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January 19, 2021

**Via Email & US Mail**

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County of Santa Barbara Planning and Development  
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Jose Barajas  
Division Supervisor Permitting and Inspections-Building and Safety  
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123 East Anapamu Street  
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901 PARK LANE, MONTECITO, CA 93108  
COUNTY OF SANTA BARBARA ACCESSORY DWELLING UNIT  
APPLICATION 20BDP-00754

Dear Mr. Dargel and Mr. Barajas,

This office has been retained to represent Tom and Kelly Bilek with regard to their above-referenced Accessory Dwelling Unit Application (the "ADU Application"). In a December 4, 2020 email, Mr. Dargel informed my clients that management at the County of Santa Barbara Planning and Development ("P&D") "was unable to support the application" because there was supposedly an alternative location to build an Accessory Dwelling Unit ("ADU") on the above-referenced property (the "Property"). This is an inappropriate and inaccurate reason to refuse issuing building permits for the ADU Application.

This letter lays out why P&D must issue building permits immediately, for the ADU Application. It is my clients' goal to work with the County of Santa Barbara (the "County") to resolve this issue, as they have tried for the past six months, without litigation. We hope that the County will work with us to accomplish that goal. If not my clients are prepared to take the appropriate action.

**A. Relevant Facts.**

The Property is long and narrow in shape. There are numerous easements running through it. The property has two roads beside it. One of which is Park Lane. The County's claims that a 50-foot front yard setback from the right-of-way easement for Park Lane applies to development on the Property. This setback would make it nearly impossible to build a full

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size ADU on the Property. With this concern in mind, on or around May 5, 2020, my clients' agent contacted P&D to confirm that the front yard setback did not apply to ADU applications. In response P&D's Jessi Steele stated, via email, that "the front setback requirements... do not currently apply to Inland Area ADUs."

Based on this representation, my clients contracted with architect Dwight Gregory to design an ADU that met with the County's requirements. On or around September 23, 2020, my clients submitted the ADU Application. The ADU Application was for an approximately 1,080 square-foot ADU. The ADU Application was made pursuant to the County's "ADU Checklist G." On or around September 29, 2020, it was marked as complete by the County. On or around October 19, 2020, Mr. Dargel emailed Mr. Gregory and asked that he please disregard the May 5, 2020 email from P&D, which provided that no front setbacks apply to ADUs. Apparently P&D had changed its "stance on the topic" and as of October 19, 2020 believed the front setback did apply. No legal basis was given for this change in position. Notably, no ordinance had, or to date has, been adopted allowing the County to apply its own regulations to ADUs. (Gov. Code § 65852.2(a)).

On or around October 27, 2020, Mr. Gregory submitted a request to extend the time for the County to review the ADU Application until November 30, 2020. On or around November 3, 2020, my clients had a zoom call with Mr. Dargel, Mr. Seawards and Mr. Gregory. During that call P&D stated that an ADU of 800 square feet would be allowed in the front setback. On or around December 4, 2020, Mr. Dargel, informed my clients that P&D was "not able to support your [my client's] request to construct an ADU in the front yard setback for this property. Based on our review of the site, we believe there are still other options available to the property owner to construct an ADU.... Specifically, an ADU could be constructed as a second story above the garage." (Email from Mr. Dargel to Mr. Gregory, dated December 4, 2020). The garage is attached to the Property and is less than 500 square-feet.

For the reasons stated below, P&D does not have the discretion to impose this requirement and must immediately issue building permits for the ADU Application.

### **B. Legal Standard.**

When a county (and/or department therein) has a legal/ministerial duty that it fails to comply with, it may be ordered by the court to perform that duty. "A traditional writ of mandate... is a method for compelling a public entity to perform a legal and usually ministerial duty. (*Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 53.) The trial court reviews [such] an administrative action to determine whether the agency's action was... contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires." [emphasis added] (*Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 995.)

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**C. Reasons P&D Must Issue Building Permits Immediately.**

***(1) P&D has no discretion to refuse the ADU Application and must ministerially approve the ADU Application and issue the building permits.***

State law provides that “when a local agency that has not adopted an ordinance... receives an application for a permit to create an accessory dwelling unit... the local agency shall approve or disapprove the application ***ministerially without discretionary review.***” [emphasis added] (Gov. Code § 65852.2(b).) The County’s own website acknowledges this duty by stating “until the County adopts new ADU ordinances, ***only the standards specified in the new State laws*** (GC § 65852.2 and 65852.22) [will apply].” [emphasis added] ([www.countyofsb.org/plndev/permitting/adu-jadu.sbc](http://www.countyofsb.org/plndev/permitting/adu-jadu.sbc) (“Website”).<sup>1</sup> The Website instructs that applicants “please see the checklists below for ***the standards*** that apply to each type of ADU and JADU.” [emphasis added] (Website)

Here, my clients submitted the ADU Application on September 23, 2020, in compliance with the County’s ADU checklist G (“Checklist G”).<sup>2</sup> Checklist G does not require a front yard setback (it does require rear and side setbacks, these requirements were met in the ADU Application).

Once the P&D received the ADU Application in compliance with Checklist G, it had a ministerial duty to review and approve it. It instead has insisted upon a 50-foot front yard setback. This setback is not provided for by the “new State laws.” It also not provided in the County’s own Checklist G. The ADU Application has been submitted in compliance with Checklist G and State law. P&D has a ministerial duty to approve the ADU Application and issue building permits. P&D should do so immediately.

***(2) The ADU Application has been deemed approved by the P&D’s failure to approve or disapprove it within the time required by law.***

“The permitting agency shall act on the application to create an accessory dwelling unit... within 60 days from the date the local agency receives a completed application.... If the local agency has not acted upon the completed application within 60 days [or a later time that has been agreed to by the applicant], the application shall be deemed approved.” (Gov. Code § 65852.2(b).) The local (permitting) agency shall ministerially, “approve or disapprove the application.” (Gov. Code § 65852.2(b).

On September 29, 2020, the ADU Application was marked as complete. On October 27, 2020, Mr. Gregory agreed to an extension of the 60-day period. This extension expired

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<sup>1</sup> A copy of the Website is attached hereto and incorporated herein as **Exhibit A** (highlighting has been added).

<sup>2</sup> A copy of Checklist G is attached hereto and incorporated herein as **Exhibit B** (highlighting has been added).

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on November 30, 2020.<sup>3</sup> On December 4, 2020, P&D ambiguously stated in an email that it is “not able to support your [my clients] request to construct an ADU” [emphasis added]. To date my clients’ ADU Application has not been approved or denied by P&D.

P&D had a duty to ministerially approve or deny the project based on the standards in ADU Checklist G. This was required to be done by November 30, 2020. Due to P&D’s inaction the ADU Application was deemed approved on November 30, 2020, pursuant to California Government Code § 65852.2(b). P&D must issue building permits for the ADU Application immediately.

***(3) The location proposed by the County as an alternative would not allow for an ADU to be constructed.***

A “Junior accessory dwelling unit’ means a unit that is no more than 500 square feet in size.” (Gov. Code § 65852.2(b).) An ADU and a Junior ADU are permitted on a single family property. (Gov. Code §§ 65852.2 and 65852.22.)

Here, P&D has suggested that it “cannot support” the ADU in the front yard setback because an “ADU could be constructed as a second story above the garage.” (email from Mr. Dargel to Mr. Gregory, dated December 4, 2020). The garage is less than 500 square-feet and within the single-family residence. Any addition above the garage would be less than 500 square-feet and would be contained within the single- family residence making it a Junior ADU. Accordingly, by requiring that the “ADU” be placed above the garage P&D is essentially saying that my client cannot have an ADU, only a Junior ADU.

For the reasons stated above, the P&D does not have discretion to make that decision. Additionally, a Junior ADU is permitted on the same lot as an ADU. So even if a Junior ADU was constructed a normal ADU could also be constructed on the Property. P&D’s proposal does absolutely nothing to accommodate my clients’ desire to have an ADU.

**D. Resolution.**

My clients are prepared to litigate these issues and to seek a writ from the court compelling P&D’s immediate issuance of building permits for the ADU Application. Having said that, there may be a workable solution that can be reached, outside of litigation. In fact, I am informed that such a solution was nearly reached in November. We believe both the County and my clients would benefit from a prompt private resolution.

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<sup>3</sup> On December 26, 2020, Mr. Gregory erroneously, and without authorization from my clients, submitted another request for extension. This request was withdrawn, by Mr. Gregory, on the same day.

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I look forward to working with you and/or County Counsel,<sup>4</sup> to promptly resolve this matter. To that end, please contact me by or before Wednesday January 27, 2021. If I do not hear from you, or an attorney from County Counsel's office, by that date we will take the appropriate action.

Sincerely,

REETZ, FOX & BARTLETT LLP

  
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Wiley G. Uretz

WGU/ejg

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Enclosures

cc: Travis Seaward, Deputy Director, Michael Ghizzoni, Santa Barbara County Counsel,  
Thomas and Kelly Bilek

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<sup>4</sup> This letter has not been addressed to an attorney from County Counsel Michael Ghizzoni's office, as it is my understanding that no attorney from Mr. Ghizzoni's office has been assigned to this file. However, since the issues addressed in this letter revolve around the interpretation of the law, I have copied Mr. Ghizzoni on this letter. I trust that, if necessary, this will letter will be assigned to the appropriate representative from Mr. Ghizzoni's office.