

**CITY OF DANA POINT
PLANNING COMMISSION
AGENDA REPORT**

DATE: DECEMBER 14, 2015

TO: DANA POINT PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT
URSULA LUNA-REYNOSA, DIRECTOR
EVAN LANGAN, AICP, ASSOCIATE PLANNER

SUBJECT: VARIANCE V15-0004 TO ALLOW THE CREATION OF A FOURTH-STORY BY PERMITTING CONVERSION OF CRAWL SPACE TO HABITABLE FLOOR-AREA AT A CURRENTLY NONCONFORMING THREE-STORY DUPLEX LOCATED WITHIN THE RESIDENTIAL SINGLE-FAMILY 7 (RSF-7) ZONING DISTRICT AT 33895 CALLE LA PRIMAVERA

RECOMMENDATION: That the Planning Commission adopt the attached resolution denying Variance V15-0004.

APPLICANT/OWNER: Rodger Borge

OWNER'S AGENT: Lynn Muir (Architect)

REQUEST: Approval of a variance to allow the creation of a four-story building by approving after-the-fact conversion of 280 square feet of former crawl space into habitable area within a single unit of a nonconforming three-story duplex.

LOCATION: 33895 Calle La Primavera (APN 682-141-55)

NOTICE: Notices of the Public Hearing were mailed to property owners within a 500-foot radius on December 2, 2015, published within a newspaper of general circulation on December 3, 2015, and posted on December 4, 2015 at Dana Point City Hall, the Dana Point and Capistrano Beach Branch Post Offices, as well as the Dana Point Library.

ENVIRONMENTAL: Pursuant to the California Environmental Quality Act (CEQA), the project is Categorically Exempt per Section 15301 (e) (Class 1 – Existing Facilities) in that it proposes a nominal addition to an existing residential duplex.

ISSUES:

- Project consistency with the Dana Point General Plan and Zoning Code (DPZC).
- Project satisfaction of all findings required pursuant to the DPZC for approval or denial of a Variance (V).
- Project compatibility with and enhancement of the site and surrounding neighborhood.

BACKGROUND: The subject property is a steeply sloping lot comprising 11,469 square feet (.26 acres) and presently containing two, detached duplexes (four units) built in 1984 via Use Permit UP80-23P. Each of the two structures were designed and approved with three habitable stories and a shallow, unfinished crawl space.

At some point in 2014, the Applicant began work to convert (without benefit of permits) the 280 square foot crawl space of 33895 Calle La Primavera into habitable area by removing dirt and adding a wall, finished floor, plumbing and electricity. In response to a complaint of the unpermitted remodel work, City Code Enforcement issued a “stop work” order to the applicant. Despite issuance of the order, work continued and the space has been fully converted into habitable area with fixed cabinetry, finished walls, floors and electricity. The remodeling of the former crawl space alters the area into a “story” as defined both in the Dana Point Zoning Code (DPZC) and CA Building Code. While the overall height of the duplex structure wouldn’t be altered, story-count increases by one and now comprises four stories - a number not permitted in the property’s Residential Single-Family 7 (RSF-7) Zoning District.

Review of other properties in the vicinity does indicate the presence of other residential structures exceeding the maximum two-story count permitted in the RSF-7 Zoning District, however, these structures were presumably developed prior to incorporation of the City of Dana Point and its adoption of current zoning requirements. City records indicate one variance was requested and granted in the immediate vicinity of the subject property and under similar topographic conditions. Variance V98-08 (33901 Calle La Primavera) requested the conversion of 1,200 square feet of crawl space into habitable area and in doing so, to add a third-story to a then two-story single-family dwelling. While staff’s recommendation was for denial of the request, on hearing and reviewing the project, the Planning Commission seated at that time voted for approval. An amended resolution was provided to the Commission at a subsequent hearing and approved on consent.

DISCUSSION: The subject application requests after-the-fact approval of the conversion of crawl space into habitable area and in doing so, creation of a fourth-story in violation of development standards of the RSF-7 Zoning District. As explained herein, all findings to support the variance request cannot be made, resulting in no justification to grant the deviation from standards of the DPZC.

Variance V15-0004

Pursuant to Section 9.67.050 of the DPZC, a variance from standards may be granted by the Planning Commission where eight specific findings (listed below) can be made. As proposed, the subject application does not meet the criteria (all findings cannot be made) to support the request and accordingly, recommended findings for denial are provided in the project's draft resolution (Attachment 1).

- 1. That the strict or literal interpretation and enforcement of the specified regulation(s) would result in practical difficulty or unnecessary physical hardships inconsistent with the objectives of this Chapter; and*
- 2. That there are exceptional or extraordinary circumstances or conditions applicable to the subject property or to the intended use of the property which do not apply generally to other properties in the same zoning district; and*
- 3. That the strict or literal interpretation and enforcement of the specified regulation(s) would deprive the applicant of privileges enjoyed by the owners of other properties in the same zoning district with similar constraints; and*
- 4. That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the same zoning district with similar constraints; and*
- 5. That the Variance request is made on the basis of a hardship condition and not as a matter of convenience; and*
- 6. That the granting of the Variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity;*
- 7. That the Variance approval places suitable conditions on the property to protect surrounding properties and does not permit uses which are not otherwise allowed in the zone;*

8. *That granting of the Variance would not result in adverse impacts, either individually or cumulatively, to coastal access, public recreation opportunities, or coastal resources, and the development would be consistent with the policies of the Local Coastal Program certified land use plan.*

As stated, if any of the required findings cannot be made, a variance cannot be justified. As applied to Findings 1 and 5, there are no practical difficulties or physical hardship conditions that would preclude the intended use of the property without approval of the variance as the existing residential structure is already functioning as intended.

CORRESPONDENCE: To date, no correspondence has been received for the project.

CONCLUSION: Staff finds that the subject project is inconsistent with the policies and provisions of the City of Dana Point General Plan and Zoning Ordinance and that findings to approve the request cannot be made. As the project has been found to not comply with all standards of development, staff recommends the Planning Commission adopt the attached resolution, denying V15-0004.


Evan Langan, AICP
Associate Planner


Ursula Luna-Reynosa, Director
Community Development Department

ATTACHMENTS:

Action Documents

1. Draft Planning Commission Resolution No. 15-12-14-xx

Supporting Documents

2. Vicinity Map
3. Site Photos
4. Project Plans (architectural only)

RESOLUTION NO. 15-12-14-xx

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA DENYING VARIANCE V15-0004 TO ALLOW THE CREATION OF A FOURTH-STORY BY PERMITTING THE AFTER-THE-FACT CONVERSION OF CRAWL SPACE TO HABITABLE FLOOR-AREA AT A CURRENTLY THREE-STORY DUPLEX AT 33895 CALLE LA PRIMAVERA

The Planning Commission of the City of Dana Point does hereby resolve as follows:

WHEREAS, Roger Borge (the “Applicant”) is the owner of real property commonly referred to as 33895 Calle La Primavera (APN 682-141-55) (the “Property”); and

WHEREAS, the Applicant filed a verified application for a Variance to allow a deviation from the development standards of the Dana Point Zoning Code at the Property; and

WHEREAS, said verified application constitutes a request as provided by Title 9 of the Dana Point Zoning Code; and

WHEREAS, pursuant to the California Environmental Quality Act (“CEQA”), the project is Categorically Exempt Section 15301 (Class 1 – Existing Facilities) in that the project proposes nominal additions to a single unit of an existing residential duplex; and

WHEREAS, the Planning Commission did, on the 14th day of December, 2015 hold a duly noticed public hearing as prescribed by law to consider said requests; and

WHEREAS, at said public hearing, upon considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to Variance V15-0004.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows;

- A. The above recitations are true and correct.
- B. Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and denies Variance V15-0004.

Findings:

Variance V15-0004

1. That the strict or literal interpretation and enforcement of the specified regulation(s) would result in practical difficulty or unnecessary physical hardships inconsistent with the objectives of this Chapter **in that the property already contains a residential duplex, constructed in compliance with the Zoning and Building Codes of the era in which it was built. The subject improvements comprise the addition of a fourth story to the currently three-story structure in violation of contemporary Zoning standards. As the applicant already has use of the property via the current residential duplex consistent with the objectives of the Zoning Code (residential development of the lot), there is no practical difficulty or unnecessary physical hardship warranting the requested deviation from standards.**
5. That the Variance request is made on the basis of a hardship condition and not as a matter of convenience **in that no hardship condition exists and in fact the request would constitute a matter of convenience for the Applicant. The subject lot itself is not atypical of others in the vicinity and presently developed with a useable residential structure, similar to others nearby and meeting minimum standards of development pursuant to the Dana Point Zoning Code. There is accordingly no hardship as relates to the topography or configuration of the property resulting in a hardship justifying the addition of a fourth-story to the structure.**

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 14th day of December, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

April O'Connor, Chairperson
Planning Commission

ATTEST:

Ursula Luna-Reynosa, Director
Community Development Department

City of Dana Point

Variance V15-0004

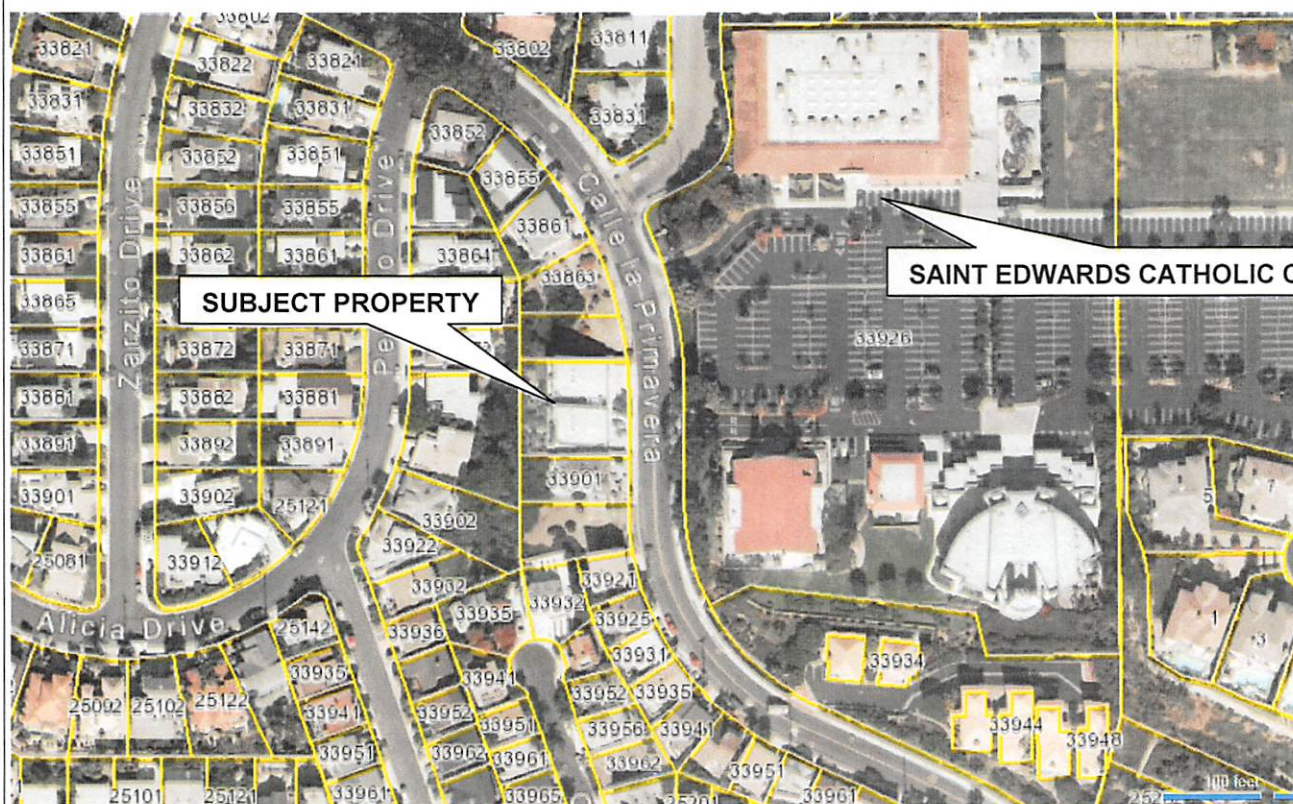
Evan Langan, AICP, Associate Planner

Community Development Department

33282 Golden Lantern

Dana Point, CA 92629-1805

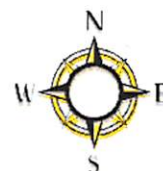
VICINITY MAP



Project : Variance V15-0004

Project Applicant: *Rodger Borge*

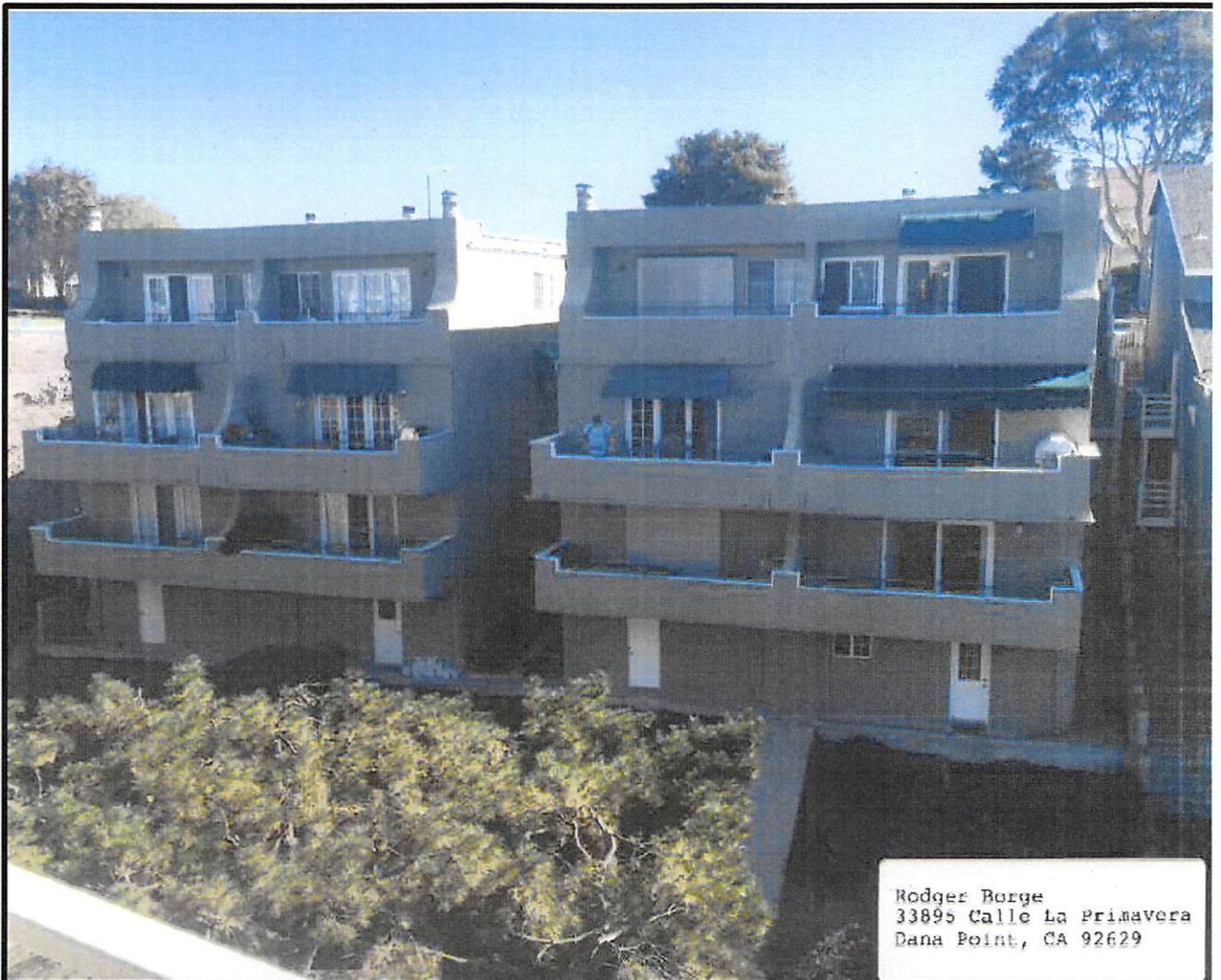
Location: 33895 Calle La Primavera



SITE PHOTOS



Rodger Borge
33895 Calle La Primavera
Dana Point, CA 92629



Rodger Borge
33895 Calle La Primavera
Dana Point, CA 92629

OWNER
RODGER BORSE
626 E SPRING ST. APT 396
LONG BEACH, CA. 90808

OWNER
RODGER BORSE
626 E SPRING ST. APT 396
LONG BEACH, CA. 90808

APN
995-67-020

APN
995-67-020

SITE ADDRESS
99595 CALLE LA PRIMAVERA
DANA POINT, CA. 92629

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99595 CALLE LA PRIMAVERA
DANA POINT, CA. 92629

CONSTRUCTION TYPE
VB

CONSTRUCTION TYPE
VB

PROJECT DESCRIPTION
CONVERSION VOID SPACE
REUSABLE SPACE

PROJECT DESCRIPTION
CONVERSION VOID SPACE
REUSABLE SPACE


$$y_0^* = 1.011$$

CALLE LA PRIMAVERA

APPROVALS:

REVISIONS:

CONVERSION OF EXISTING VOID SPACE TO USABLE SPACE FOR
DOCKED BOATS

RODGER BORGE

33895 CALLE LA PRIMAVERA

DANA POINT, CA 92629



MUIR
architects
a.i.a.

38167 PACIFIC COAST HWY
SUITE E
DANA POINT, CA. 92629
949-496-7030
FAX: 949-496-7272

JOB NO. 1508

DATE 10/27/19

CITATION

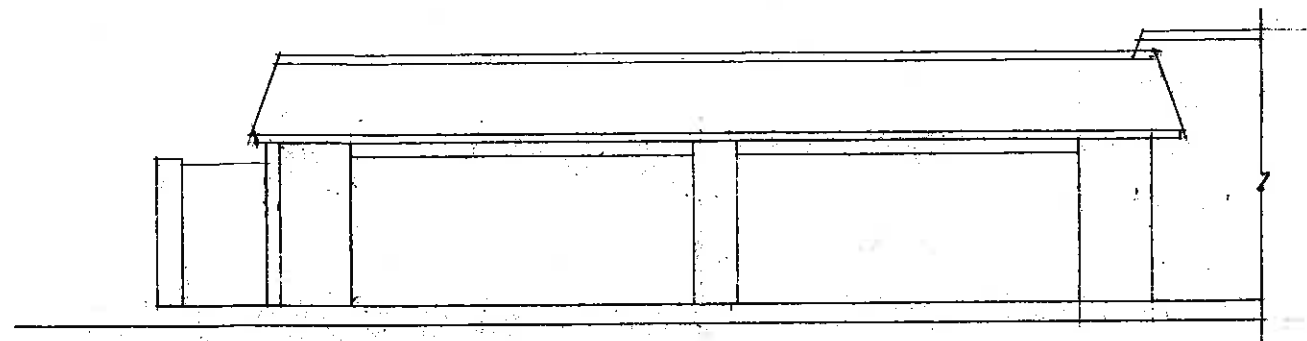
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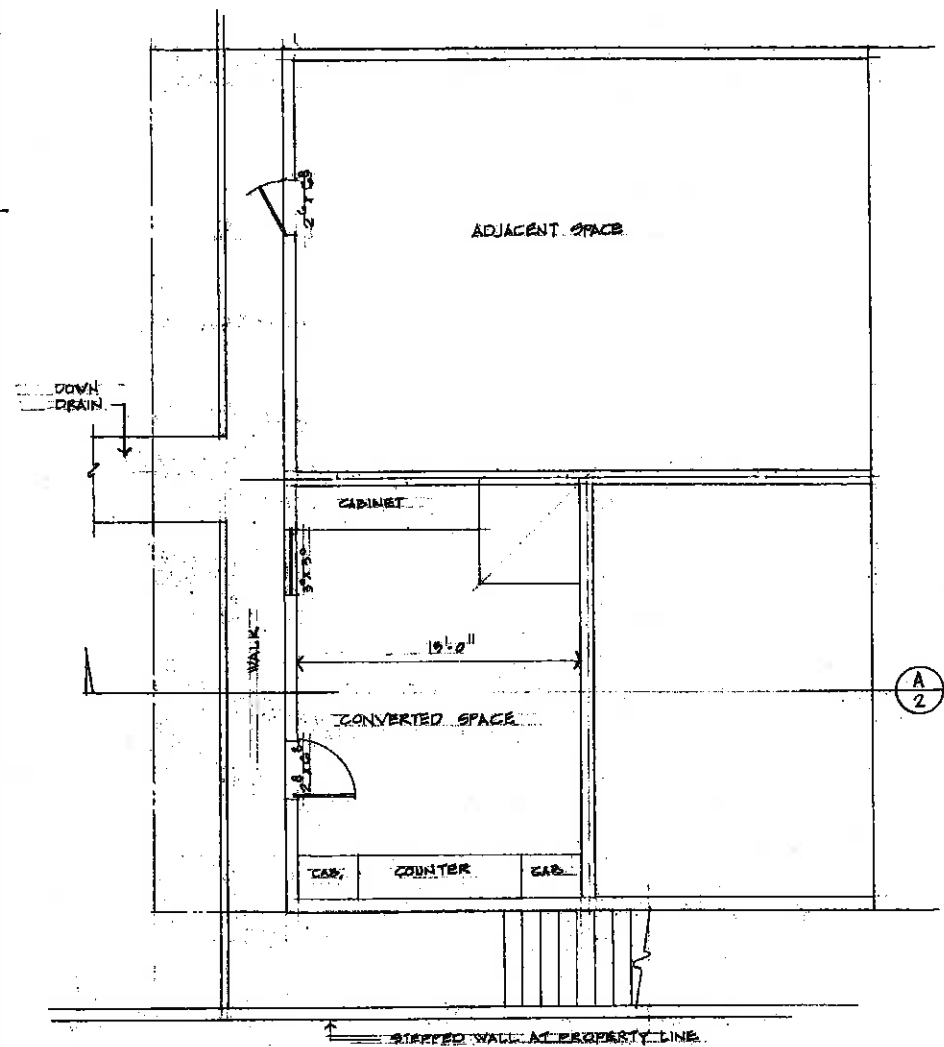
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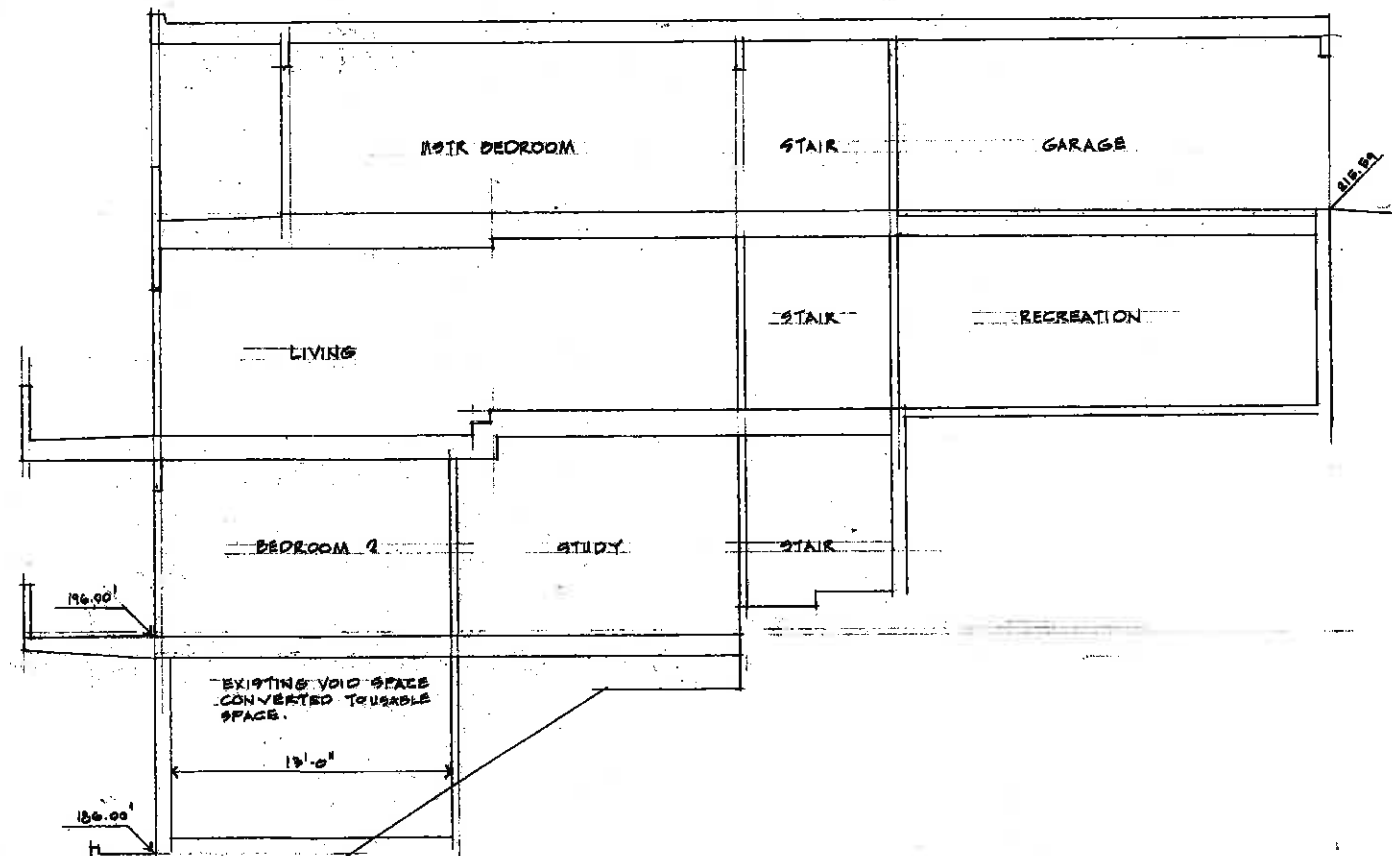
EAST ELEVATION

1/4" = 1'-0"



LOWER LEVEL FLOOR PLAN

1/4" = 1'-0"



SECTION

1/4" = 1'-0"

A

APPROVALS:

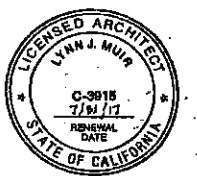
REVISIONS:

CONVERSION OF EXISTING VOID SPACE TO USABLE SPACE FOR

RODGER BERGE

33895 CALLE LA PRIMAVERA

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JOB NO. 15008

DATE 10/27/15

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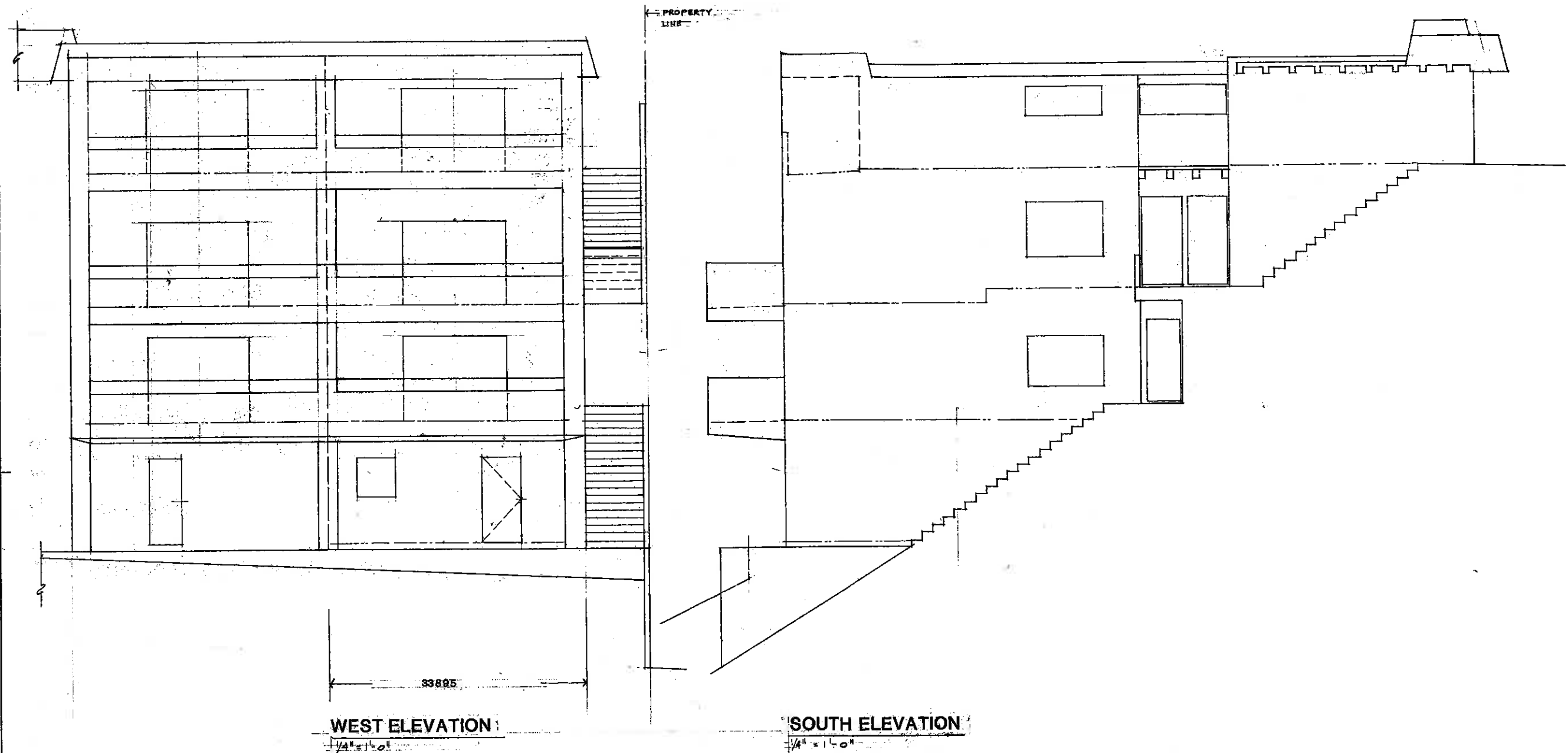
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APPROVALS:

REVISIONS:

CONVERSION OF EXISTING VOID SPACE TO USABLE SPACE FOR

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DATE 10/27/15

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