



COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, AICP
Agency Director

PLANNING
SERVICES DIVISION

E.J. Ivaldi, Deputy Director

MEMORANDUM

TO: Honorable Board of Supervisors

FROM: Michael J. Johnson, AICP
Agency Director

DATE: August 26, 2014

**SUBJECT: LUNDBERG VARIANCE – APPEALS OF THE PLANNING COMMISSION'S DECISION
FINAL ACTION
(CONTINUED FROM JULY 22, 2014 BOARD OF SUPERVISORS AGENDA)**

ACTION REQUESTED

On July 22, 2014 the Board voted 3:2 (with Uhler and Holmes voting no) on the following tentative motions:

1. Deny the appeal filed by Vinita Varma.
2. Deny the appeal filed by Alan and Alvina Lundberg.
3. Deny the Variance for the upper deck and allow the existing upper deck to extend a maximum three feet into the five-foot setback as authorized by the Zoning Code in 1978 and allow the post and girder that support the upper deck to remain to the extent it meets the original 1978 Code.
4. Deny the Variance for the lower deck and require the lower deck, as new construction, to meet the current 5-foot setback.

Pursuant to the Board's direction on July 22, 2014, staff brings this matter forward for the Board's final consideration and formal action.

Staff incorporates by reference the full staff report and all attachments considered by the Board at its July 22, 2014 public hearing.

FACTUAL BACKGROUND

The 0.45-acre subject property is located at 1346 Kings Way in the Kingswood West Subdivision in the Tahoe Vista community of Placer County and identified by Assessor Parcel No. 112-230-028-000. The property is designated residential under the North Tahoe Area General Plan and is zoned Plan Area Statement -020 (Kingswood West Residential). The Kingswood West Subdivision Final Map was recorded on January 23, 1970. At that time, a survey of the individual lots was submitted and verified by the County surveyor.

The property was improved with a single-family residence by a prior owner in 1977-78. County records indicate that building plans were approved and a building permit was issued for the construction of the

residence. The building permit for the residence, that included an unenclosed above-grade deck ("upper deck"), was finalized on December 6, 1978.

The Lundbergs purchased the subject property in 1985. In 2010, the Lundbergs submitted building plans for the remodel of the residence and the existing deck (Building Permit 32807.09). The plans submitted by the Lundbergs identified the upper deck as "pre-existing". The plans also included a new above-grade deck attached to the first floor (referred to as the "lower deck"). The plans indicated a five-foot setback from the property line for this new deck.

Vanita Varma purchased the adjoining unimproved parcel, located at 1348 Kings Way on September 18, 2012. Based on the written evidence in the record, Ms. Varma's attorney notified the Lundbergs on October 22, 2012 of the alleged upper deck encroachment into her property. On November 28, 2012, Ms. Varma filed a code enforcement complaint with the County. In a letter dated January 31, 2013, the County advised Ms. Varma that her surveyor's Record of Survey had to be verified and recorded to ascertain the "common property line" between her property and the Lundbergs. That survey by Matt Webb was recorded on March 5, 2013. In its May 21, 2013 letter sent to the Lundbergs, the County advised that the survey indicated that the "existing deck encroaches approximately 1.5 feet onto the adjoining neighbor's property to the south of your property." The remodel was still under construction at this point in time, and a Stop-Work Notice was issued. The Lundbergs were advised of their options to resolve this matter, "thereby bringing the construction of the deck into conformance with the applicable setbacks for your property and in a manner consistent with the County's 1978 approval." The Lundbergs were further advised that one resolution option would be the removal of "the encroaching portion for the deck on the adjoining property and then apply for a variance to setbacks", provided the Lundbergs could demonstrate "special circumstances" to support the variance request.

The Lundbergs voluntarily removed approximately two feet of the upper decking, thereby removing the encroachment over the property boundary shared with Varma. The Lundbergs then filed an application for the variances on January 31, 2014 to allow the resultant upper deck to remain in its existing location (refer to Attachment B). By this time, it was discovered that the partially-constructed new lower deck did not comply with the five-foot setback requirement as well as one inch of the house itself. Requests for variances for both of these were included in the Lundbergs' variance application.

Since the Planning Commission hearing, the Lundbergs have removed the decking from the lower deck back to the five-foot setback line. The upper deck remains in its current location as indicated in Exhibit A, which indicates that the southeastern-most corner of the deck is approximately five inches from the property line shared with Varma. The house is angled on the property resulting in the deck also being angled. The portion of the deck attached to the house is within the setback requirements allowed in 1978. Approximately 4.1 square feet of the deck at the southeastern corner is not within the setback area. This includes decking and a portion of the support post located at the southeastern corner. As verified in a memorandum dated May 7, 2014, the double 6x12 wood horizontal girders from the lower deck shown on the structural plan at "gridline B between gridlines 5 and 6" are "a critical part of the structural support of the deck". This horizontal girder is depicted and highlighted in Attachment D to the Board staff report and referred to as the "lower horizontal girder". Based on the location of the girder it appears to be within the 1978 setback requirements (See Attachment E).

PROCEDURAL HISTORY

On May 22, 2014, the Planning Commission conducted a hearing to consider the Lundbergs request for variances for the house, upper and lower deck. The Commission considered the staff report and testimony from the Lundbergs. The Commission also considered testimony and written comments in opposition to the requests, including testimony from Ms. Varma and her attorney. After considerable deliberation on the written and oral evidence presented, the Planning Commission took the following actions:

1. Adopted a motion which determined that the project is categorically exempt from CEQA review (6:0, Commissioner Roccucci absent); and
2. Approved the Variance (6:0; Commissioner Roccucci absent) to allow the corner of the house to encroach approximately one inch into the five-foot setback; and
3. Denied the Variance (5:1; Commissioner Johnson voting No, Commissioner Roccucci absent) for any portion of the lower deck (including the horizontal girder and corner vertical post) to remain within the five-foot setback; and
4. Approved the Variance (5:1; Commissioner Gray voting No, Commissioner Roccucci absent) to allow a maximum three-foot encroachment into the five-foot setback for the upper deck and all the appurtenances thereto.

On May 28, 2014, Ms. Varma appealed the Planning Commission's grant of the variance for the upper deck and reserved her right to support the Planning Commission's action on the lower deck, should the Lundbergs appeal the same. On June 2, 2014, the Lundbergs appealed the Planning Commission's grant of the variance to the upper deck and the lower deck. The scope of the Lundbergs' appeal of the lower deck was limited to the Planning Commission's denial of the retention of the lower horizontal girder.

Neither party appealed the CEQA determination or the grant of the variance for the encroachment of the house into the setback area.

The Board of Supervisors conducted a public hearing on the above appeals on July 22, 2014. The Board considered the staff report and attachments, the written and oral testimony of the appellants and their attorneys, the oral and written testimony of the public and all other evidence included in the administrative record in this matter. At the conclusion of public testimony, the Board commenced its deliberations. Supervisor Montgomery made the following motion:

Deny the appeal filed by Vinita Varma, deny the appeal filed by Alan and Alvina Lundberg and affirm the decision of the Planning Commission.

Following further discussion, Supervisor Montgomery withdrew the motion. The Board subsequently closed the public hearing and continued its deliberations. At the conclusion of the deliberations, the following tentative action was taken:

TENTATIVE MOTION Montgomery/Weygandt VOTE 3:2 (Holmes, Uhler No) to allow the existing upper deck to extend 3 feet into the 5-foot setback as authorized by the Code in 1978, require the lower deck, as new construction, to meet the current 5-foot setback, and allow the post and girder that support the upper deck to remain to the extent it meets the original 1978 Code.

The Board directed staff to bring back formal action and findings at the next meeting of the Board.

REGULATORY FRAMEWORK

As discussed and considered by the Board during the July 22, 2014 hearing, the following statutory and County zoning code provisions are relevant to this matter:

Side Setback Requirements for Parcel

The side setback requirements for Plan Area Statement -020 (Kingswood West Residential) are identified in the North Tahoe General Plan as: "A total of 15 feet., with a 5-foot minimum, or as required by TRPA, whichever is more restrictive." (North Tahoe General Plan, 1996, pg. 32, pg.)

Zoning Code, Section 1726 Setbacks

Section 1726(c)(2): "Unenclosed porches, or stairways, fire escapes or landing places may extend into any required front or rear setback not exceeding five (5) feet, and into any required side setback not exceeding three (3) feet." (Attachment B)

Zoning Code, Section 17.60.100 Variance.

A variance from the strict application of the requirements of this chapter may be requested and granted as provided by this section.

D. Action on a Variance. The Zoning Administrator or Planning Commission shall approve, approve subject to conditions, or disapprove a variance as set forth in this subsection.

1. Findings. Approval or conditional approval may be granted only when the granting authority first determines that the variance satisfies the criteria set forth in California Government Code Section 65906 by finding that:

a. There are special circumstances applicable to the property, including size, shape, topography, location or surroundings, and because of such circumstances, the strict application of this chapter would deprive the property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

b. The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zone district.

c. The variance does not authorize a use that is not otherwise allowed in the zoning district.

d. The granting of the variance does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

e. The variance is consistent with the Placer County general plan and any applicable community plan or specific plan.

f. The variance is the minimum departure from the requirements of this ordinance necessary to grant relief to the applicant, consistent with subsections a. and b., above.

Zoning Code, Section 17.60.120 Nonconforming uses.

No land use permit shall be approved pursuant to Article 17.58 (Discretionary Land Use Permit Procedures) which results in the creation of a nonconforming use of land or building, or which makes any existing use, building or structure nonconforming as to the provisions of this chapter. A nonconforming use of land or buildings may be continued, changed or replaced only as provided by this section. Nonconforming mobile homes are covered by Section 17.56.150(E).

B. Nonconforming Buildings. A nonconforming building may continue to be used as follows:

1. Changes to Building. The enlargement, extension, reconstruction or structural alteration of a building that is nonconforming only as to height and setback regulations, may be permitted if such additions or improvements conform to all other applicable provisions of this chapter (See Sections 17.54.020, 17.54.130, 17.54.140, 17.54.150, and 17.54.160), and the exterior limits of new construction do not encroach any further into the setback or the height limit than the comparable portions of the existing building.

In addition to the above, all applicable provisions of the Placer County General Plan and the Tahoe Vista Community Plan are incorporated by reference.

DISPOSITION OF THE APPEAL AS TO THE LOWER DECK

The testimony and the evidence in the record establish without any question that the lower deck was proposed on the 2008 building plans as "new". The building plans indicated that the lower deck would comply with the 5-foot minimum setback requirement. As outlined below in the "Findings" section, the Board finds no special circumstances to support the grant of a variance for the lower deck.

DISPOSITION OF THE APPEALS AS TO THE UPPER DECK

Both parties have appealed the Planning Commission's decision on the upper deck. As discussed above, the Planning Commission granted a variance to the 5-foot setback to permit the upper deck, including the support post and horizontal girder, to extend a maximum 3 feet into the setback.

Mrs. Varma appeals this decision and argues that the upper deck should be required to meet the current five-foot setback because no special circumstances can be identified to support the grant of the variance. Lundberg appeals this decision and requests a variance be granted to allow the upper deck as currently configured to remain.

The Board considered and deliberated on the code sections in effect when the upper deck was originally constructed in 1978. Again, the setback requirement in 1978 was a minimum of five feet. However, Section 1726(c)(2) permitted an unenclosed porch to extend a maximum three feet into that five-foot setback area. Staff testified that during the time that section 1726(c)(2) was in effect, staff routinely considered unenclosed decks to fall under the category of "unenclosed porches". Therefore, this provision would have allowed the Lundberg deck to extend three feet into the 5-foot side setback area by right.

There is correspondence in the record that at the time of construction of the original residence and deck, the original improvement plans may have misidentified the south property line as further south than it actually was. (Attachment F). In response to Ms. Varma's code enforcement complaint, the County responded that further information was needed to "determine exactly where your common property line is in relationship to the adjoining property's deck, as the exact location of the property line is not clear at this time." (County letter, January 31, 2013, Attachment H) The Lundbergs' architect stated in his declaration that the current house and deck were reconstructed "utilizing the same footprint for the house"...and exactly the same footprint for the deck." (Attachment G). The architect confirmed that the "the survey [prepared by Carl Gustafson] showed the correct house location on the lot and the corner of the existing southern deck touching the property line." (Attachment G)

While there may have been confusion as to where the property line was at the time of construction of the original upper deck, that confusion was resolved with the March 2013 recordation of the Webb survey. This survey established that the reconstructed upper deck extended approximately 1.5 feet over the property line. This section was removed by the Lundbergs. The present location of the deck is not in dispute. The south-eastern corner of the deck is approximately 5 inches from the property line.

The Board discussed extensively how the application of Section 1726(c)(2) would impact the reconstructed deck. Based on the 1978 date of construction of the original deck, Plan Area Statement - 020 required a five-foot setback and Section 1726(c)(2) allowed a 3-foot encroachment into that setback for unenclosed porches, which was historically interpreted to include unenclosed decks. If section 1726(c)(2) were strictly applied to the present upper deck, it would require a triangular piece to be removed to achieve compliance for the entire southern edge of the deck. (See Attachment C). This triangular piece includes not only the decking but a portion of the upper horizontal girder and a portion of the support post. The horizontal girder that provides structural support to the upper deck and is located at the lower deck level appears to be within the 3-foot extension area. The tentative motion of the Board would allow the support post and girder to remain to the extend these comply with the 1978 code. As just noted, the lower horizontal girder appears to comply but only a portion of the support post appears to be within the allowed 3-foot extension area.

Based on staffs review of the Board's discussion in this matter, the Board did not find support to grant a variance for the upper deck, either a variance to allow the present deck to remain in its current configuration or support for the Planning Commission's grant of a variance to allow the deck, support post and girders to extend a maximum of 3 feet into the 5-foot setback. While there are some special circumstances, including the zoning regulations that were in effect at the time of the 1978 construction, the majority of the Board did not find these sufficient to grant any variance.

The Board discussed at length the non-conforming status of the deck in relation to the 1978 Code and the non-conforming zoning code regulations. Section 17.60.120 permits the reconstruction of a non-conforming building provided "the exterior limits of new construction do not encroach any further into the setback or the height limit than the comparable portions of the existing building." The evidence establishes that the upper deck was built in the same location as the prior deck. The cutting back of the 2 feet of decking did no more than bring the physical deck configuration back into conformance with the 2010 building plans which depicted the southeastern edge of the upper deck approximately 5 inches from the property line.

Based on the tentative motion outlined at the beginning of this report, the majority of the Board found merit in allowing some portion of the present upper deck to remain based on the fact that it had been in place for over 30 years, was intended to be reconstructed in substantially the same location and design, and had been approved by the County. The Board concluded this based on its hearing on the matter, which is by law a de novo hearing on the merits of the proposed project. The Board found the regulatory basis for this decision not in the variance regulations but in the non-conforming provisions of the zoning code as outlined in the findings.

RECOMMENDATION

Based on staff's review of the motions and the hearing transcript of the Board, staff brings forward the following recommended actions for the Board's final action:

- 1. Deny the appeal filed by Vinita Varma.**
- 2. Deny the appeal filed by Alan and Alvina Lundberg.**
- 3. Deny the Variance to the 5-foot side setback for the upper deck based on the following findings:**
 - a. There are insufficient special circumstances applicable to the property and strict application of this chapter would not deprive the property of privileges enjoyed by other property in the vicinity and under identical zoning classification. The Board finds that these "special circumstances" need not be limited to a physical disparity and the Board is not limited from considering past zoning regulations related to setbacks as a special circumstance. The Board finds that the 1978 zoning code provision which allows a maximum three-foot extension into the five-foot setback applies to this deck and is an important factor in its decision on this matter. However, confirmation that a deck legally constructed under a prior code that permitted a three-foot extension into the five-foot setback can be reconstructed under Section 17.60.120(B)(1) based on these same code provisions and does not require the grant of a variance. Please see findings and action in Section 6 below.
 - b. The grant of the variance for either deck would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zone district. The County has historically considered the approval of a variance request to resolve such setback problems and this practice is codified in Section 17.58.040(b) which allows the filing of a variance application to resolve an existing zoning code violation. However as noted

above, the Board finds that a variance is not required to allow that portion of the upper deck to remain that complies with the 1978 code.

4. Deny the Variance for the lower deck and require the lower deck, as new construction, to meet the current 5-foot setback based on the following findings.

- a. There are no special circumstances applicable to the property and the strict application of this chapter would not deprive the property of privileges enjoyed by other property in the vicinity and under identical zoning classification. The evidence establishes that the lower deck is new construction. The building plans submitted by the Lundbergs in 2010 indicated that the lower deck would comply with the five-foot setback. There are no special circumstances with respect to the size, shape, topography, location, surroundings or zoning code regulations that would support the grant of a variance to that setback requirement.
- b. The grant of the variance for the lower deck would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zone district. See above.

5. Allow the existing upper deck to extend a maximum three feet into the five-foot setback as authorized by Section 1726(c)(2) of the Zoning Code in 1978 and allow the post and upper girder that support the upper deck to remain to the extent it meets the 1978 Code.

The Board's determination is supported by the following facts and evidence in the record:

- a. The upper deck was constructed pursuant to a building permit and was finalized in 1978. In 1978, the code permitted an unenclosed porch to extend a maximum of three feet into the five-foot side yard setback. In 2010, the Lundbergs submitted plans to the County, which were approved, to reconstruct the upper deck in the same location. While the Board denies the variance to allow further encroachment into the setback area beyond the three-foot limit, the Board finds that the portion of the reconstructed deck within the three-foot limit, including the lower horizontal girder, should be treated and accepted as legal non-conforming and allowed to remain.
- b. The above motion would require the portion of the post outside of the 3-foot extension to be removed or relocated as well as the shaded area of the decking (See Attachment C.) It should be noted that the square depicted in Attachment C represents the outline of the concrete footing which is larger in size than the two 4x8 support posts. It is unknown whether any portion of the posts is presently within the 3-foot encroachment area.

Given the discussion at the Board on the issue of whether the post could or would remain, staff provides the following alternative motion for the Board's consideration:

6. Allow the existing upper deck in its current configuration (Attachment A) to remain pursuant to Section 17.60.120.

Pursuant to 17.60.120, the upper deck was constructed with permits in 1978. Section 17.60.120(B)(1) authorizes the reconstruction of a nonconforming building, which definition includes a deck, to be reconstructed as long as the "exterior limits of new construction do not encroach any further into the setback than the comparable portions of the existing building." Once the confusion over the actual location of the south property line was resolved and the excess decking cut back, the facts are sufficient to support a conclusion that the reconstructed deck is in approximately the same location as the prior deck was. Given the length of time the prior deck existed and the permitting history surrounding it, the Board finds the upper deck in its present

configuration was reconstructed consistent with the intent of 17.60.120. The Board finds that it is allowed to remain based on 17.60.120 and as depicted in Attachment A.

7. The Board's determinations are exempt from environmental review pursuant to Section 15301 of the CEQA Guidelines and Section 18.36.030 of the Placer County Environmental Review Ordinance (Class 1 – Existing Facilities).

ATTACHMENTS

- Attachment A: Lundberg Site Plan
- Attachment B: Section 1726 (c)(2) of Placer County Zoning Ordinance in Effect in 1977 and 1978
- Attachment C: Proposed Limits of Upper Deck Removal by Lundbergs
- Attachment D: Picture of Limits for Upper and Lower Decks by Lundbergs
- Attachment E: Proposed Limits of Lower Deck Removal by Lundbergs
- Attachment F: Declaration of Carl Gustafson, Civil Engineer for Lundbergs
- Attachment G: Declaration of Peter Gerdin, Licensed Architect for Lundbergs
- Attachment H: County letter, January 31, 2013
- Attachment I: Correspondence

- cc: Vinita Varma – Appellant
Alvina and Alan Lundberg – Applicant/Appellant
Porter Simon Professional Corporation – Attorney for Vinita Varma
Diepenbrock Elkin LLP – Attorney for Lundbergs
Martin Wood – Representative for Lundbergs
Karin Schwab – County Counsel
Michael Johnson – Community Development/Resources Agency Director
EJ Ivaldi – Deputy Director, Planning Services
Sharon Boswell – Engineering and Surveying Division
Justin Hansen – Environmental Health Services
Tim Wegner – Building Services Division
Tim Alameda – North Lake Tahoe Fire Protection District

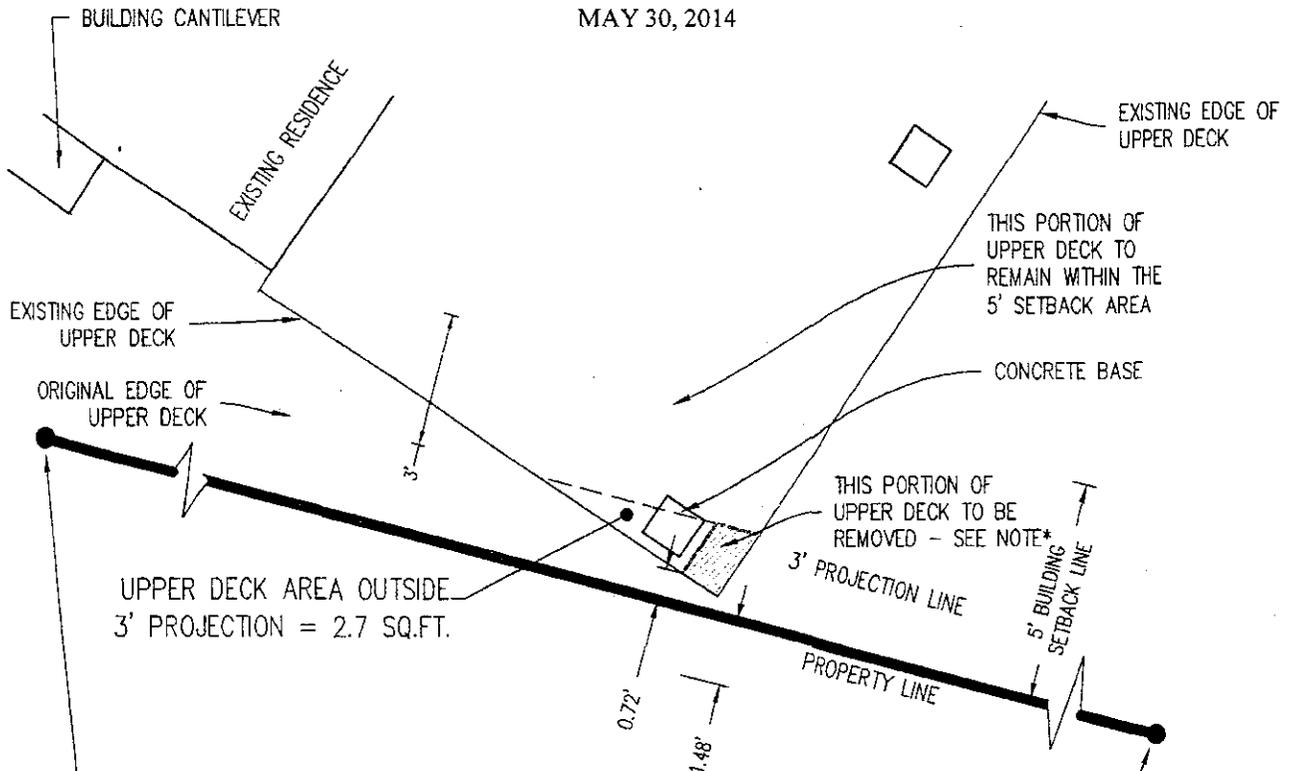
Sec. 1726

Setbacks.

- (a) Except as may be provided herein, no building or structure shall be permitted within any required setback area. The foregoing, however, shall not apply to septic tanks or other underground utilities.
- (b) In any case, where a Road Plan Line has been established as a precise section of the General Street and Highway Plan of Placer County, the required building setbacks shall be measured from such Road Plan Lines and in no case shall the provisions of this Chapter be construed as permitting any structure to encroach upon said Road Plan Lines.
- (c) Zoning District setbacks on the street side of any lot shall be nullified in any case where a building line has been established in accordance with Section 1734 of this Chapter. The required minimum setbacks so established on the street side of any such lot shall apply to main buildings and automobile garages, provided, however, that the exceptions in Section 1726(e) shall apply.
 - (1) Cornices, eaves, canopies, and similar architectural features may extend into any required side setback not exceeding two and one-half (2 1/2) feet and into any required front or rear setback not exceeding five (5) feet, provided, however, that no such feature shall be permitted within two (2) feet of any side lot line.
 - (2) Unenclosed porches, or stairways, fire escapes or landing places may extend into any required front or rear setback not exceeding five (5) feet, and into any required side setback not exceeding three (3) feet.

EXHIBIT A
FOR
ALAN AND ALVINA LUNDBERG
1346 KINGS WAY, TAHOE VISTA CA
MAY 30, 2014

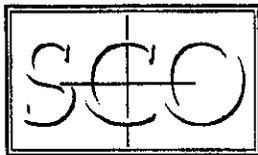
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JUN 02 2014
CDRA



RECORD INFORMATION ONLY:
R.S. # 3250, A 5/8" REBAR
W/YELLOW PLASTIC CAP L.S.
7429 WAS SET. (NO FIELD
SURVEY PER THIS MAP)

RECORD INFORMATION ONLY. PER R.S.
#3250, A 5/8" REBAR WITH PLASTIC
CAP RCE-20257 WAS FOUND. (NO FIELD
SURVEY PER THIS MAP).

-  PORTION OF UPPER DECK TO REMAIN (WITHIN THE 5' SETBACK)
-  * ADDITIONAL PORTION OF UPPER DECK LUNDBERGS ARE WILLING TO REMOVE



**SCO PLANNING
ENGINEERING
& SURVEYING**

MAILING ADDRESS:
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SCALE: 1"=4'

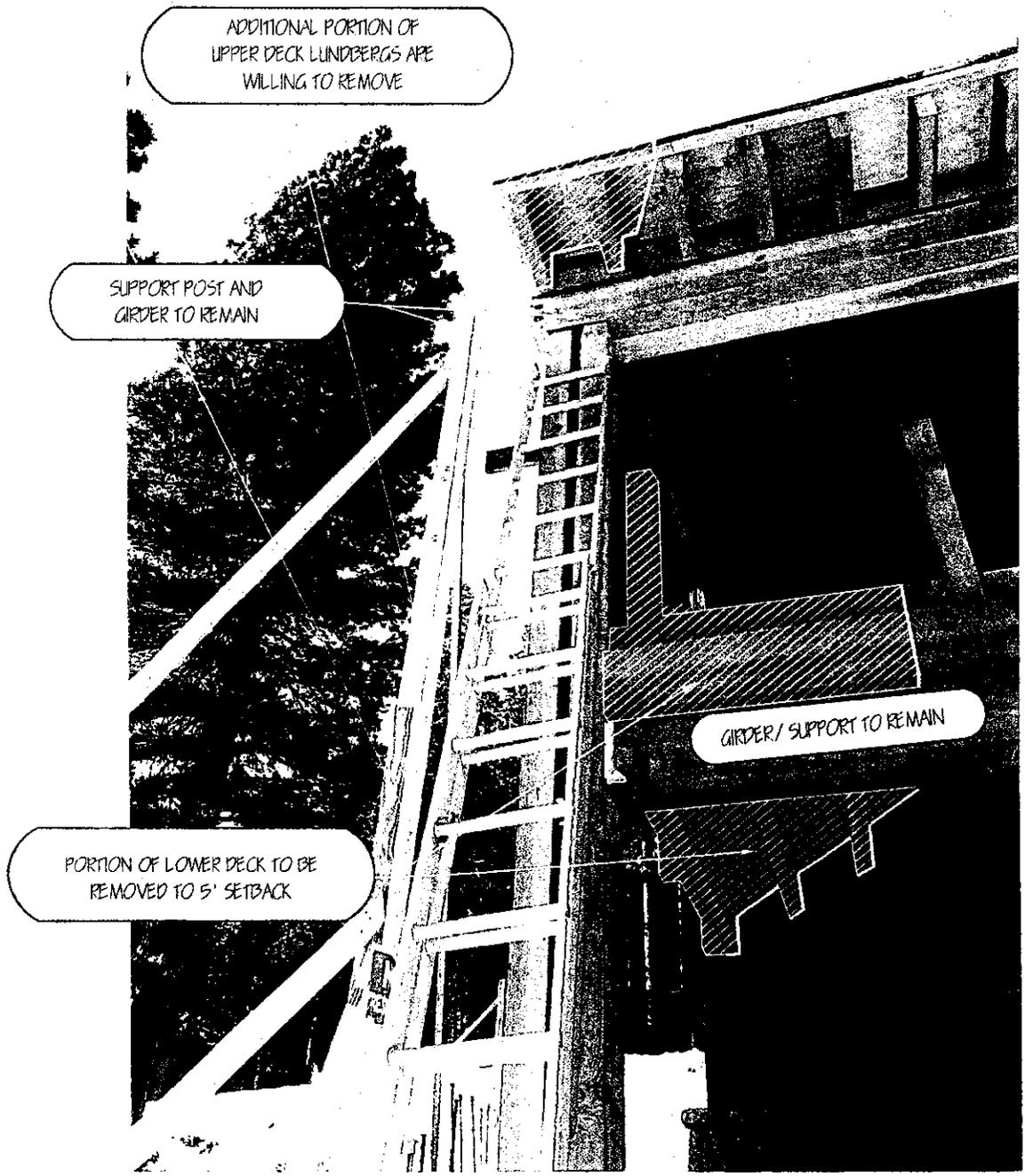
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RECEIVED

JUN 02 2014

CDRA

EXHIBIT B
FOR
ALAN AND ALVINA LUNDBERG
1346 KINGS WAY, TAHOE VISTA CA
MAY 30, 2014

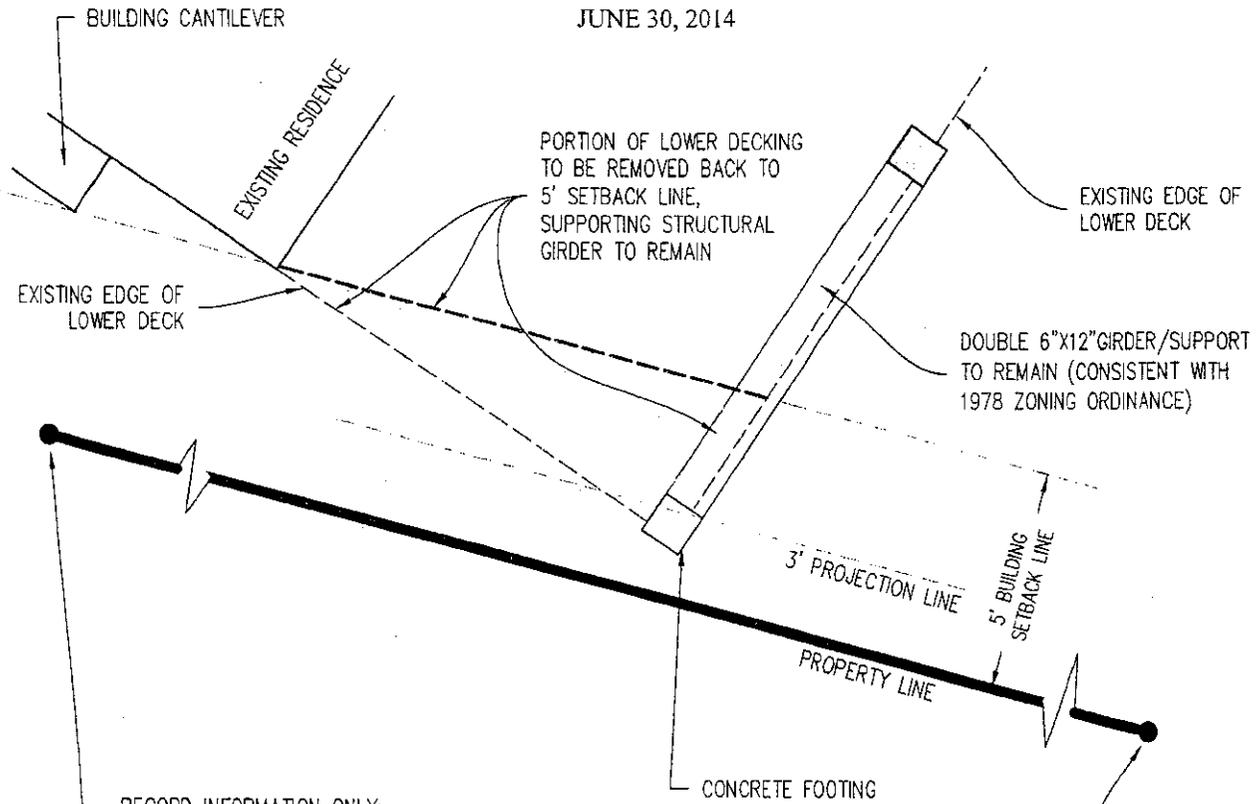


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EXHIBIT C
FOR
ALAN AND ALVINA LUNDBERG

1346 KINGS WAY, TAHOE VISTA CA

JUNE 30, 2014



RECORD INFORMATION ONLY:
R.S. #. 3250, A 5/8" REBAR
W/YELLOW PLASTIC CAP L.S.
7429 WAS SET. (NO FIELD
SURVEY PER THIS MAP)



PORTION OF LOWER DECK TO
BE REMOVED AS PREVIOUSLY
AGREED UPON

RECORD INFORMATION ONLY. PER
R.S. #3250, A 5/8" REBAR WITH
PLASTIC CAP RCE-20257 WAS
FOUND. (NO FIELD SURVEY PER
THIS MAP).



**SCO PLANNING
ENGINEERING
& SURVEYING**

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SCALE: 1"=4'

25

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4 Attorneys for Appellants,
5 ALAN AND ALVINA LUNDERG

6
7
8 **PLACER COUNTY BOARD OF SUPERVISORS**
9

10 ALAN AND ALVINA LUNDERG

11 Appellants.

12 vs.

13 VINITA VARMA,
14

15 Respondent.
16

Case No.: ER13-037

**DECLARATION OF CARL RICHARD
GUSTAFSON**

1 I, CARL RICHARD GUSTAFSON, declare:

2 1. I have personal knowledge of the facts contained in this declaration, and if called
3 today as a witness, I could and would testify competently to such matters.

4 2. I am a registered professional California licensed Civil Engineer, #18629 issued
5 March 21, 1969. That license authorizes me to do land surveying. I have practiced primarily in the
6 Tahoe-Truckee area since 1969. The Lundbergs first contacted me in 2006 to create a
7 Topographical/As-Built map of their 1970's era home, located at 1346 Kings Way, Tahoe Vista,
8 California. During my subsequent survey of that property, I sighted the Lundberg's southern
9 property line with an assistant, and found that the corner of their existing deck touched the property
10 line. This fact was shown on the final Topographical/As-Built map I prepared for the Lundbergs, a
11 true and correct copy of which is attached to this declaration as **Exhibit A**. When I submitted the
12 attached Topographical/As-Built map to the Lundbergs, I believed that it accurately depicted the
13 location of the existing 1970's era home in relation to the southern property line.

14 3. In my survey practice over the years, I have encountered numerous setback and
15 encroachment occurrences. In the cases when I was hired to address those issues, I was able to
16 resolve the matter by submitting a Minor Property Line Adjustment to Placer County.

17 4. After I learned of the present dispute involving the location of the Lundberg's new
18 home, I obtained a copy of the original 1970's Site Plan for 1346 Kings Way. A true and correct
19 copy of that Site Plan is attached as **Exhibit B**. One of the problems with that site plan was that it
20 wasn't prepared by a licensed surveyor.

21 5. In my opinion, Placer County should require Topographical maps be prepared by a
22 California licensed Land Surveyor since they are the basis for Site Plans in Building documents.
23 That would help reduce the numerous setback and encroachment problems that have occurred.

24 6. I have also reviewed the 1970's Murray & McCormick Improvement Plans that were
25 prepared for 1346 Kings Way. Those plans showed the property line going between two water
26 boxes that are actually both located south of the Lundberg's property. It appears that this error
27 misled the original 1970's contractor, and resulted in the contractor building the southern portion of
28 the deck too close to the property line. In the Topographical/As-Built map I prepared for the

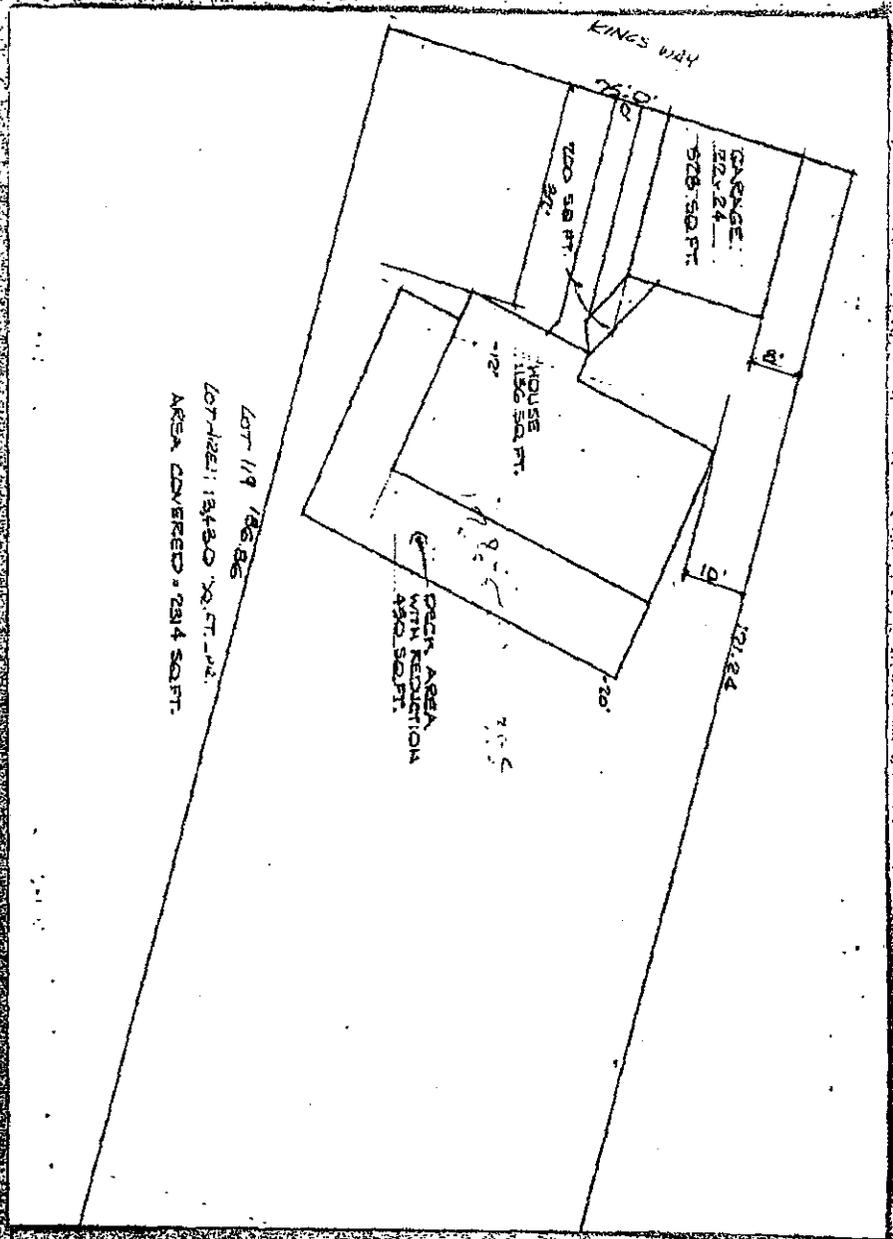
1 Lundbergs, I showed that these water boxes were incorrectly placed and that the Lundberg's utilities
2 are about 5 feet farther to the south of their property line.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing
4 is true and correct. Executed this 9 day of July, 2014, at Olympic Valley, California.

5
6 Carl R. Gustafson PE
CARL RICHARD GUSTAFSON



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1 DAVID A. DIEPENBROCK (SBN 215679)
DIEPENBROCK ELKIN LLP
2 500 Capitol Mall, Suite 2200
Sacramento, CA 95814
3 Telephone: (916) 492-5048
Facsimile: (916) 446-2640
4 Attorneys for Appellants,
5 ALAN AND ALVINA LUNDERG

6
7
8 **PLACER COUNTY BOARD OF SUPERVISORS**
9

10 ALAN AND ALVINA LUNDERG

Case No.: ER13-037

11 Appellants,

DECLARATION OF PETER S. GERDIN

12 vs.

13 VINITA VARMA,

14 Respondent.
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1 I, PETER S. GERDIN, declare:

2 1. I have personal knowledge of the facts contained in this declaration, and if called
3 today as a witness, I could and would testify competently to such matters. I am providing this
4 declaration in support of Alan and Alvina Lundbergs' request for a variance for 1346 Kings Way,
5 Placer County, California ("Subject Property").

6 2. I have been a licensed architect in the state of California, No. C-1384 7, since May
7 24, 1983, working the entire time in the Truckee/North Tahoe area.

8 3. I presented my first set of Building Addition Plans for the Subject Property to the
9 Tahoe Office of the Placer County Planning Department in 2008, and submitted my first set to the
10 Planning and Building Departments on February 26, 2009. These plans were approved by the
11 Planning and Building Departments, and reviewed for Code Compliance on February 11, 2010. A
12 Permit was issued (#32807.09) for these plans that showed a deck encroachment into the side
13 setback.

14 4. Under a June 11, 2010 Agreement for Services, I revised these previously approved
15 plans to include an extension (22' width x 4'-8' depth) to the front of the house. The same deck
16 encroachment shown on the plans the County approved under Permit No. 32807.09, was shown on
17 these revised plans. These new plans were submitted in August 2010, and approved by the Planning
18 and Building Departments. The County issued a new permit on May 12, 2011, using the same
19 permit number (32807.09) as before.

20 5. In working with the Lundbergs on this project, our intention was to reconstruct the
21 house and deck, as built in the 1970's, utilizing essentially the same footprint for the house (with the
22 exception of the above-noted extension to the front of the house), and exactly the same footprint for
23 the deck.

24 6. The Lundbergs provided me with an "as-built" Topographic Survey from Carl
25 Gustafson, Civil Engineer, dated May 29, 2007, which we used as our Site Plan for the project. I
26 determined that this survey showed the correct house location on the lot and the corner of the
27 existing southern deck touching the property line. The remodel plans the County approved under
28 Permit No. 32807.09 showed the upper deck in the same location as the existing original deck.



COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, Agency Director

**PLANNING
SERVICES DIVISION**

Paul Thompson
Deputy Planning Director

SET VIA ELECTRONIC MAIL TO: vinitavarma@hotmail.com

January 31, 2013

Vinita Varma
1348 Kings Way
Tahoe Vista, CA 96148

RE: Code Enforcement Complaint for the property located at 1346 Kings Way, Tahoe Vista

Ms. Varma:

This letter is to inform you that the Placer County Code Enforcement Division received your code enforcement complaint on November 28, 2012. In that complaint you state your neighbor's deck encroaches onto your property. As Officer Ben Branaugh of the Code Enforcement Division previously stated to you, both on the phone and at a meeting held at the Community Development Resource Agency, staff is processing your complaint in accordance with the Placer County Code Enforcement Procedure Manual. At this time, Officer Branaugh has made contact with the adjoining property owner, both verbally and in writing, and informed them of the complaint.

Before staff can proceed with the complaint process, the Code Enforcement Division must determine exactly where your common property line is in relationship to the adjoining property's deck, as the exact location of the property line is not clear at this time. The Record of Survey that Matt Webb has prepared should clarify the exact location of your common property line in relationship to the adjoining property's deck. The Record of Survey will need to be checked by the Placer County Surveyor and recorded as an official document of Placer County before the Code Enforcement Division can use it to make a determination. Once this has been completed, the Code Enforcement Division will resume processing your complaint.

I am aware that another survey was prepared by Kenneth Barrow in 2003 that shows the adjoining property's deck encroaching across the common property line in question. However, that survey was submitted to the Tahoe Regional Planning Agency (and not to the County), and the survey was never checked by the Placer County Surveyor or recorded as an official document. Consequently, the Code Enforcement Division cannot be sure of its accuracy and cannot use it to determine the location of the deck in relationship to the common property line.

Please be advised that the Code Enforcement Division is required to process all code enforcement complaints in accordance with the Placer County Code Enforcement Manual. I have attached a flow chart of that process for your review. To assure the rights of all interested parties are respected, the resolution of a Code complaint may take between 12 and 18 months.

Officer Branaugh has also made me aware that you have requested copies of all building permits issued and building plans approved by the County on the adjoining property. Staff is currently compiling the building permits for you and will forward this information to you as it is available. Building plans are the property of the architect or designer, consequently, staff cannot provide you with copies of building plans; however, you can come to the County and review the plans.

If you have any further questions, please feel free to contact Officer Branaugh of the Code Enforcement Division or myself between 8am and 5pm Monday through Friday, phone (530) 745-3000.

Cordially,



George Rosasco
Supervising Planner
Placer County Planning Services

cc.

Michael Johnson, Community Development Resource Agency Director
Timothy Wegner, Chief Building Official
Ben Branaugh, Code Enforcement Division
Beverly Roberts, County Executive Office

Attachment: Flow Chart

Hand Delivered by Alvina Lundberg

RECEIVED

AUG 13 2014

CLERK OF THE
BOARD OF SUPERVISORS

LUNDBERG VARIANCE

CORNER DECK POST LOCATION

(Same for both old original deck
and new deck)

1346 Kings Way
Tahoe Vista, CA

Aug. 12, '14

ATTACHMENT I

31



POST IN QUESTION IN CORNER
 (End post)
 in LINE WITH
 SOUTH SIDE POSTS.
 (SEE photos of

Original house deck)
 and EAST POSTS.

This is
 Gustafson handdrawn map

for Alan & Alvina Lundberg
 1346 Kings Way

①

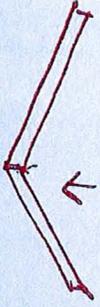


↑ CORNER END POST - BRACING ON 3 sides of END Post.



②

BRACE CONNECTING
SOUTH SIDE POSTS TO
CORNER END POST.



shape of brace
shows same
plane



3

BRACING ON SOUTH
SIDE - CORNER POST
SAME PLANE AS SOUTHERN
POSTS AND EASTERN
POSTS



4

RAFTERS
CREATE
NEW
WALL

Because of
weather
Rafters Replaced
Rafter well New

cut out of
weather

(5)



SOUTH POST
CONNECTED TO
RIDGE BEAM



post
establishes
New wall

↑
RAFTER

Beam Becomes outer wall of
New CONSTRUCTION.

The middle Rafter and ^{old} wall rafters
are in the New CONSTRUCTION.

Enclosed deck becomes
part of living Room.

Original Rafters
in New
CONSTRUCTION

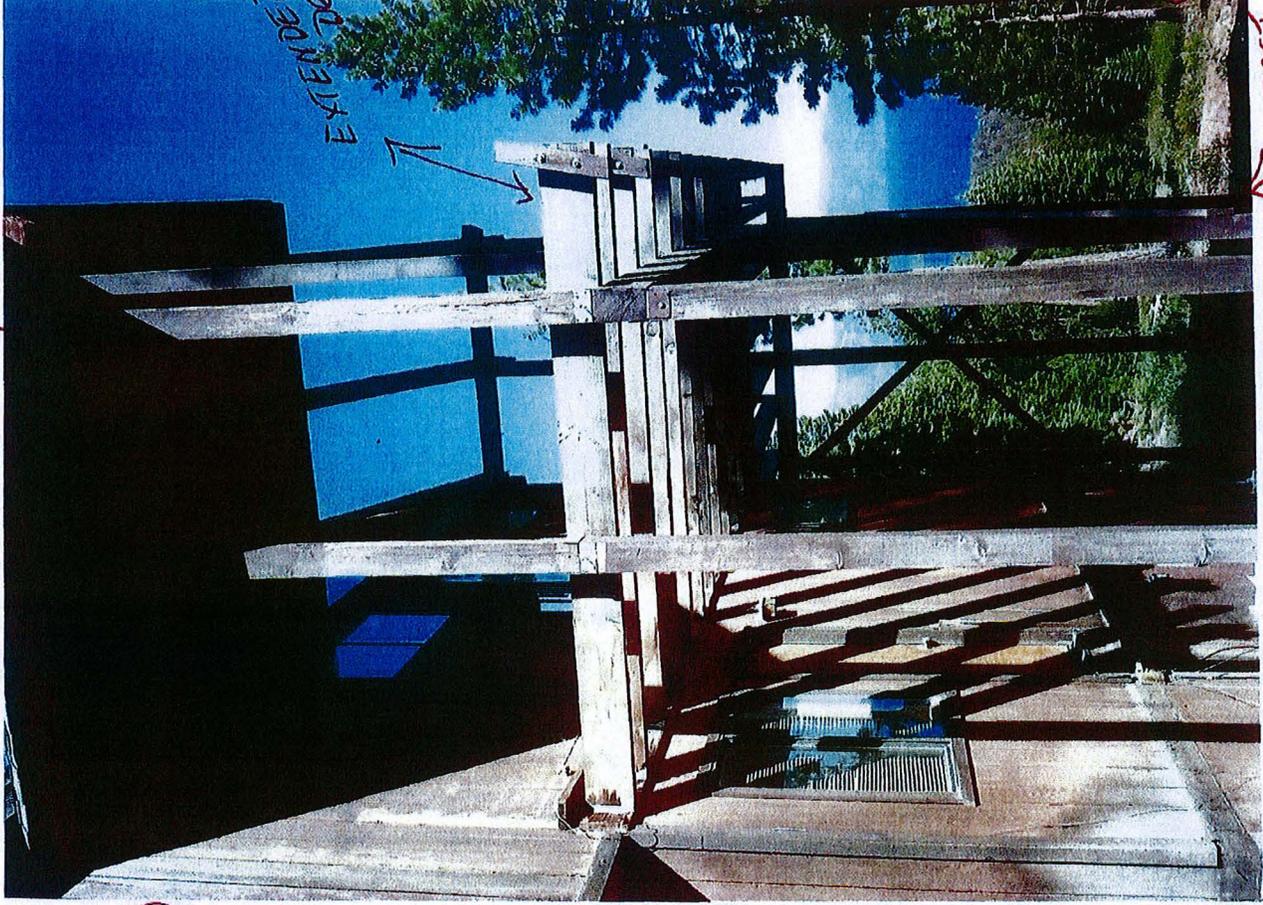


Wall

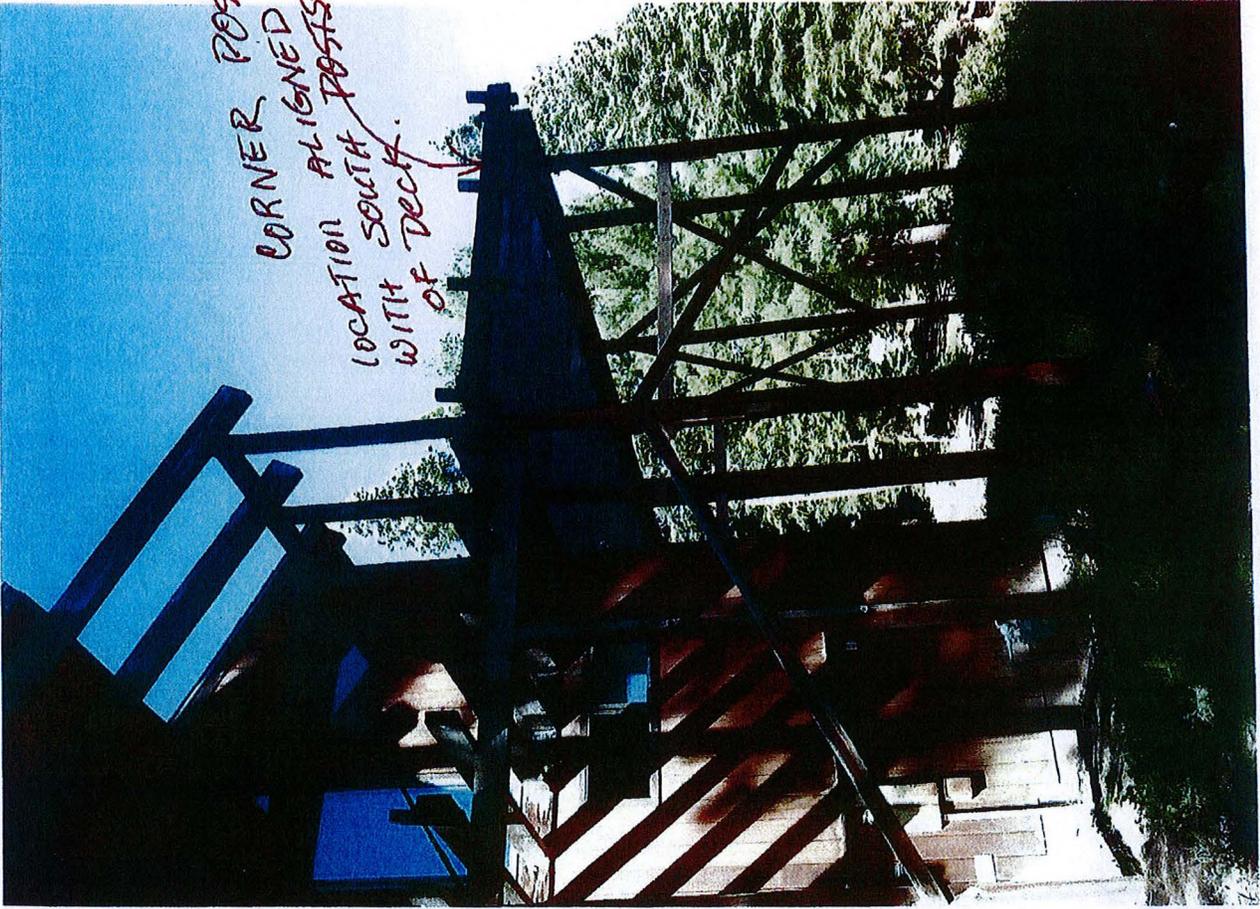
Rafter Shows
Post
Location of Wall

IN NEW CONSTR





NEW CONSTRUCTED WALL
ALIGNED WITH ORIGINAL
POST DECKS (WEST TO EAST)
ON SOUTH SIDE



CORNER POST
LOCATION ALIGNED
SOUTH WITH
POSTS
WITH DECK.

(9)

The line of the south
deck posts which became
the southern wall. →



ORIGINAL HOUSE ON
EAST SIDE.— deck joists,
beam and posts aligned
along the back of house.

Edge of second post (CORNER DECK POST) THE VIEW OF THE LAST DECK POST THAT WAS IN QUESTION. POSITION OF POST SAME AS IN PLANS.

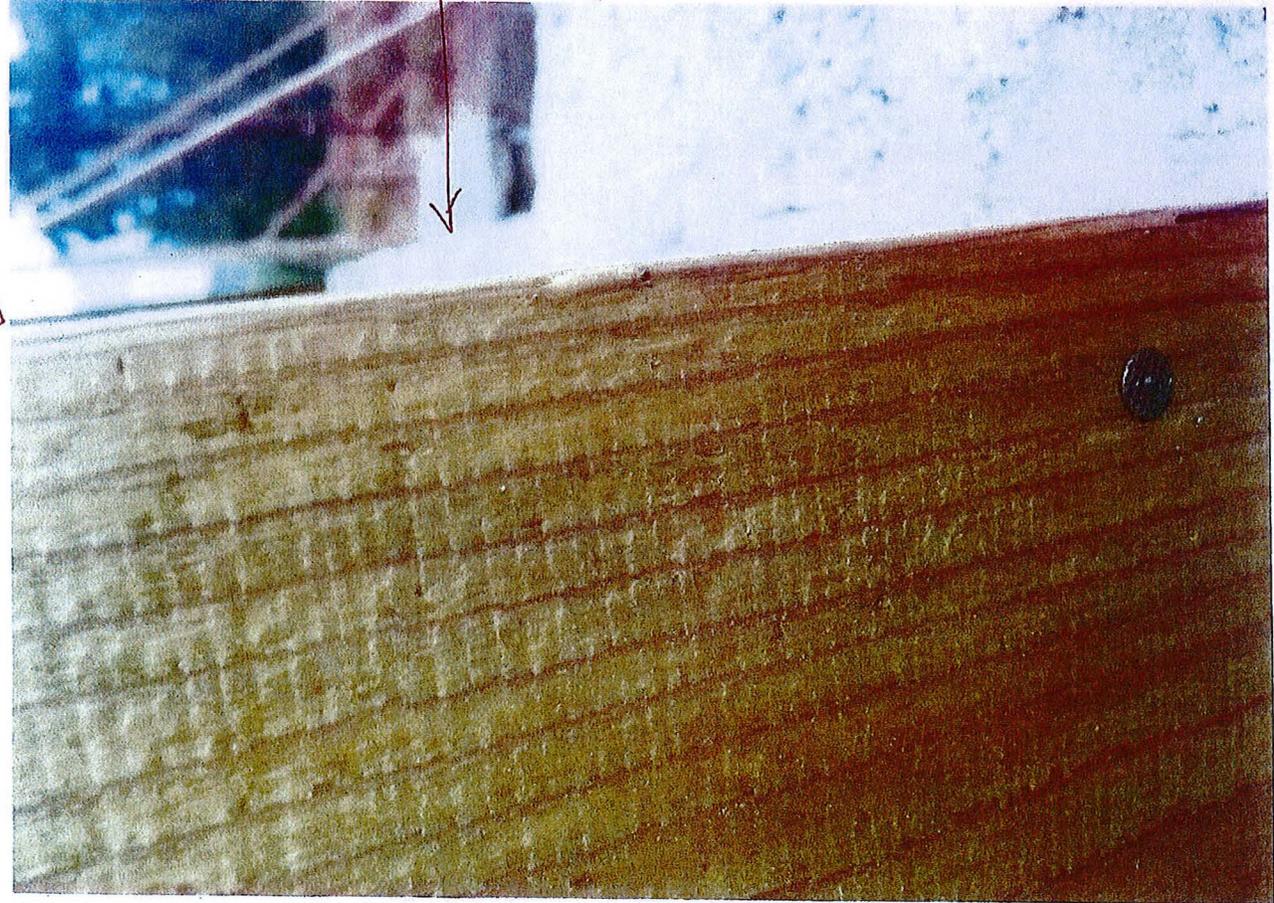
stone wall on south wall

NEW CONSTRUCTION -

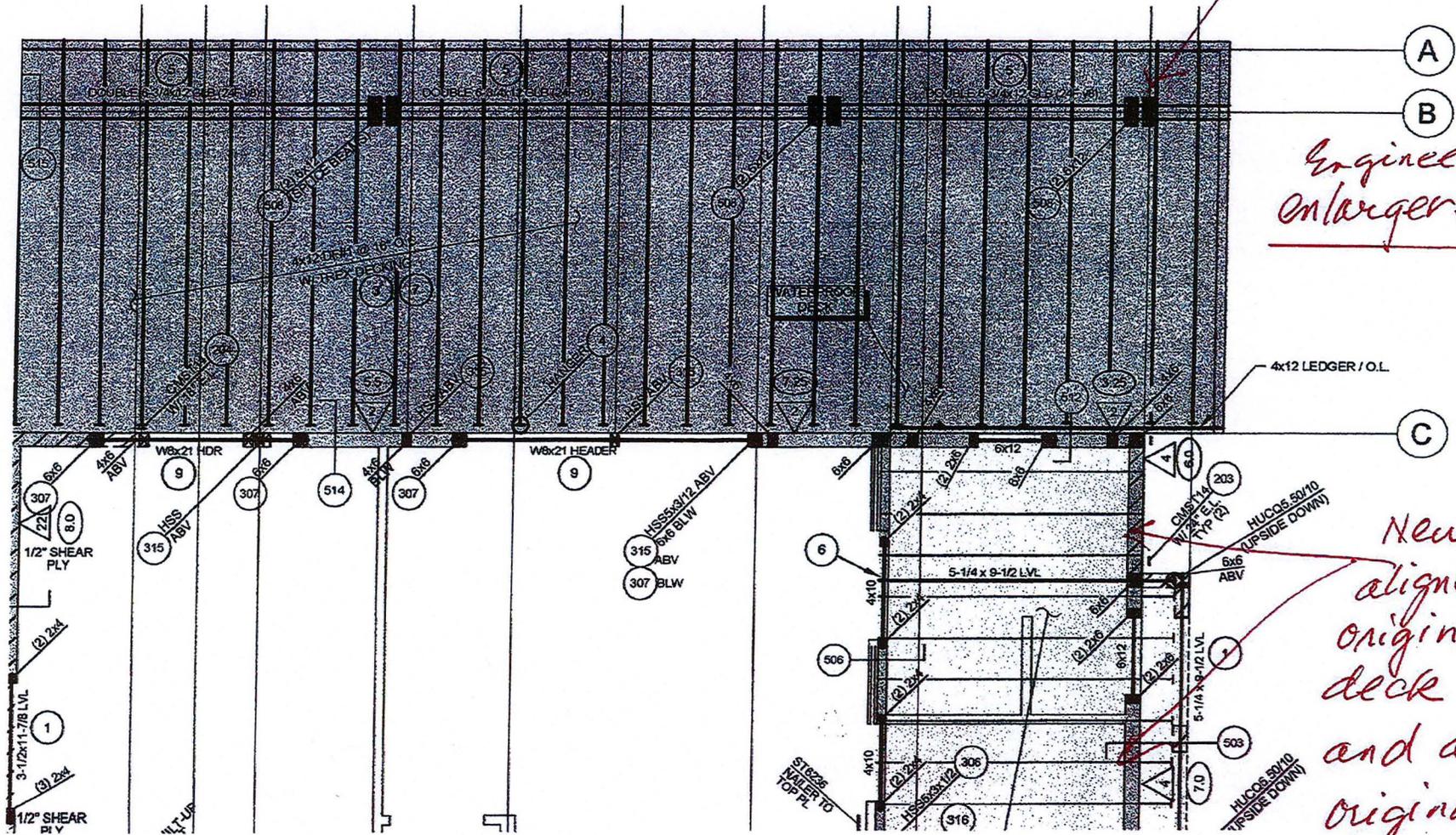
Sighting along the South wall
Towards back deck post

(see engineering S2.2)

Edge of house on southwest side



CORNER Deck Post Location

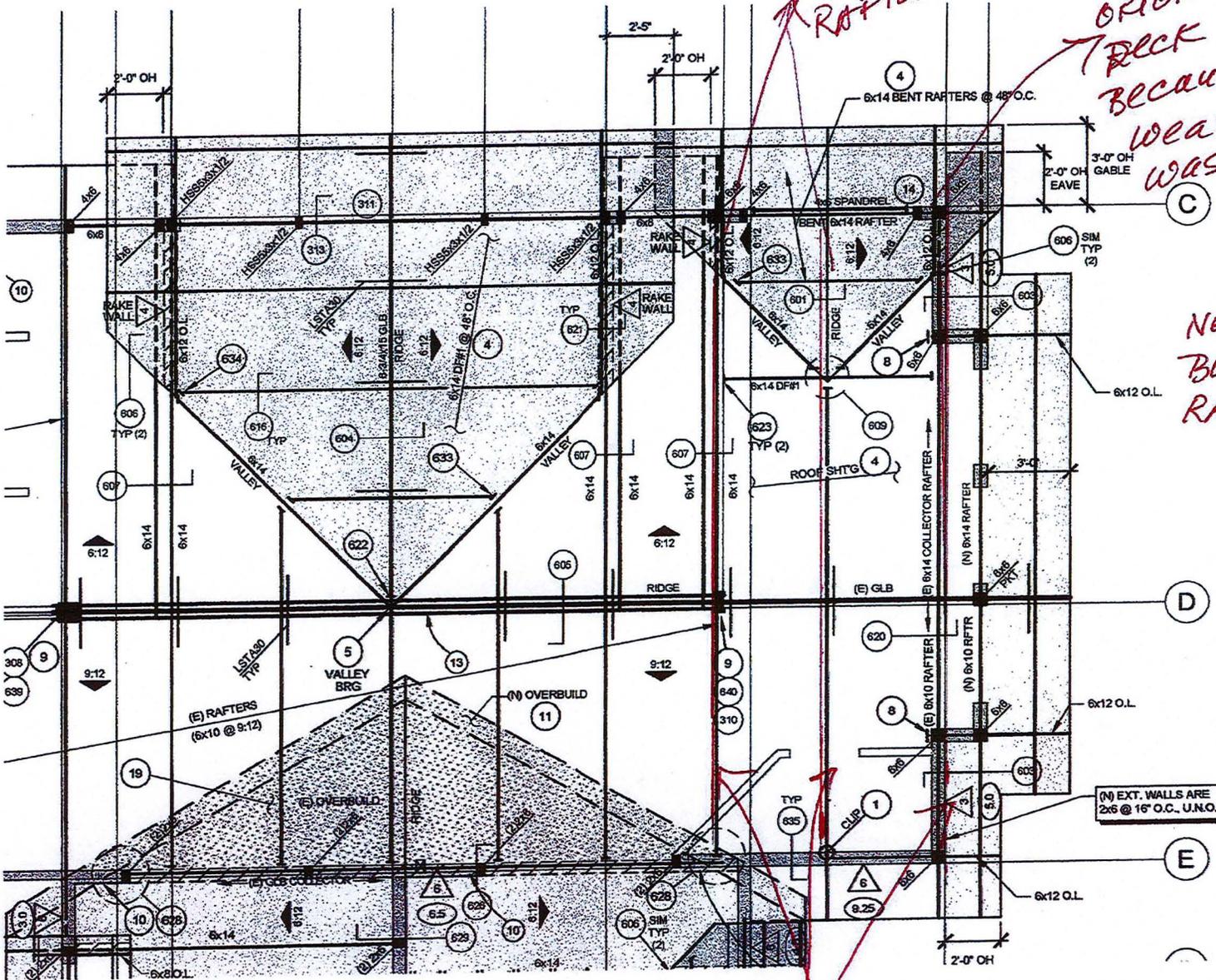


Engineering enlarged S2.2

New wall aligned with original south deck posts and also original CORNER deck post and new post

(13)

OS



2 ORIGINAL - MIDDLE RAFTERS - Rafter CUT FOR DORMER

ORIGINAL LOCATION OF DECK RAFTER BECAUSE OF WEATHER RAFTER WAS REPLACED.

NEW WALL BUILT WITH ORIGINAL RAFTERS

(2) ORIGINAL DECK RAFTERS (15)

- 15 HANG 6x6 VALLEYS T W/ (2) 5/8" Ø M. BOLTS
- 16 2x6 SLEEPERS @ 16" O.C. DORMER WALLS (DT)
- 17 DOUBLE 2x6 SLEEPER (WHERE SHOWN) RUN PERPENDICULAR TO
- 18 FIR OUT WALL TO MATCH AS REQ'D.
- 19 BUILD UP AS REQ'D TO ACHIEVE HEIGHT
- 20 BUILD UP OVER (E) R INSULATION (SEE DTL 641)

NOTE: NEW ROOF

NOTE: NEW 2x6 S RAFTERS OTHERWISE

Engineering (enlarged S2.3)

(N) EXT. WALLS ARE 2x6 @ 16" O.C. U.N.O.

52

RECEIVED

AUG 20 2014

CLERK OF THE
BOARD OF SUPERVISORS

Clerk of the Board

August 16, 2014

175 Fulweiler Ave., Room 101

Auburn, Ca. 95603

RE: Lindberg Variance cont. from July 22, 14 Board of Supervisor's agenda.

Previous to the Supervisors meeting that I attended on July 22, 2014, to express my view the variance requested by the Lundbergs be denied, I wrote expressing my views against the variance sought. I am still against granting the Lundbergs their requested variance.

I have owned the home at 1357 Kings Way, several south of the Lunbergs, since 1994. I "jumped through hoops" for nearly two years beginning in early 1994, to get a minor variance so as I could build my front deck further toward the street. I was denied as this would have placed my deck into the 30' snow set back, though the deck was to above my driveway which is approximately 12' above the street, and the deck would have been 12 feet higher than the driveway.

Working for Placer County Roads I was aware that this driveway would not be used for snow storage, as the graders cannot push up the side of the hill, and only our large "blowers" could reach that height. Our 1950's "Snow Goes" would not be able to reach this area. The snow removal policy of Placer is a reasonable one, use open space when and where available for the storage of snow, and be as less intrusive as possible upon our populace. Since the property to my North was "conservancy" open space and the properties to my South and across the street are "unbuildable" open space, I believed my minor request was reasonable.

I was denied as "rules are rules". I accepted my fate, had my engineers and draftsmen redraw the plans to accommodate "the rules".

Viewing the Lundbergs property on a daily basis, I see very little inconvenience or expense for them in having them "follow the rules". That upright post can be moved back to the 5' set back so as to allow their lower deck to be hung, with the upper deck still protruding with an overhang into the set back by the 3' that they seem to so dearly want to cling to.

To give them a special exemption just because they "want one", and now have taken steps they must have known stretched the rules, would just continue their pattern of being "above the rules". It would also set a dangerous precedence for all future building and builders.

Sincerely,

Mr. and Mrs. Michael D, O'Lear 1357 Kings Way. (530) 546-4011.

Michael D O'Lear

