



City of Santa Barbara California

PLANNING COMMISSION STAFF REPORT

REPORT DATE: July 31, 2014
AGENDA DATE: August 7, 2014
PROJECT ADDRESS: 210 West Haley Street (MST2012-00482 & BLD2012-01415)
TO: Planning Commission
FROM: Planning Division, (805) 564-5470, extension 4539
 Renee Brooke, AICP, Senior Planner *RLB*
 Tony Boughman, Assistant Planner
SUBJECT: Appeal of the Chief Building Official's Denial of Development within the Mission Creek Setback

I. PROJECT DESCRIPTION

The subject site at 208, 210, and 212 West Haley Street is developed with three detached one-story single-family dwellings and a detached garage on the 11,000 square foot lot. It is located adjacent to the west side of the Haley/De La Vina Street bridge, between Mission Creek and West Haley Street. The rear (northeastern) property line borders Mission Creek, which is channelized in this location. Two of the three existing dwellings and the detached garage are located partially within the 25-foot setback from the top of the creek bank where special controls apply to development.

The site is under enforcement for a variety of unpermitted work, most of which is proposed to be demolished and removed. Exterior alterations proposed to be permitted consist of the enclosure of the unpermitted 41 square foot front porch at 212 West Haley Street, and the 102 square foot unpermitted addition of a bathroom, den, and closet constructed at the rear of 210 West Haley Street. A request to permit this unpermitted addition at the rear of the dwelling, within the 25-foot Mission Creek setback, was denied by the Chief Building Official, per Santa Barbara Municipal Code (SBMC) §28.87.250. The Chief Building Official's decision was appealed to the Planning Commission by the property owner's attorney.



Project site outlined in yellow. Proposed addition to residence in blue.

II. RECOMMENDATION

Staff recommends that the Planning Commission uphold the Chief Building Official's decision and deny the appeal. The Santa Barbara County Flood Control District has an easement agreement for flood control purposes across the rear of the property along the creek, which basically coincides with the 25-foot Mission Creek setback. The Flood Control District strongly opposes permitting the rear addition, as it could interfere with access for debris removal and creek maintenance within the easement. It would also complicate the construction of the approved Lower Mission Creek Flood Control improvements along the northeastern boundary of this property because the rear of the structure would be closer to the proposed work on the site, and the rear of the structure would only be a few feet from the resulting new creek wall. The increased encroachment could potentially pose increased risk to the public health, safety, and welfare for the site and the neighborhood. Denial of the permit would not cause severe hardship or prohibit the reasonable development and use of the property. Staff's recommendation for denial of the appeal is based primarily on the project's inconsistency with the legislative intent of the creek setback Ordinance regarding protection of the public health, safety, and welfare.

III. BACKGROUND

In response to a request for investigation, Building & Safety staff performed inspections at the property in June 2012. Numerous violations were found for unpermitted work. Unsafe electrical work has been rectified with completion of a building permit. Other portions of the structures are to be brought into code compliance and several shed structures are to be removed. The exterior alterations proposed to remain were reviewed and approved by the Architectural Board of Review (ABR) on the Consent agenda on January 7, 2013, however the full size of the unpermitted rear addition was not accurately presented, nor was the project's proximity to Mission Creek described on the plans. The ABR reviewer and City staff were unaware of the project's encroachment into the Mission Creek setback, or the existence of an easement for the County Flood Control District on this part of the property at the time of ABR approval.

On April, 21, 2014, during the building permit plan check process, the Chief Building Official denied a request to permit a portion of the 102 square foot unpermitted addition at the rear of the dwelling within the Mission Creek setback (Exhibit A). The Chief Building Official's decision is appealable to the Planning Commission per SBMC 28.87.250, Development Along Creeks. The attorney for the property owner filed an appeal with the Community Development Department on May 12, 2014 (Exhibit B).

IV. SITE INFORMATION AND PROJECT STATISTICS

A. SITE INFORMATION

Property Owner:	Maria Elena Solis		
Site Information			
Parcel Number:	037-161-014	Lot Area:	10, 285 square feet
General Plan:	High Density Residential	Zoning:	R-3
Existing Use:	Residential	Topography:	Flat, adjacent to Mission Creek
Adjacent Land Uses			
North – Commercial		East - Residential	
South – Commercial, Residential		West - Residential	

V. APPEAL ISSUES

The scope of the project being appealed to the Planning Commission consists of the unpermitted 102 square foot bathroom, den, and closet addition at the rear of 210 West Haley Street. The encroachment into the 25-foot Mission Creek Setback was denied by the Chief Building Official. The appellant requests that the Planning Commission overturn the decision of the Chief Building Official, and allow the unpermitted addition to be permitted. The appellant makes the following arguments:

1. The unpermitted addition has existed since sometime between 1984 and 1990, prior to the current owner buying the property, and has not suffered any flood-related damage or posed any impacts to other properties during its existence;
2. The completion of the new bridge at the intersection of West Haley Street and De La Vina Street, and other components of the Lower Mission Creek Flood Control Project have reduced the risk of flooding at this site;
3. The project is no closer to Mission Creek than the other existing adjacent and permitted structures on this property;
4. The project has not, and would not have, any effects on flood waters; and
5. The project is consistent with other development on the site, and demolition of a portion of the dwelling would be a hardship for the owner.

VI. DISCUSSION

Santa Barbara Municipal Code (SBMC) §28.87.250, Development Along Creeks (Exhibit C), limits development within the banks and within 25 feet of the top of either bank of Mission Creek. No development in that area shall be approved by the Chief Building Official, or the Planning Commission on appeal, unless it is found consistent with the purposes set forth in SBMC §28.87.250.A:

A. Legislative Intent. The purpose of this Section is to provide controls on development adjacent to the bed of Mission Creek within the City of Santa Barbara. These controls are necessary:

1. to prevent undue damage or destruction of developments by flood waters;
2. to prevent development on one parcel from causing undue detrimental impact on adjacent or downstream properties in the event of flood waters;
3. to protect the public health, safety and welfare.

Pursuant to SBMC §28.87.250.F., the Planning Commission shall consider the following development standards in determining if development is consistent with the legislative intent of the ordinance.

- a. That the proposed new development will not significantly reduce existing floodways, re-align stream beds or otherwise adversely affect other properties by increasing stream velocities or depths, or by diverting the flow, and that the proposed new development will be reasonably safe from flow-related erosion and will not cause flow-related erosion hazards or otherwise aggravate existing flow-related erosion hazards.
- b. That proposed additions, alterations or improvements comply with Subparagraph 1.a above.
- c. That proposed reconstruction of structures damaged by fire, flood or other calamities will comply with Subparagraph 1.a above, or be less nonconforming than the original structure and will not adversely affect other properties.
- d. The report, if any, of a qualified soils engineer or geologist and the recommendations of the Santa Barbara County Flood Control and Water Conservation District.

- e. After review of that report, whether denial of approval would cause severe hardship or prohibit the reasonable development and use of the property.

The request to permit the addition within the creek setback was denied largely because the addition is also within a perpetual easement dedicated in 1970 to the Santa Barbara County Flood Control District "...for flood control purposes including the right to remove dirt, soil, earth, silt, trees, vegetation, debris or other materials, in, over, under and across the real property..." The 25-foot creek setback and the flood control easement overlap to a similar extent on the subject property (Exhibit D). Two of the existing dwellings and the detached garage are located partially within the creek setback and flood control easement. These improvements were permitted and built prior to the 1970 easement dedication, and the 1980 creek setback ordinance, making them legal nonconforming to the 25-foot creek setback. Since the easement was granted, there has been no additional development permitted on the site.

The County Flood Control District strongly opposes permitting the encroachment into the easement because of concurrent needs for ongoing maintenance access and the construction of a future component of the Lower Mission Creek Flood Control Project (LMCFCP). This project includes creek improvements all along the rear of the subject property resulting in a new creek bank and wall that will be closer to the existing structures. The City Public Works Engineering Division is also opposed to any further encroachment into the setback area because it will complicate the construction of the LMCFCP improvements approved by the Planning Commission and City Council in 2000. Any further encroachment of development such as permitting the addition within the easement could hamper access for flood control purposes and potentially pose unforeseeable risks to public health, safety and welfare. The City Creeks Division also does not support the approval of development within the creek setback and recommends demolition of the unpermitted addition.

Denial of the appeal would mean that the 210 West Haley street dwelling would be returned to its permitted condition of 664 square feet with two bedrooms and two full bathrooms, and the 102 square foot unpermitted addition of a full bathroom, closet, and den would be demolished. The unpermitted enclosure of the front porch on the 212 West Haley Street dwelling may be permitted as it is not within the creek setback or easement, and it was reviewed and approved by the ABR.

The Environmental Analyst has determined that the remainder of the proposed improvements recommending for permitting are exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15301 for a minor addition to the existing structure. The project will have to comply with all applicable building codes for work in a Special Flood Hazard Area. The applicant has not yet provided the required information to determine if the unpermitted construction can comply with the special construction requirements.

VII. FINDINGS

The Planning Commission denies the appeal of the Chief Building Official's denial of the requested encroachment into the 25-foot Mission Creek setback, and finds that the development

within the required setback is not consistent with the purposes and intent of the Zoning Ordinance set forth in SBMC §28.87.250. The proposed unpermitted addition is not an appropriate improvement on the lot as it could limit access for flood control purposes, potentially pose unforeseeable risks to the public's health, safety, and welfare, and hinder future construction of improvements intended to reduce the probability of flood hazards. Furthermore, denial of the encroachment would not cause severe hardship or prohibit the reasonable development and continued use of the property developed with three modestly-sized single-family houses.

Exhibits:

- A. Denial Decision Letter from Chief Building Official dated April 21, 2014
- B. Appellant's letter dated May 12, 2014
- C. Santa Barbara Municipal Code (SBMC) §28.87.250, Development Along Creeks
- D. Site Plans



City of Santa Barbara

Community Development Department

www.SantaBarbaraCA.gov

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630 Garden Street

PO Box 1990

Santa Barbara, CA

93102-1990

Mr. Pina,

This is in response to your request for an encroachment into the 25' Mission Creek setback at 210 W Haley on behalf of the property owner. We have reviewed the information that you submitted and consulted with City Planning and Zoning, City Creeks, City Public Works Engineering and County Flood Control. We regret to inform you that your request cannot be granted because the structure is also located in a Flood Control Easement agreement with the County Flood Control District. The Flood Control District expressed concerns with both access to the easement and the future widening of the creek in the area (Lower Mission Creek Project) and does not support the encroachment. There are some concerns from Planning and Zoning that may need to be addressed when the plans are resubmitted. Please contact Brenda Beltz in Planning and Zoning for further information.

When the plans are resubmitted to Building & Safety for permit, the as-built addition should be shown to be demolished and should also show how the original exterior wall will be restored. Please contact me if you have any questions.

Thank You,

Curtis Harrison
Senior Plans Examiner/Floodplain Coordinator
City of Santa Barbara
805-560-7512

EXHIBIT A

MICHAEL A. PINA
ATTORNEY AT LAW
621 WEST MICHELTORENA STREET, SUITE A
SANTA BARBARA, CALIFORNIA 93101

Telephone (805) 965-7128
Facsimile (805) 965-7268

May 12, 2014

City of Santa Barbara
City Clerk's Office - City Hall
735 Anacapa Street
Santa Barbara, CA 93101

APPEAL TO CITY OF SANTA BARBARA PLANNING COMMISSION

APPEAL OF DECISION OF CHIEF BUILDING OFFICIAL GEORGE ESTRELLA

Dated: April 30, 2014

DECISION APPEALED: The decision to deny an encroachment into the 25' Mission Creek Setback under City of Santa Barbara Ordinance 28.87.250 at 208-212 West Haley Street, Santa Barbara, California, APN: 037-161-014, Property Owner: Maria Elena Solis.

THE GROUNDS FOR THE APPEAL ARE STATED IN THE STATED BELOW

BACKGROUND

In October 2013, the City of Santa Barbara Land Development Team (the "City") provided, property owner, Maria Elena Solis, ("Ms. Solis") with the 3rd Resub Corrections & Comments in connection with Permit Application BLD2012-01415 (the "Permit"). The Permit concerns her property located at 208, 210, 212, West Haley Street, Santa Barbara, California, near the intersection of West Haley and De La Vina Streets. The property is an irregularly shaped lot of approximately 11,800 square feet which abuts Mission Creek on its northern property line. There are three (3), one-story detached single family residences on the property, as follows: 208 is a two bedroom one bath house of 702 square feet; 210 is a two bedroom one bath house of 817 square feet; and 212 is a one bedroom one bath house of 527 square feet.

The Permit concerns repair work on the structure at the 208 West Haley Street which was damaged by fire. However, at paragraph 1 of the Corrections Associate Planner, Brenda Beltz, wrote regarding the 210 structure, in part, that:

"Since the proposed development does not comply with the 25' setback as shown on your plans, an application must be made to the Chief Building Official, George Estrella, to encroach within the Mission Creek setback. Zoning clearance cannot be

EXHIBIT B

granted until the Chief Building Official approves the Mission Creek setback encroachment, see SBMC 28.87.250. . . [p] Please provide in writing, a submittal to the Chief Building Official (Chief of Building and Zoning) George Estrella. Include any findings that support why this addition should be allowed to encroach into the 25' Mission Creek setback. . . ”

Despite owning the property since September 1990, this is the first notice that Property Owner received that there was an encroachment issue with respect to the structures on her property.

The Appeal should be Granted as the Development at 210 West Haley Street is Consistent with the Legislative Intent of SBMC 28.87.250

SBMC 28.87.250, “Development Along Creeks.” states that:

“A. Legislative Intent. The purpose of this section is to provide controls on development adjacent to the bed of Mission Creek within the City of Santa Barbara. These controls are necessary:

1. to prevent undue damage or destruction of developments by flood waters;
2. to prevent development on one parcel from causing undue detrimental impact on adjacent or downstream properties in the event of flood waters;
3. to protect the public health, safety and welfare.

The existing structure (development) at 210 West Haley does not conflict with the legislative intent governing development along creeks. This development is not subject to “undue damage or destruction. . . by flood waters.” The structure was built in 1948 and has withstood several major flood events without sustaining damage.

A review of the “Santa Barbara County 2011 Multi-Jurisdictional Hazard Mitigation Plan” establishes that Between 1862 and the 2010, Santa Barbara experienced 15 significant floods eight (8) of these floods received Presidential Disaster Declarations.” Eleven (11) of these significant floods have occurred since 1952, none of which caused undue damage to, or destruction of, the 210 structure.

Based upon a review of the history of flood events in Santa Barbara County the development at 210 West Haley does not create a risk of “causing undue detrimental impact on adjacent or downstream properties in the event of flood waters.” Additionally, this potential risk has been significantly decreased due to the recent flood control improvements to Lower Mission Creek completed in May 2011.

“The Lower Mission Creek Flood Control Project” (the “Project”) replaced the structurally deficient bridge at Haley and De La Vina Streets adjacent to the development at 210, increased the

flood water capacity of lower Mission Creek, and enhanced creek beds and banks with the installation of native plants. According to the "Lower Mission Creek Preliminary Design Report, October 2007, updated March 2008," the storm capacity of the creek bed has been more than doubled by the Project as follows:

"Storm Capacity for Design: The statistical analysis included in the 2000 EIR/EIS indicated that the 3,400 cfs [cubic feet per second] design flow was equivalent to a 20 year storm event. Each year new statistical information is collected from rainfall events and this equivalent storm event changes. Adding the statistics associated with storm events over the years since 2000 indicates that the design flow of 3,400 cfs may now be equivalent to a 30 year storm event. This equivalent storm event will continue to change over time as more statistical information is collected."

Prior to the completion of the Project "Mission Creek is estimated to be able to accommodate an eight-year storm event, or approximately 1,500 cubic feet per second (cfs), without overflowing the channel banks." (City of Santa Barbara, Council Agenda Report, dated June 12, 2012.) Given that Mission Creek has increased water flow capacity to accommodate what may now be the equivalent of a 30 year storm event without overflowing the channel banks the likelihood that downstream properties will be detrimentally impacted by the development in the event of flood waters has been statistically eliminated. The completion of the flood control improvements adjacent to the development works to "protect the public health, safety and welfare" by increasing the creek channel capacity to contain flood waters.

Since 1948, the development at 210 West Haley has remained intact and unscathed by the periodic flooding which occurs in Santa Barbara. This well documented history of the development avoiding "undue damage or destruction. . . by flood waters," has been bolstered by the completion of the Project in May 2011. The Project more than doubled the historical flood capacity of Mission Creek from 1,500 cubic feet per second to 3,400 cubic feet per second. The Project installed flood control facilities and devices to the creek bed adjacent to the development that provide a degree of flood proofing that more than brings the development into conformity with the legislative intent and purposes of SBMC 28.87.250 which controls the development along creeks in Santa Barbara.

The Appeal should be Granted as the Development at 210 West Haley Street is Consistent with the Purposes set forth in Subsection 28.87.250.A. and the Development Standards stated in SBMC 28.87.250.F.¹

¹ SBMC 28.87.250 B. "Limitation on Development," states, in part, that: "No person may construct, build, or place a development within the area described in Subsection 28.87.250.C unless said development has been previously approved as provided in Subsection 28.87.250.E. . ." The development at 210 West Haley Street is located within the area described in Subsection 28.87.250.C

SBMMC Subsection 28.87.250 F. "Development Standards,"² establishes the standards that the Chief Building and Zoning follows in determining whether a development encroaching the Mission Creek Setback will be approved and building permit issued. This section states as follows: "No development in the area subject to this Section shall be approved unless it is found that it will be consistent with the purposes set forth in Subsection 28.87.250.A."

The particular governing standards are specifically stated as follows:

"1. The Chief of Building and Zoning or the Planning Commission on appeal shall consider the following in determining whether the development is consistent with Subsection 28.87.250.A:

A. That the proposed new development will not significantly reduce existing floodways, re-align stream beds or otherwise adversely affect other properties by increasing stream velocities or depths, or by diverting the flow, and that the proposed new development will be reasonably safe from flow-related erosion and will not cause flow related erosion hazards or otherwise aggravate existing flow-related erosion hazards."

The "new" development has essentially been in place since 1948. The plans in the City's Street File show that in 1984 the 210 structure required repairs to the front porch "caused by infestation of pests." The drawing attached to the Permit Application, dated March 30, 1984, shows the dimensions of the structure as 18' wide and 36' long. The structure in 2013 is 18' wide and approximately 45' long as approximately 132 square feet was added to the rear of the structure some time between March 30, 1984 and January 31, 1990. (See Exhibits "A" and "B" which consist of two (2) aerial photos dated January 31, 1990, and June 14, 1992, respectively. The photos have a scale of 1" equals 20' and show that the above referenced 132 square feet was added to the rear of the 210 structure prior to acquisition of the property by Maria Elena Solis in September 1990.)

The aerial photos also show that the development "will not significantly reduce existing floodways, re-align stream beds or otherwise adversely affect other properties by increasing stream velocities or depths, or by diverting the flow. . . " A small portion of the 210 structure encroaches on approximately 28 square feet of the Mission Creek easement and is approximately 17 ½ feet from the top of the bank from Mission Creek at its closest point. Less than 4% of the existing structure encroaches on the easement and is "reasonably safe from flow-related erosion and will not cause

² Subsection 28.87.250 E., "Approval Required" requires that: "Prior to construction of a development in the area described in Subsection 28.87.250.C," provides in relevant part, that:

"The property owner shall obtain approvals as follow:

1. Any development subject to the requirement for a building permit shall be reviewed and approved by the Chief of Building and Zoning or the Planning Commission on appeal prior to the issuance of a building permit. . ."

flow related erosion hazards or otherwise aggravate existing flow-related erosion hazards.”

This structure, as well as the structure at 208 West Haley Street, have been in place for 65 years and neither have suffered damage as a result of flooding which “detrimentally impacted downstream properties” nor have they “reduced existing floodways.”

The Denial of the Appeal filed by Ms. Solis will Cause Severe Hardship and Prohibit the Reasonable use of her Property.

The structure at 210 West Haley Street has been used a family residence by Maria Elena Solis since 1990. A review of the City “Street File” concerning her properties shows a consistent pattern of applying for permits whenever repairs or alterations were undertaken on her properties. It also shows that in the past when violations have been present on her properties she has brought them into compliance. The City “Zoning Information Reports” concerning the Property do not document a zoning violation with respect to the Mission Creek Easement. Report No. 19209 dated October 24, 1990, notes a parking ordinance violation. Report No. 11018 dated March 6, 1984, notes “several items are stored in rear yard setbacks.” Report dated September 9, 1977, notes “No zoning violations.” Report dated August 11, 1976, notes with respect to violations observed that “No covered off-street parking provided for 208 and 210 West Haley, One car only for 212.” In none of these official action by the City was Ms. Solis put on notice regarding the problem with the Mission Creek Setback.

In fact, in August 2008, the City entered into an Easement Purchase Agreement with Ms. Solis through which it purchased of approximately 72 square feet of her property as well as a temporary construction easement to facilitate the West Haley/De La Vina bridge replacement project, and, “a permanent easement for purposes of wide range of activities relating to surveys, inspections, excavations, construction, . . . repair, removal, replacement, . . . of surface and subsurface improvements required by public street, bridge, creek flow, flood control . . . On and near the intersection of Haley Street and De La Vina Street, . . .” In connection with this transaction Ms. Solis lost the use of a side yard of approximately 2000 square feet which was located inside the Mission Creek Maintenance Easement which was recorded March 27, 1970, as new fence was constructed to mark the limit of the easement.

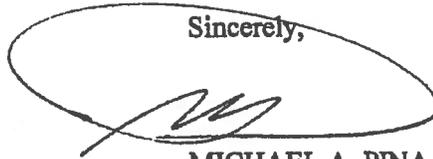
At no time during the process of negotiating this Purchase Agreement was the issue of the structure at 210 West Haley encroaching on the Mission Creek Easement raised although the City was aware of this issue. Attached as Exhibit “C” is a copy of page 8 from the appraisal report by the City’s consult Schott & Company which shows an aerial view of Ms. Solis’ property. The Mission Creek Easement is marked with a purple line and labeled as “Existing Flood Control Easement.” The easement is illustrated by a purple line which runs through the 208 and 210 West Haley Street structures. The structure at 208 has approximately 80% of its area inside the Mission Creek setback, but this encroachment was previously approved by the City. It is inconsistent and unfair to the

City of Santa Barbara
May 12, 2014
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property owner to now require a portion of structure at 210 West Haley to be demolished when less than 10% of its area inside the setback. This would present a tremendous hardship to Ms. Solis and require her to adjust the manner in which she has lived on her property for twenty four (24) years.

Thank you for your courtesy and attention to this Appeal.

Sincerely,

A handwritten signature in black ink, appearing to be "M. Pina", is enclosed within a large, hand-drawn oval.

MICHAEL A. PINA
ATTORNEY FOR MARIA ELENA SOLIS

MAP:rp
Attachments
cc: Maria Elena Solis

210

208

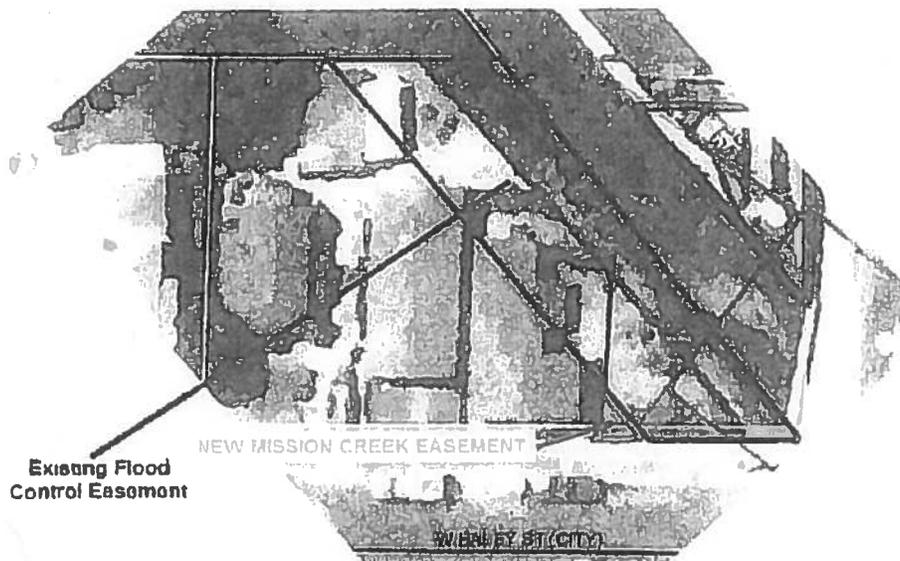
EXHIBIT A

210

208

EXHIBIT B

encumbered by the Mission Creek easement is used as a side yard. Below is an aerial photograph depicting the approximate location and size of the proposed Mission Creek easement. The photo also depicts the location of the existing flood control easement. Note that this easement encumbers nearly all of the yard area for the subject house that is on the right. The new Mission Creek Easement encumbers a portion of the unencumbered yard area.



The subject easements will be used for those uses referenced in the proposed easement language attached herein at the end of this report. Specifically, the Mission Creek easement is for "all purposes relating to surveys, inspections, excavations, construction, operations, maintenance, repair, removal, replacement and reconstruction of surface and subsurface improvements required for public street, bridge, creek flow, flood control and all appurtenant facilities associated with Mission Creek and nearby public street improvements located on and near the intersection of Haley Street and De La Vina Street, including the unrestricted right of ingress and egress at all times, and including any required removal at any time of vegetation, improvements, materials and any other topographic features that may exist within said exclusive easement."

The nonexclusive easement will not be used for staging or storage of construction equipment/materials. The duration of the temporary construction easement is 24 months while the Mission Creek easement is a permanent easement.

Highest & Best Use (Before Taking)

If the subject were vacant, the highest and best use would be the construction of a two to three unit condominium complex. As improved, the highest and best use is to continue the current use.

Highest & Best Use (After Taking)

28.87.250 Development Along Creeks.

A. Legislative Intent. The purpose of this Section is to provide controls on development adjacent to the bed of Mission Creek within the City of Santa Barbara. These controls are necessary:

1. to prevent undue damage or destruction of developments by flood waters;
2. to prevent development on one parcel from causing undue detrimental impact on adjacent or downstream properties in the event of flood waters;
3. to protect the public health, safety and welfare.

B. Limitation on Development. No person may construct, build, or place a development within the area described in Subsection 28.87.250.C unless said development has been previously approved as provided in Subsection 28.87.250.E.

C. Land Area Subject to Limitation. The limitations of this Section shall apply to all land within the banks and located within twenty-five (25) feet of the top of either bank of Mission Creek within the City of Santa Barbara.

"Top of bank" means the line formed by the intersection of the general plane of the sloping side of the watercourse with the general plane of the upper generally level ground along the watercourse; or, if the existing sloping side of the watercourse is steeper than the angle of repose (critical slope) of the soil or geologic structure involved, "top of bank" shall mean the intersection of a plane beginning at the toe of the bank and sloping at the angle of repose with the generally level ground along the watercourse. The angle of repose is assumed to be 1.5 (horizontal) : 1 (vertical) unless otherwise specified by a geologist or soils engineer with knowledge of the soil or geologic structure involved. "Toe of bank" means the line formed by the intersection of the general plane of the sloping side of the watercourse with the general plane of the bed of the watercourse.

D. Development Defined. Development, for the purposes of this Section, shall include any building or structure requiring a building permit; the construction or placement of a fence, wall, retaining wall, steps, deck (wood, rock, or concrete), or walkway; any grading; or, the relocation or removal of stones or other surface which forms a natural creek channel.

E. Approval Required. Prior to construction of a development in the area described in Subsection 28.87.250.C, the property owner shall obtain approvals as follow:

1. Any development subject to the requirement for a building permit shall be reviewed and approved by the Chief of Building and Zoning or the Planning Commission on appeal prior to the issuance of a building permit.
2. Any development not requiring a building permit shall be reviewed and approved by the Chief of Building and Zoning or his designated representative or the Planning Commission on appeal. A description of the development shall be submitted showing the use of intended development, its location, size and manner of construction.

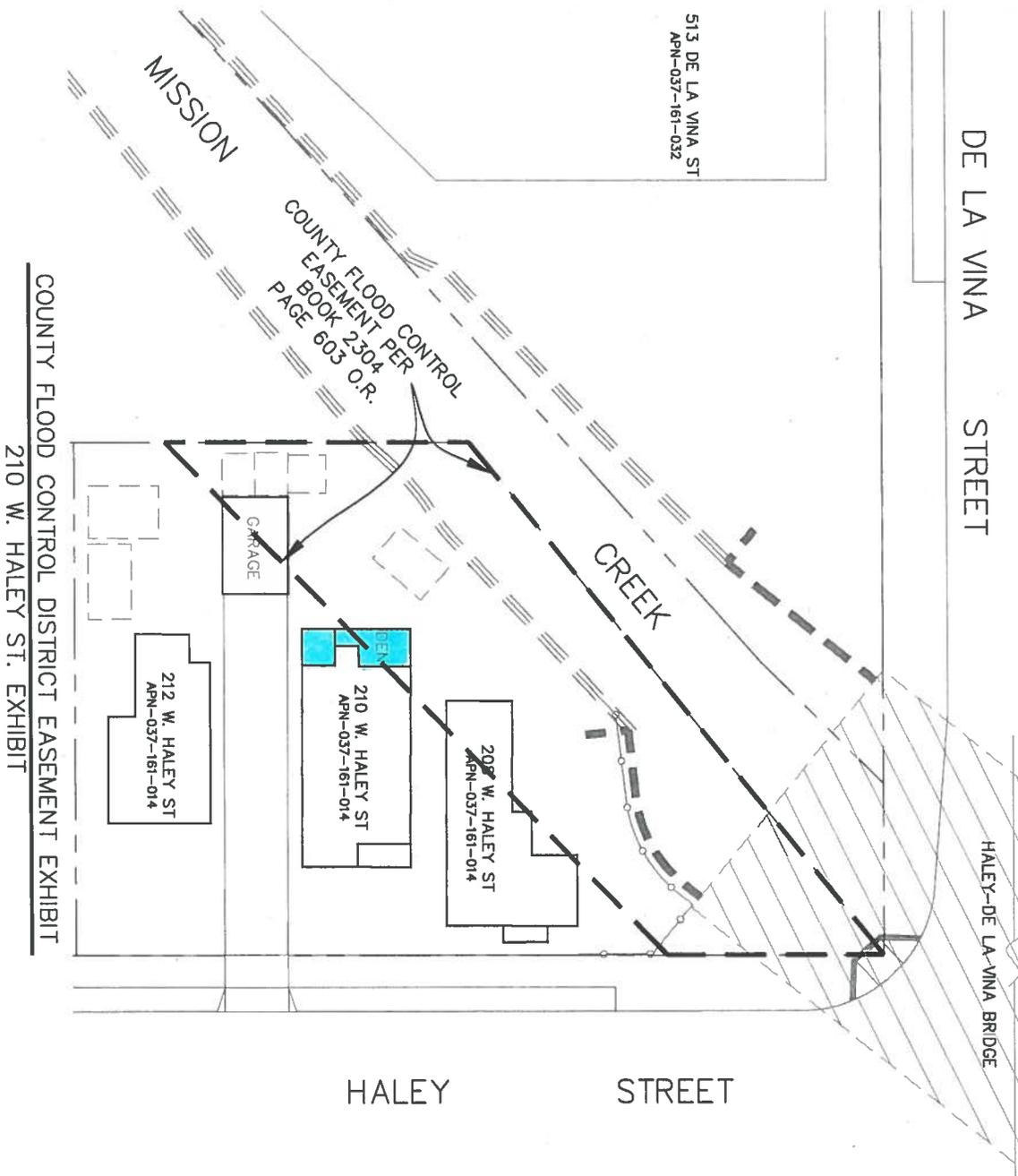
F. Development Standards. No development in the area subject to this Section shall be approved unless it is found that it will be consistent with the purposes set forth in Subsection 28.87.250.A.

1. The Chief of Building and Zoning or the Planning Commission on appeal shall consider the following in determining whether the development is consistent with Subsection 28.87.250.A:
 - a. That the proposed new development will not significantly reduce existing floodways, re-align stream beds or otherwise adversely affect other properties by increasing stream velocities or depths, or by diverting the flow, and that the proposed new development will be reasonably safe from flow-related erosion and will not cause flow-related erosion hazards or otherwise aggravate existing flow-related erosion hazards.
 - b. That proposed additions, alterations or improvements comply with Subparagraph 1.a above.
 - c. That proposed reconstruction of structures damaged by fire, flood or other calamities will comply with Subparagraph 1.a above, or be less nonconforming than the original structure and will not adversely affect other properties.

- d. The report, if any, of a qualified soils engineer or geologist and the recommendations of the Santa Barbara County Flood Control and Water Conservation District.
 - e. After review of that report, whether denial of approval would cause severe hardship or prohibit the reasonable development and use of the property.
2. The Chief of Building and Zoning, or the Planning Commission on appeal may consider the following factors as mitigating possible hazards which might otherwise result from such development:
 - a. Where the development is located on a bank of the creek which is sufficiently higher than the opposite bank to place the development outside a flood hazard area.
 - b. Where the creek bed adjacent to the development is sufficiently wide or the creek bank slope sufficiently gradual that the probability of flood hazard is reduced.
 - c. Where approved erosion or flood control facilities or devices have been installed in the creek bed adjacent to the development.
 - d. Where the ground level floor of the development is not used for human occupancy and has no solid walls.
 - e. Where the development is set on pilings so that the first occupied floor lies above the 100-year flood level, and such pilings are designed to minimize turbulence.
 3. The Chief of Building and Zoning or the Planning Commission on appeal may allow development into required setbacks if he makes the finding that the encroachment would not be necessary except for the development controls required by this section and that the modification of the required setback is necessary to secure an appropriate improvement on a lot, to prevent unreasonable hardship or to promote uniformity of improvement.

G. Procedures. The following procedures shall apply to developments in the area defined in Subsection 28.87.250.C:

1. All applicants shall receive an environmental assessment.
2. All applications shall be referred to the Santa Barbara County Flood Control and Water Conservation District and the City Public Works Department for review and comment.
3. Upon completion of the above review and comment, the proposed development shall be reviewed by the Chief of Building and Zoning as provided in Subsection 28.87.250.E. The Chief of Building and Zoning shall give the applicant and any other person requesting to be heard, an opportunity to submit oral and/or written comments to him prior to his decision. The Chief of Building and Zoning shall send by mail notice of his decision to the applicant. The decision of the Chief of Building and Zoning shall be final unless appealed by the applicant or any interested person to the Planning Commission within ten (10) days by the filing of a written appeal with the Department of Community Development. The Department of Community Development shall schedule the matter for a hearing by the Planning Commission and shall mail the applicant and any interested person requesting notice written notice of the hearing ten (10) days before the hearing. The decision of the Planning Commission shall be final. (Ord. 5459, 2008; Ord. 4056, 1980.)



LEGEND

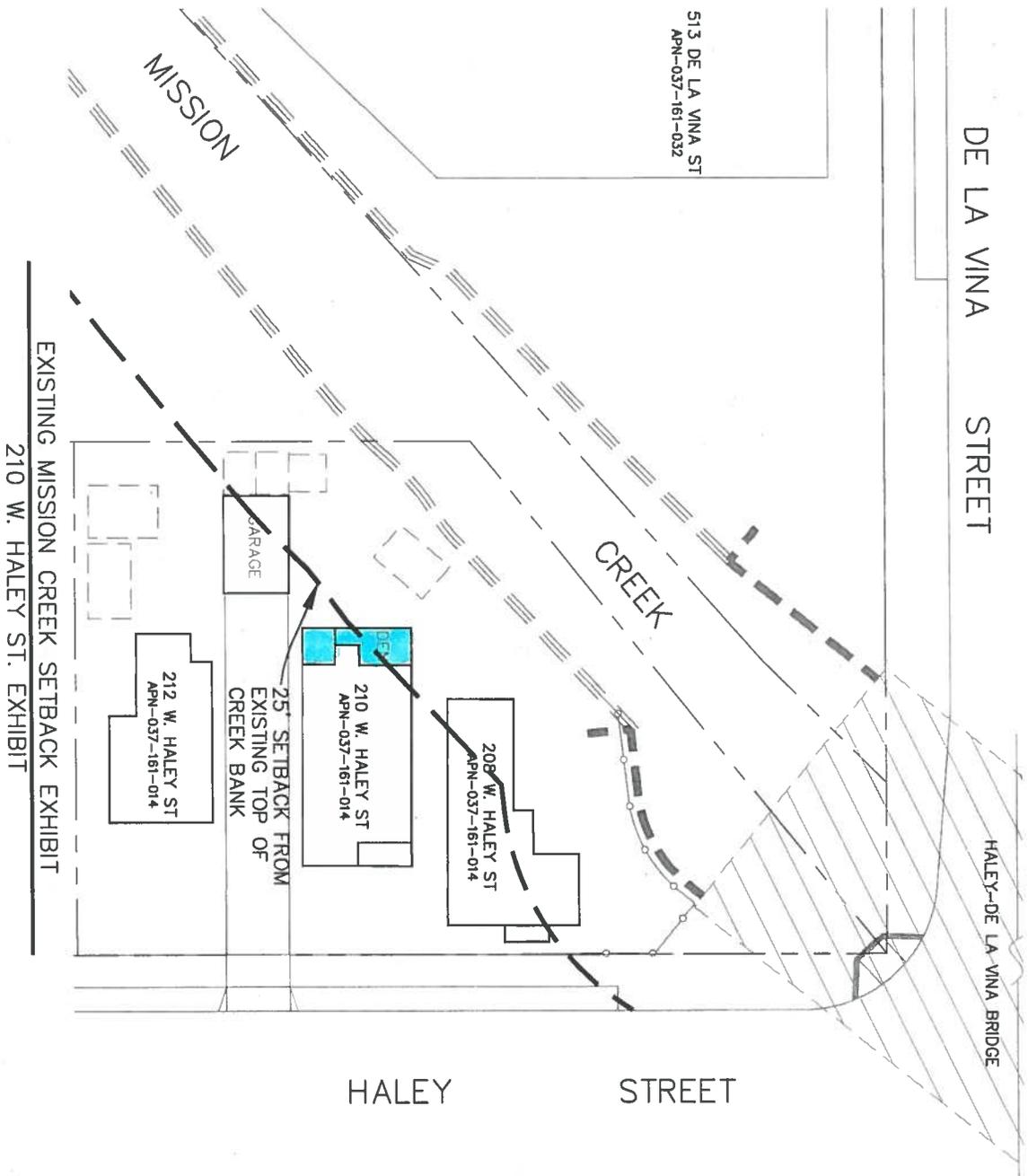
-  CITY OF SANTA BARBARA BRIDGE LIMITS
-  EXISTING RETAINING WALL (INSTALLED WITH HALEY-DE LA VINA BRIDGE REPLACEMENT)
-  EXISTING CREEK WALL
-  EXISTING FENCE



ALL LOCATIONS SHOWN ARE APPROXIMATE AND SHALL BE USED FOR EXHIBIT PURPOSES ONLY.

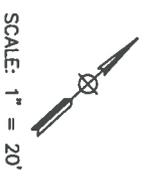
COUNTY FLOOD CONTROL DISTRICT EASEMENT EXHIBIT
210 W. HALEY ST. EXHIBIT

EXHIBIT D

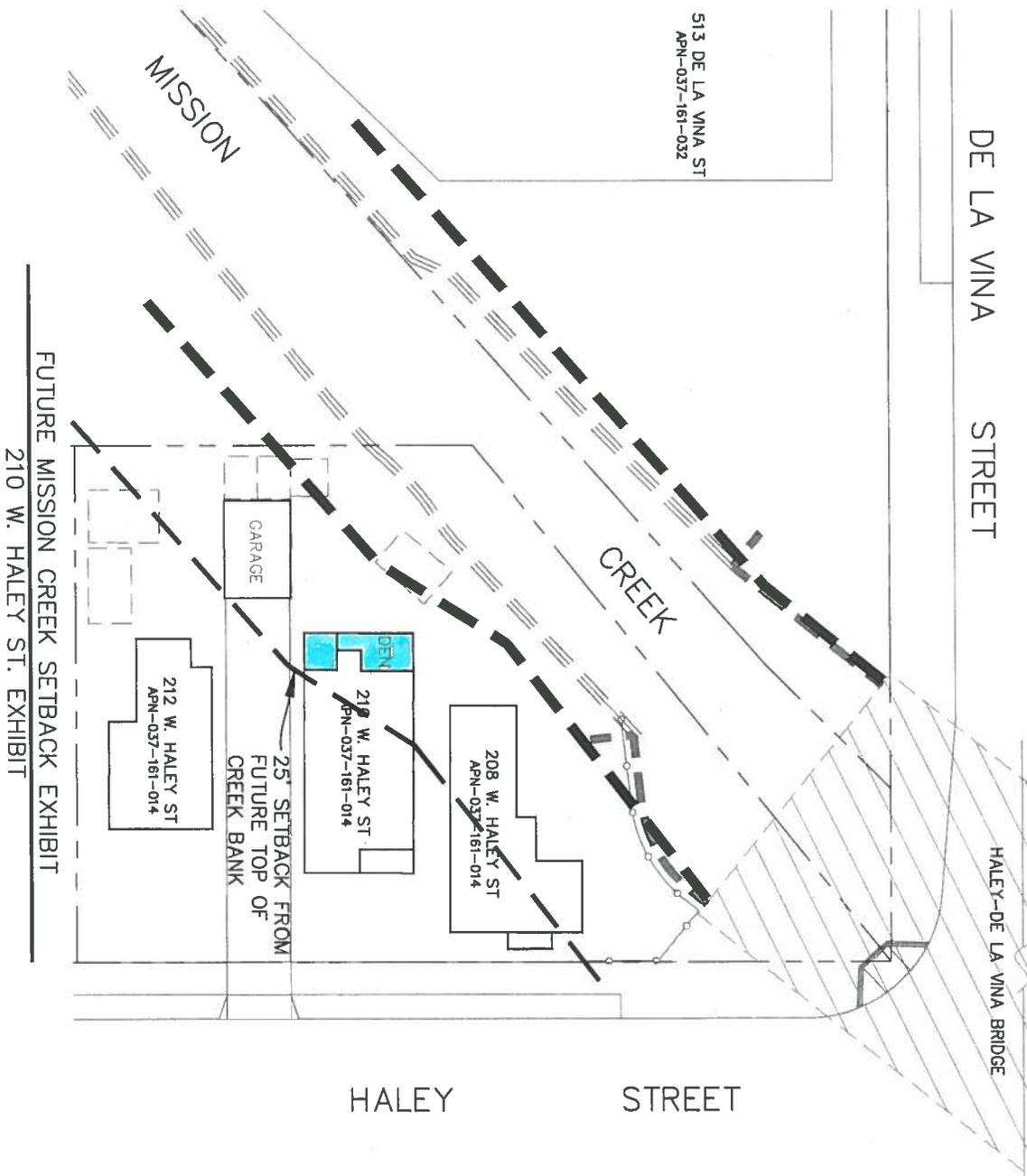


LEGEND

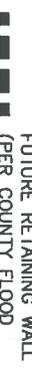
-  CITY OF SANTA BARBARA BRIDGE LIMITS
-  EXISTING RETAINING WALL (INSTALLED WITH HALEY-DE LA VINA BRIDGE REPLACEMENT)
-  EXISTING CREEK WALL
-  EXISTING FENCE

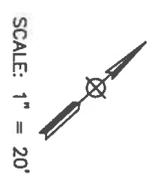


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LEGEND

-  CITY OF SANTA BARBARA BRIDGE LIMITS
-  FUTURE RETAINING WALL (PER COUNTY FLOOD CONTROL 65% PLANS)
-  EXISTING RETAINING WALL (INSTALLED WITH HALEY-DE LA VINA BRIDGE REPLACEMENT)
-  EXISTING CREEK WALL
-  EXISTING FENCE



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