

**TOWN OF SAN ANSELMO  
TOWN COUNCIL STAFF REPORT**

**September 17, 2008**

**For the meeting of September 23, 2008**

**TO: Town Council**

**FROM: Lisa Wight, <sup>rw</sup> Planning and Building Director**

**SUBJECT: Appeal of Planning Commission's denial of a Setback Variance to construct a one story, 496 ± square foot two-car garage within 3' of the west side property line at 114 Alder Avenue, APN 007-241-20.**

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**PLANNING COMMISSION DETERMINATION**

Denial of the Setback Variance without prejudice.

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**APPLICANTS/APPELLANTS:** Scott and Heidi McCarthy, 114 Alder Avenue,  
San Anselmo, California 94960

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**I. BACKGROUND**

**July 21, 2008:** Planning Commission denied the project without prejudice (5:0; 2 absent) on the grounds that there are no special circumstances to support the Setback Variance. The lot has a frontage greater than most lots in this neighborhood, covered parking is not required in the Code, and a one car garage could be constructed in this location without the need for a variance; and, although inherited, this is a self created hardship due to a previous owner adding a swimming pool in the location of the previous garage, and pushing the parking to the front of the lot.

**2007:** Planning Commission approved Setback and Flatland Design Review to add first and second story additions totaling 2,000± square feet within 6'-2" of the east side property line. A new 420 square foot garage was also shown on the plans, which did not necessitate a Setback Variance.

Note: With the 2007 application the applicants also applied for a Setback Variance to construct a 551 square foot two-car garage, but after deliberation by the Planning Commission, the garage was reduced to 481 square feet, still requesting a Setback Variance. The Planning Commission indicated they still could not support the Setback Variance for the revised garage and so the plans were amended to add a 420 square foot, one car garage that met all the required setbacks.

**1988:** Planning Commission granted a Setback Variance for a first and second story addition. Never constructed.

**1988:** Planning Commission considered, but made no determination of a Setback Variance for a two car garage within 4'-3" of the southwest side property line. Application withdrawn.

## **II. DISCUSSION OF APPEAL**

*"We believe variance request was reasonable for several reasons: 1) Town Council in 2004 granted variance to our next door neighbor at 110 Alder to construct new garage 3'4" from property line; 2) in Alder/Yolanda neighborhood, appx 70% of properties encroach into the 8' setback with main structure, and about 50% have garages within 5' of property line; 3) the four properties surrounding us have garages within 5' of property line and 50-55' average lot widths; our lot's average width is 75'; 4) garage-side neighbor at 122 Alder submitted letter of support; 5) due to angle of property line and landscaping, 76 square feet in setback will largely not be visible from street; 6) we have been careful to maintain the character of the neighborhood – the entire addition is barely noticeable from the street; 7) cars in garage better than on street."*

The Planning Commission's comments included: The project has been approved with two on-site parking spaces; there is no difference with this garage proposal and the garage proposal for last year that was not supported by the Commission; the pool location was a choice limiting action and the former owners gave up a potential parking area for a pool; this is a good sized house and the lot is wider than most in the area and while there are many existing garages located in the setbacks, those were grandfathered so it does not necessarily mean the Commission can make findings for this garage; this is a big lot with a big house and is one of the wider lots with a street frontage of 64' and the lot gets wider at the rear; there hasn't been a case made that there is something unique about this property, which is the basis for a variance; most of the other garages are single and with tandem parking; staff did not support the setback variance at neighboring No. 110; if the Commission had heard this garage last year it would have likely come to the same decision; the applicant has acknowledged there is no basis for the special circumstance finding; the project has already been approved with two on-site parking spaces; and 23 of the existing neighboring garages were likely erected when the Code setback was 5', which was a different set of rules.

## **III. REQUIRED FINDINGS FOR APPROVAL**

1. Due to special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the controlling zoning ordinance or regulation deprives the property of privileges enjoyed by other property in the vicinity and under an identical zoning classification, and the granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated; and

2. The granting of the variance under the circumstances of the particular case, will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in such neighborhood.

#### **IV. RECOMMENDATION**

Should the Town Council grant the appeal, thereby approving the project, staff recommends the following conditions of approval:

1. Approval is based on the plans date stamped received by the San Anselmo Planning Department on July 10, 2008.
2. Prior to the roof framing inspection, architect/surveyor shall certify in writing roof height of 14' as shown on Sheet G-200
3. Applicant shall apply for and pay all appropriate fees for building permits, plan checks and inspections.
4. Conditions of approval shall be printed on the top sheet of the building permit plans.
5. If construction is not commenced within one year from the date of final action, the permit becomes null and void. However, this discretionary action may be renewed by the Planning Director for a maximum period of one (1) year provided the applicant places such a request in writing to the Planning Director showing good cause prior to the expiration of the discretionary action.
6. This permit and each condition contained herein shall be binding upon applicant and any transferor, or successor in interest.

c: Scott and Heidi McCarthy, applicants  
Dan Phipps, architect

- Attachments:
1. Appeal
  2. Planning Commission minutes and staff report dated July 21, 2008
  3. APN map
  4. Plans

RECEIVED

JUL 31 2008

Appeal Fee: \$ 420.00

Town of San Anselmo

check # 13622

CC Debbie

Rabi

Lisa

APPEAL TO THE TOWN COUNCIL  
OF ADMINISTRATIVE OR PLANNING COMMISSION ACTION

Appellant's Name and Address:

Scott + Heidi McCarthy  
114 Alder Avenue

Daytime Phone:

415-265-5001

Address of Subject Property (if applicable):

114 Alder Avenue

Date of Action:

7/21/08

Action being appealed:

Planning Commission Action V-0811;  
Denial of setback variance request to expand previously approved  
garage by 76 square feet (3'0" to 7'6" from property line)

Reason(s) you are appealing the action:

We believe variance request was reasonable for several reasons:  
1) Town Council in 2004 granted variance to our next door  
neighbor at 110 Alder to construct new garage 3'4" from property  
line; 2) in Alder/Yolanda neighborhood, approx 70% of properties  
encroach into the 8' setback with main structure, and  
about 50% have garages within 5' of property line;  
3) the four properties surrounding us have garages within 5'  
of the property line and 50-55' average lot widths; our lot's average  
width is 75'; 4) garage-side neighbor at 122 Alder submitted  
letter of support; 5) due to angle of property line and

  
Signature of Appellant

7/30/08

Date

An appeal must be filed with the Town Clerk within ten days of the Planning Commission action or receipt of written notice of the administrative action being appealed.

landscaping, 76 square feet in setback will largely not be  
visible from street; 6) we have been careful to maintain the  
character of the neighborhood - the entire addition is barely  
noticeable from the street; 7) cars in garage better than on street.

**TOWN OF SAN ANSELMO  
PLANNING COMMISSION MINUTES OF JULY 21, 2008**

2. **V-0811 – Scott and Heidi McCarthy, 114 Alder Avenue, APN 007-041-20**, Amendment to previously approved project for a Setback Variance to construct a one story, ±496 square foot, two car garage within 3' of the west side property line (Code: 8'), located within the R-1 zoning district. (staff person: Chambers)

The Commission waived reading of the staff report.

Assistant Planner Chambers distributed a packet of photos and map submitted by the applicant after the writing of the staff report. Chambers noted the items in the packet are similar to what was submitted last year and further noted that most of the existing garages in the neighborhood are legal, nonconforming (existed before Code).

Commissioner Krebs noted that staff had recommended against the one garage that was granted a variance and Chambers confirmed that one is located next door to subject property.

Chair Schinner requested the applicant to focus on the changes to the project submitted last year.

Scott McCarthy, applicant, said that when they appeared before the Commission in April 2007 they thought the proposed location of the garage at that time would have been approved, but that their neighbors withdrew their support prior to the hearing. At that point their focus shifted to redesigning items of concern to the house and they withdrew their original two car garage request and proposed a one car garage that could meet the Code setbacks. At this time they have revisited the two car garage in the setback and are thus before the Commission with a variance request. Their feeling is that there is a precedent with the next door garage having obtained a variance and 8' setbacks are not adhered to in this neighborhood. They have a letter of support from the owner of No. 122 Alder Avenue. Mr. McCarthy added that the garage will be aesthetically pleasing.

Dan Phipps, architect, said they were sensitive about the garage design. The existing foliage provides adequate screening. He doesn't understand why the Code doesn't allow side-by-side parking to replace tandem parking.

In response to Commissioner Harris' questions, Mr. Phipps agreed that the reason for the variance request is so the applicant can have side-by-side parking versus tandem parking.

Krebs inquired whether a two car tandem garage could fit within the Code setbacks. Mr. Phipps advised it would run into the Code front setback.

Commissioner Sisich noted the project had been approved with two on-site parking spaces. Schinner noted that the staff report states that were the garage pulled back it would still need a

**TOWN OF SAN ANSELMO  
PLANNING COMMISSION MINUTES OF JULY 21, 2008**

variance. Phipps said a 5' deep changing room is proposed in back of the garage as a staging area for the pool.

Sisich said there is no difference between the garage proposal for last year which was not supported. The pool was a choice limiting action and the former owners gave up a potential parking area for a pool. This is a good sized house and the lot is wider than most in the area and while there are many existing garages located in the setbacks those were grandfathered and does not necessarily mean we can make findings for this.

Harris echoed Sisich, adding that this is a big lot with a big house and it is one of the wider lots on the frontage at 64' and gets larger at the rear and the basis for a variance is that there is something unique to the property that makes the application of the zoning rules unfair to this particular property and denies this property special privileges enjoyed by others. There hasn't been a case made that there is something unique about your property. He understands that No. 122 does not object but we need to do what is best for the community and he cannot make the findings for a lot with a 64' frontage.

Brown said he would also support the staff report because this is the widest lot in the neighborhood. Most of those other garages are single and with tandem parking and the findings cannot be made.

Krebs said he also agreed, although appreciating that the owner worked with the neighbors to make the design changes to the addition last year. If we had heard this garage last year he felt it would have likely come to the same decision. The fundamental issue is whether there are special circumstances and so to approve it would be precedent setting for the rest of the neighborhood.

Schinner echoed the other comments. He noted that even Mr. McCarthy acknowledged there is no basis for the special circumstance finding. 23 of the existing neighboring garages were likely erected when the Code setback was 5', which was a different set of rules. He would rather see the Town resources spent on a variance significantly different than what we saw last year.

M/s Sisich, Harris, and passed 5:0 to approve the staff report and deny the project without prejudice.

Applicant was advised of the 10-day appeal period.

**TOWN OF SAN ANSELMO  
PLANNING COMMISSION STAFF REPORT**

**For the meeting of July 21, 2008**  
Agenda Item C-3

**Applicant:**

Scott and Heidi McCarthy

**Case No.:**

V-0811

**Mailing address:**

114 Alder Avenue  
San Anselmo, CA 94960

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**Location**

114 Alder Avenue,                      APN 7-041-20

**Request**

Setback Variance to construct a one story, ±496 square foot, two-car garage within 3' of the west side property line.

**Recommendation**

Deny without prejudice

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**I.     EXISTING CONDITIONS**

**Project Specifications**

	Existing	Proposed	Code
Lot Size	12,179 sq ft	Same	7,500 sq ft
Dwelling	1 <sup>st</sup> story: 2,102 sq ft 2 <sup>nd</sup> story: 2,178 sq ft Total:     4,280 sq ft	1 <sup>st</sup> story: 2,102 sq ft 2 <sup>nd</sup> story: 2,178 sq ft Total:     4,280 sq ft	
Garage	420 sq ft	496 sq ft	
Covered Porch	273 sq ft	128 sq ft	

Cont'd	Existing	Proposed	Code
Eaves over 24"	136 sq ft	136 sq ft	
Bldg. Height	24'	30'	30'
Play House	111 sq ft	111 sq ft	-
Deck/Stairs	480 sq ft	480 sq ft	-
Lot coverage	28.9 %	28.4%	35%
On-Site Parking	1: 9'x19' space in garage 1:9'x19' space in tandem	2: 9'x19' spaces side-by-side in garage 1 space conforming and 1 non-conforming 1: 9' x 19' in tandem	2: 9'x19' conforming to required setbacks
Zoning	R-1	Same	Same
Flood Zone	C	Same	Same

**Environmental determination**

Categorically Exempt.

**Authority**

SAMC 10-3.1405 Variance Findings  
Development Table 4A

**Timing**

The Planning Commission must take action no later than September 10, 2008.

**Previous Action**

May 7, 2007: Planning Commission approved Setback and Flatland Design Review to add first and second story additions totaling ±2,000 square feet within ±6'-2" of the east side property line.

1988: Setback Variance within 6'-6" of the northeast side property line with a 3' roof eave for a first and second story addition. Approved but never constructed.

1988: Setback Variance for a two car garage within 4'-3" of the southwest side property line. The Commission continued the hearing for the garage and subsequently the applicant withdrew the application.



## **II. PROJECT DESCRIPTION AND ANALYSIS**

### **Background**

The applicants are proposing to expand the previously approved 420 square foot one car garage to a 496 square foot, two car garage. Due to the angle of the lot, the increase in size to accommodate the additional vehicle, and provide a storage area, would require the garage to be situated within 3' at the closest point, up 7'-6" from the west side property line.

As part of the Setback and Flatland Design Review application last year, the applicants applied for a 1'-11" side yard Variance to construct a 551 square foot two-car garage. After deliberation by the Planning Commission, the garage was modified such that the garage was reduced in size to 481 square feet, and relocated 3' (at the front of the garage wall) from the west side property line. The Commission was not able to support the Setback Variance for the two car garage so the applicants withdrew the Variance request and revised the plans to add a 420 square foot, one car garage that met all the required setbacks.

### **Analysis**

The current proposal is virtually the same as the proposal presented to the Commission last year. The proposed 497 square foot garage will be slightly larger and will be setback approximately 29' from the front property line but will be within 3' of the side property line requiring a 5' side yard variance. The garage measures 27'-4" in length and 20'-7" in width. A 400 square foot garage would accommodate two, side-by-side parking spaces measured 18' in width by 19' in depth. The lot has a 64' frontage which is larger than most in the neighborhood. If the structure was reduced in length, and the interior wall removed, the garage could be pulled back approximately 10' and would only require a 3' side yard variance, not a 5' side yard variance. Although staff supports side-by-side parking, this could be accommodated by widening the driveway without providing covered parking (covered parking is not required). A one car garage could be constructed along the west side and meet all required setbacks as demonstrated by the current plans. Also, there are other properties within the neighborhood that have no covered parking, some that have carports and some with garages.

Staff also notes that prior to 1988 a previous owner elected to relocate parking from the northwest corner of the lot to its present location in order to build a swimming pool. As stated in a previous staff report, staff believes the desire to have a two car garage in this current location is a self created hardship that was created years ago on this lot.

The applicant provided a map with several properties having non-conforming garages within this neighborhood. Staff researched the files and notes that of the properties highlighted, 23 have legal, non-conforming garages/carports, 1

Variance was granted for a carport, 1 Variance was granted for a garage (staff did not recommend approval), and 2 Variances were granted to rebuild and slightly relocate the existing garage/carport.

There are letters of support from the neighbors of 81 and 122 Alder Avenue, and 21 and 37 Yolanda Drive,

The applicants recall that staff and the Planning Commissioners present last year were unable to make the findings to support the Setback Variance for the garage. ability to appeal the Planning Commission's decision to the Town Council.

### **III. DISCUSSION OF REQUIRED FINDINGS OF APPROVAL**

*1. Due to special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the controlling zoning ordinance or regulation deprives the property of privileges enjoyed by other property in the vicinity and under an identical zoning classification, and the granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated; and*

There are no special circumstances to support the Setback Variance. The lot has a frontage greater than most lots in this neighborhood, covered parking is not required in the Code, and a one car garage could be constructed in this location without the need for a variance; and, although inherited, this is a self created hardship due to a previous owner adding a swimming pool in the location of the previous garage, and pushing the parking to the front of the lot.

*2. The granting of the variance under the circumstances of the particular case, will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in such neighborhood.*

The additions would have no adverse impacts to the neighboring properties. The location of the proposed garage is only one story and the current vegetation screens the two properties along the side property line and the vehicles currently park in this location.

### **IV. RECOMMENDATION**

Should the Commission approve the project, staff recommends the following conditions of approval:

1. Approval is based on the plans date stamped received by the San Anselmo Planning Department on July 10, 2008.

2. Prior to the roof framing inspection, architect/surveyor shall certify in writing roof height of 14' as shown on Sheet G-200
3. Applicant shall apply for and pay all appropriate fees for building permits, plan checks and inspections.
4. Conditions of approval shall be printed on the top sheet of the building permit plans.
5. If construction is not commenced within one year from the date of final action, the permit becomes null and void. However, this discretionary action may be renewed by the Planning Director for a maximum period of one (1) year provided the applicant places such a request in writing to the Planning Director showing good cause prior to the expiration of the discretionary action.
6. This permit and each condition contained herein shall be binding upon applicant and any transferor, or successor in interest.

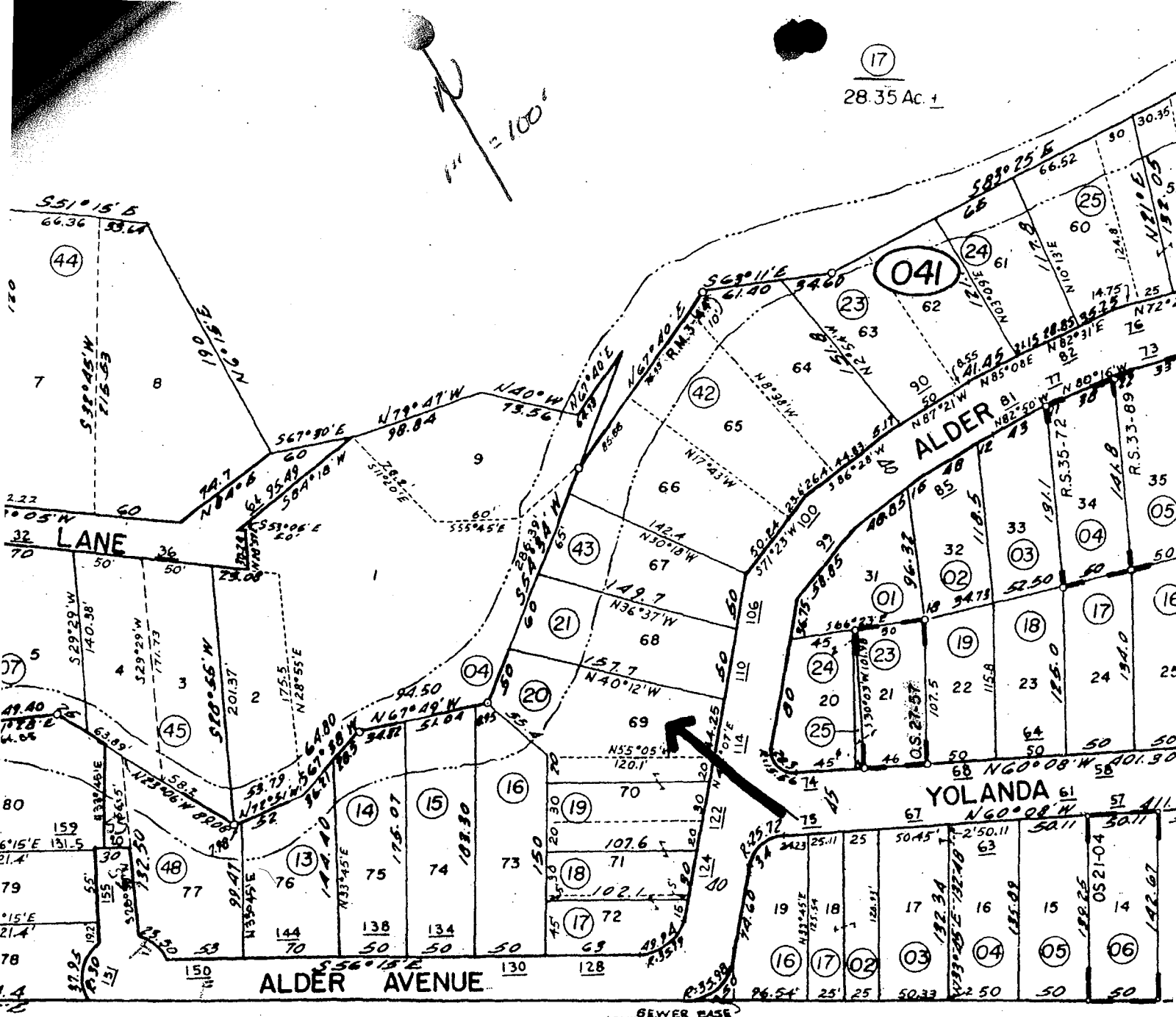
Prepared by:

COPY

Barbara Chambers  
Assistant Planner

C: Applicants  
Marcia Duys, Dan Phipps Architects

Attachments: Staff Reports and Minutes of April 2 and 16, and May 7, 2007



Yolanda Court, R.M. Bk. 3-Pg. 25

CENTER RAILROAD AVENUE

