

WRIGHT LAW OFFICE
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CAMERON PARK, CA 95682
(530) 676-8096

ADMINISTRATIVE HEARING
C #187939
ASSESSORS PARCEL #117-410-03-100

ADMINISTRATIVE ORDER

Owner: David Holtry
Nancy Holtry
1031 Autumn Sky Way
El Dorado Hills, California 93451

Hearing Date: November 12, 2010

The hearing in this matter was scheduled for November 12, 2010 at 9 a.m. at the El Dorado County Planning Commission meeting room. The property owner, David Holtry ("Owner"), was present. Jim Wassner of El Dorado County Code Enforcement ("Code Enforcement") was present on behalf of the County.

After considering the testimony from the Owner and Code Enforcement and accepting into evidence the County's Exhibits A1-A14, B1-B9, C1-C14, D1-D-11, D14-D43, and E1-E16, and the Owner's Exhibits consisting of "Issue or allegation: County practice establishes authority," "Issue or allegation: Relevance of other permitted structures," "Issue or allegation: The trellis has a Roof and therefore is a building subject to the setback," "The County Bears the Burden of Proof," and "Hearing Presentation showing that my Trellis is not in violation of the Carson Creek Specific Plan," the Hearing Officer issued a verbal deadline of December 15, 2010 for the parties to work together to try to resolve the issues herein.

This is to advise the parties that because they have failed to reach a mutually agreeable resolution by the deadline of December 15, 2010, the Hearing Officer has issued this Administrative Order upholding the County's Administrative Citation and making the following findings and determinations.

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Testimony

Jim Wassner stated the background of the case. On April 9, 2008, Code Enforcement received a complaint about an unpermitted building located in the setback area of the property located at 1031 Autumn Sky Way, El Dorado Hills, California. Code Enforcement issued a Courtesy Notice to the Owner asking to schedule a site visit. On April 14, 2008 an inspection by Code Enforcement for an unpermitted building resulted in a finding that no permit was required for the "trellis" built in the setback area of the yard and the case was closed.

On November 20, 2008, Code Enforcement was informed that a patio cover had been built without a permit inside the setback area. A subsequent inspection on January 28, 2009 resulted in a Notice to Correct dated March 3, 2009, which was later reissued on August 10, 2009, for violations of setback for a structure "greater than 30 inches high built in side and rear setback area in violation of Zoning Ordinance" and for electrical wiring installed without a permit.

On March 8, 2010, Code Enforcement issued another Notice to Correct. It noted that the Owner had abated the electrical violation by removing the unpermitted electrical wiring and that the structure in question did not require a permit because it was less than 120 square feet in size. However, a continuing violation was noted for encroachment into the setback.

As support for its assertion of continuing violation, Code Enforcement submitted into evidence Exhibit D-18, a memo dated July 23, 2009 from Roger P. Trout, Development Services Director, entitled "Encroachment of Trellises into Side and Rear Yard Setbacks" and Exhibit C-7, a photograph hand-dated 5/12/09, showing the trellis/arbor structure located within the setback area on the subject property.

A final notice was sent to the Owner on September 23, 2010 informing him of the continuing violations and setting the Administrative Hearing herein for November 12, 2010. Code Enforcement affirmed that copies of all documents submitted as County Exhibits were provided to the Owner.

The Owner testified that he believes his trellis/arbor is not subject to setback requirements because it is not a "building" within the meaning of the California Building Code. He stated that a "building" requires a solid roof, whereas the roof of his trellis/arbor is not solid. With regard to Exhibit A6, a photograph of his trellis/arbor, he stated that it is 8 feet in height. He further stated that to his knowledge other property owners had constructed similar structures in their setback areas without being cited by Code Enforcement for permit or zoning violations.

Exhibits D12 and D13 were excluded from evidence but all other Exhibits as set forth above were entered into evidence.

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Findings and Determinations

During the course of the correspondence between the Owner and Code Enforcement over the past two years, it appears that a great deal of confusion has involved semantics. There have been disagreements over the definition of "building," "roof," "trellis," and "arbor," and confusion over the difference between violations concerning permits and violations concerning zoning, which are two very separate issues.

Permit issue.

In El Dorado County, pursuant to California Building Code §106.2, a building permit is not required for any residential accessory structure smaller than 120 square feet, without utility improvements. Here, because the Owner's trellis/arbor structure is less than 120 square feet, the Hearing Officer finds that Code Enforcement has rightly determined that no permit is required.

The Owner has alleged that other property owners in his neighborhood have built structures within their setback areas similar to his, without being cited by Code Enforcement. He offered into evidence a number of photographs purporting to support his allegation. However, it is unknown whether 1) the structures actually encroach into the setback area or otherwise violate County Code, 2) the structures have been approved, permitted, inspected or allowed by Code Enforcement and 3) if any approval for height limitation variance was given pursuant to a neighbor's notarized statement of no objection or by other exception. Because the facts are unknown and because this question exceeds the scope of the Hearing Officer's jurisdiction herein, no finding or determination is made on this issue.

Zoning issue.

The zoning setback requirements in this case are found in the Carson Creek Specific Plan and in the El Dorado County Code.

Carson Creek Specific Plan Section 4.4 (2), which governs Autumn Sky Way in El Dorado Hills, establishes a side yard setback of five feet.

El Dorado Code Section 17.06.050(RR) defines "side yard" as follows:

"Side yard" means a yard between the side line of the building site and the nearest line of the building and extending from the front line of the building site to the rear yard.

El Dorado Code Section 17.06.050(WW) defines "yard" as follows:

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"Yard" means that portion of the lot or parcel which is unobstructed by building or structure from the ground to the sky, except by encroachments permitted in this ordinance.

El Dorado Code Section 17.14.050 (A), Encroachment into Required Yards, provides exceptions to the setback requirements as follows:

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 may extend into any required yard by not more than fifty percent (50%) of the required width or depth.

By the above definitions, a five-foot side yard open from ground to sky is required between any building or structure and the property lot line. In other words, no building or structure is allowed within the side yard setback that obstructs the area from the ground to the sky unless it falls under a specific exception to encroachment in the ordinance. The Owner's trellis/arbor structure obstructs the area from the ground to the sky within the side yard. Unless it falls under a listed exception, it violates the Code.

The relevant exception for the horizontal portion of the trellis/arbor listed in Section 17.14.050(A) would be "canopies, eaves . . . or similar architectural features." Canopies, eaves and similar architectural features are horizontal extensions that are permitted to partially encroach into the setback. The ordinance clearly would allow the Owner to install a canopy or extend an eave across 50% of the required width of the side yard setback. Although the ordinance does not specifically list a slatted roof, patio cover or pergola, the horizontal portion of a trellis/arbor structure would reasonably be considered to be an architectural feature similar to a canopy or eave. Therefore, the horizontal portion of the trellis/arbor may legally encroach into the setback area by no more than 50% (2½ feet) of the side yard setback.

The vertical portion of the trellis/arbor does not fit within any of the exceptions set forth in Section 17.14.050(A). The only other type of structure allowed within the setback is a fence or wall. However, the Owner has maintained that his trellis/arbor is not a fence. If it is not a fence, it constitutes an illegal structure within the setback and must be removed.

Although "fence" and "wall" are not defined in County Code Section 17.06.050, "Definitions," a fence or wall may reasonably be considered a vertical barrier or enclosure, even if it is also called a trellis. It is not uncommon to use a decorative trellis as a fence or a wall. Because a court would likely construe the vertical portion of the existing trellis/arbor as a fence, the Hearing Officer finds that it is a fence and may remain within the setback area, subject to El Dorado County Code Section 17.14.155, "Fence Height Limitations."

El Dorado County Code Section 17.14.155(B) provides:

B. In those residential districts noted in subsection A above, fences or walls shall be permitted within required side and rear yard setback areas as follows:

1. Any type of fence or wall shall not exceed seven feet (7'), except as noted herein.
2. Over seven feet (7'), but not exceeding ten feet (10') in height, subject to the following:
 - a. A signed and notarized statement from adjacent property owners that the proposed fence or wall (which shall be described or shown in an attached exhibit) will not impact their view nor will it restrict light or movement of air, and therefore, they have no objection to the construction of the wall or fence.
 - b. The planning director shall review the notarized statement(s) to determine if they adequately represent adjacent affected properties. If such determination is made by the planning director, a fence or wall as proposed not to exceed ten feet (10') shall be approved. The planning director may require additional notarized statements from neighboring properties if in the director's opinion they may be impacted by the fence or wall.

Under the above Code Section, the vertical portion of the Owner's trellis/arbor constituting a fence within the setback may extend no more than seven (7) feet above the ground, unless the requirements of subsection 2 above are met.

Pursuant to the above findings, the Hearing Officer determines that both the vertical portion and the horizontal portion of the Owner's trellis/arbor located within the setback area currently violate the setback requirements and must be abated or brought into compliance.

Administrative Orders

Under the authority of El Dorado County Ordinance Section 9.02.440(b), the Hearing Officer imposes the following administrative orders in this matter.

1. The Hearing Officer upholds the Administrative Citation issued on September 7, 2010.
2. The Hearing Officer orders the Owner to take immediate steps to abate the ongoing violations as follows:

a. The vertical portion of the trellis/arbor located within the setback area must be either removed or reduced to no more than seven (7) feet above the ground. If the Owner meets the requirements of El Dorado County Code Section 17.14.155(B)(2), the vertical portion of the trellis/arbor may extend up to a maximum of ten (10) feet above the ground. Note that removal of only the lattice portion of the trellis/arbor would render the structure illegal, as the remaining columns would obstruct the area from ground to sky within a setback area, in violation of the Code, without fitting within any of the other exceptions.

b. The horizontal portion of the trellis/arbor must be removed to the extent that it extends into the setback area by more than 50% or 2 ½ feet.

3. The County's Case Fee Summary listed administrative expenses in the amount of \$900.00 to be reimbursed to the County for investigation, inspection, notices, and other processing costs associated with the violation specified on the administrative citation, pursuant to County Ordinance 9.02.090. The County has noted additional costs incurred in conducting further inspections after the hearing. The Hearing Officer hereby imposes a fee of \$800.00 as reimbursement by the Owner to the County. The fee shall be paid by February 28, 2011. If the fee remains unpaid after February 28, 2011, the County may pursue collection pursuant to El Dorado County Ordinance Section 9.02.110 in addition to any other process provided by law.

4. The Owner was given written notice on August 26, 2010 that each day of the continuing violation is considered a separate offense under the El Dorado County Ordinance. The Hearing Officer hereby imposes a fine of \$100 per day for every day the violations continue to exist, beginning on January 17, 2011. Any unpaid fines may be billed and collected by the County pursuant to El Dorado County Ordinance Section 9.02.110 in addition to any other process provided by law.

5. If the Owner complies with all of the above Administrative Orders by February 28, 2011, then the \$100 per day fine imposed herein shall be waived.

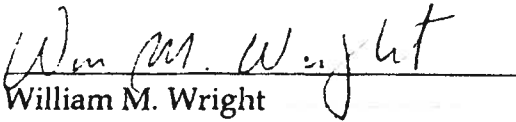
6. The Hearing Officer hereby grants authority to Code Enforcement to reduce the fines imposed herein if it determines such a reduction would result in a prompt resolution of this matter.

7. The County shall be responsible for serving a copy of this order on the Owner in accordance with the Code.

8. **NOTICE OF THE RIGHT TO APPEAL:** The Owner has the right to appeal the decision of the Hearing Officer to the El Dorado County Board of Supervisors as provided by Ordinance 9.02.470, which is set forth below.

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09.02.460 Failure to comply with the administrative order; misdemeanor:
Failure to comply with an administrative order constitutes a misdemeanor. A misdemeanor is punishable by a fine not to exceed \$1,000.00 or by imprisonment in the County Jail for a period not to exceed six months or by both such fine and imprisonment.


William M. Wright
Hearing Officer

December 15, 2010

**SEE BELOW FOR ADDITIONAL COUNTY ORDINANCES REGARDING
ADMINISTRATIVE ORDERS**

9.02.470 Administrative and judicial review.

- (a) Within 30 calendar days from service of an administrative order or other decision by the hearing officer, any party may appeal the determination of the hearing officer to the Board. The Board shall there after set the matter for hearing at the next regular meeting of the Board. Except as otherwise provided by specific Code provisions the Board shall apply the provisions of this Chapter. The Board may consider any other non-cumulative and relevant evidence at the hearing.
- (b) Within 30 calendar days from service of an order or other decision of the Board any party may appeal to the Superior Court.
- (c) Any party failing to timely file an appeal to the Board or the Superior Court shall be deemed to have waived any and all objections to the administrative hearing officers or the Board's decision. Any review of the matter conducted in court shall be de novo. (Ord. 4706, 10-24-2006)

09.02.440 Administrative order; compliance with administrative order.

- (a) The decision of the hearing officer shall be entitled "administrative order".
- (b) Once all evidence and testimony are completed, the hearing officer shall issue an administrative order, which affirms, modifies or rejects the enforcement official's action. The administrative order may affirm, modify or reject the daily rate or duration of the administrative fines depending upon review of the evidence and may increase or decrease the total amount of administrative fines assessed.
- (c) The hearing officer may issue an administrative order that requires the responsible person to cease violating the Code and to make necessary corrections, repairs, or to complete any other reasonable act requested by the enforcement official, which may be modified by the hearing officer, to bring the property into compliance with the Code. The hearing officer shall include a specific time frame to complete the requested act.

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(d) As part of the administrative order, the hearing officer may establish specific deadlines for the payment of administrative fines, fees and costs and may condition the total or partial assessment of administrative fines on the responsible person's ability to complete compliance by specific deadlines.

(e) The hearing officer may issue an administrative order which imposes additional administrative fines as set forth in this Chapter that will continue to be assessed for each day the violation continues until the responsible person complies with the hearing officer's decision and corrects the violation.

(f) The hearing officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative order.

(g) The administrative order shall become final on the date of service of the order.

(h) The administrative order shall be served on all parties by any one of the methods listed in this Chapter.

9.02.090 Recovery of administrative fees; purpose.

The Board finds there is a need to recover the cost of abatement incurred by the County in its code enforcement efforts. Administrative fees include time spent by County personnel in the investigation, inspection, recording of notices, title search, and any other processing costs associated with the violation(s) specified on the administrative citation.

9.02.100 Notification of assessment of administrative fees.

(a) Where the assessment of an administrative fee is authorized under this chapter, the enforcement official shall provide the responsible person with a written notice assessing the fee. The written assessment shall be served in accordance with section 09.02.120 of this ordinance and shall contain the following information:

(1) The amount of fee charged;

(2) The case number;

(3) A deadline by which the administrative fee must be paid

(b) An administrative fee may be assessed as part of any administrative enforcement action as provided for in this chapter and is in addition to any fine imposed.

(c) An administrative fee collected pursuant to this chapter shall not be duplicated in any other action to recover these identical fees.

(d) The failure of any responsible person to receive notice of the administrative fees shall not affect the validity of any fees imposed under this chapter.

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9.02.110 Collection of administrative fines or fees.

Fines or fees incurred in connection with code enforcement activities may be recovered through the billing process. Those fees billed shall be paid within 30 days after the date of billing. Any fees not paid within such 30 day period shall be subject to a late fee in the amount of ten percent (10%) of the established fee. The total fee plus late fee as described herein shall accrue interest at the rate of one percent (1%) per month for each month the fees remain unpaid. Any fee which remains unpaid 90 days after the due date shall be referred to the El Dorado County Treasurer for collection purposes and will be subject to additional fees to cover the cost of collection.

9.02.290 Abatement by the County.

- (a) Once the enforcement official follows the procedures set forth in this Chapter and the time for compliance has lapsed without abatement being fully completed or appealed through a hearing by the responsible person, the conditions may be abated by County personnel or by a private contractor hired by the County for that purpose per County Ordinance 03.13.
- (b) County personnel or a private contractor can enter upon private property in a reasonable manner to abate the conditions as specified in the notice to abate, administrative order or a court order of abatement.
- (c) When the abatement is completed a report describing the work performed and an itemized accounting of the total abatement costs shall be prepared by the enforcement official. The report shall contain the names and addresses of the responsible person, the name and address of the property owner if different from the responsible person and the assessor's parcel number.
- (d) All administrative fees and actual costs incurred by the County in abating the violation(s) may be assessed and recovered against the responsible person pursuant to the provisions set forth in this Chapter.

09.02.450 Lien.

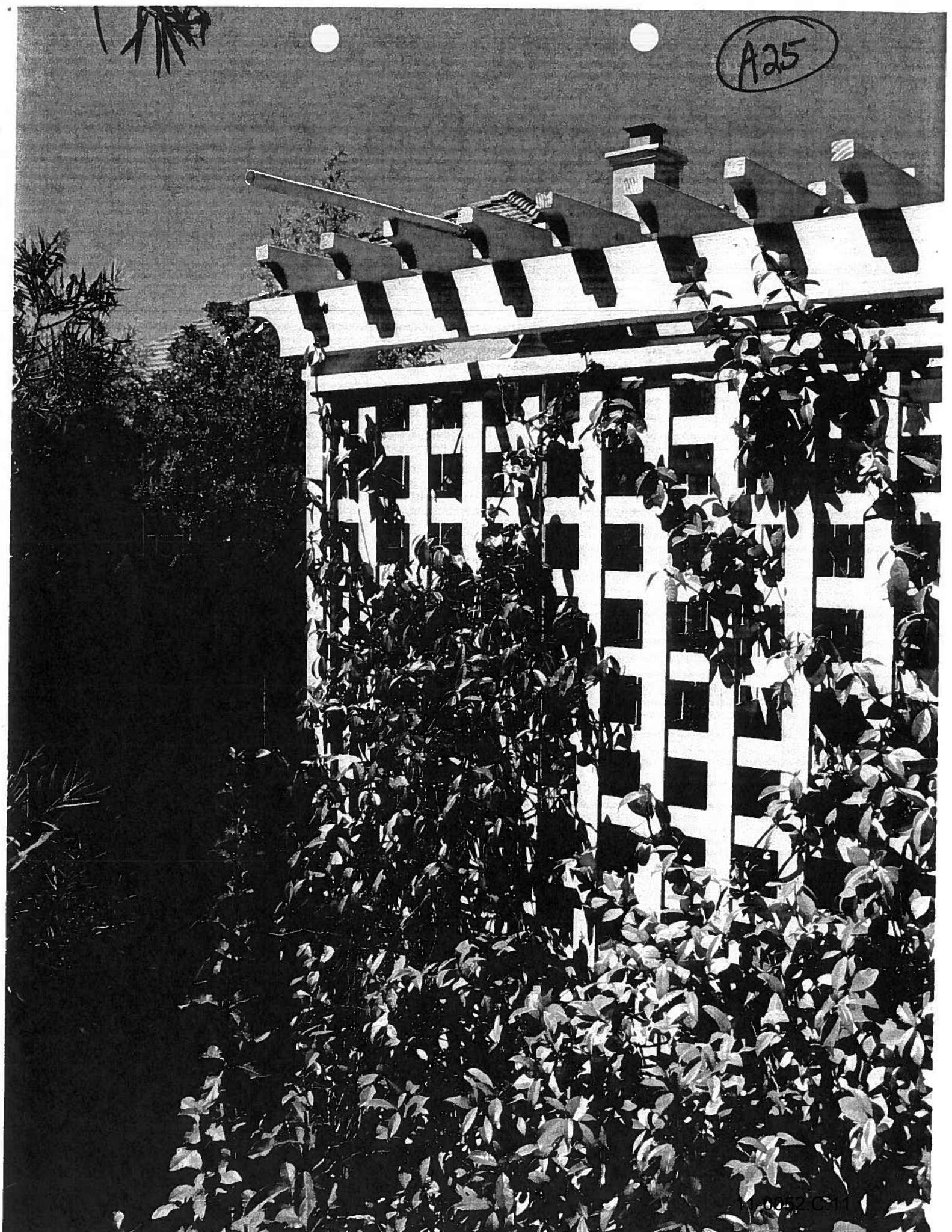
If the violation is not abated within the time prescribed in the Administrative Order, the Board of Supervisors may cause the violation to be abated as provided in this Chapter and the cost of abatement, including any unpaid fines and civil penalties (Government Code section 53069.4) shall be charged against the real property upon which the violation has occurred and shall be a recorded lien upon such property and assessed and enforced, pursuant to Government Code section 25845.

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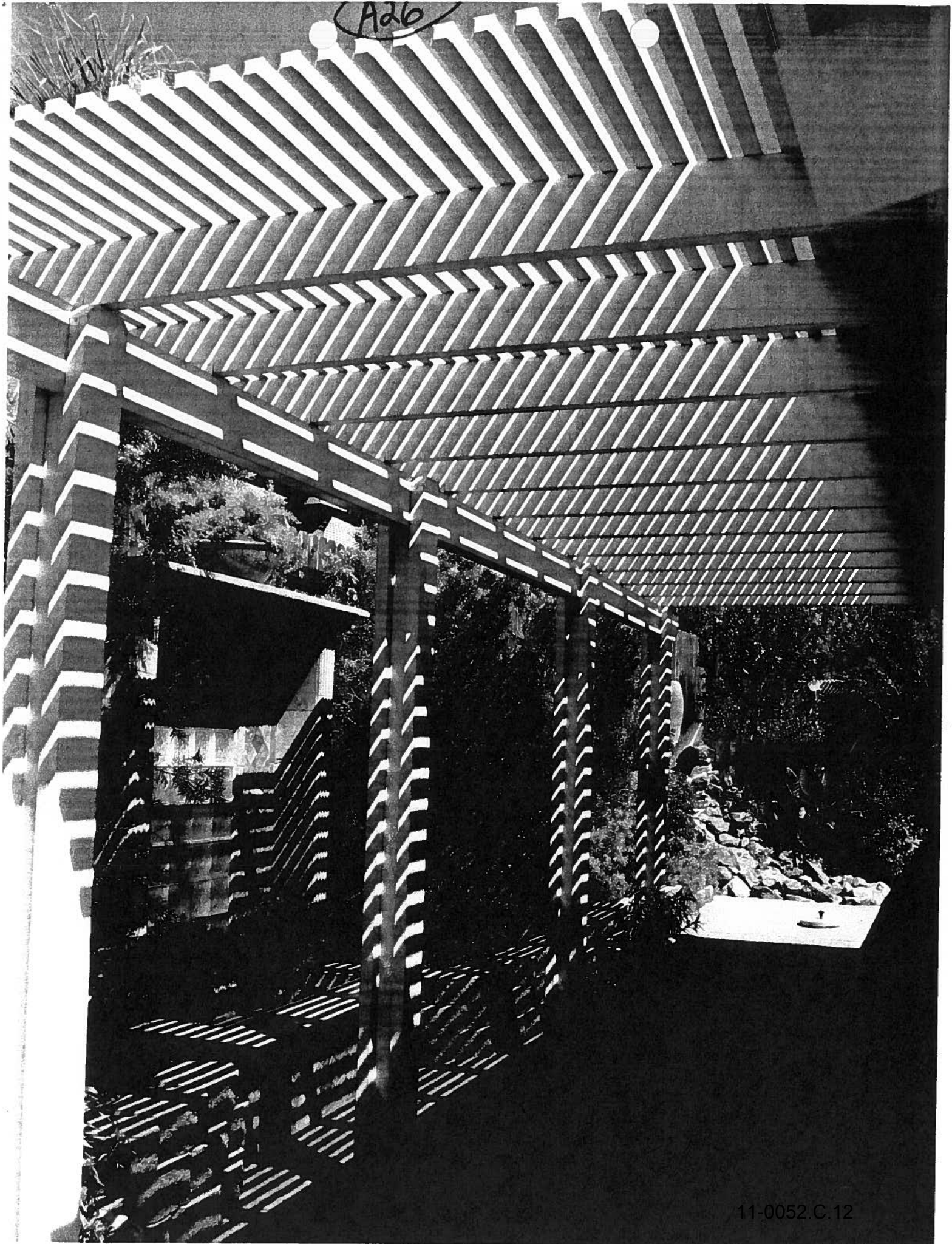
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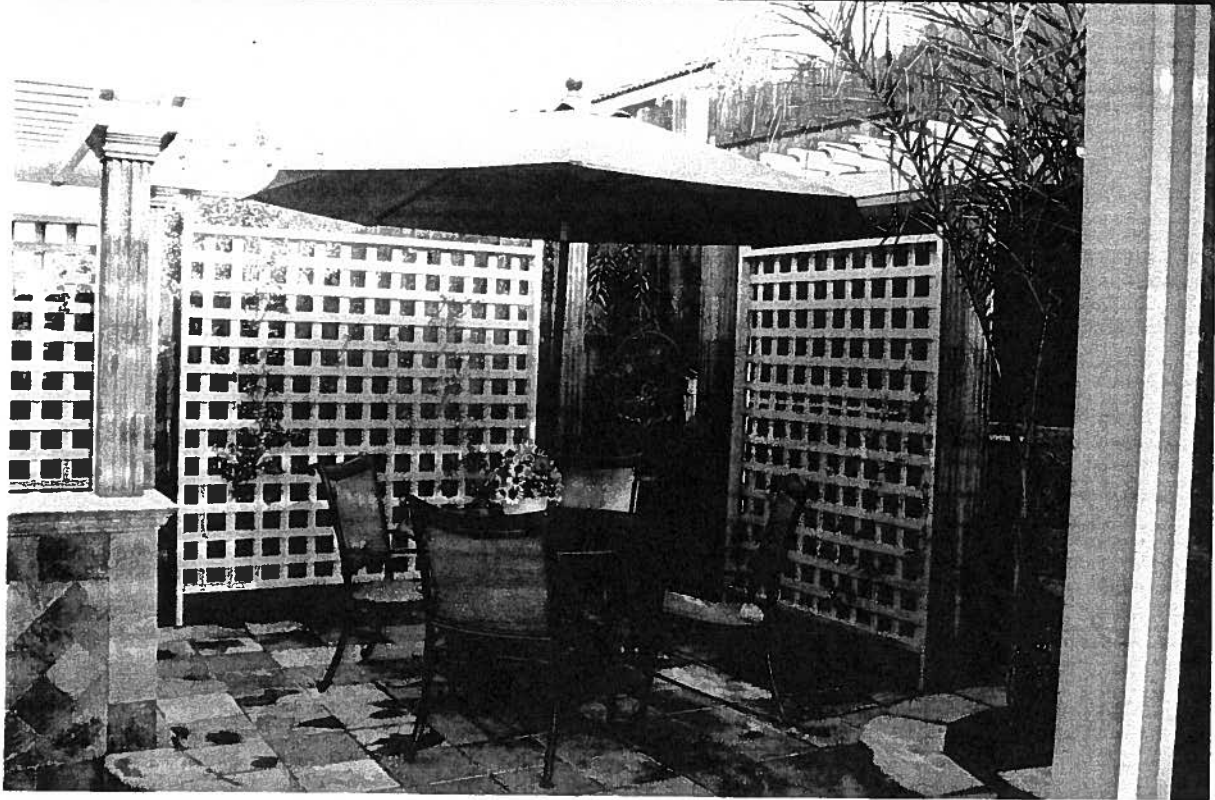
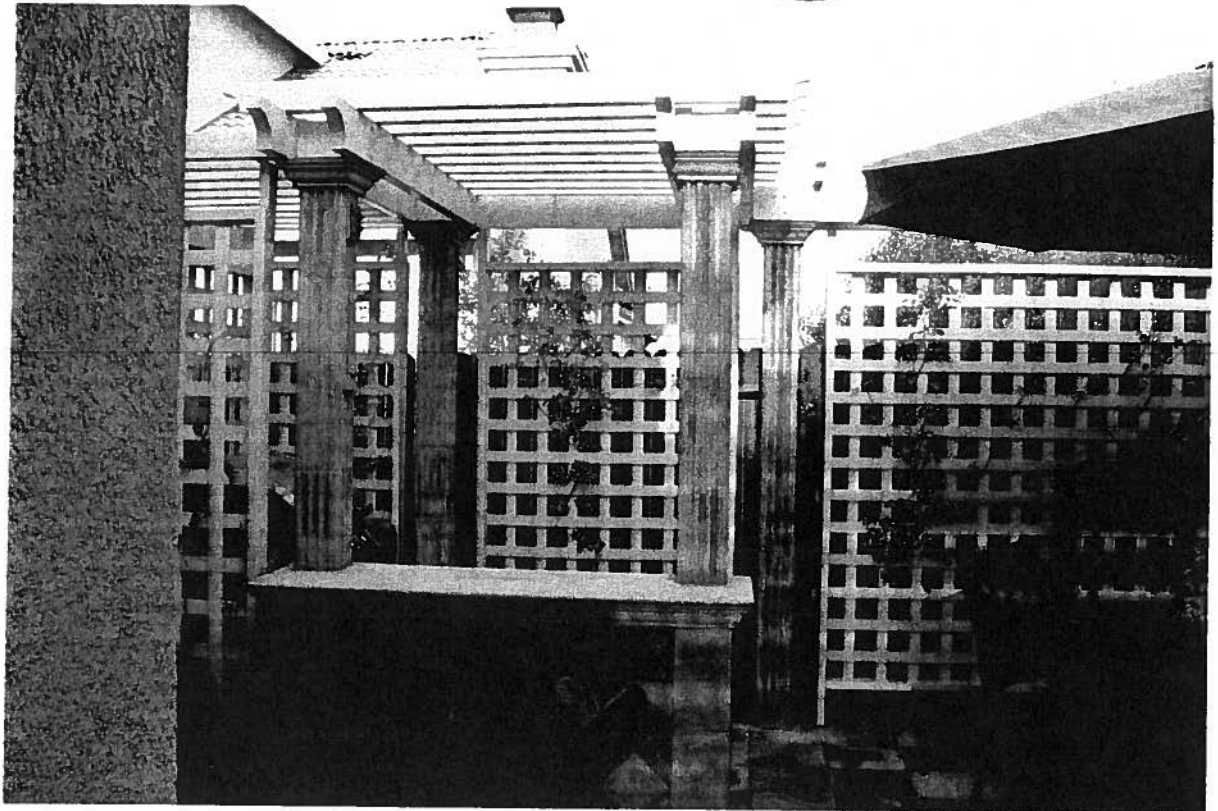


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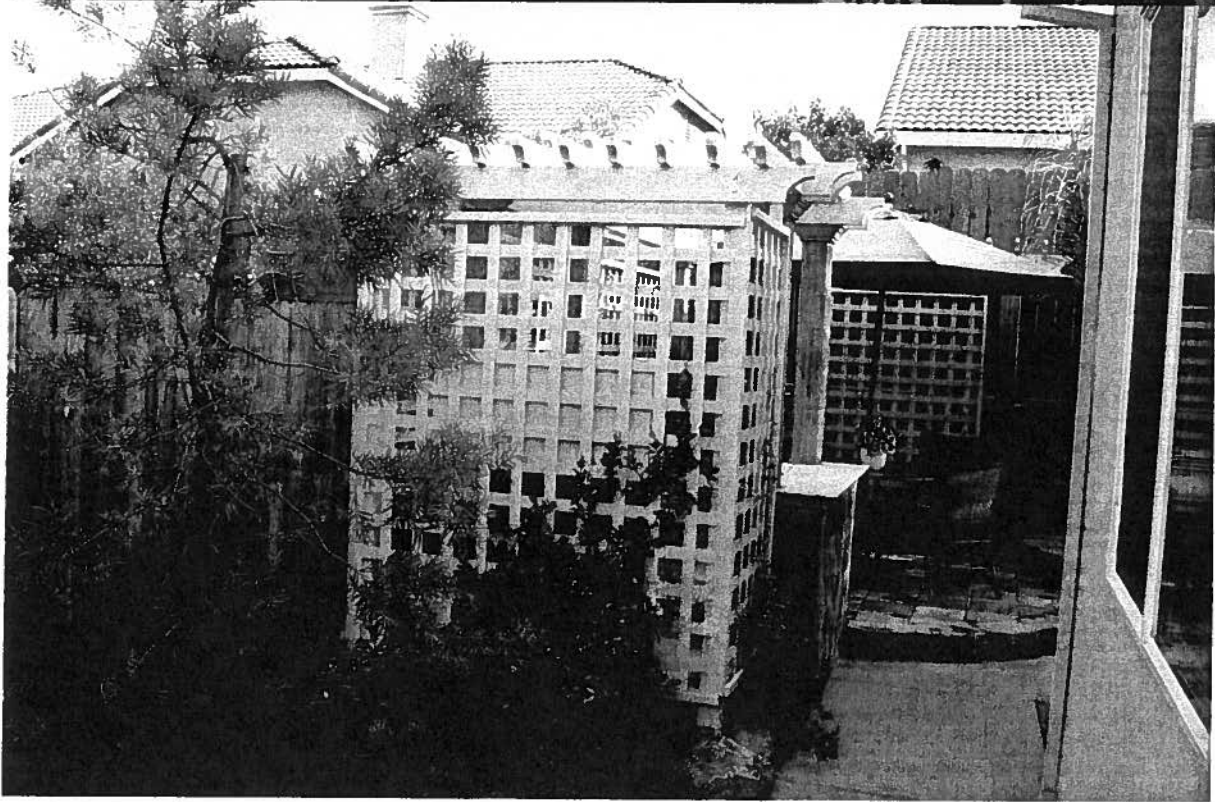
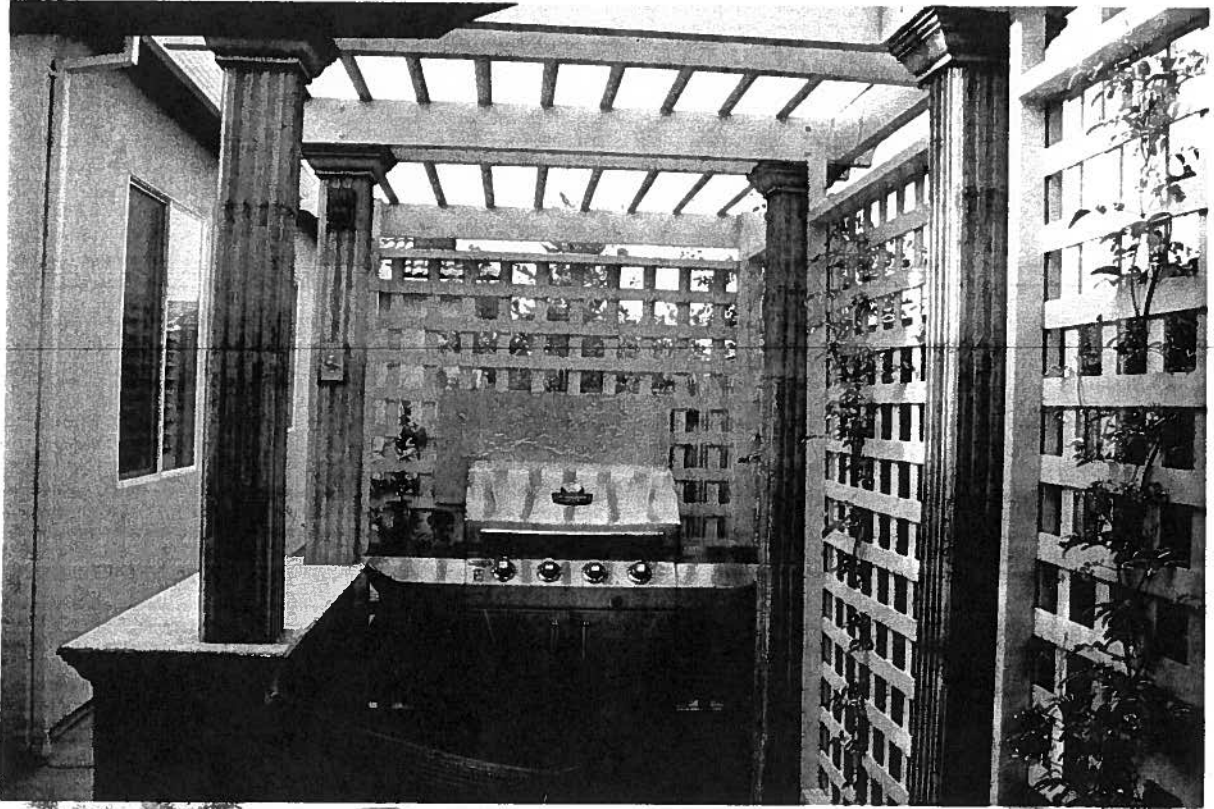
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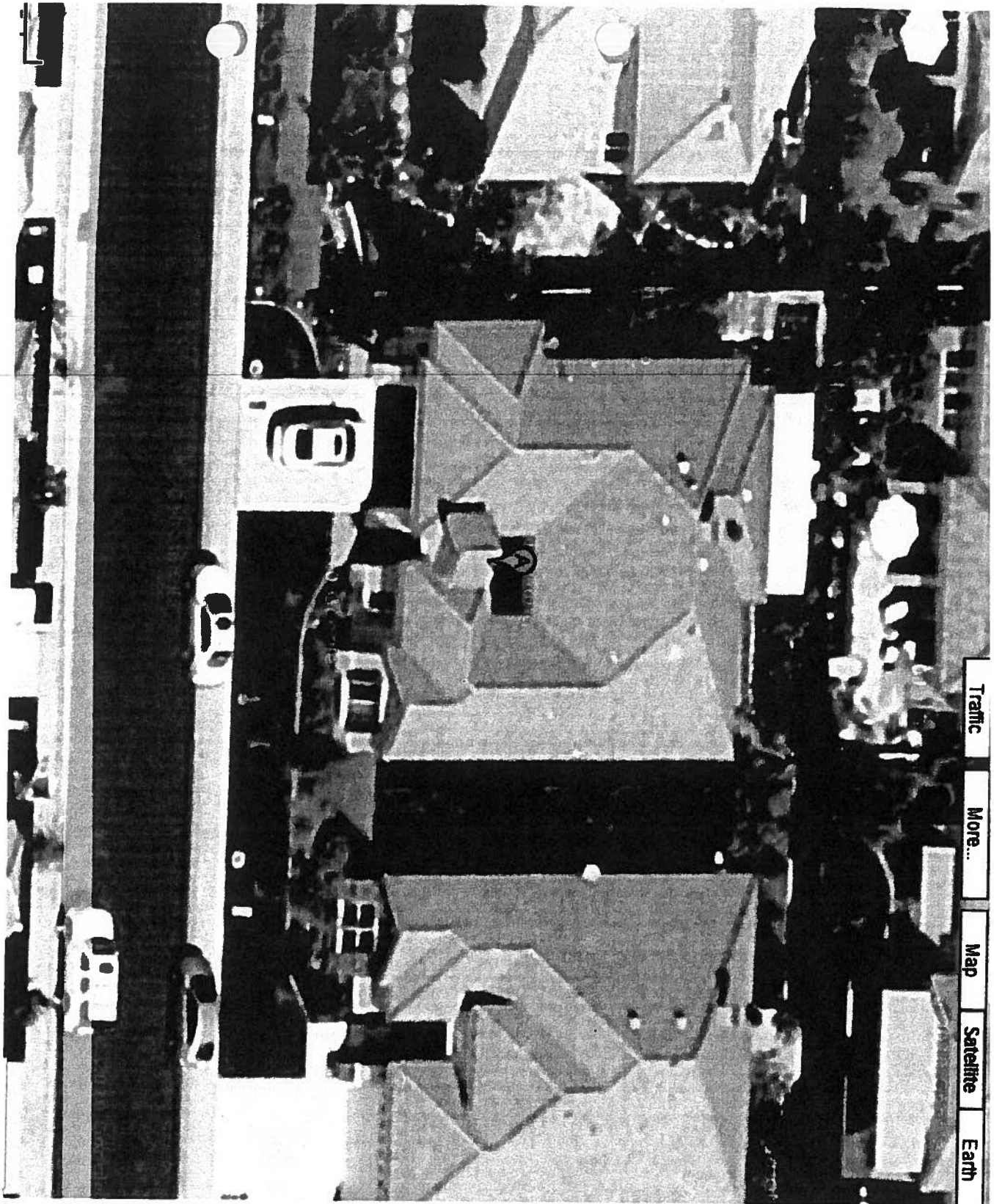


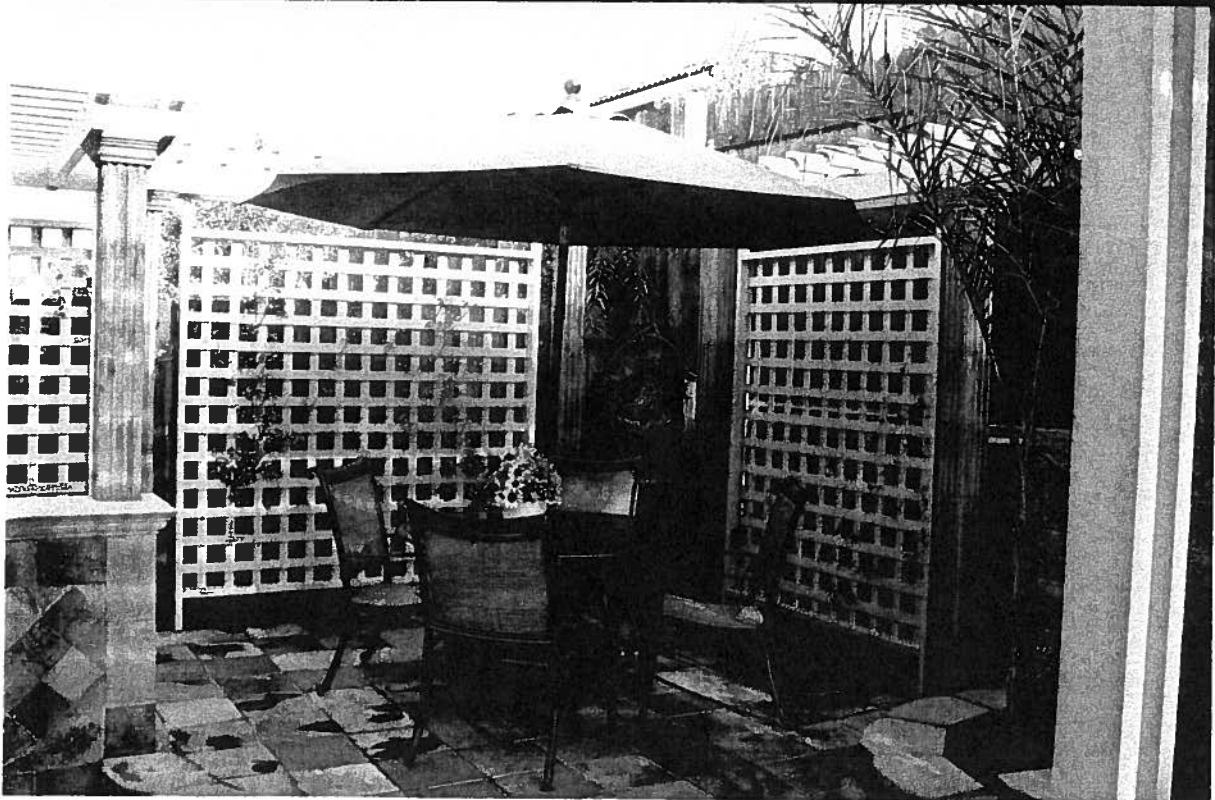
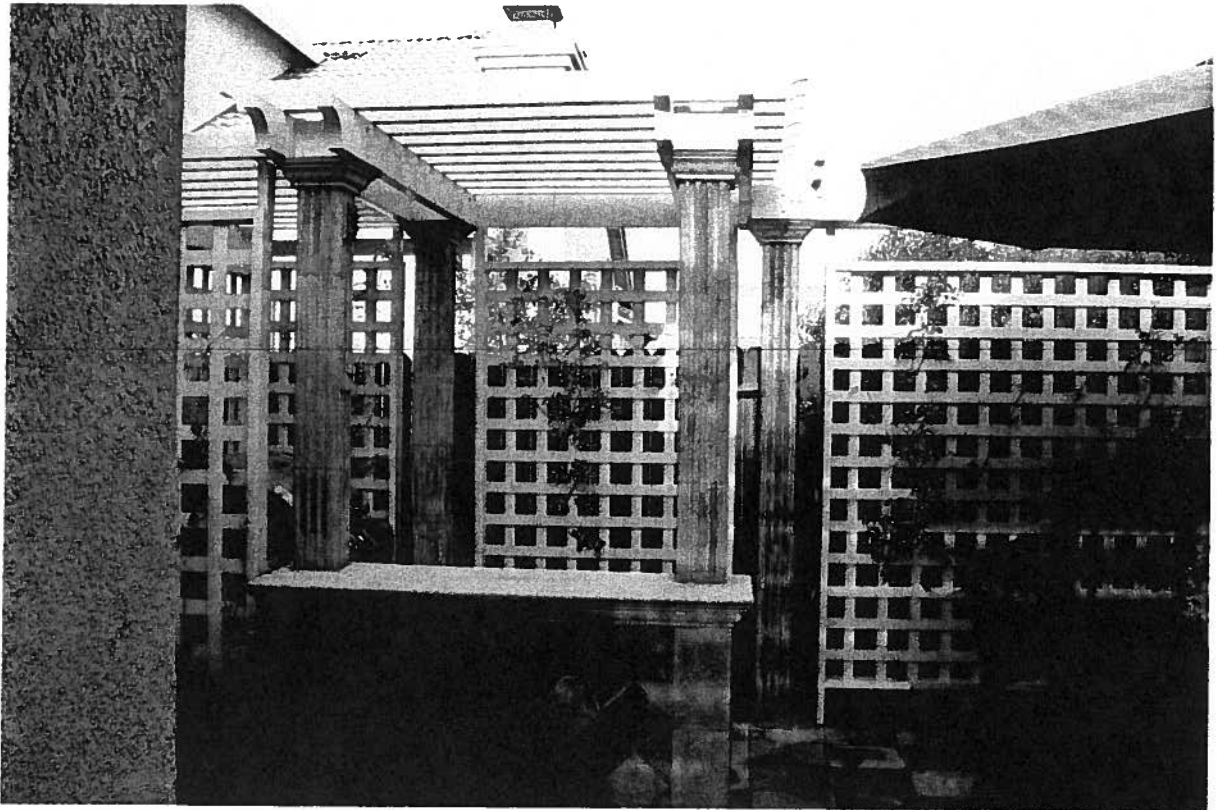
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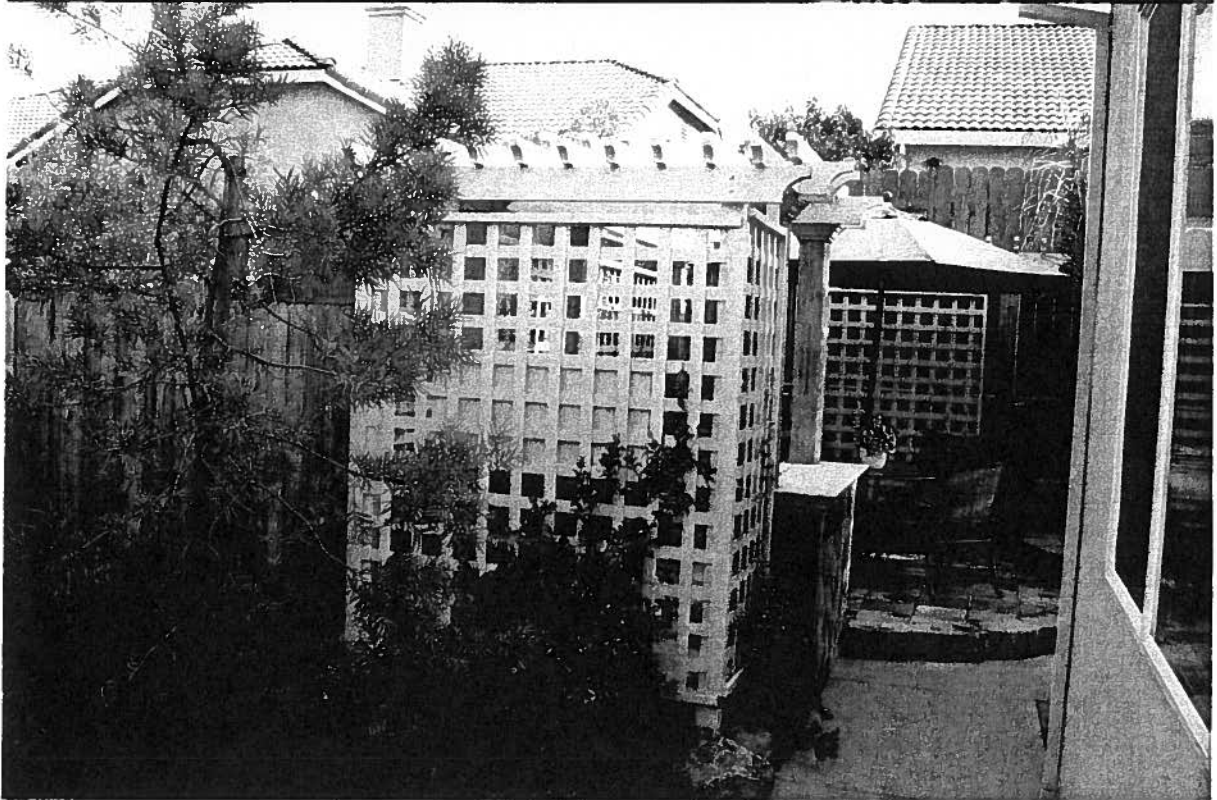
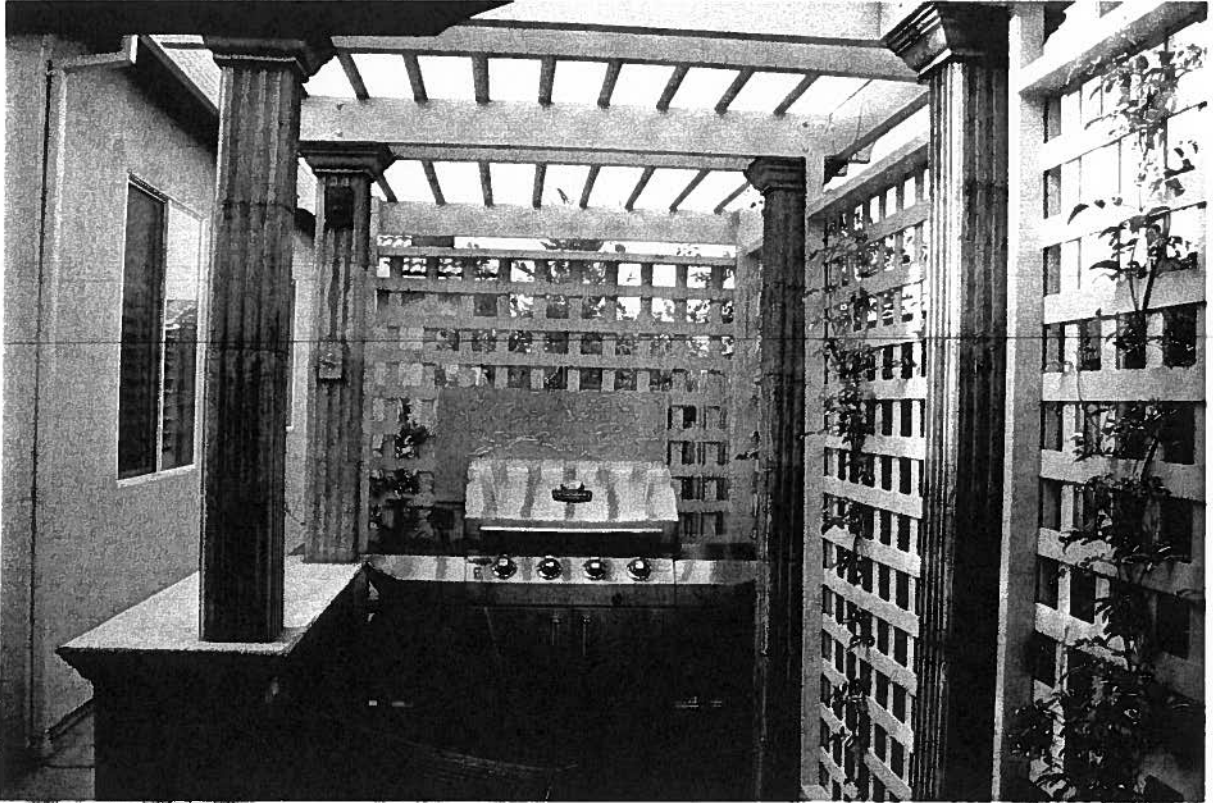


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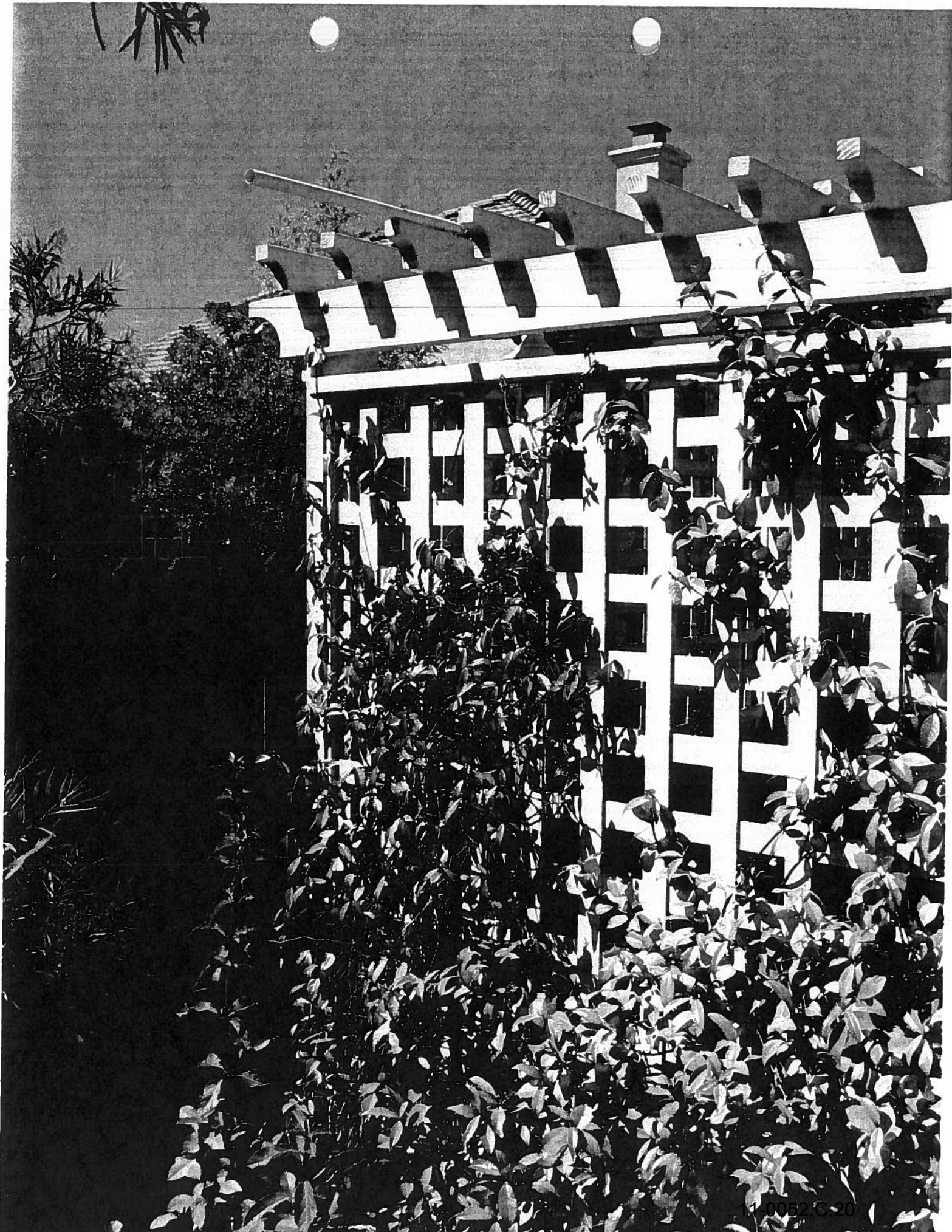






11-0052.C.19

(A6)





Development Services Department
Code Enforcement Unit

(530) 621-5999 FAX (530) 622-2921

www.co.el-dorado.ca.us/building

2850 Fairlane Court
Placerville CA 95667

09-10-10A10:50 RCY

Request for Administrative Hearing

PLEASE PRINT

Pursuant to Section 09.02.270 of the County Code, a party who has been issued a Notice to Correct may request a hearing to contest the action.

SEE ATTACHED PAGES FOR APPLICABLE ORDINANCE SECTIONS.

CASE NUMBER: C # 191441 NOTICE DATE: 9-7-10
SITE OF VIOLATION: 1031 AUTUMN SKY WY APN: 117-410-03-1
NAME: DAVID HOLTRY Owner Tenant / Occupant
MAILING ADDRESS: 1031 AUTUMN SKY WY
CITY, STATE, ZIP: EL DORADO HILLS, CA 95762
PHONE NUMBER: 916 933-5130

Reason for requesting a hearing:

I am not responsible for the violation(s) *Instructions: Provide a written statement explaining why you are not responsible.*

I have abated / removed the violation(s) *Instructions: Provide written and /or photo evidence of removal.*

Other:

In order for your request to be considered, you must submit this form to the address above along with a hearing fee of \$200.00 on or before 10 calendar days from the date of the Notice. This hearing fee may be refunded if you prevail in the hearing.

David Holtry
Appellant's signature:

DAVID HOLTRY
Name Printed:

Date: 9-7-10

(Office use only)

Case #	Date received:	Amt. paid:	Receipt #:	Initials:
191441	9-10-10	\$300 ⁰⁰	1	JZH 17-0052.C.21

(A8)

Written Statement

(An attachment to Request for Administrative Hearing)

Subject: Case # 191441

The violation states: *Structure built inside side setback area in violation of Carson Creek Specific Plan.*

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

To know what can not be built in the setback area, one has to go to the Codes which the County 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 is 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 Carson Creek Specific Plan as referenced in the subject citation. Thus I request that the 9-7-2010 citation be withdrawn.

Sincerely,

David Holtry

15.16.010 Adoption.

The 2001 edition of the California Building Standards Code, known as the California Code of Regulations, Title-24, incorporating the following model codes, is adopted by reference with the general amendments set forth in sections 15.16.020 through 15.16.110 and the amendments specific to each model code as noted.

Uniform Building Code, 1997 edition, published by the International Conference of Building Officials including those sections of Volume 1, Chapter 1 not included above, and Appendix Chapters 3-Division II, 4-Division I, 12-Division IIA, 15, 31 and 33 with the additions, deletions and amendments set forth in Sections 15.16.020 through 15.16.100 of the El Dorado County Code;

Uniform Mechanical Code, 2000 edition, published by the International Association of Plumbing and Mechanical Officials with Appendix chapters and those sections of Chapter 1 not included above with the additions, deletions and amendments set forth in Section 15.16.110 of the El Dorado County Code;

Uniform Plumbing Code, 2000 edition, published by the International Association of Plumbing and Mechanical Officials with Appendix chapters and those sections of Chapter 1 not included above.

Uniform Code for Building Conservation, 1997 edition, published by the International Conference of Building Officials.

Uniform Fire Code, 2000 edition, published by the Western Fire Chiefs Association;

National Electric Code, 1999 edition, published by the National Fire Protection Association; (Ord. 4625, 4-1-2003)

15.16.020 General Amendments.

For the purpose of this code, the following general amendments apply to all portions of the code where the specific references are found.

Building Official Defined. For the purpose of this code, the terms "building official" or "administrative authority" mean the El Dorado County building official as defined in section 2.30.060 of the El Dorado County Code.

Fee Determination. For the purpose of this code, any reference to fees or fee refunds is replaced with the following:

All matters pertaining to fees are as established by resolution of the El Dorado County board of supervisors.

Violations. For the purpose of this code, any definition of an unlawful act shall have added:

Any person, firm, partnership, association, corporation or other entity violating any of the provisions of this code shall be deemed guilty of a misdemeanor and upon conviction of such violation such persons may be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the El Dorado County jail for a term not to exceed six (6) months, or by both such fine and imprisonment. Any such person who violates the provisions of this code after being given notice of such violation shall be deemed guilty of a separate offense for each and every day or portion thereof during which such violation is committed, continued or permitted. At the discretion of the building official, or the district attorney, the violation may be reduced to an infraction with maximum penalty of five hundred dollars (\$500).

All

SECTION 108.4 PERMITS, FEES, APPLICATIONS AND INSPECTIONS

108.4.1 Permits. A written construction permit shall be obtained from the enforcing agency prior to the erection, construction, reconstruction, installation, moving or alteration of any building or structure.

Exceptions:

1. Work exempt from permits as specified in Appendix Chapter 1, Section 105.2.
2. Changes, alterations or repairs of a minor nature not affecting structural features, egress, sanitation, safety or accessibility as determined by the enforcing agency.

Exemptions from permit requirements shall not be deemed to grant authorization for any work to be done in any manner in violation of other provisions of law or this code.

108.4.2 Fees. Subject to other provisions of law, the governing body of any city, county or city and county may prescribe fees to defray the cost of enforcement of rules and regulations promulgated by the Department of Housing and Community Development. The amount of the fees shall not exceed the amount reasonably necessary to administer or process permits, certificates, forms or other documents, or to defray the costs of enforcement. For additional information, see the State Housing Law, Health and Safety Code, Division 13, Part 1.5, Section 17951 and California Code of Regulations, Title 25, Division 1, Chapter 1, Subchapter 1, Article 3, commencing with Section 6.

108.4.3 Plan review and time limitations. Subject to other provisions of law, provisions related to plan checking, prohibition of excessive delays and contracting with or employment of private parties to perform plan checking are set forth in the State Housing Law, Health and Safety Code Section 17960.1, and for employee housing, in Health and Safety Code Section 17021.

108.4.3.1 Retention of plans. The building department of every city, county or city and county shall maintain an official copy, microfilm, electronic or other type of photographic copy of the plans of every building, during the life of the building, for which the department issued a building permit.

Exceptions:

1. Single or multiple dwellings not more than two stories and basement in height.
2. Garages and other structures appurtenant to buildings listed in Exception 1.
3. Farm or ranch buildings appurtenant to buildings listed in Exception 1.
4. Any one-story building where the span between bearing walls does not exceed 25 feet (7620 mm), except a steel frame or concrete building.

All plans for common interest developments as defined in Section 1351 of the California Civil Code shall be

retained. For additional information regarding plan retention and reproduction of plans by an enforcing agency, see Health and Safety Code Sections 19850 and 19851.

108.4.4 Inspections. Construction or work for which a permit is required shall be subject to inspection by the building official and such construction or work shall remain accessible and exposed for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or other regulations of the Department of Housing and Community Development. Required inspections are listed in Appendix Chapter 1, Sections 109.3.1 through 109.3.6, 109.3.8, 109.3.9 and 109.3.10.

SECTION 108.5 RIGHT-OF-ENTRY FOR ENFORCEMENT

108.5.1 General. Subject to other provisions of law, officers and agents of the enforcing agency may enter and inspect public and private properties to secure compliance with the rules and regulations promulgated by the Department of Housing and Community Development. For limitations and additional information regarding enforcement, see the following:

1. For applications subject to the State Housing Law as referenced in Section 108.3.2.1 of this code, refer to Health and Safety Code Sections 17970 through 17972 and California Code of Regulations, Title 25, Division 1, Chapter 1, Subchapter 1.
2. For applications subject to the Mobilehome Parks Act as referenced in Section 108.3.2.2 of this code, refer to the Health and Safety Code, commencing with Section 18200 and California Code of Regulations, Title 25, Division 1, Chapter 2.
3. For applications subject to the Special Occupancy Parks Act as referenced in Section 108.3.2.3 of this code, refer to Health and Safety Code, commencing with Section 18860 and California Code of Regulations, Title 25, Division 1, Chapter 2.2.
4. For applications subject to the Employee Housing Act as referenced in Section 108.3.2.4 of this code, refer to Health and Safety Code Section 17052 and California Code of Regulations, Title 25, Division 1, Chapter 1, Subchapter 3.
5. For applications subject to the Factory-Built Housing Law as referenced in Section 108.3.2.5 of this code, refer to Health and Safety Code Sections 19960 through 19997 and California Code of Regulations, Title 25, Division 1, Chapter 3, Subchapter 1.

SECTION 108.6 LOCAL MODIFICATION BY ORDINANCE OR REGULATION

108.6.1 General. Subject to other provisions of law, a city, county or city and county may make changes to the

104.9.1 Used materials and equipment. The use of used materials which meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless approved by the building official.

104.10 Modifications. Wherever there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or owner's representative, provided the building official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

104.11 Alternative materials, design and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

104.11.1 Research reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

104.11.2 Tests. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the building official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

104.11.3 Peer review. [OSHPD 1 & 4] When peer review is required, it shall be performed pursuant to Section 3414A.

104.11.4 [For OSHPD 1 & 4] Earthquake monitoring instruments. The enforcement agency may require earthquake monitoring instruments for any building that receives approval of an alternative system for the Lateral Force Resisting System (LFRS). There shall be a sufficient number of instruments to characterize the response of the building during an earthquake and shall include at least one tri-axial free field instrument or equivalent. A proposal for instrumentation and equipment specifications shall be forwarded to the enforcement agency for review and approval. The owner of the building shall be responsible for the implementation of the instrumentation program. Maintenance of the

instrumentation and removal/processing of the records shall be the responsibility of the enforcement agency or its designated agent.

SECTION 105 PERMITS

105.1 Required. 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.

105.1.1 Annual permit. In lieu of an individual permit for each alteration to an already approved electrical, gas, mechanical or plumbing installation, the building official is authorized to issue an annual permit upon application therefor to any person, firm or corporation regularly employing one or more qualified tradespersons in the building, structure or on the premises owned or operated by the applicant for the permit.

105.1.2 Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The building official shall have access to such records at all times or such records shall be filed with the building official as designated.

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
5. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18 925 L) and the ratio of height to diameter or width does not exceed 2:1.
6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy that are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18 925 L) and are installed entirely above ground.

10. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
11. Swings and other playground equipment accessory to detached one- and two-family dwellings.
12. Window awnings supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support of Group R-3 and U occupancies.
13. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

Electrical:

Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.

Temporary testing systems: A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

Gas:

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any part that does not alter its approval or make it unsafe.
6. Portable evaporative cooler.
7. Self-contained refrigeration system containing 10 pounds (5 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe, provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with the new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

105.2.1 Emergency repairs. Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.

105.2.2 Repairs. Application or notice to the building official is not required for ordinary repairs to structures, replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles. Such repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

105.2.3 Public service agencies. A permit shall not be required for the installation, alteration or repair of generation, transmission, distribution or metering or other related equipment that is under the ownership and control of public service agencies by established right.

105.3 Application for permit. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 106.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

105.3.1 Action on application. The building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building official shall reject such application in writing, stating the reasons therefor. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefor as soon as practicable.

105.3.2 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated. *[OSHPD 1, 2 & 4] Time limitation shall be in accordance with Title 24, Part 1, Chapter 7, Section 7-129.*

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