

OC PLANNING REPORT

DATE: July 18, 2019

TO: Orange County Zoning Administrator

FROM: OC Development Service/Planning Division

SUBJECT: Public Hearing on Planning Application PA19-0050 - a Variance request to allow a minimum side yard setback of 5 feet 1 inch where the 100 RSF (Residential Single Family) District of the North Tustin Specific Plan would require a setback of 10 feet 8 inches (10% of lot width), and a Use Permit request to allow over-height walls of up to 8 feet and 9 feet along the property's west and south property line where the maximum allowable height would otherwise be 6 feet.

PROPOSAL: The applicants propose remodeling and expanding the master bathroom which would encroach into the require side yard setback, and to replace existing block and wooden fences along two property lines with full block walls, portions of which would exceed maximum allowable height.

ZONING: 100-RSF "Residential Single Family" District within the North Tustin Specific Plan

GENERAL PLAN: 1B Suburban Residential

LOCATION: The project is located at 19102 Ervin Lane (APN 395-033-07), in the unincorporated North Tustin area, within the Third (3rd) Supervisorial District.

APPLICANT: Paul Reimer and Wendy Aquin, Property Owners

STAFF CONTACT: Kevin Canning, Contract Planner
Phone: (714) 667-8847

RECOMMENDED ACTION:

OC Planning Services recommends that the Zoning Administrator:

- a) Receive staff report and public testimony as appropriate;
- b) Find that the proposed project is Categorically Exempt (Class 3 – New Construction or Conversion of Small Structures) from the provisions of CEQA pursuant to Section 15303 of the CEQA Guidelines; and,

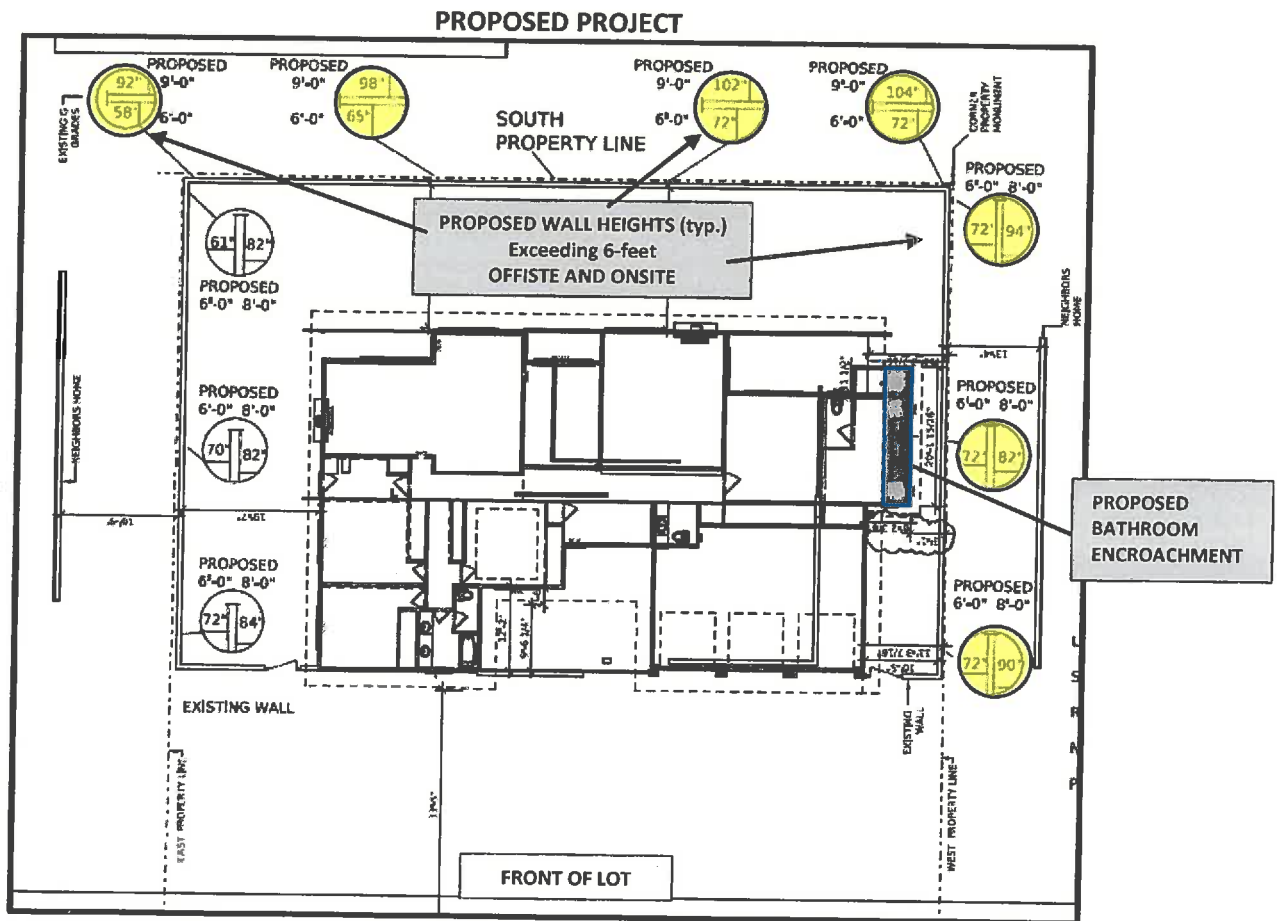
- c) Approve Planning Application PA19-0050 for a Variance and Use Permit subject to the attached Findings and Conditions of Approval.

BACKGROUND AND EXISTING CONDITIONS

The project site is developed with a single-family dwelling with an attached garage located at 19102 Ervin Lane. The existing structures were constructed in the 1960s per County Assessor’s information and currently conform to established setbacks. The lot is flat and approximately two feet higher than the existing residence to the west. The property also abuts a vacant property to the rear (south) which will be developed as the Clearwater Senior Care facility.

PROPOSED PROJECT

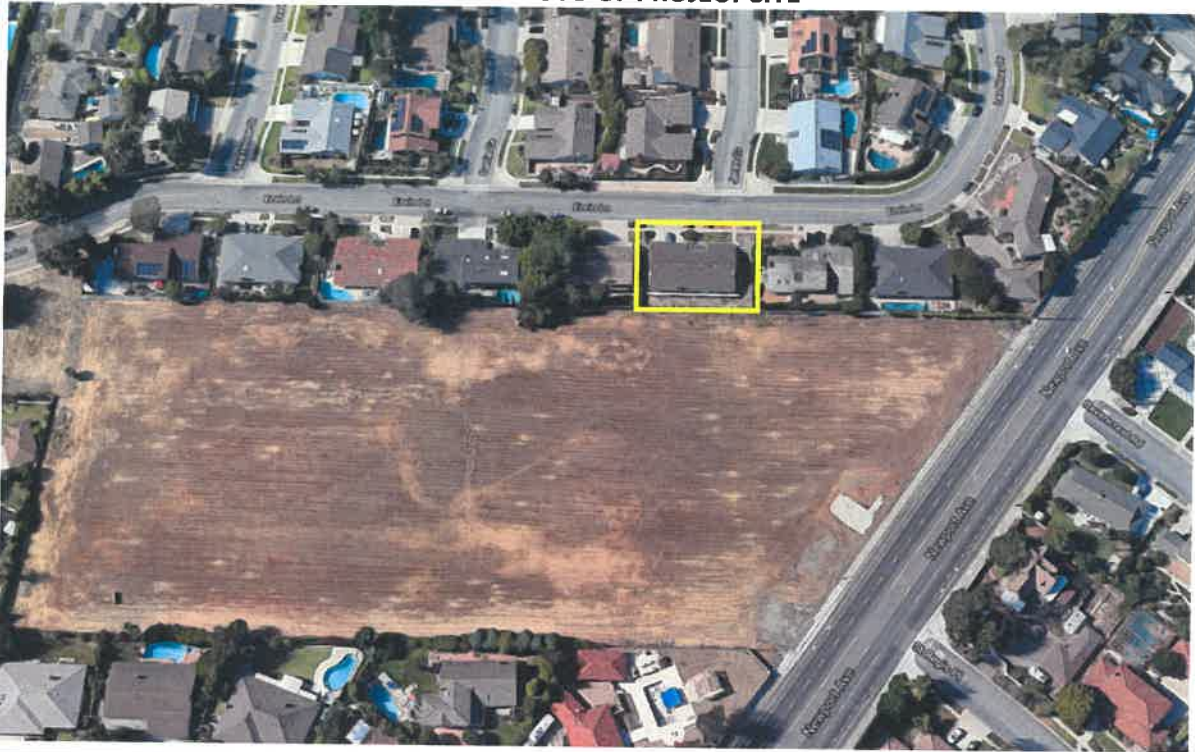
The proposed project would expand the master bathroom area by approximately 125 square feet by extending into the side yard to within 5 feet 1 inch of the side property line. The expansion is necessary to provide an interior access within the bathroom as the owners age. Additionally, the applicants propose to replace an existing wood over a short block wall fencing along the side and rear property lines with full block walls. The proposed wall would be 6 feet as measured from the subject lot but would exceed this height as measured from the adjacent lots, measuring up to 8 feet on the west and up to 9 feet to the south.



SURROUNDING LAND USE

The subject site is zoned 100-RSF “Residential Single Family” District within the North Tustin Specific Plan with a minimum build site width of 100 feet and a required side yard setback of 10% of the lot width minimum building site area of 10,000 square feet. All improved surrounding properties are similarly zoned and are also developed with single-family residences.

AERIAL PHOTO OF PROJECT SITE



Direction	Zoning Description	Existing Land Use
Project Site	100-RSF (NTSP)	Single-Family Dwelling
North	100-E4	Single-Family Dwelling
South	100-RSF-RCF (NTSP)	Vacant
East	100-RSF (NTSP)	Single-Family Dwelling
West	100-RSF (NTSP)	Single-Family Dwelling

* NTSP = North Tustin Specific Plan

ZONING STANDARDS APPLICABLE TO THE APPLICANT'S REQUEST

Standard	Zoning Code	Proposed
Building Site Area	10,000 square feet	9,936 square feet (existing)
Min. Side Setback of bathroom expansion (west side)	10.8 feet (10% of lot width)	5.1 feet

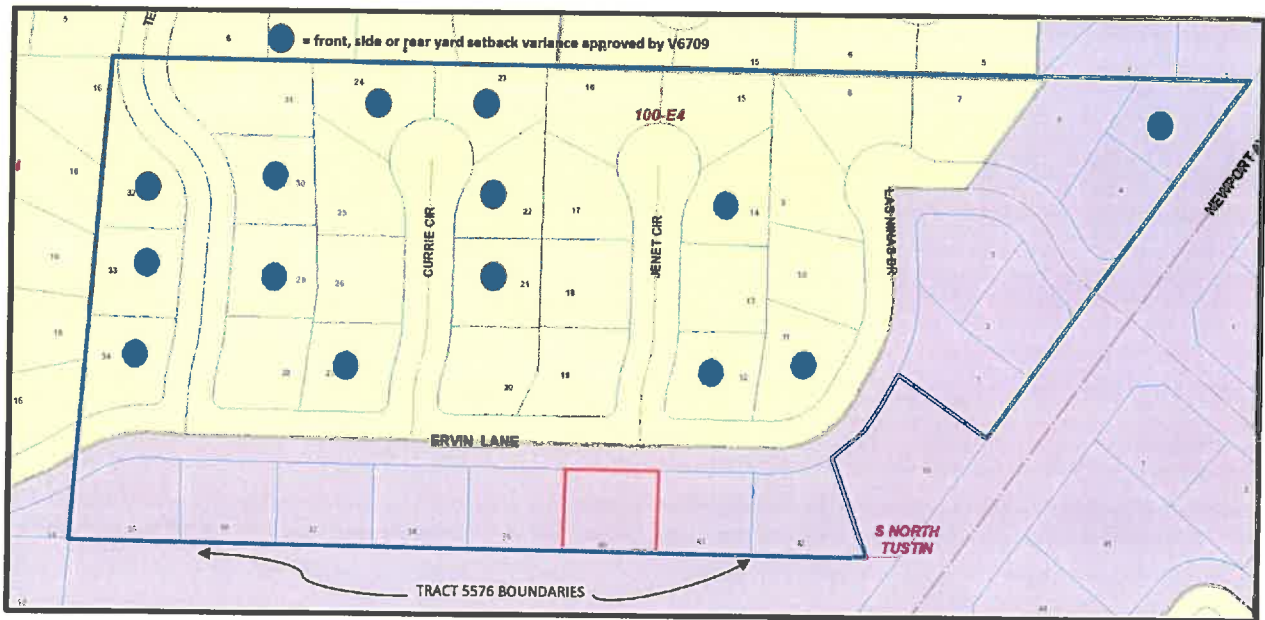
Standard	Zoning Code	Proposed
Wall height on property side and rear lines	6 feet	8 feet on west property line 9 feet on south property line

DISCUSSION/ANALYSIS

Variance

The property is zoned 100-RSF within the North Tustin Specific Plan (NTSP), which requires a side yard setback equal to 10% of the building site width. However, at the time of its development the property was zoned 100-E4 which has an identical 10% side yard setback requirement. The property was within the boundaries of Tract 5576. With the development of the homes in the tract, V6709 was approved that granted various setback reductions (front, side and rear) for 14 of the 42 lots. The approved setbacks varied from two feet to 60% of the otherwise required setback. Nine (9) of the 14 approved setback reductions were for lots developed with single story residences (usually requiring a larger footprint)

V6709 SETBACK REDUCTIONS IN TRACT 5576



For the subject application, the expansion of the master bathroom cannot be reasonably achieved within the existing footprint of the single-story residence. The proposed setback encroachment will provide for added space and accommodation within the bathroom for the owners as they age while still providing an adequate 5-foot access through the side yard area. The bathroom expansion will match the existing single-story configuration of the residence and will not create any privacy encroachment into the neighboring property, and will be well setback back from the front property line.

Zoning Code Section 7-9-150.3(e)(2), Variances, states that in order for an approval of a variance to be granted, the following findings must be made:

- A. Special Circumstances. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.
- B. No special privileges. Approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.

The physical configuration and circumstances of this property are similar to other properties in the immediate vicinity which have been granted similar approvals (setback reductions) in this tract. In order to achieve the privileges enjoyed by other properties in this tract a variance would be required; as such a special circumstance does apply. Staff also finds that the age of the existing residence and its single-story style of development is an impediment to the ability of the owners to provide for a more accessible master bathroom. The limited encroachment would setback approximately 35 feet from the street and would have limited visibility.

In addition, this application would not be a granting of special privileges due to the fact that the proposed project is consistent with other approvals for variances in the vicinity and within the same tract.

Use Permit

The heights for the proposed replacement walls would be six (6) feet as measured from the subject property's side of the wall. However, due to off-site topographical differences, the measured wall height would be eight (8) feet along a portion of the westerly property line (from the front of the residence to the rear property line) and nine (9) feet along the entire rear (south) property line. The applicant is requesting a minimum 6-foot wall as a reasonable privacy measure.

Zoning Code Section 7-9-137.5(f), Modifications permitted, states that exceptions and modifications to the fence and wall height provisions may be permitted by approval of a Use Permit by the Zoning Administrator if the following findings can be made:

- 1) That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.
- 2) That the location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

Staff finds that the requested wall heights would not result in or create a traffic hazard as the walls would not obstruct and sight lines for vehicle. Staff also finds that the proposed heights would not create a condition or situation that would be objectionable or detrimental, and that the wall heights would be compatible with surrounding development.

REFERRAL FOR COMMENT AND PUBLIC NOTICE

A Notice of Hearing was mailed to all property owners of record within 300 feet of the subject site on July 5, 2019. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the

proposed site plan were distributed for review and comment to County Divisions. As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions. The project was referred for review and comment to the North Tustin Advisory Committee (NTAC) at two consecutive meetings, May 15 and June 19, however both meetings were cancelled due to a lack of quorum. At this time NTAC does not have enough members to hold a meeting and no recommendation is able to be provided by the advisory committee. Staff has conferred with County Counsel's office and determined that the subject map may proceed directly to the Zoning Administrator for a decision.

CEQA COMPLIANCE

The proposed project is Categorically Exempt Class 3 (New Construction or Conversion of Small Structures) from the provisions of CEQA pursuant to Section 15303 of the CEQA Guidelines. The Class 3 exemption consists of construction and location of limited numbers of new, small facilities or structures. Examples of the exemption include:

- (a) *One single-family residence or a second dwelling unit in a residential zone. . .*
- (e) *Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.*

The proposed project is eligible for a Class 3 exemption because construction of the bathroom improvement to the single-family residence and the related improvement of walls/fences are included in the list of examples.

None of the exceptions listed in Section 15300.2 apply to the project. Both component of the project, meet the criteria outlined in the Class 3 exemptions. The project will not result in a cumulative impact, significant environmental effect, and will not damage scenic or historic resources and the appropriate environmental document for this project is a Notice of Exemption. Standard conditions of approval applied by the County for all construction projects of this nature will address any less than significant short-term construction related concerns.


CONCLUSION

Staff has reviewed the design of the applicant's proposed addition and found it to be compatible with adjacent residential uses and development. The area and location of the proposed addition would be largely screened from public and neighbors' views. The proposed over-height walls will not create a traffic hazard and will ensure and promote privacy and security. Staff supports the applicant's proposal subject to the attached Findings and Conditions of Approval and makes a recommendation as follows:

Submitted by:


Richard Vuong, Division Manager
Planning, OC Development Services

Concurred by:


Colby Cataldi, Deputy Director
OC Public Works/Development Services

ATTACHMENTS

1. Recommended Findings
2. Recommended Conditions of Approval
3. Applicant's Letter of Explanation
4. Site Plans

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$500.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the OC Planning.



**Attachment 1
Findings
PA 19-0050**

1 GENERAL PLAN PA19-0050

That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.

2 ZONING PA19-0050

That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code regulations applicable to the property.

3 COMPATIBILITY PA19-0050

That the location, size, design and operating characteristics of the proposed use will not create unusual noise, traffic or other conditions or situations that may be objectionable, detrimental, or incompatible with other permitted uses in the vicinity.

4 GENERAL WELFARE PA19-0050

That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.

5 PUBLIC FACILITIES PA19-0050

That the approval of the permit application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.).

6 CATEGORICALLY EXEMPT PA19-0050

That the proposed project is Categorically Exempt (Class 3 – New Construction or Conversion of Small Structures) from the provisions of CEQA pursuant to Section 15303 of the CEQA Guidelines

7 VARIANCE 1 PA19-0050

That the physical configuration and circumstances of this property are similar to other properties in the immediate vicinity which have been granted similar approvals (setback reductions) in this tract. In order to achieve the privileges enjoyed by other properties in this tract a variance would be required; as such a special circumstance does apply.

8 VARIANCE 2 PA19-0050

That approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.

9 FISH AND GAME CODE PA19-0050

That pursuant to Section 711.4 of the California Fish and Game Code, this project is exempt from

the required fees as it has been determined that the project is Categoricaly Exempt under CEQA.

10

FENCE AND WALL 1

PA19-0050

That the height and location of the over-height walls within the front setback area and along the side and rear property lines areas will not result in or create a traffic hazard.

11

FENCE AND WALL 2

PA119-0050

That the height and location of the over-height walls as proposed will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.



Attachment 2
Conditions of Approval
PA19-0050

1 **BASIC/ZONING REG** **PA19-0050**

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

2 **BASIC/TIME LIMIT** **PA19-0050**

This approval is valid for a period of 36 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.

3 **BASIC/PRECISE PLAN** **PA19-0050**

Except as otherwise provided herein, this permit is approved as a precise plan. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, OC Planning, for approval. If the Director, OC Planning, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

4 **BASIC/COMPLIANCE** **PA19-0050**

Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

5 **INDEMNIFICATION** **PA19-0050**

Applicant shall defend with counsel approved by the County of Orange in writing, indemnify and hold harmless the County of Orange, its officers, agents and employees from any claim, action or proceeding against the County, its officers, agents or employees to attack, set aside, void, or annul any approval of the application or related decision, or the adoption of any environmental documents, findings or other environmental determination, by the County of Orange, its Board of Supervisors, Planning Commission, Zoning Administrator, Director of OC Public Works, or Deputy Director of OC Development Services concerning this application. The County may, at its sole discretion, participate in the defense of any action, at the applicant's expense, but such participation shall not relieve applicant of his/her obligations under this condition. The County may, at its sole discretion, require the Applicant to post a bond, enter into an escrow agreement, obtain an irrevocable letter of credit from a qualified financial institution, or provide other

security, to the satisfaction of the County, in anticipation of litigation and possible attorney's fee awards. Applicant shall reimburse the County for any court costs and attorney's fees that the County may be required to pay as a result of such action. The County shall promptly notify the applicant of any such claim, action or proceeding.

6 **BAISC APPEAL/EXACTIONS** **PA19-0050**

Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.

7 **GEOLOGY REPORT** **PA19-0050**

Prior to the issuance of a grading or building permit, the applicant shall submit a geotechnical report to the Manager, Permit Services, for approval. The report shall include the information and be in the form as required by the Grading Code and Grading Manual.

8 **EROSION AND SEDIMENT CONTROL PLAN** **PA19-0050**

Prior to the issuance of any grading or building permit, the applicant shall submit an Erosion and Sediment Control Plan (ESCP) in a manner meeting approval of the Manager, Permit Intake, to demonstrate compliance with the County's NPDES Implementation Program and state water quality regulations for grading and construction activities. The ESCP shall identify how all construction materials, wastes, grading or demolition debris, and stockpiles of soil, aggregates, soil amendments, etc. shall be properly covered, stored, and secured to prevent transport into local drainages or coastal waters by wind, rain, tracking, tidal erosion or dispersion. The ESCP shall also describe how the applicant will ensure that all BMPs will be maintained during construction of any future public right-of-ways. The ESCP shall be updated as needed to address the changing circumstances of the project site. A copy of the current ESCP shall be kept at the project site and be available for County review on request.

9 **CONSTRUCTION NOISE** **PA19-0050**

A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Permit Services, that:

- (1) All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers.
- (2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
- (3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

B. Notations in the above format, appropriately numbered and included with other notations on the front sheet of the project's permitted grading plans, will be considered as adequate evidence of compliance with this condition.

Paul Reimer
Wendy Aquin
19102 Ervin Ln.
Santa Ana CA 92705

April 4, 2019

County of Orange, OC Public Works, OC Planning
Land Use Planning
300 N. Flower St.
Santa Ana, CA 92703

**RE: Letter of Project Proposal and Scope of Work
19102 Ervin Lane Use Permit and Variance**

This application requests both a use permit for an over height wall, as well as a setback variance. This property is located within the North Tustin Specific Plan.

The back yard of this property is currently surrounded by low block retaining walls with a wood fence on top. In order to eliminate future maintenance, provide privacy, sound attenuation, and security, we propose to replace the wood fencing with block. Construction of a 6' tall wall on this property results in over height walls facing adjacent properties, up to 8' high on west property line and up 9' high on south property line (including the retaining wall portions).

In addition, we propose to extend the master bath 6'2" on the west side of the property, reducing the side yard setback from approximately 11'3" to 5'1". The master bath is currently too narrow (only 5'6" wide) to provide accessibility as the owners age. It is located on the west exterior wall of the house, which is situated within inches of the required 10'8" setback, so it cannot be expanded without a variance for the setback.

Compatibility

The proposed block wall on the west will be up to 8' high on the side of the neighboring property (including the retaining wall portion), which approximates the height of the existing fence. The block wall on the south will be up to 9' (including the retaining wall portion, which is higher on that side). This also approximates the height of the existing fence. The property to the south is a large lot, currently undeveloped, which has recently been rezoned to Residential Care Facility. The property to the west is another residence. Maintaining the current fence height will have virtually no impact on adjacent properties.

Homes in this tract are over 50 years old and many have been remodeled to add square footage. There are two homes within 300' of this property which have similar side yard additions which were built within the setback. There are other homes nearby which encroach on the front setbacks. Additional homes appear to have been originally constructed with less than currently required setbacks.

The home to the west is located over 13' from the property line. It is a two story home, the only windows on the side of the home facing the proposed extension are two small windows in the 2nd floor bathrooms. The neighbor's side yard adjacent to the proposed extension is currently utilized as a utility area. We believe that reducing the distance between the structures due to this proposed extension would have minimal impact. The proposed extension would be set

back approximately 50' from the street, behind a 6' wall, so it will have a minimal impact on the street view.

General Welfare

Neither the proposed block wall or master bath extension will affect public health and safety, or the general welfare of residents, visitors, or others concerned. The extension will have minimal impact to other residents and will be consistent with the neighborhood.

Special Circumstances

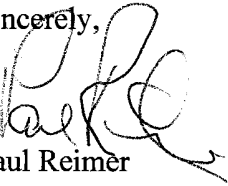
This area has a number of properties which are inconsistent with current zoning regulations, both as regards to setbacks and fencing height. The requested use permit and variance would allow these property owners the same utility others property owners currently enjoy.

No Special Privileges

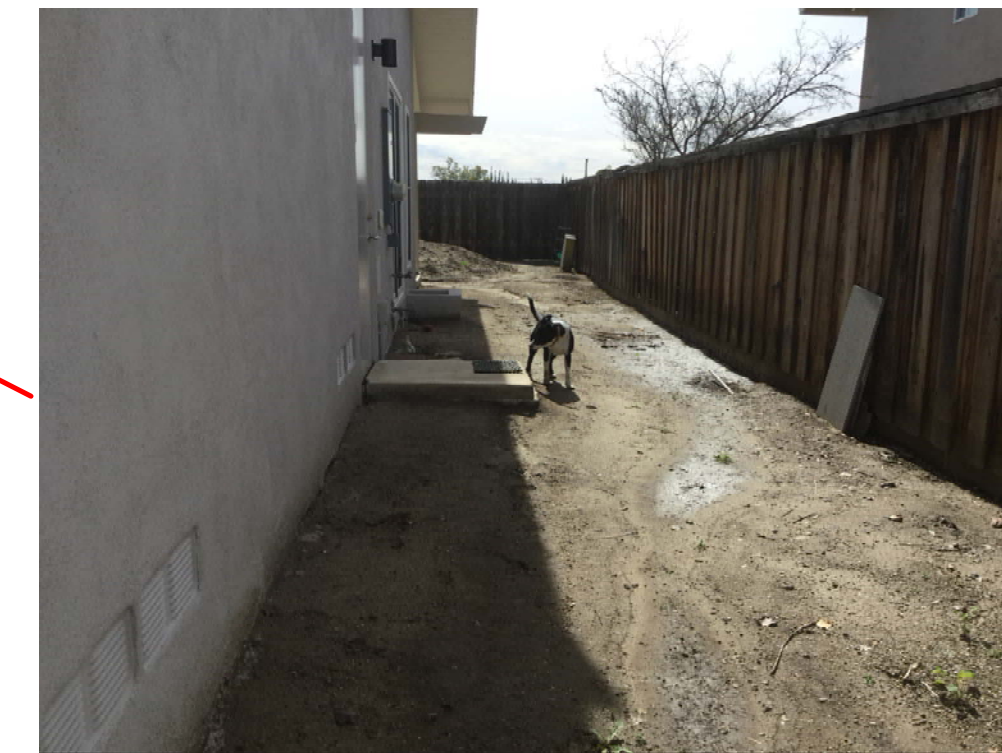
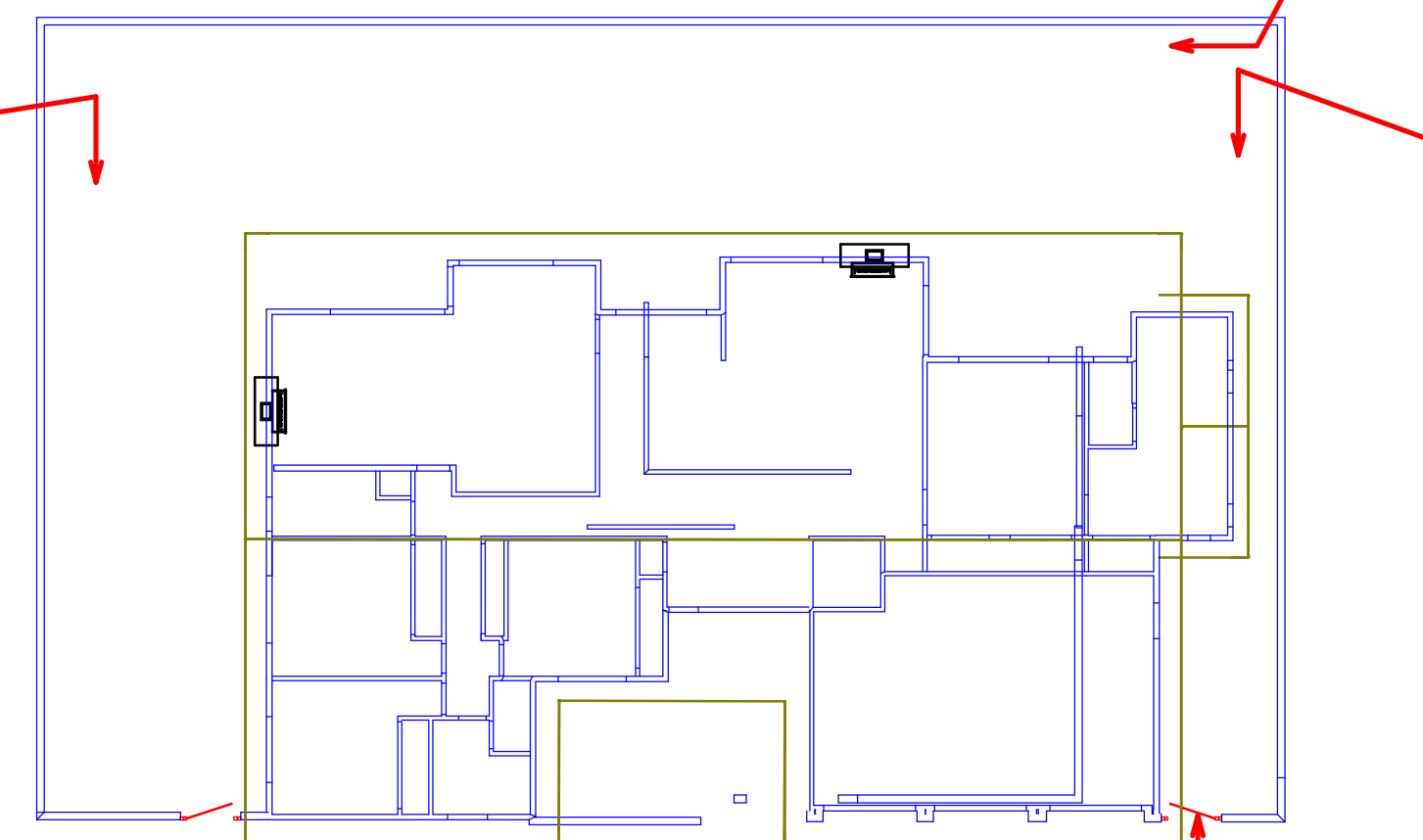
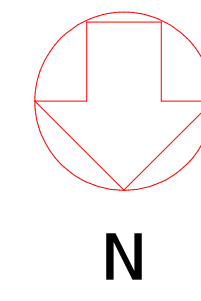
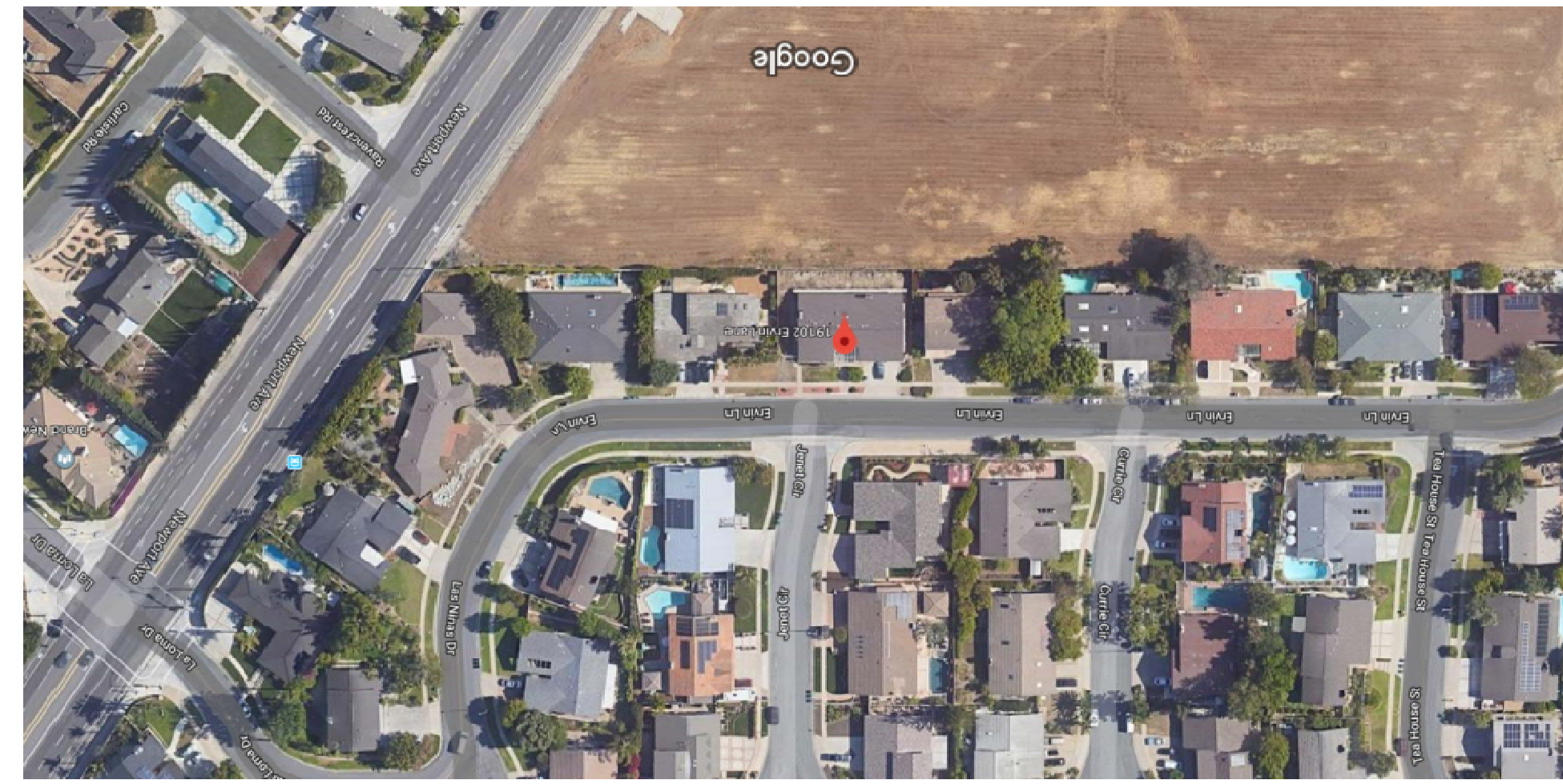
The granting of the requested use permit and variance will have insignificant impact in this area. The use permit for the over height wall merely allows a change in fencing material while maintaining current fence heights.

The setback variance will allow us the ability to improve accessibility in the master bath as we continue to age in place. Other nearby properties encroach on setbacks, so this would not be an unusual accommodation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Reimer', written over the printed name.

Paul Reimer



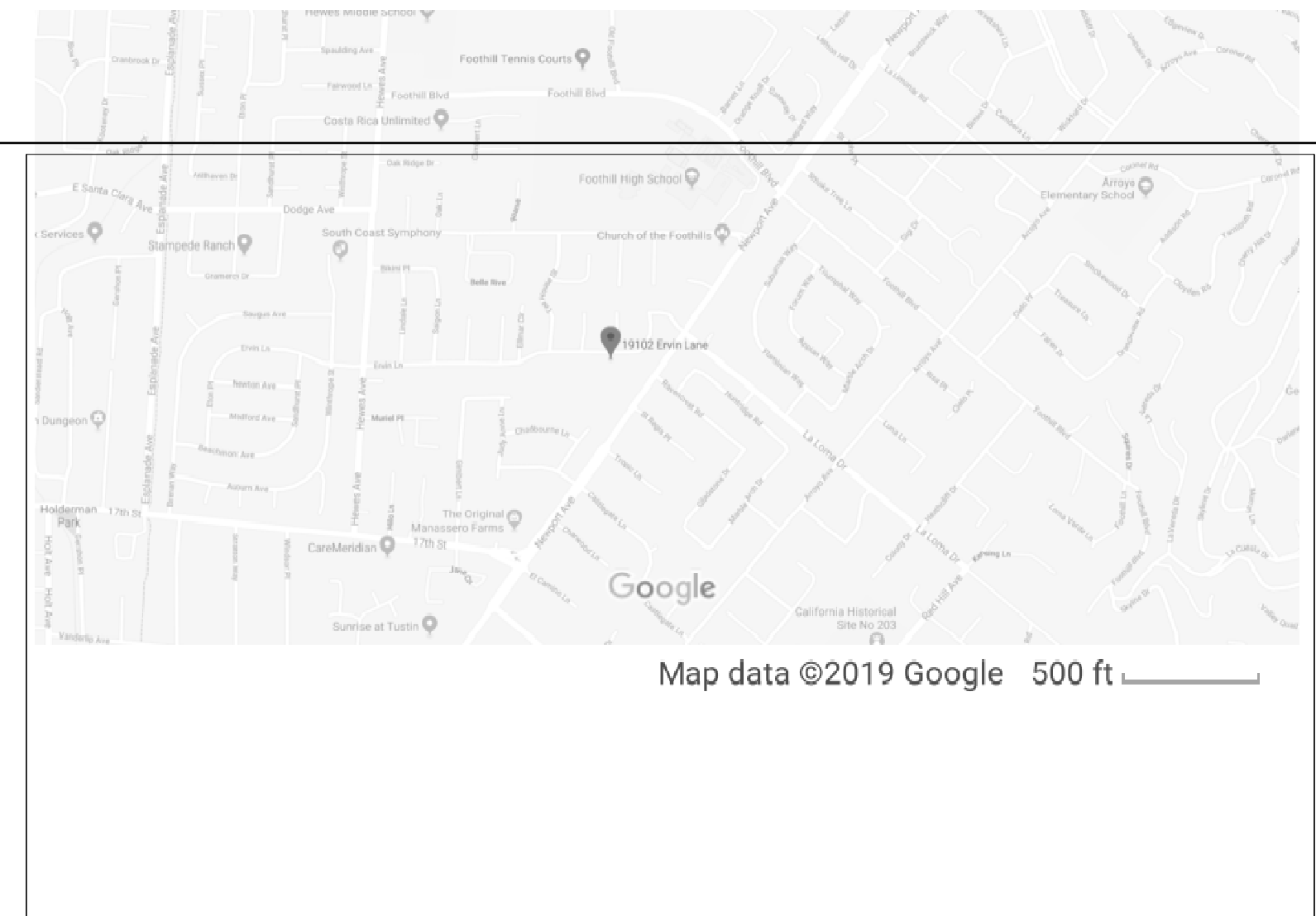
PHOTOS

AQUIN / REIMER T RESIDENCE

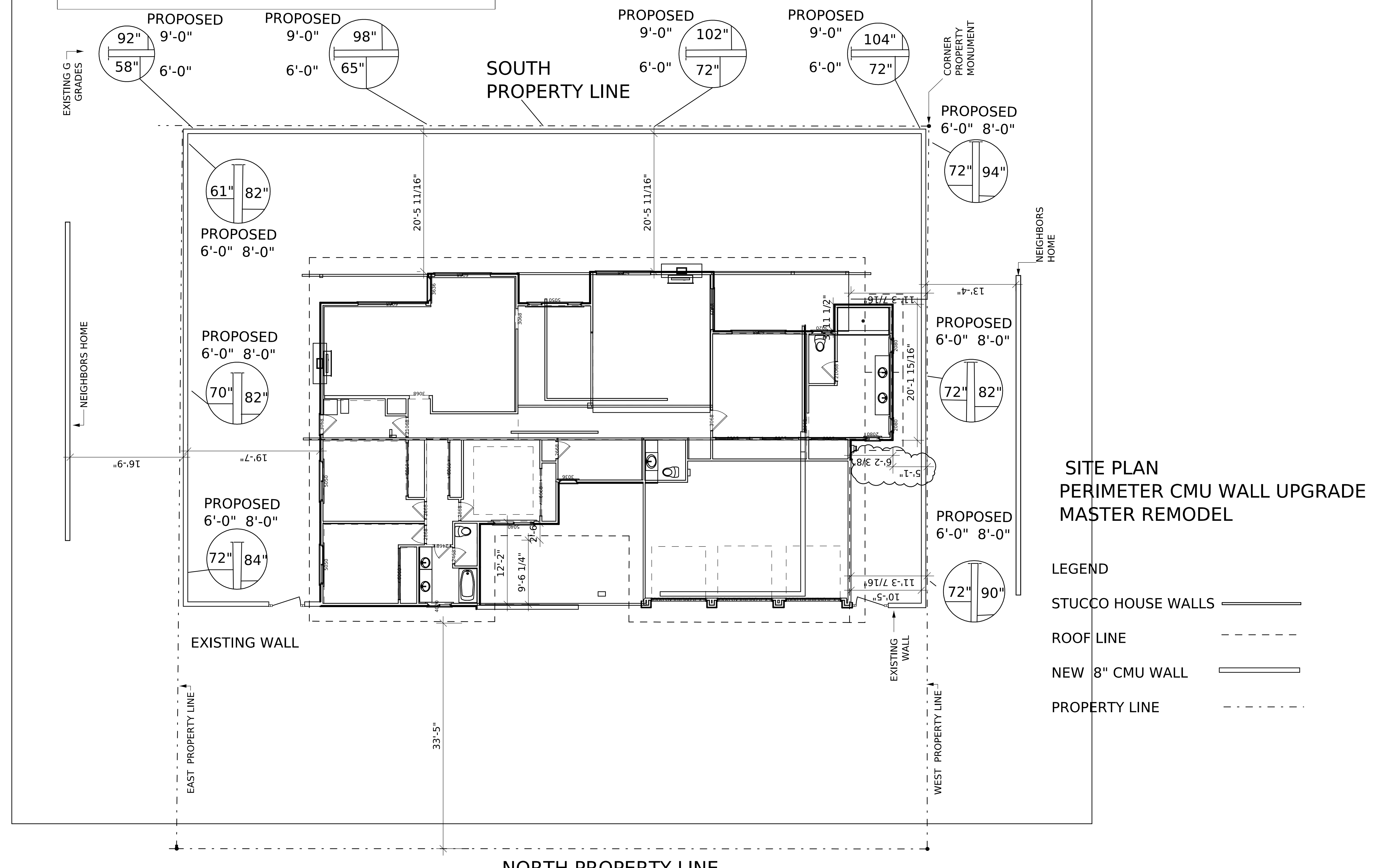
DRAWN BY: PR SCALE: 1:48
CHECKED BY: WA DATE: JAN/21/2019

19102 ERVIN LANE
SANTA ANA, CA
92705
PHONE: 714-730-0664
FAX:

Google Maps 19102 Ervin Ln



SITE PLAN



SITE PLAN
PERIMETER CMU WALL UPGRADE
MASTER REMODEL

- LEGEND
- STUCCO HOUSE WALLS —————
 - ROOF LINE - - - - -
 - NEW 8" CMU WALL =====
 - PROPERTY LINE - - - - -

SITE PLAN

AQUIN - REIMER RESIDENCE	
DRAWN BY: PR	SCALE: 1/96 / 1/8" = 1'
CHECKED BY: WA	DATE: 4/4/2019
19102 ERVIN LANE SANTA ANA, CA 92705 PHONE: 714-730-0664	