

STAFF REPORT
SAUSALITO PLANNING COMMISSION

Agenda Item Number 3

PROJECT: 2 Alexander Avenue
Variance and Design Review Modification Application No.
VAM/DRM 07-002
APN 065-303-05 & 065-303-20

MEETING DATE: October 10, 2007

STAFF: Sierra Russell, Associate Planner

APPLICANT: Don Olsen and Associates

PROPERTY OWNER: Ed Fotsch

REQUEST

Applicant, Donald Olsen, on behalf of property owner Ed Fotsch, requests Planning Commission approval to modify Variance and Design Review Application No. VA/DR 03-26 and DRM 06-070 for the property at 2 Alexander Avenue to legalize an additional one foot projection of the exterior stairway into the required side-yard setback. The applicant is also proposing a modification to Design Review Modification Application No. 06-070 in order to include a bathroom in the den of the approved under floor area. The as-built dimensions of the constructed structure increase the site's building coverage and floor area by 0.5% and 0.9% respectively to 43% and 49.8%.

REGULATORY FRAMEWORK

Zoning: R-2-2.5 (Two-Family Residential)

General Plan: Medium High Density Residential (up to 17.4 DU/acre)

Special Regulations: Variance Findings (10.68.050)
Design Review Findings (10.54.050)

CEQA: Categorically Exempt pursuant to CEQA Section 15301 (e)

Required Permits: Variance Modification
Design Review Permit Modification

EXISTING SETTING

Neighborhood The neighborhood consists primarily of single and two-family structures as allowed by zoning.

Subject Parcel The parcel is steeply sloped downhill from Alexander Avenue. The parcel is the first property upon entering Sausalito from Alexander Avenue. It is bordered by Golden Gate National

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Recreation Area (GGNRA) land owned by the National Park Service to the south, San Francisco Bay to the east, 6 Alexander to the north, and Alexander Avenue to the west.

PROPERTY BACKGROUND

The subject project has been reviewed by the Planning Commission during a variety of public meetings since its original approval for a Variance and Design Review Permit to enlarge an existing 2-car garage to accommodate 4 cars and the construction of a new exterior stairway. The following is a timeline of the project's history that led to the most recent submittal for a Variance modification:

- **November 5, 2003** – The Planning Commission adopted Resolution 2003-51 (Attachment B, Exhibit 1) approving application VA/DR 03-26 for a variance, design review permit, and encroachment permit after considering the project during two public meetings on August 6, 2003 and October 22, 2003. The project required Planning Commission approval of a Variance for projections into the side yard and special front yard setbacks and an encroachment permit for improvements in the public right-of-way.
- **November 8, 2006** – The Planning Commission adopted a Resolution of Denial Without Prejudice (Resolution No. 2006-44, 17) after considering requested Design Review modifications for the 2 Alexander project on May 10, 2006, June 7, 2006, and October 25, 2006. The requested modifications included new trellis features encroaching into the front and side yard setbacks, a new security gate, a new balcony area above the new roof adjacent the elevator shaft, and new windows and doors that would convert the under floor area of the garage, which was administratively approved in 2004, into habitable space. As summarized in the meeting minutes of October 25 and November 8, the findings for denial focused on the additional encroachments into the 10-foot special front yard setback which the Commission considered would constitute self-created hardships. Other findings listed in the resolution of denial included concerns with over intensification of use, traffic, slope stability and geotechnical issues.
- **March 14, 2007** - Because the resolution of denial was granted without prejudice, the applicant revised the plans to address the Commission's concerns and returned to the Commission requesting Design Review modifications (Application No. DRM 06-070). The Commission approved the Design Review modifications, as listed in Resolution No. 2007-08 (Attachment B, Exhibit 1), which included the addition of new habitable floor area beneath the garage and the installment of an 8.5 foot high security fence directly below the landing of the garage.
- **March 22, 2007** - An appeal of the Planning Commission's approval of DRM 07-060 was filed by Ian Moody, the downhill neighbor located at 8 Alexander Avenue.
- **June 19, 2007** – The appeal was denied and the Planning Commission decision was ultimately upheld by the City Council after deliberations on May 15, 2007, June 12, 2007, and June 19, 2007. One of the outcomes of the series of meetings was additional conditions of approval addressing the Moody's concerns, including a one-year time limit for the construction activities associated with the project and penalties if the time limit is not met (Conditions 22 and 23, City Council Resolution No. 4907, Attachment B, Exhibit 1).
- **July 24, 2007** – It came to the attention of the Community Development Department that the garage was built one foot wider than indicated on the approved building

permit plans, which resulted in an additional one foot projection of the exterior stairway into the side-yard setback.

- **July 31, 2007** – The City determined the discrepancy of the additional projection would require approval of a modification to the originally approved Variance (Application No. VA/DR 03-26). The City issued a Stop Work Order for construction associated with the project and requested that the property owner submit a request for a Variance modification.
- **August 17, 2007** – The applicant submitted a Variance modification request to legalize the discrepancies of the as-built structure from the approved plans. Concurrently with the Variance modification request, the applicant filed a Design Review modification request to add a bathroom in the under floor area.

DESCRIPTION OF MODIFICATIONS

The modifications being presented to the Commission are to amend two previously approved applications for a Variance and Design Review Permits (Applications No. VA/DR 03-26 and DRM 07-060) and include the following:

- 1) Modifications that resulted from discrepancies between the as-built structure and the approved plans, which include an enlarged structure with additional floor area and building coverage and an additional 1' side-yard setback projection.

On July 24, 2007, the Building Inspector, Kenneth Henry, and previous Community Development Director, Paul Kermoyan, inspected the 2 Alexander project to determine the project's compliance with the approved building permit plans. Mr. Henry and Mr. Kermoyan's measured dimensions of the as-built structure (Exhibit 3) determined that the garage was constructed 16" wider and the exterior stairway 4" narrower, resulting in an additional 1' structural projection into the side-yard setback. Given that previously approved Variance granted a 4' projection into the side yard, and the additional projection would result in a 0' setback, Staff determined that the applicant would need to return to the Planning Commission for reconsideration of the Variance. Other deviations were found with the as-built structure, but were determined to be acceptable with demonstration that the building coverage and floor area satisfies the City's development standards. However, because Planning Commission review would be required for the deviations related to the Variance, the Planning Commission must consider all deviations related to the project.

- 2) Request for a bathroom with shower, sink, and toilet in the den area, which was previously approved with only a shower.

In addition to the Variance and Design Review modifications described above, the applicant is requesting to add a bathroom in the den of the under floor area, where a shower was previously shown on the approved plans for Design Review Permit No. 06-070. This modification is also under the purview of the Planning Commission.

ANALYSIS

Compliance with Zoning Ordinance Development Standards

The applicant is requesting to legalize an additional 1' projection into the side-yard setback of the built garage structure. The following table summarizes the site development of the approved Design Review plans (as approved by the Planning Commission on March 14, 2007), versus the site development as was constructed. As shown in the table below, the as-built construction is compliant with Zoning Ordinance development standards, with the exception of the right side-yard setback that does not comply with the originally approved Variance and requires review by the Planning Commission.

	Approved	As-Built	Difference	Compliance
Parcel Area:	10,093 sq. ft.	No change	No change	Yes
Off-street Parking:	4 spaces	4 spaces	No change	Yes
Setbacks Left Side Yard:	0'	0'	No change	Legal Non-Conforming (5' min. required)
Right Side Yard:	1'	0'	1'	With Variance Modification Approval (5' min. required)
Garage Height:	35' 1"	35' 1"	No change	Yes*
Floor Area:	4,932 sq. ft. (48.9%)	5,028 (49.8%)	96 sq. ft. (0.9%)	Yes (65% max.)
Building Coverage:	4,292 sq. ft. (42.5%)	4,321 sq. ft. (43%)	49 sq. ft. (.5%)	Yes (50% max.)

*Permitted by the Zoning Ordinance regulations in place at the time the project was approved. SMC 10.203.1 (a)(5) states: "On the downhill side of a street, that portion of a building devoted to covering the off-street parking spaces may project above the 32 foot required height limit subject to the following conditions: a) the overall height of the structure and all appurtenances does not exceed 40 feet, and b) the portion of new proposed structures exclusive of covered parking not exceed the 32 foot height limit.

Structural Safety

Neighbor concerns have been raised regarding whether the garage structural remain structurally safe under the original engineering design and calculations with the enlarged projection. The project's Structural Engineer reviewed the project on September 11, 2007, and found that the variance from the as-built plans and the original plans do not represent an issue from a structural standpoint (Exhibit 4). The City Engineer also reviewed the Structural Engineer's letter and the original structural calculations and concurred that the as-built structure is structurally safe under the approved engineering design and calculations. Thus, City staff believes that structural safety is not compromised with the additional one foot projection.

Views

Design Review permit findings require analysis that "The proposed project has been located and designed to minimize obstruction of public views and primary views from private property (SMC § 10.54.030.(D).4). Uphill view obstructions were not found to be a major concern in either of the previously approved Design Review Permits. As stated in the staff report dated October 22, 2003 (Attachment B, Exhibit 1), "Staff does not anticipate this

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proposal to significantly impact the provision of light and air to the surrounding residences." However, the Commission did express concern with public view obstructions along Alexander Avenue during their initial project review of the garage expansion. During the November 5, 2003 Planning Commission meeting (page 14, Exhibit 19), the Commission determined that the removal of Eucalyptus trees proposed as part of the project would compensate for any view obstructions from the expanded garage, which allowed the Commission to make the findings that views would not be adversely impacted.

Additionally, staff has visited the site to determine the impacts to public and private views from the additional 1' projection. The portion of the structure that is visible from Alexander Avenue is the garage and a portion of the stairway planter; the stairway itself is not visible as it is behind the concrete wall along the roadway. The attached photo illustrates the additional one foot projection of the garage structure (Exhibit 5). Staff believes the change does not appear to adversely impact views from the roadway, and appears to constitute a minor deviation from the approved design. Views uphill from the easternmost portion of the property, where downhill properties are located, also do not appear to be adversely affected (Exhibit 6). Given that the closest residential structure located downhill is approximately 85' from the garage structure, an additional foot would constitute a minimal change in views uphill. Based on this site analysis and from reviewing previous staff reports, staff believes the findings of the originally Design Review Permit can be upheld with the proposed modifications, and that the additional foot does not appear to negatively impact public or private views.

Concerns with a "Piecemeal Process"

The Commission is being presented with a request for a Variance and Design Review modification, which requires that the Commission assess the project changes' compliance with the original Design Review and Variance approvals. Addressing the policy question as to whether the Commission should grant retroactive approvals entails a policy discussion that staff believes is outside of the scope of the Variance and Design Review modifications in question and has a broader reaching impact than to the subject project. The Commission discussed the policy issue of retroactive approvals during the March 14, 2007 meeting (pages 44-46, Exhibit 19). Ultimately, the Commission felt the issue should be addressed at the City Council level. The Commission deliberated on the required Design Review findings and approved the proposed project modifications. Staff also addressed this policy issue in the May 15, 2007 staff report presented to the City Council for the appeal filed (page 4-5, Exhibit 19). In response to concern with after-the-fact approvals and prolonged construction projects, the Council imposed a one-year timeline as a condition of approval for the project, with administrative penalties if the timeline is not met. As indicated in the attached draft resolution, this timeline and all other conditions of approval of Resolution No. 4907 will remain valid if the modifications are approved.

Bathroom Modification

The applicant is requesting to modify Design Review Application No. DRM 06-070 (approved by the Commission on March 14, 2007) to add a bathroom in the den area. In the staff report for this meeting, staff mentioned that a proposed shower is located in the floor area, but that there is no indication that a bathroom or kitchen is proposed. Staff presented the possibility of including a condition that any bathroom facilities and "220" electrical, or gas lines, be removed. However, the Commission at the time did not express concerns with the bathroom

and did not attach such a condition. The applicant is now requesting to create a bathroom where the original shower was located.

During the March 14, 2007 meeting, there was discussion regarding the potential of converting the under floor area into a second unit. At the time, Staff clarified that the R-2-2.5 zoning of the property, and the presence of four off-street parking spaces would allow for a second unit on the property, however the applicant was not requesting a second unit. Pursuant to Zoning Ordinance definitions, second dwelling units contains complete independent living facilities that include provisions for living, sleeping, eating, cooking, and sanitation on the same parcel (Zoning Ordinance § 10.88.040). The den and game room area do not contain a kitchen, and thus would not constitute a second dwelling unit. To address concerns with creating an unpermitted second unit, the following condition of approval has been incorporated into the draft resolution:

"Gas systems, "220" electrical premise wiring, and any other premise wiring, except one (1) 20 amp branch circuit serving the bathroom receptacle, shall not be installed in the under floor unless otherwise approved by obtaining the necessary permits from the Community Development Department."

The Commission should consider whether said condition is necessary to ensure a second unit is not created without the necessary permits.

National Park Service Review

On August 23, 2007, staff forwarded the proposed modifications to the National Park Service (NPS) for their review. NPS had previously reviewed the application on March 11, 2003 (Exhibit 7), and had requested that a minimum 1' setback be maintained along the portion of the project adjacent to the Golden Gate National Recreational Area (GGNRA). NPS initiated their own project review in order to investigate their concerns related to encroachments onto GGNRA lands, drainage, and fencing.

Staff has continuously discussed the modifications with NPS staff throughout the processing of the application. NPS staff has indicated their main concerns are related to additional drainage from the enlarged structure, the need for fencing along the GGNRA boundary at 2 Alexander Avenue, and the need to identify any potential encroachments into GGNRA lands. Most recently on October 4, 2007, NPS staff indicated they are in the process of investigating the encroachments onto GGNRA lands and resolving the installation of the requested fencing with the owner. NPS staff clarified their concerns are related to improvements along the property line, and that improvements related to the completion of the garage and under floor area are not of concern. Staff anticipates a letter summarizing NPS project review and conditions will be forwarded to the City in the coming week. Should the Commission approve the Variance and Design Review modifications, a condition of approval has been included in the draft resolution that the property owner shall comply with all National Park Service requested conditions.

Updated Site Survey

The applicant submitted updated survey information to verify the location of the enlarged structure (Exhibit 8). The Surveyor located the property boundaries using the Record of Survey filed with the County of Marin in 2003 (Exhibit 9). In order to identify the location of the property line, the surveyor set an orange line at a 2' distance from the property line. Staff measured the distance from the exterior face of the stairway to the orange survey line and found that the face

of the exterior stairway is located 6" to 6.5" from the property line, or 30" to 30.5" from the orange survey marker respectively. When using the dimensions shown on the approved building plans, the guardrail on the exterior stairway that is not yet installed would extend an additional 4" beyond the exterior face, and the drilled piers to support the structure extend 6" beyond wall face, thus creating a 0' setback for the exterior stairway. This measurement is consistent with the 1' discrepancy measured by staff on July 24, 2007.

In between the two stairways is located a planter wall that currently consists of an unfinished retaining wall that ranges approximately 1-3' in height, and appears to project onto GGNRA lands. As discussed above, NPS staff is currently investigating all potential encroachments, and a condition has been incorporated into the draft resolution that the owner shall comply with all NPS conditions.

A letter submitted by the owner's contractor summarizes an explanation of a potential construction error that may have caused the additional projection of the garage and exterior stairway (Exhibit 10). Based on this explanation, a reanalysis of the survey information shows that the parcel narrows by 1' towards Alexander Avenue as the southern property line projects in a northeasterly direction inwards from the bay to the street. According to the Contractor's statement, the control points that were set when the foundation was poured were set downhill in the wider portion of the parcel and then projected parallel to the northern property line uphill. The Contractor's oversight that the parcel narrowed by one foot along the western boundary thus could constitute the reason for the additional projection that occurred during the course of the project.

Analysis Summary

Staff's initial concerns with the project modifications were regarding issues related to compliance with Zoning development standards, structural safety, compliance with the National Park Service conditions, and compliance with the Variance and Design Review Permits No. VA/DR 03-026 and DRM 06-070 findings. With regards to the modifications associated with the project's approved Design Review permits, the additional floor area and building coverage and the new bathroom, staff believes the project remains compliant with the previously approved Design Review permits and findings. With regards to the Variance modification for the additional side yard setback projection, Staff believes the project remains compliant with the initial Variance findings if the applicant meets all conditions requested by the National Park Service. Staff has prepared a draft resolution of approval stating that the previous project approvals shall remain valid and the conditions of approval shall remain in full force and effect. Additional conditions have also been incorporated in the draft resolution to address compliance with previous approvals, National Park Service conditions, and Zoning Ordinance standards for second units.

The following summarizes staff analysis above:

- **Compliance with Zoning Ordinance development standards.** With the additional floor area and building coverage created from the enlarged as-built structure, the site remains compliant with all maximum permitted development standards for the underlying R2-2.5 Zoning District.
- **Additional Bathroom.** The proposed bathroom in the under floor area is a minor modification, but one that will require the approval of the Planning Commission. Staff believes the request could be granted with the condition that no gas systems or "220"

premise wiring be installed in the under floor area to prevent the creation of an unpermitted second unit.

- **Impacts to Public and Private Views.** The additional projection of the as-built structure does not appear to adversely impact public views. Neighboring properties located downhill are located at a distance far enough that an additional one foot projection would have a negligible impact to uphill view obstructions.
- **National Park Service Review.** The National Park Service is currently investigating the potential encroachments onto GGNRA lands and resolving the installation of the requested fencing with the owner. NPS staff has indicated their concerns are related to improvements along the property line. The attached draft resolution has conditioned the modifications on compliance with all NPS requested conditions.
- **Structural Safety.** The City Engineer and project Engineer reviewed the modifications resulting from the as-built discrepancies from the approved plans and both found that the as-built structure is structurally safe under the approved engineering design and calculations.
- **Site Survey.** An updated site survey indicates the garage structure and exterior stairway are located within and adjacent to the southern property boundary of 2 Alexander Avenue. An unfinished retaining wall not structurally inherent to the stairway has been identified to potentially encroach onto GGRNA lands, to which the NPS is investigating. A statement submitted by the owner's contractor states that further analysis of the survey coordinates render the possibility that a construction error occurred during the pouring of the foundation, when control points were inaccurately set downhill on the portion of the property that widens slightly by 1'.
- **Drainage.** Although not discussed in the analysis, drainage has been a continuous concern with the 2 Alexander project. Previous project approval for the under floor area required that the applicant submit necessary drainage plans and other improvement plans for all unpermitted work constructed on the property, prior to final project approval, including for the garden retaining walls (Condition 12, Resolution No. 4907). The attached draft resolution of approval is conditioned that this requirement, and all other project conditions of approval shall remain in full force and effect should the modifications be approved. The applicant shall be required to follow through with more thorough drainage analysis and the development of refined drainage plans for all property improvements.

GENERAL PLAN CONSISTENCY

The Planning Commission must examine the proposal for consistency with the General Plan. Staff believes the project remains consistent with General Plan policies as described in the October 22, 2003 and March 14, 2007 staff reports in which the project was previously approved. The following is additional explanation of the project modifications' General Plan consistency:

Program LU-1.10.1. Zoning Ordinance (Setbacks). Consider amending the zoning ordinance to provide a new mechanism for flexibly implementing setback requirements.

The General Plan takes into consideration difficulties to design within the development standards of many residential neighborhoods due to the prevalence of irregularly shaped parcels and because many properties were developed prior to adoption of the Zoning Ordinance in 1963. The Variance approved for 2 Alexander in 2003 recognized that there were exceptional circumstances

that applied to the property that would present an unnecessary hardship, attaining access through an efficient means of entry and exit to the property.

Policy CD 1.3: Neighborhood Compatibility – Provide that all new residential structures, all residential structures that are to be removed and replaced, and those structures to be significantly remodeled, are designed to complement their setting and the other buildings in the neighborhood.

The remodel at the subject property is consistent with the neighborhood and the additional 1' projection does not compromise the structure's compatibility with the setting and other buildings in the neighborhood. All exterior materials and the overall architectural style have been maintained as were approved and are consistent with the style of homes in the area.

Policy CD 3.1: Private Views – Locate and design new and significantly remodeled structures and landscape improvements so as to minimize the interference with primary views from structures on neighboring properties. Some minor loss of view may be consistent with this policy if necessary to protect a property right.

The additional 1' projection does not increase the view obstructions from surrounding properties or public streets. Private and public view obstruction was found to be minimal in the previously approved Variance and Design Review Permits, and the modification with an increased 1' projection does not affect these findings.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This project is categorically exempt from environmental review pursuant to Section 15301 (e) [Existing Facilities] of the California Environmental Quality Act (CEQA), as the addition or remodel of an existing under floor area of a garage which does not involve an increase of more than 50% of the addition or 2,500 square feet.

PUBLIC NOTICE AND FEEDBACK

Notice: Ten (10) days prior to the hearing date, notice of this proposal was posted on site and was mailed to residents and property owners within 300 feet of the subject parcel.

Written Feedback: As of this writing of the staff report, staff has received one letter of support for the project (Exhibit 14). A letter requesting continuance of the project has also been received (Exhibit 15).

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STAFF CONCLUSIONS

Staff Recommendation: Staff believes that the proposed application for a Variance modification meets the requirements of the Sausalito Municipal Code and is consistent with the goals and objectives of the General Plan. Staff believes that all necessary Variance and Design Review findings can be made as they were previously in Resolution No. 2003-51 and Resolution 2007-08, and recommends that the Planning Commission adopt the attached draft resolution of approval. Additionally, the Planning Commission may:

1. Approve the application with modifications;
2. Continue the application for additional information and/or project revisions; or
3. Deny the application and direct Staff to return with a Resolution of Denial.

EXHIBITS

A. VAM/DRM 07-002 Materials Attached to the Staff Report

1. Resolution of Approval Approving Application No. VAM/DRM 07-002 with Attachment A – Plans and Elevations and Attachment B – Project Resolutions in Effect: Planning Commission Resolutions No. 2003-51 (with October 22, 2003 staff report incorporated) and 2007-08, and City Council Resolution No. 4907
2. Vicinity Map
3. Dimensions of garage as-built structure measured by staff on July 24, 2007
4. Letter from Structural Engineer, SAABCO Consulting Inc., dated September 11, 2007
5. Photo illustrating public view of garage along Alexander Avenue
6. Photo illustrating view from easternmost (downhill) point of the 2 Alexander property
7. Letter from NPS, dated March 11, 2003
8. Corner Record with description of Survey points filed with Marin County on August 27, 2007
9. 2003 Survey filed with Marin County
10. Letter from 2 Alexander project Contractor, dated September 14, 2007
11. Property Owner statement submitted to National Park Service, dated September 22, 2007
12. Letter from Liz Ponzini regarding NPS restoration efforts, dated April 18, 2005
13. Letters from the property owner and applicant dated August 8, 2007 and September 6, 2007
14. Letter from Dennis Fecteau, neighbor at 12 Alexander Avenue, dated October 3, 2007
15. Letter from Michael Rex, Architect, dated October 3, 2007

**THE FOLLOWING MATERIALS WERE SUBMITTED ELECTRONICALLY TO THE
PLANNING COMMISSION AND ARE AVAILABLE WITH THE COMMUNITY
DEVELOPMENT DEPARTMENT UPON REQUEST:**

B. Staff Reports

- 16. October 25, 2006 and November 8, 2006 Staff Reports, and Resolution No. 2006-44
- 17. March 14, 2007 Planning Commission Staff Report without attachments
- 18. May 15, 2007 City Council Staff Report (Appeal) without attachments

C. Minutes

19. Planning Commission Meetings

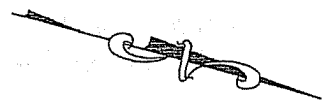
- August 6, 2003
- October 22, 2003
- November 5, 2003
- May 10, 2006
- June 7, 2006
- October 25, 2006
- November 8, 2006
- March 14, 2007

20. City Council Meetings

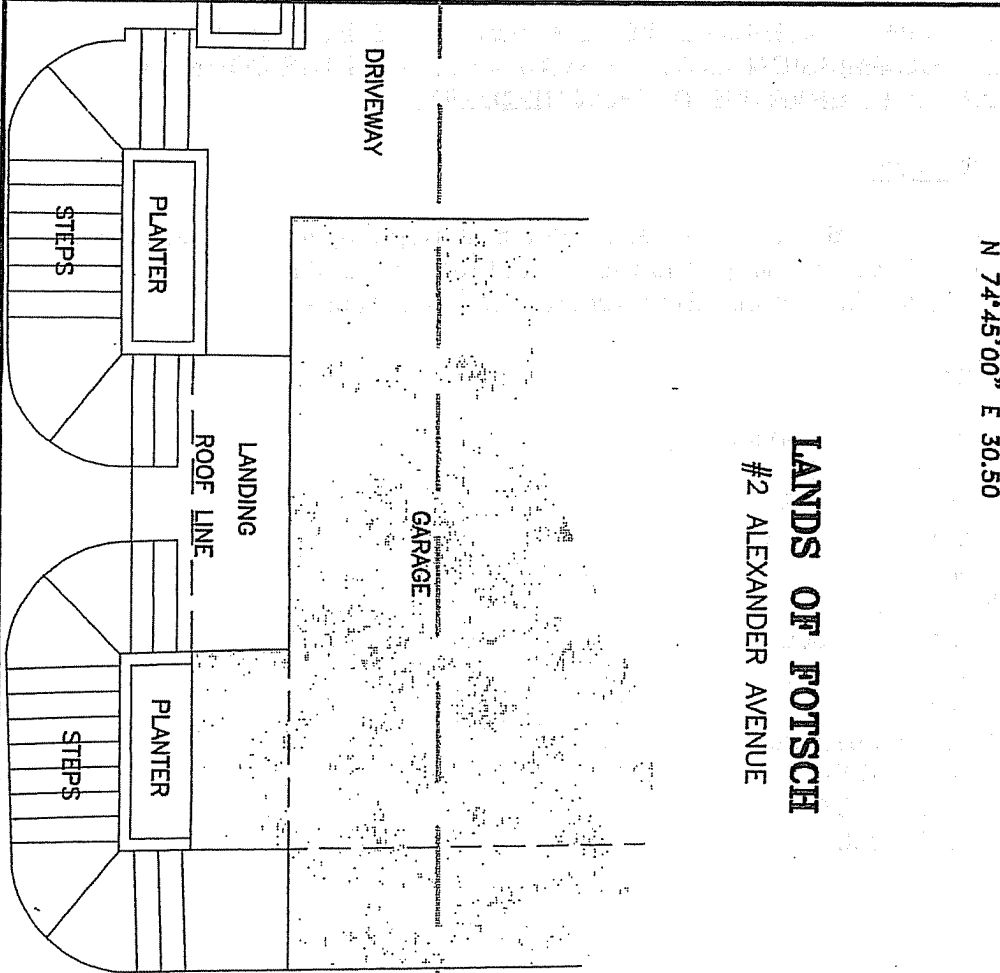
- May 15, 2007
- June 12, 2007
- June 19, 2007

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ALEXANDER AVENUE



N 15°11'42" W 41.50



LANDS OF FOTSCH
#2 ALEXANDER AVENUE

N 74°45'00" E 30.50

7.00

N 15°15' W

N 74°45'00" E 20.00

N 75°05'29" E 193.47

BOUNDARY LINE (TYPE)

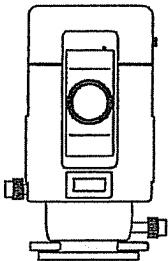


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CITY OF SAUSALITO
COMMUNITY DEVELOPMENT

NEW STAIRWAY DIAGRAM



LANDS OF FOTSCH

#2 ALEXANDER AVENUE

SAUSALITO, CALIFORNIA

DAVID HARP & ASSOCIATES
PROFESSIONAL LAND SURVEYORS
101 FLORIBEL AVENUE SAN ANSELMO, CALIFORNIA 94960
(415) 453-7624

SCALE 1" = 8'

DATE 10-30-07

DRAWN BY D.H.

APPROVED BY D.H.

DRAWING No. H1092

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United States Department of the Interior

NATIONAL PARK SERVICE
Golden Gate National Recreation Area
Fort Mason, San Francisco, California 94123

IN REPLY REFER TO:
D18 (GOGA-BMD)

October 10, 2007

Sierra Russell, Associate Planner
City of Sausalito Community Development Department
420 Litho Street
Sausalito, CA. 94965

Re: Variance 2 Alexander Avenue, Sausalito

Dear Ms. Russell:

The National Park Service (NPS) is writing regarding the request from the City of Sausalito (City) for comment to the proposed modification of the variance adopted by the City Planning Commission in Resolution 2003-51 dated November 5, 2003 (Variance). In March 2003, NPS issued a letter conditionally supporting a request from Dr. Edward Fotsch, the resident at 2 Alexander Avenue, to a proposed variance from the City building code to permit a one foot setback from our mutual property line for a stairway and garage remodel project (Project). In August 2007, NPS was notified by the City of a proposed Variance modification to approve the Project as-built within the one foot setback. At your request, NPS has reviewed the Project record including the as-built site conditions for conformance with the NPS letter conditionally supporting the Variance dated March 11, 2003 (NPS Conditions Letter).

NPS has determined that the Project is out of compliance with the NPS Conditions Letter. The Project was constructed without the installation of a temporary fence placed along the surveyed property boundary line resulting in Project construction within the one foot minimum setback. As a result, substantial construction activity took place on NPS lands, including project staging and the construction of a temporary stairway. Based upon the recently placed survey line located two feet away from the property boundary, it appears that a concrete planter and the stairway's underground footings may be encroaching onto NPS land. NPS has contacted Dr. Fotsch to schedule a walkthrough with his surveyor and contractor later this month to jointly inspect the boundary and verify a possible encroachment onto federal land. NPS believes these Project defects were preventable had the boundary been properly surveyed, marked, and fenced off prior to construction in conformance with the NPS Conditions Letter.

Consequently, NPS requests that the City not grant the requested modification to the Variance until these defects are brought into conformance with the NPS Conditions Letter including: (a) verification and removal of any encroachments on NPS land, (b) the removal of Project construction debris, temporary stairs and the restoration of disturbed surfaces on NPS property including installation of erosion control measures, and (c) the construction of a continuous permanent fence or equivalent ground level boundary marker along the surveyed boundary with the GGNRA. Upon completion of these

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corrections, NPS would support a modification of the Variance for Project construction up to the property boundary line. NPS has no objection to the City lifting the Project construction hold for work outside the minimum one foot setback from the property line set forth in the Variance.

The NPS works diligently to manage the resources of the Golden Gate National Recreation Area in accordance with our mission. The NPS values productive communications and relations with our partners and stakeholders. We have a good working relationship with our neighbor Dr. Fotsch and will cooperate to resolve our concerns in a timely manner. If you have any questions regarding this communication, please contact me at (415) 561-4971.

Thank you for your consideration in this matter.

Respectfully,



Paul Batlan
Realty Specialist

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SAABCO CONSULTING, INC.

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October 18, 2007

City Of Sausalito
420 Litho Street
Sausalito ca 94965

Re: Structural Engineering Services For
2 Alexander St.
Sausalito, Ca

Job # 03-136

Dear Dr. Fotsch and Mr. Olsen,

I have reviewed the structural drawings and site photos for 2 Alexander in relationship to the concrete planter on the south side of the new garage stairs. I understand that a portion of this planter extends over the property roughly 4" and should be removed or relocated fully on to your property. The most effective approach here would be to have a laborer jack hammer off the concrete from this planter leaving the existing rebar in place. You should then bend back this rebar, to the extent necessary to avoid the encroachment, and re-pour this planter using the same rebar. You may as an alternative remove the existing rebar and epoxy new rebar into the remaining grade beams, embedded a minimum of 8", using the original rebar specification, then re-pour the grade beam avoiding the encroachment.

I will inspect the revised rebar prior to pour if there are any questions. You should also photograph this rebar prior to pour for your records. Please let me know if you have any questions.

If you have any questions please let us know.

Sincerely,



Mohammad R. Saaber P.E.



1263 ElCamino Real Suite I, Menlo Park, CA. 94025 Tel (650) 329-9219 Fax (650) 329-1943

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**2 Alexander Avenue
Barrier Rail Repair Plan**

Approximately three feet of the existing concrete and steel barrier rail was removed adjacent to the driveway at 2 Alexander Avenue. In order to seal and protect the exposed end of the concrete barrier and steel railing, contractor shall:

1. Fabricate and install a galvanized cap into the end of the steel railing after grinding away any areas of rust and painting the end with galvanizing repair paint; and
2. Chip or grind back the areas of concrete immediately surrounding exposed rebar in the cut concrete wall exposing a minimum of 2" of rebar; and
3. Cut the exposed rebar back and use epoxy or other similar product to seal the exposed portions of cut rebar; and
4. Pack the areas of concrete that were chipped or ground back to expose the rebar with mortar creating a smooth finish; and
5. Chamfer the vertical edges of the concrete to match the existing horizontal edges thereby removing the existing 90° exposed edges; and
6. Seal all cut or chamfered concrete surfaces with ARDEX Concrete Guard sealer, available at White Cap Construction Supply, or similar product; and
7. Coat the exposed end of the concrete with stucco (optional) and;
8. Submit photographs documenting the above to the Golden Gate Bridge Highway and Transportation District upon completion of the work via email to:
 - a. Norma Jellison; njellison@goldengate.org
 - b. John Eberle; jeberle@goldengate.org

This work will be completed within 90 days of receiving our currently pending building permit from the City of Sausalito.


Edward Fotsch, MD
Owner 2 Alexander Ave
Sausalito CA
415.332.8529

Joaquin Fritz
General Contractor
415.235.6865

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Sierra Russell

From: Norma Jellison [NJellison@goldengate.org]
Sent: Tuesday, November 06, 2007 1:30 PM
To: Ed Fotsch
Cc: Sierra Russell; Paul_Batlan@nps.gov; John Eberle; mailbox@fritzbuilding.com
Subject: RE: Plan for sealing concrete and rail at 2 Alexander Ave in Sausalito

Thank you for making the requested changes. The District is fine with the attached plan of action.

It would be appreciated if you and/or the City would notify us when the Building Permit is actually approved. That will give us some sense of when we might expect the repair to commence thereafter.

Do you have a sense of when the BP might be considered for approval?

Norma

Norma Jellison
Property Development & Management Specialist
Golden Gate Bridge Highway & Transportation District
1011 Andersen Drive
San Rafael CA 94901-5318
(415) 257- 4564
(415) 257-4516 fax
njellison@goldengate.org

From: Ed Fotsch [mailto:ed.fotsch@medem.com]
Sent: Monday, November 05, 2007 5:12 PM
To: Norma Jellison
Cc: srussell@ci.sausalito.ca.us; Paul_Batlan@nps.gov; John Eberle; mailbox@fritzbuilding.com
Subject: RE: Plan for sealing concrete and rail at 2 Alexander Ave in Sausalito

Thanks Norma, I have accepted all of John's changes to the document and added a commitment to have the work completed within 90 days of the issuance of the building permit now before the City of Sausalito. The document has a signature on it. Assuming that this meets requirements we will proceed as specified and look forward to completion. Thanks again, ef

Edward Fotsch, MD
2 Alexander Ave

From: Norma Jellison [mailto:NJellison@goldengate.org]
Sent: Monday, November 05, 2007 3:04 PM
To: Ed Fotsch
Cc: srussell@ci.sausalito.ca.us; Paul_Batlan@nps.gov; John Eberle
Subject: FW: Plan for sealing concrete and rail at 2 Alexander Ave in Sausalito

Dr. Fotsch -

Thank you for your prompt communication following our field meeting on Friday afternoon. John Eberle's edits to the document you provided are attached. Would you please add a separate sentence stating that you will make the repairs described in the document. Would you also provide some timeframe associated with your statement that the described work is "...intended (to be accomplished)....immediately after completion of the rough framing of 2 Alexander Avenue garage..." Is the commencement of this barrier rail repair work anticipated this calendar year, within the first quarter of 2008?? Thank you for clarifying these matters.

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Norma

Norma Jellison
 Property Development & Management Specialist
 Golden Gate Bridge Highway and Transportation District
 1011 Andersen Drive
 San Rafael CA 94901-5318
 (415) 257- 4564
 (415) 257- 4516 fax
njellison@goldengate.org

From: John Eberle
Sent: Mon 11/5/2007 9:08 AM
To: Norma Jellison
Subject: FW: Plan for sealing concrete and rail at 2 Alexander Ave in Sausalito

Please see my comments and edits.

From: Ed Fotsch [<mailto:ed.fotsch@medem.com>]
Sent: Friday, November 02, 2007 2:52 PM
To: Norma Jellison; John Eberle
Cc: mailbox@fritzbuilding.com; Paul_Batlan@nps.gov; Sierra Russell
Subject: Plan for sealing concrete and rail at 2 Alexander Ave in Sausalito

Ms. Jellison and Mr. Eberle,

Thank you for coming by today and meeting with Mr. Fritz and me. We have taken your direction from today's meeting and formalized it in the attached plan. If this is accurate we will follow this plan and will submit photographs to you, at the time of completion, of the key stages of the work. If we've missed anything in this plan, please advise. If we've captured this correctly will you please confirm, with copies to Mr. Batlan and Ms. Russel from the City of Sausalito, and we will move forward to seal the rail and concrete.

Thanks again for your time and help.

Best regards, ef

Edward Fotsch, MD
 2 Alexander Ave
 415.332.8529

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11/19/2007

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**2 Alexander Avenue
Project Specific* Conditions of Approval
Status Report**

#	Resolution 2003-51	Compliance
6	Prior to the issuance of a building permit, the applicant shall submit a Record of Survey that indicates, to the satisfaction of the City Engineer, that parcels APN 065-303-05 and APN 065-303-20 have been merged	Complete
8	The owner shall be required to remove any and/or all improvements within the public right-of-way or the 10-foot special front setback in the event of any future street widening or public improvement projects undertaken by the City of Sausalito. The cost of this work will be at the burden of the owner. This shall be memorialized by the recordation of a deed restriction, on the subject parcel, prior to the issuance of a building permit.	Complete
9	Within ten days of this approval the applicant shall submit a diagram that indicates the height of the existing hedge at the guardrail along Alexander Avenue. To preserve the existing view the owner shall plant a new vegetation type that, at maturity, will not exceed the height of the existing hedge. The new vegetation will be subject to the review and approval of the City Arborist.	Complete
10	Prior to final sign-off of the building permit the applicant shall remove trees adjacent to the Alexander Avenue right-of-way.	Complete
11	An encroachment permit shall be required for all improvements to be constructed within the public right-of-way.	Complete
12	A detailed site and project-specific erosion and sedimentation control plan shall be submitted as part of the project grading plans.	Complete. Erosion Control Notes on Sheet A1.1 of approved Building Permit plans.
13	A traffic control plan shall be submitted for controlling traffic during construction on Alexander Avenue.	Complete
14	A construction staging plan and construction schedule shall be submitted for review and approval by the City Engineer.	Complete
16	The locations of all subsurface storm drains and clean-outs shall be surveyed and shown on the as-built plans.	Complete

*Note: Standard conditions of approval, including indemnification of project costs, construction hours, and other general conditions not specific to the project are not included in this status report. All project conditions are listed in full detail in the referenced resolutions.

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#	Resolution 2007-08	Compliance
12	The applicant shall submit plans of the garden retaining walls to the Community Development Department for review and approval.	Superceded by Condition 12 of Reso 4907
13	Project Grading and Improvement Plans shall be prepared and submitted that comply with City requirements and as directed by the City Engineer. Plans and analysis shall address the structural adequacy of the existing garden retaining walls	Superceded by Condition 12 of Reso 4907
14	All overhead utility facilities serving the parcel shall be placed underground during the construction process.	Complete
15	The sanitary sewer lateral shall be videoed and rehabilitation work shall be performed under the authority of the Building Permit. This condition will be viewed as satisfied if the applicant can demonstrate that a video inspection has already occurred in the last five (5) years.	Incomplete. Required prior to final project approval.
16	An encroachment permit shall be required for all improvements to be constructed within the public right-of-way, including temporary debris boxes.	Complete
17	A Construction Impact Plan shall be submitted that addresses: <ul style="list-style-type: none"> a. Control of traffic on Alexander Avenue during the construction process, including placement of temporary construction signage and pavement markings. b. Construction staging plan and construction indicating construction equipment, material and vehicles storage areas and location of debris boxes. c. Offsite parking plan for the construction stage which include transportation of workers to and from the site 	Complete
18	The limits of proposed grading (cut and fill) shall be clearly defined in regards to the <u>garden retaining walls</u> . The amount of grading shall be stated on the Site Plan. A grading plan and permit shall be required prior to the issuance of a Building Permit if the grading quantities exceed 50 cubic yards, fills over 1.0' thick are placed, cuts over 2.0' are made, grading is performed within 2' of a property line, or for any excavations or embankment (cut or fill) on a slope of over 20%. The grading plan shall be prepared by a registered civil engineer or the project architect in accordance with the State Code.	Plans indicate earthwork is less than 50 cu. yds. Applicant to submit plans for retaining walls as required by Condition 12 of Reso 4907.
19	If a Grading Permit is required, applicant shall submit a Geotechnical (Soils) Report for review prepared by a State of California licensed civil engineer qualified in geotechnical engineering.	Superceded by Condition 12 of Reso 4907

#	Resolution No. 4907	Compliance
12	To the extent a Building Permit is or would be required, the applicant shall submit plans, including, without limitation, grading, drainage, and improvement plans to the extent required by the Building and/or Engineering Divisions, for all work constructed without a Building Permit including floor systems, placement of the spa, and the garden retaining walls to the Community Development Department for review and approval. Engineering staff shall review site improvement elements, including, but not limited to, detached retaining walls and drain systems for approval. Building structural elements shall be reviewed by the Building Department for conformance with Building Code provisions. Said plans shall be submitted prior to final project approval and shall include a geotechnical review prepared by a State of California licensed civil engineer qualified in geotechnical engineering.	Incomplete. Required prior to final project approval.
22	The construction associated with the Project Plans referenced in Condition 1 and all plans to be submitted pursuant to paragraph 12 hereof, shall be completed within one year of the date of the installation of the PG&E main. The applicant shall submit an invoice from PG&E informing staff of the date of installation. The time of completion shall exclude time periods for processing the building permit with the Community Development Department, from the date plans are submitted for the under floor area improvements to the date of issuance of the building permit for such improvements. The project shall be deemed complete upon final building inspection approval.	To be determined with completion of project
23	In the event that applicant has not completed any or all phases of the improvements within the times set forth in Condition 22 above, each day beyond the required date of completion shall be treated as a separate violation and failure to comply with the condition of approval. A fine of \$100 per day shall apply to each such violation. The applicant shall also be subject to any other applicable remedies for such failure.	To be determined with completion of project
24	The applicant shall forward any future modifications to the approved plans to the Community Development Department staff, and staff shall notice all concerned neighbors, as submitted by list to the Community Development Department on June 12, 2007. Staff shall notice these same neighbors of the filing of plans submitted for a Building Permit within two (2) days of the filing date to allow sufficient time for the neighbors' review and prior to the City's issuance of a Building Permit. Public comments shall be considered by staff in the review of any proposed modifications, and shall be received by Community Development Department within seven (7) days of said notice.	Complete. To maintain compliance with any future modifications.

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**CITY OF SAUSALITO - BUILDING DIVISION
INSPECTION RECORD**

Tel 415.289.4100 Fax 415.339.2256



Project Address	PLANS? YES	Type Street	Apt, STE	Permit No.	Date Building Permit Issued
2 Alexander		Avenue		AEPM 11330	03/29/2005
		Contractor Name			Contractor Fax
Project Description		Fritz Bldg Co.			332-6285
New garage and storage area underneath					

Inspection Comments

4/28/05 piers OK SB
 6/23/05 foundation as highlighted on plans S-2 OK MS
 8/3/05 2 stepped grade beams & col. pad OK RES
 10/27/05 @ garage deck-
 3X @ panel edges- corners require 3 studs
 re nail plywood over penetration
 change wood in contact with concrete
 11/3/05 cardeck & below shear wall @ S & E GL C & 5 OK to cover KH
 02-08-06 KH
 shear wall, gypsum, weatherproofing at GL 1/A thru 1/B north side OK
 02-15-06 KH
 upper level garage shear wall at GL 4/A-C, 3/ C-D, C/ 3-4
 02-27-06 KH
 rain protection in place ; unable to verify roof nailing
 → Need to verify if roof elevation is required to be surveyed
 04-17-06 KH
 → roof sheathing OK
 add clips to built up roof framing
 struc engr shall approve screws to roof diaphragm vs. common nails
 Finish elevation is greater than on approve drawings@119
 provide submittal for roof vents
 04-19-06 KH
 built-up roof framing / sheathing OK
 08-16-06 SYL
 roof sheathing at 2 lower roof; garage shear wall exterior OK
 08-31-06 KH
 lath at south and east exterior stairwell ; elevator equip room and small section at north OK
 09-11-06 KH
 scratch at south and east exterior stairwell; elevator equip room and small section at north OK
 11-14-06 KH; reviewed with Paul Kermoyan concerns with regards to placing concrete on the
 garage floor. It may present problems if concrete concentrated loads are imposed on exterior
 walls that may require reframing. Since revised work has not received approvals and may need
 to be removed additional loads are not recommended.

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**CITY OF SAUSALITO - BUILDING DIVISION
INSPECTION RECORD**

Tel 415.289.4100 Fax 415.339.2256



12-04-06 KH

lath located on south staircase structure wall (only in approved areas; no work on mid level area below garage.) lath OK

12-06-06 KH

scratch : not passed. need additional curing time or scratch coat test

12-07-06 EC

scratch OK see 12-04-06 for location

03-08-07 KH

for electrical service panel ;

~~Engineering requires panel to have min. 18" clearance to vehicle barrier 03-13-07~~

~~provide approval from City Engineer and Planning Dept. for location of meter at PROW~~

~~bond concentric ring at cabinet~~

~~provide grounding electrode conductor~~

~~complete raceway to utility vault ; no reduction of 2"~~

03-28-07 KH

add appropriate hanger bracket and fire block floor to floor penetration

electrical service OK

faxed PG&E OK to set meter

06-21-07 received call from neighbor at 6 Alexander regarding contractors obstructing access to residence. KH

06-22-07 contacted Ed Fotch's office. Reviewed neighbors concerns regarding obstruction of 6 Alexanders driveway. Response was positive that this senerio would not happen again.

07-02-07 KH

waterproofing at garage slab OK

reinforcement in garage slab OK

NOTE: neighbor concerns of exposed piping on exterior wall

07-09-07 KH

visited site at 9:20am identified minimum traffic controls in place. One flag man and limited control on public right of way. Had concrete truck relocate to inside of white line on property side. Notified contractor (Walkeen) no more trucks untill Engineering Dept has reviewed and approved work plan for public right of way.

recieved complaint letter for encroaching into north and south property lines

10-10-07 KH

verified main house is equipped with fire supression system

10-15-07 KH

site visit to review North neighbors concerns of drainage problem. Trench drain termination has been plug maintaining drainage to south end for discharge.

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Application No. VAM/DRM 07-002
2 Alexander Avenue

Agenda Item 6
November 28, 2007

EXHIBITS SECTION B
PUBLIC COMMENT RECEIVED

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NO. 0 PAGE 113

MICHAEL REX ASSOCIATES

ARCHITECTURE & DESIGN
1750 BRIDGEWAY
SUITE B 211
SAUSALITO
CALIFORNIA 94965
T 415 331-1400
F 415 331-5463

November 20, 2007

Members of the Planning Commission
City of Sausalito
420 Litho Street
Sausalito, CA 94965

**RE: 2 ALEXANDER AVENUE – FOTSCH RESIDENCE
VARIANCE APPLICATION #VAM/DRM 07-002 – NEIGHBOR CONCERNS**

Dear Commissioners:

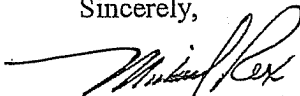
I am writing a cover to my previous letter to you dated October 3, 2007, a copy of which I am enclosing to insure you receive my earlier comments that are still pertinent to you November 28th hearing. You may recall your October hearing on this application was postponed at the applicant's request to allow time to resolve issues associated with the National Park Service.

I am writing to also bring you up to date on a recent discussion I had with Dr. Fotsch, following my request to get together to seek a resolution between neighbors. Dr. Fotsch and I met once and later exchanged a few emails. During our meeting, Dr. Fotsch agreed to arrange a site visit between his geotech consultant and myself to discuss how fill had been placed on his property, how the retaining walls were supported and the soil behind them drained. I was hoping that such a meeting would lead to a better understanding of what had been built and address concerns about soil and wall stability and associated safety.

Before such a meeting could occur, however, I received an email from Dr. Fotsch preconditioning such a site visit on a "clear guarantee" that the meeting would fully satisfy the Moodys and they would stop pressing for other important issues to be addressed. Not knowing in advance the results of such a site visit and the Moody's not willing to limit their concerns to just one of a number of items, I couldn't offer such a "guarantee." So the meeting never occurred. This was disappointing, because I was hoping that we could get closer to a resolution by addressing key matters as we were able, while waiting for additional information to be presented by the applicant on other matters.

At least we did make an effort to communicate with Dr. Fotsch beyond the formal hearing process.

Sincerely,


Michael Rex, Architect

MICHAEL REX ASSOCIATES

ARCHITECTURE & DESIGN
1750 BRIDGEWAY
SUITE B 211
SAUSALITO
CALIFORNIA 94965
T 415 331-1400
F 415 331-5463

October 3, 2007

Members of the Planning Commission
City of Sausalito
420 Litho Street
Sausalito, CA 94965

**RE: 2 ALEXANDER AVENUE – FOTSCH RESIDENCE
VARIANCE APPLICATION #VAM/DRM 07-002 –NEIGHBOR CONCERNS**

Dear Commissioners:

As the Architect representing Ian and Jan Moody, homeowners of 6 Alexander directly downhill of the project site, we write in response to the latest Design Review and Variance application for 2 Alexander in which the Fotsches seek once again to obtain City approval after construction has been put in place which does not conform to approved plans.

Incomplete Application:

Following our review of the application, we conclude that it is incomplete and lacks essential information necessary for proper Project review. Important information that is missing includes:

1. The survey provided does not show the constructed features so their actual relationship to the property boundaries is impossible to determine. This was the purpose for requiring a new survey in the first place. Without the built features shown on the survey, there is no way the City, or anyone else, can determine the extent the work encroaches into the required setback.
2. The surveyor's new stakes do not show the property corners, but instead have been offset two feet to the south of the southern property line, which is misleading, giving the impression that the construction is setback from the parcel boundary. There is no reason that stakes can't be placed at the property corners.
3. There are no drainage plans submitted, even though the August 27, 2007 letter from Planner, Sierra Russell, said the City would require them, like it does for all other Design Review submittals.
4. There are no grading plans submitted, even though the July 26, 2007 letter from Planning Director, Paul Kermoyan said the city would require them, like they do for all other Design Review submittals.
5. There has been no assessment of the structural integrity of the site's numerous retaining walls, a requirement of the conditions in Resolution No. 4907 and necessary to insure safety.

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6. The 9/11/07 letter from Project engineer, Mohammad Saaber offers no calculations or other evidence with which to evaluate or confirm the structural integrity of enlarged building. The letter does not address the retaining walls.
7. There is no Geotech report to evaluate the integrity of the fill, foundation systems and retaining walls constructed on the site without permit or for supporting structures larger than approved even though in Sierra Russell's August 27, 2007 letter, she encouraged the applicant to submit such a report and notes that such a report must be submitted prior to final project approval, as required by Condition 12 of Resolution No. 4907. Such Geotech reports are typically required as part of all Design Review applications for new work. Certainly, such a report can and should be submitted for work already constructed.
8. The Applicant has not submitted written findings necessary to grant a variance, a requirement of all variance applications.
9. There has been no written response as yet from the National Park Service in regard to the Applicant's lack of conformance to NPS conditions for Park Service's support of the sideyard variance. Knowledge of the NPS's position on this matter is germane to your consideration of this application.
10. The Site Plan submitted with the Variance application appears to be inaccurate, showing retaining walls and grade beams within the property lines. Even Dr. Fotsch's own letter dated September 22, 2007 admits in item 6. that a planter (actually a structural concrete grade beam) encroaches onto GGNRA property by 4". Site observations and structural details shown on construction documents reveal that additional grade beams and retaining walls encroach onto GGNRA property. A proper survey that shows site features in relationship to the parcel boundaries would confirm such encroachments and is the reason why the City must insist that a complete survey must be submitted before the application can be heard.
11. The applicant's 8/8/07 request letter doesn't ask for the City's approval of the increased building mass, but only for the addition of an interior bathroom. Since the three-story building is 16" wider and 7" deeper and adds additional Floor Area and Building Coverage, this seems like a serious oversight.

Improper Hearing Notice: The public notice for the Design Review portion of the application gives the impression that only an interior bathroom is being considered. The excess building mass & bulk should be included in the notice as part of Design Review hearing.

Flawed Process: Rather than requiring a new Design Review and Variance application to address the non-conforming construction and sideyard encroachments, we contend that the Moody's previous appeal should be reopened, because given the new information that has come to light since the appeal hearings, it is possible the Planning Commission and the City Council might have taken a different position on the matter.

New Information: Since the current application has been filed, we have discovered that a publicly owned concrete and steel guardrail within the street right-of-way has been cut back and potentially compromised. We question if this work was done with a permit.

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The cut exposes the steel reinforcing bars to weather, which could rust, expand and cause the concrete to crack and spall. This unpermitted work should be added to the approval process.

Letter from Dr. Fotsch dated 9/22/07: We reviewed Dr. Fotsch's letter submitted to support his application and offer the following observations:

- Item 2: The approved plans show a minimum 18" setback between the stairways and the southern property line, not 12"
- Item 4: The narrowing of the lot from east to west does not justify the expansion of the three-story garage structure and the encroachment of the structure into the sideyard beyond the 3'-6" variance already approved. An error by the builder is also an insufficient reason to justify non-conforming construction.
- Item 5: The new survey submitted as part of the application does not show the stairways or any other feature constructed on the site.
- Item 5a: Placing survey points 2 feet from the property line is misleading and should be reset to mark the actual southern property line and the southwest parcel corner.
- Item 6: The decorative planter is actually a structural grade beam. Site observations and a proper survey that illustrates what is built relative to the southern property line, combined with an inspection of the structural plans, will reveal that additional grade beams and retaining walls encroach into the required sideyard setback and even onto GGNRA lands.
- Item 7: There have been no plans submitted to demonstrate how drainage from the garage and stairs will be directed away from Park Service property or from the Moody property below.
- Item 8: Because the stairway is built right up to the Park Service property, there is no room to construct a fence between the Project parcel and GGNRA lands as required by the Park Service.
- Last Paragraph: According to the City's measurements noted in Paul Kermoyan's letter of July 26, 2007, the additional sideyard encroachment at the stairways is 12", not 10". This 12" deviation is only part of the problem. The fact that a three-story structure has been constructed which is 16" wider and 7" deeper than approved, and adds additional Floor Area, and Building Coverage, building mass, is a significant issue that the Planning Commission needs to consider as well.

Variance Findings: The findings necessary to grant a variance cannot be made.

- There are no unusual site conditions that cause a need for relief from the City's zoning standards.
- There is no hardship to justify additional encroachment into the southern sideyard setback. The applicant has already received one variance to encroach based on questionable findings. The hardship to remove the additional encroachment is a self-imposed hardship caused by either careless construction, or worse, deliberate intent.

Because the necessary findings cannot be made, the Variance application must be denied.

Consequence for Building Structures that Deviate from Approved Plans: Except for minor deviations that don't impact others, there should be some consequence when property owners fail to construct improvements that don't conform to approved plans. Building a three-story building that is wider and deeper than approved, resulting in a significantly more massive structure, is not insignificant deviation. Encroaching further into a setback, even onto adjacent property, beyond a variance already granted, is not an insignificant matter.

In the past, the City has required property owners to rebuild so structures conform to approved plans. The City has done so not necessarily to be punitive, but to honor the public's right to expect that what they see with story poles and what the City approves is what is in fact, built. To do otherwise, undermines the plan approval process and encourages property owners to build larger in the hopes that no one will notice, or if they do, the City will bless the deviation so they get away with it. The Commission needs to send a clear message with this application that such an approach is unacceptable.

Criteria to Judge this Application: Staff has suggested that the deviations can be considered minor, and therefore should be acceptable. The applicant has explained that the errors were oversights and honest mistakes. We suggest that the size of the deviation from the approved plans and the reason for the errors are not the paramount criteria to use when evaluating this application. The most important criteria to consider should be:

1. Is it credible that a building could be constructed 16" wider and 7" deeper as an "honest mistake," particularly given this Project's long history of building components without a permit? (The Garage structure would also have been higher than approved, but fortunately, Staff caught in Plan Check that the building permit plans didn't match the Design Review approved plans.)
2. Is it credible that foundation systems, retaining walls, stairways and planters could be constructed that encroach 12" or more into sideyards and even onto adjacent property, when the Park Service instructed the applicant to first construct a fence to define the property limits before building to insure just such an event wouldn't happen?
3. Whatever the excuse, it is the Applicant's responsibility to build in conformance with the approved plans.
4. In this case, the deviations have a direct and significant impact on the Moodys, who forevermore, will look up to a more massive structure and enjoy less late afternoon sunlight, should the City bless the Applicant's mistakes.
5. The public's right to expect a fair and proper plan approval process is compromised and the "build it now, and ask questions later" approach to construction in Sausalito is encouraged.

Request: We ask that you continue this hearing to a later date, following the submittal of the items noted above that are required for the application to be fully complete and properly reviewed. If you choose to hear and vote on this application now, for all the good reasons stated above, we ask the following:

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1. Deny the Variance and require that the stairways and other structures on the southern side of the Fotsch garage be reconstructed to conform to the previously approved plans.
2. Insist that the public's concrete wall within the street right-of-way be repaired.
3. Require that the plans filed for a Building Permit be withdrawn so they can be revised to reflect your decisions.
4. Require that before Staff accepts the Building Permit application, the plans include fire sprinkler plans, a geotech report prepared by a licensed Civil Engineer, Structural calculations for the new structural work prepared by a licensed Civil or Structural Engineer, grading and drainage plans prepared by a licensed Civil Engineer. A full survey that notes parcel boundaries and site features prepared by a licensed Surveyor, as well as a Site Plan that conforms to the new survey.

Conclusion: I thank you for considering this point of view and the Moody's needs when reviewing this application.

Sincerely,

Michael Rex, Architect

Copy: Ian and Jan Moody
Ken Downs, Attorney

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Sierra Russell

From: ianmoody [imoody@earthlink.net]
Sent: Tuesday, November 20, 2007 11:51 PM
To: Diane Henderson; Sierra Russell
Subject: Letter for Planning Commission Mtg. 11/28/07
Follow Up Flag: Follow up
Flag Status: Flagged

November 20, 2007
 Letter for Planning Commission Meeting, November 28, 2007
 Re. Application # VAM/Drm 07-002

Dear Planning Commission Chair Janelle Kellman, and Commissioners Bill Keller, Cheryl Bossio, Barry Peterson, and Stan Bair:

This letter has been revised from the letter that appeared in the binders we delivered to each of you for the last Planning Commission Meeting on October 10, 2007, which is now continued to November 28, 2007 because of Fotsch's encroachment onto the National Park and concerns we had about the application not having sufficient information to present. But we would ask that you please refer to those binders for the Attachments and Photographs. (We will be happy to prepare you another, should the one you had have become lost in the shuffle in the many matters before you.)

For the record, we would like to emphatically state that we have never had any objection to Ed Fotsch completing his garage and stair project as originally approved and permitted. As we In fact, we were the first to support it.

But as the neighborhood waited for this approved project to be completed, with construction going on every day for over seven months, we and other neighbors began wishing it was over and wondering what was taking so long for it to be finished. Our answer came on May 7, 2006, while looking at some story poles surprisingly extending into the Alexander Avenue ten foot special setback. From City property, looking over the side of the garage to see what the story poles were attached to, we were shocked to see all sorts of unexplainable, unapproved construction taking place on a grand scale on the level below the garage! Other neighbors looked too, and no one knew what on earth was going on. While we were all waiting for him to finish his garage and stair, Fotsch had built floor areas, windows, doors, and balconies below the garage level, all without permits and before any City approvals.

Since then there have been many problems. After numerous appearances before the commission to obtain after the fact approvals to his project, after he has already built the changes, Fotsch is back again, seeking yet another after the fact approval and "variance modification". As you know, a variance is a permit to do something that is normally prohibited by building regulation. Fotsch was granted a variance, by the GGNRA and the City of Sausalito, each with conditions, to encroach into the sideyard setback. He preventably violated several conditions set by the GGNRA and encroached into the Sausalito variance setback, and even over the boundary of the GGNRA. When someone is specially granted a variance, you would think that they would take extra care, and indeed they have a duty to abide by it.

Fotsch's need for this "variance to the variance" is entirely self-inflicted.

You will recall that during the Planning Commission Meeting of June 7, 2006, in response to the question as to whether the as-built project was as depicted on the plans and specifications, applicant Ed Fotsch represented this to you and the public:

- "Mr. Fotsch said that as far as what's built, **the building inspector came out and verified that it is within an inch in every aspect of what was approved.**" [Planning Commission Minutes, Draft/Unapproved, June 7, 2006, Item 1, p. 38, line 28, bold added.] (For a copy of these Planning Commission Minutes, please see the binder we delivered to you, Attachment B.)

In fact, the the garage and stair project is overbuilt in 13 dimensions as measured by former Planning Director Paul Kermoyan and Building Inspector Kenneth Henry. And the Sausalito Planning Staff has confirmed what we have long suspected: As-built, the Fotsch structure encroaches not only into the permitted and variance approved 3'6" into the side yard setback, but a full 5 feet, 100% into the setback, leading to a zero (0) lot-line, exceeding what was permitted by over 42%; additionally there are encroachments onto GGNRA property, violating conditions of their variance approval. (Please see photos in your binder, Attachment A.)

As a matter of equity, the Planning Commission cannot possibly make the findings necessary to grant the presently requested variance modification and encroachment permit for many reasons set forth below. It is finally time to demonstrate to Ed Fotsch that there are consequences to his utter disregard of the planning process.

1. The Submitted Plans Are In Error and The Survey Is Incomplete.

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The Fotsch application should be denied, as an initial matter, because the plans submitted are grossly in error and do not represent what is actually built on the site. Some critical dimensions are not shown, others are shown but are incorrect. The submitted plans submitted to support this application are out of date, inaccurate, and misleading. None of the plans show the encroachments into the sideyard setback variances granted, or onto the GGNRA, such as the stairs, planter, retaining walls, stairs, and pier footings.

- Plan A2.0 shows the stair 6" away from the GGNRA boundary when the true difference is zero (0") setback.
- Plan A2.0 has no dimension shown from the south side of the building to the GGNRA boundary.
- Plan A3.0 shows a 6" gap between the south side of the stair and the GGNRA boundary. That distance is zero (0").
- On Don Olsen's project drawings, sheet A4.0, 10.29.04, showing "SECTION 2, BUILDING SECTION LOOKING WEST" you will observe that the piers below ground are considerably wider than the wall to the stairs they support above. It has been verified by Planning Associate, Sierra Russell (at a meeting on September 19, 2007), that the wall above has 0" setback from the boundary, therefore the piers must be encroaching onto GGNRA property.
- And, as drawn, the handrails and cap rail will extend a further 6" onto GGNRA land.

Specifically, the submitted survey does not show the location of buildings and structures such as retaining walls. The surveyor did not mark the lot corners. (The property line is not marked with a string line [Please see photos in Attachment A]: he could not mark the boundary because Fotsch's building is on and over the boundary.) The applicant must submit an accurate survey of what has been built before this application should be deemed complete.

Inaccurate plans were repeatedly submitted. One example of many inaccuracies: A survey dated March 2, 1997, was submitted by Fotsch when a Building Permit was applied for to build the two lower floors, turning the existing two story house into a four story house, and the four stories are clearly shown on the application plans submitted. [The two additional stories were built without permit and without being referred to the Fire Department for the mandatory Fire Code sprinkler safety procedures of Fire Marshall review of plans and hydraulic calculations, and series of inspections and testing, and Fotsch avoided required processes yet again. But that's another matter.] What is pertinent is that all plans submitted thereafter for the garage/stair project, and the gameroom/den project, of the main house by Fotsch/Olsen show only an existing two story house, and after we repeatedly pointed this out as an inaccurate portrayal of the existing structures and retaining walls, eventually they submitted a plan with three stories, still showing no retaining walls or other appurtenances. [Please refer to the binder for photos of the main four story house with the second three to four story structure above it including the garage and game room/den below it.]

The project is oversize in thirteen dimensions. And the enlarged as-built dimensions affect all the three stories below the garage, some floors now supporting "live load", and greatly adding to the bulk of the project, and this requires review by the Planning Commission.

2. Even If This Is An Oversight, A Variance Should Not Be Granted.

In a letter [Attachment C in the binder.] dated September 14, 2007 Ed Fotsch's building contractor, Joaquin Fritz, claims that this is all an "oversight": the expansion of the entire building [all levels below and not just the garage level by 1'6"], the drilling and pouring of piers that encroach approximately 6" onto the GGNRA property, and the adding of approximately 1,867 cubic feet of volume to the structure on the south side alone. (Remember, structure is larger in 13 dimensions.) Fritz says that he assumed that the lot was in square when he poured the piers and foundations [on and over the GGNRA boundary]. (Please see the GGNRA letter quoted below, and attached, for why this should not have happened.) There are probably very few lots in Sausalito that are in square, this lot is not a particularly challenging shape, and builders all face this as a matter of usual business. [There is also garbled math in the letter attempting to prove "mistake". If interested, please see footnote 1.] Fritz makes no explanation of why the garage is 1'6" wider than approved. But all of this convoluted explanation aside, all Fritz had to do was work off a straight line on the south side of the property.

Amazingly, these and all other "mistakes" and "oversights" have been to the benefit of Fotsch.

First of all, it seems to us that this expansion may be intentional. The accuracy of the builder's inaccuracy is remarkable. He managed to build the wall and stairs exactly on the GGNRA boundary. The piers that support the stairs encroach below the ground and slightly above it where they cannot easily be seen and can be covered over. But in no way can this "mistake" be deemed accidental. Requirements on the part of the City and the GGNRA, had Fotsch complied with them, would have made the "mistake" impossible:

The March 11, 2003 letter to Fotsch from the GGNRA stipulates the conditions of granting their variance [Binder, Attachment D]:

We concur with your request for a variance from the City of Sausalito's required 5 foot setback to a no less than 1 foot setback for your property if the following conditions are met [Underlining and bold mine].

- A survey is completed prior to the start of the project to confirm and permanently mark your property line and the GGNRA boundary along the south side of your property.
- Prior to construction, a temporary fence will be installed along that boundary line that clearly defines the boundary line and contains all construction activity to your property.
- All stairway structure, footings, etc. will be placed no less than one foot [Underlining mine.] from the GGNRA boundary that adjoins your property on the south side.
- The design of the additions on your property satisfies the City of Sausalito Community Development Department regarding avoidance of any potential impact on slope stability [Underlining mine.]
- You will have any existing construction on your property that is found to extend onto the GGNRA property

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removed, as well as any construction debris that was previously deposited on GGNRA land adjoining your land. We would further ask that no additional materials of any kind be deposited on GGNRA property in the future [Underlining mine.]. (Please see footnote 2.)

The boundary was clearly not set and marked. Such conditions are imposed to prevent exactly what happened here: someone falsely claiming that this was all a "mistake". Despite GGNRA governmental restriction, conditions, and warnings, Ed Fotsch encroached by constructing his building 1 1/2 feet beyond the approved variance into the setback, and pouring the pier footings of his building over the boundary of the GGNRA property. If the boundary was set and marked, there could have been no encroachment into either City or GGNRA setback. The need for the "variance modification" is self-imposed, and must be denied [Please see Binder, Attachment E.1, Resolution Design Review Finding 2 regarding self-imposed hardships].

It is important to note that this is not the first time Ed Fotsch has encroached beyond his limits, or onto GGNRA property, with his construction projects. (Please see footnote 3.)

3. The Encroachment Was Clearly Visible On the Ground.

As the enclosed photographs show, there is a surveyors permanent mark (pin) in the road on Alexander Avenue that has been there for some time. According to Don Olsen's plans (permit copy), that pin should align exactly with grid 4, which should be the south side of the garage. It can be clearly seen with the naked eye that the garage wall has been built about 1'6" further south than shown on the plans, and this survey pin is further proof that the claim of "mistake" does not stand up. At some point, long ago, someone would have had to say, "What's going on here? Something is not right!" In addition, Fotsch has also cut off 3 feet of length from the Golden Gate Bridge and Highway District's viaduct, a three and a half foot high concrete public wall and guard rail on the public road, also diminishing a City no parking red zone, to accommodate straight entrance into the "mistakenly" widened part of his garage.

4. The Design Review Application Must Also Be Denied.

In addition to the self-imposed encroachment, the building does not conform to applications, approvals, and approved plans and specifications. This expansion (hardly a mistake) has created an increase in bulk volume of 1,867 cubic feet on the south side alone. We object to the increased bulk caused by the overbuilding in thirteen dimensions, and the further extension south as it looms hugely over us, affects our safety, and takes more of our privacy and afternoon sun than the approved project; this was our main concern about the original project, but we finally agreed to it as long as it didn't project any further south than approved. The bulk increase alone warrants design review, and we are at a loss as to why the Planning Department chooses to ignore this and continues to downplay this massively overbuilt project.

The information presented by Fotsch is nothing more than an arrogant and deliberate attempt to mislead the Planning Commission and the City Council. Instead of encroaching only into the permitted and approved 3'6" into the side yard setback, Fotsch has gone a full 5 feet, 100 % into the setback and exceeding what was granted in the variance by over 42%. Further, he encroached onto GGNRA property with piers/footings, and built in violation of the GGNRA variance conditions.

5. Concerns for Safety

We are concerned for our safety. Fotsch's development of six parcels on Edwards Avenue and encroaching onto the GGNRA, across and on the uphill side west of Alexander Avenue, precipitated a landslide on March 7, 2002 causing damage to homes at 1 and 7 Alexander Avenue directly above us, damaged cars parked across the street, and closed Alexander Avenue, the main artery into Sausalito. The City of Sausalito deemed 1 Alexander Avenue too dangerous for human habitation (a condition that remains to this day). Alexander Avenue, the main artery into Sausalito, was closed. The blue tarp and slide area can still be seen above Alexander Avenue.

The Planning Commission is being asked to consider the problem of the Retaining Walls at this meeting:

We sent you each an email with attached photos about our Landslide Concerns at 2 Alexander Avenue. The photos are very helpful in understanding the problem. (As it's been a while, if you wish us to send another one with the photos, we will be happy to.)

Directly below the slide described above, Fotsch has loaded the hillside on the east side of 2 Alexander Avenue immediately above us with his overbuilt house. Exacerbating the problem, he has brought in massive amounts of fill to put behind unengineered, unreinforced, and stack block retaining walls (which also encroach onto the GGNRA), and an unpermitted hot tub sits on top of several terraces of these, creating the surcharge of an 18 foot unreinforced retaining wall.

Since mid 2006, we repeatedly asked Planning Director Paul Kemoyan to come to the 2 Alexander site to see the as-built reality of the house structures and the retaining walls. We have submitted Code Violation Forms which are supposed to be responded to promptly. We have appealed for redress of the retaining wall problems to the Planning Department in person, and in written correspondence many times, to absolutely no avail. [Please see footnote 4, and photos in Attachment H.] In desperation we asked that they be attached as a condition to the approval of the game room/den project as one way of achieving rectification, and a resolution with that condition of approval was issued June 12, 2007, when it looked as though a building permit for that might be imminent. When that was delayed due to Fotsch's overbuilding and variance violations, we were told that nothing is going to be done about them until prior to Fotsch's final approval for a Building Permit.

Addressing the problem of these walls should have been done long ago, whether or not they were ever a condition of approval. These are reported unsafe existing retaining walls (some already fallen and rebuilt the same way, some in the process of failing now) already built

by Fotsch that violate grading codes, and were constructed without permits, or necessary engineering. And these need to be addressed by Fotsch anyway before he can receive a building permit. But the Planning Department position is that since now they are in the conditions for approval of a Building Permit, they cannot possibly and will not be addressed before the approval process for Fotsch's Building Permit (for the project he is nearly finished constructing without one) takes place. In the Planning Department's latest letter regarding the walls (but avoiding entirely our other landslide concerns) Sierra Russell states that the only way to address the walls/hot tub placement sooner (than a nebulous time to be decided by Fotsch), "...would require a modification of a condition of approval previously approved by the City Council". So Planning is forwarding this matter to this Planning Commission meeting on November 28, 2007, for Commissioners to consider whether or not they will recommend to the City Council that the condition be modified to specify an earlier time; then it would go to the City Council for a hearing to decide whether or not the condition should be modified.....Please. The rainy season is again upon us with no relief from this matter. It is a nightmare, especially when the rains continue for a few days, as they do each year, saturating the hillsides.

As Architect Michael Rex states in # 7 of his letter regarding a Geotechnical Report about the foundation systems and retaining walls, "Certainly, such a report can and should be submitted for work already constructed."

Also, there have been no plans submitted showing drainage from this project, which is of paramount importance to us as it surely must be to the GGNRA [Please see footnote 3.] There is a risk of landslides affecting our property, which would have the potential for loss of life, injury, and economic damage to ourselves and our neighbors. (Please see footnote 5, and Attachment E, regarding November 8, 2006 Resolution Design Review Board Findings, General Plan Objective HS-1.0.)

6. Flawed Process and Inaccurate Information Given to the Planning Commission and City Council

The Planning Commission and the City Council were denied the discretion to grant approval of this project because they lacked proper information, and both have made decisions based on misinformation provided to them by City of Sausalito Planning Department in Staff Reports and provided in the plans and statements presented by applicants Fotsch/Olsen. In the light of misrepresentations, safety concerns, and the now evident scope of this project, the whole approval of this project should be looked at again with corrected information provided.

At the Planning Commission Meeting of October 25, 2006, the retroactive approval of the almost completely built without permits game room/den project was denied, in large part on the basis of Sausalito Planning Commission Design Review Finding 1, issued in Resolution 2006-44 on November 8, 2006:

DESIGN REVIEW FINDINGS

1. The proposal is **not** in conformity with General Plan Objective H-S 1.0, which states that development shall minimize the potential for loss of life, injury of damage to property, economic and social dislocation and unusual public expense due to natural and man made hazards. The Planning Commission has determined that the proposed project jeopardizes public safety due to hillside stability...the subject parcel is located in an area of known landslides. Intensifying development with the subject property by converting the upper landing area to habitable space increases the possibility of further destabilization of the hillside. This destabilization would jeopardize public safety for both the property occupants and adjacent properties. [Staff Report to Planning Commission 5A, Meeting Date, 5/15/07, p. 2, lines 15-16. Please see binder Attachment A to Design Review Findings, p.3, #1.]

When Fotsch resubmitted his application to the Planning Commission with the one small change being a relocated security gate, the Planning Staff Report stated that the Planning Commission's main concern had been the security gate, and reduced Finding 1 to only one inadequate and inaccurate sentence: "Other concerns cited by the Commission included hillside stability and traffic safety impacts with the placement of improvements near street frontage" [Staff Report, Planning Commission, Item 5A, Meeting date 5/15/07, p.2, lines 15-16. For actual copy, please see binder Attachment E 2.] Whether this misrepresentation of Design Review Finding 1 was deliberate or not, it was negligent. The Planning Commission should be able to rely on City of Sausalito Staff Reports as accurate, but when the Planning Commission approved the project because the gate was relocated Finding 1 was not in the Staff Report and was not even considered.

Then, when Ian Moody appealed this approval, the Planning Department Staff Report to the City Council represented the following erroneous information to the City Council:

"The Planning Commission granted the proposed Design Review permit request because they could make the Design Review findings, some of which include consistency with the General Plan..." [Staff Report to the City Council, File no. AP 07-003, May 15, 2007, p.4, 35.]

Please see Design Finding 1 above!

Additionally, as the letter from Michael Rex states, " Rather than requiring a new Design Review and Variance application to address the non-conforming construction and sideyard encroachments, we contend that the Moody's appeal should be reopened, because given the new information that has come to light since the appeal hearings, it is possible the Planning Commission and the City Council might have taken a different position on the matter."

And the as-built bulk (as described in #1 of this letter) requires a Design Review.

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7. Conclusion

In conclusion, we request that this application be denied and the applicant compelled to remove encroachments into the setback, and onto the GGNRA, and abide by the terms of the variance granted and the approved plans. None of the mandatory findings needed to approve this application can be made, and self-imposed hardship is certainly not grounds for approval.

We wish to reiterate for the record that we have never had any objection to Ed Fotsch building or completing the originally approved and permitted garage and stair project, although that is what he tells others.

What we have objected to is: his violating the public trust by disregarding the planning process; building continuously above us for over ten years in a pattern of creep development (with no end in sight); building without approvals and permits and building beyond the approvals he did receive; building without the required inspections for building quality and safety; misinforming and trying to slip one by his neighbors; and converting public property into his own. [And we have stayed on the issues while, as some of you know, he has engaged in personal smear tactics.]

The City of Sausalito has a duty to protect the public safety, to protect the public from those who would convert the public interest for their private use, to protect the Planning Staff from those who try to take advantage by asserting pressure to try to get exceptions, and an important interest in protecting neighbors of developers.

At the Planning Commission Meeting of October 25, 2006, a member of the Planning Commission said that Fotsch, "...has lived in this community a very long time, he's been before the Planning Commission many times on different projects, and knows how the system works and he's sorry to say the applicant knows how to work the system" (Attachment F, Planning Commission Minutes, Draft/Unapproved, p. 25, lines 6-8).

On that occasion, you sent a message to Fotsch and all others who seek to abuse the system and engage in project creep by seeking incremental approvals, or simply building now and seeking approvals after the fact (if caught) or not at all: you denied Fotsch's application. You have a chance to send that message again. Please do not reward this type of builder for their self-imposed problems. We respectfully request that you deny both the variance modification and the design review application that is before you tonight. Thank you.

Sincerely,
Ian and Janeane Moody
Residents at 6 Alexander Avenue, Sausalito, since 1979.

Footnotes:

1. Inaccuracies in the Fotsch's submitted letter from Fritz:
 - A. The lot "narrows by 18" from the bay to the street". Wrong: It narrows by about 5".
 - B. The lot "narrows the better part of a foot from ny control point to the street". Wrong: It narrows by about 1 1/2 ".
 - C. The lot "is not square, and the 12" [Remember, it is actually 18"; not 12".] overbuilt and resultant less than one foot side yard [It's zero setback] is the result." Wrong: The lot is not in square but the divergence between the critical north and south boundaries is 0 degrees twenty minutes and 29 seconds; slightly more than 1/3 of a degree.
2. Fotsch has repeatedly dumped construction excavation and debris onto the GGNRA, from projects on this property and from the project above Alexander Avenue and we've had to call Park Rangers twice because Fotsch was cutting down trees on the GGNRA without permission.
3. In the period of May 1991 through 1993, Fotsch developed six parcels at 15, 21, 25, 27, and 35 Edwards Avenue which included a reduction in the sideyard setback and drainage and encroachments onto the GGNRA land, and which resulted in a lawsuit (filed March 7, 2005) against Fotsch, the GGNRA, the Golden Gate Bridge and Highway District and others, due to a landslide.
4. The latest of the fill was added with no grading permit to the steep slope during the week of June 4-8, 2007, while a red tag was in effect [as seen in photos, binder Attachment F] to put behind more extensive retaining walls than than we had already reported as being against code. The Planning Director, when coming out to measure Fotsch's garage, "couldn't find" the three plus dumpsters of added fill, delivered by a large truck off-loading it on rails which left scratches on the street. We offered to point out the location of the fill, but have been met with no response to date, November 21, 2007.

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Sierra Russell

From: ianmoody [imoody@earthlink.net]
Sent: Tuesday, November 20, 2007 11:52 PM
To: Diane Henderson; Sierra Russell
Subject: Attachment to Planning Commission Letter for 11/28/07 Mtg.
Follow Up Flag: Follow up
Flag Status: Flagged

**Important Attachment to the Letter to Planning Commission
for the Meeting on November 28, 2007**

**LANDSLIDE CONCERNS at 2 Alexander Avenue
(Slide History, Overbuilt Hillside, Cut and Fill, Retaining Walls, and Drainage)**

There is a definite risk of landslide affecting our property at 6 Alexander Avenue, with the attendant risk of loss of life, injury, and economic damage to ourselves and our neighbors. Economic damage to our property has already occurred because of the dangerous conditions that Ed Fotsch has created at 2 Alexander Avenue and that the City of Sausalito has refused to abate.

This issue has been the subject of numerous correspondences to the City of Sausalito: written correspondence, certified letters, email, phone calls, Code Violation Forms submitted, and testimony at many Planning Commission Meetings by ourselves and neighbors whose homes have been damaged.

Landslide History

The safety of Ed Fotsch's construction(s) taking place above us at 2 Alexander Avenue worry and concern us. In an earlier development, directly above us on the upper, western side of Alexander Avenue, in the period of May 1991 through 1993, Ed Fotsch developed six parcels at 15, 21, 25, 27, 29 and 35 Edwards Avenue, which included a reduction in the sideyard setback and encroachments onto the GGNRA land, considerable modification of drainage, and other impacts on GGNRA land. The GGNRA and the City of Sausalito, in an attempt to control the excesses of development placed restrictions and conditions on the development. Drainage from the development was directed onto the GGNRA and the properties at 1 and 7 Alexander Avenue, and on March 7, 2002, a landslide occurred, resulting in a lawsuit (filed March 7, 2005) against Fotsch, the GGNRA, and the Golden Gate Bridge and Highway District who maintained a small retaining wall at the toe of the slide area.

That 2002 landslide caused damage to homes above Alexander Avenue, damaged cars parked across the street, and closed Alexander Avenue, the main artery into Sausalito from the south. The City of Sausalito deemed number 1 Alexander Avenue too dangerous for human habitation, a condition that remains to this day. The Golden Gate Bridge and Highway District had to construct a much more substantial retaining wall with a fence above it due to the slide. Both a blue tarp on a lower part of the slide and a larger black tarp above it can still be seen above Alexander Avenue today.

Overbuilt Hillside

Directly below this slide, Fotsch has loaded the hillside, on the east side of and below Alexander Avenue, immediately above us, with his overbuilt five storey plus house (potentially 8 storeys) at 2 Alexander Avenue. Four storeys comprise the main house. The garage is at street level. Plans submitted by the applicant Fotsch, for the approval of the under garage game room and den living area, show an existing two story house. The area is an almost completely built (without permit) fifth storey. Retroactive approval was applied for this storey at a Planning Commission Meeting on October 25, 2006, and resulted in Design Review Finding 1, a finding about overloading the hillside directly above us. In denying the approval, Sausalito Planning Commission, Resolution 2006-44, November 8, 2006 states:

DESIGN REVIEW FINDINGS

1. The proposal is **not** in conformity with the City's Design Review permit.
Finding 1:

The proposed project is inconsistent with General Plan Objective H-S 1.0, which states that development shall minimize the potential for loss of life, injury or damage to property, economic and social dislocation and unusual public expense due to natural and man made hazards. The Planning Commission has determined that the proposed project jeopardizes public safety due to hillside stability...The subject parcel is located in an area of known landslides. Intensifying development with the subject property by converting the upper landing area to habitable space increases the possibility of further destabilization of the hillside. This destabilization would jeopardize public safety for both the property occupants and adjacent properties. [Attachment A to Design Review Findings, p. 3, #1.]

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Inaccurate Information Submitted by Planning to the Planning Commission and the City Council

When Fotsch resubmitted his application to the Planning Commission with the one small change of a relocated security gate, the Sausalito Planning Department Staff Report to the Planning Commission stated that the Planning Commission's main concern had been the security gate, and reduced Finding 1 to only one inadequate and inaccurate sentence, which stated: "Other concerns cited by the Commission included hillside stability and traffic safety impacts with the placement of improvements near street frontage." [Staff Report, Planning Commission, Item 5A, Meeting Date 5/15/07, p.2, lines 15-16.] Whether this misrepresentation of the facts was deliberate or not, it was negligent. The Planning Commission should be able to rely on City of Sausalito Staff Reports to be accurate, but when the Planning Commission approved the project because the gate was relocated, Finding 1 was not in the Staff Report and not even considered.

Further, when Ian Moody appealed this approval, the Planning Department Staff Report to the City Council represented the following erroneous information to the City Council:

"The Planning Commission granted the proposed Design Review permit request because they could make the Design Review findings, some of which include consistency with the General Plan..." [Staff Report to the City Council, File No. AP 07-003, May 15, 2007, p. 4, #5.]

The Planning Commission and the City Council were denied the discretion to grant approval of this project because they lacked proper information, and both have made decisions based on misinformation provided to them by the City of Sausalito Planning Staff and plans submitted by applicant Fotsch/Olsen. In the light of misrepresentation, safety concerns, and the now evident scope of this project, the whole approval of this project should be looked at again with corrected information provided.

Retaining Walls, Cut and Fill, Hot Tub Placement, Drainage

[Please see Footnote 1 below, requirements for a Grading Permit.]

To exacerbate the slope stability problem further, without a Grading Permit Ed Fotsch excavated a great amount of earth out from under what was a two storey house with a garage at street level to build two more storeys under the main house, and threw the excavated dirt onto the south hillside of his property and the GGNRA. This created a loose talus (dirt, rock, and cement fragments) slope on top of the very steep slope beside his house and fanning out broadly onto the National Park property (which was reported to them at the time). On top of this talus, Fotsch has built stacked terraces of unengineered, unreinforced, stack block retaining walls, and in the week of June 4 through 8, 2007 we have photos and witnesses that Fotsch brought in massive amounts of fill (from three to five large size dumpster boxes full) and placed that fill behind his retaining walls, which encroach onto the GGNRA and tapered it out onto the hillside. [Please see Footnote 2.] A hot tub, built without placement or permit approval, sits on top of several terraces of these stack block walls, creating minimally the equivalent of the surcharge on an unreinforced wall over 16 feet high. Directly above these terraces is a long 12 foot high concrete retaining wall (with 3' glass wall and handrail above it) which has over 50 cubic feet of fill added behind it to create a flat yard for the Fotsch's on the very steep hillside; that wall required a permit and engineering and has neither, and encroaches onto the GGNRA [See Footnote 3.]. There are also other stack block walls in various parts of the property that require engineering and permits and have none. Yard debris and fill has been dumped in front of some walls to minimize the unpermitted height and, in one case, to cover a fissure caused by slope slippage and drainage problems. Fotsch's trees have fallen twice when the stack block walls failed, one onto our roof and one damaging our landscaping. We wrote letters to Fotsch about the materials and drainage when he was building the walls, and again after the walls had failed, and he built the walls back the very same way. And all of this has been done by Fotsch on the steep slope directly below the area that slid above Alexander Avenue, which is directly above our house.

Again the rainy season is upon us, and as of today the existing and proposed drainage patterns on the site are not shown on the site plans, nor are the locations of all subsurface storm drains and clean-outs surveyed and shown on the as-built plans, in spite of the fact that both were requested by Planning Assistant Bill Rose in April of 2003 to be done prior to the first presentation of the garage/stair project to the Planning Commission for review.

In a conversation at the Planning Department counter on October 22, 2007, in response to our question about when our safety needs about the existing retaining walls would be addressed, Sierra Russell, Associate Planner, replied that they would not be addressed before the building permit (for the already built fifth storey of the den and game room) is applied for by Ed Fotsch. But we don't know when that will be. And that comment should apply only to the building permit for the mostly already built den and game room (and bathroom), when and if that permit is applied for. The Planning Department insists that these known unsafe conditions and code violations "must wait" even longer to be addressed, and that their rectification depends on a time to be determined by Ed Fotsch.

This points to another problem: When the City of Sausalito allows project creep, developers are encouraged to do what they can get away with and not what they are obligated to do.

The City of Sausalito has a duty to protect the public safety, to protect the public from those who would convert the public interest for their private use, to protect the Planning Staff from those who try to take advantage by asserting pressure to try to get exceptions, and an important interest in protecting neighbors of developers.

There is a definite risk of landslide affecting our property, with the attendant risk of loss of life, injury, and economic damage to ourselves and our neighbors. The economic damage to our property has already occurred, as we would need to disclose these dangerous conditions to potential buyers if we, or our heirs, ever need to sell our property. The unsafe conditions described herein have been known by The City of Sausalito for well over a year and remain unabated. We demand that they be rectified immediately.

SB
195

Sincerely,
Ian and Janeane Moody
6 Alexander Avenue
Sausalito
November 20, 2007

1. A grading plan and permit shall be required prior to the issuance of a Building Permit if the grading quantities exceed 50 cubic yards, fills over 1.0 thick are placed, cuts over 2.0' are made, grading is performed within 2' of a property line, or for any excavations of embankment (cut or fill) on a slope of over 20%. The amount of grading shall be stated on the Site Plan.
2. On July 26, 2007, after a site visit by Paul Kermoyan, Planning Director, noted that these gravity stack retaining walls are installed on steep-sloping grades requiring structural evaluation for existing conditions for the installation of the retaining wall system, that they require a geotechnical engineering report, and permits, and that they are not shown on plans dated June 9, 2004.
3. On July 26, 2007, after a site visit by Kermoyan, he noted that the large concrete wall creating a flat yard is required to be engineered and permitted, and is not shown on plans dated June 9, 2004.

5B
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THOMAS R. MCADAMS

FAX

October 9, 2007

RECEIVED
OCT 10 2007
CITY OF SAUSALITO
COMMUNITY DEVELOPMENT DEPT.

To: City of Sausalito
Attn: Sierra Russell

From: Tom McAdams
Pages: 1 (including cover)

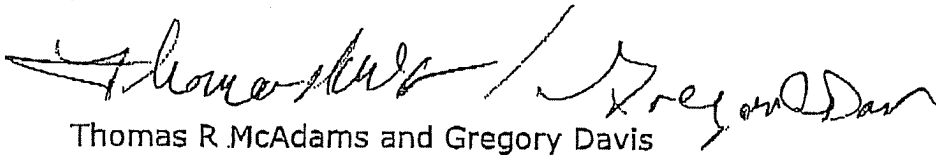
FAX: 415-289-4167

Subject: 2 Alexander Ave Variance

Sierra,

We are neighbors of the Fotch's who are applying for a variance to the construction of their garage. We are in favor of the City of Sausalito allowing this variance so the project can proceed. Ultimately, this completed garage will provide space for off-street parking of the Fotch's vehicles allowing for additional parking that is in such high demand in our neighborhood.

Thank you,


Thomas R. McAdams and Gregory Davis

SB
197

Sierra Russell

From: Forest Baskett [fbaskett@nea.com]
Sent: Sunday, October 07, 2007 9:14 PM
To: Sierra Russell
Subject: Ed Fotsch's garage project at 2 Alexander Avenue
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Sierra: My wife and I live at 24 Alexander Avenue and we are sending you this note in support of Ed Fotsch's appearance before the planning commission this coming week. We support his proposal and very much look forward to this project being done and our neighborhood having two more off street parking places.

Sincerely,
Forest Baskett
24 Alexander Avenue
Sausalito, Ca

This electronic mail message, including any attachments hereto, is intended only for addressee and may contain privileged and/or confidential information. If you are not addressee indicated in this message (or responsible for delivery of the message to s person), you are hereby notified that you must not use, disseminate, copy it in any or take any action based upon it. If you have received this message by error, please immediately delete it and any copies of it, including any attachments hereto, and no the sender at New Enterprise Associates by reply electronic mail message, fax or pho Thank you.

SB
198

ITEM NO. 6 PAGE 130

Sierra Russell

From: Patrick Courtney [patcour@comcast.net]
Sent: Friday, October 05, 2007 6:58 PM
To: Sierra Russell
Cc: Deb Delguidice; Ed Fotsch
Subject: Re: note of support to the City
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Planning Commission,

I hope I am writing this letter in time for you to include it in your report and apologize if I missed the cutoff.

Again, I am writing to express my support for the Fotsch's remodel project on Alexander Avenue. I have known Ed for appx 20 years, since the time I purchased a home he constructed on Edwards Avenue. We still live in the house. In my opinion Ed's projects over the past 25 years have improved the neighborhood.

We understand that he is making some changes to his existing home, to make it more livable for his family.

Over the past years, my wife Denise and I have watched family after family leave Sausalito after having kids. We are raising our kids in Sausalito and realize that sometimes this is not as easy as raising kids in the surrounding towns. We believe that our town should support our resident families. One way this can be accomplished is for our town planning commission to allow for reasonable modifications to homes for the purpose of making them more kid friendly.

This is what Ed appears to be asking for. Again we support his project. Please feel free to call us at 331-9881 should you wish to discuss this in person.

Thank you very much,

Pat Courtney
 37 Edwards Ave

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

From: Sierra Russell
To: Ed Fotsch ; Patrick Courtney
Cc: Deb Delguidice
Sent: Wednesday, October 03, 2007 3:24 PM
Subject: RE: note of support to the City

Ed: Just as a sidenote, any letters I receive by tomorrow mid-day, I will be able to include in the Planning Commission packet. If received after, I will have to forward them to the Commission the day of the hearing. Letters can be submitted by email.

Thanks,
 -Sierra

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

From: Ed Fotsch [mailto:ed.fotsch@medem.com]
Sent: Wednesday, October 03, 2007 1:01 PM

ITEM NO. 6 PAGE 131

JOHN B. KEATING
 ATTORNEY AT LAW
 POST OFFICE BOX 620622
 2995 WOODSIDE ROAD, SUITE 350
 WOODSIDE, CALIFORNIA 94062
 FACSIMILE (650) 851-5912
 (650) 851-5900

FACSIMILE COVER SHEET

DATE: 10/9/07
TO: Ms. Sierra Russell
FACSIMILE: (415) 339-2256
FROM: John Keating
RE: 2 Alexander Avenue

PAGES (Including Cover Sheet): 2 (one photo page follows)

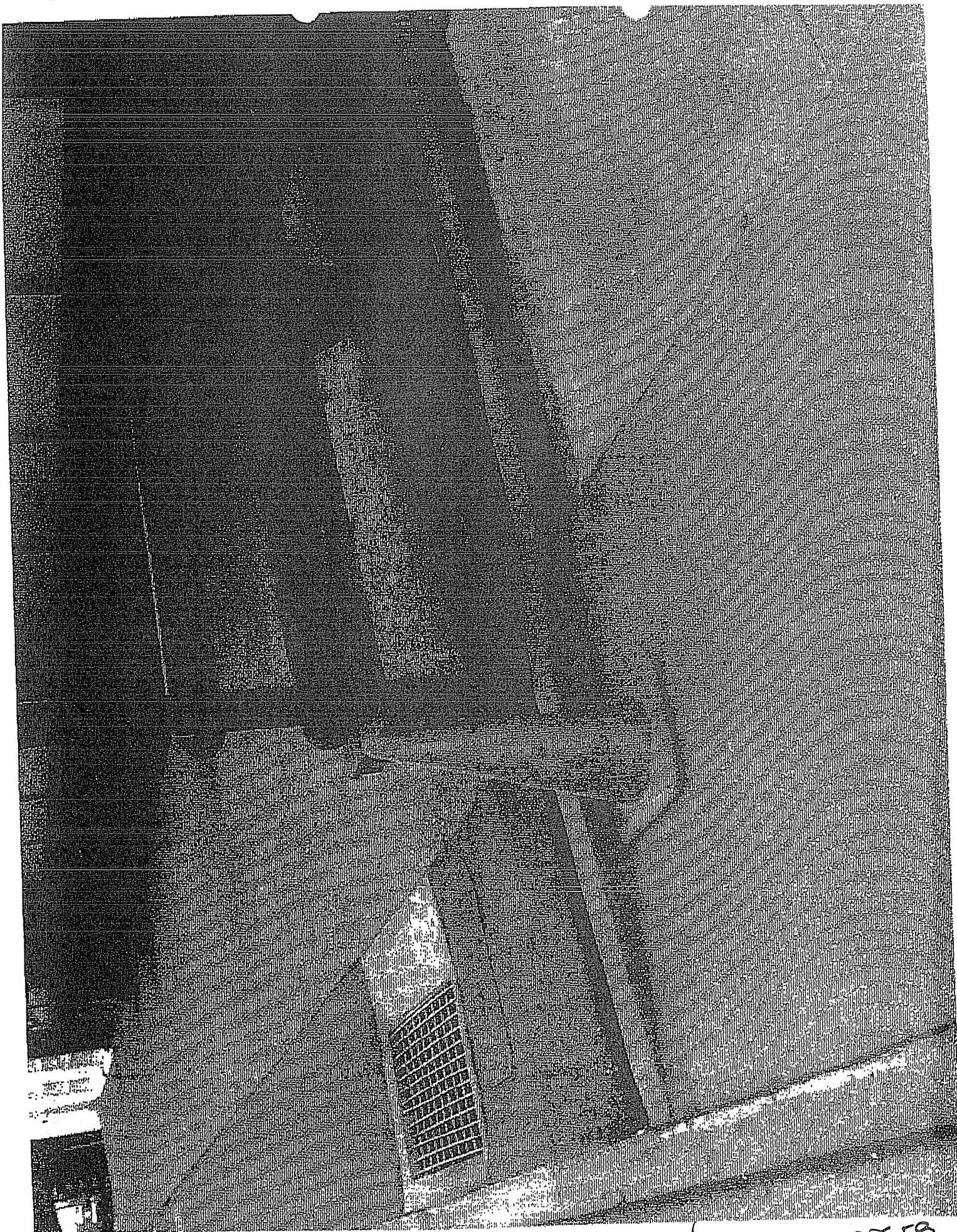
COMMENTS:

Here is a photo of the change in grade between the street pavement and driveway in the easement at 2 Alexander. As is shown in the photo, such deviation is inconsistent with the driveways of the properties along the remainder on the block. The slope, the gap in the pavement, and fence obstruction of the easement at the property line may interfere with safe use by pedestrians, bicycles and availability for auto users to pull over or turn around such as to warrant investigation as to conformity with plans and approval.

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123 5B 201

JOHN B. KEATING
ATTORNEY AT LAW
POST OFFICE BOX 620622
2995 WOODSIDE ROAD, SUITE 350
WOODSIDE, CALIFORNIA 94062
FACSIMILE (650) 851-5912
(650) 851-5900

FACSIMILE COVER SHEET

DATE: 10/4/07
TO: Mr. Kenneth Henry
FACSIMILE: (415) 339-2256
FROM: John Keating
RE: 2 Alexander Avenue

PAGES (Including Cover Sheet): 8 (six pages of photos follow)

COMMENTS:

We enclose six pages of photographs in chronological order reflecting the roof height aspect of the construction at 2 Alexander Avenue.

Pages 1-2 reflect the prior condition. The roofing surface was recessed below the facing of the building such as to accommodate flower boxes. (I have heard that part of the initial variance consideration was based on assurances that the flower boxes would remain and that the height of the roof would not be increased. Possibly the Commission hearing, building plans, permit or approval reflect that condition.)

Page 3 consists of two pictures of the initial stages in the demolition/construction. The upper picture shows the height of the prior facing which had not yet been removed. The lower picture reflects the removal of part of the facing, but with the facing on the side against the adjoining building still in place and with the addition of a large beam installed against the side facing. As can be seen from the photos, the new beam is placed such that it's height appears to take the construction up to the final height of the top of the prior planter boxes.

Page 4 consists of two photos reflecting the placement of two more layers of plywood and 2x4 lumber above the prior height of the beam.

Pages 5-6 reflect the final roof height where new facing is installed and the roofing

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Kenneth Heary
City of Sausalito Building Inspector

Via Facsimile
October 4, 2007
Page 2

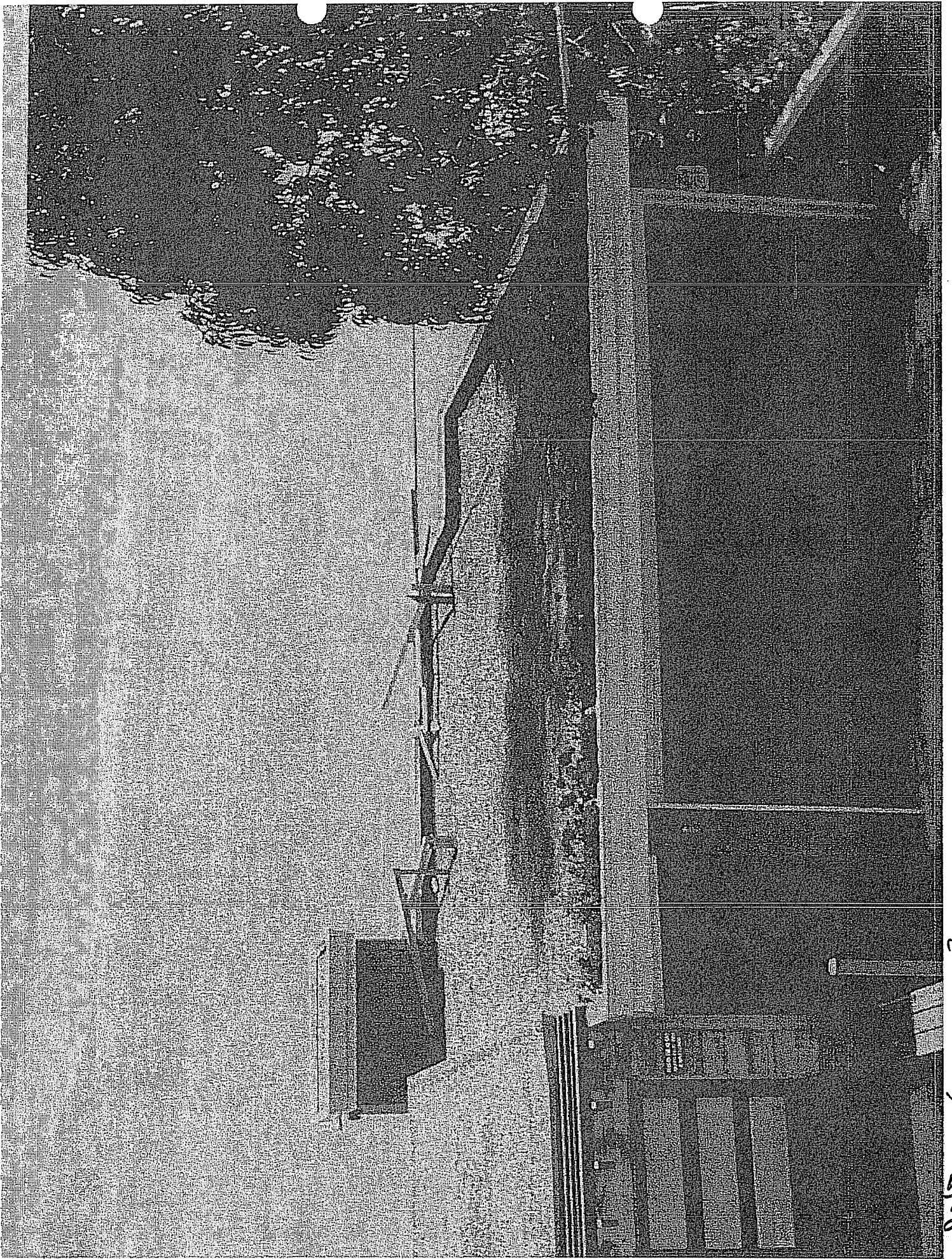
Re: 2 Alexander Avenue

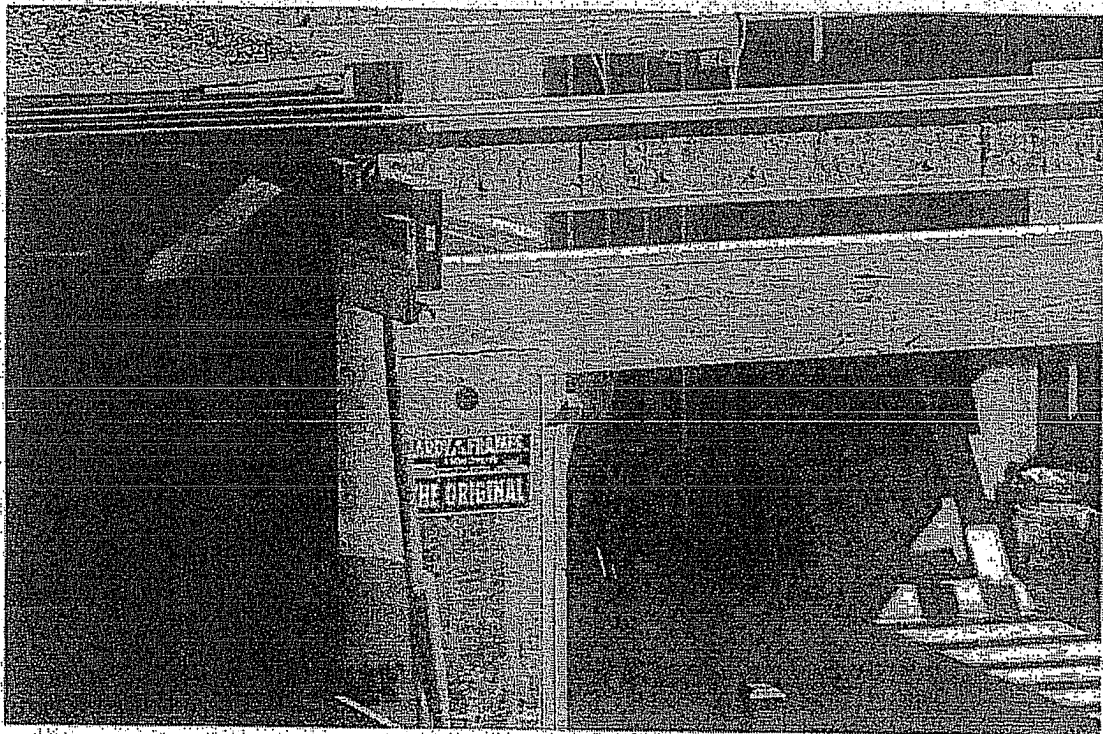
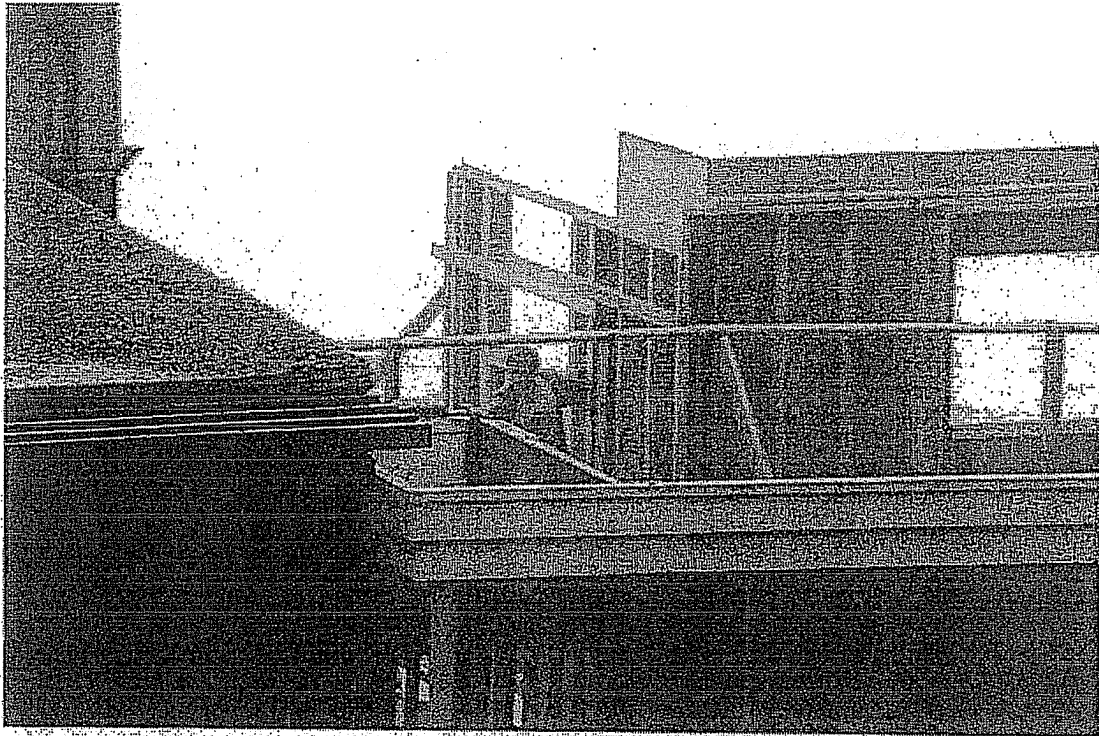
material is added to fill the level up to the top of the facing.

While in the process of considering the circumstances of the various other deviations from approval, you may wish to determine whether the actual construction is consistent with the approval to the extent the roof line ends up being higher and whether it is appropriate and consistent to have the roofing material fill go up to the final facing height without leaving room for the contemplated flower boxes as previously constructed.

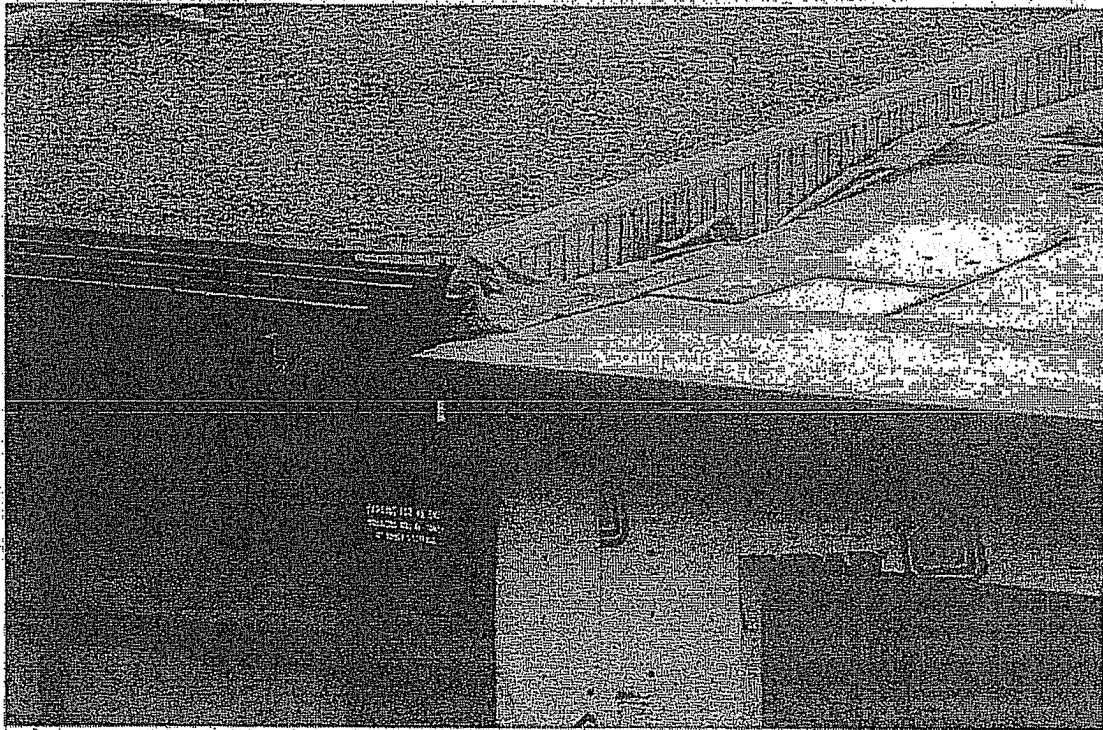
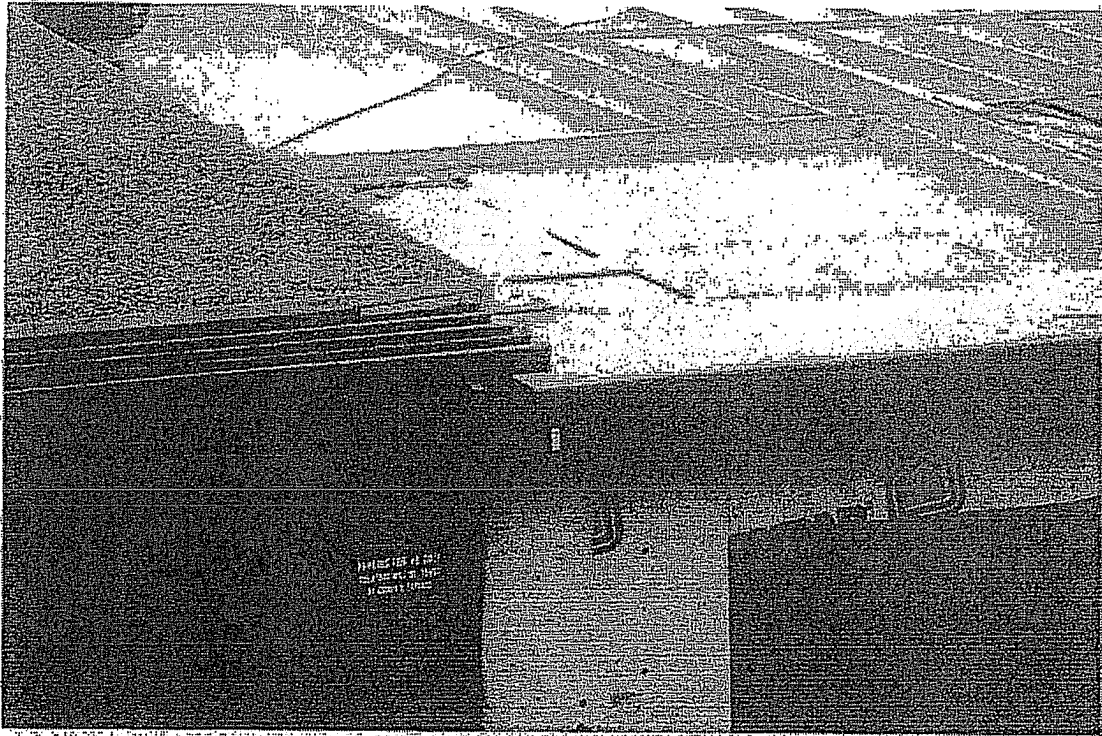
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SB
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