



# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Tell and Members of the City Council

**THROUGH:** David N. Carmany, City Manager

**FROM:** Richard Thompson, Director of Community Development  
Clay Curtin, Management Analyst  
Eric Haaland, Associate Planner

**DATE:** November 15, 2011

**SUBJECT:** Consideration of Parking and Public Improvements Commission Recommendation to Approve an Encroachment Permit Appeal to Allow Raised Planters in the Public Right-of-Way to Remain at 301 28<sup>th</sup> Street.

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### **RECOMMENDATION:**

Staff recommends that the City Council approve the Parking and Public Improvements Commission recommendation to approve the encroachment appeal request.

### **FISCAL IMPLICATION:**

There are no fiscal implications associated with the recommended action.

### **DISCUSSION:**

The Parking and Public Improvements Commission (PPIC), at its regular meeting of October 27, 2011, recommended approval (3-2 vote, Fournier & Stabile dissenting) to the City Council of an encroachment permit appeal to allow raised planters to remain within City right-of-way adjacent to a newly constructed duplex. The City Council, after receiving a PPIC recommendation, can approve exceptions to the City's encroachment standards as it determines to be appropriate.

The submitted appeal plans show 3 L-shaped concrete walls, as much as 2 feet tall, forming raised planters occupying most of the site's sloped encroachment area (currently unused public right-of-way) between walkways leading to the house. The approved encroachment plan allows the same walls at a maximum of 1 foot tall. Section 7.36.150 of the Municipal Code permits fences and walls in encroachment areas at a maximum height of 3.5 feet in these areas, but does not permit changing the grade in drive-street encroachment areas (unlike walk-streets). This precludes the possibility of significantly raised planters for the applicant's encroachment area. Staff permitted the 1-foot tall planter walls based on the practice of treating 6-inch curb-height grade changes as insignificant, and applying an averaging method on the slope. This method allows the leveled-off planters desired by the applicant to be an average of 6 inches in height, and no more than 12 inches high at any point.

The PPIC recommended approval of the raised grade request for the following reasons:

1. A number of letters from surrounding neighbors (attached) were received supporting the request, and no comments in opposition were received.
2. Some raised planters had existed in the encroachment area prior to project construction.
3. The raised planters do not appear visually obtrusive or disruptive to the public.
4. The applicant had concerns for preventing erosion on the sloped area.

The Commissioners opposing the request felt that the project should be in compliance with the encroachment standards and the originally approved encroachment plan. Concern was also expressed that the applicant submitted a substantial amount of material (attached) to the PPIC at the meeting leaving inadequate time to review it.

Should the City Council accept the PPIC's recommendation to approve the encroachment appeal request, staff will revise the applicant's existing encroachment permit to reflect the taller planters and impose a condition requiring cost reimbursement if the planters result in unusual future maintenance costs to the City.

**ALTERNATIVE:**

The alternative to the staff recommendation is:

Remove this item from the Consent Calendar, discuss the decision of the PPIC, and direct staff as determined to be appropriate.

**Exhibits:**

- A. PPIC Minutes excerpt, dated 10/27/11
- B. PPIC Staff Report and attachments, dated 10/27/11
- C. Supplemental applicant material
- D. Neighbor letters

C: Bob Weiss, Applicant  
Louie Tomaro, Architect

**E. GENERAL BUSINESS**

**10/27/11-2 Consideration of an Encroachment Permit Appeal to Allow Existing Yucca Trees Over 42” in Height on the Public Walkstreet to Remain - 228 7<sup>th</sup> Street.**

Planning Manager Laurie Jester reported that the Appellant, Mr. Wattles in the above mentioned item regarding the Yucca trees at 228 7<sup>th</sup> Street had requested a continuance. She stated that this is the second continuance requested by the party and that the request had been reviewed by the City Attorney and Staff had no objections to a continuance.

Planning Manager Jester asked the Commission to continue the item to the December 1, 2011, meeting emphasizing that the item would move forward at that time, and this would be the last continuance granted.

**Action**

A motion was MADE and SECONDED (Vigon/Adami) to continue the item, “Consideration of an Encroachment Permit Appeal to Allow Existing Yucca Trees over 42” in Height on the Public Walkstreet to Remain – 228 7<sup>th</sup> Street” to the December 1, 2011, meeting.

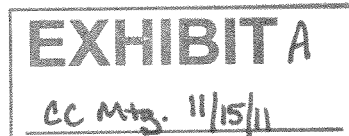
AYES: Vigon, Fournier, Adami, Silverman, and Chair Stabile.  
NOES: None.  
ABSENT: None.  
ABSTAIN: None.

**10/27/11-3 Consideration of an Encroachment Permit Appeal to Allow Raised Planters in the Public Right-of-Way to Remain – 301 28<sup>th</sup> Street.**

Planning Manager Jester introduced Associate Planner Eric Haaland to present an over view of the Encroachment Permit Appeal to Allow Raised Planters in the Public Right-of-Way to Remain at 301 28<sup>th</sup> Street.

Associate Planner Haaland presented a power point presentation on the Encroachment Appeal. He stipulated that the City issued an encroachment permit for the subject property on December 15, 2010. The approved plan called for curb-height planters stepping down the slope between the roadway curb and the new house being constructed at that same time. Taller planters were actually constructed, and staff notified the applicant that these planters could not be approved. The applicant subsequently filed an encroachment permit appeal application to retain the taller planters.

The submitted appeal plans show three L-shaped concrete walls as high as 20 inches, forming raised planters occupying most of the site’s sloped encroachment area (currently unused public right-of-way on 28<sup>th</sup> Street) between walkways leading to



the house. The approved encroachment permit allows for a maximum height of 12 inches. Staff permitted the one-foot tall planter walls based on the practice of treating six-inch curb height grade changes as insignificant, and applying an averaging method on the slope. This method allows the leveled off planters desired by the applicant to be an average of six inches in height, and no more than 12 inches high at any point.

Staff's position has been that, although some raised planters were pre-existing, they were being eliminated, and the general grade of the encroachment area matched the sloped 28<sup>th</sup> Street curb. New construction is required to eliminate any old non-conformities and new construction must conform to the new code.

Associate Planner Haaland stated that the series of planters in question are approximately 100 feet in length all together and is currently planted with drought tolerant plants, which are great for conserving water but the applicant has stated that they are not useful for preventing erosion. He went on to convey that there are some homes in the area with similar pre-existing planters that are even higher.

Associate Planner Haaland said that staff cannot make the decision on the appeal. It is the responsibility of the PPIC to decide and forward their recommendation to City Council. He explained that staff recommends denial of the encroachment appeal and that the property owner either reduce the height of the planters or eliminate 8 inches of dirt inside the planter.

Commissioner Vigon inquired about a law/code for dedicated sidewalk on 28<sup>th</sup> Street for pedestrian use. Associate Planner Haaland responded that a sidewalk is not required by Public Works.

Commissioner Vigon also asked if the house was new construction from the ground up to which Associate Planner Haaland replied affirmative.

Commissioner Adami asked about the codes for new construction conformity on page two of the report. Planning Manager Jester interjected that the constructed walls do not conform to code and that is why the item is before the PPIC Commission tonight.

Commissioner Fournier inquired about the criteria used by Public Works for sidewalk placement and if the area required sidewalks.

Commissioner Adami wanted clarification on the submitted plans, original and revised for wall height.

Commissioner Silverman asked if there was any discussion about the height of the walls going beyond 12 inches when the plans were submitted. Associate Planner Haaland remarked that there were discussions with the architect at the time.

Commissioner Vigon questioned whether the permit had been finalized, and it had not.

Planning Manager Jester said that there was some confusion with the contractor regarding the code. The contractor was under the impression that the codes were the same for walk streets and vehicular streets. She explained that the property owners were given a temporary Certificate of Occupancy at their request, in order to allow them to landscape as the plants had been purchased and were being stored in the garage. The owners were afraid the plants would die if they continued to wait.

Commissioner Adami asked staff to clarify the problem and the impact the higher walls would have on others. Planning Manager Jester said that staff is opposed to the 20" walls because they did not want a significant grade change nor non-compliance with the code. Associate Planner Haaland added that if the appeal is denied the property owners would have to modify the existing wall to meet code.

Commissioner Vigon asked that staff clarify that it was a public right-of-way and the City was not using it. Associate Planner Haaland confirmed that the City was not using it therefore, encroachments could occur.

Commissioner Adami indicated that if the property owner does not comply with code then staff can't approve the project.

Chair Stabile summarized the information provided by stating that the plans presented to the City were in compliance but the walls as constructed were higher than the maximum 12 inches so they did not comply.

Commissioner Silverman wanted clarify the fact that staff is recommending that they deny the appeal, but at the same time states that staff does not have the authority to make a decision on this appeal item. Planning Manager Jester replied that he was correct.

Commissioner Adami asked if there were any other new projects on the street that did not comply with code. Planning Manager Jester said "No."

Commissioner Fournier asked about the height of the pre-existing planters. Planning Associate Haaland said that there were drainage problems in the past. Planning Manager Jester explained that there were substantial improvements made regarding drainage and erosion and that the City Engineer had signed off on the improvements.

Planning Manager Jester confirmed to Commissioner Adami that the approved plans did comply with code but the walls were built higher.

Planning Manager Jester noted that staff had received letters from neighbors supporting the appeal in the area and that those had been forwarded to the commissioners.

Chair Stabile asked if anyone wished to speak on this item.

Bob Weiss, property owner of 301 28<sup>th</sup> Street stepped to the podium. Mr. Weiss stated that the plans were approved but did not state that the walls were limited to 12 inches.

Mr. Weiss stressed that they are not requesting any special treatment from the City. They want their walls to remain as is per the approved plans by the City. He went on to share that he and his wife purchased the home in the mid 90's and learned quickly that there was a drainage problem when their garage and landscaping were flooded after a hard rain. It appears that there are too many streets in the area that drained down to the corner of Crest and 28<sup>th</sup> and the runoff flowed into the landscape and homes. He complained to the City about the drainage problems and nothing was done. He installed drainage and walls in the landscaping to prevent the erosion and flooding in October 1997 and the height of the walls then was 30 inches (with the City's approval).

Mr. Weiss stated that he and his wife have complied with all the City's demands while building their new home, including the addition of more steel which raised the cost of the project by more than \$50,000. The City also made him improve the street behind his home, which he did for an additional fee. He also stated that they had to remove dirt from the area where the old planters were to accommodate the City approved plans. Now the City will not give them a final until they lower the walls eight inches or remove the dirt inside the planters eight inches.

Mr. Weiss complained that the City has given him several interpretations of the code over this issue with the walls and he finds that there is no consistency. First he has to take down the wall, now he was told he can leave the wall if he removes eight inches of dirt. Again Mr. Weiss reiterated the fact that the City approved the plans and the walls were built according to the drawings and the elevation approved by the City. He feels the City has been unreasonable and he has not been given an acceptable reason as to why the landscaping is a problem.

The City did grant Mr. Weiss a temporary permit so he could move in but he had to give a deposit of \$5000 and pay \$500 for the appeal.

Mr. Weiss shared his concerns with the Director of Community Development, Richard Thompson who suggested that he build a walkway between the curb and the planters at which time he would approve the planter height.

Mr. Weiss reiterated the fact that all he and his wife want is for the City to give him his final permit and for the walls to remain as they are per the approved plans presented to the City in 2009.

Mr. Weiss referred to exhibits that he had compiled in a binder for each of the commissioners to show a visual of the wall and issues he was referring to throughout his presentation.

Chair Stabile asked why Mr. Weiss waited until tonight to provide the bulk of information regarding his appeal to the commissioners and staff. Mr. Weiss responded that his architect was working on a PowerPoint presentation but staff would not permit such a presentation at the PPIC meeting. However, Mr. Weiss stated that staff had seen the information provided in the binder on more than one occasion.

Chair Stabile said he understands Mr. Weiss's frustration but that there was too much information submitted in the binders for the commissioners to process right then and there. Chair Stabile stated that he could not fully consider the information presented in the binder because it was too late.

Mr. Weiss reported that he was not aware of any deadline regarding the introduction of information to commissioners prior to the PPIC meeting.

There was a brief exchange between Commissioner Adami and Mr. Weiss over Exhibit G in the binder and if Public Works approved the plans and height classification on the walls. Mr. Weiss assured him that the contractor built the walls to comply with the elevation on the plans.

Planning Manager Jester responded that the significant alteration of the grade is the problem, and the higher walls are needed to support the raised grade.

Chair Stabile clarified the options; either lower the walls eight inches or remove eight inches of dirt from the planter.

Commissioner Vigon suggested that there might be a third option and that would be to raise the dirt around the outside of the wall.

Mr. Weiss once more stated that the contractor had to remove dirt from the property in order to comply with the construction of the new lower walls that the City approved.

Mr. Weiss stressed that by the time he learned that there was a problem with the walls, the plants were already purchased. Either option presented by the City to comply with the code would require Mr. Weiss to tear up the landscaping in his yard.

Commissioner Adami asked staff what impact there would be to the City if the walls remained as is. Planning Manager Jester stated that there is a significant

change in the grade and that if Mr. Weiss is allowed to leave the wall as is, it would be inconsistent with City municipal code.

Commissioner Adami commented on the rains and flooding issues.

Commissioner Vigon said that it appeared the wall was built to the height relevant to the structure and relevant to the elevation on the plans.

Mr. Weiss said that there was no fixed grade at the time of construction, the curb was installed later and the contractor could only build according to plans. He was not aware of the dirt behind the wall being an issue.

Chair Stabile asked for the status of the project from Staff regarding the wall height and grade.

Planning Manager Jester reported that the City approved the plans, construction began, then at the completion the inspector went out for the final and told the contractor and owner that the walls were too high and he could not provide him with a Certificate of Occupancy. Planning Manager Jester said there have always been two solutions available to Mr. Weiss; lower the wall and soil or lower only the soil.

Chair Stabile asked Mr. Weiss if either of the City's options would be acceptable to him. Mr. Weiss stated that he filed his appeal on August 3, 2011. He refused both options stating that they would destroy his landscaping. Mr. Weiss reiterated the fact that he does not believe that he has violated any code sections as his home was constructed according to City approved plans.

There was a brief exchange between Commissioner Adami and Associate Planner Haaland regarding the appearance of the wall if it were dropped.

Chair Stabile closed public testimony.

Commissioner Fournier agreed with Chair Stabile's stand on the amount and content of information presented tonight regarding this item. He felt that he had been blindsided by all the information presented tonight from Mr. Weiss incorporated in the binder he had received just before the start of the meeting. He has a number of questions but feels that they will only lead to more questions. He is not an architect or a landscaper.

Commissioner Vigon said that this was no different from any other meeting where the commission receives a stack of letters, documents, etc. thrown at them prior to the start of the meeting. He did not feel that Mr. Weiss had done anything wrong in presenting his information at the beginning of the meeting and that Mr. Weiss had not violated any rules. Commissioner Vigon stated that the rules might need to be changed. He stated that this would permit the commissioners to absorb the information presented before moving forward on an item.



Chair Stabile indicated that there was not enough time to question factual findings or to decipher what was presented; it was simply too much information. He asked if there was a motion to continue the matter.

Commissioner Adami suggested that a rule that no evidentiary materials could be submitted the same night as the meeting.

Planning Manager Jester reminded the commission that their role is to provide a public forum, listen, and determine a recommendation. No other bodies refuse material the night of a meeting, City Council or Planning Commission, she stated. The matter to be determined she said, is that the walls are over 12" high and not constructed to code.

Commissioner Adami stated that he is aware that it can be stressful to build a home in Manhattan Beach because he has done it. He noted that it does not appear that the walls would pose any significant problem if left as is.

Chair Stabile was concerned about setting a president for encroachment appeals if the commission agrees to make an exception. It is a standard code he noted and is fearful that it will not have any meaning if an exception is permitted. Planning Manager Jester explained that encroachments need to be viewed on a case-by-case basis because the curbs, slopes and grades are all different. She commented that one needs to also see the big picture and to determine what the City should look like as a whole.

Commissioner Adami stated that he understands the code but if there is no significant impact that the commission should grant the appeal.

Commissioner Silverman said that exceptions are permitted within the code. The question is practicality.

Chair Stabile closed the discussion among the commissioners.

### **Action**

A motion was MADE and SECONDED (Adami/Silverman) to approve the Encroachment Appeal to allow raised planters in the public-right-of-way to remain as is at 301 28<sup>th</sup> Street.

AYES: Vigon, Silverman, and Adami.  
NOES: Stabile and Fournier.  
ABSENT: None.  
ABSTAIN: None.

Planning Manager Jester explained that staff will present the recommendation of the Commission under the Consent Agenda at the November 15, 2011, regular City Council meeting.

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**CITY OF MANHATTAN BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT**

**TO:** Parking and Public Improvements Commission

**FROM:** Richard Thompson, Director of Community Development  
Clay Curtin, Management Analyst *cc* *URJ FOR P.T.*

**BY:** Eric Haaland, Associate Planner *EH*

**DATE:** October 27, 2011

**SUBJECT:** Consideration of an Encroachment Permit Appeal to Allow Raised Planters in the Public Right-of-Way to Remain – 301 28<sup>th</sup> Street

**RECOMMENDATION:**

Staff recommends that the Commission **DENY** the request at 301 28<sup>th</sup> Street to maintain the raised planters in the 28<sup>th</sup> Street public right of way (drive-street).

**BACKGROUND:**

An encroachment permit was issued for the subject property on December 15, 2010. The approved plan called for curb-height planters stepping down the slope between the roadway curb and the new house being constructed at the same time. Taller planters were actually constructed, and staff notified the applicant that these planters could not be approved. The applicant subsequently filed an encroachment permit appeal application to retain the taller planters. In accordance with Section 7.36.080 of Manhattan Beach Municipal Code, the Parking and Public Improvements Commission (PPIC) must review the appeal request and forward its recommendation to the City Council.

**DISCUSSION:**

The submitted appeal plans show 3 L-shaped concrete walls, as much as 2 feet tall, forming raised planters occupying most of the site's sloped encroachment area (currently unused public right-of-way) between walkways leading to the house. The approved encroachment plan allows the same walls at a maximum of 1 foot tall. Section 7.36.150 of the Municipal Code permits fences and walls in encroachment areas at a maximum height of 3.5 feet in these areas, but does not permit changing the grade in drive-street encroachment areas (unlike walk-streets). This precludes the possibility of significantly raised planters for the applicant's encroachment area. Staff permitted the 1-foot tall planter walls based on the practice of treating 6-inch curb-height grade changes as insignificant, and applying an averaging method on the slope. This method allows the leveled-off planters desired by the applicant to be an average of 6 inches in height, and no more than 12 inches high at any point.

EXHIBIT B  
CC MTG 11-15-11

The applicant's appeal plan includes arguments for his request as follows:

1. The walls/planters prevent erosion on what is otherwise a long steep slope.
2. The drought tolerant plants intended for the area will not prevent soil erosion as other plants would.
3. Raised planters did exist previously in this encroachment area.
4. Raised planters exist in other encroachment areas.

Staff's position has been that, although some raised planters were pre-existing, they were being eliminated, and the general grade of the encroachment area matched the sloped 28<sup>th</sup> Street curb. New construction is required to eliminate any old nonconformities and new construction must conform (M.B.M.C. 7.36.150(A)(8)). The similar encroachment area across 28<sup>th</sup> Street from the site appears to match this grading concept, although some leveling was done for entry walkways. No recent developments above or below the project on 28<sup>th</sup> Street appear to have raised planter encroachments.

Staff's understanding is that previous drainage issues at Crest Drive at the east end of the encroachment area have been resolved with street improvements resulting from the project. Potential sidewalk improvements in the subject right-of-way have also been discussed during the course of the applicant's project, but have not been required. A paved catch basin cover does form a narrow walkable surface for the lower third of the encroachment area. The Public Works Department practice is to not require sidewalks on this segment of 28<sup>th</sup> Street if none are pre-existing.

#### Public Input

A notice of the Parking and Public Improvement Commission meeting was mailed to all residents within a 300 foot radius from the subject encroachment property (Attachment D). Staff has not received any responses to the notice prior to this report.

#### CONCLUSION:

Staff does not support the request to maintain the raised encroachment planters for the reasons described above, and suggests that the PPIC recommend denial of the Encroachment Appeal request to the City Council.

Should the PPIC recommend approval of maintaining the existing raised planters, staff suggests conditions be imposed requiring their removal whenever a future encroachment project occurs, and that any City costs (future street work) that may result from the planters be reimbursed.

#### Attachments:

- |    |                                      |                          |
|----|--------------------------------------|--------------------------|
| A. | Vicinity Map and Photos              |                          |
| C. | Encroachment Code excerpts           |                          |
| D. | Neighborhood Notice                  | cc: Bob Weiss, Applicant |
| E. | Encroachment Appeal plans (separate) | Louie Tomaro, Architect  |



Vicinity  
**301 28<sup>th</sup> Street**



Pre-Construction Photos

## M.B.M.C. Excerpts

### 7.36.080 - Appeals.

Applications which are inconsistent with the "Encroachment Standards" set forth in Section 7.36.150, including right of way frontage improvements required as a condition of approval by the Director of Public Works, must be appealed to and approved by the City Council with a recommendation from the Parking and Public Improvements Commission. A notice shall be sent to the property owners whose lots' front property lines are within three hundred feet (300') of the subject encroachment area site at least ten (10) calendar days prior to each body's consideration of the exception request. The notice will describe the proposed encroachment, make the plans available for review, and set a deadline for registering objections. Upon consideration of such an appeal application, the City Council may approve, modify, or disapprove the application for encroachment. The action of the City Council shall be final.

### 7.36.150 - Encroachment standards. (A & D)

#### A.

##### General Standards:

1.

Structures as defined by the City's Building Code or other encroachments are prohibited from encroaching within the public right of way unless in compliance with these standards or approved by the City Council.

2.

Landscaping is permitted without an encroachment permit in accordance with an approved landscape plan pursuant to Chapter 7.32 of the Municipal Code. Artificial landscape materials are prohibited.

3.

Utility obstructions shall be avoided so as to maintain access to underground utilities. A minimum of thirty inches (30") of clearance is required on each side of all water and sewer mains, unless otherwise approved by the Director of Public Works.

4.

Drainage from a private collection system that discharges a concentrated flow shall be directed to a vehicular street or alley pursuant to Public Works Department construction standards and shall be prohibited from flowing onto a public pedestrian walkway or sidewalk. A drainage plan shall be provided with an application for an Encroachment Permit.

5.

All encroachments shall be in conformance with Title 5, Chapter 5.84 of the Municipal Code pertaining to storm water pollution control.

6.

Obstructions to neighboring resident's scenic views shall be avoided.

7.

Steps and Stairs, other than risers between four and seven inches (4" to 7") in height and spaced a minimum of three feet (3') apart, are not permitted in the public right of way.

Exception. One set of steps comprised of three (3) consecutive risers is permitted provided a condition does not result that requires installation of a guardrail or handrail.

8.

Existing improvements which do not conform to current standards must be removed or brought into conformance if the related structure on the adjoining property is significantly remodeled or reconstructed or if any new significant construction is proposed in the public right of way. Existing permitted improvements that have been made non-conforming by changes to these standards may otherwise remain provided any nonconforming element is not increased or expanded. The intent is to cause nonconforming encroachments to be brought into conformity concurrent with major alterations or entirely new structures constructed on adjoining private property.

9.

Routine maintenance and repair may be performed on a nonconforming encroachment structure or improvement and replacement with a comparable improvement is permitted upon demonstration that the encroachment is deteriorated and creating an unsafe condition.



**D. Vehicular Street Standards:**

1.

Street improvements, including (but not necessarily limited to) sidewalks, curbs, gutters, parking pads and paving may be required by the Public Works Department for the purpose of maintaining or improving conditions related to drainage, visibility, access, maneuverability or public parking, and, if required, shall be constructed in compliance with City standards.

2.

Fences and walls are permitted as follows:

a.

Location. Compliance is required with Public Works Department standards established in MBMC 9.72.015. A minimum set back of two feet (2') is required behind existing or required street improvements.

b.

Height. Fences and walls may not exceed a maximum height of forty-two inches (42"), measured from the existing public right of way grade at the fence or wall location. Open-design fences or guard rails required by the Building Official to exceed the forty-two inch (42") maximum height are allowed on top of retaining walls if necessary to retain a neighbor's grade at a side property line. Fences and walls located near the intersection of streets or driveways may be subject to lower height requirements to ensure traffic visibility.

3.

Ground cover such as pavement (including brick or other decorative surfaces) and landscaping is permitted on the existing right of way grade. Decks or similar structures are prohibited.

4.

Street Corner Visibility. To ensure visibility at street corners a thirty-six inch (36") maximum height is applicable to all fences, walls or landscape plantings within a distance of fifteen feet (15') from the street corner as per MBMC 3.40.010 (Traffic Sight Obstructions). A height less than thirty-six inches (36") may be applicable due to unusual slope conditions.



5.

Significant alteration of the existing right of way grade is prohibited, unless determined to be necessary to accommodate a required public street improvement.

6.

Loose gravel and similar material as determined by the Public Works Department is not permitted.

7.

Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular street right of way location via a non-erosive device pursuant to Public Works Department standards subject to review and approval of the City Engineer.



# City of Manhattan Beach

## Community Development

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Phone: (310) 802-5500  
FAX: (310) 802-5501  
TDD: (310) 546-3501

October 12, 2011

### **PUBLIC MEETING NOTICE**

Encroachment Permit Appeal- 301 28<sup>th</sup> Street

Dear Manhattan Beach Resident:

The Department of Community Development has received an application for an Encroachment Appeal submitted by property owner, Robert Weiss at 301 28<sup>th</sup> Street. Mr. Weiss is requesting to keep his raised planters in the public right of way (drive-street) on 28<sup>th</sup> Street.

The request has been administratively denied because the new raised planters violate a prohibition of altering the grade in the public right way of a drive-street per Manhattan Beach Municipal Code 7.36.150. Mr. Weiss appealed this decision and therefore this matter has been referred to the PPIC (Parking and Public Improvement Commission) for review and a recommendation for action by the City Council. Your comments and input are invited. The review will be held on:

Thursday, October 27, 2011  
6:30 pm  
City Council Chambers  
1400 Highland Avenue

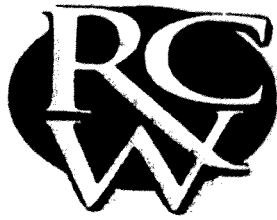
Input regarding the subject Encroachment Permit Appeal may be submitted in advance through the Community Development Department or at the Hearing. Comments made in advance should be sent to:

Eric Haaland, Associate Planner  
Community Development Department  
1400 Highland Avenue  
Manhattan Beach, CA 90266,  
or: [ehaaland@citymb.info](mailto:ehaaland@citymb.info)

If you have any questions, or would like additional information, please contact Eric Haaland at (310) 802-5511 or the email address noted above.

Sincerely,

  
Richard Thompson  
Director of Community Development



THE LAW OFFICES OF ROBERT C. WEISS

August 3, 2011

Via Hand Delivery

City of Manhattan Beach  
Planning Department  
1400 Highland Avenue  
Manhattan Beach, California 90266

Re: 301 28<sup>th</sup> Street Landscaping

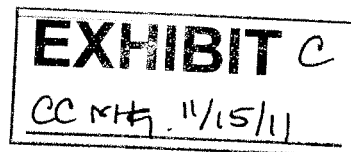
To whom it may concern:

I am the owner of the property at 301 28<sup>th</sup> Street.

It is my understanding that the City is requiring this letter and a \$5,000.00 deposit in order to issue a temporary COO which will allow for the completion of the inspection process and allow me to move into my new house. It is my further understanding that the City contends that three (3) walls which were built by my contractor for the landscaping and to prevent a possible serious erosion problem, fail to comply with Code Section 7.36.150 D 5 which the City contends limits any walls to a height of no more that 12" above the top of the curb. The City further contends that the present walls should be cut down to the required 12" height and that the plants used for the landscaping replanted.

It is my intention to appeal the City's present position and seek whatever other remedies which might be available to prevent the walls from being cut down and the plants replanted.

3770 Highland Avenue  
Suite 203  
Manhattan Beach, CA 90266




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F: 310.545.9853  
E. robertweiss@rcwlaw.com

As I have previously advised the City, during a heavy rain a tremendous amount of water passes down Alma and 28<sup>th</sup> Street and runs over the curb. I first raised this problem with the City over 10 years ago when I lived in the previous house located at 301 28<sup>th</sup> Street. Nothing was done by the city to remedy this problem. At the City's request, I recently put in, at my expense, an entire new portion of the street on Alma behind my house and extending into 28<sup>th</sup> Street. Hopefully, this will correct the flooding which previously existed behind my garage, but it will not solve the erosion problem. The erosion problem is compounded by the fact that I bought and planted drought resistance plants for the landscaping which do not hold the soil like a ground cover such as grass. These plants were purchased before I knew the City was demanding walls of no greater height than 12". Because of the steepness of the grade, the eroded soil could easily flow down the landscaping and into Highland Avenue if the present walls are not maintained.

The \$5,000.00 check which accompanies this letter is being required by the City in case I should chose not to cut down the three (3) walls to the 12" height after my right of appeal or other relief is denied and no further right of appeal is available. I have been advised that the \$5,000.00 will be used by the City to cover the cost of correcting the walls and any grade problem.

Very truly yours,



Robert C. Weiss

301  
310<sup>th</sup> ST.  
LANDSCAPING APPEAL

BACKGROUND	P. 1
THE PRIOR LANDSCAPING	P. 1
THE NEW STREET	P. 2
THE NEW LANDSCAPING	P. 2
THERE IS NO 12" HEIGHT STANDARD	P. 3
THE WALLS WERE BUILT ACCORDING TO THE APPROVED PLANS	P. 4
THE CITY INSPECTION	P. 5
THE CITY DOESN'T REALLY CARE ABOUT THE 12" STANDARD	P. 7
CONCLUSION	P. 8

**LATE ATTACHMENTS  
SUBMITTED AT  
PPIC MEETING ON 10/27/11**

**LANDSCAPING  
PPIC APPEAL BY BOB AND  
PATRICIA WEISS**

**BACKGROUND**

My wife and I purchased the property at 301 28<sup>th</sup> Street in the mid-1990's. Shortly after moving in, we experienced during a rainstorm a significant flooding problem behind the property on Crest and at the corner of Crest and 28<sup>th</sup> Street. There is a very high volume of water during a rainstorm at this location because the water flows south down Crest and collects the water flowing west down 30<sup>th</sup> Street, 29<sup>th</sup> Place, 29<sup>th</sup> Street and 28<sup>th</sup> Place until it eventually joins with the water flowing west down 28<sup>th</sup> Street. A map showing the flow of the water is attached as Exhibit A and a photo taken during a 2009 rainstorm looking north on Crest attached as Exhibit B shows part of the volume of water flowing south on Crest.

Until it was corrected, this flooding problem flooded the garage and part of my house and went over the curb at the northwest corner of Crest and 28<sup>th</sup> Street causing damage to the landscaping. The problem was reported to the City, but nothing was done about it.

**THE PRIOR LANDSCAPING**

To solve the problem regarding the flooding into the garage and house, I installed a drainage system. In order to solve the flooding problem into the landscaped area, I had new landscape plan which included walls to level the grade of the landscaping. This landscaping plan was done by Pacific Coast Landscape and is shown in the October 9, 1997 Landscape Plan attached as Exhibit C. The Landscape Plan included 30" retaining walls as shown in Exhibit C and photos of the landscaping after it was built

attached as Exhibit D. This Landscape Plan was approved by the City in 1997 and remained in place until 2009 when construction of the new house began.

### **THE NEW STREET**

Because of the flooding problems which the City had previously failed to correct, the City wanted certain street work done on Crest behind the new house. Despite an earlier agreement with the City, the City wanted additional work done on Crest and 28<sup>th</sup> Street which was beyond the original agreement. In order to satisfy the City, I had the contractor do this additional work at my expense. The additional work was substantial.

This new street work on Crest will hopefully alleviate the flooding behind my house, but it is not a solution to the problem when the water rushes over the curb at the corner of Crest and 28<sup>th</sup> Street and flows into the landscaping.

### **THE NEW LANDSCAPING**

In order to prevent flooding of the landscaping, I again decided to try to lessen the grade by putting in retaining walls since this had previously solved the problem. I was subsequently told that the walls could not be as high as the prior walls. I was disappointed because I believed that these higher walls were needed to fully solve the flooding problem. However, I was eventually persuaded by the architect and contractor that the walls shown on the plans should be sufficient.

The present landscaping and walls are shown in the photos attached as Exhibit E. As can be seen in the photos, the grade is substantially lower and closer to the street grade than the prior landscaping.

## THERE IS NO 12" HEIGHT STANDARD

As the basis for the City's claim that walls higher than 12 " above the curb are in violation of the Code, the City is relying upon 7.36.150 D 5. I was told by the City that there was no other basis for the 12" height requirement.

Section 7.36.150 D 5 provides:

"Significant alteration of the existing right of way grade is prohibited, unless determined to be necessary to accommodate a required public street improvement."

This Section doesn't say anything about 12" height standard and no one at the City was able to explain to me the reason for such a standard.

"Significant" is not defined by the Code. It is also unclear what it is meant by "existing right of way grade". The existing grade, even after the walls for the previous landscaping were taken down, was substantially higher than the grade of the present landscaping. In fact, in order to build the present walls and landscaping approved by the City, I had to pay to remove soil from the existing right of way grade. If the City is somehow claiming that "existing right away grade" means the street level grade, then there has not been a "significant" alteration of that grade.

The purported 12" requirement is not set forth in the Code nor have I ever been referred to any code section or anything else that requires that walls be limited to 12". This restriction is an arbitrary choice by the City without any reasons for selecting a 12" standard. Indeed, in view of the steep slope of the encroachment area and the flooding problems, a 12" restriction makes no sense.



The City has also chosen to ignore the fact that the walls will help hold the bank. Without the walls the water could flood over the landscaping and pour into Highland Ave.

Furthermore, the City is not consistent in applying a 12" height standard. Other properties, including new construction" include walls higher than 12" above the curb. Within blocks of my house are numerous walls which are higher than 12" as shown by the photographs attached as Exhibit F. The City should adopt a reasonable standard. In view of the steep grade of the encroachment area, walls to hold the banks and landscaping makes sense. Would the City prefer that during the rainstorm that the landscaping be washed out into Highland? This is not desirable from my standpoint, or from the City's standpoint.

#### **THE WALLS WERE BUILT ACCORDING TO THE APPROVED PLANS**

Contrary to the position taken by the City, the landscaping and the walls were built according to the Plans approved by the City on December 15, 2010. These approved plans are attached as Exhibit G. The present landscaping is the same as shown in the Plans except for a lower west wall with a height of 12" above the curb height which was added after planning indicated that additional 12" walls could be added. The other wall heights are consistent with the Plan drawings showing the walls relative to the building structure and the plan elevations. The maximum heights of the walls relative to the top of the curb beginning with the upper east wall are 20", 20 ½ "and 19", respectively. At the time the walls were constructed, there was no curb, but the height of the curb is irrelevant according to the approved plans.

The City, in contending that the walls are too high, claims that the walls should not be more than 12" above the height of the curb. Apparently, the City is relying on the designations on the plans, again beginning with the upper east wall, of "1'-0" MAX", "11 5/8 MAX." and "1'- 0", respectively. These designations, at the very least, are inconsistent with the plan drawings and the elevations and are a meaningless limitation with respect to the curb height. As shown on the plans, these MAX dimensions are not drawn to the curb, but instead are clearly drawn to an unspecified grade level above the curb. See a blow-up of these "MAX" plan designations attached as Exhibit H. If the City intended the walls to have a height of no more than 12" above the curb height, the City should have put this on the plans.

The contractor was correct in building the walls according to the plan drawings and the designated elevation levels. There was no way to build the walls according to the "MAX." designations because this height depends upon an unspecified grade level. The City is attempting to re-write history if it claims that the walls were not built according to the plans because the height of the walls exceed a height of 12" above the height of the curb.

### **THE CITY INSPECTION**

Shortly before we were ready to plant the landscaping and move into the new house, I was told that the City refused to approve the landscaping because the height of the walls were more than 12" above the height of the curb. This was the first time that I was told of any such limitation. I understood, and still believe, that the walls were constructed correctly according to the plans. When I found out that the City was refusing to approve the landscaping, the plants for the landscaping had already been

delivered for planting. Because of the City's refusal to approve the landscaping, the plants were not planted and temporarily stored in a garage.

I met with Eric Haaland of the City to try to solve the problem. No one was able to provide me with an explanation for the reason for the purported 12" height limitation. I tried to explain the flooding problem and that I was particularly worried about the problem because I had chosen drought resistant plants which would not hold the bank as well as grass or other ground cover requiring more water. The City was told that we thought the walls were built according to the approved plans and, by no means, was there any attempt to circumvent what the City had approved.

The City was unimpressed. If I wanted to plant the landscaping and move into our house, the walls had to be cut-down to the 12" height limitation. Finally, in a subsequent meeting with the Mr. Haaland, I was told I could appeal the decision and obtain a temporary C.O.O. or temporary permit which would allow us to plant the plants which had to be moved out of the garage and to move into the new house.

I felt that this was at least a temporary solution to the problem until I could get someone from the City to see why the City's position of cutting down the walls was not reasonable. I paid my \$500 for the appeal and filled out and filed the appeal application. However, while I was in the airport ready to board a plane for a business trip, my contractor called and said the City refused to issue the C.O.O. and that I was to call Laurie Jester in Planning. I called her and she said that I could not get a C.O.O. because the appeal process would take more than 30 days and Building did not want to issue a C.O.O. for more than 30 days. I tried to explain why this was unreasonable, but I was told by Ms. Jester this was the City's position.

When I returned from my business trip a few days later, I was then told that I could obtain a C.O.O. See the attached August 3, 2011 email from Laurie Jester attached as Exhibit I. However, I was told it could only be obtained subject to certain conditions, including a \$5,000 deposit in case I lost the appeal and the City needed to tear the walls down and a letter addressed to the City. Since the plants had to be planted, I immediately complied and obtained the C.O.O. because I had no other choice.

**THE CITY DOESN'T REALLY CARE  
ABOUT THE 12" STANDARD**

As previously indicated, no one from the City was able to explain why there was a need for a 12" standard. More importantly, the City was willing to overlook the 12" maximum height standard provided that I made other changes to the approved landscaping at my expense that the City has now decided it wanted.

In a further effort to try to resolve this issue without proceeding with the appeal. I met with Richard Thompson at the property on September 1, 2011. It was my understanding that Mr. Thomson was the person refusing to approve the landscaping. He was accompanied at the meeting by the City Engineer.

Mr. Thompson decided that the present height of the walls could be maintained provided that, at my expense, I moved the portion of two of the walls parallel to 28<sup>th</sup> Street inward and built a permanent paved walkway. The landscaping plans approved by the City do not require a walkway and the walls are set back from the curb the distance required on the plans. In still a further attempt to resolve this dispute with the City, I told Mr. Thompson that I would consider putting in the walkway if I did not have to

move the walls. Mr. Thompson let me know that this was insufficient and then drove off without any further comment.

### **CONCLUSION**

This is not the way the City should treat a longtime resident of Manhattan Beach. My wife and I have lived here since 1967. The City has never indicated why a 12" standard is required. The only basis for rejecting the landscaping is an ambiguous Code Section and the City's incorrect claim that the landscaping fails to comply with the approved plans. Whether the landscaping is reasonable in view of the flooding problems has never been addressed by the City. The only solution offered by the City has been to tear down the walls to 12" and replant the landscaping or move the walls and provide the City with Mr. Thompson's requested walkway.

I think this Appeal Board can recognize that the City's position is totally unfair and we respectfully request that the Appeal Board reverse the City's denial to approve our present landscaping.

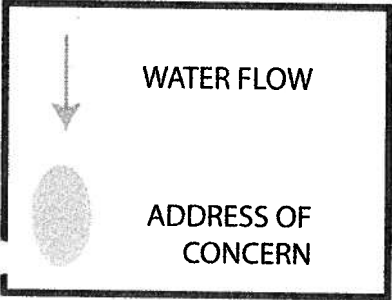
301  
310 28<sup>th</sup> ST.

EXHIBIT INDEX

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# EXHIBIT A - WATER FLOW

## LEGEND



301 28TH STREET



# EXHIBIT B - WATER FLOWING DOWN CREST

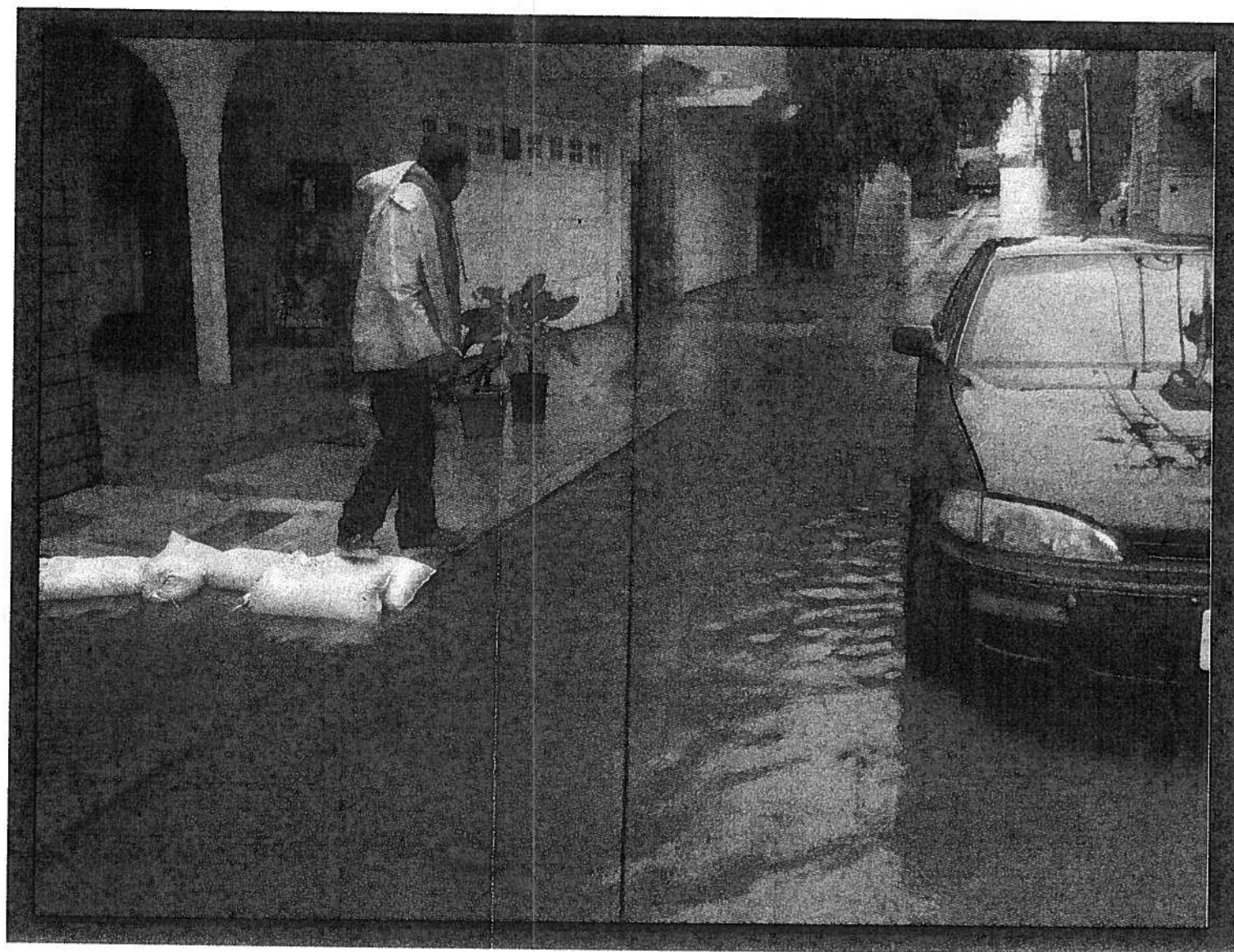






EXHIBIT D.1 - PHOTOS OF PRIOR LANDSCAPING

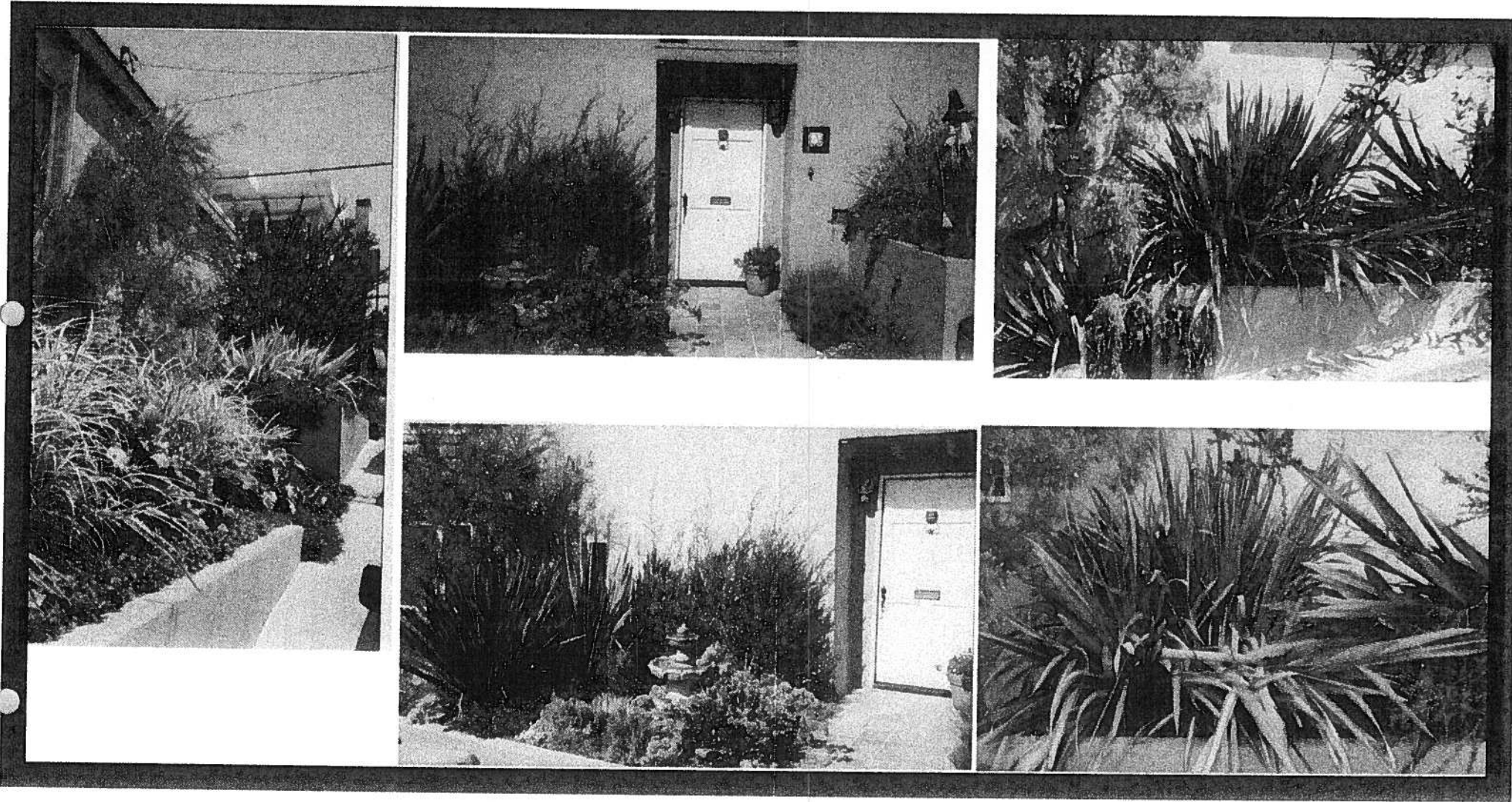
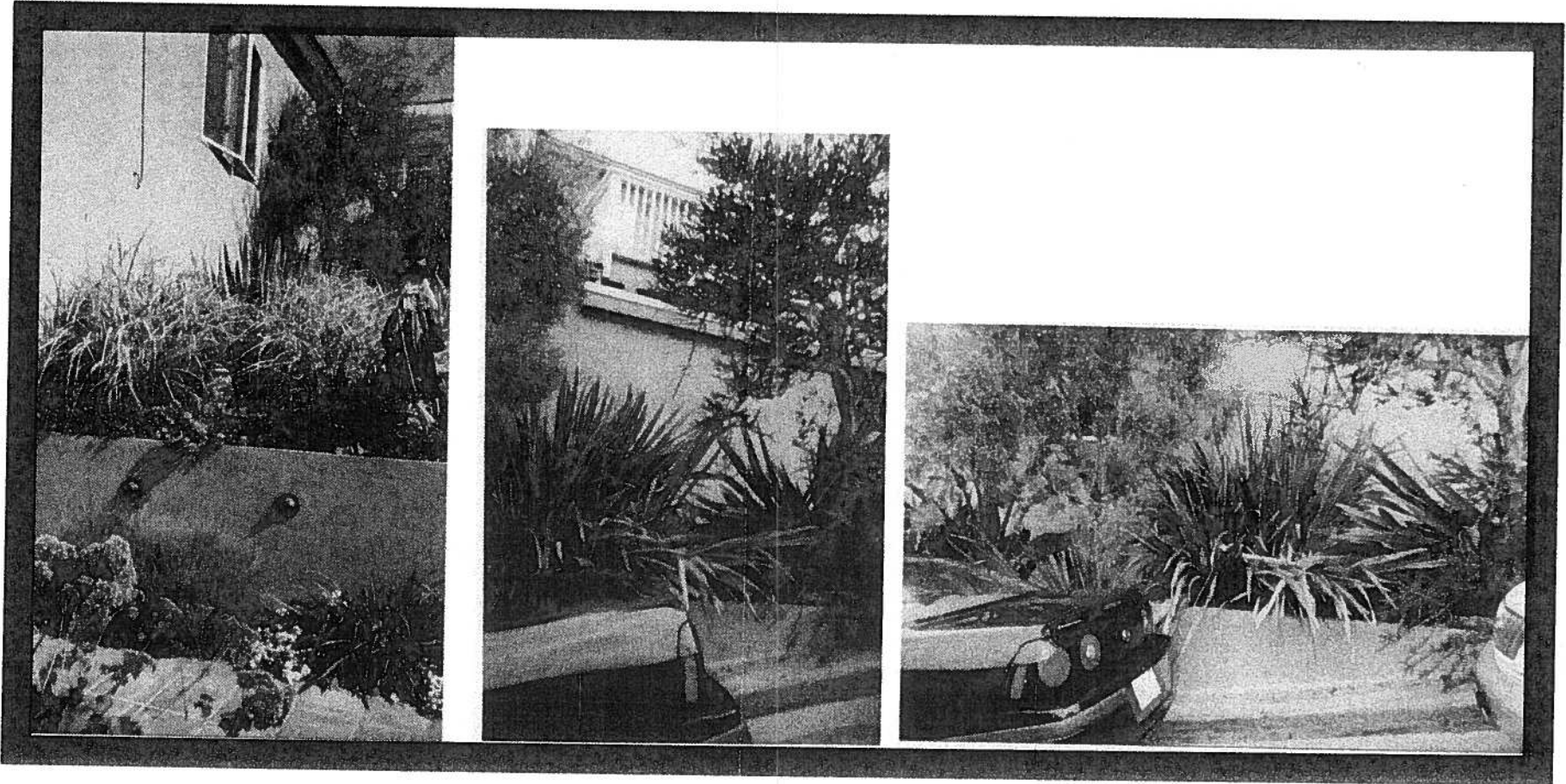
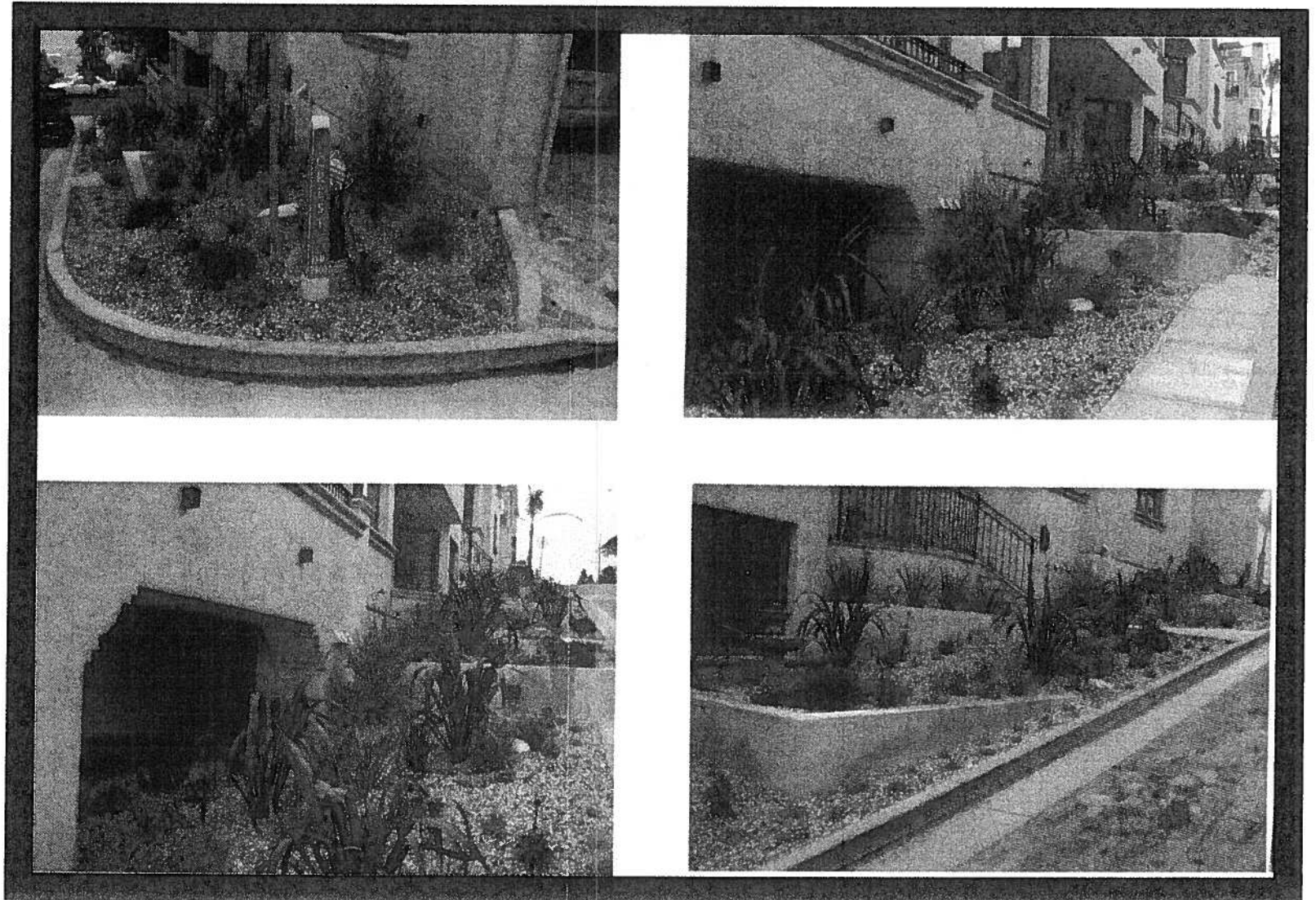


EXHIBIT D.2 - PHOTOS OF PRIOR LANDSCAPING CONTINUED



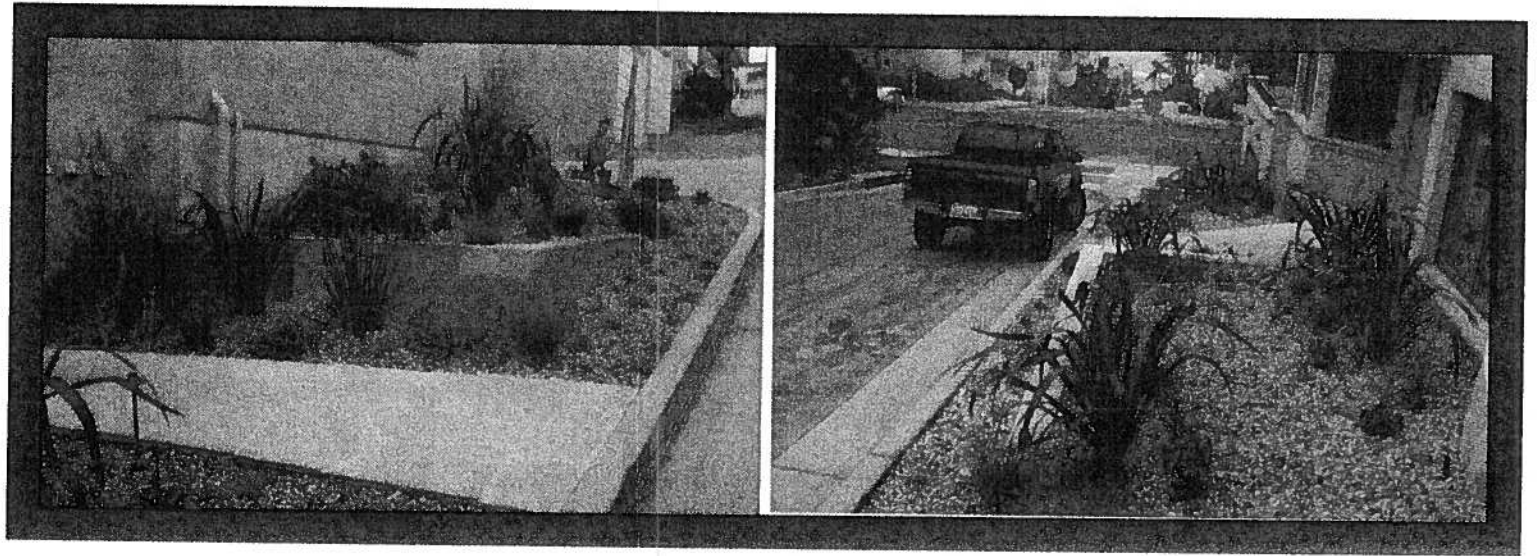
# EXHIBIT E.1 - PHOTOS OF PRESENT LANDSCAPING



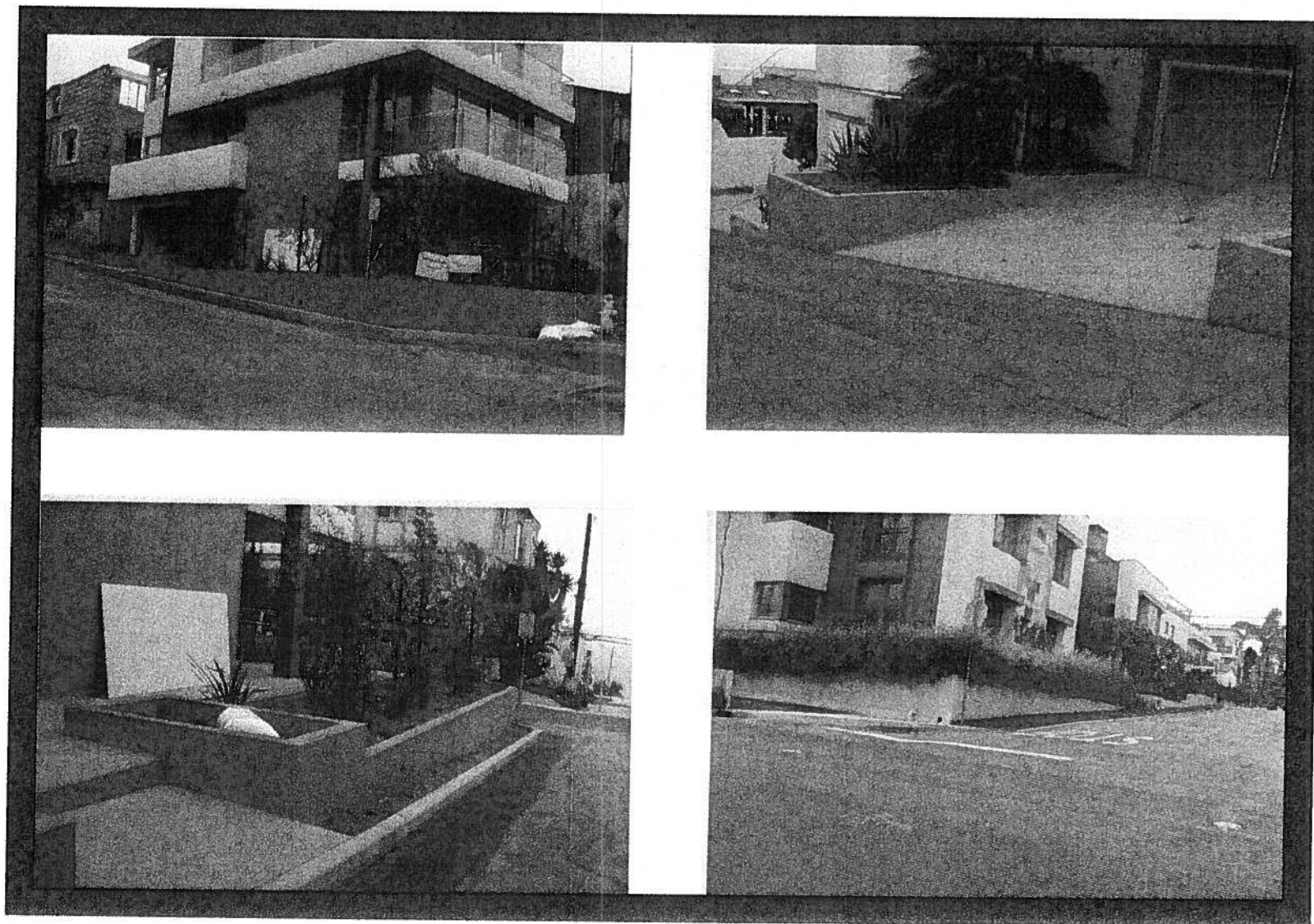
# EXHIBIT E.2 - PHOTOS OF PRESENT LANDSCAPING CONTINUED



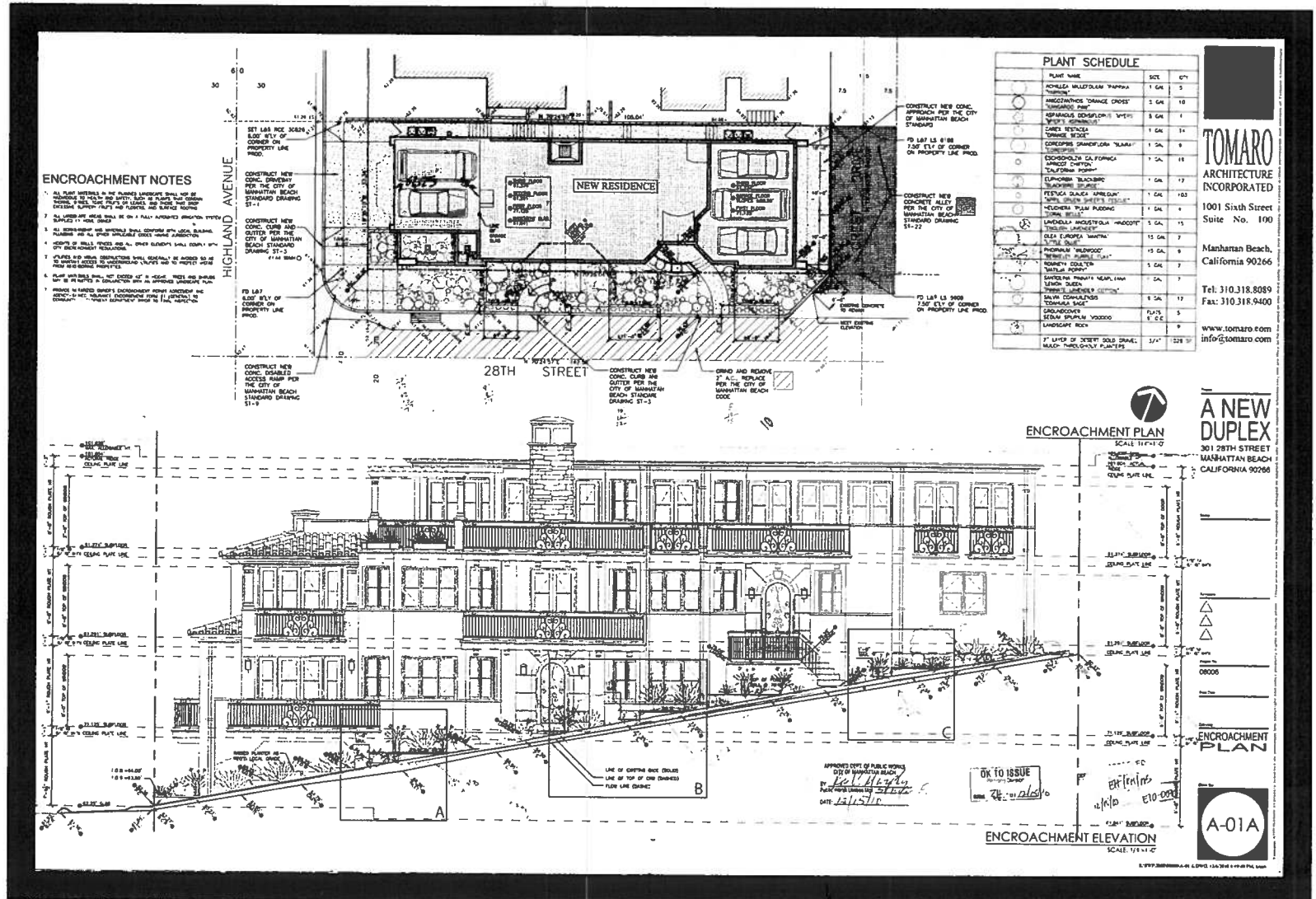
## EXHIBIT E.3 - PHOTOS OF PRESENT LANDSCAPING CONTINUED



# EXHIBIT F - WALLS HIGHER THAN 12"

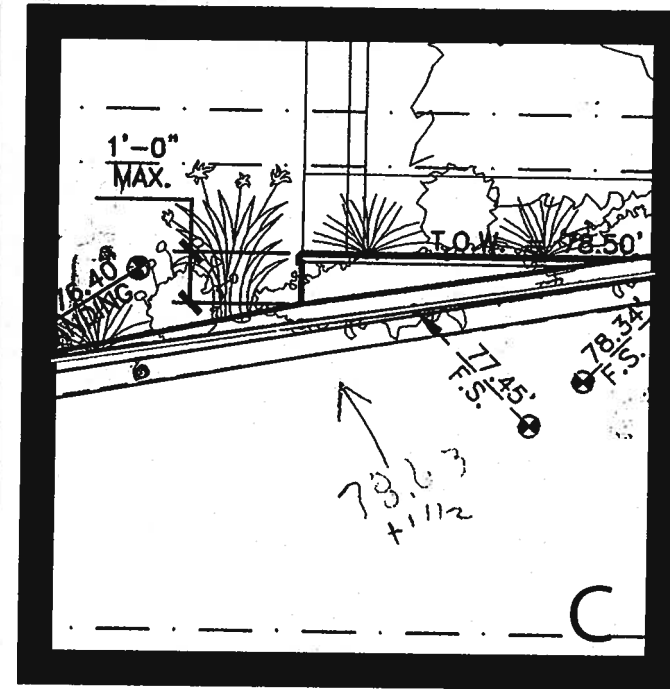
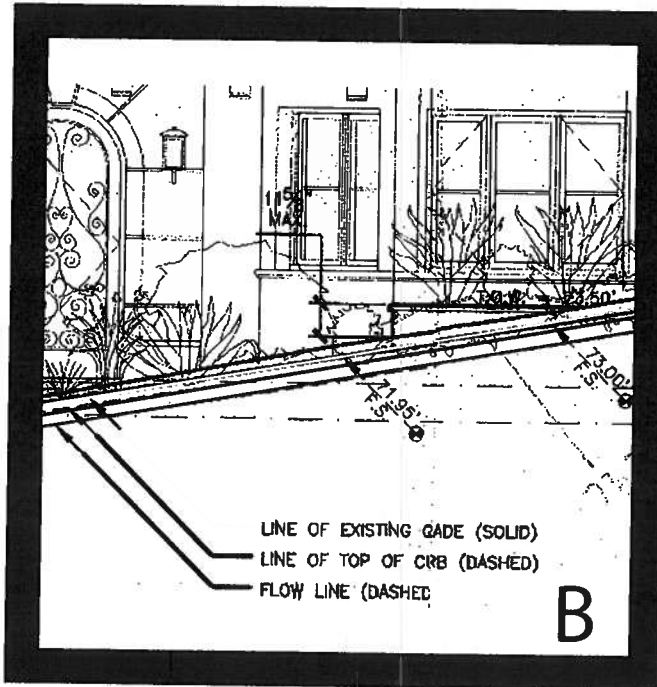
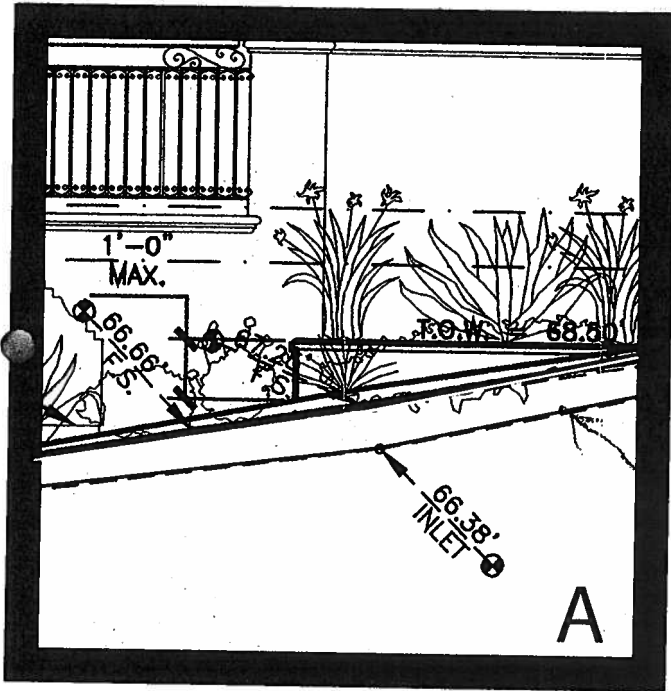


# EXHIBIT G - DECEMBER 15, 2010 APPROVED PLANS





# EXHIBIT H - DECEMBER 15, 2010 APPROVED PLANS CONTINUED



# EXHIBIT I - AUGUST 3, 2011 E-MAILS FROM L. JESTER

Fw: 301 28th- Temporary building final - Yahoo! Mail

Page 1 of 1



Fw: 301 28th- Temporary building final

Friday, August 12, 2011 11:03 AM

From: "Robert Weiss" <robertweiss@rcwlaw.com>  
To: "Pat Weiss" <patjweiss@yahoo.com>

Sent from my Verizon Wireless BlackBerry

From: "Laurie B. Jester" <ljester@citymb.info>  
Date: Wed, 3 Aug 2011 11:51:40 -0700  
To: <robertweiss@rcwlaw.com>  
Cc: Eric Haaland <ehaaland@citymb.info>, Sal Kaddorah <skaddorah@citymb.info>  
Subject: 301 28th- Temporary building final

**7.36.150 D. Vehicular Street Standards:**

5.

Significant alteration of the existing right of way grade is prohibited, unless determined to be necessary to accommodate a required public street improvement.

(§ 7, Ord. 2039, eff. February 18, 2003)

<http://www.citymb.info/index.aspx?page=101> See the Encroachment Booklet under handouts

Mr Weiss-

Thank you for calling this am- Please contact Eric Haaland 310-802-5511, your project planner, who can assist you with the temporary building final and the requirements for the \$5,000 deposit and letter agreement that we discussed this am. The encroachment permit appeal application and fee needs to be submitted at the same time

Thanks

laurie

Laurie B. Jester  
Planning Manager  
P: (310) 802-5510  
E: ljester@citymb.info



Please consider the environment before printing this email.

[http://us.mc1120.mail.yahoo.com/mc/showMessage?fid=Inbox&mid=1\\_5859982\\_AFcWw...](http://us.mc1120.mail.yahoo.com/mc/showMessage?fid=Inbox&mid=1_5859982_AFcWw...) 8/12/2011

Fw: 301 28th- Temporary building final - Yahoo! Mail



Fw: 301 28th- Temporary building final

Friday, August 12, 2011

From: "Robert Weiss" <robertweiss@rcwlaw.com>  
To: "Pat Weiss" <patjweiss@yahoo.com>  
1 File (52KB)



Master A...

Sent from my Verizon Wireless BlackBerry

From: "Laurie B. Jester" <ljester@citymb.info>  
Date: Wed, 3 Aug 2011 12:38:50 -0700  
To: Robert Weiss <robertweiss@rcwlaw.com>; Eric Haaland <ehaaland@citymb.info>  
Subject: RE: 301 28th- Temporary building final

Mr. Weiss-

The application is just your name address and project description that you want to keep walls in the public right of way up to 24" in height- We need this application. Plans, a with a complete description of why you want to keep the walls, photos, more details, come in a couple weeks later.

But we need the actual application form- if it is not notarized that is ok, you can have notarized later-

I know you are going out of town again and your time is tight.

No problem---

I would like to talk to you more about the appeal when you have time when you return

Please follow up with Eric with any other questions.

Thanks!

Laurie B. Jester  
Planning Manager  
P: (310) 802-5510  
E: ljester@citymb.info



Please consider the environment before printing this email.

From: Robert Weiss [mailto:robertweiss@rcwlaw.com]  
Sent: Wednesday, August 03, 2011 12:20 PM  
To: Laurie B. Jester

[http://us.mc1120.mail.yahoo.com/mc/showMessage?fid=Inbox&mid=1\\_5860589\\_AFYW...](http://us.mc1120.mail.yahoo.com/mc/showMessage?fid=Inbox&mid=1_5860589_AFYW...)

Fw: 301 28th- Temporary building final - Yahoo! Mail

Page 2 of 2

Cc: Robertweiss@rcwlaw.com

Subject: Re: 301 28th- Temporary building final

Laurie, can you please send me the appeal application. Would it be okay to give you the \$500 appeal deposit now and then give you the actual application in a few days? We need to move things forward as soon as possible because we need to move from my present house no later than 9/1

--- On Wed, 8/3/11, Laurie B. Jester <ljester@citymb.info> wrote:

From: Laurie B. Jester <ljester@citymb.info>  
Subject: 301 28th- Temporary building final  
To: robertweiss@rcwlaw.com  
Cc: "Eric Haaland" <ehaaland@citymb.info>, "Sal Kaddorah" <skaddorah@citymb.info>  
Date: Wednesday, August 3, 2011, 6:51 PM

**7.36.150 D. Vehicular Street Standards:**

5.

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(§ 7, Ord. 2039, eff. February 18, 2003)

<http://www.citymb.info/index.aspx?page=101> See the Encroachment Booklet under handouts

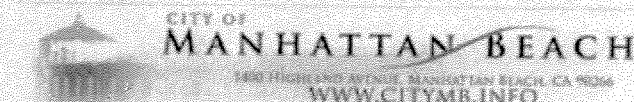
Mr Weiss-

Thank you for calling this am- Please contact Eric Haaland 310-802-5511, your project planner, who can assist you with the temporary building final and the requirements for the \$5,000 deposit and letter agreement that we discussed this am. The encroachment permit appeal application and fee needs to be submitted at the same time

Thanks

laurie

Laurie B. Jester  
Planning Manager  
P: (310) 802-5510  
E: ljester@citymb.info



Please consider the environment before printing this email.

[http://us.mc1120.mail.yahoo.com/mc/showMessage?fid=Inbox&mid=1\\_5860589\\_AFYW...](http://us.mc1120.mail.yahoo.com/mc/showMessage?fid=Inbox&mid=1_5860589_AFYW...) 8/12/2011

# EXHIBIT J - ENCROACHMENT PERMIT

## ENCROACHMENT PERMIT CITY OF MANHATTAN BEACH

ADDRESS: 301 28TH ST MANB

PERMIT NO: E10-0090  
STATUS: ISSUED

APPLICANT: WEISS, ROBERT C/PATRICIA J  
APPLIED:

11/01/2010  
ISSUED: 12/15/2010

OWNER: WEISS, ROBERT C/PATRICIA J

AGREEMENT RECORDED:

DATE TRANSFERRED TO NEW OWNER:


DESCRIPTION: LOW WALLS, CONCRETE WALKWAY AND LOW LANDSCAPING

Permit Fee	:	\$1,410.00
Imaging Sm1	:	\$0.00
Imaging Lrg	:	\$0.00
Other Fee	:	\$0.00
Transfer Fee	:	\$0.00
Appeal Fee	:	\$0.00

Calculated Fees:	:	\$1,410.00
Payments	:	\$1,410.00
Balance Due	:	\$0.00

For FINAL INSPECTION call the  
Planning Department at 310-802-5503 &  
the Public Works Department at 310-802-5306

# EXHIBIT K - ENCROACHMENT PERMIT APPLICATION



**ENCROACHMENT PERMIT APPLICATION**  
Chapter 7.36 MBMC

Manhattan Beach City Hall 1400 Highland Avenue Manhattan Beach, CA 90266  
Telephone (310) 802-5500 FAX (310) 802-5501 TDD (310) 546-3501

---

Applicant/Agent-Name/number Robert Weiss Date 8/3/11

Owners MAILING Address 3770 Highland Ave. Suite 203, M.B. Phone # (310) 545-9854

City: Manhattan Beach State: CA Zip: 90266 E-mail robertweiss@rcwlaw.com

**PROJECT** Address 301 28th St.

Encroachment Located on 28th St. Street, Avenue, etc. (If on more than one street, note both)

Name(s) of LEGAL OWNER(s) (AS SHOWN ON TITLE) Robert Weiss

Proposed Encroachment (Check all that apply and describe)  Deck/Patio  Fence/Wall  
 Walkway/landings  Steps  Landscaping  
 Irrigation (Plumbing permit required)  Lighting/Electrical (Electrical Permit Required)  Other (Describe)

Owner certifies he/she has read the standard Encroachment Permit Standards, shall comply with said Standards, and shall not commence the construction of any private improvements in the public right of way without proper approval by the Community Development Department. This Encroachment Permit shall be valid for six (6) months after issuance. Additionally, a right-of-way permit shall be required for all work in the public right-of-way.

Signature (s) [Signature]

Fee Schedule	<input type="checkbox"/> Permit Application	\$1,495.00	Permit Fee (4502):	\$500.00
	<input type="checkbox"/> Permit Transfer or Minor Revision	\$700.00	Total:	\$500.00
	<input checked="" type="checkbox"/> Permit Appeal to PPIC	\$500.00		

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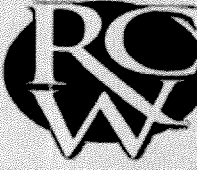
**For Office Use Only:**

Legal Description \_\_\_\_\_  
 Map Book \_\_\_\_\_ Page (s) \_\_\_\_\_ APN \_\_\_\_\_  
 Bldg Permit # \_\_\_\_\_ (if applicable) New House: Yes \_\_\_ No \_\_\_

Comments/Notes: Water Main location: \_\_\_\_\_  
 Sewer Main location: \_\_\_\_\_  
 Public Works OK: Yes \_\_\_ No \_\_\_  
 Agreement Submitted: Yes \_\_\_ No \_\_\_ Insurance Submitted: Yes \_\_\_ No \_\_\_  
 Other: \_\_\_\_\_

Approved / Denied \_\_\_\_\_ Date \_\_\_\_\_  
 Community Development Department

G:\PLANNING DIVISION\Firms-Check\State\Courtesy Handouts\Encroachment Permit Application.doc  
 08-03-2011  
 PAID



**THE LAW OFFICES OF ROBERT C. WEISS**

August 3, 2011

**Via Hand Delivery**

City of Manhattan Beach  
 Planning Department  
 1400 Highland Avenue  
 Manhattan Beach, California 90266

Re: 301 28th Street Landscaping

To whom it may concern:

I am the owner of the property at 301 28th Street.

It is my understanding that the City is requiring this letter and a \$5,000.00 deposit in order to issue a temporary COO which will allow for the completion of the inspection process and allow me to move into my new house. It is my further understanding that the City contends that three (3) walls which were built by my contractor for the landscaping and to prevent a possible serious erosion problem, fail to comply with Code Section 7.36.150 D 5 which the City contends limits any walls to a height of no more than 12" above the top of the curb. The City further contends that the present walls should be cut down to the required 12" height and that the plants used for the landscaping replanted.

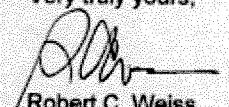
It is my intention to appeal the City's present position and seek whatever other remedies which might be available to prevent the walls from being cut down and the plants replanted.

3770 Highland Avenue  
 Suite 203  
 Manhattan Beach, CA 90266

T: 310.545.9854  
 F: 310.545.9853  
 E: robertweiss@rcwlaw.com

As I have previously advised the City, during a heavy rain a tremendous amount of water passes down Alma and 28th Street and runs over the curb. I first raised this problem with the City over 10 years ago when I lived in the previous house located at 301 28th Street. Nothing was done by the city to remedy this problem. At the City's request, I recently put in, at my expense, an entire new portion of the street on Alma behind my house and extending into 28th Street. Hopefully, this will correct the flooding which previously existed behind my garage, but it will not solve the erosion problem. The erosion problem is compounded by the fact that I bought and planted drought resistance plants for the landscaping which do not hold the soil like a ground cover such as grass. These plants were purchased before I knew the City was demanding walls of no greater height than 12". Because of the steepness of the grade, the eroded soil could easily flow down the landscaping and into Highland Avenue if the present walls are not maintained.

The \$5,000.00 check which accompanies this letter is being required by the City in case I should chose not to cut down the three (3) walls to the 12" height after my right of appeal or other relief is denied and no further right of appeal is available. I have been advised that the \$5,000.00 will be used by the City to cover the cost of correcting the walls and any grade problem.

Very truly yours,  
  
 Robert C. Weiss

## Eric Haaland

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**From:** trthomas@verizon.net  
**Sent:** Monday, October 24, 2011 4:09 PM  
**To:** Eric Haaland  
**Subject:** Encroachment Permit Appeal - 301 28th Street

Mr Haaland -

My wife and I live at 326 28th Street. We also are half-owners of 320 / 320.5 28th Street . Both our properties have a clear look at the new planters installed by the Weiss family on the north side of 28th. Simply put, I think they look great. The view impact, if any, is positive. The tiered planters create a much more interesting look compared to how the planted area would appear without the lifts. Moreover, the tiers will add to the slope stability of the RoW, which can be an issue during heavy rain when cars are parked on the curb with the right front wheel properly turned into the curb. Rushing water jumps the curb in that situation and will wash out whatever happens to be there if the tiers come out. Trust me on that. I've lived here for 37 years.

I hope the PPIC will recommend approval of their permit application, and that the Council will follow such recommendation.

Tim Thomas



*Grit*

City of Manhattan Beach

Community Development

Dear Mr. Thompson

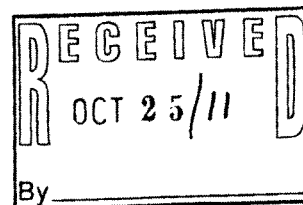
Re: Landscaping at 301 28th Street

I have been a resident of Manhattan Beach since 1968. In 1985 I had the terrible experience of building a four unit apartment building on Rosecrans. The city approved our plans, and then started changing their minds on just about everything approved. Then as now the codes were vague. Please refer to the enclosed Municode page 2

I'm aware that many of the properties close by 301 28th st have walls and or planters higher than the 20" walls on Mr. Reeds property. If height is the problem why don't you state the maximum height for a planter or wall can be? Thank you for your time.

Sincerely, Tim Collup

*2904 Strand*



Monday, October 24, 2011 AOL: TCollup

Usable surfaces (as defined herein). The intent of this standard is to ensure that the elevation of encroaching outdoor living areas located nearest the public walkway be consistent with the public walkway. Usable surfaces are permitted as follows:

- a. Within the front half of the encroachment area (adjacent to the public walkway), limited to a maximum height of twelve inches (12") as measured above or below the adjacent public walkway.
  - b. Within the rear half of the encroachment area (adjacent to private property), limited to a maximum height of either: thirty-six inches (36") as measured above or below the adjacent public walkway, or twelve inches (12") as measured above or below the natural grade, as defined herein.
5. The total combined height of fences, railings, retaining walls (including walkway risers) shall not exceed a height of forty-two inches (42") as measured from lowest adjacent finished grade.
  6. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular alley or street via a non-erosive device pursuant to Public Works Department construction standards except as permitted by the Director of Public Works.
- C. **El Porto Strand Standards:**  
In addition to the encroachments permitted in (B) above, the following encroachments are permitted within The Strand right of way north of Rosecrans Avenue due to unusual slope and underground utility location and to provide an adequate buffer between the Strand walkway and adjoining private properties.
1. Usable surfaces are permitted within the rear half of the encroachment area at a maximum height of seventy-two inches (72") measured from the adjacent public walkway, provided they are accompanied by terraced landscape planters with evenly spaced retaining walls with a maximum height of thirty inches (30") each.
  2. Fences and walls are permitted to be a maximum height of forty-two inches (42") above the adjacent public walkway except that planter walls required in subsection (1) above may have a maximum height of seventy-two inches (72").
  3. Corner properties bordering a parking lot entrance or exit are allowed to have walls and fences on the vehicular street side to a maximum height of six feet (6') above adjacent curb level except that a maximum height of three feet (3') shall be permitted adjacent to driveway/roadway intersections.
  4. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular alley or street via a non-erosive device pursuant to Public Works Department construction standards.
- D. **Vehicular Street Standards:**
1. Street improvements, including (but not necessarily limited to) sidewalks, curbs, gutters, parking pads and paving may be required by the Public Works Department for the purpose of maintaining or improving conditions related to drainage, visibility, access, maneuverability or public parking, and, if required, shall be constructed in compliance with City standards.
  2. Fences and walls are permitted as follows:
    - a. Location. Compliance is required with Public Works Department standards established in MBMC 9.72.015. A minimum set back of two feet (2') is required behind existing or required street improvements.
    - b. Height. Fences and walls may not exceed a maximum height of forty-two inches (42"), measured from the existing public right of way grade at the fence or wall location. Open-design fences or guard rails required by the Building Official to exceed the forty-two inch (42") maximum height are allowed on top of retaining walls if necessary to retain a neighbor's grade at a side property line. Fences and walls located near the intersection of streets or driveways may be subject to lower height requirements to ensure traffic visibility.
  3. Ground cover such as pavement (including brick or other decorative surfaces) and landscaping is permitted on the existing right of way grade. Decks or similar structures are prohibited.
  4. Street Corner Visibility. To ensure visibility at street corners a thirty-six inch (36") maximum height is applicable to all fences, walls or landscape plantings within a distance of fifteen feet (15') from the street corner as per MBMC 3.40.010 (Traffic Sight Obstructions). ~~A height less than thirty-six inches (36") may be applicable due to unusual slope conditions.~~
  5. Significant alteration of the existing right of way grade is prohibited, unless determined to be necessary to accommodate a required public street improvement.
  6. Loose gravel and similar material as determined by the Public Works Department is not permitted.
  7. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular street right of way location via a non-erosive device pursuant to Public Works Department standards subject to review and approval of the City Engineer.

P.S. Handwritten Page 4 By Bob Will not Print

(Pen Ink to light for copy)

Tim Collup

<http://library.municode.com/print.aspx?clientID=16473&HTMRequest=http%3a%2f%2f...> 10/19/2011



Ned J. Momary, D.D.S.  
Dentistry For Children

to whom it may concern,

I am a longtime resident of Manhattan Beach. I recently received a public meeting notice regarding planters on the south side of 28<sup>th</sup> St. After viewing the landscaping I could find no fault with the planters. No one was deprived of their view and the landscaping was done in very good taste.

In talking to Mr. Weiss he said the plans had been approved by the planning department and the walls were constructed according to the plans.

In reviewing the codes for vehicular street standards code 7.36.150 I found section 5 D to be very nebulous as to its meaning. If the planning department wants to have a standard then it should be a specific height limit not an arbitrary designation that no one can interpret.

973 Manhattan Beach Blvd. • Suite E • Manhattan Beach, CA 90266  
545-4549 • Fax: 545-8011





Ned J. Momary, D.D.S.  
Dentistry For Children

Mr. Weir has done an exemplary job of beautifying his street only to be attacked by the city. The planning department must have something better to do with their time.

In doing anyone who has built in this city has certain for the planning department and its inspectors. This is just another example of that. Let some common sense prevail and stop this ridiculous use of city resources.

Sincerely,  
Ned J. Momary

300 28<sup>th</sup> Street  
Manhattan Beach, CA 90266

October 24, 2011

Mr. Eric Haaland  
Associate Planner  
Community Development Department  
1400 Highland  
Manhattan Beach, CA 90266

Dear Mr. Haaland:

I am a long time resident of Manhattan Beach.

I am familiar with the landscaping at 301 28<sup>th</sup> Street. It is my understanding that the city claims that the landscaping is a violation of Section D5 of the Manhattan Beach Municipal Code 7.36.150.

This section prohibits a "significant alteration of the existing right away grade..."

There is no explanation as to what is a "significant alteration", but it is my opinion the landscaping at 301 28<sup>th</sup> Street does not represent a significant alteration of the grade.

I am also aware of many locations nearby 301 28<sup>th</sup> Street where there are walls and/or planters which are much higher than the approximately 20" walls at 301 28<sup>th</sup> Street.

After viewing the landscaping at 301 28<sup>th</sup> Street, it is impossible for me to understand why the city is objecting to his existing landscaping.

  
William McCaverty