

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building		(2) MEETING DATE March 21, 2006		(3) CONTACT/PHONE Marsha Lee, Current Planning (805) 788-2008	
(4) SUBJECT Hearing to consider an appeal by Frank Parnel of the Planning Commission's denial of his request for a Variance/Coastal Development Permit DRC2004-00224 to allow a variance to rear and side setbacks for a 675 square foot enclosed patio structure with walls built on the property line. The site is developed with an approximately 2,846 square foot residence. Supervisorial District: 4.					
(5) SUMMARY OF REQUEST On November 10, 2005 a Variance/Coastal Development Permit DRC2004-00224 was denied by the Planning Commission to allow a variance to rear and side setbacks for a 675 square foot enclosed patio structure with walls built on the property line. The applicant, Frank Parnel, appealed that decision on November 22, 2005. The proposed project is within the Residential Multi-Family land use category and is located at 1560 Strand Way in the community of Oceano. The site is in the San Luis Bay (coastal) planning area.					
(6) RECOMMENDED ACTION Adopt the resolution affirming the decision of the Planning Commission and deny the application of Frank and Janet Parnel for a Variance/Coastal Development Permit DRC2004-00224.					
(7) FUNDING SOURCE(S) Appeal Fee		(8) CURRENT YEAR COST N/A		(9) ANNUAL COST N/A	
(10) BUDGETED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): California Coastal Commission, Oceano CSD/Fire Department					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent <input type="checkbox"/> Limited Term <input type="checkbox"/> Contract <input type="checkbox"/> Temporary Help					
(13) SUPERVISOR DISTRICT(S) 1st, 2nd, 3rd, <u>4th</u> , 5th, All			(14) LOCATION MAP <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A		
(15) AGENDA PLACEMENT <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Hearing (Time Est. <u>45</u> ) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(16) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> N/A		
(17) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(18) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		

(19) ADMINISTRATIVE OFFICE REVIEW	OK Leslie Brown	
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SAN LUIS OBISPO COUNTY  
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP  
DIRECTOR

**TO:** BOARD OF SUPERVISORS  
**FROM:** MARSHA LEE, CURRENT PLANNING  
**VIA:** WARREN HOAG, DIVISION MANAGER  
**DATE:** MARCH 21, 2006

**SUBJECT:** HEARING TO CONSIDER AN APPEAL BY FRANK PARNEL OF THE PLANNING COMMISSION'S DENIAL OF HIS REQUEST FOR A VARIANCE/COASTAL DEVELOPMENT PERMIT DRC2004-00224 TO ALLOW A VARIANCE TO REAR AND SIDE SETBACKS FOR A 675 SQUARE FOOT ENCLOSED PATIO STRUCTURE WITH WALLS BUILT ON THE PROPERTY LINE. THE SITE IS DEVELOPED WITH AN APPROXIMATELY 2,846 SQUARE FOOT RESIDENCE.  
SUPERVISORIAL DISTRICT: 4.

**RECOMMENDATION**

Adopt the resolution affirming the decision of the Planning Commission and deny the application of Frank and Janet Parnel for a Variance/Coastal Development Permit DRC2004-00224.

**DISCUSSION**

**Permit History**

There are two permits on file concerning this property. The county issued the original construction permit for the residence in 1987. In addition, the landowner should have received a Coastal Development Permit from the California Coastal Commission (CCC). However CCC staff has not been able to find a record of the permit to date. In 1997, a construction permit for a second floor deck enclosure was issued. The site plans for both the original building permit and the building permit for the second floor deck enclosure shows ground level development outside the required three-foot side setback and ten foot rear setback.

In review of aerial maps for 1987, 1989, 2000, and 2002 provided by California Coastline Website, the 1987 view shows the home with the required side and rear setbacks. The 1989 view shows the ground level patio structure encroaching into the side and rear setbacks.

On November 10, 2005, a Variance/Coastal Development Permit DRC2004-00224 was denied by the Planning Commission to allow a variance for setbacks to the rear and side setbacks for a 675 square foot ground level patio structure, which is built on the property line. The proposed project is within the Residential Multi-Family land use category and is located at 1560 Strand Way in the community of Oceano. The site is in the San Luis Bay (coastal) planning area. Frank Parnel appealed that decision on November 22, 2005

## **APPEAL ISSUES**

The appellant raises the following issues in the appeal:

**Issue 1** – In 1997, a construction permit for an upper deck enclosure was issued and finalled, and the lower deck walls were existing within the setback at that time. Since the County permitted the upper deck patio enclosure, this also permitted the lower patio enclosure that was in the required setbacks.

**Staff response:** The building inspection was only for the second floor deck enclosure that was the subject of the requested permit. In other words, the inspector was sent to the site to inspect the permitted work, nothing else. The fact that the building inspector did not tell the landowner to remove or permit the ground level patio structure does not constitute approval of the ground level patio structure, because there is no record that the building inspector inspected the illegal structure. The inspection was not conducted for any other portion of the existing structure.

**Issue 2** – Removing the existing enclosed patio that is within the required setbacks would cause substantial expense.

**Staff response:** The landowner constructed improvements in the rear and side setbacks at their own risk and without permits.

**Issue 3** – There is no hardship to the County nor any health or safety risk since there is sufficient fire access to the rear of this property and exceeds the fire access at numerous other sites throughout this area of Oceano.

**Staff response:** The Oceano Community Services District response to the request is contained in a letter attached to the staff report, dated October 14, 2005. Comments include the following: "The Fire Department would have a great many problems controlling a fire at either location. In particular, there is no access to the ocean side of the structure from the south side, access to the western exposure is limited due to the sandy terrain of the beach where no apparatus access exists, and the remaining eastern and northern exposures would be the only access for fire attack and egress."

This leaves us in a bad situation should there ever be a fire in either structure – the thought is that we could possibly lose both residences.”

### **OTHER AGENCY INVOLVEMENT**

The California Coastal Commission and Oceano CSD/Fire Department

### **FINANCIAL CONSIDERATIONS**

The required appeal fee was paid by the appellant (pursuant to our adopted policy and procedure).

### **RESULTS/IMPACT**

Denial of the appeal and upholding of the denial of the Variance/Coastal Development Permit DRC2004-00224 will require removal of the structure located within the rear and side setbacks.

### **ATTACHMENTS**

1. Resolution upholding the Planning Commissions decision
2. Appeal letter
3. Letter from applicant addressing appeal issues
4. Staff report, with correspondence from the November 10, 2005 Planning Commission hearing
5. Exhibits received at the November 10, 2005 Planning Commission hearing

A handwritten signature or set of initials, possibly 'GJ' or 'GJL', written in black ink in the bottom right corner of the page.

**IN THE BOARD OF SUPERVISORS**  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

\_\_\_\_\_ day \_\_\_\_\_, 2006

**PRESENT: Supervisors**

**ABSENT:**

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AFFIRMING THE DECISION OF THE PLANNING COMMISSION  
AND DISAPPROVING THE APPLICATION OF FRANK AND JANET PARNEL  
FOR VARIANCE/COASTAL DEVELOPMENT PERMIT DRC2004-00224

The following resolution is now offered and read:

WHEREAS, on November 10, 2005, the Planning Commission of the County of San Luis Obispo (hereinafter referred to as the "Planning Commission") duly considered and disapproved the application of Frank and Janet Parnel for Variance/Coastal Development Permit DRC 2004-00224; and

WHEREAS, Frank Parnel has appealed the Planning Commission's decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the "Board of Supervisors") pursuant to the applicable provisions of Title 23 of the San Luis Obispo County Code; and

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on March 21, 2006, and determination and decision was made on March 21, 2006; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be denied and the decision of the Planning Commission should be affirmed subject to the findings set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:



1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.
3. That this project is found to be statutorily exempt from the California Environmental Quality Act under the provisions of Public Resources Codes section 21080(b)(5), which provides that CEQA does not apply to projects which a public agency rejects or disapproves.
4. That the appeal filed by Frank Parnel is hereby denied and the decision of the Planning Commission is affirmed and that the application of Frank and Janet Parnel for Variance/Coastal Development Permit DRC2004-00224 is hereby disapproved based upon the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

\_\_\_\_\_  
Chairman of the Board of Supervisors

ATTEST:

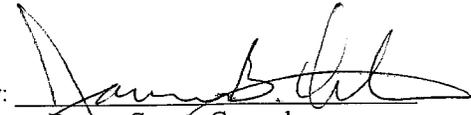
\_\_\_\_\_  
Clerk of the Board of Supervisors

[SEAL]



APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.  
County Counsel

By:   
Deputy County Counsel

Dated: February 8, 2006



STATE OF CALIFORNIA,            )  
  ) ss.  
COUNTY OF SAN LUIS OBISPO )

I, \_\_\_\_\_, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this day of \_\_\_\_\_, 20 \_\_\_\_.

County Clerk and Ex-Officio Clerk of the Board of Supervisors

(SEAL)

By: \_\_\_\_\_  
Deputy Clerk.



**FINDINGS - EXHIBIT A  
DRC2004-00224**

*Environmental Determination*

- A. That this project is found to be statutorily exempt from the California Environmental Quality Act under the provisions of Public Resources Code section 21080(b)(5), which provides that CEQA does not apply to projects which a public agency rejects or disapproves.

*Variance*

B. The approval of the variance would constitute a granting of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which it is situated because authorizing a variance of the setbacks would create an inconsistency with the surrounding properties. The variance would also create adverse conditions for the neighbors of the property because, as stated in letters to the county, the neighbor's property becomes flooded because water runs from the roof and gutters causing flooding on their property. Additionally, varying the setbacks for beachfront property such as this lot is could create a precedent that would lead to other neighbors building to their property lines and enclosing their patios. Granting this variance would create an inconsistency with the surrounding homes and land use.

C. There are not special circumstances applicable to the property, including size, shape, topography, location, or surroundings, and because the parcel size, shape and topography is not different than the surrounding properties, and the strict application of this Title would not deprive the property of privileges enjoyed by other property in the vicinity and in the same land use category.

D. The variance would authorize a use that is not otherwise authorized in the land use category.

E. The granting of such application would, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, is materially detrimental to the public welfare, and is injurious to nearby property or improvements, because the neighboring property would face drainage issues as outlined in their letter to the county. The lack of side setbacks causes flooding on the neighboring property as run-off from the roof and gutters flows onto the adjoining property. Additionally, without any side setback, in the event of fire, it would be able to jump more easily from house to house. For these reasons, allowing a variance to the setbacks could create a detrimental situation for surrounding property owners. The enclosed patio area also can affect the lateral view sheds of neighbors and the enclosed space is unauthorized added living space.

F. Approval of the variance would be inconsistent with the San Luis Obispo County General Plan because the setbacks are zero in the rear and portions of the side setbacks and fire safety and access is negatively effected.





SAN LUIS OBISPO COUNTY  
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP  
DIRECTOR

November 28, 2005

Frank Parnel  
1560 Strand Way  
Oceano, CA 93445

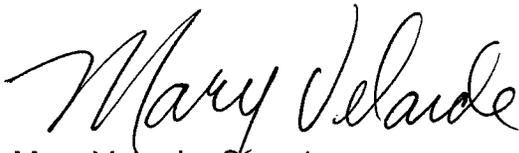
SUBJECT: Appeal of Janet and Frank Parnel

We have received your request for review on the above referenced matter. We have received an appeal on the above referenced matter. In accordance with Section 23.01.042 of the Coastal Zone Land Use Ordinance, the matter will be scheduled for public hearing before the County Board of Supervisors. The action of the Planning Commission on this application is not effective at this time. A copy of your appeal is attached.

The public hearing will be held in the Board of Supervisors Chambers, New Government Center, 1055 Monterey Street, Room #D170, San Luis Obispo, CA 93408. As soon as we get a firm hearing date and the public notice goes out, you will receive a copy of the notice.

Please feel free to telephone me at 781-5718 if you have any questions.

Sincerely,

  
Mary Velarde, Secretary  
County Planning Department

Cc: County Counsel  
Marsha Lee



# Inland Appeal Application

## San Luis Obispo County Department of Planning and Building

### PROJECT INFORMATION

Type of permit being appealed:

- Plot Plan   
  Site Plan   
  Minor Use Permit   
  Development Plan   
 Variance  
 Land Division   
 Lot Line Adjustment   
 Sending Site Determination   
 Other \_\_\_\_\_

File Number: DRC 2004-00224 / Janet and Frank Parnel

*Masha / Matt Dist # March 21, 06*

The decision was made by:

- Planning Director   
 Building Official   
 TDC Review Committee   
 Administrative Hearing Officer  
 Subdivision Review Board   
 Planning Commission   
 Other \_\_\_\_\_

Date the application was acted on Nov. 10 2005

2005 NOV 2 PM 2:13  
SLO COUNTY PLANNING/BUILDING DEPT

The decision is appealed to:

- Board of Construction Appeals   
 Board of Handicapped Access   
 Planning Commission   
 Board of Supervisors

### BASIS FOR APPEAL

Appeal Reasons: Please state your reasons for the appeal. In the case of a Construction Code Appeal, note specific code name and sections disputed (*attach additional sheets if necessary*). Please Note: An appeal should be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

See attached

2005 NOV 23 PM 2:13  
SLO COUNTY PLANNING/BUILDING DEPT

Specific Conditions. The specific conditions that I wish to appeal that relate to the above referenced grounds for appeal are:

Condition Number	Reason for appeal ( <i>attach additional sheets if necessary</i> )
DRC 2004-00224	See attached

### APPELLANT INFORMATION

Print name: Frank Parnel

Address: 1560 Strand Way, Oceano, Ca 93445 Phone Number (daytime): 81-7410

We have completed this form accurately and declare all statements made here are true.

*Frank Parnel*  
Signature

11-22-05  
Date  
2005 NOV 23 PM 2:43  
SLO COUNTY PLANNING/BUILDING DEPT

OFFICE USE ONLY Date Received: <u>11/23/05</u> Amount Paid: <u>\$ 604.00</u>	By: <u>CHRIS MACEK, SECRETARY</u> Receipt No. (if applicable): _____	Revised 7/31/01/ep
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APPEAL OF FRANK AND JANET PARNEL  
COUNTY FILE NO. DRC2004-00224

In 1987, Frank and Janet Parnel constructed a patio with glass walls and a glass roof in conjunction with permits issued for their home at 1560 Strand Way. The patio walls extended to the rear and side property lines. In 1989, an ariel photo presented by the Planning staff at the Planning Commission hearing shows that this home was completed with said walls in place.

The Commission mistakenly felt that the 1989 ariel photograph shows a walled-in patio in a different place than the present walled-in patio and on that basis, denied the application for a variance. However, Mr. Parnel is entitled to a variance because the 1987 construction is in exactly the same place as today's construction and the walled-in and roofed patio has existed in its present locale from the beginning.

In 1997, the Parnels received a permit for a patio enclosure, including work on the second floor, which extended into and as part of the roof of the patio. The record shows inspections and clearances by the County for this work. At that time, the Parnels replaced the glass roof with a title roof for a number of reasons. However, the patio remained in its exact same location as constructed in 1987. This is evident from the fact that the original walls constructed with the house and shown as a fence on the original floor plans have remained in the same location since that time.

Under State and federal decisional authorities provided to the County, including Anderson v. La Mesa (1981) 118 Cal.App.3d 657 and Congregation Etz Chaim v. City of Los Angeles (9<sup>th</sup> Cir 2003) 371 F.3d 1122, the County is obligated to issue a variance where it has accepted (inspected) the work and to rule otherwise, would cause a substantial hardship to the applicant. In this case, the applicant would be required to rip out and remove a 20 year old walled-in sunroom at substantial expense. By contrast, there is no hardship to the County nor any health or safety risk. The appellant will demonstrate that the 3 foot clearance on either side of the walls is more than sufficient fire access to the rear of this property and exceeds the fire access at numerous other sites throughout this area of Oceano.

The Parnels are entitled to a variance and will perfect their claims in Court if not granted at the Board of Supervisors.



# BELSHER & BECKER

ATTORNEYS AT LAW

412 MARSH STREET

SAN LUIS OBISPO, CALIFORNIA 93401

JOHN W. BELSHER  
HOWARD MARK BECKER  
STEVEN P. ROBERTS  
GREGORY A. CONNELL

TELEPHONE (805) 542-9900

FAX (805) 542-9949

E-MAIL [slolaw@belsherandbecker.com](mailto:slolaw@belsherandbecker.com)

November 3, 2005

VIA HAND DELIVERY

James Orton, Deputy County Counsel  
County of San Luis Obispo  
County Government Center, Rm. 386  
San Luis Obispo, CA 93408

**RE: Parnel, DRC 2004-00224**

Dear Jim:

This firm represents Frank and Janet Parnel with respect to their request for a variance to leave an existing roofed porch in the rear and side yard setback. I am writing because the staff report makes no mention of important legal concerns raised in the application.

Under the well-known doctrine of equitable estoppel, as applied in Anderson v. La Mesa (1981) 118 Cal.App.3d 657, construction of single family improvements in the setback are entitled to a variance where the permits are issued in good faith and inspections take place. The documents submitted with the variance application (and included in the staff report) show a permit issued for this enclosed area and that it was inspected by the County without objection. Thus, whether considered a "fence" or a room wall, a variance is required to be issued.

A more recent decision from federal court (enclosed) underscores this rule of law.<sup>1</sup>

Health & Safety issues of runoff onto neighbor property is easily remedied by installation of rain gutters. The complaining party's contractor promised to install these rain gutters. It bears noting that the down spout complained of was ripped out by the complaining neighbor. A bid for installing and/or relocating the rain gutter will be presented to show it is easily accomplished. Neighbor complaints of pending/inundation on the Oceano beach sand seems specious since (A) beach sand rarely ponds, and (B) the neighbors did not occupy the home until very recently.

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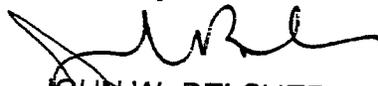
<sup>1</sup>In Congregational Etz Chaim v. City of Los Angeles (9<sup>th</sup> Cir 2003) 371 F.3d 1122, the federal court upheld the validity of construction which violated the City's building code dissent (p. 1127) because of equitable estoppel. Even if the approval was wrong, the owner is entitled to rely on his permit and City inspections.

Jim Orton  
November 3, 2005  
Re: Parnel  
Page 2

There are 3-foot setbacks on both neighbors' properties. Therefore, there is no fire safety issue. This was addressed by OCSD.

In sum, there is no reason to deny this variance which must be granted by decisional law based on equitable estoppel.

Sincerely,

  
JOHN W. BELSHER

JWB/ab

Encl

cc: Planning Commission & Planning Staff (via hand delivery)  
client

CP  
14

OWNER Parnol  
 LOCATION 1560 Strand Way, Oceano  
 PERMIT NO. A0419 DATE ISSUED 2-28-97  
 PROJECT TYPE patio enclosure  
 CONTRACTOR \_\_\_\_\_

**FOUNDATION, SETBACK & BLOCK INSPECTIONS**

To Be Made Before Concrete is Placed	Setbacks _____
	Footings, Forms, Steel _____
	Slab: House _____ Garage _____
	Block, Steel (Pre-Grout) _____
	Concrete-Encased Ground _____
	Other Footings _____

**SUBFLOOR & UNDER-SLAB INSPECTIONS**

To Be Made Before Subfloor Or Slab Is Installed	Plumbing _____
	Ducts, Gas Lines _____
	Joists, Sills, _____
	Girders _____

**ROUGH INSPECTIONS**

To Be Made Before Insulation Or Drywall Is Installed	Roof Framing & Nailing _____
	Shear _____
	Framing _____
	Plumbing _____
	Electrical _____
	Mechanical _____
	Fireplace/Chimney _____
	Stucco Wire, Lath _____

Insulation: Floor _____ Wall _____ Ceiling _____
Drywall _____
Gas Lines (Interior) _____
Shower Pan _____

**OUTDOOR UTILITY INSPECTIONS**

To Be Made Before Backfilling	Sewer _____
	Septic: Tank _____ Field _____
	Gas Lines (Exterior) _____
	Water Lines _____
	Electrical Conduit/Cable _____

**FINAL INSPECTIONS**

Other Agency Approvals	Development Review _____
	Fire Department _____
	Encroachment _____
	Service District _____
	Other _____
Do Not Occupy Building Until These Items Are Signed	Roof Covering _____
	Grading/Drainage _____
	Plumbing _____
	Electrical <u>JAW 4-11-97</u> Tag# <u>N/A</u>
	Mechanical <u>N/A</u>
	Building <u>JAW 4-11-97</u>

*(Handwritten initials/signature)*

# 426306



# Bobcat Rain Gutters Inc.

953 Huber St., Grover Beach, CA 93433 (805) 489-6835 • 800-606-7246 • FAX (805) 481-4480

## ESTIMATE and PROPOSAL

Frank Parnel 15600 Strand Way Oceanside CA 93445		Location _____	
X St. Pier Ave		Map Code 714-D7	

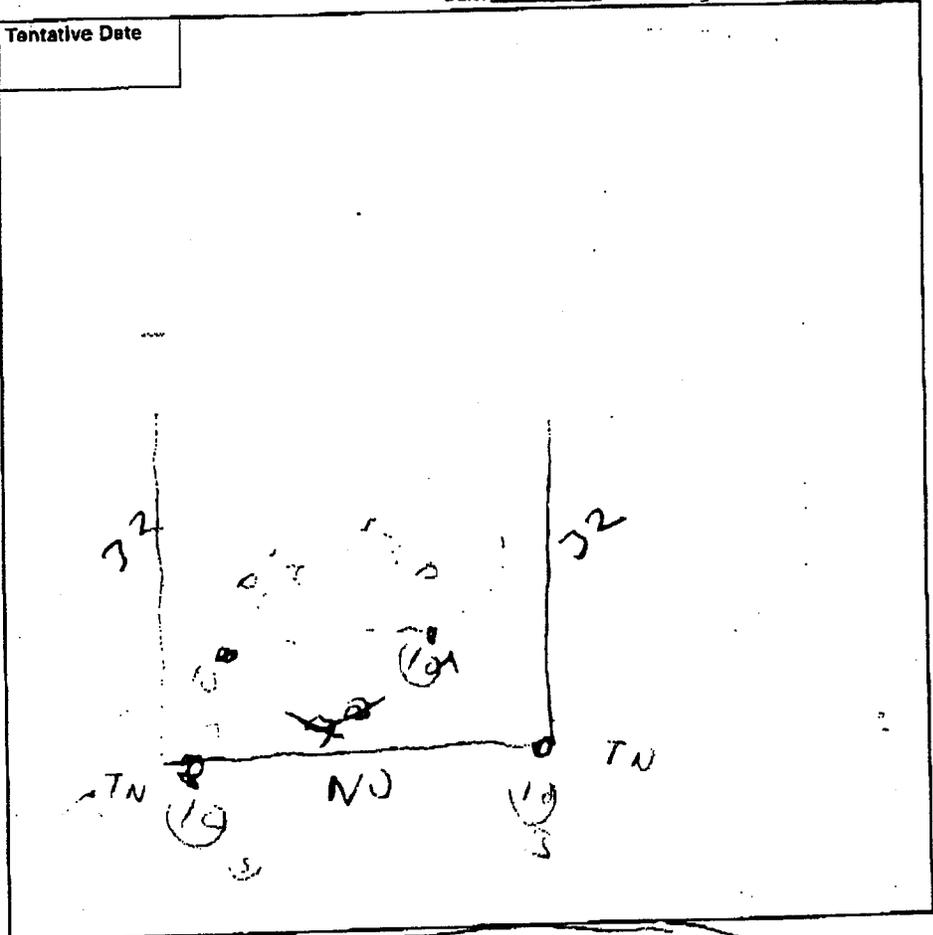
Phone: 481-2110

Date: 11-4-05 Time: 7:45

Bid: needs bid for attorney

Tentative Date

Stories #	Type Roof	Roof Proj.
1		
Gutter	D/S	14x14
5 Gutter - 5 Gutter		
Gutter	64	
D/S	20	
Elbows	6	
Offsets		
Total Footage	90	\$ 405
2x4	26	125.00
Buy R. Mitres	2	20.00
Sp. Mitres		
Teardown	26	16.00
G. Guard		566.00
Flashing		
Divertor		
		566.00
Total COD Amt.	\$	\$



Fax or mail a signed copy by \_\_\_\_\_ to set up job.

This bid good for 15 days.

If Rock Roof: Owner may need to have roofer reseal gravel stop seams.

If Tile Roof: Roofer needs to leave flashing out 1/4" on eaves where gutters are to be installed. Gutters need to go on 2nd story eaves before 1st story roofs are done: if not, not responsible for broken tile.

A late payment charge of two percent (2%) per month will be added on all accounts that are outstanding more than thirty (30) days after billing date. Annual percentage rate is twenty-four percent (24%) per annum. In the event of any legal action in connection with this contract, either for collection or on other grounds, buyer shall be obligated to pay all attorney's fees and court costs including legal fees incurred in any supplementary proceedings necessary to recover payment of any amounts due to contractor. This contract includes operative provisions which are set forth on the REVERSE side hereof. Buyer acknowledges having received and read the REVERSE side of this contract and agrees to all of the provisions set forth therein.

If this contract is in excess of \$500, You as owner or tenant have the right to require the contractor to have a performance and payment bond or funding control.

You, the buyer, may cancel this transaction at any time prior to the third business day after the date of this transaction. (See reverse side.)

Accepted \_\_\_\_\_ Date \_\_\_\_\_ Salesman \_\_\_\_\_ Date \_\_\_\_\_  
CUSTOMER'S SIGNATURE

C3  
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CheckMate

Case History

# ANDERSON v. CITY OF LA MESA (1981) [118 Cal.App.3d 657]

[Civ. No. 22911.

Court of Appeals of California, Fourth Appellate District, Division One.

May 1, 1981.]

LEONA ANDERSON, Plaintiff and Respondent, v. CITY OF LA MESA, Defendant and Appellant.

(Opinion by Brown (Gerald), P. J., with Wiener, J., and Langford, J., concurring.)

## COUNSEL

Knutson, Tobin, Meyer & Shannon and John S. Meyer for Defendant and Appellant.

Thomas D. Parker for Plaintiff and Respondent.

## OPINION

BROWN (Gerald), P. J.

The City of La Mesa (City) appeals a judgment granting Leona Anderson's petition for a peremptory writ of mandate.

The City issued Anderson a building permit under the City's standard zoning ordinances requiring single family dwellings be set back at least five feet from the side lot lines. As allowed under the permit, one wall of Anderson's house was built about seven feet from the side lot line. During construction the City inspected the house six times. Upon completing the house Anderson applied for final inspection, but the City claimed a specific plan ordinance required her house be set back at least 10 feet from the side lot lines. The City did not grant Anderson a variance and would not issue her a permanent occupancy permit unless she removed the portion of her house within 10 feet of the side lot line.

Anderson petitioned the superior court for a writ of mandate. The court found Anderson had a vested right in having her home remain {Page 118 Cal.App.3d 660} where built because she relied in good faith on the building permit the City issued. The court found no substantial evidence a variance for Anderson's seven-foot setback would harm anyone, while remodeling the house would cost Anderson more than \$6,000. Finding the City abused its discretion, the court ordered the City to issue Anderson a variance and an occupancy permit. The City appeals the judgment.

[1a] The City unmeritoriously contends the court improperly granted relief because Anderson did not submit to the court the full record of the administrative hearing before the city council or other evidence

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any other action that conceivably could stay the entry of that judgment. Indeed, it failed even to appeal the original denial of its motion to amend its pleadings to include a claim for attorneys' fees. By failing to file an appropriate motion within the relevant time limit, to say nothing of failing to appeal from the underlying judgment, the Port waived any claim to attorneys' fees arising out of the original litigation, and therefore cannot recover them in this new action.<sup>2</sup> See *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 889-90 (9th Cir.2000) (holding that defendants waived rights to attorney fees by failing to file Rule 54(b) motion within time limit after entry of judgment).

AFFIRMED.



CONGREGATION ETZ CHAIM,  
Plaintiff-Appellee,

v.

CITY OF LOS ANGELES,  
Defendant-Appellant.

No. 02-56487.

United States Court of Appeals,  
Ninth Circuit.

Argued and Submitted Aug. 7, 2003.

Filed June 16, 2004.

**Background:** Religious congregation challenged city's right to revoke building permit. The United States District Court for the Central District of California, Harry L. Hupp, J., held for congregation, and city appealed.

**Holding:** The Court of Appeals, Rawlinson, Circuit Judge, held that city was equitably estopped from revoking permit.

2. Although the district court dismissed on the basis of res judicata, we affirm on these alternate grounds. See *Branson v. Nott*, 62 F.3d

Affirmed.

Aldisert, Circuit Judge, dissented and filed opinion.

### 1. Federal Courts ⇨776

District court's interpretation of settlement agreement is reviewed de novo, though with due respect for district court's superior perspective.

### 2. Zoning and Planning ⇨377

Under California law, principle of equitable estoppel prohibits governmental entity from exercising its regulatory power to prohibit proposed land use when developer incurs substantial expense in reasonable and good faith reliance on some governmental act or omission so that it would be highly inequitable to deprive developer of right to complete development as proposed.

### 3. Zoning and Planning ⇨465

Under California law, real estate developer's right to develop property pursuant to its proposed plans vests when: (1) valid building permit issues and (2) developer performs substantial work and incurs substantial liabilities in good faith reliance on permit.

### 4. Zoning and Planning ⇨463.1

Under California law, city was equitably estopped from revoking building permit it had previously issued to religious congregation, pursuant to agreement settling congregation's suit challenging city's building permit requirements, once congregation had detrimentally acted in reliance on permit.

### 5. Municipal Corporations ⇨1018

Religious congregation satisfied terms of settlement agreement with city when it

287, 291 (9th Cir.1995) ("We may affirm the decision of the district court on any basis which the record supports.").

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submitted building permit application to city building department and to deputy city attorney who advised that department; settlement provision specifically requiring submission of permit applications to city controlled over separate provision generally requiring delivery of communications to particular person in city planning department.

#### 6. Contracts $\S$ 154

Under California law, court must give reasonable and commonsense interpretation of contract consistent with parties' apparent intent.

Claudia McGee Henry, Senior Assistant City Attorney, Los Angeles, CA, for defendant-appellant City of Los Angeles.

Kathryn Davis (briefed), Susan S. Azad (argued), Latham & Watkins, Los Angeles, CA, for plaintiff-appellee Congregation Etz Chaim.

Appeal from the United States District Court for the Central District of California; Harry L. Hupp, District Judge, Presiding. D.C. No. CV-97-5042-HLH.

Before: ALDISERT\*, TALLMAN, and RAWLINSON, Circuit Judges.

Opinion by Judge RAWLINSON;  
Dissent by Judge ALDISERT.

RAWLINSON, Circuit Judge:

The controlling question in this case is whether Appellant the City of Los Angeles (the City) may revoke a building permit issued to Appellee Congregation Etz Chaim (the Congregation) authorizing renovations to a home owned by the Congregation and used as a place of worship. Because we agree with the district court

that Congregation was entitled to rely on issuance of the building permit by the City, we AFFIRM the district court's order lifting the stop-work order issued by the City.

#### I.

#### BACKGROUND

There is a long history of litigation between the City and the Congregation. The Congregation's initial claim against the City, filed in federal court in 1997, alleged that the City's building permit requirements violated the Congregation's constitutional rights to the free exercise of religion, freedom of speech, freedom of association, freedom of assembly, and equal protection; and violated the Fair Housing Act. Eventually, most of the Congregation's claims were dismissed, but a claim against the City under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.  $\S$  2000cc, remained. Before the district court ruled on the merits of this claim, the parties entered into a settlement agreement (the Agreement), which resulted in dismissal of the Congregation's remaining claim. The district court retained jurisdiction over the matter for the purpose of issuing any future orders necessary to modify or terminate the Agreement.

After the Agreement was signed and the Congregation's action was dismissed, the Congregation submitted its renovation plans to the City's Department of Building and Safety. The plans clearly and explicitly described expansion of the existing home from 3,400 square feet to 8,150 square feet. The Building Department spent approximately three months reviewing the renovation plans in conjunction

\* The Honorable Ruggero J. Aldisert, Senior United States Circuit Judge for the Third Cir-

cuit, sitting by designation.

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with the Agreement. As part of this process, the Building Department demanded numerous changes to the plans, with which the Congregation complied. An attorney in the City Attorney's office who represented the Building Department also reviewed the plans and the Agreement. After this review, the Building Department issued a building and grading permit to the Congregation, and the Congregation promptly began work as specified in the plans.

Approximately one week later, apparently in response to complaints from neighbors, the City issued a stop-work order, giving notice that it intended to revoke the Congregation's building permit. The City described the permit as having been issued "in error or in violation of other provisions of the code and condition [sic] are such that the action should not have been allowed." In response, the Congregation filed a motion seeking enforcement of the Agreement and lifting of the stop-work order. The City countered with its motion to enforce the Agreement and the stop-work order. The district court granted the Congregation's motion, and denied the City's. This timely appeal followed.

## II.

### DISCUSSION

#### A. Standard of Review

[1] We review a district court's interpretation of a settlement agreement *de novo*. See *Botefur v. City of Eagle Point*, 7 F.3d 152, 156 (9th Cir.1993). Where the district court oversaw the extensive litigation giving rise to the settlement agreement and approved the agreement, we review the district court's interpretation of the agreement with due respect for the district court's superior perspective. Cf. *Labor/Cmty. Strategy Ctr. v. Los Angeles County Metro. Transp. Auth.*, 263 F.3d 1041, 1048 (9th Cir.2001) ("We must give deference to the district court's interpreta-

tion based on the court's extensive oversight of the [consent] decree from the commencement of the litigation to the current appeal.") (citation and internal quotation marks omitted).

#### B. Estoppel Ruling Against the City

The district court essentially ruled that the City was estopped from revoking the building permit it had previously issued to the Congregation pursuant to the Agreement. The district court expressly noted that the City's objection to the size of the building under construction "would have made a fine issue for the court, with excellent arguments on both sides, and with [the] result not predictable, *except for the fact that City approved the plans and issued the building permit with full knowledge of the terms of the settlement agreement.*" (emphasis added). The district court presumed that it would have had jurisdiction to resolve the size dispute if the dispute had arisen prior to issuance of the building permit and the incurrence of substantial expenditures by the Congregation in reliance upon issuance of the building permit. However, the district court concluded that once the building permit had issued and the Congregation had substantially relied upon its issuance by commencing construction, the Congregation acquired a vested right under California law that could not be revoked by the City. The district court ruled that the City's issuance of the building permit represented its approval of the building project, size and all. According to the district court, the appropriate time for the City "to take issue with the size of the remodeling was during the extensive and meticulous review, including review of the agreement, which preceded the issuance of the permit and the expensive reliance on it by Congregation."

[2, 3] The use of equitable estoppel to resolve land use issues is well-developed in

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California law; "The principle of estoppel prohibits a governmental entity from exercising its regulatory power to prohibit a proposed land use when a developer incurs substantial expense in reasonable and good faith reliance on some governmental act or omission so that it would be highly inequitable to deprive the developer of the right to complete the development as proposed." *Toigo v. Town of Ross*, 70 Cal.App.4th 309, 321, 82 Cal.Rptr.2d 649 (Cal.Ct.App.1998) (citation omitted). A developer's right to develop property pursuant to its proposed plans vests when: (1) a valid building permit issues and (2) the developer performs substantial work and incurs substantial liabilities in good faith reliance on the permit. *See id.* (citations omitted).

[4] The facts of this case provide particularly strong support for the Congregation's estoppel argument. It is unrefuted that the Congregation performed substantial work and incurred substantial liabilities in reliance on the permit. The record reflects that prior to revocation of the permit, the Congregation paid in excess of \$21,000 in permit fees and over \$15,000 for demolition pursuant to the renovation plans approved by the City.

The City argues that revocation of the permit is proper because the estoppel doctrine cannot immunize the Congregation from compliance with current law as reflected in the Agreement. However, we agree with the district court that the City's argument is significantly weakened by the fact that the size of the building was clearly delineated in the building plans that were reviewed at length and approved by the City. The issuance of a valid building

permit by the City was essentially a representation that the Congregation's plans were in accordance with the terms of the Agreement. *See Hock Investment Co. v. City and County of San Francisco*, 215 Cal.App.3d 438, 445, 263 Cal.Rptr. 665 (Cal.Ct.App.1989) (characterizing a building permit as an implied promise "that the proposed use will not be prohibited by the regulation in question").

The City does not and cannot allege that the Congregation engaged in fraud or acted in bad faith in presenting its proposed plans to the City for approval. In fact, the City conceded at oral argument that the Congregation submitted both the building permit application and a copy of the Agreement to the Building Department and to the deputy city attorney who advised the Building Department. The City simply cannot dispute that it had ample opportunity to review both the plans and the Agreement before granting the building permit. In view of these facts, we would be hard pressed to find error in the district court's decision to lift the stop-work order.

#### C. Interpretation of the Settlement Agreement

[5] The City's second argument in support of the stop-work order is that the Congregation failed to comply with the Agreement when the Congregation submitted its permit application to the City. Although the Congregation submitted the application to the Building Department and to the deputy city attorney who advised the Building Department, the City maintains that the Agreement required submission of the application to a specific individual in the Planning Department, Daniel Green.<sup>1</sup>

1. The dissent advances an argument that was not made by any of the parties to this case—that the settlement agreement "was tantamount to a deemed-approved conditional use [permit]." *See Dissent* at 1130-31. This po-

sition is nowhere supported in the record, the briefs, or the oral argument on behalf of the parties. In short, the dissent seeks to bind the parties to an agreement that not even they

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To resolve this issue, we must consider two provisions of the Agreement, Paragraph VI and Paragraph XI.

Paragraph VI of the Agreement is entitled "Use of 303 South Highland Avenue" and specifically addresses the building permit application process, requiring the submission of "any required plan and permit application to the *City* ..." (emphasis added).

Paragraph XI of the Agreement is entitled "Form of Notice," and provides in relevant part: "Any notice, tender, delivery or other *communication* pursuant to this Settlement Agreement ... shall be deemed to be properly given if delivered, mailed or sent ... If to the City: Daniel Green, Planning Department ..." (emphasis added).

The City contends that Paragraph XI required submission of the permit application to Daniel Green, and the Congregation's failure to comply with Paragraph XI voided issuance of the building permit.

The district court rejected the City's argument, ruling that the Congregation's building permit application "was not a notice, tender, delivery, or other communication[.]" Rather, the permit application was a "plan or permit application separately referred to in paragraph VI(A) [and] required to be submitted to the City," rather than to a specific individual. The district court also pointed out the unlikelihood that the City construed Paragraph XI to encompass the permit application given the City's failure to follow Paragraph XI itself when processing the permit application. Finally, it would have been an easy matter for the City to require compliance with Paragraph XI prior to issuing the building permit, as it did with numerous other issues that were addressed dur-

ing the application process. This is especially true in light of the fact that the Agreement was submitted with the permit application and a deputy city attorney participated in the review of the application, having been provided with his own copy of the Agreement.

We agree with the district court that in these circumstances, the buck stops with the City. Because the Notice provision did not encompass the permit application, we conclude that the Congregation complied with the terms of the Agreement. The permit application was presented and processed in accordance with Paragraph VI of the Agreement, which specifically concerned renovations to the property.

[6] There is little indication in the language of the Agreement or in the actions of the parties to support the City's proposition that the notice provision was intended to apply to submission of the building permit application. "[C]ourts must give a reasonable and commonsense interpretation of a contract consistent with the parties' apparent intent." *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 107 Cal.App.4th 516, 526, 132 Cal.Rptr.2d 151 (Cal.Ct.App.2003) (internal quotation marks omitted). A commonsense interpretation of the Agreement indicates that the Congregation was not required to submit its building permit application to Mr. Green. The building permit application is referenced elsewhere in the Agreement, where the Congregation agrees to "take all necessary actions to restore the property to [residential] use, including submitting any required plan and permit application to the City within ninety (90) days of signing this Settlement Agreement." The City more or less concedes that the Congregation complied with this requirement by

contend was made, hence use of the term "tantamount." We elect in the majority opinion to address the settlement agreement that

was actually agreed upon by the parties and approved by the court.

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"submit[ting] building plans to the City's building officials in order to obtain a building permit as required by state law." It would have made little sense to require the Congregation to submit its plans to Mr. Green, when it is undisputed that he had no authority to approve the plans or to grant a permit. The district court judge, who oversaw the litigation and settlement of this case, and who was presumptively familiar with the processes and procedures of the municipality in which he sits, committed no error in rejecting the City's argument that the Congregation's purported failure to comply with Paragraph XI justified imposition of the stop-work order.

III.

CONCLUSION

The district court did not err when it applied equitable estoppel principles and lifted the City's stop-work order. The Congregation's permit application was reviewed and approved by the City and the subsequent renovations were undertaken in reliance upon the issuance of a valid building permit. A commonsense interpretation of the Agreement coupled with an examination of the parties' behavior reflects that the parties did not intend that the Congregation's building permit application be submitted to the individual listed in the notice provision of the Agreement.

AFFIRMED.

ALDISERT, Circuit Judge, Dissenting:

I would reverse the judgment of the district court and allow the City of Los Angeles to revoke the building permit. The building permit contravened the Los Angeles Municipal Code and the explicit limitations and directions of the Settlement Agreement entered into by the parties after five years of administrative proceedings and litigation in federal and state courts. Because the building permit was invalid, I would hold that the district court

committed reversible error in applying the doctrine of equitable estoppel against the City of Los Angeles. See *Pettiti v. City of Fresno*, 34 Cal.App.3d 813, 824, 110 Cal. Rptr. 262 (Cal.Ct.App.1973); *Smith v. County of Santa Barbara*, 7 Cal.App.4th 770, 772, 9 Cal.Rptr.2d 120 (Cal.Ct.App. 1992).

I.

Prior to signing the Settlement Agreement on September 27, 2001, the Congregation Etz Chaim and the City of Los Angeles engaged in extensive administrative proceedings and federal and state court litigation related to the City Zoning Administrator's October 16, 1996 denial of the Congregation's requests for variances and a conditional use permit. At the time of the denial, the Congregation already had been using the 303 South Highland Avenue residence for worship services—in violation of the Los Angeles Municipal Code—for approximately 18 months. Additionally, the property's large fence and front-yard pavement, installed by a previous owner, violated the residential zoning ordinance.

The Zoning Administrator denied the Congregation's application for a conditional use permit and requests for variance because, among other conclusions, a house of worship at 303 South Highland Avenue would not "be in the best interest and convenience of the overall community and its general welfare." The Zoning Administrator cited concerns about inadequate parking, noise and incompatibility with the surrounding single-family residential neighborhood. The Board of Zoning Appeals upheld the denial after adopting the findings of the Zoning Administrator and voicing an additional concern about potential traffic safety hazards at the site. The City Council of Los Angeles sustained the Board's action on July 8, 1997.

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The Congregation subsequently filed an action in the United States District Court for the Central District of California, challenging the constitutionality of the City's conduct. On June 1, 1998, the district court dismissed without prejudice the Congregation's claim for administrative mandamus so the Congregation could pursue that claim in the California state courts. In the meantime, the district court stayed federal proceedings on the Congregation's other claims.

The Congregation then filed a petition for a writ of mandate in California Superior Court. The California Superior Court denied the petition, concluding that there was substantial evidence to support the City's findings that led to denial of the conditional use permit. In affirming the judgment of the Superior Court, the California Court of Appeal concluded that the City's action was properly taken in furtherance of a compelling governmental interest—namely, the preservation of single-family neighborhoods.

Following the conclusion of these state court proceedings, the district court lifted the stay of federal court proceedings, and the Congregation filed a Second Amended and Supplemental Complaint for Declaratory and Injunctive Relief. In addition to reasserting its constitutional and statutory claims, the Congregation contended that the Religious Land-Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*, provided a remedy against the City's permit denial. The RLUIPA claim alone survived the City's motion to dismiss, and the matter was set for pretrial conference.

On September 27, 2001 the parties entered into a Settlement Agreement fully and completely disposing of the Congregation's RLUIPA and other claims against the City. The Settlement Agreement permitted the Congregation to hold prayer services at the 303 South Highland Avenue

residence with various use conditions: (1) "The single family use of the property . . . shall be restored and maintained, including the residential character and architecture . . ."; (2) double-pane windows must be installed; (3) a proper fence must be installed and maintained; (4) the property must be landscaped and the pavement replaced with a grassy lawn; (5) the Congregation must not post signs or flyers on the premises; and (6) the Congregation must enforce certain specified limitations on the size, type and timing of gatherings and number of cars on the property. The Settlement Agreement also required that the Congregation submit to the City within 90 days "any required plan and permit application" to restore the property to its single-family residential use. Once the City approved those plans, the Congregation was bound to use its best efforts to complete construction in a diligent and timely manner.

The Settlement Agreement stated that the district court would retain jurisdiction over both the subject matter and the parties. Finally, the agreement included a "Form of Notice" provision, which required that *all communications* made pursuant to the Settlement Agreement be made in writing and delivered to the parties' representatives and their respective counsel:

Any notice, tender, delivery or other communication pursuant to this Settlement Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed or sent by wire or other telegraphic communication in the manner provided in this paragraph, to the following persons:

If to [the Congregation]: Rabbi Chaim Baruch Rubin, 303 South Highland Avenue, Hancock Park, CA 90036; with copy to Susan Azad, Esq., Latham and

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Watkins, 633 West 5th Street, Suite 1000, Los Angeles, CA 90071.

If to the City: Daniel Green, Planning Department, 201 North Figueroa Street, Los Angeles, CA 90012; with copy to Tayo A. Popoola, Deputy City Attorney, Office of the Los Angeles City Attorney, 200 North Main Street, Los Angeles, CA 90012.

Daniel Green has served for 11 years as the Associate Zoning Administrator in the City's Department of City Planning. In that capacity, he has conducted hearings and made discretionary, quasi-judicial determinations on more than 1,800 cases involving, among other matters, conditional uses and variances. Several dozen of these cases implicated properties in the City's Wilshire Plan area where the 303 South Highland Avenue residence is located.

At the time the parties signed the Settlement Agreement, the size of the residence on the property was approximately 3,536 square feet, 20 percent larger than the average house on the same side of the street in that block. After the parties executed the Settlement Agreement, the Congregation applied to the City's Department of Building and Safety for an "addition of 4,423 [square feet] to existing 2 story residential house and addition of 330 [square-foot] 2-car attached garage to existing dwelling. Also remodeled [sic] the entire existing dwelling. Add 657 [square-foot] loft to second floor." The proposed additions would more than double the size of the house.

The Congregation neither submitted its plans to Daniel Green nor notified him of the proposal, but the Congregation did furnish the Department of Building and Safety with a copy of the Settlement Agreement. On March 13, 2002, the Department of Building and Safety issued a building permit. On June 4, 2002, the Congregation began remodeling the exist-

ing structure. The "remodeling" consisted of massive destruction of the existing residence to the extent that only two exterior walls remained intact.

## II.

I do not accept the majority's characterization that "[a] commonsense interpretation of the [Settlement] Agreement indicates that the Congregation was not required to submit its building permit application to Mr. Green." *Maj. Op.* at 1126. The Congregation entered into the agreement after losing in its application for a conditional use permit before the Los Angeles City Council, the state trial court, the state appellate court and—on all of its claims but one—the federal district court. A settlement is always a compromise and this one was no exception. It is important to note that the Settlement Agreement accomplished the purpose sought by the Congregation in its 1996 conditional-use permit application—gaining official approval for property uses then taking place in violation of the Los Angeles Municipal Code—while also securing concessions from the Congregation to address the City's concerns about parking, noise and incompatibility with the surrounding neighborhood.

Specifically, the Congregation made three concessions that addressed the concerns expressed by the Zoning Administrator in denying the 1996 conditional-use permit application. First, the Congregation addressed the Zoning Administrator's 1996 concerns about noise and neighborhood disruption by agreeing to install double-pane windows, limit gatherings to daylight hours, limit the number of people who would gather at any one time and not hold weddings, receptions, banquets, funerals or fundraising and daycare activities on the property. Second, the Congregation addressed the Zoning Administrator's

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1996 concern about inadequate parking by agreeing to limit the number of cars that would be coming to the property to six on weekdays and zero on the Sabbath and High Holy Days. Finally, the Congregation agreed to take steps to address the Zoning Administrator's 1996 concern about incompatibility with the surrounding neighborhood by restoring and maintaining the single-family use of the property, including submitting any requisite plans and building permit applications within 90 days to the City.

The critical question presented in this appeal—and the one that divides this panel—thus arises: Who or what agency in the City of Los Angeles had sole authority under the Municipal Code to decide whether the plans submitted in the Congregation's 2002 building permit application met the use conditions of the Settlement Agreement—to wit, the property “shall be restored and maintained, including the residential character and architecture”?

The Settlement Agreement's “Form of Notice” provision must be understood in light of the concessions made by the Congregation to address the Zoning Administrator's 1996 concerns that led to denial of the conditional-use permit application. Applying the teachings of *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 107 Cal.App.4th 516, 526, 132 Cal.Rptr.2d 151 (Cal.Ct.App.2003), the “reasonable and commonsense interpretation” of the Settlement Agreement is that it required the Congregation to contact Mr. Green to make the quasi-judicial determination of whether building and remodeling plans complied with the agreement. Indeed, such an interpretation is not only permissible but is compelled by the terms of the Settlement Agreement and the provisions of the Municipal Code.

The Settlement Agreement did not terminate a relationship between the City of Los Angeles and the Congregation. The

agreement's immediate effect was twofold: (1) to terminate five years of administrative and courtroom wrangling; and (2) to provide directions as to the quantum of physical change that would be permitted to the existing residence. The Settlement Agreement specifically contemplated an application for a building permit for the purpose of restoring the 303 South Highland Avenue property to its single-family use. It cannot be controverted that the Settlement Agreement was tantamount to a deemed-approved conditional use for the Congregation to conduct activities on the 303 South Highland Avenue property that otherwise would not have been permissible in the City's R-1 zone.

Under the relevant provision of the Los Angeles Municipal Code, a conditional use is one of various specified “uses and activities [that] may be permitted in any zone, unless restricted to certain zones or locations, if approved by the Zoning Administrator as the initial decision-maker. . . .” *Los Angeles Mun.Code* § 12.24-W (6th ed.). The Code specifically grants authority to the Zoning Administrator to allow, as a conditional use, operation of churches in R-1 zones. *Id.* § 12.24-W.9. As a potential conditional use subject to approval of the Zoning Administrator, operation of a church in an R-1 zone is “not permitted by right.” *Id.* § 12.24-A.

Like a conditional use permit under the Los Angeles Municipal Code, the Settlement Agreement, which was signed on behalf of the City by Associate Zoning Administrator Daniel Green, allowed the Congregation to use its property in a way not otherwise permissible under the City's zoning ordinance. In the Settlement Agreement, the Zoning Administrator allowed the Congregation to operate a church in an R-1 zone, much as the Zoning Administrator might have done in a conditional use permit. This use was not

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permitted by right. The Settlement Agreement in this case was the negotiated outcome of a five-year process that began when the Congregation applied for a conditional use permit in 1996. Because the Settlement Agreement had the effect of a conditional use permit, the provisions of the Los Angeles Municipal Code relating to building permit applications on deemed-approved conditional use sites are instructive here.

When a property owner has been granted a conditional use permit, the Los Angeles Municipal Code requires that any building or remodeling plans be approved not only by the Department of Building and Safety but also by the Zoning Administrator:

On any lot or portion of a lot on which a deemed-approved conditional use is permitted pursuant to the provisions of this section, new buildings or structures may be erected, enlargements may be made to existing buildings, and existing uses may be extended on an approved site, as permitted in Subsection L of this section, *provided that plans are submitted to and approved by the Zoning Administrator, the Area Planning Commission, or the City Planning Commission, whichever has jurisdiction at the time.* The Zoning Administrator, the Area Planning Commission, or the City Planning Commission may deny the plans if the Zoning Administrator or the Commission finds that the use does not conform to the purpose and intent of the findings required for a conditional use under this section, and may specify the conditions under which the plans may be approved.

*Id.* § 12.24-M.1 (emphasis added).

The Settlement Agreement effectively allowed the Congregation to make a condi-

tional use of the 303 South Highland Avenue property as a house of worship in an R-1 zone. *See id.* § 12.24-W.9 (stating that the Zoning Administrator has authority to allow churches in R-1 zones). Any building or remodeling plans proposed after the Settlement Agreement should have been submitted for approval to the Zoning Administrator. *See id.* § 12.24-M.1. The intent and purpose behind the Los Angeles Municipal Code—that the Zoning Administrator must have an opportunity to determine whether remodeling plans conform with the written findings supporting a conditional use permit—apply equally to the Settlement Agreement. Daniel Green must have been given the opportunity to review the Congregation's building plans to determine whether they conformed with the concessions made by the Congregation in the written Settlement Agreement.

Moreover, the Settlement Agreement specifically required that of the 47,907 employees<sup>1</sup> in the City of Los Angeles, one—Daniel Green, who had the authority to conduct hearings and make discretionary, quasi-judicial determinations—should receive all communications from the Congregation relating to execution of the Settlement Agreement. Copies were to go to the Deputy City Attorney who ostensibly had handled the litigation being settled. In any event, nothing in the record indicates that a clerk in the Los Angeles Department of Building and Safety had the competence or authority to conduct hearings or make quasi-judicial decisions in interpreting a conditional use agreement entered into by the Department of City Planning that settled five years of litigation in state and federal courts.

Accordingly, I do not believe that the issue is even close. The Settlement

1. *Los Angeles Business Journal Book of Lists 2003 Online*, at [http:// www.labusinessjour-](http://www.labusinessjournal.com/tobol_labj.htm)

[nal.com/tobol\\_labj.htm](http://www.labusinessjournal.com/tobol_labj.htm).

Agreement is a contract that limited the extent of any renovation of the existing residence and imposed a legal obligation on the Congregation to notify Daniel Green of any written communication there-to, including a written application for a building permit. See *Weddington Prods., Inc. v. Flick*, 60 Cal.App.4th 793, 810-811, 71 Cal.Rptr.2d 265 (Cal.Ct.App.1998) (stating that, under California law, "[a] settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement agreements"). The Congregation is in breach of the Settlement Agreement<sup>2</sup> for bypassing Mr. Green and the Deputy City Attorney, even though a copy of the Settlement Agreement was attached to the Congregation's building permit application. See *Jensen v. Traders & Gen. Ins. Co.*, 52 Cal.2d 786, 345 P.2d 1, 6 (Cal.1959) ("Parties to a contract may contract on such method of giving notice as they desire and unless public policy is contravened, the contract should be enforced as made.") (internal quotation and citation omitted).

The Settlement Agreement did not allow the Congregation free rein in its building and remodeling plans. Rather, the Settlement Agreement constrained and limited the Congregation by requiring that the "single family use of the property . . . shall be restored and maintained." To restore is "to bring back to or put back into a former or original state." *Webster's Third New International Dictionary* 1936 (1966). To maintain is "to keep in a state of repair." *Id.* at 1362. And to keep is "to cause to remain in a given place, situation, or condition," to "maintain unchanged," or to "hold or preserve in a particular state." *Id.* at 1235.

By applying for a building permit that far exceeded the limitations of the Settle-

ment Agreement, the Congregation breached its implied covenant "not to do anything which will deprive [the City] of the benefits of the contract." *Harm v. Frasher*, 181 Cal.App.2d 405, 417, 5 Cal.Rptr. 367 (Cal.Ct.App.1960). By circumventing Mr. Green, the Congregation deprived the City of the Congregation's explicit assurance that it would adhere to the concessions it made in the Settlement Agreement to address the City's concerns about parking, noise and incompatibility with the surrounding neighborhood.

In light of these precepts, the district court erred when it determined that the Settlement Agreement, which was tantamount to a conditional use permit requiring any building permit application to be approved by the Zoning Administrator, did not require the Congregation to give notice to Mr. Green of the Congregation's application for a building permit.

### III.

The district court determined that the Congregation acquired a vested right to complete the renovations by virtue of the Department of Building and Safety's issuance of a permit and the Congregation's incurring of substantial expenditures in reliance on the permit. Accordingly, the Congregation argues that the City can be estopped from denying the validity of the permit. We review the district court's decision whether to apply the equitable estoppel doctrine for abuse of discretion. *Santa Maria v. Pac. Bell*, 202 F.3d 1170, 1176 (9th Cir.2000). In my view, abuse of discretion is present here because the district court committed legal error by viewing the building permit as a valid one.

Equitable estoppel does not operate to prevent the government from revoking an

of this contract and thus entitled to breach remedies.

2. I do not address the issue whether residents of Hancock Park and neighbors of 303 South Highland Avenue are third-party beneficiaries

invalid building permit. "[T]he courts have ... consistently concluded that the public and community interest in preserving the community patterns established by zoning laws outweighs the injustice that may be incurred by the individual in relying upon an *invalid* permit to build issued in violation of zoning laws." *Pettitt*, 34 Cal.App.3d at 820, 110 Cal.Rptr. 262 (emphasis in original). That is to say, although equitable estoppel may apply against the government in situations where there is an intervening zoning or legal change, it will not apply where a permit is merely issued in error. *See id.* at 819, 110 Cal.Rptr. 262 ("[A]s a matter of law the City cannot be estopped to deny the validity of a permit or other representations respecting the use of property issued or made in violation of the express provisions of a zoning ordinance.").

In *Pettitt*, the City of Fresno's Planning Department mistakenly issued a permit for the conversion of a residential property to commercial use even though the municipal code prohibited such use in that location. *Id.* Highlighting neighboring residents' "protectable property and personal interest in maintaining the character of the area as established by comprehensive and carefully considered zoning plans ... [I]" *id.* at 823, 110 Cal.Rptr. 262, the California Court of Appeal held that equitable estoppel would not apply against the City because the permit was invalid from the beginning. *Id.* at 824, 110 Cal.Rptr. 262. The court stated:

To hold that the City can be estopped would not punish the City but it would assuredly injure the area residents, who in no way can be held responsible for the City's mistake. Thus, permitting the violation to continue gives no consideration to the interest of the public in the area nor to the strong public policy

in favor of eliminating nonconforming uses and against expansion of such uses. *Id.* at 823, 110 Cal.Rptr. 262.

Similarly, in *Smith v. County of Santa Barbara*, the California Court of Appeal held that the County was not estopped from revoking a land use permit where it issued the land use permit in error. 7 Cal.App.4th at 772, 9 Cal.Rptr.2d 120. Specifically, the County building department issued a building permit authorizing the installation of more microwave dishes per antenna support tower than it properly could under County zoning regulations. *Id.* at 773, 9 Cal.Rptr.2d 120. In refusing to apply equitable estoppel, the court focused on the "point ... that public policy may be adversely affected by the creation of precedent where estoppel can too easily replace the legally established substantive and procedural requirements for obtaining permits." *Id.* at 775, 9 Cal.Rptr.2d 120. The government is not estopped from enforcing a pre-existing law. *Id.* at 776, 9 Cal.Rptr.2d 120.

In accord are the teachings of *Toigo v. Town of Ross*, 70 Cal.App.4th 309, 321, 82 Cal.Rptr.2d 649 (Cal.Ct.App.1998) ("In California, the developer's right to complete a project as proposed does not vest until a *valid* building permit, or its functional equivalent, has been issued and the developer has performed substantial work and incurred substantial liabilities in good faith reliance on the permit.") (emphasis added).

In the case at bar, the building permit was invalid because it was issued without authority and in violation of the Los Angeles Municipal Code and the governing Settlement Agreement. I already have concluded that the Settlement Agreement required the Congregation to submit its remodeling plans to Daniel Green and that the Congregation did not do so, thereby breaching the terms of the Settle-

C-20  
20

ment Agreement and its implied covenant of good faith. Moreover, the Settlement Agreement was tantamount to a conditional use permit under the Los Angeles Municipal Code. The Code requires that plans for changes to a deemed-approved conditional use site must be "submitted to and approved by the Zoning Administrator..." *Los Angeles Mun.Code* § 12.24-M.1 (emphasis added). The Congregation did not submit its building permit application to Daniel Green.

Even without the notice problem, the building permit would still be invalid. Because the clerk in the Department of Building and Safety lacked the authority to approve the plans, the teachings of the *Restatement (Second) of Agency* (1958) come into play. Section 164 provides in relevant part: "[A]n agent for a disclosed or partially disclosed principal who exceeds his power in making an unauthorized contract with a third person does not bind the principal..." Cf. *Terminix Co. v. Contractors' License Bd.*, 84 Cal.App.2d 167, 190 P.2d 24, 27 (Cal.App.1948) (holding that the language of a written contract forbade a company's agent from making oral representations to customers beyond the terms of the contract itself).

Even setting aside the notice requirement that the Congregation failed to meet, the Congregation's execution of the building plans reflected in the building permit violated the specific limitations in the Settlement Agreement. It is true that the Settlement Agreement functioned as a conditional use permit to allow the Congregation to operate a church in an R-1 zone. It is also true that the Settlement Agreement contemplated changes, if approved by the Zoning Administrator, to the existing structure at 303 South Highland Avenue. It does not follow, however, that the Department of Building and Safety had authority under the Settlement Agreement and the Municipal Code to is-

sue a building permit that allowed the Congregation to destroy all but two exterior walls of the existing structure and then build a new structure more than double the size of the original one. Tearing the residence down and then building a new structure more than twice as large simply does not constitute restoring and maintaining "[t]he single family use of the property ... including the residential character and architecture."

Because the permit was issued in violation of the Settlement Agreement and the Code, the City may revoke the permit. *Los Angeles Mun.Code* § 98.0601(a)(2) ("The Department [of Building and Safety] shall have the authority to revoke any permit, slight modification, or determination whenever such action was granted in error or in violation of other provisions of the Code and conditions are such that the action should not have been allowed."). Equitable estoppel does not apply.

Here, the law did not change from the time before the Department of Building and Safety issued the permit to the time when the City issued a stop-work order. Like the ordinances in *Pettitt* and *Smith*, the Settlement Agreement predated the issuance of the building permit and remains in place beyond it. Significantly, in *Toigo*, the court stated:

Courts have yet to extend the vested rights or estoppel theory to instances where a developer lacks a [valid] building permit or the functional equivalent, regardless of the property owner's detrimental reliance on local government actions and regardless of how many other land use and other preliminary approvals have been granted.

70 Cal.App.4th at 322, 82 Cal.Rptr.2d 649.

The Congregation made an end-run around the notice provision and applied for a building permit that far exceeded the terms of the operational Settlement Agree-

C 20  
B

ment. Applying equitable estoppel "would effectively nullify a strong rule of policy, adopted for the benefit of the public." *Pettitt*, 34 Cal.App.3d at 819, 110 Cal.Rptr. 262 (internal quotations and citations omitted).

Accordingly, I conclude that the Congregation did not possess a vested right in carrying through the renovations to their completion. I conclude also that equitable estoppel does not apply against the City because the public and community interest in preserving the community patterns established by the carefully drafted Settlement Agreement outweighs the injustice that may be incurred by the Congregation in relying upon an *invalid* building permit. The district court abused its discretion in holding otherwise.

For the foregoing reasons, I respectfully dissent.



Celestino SILVA-CALDERON,  
Petitioner,

v.

John ASHCROFT, Attorney  
General, Respondent.

No. 02-73474.

United States Court of Appeals,  
Ninth Circuit.

Submitted Feb. 9, 2004.\*

Filed June 16, 2004.

**Background:** Alien petitioned for judicial review of denial of application for cancellation of removal, based on immigration judge's refusal to grant continuance or to issue subpoena to compel witness' attendance.

\* This panel unanimously finds this case suitable for decision without oral argument.

**Holding:** Withdrawing its prior opinion, 358 F.3d 1175, on motion for rehearing, the Court of Appeals, Gould, Circuit Judge, held that, where certified administrative record was incomplete, and it was unclear whether the Board of Immigration Appeals (BIA) had considered a brief filed by alien which was not reflected on administrative record, Court of Appeals would not reach merits of alien's procedural due process claims, but would remand to the BIA to address these issues.

Remanded.

**Aliens § 54.3(6)**

Where certified administrative record was incomplete, and it was unclear whether the Board of Immigration Appeals (BIA) had considered a brief filed by alien which was not reflected on administrative record, Court of Appeals would not reach merits of alien's procedural due process claims, regarding whether immigration judge should have continued hearing and granted subpoena, but would remand to the BIA to address these issues; issues were within the BIA's core competence.

Timothy M. Greene, Puyallup, WA, for the petitioner.

Patricia L. Buchanan, U.S. Department of Justice, Civil Division, Washington, D.C., for the respondent.

On Petition for Review of an Order of the Board of Immigration Appeals.

Before D.W. NELSON, FISHER, and GOULD, Circuit Judges.

Fed. R.App. P. 34(a)(2).

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Frank R. Parnel  
Janet V. Parnel  
1560 Strand Way  
Oceano, CA 93445-9740

2418

11/17/05

16-24/1220 4180  
7135695158

DATE

PAY TO THE ORDER OF The Dept. of Building + Planning \$ 60400  
Six hundred Four 00/100 DOLLARS



Security Features Credits on Back



Wells Fargo Bank, N.A.  
California  
wellsfargo.com

File # DRC 2004-00224

Janet V. Parnel

MP

⑆ 122000247⑆ 7135695158⑆ 02418

CP 32

7-1



COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF PLANNING AND BUILDING  
STAFF REPORT

PLANNING COMMISSION

Promoting the wise use of land  
Helping build great communities

MEETING DATE November 10, 2005		CONTACT/PHONE Marsha Lee 788-2008		APPLICANT Frank Parnel		FILE NO. DRC2004-00224		
SUBJECT Request by Frank Parnel for a Variance/Coastal Development Permit to allow a setback variance of the rear and side setbacks for a 675 square foot enclosed patio structure with walls built on the property line. This project is already built as an approximately 2846 square foot residence. The building is constructed at the rear property line and at the side property line for a portion of the structure. The proposed project is within the residential multifamily land use category and is located at 1560 Strand Way in the community of Oceano. The site is in the San Luis Bay planning area.								
RECOMMENDED ACTION Deny the request for Variance/Coastal Development Permit by Frank Parnel DRC2004-00224 based on the findings listed in Exhibit A.								
ENVIRONMENTAL DETERMINATION This project is statutorily exempt from the California Environmental Quality Act under the provisions of Public Resources Code section 21080(b)(5), which provides that CEQA does not apply to projects that a public agency rejects or disapproves.								
LAND USE CATEGORY Residential Multifamily		COMBINING DESIGNATION Airport Review Area, Small Scale Neighborhood, Archeological Study, Coastal Appealable Zone, Coastal Commission Original Jurisdiction, Local Coastal Plan Area			ASSESSOR PARCEL NUMBER 061-061-033		SUPERVISOR DISTRICT(S) 4	
PLANNING AREA STANDARDS: Airport Review Area, Setbacks, Height								
LAND USE ORDINANCE STANDARDS: Setbacks; Projection into the rear setback								
EXISTING USES: Two-story single-family home with an enclosed back patio.								
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Oceano/Halcyon Advisory Group, Public Works, Oceano Community Services District and Fire, California Coastal Commission								
TOPOGRAPHY: Generally flat				VEGETATION: Ornamentals				
SURROUNDING LAND USE CATEGORIES AND USES: North: Residential Multifamily/Residential South: Residential Multifamily/Residential East: Residential Multifamily/Residential West: Recreational/Beach								
PROPOSED SERVICES: Water supply: Community system Sewage Disposal: Community sewage disposal system Fire Protection: Oceano Fire Department					ACCEPTANCE DATE: August 23, 2005			

ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT:  
COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242

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2-2

**BACKGROUND**

Planning Department staff cannot support the proposed variance and due to a variety of concerns such as the use is simply not appropriate for the subject site, the situation cannot be mitigated with conditions or project revisions. Concerns include site constraints, conflicts with adopted General Plan policies, conflicts with uses in the immediate site vicinity, and other generally accepted planning principles. Staff seeks to resolve issues with applicants but when this situation arises, staff has been directed to bring the matter to the appropriate decision-making body as soon as possible for a hearing with a recommendation to not approve the use. The proposed construction already exists. To come into compliance with the ordinance, the owners have applied for a variance to the rear and side setbacks to allow the 675 square feet of enclosed deck space to remain. Had the applicant requested the variance before the enclosure of the patio space, the project would have been brought forward for a denial.

**PROJECT DISCUSSION**

The request is for a setback variance of the rear and side setbacks for a 675 square foot enclosed patio structure with walls built on the property line into both the rear and side setbacks. After reviewing the proposal and the existing land use ordinance and area plan standards, staff concluded the variance for setbacks raised significant concerns and is not suitable for the site.

Currently, according to adjacent resident, rain water runs from the project residence onto the adjacent property to the south. The residences on the north and south side are set back 3', and the subject residence has no setback, therefore the access is limited to 3 feet between the two residences on both sides of the subject parcel. This is a concern because it also limits accessibility and fire safety.

There is one permit on file concerning this property. The county issued the original construction permit (1987). In addition, the landowner should have received a Coastal Development Permit from the California Coastal Commission (CCC). However CCC staff has not been able to find a record of the permit to date. In 1997, a construction permit for a patio enclosure was issued. The site plans for both the original building permit and the building permit for the deck enclosure on the second floor, show the required three-foot side setback and ten foot rear setback.

**PROJECT ANALYSIS**

Fire Safety- The Oceano Community Services District response to the request is contained in a letter attached to the staff report, dated October 14, 2005. Comments include the following: The Fire Department would have a great many problems controlling a fire at either location. In particular, there is no access to the ocean side of the structure from the south side, access to the western exposure is limited due to the sandy terrain of the beach where no apparatus access exists, and the remaining eastern and northern exposures would be the only access for fire attack and egress. This leaves us in a bad situation should there ever be a fire in either structure – the thought is that we could possibly lose both residences.”

*Ordinance Compliance:*

<u>Standard</u>	<u>Allowed/Required</u>	<u>Proposed</u>
Setbacks	Front: 14'	Front: 14'
Front	Side: 3'	Side: 0'
Side	Rear: 10'	Rear: 0'
Rear		
Height	25'	25'

2-3

Modifications

The applicant is requesting a modification of the rear and side setbacks for their property to accommodate an enclosed patio space of which is built on the property line at the rear and side property lines.

PLANNING AREA STANDARDS: The following sections discuss the planning area standards that apply to this project.

Airport Review Area: Allowable uses are limited to those designated as "compatible" or "conditionally approvable" by the Oceano County Airport Land Use Plan. All permit applications for sites within the boundary of the Airport Land Use Plan are subject to the development standards in the plan.

Front Setback: The minimum front setback is 14 feet for all buildings on the west side of Strand Way between Pier and Brooks Avenues. *The project complies with the front setback standard.*

Height: Structures shall not exceed 25 feet. *The project appears to meet this requirement.*

LAND USE ORDINANCE:

Side Setbacks: 10% of the lot width (the 30 foot wide lot requires 3 feet side setback). The project does not meet these standards. The request is for a variance to reduce the setback requirements to zero feet for the sides.

Rear Setback: 10 feet on sites of less than one acre.

Projections into rear setback (Section 23.04.116): Deck may occupy up to 30% of the required rear setback but no closer than 3 feet to the rear property line. For this 10 foot setback, a projection would be 3 feet. The second floor enclosed deck is at the 7 foot setback line therefore complies with the ordinance.

COMBINING DESIGNATIONS:

Airport Review Area: This project site is within the Airport Review Area and is subject to the standards set forth in the San Luis Bay Combining Designations section. Allowable uses are limited to those designated as "compatible" or "conditionally approvable" by the adopted Oceano County Airport Land Use Plan. A recorded aviation easement is required prior to the issuance of a building permit.

Archeological Study: Before any ground disturbance can take place on the site a Level 1 site survey must be completed by a certified archeologist. This was not done because the proposed project is a request for a variance of an already constructed residence. There is no ground disturbance associated with this application.

Coastal Commission Original Jurisdiction: The project requires a land use permit from the California Coastal Commission.

Local Coastal Program/Coastal Appealable Area: The project site is located within the California Coastal Zone as determined by the California Coastal Act of 1976 and is subject to the provisions of the Local Coastal Plan. The subject project site is also located within an area that is appealable to the California Coastal Commission.

2-4

COASTAL PLAN POLICIES:

Shoreline Access: The project does not interfere with coastal access that is located within 100 feet of the residence.

Recreation and Visitor Serving:  N/A Policy No(s):

Energy and Industrial Development:  N/A Policy No(s):

Commercial Fishing, Recreational Boating and Port Facilities:  N/A Policy No(s):

Environmentally Sensitive Habitats:  N/A Policy No(s):

Agriculture:  N/A

Public Works:  N/A

Coastal Watersheds:  N/A

Visual and Scenic Resources: Inconsistent with community character for 0 side and rear setbacks

Hazards: The 3' side setback could limit fire access to the properties.

Archeology:  N/A

Air Quality:  N/A

**Does the project meet applicable Coastal Plan Policies: No**

COMMUNITY ADVISORY GROUP COMMENTS: Oceano/Halcyon Advisory Group—  
Recommends denial

AGENCY REVIEW:

Public Works—no concerns with proposal.

Oceano Community Services District and Fire— The Oceano Community Services District response to the request is contained in a letter attached to the staff report, dated October 14, 2005. Comments include the following: The Fire Department would have a great many problems controlling a fire at either location. In particular, there is no access to the ocean side of the structure from the south side, access to the western exposure is limited due to the sandy terrain of the beach where no apparatus access exists, and the remaining eastern and northern exposures would be the only access for fire attack and egress. This leaves us in a bad situation should there ever be a fire in either structure – the thought is that we could possibly lose both residences.”

California Coastal Commission—no response

Tony N—no response

LEGAL LOT STATUS:

The 1 lot were legally created by deed at a time when that was a legal method of creating lots.

ADDITIONAL INFORMATION

The applicant contends that the variance should be approved based on the ruling made in Anderson v. City of La Mesa (1981). In the Anderson v. City of La Mesa case the city erred in issuing the permit, mistakenly telling Anderson that they required a five foot setback when, in fact, a ten foot side setback was required. The city refused to issue a variance because of their error. This case is different. In both the original construction permit and the permit allowing the enclosure of the deck area the setback requirements of three feet on the sides and ten feet in the rear are shown.

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**FINDINGS - EXHIBIT A**

*Environmental Determination*

- A. That this project is found to be statutorily exempt from the California Environmental Quality Act under the provisions of Public Resources Code section 21080(b)(5), which provides that CEQA does not apply to projects which a public agency rejects or disapproves.

*Variance*

- B. The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which it is situated because authorizing a variance of the setbacks would create an inconsistency for the property. The variance would also create a hardship for the neighbors of the property because, as stated in letters to the county, the neighbor's property becomes flooded because water runs from the roof and gutters causing flooding on their property. Additionally, varying the setbacks for beachfront property as this lot is could create a precedent that would lead to other neighbors building to their property lines and enclosing their patios. Granting this variance would create an inconsistency with the surrounding homes and land use..
- C. There are not special circumstances applicable to the property, including size, shape, topography, location, or surroundings, and because of the absence of these circumstances, the strict application of this Title would not deprive the property of privileges enjoyed by other property in the vicinity and in the same land use category.
- D. The variance does not authorize a use that is not otherwise authorized in the land use category however, authorizing this use would create a use that is not built to the standards required for this type of use to be constructed.
- E. The granting of such application does, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, is materially detrimental to the public welfare, and is injurious to nearby property or improvements, because the neighboring property would face drainage issues as outlined in their letter to the county. The lack of side setbacks causes flooding on the neighboring property as run-off from the roof and gutters flows onto the adjoining property. Additionally, without any side setback in the event of fire it would be able to jump more easily from house to house. For these reasons, allowing a variance to the setbacks could create a detrimental situation for surrounding property owners. The enclosed patio area also can affect the lateral view sheds of neighbors and the enclosed space is added living space.
- F. The variance is inconsistent with the San Luis Obispo County General Plan because the setbacks are zero in the rear and portions of the side setbacks.

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# Oceano Community Services District

1655 Front Street, P.O. Box 599, Oceano, CA 93475

(805) 481-6780

FAX (805) 481-6886

October 14, 2005

County of San Luis Obispo  
Department of Planning and Building  
Attention Coastal Team  
Room 310, County Government Center  
San Luis Obispo, CA 93408

**SUBJECT: PARNEL, DRC 2004-00224, VARIANCE FOR ENCLOSED PATIO**

Dear Sir or Madam:

Our apologies for the delay in response to your request for comments on the requested variance to the set back located at 1560 Strand Way in Oceano. The District believes that its jurisdiction or concern regarding any building and planning matter is usually best handled by your offices. However, with regard to this particular situation, somewhere, somehow, the ball got dropped.

Regarding solely the access for the Fire Department, a problem certainly exists. The Fire Department would have a great many problems controlling a fire at either location. In particular, there is no access to the ocean side of the structure from the south side, access to the western exposure is limited due to the sandy terrain of the beach where no apparatus access exists, and the remaining eastern and northern exposures would be the only access for fire attack and egress. This leaves us in a bad situation should there ever be a fire in either structure-- the thought is that we could possibly lose both residences.

Should you have additional questions or require further information, please feel free to call me at (805) 481-6730.

Yours truly,

OCEANO COMMUNITY SERVICES DISTRICT

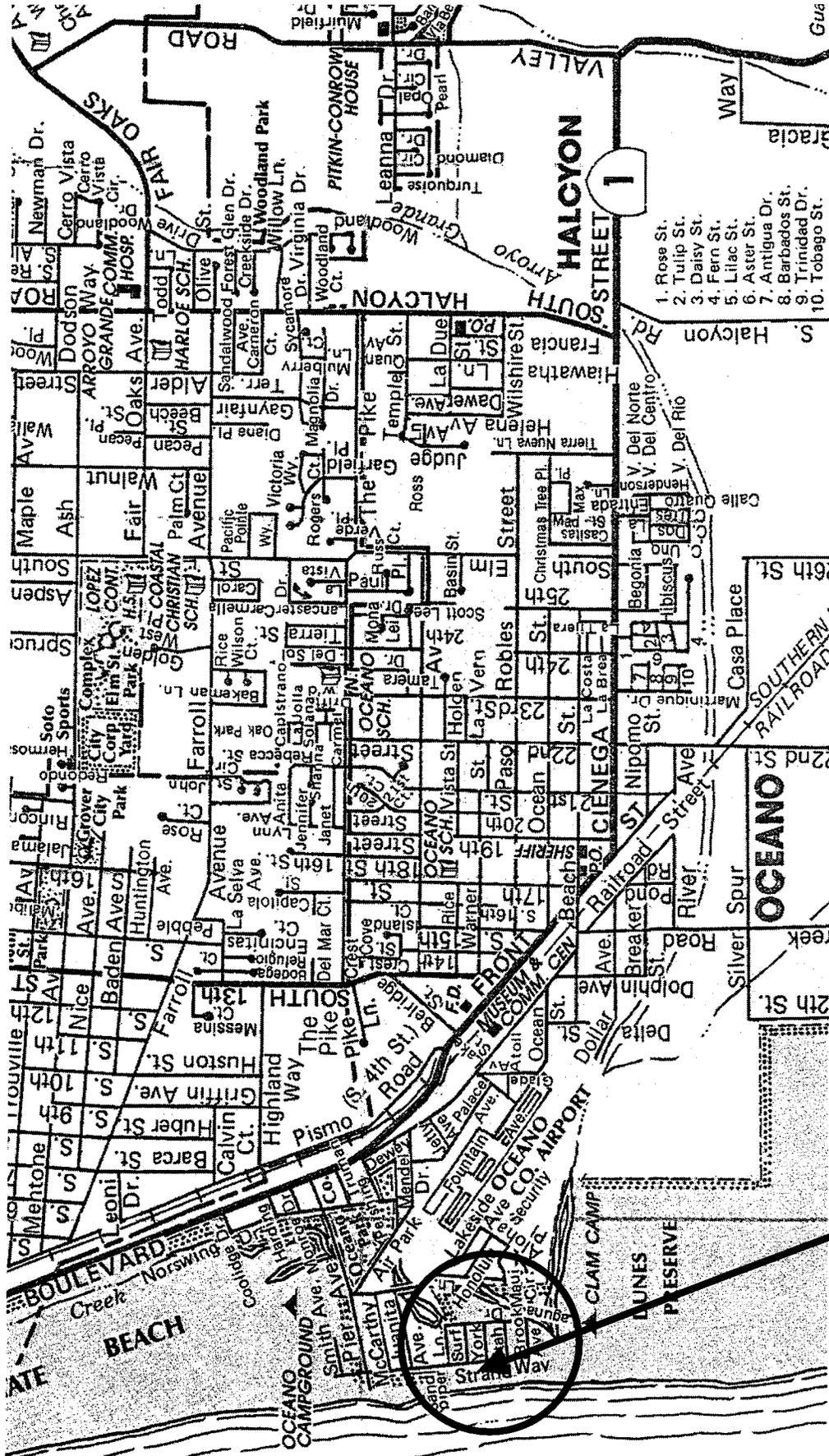
Michael G. Steinhauser, Fire Chief

cc: Linda Austin etal

MGS:sw

2-6-2

SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING



**SITE**

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**PROJECT**

Variance/Coastal Development Permit  
Pamel DRC2004-00224

**EXHIBIT**

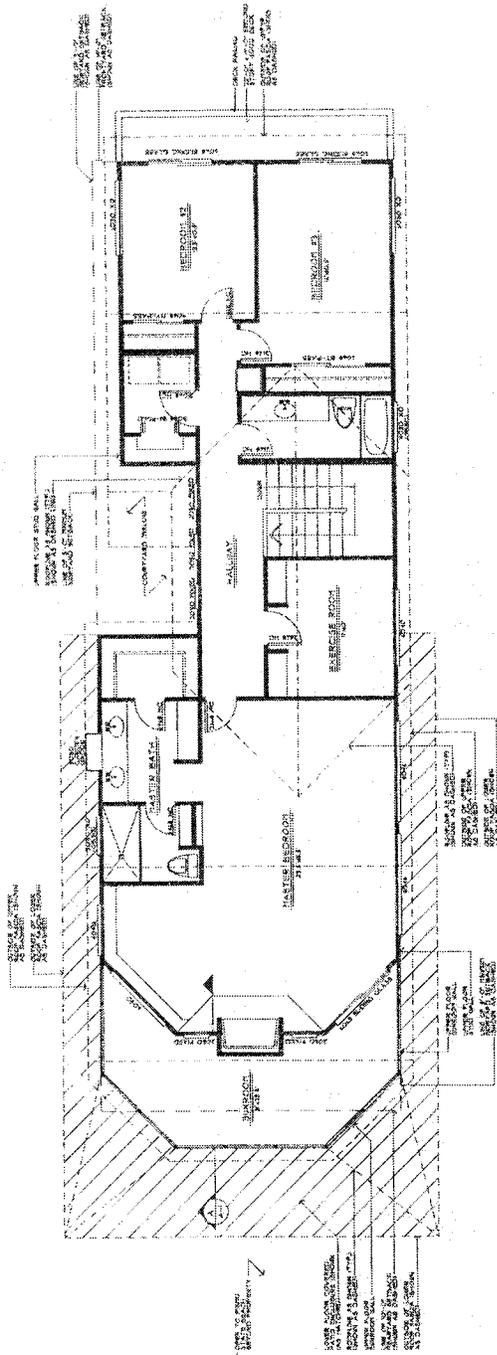
Vicinity Map



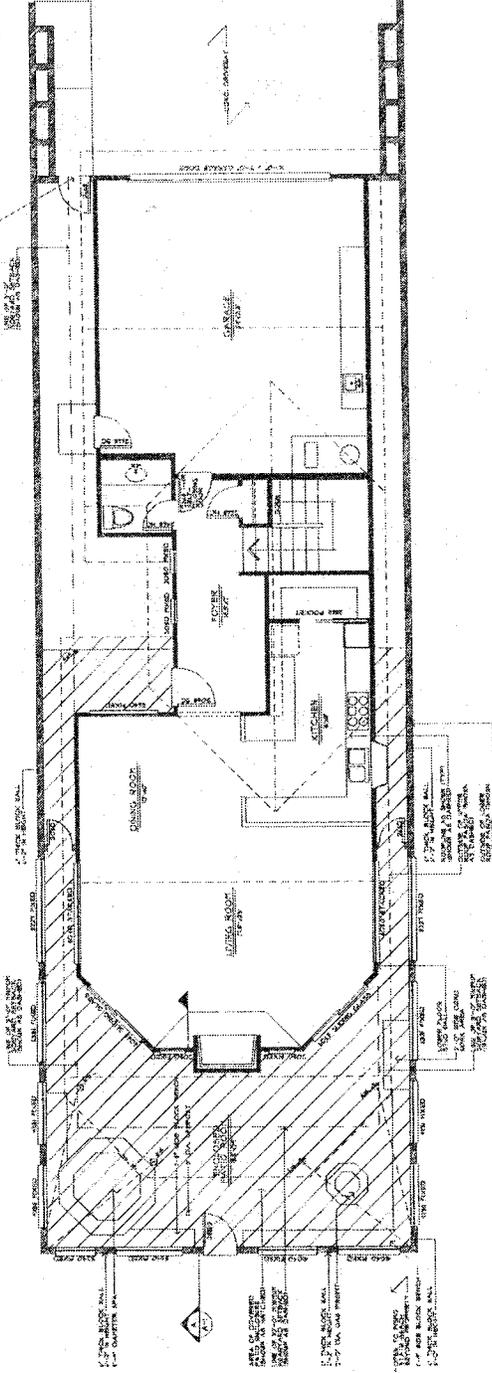




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(E) UPPER FLOOR PLAN



(E) LOWER FLOOR PLAN

Floor Plan

EXHIBIT



PROJECT  
Variance/Coastal Development Permit  
Parnel DRC2004-00224

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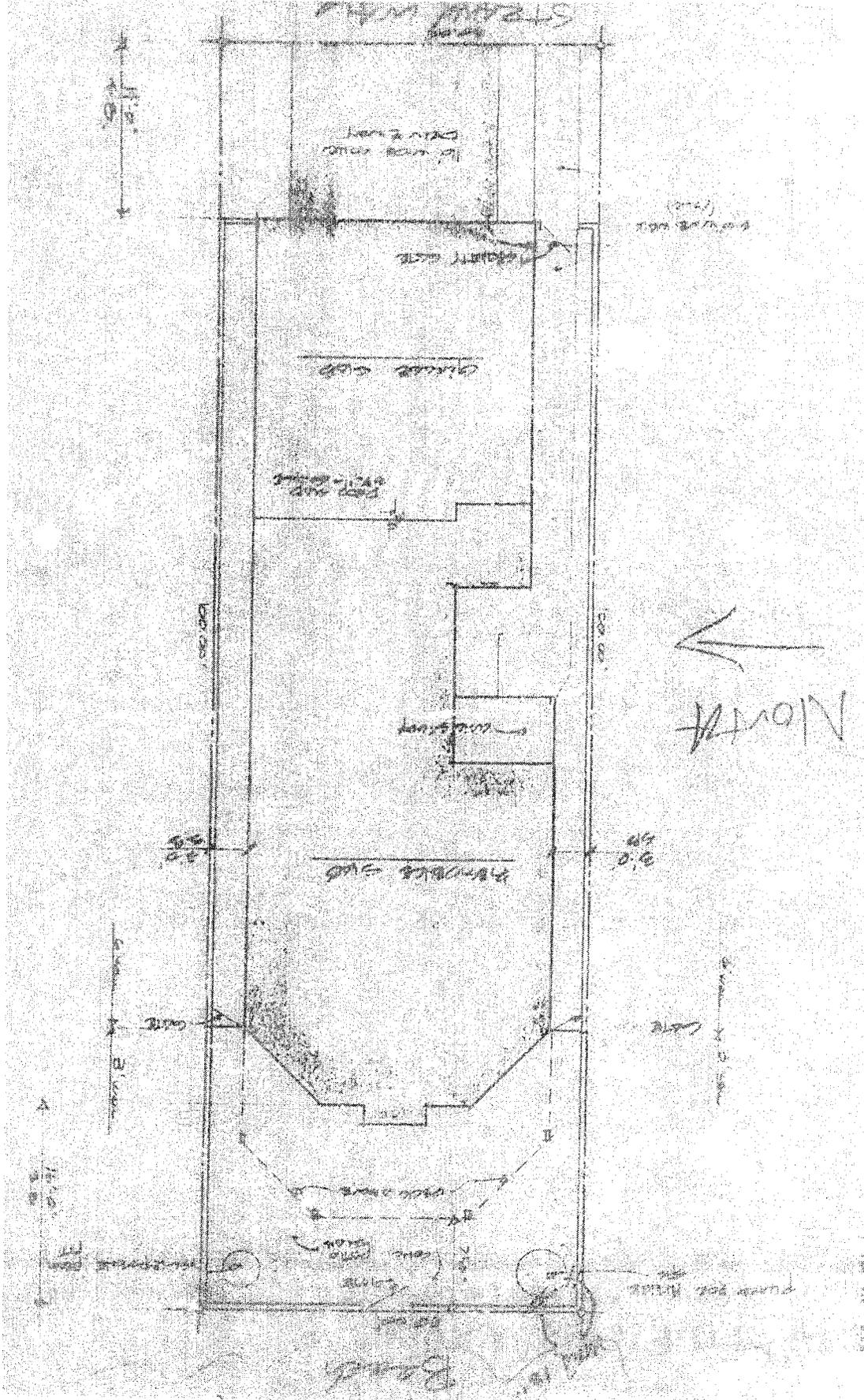


EXHIBIT Original Building Permit

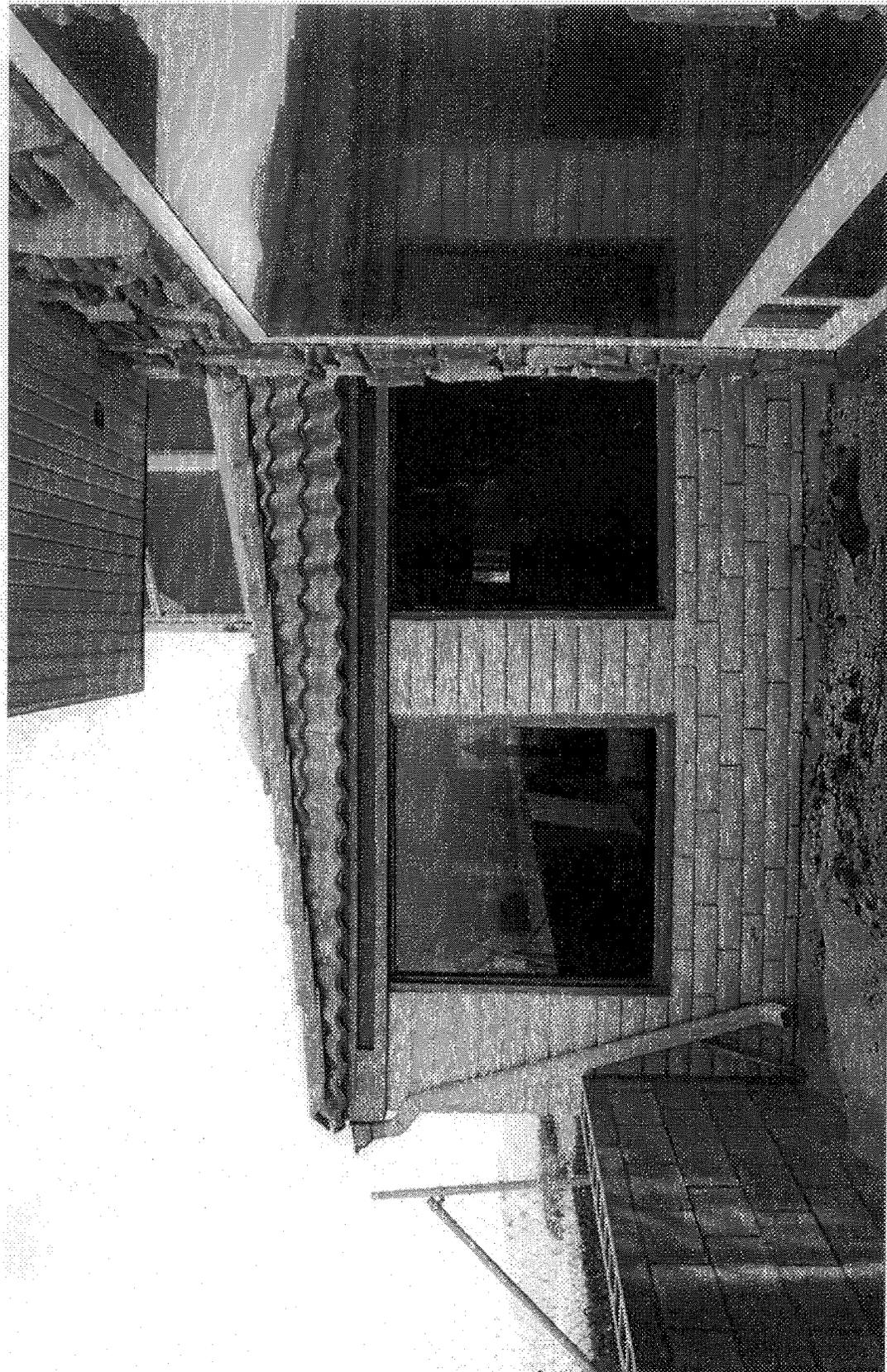


PROJECT Variance/Coastal Development Permit  
Parnel DRC2004-00224

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PROJECT

Variance/Coastal Development Permit  
Parnel DRC2004-00224

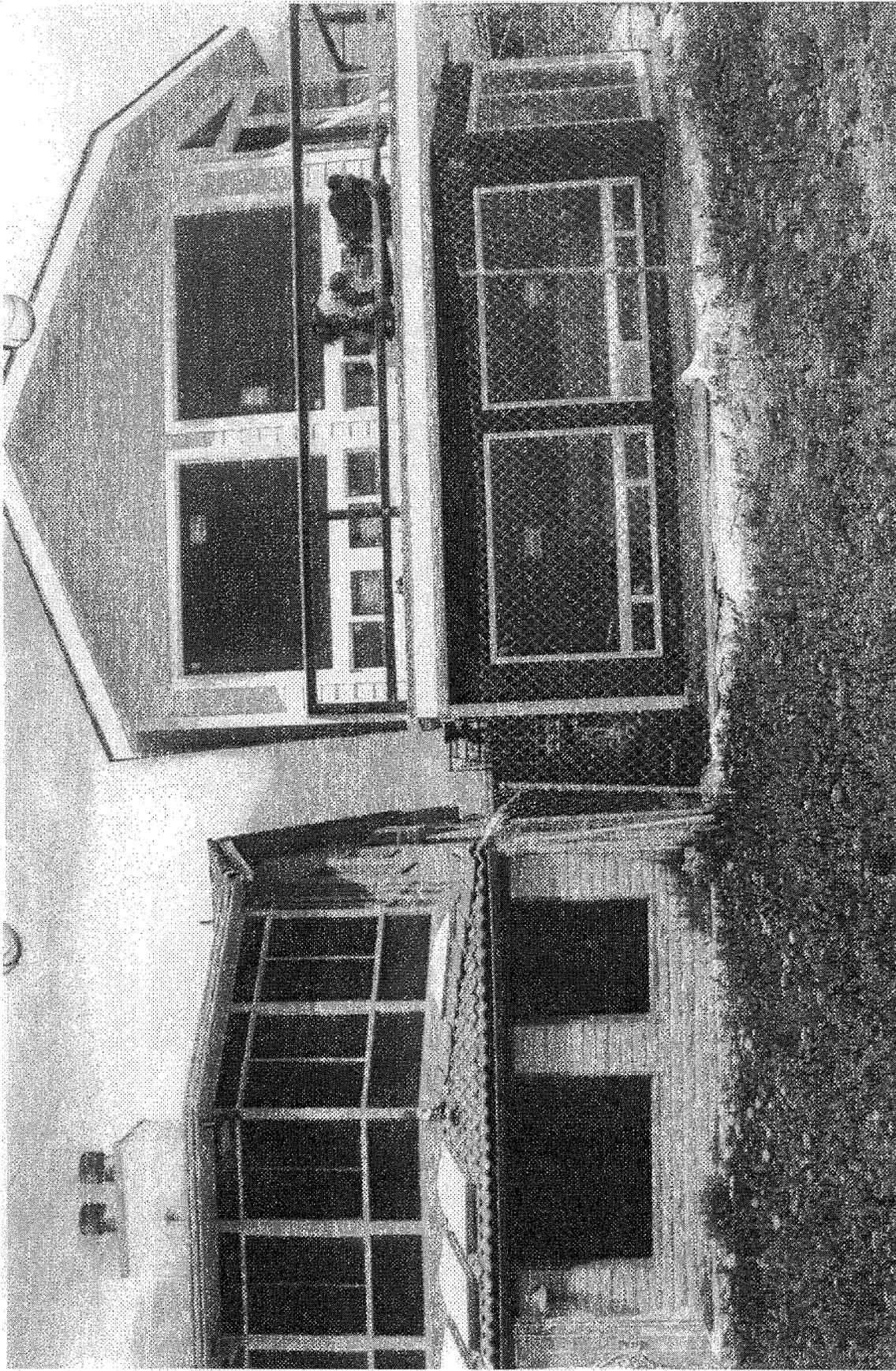
EXHIBIT

1997 Patio Enclosure Permit



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**PROJECT**

Variance/Coastal Development Permit  
Pamel DRC2004-00224

**EXHIBIT**

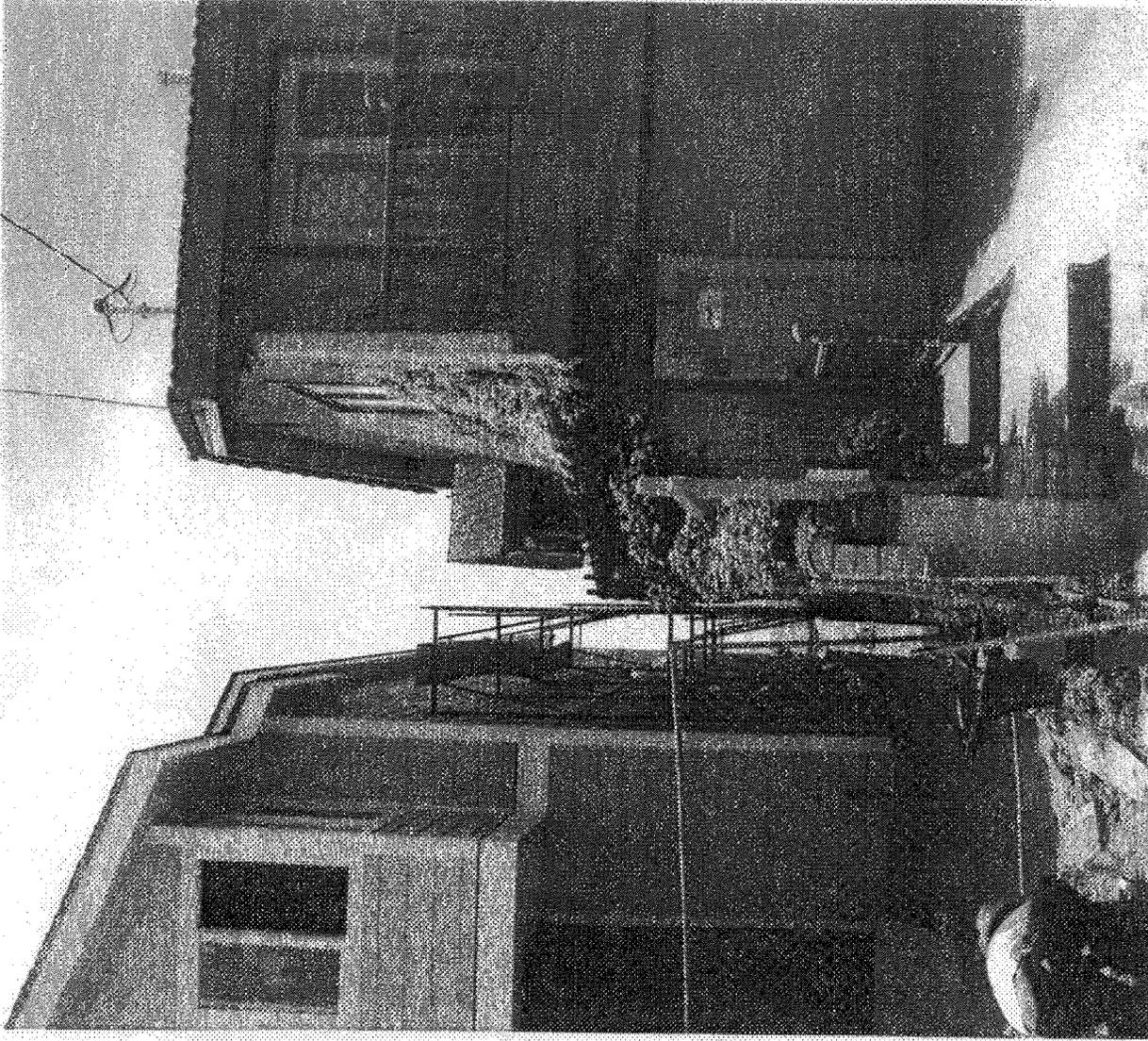
1997 Patio Enclosure Permit



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SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING



PROJECT

Variance/Coastal Development Permit  
Pamel DRC2004-00224

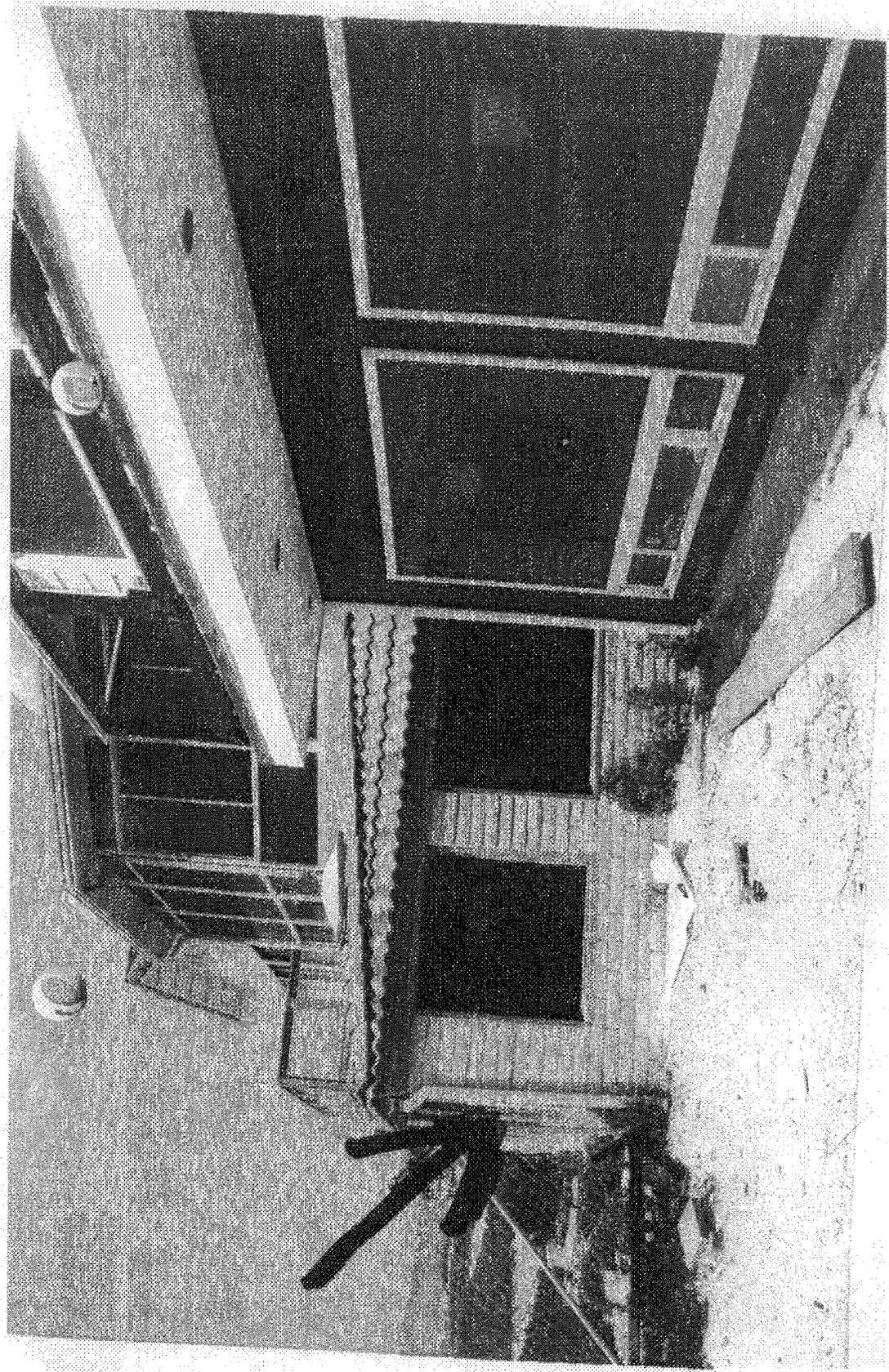
EXHIBIT

1997 Patio Enclosure Permit



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EXHIBIT

1997 Patio Enclosure Permit



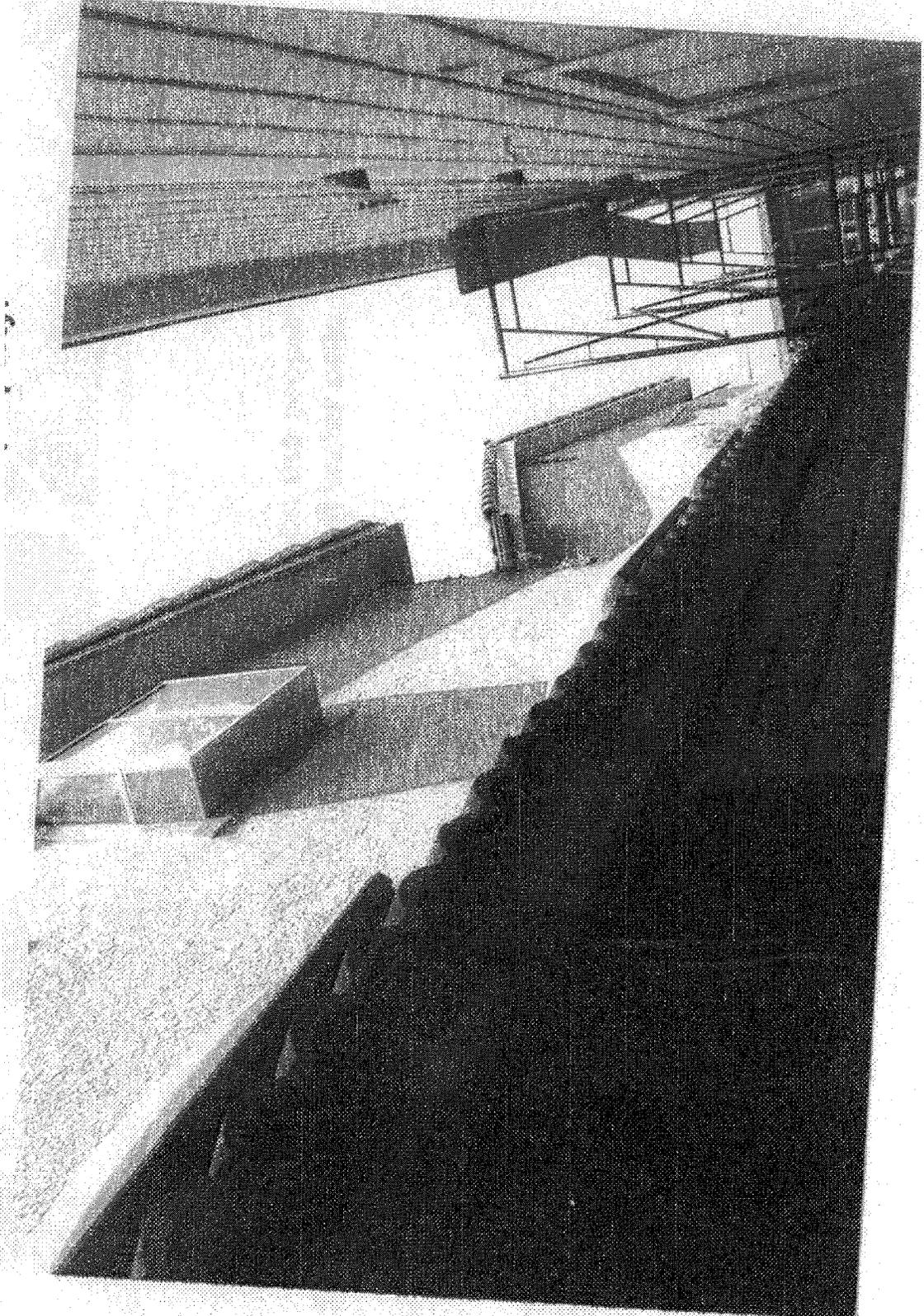
PROJECT

Variance/Coastal Development Permit  
Pamel DRC2004-00224

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SAN LUIS ORISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING



PROJECT

Variance/Coastal Development Permit  
Pamel DRC2004-00224

EXHIBIT

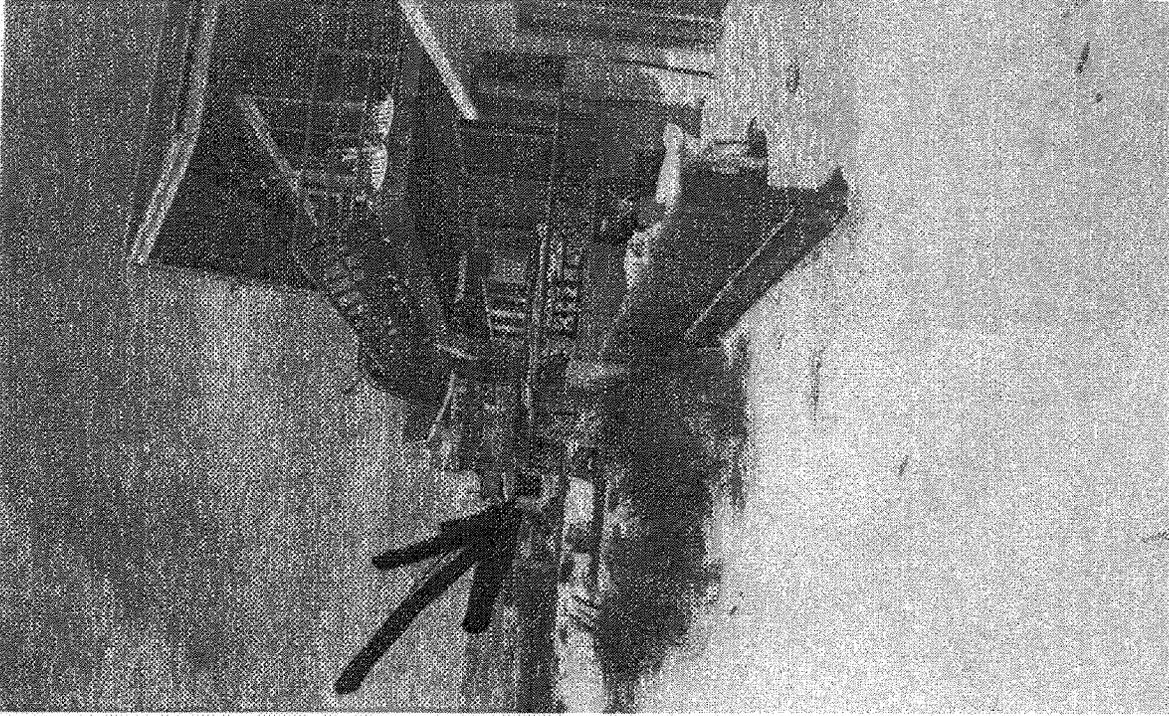
1997 Patio Enclosure Permit



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SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING



PROJECT

Variance/Coastal Development Permit  
Pamel DR:2004-00224

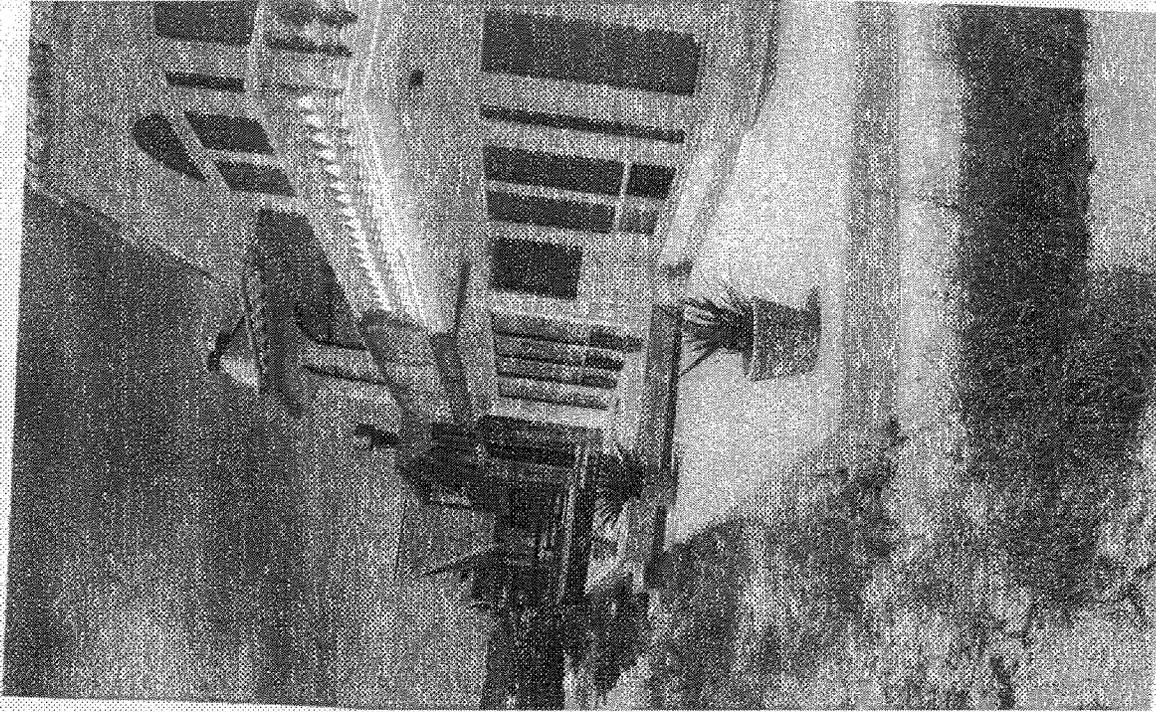
EXHIBIT

1997 Patio Enclosure Permit



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PROJECT

Variance/Coastal Development Permit  
Pamel DRC2004-00224

EXHIBIT

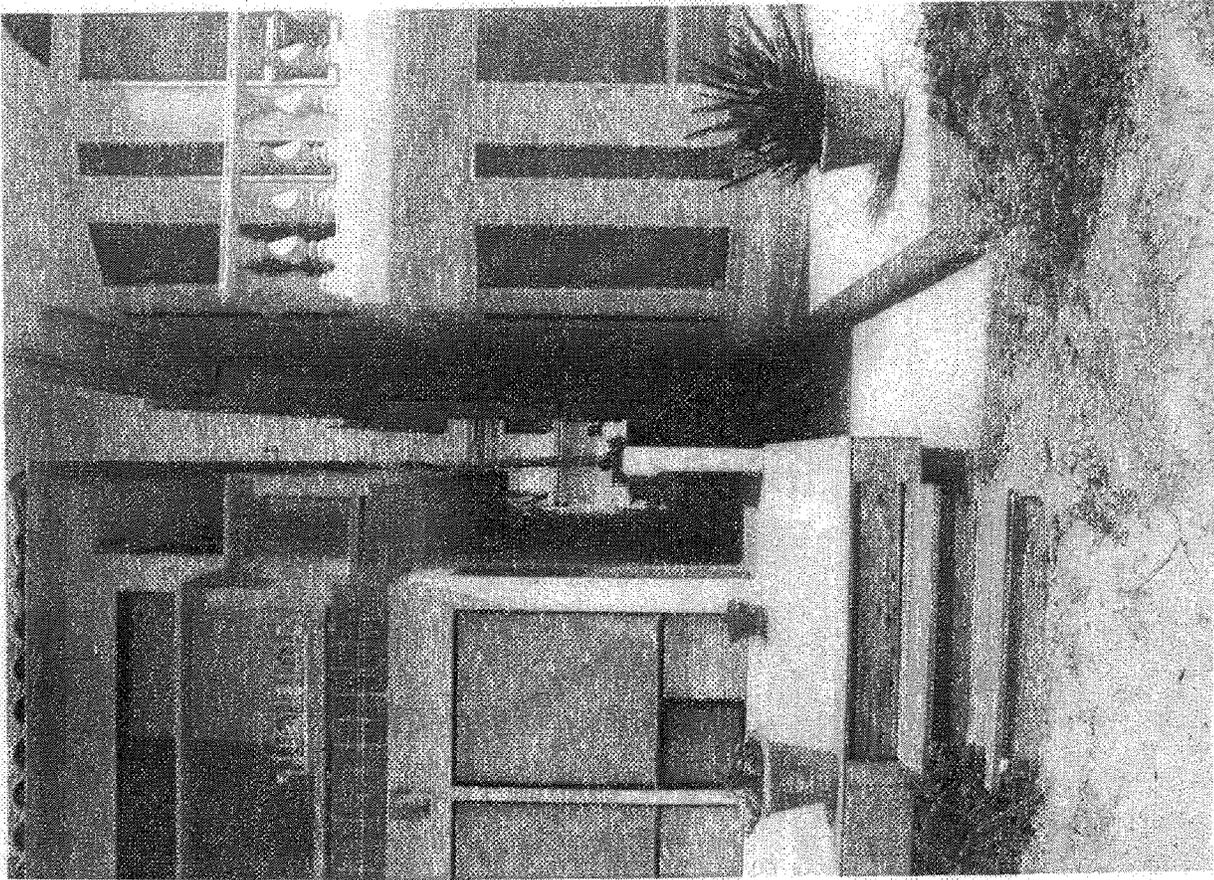
1997 Patio Enclosure Permit



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SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING



PROJECT

Variance/Coastal Development Permit  
Pamel DRC2004-00224

EXHIBIT

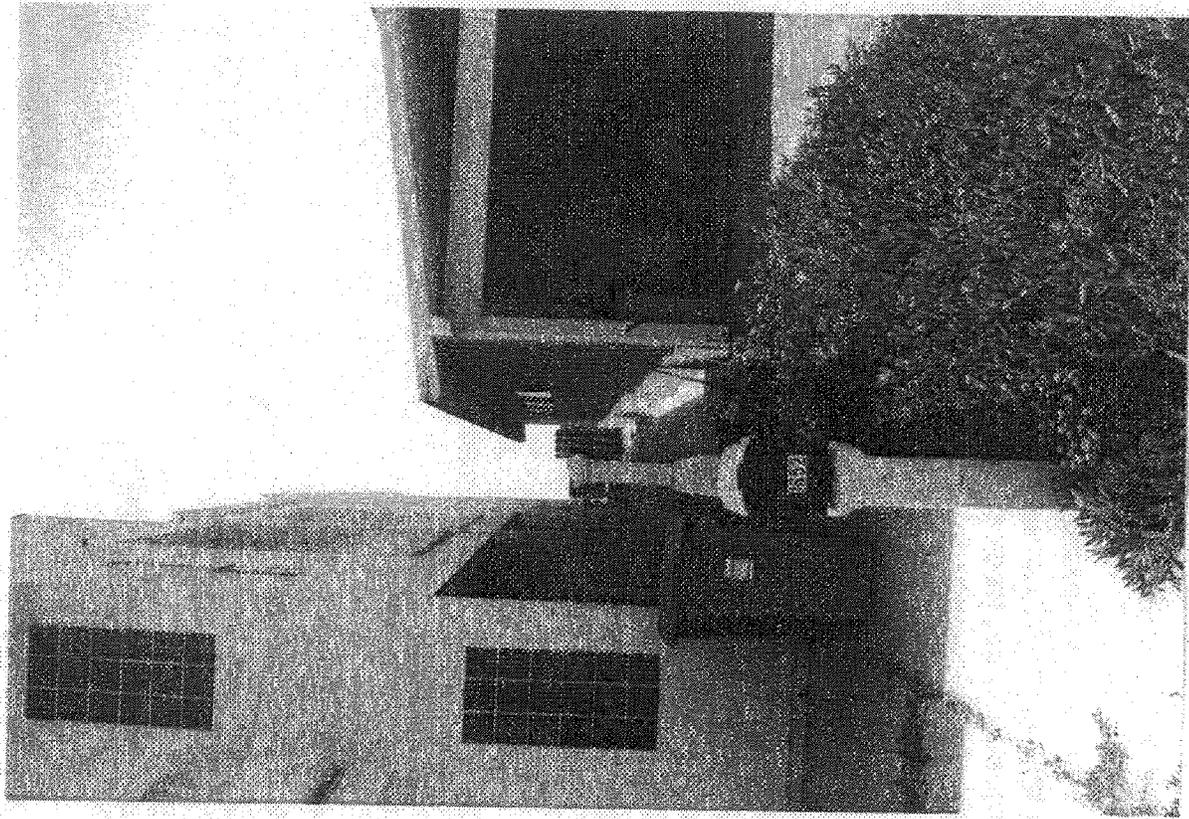
1997 Patio Enclosure Permit



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SAN LUIS OBISPO COUNTY DEPARTMENT OF BUILDING AND PLANNING



PROJECT

Variance/Coastal Development Permit  
Parcel DRC2004-00224

EXHIBIT

1997 Patio Enclosure Permit



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## ATTACHMENT TO VARIANCE APPLICATION

(Parnel-1560 Strand Way, Oceano, CA)

April 14, 2005

On February 28, 1997, Mr. Parnel, the owner of 1560 Strand Way, received a building permit to enclose his patio and rebuild his decking (Permit # A0419). At this same time he had his lower patio re-roofed. The lower patio had been enclosed since 1989, and previously consisted of glass roof panels.

The house was inspected on April 2, 1997, by the San Luis Obispo Department of Planning and Building, as evidenced by the attached Correction Notice. The house was re-inspected on April 11, 1997 and final approval was given to the project.

Mr. Parnel then began to receive notices from the San Luis Obispo Department of Planning and Building on August 22, 2002, that his house was in violation of County land use and zoning requirements. Mr. Parnel respectfully requests that his variance be approved, pursuant to the decision in Anderson v. City of La Mesa (1981) Cal.App.3d 657, for the following reasons:

1. The enclosed "patio enclosure" construction was inspected by the County in 1997 and approved.
2. There would be a substantial hardship to the Owner if forced to rebuild the patio enclosure.
3. A patio that extends to the property line is similar to others in the neighborhood such that no special privilege is granted by this application.
4. The granting of the variance will not adversely affect any persons residing in the vicinity.

CS

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**BELSHER & BECKER**

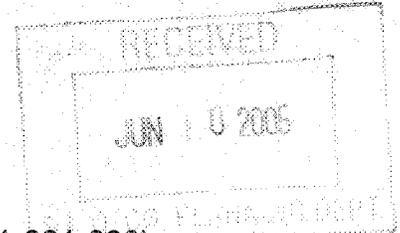
ATTORNEYS AT LAW  
412 MARSH STREET  
SAN LUIS OBISPO, CALIFORNIA 93401

JOHN W. BELSHER  
HOWARD MARK BECKER  
STEVEN P. ROBERTS  
GREGORY A. CONNELL

TELEPHONE (805) 542-9900  
FAX (805) 542-9949  
E-MAIL [slolaw@belsherandbecker.com](mailto:slolaw@belsherandbecker.com)

June 8, 2005

Marsha Lee, Project Planner  
San Luis Obispo County  
Department of Planning & Building  
County Government Center  
San Luis Obispo, CA 93408



Re: 1560 Strand Way / Parnel DRC 2004-00224 (APN 061-061-033)

Dear Ms. Lee:

We have completed a photo survey of the neighborhood in which the above referenced applicant resides. Please consider these photos as a supplemental response to our client's variance application.

We believe these pictures represent that our client is not asking for a special benefit greater to that of other residents in his community. An explanation of each photo is as follows:

Exhibit # 1

- Photo A: Shows a patio wall similar to the applicant up to their property line
- Photo B: Shows a roofed awning similar to applicants
- Photo C: Shows another roofed awning on other side of house

Exhibit #2

- Photo A: Shows two houses and small retaining wall on property line
- Photo B: Shows other side of home built on property line
- Photo C: Shows a patio wall and home built up to property line

Exhibit #3

- Photo A: Three homes on Strand Way in Oceano
- Photo B: Shows different size patios and patio walls and home buildout
- Photo C: Another view of home buildout

Exhibit #4

- Photo A: Shows two homes with enclosed patios
- Photo B: Another view of enclosed patio built out to property line

Exhibit #5

- Photo A: Shows retaining wall similar to applicants on property line
- Photo B: Shows the close proximity of retaining wall to home

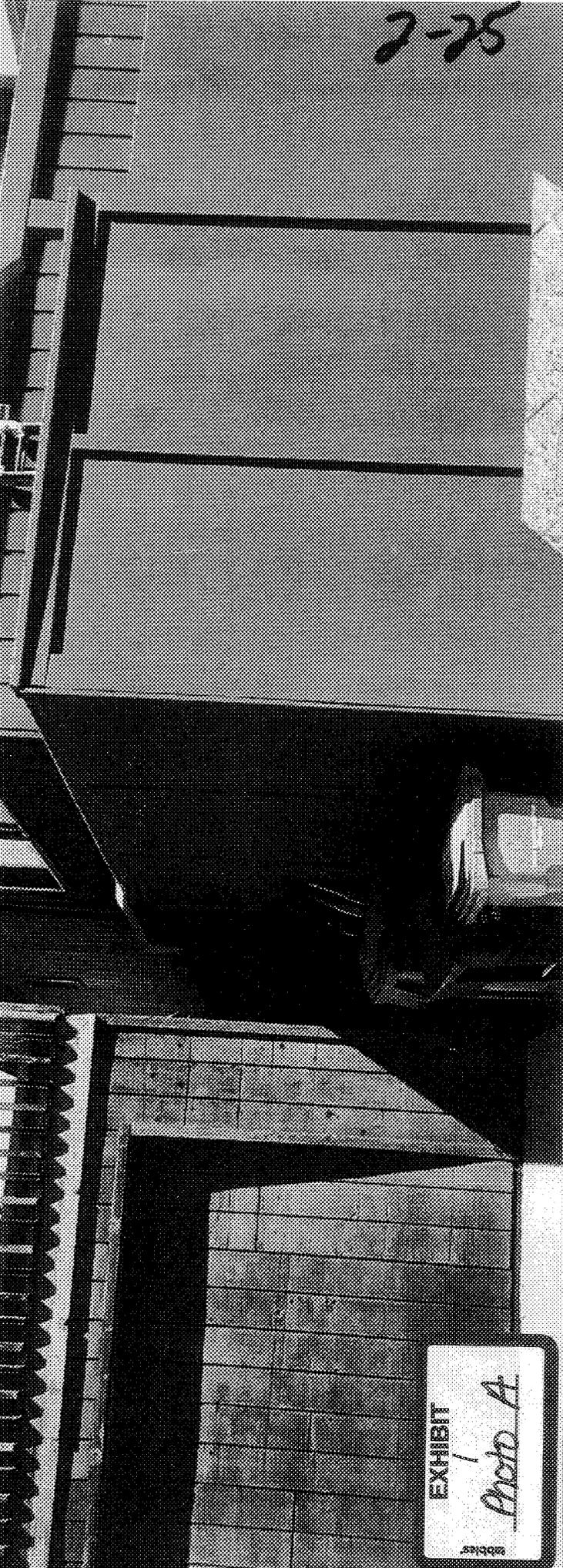
Sincerely,

A handwritten signature in black ink, appearing to read "Gregory A. Connell".

Gregory A. Connell, Esq.

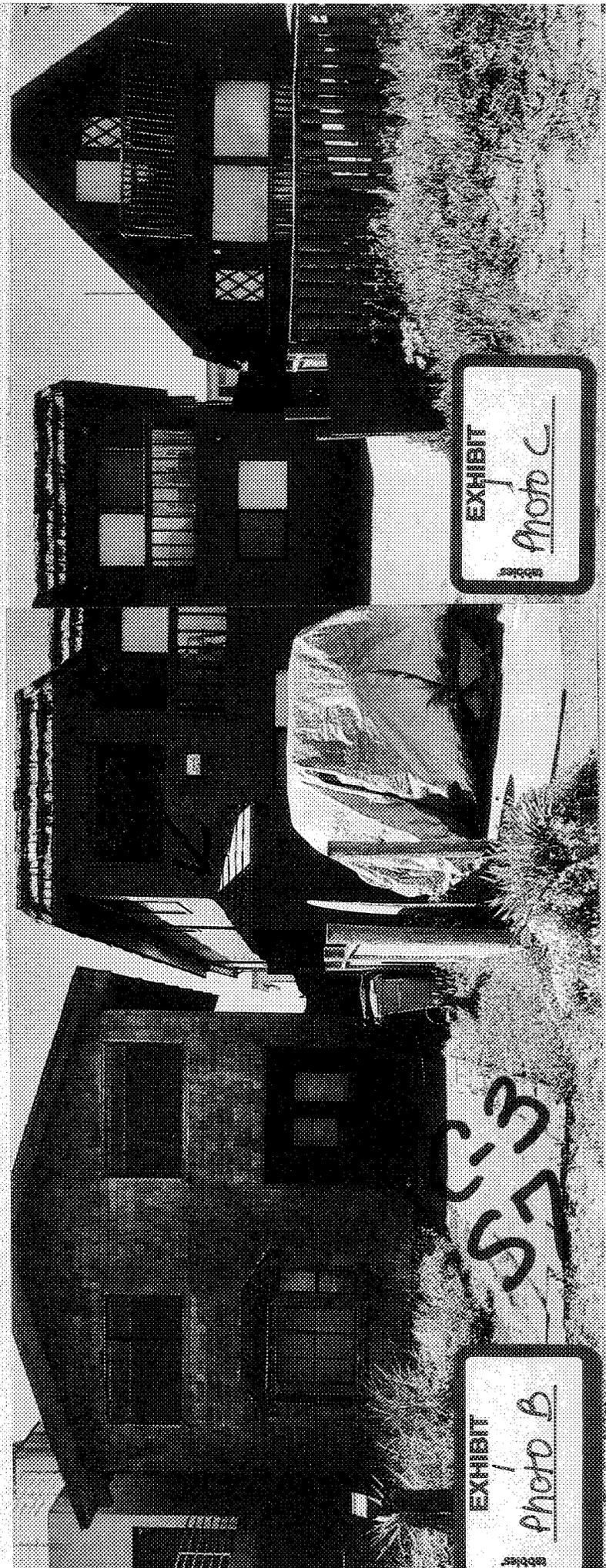
A large, stylized handwritten mark, possibly initials or a signature, in black ink.

GAC/ab  
cc: client  
P:\Angela's Files\John's clients\Parnel\Marsha Lee 02.wpd



2-25

EXHIBIT / Photo A  
Robbler



5713

EXHIBIT / Photo B  
Robbler

EXHIBIT / Photo C  
Robbler

2-26

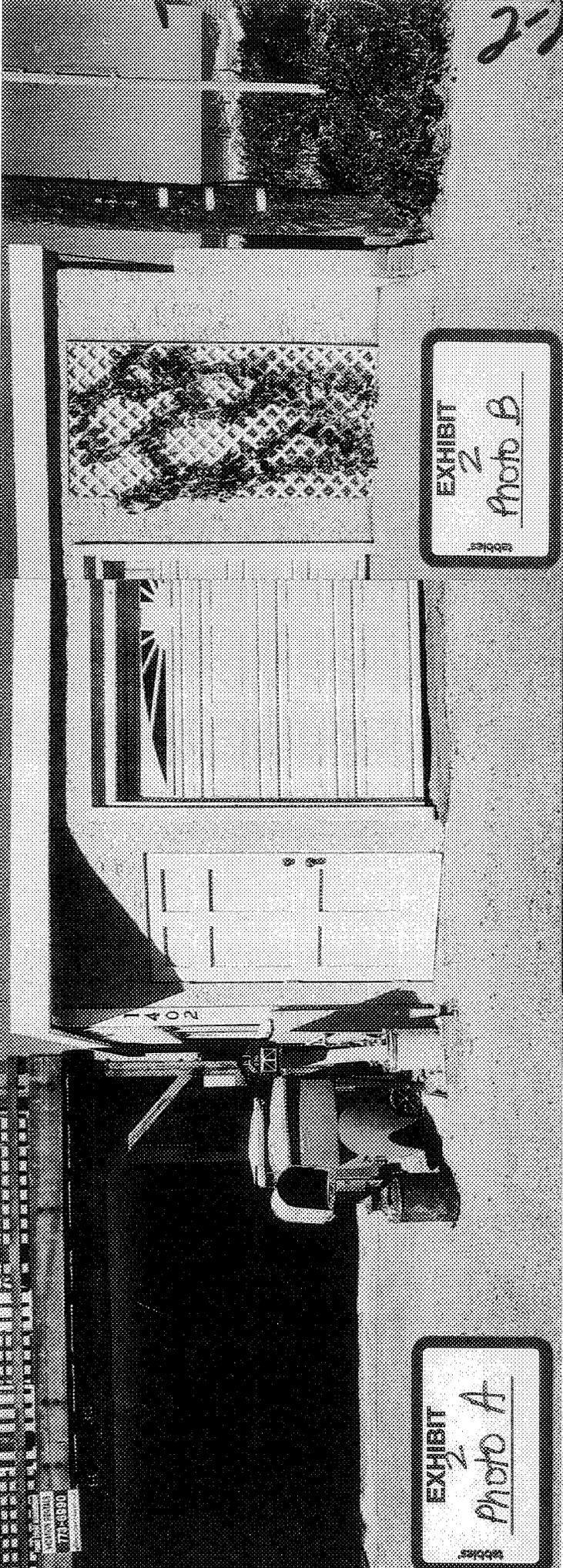


EXHIBIT 2 Photo B

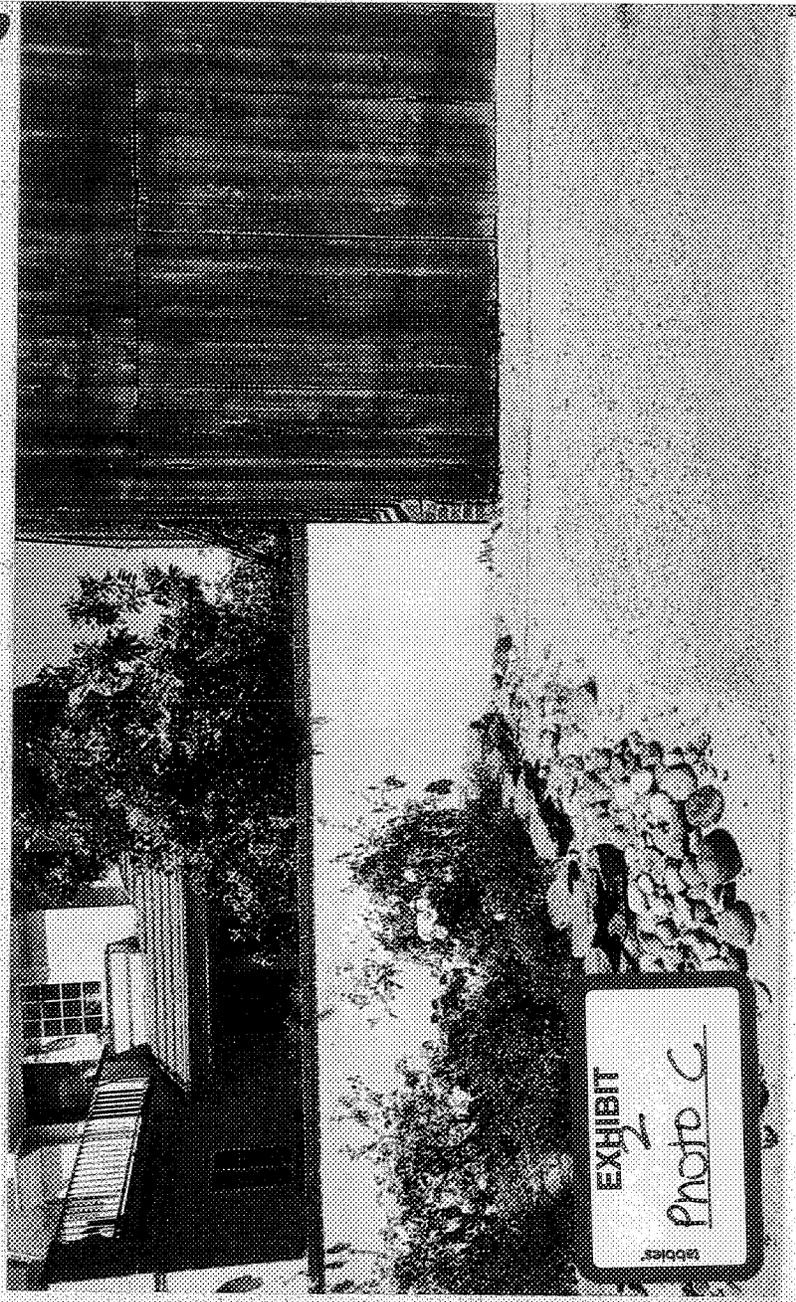
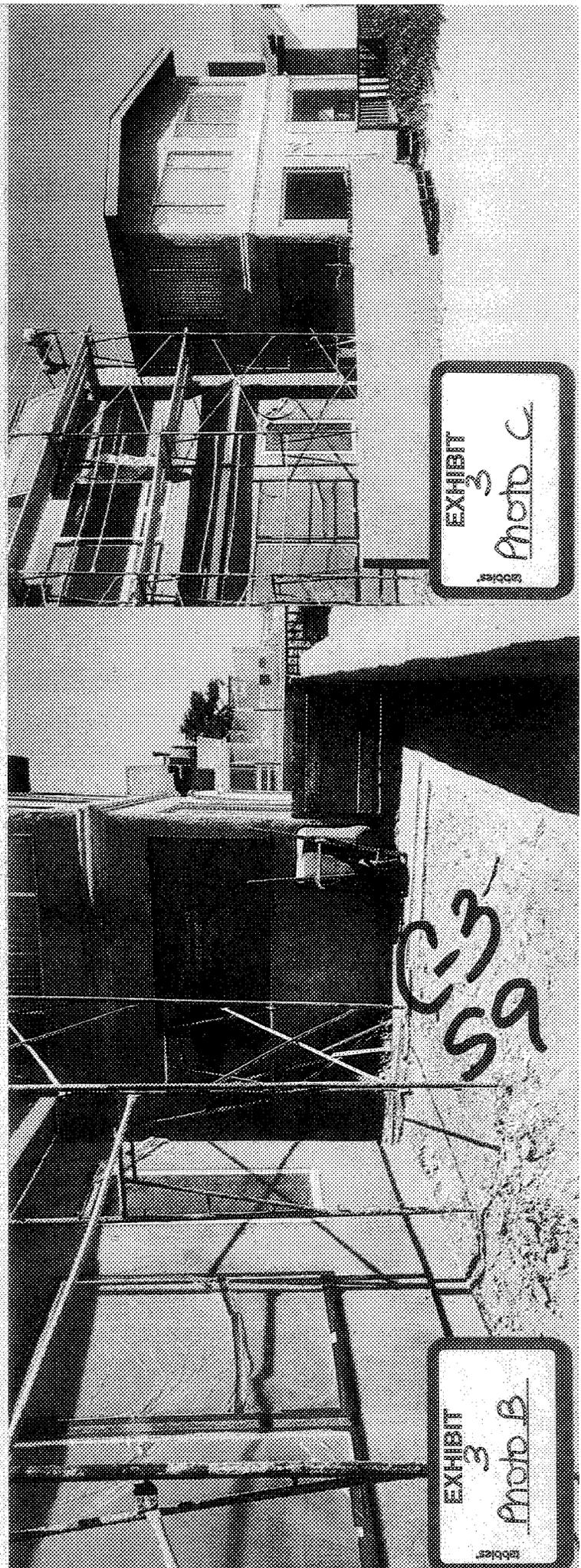
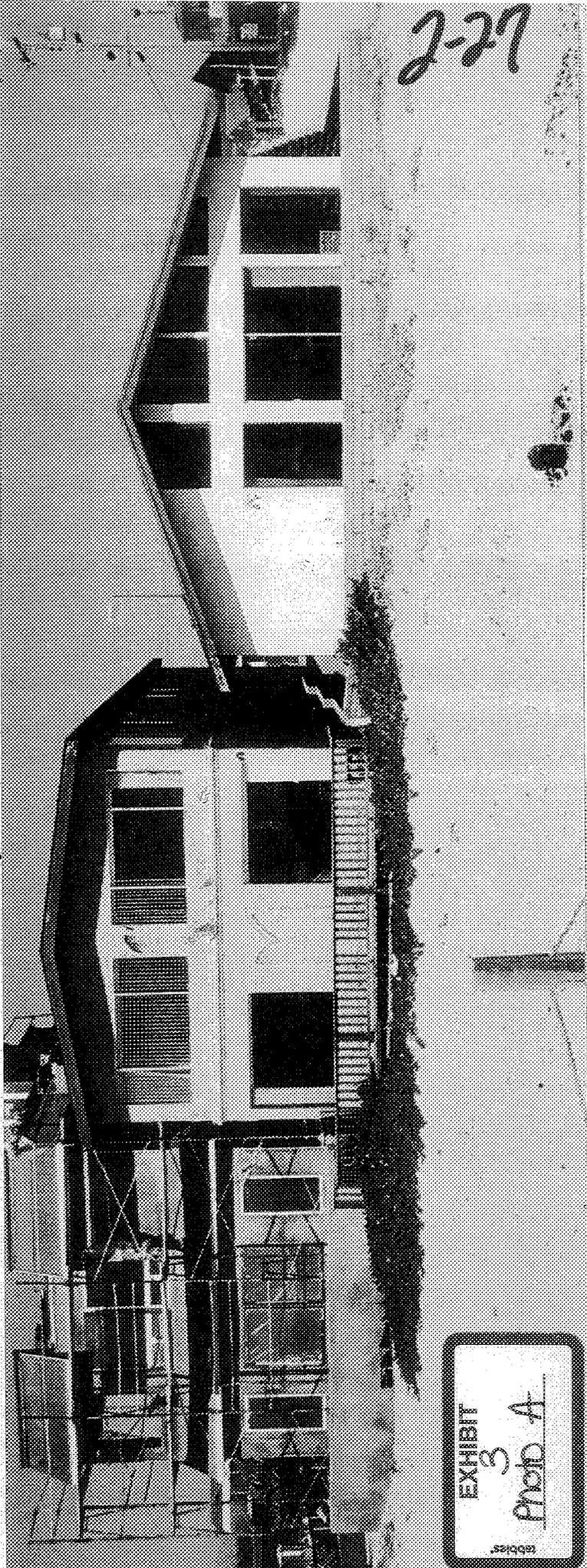


EXHIBIT 2 Photo C

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773-4880



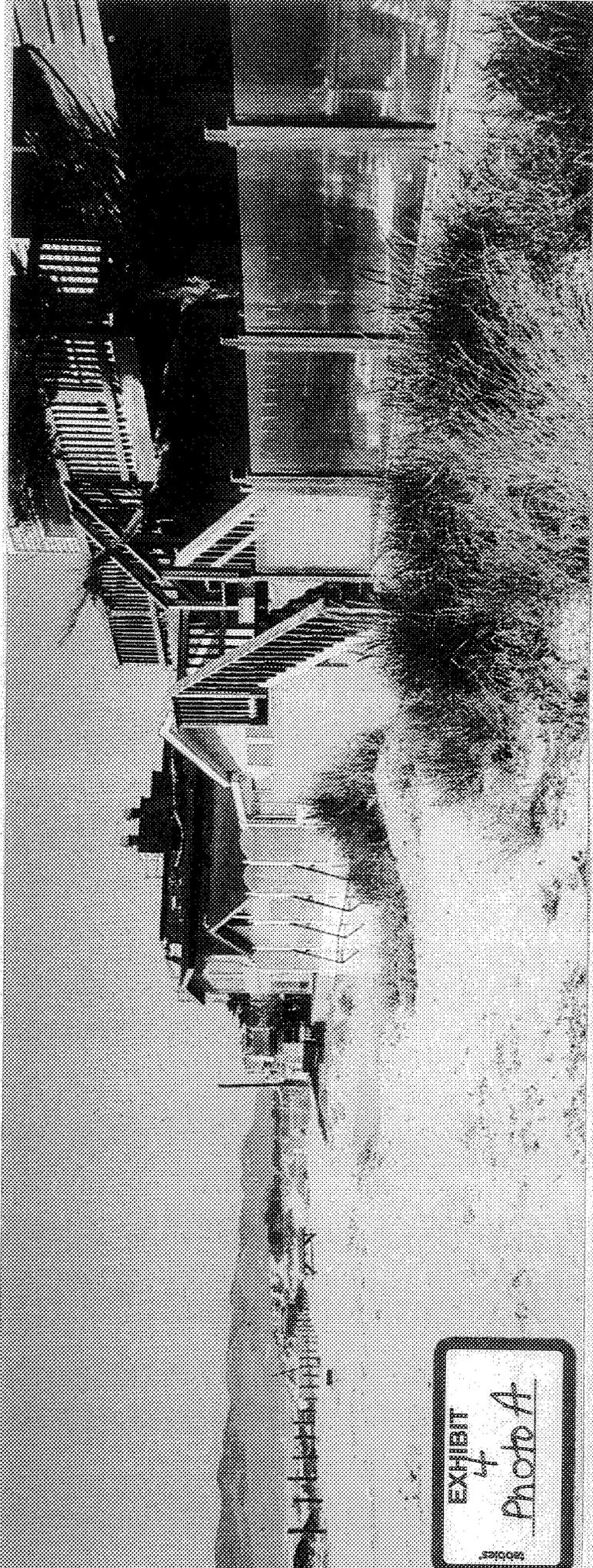


EXHIBIT  
4  
Photo A

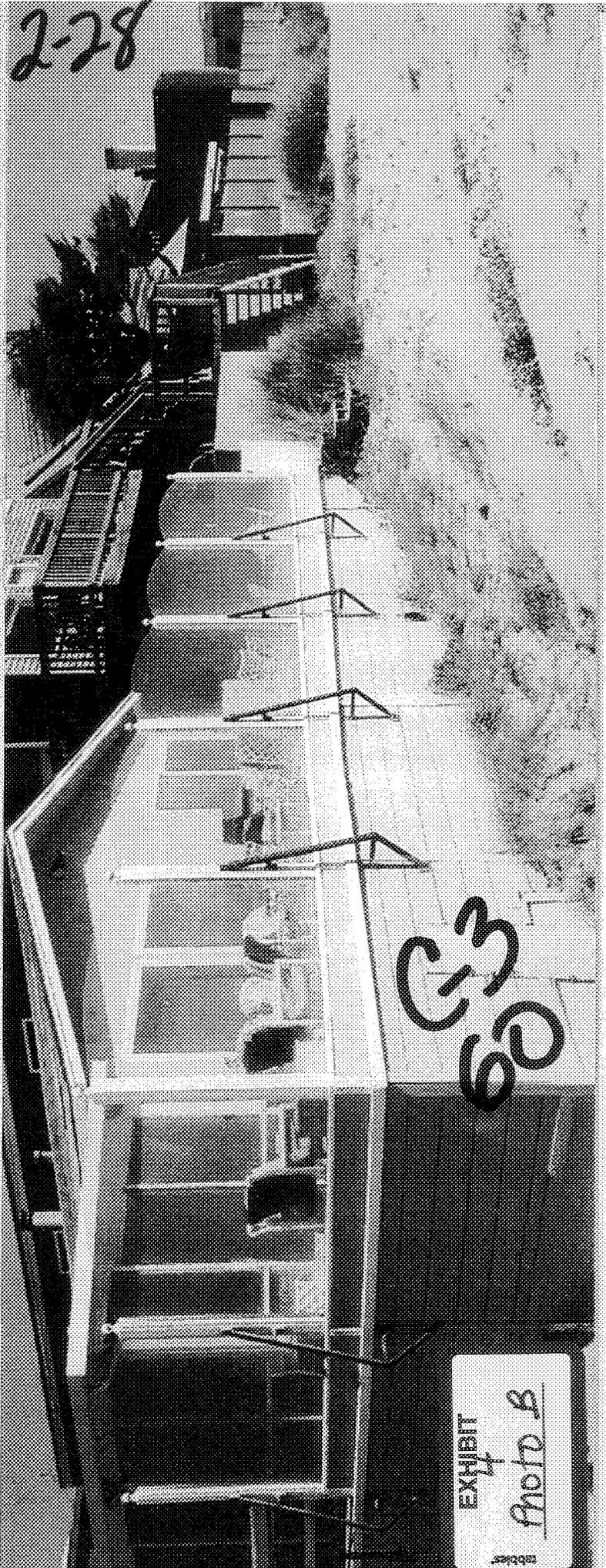
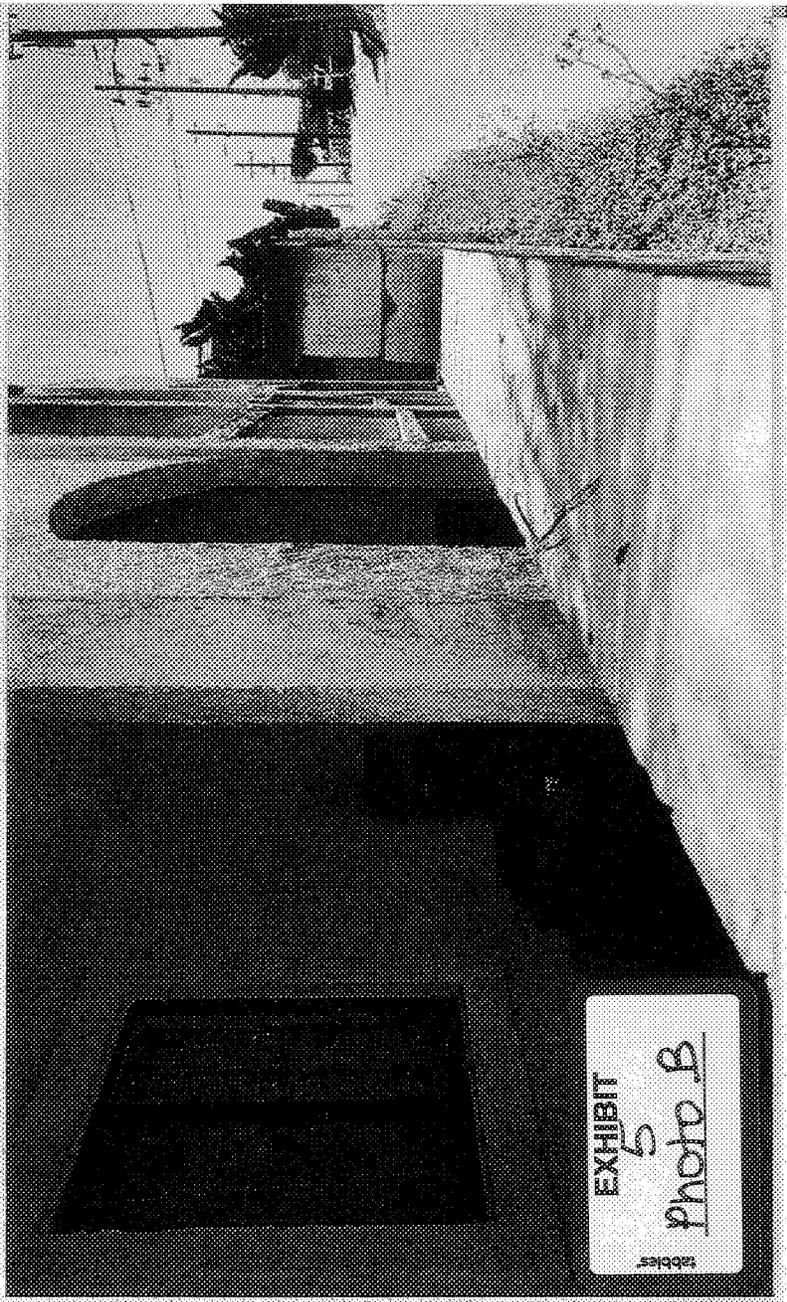
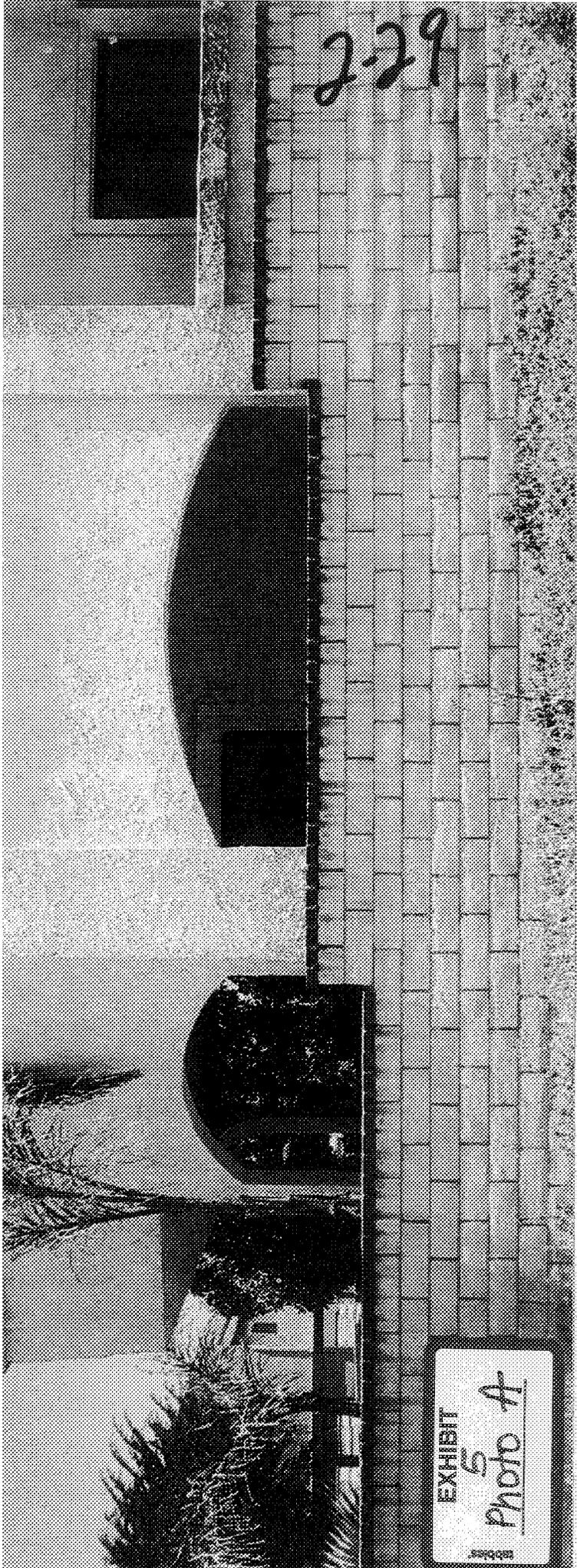
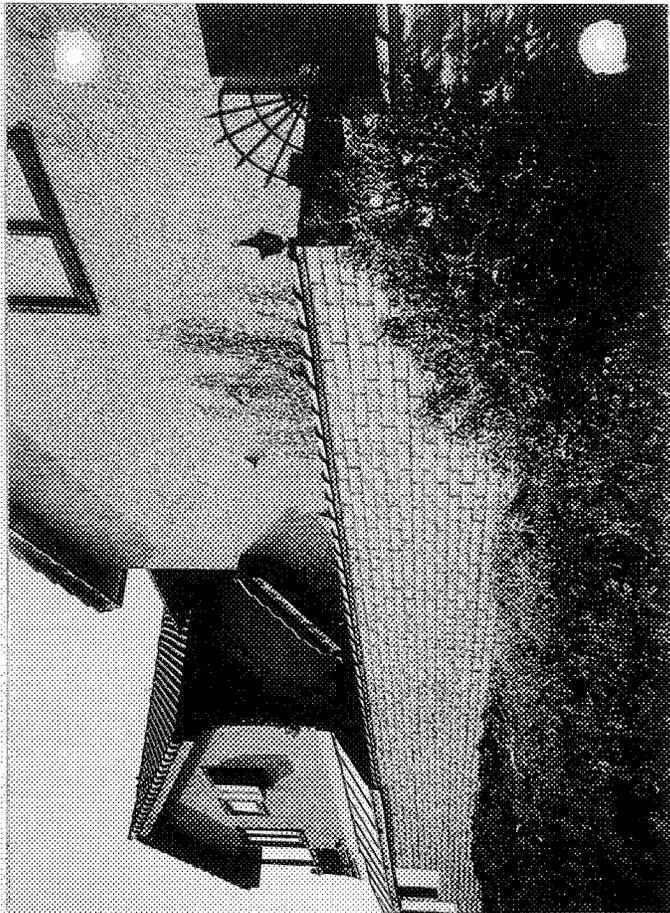


EXHIBIT  
4  
Photo B

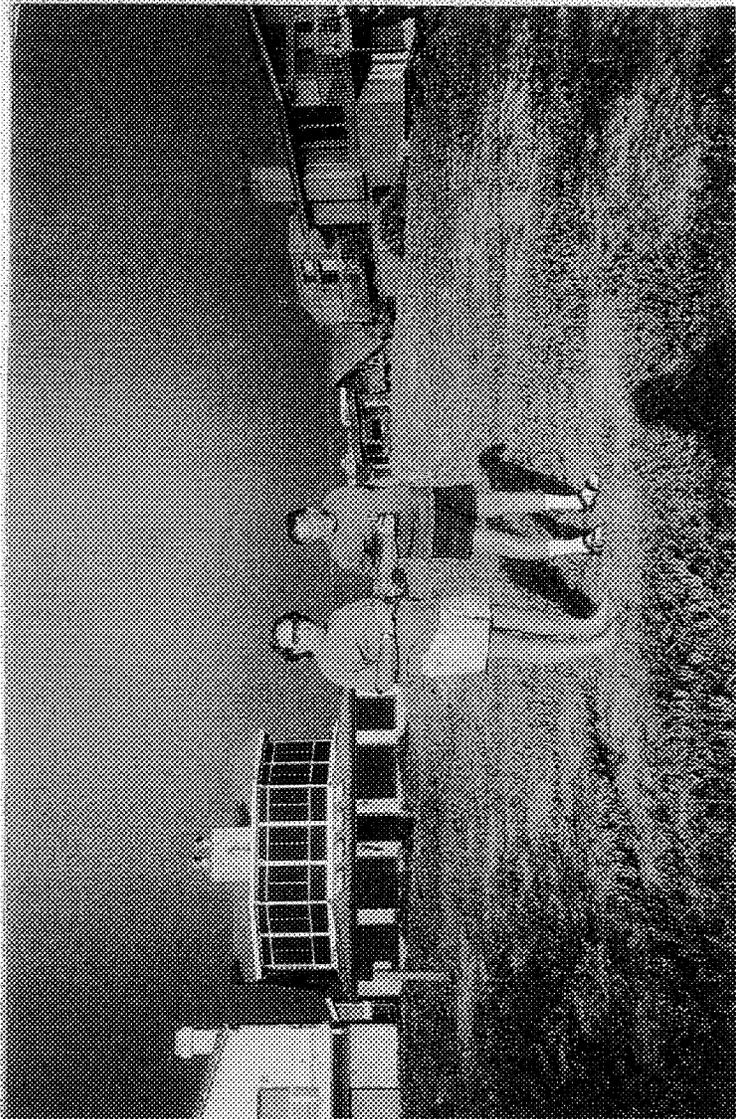
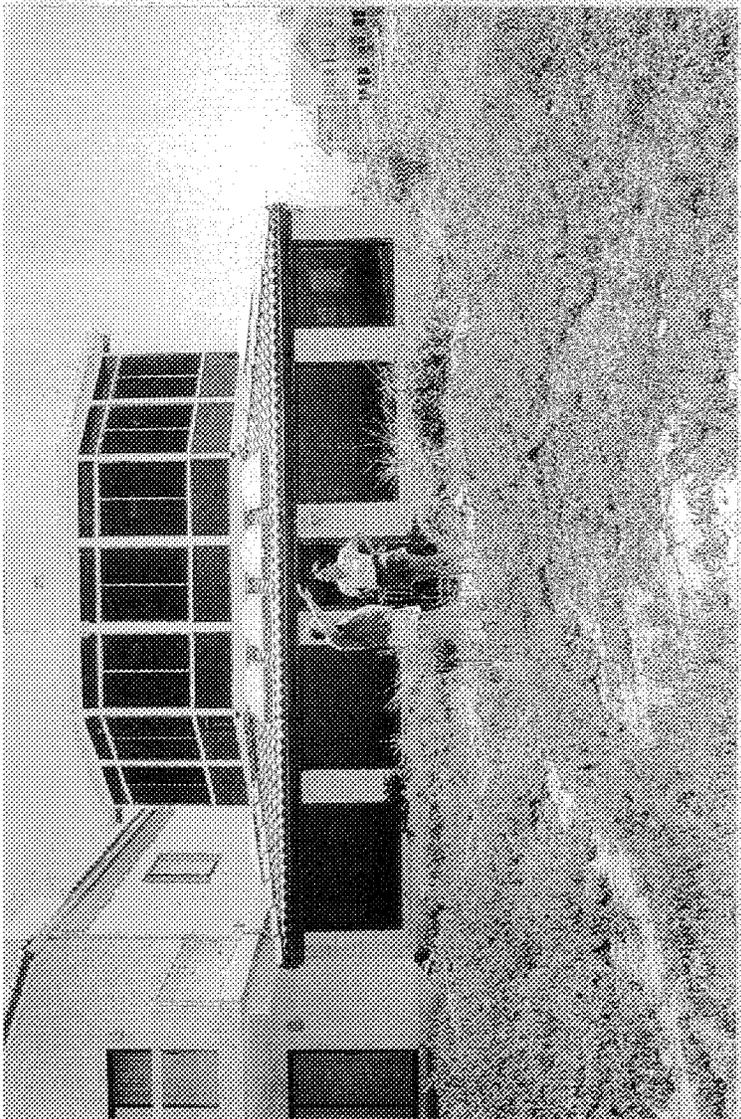


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C3  
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2-31

**BELSHER & BECKER**

ATTORNEYS AT LAW  
412 MARSH STREET

SAN LUIS OBISPO, CALIFORNIA 93401

JOHN W. BELSHER  
HOWARD MARK BECKER  
STEVEN P. ROBERTS  
GREGORY A. CONNELL

TELEPHONE (805) 542-9900  
FAX (805) 542-9949  
E-MAIL slolaw@belsherandbecker.com

May 20, 2005

MAY 23 2005

Marsha Lee, Project Planner  
San Luis Obispo County  
Department of Planning & Building  
County Government Center  
San Luis Obispo, CA 93408

Re: 1560 Strand Way / Parnel DRC 2004-00224 (APN 061-061-033)

Dear Ms. Lee:

We are in receipt of your correspondence dated May 4, 2005 outlining additional information needed before you believe you can accept our variance application. Your request for information related to other properties on Strand Way is not one of the supplemental information items listed in your variance application. This request will be difficult and nearly impossible to accomplish since it includes information not readily available to the applicant. We will make our best effort to obtain pictures of these properties.

As you are most likely aware, each State agency and each local agency shall compile one or more list that shall specify in detail, the information that will be required from any applicant for a development project. California Government Code §65940. Since your demand for supplemental information regarding other properties on Strand Way is not listed in the variance application, we believe this information regarding is not necessary for you to process the application as complete. Furthermore, the variance application should be deemed accepted since the 30 day review period, pursuant to Government Code §65943, had passed as of May 14, 2005.

We respectfully request that our application for variance be accepted as complete for processing. If you have any further questions, please do not hesitate to contact this firm.

Sincerely,



Gregory A. Connell, Esq.



GAC/ab

cc: clients

P:\Angela's Files\John's clients\Parnel\Marsha Lee 01.wpd

**CALIFORNIA GOVERNMENT CODE § 65940****CALIFORNIA CODES****CALIFORNIA GOVERNMENT CODE****Title 7. PLANNING AND LAND USE****Division 1. PLANNING AND ZONING****Chapter 4.5. REVIEW AND APPROVAL OF DEVELOPMENT PROJECTS****Article 3. Applications for Development Projects**

*Current through Stats 2005, Ch. 5*

**§ 65940.**

(a) Each state agency and each local agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project. Each local agency shall revise the list of information required from an applicant to include a certification of compliance with Section 65962.5, and the statement of application required by Section 65943. Copies of the information, including the statement of application required by Section 65943, shall be made available to all applicants for development projects and to any person who requests the information.

(b) (1) The list of information required from any applicant shall include, where applicable, identification of whether the proposed project is located within 1,000 feet of a military installation, beneath a low-level flight path or within special use airspace as defined in Section 21098 of the Public Resources Code, and within an urbanized area as defined in Section 65944.

(2) The information described in paragraph (1) shall be based on information provided by the Office of Planning and Research pursuant to paragraph (2) of subdivision (d) as of the date of the application. Cities, counties, and cities and counties shall comply with paragraph (1) within 30 days of receiving this notice from the office.

(c) (1) A city, county, or city and county that is not beneath a low-level flight path or not within special use airspace and does not contain a military installation is not required to change its list of information required from applicants to comply with subdivision (b).

(2) A city, county, or city and county that is entirely urbanized, as defined in subdivision (e) of Section 65944, with the exception of a jurisdiction that contains a military installation, is not required to change its list of information required from applicants to comply with subdivision (b).

(d) (1) Subdivision (b) as it relates to the identification of special use airspace, low-level flight paths, military installations, and urbanized areas shall not be operative until the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations, at a scale and in an electronic format that is acceptable to the Office of Planning and Research.

(2) Within 30 days of a determination by the Office of Planning and Research that the information

7-33

provided by the Department of Defense is sufficient and in an acceptable scale and format, the office shall notify cities, counties, and cities and counties of the availability of the information on the Internet.

**History.** Amended by Stats 2004 ch 906 (SB 1462), s 4, eff. 1/1/2005

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**CALIFORNIA GOVERNMENT CODE § 65943****CALIFORNIA CODES****CALIFORNIA GOVERNMENT CODE****Title 7. PLANNING AND LAND USE****Division 1. PLANNING AND ZONING****Chapter 4.5. REVIEW AND APPROVAL OF DEVELOPMENT PROJECTS****Article 3. Applications for Development Projects***Current through Stats 2005, Ch. 5***§ 65943.**

(a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

(b) Not later than 30 calendar days after receipt of the submitted materials, the public agency shall determine in writing whether they are complete and shall immediately transmit that determination to the applicant. If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.

There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.

(d) Nothing in this section precludes an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.

2-35

(e) A public agency may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

2-35

Last Name **PARREL, Frank & Jan**  
 Rural 4-13-87 E60



# Construction Permit

## San Luis Obispo County Planning Department

THIS PERMIT CONSTITUTES AUTHORIZATION BY THE COUNTY OF SAN LUIS OBISPO ALLOWING CONSTRUCTION OF THE PROJECT DESCRIBED HEREIN, SUBJECT TO ALL APPLICABLE PROVISIONS OF THE COUNTY CODE.

Project Address 1000 Strand Way Locality OCEANO P.N. 61-061431  
 Lot Number 14 Block 39 Tract / Other OCEANO BEACH  
 P.A. SLB Comm. OCMO LUC REF Comb. Desig. LOP/AR In Coastal Zone TR Lot Size 5000 sq ft  
 Owner (Name(s)) PARREL, Frank & Jan 615 E. Providence Avenue, Apt. F. Surfside, CA 91501 (909) 446-4100  
 Mailing Address Pacific Coastline Corporation P.O. Box 1454 Arroyo Grande, CA 93420 (805) 491-0492 Zip Code 93420 Business Hour Phone 491-0492  
 Contractor or Member Pacific Coastline Mailing Address Pacific Coastline Phone No. 491-0492 State License No. 481995  
 Architect, Engineer or Designer COMPLETED Phone No. \_\_\_\_\_ State License No. \_\_\_\_\_

### LEGAL DECLARATIONS

**LICENSED CONTRACTORS DECLARATION**  
 I am licensed under the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the California Business and Professions Code, and my license is in full force and effect.

License Class General Contracting  
 License Number B 481995  
 Contractor Pacific Coastline Date 3-20-86

**OWNER BUILDER DECLARATION: CBRA**  
 I am exempt from the contractor's license law for the following reason:  
 I, as owner of the property, or my employees with wages as their sole compensation will do the work, and the structure is not intended or offered for sale.  
 I, as owner of the property, am exclusively contracting with licensed contractors to construct the project.  
 I am exempt under Sec. \_\_\_\_\_ B, P. & C. for this reason \_\_\_\_\_

**WORKERS COMPENSATION DECLARATION**  
 I hereby affirm that I have a certificate of consent to self-insure, or a certificate of Workers Compensation Insurance, or a certified copy thereof (Sec. 3800, Calif. Labor Code).  
 Certified copy is hereby furnished.  
 Certified copy is filed with the county Planning Department.  
 Date 3-20-86 Applicant Pacific Coastline CBRA

**CERTIFICATE OF EXEMPTION FROM WORKERS COMP. INSURANCE**  
 I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Worker's Compensation Laws of California.  
 Date \_\_\_\_\_ Applicant \_\_\_\_\_

**CONSTRUCTION LENDING AGENCY**  
 I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Calif. Civil Code).  
 Lender's Name None  
 Lender's Address \_\_\_\_\_

**NOTICE**  
 The Uniform Building Code requires that this permit become null and void if work or construction authorized is not started within 180 days after the permit is issued, or if construction or work is suspended or abandoned for a period of 180 days any time after work is commenced.  
 I certify under penalty of perjury that I have read this application and state that the above information is correct. I agree to comply with all county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

Signature of Contractor or Authorized Agent [Signature]  
 Signature of Owner (If Owner Builder) \_\_\_\_\_  
 I.D. Verification \_\_\_\_\_ Date \_\_\_\_\_

**PROJECT INFORMATION**  
 Type of Project: GRADING  
 Proposed Use: SITE ELEVATION  
 Setbacks: Front \_\_\_\_\_ Sides \_\_\_\_\_ Rear \_\_\_\_\_  
 Habitable Floor Area \_\_\_\_\_ Garage \_\_\_\_\_ Barn \_\_\_\_\_  
 Carport \_\_\_\_\_ Covered Porch \_\_\_\_\_ Deck \_\_\_\_\_ Storage \_\_\_\_\_  
 No. Bedrooms \_\_\_\_\_ No. Bathrooms \_\_\_\_\_ No. Staircases \_\_\_\_\_  
 Retaining Wall Information: \_\_\_\_\_ Square Feet \_\_\_\_\_  
 Height \_\_\_\_\_ Length \_\_\_\_\_  
 Mobile/Modular Home Information: Manufacture \_\_\_\_\_  
 Year \_\_\_\_\_ Serial No. \_\_\_\_\_ D.O.H. No. \_\_\_\_\_  
 D.M.V. License No. \_\_\_\_\_ State \_\_\_\_\_ No. Bedrooms \_\_\_\_\_  
 Moved Building Information: \_\_\_\_\_ Locality \_\_\_\_\_  
 Present Location \_\_\_\_\_  
 Proposed Use \_\_\_\_\_ Tot. Lin. Ft. of Fdn. \_\_\_\_\_  
 Grading Information: Tot. Cut 900 (C.Y.)  
 Tot. Fill 900 (C.Y.) Area of Disturbance 5,000 (Sq. Yds.)  
 TYPE OF CONSTRUCTION: SLOPE 2%  
 Foundation \_\_\_\_\_ Frame \_\_\_\_\_ Roof Style \_\_\_\_\_  
 Roof Covering Material \_\_\_\_\_ Exterior Wall \_\_\_\_\_  
 Mechanical and Energy Information: Type Space Heating \_\_\_\_\_  
 Type Water Heating \_\_\_\_\_ Fireplace Type \_\_\_\_\_  
 Utility Information: Water Source \_\_\_\_\_  
 Sewage Disposal \_\_\_\_\_ Fuel Gas Type \_\_\_\_\_  
 Method of Energy Compliance \_\_\_\_\_

**FEES**

TOTAL VALUATION (for bids - items in \$ only)			
Plan Review	\$ 50.00	Building	\$
Energy Review	\$	Grading	\$ 150.00
Plot Plan	\$ 10.00	Plumbing	\$
Microform	\$ 4.00	Electrical	\$
Drainage	\$	Mechanical	\$
Fire Plan	\$	SMIP Tax	\$
Tree Removal	\$	Encroachment	\$
Adjustment	\$		\$
Investigation	\$		\$
Violation Fee	\$		\$
Subtotal	\$ 70.00	Subtotal	\$ 150.00
		Total Fees	\$ 220.00

**REQUIREMENTS FOR FINAL INSPECTION**

_____	Curb, gutter and sidewalk	_____	Fire Safety Improvements
_____	Road Tax	_____	Parking Lot Improvements
_____	Land Use Permit Conditions	_____	Fencing Improvements
_____	Landscaping Improvements	_____	Other
_____	Encroachment Type	_____	Other

**Private Sewage Disposal System Requirements:**  
 Gallon Septic Tank \_\_\_\_\_ Sq. Ft. Leach Area \_\_\_\_\_

**SPECIAL CONDITIONS:**  
 Date Received: 3-22-86 Receipt No. 101235-Mm  
 Ready To Issue Date: 3/27/86 By Charles  
 Date Issued: 3-27-86 Issued By: Frank Parsons

PERMIT NO. 53081

*[Handwritten initials]*

# Construction Permit

## San Luis Obispo County Planning Department

Last Name: PARNELL 54314  
**PARNELL, Frank & Jan**  
 Final 9-13-87

THIS PERMIT CONSTITUTES AUTHORIZATION BY THE COUNTY OF SAN LUIS OBISPO ALLOWING CONSTRUCTION OF THE PROJECT DESCRIBED HEREIN, SUBJECT TO ALL APPLICABLE PROVISIONS OF THE COUNTY CODE.

Project Address: 1560 Strand Way Locality: OCEANO A.P.N. 61-061-33  
 Lot Number: 19 Block: 39 Tract / Other: OCEANO BEACH #2  
 P.A. SLB Comm: OC90 LUC: RME Comb. Desig: ICP/AR In Coastal Zone: IN Lot Size: 30x100  
 Owner Name(s): PARNELL, Frank & Jan 615 E. Providencia Ave. Apt F, Burbank, CA 91501  
 Mailing Address: Pacific Coastline Corp (Ed Mueller) P.O. Box 1454 Agroyo Grande, CA 93420 Zip Code: (805) 481-9492 Business Hour Phone:  
 Contractor or Mover: Scott Hfeks 1367 Grand Ave. Grover City, CA 93433 Phone No: 481-3729 State License No:  
 Architect, Engineer or Designer: \_\_\_\_\_ Mailing Address: \_\_\_\_\_ Phone No: \_\_\_\_\_ State License No: \_\_\_\_\_

### LEGAL DECLARATIONS COMPLETED

LICENSED CONTRACTORS DECLARATION:  
 I am licensed under the provisions of Chapter 11300 of the California Business and Professions Code with Section 70007 of Division 3 of the California Business and Professions Code. DATE: 4-13-87

License Class: B  
 License Number: 481995  
 Contractor: Pacific Coastline Corporation Date: Aug 29-86

OWNER BUILDER DECLARATION:  
 I am exempt from the contractor's license law for the following reason:  
 I, as owner of the property, or my employees with wages as their sole compensation will do the work, and the structure is not intended or offered for sale.  
 I, as owner of the property, am exclusively contracting with licensed contractors to construct the project.  
 I am exempt under Sec. \_\_\_\_\_ B, P. & C. for this reason: \_\_\_\_\_

Date: \_\_\_\_\_ Applicant: \_\_\_\_\_  
**WORKERS COMPENSATION DECLARATION**  
 I hereby affirm that I have a certificate of consent to self-insure, or a certificate of Workers Compensation Insurance, or a certified copy hereof (Sec. 3800, Calif. Labor Code).  
 Certified copy is hereby furnished.  
 Certified copy is filed with the county Planning Department.  
 Date: Aug 29/86 Applicant: Pacific Coastline Corp

**CERTIFICATE OF EXEMPTION FROM WORKERS COMP. INSURANCE**  
 I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Worker's Compensation Laws of California.  
 Date: \_\_\_\_\_ Applicant: \_\_\_\_\_

**NOTICE TO APPLICANT:** If, after making this Certificate of Exemption, you should become subject to the Worker's Compensation provisions of the Labor Code, you must comply with such provisions or this permit shall be deemed revoked.  
**CONSTRUCTION LENDING AGENCY**  
 I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Calif. Civil Code).  
 Lender's Name: Foul  
 Lender's Address: \_\_\_\_\_

**NOTICE**  
 The Uniform Building Code requires that this permit become null and void if work or construction authorized is not started within 180 days after the permit is issued, or if construction or work is suspended or abandoned for a period of 180 days any time after work is commenced.  
 I certify under penalty of perjury that I have read this application and state that the above information is correct. I agree to comply with all county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

Signature of Contractor or Authorized Agent: Pacific Coastline Corporation  
Edmund Mueller  
 Signature of Owner (If Owner Builder): \_\_\_\_\_  
 I.D. Verification: \_\_\_\_\_ Date: \_\_\_\_\_

**PROJECT INFORMATION**  
 Type of Project: SFD  
 Proposed Use: CONSTRUCT NEW SFD  
 Setbacks: Front 24 Sides 3 Rear 10  
 Habitable Floor Area: 876 Garage: 500 Barn: \_\_\_\_\_  
 Carport: \_\_\_\_\_ Deck: \_\_\_\_\_ Storage: \_\_\_\_\_  
 No. Bedrooms: \_\_\_\_\_ No. Bathrooms: 3 No. Stories: 2  
 Retaining Wall Information: \_\_\_\_\_ Square Feet: \_\_\_\_\_  
 Height: \_\_\_\_\_ Length: \_\_\_\_\_  
 Mobile/Modular Home Information: Manufacturer: \_\_\_\_\_  
 Year: \_\_\_\_\_ Serial No: \_\_\_\_\_ D.O.B. No: \_\_\_\_\_  
 D.M.V. License No: \_\_\_\_\_ State: \_\_\_\_\_ No. Bedrooms: \_\_\_\_\_  
 Moved Building Information: Locality: \_\_\_\_\_  
 Present Location: \_\_\_\_\_  
 Proposed Use: \_\_\_\_\_ Tot. Lin. Ft. of Fdn: \_\_\_\_\_  
 Grading Information: Tot. Cut: \_\_\_\_\_ Cu. Yds. Area of Disturbance: \_\_\_\_\_  
 Tot. Fill: \_\_\_\_\_ Cu. Yds. Area of Disturbance: \_\_\_\_\_

**TYPE OF CONSTRUCTION**  
 Foundation: slab Frame: wood Roof Slope: 5/12  
 Roof Covering Material: tile Exterior Wall: stucco  
 Mechanical and Energy Information: Type Space Heating: gas  
 Type Water Heating: solar Fireplace Type: X  
 Utility Information: Water Source: comm  
 Sewage Disposal: comm Fuel Gas Type: natural  
 Method of Energy Compliance: \_\_\_\_\_

**FEES**

Plan Review	\$ 312.33	Building	\$ 480.50
Energy Review	\$ 48.05	Grading	\$ 62.00
Pilot Plan	\$ 15.00	Plumbing	\$ 59.40
Microform	\$ 4.00	Electrical	\$ 19.76
Drainage	\$	Mechanical	\$ 8.32
Fire Plan	\$	SMIP Tax	\$ 25.00
Tree Removal	\$	Encroachment	\$
Adjustment	\$		\$
Investigation	\$		\$
Violation Fee	\$		\$
Subtotal	\$ 379.38	Subtotal	\$ 655.98
Total Fee	\$ 1035.36		

**REQUIREMENTS FOR FINAL INSPECTION**  
 Curb, gutter and sidewalk \_\_\_\_\_ Fire Safety Improvements \_\_\_\_\_  
 Road Tax \_\_\_\_\_ Parking Lot Improvements \_\_\_\_\_  
 Land Use Permit Conditions \_\_\_\_\_ Fencing Improvements \_\_\_\_\_  
 Landscaping Improvements \_\_\_\_\_ Other \_\_\_\_\_  
 Encroachment Type \_\_\_\_\_ Other \_\_\_\_\_

**Private Sewage Disposal System Requirements:**  
 Gallon Septic Tank: \_\_\_\_\_ Sq. Ft. Leach Area: \_\_\_\_\_

**SPECIAL CONDITIONS:**  
 Date Received: \_\_\_\_\_ Receipt No: \_\_\_\_\_  
 Ready To Issue Date: 8/29/86 By: Ed Mueller  
 Date Issued: 8-28-86 Issued By: Se Foul

PERMIT NO. 54314  
 CA  
 03

53081

MAR 21 REC'D  
GRADING OK

# Construction Permit Application

## San Luis Obispo County Planning Department

### SITE INFORMATION, 1500

Project Address 3363 Strand Way, Oceano, CA 93445 Locality Oceano  
Lot Number 14 Block 39 Tract Oceano Beach or: Sec \_\_\_\_\_ TSP \_\_\_\_\_  
Assessor Parcel Number(s) 61-061-33 Lot Size 3074 Date of App. 3/19

### APPLICANT INFORMATION

("x" contact person) 615 E. Providencia Avenue, Apt. F  
( ) Frank and Jan Parnel, Burbank, CA 91501 (805) 846-8180  
Owner Name(s) Mailing Address City, State, Zip Code Business Hour Phone  
P. O. Box 1454  
(x) Pacific Coastline Corporation, Arroyo Grande, CA 93420 (805) 481-9492  
Contractor Mailing Address City, State, Zip Code Bus. Hr. Phone License No.  
B481995  
( ) Architect, Engineer or Designer Mailing Address City, State, Zip Code Bus. Hr. Phone License No.

### PROJECT DESCRIPTION

TYPE (X) All new ( ) Addition ( ) Alteration ( ) Repair ( ) Demolish ( ) Moved Building ( )  
OF (X) Single-Family Dwelling ( ) Multi-Family Dwelling ( ) Mobile Home ( ) Barn (X) Grading  
PROJECT ( ) Sign ( ) Commercial ( ) Industrial ( ) Other  
NOTE: Describe Specific Project REMOVE EXISTING GRADING

### AREA AND SIZES PROPOSED

Total Habitable Floor Area 1976 Garage Area 520 Barn N/A Storage Area N/A  
Deck Area 246 Height Above Finish Grade 25' Garport Area \_\_\_\_\_ Covered Porch Area N/A  
No. of Bedrooms 2 No. of Bathrooms 3 No. of Stories 2 Retaining/Garden Wall Area \_\_\_\_\_ Height 5' Length 300'

### MOVED BUILDING(S) N/A

Existing Location \_\_\_\_\_ Locality \_\_\_\_\_

### MANUFACTURED HOUSING N/A

Manufacturer \_\_\_\_\_ Serial Number \_\_\_\_\_ Dept. of Housing No. \_\_\_\_\_  
Number of Bedrooms \_\_\_\_\_ Size \_\_\_\_\_ DMV License Number \_\_\_\_\_ Year \_\_\_\_\_ State \_\_\_\_\_

### GRADING

Depth of Cuts (min. & max.) 7 1/2 Depth of Fills (min. & max.) \_\_\_\_\_ Cu. Yds. Cut 900 Fill \_\_\_\_\_  
Total Cu. Yds. of Material 900 Area of Site Disturbance 5000

### TYPE OF CONSTRUCTION

Foundation: (X) Slab ( ) Pier/Block & Fill ( ) Pole ( ) Other  
Framework: (X) Wood Stud ( ) Masonry ( ) Metal ( ) Timber  
Exterior Siding: (X) Stucco ( ) Plywood ( ) Board ( ) Stone Veneer  
( ) Brick Veneer ( ) Concrete Tilt-up ( ) Metal ( ) Other  
Roof Pitch 5/12 Material: ( ) Wood Shakes, Shingles (X) Tile ( ) Built-up Comp. ( ) Comp. Shingles  
( ) Metal ( ) Other

### MECHANICAL AND ENERGY INFORMATION

METHOD OF ENERGY COMPLIANCE \_\_\_\_\_  
TYPE OF SPACE HEATING: LIST MFG., MODEL #, AND SERIAL OF EACH APPLIANCE  
(X) Gas \_\_\_\_\_ (X) Fireplace \_\_\_\_\_  
( ) Butane LPG, etc. \_\_\_\_\_ Other \_\_\_\_\_  
( ) Active Solar \_\_\_\_\_  
( ) Passive Solar \_\_\_\_\_  
( ) Electric Heatpump \_\_\_\_\_  
TYPE OF SPACE-COOLING (A.C.): N/A  
TYPE OF WATER HEATING: Solar

### UTILITIES

WATER: ( ) well (X) public SEWAGE DISP: ( ) septic (X) sewer ( ) GAS: (X) Natural ( ) LPG ( ) TERRY POWER



Handwritten initials or signature: "CB 70"

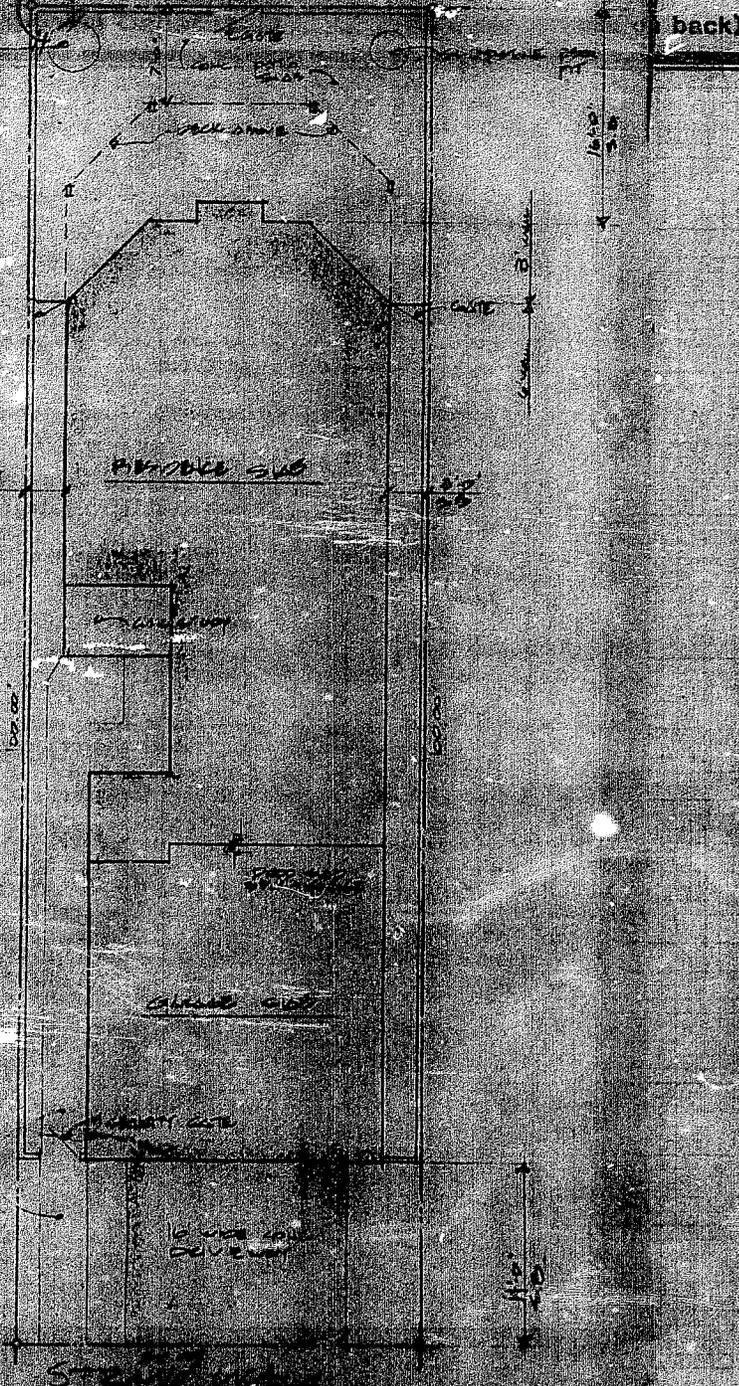
Prope  
San Luis

Beach 2-37

Parcel

# 54314

North  
→



REQUIREMENT	COMPLETED	INITIALS/DATE
<input checked="" type="checkbox"/> BOND VERIFICATION		19770
<input type="checkbox"/> FIRE SAFETY PLAN		
<input type="checkbox"/> LAND USE APPROVAL		
<input type="checkbox"/> LEGAL DECLARATIONS		
<input type="checkbox"/> GRADING APPROVAL		8/27/86
<input type="checkbox"/> COUNTY ENGINEERING		
<input type="checkbox"/> RECORD DOCUMENT		
<input type="checkbox"/> PERFORMANCE BOND		
<input type="checkbox"/> TREE REMOVAL		
<input checked="" type="checkbox"/> SPECIAL DISTRICT	see letter attached	
<input type="checkbox"/> INSPECTOR VERIFY		
<input checked="" type="checkbox"/> BALANCE OF FEES	655.98	
<input checked="" type="checkbox"/> OTHER	Sign Coastal view notice	
<input checked="" type="checkbox"/> OTHER	School Fees attached	

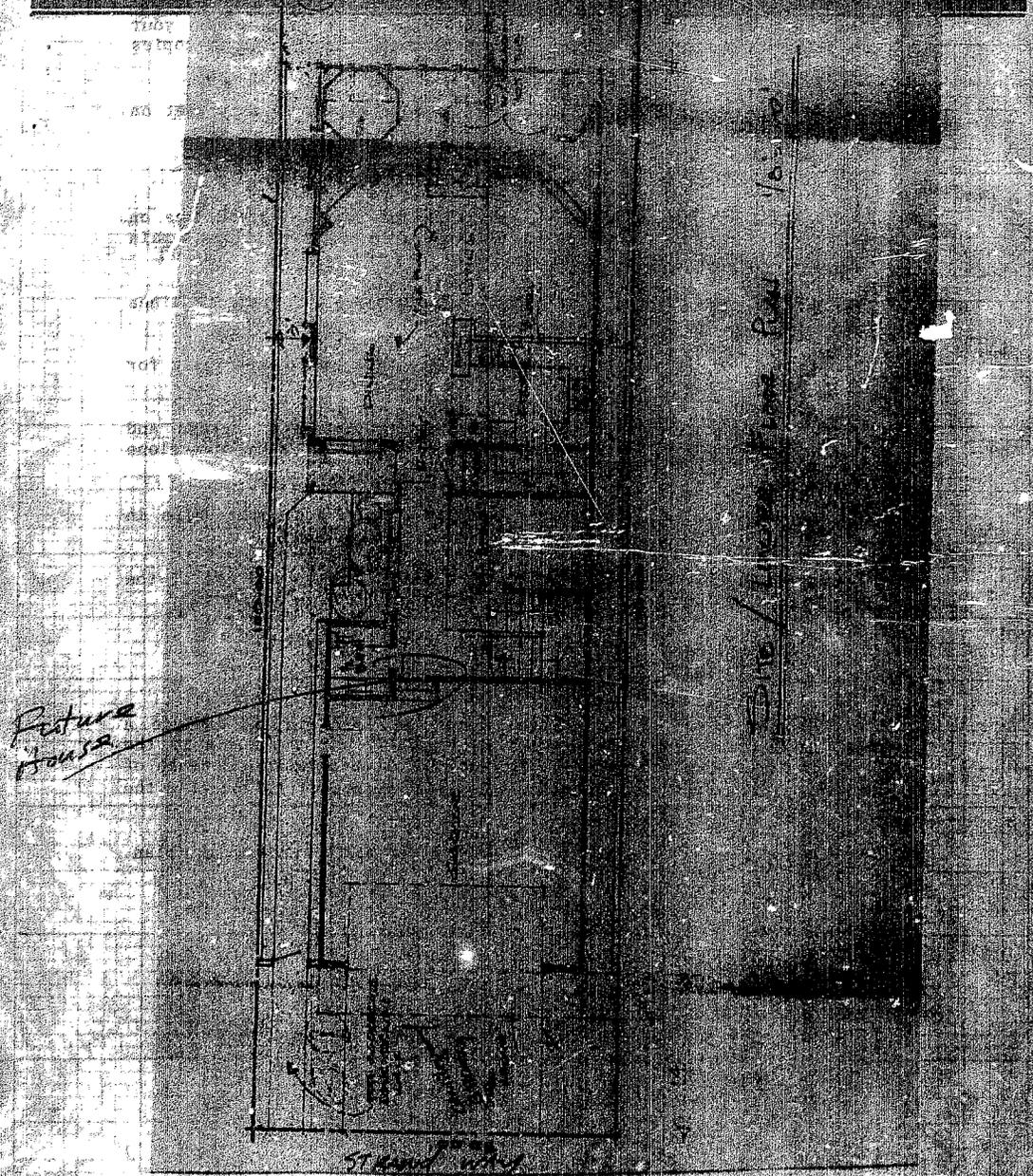


2-40

North →

Property  
San Luis Obispo

(in back)

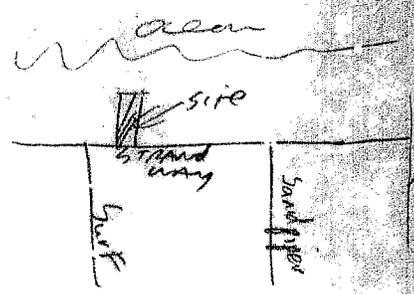


Pasture House

Site/Lines from Plan 1/8-80

STANDWAY

VICINITY MAP



TO BE COMPLETED BY STAFF

- | REQUIREMENTS TO BE MET PRIOR TO PERMIT ISSUANCE:    | INITIAL/DATE |
|---|--------------|
| <input type="checkbox"/> DEED VERIFICATION          | _____        |
| <input type="checkbox"/> FIRE SAFETY PLAN           | _____        |
| <input type="checkbox"/> LAND USE APPROVAL          | _____        |
| <input type="checkbox"/> LEGAL DECLARATIONS         | _____        |
| <input type="checkbox"/> GRADING APPROVAL           | _____        |
| <input type="checkbox"/> COUNTY ENGINEERING         | _____        |
| <input type="checkbox"/> RECORD DOCUMENT            | _____        |
| <input type="checkbox"/> PERFORMANCE BOND           | _____        |
| <input type="checkbox"/> TREE REMOVAL               | _____        |
| <input type="checkbox"/> SPECIAL DISTRICT           | _____        |
| <input type="checkbox"/> INSPECTOR VERIFY           | _____        |
| <input checked="" type="checkbox"/> BALANCE OF FEES | 1500.00      |
| <input type="checkbox"/> OTHER                      | _____        |
| <input type="checkbox"/> OTHER                      | _____        |

Handwritten initials and the number 12.



7-42

PERMANENT INSPECTION RECORD

PERMIT NO.:

FOR:

SETBACKS AND FOUNDATION - TO BE INSPECTED PRIOR TO CONCRETE PLACEMENT

SETBACKS	EXPANSIVE INDEX
FOOTINGS	FLOOR ELEVATION
HOUSE SLAB	CONC. ENCASED ELECT.
GARAGE SLAB	TEMP. POWER @ MAIN/OTHER
OTHER FOOTING	OTHER
RETAINING WALL	

SUB-FLOOR/UNDER SLAB - PRIOR TO CONCRETE PLACEMENT OR FLOOR SHEATHING

JOIST AND SILLS	
DRAIN PLUMBING	
WATER PIPING	
ACCESS & VENTILATION	

ROUGH FRAMING INSPECTIONS - PRIOR TO INSULATION AND WALL COVERINGS

FRAMING	FIREPLACE
SHEAR - EXTERIOR	CHIMNEY
FRAMING HWD.-EXT.	PLUMBING
SHEAR - INT.	WIRING
FRAMING HWD.-ING.	HVAC
ROOF NAILING	
ROOF FRAMING	
BUILDING HEIGHT	

LATH / GYPSUM WALL BOARD / INSULATION / MISC.

EXTERIOR LATH	DRYWALL
INSULATION - FLOOR	INTERIOR GAS
INSUL - WALLS	SHOWER PAN
INSUL - CEILING	
OTHER	

EXTERIOR / UTILITIES

SEWER LINE	EXTERIOR GAS PIPING
BACK WATER VALVE	GAS PIPE SIZE/TYPE
SEPTIC TANK	WATER LINE
TANK SIZE	ELECT. CONDUIT
LEACH FIELD	
LEACH AREA/TYPE	

FINAL INSPECTIONS

BUILDING 79W 4-11-97	GRADING/DRAINAGE
PLUMBING N/A	ROOF COVERING
MECHANICAL N/A	FIRE INSPECTION
ELECTRICAL 79W 4-11-97	ENCROACHMENT
ELECT. MTR. TAG N/A	PLANNING REVIEW
GAS TAG	OTHER

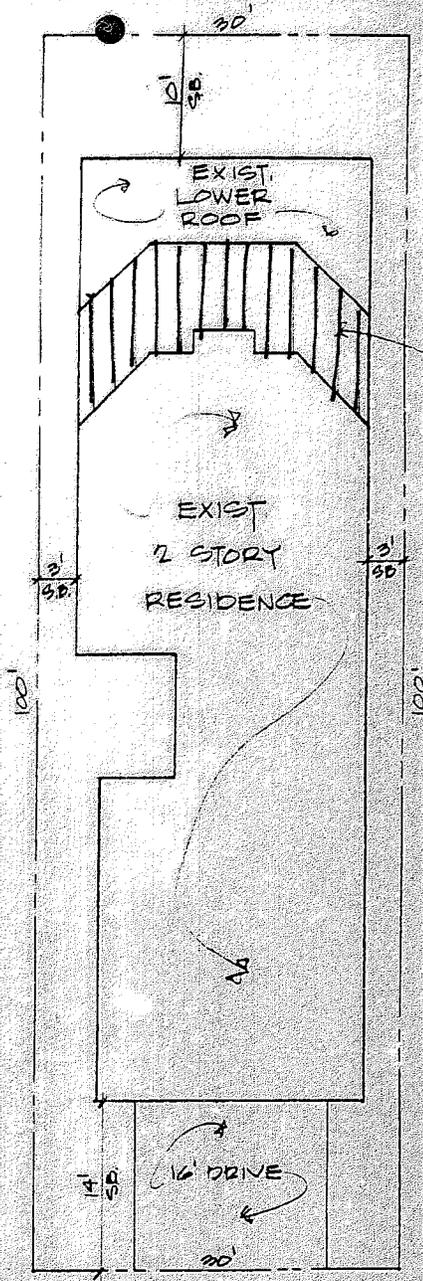
COMMENTS

Meeting with Ted at site - 79W 4-11-97

CB  
74

243

10. ENCLOSURE  
- AS PER ICBD  
30P. PROJECT  
WITH 1994 LBC,  
& ALL STATE &  
NCES THAT



PROPOSED PATIO  
ENCLOSURE ON EXIST  
UPPER DECK

STRAND WAY

PLOT PLAN

1" = 10'

CS  
75

# INSPECTION RECORD CARD

County of San Luis Obispo  
Department of Planning and Building  
Phone: SLO Office 781-5602  
No. County: 461-6136 Cambria: 927-3293

2-44

OWNER Parnel  
LOCATION 1560 Strand Way, Oceano  
PERMIT NO. A0419 DATE ISSUED 2-28-97  
PROJECT TYPE patio enclosure  
CONTRACTOR \_\_\_\_\_

## FOUNDATION, SETBACK & BLOCK INSPECTIONS

To Be Made Before Concrete is Placed	Setbacks _____
	Footings, Forms, Steel _____
	Slab: House _____ Garage _____
	Block, Steel (Pre-Grout) _____
	Concrete-Encased Ground _____
	Other Footings _____

## SUBFLOOR & UNDER-SLAB INSPECTIONS

To Be Made Before Subfloor Or Slab Is Installed	Plumbing _____
	Ducts, Gas Lines _____
	Joists, Sills, _____
	Girders _____

## ROUGH INSPECTIONS

To Be Made Before Insulation Or Drywall Is Installed	Roof Framing & Nailing _____
	Shear _____
	Framing _____
	Plumbing _____
	Electrical _____
	Mechanical _____
	Fireplace/Chimney _____
	Stucco Wire, Lath _____

Insulation: Floor \_\_\_\_\_ Wall \_\_\_\_\_ Ceiling \_\_\_\_\_  
Drywall \_\_\_\_\_  
Gas Lines (Interior) \_\_\_\_\_  
Shower Pan \_\_\_\_\_

## OUTDOOR UTILITY INSPECTIONS

To Be Made Before Backfilling	Sewer _____
	Septic: Tank _____ Field _____
	Gas Lines (Exterior) _____
	Water Lines _____
	Electrical Conduit/Cable _____

## FINAL INSPECTIONS

Other Agency Approvals	Development Review _____
	Fire Department _____
	Encroachment _____
	Service District _____
	Other _____

Do Not Occupy Building Until These Items Are Signed	Roof Covering _____
	Grading/Drainage _____
	Plumbing _____
	Electrical <u>JAW 4-11-97</u> Tag# <u>N/A</u>
	Mechanical <u>N/A</u>
	Building <u>JAW 4-11-97</u>

C3  
16



2-46

# Construction Permit Application

No. B916136-001  
OK to issue by \_\_\_\_\_

San Luis Obispo County Department of Planning and Building

Note: If the project is located within the coastal zone, this application must be accompanied by a Coastal Development Permit Supplement.

**SITE INFORMATION**  
Project Address: 15100 Strand Way Locality: Oceano  
Lot Number: \_\_\_\_\_ Block: \_\_\_\_\_ Tract: \_\_\_\_\_ Sr. Sec: \_\_\_\_\_ TSP: \_\_\_\_\_ Range: \_\_\_\_\_  
Assessor Parcel Number(s): 0101-001-033 Lot #1: 3000 Date of App: \_\_\_\_\_

**APPLICANT INFORMATION (\*1\* contact person)**

Owner Name(s): Frank Parnel see above Phone: 481-7110  
Contractor of Work Name: Day Const 1107 Elcamino Road Business Hour Phone: 489-1877  
Contractor of Work Name: \_\_\_\_\_ Hailing Address: \_\_\_\_\_ City, State, Zip Code: \_\_\_\_\_ Bus. Hr. Phone: \_\_\_\_\_ License # \_\_\_\_\_  
Architect, Engineer or Designer: \_\_\_\_\_ Hailing Address: \_\_\_\_\_ City, State, Zip Code: \_\_\_\_\_ Bus. Hr. Phone: \_\_\_\_\_ License # \_\_\_\_\_

**PROJECT DESCRIPTION**

TYPE:  All new  Addition  Alteration  Repair  Demolish  Moved Building  
OF:  Single-Family Dwelling  Multi-Family Dwelling  Mobile Home  Barn  Grading  
PROJECT:  Garage  Sign  Commercial  Industrial  Other \_\_\_\_\_  
USE: Describe specific project: Patio Enclosure 200 sq ft

**AREA AND SIZES PROPOSED**

Residential/Comm. \_\_\_\_\_ Garage Area \_\_\_\_\_ Barn \_\_\_\_\_ Storage Area \_\_\_\_\_  
Deck Area \_\_\_\_\_ Roof Height Above Average Grade \_\_\_\_\_ Carport Area \_\_\_\_\_ Covered Porch Area \_\_\_\_\_  
No. of Bedrooms \_\_\_\_\_ No. of Bathrooms \_\_\_\_\_ No. of Stories \_\_\_\_\_ Retaining/Garden Wall Height \_\_\_\_\_ Length \_\_\_\_\_

**EXISTING LOCATION**

Existing Location: \_\_\_\_\_ Locality: \_\_\_\_\_  
**MANUFACTURED HOUSING**  
Manufacturer: \_\_\_\_\_ Serial Number: \_\_\_\_\_ Dept. of Housing No. \_\_\_\_\_  
Number of Bedrooms: \_\_\_\_\_ Size: \_\_\_\_\_ DWV License Number: \_\_\_\_\_ Year: \_\_\_\_\_ State: \_\_\_\_\_

**GRADING**

Depth of Cuts (min. & max.): \_\_\_\_\_ Depth of Fills (min. & max.): \_\_\_\_\_ Cu. Yds. Cut: \_\_\_\_\_ Fill: \_\_\_\_\_  
Total Cu. Yds. of Material: \_\_\_\_\_ Slope %: \_\_\_\_\_ Area of Site Disturbance: \_\_\_\_\_

**TYPE OF CONSTRUCTION**

Foundation:  Slab  Perimeter & Piers  Pole  Other: deck  
Framework:  Wood Stud  Masonry  Metal  Timber  
Exterior Siding:  Stucco  Plywood  Board  Stone Veneer  
 Brick Veneer  Concrete Tilt-up  Metal  Other \_\_\_\_\_  
Roof Pitch: \_\_\_\_\_ Material:  Wood Shakes, Shingles  Tile  Built-up Comp.  Comp. Shingle  Metal  Other \_\_\_\_\_

**MECHANICAL AND ENERGY INFORMATION**

**METHOD OF ENERGY COMPLIANCE**  
TYPE OF SPACE HEATING: LIST MFR., MODEL #, AND SIZE OF EACH APPLIANCE  
 Gas \_\_\_\_\_  Fireplace \_\_\_\_\_  
 Butane LPG, etc. \_\_\_\_\_ Other \_\_\_\_\_  
 Active Solar \_\_\_\_\_ TYPE OF SPACE COOLING (A.C.) \_\_\_\_\_  
 Passive Solar \_\_\_\_\_  
 Electric Heatpump \_\_\_\_\_ TYPE OF WATER HEATING \_\_\_\_\_  
**UTILITIES**  
WATER:  Well  Public  SEWAGE DISPOSAL:  Private  Public  GAS:  Natural  LPG  TENS POWER:

**SPECIAL REQUIRED CERTIFICATIONS**

This application must include the following: A. A signed verification of project location relative to known hazardous waste and substance site pursuant to AB 3750; and, B. Signed acknowledgment of receipt of applicant notice as provided under the California Government Code.

OFFICE USE ONLY	OCCUPANCY GROUP	TYPE OF CONSTRUCTION	PLAN CHECK INITIALS	DATE
Sq. ft. sq.	-	TOTAL VALUATION (for bidg. permit use only) = \$		
Sq. ft. sq.	-	Plot Check = \$	Building = \$	
Sq. ft. sq.	-	Energy Review = \$	Grading = \$	
Sq. ft. sq.	-	Plot Plan = \$	Plumbing = \$	
		Microform = \$	Electrical = \$	
		Drainage = \$	Mechanical = \$	
		Fire Plan = \$	SHIP Tax = \$	
		Tree Removal = \$	Encroachment = \$	
		Adjustment = \$		
		Investigation = \$		
		Violation Fee = \$		
		Coastal Fee = \$	Subtotal = \$	
		"Subtotal" = \$	Total Fee = \$	

PROJECT: Patio enclosure  
LDC CAT: RMF CON. DESIGN: NAS  
PLAN AREA/USE OR VIL. AREA: CAZ, AR, LU  
PARKING SPACES REQ. Coastal zone ( ) in ( ) out  
IF IN, COMPLETE A COASTAL DEVELOPMENT PERMIT  
COUNTY ROAD NO. \_\_\_\_\_ MAP NO. \_\_\_\_\_  
STREETS: Front 14 St. Name Strand Rear 10  
SIGNS: ( ) 3 ( ) 2 ( ) 1 ( ) No  
BUILDING HEIGHT: 8'6" Proposed 22 Basis N  
LAND USE/DIVISIONS: \_\_\_\_\_ Requirements for final inspection:  
LDC/LDO STANDARDS: \_\_\_\_\_ ( ) Land Use Conditions ( ) Fire Safety Inspection  
ENFORCEMENT CASE: ( ) Yes ( ) No ( ) Other \_\_\_\_\_  
PLANNER'S INITIALS: BE Date: 2/27/97

2 root #

no project into set back

781-5600  
PLEASE CALL FOR A APPOINTMENT.  
2 FULL SETS OF PLANS -

PAGE 2  
27-339  
271/103262  
Revised 2/12/97

Receipt No. \_\_\_\_\_ Date \_\_\_\_\_ Receipt No. \_\_\_\_\_ Date \_\_\_\_\_



Construction Permit

2-47

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

County Government Center ■ San Luis Obispo, California 93408 ■ Telephone (805) 781-5600

I hereby affirm under penalty of perjury that I am licensed under provisions of chapter 9 (commencing with Section 7000) of Division 5 of the Business and Professions Code, and my license is in full force and effect.

License class B C20 Lic. No. 336439
Date 2/28/97 Contractor Day Const

WORKERS COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following:

I have and will maintain a certificate of consent to self-insure for workers compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

I have and will maintain workers compensation insurance as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers compensation insurance carrier and policy number are:

Carrier
Policy Number

(This section need not be completed if the permit is for one hundred dollars (\$100) or less).

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers compensation laws of California, and agree that if I should become subject to the workers compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS COMPENSATION COVERAGE IS UNLAWFUL AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued. (Sec. 3027, Civ. C.).

Lenders Name

Lenders address

I certify that I have read this application and state that the above information is correct. I agree to comply with all county ordinances and state laws relating to building construction and hereby authorize representatives of this county to enter upon the above mentioned property for inspection purposes.

Signature of Applicant or Agent Date 2/28/97

Handwritten initials and signature

THIS PERMIT CONSTITUTES AUTHORIZATION BY THE COUNTY OF SAN LUIS OBISPO ALLOWING CONSTRUCTION OF THE PROJECT DESCRIBED HEREIN, SUBJECT TO ALL APPLICABLE PROVISIONS OF THE COUNTY CODE.

NOTICE: The county Code requires that this permit become null and void if work or construction authorized is not started within 360 days after the permit is issued, or if construction or work is suspended or abandoned for a period of 180 days any time after work is commenced.



San Luis Obispo County  
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP  
DIRECTOR

THIS IS A NEW PROJECT REFERRAL

DATE: 4/15/05

TO: OTAE

FROM: Coastal Team  
(Please direct response to the above)

Parnel  
DRC 2004-00224  
Project Name and Number

Development Review Section (Phone: 788-2009) \*OR ASK THE SWITCH-BOARD FOR THE PLANNERS

PROJECT DESCRIPTION: MUP -> Variance for enclosed patio to rear & sideyard setback. Located on a 3,000 sf lot off Strand Way in Oceano. APN: 061-061-033.

Return this letter with your comments attached no later than: 4/30/05

PART I IS THE ATTACHED INFORMATION ADEQUATE FOR YOU TO DO YOUR REVIEW?  
 YES  
 NO

PART II ARE THERE SIGNIFICANT CONCERNS, PROBLEMS OR IMPACTS IN YOUR AREA OF REVIEW?  
 NO (Please go on to Part III)  
 YES (Please describe impacts, along with recommended mitigation measures to reduce the impacts to less-than-significant levels, and attach to this letter.)

PART III INDICATE YOUR RECOMMENDATION FOR FINAL ACTION. Please attach any conditions of approval you recommend to be incorporated into the project's approval, or state reasons for recommending denial. IF YOU HAVE "NO COMMENT," PLEASE INDICATE

Denial is recommended -

5-16-05 Date      P. Wilson Name      413-0421 Phone

J-49

May 16, 2005

Oceano Halcyon Advisory Committee  
Oceano, CA

RE: DRC 2004-00224  
PARNEL-1560 Strand Way  
APN: 061-061-033

Dear committee members:

We are asking that you recommend denial of this variance for the following reasons:

The homes on Strand are built on 30x100 lots or 35x100 if they are a corner lot. There is a 3' side setback required of each residence. Most of the homes have a fence or a wall built on the property line between them leaving 3' on each side, total of 6' of open space between homes. The homes are close together so this 6' is necessary to get as much space between homes as possible.

In this case, there is a brick wall built on the property line between Mr. Parnel's residence and our home that is under construction. The brick wall is not the problem. The problem is the tile roof installed on the wall that is connected to the residence. What he has done is totally enclose his set back by putting on this roof and making a room out of the patio in the setback. His setback is completely enclosed along the south side of the residence and around the front.

Pictures 1,2, and 3 show this.

I will address the required findings one by one, page 2 of the request.

1. This patio is not similar. There are no other homes in the area that have enclosed their setback. There are patios that may have windbreaks, such as plexiglass, but none have put roofs on and made a structure out of their setback.

Pictures 6, 7 8, 9 & 10 are examples of other Strand Way homes in the vicinity that show the setbacks between the homes. You can see that there are brick or cement walls on the property line and their patios are open, not enclosed with a roof.

2. Again, no other homeowners have enclosed their setbacks with a roof.

CB  
21

3. This is not true because of the tile roof all the runoff from rain and moisture from Mr. Parnel's residence goes directly onto our property. The north side of our property next to his residence has 3 feet between, that is our setback. Mr. Parnel has enclosed the wall and his 3' feet so we take all runoff and water from his home onto ours. When it rained the water poured off his roof and went directly onto our residence. His rain-gutter in the front is on our property, and the raingutter on the top of his residence in the front has a sleeve attached where the runoff is directed to the gutter he has placed on our property. Leaving this roof would damage our home because it would be wet all the time. There is no access because he has totally enclosed the access.

Pictures 4 & 5 show the tile roof and you can note the edge of the roof is directly on our property.

This enclosed structure is illegal, is in direct violation of county code and was added on after the home and patio were built. It adversely affects our property. There is no other home anywhere in the beach area or to my knowledge in any other area anywhere where a neighbor has put a structure with roof on the fence that separates their property from their neighbor directing all runoff onto the neighbors property.

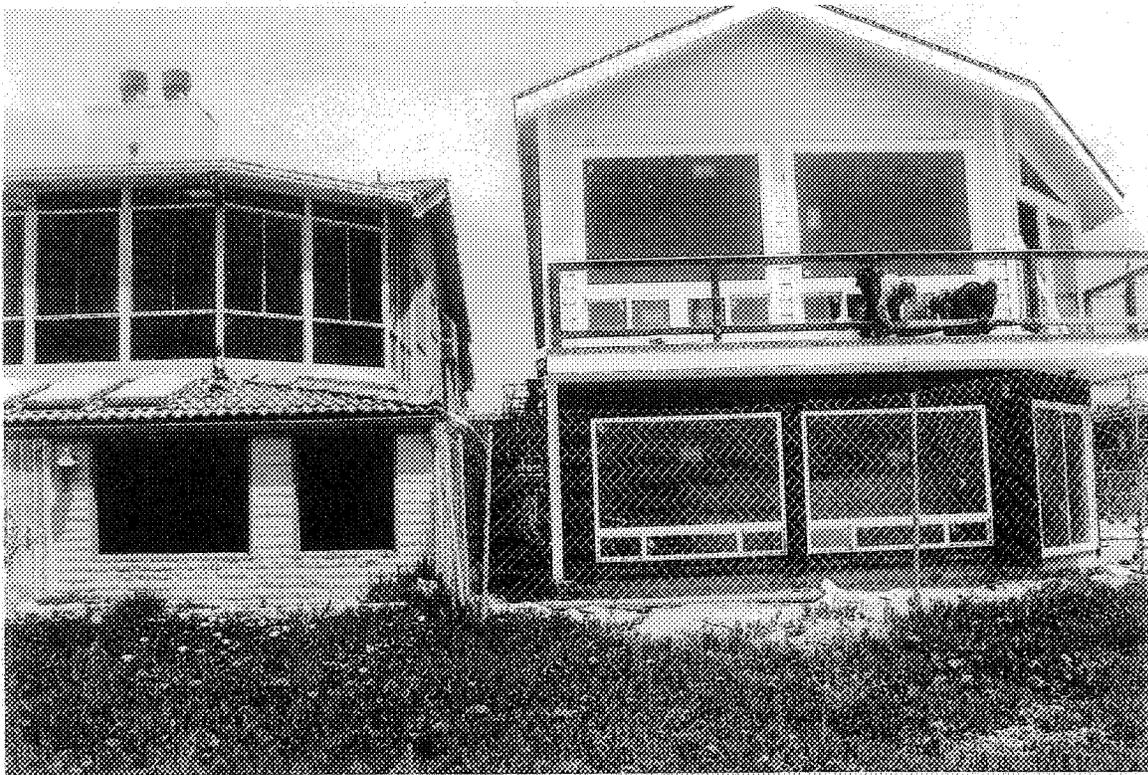
Please recommend denial of this variance. If this is allowed it would set a precedent that would be highly detrimental to all the property owners in the area. It is not fair to us and to all the people who abide by the county regulations. If everyone were allowed to enclose their setback, where would the runoff go?

Thank you for your consideration.

Glenda L. Guiton *Glenda L. Guiton*  
James E. Guiton *James E. Guiton*  
Laurie D. Guiton *Laurie D. Guiton*  
Linda M. Austin *Linda M. Austin*  
Owners of 1590 Strand Way

*C3*  
*82*

2-51



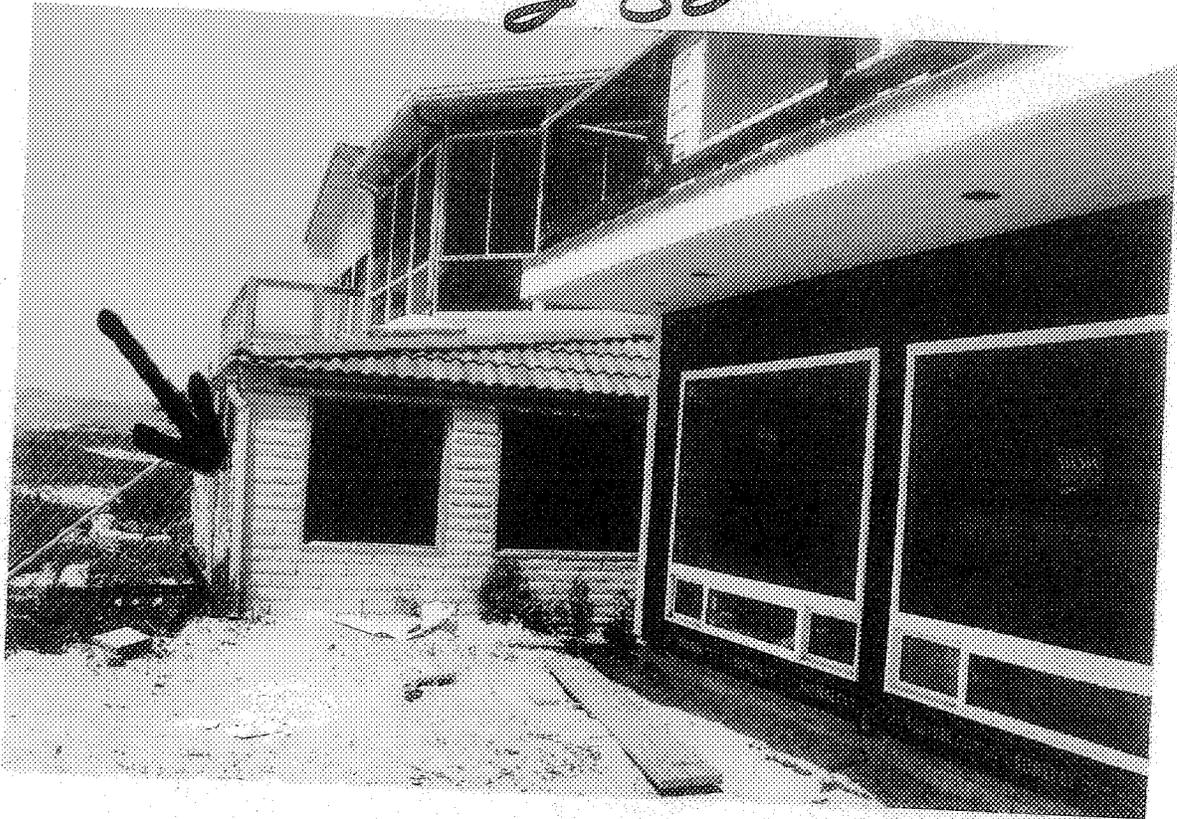
1. From beach side, front of 1560 Strand on left. 1590 Strand on right. Note tile roof enclosing patio.



2. View from Strand Way. Note 3' setback on 1590 on the left. There is no setback on right at 1560, wall enclosed.

C-3  
83

2-52



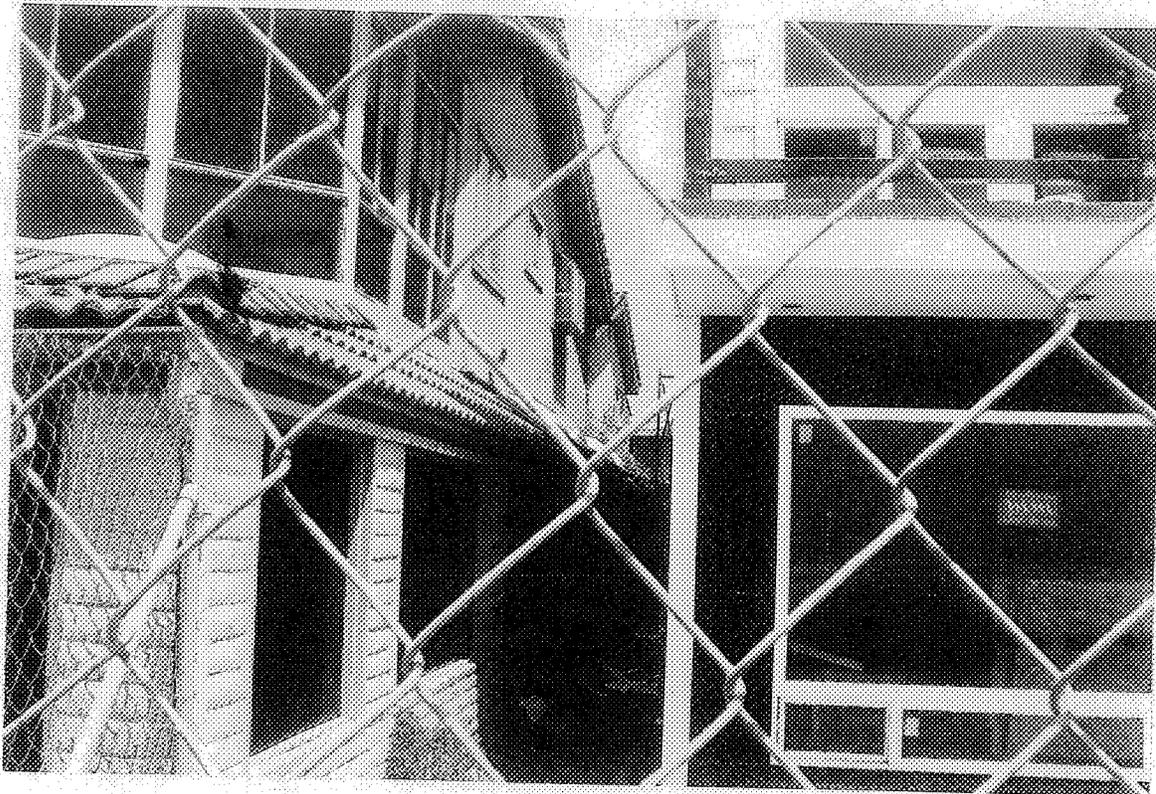
3. Side view of south side of patio 1560 Strand. Note the rain gutter attached to side of wall directly onto our property. All runoff from 1560 Strand runs onto our property.



4. Close up view of tile roof on property line. Here it is easy to see how runoff from tile goes directly onto our property.

03  
34

2-353

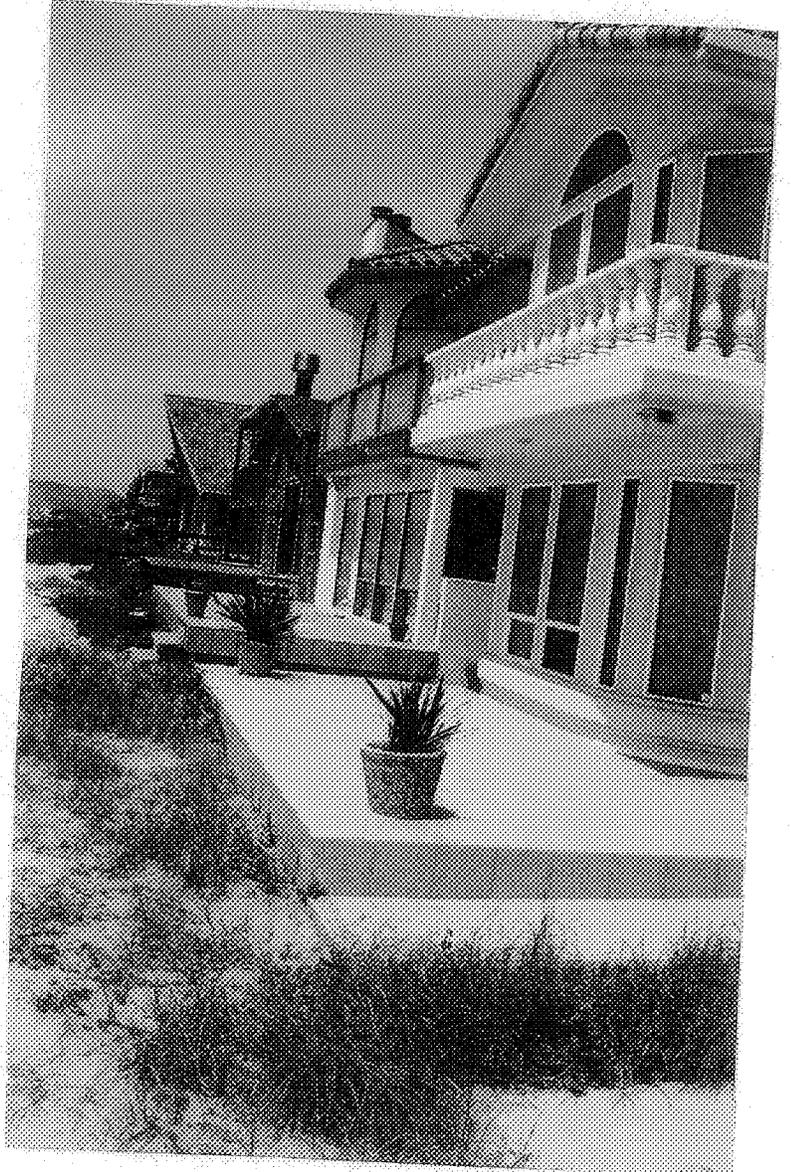


5. Another view of the enclosed wall on the property line showing how the roof and rain gutter direct all water onto our property.

CB  
25

2-54

6. View of other Strand way homes front patios looking north towards 1560 Strand. Arrow points to the enclosed patio.



7. Another view of Strand Way homes and their front patios.

CM  
2/6

2-55



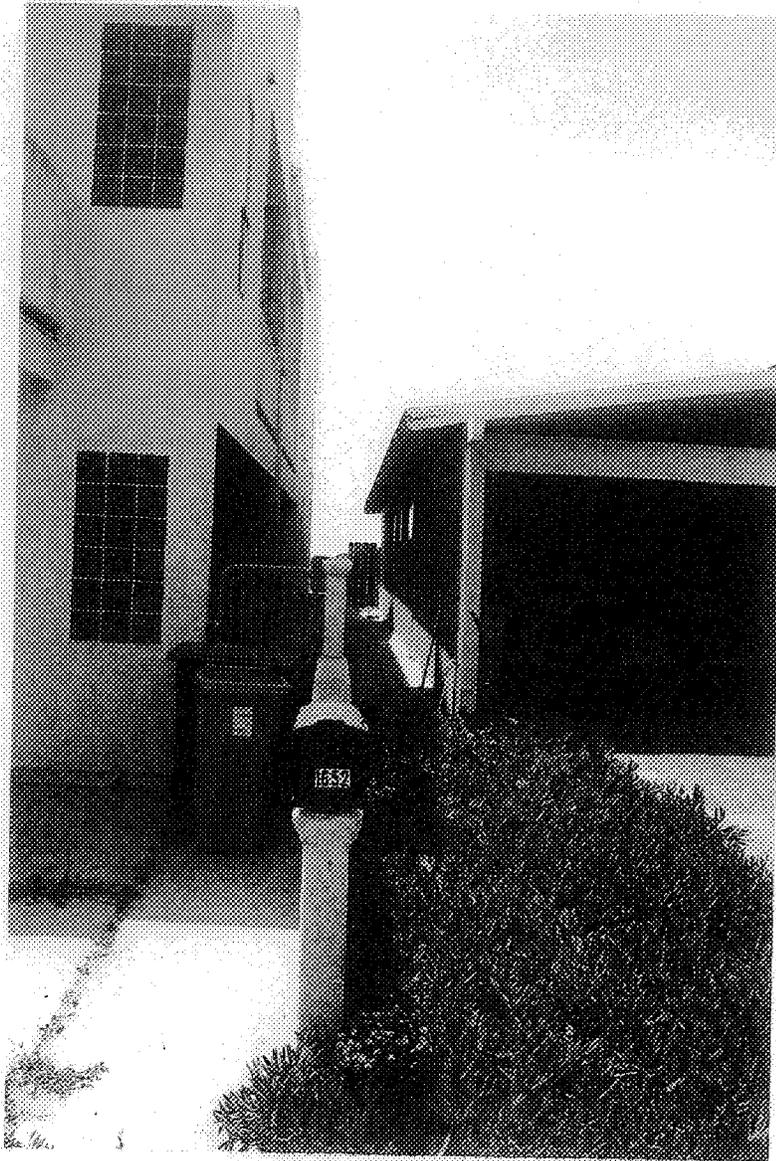
8. Two Strand way homes just south of 1560 showing the fence between and the 3' open on each side of the homes.



9. Another example of Strand Way homes with a cement wall on the property line between homes with setbacks open.

2-55

2-56



10. Another example of Strand Way homes with the wall on property line and required setbacks.

CS  
22

2-57

May 16, 2005

San Luis Obispo County  
Department of Planning and Building  
County Government Center  
San Luis Obispo, CA 93408

RE: DRC 2004-00224  
Parnel-1560 Strand Way  
APN: 061-061-033

Dear Planning Department:

In regard to the above project requesting a variance for an enclosed setback we would like to address the concerns we have.

We are the owners of the property directly to the south of 1560 Strand Way and have a home under construction on our lot. As you know, the lots on Strand Way are either 30x100 or 35x100 on the corners. The homes are close together and the 3' required setback on the sides of each residence are necessary to keep as much distance between the homes as possible.

The way it stands now, there is only 3' between our homes. Mr. Parnel has enclosed the wall on the property line with a tile roof that is attached to his residence. He has further enclosed the patio in the front with a tile roof. On the variance request in item 1. on the "required findings" they state that the patio is similar to others in the area. This is not true. To my knowledge, there are no other enclosed setbacks in the beach area. There are fences and walls between the homes but all the other homes have 6' of open space between them. There are no other structures attached to the fence or wall between the homes such as was done at 1560 Strand Way.

During the recent rains, the runoff from his residence ran directly onto our home. He has installed his raingutter on the side of the wall on our property. He has further placed a sleeve on the gutter on the top of his home to divert the runoff into his gutter on our property. We have all the runoff and moisture from his home on our property. The north side of our home, having only 3' between residences and handling all the runoff from his home will stay wet constantly and cause damage to our home.

CB  
JH

2-58

We ask that you deny this request for a variance. If this is allowed it would set a precedent that would be detrimental to all the other properties in the Strand Way area. It is not fair to us and to the other homeowners in the area that comply with the County regulations if this kind of structure is allowed.

Thank you for your consideration.

Sincerely,

Glenda L. Guiton *Glenda L. Guiton*  
James E. Guiton *James E. Guiton*  
Laurie Guiton *Laurie L. Guiton*  
Linda M. Austin *Linda M. Austin*  
Owners of 1590 Strand Way

mailing address:

P.O. Box 535

Oceano, CA 93475-0535

encl: copy of presentation to the Oceano-Halcyon Advisory committee  
meeting on May 16, 2005.

*CB*  
*AO*

**BELSHER & BECKER**

Attorneys at Law

Jim Orton  
November 3, 2005  
Re: Parnel  
Page 1

PLANNING COMMISSION

EXHIBIT: #2

DATE: 11/10/05

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November 3, 2005

VIA HAND DELIVERY

James Orton, Deputy County Counsel  
County of San Luis Obispo  
County Government Center, Rm. 386  
San Luis Obispo, CA 93408

**RE: Parnel, DRC 2004-00224**

Dear Jim:

This firm represents Frank and Janet Parnel with respect to their request for a variance to leave an existing roofed porch in the rear and side yard setback. I am writing because the staff report makes no mention of important legal concerns raised in the application.

Under the well-known doctrine of equitable estoppel, as applied in Anderson v. La Mesa (1981) 118 Cal.App.3d 657, construction of single family improvements in the setback are entitled to a variance where the permits are issued in good faith and inspections take place. The documents submitted with the variance application (and included in the staff report) show a permit issued for this enclosed area and that it was inspected by the County without objection. Thus, whether considered a "0" fence"1" or a room wall, a variance is required to be issued.

A more recent decision from federal court (enclosed) underscores this rule of law.<sup>1</sup>

Health & Safety issues of runoff onto neighbor property is easily remedied

**BELSHER & BECKER**

Attorneys at Law

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by installation of rain gutters. The complaining party's contractor promised to install these rain gutters. It bears noting that the down spout complained of was ripped out by the complaining neighbor. A bid for installing and/or relocating the rain gutter will be presented to show it is easily accomplished. Neighbor complaints of pending/inundation on the Oceano beach sand seems specious since (A) beach sand rarely ponds, and (B) the neighbors did not occupy the home until very recently.

There are 3-foot setbacks on both neighbors' properties. Therefore, there is no fire safety issue. This was addressed by OCSD.

In sum, there is no reason to deny this variance which must be granted by decisional law based on equitable estoppel.

Sincerely,

JOHN W. BELSHER

JWB/ab

Encl

cc: Planning Commission & Planning Staff (via hand delivery)  
client

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**ANDERSON v. CITY OF LA MESA (1981), 118 Cal.App.3d 657****CheckMate****Case History****ANDERSON v. CITY OF LA MESA (1981) [118 Cal.App.3d 657]**

[Civ. No. 22911.

Court of Appeals of California, Fourth Appellate District, Division One.

May 1, 1981.]

LEONA ANDERSON, Plaintiff and Respondent, v. CITY OF LA MESA, Defendant and Appellant.

(Opinion by Brown (Gerald), P. J., with Wiener, J., and Langford, J., concurring.)

**COUNSEL**

Knutson, Tobin, Meyer &amp; Shannon and John S. Meyer for Defendant and Appellant.

Thomas D. Parker for Plaintiff and Respondent.

**OPINION****BROWN (Gerald), P. J.**

The City of La Mesa (City) appeals a judgment granting Leona Anderson's petition for a peremptory writ of mandate.

The City issued Anderson a building permit under the City's standard zoning ordinances requiring single family dwellings be set back at least five feet from the side lot lines. As allowed under the permit, one wall of Anderson's house was built about seven feet from the side lot line. During construction the City inspected the house six times. Upon completing the house Anderson applied for final inspection, but the City claimed a specific plan ordinance required her house be set back at least 10 feet from the side lot lines. The City did not grant Anderson a variance and would not issue her a permanent occupancy permit unless she removed the portion of her house within 10 feet of the side lot line.

Anderson petitioned the superior court for a writ of mandate. The court found Anderson had a vested right in having her home remain {Page 118 Cal.App.3d 660} where built because she relied in good faith on the building permit the City issued. The court found no substantial evidence a variance for Anderson's seven-foot setback would harm anyone, while remodeling the house would cost Anderson more than \$6,000. Finding the City abused its discretion, the court ordered the City to issue Anderson a variance and an occupancy permit. The City appeals the judgment.

[1a] The City unmeritoriously contends the court improperly granted relief because Anderson did not submit to the court the full record of the administrative hearing before the city council or other evidence

sufficient to support the court's decision. Both parties attached to their pleadings portions of the administrative record as permitted by Code of Civil Procedure section 1094.5, subdivision (a). The City's answer admitted most of the significant facts. The court had adequate evidence before it to rule on Anderson's petition.

The City contends the court erred in exercising its independent judgment upon the evidence because denying a zoning variance did not affect any fundamental right vested in Anderson. [2] The court must exercise its independent judgment where an administrative decision substantially affects a fundamental vested right (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32 [112 Cal.Rptr. 805, 520 P.2d 29]). [3] Where "a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit." (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791 [132 Cal.Rptr. 386, 553 P.2d 546].) [1b] Here the City first claimed Anderson's house violated the specific plan ordinance after she had completed her house in good faith reliance upon the building permit the City issued. Once she built the house, her right was vested. The court properly exercised its independent judgment.

[4] The City contends the court erred in applying estoppel against the City because Anderson neither pleaded nor proved estoppel. Where facts themselves constituting estoppel appear in the pleadings, estoppel is adequately pleaded (*N.C. Roberts Co. v. Topaz Transformer Products, Inc.* (1966) 239 Cal.App.2d 801, 821 [49 Cal.Rptr. 209]). Here Anderson pleaded the City issued a building permit under the general zoning ordinances requiring only a five-foot setback. She attached a copy of the permit to her petition. Anderson also alleged the City refused to "consider the action of its agents in establishing the violation of {Page 118 Cal.App.3d 661} which Respondent [the City] now complains." The issue of estoppel was properly before the court.

[5] The City contends as a matter of law it cannot be estopped to deny a building permit issued in violation of a zoning ordinance. A government entity may be estopped, however, where, as here, "the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497 [91 Cal.Rptr. 23, 476 P.2d 423].) Anderson built her house according to the permit the City issued and did not violate the City's standard zoning ordinances. Denying the variance would substantially harm Anderson, costing her more than \$6,000. The court specifically found Anderson's seven-foot setback created no "special problem for the area or adjacent landowners." Moreover, the court found no evidence granting Anderson a variance would "create any hardship on any other persons." These findings, coupled with the nature of the zoning violation involved here, a two-and-one-half-foot setback encroachment, serve to distinguish this case from holdings that estoppel may not be used to justify nonconforming uses, based upon building permits issued in violation of existing zoning ordinances. (See, e.g., *Magruder v. City of Redwood* (1928) 203 Cal. 665, 673-674 [265 P. 806]; *In re Application of Ruppe* (1927) 80 Cal.App. 629, 637 [252 P. 746]; *Chaplis v. County of Monterey* (1979) 97 Cal.App.3d 249, 258-260 [158 Cal.Rptr. 395]; *Pettit v. City of Fresno* (1973) 34 Cal.App.3d 813, 819-823 [110 Cal.Rptr. 262]; *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 246 [69 Cal.Rptr. 251]; *Markey v. Danville Warehouse & Lbr., Inc.* (1953) 119 Cal.App.2d 1, 6-7 [259 P.2d 19].) In the circumstances of this case, the court could properly apply estoppel against the City.

The judgment is affirmed.

Wiener, J., and Langford, J., concurred.

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Court of Appeals of California, Fourth Appellate District, Division One.

May 1, 1981.]

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(Opinion by Brown (Gerald), P. J., with Wiener, J., and Langford, J., concurring.)

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OPINION

BROWN (Gerald), P. J.

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Anderson did not submit to the court the full record of the administrative hearing before the city council or other evidence sufficient to support the court's decision. Both parties attached to their pleadings portions of the administrative record as permitted by Code of Civil Procedure section 1094.5, subdivision (a). The City's answer admitted most of the significant facts. The court had adequate evidence before it to rule on Anderson's petition.

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[5] The City contends as a matter of law it cannot be estopped to deny a building permit issued in violation of a zoning ordinance. A government entity may be estopped, however, where, as here, "the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Long Beach v. Mansell* (1970) , 496-497 [91 Cal.Rptr. 23, 476 P.2d 423].) Anderson built her house according to the permit the City issued and did not violate the City's standard zoning ordinances. Denying the variance would substantially harm Anderson, costing her more than \$6,000. The court specifically found Anderson's seven-foot setback created no "special problem for the area or adjacent landowners." Moreover, the court found no evidence granting Anderson a variance would "create any hardship on any other persons." These findings, coupled with the nature of the zoning violation involved here, a two-and-one-half-foot setback encroachment, serve to distinguish this case from holdings that estoppel may not be used to justify nonconforming uses, based upon building permits issued in violation of existing zoning ordinances. (See, e.g., *Magruder v. City of Redwood* (1928) 203 Cal.



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The judgment is affirmed.

Wiener, J., and Langford, J., concurred.

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any other action that conceivably could stay the entry of that judgment. Indeed, it failed even to appeal the original denial of its motion to amend its pleadings to include a claim for attorneys' fees. By failing to file an appropriate motion within the relevant time limit, to say nothing of failing to appeal from the underlying judgment, the Port waived any claim to attorneys' fees arising out of the original litigation, and therefore cannot recover them in this new action.<sup>2</sup> See *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 889-90 (9th Cir.2000) (holding that defendants waived rights to attorney fees by failing to file Rule 54(b) motion within time limit after entry of judgment).

AFFIRMED.



CONGREGATION ETZ CHAIM,  
Plaintiff-Appellee,

v.

CITY OF LOS ANGELES,  
Defendant-Appellant.

No. 02-56487.

United States Court of Appeals,  
Ninth Circuit.

Argued and Submitted Aug. 7, 2003.

Filed June 16, 2004.

**Background:** Religious congregation challenged city's right to revoke building permit. The United States District Court for the Central District of California, Harry L. Hupp, J., held for congregation, and city appealed.

**Holding:** The Court of Appeals, Rawlinson, Circuit Judge, held that city was equitably estopped from revoking permit.

2. Although the district court dismissed on the basis of res judicata, we affirm on these alternate grounds. See *Branson v. Nott*, 62 F.3d

Affirmed.

Aldisert, Circuit Judge, dissented and filed opinion.

### 1. Federal Courts ⇨776

District court's interpretation of settlement agreement is reviewed de novo, though with due respect for district court's superior perspective.

### 2. Zoning and Planning ⇨377

Under California law, principle of equitable estoppel prohibits governmental entity from exercising its regulatory power to prohibit proposed land use when developer incurs substantial expense in reasonable and good faith reliance on some governmental act or omission so that it would be highly inequitable to deprive developer of right to complete development as proposed.

### 3. Zoning and Planning ⇨465

Under California law, real estate developer's right to develop property pursuant to its proposed plans vests when: (1) valid building permit issues and (2) developer performs substantial work and incurs substantial liabilities in good faith reliance on permit.

### 4. Zoning and Planning ⇨468.1

Under California law, city was equitably estopped from revoking building permit it had previously issued to religious congregation, pursuant to agreement settling congregation's suit challenging city's building permit requirements, once congregation had detrimentally acted in reliance on permit.

### 5. Municipal Corporations ⇨1018

Religious congregation satisfied terms of settlement agreement with city when it

287, 291 (9th Cir.1995) ("We may affirm the decision of the district court on any basis which the record supports.")

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submitted building permit application to city building department and to deputy city attorney who advised that department; settlement provision specifically requiring submission of permit applications to city controlled over separate provision generally requiring delivery of communications to particular person in city planning department.

#### 6. Contracts $\approx$ 154

Under California law, court must give reasonable and commonsense interpretation of contract consistent with parties' apparent intent.

Claudia McGee Henry, Senior Assistant City Attorney, Los Angeles, CA, for defendant-appellant City of Los Angeles.

Kathryn Davis (briefed), Susan S. Azad (argued), Latham & Watkins, Los Angeles, CA, for plaintiff-appellee Congregation Etz Chaim.

Appeal from the United States District Court for the Central District of California; Harry L. Hupp, District Judge, Presiding. D.C. No. CV-97-5042-HLH.

Before: ALDISERT\*, TALLMAN, and RAWLINSON, Circuit Judges.

Opinion by Judge RAWLINSON;  
Dissent by Judge ALDISERT.

RAWLINSON, Circuit Judge:

The controlling question in this case is whether Appellant the City of Los Angeles (the City) may revoke a building permit issued to Appellee Congregation Etz Chaim (the Congregation) authorizing renovations to a home owned by the Congregation and used as a place of worship. Because we agree with the district court

that Congregation was entitled to rely on issuance of the building permit by the City, we AFFIRM the district court's order lifting the stop-work order issued by the City.

#### I.

#### BACKGROUND

There is a long history of litigation between the City and the Congregation. The Congregation's initial claim against the City, filed in federal court in 1997, alleged that the City's building permit requirements violated the Congregation's constitutional rights to the free exercise of religion, freedom of speech, freedom of association, freedom of assembly, and equal protection; and violated the Fair Housing Act. Eventually, most of the Congregation's claims were dismissed, but a claim against the City under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc, remained. Before the district court ruled on the merits of this claim, the parties entered into a settlement agreement (the Agreement), which resulted in dismissal of the Congregation's remaining claim. The district court retained jurisdiction over the matter for the purpose of issuing any future orders necessary to modify or terminate the Agreement.

After the Agreement was signed and the Congregation's action was dismissed, the Congregation submitted its renovation plans to the City's Department of Building and Safety. The plans clearly and explicitly described expansion of the existing home from 3,400 square feet to 8,150 square feet. The Building Department spent approximately three months reviewing the renovation plans in conjunction

\*The Honorable Ruggero J. Aldisert, Senior United States Circuit Judge for the Third Cir-

cuit, sitting by designation.

with the Agreement. As part of this process, the Building Department demanded numerous changes to the plans, with which the Congregation complied. An attorney in the City Attorney's office who represented the Building Department also reviewed the plans and the Agreement. After this review, the Building Department issued a building and grading permit to the Congregation, and the Congregation promptly began work as specified in the plans.

Approximately one week later, apparently in response to complaints from neighbors, the City issued a stop-work order, giving notice that it intended to revoke the Congregation's building permit. The City described the permit as having been issued "in error or in violation of other provisions of the code and condition [sic] are such that the action should not have been allowed." In response, the Congregation filed a motion seeking enforcement of the Agreement and lifting of the stop-work order. The City countered with its motion to enforce the Agreement and the stop-work order. The district court granted the Congregation's motion, and denied the City's. This timely appeal followed.

## II.

### DISCUSSION

#### A. Standard of Review

[1] We review a district court's interpretation of a settlement agreement *de novo*. See *Botefur v. City of Eagle Point*, 7 F.3d 152, 156 (9th Cir.1993). Where the district court oversaw the extensive litigation giving rise to the settlement agreement and approved the agreement, we review the district court's interpretation of the agreement with due respect for the district court's superior perspective. Cf. *Labor/Cnty. Strategy Ctr. v. Los Angeles County Metro. Transp. Auth.*, 263 F.3d 1041, 1048 (9th Cir.2001) ("We must give deference to the district court's interpreta-

tion based on the court's extensive oversight of the [consent] decree from the commencement of the litigation to the current appeal") (citation and internal quotation marks omitted).

#### B. Estoppel Ruling Against the City

The district court essentially ruled that the City was estopped from revoking the building permit it had previously issued to the Congregation pursuant to the Agreement. The district court expressly noted that the City's objection to the size of the building under construction "would have made a fine issue for the court, with excellent arguments on both sides, and with [the] result not predictable, *except for the fact that City approved the plans and issued the building permit with full knowledge of the terms of the settlement agreement.*" (emphasis added). The district court presumed that it would have had jurisdiction to resolve the size dispute if the dispute had arisen prior to issuance of the building permit and the incurrence of substantial expenditures by the Congregation in reliance upon issuance of the building permit. However, the district court concluded that once the building permit had issued and the Congregation had substantially relied upon its issuance by commencing construction, the Congregation acquired a vested right under California law that could not be revoked by the City. The district court ruled that the City's issuance of the building permit represented its approval of the building project, size and all. According to the district court, the appropriate time for the City "to take issue with the size of the remodeling was during the extensive and meticulous review, including review of the agreement, which preceded the issuance of the permit and the expensive reliance on it by Congregation."

[2, 3] The use of equitable estoppel to resolve land use issues is well-developed in

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California law: "The principle of estoppel prohibits a governmental entity from exercising its regulatory power to prohibit a proposed land use when a developer incurs substantial expense in reasonable and good faith reliance on some governmental act or omission so that it would be highly inequitable to deprive the developer of the right to complete the development as proposed." *Toigo v. Town of Ross*, 70 Cal.App.4th 309, 321, 82 Cal.Rptr.2d 649 (Cal.Ct.App.1998) (citation omitted). A developer's right to develop property pursuant to its proposed plans vests when: (1) a valid building permit issues and (2) the developer performs substantial work and incurs substantial liabilities in good faith reliance on the permit. *See id.* (citations omitted).

[4] The facts of this case provide particularly strong support for the Congregation's estoppel argument. It is unrefuted that the Congregation performed substantial work and incurred substantial liabilities in reliance on the permit. The record reflects that prior to revocation of the permit, the Congregation paid in excess of \$21,000 in permit fees and over \$15,000 for demolition pursuant to the renovation plans approved by the City.

The City argues that revocation of the permit is proper because the estoppel doctrine cannot immunize the Congregation from compliance with current law as reflected in the Agreement. However, we agree with the district court that the City's argument is significantly weakened by the fact that the size of the building was clearly delineated in the building plans that were reviewed at length and approved by the City. The issuance of a valid building

permit by the City was essentially a representation that the Congregation's plans were in accordance with the terms of the Agreement. *See Hock Investment Co. v. City and County of San Francisco*, 21 Cal.App.3d 438, 445, 263 Cal.Rptr. 66 (Cal.Ct.App.1989) (characterizing a building permit as an implied promise "that the proposed use will not be prohibited by ... the regulation in question").

The City does not and cannot allege that the Congregation engaged in fraud or acted in bad faith in presenting its proposed plans to the City for approval. In fact, the City conceded at oral argument that the Congregation submitted both the building permit application and a copy of the Agreement to the Building Department and to the deputy city attorney who advised the Building Department. The City simply cannot dispute that it had ample opportunity to review both the plans and the Agreement before granting the building permit. In view of these facts, we would be hard pressed to find error in the district court's decision to lift the stop-work order.

#### C. Interpretation of the Settlement Agreement

[5] The City's second argument in support of the stop-work order is that the Congregation failed to comply with the Agreement when the Congregation submitted its permit application to the City. Although the Congregation submitted the application to the Building Department and to the deputy city attorney who advised the Building Department, the City maintains that the Agreement required submission of the application to a specific individual in the Planning Department, Daniel Green.<sup>1</sup>

1. The dissent advances an argument that was not made by any of the parties to this case—that the settlement agreement "was tantamount to a deemed-approved conditional use [permit]." *See* Dissent at 1130-31. This po-

sition is nowhere supported in the record, the briefs, or the oral argument on behalf of the parties. In short, the dissent seeks to bind the parties to an agreement that not even they

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To resolve this issue, we must consider two provisions of the Agreement, Paragraph VI and Paragraph XI.

Paragraph VI of the Agreement is entitled "Use of 303 South Highland Avenue" and specifically addresses the building permit application process, requiring the submission of "any required plan and permit application to the City ..." (emphasis added).

Paragraph XI of the Agreement is entitled "Form of Notice," and provides in relevant part: "Any notice, tender, delivery or other *communication* pursuant to this Settlement Agreement ... shall be deemed to be properly given if delivered, mailed or sent ... If to the City: Daniel Green, Planning Department ..." (emphasis added).

The City contends that Paragraph XI required submission of the permit application to Daniel Green, and the Congregation's failure to comply with Paragraph XI voided issuance of the building permit.

The district court rejected the City's argument, ruling that the Congregation's building permit application "was not a notice, tender, delivery, or other communication[.]" Rather, the permit application was a "plan or permit application separately referred to in paragraph VI(A) [and] required to be submitted to the City," rather than to a specific individual. The district court also pointed out the unlikelihood that the City construed Paragraph XI to encompass the permit application given the City's failure to follow Paragraph XI itself when processing the permit application. Finally, it would have been an easy matter for the City to require compliance with Paragraph XI prior to issuing the building permit, as it did with numerous other issues that were addressed dur-

ing the application process. This is especially true in light of the fact that the Agreement was submitted with the permit application and a deputy city attorney participated in the review of the application, having been provided with his own copy of the Agreement.

We agree with the district court that in these circumstances, the buck stops with the City. Because the Notice provision did not encompass the permit application, we conclude that the Congregation complied with the terms of the Agreement. The permit application was presented and processed in accordance with Paragraph VI of the Agreement, which specifically concerned renovations to the property.

[6] There is little indication in the language of the Agreement or in the actions of the parties to support the City's proposition that the notice provision was intended to apply to submission of the building permit application. "[C]ourts must give a reasonable and commonsense interpretation of a contract consistent with the parties' apparent intent." *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 107 Cal.App.4th 516, 526, 132 Cal.Rptr.2d 151 (Cal.Ct.App.2003) (internal quotation marks omitted). A commonsense interpretation of the Agreement indicates that the Congregation was not required to submit its building permit application to Mr. Green. The building permit application is referenced elsewhere in the Agreement, where the Congregation agrees to "take all necessary actions to restore the property to [residential] use, including submitting any required plan and permit application to the City within ninety (90) days of signing this Settlement Agreement." The City more or less concedes that the Congregation complied with this requirement by

contend was made, hence use of the term "tantamount." We elect in the majority opinion to address the settlement agreement that

was actually agreed upon by the parties and approved by the court.

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"submit[ing] building plans to the City's building officials in order to obtain a building permit as required by state law." It would have made little sense to require the Congregation to submit its plans to Mr. Green, when it is undisputed that he had no authority to approve the plans or to grant a permit. The district court judge, who oversaw the litigation and settlement of this case, and who was presumptively familiar with the processes and procedures of the municipality in which he sits, committed no error in rejecting the City's argument that the Congregation's purported failure to comply with Paragraph XI justified imposition of the stop-work order.

III.

CONCLUSION

The district court did not err when it applied equitable estoppel principles and lifted the City's stop-work order. The Congregation's permit application was reviewed and approved by the City and the subsequent renovations were undertaken in reliance upon the issuance of a valid building permit. A commonsense interpretation of the Agreement coupled with an examination of the parties' behavior reflects that the parties did not intend that the Congregation's building permit application be submitted to the individual listed in the notice provision of the Agreement.

AFFIRMED.

ALDISERT, Circuit Judge, Dissenting:

I would reverse the judgment of the district court and allow the City of Los Angeles to revoke the building permit. The building permit contravened the Los Angeles Municipal Code and the explicit limitations and directions of the Settlement Agreement entered into by the parties after five years of administrative proceedings and litigation in federal and state courts. Because the building permit was invalid, I would hold that the district court

committed reversible error in applying the doctrine of equitable estoppel against the City of Los Angeles. See *Pettitt v. City of Fresno*, 34 Cal.App.3d 813, 824, 110 Cal. Rptr. 262 (Cal.Ct.App.1973); *Smith v. County of Santa Barbara*, 7 Cal.App.4th 770, 772, 9 Cal.Rptr.2d 120 (Cal.Ct.App. 1992).

I.

Prior to signing the Settlement Agreement on September 27, 2001, the Congregation Etz Chaim and the City of Los Angeles engaged in extensive administrative proceedings and federal and state court litigation related to the City Zoning Administrator's October 16, 1996 denial of the Congregation's requests for variances and a conditional use permit. At the time of the denial, the Congregation already had been using the 303 South Highland Avenue residence for worship services—in violation of the Los Angeles Municipal Code—for approximately 18 months. Additionally, the property's large fence and front-yard pavement, installed by a previous owner, violated the residential zoning ordinance.

The Zoning Administrator denied the Congregation's application for a conditional use permit and requests for variance because, among other conclusions, a house of worship at 303 South Highland Avenue would not "be in the best interest and convenience of the overall community and its general welfare." The Zoning Administrator cited concerns about inadequate parking, noise and incompatibility with the surrounding single-family residential neighborhood. The Board of Zoning Appeals upheld the denial after adopting the findings of the Zoning Administrator and voicing an additional concern about potential traffic safety hazards at the site. The City Council of Los Angeles sustained the Board's action on July 8, 1997.

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The Congregation subsequently filed an action in the United States District Court for the Central District of California, challenging the constitutionality of the City's conduct. On June 1, 1998, the district court dismissed without prejudice the Congregation's claim for administrative mandamus so the Congregation could pursue that claim in the California state courts. In the meantime, the district court stayed federal proceedings on the Congregation's other claims.

The Congregation then filed a petition for a writ of mandate in California Superior Court. The California Superior Court denied the petition, concluding that there was substantial evidence to support the City's findings that led to denial of the conditional use permit. In affirming the judgment of the Superior Court, the California Court of Appeal concluded that the City's action was properly taken in furtherance of a compelling governmental interest—namely, the preservation of single-family neighborhoods.

Following the conclusion of these state court proceedings, the district court lifted the stay of federal court proceedings, and the Congregation filed a Second Amended and Supplemental Complaint for Declaratory and Injunctive Relief. In addition to reasserting its constitutional and statutory claims, the Congregation contended that the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*, provided a remedy against the City's permit denial. The RLUIPA claim alone survived the City's motion to dismiss, and the matter was set for pretrial conference.

On September 27, 2001 the parties entered into a Settlement Agreement fully and completely disposing of the Congregation's RLUIPA and other claims against the City. The Settlement Agreement permitted the Congregation to hold prayer services at the 303 South Highland Avenue

residence with various use conditions: (1) "The single family use of the property . . . shall be restored and maintained, including the residential character and architecture . . ."; (2) double-pane windows must be installed; (3) a proper fence must be installed and maintained; (4) the property must be landscaped and the pavement replaced with a grassy lawn; (5) the Congregation must not post signs or flyers on the premises; and (6) the Congregation must enforce certain specified limitations on the size, type and timing of gatherings and number of cars on the property. The Settlement Agreement also required that the Congregation submit to the City within 90 days "any required plan and permit application" to restore the property to its single-family residential use. Once the City approved those plans, the Congregation was bound to use its best efforts to complete construction in a diligent and timely manner.

The Settlement Agreement stated that the district court would retain jurisdiction over both the subject matter and the parties. Finally, the agreement included a "Form of Notice" provision, which required that *all communications* made pursuant to the Settlement Agreement be made in writing and delivered to the parties' representatives and their respective counsel:

Any notice, tender, delivery or other communication pursuant to this Settlement Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed or sent by wire or other telegraphic communication in the manner provided in this paragraph, to the following persons:

If to [the Congregation]: Rabbi Chaim Baruch Rubin, 303 South Highland Avenue, Hancock Park, CA 90036; with copy to Susan Azad, Esq., Latham and

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Watkins, 633 West 5th Street, Suite 1000, Los Angeles, CA 90071.

If to the City: Daniel Green, Planning Department, 201 North Figueroa Street, Los Angeles, CA 90012; with copy to Tayo A. Popoola, Deputy City Attorney, Office of the Los Angeles City Attorney, 200 North Main Street, Los Angeles, CA 90012.

Daniel Green has served for 11 years as the Associate Zoning Administrator in the City's Department of City Planning. In that capacity, he has conducted hearings and made discretionary, quasi-judicial determinations on more than 1,800 cases involving, among other matters, conditional uses and variances. Several dozen of these cases implicated properties in the City's Wilshire Plan area where the 303 South Highland Avenue residence is located.

At the time the parties signed the Settlement Agreement, the size of the residence on the property was approximately 3,536 square feet, 20 percent larger than the average house on the same side of the street in that block. After the parties executed the Settlement Agreement, the Congregation applied to the City's Department of Building and Safety for an "addition of 4,423 [square feet] to existing 2 story residential house and addition of 330 [square-foot] 2-car attached garage to existing dwelling. Also remodeled [sic] the entire existing dwelling. Add 657 [square-foot] loft to second floor." The proposed additions would more than double the size of the house.

The Congregation neither submitted its plans to Daniel Green nor notified him of the proposal, but the Congregation did furnish the Department of Building and Safety with a copy of the Settlement Agreement. On March 13, 2002, the Department of Building and Safety issued a building permit. On June 4, 2002, the Congregation began remodeling the exist-

ing structure. The "remodeling" consisted of massive destruction of the existing residence to the extent that only two exterior walls remained intact.

## II.

I do not accept the majority's characterization that "[a] commonsense interpretation of the [Settlement] Agreement indicates that the Congregation was not required to submit its building permit application to Mr. Green." *Maj. Op.* at 1126. The Congregation entered into the agreement after losing in its application for a conditional use permit before the Los Angeles City Council, the state trial court, the state appellate court and—on all of its claims but one—the federal district court. A settlement is always a compromise and this one was no exception. It is important to note that the Settlement Agreement accomplished the purpose sought by the Congregation in its 1996 conditional-use permit application—gaining official approval for property uses then taking place in violation of the Los Angeles Municipal Code—while also securing concessions from the Congregation to address the City's concerns about parking, noise and incompatibility with the surrounding neighborhood.

Specifically, the Congregation made three concessions that addressed the concerns expressed by the Zoning Administrator in denying the 1996 conditional-use permit application. First, the Congregation addressed the Zoning Administrator's 1996 concerns about noise and neighborhood disruption by agreeing to install double-pane windows, limit gatherings to daylight hours, limit the number of people who would gather at any one time and not hold weddings, receptions, banquets, funerals or fundraising and daycare activities on the property. Second, the Congregation addressed the Zoning Administrator's

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1996 concern about inadequate parking by agreeing to limit the number of cars that would be coming to the property to six on weekdays and zero on the Sabbath and High Holy Days. Finally, the Congregation agreed to take steps to address the Zoning Administrator's 1996 concern about incompatibility with the surrounding neighborhood by restoring and maintaining the single-family use of the property, including submitting any requisite plans and building permit applications within 90 days to the City.

The critical question presented in this appeal—and the one that divides this panel—thus arises: Who or what agency in the City of Los Angeles had sole authority under the Municipal Code to decide whether the plans submitted in the Congregation's 2002 building permit application met the use conditions of the Settlement Agreement—to wit, the property “shall be restored and maintained, including the residential character and architecture”?

The Settlement Agreement's “Form of Notice” provision must be understood in light of the concessions made by the Congregation to address the Zoning Administrator's 1996 concerns that led to denial of the conditional-use permit application. Applying the teachings of *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 107 Cal.App.4th 516, 526, 132 Cal.Rptr.2d 151 (Cal.Ct.App.2003), the “reasonable and commonsense interpretation” of the Settlement Agreement is that it required the Congregation to contact Mr. Green to make the quasi-judicial determination of whether building and remodeling plans complied with the agreement. Indeed, such an interpretation is not only permissible but is compelled by the terms of the Settlement Agreement and the provisions of the Municipal Code.

The Settlement Agreement did not terminate a relationship between the City of Los Angeles and the Congregation. The

agreement's immediate effect was twofold: (1) to terminate five years of administrative and courtroom wrangling; and (2) to provide directions as to the quantum of physical change that would be permitted to the existing residence. The Settlement Agreement specifically contemplated an application for a building permit for the purpose of restoring the 303 South Highland Avenue property to its single-family use. It cannot be controverted that the Settlement Agreement was tantamount to a deemed-approved conditional use for the Congregation to conduct activities on the 303 South Highland Avenue property that otherwise would not have been permissible in the City's R-1 zone.

Under the relevant provision of the Los Angeles Municipal Code, a conditional use is one of various specified “uses and activities [that] may be permitted in any zone, unless restricted to certain zones or locations, if approved by the Zoning Administrator as the initial decision-maker...” *Los Angeles Mun.Code* § 12.24-W (6th ed.). The Code specifically grants authority to the Zoning Administrator to allow, as a conditional use, operation of churches in R-1 zones. *Id.* § 12.24-W.9. As a potential conditional use subject to approval of the Zoning Administrator, operation of a church in an R-1 zone is “not permitted by right.” *Id.* § 12.24-A.

Like a conditional use permit under the Los Angeles Municipal Code, the Settlement Agreement, which was signed on behalf of the City by Associate Zoning Administrator Daniel Green, allowed the Congregation to use its property in a way not otherwise permissible under the City's zoning ordinance. In the Settlement Agreement, the Zoning Administrator allowed the Congregation to operate a church in an R-1 zone, much as the Zoning Administrator might have done in a conditional use permit. This use was not

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permitted by right. The Settlement Agreement in this case was the negotiated outcome of a five-year process that began when the Congregation applied for a conditional use permit in 1996. Because the Settlement Agreement had the effect of a conditional use permit, the provisions of the Los Angeles Municipal Code relating to building permit applications on deemed-approved conditional use sites are instructive here.

When a property owner has been granted a conditional use permit, the Los Angeles Municipal Code requires that any building or remodeling plans be approved not only by the Department of Building and Safety but also by the Zoning Administrator:

On any lot or portion of a lot on which a deemed-approved conditional use is permitted pursuant to the provisions of this section, new buildings or structures may be erected, enlargements may be made to existing buildings, and existing uses may be extended on an approved site, as permitted in Subsection L of this section, *provided that plans are submitted to and approved by the Zoning Administrator, the Area Planning Commission, or the City Planning Commission, whichever has jurisdiction at the time.* The Zoning Administrator, the Area Planning Commission, or the City Planning Commission may deny the plans if the Zoning Administrator or the Commission finds that the use does not conform to the purpose and intent of the findings required for a conditional use under this section, and may specify the conditions under which the plans may be approved.

*Id.* § 12.24-M.1 (emphasis added).

The Settlement Agreement effectively allowed the Congregation to make a condi-

tional use of the 303 South Highland Avenue property as a house of worship in an R-1 zone. *See id.* § 12.24-W.9 (stating that the Zoning Administrator has authority to allow churches in R-1 zones). Any building or remodeling plans proposed after the Settlement Agreement should have been submitted for approval to the Zoning Administrator. *See id.* § 12.24-M.1. The intent and purpose behind the Los Angeles Municipal Code—that the Zoning Administrator must have an opportunity to determine whether remodeling plans conform with the written findings supporting a conditional use permit—apply equally to the Settlement Agreement. Daniel Green must have been given the opportunity to review the Congregation's building plans to determine whether they conformed with the concessions made by the Congregation in the written Settlement Agreement.

Moreover, the Settlement Agreement specifically required that of the 47,907 employees<sup>1</sup> in the City of Los Angeles, one—Daniel Green, who had the authority to conduct hearings and make discretionary, quasi-judicial determinations—should receive all communications from the Congregation relating to execution of the Settlement Agreement. Copies were to go to the Deputy City Attorney who ostensibly had handled the litigation being settled. In any event, nothing in the record indicates that a clerk in the Los Angeles Department of Building and Safety had the competence or authority to conduct hearings or make quasi-judicial decisions in interpreting a conditional use agreement entered into by the Department of City Planning that settled five years of litigation in state and federal courts.

Accordingly, I do not believe that the issue is even close. The Settlement

1. *Los Angeles Business Journal Book of Lists 2003 Online*, at [http:// www.labusinessjour-](http://www.labusinessjournal.com/tobol1abj.htm)

[nal.com/tobol1abj.htm](http://www.labusinessjournal.com/tobol1abj.htm).

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Agreement is a contract that limited the extent of any renovation of the existing residence and imposed a legal obligation on the Congregation to notify Daniel Green of any written communication there-to, including a written application for a building permit. See *Weddington Prods., Inc. v. Flick*, 60 Cal.App.4th 793, 810-811, 71 Cal.Rptr.2d 265 (Cal.Ct.App.1998) (stating that, under California law, "[a] settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement agreements"). The Congregation is in breach of the Settlement Agreement<sup>2</sup> for bypassing Mr. Green and the Deputy City Attorney, even though a copy of the Settlement Agreement was attached to the Congregation's building permit application. See *Jensen v. Traders & Gen. Ins. Co.*, 52 Cal.2d 736, 345 P.2d 1, 6 (Cal.1959) ("Parties to a contract may contract on such method of giving notice as they desire and unless public policy is contravened, the contract should be enforced as made.") (internal quotation and citation omitted).

The Settlement Agreement did not allow the Congregation free rein in its building and remodeling plans. Rather, the Settlement Agreement constrained and limited the Congregation by requiring that the "single family use of the property . . . shall be restored and maintained." To restore is "to bring back to or put back into a former or original state." *Webster's Third New International Dictionary* 1936 (1966). To maintain is "to keep in a state of repair." *Id.* at 1362. And to keep is "to cause to remain in a given place, situation, or condition," to "maintain unchanged," or to "hold or preserve in a particular state." *Id.* at 1235.

By applying for a building permit that far exceeded the limitations of the Settle-

2. I do not address the issue whether residents of Hancock Park and neighbors of 303 South Highland Avenue are third-party beneficiaries

ment Agreement, the Congregation breached its implied covenant "not to do anything which will deprive [the City] of the benefits of the contract." *Hamm v. Frasher*, 181 Cal.App.2d 405, 417, 5 Cal.Rptr. 367 (Cal.Ct.App.1960). By circumventing Mr. Green, the Congregation deprived the City of the Congregation's explicit assurance that it would adhere to the concessions it made in the Settlement Agreement to address the City's concerns about parking, noise and incompatibility with the surrounding neighborhood.

In light of these precepts, the district court erred when it determined that the Settlement Agreement, which was tantamount to a conditional use permit requiring any building permit application to be approved by the Zoning Administrator, did not require the Congregation to give notice to Mr. Green of the Congregation's application for a building permit.

### III.

The district court determined that the Congregation acquired a vested right to complete the renovations by virtue of the Department of Building and Safety's issuance of a permit and the Congregation's incurring of substantial expenditures in reliance on the permit. Accordingly, the Congregation argues that the City can be estopped from denying the validity of the permit. We review the district court's decision whether to apply the equitable estoppel doctrine for abuse of discretion. *Santa Maria v. Pac. Bell*, 202 F.3d 1170, 1176 (9th Cir.2000). In my view, abuse of discretion is present here because the district court committed legal error by viewing the building permit as a valid one.

Equitable estoppel does not operate to prevent the government from revoking an

of this contract and thus entitled to breach remedies.

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invalid building permit. "[T]he courts have ... consistently concluded that the public and community interest in preserving the community patterns established by zoning laws outweighs the injustice that may be incurred by the individual in relying upon an *invalid* permit to build issued in violation of zoning laws." *Pettitt*, 34 Cal.App.3d at 820, 110 Cal.Rptr. 262 (emphasis in original). That is to say, although equitable estoppel may apply against the government in situations where there is an intervening zoning or legal change, it will not apply where a permit is merely issued in error. *See id.* at 819, 110 Cal.Rptr. 262 ("[A]s a matter of law the City cannot be estopped to deny the validity of a permit or other representations respecting the use of property issued or made in violation of the express provisions of a zoning ordinance.").

In *Pettitt*, the City of Fresno's Planning Department mistakenly issued a permit for the conversion of a residential property to commercial use even though the municipal code prohibited such use in that location. *Id.* Highlighting neighboring residents' "protectable property and personal interest in maintaining the character of the area as established by comprehensive and carefully considered zoning plans ... [I]" *id.* at 823, 110 Cal.Rptr. 262, the California Court of Appeal held that equitable estoppel would not apply against the City because the permit was invalid from the beginning. *Id.* at 824, 110 Cal.Rptr. 262. The court stated:

To hold that the City can be estopped would not punish the City but it would assuredly injure the area residents, who in no way can be held responsible for the City's mistake. Thus, permitting the violation to continue gives no consideration to the interest of the public in the area nor to the strong public policy

in favor of eliminating nonconforming uses and against expansion of such uses. *Id.* at 823, 110 Cal.Rptr. 262.

Similarly, in *Smith v. County of Santa Barbara*, the California Court of Appeal held that the County was not estopped from revoking a land use permit where it issued the land use permit in error. 7 Cal.App.4th at 772, 9 Cal.Rptr.2d 120. Specifically, the County building department issued a building permit authorizing the installation of more microwave dishes per antenna support tower than it properly could under County zoning regulations. *Id.* at 773, 9 Cal.Rptr.2d 120. In refusing to apply equitable estoppel, the court focused on the "point ... that public policy may be adversely affected by the creation of precedent where estoppel can too easily replace the legally established substantive and procedural requirements for obtaining permits." *Id.* at 775, 9 Cal.Rptr.2d 120. The government is not estopped from enforcing a pre-existing law. *Id.* at 776, 9 Cal.Rptr.2d 120.

In accord are the teachings of *Toigo v. Town of Ross*, 70 Cal.App.4th 309, 321, 82 Cal.Rptr.2d 649 (Cal.Ct.App.1998) ("In California, the developer's right to complete a project as proposed does not vest until a *valid* building permit, or its functional equivalent, has been issued and the developer has performed substantial work and incurred substantial liabilities in good faith reliance on the permit.") (emphasis added).

In the case at bar, the building permit was invalid because it was issued without authority and in violation of the Los Angeles Municipal Code and the governing Settlement Agreement. I already have concluded that the Settlement Agreement required the Congregation to submit its remodeling plans to Daniel Green and that the Congregation did not do so, thereby breaching the terms of the Settle-

*CP*  
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ment Agreement and its implied covenant of good faith. Moreover, the Settlement Agreement was tantamount to a conditional use permit under the Los Angeles Municipal Code. The Code requires that plans for changes to a deemed-approved conditional use site must be "submitted to and approved by the Zoning Administrator..." *Los Angeles Mun.Code* § 12.24-M.1 (emphasis added). The Congregation did not submit its building permit application to Daniel Green.

Even without the notice problem, the building permit would still be invalid. Because the clerk in the Department of Building and Safety lacked the authority to approve the plans, the teachings of the *Restatement (Second) of Agency* (1958) come into play. Section 164 provides in relevant part: "[A]n agent for a disclosed or partially disclosed principal who exceeds his power in making an unauthorized contract with a third person does not bind the principal..." Cf. *Terminix Co. v. Contractors' License Bd.*, 84 Cal.App.2d 167, 190 P.2d 24, 27 (Cal.App.1948) (holding that the language of a written contract forbade a company's agent from making oral representations to customers beyond the terms of the contract itself).

Even setting aside the notice requirement that the Congregation failed to meet, the Congregation's execution of the building plans reflected in the building permit violated the specific limitations in the Settlement Agreement. It is true that the Settlement Agreement functioned as a conditional use permit to allow the Congregation to operate a church in an R-1 zone. It is also true that the Settlement Agreement contemplated changes, if approved by the Zoning Administrator, to the existing structure at 303 South Highland Avenue. It does not follow, however, that the Department of Building and Safety had authority under the Settlement Agreement and the Municipal Code to is-

sue a building permit that allowed the Congregation to destroy all but two exterior walls of the existing structure and then build a new structure more than double the size of the original one. Tearing the residence down and then building a new structure more than twice as large simply does not constitute restoring and maintaining "[t]he single family use of the property ... including the residential character and architecture."

Because the permit was issued in violation of the Settlement Agreement and the Code, the City may revoke the permit. *Los Angeles Mun.Code* § 98.0601(a)(2) ("The Department [of Building and Safety] shall have the authority to revoke any permit, slight modification, or determination whenever such action was granted in error or in violation of other provisions of the Code and conditions are such that the action should not have been allowed."). Equitable estoppel does not apply.

Here, the law did not change from the time before the Department of Building and Safety issued the permit to the time when the City issued a stop-work order. Like the ordinances in *Pettitt* and *Smith*, the Settlement Agreement predated the issuance of the building permit and remains in place beyond it. Significantly, in *Toigo*, the court stated:

Courts have yet to extend the vested rights or estoppel theory to instances where a developer lacks a [valid] building permit or the functional equivalent, regardless of the property owner's detrimental reliance on local government actions and regardless of how many other land use and other preliminary approvals have been granted.

70 Cal.App.4th at 322, 82 Cal.Rptr.2d 649.

The Congregation made an end-run around the notice provision and applied for a building permit that far exceeded the terms of the operational Settlement Agree-

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ment. Applying equitable estoppel "would effectively nullify a strong rule of policy, adopted for the benefit of the public." *Pettiti*, 34 Cal.App.3d at 819, 110 Cal.Rptr. 262 (internal quotations and citations omitted).

Accordingly, I conclude that the Congregation did not possess a vested right in carrying through the renovations to their completion. I conclude also that equitable estoppel does not apply against the City because the public and community interest in preserving the community patterns established by the carefully drafted Settlement Agreement outweighs the injustice that may be incurred by the Congregation in relying upon an *invalid* building permit. The district court abused its discretion in holding otherwise.

For the foregoing reasons, I respectfully dissent.



Celestino SILVA-CALDERON,  
Petitioner,

v.

John ASHCROFT, Attorney  
General, Respondent.

No. 02-73474.

United States Court of Appeals,  
Ninth Circuit.

Submitted Feb. 9, 2004.\*

Filed June 16, 2004.

**Background:** Alien petitioned for judicial review of denial of application for cancellation of removal, based on immigration judge's refusal to grant continuance or to issue subpoena to compel witness' attendance.

\*This panel unanimously finds this case suitable for decision without oral argument.

**Holding:** Withdrawing its prior opinion, 358 F.3d 1175, on motion for rehearing, the Court of Appeals, Gould, Circuit Judge, held that, where certified administrative record was incomplete, and it was unclear whether the Board of Immigration Appeals (BIA) had considered a brief filed by alien which was not reflected on administrative record, Court of Appeals would not reach merits of alien's procedural due process claims, but would remand to the BIA to address these issues.

Remanded.

Aliens @54.3(6)

Where certified administrative record was incomplete, and it was unclear whether the Board of Immigration Appeals (BIA) had considered a brief filed by alien which was not reflected on administrative record, Court of Appeals would not reach merits of alien's procedural due process claims, regarding whether immigration judge should have continued hearing and granted subpoena, but would remand to the BIA to address these issues; issues were within the BIA's core competence.

Timothy M. Greene, Puyallup, WA, for the petitioner.

Patricia L. Buchanan, U.S. Department of Justice, Civil Division, Washington, D.C., for the respondent.

On Petition for Review of an Order of the Board of Immigration Appeals.

Before D.W. NELSON, FISHER, and GOULD, Circuit Judges.

Fed. R.App. P. 34(a)(2).

A large, stylized handwritten signature or initials, possibly "CP" or "CJ", written in dark ink.



953 Huber St., Grover Beach, CA 93433 (805) 489-6835 • 800-606-7246 • FAX (805) 481-4480

### ESTIMATE and PROPOSAL

Frank Parnel 1560 Strand Way Oceano, CA 93445	Location _____ _____ _____ X St. <u>Pier Ave</u>	Map Code <u>714-D7</u>
---	---	------------------------

Phone: 481-7110

Date: 11-4-05 Time: 7:45

Bid: needs bid for attorney

Stories # 1-2 Type Roof \_\_\_\_\_ Roof Proj. \_\_\_\_\_

Gutter ~~Blue~~ D/S Ivory  
56000-5 Gutters

Gutter 64

D/S 20

Elbows 6

Offsets \_\_\_\_\_

Total Footage 90 \$ 405 \$

<sup>2x4</sup> R. 26 125.00

<sup>100%</sup> R. Mitres 2 20.00

Sp. Mitres \_\_\_\_\_

Teardown 26 16.00

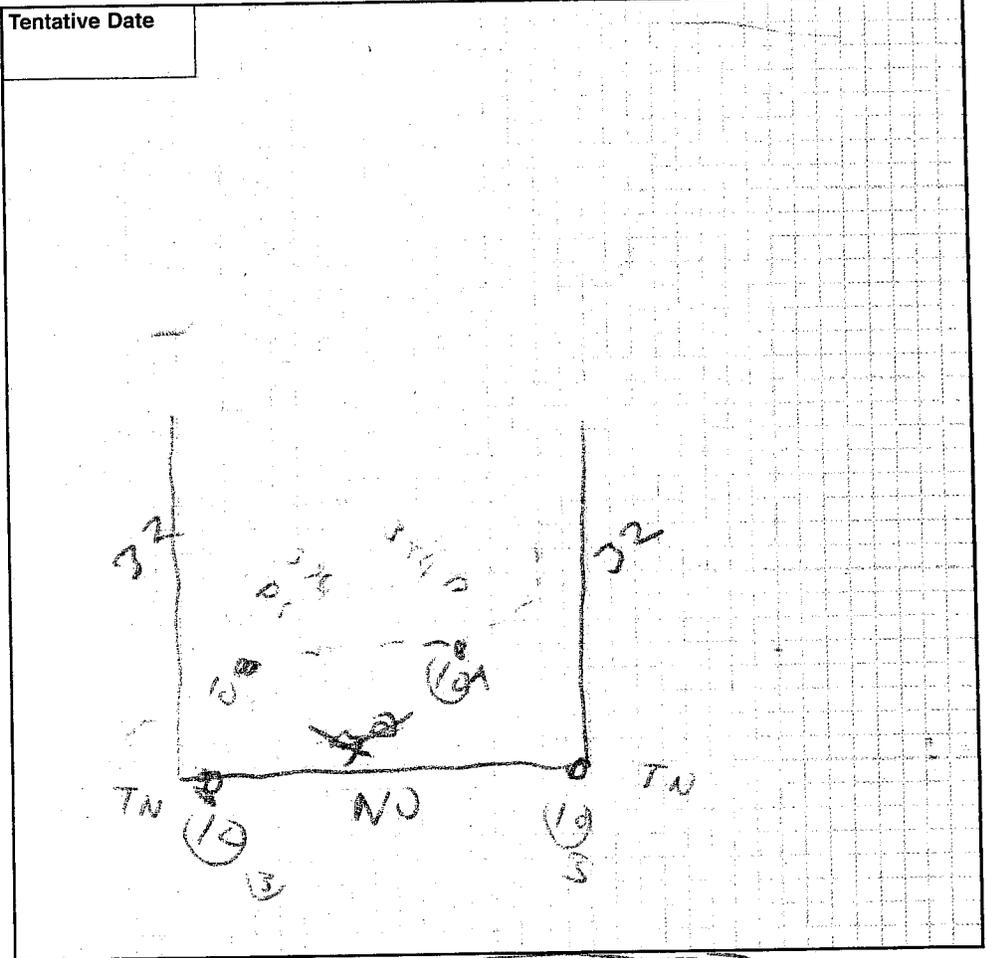
G. Guard \_\_\_\_\_ 566.00

Flashing \_\_\_\_\_

Diverter \_\_\_\_\_

566.00

Total COD Amt. \$ \_\_\_\_\_ \$ \_\_\_\_\_



Fax or mail a signed copy by \_\_\_\_\_ to set up job.

This bid good for 15 days.

**If Rock Roof:** Owner may need to have roofer reseal gravel stop seams.

**If Tile Roof:** Roofer needs to leave flashing out 1/4" on eaves where gutters are to be installed. Gutters need to go on 2nd story eaves before 1st story roofs are done: if not, not responsible for broken tile.

A late payment charge of two percent (2%) per month will be added on all accounts that are outstanding more than thirty (30) days after billing date. Annual percentage rate is twenty-four percent (24%) per annum. In the event of any legal action in connection with this contract, either for collection or on other grounds, buyer shall be obligated to pay all attorney's fees and court costs including legal fees incurred in any supplementary proceedings necessary to recover payment of any amounts due to contractor. This contract includes operative provisions which are set forth on the REVERSE side hereof. Buyer acknowledges having received and read the REVERSE side of this contract and agrees to all of the provisions set forth therein.

If this contract is in excess of \$500, "You as owner or tenant have the right to require the contractor to have a performance and payment bond or funding contract."  
You, the buyer, may cancel this transaction at any time prior to the third business day after the date of this transaction. (See reverse side.)

Accepted [Signature]  
CUSTOMER'S SIGNATURE

Date 11/4/05 Salesman \_\_\_\_\_

Date \_\_\_\_\_ [Signature]  
112

11-9-05

Planning Commission  
County of SLO  
County Government Center  
San Luis Obispo, CA 93408

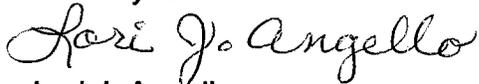
Dear Commissioners:

I am responding to a notice we received about a variance request to allow the enclosure of the setback on the home at 1560 Strand Way, Oceano.

My husband and I built our home at 1630 Laguna 27 years ago. I am very familiar with all the properties in the beach area. All the homes are very close together, the lots are 30' wide, with 3' setback on each side. This particular owner has illegally enclosed his 3' setback and created a living area where the walkway and access to the house should be. This creates a very dangerous situation should a medical or fire emergency arise. There is no way the firemen could get into the house, especially the upper story.

I ask that you deny this request. This enclosed patio should be put back the way it was when the house was built for the protection and safety of everyone living in the area.

Thank you.



Lori J. Angello  
1630 Laguna  
Oceano, Ca. 93445



November 10, 2005

San Luis Obispo County  
Planning Commission  
County Government Center  
San Luis Obispo, CA 93408

Re: Variance request DRC 2004-00224  
Parnel - 1560 Strand Way, Oceano

Dear Planning Commissioners:

We are the homeowners directly to the south of 1560 Strand Way and are requesting a denial of the above request for a variance.

We have enclosed pictures of the two properties showing the illegal structure on the wall that is on the property line.

Exhibit A- picture 1- shows the roof on the wall extending the length of the property. The wall is a single brick wall with windows supporting a tile roof. There is no access to the residence because the 3' setback is enclosed. All runoff from the roof runs directly onto our property. In the event of fire, there is no access to the residence.

Exhibit B- picture 2- shows the view from Strand Way. There is only 3' between the homes, that being the setback at 1590 Strand Way. The homes in Oceano Beach are built on small lots and the 6' that is normally between the homes is an absolute necessity.

This structure constitutes a safety hazard, affecting the health and welfare of surrounding property owners and is also a trespass and a nuisance to our property.

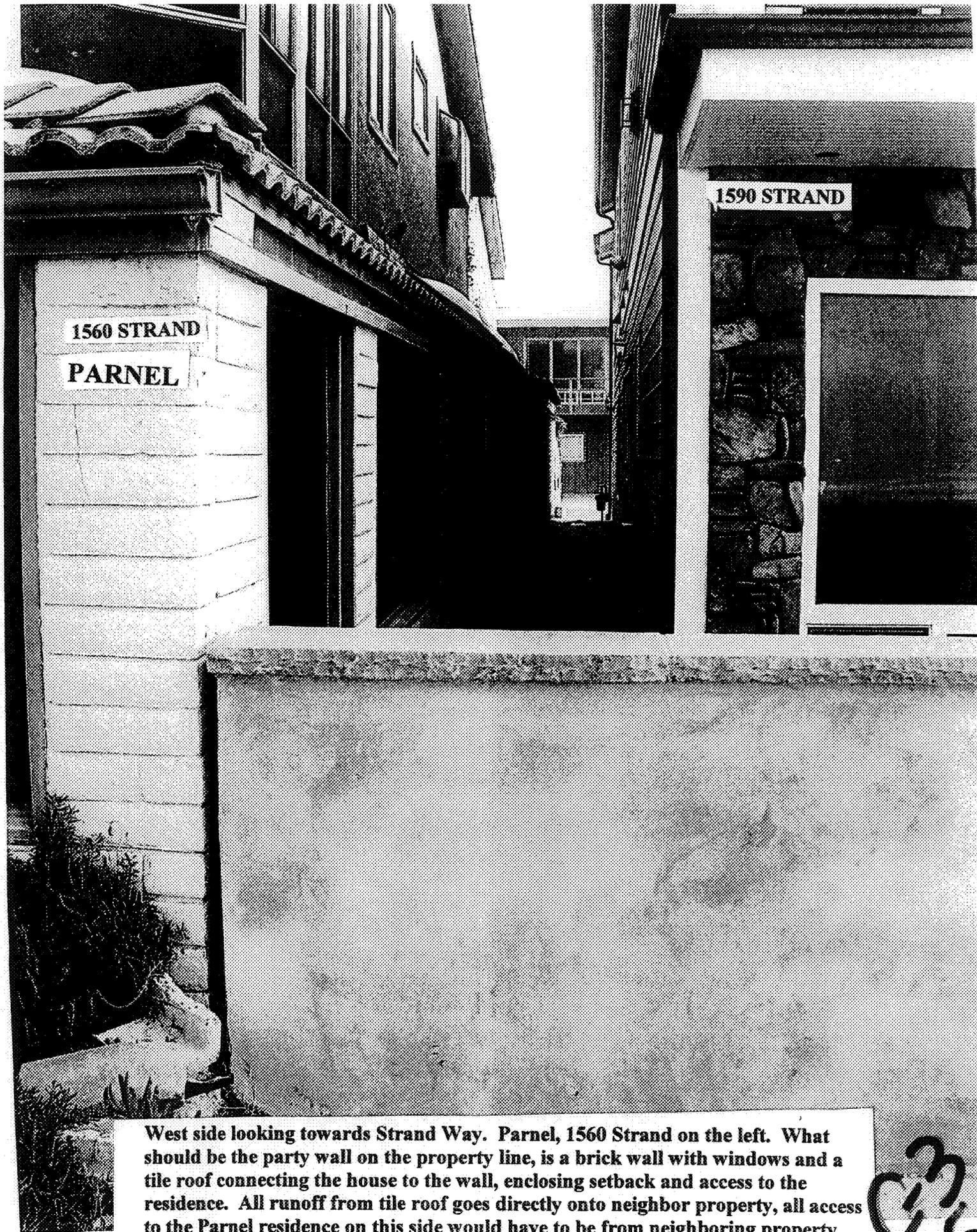
We respectfully ask that you deny this request.  
Thank you.

Sincerely,



Linda Austin  
Glenda, Jim, Laurie Guiton  
1590 Strand Way  
Oceano, CA

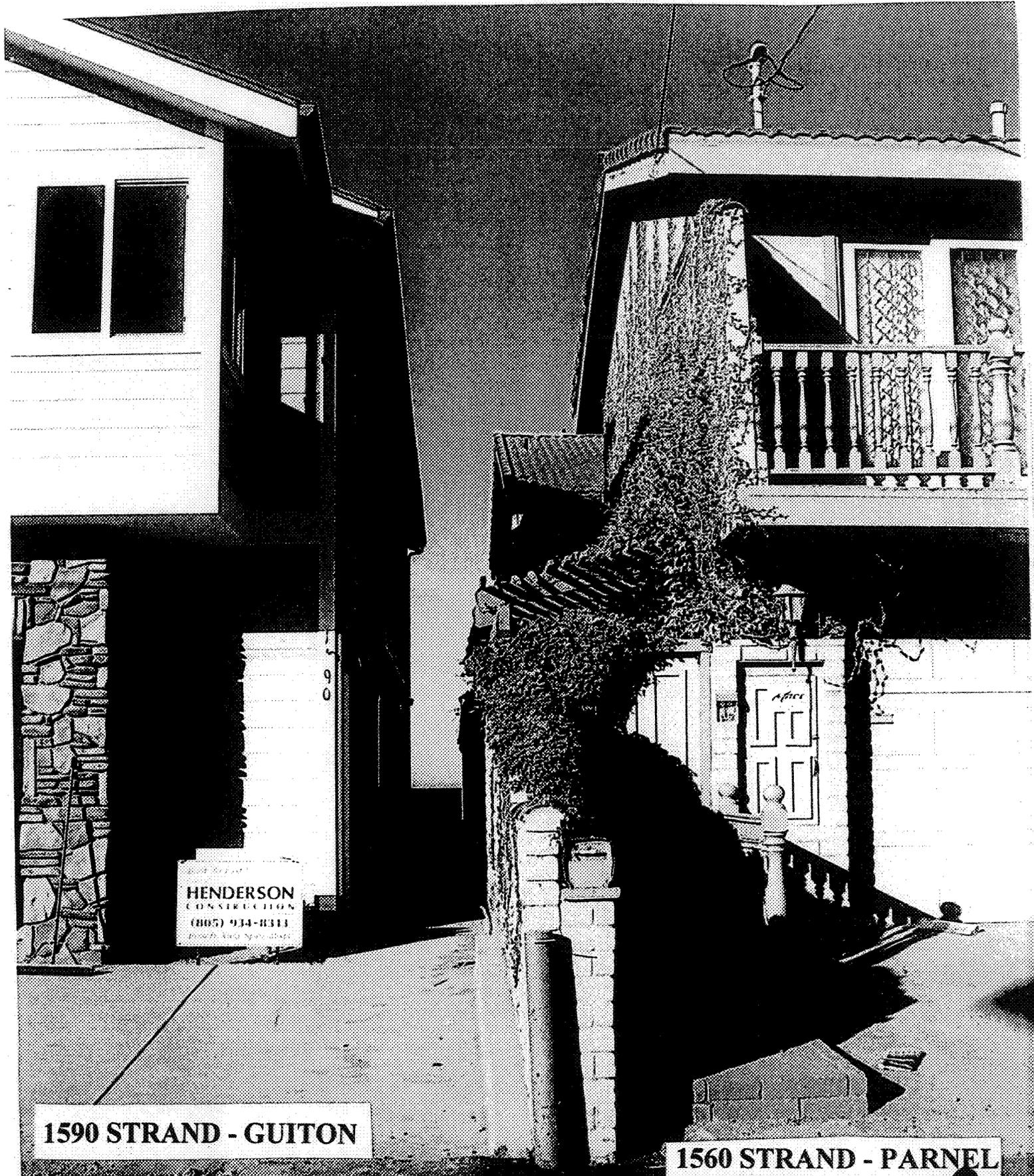




**West side looking towards Strand Way. Parnel, 1560 Strand on the left. What should be the party wall on the property line, is a brick wall with windows and a tile roof connecting the house to the wall, enclosing setback and access to the residence. All runoff from tile roof goes directly onto neighbor property, all access to the Parnel residence on this side would have to be from neighboring property.**

**EXHIBIT A - PICTURE 1**

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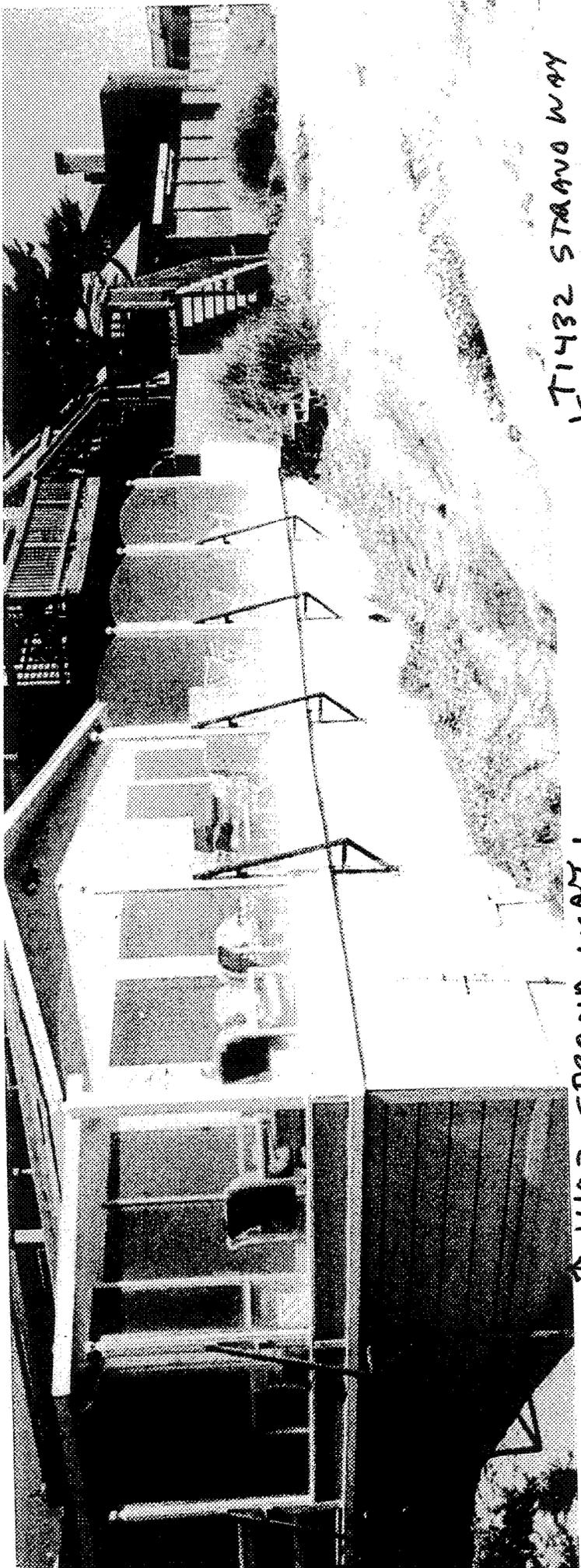
HENDERSON  
CONSTRUCTION  
(885) 934-8111  
1560 Strand Way

1590 STRAND - GUITON

1560 STRAND - PARNEL

From Strand Way. Note 3' setback on Guiton, 1590 Strand Way. There is no setback on Parnel, 1560 Strand. All access to the exterior of 1560 Strand Way would have to be from the neighboring property.

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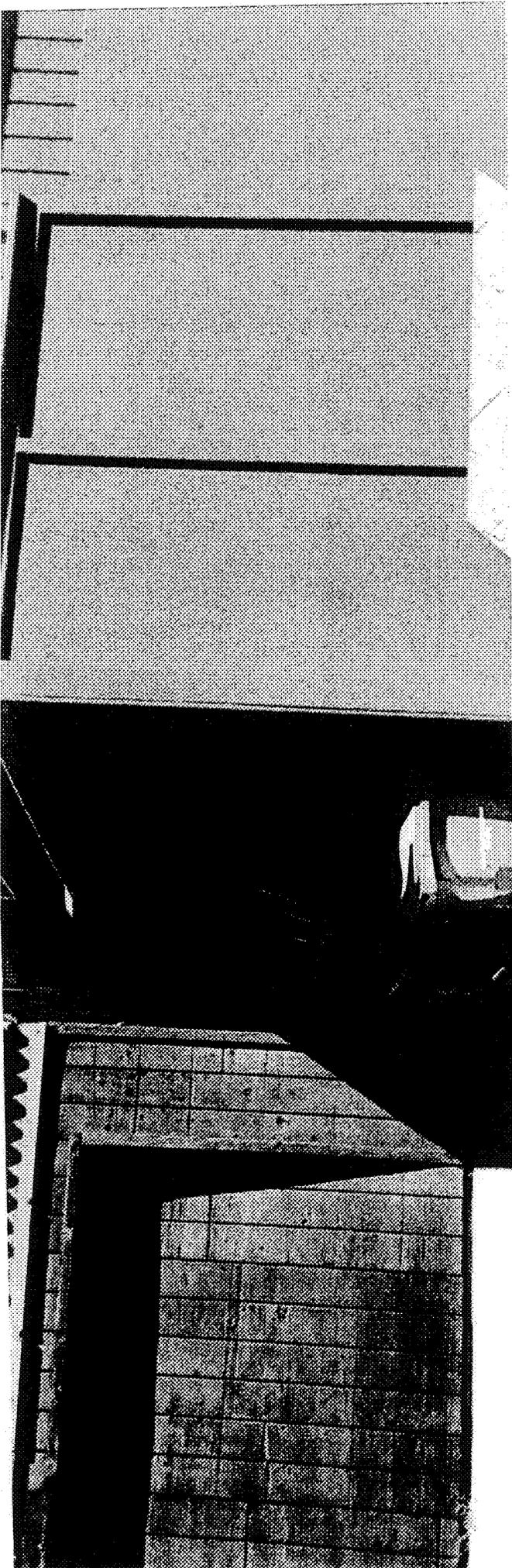


↑ 1402 STRAND WAY ↓

↓ 11432 STRAND WAY



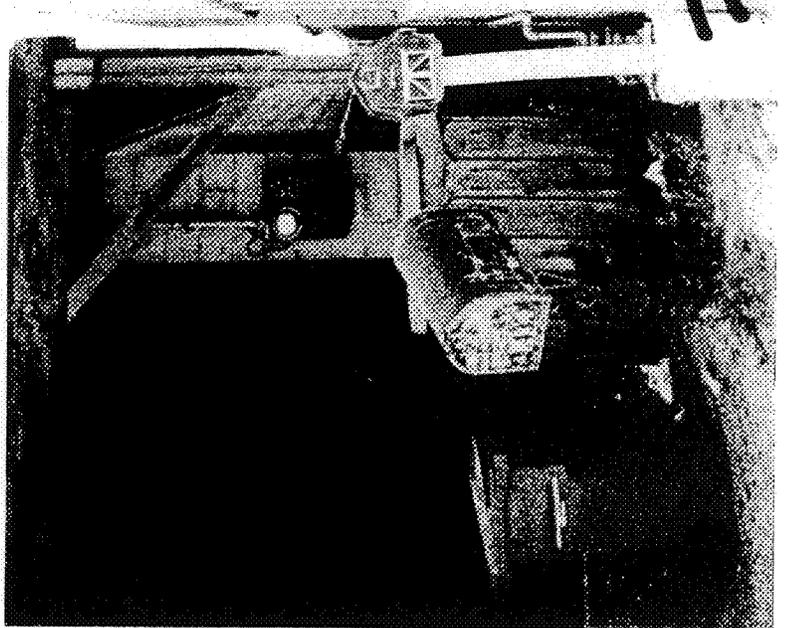
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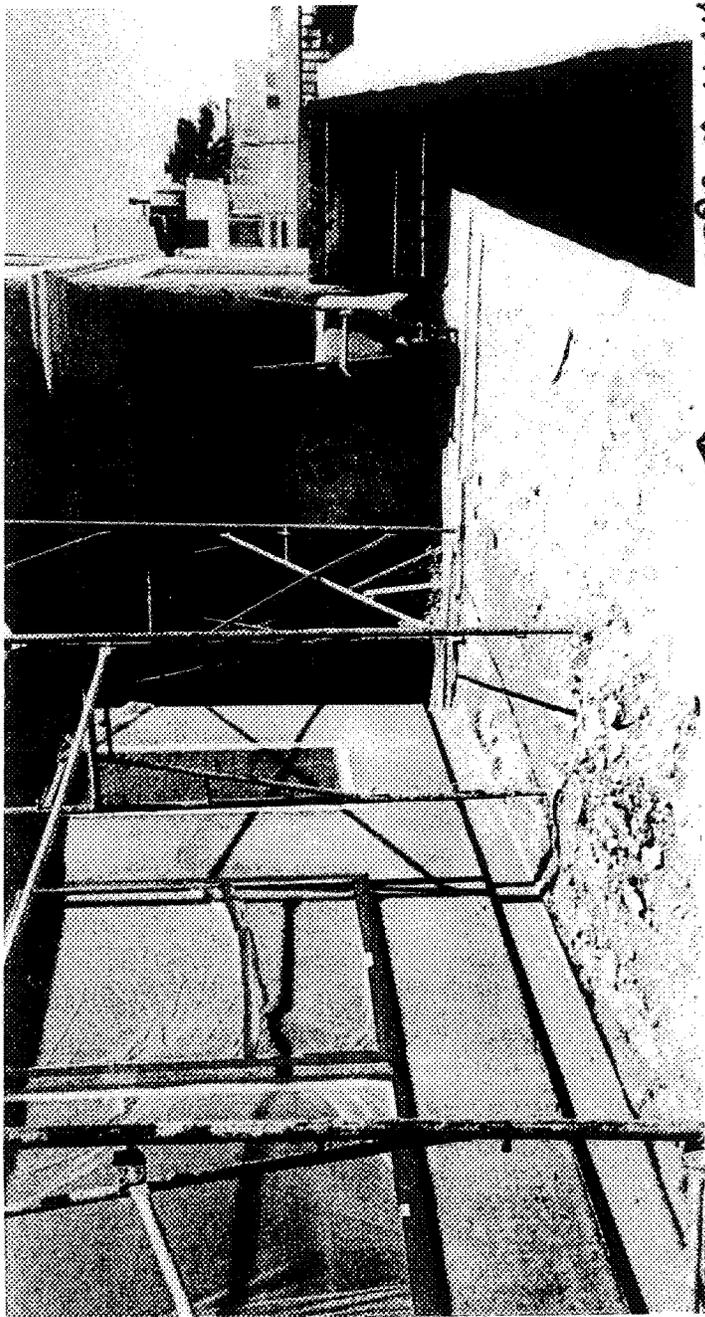
↑ 316 SURF



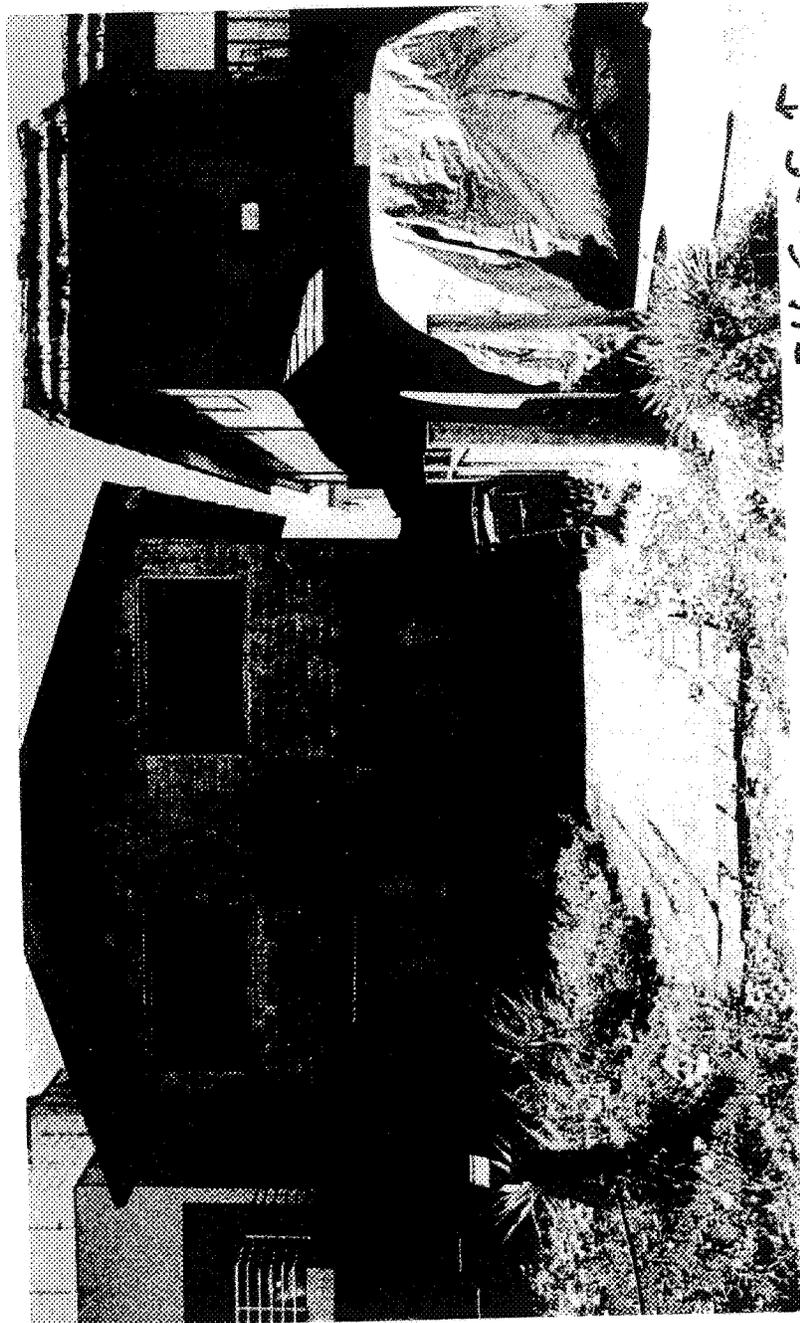
↑ 407 STRANDWAY



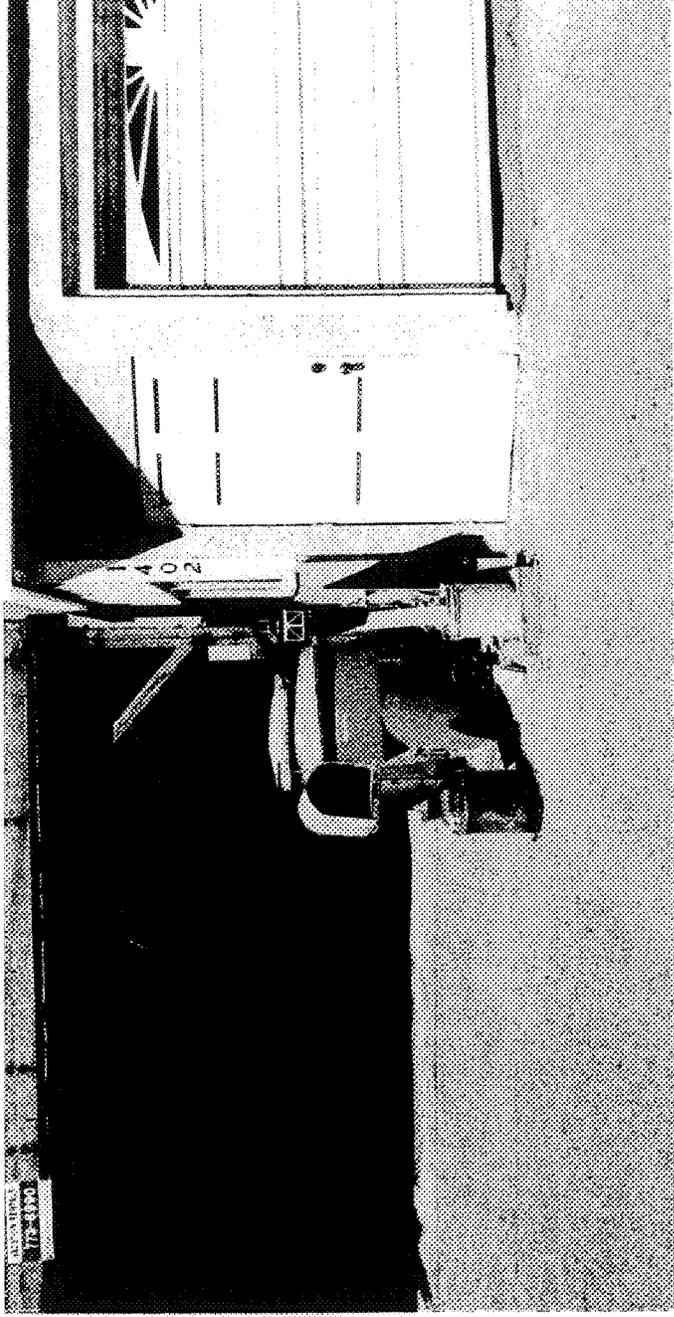
C3  
112



↑ 1452 STRAND WAY



C3  
119

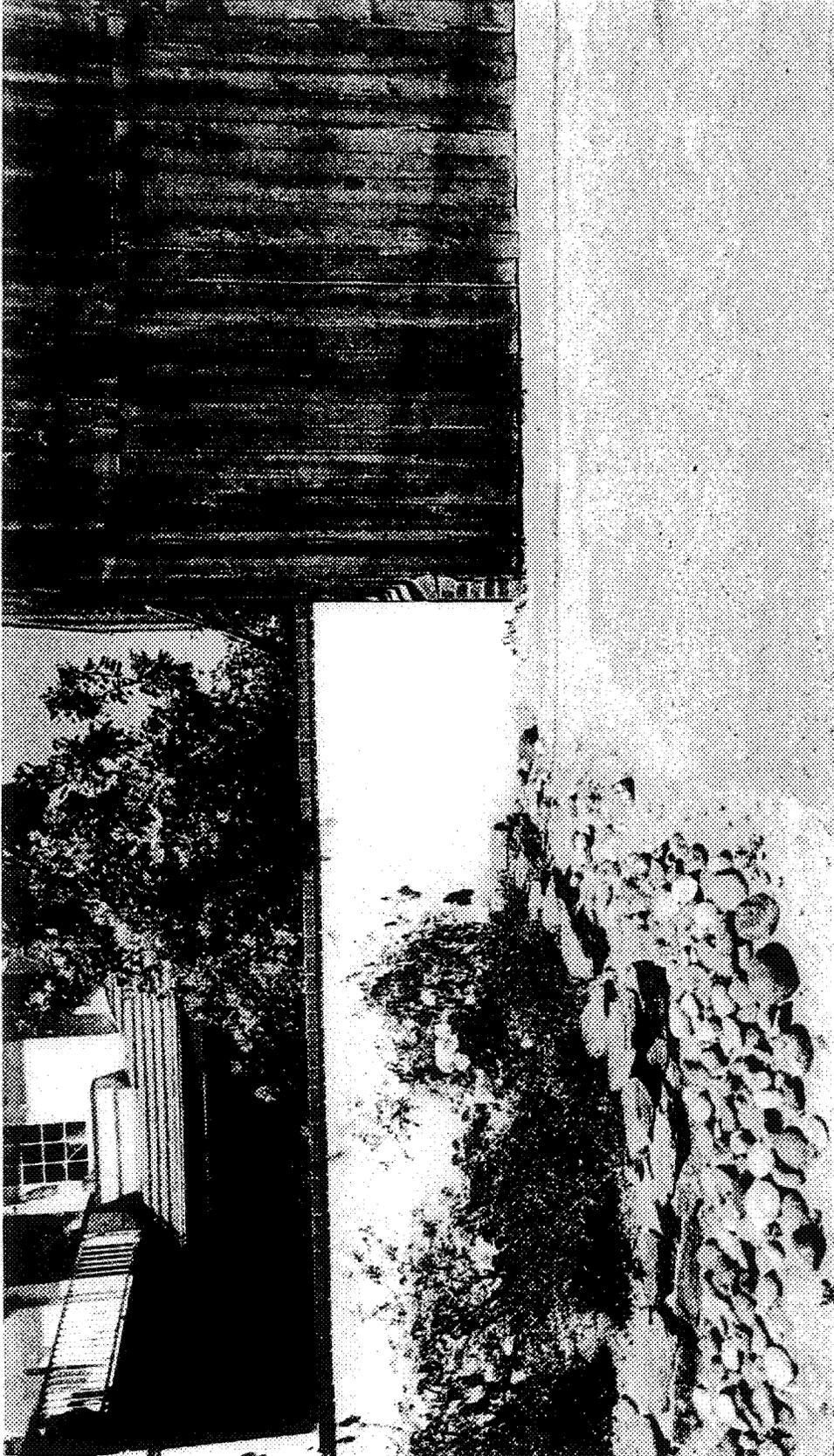


1402 STRAND WAY ↑



↑ 314 SURF ↑

C3  
120



1452 STRANDWAY ↑

CB  
121

11-9-05

Planning Commission  
County of SLO  
County Government Center  
San Luis Obispo, CA 93408

Dear Commissioners:

I am responding to a notice we received about a variance request to allow the enclosure of the setback on the home at 1560 Strand Way, Oceano.

My husband and I built our home at 1630 Laguna 27 years ago. I am very familiar with all the properties in the beach area. All the homes are very close together, the lots are 30' wide, with 3' setback on each side. This particular owner has illegally enclosed his 3' setback and created a living area where the walkway and access to the house should be. This creates a very dangerous situation should a medical or fire emergency arise. There is no way the firemen could get into the house, especially the upper story.

I ask that you deny this request. This enclosed patio should be put back the way it was when the house was built for the protection and safety of everyone living in the area.

Thank you.

*Lori J. Angello*

Lori J. Angello  
1630 Laguna  
Oceano, Ca. 93445

*C-3  
122*

November 10, 2005

San Luis Obispo County  
Planning Commission  
County Government Center  
San Luis Obispo, CA 93408

Re: Variance request DRC 2004-00224  
Parnel - 1560 Strand Way, Oceano

Dear Planning Commissioners:

We are the homeowners directly to the south of 1560 Strand Way and are requesting a denial of the above request for a variance.

We have enclosed pictures of the two properties showing the illegal structure on the wall that is on the property line.

Exhibit A- picture 1- shows the roof on the wall extending the length of the property. The wall is a single brick wall with windows supporting a tile roof. There is no access to the residence because the 3' setback is enclosed. All runoff from the roof runs directly onto our property. In the event of fire, there is no access to the residence.

Exhibit B- picture 2- shows the view from Strand Way. There is only 3' between the homes, that being the setback at 1590 Strand Way. The homes in Oceano Beach are built on small lots and the 6' that is normally between the homes is an absolute necessity.

This structure constitutes a safety hazard, affecting the health and welfare of surrounding property owners and is also a trespass and a nuisance to our property.

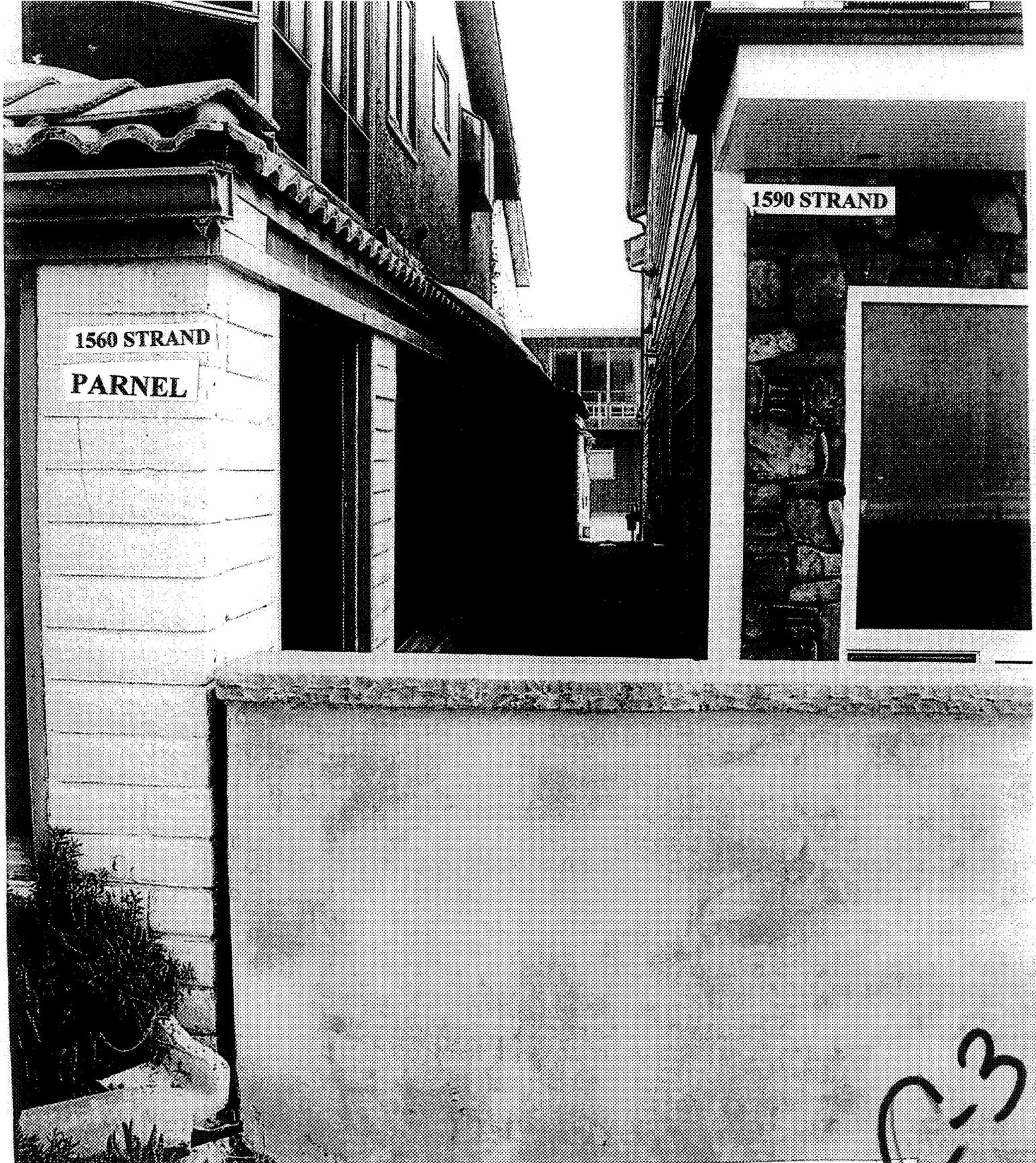
We respectfully ask that you deny this request.  
Thank you.

Sincerely,



Linda Austin  
Glenda, Jim, Laurie Guiton  
1590 Strand Way  
Oceano, CA





West side looking towards Strand Way. Parnel, 1560 Strand on the left. What should be the party wall on the property line, is a brick wall with windows and a tile roof connecting the house to the wall, enclosing setback and access to the residence. All runoff from tile roof goes directly onto neighbor property, all access to the Parnel residence on this side would have to be from neighboring property.

C3  
124

EXHIBIT A - PICTURE 1