

JAMES MALOTT, ARCHITECT



July 17, 2009

Members of the Board of Supervisors
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101

Re: Hearings and actions regarding
AP #005-133-058
Tracy remodel and addition
2200 Banner Avenue, Summerland, CA

Items Appealed:

Zoning Administrator 08MOD00000-00006
BAR South 07BAR0000-00249
Planning Department Staff misc decisions
County DPW misc decisions
Summerland DRB misc decisions
Coastal Development Permit for Tracy
remodel and additions #08CDP32
Planning Commission actions of July 8,
2009
And related items

Dear Supervisors,

This letter is to summarize the complex web of issues which serve as the basis of our appeal to you. The attached letters to the Planning Commission elaborate on and explain the issues more fully. Our appeal is based on the following issues and items:

1. The lack of notice to at least seven critical meetings before the Santa Barbara County South BAR (SBAR), Santa Barbara County DPW, and Summerland Design Review Board, over a period of one year and two months from October 7, 2007 to December 19, 2008. During this time, the Tracy project developed its inertia toward approval and various boards "bought into" or approved parts of the project. During this entire period, the Nantker/Malott interests were never heard even though they were the party most affected by the Tracy project. The Tracy architect, Tom Smith, actively concealed notice to Mrs. Nantker while the County and Summerland ignored requests by Malott to be notified in the event of any hearings or activity on the project. The result was Nankter received no information whatsoever while the project was moving through Design Review toward approval. Nor did Nankter receive any notice from DPW when that organization approved a critical encroachment request by Tracy's architect, Smith.

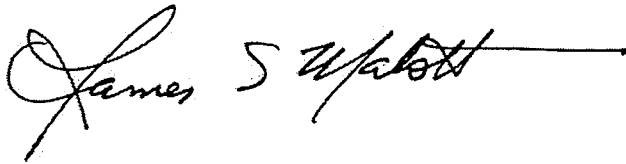
We note that since this lack of notice has received the attention of the Planning Department, the noticing policy is being revised to create an appropriate notice process. Unfortunately, the damage has been done in our case, which is why we are appealing.

2. Because of the above lack of notice, the Tracy project was effectively approved by December 15, 2008, with no consideration, discussion or review of the issues raised by Mrs. Nantker, Mr. Malott and Ms. Malott. December 15, 2008 was the first time Nantker/Malott knew of any action on the project since October 2007, thus, the critical decisions were already made before we had a chance to speak.
3. Since December 15, 2008, we have appealed these cumulative decisions to the Planning Commission and had two hearings on the project. In neither hearing did the Planning Commission address the key issue of damage to the Nantker property, nor did any Commissioner (or Board Members before) visit the Nantker property to review the issue.
4. The key issues of damage to the Nantker property are as follows:
 - a. The Tracy project is proposed for construction square in the middle of the ocean views of Nantker's primary living spaces (living room and dining room).
 - b. The public view of the ocean and Summerland will be similarly blocked at one of the few points where the ocean is visible on Evans Avenue.
 - c. This public view was created at the instigation of the Planning Department by its forced removal of a garage located totally on the Nantker property, but apparently built long before Nantker owned the property (30 years). This forced removal occurred in 2001.
 - d. The Tracy project requires significant modifications (Variances) for the project to be built and create this view blockage. A similar project next to the Tracy project (Rhodes) was built as a single story specifically to avoid the view blockage from the Nantker residence.
 - e. The Tracy project is designed with a second story addition, according to the Tracys, to preserve the ground area on their property for their children's play area. In reality, the exposed ground area has been more than doubled by the Tracy architect asking for, and receiving from County DPW, an encroachment permit extending 19 feet into Evans Avenue and 15 feet into Banner Avenue. Thus, the County DPW has facilitated a condition which makes unnecessary the second story addition proposed by Tracy.
 - f. In addition, the encroachment permit has the effect of removing at least five parking spaces from public use, forcing all public parking in front of Nantker or Rhodes (there is no parking on the opposite side of Banner).

- g. The Tracy residence has no onsite parking at all. The carport, which had been converted to a garage and then master bedroom, was never permitted with the original house (at least no permit has ever been found).
- h. A series of findings by the Planning Commission meeting on July 8, 2009 cannot be made, to wit:
 - i. Finding 1.1.1 cannot be made, since the project does block ocean views from both the public and Nantker properties. Furthermore, the Tracy carport is not legal, nor is backing out into an intersection safe.
 - ii. Finding 2.1.2 cannot be made, in that the two story proposal is in an area (the Summerland swale) of one story residences to preserve views for all.
 - iii. Finding 2.1.3 cannot be made, in that the two story proposal does not constitute "a well-designed relationship one to another", nor does it respect "site layout, appropriate well-designed relationship to one another, respecting the environmental qualities, open spaces and topography".
 - iv. Finding 2.1.4 cannot be made, in that it does create and codify "an adverse impact on the community, character, aesthetics and public view."
 - v. Finding 2.1.5 cannot be made, because the action codifies an illegal number of parking spaces (none) and removes five parking spaces from the public right-of-way through illegal encroachments.
 - vi. Finding 2.1.6 cannot be made, in that solar exposure to both public and private views will be affected by the proposed project. Sunrise will be obscured to public views during certain months and sunset will be obscured from Nantker during certain months, while a reflective roof will bounce sunlight into the Nantker property daily.
 - vii. Finding 2.2.2 cannot be made, in that this action would permit and codify an illegal encroachment which damages Nantker/Malott and other neighbors.
 - viii. Finding 2.2.3 cannot be made, because the proposed carport reconversion is being made through an illegal carport addition. No building permit for said carport was ever granted. A similar garage, which was totally on Nantker property (not in the public right-of-way) was forced to be removed by the Planning Department within the last decade.
 - ix. CEQA Finding under Section 15300.2 (b) cannot be made, in that this project sets a new standard of allowing two story additions, via variances or modifications, on exceptionally small lots, when the cumulative impact of such additions over time will be to change the entire character of this part of Summerland.

All of the above issues are treated more fully in our attached letters of January 5, 2009, and February 20, 2009, both of which are herewith made a part of this letter. We urge each of the Supervisors to review carefully the issues we here present. We respectfully request a denial of the proposed Tracy project on the basis of these issues.

Sincerely,

A handwritten signature in black ink that reads "James S. Malott". The signature is written in a cursive style with a long horizontal line extending to the right.

James S. Malott

p.s. During the course of the above events, Mrs. Nantker has died. James S. Malott and Lucinda Malott are her heirs. Mrs. Nantker, Lucinda Malott and other family members have lived in this house during the 30 years Mrs. Nantker owned the property.

December 1, 2009

Remarks before the Board of Supervisors, Santa Barbara County

Re: Nantker (James Malott and Lucinda Malott) Appeal of AP 005-133-058, Tracy Addition, 2200 Banner Avenue, Summerland.

1. Appeal Issues. We received three days notice for a hearing on October 7, 2007. We attended, commented and requested notice of any further hearings to County Planning, Summerland DRB, and architect, Smith.
 - A. No Notice was received for any of the following critical hearings:
 1. Meeting of Santa Barbara DPW, re: encroachments of 19 feet and 15 feet, approximately July 15, 2008.
 2. Meeting of Summerland DRB, July 8, 2008.
 3. Meeting of Summerland DRB, September 30, 2008.
 4. Meeting of SB County South BAR, October 19, 2008.
 5. Meeting of SB County South BAR, October 24, 2008.
 6. Meeting of Summerland DRB, December 16, 2008.
 7. Meeting of SB County South BAR, December 19, 2008.
 - B. These one-sided meetings built on each other and determined the direction of the project for over a year before Nantker received any notice or made any remarks.
 1. All parties, Planning, Summerland DRB, DPW, Tracy, and Smith expressed their views, invested in the project and gave it inertia and direction with no input from the party most negatively affected by the project, Nantker/Malott. A casual investigation by Planning would have recognized that Nantker was the most negatively affected by the project and should have been noticed.
 2. Lack of input from Nantker/Malott in the critical, early meetings and hearings determined the major direction of the project in a manner that disregarded the effects on the Nantker property. The Planning Department made no effort to notice or protect the rights of Nantker.
 3. When notice was finally received by Nantker, over a year after the initial meeting, it was completely untimely. Architect, Smith admitted to actively concealing the meeting notices from Nantker/Malott. By then, the Planning issues had already been decided and the damage to Nantker had been set in virtual concrete.
 4. Planning Department acted unfairly in that it could not, or would not, hear, support, or seriously address issues raised by Nantker (i.e., neighborhood character, encroachment, street parking, intersection safety, two stories, reflective roof, building color, view blockage). The only revisions required by Planning consisted of minor design changes to a handrail. Instead of dealing with real Planning issues and

recognizing the significant property losses to Nantker and the neighborhood if this project is built, Planning addressed only its paperwork issues. Not one Planning Commissioner or Planner bothered to enter the Nantker residence to review the impact of the proposed project. Nor was one concession required of the Tracy addition to mitigate or reduce the impact of the Tracy addition on Nantker.

5. Planning Department acted unfairly and inequitably, in that it did not treat the Tracy project with the same rigor it had treated, 8 years earlier, the Nantker garage. At that time, Planning required the Nantker garage be torn down, due to it having a 1 foot setback, when 6 feet was required, while in this case it is allowing the Tracy garage to encroach 7 feet into public property, and is approving this encroachment, effectively a 15 foot variance. Neither property had a building permit for their garage structures.
6. The Planning Department effectively directed the design of the Tracy addition by discouraging architect Smith from a 1 story design for the Tracy addition, advising that Planning would not support the variances required for the 1 story proposal. This was decided even though a 1 story solution would provide a less bulky, less massive structure, and would have considerably less neighborhood impact. A 1 story solution would be consistent with all the houses in this immediate swale area. This decision by Planning was made in spite of the fact that a variance had been granted for a similar 1 story residence next door (the Rhodes residence) just 4 years earlier.
7. Tracy disingenuously argued their 2 story solution was saving ground level space in which their children could play. The DPW, by granting Tracy a major (19 ft and 15 ft) encroachment on both Evans and Banner Avenues, facilitated the Tracy approval by more than doubling their private fenced yard open space at the expense of all neighbors wishing to street park. In addition, the Rhodes fence encroaches up to 4 feet into the Tracy property. Realignment of the fence would create a considerable additional area for children's play. The result of the DPW action is that the Nantker property becomes the parking area of choice, since it has the only available street parking (Rhodes parks in front of their home and there is no parking allowed across the street).
8. Planning staff has taken the position that the Tracy garage, located 7 feet over the property line into the public right of way and creating only tandem parking with backout into a blind intersection, is "grandfathered". Planning further states that the Tracy property is in compliance with all laws. Both are untrue. There is no actual indication that the garage was grandfathered, only an ambiguous note on a Planning card written several years after the Tracy construction, noting that a carport then existed. An inspection of the carport structure shows that it had to have been built substantially after the original house was constructed, for several reasons. 1) The garage roof framing is below

the original residential roof framing and is constructed of 2x8's rather than 2x4 construction, typical of the 1950s. 2) The 2x8s are attached with a 2x8 ledger on the side of the original residence. 3) The ledger is placed over the siding on the house. 4) No contractor would have built a carport this way if he was building the carport at the time of the original house construction. The carport joists would have been placed on top of the double 2x4 plate of the residence wall, had it been built concurrently with the house. 5) The manner in which this carport was built is more costly and time consuming and provides much less headroom in the carport. 6) The reason the carport was built in this manner was that, as a subsequent addition, it was then easier to construct as an add-on and did not require "major surgery" on the house structure. A simple check by the Planning Department could have confirmed this construction sequence and timing. A further check under the ledger would most likely show the original house paint color hidden by the addition. The Planning Department did not show reasonable diligence in its investigation of the "grandfathered" issue.

2. Conclusion: We (Nantker/Malott) have been treated unfairly, possibly illegally, by the Santa Barbara County bureaucracy. In particular, the lack of notice to the original Tracy hearings gave us no possibility of an equitable resolution to the proposed Tracy project. The fact that the Planning Department has since changed its notice procedure for meetings (after we were abused by their previous system), is a de facto concurrence with our position.

We now face the necessity, if this appeal is not upheld, of pursuing our rights in court because of the serious lack of critical thinking and action by the Santa Barbara Planning Department and its related commissions. Underlying issues of fairness and reasonable procedures have been ignored in favor of extremely murky ordinances and concealment of critical processes.

If the Planning Department performed its due diligence (onsite checking of its facts, reviewing its own policies, and reviewing sites affected by proposed construction projects) it would become a much more effective and fair group of public servants. I trust the Board of Supervisors has read my previous appeal letters, which are a part of this appeal, and recognizes the process failures within the Planning Department described in those letters. While the Tracy addition issues are too complex to address here in total, the complete lack of appropriate Planning considerations requires that the project be remanded to Design Review with instructions to create a single story design.

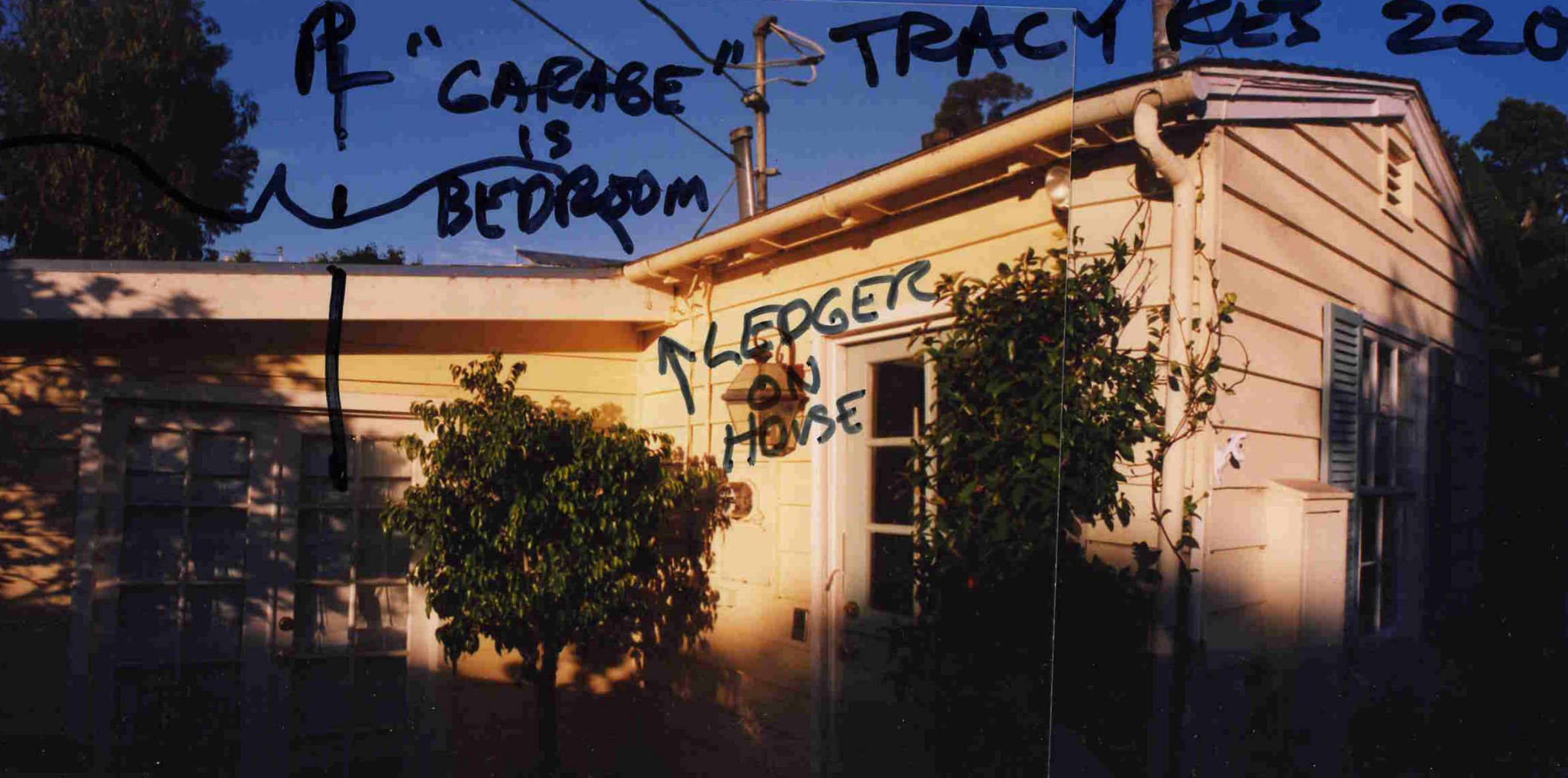
We appreciate your sincere reflection on these matters and believe, if you do so reflect, you will sustain our appeal.

James Malott

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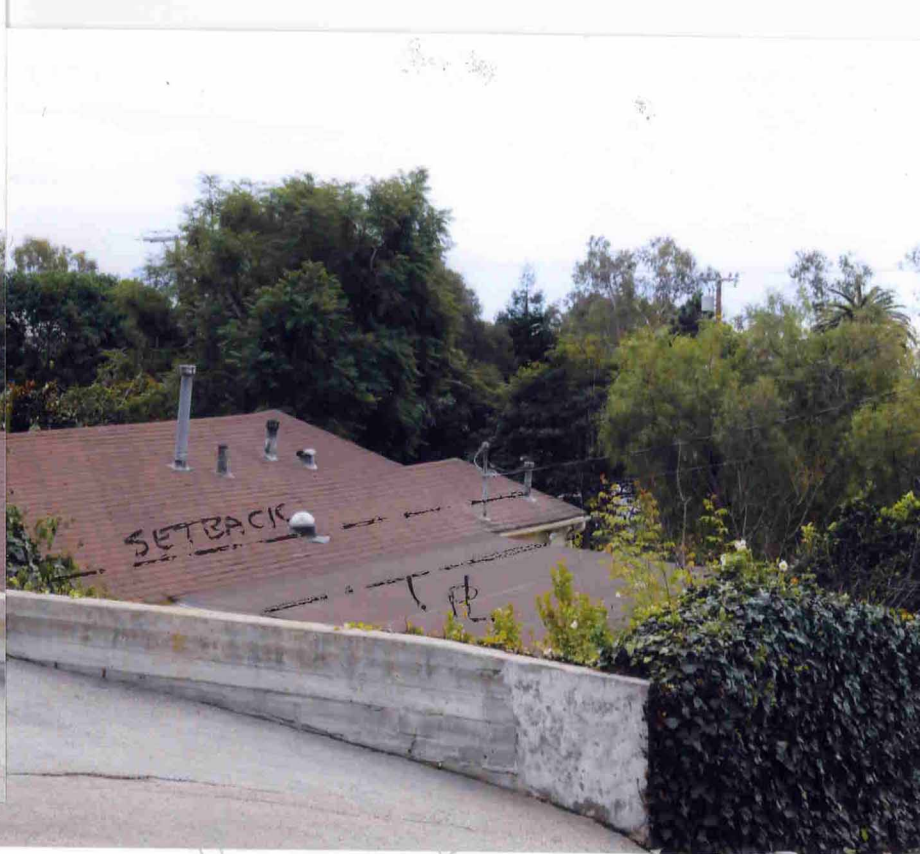
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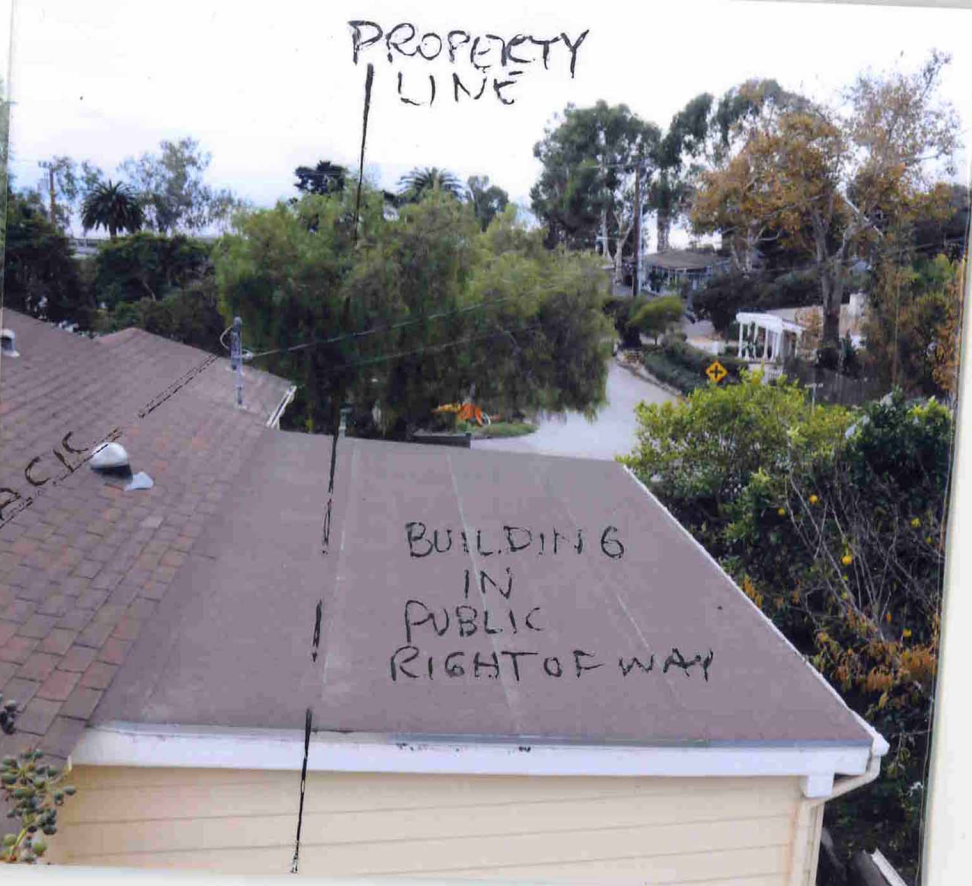
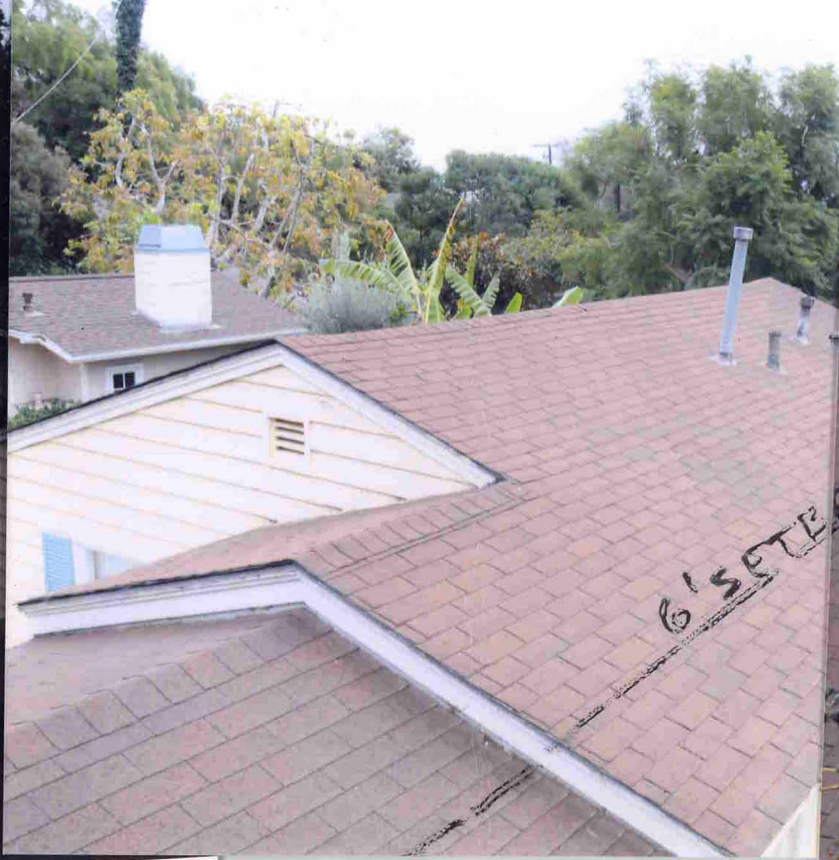
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