

# RECORD PACKET COPY

W 17m

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

45 W. BROADWAY, STE. 380

P.O. BOX 1450

LONG BEACH, CA 90802-4416

(310) 590-5071

Filed: 12/2/96  
49th Day: 1/20/97  
180th Day: 5/31/97  
Staff: MV-LB  
Staff Report: 12/18/96  
Hearing Date: 1/7-10/97  
Commission Action:



### STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-96-249

APPLICANT: Jeff & Diane Heimstaedt

AGENT: Dobbie Schley & Associates

PROJECT LOCATION: 5503 Seashore Drive, Newport Beach, Orange County

PROJECT DESCRIPTION: Demolition of a single family residence and construction of a 2,601 square foot, 3 story, 29 feet high single family residence with an attached 375 square foot, two-car garage. Existing private development encroaches onto public right-of-way at the subject site.

Lot area:	2036 square feet
Building coverage:	1358 square feet
Pavement coverage:	528 square feet
Landscape coverage:	150 square feet
Parking spaces:	3
Zoning:	R-2
Plan designation:	Two Family Residential
Ht abv fin grade:	29 feet

LOCAL APPROVALS RECEIVED: Newport Beach Approval in Concept No. 1390-96

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits 5-93-114, 5-94-091, 5-95-010, and 5-96-106 (City of Newport Beach (street-ends)), 5-94-054 (Riegelsberger), 5-94-178 (RJH Properties), 5-94-280 (Hood); 5-96-218 (Collins); City of Newport Beach Certified Land Use Plan

### SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with two special conditions addressing the impacts of private development encroaching onto undeveloped sandy beach area located within a public right-of-way. The two special conditions recommended require: 1) that the applicant either submit evidence that an encroachment permit from the City has been applied for or remove the encroachments. The special condition further requires that if the encroachments are retained, approval of an amendment to this permit is required for any deviation from the encroachments described herein, and submission of a City approved encroachment permit prior to commencement of construction; and 2) acknowledgment that the City retains the right to revoke any encroachment permit, without cause.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development, located between the nearest public roadway and the shoreline, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 including the public access and recreation policies of Chapter 3, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. Special Conditions.

#### 1. Obtain Encroachment Permit or Removal of Encroachments

Prior to issuance of the coastal development permit the applicant shall submit, for the review and approval of the Executive Director, either:

a) Evidence that an encroachment permit has been applied for from the City of Newport Beach. In addition, prior to commencement of construction of the single family residence described herein, the applicant shall submit a copy of the valid, approved City encroachment permit for review and approval by the Executive Director. And, any deviations from the encroachments identified on the survey by James Kaviani (which was included in the coastal development permit application submittal on November 18, 1996 and was signed approval in concept by the City of Newport Beach Planning Department on October 9, 1996) shall require an amendment to this coastal development permit from the Coastal Commission or its successor agency.

or

b) Revised plans indicating removal of the existing private development that encroaches onto the public right-of-way. In addition, the applicant shall submit a written statement agreeing to the removal of the encroachments and that the encroachments shall be removed prior to commencement of construction of the single family residence. Encroachment removal shall occur consistent with the approved revised plans and written statement.

#### 2. City's Right to Revoke Encroachment Permit

Approval of this coastal development permit shall not restrict the City's right and ability to revoke, without cause, any approved City encroachment permits in order to construct public improvements within the Oceanfront public right-of-way.

### IV. Findings and Declarations.

#### A. Project Description

The applicants are proposing to demolish a single family residence and construct a 2,601 square foot, 3 story, 29 foot high single family residence with an attached 375 square foot, two-car garage. Existing private development encroaches onto public right-of-way adjacent to the subject site.

The public right-of-way adjacent to the subject site is the unimproved Oceanfront street dedication. With the exception of the existing encroachments, the right-of-way area is undeveloped sandy beach area. The existing private development that encroaches onto the public right-of-way consists of portions of a wood deck patio and low block wall. The wood deck patio encroachment is 30 feet long and the width ranges from 1.9 feet tapering to 0.7 feet. The low block wall is 27 feet long and does not exceed 3 feet in height. (See Exhibit C).

## B. Public Access/Recreation

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

### 1. Public Right-of-Way Encroachments

Existing development at the subject site includes patio encroachments onto the Oceanfront public right-of-way on the seaward side of the home. The applicant has not proposed to remove the encroachments. The remainder of the public right-of-way is currently unimproved and consists of sandy beach area. Thus, the patio encroachments reduce the amount of public sandy beach area available for public access and recreation.

The patio encroachments contribute to the cumulative adverse impact on beach use resulting from the various existing encroachments on the public right-of-way in the area. The cumulative adverse impact would make it difficult in the future for the City to improve the public right-of-way for lateral access purposes. For instance, the public right-of-way could be used to extend the City's concrete bikeway/walkway along the beach. Because the right-of-way is not improved in this area, the bike path currently runs inland along Seashore Drive in the vicinity of the subject site.

This cumulative impact is addressed by the mitigation plan contained in the City's Certified Land Use Plan ("LUP"). The mitigation plan requires that all patio encroachments in the area, including the subject encroachment, must be approved by encroachment permits issued by the City. The LUP policy applies to all encroachments, including those in existence at the time the Commission certified the LUP amendment. The fees generated by these encroachment permits are then used to fund the improvements of street-ends in the area, including the provision of two metered public parking spaces per street-end. With this mitigation plan, the Commission found the LUP policies allowing patio encroachments to be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

Although the patio encroachments currently exist, the City has not required an encroachment permit for the subject site in the past. City staff have indicated that an encroachment permit was not required due to the relatively minor nature of the encroachment area involved. However, the LUP policy which requires an encroachment permit applies to all encroachments. The LUP policy establishes a fee for encroachments based on the extent of encroachment. The

fee scale begins with encroachments from zero to two feet. Clearly, this indicates that encroachments of any size require an encroachment permit and payment of the corresponding fee. Without compliance with this LUP policy, the Commission could not find that the adverse impacts created by the encroachment are adequately mitigated.

Therefore, the permit is being conditioned to require the applicant to either obtain an encroachment permit or to remove the encroachments. If the applicant opts to retain the encroachments, evidence that an encroachment permit has been applied for must be submitted prior to issuance of the coastal development permit. In addition, if the applicant opts to retain the encroachments, the applicant is required to submit the valid, paid City encroachment permit pursuant to the LUP mitigation program, prior to commencement of construction of the proposed single family residence.

Further, if the applicant chooses to retain the encroachments, the permit is also being conditioned to require that future deviations from the approved encroachments require an amendment to this permit. This would allow the Commission to evaluate future deviations for adverse public access and recreation impacts. Finally, the permit is being conditioned to notify the applicant that issuance of the coastal development permit does not restrict the City's right to revoke its encroachment permit, without cause, in order to construct public access and recreation improvements in the public right-of-way. This would ensure future opportunities for public access and recreation.

If the encroachments are removed, adverse cumulative impacts to public access will be eliminated. Alternately, purchase of the encroachment permit would mitigate the adverse impacts on public access and recreation resulting from the encroachments by funding street-end improvements to enhance vertical access in the area.

The Commission previously approved coastal development permits 5-94-054 (Riegelsberger), 5-94-178 (RJH Properties), 5-94-280 (Hood), and 5-96-218 (Collins) which incorporated similar conditions to minimize the adverse impacts to public access resulting from similar patio encroachments onto the Oceanfront public right-of-way in the area. The Commission finds that, only as conditioned, are the patio encroachments onto the Oceanfront public right-of-way consistent with the public access and recreation policies of the Coastal Act.

## 2. Development on Private Property

Section 30212 of the Coastal Act states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or

private association agrees to accept responsibility for maintenance and liability of the accessway.

The subject site is located between the nearest public roadway and the shoreline. A public access dedication can be required pursuant to Section 30212 of the Coastal Act only if it can be shown that the development, either individually or cumulatively, directly impacts physical public access, e.g. it impacts historic public use or precludes use of public trust lands. The proposed single-family residence would not be an intensification of use over the previously existing single-family residence on-site. The proposed project would provide three parking spaces, consistent with the Commission's regularly used standard of two spaces per residential dwelling unit. The development as proposed on private property would not result in direct adverse impacts, either individually or cumulatively, on physical public access. Further, vertical access to the beach exists in the immediate vicinity via the 55th Street and 56th Street street-ends. Therefore, the Commission finds that the portion of the proposed development located entirely on private property is consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

#### C. Local Coastal Program

Section 30604(a) of the Coastal Act provides that, prior to certification of a local government's local coastal program ("LCP"), the Commission shall issue a coastal development permit if the permitted development would not prejudice the ability of the local government to prepare an LCP that is in conformity with the Chapter 3 policies of the Coastal Act. The City of Newport Beach Land Use Plan ("LUP") component of its LCP was originally certified on May 19, 1982. However, the City has not yet prepared the LCP implementation plan.

On January 9, 1991, the Commission denied as submitted City of Newport Beach LUP Amendment 90-1 to establish policies regarding encroachments of private development onto public rights-of-way along the beaches of West Newport and the Balboa Peninsula. On June 11, 1991, the Commission approved the LUP amendment with suggested modifications. The Commission found the amendment as modified to be consistent with the Chapter 3 policies of the Coastal Act.

A public right-of-way runs between private property and the beach along West Newport and the Balboa Peninsula. Portions of the right-of-way are developed with a public bikeway/walkway which provides public access and recreation opportunities. However, in West Newport (including in the vicinity of the subject site) and the eastern end of the Balboa Peninsula, the public right-of-way is unimproved. Because the public right-of-way in these areas is not physically improved and instead is sandy beach area, there are no public improvements to serve as a barrier preventing private encroachment onto the public beach.

There had been a history of patios, decks, and landscaping which had been built onto the public right-of-way in a hodge-podge manner. The City submitted LUP Amendment 90-1 as a way to address these encroachments. The LUP encroachment policies include encroachment zones of varying depth out onto the public right-of-way and a three foot vertical height limit on structures allowed in these zones. The LUP policies prohibit encroachments which would interfere with access and which would be so significant in nature as to require the issuance of a City building permit.

The LUP amendment as certified by the Commission established a program to mitigate the adverse impacts of the encroachments by using encroachment permit fees to fund street-end improvements. The street-end improvements enhance public access to the beach in the areas of the encroachment zones. Coastal Development Permits 5-93-114, 5-94-091, 5-95-010, and 5-96-106 (City of Newport Beach) approved such street-end improvements. Thus, the City has begun to implement this mitigation program.

LUP Encroachment Policy 6B states that property owners waive and give up any right to contest the validity of the unimproved public right-of-way on which the encroachments are located. Policy 6B further provides that City encroachment permits are revokable, without cause, if the City proposes to construct public improvements on the public right-of-way in the future.

The Commission found the LUP Encroachment policies as modified to be consistent with Sections 30210, 30211, 30212, and 30214 of the Coastal Act. The proposed development, as conditioned, conforms to the LUP Encroachment policies and the public access policies of Chapter 3 of the Coastal Act. Therefore, the Commission finds that the proposed development, as conditioned, will not prejudice the ability of the City of Newport Beach to prepare an LCP in conformity with the Chapter 3 policies of the Coastal Act.

D. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the public access and recreation policies of the Coastal Act. Mitigation measures include conformance with the standards of the City's LUP encroachment policies and, if the encroachments are retained, submission of an approved City encroachment permit, the fees from which are used to fund street-end improvements to enhance public access. As conditioned, the proposed project will minimize all adverse impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

In addition, development previously existed on the site. The proposed development would not result in an intensification of use of the site. The proposed project would be infill development in an urbanized area. All infrastructure necessary to serve the proposed project exists in the area. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

RECEIVED

5-96-249

NOV

5503 SEASHORE DRIVE



31

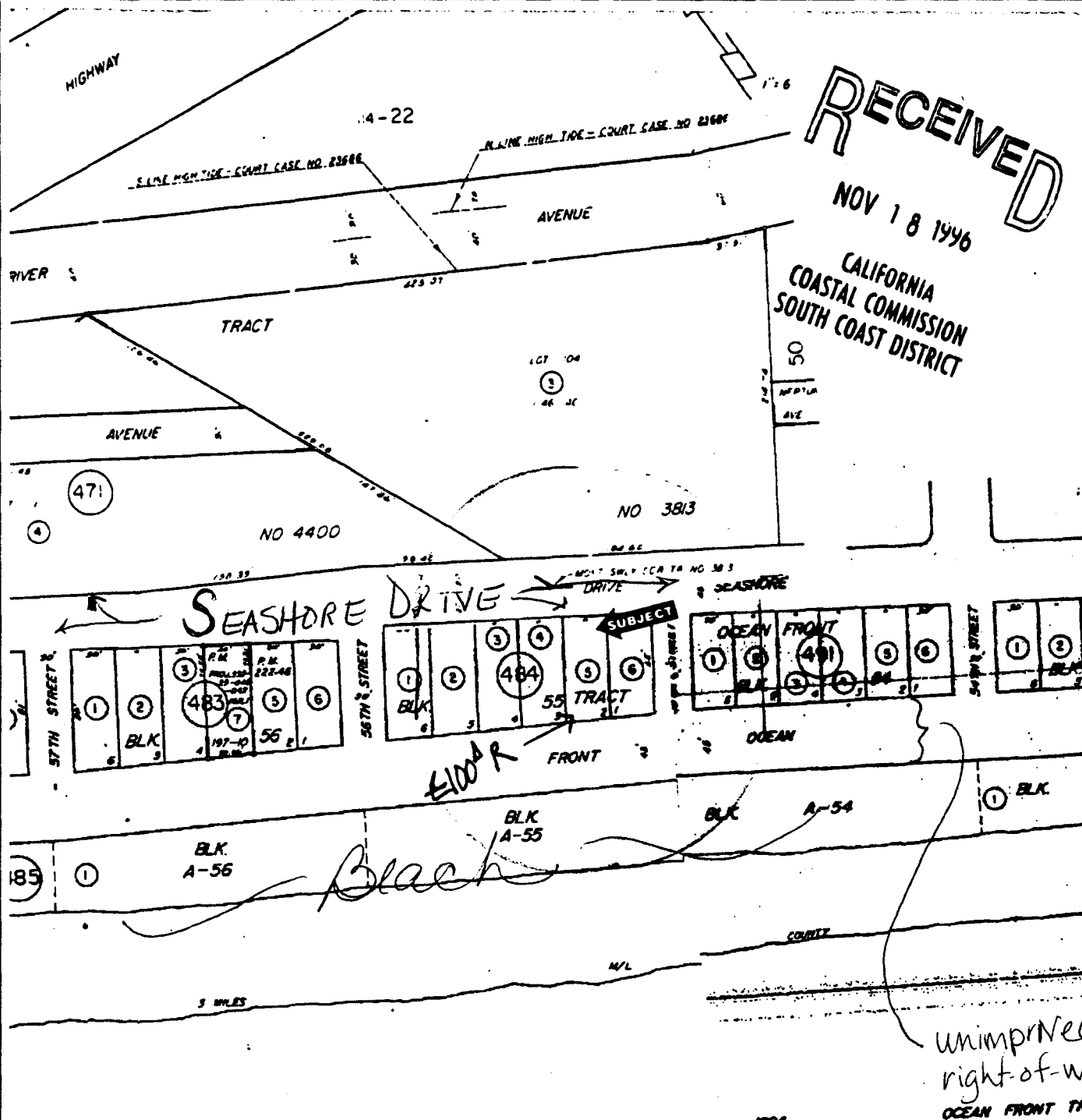
SEE MAP 33

5-96-249

RECEIVED

NOV 18 1996

CALIFORNIA  
COASTAL COMMISSION  
SOUTH COAST DISTRICT



M 4-12  
M 197-10

NOTE - ASSESSOR'S BLOCK &  
PARCEL NUMBERS  
SHOWN IN CIRCLES

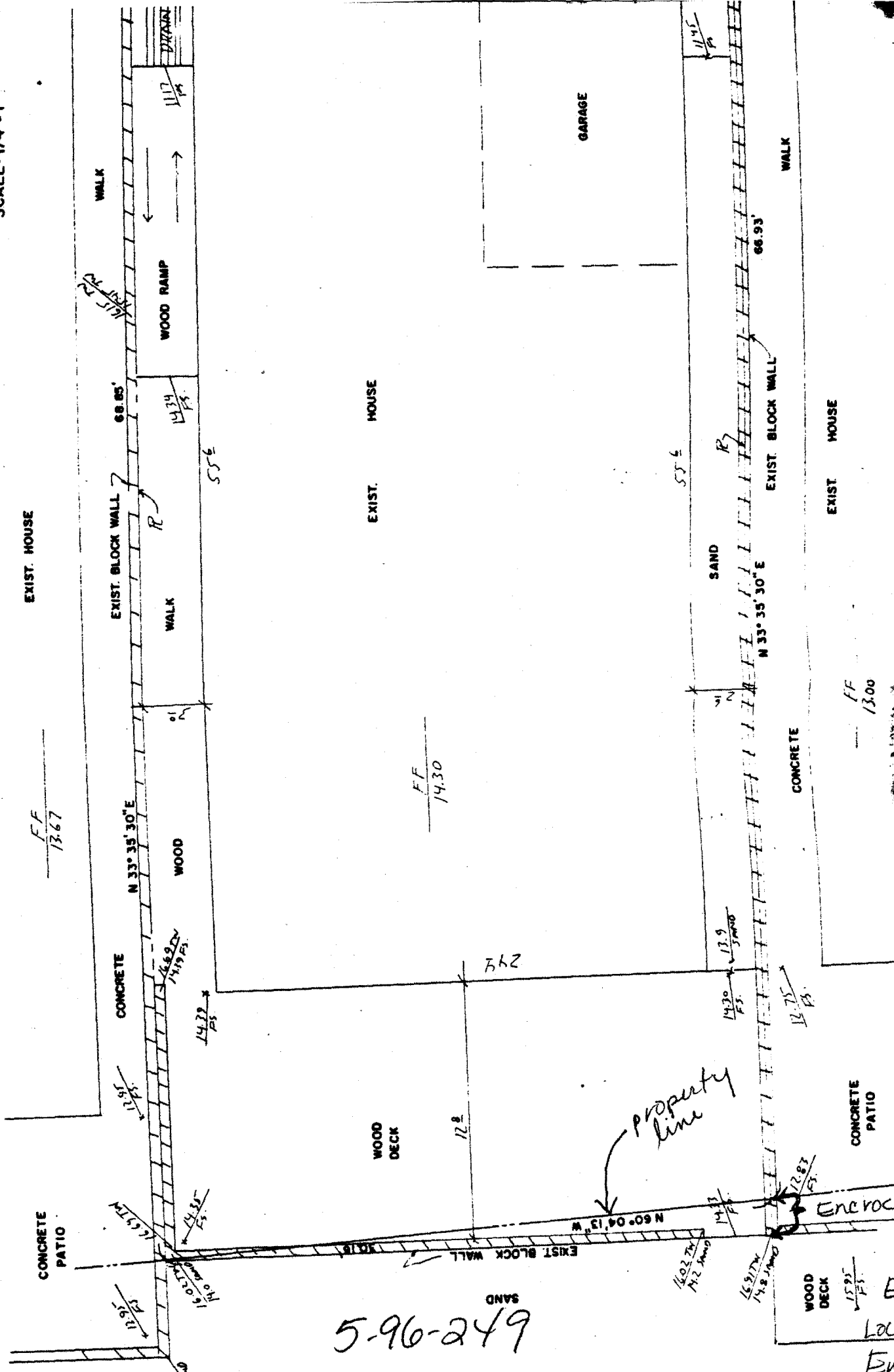
ASSESSOR'S MAP  
BOOK 424 PAGE 48  
COUNTY OF ORANGE

Ownership Map

5-96-249

Exhibit B.  
Location of  
Unimproved ROW

SCALE: 1/4" = 1'



5-96-249

Property line

Encroachments  
Exhibit  
Location of  
Encroachm

NOTE:

ALL REQUIRED SETBACK  
+ DIMENSIONS ARE TO  
THE FACE OF FINISH MATERIAL.

5-96-249

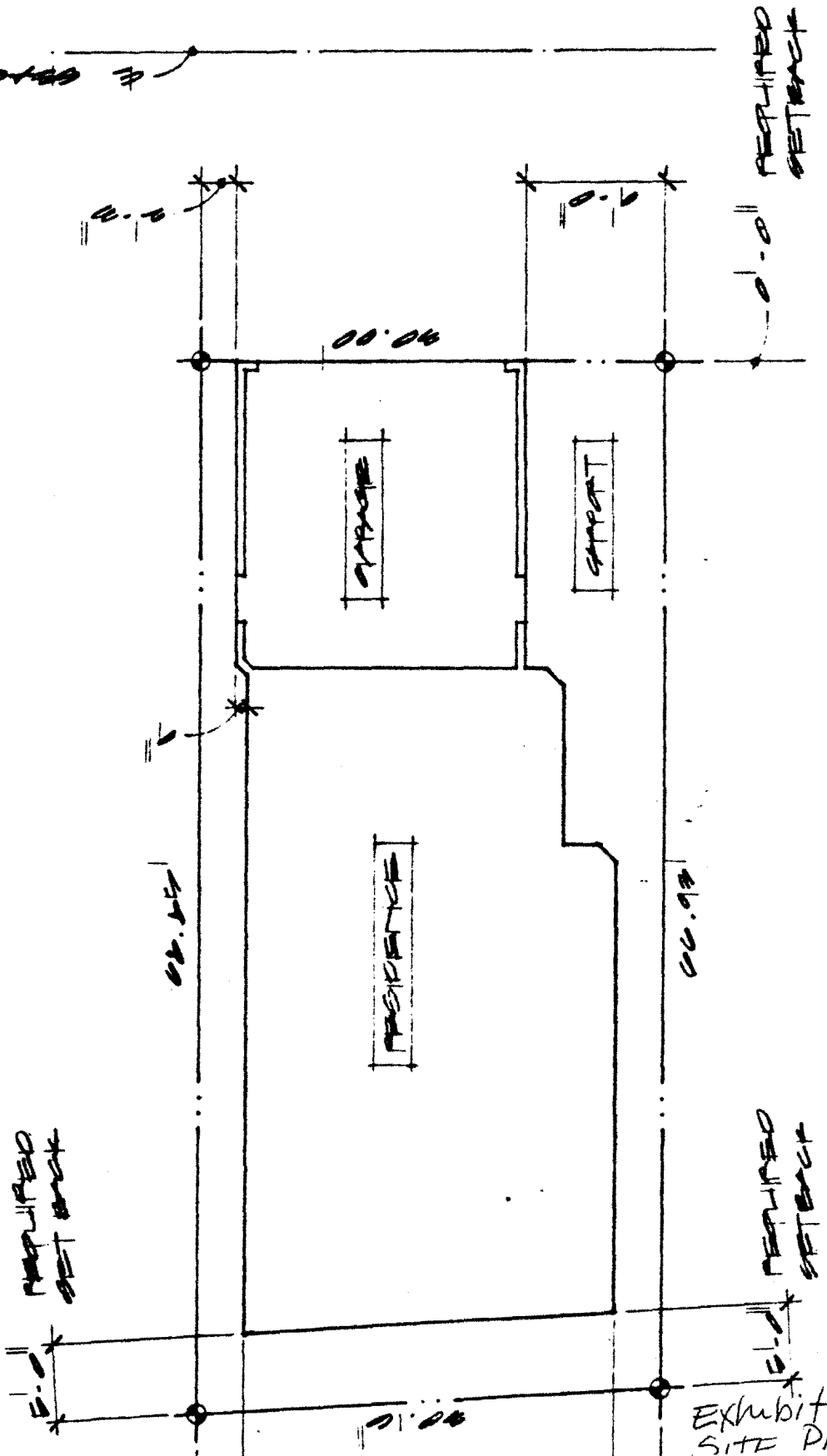
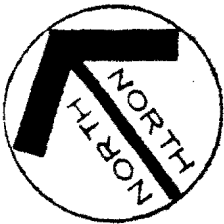


Exhibit D  
SITE PLAN

DOBBIE / SCHLEY  
& ASSOCIATES  
BSA