



CITY COUNCIL AGENDA REPORT

MEETING DATE: SEPTEMBER 7, 2004

ITEM NO:

**SUBJECT: APPEAL OF MINOR DESIGN REVIEW ZA-04-30
281 WALNUT STREET**

DATE: AUGUST 26, 2004

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: MEL LEE, ASSOCIATE PLANNER

FOR FURTHER INFORMATION CONTACT: MEL LEE, ASSOCIATE PLANNER (714) 754-5611

RECOMMENDATION:

Conduct a public hearing and either uphold, reverse, or modify Planning Commission's decision.

BACKGROUND:

On June 24, 2004, the Zoning Administrator approved a minor design review to construct a two-story, 3,108 square-foot residence with a detached 512 square-foot granny unit, proposed to be constructed over a 635 square-foot, three-car garage. A development review was also approved for the granny unit, the occupancy of which is restricted to no more than two residents, each at least 62 years of age or older. Finally, a minor modification was approved to allow the support posts for the covered porch to encroach 2 feet into the required front yard setback (20 feet required; 18 feet proposed).

An appeal of the Zoning Administrator's approval was filed by area resident Lori McDonald on July 1, 2004. The appeal states, among other things, that (1) the public notice was faulty; (2) the proposed project violates several city zoning ordinances, including open space; (3) the project will invade the privacy of her property, 284 Walnut Street, across the street from the subject property; (4) the proposed project will result in 2, two-story structures on one lot; and (5) the proposed second unit will not be used as a granny unit.

Planning Commission considered the appeal at their July 26, 2004 meeting and upheld the approval on a 4-0 vote (Commissioner Bever absent). On August 2, 2004, attorney Kenneth Zwick filed an appeal of the Planning Commission's approval on behalf of Lori McDonald.

ANALYSIS:

APELLANT'S ISSUE #1

Invasion of my right to privacy at my home.

STAFF RESPONSE

The Planning Commission determined that privacy impacts on the appellant's property will be minimal due to the 100-foot distance between the appellant's residence and the proposed residence on the subject property, which consists of a 20-foot setback from the property line of the subject property, coupled with a 60-foot width of the public right-of-way for Walnut Street, and the approximately 20-foot setback of the appellant's residence on the opposite side of the street.

APELLANT'S ISSUE #2

Interference with the quiet use and enjoyment of my property.

STAFF RESPONSE

The proposed project will not interfere with the quiet use and enjoyment of the appellant's property due to the 100-foot separation between the residences, which includes a public street (refer to staff's response to appellant's issue #1 above).

APELLANT'S ISSUE #3

A piecemeal change spot zoning in the character and continuity of my neighborhood.

STAFF RESPONSE

A zone change for the subject property is not proposed. The subject property is zoned R1 (Single Family Residential) and the proposed project complies with the provisions of the R1 zone. State law requires cities to allow granny units in R1 zoned properties provided that the occupant(s) is at least 62 years of age and the structure complies with local zoning requirements. The Planning Commission upheld the Zoning Administrator's determination that the proposed project complies with the zoning code as well as the intent of the City's Residential Design Guidelines, which were adopted to ensure residential construction is consistent with the "character and continuity" of the surrounding neighborhood.

APELLANT'S ISSUE #4

A discriminatory cumulative effect of surrounding my single story home with 3 different 2-story big box homes.

STAFF RESPONSE

Code allows a maximum height of two stories for all residential structures within the City. There is no basis for the appellant's claim that a two-story structure is "discriminatory".

APPELLANT'S ISSUE #5

Interference with my home's access to ocean breezes essential to keeping it cool, and light essential to vegetation.

STAFF RESPONSE

The proposed project will not interfere with the access to the appellant's property of ocean breezes or light, due to the 100-foot separation between the residences, as described in staff's response to appellant's issue #1.

APPELLANT'S ISSUE #6

Material damage to the aesthetic value of my house.

STAFF RESPONSE

Staff is not aware of any alteration or damage to the appellant's property that would result from the proposed project, due to the 100-foot separation between the residences as described in staff's response to appellant's issue #1.

APPELLANT'S ISSUE #7

Failure to follow procedures for a properly signed application on the design review.

STAFF RESPONSE

The minor design review application was signed by Darlene LaCombe, the designer of the proposed project, who is acting as the authorized agent for the property owners, Barron and Jance Hurlbut. Mrs. Hurlbut originally signed the application; to clarify his consent to the application, the application has also been signed by Mr. Hurlbut.

APPELLANT'S ISSUE #8

Failure to follow procedures on proper notice to landowners in the neighborhood.

STAFF RESPONSE

Proper notice was provided for the proposed project. Public notice was posted on the subject property, sent via postcards to all property owners within 500 feet of the subject property (including the appellant), and published in the newspaper. These notices were provided prior to the Zoning Administrator's decision, prior to the Planning Commission appeal hearing, and prior to the City Council appeal hearing.

APPELLANT'S ISSUE #9

Failure to follow proper procedures concerning the type of review of the building application.

STAFF RESPONSE

The concern raised here is not clear. The proper procedures for the minor design review, the development review, and the minor modification were followed. The applicant has not yet submitted an application or plans to the Building Division, which is normally done after a project has been approved and the appeal period has lapsed.

APPELLANT'S ISSUE #10

Several other problems spelled out in a letter from my attorney that will be filed with the Clerk after this date (August 2, 2004).

STAFF RESPONSE

At that the time this report was prepared, no additional information has been provided by the appellant.

ALTERNATIVES CONSIDERED:

The available alternatives are:

- (1) Uphold Planning Commission's decision to approve the request;
- (2) Reverse Planning Commission's decision and deny request. If City Council wishes to deny the request, modifications to findings will need to be made.

FISCAL REVIEW:

There is no fiscal impact as a result of this project.

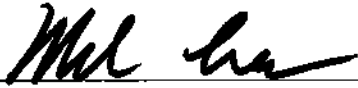
LEGAL REVIEW:

Legal review is not required for this project.

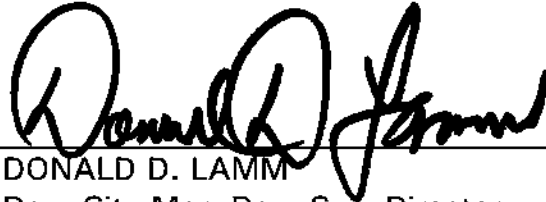
CONCLUSION:

Despite the issues raised by the appellant, Planning Commission upheld the Zoning Administrator's approval of the proposed residence because it complies with all applicable development standards and residential design guidelines. The appellant

has not raised any new issues that would, in staff's opinion, warrant reversal of the Planning Commission's action.



MEL LEE
Associate Planner



DONALD D. LAMM
Dep. City Mgr.-Dev. Svs. Director

DISTRIBUTION: City Manager
City Attorney
Public Services Director
City Clerk (2)
Staff (4)
File (2)

Darlene LaCombe
2022 Orchard Drive
Newport Beach, CA 92660

Mr. and Mrs. Hurlbut
3341 Alabama
Costa Mesa, CA 92626

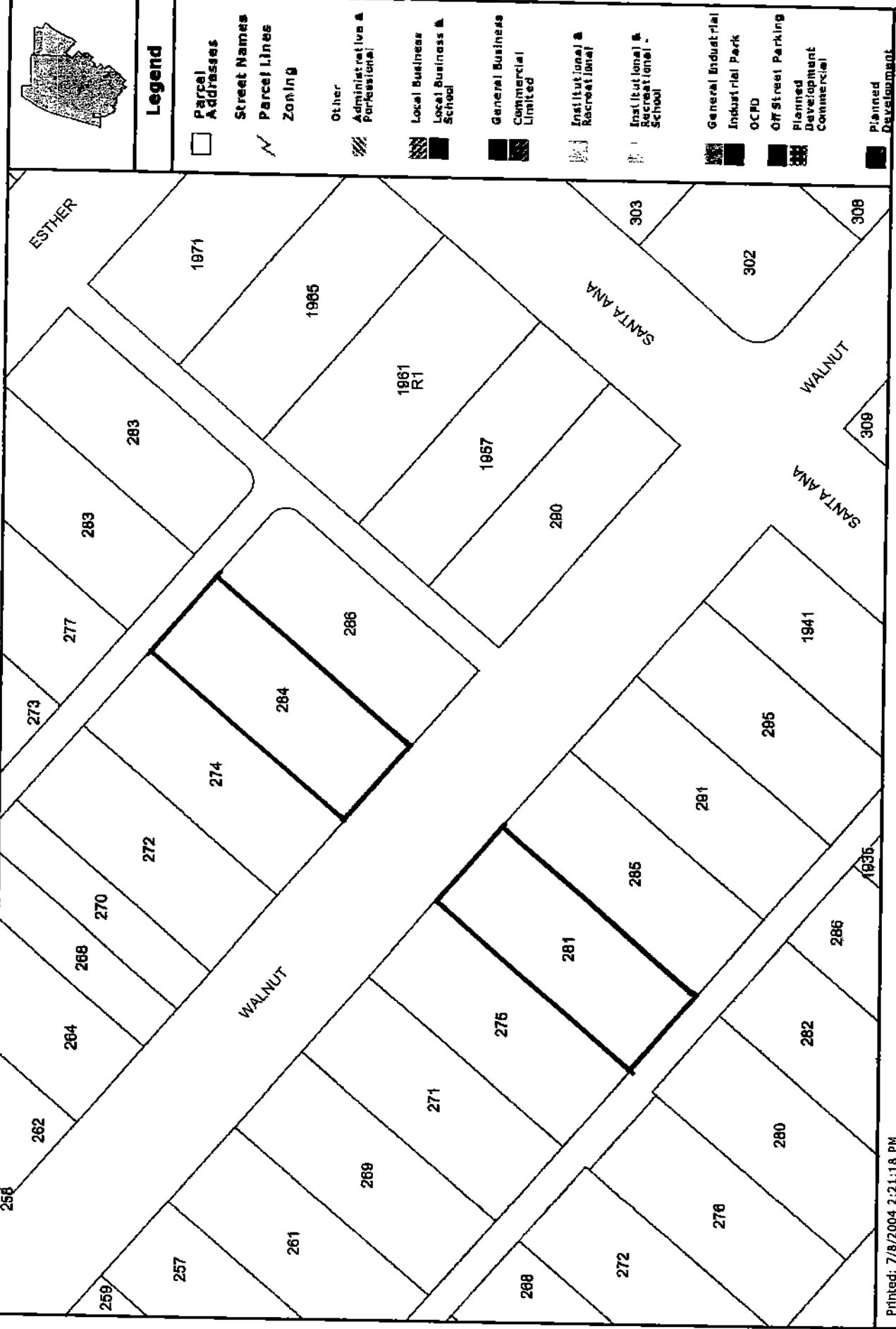
Lori McDonald
284 Walnut Street
Costa Mesa, CA 92627

Law Offices of Kenneth Zwick
P.O. Box 1512
Costa Mesa, CA 92628-1512

ATTACHMENTS: Location Map
Plans and Photos
Draft City Council Resolution
Exhibit "A" Draft Findings
Exhibit "B" Conditions of Approval
Appeal
Minutes from Planning Commission Meeting of July 26, 2004
Planning Staff Report
Planning Commission Resolution
Zoning Administrator Letter dated June 24, 2004
Letter From Kenneth Zwick presented at the July 26, 2004
Planning Commission Meeting

ZONING/LOCATION MAP

281 AND 284 WALNUT



Legend

- Parcel Addresses
- Street Names
- Parcel Lines
- Zoning
- Other
- Administrative & Professional
- Local Business & School
- Local Business & School
- General Business & Commercial Limited
- Institutional & Recreational
- Institutional & Recreational - School
- General Industrial
- Industrial Park
- OCFD
- Off Street Parking
- Planned Development Commercial
- Planned Development

281 AND 284 WALNUT

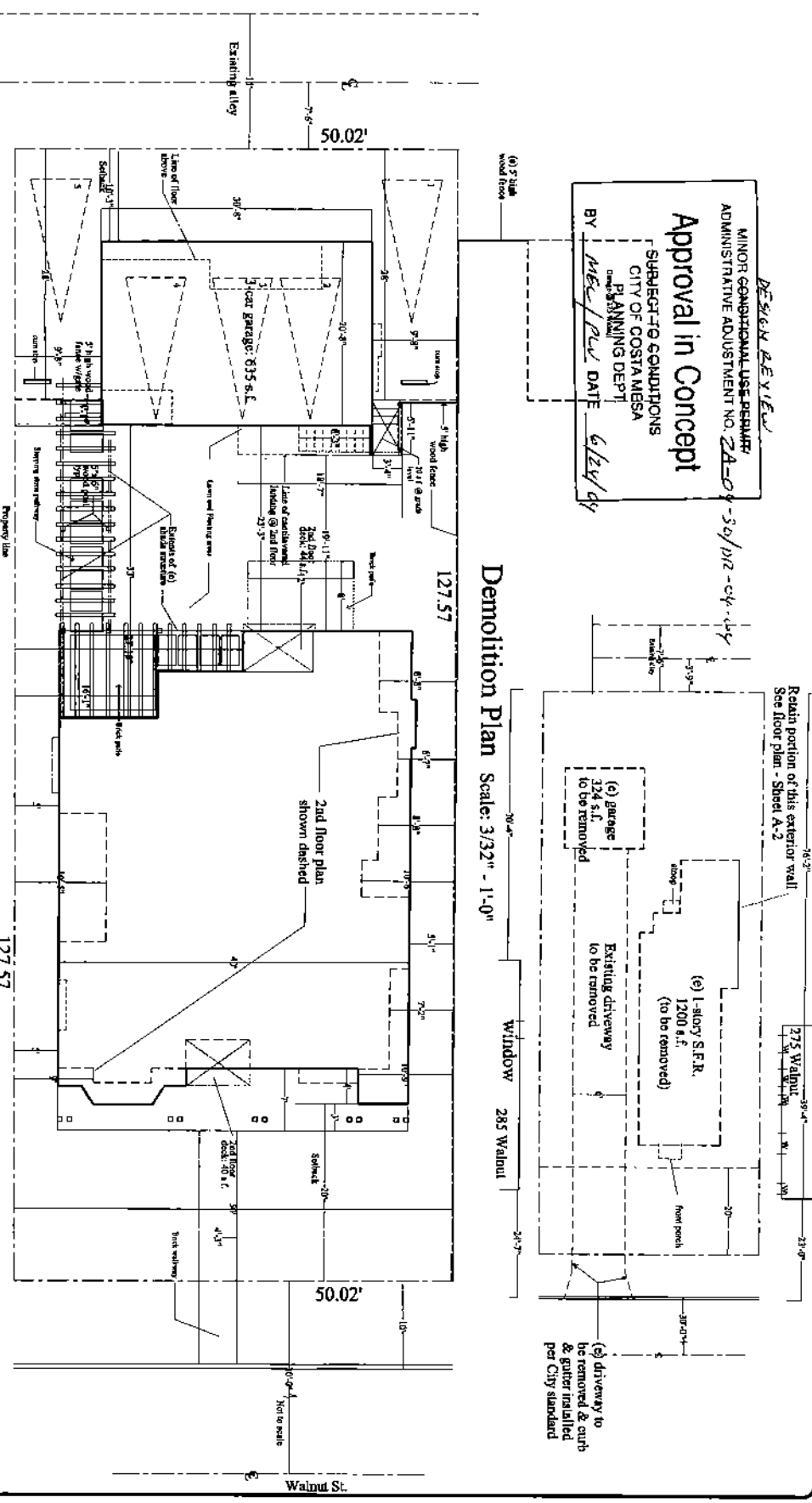


Legend

- Street Names
- Parcel Lines
- Ortho
- Photography
- Parcels

DESK REVIEW
 MINOR ZONING USE PERMIT
 ADMINISTRATIVE ADJUSTMENT NO. 24-09-30/112-04-04
Approval in Concept
 SUBJECT TO CONDITIONS
 CITY OF COSTA MESA
 PLANNING DEPT
 DATE 6/24/04
 BY *Mec/Plv*

Demolition Plan Scale: 3/32" = 1'-0"



Project Information:

- 6381.05 s.f. (Site area)
- x .60%
- 3828.63 s.f. (Buildable area)
- 1775 s.f. House @ 1st floor
- 1580 s.f. Garage + parking
- 3355 s.f. Building footprint (house, garage, driveway & parking) 53%
- 3026 s.f. Open space (Lawn, planting areas, walkways, patios and porch) 47%
- 6381 s.f. Total (Site area)

New 2-story s.f.r.

- 1775 s.f. (1st Floor area)
- x .80%
- 1420 s.f. (Allowable 2nd floor area)
- 1333.7 s.f. (Actual 2nd floor area)
- 84.08 f. (2nd floor decks)
- 1417.8 s.f. (Total 2nd floor area)

New 3-car garage & granny unit

- 635 s.f. Garage area + 24 s.f. (stair)
- 512 s.f. Granny unit above garage
- 20 s.f. Stair enclosure @ grade
- 23 s.f. Landing @ granny unit
- 73 s.f. Deck @ granny unit

Site Plan

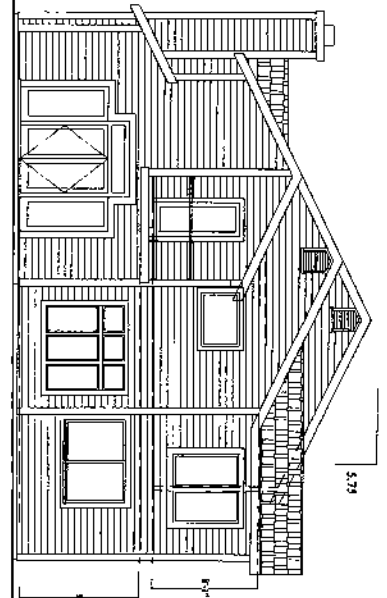
Scale: 3/16" = 1'-0"

NO. 1	DATE	BY	CHKD.

Mr. and Mrs. Hurlbut
 281 Walnut St.
 Costa Mesa, CA

D L C A
 2022 ORCHARD DRIVE
 NEWPORT BEACH, CA.
 TEL. # 714-971-3016

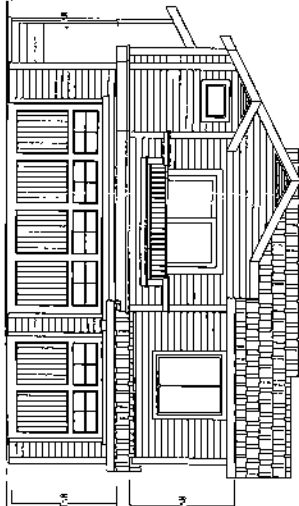
NO. 1	DATE	BY	CHKD.



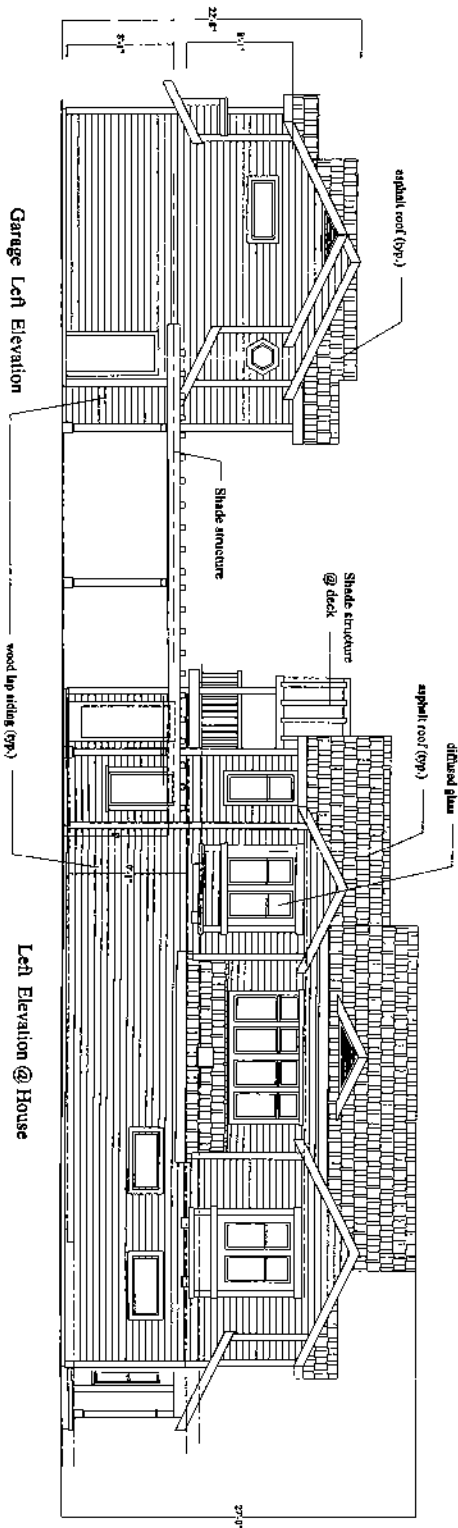
Rear Elevation @ residence



Garage Interior Yard Elevation

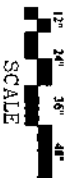


Garage Alley Elevation



Garage Left Elevation

Left Elevation @ House



12 Exterior Elevations

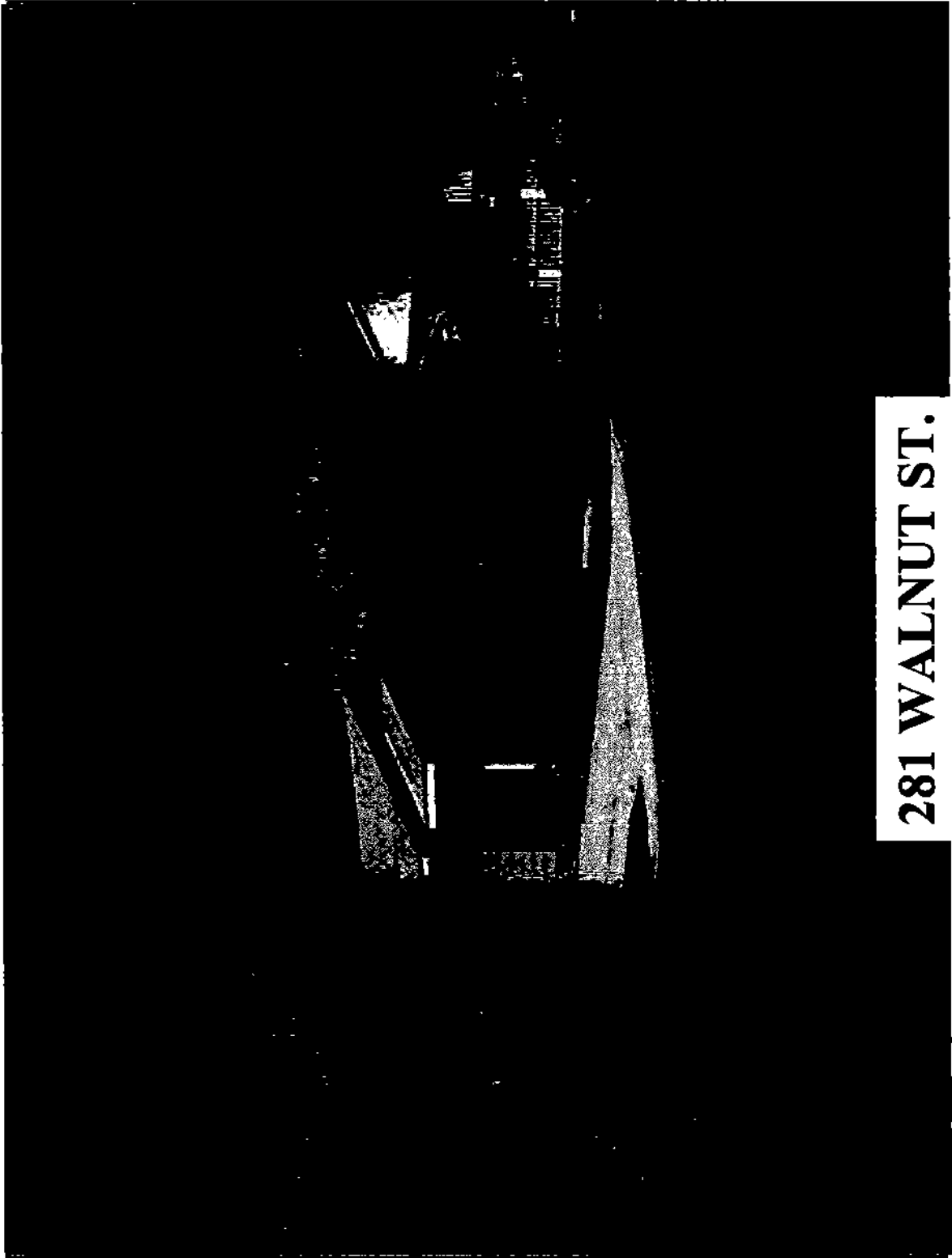
NO.	DATE

Mr. and Mrs. Hurlbut
 281 Walnut St
 Costa Mesa, CA

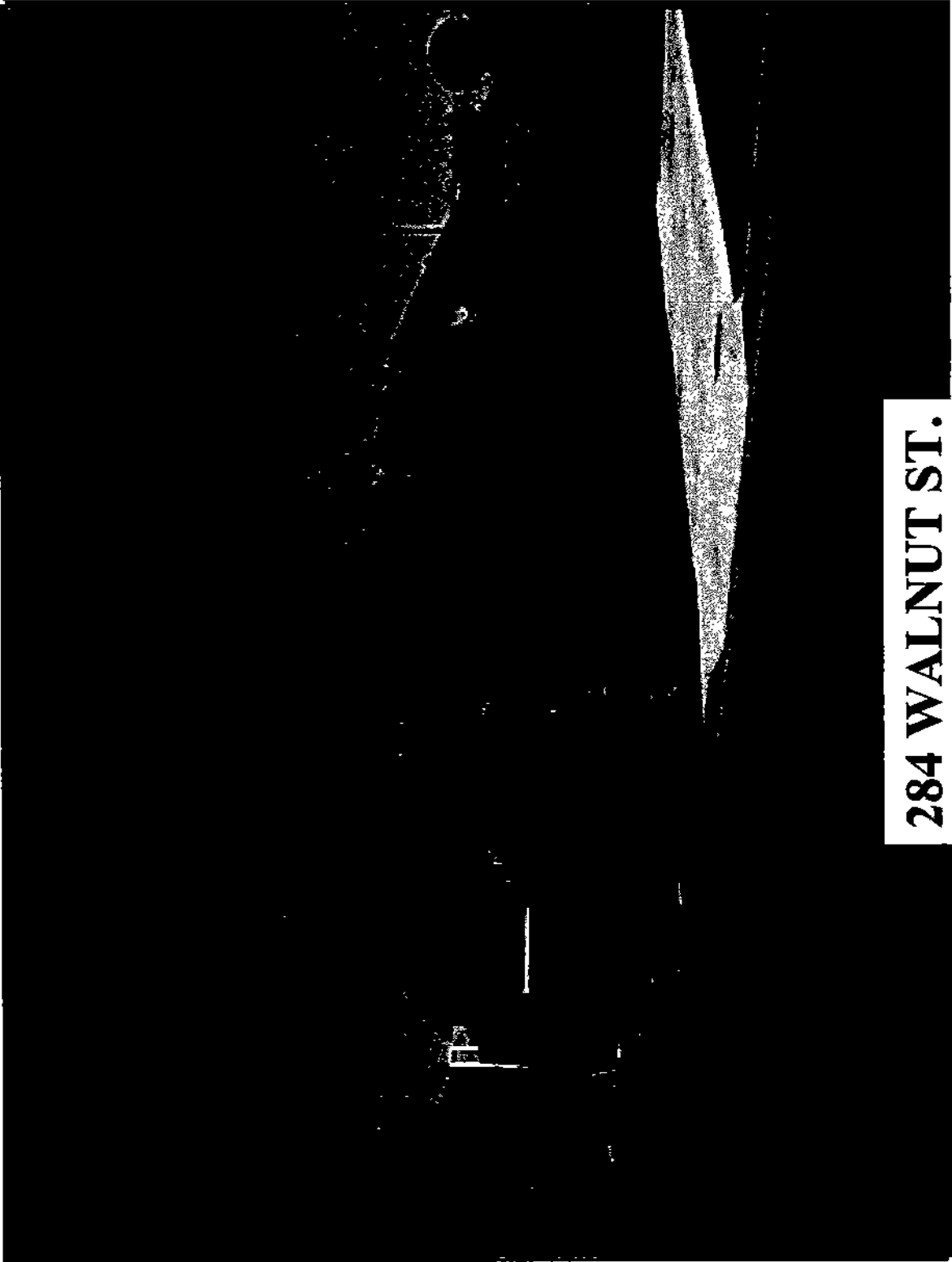
D L C A
 2022 ORCHARD DRIVE
 NEWPORT BEACH, CA.
 TEL. # 714-971-3016

PROJECT	
DATE	
DESIGNER	
DRAWING NUMBER	

A-9.1



281 WALNUT ST.



284 WALNUT ST.

RESOLUTION NO. 04-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
COSTA MESA APPROVING MINOR DESIGN REVIEW
ZA-04-30**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Darlene LaCombe, representing Barron and Jance Hurlbut, owners of the real property located at 281 Walnut Street, requesting approval of a minor design review to construct a two-story, 3,108 square-foot residence and a detached 512 square-foot granny unit, over a 635 square-foot, three-car garage with a development review for the granny unit and a minor modification to allow the support posts for the covered porch to encroach 2 feet into the required front yard setback (20 feet required; 18 feet proposed); and

WHEREAS, the Zoning Administrator approved Minor Design Review ZA-04-30 on June 24, 2004; and

WHEREAS, on July 1, 2004, Minor Design Review ZA-04-30 was appealed to the Planning Commission; and

WHEREAS, Planning Commission upheld the Zoning Administrator's approval at a duly noticed public hearing on July 26, 2004; and

WHEREAS, ZA-04-30 was appealed to City Council; and

WHEREAS, a duly noticed public hearing was held by the City Council on September 7, 2004.

NOW, THEREFORE, BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", and subject to the conditions contained in Exhibit "B", the City Council hereby **APPROVES** ZA-04-30 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this resolution is expressly predicated upon the activity as described in the staff report for ZA-04-30 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B". Should

any material change occur in the operation, or should the applicant fail to comply with the conditions of approval, then this resolution, and any recommendation for approval herein contained, shall be deemed null and void.

PASSED AND ADOPTED this 7th day of September, 2004.

Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

Deputy City Clerk of the City of
Costa Mesa

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certifies that the above and foregoing Resolution No. _____ was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the ____ day of _____, 2004.

IN WITNESS WHEREOF, I have herby set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2004.

Deputy City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

EXHIBIT "A"**FINDINGS**

- A. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(g)(14) with regard to the minor design review in that the project complies with the City of Costa mesa Zoning Code and meets the purpose and intent of the Residential Design Guidelines, which are intended to promote design excellence in new residential construction, with consideration being given to compatibility with the established residential community. The proposed construction complies with the intent of the residential design guidelines because the elevations incorporate multiple building planes and breaks in the roof to create visual interest. The residence incorporates variation in building heights and forms, as well as variation in the depth of the floor plans to alleviate building mass. Appropriate transitions between first and second floors have been made as well as the provision of second floor offsets to avoid unrelieved two-story walls. This minor design review includes site planning, preservation of overall open space, landscaping, appearance, mass and scale of structures, location of windows, varied roof forms and roof plane breaks, and any other applicable design features.
- B. The proposed project complies with Costa Mesa Municipal Code Section 13-29(e) because:
- The proposed development and use is compatible and harmonious with uses on surrounding properties.
 - Safety and compatibility of the design of the buildings, landscaping, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
 - The project is consistent with the General Plan.
 - The planning application is for a project-specific case and does not establish a precedent for future development.
- C. The information presented complies with Costa Mesa Municipal Code Section 13-29(g)(6) with regard to the minor modification because the encroachment will be for posts supporting a covered porch (the porch roof itself complies with code). The encroachment of the support posts will not be materially detrimental to the health, safety, and general welfare of persons residing within the immediate vicinity of the project or to property and improvements within the neighborhood. The proposed porch enhances the architecture and design of the portion of the residence visible from the street and provides a transition between the first and second floors. The main residence meets or exceeds the 20-foot front setback from property line.
- D. The information presented substantially complies with Costa Mesa Municipal Code with regard to the development review in that the granny unit complies with all applicable provisions of the General Plan and the Zoning Code.

- E. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA.
- F. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"**CONDITIONS OF APPROVAL**

- Plng. 1. Street addresses shall be displayed on the fascia adjacent to the main entrance or front door in a manner visible from the public street and alley. Numerals shall be a minimum 6 inches in height with not less than ½-inch stroke and shall contrast sharply with the background.
2. The conditions of approval for ZA-04-30 and DR-04-04 shall be blueprinted on the face of the site plan as part of the plan check submittal package.
3. Construction, grading, materials delivery, equipment operation or other noise-generating activity shall be limited to between the hours of 7 a.m. and 8 p.m., Monday through Friday, and between the hours of 8 a.m. and 7 p.m., on Saturday. Construction is prohibited on Sundays and Federal holidays. Exceptions may be made for activities that will not generate noise audible from off-site, such as painting and other quiet interior work.
4. The subject property's ultimate finished grade level may not be filled/raised in excess of 30 inches above the finished grade of any abutting property. If additional fill dirt is needed to provide acceptable on-site storm water flow to a public street, an alternative means of accommodating that drainage shall be approved by the City's Building Official prior to issuance of any grading or building permits. Such alternatives may include subsurface tie-in to public storm water facilities, subsurface drainage collection systems and/or sumps with mechanical pump discharge in-lieu of gravity flow. If mechanical pump method is determined appropriate, said mechanical pump(s) shall continuously be maintained in working order. In any case, development of subject property shall preserve or improve the existing pattern of drainage on abutting properties. Applicant is advised that recordation of a drainage easement across the private street may be required to fulfill this requirement.
5. The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to the release of occupancy/utilities. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
6. Exterior elevations shall be submitted for pre-plan check review and approval by the Planning Division. Once the exterior elevations have been reviewed and approved by the Planning Division, the exterior elevations shall be incorporated into the plan check drawings.
7. Existing mature vegetation shall be retained wherever possible. Should it be necessary to remove existing vegetation, the applicant shall submit a written request and justification to the Planning Division. A report from a California licensed arborist may be required as part of the justification. Replacement trees shall be of a size consistent with trees

- to be removed, and shall be replaced on a 1-to-1 basis. This condition shall be completed under the direction of the Planning Division.
8. A land use restriction, executed by and between the applicant and the City of Costa Mesa, shall be recorded prior to the issuance of building permits. This land use restriction shall inform future property owners that no more than two residents, who are no less than 62 years of age, shall occupy the granny unit. Additionally, the granny unit shall be served from the same utility meters (electric, gas, and water) as the main dwelling unit on the property. Applicant shall submit to the Planning Division a copy of the legal description for the property, and either a lot book report or current title report identifying the current legal property owner so that the document may be prepared.
 9. Second floor windows shall be designed and placed to minimize visibility into the abutting yards. Every effort shall be made to maintain the privacy of abutting property owners.
 - Eng. 10. Maintain the public right-of-way in a "wet-down" condition to prevent excessive dust and remove any spillage from the public right-of-way by sweeping or sprinkling.

RESOLUTION NO. 04-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
COSTA MESA DENYING MINOR DESIGN REVIEW
ZA-04-30**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Darlene LaCombe, representing Barron and Jance Hurlbut, owners of the real property located at 281 Walnut Street, requesting approval of a minor design review to construct a two-story, 3,108 square-foot residence and a detached 512 square-foot granny unit, over a 635 square-foot, three-car garage with a development review for the granny unit and a minor modification to allow the support posts for the covered porch to encroach 2 feet into the required front yard setback (20 feet required; 18 feet proposed); and

WHEREAS, the Zoning Administrator approved Minor Design Review ZA-04-30 on June 24, 2004; and

WHEREAS, on July 1, 2004, Minor Design Review ZA-04-30 was appealed to the Planning Commission; and

WHEREAS, Planning Commission upheld the Zoning Administrator's approval at a duly noticed public hearing on July 26, 2004; and

WHEREAS, ZA-04-30 was appealed to City Council; and

WHEREAS, a duly noticed public hearing was held by the City Council on September 7, 2004.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the City Council hereby **DENIES** ZA-04-30 with respect to the property described above.

PASSED AND ADOPTED this 7th day of September, 2004.

Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

Deputy City Clerk of the City of Costa
Mesa

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certifies that the above and foregoing Resolution No. _____ was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the ____ day of _____, 2004.

IN WITNESS WHEREOF, I have herby set my hand and affixed the Seal of the City of Costa Mesa this _____ day of _____, 2004.

Deputy City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

CITY OF COSTA MESA
P.O. BOX 1200
COSTA MESA, CALIFORNIA 92626
APPLICATION FOR APPEAL OR REHEARING

FEE: \$ 810.00

Applicant Name Lori McDonald 04 AUG -2 PM 4:35

Address 284 Walnut St., Costa Mesa, CA 92626

Phone 949-650-4242 Representing Represented by Kenneth Zwick, Esq.

Decision upon which appeal or rehearing is requested: (Give number of rezone, zone exception, ordinance, etc., if applicable, and the

date of the decision, if known.) Decision of Planning Commission on July 26, 2004

approving Minor Design Review ZA-04-30 and Development Review

DR-04-04 on construction of double Decision by: Costa Mesa Planning Commission

2 story buildings at 281 Walnut St., Costa Mesa, CA 92627.
Reason(s) for requesting appeal or rehearing:

I wish to appeal the decision of the Costa Mesa Planning Commission
for a plethora of reasons, only some of which can be listed here.

They include, amongst others, the following: (1) invasion of my right to
privacy at my home; (2) interference with the quiet use and enjoyment

of my property; (3) a piecemeal change^{spot zoning} in the character and continuity
of my neighborhood; (4) a discriminatory cumulative effect of

surrounding my single story home with 3 different 2-story Big Box
homes; (5) interference with my home's access to ocean breezes

essential to keeping it cool, and light essential to vegetation;

(6) material damage to the aesthetic value of my house; (7) failure
to ^{follow procedures for} provide a properly signed application on the design review; (8)

failure to follow procedures on proper notice to land owners in the
neighborhood; (9) failure to follow proper procedures concerning the type

of review of the building application; (10) ^{Several other problems have} spelled out in a letter from my
attorney that will be filed with the

Date: Aug 2, 2004 Signature: Kenneth Zwick on behalf of Lori McDonald
check shortly after this date.

For Office Use Only — Do Not Write Below This Line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:

9/7/04

APPEAL OF ZONING ADMINISTRATOR'S APPROVAL OF MINOR DESIGN REVIEW ZA-04-30

The Chair opened the public hearing for consideration of an appeal of Zoning Administrator's Approval of Minor Design Review ZA-04-30 for Darlene LaCombe, authorized agent for Barron and Janice Hurlbut, to construct a new 3,108 sq. ft., two-story, single-family residence and a 512 sq. ft., second-story, detached granny unit over a 635 sq. ft. 3-car garage, with a minor modification to allow a 2 ft. encroachment into the front setback (20' required; 18' proposed) for a porch, located at 281 Walnut Street in an R1 zone. Environmental determination: exempt.

Associate Planner Mel Lee reviewed the information in the staff report and gave a presentation. He said staff is recommending that the Zoning Administrator's decision of approval be upheld.

In response to a question from Commissioner Foley regarding the usages of the granny unit, Mr. Lee explained that the granny unit could not legally be used for a purpose other than what it was approved it for, (i.e., no more than two person 62 year of age or older).

Darlene LaCombe, authorized agent for the applicant, 2022 Orchard Drive, Newport Beach, agreed to the conditions of approval.

Lori McDonald, 284 Walnut Street, Costa Mesa, stated that she is asking the Planning Commission to deny Planning Application PA-04-03 and DR-04-03 for the following reasons: (1) so further environmental impacts can be adequately explored; (2) notification to the public regarding this project was faulty and omitted the correct legal owners who are still omitted on the planning application and 1 non-owner still remaining; (3) The application process requires signatures that are true and correct. Only Barron Hurlbut was recently added after the posting on July 14, 2004. (4) At least 2 persons did not receive a notice and notices were not sent to owners in some cases, only tenants. (5) The postcard says "new construction" and plans highlight keeping a portion of the wall. Current code says that all new construction must comply with current standards. (6) On the open space calculation for the plans, Mel Lee apparently included the area under the outdoor stairwell and upper floor decks; she felt these areas should not be included as open space. (7) Ms. McDonald questioned the validity of the plans since some of the distances seem exaggerated and are questionable—she requested that a City certification is necessary to attest that the site has been measured by a licensed surveyor, drawn by an architect licensed to do business in Costa Mesa for this project as the code requires. (8) She is concerned that Ms. LaCombe operates from Newport Beach and revisions already were made to the plans between the notice and this hearing. (9) On the postcard it lists a minor design review, yet it does not seem to comply with State Code Section 65852.1, as an existing unit will not be present when the project begins. At a later date she received a letter from Mr. Valentine describing an added development review, DR-04-04, which would have led to a free public hearing which she did not receive. (10) She said the Planning Application Summary sheet on page 1A of the report displays a "Proposed/Provided" column and she felt the rear measurement includes part of the alley as their measurement, but she couldn't be sure. (11) She received no advance notice on procedural rules of conduct and feels certain staff members have engaged in activities just prior to this meeting that may cause discrimination against her and harm her right to the quiet use and enjoyment of her property. Ms. McDonald said this project aside from a slue of procedural errors, omissions, and interpretations, favoring builders over preservationists, will do the following to affect her quality of life: (1) increase the intensity from R1 low density to spot high density zones that have become cumulative in her case, and high density do not comply with the general plan designation; (2) invasion of privacy from high-top windows at close range into areas previously assumed to be private: a bedroom, living room, kitchen, front yard, possibly even her back yard;

(3) this building will effectively block air coming into her house and cause a shade and shadow effect to her garden, which was planted with current light conditions; (4) finally, this project will set a detrimental precedent of the only 2 two-story newly built homes on an R1 lot on the entire street.

Kenneth Zwick, the attorney representing Ms. McDonald, stated that approval of this project would seriously impose on Ms. McDonald's privacy; the new two-story home would look directly down into Ms. McDonald's front yard whether it be a 100 feet away or not. It has second-story windows allowing residents to peer down into her living room and front bedroom, it will destroy the privacy of a garden, and the ocean breezes and enjoyment of light would be harmed. The economic value of her property would be damaged because of the way her neighborhood has been transformed. He alleged that over the past few years, the Planning Division has allowed this community to slowly change in a bit-by-bit piecemeal fashion. He reviewed the changes made to homes by surrounding neighbors and said Ms. McDonald's single-story, 100-year old home, is now surrounded on 3 sides by modern two-story, big box homes. He quoted a case law which said, "a planning department cannot change the character of a residential zone, parcel-by-parcel, until it is transformed into something completely different." Furthermore, he said many of these big boxes are losing their single-family character, with garages and the like being rented out. The yards are disappearing into these large houses and the quiet community is getting louder and louder. He said it appears that this may not be by mere happenstance that this enclosure by big boxes is happening to Ms. McDonald. Mr. Zwick indicated that this may be a payback for her years of legal protest against the City. He strongly urged denial of the project. He said if nothing else, the matters discussed here deserve additional study and justify postponement of any kind of approval. Mr. Zwick submitted copies of his letter.

The Chair reviewed each of the issues raised by Ms. McDonald. He asked Mr. Lee to comment on the need for an environmental study. Mr. Lee stated that under the California Environmental Quality Act, this type of project is "exempt." Staff determined that the nature of the project, i.e., a basically new residential structure in a single-family residential neighborhood, would not have adverse impacts per CEQA guidelines on air quality, wild life, etc. For projects such as this, staff looks at immediate issues such as privacy and aesthetic issues and these were taken into consideration when the project was evaluated. With regard to the old/new construction, Mr. Lee said Ms. McDonald was referencing one wall that will remain as part of the proposed project and the rest of the construction will be entirely new. The totality of the project was evaluated in terms of zoning code requirements, including setbacks, open space and parking.

Commissioner Foley said Ms. McDonald raised the issue about a free public hearing and asked Mr. Lee to explain. He said this project falls under a "minor design review." Minor design reviews are reviewed by the Zoning Administrator and do not require a public hearing, although all property owners within 500 feet of the subject property are notified. He confirmed with Commissioner Foley that it has nothing to do with new or existing development.

The Chair asked about the open space calculation and the request that a survey be conducted. Mr. Lee said that staff verified the lot size with the City and County records to confirm the information presented on the plan was correct. Staff checked and rechecked the areas that were being covered by the proposed building, as well as the paved areas at the rear of the site off the alley, and came up with a 47% open space calculation, exceeding the 40% minimum required by code.

Commissioner Foley asked about the notice process and rule regarding legal ownership and who has to be named on the postcard. Mr. Lee said that the notice indicated that the applicant, Darlene LaCombe was acting as the authorized agent for Barron and Jance Hurlbut who are the property owners. Jance Hurlbut, who is Barron Hurlbut's wife, had initially signed the application as the property owner. After Ms. McDonald pointed out that Barron Hurlbut is the actual owner of the property, he was contacted and asked to sign his name on the application so that there was no question that he authorized the application. Mr. Valentine explained that there is no requirement that the public notice contain the name of the owner, or the authorized agent; it simply has to contain a description of the project and the address. Commissioner Foley asked if there was a distinction between "new development" versus "existing development" and if this were described as existing development would they have gone through a different process, or would it still be a minor design review. Mr. Lee stated that this proves it would be the same.

Mr. Lee was asked to comment on the cumulative effects of this project in Ms. McDonald's immediate area. He stated that one of the required findings deals with the issue of cumulative effects. In terms of cumulative effects for purposes of density, state law does not recognize granny units as being an additional unit for purposes of calculating density for single-family residential properties. There were no errors indicated on the plan as far as the location of the property line versus the alley and the plan is correct and accurate in that regard. There are, as was pointed out by the attorney, several two-story structures that already exist in the immediate area and the cumulative effects as a result of this project are negligible.

Commissioner Foley asked if the open space calculation included the decks and if it is routine. Mr. Lee explained that neither the second-floor decks, nor the floor area below them were counted as open space. Mr. Lee said the definition of open space is spelled out in the definition section of the zoning code.

The Chair said the only other comment he would like to make is in response to Ms. McDonald's attorney, who referenced homes as "big boxes". He said this City, several years ago, spent a lot of time revising the zoning code to deal with "big box" issues and then readdressed it last year, and this Commission spent many hearings looking at that and the code was updated and design guidelines were put into place. The issue has been addressed and updated as recently as last October.

Commissioner Foley asked what revisions have occurred with respect to the application since the notice was sent out, if any. Mr. Lee said there have been no revisions to the plans since the notices were sent out, or since the appeal was filed. Commissioner Foley said the appellant raised an issue with respect to the privacy interests and placement of the windows on the second story and asked how far is the second story of the applicant's proposed home from the property line of the appellant. Mr. Lee said the proposed structure has a 20-foot front setback, there is a 60-foot right-of-way for Walnut Street, and the appellant's structure is set back approximately 20 feet, so the total distance from structure-to-structure is approximately 100'. In response to a question from Commissioner Foley regarding the average size of the street separating the two properties, Senior Engineer Fariba Fazeli stated that the average residential street in Costa Mesa is 40 feet wide from curb-to-curb, with 10-foot parkways on both sides.

In response to a question from Commissioner Foley regarding the architecture of the façade of the proposed home and other characteristics, Mr. Lee explained that there would be wood siding; the roof

will be an asphalt shingle roof and the distance between the main residence and the detached structure is approximately 19 feet.

Judy Barry, 2064 Meadow View Lane, Costa Mesa, was concerned about how the City is assured that whoever is residing in the granny unit is over 62 years of age. Mr. Lee stated that land use restriction document would be required to be recorded on the property that makes it clear to any future owners, that the occupants of the unit have to be at least 62 years of age or older; and the present owners are aware of the requirement. If however, it is brought to the City's attention that people are occupying the unit who are not 62 or older, then the matter could be referred to Code Enforcement for appropriate action. The Chair confirmed that, more than likely, it would be through some complaint that's brought to the City's attention. Senior Deputy City Attorney Marianne Milligan stated that typically included in the land use restriction, is the authority for Code Enforcement or a representative from the City, during reasonable business hours, to inspect the property for compliance.

Beth Refakas, Eastside resident, Costa Mesa, said she was concerned that the project seems to be out of scale and because of that, it contributes to traffic, lack of parking, lack of open space, and invasion of privacy. In response to a question from Ms. Refakas regarding the encroachment of the support posts, Mr. Lee explained that the support posts do encroach into the 20-foot front setback, but code does allow porch overhangs of 5 feet into the required setback without a minor modification. She felt the middle set of windows should be eliminated because it would provide more privacy and wouldn't add to the mass of the house if they were gone.

Pamela Frankel, a Myran Drive resident, Costa Mesa, suggested the proposed project be taken back to the drawing board and make it improved, compatible and harmonious so everyone wins.

Attorney Zwick returned to clarify that if the Commission were to go and visit the property, they would find that a 100-foot separation is a significant invasion of privacy, particularly at night when the lights are on. Secondly, with regard to the measurement of the property, simply because the computer and the City records say that these measurements are a certain amount, that does not properly address whether those measurements were done correctly.

In response to Commissioner Foley's concern that someone didn't go out and measure the property and because it was one of the complaints from the appellant, the authorized agent Ms. LaCombe said she did not have anyone measure the lot, but went to the County Tax Assessor's Office and asked for a copy of the recorded description of the lot; they are the same ones the client gave her and she proceeded from there. Mr. Valentine confirmed that the dimensions for the lot were not brought up previously until this evening. He said the records the City uses are not in the City computer, but records received from the County and are based on the original recorded tract map for the property. The only time the Planning Division would require a survey, is if there is some evidence that indicates a dispute as to the size of the property. In addition to that, when the foundations are set for the property, the Building Inspectors will measure the distance from the foundations to the property lines, i.e., the setbacks, ensuring those are correct. Senior Deputy City Attorney Marianne Milligan explained that the County documents the City has relied on are used during property sales, etc., and to question their validity, unless some other proof is provided that brings that fact into question, is a moot point.

No one else wished to speak and the Chair closed the public hearing.

A motion was made by Chairman Garlich, seconded by Vice Chair Perkins, and carried 4-0 (Eric Bever absent), to uphold the Zoning

MOTION:
ZA-04-30

Upheld Zoning Administrator's
Approval

Administrator's of approval, by adoption of Planning Commission Resolution PC-04-50, based on analysis and information in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B."

During the motion, Commissioner Foley stated that this site is very different from Myran Drive and other areas in the community, and she believed that the type of architecture used, is intended to provide a sense of style that is compatible with the neighborhood. She said personally she did not believe that the distance between the two homes would severely invade the privacy, more so than any other residential neighborhood where you have a 2-story home directly across the street. She does not see that the second story is looming over the single-story home. Removing windows would not make much of a difference and they accent the outside of the home that makes it a nicer building. Regarding the notice, she did not see anything sufficient to show that there were errors, and the ownership as indicated by staff, is not required to be included in the notice even though it was. The application was posted correctly and all the components of the application were included, and it was mailed to owners within 500 feet; some tenants may have received it also, but probably because the owners used that address as their mailing address. The open space is 47% , and exceeds the code requirement of 40%. She said according to Mr. Lee, code allows the decks to be used as a part of the open space. She said if the open space is incorrect for some reason, she is satisfied that it can be corrected at the time of the inspection and suggested the inspector be notified. She said the encroachment for the support posts, as indicated by staff, a minor modification, no variance required, is allowed and limited to the posts that she felt enhances the property. She did not believe that there is that much of an impact on privacy with 2 huge trees and a fence in front of the appellant's home. With respect to the granny unit, she said the Commission couldn't do anything about it other than request that they have a land use restriction in place, and a condition of approval requiring people of age 62 and older to live there. She said if someone 22 is living there, she is certain the City will hear about it. This process all comes under the minor design review, none of which would allow for anything but a Zoning Administrator decision, and it does not require a public hearing as the appellant thought.

Mr. Valentine asked for a point of clarification on the "decks" issue. He felt there was some misunderstanding and clarified that the decks at the second floor level were not included in the open space calculation. Open space only relates to the coverage on the ground. What Mr. Lee referred to is that if there is a deck on the second floor that overhangs a portion of open ground, that ground below the deck is counted.

The Chair said he believed it was important to get all the questions addressed and obtain rationale for the Commission's support of the proposed project on the record. He thanked Mr. Lee for his competence in dealing with all the questions this evening.



PLANNING COMMISSION AGENDA REPORT

III. 1.

MEETING DATE: JULY 26, 2004

ITEM NUMBER:

SUBJECT: APPEAL OF MINOR DESIGN REVIEW ZA-04-30
281 WALNUT STREET

DATE: JULY 15, 2004

FOR FURTHER INFORMATION CONTACT: MEL LEE, ASSOCIATE PLANNER
(714) 754-5611

PROJECT DESCRIPTION

The applicant is proposing to construct a new two-story, 3,108 square-foot residence with a detached 512 square-foot granny unit, proposed to be constructed over a 635 square-foot, three-car garage. The three-car garage and two open parking spaces, on either side of the garage, will take access from the alley at the rear of the property. A minor design review is required for the proposed second story of both structures because they will exceed 50% of the first floor areas. A development review is required for the granny unit; the occupancy of which will be restricted to no more than two residents, each at least 62 years of age or older. Finally, a minor modification is requested to allow the support posts for the covered porch to encroach 2 feet into the required front yard setback (20 feet required; 18 feet proposed).

APPLICANT

The project applicant is Darlene LaCombe, representing the property owners, Barron and Jance Hurlbut. The appellant is Lori McDonald.

RECOMMENDATION

Uphold Zoning Administrator's approval of ZA-04-30.

MEL LEE
Associate Planner

PERRY L. VALANTINE
Asst. Development Services Director

PLANNING APPLICATION SUMMARY

Location: 281 Walnut Street Application: ZA-04-30

Request: 2 story residence and detached granny unit over 3 car garage

SUBJECT PROPERTY:

SURROUNDING PROPERTY:

Zone: <u>R1</u>	North: <u>Surrounding properties are residential and constructed</u>
General Plan: <u>Low Density Residential</u>	South: <u>with residences</u>
Lot Dimensions: <u>50 FT x 127 FT</u>	East: _____
Lot Area: <u>6,381 SF</u>	West: _____
Existing Development: <u>1 Story residence and detached garage</u>	_____

DEVELOPMENT STANDARD COMPARISON

Development Standard	Required/Allowed	Proposed/Provided
Lot Size:		
Lot Width	50 FT	50 FT
Lot Area	6,000 SF	6,381 SF
Density:		
Zone	1 du/6,000 SF	1 du/6,381 SF
General Plan	1 du/6,000 SF	1 du/6,381 SF
Building Coverage:		
Buildings	NA	2,410 SF (38%)
Paving	NA	945 SF (15%)
Open Space	2,552 SF (40%)	3,026 SF (47%)
TOTAL		6,381 SF (100%)
Building Height:		
	2 Stories 27 FT	27 FT (Main House) 22 FT (Detached Granny Unit)
Chimney Height	29 FT	27 FT
First Floor Area	NA	1,775 SF (Main House) 635 SF (Detached 3-Car Garage)
Second Floor Area	NA	1,334 SF (Main House) 512 SF (Detached Granny Unit)
Ratio of First Floor to Second Floor*	80%	75% (Main House) 80% (Detached Granny Unit)
Setbacks		
Front	20 FT	18 FT**
Side (left/right)	5 FT (1 Story) 10 FT Avg. (2 Story)*	5 FT (1 Story) 8-10 FT Avg. (2 Story)(Main House) 9 FT, 8 IN (1 and 2 Story) (Detached Granny Unit)
Rear (alley)	5 FT	10 FT
Roof Overhang (Front)	15 FT	17 FT
Rear Yard Lot Coverage	NA	NA
Parking:		
Covered	2	3
Open	3	2
TOTAL	5 Spaces	5 Spaces
Driveway Width:	NA	NA

NA = Not Applicable or No Requirement

*Design Guideline

**Does not comply with code/minor modification requested

CEQA Status Exempt, Class 3

Final Action Zoning Administrator

BACKGROUND

On June 24, 2004, the Zoning Administrator approved the minor design review as described on the first page of this report. An appeal was filed by area resident Lori McDonald on July 1, 2004. The appeal states, among other things, that (1) the public notice was faulty; (2) the proposed project violates several city zoning ordinances, including open space; (3) the project will invade the privacy of her property, 284 Walnut Street, across the street from the subject property; (4) the proposed project will result in 2, two-story structures on one lot; and (5) the proposed second unit will not be used as a granny unit.

ANALYSIS

Public Notice

There were no errors in the notification of the project that would have invalidated the Zoning Administrator's decision. The public notice of the project included the proposed 2-story residence, the 2nd story granny unit, and the proposed 3-car garage. Public notice was posted on the subject property, sent via postcards to all property owners within 500 feet of the subject property (including the appellant), and published in the newspaper. The appellant states that the property is owned by Barron Hurlbut, while the application and notice refer to Barron and Jance Hurlbut. The addition of a spouse's name is not material to proper consideration of a land use application.

City Zoning Code

The proposed project meets or exceeds all applicable provisions of the City's zoning code for residential development including building setbacks, parking and open space. No variances are required for this project. With regard to open space, the project provides 47% open space, which exceeds code requirement by 7%. Open space includes all areas of the lot which are not covered by buildings, driveways, or parking spaces.

The applicant is requesting a minor modification to allow the support posts for the covered porch to encroach 2 feet into the required 20-foot front setback. Code allows the porch roof to encroach a maximum of 5 feet into the required setback without a minor modification. The proposed porch enhances the architecture and design of the portion of the residence visible from the street and provides a transition between the first and second floors. The main residence meets or exceeds the required 20-foot front setback from property line.

Privacy

Privacy impacts on the appellant's property (directly across Walnut Street from the subject property) will be minimized due to the 22-foot setback from the front

property line to the second story of the proposed residence, coupled with the 60-foot width of the public right-of-way for Walnut Street (10 feet from property line to face of curb, 40 foot street width, and 10 feet from face of curb to property line on the opposite side of the street), and the approximately 20-foot setback of the appellant's residence. The only way to completely eliminate the privacy impacts on the appellant's property would be to eliminate the windows on the elevation facing toward the street, which would result in a rather stark appearance.

Two-Story Structures

As indicated previously, both the main residence and the detached granny unit are two-story structures. A minor design review is required for the proposed second story of both structures because they will exceed 50% of the first floor areas. The Zoning Administrator found that the proposed construction complies with the intent of the residential design guidelines because the elevations incorporate multiple building planes and breaks in the roofline to create visual interest. The residence incorporates variation in building heights and forms, as well as variation in the depth of the floor plans to alleviate building mass. Appropriate transitions between first and second floors have been made, as well as the provision of second floor offsets to avoid unrelieved, two-story walls.

The City's Residential Design Guidelines recommend an average 2nd floor side setback of 10 feet. The proposed primary residence provides an 8-foot average right (west) side setback and a 10-foot average left (east) side setback. The granny unit provides a minimum 9'8" second-story side setback on both sides. There are several 2-story structures in the area that predate the current residential design guidelines having less than 10 foot average, second-story, side setbacks.

Granny Unit

As indicated previously, a detached 512 square-foot granny unit is proposed to be constructed over a 635 square-foot, three-car garage. State law requires cities to allow granny units in R1 zoned properties provided that the occupant(s) is at least 62 years of age and the structure complies with local zoning requirements. The proposed granny unit satisfies these requirements. A condition of approval has been included (condition number 8) requiring a land use restriction be recorded prior to the issuance of building permits. This land use restriction will inform future property owners that no more than two residents, who are no less than 62 years of age, can occupy the granny unit.

ALTERNATIVES

The Commission has the following alternatives:

1. Uphold the Zoning Administrator's approval of ZA-04-30;
2. Overturn the Zoning Administrator's approval and deny ZA-04-30; or

3. Approve ZA-04-30 with modifications.

CONCLUSION

Based on the issues identified in the Zoning Administrator's decision letter and this report, staff recommends upholding the Zoning Administrator's approval of ZA-04-30.

Attachments: Planning Commission Resolution
 Exhibit "A" Draft Findings
 Exhibit "B" Conditions of Approval
 Appeal
 Zoning Administrator Letter dated June 24, 2004
 Applicant's Project Description and Justification
 Zoning/Location Map
 Plans

File Name: 072604ZA0430A

Date: 07/13/04

Time: 10:45am

cc: Deputy City Manager - Dev. Svcs. Director
 Sr. Deputy City Attorney
 City Engineer
 Fire Protection Analyst
 Staff (4)
 File (2)

Darlene LaCombe
2022 Orchard Drive
Newport Beach, CA 92660

Mr. and Mrs. Hurlbut
3341 Alabama
Costa Mesa, CA 92626

Lori McDonald
284 Walnut Street
Costa Mesa, CA 92627

CITY OF COSTA MESA
P.O. BOX 1200
COSTA MESA, CALIFORNIA 92626
APPLICATION FOR APPEAL OR REHEARING

FEE: \$ 470.00

Applicant Name Lori McDonald 04 JUL 1 PM 4:45

Address 284 Walnut St

Phone (949) 6504242 Representing 284 Walnut St

Decision upon which appeal or rehearing is requested: (Give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) June 24, 2004

Decision by: _____

Reason(s) for requesting appeal or rehearing: The city notification was faulty (to be amended later)

I am appealing the application 2A-04-30 281 Walnut St CM
Because I am basing the appeal on my contention that there are several (or more) violations of city zoning ordinances involved in this (new) construction.

For example, the postcard mailed to my address by the city of CM lists the new construction as a total of 4,355 sq. ft. on a lot with a total sq. ft. of: 6381. 32% of the property is open space + (10 feet) needed to rear or garage (3) in back will violate the 40% open space rule configuration.

this will violate the fair use of my property as invade my privacy in a bedroom, living room, kitchen etc. at only 18 feet to the curb. (another variation, 20 ft. required)
Date: July 1, 2004 Signature: Lori McDonald

For Office Use Only — Do Not Write Below This Line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF: 7/26/04

also: the surrounding houses are configured with side driveways. this project will do away with that, and should not be (2) 2 stories on one lot without at least 12000 sq. ft. It would not be used for a "granny" flat by my estimation, rather an accessory unit in back.

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OFFICIAL CITY NOTICE

The Costa Mesa Zoning Administrator will render a decision on **Thursday, June 24, 2004**, or as soon as possible thereafter, on the following item:

Minor Design Review ZA-04-30 for Darlene La Combe, authorized agent for Barron and Jance Hurlbut, to construct a new 3,108 sq. ft. two-story, single-family residence and a 1,247 sq. ft. 2-story detached granny unit (including a 3-car garage), with a minor modification to allow a 2 ft. encroachment into the front setback (20' required; 18' proposed) for a porch, located at 281 Walnut Street in an R1 zone. Environmental determination: exempt.

If you wish to make any oral or written comments regarding the application, please call or write the Planning Division at (714) 754-5245 or at the return address on the opposite side of the card. You have until the action date mentioned above to respond. There will be no public hearing on this request. Notice of the decision will be mailed to any affected party requesting said notice. Challenge of this item in court may be limited to issues raised in writing prior to the above action date.



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92626-1200

DEVELOPMENT SERVICES DEPARTMENT

June 24, 2004

Darlene Lacombe
2022 Orchard Drive
Newport Beach, CA 92660

**RE: MINOR DESIGN REVIEW ZA-04-30 AND
DEVELOPMENT REVIEW DR-04-04
281 WALNUT STREET, COSTA MESA**

Dear Ms. Lacombe:

The review of the above-referenced project has been completed. The application has been approved, based on the following project description and findings, subject to the conditions set forth below:

PROJECT DESCRIPTION

The applicant is proposing to construct a new two-story, 3,108 square-foot residence with a detached 512 square-foot granny unit, proposed to be constructed over a 635 square-foot, three-car garage. The three-car garage and two open parking spaces on either side of the garage, will take access from the alley at the rear of the property. A minor design review is required for the proposed second story of both structures because they will exceed 50% of the first floor areas. A development review is required for the granny unit; the occupancy of which will be restricted to no more than two residents, each at least 62 years of age or older. Finally, a minor modification is requested to allow the support posts for the covered porch to encroach 2 feet into the required front yard setback (20 feet required; 18 feet proposed).

The proposed primary residence consists of a living room, dining room, kitchen, and two bedrooms on the first floor, and three bedrooms and a bonus room on the second floor. Access to the second floor is via an interior stairway. The proposed granny unit consists of a living room, kitchen, bedroom and bathroom on the second floor over the three-car garage. Access to the second floor is via an exterior stairway.

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The exterior design for both structures is a Cape Code type theme with asphalt shingle roofs, decorative window and door trims, and shiplap siding on the exterior. The existing homes abutting the property are one-story, although there are several two-story residences in the surrounding neighborhood.

The City's Residential Design Guidelines recommend an average 2nd floor side setback of 10 feet. The proposed primary residence provides an 8-foot average right (west) side setback and a 10-foot average left (east) side setback. The granny unit provides a minimum 9' 8" second-story side setback on both sides. There are several 2-story structures in the area that predate the current residential design guidelines having less than 10-foot average, second-story, side setbacks.

The proposed construction complies with the intent of the residential design guidelines because the elevations incorporate multiple building planes and breaks in the roofline to create visual interest. The residence incorporates variation in building heights and forms, as well as variation in the depth of the floor plans to alleviate building mass. Appropriate transitions between first and second floors have been made, as well as the provision of second floor offsets to avoid unrelieved, two-story walls.

The applicant is requesting a minor modification to allow the support posts for the covered porch to encroach 2 feet into the required 20-foot front setback. Code allows the porch roof to encroach a maximum of 5 feet into the required setback without a minor modification. The proposed porch enhances the architecture and design of the portion of the residence visible from the street and provides a transition between the first and second floors. The main residence meets or exceeds the 20-foot front setback from property line.

FINDINGS

- A. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(g)(14) with regard to the minor design review in that the project complies with the City of Costa mesa Zoning Code and meets the purpose and intent of the Residential Design Guidelines, which are intended to promote design excellence in new residential construction, with consideration being given to compatibility with the established residential community. The proposed construction complies with the intent of the residential design guidelines because the elevations incorporate multiple building planes and breaks in the roof to create visual interest. The residence incorporates variation in building heights and forms, as well as variation in the depth of the floor plans to alleviate building mass. Appropriate transitions between first and second floors have been made as well as the provision of second floor offsets to avoid unrelieved two-story walls. This minor design review includes site planning, preservation of overall open space, landscaping, appearance, mass and scale of structures, location of windows, varied roof forms and roof plane breaks, and any other applicable design features.

- B. The proposed project complies with Costa Mesa Municipal Code Section 13-29(e) because:
- The proposed development and use is compatible and harmonious with uses on surrounding properties.
 - Safety and compatibility of the design of the buildings, landscaping, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
 - The project is consistent with the General Plan.
 - The planning application is for a project-specific case and does not establish a precedent for future development.
- C. The information presented complies with Costa Mesa Municipal Code Section 13-29(g)(6) with regard to the minor modification because the encroachment will be for posts supporting a covered porch (the porch roof itself complies with code). The encroachment of the support posts will not be materially detrimental to the health, safety, and general welfare of persons residing within the immediate vicinity of the project or to property and improvements within the neighborhood. The proposed porch enhances the architecture and design of the portion of the residence visible from the street and provides a transition between the first and second floors. The main residence meets or exceeds the 20-foot front setback from property line.
- D. The information presented substantially complies with Costa Mesa Municipal Code with regard to the development review in that the granny unit complies with all applicable provisions of the General Plan and the Zoning Code.
- E. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA.
- F. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

CONDITIONS OF APPROVAL

- Plng. 1. Street addresses shall be displayed on the fascia adjacent to the main entrance or front door in a manner visible from the public street and alley. Numerals shall be a minimum 6 inches in height with not less than ½-inch stroke and shall contrast sharply with the background.
2. The conditions of approval for ZA-04-30 and DR-04-04 shall be blueprinted on the face of the site plan as part of the plan check submittal package.
3. Construction, grading, materials delivery, equipment operation or other noise-generating activity shall be limited to between the hours of 7 a.m. and 8 p.m., Monday through Friday, and between the hours of 8

- a.m. and 7 p.m., on Saturday. Construction is prohibited on Sundays and Federal holidays. Exceptions may be made for activities that will not generate noise audible from off-site, such as painting and other quiet interior work.
4. The subject property's ultimate finished grade level may not be filled/raised in excess of 30 inches above the finished grade of any abutting property. If additional fill dirt is needed to provide acceptable on-site storm water flow to a public street, an alternative means of accommodating that drainage shall be approved by the City's Building Official prior to issuance of any grading or building permits. Such alternatives may include subsurface tie-in to public storm water facilities, subsurface drainage collection systems and/or sumps with mechanical pump discharge in-lieu of gravity flow. If mechanical pump method is determined appropriate, said mechanical pump(s) shall continuously be maintained in working order. In any case, development of subject property shall preserve or improve the existing pattern of drainage on abutting properties.
 5. The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to the release of occupancy/utilities. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
 6. Exterior elevations shall be submitted for pre-plan check review and approval by the Planning Division. Once the exterior elevations have been reviewed and approved by the Planning Division, the exterior elevations shall be incorporated into the plan check drawings.
 7. Existing mature vegetation shall be retained wherever possible. Should it be necessary to remove existing vegetation, the applicant shall submit a written request and justification to the Planning Division. A report from a California licensed arborist may be required as part of the justification. Replacement trees shall be of a size consistent with trees to be removed, and shall be replaced on a 1-to-1 basis. This condition shall be completed under the direction of the Planning Division.
 8. A land use restriction, executed by and between the applicant and the City of Costa Mesa, shall be recorded prior to the issuance of building permits. This land use restriction shall inform future property owners that no more than two residents, who are no less than 62 years of age, shall occupy the granny unit. Additionally, the granny unit shall be served from the same utility meters (electric, gas, and water) as the main dwelling unit on the property. Applicant shall submit to the Planning Division a copy of the legal description for the property, and either a lot book report or current title report identifying the current legal property owner so that the document may be prepared.

9. Second floor windows shall be designed and placed to minimize visibility into the abutting yards. Every effort shall be made to maintain the privacy of abutting property owners.
- Eng. 10. Maintain the public right-of-way in a "wet-down" condition to prevent excessive dust and remove any spillage from the public right-of-way by sweeping or sprinkling.

CODE REQUIREMENTS

For the developer's reference, staff has compiled the following list of federal, state and local laws applicable to the project. Any reference to "City" pertains to the City of Costa Mesa.

- Plng. 1. All contractors and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.
2. Approval of the zoning action is valid for one (1) year and will expire at the end of that period unless building permits are obtained and business commences or the applicant applies for and is granted an extension of time.
3. Development shall comply with all requirements of Section 13-32, Title 13, of the Costa Mesa Municipal Code relating to development standards for residential projects.
4. All new on-site utility services shall be installed underground.
5. Installation of all new utility meters shall be performed in a manner so as to obscure the installation from view from any place on or off the property. The installation shall be in a manner acceptable to the public utility and shall be in the form of a vault, wall cabinet, or wall box under the direction of the Planning Division.
6. Any mechanical equipment such as air-conditioning equipment and ductwork shall be screened from view in a manner approved by the Planning Division. No rooftop mechanical equipment shall be permitted.
- Bldg. 7. Comply with the requirements of the California Code of Regulations, Title 24, also known as the California Building Standards Code, as amended by the City of Costa Mesa.
8. Prior to or concurrent with the submittal of plans for grading/building/plan check/submittal of final subdivision map for engineering plan check, the applicant shall prepare and submit documentation for compliance with the State Water Resources Control Board (SWRCB) Water Quality Order 99-08-DWQ; National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000002 for Storm Water Discharges Associated with Construction Activity (General Permit); the California Regional Water Quality Control Board (RWQCB) Santa Ana Region Order No. R8-2002-0010 and NPDES Permit No. CAS618030;

- and, the City of Costa Mesa Ordinance No. 97-20 for compliance with NPDES Permit for the City of Costa Mesa. Such documentation shall include a Storm Water Pollution Prevention Plan (if over 5 acres) and a Water Quality Management Plan (WQMP) identifying and detailing the implementation of the applicable Best Management Practices (BMPs).
9. The project applicant shall require the contractor to comply with the SCAQMD's regulations during construction, including Rule 402 which specifies that there be no dust impacts offsite sufficient to cause a nuisance, and SCAQMD Rule 403, which restricts visible emissions from construction. Specific measures to reduce fugitive dust shall include the following:
 - a. Moisten soil prior to grading.
 - b. Water exposed surfaces at least twice a day under calm conditions and as often as needed on windy days when winds are less than 25 miles per hour or during very dry weather in order to maintain a surface crust and prevent the release of visible emissions from the construction site.
 - c. Treat any area that will be exposed for extended periods with a soil conditioner to stabilize soil or temporarily plant with vegetation.
 - d. Wash mud-covered tires and under-carriages of trucks leaving construction sites.
 - e. Provide for street sweeping, as needed, on adjacent roadways to remove dirt dropped by construction vehicles or mud which would otherwise be carried off by trucks departing project sites.
 - f. Securely cover loads of dirt with a tight fitting tarp on any truck leaving the construction sites to dispose of excavated soil.
 - g. Cease grading during periods when winds exceed 25 miles per hour.
 - h. Provide for permanent sealing of all graded areas, as applicable, at the earliest practicable time after soil disturbance.
 - Eng. 10. A construction access permit and deposit of \$350 for street sweeping will be required by the Engineering Division prior to the start of any on- or off-site work.
 11. Submit required cash deposit or surety bond to guarantee construction of offsite street improvements at time of permit per Costa Mesa Municipal Code Section 15-32, and as approved by City Engineer. Cash deposit or surety bond amount to be determined by the City Engineer.
 12. Obtain a permit from the Engineering Division at the time of development and then construct P.C.C. residential sidewalk per City of Costa Mesa standards as shown on the offsite plan, including four feet clear around obstructions in the sidewalk. This requirement may be modified in accordance with the procedures described in City Code Section 13-72.1.

13. Obtain a permit from the Engineering Division at the time of development and then remove any existing driveways and/or curb depressions that will not be used and replace with full height curb and sidewalk at applicant's expense.
14. Private on-site drainage facilities and parkway culverts or drains will not be maintained by the City of Costa Mesa, they shall be maintained by the owner of the property.
15. Reconstruct abutting driveway approach to the east of the subject property. An encroachment permit from Public Services shall be required prior to all work within public right-of-way.
- Trans. 16. Provide minimum 10-foot setback at alley for all parking spaces to provide adequate space for turning movements.
17. Provide pedestrian accessible pathway from Walnut Street leading to entrance of new rear granny unit for visitors, deliveries, or emergency response.
18. Redesign stairway adjacent to new 3-car garage such that front of open parking space remains unobstructed.
- Fire 19. Provide an approved smoke detector to be installed in accordance with the 2001 Edition of the Uniform Fire Code.

SPECIAL DISTRICT REQUIREMENTS

The requirements of the following special districts are hereby forwarded to the applicant:

- Sani. 1. Developer will be required to construct sewers to serve this project, at his own expense, meeting the approval of the Costa Mesa Sanitary District.
2. County Sanitation District fees, fixture fees, inspection fees, and sewer permit are required prior to installation of sewer. To receive credit for buildings to be demolished, call (714) 754-5307.
3. Developer shall submit a plan showing sewer improvements that meets the District Engineer's approval to the Building Division as part of the plans submitted for plan check.
4. The developer is required to contact the Costa Mesa Sanitary District at (714) 754-5307 to arrange final sign-off prior to certificate of occupancy being released.
5. Developer shall contact the Costa Mesa Sanitary District at (714) 754-5043 to pay trash collection program fees and arrange for service for all new residences using curbside services. Residences using bin or dumpster services are exempt from this requirement.
- School 6. Pay applicable Newport Mesa Unified School District fees to the Building Division prior to issuance of building permits.
- State 7. Comply with the requirements of the California Department of Food and Agriculture (CDFA) to determine if red imported fire ants (RIFA) exist on the property prior to any soil movement or excavation. Call CDFA at (714) 708-1910 for information.

Upon receipt of this letter, your project has been approved, subject to the above-listed conditions. A copy of the conceptually-approved plans is enclosed. The decision will become final at 5 p.m. on July 1, 2004, unless appealed by an affected party, or by a member of the Planning Commission or City Council.

If you have any questions regarding this letter, please feel free to contact the project planner, Mel Lee, at (714) 754-5611, between 1 p.m. and 5 p.m., Monday through Friday.

Sincerely,



for PERRY L. VALANTINE
Zoning Administrator

Enclosure: Conceptually-approved plans

cc: Engineering
Fire Protection Analyst
Water District
Building Division

Mr. and Mrs. Hurlbut
3341 Alabama
Costa Mesa, CA 92626

RESOLUTION NO. PC-04-50

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF COSTA MESA APPROVING MINOR DESIGN
REVIEW ZA-04-30**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Darlene LaCombe, representing Barron and Jance Hurlbut, owners of the real property located at 281 Walnut Street, requesting approval of a minor design review to construct a two-story, 3,108 square-foot residence and a detached 512 square-foot granny unit, over a 635 square-foot, three-car garage with a development review for the granny unit and a minor modification to allow the support posts for the covered porch to encroach 2 feet into the required front yard setback (20 feet required; 18 feet proposed); and

WHEREAS, the Zoning Administrator approved Minor Design Review ZA-04-30 on June 24, 2004; and

WHEREAS, on July 1, 2004, Minor Design Review ZA-04-30 was appealed to the Planning Commission; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on July 26, 2004.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", and subject to the conditions contained in Exhibit "B", the Planning Commission hereby **APPROVES** Minor Design Review ZA-04-30 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this resolution is expressly predicated upon the activity as described in the staff report for Minor Design Review ZA-04-30 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B". Any approval granted by this resolution shall be subject to review,

modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

PASSED AND ADOPTED this 26th day of July, 2004.



Chair, Costa Mesa
Planning Commission

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

I, Perry L. Valentine, secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a meeting of the City of Costa Mesa Planning Commission held on July 26, 2004, by the following votes:

AYES: COMMISSIONERS: GARLICH, PERKINS, DEMAIO, FOLEY

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS: BEVER

ABSTAIN: COMMISSIONERS



Secretary, Costa Mesa
Planning Commission

LAW OFFICES OF KENNETH ZWICK

OFFICES IN COSTA MESA
MAIL TO: P.O. BOX 1512 • COSTA MESA, CA • 92628-1512
PHONE: (714) 662-3721 • FAX: (714) 662-3167

July 26, 2004

City of Costa Mesa
Planning Commission
Costa Mesa, CA 92627

CLIENT-MATTER: McDONALD-Zoning Protest
SUBJECT: Appeal of Application of Minor Design Review ZA-04-30 and Development Review DR-04-04

Dear Sirs:

I am requesting on behalf of my client, Lori McDonald, that the City of Costa Mesa Planning Commission either deny the application for approval of a Minor Design Review and Development Review at 281 Walnut St., Costa Mesa, CA 92627 (hereinafter referred to as the "Walnut Project"), or, at minimum, submit the matter for further review and study before going forward.

The crown jewel of the American Dream is home ownership. One's home is the private refuge from the troubles of the outside world, and a sound personal investment in one's economic future. Approval of the Walnut Project would take Ms. McDonald's small portion of that crown jewel and smash it with the sledgehammer of new construction.

Her privacy would be seriously imposed upon by approval of this Project. The new 2-Story structure would look directly down on Ms. McDonald's front yard, which heretofore had been kept as a pleasant private garden with a five-foot tall wooden fence. The Walnut Project creates 2nd story windows that would allow the residents to peer down into Ms. McDonald's living room and front bedroom. Her private refuge would be transformed into an alternative form of reality entertainment when TV's version becomes boring.

The economic value of her property would also be severely impacted by the new construction proposed in the Walnut Project. Her access to ocean breezes would be seriously impaired by the proposed placing of not one, but two 2 Story structures directly across from her and in the path towards the ocean. Her enjoyment of light would also be harmed by the shade and shadows thrown down by these two 2 Story structures.

But perhaps the most important way in which the economic value of Ms. McDonald's property would be damaged is the creeping approach by which the character and continuity of her surrounding neighborhood has been transformed. When Ms. McDonald moved in to Walnut Street twenty years ago, it was classic single-story, single family neighborhood with reasonable yards and a quiet charming ambiance.

Over the past few years, the Planning Department has allowed this community to slowly change in a bit-by-bit piecemeal fashion. In particular, the house on the West side of Ms.

McDonald's home was permitted to go 2 Story several years back. Then a year and a half ago, the lot behind hers was permitted to build two 2 Story structures over her vigorous protests. Now the lot in front of her house is attempting to do the same thing.

The end result is that Ms. McDonald's classic, 100 year-old Costa Mesa residence is now surrounded on three sides by modern 2 Story Big-Box homes. The character of her classic home is being eroded by dribs and drabs. Unless she wishes to kiss her investment goodbye, she may be forced by this Planning Department's decisions to transform her historic home into a big modernistic box, too.

The character and continuity of a neighborhood should not be changed in such a piecemeal fashion. *People v. Perez*, 214 Cal. App. 2d Supp. 881, 885 (1963) makes it clear that a Planning Department cannot change the character of a residential zone, parcel by parcel, until it is completely different. Ms. McDonald's single story, quiet community is slowly being transformed by this Department into a 2 Story Big Box mecca. Furthermore, many of these Big Boxes are losing their single family character, with garages and the like being rented out. The yards are disappearing into these large houses, and a quiet community is getting louder and louder by the minute.

Finally, it appears that it may not be mere happenstance that this enclosure by Big Boxes is happening to Ms. McDonald. As you surely know, she has been a legitimate thorn in the side of the Planning Department's efforts to transform the character of Costa Mesa over the last ten years. She has attended Planning Commission and City Council meetings on a monthly basis, speaking out regularly against decisions that she feels will damage the environment and scenic beauty of Costa Mesa. She has also written local newspaper articles criticizing the Department's decisions.

What has been the result of her diligent exercise of her First Amendment rights and duties as a public spirited citizen? Her house is about to be enclosed by the very buildings whose construction she has protested. That seems very intriguing in and of itself.

However, this matter has taken a very serious turn recently. Three members of the Planning Department appear to have attempted to squelch Ms. McDonald's exercise of her free speech rights by filing a false police report against her. While talking to a member of the Department about her appeal of the Walnut Project, Ms. McDonald politely asked if she might "make a record the conversation" for later reference. This completely legal and innocent act was distorted into an allegation of criminal surreptitious tape recording by the Planning Department member. An e-mail was then sent to the Costa Mesa Police falsely accusing Ms. McDonald of a crime. This false allegation was also spread to at least some members of this very Planning Commission, based on an admission made by one the Department members to my client.

Fortunately, the Costa Mesa Police Department had the good sense to contact Ms. McDonald and determine that the report of illegal taping was completely erroneous. Even so, this appears to be an effort to the use the power of the government to intimidate a citizen in the exercise of her constitutional rights.

JULY 26, 2004

Thus, it appears that approval of yet another 2 Story Big Box modern home to surround Ms. McDonald's historic property may well be discriminatory in nature and intent--a pay back for her years of legal protest.

For all these reasons and those set forth by my client (especially the procedural errors in failing to treat this new construction as a full-fledged design review with a free public hearing), I strongly urge this Commission to deny approval of the Walnut Project. If nothing else, the matters herein deserve additional study and justify postponement of any final approval.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Zwick". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kenneth Zwick
Attorney at Law