

MAY 18 2011

To: Town Council, Town of Fairfax  
From: Dolores Cordell  
Re: Appeal from Conditions of Use Permit for Bathroom at 9 Scenic Road, Fairfax,  
Hearing: June 1, 2011

RECEIVED

## 1. INTRODUCTION

This is an appeal from a requirement for the installation of fire sprinklers as a condition imposed by the Planning Commission for the granting a Use Permit. The Permit legalizes a 15 year old bathroom that was installed in a 400 square foot Studio at 9 Scenic Road, Fairfax ("Property"). Unlike the common case with an "accessory building", the Studio was the residence on the Property until 1978, and was effectively returned to residential status in 1988, by the Town's issuance of permits for many residential amenities, including a gas heater, skylights, and interior paneling.

Because of the damage and costs involved, and the need to preserve my legal rights, please forgive the length of the arguments and documentation submitted for this appeal. In particular, I have included information on the procedures I have been through in order to demonstrate the lack of due process notice that has plagued this matter.

The Town Council is the only body that has the authority to reverse the fire sprinkler condition. Among the many reasons why the sprinkler condition should be reversed are the facts that the sprinklers' installation would require, among other things<sup>1</sup>:

- **Tearing up the city street to hook a new 1 ¼ " pipe to the water main**
- **Tearing up 60 feet of the front of the Property, including going through a field stone retaining wall, several feet of planting, and 20 feet or more of decking. In addition there is a well-established coastal oak in the path of the work.**
- **Tearing out paneled walls in the Studio, all resulting in:**
- **Construction and installation costs which could easily exceed \$11,000, plus**
- **A \$4,000 fee to hook up the new 1 ¼ " pipe to the water main – TOTAL: \$15,000 minimum**
- **Finally, as all home owners know, few construction projects are without costly "surprises."**

The unique circumstances of the Property - including the fact that the Studio was the original house on the Property - are such that a decision reversing the fire sprinkler condition will NOT set any precedent for other properties.

The Fire Chief has also included as a condition that a wired in fire alarm be installed in the Studio, and the Planning Commission decision so provided. As will be seen, an "alternative means of protection" to fire sprinklers are specifically approved of by the Fire Code and the wired in fire alarm would suffice in this case.

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<sup>1</sup> See Statement of Peter Coyle, general contractor. Mr. Coyle will be present at the hearing to answer questions.

EXHIBIT #

**F**

## 2. THE SCOPE OF THE COUNCIL'S DISCRETION

According to the Town's attorney's, this Council alone has the authority to bring some common sense into the application of the Town's Fire Code to this case. The standard the Council is to apply to its analysis of this appeal is set forth in Fairfax Town Code § 17.036.060, which states that the Council has the discretion and authority to:

**“...reverse or modify the action appealed as it deems just and equitable.”** (Emphasis added.)

Due to the unique history of the Property and the Studio, the fire sprinkler requirement is neither “just” nor “equitable”, nor will granting a waiver of the sprinklers set a precedent for future properties. I therefore request that the Town Council reverse the fire sprinkler condition imposed on the Use Permit.

## 3. THE FACTS

### A. Property's Location on the “Flats”

9 Scenic Road is a very accessible property, centrally located on the “flats” of Fairfax, less than ½ mile from the Fire Department (.41 miles). The Studio is a considerable distance from the buildings on neighboring Properties: On the East side, the closest building from the Studio on neighboring property is approximately 41 feet away; on the West side, approximately 50 feet away; on the South side, approximately 58 feet away. The front of the Property faces Scenic Road on the north. (See plot map prepared by me– **Exhibit 1**.)

### B. Property History & Residential Amenities

Contrary to common situations in Use Permit applications, it is undisputed that the Studio was **designed and maintained as the residence** at 9 Scenic Road, Fairfax (“Property”) for at least 50 years. In 1978-79, a new main house was built on the Property and the original residence was then truncated to a 20 X 20 foot structure and completely renovated, turning it into what is now “the Studio”.<sup>2</sup>

In 1988, the Town issued permits for the remodeling and renovating of the Studio by the installation of clearly residential amenities [**Exhibit 2**] (All Exhibits are from the Fairfax building department files unless otherwise noted.):

- Replacement of windows and doors with insulated glass
- Adding skylights
- Insulating the ceiling

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<sup>2</sup> Based on photos in the Fairfax files, substantial work was performed on what became the Studio, including a new foundation where the residence was truncated.

- Covering the ceiling with tongue and groove pine
- Installation of a gas heater

Thus, when I purchased the Property in 1994, the Studio had the following residential amenities.

- **Gas wall heater (fully functioning)**
- **Hot water heater (in the Studio basement – fully functioning)**
- **Washer/dryer hook up (in use)**
- **French doors to the front of the Studio (double-paned insulated)**
- **Three other exterior doors, 1 front, 2 in back (2 double-paned insulated)**
- **Five skylights**
- **Six exterior windows (double-paned insulated)**
- **Wired-in ceiling fan with wall switch (fully functioning)**
- **Electrical switches and outlets (fully functioning)**
- **Finished interior walls, ceiling and floor**
- **Front exterior deck of approximately 60 square feet, with two sets of exit stairs**
- **Sound wood shingle roof (replaced with Class A composition in 2003)**

In other words, when I purchased the Property in 1994, the Studio had a full complement of residential amenities, i.e. in all respects **by 1994 the Studio was fully useable as living space**. Clearly, from the front of the building, it presented as living space. [Exhibit 3 – my photo of the front of the Studio.] All the Studio required was a bathroom to make it more comfortable and convenient.

The Studio was not a shed or garage converted to living space. **Prior to installing the bathroom it was already a fully functional residential building**. Anyone looking at it would assume that it could be used as such, and I did use it as my bedroom from the time I moved in 1994.

Despite being only 400 square feet, the Studio has **four** exterior doors providing quick and easy access to the outside. Except when in the bathroom, one is never more than **10 feet** from an exit. In 2003 I had a Class A “Presidential” fire retardant roof installed on both the Studio and the main house and in 2004 the electrical panel was upgraded, both with permits, both of which contributed to additional fire safety. (Exhibit 4.)

### **C. Installation of Studio Bathroom in 1995**

Due to the clear livability of the Studio, in 1995 I installed a lovely bathroom and closet in the Studio. [See enclosed color photos of Studio bath, closet, and living area - **Exhibit 5**], and moved the washer/dryer hook up to a corner of the building to form a separate laundry room. **These changes impacted less than 25% of the total building**. Enclosed is a copy of the floor plan for the Studio showing the layout of the Studio, including the bath, closet and washer/dryer

area [Exhibit 6.] The bathroom itself is open to the ceiling and for the most part the Studio remains an open room with minimal interior walls.

Please note that no new sewer line was required for the Studio bath. The plumber who did the installation of the toilet informed me that the “soil pipe” needed for the toilet was *already in place*. In other words, everything was in place as one would expect in a residential building, including the waste removal pipe and all of the other amenities one would expect in a living space, e.g. windows, doors, hot water, heater, electricity, etc.

#### **D. Application for Use Permit**

In September of 2010 I was informed by the Town of Fairfax that I should have applied for a Use Permit. My fault was in not applying for a building permit for the bathroom in 1995, and I confess to not having done so. However, the only penalty set forth in the Code is a tripling of application fees, which I have paid (See section 4.C. for further discussion of this issue.) However, in connection with my sale of the Property to Ken & Shaun DeMont late 2010, I did apply for the permit and it was then that I was informed that I would first have to apply for a Use Permit because the Studio was not supposed to be living space.<sup>3</sup>

The application for the Use Permit was filed in October 2010. However, it was not until I received the Staff Report in November 2010, that any mention was made of fire sprinklers. Had I been informed of this requirement, I would have challenged the designation of the Studio as a non-residential structure. As it is, I have now paid \$2,775 solely to apply for the Use Permit.

#### **E. 1994 Resale Report**

Based on the November 2010 work up by the Town Staff, one of the allegations being made was that in 1994 I received a Resale Report that “informed” me that no bathroom was allowed in the Studio (Exhibit 6. 1994 Resale Report). However, that is NOT what the Resale Report says. All it states regarding the Studio (i.e. “Accessory Structure”) is:

**“Zoning and uses of property observed during on-site inspection. [Emphasis added]**

...

**“1. PRESENT USE:              v   single family residence**

...

**v   Accessory structures: Height 15 ft. or less**

**“Specify use: Workshop with gas heater and washer/dryer hook up. No bathroom.”**

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<sup>3</sup> Although the DeMonts are now the owners of the Property, I am contractually obligated to obtain a permit for the bathroom in the Studio.

The Resale Report give absolutely NO notice that a bathroom was not allowed. The Town's position has been that underlining the word "no" in the Resale Report gave me notice that no bathroom could be installed. With all due respect, I expect government officials to communicate with me in words, not squiggles. The Resale Report could easily have stated "no bathroom allowed" or "bathroom not permitted" or "no bathroom may be installed." But it didn't.

It should also be noted that it was not until a March 29, 2011 meeting with Staff that I learned that there were Minutes of two 1978 Town Council meetings which established any limitation on the Studio. (**Exhibit 7**) It was conceded that neither of these Minutes were ever in the Town's 9 Scenic property file.

#### **F. Non-Noticed "Appeal" Rights from Resale Report**

The 1994 Resale Reports never gave me notice that a bathroom was prohibited in the Studio. However, it was not until March 2011, that I was informed for the first time that I could have "appealed" both the 1994 Report and the 2010 Resale Report prepared when I sold the Property (**Exhibits 6 & 8**. 1994 Resale Report and 2010 Resale Report). In a March 25, 2011 letter, the Staff informs me for the first time that:

"The determination that the accessory structure was not a U-occupancy, a workshop, could have been appealed if you felt the space was improved as an R-occupancy, living space, within ten (10) days of the issuance of the 1994 Resale Inspection. That appeal was never filed."

"You also could have appealed the staff telling you a use Permit was required for the improvements converting the workshop to a bedroom, bathroom and laundry room within 10 days of the September 29, 2010 Resale Inspection if you contested that determination. No appeal was submitted and the deadline for filing that appeal is long past." (**Exhibit 9**, Linda Neal email with attached letter dated March 25, 2011)

Neither Resale Report contains even the *slightest hint* that these alleged "decision" of Staff contained therein were appealable; nor during the almost six (6) months from the September 29, 2010 Resale Report until the March 25, 2011 letter was ANY mention made that a Resale Report was appealable. (See **Exhibits 6 and 8**. 1994 and 2010 Resale Reports.)

While the Town Staff has been very kind and responsive during this process, I have to say that the March 25 letter can only strike one as a "gotcha" based on an unsupportable legal analysis.

Such an interpretation of the impact of the Reports violates the due process rights of every new Fairfax home owner, none of whom are informed that the Resale Report represents a cast-in-stone determination of their property rights unless within **10 days** – while they are closing escrow and moving – they appeal a "Report" that gives them absolutely NO notice that they should do so upon pain of forever being locked into the conclusions of one Town Inspector.

Surely this is not the way Fairfax intends to do business. Equally obvious, such a position violates every notion of due process, fairness and transparency.

As will be seen, the failure to notify me of my appeal right, or to provide any meaningful avenue of appeal, has been a continuing and consistent omission in this matter.

### **G. Fire Department & the Limited Fire Board Appeal**

Meanwhile, the Fire Department's demand for sprinklers was set forth in a Fire Department Plan Review to the Town dated October 27, 2010 (**Exhibit 10**. "Fire Dept. Review"), which I received in late November 2010. Please note that – once again - nothing in the Fire Dept. Review makes any mention of a right to appeal the determination made by that Review.

Instead, during a casual conversation with Firefighter Robert Bastianon on December 9, 2010, he informed me that I DID have appeal rights, i.e. by writing the Fire Chief asking him to reconsider and waive the fire sprinkler order. Mr. Bastianon also informed me that if the waiver was denied, I could then appeal to the Fire Board.

Therefore on December 14, 2010, I wrote Chief Meagor explaining the situation with the Studio and requesting a waiver of the sprinklers pursuant to Fairfax Code § 903.2 **(3)**, (**Exhibit 11** December 14, 2010 Appeal Letter to Chief Meagor.) Please note that Code Section **903.2(3)** expressly allows for a waiver of fire sprinklers when more than 50% of floor area is added or there is a "substantial" remodel, stating: "**Exceptions may be granted by the Fire Chief when alternative means of protection are installed as approved by the Fire Chief.**"

Nevertheless, the 903.2 **(3)** waiver was denied by the Chief, citing only section 903.2 **(10)**, which requires fire sprinklers when there is more than a 50% "change in use" of the premises. (**Exhibit 12** - Denial Letter of Chief Meagor dated January 10, 2011.) In other words, the waiver provisions of subsection **(3)** of 903.2 were not even considered.

In a continuing pattern, the Denial Letter makes no mention of any right to appeal. It was only due to my December 2010 conversation with Mr. Bastianon that I was aware that a Fire Board appeal was even available. Attached are my email exchanges with the Fire Department attempting to obtain further information about my appeal rights. (**Exhibit 13** - January 11, 2011 emails with Fire Department.)

I timely filed my appeal with the Fire Board and a hearing went forward on March 10, 2011. The Fire Board does not make a recording of its proceedings (**Exhibit 14** - Meagor email of March 20, 2011), however, I was present for the entire hearing and can testify under oath as to what was stated at that hearing. That hearing included the following:

First, the Fire Board was informed by its legal counsel that it did not have the authority to decide whether the fire sprinklers were reasonable. Second, when I pointed out that a waiver was permissible under subsection **(3)** of section 903.2, the Chief replied that there were "no

alternative means of protection” that were “as good as fire sprinklers.” **Please note that such an interpretation renders subsection (3) meaningless**, i.e., if the only means of protection are fire sprinklers, then there can never be an “alternative means of protection” as contemplated by that subsection.

The result of these limitations on the Fire Board’s decision-making was to render its decision nothing more than a rubber stamp of the Fire Chief’s decision. Nevertheless, the final vote was still 1 vote for the waiver, 2 against, and 1 abstention.

Moreover, the final conclusion of the Fire Board based on its legal counsel’s information was that only the Town of Fairfax could make a final determination on the fire sprinkler condition, although counsel did note that I had to appeal to the Fire Board first in order to exhaust my administrative remedies.

#### **H. “Connect the House & Studio”**

On March 29, prior to the continued Planning Commission hearing, the Town Staff and I met regarding this matter. In an effort to assist me, the Staff obtained a suggested “solution” from the Fire Department, which “solution” is one of the stranger aspects of this situation. To wit:

**Sprinklers would NOT be required IF the main house and the Studio were joined together to make one large house. [Exhibits 15 & 16 - Linda Neal email of March 30, 2011 & Robert Bastianon email of March 30, 2011)**

In other words, if the 9 Scenic Property had only one BIG building, no sprinklers required. But since there was one SMALL building, sprinklers would be required. One can only question the rational basis for such an odd and illogical distinction in the Code.

#### **I. Previous Amnesties for Second Units**

Moreover, at the March 29, 2011 meeting, reference was made to a fire sprinkler amnesty for Second Units that was in effect when I applied for the Use Permit, and which continued through February 13, 2011.. (**Exhibit 17** - Second Unit Amnesty Ordinance 751– see Fire Sprinkler waiver in section A.5 of ordinance.)

Under the terms of these amnesty ordinances, if I had installed a kitchen and illegally rented out the Studio in 1994, in the fall of 2010 I could have applied to legalize the Studio as a rental (the Property has 3 parking spaces). Not only would part of the permit fees have been remitted, the Town would have legalized the Studio as a second unit **without requiring sprinklers**.

Ordinance No. 751 expressly states that in granting a conditional use permit to legalize an existing Second unit, “...**an automatic fire sprinkler suppression system shall not be required.**” (**Exhibit 18**) It is ironic that this second unit fire sprinkler waiver remained in place during the pendency of Studio Use Permit, until February 13, 2011.

As with the “make-it-one-big-house” solution, the juxtaposition of a sprinkler requirement for a Studio used by a single family against the waiver of fire sprinklers in a rental unit defies logic. If I had applied to legalize the Studio as a rental unit, I would not have install sprinklers. But because I simply applied for a Use Permit for a 15 year old bathroom, I would have to spend **\$15,000 or more** for fire sprinklers – sprinklers which the current owners do not even want. (**Exhibit 18** - email of the DeMonts, current owners.)

Clearly the Town of Fairfax recognizes that fire sprinklers are NOT necessary in all situations, which includes situations in which a property owner wants to permit an illegal second unit rental. Given that fact, the fire sprinkler requirement for a 400 square foot structure is both irrational and discriminatory.

#### **J. Planning Commission Hearing**

After continuing the hearing several times for the Fire Board Appeal, this matter was finally heard before the Fairfax Planning Commission on April 21, 2011. Briefly put, the Commission approved the Use Permit for the Studio bath, but was told by Staff that legal counsel had advised them that the Commission did not have the authority to do anything other than impose the sprinklers as a condition of granting the Use Permit.

Thus the Planning Commission could not remove the fire sprinkler requirement from its approval of the Use Permit. Instead, that decision would have to be made by the Town Council, which is why, after 7 months, this matter is finally coming before this Council.

#### **4. REASONS WHY THE SPRINKLER CONDITION IS NOT “JUST” OR “EQUITABLE”**

##### **A. SINCE THE STUDIO WAS DESIGNED AND BUILT AS RESIDENTIAL LIVING SPACE, NO FIRE SPRINKLERS SHOULD BE REQUIRED**

The standard for this appeal is that the decision be “just and equitable”. Surely requiring \$15,000 or more worth of fire sprinklers fails to meet the criteria of “just” or “equitable” and if for no other reason means the sprinkler condition is appropriate for reversal.

The ONLY basis for the Fire Department’s demand for sprinklers is that there has been a “change in use” of the Studio which triggered the provisions of Fire Code §903.2 (10). (**Exhibit 12** -- Denial Letter of Chief Meagor.) But this is a misinterpretation of the Code.

The Fire Chief’s denial neither considers whether there was a FACTUAL change in the “use” of the Studio, nor does it consider the applicability of the wavier provisions of subsection (3).

The Code states:

“Section 903.2. Where Required. All Occupancies and Facilities. An automatic fire sprinkler system shall be installed in all of the following:

(3) In all buildings which have more than fifty percent (50%) floor area added or any “substantial remodel” as defined in the Fire code, within any 12 month period. **Exceptions may be granted by the Fire Chief when alternative means of protection are installed as approved by the Fire Chief.** [Emphasis added.]

(10) A change in the use of a structure that results in a higher fire or life safety exposure when the square footage of the area changes use is more than 50% of the square footage of the building.”

It is axiomatic that Code sections must be applied so as to give effective to ALL of their terms, not just selected excerpts. In the case of the Studio, only subsection 10 has been applied, but not subsection 3. But when ALL of the subsections of the Fairfax Fire Code are considered, it becomes clear that the fire sprinkler requirements were expressly drafted to provide for an exception to the requirement in cases just such as that of the 9 Scenic Studio, i.e. where there is no factual change of “use” and/or where imposing fire sprinklers is plain overkill.

1. **There Was No Change in the “Use” of the Studio as Defined by the Fairfax Code**

The only definition of “use” in the Fairfax Code is found in its Definitions in section 17.008.020. The definition of “use” is **not** defined as “legally permitted use” or an “authorized use”. All the Code defines as a “use” is:

- (1) (a) Any purpose for which a building or other structure or tract of land may be designed, arranged, intended, maintained or occupied; or
- (b) Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.
- (2) To *USE* means to convert to one’s service.<sup>4</sup> [Emphasis added.]

In this case, the plain meaning of section 903.2 (10) has been wrongly interpreted as meaning that sprinklers are required if a **legally permitted use** of a building has changed. But that is NOT what subsection 10 says.

All subsection 10 says is that sprinklers are required when there is “A change in the **use** of a structure that results in a higher fire or life safety exposure when the square footage of the area changing **use** is more than 50% of the square footage of the building.” If the Town had meant to

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<sup>4</sup> This is the only definition of “Use” I have found in the Fairfax Code.

say that the sprinkler were required if there was a change in the **legally permitted use** of a structure, undoubtedly it would have said so. But the Town Code does not say that.

It is clear that the Studio was built as a residence. It is equally clear that by 1994, the Studio was a habitable space based on its residential amenities which included those **installed in 1988 with permits from the Town of Fairfax**, such as a gas heater, skylights, and double-paned windows and doors, not to mention a deck, hot water heater, electrical outlets, ceiling fan, etc.

The Studio was built, “maintained”, and “occupied” as residential space for almost its entirety of its history. It was not built as a shed or a garage which was then converted into living space. It WAS and HAS BEEN a residential building.

**2. Since Less Than 50% of the Studio Has In Fact Changed “Use”, Subsection (10) Does Not Apply**

By its own terms, subsection 10 only applies “when the square footage of the areas changing use is more than 50% of the square footage of the building”. In this case, less than 50% of the Studio square footage changed “use” – the bathroom, closet and laundry use less than 100 square feet of the 400 square foot structure, i.e. less than 25% of Studio.

Accordingly, under the terms of subsection 10, it is not applicable to the Studio because less than 50% of the building was changed by installing the bathroom.

**3. Even If the “Use” Has Changed, the Applicable Subsection of Fire Code §903.2 to Apply is Subsection (3), Not Subsection (10)**

Because of the unique history of the Studio, if any Code section applies, it should be Fairfax Fire Code section 903.2 (3), not (10). Subsection (3) states that sprinklers shall be installed:

3. In all building which have more than fifty percent (50%) floor area added OR any “substantial remodel”<sup>5</sup> as defined in the Fire Code, within any 12 month

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<sup>5</sup> “Substantial remodel” is defined in § 8.04.100 as follows:

“Substantial Remodel shall mean the **renovation** of any structure, which combined with any additions to the structure, **affects a floor area which exceeds fifty percent of the existing floor area** of the structure within any 12 month period. When any changes are made in the building, such as walls, columns, beams or girders, floor or ceiling joists and coverings, roof rafters, roof diaphragms, foundations, piles or retaining walls or similar components, the floor area of all rooms affected by such changes shall be included in computing floor areas for the purposes of applying this definition. This definition does not apply to the replacement and upgrading of residential roof coverings.” [Emphasis added]

**period. Exceptions may be granted by the Fire Chief when alternative means of protection are installed as approved by the Fire Chief. [Emphasis added.]**

It is clear that the “true intent and meaning” of the Code is to allow a waiver when “alternative means of protection are installed” because merely remodeling a “structure” should not necessarily trigger the disruptive and costly requirement for fire sprinklers. The Studio was in fact “substantially remodeled” in 1988 and the addition of a bathroom in 1994 affected less than 50% of the square footage of the building.

Interpreting 903.2 any other way leads to an odd result i.e., if I had ADDED an additional 200 square feet to the Studio, a waiver of the fire sprinkler requirement would have been available under subsection 3. But because I merely installed a bathroom in existing space, a waiver is not available because of subsection 10. Clearly it could not be the intent of the Code section to impose MORE restrictions on a citizen making a small modification to a structure than to a citizen who has increased or even doubled the size of a structure!

The Studio has the smoke alarms required by law. This has sufficed for the last 15 years. With that history in mind, it is clear that the alarms are and have been an “alternative means of protection” which have, in fact, been in effect “approved” by the Fire Chief. **The wired in fire alarm which the Fire Chief also included as a condition of the Use Permit would easily meet the test of an ‘alternative means of protection.’**

**B. RESIDENTIAL USE OF THE STUDIO IS SAFER THAN USE OF THE STUDIO AS A WORKSHOP**

The Staff Report for the Use Permit describes the Studio as only being permitted as a “workshop / laundry room.” The Fire Department then concluded that residential “use” created a greater fire or life safety risk. However, I would request that the Board consider the following:

**If the Studio was used as a “workshop” it would risk introducing into a building with a GAS wall heater and pilot, flammable materials such as solvents, paints, wood shavings, plaster dust, and perhaps even tools that spark, all in the presence of natural gas.**

As a residential structure, it is far less likely that a fire will be started inside of the Studio since residents will be using it frequently and therefore can observe what is going on in the building. Moreover, if there is a fire, it is more likely that it will be noticed sooner and action taken faster. In the meantime, the 4 exterior doors insure that one or more exits in this small building are readily accessible for escape by residents, thereby making the risk to life unlikely.

Indeed, since 1994 the Studio was in continuous use as my bedroom or that of my family and overnight guests without incident.

Understandably, fire sprinklers **would be** a reasonable and sensible precaution under other, common circumstances. For example:

- IF the Studio did not have adequate exits (it has 4 exterior doors); or
- IF the Studio had been converted from a non-residential building, such as a shed or garage (it was built as a residence and even rehabilitated and improved thereafter); or
- IF 9 Scenic were in a difficult to reach hillside area (it is on the “flats” less than a ½ mile from the Fire Department); or
- IF the Studio were a two story building; or
- IF the Studio had a hallway blockable by fire (there is no hallway); or
- IF the Studio was a Second Unit, i.e. had kitchen (Fairfax Code section 17.048.030 defines “Second Units” as one with a kitchen.)

None of these characteristics are applicable to the Studio. If they were, then the sprinklers would be a sensible and reasonable precaution to protect life and property. But under the unusual and probably unique circumstances of 9 Scenic, the disruption and costs cannot be justified under the plain language of 903.2(10), i.e. even if there is a “change in use”, that use does not result in a “higher fire or life safety exposure.”

**C. REQUIRING FIRE SPINKLERS UNDER THESE CIRCUMSTANCE WOULD BE UNDULY PUNITIVE**

Although I would have learned of the restriction if I had applied for a permit in 1995 – which was prior to the enactment of section 903.2 - the only penalty the Town Code sets forth for failure to obtain a permit is that the application fees for a Use Permit and for a building permit are tripled. I have paid the triple fees (of almost \$2,800) to apply for the Use Permit and will have to pay triple fees for the permit to issue.

To increase the “penalty” by imposing an addition expenditure of as much as **\$15,000** (possibly more if there are the almost certain “surprises”) would simply be punitive. That is not what the Fairfax Code requires and to impose such a condition and its excessive costs under the unique circumstances of this case seems neither fair nor reasonable.

**D. SINCE THE STAFF HAS ALREADY DONE MOST OF THE WORK UP FOR THE USE PERMIT, IT IS REQUESTED THAT AT LEAST A PORTION OF THE \$945 APPEAL FEE BE REMITTED**

The fee for this appeal to the Town Council was \$945. I would suggest that for many residence of Fairfax a fee of this amount would be prohibitive and therefore deprives them of their right to appeal. But in any event, since the fee is primarily to pay for the Staff work-up, and the Staff has

previously prepared this matter for hearing, the cost of Staff time required is far less than the \$945 fee. This is particularly true since neither the Fire Board nor the Planning Commission could rule on this issue, thereby requiring an appeal to the Town Council, and the fact that I have already had to expend almost \$2,800 for the Use Permit. I would therefore request that at least a portion of the appeal fee be remitted to me in connection with the granting of this appeal.

**E. A REVERSAL OF THE SPRINKLER CONDITION WILL NOT SET A PRECEDENT**

The Town may have a concern whether this reversal of the fire sprinkler condition would set a precedent in other disputes over fire sprinklers. However, the circumstances of the Studio are probably unique in Fairfax: An original residence reduced in size with all residential amenities except a bathroom.

This distinction could be made clear in the Town Council minutes by making the appropriate findings, which could be as follows:

**Proposed Findings**

1. The structure at issue ("Structure") was designed, built and maintained on the residence prior to its becoming an accessory structure.
2. At the time a bathroom was installed in 1994, the structure was already habitable, having a gas heater, insulated windows, doors and skylights, a hot water heater, laundry room facilities, ceiling fan, and electrical outlets and switches, all consistent with residential use.
3. Under the above circumstances, the addition of a bathroom to the structure is not a change in use such that requiring the installation of an automatic fire sprinkler suppression system would be just and equitable.

**CONCLUSION**

The Studio at 9 Scenic was designed, built and used as a residence for decades prior to the building of a new main house. Its use is and remains residential, which includes the many residential upgrades approved in 1988.

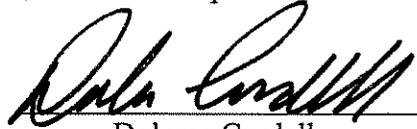
Given the location of the Property and structure of the Studio, there is no greater risk of fire or life safety than there has been for the decades the structure has been on the Property, both before and after its transformation into a Studio. In other words, under Code section 903.2 (10) there is no evidence that the **continuing the use** of the Studio for residential purposes will result in any greater risk to any person or property.

This is not a multi-story building or a fire trap. It is a 400 square foot building with 4 exterior doors. It is on the "flats", close to the fire department and distant from structures on neighboring properties.

I therefore request that the Board find that there is no greater risk in continuing this use and therefore no built-in sprinklers are required under Code section 903.2. In the alternative, I would request that the Board find that section 903.2 (3) rather than section (10) is applicable and that the installation of a fire alarm – either free standing or wired in – is adequate under the circumstances.

Thank you very much for your public service, attention and patience in reviewing this matter.

May 18, 2011

  
\_\_\_\_\_  
Dolores Cordell

Statement of Peter Coyle

I, Peter Coyle, declare:

1. I have been a licensed general contractor in the State of California since 1991, license number 735345, and a principal of Coyle Brothers Construction Company, Inc., which works principally in Marin County, California. Address: 51 Sunview Avenue, San Anselmo, CA. Telephone: 415-454-1633. All of the facts below are within my personal knowledge.
2. During my years as a general contractor, I have worked on numerous projects involving the installation of automatic fire sprinklers, and am familiar with the problems which accompany their installation.
3. The actual installation of the fire sprinklers themselves is not necessarily a difficult task in most buildings. However, sprinkler installation also involves additional issues such as a) the size of the water line running from the street to the house; b) location of shut off valves; and c) hook up of the new sprinkler feed line to the structure in which the sprinklers are installed.
4. The installation of the fire sprinklers themselves is normally about \$3,000 in a building of less than 500 square feet. However, the cost of the other items involved in installation can be substantial and far more expensive than the installation of the sprinklers themselves, as well as being very disruptive to the land and buildings.
5. I am familiar with the property located at 9 Scenic Road, Fairfax, California, and have investigated the work and cost of what it would require to install sprinklers in the studio structure at the front of the property. Because of the geography involved, the exterior of the

*EXHIBIT*

property, the requirements of fire sprinkler installation companies, and the structure of the Studio itself, installation of fire sprinkler in the Studio would be very costly and disruptive.

6. I have worked with numerous fire sprinkler companies in Marin County and none of them will install a sprinkler line unless the line to the city water main is at least 1 1/4" in diameter. The Scenic line is 3/4" and would therefore have to be replaced. In addition, I am informed that the City of Fairfax charges \$4,000 in order to hook up such a new line.
7. After that, a new 1 1/4" water pipe for the sprinkler line would have to run from the "sidewalk" level water main shut off box in front of the property all the way to the front of the main house where the water main enters the house. The house is on a rise which is at least 60 feet from the water main shut off. Between the water main and the front of the house there is stone wall, well established ivy, and approximately 20 feet of decking. These would all have to be torn up to connect the sprinkler line with the front of the house. This requires substantial deck removal and digging a trench approximately 60 feet long through the entire front of the property.
8. At the point where the water line enters the main house, a valve would need to be installed to re-direct the line with the sprinkler system water into the Studio. This is because the code requires a set up preventing the sprinkler line from being turned off if water into the main house is shut off. It would also require that a valve be installed on the outside of the main house near the front door, on top of the existing deck.

Declaration of Peter Coyle

Re: 9 Scenic Road, Fairfax

Ross Valley Fire Board Hearing: February 10, 2011

Page 3

9. Once the valve near the front of the house is installed, the sprinkler line would then need to enter the studio and be installed within the walls.
10. The problem with fire sprinkler installation in the 9 Scenic Studio is that the walls and ceiling are all wood paneled and the ceiling is vaulted so that there is no attic space. As a consequence, the wood walls would have to be torn out to do the installation. Replacement and repair of the walls will be far more difficult and expensive than simply replacing dry wall. The wood will have to be cut out, replaced with new cut wood, nailed in, patched and painted. As opposed to simple reinstalling dry wall, the entire wood panels & trims (some of which are 8 feet long) will have to be replaced. In a building the size of 9 Scenic at least 4 sprinkler heads would be required.
11. In short, the cost of installation of the sprinklers themselves is a small part of the cost of the project, although even that installation would be much more difficult and expensive than normal because of the wood paneling. The substantial costs are in connection with the hook up to the city line and running the new line to the main house and then to the Studio. The sprinkler company does not do that work; that is the work of a general contractor such as myself.
12. Based on the location and nature of the property and the issues that must be addressed, it is my opinion as an experienced general contractor that the cost of such a project would be at least \$11,000, not including the \$4,000 for the hook up to the city sewer line. However, in any construction project there can be "surprises" that result in higher than anticipated costs.

Declaration of Peter Coyle

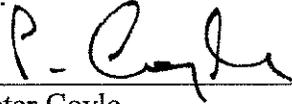
Re: 9 Scenic Road, Fairfax

Ross Valley Fire Board Hearing: February 10, 2011

Page 4

13. In view of the fact that the Studio is only 400 square feet, has 4 exterior doors, and is no closer than 40 feet, approximately, to the buildings on neighboring properties, the cost versus benefit of these sprinklers is simply not justified.

I declare that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on February \_\_, 2011.

  
\_\_\_\_\_  
Peter Coyle

SCENIC ROAD

$\Delta = 13^{\circ}27'20''$

$R = 276.78'$

$L = 65.00'$

DRIVE

PARK

15 SCENIC

19'5"

HOUSE  
[PREVIOUSLY  
EST. AT  
15'.  
ACTUAL  
MEASURE-  
MENT IS  
19'5"]

30'

PATIO

OAK

EXIST.  
Studio

13'

63.13'

28'  
5 SCENIC

\* [PREVIOUS  
EST.  
25']

MAIN HOUSE

Deck

24' 10'

3.5'

54.81'

55.49'

24'

HOUSE (PREVIOUS  
EST. 30')

DOLORES CORDELL  
415-608-3310  
DCORDELL@EARTHLINK.NET  
OCT 2010

9 SCENIC ROAD

Other  
Houses

FOUNDATION'S

EXHIBIT 1

14  
AZA-  
ZEA

SCALE 1"=10'

TOWN OF FAIRFAX



PERMIT NUMBER

18929

Job Address

9 SCENIC  
Fairfax

Phone 459-6375

State Ca

Zip 94930

WORK DESCRIPTION

Replacing windows & doors with insulated glass, insulating walls, adding skylight insulating ceiling, covering ceiling with 1x6 rafter & gable pine, painting inside & outside new doors.

VALUATION: \$9,000.00

DEPARTMENT USE ONLY

VALUATION OF PROJECT \$9,000 DATE 12/2/88 RECEIVED BY JL

DEPOSIT \$40.00 Acct. = 311 RECEIPT #

BUILDING PERMIT FEE.....	\$ 210 -	
PLUMBING PERMIT FEE.....	\$	
ELECTRICAL PERMIT FEE.....	\$	
MECHANICAL PERMIT FEE.....	\$	
TITLE V (Energy Calcs).....	\$	
LESS DEPOSIT.....	\$ 40.00	
SUBTOTAL.....	\$ 210 -	Acct. 311
STATE SEISMIC SAFETY.....	\$ 1 -	Acct. 317
PLAN RETENTION FEE.....	\$	Acct. 318
PLANNING REVIEW FEE.....	\$ 20.00	Acct. 801
PLAN CHECK FEE.....	\$	Acct. 805
ENGINEERING DEPOSITS OR FEES.....	\$	Acct. 806
SUBTOTAL.....	\$ 231	
BUSINESS LICENSE.....	\$ 9 -	Acct. 301
TOTAL DUE.....	\$ 240 -	

EXHIBIT 2

SITE PLAN 9 SCENIC ROAD

STEVEN VERMILLION

**APPROVED**

BY [Signature]

DATE 12-12-88

COPI

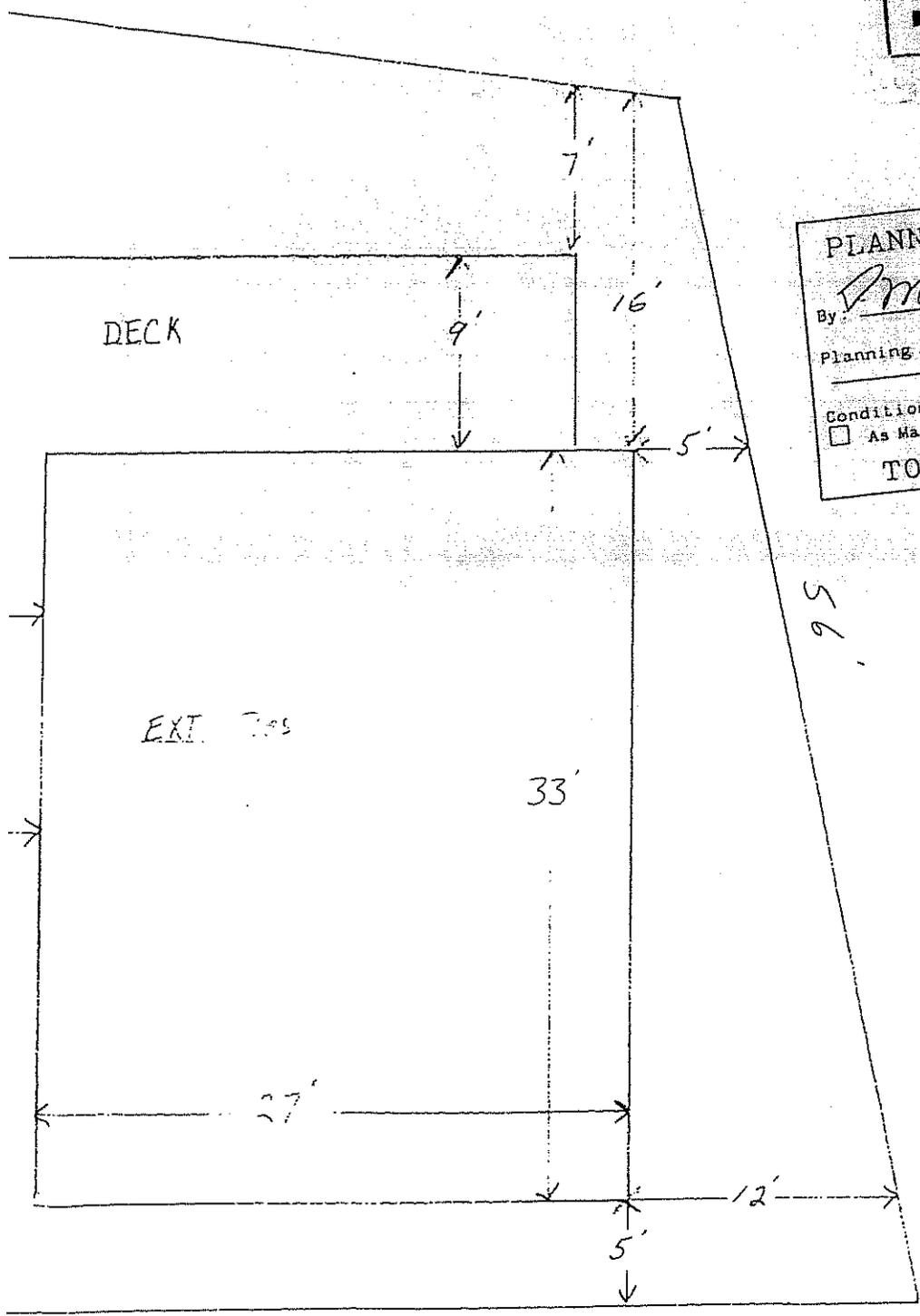
PLANNING DEPT. APPROVAL

By: [Signature] Date: 12/12/88

Planning Applications: \_\_\_\_\_

Conditions:  
 As Marked  As Attached  None

TOWN OF FAIRFAX, CA.



DRAWN BY STEVEN VANNI 12/10/88

TOWN OF FAIRFAX



PERMIT NUMBER

18945

Job Address

9 Scenic AVE

Phone 459-6375

City Fairfax

State Ca

Zip 94930

WORK DESCRIPTION

installing Gas Heater

VALUATION: \$

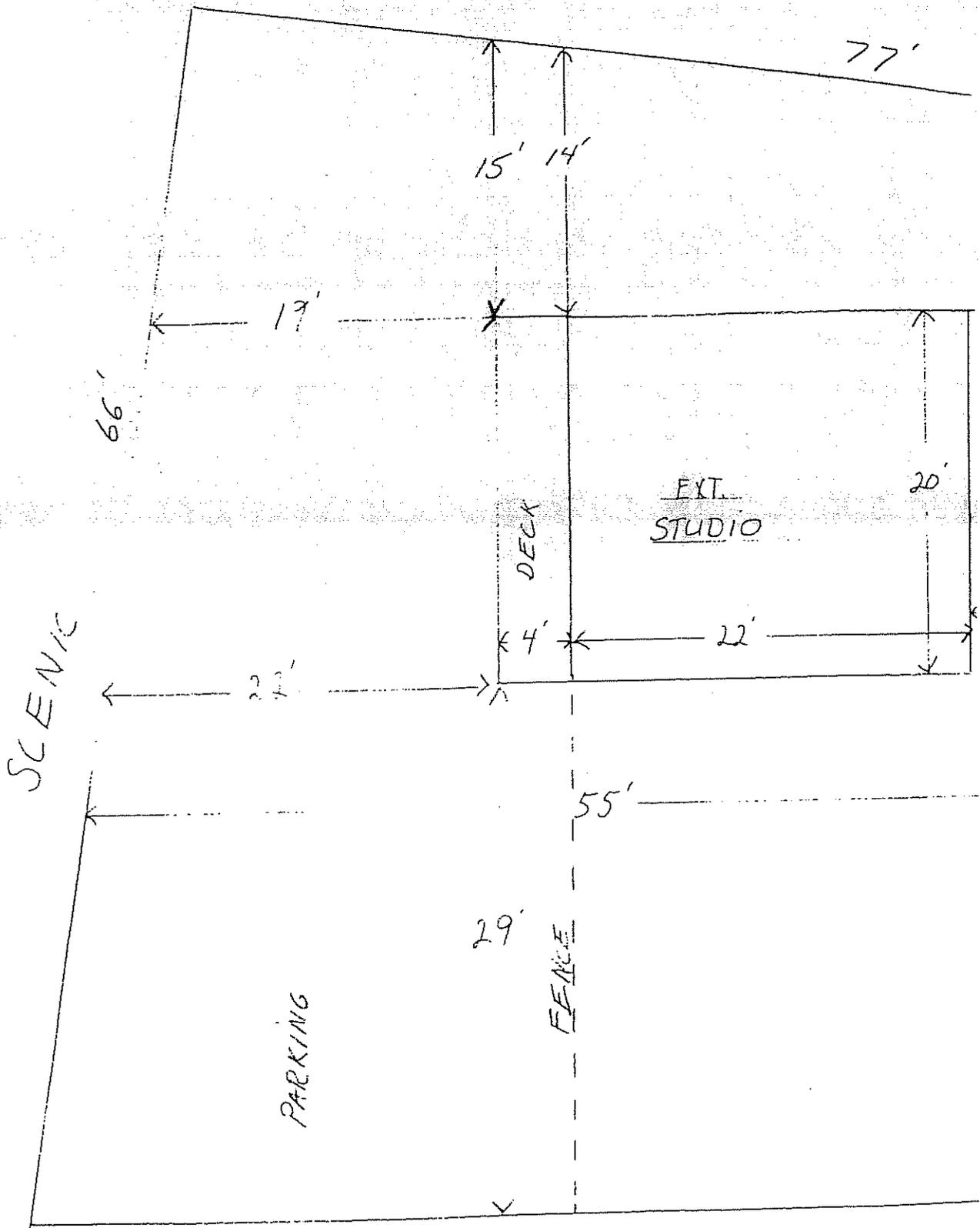
790.80

DEPARTMENT USE ONLY

VALUATION OF PROJECT \$ 790 - DATE 12-15-88 RECEIVED BY JZ

DEPOSIT \$ 40.00 Acct. # 311 RECEIPT #

BUILDING PERMIT FEE.....	\$	_____	
PLUMBING PERMIT FEE.....	\$	24 -	
ELECTRICAL PERMIT FEE.....	\$	_____	
MECHANICAL PERMIT FEE.....	\$	_____	
TITLE V (Energy Calcs).....	\$	_____	
LESS DEPOSIT.....	\$	<del>40.00</del>	
SUBTOTAL.....	\$	_____	Acct. 311
STATE SEISMIC SAFETY.....	\$	1.50	Acct. 317
PLAN RETENTION FEE.....	\$	_____	Acct. 318
PLANNING REVIEW FEE.....	\$	<del>20.00</del>	Acct. 801
PLAN CHECK FEE.....	\$	_____	Acct. 805
ENGINEERING DEPOSITS OR FEES.....	\$	_____	Acct. 806
SUBTOTAL.....	\$	245.00	
BUSINESS LICENSE.....	\$	.80	Acct. 301
TOTAL DUE.....	\$	253.00	



2-4

TOWN OF FAIRFAX



PERMIT NUMBER

18945

COPI

Job Address

9 Scenic Ave  
City: Fairfax State: Ca Zip: 94930  
Phone: 459-6375

WORK DESCRIPTION

installing gas heater

VALUATION: \$

790.00

DEPARTMENT USE ONLY

VALUATION OF PROJECT \$ 790 — DATE 12-15-88 RECEIVED BY Jm

DEPOSIT \$ 40.00

Acct. = 311

RECEIPT #

BUILDING PERMIT FEE.....\$  
PLUMBING PERMIT FEE.....\$ 24  
ELECTRICAL PERMIT FEE.....\$  
MECHANICAL PERMIT FEE.....\$  
TITLE V (Energy Calcs).....\$

LESS DEPOSIT.....\$ ~~40.00~~

SUBTOTAL.....\$ Acct. 311

STATE SEISMIC SAFETY.....\$ 1.50 Acct. 317

PLAN RETENTION FEE.....\$ Acct. 318

PLANNING REVIEW FEE.....\$ ~~20.00~~ Acct. 801

PLAN CHECK FEE.....\$ Acct. 805

ENGINEERING DEPOSITS OR FEES.....\$ Acct. 806

SUBTOTAL.....\$ 245.00

BUSINESS LICENSE.....\$ .80 Acct. 301

TOTAL DUE.....\$ 253.00

2-5

NOTICE: Cutting or Removal of Trees Prohibited Without a Tree Cutting Permit. SUBMIT 3 COPIES OF ALL PLANS AND PERMITS.



APPLICATION FOR BUILDING PERMIT

TOWN OF FALLENAX

PERMIT # [ ] VALUATION: \$ [ ]

Owner: Steven Lerman 459-6375

Address: 9 Scenic Ca Phone: 99930

City: Fallbrook Ca State: Ca Zip: 94430

Address: Designer/Architect: City: State: Zip: Phone:

Contractor: Steven Lerman 465-0811 Address: P.O. Box 1016 Ca Phone: 99930 City: Fallbrook Ca State: Ca Zip: 94430

Signature: Steven Lerman Date: 12/15/88 License #: B License #: 401354

OWNERS BUILDERS DECLARATION

I hereby affirm that I am exempt from the Contractor's License Law for the following reasons: (Sec. 7021.5 Business and Professions Code: Any city or county which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he is licensed pursuant to the provisions of the Contractor's License Law Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he is exempt therefrom and the basis for alleged exemption. Any violation of Section 7021.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500).

1, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended for sale. (Sec. 7014, Business and Professions Code: The Contractor's License Law does not apply to owner of property who builds or improves thereon, and who does such work himself or through his own employees, provided that such improvements are not intended or offered for sale. It, however, the building or improvements sold within one year of completion, the owner-builder will have the burden of proving that he did not build or improve for the purpose of sale.)

I, as owner of the property, am exclusively contracting with licensed contractor, in compliance with the Building Code, Business and Professions Code. The Contractor's License Law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a contractor(s) licensed pursuant to the Contractor's License Law.

[ I am exempt under Sec. U & P.C. for this reason: ] Date: Owner:

CONSTRUCTION LENDING AGENCY

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name: Lender's Address:

WORKERS' COMPENSATION DECLARATION

I hereby affirm that I have a certificate of consent to self-insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.).

Policy No.: Certified copy is hereby furnished. Certified copy is filed with the city building inspection department. Date: 12/15/88 Applicant: Steven Lerman

2-6

CERTIFICATE OF EXEMPTION FROM WORKERS' COMP. INSURANCE

This section need not be completed if the permit is for one hundred dollars (\$100) or less. I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become a subject to the Workers' Compensation Laws of California.

Date: Applicant: NOTICE TO APPLICANT: If, after making this Certificate of Exemption you should become subject to the Workers' Compensation provisions of the Labor Code, you must forthwith comply with such provisions or this permit shall be deemed revoked. \* \* \* "The undersigned hereby declares as follows: \* \*

"That on this date, making application for a building permit, a copy of which is attached hereto and made a part hereof as though fully set forth herein in particular, and that all of the work and labor of every kind used to construct the project herein described will be performed by the undersigned, or under my direct supervision and direction, and by no other person or persons, and the undersigned agrees to save, indemnify, and hold harmless the Town of Fallenax against all liabilities, judgments, costs and expenses which may, in any way, accrue against such Town as a result of the issuance of this permit or the performance of work hereunder."

I certify that I have read this application and state that the above information is correct. I agree to comply with all city ordinances and state laws relating to building construction, and hereby authorize representatives of this city to enter upon the above-mentioned property for inspection purposes.

Signature of Owner: Steven Lerman Date: 12/15/88



EXHIBIT 3





# TOWN OF FAIRFAX

142 Bolinas Road, Fairfax, California 94930  
(415) 453-1584 / Fax (415) 453-1618

Permit # 03-142

## CONSTRUCTION PERMIT APPLICATION

PLEASE PRINT AND PRESS HARD - 4 COPIES (FILL OUT COMPLETELY EXCEPT FOR SHADED AREA)

JOB ADDRESS 9 Scenic Rd  
OWNER Dolores Cordell  
ADDRESS 9 Scenic Rd PHONE (415) 459 3310  
CITY Fairfax CA STATE CA ZIP 94930

DESIGNER/ARCHITECT \_\_\_\_\_  
ADDRESS \_\_\_\_\_ PHONE \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

ENGINEER \_\_\_\_\_  
ADDRESS \_\_\_\_\_ PHONE \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

CONTRACTOR Miranda's Roofing  
ADDRESS 1615 Rio Grande PHONE \_\_\_\_\_  
CITY American Canyon STATE CA ZIP 94503

I hereby affirm under penalty of perjury that I am licensed under provisions of chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License # and Class C39 695415  
City Business License \_\_\_\_\_  
SIGNATURE Miranda DATE 5-19-03

WORK DESCRIPTION: Remove Shake roof install 1/2" plywood presidential composition Shingles Class "A" 30 lbs felt underlayment

Hazardous Materials: Indicate YES or NO if the intended occupanc y will use chemicals. Initialing Yes acknowledges that H&S Code Sections 25502, 25533 & 25534 as well as filing directions were made available to you.

OCCUPANCY: Group \_\_\_\_\_ Const. Type \_\_\_\_\_ Zoning \_\_\_\_\_ Stories \_\_\_\_\_

Valuation: \$ 10,000.00

- Contract price
- Square feet: New: \_\_\_\_\_ Addition: \_\_\_\_\_ Remodel \_\_\_\_\_
- Lineal feet: Retaining walls \_\_\_\_\_ Foundations \_\_\_\_\_
- Decks \_\_\_\_\_ Parking decks \_\_\_\_\_ Carports \_\_\_\_\_ Garages \_\_\_\_\_

### WORKERS COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:  
I have and will maintain a certificate of consent to self-insure for workers compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

I have and will maintain workers compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers compensation insurance policy number and carrier are:  
Carrier State Fund Policy Number 4-2

(Does not need to be completed if the permit is for \$100 or less)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner...

FEES				
BUILDING		PLUMBING		RECAP
PERMIT	181.25	PERMIT		BLDG 182.25
PLAN CHECK		FIXTURE		MECH -
SMP	1.00	OTHER		PLUMB -
SUBTOTAL	182.25	SUBTOTAL		ELECT -
MECHANICAL		ELECTRICAL		

provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Contractor \_\_\_\_\_ Date \_\_\_\_\_  
**WARNING: Failure to secure workers compensation coverage is unlawful, and shall subject an employer to criminal penalties and civil fines up to one hundred thousand dollars (\$100,000). In addition to the cost of compensation, damages as provided for in Section 3706 of the Labor Code, interest, and attorney's fees.**

**CONSTRUCTION LENDING AGENCY**

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civic Code C.)  
 Lender's Name \_\_\_\_\_  
 Lender's Address \_\_\_\_\_

**OWNER BUILDER DECLARATION**

I hereby affirm under penalty of perjury that I am exempt from the Contractor License Law for the following reasons (Sec. 7031.5 Business and Professions Code: Any city or county which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he is licensed pursuant to the provisions of the Contractor License Law Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he is exempt therefrom and the basis for alleged exemption. Any violation of Sec. 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500.)

I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractor's license law does not apply to owner of the property who builds or improves thereon, and who does such work himself or through his own employees, provided that such improvements are not intended or offered for sale. If however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he did not build or improve for the purpose of sale.)

I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a contractor licensed pursuant to the Contractors license law.)

Owner Luis Miranda Date 5-19-03

I hereby certify and agree that all ordinances of the Town of Fairfax and the State of California will be complied with whether stated or not. I agree to contact the Town for all inspections including final and hereby authorize representatives of the Town to enter upon the above-mentioned property for inspection purposes. I agree to save, indemnify, and hold harmless the Town of Fairfax against all liabilities, judgments and expenses that may in any way accrue against the Town in consequence of the granting of this permit.

Applicant Luis Miranda

DISTRIBUTION: WHITE — FILE GOLDENROD — APPLICANT

4-3

FAU		FIXTURES		ENGINEERING	
VENT FAN		PANELS		PENALTY	
BOILER		EQUIP		PLAN RETENTION	
				BUSINESS LICENSE	60.110
SUBTOTAL		SUBTOTAL		GRAND TOTAL	251.75

**CONDITIONS OF PERMIT APPROVAL**

This permit will expire if more than 180 days lapses between inspections or from the issuance of the permit. Please ask for an extension in writing before the permit expires. (Authority: CBC Sec 105.4.4)

Received by: \_\_\_\_\_ Date \_\_\_\_\_  
 Approved for issuance: [Signature] Date 5/20/03  
 Issued by: \_\_\_\_\_ Date \_\_\_\_\_  
 FINALED BY: \_\_\_\_\_ Date \_\_\_\_\_

CANARY — OFFICE WHITE CARD — INSPECTOR



EXHIBIT S-1



EXHIBIT 5-2



EXHIBIT 5-3

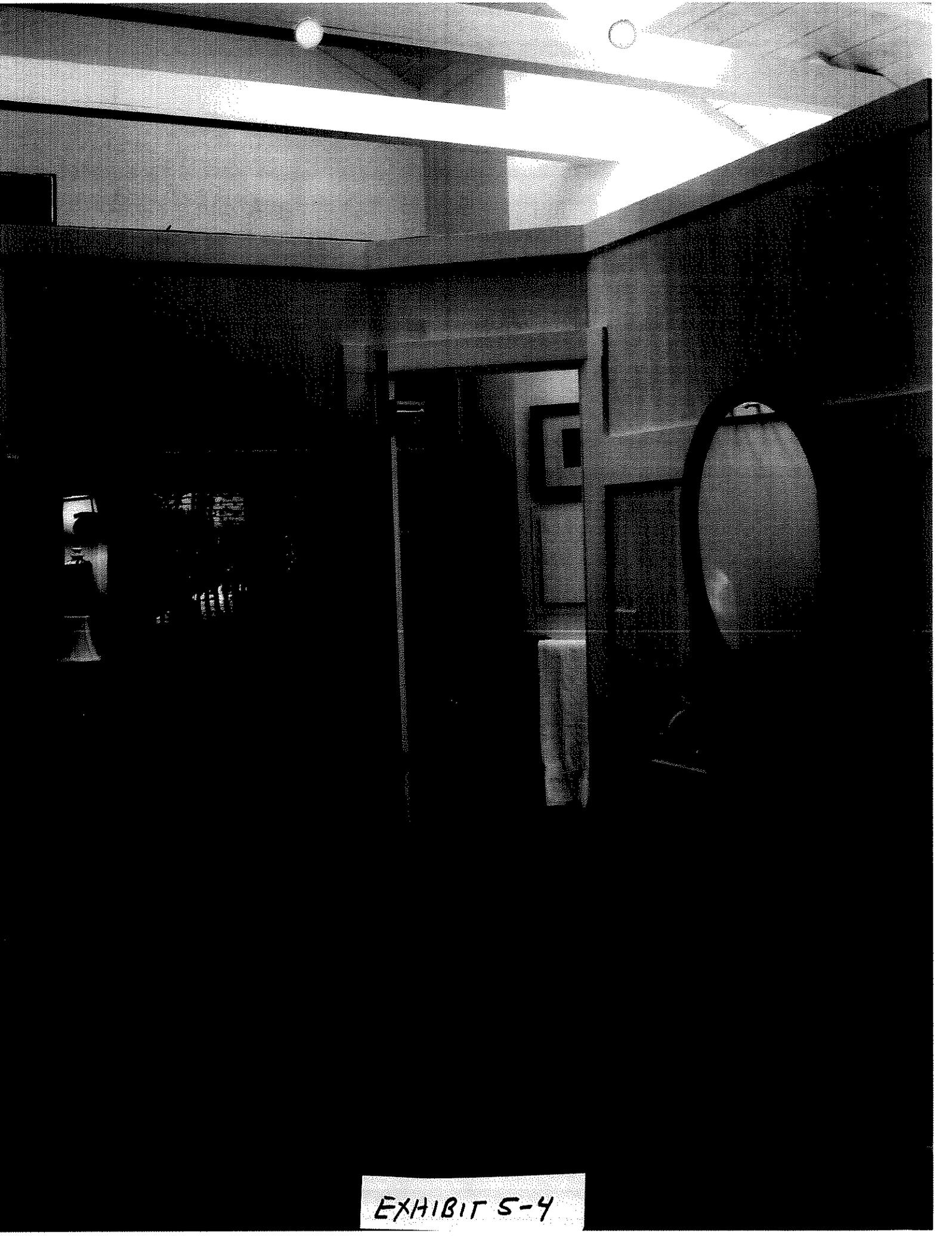


EXHIBIT S-4



EXHIBIT 5-5

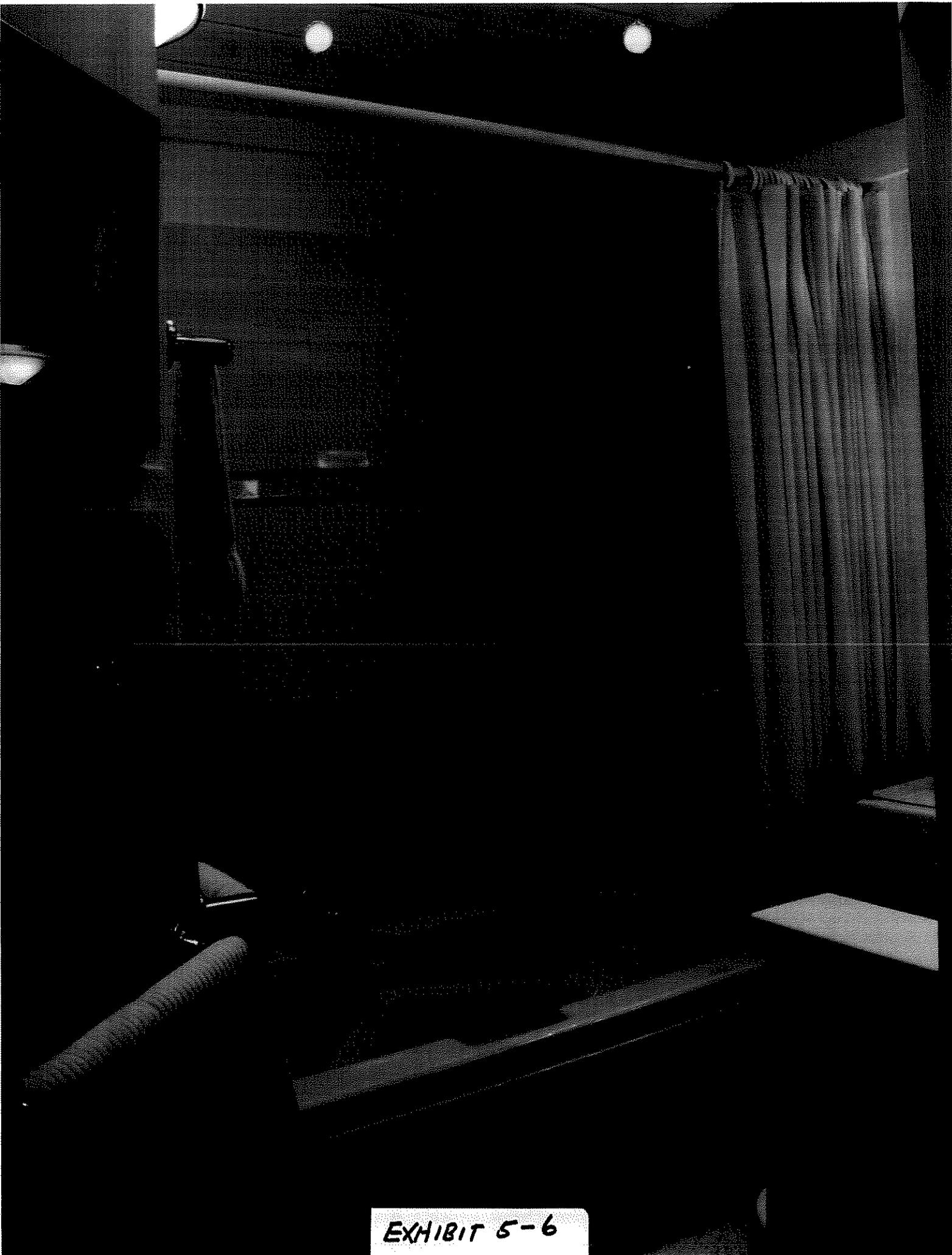


EXHIBIT 5-6



EXHIBIT 5-7



# TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930  
(415) 453-1584 / FAX (415) 453-1618

## REPORT OF RESIDENTIAL RESALE INSPECTION

*Mayor*

Steven M. Vanni

*Council*

Susan Brandborg  
Frank Egger  
Sue Peterson  
Doug Wilson

FOR STAFF USE:

Business License Paid yes  
Inspection Date 10/20/94 Time 2:00  
Fee \$ 125 : Receipt # 24028 By L.M.

*Town Administrator*  
Linda Christman

ADDRESS 9 SCENIC

**FEES** Fees are set by Resolution of the Town Council.

**PROCESSING** One copy of the report shall be mailed to the person designated on page 2 within 2 weeks of the date of inspection.

### LEGAL REQUIREMENTS

1. Pursuant to the provisions of Sections 38780 through 38785 of the Government Code of the State of California, it is the intent of the Council that the grantee of a residential building within the Town be furnished a report of matters of Town record pertaining to the authorized use, occupancy, and zoning classifications prior to sale or exchange. The report must be obtained by the seller and delivered to the buyer.
2. This report is valid for a period not to exceed six months from date of issue. Upon written request of the owner, prior to the expiration date, the Building Inspector may issue an endorsement to the report, extending the validity for one additional three month period and showing any change to the information on the original report. The fee for such endorsement shall be one-third the original filing fee. In cases where the Building Inspector makes a site visit prior to issuing an endorsement, a \$10.00 fee may be charged.

### INSPECTION PROCEDURE

**ACCURACY NOT WARRANTED - NO STATEMENTS IN THIS REPORT SHALL AUTHORIZE THE USE OR OCCUPANCY OF ANY RESIDENTIAL BUILDING CONTRARY TO THE PROVISIONS OF ANY LAW OR ORDINANCE.**

3. Based upon its files, the Town will attempt to provide accurate information in the Residential Resale Inspection Report. Nevertheless, the Town will not warrant the accuracy of such information. The Town reserves the right to enforce all of its ordinances and regulations and to require the correction of any unsafe or illegal conditions even though not disclosed in the Residential Resale Inspection Report. No statements in the report authorize the use of occupancy of the property contrary to the provisions of any law or ordinance.

EXHIBIT 6

The entire building must be available for a complete and continuous inspection at the time for which the inspection is arranged. The Building Inspector will not inspect buildings which are occupied unless he is accompanied by either the owner or the owner's authorized agent. If neither the owner nor the owner's authorized agent appear at the scheduled time of the inspection, a \$10.00 fee will also be charged.

Property address 9 scenic  
Applicant's name Pat OPPENHEIM Day phone 899-8400  
~~STEVEN VERMILION~~  
Person to receive report Pat OPPENHEIM  
Mailing address Coldwell Banker 901 Reid <sup>Ave</sup> Novato Zip 94945  
Person to meet inspector Pat OPPENHEIM Day phone 899-8400  
Owner's name, if different STEVEN VERMILION  
Owner's address, if different 2 DAN RD, Nicasio 94946  
~~GENERAL DELIVERY~~

Type of Building

Single family or condominium      Number of bedrooms in each unit \_\_\_\_\_  
 Duplex       Other

I am the ( ) Legal Owner, (X) Authorized Agent of the Legal Owner of the property at the address of subject building and hereby request that a physical inspection be made of the subject building and agree to furnish buyer with a copy of the final report.

Patricia A. Oppenheim  
Signature ami

18 Oct. 1984  
Date

6-2

Town of Fairfax Residential Resale Inspection Report  
 TOWN RECORD HISTORY OF BUILDING AND ZONING

The following represents the zoning and permitted uses of the property according to Town records. If no information is available in our file as of the date of this inspection, it will be indicated by N/A (not available).

1. Address 9 Scenic Road. Assessor's Parcel No. 1-146-04
2. Lot(s) 11 Block 4 Tract Fairfax Manor Zoning RD5.5-7  
single family homes on lots of 5,500 sq. ft. for property with
3. Present permitted use duplex on lots of 7,000 sq. ft. } less than a 10% slope
4. Overlay zones —
5. Flood zone C; area of minimal flooding
6. Date constructed prior to 1947-48 - previous SFD demolished 1979. New home bu
7. Permitted use under previous ordinance residential 6/27/79
8. Required parking at time of construction none
9. 50% remodel date                      Applicable zoning ordinance
10. Building permits:
  - Date 6/27/79 For demolition of single family home
  - Date 7/20/79 For construction of new home
  - Date 8/1/79 For electrical + plumbing for new single family home
  - Date 7/29/80 For repair of accessory building
  - Date 12/12/85 For new windows, doors, skylight
  - Date 12/15/88 For new gas heater
11. Encroachment permit: Date                      For
12. Use permit: Date 2/15/79 For front + side setback variances for parking
13. Variance: Date                      For
14. Other: Date                      For

Compiled by A. Heale  
 Planning and Building Services Staff

Town of Fairfax Residential Resale Inspection Report

**BUILDING CODE INSPECTION REPORT** The purpose of the following inspection is to identify any building deficiencies which are unsafe. It is not the purpose of this inspection to evaluate craftsmanship or require work done under old codes to be brought up to today's codes **unless a safety and/or permit problem(s) exists**. This report does not address termite damage; this problem must be analyzed by a private termite repair service.

This inspection is performed for general compliance to the Uniform Housing Code and does not imply or intend to imply any warranty to the subject structure. This inspection does not cover engineering for soils, geotechnical, drainage, foundation, structural, or any related areas. It is recommended that any party with concerns about these or any other items contact an architect or engineer licensed by the State of California for that specific area of concern.

**PHYSICAL INSPECTION**

No correction required.

The corrections do not require permits from the Building Department.

Building and/or premises require corrections which must be completed within 30 days.

The following permit(s) must be obtained from the Building Department before corrections can be made

Building  Electrical  Plumbing  Mechanical

a demolition permit is required to remove the illegal construction (remove the:

\_\_\_\_\_  
 (Other)\_\_\_\_\_

The corrections may require permits from the Planning Department. Contact the Planning Department for further information.

**CORRECTION(S) REQUIRED**

**Construction performed without permits**

Construction has been performed for which building permits were not obtained. Review must be made by the Planning and Building Departments, and then, if approved, permits may be issued.

CIRCLED ITEMS ARE TO BE CORRECTED, WHEN CORRECTED AND REINSPECTED,  
THE BUILDING OFFICIAL WILL CHECK THEM OFF

**Electrical**

- \_\_\_\_ 1) All residences must be supplied by an electrical main, 100 amps minimum.
  - \_\_\_\_ 2) All residences must be provided with an exterior main service disconnect.
  - \_\_\_\_ 3) All exposed romex wiring must be protected from physical contact if it is located at 8 feet or less in height.
  - \_\_\_\_ 4) All splices must be within junction boxes.
  - \_\_\_\_ 5) All Edison-based fuses must be replaced with Type S fuses.
  - \_\_\_\_ 6) Electrical panel must be labeled.
  - \_\_\_\_ 7) (Other) \_\_\_\_\_
- 

**Gas Appliances**

- \_\_\_\_ 1) The gas service to all appliances must be provided with an epoxy coated, flexible gas connector. Provide one for \_\_\_\_\_
  - \_\_\_\_ 2) All flues shall be maintained in good order and not leak at joints or couplings. Repair the flue for the: \_\_\_\_\_
  - \_\_\_\_ 3) Provide a pressure relief valve (PSI) to the hot side of your water heater piping or to the appropriate provided connection.
  - \_\_\_\_ 4) The pressure relief valve needs a full diameter metallic overflow to the exterior of the building and down to within 6 inches from grade.
  - \_\_\_\_ 5) Provide an earthquake strap for your water heater.
  - \_\_\_\_ 6) (Other) \_\_\_\_\_
- 

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## Plumbing

- \_\_\_\_\_ 1) Replace the worn "p" trap under the sink in the \_\_\_\_\_

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  - \_\_\_\_\_ 2) Provide an air gap separator for the dishwasher waste line.
  - \_\_\_\_\_ 3) Provide proper venting for the drain \_\_\_\_\_
  - \_\_\_\_\_ 4) Contact Environmental Health Dept. at (415)499-6907 regarding:
- 

## General

- ✓ (1)
- ALL STAIRWAYS** (interior and exterior) with four or more risers shall be provided with a handrail, 1-1/2" to 2" in cross sectional dimension, the shape shall provide an equivalent gripping surface and shall be placed 34 inches to 38 inches above the stair nosing. Ends shall be returned or shall terminate in newel posts or safety terminals.
- \_\_\_\_\_ 2) All areas that have a 30" drop such as decks or landings shall be provided with a guardrail 36" in height with openings not greater than 4".
  - \_\_\_\_\_ 3) Provide smoke detectors to all sleeping areas.
  - \_\_\_\_\_ 4) The area around your pool or spa must be provided with a continuous, solid, non-climbable fence, 6' in height and all gates into the area must be self-closing and self-latching, with the latch no lower than 4' high.
  - \_\_\_\_\_ 5) Provide a spark arrestor for your chimney with screening, 1/2" openings maximum.
  - \_\_\_\_\_ 5A) Remove tree limbs within ten feet of chimney (if 24" or more in circumference, a tree permit must first be granted. contact Town Hall for tree cutting permit application.
  - \_\_\_\_\_ 6) Post your address in numerals at least three inches in height and in a contrasting color so that it is clearly visible from the street.
  - \_\_\_\_\_ 7) The required firewall must be provided and maintained between the garage and your dwelling. Repair holes in sheetrock and tape where necessary.
  - \_\_\_\_\_ 8) The door between your dwelling and your garage must be a 1-3/8" solid wood door, and be self-closing.

## Additional Requirements/Comments

\_\_\_\_\_ 6 - 6 \_\_\_\_\_

**Structural**

- \_\_\_\_\_ 1) The foundation shows extensive cracking and distress. It is recommended that a licensed architect or engineer be employed to analyze the structure.
- \_\_\_\_\_ 2) The fireplace chimney appears to be unreinforced masonry construction. It is recommended that a licensed architect or engineer be employed to analyze the structure.
- \_\_\_\_\_ 3) (Other) \_\_\_\_\_

Town of Fairfax Residential Resale Inspection Report for 9 SCENIC AVB

**PLEASE NOTE:**

The circled corrections must be made within 30 days. Contact the Building Department to schedule a reinspection appointment for completed items to be checked off. There is no fee for the reinspection. However, should the items not be corrected at the scheduled second visit, or should the owner(s) or their representatives fail to be present on site, an additional \$60.00 will be charged for the third visit to the property.

Date inspection made 10/29/94

[Signature]  
Building Official

Date corrections made 10/31/94

[Signature]  
Building Official

Zoning and uses of property observed during on site inspection.  
Please note that all measurements are estimates.

1. PRESENT USE:      single family residence     \_\_\_ condominium  
                          \_\_\_ duplex                                     \_\_\_ second unit  
                          \_\_\_ multiple residence           \_\_\_ commercial  
                           accessory structures: height 15 ft. or less.

specify use: WORKSHOP WITH GAS HEATER AND WASHEN / DRYER  
NO BATHROOM, HOOK-UP

2. Number of structures: TWO  
3. Number of stories: TWO  
4. PARKING: (a) Number of spaces: THREE  
                 (b) Number of covered spaces: 0  
                 (c) Size of spaces (visual, not surveyed) 10' X 20'  
                 (d) Location of parking (visual, not surveyed):  
                  \_\_\_ On private property     \_\_\_ In city right-of-way  
                   In front yard setback      In side yard setback

5. Setbacks - approximate number of feet between structure and property line:

Front yard 12'     Side yards 10' & 5'  
Back yard 10'     Creek setback        (as measured from edge of bank)

Property:     Sloped  [up/down]  
                 Flat       

6. Fences and/or retaining walls:  
Front: (fence / wall) height: 6'  
Sides: (fence / wall) height: 8' & 6'  
Rear: (fence / wall) height: 8'

### ZONING AND PLANNING INFORMATION

1. Zoning:

\_\_\_ Conforming (Means that the structures and uses are in accordance, without exception, to current zoning law.)

\_\_\_ Conforming by use permit or variance (Means that the structure and use are in accordance with current zoning law with exception to that law as granted by use permit or variance.)

\_\_\_\_\_  
Expiration date: \_\_\_\_\_

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Legal, Non-conforming (Means that the structures and uses are in accordance with a previously adopted zoning ordinance, which is different from existing zoning law.)

Non-conforming features: parking; setbacks; lot size

Illegal, Non-conforming (Means that the structure and/or uses are not in accordance with existing or prior zoning laws and must be corrected by abatement of the non-conformity.)

Illegal, Nonconforming features: 8ft<sup>high</sup> fences on side & rear property lines

Required Zoning Action: fences must either be cut down to 6ft in height or owners must obtain a fence height variance from the Fairfax Planning Commission

Parcels merged? NA

Report completed by: S. Deal Date: 10/26/94  
Planning Staff

THE LAW REQUIRES THAT, PRIOR TO THE CONSUMMATION OF THE SALE OR EXCHANGE OF PROPERTY, THE SELLER MUST DELIVER THIS REPORT TO THE BUYER(S), AND THE BUYER(S) MUST SIGN AND RETURN THE ATTACHED POSTCARD TO THE FAIRFAX TOWN HALL. This report will not be considered complete until 1) the postcard is signed and returned to the Town of Fairfax; and 2) the report is signed off by the Building Official on page 7.