

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

TO: Planning Commission

FROM: Richard Thompson, Director of Community Development

BY: Angelica Ochoa, Assistant Planner

DATE: February 13, 2013

SUBJECT: Appeal of a Height Determination for a Coastal Permit (CA 12-25) for a New Single Family Residence at 301/303 25th Street

RECOMMENDATION

Staff recommends that the Planning Commission uphold the Community Development Director's decision to APPROVE the height determination for 301/303 25th Street and DENY the subject appeal.

APPELLANT

Dr. Rosario P. Armato ("appellant")
2501 Crest Drive
Manhattan Beach, CA 90266

BACKGROUND

On October 12, 2012, a Coastal Permit application was submitted to the Community Development Department to demolish an existing duplex and construct a new single family three-story residence with an attached two-car garage located at 301/303 25th Street (Exhibit A). Since this project is located in the Coastal non-appealable area of the City, a Coastal Permit is required. The project is located in Area District III and zoned Residential High Density, RH. The lot is a half lot, 33.34 x 52.50, approximately 1750 square feet in area. The original existing duplex was built in 1966. The surrounding area is a mix of two- and three-story condominium units, duplex and single family residences.

Staff reviewed the Coastal plans and sent a notice of the proposed project on November 28, 2012 to the surrounding neighbors within the required 100 feet of the subject property. A Coastal Permit approving the demolition of the duplex and construction of the new single family residence, including the height determination, was issued on December 19, 2012 (Exhibit B). On December 27, 2012, an appeal was filed by the neighbor at 2501 Crest Drive located directly to the east (rear) of the subject property objecting to the property corners used to determine the maximum height of the proposed building (Exhibit C). According to Section A.96.160 of the City of Manhattan Beach Local Coastal Program, Appeals, the decision of the Community Development Department Director may be appealed to the Planning Commission. The neighbor expressed concerns regarding the maximum height of the proposed new house since it would directly affect their ocean view. The rear portion of the proposed house will be 8-½ feet taller than the existing duplex.

DISCUSSION

Measurement of Height

Per the City of Manhattan Beach Municipal Code, Section 10.60.050 states the following when measuring height:

10.60.050 - Measurement of height.

This section establishes regulations for determining compliance with the maximum building height limits prescribed for each zoning district and area district or as modified by an overlay district. The procedure involves a two (2) step process: first the reference elevation, defined as the average of the elevation at the four (4) corners on the lot, is determined and then a second limit is imposed to ensure that no building exceeds the maximum allowable height above existing grade or finished grade, whichever is lower, by more than twenty percent (20%).

- (a) Height shall be measured from a horizontal plane established by determining the average elevation of existing grade at all four (4) corners of the lot. In situations where the elevation of existing grade at a lot corner is not clearly representative of a site topography (because, for example, of the existence of such structures as retaining walls, property-line walls, or planters) the Community Development Director shall select an elevation that minimizes, to the extent reasonably possible, adverse impacts on adjacent properties and encourages some degree of consistency in the maximum building height limits of adjacent properties. Such interpretations may be appealed pursuant to the provisions of Chapter 10.100.
- (b) No portion of a building shall exceed the maximum allowable height for the zoning district and area district in which the building site is located by more than twenty percent (20%). For purpose of this requirement, height shall be measured from the existing grade or finished ground level grade, whichever is lower.
- (c) To determine compliance with this section, the Community Development Director may require applicants to submit a topographic survey of the project site, and, if necessary, portions of adjacent sites, prepared by a licensed surveyor or licensed civil engineer, depicting existing contours and the contours of finished grade, if different from existing grade, at elevation change intervals no greater than five (5) feet. Survey measurements also shall indicate the elevations of adjacent curbs and street pavements where no curb exists.

Exceptions:

- 1. The Community Development Director may approve measuring height from finished grade elevation within five (5) feet of front or street side property lines for alterations and additions to preexisting structures which have height nonconformities under the procedures for granting minor exceptions established in Section 10.84.120.
- 2. The Community Development Director may administratively approve measuring height from local grade adjacent to an existing or planned building that is adjacent

to a street where substantial grading occurred which lowered the street, which, in turn, affected the elevation of the street property line. The intent of this exception is to accommodate situations which exist, such as, on portions of Ardmore Avenue.

- (A) The procedure and standards established by this section shall not be amended, whether by change in regulation, by addition of exceptions or by other means, so as to increase the elevation above sea level of the highest point of any building on a given lot beyond the elevation permissible under existing law, unless the amendment is first submitted to a City-wide election and is approved by a majority of the voters. The term “existing law” as used in this subsection includes the outcome of the March 1997 referendum on Ordinance 1933 (“Measurement of Height”) and any future amendments to the municipal code.

The four property corner elevations are taken from a survey, which is required for all new residences and most additions. A survey must be stamped, and signed by a State licensed surveyor or civil engineer and dated within 12 months of applying for a building permit application. A survey is used by staff to determine the maximum height of a building based on the property corners and to evaluate other conditions and code requirements, such as existing structures, setbacks, property line walls, and trees.

In some cases, staff may request additional spot elevations on the survey where there are property line walls, planters, or other significant grade variations at or around the property corners. MBMC Section 10.60.050(A) clearly states how the Director may interpret corner elevations for consistency and to minimize impacts on adjacent properties. Measurement of height is not based on view but rather a calculation of actual property corner elevations; the City does not have a view ordinance.

Staff often reviews surveys and plans of adjacent properties to ensure that property corner elevations are consistent and accurate. Staff reviewed the property corner elevations from a 1989 survey for a loft and roof deck addition at 2501 Crest Drive, to the rear of the subject property. The two property corners at the rear property line show a grade difference of 2.9 feet. In order to be consistent and comply with Section 10.60.050 (A), one rear corner elevation was averaged for the subject property of 301/303 25th Street. The north east property corner of 116.9 and a spot elevation 5 feet to the east adjacent to the rear property line of 115.9 were averaged to equal 116.4. (See chart below.) This averaging provides the same grade difference of 2.9 feet along the common rear property line as in the 1989 survey of the appellant.

CORNER	ELEVATION	MAXIMUM HEIGHT
NE	$116.9 + 115.9 / 2 = 116.4$	
NW	101.15	
SW	102.1	
SE	113.5	
	$433.15 / 4 = 108.29 + 30 =$	138.29

Staff also inspected the subject property to analyze the existing conditions and surrounding properties. Since some of the surrounding properties to the north are full size lots and were built under the old Zoning Code which had a different height methodology using multiple elevations, the buildings are substantially higher (about 12 feet) on Crest Drive and lower (about 6 feet) on Highland Avenue than the current code allows. This is a common occurrence for older homes on steep full-size lots in the beach area. If these full-sized lots were to be re-developed per the current code, the height limit would be higher than the subject lot and lower than the appellant's lot. When determining building heights, in accordance with Section 10.60.050(A), the Director evaluates "consistency in the maximum building height limits of adjacent properties". This evaluation is based on the allowed height limits, not the actual existing building heights, which may not reflect current code standards as in this case.

On numerous occasions, staff met with the appellant, the appellant's attorney, and his architect to explain the process and reasons for the maximum height determination for the proposed building. According to the appellant at 2501 Crest Drive, the property corners used for the northeast and southeast elevations to determine the maximum height were not representative of the natural grade of the property and those numbers represented an artificial raised grade.

Proposed Building

The proposed building will be a three-story single family residence, with a deck at the top floor on the front and an attached two-car garage accessed from Highland Avenue. The total living area will be 2,864 square feet, under the allowable 2,985 square feet for the lot. The total open space will be 461 square feet consisting of a deck at the top floor, a balcony at the second floor and the rear yard, which meets the required 15% of the total living area. The maximum height limit for the building is 138.29 feet per MBMC Section 10.60.050. The proposed height for the building is 138.16 feet, which is under the maximum height limit. According to the 2012 survey, the ridge height of the existing building at the highest point is 129.67 feet, which is 8.49 feet lower than the proposed height. On the front facing Highland Avenue, the proposed top eave and the existing eave are at about the same height.

Subject Appeal (Exhibit D)

Appellant Rosario Armato, property owner of 2501 Crest Drive, is appealing the property corner elevations that were used at the rear of the subject property to determine the maximum height of the subject building since he feels it will block their view. Specifically, the appellant states the following:

1. The elevations used at the northeast property corner (average of 116.9 and 115.9) are not the natural grade because of existing retaining walls. They state that the natural grade elevation is 109.2, located in the north side yard near the midpoint of the subject lot and they believe this number should be used to determine the maximum height of the proposed building.
2. The southeast property corner was raised by approximately 6 feet and the natural grade elevation should be 108.16, the elevation near the front door of the existing house by the walkstreet on 25th Street, and not 113.5, the actual property corner.

On February 6, 2013, staff and the City Attorney received a legal brief from the appellant's attorney requesting, among other things, to continue the Planning Commission hearing. The attorney alleges his client has not been provided "due process" because the City has denied him "full access to copy surveys in the City's file." The City has fully complied with applicable law by providing copies of numerous documents to the attorney, and offering to allow the appellant and attorney the opportunity to inspect the City's official copy of the building plans. California Health and Safety Code Section 19851 provides that the public may inspect such plans, but requires approval from the licensed architect or designer and property owner in order for the City to provide copies of such plans. In his letter, the attorney now alleges that the City has denied him "full access" to "surveys." In response to such representation, the attorney for the applicant has provided a copy of the 1966 survey. See attached email dated February 4, 2013 enclosing the survey (Exhibit G). In addition to the email, the appellants February 6, 2013 brief and a packet from the applicant dated February 6, 2013 are included in the packet delivered to the Commission and are available to the public.

Staff has notified the attorney's appellant that the entire file and plans for 301 25th Street are available for review and the appellant, his attorney and his architect have reviewed the entire file several times. In consultation with the City Attorney, we do not believe that the appellant's attorney's letter provides any basis for granting a continuance.

Staff's Determination (Exhibit E)

Staff's determination of maximum height for the subject property is based on the following supporting documentation:

1. 2012 Survey (301 25th Street) - The property corner elevations from the survey were used to calculate the maximum height of the proposed building of 138.29 feet.
2. 1989 Survey (2501 Crest Drive) - To be consistent with the property corners that were used in 1989 for a loft and roof deck addition at 2501 Crest Drive (appellant), staff averaged the north east property corner for the subject building at 301 25th Street to be 116.4 (average of 116.9 and 115. 9). With staff's determination, the rear property corner elevations for the subject property and the appellant's property are consistent.
3. 1913 Street Plan - In order to verify street grading information on Highland Avenue, staff contacted the Engineering Department to obtain historic information. According to the contour map, it shows that the grade of 301 25th Street has steeper contour intervals than the rear appellant's lot at 2501 Crest Drive. Also, the street plan from 1913 shows that the grade, before the walkstreet was built on 25th Street, and was steeper towards Highland Avenue than Crest Drive at the rear. Therefore, the existing grade of the lot is representative of the grade in 1913.
4. 1966 Topographic Plan - According to City records, this plan shows the elevations when the original existing duplex at 301 25th Street was built. Staff extrapolated the property corner elevations shown in 1966 and compared them to the property corner elevations from the current 2012 survey to show if there were any grade differences. The difference in elevations for all property corners and the maximum height in 1966 compared to 2012 is minimal and it shows that the grade has not substantially changed in over 40 years.

5) 1988 Shoring Plans (2504 Highland Avenue) – The grade has not changed from the adjacent full lot directly to the north of the subject lot. The topographic elevations showed a difference of more than 15 feet between the common property corner elevation at Highland Avenue and the midpoint of the full lot, adjacent to the northeast property corner of the subject lot. This is consistent with the 2012 survey of the subject property.

Staff's decision to approve the subject project, Coastal Development Permit CA 12-25 and deny the subject appeal, is based on the grade elevations from the 2012 survey and the 1989 survey used for the loft and roof deck addition at 2501 Crest Drive. Other documentation that supports staff's decision, and are consistent with this decision, includes the 1966 topographic plan, the 1913 street plan, and the 1988 neighbors shoring plan. All of the documents mentioned above show that the grades and elevations have been consistent for the past 100 years.

Public Comments (Exhibit F)

Staff received one comment in support of the proposed project, stating the proposed building will comply with all zoning codes and development standards. Staff also received a petition signed by surrounding neighbors opposing the proposed development.

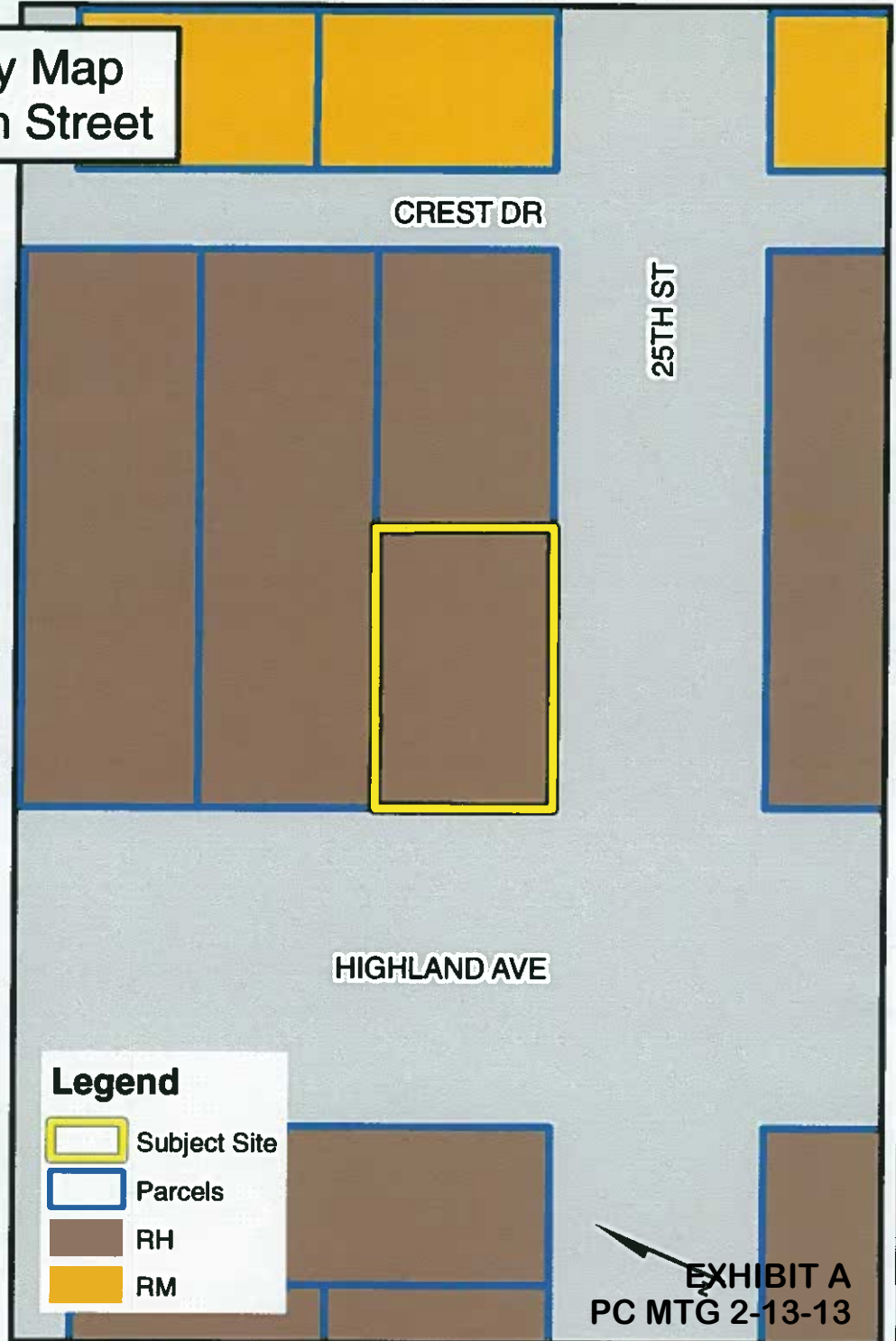
CONCLUSION

The proposed project complies with all of the required Zoning codes, the Local Coastal Program and development standards and therefore, staff recommends that the Planning Commission uphold the Community Development Director's decision to APPROVE the Coastal Permit for 301 25th Street (CA 12-25) and DENY the subject appeal.





Attachments:


- Exhibit A – Vicinity Map
- Exhibit B – Coastal Development Permit CA 12-25
- Exhibit C – Appellant's Application Request for Appeal
- Exhibit D – Appellant's Appeal Documentation, including February 6, 2013 legal brief (Only Attachment 5 not available electronically; available at City Hall and Public Library)
- Exhibit E – Staff's Supporting Documentation
- Exhibit F – Public Comments
- Exhibit G – Property Owner of 301 25th Street Documentation, including February 6, 2013 packet and February 4, 2013 email with 1966 survey attachment
- Exhibit H – Coastal Permit Building Plans (not available electronically, available at City Hall and Public Library)

Vicinity Map 301-25th Street



Legend

-  Subject Site
-  Parcels
-  RH
-  RM

 **EXHIBIT A**
PC MTG 2-13-13

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COASTAL DEVELOPMENT PERMIT

Project No: CA 12-25
Page 1 of 4

On December 19, 2012, the Community Development Department of the City of Manhattan Beach granted Joe Paunovich, (property owner) this permit for the development described below, subject to the attached Standard and Special conditions.

Site: 301-25th Street

Description: Demolition of existing duplex and construction of a new three story single family residence with attached two-car garage.

Issued by: Angelica Ochoa, Assistant Planner

COMMUNITY DEVELOPMENT DEPARTMENT
Richard Thompson, Director

Acknowledgment:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

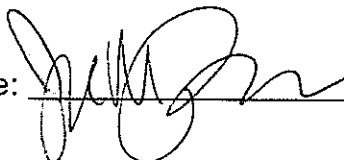
Signature of Permittee:  Date: 12/19/12

EXHIBIT B
PC MTG 2-13-13

Required Findings: (Per Section A.96.150 of the Local Coastal Program)

Written findings are required for all decisions on Coastal Development Permits. Such findings must demonstrate that the project, as described in the application and accompanying material, or as modified by any conditions of approval, conforms with the certified Manhattan Beach Local Coastal Program.

1. The property is located within Area District III (Beach Area) and is zoned Residential High Density, RH.
2. The General Plan and Local Coastal Program/Land Use Plan designation for the property is High Density Residential.
3. The project is consistent with the residential development policies of the Manhattan Beach Local Coastal Program, specifically Policies II. B.1, 2, & 3, as follows:

II.B.1: The proposed structure is consistent with the building scale in the coastal zone neighborhood and complies with the applicable standards of the Local Coastal Program-Implementation Plan;

II.B.2: The proposed structure is consistent with the residential bulk control as established by the development standards of the Local Coastal Program-Implementation Plan;

II.B.3: The proposed structure is consistent with the 30' Coastal Zone residential height limit as required by the Local Coastal Program-Implementation Plan. The northeast corner elevation of the property, used to determine maximum building height, was averaged in order to be consistent with the elevation ratio for the property to the east (rear) at 2501 Crest. A survey dated 12-9-89 for 2501 Crest shows a 2.9 foot grade difference for the two property corners on the common rear property line. Averaging the northwest corner (116.9 PC with 115.9 adjacent grade= 116.4) provides the same 2.9 foot grade difference from the northeast to the southeast corner for 301 25th Street (116.4 – 113.5=2.9 feet).

The corner elevations used for the subject Coastal Permit to determine maximum building height are as follows:

CORNER	ELEVATION	MAXIMUM HEIGHT
NE	$116.9 + 115.9/2=116.4$	
NW	101.15	
SW	102.1	
SE	113.5	
	$433.15/4= 108.29 + 30=$	138.29

The proposed plans are below the maximum allowed building height.

4. The project is consistent with the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976, as follows;

Section 30212 (a) (2): The proposed structure does not impact public access to the shoreline, adequate public access is provided and shall be maintained along Highland Avenue, 25th Street, and Crest Drive.

Section 30221: Present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

5. The proposed use is permitted in the RH zone and is in compliance with the City's General Plan designation of High Density Residential; the project will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City.

Standard Conditions:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Community Development Department.
2. Expiration. The Coastal Development Permit shall expire one-year from the date of approval if the project has not been commenced during that time. The Director of Community Development may grant a reasonable extension of time for due cause. Said time extension shall be requested in writing by the applicant or authorized agent prior to the expiration of the one-year period.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the Director of Community Development.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Director of Community Development.

5. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified persons subject to submittal of the following information to the Director of Community Development:
 - a. A completed application and application fee as established by the City's Fee Resolution;
 - b. An affidavit executed by the assignee attesting to the assignee's agreement to comply with the terms and conditions of the permit;
 - c. Evidence of the assignee's legal interest in the property involved and legal capacity to undertake the development as approved and to satisfy the conditions required in the permit;
 - d. The original permittee's request to assign all rights to undertake the development to the assignee; and,
 - e. A copy of the original permit showing that it has not expired.
7. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

Special Conditions:

1. The project shall be developed in conformance with all applicable development standards of the RH zoning district, and Chapter 2 of the Local Coastal Program - Implementation Program.
2. The project shall be constructed in substantial compliance with the submitted project description and plans as approved by the Community Development Director on December 19, 2012. Any substantial deviation from the approved plans must be reviewed by the Director to determine if an Amendment to this Coastal Permit is required.



MASTER APPLICATION FORM

PAID
CAT/001-01314091
12-27-2012

CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT

Office Use Only
Date Submitted: 12/27/12
Received By: [Signature]
F&G Check Submitted:

Project Address: 2500 Highland Ave / 301-25th St.
+ 303 25th St.

Legal Description

General Plan Designation

Zoning Designation

Area District

For projects requiring a Coastal Development Permit, select one of the following determinations¹:

Project located in Appeal Jurisdiction

Project not located in Appeal Jurisdiction

- Major Development (Public Hearing required)
Minor Development (Public Hearing, if requested)
Public Hearing Required (due to UP, Var., etc.)
No Public Hearing Required

Submitted Application (check all that apply)

- Appeal to PC/PPIC/BBA/CC 500.00
Coastal Development Permit
Environmental Assessment
Minor Exception
Subdivision (Map Deposit) 4300
Subdivision (Tentative Map)
Subdivision (Final)
Subdivision (Lot Line Adjustment)
Use Permit (Residential)
Use Permit (Commercial)
Use Permit Amendment
Variance
Public Notification Fee / \$85
Park/Rec Quimby Fee 4425
Lot Merger/Adjustment/\$15 rec. fee
Other

Fee Summary: Account No. 4225 (calculate fees on reverse)

Pre-Application Conference: Yes No Date: Fee:
Amount Due: \$ (less Pre-Application Fee if submitted within past 3 months)
Receipt Number: Date Paid: Cashier:

Applicant(s)/Appellant(s) Information

Name: DR. ROSARIO P. ARMATO
Mailing Address: 2501 CREST DR, Manhattan Beach CA 90266
Applicant(s)/Appellant(s) Relationship to Property: Neighbor
Contact Person: DR. ROSARIO ARMATO OR Leonard Armato (Son) 310 545-3877

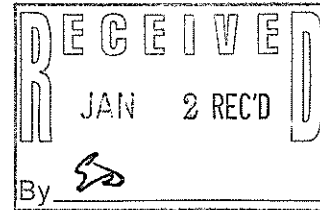
Address: [Signature]
Applicant(s)/Appellant(s) Signature Phone number

Complete Project Description- including any demolition (attach additional pages if necessary)

Appeal to Coastal Development permit for 2500 Highland Ave
Palace to shop's commercial development

1 An Application for a Coastal Development Permit shall be made prior to, or concurrent with, an application for any other permit or approvals required for the project by the City of Manhattan Beach Municipal Code. (Continued on reverse)

January 2, 2013



To Whom It May Concern at the City of Manhattan Beach

We are writing this letter in support of our appeal of Richard Thompson's ruling relating to the building permit requested at 301-25th Street where they propose, on a mere ½ lot, to add over 800 square feet totaling over 2900 square feet and increase the height of the building by over 9 feet. We are also requesting a meeting with the Community Director, Richard Thompson, and his staff, to examine all the plans and documents Mr. Thompson intends to rely upon at the Planning Commission Hearing. In support of his ruling. In addition to this letter, we will provide supplemental information and evidence prior to the planning commission meeting relying upon City Records and private records.

We also reserve the right to supplement this letter with additional allegations and claims regarding Mr. Thompson's ruling.

Below are our basic contentions at this point:

1. Mr. Thompson did not apply Manhattan Beach Municipal Code 10.60.050 correctly which states: "The Community Director shall select an elevation that minimizes, to the extent reasonably possible, adverse impacts on adjacement properties and encourages some degree of consistency in the maximum building height limits of adjacent properties"

The city officials have for years assured us that no one would be permitted on this ½ lot to erect a structure significantly higher than the other buildings on the block and then Mr. Thompson 's ruling reversed their position.

Mr. Thompson bases his findings on a 1989 survey at our home, 2501 Crest. Mr. Thompson took the 2501 survey and applied the 2 westerly (North & South) corners (shared property line) to the 301-25th Street survey for determining the maximum building height, claiming this would assure "consistency". This approach would, in fact, ensure "inconsistency" because 301-25th Street is the "1/2 lot" property on the block and would be towering above the other properties.

This is not consistent with the intent of Manhattan Beach Municipal Code 10.60.050. It was designed to prevent situations like this where a single ½ lot property on a block would be given an unfair height advantage over the other properties and roof lines on that block, thus adversely impacting the views of numerous properties on the block.

Richard Thompson should have gone "to the next level down" in taking his measurement, as he indicated he would, when determining whether the building would have "adverse impact" on other properties nearby. Not only is our property adversely affected by his proposed construction but all

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other properties on the block are impacted as well. All the other properties are Highland to Crest structures with constant roof lines. This proposed structure is the only ½ lot on the block would stick up above the other roof lines conspicuously.

2. Mr. Thompson ignored that the natural grade of 301-25th Street had been altered to create and artificially high grade for 301-25th Street

Richard Thompson findings do not address our contention that the natural grade had been altered thereby artificially raising the back portion of 301-25th Street.

By using our 1989 survey as the basis for his ruling, he ignores that the high point marks for 301-25th Street at our joint property line were artificially raised. This is also relevant to his improper interpretation of Code section 10.60.050 above.

3. Mr. Thompson's granting of the building permit would irreparably harm us by destroying certain property rights we have earned through our over 40 years of using the set-back area between the properties

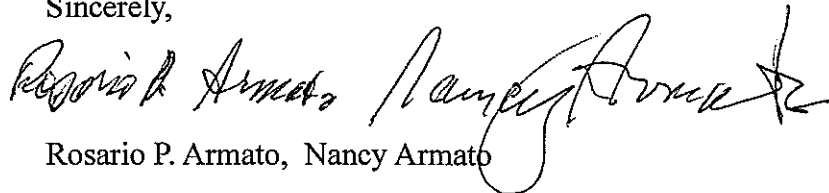
Our home was built in 1930 on the property line. 301-25th Street was built in 1966 with a 10 foot setback which was required at that time. Such set-back should be maintained.

We have been using the set-back area regularly and systematically for over 40 years and have acquired certain "equitable" property rights as a result which would be destroyed by Richard Thompson ruling.

We will be irreparably harmed if Mr. Thompson's ruling stands in that we will be deprived of the access we have enjoyed for over 40 years, including but not limited to irrigation, light and safety, as well as numerous other uses and benefits of the property.

We will be contacting the City to arrange a meeting with Richard Thompson and his staff to understand everything they intend to rely upon to support this ruling. This letter should not constitute a waiver of any of our rights and all such rights are expressly reserved.

Sincerely,



Rosario P. Armato, Nancy Armato

(Page 2 of 2)

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11/19/12

for 11/20

10:00 AM meeting

Inequitable Building Code of Manhattan Beach

My wife and I worked many years to provide a comfortable home for our family. And this has been our home since 1972. It is a beautiful and pleasant space providing office facilities for my wife and me.

We eventually decided to remodel and invested a significant sum of money to provide us with beautiful unobstructed view of the Santa Monica Bay including Palos Verdes and Catalina (on a clear day) to the south and Santa Monica and Malibu to the north. It is always exhilarating to step to the window and revel in the view we worked so hard to realize.

Now in our mature years what we worked so hard to realize is threatened by someone who has purchased the property immediately to the west of us and plans to build a three story house within five feet of our westerly wall and so high to completely obstruct the view we worked so hard to realize. Moreover such a structure would diminish the value of our property by at least one million dollars. Who is to compensate us for the loss of value to our property? The city? The state? The builder? Or are we to absorb this loss of property value as part of the vicissitudes of living in Manhattan Beach? I'm at a loss to understand how this devastating injury to us could be permitted by an antiquated building code.

It might be instructive examine the building ordinances of Rancho Palos Verdes which reads as follows:

This ordinance:

1. Protects, enhances and perpetuates views available to property owners... These views provide unique and irreplaceable assets to the City and its neighboring communities and provide for this and future generations examples of the unique physical surroundings which are characteristic of the City.

This ordinance could apply equally to the City of Manhattan Beach. We should not concede a superior vision of the welfare of its citizens to Rancho Palos Verdes. The psychological and financial impact to us would be devastating if the planned structure in front of us were to be permitted.

Therefore I propose that the Building Department of Manhattan Beach, California adopt an ordinance that prohibits the construction of any building that will obstruct the view, totally or partially, of an existing domicile. This ordinance will apply to any plans for present or future construction, including those already approved by the building, so long as construction has not already begun. Coincidentally, the city ordered me to cut down my Italian Cypress because it obstructed the view of the ocean of a neighbor to the east of me.

Dr. R. P. Armato

2501 Crest Dr. Manhattan Beach, CA

Laurie B. Jester

From: Richard Thompson
Sent: Tuesday, December 18, 2012 4:25 PM
To: 'Leonard Armato'
Cc: nancyarmato@aol.com; Sam Armato; 'armatojames@msn.com'
Subject: RE: 2501 Crest and 301 25th Street/2500 Highland

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Lenard,

As we discussed I will follow the codes including the provision you highlighted below to ensure consistency and compliance. I have reviewed the plans and visited the property yesterday and today to make sure I haven't missed anything. Please be assured that our decision will be based upon the survey and all code requirements. If you are not satisfied with my decision you may appeal it to the Planning Commission within 15 days.

I hope you are enjoying the holidays.

Richard Thompson
Director of Community Development

P: (310) 802-5502

E: rthompson@citymb.info



CITY OF
MANHATTAN BEACH
1400 HIGHLAND AVENUE, MANHATTAN BEACH, CA 90260
WWW.CITYMB.INFO
PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL

From: Leonard Armato [<mailto:la@mpe.com>]
Sent: Monday, December 17, 2012 8:36 PM
To: Richard Thompson
Cc: nancyarmato@aol.com; Sam Armato; 'armatojames@msn.com'
Subject: 2500 Crest

Richard,

Thanks for meeting with me last week to discuss the proposed construction of 2500 Highland avenue. My parents, Sam and Nancy Armato, who live at 2501 Crest are objecting to the proposed construction because it will adversely impact adjacent properties (view blockage; significantly higher roof line). Their ocean view would be completely eliminated by the proposed 9 ½ foot raising of the roof line and my sister's property (next door) would also be adversely impacted as well. This would also dramatically change the character of the block as this proposed construction would stand far taller than the rest of the properties that all have consistent roof lines.

As we discussed, the local code states:

"The Community Development Director shall select an elevation that minimizes, to the extent reasonably possible, adverse impacts on adjacent properties and encourage some degree of consistency in the maximum building height limits of adjacent properties."

In this instance, the survey that has been submitted should be rejected and instead a survey should be taken from the next level down—which is approximately 6 feet lower than the built up area that the current owner used for the survey submitted. This would maintain relative consistency of the building heights of adjacent properties.

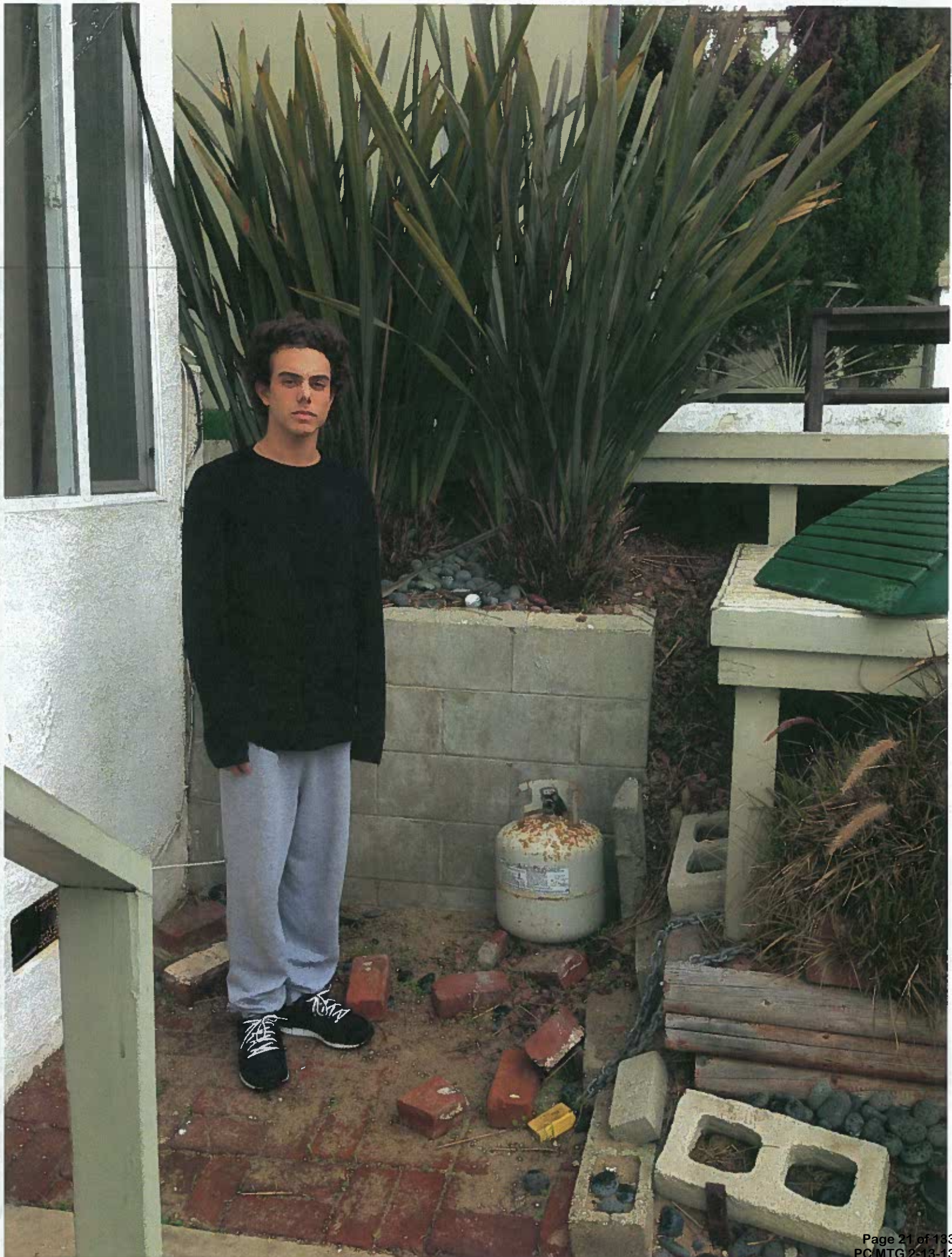
Moreover, the “survey” submitted by the home owner does not reflect the “natural grade” of the property. The attached pictures show clearly that retaining walls and dirt fill were used on either side of the subject property to alter and increase the natural grade by approximately six feet,.

We appreciate your consideration in carefully reviewing this matter and selecting an elevation for the survey that minimizes the adverse impact on my parent’s home and other adjacent properties. I look forward to hearing from you re your findings.

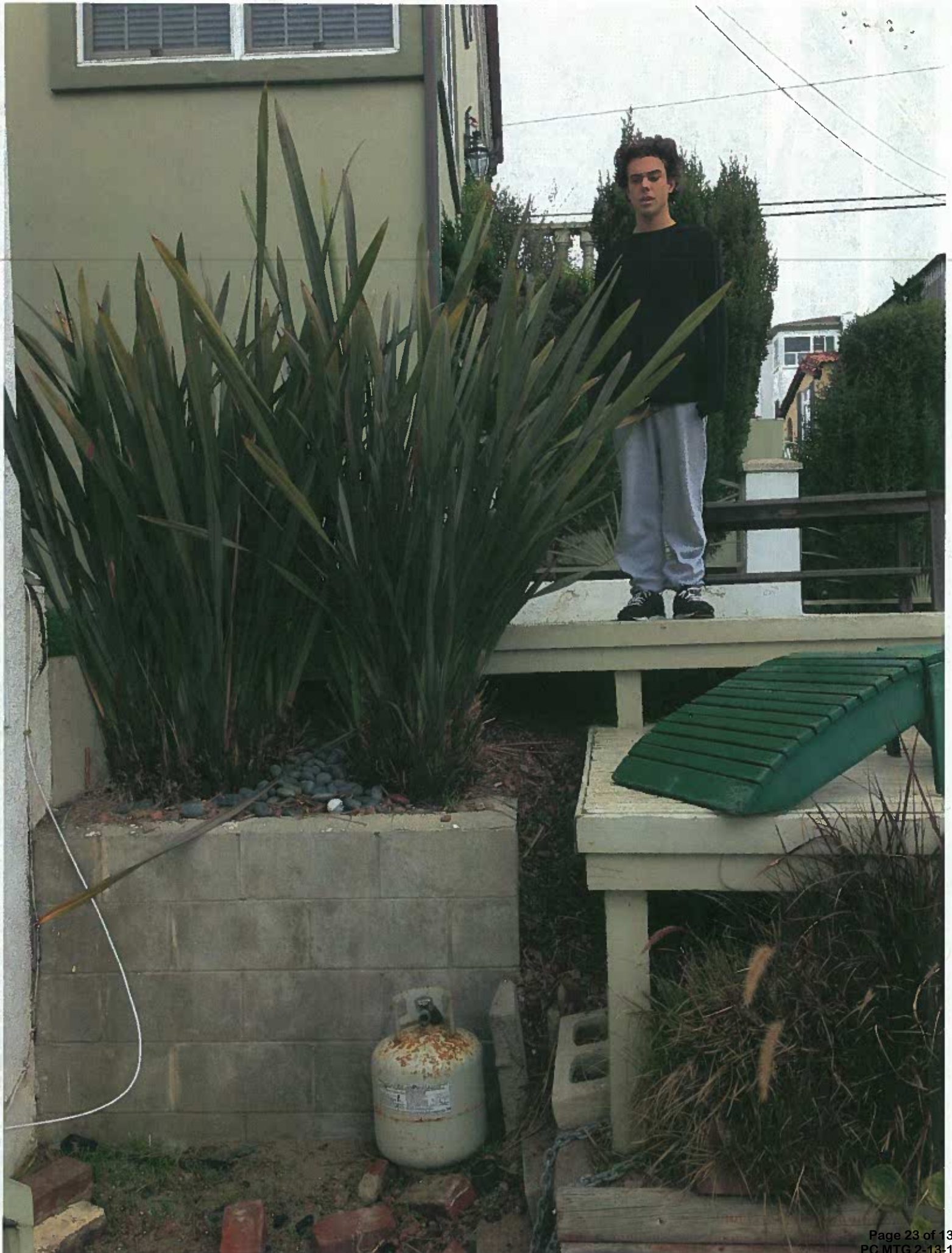
Sincerely,

Leonard

Leonard Armato
President & CEO
Management Plus Enterprises
la@mpe.com
310.545.1000



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ANGELO & DI MONDA, LLP

ATTORNEYS AT LAW

CHRISTOPHER E. ANGELO
JOSEPH DI MONDA, A.I.A.

1721 NORTH SEPULVEDA BOULEVARD
MANHATTAN BEACH, CALIFORNIA 90266

TELEPHONE: (310) 939-0099
FACSIMILE: (310) 939-0023

January 23, 2013

VIA FACSIMILE & U.S. MAIL

Mr. Quinn Barrow City Attorney City of Manhattan Beach 1400 Highland Ave. Manhattan Beach, CA 90266	Mr. Richard Thompson Community Development Director City of Manhattan Beach 1400 Highland Ave. Manhattan Beach, CA 90266
---	--

Re: REQUEST FOR CONTINUANCE OF PLANNING COMMISSION HEARING
REQUEST FOR CITY STAFF TO OBTAIN DOCUMENTS PER HEALTH &
SAFETY CODE § 19851

Gentlemen:

As you know, Mr. & Mrs Armato have appealed the Community Development Department's approval of the Development at 2500 Highland Ave. to the Planning Commission. The hearing has been scheduled for February 13, 2013. We have been unsuccessfully attempting to obtain documents from the City records which we require for our appeal. Today, January 23, 2013, City staff gave me a copy of Health & Safety Code § 19851 which the City relies on to deny my request for copies of drawings in the City's files. Putting aside the issues I raised in my previous letter related to copyright law, Health & Safety Code § 19851 raises other issues.

First, the law states:

"Any building department of a city or county, which is requested to duplicate the official copy of the plans maintained by the building department, shall request written permission to do so from the certified, licensed, or registered professional, or his or her successor, if any, who signed the original documents and from (1) the original or current owner of the building . . ." Health & Saf. Code, § 19851(b).

My clients requested the plan file for 2500 Highland Avenue on or about January 13, 2013. To date, the City has not fulfilled its mandatory obligation pursuant to Health & Saf. Code, § 19851(b) to contact the owner, the architects or engineers of record.

By this letter we are requesting that the City proceed pursuant to Health & Saf. Code, § 19851(b).

January 23, 2013
Mr. Quinn Barrow
Mr. Richard Thompson

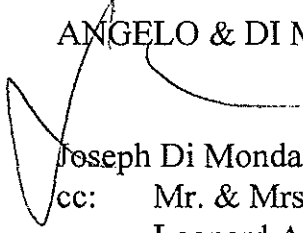
Additionally, Health & Saf. Code, § 19851(f)(1) provides that the owner or licensed professional shall have 30 days to respond to the City's request to permit my clients to copy their plans. The 30 days may be extended for an additional 30 days. Hence, there is at minimum a 30 to 60 day response time. Here, the City has set a Planning Commission hearing within that timeframe which means that my clients' appeal is to be heard prior to the owner or licensed professional's time to respond to the request.

That means my client has to perfect their appeal without the benefit of the City's records. Hence, I am requesting that the City postpone the Planning Commission appeal of this matter until such time as the City fulfills its mandatory obligations under the law and requests written permission from the owner and licensed professional to release copies of the plans for 2500 Highland Ave. to us.

I am also requesting that you give this letter your utmost consideration and notify of your decision as soon as possible.

Sincerely,

ANGELO & DI MONDA, LLP

 Joseph Di Monda

cc: Mr. & Mrs. Armato
Leonard Armato
Amy Howorth
David Lesser
Richard Montgomery
Wayne Powell
Nicholas Tell

ANGELO & DI MONDA, LLP

ATTORNEYS AT LAW

1721 NORTH SEPULVEDA BOULEVARD
MANHATTAN BEACH, CALIFORNIA 90266

CHRISTOPHER E. ANGELO
JOSEPH DI MONDA, A.I.A.

TELEPHONE: (310) 939-0099
FACSIMILE: (310) 939-0023

ARMATO APPEAL

San & Nancy Armato appeal from the Community Development Department's decision permitting development of 2500 Highland Ave., to a height of approximately 9 feet 5 inches above any of the adjacent properties on the block.

I. THE COMMUNITY DEVELOPMENT DEPARTMENT HAS REFUSED TO FOLLOW THE LAW AND OBTAIN PERMISSION FROM THE PROPERTY OWNER AND THE LICENSED PROFESSIONAL SO THAT THE ARMATOS MAY OBTAIN COPIES OF DRAWINGS IN THE CITY FILES

The Armatos requested that the Community Development Department ("CDD") provide them with copies of all drawings and surveys in the City of Manhattan Beach's ("the City") public record on file with the CDD. Declaration of Sam Armato; Declaration of Joseph Di Monda. See Exhibit 1.

The CDD refused to provide the Armatos with any copies of drawings contained in the City's files. It claimed that Health & Safety Code § 19851 prevents the CDD from giving the Armatos any drawings without the written permission from both the property owner and the licensed professional who created the drawings. The CDD also have placed the burden of obtaining permission from the property owner and the licensed professional on the Armatos.

However, Health & Safety Code § 19851 creates a mandatory duty on the part of the City or the CDD to obtain permission from the property owner and/or the licensed professional so that

the Armatos may obtain copies of the plans in the City's files.

“Any building department of a city or county, which is requested to duplicate the official copy of the plans maintained by the building department, **shall** request written permission to do so from the certified, licensed, or registered professional, or his or her successor, if any, who signed the original documents and from (1) the original or current owner of the building or (2), if the building is part of a common interest development, from the board of directors or other governing body of the association established to manage the common interest development.”
Health & Saf. Code, § 19851 (emphasis added).

The statutory language is **mandatory**. The City “**shall** request written permission to do so from the certified, licensed, or registered professional” so that the Armatos may pursue their appeal. The City and the CDD have refused to request permission from the property owner and licensed professional. Hence, the City and the CDD is in violation of the law and this hearing must be postponed until such time as the City and the CDD fulfill its mandatory statutory obligations under the law.

There are drawings in the City's files which prove that the CDD used incorrect elevations to calculate the height of the building at 2500 Highland Ave. The Armatos are entitled to copies of these drawings. Further, the City has used copies of these same drawings while denying the Armatos the same rights and privileges.

Moreover, the Armatos claim that Health & Safety Code § 19851, as interpreted by the City and the CDD, violates their First Amendment right to petition their government by denying to the Armatos the very evidence in the City's files which is evidence that the City's calculations are flawed.

On February 5, 2013, at approximately 3:30 p.m., two days before the Armatos had to file this Appeal, the property owner agreed to release one document which has been attached hereto as Exhibit 4.

II. THE APPLICANT HAS REFUSED TO PERMIT THE ARMATOS TO COPY EVIDENCE IN THE CITY FILES WHICH SUPPORT'S THE ARMATO'S CLAIM THAT THE GRADE AT 2500 HIGHLAND AVENUE WAS RAISED

The Armatos requested that the owner ("the Applicant") of 2500 Highland Avenue give his permission to permit the Armatos to copy the relevant drawings and surveys in the City's files and he refused the request. Declarations of Joseph Di Monda, Nancy Armato and Sam Armato. See Also Exhibit 2.

III. THE EVIDENCE THAT THE ARMATOS WERE ABLE TO OBTAIN SHOWS THAT THE CITY'S CALCULATIONS ARE FLAWED AND THAT THE PROPERTY AT 2500 HIGHLAND WAS ARTIFICIALLY RAISED

The Armatos were able to reproduce from memory two drawings in the City's files, which when compared to the drawings submitted for approval of the proposed development at 25000 Highland Ave., ("2500 Highland") clearly indicate that at one time, approximately in 1966, the grade at 2500 Highland had been changed. This is without prejudice to other documents in the City's records which the Armatos were denied, which would show that the grade at 2500 Highland was altered at other times in the past.

Compare Exhibit 3, a 1966 drawing contained in the City's files, which clearly indicates that a retaining wall was constructed on 2500 Highland at the rear of the property and that the rear yard of 2500 Highland was filled to raise its grade. See Also Exhibit 4 which is a 1966 survey which clearly shows that no such retaining wall existed on the northerly side of 2500 Highland and that the rear yard is sloped and not level as it appears today.

Compare Exhibit 4 with the drawings submitted by the Applicant. Specifically, compare Exhibit 4, which does not indicate a retaining wall with Applicant's drawing titled "Boundary/Topography Survey" which indicates a retaining wall located on the northeast side yard of 2500 Highland. The Applicant's drawing indicates an elevation referred to as 114.04TW, meaning "Top of Wall." It also indicates an elevation of 109.30' at the bottom of the wall. This is the wall which was added in approximately 1966 when the rear yard was artificially raised with fill.

This retaining wall is clearly show in Exhibit 5 which is a survey of the adjacent property prepared on or about December 2011 and shows the retaining wall at 2500 Highland.

The fact that the grade at the easterly edge of 2500 Highland was sloped is consistent with the 1989 drawings, Exhibits 6 and 7, which indicate that the westerly edge of 2501 Crest Drive, the common property line with 2500 Highland, is sloped and not flat.

The retaining wall which is not indicated on the 1966 survey, Exhibit 4, is clearly shown on the photographs, Exhibits 8 and 9. Moreover, Exhibit 9 shows that additional retaining walls

have been placed on the northerly sideyard of 2500 Highland, indicating that the grade has been raised all along the northerly property line.

This is consistent with the fact that another retaining wall may be seen in Exhibit 10 which is retaining the filled sideyard at the westerly edge of the property. One may see that it has been paved with brick and a drain pipe extends into the filled area.

Exhibit 11 is a photograph looking from the filled area of the northeast corner of 2500 highland looking down into the sideyard.

Exhibits 12 and 13 also indicate that the lot filling and subsequent grade raising is not limited to the northerly sideyard but has also occurred on the southeast portion of the property. Exhibits 11 and 12 indicate that another concrete block retaining wall has been constructed for which no permits exist in the City files. This is more evidence of unpermitted grade changes occurring at 2500 Highland.

Additionally, Exhibit 16, is a photograph of the rear yard at 2500 Highland which shows that the rear yard is filled with bricks, tiles and concrete blocks directly under the top soil. None of these materials aer naturally present in the sand dune which makes up this area. This is all fill.

For these reasons, the City calculations and findings are flawed and staff should be directed to re-examine the historical grade changes which occurred at 2500 Highland and this development should not be approved as is.

IV. EVEN IF THE CITY'S HEIGHT CALCULATIONS ARE CORRECT THE CITY'S DECISION VIOLATES MUNICIPAL CODE § 10.60.050

“Height shall be measured from a horizontal plane established by determining the average elevation of existing grade at all four (4) corners of the lot. In situations where the elevation of

existing grade at a lot corner is not clearly representative of a site' topography (because, for example, of the existence of such structures as retaining walls, property-line walls, or planters) the Community Development Director shall select an elevation that minimizes, to the extent reasonably possible, adverse impacts on adjacent properties and encourages some degree of consistency in the maximum building height limits of adjacent properties.” City of Manhattan Beach Municipal Code § 10.60.050A

A. The Grade Used By the CDD Is Not Clearly Representative of The Site's Topography.

The City based its height calculation on the average of the four corner's of 2500 Highland. Because of the retaining walls located on the north and south side of the property and the 1966 evidence which indicates that the rear yard was filled, the City should have used an elevation from the bottom of the north and south retaining walls. This would result in the calculated elevation being reduced at least four to six feet. This would result in 25600 Highland being lowered based on the average of the lot elevations.

Further, the City's own maps which it used to determine the slope of 2500 Highland are unreliable and inaccurate. The City even claims that the evidence it relied upon “may or may not be accurate, current, or otherwise reliable.” Exhibit 14. Yet, the City relies on them to justify its decision.

Hence, since the City disavows the maps which it uses to justify its decision, the Planning Commission should find that the entire permitting process was flawed and send this matter back to staff for review.

B. The Grade Used by The CDD Will Have an Adverse Impact on Adjacent Properties.

The adjacent properties will be subjected to reduced light and air. While this may not be an issue in the City's municipal code, it results because of the unpermitted grade raising which has historically occurred at 2500 Highland.

For this reason, the artificially staff should be directed to recalculate the height of 2500 Highland using a reduced elevation point for both the northwest and southwest lot corners.

C. The Grade Used by The CDD Will Create Inconsistencies With Adjacent Properties.

One of the stated purposes in the City's Municipal Code is to "select an elevation that minimizes, to the extent reasonably possible, adverse impacts on adjacent properties and encourages some degree of consistency in the maximum building height limits of adjacent properties." City of Manhattan Beach Municipal Code § 10.60.050A

The use of an artificially raised elevation on the northwest, northeast and southeast property corners to calculate the maximum height of 2500 Highland results in major inconsistencies along the entire block. See Exhibit 15, photo's of the entire block with the height

addition at 2500 Highland superimposed. Even if the Planning commission agrees with staffs' height calculations, they should be rejected because of the inconsistencies they result in.

The inconsistencies result because 2500 Highland and 2501 Crest drive are the only half lots on the entire block. Because they are half lots, an anomaly exists wherein the corner elevations are based upon mid-lot heights. None of the other lots on the block may use mid-block elevations to calculate their height. Hence, the steeper slope angle on the first half of the lots do not create an increased height on the full lots.

Staff has justified its findings based upon the slope of 2500 Highland as shown on Exhibit 14. Although the Armatos maintain that this map is unreliable, since the City relied on it, the Armatos may use it as evidence. This map shows that the slope along the entire block on Highland Avenue is steeper on the front portion of the lots. While the rest of the block may not benefit from that anomaly, the half-lot at 2500 Highland does benefit. This results in a added height to 2500 Highland which none of the other lots have. As shown on Exhibits 15 This results in inconsistent roof lines which disrupt the roof lines along the entire block.

If the City truly wants to achieve consistencies, it should not allow a half-lot to take advantage of a grading anomaly which does not exist on the remainder of the block. To do otherwise would be to ignore a stated goal of the Municipal Code.

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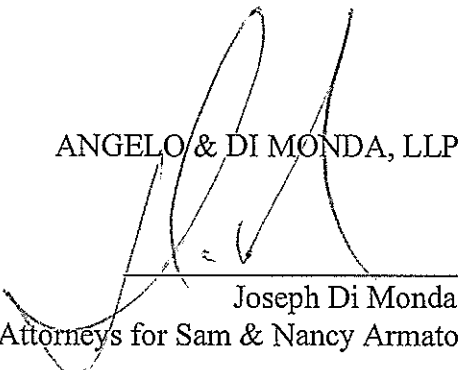
V. CONCLUSION

Even though the City and the property owner have denied the Appellant their due process rights to perfect their appeal by denying them full access to copy surveys in the City's file, the Appellants have produced sufficient evidence that the grade at 2500 Highland was raised in at least 1966 on the northeast side and that the unpermitted retaining walls on the southeast side indicate that the grade was artificially raised there as well. The photographs also indicate an unpermitted retaining wall on the northwest corner of the property. This is consistent with the lot having been raised along the entire north side.

For all of the above reasons, including the detriment to the surrounding properties and the resultant inconsistencies between this property's roof lines and those on the entire block, this matter should be sent back to staff with an order, ordering staff to conduct a full historical examination of the unpermitted and permitted grade changes at 2500 Highland.

February 6, 2013

ANGELO & DI MONDA, LLP



Joseph Di Monda
Attorneys for Sam & Nancy Armato

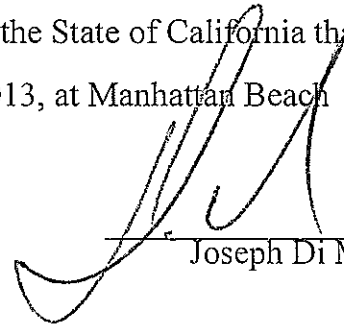
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side of 2500 highland, at the easterly property line.

11. Exhibit 4 attached to this Appeal is a true and correct copy of a 1966 survey contained in the City files which indicates that the retaining wall on shown on Exhibit 3 did not exist. It also shows that the rear yard at 2500 Highland was sloped and not flat. Hence, it is clear that the rar yard was filled and the grade artificially raised.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 5, 2013, at Manhattan Beach California.



Joseph Di Monda

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Subj: RE: 2500 Highland/301 25th Street
Date: 2/1/2013 3:06:24 P.M. Pacific Standard Time
From: aochoa@citymb.info
To: JDAIA@aol.com
Mr. Di Monda,

Staff received a copy of the letter dated January 30, 2013 that was sent to you by the property owner at 301 25th Street, Joseph M. Paunovich in response to your request for copies of documents and drawings. Mr. Paunovich denied your request to obtain copies of all drawings related to his property. For this reason, the City cannot release any of these documents.

Angelica

Angelica Ochoa
Assistant Planner
P: (310) 802-5517
E: aochoa@citymb.info



Please consider the environment before printing this e-mail

From: JDAIA@aol.com [mailto:JDAIA@aol.com]
Sent: Friday, February 01, 2013 12:43 PM
To: Angelica Ochoa; jdaia@aol.com
Subject: Re: 2500 Highland/301 25th Street

Ms. Ochoa:

My point is that it is the City that has to contact the Owner and licensed professional. Do yo agree with that or not? You keep telling me that I have to send out the letters to the Owner and licensed architect. Whose responsibility is it to obtain permission? Is it the applicants or the City? Do you understand my question?

Joseph Di Monda

In a message dated 1/28/2013 1:26:09 P.M. Pacific Standard Time, aochoa@citymb.info writes:

Mr. Di Monda,

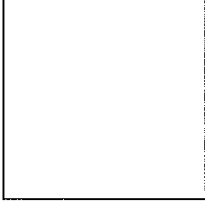
Please see the City Attorney's email response below dated January 16, 2013, and e-mailed to you on the same day. Additionally, we can not process your request for duplication of plans as you have not completed the applicant's portion of the Authorization to Duplicate Plans (Property Owner) form in accordance with H&S Section 19851(c) and (d). The property owner has due process rights and therefore, the Planning Commission meeting will be held as scheduled on February 13, 2013.

Thank you.

Angelica Ochoa
Assistant Planner

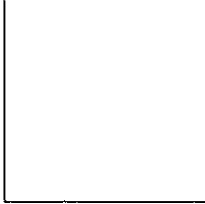
EXHIBIT 1

P: (310) 802-5517
E: aocchoa@citymb.info



Angelica Ochoa
Assistant Planner

P: (310) 802-5517
E: aocchoa@citymb.info



From: JDAIA@aol.com [<mailto:JDAIA@aol.com>]
Sent: Wednesday, January 23, 2013 4:23 PM
To: Angelica Ochoa; jdaia@aol.com
Subject: Re: FW: 2500 Highland / 301 25th street

Mr. Barrow. Thanks for your reply. I faxed you a letter concerning this matter prior to receiving this e-mail from you. I would direct your attention to Section (b) which creates a mandatory duty on the part of the City to contact the owner and licensed professional once a request has been made for copies of purported protected documents. We have requested such documents about two weeks ago. Apparently City staff is attempting to place this mandatory obligation on my client.

Because of my need to obtain these documents, and the City's obligation under H&S Section 19851(b) to obtain permission, or denial if the case be, I am requesting that the Planning Commission hearing be postponed until we resolve this and until such time as the City fulfills its obligations under the law. Simply put, I need these documents and the legal question is whether the First Amendment trumps H&S section 19851. I think it does. I also think federal law pre-empts any state law related to copyright.

Thank you for your prompt attention.

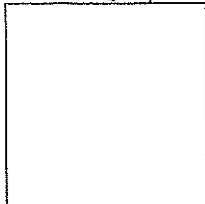
Joseph Di Monda

In a message dated 1/23/2013 12:50:32 P.M. Pacific Standard Time, aocchoa@citymb.info writes:

Here is the email that the City Attorney sent you last week.

Angelica Ochoa
Assistant Planner

P: (310) 802-5517
E: aocchoa@citymb.info



From: Quinn M. Barrow [mailto:QBarrow@rwqlaw.com]
Sent: Wednesday, January 16, 2013 3:27 PM
To: 'JDAIA@aol.com'
Cc: Richard Thompson; Quinn Barrow
Subject: FW: 2500 Highland / 301 25th street

Mr. DiMonda: I received your letter yesterday. You may review the files, including architectural plans, and staff is available to assist you with that review. However, to obtain copies of building plans, you have to comply with California Health and Safety Code Section 19851:

(a) The official copy of the plans maintained by the building department of the city or county provided for under Section 19850 shall be open for inspection only on the premises of the building department as a public record. The copy may not be duplicated in whole or in part except (1) with the written permission, which permission shall not be unreasonably withheld as specified in subdivision (f), of the certified, licensed or registered professional or his or her successor, if any, who signed the original documents and the written permission of the original or current owner of the building, or, if the building is part of a common interest development, with the written permission of the board of directors or governing body of the association established to manage the common interest development, or (2) by order of a proper court or upon the request of any state agency.

(b) Any building department of a city or county, which is requested to duplicate the official copy of the plans maintained by the building department, shall request written permission to do so from the certified, licensed, or registered professional, or his or her successor, if any, who signed the original documents and from (1) the original or current owner of the building or (2), if the building is part of a common interest development, from the board of directors or other governing body of the association established to manage the common interest development.

(c) The building department shall also furnish the form of an affidavit to be completed and signed by the person requesting to duplicate the official copy of the plans, which contains provisions stating all of the following:

(1) That the copy of the plans shall only be used for the maintenance, operation, and use of the building.

(2) That drawings are instruments of professional service and are incomplete without the interpretation of the certified, licensed, or registered professional of record.

(3) That subdivision (a) of Section 5536.25 of the Business and Professions Code states that a licensed architect who signs plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent changes to, or use of, those plans, specifications, reports, or documents where the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed architect who originally signed the plans, specifications,

reports, or documents, provided that the architectural service rendered by the architect who signed the plans, specifications, reports, or documents was not also a proximate cause of the damage.

(d) The request by the building department to a licensed, registered, or certified professional may be made by the building department sending a registered or certified letter to the licensed, registered, or certified professional requesting his or her permission to duplicate the official copy of the plans and sending with the registered or certified letter, a copy of the affidavit furnished by the building department which has been completed and signed by the person requesting to duplicate the official copy of the plans. The registered or certified letters shall be sent by the building department to the most recent address of the licensed, registered, or certified professional available from the California State Board of Architectural Examiners.

(e) The governing body of the city or county may establish a fee to be paid by any person who requests the building department of the city or county to duplicate the official copy of any plans pursuant to this section, in an amount which it determines is reasonably necessary to cover the costs of the building department pursuant to this section.

(f) The certified, licensed, or registered professional's refusal to permit the duplication of the plans is unreasonable if, upon request from the building department, the professional does either of the following:

(1) Fails to respond to the local building department within 30 days of receipt by the professional of the request. However, if the building department determines that professional is unavailable to respond within 30 days of receipt of the request due to serious illness, travel, or other extenuating circumstances, the time period shall be extended by the building department to allow the professional adequate time to respond, as determined to be appropriate to the individual circumstance, but not to exceed 60 days.

(2) Refuses to give his or her permission for the duplication of the plans after receiving the signed affidavit and registered or certified letter specified in subdivisions (c) and (d).

Please contact Richard Thompson to arrange an inspection.

Quinn Barrow
City Attorney
City of Manhattan Beach

From: Richard Thompson [<mailto:rthompson@citymb.info>]

Sent: Monday, January 14, 2013 4:25 PM

To: 'JDAIA@aol.com'

Cc: la@mpe.com; nancyarmato@aol.com

Subject: RE: 2500 Highland / 301 25th street

Saturday, February 02, 2013 AOL: JDAIA

Mr. Di Monda,

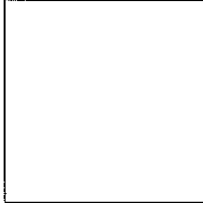
I have forwarded your comments to our City Attorney to advise me on the question you raised below. I am assuming you are now taking the lead on this appeal and my staff should communicate directly with you. This should help our communication with your clients.

The hearing for the appeal has been scheduled for Planning Commission consideration on February 13, 2013.

Richard Thompson
Director of Community Development

P: (310) 802-5502

E: rthompson@citymb.info



From: JDAIA@aol.com [<mailto:JDAIA@aol.com>]
Sent: Monday, January 14, 2013 9:32 AM
To: Richard Thompson
Cc: la@mpe.com; jdaia@aol.com; nancyarmato@aol.com
Subject: 2500 Highland / 301 25th street

Mr. Thompson

I am representing Mr. & Mrs. Armato in their appeal of the City's decision to permit a development at 2500 Highland Ave. We would like to obtain the complete Building/Planning file from the City for 2500 Highland Ave. City staff is claiming that certain documents, such as surveys and new plans require permission from the architect/engineer due to copyright issues.

In other words, the City is using the copyright laws to deny my clients information contained in the public record which they need for their appeal. The City's position contradicts the law. "Any individual may reproduce a copyrighted work for a "fair use"; the copyright owner does not possess the exclusive right to such a use." Sony Corp. of America v. Universal City Studios, Inc. (1984) 464 U.S. 417 [104 S.Ct. 774, 776, 78 L.Ed.2d 574].

Further, "the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include--

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made

upon consideration of all the above factors." 17 U.S.C.A. § 107.

The issue in determining whether a copy right is being infringed turns on the purpose behind the copying of the protected work. If the purpose is the same as the works' intended use, the the work is protected. However, here, the purpose is not the same. The purpose is so that amy clients may exercise their constitutional right to petition their government for redress of grievances. The purpose is so that my clients have every document in the public record which they need to assure that they have a complete administrative record before the Planning Commission and the City Council if needed. Petitioning the government is a "fair use."

Please inform me if the City will continue to make every document available to my clients. Please also inform me if the City will refuse to provide my clients with copies of everything in the public record. Please also give a copy of this letter to the City Attorney. if the City continues to refuse to provide my clients with copies of copyrighted material which they need for their appeal, then I am requesting that the City Attorney provide me with the authority it relies on to support the City's refusal.

I am also requesting an appointment with either you or your staff so that we may discuss the City's position and review documents which the City staff relied on in reaching its decision that the development at 2500 Highland complies with the City's height limitation. When are you or your staff available to meet?

Sincerely,
ANGELO & DI MONDA, LLP

JOSEPH DI MONDA
310-939-0099

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient of this communication, or an employee or agent responsible for delivering this communication to the intended recipient, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

quinn emanuel trial lawyers | los angeles

865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543 | TEL: (213) 443-3000 FAX: (213) 443-3100

January 30, 2013

VIA REGISTERED U.S. MAIL

Joseph Di Monda, Esq.
Angelo & Di Monda, LLP
1721 N. Sepulveda Blvd.
Manhattan Beach, CA 90266

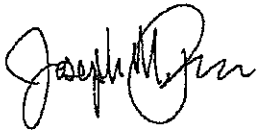
Re: 2500 Highland Ave. (aka 301/303 25th Street), Manhattan Beach, CA 90266

Dear Mr. Di Monda:

This letter is in response to your letter to me dated January 24, 2013 (post-marked January 25; delivered January 28) requesting copies of all documents and drawings in the file the City keeps in the Building Department relating to my property.

I do not consent to the City releasing copies of any documents or drawings. As you know, Mr. & Mrs. Armato, and any other member of the public, are free to review the file for my property at the City of Manhattan Beach Building Department.

Respectfully submitted,



Joseph M. Paunovich

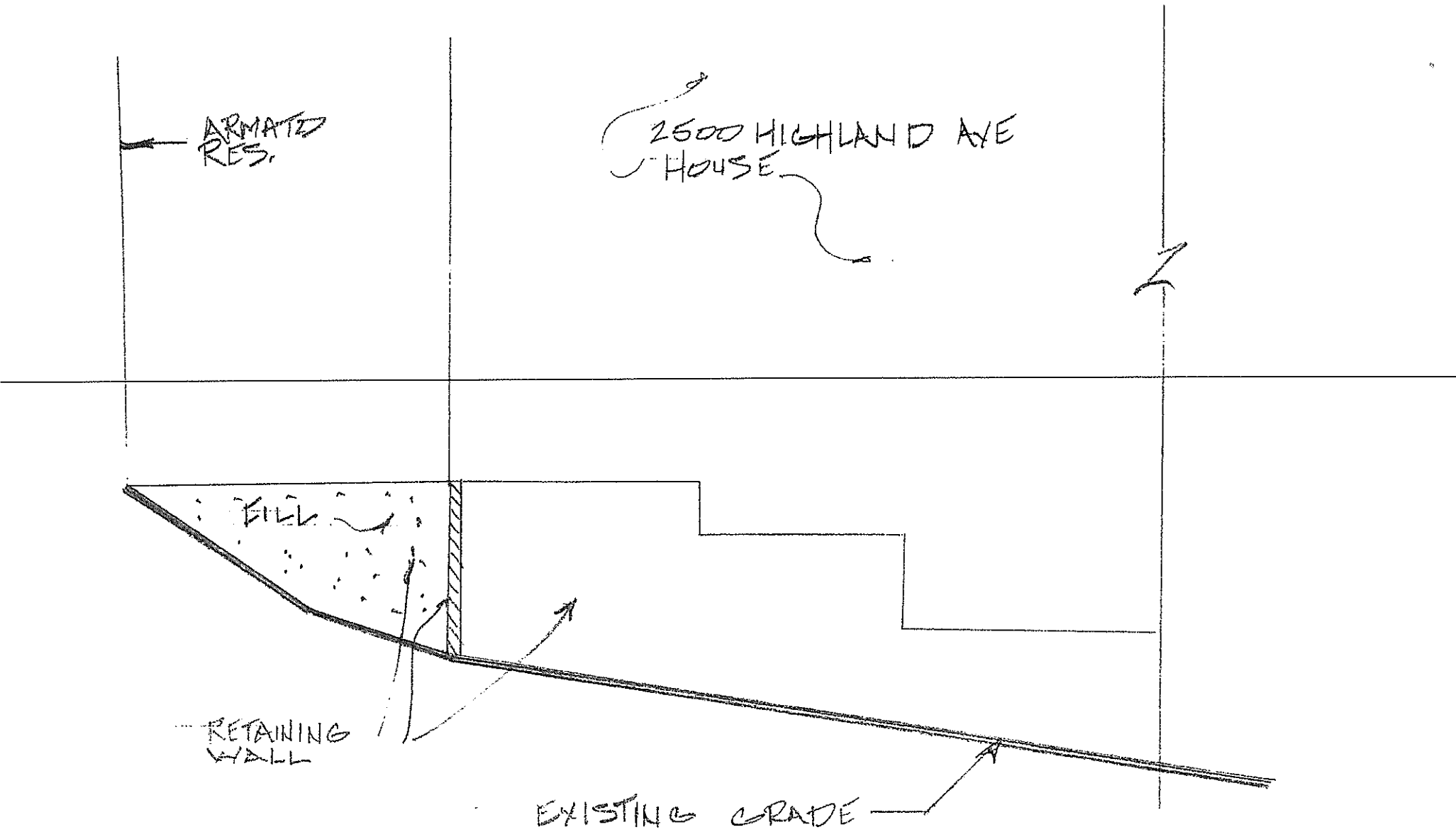
cc: Richard Thompson, Director of Community Development (*via email*)
Angelica Ochoa, Assistant Planner (*via email*)

quinn emanuel urquhart & sullivan, llp

NEW YORK | 51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL (212) 849-7000 FAX (212) 849-7100
SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111-4788 | TEL (415) 875-6600 FAX (415) 875-6700
SILICON VALLEY | 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2139 | TEL (650) 801-5000 FAX (650) 801-5100
CHICAGO | 500 W. Madison Street, Suite 2450, Chicago, Illinois 60661-2510 | TEL (312) 705-7400 FAX (312) 705-7401
WASHINGTON, DC | 1299 Pennsylvania Avenue NW, Suite 825, Washington, District of Columbia 20004-2400 | TEL (202) 538-8000 FAX (202) 538-8100
LONDON | 16 Old Bailey, London EC4M 7EG, United Kingdom | TEL +44 20 7653 2000 FAX +44 20 7653 2100
TOKYO | NBF Hibiya Building, 25F, 1-1-7, Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan | TEL +81 3 5510 1711 FAX +81 3 5510 1712
MANNHEIM | Mollstraße 42, 68165 Mannheim, Germany | TEL +49 621 43298 6000 FAX +49 621 43298 6100
MOSCOW | Paveletskaya Plaza, Paveletskaya Square, 2/3, 115054 Moscow, Russia | TEL +7 499 277 1000 FAX +7 499 277 1000
HAMBURG | An der Alster 3, 20099 Hamburg, Germany | TEL +49 40 89728 7000 FAX +49 40 89728 7100

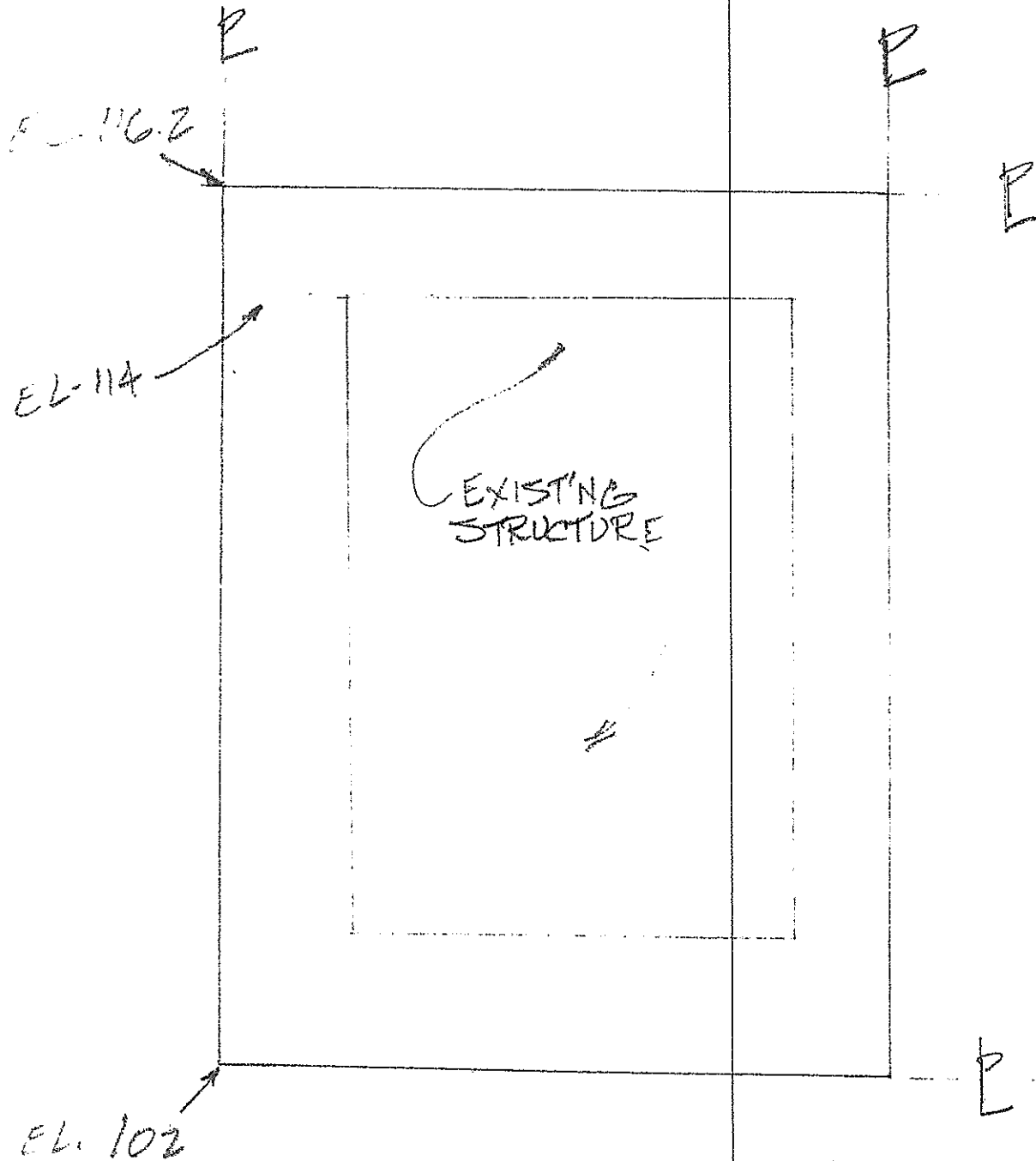
EXHIBIT 2

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1966 DNG.
EXHIBIT NO. 3

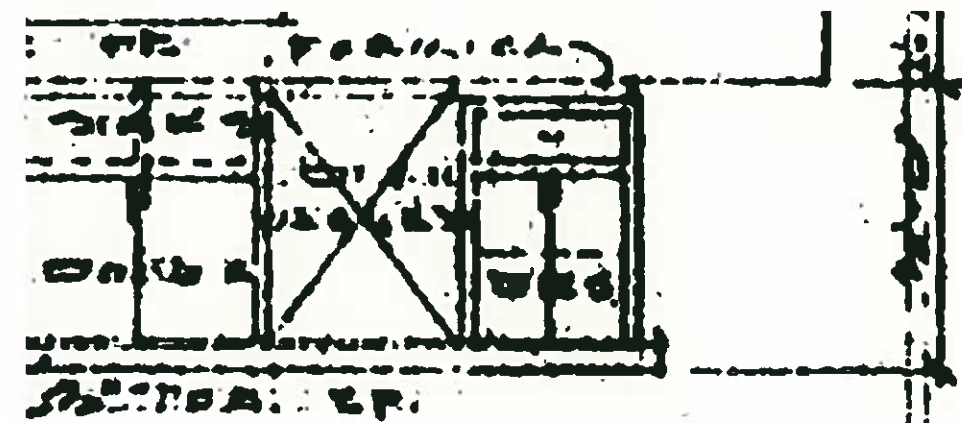
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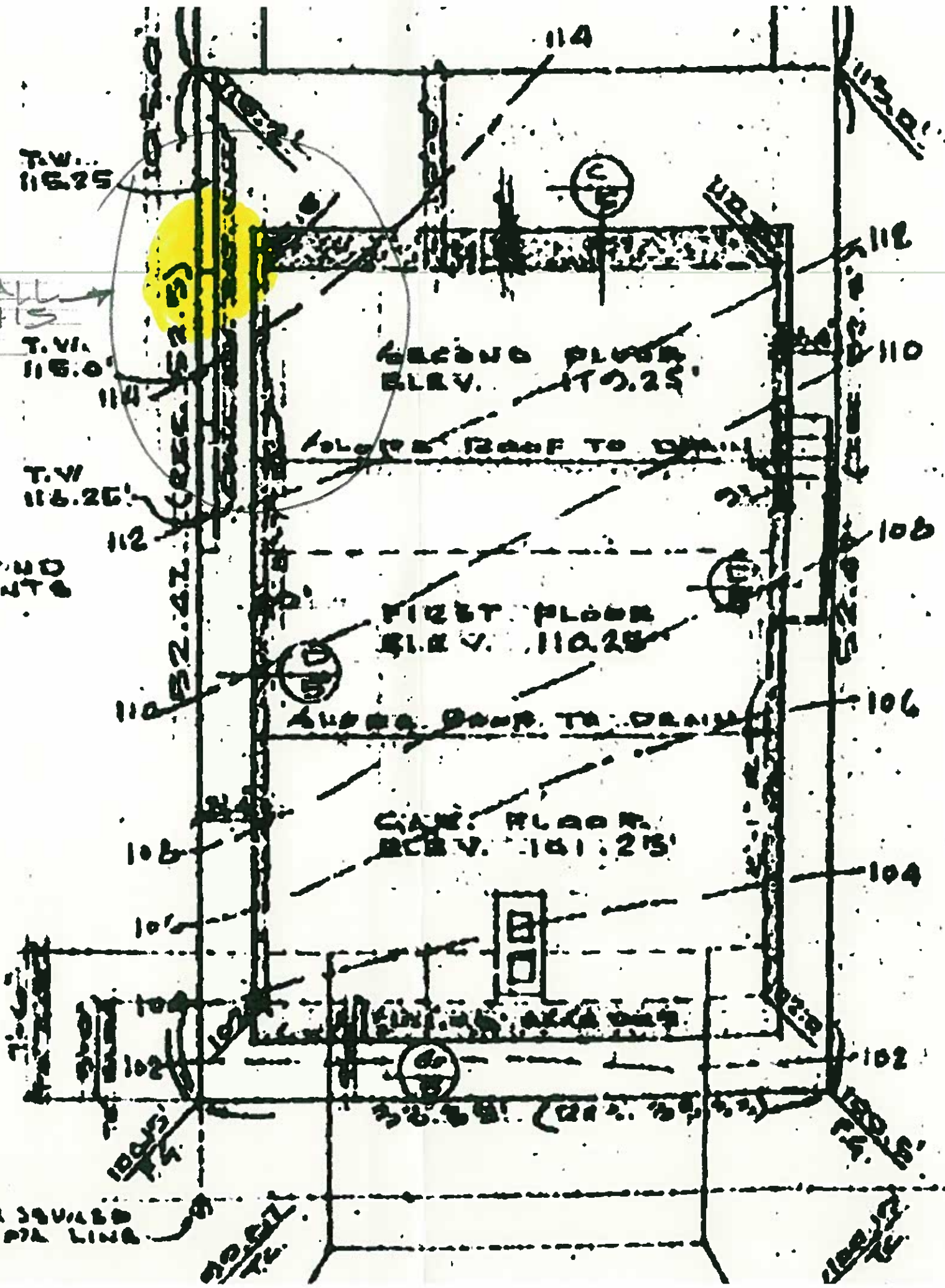
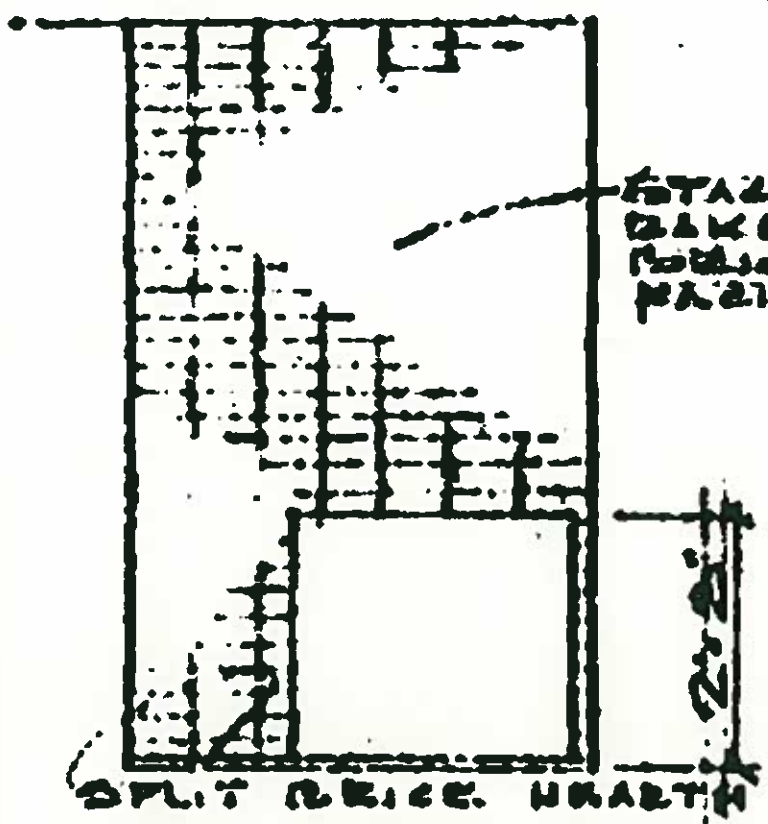
1966 SURVEY - SHOWING
NO RETAINING WALL

EXHIBIT NO. 4

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NO REMAINING WALL
SHOWN IN THIS
AREA



STAKE BOND
BASE JOINTS
POUR
PARTIAL

#2 REBAR

SCALE 3/8" = 1'-0"

100.0' & 100.0'
OF FROM LINE

DATE
GOOD
DVM
MARI
E. F. B.

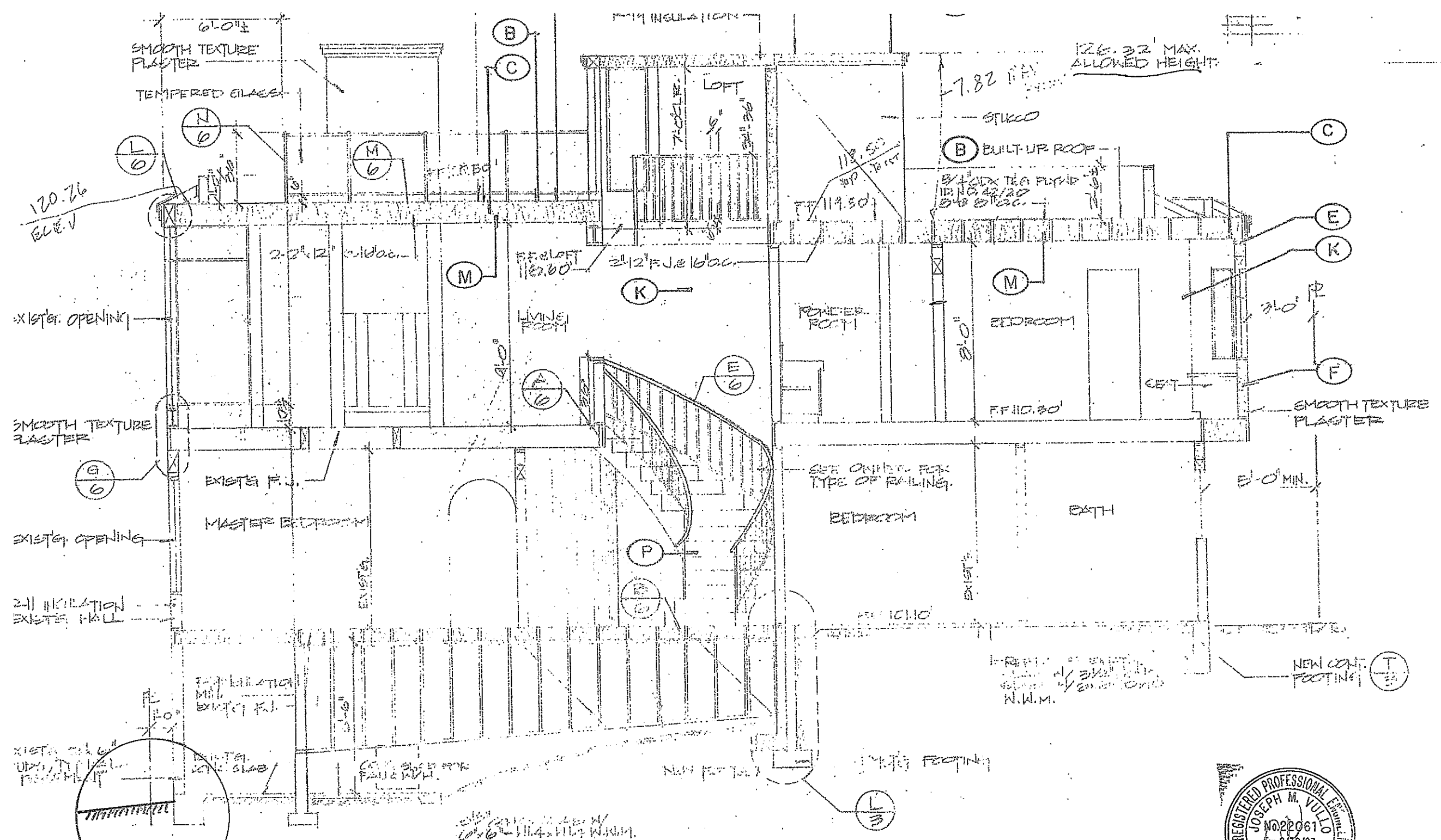
100.0'

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EXHIBIT 5

**UNAVAILABLE
ELECTRONICALLY
DUE TO LARGE SIZE**

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SECTION A-A



APPROVED
 DEPT. OF COMM. DEV.
 CITY OF MANHATTAN BEACH
 BY _____
 DIVISION OF COMM. DEV.
 DATE _____ PERMIT NO. _____

EXHIBIT 6



SOUTHEAST ELEVATION
 SCALE 1/4" = 1'-0"

APPROVED
 DEPT. OF COMM. DEV.
 CITY OF MANHATTAN BEACH
 BY _____
 DIRECTOR OF COMM. DEV.
 DATE _____ PERMIT # _____

EXHIBIT 7



EXHIBIT 8

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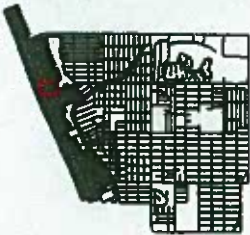
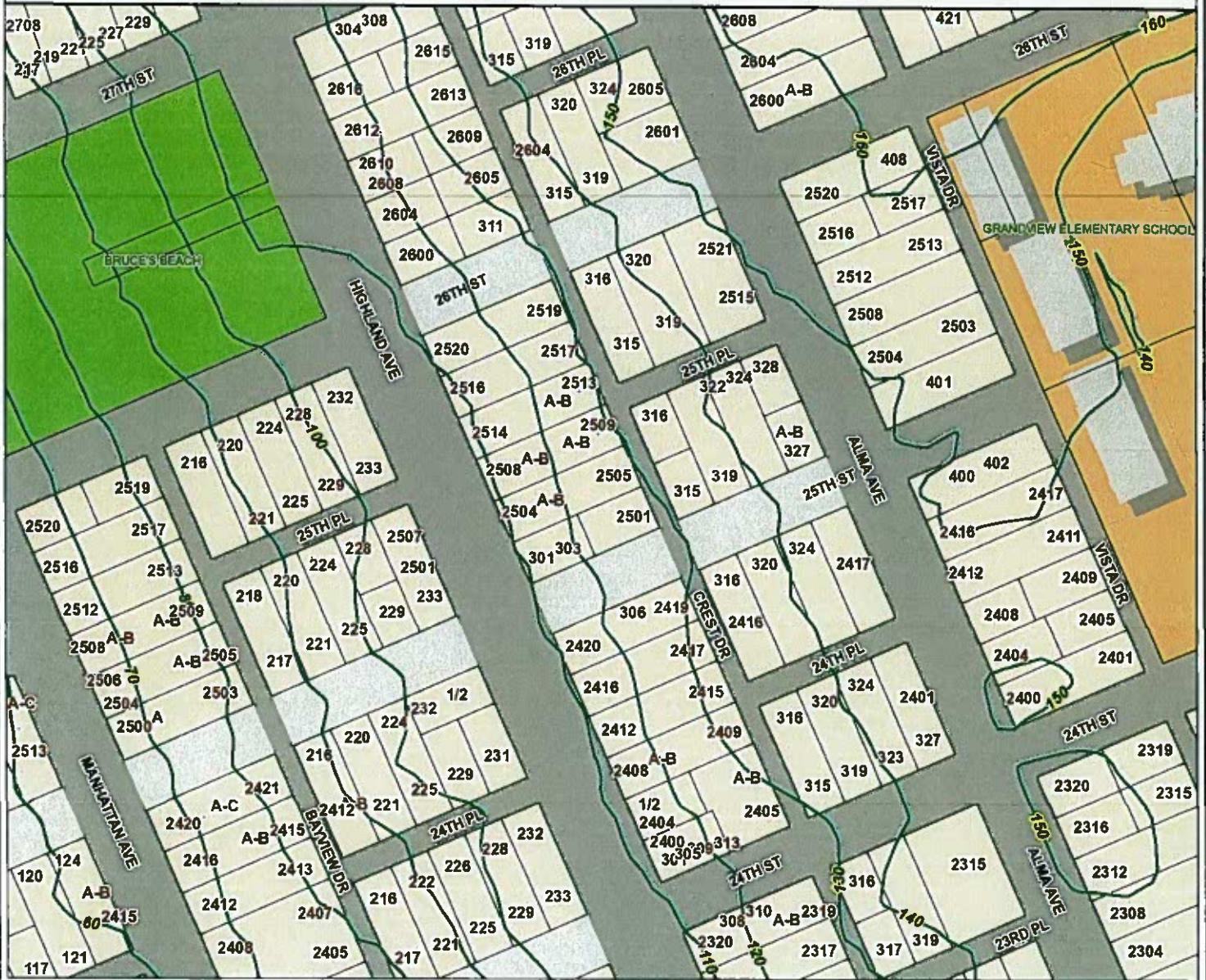
PHOTOGRAPHY

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Manhattan Beach



Legend

- Addresses
- - Topo Elevation Contours
- - City Boundary
- Streets
- Parcels
- Basemap Labels

Scale: 1: 1,278

212.9 0 106.47 212.9 Feet



This map is a user generated static output from the "MB GIS Info" Intranet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

Notes

© Latitude Geographics Group Ltd.

EXHIBIT 14

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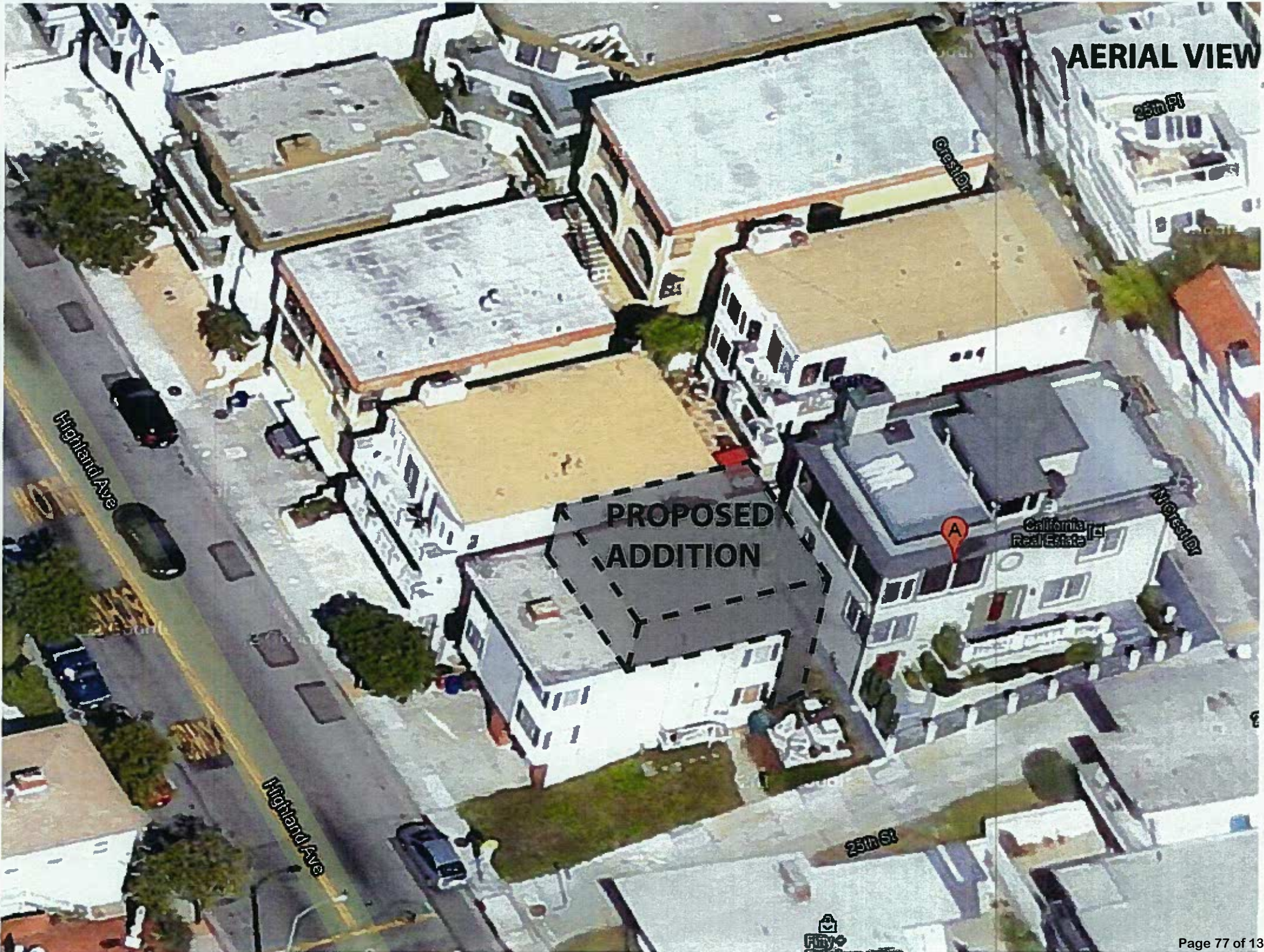
ELEVAT
SHOWING TYPICAL HEIGH
VS PROPOSED AD



EXHIBIT 15

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AERIAL VIEW



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SOUTHWEST VIEW



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2/7/13

Appeals Committee Re: Proposed Structure 301 25th St.

Each member of the City Council has received the history of time, effort and expense it took us to realize the home we enjoy and have lived in since 1972. We have the responsibility to protect that investment and to urge the city to support our efforts. The city has the moral duty to do what is right , not easy, that which is equitable not convenient.

There are many questions that arise when assessing the building code as it presently exists. Any structure may be built any where so long as it conforms to the existing code. There is no concern for collateral implications to existing structures. That is, what consideration is given to those residents who suffer economic and psychological consequences as a result of the permitted new structure? The new structure will come within five feet of my westerly wall. This proximity is not only claustrophobic but it also impedes free circulation of ventilation and light. Moreover, how would my home be affected if the proposed structure were to burst into flames? How do I protect myself in such an eventuality? "

Has the building department assessed how the elevation of the new structure will "adversely " impact "adjacent properties" and how its proposed height departs from "some degree of consistency in the maximum building height limits of adjacent properties."? These are direct quotes from the building codes of Manhattan Beach.

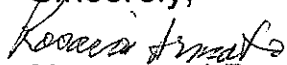
Laws, regulations, codes ordinances, etc. are formulated to protect its citizens, not injure them. And if it discovered that an existing law or ordinance is inequitable and potentially dangerous to its citizens, then reason, equity and justice should militate to annul it, no matter how long it has been on the books. Even our Constitution has been amended. There is nothing so sacrosanct that it cannot be reexamined. Review the view protection in the Rancho Palos Verdes building code.

Please give these remarks careful consideration. They are relevant not

EXHIBIT D (CON'T)
PC MTG 2-13-13

only to my circumstances but to those of all future inhabitants of this extraordinary city.

Sincerely,



Nancy and Dr. Rosario (Sam) Armato

2501 Crest Dr.

Manhattan Beach, CA 90266

310 545-3877

From: nancyarmato <nancyarmato@aol.com>

To: la <la@mpe.com>

Subject: I'm not finished, you can edit this in the meantime.

Date: Thu, Feb 7, 2013 3:40 pm

Re: 2500 Highland aka 301/305 - 25th St. M. Bch
For the Committee Members of the Planning Commission.

I am opposed to the building on this site as permitted by the Community Development Department for the following reasons.

1. It will increase the height of the existing 3 story building by over 9 feet higher to what is already there.
2. The new square footage allowed will increase the square footage by almost 40% more than the existing buildings square footage which is 2050.
3. The east wall (rear yard) of the building has been approved to move 5 feet into the existing 10 feet rear yard that presently separates the existing duplex and my home. My home is virtually on the property line. The problem is that there would be just 5 feet separating the two buildings for rear yard setback.

So we have (1) Height issue; (2) Bulk or "mansionization" issue; (3) Setting a precedent issue.

Height:

I was told when the subject property came on the market over 3 years ago, (with picture of the property in hand,) that it was a three story building, that it could not go any higher. Well here I am today not looking at a couple of inches in height, but 9 feet plus. It's like putting a fourth floor over an already three story building. The new height of the building will block the three large glass paned windows almost completely on the west side of of my home.

Square footage:

Big bulky buildings do not belong on Highland Avenue for a number of reasons. As you drive through, it not only blocks one's view of the topography of this lovely city with its sloping hillside here and there, but it also blocks from view the mixture of interesting architecture, both old and new side by side. Highland Ave. is one of the busiest and perilous streets in the City from Rosecrans to Manhattan Beach Blvd. We don't need any tall, huge buildings side by side giving a tunnel effect. That's what makes the block of 25th St to 26th Street on Highland so special. Highland is flat between those two Streets. The buildings on Highland are all about the same height and there is the look of continuity that is appealing. All of the lots in that block are full lots, with two separate buildings with ten feet separating the buildings, except the 26th St. walk street lot that contains two attached town homes. The only lot that has been split (into two lots) is the subject property and my lot. The TOTAL number of square footage for ALL the buildings on the full lots is as follows starting with the property to the north of my property are: Home and Duplex - 4254 Sq ft. ; 4 units - 4289 Sq. Ft. ; 3 Condos - 4154 Sq. Ft.; Two detached town homes - 4249 Sq.. Ft. I don't have the total for the attached townhouses,, but for one which is 2515 Sq. Ft. How can the sq. ftg. of almost 40 percent more than existing be allowed?

Setting a precedent:

~~This building will be five feet away from my large west facing windows, which means that the new building will be virtually up against my windows~~

Page 1

From: nancyarmato <nancyarmato@aol.com>

To: la <la@mpe.com>

Subject: 2500 Highland continued

Date: Thu, Feb 7, 2013 4:41 pm

Setting a precedent:

This building will be five feet away from my large west facing windows, which means that the new building will be virtually up against my windows. For the width of this size lot the side yard set back are 3.3 which means that there is 6.5 ft between bldgs. How can 5 feet be acceptable to anyone for a rear yard set back? I had nothing to do with the fact that my building is on the property line. The rear yard set back should remain the same as when the duplex was built in 1966.

Apparently the City planners back then had required that the buildings maintain the 10 foot separation. I have owned this property since 1972 and the latest remodel was done in 1990. Since the time that we've lived here, it has never been owner occupied. During the years, we have continuously used the land in between the buildings freely, and about eight years ago had our landscaper build an almost 2 foot rock pathway in front of the west side of our building.

In Summary:

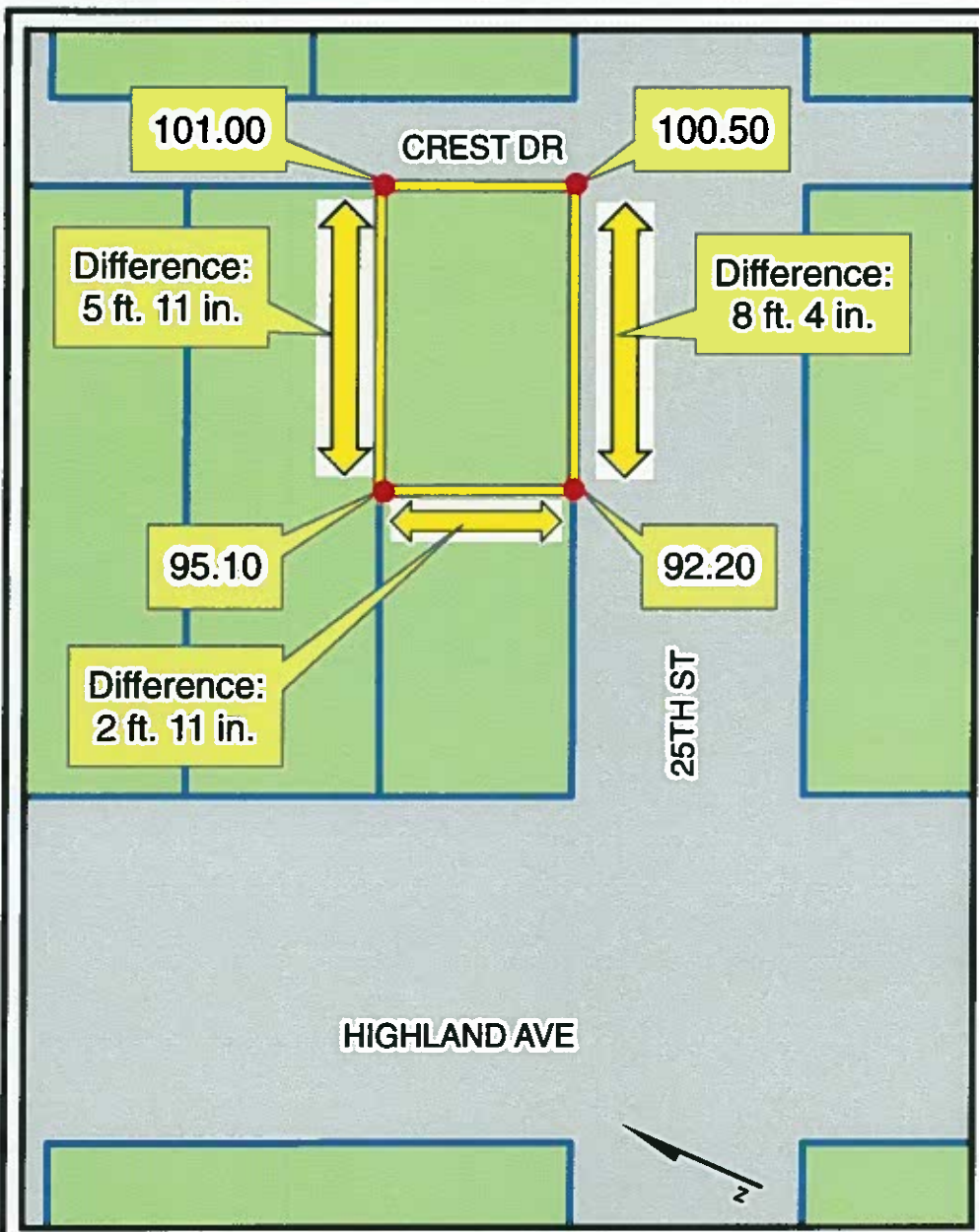
The City should not allow the owner of a 1/2 lot (the only such 1/2 lot on a block of consistent roof lines) to be permitted to take advantage of an artificially elevated lot to increase building density by nearly 1/3 and construct an edifice towering 9 1/2 feet above the neighboring roof lines, thus adversely affecting numerous properties and residents in the Community.

We are not the only Manhattan Beach residents that will suffer irreparable damage by this proposed development. In fact, 25 people in the neighborhood have signed a petition opposing this ill-advised construction.

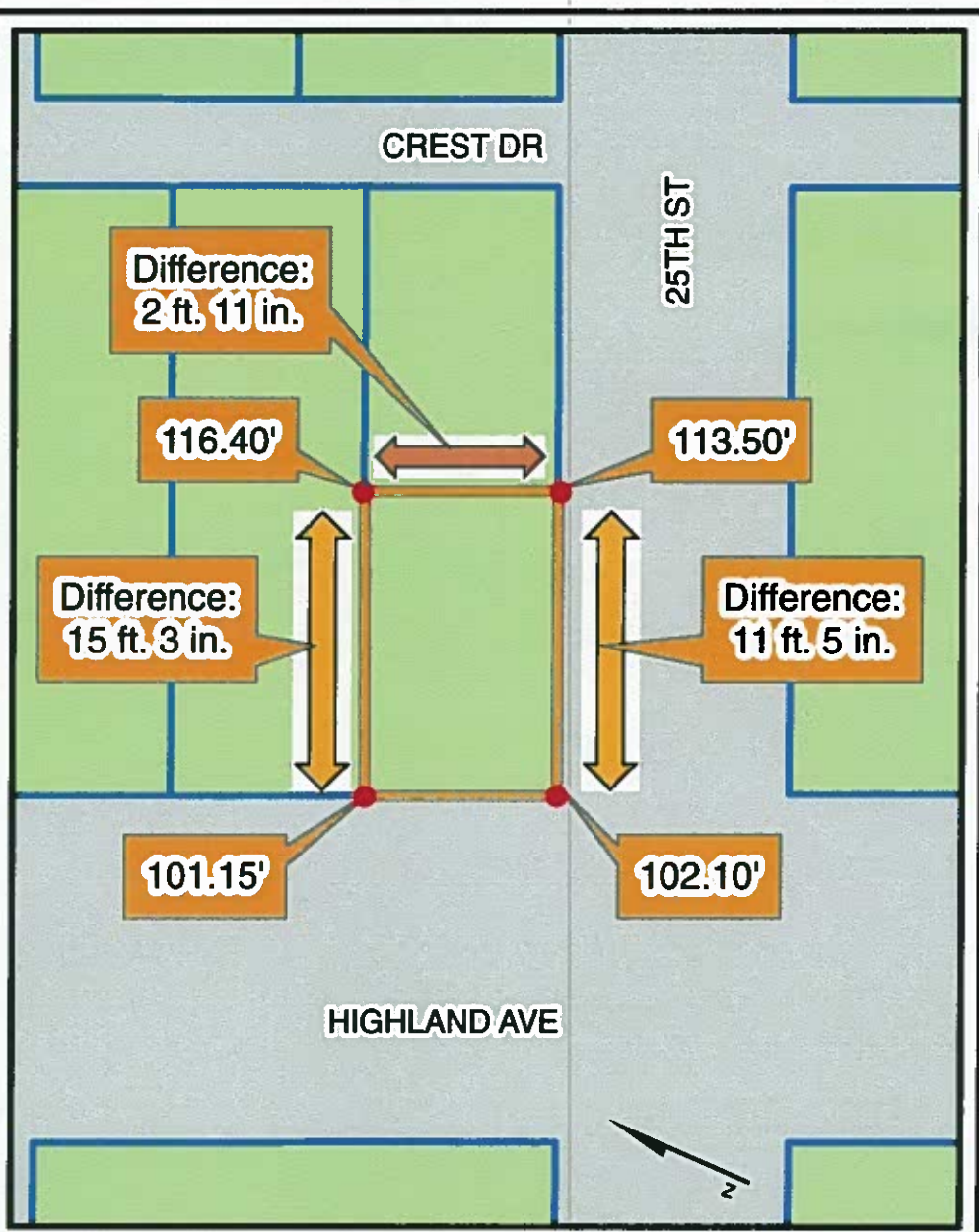
Sincerely,


Nancy Armato

Page 2

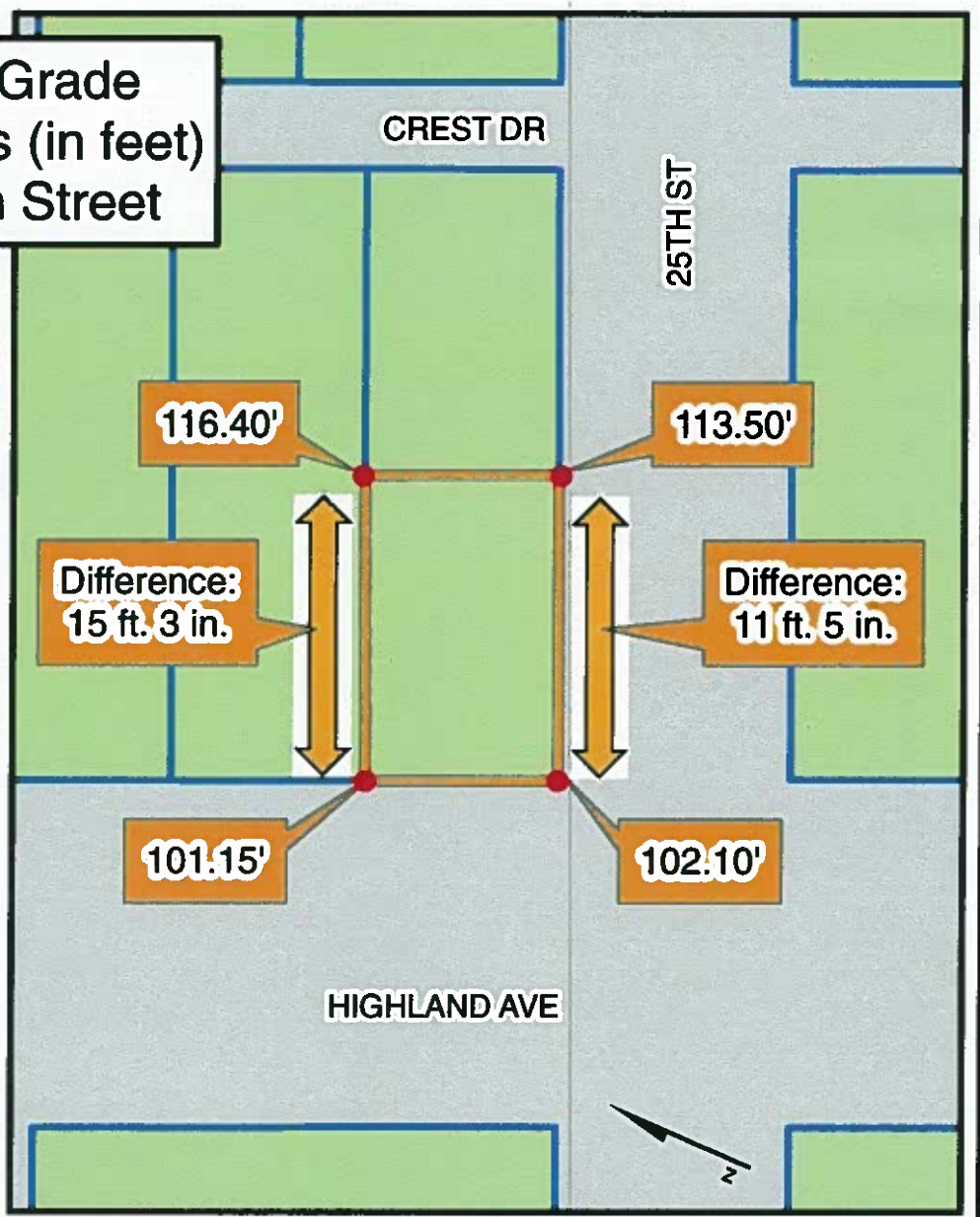
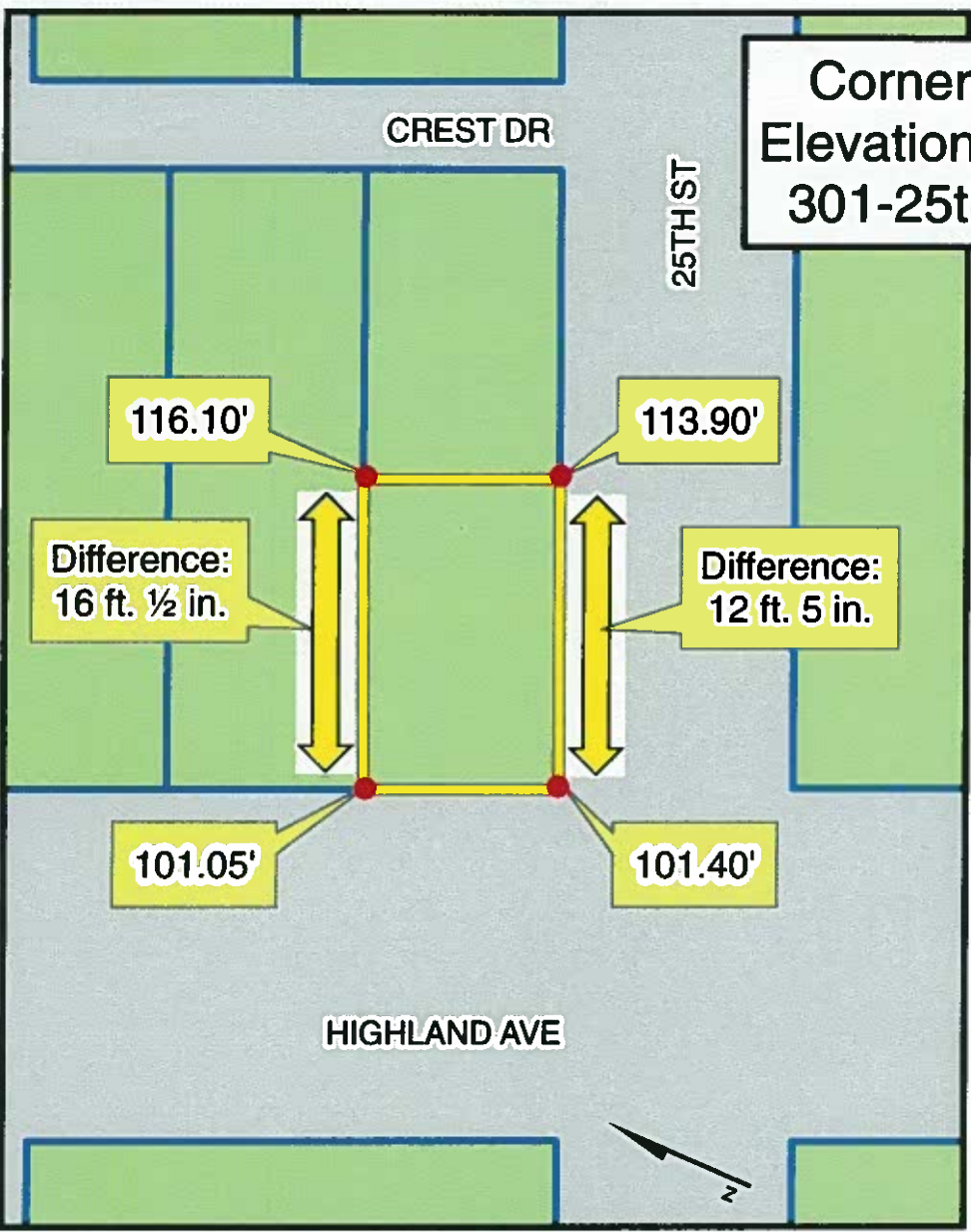


1989 Survey
 2501 Crest Drive
 Benchmark: Unknown



2012 Survey
 301-25th Street
 Benchmark: 100.90'

**Corner Grade Elevations (in feet)
301-25th Street**



1966 Survey
 Benchmark: 100' (Extrapolated to 100.9' for consistency)
Max Height: 138.11'

2012 Survey
 Benchmark: 100.90'
Max Height: 138.29'

Laurie B. Jester

From: Steve Finton
Sent: Tuesday, December 18, 2012 6:53 PM
To: Laurie B. Jester
Subject: FW: Topography-
Attachments: 25th Street 1913 plan.TIF; 10' contours.pdf

Both are attached here. Nancy received both.

Steve Finton
City Engineer
P: (310) 802-5352
E: sfinton@citymb.info



CITY OF
MANHATTAN BEACH
1400 HIGHLAND AVENUE, MANHATTAN BEACH, CA 90266
WWW.CITYMB.INFO
 PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL

From: Steve Finton
Sent: Monday, December 17, 2012 11:52 AM
To: 'nancyarmato@aol.com'
Cc: Richard Thompson
Subject: Topography

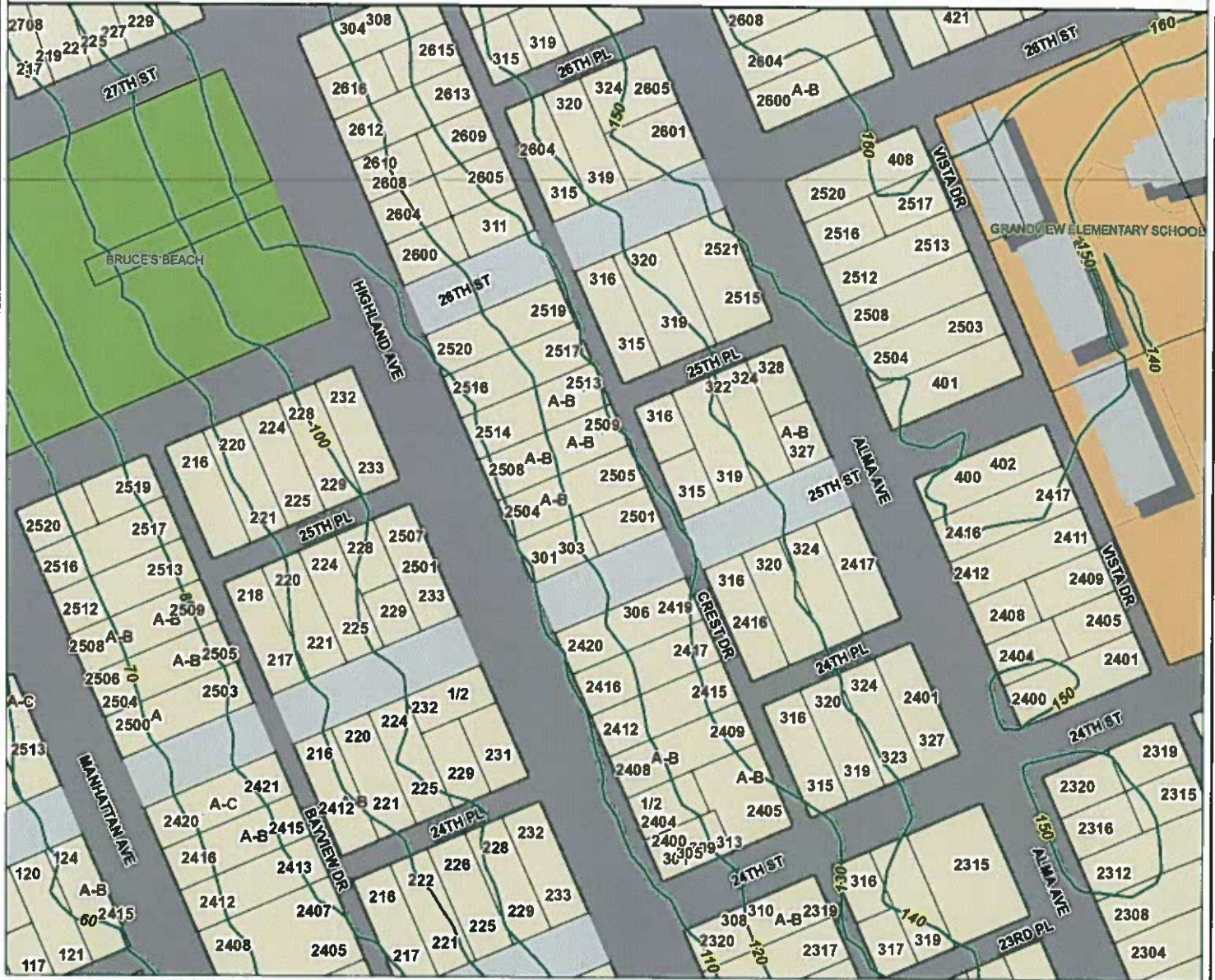
Attached are the following:

10' contours map. Shows contours at 10' intervals. This shows that your lot is not as steep as your neighbor's lot to the west.

Street plan from 1913. Shows the grade of the street before the walk street was built. It also shows that the ground was steeper at your neighbor's lot than it was at yours.

Hope this helps

Manhattan Beach



Legend

- Addresses
- Topo Elevation Contours
- City Boundary
- Streets
- Parcels
- Basemap Labels

Scale: 1: 1,278



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Notes

Angelica Ochoa

From: Richard Thompson
Sent: Wednesday, January 16, 2013 4:11 PM
To: Angelica Ochoa; Laurie B. Jester
Subject: FW: 2500 Highland / 301 25th street

fyi

Richard Thompson
Director of Community Development

P: (310) 802-5502
E: rthompson@citymb.info



Please consider the environment before printing this email.

From: Quinn M. Barrow [mailto:QBarrow@rwglaw.com]
Sent: Wednesday, January 16, 2013 3:27 PM
To: 'JDAIA@aol.com'
Cc: Richard Thompson; Quinn Barrow
Subject: FW: 2500 Highland / 301 25th street

Mr. DiMonda: I received your letter yesterday. You may review the files, including architectural plans, and staff is available to assist you with that review. However, to obtain copies of building plans, you have to comply with California Health and Safety Code Section 19851:

- (a) The official copy of the plans maintained by the building department of the city or county provided for under Section 19850 shall be open for inspection only on the premises of the building department as a public record. The copy may not be duplicated in whole or in part except (1) with the written permission, which permission shall not be unreasonably withheld as specified in subdivision (f), of the certified, licensed or registered professional or his or her successor, if any, who signed the original documents and the written permission of the original or current owner of the building, or, if the building is part of a common interest development, with the written permission of the board of directors or governing body of the association established to manage the common interest development, or (2) by order of a proper court or upon the request of any state agency.
- (b) Any building department of a city or county, which is requested to duplicate the official copy of the plans maintained by the building department, shall request written permission to do so from the certified, licensed, or registered professional, or his or her successor, if any, who signed the original documents and from (1) the original or current owner of the building or (2), if the building is part of a common interest development, from the board of directors or other governing body of the association established to manage the common interest development.
- (c) The building department shall also furnish the form of an affidavit to be completed and signed by the person requesting to duplicate the official copy of the plans, which contains provisions stating all of the following:

- (1) That the copy of the plans shall only be used for the maintenance, operation, and use of the building.
- (2) That drawings are instruments of professional service and are incomplete without the interpretation of the certified, licensed, or registered professional of record.
- (3) That subdivision (a) of Section 5536.25 of the Business and Professions Code states that a licensed architect who signs plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent changes to, or use of, those plans, specifications, reports, or documents where the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed architect who originally signed the plans, specifications, reports, or documents, provided that the architectural service rendered by the architect who signed the plans, specifications, reports, or documents was not also a proximate cause of the damage.
- (d) The request by the building department to a licensed, registered, or certified professional may be made by the building department sending a registered or certified letter to the licensed, registered, or certified professional requesting his or her permission to duplicate the official copy of the plans and sending with the registered or certified letter, a copy of the affidavit furnished by the building department which has been completed and signed by the person requesting to duplicate the official copy of the plans. The registered or certified letters shall be sent by the building department to the most recent address of the licensed, registered, or certified professional available from the California State Board of Architectural Examiners.
- (e) The governing body of the city or county may establish a fee to be paid by any person who requests the building department of the city or county to duplicate the official copy of any plans pursuant to this section, in an amount which it determines is reasonably necessary to cover the costs of the building department pursuant to this section.
- (f) The certified, licensed, or registered professional's refusal to permit the duplication of the plans is unreasonable if, upon request from the building department, the professional does either of the following:
 - (1) Fails to respond to the local building department within 30 days of receipt by the professional of the request. However, if the building department determines that professional is unavailable to respond within 30 days of receipt of the request due to serious illness, travel, or other extenuating circumstances, the time period shall be extended by the building department to allow the professional adequate time to respond, as determined to be appropriate to the individual circumstance, but not to exceed 60 days.
 - (2) Refuses to give his or her permission for the duplication of the plans after receiving the signed affidavit and registered or certified letter specified in subdivisions (c) and (d).

Please contact Richard Thompson to arrange an inspection.

Quinn Barrow
City Attorney
City of Manhattan Beach

From: Richard Thompson [<mailto:rthompson@citymb.info>]
Sent: Monday, January 14, 2013 4:25 PM
To: 'JDAIA@aol.com'
Cc: ja@mpe.com; nancyarmato@aol.com
Subject: RE: 2500 Highland / 301 25th street

February 1, 2013

Ms. Angelica Ochoa
Assistant Planner
1400 Highland Avenue
Manhattan Beach, CA 90266

Re: Appeal to Height Determination at 310/303 25th Street

Dear Ms. Ochoa:

If I understand correctly, Mr. Rosario Armato is objecting to the height of the construction of a new three-story single family residence to be located at the above-captioned address. Since Mr. Armato lives in the rear of the property I understand his concern.

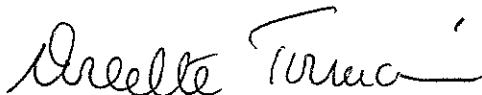
However, when it was Mr. Armato's turn to build his new house, he certainly didn't have the same concerns for the rest of us. The height of his new house did in fact impact some neighbors.

I have absolutely no objection to the construction of the new house providing it is within Code, which I understand it to be the case.

What is Mr. Armato's ground for his objections? That he will lose his view? As far as I know, there is nothing in the Code that guarantees a view.

The construction of a new house will definitely improve the neighborhood and the new owners should have the same rights as Mr. Armato received when he built his house – nothing more, nothing LESS.

Sincerely,



Arlette Tirman
319 25th Street
Manhattan Beach, CA 90266
arlette124@gmail.com

EXHIBIT F
PC MTG 2-13-13

February 4, 2013

Ms. Angelica Ochoa
Assistant Planner
1400 Highland Avenue
Manhattan Beach CA 90266

Re: 301/303 25th Street

Dear Ms. Ochoa:

We are writing in SUPPORT of the Coastal Permit for a new residence at 301/303 25th Street. We are nearby neighbors affected one way or another with the new construction including loss of view. We understand the plans were reviewed by the Director of Community Development who determined that they comply with the Code, including the height of the proposed building.

The new home will benefit the neighborhood in several ways:

- It will reduce the density by eliminating the extra one unit from the old days
- It will remove some of the wiring that hand over 25th Street from the alley to the subject property
- It will replace an old decrepit structure with a new one and improve
- the parking situation since the 2nd unit is eliminated

Our main concern is to have the Code applied in a uniform way for ALL residents so that we can rely on the City to enforce the rules consistently and not bend them to grant favors.

Sincerely Yours,

February 4, 2013

Ms. Angelica Ochoa
Assistant Planner
1400 Highland Avenue
Manhattan Beach CA 90266

Re: 301/303 25th Street

Dear Ms. Ochoa:

We are writing in SUPPORT of the Coastal Permit for a new residence at 301/303 25th Street. We are nearby neighbors affected one way or another with the new construction including loss of view. We understand the plans were reviewed by the Director of Community Development who determined that they comply with the Code, including the height of the proposed building.

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- It will replace an old decrepit structure with a new one and improve
- .. the parking situation since the 2nd unit is eliminated

Our main concern is to have the Code applied in a uniform way for ALL residents so that we can rely on the City to enforce the rules consistently and not bend them to grant favors.

Sincerely Yours,

Ornella & Claude Torrai
319- 25th St
Manhattan Beach, CA 90266
310 802-0191

Angelica Ochoa

From: Mark Abramson <mark@rpfesq.com>
Sent: Wednesday, February 06, 2013 11:05 AM
To: Angelica Ochoa
Subject: 301 25th St.
Attachments: DOC020613.pdf

Angelica:

Attached please find a petition in opposition to the proposed development at 301 25th St. signed by numerous residents in the local vicinity of the project. Please make sure this gets included in the Staff Report.

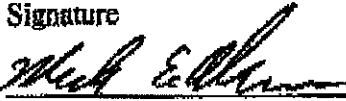


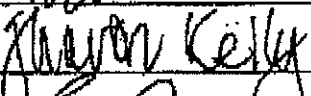



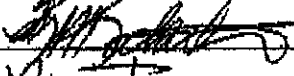
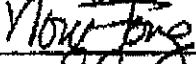

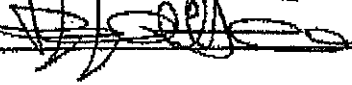
Thanks.

Mark E. Abramson, Esq.
Law Office of Robert P. Friedman
827 Moraga Drive
Bel Air, California 90049
Phone: (310) 471-3413
Fax: (310) 471-8613
mark@rpfesq.com

Please note my new email address is mark@rpfesq.com

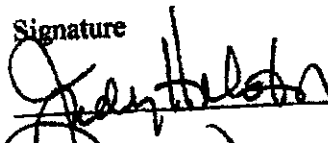

PETITION IN OPPOSITION TO
 PROPOSED DEVELOPMENT
 AT
 301/303 25TH STREET, MANHATTAN BEACH

The undersigned residents of Manhattan Beach hereby state their opposition to the proposed development at 301/303 25th Street, Manhattan Beach, and in particular, the determination of the maximum building height, and petitions the Manhattan Beach Planning Commission and/or City Council to reverse the Planning Department's approval of a Coastal Permit, and to deny a building permit for the proposed project as currently contemplated.

Print Name	Signature	Address
Mark Abramson		2513 Crest Dr, Unit A
Harold A. Bosacki		2908 Highland
MONIQUE SULLIVAN		316 26th Street
Sharon Kelly		314 25th Street
Chuck DALALIS		2517 Crest Dr
Dana Kushner		2417 Crest Dr.
Kip Pappas		2519 Crest Dr
Katherine M. Madarte		2513 Crest Dr. Unit A
NORA FONG		2513 Crest Dr Unit B
Julie Phustas		2419 Crest Dr
REIKO HASUIKE		2514 Highland Ave

PETITION IN OPPOSITION TO
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AT
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Print Name	Signature	Address
JUDY HOLSTON		232-26 th Street Manhattan Beach, CA 90266
RAND HOLSTON		

2008 JUN 12 11:22 AM
MANHATTAN BEACH PLANNING COMMISSION

February 8, 2013

Community Development Department
City of Manhattan Beach
ATTN: Angelica Ochoa, Assistant Planner

RE: 301-303 25th Street, Coastal Application

Dear Ms. Ochoa:

We are writing in support of the Coastal Permit for the new home to be built at 301-303 25th Street. We were happy to learn that a young family is moving into the neighborhood and we're also happy to see that the old duplex will be replaced with a single family residence.

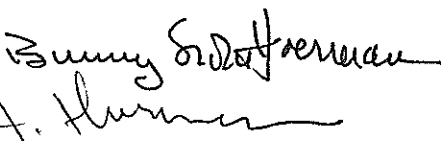
We have talked with several neighbors in support of the proposed plans as well as a neighbor who is opposed to the plans and more specifically, the calculations for measurement of height. The objections raised by the neighbor seem to be based on belief that the grade of subject property has been substantially raised. However, the neighbor was not able to provide any technical information to support that belief. My husband and I have looked at the slope of the 301 property and the adjoining half lot sharing the common rear property line. It is obvious to us that the slope is a continuous uphill slope on the north side of the walk street just as it is all along the sand dune. That slope continues uphill the length of 25th Street to Alma Avenue. So there does not seem to be any basis to support the claim of the opponent.

The most sensitive issue in the beach area tends to be view, and the new home will obviously affect views from the home directly east as well as properties adjacent to the north of 301. For your information, as uphill neighbors, we are directly affected by the new construction as it will eliminate some of our ocean view.

We are confident Staff has carefully analyzed plans and supporting documentation submitted for the Coastal Permit. We are also aware the applicant has engaged a reputable and experienced land surveyor. Our hope is that the new owners of 301-303 have the same opportunity to develop their property as other neighbors, including immediately adjacent properties.

We urge the Planning Commission to support the decision of the Director to approve the Coastal Permit for 301-303 25th Street.

Thank you.



BUNNY and FRANK HOERMAN
316-25th Street

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quinn emanuel trial lawyers | los angeles

865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543 | TEL: (213) 443-3000 FAX: (213) 443-3100

January 30, 2013

VIA REGISTERED U.S. MAIL

Joseph Di Monda, Esq.
Angelo & Di Monda, LLP
1721 N. Sepulveda Blvd.
Manhattan Beach, CA 90266

Re: 2500 Highland Ave. (aka 301/303 25th Street), Manhattan Beach, CA 90266

Dear Mr. Di Monda:

This letter is in response to your letter to me dated January 24, 2013 (post-marked January 25; delivered January 28) requesting copies of all documents and drawings in the file the City keeps in the Building Department relating to my property.

I do not consent to the City releasing copies of any documents or drawings. As you know, Mr. & Mrs. Armato, and any other member of the public, are free to review the file for my property at the City of Manhattan Beach Building Department.

Respectfully submitted,



Joseph M. Paunovich

cc: Richard Thompson, Director of Community Development (*via email*)
Angelica Ochoa, Assistant Planner (*via email*)

quinn emanuel urquhart & sullivan, llp

NEW YORK | 51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL (212) 849-7000 FAX (212) 849-7100
SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111-4788 | TEL (415) 875-6600 FAX (415) 875-6700
SILICON VALLEY | 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2139 | TEL (650) 801-5000 FAX (650) 801-5100
CHICAGO | 500 W. Madison Street, Suite 2450, Chicago, Illinois 60661-2510 | TEL (312) 705-7400 FAX (312) 705-7401
WASHINGTON, DC | 1299 Pennsylvania Avenue NW, Suite 825, Washington, District of Columbia 20004-2400 | TEL (202) 538-8000 FAX (202) 538-8100
LONDON | 16 Old Bailey, London EC4M 7EG, United Kingdom | TEL +44 20 7653 2000 FAX +44 20 7653 2100
TOKYO | NBF Hibiya Building, 25F, 1-1-7, Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan | TEL +81 3 5510 1711 FAX +81 3 5510 1712
MANNHEIM | Mollstraße 42, 68165 Mannheim, Germany | TEL +49 621 43298 6000 FAX +49 621 43298 6100
MOSCOW | Paveletskaya Plaza, Paveletskaya Square, 2/3, 115054 Moscow, Russia | TEL +7 499 277 1000 FAX +7 499 277 1001
HAMBURG | An der Alster 3, 20099 Hamburg, Germany | TEL +49 40 89728 7000 FAX +49 40 89728 7100

EXHIBIT G
PC MTG 2-13-13

Angelica Ochoa

From: Joe Paunovich <joepaunovich@quinnemanuel.com>
Sent: Monday, February 04, 2013 7:44 PM
To: Angelica Ochoa; Laurie B. Jester
Cc: Richard Thompson; 'Fred Gaines'; 'brucebolander@brucebolander.com'
Subject: 301/303 25th Street (fka 2500 Highland Ave.) Permit Appeal
Attachments: 2500 HIGHLAND AVE - PLANS.pdf

Angelica and Laurie,

I understand now that the appellant's attorney Joseph Di Monda, contrary to his January 23, 2013 letter to me and the City, is requesting only a copy of the 1966 survey associated with my property. In his letter, he previously requested copies of all files and documents associated with my property which I objected to since he and any other member of the public can review such files at any time at City Hall and since the overwhelming majority of the documents are completely irrelevant to their appeal.

By this email, I hereby authorize the City to provide the 1966 survey to the appellant's and their attorney for the purpose of their appeal. A copy of the survey is attached to this email for your convenience to forward to them by email or I can send it if you prefer.

I also understand that Mr. Di Monda sent a letter on behalf of appellants on January 23, 2013 asking for a continuance of the permit appeal hearing scheduled on February 13, 2013 because the appellants supposedly have not been able to obtain some unidentified documents. I received a copy of the letter today and see that it was sent to the City Attorney, the Director of Community Development and each member of the City Council - as you know, it was not sent to me by Mr. Di Monda.

As the Planning Commission, City Council and City Attorney should know if they consider the appellant's requested continuance, I understand that the appellant and various attorneys representing them began to meet with the Director and staff on a weekly (if not daily) basis beginning in November 2012 (continuing through the present) and have had ample opportunity to review all files and documents associated with my property at City Hall. In fact, I understand that the staff has gone to great lengths to accommodate the appellant's and their attorney's requests for assistance. As you know, their latest claim that they have not been able to review some unidentified documents is simply not true.

As a practical matter, the appellants filed their appeal of my issued permit on December 27, 2012. Pursuant to the Manhattan Beach Municipal Code ("MBMC") § 10.100.050, I was entitled to a hearing to resolve the appeal within 30 days of the appeal being filed absent my consent to a later hearing date. "An appeal shall be scheduled for a hearing before the appellate body within thirty (30) days of the City's receipt of an appeal unless both applicant and appellant consent to a later date." MBMC § 10.100.050. When I was notified of the appeal for the first time on January 9, 2013, I requested a hearing within 30 days of December 27, 2012 (which would have been January 26, 2013) and I begrudgingly accepted the City's request that I consent to a brief extension of the hearing until February 13, 2013. This consent came at significant monetary cost to me in that I am further delayed in having the appeal resolved so that I can start my project.

I know you are aware of all these facts but since I was unaware until today that Mr. Di Monda had sent a letter requesting the continuance to the City Attorney and City Council, I want the record to be clear that I do not consent to any further extensions of the appeal hearing. Please forward to the City Attorney, City Council and/or the Planning Commission if appropriate or let me know if I should do so.

It is also worth noting that my providing the 1966 survey to appellants and their attorney obviates their supposed need for a continuance.

Regards,

Joe Paunovich

Joseph M. Paunovich | Quinn Emanuel Urquhart & Sullivan LLP | 865 S. Figueroa Street, 10th Floor, Los Angeles, CA 90017

Office: +1.213.443.3257 | Fax: +1.213.443.3100 | E-mail: joepaunovich@quinnemanuel.com

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FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG*
REBECCA A. THOMPSON
NANCI SESSIONS-STACEY
KIMBERLY A. RIBLE
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February 6, 2013

ORIGINAL BY U.S. MAIL

VIA E-MAIL: PlanningCommission@citymb.info

Planning Commission
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

Re: Project No.: CA 12-25
Property: 301/303 25th Street
Planning Commission Hearing – February 13, 2013
Support for Project Approval/Denial of Appeal

Dear Honorable Commissioners:

This office represents Joe Paunovich, the owner of the property referenced above (the "Property"), with regard to the project referenced above and shown in the attached graphics and plans. See Exhibit A (renderings of the approved project); Exhibit B (Mr. Paunovich's site plan, elevations, floor plans and land survey for the approved project). On December 19, 2012, the Community Development Department of the City of Manhattan Beach (the "City") granted a Coastal Development Permit ("CDP") to Mr. Paunovich to permit demolition of the dilapidated 1966 duplex located on the Property, and to construct in its place a new three story single family residence with an attached two car garage.

Mr. Paunovich's proposed home complies with all applicable provisions of the City's Municipal Code and the development conforms with the Manhattan Beach Local Coastal Program. Despite the fact that all required findings for project approval were properly made, Mr. Paunovich's CDP was appealed by the owner of the adjacent property to the east, located at 2501 Crest Drive. The appellant claims to be aggrieved by the City's determination of the maximum allowable height of Mr. Paunovich's proposed residence. However, Mr. Paunovich's proposed residence complies with the strict requirements of Manhattan Beach Municipal Code ("MBMC") § 10.60.050.

EXHIBIT G (CON'T)
PC MTG 2-13-13

In truth, the appeal has no factual or legal support, and the appellant wishes only to preserve private views to which they have no legal entitlement. As this Commission knows, the City does not have a view protection ordinance. Moreover, as the graphics included with this letter demonstrate, the appellant's want what no other property owner in Manhattan Beach off the strand has, an unobstructed 180 degree view from the lower level of their house. In reality, Mr. Paunovich's proposed residence only partially affects the view from the appellant's lower levels and the appellant has a third story roof deck with an 180 degree view that will not (and never can) be obstructed. See Exhibit C (diagram of the south elevation of the subject properties). In fact, as we will explain and illustrate further at the appeal hearing, the appellants could build a complete third story on their property to take advantage of what is now their roof deck ocean view just like any other owner in the same zone in Manhattan Beach that wants to build a third story. Other neighbors have expressed their support of the project for a number of reasons including among other things because it will reduce neighborhood density, underground dangerous alley overhead wires, replace an old, dilapidated structure with a new desirable one and improve parking. Most importantly, other neighbors are in support of the project because the City has applied the Code correctly and consistently for all Manhattan Beach residents. See Exhibit D (letter from neighbor Arlette Tirman).

As explained in detail below, Mr. Paunovich's proposed residence complies with the letter and spirit of the City's restrictions with regard to height, and in fact is consistent with the size and height of adjacent homes (including appellant's own home). **As a result, our client respectfully requests that the Planning Commission deny the pending appeal and affirm the Community Development Department's approval of the Coastal Development Permit.**

A. The Property's Zoning

The Property is located within Area District III (Beach Area) and is Zoned Residential High Density (RH-3) coastal non-appealable. In the RH-3 Zone, development must comply with the following standards:

- Front yard setback: 5 feet
- Side yard setback: 10% of lot width
- Corner side yard setback: 1 foot
- Rear yard setback: 5 feet
- Height: 30 feet, 3 story maximum

MBMC § 10.12.030.

B. The Project

The CDP authorized Mr. Paunovich to develop the Property with a new three story single family residence in compliance with each of the development standards listed above.

MBMC § 10.60.050 is the applicable ordinance for determining compliance with the City's maximum building height limits. For Mr. Paunovich's property, the procedure involves a two step process: first the reference elevation, defined as the average of the elevation at the four corners on the lot, is determined and then a second limit is imposed to ensure that no building exceeds the maximum allowable height above existing grade or finished grade, whichever is lower, by more than twenty percent (20%). Mr. Paunovich's proposed residence is unquestionably below the height limit prescribed by these restrictions.

The appellant contends that an exception to this standard method of height determination should apply because the corners of Mr. Paunovich's property that are shared with the appellant on a common property line are supposedly not consistent with the natural property topography. Pursuant to MBMC § 10.60.050.A, "[i]n situations where the elevation of existing grade at a lot corner is not clearly representative of a site' topography (because, for example, of the existence of such structures as retaining walls, property-line walls, or planters) the Community Development Director shall select an elevation that minimizes, to the extent reasonably possible, adverse impacts on adjacent properties and encourages some degree of consistency in the maximum building height limits of adjacent properties."

Here, the Community Development Director and his staff visited the Property a number of times to assess the conditions and investigate the natural topography. From their investigation, as well as by reference to historical GIS data and two historical property surveys, the Director correctly concluded that the surveyed corners in question are clearly representative of the natural site topography and have been for more than 100 years. See Exhibit B (Mr. Paunovich's land survey); Exhibit E (contour plot of historical GIS data and two historical surveys). Pursuant to the City's Municipal Code, the maximum allowable height of Mr. Paunovich's proposed residence is therefore properly measured as set forth above, from a horizontal plane established by determining the average elevation of existing grade at all four corners of the lot.

To demonstrate that the appellant is being treated fairly, the Director nevertheless reduced the surveyed elevation of the natural topography on the northeast corner of Mr. Paunovich's property so that the elevation change between the northeast and southeast corners would be consistent with the elevation change shown on a historical survey between the same corners on the appellant's property. As Mr. Paunovich's land survey included with this letter illustrate, these corners (and the grade change between them) are shared on the common property line between the appellant's and Mr. Paunovich's properties. See Exhibit B (Mr. Paunovich's land survey showing the disputed northeast and southeast corners on Mr. Paunovich's property are on the common property line with appellant's property).

In more detail, the Director reviewed a survey that the appellant commissioned in 1989 on their own property in order to build their house to its current height and found that there was a 2.9 foot grade difference between the north and south property corners on the property line in common with Mr. Paunovich's property. See Exhibit E (historical 1989 survey of appellant's property). Accordingly, to encourage consistency between the properties, the Director averaged the surveyed elevation for the northeast corner of Mr. Paunovich's property with a spot elevation

approximately 5 feet to the south of the actual northeast corner to provide the same 2.9 foot grade difference between the north and south property corners on the common property line. See Exhibit B (Mr. Paunovich's land survey showing the actual northeast corner elevation and a spot elevation on the natural grade to the south). The net effect is that the maximum allowable height on Mr. Paunovich's property was reduced by 0.12 feet to be consistent with the height and grade change of appellant's property.

As such, the Director used the following corner elevations for the CDP to determine the maximum building height on Mr. Paunovich's property:

CORNER	ELEVATION	MAXIMUM HEIGHT
NE	$(116.9 + 115.9)/2 = 116.4$	The average of the elevation at the four (4) corners on the lot + 30 feet.
NW	101.15	
SW	102.1	
SE	113.5	
$433.15/4 = 108.29 + 30 =$		138.29

While the averaging on the northeast corner was not necessary, Mr. Paunovich's proposed residence is still under the height limit for the property. As shown on Mr. Paunovich's approved plans, the maximum height of the proposed residence is **138.15**. This is below the permitted maximum building height prescribed by the MBMC and the height calculated by the Director and thus the proposed residence complies with the City's height restrictions.

In bringing this appeal, the appellant claims that the Director's attempt to encourage consistency in the maximum height limit for the appellant and Mr. Paunovich was done in error. In essence, the appellant contends that the Director should have ignored the height limit prescribed by the City's Municipal Code and selected an elevation more than 6 feet lower for Mr. Paunovich's property overall so that it would have absolutely no adverse impact on appellant's view from the lower level of their house. However, the Director agrees that this contention has no basis in the City's Municipal Code.

The appellant has also made the false claim that Mr. Paunovich's survey does not accurately reflect the natural grade of the property because, according to appellant, over 6 feet of dirt was supposedly placed on the common property line corners to artificially raise the natural topography of Mr. Paunovich's property. In making such a claim, the appellant boldly asks the Planning Commission to ignore historical GIS data and two historical property surveys demonstrating that the natural topography has not materially changed for more than 100 years. In particular, the City's 1913 GIS contour data, a 1966 survey of Mr. Paunovich's property and appellant's own 1989 survey which was the basis for the approval of their own house, all demonstrate that appellant's claim is false. See Exhibit B (Mr. Paunovich's land survey):

Exhibit E (contour plot of historical GIS data and two historical surveys). In fact, if anything, these historical documents further support the validity of the Mr. Paunovich's survey used by the Director to calculate the maximum permitted height on the property in this case.

In sum, Mr. Paunovich's proposed residence meets all Code requirements, and this appeal must be denied.

C. The Appellant Has No Right to Utilize the Rear Yard of Mr. Paunovich's Property

As discussed above, Mr. Paunovich's proposed residence observes a five (5) foot rear yard setback, pursuant to the requirements of the City's Municipal Code. MBMC § 10.12.030. Despite the project's compliance with this Code requirement, the appellant argues that because their home was built to the common property line, the appellant has supposedly acquired some vague "equitable" property right for "irrigation, light and safety purposes" over the 10 foot rear yard that the duplex on Mr. Paunovich's property currently maintains. As the Manhattan Beach City Attorney will advise, this is a private civil claim that is outside of the legal jurisdiction of the Planning Commission to decide in this case. In addition, the Director has confirmed that the Title Report and Grant Deed for Mr. Paunovich's property clearly show that appellants have no legal rights in any portion of Mr. Paunovich's property.

Moreover, the appellant's claim is contrary to California law. The law imposes a significant burden to establish the amorphous rights appellant claims to have in Mr. Paunovich's property in this case. *See, e.g., Grant v. Ratliff*, 164 Cal.App.4th 1304, 1310 (2008) [the "clear and convincing evidence" burden "demonstrates there is no policy favoring the establishment of prescriptive easements"]. Equitable easements are rarely granted and typically only in instances where a court wants to "promote justice, acting through its conscience and good faith" when a claimant has innocently used the property of another. *Hirshfield v. Schwartz*, 91 Cal.App.4th 749, 769 (2001). Here, the appellant cannot meet the high burden of establishing any right over Mr. Paunovich's rear yard setback area even if this was the proper jurisdiction to the resolve such a claim since they have not offered any evidence to support the claim. In addition, any use that the appellant supposedly made of Mr. Paunovich's property has not been innocent since the appellant is fully aware and admits that their home is built on the common property line.

In sum, Mr. Paunovich's proposed residence meets the five foot rear yard setback required by the City's Municipal Code, and this appeal must be denied for this additional reason.

D. Granting the Appeal Will Damage Mr. Paunovich

Granting the pending appeal will significantly interfere with our client's reasonable expectations with regard to development of the Property. If the City does not approve a Coastal Development Permit for the proposed residence that complies with all applicable codes and regulations, it would constitute a compensable taking under the Fifth Amendment of the Federal Constitution as made applicable to the State of California pursuant to the Fourteenth Amendment of the Federal Constitution, and under Article I, Section 19 of the California Constitution. Such an

Planning Commission
City of Manhattan Beach
February 6, 2013
Page 6

action would clearly “go too far” in its economic impact on the Property and thus constitute a taking of the Property for a public purpose. *See, e.g., Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 414 (1922).

In addition, granting the appeal would result in our client knowingly and intentionally being deprived by the City of his rights under the United States Constitution and laws, including, but not limited to, 42 U.S.C. § 1983. Such conscious disregard of our client’s rights would result in a compensable violation of our client’s right to substantive and procedural due process, and to equal protection under the law.

E. Conclusion

Mr. Paunovich’s proposed residence complies with all aspects of the City’s Municipal Code and with the Manhattan Beach Local Coastal Program. It is also consistent with other single family homes in the area, including appellant’s own home, and has the support of other neighbors. It is clear that the appellant objects to the proposed project because they desire only to preserve their view from all levels of their home. Such objections must be dismissed as the City does not have a private view protection ordinance.


Based upon the foregoing, our client respectfully requests that the Planning Commission deny the pending appeal and affirm the Community Development Department’s approval of the subject Coastal Development Permit.

Thank you for your consideration of these issues. As always, please do not hesitate to contact me at any time with any questions or comments that you may have.

Sincerely,

GAINES & STACEY LLP

By


FRED GAINES

cc: Richard Thompson, Community Development Director
Angelica Ochoa, Assistant Planner

EXHIBIT

A

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BRUCE BOLANDER ARCHITECT
2710 LAS FLORES CANYON ROAD
MALIBU, CA 90265
310 456-6719

PAUNOVICH RESIDENCE
301 25TH STREET
MANHATTAN BEACH, CA

01-29-2012
EXHIBIT A



EXHIBIT

B

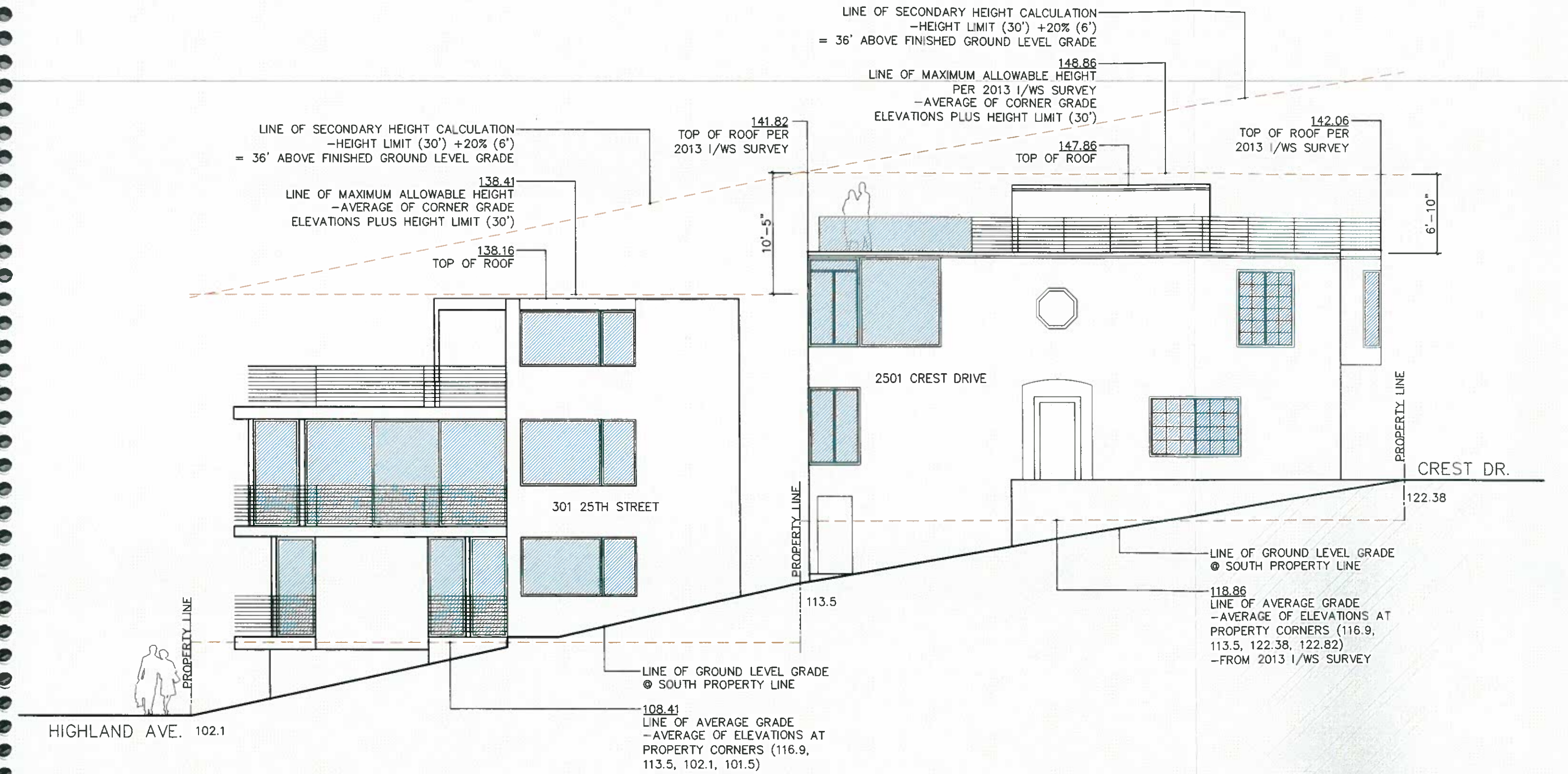
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February 4, 2013

Ms. Angelica Ochoa
Assistant Planner
1400 Highland Avenue
Manhattan Beach CA 90266

Re: 301/303 25th Street

Dear Ms. Ochoa:

We are writing in SUPPORT of the Coastal Permit for a new residence at 301/303 25th Street. We are nearby neighbors affected one way or another with the new construction including loss of view. We understand the plans were reviewed by the Director of Community Development who determined that they comply with the Code, including the height of the proposed building.

The new home will benefit the neighborhood in several ways:

- It will reduce the density by eliminating the extra one unit from the old days
- It will remove some of the wiring that hand over 25th Street from the alley to the subject property
- It will replace an old decrepit structure with a new one and improve
- the parking situation since the 2nd unit is eliminated

Our main concern is to have the Code applied in a uniform way for ALL residents so that we can rely on the City to enforce the rules consistently and not bend them to grant favors.

Sincerely Yours,

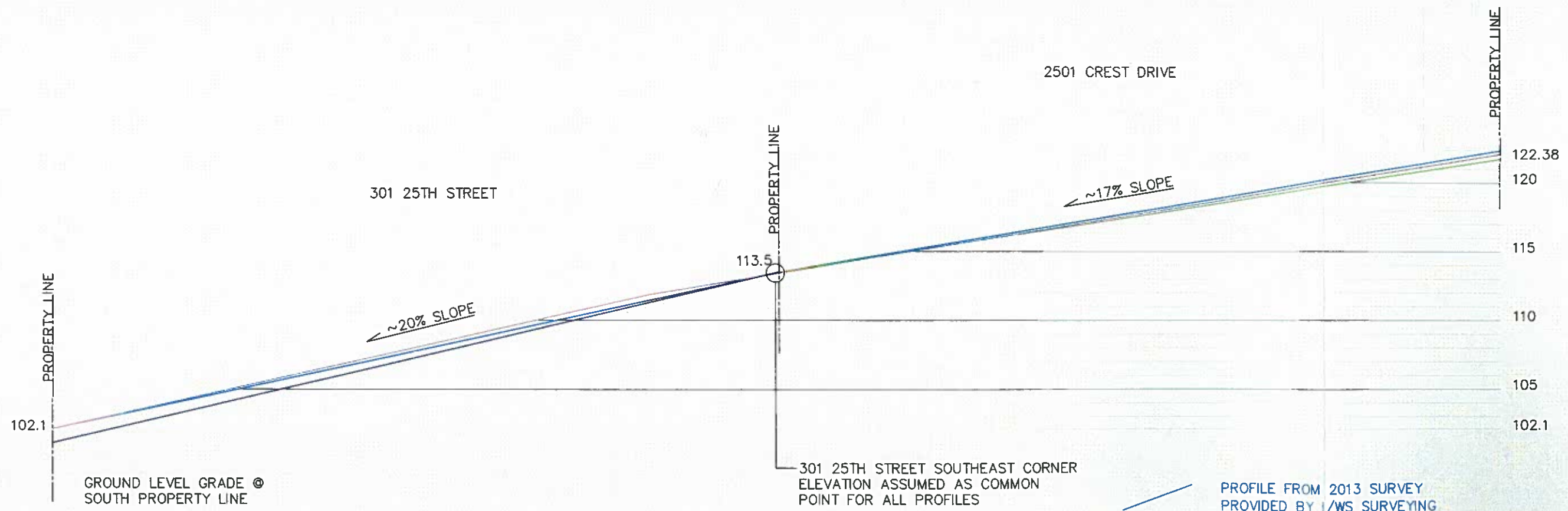
Arlette Tirman

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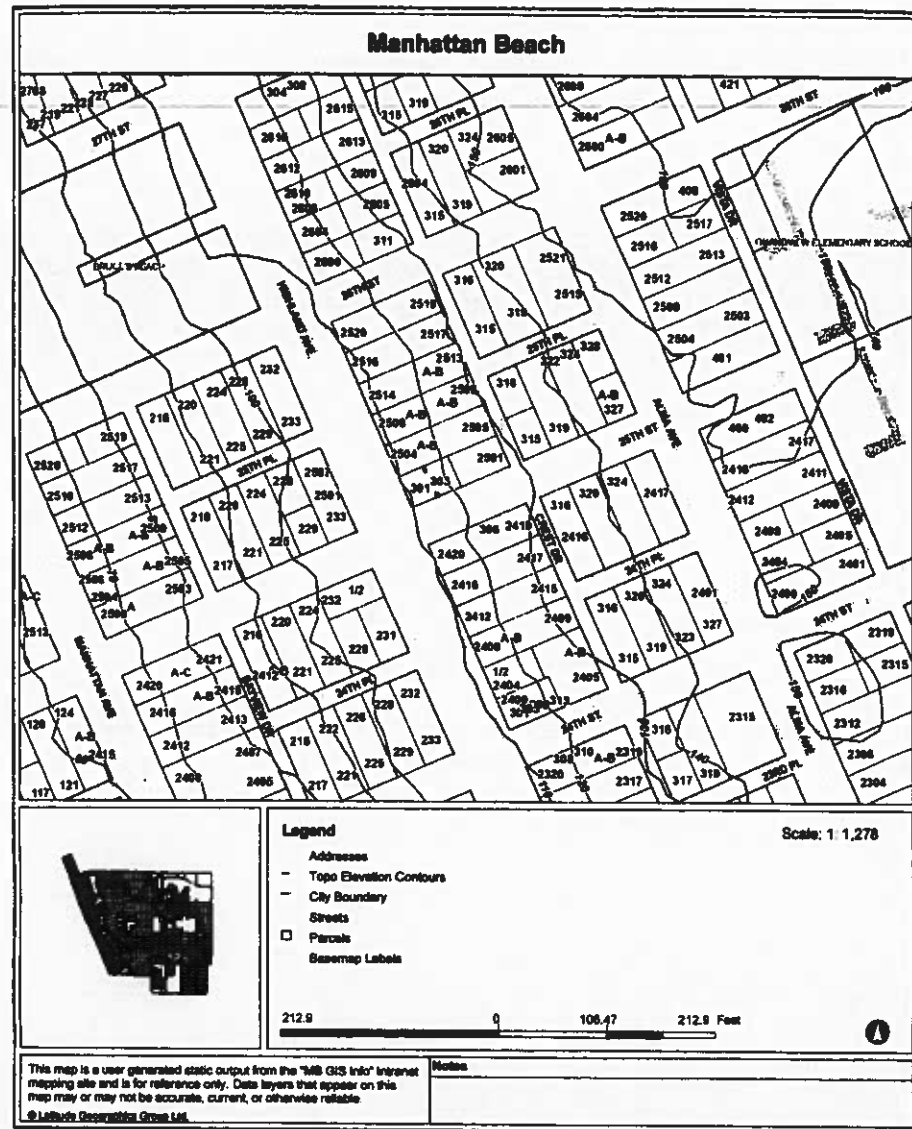
EXHIBIT

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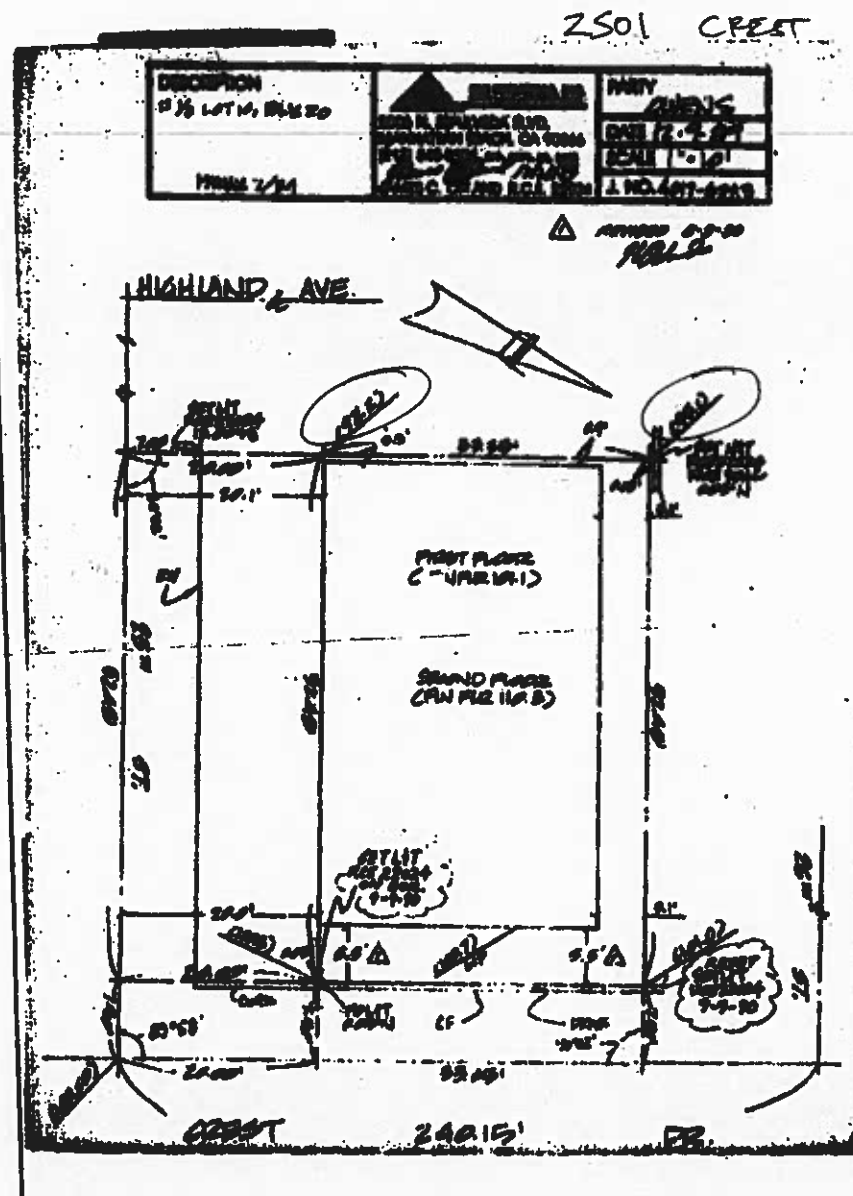
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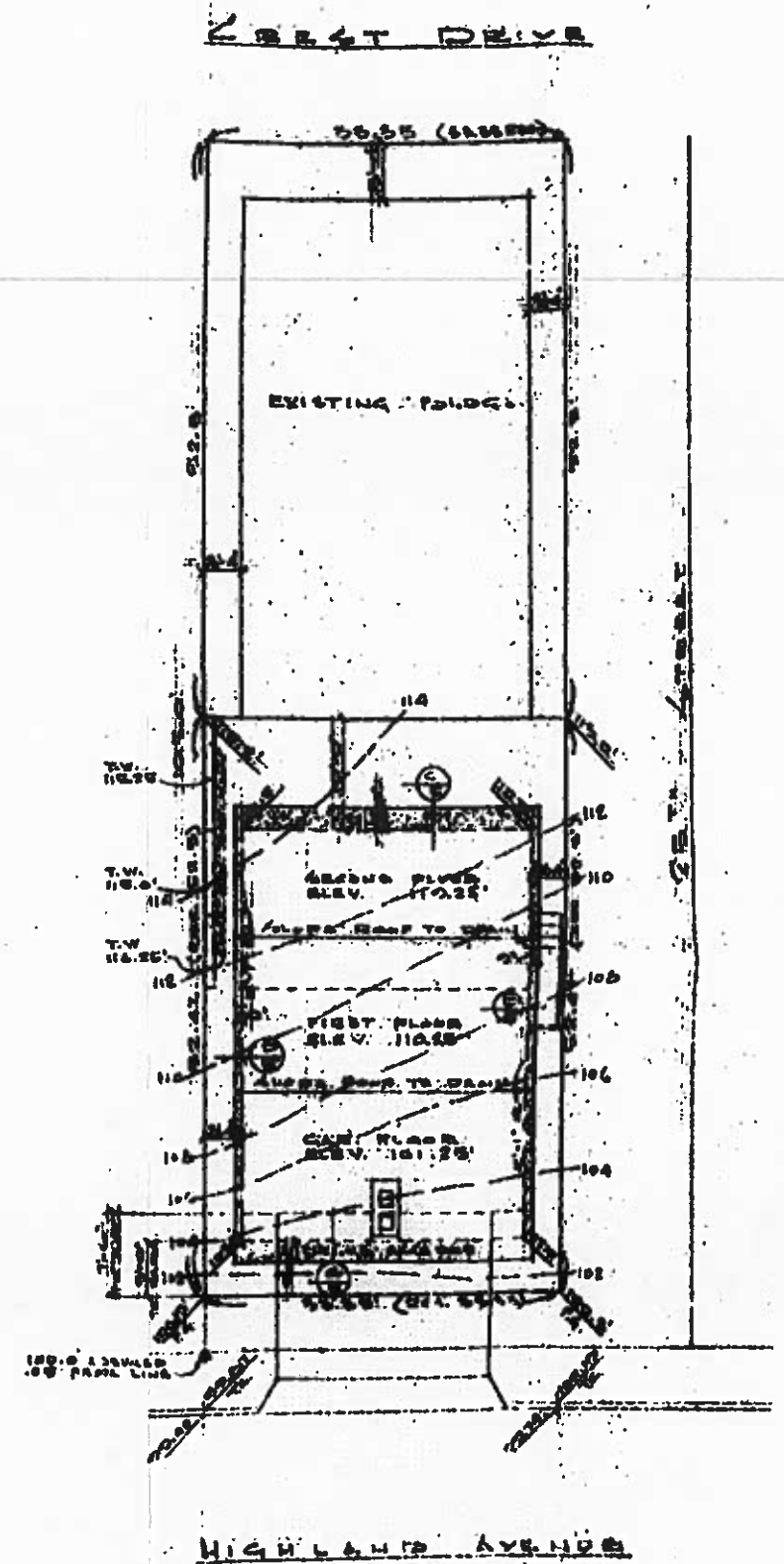
- PROFILE FROM 2013 SURVEY PROVIDED BY I/WS SURVEYING
- PROFILE FROM 1989 PLOTPLAN PROVIDED BY MR. ARMATO AVAILABLE FOR 2501 CREST DR. ONLY
- APPROXIMATE PROFILE FROM 1913 PLAN CITY OF MANHATTAN BEACH
- PROFILE FROM 1966 PLAN FOR 301 25TH STREET



1913 MAP



1989 SURVEY OF 2501 CREST DR.



1966 SURVEY OF 301 25TH STREET

Angelica Ochoa

From: Joe Paunovich <joepaunovich@quinnemanuel.com>
Sent: Monday, February 04, 2013 7:44 PM
To: Angelica Ochoa; Laurie B. Jester
Cc: Richard Thompson; 'Fred Gaines'; 'brucebolander@brucebolander.com'
Subject: 301/303 25th Street (fka 2500 Highland Ave.) Permit Appeal
Attachments: 2500 HIGHLAND AVE - PLANS.pdf

Angelica and Laurie,

I understand now that the appellant's attorney Joseph Di Monda, contrary to his January 23, 2013 letter to me and the City, is requesting only a copy of the 1966 survey associated with my property. In his letter, he previously requested copies of all files and documents associated with my property which I objected to since he and any other member of the public can review such files at any time at City Hall and since the overwhelming majority of the documents are completely irrelevant to their appeal.

By this email, I hereby authorize the City to provide the 1966 survey to the appellant's and their attorney for the purpose of their appeal. A copy of the survey is attached to this email for your convenience to forward to them by email or I can send it if you prefer.

I also understand that Mr. Di Monda sent a letter on behalf of appellants on January 23, 2013 asking for a continuance of the permit appeal hearing scheduled on February 13, 2013 because the appellants supposedly have not been able to obtain some unidentified documents. I received a copy of the letter today and see that it was sent to the City Attorney, the Director of Community Development and each member of the City Council - as you know, it was not sent to me by Mr. Di Monda.

As the Planning Commission, City Council and City Attorney should know if they consider the appellant's requested continuance, I understand that the appellant and various attorneys representing them began to meet with the Director and staff on a weekly (if not daily) basis beginning in November 2012 (continuing through the present) and have had ample opportunity to review all files and documents associated with my property at City Hall. In fact, I understand that the staff has gone to great lengths to accommodate the appellant's and their attorney's requests for assistance. As you know, their latest claim that they have not been able to review some unidentified documents is simply not true.

As a practical matter, the appellants filed their appeal of my issued permit on December 27, 2012. Pursuant to the Manhattan Beach Municipal Code ("MBMC") § 10.100.050, I was entitled to a hearing to resolve the appeal within 30 days of the appeal being filed absent my consent to a later hearing date. "An appeal shall be scheduled for a hearing before the appellate body within thirty (30) days of the City's receipt of an appeal unless both applicant and appellant consent to a later date." MBMC § 10.100.050. When I was notified of the appeal for the first time on January 9, 2013, I requested a hearing within 30 days of December 27, 2012 (which would have been January 26, 2013) and I begrudgingly accepted the City's request that I consent to a brief extension of the hearing until February 13, 2013. This consent came at significant monetary cost to me in that I am further delayed in having the appeal resolved so that I can start my project.

I know you are aware of all these facts but since I was unaware until today that Mr. Di Monda had sent a letter requesting the continuance to the City Attorney and City Council, I want the record to be clear that I do not consent to any further extensions of the appeal hearing. Please forward to the City Attorney, City Council and/or the Planning Commission if appropriate or let me know if I should do so.

It is also worth noting that my providing the 1966 survey to appellants and their attorney obviates their supposed need for a continuance.

Regards,

Joe Paunovich

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