeals is therefore legal error which must be reversed by this Commission.

² Even if either individual had made these findings, they would not have been supported by the evidence, which is presumably why the findings were not made: because they could not be made.

- ii. **DBS's failure to provide adjacent landowners with notice regarding the "Slight Modification" or an opportunity to be heard on this matter violated their right to due process.**

The California Constitution, Article 1 section 7(a) provides: "A person may not be deprived of... property without due process of law." These protections apply to land use decisions that impact property owners' use and enjoyment of their property. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605 ["*Horn*"].) DBS's decision to grant the developer an exception from the side yard setbacks required by the zoning code has substantially impacted Appellants' use and enjoyment of their home. The reduced side yard makes the structure feel as though it is looming over the Appellants' home, and has diminished Appellants' privacy, natural light, view, and airflow. (Compare Exhibit B [showing the Project site before the Project began construction] with Exhibits C, G.) As such, in order to comply with the California Constitution, *Horn* and the case law that has followed, DBS was required to provide Appellants with notice and the opportunity to be heard before it granted the Applicant permission to reduce the side yard. DBS's failure to do so contravenes California law. The ZAA's decision upholding DBS's determination, therefore, is legal error and must be reversed by this Commission.

C. The ZAA's Decision Failed to Comply with Los Angeles Municipal Code section 12.27.

L.A.M.C., section 12.27(A) requires that an applicant seeking a variance comply with a specific application procedure to receive a variance, and sections B-U provide specific procedural steps and requirements that DBS must follow to process a variance, including, as discussed above, holding a hearing, providing notice, and making specific findings. The evidence does not demonstrate that the Applicant or DBS followed any of these procedures prior to approving the "Slight Modification" and the subsequent "Notice of Correction." For this reason, the ZAA erred when it denied Appellants' appeal.

D. The ZAA's Determination That DBS Did Not Abuse Its Discretion Ignores DBS' Mandatory Duty to Comply with the Los Angeles Municipal Code.

"Where a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory." (*Great Western Sav. & Loan Assn. v. City of Los Angeles* (1973) 31 Cal.App.3d 403, 413; Gov. Code, § 14 ["shall" is mandatory].) The Decision indicates the Applicants' side yard variance was issued under sections 12.26 (B) and 98.403.1(A)(11). (Decision, pp. 4, 6.) L.A.M.C., sections 12.26(B) and 98.403.1(A)(11) provide that, before issuing approval for a side yard modification, DBS "*shall* first find that a special, individual reason makes the strict letter of the ordinance impractical and that the modification is in conformity with the spirit and purpose of the ordinance involved." (Emphasis added.) Sections 12.26(B) and 98.403.1(A)(11) also require that "[a]ny action granting a modification *shall* be recorded and entered into the files of the Department." (Emphasis added.) As these provisions require that DBS "*shall* first find that a special, individual reason makes the strict letter of the ordinance impractical and that the modification is in conformity with the spirit and purpose of the ordinance," and DBS "*shall*" record and enter actions granting modifications into DBS files, DBS was under a mandatory duty to do so.

DBS, however, failed to find that "a special, individual reason makes the strict letter of the ordinance impractical" or that "the modification is in conformity with the spirit and purpose of the

ordinance involved.” (See L.A.M.C., §§ 12.26(B), 98.403.1(A)(11); Exhibit A.) Even if DBS had made these findings, they are not supported by the evidence. DBS also failed to “record[] and enter[]” the decision to grant a modification “into the files of the Department.” (See *ibid.*)

DBS’s failure to do so was unlawful. In granting the Applicant a side yard that did not comply with the zoning requirements, DBS ignored mandatory duties under L.A.M.C., sections 12.26(B) and 98.403.1(A)(11). Therefore, the ZAA’s finding that DBS did not err or abuse its discretion is legal error. (See Decision, p. 19.)

E. The ZAA’s Finding Ignores DBS’s Duty to Comply with Its Own Guidance.

DBS’s Guidelines for Consideration of Yard Reduction Requests, effective February 2, 1998 and revised December 17, 2001, “clarify the level of authority, protocol, and neighbors’ consent requirement for considering yard reduction requests” under 98.0403.1(a)11 and 98.0403.1(b)(1). The Guidelines state that when the request is for up to 20% reduction in the required side yard, then the Applicant must obtain neighbors’ consent to the yard reduction. (Exhibit D, pp. 1, 2.) If the request is for permission to build into more than 20% of the required side yard, the Applicant must apply to City Planning for Approval. (*Ibid.*) DBS required the Applicant to obtain consent from adjoining property owners to receive approval of his request for a reduced side yard setback. (See Exhibit A.)

Appellants are adjoining property owners, but the Applicant never obtained their consent. (Decision, p. 8.) Rather, Applicant forged Appellant Amir Tabar’s signature on the form “Letter of Consent from Adjoining Neighbors” (“Letter of Consent”). (Exhibit E, Butler Appeal Letter, p. 8; see Exhibit A, p. 4.)

Appellant informed DBS of the forgery on March 19, 2014. (Decision, p. 8.)

Nonetheless, DBS’s October 20, 2015 Determination found that, though DBS’s Guidelines require written consent from the adjoining property owners, and Amir Tabar, Appellant in this matter, indicated that his signature was forged on the Letter of Consent, DBS did not have to comply with its own Guidelines, did not have to require written consent from neighbors, and would not revoke the building permit for the project. (Decision, p. 8.) DBS’s failure to comply with its own Guidelines is unlawful. The ZAA’s decision to uphold DBS’s determination is, therefore, legal error.

F. If the ZAA’s Determination that DBS did not Abuse its Discretion is not Overturned, DBS will be Empowered to Ignore the City Charter, L.A.M.C., and its Own Guidance, which would be detrimental to the rule of law and adversely impact property owners city-wide.

L.A.M.C., section 12.26(A) provides that DBS “is granted the power to enforce the zoning ordinances of the City.” Likewise, L.A.M.C., § 98.0403.1(A) delineates “powers of the [Building] Department,” including the power to “enforce all ordinances and law relating to [] construction,” “zoning ordinances,” “all portions of the Rules and Regulations of the Fire Marshall,” “building regulations,” etc. But neither section of the L.A.M.C. grants DBS the power to determine whether it may ignore mandatory requirements in the City Charter, the Los Angeles Municipal Code or DBS

Guidelines, nor do these sections empower DBS to interpret when and if it is required to comply with the Charter, Los Angeles Municipal Code, or DBS Guidelines.

The ZAA found, however, as a matter of policy, that DBS does not need to follow the Los Angeles Municipal Code or DBS's own Guidelines for implementing the Planning and Zoning Code. (See Decision, pp. 3, 10, 17-18.) As explained above, in granting the Applicant an exception from applicable requirements for side yards, DBS ignored mandatory requirements in L.A.M.C., sections 12.26(B), 12.27, 98.403.1(A)(11) and City Charter section 562, and ignored its own Guidelines. In affirming DBS's decision, the ZAA implicitly found that DBS may ignore mandatory law as well as its own guidance. This directly contravenes the express powers granted to DBS by L.A.M.C., § 12.26(A) and L.A.M.C., § 98.0403.1(A) and is therefore legal error on the part of the ZAA.

G. The ZAA's Finding that His Determination has no Citywide Impact is Legal Error and Is Not Supported by Substantial Evidence.

L.A.M.C., section 12.26(K)(4) requires that, where there is an appeal of a DBS determination to the Planning Department:

The Director, as part of the determination [on appeal], shall make a finding regarding whether the matter may have a Citywide impact. The Director shall find that there is no Citywide impact if the matter concerns only the use of the specific property, or circumstances or issues connected with other zoning matters which are unique to the affected site and would not generally apply to other sites in the City, or would not result in changes in the application of Chapter I of this Code and other land use ordinances to other sites.

The ZAA determined that, under L.A.M.C., section 12.26(K)(4), his decision has "no citywide impact as the matter concerns only the use of the specific property." (Decision, p. 19.)

However, the ZAA's finding impacts every action that DBS takes with respect to interpretation and implementation of the Planning and Zoning Code. The ZAA found, as a matter of policy, that DBS does not need to follow their own Guidelines for implementing the Planning and Zoning Code, the City Charter, and the Los Angeles Municipal Code. By upholding DBS's decision, though it violates mandatory requirements in L.A.M.C., § 12.27 and City Charter section 562, contravenes the express powers granted to DBS by L.A.M.C., § 12.26(A) and L.A.M.C., § 98.0403.1(A), and ignores its own Guidelines which interpret the Planning and Zoning Code, the ZAA's decision would empower DBS to decide if and when it must comply with the provisions of the Planning and Zoning Code in every case throughout the City.

Thus, the ZAA's Decision has citywide impacts. It concerns issues connected with other zoning matters which are not unique to the affected site and which would generally apply to other sites in the City, and would result in changes in the application of Chapter I of the Municipal Code and other land use ordinances to other parcels of land. Thus, the ZAA's finding was error and this appeal should be heard before the City Planning Commission, pursuant to L.A.M.C., § 12.26.

H. The ZAA's Determination is not Supported by Substantial Evidence and therefore must be reversed.

The ZAA's decision is not based upon the evidence. (See Exhibit E.) A reasonable person could not reach the conclusion reached by the agency. (*Sierra Club v. CCC* (1993) 12 Cal.App.4th 602.)

For example, as explained by the Appellants previously, there is no evidence that the actual side yard setback for the Project is the setback approved by DBS. (Decision, pp. 14-15.) Though the ZAA dismissed Appellants' concerns about this issue, the ZAA's decision is not supported by the evidence. (*Ibid.*) In fact, the evidence supports a conclusion that the Project's actual side yard setbacks deviate from the setbacks actually permitted by DBS.

Appellants have provided evidence, and DBS's own measurements confirm, that steel posts on the structure extend to approximately 3.01 to 3.12 feet from the 3109 South Yale property line. (See December 2015 Appeal, pp. 5, 6.) Jeff Napier, Chief Inspector for DBS's communication following an inspection of the Project indicates that the building does not conform to the side yard setbacks approved by DBS. Mr. Napier states: "the vertical elements of the rain gutter system also served as supports for the guardrail encompassing the roof deck above" and implies that because this part of the structure was outside of the approved building envelope "I issued a written correction notice to the builder to... have the guardrail removed and reconstructed within the building envelope." (*Id.* 15.)

The ZAA dismissed this portion of the structure as "architectural projections" into the side yard that did not impact the side yard setback, but there is no substantial evidence in the record that supports a conclusion that this part of the structure is simply an architectural feature. (*Id.* 16.)

In addition, the measurements provided by Appellants' expert witness indicate that the structure was not built in conformance with the DBS's permitted setbacks. (See Exhibit E, p. 5; Exhibit F [which includes measurements from Appellants' expert witness].) DBS has not provided evidence to the contrary. There is no substantial evidence that the building is in conformance with the setbacks approved by DBS.

Therefore, even if DBS and the ZAA's decisions were correct (which they are not), substantial evidence demonstrates that the Project exceeds the side yard setbacks approved by the City, and has not been constructed in compliance with DBS building permits. As such, the issuance of a Certificate of Occupancy for this Project by DBS was unlawful.

In addition, there is no evidence that DBS's initial determination of the required side yard under L.A.M.C., § 12.08 (C)(2)(a) is correct. Section 12.08(C)(2)(a) states:

For a main building not more than two stories in height, there shall be a side yard on each side of the building of not less than 5 feet, except that where the lot is less than 50 feet in width, the side yard may be reduced to 10 percent of the width of the lot, but in no event to less than 3 feet in width. For a building more than two stories in height, 1 foot shall be added to the width of each yard for each additional story above the second story.

The lot is 40 feet wide. (Decision, p. 2.) In such a case, the side yard setback should be 4 feet wide. The Project, however, includes a large roof deck, which makes the structure more than two stories high. In such cases “1 foot shall be added to the width of each yard.” (L.A.M.C., § 12.08(C)(2)(a).) Therefore, the evidence demonstrates that the initial setback, without any modification, should be 5 feet, rather than 4 feet. DBS’s determination that the side yard setback should be 4 feet, rather than 5 feet, is not supported by the evidence or the law.

This evidence also demonstrates that the DBS’s determination is not consistent with L.A.M.C., §12.26(B). L.A.M.C., §12.26(B) requires that yard modifications for structures built after January 1, 1995 “are not to exceed 20% of the width or depth of required yard space.” As the evidence shows that the setbacks are, in fact, 3.01 to 3.12 feet from the property line, then the modification approved by DBS is more than 20% of what is required by L.A.M.C., § 12.08 (C)(2)(a).

In addition, as discussed above, the setback required by code for the side yard is 5 feet, so a setback modification of 3.71 feet exceeds a 20% modification. (Decision, p. 1.) This modification, therefore, contravenes L.A.M.C., § 12.26(B) and is impermissible; this Commission should sustain the appeal and reverse the ZAA Decision.

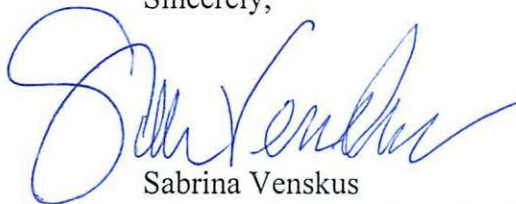
I. The Decision Sets Dangerous Precedent for the City of Los Angeles.

Though Appellants presented DBS with evidence that the Applicant submitted a Letter of Consent with a forged signature, DBS nonetheless approved the Applicant’s request to reduce the side yard, and upheld DBS’s determination on appeal. (Decision, pp. 8, 9.) The ZAA then upheld DBS’s decision to permit the Project despite the Applicant’s fraud. (*Id.* pp. 17-18.) If this Decision is allowed to stand, the City of Los Angeles will effectively communicate to developers that they may make fraudulent misrepresentations to the City and their neighbors without any repercussions. This would be a colossal mistake. The Area Planning Commission should expressly disincentivize such unethical and illegal conduct because it denigrates the democratic process and debases citizens’ trust in government.

III. Conclusion

For the reasons explained above, Appellants respectfully request that the West Los Angeles Area Planning Commission sustain the appeal, and reverse the ZAA’s Decision.

Sincerely,



Sabrina Venskus

Attorney for Appellants Katherine Conway and Amir Tabar

EXHIBIT A



REQUEST FOR MODIFICATION OF BUILDING ORDINANCES

UNDER AUTHORITY OF L.A.M.C. SECTION 98.0403

| | | | |
|---|-------|--|--------------|
| PERMIT APP. #: 1304-10000-01084 | | DATE: 2/3/2014 | |
| JOB ADDRESS: 3113 Yale Avenue Venice, CA 90292 | | | |
| Tract: 8167 | | Block: None | |
| | | Lot: 127 | |
| Owner: Forest Poorman | | Petitioner: Michael Young | |
| Address: 2778 Sawtelle Blvd. | | Address: 109 Eucalyptus Drive | |
| City | State | Zip | Phone |
| West Los Angeles | CA | 90044 | 310-500-7553 |
| City | State | Zip | Phone |
| El Segundo | CA | 90245 | 310-322-3700 |
| REQUEST (SUBMIT PLANS OR ADDITIONAL SHEETS AS NECESSARY) | | CODE SECTIONS: L.A.M.C. RA-12.07C, RE-12.07.01C, RS-12.07.1C, R1-12.06C, R2-12.09C | |
| TO ALLOW A REDUCED (FRONT)(SIDE)(REAR) YARD OF 3.75 FT. IN LIEU OF 4 FT. AT | | FT. AT | |
| PROPOSED ADDITION TO AN EXISTING DWELLING. (Both Sides) | | | |

JUSTIFICATION (SUBMIT PLANS OR ADDITIONAL SHEETS AS NECESSARY)

A reduced sideyard of 3.75 ft. in lieu of 4 ft. keeps the side yards at the existing 50% exterior walls kept on site. The building is more structurally sound if the first and second floor walls are contiguous.

Michael Young (Signature) _____ Position: Petitioner

FOR CITY DEPARTMENT'S USE ONLY BELOW THIS LINE

| Concurrences required from the following Department(s) | | | Approved | Denied |
|---|------------------------------|-------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> Los Angeles Fire Department | Print Name _____ | Sign _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> Public Works Bureau of Engineering | Print Name _____ | Sign _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Department of City Planning | Print Name: Gregory S. Shong | Sign: _____ | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> Other _____ | Print Name _____ | Sign _____ | <input type="checkbox"/> | <input type="checkbox"/> |

DEPARTMENT ACTION

☒ GRANTED ☐ DENIED

Jesse Cardoza

Reviewed by: (Staff) (print)

Bill Stinson

Action taken by: (Supervisor) (print)

2/4/14

Sign _____ Date

2/5/14

Sign _____ Date

NOTE: IN CASE OF DENIAL, SEE PAGE #2 OF THIS FORM FOR APPEAL PROCEDURES

CONDITIONS OF APPROVAL (Continued on Page 2):

SEE ATTACHED PLOT PLAN AND LETTERS OF CONSENT FROM ADJOINING PROPERTIES PER INFORMATION BULLETIN P/ZC 2002-005 REGARDING ENCROACHMENT.

FEES

| | | | |
|---|-------------------|---|--------|
| Appeal Processing Fee.. (No. of Items) = 1 | \$130 + \$39 addl | = | 130.00 |
| Inspection Fee (No of Insp.) = X | \$84.00 | = | 0.00 |
| Research Fee ... (Total Hours Worked) = 2.0 X | \$104.00 | = | 208.00 |
| Subtotal..... | | = | 338.00 |
| Surcharge (SUBTOTAL) 338.00 X | 0.060 | = | 20.28 |
| Total Fees | | = | 358.28 |

Fees verified by:

Print and Sign: Jesse A. Cardoza

For Cashiers Use Only

(PROCESS ONLY WHEN FEES ARE VERIFIED)

Permit App #:

Job Address:

CONDITIONS OF APPROVAL (Continued from Page 1)

CITY OF LOS ANGELES BOARD OF BUILDING AND SAFETY/DISABLED ACCESS COMMISSION APPEAL FORM

(Must be Attached to the Modification Request Form, Page 1)

AFFIDAVIT - LADBS BOARD OF BUILDING AND SAFETY COMMISSIONERS - RESOLUTION NO. 832-93

I, FORREST POORMAN do state and swear as follows:

(Please Type or Print the Name of the Person Signing this Form)

1. The name and mailing address of the owner of the property (as defined in the resolution 832-93) at 2775 Sawte 116 B / of 3113 Yale Avenue Venice, CA

(Please Type or Print Job Address)

2. The owner of the property as shown on the appeal application will be made aware of the appeal and will receive a copy of the appeal.

I declare under PENALTY OF PERJURY that the foregoing is true and correct.

Owner's Name(s) FORREST POORMAN

(Please Type or Print)

(Please Type or Print)

Owner's Signature(s) [Signature]

(Please Sign)

(Two Officers' Signatures Required for Corporations)

Name of Corporation _____

(Please Print Name of Corporation)

(Please Sign)

Dated this 4th day of February 20 14

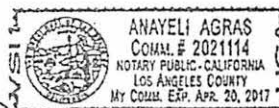
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT - SIGNATURE(S) MUST BE NOTARIZED

State of CALIFORNIA County of LOS ANGELES on February 4, 2014before me, Anayeli Agras Notary Public personally appeared Forrest Lynn Poorman

Name, Title of Officer (e.g. Jane Doe, Notary Public)

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument in person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Signature Anayeli Agras

APPEAL OF DEPARTMENT ACTION TO THE BOARD OF BUILDING AND SAFETY COMMISSIONERS/DISABLED ACCESS APPEALS COMMISSION

Applicant's Name _____

Applicant's Title _____

Signature _____

Date _____

FEES

| | | | | |
|---|-------------------------------|----------|---|------|
| Board Fee | (No. of Items) <u>1.00</u> | | = | |
| Inspection Fee | (No of Insp.) = <u> </u> X | \$94.00 | = | 0.00 |
| Research Fee ... (Total Hours Worked) = <u> </u> X | | \$104.00 | = | 0.00 |
| Subtotal | | | = | 0.00 |
| Surcharge | (SUBTOTAL) <u>0.00</u> X | 0.060 | = | 0.00 |
| Total Fees | | | = | 0.00 |

Fees verified by: _____

Print and Sign _____

For Cashiers Use Only
 (PROCESS ONLY WHEN FEES ARE VERIFIED)

P/BC 2002-005

**LETTER OF CONSENT/NON-CONSENT FROM ADJOINING
NEIGHBORS
FOR REQUEST OF YARD REDUCTION**

To be completed by the Petitioner

Owner:

FORREST POORMAN

Project Address:

3113 YALE AVE Marina Del Rey CA 90292

Scope of Work:

Remodel existing home, add second floor & Pool

Plan Check Number: B13LA 03664

Date: April 26 2013

REQUEST: To allow a reduced (side) ~~rear~~ (front) yard of 3.71 feet in lieu of 4 feet as required by Code and as indicated in the attached plans.

I certify that the plans presented to the neighbor for his/her review are identical to those plans for which a building permit is being requested:



Signature

To be completed by Neighbor

I, RON RASBEARY, am the legal owner of property

(Name)

located

at

3112 YALE AVE

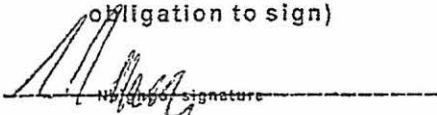
(address - number and street)

with the following legal description: Lot: 125 Block: Nue Tract: 8167

which is an adjoining property (including across the street) to the project address. I am aware that a reduction of required yards is being applied for at the subject property and have reviewed the plans presented to me by the petitioner for the proposed construction.

☒ I have No Objection to granting my consent for the aforementioned request for yard reduction.

☐ I Object to this request for a yard reduction. (Note that neighbors are under no obligation to sign)



Neighbor signature

RON RASBEARY 4/29/13

print name

date



P/BC 2002-005

**LETTER OF CONSENT/NON-CONSENT FROM ADJOINING
NEIGHBORS
FOR REQUEST OF YARD REDUCTION**

To be completed by the Petitioner

Owner:

FORREST POORMAN

Project Address:

3113 YALE AVE, MARINA DEL REY CA 90292

Scope of Work:

Remodel existing home with 12 new story 31001

Plan Check Number:

B131A03664

Date:

April 26 2013

REQUEST: To allow a reduced (side) (rear) (front) yard of 3.7 feet in lieu of 4.0 feet as required by Code and as indicated in the attached plans.

I certify that the plans presented to the neighbor for his/her review are identical to those plans for which a building permit is being requested:

Signature

To be completed by Neighbor

I, John Tabar, am the legal owner of property

(Name)

located

at

3113 Yale Ave, MDR, CA 90292

(address - number and street)

with the following legal description: Lot: 126 Block: None Tract: E167

which is an adjoining property (including across the street) to the project address. I am aware that a reduction of required yards is being applied for at the subject property and have reviewed the plans presented to me by the petitioner for the proposed construction.



I have No Objection to granting my consent for the aforementioned request for yard reduction.



I Object to this request for a yard reduction. (Note that neighbors are under no obligation to sign)

John Tabar
Neighbor signature

John Tabar
print name

05/06/13
date

P/BC 2002-005

**LETTER OF CONSENT/NON-CONSENT FROM ADJOINING
NEIGHBORS
FOR REQUEST OF YARD REDUCTION**

To be completed by the Petitioner

Owner:

FORREST POORMAN

Project Address:

3113 YALE AVE Marina Del Rey CA 90292

Scope of Work:

Remodel existing home, add second floor & Pool

Plan Check Number: B13LA 03664

Date: April 16 2013

REQUEST: To allow a reduced (side) ~~rear~~ ~~front~~ yard of 3.71 feet in lieu of 5 feet as required by Code and as indicated in the attached plans.

I certify that the plans presented to the neighbor for his/her review are identical to those plans for which a building permit is being requested:


Signature

To be completed by Neighbor

I, T. ARDORAN, am the legal owner of property

located

at

3112 UTAH AVEwith the following legal description: Lot: 149 Block: None Tract: 6167

which is an adjoining property (including across the street) to the project address. I am aware that a reduction of required yards is being applied for at the subject property and have reviewed the plans presented to me by the petitioner for the proposed construction.

☒ I have No Objection to granting my consent for the aforementioned request for yard reduction.

☐ I Object to this request for a yard reduction. (Note that neighbors are under no obligation to sign)

T. ARDORAN 4/29/13
Neighbor signature print name date

P/BC 2002-005

**LETTER OF CONSENT/NON-CONSENT FROM ADJOINING
NEIGHBORS
FOR REQUEST OF YARD REDUCTION**

To be completed by the Petitioner

Owner:

FORREST POORMAN

Project Address:

3113 YALE AVE Marina Del Rey CA 90292

Scope of Work:

Remodel existing home, add second floor & PoolPlan Check Number: B13LA 03664Date: April 26 2013

REQUEST: To allow a reduced (side) ~~rear~~ front yard of 3.71 feet in lieu of 4 feet as required by Code and as indicated in the attached plans.

I certify that the plans presented to the neighbor for his/her review are identical to those plans for which a building permit is being requested:

[Signature]
Signature

To be completed by Neighbor

I, Matthew Goldstein, am the legal owner of property

located

at 3112 Yalewith the following legal description: Lot: 105 Block: 134 Tract: 9167

which is an adjoining property (including across the street) to the project address. I am aware that a reduction of required yards is being applied for at the subject property and have reviewed the plans presented to me by the petitioner for the proposed construction.



I have No Objection to granting my consent for the aforementioned request for yard reduction.



I Object to this request for a yard reduction. (Note that neighbors are under no obligation to sign)

Matthew Goldstein
Neighbor Signature

Matthew
Print Name

4/28/13
Date

REDUCED NORTH AND SOUTH SIDE YARD OF 3.75 FT IN LIEU OF 4 FT AT PROPOSED ADDITION OF EXISTING DWELLING



3113 YALE AVENUE, VENICE, CA 90292

EXHIBIT B

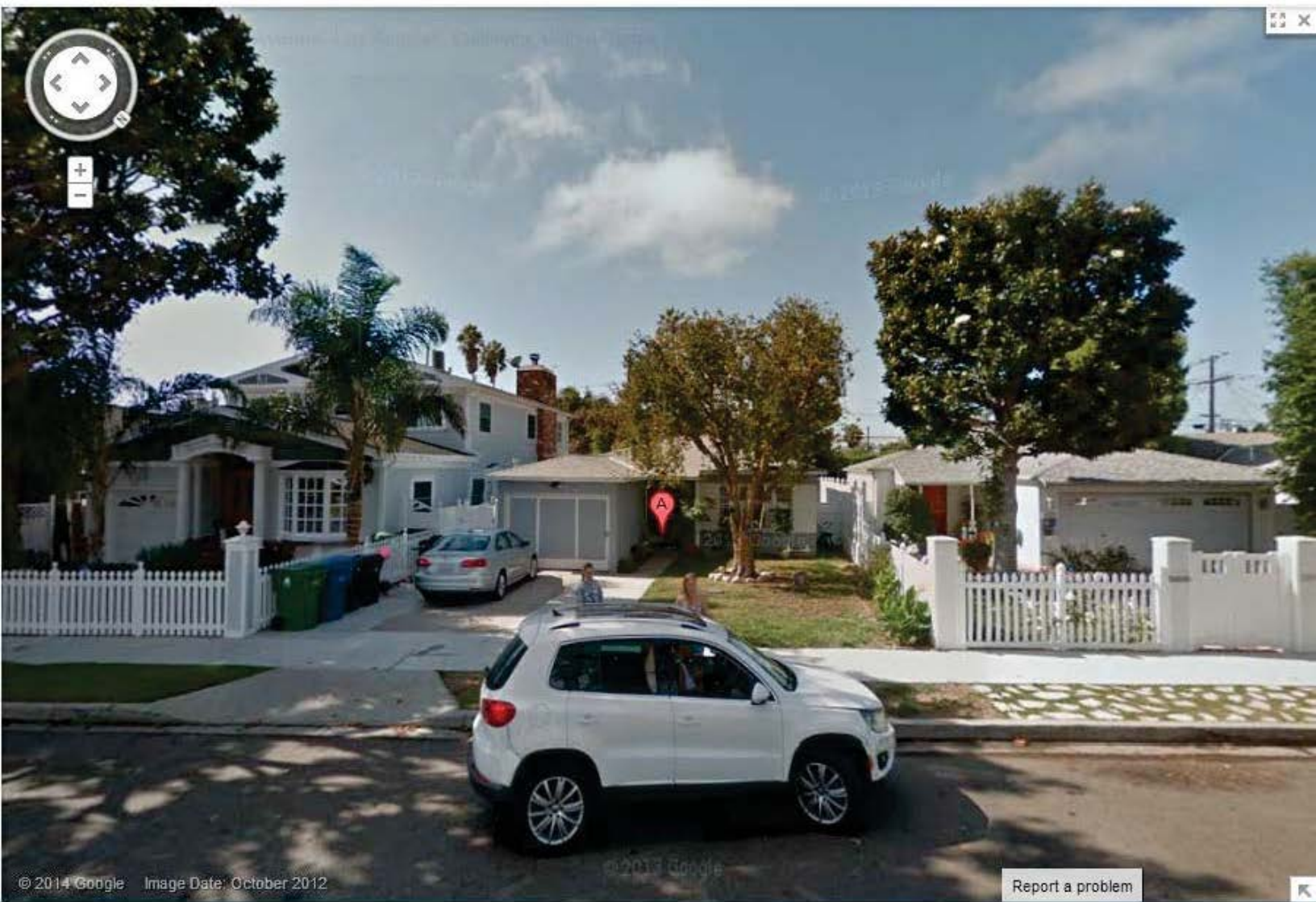


EXHIBIT C







EXHIBIT D

GUIDELINES FOR CONSIDERATION OF YARD REDUCTION REQUESTS

Section 98.0403.1(a)11 of the Los Angeles Municipal Code authorizes the Department of Building and Safety (LADBS Staff) to act on requests for slight modification to yard setback (up to 20% reduction of the required setback). Further, Section 98.0403.1(b)1 authorizes the Board of Building and Safety Commissioners (LADBS Board) to hear and act upon appeals of LADBS Staff's denial of such requests. The following guidelines will clarify the **Level of Authority, Protocol and Neighbors' Consent Requirement** for considering yard reduction requests.

I. Level of Authority for Considering Yard Reduction Requests

| | When Request is for More Than 20% of Required Yard | When Request is for Up to 20% of Required Yard |
|--|---|---|
| Multiple Lots ¹ | City Planning (Variance Required) | City Planning (Variance Required) |
| New Building ² or New Addition ³ to Existing Building | City Planning (Variance Required) | <u>Without</u> Findings or Neighbors' Consent ⁶ LADBS (Board Appeal Required) |
| Unauthorized ⁴ Construction Built After 1995 | | |
| Unauthorized Construction Built Before 1995 | <u>Without</u> Findings ⁵ or Neighbors' Consent ⁶ LADBS (Board Appeal Required) <u>With</u> Findings and Neighbors' Consent ⁶ LADBS Staff (Administrative Action Required) | <u>With</u> Findings and Neighbors' Consent ⁶ LADBS Staff (Administrative Action Required) |

¹ Multiple Lots - Requests for more than one project on lots contiguous to each other.

² New Building - Any proposed new main or accessory building.

³ New Addition - Any proposed construction that adds floor area to an existing building.

⁴ Unauthorized Construction - All or portion of a building existing without a proper building permit.

⁵ Findings - See Page 2 'Considered by LADBS Staff (Administrative Approval Process)

⁶ Neighbors' Consent - See Page 2 'Considered by LADBS Staff (Administrative Approval Process)

II. Protocol for Considering Yard Reduction Requests

A. *When a Request Is to Be Considered by LADBS Staff (Administrative Action Process)*

The Petitioner shall start the process with the Plan Check Engineer of the project or a Plan Check Supervisor and provide the following:

1. Findings (in writing) to be used as justifications for the determination.
 - a. Does the request meet the spirit and intent of the Code?
This includes the effect of the reduction on adjoining neighbors and the compatibility with the surrounding neighborhood.
 - b. What is the impracticality for the project to comply with the letter of the Code?
This includes some circumstance specifically unique to the subject site for which the applicant has no other reasonable recourse other than to seek the modification.
2. Site Plan and Neighbors' Consents
Consent is defined as a written agreement in which **owners** (individuals or trustees) of certain neighboring properties agree to the request (see attached 'Letter of Consent/Non-Consent From Adjoining Neighbor for Request of Yard Reduction'). Exactly which neighbor depends on the type of yard reduction and number of stories of the encroachment (see Pages 3 and 4 - 'Neighbors' Consent Requirement for Administrative Approval-Lots to be Included' and 'Example of Site Plan and Consents Requirement.'). *The Site Plan is available at the public counter of Building and Safety.*
3. Modification Request
To be completed by the Petitioner with the assistance of LADBS Staff and accompanied by a plot plan of the lot showing the encroachment(s) (see attached 'Request for Modification of Building Ordinances').

Upon receipt of the above, the Plan Check Supervisor will act on the request. If the Plan Check Supervisor denies the request based on either lack of appropriate findings or any of the neighbors' consent, the Petitioner may appeal the denial to the LADBS Board.

B. *When a Request Is to Be Considered by LADBS Board (Board Appeal Process)*

When a petitioner elects to appeal an administrative denial, the petitioner must pay a filing fee that is specified in the appeal form and follow the steps specified in Board Resolution 784-95. Subsequently, the Petitioner will be contacted by a staff member of the LADBS Board for a conference to further discuss the appeal. The staff member will prepare a report for the review of the adjoining neighbors and the LADBS Board. After a hearing date is selected, the adjoining neighbors will be notified of the time and place of the hearing.

If the LADBS Board denies the appeal, the Petitioner may appeal the denial to City Planning.

C. *When a Request Is to Be Considered By City Planning (Variance Process)*

When a yard reduction request is to be considered by City Planning according to the aforementioned matrix, the Petitioner shall file the variance with City Planning at:

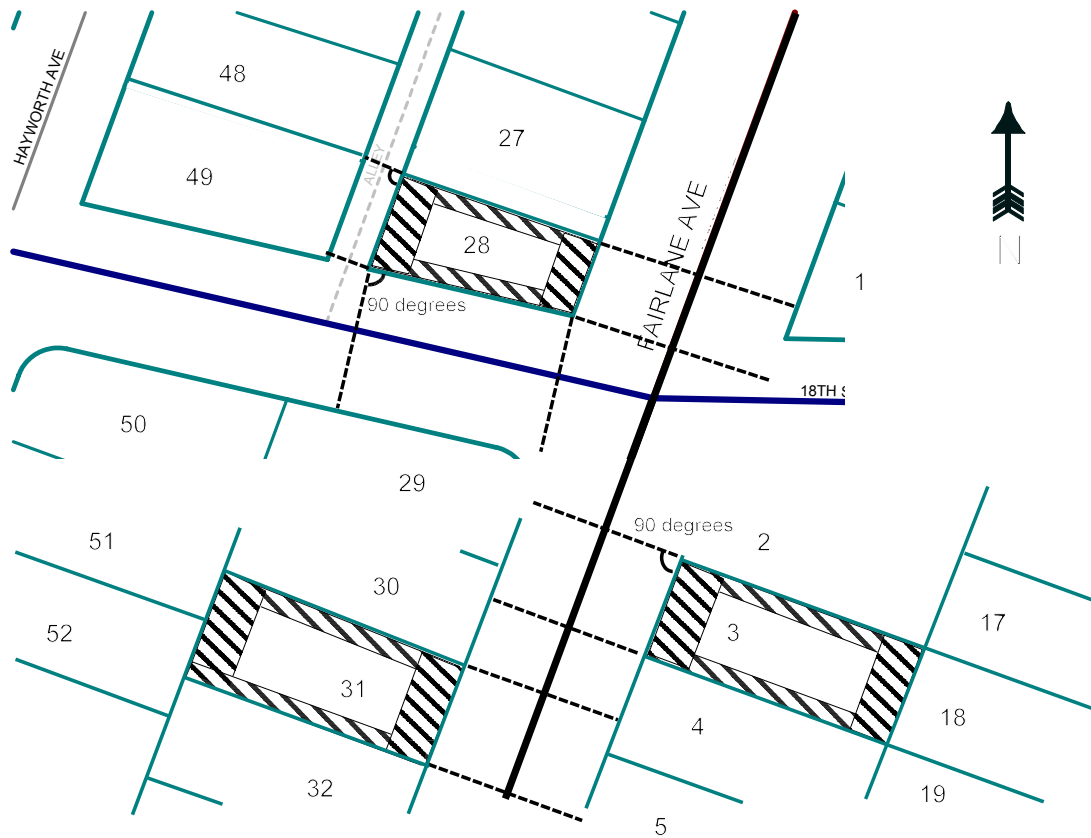
1. Counter 19, 3rd floor, 201 N. Figueroa Street, Los Angeles, CA 90012 or at
2. 6251 Van Nuys Blvd., 1st Floor, Van Nuys, CA 91401

III. Neighbors' Consent Requirement for Administrative Approval - Lots to be Included

| Consent Required from all of the Following Owners of Adjoining ¹ Lots | | |
|--|--|----------------------------------|
| Yard Reduction Requested | 1 Story Encroachment | Higher than 1 Story Encroachment |
| Front Yard | Adjoining ¹ Front Yard | Adjoining All Lot Lines |
| Side Yard | Adjoining ¹ Side Yard <i>Extended from Front Lot Line to Rear Lot Line</i> | |
| Rear Yard | Adjoining ¹ Rear Yard | |

¹ Adjoining - Lots having property lines in common with the subject yard (including common corners), or directly across the street or alley from the yard measured at a 90° angle to the street or alley property line.

IV Example of Site Plan and Consent Requirement



| Sample Lot 3 - Consent Required from all the Following Owners | | |
|---|----------------------------|--|
| Reduction Requested | For One Story Encroachment | For Higher than One Story Encroachment |
| Front Yard | lots 2, 4, 29 & 30 | lots 29, 2, 17, 18, 19, 4 & 30 |
| Northerly Side Yard | lots 29, 2, 17 & 18 | |
| Southerly Side Yard | lots 18, 19, 4 & 30 | |
| Rear Yard | lots 2, 17, 18, 19 & 4 | |

| Sample Lot 28 - Consent Required from all the Following Owners | | |
|---|-----------------------------------|---|
| Reduction Requested | For One Story Encroachment | For Higher than One Story Encroachment |
| Front Yard | lots 27, 1, & 29 | lots 1, 27, 48, 49, 29 |
| Northerly Side Yard | lots 49, 27 & 1 | |
| Southerly Side Yard | lots 29 & 49 | |
| Rear Yard | lots 27, 49 & 29 | |

| Sample Lot 31 - Consent Required from all the Following Owners | | |
|---|-----------------------------------|---|
| Reduction Requested | For One Story Encroachment | For Higher than One Story Encroachment |
| Front Yard | lots 30, 4, 5 & 32 | lots 4,5,32,52,51,30 & 4 |
| Northerly Side Yard | lots 51, 30 & 4 | |
| Southerly Side Yard | lots 5, 32 & 52 | |
| Rear Yard | lots 32, 52, 51 & 30 | |

Note: The above guidelines will cover the great majority of the cases. However, whenever these guidelines cannot reasonably be complied with or it is difficult to determine their applicability in unusual cases, the guidelines may be modified at the discretion of the Superintendent of Building or his/her designee on a case by case basis.

LETTER OF CONSENT/NON-CONSENT
FROM ADJOINING NEIGHBORS FOR REQUEST OF YARD REDUCTION

| To be completed by the Petitioner | |
|---|-------|
| Owner: | |
| Project Address: | |
| Scope of Work: | |
| Plan Check Number: | Date: |
| <p>REQUEST: To allow a reduced _____ yard of _____ feet in lieu of _____ feet as required by Code and <u>as indicated in the attached plans.</u></p> <p>I certify that the plans presented to the neighbor for his/her review are identical to those plans for which a building permit is being requested:</p> <p style="text-align: center;">_____ Signature</p> | |

| To be completed by Neighbor |
|--|
| <p>I, _____, am the legal owner of property (Name)</p> <p>located at _____ (address - number and street):</p> <p>with the following legal description: Lot: _____ Block: _____ Tract: _____</p> <p>_____ which is an adjoining property (including across the street) to the project address. I am aware that a reduction of required yards is being applied for at the subject property and have reviewed the plans presented to me by the petitioner. for the proposed construction.</p> |

- 9** I have **No Objection** to granting my consent for the aforementioned request for yard reduction.
- 9** I **Object** to this request for a yard reduction (Note that neighbors are under no obligation to sign)

Neighbor signature

print name

date

EXHIBIT E

Application:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☐ City Planning Commission ☐ City Council ☒ Director of Planning

Regarding Case Number: DBS-15006-DCPProject Address: 3113 South Yale Avenue, Marina Del Rey, Ca. 90292Final Date to Appeal: 12/04/2015

Type of Appeal: ☐ Appeal by Applicant
 ☐ Appeal by a person, other than the applicant, claiming to be aggrieved
 ☒ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATIONAppellant's name (print): Katherine Conway and Amiar Tabar

Company: _____

Mailing Address: 3109 South Yale AvenueCity: Marina Del Rey State: CA Zip: 90292

Telephone: _____ E-mail: _____

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

☒ Self ☐ Other: _____

- Is the appeal being filed to support the original applicant's position? ☒ Yes ☐ No

3. REPRESENTATIVE/AGENT INFORMATIONRepresentative/Agent name (if applicable): Laurie J. Butler, Esq.Company: The Butler Law FirmMailing Address: 601 South Figueroa Street, Suite 4050City: Los Angeles State: CA Zip: 90017Telephone: (213) 330-3364 E-mail: Laurie@thebutlerlawfirm.com

City Los AngelesState CAZip 90017Telephone: (213) 330-3364E-mail: Laurea@probulier-lawfirm.com

CP-7769 appeal (revised 5/16/2015)

Page 1 of 2

4. JUSTIFICATION/REASON FOR APPEALIs the entire decision, or only parts of it being appealed? ☒ Entire ☐ PartAre specific conditions of approval being appealed? ☐ Yes ☐ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: K. ConroyDate: 12/2/15**6. FILING REQUIREMENTS/ADDITIONAL INFORMATION**

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates)
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- Original Applicants must pay mailing fees to BTC and submit a copy of receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered original applicants and must provide noticing per LAMC 12.26 K.7
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council, persons affiliated with a CNC may only file as an individual on behalf of self
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation)
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. (CA Public Resources Code § 21151 (c); CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

| This Section for City Planning Staff Use Only | | |
|---|--------------------------------------|-------|
| Base Fee. | Reviewed & Accepted by (DSC Planner) | Date: |
| Receipt No | Deemed Complete by (Project Planner) | Date: |
| <input type="checkbox"/> Determination authority notified _____ and BTC receipt (if original applicant) | | |

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed?

☒ Entire ☐ Part

Are specific conditions of approval being appealed?

☐ Yes ☐ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: *Benjamin D. Fisher*

Date: 12/2/2015

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- Original Applicants must pay mailing fees to BTC and submit a copy of receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered original applicants and must provide noticing per LAMC 12.26 K.7.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. (CA Public Resources Code § 21151 (c)). CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

| This Section for City Planning Staff Use Only | | |
|---|---------------------------------------|---|
| Base Fee: | Reviewed & Accepted by (DSC Planner): | Date: |
| Receipt No: | Deemed Complete by (Project Planner): | Date: |
| <input type="checkbox"/> Determination authority notified | | <input type="checkbox"/> Original receipt and BTC receipt (if original applicant) |

1 Laurie J. Butler, State Bar No. 82169
THE BUTLER LAW FIRM
2 601 S. Figueroa Street, Suite 4050
Los Angeles, California 90017

3 Telephone: (213) 330-3364
4 Facsimile: (213) 330-3366
Laurie@TheButlerLawFirm.com
5

6 Attorneys for Appellants, KATHERINE E. CONWAY and AMIAR B. TABAR
7

8 LOS ANGELES DEPARTMENT OF CITY PLANNING
9


10 IN THE MATTER OF THE APPEAL OF
KATHERINE E. CONWAY and AMIAR B.
11 TABAR FROM A DETERMINATION
MADE BY THE DEPARTMENT OF
12 BUILDING AND SAFETY
13

DBS Case No. DBS-15006-DCP

14 Katherine E. Conway and Amiar B. Tabar hereby appeal the Determination of the Los
15 Angeles Department of Building & Safety issued November 19, 2015 under case number DBS-
16 15006-DCP to the Director of Planning for the City of Los Angeles, State of California. The
17 contents of this appeal is set forth in this original submission along with seven duplicates hereof,
18 all delivered and filed with the Department of City Planning.
19
20

21 Dated: December 3, 2015

THE BUTLER LAW FIRM

22
23 By: 
24 LAURIE J. BUTLER,
Attorneys for Appellants,
25 KATHERINE E. CONWAY and
AMIAR B. TABAR
26
27
28

THE BUTLER LAW FIRM

ATTORNEYS AT LAW

601 S. FIGUEROA ST. SUITE 4050
LOS ANGELES, CALIFORNIA 90017
(213) 330-3364; FAX (213) 330-3366
LAURIE@THEBUTLERLAWFIRM.COM

Laurie J. Butler
Of Counsel:
T. Sean Butler

December 3, 2015

VIA HAND DELIVERY

City of Los Angeles
Department of City Planning
201 N. Figueroa Street, Fourth Floor
Los Angeles, CA. 90012

**Re: Appeal of Decision of Los Angeles Department of Building and Safety
Determination, DBS-15006-DCP**

Katherine Conway and Amiar Tabar (hereinafter “appellants”), by their attorneys, appeal from the determination made by the Los Angeles Department of Building and Safety (“LADBS”) concerning the construction at 3113 South Yale Avenue, DBS-15006-DCP rendered on November 19, 2015, and a copy of same is attached hereto. This original appeal and seven (7) duplicates are being filed this date with the Director of Planning for the Los Angeles Department of City Planning.

GROUND FOR APPEAL TO DIRECTOR OF L.A. CITY PLANNING

All Issues set forth in the Determination for DBS-15006-DCP are being appealed as the original relief sought remains revocation of the Building Permit No.: 13014-10000-01084.

ISSUE NO.: 1: LADBS states in its determination that “LADBS Inspection will verify that required side yard setback is provided.”

RESPONSE TO NO.: 1: Nothing in its Determination provides evidence of a measurement being made, attested to and/or attached to the Determination to prove that the actual side yard setback approved by LADBS is the current setback. As is set forth below, the required setback is not as stated by LADBS.

ISSUE NO.: 2: LADBS claims the steel posts serve as downspouts for the roof drains and are not structural elements for the support of the building.

RESPONSE TO NO.: 2: There is no factual basis provided by LADBS for the determination that the steel posts, beams or columns are not structural. The claim that the steel posts are shown on the approved plans as downspouts for roof drains does not preclude the steel posts from being structural, or even that they are used as downspouts for roof drains. The only factual information presented by LADBS to the Department is that the steel posts are structural, and no facts are provided to show the steel posts are not structural. If the steel beams or columns are included in the measurement of the 3113 South Yale Avenue structure from the boundary, then that structure is as close as three feet, one inch (3'1") from the 3109 South Yale boundary line, which is a modification of more than twenty percent (20%) from the normally required four feet (4').

ISSUE NO.: 3: The side yard reduction of 3113 Yale Avenue exceeds 20%.

RESPONSE TO NO.: 3: If the modification is more than twenty percent (20%), which appellants maintain is the case, then a different process including and requiring the neighbor consent form is required. Here, as is proven by appellants, the signature of Amiar Tabar to the neighbor consent form was forged. Forgery of the neighbor consent form is a proper basis to revoke the permit. No proof or ruling has been made by LADBS to contradict or challenge the fact and proof of the forgery of Amiar Tabar's signature to the neighbor consent form, or that the owner of the 3113 Yale Avenue property submitted such forged neighbor consent form to LADBS to obtain his building permit.

ISSUE NO.: 4: The approval of the side yard setback must be revoked. The side yard setback shown on the plans conforms to LAMC Section 12.26B. As such, letters of consent from adjoining property owners are not required by LAMC Section 12.26B.

RESPONSE TO ISSUE NO.: 4: Appellants dispute this issue as determined by LADBS. The LADBS statement that the steel posts are not structural and were set forth on the approved plans is not supported by admissible or competent evidence.

DISCUSSION

There are no facts provided by LADBS regarding the steel posts (whether called posts, beams or columns) as constructed to support the determination that those steel posts are not structural.

The issue of whether or not the steel posts are structural is listed as issue 2 in the determination of LADBS. The first sentence of the response of LADBS is:

"According to the approved plans the steel posts serve as downspouts for the roof drains and are not structural elements for the support of the building."

A. The sentence used in the determination is unclear. Does it mean the plans only show that the posts are for downspouts, and from that, the LADBS concludes the plans show the steel posts are also not structural? Or does that sentence mean there are plans that show both that the steel posts are for downspouts, and also that the steel posts are not structural? The parts of the 3113 South Yale plans relied upon by LADBS should be identified, but are not. There is no reference to which parts of the plans show the steel posts are for downspouts and which parts of the plans show the steel posts are not structural.

B. The plans themselves do not show the results of the actual construction. The actual construction may be different than as shown on the plans. There is nothing to show the determination of the LADBS is based on how the building is actually constructed, as opposed to what is represented in plans. Evidence exists and was recently obtained, but too late for inclusion in this appeal, showing that a correction notice has been served on the owner of 3113 South Yale Avenue. However, such action by LADBS is confirmed in its letter responding to the appellants' current appeal.

C. Assuming that some part of the plans shows the reason for the steel posts to be considered downspouts that does not also mean that the steel posts are not also structural, as was opined by appellants' expert, Steven Cohen.

D. The only factual information (other than the plans) provided by LADBS regarding whether or not the steel posts as actually constructed are structural is the declaration of expert Steven Cohen. There is nothing to indicate that anyone on behalf of LADBS has made any factual determination about whether the steel beams as constructed are or are not structural.

E. Downspouts for roof drains are not listed as within the exceptions or list of allowable projections into a side yard as set forth in L.A.M.C., Section 12.22.C.20 (3):

“(3) Side Yards, Rear Yards and Other Spaces. (Amended by Ord. No.173, 492, Eff. 10/10/00.) A fence or wall not more than eight feet in height may be located and maintained within the required side yard, rear yard or other open space of any lot in an RW Zone and within the required side yard, rear yard or other open space of a lot within any other A or R zone which is 40 feet or more in width, provided the lot is not located within the boundary of a “Hillside Area”, as defined in Section 91.7003 of this Code.

A fence or wall not more than six feet in height may be located and maintained within the required side yard, rear yard or other open space of any lot in an A or R Zone, other than an RW Zone, which is less than 40 feet in width or which is located within the boundary of a “Hillside Area”, as defined in Section 91.7003 of this Code, except that in either case a fence or wall not more than eight feet in height may be located in the yards or other open space when authorized by a Zoning Administrator pursuant to Section 12.21A2.

In the A Zones (including the RA Zone), a fence or wall not more than eight feet in height may be located on the side street lot line of any reversed corner lot; provided, however, that if the lot is located within the boundary of a “Hillside Area”, as defined in Section 91.7003, the fence or wall shall not exceed six feet in height.

In the R Zones, other than the RW Zones, a fence or wall located within five feet of the side street lot line of a reversed corner lot may not exceed three and one-half feet in height. In the RW Zones, a fence or wall located within three feet of the side street lot line of either a corner lot or a reversed corner lot may not exceed three and one-half feet in height.”

F. If LADBS concludes the guardrails for the roof deck are required (and it does), and these steel posts act not only as downspouts, but also as support for the guardrails, then the steel posts that support required guardrails are part of the structural support for required parts of the structure. Even if the guardrails are moved back, the steel posts holding the guardrails in place "project" or extend to closer than 38.4 inches (more than 20% closer than 48 inches) and are not on the list of allowable projections.

G. The issue of whether or not the steel posts are downspouts was not presented in the appeal by appellants, but was raised for the first time in the determination of the LADBS. Appellants submit the declaration of expert Steven Cohen regarding whether or not the steel posts are downspouts, to respond to the new issue raised for the first time in the LADBS determination.

The Department determines that the modification is less than 20% based solely on the plans, and not as the building has actually been constructed. The determination expressly states it is based only on the plans, and there is nothing to show any efforts were made to determine if the building was constructed as planned. Yet we do know from the LADBS determination that a Correction Notice was issued, because the 3113 South Yale Avenue structure did not comply with the plans.

A. While the plans show the distance between the structure and the boundary as 3.71 feet, or a modification of 7.25%, it is undisputed that if the steel posts as constructed are included, then the structure is as close as 3.01' to 3.12') from the 3109 South Yale Avenue boundary line, or a modification of an amount greater than 20% (which means the closest the structure could be to the boundary would be 3.2').

B. Appellants presented their expert witness measurements. No other measurements of the actual construction (as opposed to plans) were provided by either the owner of the 3113 South Yale Avenue property, Forrest L. Poorman, or by LADBS.

C. A slight modification may be granted for up to 20% of the otherwise required setback. For this property, the normally required setback is four (4') feet, which is forty eight (48") inches. To fall within the 20% rule for slight modifications, the Department could grant a modification as close as 38.4" (3' 2.4", or 3.2').

D. Anything closer than 38.4 inches is beyond what could be granted as a slight modification from the normally required four (4') feet.

E. According to the measurements provided to the LADBS, if the steel posts are included, the structure is closer to the boundary (3.01' to 3.12') than the required 3.2'.

F. The slight modification granted to Poorman of less than 20% should be revoked, as the structure, as built, including the steel posts, is built closer than a 20% reduction of the set back, and much closer than the 3.71 foot setback represented by Poorman in the application. The application was granted based on the agreement by Poorman to build in compliance with the plans. Even without the steel posts, Poorman built closer than the 3.71 feet he asked for in his application. With the steel posts included, Poorman built closer than the 20% slight modification he was granted by the LADBS.

G. The misrepresentations by Poorman are alone a sufficient basis to revoke the permit. He misrepresented what he intended to build, knowing he would be closer than 38.4", which is why he felt he needed the neighbor consent forms. His dishonesty in representing how close he would build is compounded by the submission of forged neighbor consent forms. [A new forgery has just been located of the neighbor consent forms and will be the subject of a subsequent appeal.]

For variances of more than 20%, a different procedure, including Neighbor Consent forms, is required. The submission of a forged Neighbor Consent form by Poorman is a proper basis to revoke the permit.

A. The LADBS determines that no neighbor consent is required by L.A.M.C.
12.26B.

B. L.A.M.C. Section 12.26B applies to modifications not to exceed twenty percent (20%) of the required yard.

C. While the plans submitted by Poorman claim the structure will be no closer than 3.71 feet from the boundary, the building he has constructed is between 3.01' and 3.12' from the boundary. To fall within the twenty percent limitation, the closest the structure could be to the boundary is 3.2' (eighty percent of the required four feet (4')).

D. The only factual information presented about how close the structure is to the boundary as constructed is the measurements from the appellants' experts.

E. There is nothing in the LADBS determination to show that anyone on behalf of LADBS measured the distance of the structure as constructed to see if it was really not closer than the 3.71' represented in the plans.

F. For a variance of more than twenty percent (20%), a different process is used, and includes presenting neighbor consent forms.

G. 3.01' to 3.12' from the boundary is closer than 3.2' from the boundary.

H. Per the Guidelines for Consideration of Yard Reduction Requests, as revised 10-31-2012, a different process is required for requests of more than 20% than the process for requests of less than 20%. There are also differences listed which determine which agency can make the approval (LADBS for less than 20%, City Planning for more than 20%.) Even if less than 20%, if there are no neighbor consents or finding, then approval is to be by City Planning, and only with findings and neighbor consent can that determination be made by LADBS staff. Using those guidelines, published by the City of Los Angeles, although no neighbor consent may be required, without those consents, the determination should have been made by City Planning. The City did not follow the procedures it published when LADBS granted the slight modification without neighbor consent forms. The City publications show that if there were no neighbor consents, then LADBS should have passed the decision to City Planning. It appears that the LADBS did rely on the neighbor consents initially, and it was only after the forgery issue was raised, that LADBS determined neighbor consents were not required for this slight modification,

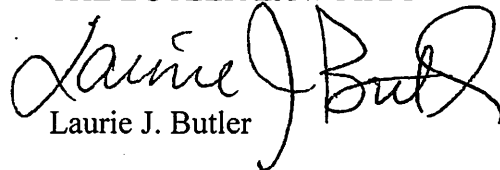
Page 8
City of Los Angeles
Department of City Planning
December 3, 2015

but LADBS did not pass the decision on to City Planning (as it appears that should have been the proper process per the Guidelines.)

I. If Poorman believed he did not need the Neighbor Consent forms, he would not have submitted them. There is no factual information provided that the alleged signature of Amiar Tabar on the Neighbor Consent form was not a forgery. The only evidence presented is that it is a forgery. Since there was no approval by City Planning, the City did not follow the procedure it shows should be followed if the modification is not supported by findings and neighbor consents. The permit should be revoked.

Very truly yours,

THE BUTLER LAW FIRM


Laurie J. Butler

LJB:cd
Enclosures

EXHIBIT F

DECLARATION OF STEVEN G. COHEN

I, Steven G. Cohen, declare:


1. I am a California licensed general (B1) and electrical (C10) contractor, attorney, retired Administrative Law Judge and have served for the past 21 years as a Senior Arbitrator for the Contractor's State License Board (CSLB). I am also an expert in commercial and residential property inspection, Los Angeles Building Code Compliance and have acted as a special master and court appointed expert under California Evidence Code, Section 730. I am a resident of Los Angeles County, state of California. I have personal knowledge of the following facts and if called to testify concerning same, I could and would do so.
2. On June 19, 2015, I personally inspected the side yard of a residential new construction/remodel located at 3113 Yale Avenue, Marina Del Rey, California. I had previously inspected the same property and side yard approximately 2 months ago, and walked along its side yard, viewing, touching and measuring all the steel posts protruding from the wall of the house which are located on the side of the house next to 3109 Yale Avenue.
3. I took several pictures of the steel posts and the side yard referenced above on June 19, 2015. I also included three pictures of the neighborhood which also included two larger structures that abided by the standard setback requirements. I have attached such pictures hereto as Exhibit A. The first SEVEN photos depict the steel posts and side yard intrusion. The last THREE photos depict typical residences on the same block.
4. Based on my 31 years as a licensed contractor, my inspection of building structures in excess of two stories, my knowledge of Los Angeles Building Code requirements regarding construction of structures exceeding two stories, and my experience working for the Contractor's

State License Board as an Arbiter, I have determined that the steel posts on this structure are necessary structural elements of the building, as opposed to decorative designs, and constitute a necessary structural and integral part of the structure. As such, any measurements of the size of the side yard setback between 3113 Yale Avenue and 3109 Yale Avenue would have to start from the face of the steel posts, not from the wall of the 3113 Yale house. Notwithstanding this measurement, the wall on its own has already exceeded the permissible setback. The required setback based upon the May 25, 1960 certification of the prior structure is 4' - 0". The 3113 Yale Avenue wall reduces the setback at its furthest point to as little as 3' - 6 and 15/16". Therefore, without even including the structural posts, the wall has encroached into the required setback.

5. With the structural posts, the setback is further reduced to 2' - 11 and 13/16". The 3113 Yale Avenue property protrudes beyond the 4 foot required setback whether measured from the building face or from the structural steel members. The structure is required to be a minimum of 4' from the adjacent property line.

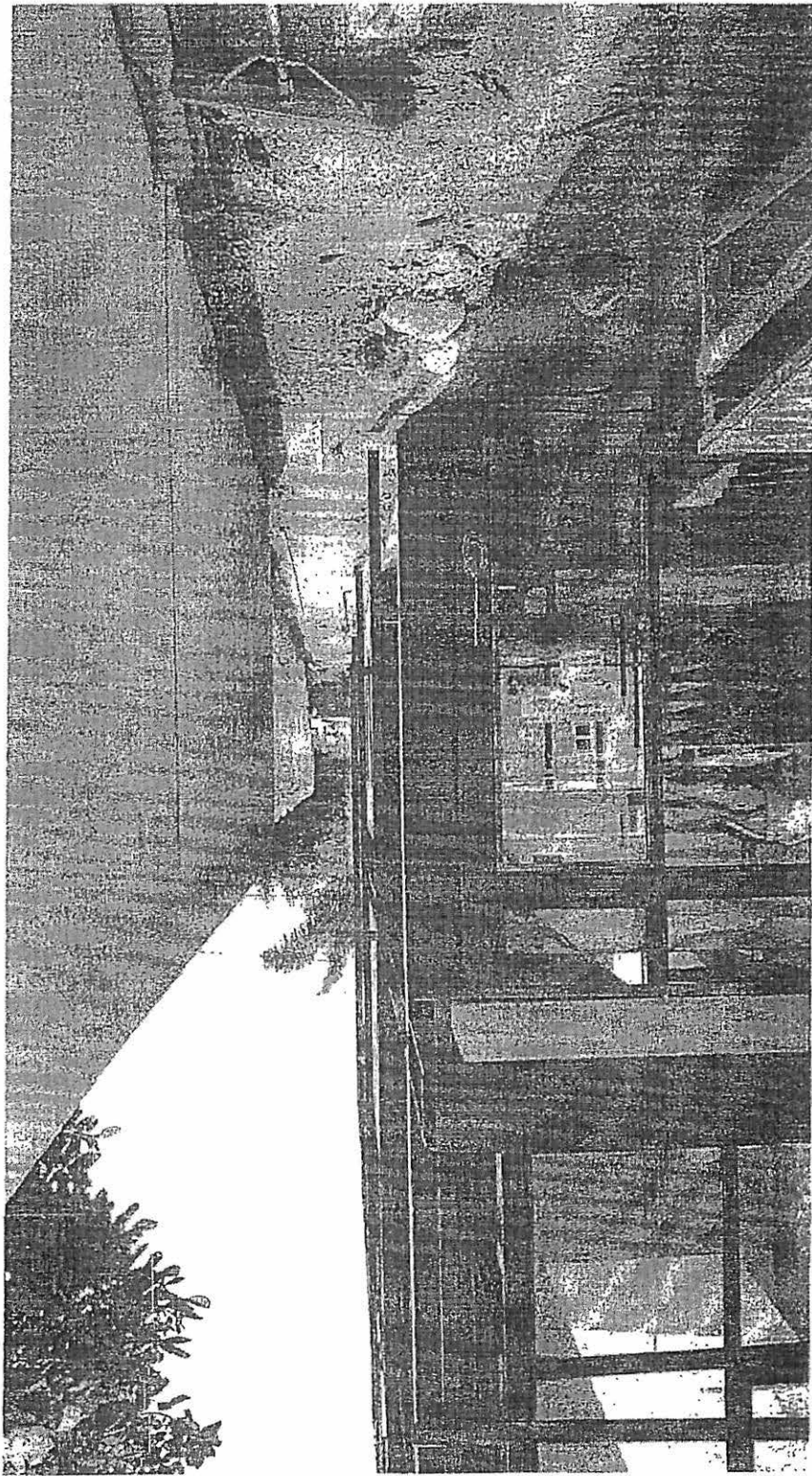
6. If stucco is added to any of the structural metal posts, the measurements will have to include an additional 7/8" further intrusion. Currently, there is no stucco affixed to the structural steel.

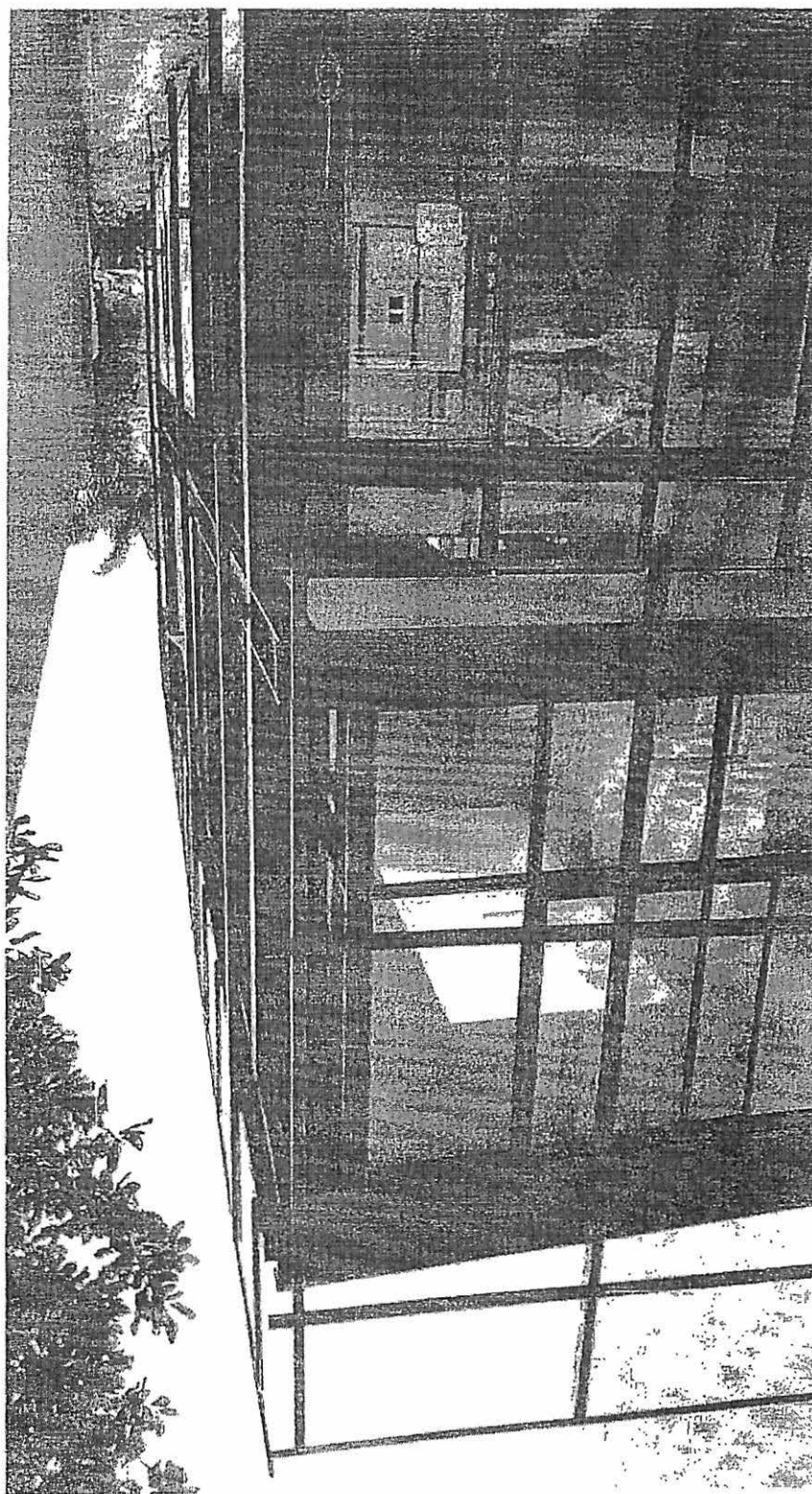
I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this declaration was executed under penalty of perjury on June 22, 2015 at Santa Monica, California.



Steven G. Cohen, Contractor's Lic #470045

EXHIBIT A

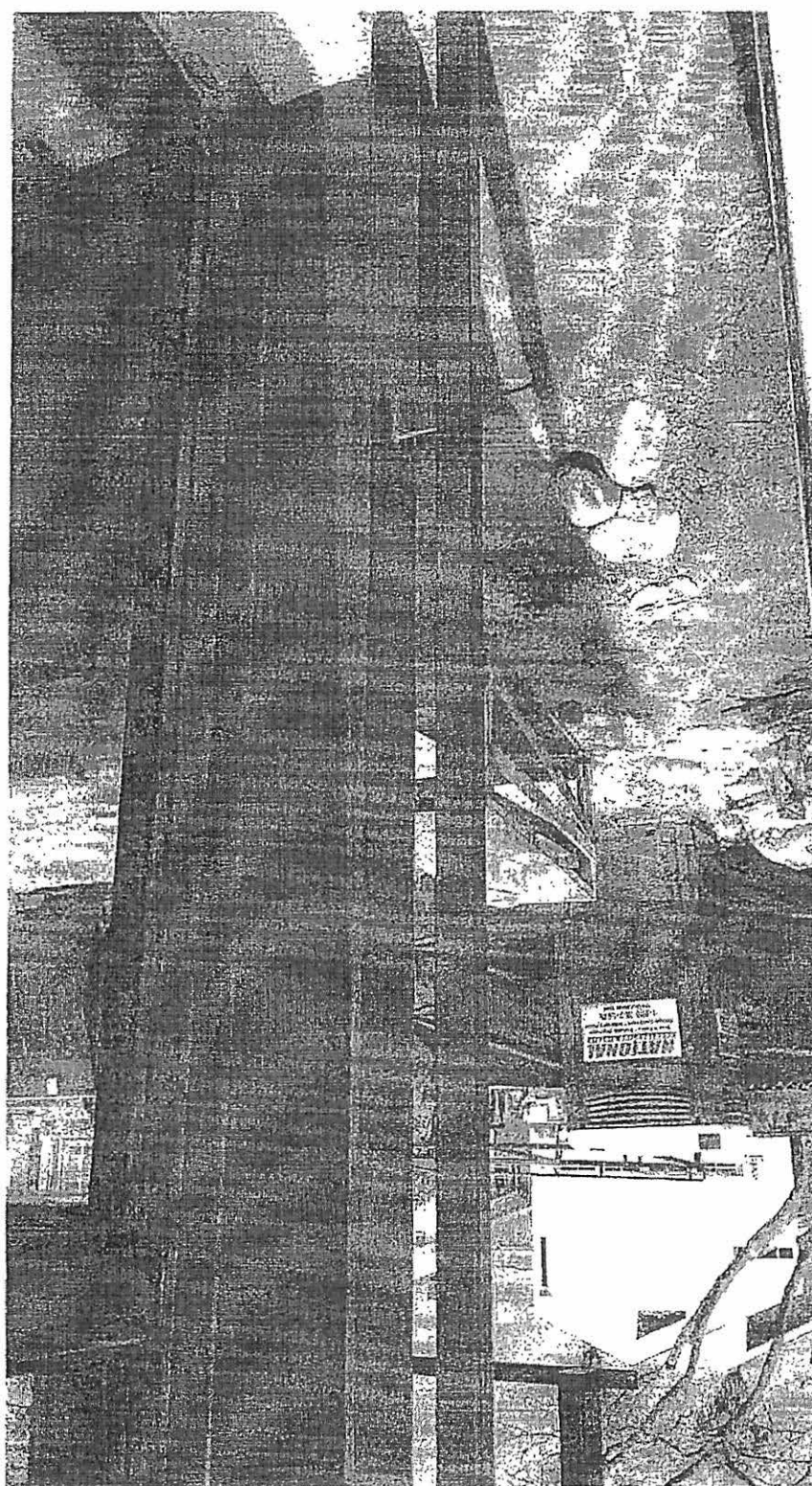


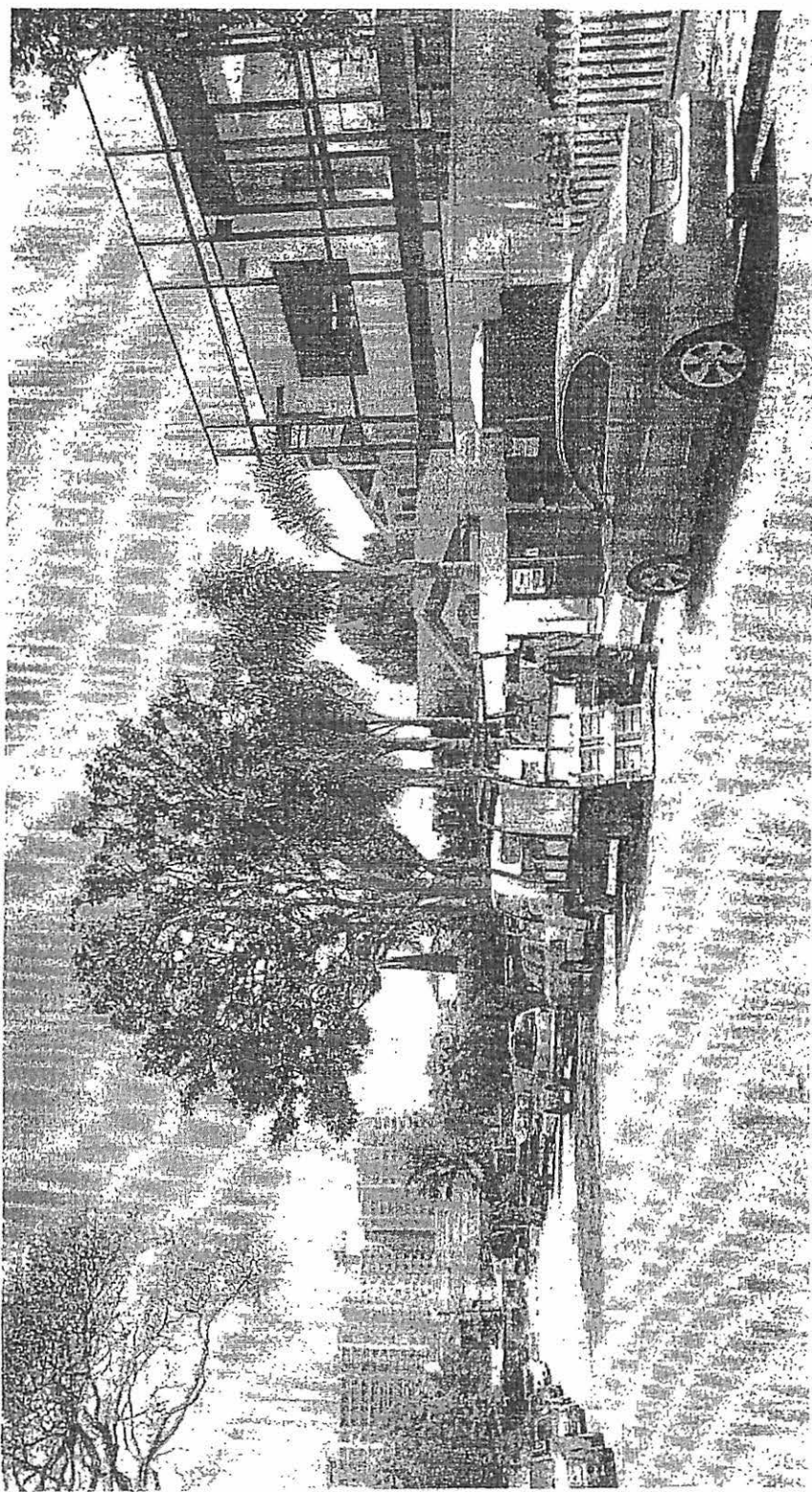


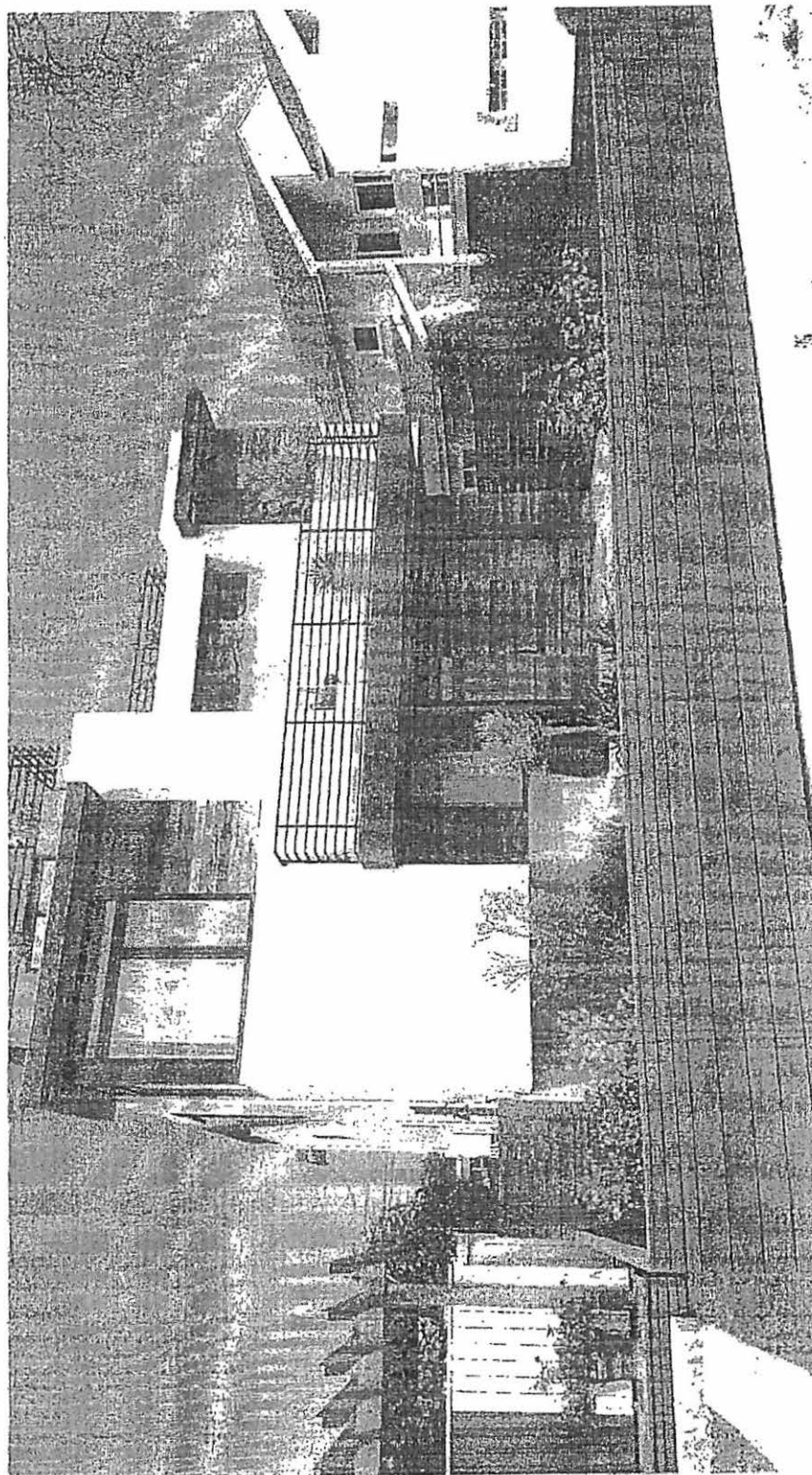


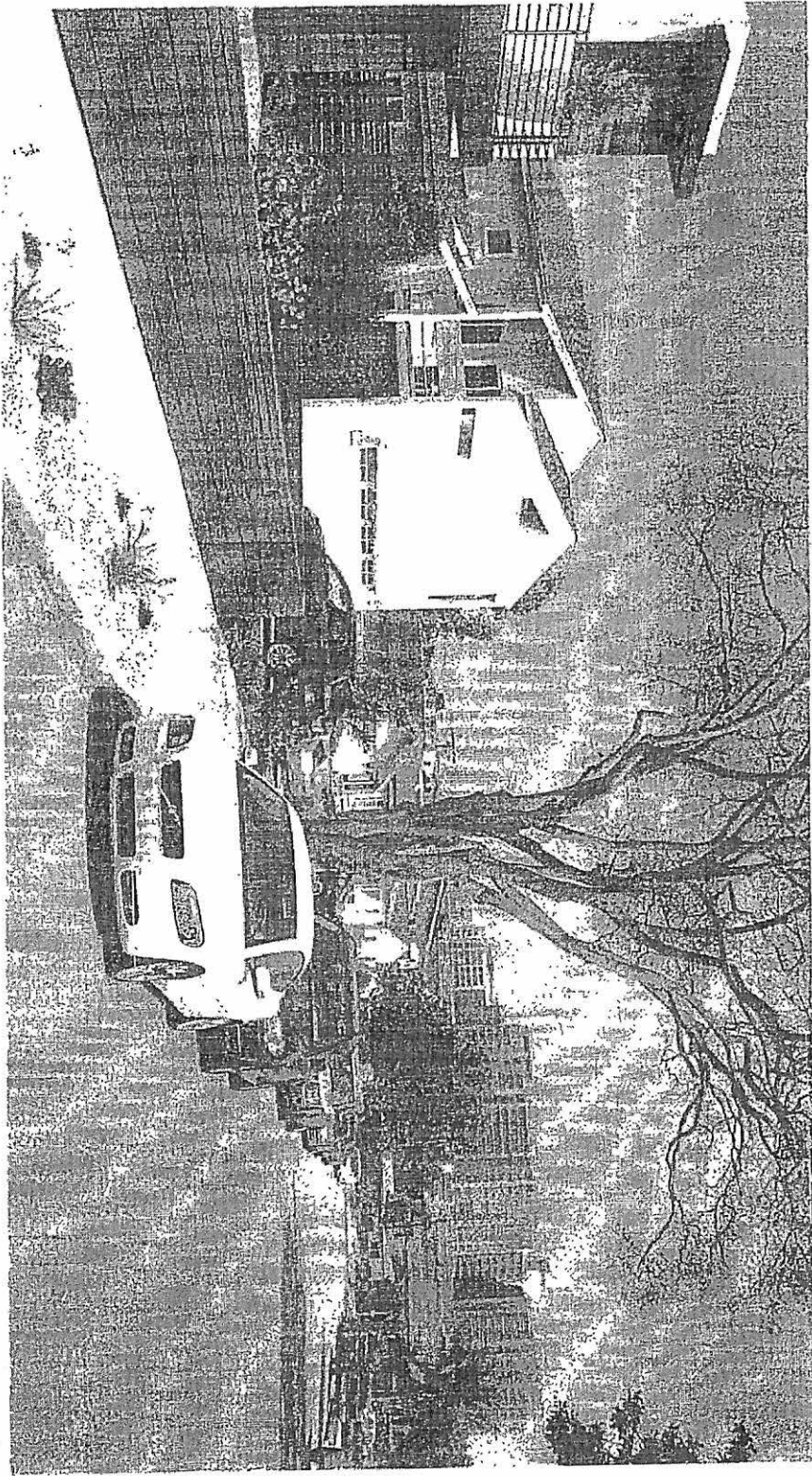












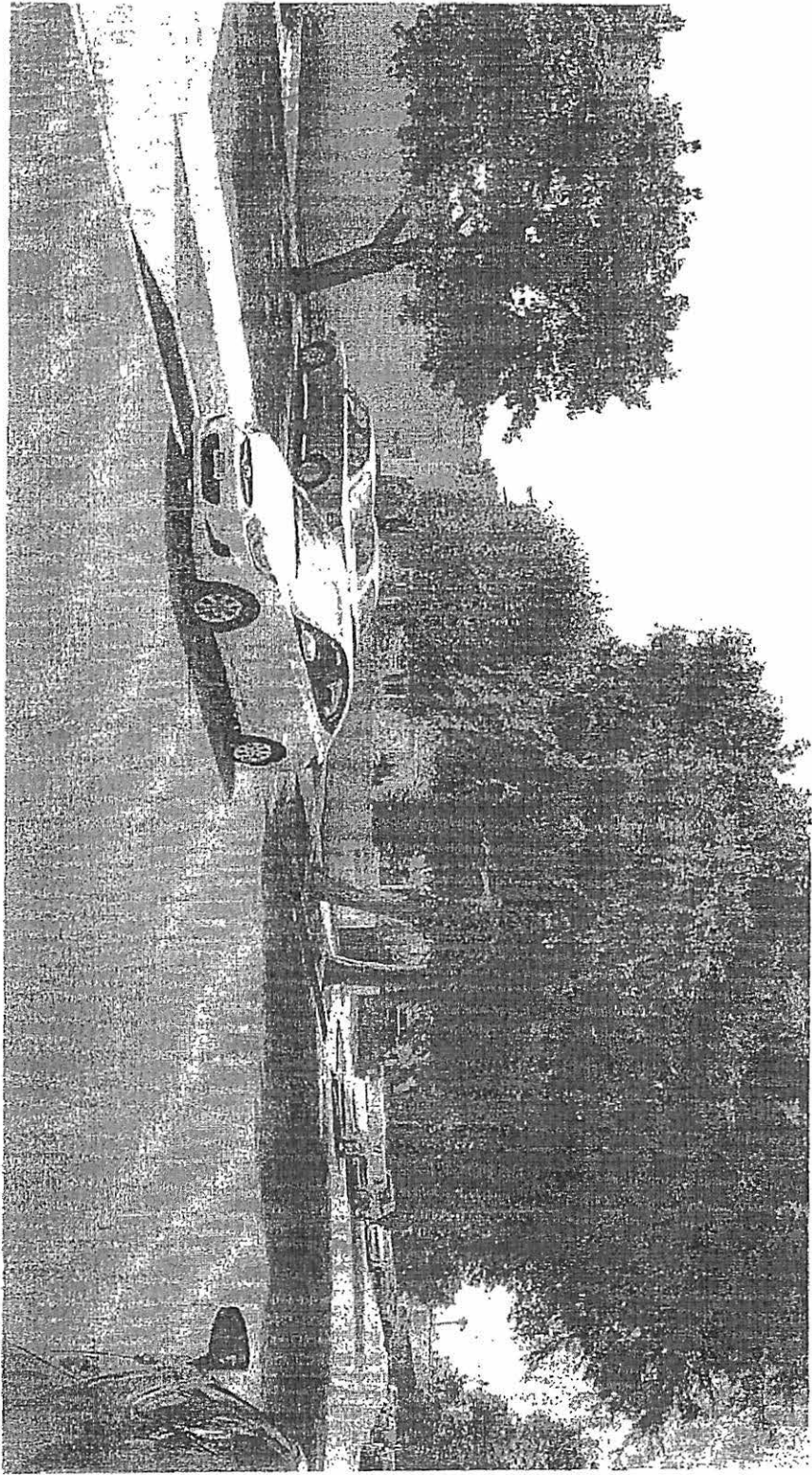
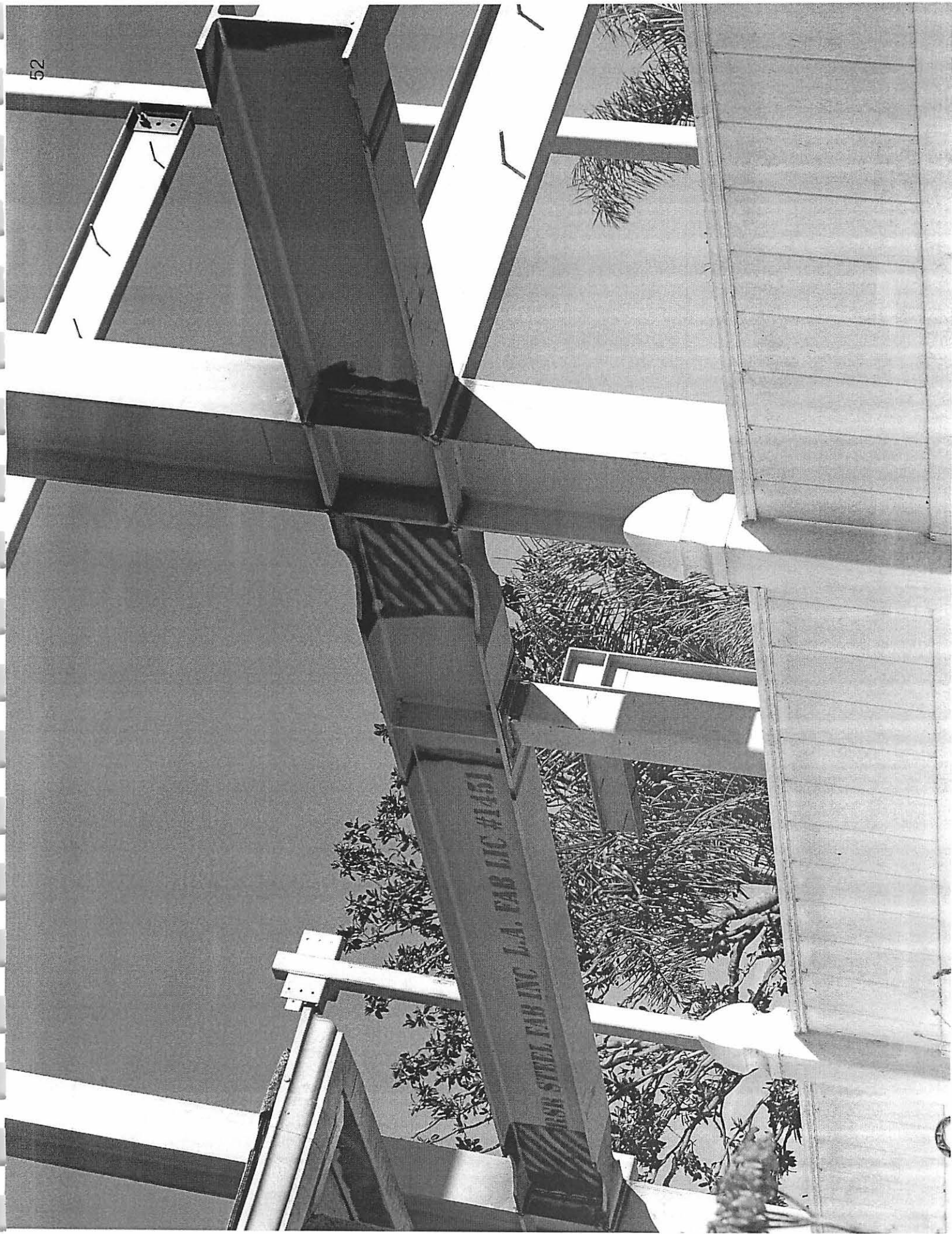


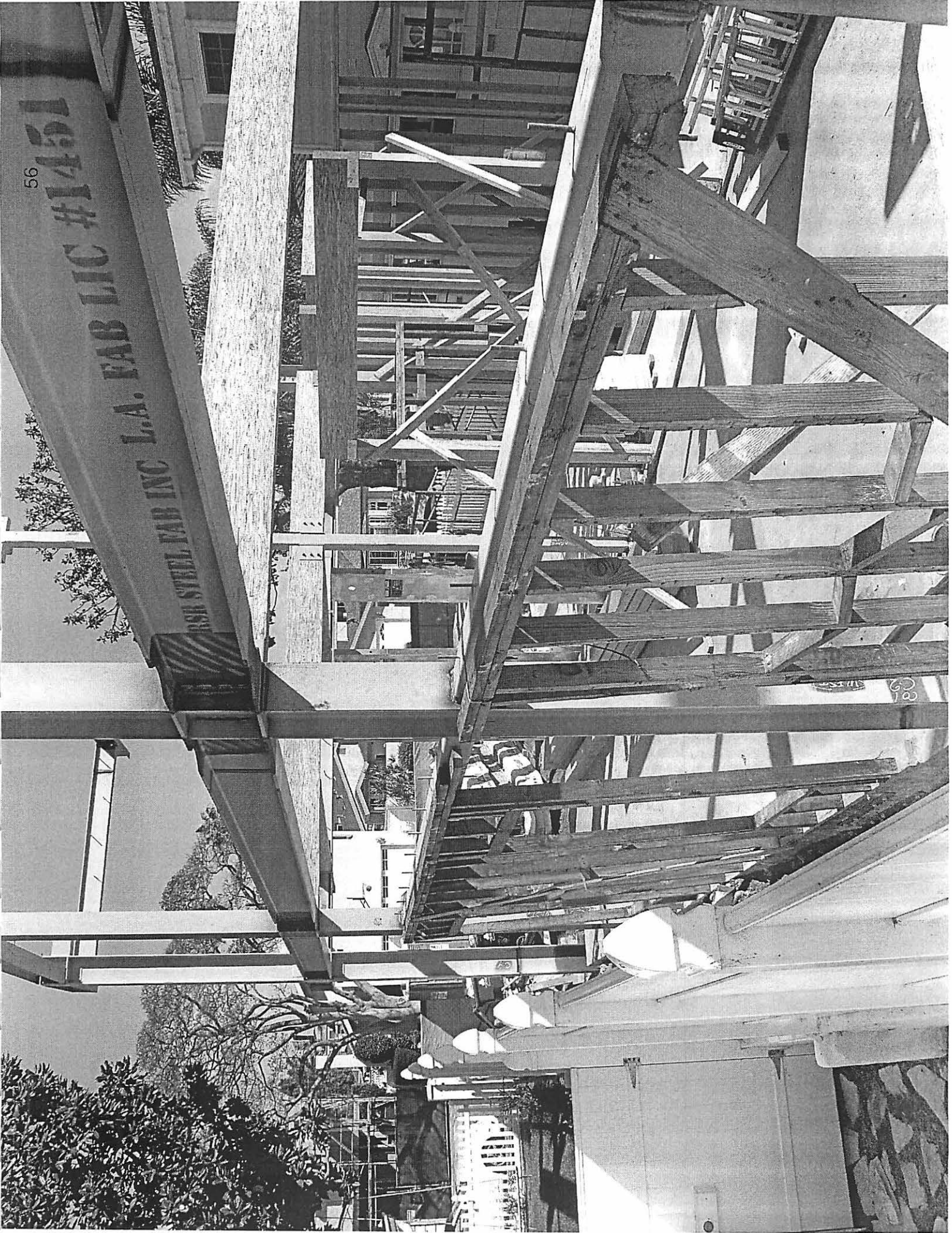
EXHIBIT G



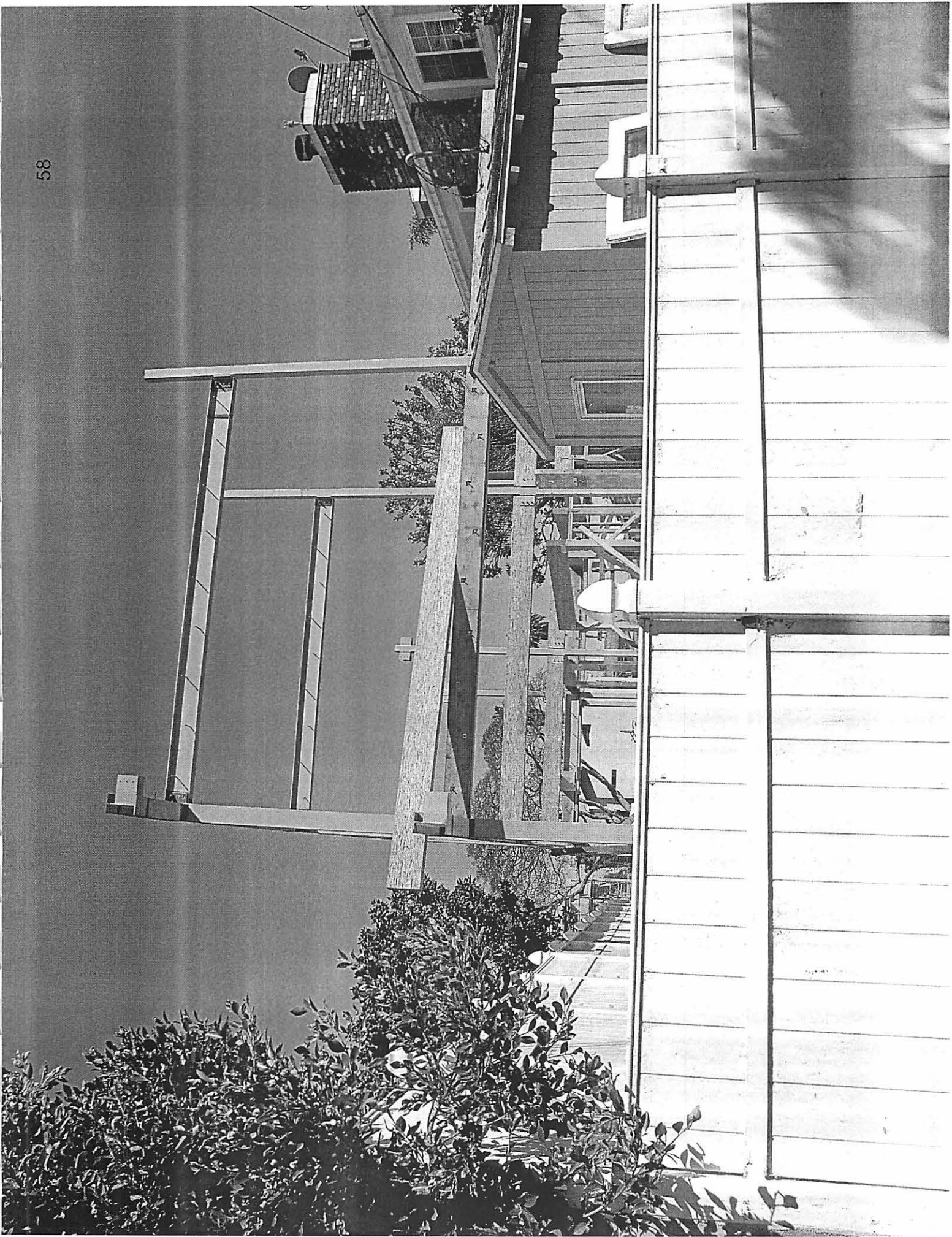














BRUNO L.A. FAB LIC #1451

70 230 1115

70 230 1115

70 230 1115

70 230 1115

70 230 1115

70 230 1115

70 230 1115

70 230 1115

70 230 1115

70 230 1115

70 230 1115

70 230 1115

70 230 1115

70 230 1115

70 230 1115

BEAM
230
ABOVE



