



Los Angeles County Department of Regional Planning

Planning for the Challenges Ahead



Richard J. Bruckner
Director

February 4, 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

Please find attached the Staff Analysis, Draft Findings and related materials for the above referenced project.

PROJECT DESCRIPTION

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 Code Section 22.48.180 (RPP 200801286-(5)). 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. The applicants appealed the denial of their request.

The subject addition was constructed legally with building permits in 2007. A survey conducted after construction of the addition however showed that the south side property line was closer to the structure than previously thought. The fence along the south side property line was then moved to the actual property line as depicted in the survey. The structure is now located less than two feet from the south side property line. The Director of the Department of Regional Planning (DRP) found that the Yard Modification request did not satisfy the Yard Modification burden of proof and denied the case. The applicant is appealing this decision.

RC

STAFF ANALYSIS
PROJECT NUMBER R2008-01777
APPEAL TO DENIAL OF RPP 200801286-(5)

PROJECT DESCRIPTION

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 Code Section 22.48.180 (RPP 200801286-(5)). 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. The applicants appealed the denial of their request.

The subject addition was constructed legally with building permits in 2007. A survey conducted after construction of the addition however showed that the south side property line was closer to the structure than previously thought. The fence along the south side property line was then moved to the actual property line as depicted in the survey. The structure is now located less than two feet from the south side property line. The Director of the Department of Regional Planning (DRP) found that the Yard Modification request did not satisfy the Yard Modification burden of proof and denied the case. The applicant is appealing this decision.

LOCATION

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. The subject property is a flat level parcel with an existing single-family residence and no unusual topographic features. However, it is shaped irregularly and the existing house is situated at an angle so it is not parallel to the lot lines.

SITE PLAN DESCRIPTION

There are three different versions of the site plan attached. The first is the copy that was approved by the Los Angeles County Department of Public Works Building and Safety Division (Building and Safety) on January 2, 2007 and is labeled sheet A-1. This site plan shows an existing 1,742 square foot residence with a 150.5 square foot addition located at the southeast corner of the structure. This plan showed the addition with a 15 foot rear yard setback and five-foot side yard setback.

The second version of the site plan was submitted to DRP on September 17, 2008 when RPP 200801286 was filed. It is labeled as sheet no. 1 and has a date of 2/15/08 on it. On this site plan, the structure is the same size but the setbacks are different. It was modified to show the new fence location and was an attempt to show the correct lot lines, although it is still not the same as the survey. The site plan shows the residence to be 2'-0" from the side property line on the south side and 5'-4" from the "old boundary

line" at the same point. The "old boundary line" is where the fence was previously located and where the boundary was believed to be located before the property was surveyed.

No dimension is given on this site plan for the rear setback from the addition. Based on the scale of the drawing however the distance appears to be about 11.5 feet from the rear of the addition to the rear property line at the closest point. The site plan also shows the location of the six foot high red wood fence along the north and south property lines and along the rear property line. The height of the fence in the rear was corrected by hand to seven feet. The house is located at an angle, so even though the setback is shown as 2'-0" at the corner of the addition, the setback distance increases to 20'-10" at the other end of the house on the south side. On the rear, the corner of the existing attached garage is only about 10 feet from the rear property line, although this setback dimension is not shown on the site plan. The second version of the site plan was the one that was denied by the Director.

The third version of the site plan is a revised site plan that was submitted on November 3, 2009. It is the same as the second version except for the following items. It showed a distance of 1'-10" instead of 2'-0" for the south side setback and the distance to the old fence was changed from 5'-4" to 5'-0". The new site plan also corrected some of the lot dimensions, which had been shown incorrectly on the original submittal. It also shows the location of the original fence. It is labeled as sheet no. 1 and has a date of 1/2/07, although it was actually drafted in 2009 sometime after the denial. The floor plans, elevations, and structural plans were the same for all three versions and are also attached for reference. This third version of the site plan is the one the applicant would like to have approved in the current appeal request.

A copy of the survey is also attached for reference. The survey was done on November 8, 2007 by a licensed land surveyor, Eugene C. Duncan. The survey shows a setback of 1.68 feet (1'-8.16") at the closest point of the residence to the south side property line. The survey did not indicate the rear yard setback or show the portion of the property where the rear yard is less than the required 15 feet.

A site visit was conducted by DRP staff on December 29, 2009. The distance from the closest corner of the addition to the side yard fence was measured as 1'-9 7/16". The distance from the rear of the addition to the rear fence was measured as 12'-5". The height of the rear fence was measured as 7'-5", but the height varies slightly at different points. There are some posts that extend up about another foot above the fence line.

ENVIRONMENTAL DETERMINATION

This project was 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).

LEGAL NOTIFICATION AND PUBLIC OUTREACH

Pursuant to section 22.48.180 of the Los Angeles County Zoning Code (Title 22), a Yard Modification request does not require notification to the public or a hearing. The Director's decision on a Yard Modification request may be appealed to the Regional Planning Commission pursuant to section 22.56.1750. Required notice was provided to the applicant and courtesy notice was provided to anyone who requested notice regarding this application.

PREVIOUS CASES/ZONING HISTORY

There is no record of any previous cases filed with DRP on the property before RPP 200801286-(5) was filed on September 17, 2008. The house was built in 1956 and there was a building permit for its construction. In 2007, a building permit for a 150.5 square foot addition was issued by the Los Angeles County Department of Public Works Building and Safety Division (Building and Safety). The site plan approved by Building and Safety on January 2, 2007 depicted a 5-foot setback on the south side and a 15-foot setback in the rear.

The addition was completed and received final approval from Building and Safety in August 2007. A survey was completed in November 2007. A complaint was received by DRP's Zoning Enforcement section in May 2008 that the addition was too close to the property line. On September 17, 2008 the applicant filed RPP 200801286 to request a Yard Modification. A correction letter was sent to the applicant on November 5, 2008, which set a deadline of February 5, 2009. Prior to the deadline the applicant requested a time extension, and the deadline was extended to April 2, 2009.

A meeting was held at DRP with the applicant and DRP staff on March 19, 2009. It was concluded that the most feasible solution to the side yard setback encroachment was to file a lot line adjustment (LLA) to modify the lot line so that the required setback could be complied with. The applicant indicated that he would like to file an LLA to correct the problem, but was concerned that the neighbor would not agree to it. He said he would approach the neighbor to discuss it, but that he would need some more time. He was given until May 19, 2009 to file the LLA. The deadline passed and the LLA was not filed. A denial letter was prepared, which was finalized on August 13, 2009. The applicant was given 15 days to appeal the denial. He filed the appeal on August 26, 2009. The applicant was given until October 21 to submit additional information required for the appeal, and this deadline was extended to November 4. On November 3, 2009, the material submitted by the applicant was received by DRP. A hearing date was scheduled for February 17, 2010.

STAFF EVALUATION

General Plan Consistency

The subject property is classified as Low-Density Residential within the Los Angeles County General Plan. This category is suitable for the proposed use.

Zoning Ordinance and Development Standards Compliance

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 five feet and rear yards of at least 15 feet. Fence height is limited to six feet within interior side and rear yards by section 22.48.160 C of Title 22. The original residence was 42'-6" in width on the south side. The addition was 10 feet in width on that side, for a new overall width of 52'-6". Approximately eight feet of the structure on that side is less than five feet from the actual property line, but the remainder complies with the required five foot setback. The addition is 15 feet long on the rear. Approximately eight feet of that length encroaches within the required 15 foot rear yard setback. The existing attached garage on the north side of the residence has a rear yard setback of approximately 10 feet, although the requirement is 15 feet. It appears to have been built that way with the original residence though, and no change is proposed for that part of the structure.

Title 22 allows eaves and cantilevered roofs to project a maximum distance of two and one-half feet into any required yard, provided that such eaves or cantilevered roofs are not closer than two and one-half feet to any lot or highway line, no portion of such eaves or cantilevered roofs are less than eight feet above grade, and there are no vertical supports or members within the required yard. The eave of the addition on the south side encroaches across the property line onto the neighboring property to the south. The eaves are not shown on the site plan.

On the east elevation plan, the eave appears to project about 2.5 feet from the residence at the southeast corner of the addition. Based on this estimate, the eave would project nearly ten inches onto the neighboring property. This encroachment only occurs at the corner for a short distance, but it still is clearly an encroachment into the neighbor's property. Based on the site visit by DRP on December 29, 2009, it was confirmed that the corner of the roof eave does encroach onto the neighboring property, although the exact distance of the encroachment was not measured. It appeared to be less than ten inches, but it was difficult to measure with any precision.

Neighborhood Impact/Land Use Compatibility

The proximity of the addition to the south side property line and the encroachment of the roof eave onto the property to the south have a potentially negative impact on that property. The neighbor 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 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.

Yard Modification Burden of Proof

The applicant is required to substantiate all facts identified by Section 22.48.180 of Title 22 for any request to obtain approval for a modification to standard setback requirements, modification of fence height requirements or other yard requirements. In addition, the application would have to satisfy the principles and standards for consideration for a Director's Review, which are listed in section 22.56.1690 of Title 22. The applicant's Burden of Proof with applicant's responses is attached.

On August 13, 2009, the Director of Planning denied the Yard Modification request as it did not satisfy the following criteria established and used by DRP.

1. What topographic features, lot design or other conditions justify the setback modifications?

The applicants believe that this portion of the burden of proof is satisfied since the lot is irregularly shaped and the existing house is not parallel with the property line. There are also unusual conditions based on the fact that the addition was built before it was discovered through the survey where the correct lot line is located.

The site plan however did not provide proof of any topographic features that prevented the applicants from complying with the required yard areas. Title 22 does not allow any projections, including eaves, to cross property lines. This proposal could potentially have negative impacts on the property to the south.

The applicant's burden of proof did not discuss the request for a fence height modification or modification of the rear yard setback. The neighbor to the east has not expressed any opposition to the addition or fence height, and in fact paid half of the filing fee for the yard modification application. Although additional information for the Burden of Proof for the requested rear fence height modification was requested in the November 5, 2008 DRP correction letter, no supplemental burden of proof information was provided by the applicant.

2. Are other adjacent or neighboring properties enjoying setbacks similar to what has been proposed?

No other properties were identified on the Yard Modification burden of proof form as enjoying setbacks similar to what the applicant proposed. Photos were provided of 2640 and 2644 San Pasqual Street. The photos of 2644 San Pasqual show a detached garage on that property that is less than five feet from its side property line, which is the rear property line of 520 Wenham. However, since this structure is a detached garage only and it is over 75 feet from the front of the lot, it is allowed to encroach into the side yard setback by the yard provisions of Title 22. The photo of 2640 San Pasqual shows the side yard, but it appears in the photograph that the structure meets the setback requirement. Neither of these examples were a similar situation to the applicant's

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

3. Are there any neighbors in opposition to the proposed Yard Modification?

DRP received a written protest from one neighbor opposed to the granting of the Yard Modification request.

Since the proposal would result in potential adverse effects on the neighboring property to the south, particularly with regards to the drainage and potential fire and safety issues, it does not satisfy the principles and standards for consideration for a Director's Review set forth in section 22.56.1690 of Title 22. It also could set a precedent for similar requests in the neighborhood. Staff is of the opinion that the applicant has not met the burden of proof for a yard modification, nor does the request meet the principles and standards for consideration for a Director's Review.

PUBLIC COMMENTS

Staff received comments from the owner of 526 Wenham Drive, the property located immediately to the south. The owner and her attorney have both written letters to DRP expressing strong opposition to the addition and are opposed to the granting of a modification. No other comments have been received regarding this project.

STAFF RECOMMENDATION

The following recommendation is made prior to the public hearing and is subject to change based upon testimony and/or documentary evidence presented at the public hearing:

Staff recommends that the Regional Planning Commission uphold the denial of the Yard Modification Request RPP 200801286 (project number R2008-01777).

SUGGESTED MOTION

"I MOVE THAT THE REGIONAL PLANNING COMMISSION UPHOLD THE DENIAL OF YARD MODIFICATION REQUEST RPP 200801286-(5) SUBJECT TO THE ATTACHED FINDINGS."

Prepared by Richard Claghorn, Principal Regional Planning Assistant
Reviewed by Nooshin Paidar, Supervising Regional Planner, Land Development Coordinating Center

Attachments:

Draft Findings for the Appeal to the Denial of RPP 200801286
Denial Letter and Findings for RPP 200801286
DRP Correction Letter from 11/5/08
Applicant's Burden of Proof statement
Site Photographs

Site Plan submitted on 9/17/08 (includes floor plan, elevations and 1/2/07 site plan)

Site Plan with Revisions submitted on 11/3/09

Survey

Letters from applicant and neighboring property owner

Supplemental information from applicant and neighboring property owner

Surrounding Zoning Map

Property Location Map

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

PROJECT NUMBER R2008-01777

**ENTITLEMENT TYPE AND NUMBER APPEAL OF DENIAL OF RPP 200801286
(YARD MODIFICATION)**

REQUEST

The applicant is appealing the denial of RPP 200801286, which was to request the approval of a modification of the building setbacks for an addition to a single-family residence.

REGIONAL PLANNING COMMISSION HEARING DATE: February 17, 2010

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 Code Section 22.48.180 (RPP 200801286-(5)). 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. The applicants appealed the denial of their request.
3. The subject property is classified as Low-Density Residential within the Los Angeles County General Plan. This category is suitable for the proposed 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 five feet and rear yards of at least 15 feet. Fence height is limited to six feet within interior side and rear yards by section 22.48.160 C of Title 22.
5. Pursuant to Chapter 22.48.180 of the Code (Title 22), the Director of 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, but it was deemed inadequate to justify a modification. There were no examples provided of other properties in the neighborhood with setbacks similar to what is being requested. There are no topographic features on the property that provide a reason to allow a reduction in the required setbacks. The applicant did not provide enough justification for the requested modification.

6. 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 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). The site plan approved by Building and Safety in January 2007 showed a five-foot side yard setback and 15-foot rear yard setback, in accordance with the setback requirements of the Zoning Code. Permits for the addition received final approval from Building and Safety in August 2007.
7. 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. The property boundary has not changed.
8. 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.
9. 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.
10. In November 2008, a correction letter was mailed informing the applicant that the site plan contained inaccuracies and that there were other corrections and omissions which needed to be addressed. 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. The applicant was given two options to resolve the situation, including filing a lot line adjustment (LLA) with the neighbor to meet the required setbacks or demolishing the portions of the addition that encroached into the required setbacks. A deadline of February 5, 2009 was given.

11. In March 2009 the applicant indicated that they would like to attempt to have a lot line adjustment (LLA) done to remedy the setback problem. However, this would require the cooperation of the owner of 526 Wenham Road. Since this potential solution is not feasible at this time, there is no other way to comply with the setback requirements except to demolish the portions of the addition that encroach into the required setbacks. The deadline was extended to April 2, 2009 and then to May 19, 2009 to give the applicant time to work out a solution with the neighbor and to file a LLA.
12. The Yard Modification case (RPP 200801286) was denied on August 13, 2009. The applicant appealed the decision on August 26, 2009.
13. 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.
14. 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. On December 29, 2009 Regional Planning staff 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.
15. 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 encroached several inches over the fence, although it was 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.

16. 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.
17. 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, 13th 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, Nooshin Paidar, 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 modification of the development standards of Title 22 is justified by any topographic features, subdivision plans or other conditions.

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 was 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, denial of Plot Plan Case RPP 200801286 (Project No. R2008-01777) is **UPHELD**.

c: Pat Modugno, Esther L. Valadez, Leslie G. Bellamy, Harold V. Helsley, Wayne Rew, Zoning Enforcement, Building and Safety

VOTE

Concurring:

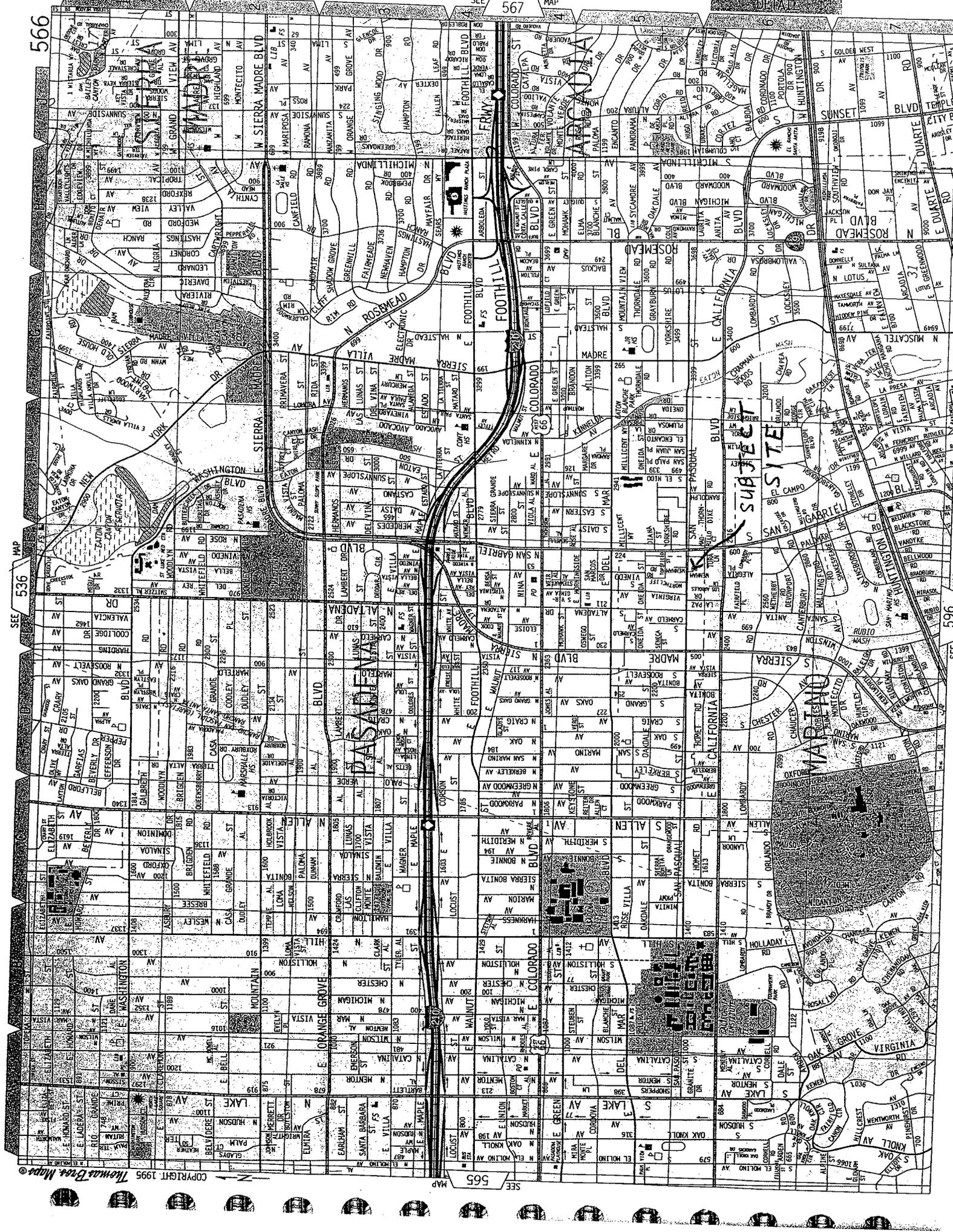
Dissenting:

Abstaining:

Absent:

Action Date:

RWC
2/4/10



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MAP 567

536

565

596

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