

SANTA BARBARA COUNTY PLANNING COMMISSION
Staff Report for Nantker Appeal of Tracy Addition

Hearing Date: May 6, 2009

Staff Report Date: April 16, 2009

Case Nos.: 09APL-00000-00001; 09APL-00000-00005
08MOD-00000-00006; 08CDP-00000-00032

Deputy Director: Dave Ward

Division: Development Review South

Supervising Planner: Peter Imhof

Supervisor Phone #: (805) 568-2518

Staff Contact: Sarah Clark

Planner's Phone #: (805) 568-2059

Environmental Document: CEQA Exemption Sections 15301(e) and 15305(a)

OWNER:

Kristina & Reid Tracy
3535 Fortuna Ranch Road
Encinitas, CA 92024

AGENT:

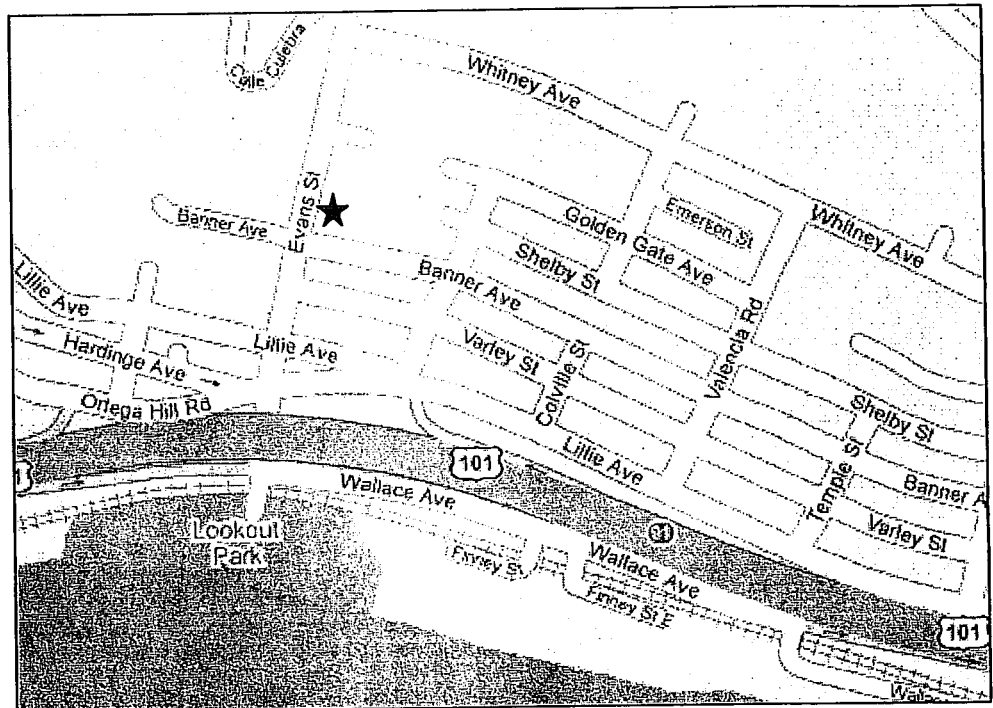
Tom V. Smith
1115 Coast Village Road
Santa Barbara, CA 93108
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APPELLANT:

James S. Malott &
Lucinda Malott
987 Tiburon Boulevard
Tiburon, CA 94920
(415) 336-2650

On behalf of:

Carol Nantker
957 La Senda
Santa Barbara, CA 93105
(805) 687-4363



This site is identified as Assessor Parcel Number 005-133-058, located at 2200 Banner Avenue, Summerland, 1st Supervisorial District.

Application Filed: April 21, 2008

Zoning Administrator Approval of Modification: December 15, 2008

Appeal of Zoning Administrator Decision Filed: January 5, 2009

Coastal Development Permit Approved: February 12, 2009

Appeal of Coastal Development Permit Filed: February 23, 2009

1.0 REQUEST

Hearing on the request of James Malott, Lucinda Malott, and Carol Nantker, appellants, to consider the following:

1. Case No. 09APL-000000-00001, [filed on January 5, 2009] to appeal the decision of the Zoning Administrator to approve the application for a Modification, Case No. 08MOD-00000-00006, and
2. Case No. 09APL-00000-00005, [filed on February 23, 2009], to appeal the decision of the Planning Department to approve the application for a Coastal Development Permit, Case No. 08CDP-00000-00032,

In compliance with Section 35-182 of Article II, on property zoned 10-R-2, to allow a Modification of the 25-foot rear yard setback, as required by Section 35-72.7 of Article II, to 21 feet from rear property line in compliance with Article II Section 35-179, to accommodate construction of a 360.6 square foot second story addition, and a Coastal Development Permit, in compliance with section 35-169 of Article II, for construction of the second story addition, an 82.2 square foot first story addition, and conversion of the garage to a carport; and to accept the Exemption pursuant to Sections 15301(e) and 15305(a) of the State Guidelines for Implementation of the California Environmental Quality Act.

The application involves AP No. 005-133-058, located at 2200 Banner Avenue in the Summerland area, 1st Supervisorial District.

2.0 RECOMMENDATION AND PROCEDURES

Follow the procedures outlined below and approve Case Nos. 08MOD-00000-00006 and 08CDP-00000-00032, marked "Officially Accepted, County of Santa Barbara March 18, 2009, County Planning Commission Attachment A-H," for the project based upon the project's consistency with the Comprehensive Plan, the Coastal Land Use Plan, and Article II, and the ability to make the required findings.

Your Commission's motion should include the following:

1. Adopt the required findings for approval of the project, Case Nos. 08MOD-00000-00006 and 08CDP-00000-00122, specified in Attachment A of this staff report, including CEQA findings;
2. Deny the appeals, Case Nos. 09APL-00000-00001 and 09APL-00000-00005; and
3. Approve the project, Case Nos. 08MOD-00000-00006 and 08CDP-00000-00032, subject to the Conditions of Approval in Attachments C and D.

Alternatively, refer back to staff if the County Planning Commission takes other than the recommended action for appropriate findings and conditions.

3.0 JURISDICTION

This project is being considered by the County Planning Commission based on Section 35-182.4 of Article II, which designates the Planning Commission as the appellate review authority for Director decisions and Zoning Administrator decisions.

4.0 ISSUE SUMMARY

The appeal letters are included in this staff report as Attachment G. The appellants cite the following issues with the project, as it relates to their (Nantker) property, as the basis for their appeal:

Noticing: The appellant contends that sufficient notice of public hearings was not provided. As described in Section 6.2, both the SBAR hearings and the Zoning Administrator hearing were noticed in accordance with the requirements of Article II.

Neighborhood Compatibility: The appellant contends that the proposed development of a second story is not compatible with development in the surrounding area because all houses in the "swale" area of Evans Avenue are single story. As discussed in Section 6.2, the neighborhood surrounding the subject parcel contains a mix of one- and two-story structures, including a two-story structure located immediately across Evans Avenue from the subject parcel. SBAR granted the project preliminary approval and in so doing made the finding that the proposed development was compatible with the scale and character of the existing community. SBAR comments are included in Section 6.5.

On-Site Parking: The appellant contends that the subject property does not have on-site parking. As discussed in Sections 6.2 and 6.4, the required two parking spaces are provided in the carport and driveway. Although these parking spaces encroach into the County right-of-way, this is the existing, permitted parking configuration. No changes to this legal non-conforming parking situation are proposed and the proposed development would not necessitate the addition of any new parking spaces.

Road Encroachments: The appellant claims that the existing encroachments of structures on the subject parcel into the rights of way of Evans and Banner Avenue effectively enlarge the subject parcel. As such, they argue that a first floor addition would not limit the useable yard area, as the applicant claims. As discussed in Section 6.2, although the right-of-way is in use for parking and landscaping, development on the site is still constrained by the property boundaries. No further development could be permitted on the first floor without a Variance.

Public Safety: The appellant contends that the right-of-way encroachments constitute a threat to public safety by restricting on-street parking and limiting visibility at the intersection of Evans

Avenue and Banner Avenue. Public Works has reviewed the existing encroachments and issued a Road Encroachment Permit for the carport.

Harm to Nantker Property: The appellant claims that the proposed development will harm the Nantker property, located directly to the north of the subject parcel, by incorporating a reflective roofing material and blocking ocean views. The SBAR has reviewed and approved the proposed development, including the roofing material. Private views are not protected by Article II, the Coastal Land Use Plan, or the Summerland Community Plan.

5.0 PROJECT INFORMATION

5.1 Site Information

Site Information	
Comprehensive Plan Designation	Res-9.0: Multiple Family Residential/Minimum Parcel Size 5,000 sq. ft. (max 9.0 residential units/acre)
Zone	10-R-2
Site Size	0.07 acres
Present Use & Development	754 square foot residence 260 square foot garage
Surrounding Uses/Zoning	<i>North:</i> 10-R-2; Multiple Family Residential <i>South:</i> 10-R-2; Multiple Family Residential <i>East:</i> 10-R-1; Single Family Residential <i>West:</i> 10-R-2; Multiple Family Residential
Access	Private driveway at the corner of Evans Avenue and Banner Avenue
Other Site Information	Existing residence and carport were permitted in 1948 and constructed within setbacks and across the property line.
Public Services	Water Supply: Montecito Water District Sewage: Summerland Sanitary District Fire: Carpinteria-Summerland Fire Protection District

5.2 Setting

The subject parcel is located at the intersection of Evans Avenue and Banner Avenue in Summerland. The parcel is relatively flat, with a retaining wall at the rear. The subject parcel is surrounded by residential development, with the Nantker property situated immediately to the north.

5.3 Statistics

Statistics		
Item	Proposed	Ordinance Standard
Structures (floor area)	Residence: 1,196 sf	FAR limits residence to 1,197

Statistics		
Item	Proposed	Ordinance Standard
	Carport: 260 sf	sf
Max. Height of Structure(s)	21 feet	22 feet
Floor to Area Ratio	1,196 sf	1,197 sf allowed
Roads	Evans Avenue, Banner Avenue	No ordinance standard
Parking (covered/uncovered, ratio)	1 covered, 1 uncovered	2 spaces/dwelling unit
Walkways	Private on-site walkways	No ordinance standard
Open Space	~2,035 sf (67%)	No ordinance standard
Number of Dwelling Units	One single-family dwelling	Two single-family dwellings
Project Density	One single-family dwelling	Two single-family dwellings
Employees/Residents	One family	No ordinance standard
Grading	None	Minimize cut and fill

5.4 Description

The applicant requests a Modification to allow a 360.6 square foot second story addition to encroach four feet into the required 25-foot rear yard setback. Under the associated CDP, the applicant also proposes an 82.2 square foot first floor addition to the existing 754 square foot residence to be located outside of the required setbacks, demolition of an unpermitted storage shed, conversion of the garage back to its permitted carport configuration, and removal of the unpermitted spa in the rear setback. Removal of four banana trees is proposed and no grading will be necessary.

5.5 Background Information

On April 21, 2008, Planning and Development (P&D) received the Modification and Coastal Development Permit (CDP) applications. The Modification application was deemed complete on August 29, 2008. The project received conceptual SBAR review on October 19, 2007. The project was also reviewed by the Summerland Board of Architectural Review on December 12, 2007, July 8, 2008, September 30, 2008, and December 16, 2008.

The applications received preliminary approval from the Board of Architectural Review (SBAR) on October 24, 2008. The Modification was approved by the Zoning Administrator on December 15, 2008 based on the ability to make the required findings. The accompanying CDP was approved by P&D on February 12, 2009, also based on the ability to make the required findings for approval. The Malotts appealed the Zoning Administrator's approval of the Modification on January 5, 2009 and P&D's approval of the CDP on February 23, 2009.

6.0 PROJECT ANALYSIS

6.1 Environmental Review

The proposed project is exempt from environmental review pursuant to Sections 15305(a) and 15301(e) of the State Guidelines for Implementation of the California Environmental Quality Act. Please refer to the Notice of Exemption in Attachment B.

6.2 Appeal Issues and Discussion

Appellant Statement:

GROUNDS FOR APPEAL

1. *Lack of legal, reasonable, or proper notice to Mrs. Nantker and appellants by*
 - a. *Santa Barbara County Planning Department and BAR South*
 - b. *Summerland Design Review Board*
 - c. *Santa Barbara County DPW/Highway Department*
 - d. *Santa Barbara County Planning Department/Zoning Administrator*

P&D Response: Notice of the initial SBAR review was mailed to Mrs. Nantker on October 9, 2007, 10 days prior to the first SBAR meeting. Article II does not require notice to be given for subsequent SBAR hearings, rather, it is the responsibility of any interested party to follow SBAR agendas, use the Department website, or contact P&D to determine when a project will be heard next.

The Summerland Board of Architectural Review is a committee of the Summerland Citizens Association and is not affiliated with the County. The County is not responsible for noticing Summerland BAR meetings.

The Department of Public Works – Transportation issued a Road Encroachment Permit on August 7, 2008. Road Encroachment Permits do not require any kind of noticing or public hearing and are not appealable.

Notice was mailed to Mrs. Nantker on November 5, 2008 and published in the Santa Barbara Daily Sound on November 7, 2008, fifteen and thirteen days prior, respectively, to the scheduled Zoning Administrator hearing of November 20, 2008, in accordance with the requirements of Article II Section 35-181.2. Due to an error in the address printed on the notices, the project was dropped from this agenda. Corrected notices were mailed on November 20, 2008 and published in the Santa Barbara Daily Sound on November 21, 2008, and the project returned to the Zoning Administrator on December 1, 2008. This hearing was continued to December 15, 2008. Because notice of the next hearing is given during the first hearing, no additional mailed notice for continued hearings is required.

The County satisfied all public noticing requirements for this project.

Appellant Statement:

2. *December 1, 2008, hearing by Zoning Administrator, continued to December 15, 2008, contains multiple errors of discretion. It lacks a fair and impartial hearing. The Zoning Administrator's decisions are not supported by the evidence.*
 - a. *The Zoning Administrator's "acceptance of the staff report" is not consistent with the Planning Code and Zoning Ordinance.*
 - i. *Facts presented on the Tracy Plans are not accurately drawn. Plans are incomplete, vignettted, and do not properly show site conditions, no site section is shown, no landscaping is shown.*
 - ii. *Architect Smith's representations are incorrect as to neighboring properties, conditions, and dimensions.*
 - iii. *Zoning Administrator incorrectly allowed architect Smith to rebut all statements issued by Malott, while failing to allow Malott to rebut Smith's incorrect statements.*
 - b. *Staff report was written "in camera," using architect Smith's drawings and statements, with no input from Malott/Nantker, or corrections of fact.*
 - c. *Staff letter to Zoning Administrator regarding Nantker garage removal was inaccurate and incomplete.*
 - d. *Zoning Administrator incorrectly interpreted numerous planning issues.*
 - i. *"Cumulative effect" of second story addition in the Banner/Evans swale area was not considered.*
 - ii. *Huge encroachments into public ROW by Tracy on two sides of residence creating parking and neighborhood safety issues were not considered.*
 - iii. *Addition of 70% to Tracy yard area and its relationship to the granting of a setback modification for a second story addition was not considered.*
 - iv. *Options available for Tracy, other than second story, due to ROW encroachment additions to their land were not considered.*

P&D Response: Plans submitted for P&D review are based on a survey conducted by Joel F. Avakian, Licensed Land Surveyor and prepared on November 12, 2007. Site visits conducted by staff did not reveal any inconsistencies between submitted plans and the current configuration of the subject parcel. The applicant submitted a site plan, floor plan, and elevation drawings for review in accordance with Department policy. The staff report was prepared by the planner and was based on the application materials submitted by the applicant as well as staff research and analysis. At the Zoning Administrator hearings of December 1 and December 15, the appellant was given time to speak during the public comment period on this item. Any rebuttal to the applicant's statements by the public is allowed at the discretion of the Zoning Administrator.

The memo regarding the Nantker garage removal, dated December 11, 2008 (included as Attachment F), was prepared using all available information in County permit records. As stated in the memo, County records indicate that the garage was constructed without permits and

removal was required because it was built too close to the property line to be permitted with a Modification. Permit history did not contain any references to inconsistency with visual resource policies or public views.

All properties in the urban R-2 zone district in Summerland that are not subject to Hillside Ridgeline policies are allowed to construct buildings up to 22 feet in height, pursuant to Article II Section 35-191.4. The existing carport was permitted in 1948 and was constructed across the property line, encroaching into the right-of-way of Evans Avenue. This structure is legal nonconforming and, as such, the applicant has a right to maintain the carport and access to the carport via the existing driveway. At some point, fencing and landscaping was also installed in the rights of way of both Banner Avenue and Evans Avenue. These structures do not require Coastal Development Permits. The Department of Public Works – Transportation issued Road Encroachment Permit #040127 for the existing road encroachments on August 7, 2008 (see Attachment H). The land within the County right of way that the applicants currently use as lawn and parking space does not count towards the lot area for Floor to Area Ratio (FAR) purposes and does not impact measurement of setbacks. No new structures may be constructed within the right of way. This area is not useable beyond the existing, permitted encroachments. The Modification allowing the proposed second story addition to encroach into the rear setback was approved by both the Zoning Administrator and the SBAR based on the ability to make the required findings for approval.

Appellant Statement:

3. *Errors and inconsistencies in findings of the above groups created a web of error and abuse of discretion specifically, but not limited to:*
 - a. *Lack of consideration of impact on neighboring streets and properties, damage to public and private view, lack of on-site and street parking, creation of a permanent safety problem at the intersection of Banner and Evans.*
 - b. *Lack of consistency of findings between Tracy's proposed second story and neighboring properties, including a reduction of street parking, no on-site parking, intersection view obstruction, neighborhood properties required to provide on-site and street parking for Tracy residence overflow.*
 - c. *Lack of consistency of findings between Nantker's required garage removal in a public street view obstruction, while Tracy is being allowed to reconstruct their carport, which is built 10 feet over the property line in the public right of way and, at the same time, build a second story blocking the exact same ocean view the Nantker garage was abated to restore. Notwithstanding planning documentation to the contrary, a primary consideration used by the Planning Department in insisting on demolition of the Nantker garage was to restore the view corridor.*
 - d. *The variance modification approved by the Zoning Administrator allows the Tracy second story to be built into the rear yard setback, thus taking not only the same street view that Nantker garage was demolished to preserve, but also taking Nantker's view of the ocean and sunsets in the process.*

- e. *The variance modification allows the Tracy residence to build a second story in a swale area that has no second stories. Each single-story building has a sweeping view now. Thus, the Zoning Administrator's decision has no basis in fact, since it is based on the concept that "it was not possible to obtain a variance" for a ground floor addition and that the second story addition would preserve scarce yard space, neither of which is true.*

P&D Response: The proposed addition would block views from Evans Avenue to the ocean from one point along Evans Avenue. This view is already largely obstructed by existing vegetation, and the view blockage would last for a very short period of time (approximately one second) for vehicles travelling south on Evans Avenue and therefore is insubstantial. As such, the project is consistent with policies protecting public views to the ocean. Article II, the Coastal Land Use Plan, and the Summerland Community Plan do not protect private views.

Article II requires two on-site parking spaces per single-family residence. The permitted carport and driveway space provide two parking spaces, located partially within the Evans Avenue right-of-way. Although Article II does not allow tandem parking, the existing parking configuration is legal non-conforming. Because no changes to the permitted parking configuration are proposed and the proposed development would not increase the required number of parking spaces, no changes to the parking configuration are required.

Public Works generally allows encroachment of non-habitable structures that meet the review criteria for sight distance and vehicle driveway storage without encroaching into a travel lane, sidewalk, or pedestrian path (personal communication with Will Robertson, April 21, 2009). The existing encroachments on site do not encroach into a travel lane, sidewalk, or pedestrian path.

There are several other two-story homes in the surrounding neighborhood, including the residence on the opposite side of Evans Avenue. The SBAR gave the project preliminary approval on October 24, 2008, and in doing so made the finding that the proposed structure was in conformance with the scale and character of the existing community.

Appellant Statement:

4. *Rationale for the second story addition is given by Tracy and architect Smith as a need to preserve yard space for the Tracy children and a lack of ability to obtain variances from the Planning Code for a ground floor addition. Evidence submitted by architect Smith and by Malott show this rationale is not true.*
 - a. *Tracy's yard has been effectively enlarged by 2,100 sq ft or 70% from its present 3,000 sq ft, to a total of 5,100 sq ft, by encroaching with unpermitted fences, retaining walls and landscaping into the public right of way. Fences up to 7 feet high enclose this yard area. These encroachments, according to architect Smith, have been "permitted" by the County DPW Road Division. If true, this 2,100 sq ft more than compensates Tracy for the 360 sq ft of ground floor addition they*

require and if the County DPW grants this additional usable land area to Tracy, then there is absolutely no justification for, nor any ability to make, the findings for the second story variance modification to a rear yard setback granted by the Zoning Administrator. Effectively, Tracy is asking for an illegal encroachment to more than double their usable yard area, then asking for a variance to bump up a second story because a ground floor addition would make their yard too small. Actions by two separate County agencies, DPW and Planning, are facilitating this double-play at the expense of Mrs. Nantker, who loses on the one hand her access to street parking and on the other, her ocean and sunset views, perceived privacy and gains only a highly reflective roof material bouncing sunlight into her living and dining room views. Thus, Nantker appeals both the DPW and the County Planning and Zoning decisions allowing approval of this project.

P&D Response: As discussed previously, the fencing around the property is five feet high. The carport is a permitted, non-conforming structure and as such the owner is entitled to continued use of and access to this structure. Existing road encroachments were permitted by Public Works on August 7, 2008, and this permit is not appealable. The owners cannot construct new structures in the right-of-way area, and this area is not used in determining the location of setbacks. New development is constrained by the property boundaries. A Modification may be approved if the decision maker determines that all of the findings required for approval can be made. Findings made by the Zoning Administrator are included as Attachment A.

Appellant Statement:

5. *Lack of Planning consistency.*
 - a. *Tracy is being allowed to encroach in the public right of way 19 feet on Evans and 15 feet on Banner, thus removing at least 5 safe public street parking spaces from use. This forces public parking in front of 140 Evans (Nantker) and 210 Banner (Rhodes) and others.*
 - b. *Tracy is being allowed to build a carport 10 feet over their property line into a public right of way while Nantker was required to demolish a garage which was constructed entirely on their property. Both the Nantker garage and the Tracy carport were unpermitted, we believe, since the carport was later add-on to the residence and was subsequently turned into a garage and is now a master bedroom. The Tracy's wish to keep this part of their building. They propose it to return to a carport, but to add approximately 500 sq ft of area in a second story, which changes the character of the neighborhood and damages the neighbor's property.*
 - c. *Tracy has no on-site parking, although Nantker and Rhodes and all others are required to do so.*
 - d. *Tracy proposes two tandem parking spaces in the public right of way. Neither tandem nor right of way parking constitutes parking on-site.*
 - e. *Tracy driveway requires backing into the intersection of Banner and Evans. Views in both directions are blocked by Tracy's 7 ft high fences, encroaching into*

the public right of way 19 feet on Evans and 12 feet on Banner. This intersection acts as a feeder for hundreds of dwelling units uphill and Evans and Banner. Backing into the blind intersection is an accident waiting to happen.

- f. *Tracy is being permitted to build a second story addition in the very view corridor Nantker was forced to vacate in 2001.*

P&D Response: As discussed, the carport and driveway were permitted in 1948. The owner is entitled to continued use of this development. Although at some point the carport was converted into a garage and then into habitable space, under this permit, it would be converted back to its originally permitted carport configuration. The Nanker garage in question was built without permits. As such, when the Nantkers applied for a lot line adjustment, the garage had to be permitted as-built. Because it was constructed less than a foot from the property line, the garage could not be permitted and had to be removed. As was also discussed earlier, the parking configuration is legal-nonconforming and the fences are five feet high. Public Works has issued a Road Encroachment Permit for the carport. Public Works generally allows encroachment of non-habitable structures that meet the review criteria for sight distance and vehicle driveway storage without encroaching into a travel lane, sidewalk, or pedestrian path (personal communication with Will Robertson, April 21, 2009). The existing encroachments on site do not encroach into a travel lane, sidewalk, or pedestrian path.

6.3 Comprehensive Plan Consistency

REQUIREMENT	DISCUSSION
<p><i>Coastal Land Use Plan Policy 4-4: In areas designated as urban on the land use plan maps and in designated rural neighborhoods, new structures shall be in conformance with the scale and character of the existing community. Clustered development, varied circulation patterns, and diverse housing types shall be encouraged.</i></p>	<p>Consistent. The portion of the existing residence to remain will be re-sided to match the new addition. Although the proposed addition will add a second story to the existing one-story structure, the surrounding neighborhood contains a mix of one- and two-story homes. On October 24, 2008, the project received preliminary approval from the South County Board of Architectural Review (SBAR). In granting preliminary approval, the SBAR made the required finding that “new structures shall be in conformance with the scale and character of the existing community.” The Summerland Board of Architectural Review has also reviewed the project. The proposed project would not alter development or-circulation patterns or alter-existing housing types. Because the proposed project would be similar in scale and character to the surrounding neighborhood and would have no impact on development patterns, circulation</p>

REQUIREMENT	DISCUSSION
	<p>patterns, or the diversity of housing types in the existing neighborhood, the project complies with the requirements of CLUP Policy 4-4.</p>
<p><i>Summerland Community Plan Policy CIRC-S-17: New encroachment of structures, fences, walls, landscaping, etc. into existing road rights-of-way shall not be permitted.</i></p>	<p>Consistent. The subject parcel currently contains a garage that was constructed across the property line and in the Evans Avenue right-of-way. Permit records show that this structure was originally permitted as a carport, but no information about its permitted relationship to the property line could be found. The carport was converted to a garage without benefit of permit, and that garage was subsequently converted to habitable space, also without benefit of permit. Additionally, a fence and some planter structures have also been constructed within the right-of-way. As part of the associated CDP, the garage will be returned to its originally permitted carport configuration. The Summerland BAR has indicated that the existing road encroachments on the property are allowable, provided the garage is converted back to a carport, and Public Works has issued a Road Encroachment Permit for these structures. Because these are existing right-of-way encroachments and no new encroachments are proposed, the project is consistent with this policy.</p>
<p><i>Summerland Community Plan Policy VIS-S-3: Public views from Summerland to the ocean and from the Highway to the foothills shall be protected and enhanced. Where practical, private views shall also be protected.</i></p>	<p>Consistent. The proposed addition would block views to the ocean from Evans Avenue at one location. Views to the ocean in this area are already largely blocked by existing vegetation, and any new view blockage would last only for a very short time (approximately one second) for individuals travelling south on Evans Avenue. Because of the small size and setback constraints on this parcel, the only option for expanding the existing residence without a Variance is a second story addition. The applicant has worked to minimize view blockage to the property to the north to the greatest extent feasible by redesigning the</p>

REQUIREMENT	DISCUSSION
	project to lower the roof. Therefore, the project is consistent with this policy.
<i>Summerland Community Plan Policy VIS-S-4: New development in Summerland shall be compatible with and shall enhance the community's architectural character.</i>	Consistent. The project was granted preliminary approval by the SBAR. In approving the project, the SBAR made the finding that the proposed structure was in conformance with the scale and character of the existing community. Therefore, the project is consistent with this policy.

6.4 Article II Consistency

The existing residence and carport were permitted in 1948. Because the residence was constructed within current setbacks and the carport was constructed across the property line, these are legal nonconforming structures. Article II Section 35-162.1 states:

A nonconforming structure may be enlarged, extended, moved, or structurally altered provided that any such extension, enlargement, etc., complies with the setback, height, lot coverage, and other requirements of this Article. Seismic retrofits, as defined in Section 35-58 and pursuant to Section 35-169.2.1.m, are allowed throughout the conforming and nonconforming portions of the structure or building. No living quarters may be extended into an accessory building located in the required front, side, or rear yards by such addition or enlargement.

The applicant proposes to enlarge the nonconforming residence. However, with approval of this Modification to allow the rear setback encroachment, the proposed expansion will be consistent with the setback, height, lot coverage, and other requirements of Article II.

There is currently an unpermitted spa and storage shed in the rear setback. Under this CDP, these structures would be removed. Additionally, the permitted carport was converted to habitable space without permits. This project includes returning this structure to its originally permitted carport configuration.

Article II Section 35-108.1 requires two parking spaces per dwelling unit in the R-2 zone district. Although Section 35-114 prohibits tandem parking and requires parking spaces to be located outside of the front and side setbacks, the existing parking configuration on the site is permitted and therefore is legal non-conforming. Because the proposed development would not necessitate the addition of any new parking spaces, and no changes to the permitted parking configuration are proposed, the existing parking retains its legal non-conforming status.

Per Article II, Section 179.2.3, Modifications may not reduce the required rear yard setback area by more than 20 percent of the minimum setback area required in compliance with the applicable

zone regulations and may not result in a rear yard setback depth from property lines of less than 15 feet. The area of the required rear setback is 1,250 square feet. Existing structures, both permitted and unpermitted, currently cover 564.25 square feet, or 45.1% of the required rear setback area. The proposed addition and associated Modification and CDP would result in 528.5 square feet of coverage, or 42.2%. Although the rear yard setback coverage exceeds the 20 percent limit set forth in Article II, the excess coverage is due to the existing, permitted coverage by the residence and carport and not to any new coverage proposed under the Modification. Because the associated project involves demolition of an unpermitted shed addition within the rear setback, the proposed project would result in a net reduction in rear yard setback coverage of 2.9%. The proposed addition would result in a rear setback depth of 21 feet as measured from the rear property line. As such, the proposed project is consistent with these requirements.

6.5 Design Review

The proposed project was reviewed by SBAR at the conceptual level on October 18, 2007. At that time, SBAR made the following comments on the project:

- *Applicant directed to apply for a CDP and to go to the Summerland ARC.*
- *No comments until planning weighs in on project as design may change substantially due to zoning concerns.*
- *Drawings need to be informed by an accurate survey.*
- *Public Speakers: Jim Malott (concerned about mass, loss of privacy, view blockage and the fact of no survey) and Tom Evans (concerned about second story on corner lot).*

The project received preliminary SBAR approval on October 24, 2008. In granting their approval, the SBAR commented:

- *Project was granted preliminary approval for the proposed ordinance modification on the basis of good design.*
- *Return for final on consent*

6.6 Community Land Use/Design Review Committee

The proposed project received conceptual review by the Summerland BAR on December 11, 2007 and July 8, 2008. It received preliminary approval on September 20 and final approval on December 16, 2008.

7.0 APPEALS PROCEDURE

The action of the Planning Commission may be appealed to the Board of Supervisors within the 10 calendar days following the date of the Planning Commission's decision by the applicant or an aggrieved person. The appeal fee to the Board of Supervisors is \$443.

ATTACHMENTS

- A. Findings
- B. Notice of Exemption
- C. Conditions of Approval of 08MOD-00000-00006
- D. Conditions of Approval of 08CDP-00000-00032
- E. Site Plan
- F. Memo to Zoning Administrator re: Nantker Garage, December 11, 2008
- G. Appeal letters
- H. Road Encroachment Permit

ATTACHMENT A: FINDINGS

1.0 CEQA FINDINGS

The Planning Commission finds that the proposed project is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15305(a) and 15301(e). Please see Attachment B, Notice of Exemption.

2.0 ADMINISTRATIVE FINDINGS

2.1 Modification Findings specified in Section 35-179.6.

2.1.1. **The project is consistent with the Coastal Act, Comprehensive Plan including the Local Coastal Plan and any applicable Community Plan.**

The project conforms to all applicable provisions of the Coastal Act, Comprehensive Plan including the Local Coastal Plan, and the Summerland Community Plan. The proposed addition and associated setback modification will not affect any biological resources and no grading is involved. The project will not impact public views to or along the coast. The project is consistent with the character of the surrounding neighborhood and has received preliminary approval for the South County Board of Architectural Review. The proposed addition and associated setback modification does not have the potential to create any additional traffic and will not be detrimental to public safety. With the approval of this Modification and removal/conversion of unpermitted structures under the associated CDP, all proposed structures will be consistent with the requirements of the 10-R-2 zone district. Therefore, this finding can be made.

2.1.2. **The project complies with the intent and purpose of the applicable Zone District(s) including Overlays, this Section and this Article.**

The purpose of the R-2 zone district is to provide areas for multiple residential development in the form of duplexes and to maintain a residential character similar to that found in single-family neighborhoods. The intent is to ensure compatibility of duplex development with surrounding multiple and single-family residences and the local neighborhoods. The proposed project involves a setback modification to accommodate an addition to an existing single-family residence. The project would therefore be in keeping with the character of a single-family residential neighborhood. On October 24, 2008, the South County Board of Architectural Review granted the project preliminary approval. In doing so, the SBAR made the finding that the structure was "in conformance with the scale and character of the existing community." Therefore, this finding can be made.

2.1.3. **The Modification is minor in nature and will result in a better site or architectural design, as approved by the Board of Architectural Review, and/or will result in greater resource protection than the project without such Modification.**

The proposed Modification would allow the second story addition to encroach four feet into the required 25-foot rear yard setback. On October 24, 2008, the South County Board of Architectural Review granted the project preliminary approval and in doing so made the finding that, "site layout,

orientation, and location of structures, buildings, and signs are in an appropriate and well-designed relationship to one another, respecting the environmental qualities, open spaces, and topography of the property.” Therefore, this finding can be made.

2.1.4. The project is compatible with the neighborhood, and does not create an adverse impact to community character, aesthetics or public views.

On October 24, 2008, the South County Board of Architectural Review granted the project preliminary approval and in doing so made the finding that, “new structures shall be in conformance with the scale and character of the existing community.” The proposed second story addition and setback Modification would not be visible from the coast or any public trails. Therefore, this finding can be made.

2.1.5. Any Modification of parking or loading zone requirements will not adversely affect the demand for on-street parking in the immediate area.

The applicant is not requesting any Modification of parking or loading zone requirements. The proposed project is a Modification to accommodate a residential addition. No changes to the number of on-site parking spaces are proposed. The project will not impact demand for on-street parking in the immediate area. Therefore, this finding can be made.

2.1.6. The project is not detrimental to existing physical access, light, solar exposure, ambient noise levels or ventilation on or off site.

The applicant requests Modification of the rear yard setback requirement. A reduction of the rear yard setback requirement will not generate any additional noise and the proposed addition will not be detrimental to existing ambient noise levels. The proposed setback reduction would not restrict physical access to the subject property or any surrounding area. Only approximately 30 square feet of the proposed second-story addition would be constructed outside of the footprint of the existing residence. The proposed entry hall and porch would require review by the Building and Safety Division, which would ensure adequate light and ventilation, prior to approval of any associated building permits. Therefore, this finding can be made.

2.1.7. Any adverse environmental impacts are mitigated to a level of insignificance.

The project is exempt from review pursuant to Section 15305(a) of the State Guidelines for Implementation of CEQA. The proposed project will not have any significant environmental impacts. Therefore, this finding can be made.

2.2. Coastal Development Permit Findings specified in Section 35-169.5.1.

2.2.1. The proposed development conforms: 1) To the applicable policies of the Comprehensive Plan, including the Coastal Land Use Plan; 2) With the applicable provisions of this Article or the project falls within the limited exceptions allowed under Section 35-161 (Nonconforming Uses of Land, Buildings and Structures).

As discussed in Sections 6.3 and 6.4 and incorporated herein by reference, the project conforms to all applicable policies of the Comprehensive Plan, including the Coastal Land Use Plan, and all applicable provisions of Article II. Therefore, this finding can be made.

2.2.2. The proposed development is located on a legally created lot.

The subject parcel is considered a legally created lot as it has been the subject of approved building permits. Therefore, this finding can be made.

2.2.3. The subject property and development on the property is in compliance with all laws, rules, and regulations pertaining to zoning uses, subdivisions, setbacks, and any other applicable provisions of this Article, and any applicable zoning violation enforcement fees and processing fees have been paid. This subsection shall not be interpreted to impose new requirements on legal nonconforming uses and structures in compliance with Division 10 (Nonconforming Structures and Uses).

As discussed in Sections 6.3 and 6.4 and incorporated herein by reference, the project conforms to all applicable policies of the Comprehensive Plan, including the Coastal Land Use Plan, and all applicable provisions of Article II. There is currently an unpermitted storage shed and spa in the rear setback and the carport has been converted to habitable space without permits. Under this permit, the spa and shed will be removed and the habitable space will be converted back to a carport. There are no outstanding zoning violation enforcement fees associated with this parcel. Therefore, this finding can be made.

ATTACHMENT B: ENVIRONMENTAL DOCUMENT

NOTICE OF EXEMPTION

TO: Santa Barbara County Clerk of the Board of Supervisors

FROM: Sarah Clark, Planning & Development

The project or activity identified below is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970, as defined in the State and County Guidelines for the implementation of CEQA.

APN: 005-133-058

Case No.: 08MOD-00000-00006, 08CDP-00000-00032

Location: 220 Banner Avenue

Project Title: Tracy Addition

Project Description: Modification to allow a 360.6 square foot second floor addition to encroach 4 feet into the required 25-foot rear yard setback. Under the associated CDP, 08CDP-00000-00032, applicant also proposed an 82.2 square foot first floor addition to the existing 754 square foot residence to be located outside of required setbacks, demolition of an unpermitted storage shed, and conversion of the garage back to its permitted carport configuration. Removal of four banana trees is proposed. No grading is proposed. The parcel will continue to be served by the Summerland Sanitary District, the Montecito Water District, and the Carpinteria-Summerland Fire District. Access will continue to be provided via a private driveway at the corner of Banner Avenue and Evans Avenue. The property is a 0.07-acre parcel zoned 10-R-1 and shown as Assessor's Parcel Number 005-133-058, located at 2200 Banner Avenue in the Summerland area, 1st Supervisorial District.

Name of Public Agency Approving Project:

County of Santa Barbara

Name of Person or Agency Carrying Out Project:

Tom V. Smith

Exempt Status: (Check one)

- Ministerial
- Statutory Exemption
- Categorical Exemption
- Emergency Project
- Declared Emergency

Cite specific CEQA Guideline Section: 15305(a), 15301(e)

Reasons to support exemption findings: Section 15305(a) of the Guidelines for Implementation of CEQA exempts minor lot line adjustments, side yard, and setback variances not resulting in the creation of any new parcel. No environmental impacts would be associated with reduction of the rear yard setback requirement.

The setback modification would not result in the creation of any new parcel. There will be no obstruction of any scenic views open to the public and the project would not change the visual character of the area. The project would not result in the loss of any existing native vegetation or the removal of any oak trees, would not require any grading or land alteration, and would not impact any biological resources.

Exceptions pursuant to Section 15300.2 of CEQA

There is no substantial evidence that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts which threaten the environment. The exceptions to the categorical exemptions pursuant to Section 15300.2 of the State CEQA Guidelines are:

- (a) **Location.** Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource or hazardous of critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

There is no mapped environmentally sensitive habitat on the subject parcel. Therefore, this exception does not apply.

- (b) **Cumulative Impact.** All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

The proposed setback modification will be located in an urban neighborhood on a parcel currently developed with a single-family dwelling and garage. The scope of the project is limited to the project description and the proposed project is not part of any larger planned development project. Therefore, this exception does not apply.

- (c) **Significant Effect.** A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

The proposed project is a four-foot reduction in the required rear yard setback to accommodate construction of a second story addition. The proposed development would be located on a previously developed parcel in an urban neighborhood. There are no identified potentially significant effects on the environment. Therefore this exception does not apply.

- (d) **Scenic Highways.** A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

The proposed development would not impact any scenic resources. The subject parcel is not located adjacent to a scenic highway and would not be visible from Highway 101. No trees, historic buildings, rock outcroppings, or similar resources would be impacted by this project. Therefore, this exception does not apply.

(e) **Hazardous Waste Sites.** A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

There are no known hazardous or toxic sites on the subject parcel. Therefore, this exception does not apply.

(f) **Historical Resources.** A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

The applicant requests a four-foot reduction of the rear yard setback. Modification of the setback does not have the potential to cause a substantial adverse change in the significance of a historical resource. Therefore, this exception does not apply.

Lead Agency Contact Person: Sarah Clark Phone #: (805) 568-2059

_____ Date

Department/Division Representative

Acceptance Date: _____

Note: A copy of this form must be posted at P&D 6 days prior to a decision on the project. Upon project approval, this form must be filed with the County Clerk of the Board and posted by the Clerk of the Board for a period of 30 days to begin a 35-day statute of limitations on legal challenges.

distribution: Hearing Support Staff

Project file (when P&D permit is required)
Date Filed by County Clerk: _____.

ATTACHMENT C: CONDITIONS OF APPROVAL OF 08MOD-00000-00006

ATTACHMENT A
PROJECT SPECIFIC CONDITIONS
Case No.: 08MOD-00000-00006
Project Name: Tracy Addition
Project Address: 220 Banner Avenue
APN: 005-133-058

This permit is subject to compliance with the following conditions:

1. This Modification is based upon and limited to compliance with the project description, the hearing attachments marked A-D dated October 22, 2008, and conditions of approval set forth below. Any deviations from the project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

The project description is as follows:

Modification to allow a 360.6 square foot second floor addition to encroach 4 feet into the required 25-foot rear yard setback. Under the associated CDP, 08CDP-00000-00032, applicant also proposed an 82.2 square foot first floor addition to be located outside of required setbacks, demolition of an unpermitted storage shed, and conversion of the garage back to its permitted carport configuration. Removal of four banana trees is proposed. No grading is proposed. The parcel will continue to be served by the Summerland Sanitary District, the Montecito Water District, and the Carpinteria-Summerland Fire District. Access will continue to be provided via a private driveway at the corner of Banner Avenue and Evans Avenue. The property is a 0.07-acre parcel zoned 10-R-1 and shown as Assessor's Parcel Number 005-133-058, located at 2200 Banner Avenue in the Summerland area, 1st Supervisorial District.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto. All plans (such as Landscape and Tree Protection Plans) must be submitted for review and approval and shall be implemented as approved by the County.

MODIFICATION CONDITIONS

2. This Modification is not valid until a Coastal Development Permit for the development and/or use has been obtained. Failure to obtain said Coastal Development Permit shall render this Modification null and void. Prior to the approval of the Coastal Development Permit, all of the conditions listed in this Modification that are required to be satisfied prior to approval of the Coastal Development Permit

must be satisfied. Upon issuance of the Coastal Development Permit, the Modification shall be valid. The effective date of this approval shall be the date of expiration of the appeal period, or if appealed, the date of action by the Planning Commission.

3. This Modification shall expire one year from the date of approval if a Coastal Development Permit has not been issued for the modified building or structure. Once the building or structure has been granted a Coastal Development Permit, the Modification shall have the same expiration date as the issued Coastal Development Permit.
4. Any use authorized by this Modification shall immediately cease upon expiration of this Modification. Modification extensions under Section 35-179.7 of Article II must be applied for prior to expiration of the Modification.

STANDARD CONDITIONS

5. This Modification is not valid until the project receives final approval from the Board of Architectural Review (BAR). The project shall be in strict conformance with the plans reviewed and approved by the BAR under 07BAR-00000-00249. Any structural or color revisions to final BAR-approved plans shall be submitted for review and approval by the Development Review Division and/or BAR.
6. The applicant's acceptance of this permit and/or commencement of construction and/or operations under this permit shall be deemed acceptance of all conditions of this permit by the permittee.
7. Developer shall defend, indemnify and hold harmless the County or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of this Coastal Development Permit. In the event that the County fails promptly to notify the applicant of any such claim, action or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.
8. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the County and substitute conditions may be imposed.
9. If the applicant requests a time extension for this permit, the permit may be revised to include updated language to standard conditions and/or mitigation measures and additional conditions and/or mitigation measures which reflect changed circumstances or additional identified project impacts.

ATTACHEMNT D: CONDITIONS OF APPROVAL OF 08CDP-00000-00032



COUNTY OF SANTA BARBARA

Planning and Development

COASTAL DEVELOPMENT PERMIT

Case No.: 08CDP-00000-00032

Project Name: Tracy Addition

Project Address: 2200 Banner Avenue

Assessor's Parcel No.: 005-133-058

Applicant Name: Reid and Kristina Tracy

The Planning and Development Department hereby approves this Coastal Development Permit for the development described below, based upon the required findings and subject to the attached terms and conditions.

Date of Approval: May 6, 2009

Associated Case Number(s): 08MOD-00000-00006, 07BAR-00000-00249

Project Description Summary: See attached.

Project Specific Conditions: See attached.

Permit Compliance Case: ___ Yes ___ No.

Permit Compliance Case No: _____

Appeals: The approval of this Coastal Development Permit may be appealed to the by the applicant or an aggrieved person. The written appeal and accompanying fee must be filed with the Planning and Development Department at either 123 East Anapamu Street, Santa Barbara, or 624 West Foster Road, Suite C, Santa Maria, by 5:00 p.m. on or before May 18, 2009.

The final action by the County on this Coastal Development Permit, including any appeals to the Board of Supervisors, may not be appealed to the California Coastal Commission. Therefore a fee is required to file an appeal of this Coastal Development Permit.

Terms of Permit Issuance:

- 1. Work Prohibited Prior to Permit Issuance.** No work, development, or use intended to be authorized pursuant to this approval shall commence prior to issuance of this Coastal Development Permit and/or any other required permit (e.g., Building Permit). **Warning! This is not a Building/Grading Permit.**
- 2. Date of Permit Issuance.** This Permit shall be deemed effective and issued on , provided an appeal of this approval has not been filed.
- 3. Time Limit.** The approval of this Coastal Development Permit shall be valid for one year from the date of approval. Failure to obtain a required construction, demolition, or grading permit and to lawfully

commence development within two years of permit issuance shall render this Coastal Development Permit null and void.

NOTE: Approval and issuance of a Coastal Development Permit for this project does not allow construction or use outside of the project description, terms or conditions; nor shall it be construed to be an approval of a violation of any provision of any County Policy, Ordinance or other governmental regulation.

Owner/Applicant Acknowledgement: Undersigned permittee acknowledges receipt of this pending approval and agrees to abide by all terms and conditions thereof.

Print Name	Signature	Date
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Planning and Development Department Approval by:

Print Name	Signature	Date
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Planning and Development Department Issuance by:

Print Name	Signature	Date
------------	-----------	------

ATTACHMENT A: PROJECT SPECIFIC CONDITIONS

1. This Coastal Development Permit is based upon and limited to compliance with the project description, the exhibits, and conditions of approval set forth below. Any deviations from the project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

The project description is as follows:

Coastal Development Permit for a 360.6 square foot second floor addition that encroaches 4 feet into the required rear yard setback (permitted under 08MOD-00000-00006), 82.2 square foot first floor addition, demolition of an unpermitted storage shed, and conversion of the garage back to its permitted carport configuration. Removal of four banana trees is proposed. No grading is proposed. The parcel will continue to be served by the Summerland Sanitary District, the Montecito Water District, and the Carpinteria-Summerland Fire District. Access will continue to be provided via a private driveway at the corner of Banner Avenue and Evans Avenue. The property is a 0.07-acre parcel zoned 10-R-1 and shown as Assessor's Parcel Number 005-133-058, located at 2200 Banner Avenue in the Summerland area, 1st Supervisorial District.

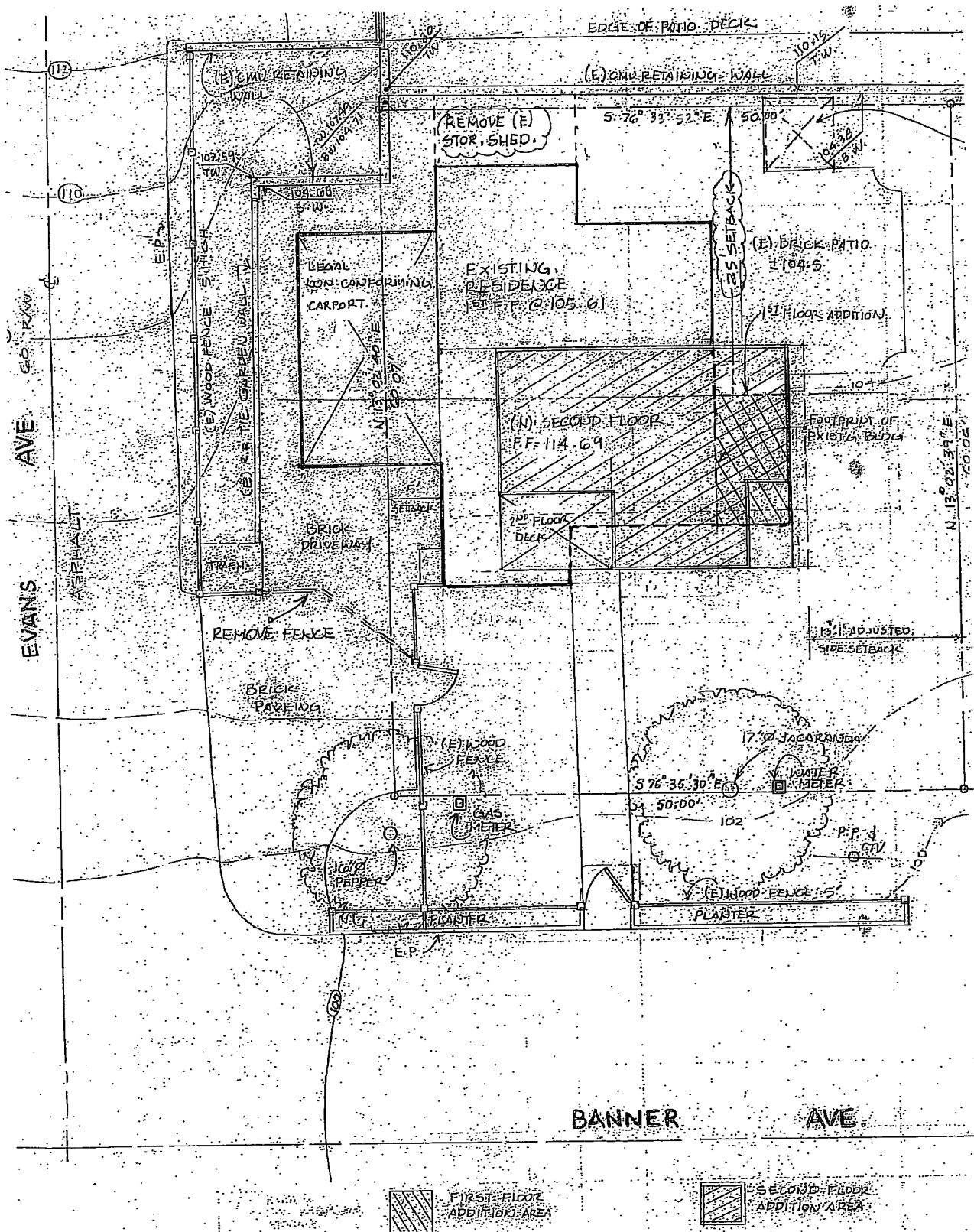
The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above, the referenced exhibits, and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved exhibits and conditions of approval hereto. All plans (such as Landscape and Tree Protection Plans) shall be implemented as approved by the County.

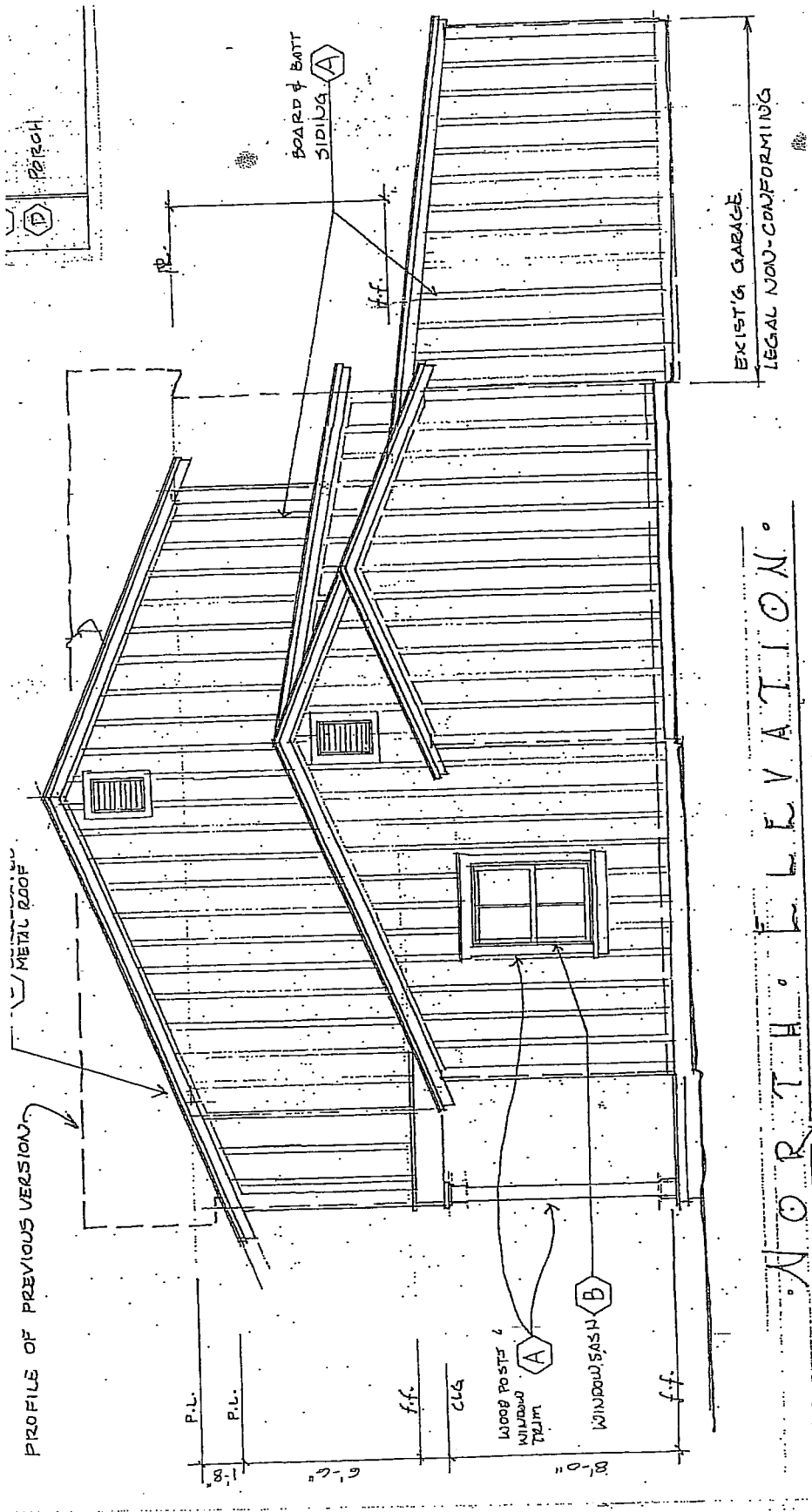
2. **Board of Architectural Review.** Exterior elevations, colors, and materials shall conform to BAR approval as part of 07BAR-00000-00249. Final BAR review and approval shall be obtained *prior to issuance* of the Coastal Development Permit. The project shall conform to final BAR approval in all respects. The BAR-approved color and material board shall be kept on-site throughout construction and be available for Planning and Development staff. **Plan Requirement:** Materials shall be denoted on building plans.
3. **Night Lighting.** Any exterior night lighting installed on the project site shall be of low intensity, low glare design, minimum height, and shall be hooded to direct light downward onto the subject parcel and prevent spill-over onto adjacent parcels. **Plan Requirement and Timing:** The applicant shall submit architectural drawings of the project for review and approval by the Board of Architectural Review *prior to issuance* of the Coastal Development Permit. **Monitoring:** Building and Safety inspectors shall confirm installation of lighting per approved plans.
4. **Washout Area.** During construction, washing of concrete trucks, paint, equipment, or similar activities shall occur only in areas where polluted water and materials can be contained for subsequent removal from the site, and shall not be conducted within the critical root zones of oak trees on the site. Wash water shall not be discharged to the storm drains, street, drainage ditches, creeks, or wetlands. Areas designated for washing functions shall be at least 100 feet from any storm drain, waterbody or sensitive biological resources. The location(s) of the washout area(s) shall be clearly noted at the construction site with signs. The washout-area(s) shall be in place and maintained throughout construction. **Plan Requirements: Prior to issuance** of the Coastal Development Permit, the applicant shall designate a washout area, acceptable to P&D, and this area shall be shown on the construction and/or grading and building plans. **Monitoring:** Building & Safety shall confirm the availability and maintenance of a designated washout area during construction.

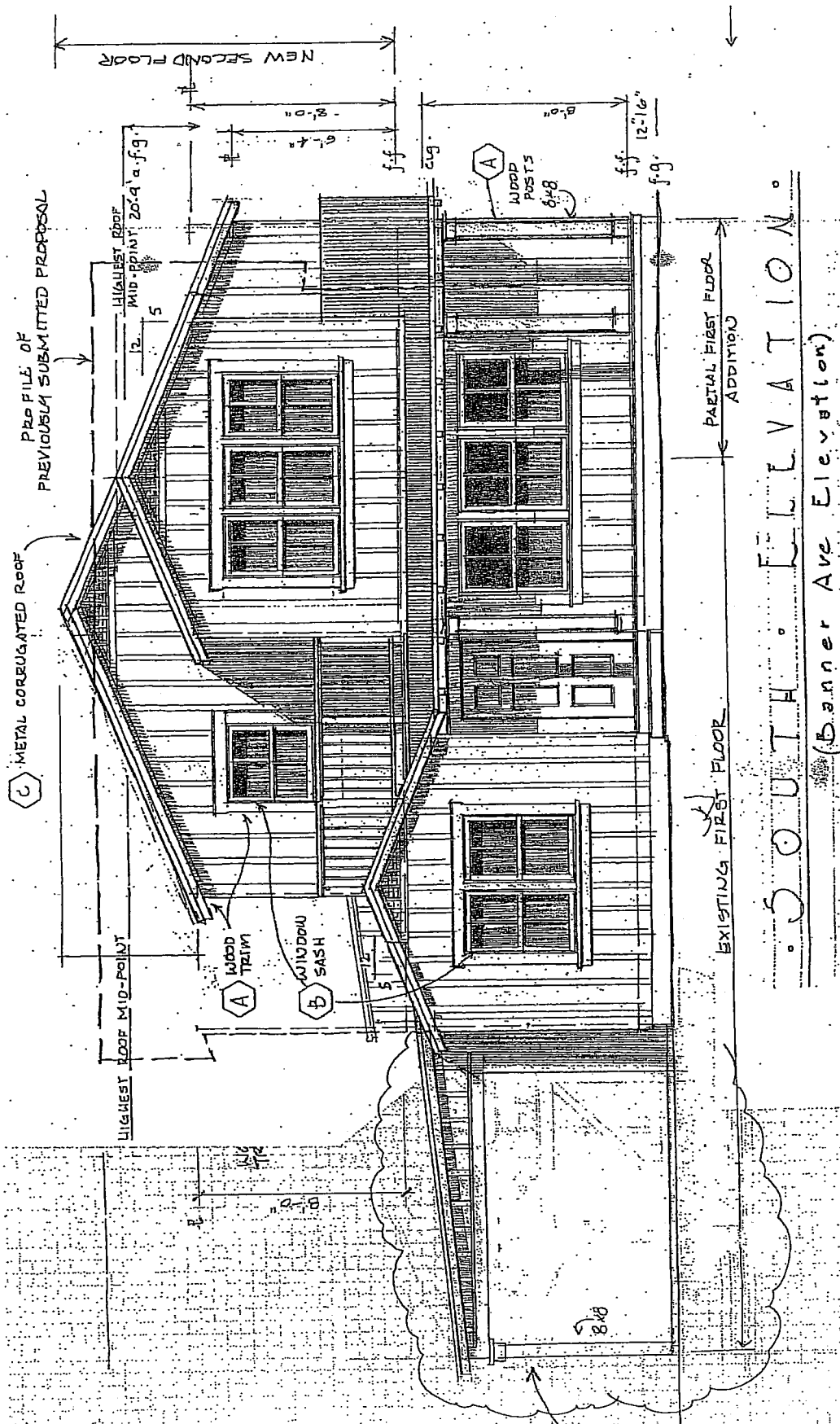
5. **Construction Hours.** Construction activity for site preparation and for future development shall be limited to the hours between 7:00 a.m. and 4:30 p.m., Monday through Friday. No construction shall occur on State holidays (e.g., Thanksgiving, Labor Day). Construction equipment maintenance shall be limited to the same hours. Non-noise generating construction activities such as interior painting are not subject to these restrictions. **Plan Requirements:** Three (3) signs stating these restrictions shall be provided by the applicant and posted on site. **Timing:** Signs shall be in place prior to beginning of and throughout grading and construction activities. Violations may result in suspension of permits. **Monitoring:** Building & Safety shall respond to complaints.
6. **Off-street Construction Parking.** All construction-related vehicles, equipment staging and storage areas shall be located onsite and outside of the road and highway right of way. The applicant shall provide all construction personnel with a written notice of this requirement and a description of approved parking, staging and storage areas. The notice shall also include the name and phone number of the applicant's designee responsible for enforcement of this restriction. **Plan Requirements:** Designated construction personnel parking, equipment staging and storage areas shall be depicted on project plans submitted for Coastal Development Permit clearance. A copy of the written notice shall be submitted to P&D prior to permit clearance and at any time during construction, at P&D's request. **Timing:** This restriction shall be maintained throughout construction. **Monitoring:** Building & Safety shall confirm the availability of designated onsite areas during construction, and as required, shall require re-distribution of updated notices and/or refer complaints regarding offsite parking to appropriate agencies.
7. **Permit Acceptance.** The applicant's acceptance of this permit and/or commencement of construction and/or operations under this permit shall be deemed acceptance of all conditions of this permit by the permittee.
8. **Additional Permit Requirements.** The use and/or construction of the building or structure, authorized by this approval cannot commence until the Coastal Development Permit has been issued. Prior to the issuance of the Coastal Development Permit, all of the project conditions that are required to be satisfied **prior to issuance** of the Coastal Development Permit must be satisfied.
9. **Permit Expiration.** This Coastal Development Permit shall expire two years from the date of issuance or, if appealed, the date of action by the Board of Supervisors on the appeal, if the permit for use, building or structure permit has not been issued.
10. **Time Extension.** If the applicant requests a time extension for this permit, the permit may be revised to include updated language to standard conditions and/or mitigation measures and additional conditions and/or mitigation measures which reflect changed circumstances or additional identified project impacts.
11. **Fees Required.** **Prior to issuance** of the Coastal Development Permit, the applicant shall pay all applicable P&D permit processing fees in full.
12. **Print & Illustrate Conditions on Plans.** All applicable final conditions of approval shall be printed in their entirety on applicable pages of grading/construction or building plans submitted to P&D or Building and Safety Division. These shall be graphically illustrated where feasible.
13. **Indemnity and Separation Clauses.** Developer shall defend, indemnify and hold harmless the County or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of the Coastal Development Permit. In the event that the County fails promptly to notify the applicant of any such claim, action or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.

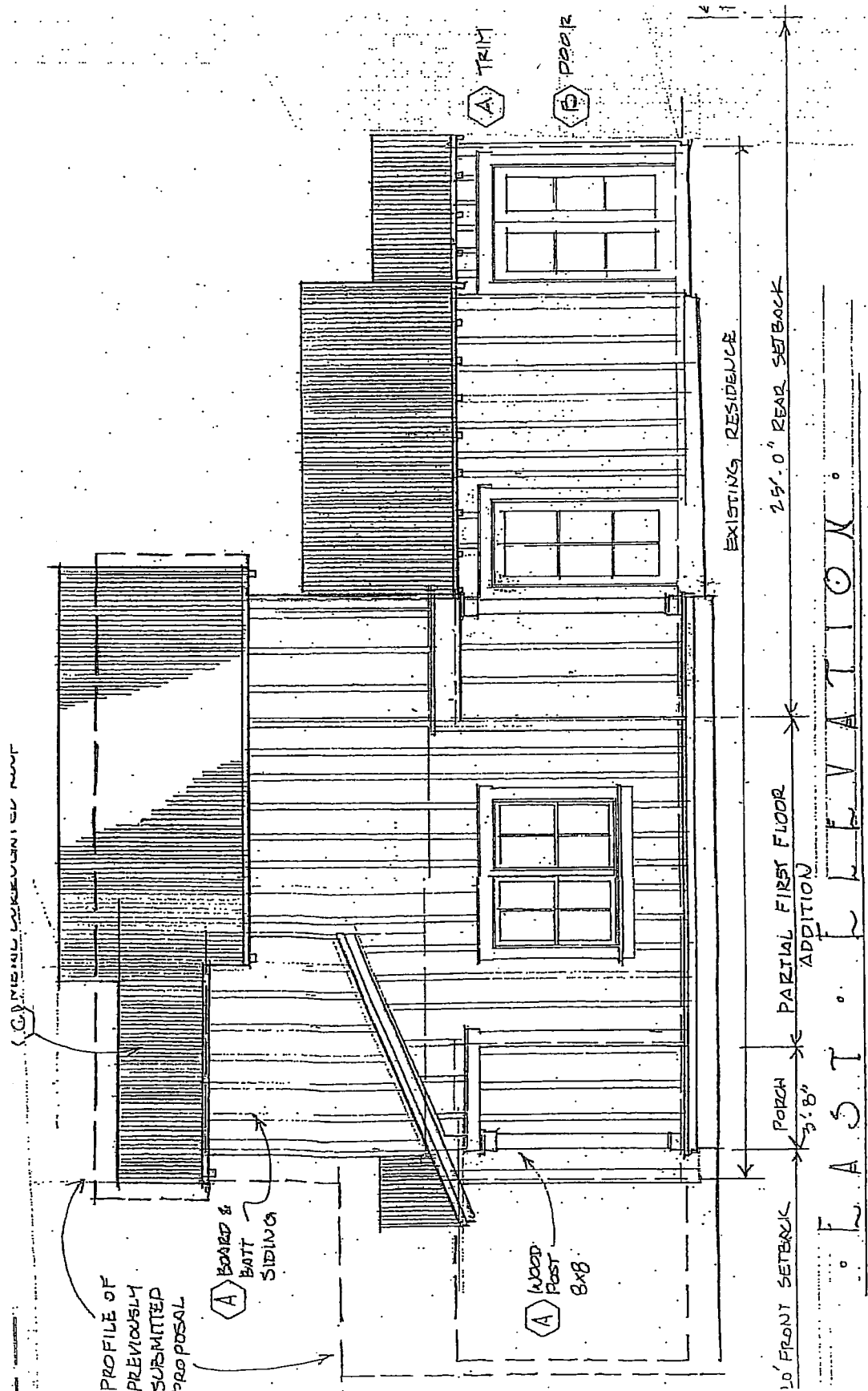
14. **Legal Challenge.** In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the County and substitute conditions may be imposed.

ATTACHMENT E: SITE PLAN









(C) MATERIAL DOCUMENTED NOT

PROFILE OF
PREVIOUSLY
SUBMITTED
PROPOSAL

A BOARDS &
BATT
SIDING

A WOOD
POST
8x8

A TRIM

B SILL

EXISTING RESIDENCE

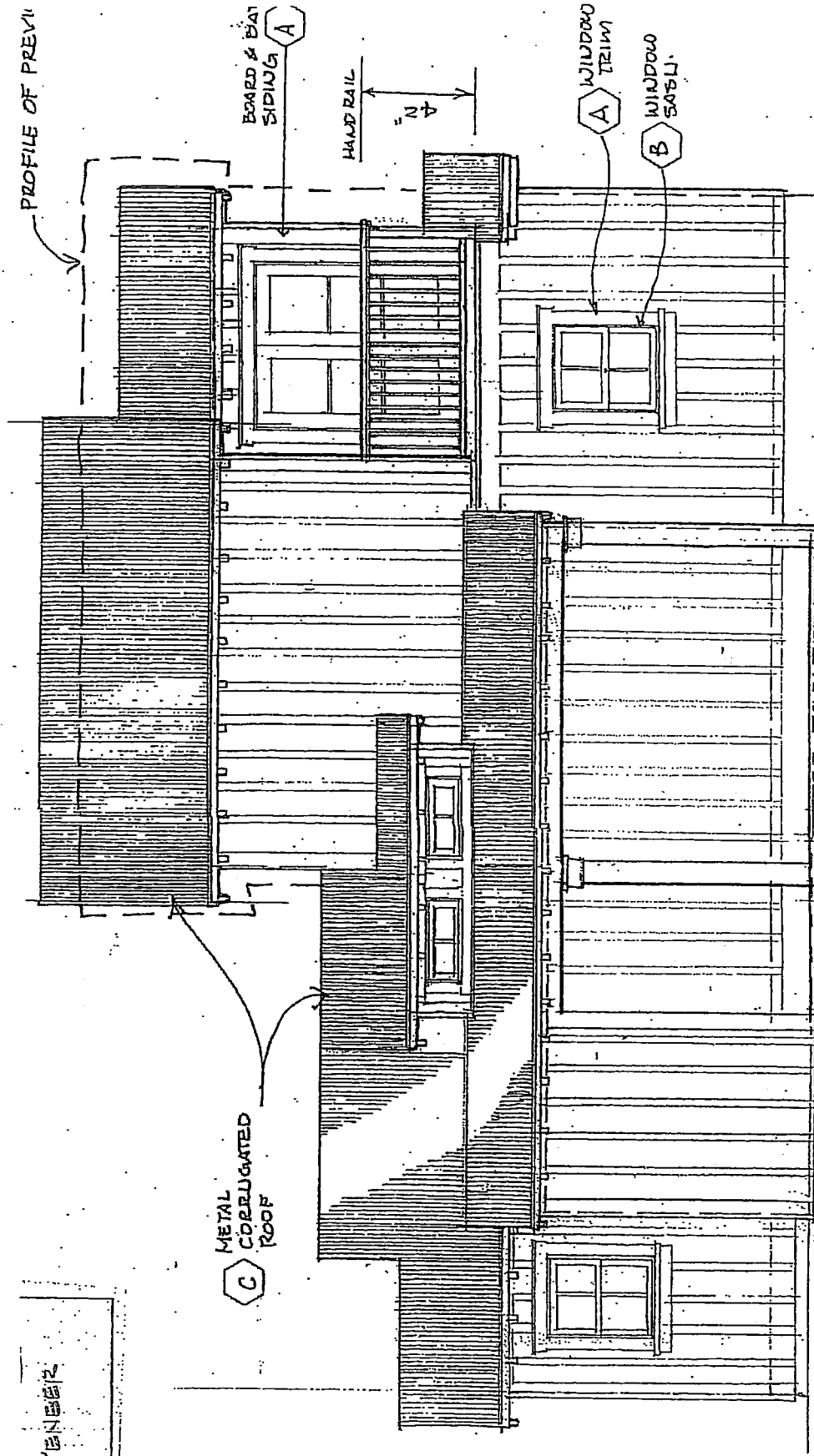
25'-0" REAR SETBACK

PORCH
3'-8"

PARTIAL FIRST FLOOR
ADDITION

10' FRONT SETBACK

EAST ELEVATION



WEST ELEVATION

ATTACHMENT F: NANTKER GARAGE MEMO



Planning and Development Department

To: Doug Anthony, Zoning Administrator
From: Sarah Clark
Re: 08MOD-00000-00006, Tracy Modification
Date: December 11, 2008

At the Zoning Administrator hearing of December 1, 2008, Mr. Jim Malott spoke in opposition of the Tracy Modification project (08MOD-00000-00006). During his comments, Mr. Malott referenced a garage that previously existed on his mother's property, located at 140 Evans Avenue, immediately north of the subject parcel. Mr. Malott stated that P&D had required his mother to remove the garage because it blocked public views from Evans Avenue to the ocean.

At your request, I have researched the history of development on the property at 140 Evans Avenue to determine the reason for garage removal. I was unable to locate any permit information for the garage in County records. In 2002, a Lot Line Adjustment (LLA) was processed for the properties at 140 and 160 Evans Avenue. The staff report for the LLA references an unpermitted garage located at 140 Evans Avenue. The staff report states:

In addition, a zoning violation was discovered on the property related to an unpermitted garage located on Parcel 1 [140 Evans Avenue] in December of 1999. At that time the applicant was advised that the proposed lot line adjustment could not proceed until the violation was corrected either by removing the structure or requesting a coastal development permit and modification to legalize the development (the garage was located in the front and side yard setback). The applicant choose to remove the structure and the violation case was closed in April of 2000.

Review of letters pertaining to the LLA indicated that the owner had applied for a Modification (97-MOD-012) to legalize the garage. In a letter to the owner dated October 2, 1997, Kimberly McCarthy states:

As I understand the project, the Modification application was submitted to allow the existing unpermitted garage (located on Lot 1) to be validated under current permitting requirements (validation of this unpermitted/illegal structure is required in order to allow for recordation of the proposed Lot Line Adjustment).

Please note that pursuant to Section 35-179.3.b.1 of the Article II Zoning Ordinance, Modifications may not reduce the front yard setback depth (as measured from the right-of-way or easement line of a street or driveway) to less than 16.5 feet. The Modification request seeks to reduce the front yard setback for the existing but unpermitted garage to a depth of one foot or less. The Modification as proposed cannot be approved under the regulations governing modifications. In addition, I would not be able to make the required findings (see attached) for approval of the Modification and would take forward a recommendation of denial to the Zoning Administrator.

I was unable to locate the required findings attachment referenced by Ms. McCarthy. Although no permit records are available for the garage, letters associated with prior permits processed on the property at 140 Evans Avenue indicated that the garage was removed because it was located too close to the property line to be permitted. No references are made to inconsistency with policies protecting public views.

ATTACHMENT G: APPEAL LETTERS

January 5, 2009

Members of the Planning Commission
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 07BAR00000-00249
Planning Dept Staff Misc Decisions
Summerland DRB Misc Decisions
DPW Misc Decisions

Dear Planning Commissioners:

Introduction

This letter is to outline in narrative form the complex web of issues which serve as the basis of our appeal to you. The simple reason for this appeal is that the proposed Tracy residence addition harms Mrs. Nantker's property in several ways, harms the neighborhood in several ways and harms public safety.

We herewith appeal all of the relevant Tracy decisions and approvals granted by the Santa Barbara Planning and Development Department, including the Zoning Administrator, Staff and BAR South, as well as contributing actions by the Summerland Design Review Commission and County DPW Highway Department. These actions and approvals include, but are not limited to, the Zoning Administrator's acceptance of the staff report on December 15, 2008, tentative approval by the County DRB South on December 19, 2008, Coastal Development Permit, if any, Land Use Permit, if any, Encroachment Permits or Easements, if any and related decisions.

Since the Planning Department is on its year-end furlough (December 19, 2008, to January 5, 2009), we have no access to their expertise or assistance in writing this appeal, particularly as to violations of specific sections of the Planning Code. We will provide Code sections when we have an opportunity to meet with the Planning Staff after their return on January 5, 2009, which is also the date this appeal is due. We recognize your Commission may not have jurisdiction over the non-planning agencies, but their contributory parts in this matter are important to show the complete web of action, inaction and concealments that have created this problem. The decisions by the agencies over which you do not have jurisdiction were used as inducements in the approval processes before the agencies over which you do have jurisdiction.

Background

Mrs. Nantker (Nantker) is the mother of James and Lucinda Malott (Malott), the appellants on her behalf. Mr. Malott is an architect practicing residential architecture for over 30 years in

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California. He has served on Planning Commissions, Design Review Boards, and has written texts of Guidelines for Hillside Homes, which have been adopted in full or in part in numerous California communities. Mrs. Nantker is 92 years old, infirm, and lives with a full-time caregiver at her home, 140 Evans Avenue, Summerland. Mrs. Nantker's home is immediately adjacent to the north property line of the Tracy residence on 2200 Banner Avenue, where a second story addition is proposed. The Nantker ground level is about 12 feet higher than the Tracy ground level and the existing Tracy roof ridge at 15 feet above grade is 3 feet higher than the Nantker ground level. Thus there is minimal visual impact by the existing Tracy residence on the Nantker residence. This neighborhood pattern of one-story homes, each 10 to 15 feet above the ones to the south of it, is repeated in all of the homes in this swale area parallel to Evans Avenue in Summerland. The pattern allows for sweeping ocean views from each one-story home in the swale. The houses in the swale area are small size, due to their lots being very small (3,000 sq ft) and substandard for the zoning area requirements of 10,000 square feet. A brief inspection of the proposed Tracy site by any Board Members would show Mrs. Nantker's property to be the only property severely affected by the Tracy's proposed second-story addition. It would also show the need for Mrs. Nantker to be represented at any hearing by any board concerning changes to the Tracy property at 2200 Banner Avenue.

Unlike homes a few dozen feet east or west, up steep hills on either side of the swale (see attached neighborhood plan), all of which are on larger lots (6,000 sq. ft. or more), the single story homes in the swale all enjoy sweeping views of the ocean, albeit some views are blocked by prunable trees. Those houses to the east and west pick up ocean views by stepping up the steep hillsides where steeper topography creates much greater differences in elevation and changes the character of the homes to split-level, typically with a single story on the uphill side and double story on the downhill side.

If one two-story home is built in the swale, it will set an irreversible precedent for all the other homes in the swale. The cumulative effect will be for each successive, wealthy new buyer to reach up a bit higher and larger with his or her addition. This will turn the present open views enjoyed by every one-story home in the swale into peek-a-boo views, between successive new second stories, to the detriment of all.

The proposed Tracy second story addition on a tiny lot has the potential to change the character of this cottage-like portion of Summerland into another Padaro Lane. Years ago, Padaro Lane was open, like Evans Avenue and Banner now are. At that time, one could drive along Padaro Lane and see the ocean through open landscapes and between homes. Today, Padaro Lane is a monument to individual lack of taste and a disgraceful lack of Planning foresight. There is no ocean view left, merely solid walls of fences and buildings, two and three stories high, blocking every inch of ocean view. Evans Avenue and Banner will be set on this course if the two-story Tracy residence addition is approved. Since the facts of the Tracy parcel include a land-grab from the public right of way of a 70% increase in the lot size, there is absolutely no need for a second story addition.

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The Notice Problem

Since our mother is not able to handle mail or go to the Summerland Post Office, my sister, Lucinda Malottk, receives all her correspondence. In late September 2007, she received and faxed to me immediately a notice regarding the Tracy residence with a hearing scheduled for October 7, 2007. This began the cascade of events leading to this appeal.

Concerned by the notice and a call to the Planning Department, I drove 350 miles to attend the hearing, reviewed the plans and made numerous comments about our concerns, particularly with the proposed second story, as well as parking and encroachment issues. I requested that a survey be done of the properties involved (2200 Banner-Tracy, 2210 Banner-Rhodes and 140 Evans-Nantker) to show their relative positions and elevations.

Because of our concern, I explained about our mother's situation and requested that I be notified in the event of any further hearings on this matter. I gave my name and address, phone number and email address as well as that of my sister and my mother to the Summerland DRB representative, Tom Evans, who said he would have Summerland's DRB notify me in the event of any hearing. I also gave the same information with a request to notify Nantker and Malott as the most affected parties to the Planning Department staff member at that DRB South meeting and to the Tracy's architect, Tom Smith. I heard nothing in the succeeding year and 2 months. The story poles were removed and, if revised story poles were placed to indicate a revised project, I was not aware of it. I had no notice, nor did I see any revised story poles in my regular visits to my mother's home. My sister also received no notice, nor did she see any activity when she visited our mother's home several times a week. No calls, no correspondence or emails were received. We believed the project to be dead.

Then, on November 27, 2008, over a year and a month later, my sister called about a notice received that day, Thursday, for a hearing on December 1, 2008, the following Monday. This notice provided three days of warning before an important hearing. The hearing concerned a variance or modification of the Planning Code for the Tracy residence to be heard by the Santa Barbara County Zoning Administrator. I immediately called the Planning Department and requested a set of plans for the project. The Planner, Ms. Sarah Clark, indicated they were "on file" at Planning and I informed me that I would have to go there to see them. I then called the project architect, Tom Smith, and requested a set of plans as a professional courtesy. Reluctantly, he sent the plans, which arrived Saturday, November 28 and confirmed my fears. The plans were for a two-story, 2 1/2 ft higher project than before. The proposed addition was bulkier and now included a reflective metal roof.

Sunday, November 30, 2008, I drove to Santa Barbara to attend a second hearing with over a year and two months having elapsed since we had made strong objections to DRB South against a second story addition. This hearing was to be before the Zoning Administrator the following

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Monday. At that time, I had no inkling that there had already been at least 5 other hearings prior to this one, all without notice to the property owner most affected, Nantker.

In summary, after an initial notice of October 7, 2007, we, as the most affected party in the Tracy addition hearings, who had specifically requested of all the relative parties that we needed notice, were totally ignored. Through a series of intentional acts and/or lack of attention to detail, lack of concern for the affected party, lack of response to our requests and lack of board member responsibility and awareness, we were not given even a hint that a hearing or action by a public body was possible.

Accordingly, we received no notice, nor were our interests represented in any way on all of the following dates: (Had we been notified, we would have attended every one of these hearings and presented information to refute the claims of Tracy and architect Smith.)

NO NOTICE #1

An unknown date hearing by architect Smith, and others with the Santa Barbara DPW Street and Roads Division to determine that the large Tracy encroachments into the public right of way up to 19 feet were "OK," and to grant an easement for a carport in these encroachments, according to the architect. To date, we have only architect Smith's word that these have, indeed, been OK'd by DPW.

Effects:

1. Encroachment approval, if given, grants Tracy an extra 2,100 square feet of yard area to their 3,000 square foot lot, a 70% increase to 5,100 sq ft. This negates their claim of "not enough yard" as the reason for a 360 square foot second story addition. The relationship between the encroachment areas and the second story proposed by Tracy was ignored by the Zoning Administrator in hearings many months later.
2. Approval, if given, deprived Nantker and the public of at least 5 street parking spaces.
3. Approval, if given, forced all street parking on Evans uphill in front of Nantker residence or on Banner, in front of Rhodes residence.
4. Approval, if given, created an unsafe intersection at Evans and Banner, due to 7' foot high unpermitted fencing, blocking views of the intersection.

NO NOTICE #2

Meeting of July 8, 2008, by the Summerland Design Review Board, over 10 months after the initial BAR South hearing and before a different body with no written or other notice to the most affected party (Nantker).

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Effects:

1. Architect Smith, is a local architect and is obviously very familiar and friendly with the Summerland DRB. This hearing, with no notice to Nantker, and after having lain dormant for ten months, demonstrates an intent to conceal the hearing from Nantker. It began the process of creating an investment in the design by the board.
2. Apparently, Summerland DRB provided a hearing list posted at the local post office. Nantker did not, and could not, get to the post office. Her mail is forwarded to Lucinda Malott. Posting notice at the local post office is completely ineffective for many people, like Mrs. Nantker, the most affected party.
3. We requested directly of the Summerland DRB representative, Mr. Tom Evans, that Nantker be noticed of any Tracy hearing. I had every reason to expect such notice from the board, whether written or oral.
4. To my knowledge, no new story poles were erected by architect Smith, to tip Nantker off as to revised plans or hearings, although the revised plans indicated a 2 ½ foot higher, more massive structure.
5. Plans submitted by architect Smith, were incomplete and inaccurate in describing the site situation and adjacent property relationships. No indication of the lot coverage and setbacks of Rhodes or Nantker was shown to indicate the neighborhood pattern. This would have demonstrated that Rhodes had already received setbacks similar to that which would be required for a Tracy ground floor addition.
6. No DRB member came to the Nantker residence to observe the impact on her property and provide information about the hearing. Nor did any board member accept responsibility for providing notice, although a casual observation of the Tracy site shows Nantker to be the most affected party.
7. Apparently, minor suggestions regarding paint, roof materials and lighting were discussed at the meeting. No issues regarding encroachments, parking on-site or on-street or issues of a preferred ground floor addition were discussed.

NO NOTICE #3

Meeting of September 30, 2008, by the Summerland Design Review Board, almost one year after the initial County BAR South hearing and a second time before the local body.

Effects:

1. The Summerland DRB heard no objections from any neighbors since no neighbors were noticed.
2. The only notice given was to architect Smith and the Tracy's, who concealed that notice from Nantker and Malott. Architect Smith stated later before the Summerland Board, "If I (had) notified him (Malott), I'd be cutting my throat." This indicated he realized information Malott would present would be extremely detrimental to his two-story design for the Tracy residence.

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3. Architect Smith was building approval for his project before the board by investing the Summerland DRB time in the project. As all architects and board members know, repeated meetings with, and deference to, a board "wears down" resistance. The architect listens to the board's suggestions, makes minor changes for the following meeting and allows board members to "buy in" through the acceptance of these incremental changes. The board eventually tires of seeing the project repeatedly and gives up or feels the project is as good as they can make it, given the plans proposed. In either case, the board usually approves.
4. Such suggestions by Summerland DRB apparently included changed light fixtures, a new color board with a metal roof material and a change in hand-rail design.
5. The fact that Nantker, a 30-year owner-resident of Summerland, was grossly and needlessly affected by the proposed second-story addition, when a single-story addition could easily be created with no such effect, was not addressed nor did any board member come in to the Nantker home to observe the effect of the proposed second-story addition.
6. The fact that next door neighbor Rhodes at 2200 Banner had proposed and been denied a second-story addition in the same swale for the same reasons raised by Nantker in 2001 was never even addressed by the board, nor, of course, by architect Smith, or by Nantker, who was not there. The Rhodes proposal, also designed by architect Smith, ultimately was built as a single-story project because the original two-story proposal had a huge effect on Nantker.
7. The fact that Nantker was forced to tear down a garage in the exact same public view corridor off of Evans, as Tracy now proposes to fill with an even larger second story view obstruction, was never addressed by the Summerland DRB.
8. The final effect of this meeting was to create momentum for the project and allow Mr. Smith to schedule BAR South County meeting, there to represent that Summerland BAR and County DPW had "approved" the Tracy project. (No such approval was made as of December 19, 2008.)

NO NOTICE #4

The October 19, 2008 hearing before the Santa Barbara County South BAR (over a year after the initial hearing), to which Nantker received no notice. Since this hearing was over a year after the initial hearing, the lack of notice is egregious and we believe unlawful.

Effects:

1. Nantker had no input at all, nor did we see minutes or other material from this hearing.
2. Effectively, architect Smith and the BAR, by excluding Nantker as the party most affected, were taking an end-run around any and all concerns Nantker might have presented.
3. Nantker was given no opportunity to contest the "revised" plans.

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4. To my knowledge, no new story poles were erected. The new project was 2 ½ feet higher and bulkier than the original project.
5. The plans submitted by the architect were incomplete and inaccurate. The survey was also inaccurate in describing the site situation, which had the affect of misleading the BAR into an incorrect review and discussion.
6. The BAR action constitutes a severe error and abuse of discretion as well as a lack of a fair and impartial hearing, both of which are required by law.

NO NOTICE #5

The October 24, 2008, meeting of the Santa Barbara County South BAR over a year after the initial hearing of October 7, 2007. This represented the fifth time a public body had provided no notice to the most affected party, Nantker, in a public hearing process during the past year.

Effects:

1. Nantker had no input at this BAR meeting.
2. Architect Smith and the BAR and its members excluded the most affected party and took no interest in public and private view issues, privacy, public parking, parking on-site or encroachment issues, and safety of the intersection issues.
3. The abuse of discretion and lack of a fair and impartial hearing was continued by the BAR.
4. The decisions reached by the Board were not supported by the evidence (plans) submitted since those plans were inaccurate and incomplete.
5. New evidence was not allowed because Nantker was not allowed to be present by virtue of de facto collusion between architect Smith and the County Planning Department.

NO NOTICE #6

The meeting of December 16, 2008, by the Summerland DRB. Quite by accident, on December 1, 2008, I overheard Planner Sarah Clark and architect Tom Smith discussing "the design hearing." I then asked enough questions to realize Mr. Smith had scheduled 3 hearings on the Tracy project, only one of which I knew about. The December 1, 2008, hearing I was attending, before the Zoning Administrator, was being continued to December 15, 2008, but Mr. Smith had a second scheduled meeting that week on December 16, 2008, before Summerland DRB and a third scheduled that week on December 19, 2008, before the South County DRB. This conversation occurred at the very end of the December 1, 2008, Zoning Administrators hearing, for which we received notice. I have no doubt that had I not overheard this conversation, architect Smith could have and would have concealed this meeting from me as he had hearings #1 through #5, above. At this meeting, when the issue of a ground-story addition in place of a second-story addition was suggested as an alternative, architect Smith stated disingenuously, "If it (a ground- floor addition) was possible to do on the ground floor, we would do it." His

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subsequent statements that he "couldn't get the variances" from the Planning Department are belied by the fact that they obtained those same variances in 2004 for the Rhodes addition next door.

Effects:

1. By the December 16, 2008, Summerland DRB hearing, architect Smith had been before that board three times for the Tracy residence. The Summerland board had already given him two rounds of suggestions for minor design revisions, which had been cranked into the drawings. This hearing addressed only exterior paint colors and light fixtures.
2. Architect Malott provided a drawing of a ground-floor plan for a 360 square foot master suite, same size as that proposed by architect Smith, on the ground floor, which meets all of the Planning criteria the Rhodes residence met next door.
3. Nantker's concerns were prevented from being expressed by a "3 minute limit rule." This limited our comments about basic planning and architectural concepts drastically. Our complaints about lack of notice and a fair hearing were virtually ignored.
4. Lack of notice was bypassed by one Summerland board member as "not necessary." Another claimed the board "dropped the ball" when it was pointed out that Nantker had specifically requested notice. A third board member said "it is very time consuming" (noticing) and "we just review the plans in front of us," implying no significant changes could or would be made.
5. At the end of the hearing, the board had a few remaining questions about paint, roof material and light fixtures, but obviously was not going to address basic issues of encroachment, parking, public and private view impacts, and change of neighborhood character.
6. The results of this hearing were used by architect Smith to represent local approval before the December 19, 2008, hearing at the South County DRB hearing below. No such approval was granted by Summerland DRB as of that date.

NO NOTICE #7

The December 19, 2008, Santa Barbara County South BAR hearing. This hearing was one year, 2 ½ months after the first hearing on the Tracy residence proposals. The only reason Nantker was represented was because Malott overheard a comment between architect Smith and planner Sarah Clark at the December 1, 2008, Zoning Administrator hearing. No notice was given for this hearing, nor did planner Clark have the exact dates of number 6 and number 7 when Malott asked her for them.

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Effects:

1. Architect Smith represented having approvals from Summerland DRB and from County DPW (Roads/Encroachment) and responses to prior County SBAR hearings.
2. Nantker was limited to a few minutes to address concerns of lack of notice, lack of response to major issues, to issues like encroachment, on-site and street parking, public and private view issues, neighborhood character.
3. The BAR had already invested three hearings on the project and was not about to revisit major design issues presented by Malott.
4. After brief discussion of the investment in design time, Summerland paint, roof material and light fixture issues, the BAR gave approval to the design contingent upon paint and lighting approval by Summerland BAR. Nantker objects strenuously to the reflectivity of the proposed metal roof material.
5. The BAR had no interest in, nor concern with, the lack of notice between their hearing of October 7, 2007, and the flurry of hearings a year later. They also glossed over the primary planning issues, concentrating only on building aesthetics.

RATIONALE FOR APPEAL

Nantker's reasons for appeal include lack of notice to all of the above meetings. All of these meetings lacked a fair and impartial hearing, since Nantker, the primary person concerned with the Tracy proposal, was either not able to present at all, due to lack of notice, or if presenting, was only presenting after the inertia of several board meetings and "buying in" of board members had already occurred. Once Nantker was able to participate in the hearings, during the 2 ½ weeks from December 1, 2008, to December 29, 2008, all of the major planning issues had already been made by the various boards. Even the staff report failed to take notice of major problems in the Tracy application and the neighborhood history of the Rhodes, Tracy and Nantker properties in prior actions and decisions by Planning and others.

Effectively, the above hearings all had an "in-crowd" or clique aspect to them. Nantker's concerns were definitely excluded from the discussions.

What Nantker asks at its core is that the Planning process and decisions for Tracy be as rigorous and as consistent as has been the Planning process and decisions for Nantker and the Rhodes properties. Nantker asks that the process be fair and equitable and, further, that the planning and design review process for Tracy address not merely the minutiae of superficial architectural design, such as paint color and light fixtures. Nantker asks that planning issues such as public view corridor blockage, change of neighborhood character with second-story additions, availability of street parking, parking on site and lack of safety at an intersection, be addressed in full.

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GROUNDNS FOR APPEAL

1. Lack of legal, reasonable, or proper notice to Mrs. Nantker and appellants by
 - a. Santa Barbara County Planning Department and BAR South
 - b. Summerland Design Review Board
 - c. Santa Barbara County DPW/Highway Department
 - d. Santa Barbara County Planning Department/Zoning Administrator

Lack of proper notice permeates the entire history of the project. Age of Mrs. Nantker (92) and distance of children from her home discriminates against her. Architect Smith's actions actively concealed the project from Nantker and Malott and misled board discussions and findings by incomplete and inaccurate plans.

Architect Smith's actions in conjunction with County Planning staff and Summerland DRB de facto worked to conceal the relevant hearings and actions taken by the County from the most affected neighbor, Nantker.

2. December 1, 2008, hearing by Zoning Administrator, continued to December 15, 2008, contains multiple errors of discretion. It lacks a fair and impartial hearing. The Zoning Administrator's decisions are not supported by the evidence.
 - a. The Zoning Administrator's "acceptance of the staff report" is not consistent with the Planning Code and Zoning Ordinance.
 - i. Facts presented on the Tracy plans are not accurately drawn. Plans are incomplete, vignitted, and do not properly show site conditions, no site section is shown, no landscaping is shown.
 - ii. Architect Smith's representations are incorrect as to neighboring properties, conditions and dimensions.
 - iii. Zoning Administrator incorrectly allowed architect Smith to rebut all statements issued by Malott, while failing to allow Malott to rebut Smith's incorrect statements.
 - b. Staff report was written "in camera," using architect Smith's drawings and statements, with no input from Malott/Nantker, or corrections of fact.
 - c. Staff letter to Zoning Administrator regarding Nantker garage removal was inaccurate and incomplete.
 - d. Zoning Administrator incorrectly interpreted numerous planning issues.
 - i. "Cumulative effect" of second story addition in the Banner/Evans swale area was not considered.
 - ii. Huge encroachments into public ROW by Tracy on two sides of residence creating parking and neighborhood safety issues were not considered.
 - iii. Addition of 70% to Tracy yard area and its relationship to the granting of a setback modification for a second story addition was not considered.

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- iv. Options available for Tracy, other than a second story, due to ROW encroachment additions to their land were not considered.
3. Errors and inconsistencies in findings of the above groups created a web of error and abuse of discretion specifically, but not limited to:
 - a. Lack of consideration of impact on neighboring streets and properties, damage to public and private view, lack of on-site and street parking, creation of a permanent safety problem at the intersection of Banner and Evans.
 - b. Lack of consistency of findings between Tracy's proposed second story and neighboring properties, including a reduction of street parking, no on-site parking, intersection view obstruction, neighborhood properties required to provide on-site and street parking for Tracy residence overflow.
 - c. Lack of consistency of findings between Nantker's required garage removal in 2001, which was entirely on their property, but lacked front setbacks and created a public street view obstruction, while Tracy is being allowed to reconstruct their carport, which is built 10 feet over the property line in the public right of way and, at the same time, build a second story blocking the exact same ocean view the Nantker garage was abated to restore. Notwithstanding planning documentation to the contrary, a primary consideration used by the Planning Department in insisting on demolition of the Nantker garage was to restore the view corridor.
 - d. The variance modification approved by the Zoning Administrator allows the Tracy second story to be built into the rear yard setback, thus taking not only the same street view that Nantker garage was demolished to preserve, but also taking Nantker's view of the ocean and sunsets in the process.
 - e. The variance modification allows the Tracy residence to build a second story in a swale area that has no second stories. Each single-story building has a sweeping view now. Thus, the Zoning Administrator's decision has no basis in fact, since it is based on the concept that "it was not possible to obtain a variance" for a ground floor addition and that the second story addition would preserve scarce yard space, neither of which is true.
 4. Rationale for the second story addition is given by Tracy and architect Smith as a need to preserve yard space for the Tracy children and a lack of ability to obtain variances from the Planning Code for a ground floor addition. Evidence submitted by architect Smith and by Malott show this rationale is not true.
 - a. Tracy's yard has been effectively enlarged by 2,100 sq ft or 70% from its present 3,000 sq ft, to a total of 5,100 sq ft, by encroaching with unpermitted fences, retaining walls and landscaping into the public right of way. Fences up to 7 feet high enclose this yard area. These encroachments, according to architect Smith, have been "permitted" by the County DPW Road Division. If true, this 2,100 sq ft more than compensates Tracy for the 360 sq ft of ground floor addition they require and if the County DPW grants this additional usable land area to Tracy,

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then there is absolutely no justification for, nor any ability to make, the findings for the second story variance modification to a rear yard setback granted by the Zoning Administrator. Effectively, Tracy is asking for an illegal encroachment to more than double their usable yard area, then asking for a variance to bump up a second story because a ground floor addition would make their yard too small. Actions by two separate County agencies, DPW and Planning, are facilitating this double-play at the expense of Mrs. Nantker, who loses on the one hand her access to street parking and on the other, her ocean and sunset views, perceived privacy and gains only a highly reflective roof material bouncing sunlight into her living and dining room views. Thus, Nantker appeals both the DPW and the County Planning and Zoning decisions allowing approval of this project.

5. Lack of Planning consistency.
 - a. Tracy is being allowed to encroach in the public right of way 19 feet on Evans and 15 feet on Banner, thus removing at least 5 safe public street parking spaces from use. This forces public parking in front of 140 Evans (Nantker) and 210 Banner (Rhodes) and others.
 - b. Tracy is being allowed to build a carport 10 feet over their property line into a public right of way while Nantker was required to demolish a garage which was constructed entirely on their property. Both the Nantker garage and the Tracy carport were unpermitted, we believe, since the carport was a later add-on to the residence and was subsequently turned into a garage and is now a master bedroom. The Tracy's wish to keep this part of their building. They propose it to return to a carport, but to add approximately 500 sq ft of area in a second story, which changes the character of the neighborhood and damages the neighbor's property.
 - c. Tracy has no on-site parking, although Nantker and Rhodes and all others are required to do so.
 - d. Tracy proposes two tandem parking spaces in the public right of way. Neither tandem nor right of way parking constitutes parking on-site.
 - e. Tracy driveway requires backing into the intersection of Banner and Evans. Views in both directions are blocked by Tracy's 7 ft high fences, encroaching into the public right of way 19 feet on Evans and 12 feet on Banner. This intersection acts as a feeder for hundreds of dwelling units uphill and Evans and Banner. Backing into the blind intersection is an accident waiting to happen.
 - f. Tracy is being permitted to build a second story addition in the very view corridor Nantker was forced to vacate in 2001.

SUMMARY

The Tracy's recently bought their property in Summerland as a weekend home for their family, knowing that it would not fit their needs. They bought it knowing that it had multiple illegal

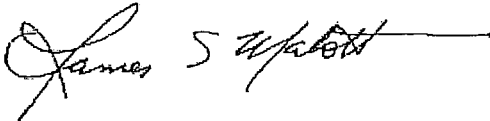
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conditions (illegal master bedroom conversion, illegal rear yard and side yard encroachments, and a series of illegal fences and retaining wall barriers built far into the public rights of way on Evans and Banner). Now the Tracy's claim that the property has too little yard space and, in order to build, the code requires they remove illegal garage conversion to master bedroom and replace it with a second story master bedroom. In doing this, the Tracy's are trying to solve the problem they knowingly purchased, at the expense of others in the neighborhood. This second story, if granted, causes major view impacts, both public and private, and change in neighborhood character, thus damaging the neighborhood and the neighbors who live there full-time.

The Tracy's are being aided and abetted by architect Smith, who knows full well what the neighborhood issues are, since he had been through the same issues on the Rhodes property next door. Architect Smith recognized from the beginning that he could only get this approval by acting surreptitiously. He actively concealed the project from the most concerned neighbor, Nantker. In addition, the County and Town agencies cooperated with the architect through a lack of due diligence and major errors in process and judgment.

For all of the above reasons, we appeal to you, the Planning Commission to reverse the decisions by the above mentioned bodies to approve any and all of the Tracy application.

Sincerely,



James S. Malott
Representing Carol Nantker,
Owner of 140 Evans

Enclosures: Architect Smith plans (annotated)
Neighborhood plan
Smith site plan
Neighborhood photos
Rhodes variances: 1994 and 2001
Nantker survey (on site plan)
Appeal to the Planning Commission

February 20, 2009

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County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101

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2200 Banner Avenue, Summerland, CA

Items Appealed:
Coastal Development Permit for Tracy
Remodel and Addition
#08CDP32 Approved February 13, 2009

Dear Planning Commissioners,

This letter is to appeal the Coast Development Permit decision by the Planning staff regarding the Tracy residence remodel and addition referenced above.

No hearing having been undertaken on our appeal (09APL-1), we find it unreasonable and probably unlawful that further decisions by the staff are undertaken in furtherance of the Tracy project without having the many appeal questions resolved. This is a further example of the staff inertia railroading the project through, about which we have complained in our letter of January 5, 2009.

We further object to having another appeal fee and appeal process required, when we specifically included in our appeal of January 5, 2009 (Page 1, Paragraph 2) an appeal of "Coastal Development Permit, if any, and Land Use Permit, if any". Nevertheless, we herewith enclose another appeal form and fee, since we have no alternative.

Grounds for Appeal

1. All of the elements of our appeal of January 5, 2009 are herewith included in this appeal.
2. In accordance with Sec 35.169.5 of Article 2 of the Planning Code, six specific findings must be made in order to approve a Coastal Development Permit. We believe that several of these findings cannot be made for the Tracy project, including findings number 2, 4 and 6.

Finding #2: "That the property is in conformance with the Zoning Ordinance and Conditional Use required".

The Tracy project requires several variances and encroachments, which have not been properly approved or even addressed. The staff report claims this finding can be made, but in the absence of any neighborhood input, notably from the most affected neighbor Nantker, no serious examination was made of setback issues, encroachments for

Members of the Planning Commission
County of Santa Barbara
February 20, 2009

buildings, encroachments into the public right-of-way by fences, retaining walls, loss of public parking, all of which were outlined in our letter of January 5, 2009.

Finding #4: "Subject property is in compliance with all laws".

The Tracy project is not built legally. The original plans (1950?) showed the house fully on the Tracy lot. The house, as built, however, including the carport, encroaches at least 10 feet into the public right-of-way. (Undoubtedly the building contractor did not bother to tell the Building Inspector or Planner).

If the original plans included the carport, then the house was built, not as permitted, but improperly into the public right-of-way and is thus illegal, since it is shown on the plans as being fully on the Tracy property.

Alternatively, if the carport was a later addition to the home, no separate permit for such a later addition exists, and as such, it is illegal, never having been permitted. (This is the condition which required the Nantker garage to be removed next door although it was entirely within the Nantker property). We ask herewith for equal treatment for the Tracys.

Finding #6: "No zoning violation may be on the property".

Since our appeal of January 5, 2009 is meant to determine this question, and since the Tracy residence project creates unsafe and inequitable conditions as it already exists, and since the Tracy residence project has no encroachment permits for its fencing, retaining walls, or removal of public parking, it is obvious that these constitute violations of the Zoning Code, which have not been addressed by the Planning Department or staff. No permits exist for these zoning violations, thus the project is in violation of zoning codes.

3. The fact that the staff says the Tracy residence is "grandfathered-in" and therefore legal, does not make it so. The staff has developed a conflict of interest on the Tracy project, since it has already made several reports which have the effect of "committing to" "getting behind" or "moving the Tracy project forward". No critical look has ever been made by the staff of the overall effects of the Tracy project on the neighborhood. The staff reports have concentrated on the minor, simple, objective elements of the code, taking the path of least resistance, thereby protecting their code, while forgetting the big picture issues of Planning, to wit:
 - a. No notice was given by the staff to the most affected neighbor, a very old woman who cannot easily defend her property. (See letter of January 5, 2009).
 - b. The architect of the project actively colluded with the staff to keep the most affected neighbor and her representatives in the dark, even though both the staff and the

Members of the Planning Commission
County of Santa Barbara
February 20, 2009

Page 3

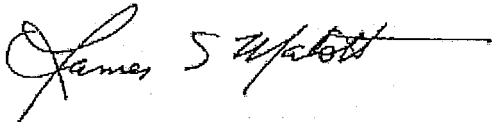
- architect had been requested to provide notice on a project that had had one hearing one year earlier, and had apparently become dormant.
- c. The Planning staff failed to address the issues of severe encroachment by the project into the public right-of-way and its relationship to the Tracy desires (not needs) for a second story addition, which affected both public and private views. No attempt was made by staff to suggest alternative, less damaging, proposals.
 - d. The Planning staff failed to address the safety issue of the parking and carport situation of the Tracy residence and the requirement to back cars into a blind intersection.
 - e. The Planning staff proceeding with a series of hearings for the project with no regard to the major Planning issues of this part of Summerland. The swale, the only major valley in the heart of the town, has different needs than the hillsides on the rest of Summerland. The swale area requires different Planning criteria than the automatic response of "it's just like all of Summerland's hills". This project is not on a hill, it is in a valley, the primary drainage swale of a large area uphill. The swale requires different Planning criteria to maintain community character. Not one Planning or BAR representative bothered to come to the Nantker property to see how the Tracy project affects that property and that home. None of those people bothered to focus on major Planning issues and alternative design solutions.

This is not a responsible Planning process.

On the above bases, we appeal the Coastal Development Permit decision by the Planning staff for the Tracy residence.

We urgently request that all Planning Commission members visit the Nantker home prior to the public hearing on this appeal.

Sincerely,



James S. Malott
Representing Carol Nantker,
Owner of 140 Evans

Enclosures: Appeal to the Planning Commission

ATTACHMENT H: ROAD ENCROACHMENT PERMIT



COUNTY OF SANTA BARBARA
 DEPARTMENT OF PUBLIC WORKS - TRANSPORTATION
 ROAD ENCROACHMENT PERMIT

PERMIT NO. 040127

August 7, 2008

ROAD NAME BANNER AV

INSPECTION REQUIRED - SEE ATTACHED REQUIREMENTS

OWNER: REID & CHRISTINA TRACY

3535 FURTUNA RANCH RD., ENCINITAS, CA 92024

APPLICANT: TOM V SMITH

1115 COAST VILLAGE RD, MONTECITO, CA 93105

I hereby makes application for permit to excavate and/or encroach in the Public Road/Right-of-Way at the location(s) and as described herein, subject to the provisions required by Ordinance No. 1481, of Santa Barbara County, applicable State or Federal Regulations, AND ANY SPECIFIED REQUIREMENTS ATTACHED HERETO.
 In consideration of the granting of this permit it is agreed by the applicant that the County of Santa Barbara and any officer or employee thereof shall be saved harmless by the applicant from any liability or responsibility for any accident, loss or damage to persons or property, happening or occurring as the proximate result of any of the work undertaken under the terms of this application and the permit or permits which may be granted in response thereto, and that all of said liabilities are hereby assumed by the applicant. It is further agreed that if any facilities placed in the excavation or obstruction for which this application is granted and approved as a permit, shall become incompatible with future level by the general public, then the applicant or its assigns or successors will, either remove such facilities in cases where such removal is necessary or in cases where the use thereof has been or is to be abandoned, or in other cases, applicant or its assigns or successors, will relocate such facilities at a location designated by the Commissioner, as provided in Section 30 and 30.1 of Ordinance No. 1481 of the County of Santa Barbara.
 The provisions of the foregoing sentence shall not apply in any case where the easement for the facilities was in existence prior to the existence as such of the public highway concerned herein.

DESCRIPTION OF ENCROACHMENT:

This Road Encroachment Permit is for a legal non-conforming carport to remain within the County's Right-of-Way on Evans Ave in Summerland, CA. Summerland Association has granted permission for this encroachment to remain in place given that it is returned to its prior condition, per the attached letter dated July, 25, 2008 from Mary L. Holzhauer, secretary for the Summerland Association.

NOTE: County reserves the right to ask the Owner/Permittee to remove this encroachment at any time. Owner/Permittee shall be responsible for the cost & contracting for any and all removals upon 30 day written notice to the property owner for removal. Owner/Permittee agrees that this encroachment shall be maintained in perpetuity and this agreement shall run with the ownership of the land. The current Owner/Permittee shall disclose this requirement to any future buyers/owners.

I E: All work of this permit shall be in accordance with the attachments and the applicable sections of the Santa Barbara County Road Division Encroachment Permit Requirements including the County Engineering Design Standards and latest revisions, and latest edition of the Caltrans Design Standards.

Location of Encroachment: 2200 BANNER AV, SUMMERLAND 93108 - CROSS STREET: ()

APN # 005-133-228 U.S.A. # _____ Tract # _____ File # _____

Contractor _____ Bldg. Permit # _____

Contractor Phone _____ Start Date _____

Permit Received By: _____

Signed: [Signature] Date: 8/7/08

Business Address 1115 COAST VILLAGE RD

City, State Zip MONTECITO, CA 93108

Phone (805) 565-2288

Attachments Yes No _____

Approved: [Signature] Date: 8-7-08

Work indicated on this permit is complete and acceptable.

Inspector _____ Date _____

Issuance Fee	\$68.00
Inspection Fee	\$296.00
Plan Check Fee	
Pavement Cut Restoration Fee	
Restoration Bond Deposit	
	\$364.00
Bond No:	TOTAL FEES

Most recent Receipt:
 Receipt, Check No: _____

CASH _____ CHECK _____

Paid to Date (all receipts) _____

RECEIVED

JUL 31 2008

Page 1 of 1



County of Santa Barbara
Department of Public Works, Road Division Permit Office
4417 Cathedral Oaks Road
Santa Barbara, CA 93110

Road Encroachment Permit Application

Permit No. 040127

PART I - PERMIT APPLICATION DATA

JOB ADDRESS: 2200 Banner Ave., Summerland APPLICATION DATE: 7/29/08

APN: 005-133-2288 Lot No. _____ Tract No. _____

TYPE OF WORK: Road Encroachment Permit on Evans Ave of CARPORT (new)

APPLICANT INFORMATION

Name: Tom V. Smith E-mail address: SORRELL587@CS.COM
 Check one: Owner Authorized Agent (if not owner, please complete Part II on back)

Mailing Address: 1115 Coast Village Rd Montecito CA 93108

Telephone: (Day) 565 2288 (Night) 562 8868 (Cell/Fax/Pager) _____

OWNER INFORMATION

Owner: Reid & Christina Tracy

Telephone: (Day) _____ (Night) _____ Pager _____
 (Cell) 858 229 0029 (Fax) _____ E-mail _____

Mailing Address: 3535 Fortuna Ranch Rd., Encinitas CA. 92029

GENERAL CONTRACTOR INFORMATION

Company Name: _____

Company Representative: _____ State License No.: _____

Telephone: (Day) _____ (Night) _____ (Pager) _____
 (Cell) _____ (Fax) _____ E-mail _____

Address: _____

Worker's Comp. Insurer: _____ Exp. Date: _____

SUBCONTRACTOR OR GRADING/EXCAVATING CONTRACTOR INFORMATION

Company Name: _____

Company Representative: _____ State License No.: _____

Telephone: (Day) _____ (Night) _____ (Pager) _____
 (Cell) _____ (Fax) _____ E-mail _____

Address: _____

ARCHITECT/ENGINEER

Company Name: Tom V. Smith, Architect

Company Representative: _____ Registration No.: C27736

Telephone: (Day) 565 2288 (Night) 562 8868 (Pager) _____
 (Cell) _____ (Fax) 565 2285 E-mail SORRELL587@CS.COM

Address: 1115 Coast Village Rd, S.B. CA 93108

PART II
PROPERTY OWNER (PERMITTED) AUTHORIZATION

(Please complete this section only if owner is not the applicant)

I/We Reid & Christina Tracy authorize and give consent to Tom V. Smith to act as my/our authorized agent to apply for, sign, and receive in my/our behalf, a Road Division Encroachment/Excavation Permit. I/we understand that as the legal property owner where the encroachment/excavation is to take place, that I/we are responsible and liable for all actions, costs, and liabilities associated with this Encroachment/Excavation Permit.

Signature

7/29/08
Date

STATE OF _____
COUNTY OF _____

Notarization not Required

On _____, before me, a Notary Public in and for said County and State, personally appeared _____, known to me or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and Official Seal _____

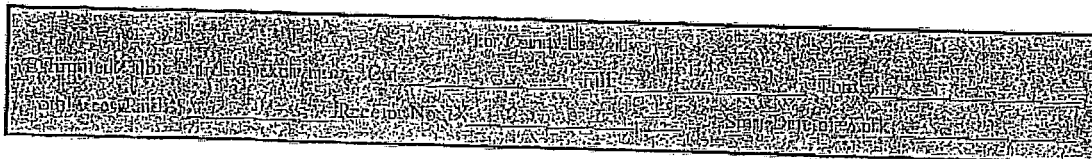
PART III
Signature Block

Tom V Smith
(Print Name) hereby make application to excavate and/or encroach in the Public Road/

Right-of-Way at the location(s) and as described herein, subject to the provisions required by Ordinance No. 1491, of Santa Barbara County, applicable State or Federal Regulations, AND ANY SPECIFIED REQUIREMENTS ATTACHED HERETO.

It is agreed by the applicant that the County of Santa Barbara and any officer or employee thereof shall be saved harmless by the applicant from any liability or responsibility for any accident, loss or damage to persons or property, happening or occurring as the proximate result of any of the work undertaken under the terms of this application and the permit or permits which may be granted in response thereto, and that all of said liabilities are hereby assumed by the applicant.

Signed: Tom V Smith Date: 7/29/08



ORIGINAL

*Summerland Citizens Association
Architectural Committee
P.O. Box 508
Summerland, CA 93067*

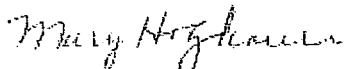
July 25, 2008

Andrew Dudley
Public Works Department (Roads)
County of Santa Barbara
105 E. Anapamu St.
Santa Barbara, CA 93101

Dear Mr. Dudley,

Our committee has considered Tom Smith's design for the Tracy residence at 2200 Banner St. Summerland.. We will approve the encroachment of the parking structure into the right-of-way if it is taken back to its original design as a carport (not the garage it became). If you have any questions, please call me at 565-3751 or the chairman, Jeff O'Neil, at 969-1971.

Sincerely,



Mary L. Holzhauser
Secretary

cc: Sarah Clark, Planner



**County of Santa Barbara
Department of Public Works, Road Division Permit Office**

4417 Cathedral Oaks Road
Santa Barbara, CA 93110
Telephone: (805) 681-4990
Fax: (805) 681-4990

620 W. Foster Rd
Santa Maria, CA 93455
Telephone: 805 739 8750
Fax: 805 739 8753

REQUIREMENTS FOR ROAD DIVISION ENCROACHMENT PERMIT NO. 040127

Reid & Christina Tracy, OWNER

2200 Banner Avenue, Summerland, CA

This Road Encroachment Permit is for a legal non-conforming carport to remain within the County's Right-of-Way on Evans Ave in Summerland, CA. Summerland Association has granted permission for this encroachment to remain in place given that it is returned to its prior condition, per the attached letter dated July, 25, 2008 from Mary L. Holzhauser, secretary for the Summerland Association.

NOTE: County reserves the right to ask the Owner/Permittee to remove this encroachment at any time. Owner/Permittee shall be responsible for the cost & contracting for any and all removals upon 30 day written notice to the property owner for removal. Owner/Permittee agrees that this encroachment shall be maintained in perpetuity and this agreement shall run with the ownership of the land. The current Owner/Permittee shall disclose this requirement to any future buyers/owners.

NOTE: Any additional work beyond the scope on the face of this permit shall be reviewed by the Road Encroachment Office.

**ALL WORK SHALL BE IN CONFORMANCE WITH THE MOST CURRENT
COUNTY OF SANTA BARBARA ENGINEERING DESIGN STANDARDS AND
CALTRANS TRAFFIC CONTROL PROCEDURES.**

PEDESTRIAN AND BICYCLE SAFETY SHALL BE OBSERVED AT ALL TIMES.



Planning and Development Department

MEMORANDUM

TO: Planning Commission

FROM: Sarah Clark, Planner

CC: Dave Ward, Deputy Director, DRS
Peter Imhof, Supervising Planner, DRS

DATE: June 16, 2009

RE: Nantker Appeal of Tracy Addition
09APL-00000-00001; 09APL-00000-00005
08MOD-00000-00006; 08CDP-00000-00032

Recommendation and Procedures

Follow the procedures outlined below and approve Case Nos. 08MOD-00000-00006 and 08CDP-00000-00032, marked "Officially Accepted, County of Santa Barbara July 8, 2009, County Planning Commission Attachment A-H," for the project based upon the project's consistency with the Comprehensive Plan, the Coastal Land Use Plan, and Article II, and the ability to make the required findings.

Your Commission's motion should include the following:

1. Adopt the required findings for approval of the project, Case Nos. 08MOD-00000-00006 and 08CDP-00000-00032, specified in Attachment A of this staff report, including CEQA findings;
2. Accept the exemption, included as Attachment B, pursuant to CEQA Guidelines Sections 15305(a) and 15301(e);
2. Deny the appeals, Case Nos. 09APL-00000-00001 and 09APL-00000-00005; and
3. Approve the project, Case Nos. 08MOD-00000-00006 and 08CDP-00000-00032, subject to the Conditions of Approval in Attachments C and D.

Alternatively, refer back to staff if the County Planning Commission takes other than the recommended action for appropriate findings and conditions.

Project Description

At the request of the Planning Commission, the applicant has revised the proposed project in order to remove new footprint area from the rear setback. The revised Modification project description reads:

Modification to allow a 364 square foot second story addition to encroach 4.5 feet into the required 25-foot rear yard setback and 1.5 feet into the required 10-foot secondary front yard setback. Under the associated CDP, 08CDP-00000-00032, the applicant also requests a 77 square foot first floor addition to be located outside of required setbacks, demolition of an unpermitted storage shed, removal of an unpermitted spa, and conversion of the garage back into its permitted carport configuration. Removal of four banana trees is proposed. No grading is proposed. The parcel will continue to be served by the Summerland Sanitary District, the Montecito Water District, and the Carpinteria-Summerland Fire District. Access will continue to be provided via a private driveway at the corner of Banner Avenue and Evans Avenue. The property is a 0.07-acre parcel zoned 10-R-1 and shown as Assessor's Parcel Number 005-133-058, located at 2200 Banner Avenue in the Summerland area, 1st Supervisorial District.

The CDP project description now reads:

Coastal Development Permit for a 364 square foot second floor addition that encroaches 4.5 feet into the required rear yard setback and 1.5 feet into the required secondary front setback (permitted under 08MOD-00000-00006), a 77 square foot first floor addition, demolition of an unpermitted storage shed, removal of an unpermitted spa, and conversion of the garage back into its permitted carport configuration. Removal of four banana trees is proposed. No grading is proposed. The parcel will continue to be served by the Summerland Sanitary District, the Montecito Water District, and the Carpinteria-Summerland Fire District. Access will continue to be provided via a private driveway at the corner of Banner Avenue and Evans Avenue. The property is a 0.07-acre parcel zoned 10-R-1 and shown as Assessor's Parcel Number 005-133-058, located at 2200 Banner Avenue in the Summerland area, 1st Supervisorial District.

Article II Consistency

Per Article II, Section 179.2.3, Modifications may not reduce the required front, side, or rear yard setback area by more than 20 percent of the minimum setback area required in compliance with the applicable zone regulations, and may not result in a rear yard setback depth from property lines of less than 15 feet, a front yard setback depth of less than 16.5 feet, or a side yard

setback depth of less than three feet. With the proposed revision, all new second story setback encroachments will be located on top of existing permitted structures. No new building coverage inside the required setbacks is proposed. The second story addition would be located 20.5 feet from the rear property line, in compliance with the 15-foot minimum setback requirement.

The Modification section of the ordinance does not address minimum setback requirements for secondary front setbacks. In this case, the required secondary front setback (10 feet from right-of-way) per Article II, Section 35-126.2.a is less than the minimum setback allowed with a Modification (16.5 feet from right-of-way), which applies to primary front setbacks. Therefore, encroachments into the secondary front setback should be treated as side setback encroachments. The proposed project will not encroach any farther into the secondary front setback than the existing, permitted development on the first floor. The encroachment is consistent with the three-foot minimum side yard setback requirement allowable with a Modification and would not create any new building coverage in the secondary front setback area. The proposed project is therefore consistent with zoning requirements, including the intent of the Modification requirements specified in Section 179.2.3.

Design Review

The project received revised preliminary approval from the SBAR on June 5, 2009. The following comments were recorded in the unapproved SBAR meeting minutes:

- *Modifications made are not significant enough to vary from previous approval. The project is quirky and fits into Summerland.*
- *Simplify railing on second floor by returning to previous approval.*
- *SBAR prefers a grey roof.*
- *Project received preliminary approval with the condition that the roof material be grey.*

Attachments

The following revised attachments are included:

- A. Findings
- B. Notice of Exemption
- C. Conditions of Approval of 08MOD-00000-00006
- D. Conditions of Approval of 08CDP-00000-00032
- E. Site Plan