

16 MAY 02 09:13AM  
CITY CLERK

April 26, 2016

Pasadena City Clerk  
100 North Garfield Avenue Room S-228  
Pasadena, Ca. 91101

Re: Appeal of Hillside Development Permit #6347  
Hearing Date: Monday, May 2, 2016

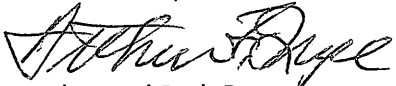
City Council Members:

My name is Arthur Drye and my wife is Ruth Drye. We live at 1876 Kaweah Dr in the San Rafael Hills area of Pasadena. We have lived in our house for over 40 years and in this time have seen many new homes built in the area. With these homes the concept of view preservation and privacy has been one of the major considerations when designing and building them.

As you may be aware, the San Rafael Hills are one of the last areas in Pasadena that strives to maintain its semi rural character. Our street Kaweah Dr. dosen't have sidewalks, the street is very narrow, and most important, the neighbors are friendly yet we maintain our individualism and treasure our privacy. This is most important to us.

We have seen the plans presented by the applicants and feel that their project restricts the Grady's view and most important their plans drastically infringe on the Grady's privacy in their primary living area. Although the city planning department does not recognize these factors as important, the Hearing Officer at the December meeting, the Board of Zoning Appeal at the March meeting, and a large number residents see this as critical and do not support the project as it is.

We urge you to be stewards of our area, to support the residents, and to reject this appeal as the other city officials and board members have done.



Arthur and Ruth Drye  
1876 Kaweah Dr  
Pasadena, Ca. 91105  
323-254-1082  
asecoman@aol.com

05/02/2016  
Item 11

April 29, 2016

CITY CLERK

16 MAY 02 11:18AM

RE: **LETTER OF SUPPORT** for the Nicholson's application  
Hillside Development Permit #6347  
1835 Kaweah Drive, Pasadena, CA

TO: Mayor Tornek and Honorable City Councilmembers

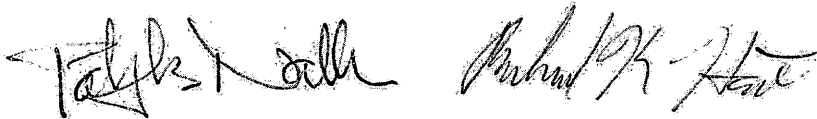
We own the residence at 1707 Kaweah Drive, Pasadena, CA, and are very familiar with the San Rafael Hills neighborhood. Additionally, Patty is a professional colleague of Sonia Nicholson, working with her on public park projects as licensed landscape architects.

Sonia and Patrick understand the goals of the Hillside Overlay District as outlined in the City Code. They have worked with the Planning Department to ensure that their project meets both the spirit and the letter of the law, creating a home that is in scale and character to the neighborhood. And in turn the staff of your Planning Dept. has supported their application from the beginning.

The View Protection Code (17.29.060) states that to the **maximum extent feasible** a new structure should not block the neighbor's view from the living room. To accommodate their neighbor Grady, they have revised their site plan numerous times; reduced the size of their home and shortened their patio; they no longer have a driveway setback, zero privacy in their own backyard, and effectively lost control of 60% of their property.

We appreciate that this is a difficult lot to build on and that there is potential for interpretation within the zoning code, but we believe that the Nicholsons have made an extraordinary effort to appease every request, both reasonable and unreasonable, that their neighbor has made and at this point their project should be approved.

Thank you for your careful consideration in this matter.



Patty Nalle & Richard Hart  
Property Owners of 1707 Kaweah Drive

## Jomsky, Mark

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**From:** Richard McDonald <rmcdonald@carlsonnicholas.com>  
**Sent:** Friday, April 29, 2016 4:35 PM  
**To:** Jomsky, Mark  
**Cc:** Tornek, Terry; Masuda, Gene; Madison, Steve; McAustin, Margaret; Gordo, Victor; Kennedy, John; Hampton, Tyron; Andy Wilson; Mermell, Steve; Bagneris, Michele; Reyes, David; sp2nicholson; Sonia Nicholson; Angelka (gmail)  
**Subject:** May 2 City Council Hearing on Appeal for HDP 6347 (1835 Kaweah Drive)  
**Attachments:** 0084.pdf; Scan.pdf; distances to grady.pdf

Mark –

On Monday night's Agenda, Item 11 is my client's appeal of the Board of Zoning Appeals decision on HDP No. 6347 concerning their proposed single family residence at 1835 Kaweah Drive.

For the Mayor's and the Councilmembers' ease and convenience, attached are copies of my February 16, 2016 and March 14, 2016 letters to the BZA, which are also attached to the Staff's Report in Attachments F and H.

In addition, I have attached a map that shows the distance from the edge of the Grady's window to the corner of my client's house to be 27 feet, and to the corner of the Nicholson's now more truncated deck to be 35' 2". The 667 square feet shown is for the floor that corresponds to the Grady's floor, which is 1,570 square feet.

Please also let the Mayor and Councilmembers know that, as explained in the Request for Appeal, the first basis for our appeal is that the BZA improperly denied a categorical exemption for a proposed single family residence in a single family neighborhood. In particular, Title 14, Article 19, Section 15303 of the California Code of Regulations specifically states that single family residences are categorically exempt from the requirement to perform an initial study, MND, or EIR:

“Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

(a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.”

To negate this exemption, the BZA was required to find and cite substantial evidence sufficient to establish “an unusual circumstance” prohibiting its use. They failed to do so. Further, under the California Supreme Court's recent decision in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, it would have been impossible for them to do so.

In particular, in the *Berkeley Hillside* case, the applicant sought a hillside permit for a 6,478-square-foot house with an attached 3,394-square-foot 10-car garage, covering 16% of a steeply sloped (about 50%) lot in a heavily wooded area on Rose Street in Berkeley. The trial court denied the petition for a writ of mandate by the neighborhood group holding there were not unusual circumstances to the project, but the Court of Appeal reversed and granted it. The Supreme Court then took up the issue of how the unusual circumstances exception

to categorical exemptions should be applied by lead agencies. The Supreme Court held that the "unusual circumstances" exception can only be used to preclude the use of a categorical exemption if an "unusual circumstance" that differentiates the project from the general class of similarly situated projects; and, if so, when the unusual circumstance that pertains to the project creates a "reasonable possibility" that the project may result in a "significant environmental impact." The Court expressly rejected the appellate court's interpretation of the "unusual circumstances" test, finding that "the Court of Appeal erred by holding that a potentially significant environmental effect itself constitutes unusual circumstances."

Following the Supreme Court's decision, the First District Court of Appeal filed its opinion affirming the trial court's judgment on September 23, and later ordered it published on October 15, 2015. *Berkeley Hillside Preservation, et al. v. City of Berkeley* (1st Dist., Div. 4, 2015) 241 Cal. App. 4th 943, 2015WL 6470455. The opinion states that a party challenging a categorical exemption decision by seeking to establish the unusual circumstances exception cannot prevail merely by providing substantial evidence that the project may have a significant environmental effect. Rather, such a party must establish an unusual circumstance by distinguishing the project from others in the exempt class. On February 3, 2016, the California Supreme Court then denied further review of the case, thus letting the Court of Appeal's decision stand, i.e., there were no unusual circumstances that precluded the use of the categorical exemption for the proposed residence despite its size, large garage, and construction on a steep slope.

In this case, there also are no unusual circumstances. The proposed residence fully complies with the Hillside Ordinance and Zoning Code, except for a minor variance needed to avoid impinging on the neighbor's view, i.e., it is needed to comply with the Code. In addition, the size of the proposed residence is well within the limits imposed by the neighborhood compatibility requirements of the Code, and it meets all other development standards. The City of Pasadena also has applied this Categorical Exemption to hundreds of single family additions throughout hillside areas without question.

The BZA thus erred in failing to grant the categorical exemption, which is the first basis that warrants reversing its decision.

Please also let them know that the second basis for the appeal is that the project complies with the Code, and in particular 17.29.060.E regarding view protection. My letters attached above explain all that has been done to avoid impinging on the neighbor's view corridor. The Nicholson's own letter to the Mayor and City Council also is attached in the "Correspondence" provided with the Staff report. There, and in our presentation Monday night, they outline how they have redesigned their project four or five times, shorten their deck an additional six (6) feet, and removed an entire floor to accommodate the neighbor's concerns.

At issue, though, is the breadth and scope of Zoning Code Section 17.29.060.E, which states:

**E. View protection.** A proposed structure shall be designed and located so that it avoids blocking views from surrounding properties to the maximum extent feasible, as determined by the review authority, and as follows. See Figures 2-6 and 2-7. For purposes of this Chapter, "surrounding" properties refers to all abutting properties as well as properties directly across a street from the subject property.

1. New structures and tall landscaping shall not be placed directly in the view of the primary living areas on a neighboring parcel. For purposes of this Chapter, "primary" living area refers to living rooms, family room, patios, but not a kitchen, bedroom, or bathroom.
2. Mechanical equipment other than vents or solar panels shall be placed on a rooftop or below a deck only if the equipment is not visible from off the site. This equipment shall also comply with the height limits in Subsection B. above.

Figure 2-6 — Siting New Building to Preserve Views

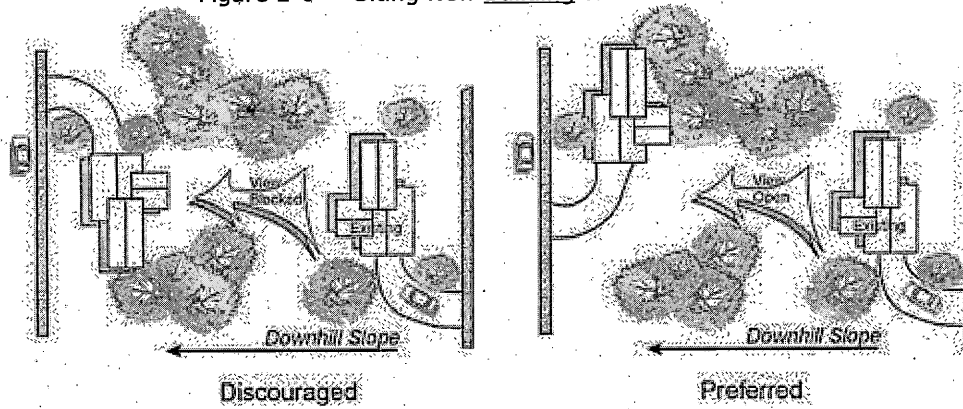
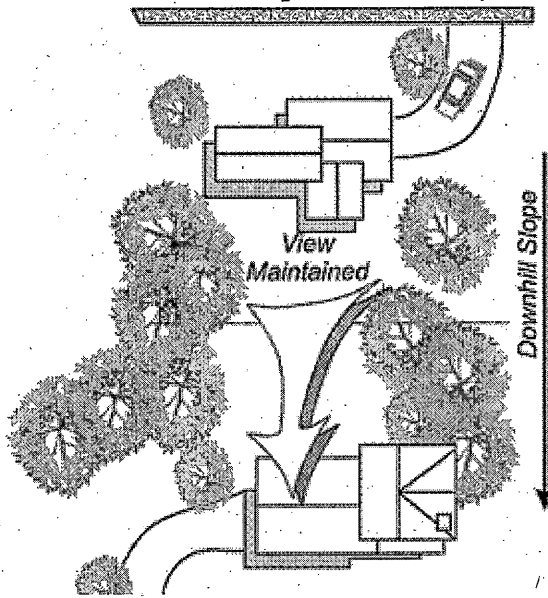


Figure 2-7 — Example of Preferred Location of Second Floor to Preserve Views



As you can see, Section E does not provide unlimited view protection, nor could it. Under California law, there is no common law right to view protection. *Wolford v. Thomas*, 190 Cal. App. 3d 347, 358 (1987). The neighbors thus do not have a right of access to air, light and view over adjoining property. *Porterville Citizens for Responsible Hillside Development v. City of Porterville*, 157 Cal. App. 4th 885, 902 (2007).

Rather, the only protection the neighbors have is under Section 17.29.060(E), which is strictly limited to avoid blocking views “to the maximum extent feasible.” If it is not feasible, then an applicant is not required to avoid blocking views, i.e., there is no view protection as provided under California law. Further, as the Section expressly states, “New structures and tall landscaping shall not be placed *directly* in the view of the primary living areas on a neighboring parcel. For purposes of this Chapter, “primary” living area refers to living rooms, family room, patios, but not a kitchen, bedroom, or bathroom.” (Emphasis added).

In other words, if you are standing in the living room, family room, or on the patio looking straight out a window, your sightlines are that "view corridor" and that is all that is protected, and then only "to the maximum extent feasible." As you can see above, Figure 2-7 gives an example of how an addition is moved so that it is not directly in the view of the neighbor's view corridor from their primary living areas. Further, during the adoption of the Hillside Ordinance in 2004, the Initial Study for the environmental assessment of the proposed ordinance included the following responses for the Aesthetics questions: "The majority of Pasadena's Hillside District are established residential neighborhoods. There are exceptions to this for certain areas that were subdivided many years ago but never developed. Submittal requirements for new hillside homes and additions to existing homes require information on views from neighboring properties. Through the proposed project, more explicit language will be added to the code relative to ridgeline protection, view preservation, and visual character. ***Through the discretionary review process (Hillside Development Permit) the City will review sightlines***, colors, materials (including the roof), and landscaping to further ensure the residence will blend with its hillside location. The project will provide standards that will guide development and will not substantially degrade the existing visual character or quality of the site and its surroundings." (Emphasis added). The purpose of the Hillside Development Permit review process, therefore, was to conduct a case-by-case review of what a "view" may be from a neighboring property based upon its sightlines, not some subjective standard dependent on some neighbor's objection.

As will be shown on Monday night, and as stated in the attached letters and the Nicholson's own letter, they have moved their house to the maximum extent feasible, shrunk it to the maximum extent feasible, cut their deck to the maximum extent feasible, all while the neighbors have done nothing but continue to complain. At some point, enough is enough. The neighbors are not allowed to design the Nicholson's house.

We, therefore, ask that they reverse the BZA decision and approve the HDP on this basis as well.

Last, please let me know when you need us to deliver our presentation for Monday night's hearing. Please also let me know if you need anything else for it.

Thank you again for all of your hard work. Have a good weekend.

Richard A. McDonald, Esq.  
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**VIA E-MAIL & HAND DELIVERY**

February 16, 2016

Chair Greg Jones  
Hon. Commissioners Cohen, Farhat, Nelson, and Williamson  
Board of Zoning Appeals of and for the City of Pasadena  
100 North Garfield Avenue  
Pasadena, California 91109

Re: 1835 Kaweah Drive – HDP No. 6347.

Dear Chair Jones and Honorable Commissioners:

Thank you for hearing the Nicholson's appeal of the Hearing Officer's December 2, 2015 denial of their application for a Hillside Development Permit ("HDP").

As explained in the staff report, the property is an irregular shaped lot located at 1835 Kaweah Drive in the RS-6 HD-SR zone. The developable area of the lot is 5,356 square feet. The site has an average slope of 38.6 percent, which slopes downward in a northwesterly direction. *See Exhibit "A."*

As originally presented, the Nicholson's proposed building a 1,337 square foot, two-story house behind a 366 square foot garage that was setback 12.5 feet from the front property line. *See Exhibit "B."* As proposed, the project fully complied with the Hillside Ordinance's

Letter to BOZA  
City of Pasadena  
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requirements for gross floor area, lot coverage, front, side, and rear yard setbacks, encroachment plane standards, height, parking, neighborhood compatibility (size and design), and ridgeline protection. The geotechnical and hydrology reports for the site also determined that the proposed project was feasible; and, the proposed house complied with Section 17.29.060 on view protection because the adjacent property to the east at 1827 Kaweah Drive faces northwest, not west. *See* Exhibit "A." Its primary view areas, therefore, would not have been blocked by the new house. *Id.*

Although fully compliant with the Hillside Ordinance, the proposed project nonetheless required three variances. The first variance was for the amount of hardscape in the front yard, i.e., to allow 56 percent of the front yard to be paved, which was more than the 30 percent limit under section 17.40.160.F.3.a. The second variance was for the width of the driveway, i.e., the 18.5-foot-wide driveway, which exceeded the Code's limit of 15 feet. The third variance was for the safety fence/railing required along the driveway, i.e., it exceeded the four-foot height limit because of the Code requires it to be measured from existing grade under Section 17.40.180. A.1.

Although originally calendared for a November 18, 2015 hearing, on November 17, 2015, staff informed the Nicholsons of some objections from the neighbor at 1827 Kaweah Drive; namely, that the proposed house would block his view. Although it did not, the Nicholsons agreed to a conference call with the Zoning Administrator and Planning staff to address his concerns.

During the conference call, staff explained the neighbor's concerns about his views being impeded and suggested the Nicholsons move their house five feet closer to Kaweah Drive. *See* Exhibit "C." Doing so, however, required them to apply for a fourth variance, i.e., one to allow a



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seven-foot front yard setback, which was five feet less than the required 12 feet under the Code. The hearing date, therefore, was continued to December 2, 2015, to provide the required public notice of the hearing on this new variance.

On December 2, 2015, both the twelve-foot setback and the seven-foot setback alternatives were presented to the Hearing Officer. For both, staff recommended approval.

Rather than approve either of the two alternatives, however, the Hearing Officer denied the HDP application on the grounds that both alternatives violated the view protection of the neighbor at 1827 Kaweah Drive under Section 17.29.060. He also handed the Nicholsons a drawing of a design prepared by the previous owner of their lot. After the Nicholsons told the Hearing Officer that they were familiar with it, but did not use it because it violated the allowable square footage limits under the Code, he suggested they use a zero front yard setback instead.

With that in mind, on January 20, 2016, the Nicholsons met with the neighbors (Mr. and Mrs. Grady to the east and Mr. Chul Paik to the north), and staff. At that meeting, they presented the zero front yard setback design suggested by the Hearing Officer. *See* Exhibit "D."

Unfortunately, the neighbors refused to consider it in good-faith, claiming it continued to obstruct their view. The neighbors also complained that if you turn at an angle, then the proposed deck blocks the view from their patio.

On February 6, 2016, the Nicholsons set-up a silhouette of the east side, north side, and the upper deck of the zero setback revised design that showed it did not block any of the neighbor's views. *Id. See also*, Exhibit "A." In particular, the following changes have been made by the Nicholsons to address all of the neighbor's concerns:

Letter to BOZA  
City of Pasadena  
February 15, 2016

1. They increased their back yard setback 14'-4 ½" from 46'-11" to 61'-3 ½".
2. They decreased their front yard setback by 12' from 12' to 0'.
3. They decreased their building footprint dimension in the north-south direction by 6'-2 ½ "from 51'-4" to 45'-1 ½ ".
4. They reduced the number of stories from 3 to 2.
5. They reduced the number of variance they need from 3 to 1.

Regardless of these changes, the neighbors still object to the project presumably based upon an unfounded belief that they have the right to an unobstructed 180-degree view.

As staff correctly explains in their report, however, Section 17.29.060(E) does not provides any such sweeping, all-encompassing right. Rather, the only views protected under the City's Code are the views from primary living areas, which are expressly defined as a living room, family room, and patio, but not a kitchen, bedroom, or bathroom.

Here, there is no evidence, let alone any substantial evidence, that any of the neighbors' primary living areas are negatively impacted. To the contrary, the fact that the neighbors claim that "if they turn at an angle" by definition means there is no impact to their direct views because, if there were, they would not have to turn.

Under California law, there also is no common law right to a view. *Wolford v. Thomas*, 190 Cal. App. 3d 347, 358 (1987). California landowners simply do not have a right of access to air, light and view over adjoining property. *Porterville Citizens for Responsible Hillside Development v. City of Porterville*, 157 Cal. App. 4th 885, 902 (2007). The only protection the neighbors have is under Section 17.29.060(E), which is limited to their northwest facing patio only and which is not impacted.

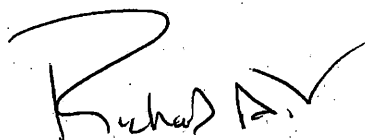
Letter to BOZA  
City of Pasadena  
February 15, 2016

Last, on November 12, 2015, and again on December 2, 2015, the Grady's expressly represented that their "view windows are approximately 55 [feet] from the street on the west, and "our primary living area begin at 50 feet from Kaweah Drive." See Exhibit "E." The Nicholsons, therefore, have eliminated any impact on the Grady's view by moving their house forward with a zero setback. See Exhibit "F." As Exhibit "F" shows, the Nicholsons house is now within the 50 – 55 feet space the Grady's state does not impede their views. As such, the findings for the HDP are supported by substantial evidence and can be made.

We, therefore, ask the Board to reverse the Hearing Officer's December 2, 2015 decision and approve the revised zero front-yard setback design for HDP No. 6347.

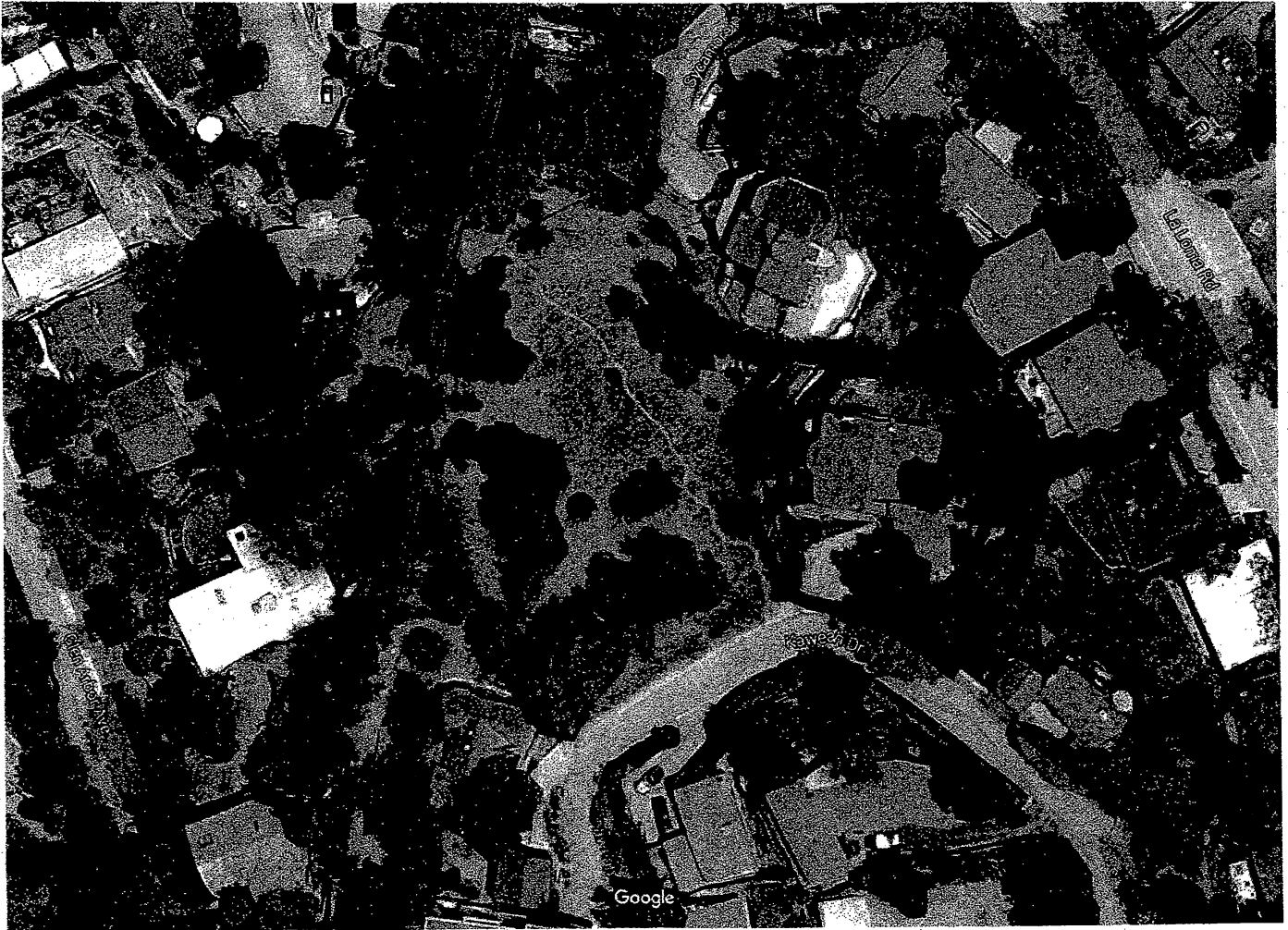
Thank you again for your consideration.

Respectfully Submitted,

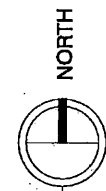
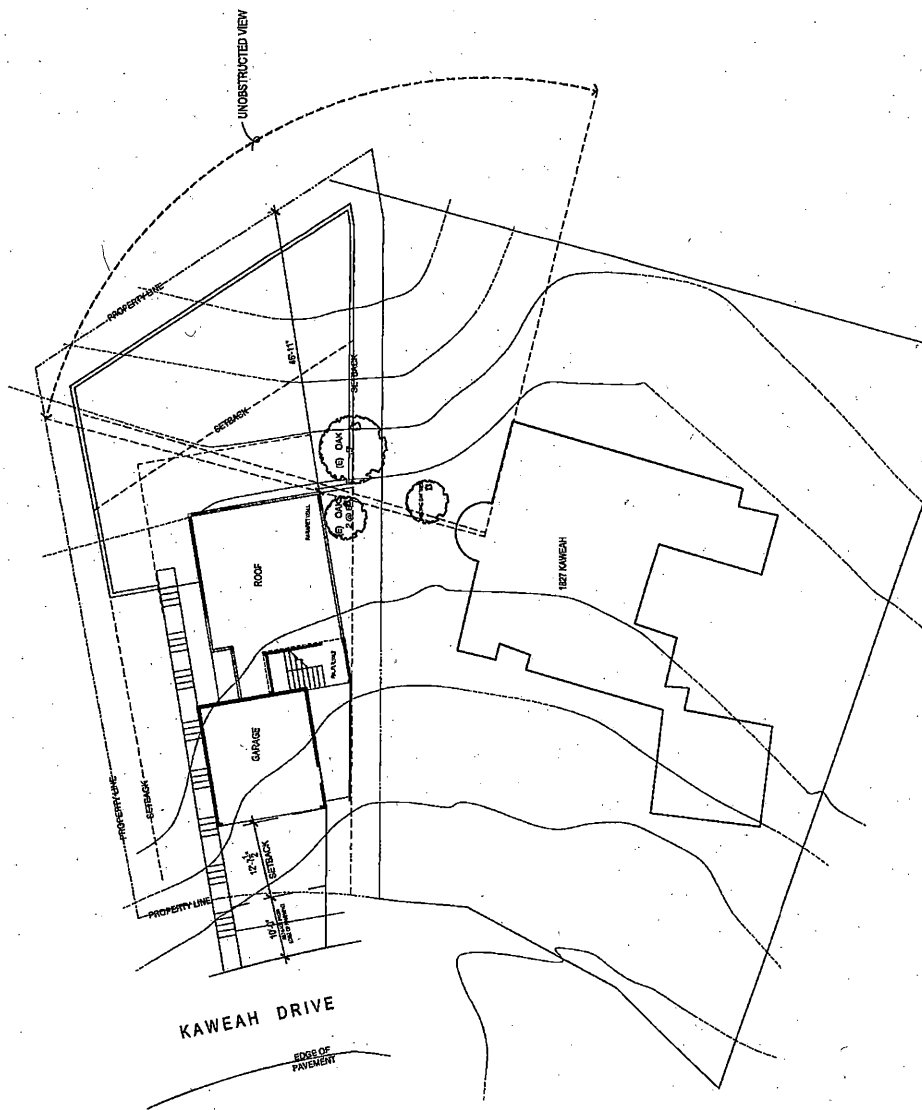
A handwritten signature in black ink, appearing to read "Richard A. McDonald". The signature is stylized with a large initial "R" and a checkmark-like flourish at the end.

Richard A. McDonald, Esq.  
Of Counsel, Carlson & Nicholas, LLP

# **EXHIBIT A**



# **EXHIBIT B**

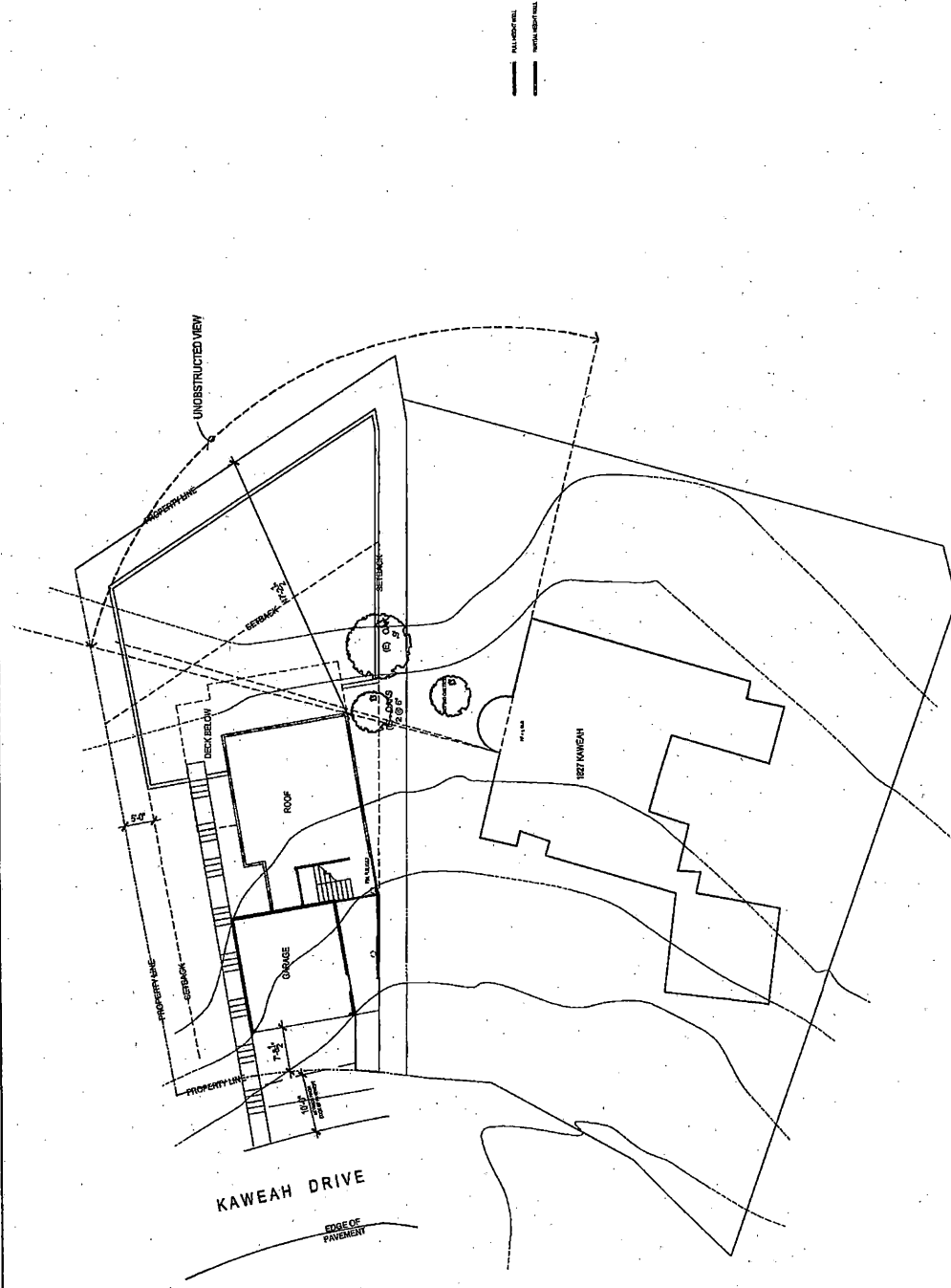


**SITE PLAN - 12 FOOT SETBACK**

1" = 20 FT.

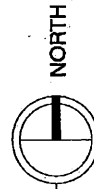
# **EXHIBIT C**



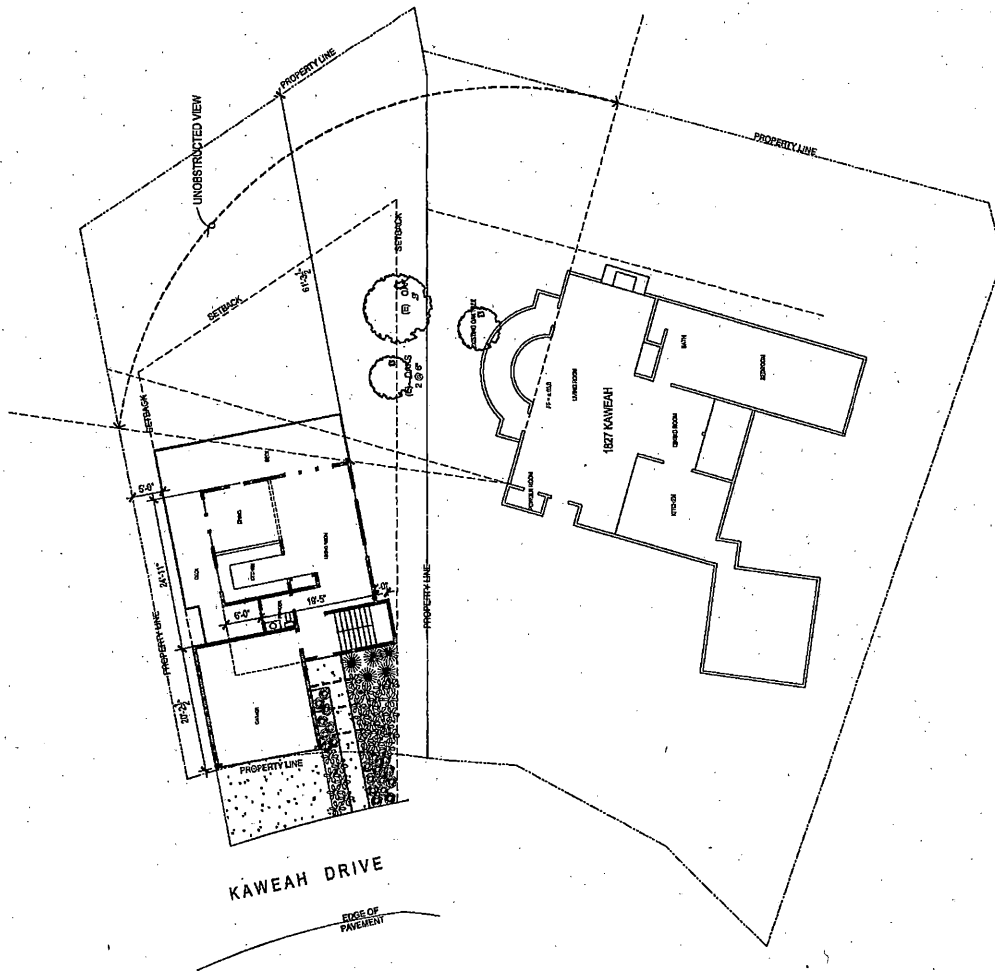
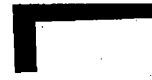


SITE PLAN - 7 FOOT SETBACK

1" = 20 FT.

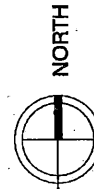


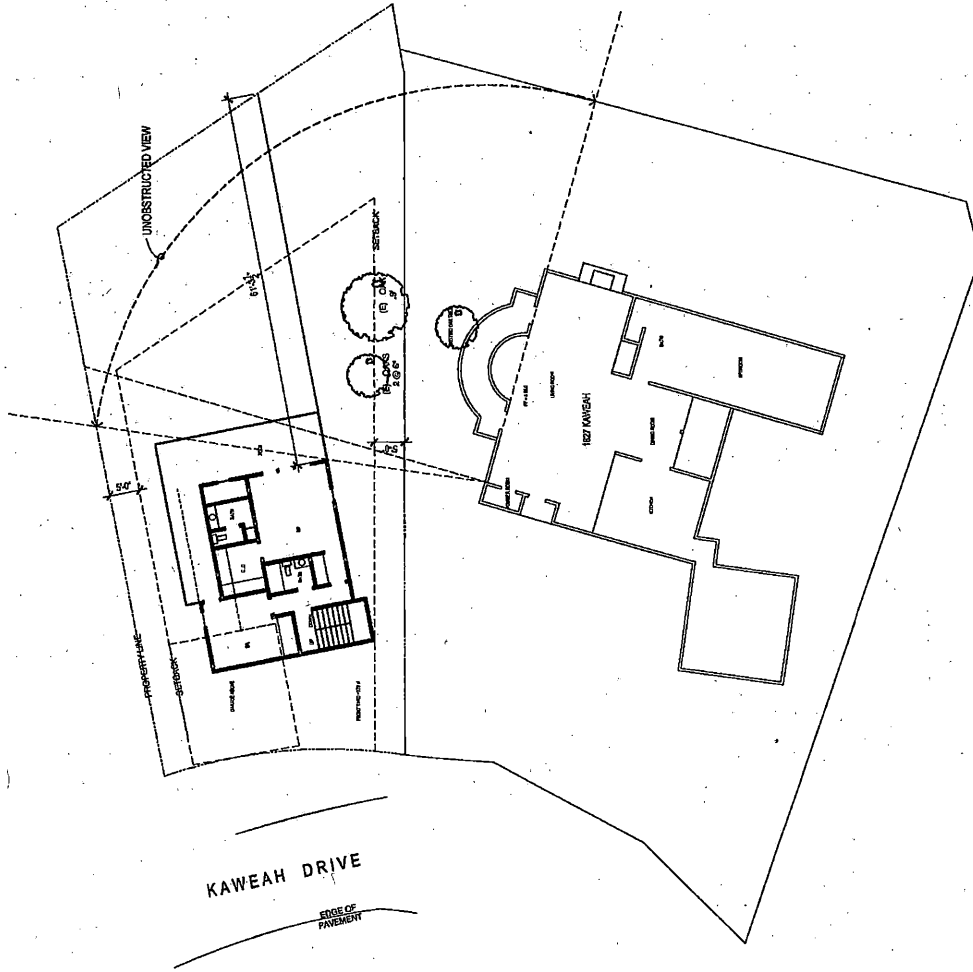
# **EXHIBIT D**



SITE PLAN - 0 SETBACK - UPPER FLOOR

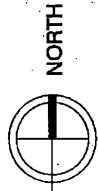
1" = 20 FT.

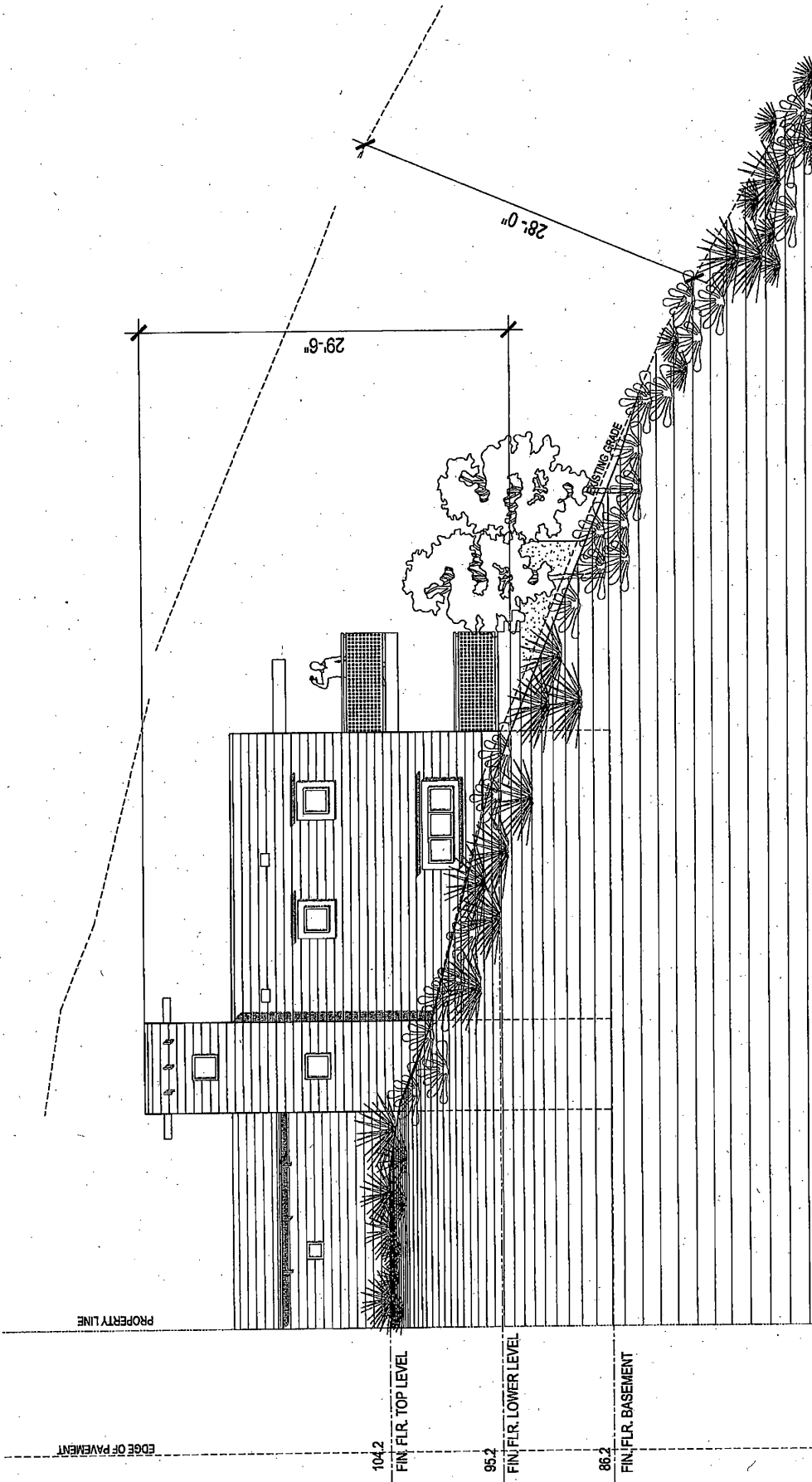




SITE PLAN - 0 SETBACK - UPPER FLOOR

1" = 20 FT.





WEST ELEVATION

$\frac{1}{8}'' = 1'-0''$

# **EXHIBIT E**

11/12/2015

5. The corner of our home is approximately 50' from the street, and our view windows are approximately 55' from the street on the West. The proposed design for Lot #17 is a long narrow structure that extends approximately 68' from the street. An adjustment of moving the proposed design by 15' toward the street, would protect the view for our home, would protect the privacy of the lower lots below on Sycamore Glen, and would also preserve the lower hillsides terrain. } \*
6. In front of our home at 1827 Kaweah Drive, Kaweah Drive is running directly WEST. At the start of Lot # 17, 1835 Kaweah Drive, Kaweah Drive makes a sharp curve to the SOUTH WEST. (An attached topographical map illustrates this change of direction).
7. If one stands on the street in front of Lot #17 looking down, one can see that the slope runs predominantly West in a pie shape. Allowing this design to go forward as is – i.e., a long narrow structure with a flat roof – will directly block the view of the primary living area of our established home. (See the attached topographical map).
8. The front of Lot # 17 property is approximately 40' in width; the rear of Lot #17 is approximately 63' in width. It is my understanding that according to the owner/builder, the lot Slope for Lot # 17 is 32 degrees. The lot slope for my home is 37 degrees. And the lot slope directly below is 42 degrees. It is my understanding the owner/builder asserts that his slope calculation at 32 degrees is nearly the same as ours. I dispute this. We all know that the slope calculations affect the overall gross floor plan of the design. Thus, it is imperative that the slope calculations for Lot #17 be accurately determined and verified.
9. Attached is an example of a proposed design for a home on Lot # 17 by the previous owner of this lot and the adjacent 4 lots (the Pasadena Five). Also attached are two site plans showing the curve on Kaweah Drive and an air photograph of the hillside. Views of the attached maps illustrate that there are other options that can be utilized in designing the structure on Lot # 17, options that do not violate the View Protection Clause of the Hillside Overlay Districts (Section 17.29.060E).
10. It is also unacceptable to consider allowing the minor variance that the owner/builder is requesting. The owner/builder requests that he be allowed to have " *fencing in the front yard with a height of up to twelve (12) feet, where the maximum permitted is four (4) feet.*" Requesting a variance to build a fence/wall 12 feet high in the front yard, when the maximum allowed is 4 feet, is an example of the extreme aspects of this design that contribute to the code violations inherent in this proposed design and location. If allowed, this variance is clearly in violation of one of the purposes of Hillside Overlay Districts, #G: "Provide development standards that promote orderly development consistent with the traditional scale and character of the community, and that preserve privacy and views."
11. At the time that Luis Rocha, Planner, came to our home in mid-August to view our home site and take photographs, he indicated that the owner/builder could not block our view and he was going to talk with him regarding changes to the design that would not violate the View Protection clause. He also indicated that he would contact the owner/builder to set up a meeting with us. It is our understanding that the owner/builders have refused to meet with us.

12/02/2015

- 2. Page 6 of the Staff Report: "...The location of the proposed residence would, however, be placed in the view and be visible from the primary living areas of 1827 Kaweah Drive (our home). As discussed, the adjoining residence has a 36-foot field of view. (Not true: 30-foot field of view). The proposed residence encroaches approximately 10 feet into the field of view of the primary living areas of 1827 Kaweah Drive (our home). To reduce the encroachment into the field of view, the applicant is proposing to move the proposed residence five feet closer to Kaweah Drive, thereby reducing the encroachment of the proposed residence."

The deck of our home and our primary living area begin at 50 feet from Kaweah Drive. Moving the proposed residence 5 feet closer to Kaweah Drive will not reduce the encroachment into our field of view. The proposed residence needs to be moved 18 feet closer to Kaweah Drive in order to eliminate the encroachment into our field of view, including the overhangs and decks. The proposed design for Lot #17 is a long narrow structure that extends approximately 68 feet from the street. An adjustment of moving the proposed design by 18 feet, not 5 feet, toward the street, would protect the view for our home, would protect the privacy of the lower lots below on Sycamore Glen, and would also preserve the lower hillsides terrain.

} \*

We believe that the proposed structure has NOT been designed to the *maximum extent feasible* to avoid blocking the view of our home – quite the contrary. In continuing to review the plans and design, it appears that no effort to avoid blocking the view of our home has been made, in violation of Section 17.29.060E.

In the Pasadena Hillside Overlay Districts, Section 17.29.060E (View Protection), it is clearly stated that, "a proposed structure shall be designed and located so that it avoids blocking views from surrounding properties to the *maximum extent feasible*. This includes abutting properties as well as properties directly across the street from the subject property."

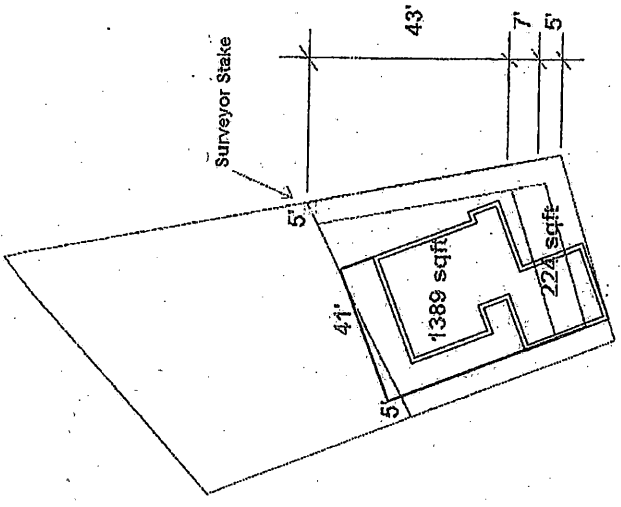
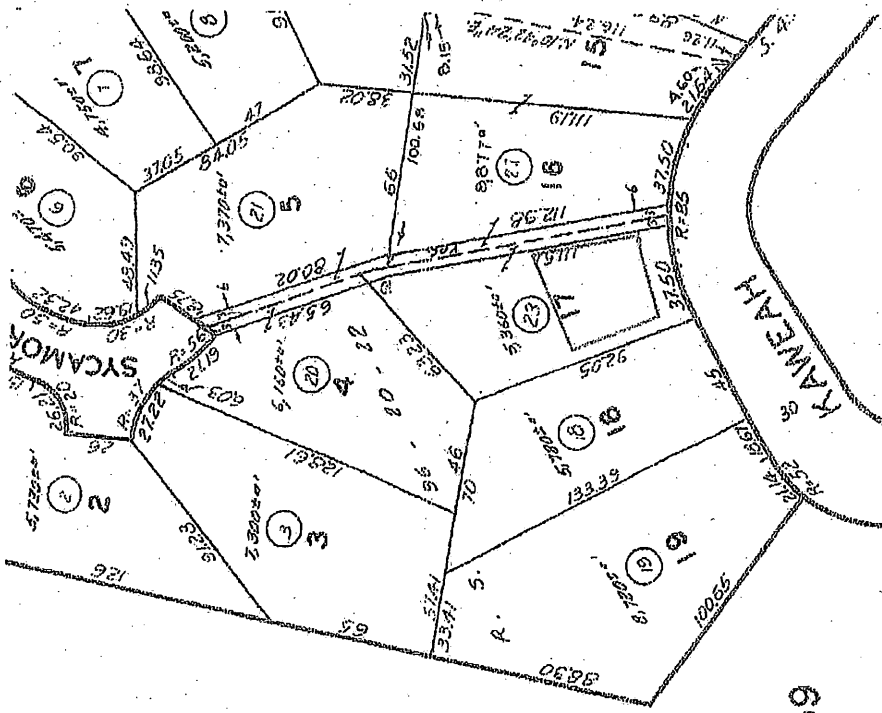
- 3. Page 6 of the Staff Report: "The downhill slope, establishing the protected view for 1827 Kaweah Drive, is towards north/northwest; the existing slope does not run towards the west, across the project site. Therefore, the proposed residence would not block any protected views that are oriented toward the downhill slope."

We disagree with the statement that our "existing slope does not run west across the project site." At the time we built our home, the report of the City Planning staff, dated March 15, 2006, states that the average slope of 37 degrees runs downward to the northwest away from Kaweah Drive." Because of this, we disagree with the staff statement above that our lot at 1827 Kaweah Drive does not run toward the west because 1/4 of our lot slopes due west.

If one stands on the street in front of Lot #17 looking down, one can see that the slope runs predominantly west in a pie shape. Allowing this proposed design to go forward as is – i.e., a long narrow structure with a flat roof – will directly block the view of the primary living area of our established home. (See the attached topographical map).



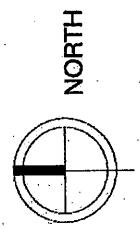
# EXHIBIT F



Note:  
 Approximate values.  
 If from 5', then area is 1613 sq ft.  
 If from 12', then area is 1389 sq ft.

9859  
 3-24

Attached are two site plans that show a new 2,400 sq. ft. of property towards the top of the hill to the surveyor's stake, which clears our windows. This leaves him plenty of room to construct a new 1,337 sq. ft. residence with a 336 sq.



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**VIA E-MAIL**

March 14, 2016

Chair Greg Jones  
Hon. Commissioners Cohen, Farhat, Nelson, and Williamson  
Board of Zoning Appeals of and for the City of Pasadena  
100 North Garfield Avenue  
Pasadena, California 91109

Re: 1835 Kaweah Drive – HDP No. 6347.

Dear Chair Jones and Honorable Commissioners:

On February 17, 2016, the BZA asked the Nicholson's to consider revising the design of their proposed deck to insure it is not in the view corridor of Mr. Grady's balcony. Mr. Nicholson will explain that revision and their approach to it. Before doing so, however, we wish to make a few additional points for the continued hearing.

*First*, Section 17.29.060.E(1) of the Zoning Code expressly states, "New structures and tall landscaping shall not be placed *directly* in the view of the primary living areas on a neighboring parcel. For purposes of this Chapter, "primary" living area refers to living rooms, family room, patios, but not a kitchen, bedroom, or bathroom." (Emphasis added).

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Therefore, under the Code, as staff has explained, Mr. Grady's only protected view is looking "directly" out his living room window in a northwesterly direction. That view corridor does not include his balcony, nor the Nicholson's house or deck.

*Second*, in an attempt to resolve this matter, I reached out to Mr. Grady's attorney and him. After two conversations, however, it became apparent that Mr. Grady did not want to resolve anything in good-faith. Rather, he claimed that he had re-surveyed his property and that his view corridor began at 42.5 feet from Kaweah Drive. He insisted that the Nicholson's house and deck, therefore, had to be moved even closer to the street to avoid blocking his views. A zero setback was not enough.

However, according to Mr. Grady's November 12, 2015 statement to the Hearing Officer ("HO"), "The corner of our home is approximately 50' from the street, and our view windows are approximately 55' from the street on the West." See, Exhibit "E" to McDonald February 16, 2016 Letter to BZA. Further, according to Mr. Grady's December 2, 2015 statement to the HO, "The deck of our home and our primary living area begin at 50 feet from Kaweah Drive." *Id.*

Somehow, miraculously, the 55 feet that existed on November 12, dropped five more feet to 50 feet by December 2d. And now, after re-surveying, it has dropped another seven and half feet to 42.5 feet.

The game being played here by Mr. Grady is obvious. In particular, to address Mr. Grady's concern about the potential impact on his view, staff asked the house be moved five feet closer to the street by reducing the 12-foot setback to a 7-foot setback. Mr. Grady, however, reduced his numbers by 5 feet as well, and continued to complain.

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When the house then was moved another 7-feet closer to the street by reducing the 7-foot setback to a zero setback, Mr. Grady reduced his number by 7-feet as well (i.e., 50 feet down to 42.5 feet), and continued to complain.

In short, no matter where the house is moved, Mr. Grady will change his position so that he can continue to object because he does not want anything built.

*Third*, unfortunately for Mr. Grady, the surveyor's immovable stake is at 55 feet. *See*, Exhibit "F" to McDonald February 16, 2016 Letter to BZA. As such, the house and deck do not impact his view with a zero setback no matter how much he changes his position.

*Fourth*, as explained at the February 17 hearing, the following changes have been made to address all of Mr. Grady's concerns:

1. They increased their back yard setback 14'-4 1/2" from 46'-11" to 61'-3 1/2".
2. They decreased their front yard setback by 12' from 12' to 0'.
3. They decreased their building footprint dimension in the north-south direction by 6'-2 1/2" from 51'-4" to 45'-1 1/2".
4. They reduced the number of stories from 3 to 2.
5. They reduced the number of variance they need from 3 to 1.

Mr. Grady, however, has not made any changes, or put forth any effort to seek a reasonable solution. Instead, regardless of these changes, Mr. Grady still objects to the entire project and its design based upon his unfounded belief that he has the right to an unobstructed 180-degree view from his balcony.

As staff correctly explains in their report, however, Section 17.29.060(E) does not provides any such sweeping, all-encompassing right. Rather, the only views protected under the

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Code are the views "directly" from primary living areas, which are expressly defined as a living room, family room, and patio, not his balcony.

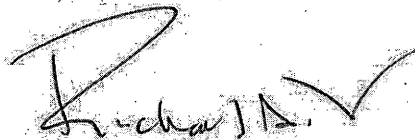
Here, there is no evidence, let alone any substantial evidence, that any of Mr. Grady's primary living areas are negatively impacted when the house is moved to a zero setback. To the contrary, the fact that Mr. Grady keeps changing his position shows as much because otherwise he would not have to change his numbers. His objections are based upon the existence of the house altogether, not any impact on his views.

Nonetheless, in final effort to resolve this matter, the Nicholson's have redesigned their deck as requested by the BZA by moving it two feet west, which is the "maximum extent feasible" for technical, structural reasons that Mr. Nicholson will explain.

In sum, with a zero setback, substantial evidence supports all of the findings set-forth in Attachment "A" to your staff report. We, therefore, ask the BZA to reverse the Hearing Officer's December 2, 2015 decision and approve the revised zero front-yard setback design for HDP No. 6347.

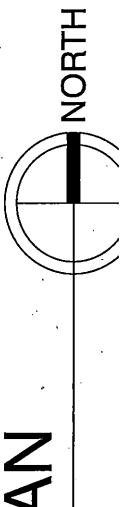
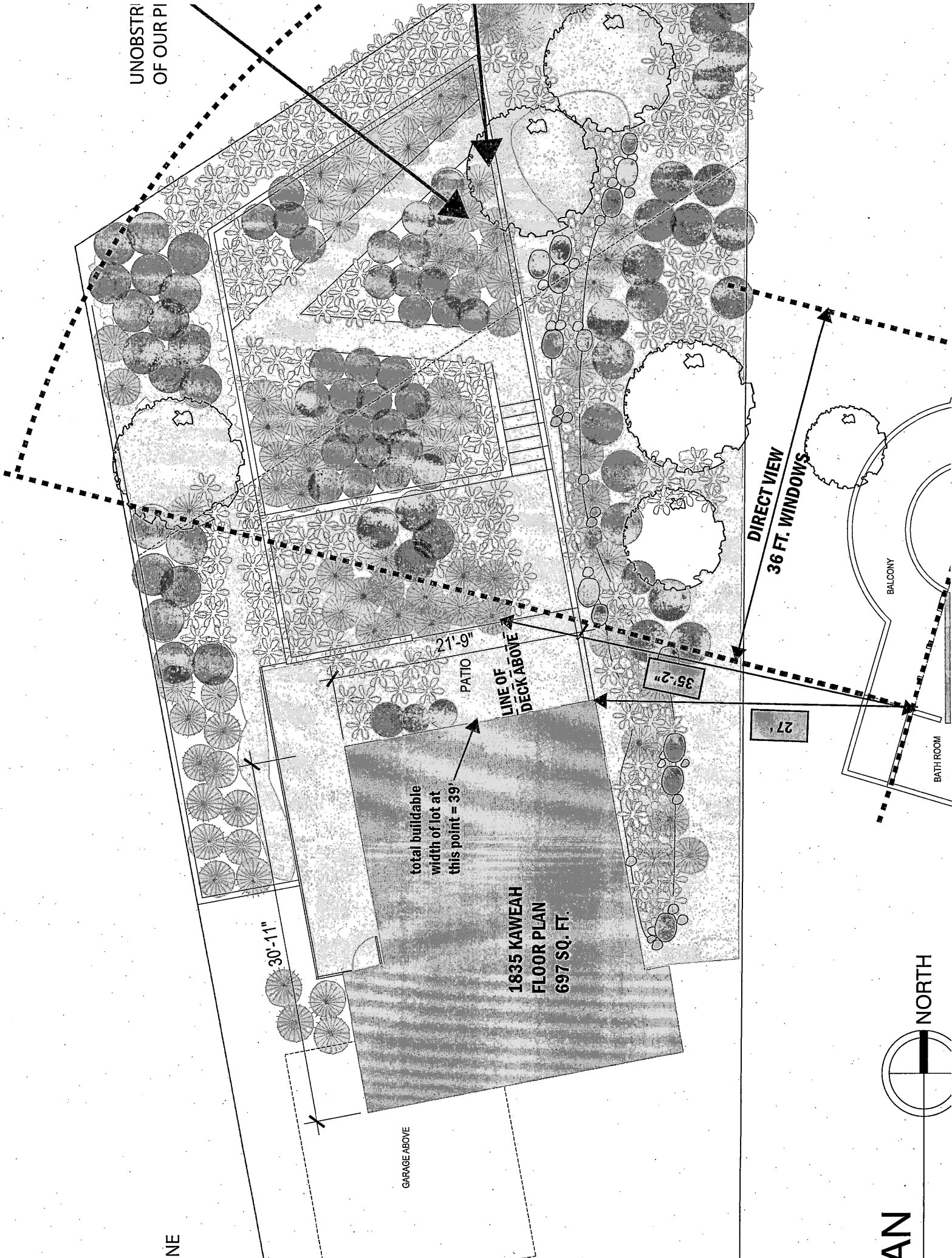
Thank you again for your consideration.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard A. McDonald". The signature is stylized with a large initial "R" and a checkmark-like flourish at the end.

Richard A. McDonald, Esq.  
Of Counsel, Carlson & Nicholas, LLP

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OF OUR PI



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