



# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Ward and Members of the City Council

**THROUGH:** Richard Thompson, Interim City Manager *RT*

**FROM:** Laurie Jester, Acting Director of Community Development *LJ*  
 Angelica Ochoa, Assistant Planner *AO*

**DATE:** September 7, 2010

**SUBJECT:** Consideration of Planning Commission Decision to Deny an Appeal of an Administrative Decision Denying a Lower Garage Floor Elevation and Other Garage Modifications for a New Single Family Residence at 626 Rosecrans Avenue, Thereby Upholding the Decision of the Acting Community Development Director (Kirby)

### RECOMMENDATION:

Staff recommends that the City Council **RECEIVE** and **FILE** the Planning Commission's decision to deny an appeal of a lowered garage floor elevation and other garage modifications at 626 Rosecrans Avenue.

### FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

### BACKGROUND:

On February 10, 2010, the property owner submitted a building permit application and plans to construct a new two-story single family residence with an attached two-car garage at 626 Rosecrans Avenue in Area District II. The submitted plans met all development regulations for the zoning district and a building permit was issued on April 28, 2010 per the approved plans. Approximately one month into construction, May 2010, the property owner and contractor met with staff to discuss adding another floor to include a bedroom and bathroom between the garage and the second floor, thereby creating a three-story residence.

Staff determined that this proposal did not meet the residential development standards for this district, Area District I and II, for which only two stories is allowed and prohibits a three-story structure. Staff communicated this information to the property owner and contractor. The garage floor was then lowered, approximately 21 inches lower, and other modifications were made without City approval. Correction notices were issued to the contractor by the building inspectors several times to correct the changes and follow the approved building plans. These corrections were also discussed with the property owner and contractor.

Thereafter, the property owner requested approval to revise the garage elevation, approximately 21 inches lower than the approved plans, and other garage modifications. Staff denied this request since the original intent of the property owner was to add another floor and the modifications were inconsistent with past staff policy and practice. This proposal of lowering the garage floor and other modifications would be able to accommodate a third story.

On June 7, 2010, staff received an application from the property owner to appeal the administrative decision denying the lowered garage floor, installing a large openable window above the garage door, and other garage modifications.

**DISCUSSION:**

The Planning Commission heard testimony from the contractor and property owner at its regular meeting of July 28, 2010 that lowering the garage floor would lessen the slope of the backyard to provide a play area and the structural modifications would strengthen the garage. The property owner stated their requested changes to the original approved plans had changed and were not intended to add another floor and they understood three stories were not allowed.

After receiving public testimony and discussion, the Planning Commission denied the subject appeal. Staff stated that there were concerns that another potential owner could add an unapproved level without the City's knowledge, due to the design and layout of the proposal. They were concerned that single story ceilings height of 15 feet, as proposed, had not been approved in the past. Also, the structural modifications made to the garage could potentially incorporate another floor.

The Planning Commission discussed that the original plans approved were accepted by staff and the contractor and the property owner were to follow the approved plans. The Planning Commission recognized that staff had valid reasons in denying the requested changes and directed the property owner to follow the approved plans. They stated that it is difficult to control the choices of future property owners and an unapproved floor could be added. Overall, the Planning Commissioners agreed that staff had justifiable reasons for denying the requested changes and they supported staff's decision to deny the subject appeal.

Since the Planning Commission decision the applicant, contractor and staff met and discussed the Planning Commission required modifications. The plans were revised and construction is proceeding in accordance with the Planning Commission approval. The applicant did not appeal the Planning Commission decision and it is anticipated that the project will be completed in a few weeks.

Attachments: A. Planning Commission minute excerpts, staff report and attachments dated July 28, 2010.

cc: Steven Kirby, Property Owner  
G.J. Constructive Creations, Inc. (Designer/Contractor)

NOES: None.  
ABSENT: None  
ABSTAIN: None

**C. AUDIENCE PARTICIPATION**

**D. BUSINESS ITEMS**

**07/28/10-2 Consideration of an Appeal of an Administrative Decision Denying a Lower Garage Floor Elevation and Other Garage Modifications for a New Single Family Residence at 626 Rosecrans Avenue**

Assistant Planner Ochoa summarized the staff report. She said that the applicant originally submitted plans for a new single family two story residence with an attached two car garage. She stated that a building permit was issued for construction based on the plans that were submitted and approved. She commented that a revised plan that included three stories in the garage area was then presented to staff while construction was occurring on the subject site. She stated that the revised plan was denied, as only two stories are permitted in the zone where the property is located. She indicated that the garage floor was then lowered about 21 inches and additional alterations were done to the garage during construction that was not approved as part of the original plans. She commented that additional work that was done in the garage which was not approved included installation of a large openable window above the garage door, electrical work, installation of a tankless water heater, and the installation of structural blocking in the garage walls. She said that the applicant requested to keep the garage floor lowered, which was denied by staff. She said that staff felt the lowering of the garage floor would allow adequate height to provide three levels. She commented that staff felt that a ceiling height of 15 feet as approved in the original plans is adequate to accommodate two levels while restricting the possibility of incorporating three levels.

Assistant Planner Ochoa indicated that the property owner is asking for approval of a garage floor elevation of 105.70 which is 21 inches below the approved elevation of 107.50. She said that the applicant is also asking for the approval of the window above the garage door, which was installed without staff approval. She indicated that the intent of the owners was to add another floor, and staff feels that the height of the garage ceiling as proposed of 16.8 feet could accommodate an additional floor. She indicated that adding a floor would not comply with the zoning standards since only two stories are permitted in the zone where the subject property is located. She stated that the garage has direct access into the house. She indicated that the garage modifications could provide a potential to accommodate a third floor with the location of the blocking that has been installed on the garage walls. She stated that the work that has been done does not meet the residential standards or the goals of the General Plan to preserve the height limit and low profile image of the neighborhood. She indicated that staff is recommending that the Commission uphold the decision of the Acting Community Development Director to deny the lower garage floor elevation and other garage modifications and deny the subject appeal.

In response to a question from Commissioner Lesser, Assistant Planner Ochoa indicated that a 16.8 feet ceiling height for the garage would not have been approved by staff if it had been submitted as part of the original plans, and 15 feet is the most that would be approved for the garage ceiling height.

Acting Director Jester indicated that she is not aware of any ceiling heights in Area Districts I or II being approved over 15 feet.



In response to a question from Commissioner Lesser, Assistant Planner Ochoa indicated that there is a concern that the current property owner or a subsequent owner could add an unapproved level to the structure without the knowledge of the City. She pointed out that the property owner did originally intend to add another floor. She said that staff felt the additional level proposed by the applicant was not simply intended for storage but rather to provide additional living area, since there was a full floor and bathroom.

In response to a question from Commissioner Lesser, Acting Director Jester commented that Code enforcement is done once a complaint is received regarding a potential violation. She said that staff does not want to continually monitor structures to ensure that additional stories are not added without approval. She pointed out that the reasons there are height restrictions placed on interior spaces is so that they cannot be easily converted to add a floor. She indicated that staff has never approved ceiling heights greater than 15 feet in such situations.

In response to a question from Commissioner Paralusz, Acting Director Jester indicated that the building inspectors have indicated that the horizontal blocking in the garage is lined up appropriately in order to lay floor joists evenly across to accommodate another level that would line up with the floor level of the rest of the house. She also commented that the large window above the garage door would be very difficult to open from the ground level.

In response to a question from Commissioner Seville-Jones, Acting Director Jester stated that the tankless water heater is at a height that would be easily accessible from an additional level but would need to be accessed from a ladder from garage the floor level.

In response to a question from Commissioner Seville-Jones, Acting Director Jester indicated that the lower elevation of the garage floor would decrease the slope of the back yard.

In response to a question from Commissioner Lesser, Acting Director Jester indicated that she is not aware of any illegal conversions in other houses to add a floor.

**Steve Kirby**, the appellant, stated that they have included pictures with their exhibits of homes in the adjacent area to the subject property that appear to accommodate three stories. He commented that their daughter, who is planning to live in the subject home, wanted a level backyard for her future children to be able to have an area to play. He indicated that their intent was to build a structure that was not built out to the maximum. He commented that while they were framing the garage, they talked to staff about what could possibly be done above the garage level. He indicated that staff informed them that they could not build a third level but could include a 6 foot high storage area. He indicated that they then submitted plans to staff to include a storage area. He stated that they then later decided that they did not want for the storage area to be included. He pointed out that the plywood on the outside of the home meets at the exact point where the blocking in the inside of the garage has been placed, and the bottom and top sheets of plywood are nailed into the blocking. He commented that the window above the garage door had already been framed, the electrical had been installed, and the blocking had been installed when they decided not to include the storage area. He pointed out that there are no electrical outlets installed at a height that could be accessed from an additional floor.

**Mr. Kirby** indicated that they have no desire or intent to build an additional level. He stated that they did not continue construction work after their meetings with staff. He said that staff did not indicate to them that adding a window above the garage door was a big concern. He stated that sprinklers have been installed on the ceiling that would be inconsistent with building a third story. He indicated that the floor for the garage has not been poured. He said that the

level of the garage floor as proposed would make a 2 degree slope which would provide a level area for children to play. He stated that they have asked staff to provide any documentation regarding their policy limiting tall ceilings, and they were told that there are no such documents which address the policy. He pointed out that they were told that nothing they have done violates any zoning regulations. He indicated that the staff report states that the reason their construction was denied by staff is because they would have an opportunity to break the law and not because they have violated any laws. He pointed out that simply because there is an opportunity does not mean that the laws will be violated. He said that the City has the right to inspect the property at any time. He stated that their intent is to place drywall around the garage and leave the electrical as in the original plans.

In response to a question from Commissioner Lesser, **Mr. Kirby** indicated that the overall height of the structure is the same as specified in the original plans and it does not violate the height limit.

**Garo Babikian**, the project architect, said that the level of the garage slab is different than was originally indicated on the plans. He stated that the owners decided to ask the City whether they could incorporate an additional floor. He commented that since an additional story is not permitted, the applicants would instead like to have a higher garage and a more level back yard. He indicated that they do not feel the construction as they are proposing would cause any harm. He stated that they would not add a third story since it is not allowed by the City. He commented that it is not justifiable for the City to determine that the ceiling is too high in the garage, as the height of the overall structure is 3 inches below the maximum allowed. He pointed out that the City should not dictate the overall design of the structure provided there are no Code violations. He stated that they have not done any work in the garage since the stop work order was issued by the City. He commented that his goal is to build a nice home for the applicants, and he would not jeopardize the project by doing anything illegal. He indicated that he does not feel there would be any harm to the neighbors if the height of the garage ceiling is 16.8 feet rather than 15 feet. He commented that the applicant can submit a report or staff can check every year to ensure that an additional floor is not built.

**Margaret Kirby**, the applicant, pointed out that they came to the City in good faith regarding the possibility of incorporating an additional level. She said that staff then informed them that it was not permitted in the area where the subject property is located. She stated that they have no plans to incorporate a third story and would like to continue with construction according to their proposed plan which would allow for less slope for the garage and back yard.

In response to a question from Commissioner Lesser, **Ms. Kirby** indicated that they are good citizens and would not break the law; however, they would not have control over the use of the property by future owners. She commented that they offered to include language on the deed to the property to indicate that a third level is not to be constructed on the property.

Acting Director Jester said that the revised plans that were suggested to staff by the applicant included a full story and not a mezzanine area. She indicated that the Building Code defines a mezzanine as having a mid floor that is no larger than 1/3 of the floor below and open to the floor below. She stated that mezzanines have been permitted in similar situations, and the revised proposal for an additional level did not meet the Code definition of mezzanine. She commented that a correction notice was placed on the property on May 21 which indicated that the City needed verification of the floor elevation. She indicated that staff indicated to the applicant that they needed to build according to the originally approved plans, which did not include adding the window above the garage door or lowering the garage floor level. She stated that a 2 degree slope is very flat and is the minimum required for drainage.

Commissioner Seville-Jones said that the original plans were approved and accepted by staff and the applicant, and nothing has changed with the staff approval from the original approval. She said that she feels staff had valid reasons to reject the proposed changes to the original plans. She indicated that the Commission needs to rely on the practice and policy of staff in considering building rules, and staff is very open and accessible in discussing the City's rules and policies. She stated that she feels there is a solid foundation as to why the staff has asked for the rules to be applied. She said that she believes the applicant was aware of the rules. She said that she does not feel that it is necessary to determine the intention of the applicants regarding incorporating an additional level, as staff has a reasonable basis for requiring the ceiling height at 15 feet. She indicated that she would support staff's recommendation to deny the appeal.

Commissioner Andreani said that she agrees with the comments of Commissioner Seville-Jones. She indicated that it does sound like the applicant had the intent of creating an additional floor in submitting the revised plans to staff. She commented that it is strange that the applicant decided to include a large window above the garage door and a bathroom for a mezzanine level. She pointed out that the applicant has indicated that they wish to incorporate a large back yard with a grass driveway area; however, the original plans that were approved show a concrete driveway. She commented that the home two doors west of the subject property appears as a two story home and has a single story garage, which is contrary to the applicant's contention that it appears to be three levels. She also indicated that the house located on the corner of Blanche Road and Rosecrans Avenue appears to be two stories of living space above a garage that is below grade, contrary to the contention of the applicants that it appears as three levels. She said that she agrees with staff that construction on the project cannot continue unless it is according to the originally approved plans.

Commissioner Paralusz stated that she agrees with the statements of Commissioners Seville-Jones and Andreani. She stated that agreeing to a Building Permit is basically entering into a contract. She said that both parties must agree in approving the plans and must agree regarding any changes that are made. She stated that the City did not agree to any changes to the original plans that were approved. She indicated that staff has articulated valid reasons for not approving a third level or the higher ceiling height. She commented that she also would support staff's recommendation to deny the applicant's appeal.

Commissioner Lesser said that he also supports the recommendation of staff to deny the appeal. He said that construction has been done which is a variation to the plans that were originally approved. He commented that he would be more receptive to the applicant's argument that there is no written specific policy limiting ceiling heights if it were made when the original plans were submitted rather than after they were approved. He said that he also understands staff's concern regarding the difficulty in addressing an illegal conversion of an additional level after it has been completed. He stated that although the applicants may not intend to build an additional level, there is no control over the actions of future owners of the property. He pointed out that staff must make decisions that consider future owners of the property as well as the applicants.

A motion was MADE and SECONDED (Andreani/Seville-Jones) to **DENY** an Appeal of an Administrative Decision Denying a Lower Garage Floor Elevation and Other Garage Modifications for a New Single Family Residence at 626 Rosecrans Avenue

AYES: Andreani, Lesser, Paralusz, Seville-Jones, Chairman Fasola  
NOES: None

ABSENT: None  
ABSTAIN: None

Acting Director Jester explained the appeal process and indicated that the item will be placed on the City Council's Consent Calendar for their meeting of September 7, 2010.

**07/28/10-3 Adoption of a Resolution Approving a Master Use Permit Amendment for Modifications to the Hours of Operation, Notification for Special Events, and Restaurant Operations and Denying a Height Variance at the Shade Hotel, Metlox Site, 1221 North Valley Drive (Manhattan Inn Operating Company LLC)**

Chairman Fasola commented that he has previously recused himself from consideration of the issue and will not participate in the discussion.

In response to a comment from Acting Director Jester, Commissioner Andreani said that although she was not present at the last hearing regarding the issue, she has reviewed the minutes and the video from that meeting.

Acting Director Jester stated that her understanding is that the Commission did not specify that functions could only in only certain areas of the hotel, and such a restriction has not been included in Condition 3 of the draft Resolution. She commented that language was also added to Condition 11 regarding the terrace enclosure to clarify that the enclosure would need to meet the standards of the City noise consultant's noise studies for a fully enclosed terrace.

Commissioner Seville-Jones commented that staff has deleted the word "entirely" from the first sentence of Condition 11. She said that her understanding is that it was agreed the terrace would be entirely enclosed, and she is not sure why the word is being deleted.

Acting Director Jester said that it does not appear that the intention was to strike the word "entirely" from the first sentence of Condition 11, and staff will keep it in the language.

Acting Director Jester said that the words "Happy Hour" was changed to "Bar and Functions" in the heading of Condition 38.

Commissioner Lesser asked about the extent to which the Commissioners can make any additional changes to the draft Resolution without renoting the hearing.

Acting Director Jester indicated that some of the additional comments that have been received by the neighbors and the applicant are substantive and would require renoting in order to be incorporated. She stated, however, that minor changes can be made for clarification without it being necessary to notice the item. She said that the Commission was very clear on their direction at the last meeting. She indicated that staff feels the Commission should vote on the draft Resolution as presented, and the applicant would have the ability to appeal the decision to the City Council if they desire.

**Michael Zislis**, the applicant, indicated that they would like for the Commission to vote on the proposed Resolution. He said that it would be appropriate for any additional changes to be addressed before the City Council.


**Nate Hubbard** said that he would also like for a vote to be taken on the draft Resolution at this hearing.


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**CITY OF MANHATTAN BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT**

**TO:** Planning Commission

**FROM:** Laurie Jester, Acting Director of Community Development 

**BY:** Angelica Ochoa, Assistant Planner 

**DATE:** July 28, 2010

**SUBJECT:** Consideration of an Appeal of an Administrative Decision Denying a Lower Garage Floor Elevation and Other Garage Modifications for a New Single Family Residence at 626 Rosecrans Avenue (Kirby)

**RECOMMENDATION**

Staff recommends that the Planning Commission uphold the Acting Community Development Director's Decision to deny the lower garage floor elevation, which raises the interior garage height, and other garage modifications, thereby denying the subject appeal. The increased garage height, large openable window, and structural framing modifications could allow the addition of a third-story in a two-story zone.

**APPELLANT/APPLICANT/OWNER**

Margaret, Steven and Allison Kirby  
1331 23<sup>rd</sup> Street  
Manhattan Beach, CA 90266

**BACKGROUND**

The applicant submitted a building permit application and plans on February 10, 2010 to construct a new two-story single family residence with an attached two-car garage at 626 Rosecrans Avenue. The property is located in Area District II, Zoning RS-D1 (Exhibit A). The submitted plans met all development regulations for the zoning district. The building permit was issued on April 28, 2010 per the approved plans (Exhibit B). The residence is currently under construction.

During the construction phase, approximately May 2010, the designer, G.J. Constructive Creations, Inc. and the property owner met with staff to discuss preliminary plans to add another floor between the garage and the second floor (top level) for a bedroom and bathroom, thereby creating a three story. (Exhibit C) Per the residential development standards for Area Districts I and II of the Manhattan Beach Municipal Code (MBMC) Section 10.12.030, Section (H), "The maximum number of stories permitted shall be two (2) where the height limit is twenty-six feet (26')". Staff determined that this proposal did not meet Section 10.12.030 of the MBMC, which specifically prohibits a three-story structure in a two-story area. The property owner and contractor understood that a third story in the district and zoning where the property is located is not permitted. Staff suggested adding the proposed bedroom and bathroom to their design in compliance with

the required two-story height limit. However, the property owner declined staff's suggestion since the project was already under construction.

Additionally, during construction, the garage floor elevation was lowered without City approval. The garage floor elevation was verified in June 2010 by the City building inspector to be approximately 21 inches lower than the approved building plans. Correction notices were issued to revise the garage floor elevation to conform to the approved plans on May 21, 2010 and June 3, 2010 (Exhibit D). The property owner and contractor were notified in writing on June 4, 2010 (Exhibit E) that work could continue on the house, however, no work could be done in the garage until the subject appeal was complete and final. These issues were also discussed with the owner and contractor several times.

Subsequently, the owner requested approval to revise the garage floor elevation (Exhibit F), approximately 21 inches lower than the approved plans. Staff denied this request for several reasons. First, the applicant originally expressed the intent to add an additional floor between the garage and the top level, thereby creating a third story condition. Second, the additional height would provide adequate height to allow a third story. Third, the layout of the house, with access to the garage directly from the entry hall, would easily accommodate tying in a third story above the garage. It has been staff's policy to consistently not allow increased ceiling height in these situations that could accommodate a third-story in a two-story zone. Fourth, the large sliding window in the wall above the garage door is in a location that would be consistent with a window location for a mid-floor level. Fifth, the additional framing and bracing in the garage is not standard construction, but is designed to accommodate floor joists.

Staff denied the owner's request to lower the garage floor and install a large openable window above the garage door. On June 7, 2010, staff received an application from the property owner to appeal the administrative decision denying the proposed lowering of the garage floor. The contractor and property owner continued to work in the garage in conflict with the approved plans. This work includes installation of electrical outlets, plumbing (tankless water heater), sliding glass window above garage door, and blocking in garage walls.

## **DISCUSSION**

The issue before the Planning Commission is Section 10.12.030, Residential Development Standards of the MBMC, which as mentioned, specifically does not permit the construction of a third story in a two story area for this district and zoning.

Staff feels that the subject proposal does not meet the purpose of the residential development standards per Section 10.12.100 (A) and (E) and with the goals and policies of the General Plan, Goal LU-1, Policy LU-1.1 and Goal LU-4. The applicant is appealing the decision of the Community Development Director to the Planning Commission per Section 10.100 of the Manhattan Beach Municipal Code.

The applicant is proposing a design which includes changing the garage floor elevation by approximately 21 inches lower than the original approved building plans. The original approved garage floor elevation was 107.50 feet and the garage floor elevation is currently 105.70 feet. The current garage floor elevation of 105.70 feet was verified by a licensed surveyor (Exhibit G) for accuracy. According to the documentation submitted by the property owner (Exhibit H), the purpose of lowering the garage floor is to level the garage floor with the elevation of the back yard. The rear of the house, per the approved plans is set back 45 feet from the rear property line. The owner would like to have a more leveled backyard for recreational purposes instead of the original approved plans. They state the intent of the proposed design is to have a leveled indoor and outdoor area for better recreational use.

The approved plans showed a garage with a tall ceiling height of 15 feet, which would not be high enough to allow two full height legal stories. Garages are required to be 7 feet minimum in height, 12 inches minimum for floor joists is required for standard floor construction, and 8 feet is the minimum required for a standard habitable room height, for a total of 16 feet. The proposed garage was 12 inches less than needed to create a third story and staff was comfortable approving the plans as submitted. The proposed interior garage height is 17 feet 10 inches, which could accommodate two stories.

Staff has determined that the proposed design of lowering the garage floor elevation is inconsistent with keeping a two-story structure. The proposed design creates an opportunity for the two story single family residence to be easily converted to three stories since the upper level in the split level design connects directly into the garage and the minimum ceiling height clearance for an additional floor can be met. Per the building code, a minimum ceiling height clearance is 8 feet for a habitable room. According to the Building Department's Structural Engineer (Exhibit I), the current garage configuration and blocking in the garage wall is capable of supporting an additional story within the proposed vertical clearance. The current design with a lower garage floor elevation easily allows the retrofit of an additional story.

## **CONCLUSION**

Staff has reviewed the conceptual plans to lower the garage floor elevation and found that the project does not comply with the intent of the residential development standards in Section 10.12.030 of the MBMC. The proposal can easily accommodate an additional floor between the garage level and the upper level creating a third story. The applicant requests to lower the garage floor elevation by approximately 21 inches. Staff believes that this design gives the property owner, or a future owner, the option to retrofit an additional floor into the home and create a three-story condition. Staff has not allowed interior heights that would accommodate an additional story.

Staff recommends that the Planning Commission consider the information presented, and **DENY** the subject application.

cc: Steven Kirby, Owner  
G.J. Constructive Creations, Inc. (Designer/Contractor)

Attachments:

- Exhibit A – Project Location Map
- Exhibit B – Approved Building Plans – 04/10/2010
- Exhibit C – Proposed Design Plans (3 story) – 4/10/2010
- Exhibit D – Building Inspector Correction Notices dated 5/21/2010, 6/3/2010, and 7/20/2010
- Exhibit E – City Notification of “No Work” in Garage – 6/4/2010
- Exhibit F – Proposed Design Plans (Lowering of Garage Floor) – 6/4/2010
- Exhibit G – Surveyor Documentation – 06/03/2010, 06/04/2010 and 06/11/2010
- Exhibit H – Owner/Applicant Documentation – 06/07/2010
- Exhibit I – Building Department Engineer’s Comments – 06/25/2010
- Exhibit J - Blue Binder – Owner/Applicant Additional Material – separate

# Vicinity Map

626 Rosecrans Avenue




626 Rosecrans Ave

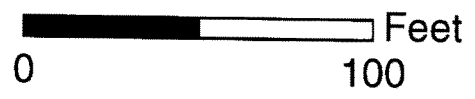
ROSECRANS AVE

BLANCHE RD

36TH PL

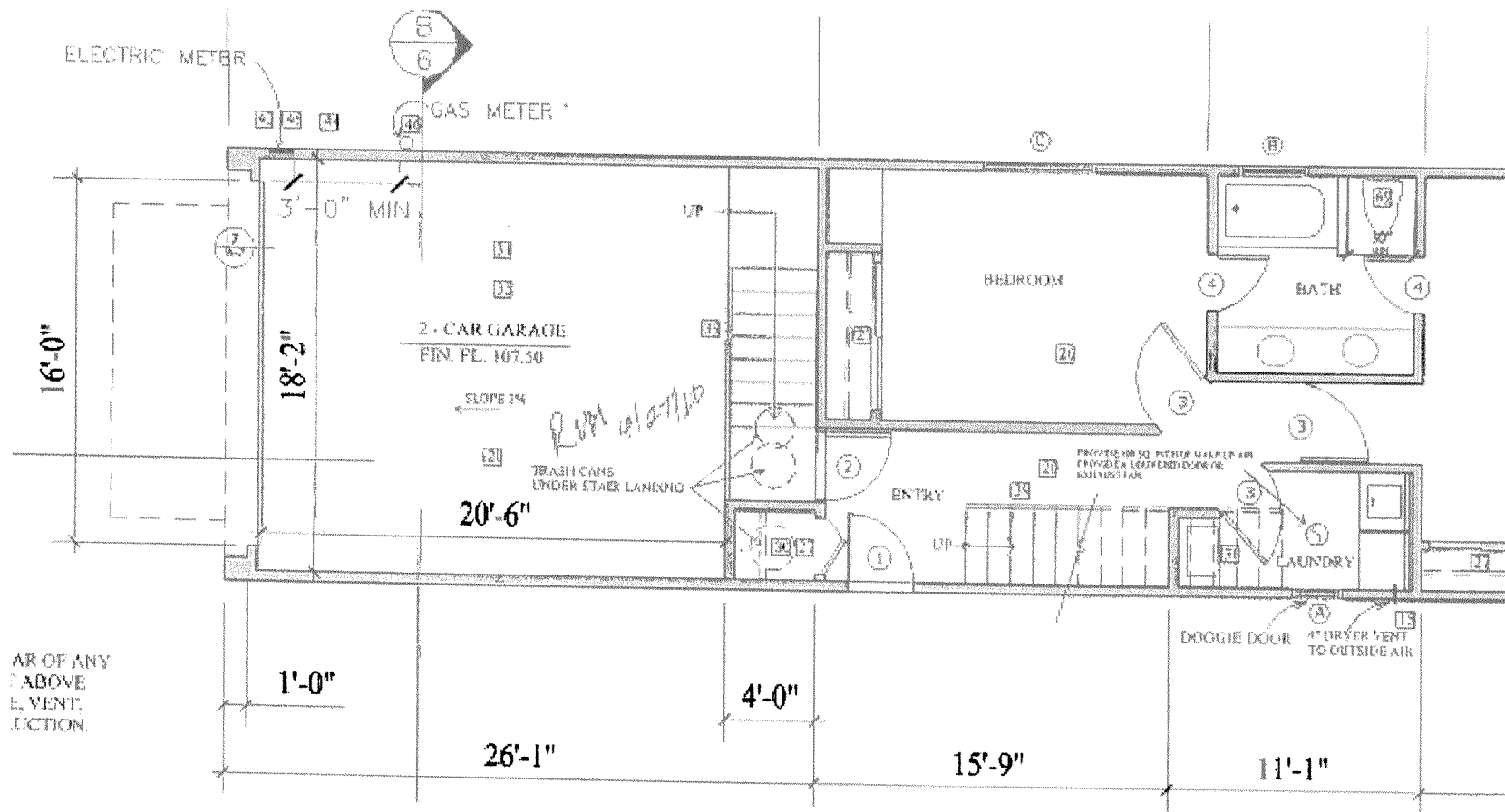
### Legend

-  RS - Residential Single Family
-  RS-D1 Residential Single Family D1 Overlay
-  626 Rosecrans Ave

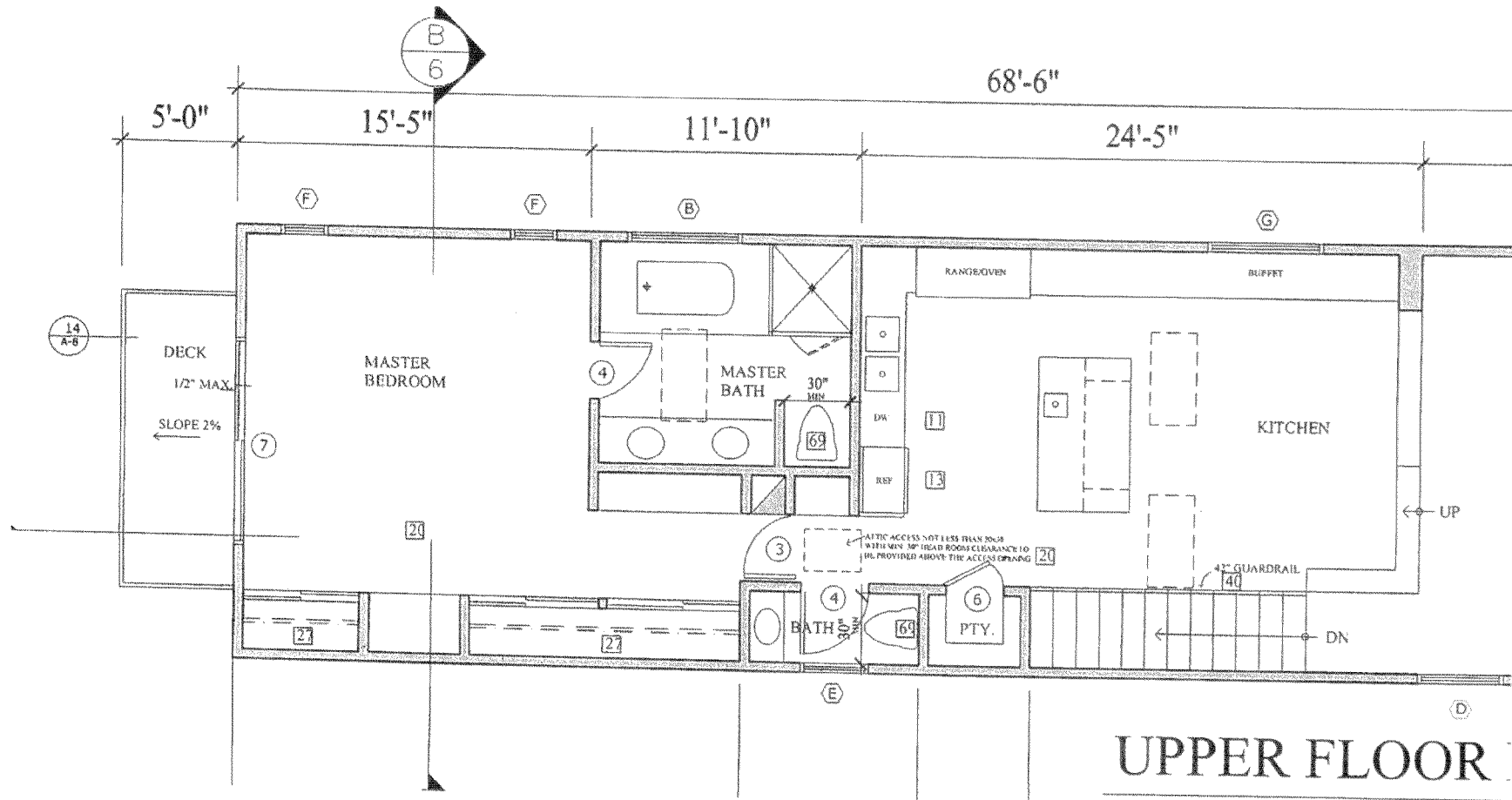


**Exhibit A**

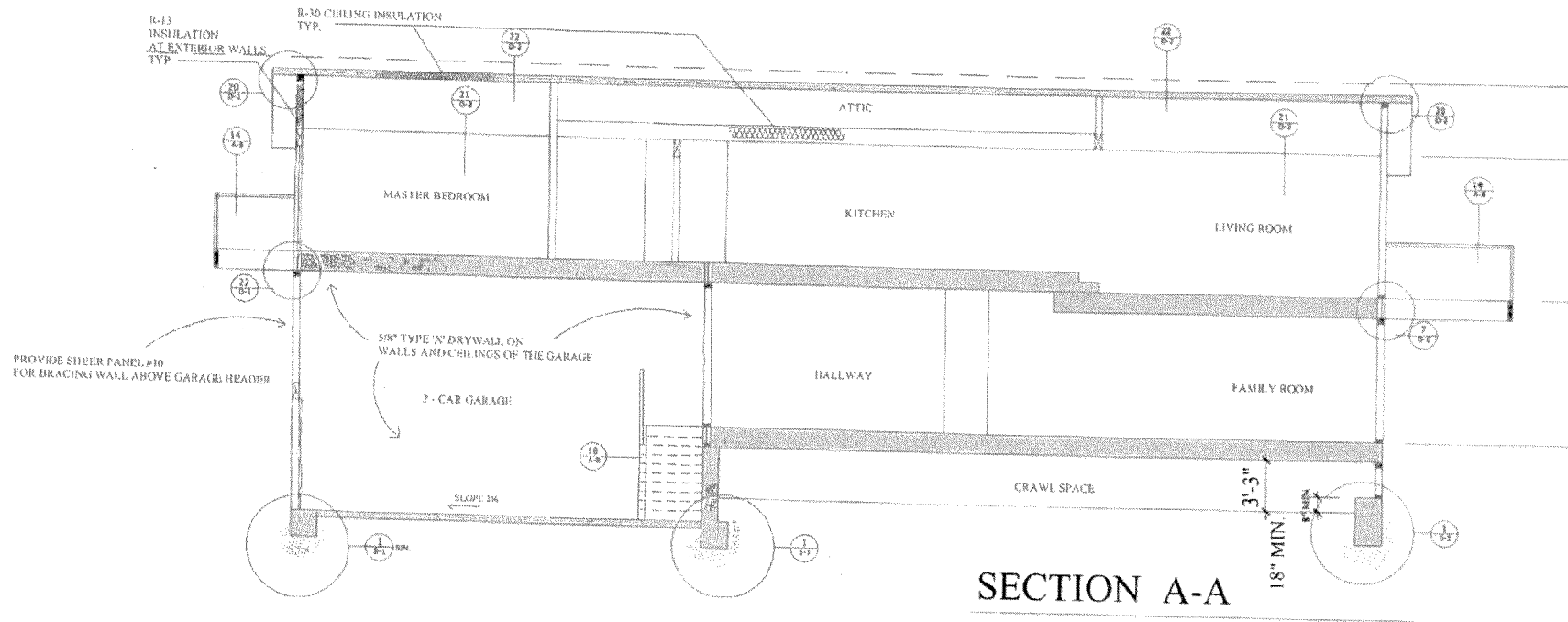




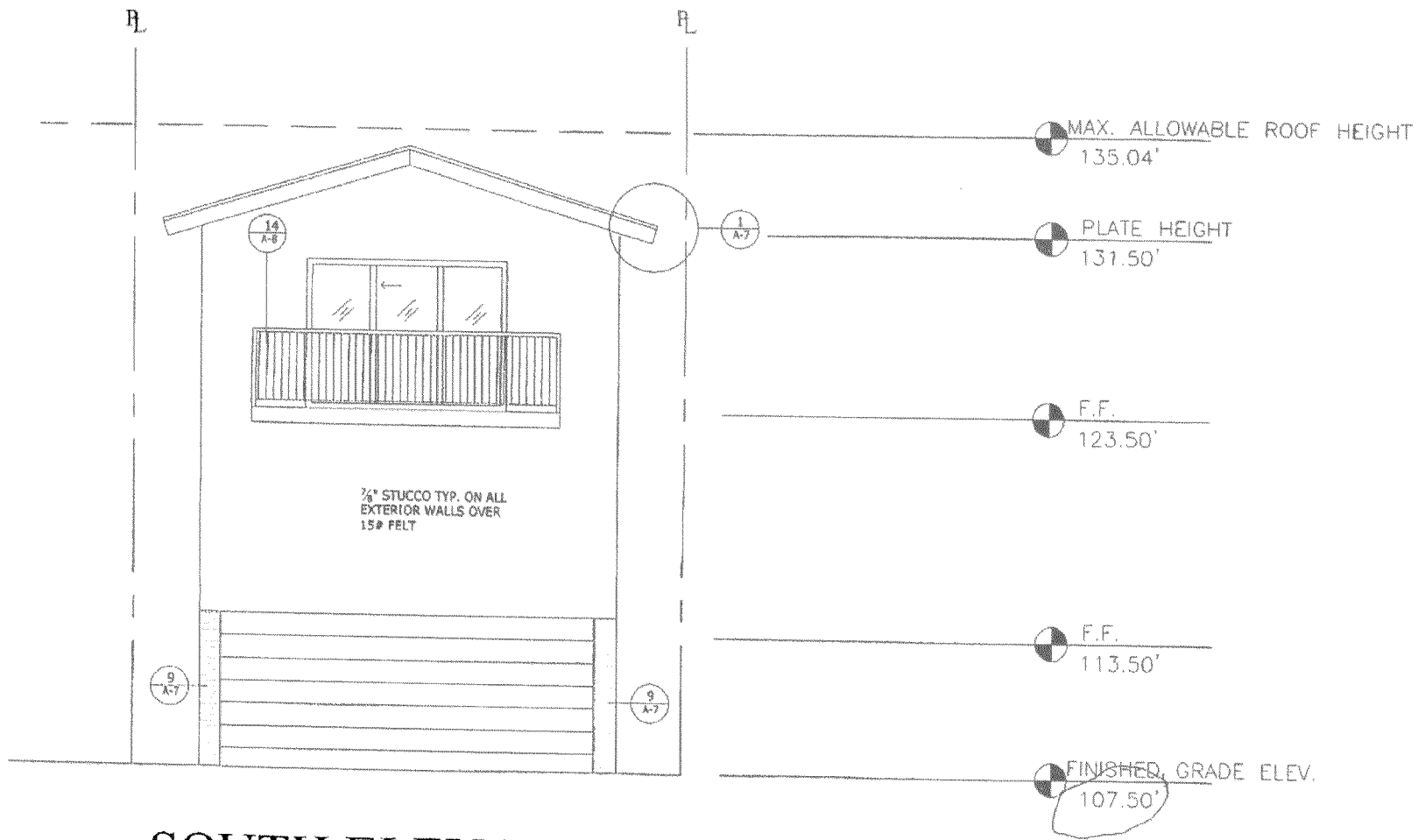
**EXHIBIT B**  
 PC Mtg. 7/28/2010



# UPPER FLOOR

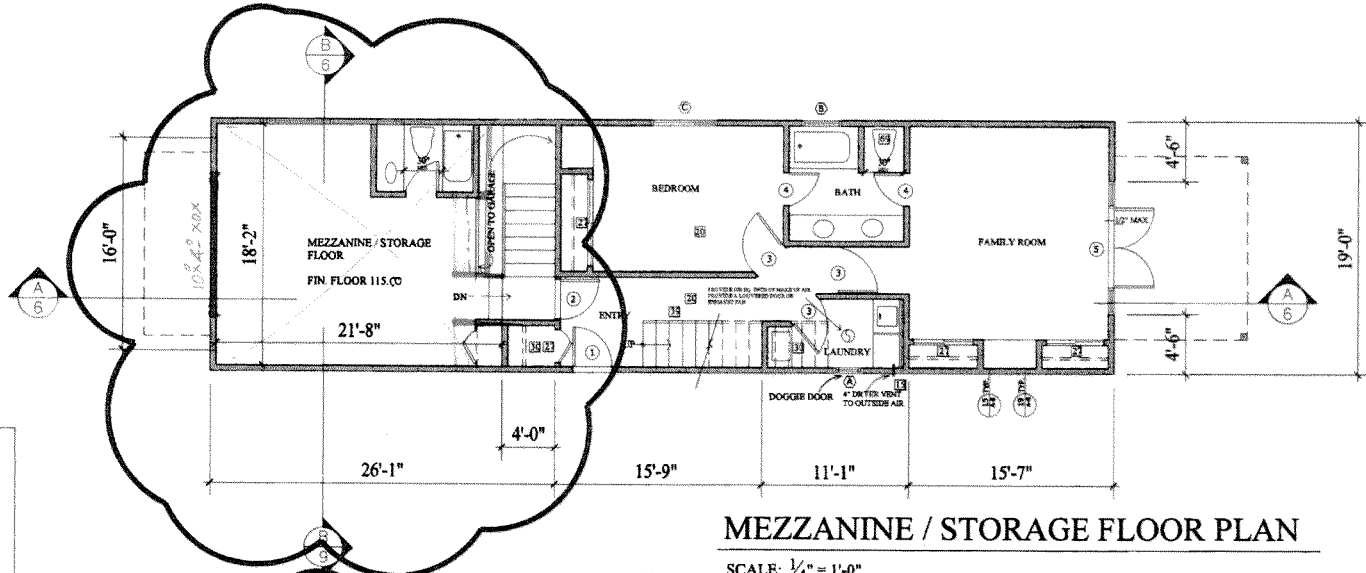






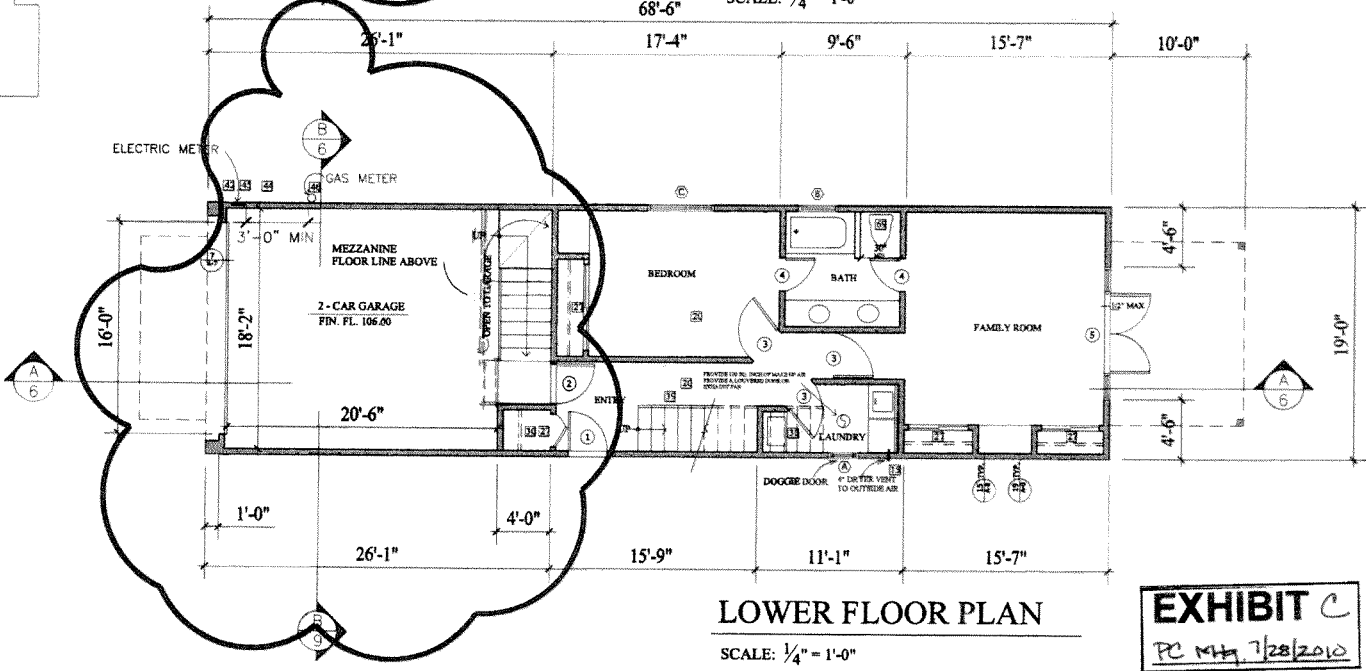
# SOUTH ELEVATION

MEZZANINE / STORAGE FLOOR  
 373.80 FT.  
 370.90



**MEZZANINE / STORAGE FLOOR PLAN**

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



**LOWER FLOOR PLAN**

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

**EXHIBIT C**  
 PC MH 7/28/2010

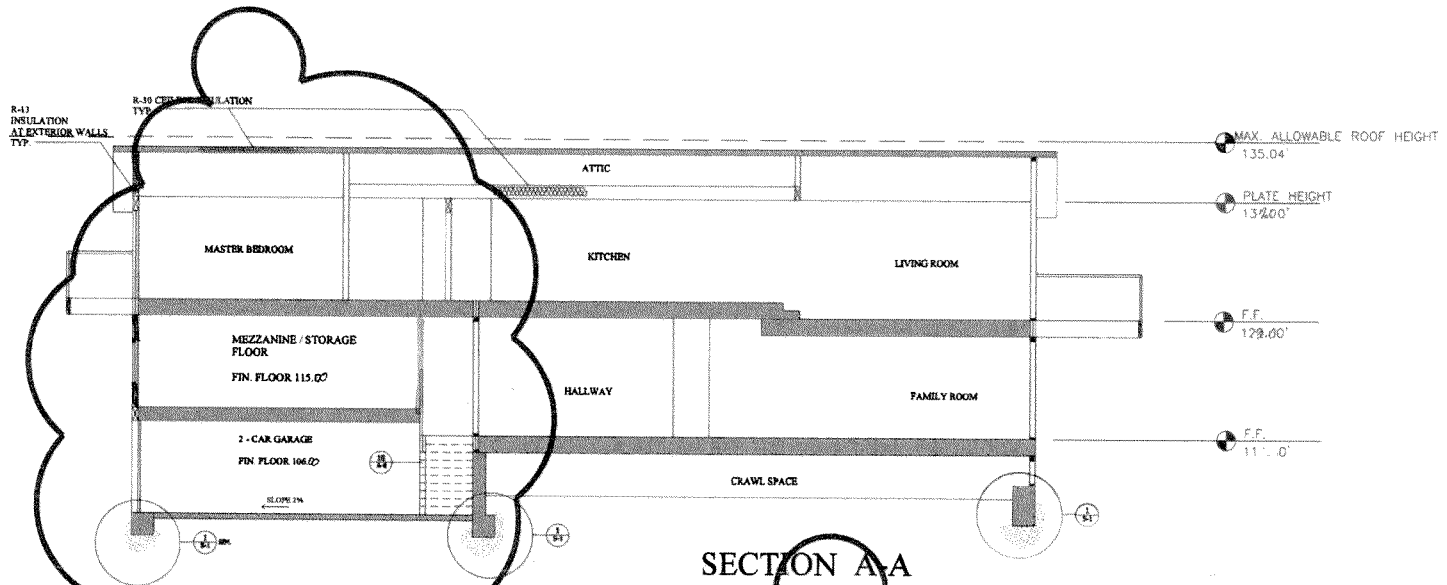
No.	Revisions/Date	Date

**G.J. COOPERATIVE CREATIONS, INC.**  
 2855 S. MANHATTAN AVE. SUITE 200  
 MANHATTAN BEACH, CA 90266  
 PHONE: (949) 427-9905

**KIRBY RESIDENCE**  
 626 ROSECRANS AVE.  
 MANHATTAN BEACH, CA. 90266

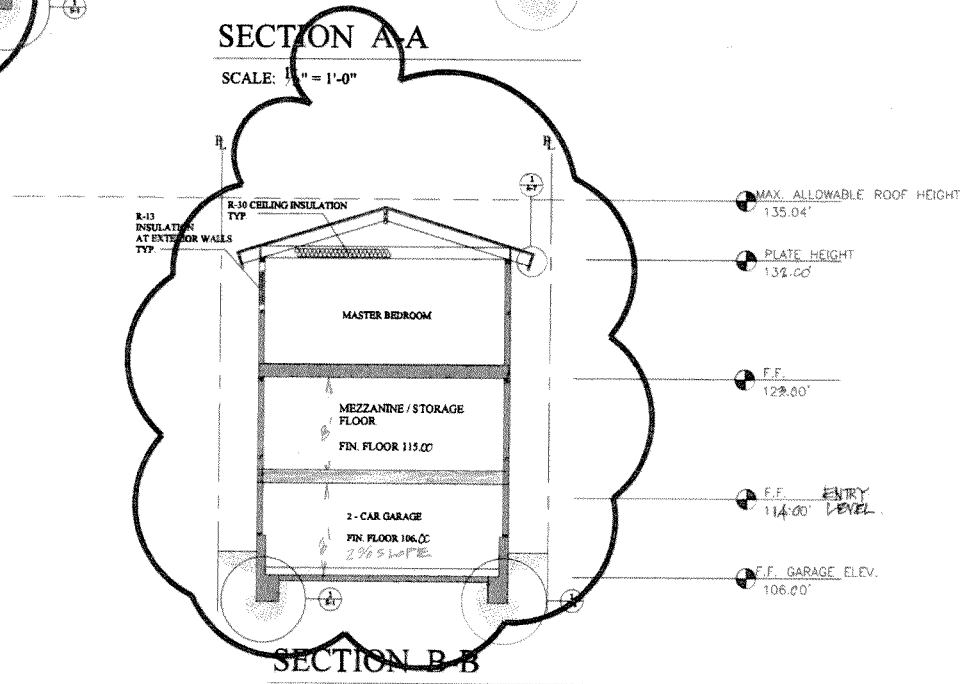
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FLOOR PLAN	SHEET
JOB NO. 100000000	R-2
DATE 4-10-10	



**SECTION A-A**

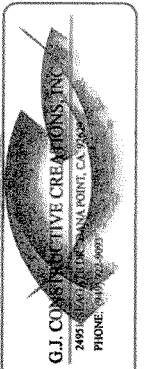
SCALE: 1/4" = 1'-0"



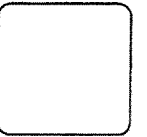
**SECTION B-B**

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

No.	Revisions/Issues	Date



**KIRBY RESIDENCE**  
 626 ROSECRANS AVE.  
 MANHATTAN BEACH, CA. 90266



SECTIONS	SHEET
JOB NO. Assessor	R-3
DATE 4-10-10	



# CORRECTION NOTICE

DEPARTMENT OF  
COMMUNITY DEVELOPMENT  
CITY OF MANHATTAN BEACH

626 Rosecrans -  
Job Address

GARAGE SLAB HEIGHT  
Type of Inspection

Permit No. of Page(s)

First

Reinspect

I have this day inspected this structure and these premises and have found the following violations of City and/or State laws governing same:

1 Contractor to  
VERIFY GARAGE  
ELEVATION PRIOR  
TO POUR OF SLAB-  
SURVAYOR OF RECORD  
TO CERTIFY ELEVATION  
PER PLAN.

You are hereby notified to correct the above violations. When corrections have been made, call (310) 802-5542, before 3 pm for following workday re-inspection.

5/21/10 Date Inspector

CD 003

IT IS UNLAWFUL TO REMOVE THIS TAG

# CORRECTION NOTICE

DEPARTMENT OF  
COMMUNITY DEVELOPMENT  
CITY OF MANHATTAN BEACH

626 Rosecrans -  
Job Address

GARAGE SLAB ELEVATION  
Type of Inspection

2ND NOTICE Permit No. 1 of Page(s)

First

Reinspect

I have this day inspected this structure and these premises and have found the following violations of City and/or State laws governing same:

1. PRIOR TO NEXT  
INSPECTIONS -  
Contractor to HAVE  
SURVAYOR OF RECORD  
VERIFY GARAGE SLAB  
HEIGHT AS PER PLAN  
ELEVATION OF PROPOSED  
SLAB - 4" thick as built.  
ALL BEFORE POURING  
1st NOTICE 5/21/10 WA

You are hereby notified to correct the above violations. When corrections have been made, call (310) 802-5542, before 3 pm for following workday re-inspection.

6/3/10 Date Inspector

CD 003

IT IS UNLAWFUL TO REMOVE THIS TAG

**EXHIBIT D**

PC Mtg. 7/28/2010

# Stop Work!

COMMUNITY DEVELOPMENT DEPARTMENT  
CITY OF MANHATTAN BEACH

Telephone (310) 802-5000

JOB ADDRESS 626 Rosecrans Av

**NOTICE:** Work is being performed on this job in violation of City and/or State Law.

Correct as noted below and call for inspection before any further work is done.

— NOTE —

Do not continue with any  
work in the garage  
as previously noted

7/20/10 [Signature]  
Date Inspector

**UNLAWFUL TO REMOVE  
THIS TAG**

**Angelica Ochoa**

**From:** Laurie B. Jester  
**Sent:** Friday, June 04, 2010 11:04 AM  
**To:** 'gjcreate@gmail.com'; 'Steve Kirby'; 'mlkirby@kirbyandkirby.com'  
**Cc:** Angelica Ochoa; Ron McFarland; Arthur Quezada; Carol Jacobson  
**Subject:** FW: 626 Rosecrans  
Garro, and Mr. and Mrs. Kirby,

In order to continue inspections on this project, we need the following:

- 1) Summit to the City written certification of the proposed garage slab grade (as currently constructed/proposed revision on-site) by the surveyor of record (**per attached 5-21-10 and 6-3-10 correction notices**), which is Denn Engineers or release from Denn Engineer to use another engineer.
- 2) Elevation of the floor (plywood) for the second floor by the surveyor of record.
- 3) Appeal application, fee (\$465), proposal and plans for a lowered garage floor not per the approved plans.

In addition, no garage work or garage inspections can be done until the appeal is complete and final action is taken by the City Council. Inspections can be done on the remainder of the house per the approved plans. Additional fees for future inspections on the garage will be applied. All work will be at the owner's risk. We will need written confirmation from the owner acknowledging and agreeing to these conditions.

Mr. Kirby indicated to me that he would like the garage header to be moved to be in conformance with the approved plans (he indicated that currently it is about 18" lower than the approved plans). This work **only** on the garage is fine, as long as it is in conformance with the approved plans.

As an alternative, you may build the entire project per the approved plans.

Angelica Ochoa, Assistant planner may be contacted for further information.

Thanks

**Laurie B. Jester**  
**Community Development Acting Director**  
P: (310) 802-5510  
E: ljester@citymb.info



**From:** Garo [mailto:gjcreate@gmail.com]

<p><b>EXHIBIT E</b></p> <p>PC MB. 7/28/2010</p>
---

07/22/2010

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**City Council item 09/07/10-30  
Exhibit F of Planning Commission  
July 28, 2010 Staff Report  
Plans dated June 4, 2010**

**Oversized plans available for public  
review in Community Development  
Department**

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~~DENN~~  
DENN

June 4, 2010

Building Department  
City of Manhattan Beach  
1200 Highland Avenue  
Manhattan Beach, CA 90266

Re: Building under construction at 626 Rosecrans Avenue, Manhattan Beach  
Job Number 04-576

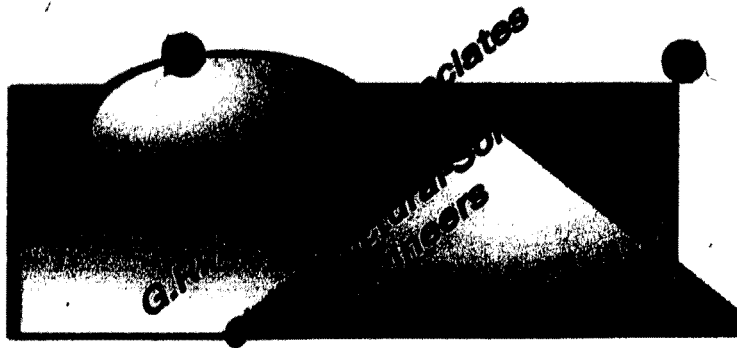
Denn Engineers hereby releases all survey information and responsibility for future surveying for the aforementioned site.

Sincerely,

Original Signed  
Gary J. Roehl  
R.C.E. 30826

**EXHIBIT 4**  
PC MH. 2/28/2010

3914 Del Amo Boulevard, Suite 921, Torrance, California 90503  
Tel: (310) 542-9433 Fax: (310) 542-9491 Email: Mail@Denn.com



June 3, 2010

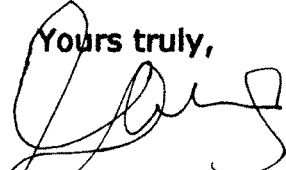
Department of Community Development  
City of Manhattan Beach, Ca. 90266

**RE: Certification of slab height 626 Rosecrans Project – Kirby Res.**

We hereby certify that we have inspected and surveyed the elevation of the garage slab form work, reinforcing and height. The garage slab elevation at the front of the garage is set at 105.70'.

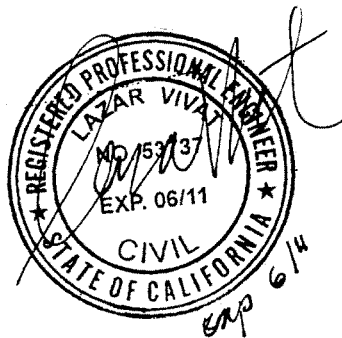
The approved set of plans call out an elevation height of 107.50'.

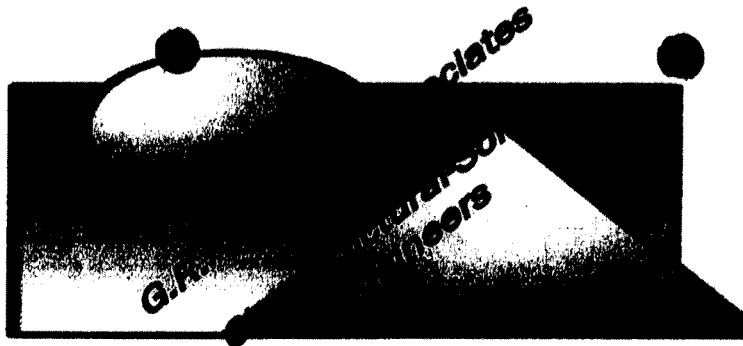
Yours truly,



Gene R. Alloway

President





June 4, 2010

Department of Community Development  
City of Manhattan Beach, Ca. 90266

**RE: Certification of 2<sup>nd</sup> floor sheathing elevation 626 Rosecrans Project - Kirby Res.**

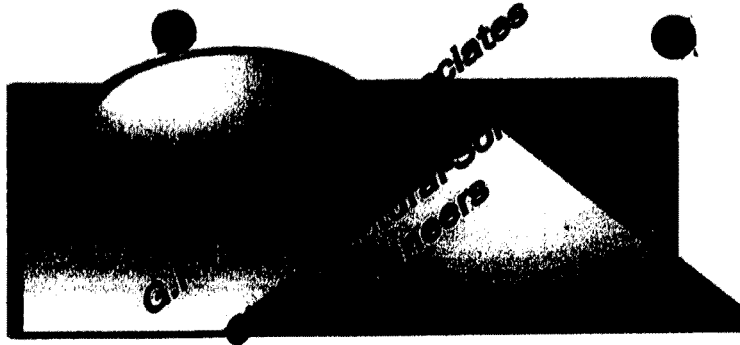
We hereby certify that we have surveyed the elevation of the 2<sup>nd</sup> floor sheathing over the garage area to be 123.45'.

Yours truly,

Gene R. Alloway

President





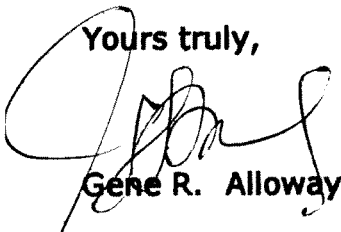
June 11, 2010

Angelica Ochoa – Assistant Planner  
Department of Community Development  
City of Manhattan Beach, Ca. 90266

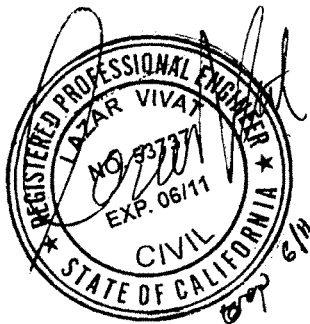
**RE: Survey Benchmark Elevation 104.12' @ Southwesterly corner – 626  
Rosecrans Ave.**

We hereby certify that we have utilized the above referenced benchmark established by Denn Engineers & Surveyors dated on 1/21/10, Job No. 04-576B Benchmark Tag RCE #20327 to establish the garage slab elevation of 105.70'.

Yours truly,



Gene R. Alloway  
President



Law Offices  
**KIRBY KIRBY & KIRBY**

Margaret L. Kirby  
Steven C. Kirby  
Aimee E. Kirby\*

2614 Artesia Boulevard  
Redondo Beach, California 90278-3312

Telephone (310) 372-8429  
Fax (310) 372-7660

Licensed in CA, AZ and NV  
sckirby@kirbyandkirby.com  
www.kirbyandkirby.com



June 7, 2010

City of Manhattan Beach  
Community Development Dept.  
Attn: Laurie Jester  
Acting Director  
1400 Highland Ave.  
Manhattan Beach, California 90266

Re: 626 Rosecrans

Dear Laurie,

As I understand it you have declined to approve our lowering of the garage floor approximately 18 inches so we are appealing your decision on this issue.

We desire backyard area as level as possible and driveway with a slight slope. As you know the plans approved by your department called for a slightly higher garage floor elevation however that height increases the slope of the driveway and backyard area of the house which we deliberately designed to have as much space as possible. The original approved plans called for a higher sloping back yard, something we want to avoid.

On a further note you have halted "all inspections" of the garage and the entire structure pending this appeal being filed. I do not understand this as we have agreed to pay for extra inspections in writing to your office and are repeating this offer.

As it relates to the garage inspections, your decision to halt all those inspections does not seem to be based on an evaluation of what is actually going on at the site. The interior of the garage, which is the "only" thing really affected by lowering the floor stays the same no matter what decision is finally reached. The only exception to this is the stairway from the garage to the house which may have to be raised two steps from the raised pad it is already on. So it seems we should be able to drywall the garage and ceiling and have all inspections done in accordance with normal inspection processes

**EXHIBIT H**

PC MH 7/28/2010

**CITY OF MANHATTAN BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT**

**TO:** See distribution below

**FROM:** Angela Soo, Executive Secretary  
c/o (ANGELICA OCHOA, Planner)

**DATE:** JUNE 25, 2010

**SUBJECT:** Review Request for Proposed Project at:  
**626 ROSECRANS AVENUE**  
(Minor Exception / allow garage floor to be lower level than approved)

The subject application has been submitted to the Planning Division. Please review the attached material(s) and provide specific comments and/or conditions you recommend to be incorporated into the draft Resolution for the project. Conditions should be primarily those which are not otherwise addressed by a City Ordinance.

If no response is received by **JULY 7**, we will conclude there are no conditions from your department.

Comments/Conditions (attach additional sheets as necessary):

1. WORK IS TO COMPLY W/ 2007 CBC.
2. Provide structural calculations for GARAGE STAIRS OVER 10'-0" IN HEIGHT.
3. PERMITS WILL BE REQUIRED FOR ANY FUTURE UPGRADES OR MODIFICATIONS TO STRUCTURE TO ENSURE FULL CODE COMPLIANCE

Yes / No Building Div.  
 Yes / No Fire Dept  
 Yes / No Public Works (Roy)  
 Yes / No Engineering (Steve F)  
 Yes / No Waste Mgmt (Anna)  
 Yes / No Traffic Engr.(Erik)

Yes / No City Attorney  
 Yes / No Police Dept.:  
 \_\_\_ Traffic  
 \_\_\_ Detectives  
 \_\_\_ Crime Prevention  
 \_\_\_ Alcohol License (Chris Vargas)

*Jul Kaddour*  
7/7/10

4. THE CURRENT STRUCTURAL & ARCHITECTURAL CONFIGURATION IS CAPABLE OF SUPPORTING & HOUSING AN ADDITIONAL STORY WITHIN THE PROPOSED VERTICAL CLEARANCE.

G:\PLANNING DIVISION\Coastal\Coastal - Dept routing form.doc

**EXHIBIT I**  
PCMH.7/28/2010



except for the stairway from the floor of the garage to the house. I will send you pictures along with pictures to Angelica to illustrate this point. Despite this I will agree to pay for extra inspections although the only one necessary seems to be that of the stairway.

Your appeal application and process explained to us is "vague" at best about how many plan copies to submit or exactly what they must comprise. We have submitted "three" copies of the Plans Page affected by this minor change in elevation to the garage along with the requested assignment and certification you requested.

We want the inspections to go forward ASAP and fail to understand why they cannot when all we are talking about is the height of the interior garage floor.

  
Steve Kirby

Encl: Plans Showing Elevation Changes of Garage  
Release of Surveyor  
Certification of Present Heights v Proposed Heights for Garage Floor.

*As I know I am proceeding  
at my own risk.  
I will pay for additional  
inspections.*

*Steve Kirby  
Future son in law wants to  
play basketball in garage.*

*Steve Kirby*

Law Offices

**KIRBY KIRBY & KIRBY**

Margaret L. Kirby  
Steven C. Kirby  
Aimee E. Kirby\*

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Redondo Beach, California 90278-3312

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sckirby@kirbyandkirby.com  
www.kirbyandkirby.com



July 16, 2010

Planning Commission Members  
CITY OF MANHATTAN BEACH  
Sandra Seville-Jones  
Martha Anderson  
Jim Fasola  
Kathleen Paralusz  
David Lesser  
1400 Highland Ave.  
Manhattan Beach, California 90266

**Re: JULY 28, 2010 HEARING RE: APPEAL FROM DECISION OF LAURIE  
JESTER ACTING DIRECTOR OF COMMUNITY DEVELOPMENT DEPT.**

Dear Members

Enclosed herewith are additional documents and photographs in support of our appeal of Community Development Director Laurie Jester's decision regarding our request. Our request was to have a slight modification to our "new construction" at 626 Rosecrans to have a lower garage floor by 18 inches and to have a window in the garage and stronger garage framing.

Thank you in advance for considering this.

Sincerely,

Steven C. Kirby

cc: Laurie Jester, Acting Director Community Development Director

**EXHIBIT J**

# TABLE OF CONTENTS

Additional arguments and paperwork supporting Appeal from Community Development Department Decision regarding minor modifications to approved plans.

## PROPOSED RESOLUTION APPROVING APPEAL

### Exhibits

1. E-Mail from Acting Director Laurie Jester establishing policy that is unwritten, unpublished and not supported by any law, ordinance or regulation of the City of Manhattan Beach. This Staff policy is the reason for denial of our request for modification of our approved plans.
2. Picture of framed garage ceiling show rough sprinkler installation
3. Picture of framed garage showing rough electrical
4. Picture of framed garage showing installed tankless water heater
5. Picture of framed garage showing rough electrical
6. Picture of header for garage door.
7. Picture of backyard area and adjacent residence west side
8. Picture of backyard area and adjacent residences east side
9. Picture of street behind house showing house and garage abutting street
10. Picture of construction showing it compared to others adjoining
11. Picture of two house west of construction, appears 3 story
12. Picture of house on southwest corner end of street, appears 3 story
13. Picture of house on southwest corner end of street, appears 3 story
14. Picture of flat area of front yard of construction
15. Picture of house east of construction front set back
16. Picture of house east of construction front set back
17. Pictures of appellant's residence at 1331 23<sup>rd</sup> showing slope and front yard
18. Picture of appellant's back yard and retaining walls and level of back yard
19. Picture of appellant's back yard and retaining walls and level of back yard
20. Example of appearance of request slope of back yard and garage entrance
21. Example of appearance of approved slope of back yard and garage entrance
22. Article by Nancie Marzulia, Clare Boothe Luce Policy Institute

**STEVEN C. KIRBY, MARGARET L. KIRBY AND ALLISON L. KIRBY  
CITIZENS OF MANHATTAN BEACH, CALIFORNIA**

**TO: Planning Commission**

**FROM: Steven C. Kirby, Margaret L. Kirby and Allison L. Kirby**

**BY: Steven C. Kirby**

**DATE: July 28, 2010**

**SUBJECT: Consideration of a Minor Deviation from Approved Plans to Allow  
A 18 inch lower garage floor, a Window in the Garage and a Stronger  
Garage Framing**

**RECOMMENDATION:**

We recommend that you grant the appeal and **APPROVE** the attached Resolution approving the subject request.

**APPELLANT/OWNER**

**Steven C. Kirby, Margaret L. Kirby, Allison L. Kirby  
626 Rosecrans Blvd.  
Manhattan Beach, California 90266**

**FACTUAL BACKGROUND**

Appellants own the property at 626 Rosecrans Ave., Manhattan Beach, California. Appellants bought the property, which had an approximate 700 square foot house. Appellant submitted plans for a new residence construction of a two-story house that is entirely consistent with the City of Manhattan Beach's anti Mansion philosophy. In fact, although encouraged by Community Development Dept. Staff, Appellant declined to increase the square footage of the residence to the maximum allowed during the Planning Process. Appellant opted for maximum open area, in the back and front of the property for future play area for children. Appellant sought to have as level as possible back yard.

During construction it became apparent that the garage area ceiling would be higher than expected due to the slope of the property from front to back. Appellants entertained the idea of a third story or storage area above the garage and directed the builder to make the framing sheeting and garage area strong enough to support an area above the garage and below the master bedroom. Also the builder was directed to make the backyard as "level" as possible. During construction the forming for the garage slab was lowered 18

inches to make the back yard and driveway area, which will be grass not concrete, as level as possible. The lowering of 18 inches of the slab and the placement of the window in the garage was in contemplation of a third story. The slope on the approved plans was six degrees from garage to alley, in the revised plans it is two degrees from garage to alley.

It should be pointed out here that the lowering of the garage floor in no way affects the stability of the stem wall that supports the garage walls and staff does not have any contention in this regard.

The Manhattan City Staff was approached, during framing and the potential of a third floor was discussed with Acting Director Laurie Jester and Assistant Planner Angelica Ochoa. Staff indicated in no uncertain terms that we could not have a third story living area because it was precluded by zoning. We were also told that we were wasting our money to ask for a non-conforming use, at the fee of \$5,000.00 because it would not be granted. The idea of a third story was abandoned at that point.

We discussed other alternatives with Staff and they including Acting Director Laurie Jester suggested that we make a third story storage area. Allison Kirby, our daughter who will be living in this house with her boyfriend, rejected that idea in lieu of the higher garage ceiling. The higher garage ceiling would make for an indoor play facility and perhaps a half basketball court when not used by cars occupying the garage. Also the lowered garage floor was consistent with having a two degree slope in the backyard, which is conducive to a level area for children's play.

Construction inspections were then halted at the entire site, for no apparent reason because nothing was being done that violated any, ordinance or regulation that we were advised of. This delayed construction for several days. We visited Staff and were told to submit our revised plan for the garage floor including the window, which was done. We were told it was unacceptable by Acting Director Laurie Jester, because of several reasons. 1. It would be a fire hazard to have a high ceiling in the garage, 2. The space above the garage could be built in without the City knowing it, 3. We were told we were in violation of the approved plans and could appeal if we wanted a garage floor and a window in the garage different than the approved plans.

We have "never" been told that our garage construction violated an ordinance, zoning or other regulation of the City of Manhattan Beach. All we want is a lowered garage slab by 18 inches to enable us to have a level as possible alley approach to the garage entrance, a window in the garage and a level backyard. As can be seen by the pictures attached all drywall has been halted in the garage and all inspections have been halted. We have agreed in writing to pay for additional inspections, that the City may incur due to the lowered garage floor and the addition of a window in the garage. All wiring, plumbing

including ceiling sprinklers and future potential solar piping have been installed in the garage.

We are not asking for a variance as that would require that we be in violation of some ordinance, rule or other regulation that we are asking exception from and neither are we asking for some non-conforming use as we are in violation of no ordinance or zoning law.

## PROJECT OVERVIEW

### LOCATION

<u>Location:</u>	626 Rosecrans Ave., (See Google Overhead Map Exhibit 1)
<u>Legal Description:</u>	Lot 18 Block 3, Tract No. 1503 APN4174001017
<u>Area District:</u>	II
<u>General Plan:</u>	Residential
<u>Zoning:</u>	RS-D1
<u>Land Use:</u>	Being Built 2 Story Single Family 2098 sq. feet
<u>Buildable Floor Area:</u>	Total Buildable Floor 2546.07 Proposed 2098.58

### PROJECT DETAILS

Parcel Size: 3,625 sq. ft. (25 Feet by 145 Feet )

<b>Building Setbacks:</b>	<b>Allowed</b>	<b>Being Built As Planned</b>
Front (North)	<b>10 feet</b>	<b>20 Feet</b>
Side: (East)	3 feet	3 Feet
Side: (West)	3 feet	3 feet
Rear (South)	<b>10 feet</b>	<b>45 feet</b>

## DISCUSSION:

After several attempts to get the City Staff including Acting City Manager Mr. Thompson and Acting Director Laurie Jester to tell us what Ordinance, Rule or Building Regulation our garage violated we were finally told the following: It was a "policy" of the City of Manhattan Beach to not allow "full two story ceiling" heights in these "situations". This "policy" is apparently not documented anywhere and not supported by situations that have come before ours and are documented by the City. It appears to be a "new" policy. It is apparently supported by the "theory" that "our" garage could very easily be converted to two stories. (**Exhibit 1**) E-Mail from Laurie Jester dated 6/30/2010.)

The problems with this policy, and the reasons given for the denial of our request are numerous. The premise by Ms. Jester, in her e-mail, that the space "**could easily**" be converted to an additional story is not correct.

1. The garage ceiling as plumbed now and as can be seen from the attached photographs has sprinklers already installed in the raised ceiling. It would be a major task to remove and or cap that plumbing and lower it to a new story above the garage. This could not be done "easily". (**Exhibits 2-5**)
2. The garage has a header for the garage door that would have to be re-located if anyone were to try to build anything other than a storage space, which we rejected. That would entail extensive work on the outside including removal of the door, stucco that will be applied, and re-framing the south garage wall that holds the header for the garage door. (**Exhibit 6**)
3. The enclosed tank-less water heater and venting would have to be re-located as it is only 60 inches from the ceiling of the garage. (**Exhibits 2-5**)
4. The electrical wiring would have to be re-routed to give the space above the garage electricity. (**Exhibits 2-5**)
5. The alarm system would have to be re-routed to facilitate an additional space above the garage. (**Exhibits 2-5**)
6. All of the above work would have to be done in **SECRET** and in violation of all the rules and regulations of Manhattan Beach.

**Our structure in it's entirety is in conformity with the "anti mansion" philosophy of the City of Manhattan Beach. As can be seen from Exhibits 7-8, our "new" construction leaves the lot with a long back entrance to the garage of approximately 45 feet that will for the most part a grass driveway and a backyard play area. There are no backyards of this size in the entire 600 block of Rosecrans. As can be seen from the alley pictures,, Exhibits 9-10 all of the houses on the block extend, with their garages to approximately 5-10 feet from the alley or what is called a street.**

One house east of our house is a structure that certainly appears to be three stories from the outside and has a garage that takes up most of the remaining part of the south part of the lot. (**Exhibit 11**).

On the corner of the alley in the 600 block of Rosecrans is a structure that appears to be on two lots and appears to be three stories. (**Exhibits 12-13**)

When looking at the front or North part of our construction, we have taken efforts to have this be as level as possible and will have a front area approximately 30 feet long and 25 feet wide for open area, including the front deck on the first story. (See **Exhibit 14**.) **Exhibits 15-16** demonstrate some of our neighbors property that have maximized the building area in the front of their property more than we have. Again, in front and back of the property at 626 Rosecrans, we have designed a structure and built same that if anything is consistent with the Manhattan Beach “**anti-mansion**” philosophy.

**We were criticized by Laurie Jester and Angelica Ochoa for not making maximum use of the buildable space on our lot in our meetings with them.** Despite this criticism, we opted to have a maximum amount of open space and potential play area for our grandchildren. We are aware that children need a place to play at home and a level space at that. Attached as **Exhibits 17-19** are demonstrative of our philosophy of our current home at 1331 23<sup>rd</sup> street which sits on a sloping street. We excavated the back yard and made a level front yard 25 years ago for our children as play areas. **Exhibits 20-21** demonstrate with a picture of a foam display the approximate difference between a slope in the proposed backyard of 6 degrees as planned and approved and 2 degrees as proposed in our amended plans.

We honestly feel that it is speculation and conjecture that someone will build a space above the garage that prompts this unwritten, undocumented, “policy” decision. This unwritten policy of the Staff of the Community Development Department is not supported by any current law, ordinance or regulation of the City of Manhattan Beach, and has not gone through a thorough vetting by the Citizens of Manhattan Beach.

It is puzzling that a government entity’s staff has an unwritten, un-vetted, policy that **restricts private property rights**. This policy as pronounced by Acting Director Laurie Jester and apparently supported by Interim City Manager Thompson, amounts to a “restriction” on the use of private property without having met any of the requirements imposed on governments who desire to restrict private property use. This unwritten, undocumented policy has shades of un-constitutional City Staff action.

We are never going to build in this space above the garage. We cannot control anyone that may break the law in the future. We are respectfully requesting that our



lowered garage floor be approved as built, along with the stronger garage walls, and the window above the garage door.


**Environmental Review**

Not required.

**CONCLUSIONS**

This request is a legitimate use of private property that impacts not one property owner, rule, regulation or ordinance of the City of Manhattan Beach. Our new construction is consistent with City of Manhattan Beach's "**anti-mansion**" philosophy. This unwritten, undocumented policy of the Community Development Dept., without input from citizens or elected officials, restricts the use of privately owned property without a showing of a "compelling municipal interest". We respectfully request that our appeal be granted

I have attached as **Exhibit 22** an article from the Clare Boothe Luce Policy Institute entitled "**Property Rights v Government Regulation: More at Stake Than Just Your Backyard.**" This article provides a summary of private property rights in the United States of America.

 Respectfully Submitted

Steven C. Kirby

Attachments:

Draft Resolution Granting our Appeal  
Exhibits 1-22

**THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH  
DOES HEREBY RESOLVE AS FOLLOWS:**

SECTION 1. The Planning Commission of the City of Manhattan Beach hereby makes the following findings:

A The Planning Commission of the City of Manhattan Beach conducted a public hearing pursuant to applicable law on July 28, 2010 to consider an application for a Appeal of a Decision of the Community Development Department denying the request of Steven C. Kirby, Margaret Kirby and Allison Kirby for a minor deviation of approved plans to allow for a 18 inch lower garage floor, a window in the garage, and stronger supporting garage walls as built.

B. The public hearing was advertised pursuant to applicable law, testimony was invited and received.

C. The applicants are Steven C. Kirby, Margaret L. Kirby, and Allison L. Kirby the property owners.

D. The applicant desires a 18 inch lower garage floor, window in the garage and stronger supporting garage walls as built, all in conformity with existing ordinances, laws, and regulations of the City of Manhattan Beach. The request are minor deviations from the approved plans.

E. The property is located within Area District II and is zoned RS-D1. The surrounding land uses consist of single family residences.

F. The General Plan designation for the property is R3/U

G. The Planning Commission made the following findings with respect to the request for a lowered garage floor, window in the garage and stronger walls of the garage as built.

- (a) The proposed minor deviations from the approved plans will be compatible with properties in the surrounding area. The proposed minor deviations will be well below the maximum size permitted and are entirely consistent with the City of Manhattan Beach “**anti-mansion**” philosophy.
- (b) The project will not be detrimental to surrounding neighbors since the new level of the garage floor, stronger garage walls and window, will be consistent with the City of Manhattan Beach’s “**anti-mansion**” philosophy and the new structure will have much larger front and rear setbacks than surrounding structures and will have significantly more open space.

SECTION 2. Thee Planning Commission of the City of Manhattan Beach hereby **APPROVES** the request of the applicants for a minor deviation from approved plans and approves the amended plan as submitted by the applicant for the garage structure.

Standard Conditions

1. *Compliance.* All development must occur in strict compliance with the proposal as set forth in the application.
2. *Interpretation.* Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
3. *Inspections.* The Community Development Department Staff shall be allowed to inspect the site and the development during construction subject to 24 hour advance notice.
4. *Effective Date.* The Resolution shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determination taken, done or made prior to such decision or to determine the reasonableness, legality, or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution. The City Clerk shall send a certified copy of this resolution to the applicant, and if any, the appellant at the address of said person set forth in the record of the proceedings and such mailing shall constitute the notice required by Code of Civil Procedure Section 1094.6.

I hereby certify that the foregoing is a full, true and Correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of July 28, 2010 and that said Resolution was adopted by the following vote.

**AYES:** \_\_\_\_\_

**NOES:** \_\_\_\_\_

**ABSTAIN:** \_\_\_\_\_

**ABSENT:** \_\_\_\_\_

---

**LAURIE B. JESTER**  
Secretary to the Planning Commission

---

**Sarah Boeschen**  
Recording Secretary

Mr. Kirby-  
 In response to your request, we have no written policy, or position paper.

Laurie B. Jester  
 Community Development Acting Director  
 P: (310) 802-5510  
 E: ljester@citymb.info  
 City of Manhattan Beach, CA

-----Original Message-----

From: SCKirby [mailto:harleyk@earthlink.net]  
 Sent: Thursday, July 01, 2010 9:35 AM  
 To: Laurie B. Jester  
 Cc: Angelica Ochoa; Richard Thompson; Portia P. Cohen; Mitch Ward; Richard P. Montgomery; Nick Tell; Wayne Powell; mlkirby@kirbyandkirby.com; gjcreate@gmail.com; Carol Jacobson  
 Subject: RE: 626 Rosecrans Ave.

Laurie,

Thank you for replying to my request, as to the basis for your denial of a lowered garage floor, a stronger framing in the garage etc. Please also supply my wife and I with any "writings" that depict this "policy". Also please supply me with any "position papers" issued by the Department of Community Development on this "policy". Thank you in advance for a quick response to this request.

Sincerely,

Steven C. Kirby

-----Original Message-----

>From: "Laurie B. Jester" <ljester@citymb.info>  
 >Sent: Jun 30, 2010 3:36 PM  
 >To: SCKirby <harleyk@earthlink.net>, Angelica Ochoa <aocchoa@citymb.info>, Richard Thompson <rthompson@citymb.info>  
 >Cc: "Portia P. Cohen" <pcohen@citymb.info>, Mitch Ward <mward@citymb.info>, "Richard P. Montgomery" <rmontgomery@citymb.info>, Nick Tell <ntell@citymb.info>, Wayne Powell <wpowell@citymb.info>, mlkirby <mlkirby@kirbyandkirby.com>, Garo <gjcreate@gmail.com>, Carol Jacobson <cjacobson@citymb.info>  
 >Subject: RE: 626 Rosecrans Ave.

>Mr. Kirby-

>With the proposed design, layout and construction of your garage, it  
 >could very easily be converted to two stories. Since there is a story  
 >above the garage, that would create three stories and your zone only  
 >allows two stories.

>It has been our policy and practice to not allow full two story ceiling  
 >heights in these situations.

>The Planning Commission will hear your appeal on July 28th.

>Thank you  
 >Laurie Jester

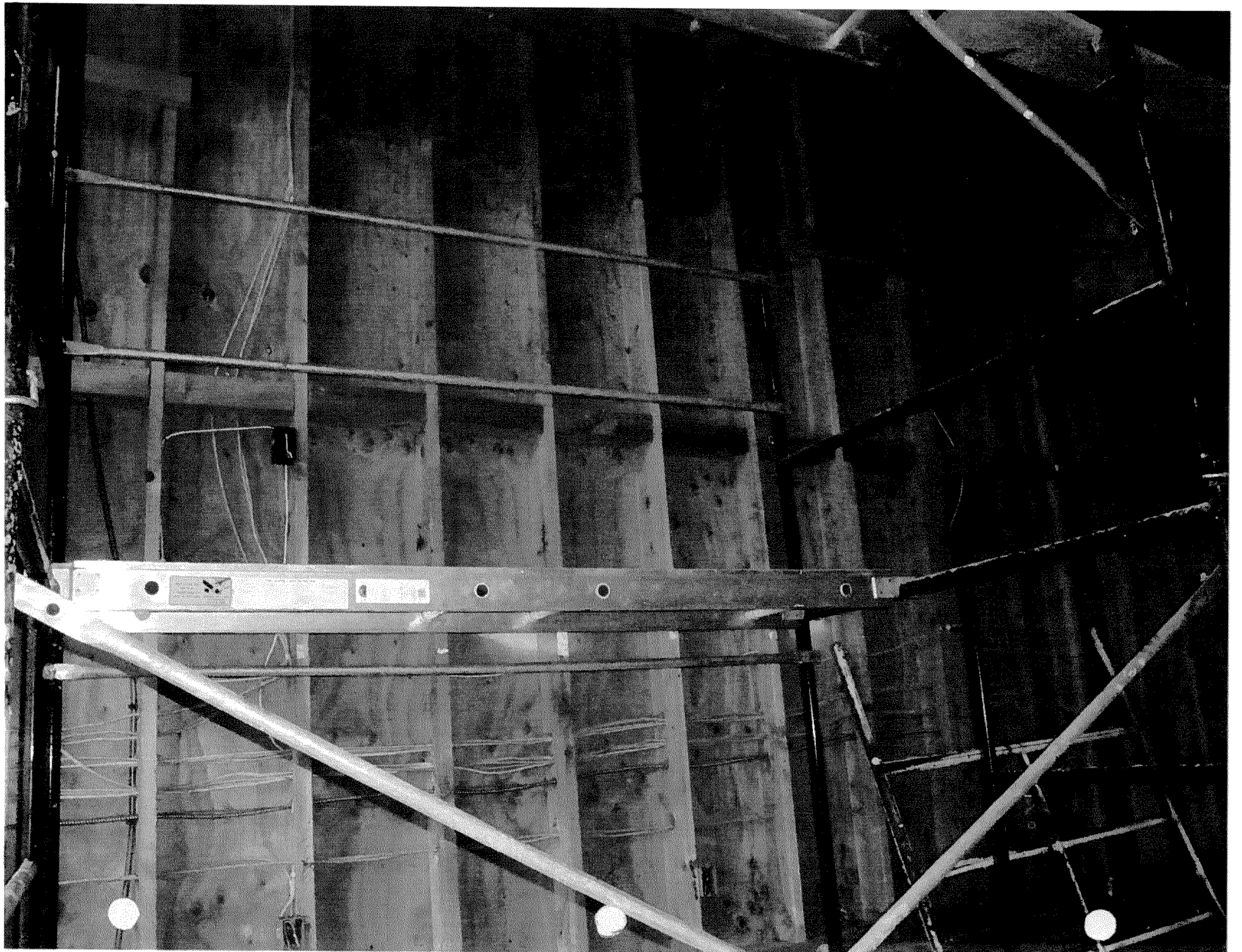
>Laurie B. Jester  
 >Community Development Acting Director  
 >P: (310) 802-5510  
 >E: ljester@citymb.info  
 >City of Manhattan Beach, CA

-----Original Message-----

>From: SCKirby [mailto:harleyk@earthlink.net]  
 >Sent: Tuesday, June 29, 2010 3:55 PM  
 >To: Laurie B. Jester; Angelica Ochoa; Richard Thompson  
 >Cc: Portia P. Cohen; Mitch Ward; Richard P. Montgomery; Nick Tell; Wayne Powell; mlkirby; Garo  
 >Subject: 626 Rosecrans Ave.

>Acting Director Jester  
 >Assistant Planner Ochoa  
 >Acting City Manager Thompson

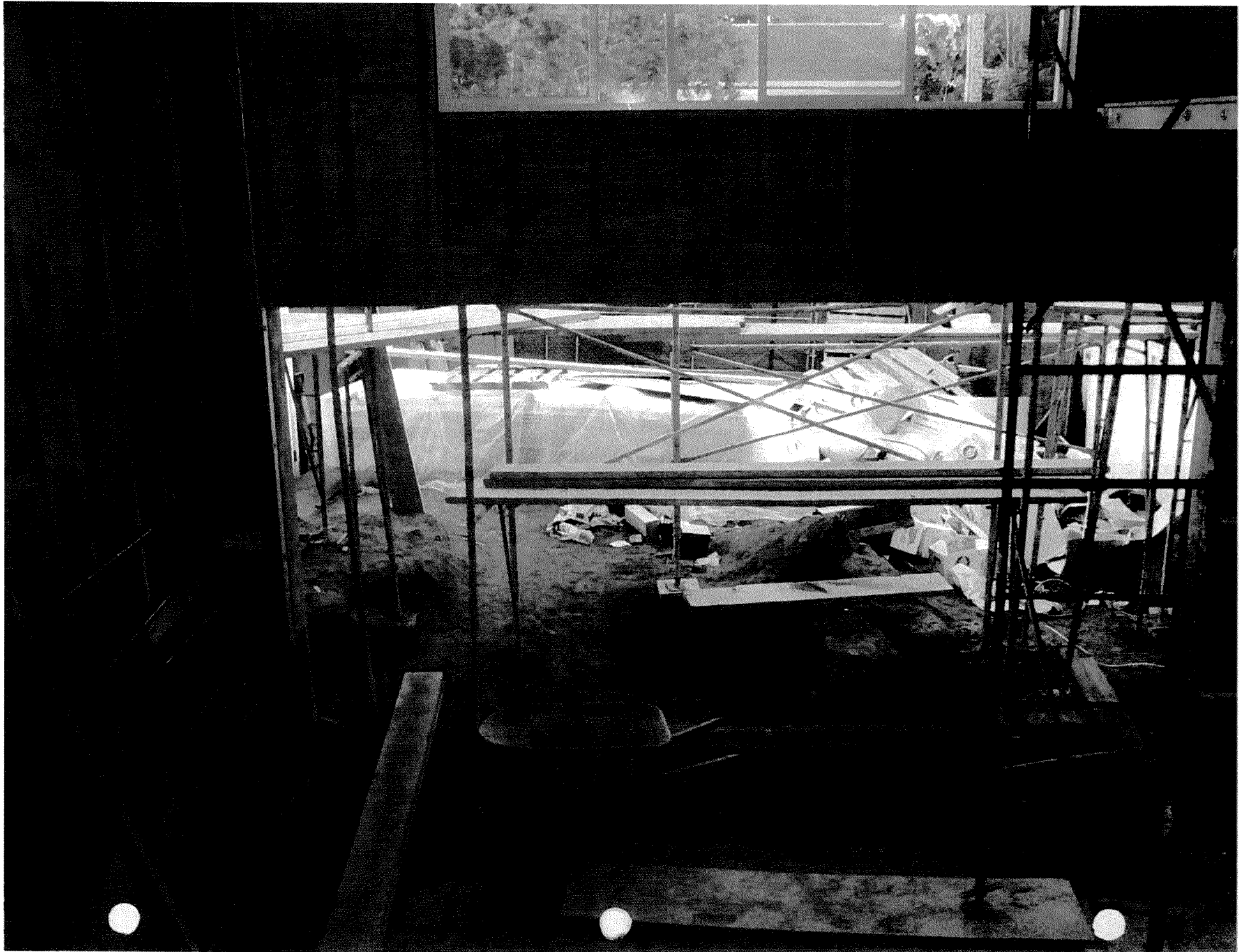










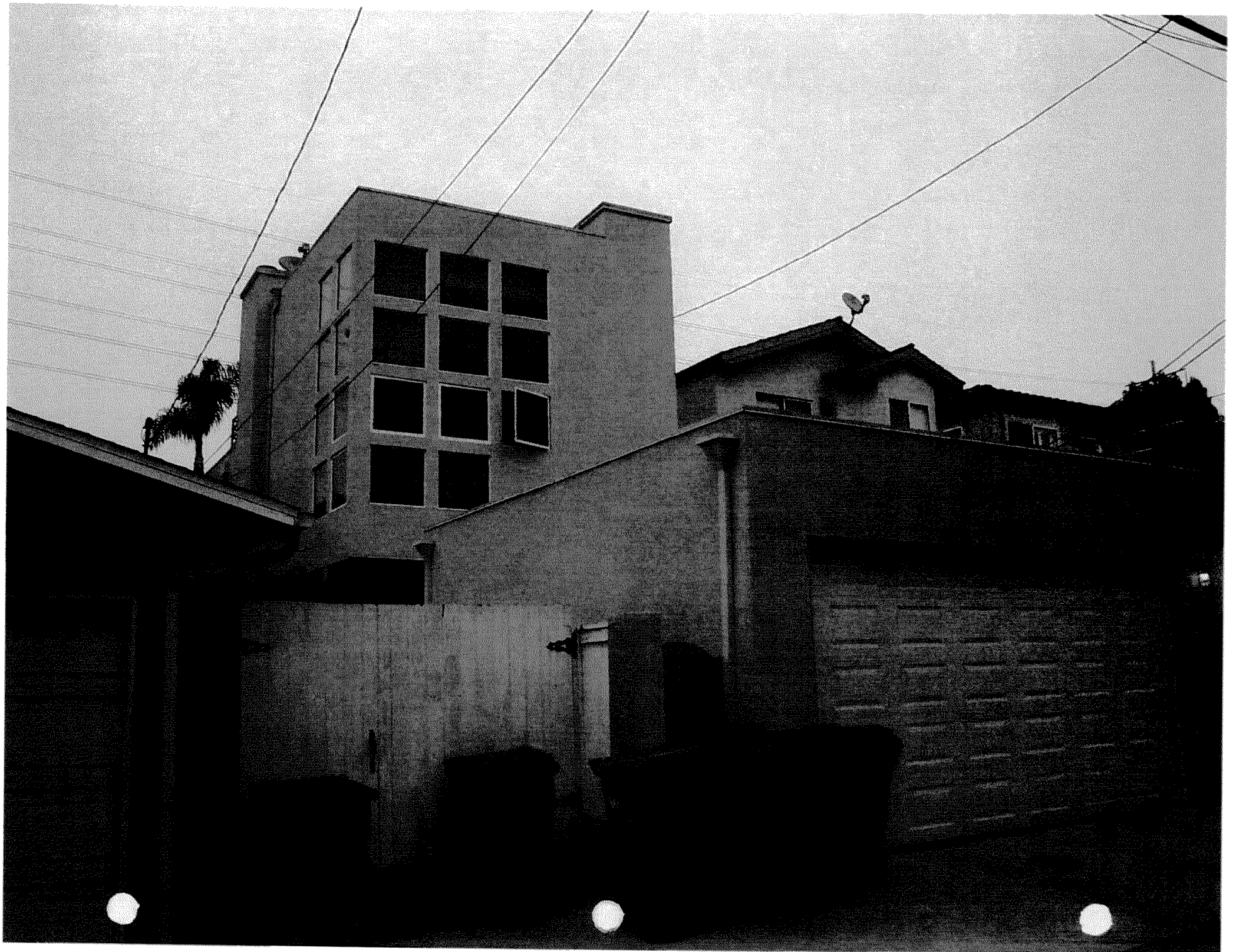






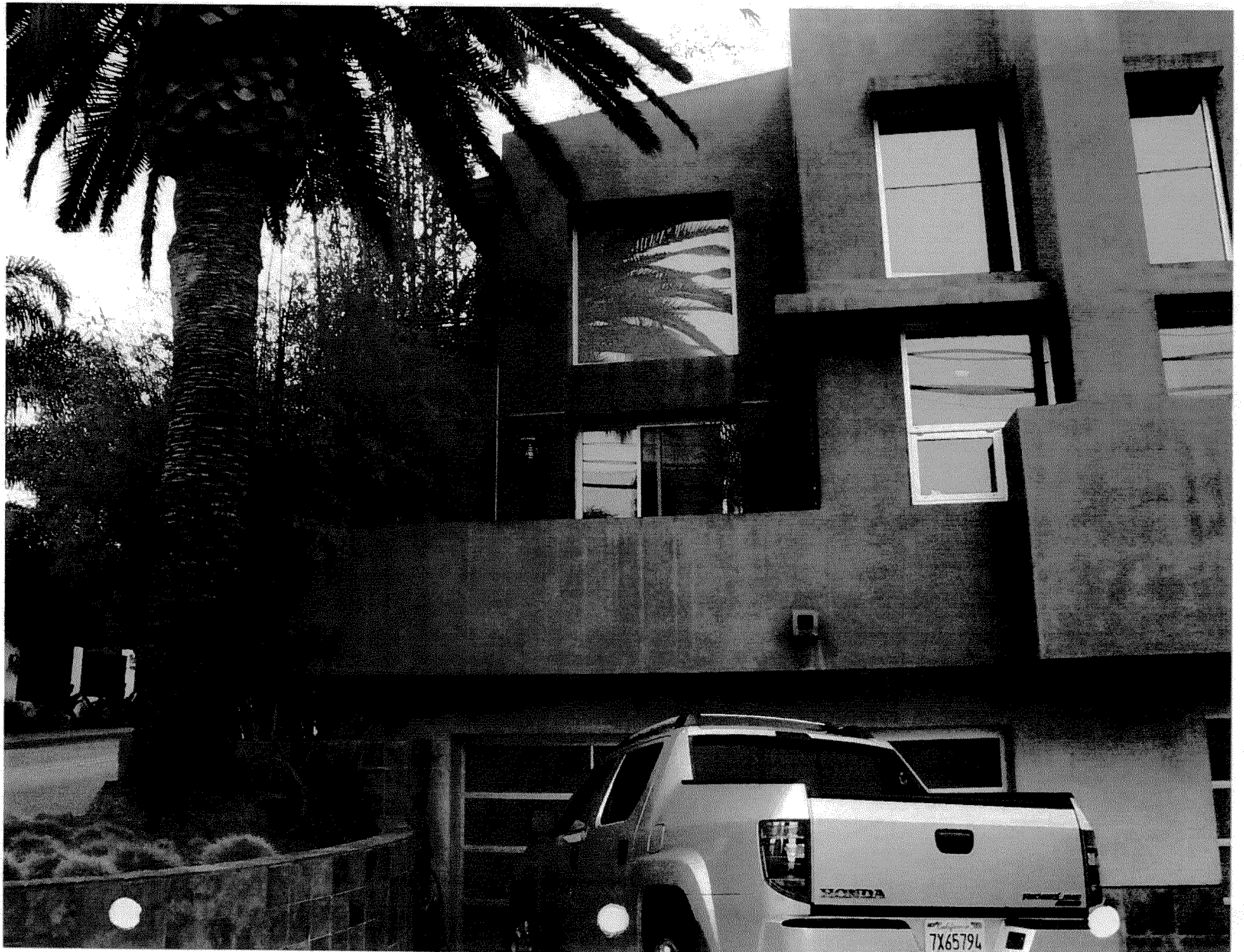




















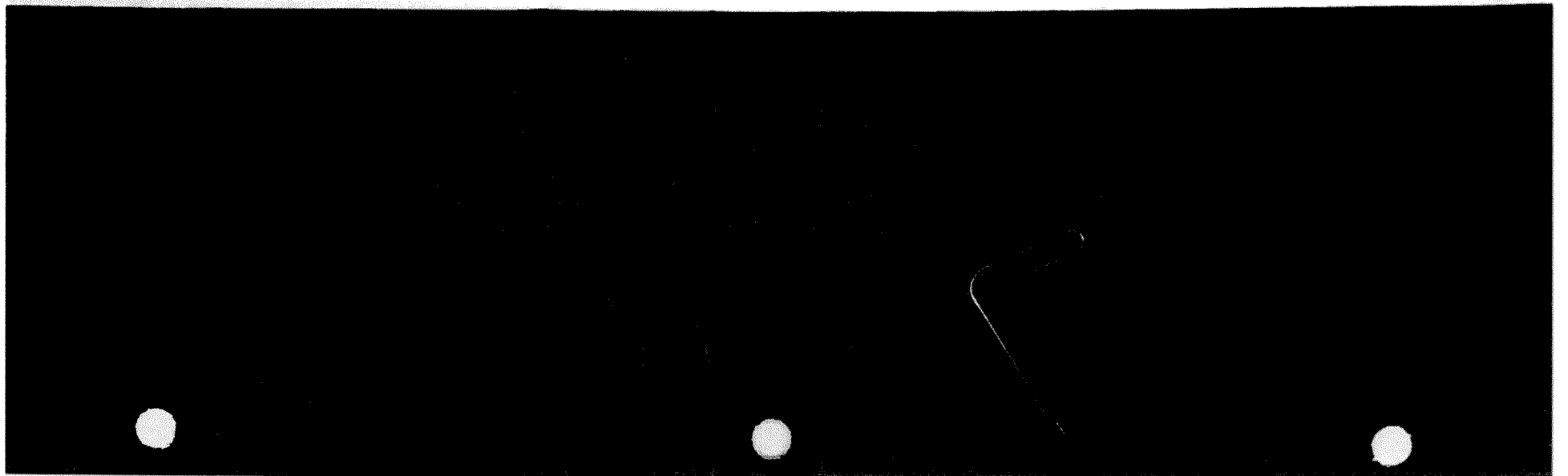
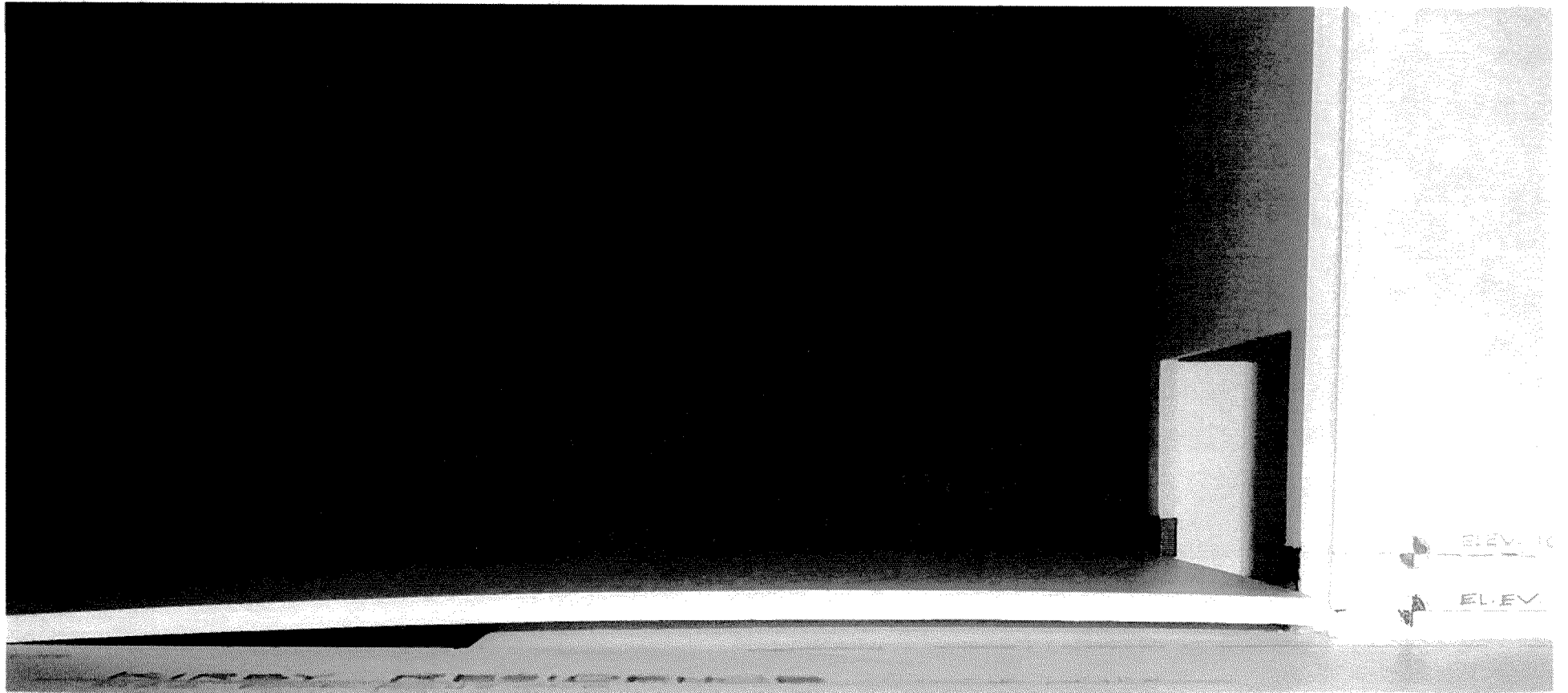


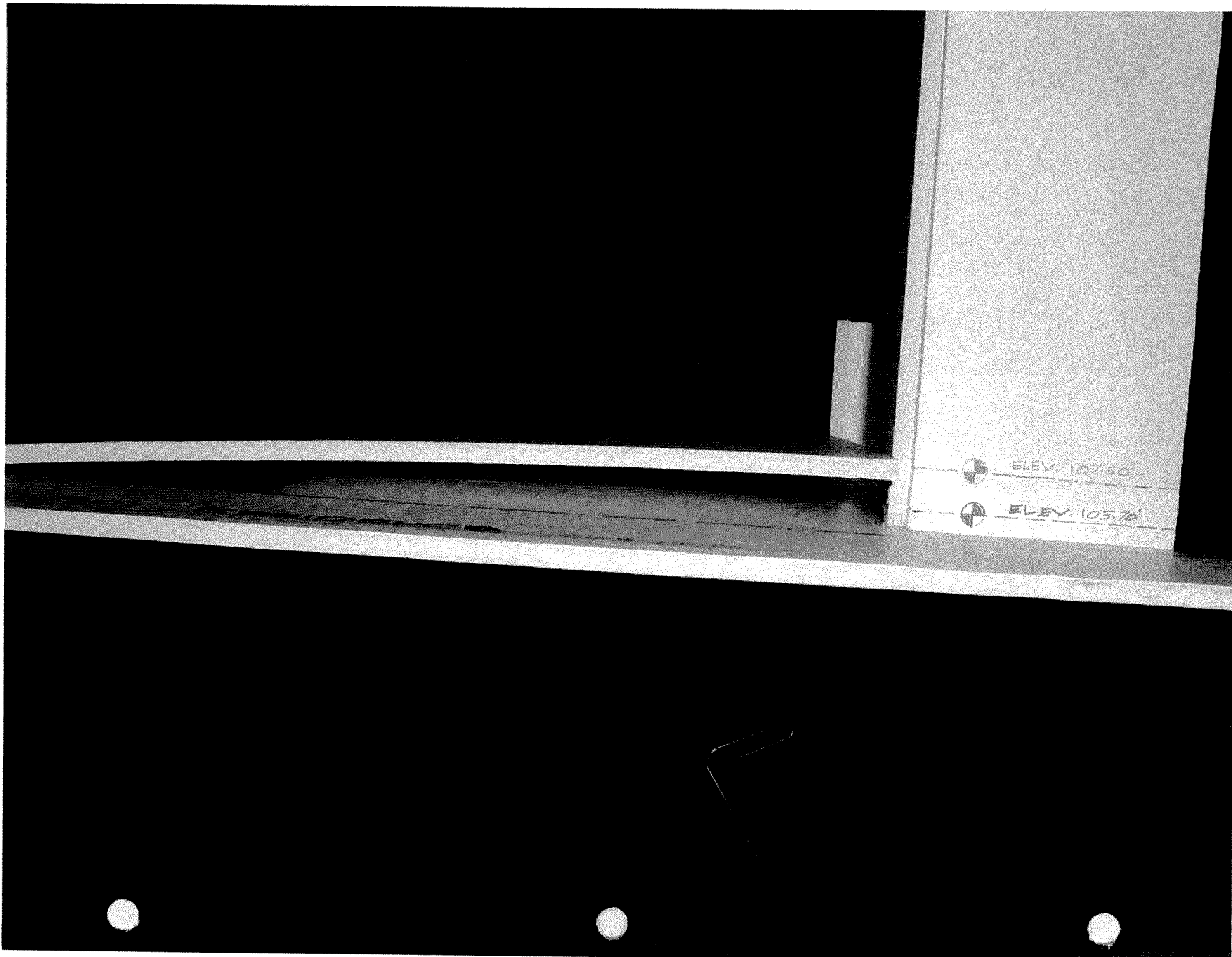


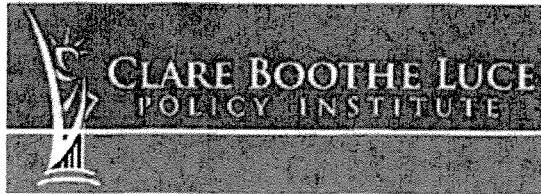












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## Property Rights vs. Government Regulation: More at Stake Than Just Your Backyard

Nancie Marzulla | 1999/11/19

Any discussion about property rights should start by going back to the Constitution. James Madison, who drafted our Bill of Rights, at the insistence of the states, demanded that there be some protections for individual rights and states' rights. Thus, in the Bill of Rights you find protections for private property rights in both the Fourth and the Fifth Amendments. Thomas Jefferson identified property rights in the Declaration of Independence when he asserted that the proper role of government is to protect its citizens' life, liberty, and pursuit of happiness. Jefferson's writings make clear that by "pursuit of happiness" he didn't mean something like the 1970's notion of "anything goes," or "if it feels good, do it," or the 1990's fixation with instant gratification. Rather, he meant something more along the lines of the right to enjoy the fruits of one's labor, or what we think of today and describe simply as private property rights. In fact, Jefferson's original draft borrowed John Locke's formulation: life, liberty, and property.

Why did our Founding Fathers place so much emphasis on protecting private property rights? Because they understood that there are essentially two ways that an oppressor or a dictator can control the people. The first is through physical oppression. The other is through controlling private property. We can see very easily how liberty is destroyed by looking no farther than the former Soviet Union, whose government controlled the citizens and allocated everything--apartments, cars, careers, educational opportunities--everything.

Our Constitution, on the other hand, by guaranteeing the right to own and use private property, secures for us our homes, our jobs, our educational opportunities, and our right to enjoy the fruit of our labor. In short, our property rights are secured against government destruction.

The current controversy over this important constitutional right arose directly out of the Fifth Amendment's requirement contained in the just compensation clause, which states, "nor shall private property be taken for public use without payment of just compensation." That's the crux of what this modern controversy over property rights centers around.

And this is because, in its most simple terms, the government wants more property, more land, more power, than it can pay for. Its appetite for more--more land, more forms, different kinds of property--is unlimited. The only thing standing in the government's way is this "loathsome" requirement that it has to pay for what it takes.

I would like to focus our discussion of property rights on the woman's

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perspective, which may really be what counts the most; because what women believe about property rights may be pivotal concerning this key constitutional right in the coming years. I'll explain in a moment.

Let me say now that despite the fact that the Constitution placed enormous emphasis on protecting private property rights, there is not a single law on the books implementing this constitutional right. Think about the other rights mentioned in the Bill of Rights; many of these provisions have elaborate implementation programs in various statutes and regulatory programs. Take the Equal Protection Clause: you need think no further than Title VII, Title VIII, fair employment, fair housing programs, the Voting Right Acts, and so forth, to realize to what lengths Congress has gone to implement those protections over due process, criminal rights, excessive fines, and the rest. In many instances, Congress has stepped in and demanded that government exercise its powers in such a way as to conform with what the Constitution requires.

But with respect to the just compensation clause, Congress has done nothing. On the contrary, we have a veritable explosion of laws that adversely affect private property rights. For example, the Clean Air Act, the Surface Mining Control and Reclamation Act, the Coastal Zone Management Act, the Super Fund, FIFRA, the Endangered Species Act, the Federal Wetlands Regulatory Program--all of these federal laws and regulatory regimes have had enormous negative impacts on private property rights. There are hundreds of thousands of pages of rules and regulations of all sorts, of all varieties, on all topics, that adversely affect private property rights. But not a single page is devoted to protecting private property rights.

In fact, no activity, no human endeavor is more heavily regulated than the use of private property in our society. Added to the federal level, there are the various state regulatory regimes, not to mention local government land use and zoning controls. In short, the unconstitutional taking of private property is an epidemic in this country.

This wholesale destruction of our liberty can only be stopped if we can come up with leaders who are willing to stand up for the property rights of the people. Agency bureaucrats can be made to obey the Constitution only if Congress requires them to do so; for example, by conducting meaningful oversight hearings, changing environmental laws, and enacting strong property rights legislation. There have in fact been a number of really excellent property rights proposals introduced in Congress since 1990. What is missing is not the proposals, but the political will to enact them.

We all know that political leaders may not read the Constitution, but they always read the polls. And what the polls tell us today is that the female voter--I'm finally back to women!--between the ages of twenty-one and fifty are the most influential and sought-after segment of the voting population. Indeed, how you vote in the coming years will determine every election from the presidency on down. Therefore, what you have to say about this issue will really count. That is, the political leaders you elect, and their stance on property rights, will be critical in deciding whether the government will conduct its business the constitutional way or continue down the path from freedom to socialism.

The home and the family are top priorities for women, as are educational and career opportunities. In other words, what women want reads like something out of the Federalist Papers. They want the pursuit of happiness as understood by Thomas Jefferson, James Madison, and our

Founding Fathers. And the only way women are going to be able to achieve these goals is, again, through the protection of private property rights.

It may be dead white men who wrote the Constitution, but the fight to protect our liberties is being led, believe it or not, by women. For example, Jean Nollan.

The Nollan decision that was rendered by the Supreme Court in 1987 forms part of what we refer to as the 1987 Trilogy. Another dauntless woman, Florence Dolan, took the City of Togard, Oregon, all the way to the Supreme Court because it had grabbed a swathe of her beachfront property, declaring it a public easement, a public pathway, without payment of just compensation. The U.S. Supreme Court struck the taking down as invalid, using the just compensation clause as a sword, which is an astonishing way to view the just compensation clause, because many people see it simply as a money-mandating provision.

Another important case was recently won by Bernadine Suitam. She battled the Tahoe Regional Planning Authority for permission to use her property. In her case, the government opposed even her right to go to court. When she finally got to the Supreme Court, she had to be carried in a wheelchair--she was in a wheelchair and blind by then. But she won her case. She got her day in court, and eventually obtained just compensation for the taking of her property.

In another case, Mary and John McMachin built a vacation home on dry land. The Corps of Engineers, however, said it was wet--but not until after the McMachins had built the house and lived in it for three years. The government wanted them to tear down the house, or move the house--but the McMachins refused. Through litigation, the government was forced to give them an after-the-fact permit.

Jeannie Ebram is another gutsy person, a grandmother with five grandchildren. This picture of the back of her vacation home is important because next to the little cement area you'll see green grass. Today the grass is gone because there was a storm on the coastline of Texas that tore up the grass. Well, guess what Texas law now says? Because there's no vegetation next to the house, the land has become beach land, publicly owned land, and she has to move her house off of state property. In fact, she's going to be fined for having personal property on public property if she doesn't move her house immediately. But this woman is not willing to roll over and play dead. She wants to fight this case. And so we are suing the state of Texas.

Hilda Taylor is another woman whom we are currently involved with. She has Parkinson's disease and needs a home that will accommodate her wheelchair. She currently lives in a two-story house. Her husband, a builder, would like to build her one on a lot they own in Fairfax County, Virginia, but the U.S. Fish and Wildlife service says no because the lot is located adjacent to a bald eagle's nest. The bald eagle has been taken off the Endangered Species Act list, or is supposed to be taken off, as proclaimed by President Clinton, because the bird is no longer in danger. But the Fish and Wildlife Service is telling the court that Mr. Taylor can't build his house because technically the bird is still on the list.

I could go on the rest of the afternoon talking about these women litigants, but I'll end with Kathy Stupak Thrall. This woman is a real property rights warrior. She was a property owner who had a home by a lake in Michigan. Everything was fine. I don't think she ever thought about private property rights. But then the federal government came

along and told them that they couldn't use the lake anymore because the lake was adjacent to federal land. And according to the federal government it can control adjacent property because there has to be a buffer around federal land, and if it destroys private rights that exist in the use of the lake, it's just too bad. It's something that the federal government thinks it's entitled to. But Kathy Stupak Thrall thought otherwise, and took the federal government to court. Unfortunately, the Circuit Court of Appeals that heard the case did not agree, but that did not stop Kathy; in fact, I think it just got her started. Because now she's running for public office and trying to get the laws changed to put an end to such thefts of private property. I predict that we're going to be hearing more from Kathy Stupak Thrall.

Let me close by touching on a topic that I have been asked to discuss, which is about success and conservative women in the fields of litigation. To my mind, thinking about success is not a very good way of going about one's life. More helpful and more useful to me is what Mother Teresa said, which is, "We are not called upon to be successful. We are called upon to be faithful." That is what I would recommend to anyone who was making life choices.

What in life brings the most satisfaction and the most meaning is making decisions and living your life faithful to your duties and responsibilities as a wife, a mother, a friend, a professional, and being faithful to your God. Live your life in such a way and your life will count for something that's bigger than yourself.

Making decisions in order to build your resume or get an award does not bring much personal happiness or satisfaction, and it certainly doesn't make the world a better place to live in. The women I've just mentioned left the comforts of everyday life and took on the really arduous task of suing the government to protect our rights, for something bigger than themselves.

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