



AGENDA REPORT

Meeting Date: May 3, 2011

Item Number: C-1

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development

Subject: AN APPEAL OF THE COMMUNITY DEVELOPMENT DIRECTOR'S DECISION APPROVING A MINOR ACCOMMODATION TO ALLOW THE EXTENSION OF A LEGALLY NONCONFORMING SIDE SETBACK ON THE PROPERTY LOCATED AT 716 ALTA DRIVE.

Attachments:

1. Appeal Petition
2. Minor Accommodation Approval - January 31, 2011
3. Photographs taken during site visits.
4. Architectural Plans

RECOMMENDATION

It is recommended that the City Council deny the appeal and uphold the Director's decision approving a Minor Accommodation to allow the extension of a legally nonconforming side setback on the property located at 716 Alta Drive.

INTRODUCTION

This is an appeal of the January 31, 2011 decision of the Community Development Director approving a Minor Accommodation to allow the extension of a legally nonconforming side setback on the single-family property located at 716 Alta Drive. The Minor Accommodation approval included the following elements:

1. Increased ceiling/roof height of an existing attic space to create habitable space within the existing residence; and
2. Increased ceiling/roof height along a 13-foot long section of the second floor is to be built in-line with the existing residence, which is set back 5 feet 9 inches from the south

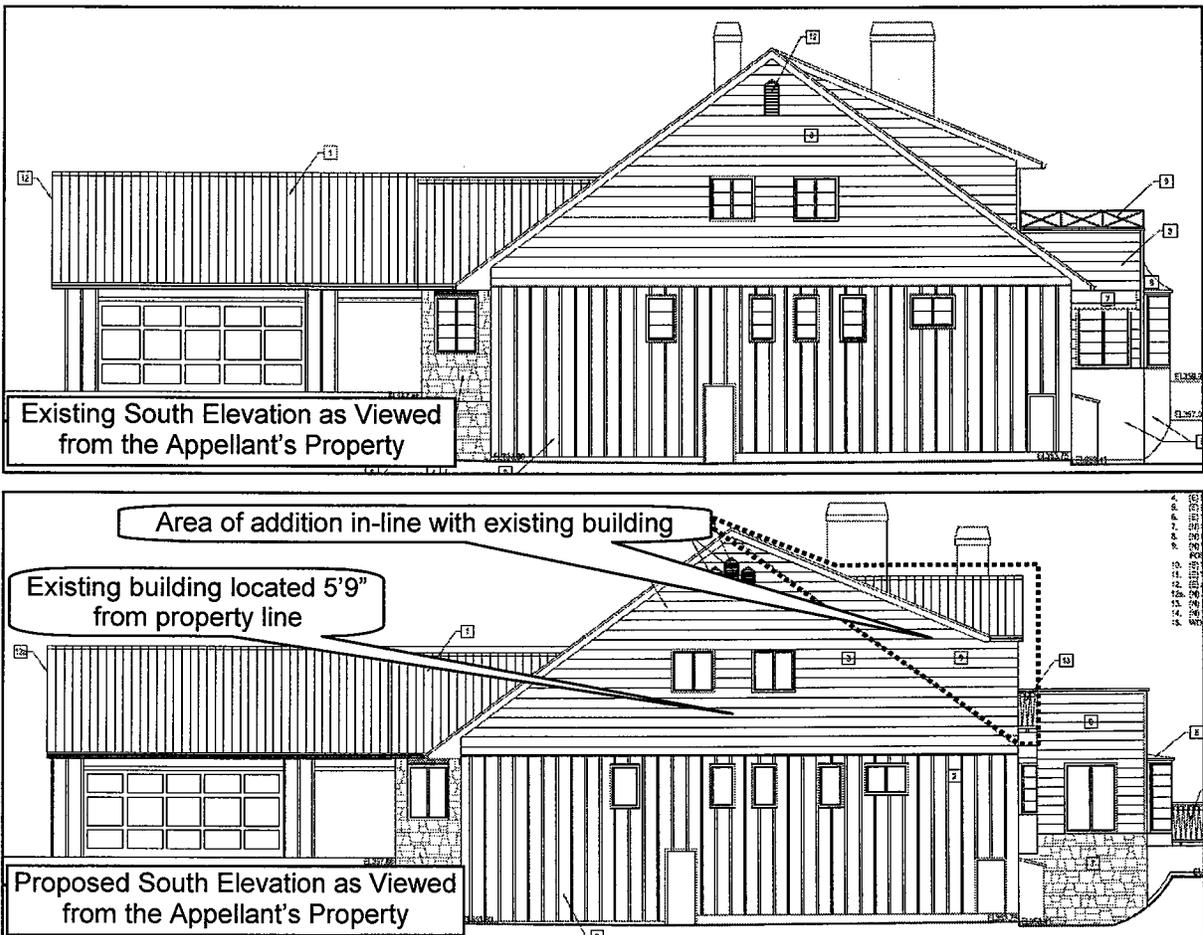
property line, rather than 10 feet 7 inches as would currently be required for the construction of a new home.

Subsequent to the Community Development Director's approval of the Project, an appeal was filed by the property owner located at 714 Alta Drive, immediately south of the project site. The appeal contends that the project will result in privacy impacts, and this report outlines the basis for the Community Development Director's approval, responds to the information contained in the appeal petition, and makes a recommendation to approve the Minor Accommodation.

BACKGROUND

Project Description

The subject property is currently undergoing renovations to remodel the interior and exterior of the existing two-story residence. As part of these renovations the property owner intends to add approximately 500 square feet of floor area to the existing residence, which will be distributed between the first and second floors. A component of this addition involves converting approximately 150 square feet of existing attic space to habitable space that is proposed to be used as an office. In order to convert the attic space to habitable space, the roof height of the existing structure is proposed to be raised. Approximately 63 square feet of the roof area to be raised is located in the required side setback. The Project requires a Minor Accommodation to allow the roof to be raised in-line with the existing setback for the residence. The proposed changes to the structure's height and roofline are shown as follows:



Summary of Project Findings

In reviewing the Project for conformance with the Municipal Code, the Community Development Director found that the Project, as conditioned, would not result in substantial impacts to surrounding properties, and more specifically would not result in impacts to scale and massing, privacy, light and air, or the garden quality of the City. This determination was made based on review of the submitted plans (Attachment 4), as well as a site visit to 714 Alta Drive. The specific findings are provided in Attachment 2.

APPEAL

The Appellant identifies the following main points as the basis for the appeal:

1. "Privacy compromised."
2. "Pre-existing conditions compromised."
3. "Information from plans finally seen on 2/9/11 after almost 2 months [of requesting to see plans]."

It should be noted that the appeal petition contains no new information that had not previously been considered in granting the Minor Accommodation. Therefore, staff is not recommending that the matter be remanded to the Community Development Director.

APPEAL ANALYSIS

The following section restates each of the main points provided in the Appeal Petition and provides analysis of each point.

Privacy compromised

The Appellant does not provide written explanation or details of how privacy has been compromised. However, multiple staff members visited the Appellant's property to both understand her concerns and the subject property. Based on these meetings staff believes that the reference to privacy is primarily related to an existing balcony at the rear of the 716 Alta residence, as well as the removal of hedges and landscaping adjacent to the Appellant's property, but on the project site.

The existing balcony at the rear of the 716 Alta residence does appear to offer slight views through trees into the Appellant's backyard where an existing pool is located; however, the existing balcony is a previously-permitted structure that is unrelated to the request for a Minor Accommodation, and was therefore not evaluated in assessing the Project. Although not a part of the Minor Accommodation, the only changes to the existing balcony include the replacement of the existing open-to-view wood railing with a solid wood railing. The attic conversion associated with the Project does include a Juliette balcony that projects 18 inches from the rear of the residence, but the Juliette balcony will be obscured by existing trees (see Attachment 3, photographs) and will not impact the Appellant's privacy. The attic conversion does not include any new window openings along the south elevation, which faces the Appellant's property.

In order to do site work and construct a planter wall at the subject property, some existing hedges and landscaping were previously removed adjacent to the Appellant's property. The property owner has installed new hedges adjacent to the Appellant's property, and as a condition of approval, the property owner is required to maintain the now-existing trees and hedges for the life of the Project. Consequently, it does not appear that approval of the Minor Accommodation will result in privacy impacts.

Pre-existing conditions compromised

The Appellant does not provide written explanation or details of how pre-existing conditions have been compromised. However, multiple staff members visited the Appellant's property to both understand her concerns and the subject property. Based on these meetings staff believes that the reference to pre-existing conditions is related to the removal of hedges and landscaping adjacent to the Appellant's property.

As is discussed above, some existing hedges and landscaping adjacent to the Appellant's property were previously removed in order to do site work and construct a planter wall at the subject property. The Municipal Code regulates the removal of landscaping in front yards only, and permits are not required to remove landscaping in a rear or side yard. The Municipal Code does regulate the removal of an urban grove regardless of its location on a property, but the hedges removed were not considered as an urban grove, and therefore were not protected. Consequently, the property owner did not violate any codes by removing existing landscaping. Furthermore, the property owner has installed new hedges approximately 7 feet in height adjacent to the Appellant's property, and as a condition of approval the property owner is required to maintain the now-existing trees and hedges for the life of the Project.

Plans finally seen on 2/9/11

The Appellant's statement that she was not able to see the Project plans until 2/9/2011 (after the approval was rendered) does not comport with the administrative record. Staff initially met with the Appellant at her property on January 10, 2011, prior to the decision that was rendered on January 31, 2011. During the January meeting staff brought a copy of the Project plans to the Appellant's property in an attempt to walk the Appellant through the proposed scope of work and make sure that she had an understanding of the Project. During the meeting the Appellant declined to review the plans and ultimately asked staff to leave her property. Subsequent to the initial site visit at the Appellant's property, the following additional meetings occurred, and at each meeting staff presented the proposed plans for the Project:

- February 9, 2011: City Planner and Associate Planner met with Appellant at her property.
- February 22, 2011: Community Development Director and Assistant City Manager met with Appellant at her property.
- Week of February 21, 2011: Community Development Director and Urban Forrest Manager met with Appellant at her property.
- February 28, 2011: Urban Forest Manager met with Appellant at her property (plans not provided at this meeting).
- March 22, 2011: Project Planner met with Appellant at City Hall.

- April 11, 2011: Project Planner met with Appellant's attorney at City Hall.

In addition to the above meetings, staff participated in numerous phone conversations with the Appellant, and also tried to facilitate a mutually agreeable resolution between the property owner and the Appellant. Unfortunately, staff's attempts to achieve mutual agreement were unsuccessful.

FINDINGS

Staff recommends that the following findings be made in support of the Project:

1. *The Project will not have a substantial adverse impact on the scale and massing of the streetscape;*

The proposed addition is located at the rear portion of the main residence at the second story level, and at a distance of approximately 97 feet from the front property line. The total height of the proposed addition would be 27 feet 9 inches measuring from the average grade, which would match the existing height of the residence. The total area of the addition requiring the Minor Accommodation is approximately 63 square feet, and a minimum of a 5 foot 9 inch setback is provided for the area under review. Because the addition is consistent with the architectural style of the residence, and would not be visible from the street, the addition is not anticipated to have an adverse impact on the scale and massing of the streetscape as viewed from Alta Drive.

2. *The Project will not have a substantial adverse impact on the neighbors' access to light and air;*

The portion of the proposed addition requiring the Minor Accommodation would be located 5 feet 9 inches from the side property line with a maximum height of 27 feet 9 inches. The addition is located toward the rear of the residence and is located adjacent to the neighboring residence, but not adjacent to the backyard and pool area of the adjacent property. Existing trees and hedges separate the two properties, and result in the addition being minimally visible from the neighboring property. Additionally, the portion of the addition requiring the Minor Accommodation totals approximately 63 square feet, which accounts for less than 2% of the total floor area of the existing residence. Due to the limited size of the portion of the Project requiring the Minor Accommodation, as well as the existing vegetation and separation from the neighbor's backyard and pool area, no adverse impact to the neighbors' access to light and air is anticipated.

3. *The Project will not have a substantial adverse impact on the neighbors' privacy; and*

The proposed addition will create added height along the south side property line; however, the addition is located adjacent to the neighboring residence and not adjacent to the neighbor's backyard and pool area. The addition does not include any new or increased window openings along the south elevation (facing the Appellant's property), and existing, dense landscaping along the side property line screens the Project from the adjacent property. Because of the design and location of the addition in relation to the neighboring property and the screening created by the existing landscaping, no adverse impact to the neighbors' privacy is anticipated.

4. *The Project will not have a substantial adverse impact on the garden quality of the city.*

Although landscaping was previously removed and then replaced along the south side property line in order to accommodate other work at the subject property, the Minor Accommodation does not include any modifications to existing landscaping. The existing landscaping is mature and appropriately scaled with the design of the house, and as a condition of approval is required to be maintained for the life of the Project. Because no changes will be made to the existing landscaping, the Project is not anticipated to adversely impact the garden quality of the city.

RECOMMENDED ACTION

Based on the forgoing information, staff recommends that the Council direct the City Attorney's office to prepare a resolution making findings and granting the Minor Accommodation.

FISCAL IMPACT

No fiscal impact to the City is anticipated from a Council decision in this matter.

PUBLIC NOTICE AND COMMENTS

A public hearing notice was mailed on April 22, 2011 to the Appellant, applicant, and all parties originally noticed in reviewing the Project. Other than communication with the Appellant, no public comments have been received.

RECOMMENDED CONDITIONS OF APPROVAL

Staff recommends that all original conditions imposed by the Community Development Director also be imposed as conditions of any City Council approval resolution.

Susan Healy Keene, AICP
Director of Community Development



Approved By

ATTACHMENT 1

Appeal Petition

RECEIVED
CITY OF BEVERLY HILLS

2011 FEB 14 A 11:30

CITY CLERK'S OFFICE

APPEAL PETITIONS MUST BE FILED WITH THE CITY CLERK'S OFFICE WITHIN
14 CALENDAR DAYS AFTER THE DATE OF THE DECISION

APPEAL TO PLANNING COMMISSION OR CITY COUNCIL

PLEASE TYPE OR PRINT CLEARLY IN BLACK INK

2/10/11
Date

In accordance with the appeals procedure as authorized by the provisions of the Beverly Hills Municipal Code, the undersigned hereby appeals from the decision of APROVE (Official, Board or Commission involved) rendered on 1/31/11; which decision consisted of: The grounds submitted for this appeal are as follows: (WARNING: State all grounds for appeal. Describe how decision is inconsistent with law. Use extra paper if necessary.)

716 ALTA DR #1036904

PRIVACY COMPROMISED
PRE-EXISTING CONDITIONS
COMPROMISED

SEC. 10.3.2406 C. STATED INFORMATION FROM PLANS FINALLY SEEN

The undersigned discussed the decision being appealed with:

SUSAN HEALY KEENE on 2/10/11
(Department Head(s) Involved) Date

It is requested that written notice of the time and place for the hearing on this appeal before the City Council be sent to:

LINDA OSTROWSKI 714 ALTA DR. BEVERLY HILLS
Name Address

Linda Ostrowski
Signature of appealing party

714 ALTA DR.
Address

(910) 2797178
Telephone Number & Fax Number

Fee Paid CHK # 5280 (For City Clerk's use) DATE RECEIVED

LOG NO. DFX11 Written Notice mailed to appellant:

Copies to: City Council, City Manager, City Attorney, Planning Dept.
Involved Department

Susan Healy Keene
Jonathan Lait
Ryan Goshlich
David Reyes

FILED
MAY 10 11
12/22/10
LETTER

ATTACHMENT 2

Minor Accommodation Approval - January 31, 2011



NOTICE OF ACTION

CITY OF BEVERLY HILLS

REQUEST: *Minor Accommodation* to allow the extension of a legally nonconforming side setback so that a second story addition may be constructed in-line with the existing footprint of a single family residential property with a legally nonconforming side setback located in the Central Area of the City.

PROJECT : *716 Alta Drive*
ADDRESS

APPLICANT: Vladi Tomalevski
2332 Cotner Ave.
Los Angeles, CA 90064
(310) 914-5577

PROPERTY OWNER: Kamran Samooha
9915 Anthony Place
Los Angeles, CA 90210

PROJECT PLANNER: Ryan Gohlich
Associate Planner

ACTION: **APPROVED, SUBJECT TO THE ATTACHED CONDITIONS AND REQUIRED FINDINGS**

Approved by

A handwritten signature in black ink, appearing to read "Jonathan Lait".

Jonathan Lait, AICP, City Planner

A handwritten date "1/31/11" in black ink.

Date

Decisions made by the Director of Community Development may be appealed to the City Council within fourteen (14) days of the Director's action by filing a written appeal with the City Clerk. Appeal forms are available in the City Clerk's office. (Note: Appeal Fee Required.)

PROJECT DESCRIPTION AND AREA CHARACTERISTICS

The property is located on the east side of the 700 block of Alta Drive in the Central Area of the City, and is surrounded by single-family residential development. The property is currently developed with a two-story single-family home.

The proposed project includes the addition of approximately 515 square feet to the first and second floors of the existing residence. Approximately 63 square feet of the addition area, located along the south elevation of the structure, would be located over a portion of the existing house with a legally nonconforming side setback. Because this 63 square feet of the addition does not conform to current setback requirements, a Minor Accommodation is required to allow for the extension of the legally nonconforming side setback. The addition will have a maximum height of 26 feet measured from average grade, and will be architecturally consistent with the theme of the existing structure.

ENVIRONMENTAL ASSESSMENT

The project has been reviewed pursuant to the California Environmental Quality Act (CEQA), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.), and the City's Local CEQA guidelines. A Class 1 (15301(a) Categorical Exemption (Minor Alterations to Existing Residential Structures) has been issued in accordance with the requirements of Section 15062 for the additions and alterations to the primary residential structure.

PUBLIC NOTICE AND COMMENTS

A Notice of Pending Decision was mailed on December 22, 2010 to all property owners and residential occupants within three hundred feet (300') of the exterior boundaries of the project site. In addition, a notice was posted on the site facing Alta Drive. In assessing the project staff also conducted a site visit at the neighboring property to the south to determine whether the project would result in impacts.

REQUIRED FINDINGS

Minor Accommodation

In accordance with Article 24 of the Beverly Hills Municipal Code (BHMC), a legally nonconforming side setback may be extended (10-3-2406) with the approval of a Minor Accommodation Permit if the reviewing authority finds that the project will not have a substantial adverse impact on or be detrimental to the following:

1. *The scale and massing of the streetscape;*

The proposed addition would be located at the rear portion of the main residence at the second story level, and at a distance of approximately 97 feet from the front property line. The total height of the proposed addition would be 26 feet measuring from the average grade, which would match the existing height of the residence. The height of the proposed addition would exceed the standard nonconforming side setback height requirement of 14 feet by 12 feet. The total area of the addition requiring the Minor Accommodation is approximately 63 square feet, and a minimum of a 5 foot 9 inch setback is provided for the area under review. Because the addition is consistent with the architectural style of the residence, and would not be visible from the street, the addition is not anticipated to have an adverse impact on the scale and massing of the streetscape as viewed from Alta Drive.

2. *The neighbors' access to light and air;*

The portion of the proposed addition requiring the Minor Accommodation would be located 5 feet 9 inches from the side property line with a maximum height of 26 feet. The addition is located toward the rear of the residence and is located adjacent to the neighboring residence, but not adjacent to the rear yard space of any neighboring properties. Existing trees and hedges separate the two properties, and results in the addition being minimally visible from the neighboring property. Additionally, the portion of the addition requiring the Minor Accommodation totals approximately 63 square feet. Due to the limited size of the portion of the project requiring the Minor Accommodation, as well as the separation from the neighbor's rear yard area and existing vegetation, no adverse impact to the neighbors' access to light and air is anticipated.

3. *Neighbors' Privacy;*

The proposed addition will create added height along the south side property line; however, the addition is located adjacent to the neighboring residence and not adjacent to the neighbor's rear yard area. Additionally, existing, dense landscaping along the side property line aides in screening the project from the adjacent property. Because of the

location of the addition in relation to the neighboring property and the screening created by the existing landscaping, no adverse impact to the neighbors' privacy is anticipated.

4. *The Garden Quality of the City;*

The proposed project does not include any modifications to existing landscaping. The existing landscaping is mature and appropriately scaled with the design of the house. Because no changes will be made, the project is not anticipated to adversely impact the garden quality of the city.

Conditions of Approval

1. The second-floor windows along the south elevation of the residence may be replaced, but shall not be increased in size beyond the existing dimensions of 3'6" x 3'6".
2. The project shall be constructed in substantial compliance with the plans approved by the City on January 31, 2011.
3. Any modifications to the approved plans shall be returned to staff for further review and assessment.
4. All existing trees and hedges along the south elevation of the residence, as shown on the approved landscape plan, shall be maintained throughout the life of the project, and replaced if damaged or removed as a result of construction. Further, all such landscaping shall be maintained in accordance with the provisions of the Beverly Hills Municipal Code.

ATTACHMENT 3

Photographs Taken During Site Visits



Existing south elevation of 716 Alta Drive as viewed from backyard of 714 Alta Drive. Face of building is set back approximately 5'9" from property line, and the proposed area of addition is outlined in black.



**Existing south elevation of 716 Alta Drive as viewed from inside the 714 Alta Drive residence.
Face of building is set back approximately 5'9" from property line**



**Existing south elevation of 716 Alta Drive as viewed from backyard of 714 Alta Drive.
Proposed area of addition is outlined in black.**



Existing south elevation of 716 Alta Drive. Face of building is set back approximately 5'9" from property line.



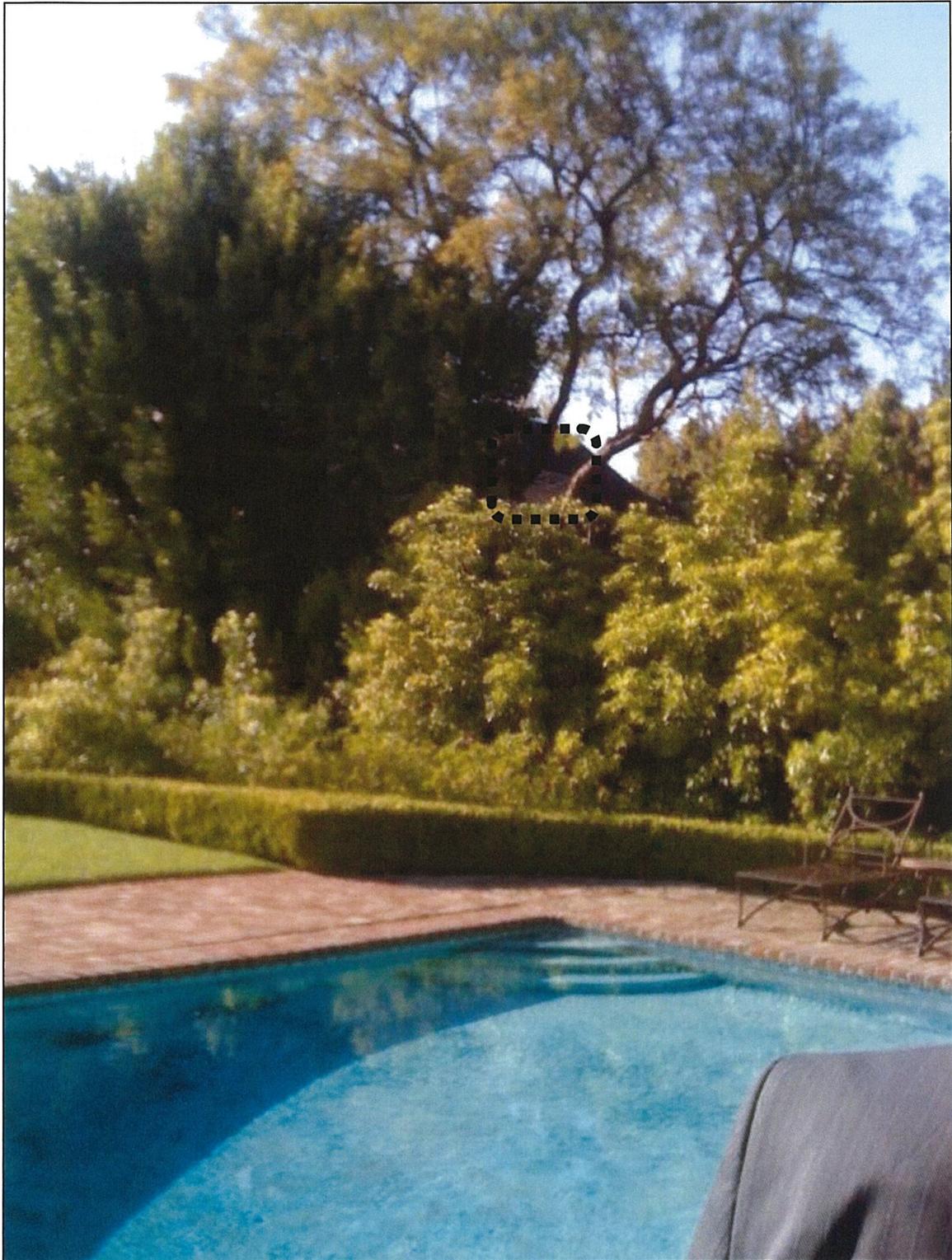
Existing south elevation of 716 Alta Drive. Face of building is set back approximately 5'9" from property line.



Recently planted hedges separating 716 Alta Drive from 714 Alta Drive.



Partial view of 714 Alta Drive pool area. View is from existing balcony at rear of 716 Alta Drive.



Backyard and pool area of 714 Alta Drive. View shows existing balcony (outlined in black) at rear of 716 Alta Drive.

ATTACHMENT 4

Architectural Plans (Provided as a Separate Document)