

**Raymond A. Appleton**  
**Permit Planners and Design Group**  
133 E. De La Guerra St #351  
Santa Barbara, CA 93101

---

Cell (805) 895-1414 E-mail: PermitPlanners@earthlink.net  
Website: www.PermittPlanners.net

January 10, 2022

Board of Appeals  
Building and Fire Code Board of Appeals  
Building and Safety Division  
City of Santa Barbara  
630 Garden Street  
Santa Barbara, CA 93101

Re: Appeal to Fire Code Board of Appeals of Chief Building Official's Decision  
of Violation Enforcement No. ENF2017-01224.  
931 Calle Cortita, Santa Barbara, CA 93109 / APN: 041-157-017  
Staff Report to Board of Appeals  
Amended Notice of Violation

Board of Appeals:

Our firm has been retained to represent the interest of the James H. Stewart Trust, owner of 931 Calle Cortita, by the authority of James H. Stewart Co-Trustee, and Sherry McTigue, Co-Trustee. The original owner purchaser of the property was James H. Stewart who later created the James H. Stewart Trust. As he aged, he requested that his niece, Sherry McTigue, become a Co-Trustee. Doctor Stewart is 97 years old and is presently a resident of a local retirement facility. Sherry McTigue and her husband Patrick are currently occupying the residence to see to Dr. Stewart's health and the maintenance of the property, as well as addressing the concerns of the City with regards to the issues that have been raised by the current adjacent property owner. The current owner Sheryl Schmandt (herein Sheryl Schmandt) is the daughter of the original owner, Jacob and Nancy Schmandt (herein "the Schmandts") of 937 Calle Cortita. Sheryl filed a complaint to the City, which resulted in Violation Enforcement No. ENF2017-01224.

Our Appeal is to address the issues contained in the Amended Notice of Violation dated October 28, 2021. We believe a history of the property and its relationship with the adjacent property will be helpful to the Board in resolving these issues.

- A) 1963** – Jacob and Nancy Schmandt purchased 2 adjacent vacant properties in Santa Barbara known as 931 Calle Cortita and 937 Calle Cortita, referenced as Lot 20 and Lot 21 respectively by the County Assessor's Office and Map. **See Exhibit 1 – Portion of APN Map**

January 10, 2022

Board of Appeals / Building and Fire Code Board of Appeals

Appeal to Fire Code Board of Appeals of Chief Building Official's Decision

of Violation Enforcement No. ENF2017-01224. 931 Calle Cortita, Santa Barbara, CA

APN: 041-157-017

Page 2

- B) 10/28/63** – Jacob Schmandt immediately proceeded with the construction of a home on 931 Calle Cortita. They decided to leave 937 Calle Cortita vacant for privacy, landscaping, and the use of themselves and their future children. All of the construction of the home was “Finaled” 8/15/63 and cleared for occupancy. Because there are no drawings of the construction in the City Records Division, it is necessary to rely upon the County Assessor’s Office from their Residential Building Records prepared by the County Appraiser dated 10/28/63.  
**See Exhibit 2 County Assessor’s Appraisal Record.**
- C) 2/3/76** – Sale of property of 931 Calle Cortita from the Schmandts to Gary Peters. **See Exhibit 3 - Grand Deed and Walkway Easement**, and photo of 931 Residence access to and from Easement path and deck.
- D) 6/15/78** – City Zoning Report due to sale of 931 Calle Cortita from Gary Peters to James H. Stewart, herein Stewart. **See Exhibit 4 – City Zoning Report, which states no violations were found on property.**
- E) 2007 Survey** for 937 Calle Cortita which shows location of 10 ft Easement benefiting Stewart’s 931 Calle Cortita. **See Exhibit 5 – Survey.**
- F) 11/20/17** – City Notice of Violation due to complaint filed by Sheryl Schmandt. City Inspector deemed that the complaint had no merit due to the fact there was not stairway being constructed near this garden wall. **See Exhibit 6 – City Notice of Violation Letter.**
- G) 10/28/21** – City Amended Notice of Violation and photos. **See Exhibit 7, Page 1**, this Amended Violation Notice identified four areas of a verbal complaint attributed to Sheryl Schmandt by City Inspector. 1. Replacement of two glass windows with two sliding glass doors of the same and height as windows, without permit. Stewart, in previous communications with the City, had agreed to apply for the necessary permits for these two replacement sliding glass doors. **See Exhibit 7, Page 2**, the photo of two replacement sliding glass doors to right of the remaining same side 3<sup>rd</sup> window. 2. This complaint about the deck being built without permits was made in error, as it was constructed and “Finaled” under the same Building Permit as the residence which is shown in **Exhibit 2 above**. 3. This complaint about a new fence was made in error as the only new fence seen by a Building Inspector of the original 11/20/17 Violation was built by Sheryl Schmandt at her property line to block Stewart from accessing his deck and residence through his recorded Walkway Easement. **See Exhibit 7, page 3**, showing a photo of the new fence of light-colored wood. Upon Sheryl Schmandt agreeing to remove her unpermitted fence, Stewart agreed to add 2ft to the top of the portion of the deck’s 3ft 6inch guard rail to provide additional privacy for Schmandt’s property. Also **See Exhibit 7, Page 3**, showing a photo that Sheryl Schmandt took from her own deck, looking toward the 931 Calle Cortita property’s deck. 4. This complaint was verbally communicated by a Building Inspector during a previous inspection, who stated that the original constructed maintenance platform, accessed through the originally constructed doorway

January 10, 2022

Board of Appeals / Building and Fire Code Board of Appeals

Appeal to Fire Code Board of Appeals of Chief Building Official's Decision

of Violation Enforcement No. ENF2017-01224. 931 Calle Cortita, Santa Barbara, CA

APN: 041-157-017

Page 3

needed rails and guards. In a recent Application to the City, Stewart attempted to obtain a permit for these rails and guards but was told that the Application needed to also include in other possible violations, so the City returned his Application. **See Exhibit 7, Page 2**, showing a photo of the original door at the back of the carport leading to the maintenance platform.

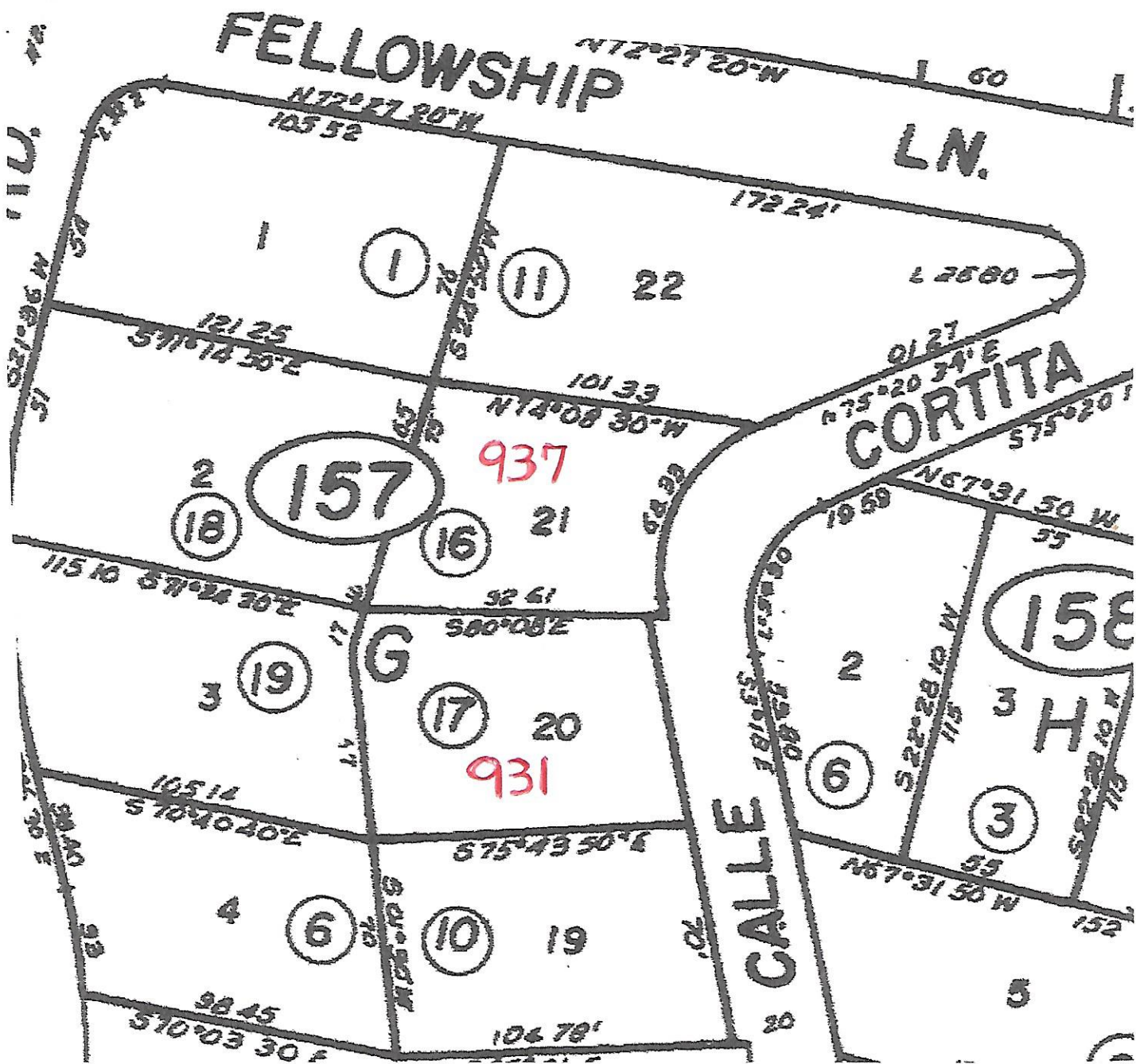
**H) California Law Section 1. Section 17958.12 is added to the Health and Safety Code.** If there was any doubt about the deck being inspected by the Building Inspector and appraised by the Assessor's Appraiser as described above, please refer to the State Law with authority to issue a retroactive Building Permit for the deck as it was constructed to serve its intended purpose and has stood the test of time since 1963, without any fault. **See Exhibit 8.**

The above information has been diligently researched and respectfully submitted for your consideration and resolution of the issues involved for owner of 937 Calle Cortita.

Respectfully,

Raymond A. Appleton  
Land Use Planner

# Exhibit 1



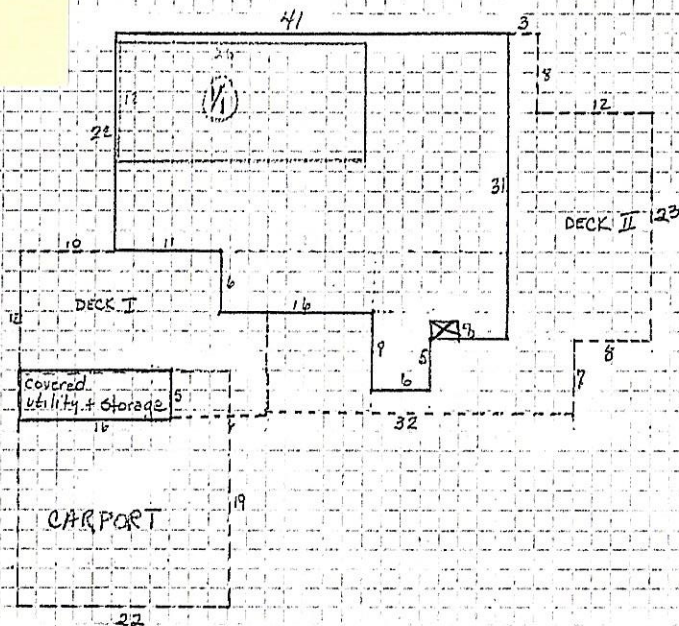


## RESIDENTIAL BUILDING RECORD

ADDRESS 931 Calle Cortita

Tract SB FELLOWSHIP

Lot 20 + 21 Bldg.

PARCEL 41-151-11  
SHEET OF SHEETSExhibit  
2

Unit	Ft.	Ft.	SQ. FT.	Unit Cost	AL.
RES	12	26	312		1000 level
	22	41	902		
	6	16	96		
	8	6	48		
	3	8	24		
			1,382		
UTILITY + STOR.	16	5	80		
DECK I	21	12	252		
	5	6	30		
	5	10	50		
			332	200	664
DECK II	11	10	110		
	23	15	345		
	15	7	105		
	2	6	12		
	3	8	24		
			596	200	1192
Air Conditioning					
Heating WALL FURN					
Cooling					
Fireplace					
Att.-Garage-Det.					
CARPORT - DET.	22	19	418	4:00	1,672
Date	1st Total				
Date	2nd Total				

Cd No.  
Escrow No. 1320234 VBM  
Loan No.

Recording requested by  
First American Title

WHEN RECORDED MAIL TO:  
Gary L. Peters  
931 Calle Cortada  
Santa Barbara, California

4191

Doc 2601 Page 2525

FEB 3 8 00 AM '76

OFFICIAL RECORDS  
SANTA BARBARA CO., CALIF.  
HOWARD C. MENZEL  
CLERK-RECORDER

Exhibit  
3

Pgs 1, 2, 3

SPACE ABOVE THIS LINE FOR RECORDERS

MAIL TAX STATEMENTS TO:

Return addressee above

A. P. No. 41-157-17

TRANSFER TAX AFFIXED  
TO ATTACHMENT!

STAMPS AFFIXED  
AFTER RECORDING

## GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

JACOB R. SCHMANDT and NANCY J. SCHMANDT, husband and wife,  
who acquired title as JACOB EDWARD SCHMANDT, a single man  
hereby GRANT(S) to

GARY L. PETERS, an unmarried man

the real property in the City of Santa Barbara  
County of Santa Barbara

, State of California, described as

LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF.

Dated December 29, 1975

STATE OF CALIFORNIA  
COUNTY OF  
Santa Barbara

On December 30, 1975  
before me, the undersigned, a Notary Public in and for said  
State, personally appeared  
Jacob R. Schmandt and Nancy J. Schmandt

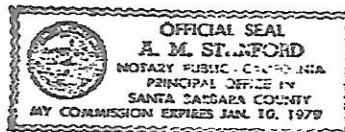
known to me to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged that  
they executed the same.

WITNESS my hand and official seal.

Signature

Jacob R. Schmandt

Nancy J. Schmandt



(This area for official notarial seal)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

1002 (10/69)

①



PARCEL ONE:

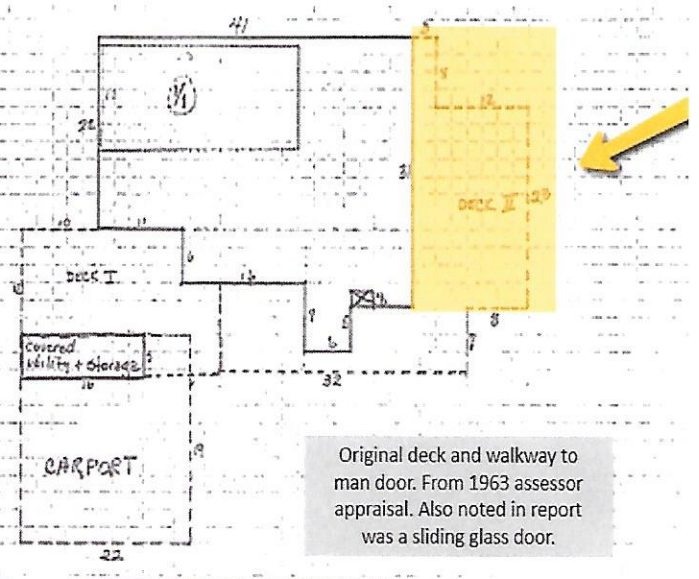
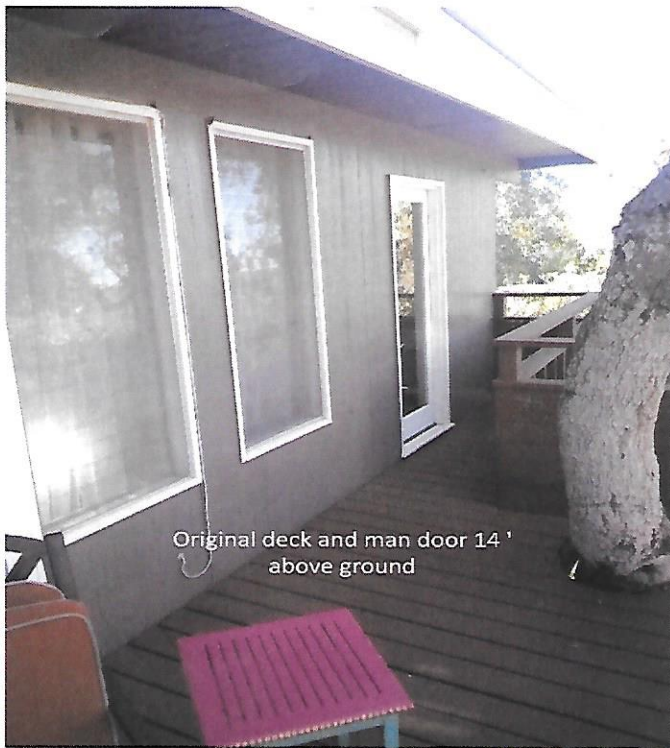
Lot 20 in Block "G" of Map No. 1 of the Santa Barbara Fellowship Tract, in the City of Santa Barbara, County of Santa Barbara, State of California, according to the map thereof recorded in Map Book 15 at pages 1 to 4, inclusive in the Office of the County Recorder of said County.

RESERVING therefrom an easement for the installation, maintenance, repair and replacement of a sewer line for the use and benefit of Lot 21 of Block "G" of said Santa Barbara Fellowship Tract in, on, over and under the Westerly 10 feet, measured at right angles to the westerly line of said Lot 20 above described.

PARCEL TWO:

An Easement for a walkway for the use and benefit of Parcel One above described in, on, under, over and across the Southerly 10 feet, measured at right angles to the Southerly line of Lot 21 of Block "G" of said Santa Barbara Fellowship Tract.

// END OF DOCUMENT //



Crtl+click to Return



Exhibit  
4

Pgs 1, 2, 3

APPLICATION  
ZONING INFORMATION REPORT  
CITY OF SANTA BARBARA

May 30, 1978  
Date

931 CALLE CORTINA  
Address of Property

Santa Barbara, CA.

Zip

41-157-17  
Parcel Number

In accordance with Ordinance No. 3826 of the City of Santa Barbara, I hereby make application for a Zoning Information Report on the above described property. Zoning Ordinance violations discovered as a result of this report will become a matter of record and shall be promptly corrected. Any claimed non-conforming buildings or uses that are not verified by City Records shall be the responsibility of the owner to justify. This report is to be furnished to the buyer or his authorized representative no later than three (3) days prior to consummation of the Transfer of Title.

GARY L. PETERS  
AUTHORIZED AGENT, (Print Name)  
(Evidence of authorization must be presented if the owner does not sign application)

Signature

687-0711  
962-9288  
Telephone Number

GARY L. PETERS  
OWNER (Print Name)

Signature

962-9288  
Telephone Number



Indicate dates and time when an inspection of the property may be made. The Zoning Inspector will confirm the time prior to making the on-site inspection.

Fee: \$25.00 for each report. (Each separate lot or parcel requires a separate report.)

DATE PAID 5-30-78, 3:22 BY Jeannie Freeland

DATE ESCROW CLOSES: Aug. 11, 1978

(If escrow is shorter than thirty days from date of this application, please indicate date escrow closes and attach copy of escrow instructions, or have escrow officer verify closing date.)

Charles R. Smith

3465

①

Ctrl+Click to Return

## ZONING INFORMATION REPORT

CITY OF SANTA BARBARA

## RECORDS CHECK

ADDRESS 931 CALLE CORTITA PARCEL NUMBER 41-157-171. ZONE CATEGORY E-1 2. NET LOT AREA 7300 APPROX. SQ. FT.

## 3. USES PERMITTED BY THE ZONING ORDINANCE:

- a. One-Family Dwelling Yes X No
- b. Two-Family Dwelling Yes      No X
- c. Multiple Family Dwelling Yes      No X
- d. Total number of dwelling units permitted on this property under current Zoning Regulations ONE (1)

## 4. ZONING ORDINANCE REQUIREMENTS:

	A-1	A-2	<u>E-1</u>	E-2	E-3	R-1	R-2	R-3 & R-4 COMMERCIAL
MIN. LOT AREA (SQ. FT.)	43,560	25,000	15,000	10,000	7,500	6,000	7,000	14,000 (except commercial-nones)
REQ. FRONT YARD SETBACK (FT.)	35	30	30	25	20	15'-1 story 20'-2 story	15'-1 story 20'-2 story	10'-1&2 story 15'-3 story
REQ. INT. YARD SETBACK (FT.)	15	10	10	8	6	5	6	6'-1&2 story 10'-3 story
MAX. BUILDING HEIGHT	30'	30'	30'	30'	30'	30'	30'	45'-3 story
OPEN SPACE REQ. (SQ. FT.)	1,250	1,250	1,250	1,250	1,250	1,250	1,250	10% of Lot Area
PARKING PER DWELLING UNIT	2 covered	2 covered	2 covered	2 covered	2 covered	2 covered	2 covered 1 uncovered per duplex	SEE ZONING ORDINANCE

## 5. MODIFICATIONS, VARIANCES, CONDITIONAL USE PERMITS, SPECIAL USE PERMITS, KNOWN VIOLATIONS AND OTHER RECORDED RESTRICTIONS

NONE

*Digitally  
SCANNED  
Document*

(OVER)

SITE INSPECTION

1. NUMBER AND USE OF BUILDINGS, INCLUDE ALL ACCESSORY BUILDINGS AND THEIR USE & SIZE:

~~ONE SINGLE FAMILY DWELLING WITH DETACHED TWO CAR GARAGE~~ CARPORT

2. NUMBER OF DWELLING UNITS: ONE (1)

3. PARKING SPACES PROVIDED: COVERED (GARAGE/CARPORT) TWO (2) UNCOVERED 0

4. WALLS, FENCES OR HEDGES THAT DO NOT MEET CURRENT ZONING REQUIREMENTS BUT ARE NON-CONFORMING. GIVE LOCATION AND HEIGHT.

5. NON-CONFORMING YARDS: FRONT X, INTERIOR X, OPEN YARD     .

6. REMARKS: LOT HAS LESS THAN 15,000 SQ. FT. - NON-CONFORMING

7. ZONING VIOLATIONS: NONE



NOTE: THE TERM "NONCONFORMING" MEANS THAT THE BUILDING OR STRUCTURE SATISFIED THE ZONING ORDINANCE REQUIREMENTS AT THE TIME OF CONSTRUCTION; HOWEVER, BECAUSE OF SUBSEQUENT CHANGES IN THE ZONING ORDINANCE OR THE ZONING MAP, THE BUILDING OR STRUCTURE DOES NOT MEET THE CURRENT REQUIREMENTS. NON-CONFORMING MEANS THAT THE BUILDING OR STRUCTURE EXISTS LEGALLY AND ITS USE MAY BE CONTINUED.

A VIOLATION OF THE ZONING ORDINANCE, CHAPTER 28 OF THE MUNICIPAL CODE OF THE CITY OF SANTA BARBARA, IS A CRIMINAL MISDEMEANOR.

ADDRESS: 931 CALLE CORTITA

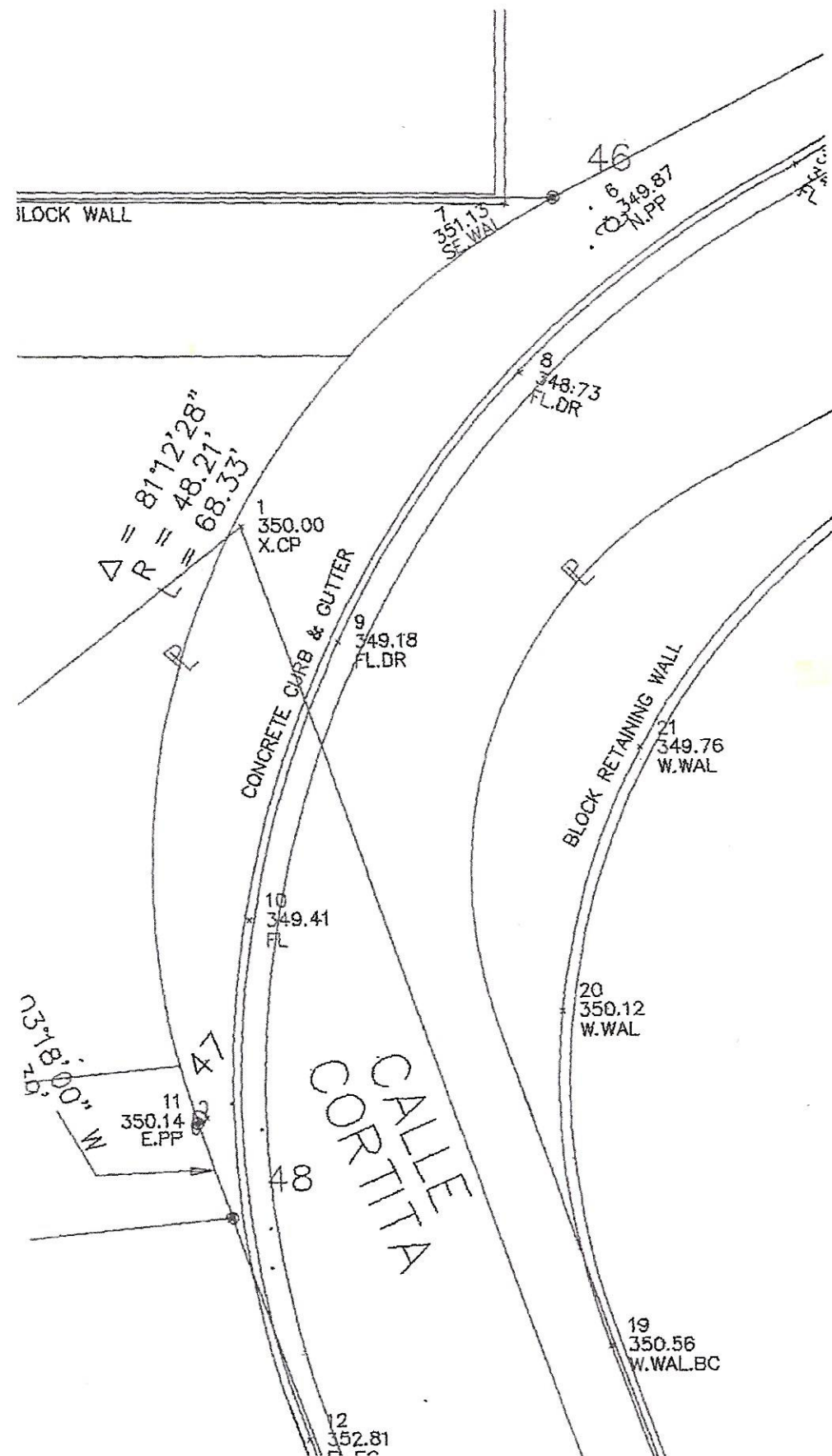
*Reverest*  
Zoning Inspector

6-15-78  
Date



# Exhibit 5

Pgs 1, 2, 3



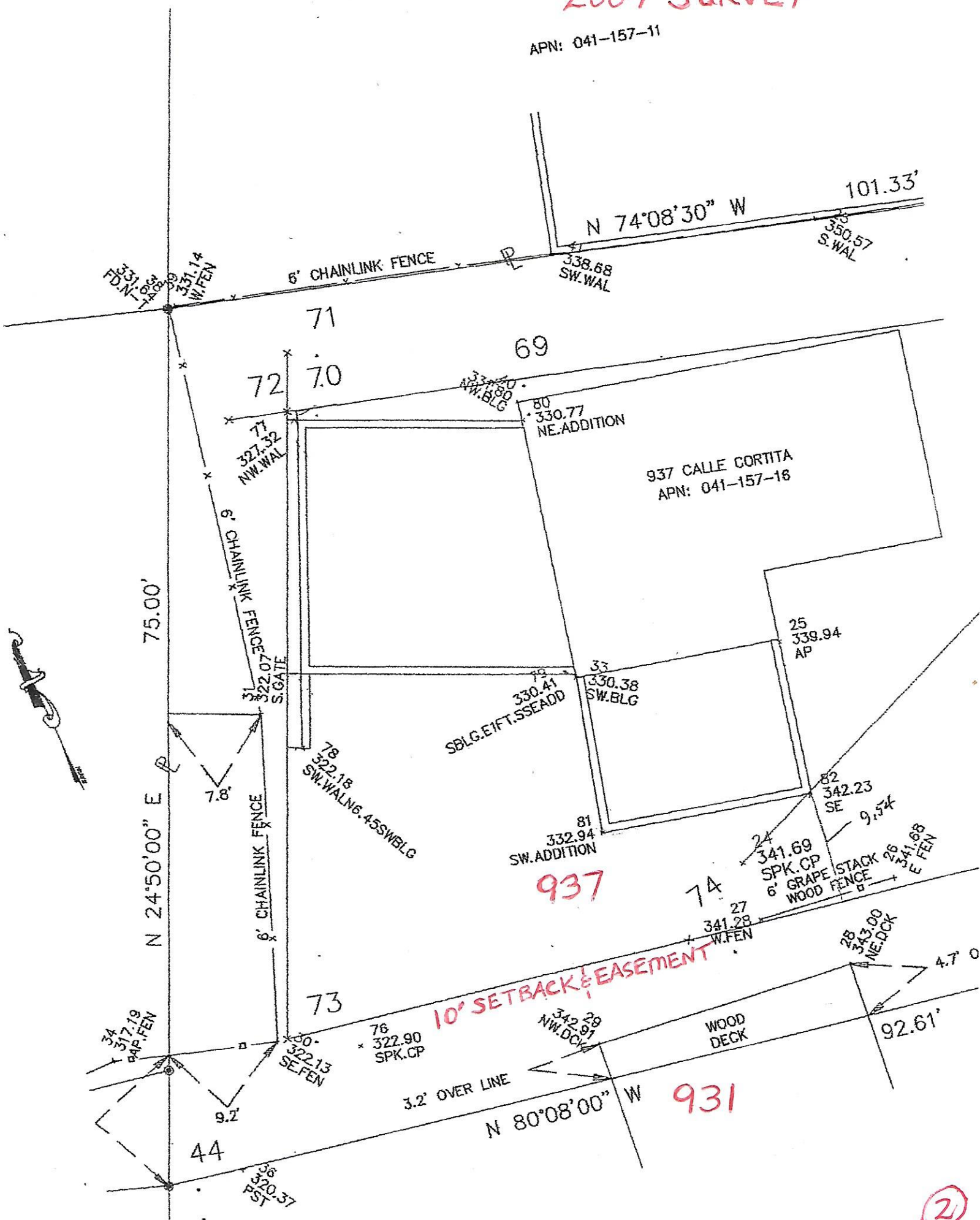
SEPARATE  
LINE

PROPERTY  
LINE



APN: 041-157-11

APN: 041-157-11









# City of Santa Barbara

Community Development Department

SantaBarbaraCA.gov

## Building & Safety Division Notice of Violation

**Exhibit  
6**

### Director's Office

Tel: (805) 564-5502 November 20, 2017

Fax: (805) 564-5477

Stewart, James H Trust 8/1/91

### Administration, Housing & Human Services

931 Calle Cortita  
Santa Barbara, CA 93109

Tel: (805) 564-5461

Fax: (805) 564-5477

APN: 041-157-017

**Case Number: ENF2017-01224**

### Building & Safety

Tel: (805) 564-5485

Fax: (805) 564-5476

**Subject Property:** 931 Calle Cortita, Santa Barbara, CA 93109

Dear Stewart, James H Trust 8/1/91 Trust:

### Planning

Tel: (805) 564-5470

Fax: (805) 564-5477

AN INSPECTION OF THE INTERIOR OF THE DWELLING AND THE GARAGE ARE REQUESTED WITHIN 10 DAYS OF THE DATE OF THIS NOTICE. PLEASE CONTACT LAUREN ANDERSON AT 897-2604 TO ARRANGE THIS INSPECTION. A NEW NOTICE OF VIOLATION MAY BE ISSUED AS A RESULT OF ANY VIOLATIONS FOUND DURING THIS INSPECTION.

### Rental Housing

#### Mediation Program

Tel: (805) 564-5420

Fax: (805) 564-5477

Due to a recent concern filed with the Building & Safety Division, an inspection at the Subject Property was performed on November 2, 2017. As a result of our investigation, we have found the Property to be in violation of Santa Barbara Municipal Code Section 22.04.010 as follows:

630 Garden Street

PO Box 1990

Santa Barbara, CA

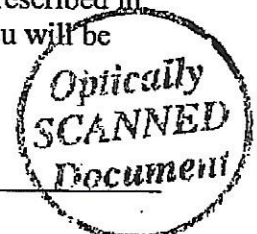
93102-1990

**VIOLATION: Footings for an exterior stairway have been built within the side yard setback without permit. The house was tented for fumigation on the day this inspection was attempted.**

### **CODE SECTION: 2016 California Residential Code, Section R105.1 PERMITS**

Any owner, or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit

**REMEDY:** Bring this Notice to the Building Permit Counter at 630 Garden Street and ask for an explanation of the plan submittal that will be required for permit application and issuance. Be aware that permit issuance must be obtained by the dates prescribed in this Notice. If permits are not obtained within the prescribed time frames, you will be ordered to obtain a demolition permit immediately.



# EXHIBIT 1



## Amended Notice of Violation

City of Santa Barbara  
Building & Safety

**Exhibit  
7  
Pgs 1, 2, 3**

October 28, 2021

Stewart, James H. Trust 8/1/91  
Trustee(s): James H. Stewart & Sherry McTigue  
1437 E. Lewis Street  
Boise, ID 83712

Subject Property: 931 Calle Cortita, Santa Barbara, CA 93109

Parcel Number: 041-157-017

Record Number: ENF2017-01224

Dear James H. Stewart,

Due to a concern filed with the Building & Safety Division, an inspection at the Subject Property was performed on 11/20/2017, 9/1/2021, and 9/16/2021. As a result of our investigation, the city inspectors found the Property to be in violation of the Santa Barbara Municipal Code as follows:

---

### **Santa Barbara Municipal Code Violations:**

- 22.04.010 Adoption of California Codes by Reference.
- 30.140.090 Encroachments into Setbacks and Open Yards.
- 22.69.020 Neighborhood Preservation - Single Family Residential Unit Design Review.

### **Violation Findings During Investigation:**

1. A new sliding glass door was installed without approval or permits. (See Exhibits 1, 2, 3, 4, 5, and 6)
2. The deck was built on adjacent property without approval or permits. (See Exhibits 7 and 8)
3. A new fence was constructed without approval or permits. (See Exhibit 8)
4. The existing carport has man door leading to platform to the roof. Platform is more than 10 feet from grade and does not have rails with guards. (See Exhibit 8)

**Building Code Violation Section:** 2019 California Residential Code § R105.1 Permits Required as adopted by Santa Barbara Municipal Code 22.04.010. Any owner, or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

**Building Code Violation Section:** 2015 International Property Maintenance Code § 108.1.4 Unlawful Structure as adopted by Santa Barbara Municipal Code 22.04.010. An unlawful structure is one found in whole or in part to be occupied by more persons than are permitted under this code, or was erected, altered or occupied contrary to law.

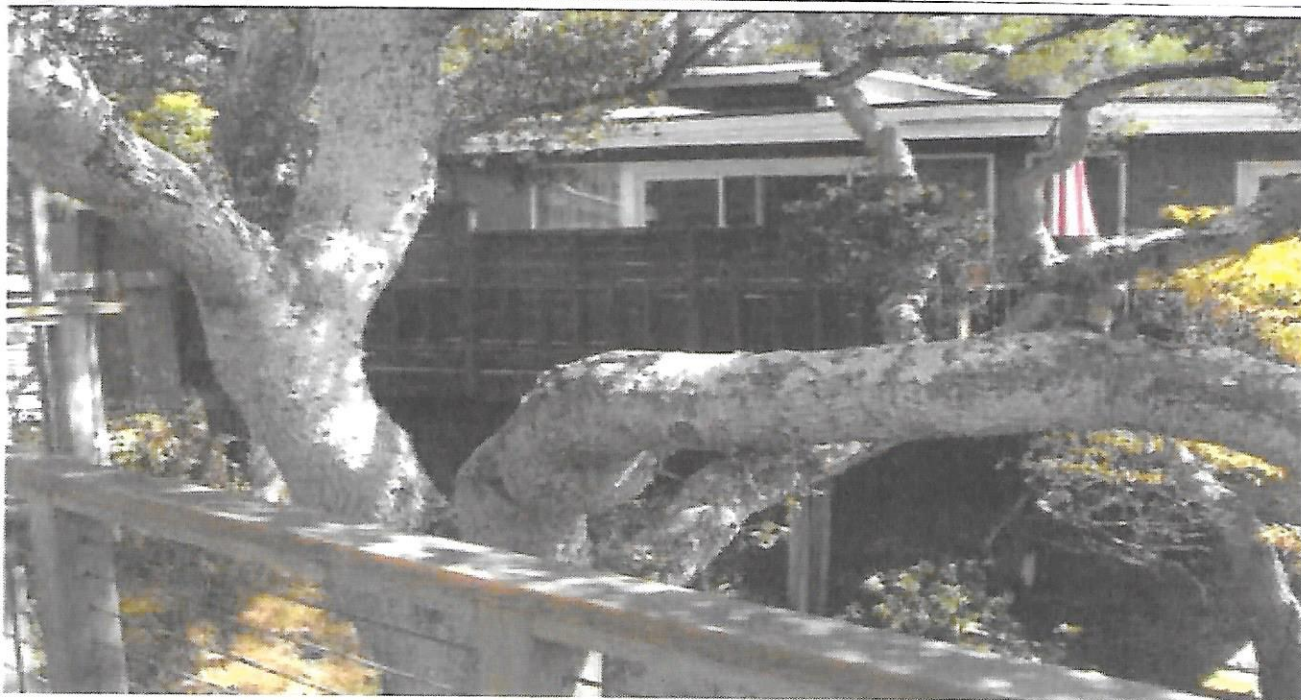
**Building Code Violation Section:** 2019 California Residential Code § R310.2.5 Replacement Windows as adopted by Santa Barbara Municipal Code 22.04.010. Replacement windows installed in buildings meeting the scope of this code shall be exempt from the maximum sill height requirements of Section R310.2.2 and the requirements of Section R310.2.1, provided that the replacement window meets the following conditions:













**SB-1226 Building standards: building permits. (2017-2018)**

**SECTION 1.** *Section 17958.12 is added to the Health and Safety Code, to read:*

**17958.12. (a)** *The Legislature hereby finds and declares the following:*

*(1) Building officials, pursuant to this code and the California Building Standards Code, have broad authority as part of their enforcement authority to render interpretations of the code and to adopt policies and procedures to clarify the application of its provisions.*

*(2) A building official has the discretion to apply the building standards that were in effect at the time a residential unit was constructed. This is permissible under the authority to grant modifications on a case-by-case basis and the authority of a building department to approve a material, appliance, installation, device, arrangement, or method if it finds that the design is satisfactory and equivalent to the building standards code. Several jurisdictions were not aware of this existing authority.*

*(3) It is the intent of the Legislature to clarify that when a building permit for a residential unit does not exist, the appropriate enforcement official may make a determination of when a residential unit was constructed and then apply the California Building Standards Code and other specified rules and regulations in effect when the residential unit was determined to be constructed for purposes of issuing a building permit for the residential unit.*

*(b) The department shall propose the adoption of a building standard to the California Building Standards Commission pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 to authorize, when a record of the issuance of a building permit for the construction of an existing residential unit does not exist, a local enforcement official to determine the date of construction of that residential unit, apply this part, the building standards in the California Building Standards Code, and other specified rules and regulations in effect on that date of construction to that residential unit, and issue a retroactive building permit for that construction. This authorization shall be consistent with the findings and declarations of subdivision (a).*

*(c) This section is declaratory of existing law.*