

May 4, 2011

TO:

Pat Modugno, Chair  
Esther L. Valadez, Vice-Chair  
David W. Louie, Commissioner  
Harold V. Helsley, Commissioner  
Curt Pedersen, Commissioner

FROM:

Richard Claghorn  
Principal Regional Planner, Land Development Coordinating Center

**SUBJECT: APPEAL OF DIRECTOR'S DENIAL OF REQUEST FOR A YARD  
MODIFICATION (RPP 200801286)  
PROJECT NUMBER: R2008-01777-(5)  
CASE: RPP 200801286  
RPC MEETING: May 18, 2011  
AGENDA ITEM: 7**

The applicants, Mr. Steven Mason and Ms. Nadine Chim, applied for a Yard Modification Request for retroactive approval to modify the required building setbacks for an addition to an existing single-family residence pursuant to Los Angeles County Code Section 22.48.180 (RPP 200801286). The applicant requested a reduction of the side yard setback from the required five feet to 1.68 feet at the closest point, a reduction in the rear yard setback from the required 15 feet to approximately 12 feet, and an increase in allowable fence height along the rear property line to seven feet instead of the maximum allowable six feet. This Yard Modification Request was considered by the Director of the Department of Regional Planning and was denied on August 13, 2009. The applicants appealed the Director's denial to the Regional Planning Commission ("RPC").

The appeal request was presented to the RPC at a duly noticed public hearing on February 17, 2010. Commissioners Valadez, Bellamy, Helsley, Rew, and Modugno were present. The applicants requested a continuance in order to have more time to gather information supportive of their case. The continuance was granted to May 19, 2010. At the hearing on May 19, 2010, all commissioners were again present. The applicant's neighbor, who owns and resides on the property adjacent to the south of the subject property, spoke in opposition to the requested Yard Modification, citing, among

other reasons, encroachment of an eave from the addition over her property, drainage onto her property from the addition, fire safety concerns and other negative impacts to her property. The applicants and the neighbor disputed the impact of the addition on the neighboring property and the best way to address the concerns raised by the setback encroachment. The RPC voted to take the item off calendar for one year to allow the applicants and neighbor time to reach a resolution. The item was to be scheduled for an RPC hearing in one year if no resolution was reached.

The applicants, the neighbor, and legal counsel for each side have met with a mediator to attempt to reach a solution acceptable to both sides. The applicants, the neighbor, and their legal counsel have also met separately with the Director of Regional Planning, the Land Development Coordinating Center Section Head, and the case planner to discuss the case and to identify a potential resolution. As of this time, no resolution has been reached.

Regional Planning has also consulted with the Fire Department and Department of Public Works, Building and Safety Division to determine if the window covering proposed by the applicant is acceptable with regard to the Fire Code and Building Code. The Fire Department has indicated that the window covering material and building separation would not conflict with Fire Code requirements. The determination by Building and Safety is still pending with regard to the Building Code requirements.

Although the window covering material would be acceptable to the Fire Department and the building separation would not conflict with Fire Code requirements, Regional Planning staff does not believe that the Yard Modification request satisfies the requirements set forth in the County Zoning Code. Therefore, Regional Planning staff's recommendation remains the same, which is to deny the appeal and uphold the Director's denial of the Yard Modification request.

Please find attached supplemental materials for this project.

#### **SUGGESTED MOTION**

**"I MOVE THAT THE REGIONAL PLANNING COMMISSION CLOSE THE PUBLIC HEARING, DENY THE APPEAL, AND UPHOLD THE DENIAL OF YARD MODIFICATION REQUEST RPP 200801286 SUBJECT TO THE ATTACHED FINDINGS."**

RC



# **FINDINGS AND ORDER OF THE REGIONAL PLANNING COMMISSION COUNTY OF LOS ANGELES**

**PROJECT NUMBER R2008-01777**

**APPEAL OF DENIAL OF RPP 200801286 (YARD MODIFICATION)**

## **REQUEST**

The applicant is appealing the denial of RPP 200801286 by the Director of the Department of Regional Planning, which requested modification of the required building setbacks for an addition to a single-family residence and authorization for an overheight fence in the rear yard setback.

**REGIONAL PLANNING COMMISSION HEARING DATE: May 18, 2011 (continued from the February 17, 2010 and May 19, 2010 meetings)**

## **PROCEEDINGS BEFORE THE REGIONAL PLANNING COMMISSION**

## **FINDINGS**

1. The subject property is located at 520 Wenham Road in unincorporated Pasadena within the San Pasqual Zoned District. The property is not located within any Community Standards District.
2. The applicants, Mr. Steven Mason and Ms. Nadine Chim, applied for retroactive approval to modify the required building setbacks for an addition to an existing single-family residence pursuant to Los Angeles County ("County") Zoning Code (Title 22) Section 22.48.180 (RPP 200801286). The addition was built within the required side yard setback area without the necessary approvals under Title 22. Additionally, an overheight fence was constructed without proper approvals within the required rear yard setback area. The applicant requested a retroactive reduction of the side yard setback from the required 5 feet to 1.68 feet from the property line at the closest point, a reduction in the rear yard setback from the required 15 feet to approximately 12 feet from the property line. The applicants also requested an increase in allowable fence height along the rear property line to 7 feet instead of the maximum allowable 6 feet. The Director of County Department of Regional Planning ("Regional Planning") considered the yard modification request and denied the application on August 13, 2009. The applicants appealed the denial of their request on August 26, 2009.
3. The subject property is classified as Low-Density Residential within the Los Angeles County General Plan. This category is suitable for the existing single-family residential use.

4. The property is zoned R-1 (Single-Family Residence). Pursuant to Section 22.20.120 of Title 22, structures in Zone R-1 must maintain interior side yard setbacks of at least 5 feet and rear yard setbacks of at least 15 feet from the property line. Fence height is limited to six feet within the required interior side and rear yard setback areas per section 22.48.160 C of Title 22.
5. The subject property is a flat level parcel with a single-family residence that had an addition built in 2007. There is no record of any Department of Regional Planning (Regional Planning) review prior to the submittal of this case in 2008, but the project received a building permit from the Los Angeles County Department of Public Works Building and Safety Division (Building and Safety) in January 2007. The site plan approved by Building and Safety showed a five-foot side yard setback and 15-foot rear yard setback, in accordance with the setback requirements of Title 22. Permits for the addition received final approval from Building and Safety on August 15, 2007.
6. In November 2007, a survey was completed that showed that the property line was not where it was previously believed to be. Based on the survey, the addition was only 1.68 feet (20.16 inches) from the side property line. Subsequently, the fence on the side yard was relocated to reflect the true location of the property line. However, the property boundary has not changed.
7. A neighbor notified the Zoning Enforcement section of Regional Planning regarding the encroachment of the subject addition into the required setback area. In May 2008, Zoning Enforcement issued a notice of violation for the setback encroachment and for a fence exceeding the height limit on the eastern side of the property.
8. In September 2008, the applicant filed a Yard Modification case (RPP 200801286) to request a modification to the setback requirements to allow the addition to remain, as well as to legalize the existing rear yard fence, which exceeds the height limit.
9. Pursuant to Chapter 22.48.180 of Title 22, the Director of Regional Planning may grant a modification to setback requirements 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. A burden of proof statement is required from the applicant in such cases to provide supporting information to justify the modification request. A burden of proof statement was provided for this request, but it was deemed inadequate to justify a modification. Among other factors, the applicants' Burden of Proof did not provide any examples of other properties in the neighborhood with setbacks similar to what the applicant requested nor did the applicant otherwise provide sufficient justification of the need for relief from applicable setback requirements.

10. In November 2008, Regional Planning issued a correction letter informing the applicant that the site plan contained inaccuracies and that there were other corrections and omissions that needed to be addressed in the yard modification application. The applicant was informed that the burden of proof provided did not justify a modification to the setback requirements and that no justification for the fence height modification was provided. No additional information was provided that would support the approval of the yard modification request.
11. Because the applicants had not provided sufficient support to justify approval of the yard modification request, Regional Planning staff informed the applicant that there were two remaining options available to resolve the situation. These options included either obtaining a lot line adjustment between the neighboring parcels to meet the required setbacks or demolishing the portions of the addition that encroached into the required setbacks. The applicant was given until February 5, 2009, to bring the property into compliance. The applicants did not bring the property into compliance by that deadline, but rather sought more time to work out a solution with their neighbor.
12. In March 2009, the applicant indicated that they would like to attempt to obtain a lot line adjustment to remedy the setback problem. However, this would require the cooperation of the owner of 526 Wenham Road, and the solution was ultimately determined not to be feasible. Therefore, the remaining solution was to demolish the portions of the addition that encroached into the required setbacks. However the applicants expressed a continued desire to work with staff and their neighbors in an attempt to reach a solution. Therefore, staff extended the compliance deadline to April 2, 2009, and then again to May 19, 2009, to give the applicant additional time to work out a solution with the neighbor and to file a lot line adjustment application.
13. Ultimately, the applicants' efforts did not result in an alternative solution, and the Director of Regional Planning denied Yard Modification case (RPP 200801286) on August 13, 2009. The applicant appealed the decision on August 26, 2009.
14. The site plan that was denied depicts a 6,800-square foot lot and shows the location of the residence and existing garage, as well as the addition. The side yard setback is shown as two feet from the property line, and as five feet, four inches from the "old boundary line". The site plan inaccurately depicts the old fence location as the "old boundary line" even though it was never the real property line. It was not clear what the actual distance from the addition to the south side property line was since the site plan showed two feet and the survey showed 1.68 feet. There were also some discrepancies between the lot dimensions shown on the site plan and the assessor's map. The north property line was shown as 61.82 feet on the site plan, but is only 55.23 feet according

to the assessor's map. The south property line is 79.69 feet long according to the site plan, but the assessor's map shows the length is 79.77 feet. The rear setback is not shown at the closest point, but it scales out to about 11.5 feet on the site plan.

15. A revised site plan was submitted on November 3, 2009, that addressed the incorrect lot dimensions. The side setback was revised from 2'-0" to 1'-10" and the distance from the addition to the "old boundary line" was modified from 5'-4" to 5 feet.
16. On December 29, 2009, Regional Planning staff conducted a site visit and measured the distance from the addition to the fence as 1'-9 7/16". It appears the south side yard fence still does not exactly match the property line since it still doesn't match the survey, but is now within less than two inches of the surveyed property line. The rear yard fence was measured by Regional Planning staff during the same site visit as 12'-5", which is still less than the required 15 feet. It was also observed that the roof overhang encroaches over the fence onto the neighbor's property located immediately to the south.
17. The neighbor located immediately to the south has expressed concerns about drainage running off from the roof overhang that encroaches onto her property. She has also stated that windows in the addition are too close to the property line and increase the danger of fire spreading to her property. The applicant has sealed off the window closest to the property line. However, the proximity of the structure to the property line is still a concern. The site plan does not show the eave, so it is not possible to determine whether it does cross the property line based on just the site plan. According to the east elevation plan the eave appears to project about 2.5 feet from the building wall, so based on that drawing it does appear to encroach onto the other property. During the site visit on December 29, 2009, it was confirmed that the corner of the roof eave encroaches several inches over the fence, although it is only encroaching at the corner. The distance from the edge of the eave of the subject addition to the edge of the eave of the neighboring residence is approximately 11 feet based on aerial imagery.
18. The over height fence in the rear was not addressed in the yard modification burden of proof. In the November 2008 correction letter, the applicant was asked to submit a burden of proof statement supporting the request to modify the fence height. This information was never provided. The applicant did submit a letter from the neighbor at 2644 San Pasqual, the property to the east that shares the over height fence, in support of a modification as part of the original submittal in September 2008. This letter cited privacy concerns and financial hardship related to the cost of altering the fence as reasons to approve this modification. No information on other over height fences in the area was provided, nor was the burden of proof section of the application form filled out

with any information relating to the fence modification request. There was no evidence provided of any other habitable structures in the vicinity with less than the required setbacks.

19. On February 17, 2010, the applicant's appeal of the denial was heard by the Regional Planning Commission (Commission). The applicants requested additional time to gather information supportive of their case. A continuance was granted by the Commission and the item was continued to May 19, 2010. At the May 19, 2010 hearing, the applicant's representatives explained why they believed the Commission should allow the addition to remain and they offered some possible solutions to reduce the impacts to the neighbor. They offered to remove the portion of the eave encroaching onto the neighboring property and place drainage pipes to direct all runoff onto the 520 Wenham Road property. The representatives for the 526 Wenham Road neighbor expressed concerns about the eave encroachment across the property line, drainage onto the neighbor's property and the potential fire danger posed by the addition within the required setback area. After hearing testimony both in support of and opposition to the project, the Commission voted to take the item off calendar for one year to allow the applicants and neighbor time to reach a resolution. The item was to be scheduled for a Commission hearing in one year if no resolution was reached.
20. During the past year, the applicant and neighbor met along with their attorneys and a mediator to attempt to reach a resolution. Additionally, the applicants and the neighbor along with their attorneys met separately with the Regional Planning Director to discuss their concerns as well as possible solutions to the dispute. Nevertheless, the mediation and meetings with the Regional Planning Director were not successful in reaching an agreement among the disputing parties, nor has the applicant provided any new or additional information that would support the approval of the retroactive Yard Modification request.
21. A lawsuit has been filed by the neighbor against the applicants, which is set for trial at the Superior Court on October 17, 2011. The applicants are requesting that the court grant them an equitable easement to allow the addition to remain as built. The applicant's attorney has sent a request to the Regional Planning Director requesting that the Yard Modification be granted. The letter asks that the matter be continued by the Commission for another year to allow time for the Superior Court action in the event that the Commission is reluctant to grant the modification. A copy of this letter is attached for reference.
22. There are no topographic features of the property that create an unnecessary hardship or unreasonable regulation, or otherwise make it obviously impractical to comply with the applicable setback requirements. The subject property is a flat, level parcel that is regularly shaped and improved with a single-family residence built in approximately 1956. The applicant built an addition on the

existing single-family residence in 2007 without first obtaining the necessary approvals to encroach into the required setback areas. Additionally, the applicant built an overheight fence without first obtaining the necessary approvals to exceed the maximum height limit for fences within a required rear yard setback. At the time the addition was built, there was sufficient space on the property for the applicant to construct an addition that would not encroach into required setback areas. Although the skewed angle of the house on the lot made the design of the addition more challenging, there was and is sufficient room to accommodate an addition of similar or larger size on the property without a setback encroachment.

23. There are no subdivision plans or other conditions that create an unnecessary hardship or unreasonable regulation or make it obviously impractical to comply with the applicable setback requirements. The residences on the subject property and neighboring parcels were built in 1955 and 1956, at approximately the same time the lots were created. The lots in the tract are 6,800 to 14,410 square feet in size with approximately 1,600 square foot to 2,100 square foot houses, providing sufficient room on each of the lots to develop a single-family house in compliance with all applicable development standards, including required setback areas.
24. The application of development standards is not in compliance with all applicable provisions of Title 22 of the Los Angeles County Code because the Code requires a minimum of a 5-foot interior side yard setback from the property line, a minimum of a 15-foot rear yard set back, and fence height that do not exceed 6 feet in height. The addition to the single-family residence resulted in a minimum of 1.68-foot side yard set back and an approximately 12-foot rear yard set back. Additionally, the rear yard fence is approximately 7 feet in height.
25. The application of development standards, when considered on the basis of the suitability of the site for the particular use or development intended, does not insure the protection of public health, safety and general welfare, does not prevent adverse effects on neighboring property and is not in conformity with good zoning practice. The encroachment of the eave onto the neighboring parcel, the drainage from the eave onto the neighboring parcel and the closeness of the addition to the property line are adverse affects to a neighboring property. The side Yard Modification would represent a 66.4% reduction from the standard 5-foot side yard setback requirement and would be out of character with the neighborhood pattern. It also would set a precedent for other requests for setback modifications in the neighborhood. Therefore, granting a Yard Modification would not be good zoning practice. It also reduces the buildable area of the 526 Wenham Road property because the proximity of the addition to the property line means that a potential addition on the 526

Wenham Road property would have to be further from the property line in order to avoid being too close to the addition on the 520 Wenham Road property.

26. The use of the land and application of development standards is not suitable from the standpoint of functional developmental design. It fails to meet the 5 foot side yard setback required by Title 22 and the 3 foot setback required by the Building Code for structures with windows. The drainage and fire safety concerns have not been adequately addressed.
27. No public notice was required for this case pursuant to Sections 22.48.180 and 22.60.240 of Title 22. The applicant and the neighbor and their legal counsel were notified of the hearing date. In addition, materials relating to this appeal and the previous related hearings are accessible to the public on the Regional Planning website ( <http://planning.lacounty.gov/agenda/rpc/> ).
28. This project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15305 of the CEQA Guidelines, Minor Alterations in Land Use Limitations, because the request would allow for a reduction in setback requirements.
29. The location of the documents and other materials constituting the record of proceedings upon which the Commission's decision is based in this matter is at the Los Angeles County Department of Regional Planning, 13<sup>th</sup> Floor, Hall of Records, 320 West Temple Street, Los Angeles, CA 90012. The custodian of such documents and materials shall be the Section Head of the Land Development Coordinating Center Section, Los Angeles County Department of Regional Planning.

**BASED ON THE FOREGOING, THE REGIONAL PLANNING COMMISSION CONCLUDES:**

- A. That the use, development of land and/or application of development standards is not in compliance with all applicable provisions of Title 22 of the Los Angeles County Code;
- B. That the use, development of land and/or application of development standards, when considered on the basis of the suitability of the site for the particular use or development intended, does not insure the protection of public health, safety and general welfare, does not prevent adverse effects on neighboring property and is not in conformity with good zoning practice; and
- C. That the use, development of land and/or application of development standards is not suitable from the standpoint of functional developmental design.

- D. That no topographic features, subdivision plans, or other conditions exist that create an unnecessary hardship or unreasonable regulation or make it obviously impractical to require compliance with the yard requirements or setback line.

THEREFORE, the Director has determined that the information submitted by the applicant does not substantiate the required findings for a Yard Modification as set forth in Sections 22.48.180 and 22.56.1690 of the Zoning Code.

**REGIONAL PLANNING COMMISSION ACTION:**

1. This project has been determined to be categorically exempt (Class 5, Minor Alterations in Land Use Limitations) under the environmental reporting procedures and guidelines of the California Environmental Quality Act (CEQA).
2. In view of the findings of fact presented above, the appeal of the Director of Regional Planning's decision to deny Yard Modification Case No. RPP 200801286 (Project No. R2008-01777) is **DENIED**, and therefore, the decision denying RPP 200801286 is **UPHELD**.

c: Pat Modugno, Esther L. Valadez, David W. Louie, Harold V. Helsley, Curt Pedersen, Zoning Enforcement, Building and Safety

**VOTE**

Concurring:

Dissenting:

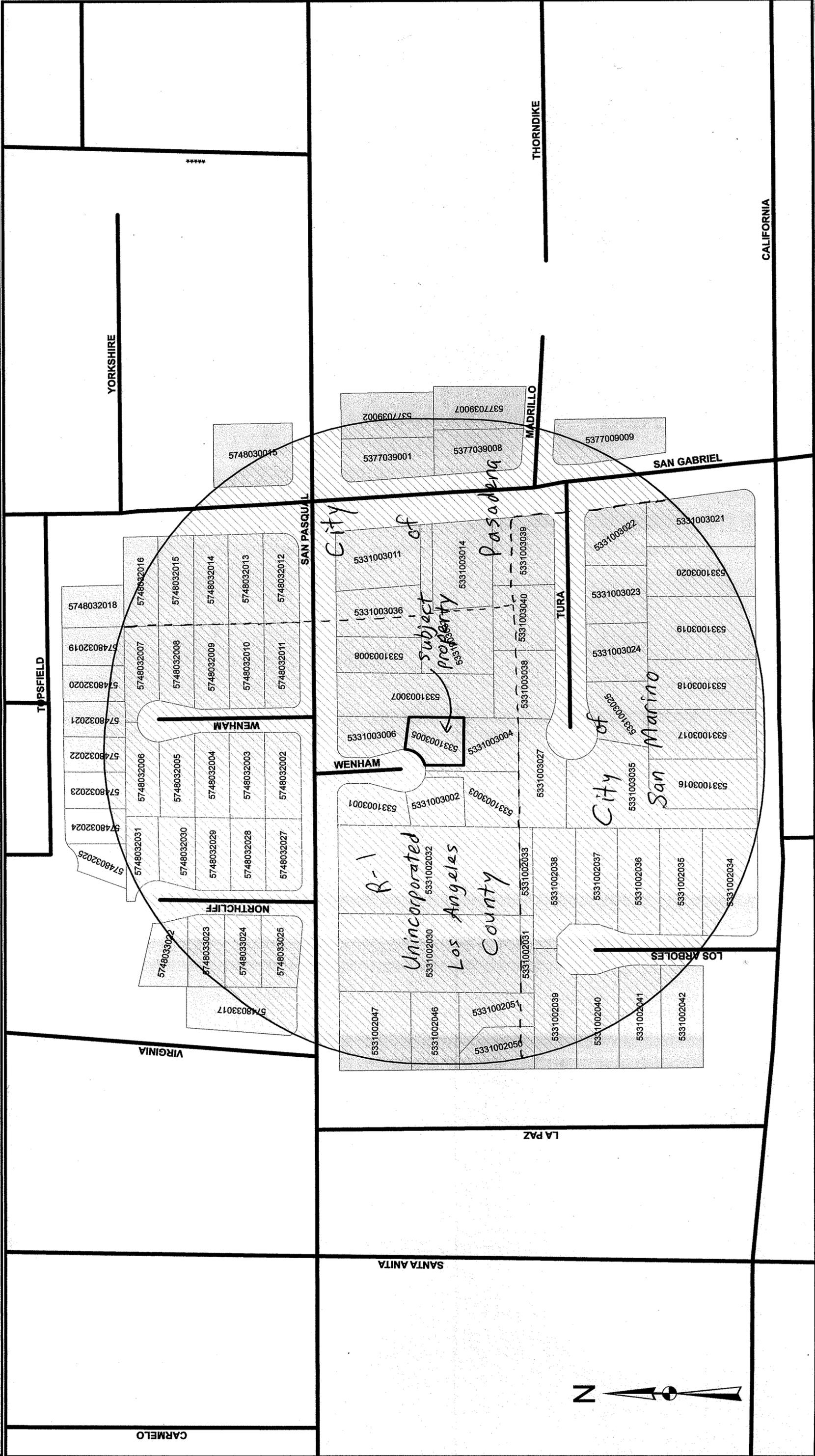
Abstaining:

Absent:

Action Date:

RWC  
5/3/11

# Radius Map From AIN# 5331-003-005, 500 FT



streets83  
 Buffer\_5331003005\_500ft  
 Parcel\_5331003005\_500ft

Scale: 1 in to 150ft  
 0 37.5 75 150 225 300 Feet

CALIFORNIA









## SPECIFICATIONS

AVAILABLE IN  
1", 1 $\frac{1}{2}$ ", 2"

CONTENT  
6-7 PCF  
COMPRESSED  
FIBERGLASS

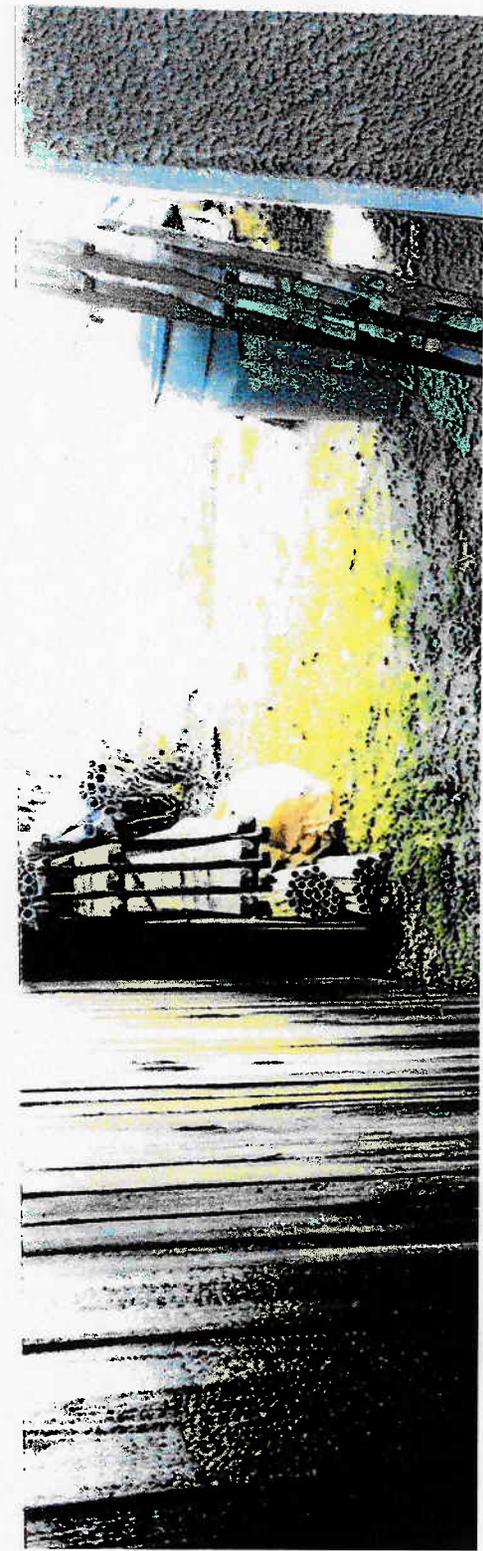
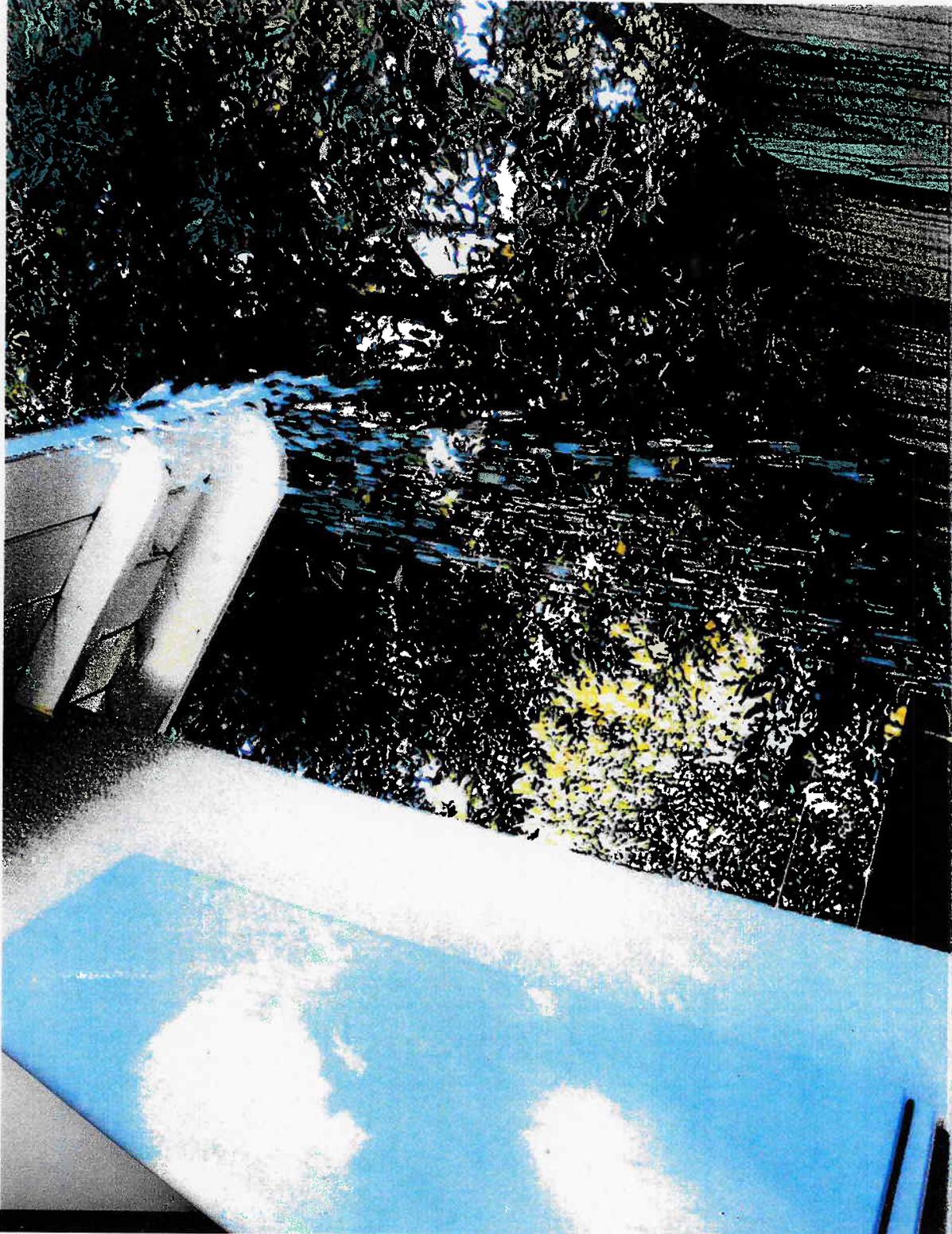
FIRE RATING  
CLASS A

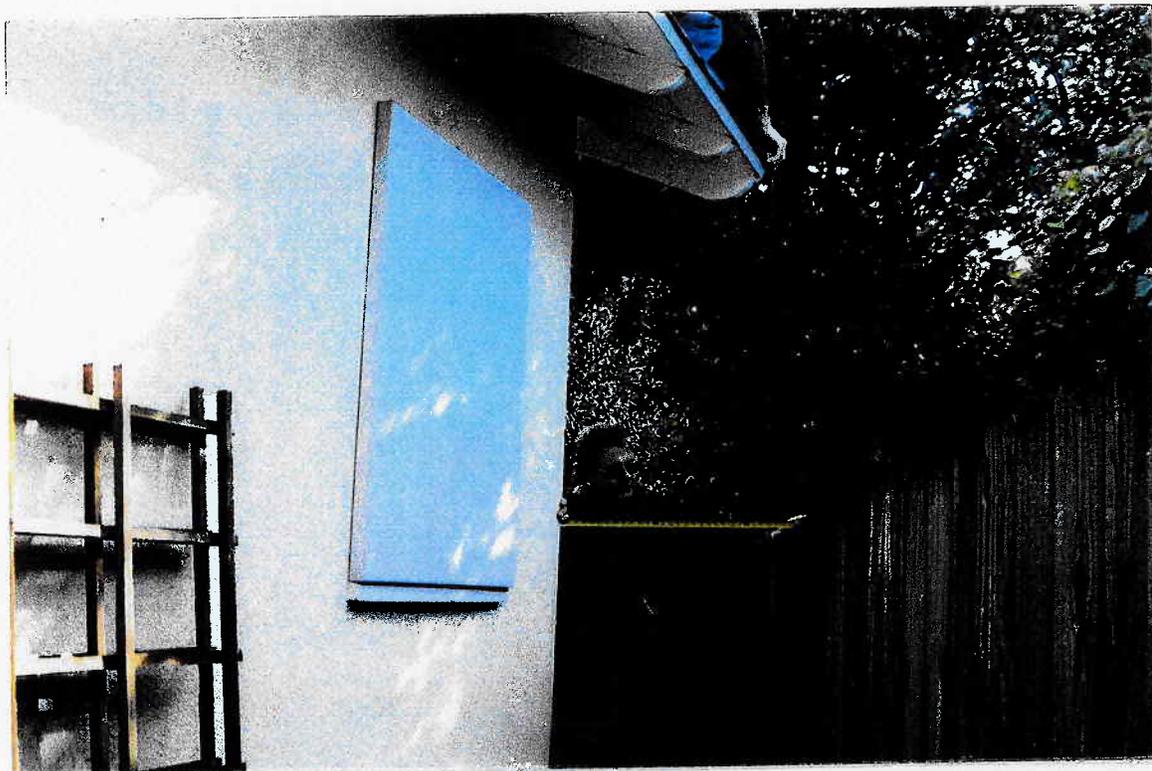
NRC RATING  
.80 - 1.05

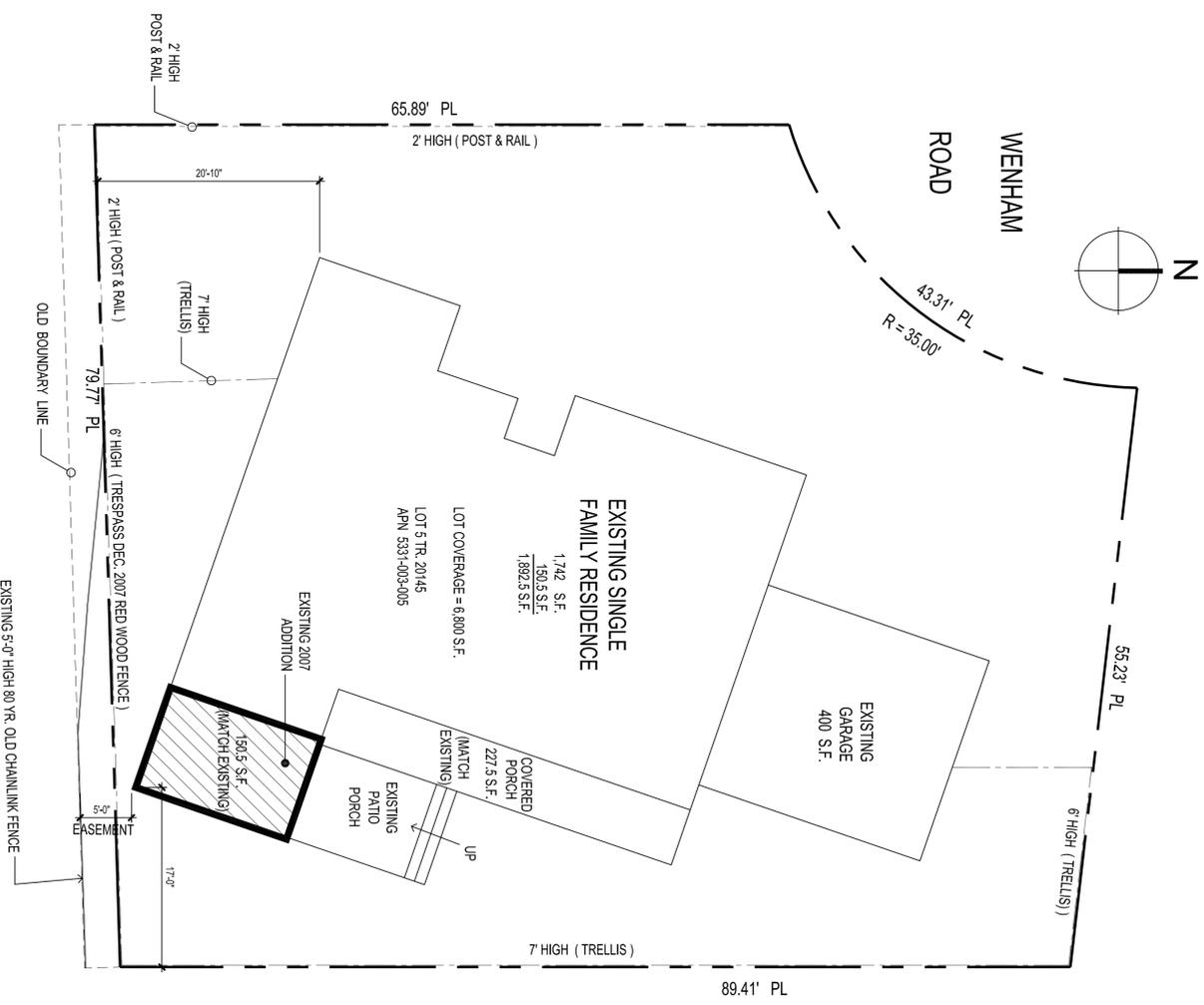


9  
10  
11  
12  
13

**Presidential shingles conform to:**  
ASTM D3462  
ASTM D3013 Type I  
150 lb. Ice Resistance  
150 mph Wind Resistance







**SITE PLAN**

SCALE:  
1/8"=1'-0"

-

SHEET NO.  
**1**

PN 0000-A

01-02-07

PROPOSED ADDITION FOR:  
**STEVE MASON**  
520 WENHAM ROAD  
PASADENA CA 91104

**DRAFTING & Design, ltd.**  
158 WEST ORANGE STREET, COVINA, CA 91723-2011  
**(626) 915-2303**

This architectural design are the sole property of Drafting & Design, Ltd. Reproduction, publication or reuse in part or in whole is prohibited without the written consent and approval of Drafting & Design, Ltd.

