



Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead



Richard J. Bruckner
Director

February 9, 2010

TO:

Wayne Rew, Chair
Pat Modugno, Vice-Chair
Esther L. Valadez, Commissioner
Leslie G. Bellamy, Commissioner
Harold V. Helsley, Commissioner

FROM:

Richard Claghorn *RC*
Principal Regional Planner, Land Development Coordinating Center

SUBJECT:

Materials for Appeal of Director's Denial of RPP 200801286
Project Number: R2008-01777-(5)
Case: RPP 200801286-(5)
RPC Meeting: 02/17/10
Agenda Item: 10 (Supplemental Materials)

Please find attached the supplemental information provided by Karen Davis, the attorney representing Maureen Keane, the owner of 526 Wenham Road.

RC

REGIONAL PLANNING COMMISSION MEETING

February 17, 2010

OPPOSITION TO AGENDA ITEM No. 10

Project No. R2008-10777(5)

Site Plan Review Case No. 200801286 (Yard Modification)

SUBMITTED ON BEHALF OF MAUREEN KEANE

(Owner of contiguous property - 526 Wenham Road)

Copy No. 1

OPPOSITION TO YARD MODIFICATION

SITE PLAN REVIEW CASE NO.: 200801286

PROJECT NO.: 42008-01777 (5) - 520 Wenham Road

Meeting Date: February 17, 2010

OVERVIEW:

Maureen Keane, the owner of the contiguous property to the Project (526 Wenham Road, Pasadena, CA) submits the following Opposition to the request for Yard Modification for the above-referenced property.

Ms. Keane opposes the approval of the request for Yard Modification based upon the following:

1. The request for a Yard Modification under Chapter 22.48.180 of the Code (Title 22) **does not meet** the stringent pre-requisites for the modification.
2. The Applicant is seeking forgiveness for the zoning code and building code violations of the project which were known and apparent before the project was approved.
3. The Applicant submitted **false** plans misrepresenting that the side yard offsets and rear yard offsets were in compliance with existing laws in order to obtain the building permit which would not have otherwise been issued.
4. The building addition creates a health, safety and fire hazard to the neighboring property due to the improper proximity (1.68 feet) from the property line. Notably, the Modification seeks **material** and **significant** exceptions - not **minor alterations** as suggested by Staff Analysis and Report.
5. The Applicant continues to submit false and misleading information to the Commission as a means to garner sympathy for the hardship that the Applicant created.
6. Ms. Keane submits that the Yard Modification should not be approved and that the denial issued by the Director of Regional Planning should be upheld.

Detailed Support for Opposition

1. Pre-requisites for Modification under Chapter 22.48.180 not met

Chapter 22.48.180 provides in pertinent part that a director of planning or county engineer, without notice or hearing, may grant a modification to yard or setback regulations required by the ordinance codified in this Title 22 or any other ordinance where topographic features, subdivision plans or other conditions create an unnecessary hardship or unreasonable regulation or make it obviously impractical to require compliance with the yard requirements or setback line...”

Moreover, the yard modification procedure within Regional Planning requires submittal of a Site Plan Review application, Yard Modification Burden of Proof, vicinity map depicting all buildings or structures within 50 feet of the subject property with similar setbacks to those being requested, photographs of these structures, an ownership radius map keyed to the ownership list, and gum labels containing contact address of all property owners located within the 100 feet of the subject property.

The specific chapter section for Yard Modifications, which address requests for approval of the equivalent of a variance, are authorized to proceed and be approved without a public hearing and without the higher level of scrutiny only in the limited circumstances that are covered by the section.

In this case, there is nothing about the topographic features (the land is flat) or the subdivision plans that create a hardship. The Applicant claims that the fact that the house is placed on an angle in the lot creates a hardship. This is not the type of hardship contemplated by the Code. In fact, California courts have concluded that a variance is not intended to be used for the purposes of convenience or to increase the value of a property. *Hamilton v. Board of Supervisors*, 269 Cal. App 2d 64, (1969).

The approval of a yard modification or variance is available to ensure that building and zoning standards do not prevent a property owner from using the property at issue in a manner consistent with neighboring properties.. In this case, there was an existing residence with two bedrooms which had provided suitable

housing since it was built in 1956. The Applicant simply decided that he wanted to expand the square footage of the residence. The expansion violated various zoning and building codes and the Applicants after-the-fact justification are not supported by either the yard modification procedures or the variance procedures. Accordingly, the Commission should deny the Applicants request to overrule the Regional Planning Department recommendations.

2. **Applicant is improperly seeking forgiveness for zoning and building code violations after the fact**

The Applicant claims that he relied on the location of a chain link fence to establish the property line between his property at 520 Wenham Road and the property to the south at 526 Wenham Road. However, the Applicant's claims simply are not truthful. The Applicant is a project manager for a residential developer. As such, he has special knowledge and understanding about the building codes and zoning regulations. Ms. Keane contends that the Applicant knew all along that the addition would not be approved so he chose to build first and ask for forgiveness afterwards.

At this time, the corner of the new structure is located 1.68 feet from the property line as referenced in the survey attached as Exhibit "1". According to the Applicant, there was a chain link fence which he claims was at least 5 feet from the proposed corner of the addition. However, this after-the-fact claim is not true. There was a chain link fence between the two properties at the time of construction. This fence did not denote the property line. Most importantly, the chain link fence was located only 15.6 inches off the actual property line. As such, there was only a maximum of **3 feet** between the corner of the addition and the property line.

This discrepancy was blatantly obvious and Ms. Keane queried of the inspectors how they did not note the obvious violation of the five foot offset requirement when conducting their inspections. Evidence of this egregious oversight and the falsity of the Applicants representations are demonstrated in the following Exhibits:

1. Photograph of old fence with ivy on it (clearly there is no 5 foot offset) attached as Exhibit "2" page 1

2. Photograph of old fence with ivy removed (clearly there is no 5 foot offset) attached as Exhibit "2" page 2
3. Survey depicting the placement of the old fence relative to the property line - 15.6 inches space at the area of reference, attached as Exhibit "3".

The photographs and survey reflect that there could never be a misunderstanding about the existence of a five foot offset. In fact, the original residence was only four feet off of the southerly property line so that **no** addition could have been built without a violation of the side yard offset requirements.

California courts have also held that a hardship created by a property owner does not justify a variance. *Atherton v. Templeton*, 198 Cal.App 2d 146 (1961).

3. **The Applicant submitted false plans misrepresenting compliance with the zoning code.**

Attached to the package submitted by the Applicant is a copy of the initial Site Plan used to obtain the building permits in January 2007. Attached to this Opposition as Exhibit "4" is another copy for the convenience of the reviewing Commission. As noted, the Applicant represented that there would be a 5 foot offset to the property line with the southerly property and a 15 foot offset to the rear yard property line. These representations were false and a reasonable person could not conclude that it was a mere oversight from the Applicant, an individual who works in the construction industry.

The burden is on a property owner to ensure that they comply with the building codes and zoning codes. A very simple method of ensuring compliance is to obtain a survey. In this case, a visual inspection, even by an inexperienced person, would note that the offsets were not feasible.

4. **The building addition creates a health, safety and fire hazard to Ms. Keane's property.**

The purpose of the side yard offsets is to ensure that there is sufficient space between structures in the event of a fire or other hazard. In this case, the addition is located 1.68 inches off of the property line. Moreover, the eve **overhangs** the property line.

As noted in the Site Plan attached as Exhibit "4", the Applicant noted that the drainage for the property would be directed towards the south-east. Historically, the drainage, based upon the existing terrain, drained towards the east- or the back of the property.

One result of the illegal addition and the subsequent grading of the yard was that the run-off water has now been directed towards Ms. Keane's property. In fact, the angle of the roof of the addition is directed towards Ms. Keane's property such that a large portion of rain water falling on the roof is dumped within inches of the property line and then runs into her back yard.

The Staff Analysis states that the Applicant has covered up the windows facing south towards Ms. Keane's property with the suggestion that such action effectively addresses the fire hazard. First, the windows are merely covered with plywood which provides no fire barrier. Secondly, the building codes do not permit any windows on a wall that is located within three feet of a property line.

The above-referenced violations of building codes and zoning codes are significant. These violations are not subject to "minor alterations" as suggested by the Staff Analysis. While the removal of the addition may be viewed as a harsh remedy for the Applicant, it is, most notably, one of his own making. [Reference photographs attached as Exhibit "2", pages 3, 4 and 5" to view proximity of addition to property line and to view overhand of eve.]

5. **The Applicant continues to submit false and misleading information to support the Application for a Yard Modification.**

The Applicant claims that the Yard Modification should be approved because they suffer from a hardship related to the fact that the original residence was placed at an angle on the lot and that they were honestly misled about the location of the property line between their property and the property to the south.

In support of this claim, the Applicant has submitted a revised Site Plan noting the addition and making a reference to the "old boundary line". A copy of the revised Site Plan is attached as Exhibit "5" for the convenience of the Commission.

The Applicant makes two false representations in this revised Site Plan. First, the Application represents that there was a 5 foot distance between the new fence and the chain link fence (now shown as the "old boundary line"). This representation is false and the photographs referenced in Exhibit "2" and the survey depicting the placement of the chain link fence prior to it's replacement with a wood fence 2" off of the property line as shown in Exhibit "3" prove this point.

The Applicant advised the representative of Regional Planning who visited the site on December 29, 2009 that a wood arbor located on Ms. Keane's property was at the same location as the chain link fence. In fact, the arbor was located several feet south of the fence. However, this story was created to establish a five foot distance from the wood fence and thus, a justification for the Applicants "misunderstanding."

The Applicant is also now loosely claiming an "easement" in the area between their addition and part of the property of Ms. Keane. Such a reference provides no legal support for a yard modification since an easement, if it existed, does not qualify for compliance with the zoning requirement of five feet from a property line. Furthermore, California Courts have long held that no easement is created when a property owner asserts exclusive use over the property of another. *Harrison v. Welch*, (2004) 116 CA4th 1084.

The Applicant is submitting the false information as a means to invoke sympathy for his purportedly "innocent oversight" in building out the addition in violation of the building codes and zoning codes. The facts clearly demonstrate that the actions of the Applicant were not innocent nor based on misinformation.

Even if the actions of the Applicant were innocent, the end result should not be approval given the material and significant impact the addition and grading have on the health, safety and fire hazard risks that have been created. These risks simply cannot be resolved without the removal of the addition.

6. **Enforcement should commence immediately as the Applicant will not ever be able to justify the request for a Yard Modification or Variance.**

Chapter 22.60.240 provides that the appellate body shall consider only the same application, plans and materials that were the subject of the original decision.

In this case, Regional Planning permitted the Applicant to submit additional documentation through November 2009 after the application was denied in August 2009. In addition, representatives of Regional Planning visited the property on December 29, 2009 for purposes of their own investigation. Notwithstanding all of the additional accommodations and efforts made to support the Application for a Yard Modification, the Applicant will never be able to justify the request based upon the underlying facts which cannot be altered.

Ms Keane inquired about the finality of the ruling by this Commission and was informed that the Applicant can re-file his request for a Yard Modification every twelve months. Such a reality, if true, would make a mockery of this process and will prevent Ms. Keane from ever seeing an end to the hazards that exist at her property as a result of the Applicant's addition which violates building and safety regulations.

Accordingly, Ms. Keane requests that a final decision denying the appeal and upholding the decision rendered by the Director of Regional Planning be made as soon as possible. Ms. Keane also requests that enforcement action be commenced immediately as there are no other administrative or legal remedies available to change the denial of the Yard Modification.

Conclusion

Ms. Keane strongly opposes the approval of the Yard Modification sought by the Applicant, Steven Mason. Ms. Keane's opposition is not only based upon the material and significant risks and hazards that have been created as a result of the addition, but her opposition is also based upon the fraud that has been perpetrated on the various county agencies in seeking the original approvals. Such conduct should not be rewarded by any subsequent approvals or accommodations to the Applicant.

Ms. Keane takes exception to any suggestion that she should allow for a lot line adjustment on her property to bring the Applicant's property into compliance. This suggestion is misplaced as any lot line adjustment would create a violation arising from the location of her pool equipment. Moreover, a lot line adjustment would interfere with the improvements she has surrounding her pool.

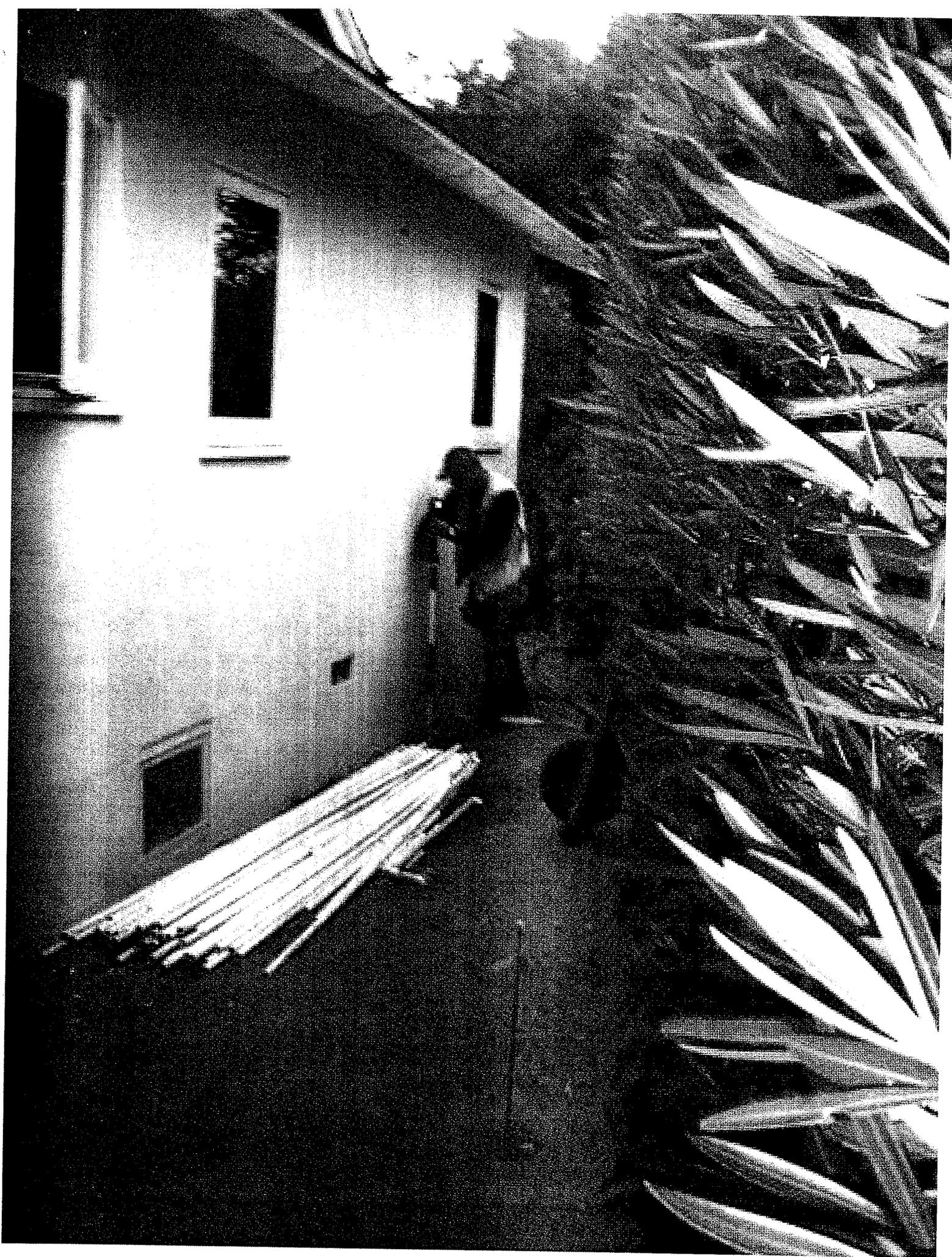
In summary, the Regional Planning Commission should deny the Applicant's appeal and should uphold the denial of the Yard Modification rendered by the Regional Planning Department as any approval or accommodation to the Applicant will cause irreparable harm to Ms. Keane and her property.

Respectfully submitted;

LAW OFFICES OF KAREN A. DAVIS



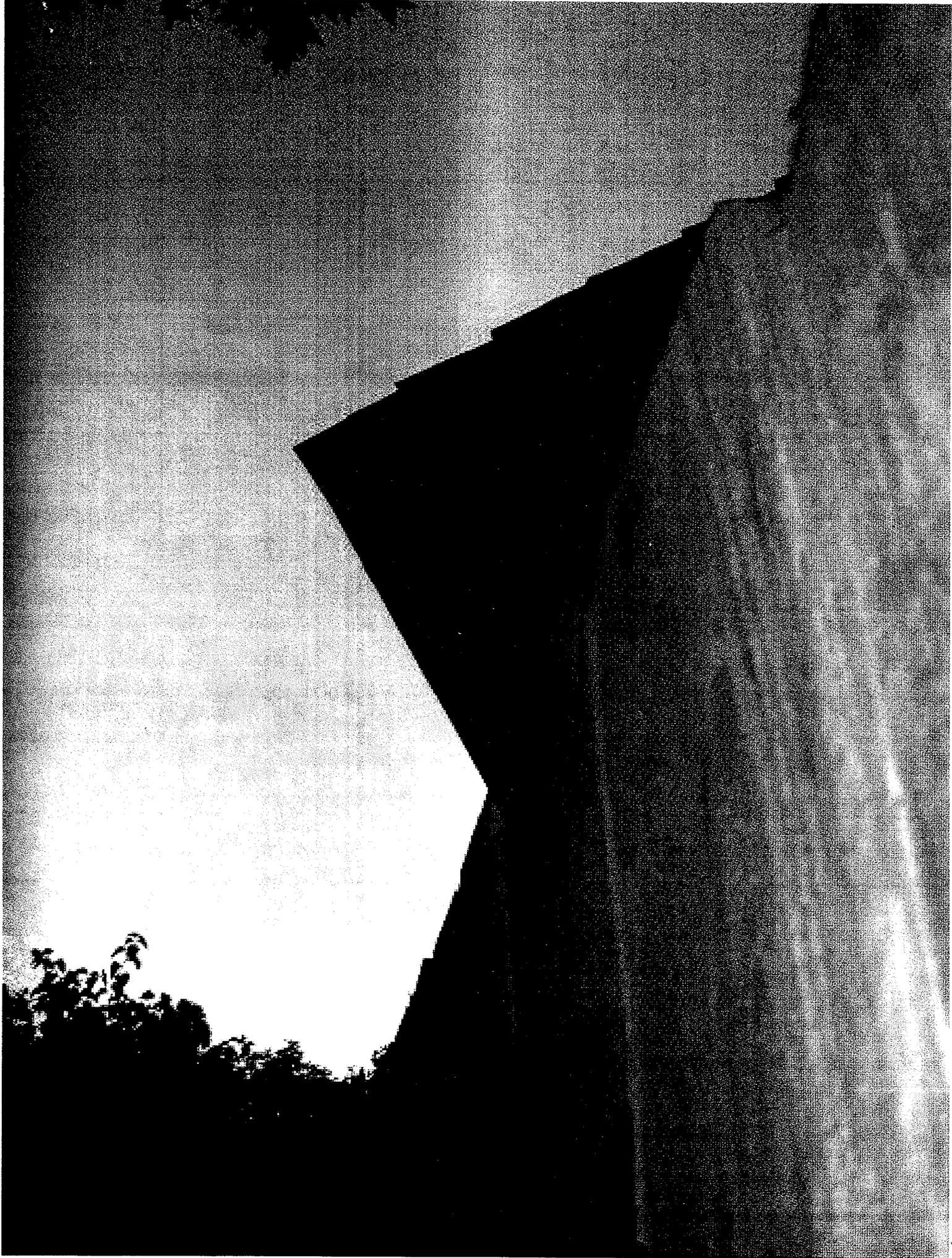
Karen A. Davis

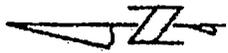






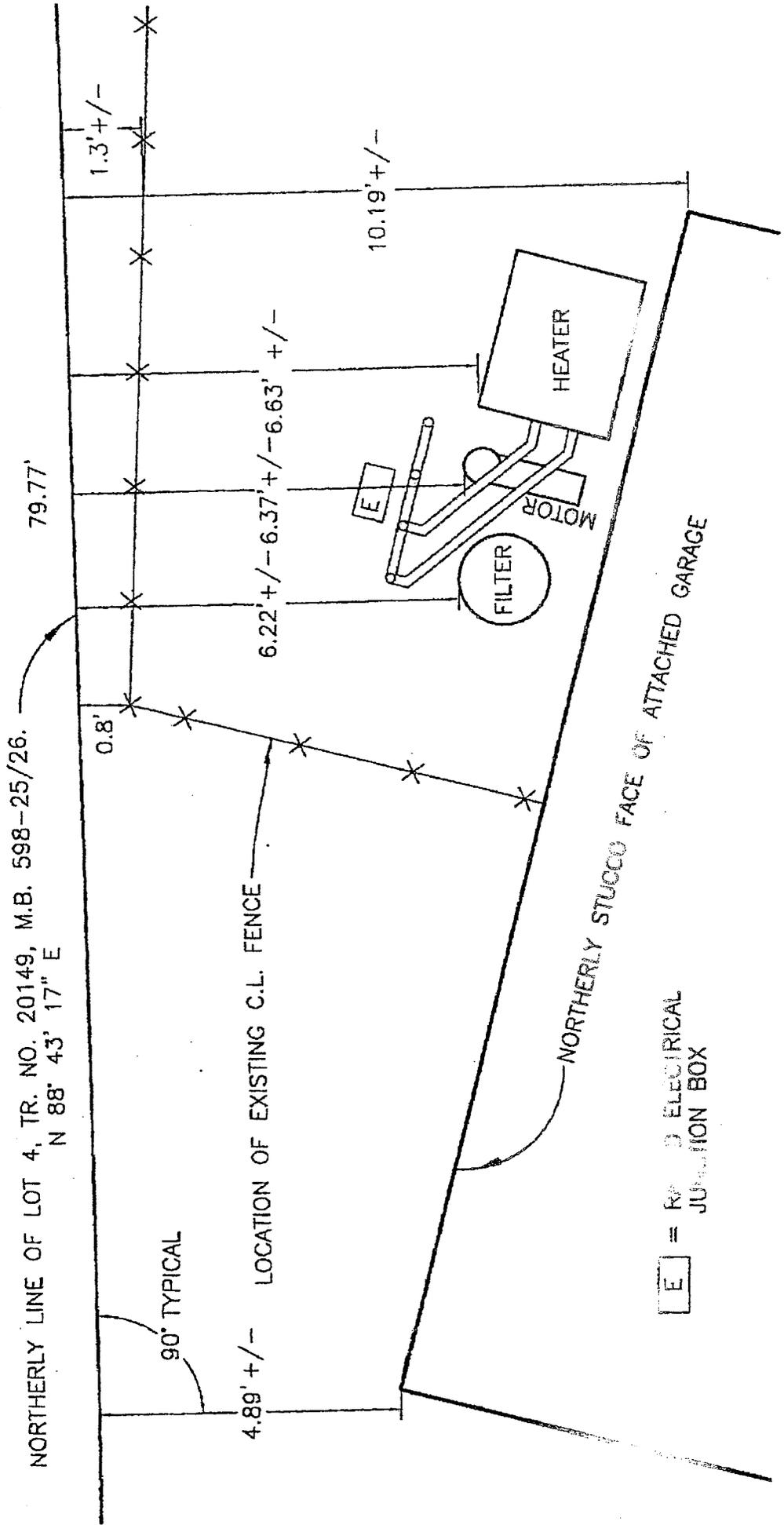
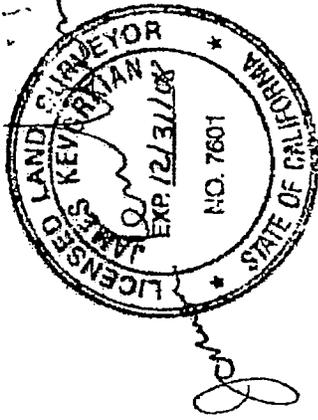




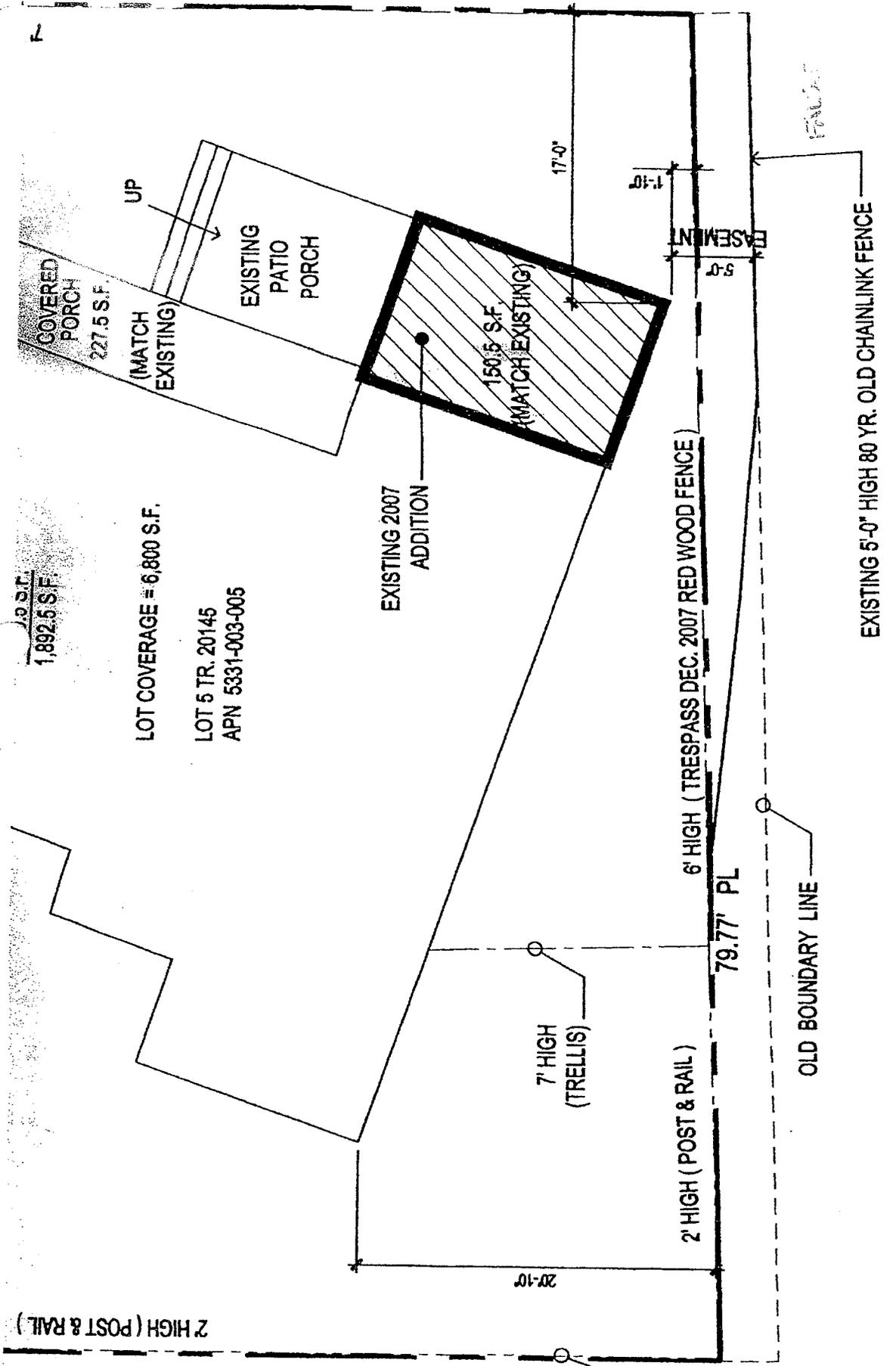


LOCATION OF MAIN POOL EQUIPMENT IN
RELATION TO LOT LINE.
526 WENHAM ROAD, PASADENA.
AS OF OCTOBER 9, 2007.

NO SCALE



E = ELECTRICAL
JUNCTION BOX



SITE PLAN