



## STAFF REPORT SAN CLEMENTE ZONING ADMINISTRATOR

Meeting Date: November 8, 2017

**PLANNER:** Kirt A. Coury, Contract Planner *KC*

**SUBJECT:** Minor Exception Permit 17-141, Mirasol Retaining Walls, a request to consider a retaining wall and pilaster exceeding 42-inches in height in the front and street-side yard setbacks.

**LOCATION:** 259 Avenida Montalvo

**ZONING/GP:** Residential Medium Density with a Coastal Zone Overly (RM-CZ)

**BACKGROUND:**

- The site is a 10,900 square-foot lot developed with two residences with two stories and two-car garages.
- The parcel is a corner lot with street frontage on three of the four sides. Although the parcel is a generous size, development is constrained by setback requirements due to the property being a corner lot, its unique shape, and a shared lot with another residence. See Attachment 2 for a site map.

**Figure 1: Existing Residence**



- The applicant proposes to construct multiple walls and pilasters within the front and street side yard setback areas. The majority of the improvements meet the 42-inch height limit for walls and pilasters in these areas. There are two exceptions: 1) a five-foot, three-inch stucco pilaster in the front yard area, and 2) a four-foot high retaining

wall in the required street side yard along Avenida Montalvo. Refer to highlighting on the plans for the location of the pilaster and wall that require exceptions.

- Zoning Ordinance Section 17.24.090.C.6, allows the height of walls and pilasters to be increased up to six feet in a required setback with approval of a Minor Exception Permit (MEP).
- The pilaster and wall will be located in the front and side yard setback areas to create more usable outdoor patio and private areas. The areas between the back of sidewalk wall and other on-site walls will be planted with drought tolerant plants to soften the appearance of the wall to match existing landscaping on-site (see Attachment 3).
- Zoning Ordinance Section 17.16.090.C.6.a, requires Zoning Administrator approval of an MEP to increase the wall and pilaster in front yards and street side yards (within five feet of the property line) from three feet, six inches, up to a maximum of six feet. The proposed project meets the required findings because:
  - The pilaster and wall are setback at least four feet from the property line providing space to create a landscape planter and buffer between the proposed structures and property line. This landscape area will help soften the wall's appearance.
  - The majority of the proposed walls comply with the height requirements. The exceptions are limited to: 1) a five-foot three-inch stucco pilaster in the front yard area, and 2) a four-foot high retaining wall in the required street side yard along Avenida Montalvo.
  - The neighboring properties will not be adversely affected as a result of the approval or conditional approval of the MEP, in that it will maintain the character and look of the residence and the surrounding neighborhood. The wall is consistent with the overall street scene of the neighborhood where other properties have structures and walls over 42-inches in height in close proximity to the front and street side yard setbacks (Attachment 3); and
  - The Minor Exception Permit will not be detrimental to the health, safety or welfare of the general public. The walls will not impede the line of sight of drivers leaving or passing the property. Additionally, the project must be permitted and inspected for compliance with building codes to ensure the project does not have adverse impacts on health, safety, and welfare.
- The project is exempt from the requirements of the California Environmental Quality Act (CEQA) as a Class 3 pursuant to State CEQA Guidelines Section 15303(e) because the project involves the construction of accessory structures on a site that is not environmentally sensitive and that has adequate public services and facilities to support the project.
- At the writing of this report, staff has not received comments from the public regarding this proposal.

**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 Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15303(e); and
2. Adopt Resolution ZA 17-034 approving MEP 17-141, Mirasol Retaining Walls.

Attachments:

1. Resolution ZA 17-034  
Exhibit A Conditions of Approval
2. Location Map
3. Photos  
Plans

# ATTACHMENT 1

## RESOLUTION NO. ZA 17-034

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING MINOR EXCEPTION PERMIT 17-141, MIRASOL RETAINING WALL, A REQUEST TO ALLOW A RETAINING WALL AND PILASTER TO EXCEED 42-INCHES IN HEIGHT IN THE FRONT YARD AND STREET SIDE YARD SETBACK AREAS ON A SITE LOCATED AT 259 AVENIDA MONTALVO

WHEREAS, on April 28, 2017, an application was submitted, and deemed complete on September 27, 2017, by Jose Castro, 864 Calle Vallarta, San Clemente, CA, 92673, for Minor Exception Permit 17-141, Mirasol Retaining Wall; a request to allow retaining wall and pilaster exceeding 42-inches in height, up to a maximum of six feet in height, in the front and street side yard setbacks, where a maximum height of three feet, six-inches (42 inches) is allowed by-right. The site is located in the Residential Medium Density Zone and Coastal Overlay at 259 Avenida Montalvo. The site's legal description is Lot 1, Unit 1 of Tract 11105, and Assessor's Parcel Number 936-370-13; and

WHEREAS, the Planning Division completed an initial environmental assessment of the above matter in accordance with California Environmental Quality Act (CEQA) and recommends that the Zoning Administrator determine this project categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15303(e) because the project involves the construction of an accessory structure including a wall and pilaster on a site that is not environmentally sensitive and that has adequate public services and facilities to support the project; and

WHEREAS, on May 25, 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

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 15303(e) because the project involves the construction of an accessory structure including walls and fences on a site that is not environmentally sensitive and that has adequate public services and facilities to support the project.

The Class 3 exemption specifically exempts from further CEQA review the construction and location of limited numbers of new, small facilities or structures, installation of small new equipment and facilities in small structures, and the conversion of existing small structures where only minor modifications are made in the exterior of the structure. This exemption includes garages, carports, patios, swimming pools and fences. Here, the proposed project adds a wall and pilaster in the front and street side yard setback areas. The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and the area in which the project is located is not environmentally sensitive. Thus, the project qualifies for the Class 3 exemption.

Furthermore, none of the exceptions to the use of the Class 3 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. There are no unusual circumstances surrounding the project that result in a reasonable possibility of a significant effect on the environment. There are no sensitive resources on the project site or in the vicinity. 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. The site does not involve or is adjacent to historic resources. Thus, the Class 3 exemption applies, and no further environmental review is required.

## Section 3. Minor Exception Permit Findings

With respect to Minor Exception Permit 17-141, the Zoning Administrator finds as follows:

- A. The neighboring properties will not be adversely affected as a result of the approval or conditional approval of the Minor Exception Permit, in that the height of the proposed wall and pilaster are in character with the neighborhood because:
  1. The wall and pilaster are consistent with the overall street scene of the neighborhood where other properties have structures and walls over 42-inches in height in close proximity to the front and street side yard setbacks (such as walls at 254 and 255 Avenida Lobeiro). In addition, there is

adequate space between the existing walls and proposed wall to allow for landscaping within the requested setback exception areas

- B. The height of the proposed wall and pilaster will not be unsightly or incompatible with the character of or uses in the neighborhood because:
1. The project will maintain the character and look of the residence and neighborhood including the street scene. There are walls and fences over three feet, six inches high in the front and side yard areas of nearby properties, such as walls at 254 and 255 Avenida Lobeiro;
  2. The wall and pilaster are setback at least four feet from the property line providing space to create a landscape planter and buffer between the proposed structures and property line. This landscape area will help soften the wall's appearance.
- C. The approval or conditional approval of the Minor Exception Permit will not be detrimental to the health, safety or welfare of the general public, in that:
1. The project will maintain the character and look of the residence and neighborhood including the street scene. There are walls and fences over three feet, six inches high in the front and side yard areas of nearby properties, such as walls at 254 and 255 Avenida Lobeiro;
  2. The wall and pilaster are setback at least four feet from the property line providing space to create a landscape planter and buffer between the proposed structures and property line. This landscape area will help soften the wall's appearance;
  3. Additionally, the project must be permitted and inspected for compliance with building codes to ensure the project does not have adverse impacts on health, safety, and welfare.
- D. The height of the fence and hedges will not have negative visual impacts upon the street scene or obstruct views of traffic to and from driveways. The wall and pilaster have setbacks and heights that do not restrict visibility of traffic to and from driveways;

Section 4. 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 Minor Exception Permit 17-141, Mirasol Retaining Walls, 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  
MEP 17-141, MIRASOL RETAINING WALLS

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/City Council Approval June 1, 2010]* (PIng.)\_\_\_\_\_
  
2. Thirty (30) days after project approval, the owner or designee shall submit written consent to all of these imposed conditions of approval to the Community Development Director or designee. *[Citation – City Attorney Legal Directive/City Council Approval June 1, 2010]* (PIng.)\_\_\_\_\_

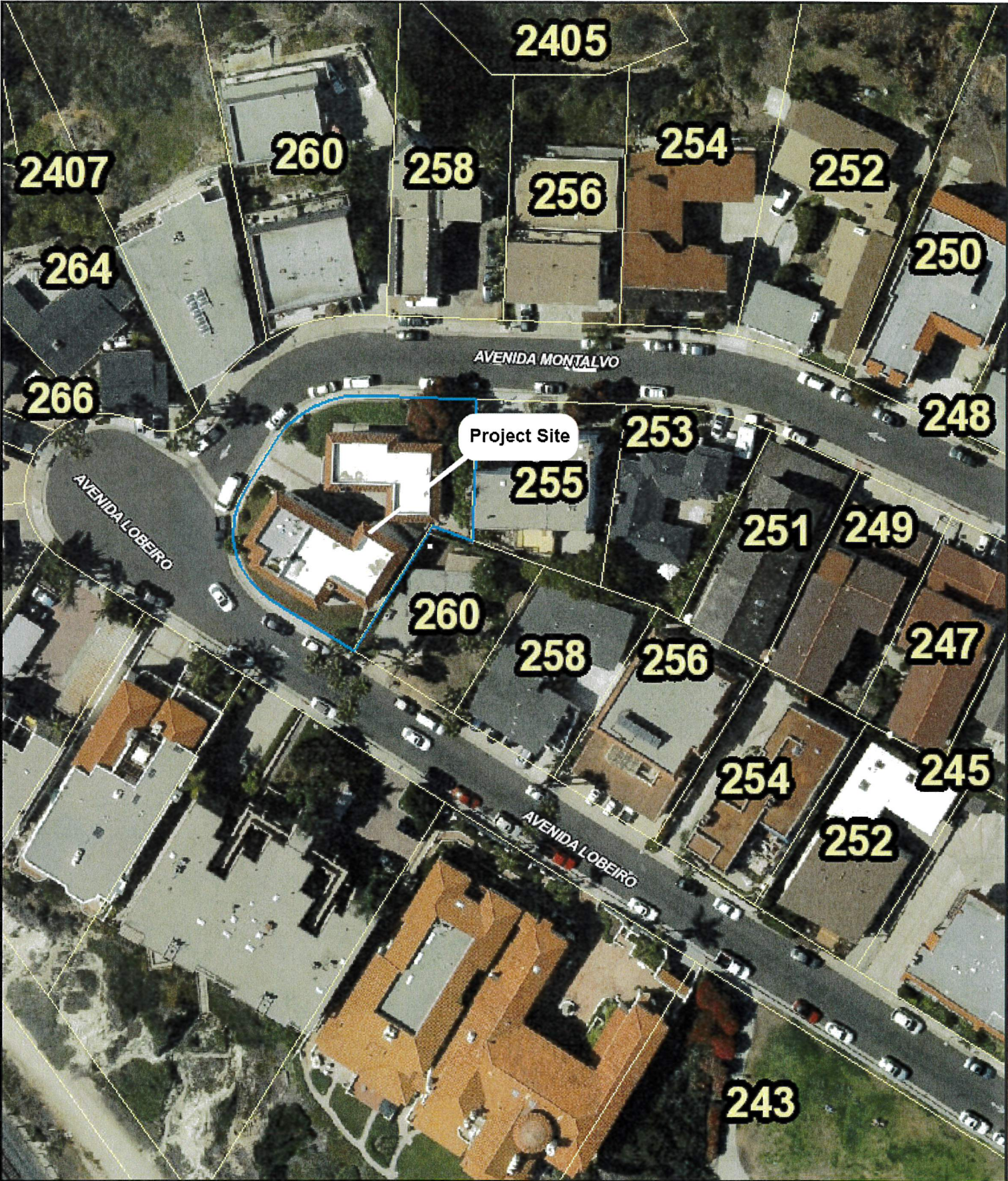


3. Minor Exception Permit 17-141 shall become null and void if the use is not commenced within three (3) years from the date of the approval thereof. Since the use requires the issuance of a building permit, the use shall not be deemed to have commenced until the date that the building permit is issued for the development. *[Citation - Section 17.12.150.A.1 of the SCMC]* (PIng.)\_\_\_\_\_
4. A use shall be deemed to have lapsed, and Minor Exception Permit 17-141 shall be deemed to have expired, when a building permit has been issued and construction has not been completed and the building permit has expired in accordance with applicable sections of the California Building Code, as amended. *[Citation - Section 17.12.150.C.1 of the SCMC]* (PIng.) \_\_\_\_\_
5. The owner or designee shall have the right to request an extension of MEP 17-141 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.) \_\_\_\_\_
6. Prior to the issuance of building permits, the applicant or designee shall include within the first four pages of the working drawings a list of all conditions of approval imposed by the final approval for the project. *[Citation - City Quality Assurance Program]* (PIng.) \_\_\_\_\_
7. With the exception of the pilaster located within the front yard area and identified as part of MEP 17-141, the maximum height of other pilasters on-site, including the retaining walls and guardrail, shall not exceed 42 inches as measured from the top of the retaining wall to the top of the pilasters *[Citation - Section 17.24.180 of the SCMC]*. ■■ (PIng.)\_\_\_\_\_
8. The proposed new fence identified along the rear property line (adjacent to property located at 258 Avenida Lobeiro) shall not be constructed on top of the existing or new wall. The fence shall be offset toward the subject property located at 259 Avenida Montalvo. *[Citation - Section 17.24.090 of the SCMC]*. ■■ (PIng.)\_\_\_\_\_
9. Prior to issuance of any permits, the owner or designee shall submit for review, and shall obtain the approval of the City Engineer or designee for frontage improvement plans, prepared by a registered civil engineer. The owner or his designee shall be responsible for the construction of all required frontage improvements as approved by the City Engineer including but not limited to the following: *[Citation - Section 15.36, 12.08.010, and 12.24.050 of the SCMC]* ■ (Eng.)\_\_\_\_\_

- A. Per City Municipal Code Section 12.08.010 (A), if combined building permit valuations exceed \$50,000, the owner or designee shall construct sidewalk along the property frontage, unless a waiver is obtained. This includes construction of compliant sidewalk up and around drive approach or other obstructions such as the street tree to meet current City standards (2% cross fall) when adequate right-of-way exists. Since the street right-of-way is approximately 2-3 feet behind the curbface a sidewalk easement is anticipated to be required to be granted to the City for the sidewalk needed to go around the drive approach and existing tree. This sidewalk requirement also includes the requirement to install a new ADA access ramp at the street intersection if the valuation is \$50,000 or more.
10. An Engineering Department Encroachment Permit shall in place prior to the commencement of any work in the public right-of-way. *[Citation – Section 15.36, 12.08.010, and 12.24.050 of the SCMC]* ■ (Eng.)\_\_\_\_\_
11. Existing retaining walls will need to be evaluated for impacts from grading changes and new retaining walls. *[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.)\_\_\_\_\_
12. Prior to the Building Division's approval of the framing inspection, the owner or designee shall submit evidence to the satisfaction of the City Building Official or designee that a registered civil engineer that is licensed to do surveying or land surveyor has certified that the height of all structures are in conformance to the approved plans. *[S.C.M.C – Title 15 – Chapter 15.08, Title 17- Chapter 17.24]* ■ (Bldg.)\_\_\_\_\_

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

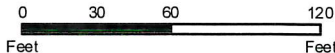
- Denotes a modified standard Condition of Approval.
- ■ Denotes a project specific Condition of Approval



**City of San Clemente**

Project: Minor Exception Permit 17-141

Address: 259 Avenida Montalvo



259 MONTALVO

257 MONTALVO  
NOT A PART



259 AV MONTALVO  
FRONT ELEVATION

①



259 AV MONTALVO  
RIGHT SIDE ELEVATION

2



257 AV MONTALVO - AS REFERENCE  
NOT A PART



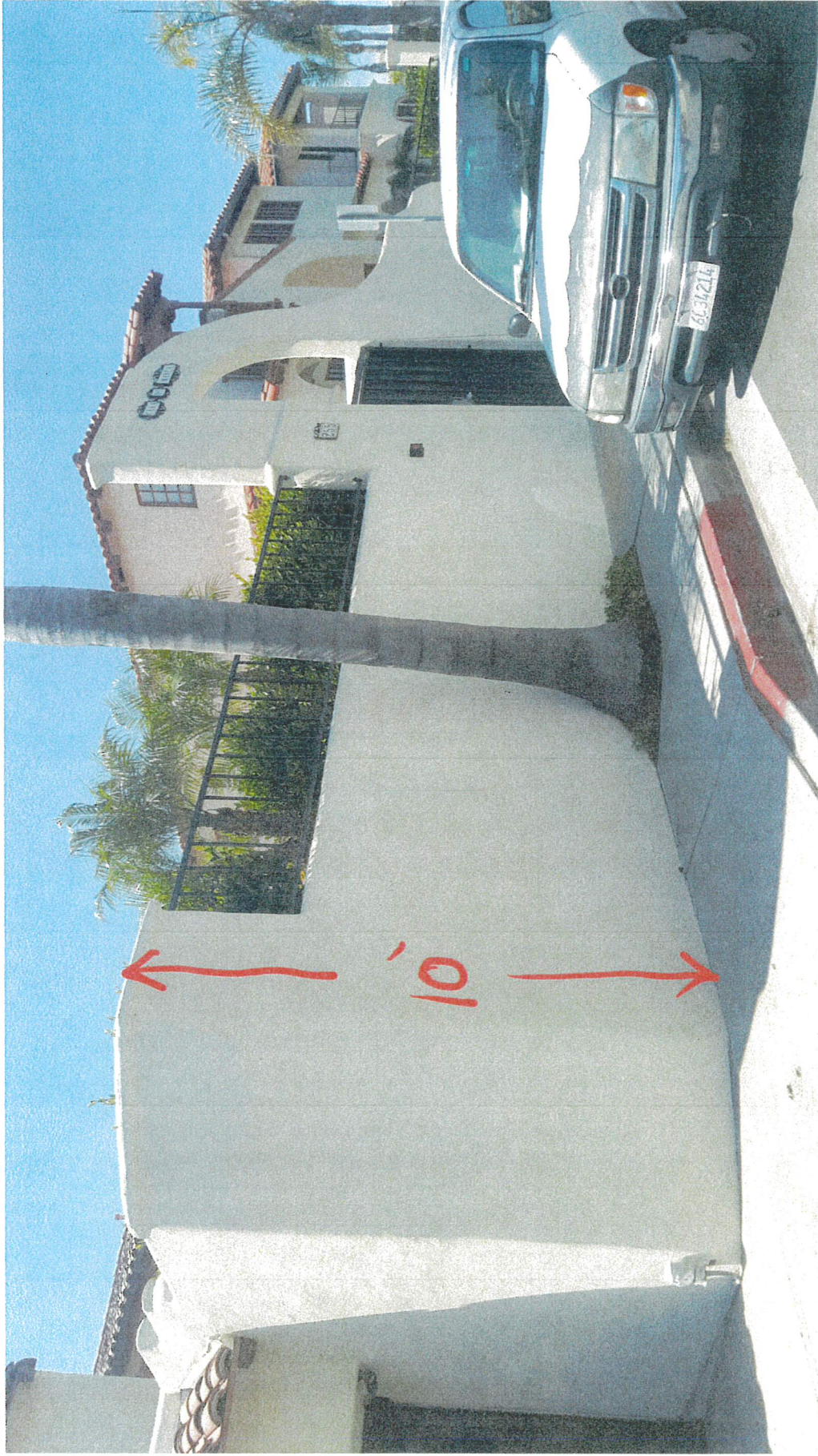
257 AV MONTALVO - AS REFERENCE  
NOT A PART







254 Av Lobeiro  
4<sup>th</sup> house on same side as  
subject property



2555 Av Lobeiro  
Almost Across The Street from  
subject property