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October 18, 2007

Woodside Town Council
Town of Woodside
2955 Woodside Rd.
Woodside, CA. 94062

**Re: *Appeal with regard to 205 Eleanor Dr., Woodside, CA
Building permit application # 2005-531***

Dear Mayor and Council Members:

On behalf of the property owners, we appreciate the serious consideration which you are giving this issue which is important to my clients and their neighbors.

Response to the Staff Report.

In response to our appeal, the Planning Director is now taking the position that one cannot "change a garage to finished space." That is an amazing position. Many people "finish" their garages. Nowhere is a garage defined as unfinished space. A garage is a space in a structure which is, according to your Code, "designed" for the storage of vehicles. In Woodside, many people have nice floors, finished walls, curtains on their windows, bathrooms etc. in their garages. It is irrelevant how it is finished or how it is used.

The point we have been making is that nowhere in the Woodside Code or permitting process is one building characterized as *multiple* permitted uses. If the building is an ALQ, it can have a garage or a room used as a cabana, or a theater or a basement as part of that ALQ, at the property owner's discretion as long as the total square footage is no greater than 1500 square feet and it has a kitchen and bedroom. The cabana, theater, basement, garage etc are merely auxiliary parts of the ALQ.

We have been searching through documents and listening to previous Council meeting tapes to see if anywhere the kind of distinction which the Planning Director is making exists. On the contrary, we find that the garage is part of the ALQ and it is up

to the property owner if they want to use some of the space for a garage, a cabana, or a dining room. A few interesting quotes from the 1991 discussions of the square foot allowance for a garage attached to a main house will illustrate the point that there was no intention to limit the use of the garage space.

Town Council meeting of 6/19/91 Item 16:

Resident: "Taking the long term view and say raising the question is there a safeguardwhat happens when property owner # 1 says well I want to add a garage and then property owner # 2 says gee that's a great space I'm going to make it into a recreation room. Property owner #3 comes in and says I don't have an attached garage and it says here in your ordinance that an attached garage doesn't count and now I want my attached garage. Does this cover...does this take that into account? How many times can you come in and not count your attached garage when there are intervening subsequent conversions?"

Councilmember (we believe it was Mayor Vartanian): "Well that's partly a FAR problem and I don't know what you would do about interior use. I think I made up my mind a long time ago with the absence of any 'thought police' you just have to forget about it.

Town Council meeting 7/17/1991 Item 18:

Councilmember Barbara Seitle: "now we in Woodside determined that we didn't want a single building to have more than a certain amount of square footage because of the bulk of the building and so we are looking at the building and so how the person who lives in it, uses it is his affair.

Additional Information

1. There are two distinct types of non-conformity. A use can become non-conforming when the zoning code is changed. In that case, the structure can be changed to any use allowed at the time of the remodel. On the other hand, a structure becomes non-conforming when the rules change with regard to the massing, height and set back. Such a structure should be allowed to be remodeled to be used in any way that it was allowed to be used under its permit, as long as that use did not become non-conforming, but no changes to the structure which increase the non-conformity are permitted. In this case, an ALQ includes living quarters and such auxiliary uses as cabanas and garages, if the property owner so chooses to have them. No distinction is made between such auxiliary uses and the living quarter itself. The property owner can choose to have or not have a cabana or garage as part of the structure.

At the September 11, 2007 hearing, we were asked for examples to illustrate what is and is not a change in use.

- (i) A structure permitted as a barn may have living quarters. If the owner wanted to remove the living quarters, it would not be a change in use. However, if the owner wanted to eliminate the barn, for which the permit was granted, it would be a change in use.
- (ii) Likewise a pool house is allowed as part of an ALQ. The owner could eliminate the pool house by removing the door to the pool and replacing it with a living room, without it being a change in use. On the other hand, eliminating the kitchen and bedroom would change the use since it would no longer be a living quarter.
- (iii) An accessory structure which is used as a gym or exercise structure can be changed to an artist studio or a boat house without it being a change in use since any of these uses is allowed in an accessory structure. However, adding a full kitchen would be a change in use as it then qualifies as living quarters.
- (iv) A property owner of an ALQ can remodel the first floor to add garage doors for storage of a car or a boat. The permit would be issued for a remodel of the ALQ.

2. At one time, there was a pool house on this property between the guest house and the pool. It was demolished and no longer exists. Interestingly, based on the size of the lot and floor area, it would be permissible to build a new pool house which would cause more site disruption and probably more neighborhood visibility and impact, than the current proposal.

3. We are advised by Greg Miller who, as a former consultant, did such calculations for the Town, that the structure is a total of 1312.53 square feet. Under the Code today, a total of 1500 square feet is allowed. Thus, an ALQ can have an attached garage or not, as long as the total including any such garage is not more than 1500 square feet.

Key Points

- We are not really talking about a "*change in use*". Whatever you decide at this hearing, cars will not be parked in the space. We are really talking about the ability to remove the garage style doors on a permitted ALQ, not its use. With or without garage doors, the use continues to be an ALQ.

- Nowhere in your Code does it specify how a "garage," whether attached or detached, must be used. Many attached garages are finished and used for a variety of purposes such as exercise rooms, art studios, family rooms and the like.

- The original building permit was issued for a "caretakers quarters" even though the drawings submitted with the application showed that the caretakers unit included a garage. See the attached permit. While the site plan for the remodeling by the Flesners in June of 1999 describes the structure as a "guest cottage over 2 car garage," the building permit #1999-187 is for "Remodel Guest house, exterior stairs and new deck railing". See the attached permit. The inspection records show that electric work in the garage area of the guest house was also done. No separate permit was taken out for that work as it was considered to be part of the guest house. In fact, permit #1999-187 could not be "finalized" until the electric work in the garage was redone. Despite the fact that the applications both indicated that the first floor would be a garage, the building permits for this structure were issued for an ALQ, not an ALQ with garage. It is significant that the Planning Director now agrees, it does not matter how the applicant labels the plans. Our point is that the permit approved the entire structure as an ALQ, not an ALQ with a garage.

- At the time this structure was built and even today there is no distinction between processing an application for an ALQ with or without a garage.

- Staff has not identified any circumstance under which the Town treats an attached garage as separate and apart from the ALQ.

- The size of the ALQ at issue includes the garage space. Town Code section 153.026 (B)(1)(g) was amended in April of 2005 to specifically include an attached garage in the calculation of the floor area of an ALQ.

Questions you should ask your Planning Director

- Can staff produce any official document which separated out the attached garage from the ALQ for any purpose?

- During the hearing on the ALQ ordinance in February 2005, when asked if a pool room with a wet bar would qualify as an ALQ, Hope Sullivan responded that "a pool cabana with a bedroom and kitchen would count as a guest house." Thus, the cabana is a part of the ALQ, not a separate use. We agree with the Planning Director that if the structure has a bedroom and kitchen it qualifies as an ALQ and if it does not have a bedroom and kitchen it is not an ALQ but is an accessory structure or a garage. If a cabana is an auxiliary use to an ALQ, why is not a garage treated in the same way?

- Since this structure was permitted as an ALQ, why can this owner not remodel the first floor to facilitate its use with his existing pool?
- Why was a new pool house permitted to replace a legal nonconforming shed, located in the setback, at 239 Miramontes Road? The rationale in the record indicates that this was allowed because the pool house was constructed in the shed's footprint? If the Jimerson remodel which does not change the foot print, massing or height is a change of use for the Jimersons, why was not the change at 239 Miramontes Road a change in use?
- Why was the property owner of 128 Alta Vista Road permitted to turn an attic into useable living space despite the fact that the house was non-conforming due to being set back only three feet from the property line? If the elimination of the garage is a change of use for the Jimersons, why wasn't the change from an attic to living space a change in use?
- If the elimination of the garage is a change of use for the Jimersons, why was a non-conforming house at 35 Corto Lane with an attached garage permitted to eliminate part of the garage in conjunction with building an addition to the living space?

In response to my previous letter, it seems that, by design or mistake, the attached garage at 115 Laning Drive was changed to an art studio and the attached garage at 2190 Ward Way was changed to a family room although both are non-conforming properties. The property owner of 41 Corto Lane was allowed to remodel a garage which was attached to a non-conforming building by the device of a setback exception which did not change the setback but only its characterization. There is nothing in the record to show that the staff at the time, considered the remodel permit for 25 Corto Lane to have been issued by mistake. We found no single example of any denial of the removal of garage doors, not to speak of denial of a permit to "finish space" of any attached garage.

We made a public records request on October 3, 2007 for copies of records which would show any similar situation in which a building permit for a remodel that added or deleted an attached garage was granted or denied. We also specifically asked about a number of addresses where there may or may not be analogous situations. (60 Corto Lane; 410 Whiskey Hill Road; 3004 Portola Road;. 3 Meadow Road;. 270 Whiskey Hill Road; 225 Whiskey Hill Road; 2087 Portola Road; 801 La Honda Road, 1909 Portola Road; 1439 Portola Road; .11 Noel Road ; 131 Bardet Road; 1545 Portola Road, and 8 Old La Honda Road.) As of the signing of this letter, we have not yet received those records.

Conclusion

The relevant facts here are not in dispute. The ALQ at issue is a legal non-conforming structure. There is more than adequate on-site parking without parking in the ALQ. The property owner wishes to improve the appearance of the structure and increase its convenience for use in conjunction with the pool. The appearance of the property will be greatly improved if the garage door is eliminated. If some future owner ever wants to park cars or a boat in that space, they can be issued a building permit for an alteration that enables the parking.

The practices of the Town should be consistent and these practices would be considered by a court in interpreting the Code. This is particularly so when nowhere in the zoning code or any other document of the Town does it state or even imply that the attached garage is a separate use.

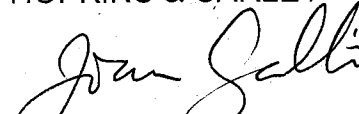
We are asking that you interpret the Code fairly and consistently. In sum, there is no distinction between an attached garage and the rest of the ALQ anywhere in the Code or the documentation maintained by the Town for any number of purposes. There is no regulation of the use of garage space. The determination to treat this garage as an independent use is contrary to precedent.

Remodels of legal non-conforming structures are allowed when they do not impact massing or change in use. Based on the above, we are asking you to find that a garage which is part of an Accessory Living Unit is not a separate independent use and, therefore, this building permit would not result in a change of use.

Thank you for your consideration.

Sincerely,

HOPKINS & CARLEY



A Law Corporation
Joan R. Gallo

JRG/BM

cc: Hope Sullivan
J Jimerson



TOWN OF WOODSIDE

2855 Woodside Road
Woodside, CA 94082
650-851-8798

Building Department Hours
Sun - 10 am and 1pm - 3pm

LICENSING CONTRACTORS DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 26100) of Division 9 of the Business and Professions Code and my license is in full force and effect.

License No. 101401 **CITY OF WOODSIDE**
 Expiration Date 12/30/91 PK

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Commission Chapter 9 for the following reasons: (see Sec. 26101, Business and Professions Code) (any violation of this law by my applicant for a permit subjects the applicant to a civil penalty of not more than \$5000)

- I am owner of the property or my employees and wages are their sole compensation, will do the work and the materials purchased or placed on site (Per Sec. 26101, Business and Professions Code)
- If I am not the owner, I am exclusively representing the licensed contractor to construct the project (Per Sec. 26101, Business and Professions Code)
- I am exempt under Sec. _____ of the Business and Professions Code for the reasons:

Contractor: Mark G. Doherty Date: 5/4/89

WORKERS' COMPENSATION DECLARATION

(Failure to secure workers' compensation coverage is a criminal offense and shall subject an employer to related penalties and penalties up to \$100,000 in addition to the cost of compensation, damages provided herein are not intended to be punitive, except as otherwise stated.)

I hereby affirm under penalty of perjury that I am aware by provisions of Sec. 4700 of the Labor Code as follows:

_____ and will maintain a certificate of coverage of such nature for workers' compensation for the duration of the work for which this permit is issued.

_____ and will reimburse workers' compensation insurance for the performance of the work for which this permit is issued.

Contract: _____ Policy No. _____

_____ shall not, in the performance of work for which this permit is issued, employ any person in any manner as an employee subject to the workers' compensation laws of California and agree that, if such person is entitled to the provisions of Sec. 4700 of the Labor Code, I shall forthwith comply with those provisions.

CONTRACTOR'S BUSINESS ADDRESS

I hereby affirm under penalty of perjury that there is a construction lending agency for lenders loans.

Date Applied for: 5/6/89 Record by: JK PERMIT NO. 99-187

Project Address: 215 ELENOR DR Altos

APN: 066-225-020 Commercial Residential
 Type(s) of Permit: Building Electrical Plumbing Mechanical

Description of Work: INTERIOR RENOVATION, EXTERIOR WORK
Remodel Guest House 1st floor, Stair case, New Deck Railing

Owner: John Elanick Phone: 510-440-1400

Address: 215 ELENOR DR

Coordinator: John Elanick Phone: 510-440-1400

Address: 1715 WOODSIDE BLVD, WOODSIDE, CA 94082

Architect/Designer: ALAN TULLI Phone: 310-3052 Fax: 605-6

Address: 1715 WOODSIDE BLVD

Engineer: ALAN TULLI Phone: _____ Fax: _____

Valuation (base + materials without): 12,500 12,500 12,500 12,500
 Net Floor Area: EXISTING

FOR STAFF USE ONLY

Date Paid	Fees	Fees Applied By	Date	Fees Collected By		Date
				By	Date	
	<u>452.50</u>	Planning	<u>5/1/89</u>			
	<u>210.00</u>	Geotech				
	<u>113.00</u>	Engineer				
	<u>200.00</u>	Fire Dept.				
	<u>66.50</u>	Health Dept.				

Flesner Remodel

