



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: APRIL 24, 2006

III. 4.
ITEM NUMBER:

**SUBJECT: APPLICANT'S APPEAL OF ZONING ADMINISTRATOR'S DECISION
212 OGLE STREET**

DATE: APRIL 12, 2006

**FOR FURTHER INFORMATION CONTACT: HILDA VETURIS, MANAGEMENT ANALYST
(714) 754-5608**

RECOMMENDATION

Conduct a public hearing and either uphold, reverse, or modify the zoning Administrator's decision by adoption of Planning Commission resolution.

BACKGROUND

The applicant received approval of Development Review DR-04-01 in September 2004 to build a new garage and to remodel the interior of an existing, nonconforming duplex. (The duplex was nonconforming because inadequate parking and open space, as well as the minimum left side setback, cannot be provided as the duplex was configured.) The applicant received permits in September 2005 to do both. On several occasions, the applicant and/or his agent discussed with Planning staff the possibility of demolishing the existing, non-conforming duplex, replacing it with a new duplex in substantially the same configuration. Each time the applicant or his agent mentioned partial or total demolition of the duplex, Planning staff strongly advised both parties that the demolition would result in the project losing its nonconforming status and that a new application would have to be processed, showing how the new construction would comply with all current codes.

On September 27, 2005, the Building Inspector of record consulted with the contractor and found that the west wall section of the duplex construction was a flat stud. This has never been in compliance with any of the California Building Codes. The contractor was informed, by the Building Inspector that he could replace only that section of wall. Nevertheless, the applicant proceeded to demolish the entire duplex to the concrete slab foundation.

When the applicant approached Planning staff about what could be rebuilt at the site, and staff reiterated the requirement to submit a new application, showing how the project would comply with current Code standards. The applicant appealed staff's decision to the Zoning Administrator, who confirmed staff's decision that a reconstruction of the duplex could only occur after the processing of a new application, showing how the project would comply with current code standards. Because the applicant did not wish to reduce the size of the duplex, to satisfy current open space, parking, and setback requirements, and he did not wish to process the necessary

variances, he filed an appeal of the Zoning Administrator's decision to Planning Commission.

ANALYSIS

The intent of both the General Plan (objective LU-2A.4) and the Zoning Code is to ensure that non-conforming uses and developments are, over time, replaced by conforming developments. Therefore, the Code allows some alterations to nonconforming structures, but does not allow complete demolition. Denial of the applicant's request will not keep the applicant from building another duplex on the property; it will only require he rebuild in compliance with current Code standards.

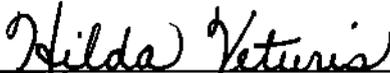
ALTERNATIVES

Planning Commission has the following alternatives:

1. Uphold Zoning Administrator's decision denying the applicant's request. This would require the applicant to redesign the site to comply with current Code requirements.
2. Reverse the Zoning Administrator's decision. This would allow the applicant to rebuild the nonconforming duplex to its original configuration, without adequate open space, parking, and with a reduced left side setback.

CONCLUSION

Planning staff very clearly informed the applicant and his agent that demolition of the duplex would result in a loss of nonconformity, requiring the project to comply with current Code requirements. Allowing the applicant to rebuild the duplex at the nonconforming configuration is inconsistent with both the General Plan and the Zoning Code, which strive for the replacement of old nonconforming projects with conforming development.


HILDA VETURIS
Management Analyst


R. MICHAEL ROBINSON, AICP
Asst. Development Services Director

Attachments: Applicant's Letter
 Zoning Administrator's Decision Letter
 Applicant's Application for Appeal
 Location Map
 Zoning Map
 Site Plan

cc: Deputy City Manager - Dev. Svs. Director
 Deputy City Attorney
 City Engineer
 Fire Protection Analyst
 Staff (4)

File (2)
Emory and Kathleen Frink
P. O. Box 1491
Newport Beach, CA 92659

Dave Branson – Help U Remodel
25861 Malia Court
Mission Viejo, CA 92691

File: 042406DR0401Appeal	Date: 041206	Time: 4:30 p.m.
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RECEIVED
CITY OF COSTA MESA
DEVELOPMENT SERVICES DEPARTMENT

FEB - 7 2006

R. Michael Robinson, AICP
Assistant Director, Development Services
City of Costa Mesa
PO Box 1200
Costa Mesa CA 92628-1200

RE: Remodel of 212 Ogle St
Plan Check # B05-00603/604
Planning File # DR-04-01

Dear Mr. Robinson,

In response to Ms. Veturis' plan correction memo of January 11, 2006, and my subsequent conversation with her on January 24, 2006, I would like to offer the following:

- 1- The architectural plans persons, the general contractor, and I worked in an open and cordial fashion with your staff, as well as the field inspectors, over the past *year and a half* that this duplex remodel has been in process.
- 2- The garage has been torn down and a new four-car garage erected in its place; it is awaiting a final in the next couple weeks.
- 3- The duplex remodel has not gone nearly as smoothly, however...

We were told we could take off the roof and gut the interior, subject to an engineering analysis; we complied.

We were told we could saw-cut the concrete slab for plumbing and create hard points for the new structure; we complied and planned the same.

We were advised, after conferring with the building inspector, that, due to the termite infestation and single-wall construction, we had better take down the walls; we complied.

We were asked to have an analysis done on the concrete slab, and a soil sample as well; we complied.

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We were advised verbally that, if the foundation was deficient, we could replace it or repair it under the remodeling section of the code. Yet at the last meeting I was advised that the foundation should be replaced, thus making it new construction, with the proviso of three additional parking spaces!

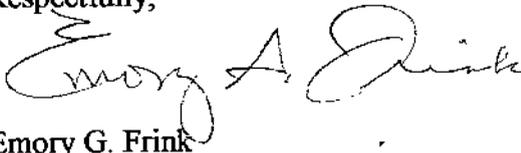
My wife and I have spent in excess of \$24,000 in trying to cooperate and comply with the building department's requests, and yet we are nowhere near resolution, and have lost one year's rents on a duplex in the meantime.

To ask us to add three parking spaces, and yet retain the green space ratios, on top of the area taken up by the new four-car garage, would be a very tough and expensive task. As retired seniors we had allocated all we could afford to this project.

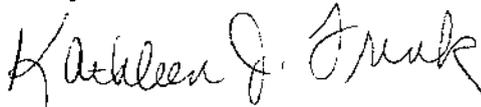
It would seem fair to allow us, subject to engineering confirmation, to saw-cut the slab, create load-bearing areas, and leave the majority of the foundation in place, this staying within the spirit of the remodeling codes.

We thank you for your consideration of our request.

Respectfully,



Emory G. Frink



Kathleen J. Frink

PO Box 1491
Newport Beach CA 92659

Phone: 714-290-0424 or 949-646-6434

Attachment: Photo of site
Form 0559-46 inspector sign-off



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

February 13, 2006

Mr. and Mrs. Frink
PO Box 1491
Newport Beach, CA 92659

RE: APPEAL OF STAFF'S DECISION
212 OGLE STREET, COSTA MESA

Dear Mr. and Mrs. Frink:

I received a letter from you on February 7, 2006, stating a history of construction at the subject property. After speaking with Planning staff and, although not stated in your letter, it is my understanding that you wish to appeal Planning staff's decision to require the new duplex comply with current Zoning Code requirements.

In September 2004, you received approval of a development review (DR-04-01) to build a new garage and to remodel an existing, non-conforming duplex; you received building permits in September 2005 to do both. However, at the same time, you (or your representative) were discussing the possibility of demolishing the existing duplex and rebuilding it. It is my understanding that as soon as Planning staff learned that you wished to demolish the non-conforming duplex and replace it with a new duplex of a comparable size, you were immediately warned (as well as on numerous occasions over the months) that this action would require the new construction to comply with current development standards.

In your letter you said you were advised about the framing, foundation, etc. However, it is unclear who advised you to do what work. Regardless, you were warned from the very beginning that you would need to work closely with Planning staff to ensure that you did not demolish too much of the building, as to lose the non-conformity status. However, despite Planning staff's advice, you have completely demolished the structure, down to the slab.

The intent of the Zoning Code is to ensure that non-conforming uses and developments are, over time, replaced by conforming developments. Therefore, the Code allows some alterations to nonconforming structures, but does not allow complete demolition. Therefore, it is my determination as Zoning Administrator that since the entire structure

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Mr. & Mrs. Frink
February 13, 2006
Page 2

has been demolished the new construction on the property must comply with all applicable codes, including open space and parking requirements.

This decision will become final at 5 p.m., seven (7) days from the date of this letter. If you wish to appeal this decision, your next step would be to file the necessary form (available at City Hall) and pay the applicable fees (\$700.00) by 5 p.m. on February 21, 2006, for consideration by Planning Commission.

If you have any questions or concerns, please call me at (714) 754-5610.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Michael Robinson", with a long horizontal line extending to the right.

R. MICHAEL ROBINSON
Zoning Administrator

cc: Martha Ford, Plan Check Engineer
Hilda Veturis, Management Analyst

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

FEE: \$ 700

Applicant Name Emory and Kathleen Frink

Address P O Box 1491, Newport Beach, CA 92659

Phone (714) 290-0424 Representing self

Decision upon which appeal or rehearing is requested: (Give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) Planning file #DR-04-01 and letter from R. M. Robinson of
Feb. 13, 2006

Decision by: _____

Reason(s) for requesting appeal or rehearing:

We request review of the status of our remodel at 212 Ogle Street. We plan to
remodel and reconstruct on the same slab and/or footprint as the existing duplex
with no increase in square footage.

Date: March 16, 2006 Signature: Emory and Kathleen Frink

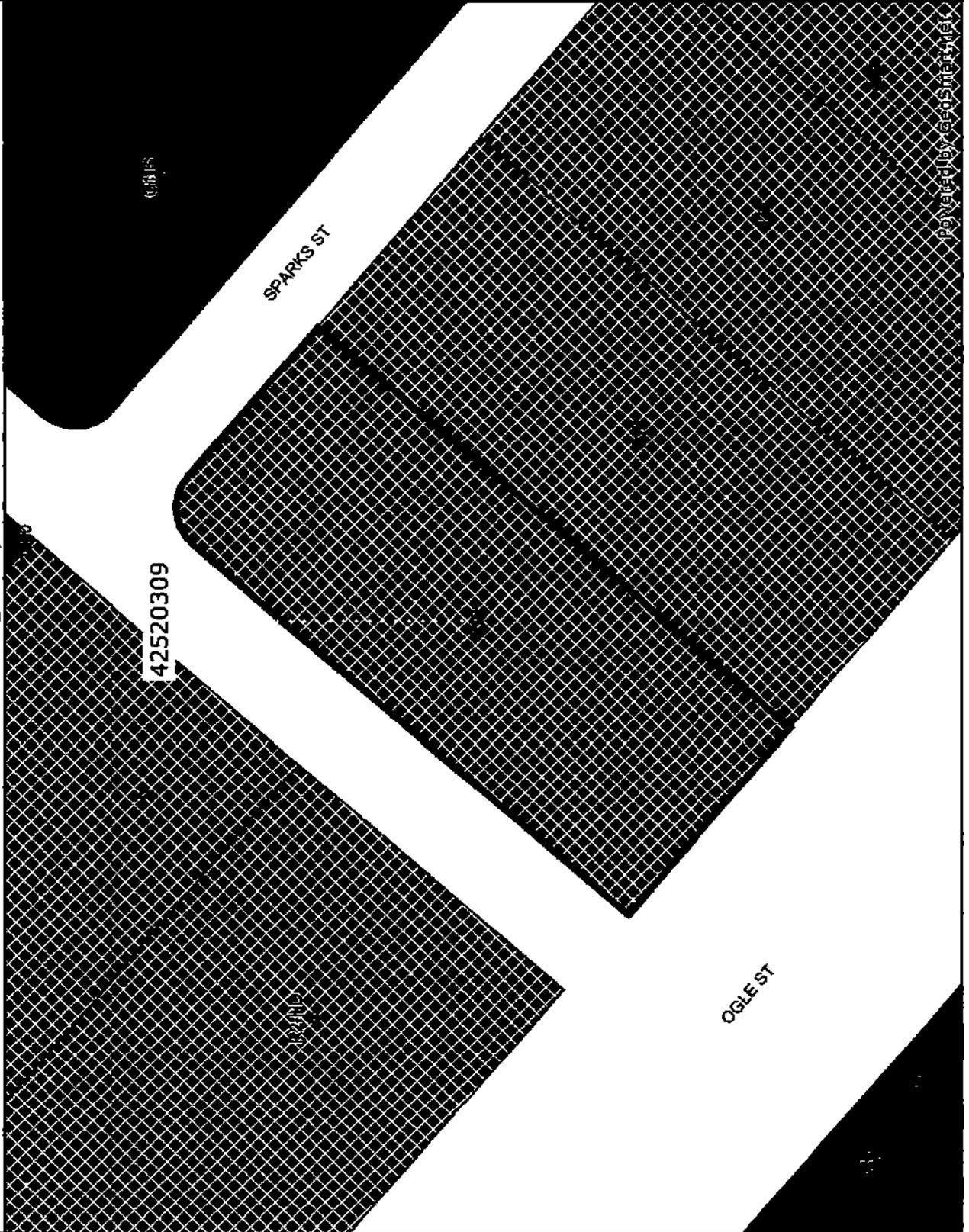
For Office Use Only — Do Not Write Below This Line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:

24 April 2006

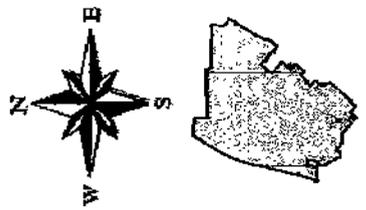
212 Ogle Street

Zoning Map



Legend

- Selected Features
 - Parcel Addresses
 - Street Names
 - Parcel Lines
 - Zoning
- | | | | | | | | | | | | | | | | | | | | | | |
|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| AP | C1 | C1-S | C2 | CL | EMR | EMR-B | MG | MP | P | POC | POI | POR-HD | POR-LD | POR-MD | POR-NCH | R1 | R2-HD | R2-MD | R3 | TC | |
| [Pattern] |
- Parcels



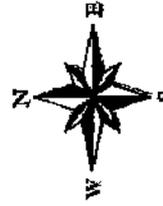
212 Ogle

Location Map



Legend

- Selected Features
- Parcel Addresses
- Street Names
- Parcel Lines
- Ortho Photography
- Parcels



RESOLUTION NO. PC-06-

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF COSTA MESA UPHOLDING THE ZONING
ADMINISTRATOR'S DENIAL TO REBUILDING A
NONCONFORMING DUPLEX**

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

WHEREAS, a request to rebuild a nonconforming duplex at 212 Ogle Street
was submitted to the Zoning Administrator by the property owners, Emory and
Kathleen Frink; and

WHEREAS, the Zoning Administrator denied the applicant's request on
February 14, 2006; and

WHEREAS, the property owner filed an appeal of the Zoning Administrator's
denial on March 16, 2006; and

WHEREAS, the Planning Commission on considered this matter at their
meeting of April 24, 2006.

BE IT RESOLVED that, based on the evidence in the record and the findings
contained in Exhibit "A", the Planning Commission **UPHOLDS** the Zoning
Administrator's denial of the applicant's request to rebuild the duplex at its
nonconforming configuration.

PASSED AND ADOPTED this 24th day of April, 2006.

Bill Perkins, Chair,
Costa Mesa Planning Commission

RESOLUTION NO. PC-06-

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF COSTA MESA REVERSING THE ZONING
ADMINISTRATOR'S DENIAL TO REBUILDING A
NONCONFORMING DUPLEX**

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

WHEREAS, a request to rebuild a nonconforming duplex at 212 Ogle Street
was submitted to the Zoning Administrator by the property owners, Emory and
Kathleen Frink; and

WHEREAS, the Zoning Administrator denied the applicant's request on
February 14, 2006; and

WHEREAS, the property owner filed an appeal of the Zoning Administrator's
denial on March 16, 2006; and

WHEREAS, the Planning Commission on considered this matter at their
meeting of April 24, 2006.

BE IT RESOLVED that, based on the evidence in the record and the findings
contained in Exhibit "A", the Planning Commission **REVERSES** the Zoning
Administrator's denial of the applicant's request to rebuild the duplex at its
nonconforming configuration.

PASSED AND ADOPTED this 24th day of April, 2006.

Bill Perkins, Chair,
Costa Mesa Planning Commission

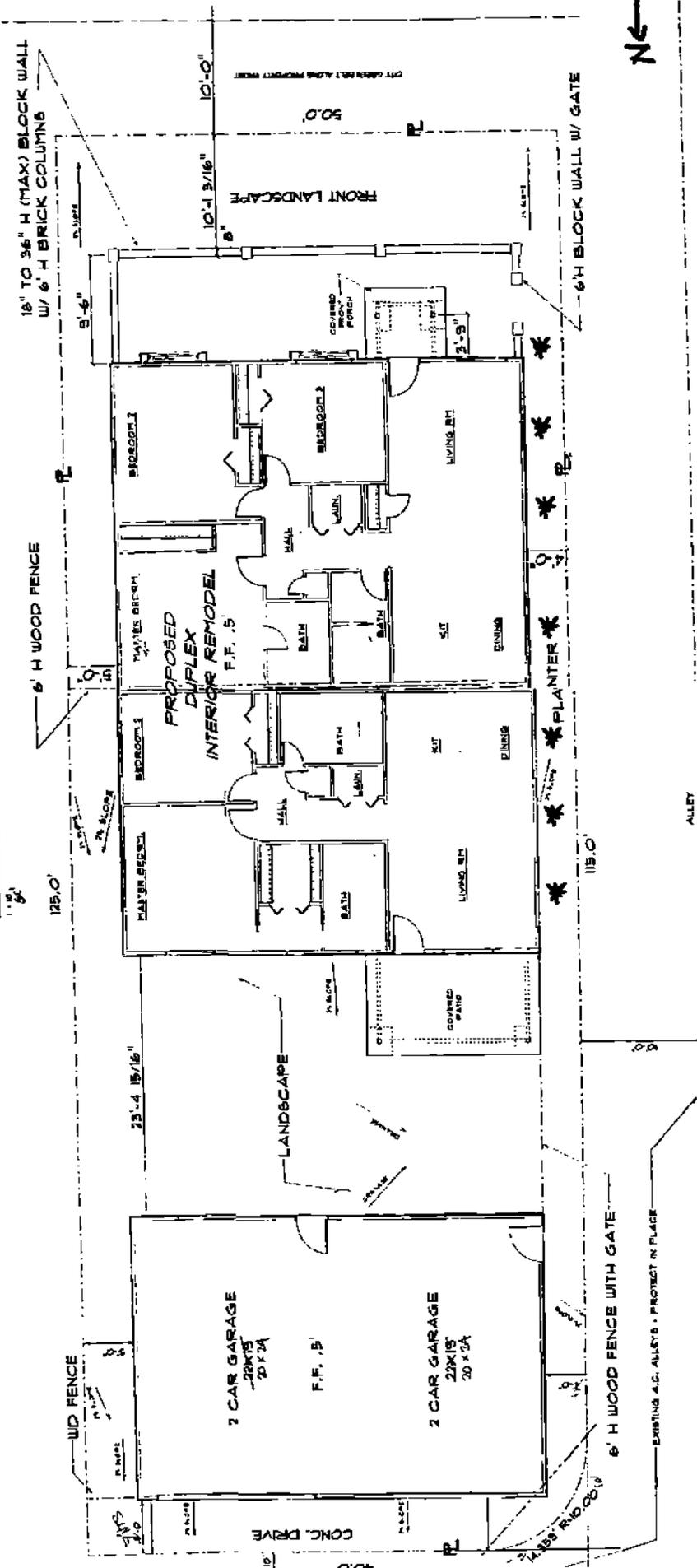
EXHIBIT "A"

FINDING

A. Denial of the rebuilding of the duplex to its previous, nonconforming configuration, is consistent with the goals and objectives of the General Plan and the intent and requirements of the Zoning Code.

0616 ST.

SITE PLAN



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212 0616 ST.