

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 1/8/2015

FROM: Julia Capasso, Associate Planner, *for* John Swiecki, Community Development Director

SUBJECT: **223 Tulare Street;** Setback Exception Modification SE-1-14; to allow construction of a 172 square-foot deck within the rear yard setback, modifying the setback exception distance to the rear property line from 5 feet to 8 inches, and the setback exception coverage of 15% of the rear setback area to 52% of the rear setback area; Jerry Kuhel, applicant; Leslie Townsend, owner; APN 007-361-110

Request: The applicant requests modification to the setback exceptions to allow construction of a 172 square-foot deck within the rear yard setback of an upslope lot. The Brisbane Municipal Code allows exceptions to the standard 10 foot setback requirement for accessory structures to be as close as 5 feet to the rear property line, but not over 8 feet in height within the setback area and occupying no more than 15% of the setback area. A modification to this exception is requested as the deck would maintain an 8-inch setback from the rear property line and would cover 52% of the rear setback area. A stop work order on the project was issued on July 30, 2010 after construction of the deck commenced without the required permits.

Recommendation: Deny Setback Exception Modification SE-1-14, via adoption of Resolution SE-1-14 with Exhibit A containing the findings of denial.

Environmental Determination: Development of new accessory structures is categorically exempt from the provisions of the California Environmental Quality Act per Section 15303(e) of the State CEQA Guidelines. The exceptions to this categorical exemption referenced in Section 15300.2 do not apply.

Applicable Code Sections: As defined in BMC Section 17.02.755.B, "Accessory structure" means a structure detached from the principal structure located on the same site, the use of which is subordinate and incidental to, and customarily associated with, the principal structure or the principal use of the site and which does not contain sleeping quarters."

BMC Section 17.32.070.A.2.b allows for accessory structures within the rear and side setbacks with certain provisions (setback exceptions). If the setback exceptions are proposed to be exceeded, the zoning administrator may approve modification of these setback exceptions, based on certain affirmative findings outlined later in this report. The zoning

administrator may also refer items to the Planning Commission, as is the case with this application.

The standard setbacks for this lot are 3.3 feet from the side lot lines (10% of the 33-foot lot width) and 10 feet from the rear lot line, per BMC Section 17.10.040.D. The setback exceptions detailed in BMC Section 17.32.070.A.2.b allow for an accessory structure to be placed within the rear setback, but not closer than 5 feet from the rear lot line, not over 8 feet in height within the setback area and occupying no more the 15% of the setback area.

Analysis and Findings:

The subject property is an upslope lot of approximately 3,347 square feet, occupied by a single-family home covering 25% of the lot (829 square feet). The rear yard of the property features three graded terraces, supported by wooden retaining walls of approximately 4 feet, 6 inches in height based on plans submitted by the applicant.

The proposed accessory structure is a partially constructed deck of 172 square feet and is located approximately 8 inches from the rear lot line, 5 feet from the south side lot line, and 7 feet from the north side lot line. The uncovered structure does not constitute new floor area or lot coverage. Though no guardrails are shown on the applicant's plan, this project will require a building permit and as such the California Residential Building Code (CBC) will apply. The CBC requires guardrails to be installed on open, elevated walking surfaces at a minimum height of 42 inches (3 feet, 6 inches). Assuming this minimum rail height, the deck would maintain a height of 7 feet, 4 inches above the lowest point of grade within the rear setback area. A summary table of project data is attached.

As indicated above, construction of the deck commenced in 2010 and was nearly completed at the time of issuance of the stop work order. The applicant proposes removing the existing stairway at the southern portion of the deck and building a new stairway at the northern portion of the deck.

In order for the structure to be completed, this modification to the setback exception is required, as well as a building permit. Setback exceptions may be approved by the Zoning Administrator, following a public hearing. However, since construction of the structure was started without the required permits and considering the potential impacts of the structure to adjacent neighbors (see findings below), the application has been referred to the Planning Commission for consideration.

Per BMC Section 17.32.070.A.2.b, the required findings to grant this requested modification to setback exceptions are as follows:

- i. The modification will not result in overbuilding the site or result in the removal of significant greenscape.

The project **would meet** this finding. As the proposed 172 square-foot deck would be uncovered, the project would not increase the lot coverage of the site per BMC 17.02.495.

While the deck would occupy 52% of the rear setback area, the majority of the rear yard between the home and the deck would remain vegetated. At present the hillside is not landscaped. Thus, the modification to the rear setback will not result in overbuilding of the lot or removal of significant greenscape.

- ii. The modification will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise, or glare.

The proposed project **does not meet** this finding. While no significant glare or noise impacts are anticipated, potential privacy impacts to the adjacent property at 225 Tulare St. will result as described below. While the Zoning Ordinance does not provide a strict definition or test to determine the significance of impacts, a typical approach would be to determine whether direct views are provided from the proposed structure into areas where the user has a reasonable expectation of privacy (e.g., primary indoor and outdoor living spaces). The landing of the deck would extend approximately 3 feet, 10 inches above grade when measured from the lowest point of grade in the setback area. At this elevation, an average-sized adult standing on the deck would have an unobstructed view into the rear yard and windows of 225 Tulare St. A fence of approximately 5-6 feet in height divides the two properties, as shown in the attached site photos. At present, the fence appears to have sustained significant damage and is currently not standing. Even if rehabilitated, this fence would extend less than 2 feet above the deck landing and would not adequately screen views or buffer noise from deck users.

The proposed project would not result in similar impacts to 221 Tulare St., the adjacent property to the north, due to the natural slope of the hillside and the presence of tall trees and vegetation between the two properties. Impacts to the adjacent apartment building to the east at 41 Thomas Ave. are also minimal due to the extreme grade change between the proposed deck and the apartment building.

- iii. The accessory structure is designed to be compatible with the primary dwelling(s) on the site.

The proposal **would meet** this finding, subject to conditions. The deck is a rectangular, natural wood structure that is complementary in scale and appearance to the primary dwelling. No details were provided by the applicant regarding proposed guardrail materials. Should the Planning Commission approve the proposed project, staff recommends adding a condition of approval addressing the design and materials of the guardrail to ensure compatibility with the primary dwelling.

Staff Recommendation:

Denial of the proposed project due to the lack of compliance with BMC Section 17.32.070.A.2.b. While the proposed project is consistent with findings i and iii, staff recommends denial of the project due to the inability to make finding ii.

Alternatives:

Should the Commission wish to approve the project, it will be required to make the findings for approval pursuant to BMC Section 17.32.070.A.2.b. Staff has attached suggested conditions of approval for the Commission's consideration in such an instance.

Attachments:

- Summary of Project Data
- Draft Resolution SE-1-14 with recommended Findings of Denial
- Draft Conditions of Approval
- Undated photo of deck construction in progress at time of stop work order
- Applicant's plans and photographs
- Aerial site map
- Applicant's supporting statements

**Summary of Project Data
223 Tulare Street**

ADDRESS	223 Tulare Street
APN	007-361-110
ZONING DISTRICT	R-3 Residential
APPLICATION #	SE-1-14

Project Description
The applicant requests modification to the setback exceptions to allow construction of a 172 square-foot deck within the 5 foot rear yard setback (permitted per standard exception) of an upslope lot. The deck would maintain an 8-inch setback from the rear property line and would cover 52% of the rear setback area. The deck is partially constructed.

Development Standard	Existing	Proposed	Min/Max	Status
Lot Area	-	-	5,000 sf	Lot of record
Lot Coverage	-	-	60%	No change
Floor Area	-	-	0.72	No change
Height (Accessory Structure within rear setback)	-	7' 4"*	8'	Complies with standard
Setbacks				
South Side Lot Line	-	5 ft	3.3 ft	Complies with standard
North Side Lot Line	-	7 ft	3.3 ft	Complies with standard
Rear Lot Line	-	8 inches	10 ft	Modification to Setback Exception required
Setback Exception Area Coverage**	14% (existing 48 sf shed)	66% (existing shed + proposed deck)	15%	Modification to Setback Exception required

Notes:

* Measured from lowest point of grade within the setback area. Assumes installation of a 42 inch guard rail, the minimum required by the California Residential Building Code.

** BMC 17.32.070.A.2.b

Draft
RESOLUTION SE-1-14

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
DENYING SETBACK EXCEPTION MODIFICATION SE-1-14
FOR AN ACCESSORY STRUCTURE
WITHIN THE REAR SETBACK

WHEREAS, Jerry Kuhel applied to the City of Brisbane for Modification of Setback Exception, for an Accessory Structure in the rear yard at 223 Tulare Street, to be located approximately 5 feet from the south side lot line and approximately 8 inches from the rear lot line, such application being identified as SE-1-14; and

WHEREAS, the proposed structure exceeds the setback exceptions for accessory structures, being approximately 8 inches from the rear lot line (with a setback exception of 5 feet) within rear setback and covering 52% of the rear setback area (with a setback exception of 15%); and

WHEREAS, on January 8, 2015, the Planning Commission conducted a hearing of the application, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the staff memorandum relating to said application, the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act; pursuant to Section 15311 of the State CEQA Guidelines; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein, as Exhibit A, in connection with the Setback Exception Modification.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of January 8, 2015 did resolve as follows:

Setback Exception Modification SE-1-14 is denied per the findings of denial attached herein as Exhibit A.

ADOPTED this eighth day of January, 2015, by the following vote:

AYES:
NOES:
ABSENT:

Karen Cunningham
Chairperson

ATTEST:

DRAFT
EXHIBIT A

Action Taken: Denied Setback Exception Modification SE-1-14 per the staff memorandum with attachments, via adoption of Resolution SE-1-14.

Findings:

- i. The modification will not result in overbuilding the site or result in the removal of significant greenscape.
- ii. The modification will not result in significant adverse noise and glare impacts to adjacent properties. However, due to the elevation of the deck landing approximately 4 feet, 6 inches above the lowest point of grade in the setback area, and the natural cross-slope between the subject property and the adjacent property at 221 Tulare St., **the modification will result in significant adverse impacts in terms of loss of privacy.**
- iii. The design of the accessory structure is compatible with the primary dwelling on the site.

DRAFT

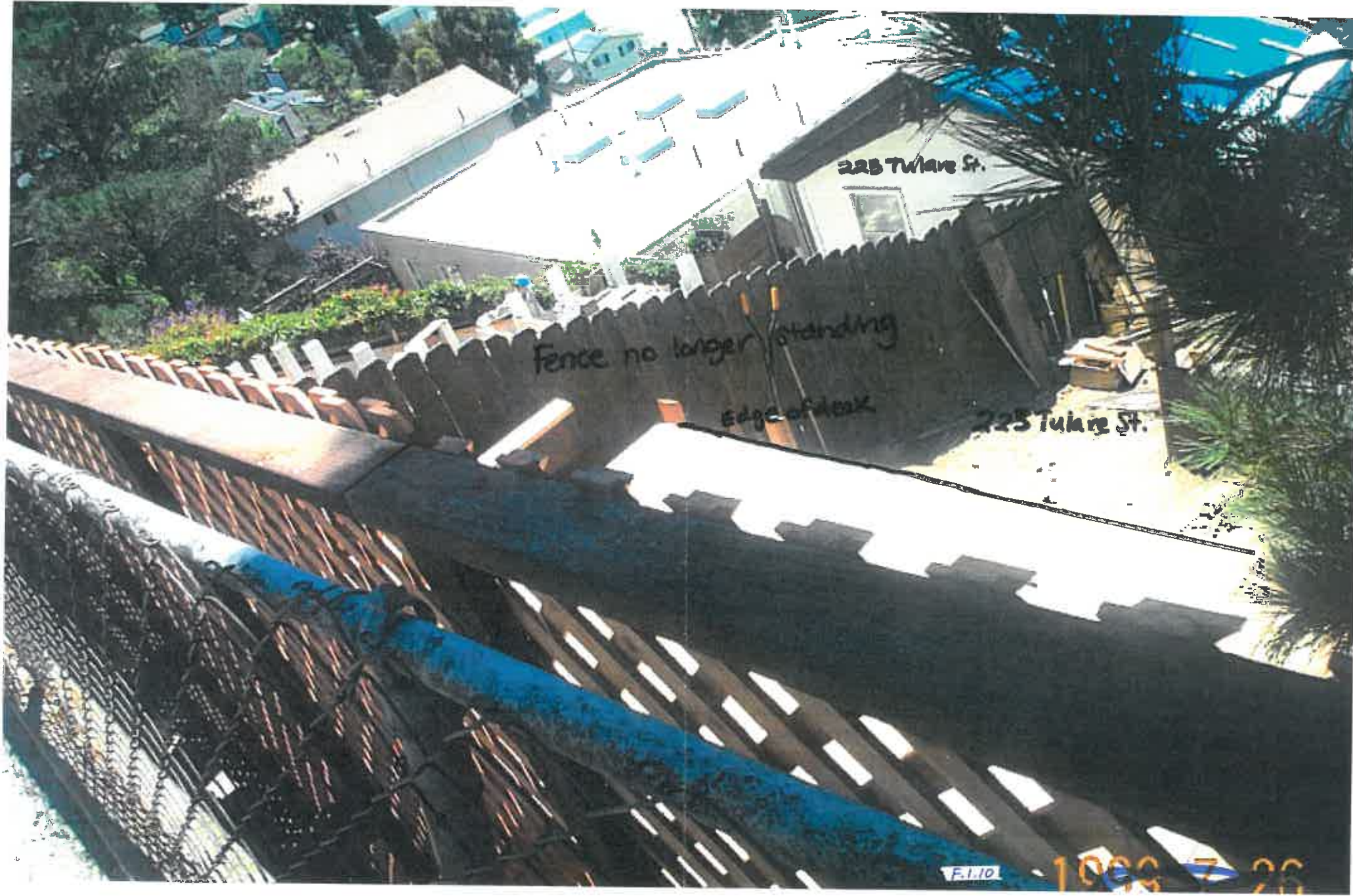
Conditions of Approval:

Building Permit Application or During Construction:

- A. The applicant shall obtain a building permit and, if applicable, a grading permit prior to proceeding with construction. The building permit application shall include the lower deck and stairs included in the stop work order issued on July 30, 2010.
- B. Plans submitted for building permit shall substantially conform to plans on file in the City of Brisbane Planning Department dated November 21, 2014, with the following modification:
 1. Guard rails shall be installed in compliance with Section R312 of the 2013 California Residential Building Code.
- C. Drawings depicting all work completed and proposed shall be provided to the satisfaction of the City. Exposure of covered work may also be required to demonstrate compliance with building code requirements.
- D. As required by the Building Department, the project must comply with Table 302.1(1) of the 2013 California Residential Building Code. No projections from the rear supporting element (wall) is permitted.
- E. Exterior finishes and materials of the accessory structure shall be compatible with that of the primary dwelling.

Modifications & Time Limits:

- F. Minor modifications may be approved by the Planning Director in conformance with all requirements of the Municipal Code.
- G. This Setback Exception Modification shall expire two years from its effective date (at the end of the appeal period) if a Building Permit has not been issued for the approved project or if the Building Permit, once issued, is allowed to expire prior to final inspection.



225 Tulare St.

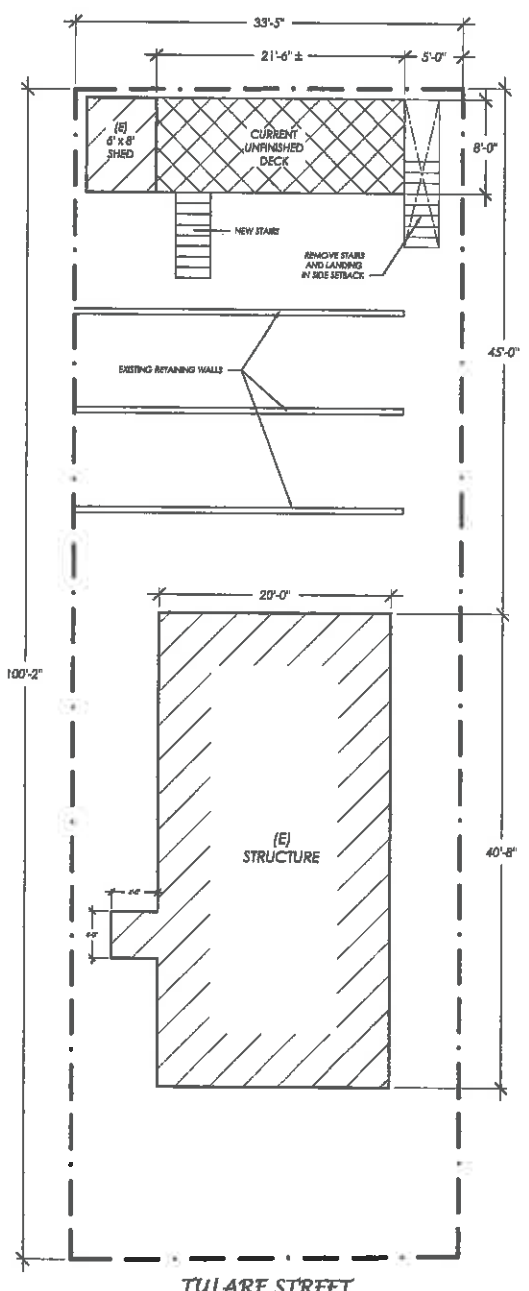
Fence no longer standing

Edge of leak

225 Tulare St.

F.I.10

1998 7 26



1 PLOT PLAN
1/8" = 1'

PROJECT DATA

223 TULARE ST. BRISBANE, CA
 (E) SINGLE FAMILY 1 STORY WOOD STRUCTURE
 APN: 007-361-110
 OCCUPANCY GROUP: DWELLING R-3, GARAGE U
 CONSTRUCTION TYPE: VB
 LOT SQUARE FOOTAGE: 3350

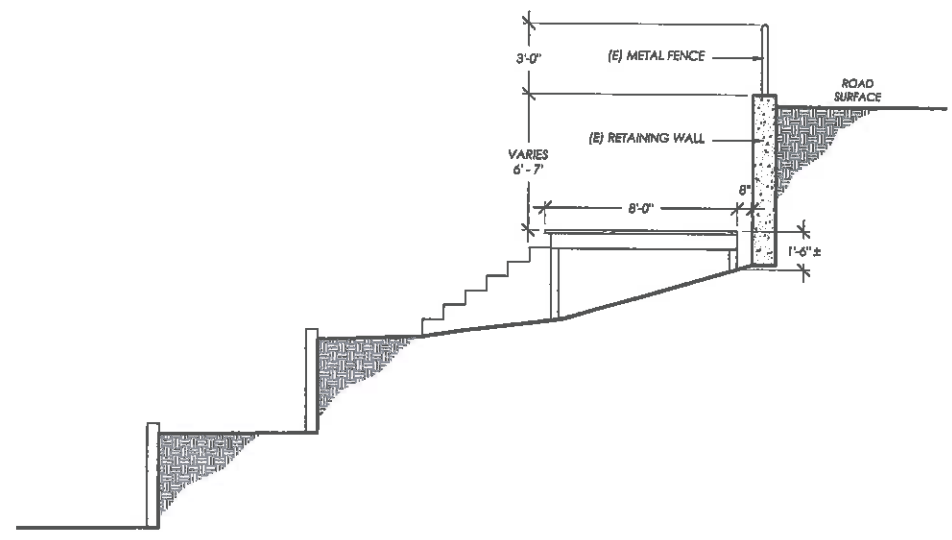
PROJECT DESCRIPTION

NEW DECK AT REAR OF PROPERTY. NO EXISTING TREES OR LANDSCAPING AFFECTED.

Kuhel Design

415-508-1750
 kuheldesign@icgglobal.net

RECEIVED
 NOV 21 2014
 Comm. Dev. Dept. Brisbane



2 SECTION
1/4" = 1'

TOWNSEND RESIDENCE
 223 TULARE STREET
 BRISBANE, CALIFORNIA
 APPROVED:

DRAWN: J. KUHEL

DATE: 11-20-14

REVISED:

SCALE: AS NOTED

JOB# 14-365

SHT A1

OF - SHTS

F. I. I.

RECEIVED

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Comm. Dev. Dept. Brisbane



F.1.12.



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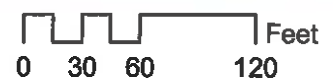
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F.1-13



Site Vicinity Map



F.1.14

11-20-14

Supporting statements for setback exception modification:
Subject Property: 223 Tulare St.

- 1) Being up against an 8 foot high wall has little if any impact on adjacent properties.
- 2) The new deck details will match any current stair and railing details
- 3) Lot sq ft: 3350. House sq ft : 830 Deck sq ft: 172
- 4) No trees or landscaping will be removed.
- 5) This is a legalization of a deck that is about 85% built. As noted earlier it is up against an 8 ft. high concrete retaining wall which has a parking lot beyond and therefore has little impact on the properties to the rear. It is farther away from the neighboring properties than a deck on the rear of the structure, therefore increasing the privacy of all the homes. To move the deck to the required setback would be both economically restrictive and not as practical reason as it is located on the flattest part of the lot.

Jerry Kuhel
Kuhel Design
415-508-1750