

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
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**Th5e**

Filed: 12/28/98  
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Staff: D. Carl  
Staff report: 2/18/99  
Hearing date: 3/11/99

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## APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

**Appeal number**.....**A-3-SCO-98-117, Odenweller & Fleck SFD**  
**Applicants**.....Norma Odenweller & Robert Fleck (Agent: Tracy Johnson)  
**Appellants**.....Jim & Judy Craik (Agent: Douglas Marshall)  
**Local government**.....Santa Cruz County  
**Local decision**.....Approved with conditions, 12/8/98  
**Project location**.....413 Beach Drive, Aptos, Santa Cruz County (APN: 043-105-07).  
**Project description**.....Demolish an existing garage and construct a new single family dwelling.  
**File documents**.....Santa Cruz County certified LCP & Santa Cruz County permit file 97-0622.  
**Staff recommendation**...**No Substantial Issue Exists**

### Summary of Staff Recommendation

This is the substantial issue determination and de novo hearing for appeal number A-3-SCO-98-117 (the Commission previously opened and continued the substantial issue hearing for this matter on February 3, 1999). Staff is recommending that the Commission find that **no substantial issue exists** with respect to this project's conformance with the certified Santa Cruz County Local Coastal Program (LCP).

Santa Cruz County approved the subject single-family dwelling along Beach Drive subject to a number of variances to site development standards to allow a three-story (2 allowed), 32 foot high (33 are allowed), structure which exceeds the 50% floor area ratio by .53% (or 31 square feet), with a 16 foot front yard setback and 8 foot setback to the second story deck (20 foot required), and a parking area that uses more than 50% of the front yard. These variances are allowed by the LCP. The County found that a variance was necessary to allow for a level of use consistent with other properties in the immediate vicinity because of the limited area available for development on the subject site due to the property's shape, topography, narrow 35 foot width, location below an eroding coastal bluff at the rear of the lot,



California Coastal Commission  
March 11, 1999 Meeting in Carmel

Staff: D. Carl Approved by: *C.F.K. 2/18/99*

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location in a coastal wave run-up and/or flooding zone which requires elevation of any new structure above 23 feet mean sea level, as well as the size and configuration of other houses in the vicinity. The County determined that the variance would provide a remedy for the proposed in-fill development of a single-family residence consistent with the existing surrounding residential development.

The primary reason for the variance to development standards is due to the geologic and flooding constraints at the Beach Drive site. Beach Drive is a public street which extends along the base of the coastal bluffs fronting Rio Del Mar Beach. Both Beach Drive and the residential development on the inland side (there is no development on the seaward side) have essentially been constructed on the back beach area at this location. These developments pre-date the Coastal Act. As such, the residential parcels along Beach Drive are located in an area of high hazard; these parcels back up to an approximately 100 foot tall, unstable bluff and are subject to wave action given their proximity to the beach and ocean seaward of Beach Drive. Beach Drive is equipped with an existing seawall at its base which extends several hundred feet up and down coast at this location.

Because of significant slope instability at the rear of the subject parcel, and further because of potential wave attack and flooding on the street frontage, the proposed residence would be raised on piers extending into bedrock with the ground floor incorporating breakaway walls intended to collapse without causing structural damage to the elevated portion of the building or the foundation. Rear walls (adjacent to the bluff) would be reinforced and a retaining wall constructed to deflect any potential slide material. As a result, the ground floor of the structure would not contain any habitable features and only the two stories above would constitute living space (consistent with LCP and FEMA flood regulations). The two-story living space would account for just over 2,000 square feet.

In approving this development, the County found that the resulting residential structure would allow the property owners to realize a level of residential use consistent with other properties in the immediate vicinity. More specifically the County found that the majority of the existing surrounding structures enjoy reduced front and/or side yard setbacks (such as the Appellants). Moreover, the majority of existing homes along Beach Drive have a front setback of 10 feet or less (including the Appellants). Of the 61 existing homes along this stretch of Beach Drive, 19 are three stories in height. The majority of properties in the vicinity were developed more than 50 years ago, predating both the Zoning Code and FEMA requirements (including the Appellants).

In general, the Appellants contend that the proposed project does not comply with the certified Santa Cruz County LCP because: (1) the project approved by the County is not compatible with neighboring development along Beach Drive; (2) the project approved by the County will result in a loss of privacy, private views, light and solar access for the Appellants (who own the neighboring property); (3) three story residential development is not allowed in Santa Cruz County; (4) there is no justification for allowing a variance for height, number of stories, size, and reduced front yard setbacks; (5) the County made a procedural error because they did not make a finding of General Plan consistency and did not adopt additional findings following the County's approval of the floor area ratio variance.



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Although the Appellants raise a number of issues regarding the County's approval of the proposed project, none of these issues rise to the level of a *substantial* issue in terms of the project's conformance with the certified LCP. The subject development is in-fill residential development in a built out area that has the same general size, mass, scale, and design features as the surrounding built environment along Beach Drive. Moreover, it seems appropriate in this case to allow for slight modifications to height, setback, floor area, and front yard requirements in order to allow for a modest residential use (in relation to surrounding development) while simultaneously addressing the slope instability and flooding realities of the subject site. Although neighboring property owners, including the Appellants, will necessarily be affected, as the subject residence will replace a small garage on an otherwise vacant parcel, these privacy and view impacts should be minimal. More importantly, the proposed project will not negatively impact *public* view resources as the development is inland of the first through public road with no through public visual access across the subject parcel due to the 100 foot coastal bluffs inland of the proposed dwelling. Finally, the proposed development and the County's findings and conditions for the project sufficiently conform to the standards of the certified LCP.

**As such, and for the reasons further articulated in this substantial issue determination staff report, no substantial issue is raised in terms of the proposed project's conformance with the certified Santa Cruz County LCP.**

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## **1. Local Government Action**

The proposed project has been approved and appealed several times at the Santa Cruz County level. In each case, the Appellants currently before the Coastal Commission were the appellants. The Appellants are the owners of the neighboring residence. The project was first approved on May 1, 1998 by the County's Deputy Zoning Administrator. This approval was then appealed by the Appellants to the Santa Cruz County Planning Commission which, on June 24, 1998, denied the appeal and again approved the proposed project. The Planning Commission's approval was subsequently appealed by the Appellants to the Santa Cruz County Board of Supervisors. On August 25, 1998, the Board of Supervisors declined to take jurisdiction over the application. Instead, the Board referred the matter back to the County Planning Commission to consider the lone issue of the project's floor area ratio since the Board determined that the issue was not raised during the Planning Commission's previous consideration of the application. On October 28, 1998, the Planning Commission again approved the project with an additional floor area ratio variance supplementing the Deputy Zoning Administrator's original approval. Finally, on December 8, 1998, the Board of Supervisors again declined to take jurisdiction over the application. Subsequently, the County's notification of final local action was received by the Coastal Commission's Central Coast District Office on December 10, 1998 (Santa Cruz County Coastal Zone Permit #97-0622). See Exhibit A attached for the County's findings and conditions for the project. The Commission's ten-working day appeal period for this action began on December 11, 1998 and concluded at 5:00 P.M. on December 24, 1998. One valid appeal (see below) was received during the appeal period.

## **2. Appeal Procedures**

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because of its location within 300 feet of the beach.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding



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that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is *not* located between the nearest public road and the sea and thus, this additional finding need *not* be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

### 3. Appellants' Contentions

In general, the Appellants contend that the proposed project does not comply with the certified Santa Cruz County LCP because: (1) the project approved by the County is not compatible with neighboring development along Beach Drive; (2) the project approved by the County will result in a loss of privacy, private views, light and solar access for the Appellants (who own the neighboring property); (3) three story residential development is not allowed in Santa Cruz County; (4) there is no justification for allowing a variance for height, number of stories, size, and reduced front yard setbacks; (5) the County made a procedural error because they did not make a finding of General Plan consistency and did not adopt additional findings following the County's approval of the floor area ratio variance. Each of these issues is discussed in the findings below.

Please note that the Appellants submitted an 11 page letter (including 4 exhibits) providing the "Reasons Supporting This Appeal." See Exhibit B for the Appellants' complete appeal document. In addition, please note that the Applicant's submitted a rebuttal to the Appellants' appeal. See Exhibit C for this rebuttal document.

### 4. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. Staff recommends a **YES** vote on the following motion:

*I move that the Commission determine that appeal number A-3-SCO-98-117 raises no substantial issue with respect to the grounds on which the appeal has been filed.*

A majority of the Commissioners present is required to pass the motion.



## **5. Recommended Findings and Declarations**

The Commission finds and declares as follows:

### **A. Project Description**

The proposed project is located along the inland portion of Beach Drive in the Aptos area of southern Santa Cruz County (see Exhibits D and E). Beach Drive is a public street which extends along the base of the coastal bluffs fronting Rio Del Mar Beach. Both Beach Drive and the residential development on the inland side (there is no development on the seaward side) have essentially been constructed on the back beach area at this location. These developments pre-date the Coastal Act. As such, the residential parcels along Beach Drive are located in an area of high hazard; these parcels back up to an approximately 100 foot tall, unstable bluff and are subject to wave action given their proximity to the beach and ocean seaward of Beach Drive. Beach Drive is equipped with an existing seawall at its base which extends several hundred feet up and down coast at this location.

The subject 5,794 square foot parcel is currently developed with a detached 440 square foot detached garage which would be demolished to make way for a three-story 2,928 square foot single-family dwelling. Due to significant slope instability at the rear of the subject parcel, and due to potential wave attack and flooding on the street frontage, the residence would be raised on piers extending into bedrock with the ground floor incorporating breakaway walls intended to collapse without causing structural damage to the elevated portion of the building or the foundation. Rear walls (adjacent to the bluff) would be reinforced and a retaining wall constructed to deflect any potential slide material. In this way, the ground floor of the structure would not contain any habitable features and only the two stories above will constitute living space (consistent with LCP and FEMA flood regulations). The two-story living space would account for just over 2,000 square feet. See Exhibit F attached.

### **B. Analysis of Project Consistency with Local Coastal Program**

#### **1. County Action**

The County approved with conditions a Coastal Zone Permit, a Residential Development Permit to increase the 6 foot height limitation of a retaining wall within the required 5 foot side yard setback to about 12 feet in height, and a Variance to: reduce the required minimum 20 foot front yard setback to about 16 feet for the dwelling and about 8 feet to the edge of the second story deck; to construct a second story deck; to increase the maximum 28 foot height limitation to about 32 feet; to allow three stories; to allow the parking area to exceed a maximum of 50% of the required front yard and increase the maximum floor area ratio from 50% to about 50.53%.

The County found that a variance was necessary to allow for a level of use consistent with other properties in the immediate vicinity. The special circumstances listed by the County applicable to this property include its shape and lack of developable area, its topography, its location, the size and



configuration of other houses in the vicinity, its narrow 35 foot width, its location below an eroding coastal bluff at the rear of the lot, and its location in a coastal wave run-up and/or flooding zone which requires elevation of any new structure above 23 feet mean sea level at the front of the lot. These circumstances together serve to limit the area available for development. The County found that the variance would provide a remedy for the proposed in-fill development of a single-family residence consistent with the existing surrounding residential development. See Exhibit A attached for the County's findings.

## **2. Substantial Issue Determination**

As described above, the Appellants raise five general issues regarding the project's conformance with the certified LCP (see Exhibit B for the full text). Each of these issues is discussed below.

### ***Compatibility of development***

The first general issue raised by the Appellants is that the project approved by the County is not compatible with neighboring development along Beach Drive (see Exhibit B for the full text of the appeal). In support of this argument, the Appellants cite Zoning Code Sections 13.11.072 (Site Design); 13.11.073 (Building Design); 13.11.073(d) describing potential means of achieving Building Articulation; 13.20.130(a)(2) requiring compliance with development standards and design criteria of Zoning Code Chapters 13.10, 13.11 and Section 13.20.140; and 13.20.130(b)(1) requiring visual compatibility with the character of the surrounding neighborhood.

However, the proposed structure is of the same general type and scale of development as that currently found along Beach Drive. As described in the County's findings for this project, 19 of 61 existing homes along this stretch of Beach Drive are three stories in height; the majority of existing homes along Beach Drive have a front setback of 10 feet or less (including the Appellants); many of these existing homes are "box-like" in appearance with minimal architectural relief. There is little information in the record that suggests that the proposed development is inconsistent with the residential structures heretofore constructed along Beach Drive. In fact, the proposed project represents in-fill residential development in a built out area that is possessive of the same general size, mass, scale, and design features as the surrounding built environment (see Exhibit G for photos of the existing Beach Drive streetscape). The County specifically found that the project would be compatible with the physical design, land use intensity and density of the neighborhood.

Design review is often somewhat discretionary, and the Appellants have argued some of the finer points of design compatibility. Nonetheless, the project is substantially consistent with neighboring development along Beach Drive and this issue does not rise to the level of a substantial issue in terms of the project's conformance with the certified LCP.

### ***Adjacent neighbor impacts***

The second general issue raised by the Appellants is that the project approved by the County will result



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in a loss of privacy, private views, light and solar access for the Appellants (as owners of the adjacent residence). The Appellants cite Zoning Sections 13.10.321(a)(5) and 13.11.072(b)(2)(ii) in support of this argument (see Exhibit B for the full text of the appeal):

*13.10.321(a)(5) [Purposes of Residential Districts] To ensure adequate light, air, privacy, solar access, and open space for each dwelling unit.*

*13.11.072(b)(2)(ii) Development should minimize the impact on private views from adjacent parcels, wherever practicable.*

In this case, the proposed project is residential in-fill development of a similar scale as the surrounding built environment (see also above). In-fill development will always bring with it some reduction in neighboring privacy and private views. Although the subject parcel is currently under-developed (i.e., with only a small garage), neighboring residences are not entitled to an unobstructed view corridor over, or continued open space on, the subject site. In fact, straight forward views of the Monterey Bay currently enjoyed by neighboring residences would not be impacted in any way by the proposed project. Moreover, the side yard setbacks, which affect neighboring properties the most, would maintain the 5 foot required setback; these adjacent residences have been themselves constructed with zero east side yard setbacks. The front yard setbacks would be about the same as the neighboring residences (all approximately 8 feet). The County specifically found the project to be consistent with the purpose of the subject residential zone district.

Overall, the impacts of this project on neighboring parcels are negligible. The applicable Zoning Code sections do not require that these impacts be zero. In fact, as residential in-fill, these types of impacts are to be expected. So while a negligible issue may be raised, this issue does not rise to the level of a substantial issue in terms of the project's conformance with the certified LCP.

***Number of stories***

The third general issue raised by the Appellants is that three story residential development is not allowed in Santa Cruz County. The Appellants cite General Plan Policy 8.6.3 in support of this argument (see Exhibit B for the full text of the appeal):

*Policy 8.6.3 Residential structures shall be limited to two stories in urban areas and on parcels smaller than one acre in the rural areas except where explicitly stated in the Residential Site and Development Standards ordinance.*

General Plan Policy 8.6.3 is *not* an LCP Policy. However, Policy 8.6.3 applies to LCP consistency inasmuch as General Plan compliance is required in permit findings (Zoning Section 18.10.230(a)(3)) and for discretionary approvals in general (Zoning Section 13.01.130(a)); Chapters 18.10 and 13.01 of the Zoning Code are included in the LCP's Implementation Plan per Zoning Section 13.03.050(b)(2). Moreover, as described by the Appellant, the two story limitation is also described in the "Site and Structural Dimensions Chart" pursuant to Zoning Section 13.10.323(b) which is part of the LCP's implementation plan.





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However, Zoning Section 13.10.323(b) goes on to state that "these standards shall apply within all residential "R" zone districts, except as noted elsewhere in this Section and uses inconsistent therewith shall be prohibited absent a variance approval." In this case, the County approved a variance to allow three stories at the subject site because the bottom story garage area is non-habitable with break away walls to ensure consistency with FEMA requirements, General Plan Flood Hazard Policies, and Zoning Code Section 16.10.070(e) which requires the lowest habitable floor to be raised above the 100-year flood level. Moreover, as described in the County's findings for this project, 19 of 61 existing homes along this stretch of Beach Drive are three stories in height; all of the two story residences having been constructed prior to floodplain regulations with which they are not now in compliance. See Exhibit G for photos of existing residential development along Beach Drive.

Based upon the unique circumstances at the subject site (including unstable bluffs and potential flooding), the County approved a variance to the two-story height limit as is allowed by Zoning Section 13.10.323(b) (see also variance discussion below). In this way, the Applicant was allowed the same 2 story living area (and approximately 2,000 square feet of habitable space) as is enjoyed by the remainder of the properties along this stretch of Beach Drive (including the Appellants). Allowing a three-story structure at this location does not raise a substantial issue in terms of the project's conformance with the certified LCP.

### **Variations**

The fourth general issue raised by the Appellants is that there is no justification for allowing a variance for height, number of stories, size, and reduced front yard setbacks (see Exhibit B for the full text of the appeal). The County-approved variance: allows three stories (as discussed above); increases the maximum 28 foot height limitation to about 32 feet; reduces the required minimum 20 foot front yard setback to about 16 feet for the dwelling and about 8 feet to the edge of the second story deck; allows a second story deck; allows the parking area to exceed a maximum of 50% of the required front yard; and increases the maximum floor area ratio from 50% to about 50.53%. Although the County approved a height variance, Zoning Code Section 13.10.323(e)(5)(ii) specifically allows for building heights up to 33 feet.

The County found that a variance was necessary to allow for a level of use consistent with other properties in the immediate vicinity. The special circumstances listed by the County applicable to this property include its shape and lack of developable area, its topography, its location, the size and configuration of other houses in the vicinity, its narrow 35 foot width, its location below an eroding coastal bluff at the rear of the lot, and its location in a coastal wave run-up and/or flooding zone which requires elevation of any new structure above 23 feet mean sea level. These circumstances together serve to limit the area available for development. The County found that the variance would provide a remedy for the proposed in-fill development of a single-family residence consistent with the existing surrounding residential development. See Exhibit A attached which includes the County's variance findings.

The Appellants argue that the subject parcel shares the same geologic and flooding risks and is not



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appreciably different from other parcels along Beach Drive. This would appear to be accurate. However, as the County found, the majority of the existing surrounding structures enjoy reduced front and/or side yard setbacks (such as the Appellants). Moreover, the majority of existing homes along Beach Drive have a front setback of 10 feet or less (including the Appellants). Of the 61 existing homes along this stretch of Beach Drive, 19 are three stories in height. The majority of properties in the vicinity were developed more than 50 years ago, predating both the Zoning Code and FEMA requirements. See Exhibit G for photos of existing residential development along Beach Drive.

According to County findings, the ground level of the subject parcel, including structural elements below habitable living space, is essentially 'reserved' for potential landslide materials and flood run-up. As a result, the entirety of living space, including outdoor recreational open space, must be accomplished at this site on the top two stories, including through the outdoor deck areas. It seems reasonable to conclude that because of these special circumstances applicable to the subject property, a variance is appropriate to allow for the same type of development as is enjoyed by other residential properties in the Beach Drive area. In this way, the Applicant is allowed the same 2 story living area (and approximately 2,000 square feet of habitable space) as is enjoyed by the remainder of the properties along this stretch of Beach Drive (including the Appellants).

The Appellants variance arguments do point to the need for the County to develop additional general site development regulations and/or exceptions applicable to residential development along Beach Drive (or in similarly situated flood and landslide prone areas). However, the County has followed its variance procedures, has made the requisite findings supported by the subject parcel's identified geologic and flood constraints, and has approved a project which is compatible with the physical design, land use intensity and density of the neighborhood. So while an issue may be raised by this claim, in no way does this issue rise to the level of a substantial issue in terms of the project's conformance with the certified LCP.

***Procedural error***

The fifth general issue raised by the Appellants is that the County made a procedural error because they did not make a finding of General Plan consistency and did not adopt additional findings following the County's approval of the floor area ratio variance. As cited by the Appellants, General Plan compliance is required for discretionary approvals in general (Zoning Section 13.01.130(a)) and for all approvals (Zoning Code Section 18.10.140). Chapters 18.10 and 13.01 of the Zoning Code are included in the LCP's Implementation Plan per Zoning Section 13.03.050(b)(2). The Appellants make the claim that because the County Planning Commission made the required general plan consistency findings at their June 24, 1998 hearing, and then subsequently approved a floor area ratio variance (with revised variance findings) at their October 28, 1998 hearing without adopting new general plan consistency findings, the floor area ratio variance was never explicitly found to be consistent with the General Plan. Moreover, the Appellants claim that the County did not pursue additional design review, nor did the County adopt new Coastal Zone or development permit findings, after the floor area ratio variance was added to the project. See Exhibit B for the full text of the appeal.



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However, the Appellants argument does not take into account the whole of the County's action. When the Planning Commission approved the additional floor area ratio variance, and adopted revised variance findings, this action did not negate the previous Zoning Administrator and Planning Commission approvals. Rather, this Planning Commission action on October 28, 1998 only had the narrow effect of allowing a variance to floor area ratio requirements and revising the previous variance findings in support of this action. Specifically, the County Planning Commission approved "a Variance to floor area ratio **as part of the original Zoning Administrator approval** of Application #97-0622" (emphasis added). As such, the County's previous findings and conditions still applied (and apply) to the entirety of the project; this includes the Coastal Zone Permit and Development Permit findings as well as the finding that the project was (and is) consistent with the General Plan and pertinent County Ordinance sections (including design review).

Projects are typically altered at all levels of the discretionary review process. Unless the alterations are specifically contrary to previous iterations of the project, it is typical that only the findings necessary to support the alteration are likewise updated. In this case, only the variance findings were altered when the floor area ratio variance was *added* to the project "as part of the original Zoning Administrator approval." All other findings and conditions remained (and remain) in effect.

Furthermore, in this case, the subject floor area ratio variance allowed the subject site to exceed the maximum 50% floor area ratio by .53%; this roughly translates into allowing an additional 31 square feet. This subject alteration did not (and does not) materially impair the review, analysis, and findings previously developed by the County. In any event, this issue does not rise to the level of a substantial issue in terms of the project's conformance with the certified LCP.

### **Substantial Issue Conclusion**

The Appellants raise a number of issues regarding the County's approval of the proposed project. However, none of these issues rise to the level of a *substantial* issue in terms of the project's conformance with the certified LCP. The subject development is in-fill residential development in a built out area that has the same general size, mass, scale, and design features as the surrounding built environment along Beach Drive. Moreover, it seems appropriate in this case to allow for slight modifications to height, setback, floor area, and front yard requirements in order to allow for a modest residential use (in relation to surrounding development) while simultaneously addressing the slope instability and flooding realities of the subject site. Although neighboring property owners, including the Appellants, will necessarily be affected, as the subject residence will replace a small garage on an otherwise vacant parcel, these privacy and view impacts should be minimal. More importantly, the proposed project will not negatively impact *public* view resources as the development is inland of the first through public road with no through public visual access across the subject parcel due to the 100 foot coastal bluffs inland of the proposed dwelling. Finally, the proposed development and the County's findings and conditions for the project sufficiently conform to the standards of the certified LCP.

**As such, and for the reasons further articulated above in this substantial issue determination finding, the Commission finds that no substantial issue is raised in terms of the proposed project's conformance with the certified Santa Cruz County LCP.**



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PLANNING DEPARTMENT



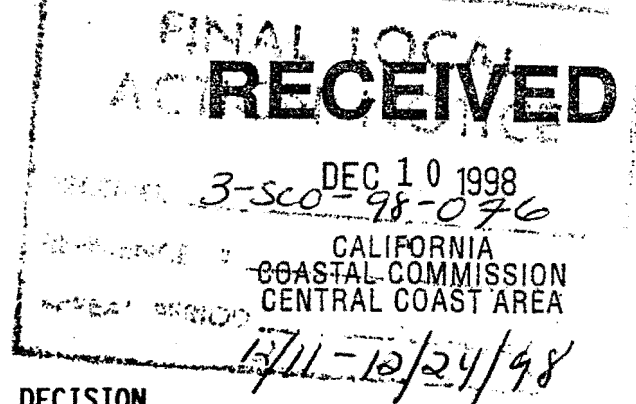
COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER

701 OCEAN STREET ROOM 400 SANTA CRUZ, CALIFORNIA 95060  
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December 8, 1998

Rick Hyman, Senior Planner  
California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, CA 95060



**NOTICE OF FINAL DECISION**

**Application No. 97-0622  
Assessor's Parcel Number 043-105-07  
Applicant: Tracy Robert Johnson**

On December 8, 1998, a final decision was taken by the Santa Cruz County Board of Supervisors which declined to take jurisdiction for the above-referenced application. You are being sent this notice pursuant to Code of Civil Procedure Section 1094.6, which establishes a time limit for seeking judicial review in Court of a final administrative determination by the County of Santa Cruz.

Attached is a copy of the permit with the findings and conditions for approval.

Sincerely,

Joan Van der Hoeven, AICP  
Project Planner  
Development Review

Enclosure

**EXHIBIT A  
SANTA CRUZ COUNTY FINDINGS & CONDITIONS  
1 OF 12 PAGES**

VARIANCE FINDINGS:

1. THAT BECAUSE OF SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY, INCLUDING SIZE, SHAPE, TOPOGRAPHY, LOCATION, OR EXISTING SURROUNDING STRUCTURES, THE STRICT APPLICATION OF THE ZONING ORDINANCE DEPRIVES SUCH PROPERTY OF PRIVILEGES ENJOYED BY OTHER PROPERTY IN THE VICINITY AND UNDER IDENTICAL ZONING CLASSIFICATION.

Special circumstances applicable to this property to justify the granting of a variance to development regulations concerning the height, number of stories, parking on more than 50 percent of the front setback, a reduced front setback and an increased floor area ratio, include the shape of the parcel, the size of useable area on the parcel, the lack of developable area on the parcel, the topography of the parcel, the location of the parcel, and the size and configuration of other houses in the vicinity. A narrow 35 foot property width provides limited area for development as required 5 foot side setbacks leave a 25 foot wide building envelope.

The project site is further constrained by existing topography. It is located below an eroding coastal bluff to the rear of the lot, and in a coastal wave run-up and/or flooding zone which requires elevation of any structure above 23 feet mean sea level at the front of the lot. The proposed structure would exceed the 28 foot height limit by four feet, exceed the two story height limit and exceed the 50 percent floor area ratio by about 0.53 percent, so that the first level would provide the necessary flood elevation required by the geologic report completed for the property and by General Plan policies 6.4.2 and 6.4.3, and by FEMA which regulate development in flood hazard areas. Without counting the non-habitable FEMA floor, the house would meet the floor area ratio requirement of 50 percent. Since this non-habitable floor has to be counted towards floor area ratio due to the County's definition of underfloor area having to do with ceiling height, the floor area ratio variance is necessary.

Due to the steep coastal bluff at the rear of the property, proposed to be retained by a 12 foot high engineered wall to deflect potential slides, the entire back yard is unsuitable for a deck/patio or recreational area as this area is reserved for storage of landslide debris in the event of a slope failure above the site which would flow into the rear yard. Such a landslide could occur at any time due to seismic events as well as storm events. This rear yard is therefore unsuitable for a deck/patio or recreational area, and makes the deck areas at the front of the structure important as the only useable outdoor area available to the parcel. The house is situated as far forward on the lot as possible due to the amount of debris flow catchment area required. This creates the necessity for the front yard variance for the proposed encroachment into the 20 foot front setback of four feet for the house (a 16 foot distance from the house to the front property line). The proposed deck encroachment to within eight feet of the front property line provides needed open space area for the single-family dwelling.

**EXHIBIT A (20F12)**

The vast majority of existing surrounding structures enjoy reduced front and/or side setbacks and the strict application of the zoning ordinance would prevent this property owner from utilizing this site to the same extent as other properties in the vicinity under identical R-1-8 zoning. The majority of properties in the vicinity were developed more than 50 years ago, predating both the zoning ordinance and FEMA regulations.

Required on-site parking takes up more than 50 percent of the 35 foot wide front yard, but provides a total of three spaces on-site so that this property does not compete with coastal visitors for access to public on-street parking on Beach Drive. The proposed deck encroachment to within 8 feet of the front property line and 16 feet to the residence, provides needed open space area for the single-family dwelling.

2. THAT THE GRANTING OF THE VARIANCE WILL BE IN HARMONY WITH THE GENERAL INTENT AND PURPOSE OF ZONING OBJECTIVES AND WILL NOT BE MATERIALLY DETRIMENTAL TO PUBLIC HEALTH, SAFETY, OR WELFARE OR INJURIOUS TO PROPERTY OR IMPROVEMENTS IN THE VICINITY.

Compliance with mitigation measures required by technical studies accepted by the Planning Department (Exhibits E, F, and G of 4/03/98 staff report) will insure that the granting of a variance to construct the proposed single-family dwelling shall not be materially detrimental to the public health, safety or welfare or be injurious to property or improvements in the vicinity. The residence is required to be elevated above 23 feet mean sea level with no habitable features on the ground floor and constructed with breakaway walls and a collapsible garage door. No mechanical, electrical or plumbing equipment shall be installed below the base flood elevation. An engineered 12 foot high retaining wall is to be constructed behind the house to stabilize the base of the coastal bluff above the residence. The rear yard is to be free of obstructions so that there is nothing substantial to deflect slide debris onto adjacent properties.

3. THAT THE GRANTING OF SUCH VARIANCES SHALL NOT CONSTITUTE A GRANT OF SPECIAL PRIVILEGES INCONSISTENT WITH THE LIMITATIONS UPON OTHER PROPERTIES IN THE VICINITY AND ZONE IN WHICH SUCH IS SITUATED.

The granting of a variance to reduce the front setback from the required 20 feet to about 16 feet to the dwelling and about 8 feet to the edge of the cantilevered second floor deck; to increase the maximum height from 28 feet to about 32 feet; to allow three stories; to allow parking to exceed a maximum of 50 percent of the required front yard, and to allow an increase in the floor area ratio from 50 percent to about 50.53 percent will not constitute a grant of special privilege to this parcel as similar variances have been granted in the R-1-8 zone district and immediate vicinity. The variance would provide a remedy for the proposed infill development of a single-family residence consistent with the existing surrounding development.

EXHIBIT A (30F12)

The County has considered and approved similar variance requests with existing surrounding development. Reduced setbacks have been granted at APN's 043-105-03, -06, and -22 for example, under Applications #97-0387 (reduced side setback from 5 feet to 3 feet), #86-45-V (reduced 5 feet setbacks to 3 feet and zero feet), and #4780 (reduced front setback from 10 feet to 5 feet). A permit for a fence greater than 6 feet in the required side yard was also granted at APN 043-105-15 under Application #91-0608.

A field survey and aerial photographs indicate that the majority of existing homes along Beach Drive have a front setback of ten feet or less, so that the proposed project being set back 16 feet to the proposed residence and 8 feet to the second level deck, would not constitute a grant of special privilege inconsistent with existing surrounding development. A field survey has shown that there are at least 19 other three-story homes on Beach Drive, so granting the variance is consistent with the privileges already enjoyed by surrounding development.

**EXHIBIT A (4 of 12)**



COASTAL ZONE PERMIT FINDINGS

1. THAT THE PROJECT IS A USE ALLOWED IN ONE OF THE BASIC ZONE DISTRICTS, OTHER THAN THE SPECIAL USE (SU) DISTRICT, LISTED IN SECTION 13.10.170(d) AS CONSISTENT WITH THE LUP DESIGNATION.

The proposed residence is an allowed use within the Single-family Residential, "R-1-8" zone district and is consistent with the "Urban Low Residential" Land Use Plan designation of the General Plan.

2. THAT THE PROJECT DOES NOT CONFLICT WITH ANY EXISTING EASEMENT OR DEVELOPMENT RESTRICTIONS SUCH AS PUBLIC ACCESS, UTILITY, OR OPEN SPACE EASEMENTS.

The subject property is not affected by any development restrictions that would hinder development of the proposed project.

3. THAT THE PROJECT IS CONSISTENT WITH THE DESIGN CRITERIA AND SPECIAL USE STANDARDS AND CONDITIONS OF THIS CHAPTER PURSUANT TO SECTION 13.20.130 ET SEQ.

Subject to the concurrent approval of the proposed variances, the proposed project is consistent with all applicable regulations under County Code Section 13.20.130 for development within the coastal zone. The structure follows the natural topography of the site as much as possible. The proposed project will be visually compatible with the character of the area given the use of natural materials and colors. These design characteristics will minimize impacts on the site and the surrounding neighborhood.

4. THAT THE PROJECT CONFORMS WITH THE PUBLIC ACCESS, RECREATION, AND VISITOR-SERVING POLICIES, STANDARDS AND MAPS OF THE LOCAL COASTAL PROGRAM LAND USE PLAN, SPECIFICALLY CHAPTERS 2 AND 7, AND, AS TO ANY DEVELOPMENT BETWEEN AND NEAREST PUBLIC ROAD AND THE SEA OR THE SHORELINE OF ANY BODY OF WATER LOCATED WITHIN THE COASTAL ZONE, SUCH DEVELOPMENT IS IN CONFORMITY WITH THE PUBLIC ACCESS AND PUBLIC RECREATION POLICIES OF CHAPTER 3 OF THE COASTAL ACT COMMENCING WITH SECTION 30200.

The proposed project is not subject to the public access requirements given the location of the property beyond the first public road, Beach Drive, and the sea. In addition, the property is not designated for public recreation or visitor serving facility requirements.

5. THAT THE PROPOSED DEVELOPMENT IS IN CONFORMITY WITH THE CERTIFIED LOCAL COASTAL PROGRAM.

The proposed project conforms to the "Urban Low Residential" land use plan designation of the Local Coastal Program and is consistent with the development standards applicable to parcels within the Coastal Zone.

EXHIBIT A (50E12)

General Plan Policy 6.2.15 allows for new development on existing lots of record in areas subject to storm wave inundation or beach or bluff erosion within existing developed neighborhoods where a technical report demonstrates that the potential hazard can be mitigated over the 100-year lifetime of the structure. Mitigations can include, but are not limited to, building setbacks, elevation of the structure, friction pier or deep caisson foundation; and where mitigation of the potential hazard is not dependent on shoreline protection structures except on lots where both adjacent parcels are already similarly protected; and where a deed restriction indicating the potential hazards on the site and the level of prior investigation. This project is subject to conditions of approval based upon the Planning Department's acceptance of the geologic and geotechnical reports dated 10/22/97, (Exhibit F) and 3/4/98 (Exhibit E).

The proposed project is visible from the Scenic Corridor within the Coastal Zone consistent with the Local Coastal Program, and is conditioned to minimize visual intrusion.

EXHIBIT A (6 OF 12)

DEVELOPMENT PERMIT FINDINGS:

1. THAT THE PROPOSED LOCATION OF THE PROJECT AND THE CONDITIONS UNDER WHICH IT WOULD BE OPERATED OR MAINTAINED WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY, OR WELFARE OF PERSONS RESIDING OR WORKING IN THE NEIGHBORHOOD OR THE GENERAL PUBLIC, OR BE MATERIALLY INJURIOUS TO PROPERTIES OR IMPROVEMENTS IN THE VICINITY.

The location of the proposed project will not be materially detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, or be materially injurious to properties or improvements in the vicinity in that the proposed project complies with all development regulations applicable to the site. Project approval is subject to meeting conditions of providing breakaway walls and garage door collapse on the ground floor, with no plumbing, mechanical or electrical equipment installed below the base flood elevation of 23 feet above mean sea level.

2. THAT THE PROPOSED LOCATION OF THE PROJECT AND THE CONDITIONS UNDER WHICH IT WOULD BE OPERATED OR MAINTAINED WILL BE CONSISTENT WITH ALL PERTINENT COUNTY ORDINANCES AND THE PURPOSE OF THE ZONE DISTRICT IN WHICH THE SITE IS LOCATED.

The proposed project is an allowed use within the "Single-family Residential" zone district. Subject to the concurrent approval of the proposed variance, the location of the project complies with the applicable regulations of the "R-1-6" zone district under County Code Section 13.10.323. Particularly, the proposed project complies with the maximum 30 percent lot coverage on site, required setbacks, with the exception of the front setback, and required parking standards. The project exceeds the 28 foot maximum height standards by about 4 feet and exceeds the two story limit within the Urban Services line to be three stories in height, as no habitable features are permitted on the ground floor due to required flood mitigation measures (Exhibit G). The retaining wall exceeding the six foot height limit is required to stabilize the coastal bluff above the property and will not obstruct coastal views or block light or air to the adjoining properties in that a minimum 5 foot side setback shall be maintained.

3. THAT THE PROPOSED USE IS CONSISTENT WITH ALL ELEMENTS OF THE COUNTY GENERAL PLAN AND WITH ANY SPECIFIC PLAN WHICH HAS BEEN ADOPTED FOR THE AREA.

The proposed project is consistent with the "Urban Low Residential" General Plan Land Use Plan designation. Compliance with mitigations of the Geologic study prepared for the project by Foxx, Nielsen and Associates in June 1997 and the Geotechnical study by Haro, Kasunich and Associates in June 1997 as accepted by the Planning Department in October 1997, insure that the project demonstrates a 100-year lifetime of the structure as required by General Plan Policy 6.2.15.

EXHIBIT A (7 OF 12)

4. THAT THE PROPOSED USE WILL NOT OVERLOAD UTILITIES AND WILL NOT GENERATE MORE THAN THE ACCEPTABLE LEVEL OF TRAFFIC ON THE STREETS IN THE VICINITY.

The proposed use will not overload utilities or generate more than the acceptable level of traffic expected for the proposed residence.

5. THAT THE PROPOSED PROJECT WILL COMPLEMENT AND HARMONIZE WITH THE EXISTING AND PROPOSED LAND USES IN THE VICINITY AND WILL BE COMPATIBLE WITH THE PHYSICAL DESIGN ASPECTS, LAND USE INTENSITIES, AND DWELLING UNIT DENSITIES OF THE NEIGHBORHOOD.

The proposed project will complement and harmonize with the existing use of the property and surrounding uses. The proposed structure will be compatible with the character of the area given the utilization of natural earth tone materials and colors.

CONDITIONS OF APPROVAL

Coastal Zone Permit No. 97-0622

Applicant and Property Owner: Tracy Johnson for Norma Odenweller  
Assessor's Parcel No. 043-105-07  
Property location and address: 413 Beach Dr., Aptos  
Aptos planning area

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EXHIBITS:

A. Architectural Plans prepared by Tracy Johnson dated 1/27/1998,  
revised 2/17/98, revised 4/13/98.

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I. This permit authorizes the construction of a single-family dwelling.  
Prior to exercising any rights granted by this permit including, with-  
out limitation, any construction or site disturbance, the applicant/  
owner shall:

- A. Sign, date, and return to the Planning Department one copy of the  
approval to indicate acceptance and agreement with the conditions  
thereof.
- B. Obtain a Demolition Permit and Building Permit from the Santa  
Cruz County Building Official.

II. Prior to issuance of a Building Permit the applicant/owner shall:

- A. Submit Final Architectural Plans for review and approval by the  
Planning Department. The final plans shall be in substantial  
compliance with the plans marked Exhibit "A" on file with the  
Planning Department. The final plans shall include, but not be  
limited to, the following:
  - 1. Exterior elevations identifying finish materials and colors.  
The colors shall be earthen tone, shall blend in with the  
coastal bluff (the intent being to minimize the visual im-  
pacts), and shall be submitted to the Zoning Administrator  
for review and approval.
  - 2. Floor plans identifying each room and its dimensions.
  - 3. A site plan showing the location of all site improvements,  
including, but not limited to, points of ingress and egress,  
parking areas, and accessory structures.

EXHIBIT A (9 OF 12)

4. A final Landscape Plan. This plan shall include the location, size, and species of all existing and proposed trees, plants, and turf areas, and irrigation system.
5. Final plans shall note that Soquel Creek Water District will provide water service and shall meet all requirements of the District including payment of any connection and inspection fees. Final engineered plans for water connection shall be reviewed and accepted by the District.
6. Final plans shall note that Santa Cruz County Sanitation District will provide sewer service and shall meet all requirements of the District including payment of any connection and inspection fees. Final engineered plans for the sewer system shall be reviewed and accepted by the District.
7. Meet all requirements and pay the appropriate plan check fee of the Aptos/La Selva Fire Protection District as stated in their letter/memorandum dated 9/15/97.
8. Follow all recommendations of the geotechnical/geologic reports prepared by Foxx, Nielsen & Assoc. and Haro, Kasunich & Assoc. for this project dated 6/97, regarding the construction and other improvements on the site. All pertinent geotechnical/geologic report recommendations shall be included in the construction drawings submitted to the County for a Building Permit. All recommendations contained in the County acceptance letter(s) dated 10/22/97, shall be incorporated into the final design. A plan review letter from the geotechnical engineer/project geologist shall be submitted with the plans stating that the plans have been reviewed and found to be in compliance with the recommendations of the geotechnical/geologic report.
9. The project shall comply with all requirements of the 3/4/98 memo from Senior Civil Engineer, Rachel Lather including:
  - a) All breakaway walls and the garage door shall be certified by a registered civil engineer or architect and meet the following conditions:
    - i) Breakaway wall and garage door collapse shall result from a water load less than that which would occur during the base flood, and
    - ii) The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of a base flood.
  - b) Any walls on the ground floor not designated as breakaway shall be demonstrated to be needed for shear or structural support and approved by Environmental Planning.
  - c) The storage room on the ground floor shall be designed with breakaway walls.

**EXHIBIT A (10 OF 12)**

- d) No mechanical, electrical, or plumbing equipment shall be installed below the base flood elevation.
  - e) All fences shall comply with FEMA standards. No solid fence is allowed. The fence shall comply with the 20 foot front setback.
10. The lowest habitable floor area must be elevated 2 feet above flood level for a total of 23 feet above mean sea level.
- B. Pay the Santa Cruz County Park Dedication fee in effect at the time of Building Permit issuance. On 4/3/98 this fee would total \$2,790.00, (\$930/bedroom, Aptos Planning Area).
  - C. Pay the Santa Cruz County Transportation Improvement fee in effect at the time of Building Permit issuance. On 4/3/98, this fee would total \$2,000.00.
  - D. Pay the Santa Cruz County Roadside Improvement fee in effect at the time of Building Permit issuance. On 4/3/98 this fee would total \$2,000.00.
  - E. Pay the Santa Cruz County Child Care fee in effect at the time of Building Permit issuance. On 4/3/98 the fee would total \$327.00, (\$109.00 per bedroom).
  - F. Meet all requirements of the Department of Public Works and pay all fees for Zone 6 Santa Cruz County Flood Control and Water Conservation District including plan check and permit processing fees as stated in their memorandum dated 9/24/97.
  - G. Obtain an Encroachment Permit from the Department of Public Works, as necessary, for any work performed in the public right-of-way. All work shall be consistent with the Department of Public Works Design Criteria.
  - H. Submit a written statement signed by an authorized representative of the school district in which the project is located confirming payment in full of all applicable developer fees and other requirements lawfully imposed by the school district in which the project is located.
  - I. Record a Declaration of Acknowledgement, on a form provided by the Planning Department, in the Office of the County Recorder, providing notice of a Geologic Hazard relating to location adjacent to an unstable coastal bluff/location adjacent to a landslide/location subject to storm wave inundation.
  - J. A Declaration of Restriction limiting the use of the rear yard shall be submitted to staff for review and approval prior to recordation.

EXHIBIT A (11 OF 12)  
22

EXHIBIT B

- K. Only translucent windows within the stairwell shall be utilized along the east side of the building.
- III. All construction shall be performed in accordance with the approved plans. Prior to final building inspection and building occupancy, the applicant/owner shall meet the following conditions:
- A. All site improvements shown on the final approved Building Permit plans shall be installed.
  - B. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.
  - C. The soils engineer/project geologist shall submit a letter to the Planning Department verifying that all construction has been performed according to the recommendations of the accepted geotechnical report. A copy of the letter shall be kept in the project file for future reference.

IV. Operational Conditions.

- A. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.

Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

PLEASE NOTE: THIS PERMIT EXPIRES TWO YEARS FROM DATE OF APPROVAL UNLESS YOU OBTAIN YOUR BUILDING PERMIT AND COMMENCE CONSTRUCTION.

EXHIBIT A (12 OF 12)  
23

EXHIBIT B



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE  
725 FRONT STREET, STE. 300  
SANTA CRUZ, CA 95060  
(408) 427-4863  
HEARING IMPAIRED: (415) 904-5200

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

RECEIVED



DEC 24 1998

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Please Review Attached Appeal Information Sheet Prior To  
This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

See attached letter from Douglas Marshall,  
dated 12/24/98

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Santa Cruz County

2. Brief description of development being appealed: See attached letter

3. Development's location (street address, assessor's parcel no., cross street, etc.): See attached letter; APN 43-105-07

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: X

c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SCO-98-117

DATE FILED: 12/28/98

DISTRICT: Central Coast District

EXHIBIT B

APPEAL OF JIM & JUDI CRAIK

1 OF 14 PAGES

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a.  Planning Director/Zoning Administrator      c.  Planning Commission  
b.  City Council/Board of Supervisors      d.  Other \_\_\_\_\_

6. Date of local government's decision: 12/8/98

7. Local government's file number (if any): see attached letter  
97-0622

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:  
Norma Odeweller + Robert Fleck  
101 First St., Suite 461  
Los Altos, CA, 94022

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) Jim + Judi Crook  
(See attached letter)
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_
- (4) \_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See attached letter.

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Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

  
\_\_\_\_\_  
Signature of Appellant(s) or  
Authorized Agent George Pellost

Date 12/24/98

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

**EXHIBIT B (3 OF 14)**

\_\_\_\_\_  
Signature of Appellant(s)

**DOUGLAS E. MARSHALL**  
**ATTORNEY AT LAW**  
**108 Locust Street, Suite 11**  
**Santa Cruz, California 95060**  
(831) 425-7900  
Facsimile: (831) 425-7924

**RECEIVED**

DEC 24 1998

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

December 24, 1998

California Coastal Commission  
725 Front Street, 3<sup>rd</sup> Floor  
Santa Cruz, CA 95060

*HAND DELIVERED*

**RE: APPEAL OF APPROVAL OF SANTA CRUZ COUNTY APP. NO. 97-0622**  
**PROJECT LOCATION: 413 BEACH DRIVE, APTOS, APN 43-105-07**  
**APPLICANT: TRACY ROBERT JOHNSON for**  
**NORMA ODENWELLER and ROBERT FLECK**  
**APPELLANTS: JIM CRAIK and JUDI CRAIK**

Members of the Coastal Commission:

This appeal is submitted on behalf of Jim and Judi Craik who own a home next to the above-referenced project. The Craiks' home is located at 415 Beach Drive (APN 43-105-08), which is immediately to the southeast of the project. The Craiks ask you deny this project because it fails to comply with substantive and procedural requirements of the Santa Cruz County Local Coastal Plan (LCP).

### Substantive Reasons for Denial

There are essentially three substantive reasons for denial.

**First**, the approved three-story, box-like structure, is not compatible with the neighboring two-story homes on Beach Drive, which typically have staggered front yard setbacks, bay windows or other architectural features that break up building scale and bulk. This is evident in the attached photographic rendering, marked as Exhibit 1, which shows the project together with surrounding homes along Beach Drive; and, it is evident from a model of the project and two adjacent homes, which was given to staff at the time this appeal was submitted.

Design compatibility is required by Santa Cruz County (herein "County") Code Section 13.20.130(b)(1), which is part of Chapter 13.20; and, 13.20.130(a)(2) also requires compliance with the design criteria of Chapter 13.11. Chapter 13.11 requires site design compatibility and building design compatibility with adjacent development in Code Sections 13.11.072 and 13.11.073; and, by encouraging building variation in "wall plane" and "roof line" and discouraging "flat," "void" surfaces on structures with street frontage, Code Section 13.11.073(d) appears to provide an explicit basis for denial of the applicants' box-like structure. Chapters 13.20 and 13.11 are included in the County's LCP pursuant to County Code Section 13.03.050(b)(2).

**EXHIBIT B (4 OF 14)**

The approved three-story design is not only visually incompatible with neighboring two-story homes, the location of its decks and windows will substantially detract from the privacy of the Craiks' home, primarily by providing clear views of their second floor and rear yard. Like other homes on Beach Drive, the Craiks' second floor and rear yard constitute nearly their entire private area. To help protect the privacy of these areas requires more attention to design, possibly by eliminating portions of the project's decks and relocating its side windows. Privacy is one of the stated purposes of the area's residential zoning based on County Code Section 13.10.321(a)(5); and, since this code section is part of Chapter 13.10, it is included in the County's LCP pursuant to County Code Section 13.03.050(b)(2) and 13.20.130(a)(2). Compliance with the purposes of the project's zone district, as outlined in Code Section 13.10.321(a), is specifically required by the project's development permit findings in Code Section 18.10.230(a)(2), which is part of Chapter 18.10. Chapter 18.10 is included in the County's LCP pursuant to County Code Section 13.03.050(b)(2).

The third floor is also objected to for compatibility reasons because, in addition to its visual effect and its effect on privacy (discussed above), its eaves and flat roof design will substantially block light and solar access on the adjacent properties. Like privacy, light and solar access are protected by County Code Section 13.10.321(a)(5). To solve this problem, a pitched or partially pitched roof could help reduce the shading effect of the project on these properties; and, since the adjacent properties have pitched roofs, this would also make the project more visually compatible with these properties.

Furthermore, the design of the project's second floor and second floor deck is objected to because it will block much of the Craiks' second floor side view of the Monterey Bay. This is so because the project's second floor living area is about sixteen (16) feet from the front property line and the project's second floor deck is only about eight (8) feet from the front property line, whereas the Craiks' second floor (on the side next to the project) is about twenty-five (25) feet from the front property line. The required setback is twenty (20) feet. Because the project's second floor will be substantially closer to the front property line, it will gain a side view of the bay at the Craiks' expense. But, this is unnecessary. If, like the Craiks' home, the project had staggered front yard setbacks so that the side of the dwelling on the second floor next to the Craiks was set back to be similar to the Craiks' setback (on that side), or if it at least complied with the County's twenty (20) foot setback, then both properties would have good side views of the bay. With good design, i.e. with a compatible design, there is no reason that the development of the subject property need be at the Craiks' expense. A design that helps protect private views is required by the LCP because County Code Section 13.11.072(b)(2)(ii) states that "[d]evelopment should minimize the impact on private views from adjacent parcels, wherever practicable." As indicated above, Chapter 13.11 is part of the County's LCP.

Like the Craiks, a majority of the property owners on Beach Drive submitted petitions and/or letters to the County that both explain their objections to the project's design and what they believe is needed for project approval. However, despite the merit of their objections, no serious design changes have ever been required by the County while it processed this application. The Zoning Administrator only suggested some "rounding off" on the corners of the decks, and the applicants have made some other minor changes in order to comply with Building Code requirements. No changes of any kind were required by the Planning Commission or Board of Supervisors. Basically, the applicants' approved design is the same design the applicants initially submitted to the County.

EXHIBIT B (5 OF 14)

**Second**, the approved three-story dwelling is inconsistent with the County General Plan because of the specific and mandatory two-story limitation in General Plan Policy 8.6.3. This policy states:

**"Story Limitation**

Residential structures shall be limited to two stories in urban areas and on parcels smaller than one acre in the rural areas except where explicitly stated in the Residential Site and Development Standards ordinance." (*emphasis added*)

Here, the project is located within the Urban Services Line and, in any event, since the subject property is less than one acre, there is no doubt as to the applicability of this General Plan Policy. The only question is whether there is an "explicit" exception.

At the Zoning Administrator (ZA) level, there is no indication in the record that anyone was even aware of this General Plan Policy. Therefore, the Deputy Zoning Administrator's decision to approve a variance for a three-story dwelling was probably only done to solve a conflict with the County Code's two-story limitation. The Code's two-story limitation for the subject property's R-1-8 zoning is shown in the County's site regulation charts, referenced in Code Section 13.10.323(b). Since compliance with General Plan Policy 8.6.3 was not addressed at the ZA level, there was, of course, no discussion of any possible "explicit" exception to this policy at the ZA level.

The first time General Plan Policy 8.6.3 was addressed by staff was at the Planning Commission level, in response to the issues raised in the appeal from the Deputy Zoning Administrator's decision. At that time, staff first argued that the approved dwelling was really only two stories because the first floor was not habitable. This argument was immediately challenged because all the public notices for this project describe it as a three-story dwelling. And, when it was shown that a floor with non-habitable space still counted as a story, as this term is defined in Code Section 13.10.700-S, the Planning Director then argued that the first floor did not count as a story because it was an "under floor," which is a stated exception from the Code's definition of a story. This argument of the Planning Director was set forth in his August 3<sup>rd</sup> letter to the Board of Supervisors (see page 3 of his letter) in response to the issues raised in the appeal from the Planning Commission's decision. However, when it was then shown that the first floor is not an under floor, as this term is defined in Code Section 13.10.700-U (since it contains stairs and a garage), the Planning Director changed his mind and now argues that General Plan consistency is provided by a variance from Policy 8.6.3, based on County Code Section 13.10.323(b). This position is stated in his November 18<sup>th</sup> letter to the Board of Supervisors (see page 2 of his letter). But, this position is not supported by the project's findings, which never mention this code section or General Plan Policy 8.6.3. More importantly, no "explicit" exception from Policy 8.6.3 can be found in Code Section 13.10.323(b) in that it only provides general authorization for variances from County site regulations. And, while some explicit exceptions to the two-story limitation are provided in the Code - such as the one for rural homes in Code Section 13.10.323(e)(4) - none are applicable here and, as I understand the County's position, they are not arguing that any of the Code's "explicit" exceptions are applicable. Their argument is simply that they have the right to grant a variance from the General Plan. The appellants disagree.

**EXHIBIT B (6 OF 14)**

Not only does Code Section 13.10.323(b) fail to provide the necessary "explicit" exception required by General Plan Policy 8.6.3, it does not provide any indication of an intent that it should be used to grant variances from County General Plan Policies. It only provides for variances from the site regulation "standards," not General Plan Policies. Without an express intent that it be use to grant variances from General Plan Policies, none should be implied because: 1) the County's General Plan states, on page 1-18, that it is the "constitution" of County land use planning and that it is "at the top of the hierarchy of land use regulation;" and, 2) state and local variance regulations only provide in their required findings that variances are for relief from "strict application of the zoning ordinance." There is no state or local authority for the view that variances can include relief from General Plan Policies. The County's General Plan argument is disturbing in that it is contrary to some of the most basic concepts of land use planning.

Since General Plan Policy 8.6.3 is a specific and mandatory policy, compliance is required for the reasons given in Families Unafraid to Uphold Rural Etc. County v. Board of Supervisors (1998) 62 CA4th 1332, 1341-1343. The County's failure to comply with this policy is a violation of the County's LCP because: 1) County Code Section 13.20.110, which specifies the findings needed for Coastal Act compliance, requires development permit findings in accordance with Chapter 18.10; and, 2) the development permit findings in Chapter 18.10 include a required finding of General Plan consistency with "all" elements of the County General Plan in Code Section 18.10.230(a)(3). Also, Chapter 13.01 specifically requires General Plan compliance for projects in Code Section 13.01.130(a), and this code section is also included in the County's LCP pursuant to Code Section 13.03.050(b)(2).

If the County wants to approve a three-story dwelling on the subject property, they must first adopt an explicit exception from Coastal Plan Policy 8.6.3, or amend their General Plan to delete this policy. Nothing less is permissible.

**Third**, since the variance findings for the project do not (and can not) identify unique characteristics of the subject property in comparison with other property in the vicinity, there is no justification for the project's litany of variances. These variances include, among others, variances for height, number of stories, size, and reduced front yard setbacks along the entire frontage of the project and on all floors. As stated by the court in vacating a variance approval in Orinda Assn. v. Board of Supervisors (1986) 182 CA3d 1145, at page 1166, "... the language of ... Government Code Section 65906 [which regulates variances] emphasizes disparities between properties, not treatment of the subject property's characteristics in the abstract."

Here, the evidence shows no appreciable disparities between the subject property and other property in the vicinity.

Looking first at the attached zoning map, marked as Exhibit 2, since the "vicinity" of the subject parcel for purposes of variance findings is limited to property under "identical" zoning, the "vicinity" in this case is limited to the subject property's R-1-8 Zone District. Notably, this "vicinity" does not include homes located at the beginning or at the end of Beach Drive. Next, looking at the attached parcel map, marked as Exhibit 3, the subject property's R-1-8 Zone District includes the parcels shown in block "5," except for the parcels on each end of this block.

EXHIBIT B (7 OF 14)

\* STAFF NOTE: PER 1/17/99  
PHONE CALL WITH DOUG MARRIAN,  
THIS IS MEANT TO SAY "GENERAL  
PLAN POLICY" NOT "COASTAL  
PLAN POLICY"

Given the above-described "vicinity" for purposes of variance findings, it is evident from the attached parcel map that the subject property is similar in size and shape to other properties in the vicinity. Indeed, it appears to be nearly identical to its neighboring properties.

As to topography and the geologic constraints of landslide debris flow and wave run-up potential, staff admitted in their staff report for the June 24<sup>th</sup> Planning Commission hearing that "slope failure and flood hazard affect each parcel on Beach Drive" (see page 4 of staff report). Also, Jerry Weber, a Ph.D. Engineering Geologist, states in an August 17, 1998 letter, which was submitted to the County, that: "The level of hazard to the subject property from both debris avalanches/flows and coastal flooding is essentially the same as for all the other homes along Beach Drive." There is no evidence in the record contradicting Jerry Weber's opinion. Even the applicants admit in a letter to the Planning Commission, dated May 8, 1998: "Yes, all property along Beach Drive face the same geological risks."

While it is evident that the characteristics of the subject property are not different from other property in the vicinity, the County has argued that FEMA rules and landslide safety rules justify variances because, in essence, these rules require that the first floor not include habitable space. Instead, the first floor is to be used mainly as garage space and as space for wave run-up and landslide debris flow. The County argues that these rules create a hardship for the project in that these rules were not imposed on other properties in the vicinity that were developed prior to the adoption of these rules.

But, the problem with the County's argument is that FEMA rules, or any other rules governing geologic safety, are not what makes a given property unique for purposes of making a special circumstance finding. Variance finding requirements speak only about the subject property's physical characteristics in comparison with other property in the vicinity. In any event, FEMA rules, or other rules governing geologic safety, can not be the basis for a special circumstance finding in this case because these rules are applicable to development on any other property in the vicinity to the same degree they are applicable to the subject property. This is so because, in the applicants' own words, "... all property along Beach Drive face the same geological risks."

Also, the County's FEMA argument is particularly flawed with regard to the variance for the third floor in that there is no indication of any intent that these FEMA rules, or other geologic rules, should ever be used to justify an exception to General Plan Policy 8.6.3. To begin with, this is so because Code Sections 16.10.040(u) and (v) indicate that FEMA rules were formally in effect in 1986, and since no exceptions from General Plan Policy 8.6.3 were adopted for geologic constraints when this General Plan policy was adopted in 1994, there is no reasonable basis to believe that the County intended geologic constraints to justify an exception. Also, in fact, no three-story homes have been built on Beach Drive, or in any other urban area I am aware of in Santa Cruz County, since the adoption of General Plan Policy 8.6.3 in 1994. An application was submitted for two three-story homes on Beach Drive in 1996, and both were denied until they were redesigned as two-story homes (see App. No. 96-0159 for APN's 43-152-55 and 43-152-56). There is only one three-story home in the vicinity of the project. That home was built in 1963. It is located on APN 43-105-22 (437 Beach Drive), and it is eleven parcels to the southeast of the project. All the other homes in the vicinity are two stories. Accordingly, the approval of a three-story dwelling in this case is a grant of special privilege, which is specifically prohibited by state and local rules.



Finally, even if we were to assume for discussion purposes that geologic constraints could justify approval of some development not enjoyed by others in the vicinity, the County has not explained the extent of its variances. For example, if it justifies front yard variances for decks and living space because of the inability to use the rear yard due to the potential for landslide debris, why do the front yard variances have to extend across the entire frontage of the dwelling? Why can't there be a staggered setback to mitigate impacts on adjacent properties, and why are front yard variances being granted on all floors? And, given that the front yard variances are due to geologic constraints, why then are geologic constraints also being used to grant a height variance, a third floor variance, and a size variance? Why isn't a two-story dwelling with only one front yard variance sufficient? The approved size, due to a floor area ratio variance, is now 2,928 square feet. However, the average size of homes in the vicinity has been shown to be only a little more than 1,500 square feet. And, as to height, the attached letter from a structural engineer, marked as Exhibit 4, show that even a three-story home could be built in 28 feet and that the proposed home could be built in 29 feet. So, why is the County approving a height variance for 32 feet along with all the other variances? The cumulative effect of these variances, and the absence of mitigation measures, shows why the approved design is not compatible with adjacent properties.

### **Procedural Reasons for Denial**

The procedural reasons for denial involve errors made at a Planning Commission hearing on October 28, 1998. This hearing was required by the Board of Supervisors to address a size variance, based on the County's Floor Area Ratio (FAR) rules. Basically, two errors were made by the Planning Commission.

**First**, there was no finding or determination by the Planning Commission of General Plan compliance for the FAR variance on October 28<sup>th</sup>, although General Plan compliance is required for each and every project approval according to County Code Sections 13.01.130(a) and 18.10.140 and, in particular, consistency with General Plan Policy 8.6.3 is required by the express terms of the County's 1994 General Plan. While General Plan findings were made by the Planning Commission at their June 24<sup>th</sup> hearing, these findings did not contemplate and do not address the FAR variance approved on October 28<sup>th</sup>. As explained above, the code sections in Chapters 13.01 and 18.10 are part of the County's LCP.

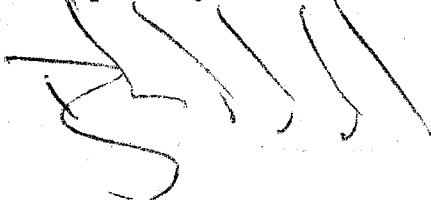
**Second**, there was no further design review for the (new) FAR variance pursuant to Chapter 13.11 of the County Code, nor did the Commission adopt or even consider new Coastal Zone findings or new development permit findings, although all of this is required by the Code. A new variance is surely a project change, and Code Section 13.11.050 requires design review for a project subject to 13.11 prior to a public hearing. Where, as here, the subject property is within the viewshed of a scenic corridor and, therefore, meets the definition of a "sensitive site" per County Code Section 13.11.030(u), design review is required per County Code Section 13.11.040(a). As to coastal permit requirements, here too, a new variance would appear to be a project change requiring new findings pursuant to County Code Sections 13.20.050 and 13.20.110; and, Code Section 13.20.110 requires development permit findings as well. Also, County Section 13.10.230(c) specifically requires development permit findings for any variance. These rules are also part of the County's LCP.

Moreover, further attention to design requirements and further attention to coastal and development finding requirements would seem to be particularly appropriate for the applicants' (new) FAR variance. This is so because the purpose of a floor area ratio variance is to be able to build a bigger home than what is normally allowed, and compliance with the requirements for such a home is a major issue raised by neighboring homeowners. To just gloss over these requirements is to ignore the neighbors' legitimate concern.

**Conclusion**

For the above reasons, the County's approval fails to comply with the County's LCP and, therefore, the project should be denied.

Respectfully Submitted.



Douglas E. Marshall, Esq.  
Attorney for Jim & Judi Craik

cc: *Jim & Judi Craik*  
*Joan Van der Hoeven (Staff Planner)*  
*Lloyd Williams, Esq. (Attorney for Applicants)*

**EXHIBIT B (10 OF 14)**

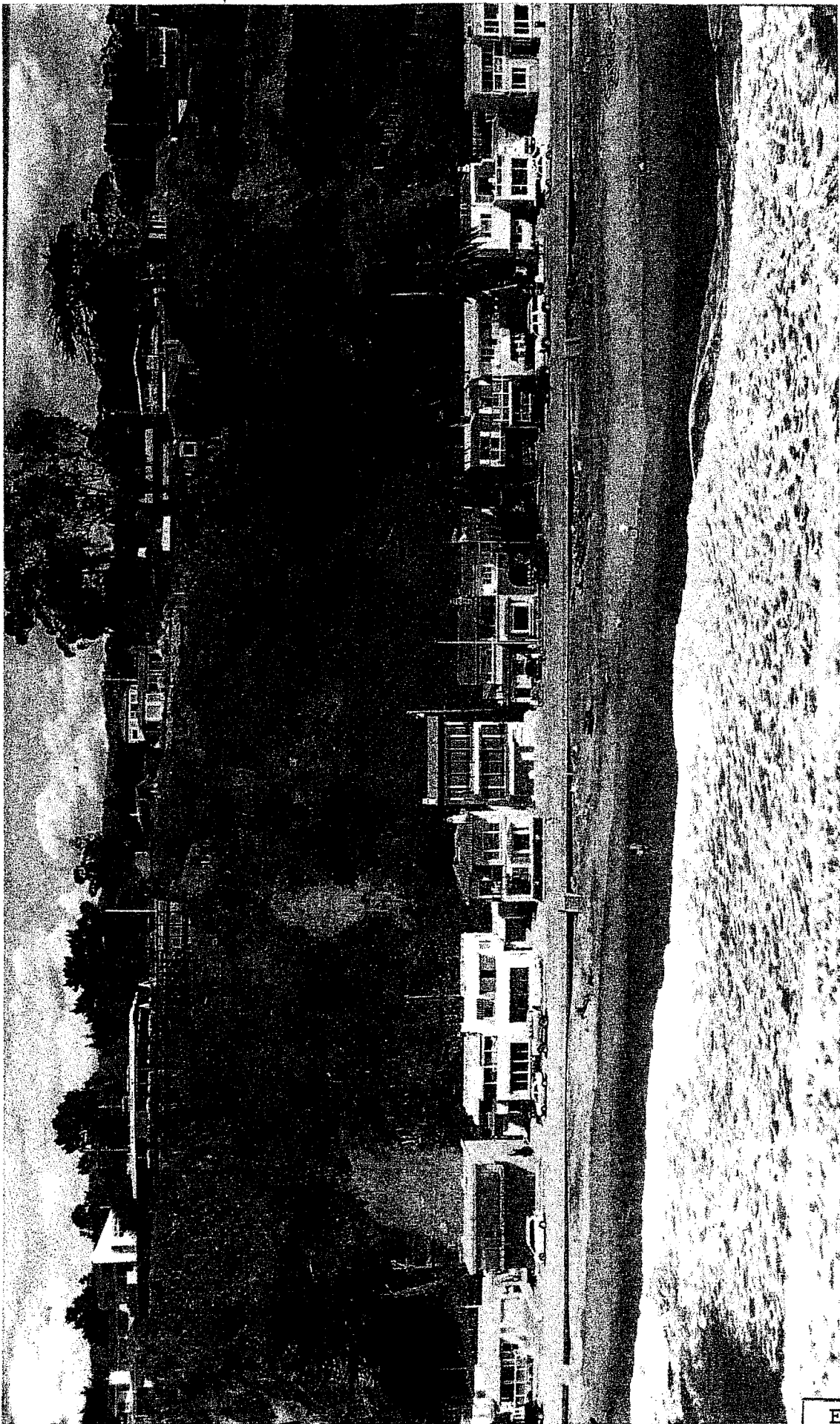
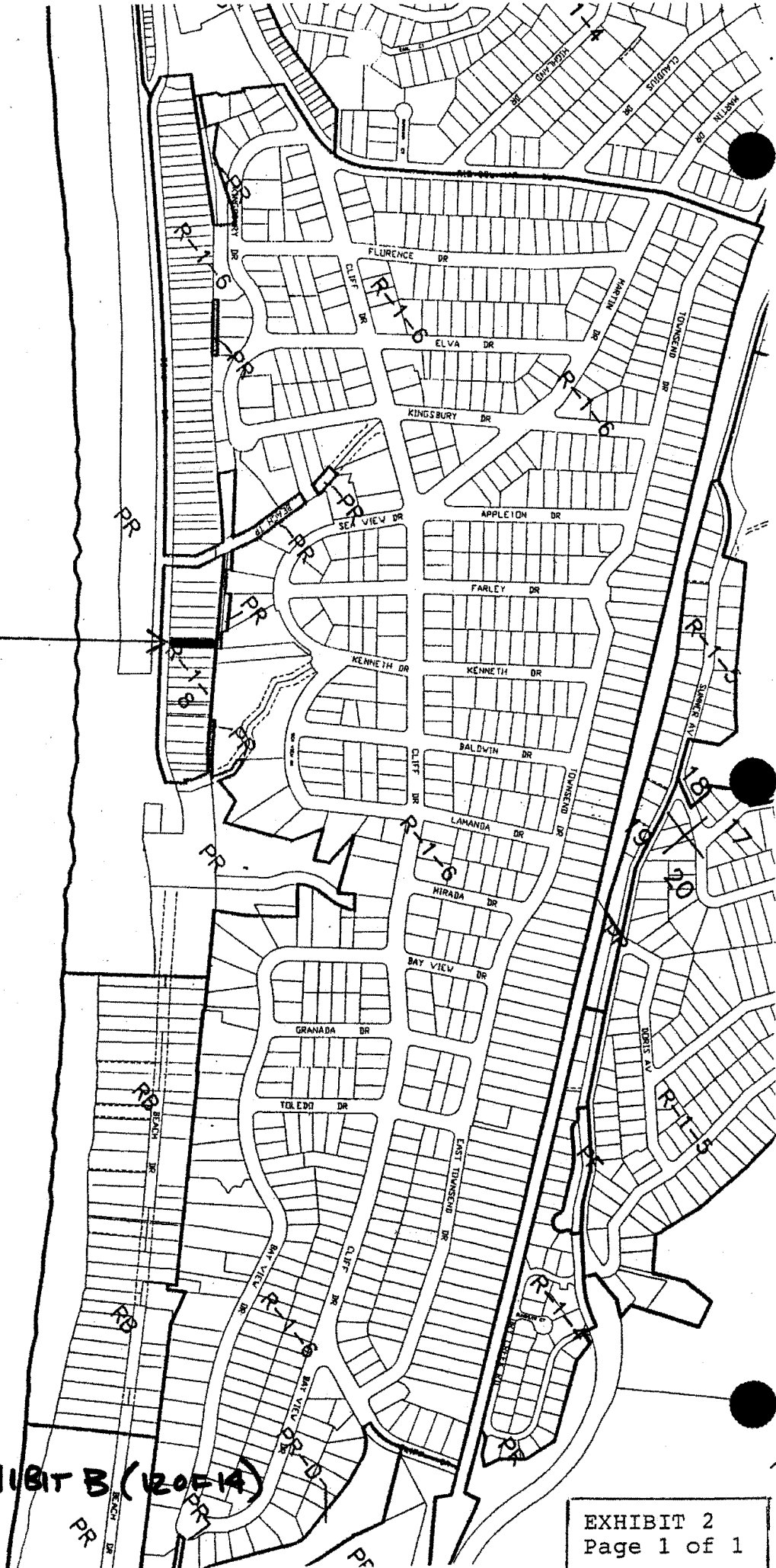


EXHIBIT B (11 OF 14)

Subject Property

EXHIBIT B (120514)

EXHIBIT 2  
Page 1 of 1



FOR TAX PURPOSES  
ONLY

POR. APTOS RANCHO  
S.E. 1/4 SEC. 18, & N.E. 1/4 SEC. 19, T.11S., R.1E. M.D.B.M. PROJECTED.

Tax Area Code  
69-101

43-10

SCANNED

7-PM-66  
8-24-72

KINGSBURY DR.

PARCEL MAP  
Vol. 6 Pg. 3  
5-9-72

SEC. 18  
SEC. 19

(03)

(04)

25009

APTOS BEACH COUNTRY CLUB SUB. 6. M.B. 23-35

DRIVE

CLIFF  
R.S. MAP (M.B. 45-44) 10/19/66

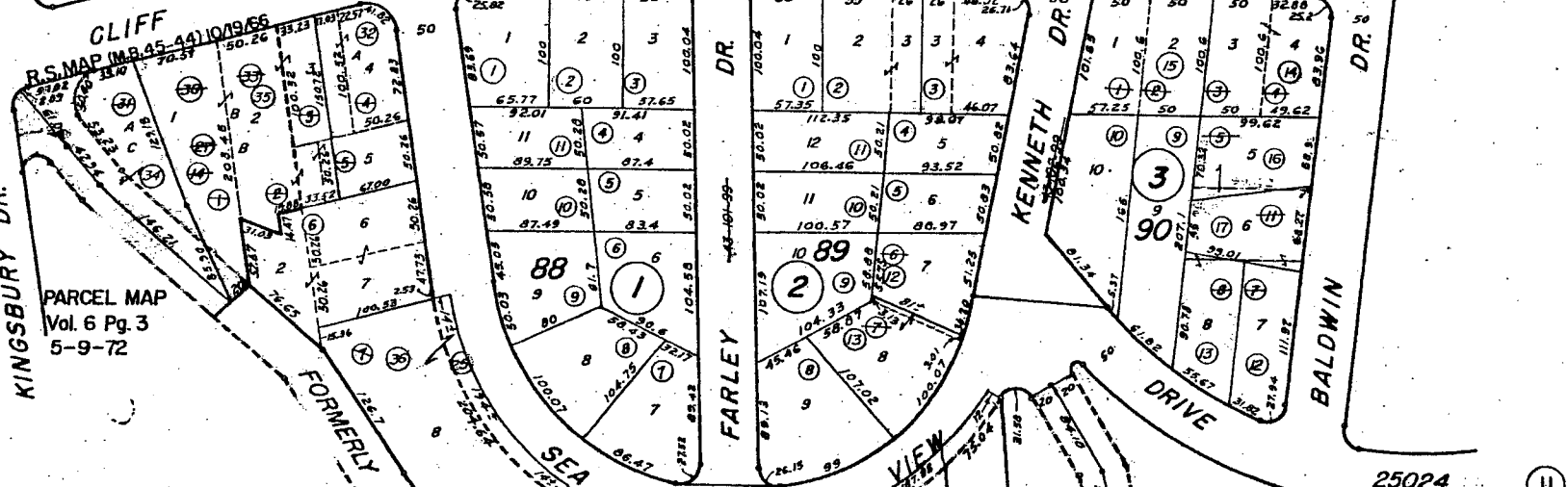


EXHIBIT 3  
Page 1 of 1

EXHIBIT B (13 OF 14)

(09)

(11)

25024

9 PM 39  
1-2-973

APTOS BEACH COUNTRY CLUB SUB. 8. M.B. 24-26

BEACH

25005

DR.

Note - Assessor's Parcel Block &  
Lot Numbers Shown in Circles

Assessor's Map No. 43-10  
County of Santa Cruz, Calif.  
Apr. 1951

Subject  
Property

CV 3/15/71 M.A.  
W. 5-18-72 D.K.  
W. 12/19/72 A.V.  
W. 3-28-73 H.J.  
W. 4-30-73 H.J.  
W. 5-17-73 A.V.  
W. 6-17/73 W.P.  
W. 6-27/73 D.H.  
W. 7-11-73 W.P.  
W. 7-11-73 W.P.  
W. 7-11-73 W.P.  
W. 10/21/82 C.B. L.B.A. 4645/1)  
W. 1/19/94 J.L. (SP-5293-329, 4-37, 39, 39)

**G.A. Graebe & Associates, Inc.**

Civil and Structural Engineers

154 West San Luis Street, Salinas, California 93901

(408) 422-6409 • (408) 394-1183 • FAX (408) 422-3275

July 30, 1998

Doug Marshall  
 108 Locust Street, Suite 11  
 Santa Cruz, California 95060

RE: Structural Consultation on the Proposed Three Story Residence Located at 413 Beach Drive, Aptos, California.

Dear Mr. Marshall:

Further to our phone conversation today, and after reviewing the floor plans and elevations for the above-mentioned proposed three story residence, the following is my response:

From a structural point of view, a three story residence can be designed for the above-mentioned address with a top of flat roof elevation of 28'-0" above adjacent grade level. The above assumes 8'-0" ceiling heights at all levels, which is acceptable by the Uniform Building Code (UBC).

As to your second question, and also from a structural point of view, the proposed three story structure can be designed with a maximum roof elevation of 29'-0" with 8'-0" ceiling heights and 7'-0" maximum header elevation. The structural system, however, will be expensive and complex since it will require cantilevering joists and steel moment frames along more than one line.

Please call our office if you have any questions regarding this letter.



Sincerely,

*Wisam Nader*

Wisam N. Nader  
 Structural Engineer  
 G.A. Graebe & Assoc., Inc.

WNN: kdh

**EXHIBIT B (14 OF 14)**

EXHIBIT 4  
 Page 1 of 1

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BOOK, ATACK & GALLAGHER**

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February 3, 1999

**RECEIVED**

FEB 03 1999

VIA HAND-DELIVERY

California Coastal Commission  
725 Front Street, 3rd Floor  
Santa Cruz, CA 95060

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

**Re: Appeal of Approval of Santa Cruz County App. No. 97-0622  
Project Location: 413 Beach Drive, Aptos; APN 43-105-07  
Applicant: Tracy Robert Johnson for Norma Odenweller  
and Robert Fleck  
Appellants: Jim Craik and Judi Craik**

Dear Commissioners:

This office represents Norma Odenweller and Robert Fleck with respect to the above-referenced appeal of the approval of their application to construct a single-family dwelling on Beach Drive in Aptos.

**A. Project Description**

The approved project is to allow construction of a single-family dwelling with 2,190 sq. ft. of habitable space in a residential neighborhood. The subject property is located at the bottom of an eroding coastal bluff, and therefore, requires construction of a 12-foot high engineered retaining wall in the backyard. Additionally, the house must be elevated (with the first floor consisting of non-habitable space) in order to meet the FEMA flood zone requirements. The house would be 3 stories, counting the non-habitable first-floor, and would be approximately 32 feet tall. Based on the geologic constraints of the parcel, the rear of the house is not suitable for use as a deck/patio or recreation area because it must remain open for debris flow.

The project received variances to allow it to exceed the County's two-story limitation,

**EXHIBIT C**

**APPLICANTS REBUTTAL TO APPEAL ISSUES**

**1 OF 7 PAGES**

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to exceed the height limit, to reduce the front-yard setback, to slightly exceed the floor-area-ratio, to allow construction of the second-story deck, and to allow the parking area to exceed 50% of the required front yard.

### **B. Procedural History**

The Zoning Administrator approved the project. Appellants appealed to the Planning Commission. The Planning Commission unanimously upheld the Zoning Administrator's approval. Appellants appealed to the Board of Supervisors to take jurisdiction of the matter. The Board held a jurisdictional hearing and unanimously decided not to accept jurisdiction, but referred the matter back to the Planning Commission for consideration of the issuance of a variance for exceeding the permissible floor-area-ratio (by .53 of a percentage point). The floor area of the project had not changed at all from the Zoning Administrator's approval (except a slight reduction in floor area to accommodate a side stairway), but the need for a variance had been overlooked. The first time that the issue of the need for a floor-area-ratio variance was raised was at the jurisdictional hearing before the Board.

Following the Board's direction, the Planning Commission considered the limited issue of the floor-area-ratio. The Planning Commission unanimously granted the floor-area-ratio variance, and adopted revised variance findings to support the floor-area-ratio variance. Appellants appealed to the Board of Supervisors again; the Board declined to take jurisdiction. Appellants filed this appeal following the Board's decision not to take jurisdiction.

### **C. Issues on Appeal to Coastal Commission**

This appeal asserts many arguments, but fails to raise a substantial issue.

❖**3-stories:** Appellants contend that the 3-story home will not be compatible with the surrounding 2-story residences. Appellants cite County Code §§13.20.130(b)(1) and 13.11.072 & 13.11.073 in support of their argument that the County Code requires design compatibility.

Section 13.20.130(b)(1) requires all new development to be "sited, designed and landscaped to be visually compatible and integrated with the character of surrounding



neighborhoods or areas." Section 13.11.072 requires site design compatibility (e.g. location and type of access to site; building location and orientation; building bulk, massing and scale) and section 13.11.073 requires building design compatibility (e.g. massing of building form; building silhouette; spacing between buildings; street face setbacks; character of architecture). Section 13.11.073 prohibits building surfaces fronting on a street from having a flat, void surface without architectural treatment. Appellants contend that the proposed project should be denied because Appellants think that the proposed home would be too box-like in appearance. However, the Zoning Administrator and the Planning Commission concluded that the architectural features of the facade of the building provide sufficient variation and are compatible with the surrounding area. (Coastal Zone Permit Findings, ¶3). Specifically, the Zoning Administrator and Planning Commission concluded that "[t]he proposed project will complement and harmonize with the existing use of the property and surrounding uses. The proposed structure will be compatible with the character of the area given the utilization of natural earth tone materials and colors." (Development Permit Findings, ¶5).

❖**Location of decks/windows:** Appellants contend that the location of the second-story deck and windows will substantially deflect from the privacy of Appellants' home. Appellants rely on County Code §13.10.321 for the assertion that a main objective of the residential zone district is to protect privacy. Appellants further contend that a project cannot be approved if it does not meet the purposes of the zone district in which it is located. (County C. §18.10.230(a)(2)).

Section 13.10.321 provides that one of the objectives of the residential zone districts is to "provide adequate light, air, privacy, solar access, and open space for each dwelling unit." County Code section 18.10.230(a)(2) provides that a finding must be made, with every development approval, that the proposed project "will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located." The Zoning Administrator and the Planning Commission found the proposed project to be "consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located." (Development Permit Findings, ¶2). The Zoning Ordinance does not guarantee that neighbors will not be able to see into other neighbors' homes or back yards. Additionally, the Staff Report to the Planning Commission notes that the project "maintains the required five foot side setbacks separating the new residence from existing structures which have zero east side setbacks." (Staff Report, p. 4).

The same rationale applies to Appellants' contention that the proposed project will block light and solar access to their home. The proposed house will not block light, air, or open space to Appellants' home. (Development Permit Findings, ¶2). The subject property is on the north side of Appellant's home, so it clearly will not block sunlight.

❖**Blocking View:** Appellants contend that the design of the project's second floor and second-floor deck will block much of Appellants' second floor side view of the ocean. Appellants cite County Code §13.11.072(b)(2)(ii) in support of their position.

Section 13.11.072(b)(2)(ii) provides that "[d]evelopment should minimize the impact on private views from adjacent parcels, wherever practicable." This is not the equivalent of a viewshed easement. In any event, Appellants will continue to enjoy an unobstructed straight-forward view of the Monterey Bay. They complain merely about one side view. The project meets the required side-yard setbacks. (Staff Report to Planning Commission, p. 4). The County Code does not guarantee the views of adjacent property owners.

❖**Height:** Appellants assert that the General Plan limits the height of all houses within the urban services line to 2 stories unless the Residential Site and Development Standards specifically allow more than 2 stories. Appellants misconstrue the General Plan.

General Plan Policy 8.6.3 provides that "[r]esidential structures shall be limited to two stories in urban areas and on parcels smaller than one acre in the rural areas except where explicitly stated in the Residential Site and Development Standards ordinance." The Residential Site Development Standards provision states: "These standards shall apply within all residential 'R' zone districts, except as noted elsewhere in this Section and uses inconsistent therewith shall be prohibited **absent a variance approval.**" (County C. §13.10.323(b) (emphasis added)). The County granted a variance to the property owner because the new FEMA requirements, which did not apply to the original construction of most of the houses on Beach Drive, require that the first floor be non-habitable. The variance is specifically authorized by the Development Standards. (County C. §13.10.323(b)). The General Plan expressly allows more than 2 stories where authorized by the Residential Development Standards. (Gen. Plan Policy 8.6.3). The Local Coastal Program includes County Code section 13.10.230, which authorizes variances to the two-story limit. (County C. §13.03.050(b)(2)). Thus, the applicable provisions of the LCP, properly read as a whole, allow variances to the 2-story limit where the appropriate findings for a variance can be

made.

The Planning Commission Staff Report notes that 19 of the 61 houses located between the Esplanade and the gated access on Beach Drive have three (3) stories. (Staff Report to Planning Commission for June 24, 1998 Agenda, p. 4). Other properties in the area were constructed prior to the implementation of the floodplain regulations. (Staff Report to Planning Commission, p. 4). The Staff Report to the Planning commission points out that “[o]ther properties in the vicinity enjoy two levels of habitable space,” as is proposed for this project. (Id).

Other houses in the vicinity of the project are three stories and exceed the 28-foot height limit, including (without limitation) the houses located at 313 Beach Drive, 340 Beach Drive, 357 Beach Drive, 369 Beach Drive, and 379 Beach Drive.

❖ **Variations:** Appellants contend that there is no justification for the variances granted by the County because the subject property is not appreciably different from any other property in the vicinity. Appellants dispute that the application of the FEMA requirements to the property can justify a variance.

The County Code authorizes a variance where special circumstances, such as “size, shape, topography, location, existing structures or surroundings,” mean that the strict application of the Zoning Ordinance would deprive the property of privileges enjoyed by other properties in the vicinity with the same zoning. (County Code §13.10.230(a)). As the County determined, there are “[s]pecial circumstances applicable to this property to justify the granting of a variance to development regulations concerning the height, number of stories, parking on more than 50 percent of the front setback, a reduced front setback and an increased floor area ratio . . .” (Planning Commission Approval, October 28, 1998 Meeting, App. #97-0622, Variance Findings (“Variance Findings”), ¶1). The special circumstances identified by the County include: 1) the shape of the parcel; 2) the size of useable area on the parcel; 3) the lack of developable area on the parcel; 4) the topography of the parcel; 5) the location of the parcel; and 6) the size and configuration of other houses in the vicinity. (Id).

Specifically, the parcel is located below an eroding coastal bluff, which makes the back yard completely unsuitable for a deck/patio or recreational area. (Variance Findings,

¶1). The proposed house has to be situated close to the front property line because a debris flow catchment area is required for the rear of the parcel. (Id). Because of the complete lack of useable space in the backyard, the proposed deck encroachment to within 8 feet of the front property line "provides needed open space area" for the home. (Id). The County properly concluded that "[t]he vast majority of existing surrounding structures enjoy reduced front and/or side setbacks and the strict application of the zoning ordinance would prevent this property owner from utilizing this site to the same extent as other properties in the vicinity under identical R-1-8 zoning." (Id).

Additionally, the house has to have a non-habitable first floor in order to meet the FEMA flood control regulations. The County properly found that "[t]he majority of properties in the vicinity were developed more than 50 years ago, predating both the zoning ordinance and FEMA regulations." (Id). If the house was limited to one story, it would only have approximately 1,000 square feet of liveable space, which is substantially smaller than surrounding houses. Moreover, the first habitable floor must be elevated at least 10 feet. The structural support requirements for the floors are greater than normal based upon the geologic condition existing in the rear of the parcel.

Further, the living area of the proposed dwelling is 7.5 feet farther back from the front street than Appellants' house and 8 feet farther back from the street than the other neighbor's house. The Variance Findings made by the Zoning Administrator note that "[a] field survey and aerial photographs indicate that the majority of existing homes along Beach Drive have a front setback of ten feet or less." (Zoning Administrator Variance Findings, ¶3). The decks are the same distance from the street as the adjacent houses. The front-yard setback variances are, therefore, compatible with the rest of the neighborhood.

❖**Floor Area Ratio Variance Findings:** Appellants allege that the County did not make a specific finding that the floor-area-ratio variance is in compliance with the General Plan. Appellants contend that this is required for every project, and that a variance is a new project.

Appellants misconstrue the required findings for a variance. Section 13.01.130(a) of the County Code provides that "[n]o discretionary land use project, public or private, shall be approved by the County unless it is found to be consistent with the adopted General Plan." The variance is not a separate project, but rather is part of the same project that was

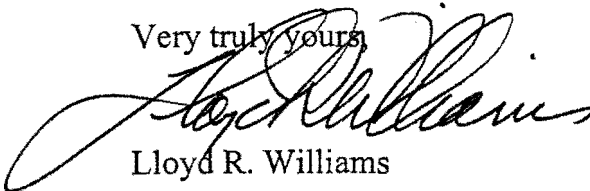
previously approved by the Zoning Administrator. The Zoning Administrator's finding that the project is consistent with the General Plan applies to the entire project. (Development Permit Findings, ¶3). The proposed development has not materially changed since the finding of General Plan consistency was made.

❖**Design Review for Floor-Area-Ratio Variance:** Appellants argue that the County was required to conduct further design review and to adopt new Coastal Zone and development permit findings in connection with the floor-area-ratio variance.

The project has already undergone design review. There is no requirement for a separate design review for a variance. The project did not change at all (except to become slightly smaller to accommodate the side stairway) following the original project approval by the Zoning Administrator. Similarly, there is no requirement for new coastal zone or development permit findings for the variance. The project didn't change because of the variance; the variance was simply a legal requirement that needed to be supported by findings (which were made pursuant to County Code section 13.10.230(c)). The granting of the variance did not change any of the findings already made for the overall project.

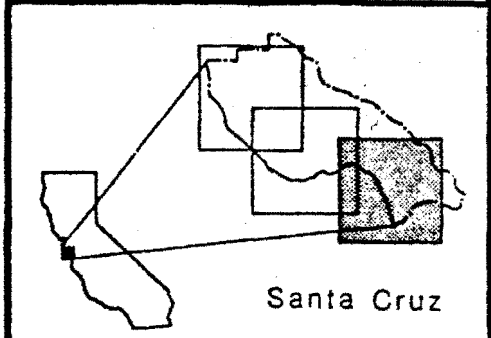
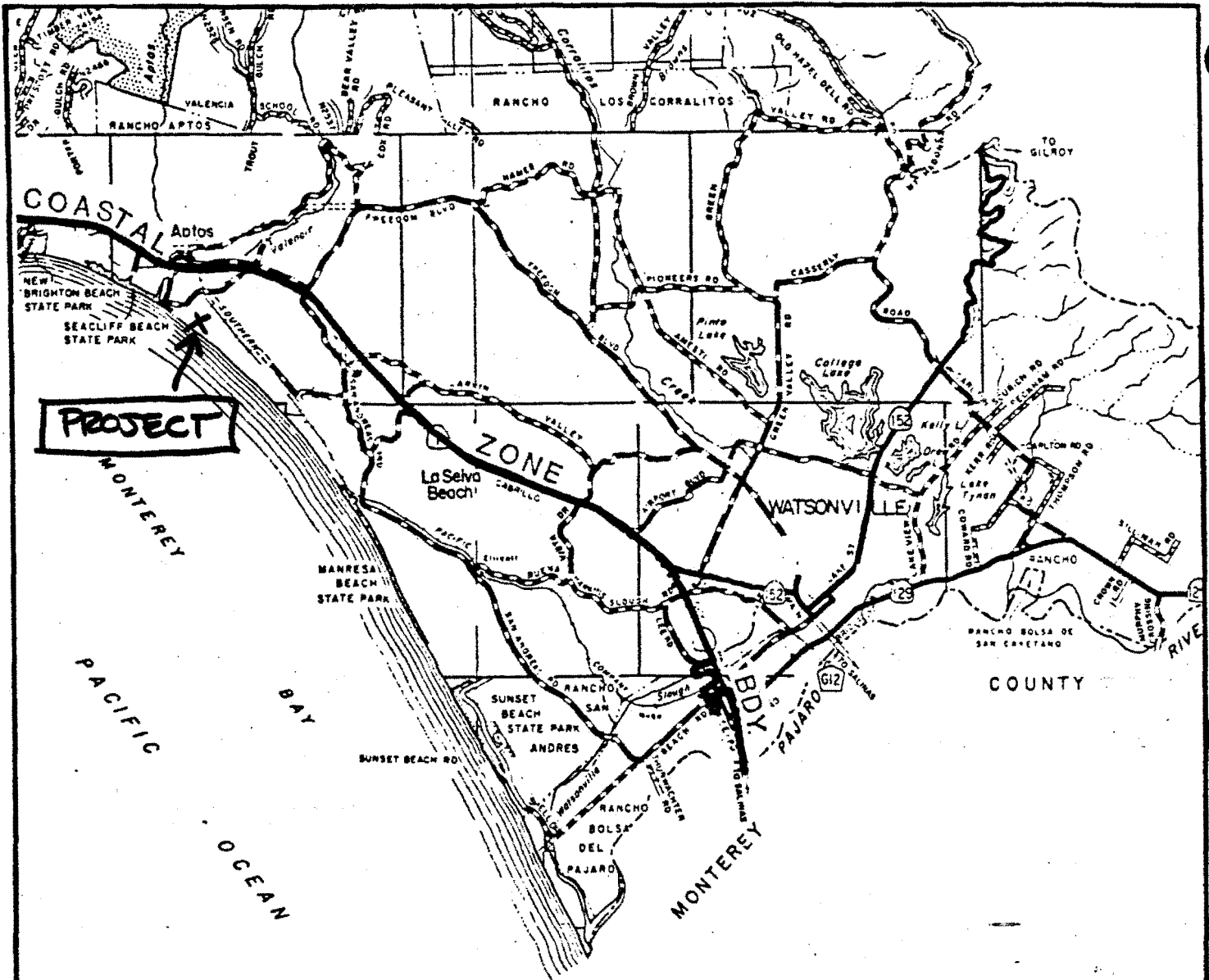
For the foregoing reasons, we respectfully submit that Appellant's appeal does not raise a substantial issue of compliance with the County's Local Coastal Program.

Very truly yours,



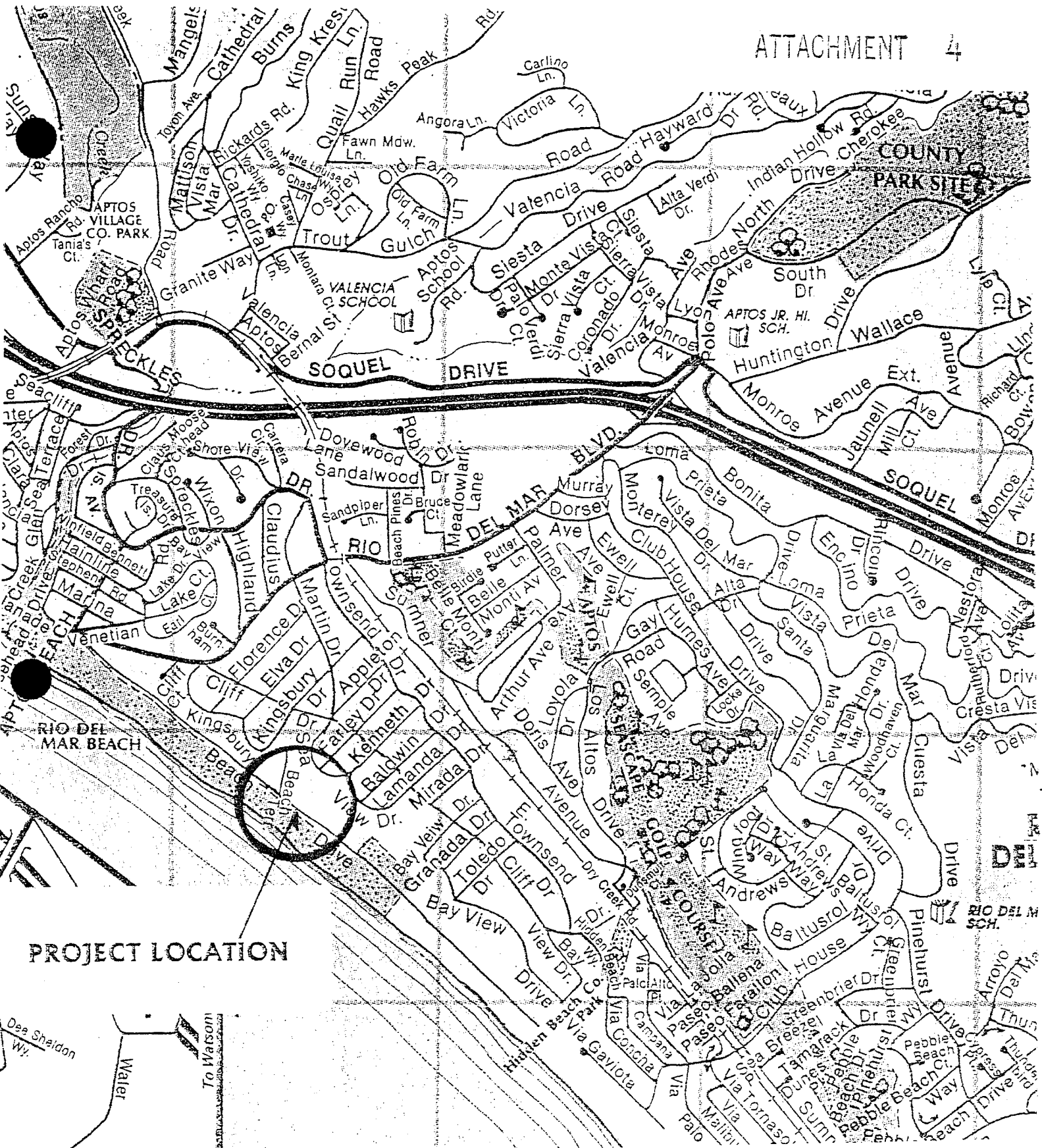
Lloyd R. Williams

cc: Clients  
Douglas E. Marshall, Esq.



LOCATION MAP



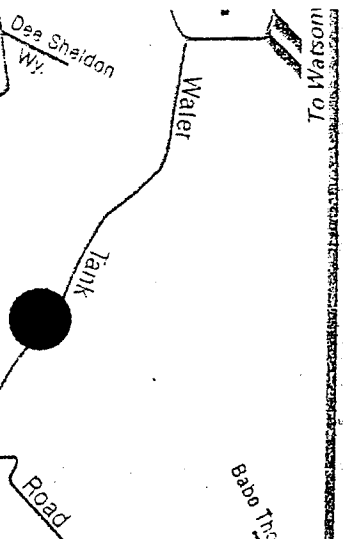


PROJECT LOCATION

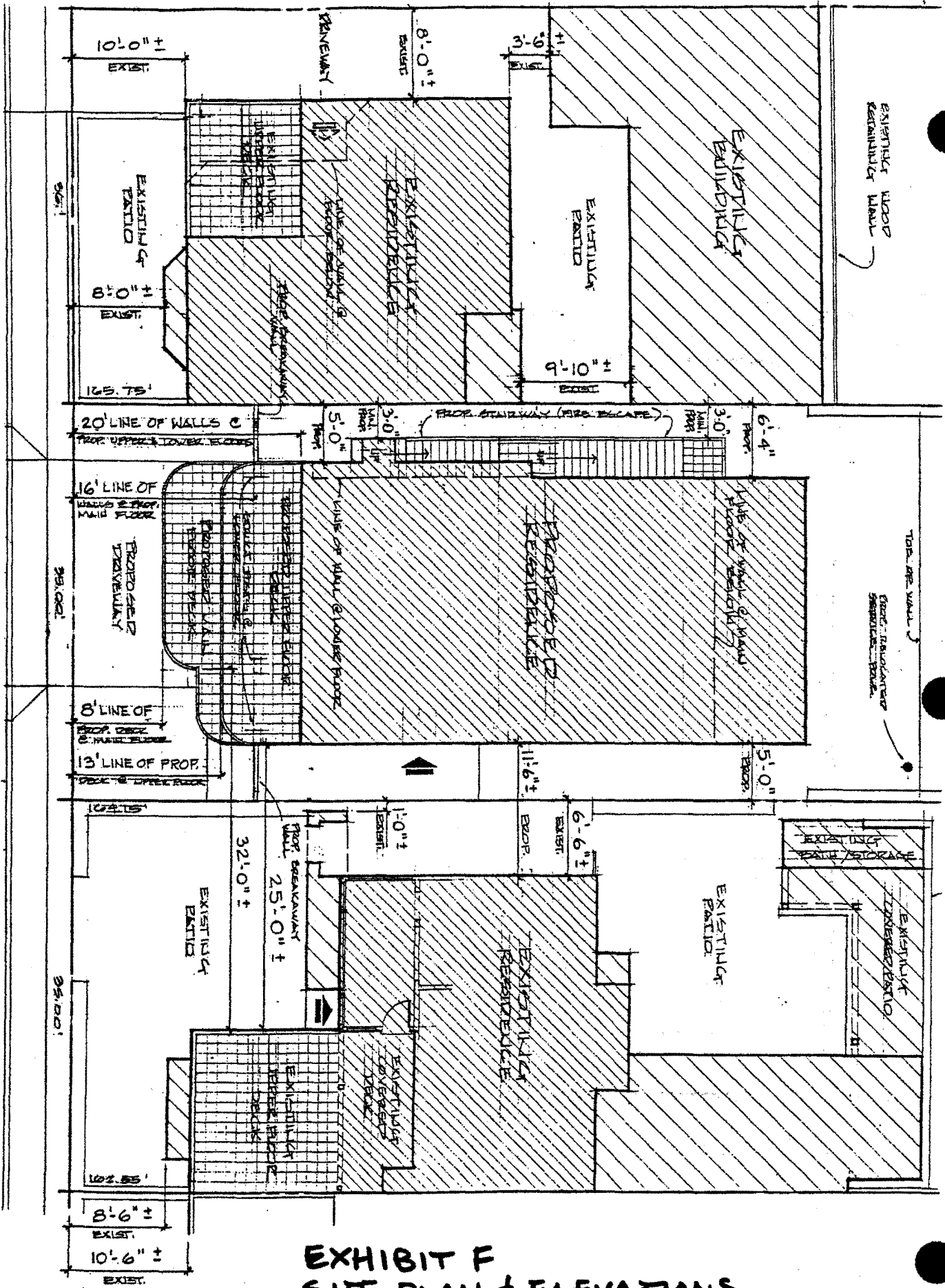
LOCATION MAP #97-0622

413 BEACH DRIVE, APTOS

# EXHIBIT E PROJECT LOCATION



411  
 PROPOSED ODENWELLER FLECK  
 BEACON DRIVE  
 413  
 415  
 CRAIK



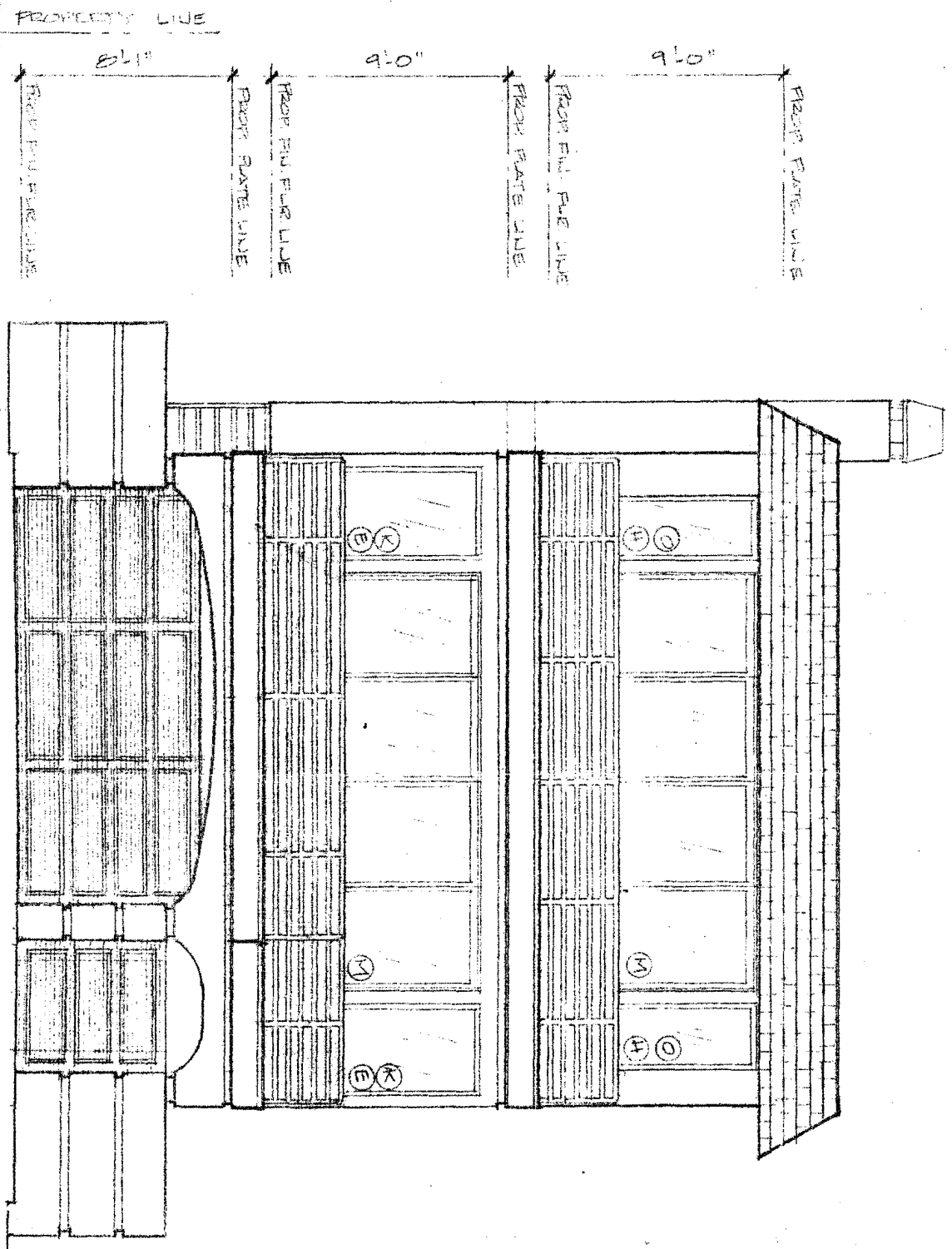
**EXHIBIT F**  
**SITE PLAN & ELEVATIONS**  
 1 OF 5 PAGES  
 GROUP SITE PLAN - DO NOT SCALE

2.1.99



EXIST. / PROP. FIN. GRADES

SOUTH / WEST - BEACH DR.



### EXHIBIT F (2015)

AGENTS: **ROBERT FLECK and NORMA ODENWELLER**  
 500 EL CAMINO REAL, SUITE 411 PALO ALTO, CA. 94306

A.P.N. 043-105-07

| REVISIONS | BY  |
|-----------|-----|
| 10.20.15  | MSH |
|           |     |
|           |     |
|           |     |

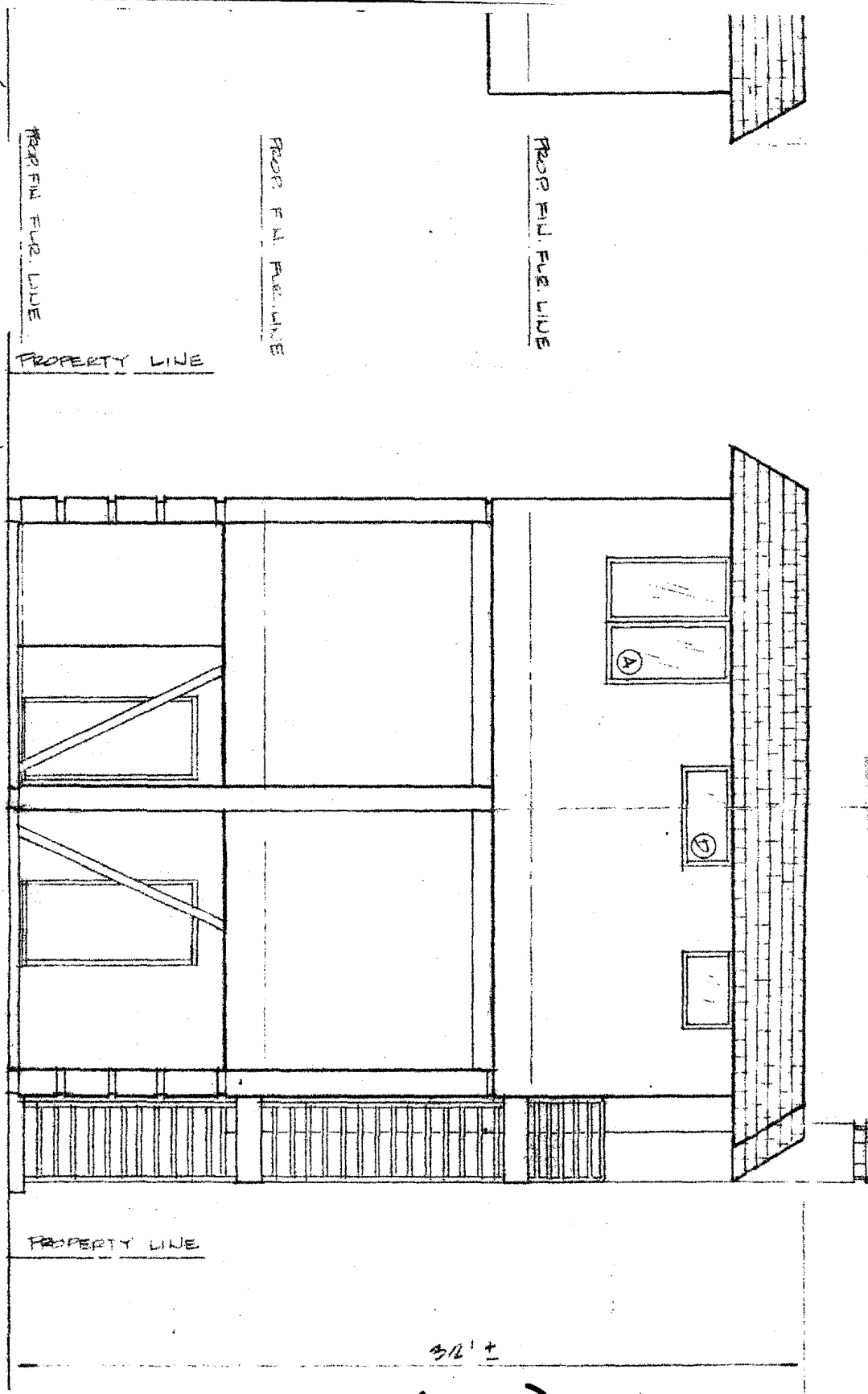


EXHIBIT F (3 OF 5)

**PRIOR ELEVATIONS**

FOR FINISH MATERIALS:  
 MID. 7/16" STUCCO, PAINTED CREAM COLOR.

EXIST / ROOF FIN. GRADE

NORTH / EAST

DO NOT SCALE PLANS. Use dimensions as noted. Builder shall verify all dimensions and inform designer of any discrepancies.

NOTE: This plan and design are the sole property of Tracy Robert Johnson. No portion of this plan or design may be reproduced or utilized in any manner without the expressed written permission of Tracy Robert Johnson. ALL RIGHTS ARE RESERVED.

UNAUTHORIZED CHANGES & USES: The designer preparing these plans will not be responsible for, or liable for, unauthorized changes to or uses of these plans. All changes to the plans must be in writing and must be

RESIDENTIAL PLANNING AND DEVELOPMENT  
 TRACY ROBERT JOHNSON AND ASSOCIATES  
 Watsonville, CA.  
 (408) 722-5462

Date 1-27-95  
 Scale 1/4" = 1'-0"  
 Drawn Mark

OWNERS:  
 ROBERT  
 2600 EL

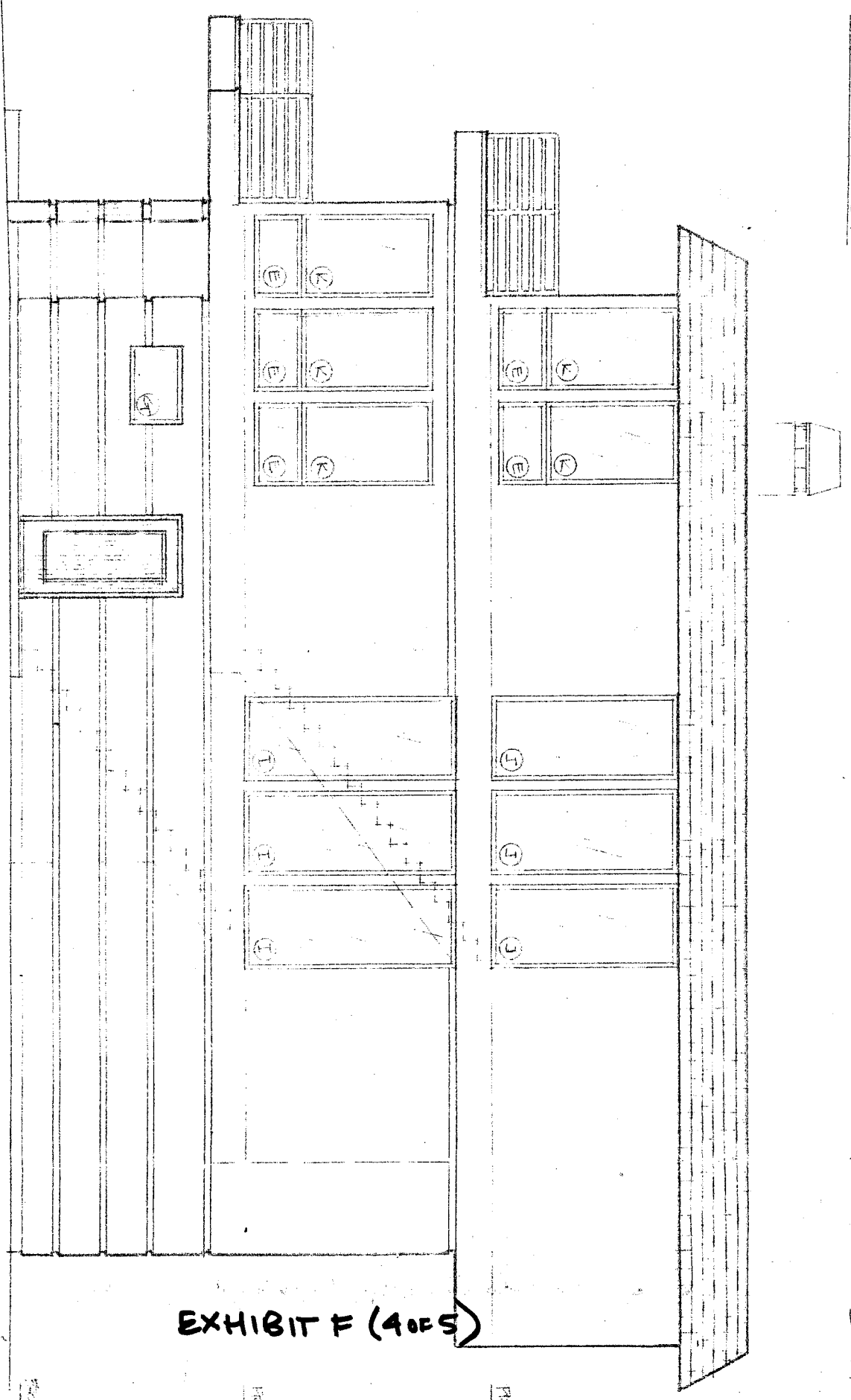
DELIVERED OCT 20 1998

SOUTH / EXIST

EXTERIOR

EXTERIOR FINISH

EXHIBIT F (40FS)



1/4" = 1'-0"

EXTERIOR FINISH

EXIST

NORTH / WEST

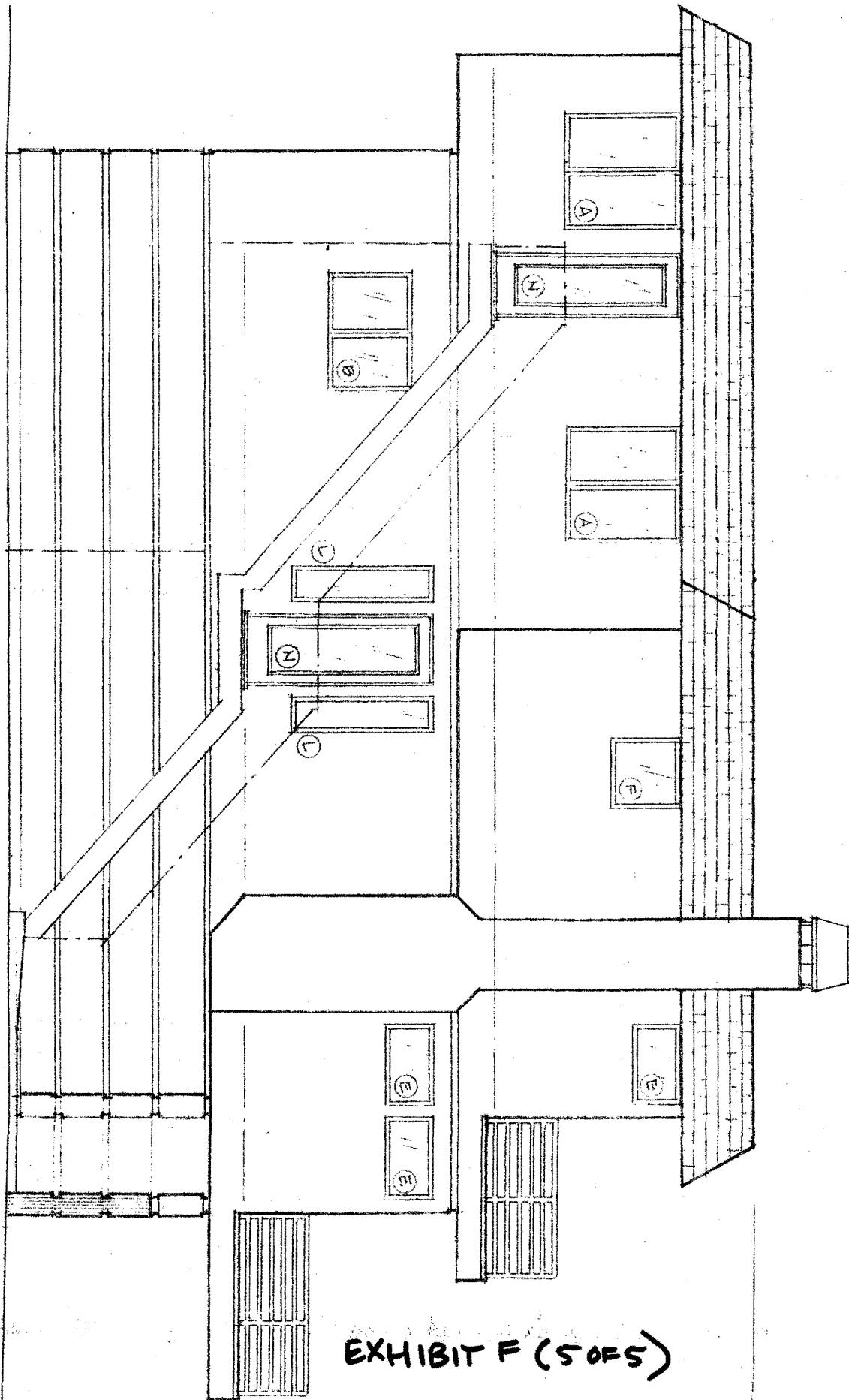


EXHIBIT F (SOFS)

32' ±

COMMISSION STAFF NOTE: ALL NOTATIONS ON EXHIBIT G (AN 8 PAGES) ARE BY APPLICANT.

EXHIBIT G  
EXISTING BEACH  
DRIVE STREETScape  
RESIDENCES

1 OF 8 PAGES

PHOTOS TAKEN 6/30/90 FROM BEACH

FACING NORTH-EAST / BEACH DRIVE

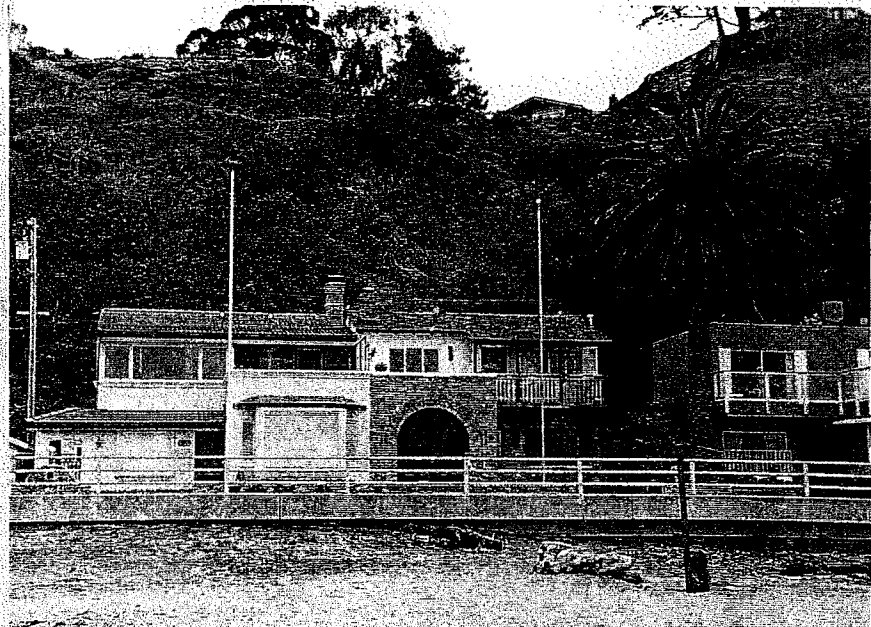
SHOWING THE PROJECT SITE AND THE EXISTING ADJACENT RESIDENCES  
NOTE THE LACK OF SEPARATION BETWEEN 415 AND 417



411

413

415



415

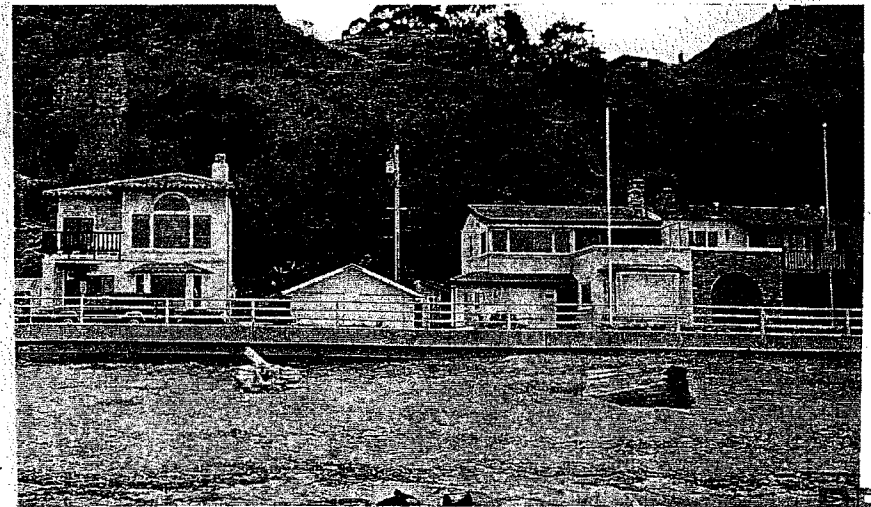
417



411

413

415



411

413

415

417

RECEIVED

JAN 28 1999

NOTE: 413 BEACH DRIVE IS THE SITE OF THE

PROPOSED FLECK-DRENWELLER RESIDENCE

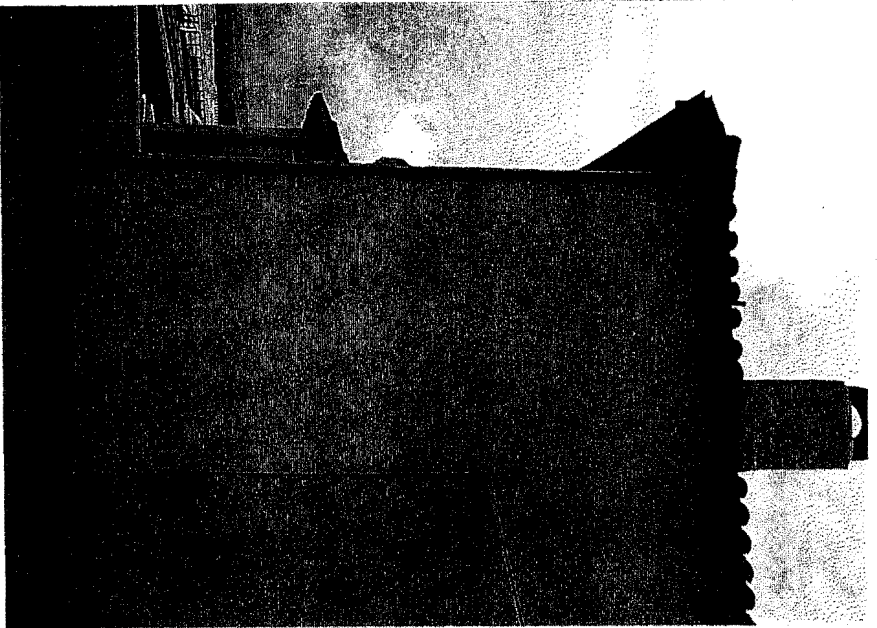
415 IS THE CRAIK RESIDENCE (SOURCE OF APPEAL)

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

P.1

FRONT  
PROPERTY  
LINE  
(BEACH DR.)

8'-0" ±  
10'-0" ±  
NOT TO SCALE



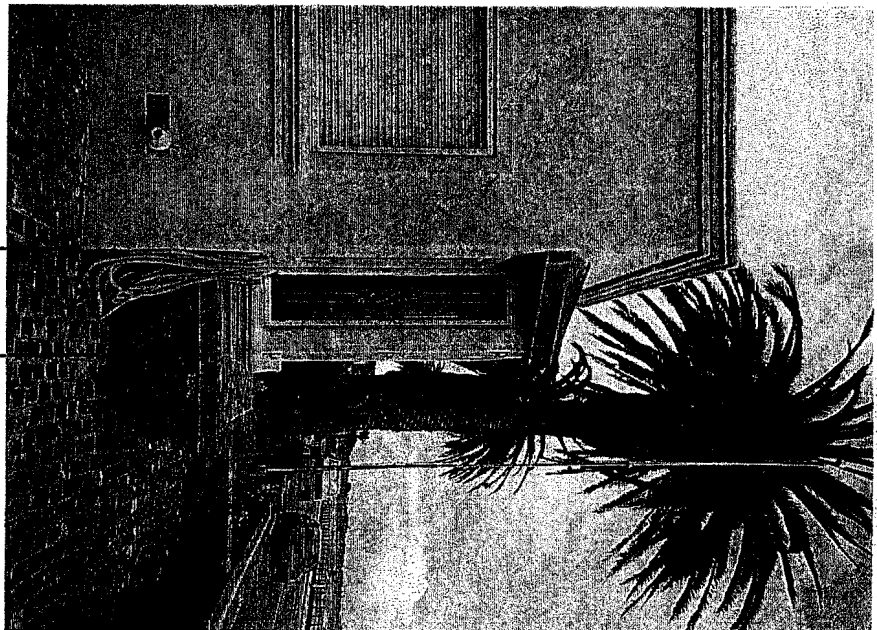
FACING  
NORTH / WEST

411 BEACH DR.

NOTE: PHOTOS TAKEN 6/30/98 FROM 413 BEACH DRIVE,  
SITE OF PROPOSED FLECK OPENWELLER RESIDENCE  
SHOWING EXISTING ADJACENT RESIDENCES RELATION TO FRONT PROPERTY LINE / BEACH DRIVE

FACING  
SOUTH / EAST

8'-6" ±  
10'-6" ±  
NOT TO SCALE



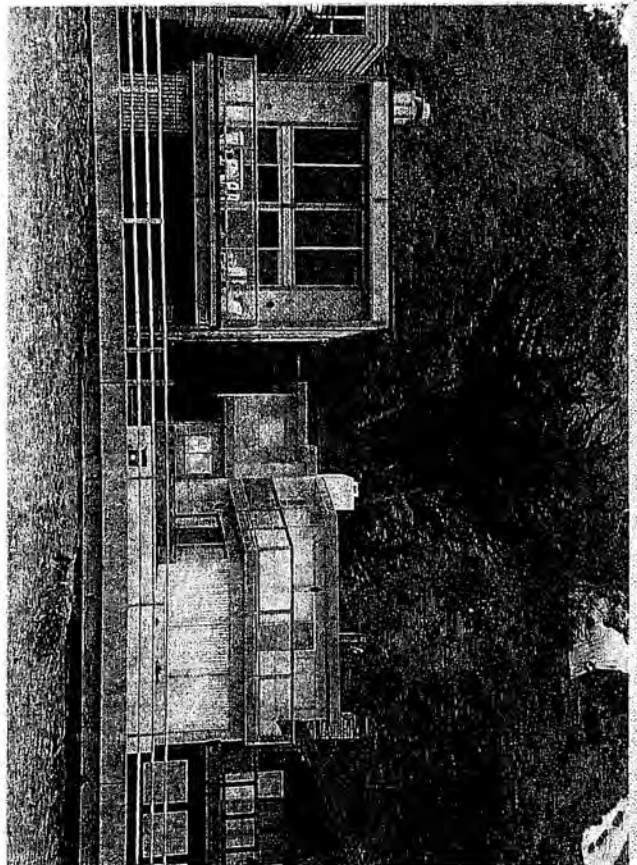
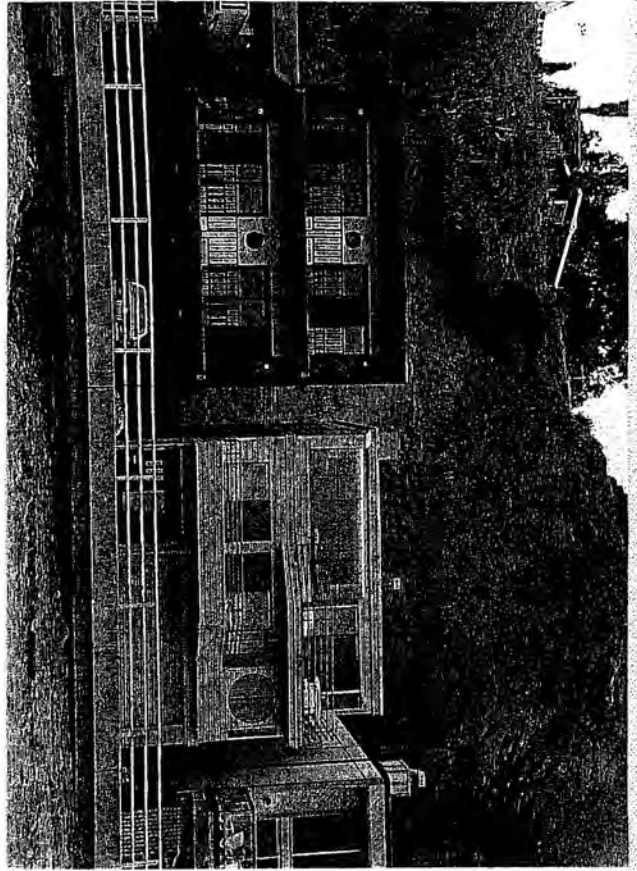
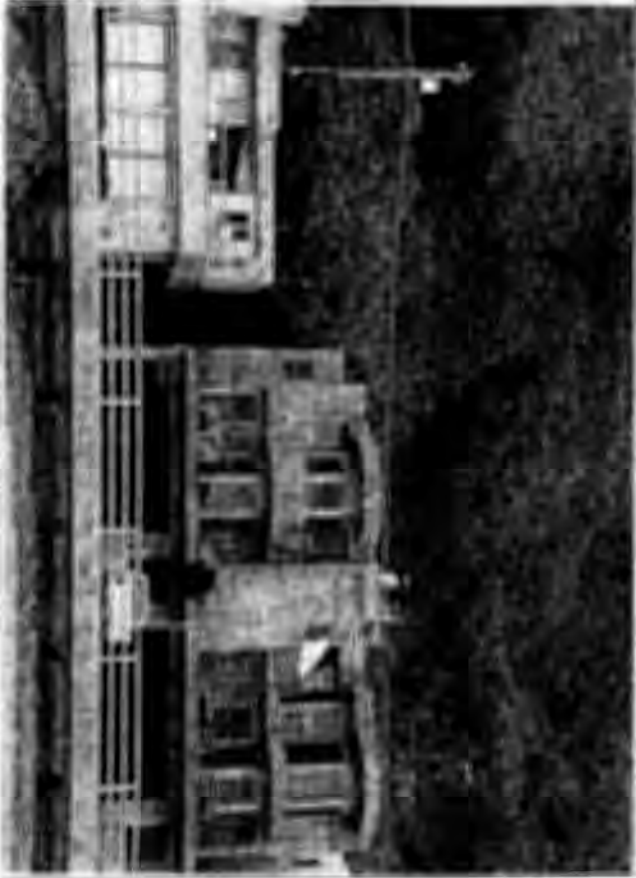
FRONT  
PROPERTY  
LINE  
(BEACH DR.)

415 BEACH DR.

CRAIK RESIDENCE

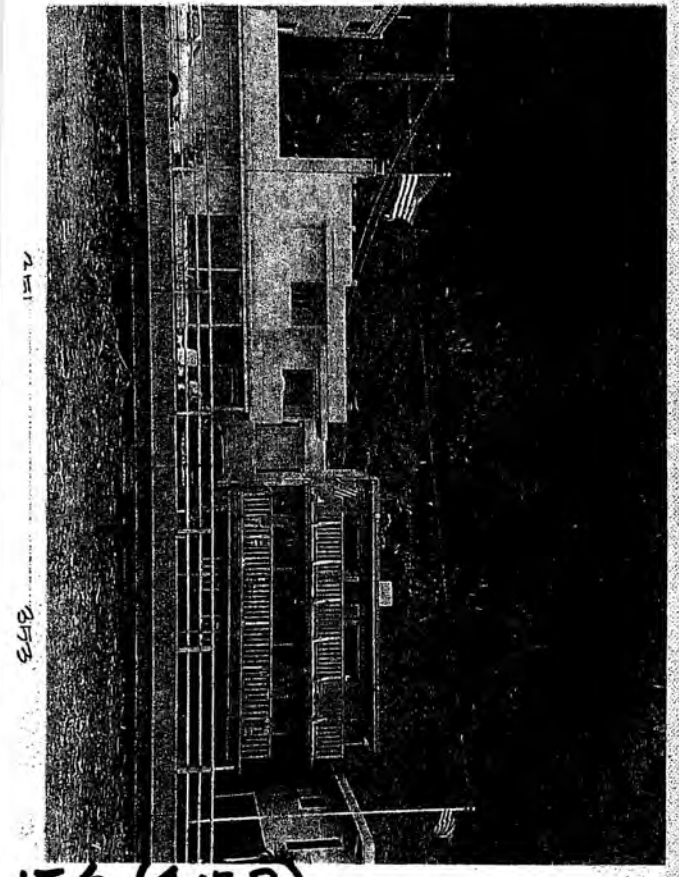
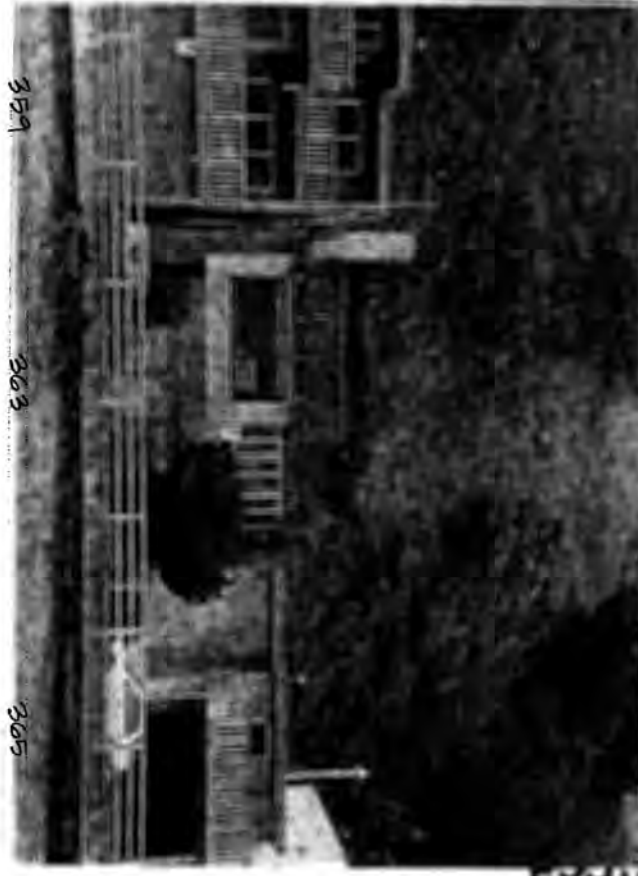
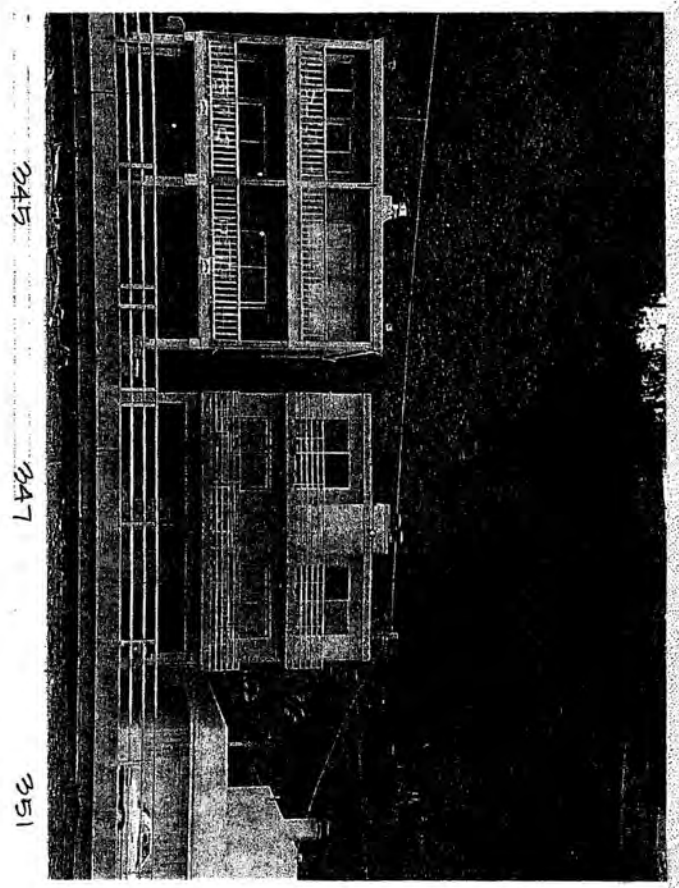
EXHIBIT G (2 OF 8)





**EXHIBIT G (3 OF 8)**

FRONT SETBACK PHOTOS TAKEN 6/30/98 FROM BEACH  
 DECK - 5'-0" + FACING NORTH EAST / BEACH DRIVE  
 BLDG. - 8'-0" ±



EXHIB

PHOTOS TAKEN 9/30/74

IT 4 (40F8)

18 FROM BEACH

FACING NORTH EAST / BEACH DRIVE

SHOWING SOME OF THE EXISTING THREE AND TWO STORY RESIDENCES

P.4



379

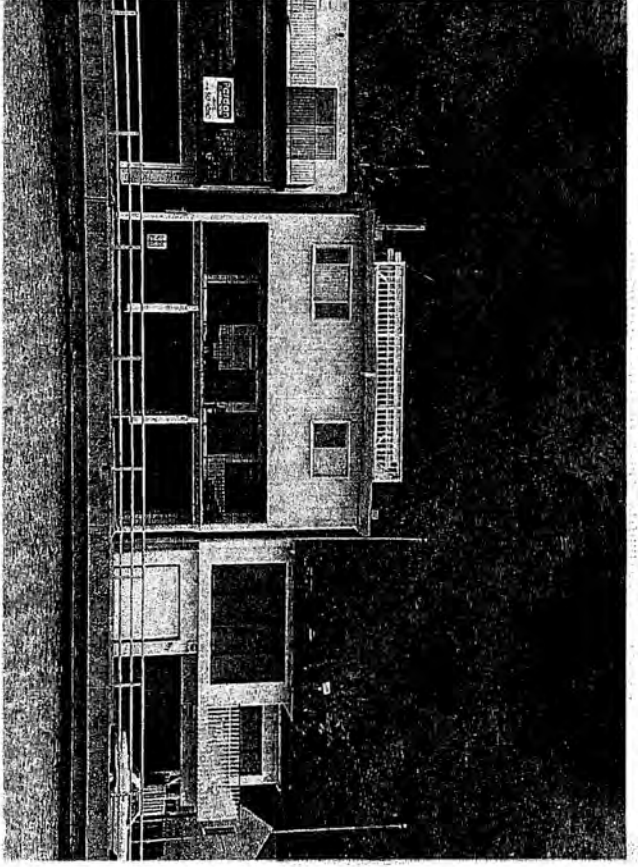
381



367

369

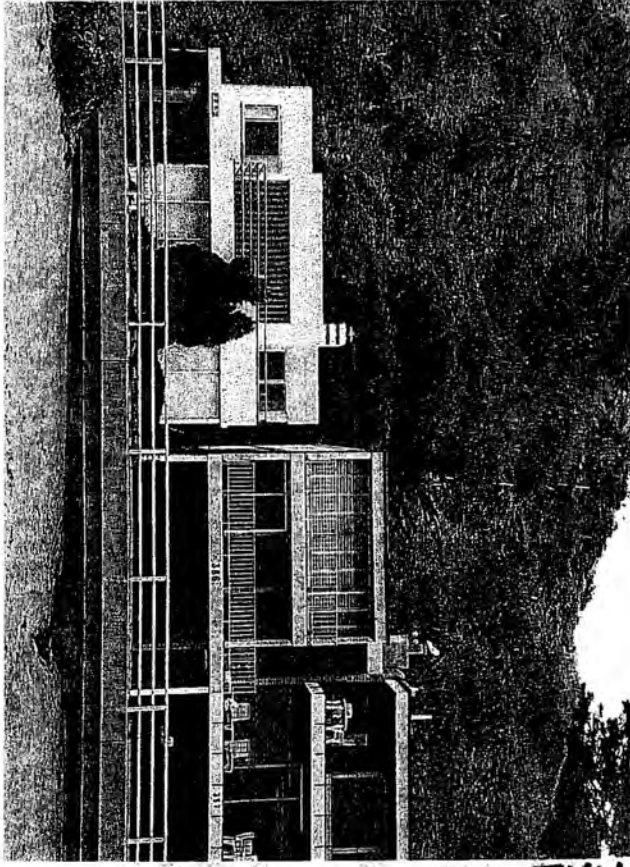
371



385

386

387



375

377

379

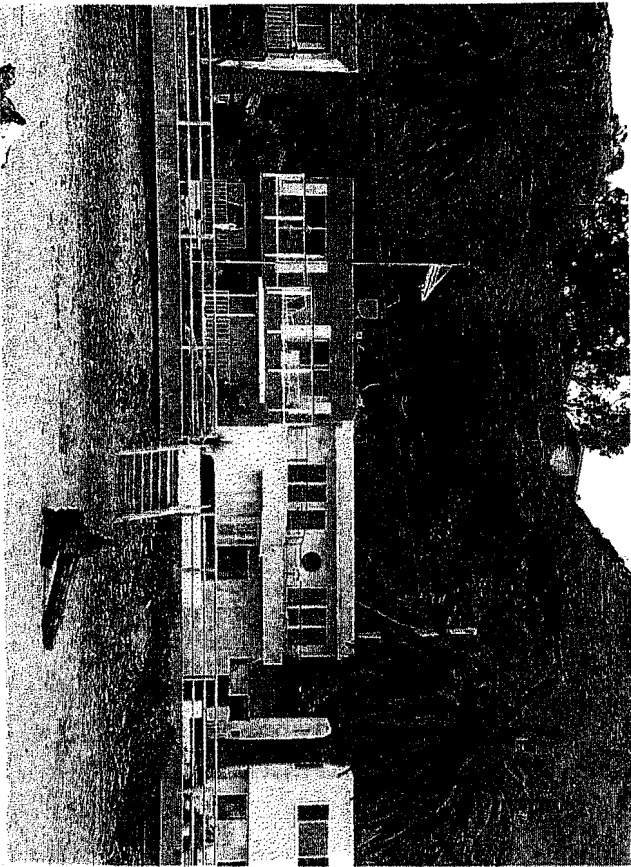


**EXHIBIT 9 (50FB)**

PHOTOS TAKEN 6/30/92 FROM BEACH  
FACING NORTH EAST / BEACH DRIVE

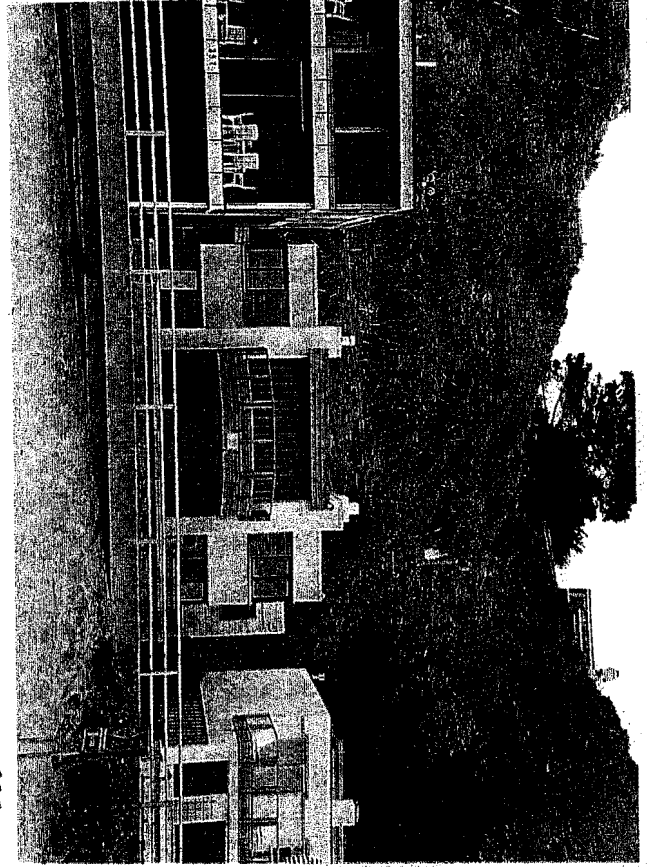
SHOWING SOME OF THE EXISTING THREE AND TWO STORY RESIDENCES.

PS



419

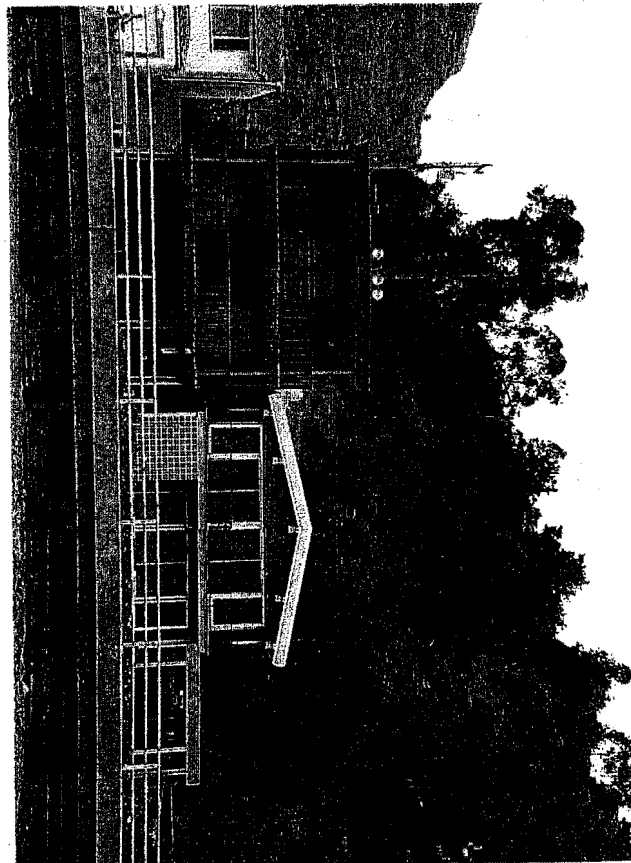
421



387

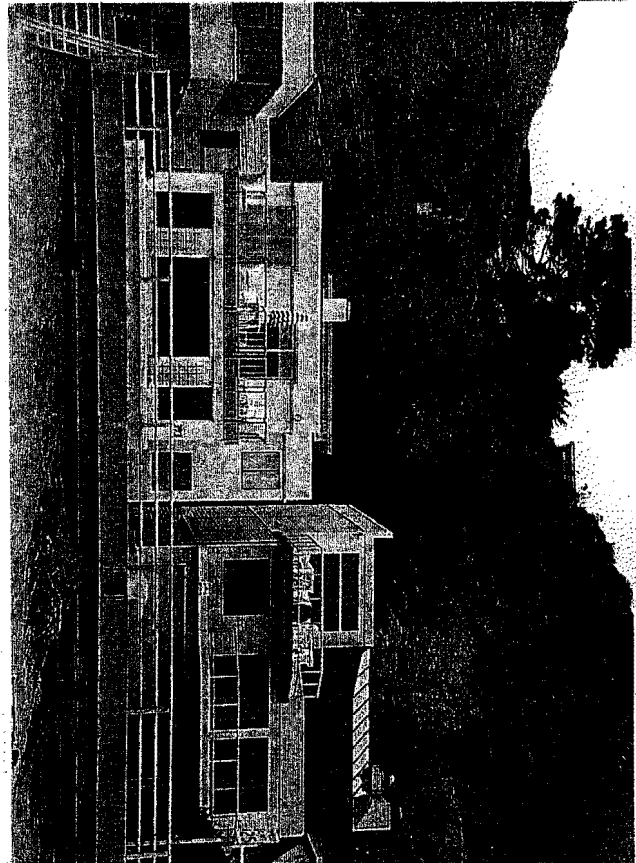
389

393



437

439



389

393

395

**EXHIBIT G (6 OF 8)**

PHOTOS TAKEN 6/30/98 FROM BEACH

FACING NORTH-EAST / BEACH DRIVE

SHOWING SOME OF THE EXISTING THREE AND TWO STORY RESIDENCES



345  
FRONT SETBACK  
TO DECK " 7'-0" ±  
TO BUILDING " 9'-0" ±



347  
FRONT SETBACK  
TO DECK " 9'-0" ±  
TO BUILDING " 15'-0" ±



353

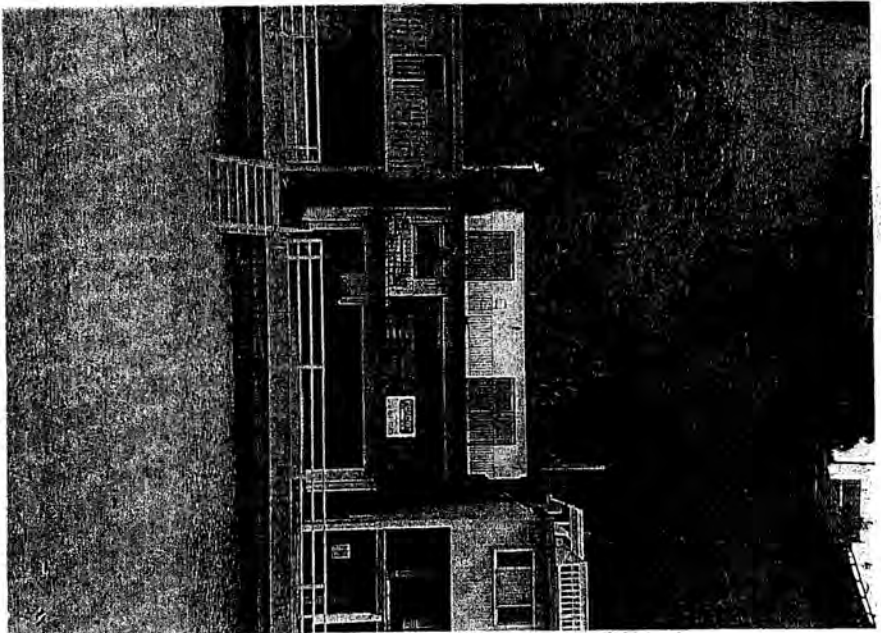
PHOTOS TAKEN 6/30/98 FROM BEACH, FACING NORTH-EAST / BEACH DRIVE  
SHOWING SOME OF THE EXISTING THREE STORY RESIDENCES WITH FULL  
WIDTH DECKS AT BOTH UPPER FLOORS, PARALLEL TO BEACH DRIVE

EXHIBIT (A-F-05)

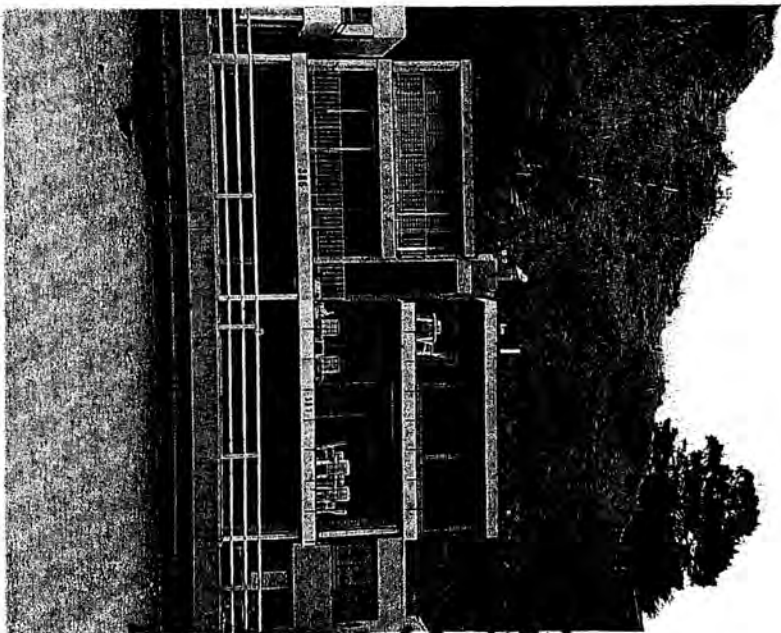




359  
 FRONT SETBACK  
 TO DECK " 9'-0" ±  
 TO BUILDING " 11'-0" ±



367



386  
 FRONT SETBACK  
 TO DECK " 10'-0" ±  
 TO BUILDING " 17'-0" ±

387

FRONT SETBACK  
 TO DECK " 10'-0" ±  
 TO BUILDING " 17'-0" ±

PHOTOS TAKEN 6/30/98 FROM BEACH, FACING NORTH-EAST / BEACH DRIVE  
 SHOWING SOME OF THE EXISTING THREE STORY RESIDENCES WITH FULL  
 WIDTH DECKS AT BOTH UPPER FLOORS, PARALLEL TO BEACH DRIVE

EXHIBIT 9 (8 OF 8)

**RECEIVED**

FEB 02 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Date: 1/26/99

From: **RESIDENTIAL PLANNING AND DEVELOPMENT**  
Tracy Robert Johnson and Associates  
1198 B. Amesti Rd. Watsonville, CA 95076  
(831) 722-5462

To: **CALIFORNIA COASTAL COMMISSION**  
Re: The Proposed Norma Odenweller-Bob Fleck Residence  
At: 413 Beach Drive Aptos, CA 95003  
A.P.N.: 043-105-07

Due to concerns of potential geologic activity affecting this parcel, the entire rear yard area between the proposed residence and the base (toe) of the bluff is required to remain free of any obstructions to provide a buffer/storage area for any potential landslide material. This causes the entire rear yard area to become unusable for deck(s) or patio(s).

Please note that the vast majority of existing residences on Beach Dr. have use of their back yard areas. If you refer to the group site plan (revised 1/14/99) you will see that both 415 and 411 Beach Dr. have use of their entire rear yard areas for building(s) and patio(s). In fact, 415 Beach Dr. (the Craiks') have recently rebuilt and expanded the structure(s) and patio area in their rear yard. In addition to the use of their rear yard area, 415 (the Craiks') also utilize their entire front yard area as patio. (415 does have the ability to park one automobile off street, within this patio area.)

411 Beach Dr. uses most of their front yard area as patio. The proposed residence at 413 Beach Dr. is "required" to use the front yard area primarily for parking to achieve the current requirement of providing off street parking for three automobiles.

Due to the constraints placed upon this parcel by geologic concerns and the limited buildable area that exists, the only outdoor area(s) that can be utilized are the decks that are proposed above the front yard area.

The proposed decks have been placed and designed to minimize their potential adverse impact to the adjacent properties. The primary deck area at the main floor level is 32'-0"± from the Craiks' (415 Beach Dr.) existing upper floor deck. The proposed upper floor deck is 25'-0"± from the Craiks' existing upper floor deck (at the nearest point). The proposed minimum distance between the Craiks' residence and the proposed residence at 413 Beach Dr. is 11'-6"±. These proposed distances between buildings and decks is, in most cases, much greater than what exists between other homes in this neighborhood.

The proposed building and deck placements as shown on the group site plan and floor plans clearly demonstrates that the existing view(s) the Craiks enjoy to the west across 413 Beach Dr. will remain largely unobstructed by the proposed development.

The proposed residence at 413 Beach Dr. is to have a total of 2,190. sq. ft. of gross conditioned (living) floor area. Most of the existing homes on Beach Dr. are larger than what we are proposing to build.

The majority of the existing homes on Beach Dr. encroach into the current 20'-0" minimum front setback with decks and /or living space. In fact, by our calculations, 93% of the existing homes on Beach Dr. have a front setback of 10'-0" or less. If you refer to the group site plan you will see that the Craiks' residence at 415 Beach Dr. has a front setback of 8'-6"± to the first floor living area, and the second floor roof deck. The residence at 411 Beach Dr. has a front setback of 8'-0"± to the second floor roof deck.

**EXHIBIT H**  
**CORRESPONDENCE FROM APPLICANT**  
**1 OF 5 PAGES**

Residential Planning and Development  
Page two of two

The proposed residence at 413 Beach Dr. specifies a front setback of 20'-0" to the face of the garage at the ground level and 16'-0" to the posts that support the deck and living area above.

The proposed (cantilevered) main floor deck would be the closest element to the front property line at 8'-0". The main floor living area would be setback 16'-0" from the property line, and the upper floor living area would be setback 20'-0" from the property line. The proposed (cantilevered) upper floor deck would be setback 13'-0". In addition to these proposed front yard setbacks, the minimum building setback(s) proposed for both sideyards is 5'-0".

The requested "living area" encroachment into the front setback is 4'-0" x 25'-0" wide, a total of 100 sq. ft. (This occurs at the main floor level only.) Please remember, the total gross conditioned (living) floor area of this residence is only 2,190. sq. ft.

This proposed residence has been painstakingly and thoughtfully designed to minimize any potential adverse impact that it may impose upon the neighborhood, and/or the neighbors.

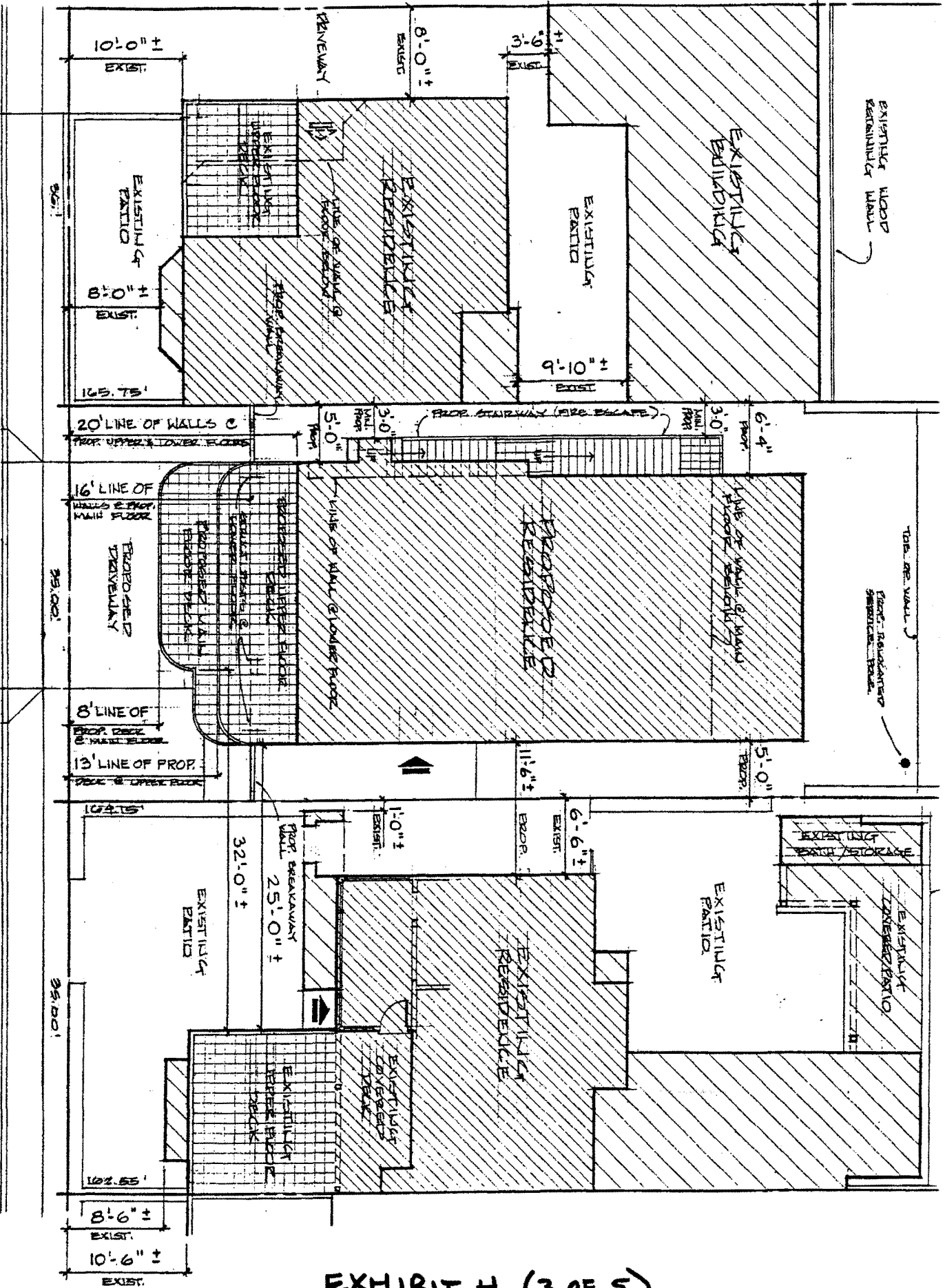
Please note: The existing neighborhood (the bluff side of Beach Dr. between the esplanade and the private gate) is comprised of 61 existing homes; 1 - one story, 41 - two story and 19 three story.

Sincerely,



Tracy Robert Johnson

EXHIBIT H (2055)



411

413

415

PROPOSED OPENWELLER, FLECK  
BEACH DRIVE

CRALK

EXHIBIT H (3 OF 5)

GROUP SITE PLAN - DO NOT SCALE

2.1.99

RECEIVED

JAN 28 1999

To: California Coastal Commission  
Fr: Owners of 413 Beach Drive Aptos, CA - Fleck/Odenweller  
Project: New home to be built on lot (infill)  
Reason for this letter: Neighbor has appealed our approval to build  
which was initially granted by the Santa Cruz Zoning Administrator on May 1, 1998  
Date: January 27, 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Application No. 97-0622  
APN 43-105-05 (413 Beach Drive, Aptos, CA)

In March 1999 our project will be on the agenda for your meeting. We wanted to take this opportunity to give you some background. We have been working with the county staff, geo-technical engineers, geologists and our designer for over 2 years to design our dream home and to meet the strict current building laws presently in force. Our neighbor the Craiks have caused us to have 7 public hearing to date. This will be our eighth. At the Planning Commission meeting one commissioner said "this project has had more public hearings than most subdivisions." The Craiks are trying everything in their power to delay us, run up our expenses, harass us and prevent us from building! This is a squabble between neighbors over an infill house.

We are angry by their **constant misrepresentation of the facts**: the Craiks claim their front set back to be about 25' which is the back wall of their sun deck not the front most part of their house which is about 8'6" from the front property line. As for privacy, their deck abuts (they have 0 setback on the right side of their property) their neighbor's deck. A single piece of canvas separates the two decks. Our open deck is about 20 feet from their open deck. They also selectively define *the neighborhood* to best support their arguments. The *neighborhood* (as defined by the county staff) is Beach Drive from the Esplanade to the gated community. *It is not just the few houses near the Craik's.*

We are sorry that this situation has turned into a nightmare. We have many constraints with which to deal and have worked diligently with all parties to address them. We are disappointed in the Craik's. Even our several attempts to compromise have not satisfied them. Enough is enough!

The Planning Commissioners and the Board of Supervisors gave us their whole-hearted support and unanimous vote. They have said that they would be happy to discuss their decisions with any of you. We ask that your findings support those of the County of Santa Cruz's staff.

If you have questions, please call us at 650-424-8424.



Sincerely, Norma Odenweller and Bob Fleck

Issue

Response

**Neighborhood:** The county considers "the neighborhood" to be the 61 houses at the toe of the bluff from the Esplanade to the gated community along Beach Dr. They do not consider just the ten or so houses on either side of the Craik's as "the neighborhood".

**2-Story+Garage:** About 1/3 of the 61 houses along Beach Drive have 2 living levels built over the garage. The current FEMA rules no longer allow living on the first floor. If the older homes were destroyed they could not rebuild and live on the first floor.

EXHIBIT H (4 OF 5)



**Privacy:**

84% of the houses along Beach Drive have zero lot line setback on one or more sides. In fact the Craik's house has zero lot line on the right side. They have a piece of canvas separating their second story deck from their neighbor. (They aren't complaining about this lack of privacy issue!) The second story deck of our new home at 413 Beach Drive is 11'6" from the Craik's *enclosed* second floor sun room. Most people on Beach Drive can look across their decks and see their neighbors. Beach Drive is a quaint old street with very narrow lots (average width approximately 35'). The size of the lots does not provide a great deal of privacy for any of the owners. The close proximity to the neighbors is part of the local charm.

**Front yard  
variance  
of new home:**

93% of the homes along Beach Drive enjoy a front yard setback of 8 feet or less. Some in fact are located at the street property line. The house to the left of our new home has a bay window at the 8' set back line. The Craik's house bay-window area is 8' 6" from the front property line. The second floor deck of our new home will have approximately the same set back (8') from the street as the houses on either side of us. The two living areas of our house are 16' and 20' respectively from the setback line.

