

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
301 E. Ocean Blvd., Suite 300  
Long Beach, CA 90802-4302  
(562) 590-5071



# F10d

## ADDENDUM

August 9, 2021

TO: Coastal Commissioners and Interested parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM F10d COASTAL DEVELOPMENT PERMIT  
APPLICATION NO. 5-21-0079 (Viloria) FOR THE COMMISSION MEETING  
OF FRIDAY, AUGUST 13, 2021**

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### **I. CORRESPONDENCE RECEIVED FROM THE APPLICANT**

Since the publication of the staff report on July 23, 2021, the Commission staff received comments from the applicant's agent, Iain Buchan, which is attached as **Attachment A** to this addendum. According to Mr. Buchan, the applicants are opposed to staff's recommendation requiring Special Condition 1, which requires the submittal of revised plans showing the entire deck located at least 15 ft. from the canyon edge in conformance with Section HAZ-47 of the Certified San Clemente Land Use Plan. Mr. Buchan opposes Commission staff's recommendation for several reasons, including 1) that the Commission staff's interpretation of Section HAZ-47 is incorrect; 2) that contextual consideration should be given to the proposed project based on the surrounding residential development in Palizada Canyon, some of which encroaches into the canyon; and 3) that the applicant relied on the City's approval in concept for the proposed project which purportedly included a pre-submittal authorization from Commission staff.

With regard to Section HAZ-47 of the City's LUP, the applicants contend that while it is "written with room for interpretation," that they believe the logical rationale for the 15-foot canyon edge setback is "intended to provide a buffer from structural concrete and foundation elements being placed too close to the canyon to protect the slopes, and to protect from being exposed in the event of future erosion." In addition, the exception for "ancillary improvements such as decks and patios, which are at-grade and do not require a foundation may encroach into the canyon edge may extend into the setback no closer than 5 feet from the canyon edge" indicates that decks and patios without footings are allowed in the setback, so a framed cantilevered deck above the ground surface with no structural supports into the setback has no impact on the canyon slope or vegetation. Therefore, the applicant rationalizes, a framed cantilevered deck above the ground surface with no structural supports into the setback has no impact on the canyon.

As addressed more fully in the staff report, impacts to the canyon slope or vegetation are not the only factors to be considered in this analysis. In this case, only the minimum 15 ft. canyon edge setback achieves the goal of preventing further encroachment toward the canyon. The 15 ft. setback protects wildlife habitat, corridors for native fauna, and preserves open space with potentially sensitive habitat. Furthermore, if built as proposed, the project would create a new future stringline closer to the canyon that would be applicable for possible future redevelopment of adjacent residential lots. Thus, siting development on this lot closer to the canyon edge would add to cumulative adverse impacts upon coastal resources. The City's policies aim to preserve coastal canyons as undeveloped areas intended to be open space through implementation of appropriate development setbacks, with the objective of protecting and enhancing coastal canyon resources by restricting the encroachment of development, incompatible land uses, and sensitive habitat disturbance. Similarly, Coastal Act policies aim to prevent impacts which would significantly degrade sensitive habitat areas and ensure that development shall be compatible with the continuance of those habitat areas.

With regard to contextual consideration being given to the proposed project based on the surrounding residential development encroaching into Palizada Canyon, Commission staff notes that preliminary research of the eleven residential developments referenced in the photo survey submitted demonstrated that four of the structures have no relevant permit history (221 and 239 West Marquita and 316 and 320 Encino Lane); three residential structures were constructed prior to the implementation of the Coastal Act (235 and 245 West Marquita and 318 Encino Lane); and four were issued CDPs prior to the 2018 certification of the City's Land Use Plan (217, 229 and 231 West Marquita and 318 Encino Lane). Therefore, most all of the residences referenced by the applicant that were approved by the Commission were analyzed under a different set of standards and do not reflect the Commission's current approach to permitting development within coastal canyons in San Clemente.

Finally, the applicant contends that this project should be approvable because the applicant consulted with the City's planning staff and an individual from the Commission's staff on a different project with a cantilevered deck. This reliance is misguided. While an approval in concept (AIC) from an uncertified City is a filing requirement for an applicant to be able to demonstrate that the City has reviewed and approved the project, the Coastal Commission issues coastal development permits and makes final determinations regarding development in the coastal zone on a case-by-case basis. Moreover, Commission staff has recently discussed HAZ-47 of the City's LUP with the City of San Clemente planning staff, and while the City's zoning code does allow for such cantilevering, the City's staff acknowledges that the LUP is more restrictive and that only at-grade decks/patios without foundations would be allowed to encroach five feet into the required setback. This deck is not at-grade and requires steel posts and a grade-beam foundation. As such, the applicant's interpretation of HAZ-47 is incorrect, and the applicant's reliance on something Commission staff allegedly said to San Clemente city staff is irrelevant to the application of the LUP to this proposed project.

# Viloria Residence Deck Addition 225 W. Marquita

California Coastal Commission Hearing

To review the proposed 5' cantilevered deck encroachment  
Into the required 5' Coastal Canyon Setback

Dear Commissioners,

Mr. and Mrs. Vilorio are proposing to construct a street level deck structure at the rear of their residence. The wood framed deck is located at the main, street level of the house above a lower level basement and patio below. The existing living space directly adjacent the proposed deck has 2 pairs of sliding doors to access the deck, currently with guardrails at the face of the wall. The proposed deck is supported on a shallow continuous grade beam foundation with structural steel posts all located outside of the required 15' canyon edge setback. The proposed cantilevered wood framed deck is attached to the house, which cantilevers a maximum of 5' into the canyon edge setback, and is located well behind the stringline.

Based on the In-Concept Approval for another project currently under Coastal Commission review at 318 W. Ave Gaviota with a similar cantilevered deck near a coastal canyon, we applied the same interpretation of HAZ-47. We received In-Concept approval, and subsequently submitted to Coastal Commission, assuming we would have a simple Diminimous Waiver approval months ago. We were surprised when Mandy informed us that the project could be approved if we remove the cantilevered portion of the deck.

Our city planner for 318 W. Ave. Gaviota, Kyle Webber consulted with Liliana Roman as a part of the In-Concept review, and they both agreed that the proposed cantilevered deck complies with the City Ordinance, the City's LUP, and Coastal Commission review. We have been working with Vince on that project and specifically asked about the cantilevered deck early in the review. Throughout the entire review process, close to the 6-month deadline, the cantilevered deck was never mentioned as being an issue in any comments or conversations until we were informed in a video conference on July 14 that the cantilevered deck would not be allowed. We are currently awaiting on a determination for the project at 318 W. Gaviota which will be based on the results of this hearing. The following slide is an excerpt from an email I received from Kyle regarding his phone conversation with Liliana in reviewing our application for In-Concept approval on the project at 318 W. Ave Gaviota.

W. MARQUITA

4' - 11"  
(E) BLDG'D SETBACK

EXISTING  
ENTRY STAIRS

PROPERTY LINE  
N23°48'17"E 81.11'

8' - 3"  
(E) BLDG SETBACK

DRIVEWAY

12' - 7"  
(E) BLDG. SETBACK

EXISTING SITE WALL

(E) CANT'L  
FLOOR ABOVE

(E) CANT'L  
FLOOR ABOVE

(E) ROOF ABOVE

PROPERTY LINE  
N16°27'36"W 142.74'

BUILDING STRINGLINE

17' - 0"  
DECK SETBACK

(E) PLANTER

NEW STEEL  
POST, TYP

REQ'D 15'  
CANYON SETBACK

CANYON  
EDGE

(E) CONC. PATIO  
EDGE @ GRADE

RE-CONSTRUCTED/  
GRADED SLOPE

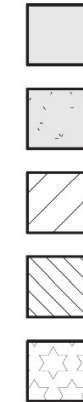
54' - 7"  
DECK SETBACK

PROPERTY LINE  
N85°34'33"E 9.22'

PROPERTY LINE  
N15°04'32"E 7.78'

PROPERTY LINE  
N60°34'02"W 99.46'

EXISTING RETAINING WALL



EXISTING FIRST LEVEL LIVING

EXISTING GARAGE

EXISTING SECOND FLOOR LIVING

PROPOSED UNCOVERED DECK

REDUCED UNCOVERED DECK  
BASED ON NO CANTILEVER

EXISTING  
SLIDER DOOR

REDUCED DECK  
AREA NO CANTILEVER  
STAR HATCH

REDUCED  
DECK DEPTH  
@ DOOR

EXISTING  
SLIDER DOOR

EXISTING ON-  
GRADE STAIRS

# SITE PLAN

3/32" = 1'-0"



Email Excerpts from Kyle Webber:

Iain,  
Coastal Program Analyst, Liliana Roman was the Coastal staff member that agreed with staff’s non-official interpretation for the Giobbi residence (‘interpretations’ by definitions are often approved by an authoritative body.) Her response was given over the phone, which Planning Staff discussed thereafter. Original email attached.

Was the Giobbi project approved by Coastal? I would guess that would be enough proof that the City and Coastal agreed on allowing the development.

Sincerely,  
**Kyle Webber**  
Assistant Planner | City of San Clemente  
910 Calle Negocio, Ste. 100, CA 92673  
(949) 361-6189 | [WebberK@San-Clemente.org](mailto:WebberK@San-Clemente.org)

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“Iain,  
I received a response from our CC consultant. She believes because it is an improvement to the site, and that the structural foundation does not encroach into the 15 foot canyon edge setback area, that the deck would be allowed to cantilever over the setback area at a measurement of no closer than 10 feet from the canyon edge. In other words, what you’re proposing on your plans seems to comply with both City ordinance, the City’s LCP, and Coastal Commission review.

Forewarning, because the site is adjacent to a historical property, improvements require the approval of a Minor Cultural Heritage Permit (MCHP). A Staff Waiver of the MCHP (SW MCHP) would be allowed assuming that “the building’s design, footprint, massing, and height are essentially kept intact” and the proposed deck does not have any visual impact on the Historic Structure. There is no additional fee for a SWMCHP.

Please provide a complete SW MCHP application form upon submittal of the In-concept review (ICRES) (attached to this email).

Let me know if you have any questions,

Kyle”

Hi Liliana (and Mandy),

I’m not sure if we have ever officially met, but my name is Kyle—I work in the Planning Division at San Clemente. I have a question for you regarding a residential development on a coastal canyon.

The applicant is proposing cantilevering a deck, with structural foundation, roughly 5 feet into the 15 foot canyon edge setback area. For non-coastal properties, the City measures decks from their structural foundation, such as posts, in order to determine if it is encroaching or not, and therefore, decks cantilevering are often allowed to encroach into side, front and rear setbacks.

The applicant for 318 W Avenida Gaviota is proposing to remove the illegal non-conforming deck that extends throughout the 15 foot setback area and cantilever a new deck no more than five feet beyond the setback area. The way I am reading HAZ-47(d) is that ancillary improvements for decks can extend into the setback area no closer than five feet to the canyon edge as long as they are built at grade. The new proposed deck is not at grade.

Can you clarify if the applicant would, in fact, not be able to cantilever a deck beyond the 15 foot canyon edge setback area?

Thanks for your time,  
Kyle

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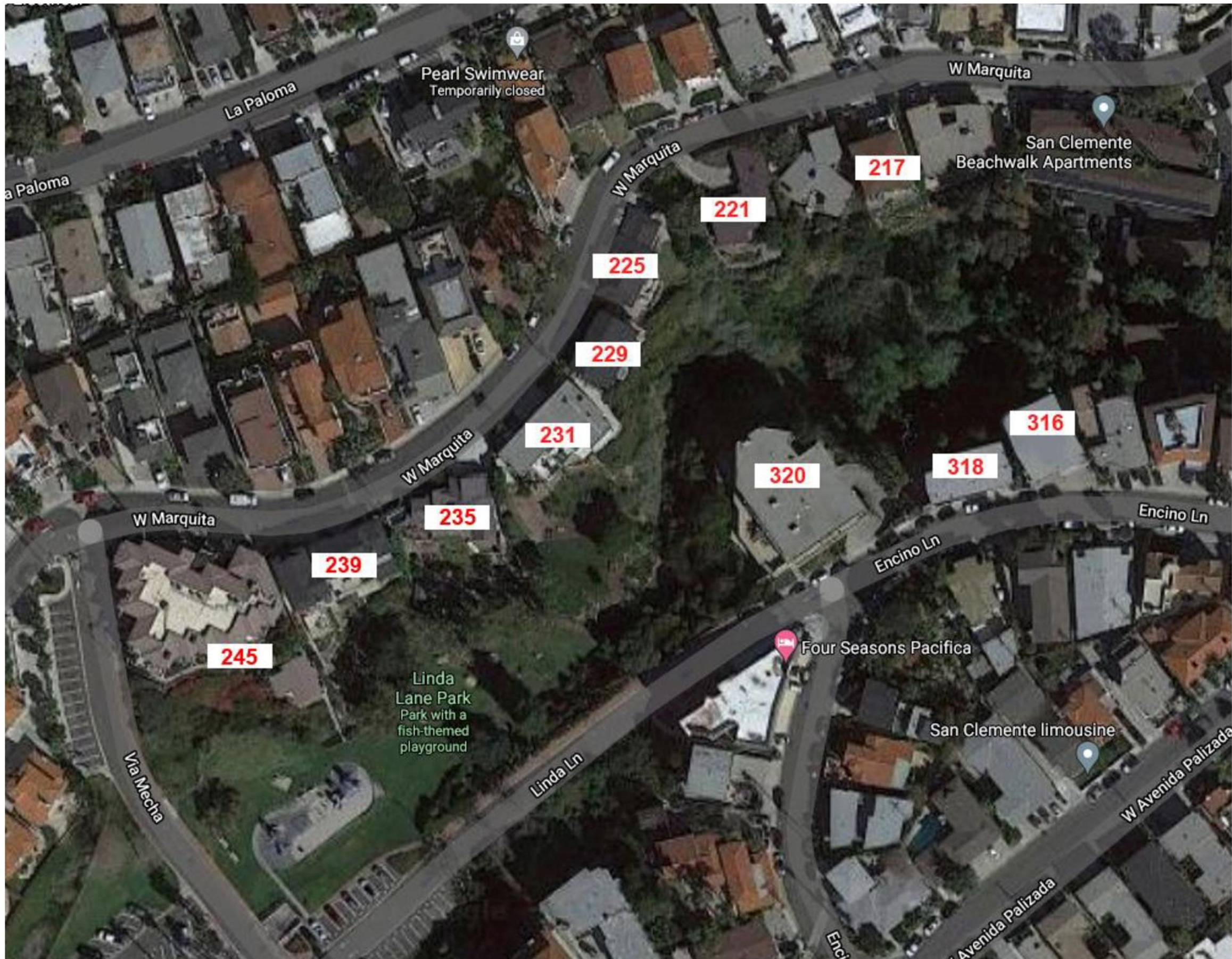
Haz-47 is written with room for interpretation, but we believe that the logical rationale for the 15' canyon edge setback is intended to provide a buffer from structural concrete and foundation elements being placed too close to the canyon to protect the slope, and to protect from being exposed in the event of future erosion. The exception for "Ancillary improvements such as decks and patios, which are at-grade and do not require a foundation may extend into the setback no closer than 5' from the canyon edge..." indicates that a determination was made that decks and patios without footings are allowed in the setback, and would not adversely affect the canyon slope or vegetation. That being said, a framed cantilevered deck above the ground surface with no structural supports into the setback has no impact on the ground/landscape surface.

A confusing addition at the end of HAZ-47 states that "no new or redeveloped walkways, stairs or retaining walls shall extend into the canyon beyond the required coastal canyon setback." I assume the redeveloped walkways applies to concrete slab / foundation supported walkways, but it is not clear. What is the difference between a walkway with constructed with decomposed granite, pavers or stepping stones, and an at-grade deck and patio of the same material. In addition, there is no definition for "at-grade-decks" in the City's LUP.

These comments apply to the interpretation of the City's LUP for coastal canyon development, and the following are considerations we feel are also important to the contextual considerations that should also be included in the determination.

First, the slope realistically is not subject to erosion from water at the bottom because this entire slope was reconstructed by the city, and there is a concrete culvert directing the water at the bottom of the channel. As a part of the slope repair, surface water drainage from the subject lot is connected through a pipe and conveyed directly into the bottom of the canyon drainage system.

The second contextual consideration can be demonstrated by the following photo survey of the surrounding existing residences on this particular canyon.



245 W. Marquita



Building and Deck on or over Canyon Edge.

239 W. Marquita (2 Photos)





**Building and Deck over Canyon Edge**

**235 W. Marquita**



**Building and Deck over Canyon Edge**

**231 W. Marquita – Building on Canyon Edge.**



**229 W. Marquita (2 Photos)**



225 W. Marquita



Building on and Decks over Canyon Edge

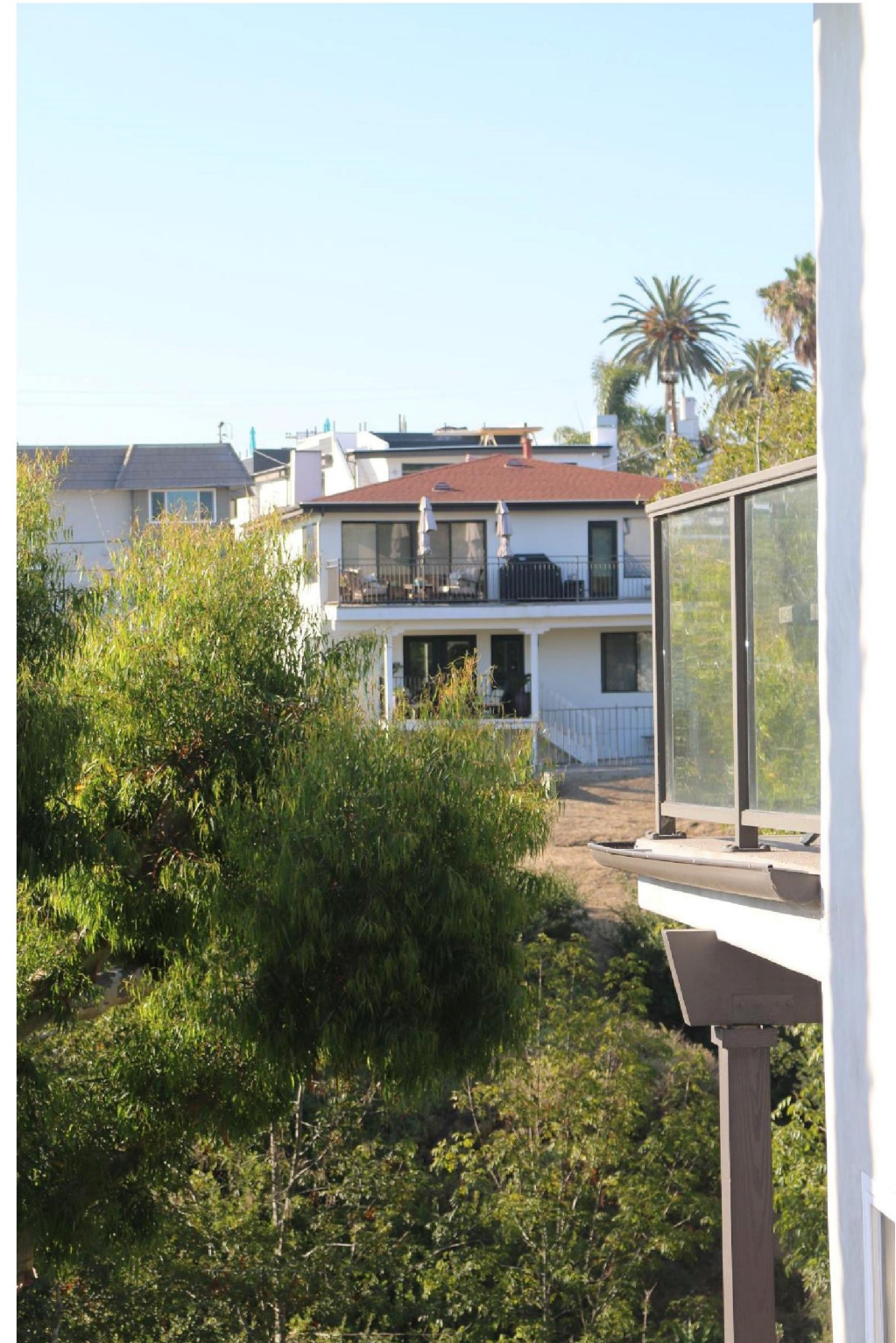


Proposed Deck Will Not be on or over Canyon Edge.

**221 W. Marquita**



**Patio Cover on Canyon Edge.**



**Building on Canyon Edge**

320 Encino Ln



318 Encino Ln (2 Photos)



316 Encino Ln



Building and Deck over the Canyon Edge.

In closing, we feel the proposed project, as submitted with the 5' encroachment of the cantilevered framed deck complies with the City Ordinance, the City's LUP, and Coastal Commission review. The fact that the majority of the existing buildings on this portion of the canyon are constructed at or onto the canyon slopes, while we are proposing a modest wood framed deck set well behind the stringline setback should also be a consideration for approval. Finally, this canyon slope has been reconstructed / regraded with erosion protective measures in place to ensure that any risk of erosion is very unlikely.

Thank you for your consideration.

Iain Buchan

Mr. and Mrs. Ben Vilorio