



**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 23rd 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

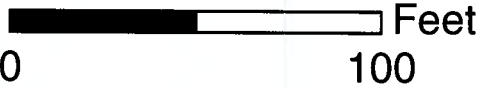


Exhibit A



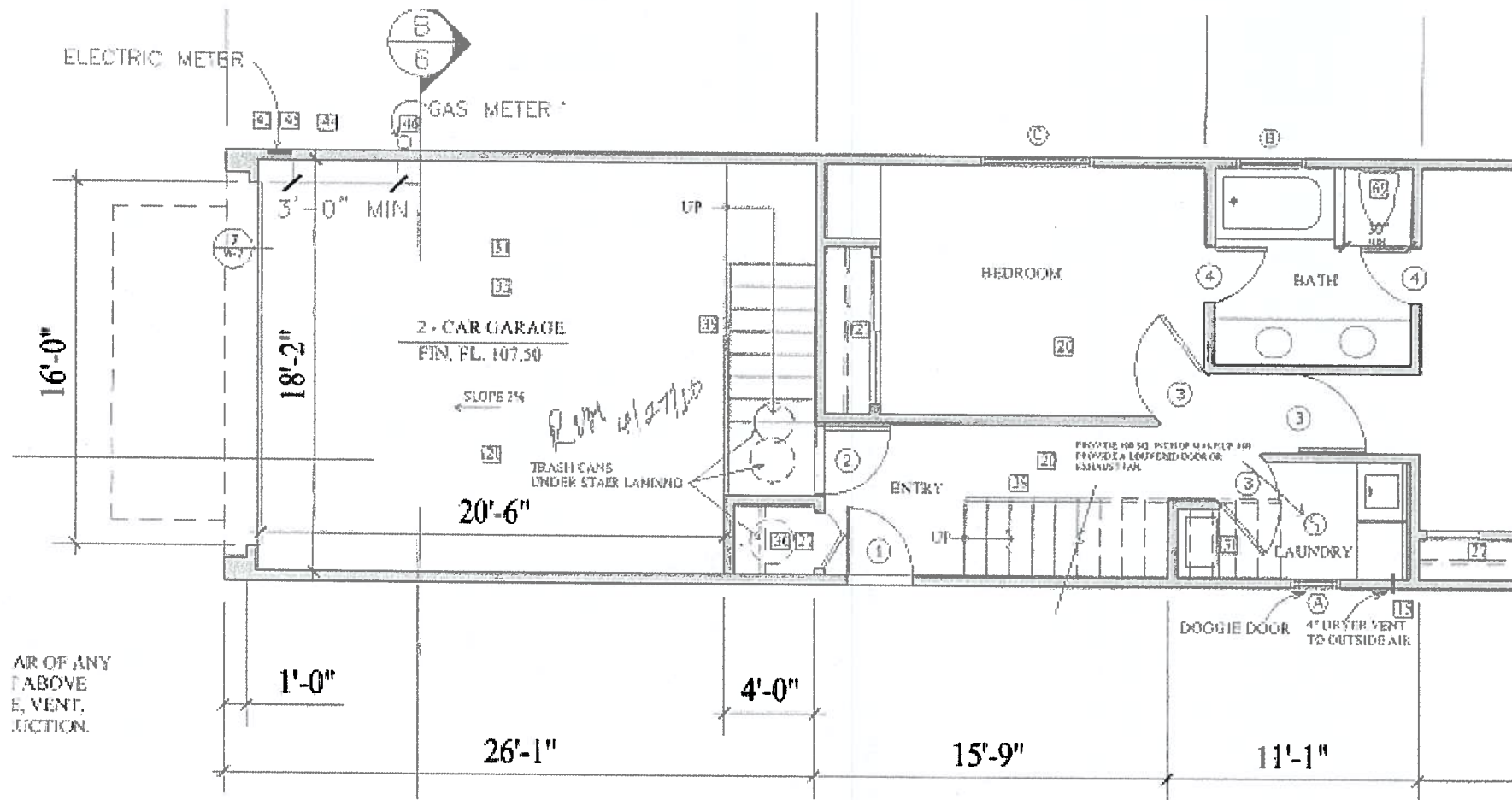
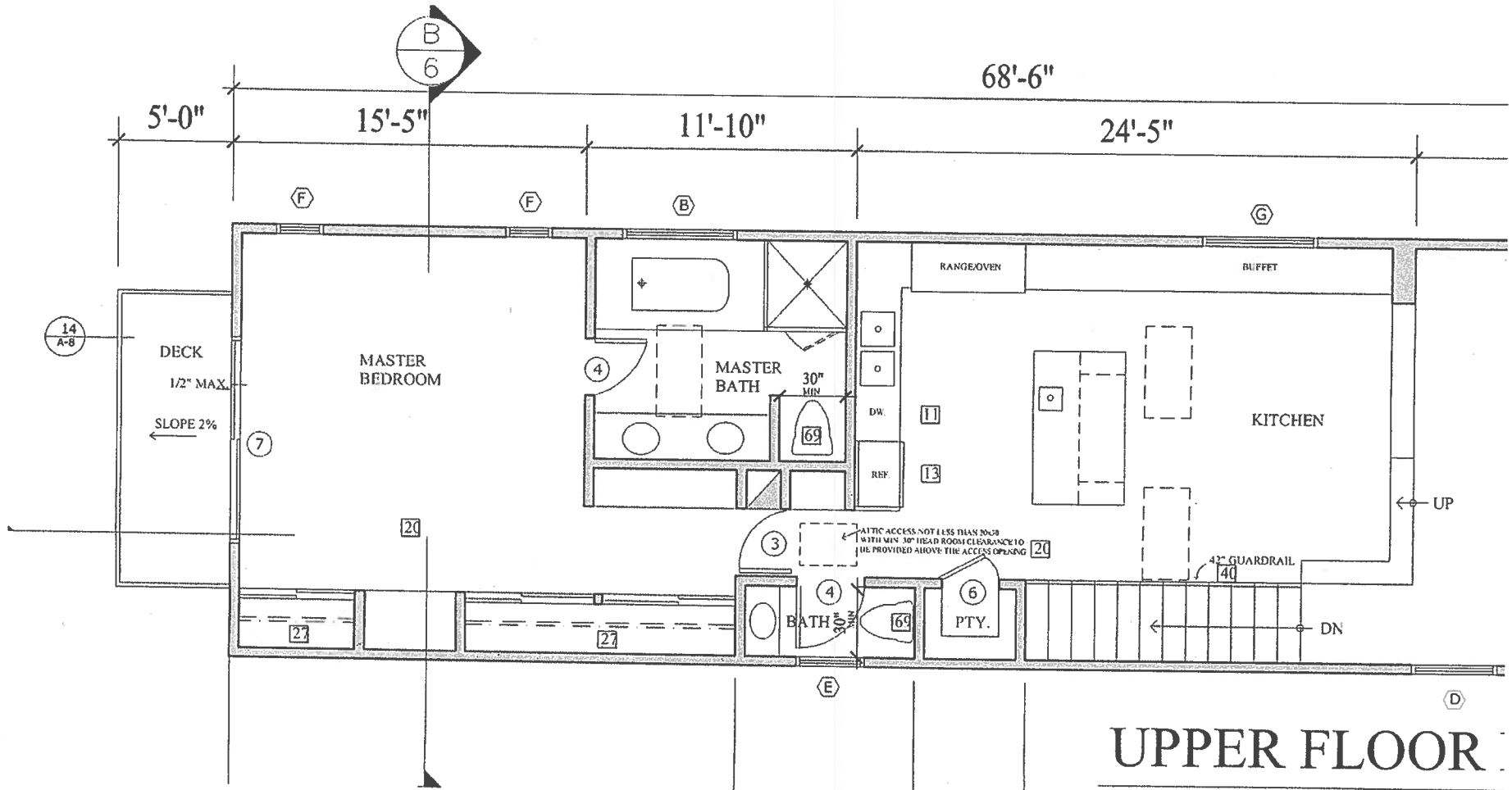
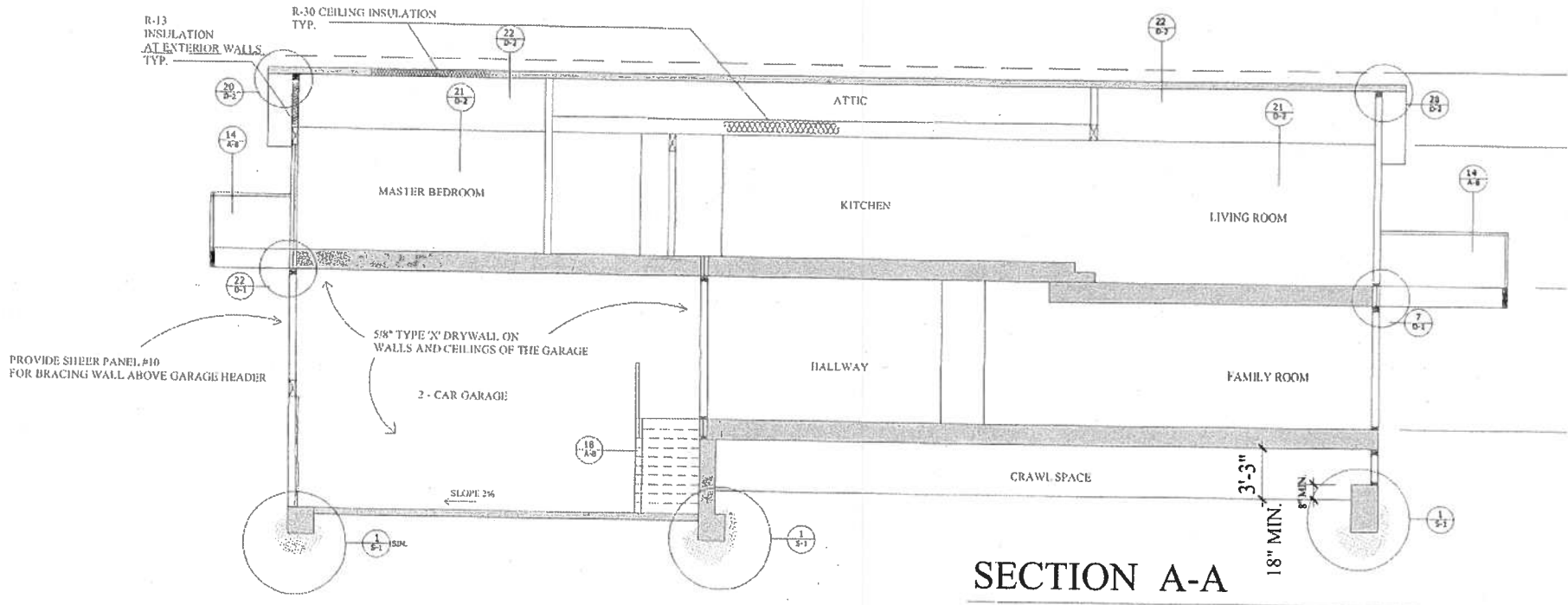
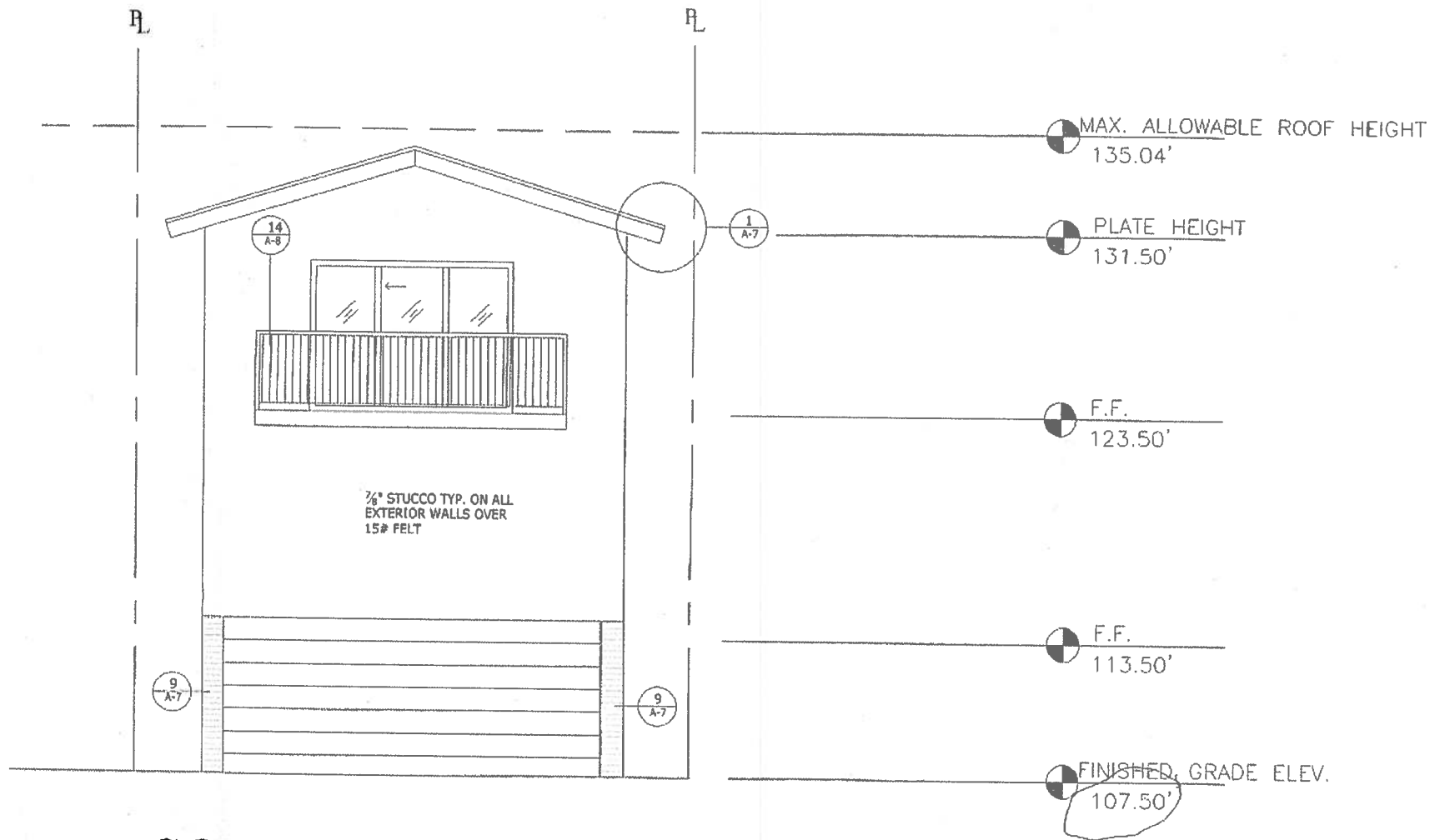


EXHIBIT B
 PC Mtg. 7/28/2010

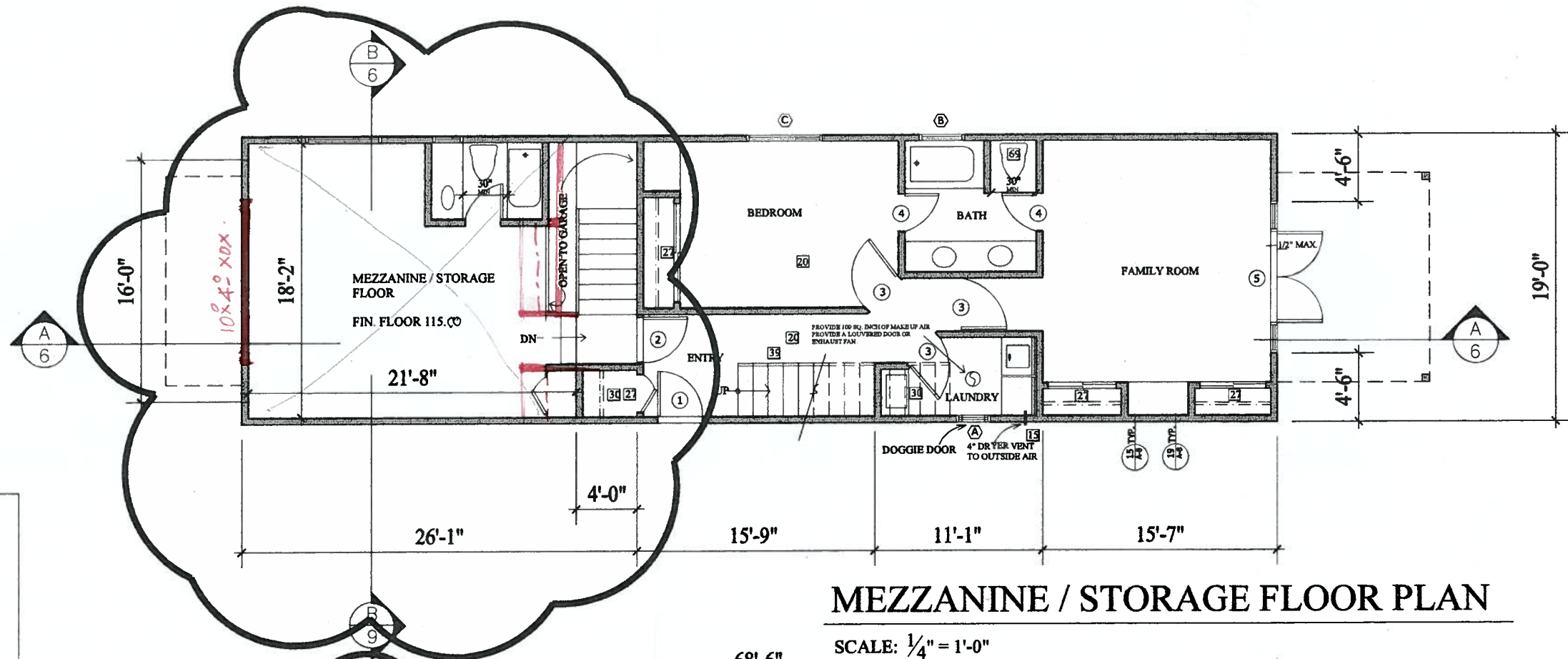




SECTION A-A



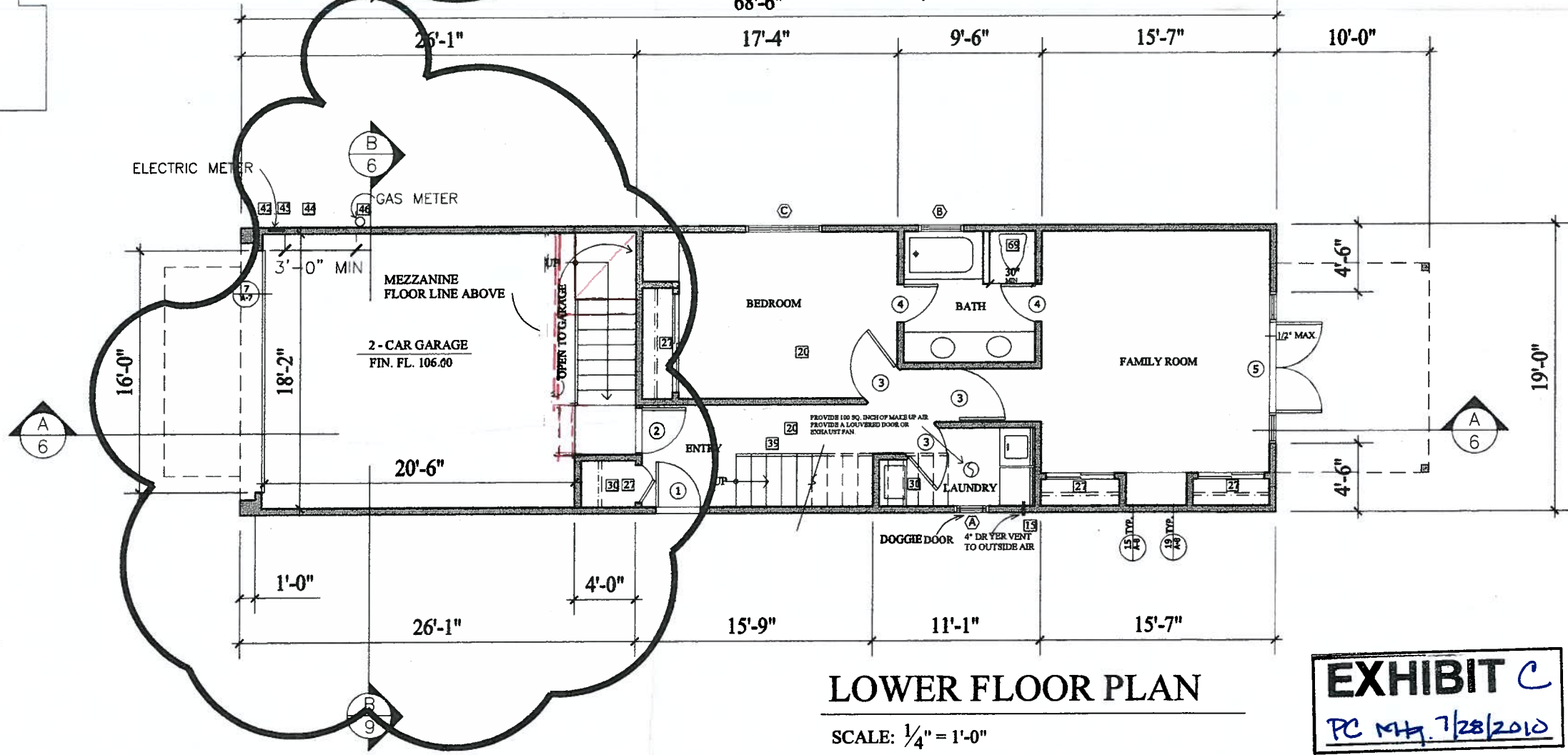
SOUTH ELEVATION



MEZZANINE / STORAGE FLOOR PLAN

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

MEZZANINE / STORAGE FLOOR
373 SQ. FT.
370.90



LOWER FLOOR PLAN

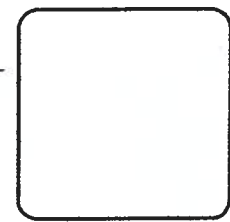
SCALE: 1/4" = 1'-0"

EXHIBIT C
PC MH. 7/28/2010

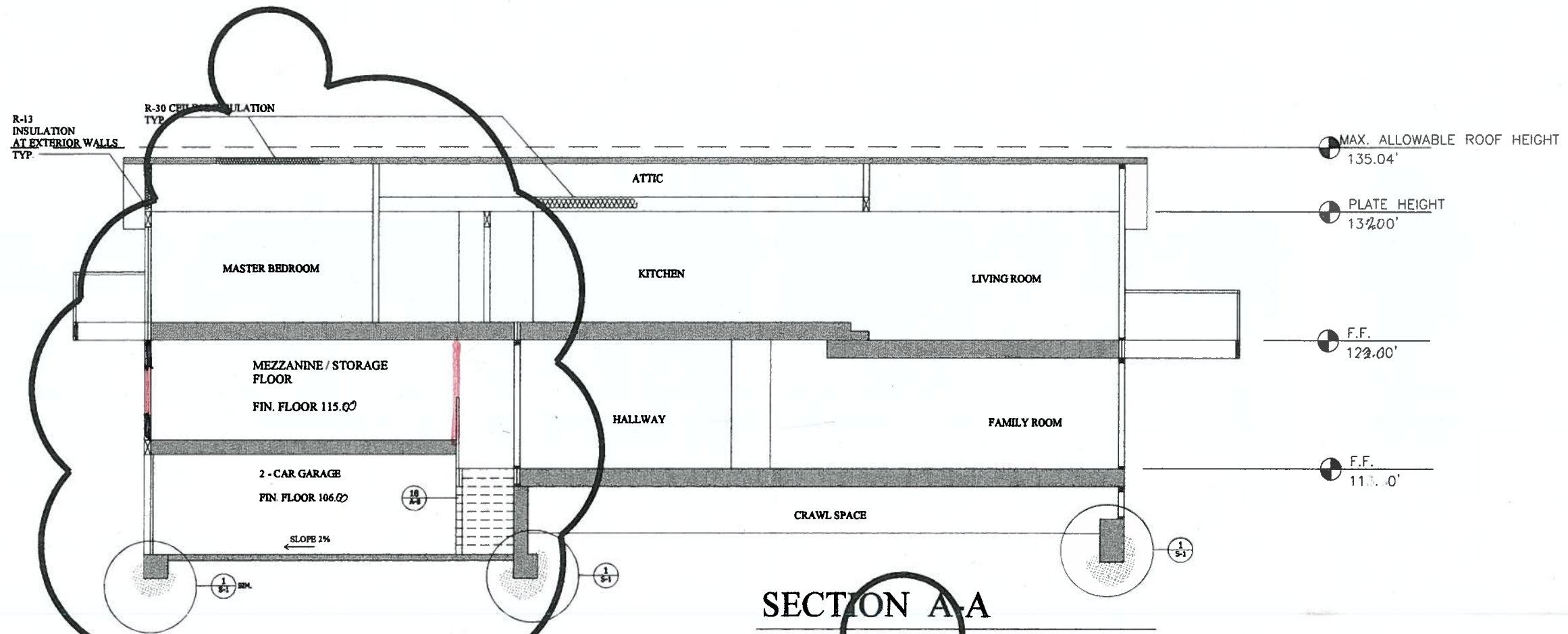
No.	Revision/Issue	Date

G.J. CONSTRUCTIVE CREATIONS, INC.
24951 17th St., Dana Point, CA 92629
PHONE: (949) 972-9093

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

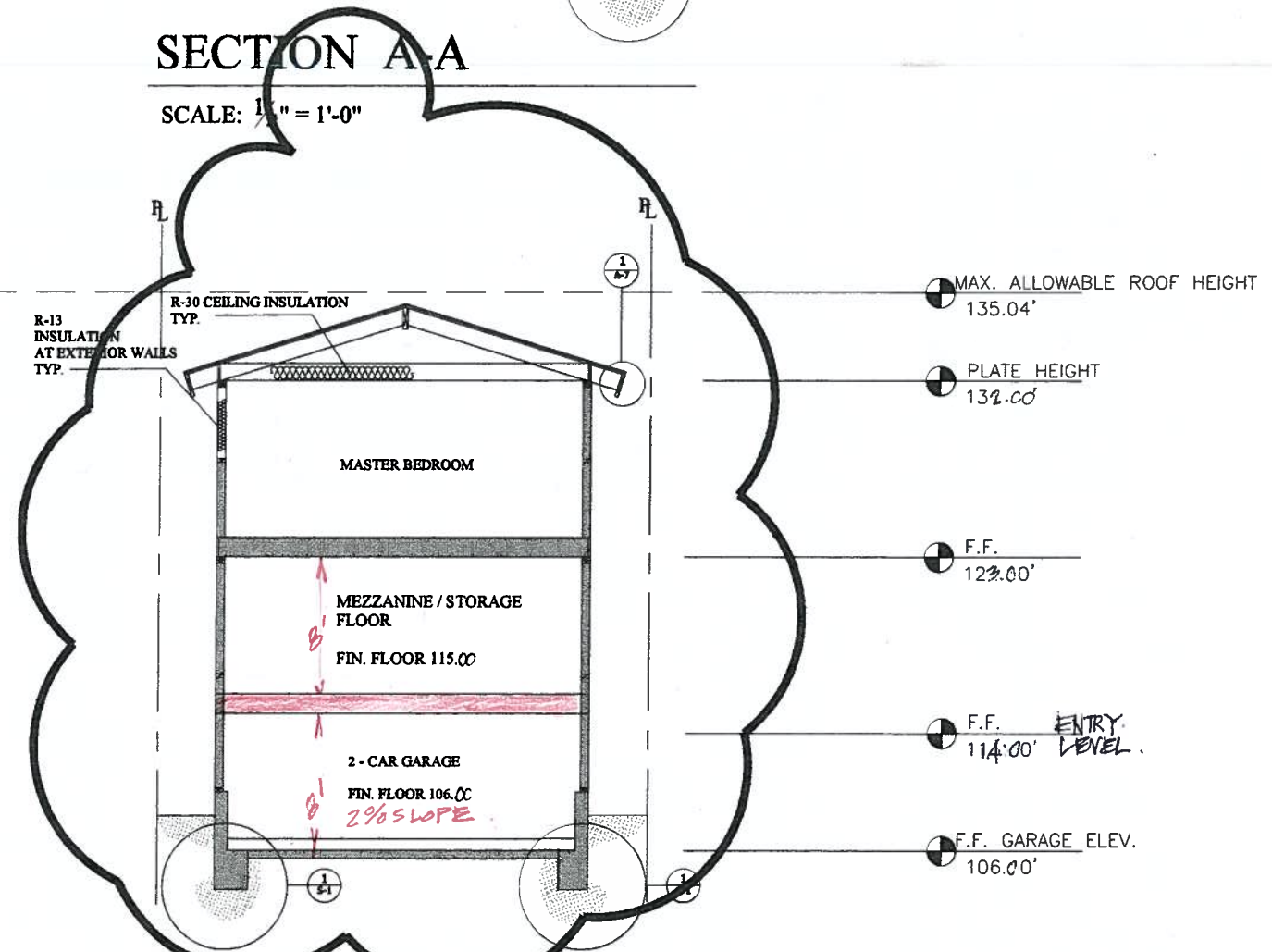


FLOOR PLANS	SHEET
JOB NO. Rosecrans	R-2
DATE 4-10-10	



SECTION A-A

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



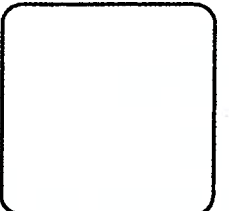
SECTION B-B

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

No.	Revision/Issue	Date

G.J. CONSTRUCTIVE CREATIONS, INC.
 24951 GATEWAY DRIVE, MANA POINT, CA 91609
 PHONE: (949) 272-9093

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

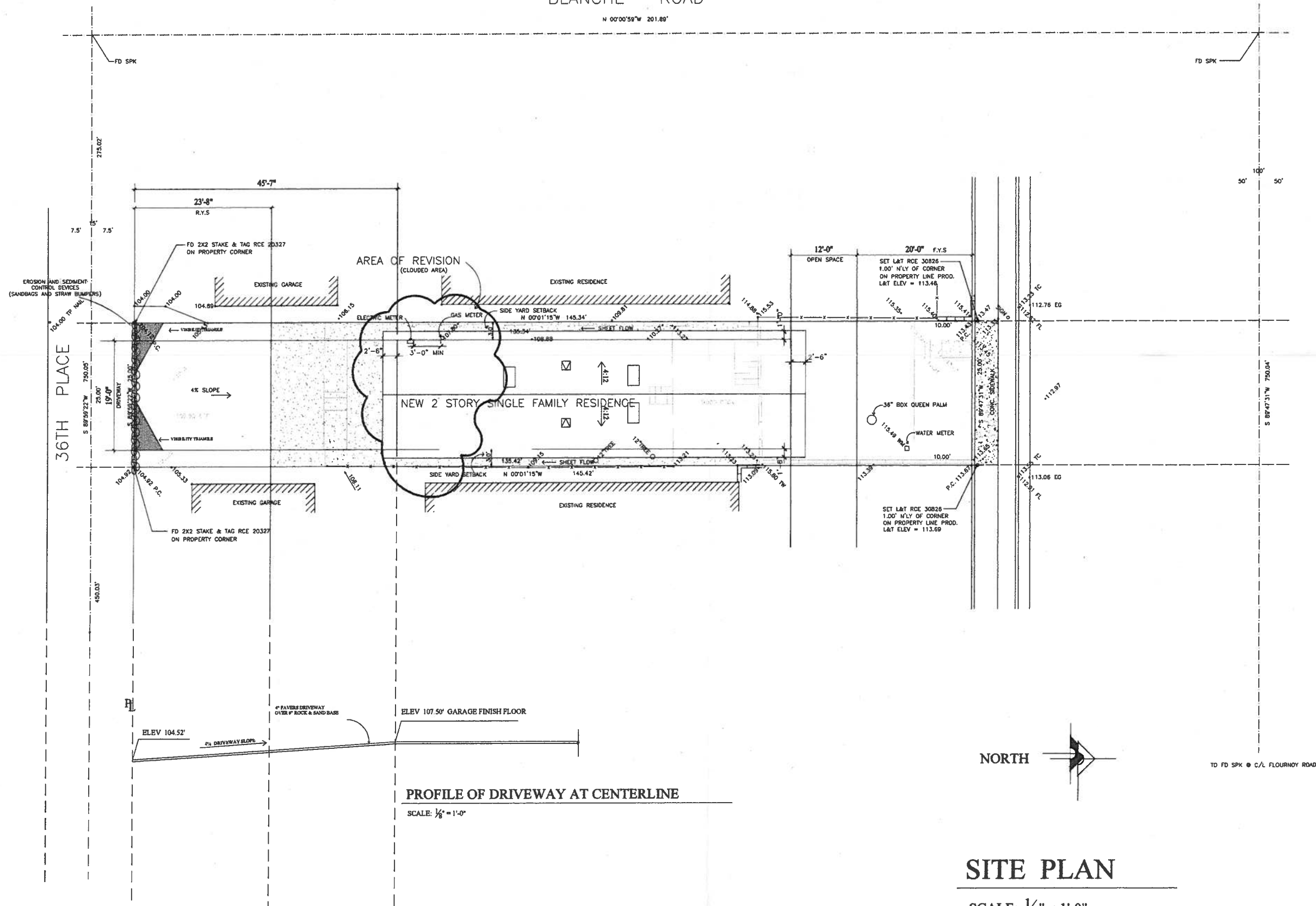


SECTIONS	SHEET
JOB NO. Rosecrans	R-3
DATE 4-10-10	

TO FD SPK @ C/L FLOURNOY ROAD

BLANCHE ROAD

N 00°00'59"W 201.80'



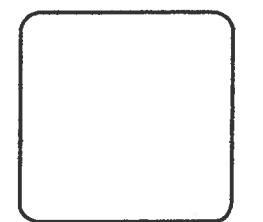
SITE PLAN

SCALE: 1/8" = 1'-0"

No.	Revision/Issue	Date

G.J. CONSTRUCTIVE CREATIONS, INC.
 24951 S. 107th St., Torrance, CA 90505
 PHONE: (310) 202-9093

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



SITE PLAN	SHEET
JOB NO. Rosecrans	R-1
DATE 4-10-10	

CORRECTION NOTICE

DEPARTMENT OF
COMMUNITY DEVELOPMENT
CITY OF MANHATTAN BEACH

626 ROCKDAWS
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 -
SUBVAYOR 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 ROCKDAWS
Job Address

GARAGE SLAB ELEVATION
Type of Inspection

2ND NOTICE
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. PRIOR TO NEXT
INSPECTIONS
Contractor to HAVE
SUBVAYOR 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 w/ any
work in the garage
as previously noted

Date

Inspector

7/20/10 [Signature]
**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
 Garo, 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



Please consider the environment before printing this email.

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

EXHIBIT E

PC MB 7/28/2010

07/22/2010

DENN

June 4, 2010

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

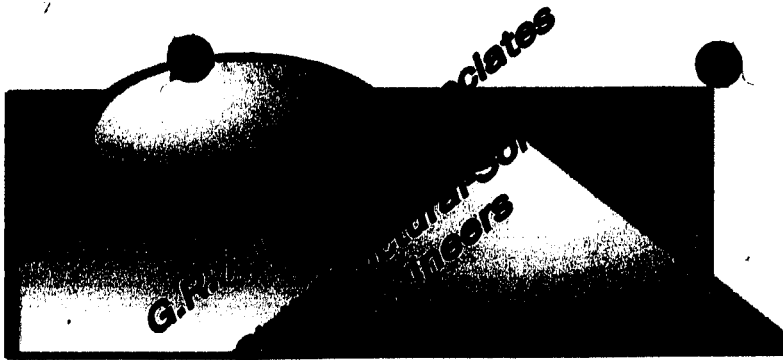
Re: Building under construction at 626 Rosecrans Avenue, Manhattan Beach
Job Number 04-576

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. 7/28/2010



June 3, 2010

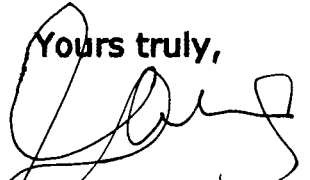
Department of Community Development
City of Manhattan Beach, Ca. 90266

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'.

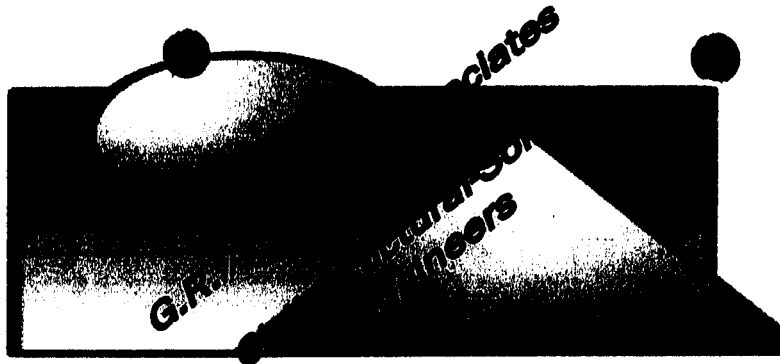
Yours truly,



Gene R. Alloway

President





June 4, 2010

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

RE: Certification of 2nd floor sheathing elevation 626 Rosecrans Project – Kirby Res.

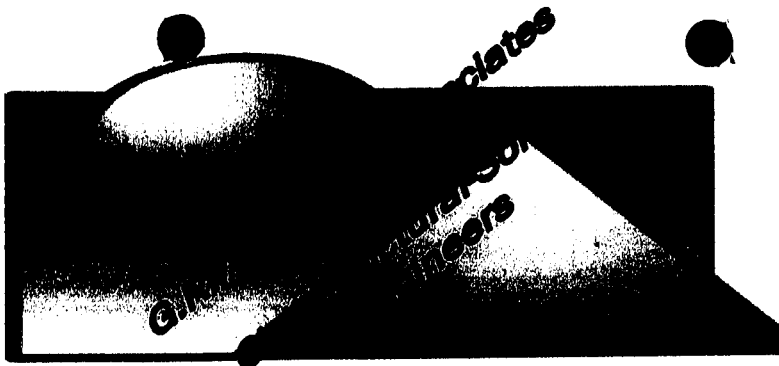
We hereby certify that we have surveyed the elevation of the 2nd floor sheathing over the garage area to be 123.45'.

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

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
Steve Kirby

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

*P.S. 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

**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.

EXHIBIT I
PCMH.7/28/2010

Law Offices

KIRBY KIRBY & KIRBY

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

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

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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 23rd 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

Location: 626 Rosecrans Ave., (See Google Overhead Map Exhibit 1)

Legal Description: Lot 18 Block 3, Tract No. 1503 APN4174001017

Area District: II

General Plan: Residential

Zoning: RS-D1

Land Use: Being Built 2 Story Single Family 2098 sq. feet

Buildable Floor Area: Total Buildable Floor 2546.07 Proposed 2098.58

PROJECT DETAILS

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

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

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 23rd 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. The 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

























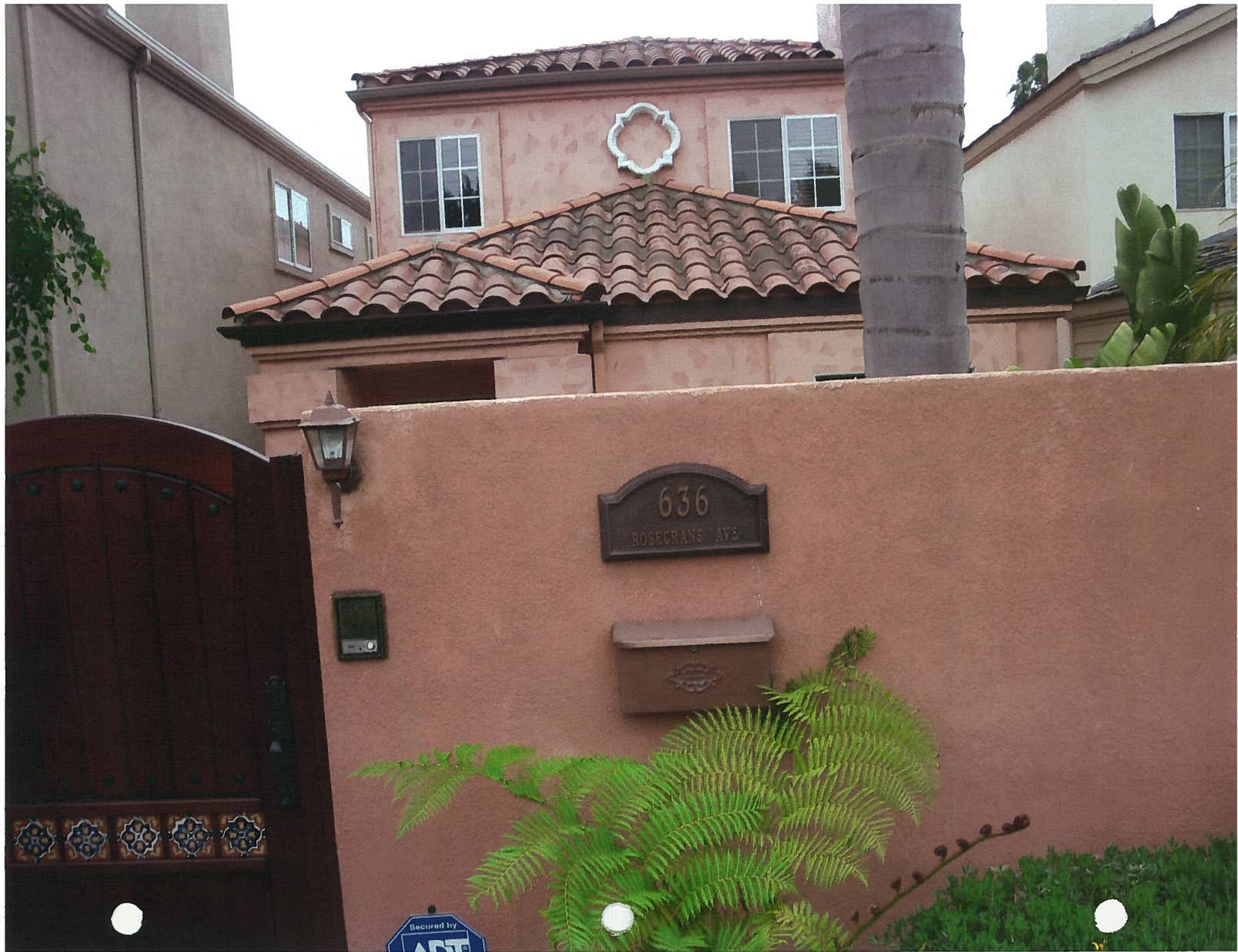
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Property Rights vs. Government Regulation: More at Stake Than Just Your Backyard

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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