

January 31, 2021

La Jolla Community Planning Association

TRANSMITTED VIA E-MAIL: info@LaJollaCPA.org, dkane002@san.rr.com

Re: TEEL RESIDENCE Garage Accessory Structure and Companion Unit
416 Nautilus Street
Combination Building Permit - Approval No. 2216948, Project No. 621791
Coastal Development Permit, Process Two - Project No. 669815

Ladies and Gentlemen of the La Jolla Community Planning Association,

The Development Services Department asked the LJCPA and DPR Committee to consider:

LA JOLLA (Process 2) Coastal Development Permit to convert an existing 263 sf room over a 449 sf detached garage into a Companion Unit at 416 Nautilus St. The project includes adding 104 sf for a Companion Unit totaling 367 sf. The 0.072-acre site contains 2 detached residences on a single lot at 414 and 416 Nautilus Street. The site is in the RM-1-1 Zone, the Coastal (Non-App.-2) Overlay Zone, the Geo Hazard Zone 53, and the Transit Priority area within the La Jolla CPA, and CD 1.

I pulled the TEEL RESIDENCE project from last month's Consent Agenda in order for you to consider a number of troubling significant issues about the project and the *accessory building* on which it sits:

- I. The permitted drawings for the garage *accessory structure* show 72% of the exterior walls being demolished, which requires Coastal Development Permit (CDP) review and approval of the new accessory garage structure prior to issuance of a Building Permit. CDP review and approval never occurred.
- II. The so-called 'existing' but not yet built 263 sf room is over a so-called 'existing' but not yet built detached garage *accessory structure* **does not comply** with the San Diego Municipal Code but nevertheless was approved for construction by the Development Services Department.
- III. The requested Companion Unit will be in addition to the two existing dwelling units on the property where the Land Development Code only allows one dwelling unit plus a Companion Unit on the small lot.

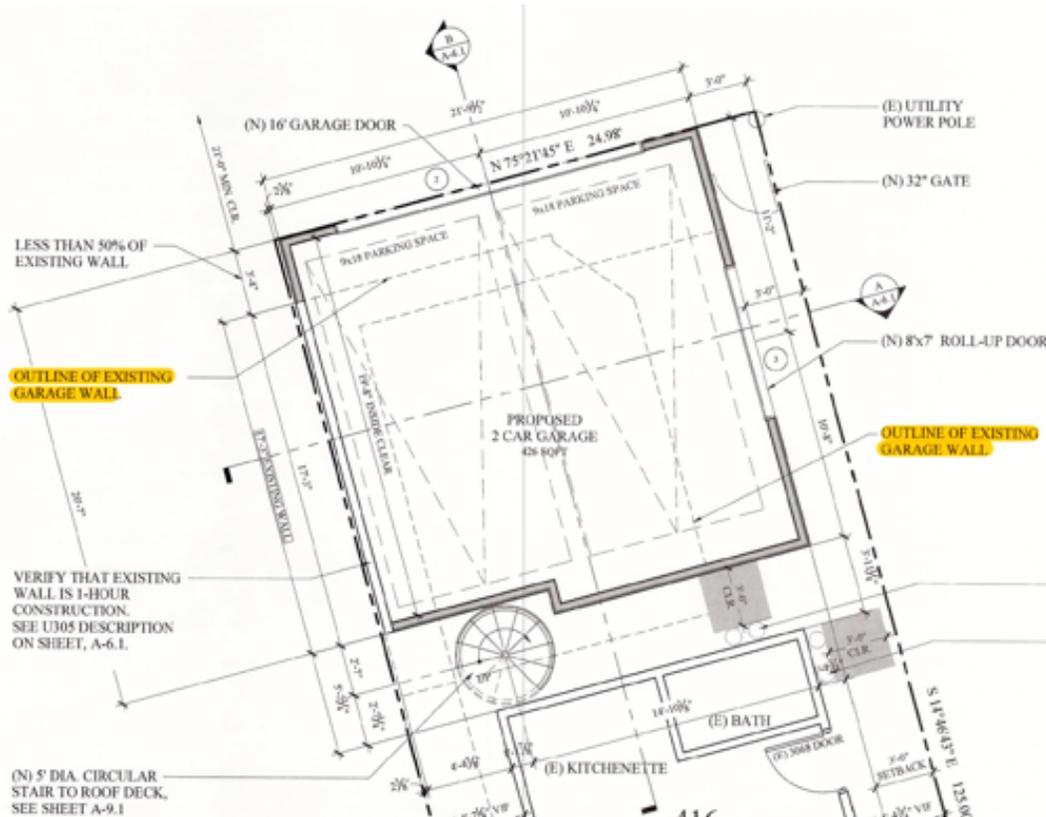
**I. COMBINATION BUILDING PERMIT - Approval No. 2216948, Project No. 621791
CURRENT GARAGE CONSTRUCTION NOT IN ACCORDANCE WITH THE MUNICIPAL CODE**

On July 9, 2020 the DSD erroneously issued a Combination Building Permit (Approval #2216948) for a garage *accessory structure* and Scope of Work described as:

'Remodel of an existing garage at an existing single family residence. Work includes overhead garage door, a swing door, a spiral staircase to a new roof deck, new outdoor laundry room w/ roll up door, new patio cover; habitable 2nd floor addition above garage with roof deck.'

The scope of work states: 'Remodel of an existing garage ...'; where in fact there is no existing garage because the previously existing garage has been demolished. In fact an entirely new and larger two car garage is being constructed where the once smaller one car garage previously stood.

The following Floor Plan drawing from the DSD approved Building Permit Drawings (enclosed) show 72% of the exterior walls, depicted by short dashed lines, of the previous garage being as being demolished. The near total demolition of the previous garage structure required Coastal Development Permit (CDP) review and approval prior to issuance of a Building Permit to remodel the garage. This fact was either ignored or completely missed by DSD staff when they approved a Building Permit for the new garage.



SDMC Sec. 126.0704(a)(5) exempts development from having to obtain a CDP if not more than 50 percent of the exterior walls of the existing structure are demolished:

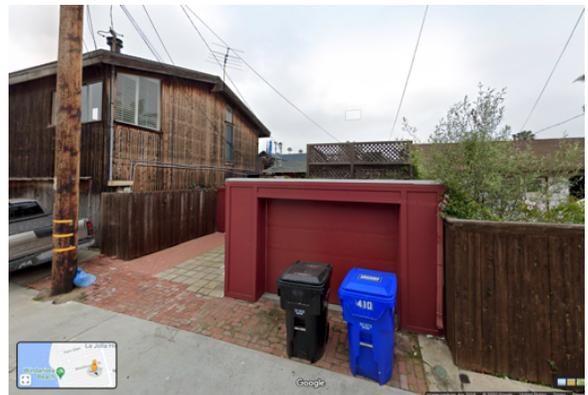
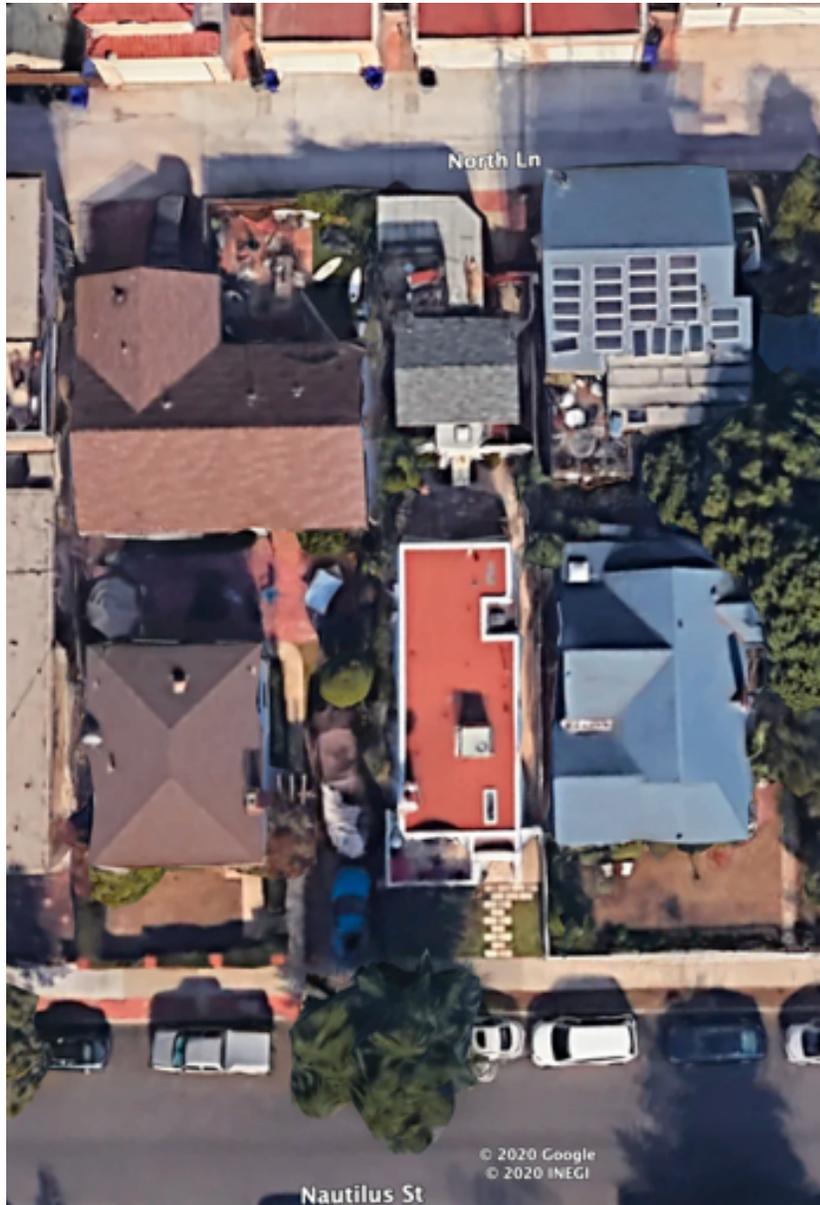
§126.0704 Exemptions from a Coastal Development Permit

The following *coastal development* is exempt from the requirement to obtain a Coastal Development Permit:

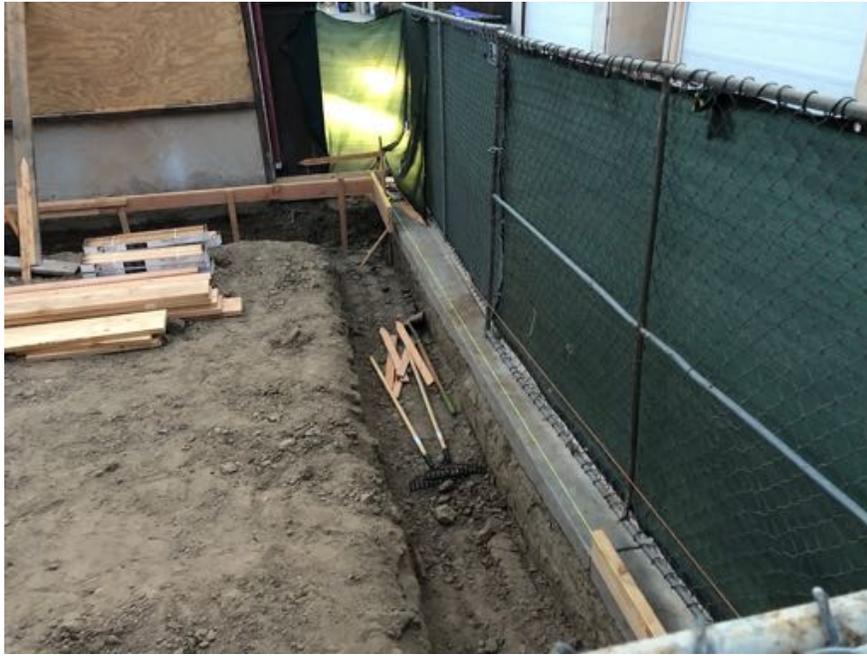
- (a) Improvements to existing structures are exempt, except if the improvements involve any of the following:
 - (5) The demolition or removal of 50 percent or more of the exterior walls of the existing structure.

But contrary to **SDMC Sec. 126.0704(a)(5)** and for exemption from CDP review and permitting, 72 percent (three of the four) of the previous garage exterior walls were completely demolished as can be seen in the photographs on the following pages.

For purposes of orientation the prior garage fronted on the south side of an east-west alley (North Lane) behind 416 Nautilus Street as depicted in the 25 foot wide lot in the center of the following aerial photo. The garage door was on the north exterior wall of the previously existing garage.



This photo is looking westward and shows the temporary construction fence along the northern property line adjacent the alley. The entire north exterior wall of the garage has been demolished. The trench is excavation for the new concrete footings for the new, yet to be constructed, north exterior garage wall with an overhead door.



The third photo is looking in a southeasterly direction towards what was the east exterior wall of the previous garage which was completely demolished. The wood form boards are for the new foundation for the new east wall.



The photo is looking south towards the eastern portion of what was the south exterior wall of the previous garage which was completely demolished. The wood form boards are for the new foundation for the new south wall.



This next photo is looking due south towards the western end of what is left of the south exterior wall of the previous garage which is almost completely demolished.



In the foreground on the right side of the above photo is what little remains of the previous west wall of the previous garage. Plywood was applied to what was the exterior face of what little wood wall framing remains. The high cripple wall studs and the top plate and bottom plates that might have previously existed are now removed.

In accordance with DSD interpretations of what portions of a wall frame must remain in order for a wall to be considered 'remaining' for CDP exemption purposes, the prior west exterior wall has effectively been demolished.

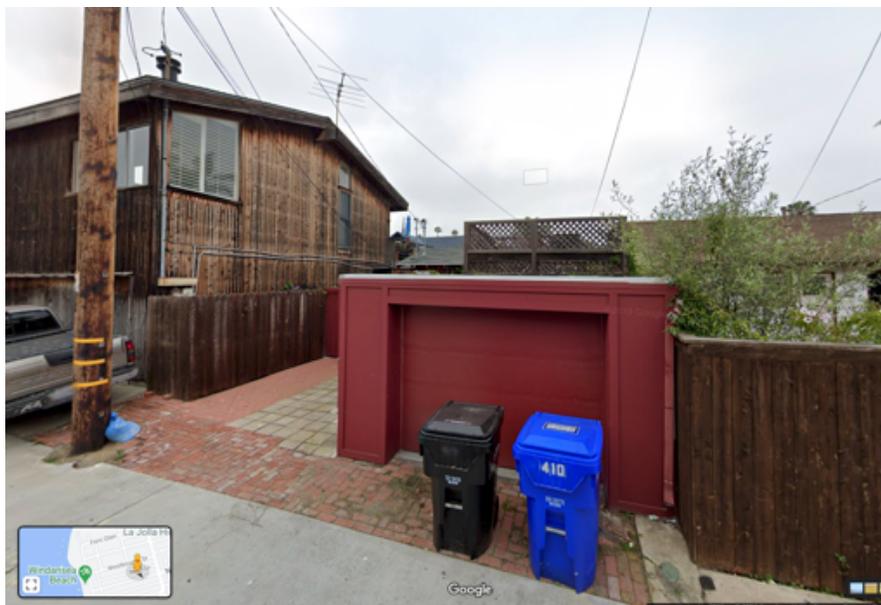
The previously existing North, East and South walls, more than 72 percent of the previous garage walls, have been completely demolished, with only 28 percent of the prior exterior walls remaining. The demolition far exceeded that allowed for CDP exemption.

Therefore, in accordance with **SDMC Sec. 126.0704(a)(5)**, the CDP exemption should be rescinded, all construction activity should be stopped, and the applicant should apply for a Coastal Development Permit for the garage accessory structure before any more work is allowed to continue.

(Note: In the Coastal Zone, *demolition* is considered to be *coastal development* and subject to CDP review. Building construction, when more than 50% of the existing exterior walls are demolished, is *coastal development* subject to CDP review. When the DSD was alerted to the fact that the DSD had issued a Building Permit for an *accessory structure* without the prerequisite CDP, instead of requiring an after-the-fact CDP review of the new accessory structure, the DSD only added demolition of the previously demolished garage to the current CDP application for a companion unit. (Note: The DSD **has yet** to require a CDP review for the new *accessory structure* in accordance with **SDMC Sec. 126.0704(a)(5)**, as evidenced by the DSD's updated project description.

The screenshot shows the OpenDSD website interface. At the top, there are navigation links for "Approval Search", "Invoice Search", and "Maps". Below this is a header for "Project 669815 - Digital - Teel Residence CDP". Underneath, there is a "Project Information" section with a "Scope" entry. The scope text reads: "LA JOLLA (Process 2) Coastal Development Permit to demo an existing garage (after fact) and convert the second-story space over the 449 sf detached garage into a 367 sf Companion Unit at 416 Nautilus St. The 0.072-acre site contains two detached residences on a single lot at 414 and 416 Nautilus Street. The site is in the RM-1-1 Zone, the Coastal (Non-App.-2) Overlay Zone, the Geo Hazard Zone 53, and the Transit Priority area within the La Jolla CPA, and CD 1."

When the DPR Committee last reviewed the project on November 17, 2020 the Committee was aware that *demolition* of the previous garage had been added to the scope of the CDP for a companion unit. The previous garage structure was likely more than 80 years of age and yet no committee member considered the possible historical nature of the single wall construction of the potentially historic garage. An historical assessment of the previous garage, required for all structures more than 45 years of age, was not even asked about by the DPR Committee.



II. ACCESSORY GARAGE STRUCTURE ENCROACHES INTO BOTH THE SIDE AND REAR YARDS

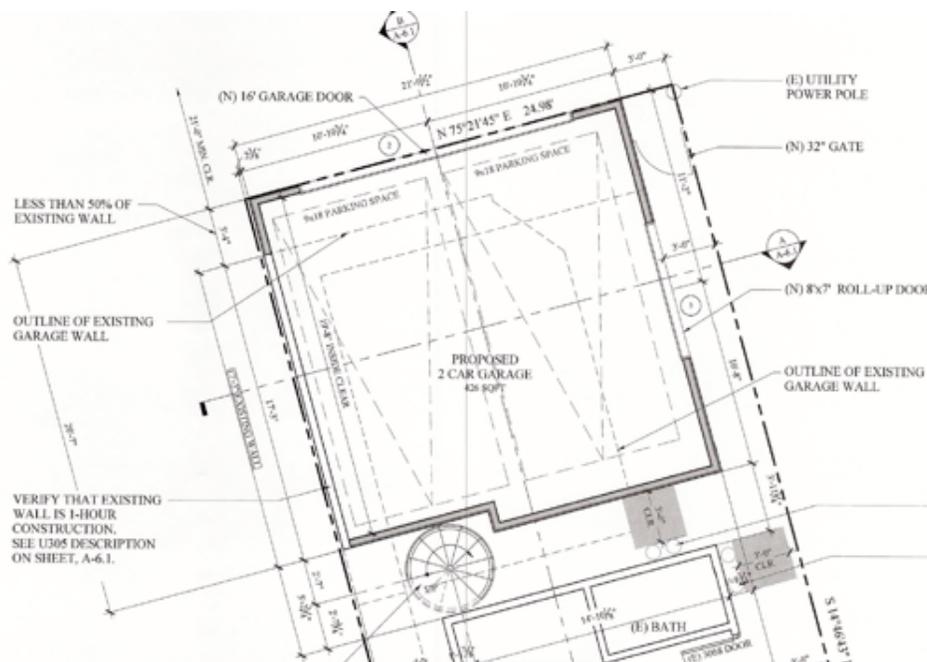
SDMC Sec. 131.0461(a)(12) states: Garages or non-habitable *accessory buildings* may encroach within the interior side or rear yard as follows:

- (12) Garages or non-habitable *accessory buildings* may encroach into a required side or rear yard as follows:

Words have meaning, and SDMC words have legal meaning. *Black's Law Dictionary* defines 'or' as: "A disjunctive particle used to express an alternative or to give choice of one among two or more things." The code section above says 'or' and means 'or'. For comparison **SDMC Sec. 141.0302(a)(6)** below says a *companion unit* may encroach within the interior side and rear yard setbacks up to the property line as follows:

- (6) A *companion unit* may encroach within the interior side and rear yard setbacks up to the *property line* subject to the following:

But contrary to **SDMC Sec. 131.0461(a)(12)** the new garage *accessory building* encroaches into both the interior side yard and rear yard. This fact was either ignored or completely missed by DSD staff when they approved a Building Permit for the new garage *accessory building*.



Therefore, to comply with **SDMC Section 131.0461(a)(12)**, all construction activity should be stopped, and the applicant should submit to the DSD revised drawings for a revised garage design that only encroaches into either the interior side or rear yard. To not correct the encroachments into both the side and rear yards will set a terrible legal precedent for future projects in La Jolla and throughout the City.

(Note: Had the garage *structure* been subject to CDP review as the SDMC requires, the proposed encroachment into both the side and rear yards would have been caught by the DPR Committee, the DPR committee would have alerted the DSD, and the DSD would have directed the applicant to revise the design accordingly before a CDP and Building Permit were issued.)

III. PROPOSED COMPANION UNIT EXCEEDS EXCEEDS THE MAXIMUM NUMBER OF DWELLING UNITS ALLOWED

When the project site was developed in the 1930s the property was zoned R-2. In the 1930s two dwelling units were permitted on an R-2 property without regard to the size of the *premises*. Sometime before 1991 the area was rezoned to RM-1-1 which established a minimum lot area of 6,000 s.f. and an allowable density of one dwelling unit per 3,000 s.f. of lot area. The RM-1-1 zone limiting one dwelling unit per 3,000 s.f. of lot area has remained in effect since before 1991 and is in affect today.

As best as I can determine the term ‘accessory Companion Unit (w/o a kitchen) was added to the SDMC in 1997, and the Residential Zone regulation below regarding *companion units* (w/ kitchens) was added in 2020. A *companion unit* with a kitchen is a *dwelling unit*.

Added in 2020: **SDMC Sec. 141.0302(a)(2)** states:

- (2) Within a *multiple dwelling unit* zone, a *companion unit* is permitted on any *premises* that is limited to a maximum of two *dwelling units* based on the allowable *density*, existing area of the *premises*, and zone.

Again, SDMC words have meaning. The following section says a ‘... a *companion unit* is permitted on any *premises* ... **based on the allowable density, existing area of the premises, and zone**. The language and terms added to the SDMC in 2020 apply to the SDMC in effect in 2020.

The subject site from Nautilus Street to the alley is 24.98 ft. wide by 125.00 ft. deep for a total premises area of 3,122.5 s.f. According to **SDMC Sec. 131.0431(e)** and **Table 131-04G Development Regulations for RM Zones** the maximum permitted density in the RM-1-1 Zone is one dwelling unit for each 3,000 s.f. of premises area. **Based on the allowable density, existing area of the premises, and zone**, and a *premises* area of 3,122.5 s.f., the maximum permitted density on this premises is only one Dwelling Unit, per Table 131-04G plus one Companion Unit per SDMC Sec. 141.0302(a)(2). But, as described in the project description on the NOTICE OF FUTURE DECISION and as depicted in the architect’s drawings, the *premises* currently contains two existing dwelling units, which is double the maximum permitted density. Therefore, in compliance with SDMC the existing second dwelling unit can only be an existing Companion Unit. The proposed additional Companion Unit would simply exceed the maximum number of Dwelling and Companion Units allowed on this premises in this zone.

CONCLUSION

The required Finding for a Coastal Development Permit that ‘**The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program**’ **cannot be made** because:

1. Contrary to the SDMC the so-called ‘existing’ but not yet built detached garage *accessory structure* upon which the new companion unit is to be constructed was erroneously permitted without the pre-requisite Coastal Development Permit review and approval;
2. Contrary to the SDMC the so-called ‘existing’ but not yet built detached garage *accessory structure* encroaches into **both** the interior side *yard* **and** rear *yard*, when encroachment is only allowed into the interior side **or** rear *yard*;
3. The proposed *companion unit* exceeds the maximum number of *dwelling units* and *companion units* allowed on the small site;

CONCLUSION (continued)

Therefore, for all the reasons explained above the required Finding for a Coastal Development Permit that:

- (3) The proposed *coastal development* is in **conformity with the certified *Local Coastal Program land use plan*** and **complies with all regulations of the certified Implementation Program.**

simply **cannot be made.**

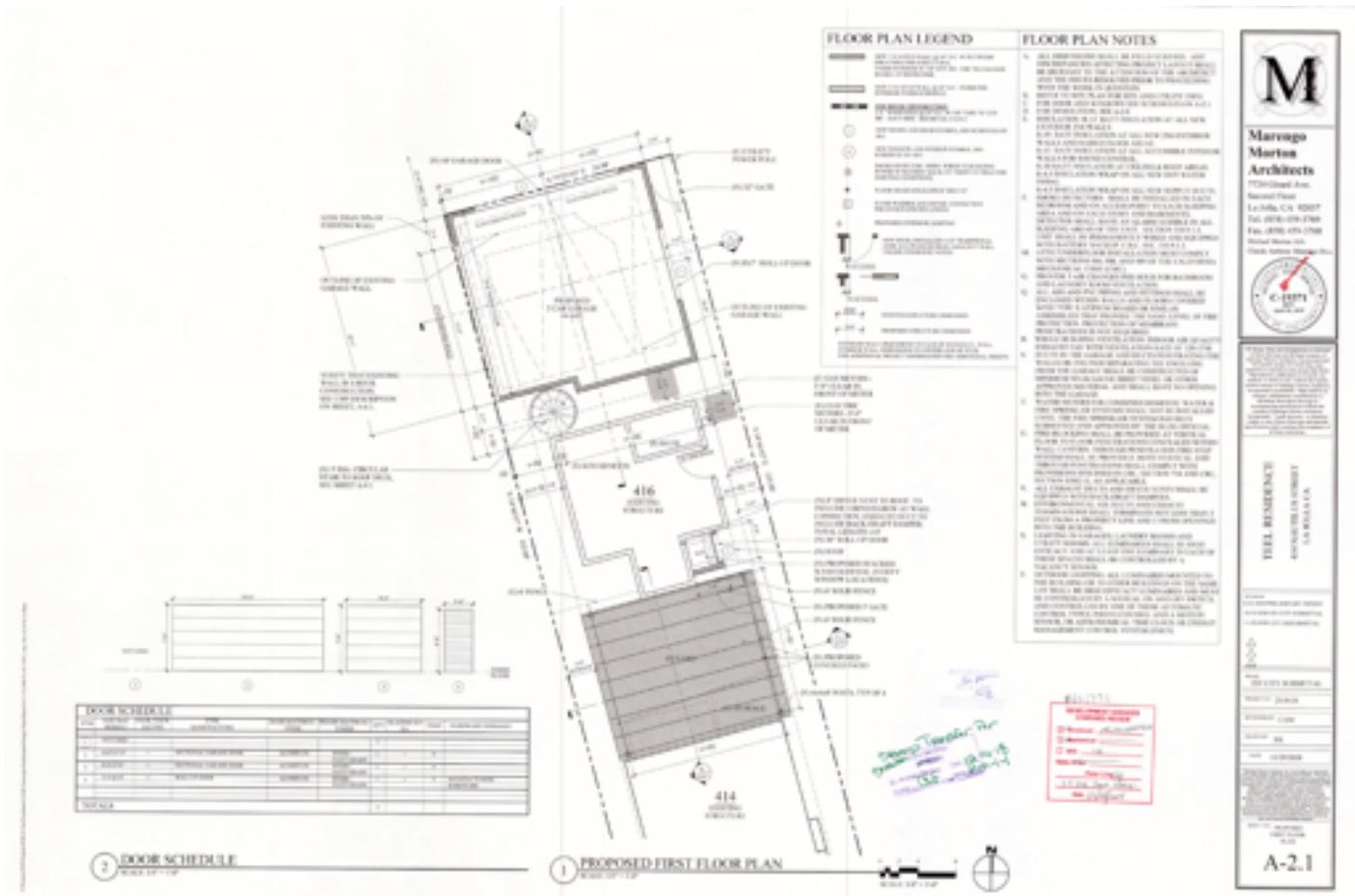
Thank you for your consideration of these very important issues.

Respectfully,



Philip A. Merten AIA

Enclosed:



FLOOR PLAN LEGEND

FLOOR PLAN NOTES

DOOR SCHEDULE	
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DOOR SCHEDULE

PROPOSED FIRST FLOOR PLAN

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