




**CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT**

TO: Parking and Public Improvements Commission

FROM: Laurie B. Jester, Acting Director of Community Development 
Nhung Madrid, Management Analyst 

BY: Angelica Ochoa, Assistant Planner 

DATE: October 28, 2010

SUBJECT: Consideration of an Encroachment Permit Appeal to Allow Existing Trees and Landscaping Over 42" in Height on the Walkstreet to Remain- 619 Highland Avenue & 233 7th Street

RECOMMENDATION:

Staff recommends that the Commission:

- A) **DENY** the request at 619 Highland Avenue to maintain and keep all landscaping in the public right of way, on 7th Street (walkstreet), over the required maximum 42 inches height limit, and,
- B) **APPROVE** all improvements and landscaping in the public right of way at 233 7th Street.

BACKGROUND:

A complaint about the trees and tall landscaping was received in November and December of 2009 by the property owners across Highland Avenue, to the east, at 300 and 305 7th Street. Specifically, the complaint focused on the existing landscaping being over the maximum height limit of 42" in the walkstreet at 619 Highland Avenue and 233 7th Street and the impact on ocean and scenic views (Exhibit A). The property at 619 Highland Avenue has an existing Eucalyptus tree and overheight landscaping in the walkstreet that exceeds the 42" maximum height limit. The property at 233 7th Street has existing Palm trees and overheight landscaping in the walkstreet that exceeds the 42" maximum height limit as well. The complaining parties stated that the landscaping directly impacts their views. Per Section 7.36.150 B.3 of the encroachment standards, if a resident view is impaired, the property owner shall be directed to trim down their landscaping to the required maximum height of 42".

The property owner at 619 Highland Avenue has an encroachment permit from May 1979 for Pine trees and a low picket fence only (Exhibit B). There is no encroachment permit for the Eucalyptus tree and over 42" high landscaping in the walkstreet. The property owner at 233 7th Street has no encroachment permit for the Palm trees, over 42" high landscaping, walls or any

improvements in the walkstreet, although, the prior owner had applied for encroachment permits for low landscaping walls and other improvements. Per Section 7.36.030 of the Manhattan Beach Municipal Code, an encroachment permit is required for improvements in the public right of way. However, both property owners felt that the existing landscaping was planted before the current regulations were in place and that they should not be subject to these regulations.

Thus, the property owners, Sabine and Werner Birkenfeld, at 619 Highland Avenue and property owner, John Ziskin at 233 7th Street filed an encroachment appeal (Exhibit C) on June 9, 2010 requesting to keep all landscaping on the walkstreet (7th Street) over the required maximum 42" height limit. Per Code Section 7.36.080, the property owner may appeal the decision to the City Council with a recommendation from the Parking and Public Improvements Commission.

DISCUSSION:

Staff met with the subject property owners at 619 Highland Avenue and 233 7th Street and explained the concerns from the complaining parties at 300 and 305 7th Street. The property owners stated that the existing landscaping was planted before the 42" height limit was enforced for walkstreets and felt they should be allowed to keep it. Additionally, staff met with the complaining parties of 300 and 305 7th Street to try and resolve the concerned issues. The complaining parties agreed that if the property owner at 619 Highland Avenue cut down all landscaping to the required 42" height limit and that the property owner at 233 7th Street trimmed and maintained the Palm trees, their views would no longer be affected.

However, the subject property owners felt they should not be subject to the walkstreet regulations since the trees and landscaping were planted before these current (2003) regulations were in place and for this reason, an appeal was filed. Since the property owner at 619 Highland Avenue had an encroachment permit from 1979 for the Pine trees and low picket fence, staff felt that these improvements could remain, however, all other landscaping must comply with the current encroachment standards.

The property at 233 7th Street has an encroachment permit that was approved in 1989 for the previous owner for a patio, sidewalk, steps, 32" high planter wall, and landscaping not to exceed 42" high, but the permit was never finalized. A revised encroachment permit was applied for in 2000 for landscaping, planter walls, paved patio and planters, but it was never approved. Since the current improvements at 233 7th Street do not impact any views and the complaining parties requested that the current owner only maintain the Palm trees, staff feels that all improvements may remain. Staff is requiring that the current owner at 233 7th Street obtain an encroachment permit in accordance with the requirements of Section 7.36.030.

Encroachment Regulations

Encroachment standards have historically been enforced largely on a complaint basis. In this case, a complaint was filed due to obstruction of views. Specifically, the over grown and over height Eucalyptus tree at 619 Highland Avenue and over height Palm tree at 233 7th Street directly impact the views of the property owners to the east (across Highland Avenue) at 300 and

305 7th Street. According to the complaining parties, if the property owner at 233 7th Street kept his Palm tree trimmed and maintained, the issue would be resolved. However, the Eucalyptus tree would require removal in order to achieve an open view.

Encroachment Permit regulations are contained in Chapter 7.36 of the Manhattan Beach Municipal Code. Specifically, walkstreet standards, as stated in MBMC Section 7.36.150 B.3 (Exhibit D), "Landscaping is permitted subject to approval of a landscape plan submitted with an encroachment permit. Landscaping shall cover a minimum of one-third of the encroachment area and shall not project over or onto the public walkway. To promote visual openness and conserve scenic vistas, the height of landscape plantings shall not exceed forty-two inches (42") as measured from the adjacent walkway".

The encroachment code states that if a view is impaired (Section 7.36.150 A6 and 7.36.030, Exhibit D), the Director of Community Development shall direct the owner to cut the landscaping in the encroachment area to a maximum of 42" high. In regards to the property at 619 Highland, staff feels that the existing Eucalyptus tree and other landscaping, not currently permitted, is directly impairing the resident views from the complaining parties. Staff does not feel that the Palm trees at 233 7th Street are a substantial impairment of view but the property owner is required to obtain an encroachment permit and the Palm trees be kept trimmed and maintained. Also, depending on the outcome of this issue, other properties along 7th Street with walkstreet landscaping over the allowed maximum height of 42" may require compliance and code enforcement action.

Therefore, the property owner at 619 Highland Avenue must remove the Eucalyptus tree and bring all landscaping into conformance at a maximum 42" high. The property owner at 233 7th Street shall obtain an encroachment permit and may maintain the Palm trees in the walkstreet, if they are kept trimmed.

Public Input

A notice of the Parking and Public Improvement Commission meeting was mailed to all owners of record within a 300 foot radius from the subject encroachment property (Attachment E), in accordance with Section 7.36.080 of the MBMC. Staff received three (3) e-mail comments, two opposing the over height trees and landscaping and one in favor (Attachment F).

CONCLUSION:

The walkstreet standards allow only landscaping limited to a maximum height of 42 inches. The subject properties (619 Highland Avenue and 233 7th Street) landscaping is not consistent with the walkstreet standards and a complaint was filed. Since the landscaping of the subject properties impairs neighbors' views and the intent of the 42" high landscaping in the encroachment area is to keep a low and open view, the landscaping at 619 Highland Avenue must comply with the walkstreet regulations. Since the current improvements at 233 7th Street do not impair any views, staff is requiring that the current owner obtain an encroachment permit.

Attachments:

- A. Complaint Letter and Photos from Property Owner at 300 7th Street dated October 18, 2010
- B. Public Works Commission staff report – Encroachment Permit appeal May 25, 1979 - 619 Highland Avenue
- C. Encroachment Appeal dated June 9, 2010 - 619 Highland Avenue and 233 7th Street
- D. Chapter 7.36 MBMC-excerpts (walkstreet standards 7.36.150 B.3, 7.36.150 A6, 7.36.030)
- E. Public Notice dated October 1, 2010
- F. E-mail Comments dated October 13, 2010 and October 18, 2010
- G. Vicinity Map

cc: Sabine and Werner Birkenfeld, property owners of 619 Highland Avenue
John Ziskin, property owner of 233 7th Street
Donna Howell, property owner of 300 7th Street
Scott and Susie Kim, property owners of 305 7th Street

October 18, 2010

City Council Members
Manhattan Beach

RE: Violation of Manhattan Beach Municipal Code Section 7.36.150

Dear City Council Members:

I am the owner of the property located at 300 7th Street. I have been a resident of Manhattan Beach for over 40 years and was hoping to someday build a retirement home with an ocean view for myself and my family, so I bought the property located at the corner of 7th and Highland.

Unfortunately, our ocean view has been entirely blocked by a tree located at 619 Highland. The tree is in the neighbor's front yard area and is presently over 40 feet tall but continuing to grow (please see the enclosed photos). The tree violates Manhattan Beach Municipal Code Section 7.36.150 ("City Code") as its height far exceeds the mandated 42-inch limitation. Our neighbor has indicated that she is unwilling to prune the tree to conform to the City Code nor to a height that would allow us to enjoy our ocean view.

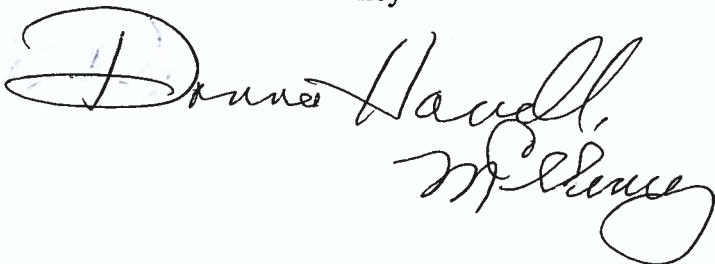
The City Code recognizes that ocean views are special and should be preserved by requiring that "obstructions to a neighboring resident's scenic views shall be avoided." As a realtor for over 33 years in Manhattan Beach, I have relayed the City Code to numerous clients concerned about whether their ocean views could be blocked by a tree or other obstruction. Many people have relied on the Code and trusted that it applies to equally to everyone. They have demonstrated their reliance by be willing to pay more for ocean views. I conservatively estimate that the ocean view contributes at least \$500,000 in value to my property. If the Council were to find that the City Code should be enforced on a selective basis and not to my neighbor's property, I would no longer be comfortable telling my clients that their views cannot be blocked by a tree that violates City Code.

While in most cases I believe trees add to a community as well as contribute to the environment. However, the tree at issue is a eucalyptus species, which is actually an invasive species in California that displaces native vegetation, in addition to emitting biogenic emissions. As a result, I do not believe the tree is beneficial to our environmental and will have an arborist testify to that fact if necessary.

In 2009, the City Council recognized the importance of protecting trees by enacting a new tree ordinance. However, the Council also recognized the importance of preserving ocean views and determined that the tree ordinance would not apply to Area 3, where our property is located. We sincerely hope the City Council continues to balance the interests of our community and administer the Municipal Code in a fair manner.

Sincerely,

Donna Howell McWhinney



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donnasells@hotmail.com

Inbox (9)

Junk

Drafts

Sent

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Messenger ▾ | Op

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Thoo

Encroachment violation

From: **Jacqueline Harris** (jharris@citymb.info)

Sent: Fri 1/22/10 11:34 AM

To: donnasells@hotmail.com

7.36.150 Encroachment standards.

A. General Standards:

6. Obstructions to neighboring resident's scenic views shall be avoided.

B. Walk Street Standards:

3. Landscaping is permitted subject to approval of a landscape plan submitted with an Encroachment Permit. Landscaping shall cover a minimum of one-third of the encroachment area and shall not project over or onto the public walkway. To promote visual openness and conserve scenic vistas, the height of landscape plantings shall not exceed forty-two inches (42") as measured from the adjacent public walkway.

Landscape plantings shall be maintained in substantial conformance with the approved plan. If it is determined that a resident view is impaired, the Director of Community Development shall direct the owner of the property adjacent to the encroachment landscaping to trim the over-height landscaping to forty-two inches (42") maximum. Should the property owner fail to act, the Director of Community Development may cause the landscaping to be trimmed, with the expense borne by the property owner. The owner of the property who receives such notice to trim may appeal the decision of the Director of Community Development pursuant to Section 7.36.070 of this chapter.

Jacqueline Harris
Code Enforcement Officer
City of Manhattan Beach
310-802-5538

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Reply Reply all Forward | Delete |

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SAV**

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10-17-2010



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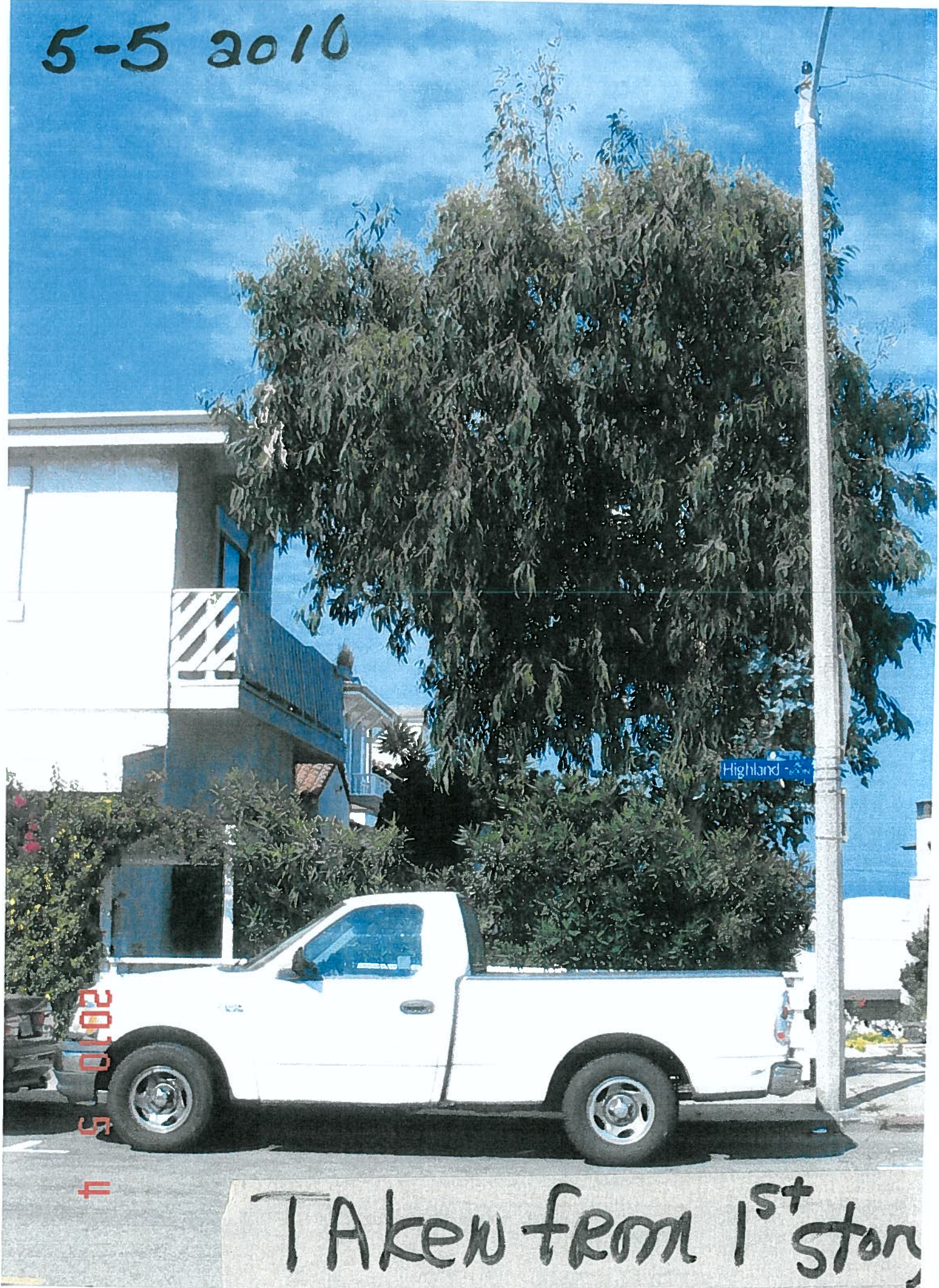
Growing on wall street

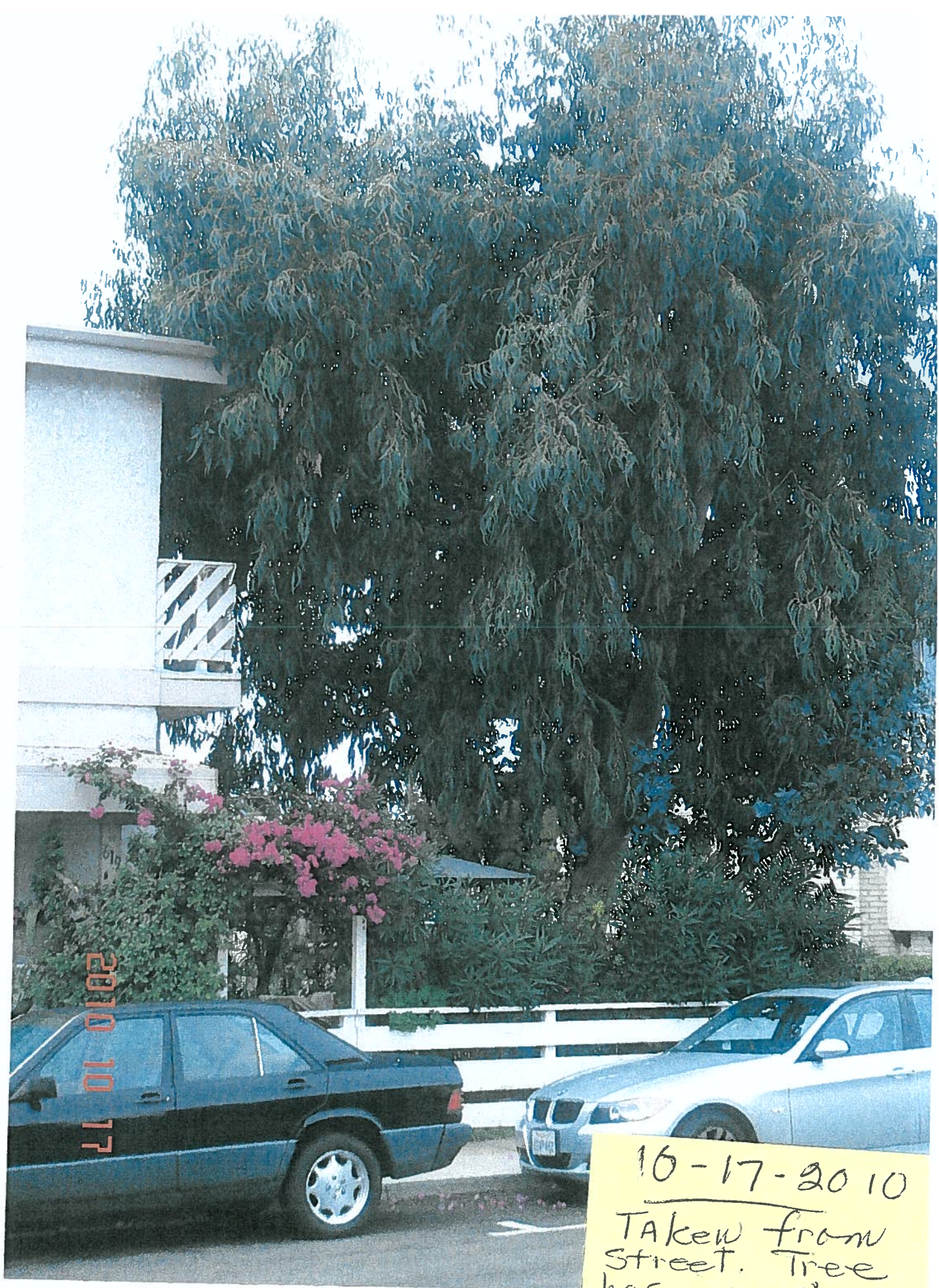
5-5 2010

Highland

2010
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4

TAKEN FROM 1ST STORY





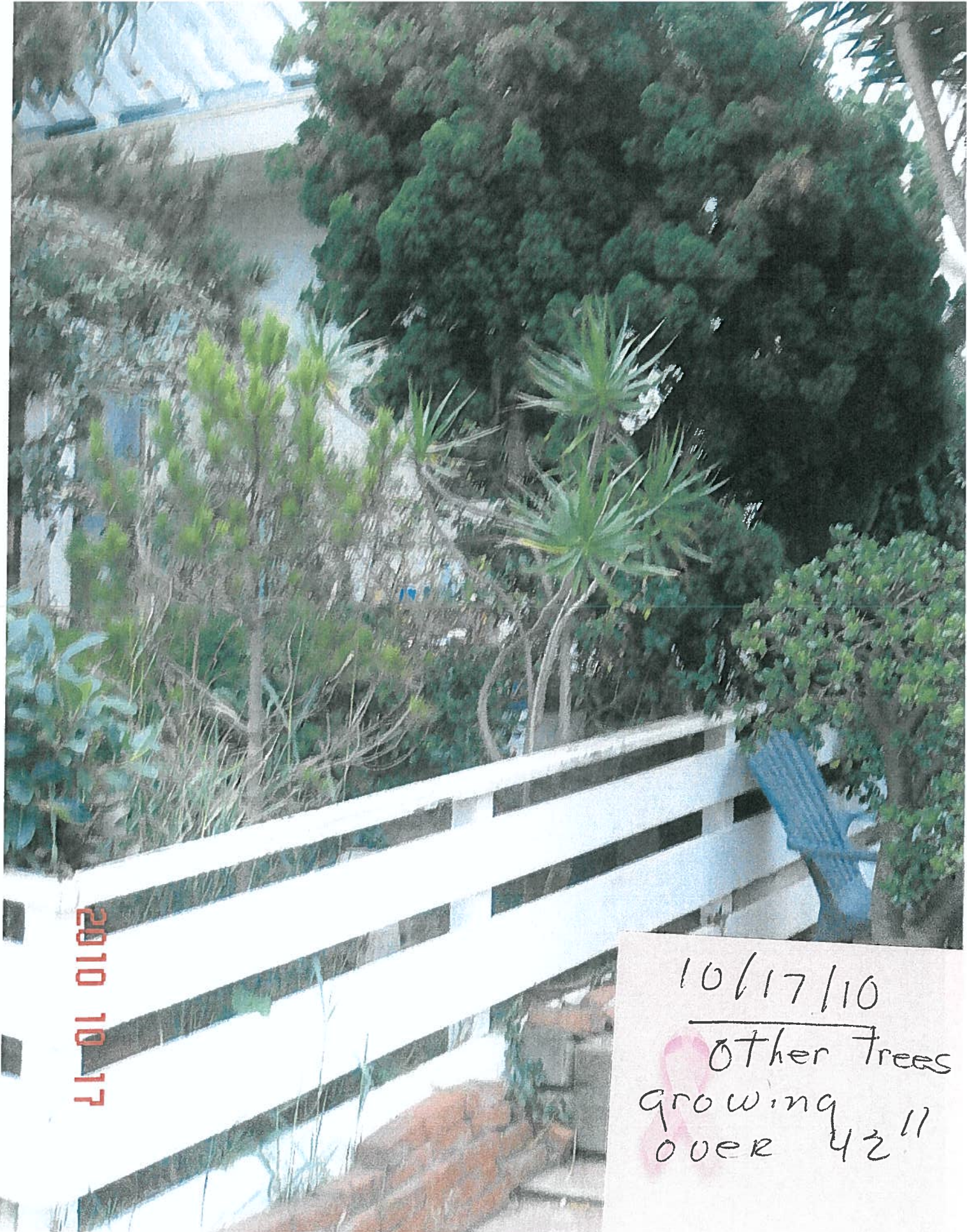
2010 10 17

16-17-2010
TAKEN FROM
STREET. TREE
HAS GROWN
SINCE LAST PICTURE



2010 3 2

front yard-




2010 10 17

10/17/10

Other trees
growing
over 42''

10-17-2010

 walkstreet
growth

2010 10 17

10-17-2010



2010 10 17




Growing on wall street



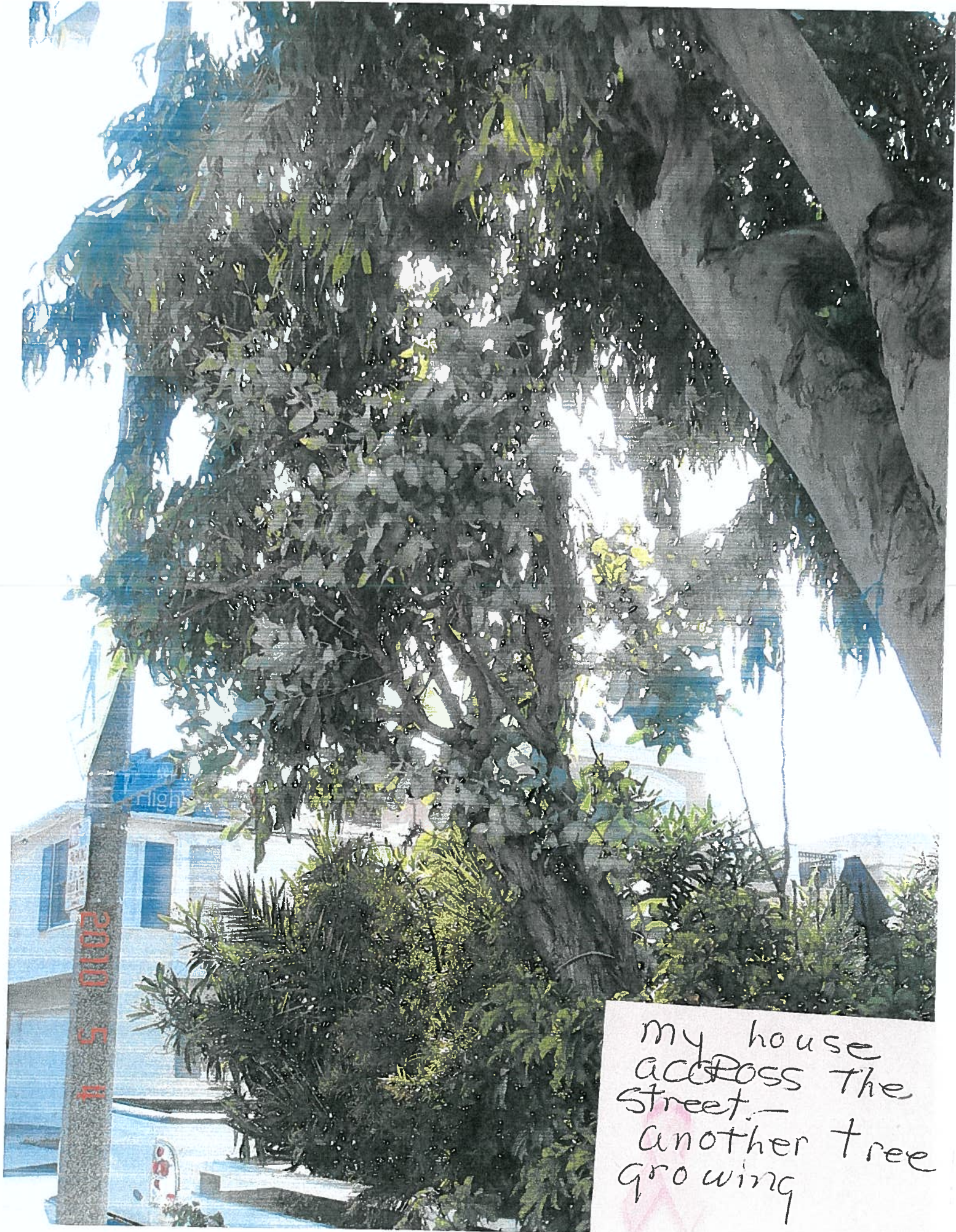
2010 3 2

front yard-

10-17-2010

 walkstreet
growth

2010 10 17



my house
across the
street -
another tree
growing



2010 3 2

New tree

2-20-2010



2nd Story View



2010 10 17

TAKEN 10/17/10
growth on
walkstreet.

2-20-2010



Taken from 2nd story

FRONT Yard

2016

5

4





INVASIVE SPECIES
70 FT - 90 FT TALL



2010 5 4

of encroachment Area

3-2-10



More trees



3010
3
2

2-10-16

More trees grow.



taken from
walk street
on west side
of property.
Several trees have
been planted.

-Facing walk street
landscaped growing
into street.

2-10-2010



MY VIEW




NO PARKING
8:00 AM - 5:00 PM
MON-FRI

High

2010 5 4

5-5-2010
New Growth



Other growth
invading
Side walk on
Highland. -

2010 10 17

25 May 1979

To: Public Works Commission

From: Thomas M. Martinsen, Jr., Director of Public Works

By: Michael Lowry, Engineer Intern *mel*

Subject: Encroachment Permit Appeal - 619 Highland Avenue

BACKGROUND

Werner and Sabine Birkenfeld, owners of the residence at 619 Highland Avenue, have requested Public Works Commission review of a design for proposed improvements to be constructed on the Seventh Street right-of-way adjacent to their property. This area is presently landscaped with a number of pine trees and a low picket fence which meets the criteria for walk street encroachments.

DISCUSSION

The proposed design would establish a strictly private usage of a portion of the right-of-way by the installation of a five-foot high fence, wooden deck, and hot tub, none of which are permitted by the encroachment guidelines. The Birkenfelds have been advised by the Public Works Department staff that approval of this design would be an unprecedented departure from the encroachment regulations adopted by the City Council and that the staff feels there are no special circumstances, as required by Section 7-9.02 of the Municipal Code, which would warrant favorable consideration of this proposal. The Birkenfelds have appealed the staff evaluation.

ALTERNATIVES

The Public Works Commission may:

- (1) Recommend that the encroachment permit appeal be denied.
- (2) Recommend that the design or elements of it be approved, subject to standard procedural requirements, even though they are not in conformance with the adopted guidelines.

RECOMMENDATION

It is recommended that the encroachment permit appeal be denied and that the applicants be permitted to resubmit a revised design, without prejudice, in conformance with the guidelines.

bam

EXHIBIT
B

Aug 26



PARKING AND PUBLIC IMPROVEMENTS APPEAL APPLICATION

PAI
E/001-0126532
06-09-201

City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795
Telephone (310) 802-5000 FAX (310) 802-5501 TDD (310) 546-3501

ENTIRE "BLOCKED" AREA MUST BE FILLED OUT

Resident/Applicant: John T. Ziskin for Agent for DANIEL E. ZISKIN
SABINE + WERNER BIRKENFELD Date: 6-9-2010
MAILING Address: 619 HIGHLAND AVE. 233^{7th} Street Phone No. 310 376-6892
(310) 374-7215
City: MANHATTAN BEACH State: CA. ZIP Code: 90266

Appeal Request: Red Curb Parking Traffic Signs/Marks Right of Way

Other: SEE ATTACHED LETTER

Address/Intersection: 619 HIGHLAND AVE 233 7th St M.B. 90266

Description: SEE ATTACHED LETTER

Petition: SEE ATTACHED LETTER

Signature: Sabine Birkenfeld
John T. Ziskin Agent for DANIEL E. ZISKIN

Cashier \$ _____ Date _____ Initials _____
TRAN Code #4502 Amount Rec'd. _____ Receipt # _____
Fee Schedule Permit Appeal \$465.00

Legal Description _____
Map Book _____ Page _____ APN _____
Comments/Notes _____

EXHIBIT
C

Approved/Denied _____ Date _____
Community Development Department

Werner & Sabine Birkenfeld
619 Highland Avenue
Manhattan Beach, CA 90266

Daniel Ziskin
233 7th Street
Manhattan Beach, CA 90266

June 9, 2010

Community Development Department
City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266

Re: Your Letters dated May 14, 2010

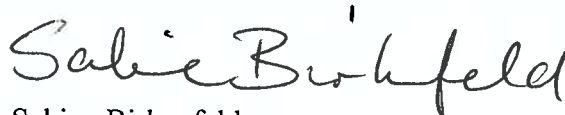
To: Department Director:

This letter responds to the referenced letters by Jacqueline Harris respectively addressed to the two property owners identified above. The referenced letters reported that after meetings, the Department determined that each of the responding property owners was required to remove or reduce the height of vegetation and a tree in the respective encroachment area of the owned properties. Additionally, the owners are required to sign an encroachment agreement.

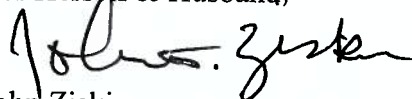
As a part of the discussions, Ms. Harris stated that the two owners can join in an appeal to the City Council of the decision and requirements of the Department and by doing so split the cost of the fee. We each contend that there is no merit to the decision and requirements, and for that reason we appeal.

We will deliver this letter to the Department on its date and pay the \$465 appeal fee. We understand this appeal timely responds to the referenced letters, and consequently the action by the Department to cut down the respective trees will be abated during the appeal. Please confirm that direct action to cut down or remove the trees will be deferred during the appeal.

Respectfully submitted,

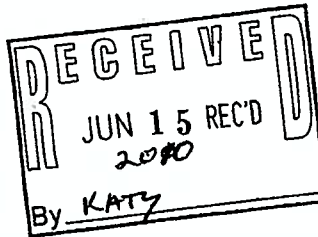


Sabine Birkenfeld
For Herself & Husband,



John Ziskin,
Agent for Daniel Ziskin

Werner & Sabine Birkenfeld
619 Highland Avenue
Manhattan Beach, CA 90266



Daniel Ziskin
233 7th Street
Manhattan Beach, CA 90266

June 14, 2010

Community Development Department
City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266

Re: Our Appeal Filed on June 9, 2010

To: Department Director:

Last week, we paid a appeal fee to have our dispute heard by the City Council. The total paid was \$465. As in our letter seeking appeal dated June 9, 2010, we stated that there was no merit to your determination stated in letters dated May 14, 2010. Your letters reported your decision that we were required to remove or reduce the height of vegetation and a tree in the respective encroachment area of our properties and we are required to sign a encroachment agreement. We responded to your decision by stating that it had no merit, nor did your requirement to apply for a encroachment permit. We asked for an appeal to the City Council.

Please clarify a concern that has arisen. We note in an excerpt from the 2008 Resolution of Fees found at <http://www.citymb.info/Index.aspx?page=1550> that the fee for an appeal to the City Council of a Planning Commission decision or an administrative decision is \$465, the same fee we paid to you. There also listed is a encroachment permit appeal to the PPIC with a fee of \$465. We also note that according to Section 7.36.080 of the Manhattan Beach Code:

“Applications which are inconsistent with the ‘Encroachment Standards’ set forth in Section 7.36.150, including right of way frontage improvements required as a condition of approval by the Director of Public Works, must be appealed to and approved by the City Council with a recommendation from the Parking and Public Improvements Commission.” Further, a notice shall be sent to neighboring property owners whose lots' front property lines are within three hundred feet (300') of the subject encroachment area site at least ten (10) calendar days prior to each body's consideration of the exception request. The notice will describe the proposed encroachment, make the plans available for review, and set a deadline for registering objections. Upon consideration of such an appeal application, the City Council may approve, modify, or disapprove the application for encroachment. The action of the City Council shall be final.

This appeal to the PPIC seems to be what you set for hearing on August 26.

The appeal to the PPIC appears to conflict with our request to you. As we understand, the appeal to the PPIC, we are requesting an exception to the Encroachment Standards be granted in accordance with our encroachment proposal. That is not our appeal position.

We want to appeal your decision requiring that the respective trees be cut down to a . . .

height of 42 inches and that we are required to file an application for encroachment permit.

For example, the City Council of Manhattan Beach shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 9.78. See 9.78.050 D. In the same manner, we respectfully allege there is an error in your requirement, decision, or determination in the enforcement or administration of Chapter 7.36. It appears that were we to appeal to the PPI as stated, then we would be surrendering our defense against your errors. Instead, we want to appeal your decision as an administration or enforcement decision for which a fee of \$465 has been set as stated. In addition to that appeal, and in the alternative, we have no problem with appealing to the City Council and asking for it to make an exception to its code regarding our trees and/or vegetation in excess of 42 inches.

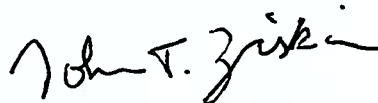
Finally, you have stated that Daniel Ziskin is not required to reduce the tree or vegetation in question on his property to 42 inches, notwithstanding your letter to him of May 14, 2010, if he will trim the frons of the tree; however, he must apply for an encroachment permit. To be clear, he is willing to trim the frons to resolve the matter, but not willing to apply for a permit. Your decision allowing mere trimming of the frons, but requiring an encroachment permit left him no option but to make the requested appeal. Further, the fee for such a permit is too much and abusively excessive.

We would appreciate it if you would respond to the concerns of this letter to insure that the procedure of our appeal properly follows our appeal request.

Respectfully submitted,



Sabine Birkenfeld
For Herself & Husband



John Ziskin,
Agent for Daniel Ziskin

"Engineer" means the Manhattan Beach City Engineer or his or her designee.

"Excavation" means any opening in the surface of a public place, right of way, sidewalk or street made in any manner whatsoever. The term shall also include any excavation on private property which removes or imperils the lateral support of a public place, right of way, sidewalk or street.

"Landscaping" means an area devoted to or developed and maintained with lawn, gardens, trees, shrubs and other plant materials and excluding decorative outdoor landscape elements such as water features, paved surfaces, potted plants and sculptural elements.

"Natural grade" means a straight line from the edge of the improved public walkway/roadway grade to the existing front property line grade.

"Nonconforming" means a previously permitted and constructed improvement which is not consistent with the standards of this chapter.

"Occupy" means owning or operating any facilities that are located in rights of way.

"Open design fence" means a fence where the primary fence material is transparent and colorless, or the open spaces between the solid segments are equal to or exceed the size of the solid segments.

"Overhead structures" means any improvement extending over a public place, right of way or street.

"Person" means any living individual, any corporation, joint venture, partnership, or other business entity.

"Public walkway" means the portion of the public right of way improved and designated by the City for pedestrian travel.

"Right of way" means the surface and space in, on, above, through and below any real property in which the City of Manhattan Beach has a legal or equitable interest whether held in fee or any other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, curb, parkway, river, tunnel, viaduct, bridge, public easement, or dedicated easement.

"Usable surface" means a relatively level surface intended for active recreation, passive occupation, or pedestrian access including but not limited to lawns, patios and decks, but excluding a walkway not exceeding forty-four inches (44") in width that provides access from the public walkway to private property.

"Walk street" means a dedicated public street improved with a public walkway that is closed to vehicular traffic.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.030 - Permit required.

It shall be a violation of this chapter for any person to construct, create, occupy or use an encroachment in the public right of way without an encroachment permit. To the extent permitted by law the issuance of such a permit shall be discretionary and may be denied or revoked without cause. Application of this chapter shall include, but not be limited to, private improvements, long-term commercial use and commercial sidewalk dining, temporary access for installation of private street improvements and all other intrusions into the public right of way whether temporary or permanent. The City Council may, from time to time, by resolution set fees for issuance of encroachment permits authorized by this chapter.

(§ 1, Ord. 2039, eff. February 18, 2003)



7.36.040 - Initiation.

The Director of Community Development shall have the authority to issue an encroachment permit consistent with the standard set forth in this chapter provided that where fixtures or structures located within public walkways or roadways, other than temporary moveable structures, are to be placed in the public right of way, or street alterations are to be performed, detailed plans for any such work shall be submitted to the Director of Public Works whose approval shall be required.

Applications shall be submitted to the Community Development Department with the required forms, fees, plans, and related material. Applications shall be reviewed for compliance with the requirements of this chapter, and the public's priority for use of City right of way as determined to be appropriate by the Director of Public Works.

7.36.105 - Restoration of public right of way.

Upon completion of the encroachment work authorized by a permit, the permittee shall restore the right of way or street by replacing, repairing or rebuilding it in accordance with the specifications or any special requirement included in the permit, but not less than to its original condition before the encroachment work was commenced and in all cases in good usable quality. The permittee shall remove all obstructions, materials and debris upon the right of way and street, and shall do any other work necessary to restore the right of way and street to a safe and usable condition, as directed by the Director of Public Works. Where excavation occurs within areas already paved, the Director of Public Works may require temporary paving to be installed within four hours after the excavation area is backfilled. In the event that the permittee fails to act promptly to restore the right of way and/or street as provided in this section, or should the nature of any damage to the right of way or street require restoration before the permittee can be notified or can respond to notification, the Director of Public Works may, at his or her option, make the necessary restoration and the permittee shall reimburse the City for the full cost of such work, and such cost shall be a lien upon the permittee's adjacent real property.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.110 - Revocation.

The Director of Community Development or the City Council may revoke any encroachment permit for noncompliance with the conditions set forth in granting such encroachment, including but not limited to provision of liability insurance coverage to the City or if it is determined that such permit is not in the public interest. A written notice shall be mailed to the permittee of such revocation. Within ten (10) working days of mailing of such notice of revocation to the permittee, a written appeal of such action may be filed. Any such appeal shall be made to the Parking and Public Improvements Commission whose recommendation will be reviewed by the City Council and the Council's determination of the matter shall be final.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.120 - Enforcement.

Violation of this chapter shall be punishable as a misdemeanor as set forth in Section 1.04.010(A) of this Code. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a separate violation of such provision. In addition to any other remedies provided in this section, any violation of this chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any or all of the following remedies: a temporary and/or permanent injunction; assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection; costs incurred in removing, correcting, or terminating the adverse effects resulting from violation; compensatory damages; and attorney fees.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.140 - Other permits.

Nothing in this chapter shall preclude a requirement for a Coastal Development Permit, Business License, Conditional Use Permit, or other City, State or County permit if otherwise required for the encroaching activity. See Chapter A.96 of the Manhattan Beach Local Coastal Program Implementation Program for applicable Coastal Development Permit requirements.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.150 - Encroachment standards.**A. General Standards:**

1. Structures as defined by the City's Building Code or other encroachments are prohibited from encroaching within the public right of way unless in compliance with these standards or approved by the City Council.
2. Landscaping is permitted without an encroachment permit in accordance with an approved landscape plan pursuant to Chapter 7.32 of the Municipal Code. Artificial landscape materials are prohibited.

3. Utility obstructions shall be avoided so as to maintain access to underground utilities. A minimum of thirty inches (30") of clearance is required on each side of all water and sewer mains, unless otherwise approved by the Director of Public Works.
4. Drainage from a private collection system that discharges a concentrated flow shall be directed to a vehicular street or alley pursuant to Public Works Department construction standards and shall be prohibited from flowing onto a public pedestrian walkway or sidewalk. A drainage plan shall be provided with an application for an Encroachment Permit.
5. All encroachments shall be in conformance with Title 5, Chapter 5.84 of the Municipal Code pertaining to storm water pollution control.
6. Obstructions to neighboring resident's scenic views shall be avoided.
7. Steps and Stairs, other than risers between four and seven inches (4" to 7") in height and spaced a minimum of three feet (3') apart, are not permitted in the public right of way.
Exception. One set of steps comprised of three (3) consecutive risers is permitted provided a condition does not result that requires installation of a guardrail or handrail.
8. Existing improvements which do not conform to current standards must be removed or brought into conformance if the related structure on the adjoining property is significantly remodeled or reconstructed or if any new significant construction is proposed in the public right of way. Existing permitted improvements that have been made non-conforming by changes to these standards may otherwise remain provided any nonconforming element is not increased or expanded. The intent is to cause nonconforming encroachments to be brought into conformity concurrent with major alterations or entirely new structures constructed on adjoining private property.
9. Routine maintenance and repair may be performed on a nonconforming encroachment structure or improvement and replacement with a comparable improvement is permitted upon demonstration that the encroachment is deteriorated and creating an unsafe condition.

B. Walk Street Standards:

1. Fences and railings, including required safety handrails and guardrails, are permitted provided an open design is utilized. The maximum allowable height is forty-two inches (42") above the adjacent public walkway. To ensure pedestrian to vehicle visibility at corners, a thirty-six inch (36") maximum height (measured from adjacent curb level) is required within a distance of five feet (5') from the street corner.
2. Retaining walls (not including walkway risers), free-standing walls and closed design fences are permitted provided the maximum allowable height is thirty-two inches (32") above the adjacent public walkway. Conditions requiring guardrails that exceed the height permitted in subsection (1) above shall not be permitted.
Exception. Retaining walls and related required safety railing that exceed the thirty-two inch (32") limit may be constructed at the side boundaries of an encroachment area if necessary to retain a neighbor's existing grade, provided all other encroachment improvements comply with applicable encroachment standards. If subsequently such over-height walls and/or safety rails are no longer necessary due to modification of the adjoining encroachment area, the property owner shall lower the over-height wall/safety rail to conform with applicable standards. This requirement shall be included as a permit condition in the Encroachment Permit Agreement.
3. Landscaping is permitted subject to approval of a landscape plan submitted with an Encroachment Permit. Landscaping shall cover a minimum of one-third of the encroachment area and shall not project over or onto the public walkway. To promote visual openness and conserve scenic vistas, the height of landscape plantings shall not exceed forty-two inches (42") as measured from the adjacent public walkway. Landscape plantings shall be maintained in substantial conformance with the approved plan. If it is determined that a resident view is impaired, the Director of Community Development shall direct the owner of the property adjacent to the encroachment landscaping to trim the over-height landscaping to forty-two inches (42") maximum. Should the property owner fail to act, the Director of Community Development may cause the landscaping to be trimmed, with the expense borne by the property owner. The owner of the property who receives such notice to trim may appeal the decision of the Director of Community Development pursuant to Section 7.36.070 of this chapter.
4. Usable surfaces (as defined herein). The intent of this standard is to ensure that the elevation of encroaching outdoor living areas located nearest the public walkway be consistent with the public walkway. Usable surfaces are permitted as follows:
 - a. Within the front half of the encroachment area (adjacent to the public walkway), limited to a maximum height of twelve inches (12") as measured above or below the adjacent public walkway.
 - b. Within the rear half of the encroachment area (adjacent to private property), limited to a maximum height of either: thirty-six inches (36") as measured above or below the adjacent public walkway, or twelve inches (12") as measured above or below the natural grade, as defined herein.
5. The total combined height of fences, railings, retaining walls (including walkway risers) shall not exceed a height of forty-two inches (42") as measured from lowest adjacent finished grade.
6. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular alley or street via a non-erosive device pursuant to Public Works Department construction standards except as permitted by the Director of Public Works.



City of Manhattan Beach

Community Development

Phone: (310) 802-5500

FAX: (310) 802-5501

TDD: (310) 546-3501

October 1, 2010

PUBLIC MEETING NOTICE

Encroachment Permit Appeal- 619 Highland and 233 7th Street

Dear Resident/Property Owner:

The Department of Community Development has received an application for an Encroachment Appeal submitted by property owners, Werner and Sabine Birkenfeld at 619 Highland Avenue and Daniel Ziskin, property owner at 233 7th Street. Mr. and Mrs. Birkenfeld are requesting to keep their Eucalyptus tree and all landscaping in the public right of way (walkstreet) on 7th Street over the required maximum 42" height limit. Mr. Ziskin is requesting to keep his Palm tree and all landscaping in the public right of way (walkstreet) on 7th Street over the required maximum 42" height limit.

The request has been administratively denied because the existing trees and landscaping exceed the 42" maximum height limit for landscaping in the public right way per Manhattan Beach Municipal Code 7.36.150. Additionally, both property owners have no current encroachment permits. An encroachment permit is required per Manhattan Beach Municipal Code Section 7.36.030 for private improvements in the public right of way. Both homeowners have appealed this decision and therefore this matter has been referred to the PPIC (Parking and Public Improvement Commission) for review and a recommendation for action by the City Council. Your comments and input are invited. The review will be held on:

Thursday, October 28, 2010

6:30 pm

City Council Chambers

1400 Highland Avenue

Input regarding the subject Encroachment Permit Appeal may be submitted in advance through the Community Development Department or at the Hearing. Comments made in advance should be mailed or emailed to:

Angelica Ochoa, Assistant Planner
Community Development Department
1400 Highland Avenue
Manhattan Beach, CA 90266 email: aocchoa@citymb.info

If you have any questions or would like additional information, please contact Angelica Ochoa at (310) 802-5517 or email at the email noted above.

Sincerely,

Laurie B. Jester
Acting Director of Community Development



Angelica Ochoa

From: Ray Joseph [rayj310@gmail.com]
Sent: Wednesday, October 13, 2010 4:07 PM
To: Angelica Ochoa
Subject: Encroachment hearing

Hi Angelica,

I live on 6th ST and think they should cut the tree down at 233 7th ST and 619 Highland Ave. It is inappropriate for the sand section to have such a large trees. I think the city made the right decision requiring the trees to be cut down.

Thanks,

Ray Joseph
228 6th St
Manhattan Beach CA

EXHIBIT
F

10/13/2010

Angelica Ochoa

From: Bill Citta [bpcitta@verizon.net]
Sent: Monday, October 18, 2010 8:49 AM
To: Angelica Ochoa
Cc: Mitch Ward (External); griffin3@roadrunner.com
Subject: ENCROACHMENT @ HIGHLAND & 7TH ST.
HONORABLE PPIC MEMBERS,

I must submit a negative to the request for an ENCROACHMENT PERMIT at 619 Highland & 233-7th Street to leave trees exceeding the 42" height limit.

Upon a personal 'check' of the situation, it definitely appears these over-height trees are blocking ocean views of other residents beside the fact they were planted without prior City approval.

Although I am generally against removing any trees, there are situations that require such action, and this is such one of them. I see no reason these trees cannot be replaced with dwarf-growing ones that will 'fit' the existing landscape.

Respectfully submitted,

William G. Citta
229 - 8th Street
M.B.
310.379.4018

Angelica Ochoa

From: mary boyd [mbmitzi@gmail.com]
Sent: Monday, October 18, 2010 5:34 PM
To: Angelica Ochoa
Cc: Sabine@dslextreme.com; grandart@verizon.net
Subject: Encroachment Permit Appeal - 619 Highland and 233 7th Street

This is in response to the letter I received from the City of Manhattan Beach dated October 1, 2010, same subject:

**PLEASE DO NOT CUT THE EUCALYPTUS TREE IN THE BIRKENFELD'S GARDEN
NOR THE PALM TREES ACROSS THE STREET.**

I have been in my home for nearly 50 years. My lovely neighbors, Mr. and Mrs. Birkenfeld were either here, or came shortly after I did. Their beautiful Eucalyptus Tree has been in their garden for nearly the same amount of time (50 years). I don't know when the palms at 233 7th were planted. I don't pay much attention to Palm Trees but I love their Eucalyptus Tree. Seventh Street is full of trees. In fact a new neighbor moved here on this street "because of the greenery."

This is what I know: The only time there has been a complaint against the Birkenfeld's tree is from the Realtor who owns the property directly across from the Birkenfeld's. A couple years ago (perhaps longer) she lodged a complaint because the place was up for rent. As soon as the place was rented she dropped the complaint. Once again, the place came up for rent and once again she complained about the Birkenfeld's tree. Obviously she spoke to the neighbor across the way who is the one complaining about the silly palm trees.

The realtor is a fairly new owner of the house and the guy complaining about the palm trees is a new neighbor. Many of us have lived here for years. Personally, I have trees, and most of my neighbors have trees in the encroachment area.

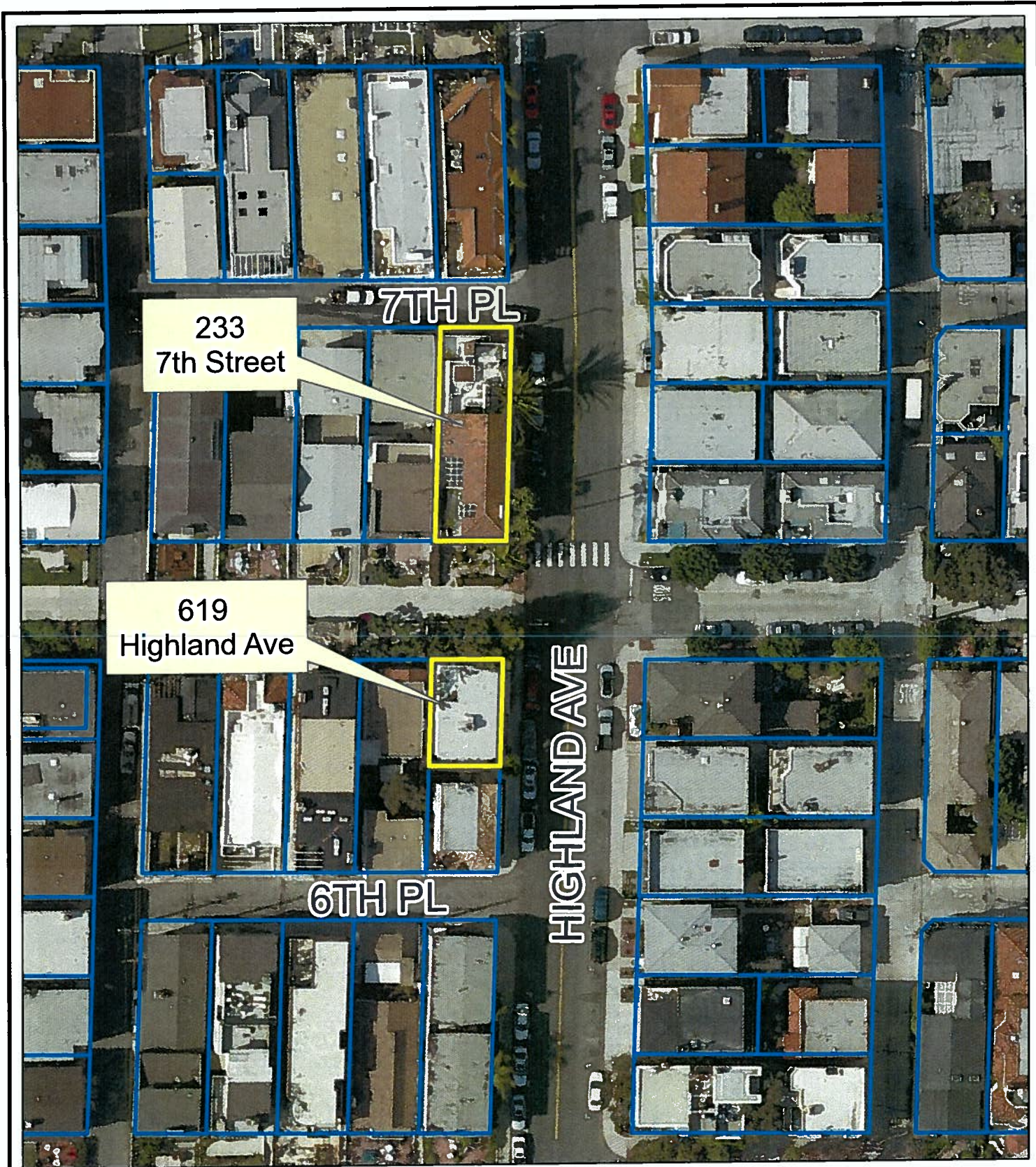
If the City thinks this is just a problem with these two properties they are **WRONG!** Most of us on 7th Street **HAVE BIG TREES.** There is a realtor on my block who is going around telling people their trees will be cut down to 42 inches. We are angry!!! We planted trees when this place was barren and now that they are grown **NEWCOMERS** think they have the right to tell us what to do. Well, they don't.

To the best of my knowledge the ordinance first came into existence in the 70's and then again in 2003? We have been here much longer than the ordinances.

For heavens sake, **LISTEN TO US!!! WE LOVE NATURE AND WE LOVE TREES.**

Sincerely, Mary Boyd (320 7th st.) Manhattan Beach

10/19/2010



Vicinity Map

233-7th Street and
619 Hihland Avenue

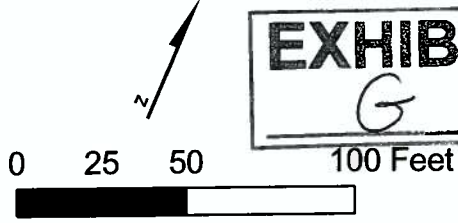


EXHIBIT
G



City of Manhattan Beach
Community Development