

ORIGINAL

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

- Area Planning Commission
 City Planning Commission
 City Council
 Director of Planning

Regarding Case Number: DIR 2015-3546 (RAO)

Project Address: 530 S ROSSMORE AVE, LOS ANGELES, CA 90020

Final Date to Appeal: APRIL 1 2016

- Type of Appeal:
- Appeal by Applicant
 - Appeal by a person, other than the applicant, claiming to be aggrieved
 - Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): BAILEY-WONG FAMILY, JADE BAILEY-WONG, MELISSA & LUKE BAILEY-WONG

Company: _____

Mailing Address: 530 S ROSSMORE AVE

City: LOS ANGELES State: CA Zip: 90020

Telephone: 917-8850419 E-mail: MELISSABAILEYWONG@YAHOO.COM

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

Self Other: _____

- Is the appeal being filed to support the original applicant's position? Yes No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): _____

Company: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ E-mail: _____

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? Entire Part

Are specific conditions of approval being appealed? Yes No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- Specifically the points at issue
- How you are aggrieved by the decision
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature:  Date: 3/30/16

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- Original Applicants must pay mailing fees to BTC and submit a copy of receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered original applicants and must provide noticing per LAMC 12.26 K.7.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. (CA Public Resources Code § 21151 (c)). CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

This Section for City Planning Staff Use Only		
Base Fee: <u>0</u>	Reviewed & Accepted by (DSC Planner): <u>L. Frazin Steele</u>	Date: <u>3/31/16</u>
Receipt No: <u>0 N/A</u>	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant) <u>n/a</u>

Jade Bailey-Wong, Melissa Bailey-Wong and Luke Bailey

Lot 15, Tract 3446

Case # DIR 2015-3546 (RAO)

March 30, 2016

APPEAL: 530 S ROSSMORE AVE 90020 RAO

BACKGROUND

The home is owned by the Trust of Jade Bailey-Wong - our 9 year old daughter permanently injured as a result of hospital malpractice at her birth in New York. She is quadriplegic, has multiple serious disabilities, cannot breathe without intervention, cannot swallow, cannot self-ambulate. She is - and always will be - completely dependent on sophisticated medical equipment and 24/7 rotating shifts of skilled nursing required to sustain her life. It is imperative that Jade have a skilled nurse by her side at all times due to her susceptibility to aspiration, asphyxiation and seizure disorder.

Jade is also dependent on the rehabilitative care of physical therapists, occupational therapists, aquatic therapists, speech therapists, respiratory therapists, massage therapists etc. (see her team in exhibit A). These services prevent muscle deterioration, encourage bone strength, reduce likelihood of bed-sores and deformity, reduce risk of chronic pneumonia and much more.

As parents of Jade, and Trustees, we petitioned the Court in NY to purchase the home on Rossmore Ave after assessing multiple criteria: a) home is within 15 minutes of Childrens Hospital of Los Angeles; b) the neighborhood is flat and has footpaths for wheelchair access; c) the back yard was large enough to create a sanctuary where Jade could spend each day in the California sunshine, surrounded by nature and receive all the care and therapy she needs in an open yet private environment.

For almost one full year, our request for safe wheelchair and vehicular egress from the home has been passed with much confusion from HPOZ to the Office of Historic Resources, to LADBS and the Zoning Administration and now to PLUM and City Council.

During this time, Jade has been denied safe wheelchair access from the home to the footpath, Jades health and safety has been put at risk, her wheelchair van has been damaged and the family has been placed under extreme duress.

REASON FOR THE APPEAL

1. The decision-maker erred by stating our request for a semi-circular driveway and setback parking was not a necessity because he believed that the back and side of house to be open and unobstructed with ample space for parking. I will show why this is erroneous.
2. The Decision Maker believes that the semi-circular driveway and setback parking will benefit the caregivers and not the disabled individual and thereby not be protected under the Federal Fair Housing Amendments Act of 1988. I will show why this is an incorrect interpretation of the Act.
3. There are multiple requests within the proposal that have not been addressed by the Decision Maker. HPOZ delegated decision-making authority for the request to The City in September 2015. As a result, we require determination on each of the following in addition the the aforementioned components of the request. In summary these are:
 - a) ADA accessible pathway - (no decision provided)
 - b) widening of the existing driveway - (no decision provided)
 - c) driveway gates - (no decision provided)

While these approvals may not be the typical mandate of the Decision Maker, given HPOZs delegation of authority on this case, we seek explicit permission on each of the above requests.

4. The Determination includes a condition that the approval of the accommodations runs only with the needs of the person being accommodated. We request the removal of this condition for reasons explained herein.

1. REQUEST FOR SEMICIRCULAR DRIVEWAY AND SETBACK PARKING - DENIED

- The current driveway requires vehicles to exit the premises by **reversing** onto Rossmore Avenue - a Collector street - blinded by parked cars, and one house away from the intersection with another busy thoroughfare, Sixth St. This particular intersection encounters car accidents on an regular basis, often at high speed.
- The trepidation of blindly reversing onto S Rossmore Ave results in long wait periods - often several light changes - until we feel safe enough to exit. Jade has had several emergency runs to the hospital in the past 18 months. On three of those occasions, we made the decision to call 911 for ambulance pickup because timing was critical and we were not confident of our capability to move Jade fast enough in her own wheelchair van.
- The other emergency occasions were during the night when traffic load is lighter, so we could have someone stand on the street to stop traffic while we reversed out. This was only possible because enough adults were present at the time, which is not always the case. When an individual with the medical complexities of Jade suffers *any* type of emergency, every minute counts. This reversing-out driveway configuration is not appropriate for her level of need.
- The family has received numerous complaints of the safety and efficiency of the on-site parking at the premises by Jades nurses and therapists. The fear has made it difficult for Jade to keep nurses and therapists who have found the situation untenable and some have left their position. Others have found themselves having to abandon their post in order to switch car park spaces and allow other vehicles egress on the linear driveway. This is an extremely dangerous predicament for Jade and against healthcare protocol for the nurses. See exhibit B for letters of complaint.
- The situation is exacerbated by the lack of availability of on-street parking during the work week, as evidenced by the satellite image of the block on Google Maps (exhibit C) where all on-street parking spots are taken, usually from people carpooling to work on Wilshire Blvd. This is the typical situation Monday-Friday.

The request for the semicircular driveway and parking was denied because:

- a) it is the belief of the Decision Maker that this request does not meet the requirements for the Federal Fair Housing Amendments Act of 1988 and therefore the granting of Reasonable Accommodation **(DENIAL REASON A)**; and
- b) it is the belief of the Decision Maker that there is room in the back yard and side of house to accommodate parked cars and therefore alternatives are available that do not require a Reasonable Accommodation **(DENIAL REASON B)**

These reasons for denial are countered in the following pages.

DENIAL REASON A

It is the belief of the Decision Maker that this request does not meet the requirements for the Federal Fair Housing Amendments Act of 1988 because “the request is for the purpose of accommodating frequent caregiver visitations to the property (and) are not necessary to afford the disabled individual full enjoyment of the premises”.

ISSUE: Misinterpretation of the Federal Fair Housing Amendments Act (FHAA) of 1988

The Decision Maker's denial is based on the belief that the request falls outside of the Federal Fair Housing Amendments Act of 1988 because it is for the benefit of the caregivers and not for the benefit of the disabled individual.

However, The FFHA on Reasonable Accommodations states: “An accommodation that permits disabled tenants to experience the full benefit of tenancy must be made unless the accommodation imposes an undue financial or administrative burden”.

Further inspection of the Act reveals the following:

- a) The Act supports the requirements of the caregiver, if a caregiver is required to provide equal opportunity to use and enjoy the premises

The Fair Housing Council of Greater San Antonio provides the following example of application of the Federal Fair Housing Amendments Act of 1988:

“A tenant needs a live-in aide to help care for him. Thus, the tenant requests that management of the apartment complex reasonably accommodate him by allowing his live-in aid to move in to assist him with his daily activities. If the tenant is disabled and needs the live-in aide to have an equal opportunity to use and enjoy his unit, then management must grant the accommodation.”

In this case, Jade requires not just one aide, but several to assist her with her daily activities. Jade needs her nurses and therapists to have an equal opportunity to use and enjoy her dwelling. Therefore, the City should grant the accommodation to the nurses and therapists for the benefit of the disabled individual, Jade.

B. The Act supports the need for continuity of care

Jade requires continuity of care 24/7 due to her susceptibility to aspiration, asphyxiation and seizure disorder. Her life is put in danger if the nurse is not able to respond within seconds. This is not made possible with the current parking situation that requires nurses to leave their posts to move their cars in order to allow other therapists (who often bring heavy equipment), nurses and family members to enter and exit the property. This lack of continuity infringes on Jades Fair Housing rights.

C. There is no undue financial or administrative burden

Per the Letter of Determination, this request places no undue financial burden on the City because it does not require the City to expend any monies; nor does it require a fundamental alteration in the nature of the City's land use and zoning regulations.

Based on The Federal Fair Housing Amendments Act of 1988, there is no cause for the Decision Maker to deny the request for a semi-circular driveway and setback parking.

DENIAL REASON B.

ASSUMPTION OF AMPLE AVAILABILITY OF SPACE ALONG THE SIDE AND REAR

The Determination letter reads: “there appears to be ample availability of space upon the property, both along the side, and to the rear, in order to meet the stated goals without the granting of a Reasonable Accommodation.” And “much of the property behind the dwelling and rear yard is open and unobstructed (so) the location of the semicircular driveway and front yard parking appear to be more a result of choice than necessity”.

ISSUE: Decision is based on conjecture

The Decision Maker has made assumptions about the land in the side and rear yard without having inspected the side and rear yard, nor made any attempt to understand how it is being used

ISSUE: The rear yard is NOT “open and unobstructed” as described in the Determination:

- The back yard is obstructed by a 100+ft tree - possibly one of the oldest in Los Angeles with a trunk over 6ft in diameter. It consumes approximately 3000sq ft area of back yard used by the branch span on the soil is approximately 3000 sq ft between the north fence to the garage. Unlike an upright tree (such as the giant chestnut tree beside it), this tree lays on its side so the branches hit the soil at multiple points. This would prohibit car access around or behind it. (See exhibit D)
- Nestled around the tree and next to the garage is the 17ft aquatic therapy swimming pool donated to Jade and installed with concrete padding and access paths by the Make a Wish Foundation in December 2015. This would prohibit car access in the rear (See exhibit E)
- There is an original 1920s 40ft x 6ft pond that runs from the house to the tree on the north side. However, not viewable without inspection is the sunken area that is three steps down

The Decision Makers finding that alternative
“open and unobstructed” parking and turnaround space
exists to the side and rear of the property is erroneous conjecture.

In truth, the land is not open. It is not unobstructed.
The land is being used every day and takes the place
of institutional and clinical off-site premises that
Jade is unable to visit as a result of her medical fragility.

from the rest of the yard, surrounding the pond. As seen in exhibit F, the sunken area is approximately 60ft x 30ft which would prohibit car access in the rear. (See exhibit F)

- The area of flat lawn behind the house is Jades physical and occupational therapy space - an area of approximately 1200sq ft running alongside the driveway where therapists set up her equipment. By doctors order, Jade is unable to participate in school, or rehabilitative gymnasiums and clinics due to the threat of transmitted disease and her immunodeficiency. Therefore ALL her education and therapy is at home and we are required to create a this space in the yard. Her respiratory and feeding equipment is also stationed here during the day, benefiting from the new electrical outlets planning to be installed shortly. This would prohibit car access in the rear. - It is not possible to show photographs of the therapist outdoor set-up as we have just moved-out temporarily due to the permitted construction work discussed below. Instead exhibit G illustrates the area used by the physical therapists and the other uses within the back yard; and exhibit H is a letter from Jades Physical Therapist attesting to the use of that outdoor location for therapy.
- Directly at the back of the house, work is underway on the construction of a 850sq ft wheelchair accessible deck with direct access to the wheelchair lift and loading area. This would prohibit car access directly behind the dwelling. The plans for these improvements have been reviewed and approved by HPOZ and LADBS. (See exhibit H and I)

ISSUE: The side of the home does not allow cars to pass

There is no “ample availability of space on the side of the property” that would allow multiple vehicles to a) park and to move around each other to enter/exit; and b) turn around to be able to exit front facing onto Rossmore while cars are parked in the driveway.

Currently, extending down the south side of the property there is an 8ft width of driveway (up to 12 ft in some areas) bordered by mature trees on both sides. This provides enough room for a single line of vehicles requiring each car to reverse out to let the innermost vehicle exit. This is unacceptable as it requires nurses and therapists to leave their post to move their car multiple times a day thereby placing Jade’s health at risk. (see exhibit J).

The standard size for a parking space is 18ft long x 8ft wide. Therefore the existing driveway width would not accommodate cars to pass, as described above. The installation of 5 car spaces in the rear and side yard as suggested by the Decision Maker would require 720 sq ft in addition to the driveway space.

It is not possible to achieve this without the removal of over 20 mature trees (contrary to the mission of the City’s Million Trees Initiative) and by appropriating 60% of the space Jade requires for her daily routine. Per the FHAA, this therapy space is crucial to the disabled individuals full enjoyment of the premises.

ISSUE: Freedom of Association

With a lot of this size, it might be tempting to think of how to eliminate the “obstructions” in the rear yard and concrete over it for cars to be able to move freely. However, the sacrifice being asked of Jade would be enormous. This home was purchased by Jade, for Jade and it is anticipated that she will spend her last years in this home.

Our promise to her as her parents was to create a sanctuary where she could be outside in her own, private safe space with all her family, her equipment, and care givers and to feel sunshine and the warm breeze on her skin. The cost of reallocating any portion of the backyard - and particularly her therapy space - for the creation of a carpark is far greater to a homeowner like Jade than it would be for others. Here’s why:

Jades social circle - albeit small - comes to her. And it comes to her in this back yard where it is landscaped with trees and sensory gardens and space for therapy equipment for her to use for the full benefit of her health and development. By doctors order, Jade is prohibited from attending any form of school, clinic or rehabilitative space. Inside the home, Jades bedroom is kept in the necessary near-sterile condition so social and therapeutic interactions are encouraged outdoors whenever possible. This specifically includes any interaction with her younger sisters. The back yard is the only place where we can truly come together as a family.

Because Jade rarely leaves the premises, this back yard is not just her yard, it is her universe.

The uniqueness of Jades disability and the uniqueness of how Jade must live her life largely within the boundaries of this property warrants special consideration.

We have no intention of converting Jades sanctuary into a carpark by removing trees, plants and her therapeutic equipment. The “obstructions” exist for the benefit of Jade and she should not be denied them. To the contrary, she has paid a hefty price for them.

SUPPORT FOR THE REQUEST

We appeal the denial and continue to request a driveway and parking in front of the property where:

- i) there is a large frontage width of 100ft and 50 ft setback from a busy collector street
- ii) Unlike the rear of the property, this area IS ENTIRELY “free and unobstructed”, serving no useful purpose other than the existing driveway (exhibit K1)
- iii) the driveway and wheelchair path could follow a tandem route
- iv) there already exists a row of ficus hedge that would serve to conceal the driveway from street view (exhibit K2)
- v) it would remove a thirsty lawn, thereby creating a positive environmental impact
- vi) it would create *more* consistency with neighboring homes on Rossmore Ave - the majority of which have either a semi-circular driveway or front yard turnaround (exhibit L)
- vii) HPOZ has seen the plans AND withdrawn its authority on this case
- viii) it would not impose an undue financial or administrative burden on the City
- ix) it would not require a fundamental alteration in the nature of the City’s land use and zoning regulations.

OTHER REQUESTS STILL WITHOUT DECISION

1. THE REQUEST INCORPORATES A WHEELCHAIR ACCESSIBLE PATHWAY

- We request an ADA accessible pathway adjacent to the semi-circular driveway. At present, there is no safe wheelchair accessible egress from the home to the footpath that meets the ADA requisite 1:12 ratio of slope.
- The slope of the existing driveway is too steep for safe wheelchair access so nurses cannot wheel Jade onto the footpath safely.
- The property frontage is sloping down toward the south, so a north facing pathway is recommended to traverse across the front yard creating a significantly reduced slope for safe access from the home to the footpath (exhibit L)
- Per the The Federal Fair Housing Amendment Act of 1988, access to the footpath from the home constitutes “full enjoyment of the premises” and that buildings should have a “Building entrance on an accessible route”.
- While this is not typically the jurisdiction of the Zoning Administrator, it forms a part of the complete request that has been passed over by HPOZ to the City.
- We require an explicit decision on this.

2. THE REQUEST INCORPORATES WIDENING THE EXISTING DRIVEWAY

- We request to widen the existing, outdated (per current Code) 8ft driveway to allow safe turning into the driveway from the street. Currently it is not possible to drive the wheelchair accessible van (or any car larger than a compact) into the driveway without clipping the curb, making it hazardous to the passengers of the vehicle and has already damaged the specialized ramp equipment within Jades van.
- Please note, Jade Bailey-Wong is quadriplegic and has NO neck or head control, and these bumps can cause serious neck injury when being transported in her van. Currently, each time we dangerously reverse out of the driveway and pull into the driveway in Jades van, the nurse must brace Jades head in her hands to help prevent injury. This is demeaning and unnecessary.

- While this is not typically the jurisdiction of the Zoning Administrator, it forms a part of the complete request that has been passed over by HPOZ to the City.
- We require an explicit decision on this.

3. THE REQUEST INCORPORATES DRIVEWAY GATES

- We request automated driveway gates at the front of the property. This is requested for privacy and safety. Disabled homes are at increased risk of burglary.
- Last July, Detective Roger Sandoval with the Robbery-Homicide Division requested the home be vacated due to a known upcoming armed burglary attempt on our property by a recently released homicide criminal. Jade and all her equipment and staff had to be relocated for over a week while the property remained under high surveillance and the burglary was finally averted.
- Out of necessity, we did move back in, however we still have no additional protection from criminals walking into all areas of the property from Rossmore Ave.
- While this is not typically the jurisdiction of the Zoning Administrator, it forms a part of the complete request for approval that has been passed over by HPOZ to the City.
- We require an explicit decision on this.

REMOVING THE CONDITION OF APPROVAL TERMINATION

- We seek to remove the condition that “this Accommodation would have a life that runs only with the needs of the person being accommodated after which the accommodation approval will terminate.”
- The March 5th 2008 Joint Statement of the Department of Housing and Urban Development and The Department Justice Reasonable Modifications Under the Fair Housing Act stipulates that: “The Fair Housing Act expressly provides that housing providers may only require restoration of modifications made to interiors of the dwelling at the end of the tenancy.” Exterior modifications are not required to restore.
- In addition the installation of a concrete driveway is physically integrated into the residential structure and cannot be easily removed. The cost of such removal would run upwards of \$30,000.
- Jades Trust could assume the significant financial burden of installation as a matter of rehabilitative improvement and safety. However, the Court would not approve the Trust to pay for the removal of such items as it provides no benefit to the child.
- Especially when when surrounded by neighboring properties with similar layouts and gates, the imposition of an expensive condition is discriminatory and cost prohibitive.
- In essence, The City is requiring the family to agree to pay a significant financial penalty upon the death of their disabled child. And we seek to remove this condition and we require a determination on this.

HOW WE ARE AGGRAVATED BY THE DECISION

We are aggravated by the decision by the following:

- a) We have suffered from shuffling amongst departments from HPOZ to Office of Historic Preservation, to LADBS and Zoning Administration. At every step there has been insufficient understanding of the request and confusion regarding the process by the persons managing the case. Complaints were voiced by each of the various departments and we have seemingly been involved in a bureaucratic quagmire
- b) So far, this process has taken approximately 12 months
- c) During this time, Jade has not been able to be taken for walks in her wheelchair in her own neighborhood from her own home - a clear violation of her rights, which continues as a result of the omission of the ADA wheelchair path from the Decision.
- d) In the time waiting for a decision on gates, we had to vacate the premises at the request of the LAPD Robbery and Homicide Division - due to a serious armed burglary threat specifically targeting our home. The repeated threat continues as a result of the omission of Gates from the Decision.
- e) We have lost nurses and therapists who were well qualified, but not prepared to risk their own safety or the safety of Jade for the benefit of parking their vehicle - this will continue as a result of the denial.
- f) Jade's health has been put in jeopardy on regular occasion by nurses leaving their post to move their cars - this will continue as a result of the denial.
- g) Jade's wheelchair vehicle has suffered suspension and ramp damage as a result of the narrow driveway apron as we wait for approval on widening it. This will continue as a result of the omission of driveway widening from the Decision.

SUMMARY

In summary, we appeal the decision and believe the basis for denial of a semi-circular driveway and parking in the front yard set-back is without merit - based on misinterpretation of the FHAA, and conjecture about the “open and unobstructed” side and rear yard.

We have illustrated how the request is built from necessity and we have explained how Jades disability and the uniqueness of how she lives her life at the hands of a large team of therapists and caregivers- largely within the boundaries of this property - warrants special consideration.

We have also restated our requests for the other components not addressed in the Determination Letter.

Finally, we have requested the removal of the condition that is cost-prohibitive and in opposition to the Fair Housing Act.

Therefore, we seek permission for the following in order for Jade to enjoy equal opportunity to use her home:

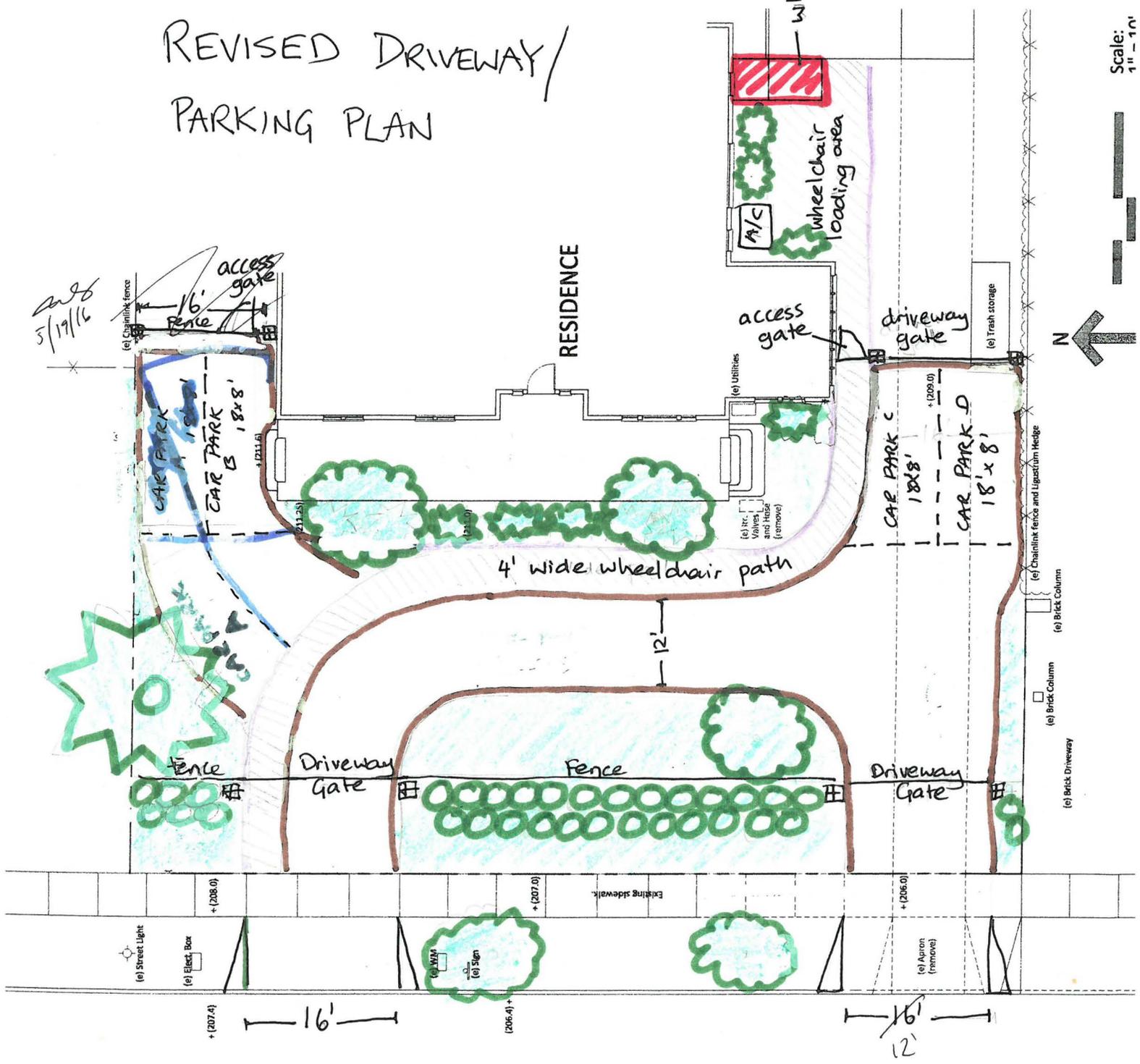
1. Permission to install a semi-circular driveway
2. Permission for parking in the front yard setback
3. Permission to install an ADA accessible pathway
4. Permission to widen the existing driveway
5. Permission to install driveway gates
6. Removal of the Approval Termination condition

MAY 18 2016

CITY PLANNING DEPT.

530 S. ROSSMORE AVE.

REVISED DRIVEWAY/ PARKING PLAN



2016
5/19/16

Scale:
1" = 10'

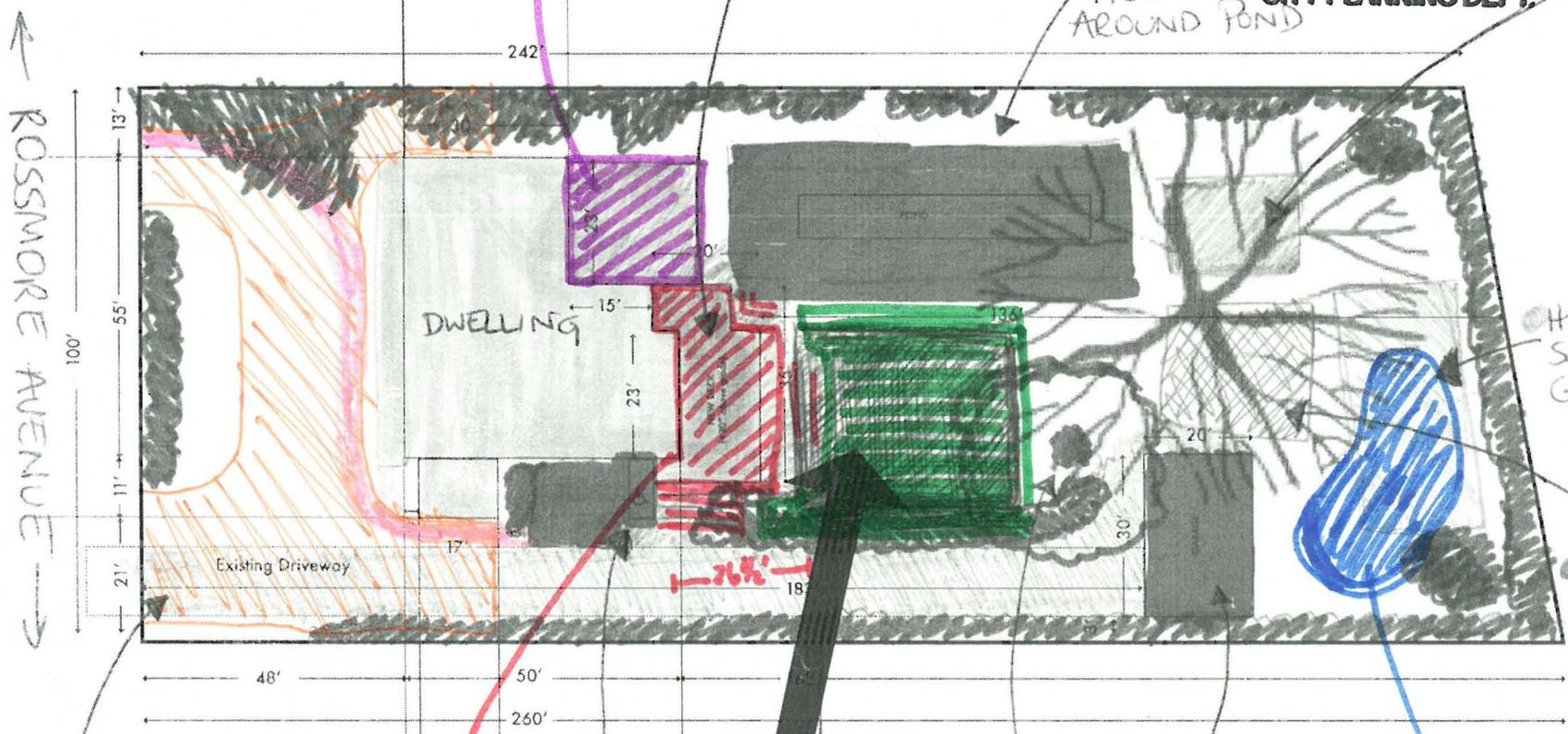


RECEIVED
CITY OF LOS ANGELES

MAY 18 2016

CITY PLANNING DEPT.

GIANT SIDE LYING
ITALIAN
STONE PINE
TREE



← ROSSMORE AVENUE →

N
↑

Site Plan

DECK
26 1/2' x
40'

35' x 45'
JADES
THERAPY
AREA

FUTURE
Swimming Pool
40'

530 S Rossmore Ave,
Los Angeles 90020

TR 3446 Lot 15
County Map Reference #M B 37-84
Assessor Parcel # 5505-015-003

EXHIBIT G: SITE PLAN SHOWING LAND USE AND OBSTRUCTIONS- SPECIFICALLY JADES THERAPY AREA