

EL DORADO COUNTY PLANNING DEPARTMENT 2850 Fairlane Court,
Placerville CA 95667 <http://www.co.el-dorado.ca.us/planning> phone: (530) 621-5355

CARSON CREEK SPECIFIC PLAN Sections 4.1 and 4.2 – CC6K

4.1 Introduction

Purpose and Intent

The purpose of this section is to establish land use standards and regulations for the Carson Creek Specific Plan. These regulations will serve as the primary mechanism for regulating the development of the Carson Creek Specific Plan. Implementation of the standards set forth in this section will ensure that future development proceeds in a coordinated manner consistent with the Specific Plan. Future review of subdivision maps, parcel maps, site plans, and other necessary discretionary approvals by El Dorado County will ensure adherence to these standards. Deviation from these standards requires a design waiver.

Definitions

For the purpose of this Specific Plan, the definitions contained in the County Zoning Ordinance shall apply. The glossary of terms and definitions has not been repeated within this Specific Plan. ✓

4.2 General Provisions

1. Code Compliance

↙ USE THE BUILDING CODE
All construction and development within the Specific Plan Area shall comply with applicable provisions of the Uniform Building Code and the various related mechanical, electrical, plumbing codes, fire code, water ordinance, grading and excavation code and the subdivision code, as currently adopted by the County when this Specific Plan is adopted.

2. Setbacks

The setback requirements are as specified within the development standards for each development option within this Specific Plan. Unless otherwise described, all setbacks shall be determined as the perpendicular distance from the existing or planned street right-of-way line, to the foundation point of the closest structure. In the case where setbacks to parking areas are described, the perpendicular distance shall be measured to the edge of pavement for the parking area.

↗
THIS SECTION JUST REFERS TO MEASURING AT STREET R/W AND AT PARKING LOTS. THIS DOES NOT INVOLVE SIDE YARD SETBACKS.

3. Process and Procedures

If specific development standards have not been established, or if an issue, condition or situation arises or occurs that is not clearly understandable in the Specific Plan, then those regulations and standards of the El Dorado County Zoning Ordinance that are applicable for the most similar issue, condition or situation shall apply as determined by the County Planning Director.

These regulations are adopted pursuant to Section 65450 of the State of California Government Code. It is specifically intended by such adoption that the development standards herein shall regulate all development within the Specific Plan area.

4. Violations

Any person, firm or corporation, whether a principal, agent, employee or otherwise, violating any provisions of these regulations shall be made to comply with the County Zoning Ordinance pertaining to zoning violations and enforcement.

5. Unlisted Uses

Whenever a use has not been specifically listed as being a permitted use in a particular classification within the Specific Plan, it shall be the duty of the County Planning Director to determine if said use is (1) consistent with the intent of the classification, and (2) compatible with other listed permitted uses. Any person aggrieved by the determination may appeal that decision to the County Planning Commission and Board of Supervisors under the County Zoning ordinance appeal procedures.

CARSON CREEK SPECIFIC PLAN
Sections 4.4 – CC6K

4.4 Single Family (6,000 sq. ft. min.)

1. Permitted Uses:

The following uses are allowed by right, without special use permit:

Primary Uses:

One single family detached dwelling per lot

Accessory Uses:

Renting of not more than one room

Home Occupations such as accountant, advisor, appraiser, architect, artist, attorney, author, broker dressmaker, draftsman, handicrafts, insurance, photographer, therapist, musician, teacher and other similar occupations normally conducted by mail or telephone on the premises where the activities do not create a traffic problem, provided that instruction or consultation is not given to groups in excess of four and concerts or recitals are not held, and no display of goods is viable from the outside of the property, such use must be carried on in the main building and be incidental to the residential use of the premises and be carried on by a resident of the main dwelling.

In-home daycare, maximum 6 children

Non-commercial accessory uses and buildings, including such structures as a swimming pool, garage, or garden shed

Public utilities distribution lines

Public parks

Churches, temples, and other places of worship

Uses permitted with a special use permit. The following uses are permitted only after obtaining a special use permit from the Planning Commission:

Schools, non-commercial playgrounds

Non-profit membership clubs and associations

Public utilities buildings and structures other than distribution and transmission lines

Real estate office on or adjacent to properties for sale or fronting a road leading directly thereto, for the exclusive sale of property

Home occupations not listed above as permitted by right or which require special consideration due to the proposed use of power tools or accessory buildings, or due to potential noise generation. Such home occupations shall not be approved unless the Planning Commission finds that the use will not change the residential character of the premises, and will not adversely affect the other uses permitted in a residential area

Health facility

Community care facility

Senior related facilities including but not limited to congregate care, skilled nursing, assisted living. Public buildings and public utilities buildings of a type and nature deemed compatible with the purposes of this zone by the Planning Director.

2. Site Development Standards

Minimum Lot Area: 6,000 square feet

Maximum Lot Coverage: 50% for single story (including accessory buildings)
40% for double story

Minimum Lot Frontage: Fifty feet (50') at building setback line

Minimum Setbacks:

Front Yard: Sixteen feet (16') for home and twenty feet (20') for garage. Garages shall be set back a minimum of four feet (4') farther than the rest of the house.

Rear Yard: Fifteen feet (15'). Garages must be located in the rear yard setback, but must be located at least three feet (3') from the rear property line. Where garages are facing alleys in the rear of the house, however, the garage may be located on the rear property line.

Side Yard: Five feet (5'). Corner lots shall have a minimum twelve and ½ (12.5) feet on street side.

Maximum Height: Thirty feet (30') or 2 stories.

Required Parking: Two (2) spaces off street in a garage plus the equivalent of two (2) spaces on the driveway (tandem or side-by-side). If driveways are not provided, the developer must show that the equivalent of two (2) parking spaces per unit are available in guest parking areas or on the street. Recreational vehicles, boats, or commercial trucks shall not be parked or stored in driveways or in any exterior location on the lot.

Hearing Presentation showing that my Trellis is not in violation of the Carson Creek Specific Plan

The Carson Creek Specific (CCSP) Plan states that the side yard setback dimension is 5 feet but does not set forth what or what cannot be in the setback area. In other words, the (CCSP) does not state that, "*structures cannot be inside the required 5 foot side yard setback area*" as stated in the citation.

To know what cannot be built in the setback area, one has to go to the Codes which the County has done as set forth in Planning Services letter dated February 19, 2010. As discussed in that letter only Buildings are subject to the setback requirements per Code Section 17.06.050. Buildings are defined as "*structures having a roof supported by columns or walls, and designed for the shelter or housing of any person, animal or chattel.*"

According to the above Code there are three elements all of which must be present to constitute a Building. 1) A structure, 2) a roof and 3) designed for housing or sheltering of people, animals or chattel. The prime purpose of the building defined here is to provide shelter.

Although my trellis may be considered a structure it does not have a roof nor is it designed for housing or for shelter; therefore it is not a Building and thus not subject to the minimum setback limitations.

The February 19th letter also states, "*A Trellis is not considered a structure that needs to meet setbacks, because it does not meet the full definition of a Building: it does not have a roof and it clearly is not intended for the sheltering of people, animals, or chattel. Trellises are intended and used for support of vegetation.*" Clearly this is exactly what my Trellis is used for.

Therefore, my Trellis is not in violation of the setback limitations in the (CCSP) as referenced in the subject citation.

Issue or allegation:
County practice establishes authority

Response:

The County alleges that it has prohibited structures like mine from being built in setback areas and therefore, based on that my trellis is in violation. My response to that is as follows: 1) there is no evidence that the County regulates such structures and 2) even if it did, that would be improperly applying the Code to certain structures that are not subject to regulation, and by doing that does not make other similar structures in violation.

Concerning point (1). I see a lot of trellises and patios with open top construction that are located in setback areas that have not been cited by the County. Furthermore, I know of a specific case in which the County investigated but did not cite and require removal of the structure from the setback area but instead allowed the owner to keep his structure as is. Therefore, this refutes the County's claim that it prohibits such structures in setback areas.

Concerning point (2). For this example say a property owner tells the County he plans to build a shed in his back yard and wants to know what he needs to do. In this case the County knows that a permit wouldn't be required because the shed would be less than 120 square feet and has no electrical work and would not be located in the setback area. However, say the County tells him a permit is required and so the property owner goes ahead and gets a permit. If another property owner built the same type and size of shed in his back yard without a permit, the County would not have the authority to require him to get a permit just because the County without authority asked the first property owner to get one.

Therefore, County practice does not establish the right of the County to improperly apply the Codes.

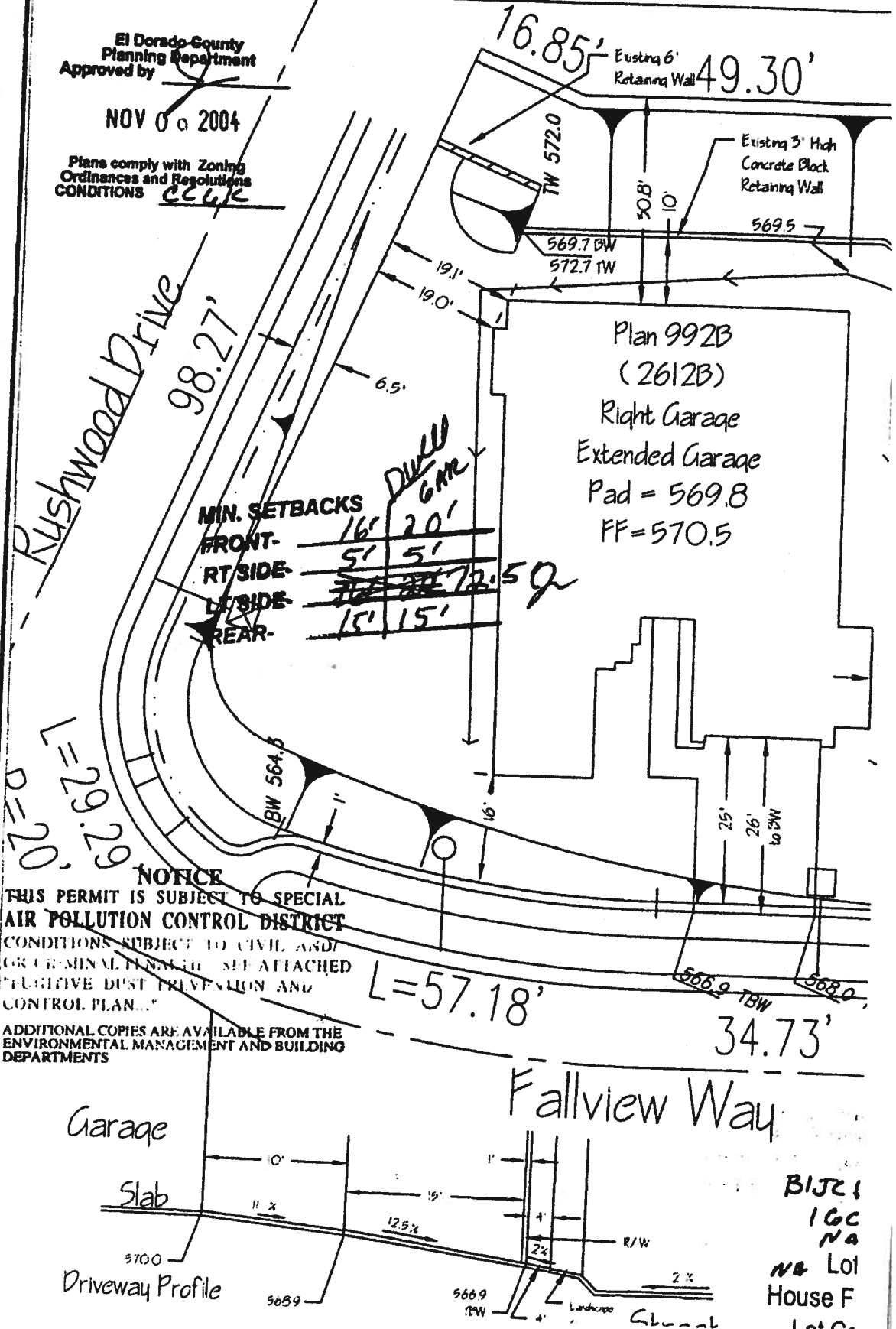
plot plan

THIS PLOT PLAN IS FOR THE PURPOSE OF SHOWING THE HOUSE TO BE CONSTRUCTED ON THE LOT AND MAY NOT BE A SURETY OF THE ACCURACY OF THIS PLOT PLAN AS-BUILT CONFIGURATION OF THE PROPERTY OR IMPROVEMENTS THEREON. THE ACCURACY OF THIS PLOT PLAN IS A PART OF ANY POLICY REPORT OR GUARANTEE TO WHICH IT MAY BE ATTACHED. ACTUAL DIMENSIONS, OTHER THAN AS SHOWN, MAY VARY OR CHANGE WITHOUT PRIOR NOTICE DUE TO ACTUAL SITE CONDITIONS.

El Dorado County
Planning Department
Approved by *[Signature]*

NOV 0 2004

Plans comply with Zoning
Ordinances and Regulations
CONDITIONS *CCUC*



MIN. SETBACKS

FRONT-	16'	20'
RT/SIDE-	5'	5'
LT/SIDE-	7'	15'
REAR-	15'	15'

DULL GMEY

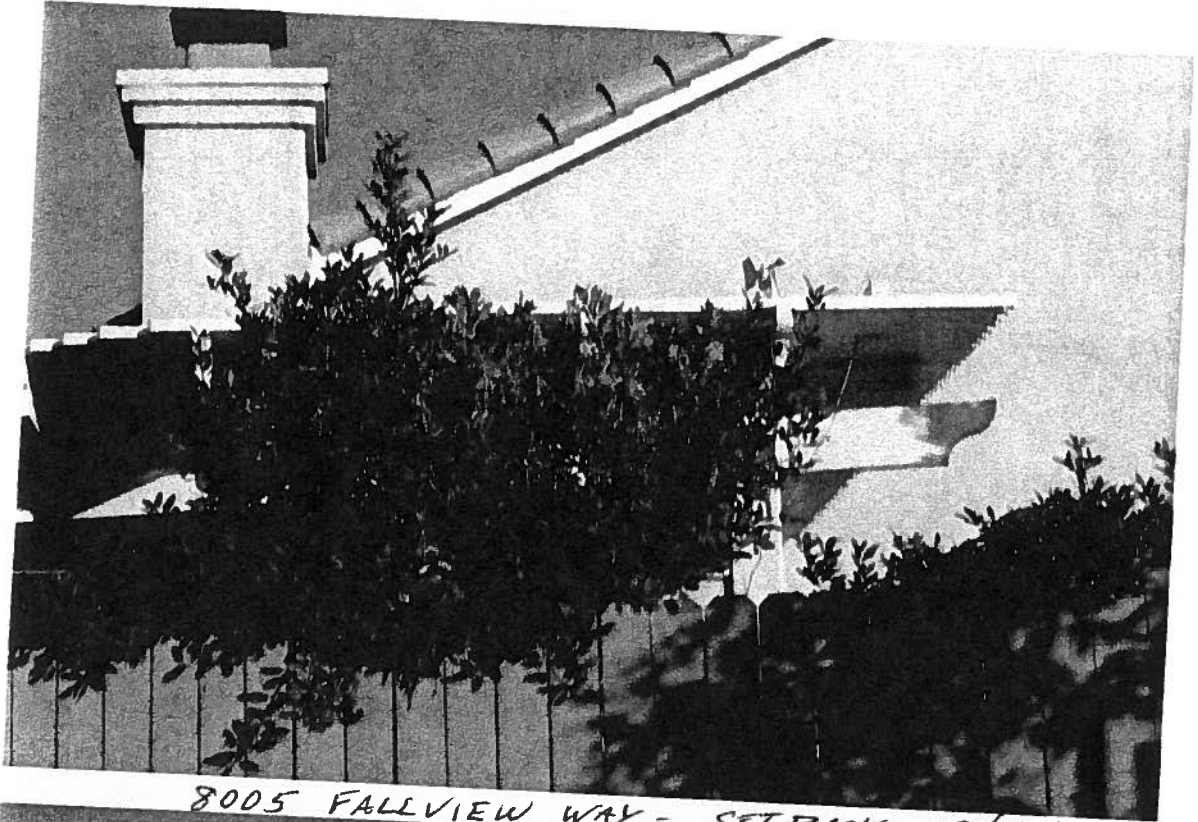
NOTICE
THIS PERMIT IS SUBJECT TO SPECIAL AIR POLLUTION CONTROL DISTRICT CONDITIONS SUBJECT TO CIVIL AND/OR CRIMINAL PENALTIES. SEE ATTACHED "FUGITIVE DUST PREVENTION AND CONTROL PLAN."

ADDITIONAL COPIES ARE AVAILABLE FROM THE ENVIRONMENTAL MANAGEMENT AND BUILDING DEPARTMENTS

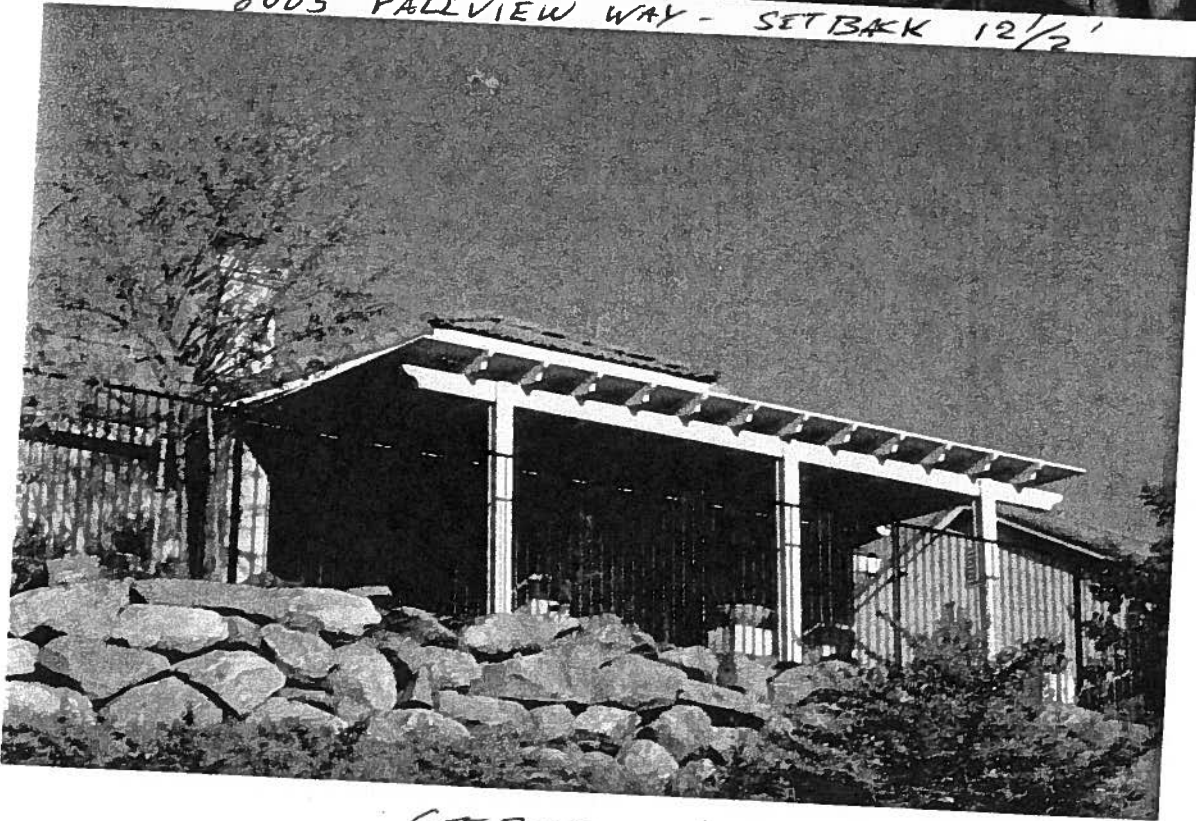
BIJZ 1
1 GC
NA
N4 Lot
House F
1 of 1



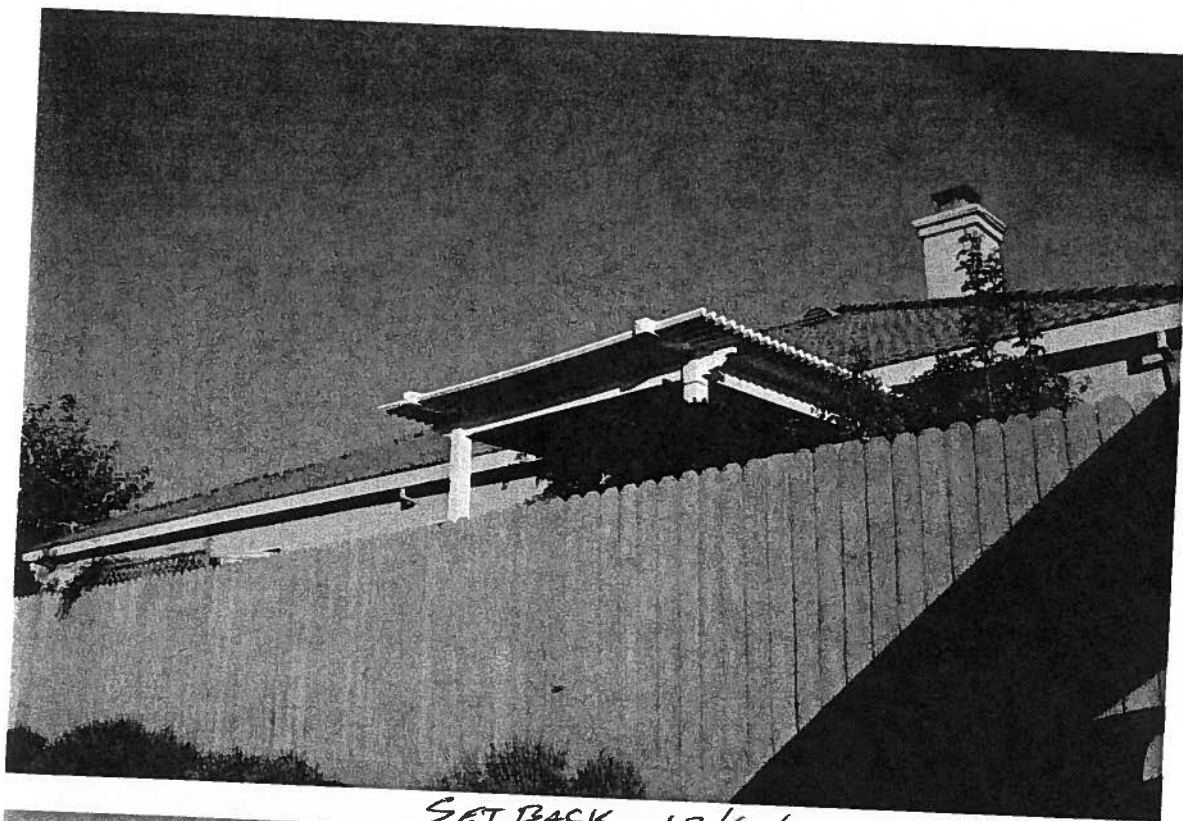
8005 FALLVIEW WAY
LEFT SIDE SETBACK REQ. 12 1/2 FT.
SIDE YARD PATIO COVER LOCATED IN SETBACK AREA



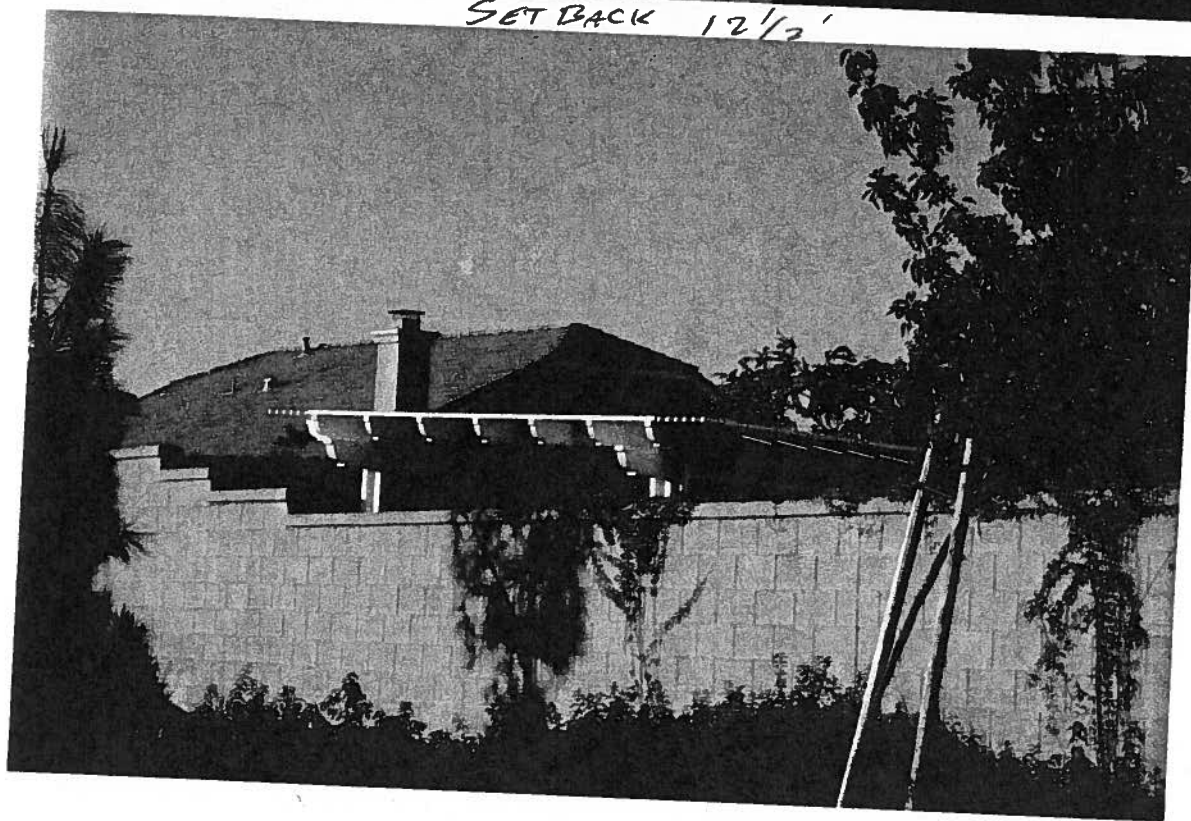
8005 FALLVIEW WAY - SETBACK 12 1/2'

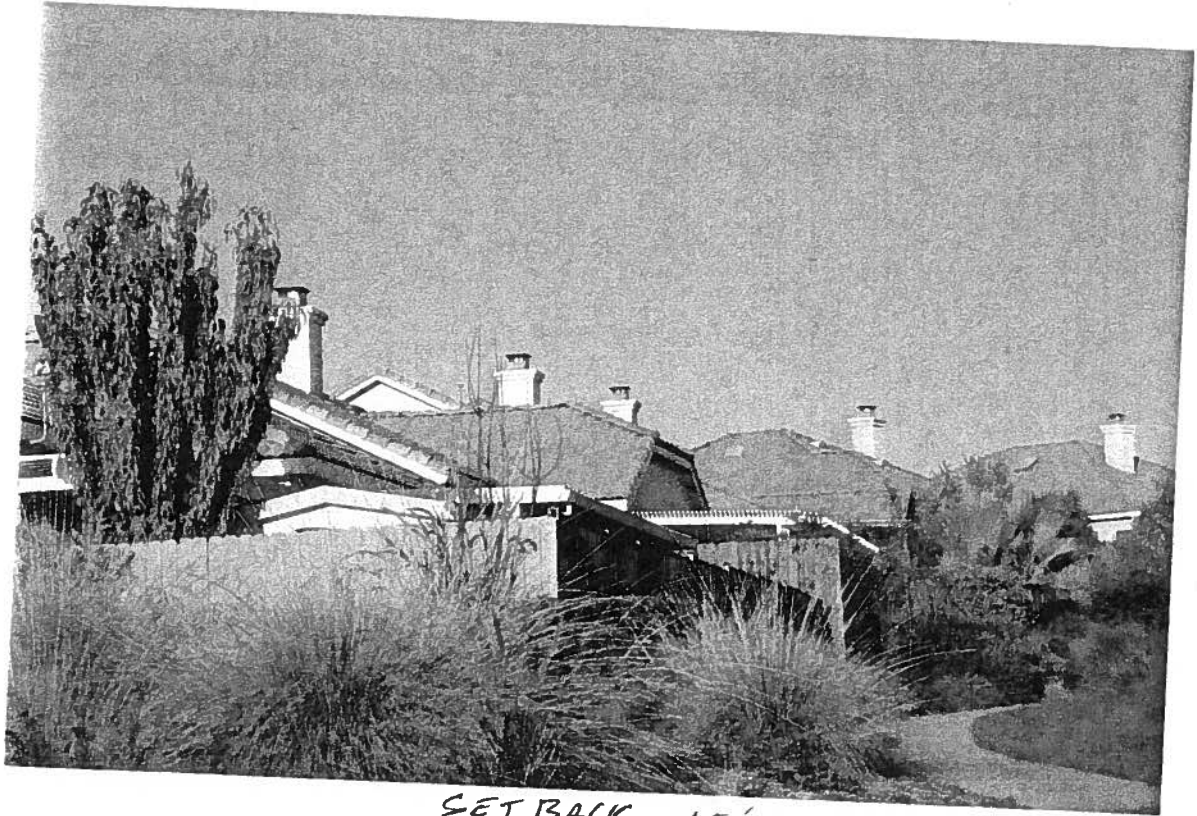


SETBACK 15'



SET BACK 12 1/2'

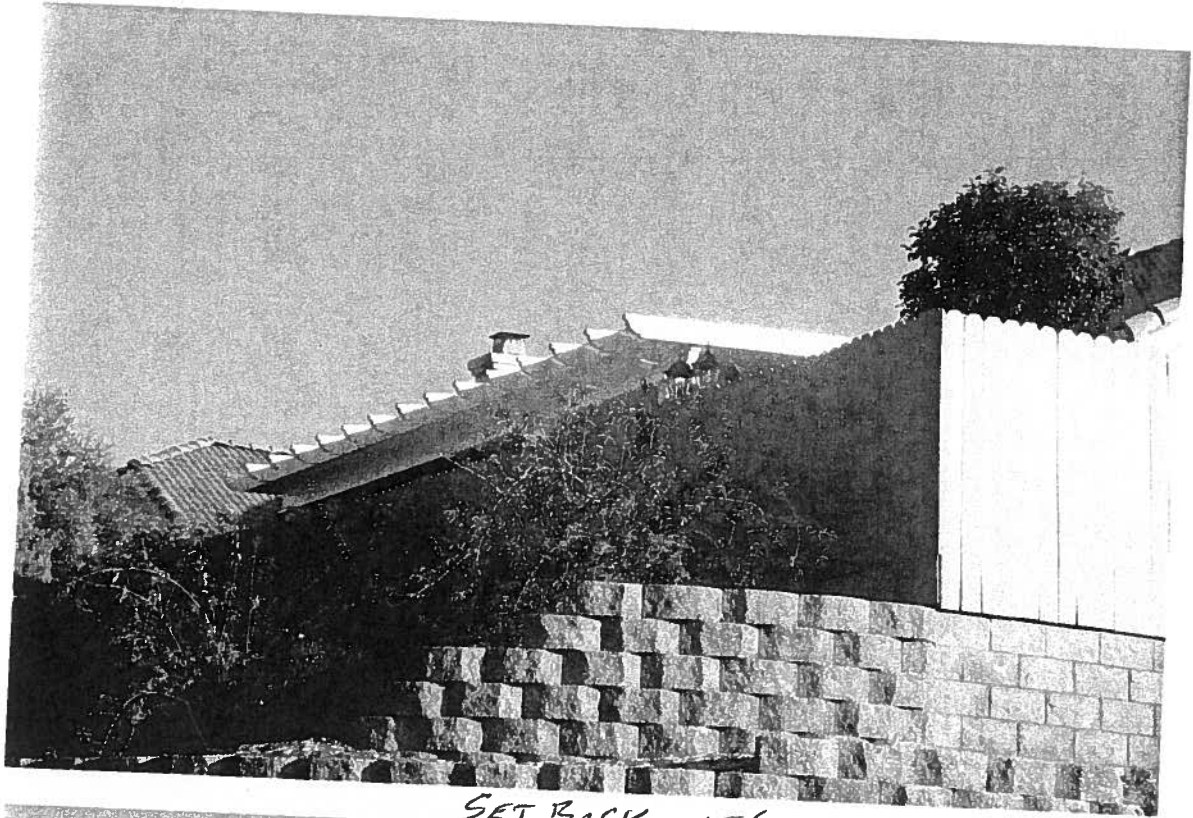




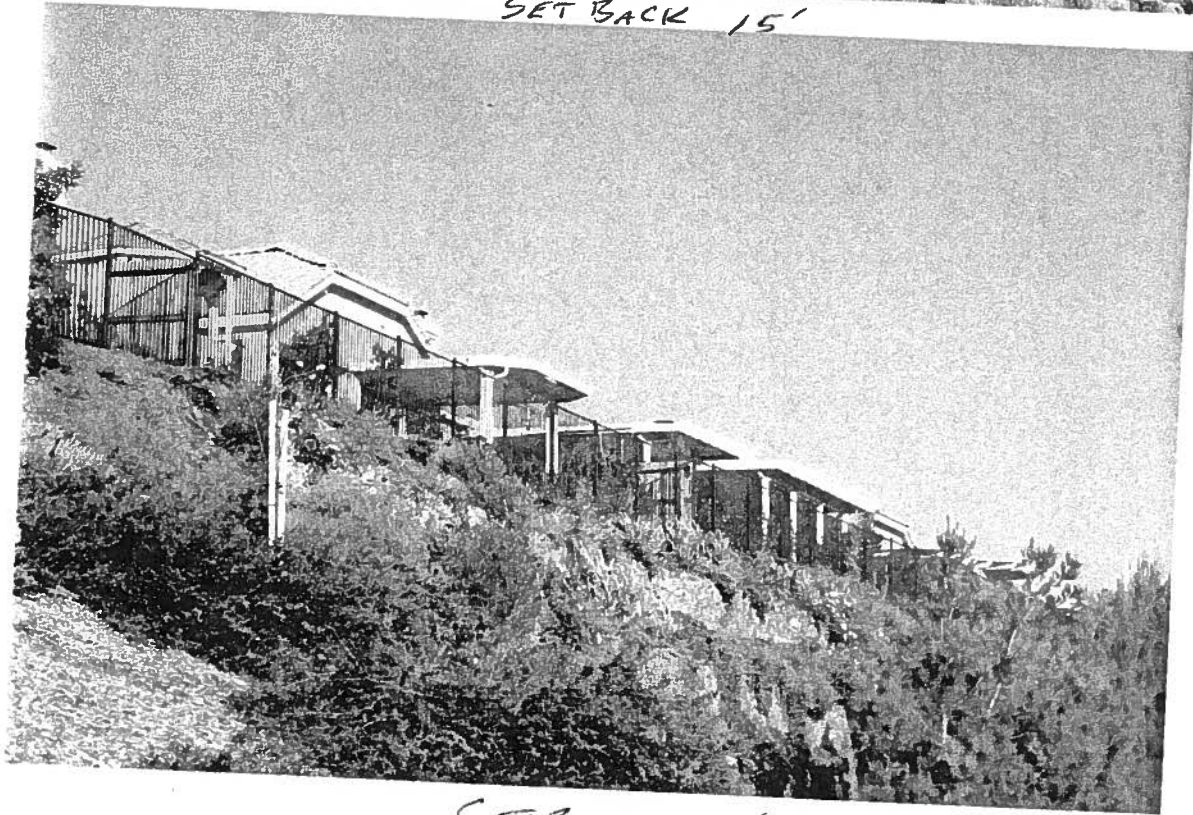
SETBACK 15'



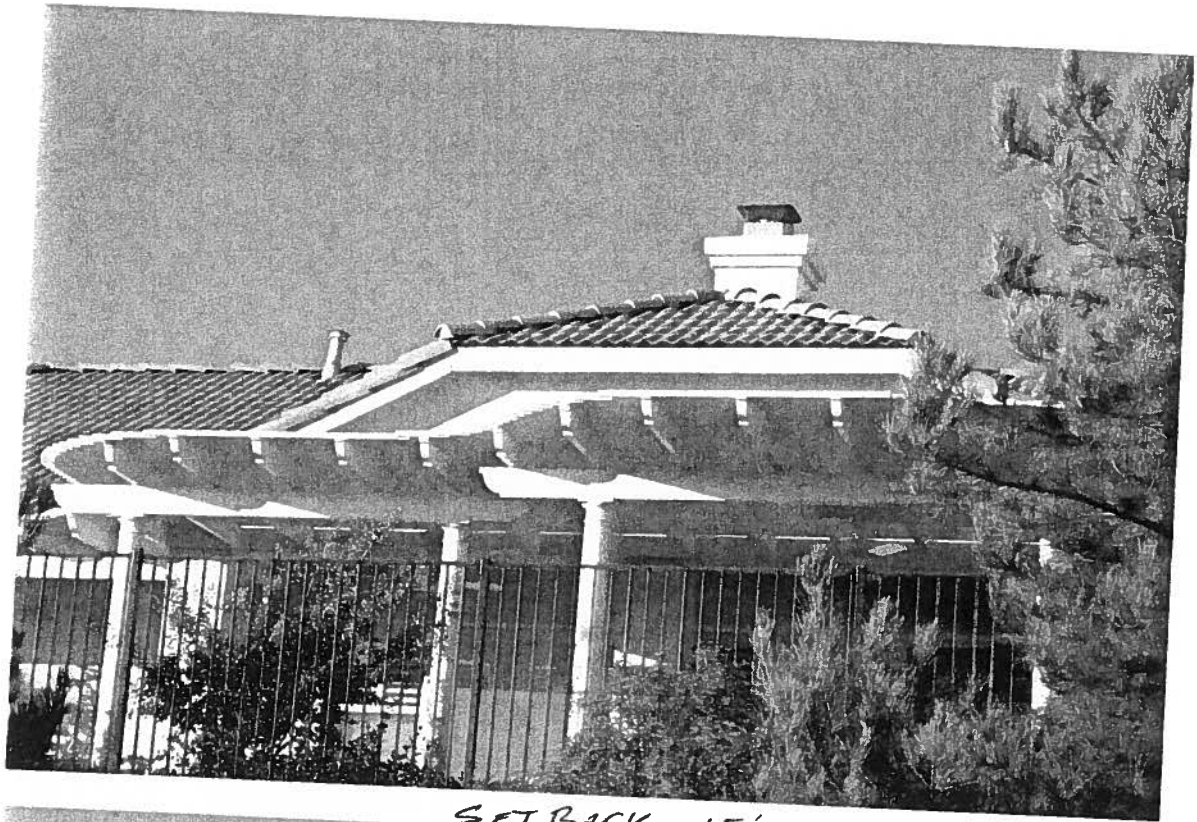
SETBACK 12 1/2'



SET BACK 15'



SETBACK 15'



SET BACK 15'



SET BACK 15'

Issue or allegation:
Relevance of other permitted structures

Response:

The County has said that my other nearby patio cover received a permit because it was of the open type construction much like my trellis and that is why my trellis is subject to regulation.

Any permit issued on my patio cover would have been done because it is over 120 square feet and not because it is an open type structure. Therefore, the fact that my patio cover is permitted is not evidence that my trellis is out of compliance. There is no correlation between a structure over 120 square feet that needs a permit to a structure less than 120 square feet that does not need a permit but may be out of compliance because of the setback limitations. In other words the issue here is not a permitting issue but a setback issue.

Issue or allegation:

The trellis has a Roof and therefore is a building subject to the setback.

Response:

The County claims that the rafters on my trellis constitutes a roof and thus is considered a Building. The County is basing this theory on a certain document located in the case file with the heading, Information Bulletin dated May 26, 2010. This document has no source reference, was not signed by anyone and is just someone's opinion that has no regulatory standing. It was prepared specifically concerning my trellis because it mentions the photographs of my trellis and has a conclusion concerning my trellis. I believe it was prepared by a Building Official as a result of a meeting with the Planning Director.

It should be noted that a Building Official has no authority to make rules or to change rules without going through the rule making process. Furthermore, the document is flawed in its attempt to determine that my trellis is a Building and thus subject to the setback limitations.

The document contains a list of terms and definitions for the terms, obtained either from the codes, the dictionary or from the author of the document. Under the term "Roof" a discussion is provided concerning 1) **roof framing** which supports the roof and 2) **roof assembly** which constitutes the roof. The term, roof framing, is not found used in the definition of roof in the Building Code. Another statement in the Bulletin says that a roof is, "*a system designed to provide weather protection...*" From the information given one would conclude that the **framing alone** could not be considered a roof but the document states just the opposite, which is that "*A roof may be constructed of framing only...*" This is an incorrect conclusion.

For example, the purpose of the framing is to support the roof just like the purpose of a cup holder is to hold a cup. The cup holder itself is not a cup. The fact that the word cup is used in the phrase cup holder does not mean that when the cup is not present that the cup holder is a cup. That just does not make sense. Likewise, if a roof assembly is removed from a structure the remaining framing is not considered a roof. The framing along is not a roof and more importantly the idea of an open roof is in conflict with the definition of a "Roof" in the Building Code, Title 24, Part 2, Chapter 15, Section 1502.

Furthermore, the idea that a structure with open framing has a roof is an oxymoron. The purpose of a roof is to provide shelter from the weather which is impossible with a structure with open framing. It would be like saying a soft marshmallow is hard which is a contradiction to it being soft. In other words an open roof cannot provide shelter which a roof must do according to its purpose and design.

Based on this incorrect conclusion that my trellis has a roof the document then concludes that my trellis is a Building with a roof and thus subject to the setback limitations. This is another incorrect conclusion, that is that a structure with open framing is a Building which is not true according to the Building Code.

When one makes an incorrect assumption in mathematics one is going to end up with the wrong answer and the error will be compounded if one makes two incorrect assumptions one right after the other and that is what the County has done here.

The County doesn't like the definitions of "roof" and "Building" in the Codes and so has attempted to come up with its own definitions in the Information Bulletin. The following will support this claim:

The County in the Information Bulletin wants to change the definition of a Building by saying if a structure has a roof it is a Building. This is not in harmony with the definition in the Code which is: *"structures having a roof supported by columns or walls, and designed for the shelter or housing of any person, animal or chattel."* The operative word in this definition is not "roof" but is "shelter". The purpose of a building is to provide shelter and a solid roof helps provide that shelter for people, animals or property. Notice that the intent of this Code is indicated by the use of the word "designed". In other words the sole purpose of the Building is designed to provide shelter for people, animals or property. Therefore, a trellis that has open rafters does not have a solid roof that will provide shelter for anything and therefore is not a Building.

In an email to me from the County dated April 6, 2010, it states *"Another option is to remove the roof over the patio (the trellis). This would include a roof that partially open, such as on the current patio cover (trellis)". This is consistent with the Building Codes for the definition of a "roof" and we have consistently applied the rule this way."*

In this communication the County is acknowledging that the Building Code should be used to find the definition of Roof. But now that the County realizes that the Building Code definition only considers solid roofs, which does not support the County's position that open structures have roofs, the County therefore, wants to come up with its own definition as shown in the Information Bulletin which states that my trellis has an open roof of girders and cross rafters. Then it says the purpose of a roof is to provide shelter. The fact that the earlier statement incorrectly uses the word roof in connection with girders and cross rafters the County thus makes the argument that girders and rafters provide shelter which of course they do not. The Building Code does not consider cross members and rafters as a roof.

Even if the Building Code included two types of roofs, such as (1) solid and (2) open, it still would not change the status of my trellis to a Building because the operative word in the definition of Building is "shelter" and not "roof". In other words, if the Building Code included the two types of roofs as mentioned above, then one would have to decide which type of roof was meant whenever the word roof was used. Clearly in the case of the definition of a Building the word roof is referring to a solid roof because the purpose of the building is designed to provide shelter. Therefore, it doesn't matter if one thinks my trellis has a roof, the fact is my trellis is not a Building according to the code.

One would think that the Building Official would use the Building Code to find the definition of a "Roof". So why would the Building Official prepare the Information Bulletin dated May 26, 2010 that expanded the definition to include open roofs? Perhaps it was because Mr. Trout talked to the Building Official at length concerning a roof not needing to be solid (see letter dated May 28, 2010). It is apparent that this letter and the Information Bulletin were prepared shortly after the meeting between Mr. Trout and the Building Official.

There is no need for the County to come up with its own definition of Building; the Code already has a definition and in fact the County referred to this definition in its letter dated February 19, 2010 and then concluded in that letter, *"A Trellis is not considered a structure that needs to meet setbacks, because it does not meet the full definition of a Building: it does not have a roof and it clearly is not intended for the sheltering of people,*

animals, or chattel. Trellises are intended and used for support of vegetation."

In summary the Information Bulletin is invalid for several reasons, anyone of which would invalidate any testimony based on it. 1) It has no source reference and no signatures, 2) it contains irrational logic and is in conflict with the Building Code and the County Ordinance, 3) it has not gone through the rule making process and therefore has no regulatory authority or standing. Therefore, as mentioned any testimony based on this document is invalid and must be dismissed as unacceptable.

The County Bears the Burden of Proof

It should be noted that 2 ½ years ago the first inspector of my trellis stated in his report "...that there is no structure (building) built. There is a trellis built in the setback area but there is no permit required for this. OK to close". This seasoned inspector had it right.

I believe I have demonstrated that that County Inspector was correct and that my trellis is not in violation of the Carson Creek Specific Plan.

The El Dorado County Code covering this administrative hearing (see Section 9.02.410 Standard of Proof) states: *The County bears the burden of proof at an administrative hearing to establish the existence of a violation of the Code. The standard of proof is by a preponderance of the evidence.*"

The County has not shown any valid evidence, let alone a preponderance of evidence that my trellis is in violation of the setback requirements. Therefore, the County has failed to prove that my trellis is in violation of the Carson Creek Specific Plan.

DEVELOPMENT SERVICES DEPARTMENT

COUNTY OF EL DORADO

<http://www.co.el-dorado.ca.us/devservices>

PLANNING SERVICES



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BUILDING (530) 621-8316 / (530) 622-1708 FAX
bddept@co.el-dorado.ca.us
PLANNING (530) 621-8368 / (530) 642-0508 FAX
planning@co.el-dorado.ca.us
Counter Hours: 8:00 AM to 4:00 PM

LAKE TAHOE OFFICE:

3368 LAKE TAHOE BLVD. SUITE 302
SOUTH LAKE TAHOE, CA 96150
(530) 573-3330
(530) 542-9082 FAX
tahoebuild@co.el-dorado.ca.us
Counter Hours: 8:00 AM to 4:00 PM

February 19, 2010

Mr. David Holtry
1031 Autumn Sky Way
El Dorado Hills, CA 95762

**Re: Interpretation of County Code Regarding Arbors and Trellises
Code Enforcement Case # 191441, APN 117-410-03**

Dear Mr. Holtry:

During the past several months we have exchanged correspondence regarding your trellises and arbors and whether they comply with County Zoning Ordinance requirements regarding setbacks. Your parcel is also subject to zoning requirements of Carson Creek Specific Plan, Single Family, 6,000 Square Feet Minimum or CC6K zone. The purpose of this letter is to clarify the interpretation.

The Zoning Ordinance requires setbacks between buildings and property lines (17.06.050 Definitions: "K" (Building), "V" (Front Yard), "MM" (Rear Yard), "RR" (Side Yard), "WW" (Yard).) Buildings are defined as "structures having a roof supported by columns or by walls, and designed for the shelter or housing of any person, animal or chattel." Arbors are considered structures because they have a roof and are designed for shelter of persons or property. ✓

Section 17.14.050.A (Encroachments Into Required Yards) permits encroachments of up to 50 percent into the required yards for "uncovered and unenclosed patios or terraces, cornices, canopies, eaves, bay windows (which do not qualify as habitable area under the Uniform Building Code), attached heating and air conditioning equipment or similar architectural features."

When considering whether covers over decks, patios and terraces qualify for the 50 percent setback reduction, the Zoning provision states that such features must be "uncovered." This conflicts with the intent of the provision to permit a roof eave to encroach 50 percent into a setback. A roof eave clearly covers something, whether it is the ground, a porch, landing, or a patio.

11-0052.1.20

Mr. David Holtry
February 19, 2010
Page Two

A roof eave, including the eave to a covered patio, would qualify for the 50 percent setback reduction. However, the wall holding up the roof and eave needs to meet the zone district setbacks.

Therefore, an arbor's roof may "overhang" 2.5 feet into a five-foot setback under this interpretation.

A trellis is not normally considered a structure that needs to meet setbacks, because it does not meet the full definition of a Building: it does not have a roof and it clearly is not intended for the sheltering of people, animals, or chattel. Trellises are intended and used for support of vegetation.

In conclusion, all structures (with roofs) need to meet the five-foot minimum side yard setback for the CC6K zone. The setback is measured from the property line to the walls or columns that support the roof. Eaves from a roof may encroach into the setback by 50 percent.

Please contact Jim Wassner (Code Enforcement: 621-5999) to arrange a site inspection to verify compliance with zoning setbacks and close the case file.

Sincerely,



Roger P. Trout
Development Services Director

cc: Supervisor Ray Nutting
Jim Wassner

RT/bs

March 9, 2010

Jim Wassner
Sr. Code Enforcement Officer
Code Enforcement Unit

SUBJECT: Trellis, Case # 191441

Mr. Wassner,

Your new Notice to Correct has the same case number but indicates a different violation than before. It states: my project is subject to the, *Carson Creek Specific Plan 4.4 (2)*. *A structure ("patio cover" over the portable BBQ) is inside the required 5 foot side yard setback area.*

The above reference was not given in the February 19, 2010 letter from Planning Services. Please send me a copy of Plan 4.4 (2) and any other rule you believe my project is in violation with.

Thank you.

David Holtry
1031 Autumn Sky Way
El Dorado Hills, CA 95762

Cc: Supervisor Ray Nutting

March 8, 2010

Jim Wassner
Sr. Code Enforcement Officer
Code Enforcement Unit

SUBJECT: Trellis, Case # 191441

Mr. Wassner,

My March 1, 2010 letter to you declares that my Trellis is in compliance with the code. However, your email in response, states: *"My understanding is that the shade cover is a structure and can not be inside the 5 foot setback area. The trellises are not an issue."*

For clarification when I used the word Trellis I was referring to my total project including the overhead horizontal slats which you are referring to as the shade cover. My Trellis project is designed for vines to grow up and over on top of the horizontal slates.

You say that the shade cover is a structure and can not be in the setback area. The code does not prohibit structures per say, only structures with roofs. This was emphasized in the concluding statement in the February 19th letter from Planning Services, as follows, *"In conclusion, all structures (with roofs) need to meet the five-foot minimum side yard setback for the CC6K zone"*.

Only Buildings are subject to the setback requirements per Code Section 17.06.050. Buildings are defined as *"structures having a roof supported by columns or walls, and designed for the shelter or housing of any person, animal or chattel."*

According to the above code there are three elements all of which must be present to constitute a Building. 1) A structure, 2) a roof and 3) designed for housing or sheltering of people, animals or chattel.

A shade cover structure is not one of the elements included in the above definition of a Building and it is unlikely that somewhere in the code horizontal slats is considered a roof, because it would not provide shelter (primarily from bad weather) for people, animals or property which is necessary for a structure to be a Building.

Although my project is a structure it does not have a roof nor is it designed for housing or for shelter; therefore it is not a Building subject to the minimum setback limitations.

The February 19, letter also states, *"A Trellis is not considered a structure that needs to meet setbacks, because it does not meet the full definition of a Building: it does not have a roof and it clearly is not intended for the sheltering of people, animals, or chattel. Trellises are intended and used for support of vegetation."* Clearly this is exactly what my Trellis project is used for.

In summary all Trellises regardless of style or configuration, with open construction and without a roof do not meet the definition of a Building and thus are not subject to the minimum setback limitations.

Therefore, my total Trellis project is not in violation of the code that has been adopted by the County. This letter has been reviewed by an attorney so I am confident in this assertion.

There are two other matters I would like to point out. First, the Notice of Correction (Case # 191441) was resolved long ago. There were two violations noted:

- 1) *Structure greater than 120 square feet built in side setback area without required permit.*
- 2) *Electrical installed without required permit.*

The first one was in error because my project is not over 120 square feet and the second one was resolved when I removed the electrical outlets. I notified you of this on September 9, 2009. Therefore, I am requesting that you send me a letter stating the date that this Case was closed and if not closed why not?

The second matter I want to discuss is that I have never been formally cited in writing by the county that my project is in violation of the minimum setback limitations, which is good because I am not in violation. So why is this issue before us? Because you via a telephone conversation indicated that my project was in violation and referred the matter to Planning Service. Planning Service called me and asked that I remove my structure. It was at that point that I asked for regulatory support for such action. This request eventually resulted in the February 19th letter discussed above which shows that this whole ordeal could have been avoided if the code had been understood by county staff.

Therefore, in order to combat future false complaints I am requesting that you or Planning Services send me a letter stating that my project is not in violation of the minimum setback limitations.

Thank you.

David Holtry
1031 Autumn Sky Way
El Dorado Hills, CA 95762

Cc: Roger P. Trout
Supervisor Ray Nutting

June 1, 2010

Roger Trout
Director, Development Services Department
El Dorado County Development Services Department
2850 Fairlane Court
Placerville, CA 95667

SUBJECT: Trellis, Case # 191441

Mr. Trout,

In your May 28, 2010 letter you ask me: *"Is it your position that the structure in question does not have a roof because: A) the roof is not solid, and B) because it does not shelter (anything)?"*

Whenever the term "roof" is used in code sections it means the roof is solid because there is no such thing as a non-solid or partially solid roof in the Building code. Therefore, it is not necessary to include the word "solid" before the word "roof". Understanding this point helps us better understand the code section at hand which is: *"structures having a roof supported by columns or walls, and designed for the shelter or housing of any person, animal or chattel."*

It is clear that the above code is referring to a solid roof otherwise there could be no shelter from bad weather. People, animals and property need shelter, not only from the sun, but primarily from rain and snow.

Consider this example: Say you hire a contractor to build a small structure, say 10 feet by 10 feet by 8 feet high, with a door but no windows and to install a roof to provide shelter for your belongings. You agree on a price and when the contractor finishes he comes back to you for payment. You inspect the structure and see that the only thing he put on top was horizontal rafters. You say to him that he hasn't finished the job because there is no roof. He says, yes there is because those boards provide a minimal amount of shade. You say, sorry but that isn't a roof according to the Building code and further it doesn't provide shelter for my property, one of the requirements of the agreement.

In such a situation you would be perplexed by the contractors' thinking that he had put a roof on your structure and so you should understand how I feel about your position that horizontal boards is a roof and sufficient to provide shelter. Such thinking is not in harmony with the intent of the above code to provide shelter for people, animals or property.

You say you discussed this with the Building Official but didn't say what he thought. I would be surprised if he considered rafters or slats as a roof, but in reality it doesn't matter what he thinks because the District attorney will make the final decision if it goes

that far. I am not worried because after speaking with three attorneys in and out of county government they are all perplexed by your position.

I think code sections should be read at face value, otherwise there is the possibility for you to over extend your authority in regulating structures not subject to the code, which then makes it necessary to try and twist or stretch the meaning of the code to fit what you want to regulate.

You also say in your letter that if I remove the boards from the top of my trellis you have no further issue. There is no reason for me to do that since my trellis is not in violation of any county code.

It would be nice if you could review the code sections again and come to the same conclusion that the rest of us have. If you do then there will be no need for further communication on this issue.

Sincerely,

David Holtry
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Cc: Jim Wassner, Code Enforcement Officer
A.L. Hamilton, Senior Legal Services
Supervisor Ray Nutting