



# City of Santa Barbara California

## STAFF HEARING OFFICER STAFF REPORT

**REPORT DATE:** March 28, 2013  
**AGENDA DATE:** April 3, 2013  
**PROJECT ADDRESS:** 209 West Constance Ave. (MST2013-00027)  
**TO:** Susan Reardon, Senior Planner, Staff Hearing Officer  
**FROM:** Planning Division, (805) 564-5470  
 Renee Brooke, AICP, Senior Planner *RLB*  
 Suzanne Riegler, Assistant Planner *SR*

### I. PROJECT DESCRIPTION

The 2,832 square foot lot is currently developed with an 829 square foot, one-story residence and a 171 square foot, detached garage. The proposal consists of permitting "as-built" improvements including an 82 square foot laundry room addition, removal of an existing chimney, and construction of a 5'-6" high wall. Also proposed is the removal of an "as-built" four square-foot water heater enclosure. The "as-built" wall is located within two feet of the existing five-foot high retaining wall on the front property line and along the alley frontage.

The discretionary applications required for this project are:

1. A Modification to allow the "as-built" laundry room to encroach into the required six-foot interior setback (SBMC § 28.21.060 & SBMC § 28.92.110); and
2. A Modification to allow the cumulative height of existing and "as-built" walls to exceed a maximum height of 3.5 feet within ten feet of the front property line (SBMC § 28.87.170 & SBMC § 28.92.110).

Date Application Accepted: 2/22/13

Date Action Required: 5/22/13

### II. RECOMMENDATION

Staff recommends that the Staff Hearing Officer deny the project as submitted.

### III. SITE INFORMATION AND PROJECT STATISTICS

#### A. SITE INFORMATION

Applicant:	Fred Sweeney, Architect	Property Owner:	Sally Grubb (Kingston)
Parcel Number:	025-022-003	Lot Area:	2,832 sq. ft.
General Plan:	Medium Density Residential	Zoning:	R-4
Existing Use:	Single Family Residential	Topography:	12% avg. slope

Adjacent Land Uses:

North – Commercial	East - Residential (One-story)
South - Residential (Two-story)	West - Residential (Two-story)

**B. PROJECT STATISTICS**

	<b>Existing</b>	<b>Proposed</b>
Living Area	829 sq. ft.	+82 = 911 sq. ft.
Garage	171 sq. ft.	No change

**IV. BACKGROUND**

The existing residence and garage were constructed prior to 1939, on a lot that has frontage on Constance Avenue and a public alley. Staff believes that the existing five-foot high retaining wall at the front property line has existed since the residence was originally developed. The City's Urban Historian visited the site and determined that the buildings are not historic resources. In 2006, a Zoning Information Report (ZIR) for the subject property noted several violations including the "as-built" laundry room and an "as-built" fence along the alley. ZIRs completed in 1992, 1997, 2001, 2003, and 2006 also disclosed that a laundry room at the rear of the residence was constructed without a building permit in the required six-foot interior setback. A number of these ZIRs also disclosed that "as-built" fences and over height hedges along the alley exceed the maximum allowed height and that the fence was constructed without permit. Staff was unable to locate evidence of permits for any of the existing fences and walls located at the property lines. Based on aerial photography on the City's Mapping Analysis Printing System (MAPS), the 5'-6" high "as-built" site wall was constructed between 2004 and 2008. Based on the lack of reference to the site wall in the 2006 ZIR, Staff believes the "as-built" wall was constructed between 2006 and 2008. A recent site inspection revealed that a low picket fence was constructed to create a trash enclosure within the public right-of-way along the alley. The trash enclosure must either be removed from the right-of-way or the applicant must obtain a Public Works Encroachment Permit to allow it to remain within the right-of-way.

As of April 19, 2004, when a ZIR discloses a major violation, such as an illegal dwelling unit, illegal conversion of non-habitable space to habitable space, "as-built" construction of new floor area (habitable or non-habitable), or elimination of required parking, the violations are turned over to enforcement staff immediately. Minor violations are kept on file and are required to be abated prior to or simultaneously with the first building permit that is obtained by the new property owner. Applicants are advised that all minor violations will be required to be abated in conjunction with any major violations on the property. For unknown reasons, the 2006 ZIR violations were not immediately forwarded to enforcement staff although the violations did include a major violation of unpermitted floor area.

In February 2012, the property owner applied for and received a building permit (BLD2012-00353) for an interior remodel. The plans were not routed to the Planning Division prior to building permit issuance, or else the outstanding ZIR violations would have been required to be

included in the scope of work of the permit and abated. In November 2012, the property owner submitted an additional application for a building permit (BLD2012-02215) to replace a masonry fireplace with a direct vent fireplace, that was halted in plan check. The plan check corrections from the Planning Division required the abatement of all outstanding violations listed in the 2006 ZIR, which prompted this current Modification application.

## V. DISCUSSION

The proposed project involves permitting "as-built" improvements including an 82 square foot laundry room addition, removal of an existing chimney, and construction of a 5'-6" high site wall. Also proposed is the removal of an "as-built" four square-foot water heater enclosure.

### Setback Encroachment

The first modification requested is to allow the "as-built" laundry room to encroach 4'-3" into the required six-foot interior setback. The laundry room was constructed at some time prior to the 1992 ZIR, is approximately 1'-9" from the property line, and does not meet the current Building and Fire Code requirements. If permitted, the addition would be required to meet all current codes, which require, at minimum, all openings within three feet of the property line be removed, a replacement roof, and a 1-hour fire rated construction. Staff does not support the unpermitted addition within the required setback and recommends denial of the Modification for the laundry room as proposed. The developed parcel is constrained due to the small lot size and the location of the existing permitted improvements; however, opportunities for conforming improvements remain. Staff and the applicant discussed alternate locations for the laundry facilities that would conform to the Zoning Ordinance requirements; however, the alternatives were not desirable to the property owner. In addition, since the improvement would need to be altered from its current state to meet Building and Fire Code requirements, it should be modified at the same time to comply with the Zoning Ordinance.

### Wall Height

The second modification requested is to permit an "as-built" 5'-6" tall site wall that exceeds the maximum height of 3'-6" feet within ten feet of the front property line. The "as-built" site wall is located within two feet of a permitted site retaining wall with a maximum height of five feet at the front property line, resulting in a cumulative height of 10'-6" at the west corner of the property, at the intersection of a public alley and Constance Avenue. Staff and the applicant discussed alternate site wall locations that would conform to the Zoning Ordinance requirements; however, the alternatives were not desirable to the property owner because they would reduce the useable yard area.

SBMC Section 28.87.170.B.2 limits the height of fences, screens, walls and hedges to three and one-half feet (3-1/2') when located within ten feet of either side of a driveway for a distance of 20' back from the front lot line. Additionally, SBMC Section 28.87.170.C limits fences, hedges, screens at walls within 50' (measured from the edge of the vehicular travelled way) of street corners to a maximum height of three and one-half feet (3-1/2'). Although this property is not located a corner of two public streets or directly adjacent to a driveway and, therefore, not

subject to the above provisions, it is located at an intersection of a street and an alley and presents very similar visibility issues.

Staff discussed the site visibility issues related to the over-height walls with Transportation Division Staff. Transportation Operations Staff generally does not support fences, hedges, walls, and screens that block visibility of pedestrian and vehicular traffic, and would not support new improvements that further exacerbate existing, non-compliant conditions. In this case, the vegetation located in the alley public right-of-way, in combination with the existing and "as-built" walls, obstruct views of west-bound traffic on Constance Avenue for vehicles existing the public alley. Likewise, as a pedestrian travels west on Constance Avenue, the visibility of vehicles exiting the alley is obstructed by the "as-built" wall and vegetation until the pedestrian reaches the curb cut for the alley.

Staff believes the cumulative height of the walls within two feet of the property line is an adverse impact to the visual openness of the street and is excessive when conforming options exist that would provide visual relief from the public sidewalk and comply with the intent of preventing visual impairment of motorists and pedestrians at intersections and driveways.

The project was reviewed by the Single Family Design Board on January 28, 2013 and the Board found that the requested modifications were aesthetically appropriate and did not pose consistency issues with the Single Family Residential Design Guidelines.

## **VI. FINDINGS**

Staff recommends that the Staff Hearing Officer deny the project as proposed making the following findings:

The Staff Hearing Officer finds that the Modification to allow the "as-built" laundry room addition to remain in the interior setback is inconsistent with the purposes and intent of the Zoning Ordinance and is not necessary to secure an appropriate improvement on the lot. The proposed setback modification for the "as-built" laundry room is not appropriate because of its proximity to the property line, the structure's inability to meet Building Code requirements as proposed, the fact that a conforming option exists on the site, and the likelihood that the structure would be required to be redesigned or partially reconstructed to meet all current Building and Fire Code requirements.

The Staff Hearing Officer finds that the Modification to allow the "as-built" site wall to remain and exceed a cumulative height of 3'-6" at the front property line and at the intersection of Constance Avenue and the public alley is inconsistent with the purposes and intent of the Zoning Ordinance and is not necessary to secure an appropriate improvement on the lot. The 5'-6" tall site wall atop the existing 5'-0" retaining wall greatly exceeds the maximum height of 3'-6" feet allowed at the front property line and also exceeds the maximum allowable height of eight-feet when located within a required setback. In addition, it adversely affects visibility of vehicles and pedestrians travelling along Constance Avenue, as viewed from the public alley. A conforming option exists that would meet the intent of providing visual relief at the front lot line and adequate visibility of vehicles and pedestrians at the intersection of Constance Avenue and the alley.

STAFF HEARING OFFICER STAFF REPORT  
209 W. CONSTANCE AVENUE (MST2013-00027)  
MARCH 28, 2013  
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Exhibits:

- A. Site Plan (under separate cover)
- B. Applicant's letter, dated January 15, 2013
- C. Photographs of "as-built" improvements
- D. Zoning Information Report, dated April 11, 2006 (ZIR2006-00207)
- E. Single Family Design Board Minutes

Contact/Case Planner: Suzanne Riegle, Assistant Planner  
(SRiegle@SantaBarbaraCA.gov)  
630 Garden Street, Santa Barbara, CA 93101  
Phone: (805) 564-5470 x 2687

**Fred L. Sweeney AIA, Architect  
10 East Quinto Street  
Santa Barbara, California 93105d**

January 15, 2013

Staff Hearing Officer  
City of Santa Barbara  
P.O. Box 1990  
Santa Barbara, CA 93102-1990

Subject: Kingston Residence (Grubb)  
209 West Constance  
Santa Barbara, California 93105  
APN: 025-022-003

**RECEIVED**  
**FEB 27 2013**  
**CITY OF SANTA BARBARA**  
**PLANNING DIVISION**

Dear Staff Hearing Officer

This existing residence is located on a small 2,832.5 square foot lot in the R4 zone. The 891 square foot single story house on the site was built around 1925 and has a separate one car garage of 198 square feet. The site is raised from the street approximately five feet and is level on the top. It faces Constance Avenue on the front side and on the south side (SB south) it adjoins the public alley way. At the rear it adjoins a recently constructed multi-family housing development and on the north it adjoins some garages and other single story residences.

At some point in the history of the house a back addition (laundry room) of approximately 82.5 gross square feet was built. This addition sits within the 6 foot rear yard setback for this zone. The addition was done without a permit. Given the compact nature of the lot size and the house size the property owner/resident wishes to bring this addition into compliance with the building code and retain its current location.

In addition a front yard garden wall was built within the 10 foot setback facing Constance Avenue. That wall sits approximately 18" from the property line and above the existing five foot site retaining wall that we believe originally established the site grade of the lot. The owner/resident would like to retain this wall. We believe that this wall is an improvement not only to this property, but the entire street scape of this block of Constance Avenue. Given the extremely small size of this R4 zoned property we believe the general zoning requirements place an unreasonable burden as these requirements are applied to this site.

Due to the small size of this home and the desire to insure proper housing for the now exterior located water heater and provide a more efficient bathroom and laundry room layout the owner would like to

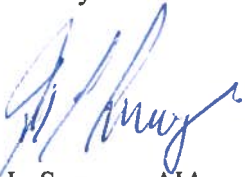
**EXHIBIT B**

request this modification. This will allow for continued efficient use of the existing two bedroom home. In as much as the city has continued to encourage small efficient housing units under its Single Family Design Guidelines this would be in alignment with that effort.

In addition the current adjacent neighborhood has several instances where portions of existing residents built during the post 1925 period have contributed to the compact nature of the neighborhood, even though several of those structures may be located within modern day zoning setback requirements.

We would request your consideration for this modification request and allow the owner/applicant to proceed with the process to obtain required building permits to upgrade the current construction of this non-conforming addition.

Respectfully Submitted

A handwritten signature in blue ink, appearing to read "Fred L. Sweeney".

Fred L. Sweeney AIA, applicant

Copy: Sally Grubb (Kingston) owner





Site: 209 W Constance Avenue  
As-built site wall atop existing retaining wall.

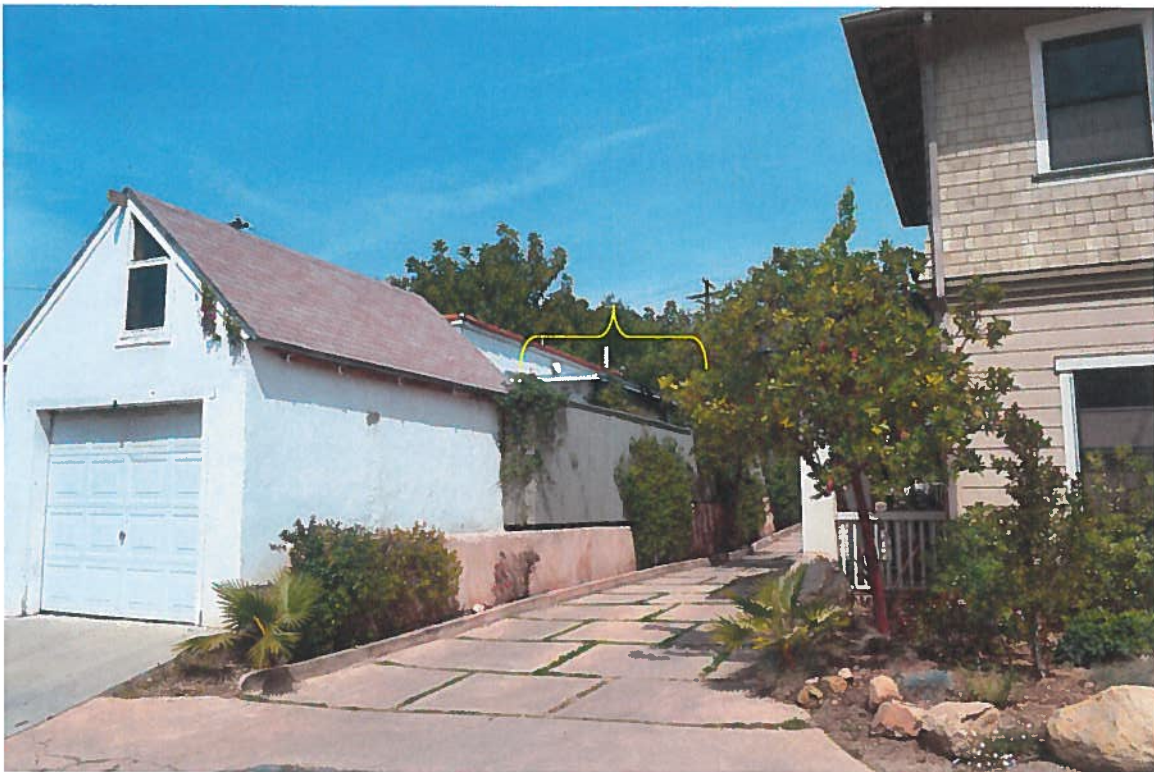


Exhibit C





**Alley view of as-built site wall**



**“As-built” Laundry Addition at rear of house**





**Additions is approximately 1' – 9" from property line  
"As-built" Laundry Addition at rear of house**



**View looking North along 20' wide alley.**



**Close up of 10' – 6" corner of wall**



**"As-built" water heater enclosure**



**The Fine Print  
was changed on  
5/12/04. Please  
read it.**



**Zoning Information Report  
209 W CONSTANCE AVE**

**Date:** 4/12/2006  
**To:** Property Owners and Prospective Buyers of Residential Property  
**From:** Planning and Zoning Staff  
**Subject:** ZIR2006-00207

Thank you for ordering a City Zoning Information Report. The purpose of this report is to identify zoning and building violations; inform the buyer as to the nature of the violations as part of the State's full disclosure laws, and to document the violations, for immediate or future enforcement by City Staff. The contents of this report are based on a review of the City's files on the property, a physical inspection, and a review of the City's archive plans and other historical data that may be available, if necessary.

The property was inspected on April 11, 2006.  
This Zoning Inspection Report expires on April 11, 2007.

The property's City Zoning Designation is **R-4**. Requirements of the property's primary zoning designation(s) are listed below. If there are multiple zones, the standards for the more restrictive zone shall apply.



**Zone:**

**R-3 or R-4**

Lot Area Requirements for Residential Units

5,000 s.f. or less 2 units allowed with Variable Density  
 5,001+ s.f. Studios: 1,600 s.f. lot area per unit  
 1 Bedrm: 1,840 s.f. lot area per unit  
 2 Bedrm: 2,320 s.f. lot area per unit  
 3+ Bedrm: 2,800 s.f. lot area per unit

Front Yard Setback 1 or 2 story structures: 10 feet  
 3 story structures: 15 feet

Interior yard Setback 1 or 2 story structures: 6 feet  
 3 story structures: 10 feet

Rear Yard Setback 1 story structures: 6 feet  
 2 or 3 story structures: 10 feet

Private Outdoor Living Space	Unit Size	Ground Floor	Upper Floor
	Studio	100 s.f.	60 s.f.
	1-Bedrm	120 s.f.	72 s.f.
	2-Bedrm	140 s.f.	84 s.f.
	3+-Bedrm	160 s.f.	96 s.f.
	Min. Dimension	10 feet	6 feet

Maximum Building Height 3 stories not to exceed 45 feet

Required Off-Street Parking Spaces 1 House on the property 2 covered spaces  
 Duplex 1 covered & 1 uncovered per unit  
 Multiple House or Duplexes 1 covered & 1 uncovered per unit  
 Multi-Family (3+ attached units):  
 Studios: 1 1/4 uncovered spaces per unit  
 1-Bedrm Units: 1 1/2 uncovered spaces per unit  
 2+-Bedrm Units: 2 uncovered spaces per unit  
 Guest Spaces: 1 per 4 units if 6+ units in the complex

Distance Between Main Buildings 1 story building to 1 story building: 10 feet  
 1 story building to multi-story building: 15 feet  
 multi-story building to multi-story building: 15 feet

Minimum Lot Area for Newly Created Lots 14,000 s.f. x Slope Density  
 Newly created lots must also conform to the  
 General Plan density requirements.

Req'd. Lot Frontage for Newly Created Lots 60 feet



If the property's zoning designation contains additional classifications that are not discussed above, please contact the Planning and Zoning Counter at (805) 564-5578 for more information on the requirements of that particular zoning designation.

### PARCEL ATTRIBUTES

The following special districts or other attributes of the property are listed below. If there are no special districts or other attributes, this area will be blank.

**Demolition Review Study Area**

All structures 50 years or older that are proposing partial or full demolition alterations are required to be reviewed by Planning prior to building permit issuance.

**Uniform Code Violation**

See ZIR2006-00207 regarding building and zoning violations.

**Zoning Violation**

See ZIR2006-00207 regarding building and zoning violations.

### PROPERTY DESCRIPTION

One family dwelling with attached covered front porch and a rear (illegal) enclosed laundry porch.

Lot Size (From County Assessor Records): 0.06 Acres

Unit #: **This is a legal dwelling unit.**

	Legal	Illegal
Bedrooms	2	0
Full Baths	1	0
Half Baths	0	0
Sinks	0	0

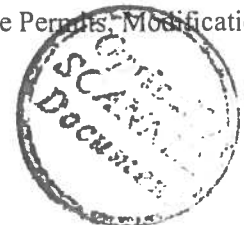
Smoke Detectors in: All Bedrooms? **No** All Hallways? **No**

Smoke detectors are required in each sleeping room and each hallway of each story of a dwelling unit. A fire alarm system is required in: 1) apartment houses three (3) or more stories in height or containing 16 or more dwelling units; 2) hotels three (3) or more stories in height or containing 20 or more guest rooms; and 3) congregate care residences three (3) or more stories in height or which have an occupant load of 20 or more. For more information regarding fire alarm system requirements, please call 564-5702.

The property contains 1 parking spaces in garages, 0 parking spaces in carports and 0 uncovered parking spaces.

This property has received the following discretionary land use permits, such as Conditional Use Permits, Modifications, Variances (If none, this area will be blank).

**None.**



**The property is legally nonconforming with respect to either density, yards and/or wall, fences and hedges.** Details regarding the properties nonconformity are detailed below. A property is determined to be nonconforming if it conformed to the regulations in effect when it was permitted, but because of subsequent changes in the Zoning Ordinance or the Zoning Map, the structures do not conform to today's zoning standards. Properties with nonconforming density, yards or walls, fences and hedges exist legally, and their uses may be continued; however, there are restrictions on alterations, additions, or replacement of nonconforming structures.

**The property contains structures that are located in the required interior (side or rear) yards.** Therefore, the interior yards are nonconforming. The structures that encroach into the required interior yards are:

**Garage.**

**Zoning Ordinance or Building Code Violations (if none, this area will be blank):**

**ZONING VIOLATIONS:**

- 1. The enclosed laundry porch encroaches into the required interior yard setback.**
- 2. The garage was inaccessible for the parking of a vehicle due to the storage of items in the garage. By City Zoning Ordinance**

**BUILDING VIOLATIONS:**

- 1. The enclosed laundry porch was added to the dwelling without the required permit.**
- 2. The fence along the alley was constructed without the required permit.**

All questions regarding zoning violations should be directed to the City's Planning and Zoning Counter at 630 Garden Street, (805) 564-5578. All questions regarding building requirements, building permits or building violations should be directed to the City's Building and Safety Counter, located at 630 Garden Street (805) 564-5485.

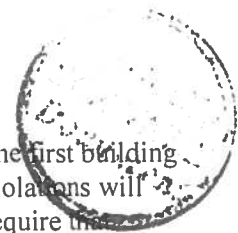




## The Fine Print

### 1) Disclosures

- a) The ZIR is a good faith effort at full disclosure to a potential buyer of authorized uses and occupancy, including zoning violations, and improvements constructed without City permits or approvals.
  - b) Improvements without permits are illegal. Previous plans showing these improvements as "existing", previous ZIRs describing improvements as legal, previous ZIRs that omit an improvement, or previous ZIRs that describe an improvement as nonconforming do not legalize illegal improvements, including structures. Only City approvals and permits legalize improvements constructed without permits.
  - c) The current ZIR is based on the most recent information, and supersedes previous ZIRs.
    - i) Improvements that existed at the time of a previous ZIR, but which were not listed on the previous ZIR or were shown as nonconforming, but which are in fact unpermitted and therefore illegal, will be subject to current standards. For example, if a 1987 ZIR did not list an accessory building in a setback, and the current ZIR shows it as a violation, the current determination supersedes the previous determination.
  - d) The zoning inspectors are not building inspectors, and are not versed in the requirements of the Uniform Codes. Therefore, this ZIR does not document violations of the Uniform Codes (such as illegal wiring, illegal plumbing, substandard structural assemblies, etc.). The ZIRs identify zoning violations and unpermitted construction.
  - e) Fences, walls, screens, hedges (See SBMC § 28.87.170)
    - i) The zoning regulations for fence, wall, screen, and hedge height became effective in 1957. Permitted fences, walls, screens, and hedges that pre-date 1957 are nonconforming as to height.
    - ii) Permits are required for fences, walls and screens that are over 3.5 feet tall from the ground to the highest point of the fence. If such permits do not exist in City records, they are considered illegal, and must be permitted and may require other City approvals. If such fences, walls, screens, and hedges are taller than allowed by the Zoning Ordinance, they must be reduced in height when required by the City. Plans in City records that show such items as "existing," do not legalize such items.
    - iii) Permits are required for retaining walls that are more than 4 feet tall measured from the bottom of the footing to the highest point on the retaining wall (permits can be required for shorter retaining walls). See the Building and Safety Division Counter for more information, at 564-5485.
    - iv) Hedges that existed prior to 1957 are nonconforming to the height limit. In order to determine whether a hedge is nonconforming, reports by three separate arborists are required, each stating that such hedge was in existence in 1957. If the three arborists' reports are not on file, such hedge is considered overheight and thus illegal.
  - f) This ZIR does not include analysis of the Solar Access Ordinance (Santa Barbara Municipal Code Chapter 28.11) as it applies to this property. Questions concerning the impact of the Ordinance on specific structures should be addressed to the Planning and Zoning Counter, located at 630 Garden Street, (805) 564-5578.
  - g) If you are selling a home, you must disclose any known earthquake weaknesses that your house has to the buyer. The State's Seismic Safety Commission has published a booklet "The Homeowner's Guide to Environmental Hazards and Earthquake Safety," which includes detailed information regarding earthquake hazard disclosure. This booklet should be available from your real estate agent/broker.
  - h) Please be advised that any alterations, additions, construction, improvements or new development may be subject to the review of the Architectural Board of Review, the Historic Landmarks Commission, the Modification Hearing Officer or the Planning Commission, depending on a number of factors. If review by one of the bodies is required, the project will be subject to environmental review, as required by the California Environmental Quality Act (CEQA). Please contact the Planning and Zoning Counter at (805) 564-5578 for more information regarding the environmental review process.
- 2) The enforcement process, as of April 19, 2004
- a) The following major violations will be turned over to enforcement staff immediately:
    - i) Illegal dwelling units
    - ii) Illegal conversion of non-habitable space to habitable space
    - iii) Unpermitted construction of new floor area (habitable or nonhabitable)
    - iv) Elimination of required parking
  - b) Minor violations are kept on file and are required to be abated prior to or simultaneously with the first building permit that is obtained by the new property owner. HOWEVER, please be advised that all minor violations will be required to be abated in conjunction with any major violations on the property. City Staff will require the

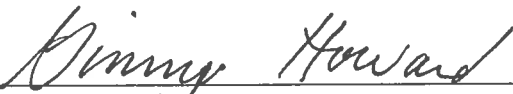


overheight fences, walls, screens and hedges be reduced in height at this time.

- 3) Validity Period and Extensions
  - a) This ZIR is valid for a period of twelve months after the date of issuance or until one transfer of title occurs, whichever occurs first.
  - b) A ZIR may be extended for a period of one year for 1/2 the price of a current ZIR, if the application for the extension is received while the ZIR is still valid. A re-inspection is not required.
- 4) Disputes regarding the content of this ZIR
  - a) You have 30 days to dispute any items in this ZIR. If you do not dispute any items, there is a rebuttable presumption that you agree with the ZIR, and any attempt to dispute such items in the future will be denied. Please contact the preparer of this Zoning Information Report.

**Zoning Information Report #ZIR2006-00207 was prepared by:**

Ginny Howard, Zoning Enforcement Officer

  
\_\_\_\_\_  
Signature

April 12, 2006





## DESIGN REVIEW ACTIVITIES SUMMARY

**209 W CONSTANCE AVE (MST2013-00027)**

**R-ADDITION**

*Proposal to permit the "as-built" 5'-6" high wall located along the front property line on a 2,832 square foot lot developed with an existing 891 square foot one-story residence and a 198 square foot one-car detached garage. The proposal includes permitting the "as-built" 82 square foot laundry room. The project includes Staff Hearing Officer review for requested zoning modifications.*

**Status: Pending**

**DISP**

**Date 3**

**SFDB-Consent (New)**

**CONT**

**01/28/13**

(Comments only; project requires environmental assessment and Staff Hearing officer review for requested zoning modifications.)

Continued indefinitely to Staff Hearing Officer with comments:

- 1) The proposed modification is aesthetically appropriate. The proposed modification does not pose consistency issues with Single Family Residence Design Guidelines.
- 2) The design of the wall, as shown on the plans reviewed on January 28, 2013, is ready for Final Design Approval.

Items on Consent Calendar were reviewed by Brian Miller and Lisa James.

**EXHIBIT E**