



## STAFF REPORT

### SAN CLEMENTE ZONING ADMINISTRATOR

Meeting Date: November 8, 2017

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**PLANNER:** Veronica Morones, Assistant Planner *MM8*

**SUBJECT:** **Short Term Apartment Rental (STAR) 17-257, De Marquette STAR**, a request to allow a Short Term Apartment Rental unit in a duplex located at 233 Avenida Serra. This would allow one of the duplex units to be rented on a short-term basis (less than 30 days) while the other unit is owner occupied.

**LOCATION:** 233 Avenida Serra

**ZONING/GENERAL PLAN:** Residential Medium Zoning District and Coastal Zone Overlay (RM-CZ)

#### **PROJECT SUMMARY:**

- The site is a 3,920 square-foot lot, with a single-story duplex and attached two-car garage, developed in 1956.
- Since February of 2016, the front unit (Unit A) of the duplex has been rented and operated as a Short-Term Lodging Unit (STLU) with a valid STLU Operating License (License Number STLU-316013). A STLU is a dwelling unit rented for lodging less than 30 days ("Short-term"). The site is not located in a zone that permits STLUs. As a result, Zoning Ordinance Section 17.72.060.G requires the STLU to cease operating at the end of a two-year amortization period on May 31, 2018 or upon a change of ownership, whichever comes first. While STLUs are not permitted on the site, if the property owner resides in one of the duplex units while the other unit is rented short-term, the Zoning Ordinance allows this form of short-term lodging on the site, known as a Short-Term Apartment Rental (STAR).
- License STLU-316013 is the active operating license for the property and has operated in good standing, with no code compliance violations.
- The applicant requests to operate a STAR in Unit A.
- Zoning Ordinance 17.16.146 requires Zoning Administrator approval of a STAR permit to allow a STAR in the RM Zoning district. STARS must meet special use requirements in Zoning Ordinance Section 17.28.292, including a requirement for a 300-foot separation between STARS to ensure there is not an over concentration of short-term lodging in residential zones. To-date, the City has permitted two STAR units, one on Avenida Granada and a second on Avenida Del Mar. There is more than 300 feet of separation between the site and the other permitted STARS, so the 300-foot separation requirement is met for this request. See Attachment 2 for a map of this analysis.

- Zoning Ordinance Section 17.28.292.C.11, limits the number of renters and guests in a STAR, based on the number of legal parking spaces provided on-site.
  - The site has two parking spaces, at one space per unit.
  - The Zoning Ordinance requires four spaces for a duplex (two spaces per unit), so there is a shortage of two required parking spaces on site. Zoning Ordinance Section 17.72.060.C.2.a allows the existing STLU conditions to carry over to the STAR if occupancy is limited so more parking is not required.
  - Under the current operating license one space is provided for the owner's unit and one space is provided for the rental unit, therefore with one legal parking space available for the STAR, Zoning Ordinance Table 17.28.292.A limits STAR occupancy to a maximum of four renters and guests at any time.
  - While it is unlikely to happen based on the site's layout, if additional legal parking spaces were provided in the future, Condition of Approval No. 15 allows the occupancy limit to increase (according to the Zoning Ordinance) if parking changes are first reviewed and approved by the Community Development Director or designee.
- Staff confirmed the applicant is knowledgeable of and agreed to meet STAR requirements, such as: 1) requiring the property owner to reside in a dwelling unit when the other is used as a STAR, and that 2) the STAR permit is voided if there is a change of ownership, as defined in the Zoning Ordinance.
- Staff supports STAR 17-257, concluding the request meets required findings for reasons summarized below and detailed in the attached Resolution:
  - The STAR must comply with all code requirements including, but not limited to, the Fire Code, California Building Code, and the Municipal Code. Also, the STAR must adhere to Conditions of Approval (in Attachment 1, Exhibit A). The special use requirements and conditions apply to ensure the use operates consistent with the intent of the RM zone, is in character with residential neighborhoods, and compatible with adjacent properties. This includes the 300 feet separation requirement and minimum standards for trash storage, parking, provision of insurance, and limitations on occupancy and noise;
  - Special conditions of approval require provision of soundproofing and the owner to use best management practices in the event that noise impacts neighboring properties; and
  - The STAR owner must reside in a dwelling unit on the property every night a unit is rented for short-term lodging purposes, so STAR operation and use is monitored and controlled by the property owner to ensure compliance with Municipal Code requirements. Provided STAR 17-257 is approved, the applicant must sign a form consenting to such conditions of approval, so there is a clear record the applicant understands and agrees to follow such requirements.
- The public was notified of this hearing item and staff has not received comments on this item to date.

**RECOMMENDATION**

Based on the information in the staff report and subject to the required findings and conditions of approval, staff recommends that the Zoning Administrator:

1. Determine the project is Categorical Exempt from the requirements of the CEQA pursuant to CEQA Guidelines Section 15301 (Class 1: Existing Facilities); and
2. Adopt Resolution ZA 17-035, approving Short Term Apartment Rental (STAR) 17-257, De Marquette STAR, subject to the attached Resolution and conditions of approval.

***Attachments:***

1. Resolution ZA 17-035  
Exhibit A - Conditions of Approval
2. Location Map
3. Photos
4. Plans

# ATTACHMENT 1

## RESOLUTION NO. ZA 17-035

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING SHORT TERM APARTMENT RENTAL 17-257, DE MARQUETTE STAR, A REQUEST TO ALLOW A SHORT TERM APARTMENT RENTAL IN A DWELLING UNIT OF A DUPLEX LOCATED AT 233 AVENIDA SERRA

WHEREAS, on August 14, 2017, an application was submitted, and completed on October 19, 2017, by Brad De Marquette, 233 Avenida Serra, San Clemente, CA 92672; a request to consider a Short-Term Apartment Rental in a dwelling unit of a duplex at 233 Avenida Serra.

WHEREAS, a Short-Term Apartment Rental (STAR) is a short-term lodging unit in a multi-dwelling unit development in which the property owner lives on-site in other units when the STAR is rented. The site is in the Residential-Medium Density Zoning District and Coastal Zone Overlay (RM-CZ). The site's legal description is Lot 16, Block 15 of Tract 779 and Assessor's Parcel Number 058-123-12; and

WHEREAS, the Planning Division has completed an initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA) and recommends the Zoning Administrator determine the project is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities). This is recommended because the project is limited to allowing an existing dwelling to be reused on a short term basis; and

WHEREAS, on August 24, 2017, the City's Development Management Team (DMT) reviewed the proposed project for compliance with the General Plan, Zoning Ordinance, and other applicable City ordinances and codes, and supports it with the conditions of approval provided in Exhibit A; and

WHEREAS, on November 8, 2017, the Zoning Administrator of the City of San Clemente held a duly noticed public hearing on the subject application, considered written and oral comments, and facts and evidence presented by the applicant, City staff, and other interested parties.

NOW, THEREFORE, The Zoning Administrator of the City of San Clemente does hereby resolve as follows:

Section 1. Incorporation of Recitals.

The Zoning Administrator hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Zoning Administrator as fully set forth in this resolution.

## Section 2. CEQA Findings.

Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Zoning Administrator, and the facts outlined below, the Zoning Administrator hereby finds and determines that the proposed project is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities).

The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features. Here, the proposed project involves a request to rent and use an existing dwelling unit on a short-term basis with no expansion of use. Zoning limitations apply to ensure the type, size, and operation of the proposed use is consistent with the purpose, intent, and conditionally permitted uses of the RM zone. Thus, the project qualifies for the Class 1 exemption.

Furthermore, none of the exceptions to the use of the Class 1 categorical exemption identified in State CEQA Guidelines section 15300.2 apply. The project will not result in a cumulative impact from successive projects of the same type in the same place, over time, given the proposed use is consistent with Zoning regulations, that include a requirement for a 300 foot separation between STARs to ensure there is not an over concentration of short-term lodging in residential zones. There are no unusual circumstances surrounding the project that result in a reasonable possibility of a significant effect on the environment. The project will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources. The project does not include any hazardous waste sites, and the project will not cause a substantial adverse change in the significance of a historical resource, given none are adjacent to the site. Thus, the Class 1 exemption applies, and no further environmental review is required.

## Section 3. Short Term Apartment Rental Findings

With respect to Short Term Apartment Rental (STAR) 17-257, the Zoning Administrator finds as follows:

- A. The proposed use is permitted within the subject zone pursuant to the approval of a STAR permit and complies with all the applicable provisions of the Zoning Ordinance, the San Clemente General Plan, and the purpose and intent of the zone in which the use is being proposed. The proposed STAR use is permitted within Residential Medium (RM) zoning district pursuant to the approval of a STAR and complies with all the applicable provisions of the Municipal Code, the San Clemente General Plan, and the purpose and intent of the zone in which the use is being proposed because the STAR is consistent with the types of permitted and intended uses in the zone, and special use requirements applied to ensure the existing character of residential neighborhoods are preserved and not adversely impacted.

- B. The site is suitable for the type and intensity of the proposed use, in that the STAR unit is required to remain consistent with residential characteristics of the neighborhood. The STAR unit must comply with all codes and adhere to Conditions of Approval, attached hereto as Exhibit A. These requirements and conditions ensure the existing character of residential neighborhoods are preserved and not adversely impacted.
- C. The proposed use will not be detrimental to the public health safety, or welfare, or materially injurious to properties and improvements in the vicinity, in that the STAR must comply with all code requirements including but not limited to Fire Code, California Building Code, and the San Clemente Municipal Code. Also, the STAR must adhere to Conditions of Approval, attached hereto as Exhibit A. These requirements and conditions apply to ensure the existing character of residential neighborhoods are preserved and not adversely impacted. These requirements include, but are not limited to, a 300 feet separation requirements between STARs (where STLUs are not permitted) to control zone density, and minimum standards for trash storage, parking, provision of insurance, architectural treatment, and limitations on occupancy and noise; and
- D. The proposed use will not negatively impact surrounding land uses, in that:
1. Conditions of Approval (attached as Exhibit A) must be met to ensure the existing character of the surrounding land uses are not adversely impacted. These requirements include, but are not limited, to a 300-foot separation requirement between STARs (where STLUs are not permitted) to control zone density, and minimum standards for trash storage, parking, provision of insurance, architectural treatment, and limitations on occupancy and noise; and
  2. The STAR owner proposes to operate the STAR and sleep within a habitable room or unit on the property every night a room or unit is rented for short-term lodging purposes, so STAR operation and use is monitored and controlled by the property owner to ensure compliance with Municipal Code requirements.
- E. The use meets the minimum operating and development standards of Subsections 17.28.292E. and F, in that:
1. The STAR maintains the residential character of the building; only one unit is proposed to be utilized as a rental unit; the building is in compliance with applicable Fire Codes, Building Codes, and San Clemente Municipal Codes; and
  2. The STAR owner proposes to operate the STAR and sleep within a habitable room or unit on the property every night a room or unit is rented for short-term lodging purposes, so STAR operation and use is monitored and controlled by the property owner to ensure compliance with Municipal Code requirements.

F. The STAR qualifies for an STLU Operating License pursuant to Chapter 3.24, in that because the STAR meets the requirements for issuance of a Short-Term Operating License per Municipal Code Section 3.24.200.

G. Zoning Administrator Approval

Based on the foregoing recitals and findings above, and the written and oral comments, facts, and evidence presented, the City of San Clemente Zoning Administrator approves STAR 17-257, De Marquette STAR, subject to the above Findings, and the Conditions of Approval set forth in Exhibit A.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Zoning Administrator on November 8, 2017.

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Cecilia Gallardo-Daly, Zoning Administrator

CONDITIONS OF APPROVAL  
STAR 17-257, DE MARQUETTE STAR

1. The applicant or the property owner or other holder of the right to the development entitlement(s) or permit(s) approved by the City for the project, if different from the applicant (herein, collectively, the "Indemnitor") shall indemnify, defend, and hold harmless the City of San Clemente and its elected city council, its appointed boards, commissions, and committees, and its officials, employees, and agents (herein, collectively, the "Indemnitees") from and against any and all claims, liabilities, losses, fines, penalties, and expenses, including without limitation litigation expenses and attorney's fees, arising out of either (i) the City's approval of the project, including without limitation any judicial or administrative proceeding initiated or maintained by any person or entity challenging the validity or enforceability of any City permit or approval relating to the project, any condition of approval imposed by City on such permit or approval, and any finding or determination made and any other action taken by any of the Indemnitees in conjunction with such permit or approval, including without limitation any action taken pursuant to the California Environmental Quality Act ("CEQA"), or (ii) the acts, omissions, or operations of the Indemnitor and the directors, officers, members, partners, employees, agents, contractors, and subcontractors of each person or entity comprising the Indemnitor with respect to the ownership, planning, design, construction, and maintenance of the project and the property for which the project is being approved. The City shall notify the Indemnitor of any claim, lawsuit, or other judicial or administrative proceeding (herein, an "Action") within the scope of this indemnity obligation and request that the Indemnitor defend such Action with legal counsel reasonably satisfactory to the City. If the Indemnitor fails to so defend the Action, the City shall have the right but not the obligation to do so and, if it does, the Indemnitor shall promptly pay the City's full cost thereof. Notwithstanding the foregoing, the indemnity obligation under clause (ii) of the first sentence of this condition shall not apply to the extent the claim arises out of the willful misconduct or the sole active negligence of the City. *[Citation – City Attorney Legal Directive]* (PIng.)\_\_\_\_\_
2. Thirty days after project approval, the owner or designee shall submit written consent to all of these imposed conditions to the Community Development Director or designee. The owner or designee understands that the resolution will be of no force or effect unless such written consent is submitted to the City. *[Citation – City Attorney Legal Directive]* (PIng.)\_\_\_\_\_
3. STAR 17-257 shall become null and void if:
  - a. there is a change of ownership as defined in the Municipal Code for STAR units; or
  - b. the STAR use is not commenced within one (1) year from the later of: 1) the date of the approval thereof. Since the use itself does not require the issuance of a building permit, the use shall not be deemed to have



commenced until the date the use becomes operational. *[Citation - Section 17.12.150.A.1 of the SCMC]* ■ (PIng.)\_\_\_\_\_

4. The owner or designee shall have the right to request an extension of STAR 17-257, if said request is made and filed with the Planning Division prior to the expiration date as set forth herein. The request shall be subject to review and approval in compliance with Section 17.12.160 of the Zoning Ordinance. *[Citation - Section 17.12.160 of the SCMC]* (PIng.)\_\_\_\_\_
5. The STAR owner shall comply with STAR requirements to ensure the existing character of residential neighborhoods are preserved and not adversely impacted. These requirements include, but are not limited to, minimum standards for trash storage, parking, provision of insurance, and limitations on occupancy and noise. ■■ (PIng.) \_\_\_\_\_
6. In the event that noise impacts neighboring properties, the STAR owner must soundproof the STAR unit, or implement other best management practices as determined by the Community Development Director or designee, to eliminate the problem and comply with the City's noise ordinances. ■■ (PIng.) \_\_\_\_\_
7. The STAR owner shall use her/his best judgment and best management practices to ensure lodging activities on the premises will be conducted in a manner that will not be disruptive to neighbors. The STAR owner shall be responsible for ensuring compliance with the San Clemente Municipal Code (SCMC), and all conditions of approval contained herein. The STAR owner hereby understand that noncompliance with regulations and conditions of approval, shall be immediate grounds for citation pursuant to SCMC Section 8.52.030(Y), which states, "*It is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in this City to maintain such premises in such manner that ... A structure, improvement, property, and/or land use not in compliance with terms and/or conditions of any City of San Clemente issued permit or approval,*" and any subsequent revision of this section of the code. ■■ (PIng.)\_\_\_\_\_
8. Plans to construct new building, add or alter the existing building configuration, change in use, add or alter structural, mechanical, electrical or plumbing features of the project must be reviewed and approved through a separate building plan check / permit process. *[S.C.M.C – Title 8 – Chapter 8.16- Fire Code, Title 15 Building Construction - Chapters 15.08, 15.12, 15.16, 15.20]* (Bldg.)\_\_\_\_\_
9. The Certificate of Occupancy shows a duplex legally developed on the site. The STAR shall be revoked, if the duplex were illegally converted to a triplex. In addition, other enforcement actions may be taken to resolve violations if they arise. ■■ (PIng.)\_\_\_\_\_
10. The owner of the STAR must own and operate the STAR and must sleep within a unit on the property while a separate unit is rented for short-term-lodging purposes. *[Citation - Section 17.28.292.D of the SCMC]* ■■ (PIng.)\_\_\_\_\_

11. Approval of STAR 17-257 supersedes all Short-Term Lodging Unit (STLU) Operating Licenses for the site, and upon issuance of the STAR Zoning Permit, renders all STLU Operating Licenses previously issued to the property null and void. This means short-term lodging shall be limited to the STAR according to STAR 17-257 and these Conditions of Approval. ■■ (PIng.)\_\_\_\_\_
12. Prior to renting and operating the STAR, the owner shall obtain a Short-Term Lodging Unit (STLU) Operating License. License issuance and renewals shall occur pursuant to Municipal Code Chapter 3.24. ■■ (PIng.)\_\_\_\_\_
13. The STAR owner shall provide record of their name and current 24-hour contact information (which consists of, at minimum, a phone number) to the Community Development Director, or designee. Updated information shall be provided, pursuant to SCMC Section 17.28.292(C)(5), which states, *"The STLU owner shall provide a 24-hour emergency contact that will respond, on-site if requested, within 30 minutes to complaints about the condition, operation or conduct of STLU renters or their guests. Prior to any change to the 24-hour emergency contact, the STLU owner shall submit a revised STLU zoning permit application to the Community Development Director, or designee for approval."* ■■ (PIng.)\_\_\_\_\_
14. The number of renters and guests permitted in the STAR shall be limited based on Zoning Ordinance Table 17.28.292.A, Number or Renters Permitted, or Building Code, whichever is more restrictive. There shall be no more than four people (renters and guests) in the STAR at any time, based on the parking provided on-site for the STAR (currently one legal space). If additional legal off-street parking is provided in the future, the occupancy can change to reflect regulations, provided any changes are first reviewed and approved by the Community Development Director or designee. ■■ (PIng.) \_\_\_\_\_(Bldg.)\_\_\_\_\_

All Conditions of Approval are standard, unless indicated as follows:



- Denotes a modified standard Condition of Approval.
- Denotes a project specific Condition of Approval



300' surrounding buffer of STAR 17-257

Address: 233 Avenida Serra

Residential Medium and Coastal Zone

-  ACTIVE STLU
-  HISTORIC STRUCTURE



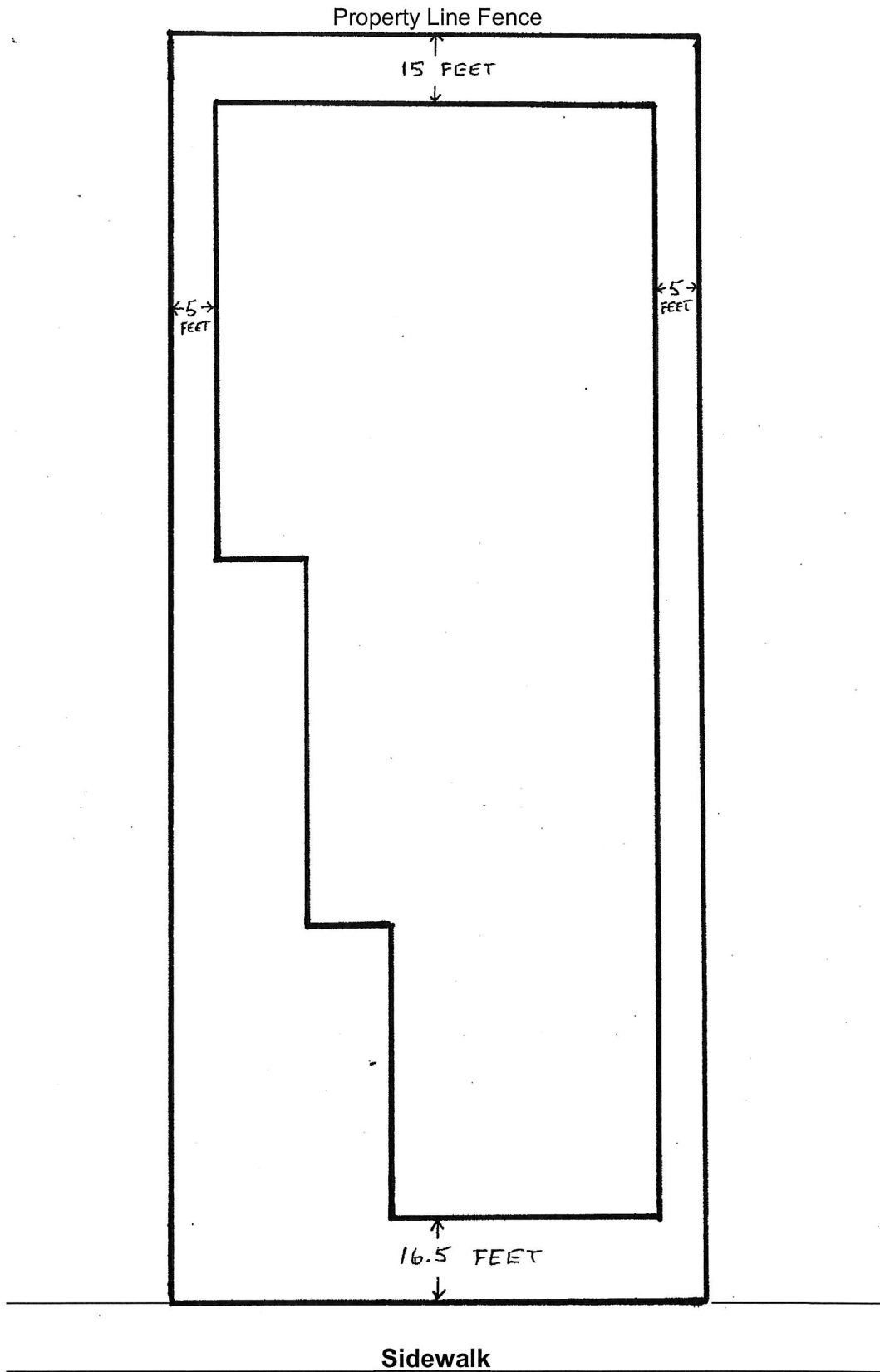
Designated off-street parking

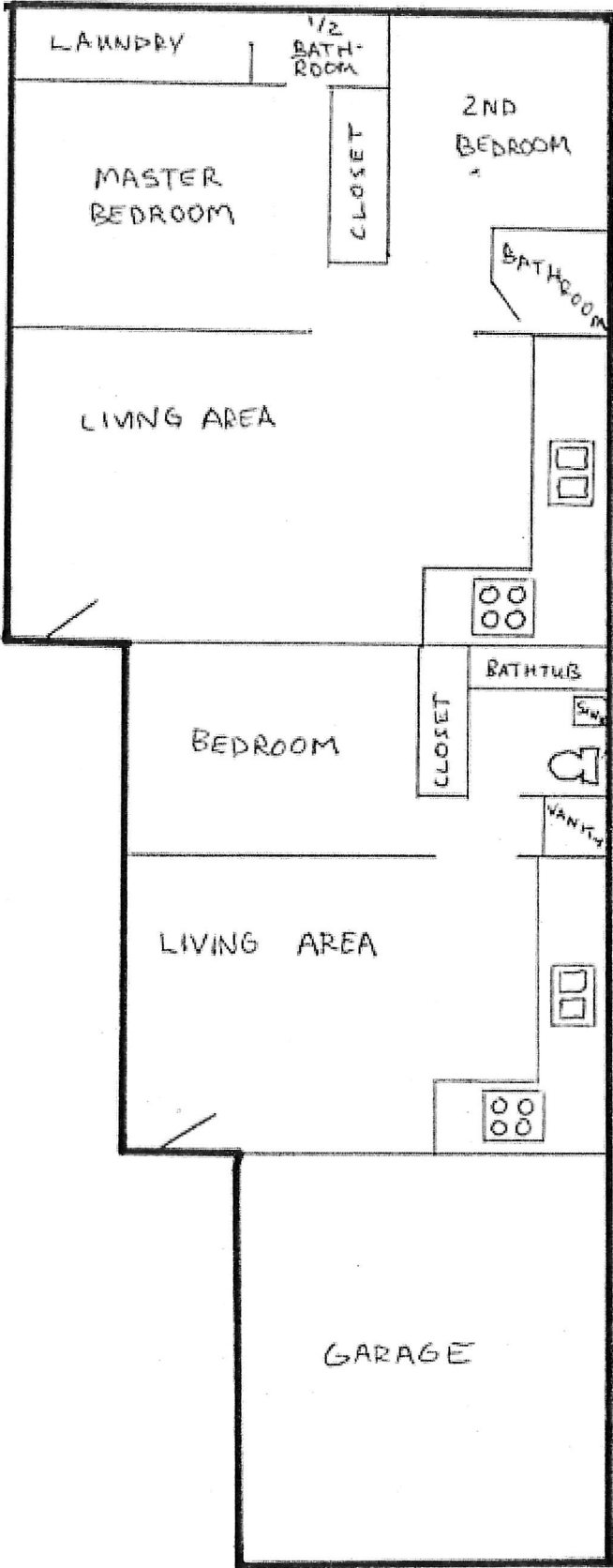


Landscaped gated front-yard

233 AVENIDA SERRA - AERIAL VIEW







# 233 Avenida Serra - Unit A

