

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
408-427-4863



M16b

RECORD PACKET COPY

Filed: 12/02/99
49th day: 01/20/00
180th day: 05/30/00
Staff: SG
Staff report: 03/23/00
Hearing date: 04/10/00

**COASTAL DEVELOPMENT PERMIT APPLICATION
REGULAR CALENDAR**

Application number3-00-004

Applicant.....Dr. and Mrs. Orville J. Golub

Project location.....West side of San Antonio between 2nd and 4th Avenues, City of Carmel-by-the-Sea, Monterey County (APN 010-321-04)

Project description.....1229 sq.ft., two story addition to an existing 1006 sq.ft., two story single family dwelling.

Approvals ReceivedCity of Carmel-by-the-Sea: Permit Number DS 99-62, VA 97-04

File documents.....Categorical Exclusion E-77-13 for City of Carmel-by-the-Sea

Staff recommendation ...Approval with Conditions



**California Coastal Commission
April 10, 2000 Meeting in Long Beach**

Staff: S. Guiney, Approved by:

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I. Summary

The site of the proposed project is on the west (seaward) side of North San Antonio Avenue in the City of Carmel. Existing single family dwellings are located to the north and south of the subject parcel and across North San Antonio Avenue to the east. The applicant proposes to construct an approximately 1229 square foot addition to an existing two story single family dwelling. The proposal would add approximately 723 square feet to the first floor and approximately 506 square feet would be added to the second floor. The proposed addition would include an elevator, garage, and expanded existing bedrooms and living room. According to information in the file, one reason for the addition is to provide easier access for Mrs. Golub, who has undergone several hip operations and has limited mobility. The proposed addition would extend the house to the west toward the sand dunes at the north end of Carmel beach, but would still be about 50 yards inland from the inland side of the dunes. Six acacia trees are proposed to be removed to facilitate the proposed addition. The proposed addition would be visible from neighboring private properties. It would be only barely visible from North San Antonio Avenue, because it would be on the end of the house away from the public street. It would also be only barely visible from the publicly owned Carmel beach. Because the proposed addition would have negligible, if any, impacts on sensitive resources and views, staff is recommending approval. As conditioned by the City permits and this coastal development permit, the proposed addition is consistent with the policies of Chapter 3 of the Coastal Act and won't prejudice the completion of the City's Local Coastal Program.



II. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **approve** the proposed project subject to the standard and special conditions below. Staff recommends a **YES** vote on the motion below. A yes vote results in approval of the project as modified by the conditions below. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: I move that the Commission approve Coastal Development Permit Number 3-00-004 subject to the conditions below and that the Commission adopt the following resolution:

Approval with Conditions. The Commission hereby grants a permit for the proposed development, as modified by the conditions below, on the grounds that the modified development is consistent with the requirements of Chapter 3 of the California Coastal Act of 1976 (Coastal Act), will not prejudice the ability of the City of Carmel to prepare a local coastal program conforming to Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and recreation policies of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).

III. Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
- 4. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 5. Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.



6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. Landscaping Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit two copies of a landscaping plan to the Executive Director for review and approval. The landscaping plans shall clearly indicate the location and number of acacia trees and any other vegetation to be removed and the location and species of proposed new landscaping. Any vegetation removal that would result in enlarging the existing "view print" as seen from the dunes is prohibited.

2. Driveway Easement

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review a copy of a recorded easement for vehicular access across the adjoining property.

IV. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location and Description

The site of the proposed project is on the west (seaward) side of North San Antonio Avenue in the City of Carmel. Existing single family dwellings are located to the north and south of the subject parcel and across North San Antonio Avenue to the east. The parcel is long and narrow – approximately 59 feet wide by 287 feet long on its northern side and 264 feet long on its southern side. The parcel slopes rather steeply to the west, down from San Antonio Avenue to a drainage swale at the inland base of the dunes. The area of the existing house and proposed addition lie as much as 12 feet below the elevation of and from about 40 to 125 feet from the edge of San Antonio Avenue. The proposed addition would be about 50 yards inland from the inland face of the dunes and over 150 yards from the beach at the seaward face of the dunes.

The applicant proposes to construct an approximately 1229 square foot addition to an existing two story single family dwelling. The proposal would add approximately 723 square feet to the first floor and approximately 506 square feet would be added to the second floor. The proposed addition would include an elevator, garage, and expanded existing bedrooms and living room.



According to information in the file, one reason for the addition is to provide easier access for Mrs. Golub, who has undergone several hip operations and has limited mobility. The proposed addition would extend the house approximately 40 feet to the west toward the sand dunes at the north end of Carmel beach. Currently vegetated with Monterey pines and non-native plants including *Eucalyptus* and acacia, the proposed addition would require the removal of six acacia trees. The existing house has a garage directly off of San Antonio Avenue. The proposed addition includes a garage on the far side of the house from the street. According to the plans submitted with the application, there is an existing driveway partly on the subject parcel and partly on the parcel adjoining to the south that serves the adjoining parcel to the south. The plans indicate that access to the proposed new garage would be over this existing driveway to a new driveway section at the rear of the structure. In order to ensure that the applicant has legal access to the new garage, the City has required recordation of an easement for this vehicular access. This coastal development permit is conditioned to require submittal to the Executive Director for review of a copy of such a recorded easement, to ensure that the applicant does have legal access to the proposed new garage.

B. Project History

This project has a long and convoluted history, beginning in 1992, and including a lawsuit by the Golub's against the City. The following history is taken from the intended decision of the Superior Court and the City staff reports. Please see exhibit 4 for the full text of the Court's decision. The existing house was constructed in 1971-1972 to a maximum height of 33 feet above grade. In 1985 the City enacted a height limit of 24 feet in the R-1 zone district, making the Golub's house non-conforming regarding height. In 1992, the Golub's submitted an application to the City for an addition, which was rejected by the Planning Commission for exceeding the maximum allowed height in the zone district. A revised proposal was subsequently submitted to the City, including a use permit and variance proposal to exceed the height limit. The Planning Commission denied the variance and continued the hearing on the use permit. Meanwhile, at the suggestion of the City, the Golub's applied for a determination of historic designation for their house. The Historic Preservation Committee recommended against a historic designation. Both the Planning Commission and the City Council agreed with the Committee and rejected historic designation for the house. According to information in the file, the Golub's "understood, after conferring with the City, that the historic designation denial was effectively a denial of the variance and that no further appeal was necessary." The Golub's then sued the City. The City argued that in fact all administrative remedies had not been exhausted and the Golub's agreed to pursue the appeal of the variance with the City Council. The Council returned the matter to the Planning Commission. On October 22, 1997, the Planning Commission voted 3-2 to grant the variance and a use permit. However, the City required a super-majority vote for use permit approval, so the use permit was not approved. On January 6, 1998, on appeal, the City Council overturned the Planning Commission's decision approving the variance, denied the Golub's appeal of the Planning Commission's decision that a use permit was required as well as a variance, and upheld the Planning Commission's denial of a use permit. However, the Golub's ultimately prevailed in court. The court noted that the City's Municipal Code "provides that 'alterations, repairs, or remodeling. . . may be permitted providing a use



permit or variance' is obtained. That section does not state that both a use permit and a variance are required." The Court found "that in this case, a variance is sufficient to allow" the proposed addition and ordered the City to issue the variance for the addition.

C. Standard of Review and Categorical Exclusion E-77-13

The City of Carmel-by-the-Sea lies entirely within the coastal zone, but the City does not have either a certified Land Use Plan or Implementation Plan, although the City is currently working on developing these elements of an LCP. Therefore, the standard of review for the project is the Coastal Act. Most residential development in Carmel does not require a coastal development permit, according to the terms of Categorical Exclusion E-77-13, approved by the Commission in 1977. However, certain areas of the City were not included in that exclusion, most notably beach and beach fronting parcels. The subject parcel here is a beach fronting parcel and so is not excluded from the requirement for a coastal development permit.

D. Coastal Access

Coastal Act Sections 30210 and 30212(a) address the issue of public coastal access:

Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212. (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
- (2) adequate access exists nearby, or,*
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Currently, public coastal access from San Antonio Avenue to the beach exists about 300 feet to the south of the site. A marked access trail leads from San Antonio Avenue along the edge of a heavily vegetated drainage swale to the dunes (see Exhibit 3). Public access also exists via Ocean Avenue, less than one-quarter mile south of the subject parcel. The last block of Ocean Avenue, between San Antonio Avenue and the beach is essentially a parking lot right at the edge of the dunes and beach.

Given the existence of adequate nearby coastal access, there is no need for this proposal to provide additional access. The proposal is consistent with Coastal Act Sections 30210 and



30212 and will not prejudice the City's ability to develop and implement an LCP.

E. Visual Resources

Coastal Act Section 30251 states:

Section 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253. New development shall:

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

The proposed addition would be approximately 28 feet above grade, exceeding the height limit by about four feet but would be below the roofline of the existing house. Staff has received four letters opposed to the proposed addition based on its height, size, and potential private view impacts. As mentioned previously, the standard of review is the Coastal Act, because there is no certified LCP. The Coastal Act does not protect private views; it protects public views only. There is thus no basis for a modification of the project by the Commission because of affects it may have on private views.

The parcel and the neighboring parcel to the south are heavily vegetated with several large (> 4 ft. diameter) and many smaller *Eucalyptus*, acacia, Monterey pine, and other native and ornamental species. From San Antonio Avenue, the house cannot be seen looking to the north-northwest from the south, there is a small view of the house at the driveway, and a small view looking south across properties to the north. The proposed addition would be on the side of the house away from San Antonio Avenue and so would mostly not be visible from the public street due to the existing house. The public view from San Antonio Avenue would not change significantly. The current view is of a house set amongst heavy vegetation; the view with the addition would be of a somewhat larger house set amongst heavy vegetation including trees much taller than the house. The proposed addition would result in a structure that is still very subordinate to the vegetational features of the site.

The existing house can be partially seen among the trees from the publicly owned beach and dunes that lie west of the subject parcel. The proposed addition will also be partially visible from these public lands. However existing large vegetation, including a 63 inch and a 90 inch



diameter *Eucalyptus* will remain just beachward of the proposed addition and should serve to "contain" the addition within the existing "view print." Removal of vegetation that would enlarge the existing view print from the dunes is prohibited. To ensure that the public view print is not enlarged and that the existing vegetational setting is not diminished, a landscaping plan is required to be submitted to the Executive Director for review and approval before the coastal development permit is issued. Therefore, as conditioned, the proposed addition is consistent with Coastal Act policies 30251 and 30253 regarding public views.

F. LCP Planning Process

Coastal Act Section 30604(a) states:

Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for that conclusion.

The City of Carmel is entirely within the coastal zone, but the City does not have a certified LCP. Currently, the City is actively working on completion of its LCP.

For the reasons discussed in this report, the Commission finds that, as conditioned: the proposed project would not prejudice Commission action on future coastal planning decisions regarding development in Carmel; and is consistent with Coastal Act requirements that development not prejudice LCP planning efforts that conform to the Coastal Act.

G. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the activity may have on the environment.

The City found the proposed addition to be exempt from CEQA review. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The proposed project's coastal resource issues have been discussed in this staff report and it has been concluded that the proposal will not have an adverse effect on coastal resources. Accordingly, the Commission finds that as conditioned by this permit the proposed project will not have any significant adverse effects on the environment within the meaning of CEQA.



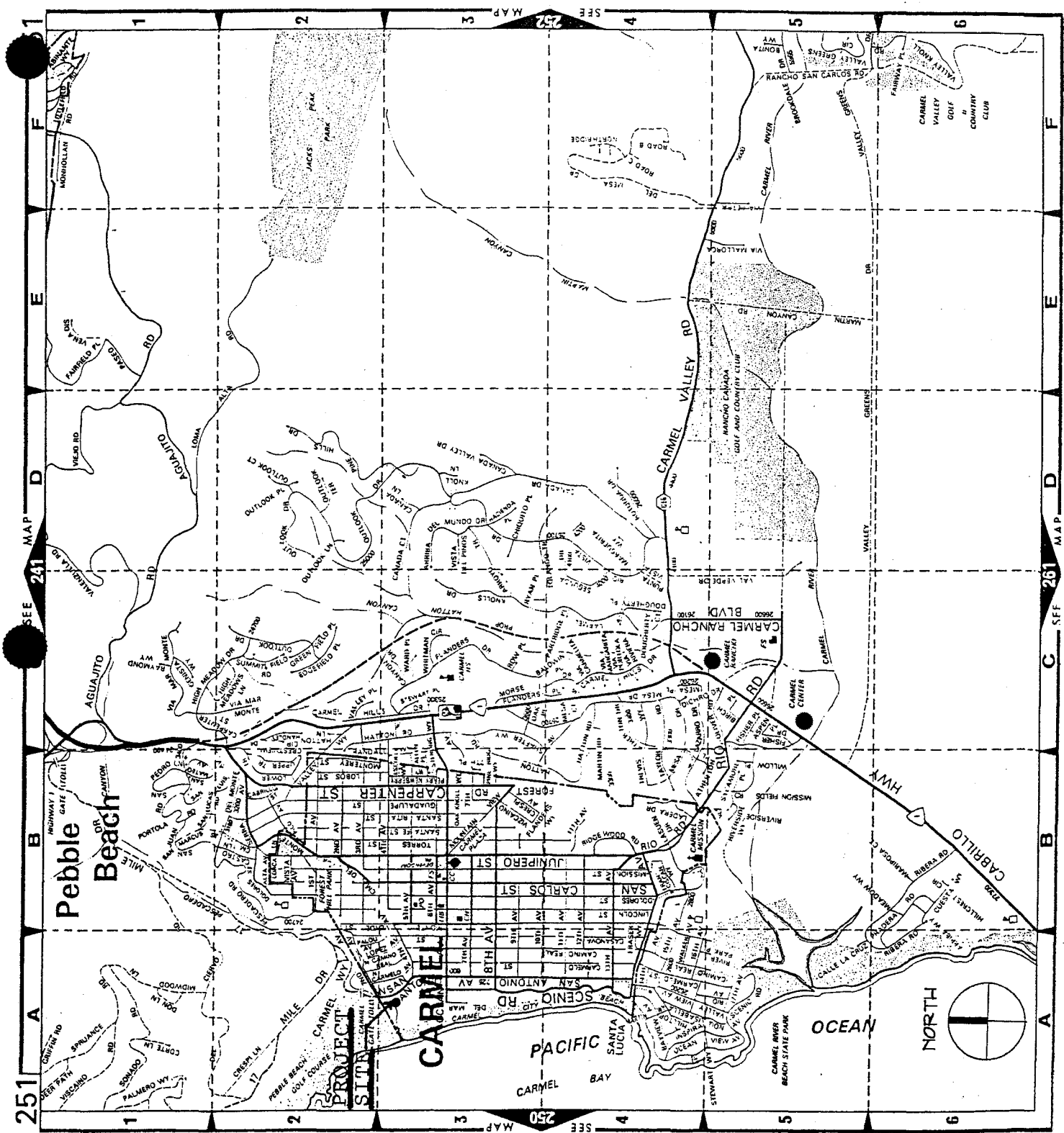


EXHIBIT 1
3-00-004

DENNIS HODGIN AIA
ARCHITECT
 9701 BLUE LARKSPUR LN.
 MONTEREY, CA 93940
 831-655-1024
 FAX 831-655-1354

PROJECT: **REMODEL & ADDITION FOR DR. & MRS. ORVILLE J GOLUB NORTH SAN ANTONIO AVE. CARMEL, CA**

SHEET TITLE: **LOCATION MAP**

REVISIONS:

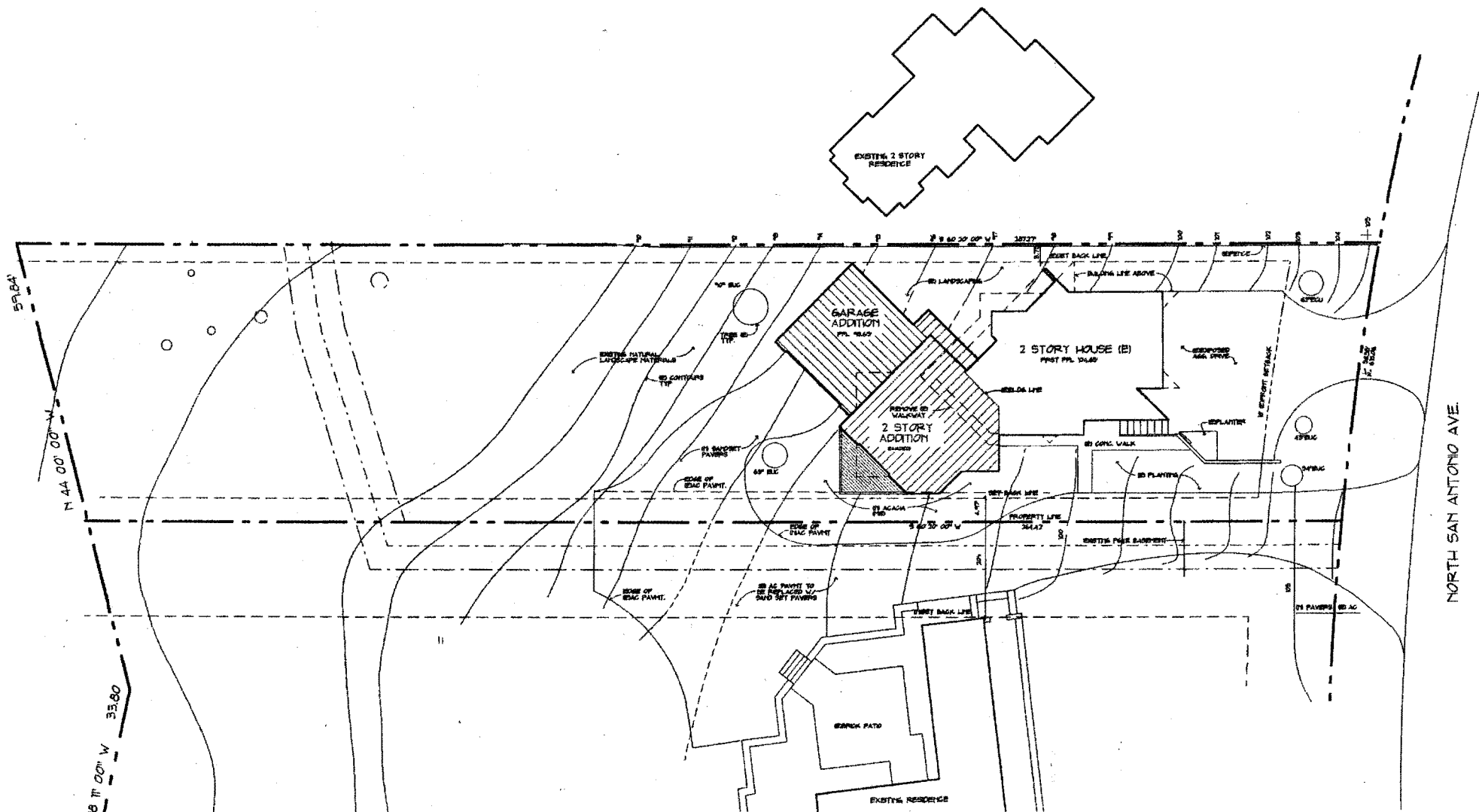
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JOB: **RSOL**

DRAWN: **WSP**

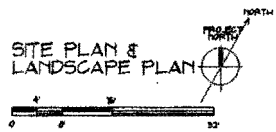
SCALE: **1" = 1/2 MILE**

SHEET: **1**



54.64' N 44° 00' 00" W
 33.60' N 81° 00' 00" W

NORTH SAN ANTONIO AVE



SITE PLAN & LANDSCAPE PLAN

NOTE: ALL NEW 3 GAL. OAK TREES TO BE PLANTED -
 LOCATION TO BE DETERMINED

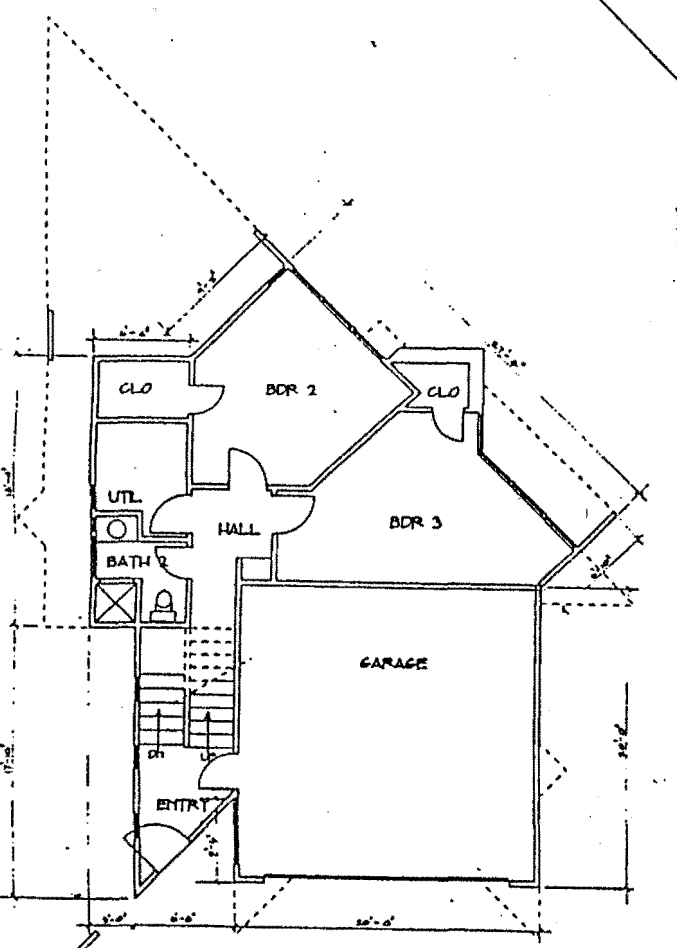
AREAS	EXISTING	PROPOSED
LOT	16,047	16,047 SF
GARAGE	--	306 SF
FIRST FLOOR	3006 SF (1974 GARAGE)	7724 SF
SECOND FLOOR	120 SF	1944 SF
HOUSE TOTAL	3206 SF	9774 SF

FLOOR AREA RATIO 30%
 EXISTING SITE COVERAGE 3006 SF / 16,047 SF = 18.7%
 PROPOSED SITE COVERAGE 4388 SF / 16,047 SF = 27.3%
 PROPOSED LAND COVERAGE 60 SF = 0.4%

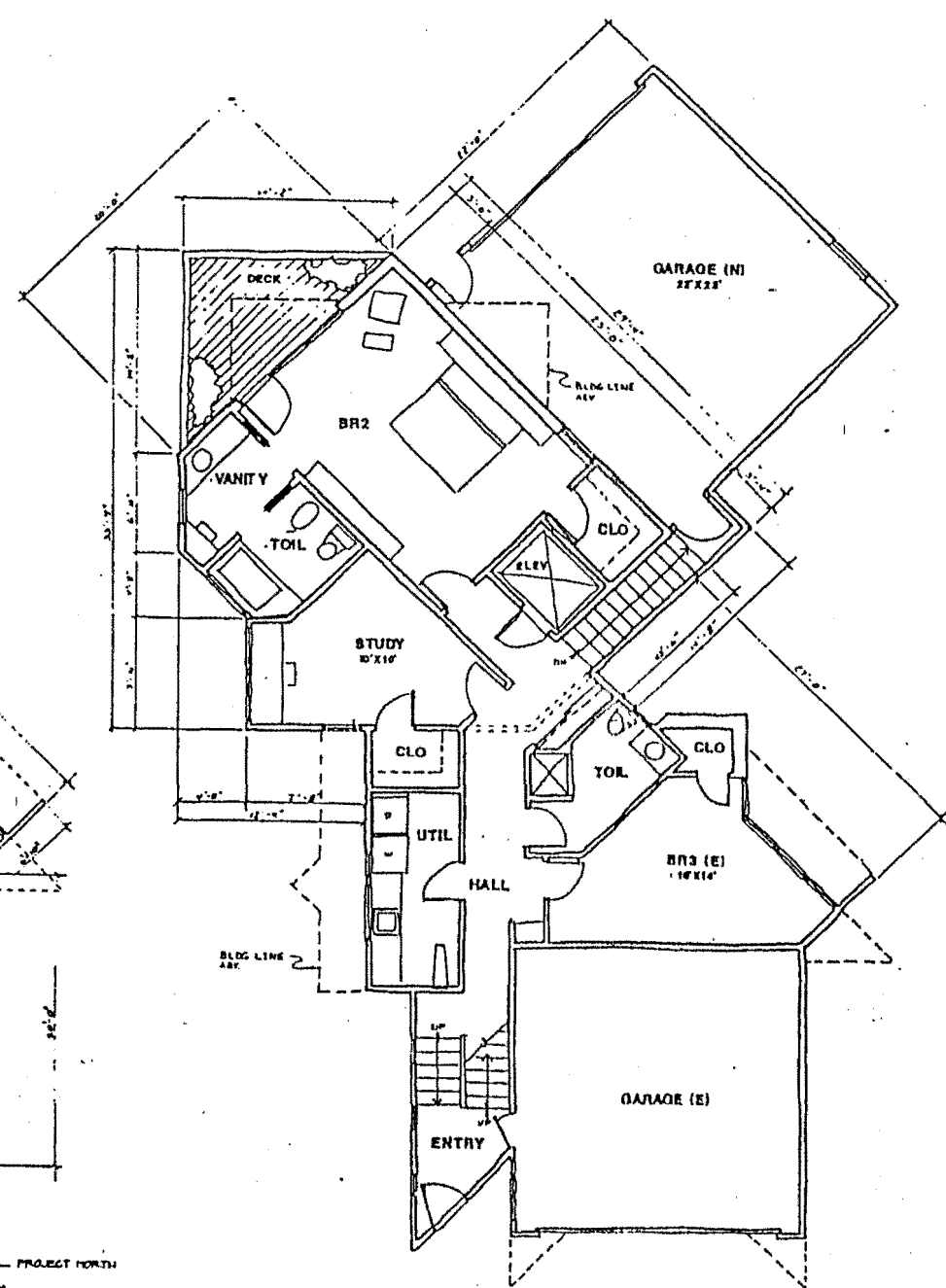
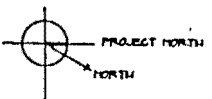
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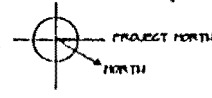
3-00-004
EXHIBIT 2



EXISTING FIRST FLOOR PLAN



FIRST FLOOR PLAN



DENNIS HOOD
ARCHITECT
ARCHITECTURE
AND PLANNING
8701 BLUEBELLE LANE
MONTBERRY CA 92640 408/898-1084

DATE: 12/10/15
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CHECKED BY: DHP/SP
SCALE: AS SHOWN

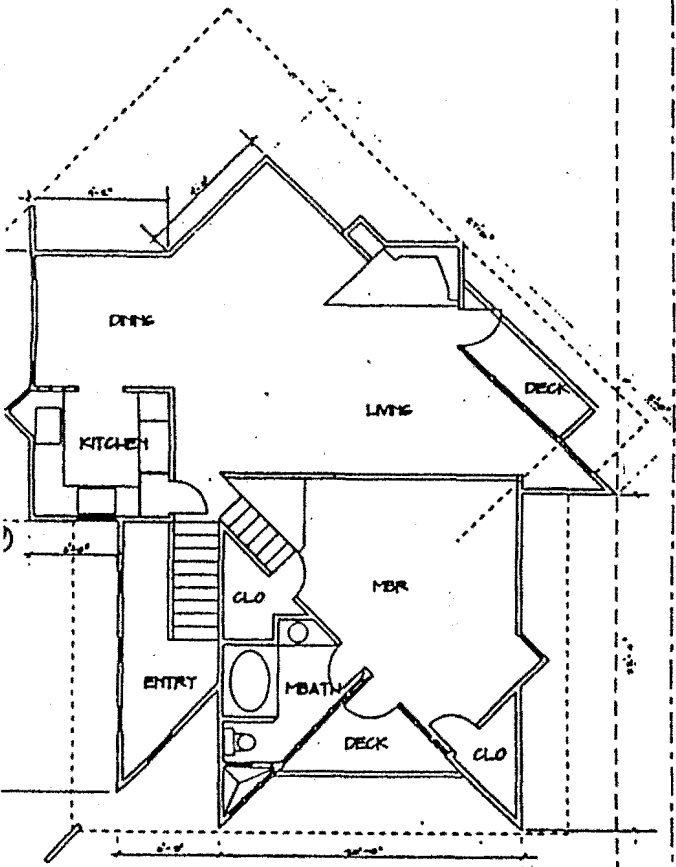
REMODEL & ADDITION FOR
DR. & MRS. GRVILLE J. GOLLS
NORTH SAN ANTONIO AVE.
CAMPBELL, CA
WITH PERMITS FOR 2 LOTS P. 2. 15
2-10-15
8-28-15

REMODEL & ADDITION FOR
DR. & MRS. GRVILLE J. GOLLS
NORTH SAN ANTONIO AVE.
CAMPBELL, CA
WITH PERMITS FOR 2 LOTS P. 2. 15
2-10-15
8-28-15

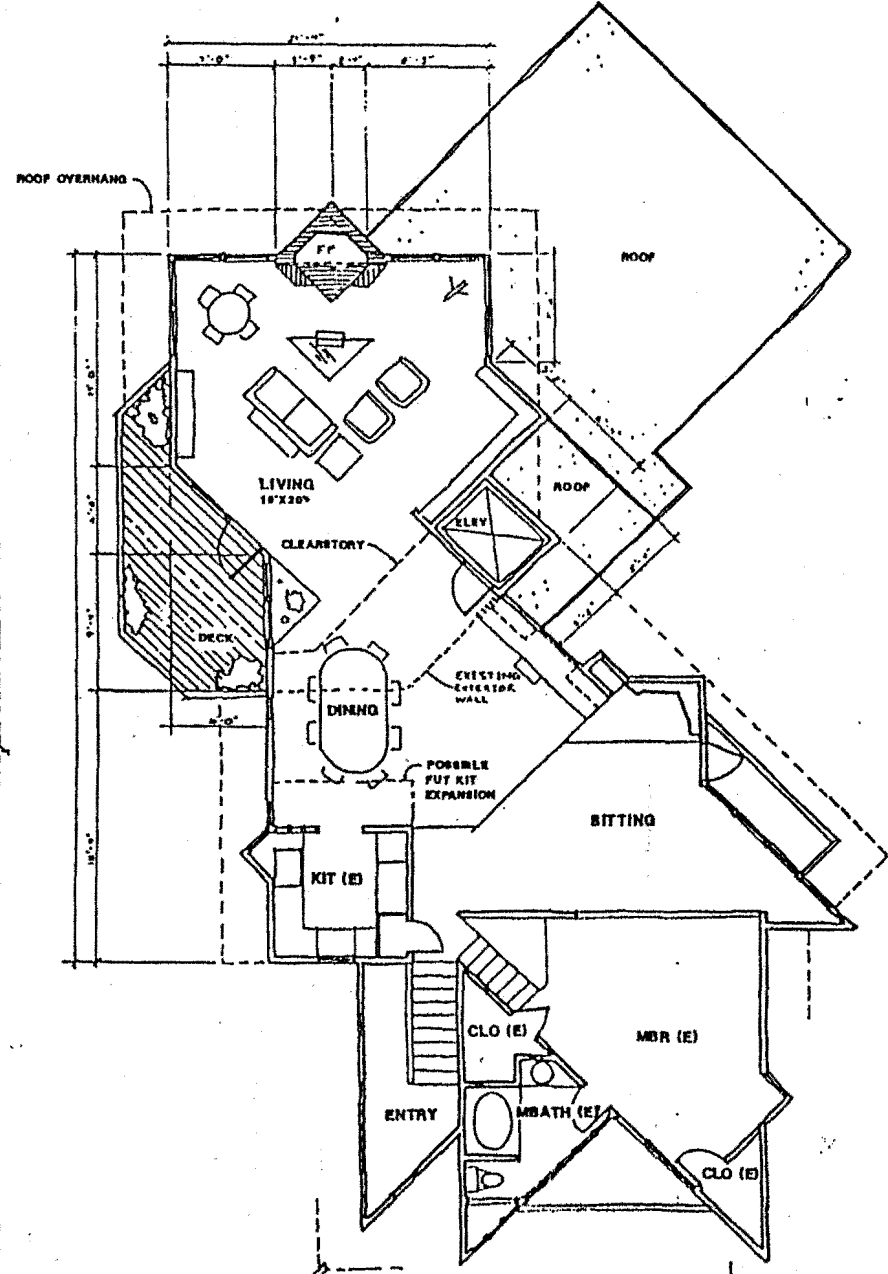
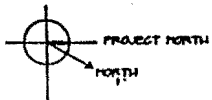
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OF 7 SHEETS

030

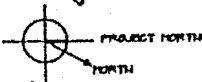
3-00-004
EXHIBIT 2



EXISTING SECOND FLOOR PLAN



SECOND FLOOR PLAN



**DENNIS
HODGSON
ARCHITECT**
ARCHITECTURE
AND PLANNING
8701 BLUELARKBURN LANE
MONTEREY CA 93940 409/866-1084

PROJECT NO.
DATE

DESCRIPTION
DATE
DATE

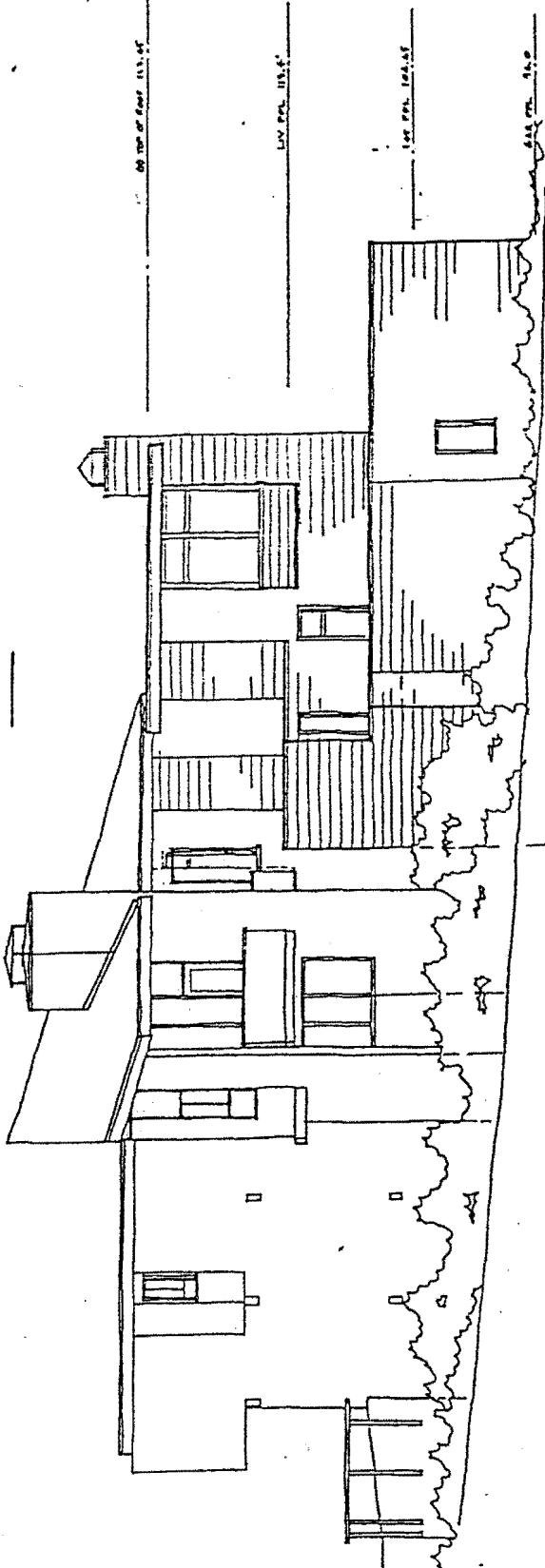
PROJECT NO. 3-00-004
DATE 2-28-79

PREPARED & CHECKED FOR
DR. & MRS. GRVILLE J. GOLDS
NORTH SAN ANTONIO AVE.
SARFELD, CA
DATE 2-28-79 & 3-15-79
NEW & EXISTING
SECOND FLOOR PLAN

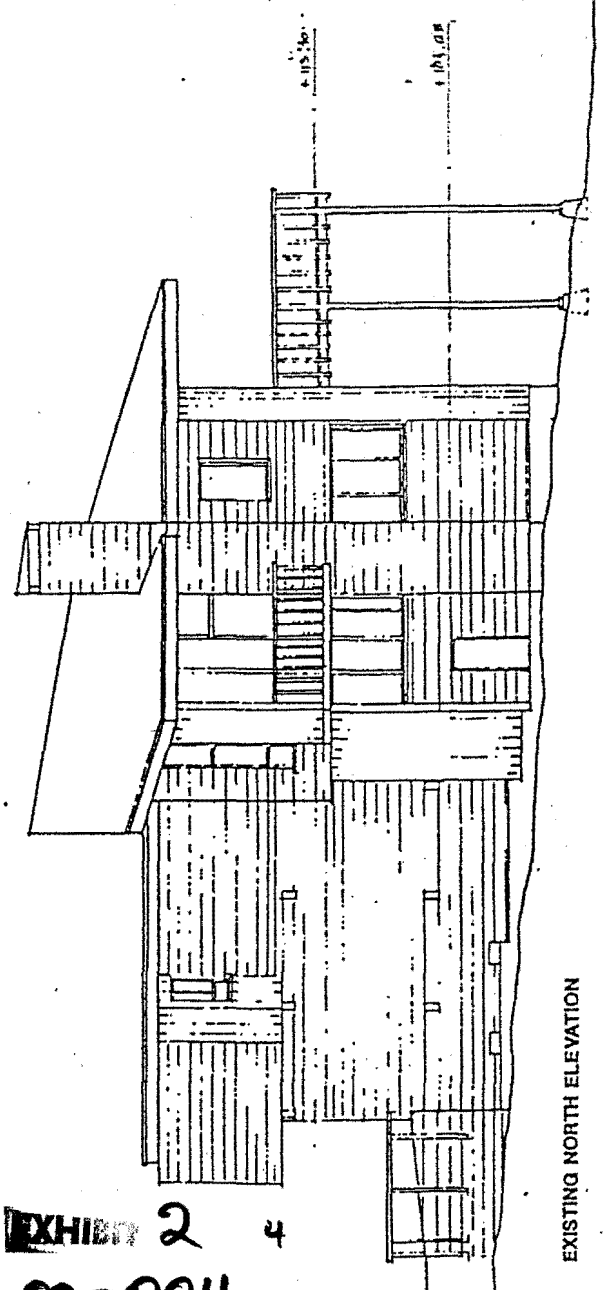
DATE 2-28-79
DRAWN BY
CHECKED BY
SCALE
SHEET NO. 4
OF 7

DENNIS HOOGS ARCHITECT
 ARCHITECTS
 AND PLANNING
 2701 BLUE LARKSPUR LANE
 MONTEREY CA 95040 408/461-0024

DATE: 1-10-95	BY: JH
NO. 1	REV. 1
PROJECT: ADDITION FOR DR. & MRS. ORVILLE J. GULLIS 10711 MARINWOOD AVE. MONTEREY, CA 95040	
DRAWING: EXTERIOR ELEVATION	
A7	



PROPOSED NORTH ELEVATION



EXISTING NORTH ELEVATION

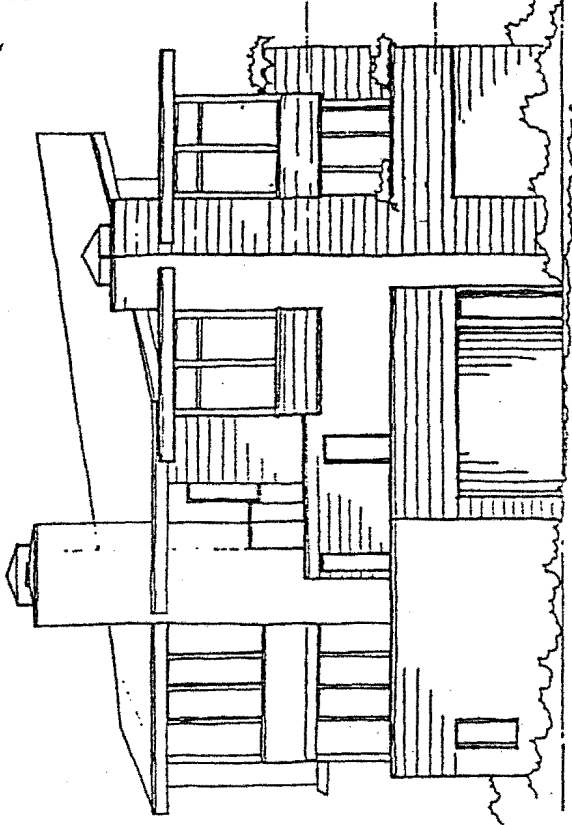
EXHIBIT 2 4
 3-00-004

DENNIS HOOD ARCHITECT
ARCHITECT
 ARCHITECTURE
 AND PLANNING
 8701 ALVA LANE
 MONTEBELLO, CA 94620

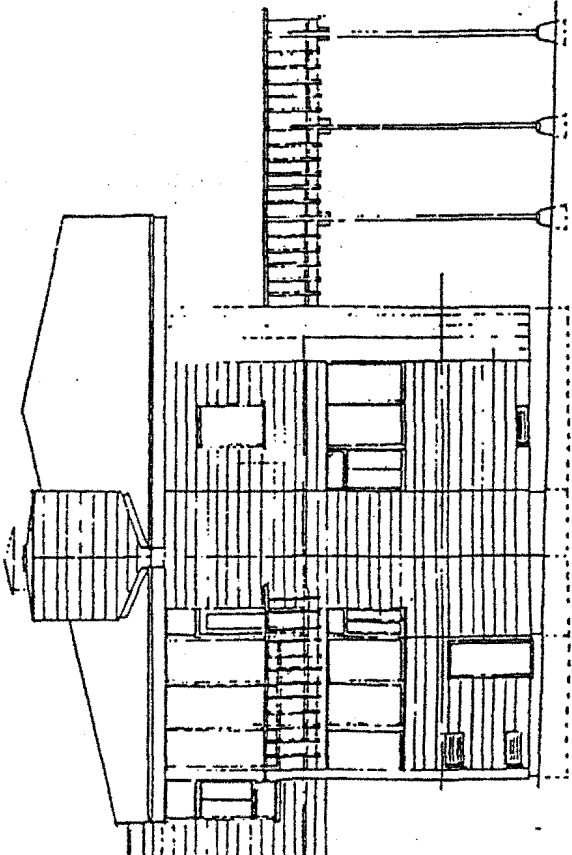
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DATE: 11/15/15

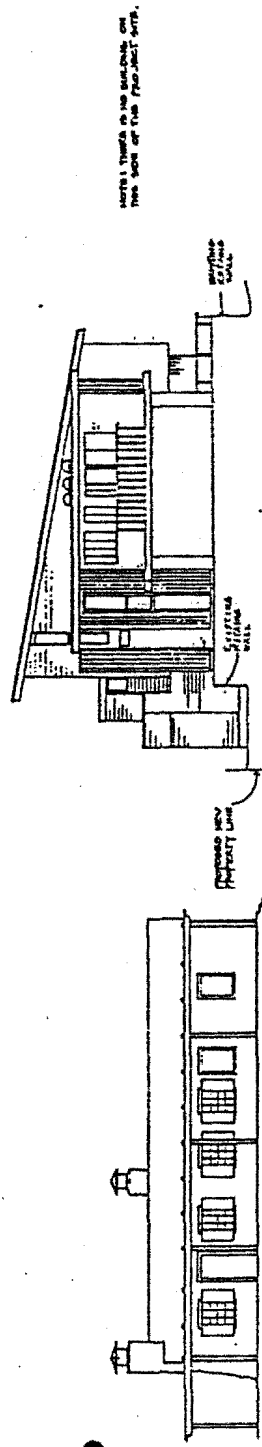
PROJECT NO.	15-004
CLIENT	DR. A. J. GARCIA
ADDRESS	10000 S. J. GARCIA
CITY	LOS ANGELES, CA
STATE	CA
COUNTY	SAN DIEGO
DATE	11/15/15
SCALE	AS SHOWN
PROJECT	EXTERIOR ELEVATION
ARCHITECT	DENNIS HOOD ARCHITECT



PROPOSED WEST ELEVATION



EXISTING NORTH/WEST ELEVATION



NEW & EXISTING STREET ELEVATION

EXHIBIT 2
3-00-004

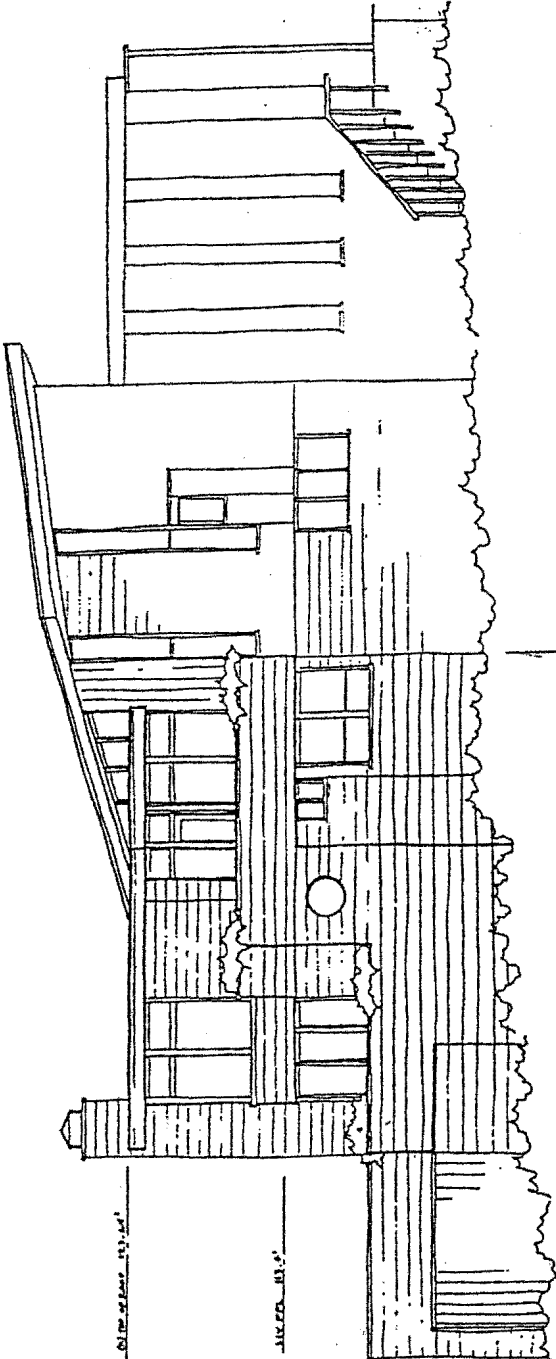
DENNIS HOOD ARCHITECT
 ARCHITECTURE
 AND PLANNING
 11111 WILSON AVENUE
 SUITE 100
 BOSTON, CA 94024-1001

© 1994 DENNIS HOOD ARCHITECT

1/24/94

DATE: 1/24/94
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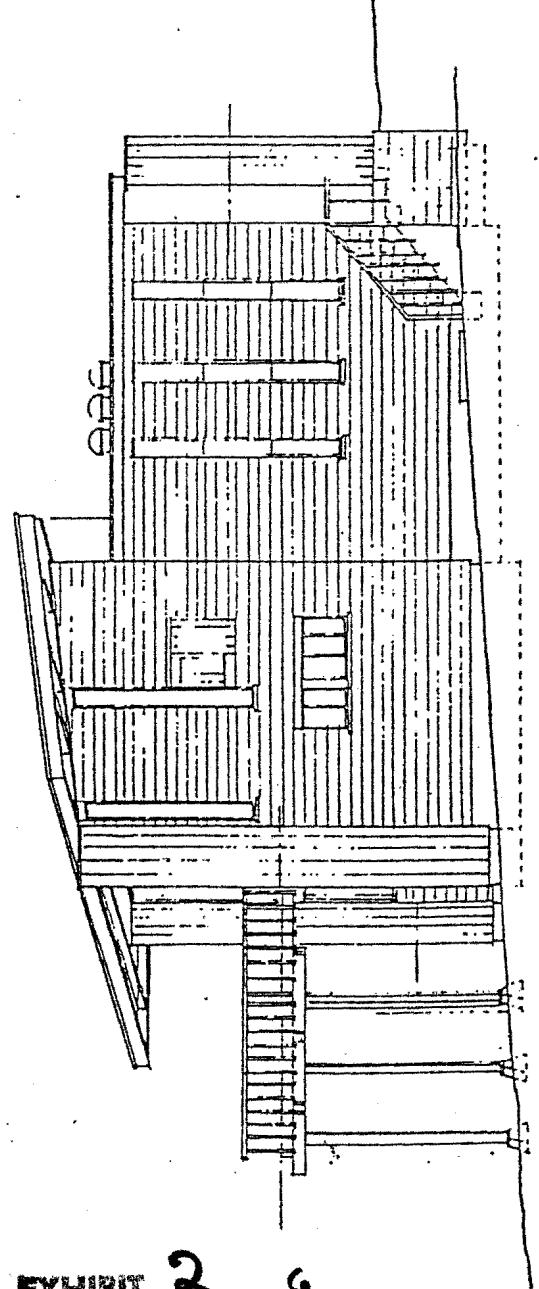
PROJECT: A. ADRIANO FOR
 DR. & MRS. ORVILLE J. COLLIS
 1000 SAN ANTONIO AVE.
 SAN ANTONIO, CA
 SHEET NO. 1 OF 2
 EXTERIOR ELEVATION



PROPOSED
 SOUTH ELEVATION

NOTE: ALL MATERIALS &
 FINISHES TO MATCH
 EXISTING

SCALE: 1/4" = 1'-0"



EXISTING
 SOUTH ELEVATION

EXHIBIT 2
 3-00-004

GOLUB RESIDENCE



VIEWS OF GOLUB SITE FROM
DUNES



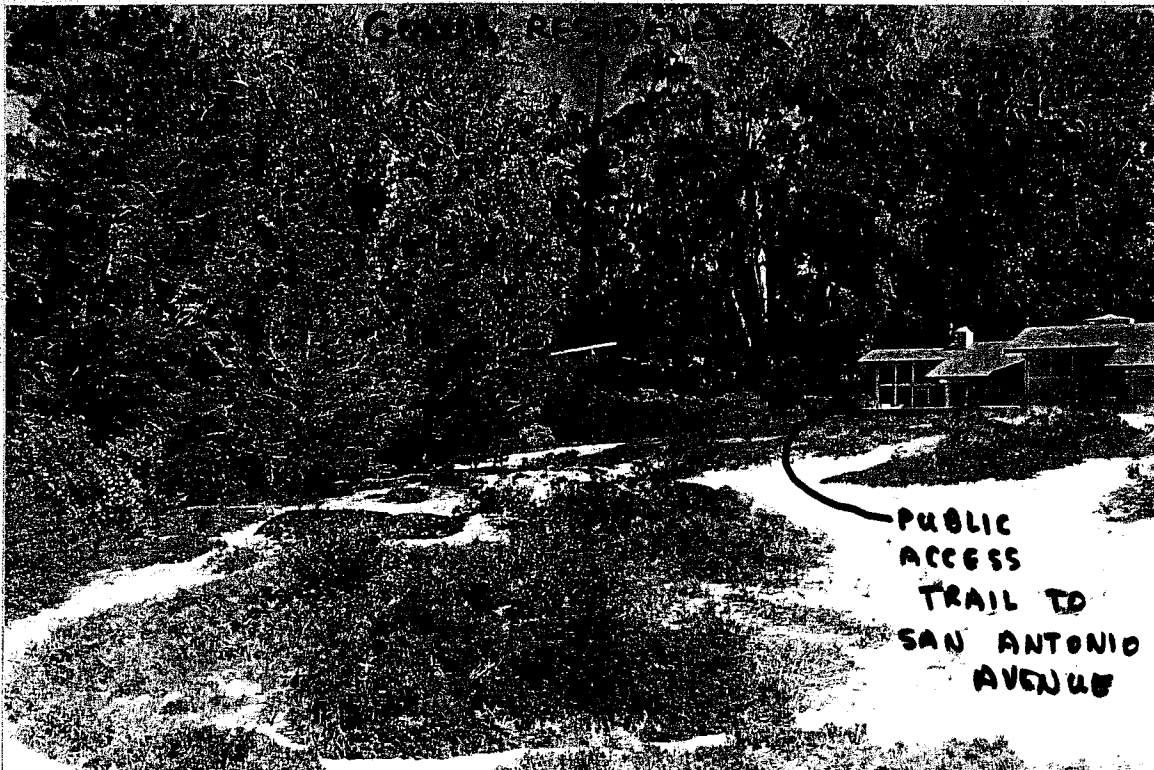
EXHIBIT 2 7
3-00-004

GOLUB RESIDENCE



PUBLIC ACCESS
TRAIL TO SAN
ANTONIO AVENUE

VIEWS OF GOLUB SITE
FROM INLAND EDGE OF
DUNES



PUBLIC
ACCESS
TRAIL TO
SAN ANTONIO
AVENUE

EXHIBIT 2

8

3-00-004



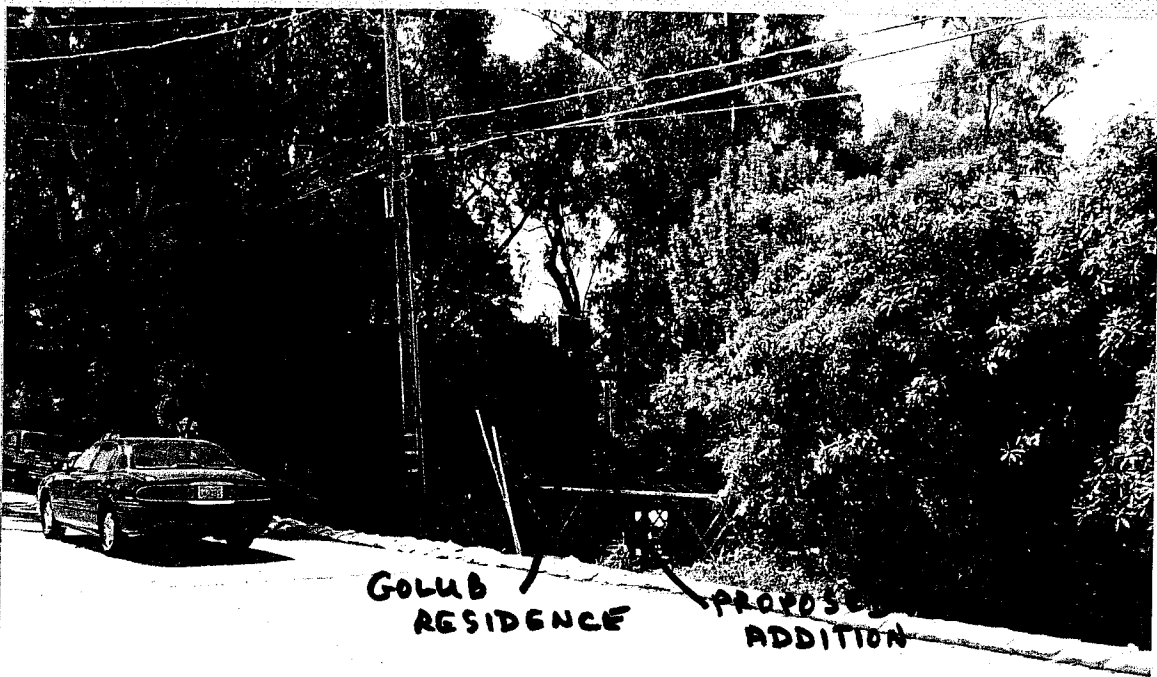
VIEWS OF GOLUB SITE FROM
SAN ANTONIO AVENUE



EXHIBIT 2 a
3-00-004



VIEW NORTH ALONG SAN ANTONIO AVENUE



VIEW SOUTH ALONG SAN ANTONIO AVENUE

EXHIBIT 2 10

3-00-004

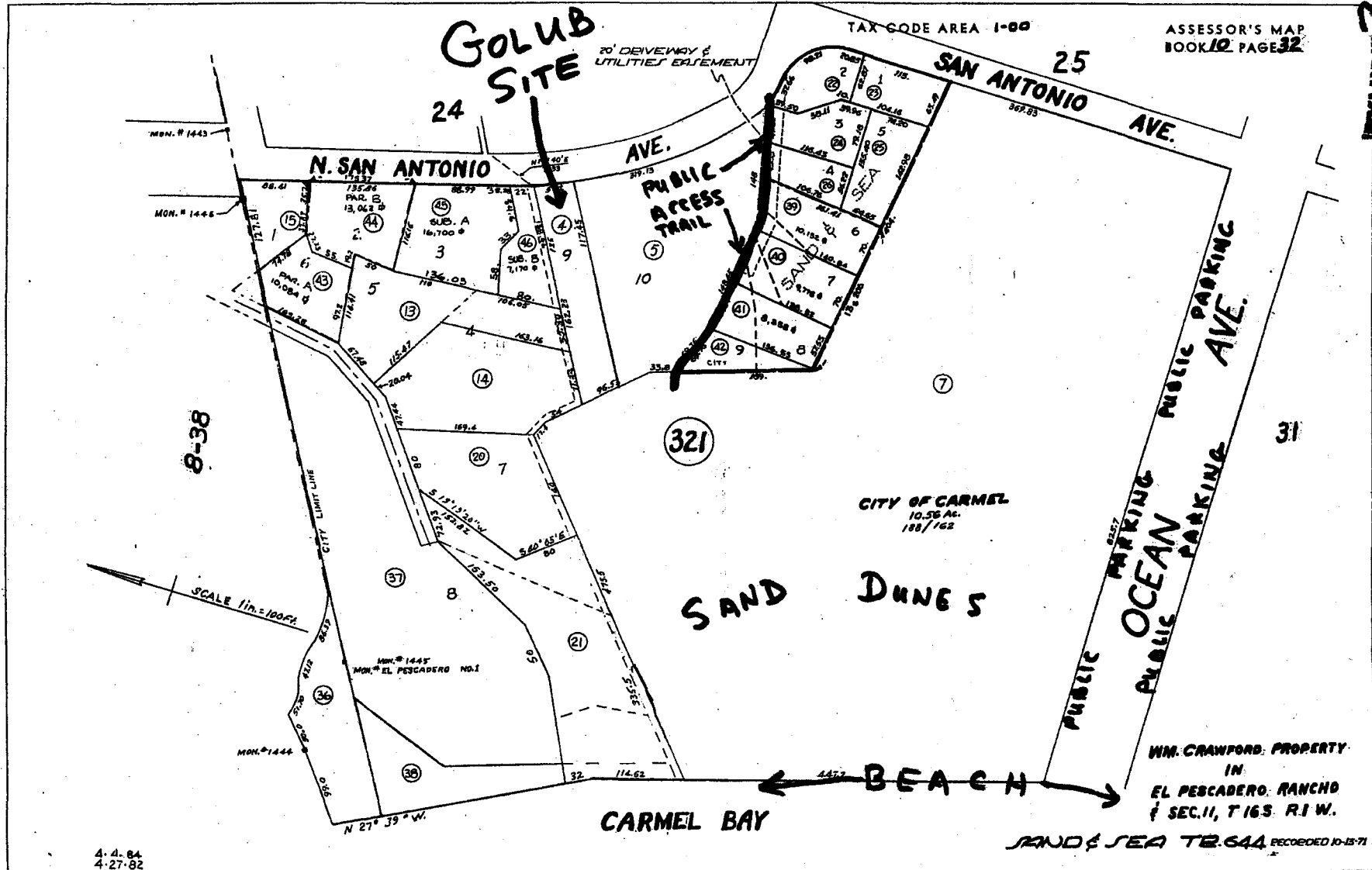


EXHIBIT 3

3-00-004

4.4.84
4.27.92

Anthony L. Lombardo
Jeffery R. Gilles
Derinda L. Messenger
Timothy J. Mingos
James W. Sullivan
Maqueline M. Zischke
Cecilia W. Vallarta
Andy R. Elliott
Todd D. Bessire
Joseph M. Karnes
Steven D. Penrose
Jason S. Retterer
E. Soren Diaz
Aaron P. Johnson

Edward G. Bernstein
Of Counsel

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FEB 07 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

3 February 2000

File No. 293.002.A

Mr. Steven Guiney
Coastal Program Analyst
Central Coast Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Golub Addition, Carmel

Dear Mr. Guiney:

This office, together with the Law Office of Antonio Rossmann in San Francisco, has represented Dr. and Mrs. Golub in connection with court proceedings concerning their property on the west side of North San Antonio Avenue in the City of Carmel. This letter responds to your request for an update on the status of the litigation and for clarification as to the nature and scope of the court's final decision.

Briefly, on October 1, 1998, the Golubs filed their First Amended Petition for Writ of Administrative Mandamus and Complaint for Declaratory, Injunctive Relief and Damages. Trial of the mandate portion of the case proceeded in Monterey County Superior Court on March 10, 1999.

On June 8, 1999, the Superior Court rendered its Intended Decision, granting the Golubs mandate relief. The court ordered that the City to issue the variance (previously granted by the Planning Commission), declared that a use permit was *not* required and that the City complete design review "as quickly as possible." The Court adopted its intended decision as its final Statement of Decision on July 7, 1999. (A copy of the Statement of Decision is attached hereto as Exhibit A.) The court's Order Adjudicating Petition for Writ of Mandamus and Directing Issuance of Peremptory Writ of Mandamus was also signed and filed on July 7, 1999. (See Exhibit B.) The Peremptory Writ of Mandamus was served on the City and filed on August 4, 1999. (See Exhibit C.) These documents commanded the City to "issue forthwith any remaining permits needed to finally authorize petitioners' project as defined in said administrative proceedings." (See, Exhibit C, Peremptory Writ of Mandamus, p. 2: 10-11.) The court's decision approved the *entire* addition as proposed by the Golubs, not only the elevator or some portion of the addition.

EXHIBIT 4

3-00-004

Mr. Steven Guiney
California Coastal Commission
February 3, 2000
Page 2

On or about August 25, 1999, the City of Carmel sought an Extraordinary Writ of Mandamus from the Court of Appeal for the Sixth Appellate District. The Court of Appeal summarily denied the writ petition and request for stay on September 3, 1999. (See Exhibit D.) No appeal of the appellate court decision was filed. In its briefing to the Court of Appeal, the City of Carmel recognized that the order to issue the permits would become final if the appellate court did not intervene. Thus, on September 14, 1999, the City issued the variance and directed staff to proceed expeditiously on the remaining design study application. (See Exhibit E, Carmel City Council Agenda, September 14, 1999, Item VII.M.)

As you know, on December 1, 1999, the Carmel Planning Commission considered and unanimously approved the Golubs' application for design study. In his presentation to the Planning Commission, City Attorney Don Freeman explained to the commissioners ("in plain simple language") what the court said: "Carmel, let the Golubs build their home." Dr. and Mrs. Golub, both of whom are in their eighties, have been waiting an extraordinarily long time to proceed with their proposed addition, which is not visible from San Antonio, Carmel Beach, or any public right of way.

We look forward to working with your office to secure the final coastal development permit so that the Golubs can proceed with the addition and make the Carmel residence their permanent home. Please feel free to call should you require any additional information concerning the underlying court proceedings.

Sincerely,

LOMBARDO & GILLES



Vanessa W. Vallarta

Enclosures

cc: Antonio Rossmann, Esq.
Dennis Hodgin AIA
Dr. and Mrs. Orville Golub

EXHIBIT 4 2

3-00-004

FILED

JUL - 7 1999

SHERRI L. PEDERSEN
CLERK OF THE SUPERIOR COURT
DEPUTY

1 Antonio Rossmann, Esq. #51471
2 Roger B. Moore, Esq. #159992
3 LAW OFFICE OF ANTONIO ROSSMANN
4 380 Hayes Street
5 San Francisco, CA 94102
6 Telephone: (415) 861-1401

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8 LOMBARDO & GILLES
9 P. O. Box 2119
10 Salinas, CA 93901
11 Telephone: (831) 754-2444
12 Attorneys for Petitioners, Orville J. Golub and Ellina Marx Golub

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF MONTEREY

15 ORVILLE J. GOLUB and ELLINA MARX
16 GOLUB,

No. M 34693

17 Petitioners/Plaintiffs,

18 vs.

wpc
~~PROPOSED~~ STATEMENT OF
DECISION IN SUPPORT OF
COURT'S GRANTING OF
PEREMPTORY WRIT OF
MANDAMUS

19 CITY OF CARMEL-BY-THE-SEA, a Municipal
20 Corporation; CITY COUNCIL OF THE CITY
21 OF CARMEL-BY-THE-SEA; PLANNING
22 COMMISSION OF THE CITY OF CARMEL-
23 BY-THE-SEA; JERE A. KERSNAR, in his
24 official capacity as City Administrator; RICK
25 TOOKER, in his official capacity as City Planner;
26 DONALD G. FREEMAN, in his official capacity
27 as City Attorney; and DOES 1 through 100,

28 _____
Respondents/Defendants. /

29 The Court hereby adopts its intended decision dated June 8, 1999, attached hereto as
30 Exhibit "A", as its final Statement of Decision in support of its grant of a peremptory writ of
31 mandamus setting aside decisions of respondent City Council of the City of Carmel-By-The-
32 Sea dated March 17, 1998; setting aside decisions of respondent Planning Commission of the
33 City of Carmel-By-The-Sea dated December 10, 1997, except for the decision to grant
34 petitioners a variance; and

Golub, et al. v. City of Carmel, et al.
Superior Court Case No. M 34693
Statement of Decision

EXHIBIT 4 3

3-00-004

EXHIBIT A

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ordering further action described therein in compliance with the writ.

Dated: 7/7/99

WILLIAM D. CURTIS
JUDGE OF THE CONSOLIDATED COURTS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Date: 6/8/99

WILLIAM D. CURTIS

Judge:

Lita Messina

Deputy Clerk

Bailiff:

Reporter

ORVILLE J. GOLUB and ELLINA MARX
 GOLUB,
 Plaintiffs/Petitioners,
 vs.
 CITY OF CARMEL-BY-THE-SEA et al.,
 Defendants, Respondents.

No. M 34693
 Minute Order:
 INTENDED
 DECISION

APPEARANCES

A hearing on Petitioners' writ of mandate was held on March 10, 1999. The matters was argued and taken under submission. The court now rules as follows:

Both parties are aware of and have extensively briefed the "continuing saga" of Petitioners' application process with the city. The court has reviewed the extensive record and both parties' points and authorities.

Although it is unusual for a court to interfere with a city's land use, zoning and permit determinations, the court finds that the unique facts and procedural posture of this case warrant court intervention.

Essentially, Petitioners seek to remodel their home. Their home was designed by renowned architect Henry Hill and contains a "reverse floor plan"--with the primary living area on the second floor. Both Petitioners are over 80 years of age. Due to health problems, Petitioners want to install an elevator to provide access to the second floor. Because of the space that the elevator will take up, Petitioners also seek to modestly expand their living space on the second floor. Because of the unique design of the Henry Hill home, the most reasonable way to add to the main living area is to extend the second floor living space.

That part of the proposed addition will require a divergence from the City's height limit [ranging from 1.20 to 3.85 feet above the current 24 foot limit]. The roofline of the addition, however, will be about six feet lower than the existing roof. Although the proposed remodel will add some 1760 square feet to the home, only 532 of those feet will require a variance from the city's height requirements--and it is that part of Petitioners' proposal that is at issue here.

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EXHIBIT 4 5

Exhibit A

3-00-004

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Page 2

Continuation of Minute Order of _____

The court notes that the Golubs lawfully constructed their home in 1971-1972. The R-1 height limitation of 24 feet, enacted in 1985, was a zoning change by the city that rendered Petitioners' home a legal but nonconforming one. The court also notes that the proposed addition would result in a 3700 square foot home, well within if not below the square footage of neighboring properties on similar lots.

In this mandamus action Petitioners challenge four administrative determinations made by the City: the City Council's December 1995 affirmance of the Planning Commission's August 1995 decision denying architectural designation to the Golubs' property; and three March 1998 decisions of the City Council which: overturned the Planning Commission's grant of a variance, required a use permit, and denied that use permit.

History: The record and the parties' points and authorities show Petitioners first submitted a design application to the City in 1992. The Planning Commission rejected the proposal on the ground that it exceeded the height in the R-1-B district. The City suggested the Golubs redesign and reduce the scale of the project. Petitioners obtained a local architect who redesigned the proposed remodel and worked to maintain the unique architectural characteristics of the existing home.

Petitioners submitted the current proposal. As directed, Petitioners applied for a variance, use permit, design study application and a request for a lot line request. The Planning Commission denied Petitioners' application for a variance and approved the lot line adjustment on April 26, 1995. Hearing on the application for a use permit and a design study were continued. On May 3, 1995, the Golubs appealed the denial of a variance. The appeal was put on hold while, at the suggestion of staff, Petitioners pursued an architectural designation of their home. Despite recommendation by staff that the home be designated as an architecturally significant resource, the Historic Preservation Committee recommended against designation. The Planning Commission also rejected the designation, affirmed by the City Council on December 5, 1995.

Petitioners understood, after conferring with the City, that the historic designation denial was effectively a denial of the variance application and no further appeal was necessary. This lawsuit was filed on April 8, 1996. Thereafter the city argued Petitioners had failed to exhaust their administrative remedies. The Golubs agreed to pursue their appeal with the City Council. The City Council held a hearing on September 9, 1997. At that hearing the City Attorney instructed the Council that the 18 foot height limit was "in error" and that the variance should have been determined using a 24 foot height limit. After much discussion the Council voted to return the matter to the Planning Commission.

2 of 5

EXHIBIT 4

3-00-004

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Page 2

Continuation of Minute Order of _____

On October 22, 1997 the Planning Commission voted 3-2 to grant the variance application and 3-2 in support of the use permit. Since the City required a super-majority vote to approve a use permit, the City Attorney advised that a majority vote was insufficient for approval. The City Attorney also explained to the Commission that the city code prohibits the increase of an existing non-conformity or the granting of a use permit in this case. At least one member of the commission characterized this as a "Catch-22"--Petitioners finally got their variance but it could not be used without the issuance of a use permit, which could not be granted.

On December 10, 1997 the Planning Commission adopted its findings approving the variance but denying the use permit and denying Petitioners' request for determination that no use permit was required. On November 25, 1997, the Golubs filed an appeal of the Commission's decision to deny the use permit. On December 17, 1997 the Golubs appealed the City's determination that a use permit was required. On December 17, 1997 the City Administrator filed an appeal of the Commission's approval of a height variance for the Golub home in order "to bring the whole case before the City Council."

On January 6, 1998, the City Council overturned the Commission's decision approving the variance, denied the Golubs' appeal of the Commission's decision that a use permit was required and upheld the decision of the Planning Commission denying the use permit.

Analysis: Petitioners argue inter alia, that the City improperly required both a variance and a use permit. Once the Planning Commission voted to approve the variance, Petitioners argue, the matter ended there.

Carmel Municipal Code section 17.46.040 sets forth a number of circumstances under which the Planning Commission may issue use permits. Nowhere in that ordinance does it say a use permit is required to remodel or add on to a nonconforming building.

The City also cites to section 17.38.030, which governs "nonconforming buildings." The City relies on that ordinance [subsections C. and E.] for the proposition that a use permit is required for alterations or remodeling to an existing nonconforming building, but a use permit cannot be issued if it will result in an increase in the nonconformity. [See the Supplemental Administrative Record at pages 492,539,540].

The court notes that section 17.38.030(C.) provides that "alterations, repairs or remodeling...may be permitted providing a use permit or variance" is obtained. That section does not state that both a use permit and a variance are required.

EXHIBIT 4 7

3-00-004

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Page 2

Continuation of Minute Order of _____

Assuming the City's interpretation of its own ordinance is correct [that an existing nonconformity can never be increased], the court finds that in this case, the City should be estopped from taking that stance.

It appears that Petitioners attempted to work with the City in good faith to obtain necessary approval for their project. Petitioners have run the gamut of appearances and applications to public agencies. After much delay and multiple hearings and determinations, Petitioners finally obtained their variance only to be told that that wasn't enough.

According to the City, a use permit was also required, and "the Commission lacked the power to authorize a use permit". "Approval would produce an increased nonconformity, which is expressly prohibited" by city ordinance. [AR 540].

If that is the law in the City of Carmel, petitioners should have been told that when they originally applied to the City in 1992. According to the City, although a variance would allow Petitioners to exceed the height limitation, a use permit is also required, and under no circumstances can a use permit issue that would allow the Golubs to expand the second floor of their home.

Had Petitioners known this in 1992, they could have then decided to tear down their home, rebuild their home so that the living area was on the first floor, or seek legal recourse. Instead, Petitioners knew they had an uphill climb to obtain a variance but didn't know that a use permit was a complete impossibility, until 1997. The court notes that staff had repeatedly recommended that should a variance be granted, a use permit should also issue.

The court finds that in this case, a variance is sufficient to allow Petitioners to proceed with their remodel. The Planning Commission properly voted to allow the variance. The Commission's findings were properly made under Municipal Code section 17.18.190 and are supported by substantial evidence. Under Municipal Code section 17.50.080, the City Council was bound to uphold the Planning Commission's grant of the variance.

The court finds additionally, that the appeal to the City Council by the city administrator of the granting of the variance was also an improper "personal" appeal. Mr. Kersnar was not personally an "aggrieved" or "interested" party. Clearly the appeal was made on the City or the Council's behalf. The court notes that Mr. Kersnar sought reimbursement from the City for the cost of filing the appeal [although that request was later withdrawn].

4 of 5

EXHIBIT 4

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3-00-004

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Page 2

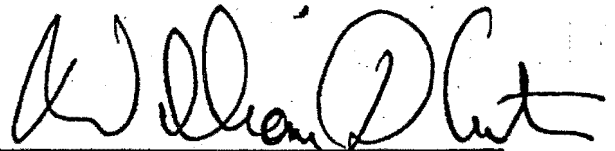
Continuation of Minute Order of _____

The court declines to make any determination on Petitioner's ADA claims by way of mandamus.

As Petitioners request, the court hereby orders that the variance shall issue, the court declares that a use permit is not required, and the city is ordered to complete the design review as quickly as possible.

Petitioners shall prepare a final statement of decision and judgment that accord with the above ruling.

DATED: 6/7/99



WILLIAM D. CURTIS
Judge of the Superior Court

EXHIBIT 4

3-00-004

**DENNIS
HODGIN
AIA
ARCHITECT
ARCHITECTURE
AND PLANNING**

2959 MONTEREY-SALINAS HWY • MONTEREY CA 93940 • 831/655-1024 • FAX 831/655-1354

Post-it® Fax Note	7671	Date	3/22/00	# of pages	2
To	STEVE GUINEY	From	DENNIS HODGIN		
Co./Dept.	COASTAL COMMA	Co.			
Phone #		Phone #			
Fax #	427 4877	Fax #			

MAILED LETTER & PHOTOS IN MAIL.

March 21, 2000

Steven Guiney
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Golub Addition Application, West side of North San Antonio Between 2nd and 4th Streets, City of Carmel

Dear Mr. Guiney,

This letter is in response to the three letters you have received from adjoining property owners. I would like to offer the following information to you, which I would appreciate you forwarding to the commissioners.

1. The current proposed plan is exactly as originally submitted to the city in 1995. At that time the design had been modified to satisfy concerns of the neighbor to the north, which was the only neighbor directly impacted who expressed concerns at the time of the initial public hearing.
2. The plan submitted to the Coastal Commission was granted a variance and went through city design review with full public hearings. There were no objections to the design from any of the affected neighbors during the hearings, which were fully noticed and open to public comment.
3. The proposed addition is about 5 feet lower than the existing structure and only exceeds the height limit from 1.2 feet to 3.8 feet at the highest point. The proposed height is 27.8 feet, not 33 feet as represented in one of the letters. It is not visible to any of the neighbors who have submitted letters claiming such. See attached photos taken from the front of each person's lot who have submitted letters for reference.
4. The purpose of the addition is twofold; to provide handicap accessibility to the main living area situated on the second floor and to expand the main living level so that Dr. and Mrs. Golub can permanently move to Carmel. The current main living level is only 582 sf. The addition needs to provide a level floor without stairs, and a ramp due to several hip replacements which requires a level floor for Mrs. Golub. It was not possible to expand the living area without the minor height variance.

In summary, the project has had full public hearings and no affected property owners appeared to object to the design as presented. This is not a new request and will have no visual impact on any of the neighbors. This house, with the proposed addition, will still remain substantially smaller than what the current city code allows, which is not the case of most of the neighboring properties.

EXHIBIT 4

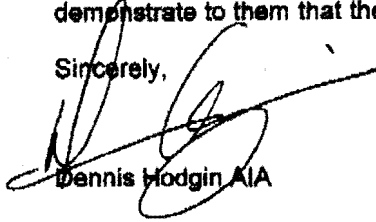
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Page 2 of 2
March 21, 2000
Mr. Steve Guiney

We appreciate your consideration of the above facts. Please contact me if you require any additional information. I will personally contact the neighbors who have expressed objections and hopefully demonstrate to them that their concerns are unfounded.

Sincerely,



Dennis Hodgins AIA

encl.

cc: Dr. & Mrs. Golub

EXHIBIT 4
3-00-004

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MAR 08 2000

6 March 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

To: Mr. Steve Guiney
Coastal Analyst
California Coastal Commission
725 Front Street Suite 300
Santa Cruz, Ca. 95060

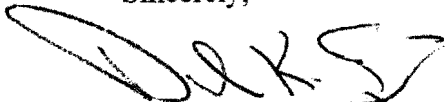
From: David K. Simpson
100 Dolores St. #164
Carmel, Ca. 93923

Subj: Proposed Construction in the Beach Overlay District, City of Carmel(Block SD,
Lots 9 & 10)

1. My wife and I live directly across the street(4NE of 4th on San Antonio Avenue) from the subject property that belongs to the Golub family. We have followed their process to add a small addition to their house which basically included an elevator. Lately, however, it has been made clear that they now want over 500 square feet on a new second floor along with a deck that will obstruct our view as well as others. Their structure, already unique, will become imposing to the other houses in the neighborhood.

2. We object to the addition that exceeds the height restrictions necessary for the installation of the originally proposed elevator. Our street has undergone extensive renovations over the last couple years, with this being the only modification that we want disapproved.

Sincerely;



DAVID K. SIMPSON

EXHIBIT 4

12

3-00-004

P.O. Box 834
Carmel, CA 93921

February 28th, 2000

Mr. Steve Guiney
Coastal Analyst
California Coastal Commission
725 Front Street - Suite 300
Santa Cruz, CA 95060

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MAR 01 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dr. Mr. Guiney:

*Re: Proposed construction in the Beach Overlay District,
City of Carmel (Block SD, Lots 9 & 10)*

We are most concerned about this proposed addition which necessitates increased height of 33 ft. The Golubs' home already exceeds the height limit allowed by the City - rendering it one of the most towering structures in this seaside community.

We are neighbors of the Golubs and when we made application - last year - to do a major remodel we were held to the strict height restrictions. We were more than willing to adhere to this restriction, in fact, we stayed below said restriction in order not to block our neighbors' view.

The Golubs supposed reason for the addition and height variance is to accommodate an elevator. How ironic that said elevator would be constructed to access the addition! We know, from personal experience, that it is possible to have an elevator attached to a staircase, thereby negating the necessity for additional square footage or height variance. Equally disturbing is the fact that, although the need for proposed elevator is temporary, the resultant eyesore would be very permanent.

This letter is by way of expressing our objection to an addition which would exceed the height restrictions currently in place.

Your truly,

Alan Hewer
Alan Hewer

Jean Hewer
Jean Hewer

EXHIBIT 4

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FEB 15 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

February 8, 2000

Mr. Steve Guiney
Coastal Analyst
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060

Re: Block SD
Lots 9+10

Dear Mr. Guiney:

I received the required announcement that public input was invited on a request to change existing property across from me owned by Dr. and Mrs. Golub. At the meeting it was explained that discussion would hold no weight since the judge's ruling was dictating what the local city could pass on the Golub property (west side of San Antonio between fourth and second). I can understand this in regard to material originally presented to him. I do not understand a judge's decision extending beyond the original plans presented.

I was informed that their new request includes over 500 square feet of new second floor area as well as the elevator. I would object to any addition exceeding current restrictions beyond the minimum necessary for the elevator. Neighboring homes and public views should be given due representation. I have not objected to the Golub's plans in the past. I do object to not having a voice at all. Why send me the letter?

Hopefully the Coastal Commission is allowed to use a clean sheet to make their decisions.

Sincerely,

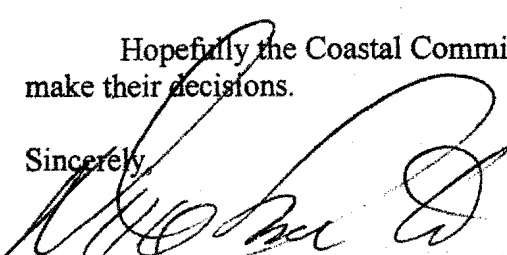

Dixie Hughes Smith

EXHIBIT 4

3-00-004

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Pat K. Wilson • P.O. Box 5247 • Carmel, California 93921

DEC 08 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

December 6, 1999

In re: Proposed construction in the Beach Overlay District, City of Carmel (Block SD, Lots 9 & 10).

Mr. Steve Guiney
Coastal Analyst
California Coastal Commission
725 Front Street - Suite 300
Santa Cruz, CA 95060

Dear Mr. Guiney:

We have twice in the past publicly supported the plans of Dr. and Mrs. Golub for what we thought would be a modest addition to their Carmel property to accommodate an elevator made needful by the considerable height (33 feet) of the structure.

We now discover the Golubs' plans include 532 square feet of new second floor area which exceeds the current Beach Overlay Zone height maximum. The resulting increase in mass and bulk and the addition of a large elevated deck are likely to result in an imposing structure we believe will loom over neighboring homes and obstruct public views of the ocean. Accordingly, we wish to make clear that we object to any addition exceeding height restrictions beyond that minimum necessary for an elevator.

Sincerely,

Pat K. Wilson

EXHIBIT 4

14

3-00-004

