CONTINTUED FROM MARCH 14, 2006 MEETING

April 4, 2006

Honorable Mayor and Members of the Hermosa Beach City Council

Regular Meeting of April 11, 2006

SUBJECT: LOT MERGER – REQUEST FOR HEARING TO DETERMINE WHETHER THE PROPERTY AT 726 PROSPECT AVENUE, COMPRISED OF TWO LOTS, SHALL BE MERGED INTO ONE PARCEL

Planning Commission Recommendation:

To release the subject lots from the merger requirement, allowing development of the two lots.

Background

The subject property is comprised of two lots from the original subdivision (Lots 3 and 4, Block 140 Redondo Villa Tract). The lots are 25-feet in width and vary from 2,944 to 3,056 square feet. In 1947 the property was developed with a single-family dwelling and in 1950 a garage apartment was added. On January 17, 2006 the Planning Commission considered whether the two lots should be merged, pursuant to Chapter 16.20 of the Municipal Code. The City may consider merging lots if all of the following requirements are satisfied:

A. The main structure is partially sited on the contiguous parcel and not more than eighty (80) percent of the lots on the same block of the affected parcel have been split and developed separately.

B. With respect to any affected parcel, one or more of the following conditions exists:

1. Comprises less than four thousand (4,000) square feet in area at the time of the determination of merger;
2. Was not created in compliance with applicable laws and ordinances in effect at the time of its creation;
3. Does not meet current standards for sewage disposal and domestic water supply;
4. Does not meet slope stability standards;
5. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability;
6. Its development would create health or safety hazards;
7. Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

C. The requirements in subsection B of this section shall not be applicable if any of the conditions in Section 66451.11(b)(A) through (E) of the California Government Code exist.

D. If the merger of parcels results in the creation of a parcel that is at least eight thousand (8,000) square feet in size, the planning commission and/or city council may, with the consent of the property owner, redivide the parcel into separate parcels that are at least four thousand (4,000) square feet in size. (Prior code § 29.5-21)

Staff referred the property to Commission because it was deemed to meet the merger criteria as each of the two contiguous lots contains less than 4,000 square feet and the existing main structure is sited on the two contiguous lots. Also, if the subject property is included in the calculation to determine whether 80 percent of the lots on the block have already been split, then the property falls within the above criteria for consideration of lot merger. (Since only one of the three lots on the block under consideration have already been "split" into 25-foot wide lots, this calculates as 33%, so "not more than 80% have been split and developed separately.") Therefore, pursuant to Section 16.20.050, the City proceeded with lot merger notification to the property owner and recorded a notice of intent to merge lots with the L.A. County Recorder.

Citywide Lot Merger Program

The lot merger ordinance was adopted in 1986 and was implemented from 1987 through 1989 under a citywide lot merger program. All properties eligible for merger were identified and staff began the notification process for affected property owners. The Planning Commission took final action to merge the lots and notices were recorded on the affected properties. If a hearing was requested by the property owner the Planning Commission conducted the hearing, and either confirmed the merger, or in some cases unmerged the lots when evidence demonstrated the proposed merged did not meet the requirements of the ordinance.

By 1989 the City merged over one thousand lots into over 500 parcels pursuant to this process, including several on the streets east of Prospect Avenue. Approximately 300 of the parcels merged were 50-feet wide and contained two 25-foot wide lots located in the R-1 areas around Prospect Avenue, while the remaining involved remnant sub-standard parcels located throughout the City. The City keeps a record of lots merged and recorded on file pursuant to these provisions. The lots merged on the blocks located east of Prospect Avenue all front on the side streets perpendicular to the block, and none of the lots that front on Prospect Avenue were included in the lot mergers. City records do not indicate why these lots were not merged or if they were simply deemed to be developable. At the conclusion of the program staff stopped referring properties to Commission for merger as all lots that were considered candidates for merger were merged and any lots not merged were considered developable.

Analysis

The purpose of the present agenda item is to determine whether the City Council should uphold the Planning Commission decision that the subject lots should not be merged. The Commission determined that the property should not be merged because the prevailing condition along Prospect Avenue is 25-foot wide lots. This issue came to light last year when the City Attorney advised that since the original merger law was never repealed, it was still in effect and any lots that appeared to qualify for merger should be referred to Commission. The applicant has requested a hearing to be given the opportunity to present evidence that the lots do not meet the requirements for merger and correctly indicates in the attached correspondence that he has processed plans for development of two lots. Unfortunately, the owner's plan submittal preceded the City Attorney's opinion on the matter. Prior to that opinion and for the last 17 years staff had not been referring lots for merger consideration because the Commission and City Council's decisions resulting from the citywide program in the 1980's was considered the final disposition for lot mergers in the City.

With respect to referral of the matter for lot merger consideration, staff determined that the lots are consistent with the rule that requires that "not more than 80% of the lots on the same block of the

affected parcel have been split and developed separately." However, this rule is difficult to interpret for blocks that do not contain a uniform pattern and is basically intended to relieve the requirement for merger on blocks that already have an established character of split lots. In this case, staff made this initial determination based on the specific definition of what constitutes a *block* for lot merger determination, as contained in the Zoning Ordinance, which defines *block* as: "all lots facing a common street on both sides of said street, except where residential zoned lot do not exist, or are not within city limits, and said lots are between intersecting streets....".

Prospect Avenue between 7th and 8th Street only consist of three lots, the subject parcel and one 25-foot wide lot on the south side, and a 50-foot lot on the north of the subject lot. Staff assumed that "facing a common street," means those lots that front on Prospect Avenue. (Please see attached photos). Since only one of these three lots (at 720 Prospect Avenue) have been "split" into 25-foot wide lots, this calculates as one out of three lots, or 33%. In making this calculation staff assumed that the subject property is included in the calculation. The difficulty with the 80% rule is that it is not clear whether the affected lot or the north corner lot should be included (since it contains an unusual condition of having a recorded P.U.D. and tract for two units, and its status as a split lot is being disputed by the owner). If the subject parcel is not included 50% of the other lots have been split, if neither the affected lots or the lot at the corner are included, and only the 25-foot lot is included, it can be argued that 100% of the other lots have been split.

Further, when the area for consideration includes so few lots, the definition of block and the required calculation seems inappropriate because the intent of the merger ordinance to create consistency with the development pattern and neighborhood character of the area. Therefore, it is useful to look beyond the small block in which the subject lots are located to make a determination and the following pertains:

1. Between 3rd Street and 10th Street there are now 28 parcels comprised of original 25-foot wide lots, that are either split or combined lots from the original subdivision, that front on Prospect Avenue within the R-1 zone as shown on the attached exhibit. (The only lots that front on Prospect Avenue on its west side, are in the R-2B Zone). Twenty two (22) of these 28 parcels have already been "split" as 25-foot wide lots, which calculates to be 78%. (This calculation includes the three lots at 838 Prospect that have been split and will be developed separately in the near future).

2. Ten (10) of these 22 parcels that have been "split" or that will soon be split have been developed or split since 1995. The seven developed new homes are located between Massey Avenue and Hollowell Avenue (4 homes at 320-326 Prospect Avenue built in 2002—three 25-foot wide lots and one 35-feet wide) and 3 homes at 510-522 Prospect Avenue (built in 1998).

In conclusion, the Commission and City Council have the authority to merge the lots into one 6,000 square foot parcel but are not compelled to do so. While staff has found the lots to meet the criteria of Section 16.20.020 and 16.20.030, the subject block only meets the 80% rule because of the small number of lots in the block. Also, in looking beyond the limits of the subject block, at past lot splits and the general character of the lots that do front on Prospect Avenue, the development of this property

with two homes on 25-foot wide lots is not be out of character with the established pattern of development along Prospect Avenue (as 78% of the parcels between 3rd Street and 10th Street have been split into similar narrow lots). Therefore, because of the development pattern in the area and ambiguity of the merger ordinance, and recent lot splits in this area including one at 838 Prospect Avenue, the Commission believes that merging the subject property does not meet the intent of the lot merger ordinance, and recommends releasing the lots from the merger requirement

Ken Robertson
Senior Planner

CONCUR:

Sol Blumenfeld, Director
Community Development Department

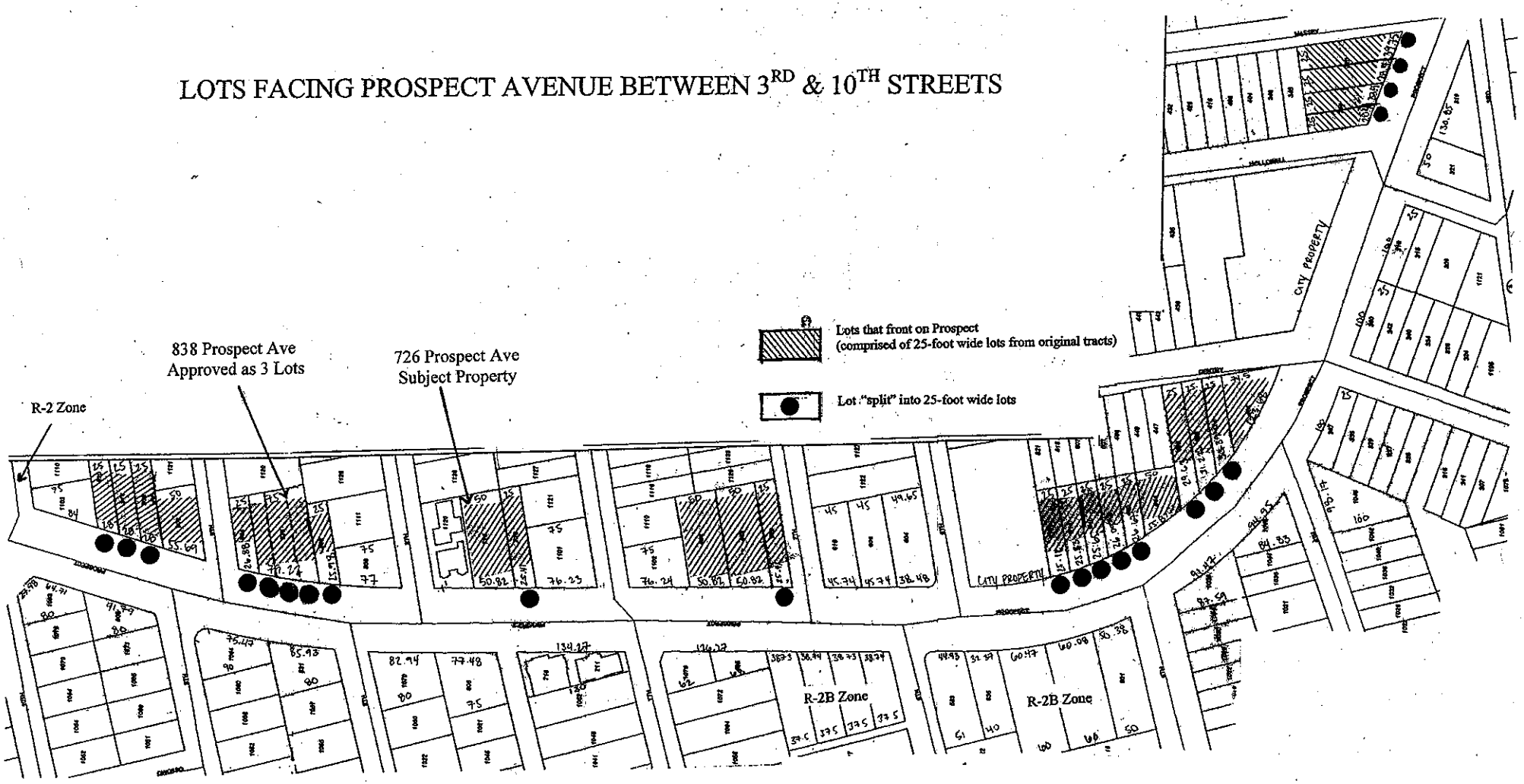
Stephen R. Burrell
City Manager

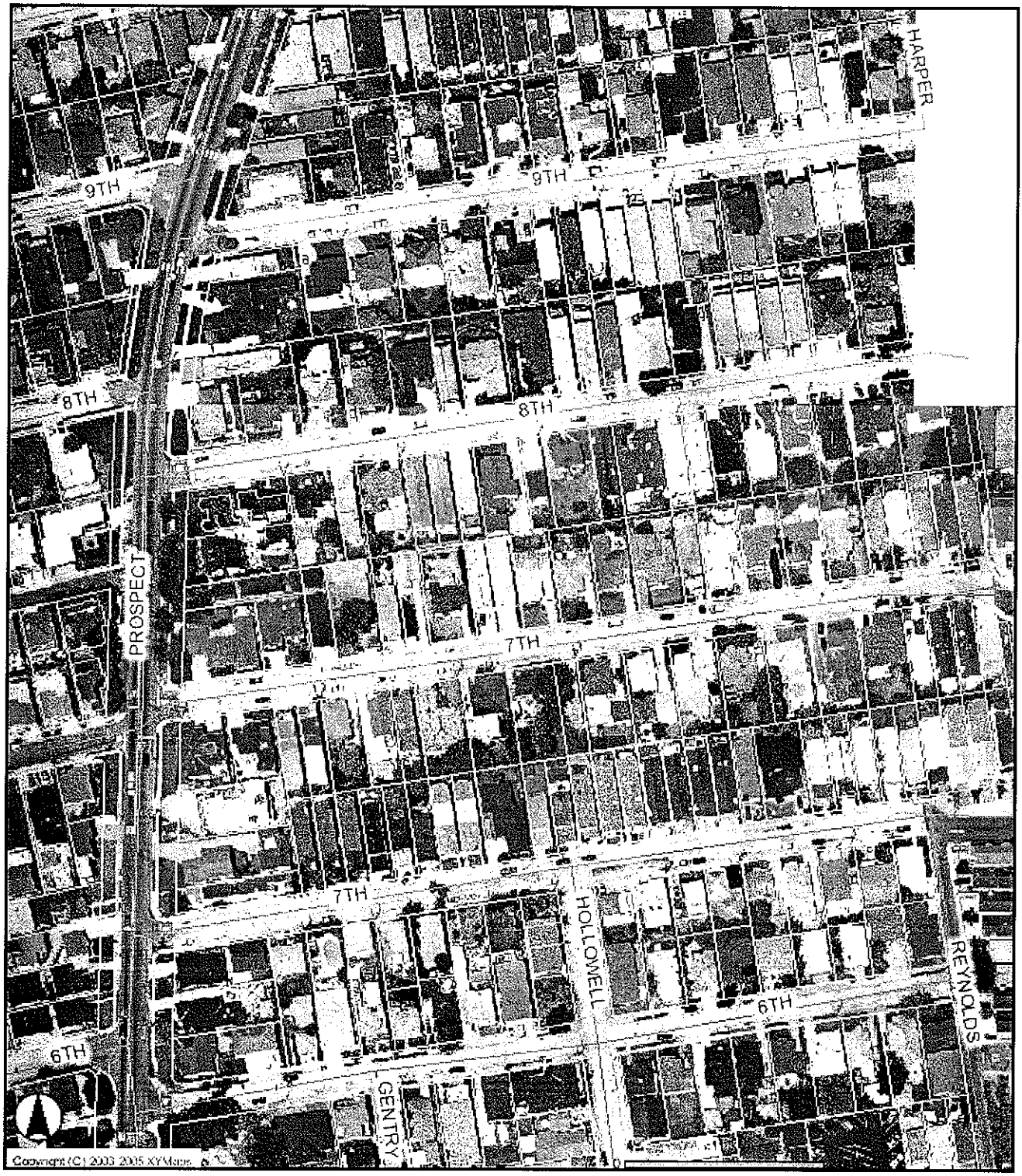
Attachments

1. Exhibit showing Prospect Avenue Lots
2. Location Map, and Area Zoning Map
3. City Attorney response (re: lot merger at 555 21st St.)
4. Applicant letter requesting hearing

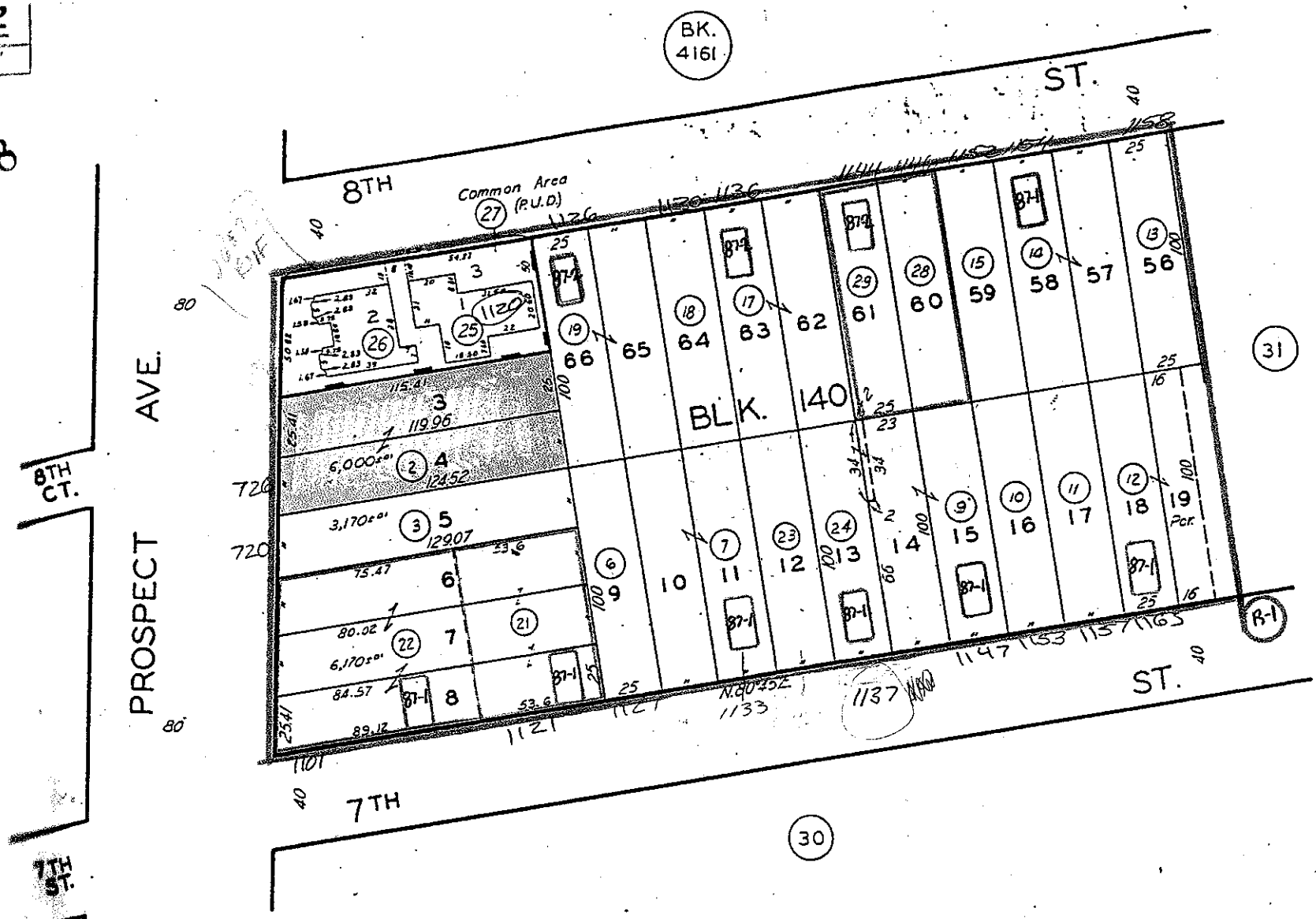
P:/ProspectCCrept

LOTS FACING PROSPECT AVENUE BETWEEN 3RD & 10TH STREETS





726 Prospect Avenue



REDONDO VILLA TRACT

M.B. 10 - 90 - 91

December 28, 2005

Charles H. Heidman
P.O. Box-903
Hermosa Beach Ca 90254

Sol Blumenfield, Director
Community Development Department
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach Ca 90254

Dear Sol;

After discussing with you the purposed merger of two lots located at 726 & 728 Prospect Ave. in Hermosa Beach and receiving your letter (Attached) dated December 15, 2005 I'm requesting a formal hearing with the Hermosa Beach Planning Commission.

My concerns are that I purchased the property based on two visits to your department. During those visits I discussed the ability to develop two dwellings at that location. On both occasions your department confirmed that the lots were not merged and that I could in fact build two homes. Going on that information I purchased the property, the value of the property is much less than I paid if they are merged.

Further, I hired an architect to generate and engineer two sets of plans based on information from your department and have paid for them. The City has reviewed them several times and have made correction to them. Now that the process is done and they are ready to be permitted the city wants to merge the lots.

I'm looking for the city to be fair regarding this issue, consider the path I've been led down for almost a year and the loss of my personal time and money.

Regards,

Charles H. Heidman

JENKINS & HOGIN, LLP

A LAW PARTNERSHIP

MEMORANDUM

TO: MEMBERS OF THE PLANNING COMMISSION

FROM: MICHAEL JENKINS, CITY ATTORNEY

DATE: AUGUST 10, 2005

RE: INVOLUNTARY MERGER

This memorandum responds to questions raised during your meeting of July 19, 2005 concerning the lot merger determination for 550 21st Street.

1. Section 16.20.030 allows for merger of "two or more contiguous parcels" under specified circumstances. Hence, two alternatives are available to the Commission: (a) merger of the easterly-most nonconforming lot (portion of lot 38) with the immediately adjacent lot (lot 37), resulting in three lots, and leaving lots 35 and 36 as is; or (b) merger of all four lots into a single lot.

The first alternative is mechanically less complicated; the nonconforming lot 38 may be merged with lot 37, and a subsequent over-the-counter lot line adjustment may be requested by the property owner to adjust the remaining lot lines in any manner requested, as long as the three resulting lots are conforming.

You have asked whether, in the second of the two alternatives, a parcel map must be filed and processed to re-subdivide the new parcel. Subsection (D) of Section 16.20.030 seems to contemplate a less formal procedure for re-subdividing the merged lot than processing a new parcel map, so as not to place that burden on a property owner whose lots have been involuntarily merged. This subsection suggests that with the consent of the property owner, the merger/re-subdivision process may be integrated in a single process, but is silent as to the mechanics of the process.

The difficulty with subsection (D), however, is that there is no mechanism in the subdivision ordinance or in the Map Act, short of a parcel map, for subdividing a parcel once it has been formally created. Once the four

parcels are merged into one, and a notice of merger is recorded as required by Section 16.20.070, no mechanism short of a parcel map would suffice to subdivide the new lot. Hence, if subsection (D) contemplates a "shortcut," this shortcut would, in effect, be precisely the same as the first alternative discussed above; in other words, the Commission would not formally create a single lot from the existing four, but instead would simply merge lots 38 and 37, and leave to the property owner the decision whether to obtain a lot line adjustment.

Finally, it is my opinion that the Commission may select either of the two alternatives. If the Commission believes that the City's land use policies and objectives would be advanced by merging the four existing lots into one and, in effect, requiring subsequent submission and processing of a parcel map to re-subdivide the lot, it may do so.

2. You next ask whether the merger is permissive or mandatory. Section 16.20.030 is written in permissive terms ("two or more parcels . . . *may* be merged). Section 16.20.080 contemplates that parcels may *not* be merged, presumably even if they qualify for merger. Section 16.20.090 repeatedly uses the phrase "[i]f the planning commission makes a determination of merger," suggesting that the decision is permissive. Read as a whole, the language in Chapter 16.20 suggests that the decision is permissive, and that the Commission may consider all relevant factors in determining whether merger in a particular case advances the City's land use policies and objectives.

The language of Section 16.20.120 no doubt creates confusion. It expressly precludes the separate sale of contiguous lots with an existing structure straddling property lines. Its purpose, however is not clear: whether to *require* merger by forbidding separate sale of a nonconforming lot held under the same ownership as the adjoining lot, or merely as a device to prevent property owners from circumventing the merger process until that process has been completed, one way or the other. Further, it does not appear on its face to be limited to situations where one or more of the lots are nonconforming; yet, if none of the contiguous lots are nonconforming, there is no reason to preclude separate sale of the lots, unless the objective is to assure that lots under common ownership be realigned to conform to the prevailing lot size in the neighborhood, and not merely to conform to minimum lot size standards.

Section 16.20.120 is ambiguous and would benefit from clarification by way of a code amendment. Insofar as it may apply in this instance, I do not believe that the section supersedes the clearly permissive language

elsewhere in Chapter 16.20. Hence, in my view its purpose here is to prevent the property owner from selling contiguous lots until a final determination as to the merger has been made.

You have also inquired into the relationship, if any, between the merger provisions and section 17.46.200 in the zoning ordinance. Section 17.46.200 merely establishes that substandard lots are to be considered legal nonconforming if they were legal lots of record as of the effective date of the ordinance. The fact that these lots may be legal nonconforming does not immunize them from the potential for merger if the criteria of Chapter 16.20 are satisfied. Similarly, section 17.46.210 essentially provides that no lot can be separated in ownership or otherwise split into four or fewer parcels unless a lot split is properly accomplished in accordance with the provisions of Chapter 17.46 and the subdivision ordinance.

3. During the public hearing, counsel for the property owner argued that the City is "estopped" from merging the parcels in question. While I am not aware of the asserted basis for that contention, I can tell you it is well recognized that the doctrine of estoppel will only be applied against the government in the most unusual of cases. *Pettit v. City of Fresno* (1973) 34 Cal.App.3d 813, 819. It is also well established that an estoppel will not be applied against the government if to do so would effectively nullify a strong rule of policy (such as that established by a zoning law) adopted for the benefit of the public. *Id.* at 819-820. Here, the merger provisions are creatures of both State and local law and they exist to promote public policy concerns that have been recognized by both the State Legislature and the City Council. Under these circumstances, there is little chance of the City being estopped from taking any action authorized by the merger provisions.

I hope that the foregoing answers your questions. Gregg Kovacevich of this office will be present at your meeting on August 16, 2005 in order to answer any further questions you may have and to assist your deliberations in this matter.

April 5, 2006

RECEIVED

APR 05 2006

COM. DEV. DEPT.

Mr. Peter Tucker, Mayor
Mr. Sam Edgerton, Mayor Pro Tempore
Mr. Michael Keegan, Council Member
Mr. J.R. Reviczky, Council Member
C/O City of Hermosa Beach
Civic Center, 1315 Valley Dr.
Hermosa Beach, CA 90254-3885

CITY COUNCIL APPEAL OF THE JANUARY 17, 2006 PLANNING COMMISSION HEARING L-10 DECISION TO RELEASE THE TWO LOTS AT 726 PROSPECT AVENUE FROM THE LOT MERGER REQUIREMENT, THEREBY ALLOWING THE DEVELOPMENT OF TWO SEPARATE PARCELS BY CHUCK HEIDMAN

In December of 2004, my wife Doris and I purchased a newly constructed home at 1126 8th Street in the City of Hermosa Beach from a Mr. Chuck Heidman, the same developer of the above-referenced subject property (as well as, according to him at the time, other properties in both Redondo and Manhattan Beach); coincidently, this same subject property also borders a substantial portion of our westerly property line. Prior to our decision to relocate to Hermosa Beach, we spent a considerable amount of time investigating existing residential density levels and discussing the relative effects of same upon neighborhood quality of life with both realtors and residents of the South Bay area in general, and, in particular, within the cities of Hermosa, Manhattan, and Redondo Beach (the latter being frequently referred to as "Recondo" Beach by many with whom we spoke). In the course of these conversations we were informed by several realtors and residents alike that Hermosa Beach had previously enacted a lot merger ordinance discouraging the very type of overdevelopment (generally defined as replacing one home with two or more single or multi-family dwellings) that we were most concerned about; upon verifying the existence of this ordinance and the completion of the resulting lot merger program with the City's Community Development Department, we narrowed our search down to Hermosa Beach and ultimately established residence here as previously indicated.

Subsequent to becoming residents of our City, in early January of this year we were informed by a concerned neighbor that the one existing home and detached guest quarters situated on the subject property was about to be demolished and developed as two separate parcels with a single-family dwelling on each, as well as that the Planning Commission had also recently rendered a similar decision not to merge the three existing lots at 838 Prospect Avenue (just one block to the north of the subject property) at its regular meeting of December 7, 2005, thereby effectively clearing the way for the developer of that property to replace the one currently existing home with three single-family dwellings. Upon confirming that a hearing in the case of 726 Prospect Avenue was, indeed, on the Planning Commission's agenda for its regular meeting of January 17, 2006 (as well as that Mr. Heidman was, in fact, not only the owner of the subject property, but also of the adjacent properties to the immediate north and south of it at 1120 8th Street and 720 Prospect Avenue, respectively), we elected to circulate a petition in opposition to the Community Development Department's staff recommendation to release the subject lots from the merger requirement, allowing the development of the two existing lots **(for which the department had already erroneously accepted, reviewed, and made corrections to building plans for two single-family dwellings submitted by the developer, thereby creating a potential financial liability to the City in the event of an alternative Planning Commission decision to merge the property into one parcel)**.

In the process of personally circulating our petition door-to-door and no more than approximately one block away from the subject property in any given direction, we collected (in under four hours on a holiday weekend when many residents were away from home) a total of 76 signatures in support of our opposition to staff's recommendation; furthermore, it is important to note that **not one of the residents we solicited signatures from declined to sign the petition**. Finally, it is most important to note that, at least based upon the comments of these signers, **they are vehemently opposed to the proposed development of the subject property or similar overdevelopment of any other properties that remain unmerged after the lot merger program of 1987 through 1990 but still meeting the intent and criteria of the lot merger ordinance as adopted into the City's Municipal Code in 1986**.

On January 17, 2006, we submitted our signed petition to the Community Development Department for consideration and attended (along with many of the other signers) the regular meeting of the Planning Commission. During the public comment period of the hearing itself, eight of the signers and a recused planning commissioner spoke in support of the petition, as well; **only the developer and his personal injury attorney Albro L. Lundy III of Baker, Burton, & Lundy spoke in favor of staff's recommendation to not merge the lots and develop the subject property as two separate parcels**. Nonetheless, the planning

commissioners (with the notable exception of Commissioner Pizer (noe) and Commissioner Kersenboom (absent) voted to approve staff's recommendation not to merge the two lots of the subject property. Upon further consultation with the signers of our petition, we filed official notice of our intent to appeal with the deputy city clerk on January 26, 2006.

Since that time, we have conducted extensive further discussions not only with the signers of our original petition but with many more neighborhood residents and/or property owners of the City, as well, **all of whom also vehemently oppose the Planning Commission's decision in this matter**. In reviewing the Community Development Department's original staff recommendation of January 9, 2006 as presented to the Planning Commission and upon which this decision was subsequently rendered, we submit the following for further consideration by the City Council at this time (each of the following sections correspond to staff's recommendation format for Council's reference; excerpts from it appear in italics):

Background

"Staff determined the subject property meets the above criteria for Commission consideration as each one of the contiguous lots contains less than 4,000 square feet and the existing structure is sited on the two contiguous lots. Also, since only one of the three lots on the block under consideration have already been 'split' into 25-foot wide lots, this calculates as 33%, so 'not more than 80% have been split and developed separately.' Therefore, pursuant to Section 16.20.050, the City mailed a Notice of Intention to Determine Status to the property owner on [December 15], 2005, and the Notice of Intention was recorded with the L.A. County Recorder."

This excerpt clearly states that, according to staff, the subject property is, indeed, subject to merger.

"The lot merger program operating between 1987 and 1990 established a mandatory review of substandard lots on a citywide basis consistent with the requirements of the lot merger ordinance. Based upon the assumption that the lot merger program had addressed all substandard lots, staff has accepted plans for constructing two homes on the property. However, since staff accepted these plans, the City Attorney has advised that any lots that meet the merger criteria that were not merged from 1987 to 1990 should still be considered for merger when a parcel meets the merger criteria."

This excerpt states that staff's assumption was, in fact, incorrect in this case **(and obviously presents the possibility that other such errors based upon this same incorrect assumption may have already occurred in the past or could**

occur again in the future unless immediate corrective action is taken); the City attorney correctly advises that the subject property must now be considered under the merger ordinance. Accordingly, **we request that the City Council direct staff to immediately audit the lot merger program in order to identify any and all remaining unmerged lots subject to the original intent and criteria of the lot merger ordinance, and reinstate the lot merger program as required to merge them now. In the meantime, all applications for building permits for new residential construction should be reviewed upon submission to insure that staff does not again accept plans for any such parcels that may still be subject to merger as it did in the case of the subject property.**

"The Planning Commission recently considered a similar case for merger of three contiguous lots at 838 Prospect Avenue, and the Commission decided not to merge the lots."

Regarding the case of 838 Prospect Avenue, during the Planning Commission meeting of January 17, 2006, one of the commissioners expressed his concern that residents and/or property owners did not appear to oppose the commission's decision not merge the lots contained in this parcel just one month earlier. However, had he been at all familiar with the language of the Lot Merger Ordinance upon which he was about to render a decision, he would surely have been aware of the fact that **there is no provision to publicly notify residents and/or property owners of a Planning Commission hearing and possible decision not to merge lots as there would be in the case of a zone change, even though it presents the very same potential implication with respect to increasing current neighborhood residential density levels.** Accordingly, **we request that the City Council direct staff to require public notice of all future Planning Commission lot merger requests for hearing to all residents and/or property owners within a 300-foot radius of any and all remaining unmerged lots subject to the original intent and criteria of the Lot Merger Ordinance and Program as is presently required in the case in a zone change hearing.** Such action on the part of Council now will serve to more fully protect the inherent property rights of *all* owners potentially affected by such a hearing and decision instead of just the developer as is presently the case under this particular municipal ordinance.

"In a prior communication regarding compulsory merger of lots under Chapter 16.20, the City Attorney indicated that the commission is not compelled to merge the lots but consider the merger based upon the evidence related to the ordinance and neighborhood compatibility."

This excerpt elicits the question of when and why the City Attorney was consulted in this matter. According to the memorandum included in staff's recommendation, it was, in fact, August 10, 2005 regarding the matter of yet another lot merger determination at 550 21st Street (a portion of which was

subsequently merged); apparently, once again, as a direct result of the incomplete lot merger program. In concluding his memorandum of the same date to the Planning Commission, he advises regarding the property owner's argument that the City is estopped from merging the parcels in question:

"...here, the merger provisions are creatures of both State and local law and they exist to promote public policy concerns that have been recognized by both the State Legislature and the City Council. Under these circumstances, there is little chance of the City being estopped from taking any action authorized by the merger provisions."

This excerpt clearly states that, according to established legal precedent, it is highly unlikely that a property owner can argue estoppel in the case of a lot merger, either during or after the original lot merger program. As such, without question the City legally retains its right to reinstate and complete the lot merger program as previously requested.

Lot Merger Ordinance Background

"Chapter 16.20 establishing the process for merging sub-standard lots was adopted into the Municipal Code in 1986. The ordinance was adopted in response to State Legislation of 1984, which completely overhauled the provisions of the Subdivision Map Act with respect to merging contiguous parcels under common ownership. The City determined that it was in the public interest to preserve the character of existing neighborhoods, and the concern was largely in response to a recent trend in the development of 50-foot wide parcels into two 25-foot wide parcels with a home on each lot. The lots were concentrated in areas east of Prospect Avenue..."

This excerpt clearly states that, once again, the intent of the ordinance was "to preserve the character of existing neighborhoods" and "in response to a recent trend in the development of 50-foot wide parcels into two 25-foot wide parcels with a home on each lot," as well as that "the lots were concentrated in areas east of Prospect Avenue." Accordingly, due to the location of the subject property on the east side of Prospect Avenue (as well as within a physical block where over 40 lots of various widths including many of 25 feet were previously merged under the original lot merger program) and its two lot widths of 25 feet each, **we request that the City Council overturn the Planning Commission hearing decision "to release the subject lots from the merger requirement, allowing the development of the two existing lots," and, instead, exercise staff's alternative recommendation "to merge the property into one parcel" in accordance with the original intent and criteria of the Lot Merger Ordinance and Program.**

"By 1989 the City merged approximately 1100 lots into 500+ parcels pursuant to these provisions, including several on the streets east of Prospect Avenue.

Approximately 300 of the parcels merged were 50-foot wide parcels that contained two 25-foot wide lots located in the R-1 areas around Prospect Avenue noted above, while the remaining involved the combining of remnant sub-standard parcels located throughout the city. The City keeps a record of lots merged and recorded pursuant to these provisions, both on file and referenced in City parcel maps. The lots merged on the blocks east of Prospect Avenue are all lots that front on the side streets perpendicular to Prospect Avenue, and none of the lots that front on Prospect Avenue were included in the lot mergers. It is not clear why these lots were not merged at the time."

This excerpt clearly states that "several" lots east of Prospect Avenue were merged into single parcels; however, based upon staff's explanation of the lot merger symbol drawn on the City parcel maps also referenced, approximately 100 lots are actually marked as merged between 7th and 10th Streets alone. Furthermore, it also makes it clear that the records required to audit the lot merger program as previously requested have existed since the assumed completion of the original program in 1989. Finally, **there appears to be no record of why eligible lots fronting Prospect Avenue were not merged under the original Lot Merger Program, again inferring that the program itself never was, in fact, completed as previously assumed by staff.**

Analysis

"The applicant has requested a hearing, pursuant to Section 16.20.060, to be given the opportunity to present evidence that the lots do not meet the requirement for merger. The applicant has submitted his request for hearing (attached) correctly noting that his project plans for the two new homes are ready to be permitted, though he has not provided any specific evidence that the property does not meet the requirements for merger."

This excerpt clearly states that the developer *"...has not provided any specific evidence that the property does not meet the requirements for merger."* Neither, it should be noted, has staff up to this point in their recommendation; however, for unknown reasons in the following excerpts, staff proceeds to attempt to provide such evidence on the developer's behalf in the remaining portion of this section.

1. Regarding the *"difficulty with the 80% rule"* (clearly defined within the ordinance itself to be that *"the main structure is partially sited on the contiguous parcel and not more than 80% of the lots on the same block of the affected parcel have been split or developed separately"* - period), staff proceeds to speculate that, somehow, *"it is not clear whether..."*

    a. *"... the affected lot..."* (previously referred to as the *"subject property"*)

b. *"...or the lot at the north corner..."* (also owned by this same developer and previously referred to as 1120 8th Street) *"...should be included (since it contains an unusual condition of having a recorded P.U.D and tract for two units, and which may be in dispute as to whether it has been 'split.'"* (despite the fact that, according to the October 18, 2005 minutes of the planning commission meeting regarding this property *"...the City Attorney has given a preliminary indication to staff that the map is no longer in effect and, therefore, its not possible to make the proposed lot line adjustment."*)

...should be included in the calculation, and furthermore, that *"if the subject parcel is not included, 50% of the other lots have been split; if neither the affected lot or the lot at the corner are included, and only the 25-foot lot is included, it can be argued that 100% of the other lots have been split."* While we acknowledge staff's creativity along this line, it is clear that it is, nonetheless, in direct conflict not only with the original intent and criteria of the ordinance, but specifically with this particular rule as previously defined by staff.

2. Concerning whether or not it is actually *"helpful to look beyond the subject block...between 3rd Street and 10th Street"* to *"determine whether merging these lots is the appropriate decision"* to meet *"the intent of the merger ordinance, which is to maintain neighborhood character,"* we instead propose to the City Council our own "alternative recommendation" of simply observing:

   a. The east side of Prospect Avenue in the subject property block, where three homes are presently situated (and, where, if the developer has his way with the subject property, there will soon be four; if he prevails in the matter of 1120 8th Street as well, there will eventually be a total of five)

   b. The west side of Prospect Avenue between 8th Street and 8th Place in the subject block, where two homes are presently situated

   c. The east side of Prospect Avenue between 8th and 9th Street, where four homes are presently situated (and where, at 838 Prospect Avenue, staff used its own recent recommendation and resulting Planning Commission hearing decision not to merge three eligible lots in order to further justify its recommendation not to merge the lots in the case of the subject property; as such, the developer of that property has already submitted plans to demolish one home and replace it with three single-family dwellings, thereby increasing residential density to six dwellings on this side of the block alone – a full 50% increase over the current neighborhood residential density level)

d. The west side of Prospect Avenue between 8th Place and 9th Street, where two homes are presently situated

e. The west side of Prospect Avenue between 9th and 10th Street, where two homes are presently situated

f. The attached photographs which clearly and accurately depict the true "character of" our "existing neighborhood" along Prospect Avenue, as opposed to staff's evaluation of neighborhoods further north and south in order to justify its recommendation not to merge the subject lots

In summation, the City Council's actions in this matter will be, according to the Community Development Director, "final," so serious consideration is required for each and every request that we have submitted for you to vote upon. Both your individual and corporate decisions will most certainly be viewed not only by our community but by surrounding communities, as well as a clear mandate of the future direction of our City with respect to overdevelopment. As such, we implore you to proceed very carefully with that future.

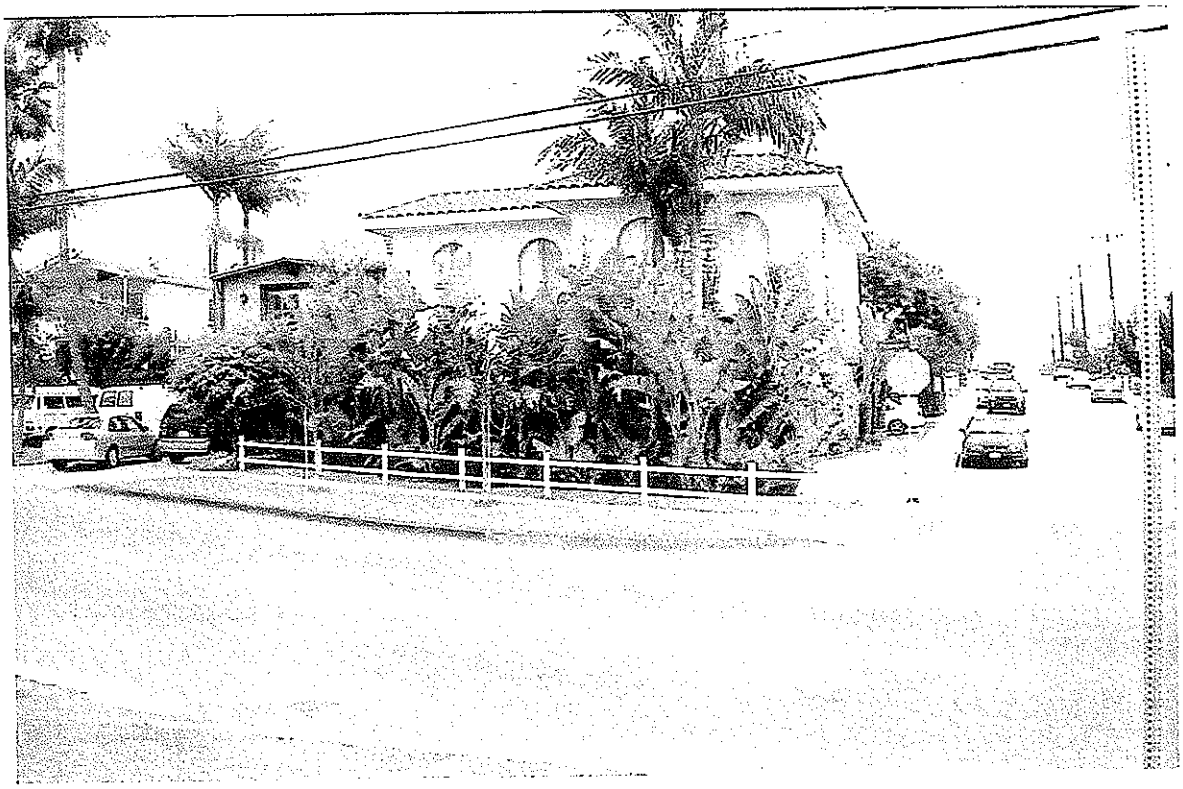
Sincerely,

Gregor E. Eberhardt

Gregor E. Eberhardt

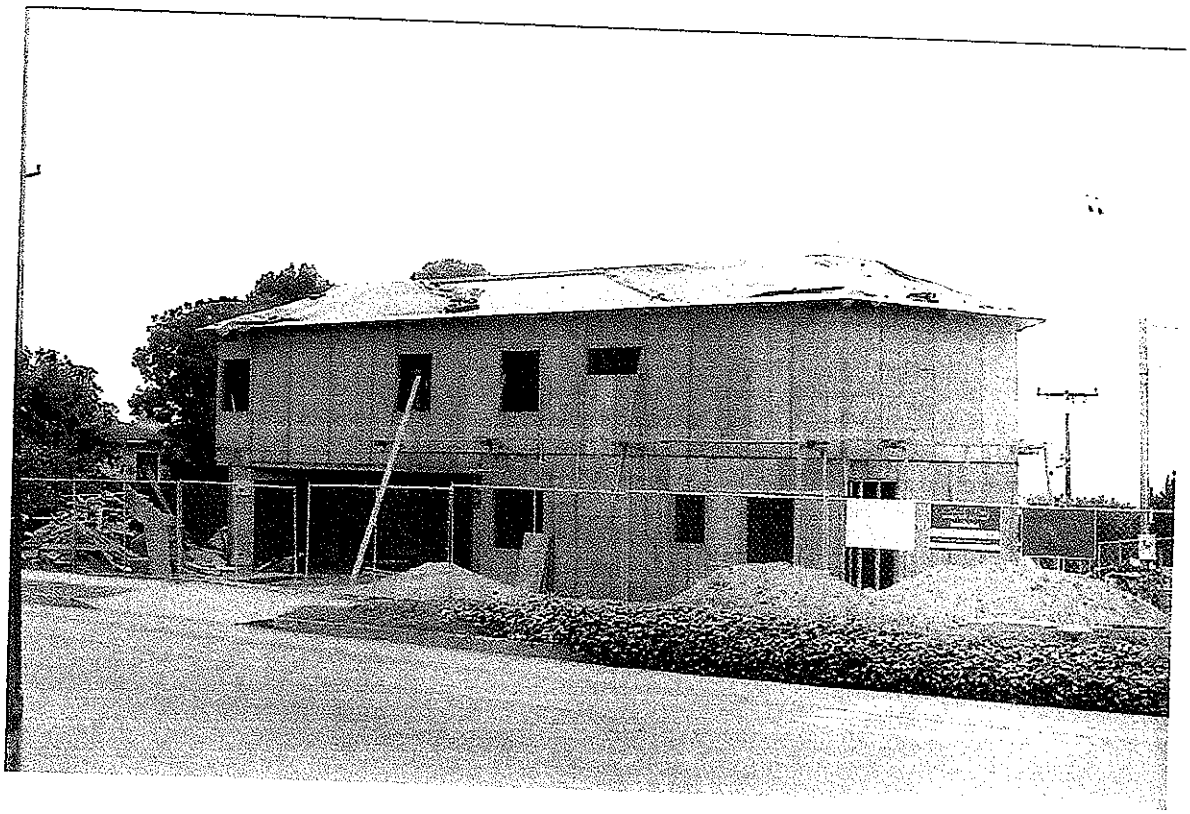
Doris O.L. Eberhardt

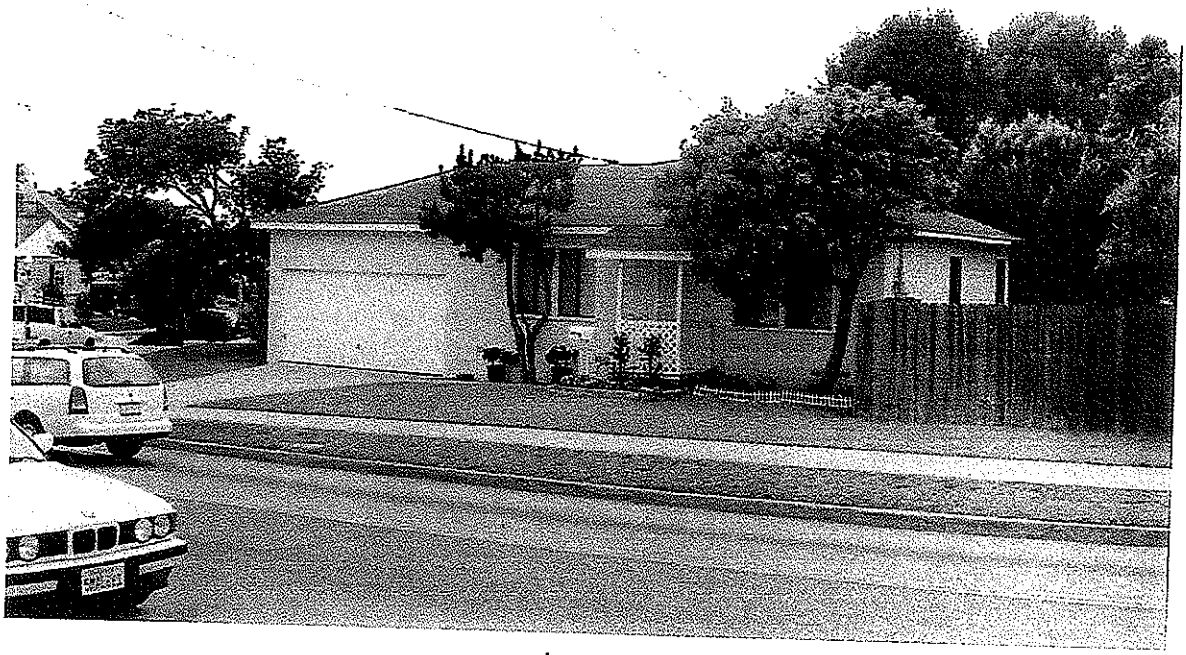
gee
Attachment
cc Petition Signers

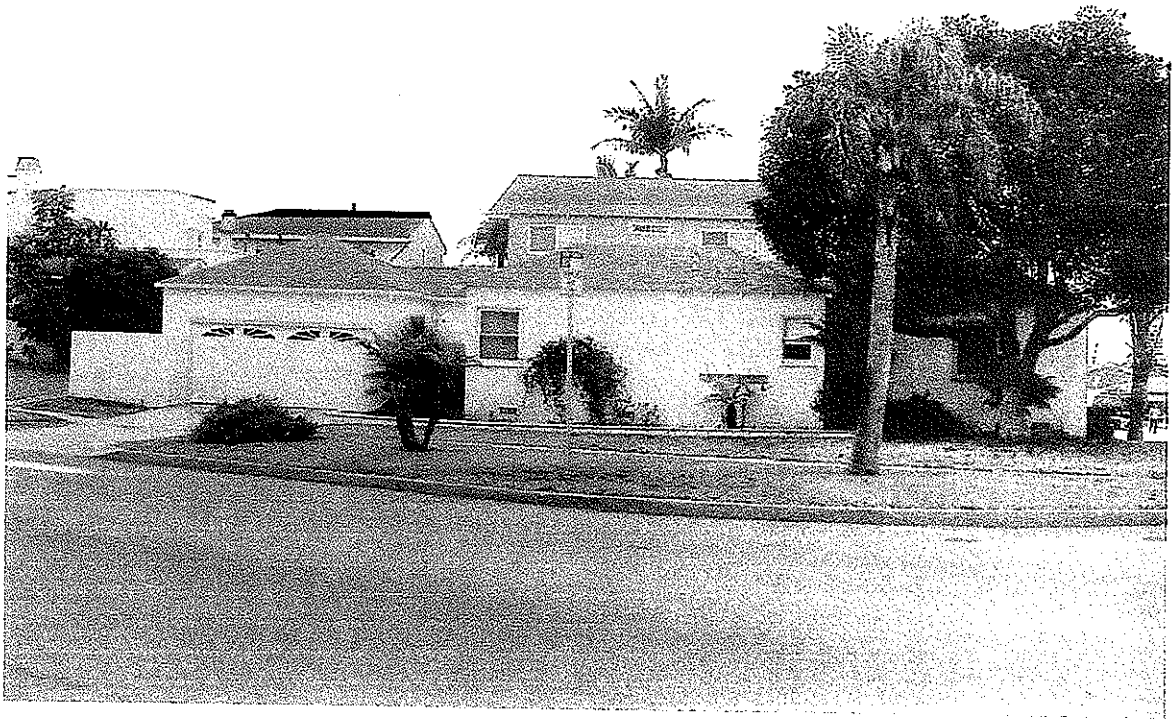


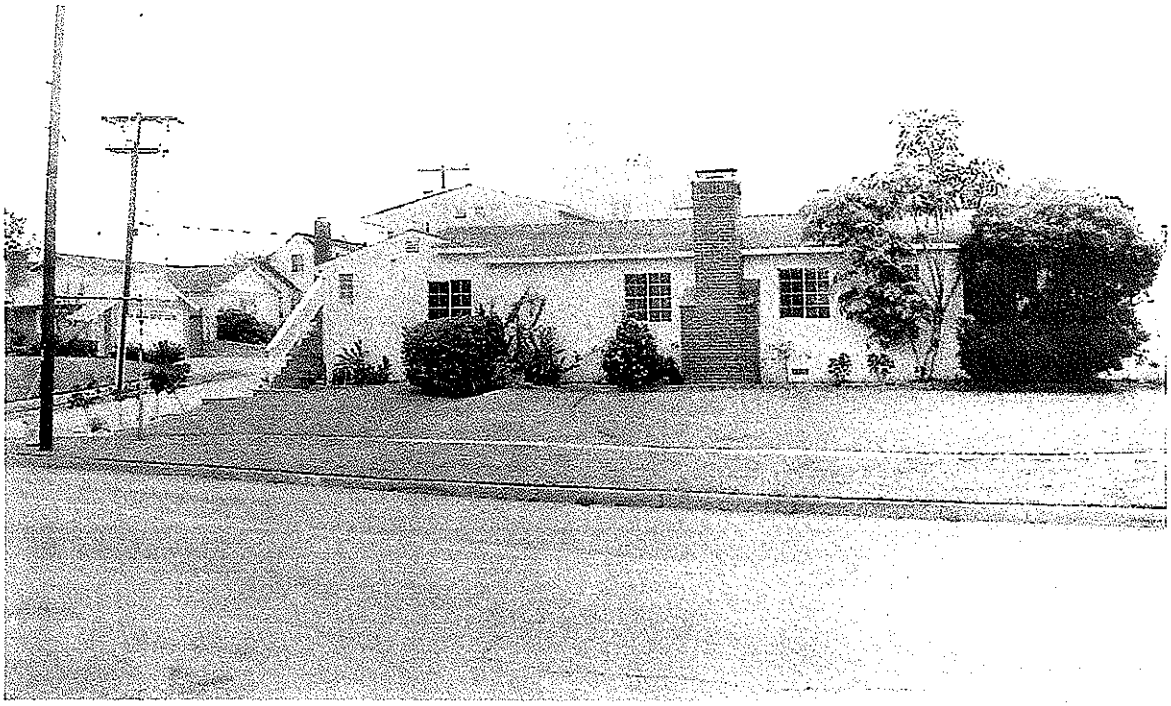

906

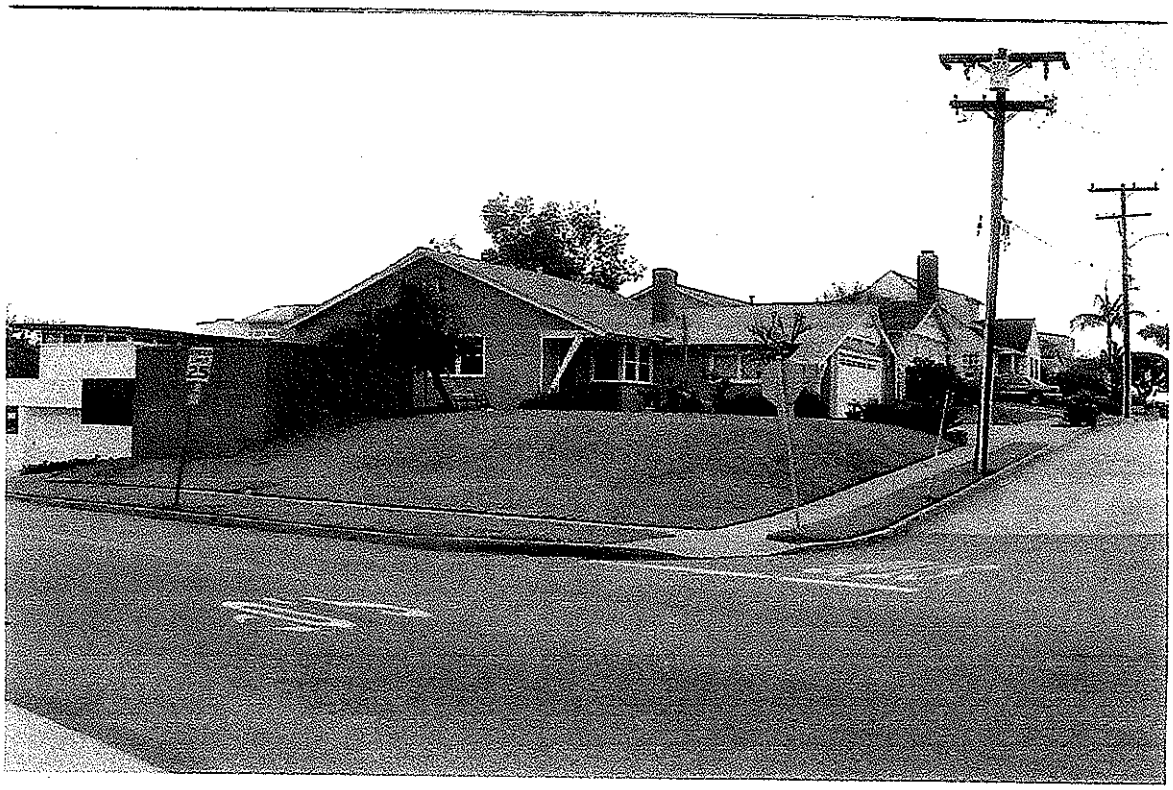

920



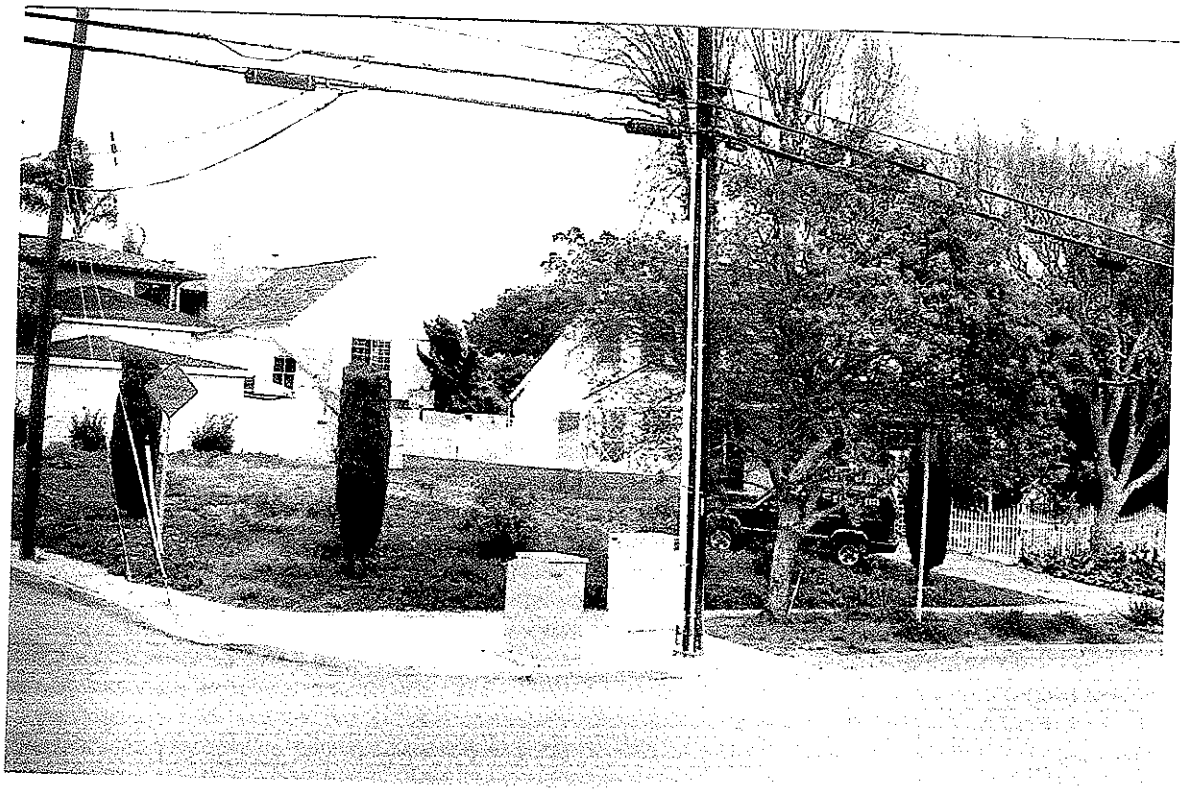


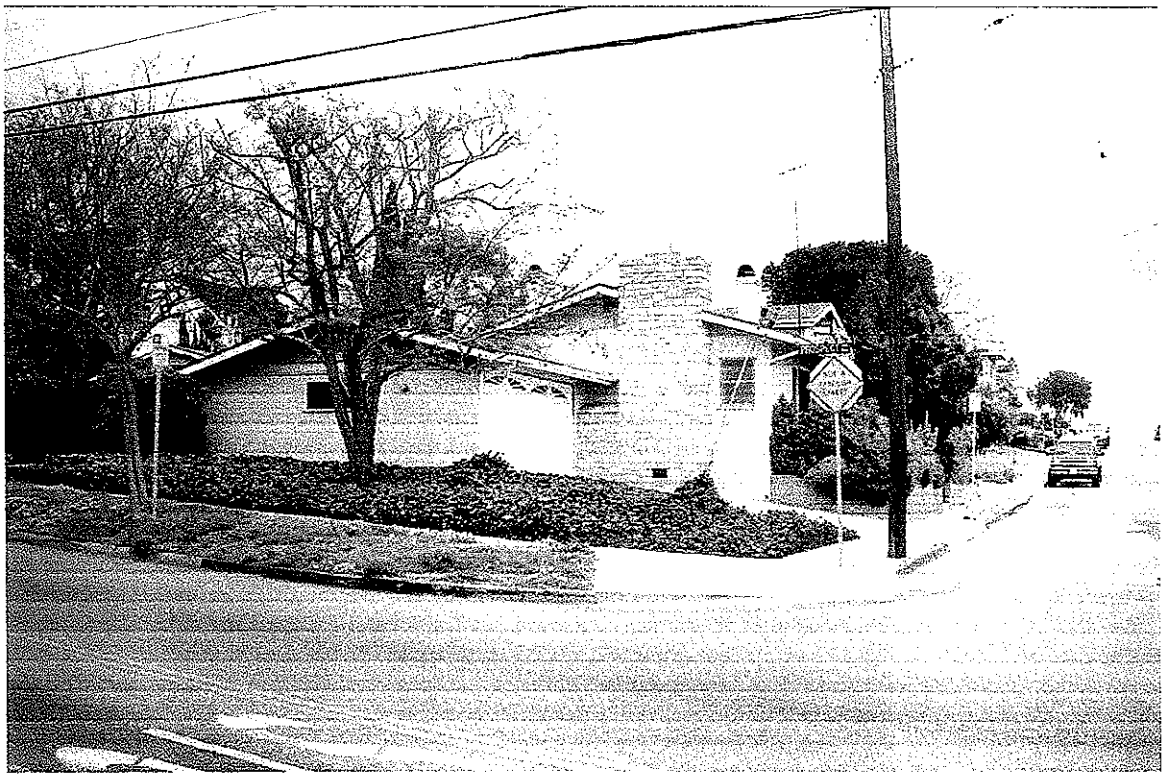


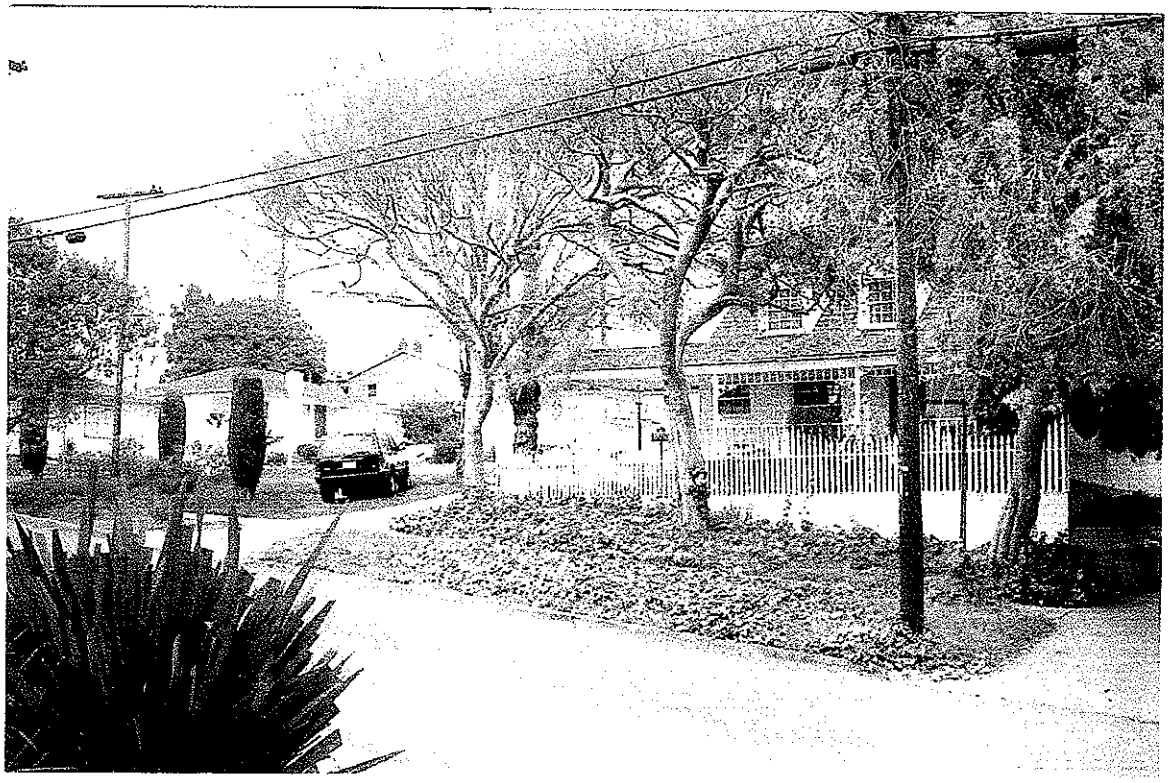


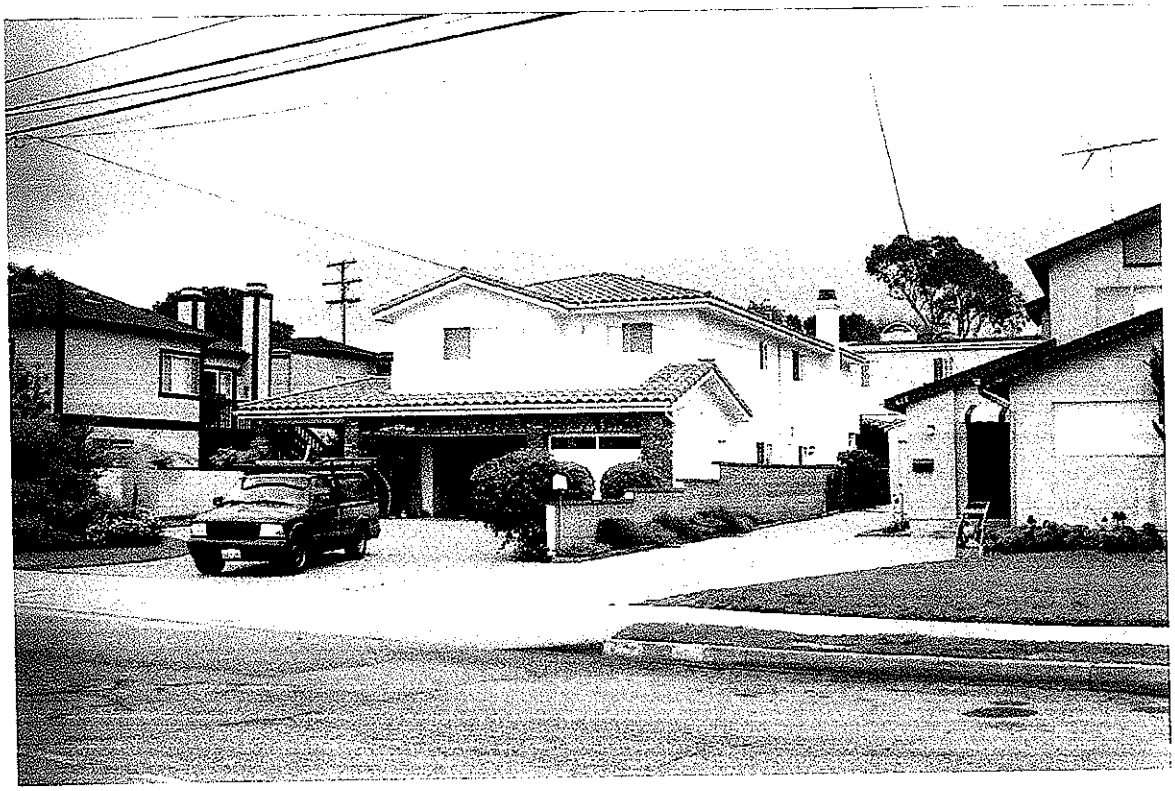


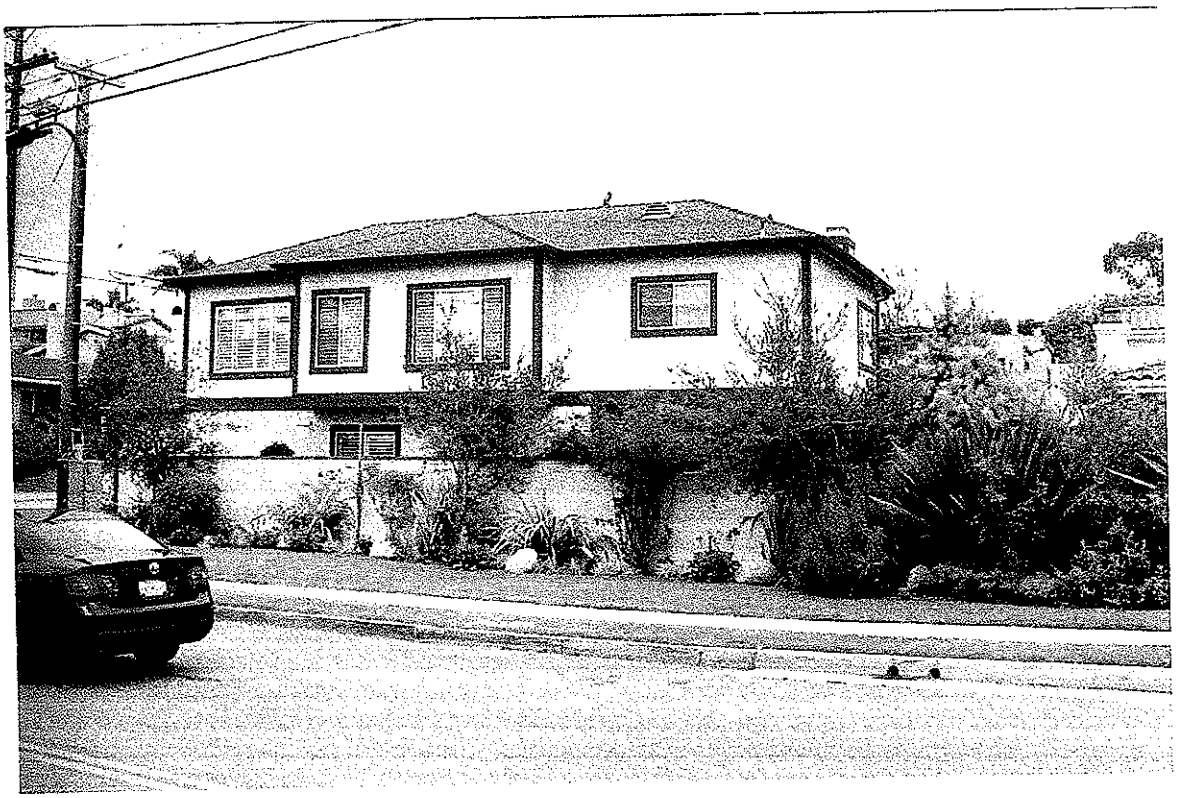

720

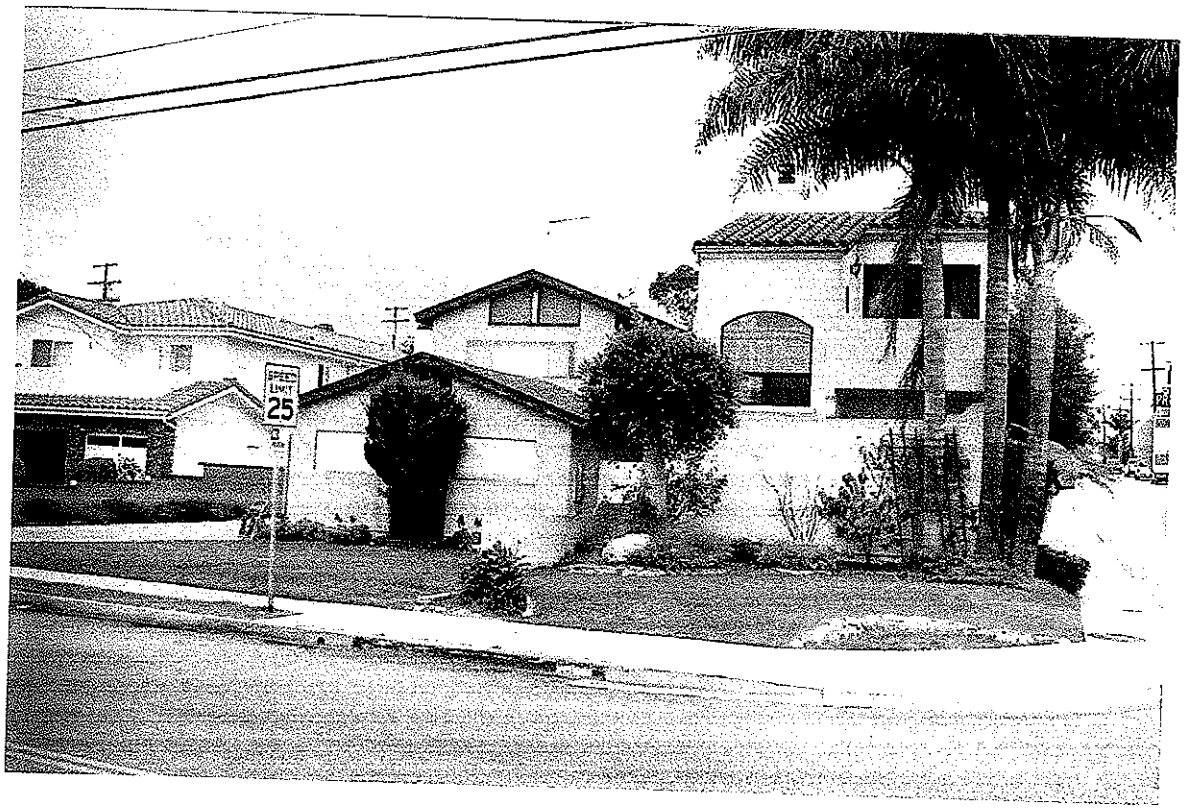


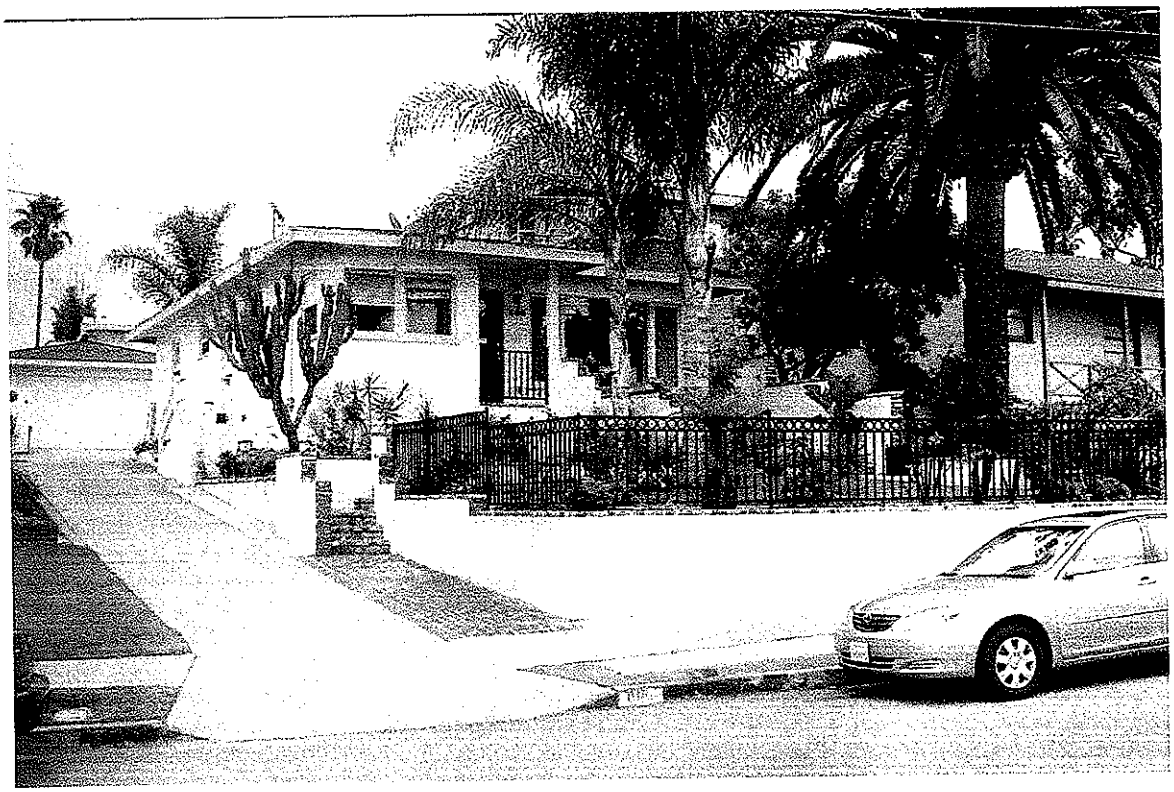


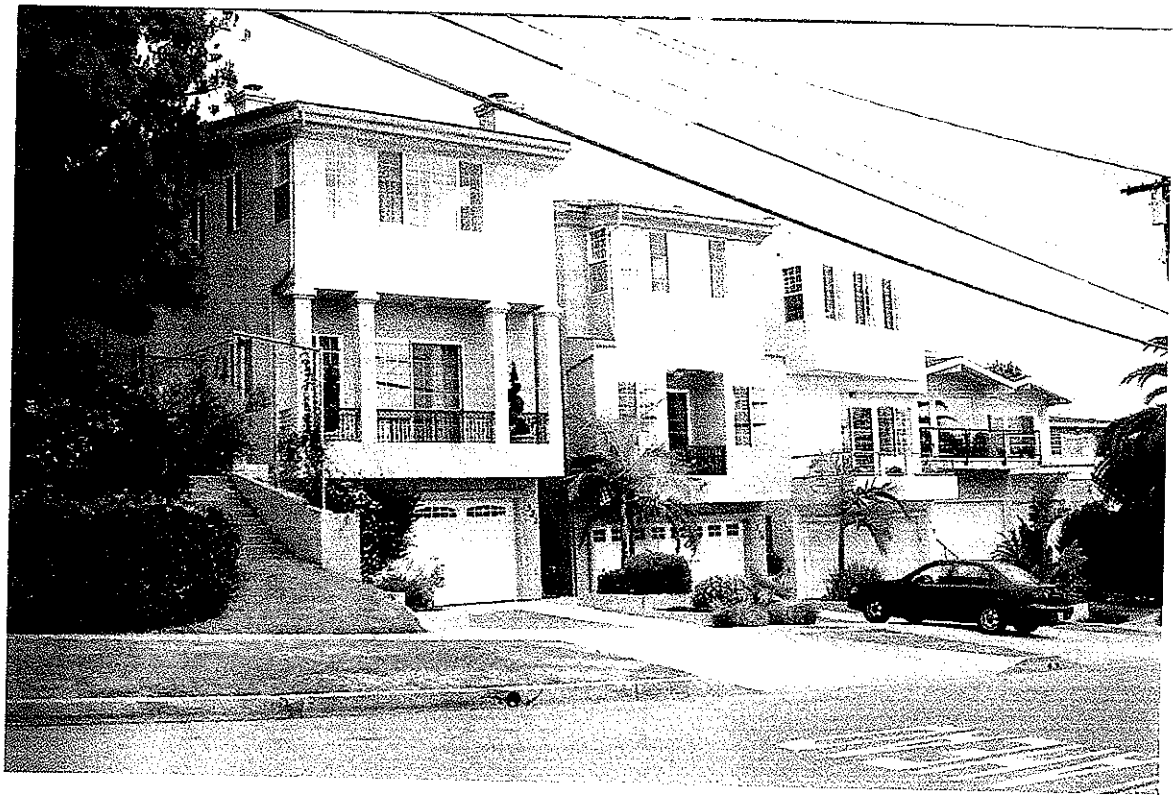


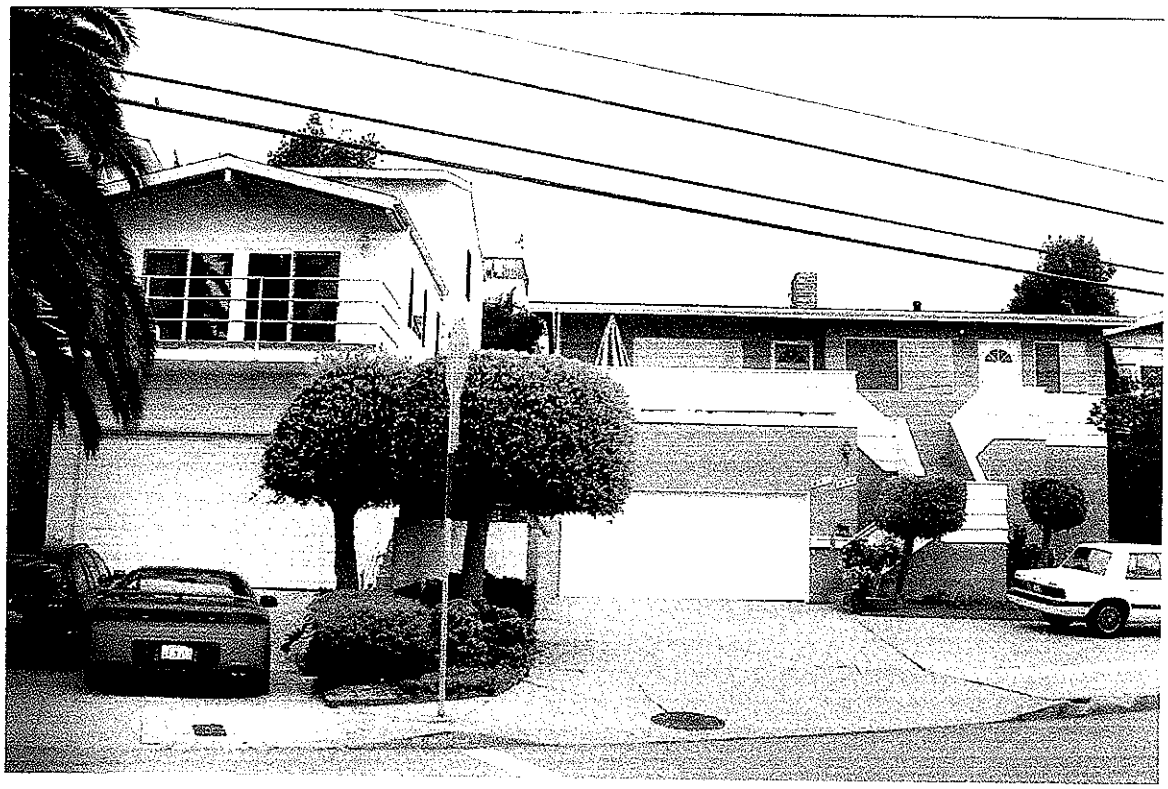


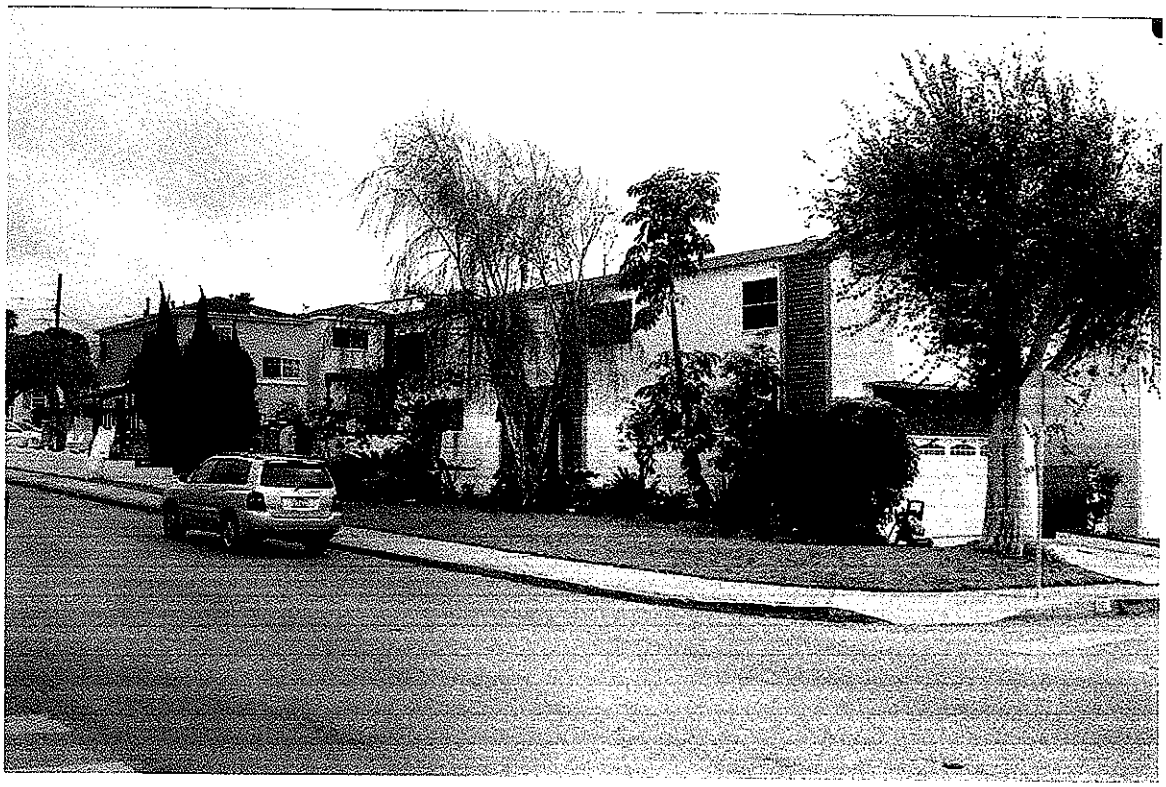


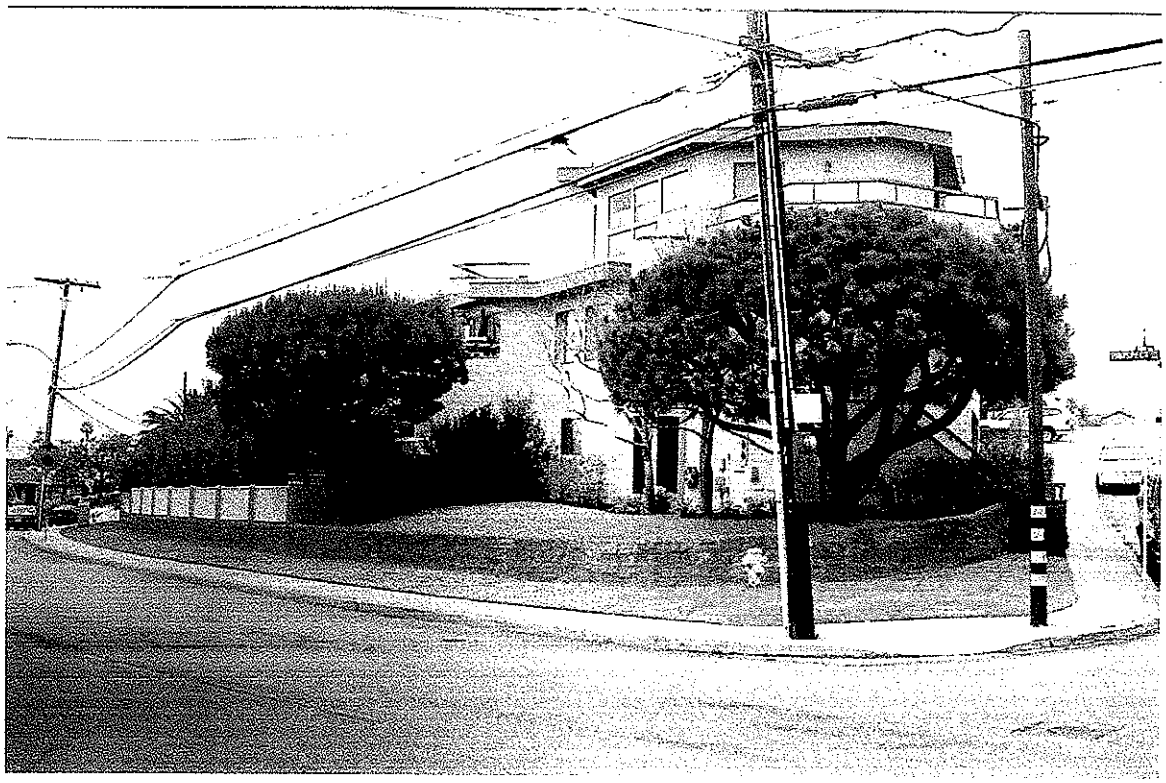

SPEED LIMIT
25

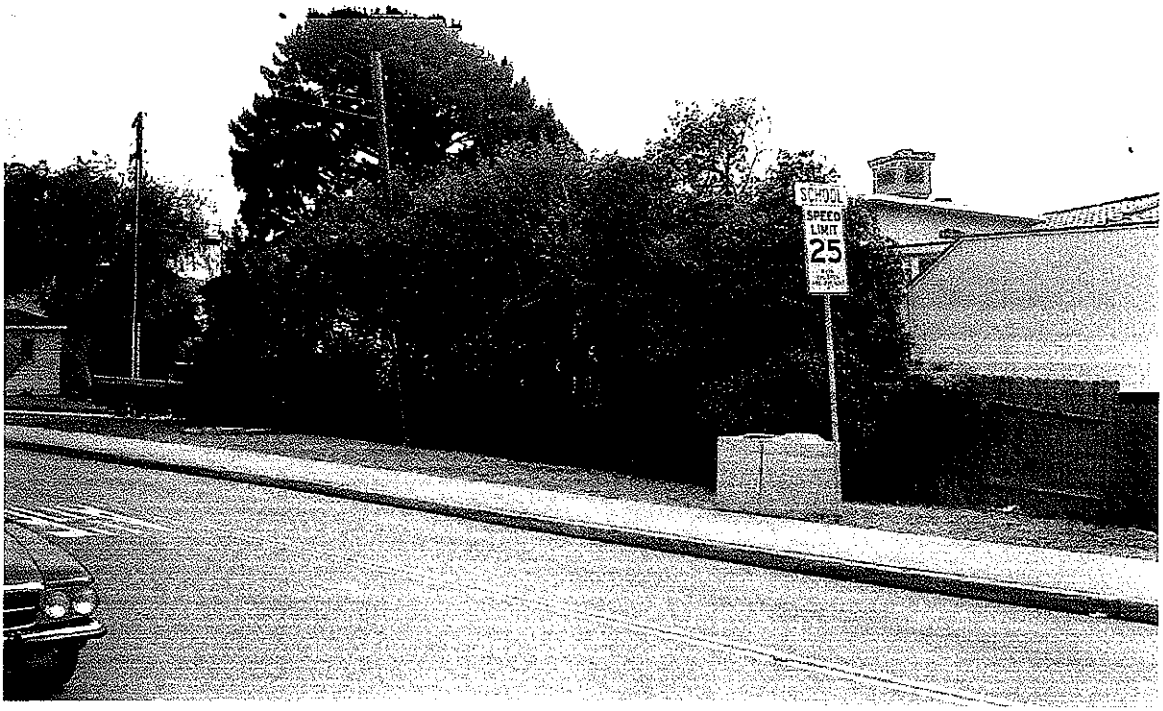











SCHOOL
SPEED
LIMIT
25