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Date: **March 5, 2009**

To: **California Coastal Commission Staff**

From: **Jeff Baron and Kevin D'Angelo**

Subject: **Response to Appeal A-3-CML-09-011 of City of Carmel Approval of Our 2nd Story Addition. Appellants are Ron and Marion Wormser**

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Before you read further into this document that rebuts the allegations made in the Wormser appeal of our partial 2nd story addition, we'd like to note a couple of things that may help clarify the organization of this document, and some of the reasoning behind how we've arrived at this situation.

We have been through this exercise before – at five previous city hearings, in fact, and the thoughts that we present here have already been accumulated in many different places. Many of the paragraphs in the appeal are simply statements of opinion, and do not reference any section of any regulation at all – most notably, sections III and IV of the appeal's final page. We feel, in these cases, that responding to the opinions and allegations of the appellants is valuable insofar as our response will provide you with a good feel as to the history of our project, but we do not believe that these items are relevant to any legal determination, whether the determination is one of substantive issue or one of general compliance. We have indicated this fact in our response as well, where appropriate.

We feel that all of the allegations in this appeal are related to Mr. and Mrs. Wormser's unwillingness to have us build any partial 2nd story addition on our property, in spite of the fact that they themselves have a two story home that towers over our yard with its 21 foot downhill plate height and views that are obstructed by almost no development. When our 2nd story addition was located in a location more distant than the location reflected in our approval, it blocked the appellants' filtered ground floor view of the ocean. When we moved our 2nd story towards the appellants' home in order to better preserve that view, in the only direction possible according to the drawings provided by their own architect, it then became too large of a presence for our neighbors. This is the crux of this appeal, and we, like city staff, the Carmel Design Review Board, and the Carmel City Council, do not believe that it would be appropriate for these neighbors, with a large two story house that is situated diagonally behind our property, to be able to single handedly prevent us via a Coastal Commission appeal from adding a 2nd story on to our home because of the alleged impacts to their own home.

The issues raised in this appeal are no different than the issues that might be raised in a property dispute in any of the non-appeal areas of Carmel, and yet in those areas, the various local bodies (the city staff, the Design Review Board, and the City Council) have final administrative stay. None of the issues presented here involve statewide impact that should require Coastal Commission approval or review (access to the ocean, public views of the ocean from our street) and if it were not for the fact that a portion of second avenue washed out in the storms of 1998 (we believe) we would not be in the CCC appeal zone. The downhill side of our street, Camino Real, which is closer to the ocean, is not in the CCC appeal zone in spite of the fact that the

downhill side does provide views of the ocean. The entirety of the street below us, Carmello Avenue, is also exempt from CCC appeal, where the public views from the street are even more significant. We are in the CCC appeal zone due to an anomaly with a road that is not between us and the sea, and while we understand “why” we are technically in the appeal zone, the issues that would normally apply to projects closer to the sea seem rather irrelevant up on our part of the hill.

We have addressed the issues as they appear in the appeal, but as the appeal seems to wander a bit and repeat itself, so does our response. Please accept our apologies at the length of this document as we attempt to address all of the issues in a manner in which you can follow. We have attempted to use appropriate formatting within our response so that you are able to follow both the progression of our document and the way that we address each of the appellants’ statements. We have also used a number of photographs in our document, so it is best printed in color rather than black-and-white so that the ideas that we attempt to present are easily discernable. We have provided you with both color copies of this document and a CD that contains the original file so that you are able to print copies for your files if you find the need to do so.

History of the application

July of 2008 – DRB Hearing #1. We proposed our first design to the Carmel Design Review Board. City staff found fault with our 2nd story addition’s impact on the ground floor view of Mr. and Mrs. Wormser. Our mistakes were twofold: Believing that the filtered nature of Mr. and Mrs. Wormser’s view rendered it less significant than views in other parts of the city that are closer to the sea, and allowing our design to be too deferential to the property of our direct rear neighbor by keeping it more “out of her way.” We learned that we had kept our design “too much” out of Mrs. Bergere’s way at the expense of the appellants’ interests.

August of 2008 – Meetings with city staff. We approached Carmel city staff in order to find a location for our 2nd story that would allow us to share in the views that both of neighbors behind us enjoy across our property. Staff specifically referred to the Wormsers’ architect’s own delineation of their private, ground floor view (attached in Appendix III) in order to equitably “allocate” the view across our property – the northwestern corner of our 2nd story was chosen specifically from their own diagram in order to share the view, as the Carmel municipal code and Design Review Guidelines encourage. This northeastern location, in addition to preserving a good portion of the appellants’ view, also helped minimize the view impact on Mrs. Bergere by keeping it out of the “more important southern section of her view”, and simultaneously, reduced the impression of mass from the street by moving the 2nd story addition up the grade, away from Camino Real.

September of 2008 – DRB Hearing #2. Our project’s “concept” was approved by a 4-0 margin with the special condition that we lower the height of our 2nd story plate from 8 feet to 7 feet. The Design Review Board found that the general outline and position of the project were in compliance with the Municipal Code.

October of 2008 – DRB Hearing #3. With continued, vocal opposition to our proposal from our neighbors, the Design Review Board voted 3-2 to overturn its initial approval even though the

hearing was only to address “final design” issues (e.g. color and finish details) and even though our project’s scope had not increased. Michael LePage, absent from our concept hearing approval, voiced his sentiment that our impact on Mrs. Bergere (again, our rear neighbor) was too great. He did not voice sentiment that our impact on Mr. and Mrs. Wormser was too great.

November 2008 – Neighbor Meeting. City staff facilitated a meeting with our neighbors in which we put forth a further compromise offer – to reduce the height of our ridge by an additional 15 inches (benefitting both of our rear neighbors) and to truncate the southern end of our 2nd story by 18 inches (benefitting Mrs. Bergere). We modified our application to this compromise offer. At the October Design Review Board meeting, Mr. and Mrs. Wormser made only one demand – for 18 inches off of the top of our house. At this November neighbor meeting, we made a compromise offer of 15 of those 18 inches.

December 2008 – DRB Meeting #4. Our proposal was approved by a unanimous 4-0 vote of the Design Review Board. The comments from the various Design Review Board members are included near the end of this document. Chairman Paterson remarked that he had “never seen a ridge come down by that much.” Mr. LePage commented that the project had now achieved “an equitable balance with the neighbors”, and he garnered an explicit admission from Mr. Wormser that the project was equitable as it related to their property because we had specifically redesigned our 2nd story addition to accommodate their private view and lowered our rear ridge by a combined total 27 inches.

February 2008 – City Council Appeal. The Carmel City Council voted 4-1 to uphold and affirm the findings of the Design Review Board, and to allow our project to move forward as designed. Comments from the various council members are also reproduced near the end of this document.

Initial Move of Our 2nd Story

We initially relocated the 2nd story of our project in direct response to the private views issues raised by the Wormsers at our first Design Review Board hearing. Given the map of their ground floor private view that they themselves produced (Appendix III) and the nature of that private view’s traversal across our property, from one corner to the other, the only possible place for us to move our 2nd floor in order to maintain a good part of both their private view and our direct rear neighbor’s private view, was up the hill towards the appellants’ home. We may have been naïve in initially believing that the filtered nature of their view of the ocean rendered their private view insignificant, but they have continually indicated that their private view was more important than any other design consideration, including that of mass. Their architect indicated exactly this sentiment during their city council appeal when he stated (in response to a proposal by our direct rear neighbor) that “moving the 2nd story back to its original location would be the Wormsers’ worst nightmare.”

Tradeoffs, Balance, and Equitability

Given that the appellants prefer to retain their private view and continue to object that our 2nd story addition is too close, the city specifically has the authority to mediate such conflicts under the city’s certified Local Coastal Program, and to balance the interests of adjoining property owners in situations such as this one:

Land Use and Community Character element; P1-51; "Attempt to achieve an equitable balance of these design amenities among all properties affected by design review decisions"
Coastal Implementation Plan (Municipal Code Title 17 – Zoning Regulations)
Section 17.10.010.M. Equity. Design controls and conditions of approval should be reasonable and fair.

This is what the city has done in the case of our project. We have made numerous concessions to our neighbors in the design of our project in order to achieve equitability, and each administrative body that has ruled on our project – staff, the Design Review Board, and the City Council – believe that it is equitable. We believe that the city of Carmel has acted within its legal authority in allocating the aesthetic amenities among the properties near us, and we do not believe that there exists a statewide issue in reviewing the decisions that the city has made regarding these private views.

All New Issues

For all of the talk in this appeal of our project's floor area and its impression of mass from the street (neither of which have been contested by the appellants previously), mass from their house, and historical status (also never contested previously), we continue to believe that the appellants' only true interest is in protecting the unobstructed nature of all of their private view – using their "view" objections and their "mass" objections to rule out any 2nd story addition on our property. Every single one of the issues in this appeal, save the "appearance of mass from Mr. and Mrs. Wormser's property," are new issues that have not been previously contested by the Wormsers in any of the forums available to them – input to city staff, the four Design Review Board hearings, and their appeal to the City Council. The city has addressed each of these issues in its Findings for Approval.

Mr. and Mrs. Wormser's appeal to the Carmel City Council, reproduced in Appendix II, contained exactly one claim – that of an alleged violation of CIP 17.64.080. In fact, each and every one of their letters to the Design Review Board after their initial "loss of view" letter mentions only section CIP 17.64.080. The appellants' letters to the Design Review Board of September, October, and December, and their December 30 appeal to the Carmel City Council, speak only of this one section of the CIP, 17.64.080.D, and they consistently address only the impact on their own property. Each of the new issues presented in this appeal is simply an attempt to cast doubt on our approved 2nd story addition, and in each case, they imply that the Carmel city staff, the Carmel Design Review Board, the Carmel Historical Resources Board, and the Carmel City Council failed individually and successively in their duties to review our project for consistency with the approved LCP. That implication is not supported by the facts.

Linkages: The City of Carmel's interests versus those of Mr. and Mrs. Wormser

In a number of different paragraphs of the appeal, the appellants have appended "from the public right-of-way" to their concerns, attempting to link their own personal interests with those of the city.

There are two problems with this linkage. First, we believe that it is the role of city staff and the Design Review Board to ensure, above all else, that individual design projects fit into the

residential fabric of Carmel as outlined by the Land Use Plan, the Coastal Implementation Plan, and the Residential Design Guidelines. To note one example of this principle as it relates to our project, city staff noted that our initial design placed the 2nd story addition close to Camino Real. However, after our redesign of the project and the 2nd story addition in particular, staff noted:

The revised design places the two-story element 80-feet from the front property line, compared to 50-feet in the original design. By relocating the two-story mass further back on the property, with one-story elements at the front, the applicant is presenting more of a one-story design to the street, as recommended by the Design Guidelines.

In fact, staff has commented on more than one occasion that various other modifications we have made to our plans (the use of floor space in the detached office, the reduced roof height) have further reduced our proposal's impact as seen from the street. Staff has consistently guarded the city's interests, and for the appellants to claim that they have not done so vigorously enough is disingenuous. One Design Review Board member's comment that our redesigned proposal was actually smaller than the properties around us only further illustrates that every individual and every official body has been looking out for the interests of the city.

In all of the testimony at the three Design Review Board hearings following our major redesign, not only did the Wormsers never raise any alleged issues related to our project's impact on the "public right of way," the Design Review Board members themselves never commented on any negative street impact at all – the issue simply never arose. The impact that has held us up has continually been the impact to the neighbors.

Second, the linkages, between "streetscape impact" and "neighbor impact" are not supported by the facts. In page 2 of Mr. and Mrs. Wormser's appeal, they claim that the house is too tall as viewed from both the public right-of-way and from the properties to the east. The mistake in the appellants' overall assumption is that building the 2nd story "up on the slope" equates to "a taller perception from the public right of way." As we will show, it is two story houses that are built closer to the street that present more mass and bulk to the public, especially on gradual slopes such as our 10% grade. The perception of mass from the Wormsers' property and the perception of mass from the street are not the same – they are, in fact, very different from one another in this case, and a move down the hill, towards the street would only serve to make our project more prominent from the street. As you will see below, staff specifically noted this in their report of September 2008. The Wormsers idea of pushing our 2nd story down the hill is at complete odds with the interests of the city and the perception of our project from the street.

4 Distinct Groups of Alleged Issues

Though we continue to believe that Mr. and Mrs. Wormser's only true interest is in protecting the unobstructed nature of all of their private view – using their "view" objections and their "mass" objections to rule out any 2nd story addition on our property – we will address each issue that the appellants present in their appeal.

All of the issues raised by Mr. and Mrs. Wormser can be roughly divided into 4 distinct groups: First, there are the issues that relate to the "impression" that our approved project presents to the

street. Though none of these issues have been raised by the Wormsers prior to this appeal – their four letters to the Design Review Board and their appeal of our approval to the City Council are reproduced in Appendix II – city staff has made complimentary comments about aspects of our project that moderate the impacts of our design – our sizeable use of underground basement space, our use of a detached accessory building as a way of relieving the mass of the primary building, and our relocation of our 2nd story addition to the rear of our property.

Carmel planning staff and the Carmel Design Review Board have never indicated that the impression that our redesigned project presents to the public right of way is somehow flawed or even suspect. Because staff and the Carmel Design Review Board have found that our design satisfies Carmel's Local Coastal Program, and because the Carmel City Council affirmed those findings in their entirety, we do not believe that this group of issues warrants a review by the California Coastal Commission. There is neither a public access issue, a public view issue, a public recreational issue, nor an environmental issue in this appeal. All of the issues in this group are red herrings.

Second, there are the “aesthetic issues” that relate to the “impression” that our approved 2nd story addition presents to the property owned by the Wormsers. Our 2nd story addition preserves half of the appellants' ground floor view, all of their 2nd story view, and is so low in the ground that it is actually lower than the appellants' ground floor! We do not believe that our project presents the issues that the Wormsers believe that it presents, and again, Carmel city staff and the Carmel Design Review Board agree with us, a decision that was affirmed by the Carmel City Council. We do not believe that this group of issues, all of which that address a dispute between two private properties, are issues that warrant a review by the California Coastal Commission. These issues are of a more private nature, not a public nature, and the city of Carmel has the specific ability to ensure that “design amenities” are “reasonable and fair” – see again Land Use and Community Character element policy P1-51 and CIP 17.10.010.M.

Third, there is the newly raised issue of lot coverage. Without merit, the appellants have combined their own misreadings of the Carmel CIP with their own opinions, and have once again reached the conclusion that city staff, in writing each of their five separate staff reports, have repeatedly misinterpreted the city's own coverage guidelines. Since the appellants are in error, we do not believe that this issue can present a substantial issue that warrants a review by the California Coastal Commission. This issue is also a red herring.

Fourth and finally, there is the “historic compliance” issue that the Mr. and Mrs. Wormser present. In raising this issue in so untimely a fashion, the Wormsers in effect plead ignorance as their only excuse. We believe, as the Carmel Land Use Plan says, that the historic fabric of Carmel is part of the city, and that that fabric helps to make Carmel what it is. We also believe that, as the city's Historic Resources Board correctly determined, our house, more modern than almost all of the other houses on the Historic Inventory, and modified since its construction, does not have historic character.

The action by the Historic Resources Board was appropriately noticed, the public meeting was held and documented on April 21st, 2008, the vote was taken and was unanimous, and the subsequent appeal period expired without any action by the appellants. That they now point only

to their own “ignorance” as a reason to reopen this matter is not, of course, legally sufficient. We do not believe there can be a substantial issue when we have followed the specified procedures and the appellants did not (nine months ago) exhaust all of their local remedies during the HRB decision’s appeal period, well before this appeal of our project’s design approval. We know that we followed all of the procedures outlined in the CIP to have our home removed from the historic inventory, and we believe that the city of Carmel followed those procedures as well.

Appendices

There are a few appendices at the end of this document that include reference materials that are useful in understanding our presentation. They are:

- Appendix I. A list of the findings determined by the Carmel Design Review Board at our approval, and affirmed by the Carmel City Council.
- Appendix II. Reproductions of the 5 written communications that Mr. and Mrs. Wormser have had with the Design Review Board and the City Council pertaining to our application
- Appendix III. The “View Balance Analysis” drawing that the Wormsers’ architect, Mr. Terry Latasa, produced for them for the first Design Review Board hearing. (This drawing plays a small but critical role in the events that follow later.)
- Appendix IV. Larger reproductions of the pictures that we have included in this primary document. Many of the pictures are small in order that they could be presented side by side or on one page without interrupting the flow of the text. Larger reproductions of each picture are included in this appendix.
- Appendix V. CIRCA’s independent review of the city’s decision to remove our property from the list of Carmel homes on the Historic Inventory.
- Appendix VI. We have provided additional documentation in electronic form only in an effort to control the amount of paper, most notably including the materials that we used in the Carmel City Council hearing of our neighbors’ appeals of our design approval. Appendix VI also includes a number of letters from the public. In preparation for the appeal of our proposal before the City Council, we received letters of support from both residents of our street and residents of the community at large – 15 letters from residents of Camino Real and 25 letters in all. The letters varied in their content (some were letters of general support, while others referenced aspects of the project) but all were relevant because the appellants in that instance referred to the impact of our project on the street on which we – but not the appellants – live. As the appellants here also make extensive reference to the “view of our project from the public right of way”, we have chosen to include (in electronic form) those ten letters from our neighbors that make specific reference to those aspects of our project. There were no letters from neighbors in opposition to our project save those of the appellants.

Response to the Specifics of Appeal A-3-CML-09-011

We would like to respond to the specific assertions made in the Wormser appeal document:

A. (Part 1) Permitted Levels: LCP Section 3.B.2: Governmental constraints, Residential Development Standards: "Housing within this district may contain up to two stories, plus a basement."

The project has 4 distinct above-ground levels plus a below grade basement, a separate garage, and a separate office.

Note: no other residence on the east side of Camino Real between 4th and 2nd Avenues appears to have more than 2 above-grade living levels.

Also, Carmel's Residential Design Guidelines, Section 7, Building Mass, Scale, and Form, Subsection 7.7, Building Height: "A building should appear to be no more than two stories in height as viewed from the public right away (sic)"

The project's appearance from Camino Real, i.e. west elevation, clearly shows 4 distinct levels.

Response

The Housing element of the Carmel General Plan, from which this section 3.B.2 is taken, is not part of the Carmel Land Use Plan, and is therefore not part of the Local Coastal Program. However, the Residential Design Guidelines are incorporated by reference in the CIP, and are addressed here.

In addition, since the appropriate Design Review Board finding was affirmed by the city council as in compliance with the certified Carmel Local Coastal Program and the Residential Design Guidelines, there should be no substantial statewide issue.

The Carmel-by-the-Sea Design Review Board adopted specific findings that addressed this issue, and in the city council appeal, the council affirmed those findings. (See Appendix I for a complete list of those findings.) Specifically:

4. The project is adapted to human scale in the height of its roof, plate lines, eave lines, building forms, and in the size of windows doors and entryways. The development is similar in size, scale, and form to buildings on the immediate block and neighborhood. Its height is compatible with its site and surrounding development and will not present excess mass or bulk to the public or to adjoining properties. Mass of the building relates to the context of other homes in the vicinity.

It does not make sense to equate the "split levels" of our proposal with the "stories" that are mentioned in the CIP and the Residential Design Guidelines. It does not make logical sense to

note that the Western elevation of our proposal shows “4 distinct levels” when those levels are not only at different distances from the street, a fact obscured by the two-dimensional nature of an elevation, but are separated from one another vertically by only a few feet at most (note that the 3 or 4 foot tall windows of those “distinct levels” practically touch one another at their tops and bottoms) and are not viewed head-on, from 15 feet above Camino Real.

Our proposal has more than 2 split “levels” (but only 2 stories) because it follows the specific direction of the Carmel Design Guidelines, Section 3.0 – Topography:

Objective: To promote the use of natural slopes and stepped floor plans in building design so that houses hug the land.

And this directive from Section 7.4:

Avoid the creation of large, unused underfloor areas that increase building mass. On sloping lots, floor levels should be stepped to follow site grade.

We have built each section of our house at grade, following the slope of the land up the hill, and each of these first floor “levels” is only a few steps lower or higher than the levels that are closest to it on the slope. (The difference in floor level elevations between the front room of our project and the rear bedroom on the ground floor of our project is only 4 feet!) Even the 2nd story is built with two levels in order to keep the presentation of mass to a minimum, the front section of the 2nd story being naturally lower on the slope than the rear part of the 2nd story. (This is clearly visible in the western and southern elevations.)

Clearly, a Design Guideline objective that promotes “stepped floor plans” anticipates the idea of split level elevations!

(Part 2) Also, Carmel’s Residential Design Guidelines, Subsection 7.7, Building Height: “Locate two story elements downhill, except where this would appear dominant or out of scale when viewed from the public right-of-way or a neighboring home.

The project’s upper level is located as far uphill as permitted, as close as possible to the east property line.

Response

There should be no substantial state issue when we have acceded to the direction of city staff in order to accommodate the provision of the Residential Design Guidelines vis-à-vis protecting the impression from the public right-of-way. We have accommodated the Residential Design Guidelines’ stated direction to preserve the look and feel from the public right-of-way.

In addition, in response to any allegation that there is an issue as our project relates to another piece of private property, there should be no substantial state interest in overturning a decision made by the City of Carmel that involves two private properties when the specific

directive of the Residential Design Guidelines has been clearly and repeatedly addressed by staff, the Design Review Board, and the City Council, and the city has the authority as outlined in CIP 17.10.010.M - Equity.

Carmel staff addressed this exact issue when we acceded to their direction and changed from our first general design (with the 2nd story at the front of the house) to our 2nd general design, (with the 2nd story at the rear of the house) when they wrote, in their September 2008 staff report:

In the original staff report the issue was raised about placing a large two-story mass at the front of the home. The revised design places the two-story element 80-feet from the front property line, compared to 50-feet in the original design. By relocating the two-story mass further back on the property, with one-story elements at the front, the applicant is presenting more of a one-story design to the street, as recommended by the Design Guidelines.

Staff stated in their first staff report that they believe that the downhill location of our original plan put pressure on Section 7.7 of the Design Guidelines, as seen from Camino Real, and they believed that if we relocated our 2nd story addition further up the hill, it would relieve that pressure. The Design Review Board and the City Council have agreed with this assessment, as indicated by their findings.

In specific reference to the impact of the 2nd story on the properties to the rear, staff continued:

Staff notes that pushing the second-story further back on the site does increase the height of the building due to the grade. However, staff supports the changes as they will avoid significant view impacts.

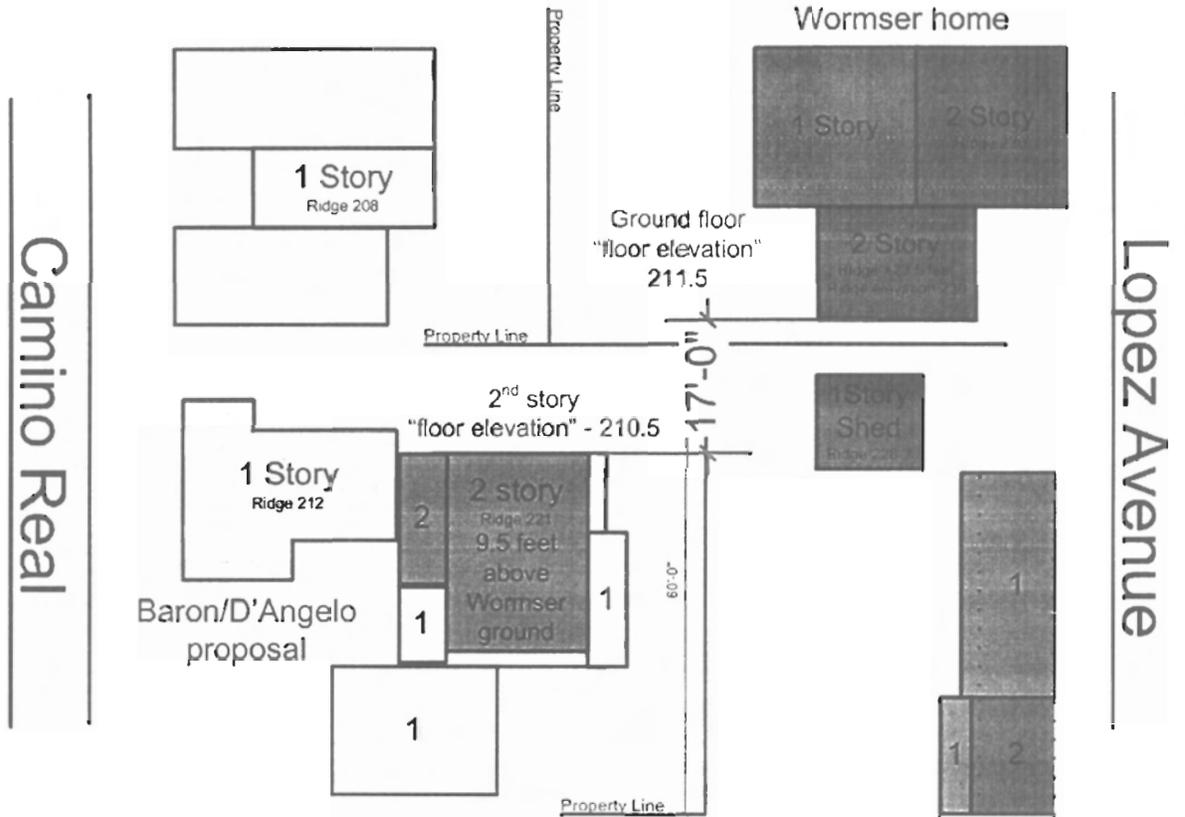
Views are consistently the single most important aspect of any contentious DRB approval in Carmel, and while moving our second floor away from the appellants' home might seem possible, Mr. and Mrs. Wormser were not willing to sacrifice more of their own view in order to have our 2nd floor be more distant. During Mr. and Mrs. Wormser's and Carol Bergere's separate appeals of our design approval to the Carmel City Council, each of our two rear, appellant neighbors was only willing to sacrifice the other neighbor's view. Neither neighbor was willing to sacrifice any of their own preserved private view in order to relocate our 2nd story addition.

Staff, the Design Review Board, and the City Council have been aware of the Wormsers concerns, and have all found our application to be balanced and equitable. Two of the points that we have repeatedly made are these:

1. How can our proposal for a 2nd story addition, where our 2nd story is itself lower than the ground floor of the appellants' house, present excess mass to their property? If the land shared under the Wormsers' two story home and our property was flat, would we not be allowed to build even a ground floor near their house, even if we were separated, as we are here, by more than 20 feet? That is the same topographical situation as exists here, and we believe that it demonstrates that the goal of the Wormsers is not one of reducing mass, but rather one of protecting their private view.

2. The Wormser property is diagonally adjacent to ours, not directly behind ours, and our 2nd story is 14 feet from our side property line. The zoning guidelines contemplate only a 3 foot setback, and yet we are 11 feet past that mark. How can our proposal present issues of mass if we are 17 feet off to the side of their home?

Here is a map that we prepared for their City Council appeal that illustrates these facts:



Here are four pictures taken from the exterior, first floor deck of Mr. and Mrs. Wormer's home that show the entirety of the appellants' viewscape from the rear of their home. As you can see in the above diagram, our project's 2nd story addition, in addition to being significantly to the side of their home, occupies only a small percentage of the 180 degree view that they enjoy into the forest. The pictures also illustrate the elevation of the deck and the ground floor of their home – between 3 and 6 feet above the ground – giving the observer a feel for the openness that the appellants enjoy from the rear of their home and the small, diagonal nature of the impact of our 2nd story addition. The elevation of our addition's own 2nd story is 210.5, a full foot lower than the 211.5 elevation of the appellants' ground floor and deck.



The staking of our project as seen in a picture originally taken to document the view that remains even with the staking, but of additional use here.



A view straight towards the ocean over the small single story house in the direct "front" of the rear of the appellants' home. The ridge pictured here is 7 feet below eye level - 2 feet lower than the floor of the appellants' deck/ground floor.



A photograph taken "between" the small home that is pictured above and the larger home that is diagonally to the northwest of the appellants' home.



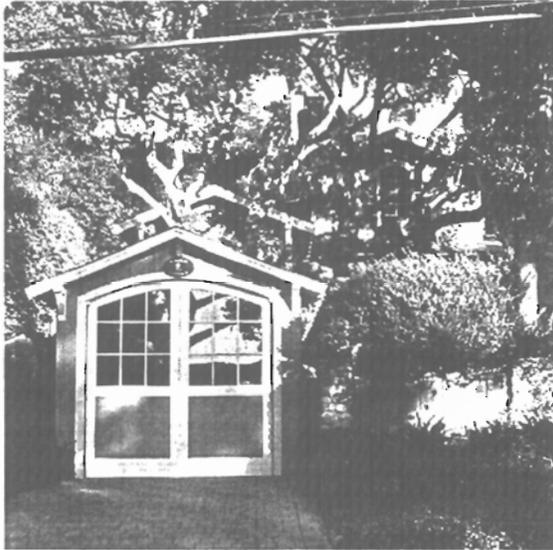
A picture taken more directly northward than the appellants' northwest neighbor.

Note: No other residence on the east side of Camino Real between 4th and 2nd Avenues appears to have an upper level as close as possible to the east property line and as far uphill as possible.

Response

This item, listed in the appeal as a "Note", is simply false.

As we have repeatedly stated in our unrefuted, written materials to the city when this exact statement was made twice previously by Mrs. Bergere, our direct rear neighbor, this statement of fact is simply false, and repeating this statement for a third time in this appeal does not make it true. The residences that are 4 and 5 houses south of our property have 2nd stories that are built at the 15 foot rear setback:



4 houses south of our property



5 houses south of our property

It is worth noting that the general “look and feel” of the property on the left bears some resemblance to our approved proposal. The garage is detached and close to the street, making it the more prominent element, and the “pancake” effect that the city prefers to see (in order to reduce the impression of mass) results in stacked levels up the property, with the highest level at the rear of the lot.

(Part 4) It is therefore likely that the project's uppermost ridge of 220.75 feet would be noticeably higher than other properties in the neighborhood.

Response

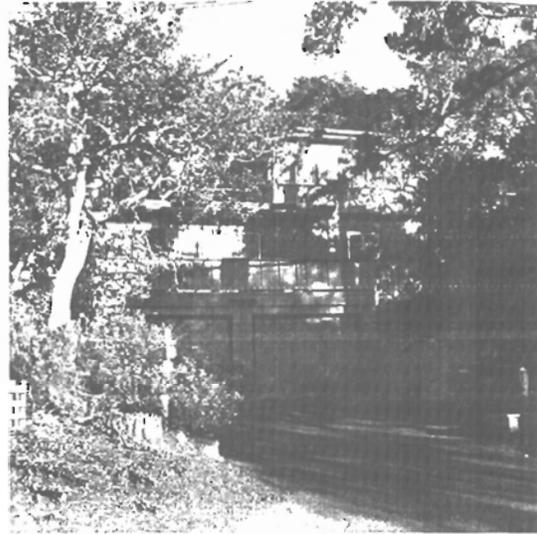
This note is also incorrect.

This statement by the appellant is not “likely”, it is simply false. In our presentation to the city council during the neighbors’ appeal of our Design Review Board approval, we presented pictures of every house on Camino Real between 2nd and 4th, all 17 of them, in order to demonstrate that not only does our approved proposal fit into the character of the neighborhood, the distance of our project from the street renders the height of the project (as viewed from the street) to be fully mitigated.

Consider, as a perfect example of this principle of “distance versus height”, the home to our immediate south, the Collins residence:



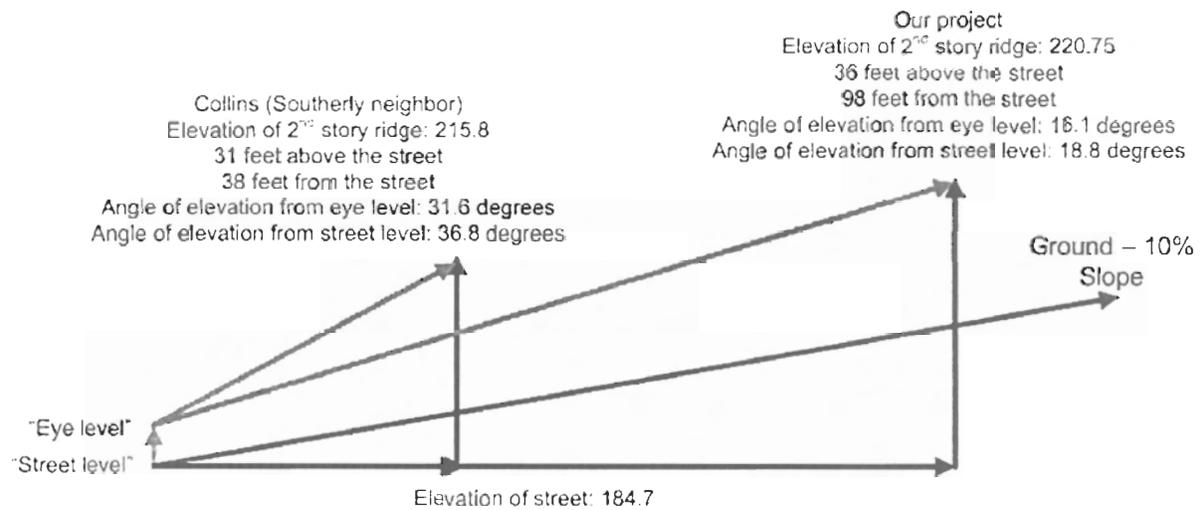
The staking of our project



Our immediate southern neighbor

Though the upper elevation of our proposal’s ridge is at 220.75 while the Collins property’s upper elevation (above the 2nd story on the right of the house) is five feet lower, at 215.8, the Collins’ property’s close distance to the street (38 feet) versus the distance to our ridge (98 feet) gives the impression of a much more significant house from the public right-of-way.

Here is a diagram that shows exactly why our proposal appears lower and less massive (than the Collins home) from the perspective of the street:



B. Mass and Bulk: LCP Section 6, Goals, Objectives, and Policies, P3-24: "Continue to use appropriate height, coverage, and floor area standards to ensure that new construction does not present excess visual mass or bulk to public view or to adjoining properties"

The Housing element of the Carmel General Plan, from which this policy P3-24 is taken, is not part of the Carmel Land Use Plan, and is not part of the Local Coastal Program.

Since the appropriate Design Review Board finding was affirmed by the city council as in compliance with the certified Carmel Local Coastal Program, there should be no substantial issue on this issue. The city has chosen "appropriate standards" to implement its coverage standards, and we are within those limits.

The city of Carmel determined that our house meets the appropriate "height, coverage, and floor area standards". See the first finding adopted by the Design Review Board, and affirmed by the city council:

1. The project conforms with all zoning standards applicable to the site, or has received appropriate use permits, variances consistent with the zoning ordinance.

Here are two sections from the Land Use and Community Character Element of the Land Use Plan:

Single-Family Residential. This area is intended to provide for single-family residential development at densities ranging from two (2) units per acre to eleven (11) units per acre. Assuming an average population of 1.5 to 2.5 persons per unit this allows a maximum population density of 16.5 to 27.5 persons per acre. Public/quasi-public uses and overnight accommodations currently operating under a use permit are also allowed. Above-ground building intensity in this area may not exceed 45 percent floor area ratio and all development requires at least 45 percent open space. Proportionately less floor area and greater open space are required on larger lots. (LUP)

Policy P1-49 Limit above-grade floor area on 4,000 square foot lots to a maximum of 1,800 square feet. Projects with less above-grade square footage shall be preferred. Structural coverage shall not exceed 45% of the site. Total site coverage (structural and other impermeable coverage) on 4,000 square foot lots shall not exceed 55% of the site. Locate open space so that it visually links with adjacent properties. (LUP)

Our *above grade floor area*, the only measure mentioned in both of these elements, is 36.14% (2,602 ft / 7,200 ft.) The maximum percentage allowed for a lot of 7,200 square feet is 38.6%:

17.10.030.D.2.b Maximum Floor Area (for sites between 4,000 and 10,000 square feet):

$$\begin{aligned} \text{Base Floor Area} &= \text{Building Site Area} \times \left[0.45 - \frac{((\text{Sq. Ft. Over } 4,000) \times 0.02)}{1000} \right] \\ &= 7,200 \times (0.45 - 3,200 \times 0.02 / 1000) \\ &= 7,200 \times \underline{\mathbf{0.386}} \\ &= 2,779 \text{ sq. ft.} \end{aligned}$$

thereby demonstrating the city's compliance with the concept of "proportionally less floor area on larger lots" as indicated in the first paragraph above. Table 17.10-D in the CIP also confirms the general accuracy of this number as well as the concept of Bonus Floor Area and, two paragraphs further in CIP 17.10.030.D.2.d, the 100 square foot "Basement Incentive." Our adherence to these zoning standards is clearly documented.

Our above ground floor area is 2,602 square feet. In FIVE separate staff reports, there has never been mention of floor area standards as being an issue, as a call to Carmel city staff would corroborate. There is no analytical (or any other) evidence presented here that floor area ratios is a substantial issue in this appeal.

Mr. and Mrs. Wormser have never previously presented this concern as an issue. Their suggestion that we have violated the floor area ratios is simply false, and it is made in an attempt to find fault with our approved design.

Also, Carmel's Municipal Code Zoning Ordinance Chapter 17.01.011 D, Purpose and Design Objectives: "Buildings shall not present excess visual mass or bulk to public view or to adjoining properties."

In addition to its upmost uphill location, the project's upper level is oriented north-south, thus maximizing its profile over the highest point on the property with maximum adverse bulk, mass and view impact on those to the east, northeast (our property) and on those viewing the property from the public right-of-way to the west, Camino Real.

Response

Since this Design Review Board finding was affirmed by the city council as in compliance with the certified Carmel Local Coastal Program, there should be no substantial issue vis-à-vis protecting the impression from the public right-of-way.

In addition, in response to any allegation that there is an issue as our project relates to another piece of private property, there should be no substantial state interest in overturning a decision made by the City of Carmel that involves two private properties when the specific directive of the Residential Design Guidelines has been clearly and repeatedly addressed by staff, the Design Review Board, and the City Council, and the city has the authority as outlined in CIP 17.10.010.M – Equity.

The final statement is both an opinion and inaccurate, and as we indicated earlier, a futile attempt to somehow “align” the interests of the city and the interests of the appellants.

The Carmel Design Review Board determined that our house satisfies this section of the Land Use Program when it adopted this (fourth) finding:

4. The project is adapted to human scale in the height of its roof, plate lines, eave lines, building forms, and in the size of windows doors and entryways. The development is similar in size, scale, and form to buildings on the immediate block and neighborhood. Its height is compatible with its site and surrounding development and will not present excess mass or bulk to the public or to adjoining properties. Mass of the building relates to the context of other homes in the vicinity.

Our design is far from maximizing the “north south” length available on our lot. Consider the four other 2nd stories on the western (our) side of our half of Camino Real:

	<i>2nd story width</i>	<i>Lot Width</i>	<i>% of lot width</i>
2 houses north	40 feet (approx)	60 feet (approx)	67%
Our project	25 feet	60 feet	41.7%
1 house south	16 feet	40 feet	40.0%
2 houses south	30 feet	40 feet	75.0%
4 houses south	15 feet	40 feet	37.5%

At 24’6” long by 24’10” wide, our 2nd floor is roughly square in shape, with a cutout for our deck, as the project plans show. Not only is our 2nd story’s width on the “good end of average” when it is compared to surrounding properties as a percentage of the width of the respective lots, it is firmly in the middle even when raw width of the 2nd floor is considered.

In addition, since the appellants have indicated that they believe that our “width” is out of character for the neighborhood, it makes analytical sense to compare the size of our 2nd story with the size of their own 2nd story:

	<i>2nd story width</i>	<i>Lot Width</i>	<i>% of lot width</i>
Our project	25 feet	60 feet	41.7%
Wormser home	33 feet	40 feet	82.5%

Note: All upper levels on the east side of Camino Real between 2nd and 4th Avenues are located down the slope, away from the east property line and/or oriented in whole or in part east/west. The combined effect of being lower on the slope and oriented differently results in a less massive profile to both the east neighbors and to the west public right-of-way.

Response

The first part of this item, repeated for the 2nd time is this appeal, is still in error. The second statement, in addition to being in error, is only an opinion, and does not address alleged inconsistencies that might exist between our approved project and the certified Local Coastal Program, and so should not be of any substantial issue.

The “down the slope resulting in a less massive profile to the public right-of-way” opinion was addressed above – here, we shall focus on the “east/west orientation. This part of this statement of fact is simply false.

Here are pictures of the homes located two properties away on either side of our project, both on the east/uphill side of Camino Real:



2 houses north – a north/south orientation
Located near the rear of the lot
(This home is built on the rear, upper half of the property)



2 houses south – a 2nd floor that completely covers the first floor of this adobe house.
This home is also built on the rear part of the property, behind the visible oak tree

The statement that 2nd floors are oriented in an east/west direction is simply false and misleading. Many of the 2nd floors are roughly square, as is ours, and they sit in a variety of different setbacks from the street, variety being something that is consistently desired by the Design Review Guidelines. Others (as shown above) are in a north/south orientation in order to presumably maximize their “exposure to the ocean.”

Once again, it is helpful to note that the compact design of the 2nd story of our house was situated in direct response to the Wormsers’ first complaint that our initial design obscured their ground floor ocean view. We redesigned a good part of our house in order to accommodate their private view, and it is notable that our initial set of plans did indeed have a second story that was longer in the east/west direction, but 3 feet less wide in the north/south direction. Their architect, Terry Latasa, reminded the city council of this fact when our direct eastern neighbor, Carol Bergere, suggested a return to that original proposal, as that proposal was more to Mrs. Bergere’s liking.

Latasa's response to Bergere's proposal was that the original design would be "the Wormsers worst nightmare."

It should be noted that though Mr. and Mrs. Wormser's claim that our (incorrectly stated) north/south orientation is troubling to the properties to the east, our direct eastern neighbor, Carol Bergere, in front of whose house we directly sit, has not filed an appeal with the Coastal Commission. (She pursued the same local remedies as the appellants pursued through our design process.) It is also worth noting that from the visual perspective of the appellants' home, located on our northeast corner and looking generally westward towards the ocean, it would be an expanded east/west orientation that would be in their direct line of sight and therefore more troubling to them. In other words, if you took our roughly square 2nd story addition and made it longer "down" our property but shorter "across" our property, this new design would be a worse design from the perspective of their property as it would not only be more visible, but would also block more of their private view! Mr. and Mrs. Wormser's implication that a more east/west orientation would be better for them is simply false, and it is made in an attempt to find fault with our approved design.

C. View Rights. Carmel's Residential Design Guidelines, Section 5, Privacy, Views: "... the desire to maximize view opportunities from one's own property must be balanced with Consideration of respecting views of others... locate buildings so they will not substantially block views enjoyed by others."

Response

Since the appropriate Design Review Board finding was affirmed by the city council as in compliance with the certified Carmel Local Coastal Program, there should be no substantial issue on this matter.

In addition, in response to any allegation that there is an issue as our project relates to another piece of private property, there should be no substantial state interest in overturning a decision made by the City of Carmel that involves two private properties when the specific directive of the Residential Design Guidelines has been clearly and repeatedly addressed by staff, the Design Review Board, and the City Council, and the city has the authority as outlined in CIP 17.10.010.M - Equity.

The Carmel Design Review Board determined that our house satisfies this section of the CIP when it adopted this (fifth) finding:

5. The project is consistent with the City's objectives for public and private views and will retain a reasonable amount of solar access for neighboring sites. Through the placement, location and size of windows, doors and balconies the design respects the rights to reasonable privacy on adjoining sites.

Here are the words from the first staff report produced after we redesigned our house in order to accommodate the Wormsers' private, ground floor view (the bold text emphasis is ours):

*The original design substantially impacted the ocean view held by the northeast neighbor [The Wormsers]. The applicant has relocated the two-story element to the back northeast corner of the lot, **which has substantially minimized this view impact.** The neighbor to the east [Mrs. Bergere], located directly behind the applicant, will maintain the majority of her views from the living room and second-story bedroom, with a slight impact on the family room view.*

After the continuance of our initial design in July, we approached Carmel city staff in order to find a location for our 2nd story that would allow us to share in the views that the neighbors behind us enjoy across our property. Staff specifically referred to the Wormsers' architect's own delineation of their private, ground floor view (attached in Appendix III) in order to equitably "allocate" the view that runs across our property – the northwestern corner of our 2nd story was chosen specifically from their own diagram in order to share the view, as the CIP and Design Review Guidelines allow.

It is also noteworthy that the Wormsers' architect, Terry Latasa, referred to that exact same diagram in his testimony at the Wormsers' City Council appeal of our approval. For the Wormsers to now claim that our proposal takes more than half of their private view when it was their own diagram that was used to allocate that private view, and their own view diagram that was referenced in their city council hearing, is simply disingenuous.

Here is a picture of Mr. and Mrs. Wormser's view as taken from their deck, directly in the rear of the ground floor of their home:



You can see from this picture that the first floor of our project (not at issue here, but outlined in the general lower, right of the netting as a reference) obscures only trees, while the second story addition, stepped up from right to left, also obscures mostly “green” rather than “blue.” In fact, the obscured “blue” that is showing through the netting at the highest point is actually sky, not ocean, and the ocean – visible over the very front ridge of our ground floor – is hardly obscured at all.

City staff, the Design Review Board, and the Carmel City Council all agree that our project allocates the view correctly and equitably. Mr. and Mrs. Wormser did not raise this private view issue at any of the succeeding three Design Review Board meetings, and they did not raise the private view allocation issue in their own appeal to the city council. The Wormsers have not raised the issue of their own, private views at any of the four public hearings that followed our redesign in September of 2008 because after that redesign, this issue was settled. Its reappearance here is presumably made in an attempt to find fault with our approved design.

The Carmel CIP and Land Use Plan respects “fair and equitable” (Land Use and Community Character element; P1-51; “Attempt to achieve an equitable balance of these design amenities among all properties affected by design review decisions”) and in his remarks at the city council meeting, council member Rose remarked that

“There is a view that is held by some Carmelites and their representatives that a view is always protectable and protected under our code, and that’s not the case... views are balanced in Carmel; the only way you can protect a view if you live uphill or away from the ocean from someone is to buy the property below you. That’s the only sure way you can do it, otherwise there’s going to be a balancing.

We believe that Councilmember Rose correctly identified the “real” point of contention when he continued (emphasis mine):

*“It has been the policy of this city council to look with some disfavor on people who live in uphill two-story homes who try to [prevent] downhill, single story homes from adding a second story, and **that’s the situation here**. I think that it would be unfair and it would be inappropriate to deny the respondents the ability to put a second story on their home.”*

Councilmember Rose and 3 of the 4 other council members, and a unanimous Design Review Board, believe that we are at the point of equitability. We entirely redesigned the 2nd story addition of our house in response to the Wormsers’ objections. We have made numerous concessions to our neighbors in order to allow us to share in the view that runs across our own property. (A list of these concessions is presented later in this document.)

We are asking for a modest 2nd story addition – it is smaller than that of the appellants, even though our property is considerably larger. Our approved proposal’s 2nd story addition preserves all of Ron and Marian Wormsers’ 2nd story view and more than half of their ground floor view while providing us with a 2nd story view – it is equitable. Under our proposal, each property would have some ground floor view and an unobstructed 2nd story view – sharing. A denial of our project would result in a complete preservation of the Wormsers’ ground and 2nd story views, and little ocean view for us. A denial would sacrifice our 2nd story in order to maintain the ground floor views of the large two story house behind us. That would not be equitable. That is staff’s opinion and the Design Review Board decision that was affirmed by the City Council.

As was evident when the netting was erected to demonstrate the profile of the project, with the upper level as far uphill as possible and so close to the north property line, the upper ridge line obstructed more than half of the ocean view from our property located to the northeast when viewed from our main living level (living and dining rooms) and from the outside deck. (The view from the upper bedroom level was less obstructed, but that is not the primary living and viewing area.)

This item, in addition to being in error, is only an opinion, and does not address alleged inconsistencies that might exist between our approved project and the certified Local Coastal Program, and so should not be of any substantial issue.

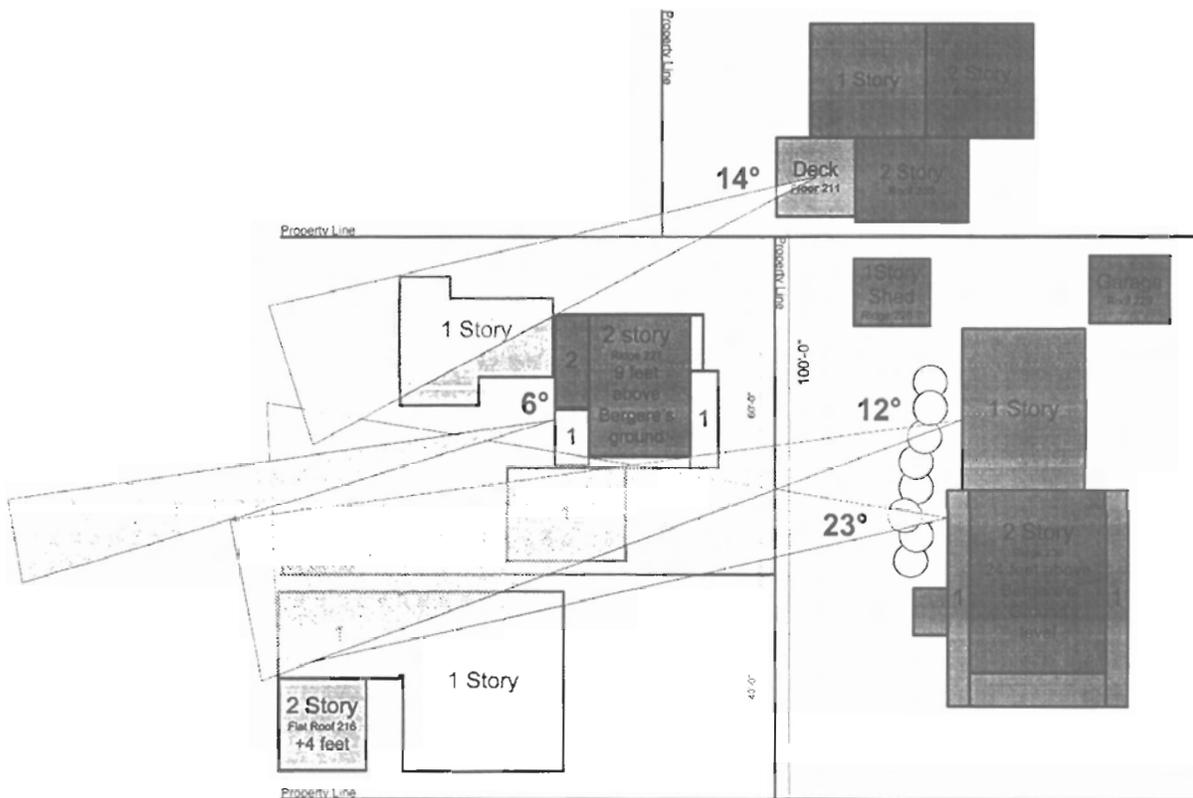
In addition, in response to any allegation that there is an issue as our project relates to another piece of private property, there should be no substantial state interest in overturning a

decision made by the City of Carmel that involves two private properties when the specific directive of the Residential Design Guidelines has been clearly and repeatedly addressed by staff, the Design Review Board, and the City Council, and the city has the authority as outlined in CIP 17.10.010.M – Equity.

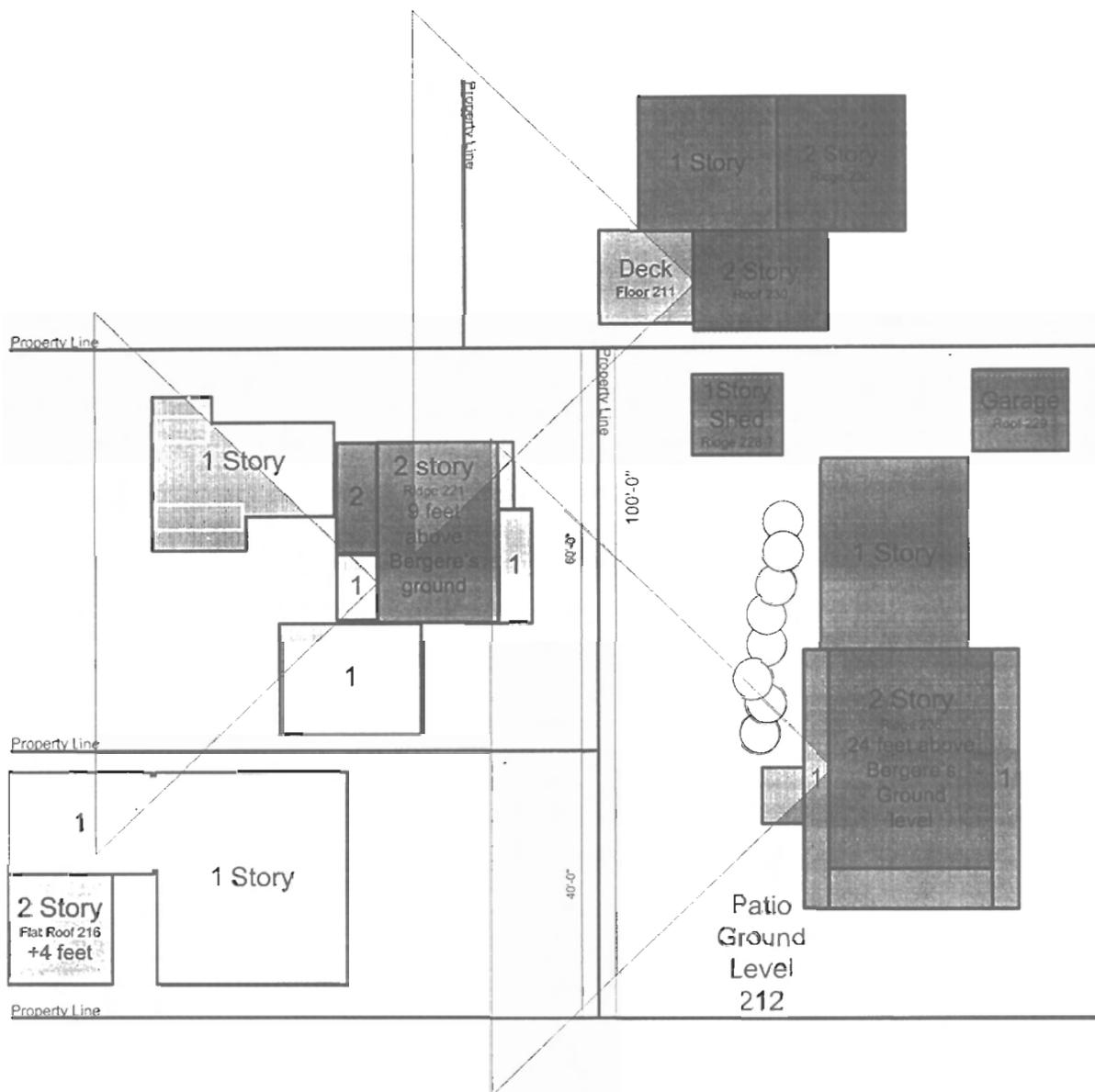
The opinion – that we obstruct more than half of Mr. and Mrs. Wormser’s private view - was not evident to any other individual on the Design Review Board, or any single member of the City Council, during their tours of inspection. This opinion has not been voiced by any member of those bodies because this issue was settled in September after we relocated our 2nd story addition – per their own map – to preserve a good portion of their private view. After that redesign, not one single individual on any city body has even mentioned that our proposal does not respect the Wormsers right to share in the view that runs across our property because the issue was never again raised.

Even Mr. and Mrs. Wormser do not believe it. In addition to having never raised this issue in their subsequent letters, they state specifically in their December 17th letter to the Design Review Board (while relating our unwillingness to provide them with a view easement across our property) that their current ground floor view with our approved design is “the 50% we regained when the DRB required a redesign of the owners’ original plan.” Aside from the fact that we believe that we restored far more than 50% of their ground floor ocean view, and aside from the fact that they maintain all of their 2nd story view, the appellants clearly admit in this letter that their view is not as impacted as they imply in this appeal.

Here are two diagrams that we put together for Wormsers’ City Council appeal (both diagrams include the view “cones” of our rear neighbor as well, Carol Bergere. In both cases, our project is on the left, and the Wormser house is in the upper right.



Ground Floor Ocean View Cones



Second Story View Cones – All 2nd Story Views are Unobstructed

As you can see from the picture that follows, it is disingenuous for the Wormsers to state that the “view from the upper bedroom level was less obstructed,” as our 2nd floor is so low in the ground as it is currently configured that not only is our 2nd floor lower in elevation than the Wormser ground floor, but the private view from Mr. and Mrs. Wormser’s 2nd floor across our proposal is 100% unobstructed. Their 2nd story view is not less obstructed, it is unobstructed. Here is (an admittedly washed out) view of the netting of our project taken from their 2nd floor:



This picture clearly shows (in spite of the effects of the sun) that our 2nd story addition is not only lower than their ground floor, but that the view that it obscures is one of only low-lying trees.

D. Basement Bonus. Municipal Code Section 17.10.030 Floor Area Ratio and Building Standards D.iv Bonus Floor Area – Basement Incentive: “Each site shall be allowed 100 square feet of floor area located in a basement... The result of this incentive is to reduce above-ground floor area and reduce exterior volume for sites awarded bonus floor area in basements.”

The project’s height and above ground mass were not significantly reduced with the additions of a basement and a separate structure for an office. The current uppermost ride-line is only 27” below the maximum permitted.

Response

Since the appropriate Design Review Board finding was affirmed by the city council as in compliance with the certified Carmel Local Coastal Program, and since we are within the specified floor area ratios, there should be no substantial issue on this issue.

The city of Carmel determined that our house meets the appropriate floor area standards. See the first finding adopted by the Design Review Board, and affirmed by the city council:

1. The project conforms with all zoning standards applicable to the site, or has received appropriate use permits, variances consistent with the zoning ordinance.

Mr. and Mrs. Wormser have run-together two sections of the municipal code. The entirety of *CIP Section 17.10.030.D.2.d.iv* reads thus:

Bonus Floor Area – Basement Incentive. Each site shall be allowed 100 square feet of floor area, located in a basement that is exempt from the floor area limit established in this section. This basement floor area shall be in addition to the allowed base floor area total.

Thus, as the city interprets its own guidelines, the first 100 feet of basement area are “free.” The other section of the municipal code, *CIP Section 17.10.030.D.4* reads thus:

4. Bonus Floor Area. The City provides an incentive to use some of the base floor area and exterior volume in a basement. The result of this incentive is to reduce above-ground floor area and reduce exterior volume for sites awarded bonus floor area in basements. Under this incentive program, the area required for a minimal stairway from the first floor to the basement shall not be counted as floor area on either floor the stair connects.

a. One-Story. [Not applicable]

b. Two-Story. For each one square foot of the base floor area constructed in a basement and 11 cubic feet of allowed exterior volume not built above average grade, one additional square foot of bonus floor area may be constructed in a basement...

In other words, the first section of code (*CIP Section 17.10.030.D.2.d.iv*) allows for 100 feet of non-countable basement, while the latter section (*CIP Section 17.10.030.D.4*) indicates that the remainder of the square footage in the basement counts “half.” This is how the Carmel city staff interprets the municipal code.

Our project, as described in the last city staff report, is allowed 2779 square feet of above grade floor area, based on the 7200 square foot size of our lot, and the city’s zoning guidelines. We have proposed 2602 square feet above ground, leaving 177 feet of “above ground allocation” for the basement. With 177 feet of allocation, we are allowed $177 + 177 + 100 = 454$ square feet of basement area. Since our basement is only 397 square feet, our proposal is 57 “basement feet” shy of the maximum, well within the guidelines.

It is also of note that the basement allocation has resulted in a reduction of our approved project’s above ground floor area, as desired and anticipated by the CIP, from 2779 square feet to 2602 square feet. Without the basement, we would most likely have added a portion of that 177 square feet (the part of the basement that will house the “physical plant” – the water heater, space heater, and laundry room, etc.) to an expanded above-ground part of the house.

However, it's not our word you should take as to the legality of the size of the house – it should be city staff's word, and to state once again, they have never raised any issues with the floor area ratios of our approved proposal.

The project's height and above ground mass were not significantly reduced with the additions of a basement and a separate structure for an office. The current uppermost ridge-line is only 27" below the maximum permitted.

Response

This paragraph includes an opinion (“not significantly reduced”), a misrepresentation of the Design Guidelines, and an incorrect statement of fact. In addition, since this finding was affirmed by the city council as in compliance with the certified Carmel Local Coastal Program, there should be no substantial issue on this issue.

It is once again worth noting the 4th finding from the Design Review Board, and affirmed by the City Council:

4. The project is adapted to human scale in the height of its roof, plate lines, eave lines, building forms, and in the size of windows doors and entryways. The development is similar in size, scale, and form to buildings on the immediate block and neighborhood. Its height is compatible with its site and surrounding development and will not present excess mass or bulk to the public or to adjoining properties. Mass of the building relates to the context of other homes in the vicinity.

The misrepresentation: The use of accessory structures (our detached office) is specifically addressed in the Design Guidelines direction on Building Mass. Here is Section 7.1 – Building Mass from the Design Guidelines:

Using a detached secondary structure (garage, guest house, etc.) is encouraged to reduce the overall mass of the primary building on a site.

The purpose of this specific directive is to reduce the mass of the primary building, not the total “above ground mass.” It is the Design Guidelines intent to reduce the appearance of mass in general, hence the reference to breaking one larger building into one not-so-large building with smaller structures nearby.

Agreeing with the Design review Guidelines directive, city staff has agreed with our idea to locate some of the mass of the main house into an accessory building – the detached office – and in the basement. This is what they said in the September staff report, specifically contradicting the Wormsers’ allegation, above:

The applicant's proposal for a secondary structure [the detached office] and the use of basement space will also help reduce the overall mass of the main dwelling.

Factually, our uppermost ridge line is not 27 inches below the maximum permitted, but rather 45 inches below the allowed 24 foot maximum, per the final staff report:

PROJECT DATA FOR A 7,200 SQUARE FOOT SITE:			
Site Considerations	Allowed	Existing	Proposed
Ridge Height (1 st /2 nd)	18/24 ft.	12 ft. 6 in.	13 ft. 8 in. / 20 ft. 3 in.

The 45 inches includes 12 inches of reduction that was asked for by city staff in their only request to reduce the height of our 2nd story in order to reduce the impact on our neighbors, and a further 15 inches that were specifically given by us in our November attempt to reach a compromise with our neighbors. We have lowered our main ridge by 27 inches – a height that initially was 18 inches below the maximum allowed height of 24 feet. We did not begin, as Mr. and Mrs. Wormser have alleged, at the maximum height allowed.

It is also worth noting that in their specific letter of October 15th, 2008 to the Design Review Board (a copy of which is attached in Appendix II in its entirety) the Wormsers noted only one alleged inconsistency between our project and the city’s municipal code (that being mass) and noted only one objection that they had to the project at that time. They wrote that:

This excessive mass can easily be rectified by lowering the main upper gable an additional 1 ½ feet.

Mr. and Mrs. Wormser got 15 of the 18 inches that they demanded in their October letter when we lowered our rear ridge by those 15 inches November. How, now, can our project be so out-of-line with their own notions of equitability?

In July, Mr. and Mrs. Wormser wanted us to redesign our house to preserve their view, and we did. In September, we lowered our ridge by 12 inches. In October, the appellants wanted us to lower our ridge by a further 18 inches; we lowered the ridge 15 of those 18 inches, but that was not good enough. Now, those 3 missing inches have turned into a demand for three more feet.

II. Changes in Historic Status

The subject of this appeal is the design approval of our project, not the removal of our home from the Carmel Historic Inventory. The removal was duly noticed and approved more than 10 months ago at the April 21, 2008 meeting of the Historical Resources Board, at which meeting the property was determined not historic and was therefore removed from the City's Historic Inventory. That decision became final with the expiration of the 10-day City Council appeal period. The appellants' complaint that they were not aware of the hearing and the subsequent removal is both untimely and barred for failure to appeal the HRB decision to the City Council. Therefore, there should be no substantial issue.

The removal of the property from Carmel's historic inventory occurred 3 months prior to the commencement of the approval process for our project, and cannot be part of the design approval that is now being appealed.

The decision of the Historic Resources Board in April 2008 was factually supported by the record and staff's recommendation. The HRB decision has also been corroborated by an independent Historic consultant (see attached report from CIRCA Historic Property Development).

The Carmel Historic Resources Board action was duly noticed per adopted LCP requirements and a public hearing was held on April 21, 2008 per CIP 17.32.070.D.2. No local administrative appeal from the HRB decision was filed as is allowable under CIP 17.32.070.D.3, and the decision thus became final per CIP 17.54.010.B. Because the appellant failed to exhaust local administrative remedies (again, CIP 17.32.070.D.3) the removal is not appealable to the Coastal Commission (CIP 17.54.040.D).

The Historic Resources Board decision was supported by the substantial evidence in the record at the hearing which showed the building style is not identified in the City's Historic Context Statement, the building has not significantly contributed to the City's character, the building's Historic integrity has been compromised by changes to the structure, and there are numerous other/better examples of this style of building on the City's Historic inventory. The Historic Resource Board's decision is also confirmed by the attached independent review from CIRCA Historic Property Development.

In their report, CIRCA notes that the original evaluator made an error in the evaluation of the existing windows on our home. CIRCA noted that "nearly all of the windows had been replaced with vinyl prior to the evaluation, including the referenced corner window." In our own conversations with Carmel city staff, possible explanations for the error became clear: Not only is our home not visible from street, from where the evaluations were made in order to avoid private property, but the number of evaluations performed and the short time frame in which they were performed led to some errors. In our case, for example, the picture on the first page of the DPR clearly shows that both of the original metal windows on the front of our home had already been replaced with vinyl window.

CIRCA goes on to note that not only does our home not retain its original integrity but that it also does not fit into Carmel's Historic Context Statement – the time periods do not match, the Minimal Traditional style cannot be justified as significant in Carmel, and the home is not an example of the work for which the builder is known.

With no other documentation to substitute for the Context Statement, the post-WWII architectural development theme in Carmel cannot be justified as significant."

In conclusion, it is my opinion that the Baron/D'Angelo property does not retain enough physical integrity to remain on the City of Carmel's list of Historic

Resources. It is not a strong example of Minimal-Traditional, post-WWII residential architecture nor does it represent Mr. Comstock's more significant work.

III. Project Modifications since Inception. The project's design has been modified since its inception. Notably, those modifications were only made at either the direction of the Carmel Design Review Board or following DRB rejections of the application, in attempts to address concerns expressed by the DRB and three of the four abutting neighbors.

This item reflects only the appellants' opinions, and does not address any alleged inconsistencies that might exist between our approved project and the certified Local Coastal Program. Therefore, there should be no substantial issue.

In general, this is how projects with design controls work, especially in Carmel – the applicants often put forth proposals that change over time as they offer compromises and give concessions to others – the city itself, and often the neighbors. We do not believe that there is an inherent problem with the process, though we have found our particular instance to be somewhat adversarial in nature.

We have made good faith efforts to compromise with our neighbors, including the Wormsers. Staff noted many of them in their final staff report for the Wormsers City Council appeal:

Summary: *Since the first hearing with the Board on 23 July 2008 the applicant has made the following revisions to accommodate the concerns of the neighbors and the Design Review Board:*

Relocated the second-story.

Reduced the square footage of the second-story.

Reduced the height of the second-story.

Removed the roof eaves from the second-story.

Withdrew the proposal to plant two upper canopy trees.

Relocated the studio.

Frosted the upper second-story bathroom window.

These changes achieve a fair balance of view opportunities and maintain reasonable privacy for all of the properties affected by the project as encouraged in the Design Guidelines. These changes also ensure that the building's mass relates to the context of other homes in the area.

Mr. and Mrs. Wormser have written FIVE letters to the city, one for each Design Review Board hearing, and one for their appeal to the City Council. (All of those letters are attached in Appendix II to this document.) We have given them numerous concessions: on the location of our 2nd story, on the height of our 2nd story, on the structure, look, and feel (both inside and outside) of our house, and on our windows. For them to imply that the process is broken, or that their voice has not been factored into the city's various decisions or that we have not given enough, for them to imply any of these things is incorrect.

IV. Possible Solution. At the February 2009 Carmel City Council Meeting at which this project was discussed, one of its members who had previously served on the Carmel Design Review Board offered a potential solution which, in that person's judgment, would be consistent with the letter and intent of all applicable Design Guidelines including the 'basement bonus.'

The proposal was "... to lower the rear multi-story bulk by 3 feet, from 220.75, to 217.75 feet, (whereby) the current floor plan could be maintained by creating a planter/retaining wall 3 feet behind the proposed structure. This would allow the current window configurations, including all egress requirements." This description was subsequently provided by our consulting architect who attended the council meeting at which the proposal was described in response to our question of whether the proposal was architecturally feasible.

This item reflects only the appellants' opinions, and does not address alleged inconsistencies that might exist between our approved project and the certified Local Coastal Program. Therefore, there should be no substantial issue.

Mayor Sue McCloud, who voted against the denial of the appeals brought by Mr. and Mrs. Wormser and Carol Bergere, did not offer a solution, she offered an "idea" that we should "investigate with the council", an idea that was rejected by all four of her city council colleagues, an idea to which we do not agree, and an idea that our supportive neighbors do not believe is necessary for our home to be a good and appropriate addition to our shared street. Councilmember Rose, in response to this "idea," said:

I don't think it's fair or even appropriate for us, to micro design this house from the city council. The respondents here have already relocated the 2nd story, they've reduced the square footage of the 2nd story, they've reduced the height of the 2nd story, they've removed eaves from the 2nd story, they've withdrawn a plan to plant two upper canopy trees, they've relocated the studio, they've frosted the upper bathroom window. It seems to me at some point we have to say enough is enough...

This "idea" that the Wormsers have now taken to heart and investigated on their own, is yet another demand from the appellants and another attempt for them to redesign our home. In October, we gave Mr. and Mrs. Wormser 15 of the 18 inches that they demanded at that time, but now, those three missing inches have turned into a demand for 3 additional feet. They now ask us to sink our completely enclosed basement three feet further into the ground, requiring an additional 45 cubic yards of excavation and greatly increased costs of engineering and construction. They ask us to sink our first floor bedroom 3 additional feet into the ground (it is already one full foot below grade on the uphill side) turning it into a subterranean, cave-like room that would lose its easy access to the outdoors, much of its light, and its access to the sounds of the ocean. Their "idea" also includes a "retaining wall for egress, 3 feet behind the

structure” that would not even be legal because it would encroach on the protected area of the marked “13 inch oak” tree at the rear of our property.

They would drop our 2nd floor by the same three feet, and we would sacrifice the view from our 2nd story bedroom that we have worked hard to obtain though this process, the same view that the Wormsers enjoy across our property. Their second floor bedroom, with a full 8 foot plate, is 12.5 feet above the ground on the ocean side, but they ask us to lower our 2nd floor bedroom, with an already lowered 7 foot plate, from 10 feet above the ground to 7 feet above the ground.

As one member of the Design Review Board noted, our approved second story addition is already significantly smaller and lower than that of the appellants. Here some measures of equitability as to heights and sizes of our 2nd story:

Heights over grade and square footage measures

	CIP (Zoning) Allowed	Wormser (<i>from plans on file at the city</i>)	Our proposal (already lower and smaller)	Proposal (per Wormser “idea”)
Finished 2nd story ridge height over grade	24 feet	23.5 feet	20.25 feet (per staff report)	17.25 feet
Uphill 2nd story plate – elevation over grade	18 feet	17 feet	15 feet	12 feet
Downhill 2nd story plate – elev. over grade	18 feet	20.5 feet	17 feet	14 feet
Size of 2nd story		593 sq. feet	518 sq. feet	518 sq. feet
2nd story as a % of allowed floor area		32.9 % (1800 sq. feet)	18.6 % (2779 sq. feet)	18.6 %

Their new demands are incredible, and they do not come close to achieving the “equitable balance” that the LCP allows the city to achieve and that staff, the Design Review Board, and the City Council have said we have reached. Again, emphasis mine:

*P1-51 Consider the effect of proposed residential construction on the privacy, solar access and private views of neighbors when evaluating design review applications. Avoid designs that are insensitive to the designs of neighboring buildings. **Attempt to achieve an equitable balance of these design amenities among all properties affected by design review decisions.***

Because of their consistent opposition and their constantly changing demands, we have become convinced there is no 2 story proposal that would satisfy the appellants.

Throughout this process, we have fully accepted and agreed with Carmel’s core residential design concept that projects should achieve an equitable balance of interests among all parties.

In that spirit, we believe that the Council Member's solution represents a reasonable and equitable compromise, one which we are prepared to accept.

Should there be technical reasons that make that solution impractical, we are open to other equitable resolutions.

This item reflects only the appellants' opinions, and does not address alleged inconsistencies that might exist between our approved project and Carmel's certified Local Coastal Program. Therefore, there should be no substantial issue.

City staff, a unanimous Design Review Board, and a 4-1 City Council, believe that the process has already achieved equitability and is in accord with Carmel's certified Local Coastal Program and the Residential Design Guidelines. It is stunning for the Wormsers to imply that, because of the outcome in this particular case, those three bodies have each made mistakes in that evaluation.

Though the Wormsers profess to agree with Carmel's "design concept" and imply that we do not, it is our belief that they will not accept the outcome of the review process unless they get each item on their ever-expanding list of demands. They simply refuse to believe that both the Carmel Design Review Board and the Carmel City Council have found "an equitable balance of interests" and they continue to opine that our project is not equitable. At our final design review board meeting, these were the comments from three of the board members:

Design Review Board chairman Keith Paterson: *A single story house would be a totally wrong decision. The applicant has worked very hard to compromise with the neighbors.*

Design Review Board member Michael LePage: *The project is now equitable with respect to all.*

Design Review Board member Jonathon Sapp: *The project is not equitable, it is SMALLER [than the houses around it]*

When the city council heard the neighbors' appeal of our Design Review Board approval, these were the comments:

Council member Gerard Rose: *It has been the policy of this city council to look with some disfavor on people who live in uphill two-story homes who try to [prevent] downhill, single story homes from adding a second story, and that's the situation here. I think that it would be unfair and it would be inappropriate to deny the respondents the ability to put a second story on their home.*

Council member Ken Talmage: *What's here is a compromise, and I think there has been a good faith effort through a series of changes to come up with what works on a very difficult site. My conclusion is it's fair and equitable... I'm convinced that the staff and Design Review Board came up with what works in a difficult situation.*

Council member Karen Sharp: *I think that this is a good compromise... and I am also in favor of standing by the Design Review Board's decision.*

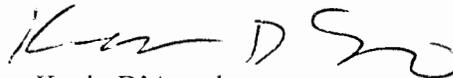
Council member Paula Hazdovac: [This project] has gone through quite a few different sessions at the Design Review Board, and I believe that this is the best compromise that can be made other than just not having a 2nd story at all, and I don't think that's a reasonable answer...

The appellants come to the California Coastal Commission with a list of demands on our project that that has been ever changing and ever increasing – as each requirement is met, the goal line extends farther out into the horizon, until we have no project at all. The Carmel City Council ruled that their appeal was without merit. Having been through that local process, they now appeal our approval to the Coastal Commission.

We respectfully ask that you find that this appeal raises no substantial issue, and that you respect the tradeoffs and decisions that we and the city of Carmel-by-the-Sea have made in order to design a project that is good for the city, reasonable for all of our neighbors, and in accord with the city's certified LCP.



Jeff Baron



Kevin D'Angelo

Appendix I. Findings adopted by the Design Review Board and affirmed by the City Council

1. The project conforms with all zoning standards applicable to the site, or has received appropriate use permits, variances consistent with the zoning ordinance.
2. The project is consistent with the City's design objectives for protection and enhancement of the urbanized forest, open space resources and site design. The project's use of open space, topography, access, trees and vegetation will maintain or establish a continuity of design both on the site and in the public right of way that is characteristic of the neighborhood.
3. The project avoids complexity using simple/modest building forms, a simple roof plan with a limited number of roof planes and a restrained employment of offsets and appendages that are consistent with neighborhood character, yet will not be viewed as repetitive or monotonous within the neighborhood context.
4. The project is adapted to human scale in the height of its roof, plate lines, eave lines, building forms, and in the size of windows doors and entryways. The development is similar in size, scale, and form to buildings on the immediate block and neighborhood. Its height is compatible with its site and surrounding development and will not present excess mass or bulk to the public or to adjoining properties. Mass of the building relates to the context of other homes in the vicinity.
5. The project is consistent with the City's objectives for public and private views and will retain a reasonable amount of solar access for neighboring sites. Through the placement, location and size of windows, doors and balconies the design respects the rights to reasonable privacy on adjoining sites.
6. The design concept is consistent with the goals, objectives and policies related to residential design in the general plan.
7. The development does not require removal of any significant trees unless necessary to provide a viable economic use of the property or protect public health and safety. All buildings are setback a minimum of 6 feet from significant trees.
8. The proposed architectural style and detailing are simple and restrained in character, consistent and well integrated throughout the building and complementary to the neighborhood without appearing monotonous or repetitive in context with designs on nearby sites.
9. The proposed exterior materials and their application rely on natural materials and the overall design will as to the variety and diversity along the streetscape.
10. Design elements such as stonework, skylights, windows, doors, chimneys and garages are consistent with the adopted Design Guidelines and will complement the character of the structure and the neighborhood.

11. Proposed landscaping, paving treatments, fences and walls are carefully designed to complement the urbanized forest, the approved site design, adjacent sites, and the public right of way. The design will reinforce a sense of visual continuity along the street.

Appendix II. Reproductions of the 5 written communications that Mr. and Mrs. Wormser have had with the Design Review Board and the City Council pertaining to our application

- Letter of July 17th, 2008 to the Carmel Design Review Board
- Letter of September 24th, 2008 to the Carmel Design Review Board
- Letter of October 15th, 2008 to the Carmel Design Review Board
- Letter of December 17th, 2008 to the Carmel Design Review Board
- City Council Appeal dated December 30th, 2008

July 17, 2008

Members of the Design Review Board
City of Carmel-by-the-Sea Planning Department
Post Office Drawer G
Carmel-by-the-Sea, CA 93921

Re: DS 08-76 (Baron/D'Angelo)
East Side North Camino Real between 2nd and 4th

Dear Board Members:

We moved to Carmel less than one year ago. We are newly retired, full-time residents. We chose to buy our home because the area is especially quiet and the home has a lovely ocean view.

We have lots of windows and very much enjoy sitting in our living room, dining room and on our deck – all located on our main level – where we can enjoy the ocean view.

The proposed Baron/D'Angelo Project totally eliminates that view from our primary living space.

As you can certainly understand, in its present design, the proposed Project would have a devastating impact on us.

For that reason, we consulted Mr. Terry Latasa whose technical analysis of the Project's impact is attached, supported by an accompanying sketch and picture.

We respectfully request that the Project be redesigned to bring it into accord with the City's Design Guidelines requiring a balance of project impact among all parties.

Thank you for your consideration.

Sincerely yours,

Marian and Ron Wormser

cc: Sean Conroy
Marc Wiener
Terry Latasa

Terry Latasa Architect

930 Harrison Street, Monterey, Ca 93940
Phone (831) 6491012

July 16, 2008

Members of the Design Review Board
City of Carmel-by-the-Sea Planning Department
Post Office Drawer G
Carmel-by-the-sea, CA 93921

Re: DS 08-76, (Baron/D'Angelo)
East Side North Camino Real between 2nd and 4th

Dear Board Members,

Ron and Marian Wormser have asked me to help them in their opposition to this project. They live in the house directly to the Northeast of the Baron/D'Angelo project, and they would lose their entire ocean view from the current proposal. I would like to outline our opposition, and strenuously suggest that the applicants should re-design their upper level to allow the Wormsers to maintain their only ocean view. **The applicants should move their upper level towards the South to achieve a balance of views.**

-The City Design Objectives states the need to "balance" views from all parcels affected by the project. It also states that "Buildings that substantially eliminate an existing significant view enjoyed on another parcel should be avoided". Please refer to the 'View Balance Analysis' attached; as you can see, the Wormsers would entirely lose their ocean view from the Main Level living areas. The other affected parcel, the Bergeres (directly behind the project) would still maintain their view if the project were re-designed.

-The proposed upper level would also block Solar Access from the Wormser's lower level. Please see the 'View Balance Analysis' attachment for the description. The same re-design of the upper level (relocate the upper mass to the South) would also fix this problem.

-There is also a privacy impact of the proposed rear North-East corner bathroom window on the Wormser's living areas; we hope this can be addressed.

-We would like to request that any tree replacements also respect the Wormser's small view.

-There is a discrepancy on the current plans regarding the elevations of the Wormser's decks; they are shown about 1-1/2 foot higher than they actually are in relation to the proposal. This creates the impression that the view impacts are not so bad. Also the plans emphasize the view impacts on the upper deck, which due to the tree canopy doesn't really enjoy a substantial ocean view.

-Finally, the City Planning Staff suggested a 3-way discussion with the applicants and neighbors. While the Wormsers were agreeable to this suggestion, they were informed by the applicants that they were not agreeable. My clients continue to be available for such discussions.

Respectfully,



Terry Latasa

Sept. 24, 2008

Members of the Design Review Board
City of Carmel-by-the-Sea Planning Department
Post Office Drawer G
Carmel-by-the-Sea, CA 93921

Re: DS 08-76 (Baron/D'Angelo)
East Side North Camino Real between 2nd and 4th

Mr. Chairman, Members of the Board and City staff:

My wife and I appreciate this opportunity to again share our concerns about the proposed Baron/D'Angelo project. As you may recall from the July meeting, our home is located immediately to the north-east of the project.

While a portion of our ocean view has been preserved in the revised proposal, a change we very much appreciate, we remain concerned about issues of privacy and mass.

We believe both are a consequence of the second story being planned over the highest point of the site, and as close as possible to our home and the one to our south.

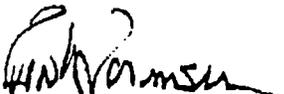
As you will notice during your site visit today, the surrounding homes north and south of this project have second stories on lower sections of their respective properties and thus further away from those of us on the eastern border.

In our view, the project's second story with its resulting mass and privacy considerations is inconsistent with the requirements for Design Study Approval, Section 17.64.080 of the Municipal Code, in particular, "The development is similar in size, scale, and form to buildings on the immediate block and neighborhood. Its height is compatible with its site and surrounding development and will not present excess mass or bulk to the public or to adjoining properties."

At the July DRB meeting, several Board members expressed doubt that a two story structure could avoid these and ocean view issues. We believe the present design confirms that assessment and respectfully request further Project modifications.

Thank you very much.

Marian and Ron Wormser

Marian Wormser 

Wormser letter to DRB re: Baron/D'Angelo Project
for DRB 10.22 mtg.

October 15, 2008

cc: Design Review Board
to Marc Wiener

While appreciative for the partial restoration of our ocean view and of the Board's requirement that the second story height of the proposed Baron D'Angelo Project be lowered by an additional foot, we continue to have concerns about the proposed building's height and mass.

We believe that even the revised height of the Project will loom over our primary living levels and would be inconsistent with section 17.64.080, paragraph 4 of the City's Municipal Code's requirement that a project's "...height is compatible with its site and surrounding development and will not present excess mass or bulk to the public or to adjoining properties."

This excessive mass can easily be rectified by lowering the main upper gable an additional 1-1/2 feet. This would place the lower rear bedroom at the elevation of the existing living room. Please see Terry Latasa's 10/14/08 letter for a technical analysis.

Accordingly, unless this further 1-1/2 foot reduction is agreed to by the DRB, we intend to appeal the most recent DRB finding to the appropriate City body at the appropriate time.

Thank you for your consideration.

Marian and Ron Wormser

December 17, 2008

Members of the Design Review Board
City of Carmel-by-the-Sea Planning Department
Post Office Drawer G
Carmel-by-the-Sea, CA 93921

RECEIVED
DEC 17 2008
CITY OF
CARMEL-BY-THE-SEA

Re: DS 08-76 (Baron/D'Angelo)
East Side North Camino Real between 2nd and 4th

Mr. Chairman, Members of the Board and City staff:

Marian and I appreciate this opportunity to once again address you about the proposed Baron/D'Angelo project.

In doing so we are mindful and appreciative of the considerable time and effort which the Board and staff have spent on this Project since the summer, attempting to reach a design which equitably balances the interests of the owners and neighbors.

Subsequent to the Board's Oct. 22 vote denying the application due to the mass and location of the two-story element, the owners' revised plans now before the Board reflect a further 15" reduction of 6% in height and less than 1% of mass.

Since the reduction in the netting two weeks ago, we have considered very carefully whether it offers enough meaningful benefit which, if accompanied by an agreement with the Owners not to further limit or obstruct our ocean view, we could conclude that an equitable balance of interests had been achieved.

In recent days, intense efforts have been underway with the owners to reach an agreement whereby they would assure us preservation of our current ocean view. Importantly this ocean view is the 50% we regained when the DRB required a redesign of the owners' original plan which totally blocked our view.

The core of our main floor ocean view is a narrow corridor through one tree, perhaps 5% of the total tree, well below the canopy with, at present, limited vegetation. The full canopy of this tree is above and to the side of this corridor.

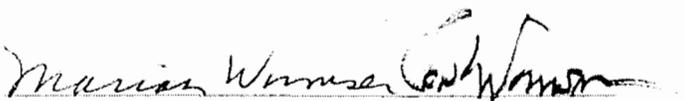
While we accepted the owners' request that the full canopy would be exempt from future trimming, we asked the owners to agree to limited, non-health-threatening trimming of this core. The owners did not accept our request.

Absent a meaningful balance of interests, our concerns remain the same as those on which this Board rejected the application at its last meeting, the mass and location of the second-story element.

We continue to believe the plan calls for a structure that would not meet the criteria in section 17.64.080, paragraph 4 of the City's Municipal Code's requirement that a project's "...height is compatible with its site and surrounding development and will not present excess mass or bulk to the public or to adjoining properties."

Understanding it is for you to decide whether such a limited change is material and sufficient to satisfy the Code requirement, we believe it does not. Therefore we respectfully request that the application be denied.

Thank you again for your time and consideration.


Marian and Ron Wormser

CITY OF CARMEL-BY-THE-SEA

APPEAL OF DESIGN REVIEW BOARD DECISION RECEIVED

(FILING FEE: \$260.00*)

DEC 30 2008

CITY OF
CARMEL BY-THE-SEA

Appellant: MARINO & RON WOIZMSER

Property Owner: (SAME)

Mailing Address: PO Box 7359 - CARMEL 93921

Phones: Day: (831) 670-0725 Evening: () _____ Fax: () _____

Today's date: 12/30/08 Date Board heard the matter: 12.17.08

Physical location of property that is the subject of appeal:

1 1/2 NORTH CAMINO REAL BETWEEN 2ND & 4TH

Lot(s): LL Block: 30

BOARD ACTION BEING APPEALED: _____

APPROVAL OF APPLICATION FOR
SUBSTANTIAL ALTERATION OF RESIDENCE

If you were NOT the original applicant or the applicant's representative, please state the evidence that you are an aggrieved party: _____

(CONTINUED ON REVERSE SIDE)

GROUND FOR APPEAL: (State the specific basis for your appeal, such as errors or omissions you believe were committed by the Board in reaching its decision, etc.)

PLEASE SEE ATTACHED

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT:

DATED AT: Carmel, THIS 30 DAY OF Dec 2008

Tom Wurmse

Signature of appellant

M receipt # 37920 \$ 260. 12/30/08
\$260 fee* received: (Staff Initial)

ATTEST:

Heidi Burch

Heidi Burch, City Clerk

*Article 9, Section 7, of the Constitution of the State of California authorizes a city to impose fees. Also see California government Code, Section 54344.

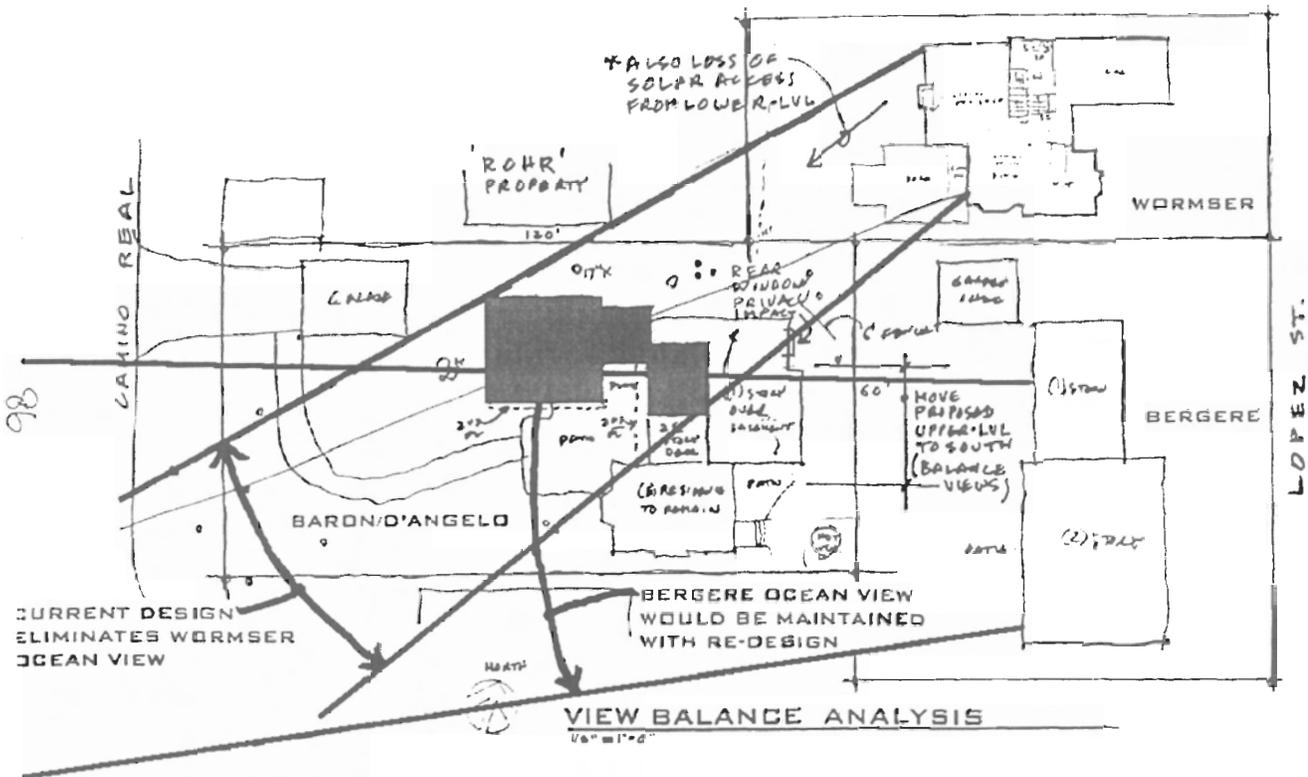
IMPORTANT: If the appellant wishes to submit materials for duplication and inclusion in the City of Carmel-by-the-Sea's Council agenda packet, the materials must be submitted to the City Clerk by _____ working days after the decision of the Board. This matter is tentatively scheduled to be heard on _____.

**ATTACHMENT TO
APPEAL OF DRB DECISION
NAME OF APPELLANT: WORMSER**

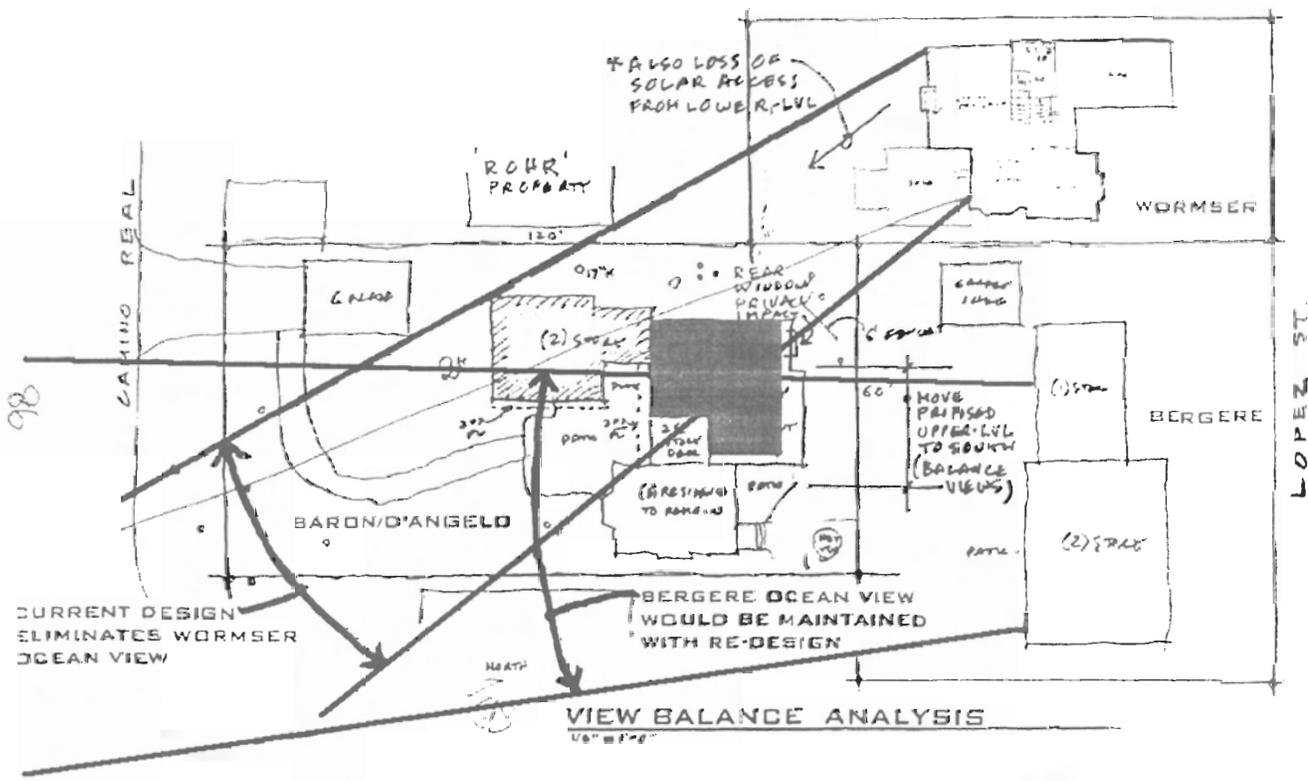
Grounds for Appeal: After denying the Owner's initial application which totally blocked our ocean view, the DRB subsequently approved a new design which, while restoring part of our ocean view, created issues of mass and bulk to which objections were raised by us and another neighbor with the DRB.

After voting to reject the Owner's application for the redesign because of its mass and bulk, and despite continued objections raised by two neighbors, the DRB finally approved a further redesign which provided for only a 5% change in height and less than 1% reduction in mass.

Despite these marginal changes, we continue to think that the approved plan remains inconsistent with Section 17.64.080, paragraph 4 of the City's Municipal Code requiring that a project's "...height is compatible with its site and surrounding development and will not present excess mass or bulk to the public or to adjoining properties."



The location of our 2nd story addition (in red) on our original plans submitted in July, 2008.



The location of our 2nd story addition (in green) on our current, approved plans, the outline dating from and generally unaltered since our main "redesign" in September, 2008

Appendix IV. Large reproductions of the pictures in this document



4 pictures in a series

Though this picture was originally taken to document the view that remains even with the staking, seen in context with the next three photographs, it also demonstrates that Mr. and Mrs. Wormser enjoy a substantial, open feeling from the rear of their home.

These four pictures also illustrate the elevation of the deck and the ground floor of their home – between 3 and 6 feet above the ground – giving the observer a feel for the openness that the appellants enjoy from the rear of their home and the small, diagonal nature of the impact of our 2nd story addition. Our addition's own elevation of 210.5 is a full foot lower than the 211.5 elevation of the appellants' deck and ground floor.



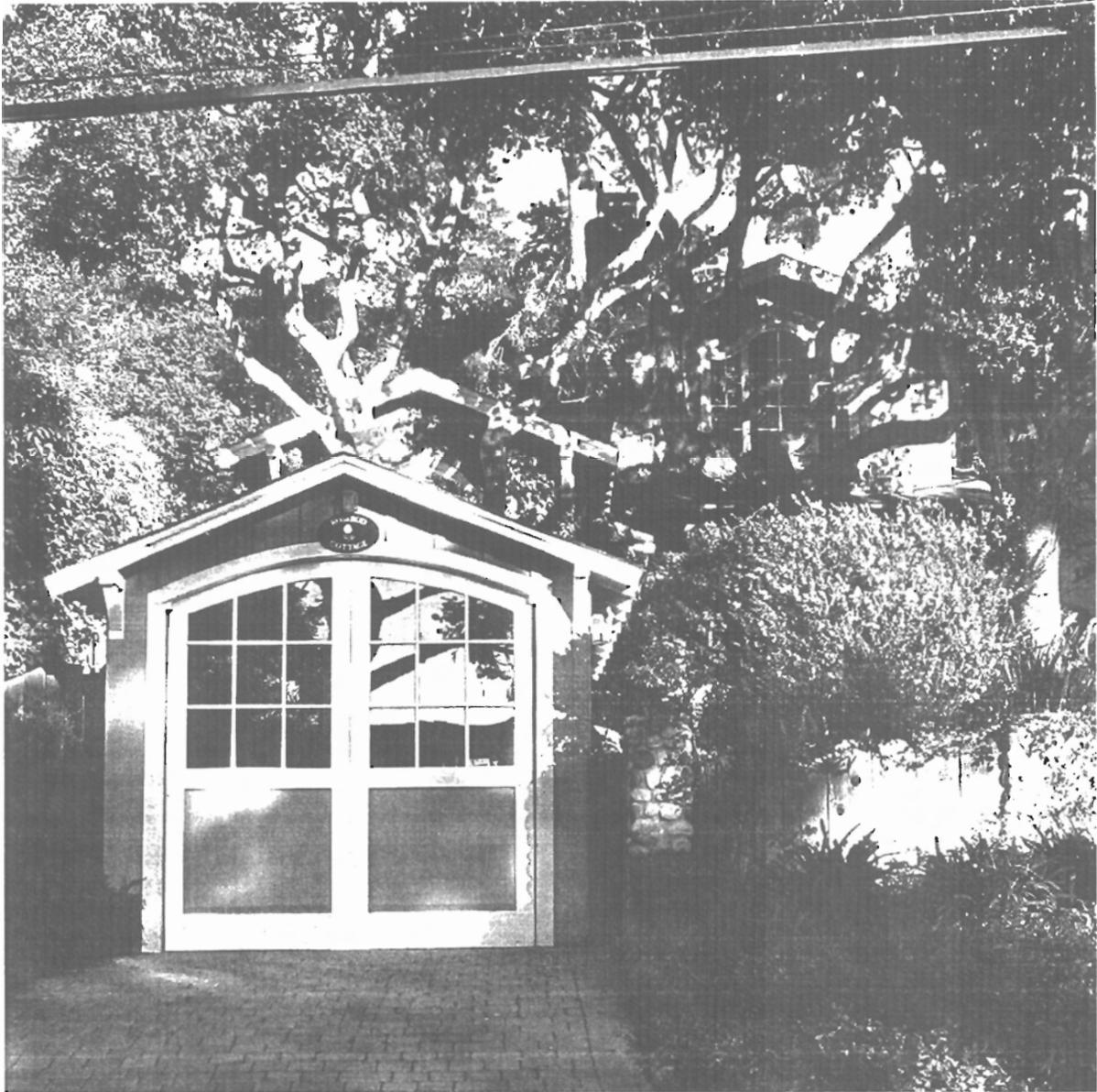
Picture 2 of the series. A view straight towards the ocean over the small, single story house in the direct “front” of the rear of the appellants’ home. The ridge of the home pictured here, directly in front of Mr. and Mrs. Wormser’s home, is at elevation 208.5, and is two feet lower than the elevation of the floor of appellants’ ground floor and deck, from where this picture was taken. “Eye level” in this picture is approximately 7 feet above the highest point of the ridge pictured here.



Picture 3 of the series. A photograph taken “between” the small home that is pictured above and the larger home that is diagonally to the northwest of the appellants home.



Picture 4 of the series. A picture taken more directly northward than the appellants' northwest neighbor. The fence in the foreground is the fence that surrounds the appellants' yard.



This residence, 4 houses south of our property, has a 2nd story that is built at the 15 foot rear setback, contrary to the assertion made in the appeal. It is also worth noting that the “general structure” of the property on the left bears some resemblance to our approved proposal. The garage is detached, and close to the street, and the “pancake” effect that the city prefers to see (in order to reduce the impression of mass) results in stacked levels up the property, with the highest level at the rear of the lot behind the large oak tree.



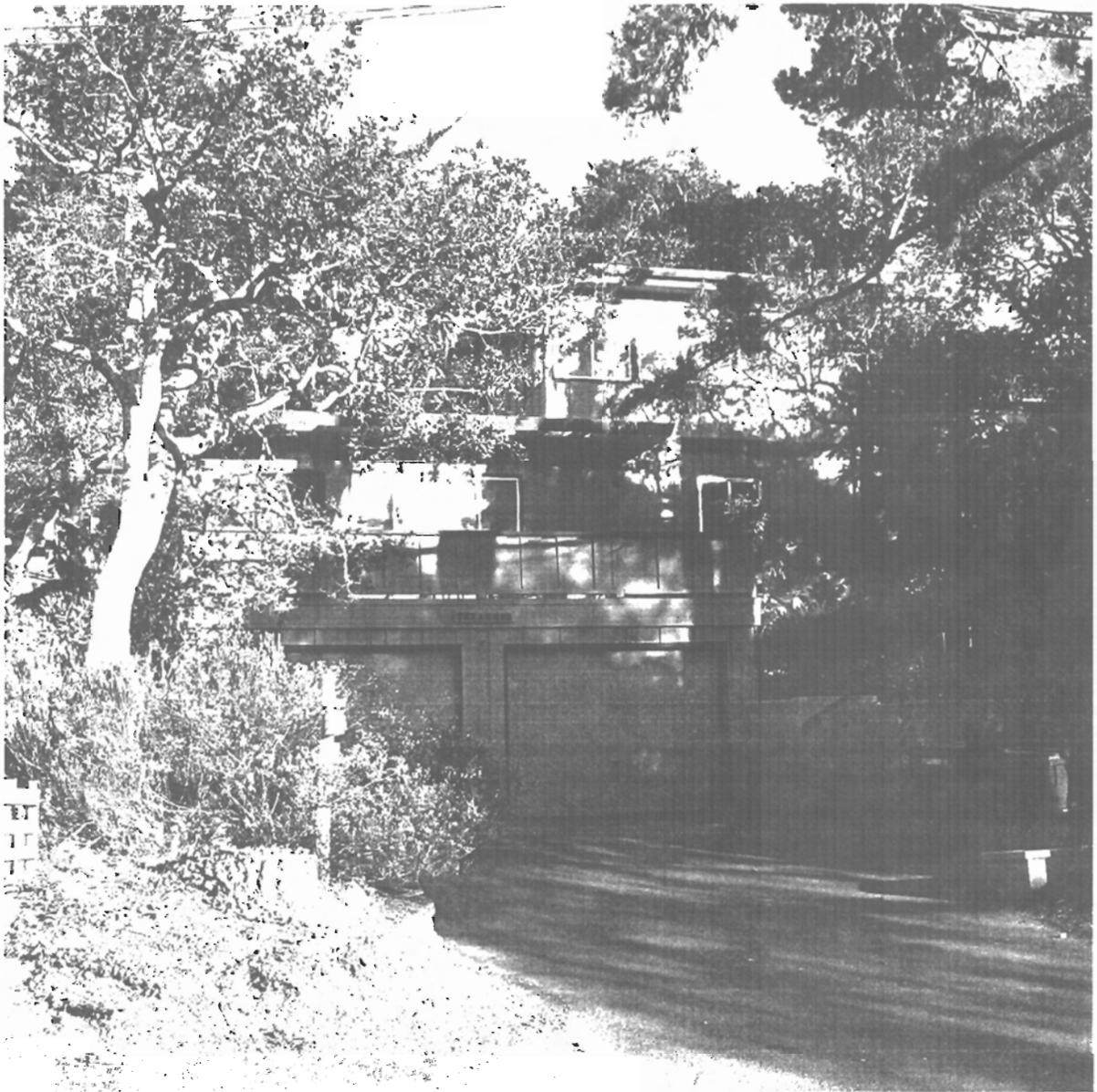
This residence, 5 houses south of our property, has a 2nd story that is built even closer to the rear lot line than the current 15 foot rear setback would allow, contrary to the assertion made in the appeal..



Compare this picture of our project's staking with the picture of our next door neighbors' home on the following page.

Though the upper elevation of our proposal's ridge is at 220.75 while the Collins property's upper elevation (above the 2nd story on the right of the house) is five feet lower, at 215.8, the Collins' property's close distance to the street (38 feet) versus the distance to our ridge (98 feet) gives the impression of a much more significant house.

In fact, from the street, it "appears" as if the garage covers 2/3 of the vertical height (as indicated by the netting) because even the smallish garage is much closer to the street.



Even though the Collins house is built on the level of the street, the fact that it contains 3 stories stacked on top of one another and is close to the street combine to make it appear much larger than our project. It is easy to note that the pictures are taken with the same "focal length" or "zoom" of the lens because the garage doors are roughly the same size.



Disproving the assertion that all of the 2nd stories have east/west orientations, this historic but mildly imposing home 2 houses north of our location has a 2nd story that is 30 feet long (parallel to the street) and about 15 feet wide, clearly oriented in a north/south direction. This house is also fairly far back from the street.



This adobe home that is 2 houses south of our property contains a 2nd story that completely covers the ground story – the house is shaped like a box. The 2nd story is roughly 30 feet wide and 30 feet long, and while square rather than oriented east/west, the width of the 2nd story gives it a very imposing structural façade from the street, though it is camouflaged by the earthy brown color. Notice that this home is also built on the rear half of the property, behind the visible oak trees.



This picture, taken from the 2nd floor of the appellants' home, does a fair job at illustrating the facts that not only is the appellants' 2nd story higher than our ridgeline, but that their view over our project is completely unobstructed.

Appendix V. CIRCA “Historic Resources” Review

March 9, 2009

John S. Bridges, Esq.
Fenton & Keller
2801 Monterey-Salinas Hwy
Monterey, CA 93940

RE: Baron/D'Angelo residence (Block: LL Lot: part 28 & 30)

Dear John;

I have recently conducted of a peer review of the Department of Parks and Recreation Primary Record and Building, Structure and Object Record (DPR 523 A & B on file in the City of Carmel's Planning Department) for the Baron/D'Angelo property located at 5 SE of Second east side of Camino Real, in the City of Carmel. In addition to reviewing the DPR forms I also conducted an intensive survey, through research and a site visit, in accordance to the City of Carmel-by-the-Sea Municipal Code 17.32.070. I do not agree with Mr. Seavey's conclusions in the DPR forms and would like to add my own observations that further support this conclusion. My observations are as follows:

- In the Description section P3 important character features identified were the multi-paned steel casement windows with steel pipe mullions, "some wrapping around the building's corners". The property was evaluated in May 2005, however nearly all of the windows had been replaced with vinyl prior to the evaluation, including the referenced corner window.
- In the BSO section B10 states that the property is significant in the area of architecture as an unaltered late example of Comstock residential design. The residence was clearly altered prior to evaluation. The reference to the innovative use of steel pipe mullions (at the windows) is not applicable. Most of the discussion about Comstock is regarding his early work that does not apply to this property and therefore is irrelevant.
- The BSO section B10 Carmel's Historic Context Statement does not go beyond 1940. Generally, while mid-century resources can be recognized for their high architectural value, the common Minimal-Traditional style in Carmel cannot be justified as *significant*.
- In the BSO section B10 the period of significance is stated to be 1947. The period of significance is much more than that and is generally recognized to be a time frame of significance for the property, with a beginning and close date (e.g. 1947-1960). The importance of the period of significance is to understand the historic context the property

Facilitating the revitalization and development of historic

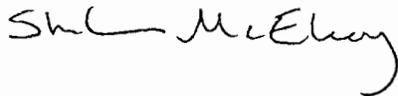
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is associated with. Carmel's Historic Context Statement does not go beyond 1940 therefore the reference to the 1997 Carmel Historic Context Statement is inappropriate. With no other documentation to substitute for the Context Statement, the post-WWII architectural development theme in Carmel cannot be justified as *significant*.

In conclusion, it is my opinion that the Baron/D'Angelo property does not retain enough physical integrity to remain on the City of Carmel's list of Historic Resources. It is not a strong example of Minimal-Traditional, post-WWII residential architecture nor does it represent Mr. Comstock's more significant work.

Please do not hesitate to contact us if you desire any additional information and thank you for your serious consideration.

Sincerely,



Sheila McElroy
Principal

Appendix VI. Additional documentation provided on the CD that we have included

- A copy of the materials that we provided to the Carmel City Council in advance of the City Council hearing on the neighbors' appeals.
- A copy of our PowerPoint presentation to the Carmel City Council for that hearing
- A copy of the CIRCA report on the removal of our property from the historic inventory

In preparation for the appeal of our proposal before the City Council, we received letters of support from both residents of our street and residents of the community at large – 25 letters in all. The letters varied in their content (some were letters of general support, while others referenced aspects of the project) but were all relevant because the appellants in that instance referred to the impact of our project on the street on which we – but not the appellants – live. As the appellants here also make extensive reference to the “view of our project from the public right of way”, we have chosen to include those letters from our neighbors that make specific reference to those aspects of our project. There were no letters from neighbors in opposition to our project save those of the appellants.

- Map that shows the specific location of the 15 letters of support from Camino Real Neighbors
- Letter from Charles and Ann Golson
- Letter from Debra Stephens and Derek Terrones
- Letter from Florence Meeker
- Letter from James and Carol Duncan
- Letter from Marshall Stimson
- Letter from Paul and Kathleen Coss
- Letter from Rick and Denise McGearry
- Letter from Robert and Marilyn O'Neill
- Letter from Roger and Terrill Dahl
- Letter from Terry and Mary Lou Snowden