CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT
January 3, 2013 Meeting
Agenda Item 3

SUBJECT: Wardy Residence - (PA2012-140)
1111 Dolphin Terrace
- Site Development Review No. SD2012-005
- Modification Permit No. MD2012-017

APPLICANT: Amen and Traci Wardy

PLANNER: Patrick J. Alford
(949) 644-3235, palford@newportbeachca.gov

PROJECT SUMMARY

A request for approval of a Site Development Review to allow an increase in the boundaries of Development Area B for the purpose of the construction of a pool and retaining walls in Development Area C. The application also includes a request for a Modification Permit to allow a retaining wall over 8 feet in height from finished grade. These improvements are proposed in conjunction with the construction of new single family residence.

RECOMMENDATION

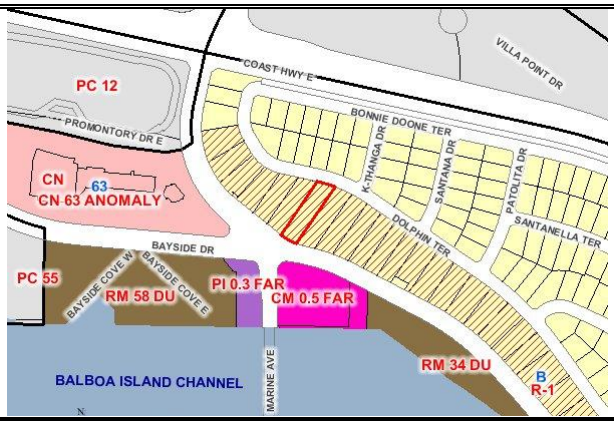
1) Conduct a public hearing; and

2) Adopt Resolution No. ___ approving Site Development Review No. SD2012-005 and Modification Permit No. MD2012-017 (Attachment No. PC 1).

VICINITY MAP

GENERAL PLAN

ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	RS-D (Single-Unit Residential Detached)	R-1-B (Single-Unit Residential-Bluff Overlay)	Single-unit residential
NORTH	RS-D (Single-Unit Residential Detached)	R-1 (Single-Unit Residential)	Single-unit residential
SOUTH	CM (Commercial Recreational and Marine)	CM (Commercial Recreational and Marine)	Offices
EAST	RS-D (Single-Unit Residential Detached)	R-1-B (Single-Unit Residential-Bluff Overlay)	Single-unit residential
WEST	RS-D (Single-Unit Residential Detached)	R-1-B (Single-Unit Residential-Bluff Overlay)	Single-unit residential

INTRODUCTION

Project Setting

The project site is located in the Irvine Terrace community at 1111 Dolphin Terrace. The project site consists of 18,359-square-foot. The project site was previously developed with a single-unit residence, which is now demolished, and the site is currently undergoing grading for a new, two-story, 10,691-square-foot single-unit residence. Building permits have been issued for the construction of the residence. The project site topography consists of a graded pad on the northern half of the lot, and slope on the southern half that drops down to Bayside Drive. The remnant of a ravine that cut into the bluff face prior to the development of Irvine Terrace causes the contours of the slope to curve inland towards Dolphin Terrace.

Adjacent uses consist of single-story, single-family residences to the east, west, and north (across Dolphin Terrace), and Bayside Square office complex and the Newport Beach Yacht Club to the south (across Bayside Drive).

Project Description

The applicant proposes to construct series of retaining walls on the slope to support a pool/spa, lawn area, and terraced planters in the rear yard. The heights of retaining walls for the planters range from 2 feet to 8 feet above finished grade. The height of the retaining wall paralleling the western property line is 14 feet above finished grade at the highest point.

A portion of the pool and retaining walls encroach into Development Area C, as defined by the Bluff Overlay District. Development Area C allows a limited range of accessory structures that does not include swimming pools and retaining walls. Therefore, the applicant is requesting a Site Development Review to modify the development area boundaries so that these proposed structures are located within Development Area B as depicted on the Project Plans (Attachment PC 2).

The application also includes a request for a modification permit to allow a retaining wall over 8 feet in height from finished grade. Section 20.30.040.A.2 of the Zoning Code sets the maximum height of retaining walls at 8 feet measured from finished grade at the base of the wall. The section of the retaining wall in question is located near the western side property line. The section that exceeds the 8-foot height limit runs approximately 28-feet, 6-inches and is approximately 14-feet-high at the highest point (See Figure 1 below).

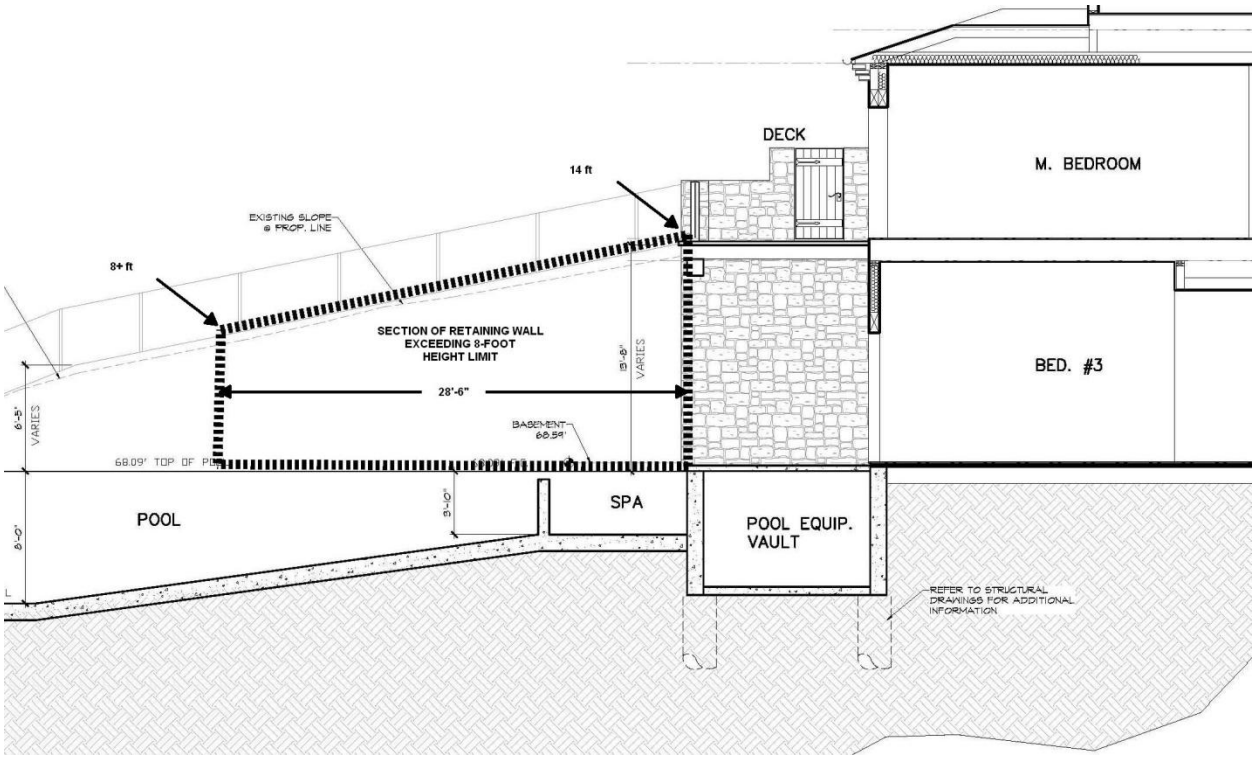


Figure 1 – Side Retaining Wall

DISCUSSION

Analysis

General Plan

The site is designated RS-D (Single-Unit Residential Detached) by the Land Use Element of the General Plan and is located in the R-1-B (Single-Unit Residential Detached, Bluff Overlay) Zoning District. The proposed structures are consistent with this land use category and the zoning district.

Local Coastal Plan

The City's certified Coastal Land Use Plan (CLUP) sets forth goals, objectives, and policies that govern the use of land and water in the coastal zone in accordance with the Coastal Act. CLUP Policy 4.4.3-10 specifically addresses the bluffs along Bayside Drive, including Irvine Terrace:

4.4.3-10. The coastal bluffs along Bayside Drive that have been cut and filled by the Irvine Terrace and Promontory Point developments are no longer subject to marine erosion. New development on these bluffs is subject to the setback restrictions established for bluff top development located on a bluff not subject to marine erosion.

CLUP Policy 4.4.3-5 relates to bluffs not subject to marine erosion and requires principal structures and major accessory structures to be set back from the bluff edge in accordance with the "predominant line of existing development:"

4.4.3-5. Require all new bluff top development located on a bluff not subject to marine erosion to be set back from the bluff edge in accordance with the predominant line of existing development in the subject area. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development.

The City does not have a certified Implementation Plan. However, the Bluff Overlay development areas (see discussion below) were generally derived from a development line established by the Irvine Terrace Community Association (10-feet from the top of bluff) and a blanket rear setback variance adopted in 1954 for this area (13 feet below the top of the curb). Since development has adhered to these limits for decades, these development limit lines generally represent the predominant lines of existing development for this area. Therefore, the Bluff Overlay development areas are considered to be consistent with the CLUP.

CLUP Policy 4.4.3-14 requires swimming pools located on bluff properties to incorporate leak prevention and detection measures. A condition has been included to ensure compliance with this policy.

It should be noted that the project site is located within and meets the conditions of Categorical Exclusion Order E-77-5; therefore, the project will not require a coastal development permit.

Bluff Overlay District

Both the Land Use Element and the Natural Resources Element of the General Plan contain polices calling for the protection of bluffs and other landforms. The Bluff (B) Overlay District was established to implement these policies.

The Bluff Overlay District is applied to a number of areas of the City that contain bluffs, including the south side of Dolphin Terrace in Irvine Terrace (See Attachment PC 3, Bluff Overlay Map B-2).

Each lot on Dolphin Terrace within the Bluff Overlay District is divided into three development areas:

I. Development Area A covers the area between the front property line adjacent to Dolphin Terrace and a 10-foot setback from the top of the existing bluff. Area A allows for the development and use of principal and accessory structures, and accessory structures allowed in Areas B and C.

II. Development Area B covers between the 10-foot setback from the top of the existing bluff and a line established at an elevation that is 13 feet below the average elevation of the top of the curb adjacent to the lot. Area B allows for the development and use of accessory structures, including swimming pools, spas, and hot tubs; walls, fences, and retaining walls, and patio covers, decks, and gazebos. Principal structures are not allowed.

III. Development Area C covers all portions of the lot not located in Areas A and B. Area C allows for the development and use of limited accessory structures, including landscaping/irrigation system, drainage devices, on-grade trails and stairways, and property line walls and walls, not including retaining walls.

Section 20.28.040.I of the Zoning Code allows development area boundaries to be adjusted through the approval of a site development review to allow structures and grading not otherwise allowed.

The proposed adjustment would shift the Area B/Area C boundary up to 34 feet down-slope to include the portions of the proposed swimming pool and retaining walls within Area B. This adjustment would increase Area B by approximately 1,444 square-feet.

In accordance with Section 20.28.040 of the Zoning Code, the Planning Commission must make the following findings for approval of an increased development area:

1. *The increased bluff development area will ensure a slope stability factor of safety greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff or canyon, whichever is farther landward;*

2. *The increased bluff development area will provide adequate protection from the erosion factors for the economic life of the development;*

3. *The increased bluff development area will be compatible and consistent with surrounding development; and*

4. *The increased bluff development area will not have an impact on public views, sensitive habitat areas, and is not otherwise detrimental to the general public health and welfare.*

Staff believes that the facts are in evidence of support of the required findings to allow the proposed adjustment to shift the Area B/Area C boundary to include the portions of the proposed swimming pool and retaining walls within Area B:

- The applicant's geotechnical consultant has provided a geotechnical analysis (See Attachment PC 4) demonstrating that the existing descending slope has a slope stability factor[1] of safety greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff. Furthermore, the proposed improvements in the rear yard will be supported by deep pile foundations supported into competent bedrock that will provide stability to the structures and also increase the factor of safety of the descending slope.

- The proposed retaining walls, pool/spa, and planters are consistent with the surrounding development in the Irvine Terrace community, which is characterized by varying degrees of development along the bluff area adjacent to Bayside Drive (See aerial photos, Attachment PC 5).

- The proposed Area B/Area C boundary is consistent with the predominant line of existing accessory structure development on the adjacent properties.

- There are no public viewing areas in the vicinity to the project site, so the project will not have an impact to public viewsheds; also, the project will provide extensive landscaping on the slope to assist in screening the proposed retaining walls and pool/spa from view by travelers on Bayside Drive.

- There are no sensitive habitat areas on the site or in the immediate vicinity.

Site Development Review

In accordance with Section 20.52.080.F of the Zoning Code, the Planning Commission must also make the following findings to approve a site development review to modify the development area boundaries so that these proposed structures are located within Development Area B:

1. *The proposed development is allowed within the subject zoning district;*

2. *In compliance with all of the applicable criteria identified in Subparagraph C.2.c:*

[1] Slope stability factor is a term that describes the structural capacity of a system beyond the expected or actual loads. The slope stability analysis assesses the safe and economic design of a human-made or natural slope and the equilibrium conditions.

1) *Compliance with this Section, the General Plan, this Zoning Code, any applicable specific plan, and other applicable criteria and policies related to the use or structure;*

2) *The efficient arrangement of structures on the site and the harmonious relationship of the structures to one another and to other adjacent development; and whether the relationship is based on standards of good design;*

3) *The compatibility in terms of bulk, scale, and aesthetic treatment of structures on the site and adjacent developments and public areas;*

4) *The adequacy, efficiency, and safety of pedestrian and vehicular access, including drive aisles, driveways, and parking and loading spaces;*

5) *The adequacy and efficiency of landscaping and open space areas and the use of water efficient plant and irrigation materials; and*

6) *The protection of significant views from public right(s)-of-way and compliance with Section 20.30.100 (Public View Protections); and*

3. *The proposed development is not detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed development.*

Staff believes that the facts are in evidence of support of the required findings to approve the site development review:

- The proposed structures are accessory to a single-unit residence and therefore consistent with the General Plan land use designation and the zoning district, and the project site is not located within a specific plan area.

- The proposed planter retaining walls are terraced at varying heights, which serves to break-up their mass. Extensive landscaping on the slope is provided to assist in screening the proposed planter retaining walls and pool/spa from view from Bayside Drive; these project design features will not increase the bulk or scale of development on the slope and provide an aesthetic treatment that is compatible with the surrounding development.

- The proposed structures do not include any improvements to the public right-of-way or off-street parking facilities; therefore, the project does not involve any issues relating to the adequacy, efficiency, and safety of pedestrian and vehicular access, or parking and loading spaces.

- The project will provide extensive landscaping on the slope to assist in screening the proposed retaining walls and pool/spa from view from Bayside Drive. The project has been conditioned to provide water efficient plant and irrigation materials.

- There are no public viewing areas in the vicinity of the project site, so the project will not have an impact to public viewsheds and Bayside Drive is not identified as a coastal view road.

- The proposed structures are designed and conditioned to be harmonious with the surrounding development to not present a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the Irvine Terrace community.

Modification Permit

A modification permit is required to allow a retaining wall up to 14 feet in height along the western side property line. Section 20.30.040.A.2 of the Zoning Code sets the maximum height of retaining walls at 8 feet measured from finish grade at the base of the wall. In accordance with Section 20.52.050.E of the Zoning Code, the Planning Commission must also make the following findings to approve a modification permit:

1. *The requested modification will be compatible with existing development in the neighborhood;*

2. *The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use;*

3. *The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code;*

4. *There are no alternatives to the modification permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public; and*

5. *The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or*

the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.

Staff believes that the facts are in evidence of support of the required findings to approve the modification permit for the increased height of the retaining wall:

- The proposed retaining wall is proposed to be located outside of the side setback area in-line with the exterior walls of the residence, so it will not present an abrupt drop-off in elevation with the adjacent property. Also, the proposed retaining wall will run perpendicular, not parallel, to Bayside Drive, which will not present a massive wall surface when viewed from the roadway.

- The project will provide extensive landscaping on the slope to assist in screening the proposed retaining wall from view by travelers on Bayside Drive.

- The project site has topographic characteristics that are unique to other bluff properties in Irvine Terrace. Prior to alteration by the Irvine Terrace development, the bluff face on the project site contained a ravine, which still causes the contours of the slope to curve inland towards Dolphin Terrace (See topographic map, Attachment PC 6). This topographic feature presents a practical difficultly that requires more extensive grading and retaining structures in order to attain parity with the adjacent development.

- The project site is topographically-constrained relative to the two abutting properties; alternatives to the increased height of the retaining wall would further constrain development on the project site.

- The proposed retaining wall is proposed to be located outside of the side setback area and will be topped with a 42-inch-high glass guardrail to avoid negative impacts to the abutting property.

- The proposed retaining wall will not result in change in density or intensity of development on the project site; the single-unit residence will have a building height and floor area that is consistent with the provisions of the Zoning Code.

<u>Environmental Review</u>

The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures).

The Class 3 exemption includes the construction of one single-family residence and accessory structures, including garages, carports, patios, swimming pools, and fences.

The proposed development involves the construction of a new single-unit residence, retaining walls, pool/spa, and planters. Therefore, the proposed project qualifies for an exemption under Class 3.

Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Patrick J. Alford, Planning Manager

Submitted by:

Brenda Wisneski AICP, Deputy Director

ATTACHMENTS

PC 1 Draft Resolution with Findings and Conditions
PC 2 Project plans
PC 3 Bluff Overlay Map B-2 Irvine Terrace – Dolphin Terrace
PC 4 Coast Geotechnical letter
PC 5 Aerial Photos
PC 6 Topographic Map of Dolphin Terrace

Attachment No. PC 1

Draft Resolution with Findings and Conditions

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING SITE DEVELOPMENT REVIEW NO. SD2012-005 AND MODIFICATION PERMIT NO. MD2012-017 FOR PROPERTY LOCATED AT 1111 DOLPHIN TERRACE (PA2012-140)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Amen and Traci Wardy, with respect to property located at 1111 Dolphin Terrace, and legally described as Lot 10 of Tract No. 5130 requesting approval of a site development review and a modification permit.

2. The applicants request approval of a site development review to allow an increased development area within the Bluff Overlay District for the construction of a series of retaining walls to support a pool/spa, lawn area, and terraced planters within Development Area C.

3. The subject property is located within the R-1-B (Single-Unit Residential-Bluff Overlay) Zoning District and the General Plan Land Use Element category is RS-D (Single-Unit Residential Detached).

4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-A (Single-Unit Residential Detached).

5. A public hearing was held on January 3, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 3 (New Construction or Conversion of Small Structures).

2. The Class 3 exemption includes the construction of one single-family residence and accessory structures, including garages, carports, patios, swimming pools, and fences. The proposed development involves the construction of a new single-unit residence, retaining walls, pool/spa, and planters. Therefore, the proposed project qualifies for an exemption under Class 3.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.28.040.I of the Zoning Code, the Planning Commission must make the following findings for approval of an increased development area through the approval of a site development review:

Finding:

A. The increased bluff development area will ensure a slope stability factor of safety greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff or canyon, whichever is farther landward;

Facts in Support of Finding:

A-1. The applicant's geotechnical consultant has provided a geotechnical analysis demonstrating that the existing descending slope has a slope stability factor of safety greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff.

A-2 The proposed improvements in the rear yard will be supported by deep pile foundations supported into competent bedrock that will provide stability to the structures and also increase the factor of safety of the descending slope.

Finding:

B. The increased bluff development area will provide adequate protection from the erosion factors for the economic life of the development;

Facts in Support of Finding:

B-1. The project is conditioned to ensure that adequate protection of the house and surrounding accessory structures for the economic life of the development.

Finding:

C. The increased bluff development area will be compatible and consistent with surrounding development; and

Facts in Support of Finding:

C-1. The proposed retaining walls, pool/spa, and planters are consistent with the surrounding development in the Irvine Terrace community, which is characterized by varying degrees of development along the bluff area adjacent to Bayside Drive.

C-2 The proposed Area B/Area C boundary is consistent with the predominant line of existing accessory structure development on the adjacent properties.

Finding:

D. The increased bluff development area will not have an impact on public views, sensitive habitat areas, and is not otherwise detrimental to the general public health and welfare.

Facts in Support of Finding:

D-1. There are no public viewing areas in the vicinity to the project site, so the project will not have an impact to public viewsheds.

D-2. The project will provide extensive landscaping on the slope to assist in screening the proposed retaining walls and pool/spa from view by travelers on Bayside Drive.

D-3. There are no sensitive habitat areas on the site or in the immediate vicinity.

In accordance with Section 20.52.080.F of the Zoning Code, the Planning Commission must also make the following findings for approval of a site development review:

Finding:

E. The proposed development is allowed within the subject zoning district;

Facts in Support of Finding:

E-1. The site is designated RS-D (Single-Unit Residential Detached) by the General Plan Land Use Element. This designation allows for a range of detached single-unit residential dwelling units; each located on a single legal lot, and does not include condominiums or cooperative housing.

E-2. The single-unit residence and improvements to be constructed are compatible with the other single-unit residential land uses within the surrounding neighborhood.

E-3. The subject property is not part of a specific plan area.

Finding:

F. The proposed development is in compliance with all of the applicable criteria identified in Subparagraph C.2.c:

a. Compliance with this Section, the General Plan, this Zoning Code, any applicable specific plan, and other applicable criteria and policies related to the use or structure;

b. The efficient arrangement of structures on the site and the harmonious relationship of the structures to one another and to other adjacent development; and whether the relationship is based on standards of good design;

c. The compatibility in terms of bulk, scale, and aesthetic treatment of structures on the site and adjacent developments and public areas;

d. The adequacy, efficiency, and safety of pedestrian and vehicular access, including drive aisles, driveways, and parking and loading spaces;

e. The adequacy and efficiency of landscaping and open space areas and the use of water efficient plant and irrigation materials; and

f. The protection of significant views from public right(s)-of-way and compliance with Section 20.30.100 (Public View Protections); and

Facts in Support of Finding:

F-1. The proposed structures are accessory to a single-unit residence and therefore consistent with its General Plan land use designation and the zoning district,

F-2 The project site is not located within a specific plan area.

F-3. The proposed planter retaining walls are terraced at varying heights, which serves to break-up their mass. Extensive landscaping on the slope is provided to assist in screening the proposed planter retaining walls and pool/spa from view from Bayside Drive; these project design features will not increase the bulk or scale of development on the slope and provide an aesthetic treatment that is compatible with the surrounding development.

F-4. The proposed structures do not include any improvements to the public right-of-way or off-street parking facilities; therefore, the project does not involve any issues relating to the adequacy, efficiency, and safety of pedestrian and vehicular access, or parking and loading spaces.

F-5. The project will provide extensive landscaping on the slope to assist in screening the proposed retaining walls and pool/spa from view from Bayside Drive. The project has been conditioned to provide water efficient plant and irrigation materials.

F-6. The project has been conditioned to provide water efficient plant and irrigation materials.

F-7. There are no public viewing areas in the vicinity of the project site, so the project will not have an impact to public viewsheds and Bayside Drive is not identified as a coastal view road.

Finding:

G. *The proposed development is not detrimental to the harmonious and orderly growth of the City, or endanger jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed development.*

Facts in Support of Finding:

G-1. The proposed structures are designed and conditioned to be harmonious with the surrounding development to not present a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the Irvine Terrace community.

In accordance with Section 20.52.050.E of the Zoning Code, the Planning Commission must also make the following findings to approve a modification permit:

Finding:

H. The requested modification will be compatible with existing development in the neighborhood;

Facts in Support of Finding:

H-1. The proposed retaining wall is proposed to be located outside of the side setback area in-line with the exterior walls of the residence, so it will not present an abrupt drop-off in elevation with the adjacent property.

H-2. The project will provide extensive landscaping on the slope to assist in screening the proposed retaining wall from view by travelers on Bayside Drive.

H-3. The proposed retaining wall will run perpendicular, not parallel, to Bayside Drive, which will not present a massive wall surface when viewed from the roadway.

Finding:

I. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use;

Facts in Support of Finding:

I-1. The project site has topographic characteristics that are unique to other bluff properties in Irvine Terrace. Prior to alteration by the Irvine Terrace development, the bluff face on the project site contained a ravine, which still causes the contours of the slope to curve inland towards Dolphin Terrace.

Finding:

J. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code;

Facts in Support of Finding:

J-1. The topographic characteristics of the project site present a practical difficultly that requires more extensive grading and retaining structures in order to attain parity with the adjacent development.

Finding:

K. There are no alternatives to the modification permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public;

Facts in Support of Finding:

K-1. The project site is topographically-constrained relative to the two abutting properties; alternatives to the increased height of the retaining wall would further constrain development on the project site.

Finding:

L. The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.

Facts in Support of Finding:

L-1. The proposed retaining wall is proposed to be located outside of the side setback area and will be topped with a 42-inch-high glass guardrail to avoid negative impacts to the abutting property.

L-2 The proposed retaining wall will not result in change in density or intensity of development on the project site; the single-unit residence will have a building height and floor area that is consistent with the provisions of the Zoning Code.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Site Development Review No. SD2012-005 and Modification Permit No. MD2012-017, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.

2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 3rd DAY OF JANUARY, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY:_____
Michael Toerge, Chairman

BY:_____
Fred Ameri, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL
(Project-specific conditions are in italics)

Planning

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)

2. Site Development Review No. SD2012-005 and Modification Permit No. 2012-017 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.

3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.

4. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Site Development Review.

5. This Site Development Review and Modification Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

6. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Site Development Review and Modification Permit or the processing of a new site development review and modification permit.

7. Should the property be sold or otherwise come under different ownership, any future owner(s) or assignee(s) shall be notified of the conditions of this approval by either the current property owner or the leasing agent.

8. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

9. A copy of this approval letter shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.

10. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Site Development Review/Modification Permit file. The plans shall be identical to those

approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Site Development Review/Modification Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

11. *Prior to the issuance of a building permits, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division.*

12. *All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.*

13. *Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and between the hours of 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.*

14. *The pool/spa shall incorporate leak prevention and detection measures.*

15. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Wardy Residence** including, but not limited to, the **Site Development Review No. SD2012-005 and Modificaton Permit No. (PA2012-017)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

<u>Building Division Conditions</u>

16. *A geotechnical report shall be required with the submittal of construction drawings for plan check. The project shall comply with any mitigation measures contained in said report and the requirements of the Newport Beach Building Division.*

17. *Drainage and grading plans shall be required with the submittal of construction drawings for plan check.*

18. *Drainage shall be conducted to a public storm drain. Filtration shall be required prior to discharging water into public storm drains.*

19. *Pool and all site walls shall be founded on caissons and grade beams and shall include seismic load contributions*.

20. *Shoring shall be required for cuts having depth greater than 1:1 distance to property line.*

21. *Pool drainage shall be clearly noted to discharge into approved public waste or storm drains. Back flow devices shall be required for all fixtures below manholes.*

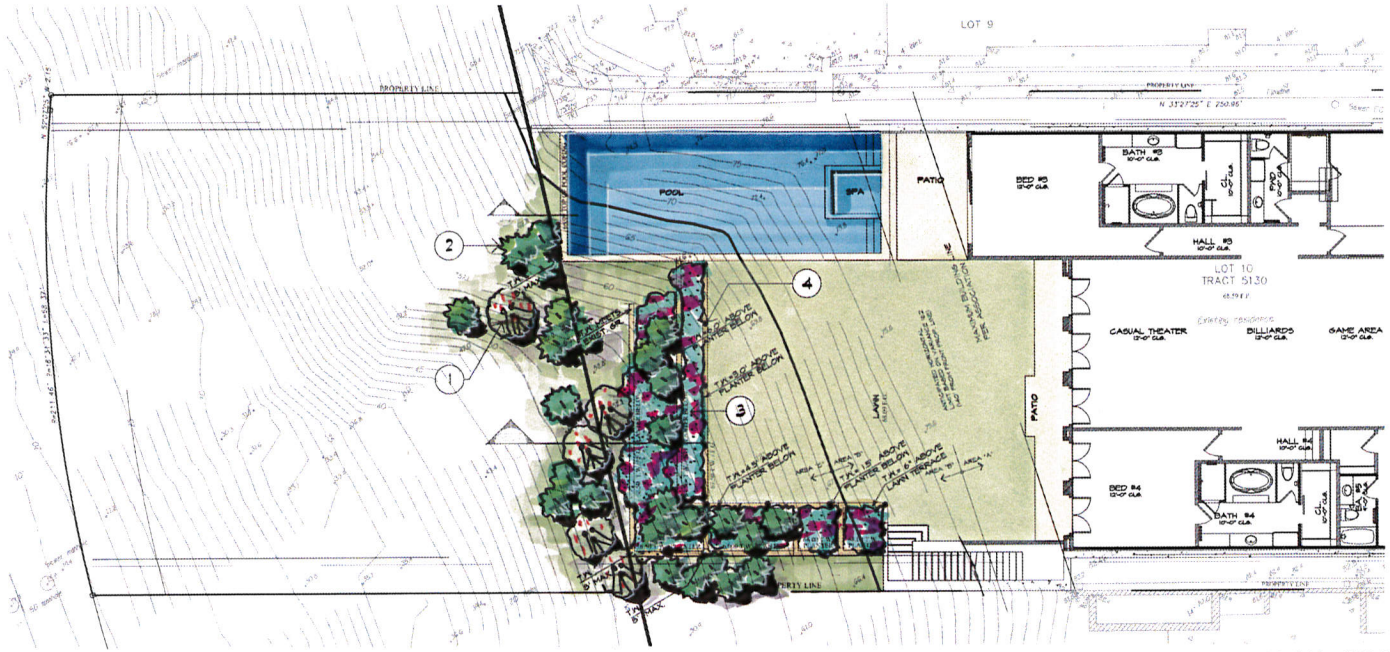
Public Works Conditions

22. *The existing 5-foot-wide sewer easement along the southwesterly property line shall be vacated prior to the start of construction.*

23. *No work shall be permitted within the existing 6-foot-wide easement along the northwesterly property line.*

Attachment No. PC 2

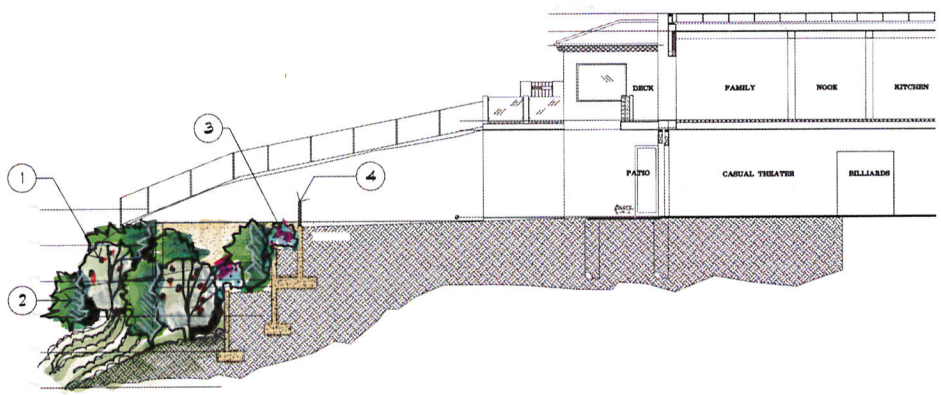
Project Plans



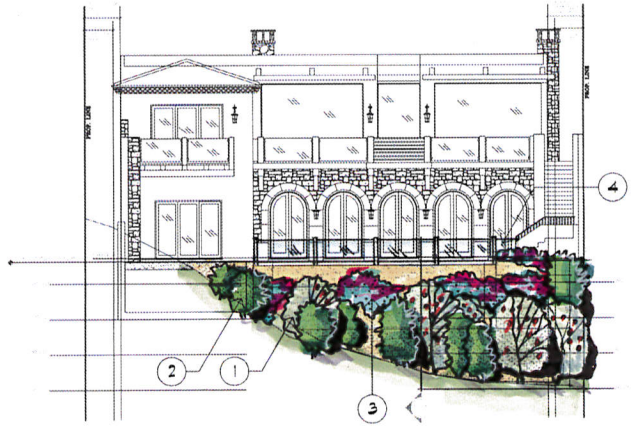
PLAN VIEW
SCALE: 1/8"=1'-0"

LEGEND:

1. METROSIDEROS SPP. (36" BOX)
2. LAURUS NOBILIS (24" and 36" BOX)
3. FLOWERING SHRUB CASCADE (I.E.: BOUGAINVILLEA)
4. POTENTIAL GLASS SCREEN



SECTION VIEW
SCALE: 1/8"=1'-0"



REAR ELEVATION
SCALE: 1/8"=1'-0"

2192 Dupont Drive
Suite 203
Irvine, California 92612
Fax (949) 474-9890
Voice (949) 955-1424
Robert Clark Graves Inc.
LANDSCAPE ARCHITECTS

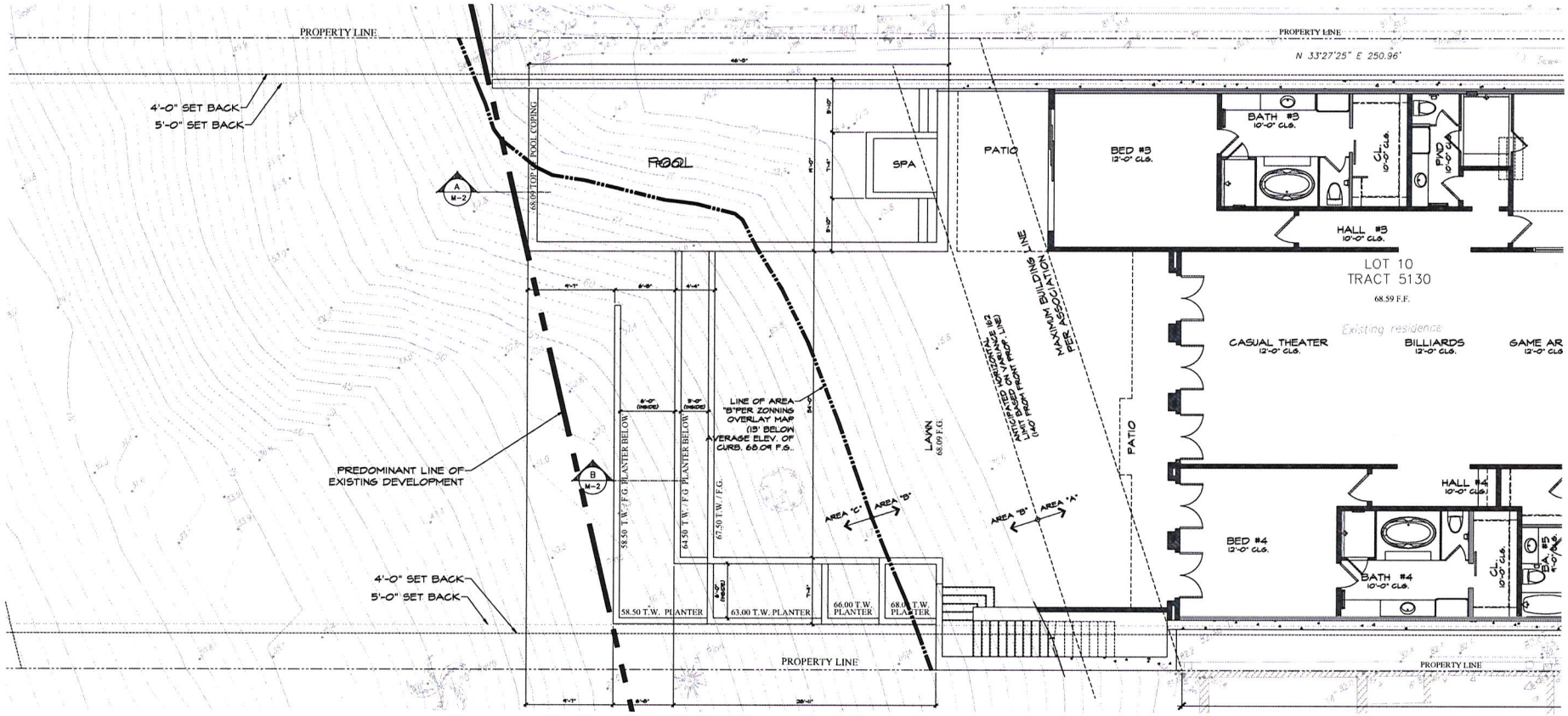
REAR YARD POOL CONCEPT
1111 DOLFIN TERRACE
NEWPORT BEACH, CA

REAR YARD POOL / WALL CONCEPT

SCALE 1/8"=1'-0"
DATE 10-5-12
DRAWN RGG
CHECKED

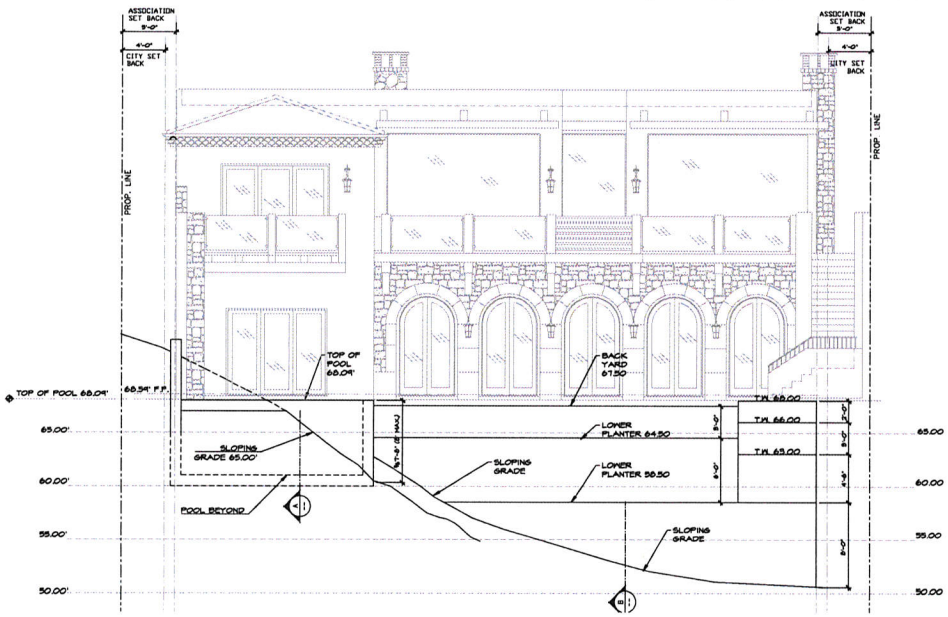
REVISIONS

SHEET
OF
JOB



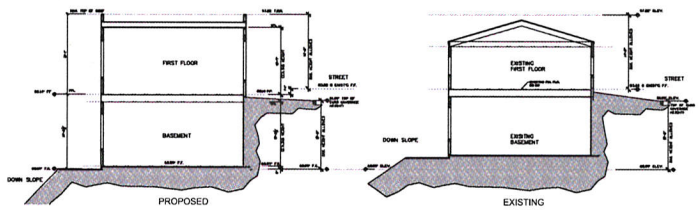
BASEMENT FLOOR PLAN

SCALE: 1/4"=1'-0"



REAR ELEVATION

SCALE: 1/4"=1'-0"



HEIGHT STUDY

SCALE: 1/8"=1'-0"

ARCHITECTURE

ARCHITOPIA

WARDY RESIDENCE

1111 DOLPHIN TERRACE
NEWPORT BEACH, CA 92625

REVISIONS

LICENSED ARCHITECT
C-26855
STATE OF CALIFORNIA

OWNER'S APPROVAL

BASEMENT FLOOR PLAN

PROJECT NO: 1113

PLAN CHECK NO: 2193-2011

SHEET NO: M-1

DATE: NOV. 14, 2012

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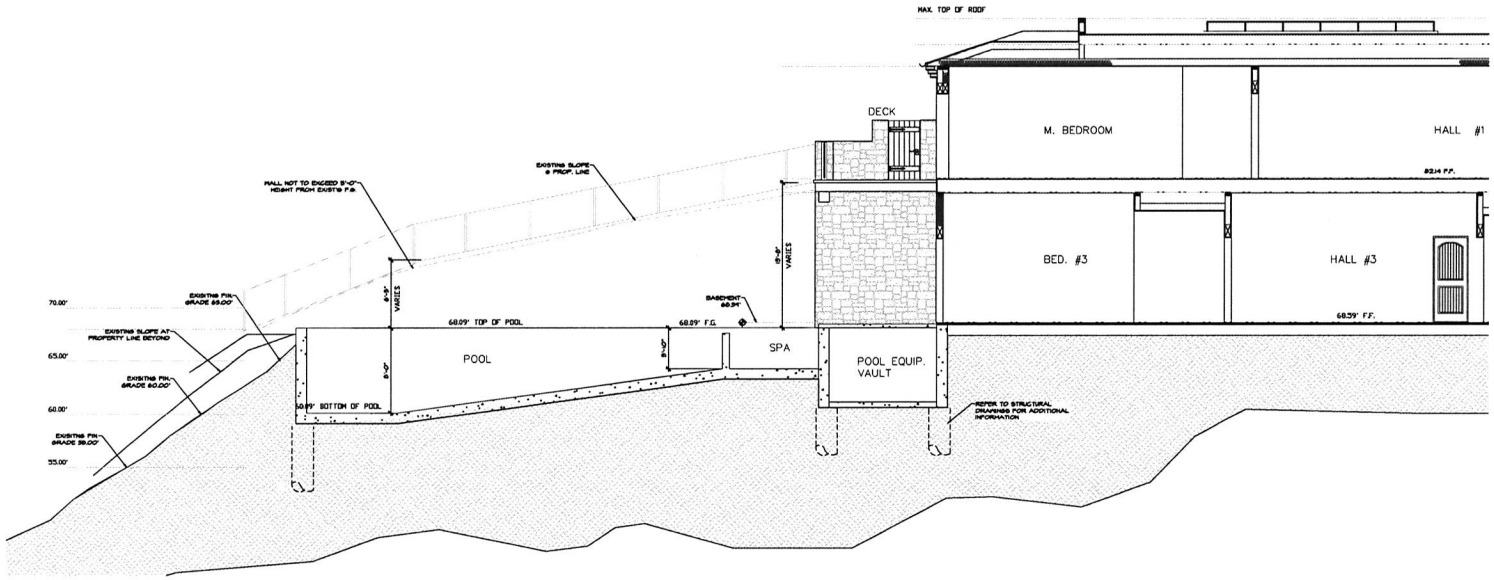
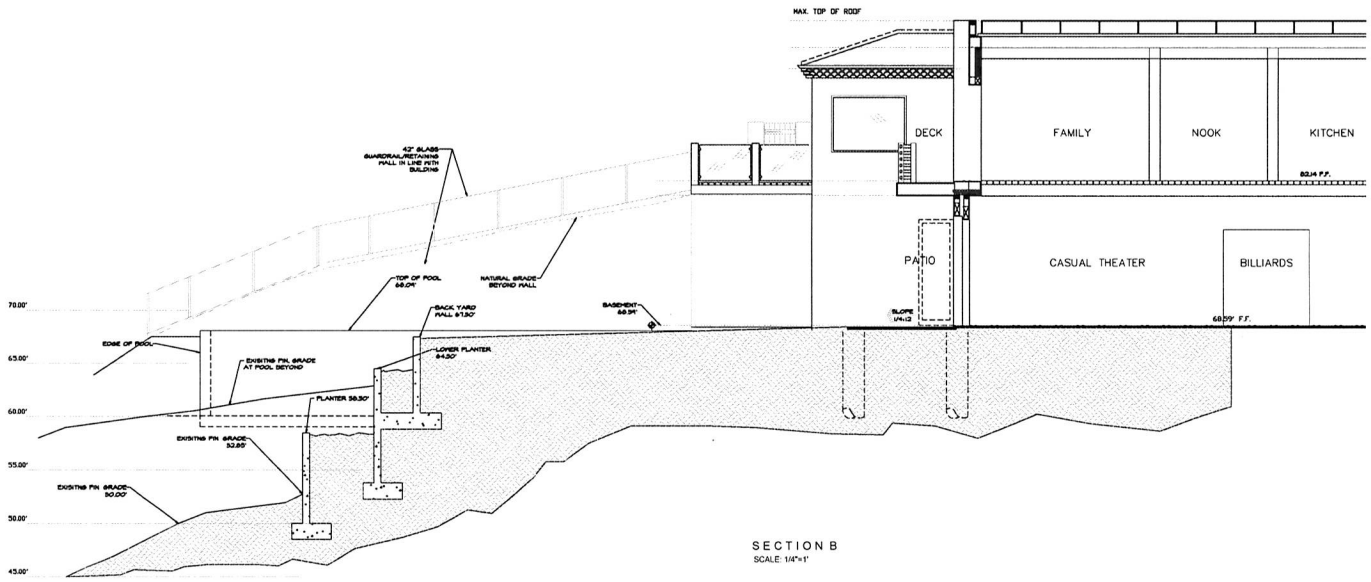


SECTION A
SCALE: 1/4"=1'



SECTION B
SCALE: 1/4"=1'

ARCHITECTURE

ARCHITOPIA

WARDY RESIDENCE
1111 DOLPHIN TERRACE
NEWPORT BEACH, CA 92625

REVISIONS

LICENSED ARCHITECT
C-26855
STATE OF CALIFORNIA

OWNERSHIP APPROVAL

BLDG. SECTIONS A & B

PROJECT NO: 1113
PLAN CHECK NO: 2193-2011
SHEET NO: M-2
DATE: NOV. 14, 2012

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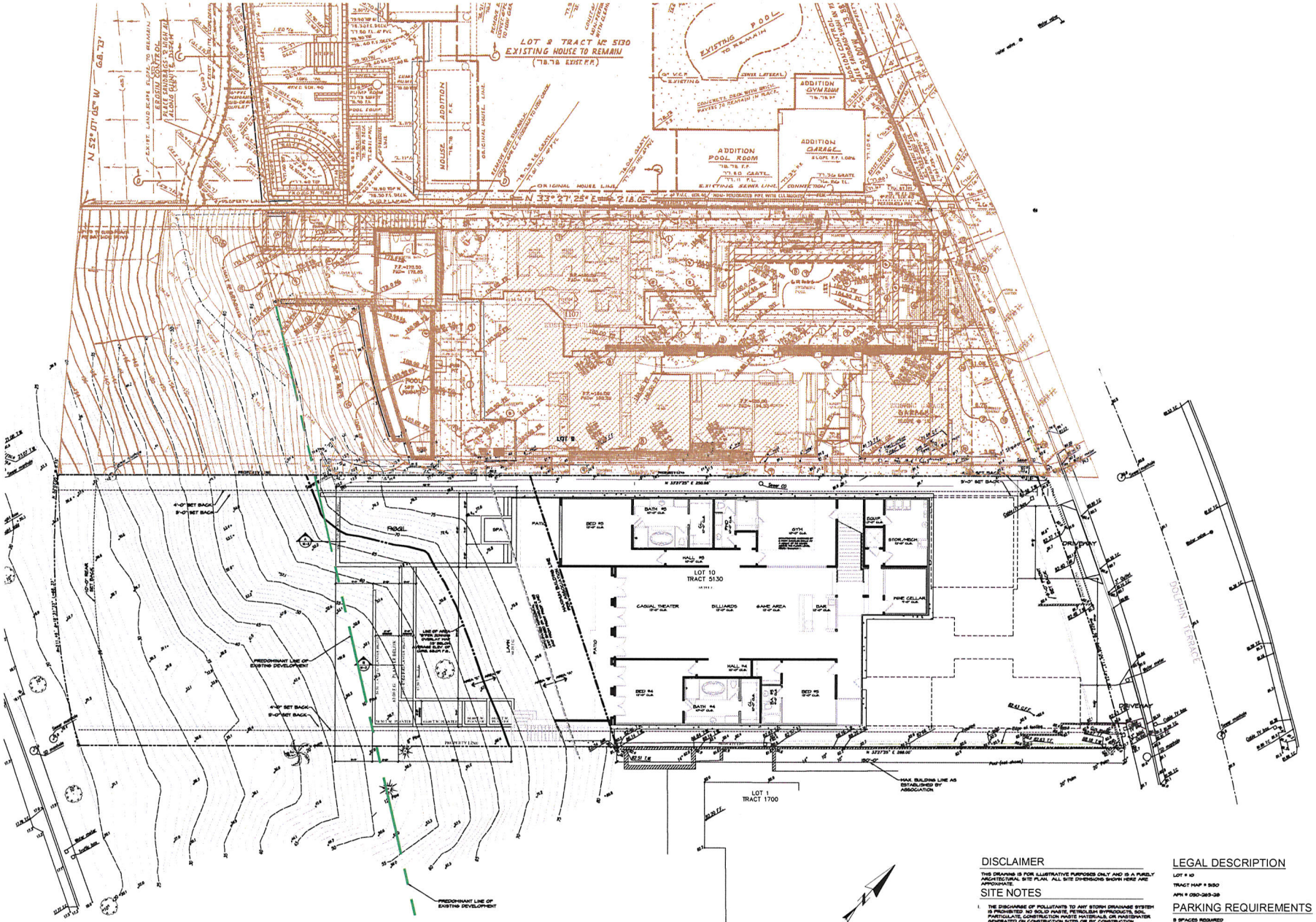


DISCLAIMER

THIS DRAWING IS FOR ILLUSTRATIVE PURPOSES ONLY AND IS A PURELY ARCHITECTURAL SITE PLAN. ALL SITE DIMENSIONS SHOWN HERE ARE APPROXIMATE.

SITE NOTES

1. THE DISCHARGE OF POLLUTANTS TO ANY STORM DRAINAGE SYSTEM IS PROHIBITED. NO SOLID WASTE, PETROLEUM BYPRODUCTS, SOIL, PARTICULATE, CONSTRUCTION WASTE MATERIALS, OR WASTEWATER GENERATED ON CONSTRUCTION SITES OR BY CONSTRUCTION ACTIVITIES SHALL BE PLACED, CONVEYED OR DISCHARGED INTO THE STREET, GUTTER OR STORM DRAIN SYSTEM.
2. COMBUSTIBLE OVERHANGS WITHIN 5 FEET OF PROPERTY LINE SHALL BE OF ONE HOUR FIRE-RESISTIVE OR HEAVY TIMBER CONSTRUCTION CONFORMING TO SECTION 705.5.
3. EXTERIOR WALLS WITHIN 5 FEET OF PROPERTY LINE SHALL BE OF ONE-HOUR FIRE-RESISTIVE CONSTRUCTION.
4. NO OPENING ARE PERMITTED WITHIN 3 FEET OF PROPERTY LINE.
5. ALL RAIN GUTTERS TO TIE INTO DRAIN LINES.
6. FINISH GRADE AROUND THE NEW STRUCTURE/ADDITION SHALL BE SLOPED AWAY FROM THE BUILDING FOR DRAINAGE PURPOSES.

LEGAL DESCRIPTION

LOT # 10

TRACT MAP # 5130

APN # 050-263-38

PARKING REQUIREMENTS

3 SPACES REQUIRED

4 SPACES PROVIDED

BUILDABLE FLOOR AREA ALLOWED

LOT SIZE	18,994 SQ. FT.
SET BACK AREA	- 5,695 SQ. FT.
BUILDABLE AREA	13,300 SQ. FT.
BUILDING TOTAL FLOOR AREA (LIVING, UPPER CLOSET & GARAGE)	10,545 SQ. FT.

ALLOWABLE 3x13,300= 39,900

ARCHITECTURE

ARCHITOPIA

NEWPORT BEACH, CA 92660

COPYRIGHT 2012

WARDY RESIDENCE

1111 DOLPHIN TERRACE
NEWPORT BEACH, CA 92625

REVISIONS

LICENSED ARCHITECT
C-26855
REGISTERED PROFESSIONAL ARCHITECT
STATE OF CALIFORNIA

OWNERSHIP APPROVAL

SITE PLAN PLAN

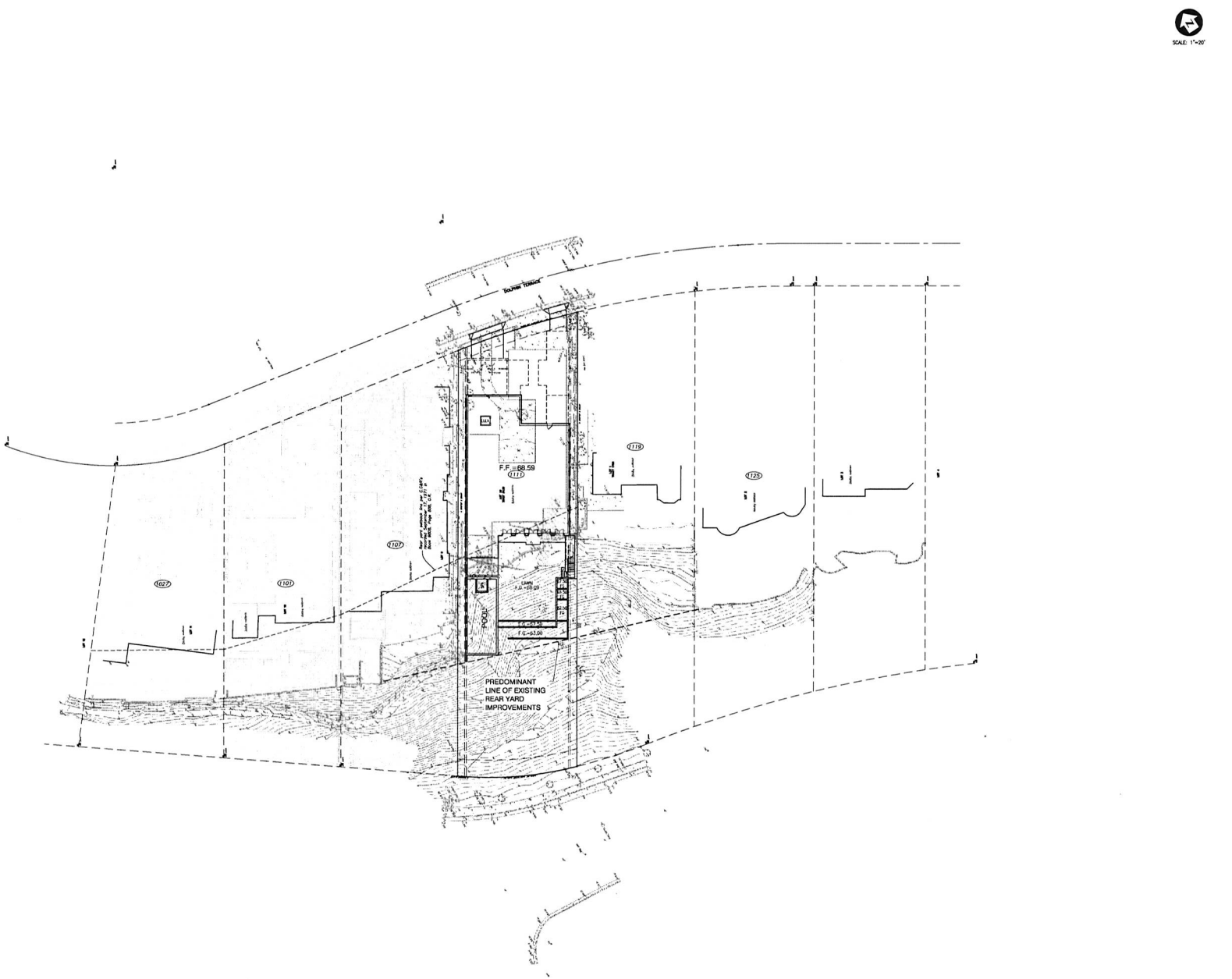
PROJECT NO: 1113

PLAN CHECK NO: 2193-2011

SHEET NO: M-S

DATE: NOV. 14, 2012

NOTICE: THE DESIGNS SHOWN AND DESCRIBED HEREIN, INCLUDING ALL TECHNICAL DRAWINGS, GRAPHICS AND MODELS THEREOF, ARE PROPRIETARY AND SHALL NOT BE COPIED, DUPLICATED, REUSED, OR COMMERCIALLY EXPLOITED IN WHOLE OR IN PART WITHOUT THE WRITTEN PERMISSION OF ARCHITOPIA, INC. ALL THESE DOCUMENTS HAVE BEEN PREPARED TO DESCRIBE NEW WORK ONLY AND DO NOT REPRESENT AS-BUILT OR ACCURATE EXISTING CONDITIONS. THE ARCHITECT DOES NOT WARRANT IN ANY WAY THE ACCURACY OF THIS INFORMATION AND SHALL NOT BE RESPONSIBLE FOR DISCREPANCIES BETWEEN THIS DOCUMENT AND EXISTING CONDITIONS. THESE PLANS ARE THE SOLE PROPERTY OF THE ARCHITECT AND ARE AVAILABLE FOR LIMITED REVIEW AND EVALUATION AS "INSTRUMENTS OF SERVICE" BY THE CLIENT, CONSULTANTS, CONTRACTORS, GOVERNING AGENCIES, VENDORS, AND OFFICE PERSONNEL ONLY IN ACCORDANCE WITH THIS NOTICE. DO NOT SCALE OFF THESE DRAWINGS. ALL RIGHTS RESERVED COPYRIGHT, ARCHITOPIA, INC.



SITE PLAN

LOT 10, TRACT 5130

1111 DOLPHIN TERRACE, NEWPORT BEACH, CALIFORNIA

PREPARED FOR HATTON, PETRIE AND STACKLER, APC

H. SCALE 1"= 20'	DATE 10/15/12		
V. SCALE N/A	DRN. K.B.		
DATE OF SURVEY 5/21/10	CKD. C.R.		
DR. FILE —	APVD. C.R.		

REVISIONS	BY	DATE	APVD.	DATE

TOAL ENGINEERING, INC.
Civil Engineers and Land Surveyors
139 Avenida Navarro, San Clemente, Calif. 92672
Ph: 949-492-8585 Fax: 949-492-8625

SHEET 1 OF 1

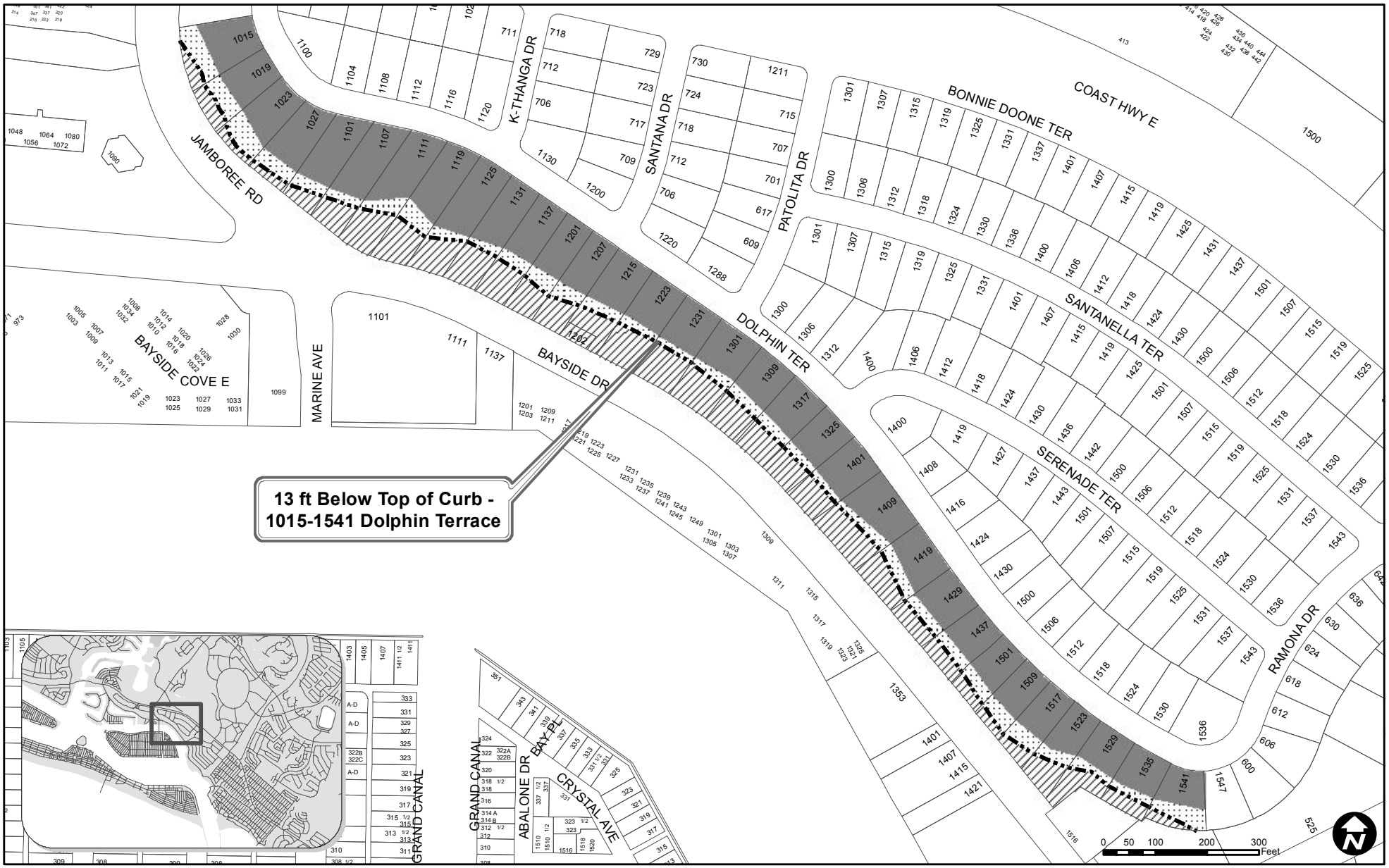
JOB NO. 14275

REGISTERED PROFESSIONAL ENGINEER
CHRISTOPHER R. TOAL
No. 37987
EXP. 12-31-11
CIVIL
STATE OF CALIFORNIA

Culver 33

Attachment No. PC 3

Bluff Overlay Map B-2



B-2 Irvine Terrace - Dolphin Terrace

Development Areas Delineated By:

- Specified Distance from Front Property Line
- Specified Distance Below Top of Curb
- Specified Contour

- Development Area A
- Development Area B
- Development Area C

Name: B-2_Irvine_Ter_Dolphin_Ter/ October 26, 2010

Attachment No. PC 4

Coast Geotechnical letter

COAST GEOTECHNICAL, INC.
1200 W. Commonwealth Avenue, Fullerton, CA 92833 Ph: (714) 870-1211 Fax: (714) 870-1222

December 20, 2012 W.O. 377509-07

Mr. Amen Wardy
535 East Coast Highway, Suite 363
Newport Beach, CA 92625

Subject: Response to City of Newport Beach, Panning Division, Slope Stability, Proposed Rear Yard Improvements at 1111 Dolphin Terrace, Newport Beach, California.

References:

1. Geotechnical Engineering Investigation for Proposed Residential Development at 1111 Dolphin Terrace, Newport Beach, California; by COAST GEOTECHNICAL, W.O. 377509-01, dated March 6, 2009.

2. Report Update, Proposed Residential Development at 1111 Dolphin Terrace, Newport Beach, California; by COAST GEOTECHNICAL, W.O. 377509-02, dated October 4, 2011.

3. Response to Geotechnical Report Review, Proposed Residence at 1111 Dolphin Terrace, Newport Beach, California; by COAST GEOTECHNICAL, W.O. 377509-05, dated June 19, 2012.

4. Response to Geotechnical Report Review, Proposed Residence at 1111 Dolphin Terrace, Newport Beach, California; by COAST GEOTECHNICAL, W.O. 377509-06, dated November 30, 2012.

Dear Mr. Wardy:

In accordance with your request, COAST GEOTECHNICAL, Inc. is responding to the City of Newport Beach, Planning Division, dated December 20, 2012, prepared by Mr. Patrick Alford, Planning Manager for the City of Newport Beach, Community Development Department. *The review question is in regard to the static and seismic slope stability based on the increased bluff or canyon development.*

Response

Reference # 1 provided slope stability analyses of the existing man-made descending slope condition. The analyses demonstrates that the existing descending slope has a static factors of safety in excess of 1.5 and a seismic factor of safety in excess of 1.1. The proposed rear yard improvements will be at a lower elevations than existing grade, thus removing loading near the top of the slope and increasing the factor of safety of descending slope. Furthermore, site improvement of the rear yard, i.e. pool and retaining walls, will be supported by deep pile foundations supported into competent bedrock, which will provide stability to the structures and also increase the factor of safety of the descending slope.

We appreciate this opportunity to be of service to you.

Respectfully submitted:
COAST GEOTECHNICAL, INC.

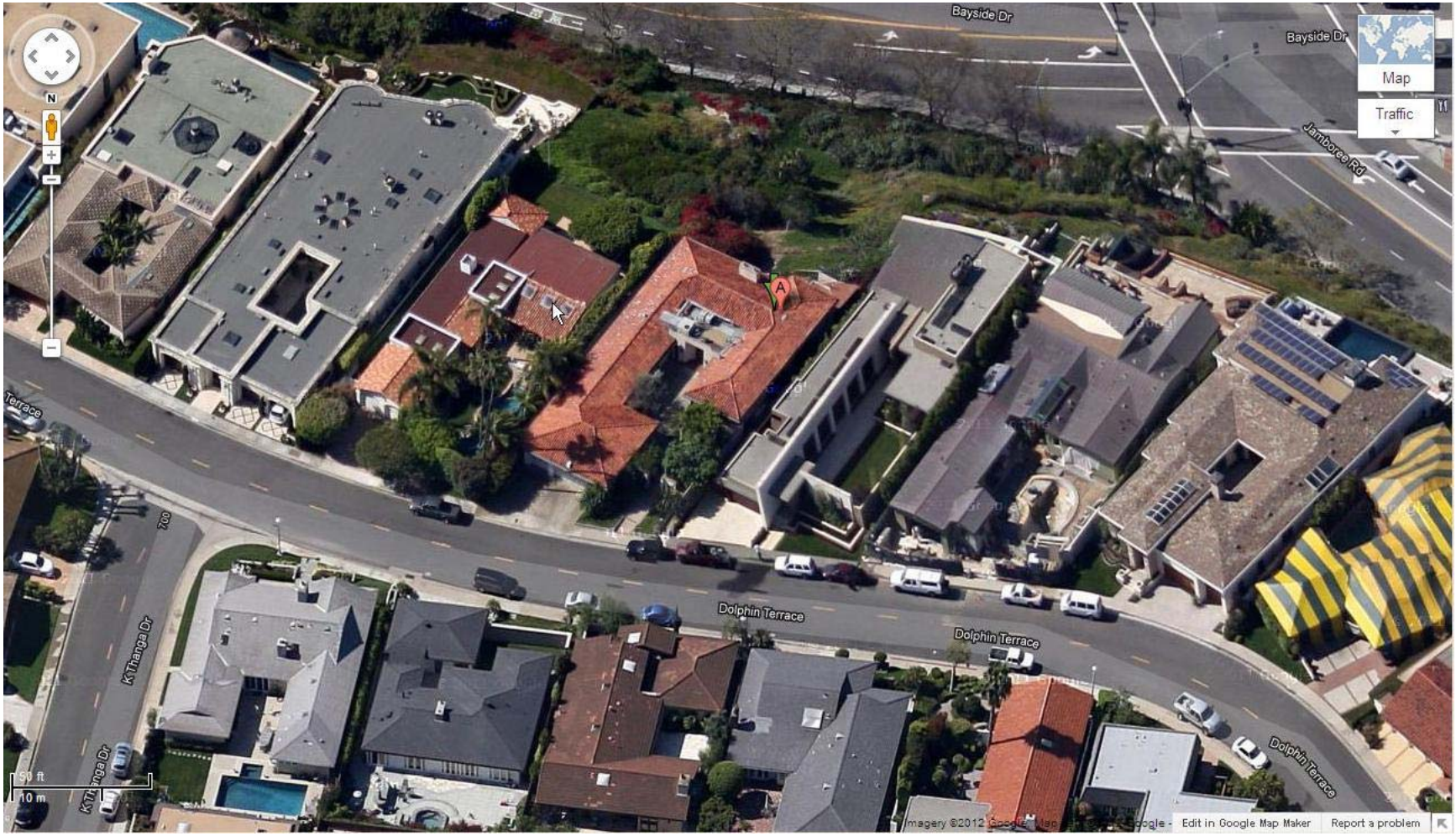
Ming-Tarng Chen
RCE 54011

REGISTERED PROFESSIONAL ENGINEER
MING-TARNG CHEN
No. 54011
Exp. 12-31-13
CIVIL
STATE OF CALIFORNIA

Daniel E. Herc
Staff Geologist

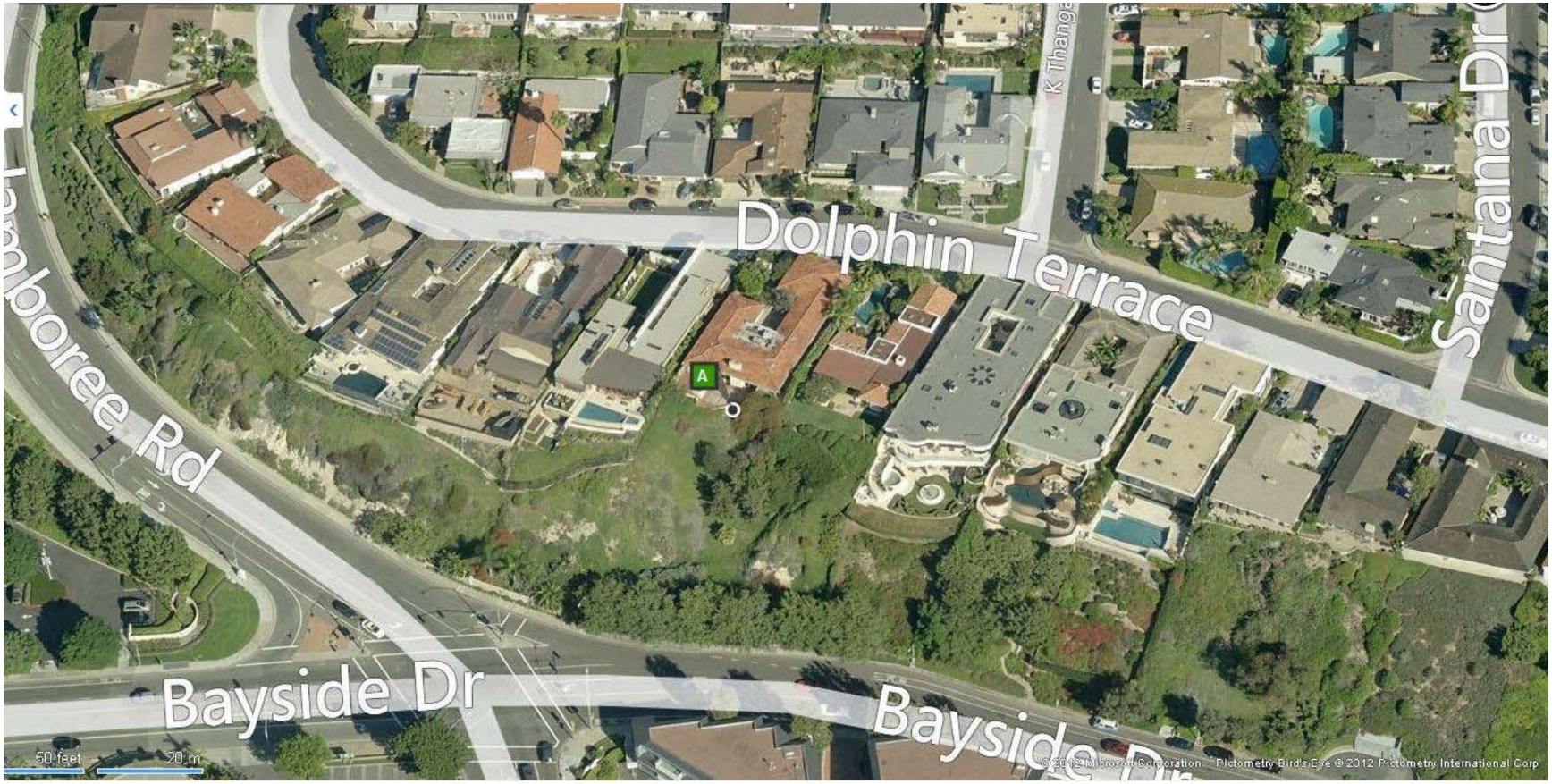
Attachment No. PC 5

Aerial Photos



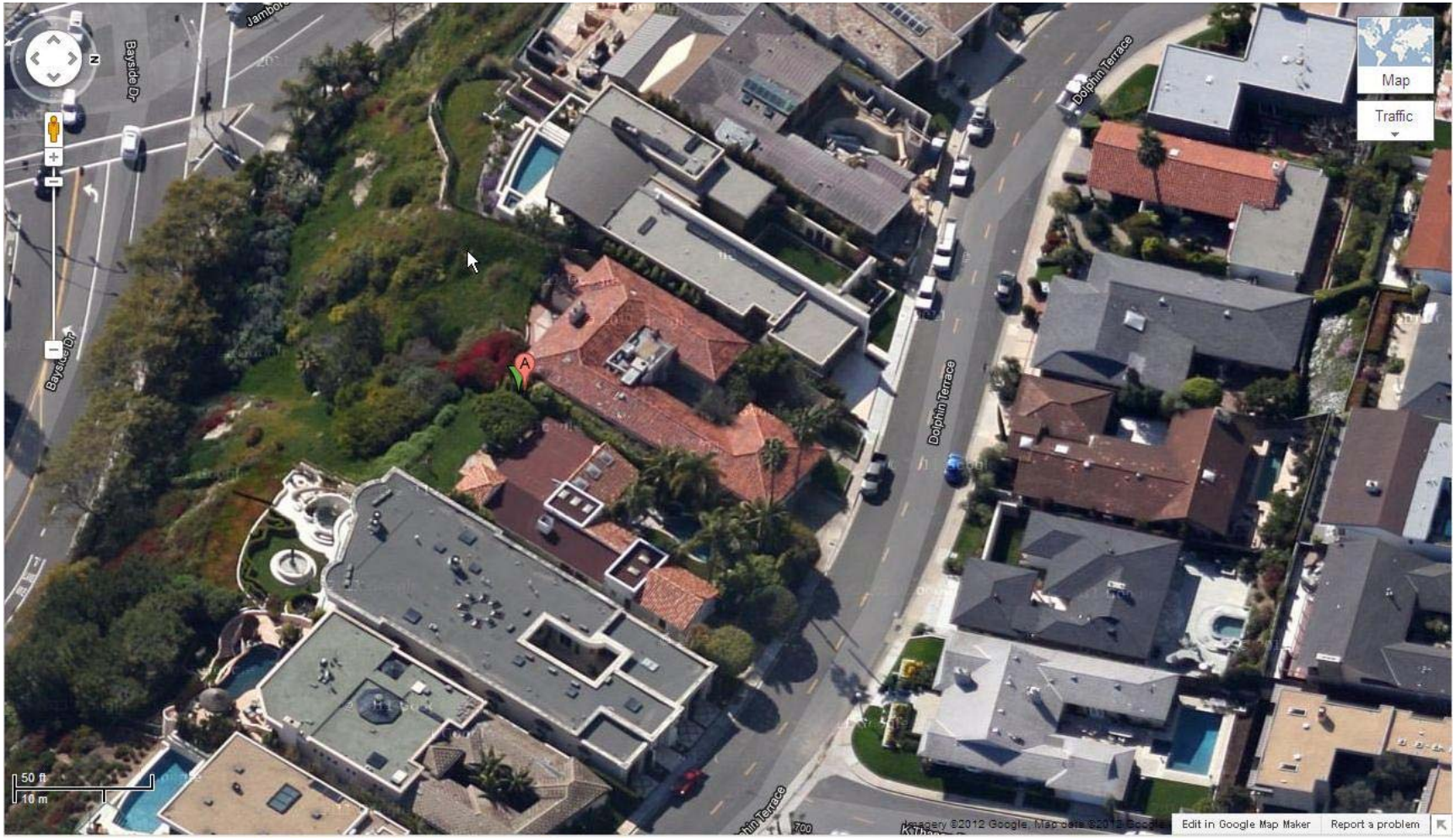
Wardy Residence - 1111 Dolphin Terrace

View from the North



Wardy Residence - 1111 Dolphin Terrace

View from the South



Wardy Residence - 1111 Dolphin Terrace

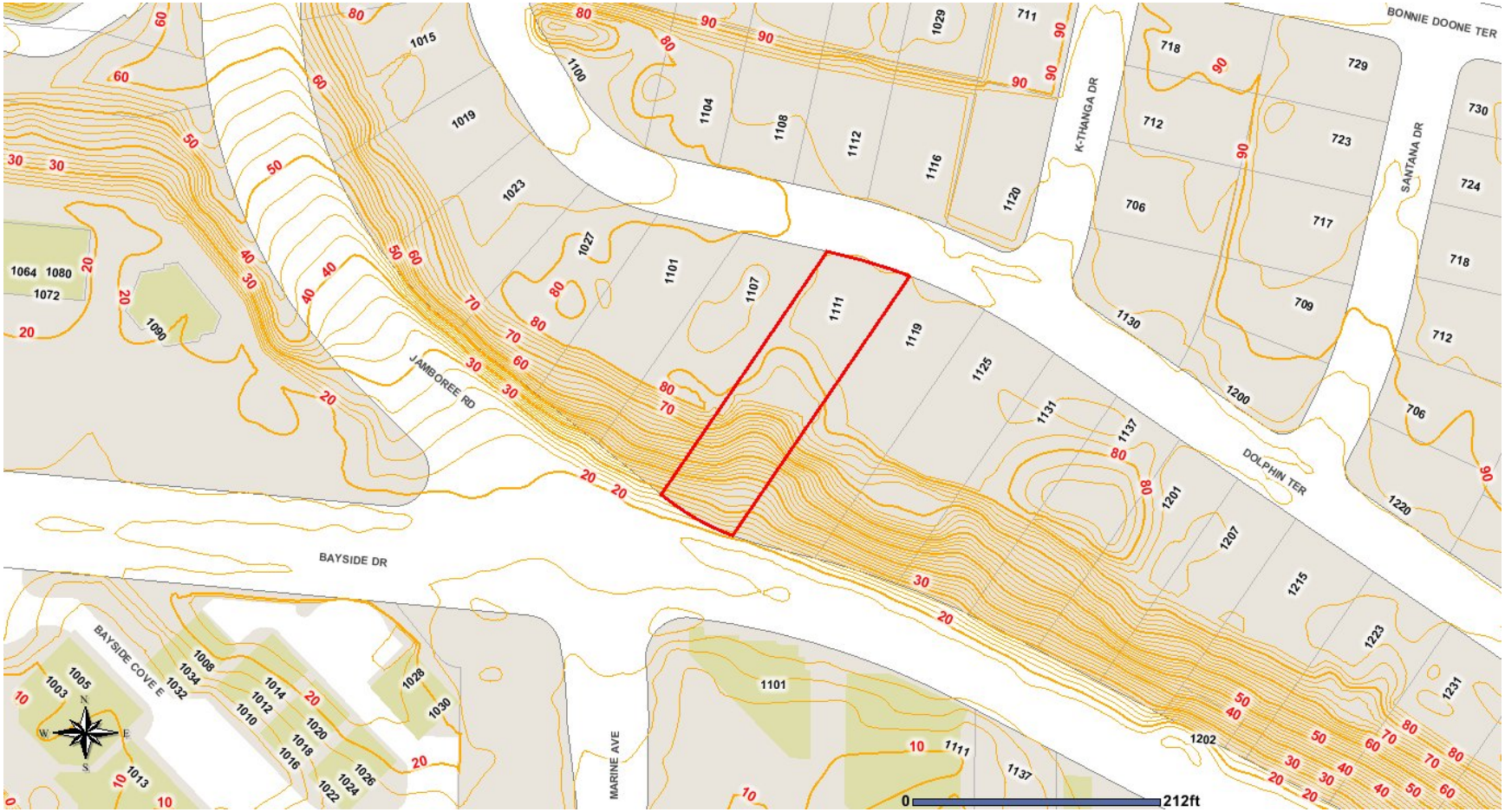
View from the East

Wardy Residence - 1111 Dolphin Terrace

View from the West

Attachment No. PC 6

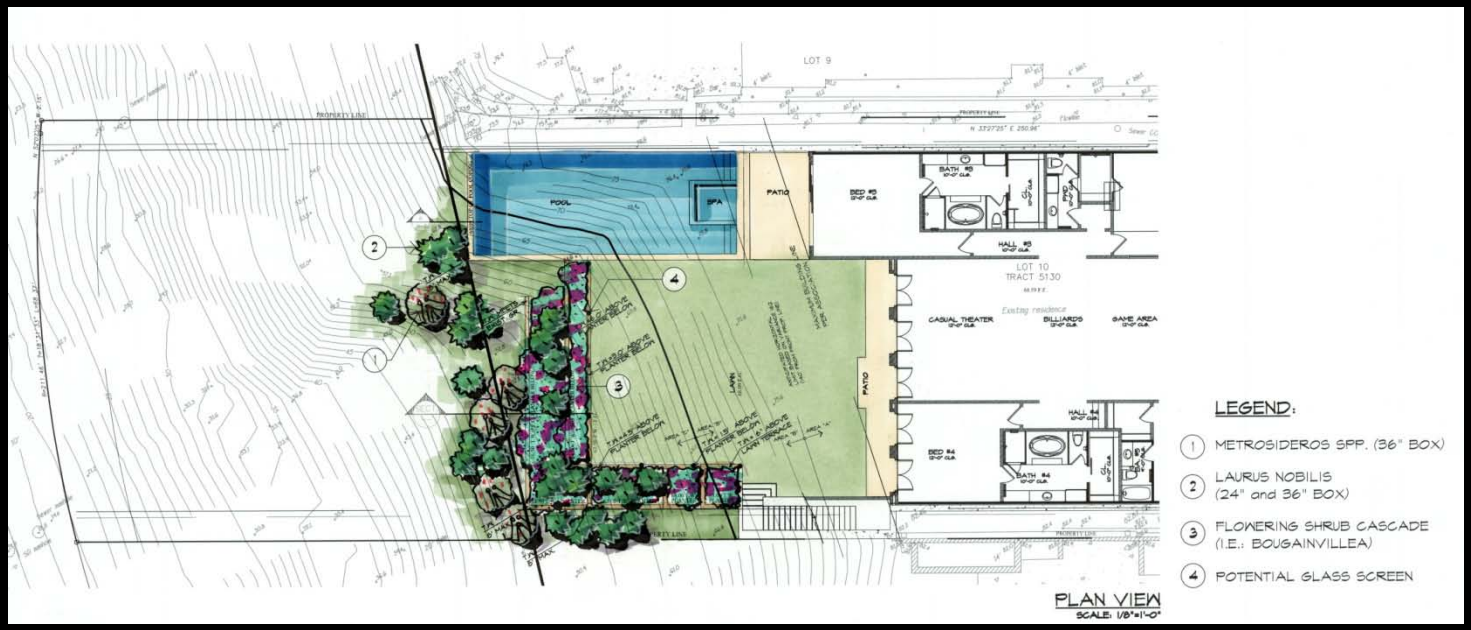
Topographic Map of Dolphin Terrace



TOPOGRAPHIC MAP OF DOLPHIN TERRACE

ADDITIONAL MATERIALS RECEIVED

Wardy Residence



Planning Commission
Public Hearing
January 3, 2013

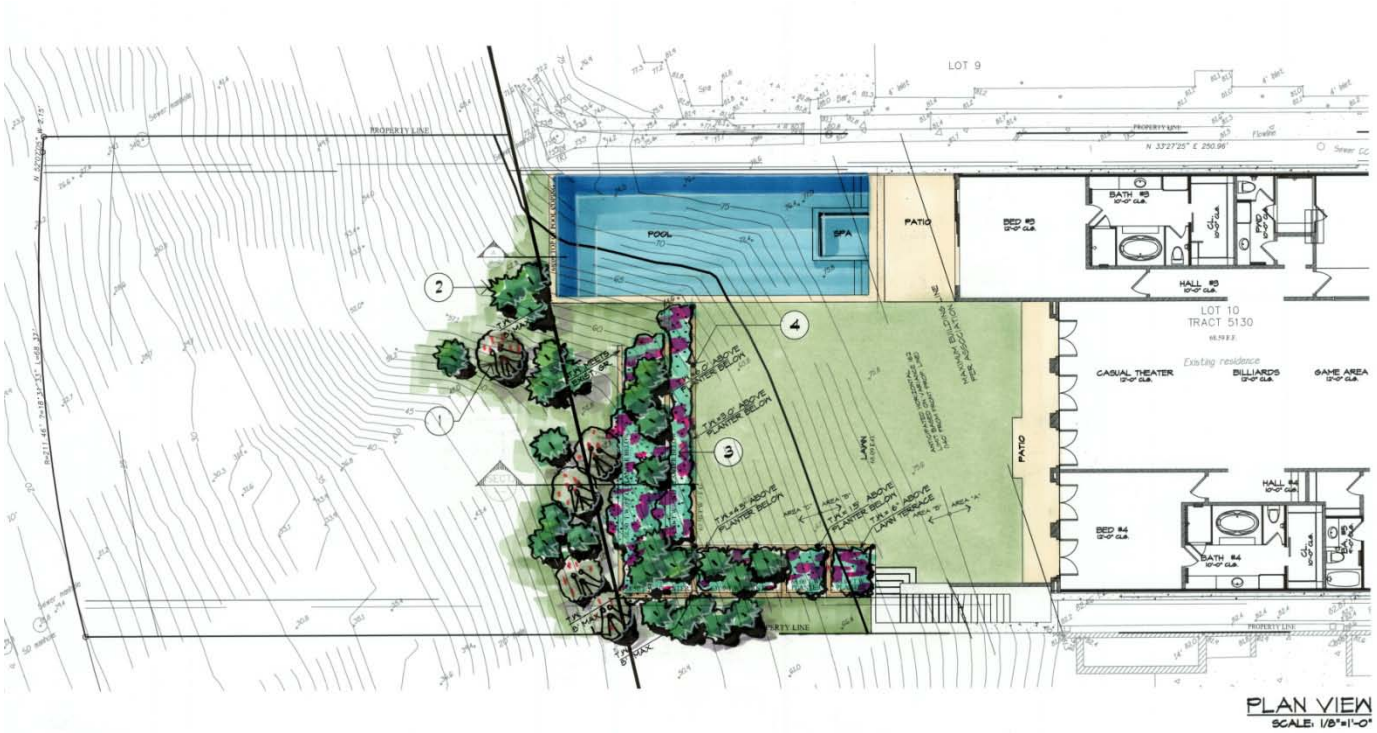
STAFF PRESENTATION
PA2010-061

Vicinity Map

Project Overview

- Site Development Review
  - To allow an increase in the boundaries of Development Area B for the purpose of the construction of a pool and retaining walls in Development Area C
- Modification Permit
  - To allow a retaining wall over 8 feet in height from finished grade

Proposed Improvements



LEGEND:

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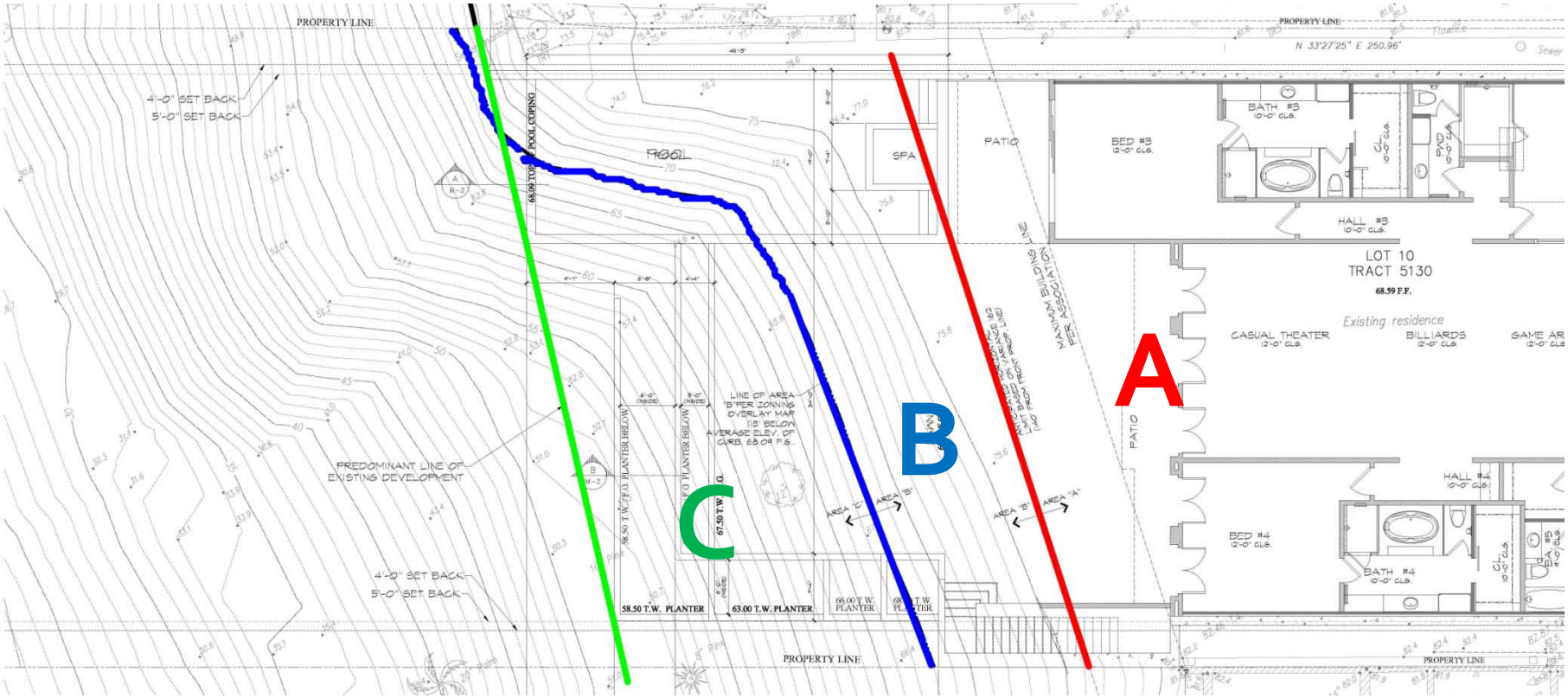
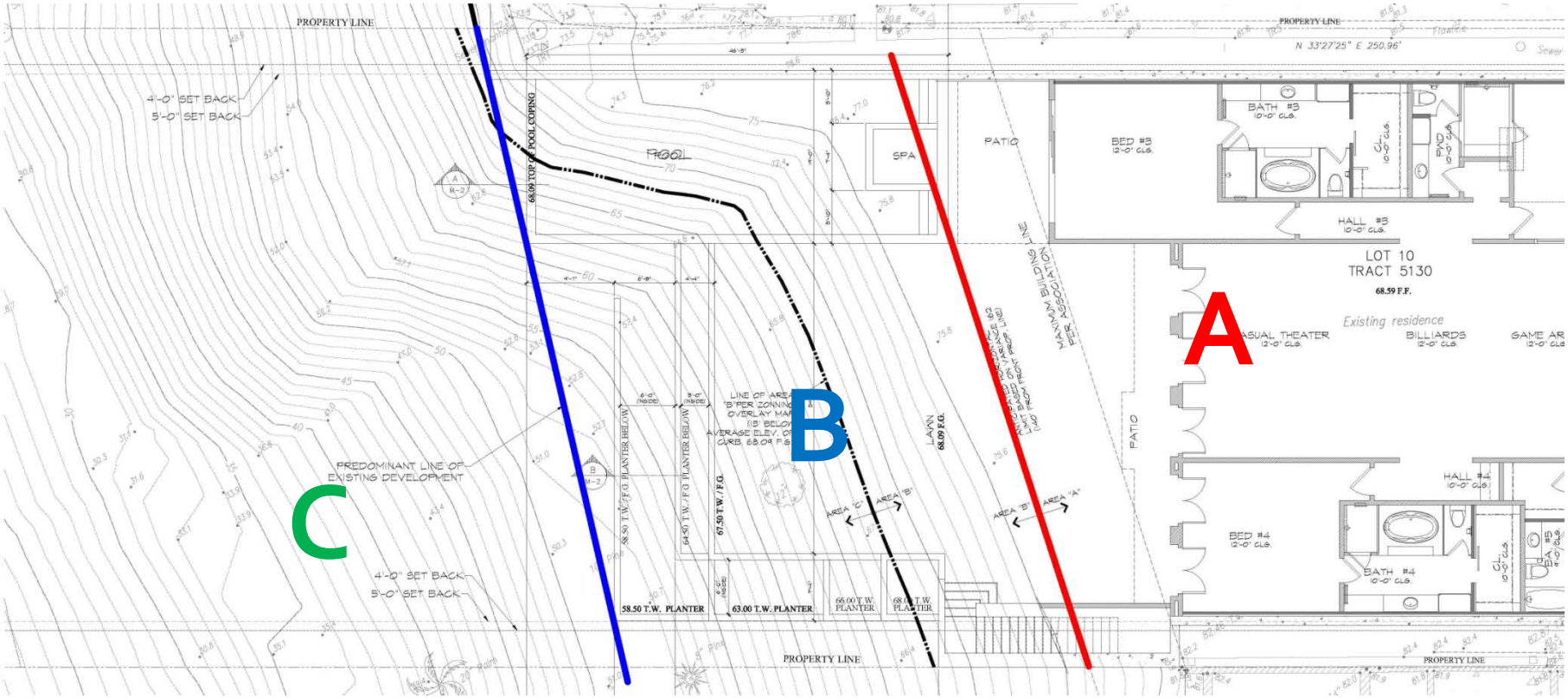
2. LAURUS NOBILIS (24" and 36" BOX)
3. FLOWERING SHRUB CASCADE (I.E.: BOUGAINVILLEA)
4. POTENTIAL GLASS SCREEN

Site Development Review

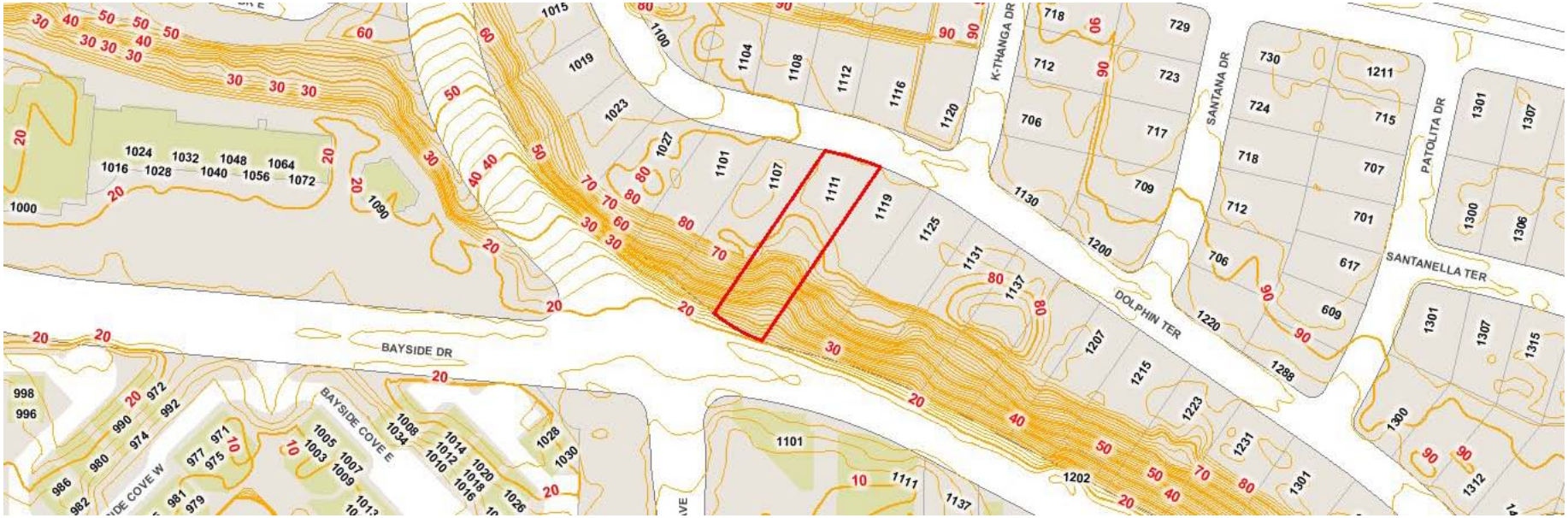


Site Development Review



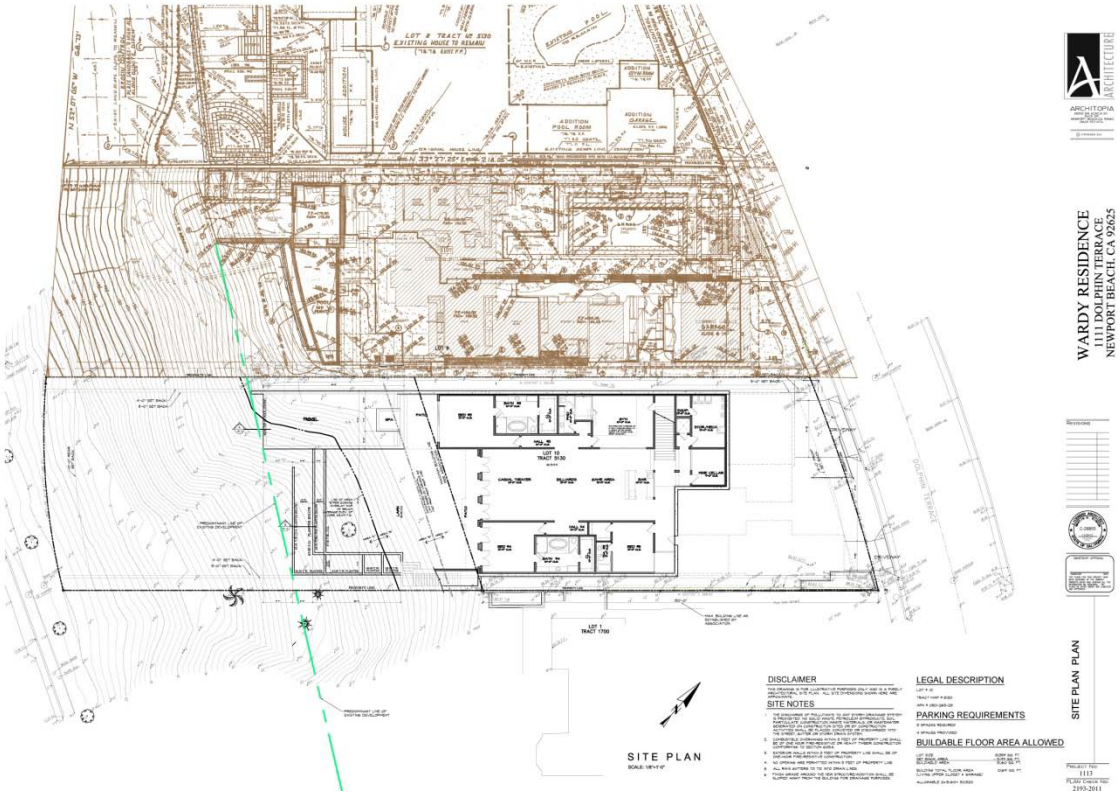
Topographic Constraints
1938 Aerial

Topographic Constraints
Current Topography

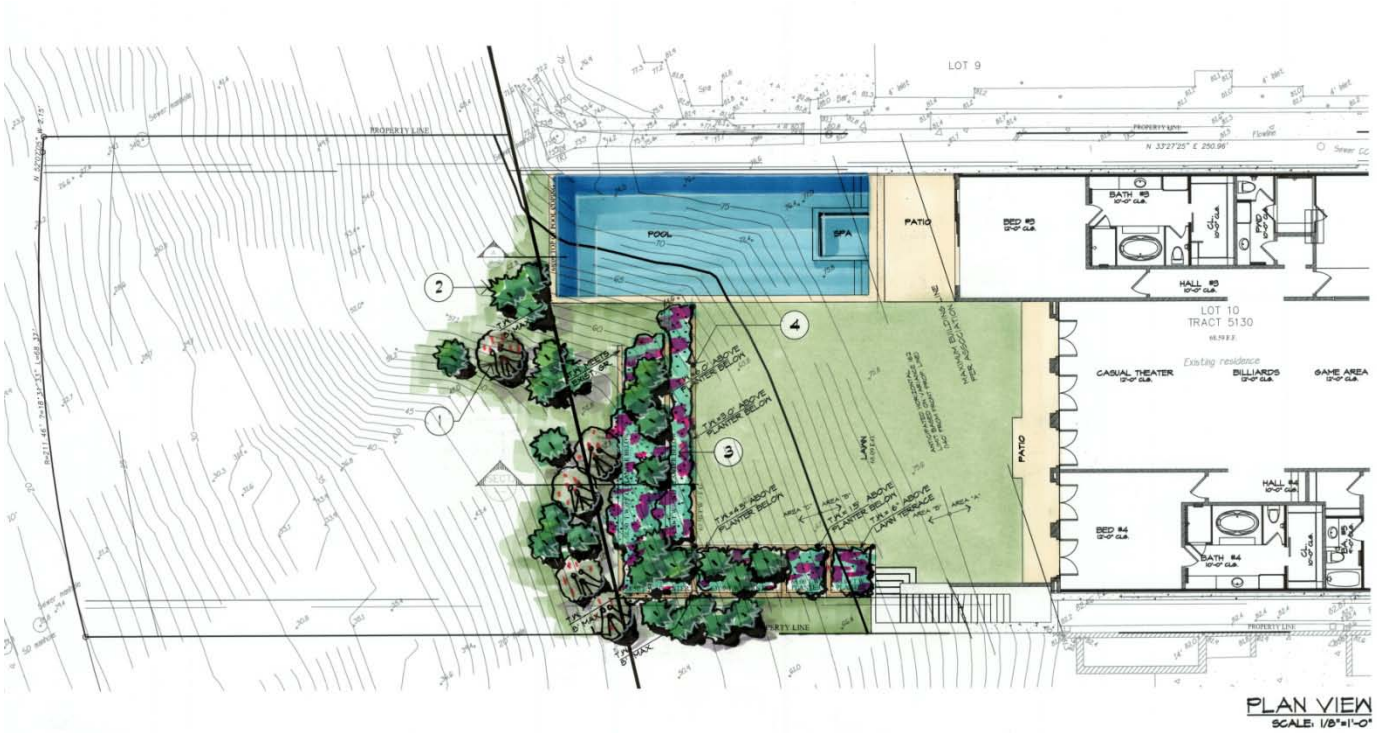


Current Aerial Photo

Line of Development



Proposed Improvements



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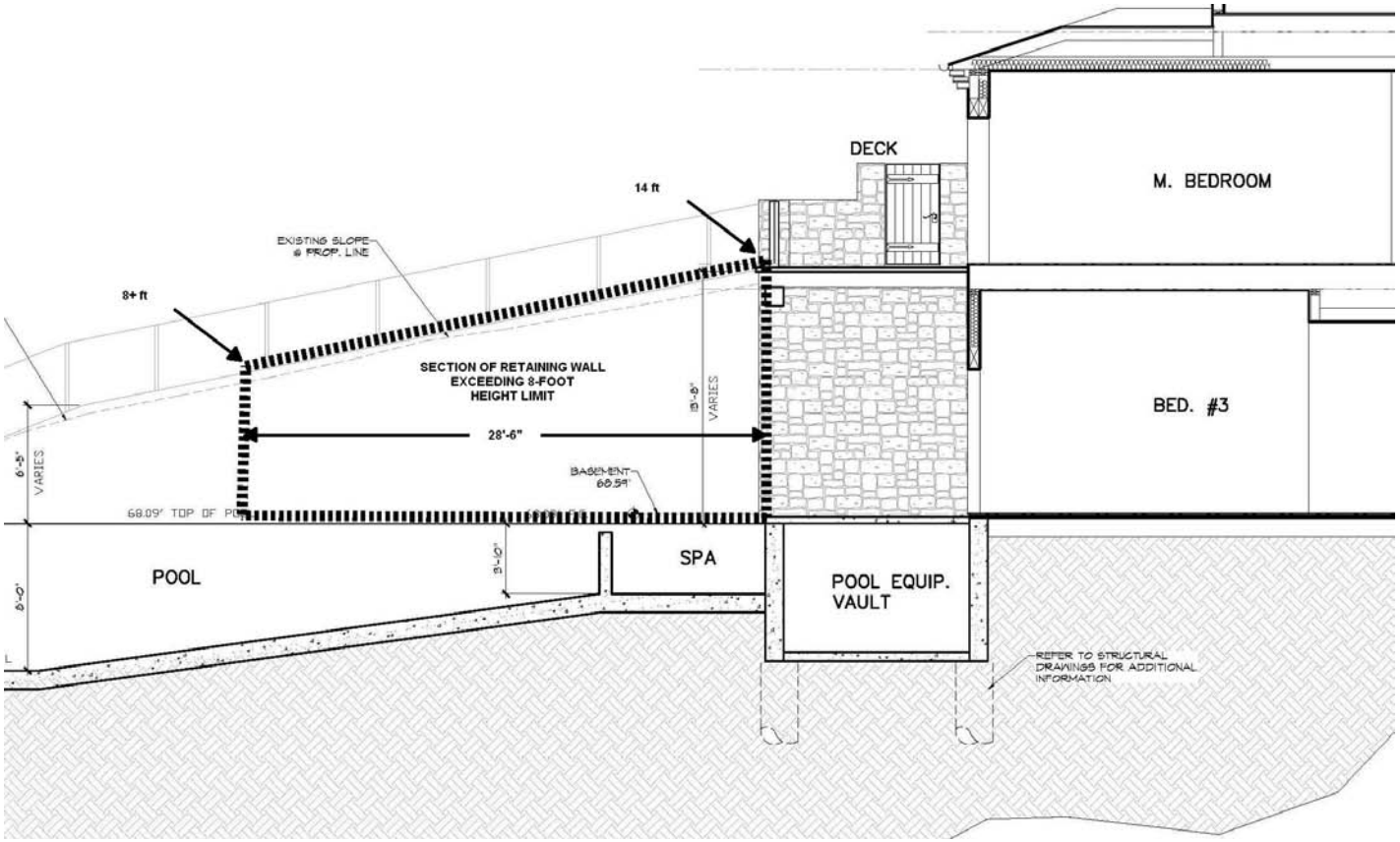
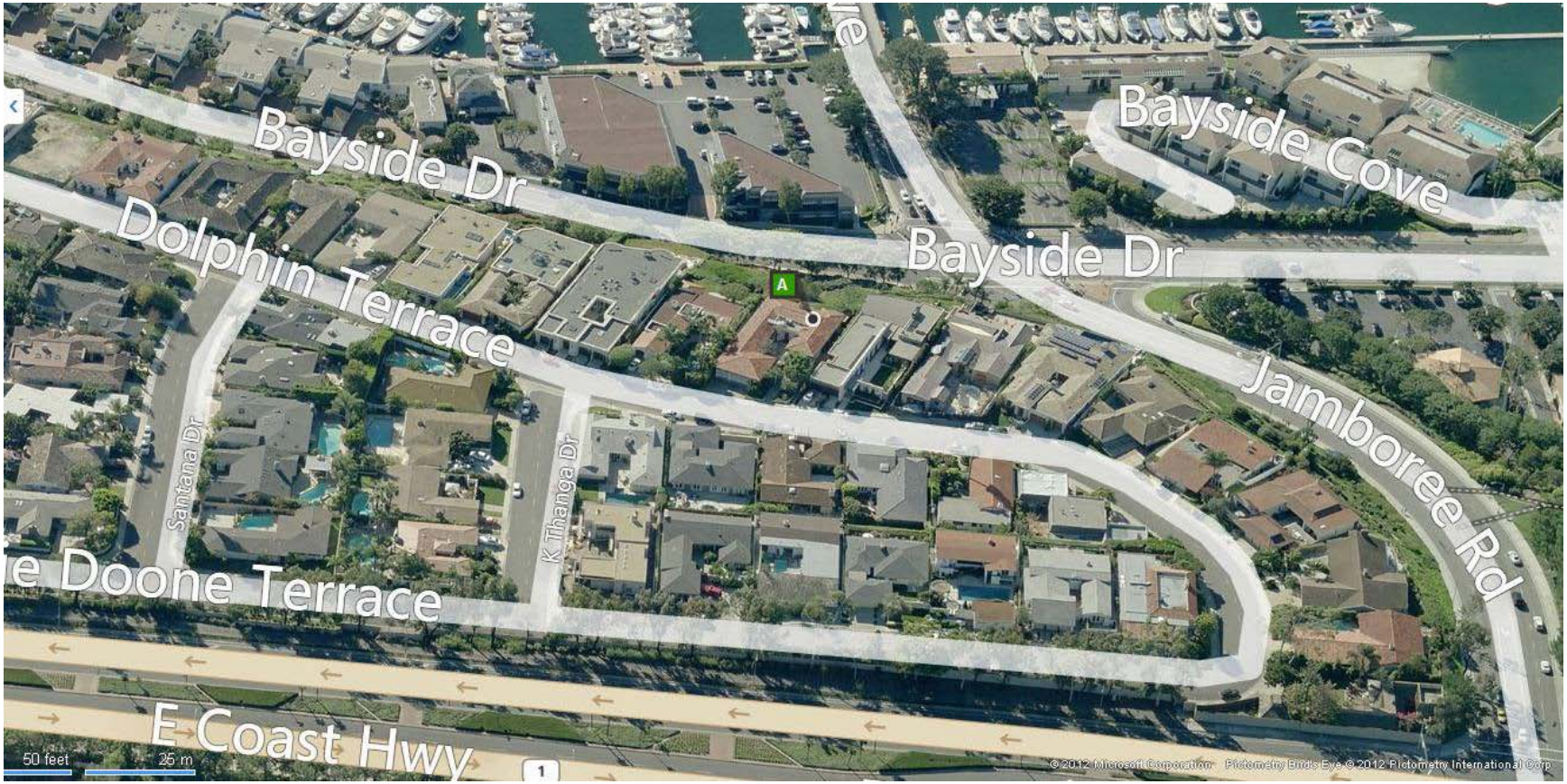
2. LAURUS NOBILIS (24" and 36" BOX)
3. FLOWERING SHRUB CASCADE (I.E.: BOUGAINVILLEA)
4. POTENTIAL GLASS SCREEN

Modification Permit



Aerial Photos

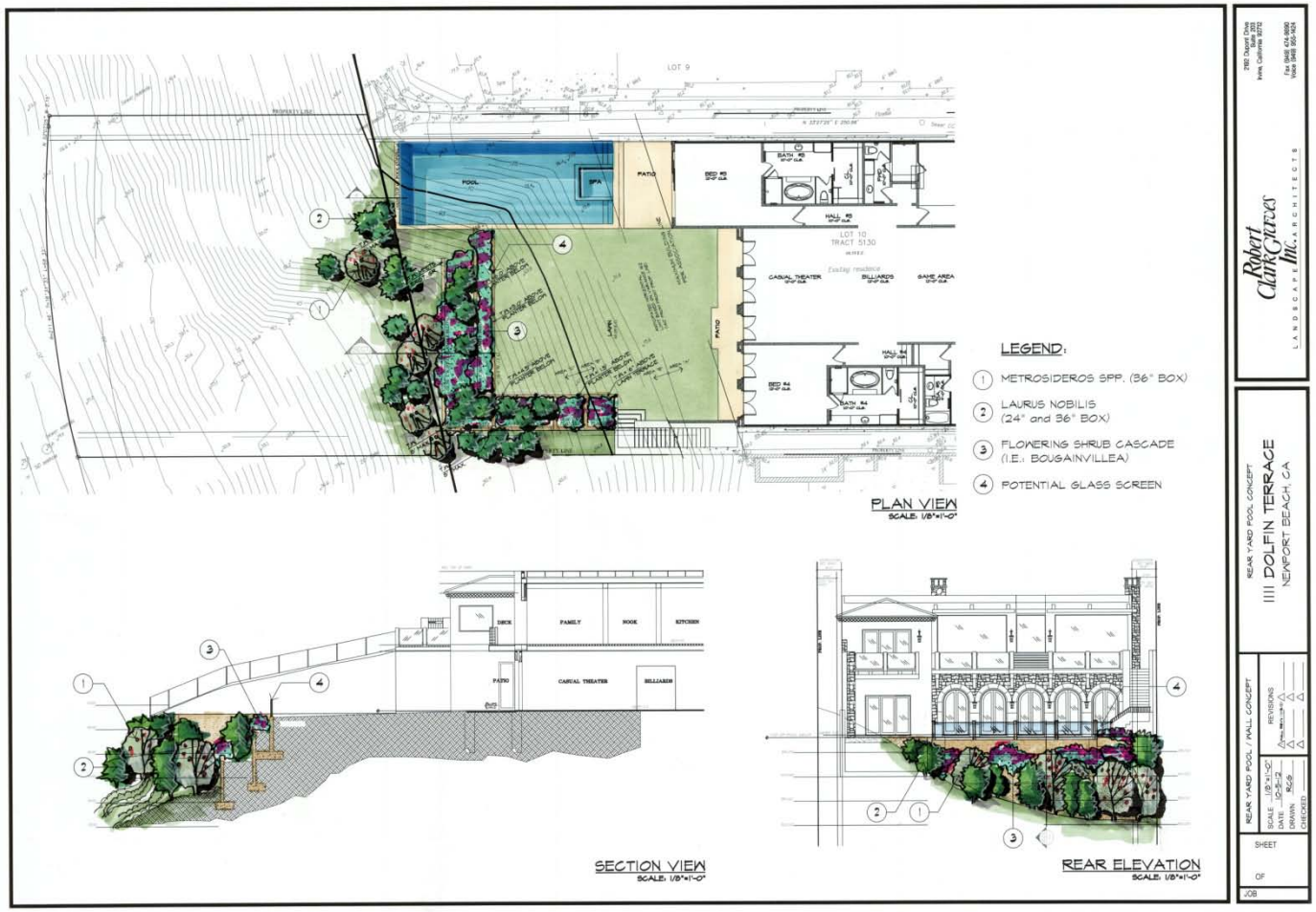
Aerial Photos



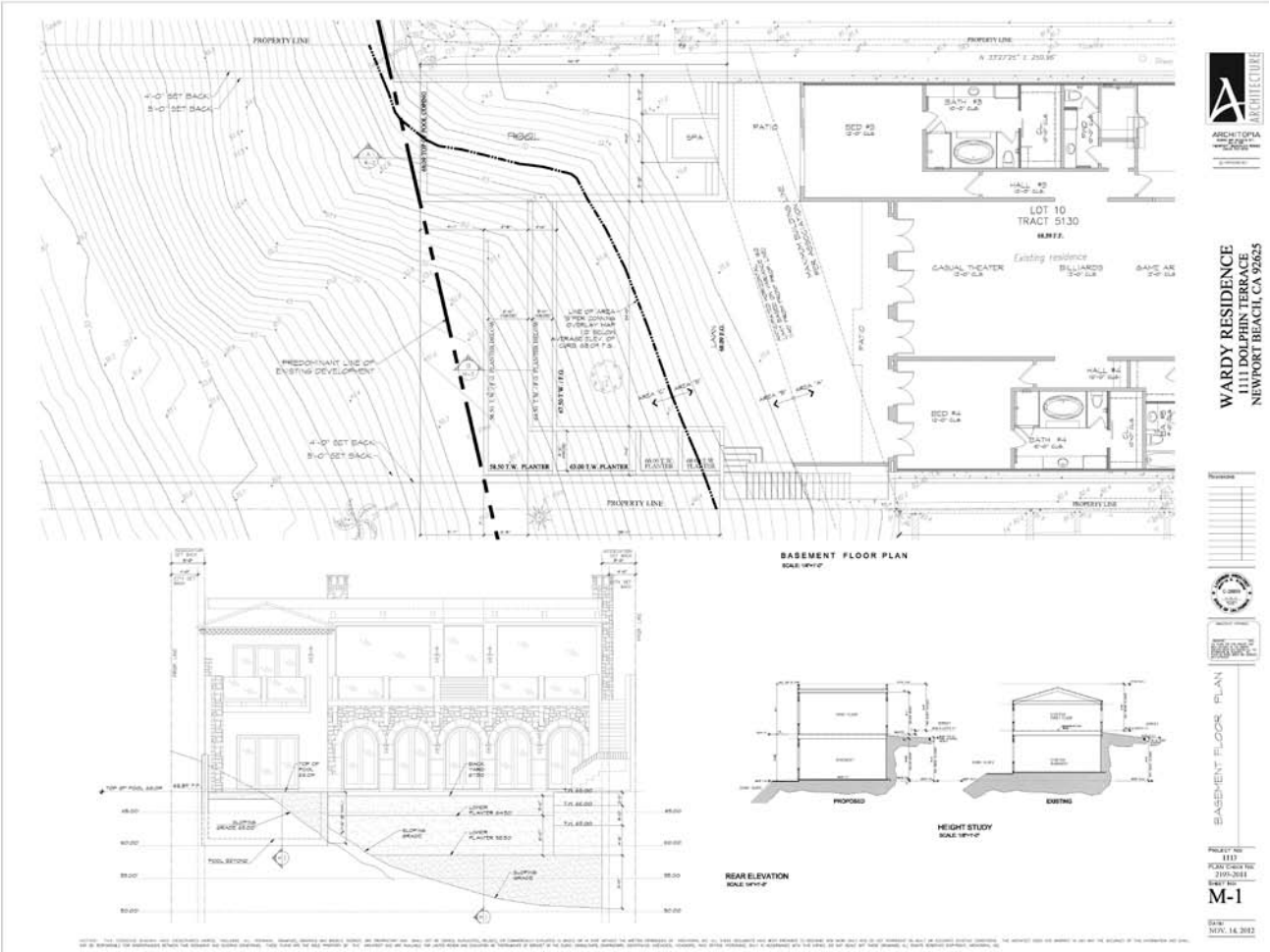
Aerial Photos

Aerial Photos

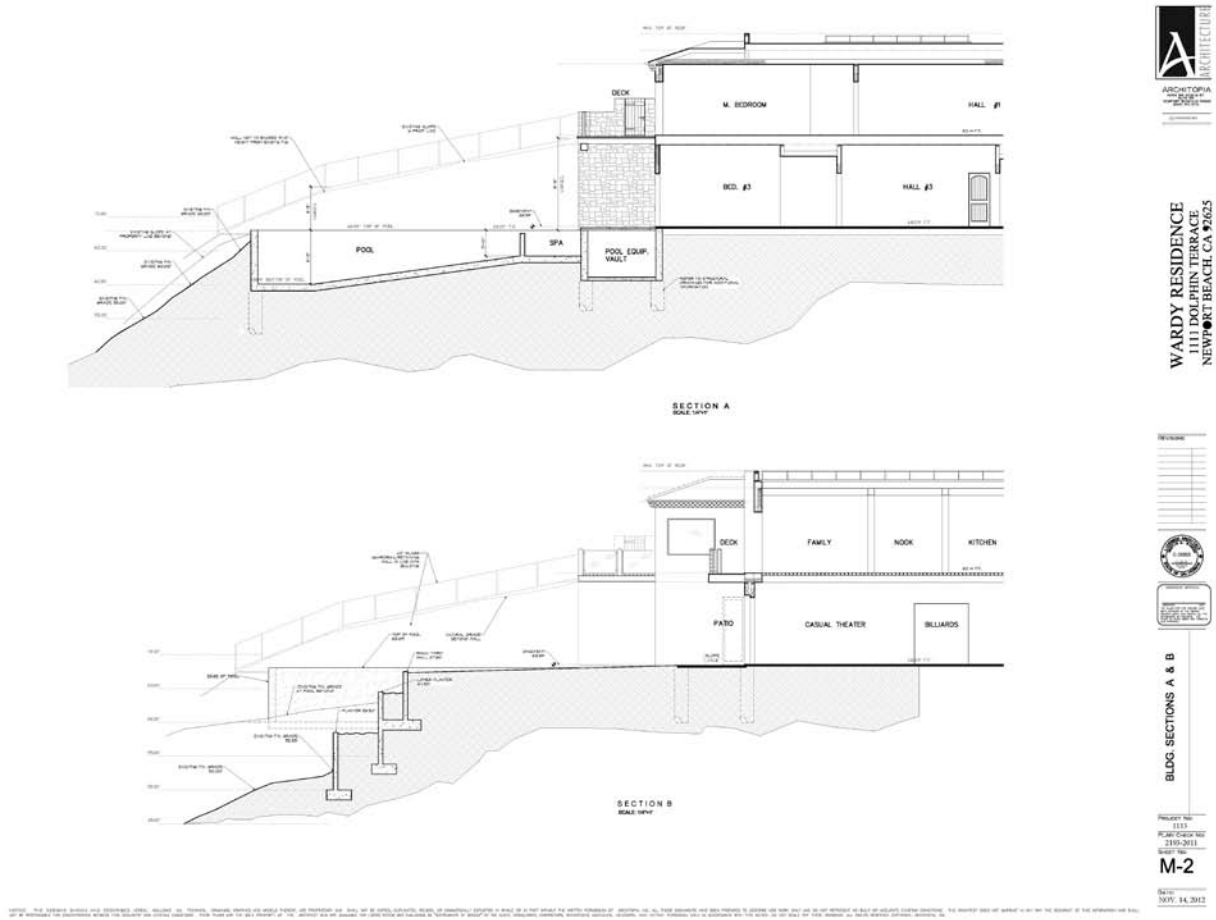
Project Plans



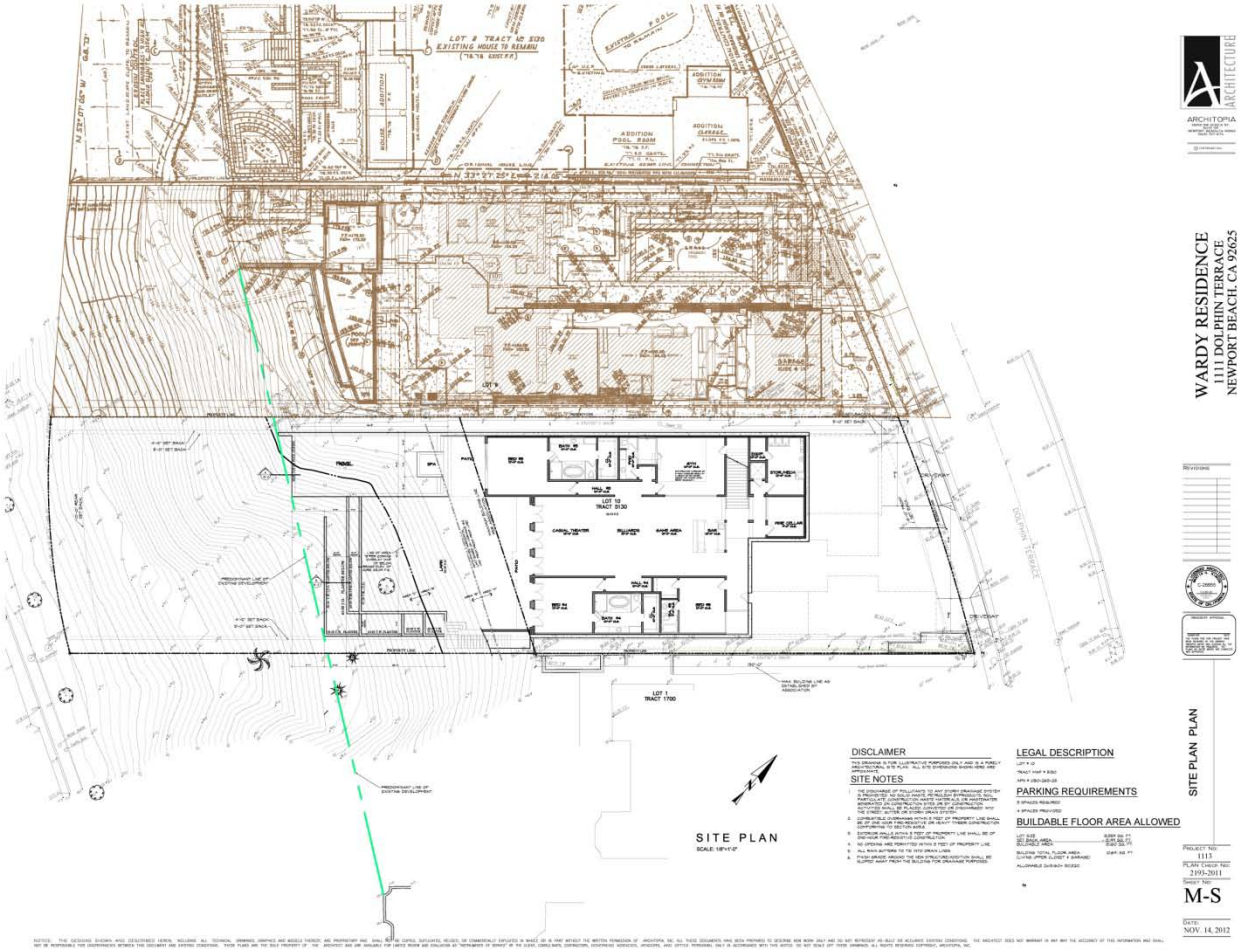
Project Plans



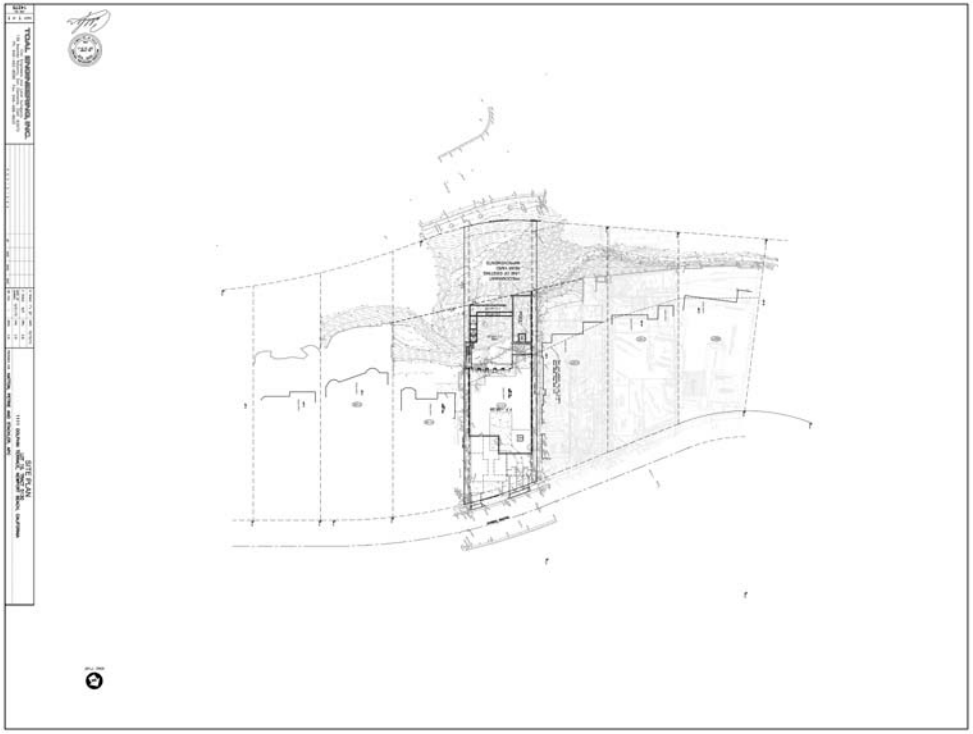
Project Plans



Project Plans



Project Plans



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Item No. 3 Wardy Residence (PA2012-140)

The following comments are referenced to the handwritten page numbers in the 51 page PDF staff report.

Page 8: In describing the proposed shift in the (Area B)/(Area C) boundary, it would have seemed helpful to reference the drawing on page 30, which appears to illustrate the proposed change in an overhead view.

That drawing references a "Variance 162" which apparently set the (Area A)/(Area B) boundary for this lot 140' from the front property line, rather than requiring the "10-foot setback from the top of the existing bluff" specified for this area in Municipal Code Section 20.28.040.D.2.a.(1), and allowed the house itself to extend down the bluff into what would normally be the restricted Development Area C (that is, more than 13 feet below curb height).

I was also unable to find in the staff report any clear statement of what the curb elevation is, so that the proposal can be objectively compared to the normal standard on Irvine Terrace of setting the B/C boundary *"13 feet below the average elevation of the top of the curb adjacent to the lot"* per NBMC Section 20.28.040.D.2.a.(2). One of the captions in the illustration on page 30 indicates the approved 68.09 foot elevation lawn area is already15 feet below the average curb elevation (the extra 2 feet possibly being part of Variance 162?), suggesting the latter is around 83 feet.

That illustration further suggests the proposed retaining walls (and therefore, the proposed Development Area B boundary) would extend down to an elevation of 51 feet, or 32 feet below curb height.

The above is difficult to reconcile with the statement on page 8 that *"The proposed adjustment would **shift** the Area B/Area C boundary up to 34 feet downslope"* unless that is referring to the horizontal shift (seen in the overhead view), rather than the vertical shift (seen in elevation). The vertical shift seems to be up to about 17 feet below the current 15 foot limit.

Page 9: I likewise find it difficult to accept staff's assertion that *"The proposed Area B/Area C boundary is consistent with the predominant line of existing accessory structure development on the adjacent properties."* It seems consistent only when viewed from above. Assuming the intent of the Bluff Overlay restrictions is to prevent development from cascading down the slope beyond an elevation of 13 feet below curb height, and assuming the other properties have followed that standard, extending down 32 feet below curb height is ***not*** consistent with extending down 13 feet.

The main justification seems to be that this atypical, and normally unpermitted, encroachment down the bluff will be screened from view.

Page 12: The assertion that the excess-height retaining wall *"will not present a massive wall surface"* because it is perpendicular, not parallel, to Bayside Drive, surely depends on where on Bayside Drive one is looking from. Being perpendicular minimizes the problem, but doesn't eliminate it.

The staff report is unclear as to what *"negative impacts to the abutting property"* are avoid by topping the excess-height retaining wall *"with a 42-inch-high glass guardrail."* I am guessing the planner has safety impacts in mind?

Page 17: In Section 1, statement 5 should say "2013" rather than "2012."

Page 18: The opening paragraph of Section 3 cites Municipal Code Section 20.28.040.I, whose title is "***Adjustment of development area boundary***." I find nothing in the Resolution that clearly defines what adjustment to the boundary is being approved or where the new boundary will be.

The illustration on page 30 of the agenda packet shows what it claims to be the current (Area "B")/(Area "C") boundary (apparently following the 68.09 foot height contour), and a somewhat arbitrary heavy line (having nothing to do with elevation contours) labeled "Predominant Line of Existing Development." I assume the intent of the Resolution is to move the "B/C" boundary for this one lot to that line, but I don't find that clearly stated.

In Fact B-1, the word "that" seems unwanted, making the sentence ungrammatical, at least to me. I would suggest deleting it.

Page 19: Regarding Fact C-2, see previous comments. The proposed line is consistent with the existing line *only* when viewed from above. Also, *even* when viewed from above, the adjacent lot to the south (also in the ravine) does ***not*** appear to have developed out horizontally to this limit.

Page 19: In Fact I-1, the use of the word *"unique"* is confusing, making it sound like many (or all?) Irvine Terrace bluff-top properties have the same problem. I think you mean the topography of the project site is unique, in which case *"to other bluff properties in Irvine Terrace"* should be deleted. Alternatively you could delete *"unique"* and say the topography of the project site is *different from* (most) other bluff-top properties along Dolphin Terrace.

Page 22: In Fact K-2, the alternative would seem to be fill the area to the 13 foot below curb level elevation. I assume that would involve building a retaining wall parallel to Bayside Drive, would be detrimental to the stability of the existing slope, and would probably also require a modification permit.

~~*Item No. 4 Plaza Corona del Mar (PA2010-061)*~~

~~The following comments refer to the January 3, 2013 Staff Report, and the page references are to the handwritten numbers (or, equivalently, the pages in the 124 page PDF)~~

~~Although not relevant to the Commission's current decisions, one of my main concerns with this project, to echo those expressed by Dan Purcell in the minutes of the December 6, 2012 hearing (page 90), is the vacation, without any compensation to the City, of the public alley easement at the rear of the Gallo's Deli property. I have not researched the vacation in the 1990's of the much larger segment that wrapped around the rear of the entire plaza, and~~