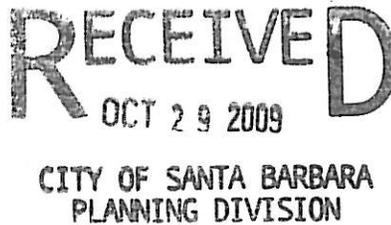


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October 28, 2009

Mayor Marty Blum and Members
of the City Council
City of Santa Barbara
Post Office Box 1990
Santa Barbara, California 93102



Re: Appeal of Planning Commission Approval of 226-232 Eucalyptus Hill Drive

Dear Mayor Blum and Members of the City Council:

I represent Cyndee Howard, owner of the property at 226-232 Eucalyptus Hill Drive, which consists of two parcels totaling 5.57 acres in the A-2 zone. Since 2003, Ms. Howard has been attempted to obtain approval for a lot line adjustment changing the orientation of these lots from north-south to east-west to provide for a more conventional configuration of the property. On August 20, 2009, she received approval of this lot line adjustment from the Planning Commission, which approval was appealed by an unspecified group of downhill neighbors on August 25, 2009. The basis for the appeal, as outlined in the one page appeal letter, appears to be that the neighbors feel they were denied adequate time to present their concerns to the Planning Commission at two separate hearings (although the Commission received a significant amount of public comment and a multitude of written submittals from the apparent appellants in connection with this lot line adjustment), and that "conflicting testimony" was received which merits "objective evaluation." No specifics are provided regarding their objections, nor is there any explanation of why the staff's evaluation of the application failed to provide the needed "objective evaluation." Given this paucity of detail, it is difficult to respond to any particular issue, apart from acknowledging that the neighbors simply do not like the project and do not accept the opinions of either the staff or the applicant's experts on issues of drainage and grading. On that point, we must respectfully disagree. We believe that the project exceeds the requirements of the City, represents no increase in development beyond what would be permitted without the lot line adjustment, and offers significant benefits to the downhill property owners. Details of our position are outlined in the attached letters to the Planning Commission (dated October 6, 2008, March 4, 2009, and July 24, 2009) and summarized below.

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The Application

Fundamentally, this is a simple request: by reorienting the lot line between the two parcels, Ms. Howard will be creating an upper parcel of 2.47 acres and a lower parcel of 3.10 acres. Because of the slope of the property, the slope density provisions apply, requiring a minimum lot size of 50,000 square feet per lot (slightly larger than one acre). Clearly, both parcels exceed the minimum size requirements.

The second element of the application is for two performance standard permits, to allow Ms. Howard to construct a second unit on each of the parcels, so that she can complete her goal of creating a compound for her family. Under the Zoning Ordinance, the minimum lot size to support a second unit on these parcels is 100,000 square feet. The upper parcel exceeds that minimum size by more than 7,500 square feet, while the lower parcel contains in excess of 35,000 square feet above the minimum requirement.

In response to concerns expressed at the first Planning Commission hearing in June (including those of the neighbors), Ms. Howard revised her plan to dramatically reduce the size of the second units, with the second home on the upper lot totaling 1,150 square feet, and on the lower lot, 1,250 square feet. The main home on the upper lot, known as the replacement home for Ms. Howard's existing residence, will be slightly larger than 6,000 square feet, while the main home on the lower lot will be 3,700 square feet. With these reductions, building coverage on the upper lot is 8%, with more than 70% of the lot in landscaped or natural open space. Building coverage on the lower lot is even less, at 5%, with 88% of the lot landscaped or left in natural open space. As such, claims of "massive" structures and unacceptable density are simply false.

The only relief being requested is a street frontage modification, which is a technical request at best, as the existing parcels already fail to meet the public street frontage requirement, and therefore nothing will change by the approval or denial of the modification request. Eucalyptus Hill Drive is a private street. These lots were all created with access only on that private street. There is no configuration of the lots which could provide access to a public street.

The Conditions

Despite the limitations imposed by state law on the local agency's ability to condition simple applications such as lot line adjustments (see Government Code Section 66412 as

Mayor Marty Blum and Members
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quoted in my letter of October 6, 2008, attached), Ms. Howard agreed to a number of conditions on her project which benefit the appellants. These include substantial drainage improvements, both onsite and at the intersection of Woodland Drive and Alston Road, which will help alleviate longstanding drainage problems in the area, including on Norman Lane. Additionally, Ms. Howard has agreed that, should her plans for onsite retention of 100 year storm runoff prove insufficient, she will undertake additional drainage improvements along Woodland Drive to prevent any drainage from her project impacting the downhill properties.

While these improvements may be standard on a subdivision, they are rather extraordinary when one considers that the same amount of development could occur on these parcels without the lot line adjustment, and therefore, without any nexus, however remote, to support these conditions. Each of the existing lots, in their present configuration, could support a considerably larger main house as well as a substantially larger second unit without the need for any modifications. While it is true that performance standard permits would be required for the second units, it is inconceivable that costly offsite improvements such as these could be imposed on a single application for a 1,150 square foot second residence or a subsequent, separate application for one of 1,250 square feet were these applications to be submitted separately over time.

Conclusion

While it is clear that the neighbors would like to retain the rural ambiance which exists on Ms. Howard's undeveloped properties, the decision to develop the site rests with Ms. Howard. She has proposed a modest project, one with significant open space and substantial neighborhood improvements; one which is in keeping with both the surrounding properties and the governing ordinances. On average, each home occupies 1.4 acres, well in excess of any property on Woodland Drive or Norman Lane. At 1,150 and 1,250 square feet, two of the four homes are substantially smaller than the homes on the appellants' streets.

In addition, Ms. Howard has incorporated a number of beneficial attributes into her project which will control and appropriately convey drainage from the hillside for the benefit of the downhill neighbors, specifically those on Woodland Drive, Norman Lane, and at the low spot at the corner of Woodland Drive and Alston Road. None of these improvements exist today or will exist without the approval of this lot line adjustment. Furthermore, the appellants' unspecified claims regarding drainage and grading problems lack any detail and are unsupported by any factual information. As such, there is simply

Mayor Marty Blum and Members
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October 28, 2009
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no basis for concluding that the project will create drainage or grading problems, is overbuilt, exceeds the allowable density, or poses a threat to neighboring property owners. Therefore, we respectfully request that the Council uphold the Planning Commission's decision approving this lot line adjustment and deny the appeal. Thank you very much.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen M. Weinheimer".

Kathleen M. Weinheimer

Enclosures

KATHLEEN M. WEINHEIMER

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MAR 04 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

October 6, 2008

Chairman George C. Myers and Members
of the Planning Commission
City of Santa Barbara
Community Development Department
630 Garden Street
Santa Barbara, California 93101

Re: 226 and 232 Eucalyptus Hill Drive

Dear Chairman Myers and Members of the Planning Commission:

I represent Cynthia Howard, owner of the property at 226 and 232 Eucalyptus Hill Drive, APNs 015-050-017 and 015-050-018, in connection with her application for a lot line adjustment, and a modification and performance standard permit for each lot. This matter was heard by the Staff Hearing Officer in September of 2007, who determined that the findings required for approval could not be made. A timely appeal to your Commission was filed on September 20, 2007.

The proposed project involves the reorientation of the lot line between the two parcels, so that the line will run in an east-west direction instead of the current north-south configuration. When the lot line adjustment is completed, the upper parcel will consist of 2.47 acres, with an average slope of 21.3% (hereafter, Parcel 1), and the lower parcel (Parcel 2) will contain 3.10 acres with an average slope of 22.5%. All structures currently existing on the two parcels (a single family residence, greenhouse foundation, and hardscape) would be removed and replaced with two residences on each parcel. Access to both parcels would be from Eucalyptus Hill Drive, a private road, with access to Parcel 2 via an easement across Parcel 1. Modifications for street frontage are required, as are performance standard permits for the second residences on each parcel.

Chairman George C. Myers and Members
of the Planning Commission

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The SHO Hearing

In 2007, the Staff Hearing Officer held two hearings to consider this application, both of which were attended by a number of neighboring property owners. At both the hearings, there was considerable confusion about the application, with most of those speaking in opposition expressing concerns ranging from access via the adjacent streets below the project (Woodland Drive and Norman Lane) to fears that the project would exacerbate existing drainage problems in the area. Notably, virtually all those in opposition to the project were owners of property on the two streets below the site, as the neighbors on Eucalyptus Hill Drive support the project.

At the initial SHO hearing in August of 2007, the hearing officer's concerns focused on the drainage issue. Ms. Weiss asked the applicant to explain the drainage improvements proposed for the project and expressed particular concern about the existing conditions on the streets below the site and the potential for the project to worsen those conditions. At the subsequent hearing in September, Ms. Weiss expressed her objection to the design of the project, stating that she felt it was overbuilt, and that second units were inconsistent with the Hillside Design Standards. In denying the project, Ms. Weiss stated that, in addition to the neighborhood concerns, it was her opinion that "the Conservation Element and the General Plan were not adequately fulfilled regarding development and reduced building footprint, lot line adjustment, adequate access and egress, lot area, and connecting roadways." In short, she was of the opinion that this application was better suited to a four lot subdivision and should be heard by the Planning Commission.

The Appeal

Both the Municipal Code and state law are clear on the issue of lot line adjustments. Section 66412 of the Government Code states in part that:

"A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements."

Chairman George C. Myers and Members
of the Planning Commission

October 6, 2008

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While the hearing officer's denial stated that the Conservation Element and General Plan were "not adequately fulfilled regarding development and reduced building footprint, lot line adjustment, adequate access and egress, lot area, and connecting roadways" no specifics of these inadequacies were cited. Not only are specifics of these alleged inadequacies lacking, the "laundry list" of problems cited by the hearing officer goes well beyond the limited review applicable in the case of lot line adjustments.

The only issue before the decision maker in reviewing the lot line adjustment is whether the resulting lots will conform to the General Plan and the Zoning Ordinance. In this case, the proposed site plan meets the lot area and density requirements of the Zoning Ordinance and General Plan, and although not determinative, the proposed lot coverage is in keeping with the FARs of nearby developments. Similarly, although not within the scope of review for the lot line adjustment application, the new configuration does not include new access points, as access already exists to both lots from Eucalyptus Hill Drive. The proposal also does not increase the impact on adjacent roadways, as two lots already exist and, with approval of a performance standard permit, both existing lots could contain two dwellings. Finally, the proposed sizes and designs of the homes are in keeping with the Hillside Design Standards. Denial of this lot split application will not limit the development potential of the site, but rather only constrain that development to the existing configuration.

The Staff Hearing Officer's initial concerns about drainage have apparently also been satisfied, as no mention of drainage considerations was contained in her final action. Similarly, there was no discussion of the requested modifications for public street frontage. It is our belief that the finding for approval of this modification can be supported, as the modification is necessary to secure an appropriate improvement on Parcel 2, access to which is already nonconforming.

Specific objections to the requested performance standard permits were also lacking, beyond a statement that the development was "too dense" and overbuilt. With almost 1.4 acres per unit, it is difficult to see how this conclusion can be supported, as the project clearly meets the requirements of Municipal Code Section 28.93.030E. Similarly, with two of the four proposed units measuring less than 2000 square feet each, a charge of overbuilding is equally hard to sustain.

Chairman George C. Myers and Members
of the Planning Commission

October 6, 2008

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The Past Year

Since the hearings in 2007, the applicant has spent considerable time and effort in refining the proposal, including substantial work on the drainage issue which was of such concern to the neighbors. The revised proposal was presented at a neighborhood meeting in August of this year, which was attended by 18 members of the neighborhood. Ms. Howard's agent, Brent Daniels, described the drainage improvements, including the retention basins, increased pipe capacity, and improvements planned for the intersection of Woodland Drive and Alston Road. He also responded to several of the ongoing misconceptions about the development, including the rumor that access to the lower lot was through Woodland Drive and that each of the four houses would be sold separately. As has been made clear from the outset, access to the site will remain at the current Eucalyptus Hill Drive entrance, the entire site is intended as a family compound, and runoff to the properties below the site will be reduced once the proposed drainage improvements have been installed. It is our hope that this meeting helped alleviate some of the neighbors' concerns, and eliminate many of the unfounded rumors.

Our Request

As stated above, we believe the requirements of the relevant law have been met, and that the action of the Staff Hearing Officer in denying the application exceeded the scope of review. Therefore, we respectfully request that, in keeping with the provisions of the Zoning Ordinance and state law, the Commission overturn the decision of the Staff Hearing Officer, make the required findings, and approve the requested application for a lot line adjustment, modifications for street frontage, and performance standard permits to allow the application to proceed to design review. Thank you very much.

Sincerely,



Kathleen M. Weinheimer

KATHLEEN M. WEINHEIMER

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March 4, 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

Chairwoman Stella Larson and Members
of the Planning Commission
City of Santa Barbara
Community Development Department
630 Garden Street
Santa Barbara, California 93103

Re: 226 and 232 Eucalyptus Hill Drive

Dear Chairwoman Larson and Members of the Planning Commission:

In October of 2008, I wrote to the Commission concerning my client Cynthia Howard's appeal of a September, 2007 decision of the Staff Hearing Officer (copy attached). At that time, we anticipated a hearing before the Commission in November or December of 2008. My letter outlined my client's position with regard to the project, the reasons why the Staff Hearing Officer's decision was in error, and requested that the Commission overturn the denial and approve the requested lot line adjustment, modifications, and performance standard permits. Since that time, however, we have been presented with a series of additional requests from staff which has delaying the hearing for a number of months. These include:

- a slope stability study,
- additional drainage analysis and refinement of the grading plans,
- additional information on the Preliminary Drainage and Grading Plan, to reflect the recommendations in the drainage analysis,
- proof that the proposed drainage plan meets the City's SWMP guidelines.

While all of this information is undoubtedly useful to some extent, it is well beyond the scope of the City's authority to require such information prior to reviewing an application for a lot line adjustment, and certainly exceeds the scope of review for an appeal. The original application was found complete some years ago when it was heard by the Staff Hearing Officer. Under the Permit Streamlining Act (Government Code Section 65920 *et. seq.*), decisionmakers are precluded from requiring additional documentation once an application is deemed complete. Since the application was, by law, complete when the

Chairwoman Stella Larson and Members
of the Planning Commission

March 4, 2009

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original hearing was held, it cannot "become" incomplete simply by virtue of the fact that the property owner filed an appeal. Moreover, state law clearly limits the extent of the inquiry that can be made in connection with a lot line adjustment application, as the impacts of such an application are by definition limited: the same number of houses could be built without the lot line adjustment as can be constructed after approval of the requested application. During at least one consultation between staff and the applicant's agent, there was discussion of the existing problems created by storm water down Woodland Road to Alston Road. Not only is this inquiry well beyond the perimeters of Section 66412 of the Government Code (defining the local agency's review of lot line adjustments), it exceeds what would be acceptable were this an application for a subdivision. There is simply no nexus between the reconfiguration of the property lines between my client's two lots and the longstanding drainage problems on Woodland Drive. Ms. Howard is neither responsible for, nor can she be required to pay to correct those existing problems.

With those objections, we have prepared and submit herewith the following:

Two (2) copies of the Slope Stability at Proposed Retention/Detention Basin Report, prepared by Earth Systems, dated January 16, 2009;

Two (2) copies of the Infiltration at Proposed Retention/Detention Basin Report, prepared by Earth Systems, dated February 13, 2009;

Two (2) copies of an Addendum Letter, prepared by Triad/Holmes Associates, Civil Engineers, dated February 23, 2009;

Ten (10) copies of the Architectural Plan Set for the Four Proposed Houses (resubmitted under separate cover), and

Ten (10) copies of the revised Lot Line Adjustment, Preliminary Grading and Drainage Plan, dated February 2009.

Chairwoman Stella Larson and Members
of the Planning Commission
March 4, 2009
Page three

As outlined in my letter of October 6, 2008, we respectfully request that the Commission review the attached material, find the project acceptable as proposed, and take the steps necessary to allow this project to proceed. Thank you very much.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Kathleen M. Weinheimer', written in black ink.

Kathleen M. Weinheimer

Enclosures

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July 24, 2009

Chairwoman Stella Larson and Members
of the Planning Commission
City of Santa Barbara
630 Garden Street
Santa Barbara, California 93101

Re: Howard Appeal

Dear Chairwoman Larson and Members of the Commission:

At the last hearing on this project, the majority of the Commission expressed concerns about the amount of development proposed on the more than five and one half acre site, raising issues related to size, bulk and scale, parking and density of development. Since then, the appellant has made a number of revisions to the proposal to address these issues, as well as to reflect changes in the Zoning Ordinance which have been adopted since this project began. These include:

1. The main house on the lower lot has been redesigned to reduce the size, bulk and scale of the proposed dwelling by 227 square feet, for a total square footage of 3,700 square feet. Pursuant to SBMC Section 28.15.083, the calculation of the garage size has also been reduced by 373 square feet, as the garage is built into the hillside and therefore does not qualify as square footage. This house is located in an area of the property where most of the slope is well under 10 percent.

2. The second home on the lower lot has also been revised to reduce the size, bulk, and scale consistent with the Hillside Design Guidelines. In addition to a 200 square foot reduction in calculation of the size of the garage (per Section 28.15.083), the overall size of the dwelling has been reduced by more than 1/3 to 1,250 square feet (from 1,786 square feet).

3. The size of detached two car garage and storage room on the upper lot has been recalculated in accordance with Section 28.15.083, which resulted in a reduction of 320 square feet, due to the fact that the garage is largely built into the hillside and is not visible from surrounding properties.

EXHIBIT B

Chairwoman Stella Larson and Members
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4. The second home on the upper lot has also been reduced in size, both through application of the new ordinance provisions and reductions in overall square footage. Section 28.15.083 resulted in a 160 square foot reduction in the understory garage of this unit, while the home itself was reduced by 367 square feet, for a total square footage of 1,150 square feet (a 41 % reduction from the prior submittal).

With these changes, there is a combined reduction of 2,183 square feet in the project. Building coverage on the upper lot is 8%, on the lower lot 5%. More than 70% of the upper lot and 88% percent of the lower lot will be landscaped or open space. In addition, while the main, or replacement house, on the upper lot remains as previously presented, it is important to note that most of this structure is in an area of the property which is well under 10 percent slope. With these kinds of reductions, there is simply no basis for a conclusion that this more than 5.5 acre site is overbuilt.

At the last hearing, time constraints prevented me from providing several additional supporting factors for the Commission's consideration in adopting the required findings for approval. These include the following:

A. Lot Line Adjustment Findings: The staff report states that the Lot Line Adjustment is appropriate for the area and is consistent with the City's General Plan and Building and Zoning Ordinances, in that the readjusted lots at 2.47 acres and 3.10 acres would far exceed the minimum size required under the Zoning Ordinance (50,000 square feet per lot, adjusted for slope density). The staff report also notes that the readjusted lots would complement each other in both the flow and functionality of landscape and architectural design. I would also suggest that a review of the surrounding neighborhood shows that, while there are other linear parcels along this private roadway, most of the properties in the vicinity are configured in a manner similar to what we are proposing. The east-west alignment allows for better use of the site, increased distance between structures, and requires fewer modifications of setbacks and the like. Rather than forming an exception to the surrounding neighborhood, this proposal brings the development in line with many of the properties in the vicinity.

B. Street Frontage Modification Finding: As Commission Thompson said during the last hearing, this modification is a technical requirement only, as all the parcels on Eucalyptus Hill Drive front on a private road, a nonconformity which will continue regardless of the action on this application. No matter how the lots are configured, public street frontage could never be obtained. More importantly, however, is the fact that the lot line adjustment request will allow for a preferred use of the properties, by avoiding the clustering of development adjacent to the street. Both before and after the lot line adjustment, one of the two lots will include 100 feet of frontage, albeit on a private street.

In addition to staff's point about the appropriateness of the improvement, I would also suggest that this modification is supportable because it is necessary to promote uniformity of development, again not necessarily with the homes on Eucalyptus Hill Drive, but with the larger Eucalyptus Hill neighborhood.

C. Performance Standard Permits: The staff report states that the lot areas of the two parcels have the minimum lot area required in the A-2 zone and the additional dwelling units comply with all other applicable ordinance requirements. In addition, however, it is important to mention that not only do the two lots meet the minimum size requirements under the A-2 zone, they both provide the minimum required for the requested second unit. Parcel 1 will include 2.47 acres, which is equivalent to 107,593 square feet, or 7,593 square feet more than required at a ratio of 50,000 square feet per unit. Parcel 2 is even larger at 3.10 acres or 135,036 square feet, with more than 35,000 square feet above that required for two units. On average, this equates to 1.4 acres per unit. Both of the Performance Standard Permit requirements, that the minimum site area per dwelling unit must be met and the location of such additional dwellings must comply with all other applicable ordinance provisions, have been met in this case. No other discretionary evaluation is included or appropriate. As such, there is no basis for a conclusion that the site would be overdeveloped, particularly given the reduced sizes of the proposed homes.

Finally, I would like to clarify some of the misstatements made by members of the public at the last hearing. While some of the comments evidenced simple misunderstandings of the governing law (for example, questions about "second units" or "granny units" which implied that the limited restrictions of the conditional use permit process must be met rather than an understanding that these were full-sized second dwellings which meet the Performance Standard Permit criteria), others were simply factually incorrect. These include:

- The continued claims that drainage on Woodland Drive will be adversely impacted by the project. Not only will the project contain the average storm flows onsite, the required installations will improve the existing situation on Woodland Drive, one which has existed for many years and is not the obligation of this owner to repair.
- Assertions that "lives and property will be endangered" through the construction of three additional houses on more than five and one half acres. There is absolutely no justification for that kind of unfounded statement in a public setting, and that claim cannot go unchallenged.

- Concern that there was too much parking on the site. There are, in fact 11 parking spaces on the property, all in garages. Eight of these garage spaces are proposed to be built into the hillside, reducing their apparent size, bulk and scale in accordance with the Hillside Design Guidelines. The "turnaround" area near the garage on the upper lot is included based on a requirement of the Fire Department, not as additional open parking.

The ability to express an opinion about a project is fundamental in our society and should be respected. However, respect for the other party's position is equally important. For a complaint to have any merit, it must be based on facts. Unfortunately, some of the letters and statements made by those opposed to this project were based on nothing more than exaggeration, misstatements, and bald-faced lies. For example, one owner claimed that the project involved the construction of "five huge structures." The reality is that one home was originally proposed at less than 1,600 square feet and has now been reduced to 1,150 square feet, while another began at less than 1,800 square feet and is now 1,250 square feet. Three of these four (not five) allegedly "huge" structures are similar in size or smaller than most of the existing homes in the surrounding neighborhoods, and at a ratio of 1.4 acres per residence, are located on lots larger than those on Woodland Drive or Norman Lane. Another neighbor objected to the entire hearing, arguing that since the SHO had made her decision, we should be precluded from an appeal. Not only did the concept of due process apparently escape this neighbor, he also alleged that we were somehow responsible for the change in staff planners and the delay in getting to the Planning Commission. A simple review of the record or a conversation with staff would have corrected this misimpression. We believe we have addressed each of the *legitimate* concerns raised at the last hearing, as reflected by the revisions described above, and ask that you disregard these false and baseless claims by the neighbors.

In closing, I would simply reiterate that the primary discretionary component of this application is for a lot line adjustment, not for an increase in density or intensity of use beyond what could already be built on the site, but merely for approval of a more compatible configuration of the property. By reducing the project by 2,183 square feet (essentially the size of a single family residence), we believe we have been responsive to the Commission's concerns and have presented a revised project which is in keeping with the neighborhood, respectful of the surroundings, and beneficial to the community through the installation of the offsite improvements. With that, we would request that you approve the changes we have proposed, uphold our appeal, and adopt the

Chairwoman Stella Larson and Members
of the Planning Commission
July 24, 2009
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Mitigated Negative Declaration, findings, and conditions as outlined by staff at the last hearing. Thank you very much.

Sincerely,



Kathleen M. Weinheimer

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CITY OF SANTA BARBARA
PLANNING DIVISION