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November 6, 2007

State Historic Building Safety Board
State of California
c/o Richard Conrad, Executive Director
1130 K Street, Suite 101
Sacramento, CA 95814

Re: Appeal of the City of Santa Barbara, Chief Building Official Local Decision

Dear Mr. Conrad,

On behalf of my client Ms. Linda Dye, this letter serves as an appeal of the decision of the Chief Building Official of the City of Santa Barbara concerning his denial to process a building permit application for the repair, maintenance or alteration of the Flores Casita at 1809 Stanwood Drive in Santa Barbara, a qualified historic building under the State Historic Building Code.

The property is subject to building restrictions in the City of Santa Barbara Conejo Road Land Slide ordinance found in Municipal Code Section 22.90.030 (attached) which limit repairs to "routine repairs," "interior alterations," "repairs of utilities and driveways" and "additions of up to 150 square feet."

The building official apparently is of the opinion the proposed work necessary to complete the rehabilitation of the Flores Casita exceeds that allowed for interior remodeling, routine repairs and additions.

This proposed work includes reinstatement of the permit for the (largely completed) concrete masonry unit perimeter foundation which replaces the original post and pier foundation. It also includes the installation of three replacement floor beams, and supplemental floor joists, replacement of the porch removed to install the foundation, installation of plywood shear panel to the interior of the building exterior walls and on top of the existing solid roof sheathing, replacement and addition of several receptacles and switches with



grounding type connections to the existing rigid metal conduit wiring, replacement of the interior finishes, glazing, screens and the roof covering.

The house is a one bedroom, 1 bath home with a small kitchen and an enclosed porch built in 1939 and legally permitted in 1949. It is 375 square feet in interior space and the exterior unenclosed porches are an additional 110 and 131 square feet.

The project does not add any new floor area nor does it change the appearance of the existing structure before the work was initiated. The property was purchased and the foundation work was begun with a valid building permit issued by the City of Santa Barbara which was later revoked by the City when the foundation was largely complete.

We enclose a copy of the Historic Structures Report that describes the history of the building along with plans, the Minutes of the City of Santa Barbara Landmarks Commission adding the structure to the City's inventory of buildings eligible for Structure of Merit Status, a code analysis addressing issues previously raised by the City of Santa Barbara and communicated to the local appeals board in October of 2003.

At that time and at my client's request, the City convened a meeting of the local appeals board without giving Ms. Dye the required notice of the hearing. At the time of the hearing, Ms. Dye was at work on Santa Barbara Island where she is an ecologist for the National Park Service.

Subsequent to the appeal hearing (where no actions were taken), the City Building Official encouraged Ms. Dye to pursue a (largely futile) geologic study exception to the City ordinance which was attempted and later denied. The enforcement of the case has been in a suspended state while Ms. Dye has considered other options.

In February of 2007 Ms. Dye retained the services of our firm, Ms. Alex Cole a local historian and Mr. Roy Harthorn a building code consultant. After examination of the building, Ms. Cole and Mr. Harthorn performed permit and historical research and then prepared the Historic Structure Report (HSR).

The report found the structure had historical merit and was submitted to the City of Santa Barbara Landmarks Commission. The Landmarks Commission



accepted the report and the eligibility findings of the structure for both local and State designations. The Commission added the structure to their own inventory of buildings eligible for historic designations.

Following the Landmarks hearing, the HSR, code analysis, plans, calculations, soil report, inspection reports and other supporting documents were submitted to the City. After several months of consideration, the City Building Official acting on the advice of the City Attorney has refused to process an application or issue a permit for the modest work proposed. The basis for this denial is purportedly due to the proposed work being considered prohibited "new construction."

It is our contention that the ordinance was never intended to be interpreted in this way and that contrary to this narrow interpretation, the City has established a much broader "community standard" in approving and allowing similar work in the Conejo Slide area, perhaps on an even larger scale than what is proposed.

The City Attorney has also taken the position that a building official decision concerning the interpretations of the MC §22.90.030 section may not be appealed. We believe he is mistaken as the City previously convened such a hearing in 2003 and for another Conejo Road property in 1984. The 1984 appeal was granted and an entirely new house was constructed and is occupied just uphill of the Flores Casita.

Besides the issue of what does or does not constitute work exempt from the Conejo Ordinance, the City has also refused to acknowledge the Flores Casita is a qualified historic building and that the State Historic Building Code is applicable and takes precedence over a local building law or regulation. As you are aware, the enabling statute that creates the State Historic Building Code declares precedence over other laws and regulations.¹

The same enabling law also creates a duty for local jurisdictions to use the State Historic Building Code "in permitting repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, safety, moving, or continued use of a qualified historical building or structure."²

¹ Health and Safety Code §18956

² Health & Safety Code § 18954

Richard Conrad
State Historic Building Safety Board
November 6, 2007
Page 4



Other pertinent historic resources protection laws in California Environmental Quality Act and the Public Resource code concerning the protection of a historic resource have been not been adhered to or addressed by the City in their enforcement actions. State housing laws protections that provide a building owner the right to perform repairs as an option to demolition have been denied in this case while others subject to housing code enforcement actions in the City have been provided such benefits.

In closing, please accept this letter for the purpose of noticing and scheduling an appeal hearing. Additional information will be supplied in the near future for the benefit of the Board in advance of their deliberations. Please advise us when you would normally be delivering such materials to the board so we can prepare and deliver our briefs and other supporting documents.

If you have any questions, please call.

Very truly yours,

ROBERT F. EGENOLF

RFE:hs
Enclosure: Historic Structures Report
Cc: Linda Dye
Roy Harthorn



STATE HISTORICAL BUILDING SAFETY BOARD

Transmitted by Facsimile
(805) 962-8936

Robert F. Egenolf
Egenolf Associates, LLP
130 East Carrillo Street
Santa Barbara, CA 93101

RE: Appeal of the City of Santa Barbara, Chief Building Official Local Decision

Dear Mr. Egenolf,

Thank you for your letter dated November 6, 2007. The next State Historical Building Safety Board meeting will be on December 13, 2007. We will add your requested appeal to the agenda. The material for the meeting is forwarded to the members of the board 10 days prior to the meeting. We would like for you to submit any additional material you may have by November 22, 2007. If I can be of any further assistance, you may reach me by phone (916) 324-7180 or email Richard.conrad@dgs.ca.gov.

Sincerely,

Richard T. Conrad, FAIA, Executive Director

cc: SHBSB Executive Committee



STATE HISTORICAL BUILDING SAFETY BOARD

October 29, 2007

Mr. Roy W. Harthorn, CBO
Building Code Consultant
P.O. Box 90756
Santa Barbara, CA 93190

Re: Letter of October 25, 2007
Flores Casita, 1809 Stanwood Drive
Santa Barbara, CA

Dear Mr. Harthorn,

This is in reply to the questions posed in your letter of October 25, 2007 concerning the subject property in Santa Barbara.

1. Based upon the copy of the Minutes of the City of Santa Barbara Landmarks Commission and the copy of the Historic Structures Report provided, would you and/or the SHBSB consider the Flores Casita a "Qualified Historic Building" as defined by the State Historic Building Code (SHBC) and would the owner be eligible to use the SHBC?

Yes. The action of the City Landmarks Commission determining the building eligible for a local designation is the only action necessary to be considered a "Qualified Historic Building" as defined by the SHBC and the building owner is thereby allowed the use of the SHBC.

2. Would the City of Santa Barbara, a charter city, who has adopted the 2001 California Building Code (without amendment of CBC Chapter 34, containing the SHBC), be obligated to allow the owner of the Flores Casita the use of the SHBC?

Yes. The SHBC and the enabling statute require all local and state agencies to afford an owner the opportunity to use the SHBC once the building or property has been determined to be a qualified historic building.

3. Would the City of Santa Barbara be obliged to utilize the alternative "unsafe building" provisions of the SHBC and the attendant "Imminent Threat" and "Distinct Hazard" standards in their enforcement of unsafe or dangerous building determinations using the City or State Uniform Housing Code, Uniform Code for Abatement Dangerous Buildings and any other local building or life safety regulation such as the "Conejo Road Landslide" ordinance (attached)?

Yes. The unsafe building definition of the SHBC takes precedence over regular building codes, ordinances and regulations.

4. Would the SHBC be applicable as it relates to the "continued use," proposed "repairs" and the identification and mitigation of any unsafe conditions in the administration of the routine repairs, interior remodeling and additions up to 150 square feet as allowed for in the City's "Conejo Road Landslide" ordinance?

Yes. The enabling statutes and application of the SHBC are intended to result in both reasonable safety and the preservation of historic resources when other codes, statutes and ordinances have "trigger" mechanisms that may cause any review, analysis, and/or enforcement action to be taken.

5. Would the SHBC consider the replacement of a post and pier foundation and board and bat wood skirting with a continuous perimeter concrete foundation within the same foot print of the original structure also using replacement board and bat skirting to be "new construction" prohibited by the Conejo Road Slide ordinance?

No. The mitigation of a structural deficiency resulting in improved seismic resistance without negatively affecting the historic fabric or character of a qualified historic building is precisely what the State Legislature intended in establishing the SHBC. Such work is common place and would be considered by the SHBC as a routine repair.

6. Where in conflict, does the SHBC take precedence over other State and local building safety regulations?

Yes. The SHBC works in conjunction with "regular" codes and ordinances but takes precedence where the regular code would result in a deleterious effect upon a qualified historic building.

7. Would the State Historic Building Safety Board consider an appeal of an unfavorable local decision of such a case?

Yes. The SHBSB would consider such a case of state wide interest and would be able to hear an appeal of a local decision.

8. Would the decision of the SHBSB be binding on the local agency?

Yes.

9. Would the statute immunities to liability of local jurisdiction be affected by use of the SHBC?

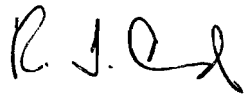
No. Local agencies are statutorily immune from liability in the exercise of their normal regulatory enforcement duties. The use of the SHBC has no effect on such statutory immunities.

Roy Harthorn
Page 3
October 29, 2007

In closing, it is my opinion that with the preparation of a Historic Structures Report reviewed and accepted by the designated body of a local government agency, the building owner of the Flores Casita is entitled to the use of the provisions of the State Historic Building Code and where conflicts arise with regular code, statute or local ordinances, the State Historic Building Code shall take precedence. No further proceedings, designations or amendments to State or local codes, statutes or ordinances are required. The SHBSB would consider work including the replacement of a post and pier foundation with a continuous perimeter foundation, the replacement of a porch roof and/or flooring, roof coverings, window glazing and interior finishes, to be routine repairs.

If I can be of further assistance to you or the local agency, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "R. J. Conrad". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Richard T. Conrad, FAIA
Executive Director

cc: SHBSB Executive Committee