CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
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VENTURA, CA 93001
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Request Filed: October 30, 199
Staff: SPF-VNT SPF
Staff Report: 12-27-95
Hearing Date: Jan 9-12, 1996
Commission Action:

STAFF REPORT: REVOCATION REQUEST

TH12

APPLICATION NO.: 4-92-062

APPLICANT: David Frankel as transferred from Rascoff Zyblat Org. Inc.

PROJECT LOCATION: 23418 Malibu Colony Road, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Addition of first and second floor exterior additions onto an existing two-story residence, add a second floor to an existing garage, extend an existing deck to align with adjacent bulkheads, remove the seaward section of a tea house, and do interior modifications to the existing teahouse. The improvements will add a total of 672 square feet. No grading is proposed.

PERSONS REQUESTING REVOCATION: Brian and Deborah Grazer, Frank Davis, Craig Dummit, Bruce Dern, and Lili Gross.

PROCEDURAL NOTE:

The Commission's regulations state the grounds for the revocation of a coastal development permit as follows:

Grounds for revocation of a permit shall be:

(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application. 14 Cal. Admin. Code Section 13105.

APPLICANTS' CONTENTION:

The Commission has received several letters requesting revocation of the subject permit. These letters are grouped here for response in this staff reports and are attached as Exhibits 1-6. The assertions and contentions made in these letters are basically the same, thus the contentions of the applicants for revocation are treated together herein.

The applicants for revocation contend that the grounds in Section 13105(a) exist because what is being constructed on the subject property now is not what was described by the project applicant as the project description in the application. They contend that the permit applicant misrepresented the nature of the project in the application. (See Exhibit 1, letter of A. Block dated October 30, 1995, p. 8; Exhibit 2, letter of F. Davis dated Oct. 25, 1995, p.1)

The applicants for revocation contend that the grounds in Section 13105(b) exist because there was inadequate notice because the project description was listed incorrectly when the notice was given. They contend that the description is incorrect because the permit applicant had misrepresented the project description when submitting the application. (See Exhibit 1, letter of A. Block dated October 30, 1995, p. 8; Exhibit 2, letter of F. Davis dated October 25, 1995, p. 2)

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission find that no grounds exist for revocation under either Section 13105(a) or (b) and deny the request.

STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following resolution and findings:

I. Denial

The Commission hereby denies the request for revocation on the basis that (1) there was no intentional inclusion of inaccurate, erroneous or incomplete information in connection with the coastal development permit application where accurate and complete information would have caused the Commission to require additional or different conditions on the permit or deny the application; and (2) there was no failure to comply with the notice provisions of Section 13054 where the views of the persons not notified were not otherwise not made known to the Commission and could have caused the Commission to require additional or different conditions or deny the application.

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description/Background

On May 13, 1992, the Commission approved a permit application for the additions and a remodel of a single family residence located at 23418 Malibu Colony Drive. The additions included exterior additions to the first and second floor adding a total of 672 square feet. The remodel included interior changes, removal of the seaward extension of a teahouse, and the extension of a deck. The signed plans for this project show minor demolition plans for the removal of a stairway and a deck. However, the plans also state that all exterior walls shall be repaired and renovated to raise the second floor and roof, and that all interior walls and finishes be removed to verify structural stability.

In the project description of the staff report, it states that the applicant is not removing over 50% of the exterior walls and therefore does not qualify as a demolition. The findings for the project conclude that there is no seaward encroachment of the residence or deck beyond the existing stringlines and the the proposed development, as conditioned with an assumption of risk deed restriction, is therefore consistent with Sections 30251 and 30253 of the Coastal Act. The findings further state that the project is consistent with Sections 30210 and 30211, which require that access be maintained and not blocked. The findings for consistency for this portion of the project state that the development does not encroach seaward of the established stringline, does not require a protective device and does not alter the stringline for future residences in the area.

This permit application 4-92-062 was amended twice. The first amendment, which was processed as an immaterial amendment and reported to the Commission in October 1992, proposed adjusting the second floor seaward extension to the seward extent of the stringline. No objections were made to this amendment and it was issued on October 17, 1992.

The second amendment was noticed on February 15, 1995. This amendment requested enclosing the open space between the landward, detached garage, and the residence. This amendment was also proposed as an immaterial amendment and reported at the Commission's March 1995 meeting. This amendment request received no objections and was issued on March 16, 1995.

The current property owners, David and Linda Frankel, purchased this property on November 14, 1994. A transfer of the original permit and first amendment was done on February 16, 1995. The underlying permit and the first amendment were requested by the original owner, Rascoff Zyblat Org. Inc.. The Frankels requested the second amendment and are the owners undertaking the development of this site.

B. Grounds for Revocation

Section 13105(a)

Pursuant to 14 California Code of Regulations (C.C.R.) Section 13108, the Commission has the discretion to grant or deny a request to revoke a coastal development permit if it finds that any of the grounds, as specified in 14 C.C.R. Section 13105 exist. 14 C.C.R. Section 13105 states, in part, that the grounds for revoking the permit shall be as follows: (1) that the permit application intentionally included inaccurate, erroneous or incomplete information where accurate and complete information would have caused the Commission to act differently; and, (2) that there was a failure to comply with the notice provisions where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to act differently.

On October 25, 1995, the South Central Coast District office received four written requests for revocation of the subject coastal development permit (Exhibits 3-6.). On October 30, 1995, the South Central Coast District Staff received two additional requests for revocation of the subject permit (Exhibits 1 and 2). As previously stated, the request for revocation is based on both of the grounds indicated above.

The first ground for revocation set forth in 13105(a) contains three essential elements or tests which the Commission must consider:

a. Did the application include inaccurate, erroneous or incomplete information relative to the permit amendment?

b. If the application included inaccurate, erroneous or incomplete information, was the inclusion intentional? (emphasis added)

c. Would accurate and complete information have caused the Commission to require additional or different conditions or deny the application?

The request for revocation states that coastal development permit 4-92-062 contained "inaccurate, erroneous and incomplete information with regard to the project description." Specifically, the applicants for revocation contend that there were misrepresentations with regards to the remodel of the residence and teahouse. They state that the "existing teahouse was completely demolished down to its foundation, and an entirely new teahouse, with some new foundations was constructed. Moreover, the existing garage upon which a second story addition was proposed to be added was also demolished down to its foundation and a new garage with second story construction above it was newly constructed." The applicants for revocation claim that "with the possible exception of portions of the original foundation, the entire house, garage, and teahouse clearly appear to constitute new development." The applicants for revocation contend therefore, that the development occuring on the subject site is a demolition and not a remodel as represented in the project description of the public hearing notice and in the application.

Next, because the changes to the teahouse was represented as a remodel, no side yard setbacks were imposed by the City of Malibu. The applicants state that the teahouse is built at an entirely different and higher elevation and

that there is a roof deck on the teahouse which was not there before. The applicants for revocation conclude that had the City of Malibu known of the demolition, sideyard and stringline setbacks would have been imposed, and that, the Commission would have placed additional conditions to make the property comply with current zoning laws and Chapter 3 policies.

Staff has visited the site, reviewed the approved plans for the project, and spoken with the Director of Building and Safety with the City of Malibu. The site visit revealed that the residence, garage, and teahouse are being built in the exact locations shown on the approved plans. There is no expansion or change to the building or foundations compared to the approved plans. The majority of the walls have been removed; however this development is approved and shown on the signed plans. The deck on the teahouse is also shown on the approved plans, and existed before. In order for new walls for the second story addition to be constructed, it was necessary to modify the existing walls. This information is stated in the project description. Moreover, the signed plans state:

> Repair and renovate all exterior walls to raise second floor and roof
>
> Remove all interior walls and finishes (Verify structural stability).

The next claim by the applicants for revocation is that the foundations have been expanded. However, staff review concludes that the foundations are the same. The City of Malibu has also confirmed that the foundations have not been replaced or expanded.

Finally, the City of Malibu considers this development to be a remodel. The City of Malibu does not have definitions for a remodel and a demolition; this development is considered a remodel by the City of Malibu because 1)the foundations were left in tact 2) no old walls were moved to new locations, and 3) the walls taken down were replaced with new materials in the exact same location.

> (1) Did the applicant include inaccurate, erroneous, or incomplete information relative to the permit?

The answer to this portion of the test for revocation is no. The original applicants submitted an application for a remodel and addition with plans that showed the removal of walls and replacement of said walls in the same location. The applicants for the revocation have submitted no evidence to show that inaccurate information was submitted at the time of application nor has staff review disclosed any. What the applicants for revocation did submit was a report that there may be a violation on site as they allege that the development is not being constructed in accordance with the plans approved by the Commission in 1992. Their reasoning seems to be that any construction which does not match the original project description equates to submission of false information at the time of the original application. Enforcement staff did verify that there are no violations of the Coastal Act with regards to this development, and that the development under construction is the same development approved under 4-92-062. Nonetheless, alleged evidence of a possible violation of an issued coastal development permit does not equate to submission by the applicant of inaccurate information at the time of

application. Here the development being built does match the original project description and there is no Coastal Act violation found on site. The Commission has found in past revocation requests that a violation of the terms or conditions of a previously approved permit does indicate that the applicant intentionally submitted inacurrate or erroneous information [R4-94-195 (Eide) and R4-92-124(Eide)]. The Commission finds, therefore, that the permit application did not include inaccurate, erroneous or incomplete information relative to the remodel and additions of the residence as described in the project description. Thus the first test is not met.

(2) If the application included inaccurate, erroneous or incomplete information, was the inclusion intentional?

As stated above, the information submitted in 1992 for the coastal development permit was not inaccurate or erroneous. The revocation requests do not contain any evidence that would indicate that the information presented by the former applicant was intentionally submitted as inaccurate information. Furthermore, Commission staff has not found any evidence of the intentional inclusion of inaccurate or erroneous information. The information submitted for the original permit showed the removal and reconstruction of walls on the plans, and the application stated that new developments would be undertaken. As stated above, while an alleged factual disparity between what was submitted in the project description under the original permit application in 1992, and what is being built now may constitute under certain conditions violations of the coastal development permit or the Coastal Act, but it does not rise to the level of evidence of any intentional acts taken in 1992. Further, here there is no disparity. Therefore, the Commission finds that there was no inclusion of intentionally inaccurate information. the second test is not met.

(3) Would accurate information have caused the Commission to require additional or different conditions or deny the application?

The information submitted to the Commission was accurate; the developments on site are shown in the approved plans. Thus the Commission would not have changed the conditions. No evidence has been presented by the applicants for revocation that the inclusion of accurate information would have caused the Commission to require different conditions. Nor has the Commission staff review disclosed any such evidence. Thus, the third test is not met.

In conclusion, 13105(a) is not satisfied because all three of the elements are answered no.

Section 13105(b)

The second ground for revocation is that the applicant failed to comply with the Commission's public noticing requirements. The noticing requirements are noted under Section 13054 of the California Code of regulations. Section 13054 mandates that applicants provide notice to adjacent landowners and residents within 100 feet of the perimeter of the property on which a development is proposed. The applicant of a proposed development must provide the Commission with a list of names and addresses of all property owners and residents and a set of envelopes addressed to each of these landowners and

residents.Section 13054 also requires the applicant of a proposed development to post, in a conspicuous place, notice of the proposed development. The notice shall provide a general description of the nature of the development.

There are three tests or elements to be met which the Commission must consider for the second ground for revocation.

(1) Was there compliance with the notice provisions of 13054?

The applicants for revocation claim that there was not compliance with the notice provisions. They state that the project description was inaccurate in that it did not reflect a complete demolition and as such the noticing was not in compliance. However, as shown above there are not inaccuracies or false information given by the applicant at the time of the application. Moreover, the notice of the project is to be a "general description of the notice of the development." The notice utilized here and posted at the site was a general description of the development and was not inaccurate or false as noted in the preceeding sections. Therefore, notice was not inadequate due to any problem with the project description. The Commission concludes that the applicants for revocation have not met the first test.

(2) Were the views of the persons not notified otherwise made known to the Commission?

The revocation request does not identify any persons who were not notified, nor has staff disclosed any. The applicants of revocation assert that had they been notified of the true project, they would have opposed the project requiring that City of Malibu Ordinances be adhered to. However, there was no inaccuracy in the project description so this argument has no merit as here was no failure of notice based on such inaccuracy. Thus, test 2 of this section is not met.

(3) Would the views of the persons not notified have caused the Commission to require different conditions or deny the application?

No objections to the permit application were received at the time of application. The applicants for revocation have not provided any evidence that there were any persons not notified who would have any information or evidence to submit at the time of application which would have caused a different decision by the Commission. Staff review has not disclosed any evidence either. As stated above, there was not inaccurate information submitted which had the potential to alter the Commission's decision. Furthermore, the report of an alleged violation would not have caused the Commission to either require different conditions or deny the project. The third test, thus, has not been met. The Commission concludes that no element of Section 13105 (b) has been met and thus no grounds exist for revocation under 13105(b) on the basis of the alleged inaccurate project description.

Before concluding this section, staff notes that there is a second basis which must be tested for compliance with Section 13105(b). Although this second basis is not asserted by the applicants for revocation, one of the revocation letters (Exhibit 1) points out that the hearing notice of April 24, 1992 did not set forth a project address. This implies that there was inadequate

notice given of the pending hearing to the applicants for revocation, as anyone receiving the hearing notice would not have known, from the hearing notice itself, which parcel of property was involved. As such, the Commission will assume, solely for the purposes of this analysis and for the record that notice of the hearing may have been improper as to certain individuals. Therefore, the Commission finds that the first test of 13105(b) is met on this basis.

Regarding the second and third essential elements of the test for 13105(b), there is no evidence provided by the applicants for revocation, nor has staff review disclosed any, indicating that the views of any persons not notified due to the missing address were otherwise made known to the Commission, nor any evidence of what those views might have been. Thus, the Commission can not on the basis of evidence currently before the Commission find that the views of the persons not notified were made known to the Commission in some other fashion. However, even though the Commission can not make this conclusion, the grounds for satisfaction of Section (b) of 13105 are, in any event, not met, because there is no evidence before the Commission that any such views could have caused the Commission to require additional or different conditions or deny the permit. As stated above there was no inaccuracy in the original project description. Thus, the third element of Section 13105(b) is not met. The test of 13105(b) is not met, therefore, because all three elements are not satisfied. Therefore, the Commission finds that the grounds in Section 13105(b) are not met.

As listed above, the request for revocation does not meet the requirements of 14 C.C.R. 13105(a) and (b). The Commission finds, therefore, that this revocation request should be denied on the basis that no grounds exist because there is no intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application which could have caused the Commission to require additional or different conditions on a permit or deny an application; and on the basis that there is no evidence that the views of any person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.

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REFER TO FILE NO.
95-967

October 27, 1995

Mr. Jack Ainsworth
California Coastal Commission
South Coast District Area
89 South California Street, 2nd Floor
Ventura, California 93001

Re: Coastal Development Permit No. 4-92-062
23418 Malibu Colony Road
REQUEST FOR SUSPENSION OF PERMIT
14 California Administrative Code §13104, *et. seq.*

Dear Mr. Ainsworth:

Please be advised that this office represents Mr. Brian Grazer, the non-resident owner of the single family residence located at 23416 Malibu Colony Road, immediately adjacent to the new residence presently under construction at 23418 Malibu Colony Road ("the subject property/project"). The purpose of this letter is to request the Coastal Commission to suspend Coastal Development Permit No. 4-92-062 ("the permit"), and to conduct an investigation to determine whether the permit should be revoked and/or modified based upon material misrepresentations made by the applicants concerning the nature of the proposed development. Before detailing the material misrepresentations we believe were made by the applicants in connection with their application for the permit, a brief description of the history of the project is warranted.

Project History

The subject property is located in the Malibu Colony, which is an exclusive, private beach front community, located west of Malibu Lagoon State Beach. At all times relevant hereto, the subject property was improved with a two-story single family residence and detached garage and teahouse. The teahouse was approximately 12-14 feet in height, approximately 15 feet wide, and approximately 30-35 feet in length. The teahouse extended from the residence to the bulkhead for the property. The teahouse was situated directly on the westerly property line with no sideyard setback. The teahouse had no rooftop deck.

On or about January 22, 1992, the former owners of the subject property, the Rascoffs, sought and obtained approval in concept from the City of Malibu for a project described as "Addition & Remodel of Existing House and 2nd Floor Over Existing Garage." A true and correct copy of said approval in concept is attached hereto as Exhibit A. On the plans for the subject project, the planner for the City of Malibu wrote the following:

> "Approved in concept for 2nd story addition to existing SFR & garage including interior remodel. All setbacks and heights shall remain as shown on plans. Any revision shall require new approval."

A true and correct copy of this notation on the Rascoffs' plans is attached hereto as Exhibit B.

On January 27, 1992, the Rascoffs, through their agent, submitted an application to the Coastal Commission for a coastal development permit. A true and correct copy of said application is attached hereto as Exhibit C. In section II, paragraph 2, they describe the proposed development as:

> "Remodel and add to existing 2 story, single family residence. Add second floor above existing garage."

In section II, paragraph 3(b), the Rascoffs denied that any existing structures would be demolished or removed. In section II, paragraph 4, the estimated cost of the additions/remodelling was stated as $150,000. In section II, paragraph 6, the maximum height of the proposed development was stated as 26 feet, 7 inches. In section II, paragraph 8, the gross floor area including covered parking and accessory buildings was stated as 3,075 square feet.

The application was deemed complete on April 14, 1992, and a staff report recommending approval of the permit application was prepared on April 22, 1992. A true and correct copy of the staff report is attached hereto as Exhibit D. In the staff report, the subject project is described as follows:

> "The applicant is proposing to add a total of 672 square feet onto an existing two-story single-family residence and detached garage on Malibu Cove Colony Road in the City of Malibu. The current square footage of the residence is 2,403 square feet for the primary residence, plus a 408 square foot garage. The applicant is proposing to add 297 square feet to the existing first floor, and remove 283 square feet, for a net total of 14 square feet. The applicant will add 297 square feet to the second floor, and put a second floor

on the existing garage. (see exhibit 2 [of the staff report])

In addition, the applicant proposes to remove the seaward most section of the existing teahouse, and replace the existing [patio] deck materials and extend the existing [patio-level] deck seaward to align with the adjacent bulkheads and decks.

The project would add 264 square feet to an existing 2403 square foot house, an addition of over 10%. The Commission has previously defined demolition to be the removal of 50% or more of the exterior walls of a structure (including the studs or framing). In this instance the applicant is proposing an addition of greater than 10%, but is not removing over 50% of exterior walls. The addition would not result in an increase in bedrooms either, and thus re-examination of the septic system is not required."

The Important Public Hearing Notice, regarding the subject project described the proposed development as follows:

"Addition of first and second story exterior additions onto an existing two-story residence, add a second floor to an existing garage, extend an existing deck to align with adjacent bulkheads, remove seaward section of teahouse, and do interior modifications to the existing teahouse. The improvements will add a total of 672 feet. No grading is proposed."

A true and correct copy of the Important Public Hearing Notice, dated April 24, 1992, is attached hereto as Exhibit E. It is significant to us that the notice contains no address for the proposed development.

A public hearing was held on May 13, 1992. The permit application was on the Commission's consent calendar. The Commission approved the application subject to the standard conditions and a special condition, recommended by staff, for an assumption of risk by the applicant. The Commission issued the subject permit on September 16, 1992. A true and correct copy of the permit is attached hereto as Exhibit F.

On or about October 13-15, 1992, an amendment to the permit was issued. For some reason which is unclear to us, there is no application or staff report in the Commission's public file for said amendment. However, Coastal Program Analyst Merle Betz has informed us that the Commission's records reflect that the scope of the amendment was an adjustment of the second floor seaward extension of the residence to conform to the seaward house stringline. Presumably, this was deemed to be an immaterial amendment.

By January 1995, work pursuant to the permit, as amended, had not been commenced. Between October 1992, and January 1995, the Rascoffs sold the subject property to the current owners, David and Linda Frankel ("the Frankels"). On January 13, 1995, the Frankels submitted to the Commission an application for a second amendment to the permit, and an assignment of the permit from the Rascoffs to them.

The application for the amendment, which was submitted on a permit application form rather than an amendment form, describes, at section 2, paragraph 2, the scope of the second amendment as follows:

> "In addition to C.D.P. 4-92-062 and 4-92-062A enclose open section between existing S.F.R. and detached garage. Relocate septic system. Roof line to be pitched but remain at the same height as approved by 4-92-062."

Notwithstanding the statement that the roof would remain at the same height as approved in the original permit (i.e., 26 feet, 7 inches), the amendment application states, at section 2, paragraph 4, that the proposed height above existing grade is 28 feet. At section 2, paragraph 3, the application states that the amendment will increase the cost of the development an additional $50,000, making the total project cost $200,000. At section 2, paragraph 6, the application states that the gross floor area of the structures is 4,103 square feet. The total square footage for structures in the original permit application was stated as only 3,075. At section 3, paragraph 1.a., the applicant states that, as of January 13, 1995, the approval of the original permit (4-92-062) is still valid but that the work authorized by said permit had not been performed. Finally, it does not appear that a new list of property owners and occupants whose properties/residences are within 100 feet of the subject property was ever completed. A true and correct copy of the application for the second amendment is attached hereto as Exhibit G.

The application for the second amendment does not appear to have attached to it an approval in concept from the City of Malibu. However, on the plans for the subject project, the planner for the City of Malibu wrote the following:

> "Approval in concept for a first floor addition to an existing SFR (2214) and a second floor addition (4634) which connects the garage to the main house, subject to the following conditions:
>
> 1. No satellite dish is permitted on upper deck;
>
> 2. New additions must maintain minimum side setbacks of 3'0".

A true and correct copy of this notation on the Rascoffs' plans, dated January 13, 1995, is attached hereto as Exhibit H.

The Commission's public file, again, did not appear to contain a notice of pending permit for the second amendment, nor did it contain a staff report for the second amendment.

On March 16, 1995, the Commission issued the Frankels the second amendment to the permit. However, the amendment states that the permit was amended to include the following changes:

> "Adjust the second floor seaward extension to conform to the seaward extent of the stringline."

This was not what was requested in the second amendment application. A true and correct copy of the Amendment to Permit, dated March 16, 1995, is attached hereto as Exhibit I. It does not appear that the second amendment application was ever considered on its merits. It is not at all clear that an amendment which adds 1.5 feet to the height of the project and over 1,000 square feet on such a small lot would be deemed an immaterial amendment. Shortly after the second amendment was issued, the Frankels applied for and obtained building permits from the City of Malibu. Construction is presently underway.

Project Violations

After recently visiting his property and observing the new construction next door, Mr. Grazer has determined that apparent misrepresentations were made by the permit's applicants in their application for the permit and notices of hearing related thereto, regarding the "project description" of the proposed development. The apparent misrepresentations were made regarding the "remodeling" of the existing residence and teahouse, and said misrepresentations effect requirements for the property's side yard set backs and deck line stringlines authorized by local Malibu zoning ordinances and approved by the Commission for the teahouse. We submit that these apparent misrepresentations likely caused the permit to be issued in violation of the Chapter 3 policies of the Coastal Act, and that, had the truth been known, the Commission would most likely not have approved the application in the first place without additional conditions to make the property comply with current zoning laws and Chapter 3 policies.

The foregoing project history makes it abundantly clear that all that was approved was an addition and some remodeling. All of the public notices in Commission's files reflect that only minimal new development was intended. However, that is not what has occurred. It is obvious that the existing teahouse was completely demolished down to its foundation, and

an entirely new teahouse, with some new foundation, was constructed. Moreover, the existing garage upon which a second story addition was proposed to be added was also demolished down to its foundation, and a new garage with second story construction above it was newly constructed. In fact, with the possible exception of portions of the original foundation, the entire house, garage and teahouse clearly appear to constitute new development.

In addition, there are inconsistencies between the application forms for the original application and subsequent amendments. These inconsistencies further serve to confirm the apparent misrepresentations and/or omissions made by the applicants. For example, whereas the original application provides that the maximum height of the structure will be 26 feet 7 inches, the application for the Amendment Request evidences that the maximum height for the structure will be 28 feet. Yet, the applicant states that the maximum height for the project will remain the same as originally approved.

My review of the City of Malibu Department of Building and Safety's files for this project reveal that no demolition permit was ever obtained by the applicants. The City building inspector, Mr. Jim Donovan, recently confirmed for me that the entire teahouse has been reconstructed. It appears that neither the Coastal Commission nor the City of Malibu were ever informed of the fact that the applicants' construction activities were much more extensive than they disclosed in their original and amended applications, and in their building permit application submitted to the City of Malibu.

Further evidence of this fact is found in the applicants' representations in their coastal applications that the cost of construction was originally $150,000, and later amended to $200,000. The amended permit reflects that the square footage of the residential structure, including the garage and teahouse, totals 4,103 square feet. Assuming, for the sake of argument only, that these figures are accurate, the cost of construction for this project would be only $48.75 per square foot, a cost which could not possibly be accurate.

Nowhere in the project description is notice provided that the formerly existing teahouse was to be completely removed and a new teahouse constructed at a higher elevation. More importantly, the project was never described as having a rooftop deck.

In fact it appears that the entire house has been demolished without a City of Malibu demolition permit, and a new residence constructed in its place. The previously existing teahouse has clearly been replaced with a totally new structure, constructed on the property line it shares with Mr. Grazer's property, with no side yard setback whatsoever, because it was represented to be only an interior remodeling. The teahouse was constructed at an entirely different and higher elevation than the teahouse which previously existed, apparently

to permit the roof to support a seaward deck which did not previously exist. The construction of this teahouse, with roof top deck, sets a dangerous precedent for the Malibu Colony, which not only permits the Frankels to look right into one of the windows of Mr. Grazer's house, but, in addition, serves to further make the Colony's beach area appear more enclosed.

One only has to make a cursory review of the construction underway in order to realize that the descriptions provided to the Commission by the applicants are both inaccurate and misleading. Attached hereto collectively as Exhibit I are 7 recently taken photographs which evidence the substantial deviations from the project descriptions. Whereas the original and amendment applications requested a "remodel and addition", the photographs evidence an entirely new structure. The new teahouse, although a completely different structure than that which previously existed, is being constructed on the property line it shares with Mr. Grazer's property, not set back 30 inches as required in the City Approval In Concept, for "new additions." See Exhibit H.

Not only is the new teahouse presently under construction being built at an entirely different and higher elevation than its predecessor, but because it is being built on the property line without a side yard set back, the City of Malibu Building Department has required that the applicant construct a fire wall on the property line the new teahouse shares with Mr. Grazer's property 30 inches higher than the new height of the teahouse. See Exhibit I, Photograph Nos. 6 and 7. The new fire wall is most definitely not referenced in the submitted applications, and such a tall, intrusive barrier is a clear violation of the Coastal Act.

14 California Administrative Code §13106 specifically provides, in relevant part, as follows:

> "(a) Any person who did not have an opportunity to fully participate in the original permit proceeding by reason of the applicant's failure to provide information as specified in Section 13105 may request revocation of a permit by application to the executive director of the regional commission which issued the permit specifying with particularity, the grounds for revocation..."

14 California Administrative Code § 13105 further provides, in relevant part, as follows:

"Grounds for revocation of a permit shall be

(a) Willful inclusion of inaccurate, erroneous, or incomplete

> information in connection with a coastal development permit application, where the . . . commission finds that accurate and complete information would have caused the . . . commission to require additional or different conditions on an application or deny an application;
>
> (b) Failure to comply with the notice provisions of Section 13054, where the views of persons not notified were not otherwise made known to the . . . commission to require additional or different conditions or deny an application."

14 California Administrative Code §13054 provides the requirement for notices to be distributed and posted. Said section demands that a proper description of the development be provided.

Mr. Grazer contends that the subject applications contained "inaccurate, erroneous, and incomplete information" with regard to the project description. Without question, the photographs evidence that what is being constructed is not what was described by the applicant in the submitted applications, or in the notice distributed to the neighboring property owners. As such, grounds exist pursuant to both § 13105(a) and (b) to commence revocation proceedings. If Mr. Grazer had been correctly informed as to the true scope of the proposed development, he would have participated in the hearing proceedings, and expressed his opposition to new construction on the property line in violation of the City's sideyard setback requirements and the construction of a rooftop deck on top of the teahouse. Because of the false and misleading notice he received, he did not do so. As a result of the material omissions of fact, and inadequate notice, the Commission did not have the opportunity to review the true development on its merits. As a consequence thereof, the Commission clearly could have, and likely would have required additional or different conditions or denied the application.

The construction of the new teahouse and second story roof deck, without a sideyard setback, directly on the shared property line with Mr. Grazer's residence creates an obvious invasion of privacy. But, moreover, it is in direct conflict with numerous sections of the Coastal Act of 1976, including but not limited to the following:

(1) §30250, in that, new development should not have a significant adverse effect, either individually or cumulatively, on coastal resources;

(2) §30251, in that, scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance; permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas; be visually

compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in degraded areas;

(3) §30252, in that, the location of new development shall maintain and enhance public access to the coast.

The construction of the new teahouse on the property line, with no sideyard setback, at a higher elevation than the previously existing teahouse, and with the construction of a second story roof deck on the property line, in violation of the City's sideyard setback requirements, individually and cumulatively interferes with coastal resources by restricting visual access along the coast, and to its inland vistas. The construction of new development on the property line without a side yard set back creates a "Chinese Wall" effect which not only visually, but psychologically restricts and reduces the coastal experience. It creates a closed-in effect where beachgoers can be monitored and/or scrutinized from a roof-top observation deck. This clearly tends to impede and discourage public access.

Section 30252 specifically speaks about, where feasible, restoring and enhancing the visual quality of degraded coastal areas. The Malibu Colony, although hardly qualifying as a "degraded area" does little to enhance the public's lateral access rights of crossing the beach at or near the mean high tide line. By setting back new development, and restricting the replacement of demolished teahouses, particularly at higher elevations, and with seaward rooftop decks built right on the property line without any sideyard setbacks, the Commission has the opportunity to restore and enhance the public beach- going experience.

Because of the glaring inaccuracies, errors and omissions contained in the original application as submitted by the property owner, neither the public, including even the neighboring property owners, nor the Commission itself, had the opportunity to consider the above-referenced sections of the Coastal Act, or other provisions of either the Coastal Act or previously approved Malibu Land Use Plan at the time the original permit application, or the amendments thereto, were reviewed by staff and/or approved. This was not caused by a failure of the public or the Commission to reasonably do so, but rather because of a failure of the applicant to properly described the proposed development, and the omission/concealment of material information which would have made such a review possible.

Mr. Grazer respectfully requests that the Commission suspend the subject permit pursuant to 14 California Administrative Code § 13107 in order to properly investigate this matter, and thereafter schedule revocation proceedings pursuant to the applicable provisions of §13104 *et. seq.* The subject application and amendments are replete with falsehoods and material omissions. The project description in both the application and amendments, as well

as the posted and distributed notices, misinformed the public as to the actual development proposed, and certainly did not provide the notice required by law.

If ongoing construction continues uninterrupted, it will only lead to further violations in the Malibu Colony. Moreover, its overall effect will be to not only discourage public access to and along the coast, but also, to encourage misrepresentations and falsehoods in describing proposed development. In that Susan Friend has advised this office that she will not be able to do a site visit for at least one week, it is important that development be promptly stopped until this matter can be adequately reviewed. Moreover, it is our understanding that other property owners in the Malibu Colony share Mr. Grazer's concerns, and will be submitting letters supporting Mr. Grazer's request herein.

Naturally, should you have any questions, please feel free to contact me at your earliest convenience. Thank you for your immediate attention to this important matter.

Very truly yours,

LAW OFFICES OF ALAN ROBERT BLOCK
A Professional Corporation

ALAN ROBERT BLOCK

ARB:pc

Enclosures

cc: Mr. Brian Grazer

FRANK I. DAVIS
23426 MALIBU COLONY ROAD
MALIBU, CALIFORNIA 90265

October 25, 1995

Mr. John Ainsworth
California Coastal Commission
South Coast District Area
89 South California Street, 2nd Floor
Ventura, California 93001

Re: Coastal Development Permit No. 4-92-062
23418 Malibu Colony Road
REQUEST FOR SUSPENSION OF PERMIT
14 California Administrative Code S 13104 et. Seq.

Dear Mr.Ainsworth:

Please be advised that the undersigned owns property in the Malibu Colony located at the above address, which property is in close proximity to the new residence presently under construction at 23418 Malibu Colony Road.

As a neighbor of the subject property I am extremely concerned about possible representations made by the applicants with regard to the "project description" of the proposed development as contained in the distributed notice, as well as the resulting lack of side yard set backs and adherence to deck line string lines as approved by the Commission.

The original notice of the development described the project as follows:

> "Addition of first and second story exterior additions onto an existing two-story residence, add a second floor to an existing garage, extend an existing deck to align with adjacent bulkheads, remove seaward section of teahouse, and do interior modifications to the existing teahouse. The improvements will add a total of 672 feet. No grading is proposed."

In fact it appears that the entire house has been demolished and a new residence constructed. The teahouse portion of the residence, which without question was totally demolished, has been rebuilt right on the property line with no setbacks whatsoever. The new teahouse was built at an entirely different and higher elevation than that which previously existed, and contains a seaward deck on its roof which did not previously exist. The construction of this teahouse, with roof top deck, sets a dangerous precedent for the Colony which not only allows an invasion of privacy of its neighboring property owners, but,

moreover, only serves to further seclude and enclose this beautiful beach area from the public.

Although I do not oppose the construction of new residences in the Colony, I do oppose the construction of new residences which do not adhere to current zoning requirements, and/or side yard setbacks and deck string lines. Particularly if they are constructed without proper notice, and full disclosure.

I request that the Commission suspend the subject permit in order to properly investigate the matter and thereafter schedule revocation proceedings pursuant to the applicable provisions of 14 California Administrative Code S 13104. I believe that even a cursory review of this application, and its extension and amendments, will evidence an incomplete and inaccurate "project description" in the notice provided to the public. Had I been properly informed of the true development proposed I would have commented on the same before the Commission, and voiced my opposition.

If this construction continues uninterrupted it will only lead to further violations in the Colony. Moreover, its overall effect will be to discourage beach access and the visual experience of those walking across the beach.

Thank you for your immediate attention to this important matter.

Very truly yours,

Frank I. Davis

(Name)

(Address)

Malibu, Ca. 90265
(City), (State), (Zip)

October 20. 1995

Mr. John Ainsworth
California Coastal Commission
South Coast District Area
89 South California Street, 2nd Floor
Ventura, California 93001

Re: Coastal Development Permit No. 4-92-062
23418 Malibu Colony Road
REQUEST FOR SUSPENSION OF PERMIT
14 California Administrative Code S 13104 et. Seq.

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In fact it appears that the entire house has been demolished without a City of Malibu issued demolition permit, and a new residence constructed. The teahouse portion of the residence, which without question was totally demolished, has been

Exhibit 3: Letter from C. Dummit
R-4-92-062

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Thank you for your immediate attention to this important matter.

Very truly yours,

Craig S. Dennit

(Name)

Bruce Dern
(Name)
95 Malibu Colony
(Address)
Malibu Ca 90265
(City), (State), (Zip)

October 20. 1995

Mr. John Ainsworth
California Coastal Commission
South Coast District Area
89 South California Street, 2nd Floor
Ventura, California 93001

Re: Coastal Development Permit No. 4-92-062
23418 Malibu Colony Road
REQUEST FOR SUSPENSION OF PERMIT
14 California Administrative Code S 13104 et. Seq.

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If this construction continues uninterrupted it will only lead to further violations in the Colony. Moreover, its overall effect will be to discourage beach access and the visual experience of those walking across the beach.

Thank you for your immediate attention to this important matter.

Very truly yours,

BRUCE DERN

(Name)

Lili Gross
(Name)

#98 Malibu Colony Rd.
(Address)

Malibu Ca. 90265
(City), (State), (Zip)

October 20. 1995

Mr. John Ainsworth
California Coastal Commission
South Coast District Area
89 South California Street, 2nd Floor
Ventura, California 93001

Re: Coastal Development Permit No. 4-92-062
23418 Malibu Colony Road
REQUEST FOR SUSPENSION OF PERMIT
14 California Administrative Code S 13104 et. Seq.

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If this construction continues uninterrupted it will only lead to further violations in the Colony. Moreover, its overall effect will be to discourage beach access and the visual experience of those walking across the beach.

Thank you for your immediate attention to this important matter.

Very truly yours,

(Name)

DEBORAH GRAZER
(Name)
98 MALIBU COLONY
MALIBU, CA.
(Address) 90265
(City), (State), (Zip)

October 20. 1995

Mr. John Ainsworth
California Coastal Commission
South Coast District Area
89 South California Street, 2nd Floor
Ventura, California 93001

Re: Coastal Development Permit No. 4-92-062
23418 Malibu Colony Road
REQUEST FOR SUSPENSION OF PERMIT
14 California Administrative Code S 13104 et. Seq.

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In fact it appears that the entire house has been demolished without a City of Malibu issued demolition permit, and a new residence constructed. The teahouse portion of the residence, which without question was totally demolished, has been

[redacted] the property line with no side setbacks whatsoever. The new [redacted] was built at an entirely different and higher elevation than that which [redacted] sly existed, and contains a seaward deck on its roof which did not previously [redacted]st. The construction of this teahouse, with roof top deck, sets a dangerous precedent for the Colony which not only allows an invasion of privacy of its neighboring property owners, but, moreover, only serves to further seclude and enclose this beautiful beach area from the public.

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Thank you for your immediate attention to this important matter.

Very truly yours,

(Name)

SHOOP & LEANSE
ATTORNEYS AT LAW

PAUL SHOOP

23805 STUART RANCH ROAD, SUITE 210
MALIBU, CALIFORNIA 90265
(310) 456-1957
FAX (310) 456-8109

DAVID V. LEANSE
OF COUNSEL

VIA FACSIMILE AND FIRST CLASS MAIL

November 13, 1995

Mr. Jack Ainsworth
Enforcement Supervisor
California Coastal Commission
89 South California Street, 2nd Floor
Ventura, CA 93001

Re: Coastal Development Permit No. 4-92-062
23418 Malibu Colony Road
Malibu, California 90265

Dear Mr. Ainsworth:

We represent the owners of the above-referenced property, David and Linda Frankel.

My office has reviewed the 10 page letter, with exhibits, submitted by Mr. Alan Robert Block, on the above-referenced matter. Without responding to each and every false statement contained in the letter (which we are prepared to do at your convenience) we observe that the main premises of the letter seem to be: (1) that Dr. and Mrs. Frankel are building something different from what was applied for and approved by the Coastal Commission ("CCC"); and (2) that "material misrepresentations" by the applicants resulted in the issuance of the permits, which would not otherwise have been issued.

We will address the allegation of "material misrepresentations" first.

Dr. and Mrs. Frankel purchased the property in question in late 1994 from Rascoff, who in turn had purchased it in 1992 from the complaining party, Mr. Grazer. Thus, prior to 1992 the complaining party owned the property about which he now complains. The primary permit (4-92-062) and one amendment (4-92-062A) were obtained by Rascoff. The Frankels bought the property with the original permits, and they are now building the improvements which are described

in the Rascoff original permit(s) and in one amendment (4-92-062A2) which the Frankels obtained.

The standard for revocation of a permit on the basis alleged, "material misrepresentation" is well established:

1. The applicant must have made a material misrepresentation;

2. which was willful or intentional; and

3. which, if not made, would have resulted in a different result.

Furthermore, the particular grounds for any request for revocation must be stated.

A careful reading of Block's letter reveals no specific allegation of any misrepresentation by either Rascoff or the Frankels, which either of them intentionally made, which affected the outcome of the commission's action on the applications. To show how illogical Mr. Block's assertions are, we would point out that in order for Rascoff to have made the type of "intentional misrepresentation" alleged by Mr. Block (such as the cost of the project) he would have had to have known what the Frankels were going to do (and how much they were going to spend) before he ever met the Frankels.

What Mr. Block appears to say is that the Frankels are building something which is not covered by the permit. That is simply not the case.

The house which is currently under construction is exactly what appears in the permit applications on file with, and the permits issued by, the CCC and the City of Malibu. The City of Malibu has made repeated inspections of the construction, and we believe they will confirm to you that the house is being built exactly as it was permitted by the City as required by City building codes. Similarly, we invite your inspection to confirm that the house is exactly what the CCC has permitted.

The Frankels have assumed that the coastal permits they bought with the property were properly issued, and they even required that the original Rascoff

permits be renewed by the CCC prior to their purchase. In reliance on those permits and the renewal, the Frankels have undertaken substantial financial commitments. They have also taken care to insure that the house is being built in conformance with the permits. The house is now fully framed, in both steel and wood, and substantial rough electrical, plumbing and HVAC are in place. The Frankels are confident that the contractor is building the house in full compliance with the plans which were submitted to and approved by both the City of Malibu and the Coastal Commission.

In other words, what is being built is exactly what the applications show. Mr. Block's assertions to the contrary are simply not true.

- For example, Mr. Block misstates, "The project was never described as having a roof top deck." (P.6) and "The new firewall is most definitely not referenced in the submitted applications." (P.7).

The truth is that both the firewall and the deck on the teahouse are clearly shown, with appropriate dimensions, on the elevations submitted with the original application. Copies of the two relevant pages (which come from Exhibit "D" of the Block letter) are enclosed, with those two features highlighted.

- Second Example: Mr. Block misstates on page 1 of his letter (last line) that "the [original] teahouse had no roof top deck."

The truth is that the original teahouse not only had a roof top deck, the adjacent master bedroom had a door out to that deck and the deck had chairs and plants on it. I personally showed photos of that original, preexisting deck to Mr. Block, and they are in the files of the CCC.

- Third Example: Mr. Block states "... no demolition permit was ever obtained by the applicants." (Block letter, P.6)

The truth is the applicants obtained a demo permit on 4/25/95, and a copy is in the City's file. This project included the removal of the seaward approximately 14 feet of the teahouse; this removal (demolition) was one item covered under the City demolition permit.

& LEANSE
TORNEYS AT LAW

We are confident that the improvements under construction are fully described and shown in the applications and fully permitted.

•••

The essence of this situation is that Mr. Grazer sold the property (presumably at a fair market price or above) to Rascoff, who went through the permitting process required by the City of Malibu and the CCC for exactly what the Frankels are building. That process included an analysis by CCC staff of the coastal issues involved in the proposed development, which included removing the seaward 14 ft. of the existing teahouse. This partial removal of the teahouse presumably was of a substantial benefit both to the public and to Mr. Grazer because it opened up views from various directions which were not theretofore existing.

Mr. Grazer could have "deed restricted" the property before he sold it to Rascoff to protect his view and privacy if he so desired and if he was willing to accept a potentially lower price for the property so restricted. Mr. Grazer chose not to. Similarly, Mr. Grazer could have inspected the Rascoff plans when they were submitted (as he was advised to do by the public notices and the postings on the property) and given his input on his next door neighbor's project at that time, had he chosen to do so.

This is not a situation where an applicant is building something which has not been permitted. The Frankels are building exactly what was permitted.

This is also not a situation where an applicant intentionally misled the CCC about their project in the original permit application while intending to build something else. The Frankels didn't even know Rascoff when Rascoff applied for and obtained the permits under which they are now building, which they purchased with the property from Rascoff. Moreover, the house complies with all conditions on the permit(s) and all coastal requirements, such as string line, grading and height.

This is also not a situation where an applicant applied for a "remodel" and concealed his intention to build an "addition" to his house and then surreptitiously

added to an existing structure during the "remodel". The applications are crystal clear that there would be "additions" (Exhibit "A" City Approval in Concept) "2d story addition to ..." (Exhibit "B" City Approval of Plans) "Remodel and add to ..." (Exhibit "C", P. 2 Application to CCC). "Addition of first and second floor exterior additions ... remove the seaward section of a teahouse ..." (Exhibit "D" Staff report). "Additions of first and second floor exterior additions ..." (Exhibit "E" Public Hearing Notice). The specific "additions" to which these public documents repeatedly refer are clearly shown in the applications.

All of those public documents, which were always available for inspection, along with the plans, would have shown Mr. Grazer exactly what was proposed and what is presently being built, had he chosen to look. He chose not to do so; instead, he has waited until the house is fully framed but is still open, with the rainy season threatening, to demand that all work be stopped so that his concerns about his privacy can be aired. He complains that he was misled by the notices; however, it is his private interpretation of the notices which causes his problem, for he appears to have interpreted the notices on the proposed project to mean something other than exactly what the public applications contained, yet he apparently never bothered to look at the applications or the elevations available to him.

•••

A fair and objective analysis of all submittals in this case shows that the applicants have, at all times, been forthright about what they intended to build, and the Frankels are strictly adhering to the CCC and City approved plans. The public notices on the project reasonably put any recipient on inquiry as to the likely impact on an adjacent property. Any inquiry into the matter would patently have disclosed the contents of the application, which is exactly what is being built. The problem for the Frankels (and it is a problem to the extent their job is delayed or their honesty, and that of their agents, is called into question) lies with the unreasonable, after-the-fact tactics of a neighbor, who seeks to engage the CCC to bring construction of the Frankels' home to a halt at an extremely vulnerable stage so he can air his private views at this time, after he chose not do so at the appropriate time and place. The fact that he, and Mr. Block, couch their private concerns in terms of the public issues (with which the CCC is legitimately

interested) is clearly disingenuous. Those public concerns were addressed by staff, and were apparently satisfied in the earlier process, with substantial voluntary mitigations such as the removal of 14 feet of the existing teahouse.

The Frankels will cooperate fully with any investigation of this matter which your office deems appropriate. The names and phone numbers of the Frankels' architect and contractor are enclosed. Please feel free to contact them directly with any questions you may have. They will be directed to meet with you at the job site or in your office at your convenience. The Frankels may not be able to assist you with facts about applications made, or approvals obtained, by Rascoff, prior to the time they purchased the property with those existing plans and permits, but they will immediately furnish any information you request with respect to the amendments submitted by them, or in their names, or regarding their construction.

Sincerely

Paul Shoop

PS:ko

cc: Susan Friend

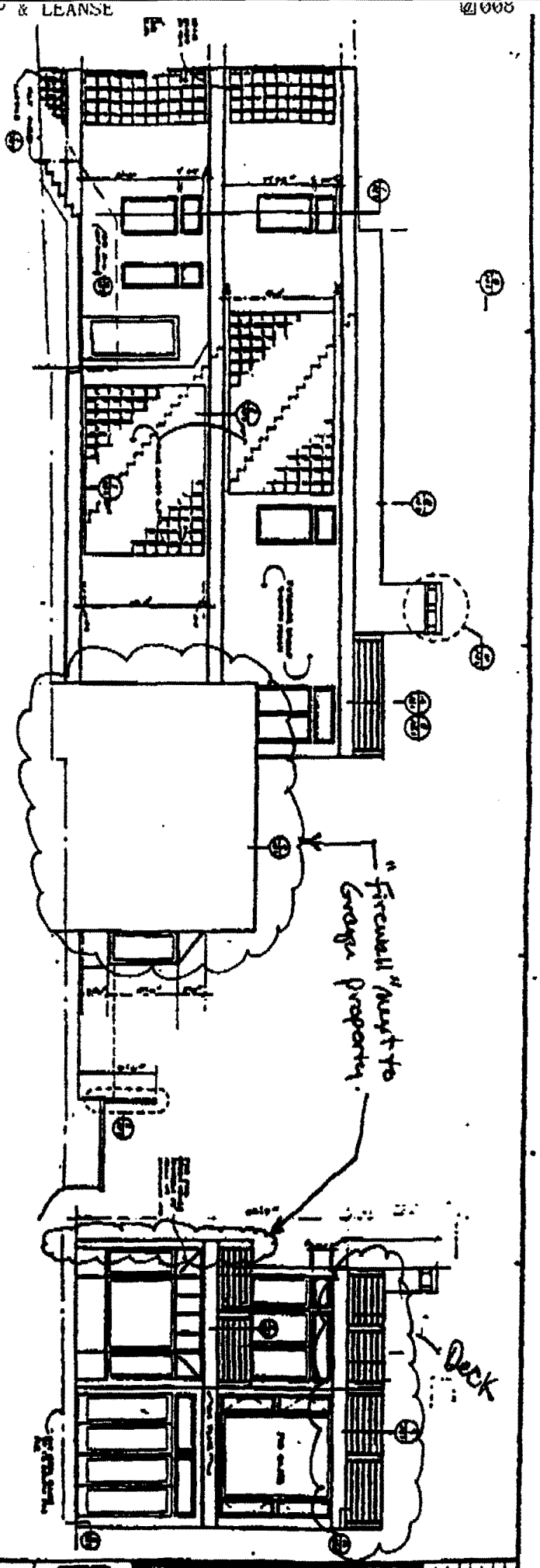

EXHIBIT 4 4-92-062

ELEVATION

MR. & MRS. RASCOFF

Choate Associates

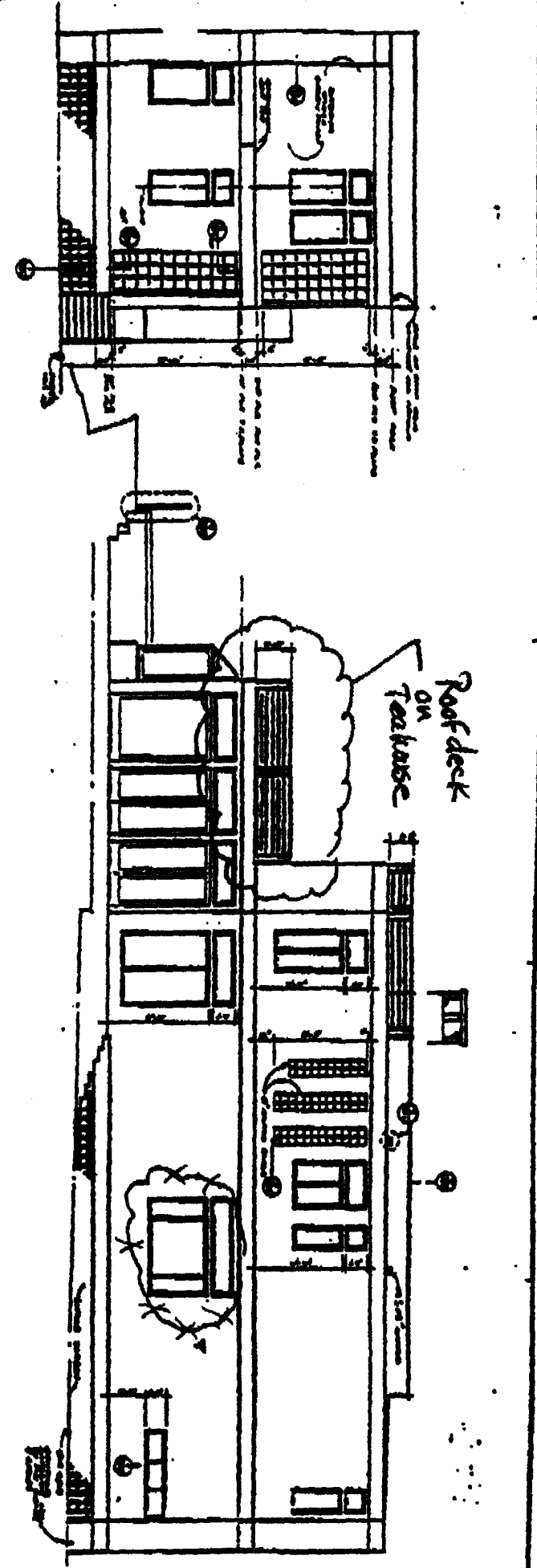

EXHIBIT 5 4-92-062

ELEVATION

MR. & MRS. RASCOFF

Choate Associates