

Appeal of Stop Work Order 4518 Rivercrest Drive

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Owner: Ms. Lica Pinkston
Brazos Lofts #310
Austin, Texas 78701

Project Address: 4518 Rivercrest Drive

Project Description : Lake Austin boat dock for single family lot

Project Engineer: Bruce Aupperle, PE

Appellant: Peter J. Cesaro, Attorney for the owner

Staff Summary:

On May 10, 2012 a Stop Work Order was issued for work being conducted on a boat dock at 4518 Rivercrest Drive. The order was issued for failure to obtain an approved site plan and for substantially exceeding the scope of site plan exemption DA-2011-0813. By letter dated May 10, 2012 Bruce Aupperle, PE, appealed the Stop Work Order. On May 15, 2012 Greg Guernsey, Director, and Leon Barba, PE, Building Official, heard the appeal and by letter dated May 17, 2012 Mr. Aupperle was notified that the Stop Work Order would remain in place and was provided the reasons for the decision.

On May 21, 2012, Mr. Peter Cesaro, attorney for the property owner, appealed the Director's decision to the Zoning and Platting Commission. Neither Mr. Aupperle's nor Mr. Cesaro's appeal contained the statement of facts and reasons the decision should be set aside as required by LDC 25-1-461(B)(2) & (4). All appeals and responses have met the timeframes required in 25-1-461.

Staff Recommendation:

Staff recommends denial of the appeal. Based on the language in LDC 25-5-2(M) – Site Plan Exemptions, the work to be conducted does not qualify for a site plan exemption and should be required to secure an approved site plan. Additionally, the existing dock did not meet the definition of “noncomplying structure” under 25-2-961 because it did not “...comply with applicable regulations at the time it was constructed.” (no CO/CC, no engineer's concurrence letter, noncompliant with administrative variance). As a result, the project does not meet the conditions necessary to modify and maintain a noncomplying structure under 25-2-963.

Attachment 1 - Director's letter denying appeal

Attachment 2 - Chronology

Attachment 3 - Site plan exemption request

Attachment 4 - Current site condition photos

Stop Work Order Appeals

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Division 4. Appeal; Criminal Enforcement.

§ 25-1-461 APPEAL.

(A) A person may appeal a stop work order, remove or restore order, revocation, or suspension issued under this division by giving written notice to the accountable official not later than the third day after:

- (1) the stop work order or remove or restore order is posted; or
- (2) the person receives notice of the revocation or suspension.

(B) The notice of appeal must contain:

- (1) the name and address of the appellant;
- (2) a statement of facts;
- (3) the decision being appealed; and
- (4) the reasons the decision should be set aside.

(C) The accountable official shall hear the appeal not later than the third working day after the appeal is filed. The appellant, the appellant's expert, and the department may offer testimony to the accountable official.

(D) The accountable official shall affirm or reverse the department's decision not later than the second working day after the hearing. The official shall give written notice of the decision and a statement of the reasons for the decision to the appellant.

(E) The appellant may appeal the accountable official's decision to the Land Use Commission or appropriate technical board by giving written notice to the accountable official and the presiding officer of the Land Use Commission or appropriate technical board not later than the third working day after receiving notice of the decision. The notice of appeal must contain the information described in Subsection (B).

(F) The Land Use Commission or appropriate technical board shall hear the appeal at the next regularly scheduled meeting following receipt of the notice of appeal. An appeal is automatically granted if the Land Use Commission or appropriate technical board does not hear the appeal before the 21st day following receipt of the notice of appeal.

(G) A stop work order, remove or restore order, suspension, or revocation remains in effect during the pendency of an appeal under this section.

Source: Section 13-1-69; Ord. 990225-70; Ord. 010607-8; Ord. 031211-11.



Aupperle Company

10088 Circleview Drive, Austin, Texas 78733

Phone & Fax (512) 329-8241

Email: Aupperle@aui.net

Texas Board of Professional Engineers Registration Number F-1994

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May 10, 2012

Greg Guernsey
Director of Planning and Development Review Department
City of Austin
P.O. Box 1088
Austin, Texas 78767

Re: Stop Work Order Associated With DA-2011-0813

Director:

On behalf of the owner of the referenced dock we are appealing the reference Stop Work Order. The Order states that what was observed substantially exceeds the scope of the site plan exemption without further explanation. Please clarify what was observed and how it substantially exceeded the scope of the site plan exemption on file.

Regards,

Aupperle Company



Bruce S. Aupperle, P.E.

cc: Scott Ginder, Steve Shearer, Ricky Rasberry



GRAVES DOUGHERTY HEARON & MOODY
A PROFESSIONAL CORPORATION

Peter Cesaro
512.480.5728
512.536.9928 (fax)
pcesaro@gdhn.com

MAILING ADDRESS:
P.O. Box 98
Austin, TX 78787

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May 21, 2012

VIA ELECTRONIC MAIL

Ms. Betty Baker
Chair, Zoning and Platting Commission
One Texas Center
505 Barton Springs
Austin, TX 78704

VIA ELECTRONIC MAIL

Mr. Greg Guernsey
Director, Neighborhood Planning & Zoning
Department
One Texas Center
505 Barton Springs
Austin, TX 78704

Re: Appeal of Stop Work Order for 4518 Rivercrest Dr. (the "Property"); Permit No. 2011-079160-BP ("Building Permit") and Site Plan Exemption (D-2011-0813)

Dear Chair Baker and Greg:

Our firm now represents Lica Pinkston, the owner of the Property. I am providing this letter on behalf of our client, to request an appeal to Zoning and Platting Commission, or the appropriate commission, of Mr. Guernsey's decision to maintain the Stop Work Order affecting the Property. This appeal is in accordance with Section 25-1-461 of the Austin Land Development Code. The Stop Work Order halted work done pursuant to the Building Permit, and we feel the Stop Work Order is based on incomplete and incorrect information. Please call me if you have questions or need additional information. We appreciate your assistance with this matter.

Sincerely,


Peter J. Cesaro
PJC/lc

cc: Mr. Bruce Aupperle (via email)
2219 Westlake Dr., #110
Austin, TX 78746

Mr. Scott Ginder (via email)

Ms. Lica Pinkston (via email)
Brazos Lofts, #310
Austin, TX 78701

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Attachment #1
Director Letter Denying Appeal



City of Austin

Founded by Congress, Republic of Texas, 1839
Planning & Development Review Department
One Texas Center, 505 Barton Springs Road
P.O. Box 1088, Austin, Texas 78767

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May 17, 2012

Certified: 7006 0810 0002 4204 0286

Bruce Aupperle, P.E.
2219 Westlake Drive #110
Austin, Tx 78746

Re: Appeal of Stop Work Order for 4518 Rivercrest Dr

Dear Mr Aupperle,

I have reviewed the appeal that you submitted on May 10, 2012 concerning the Stop Work Order issued for 4518 Rivercrest Drive. In your appeal letter you requested clarification of how the boat dock project "... substantially exceeded the scope of the site plan extension on file." During our meeting on May 15, 2012 we reviewed the site plan exemption request which stated that there were fifteen existing piers which were to remain, one pier to be added and miscellaneous maintenance items (replace siding, roofing, railing, etc). Based on photos of the project it appears that the dock was demolished down to the bottom deck level and new steel piers were added to support the two upper decks. Your position was that the existing structure was a legally constructed boat dock authorized by SP-02-0322D and 2003-006263-BP and as such it was subject to LDC 25-5-2 (M) which would allow modification of the dock without a site plan.

We have researched the applicable regulations and site records and determined that a BP final inspection was conducted twice and failed on both occasions so the dock has never received a CO/CC. Also, an engineer's concurrence letter was not received and the dock did not comply with the environmental variance dated Dec. 5, 2002 so the structure does not qualify as "legally constructed". Additionally, the exemption provided in LCD 25-5-2(M)(5) specifies that repair, reinforcement, maintenance, or modification of a dock is subject to the limitations in LDC 25-2-963 and 964 relating to noncomplying structures. The degree of demolition, and removal/ replacement of piles and walls do not meet these limitations. Therefore, the Stop Work Order will remain in place.

You may appeal this decision in accordance with LDC 25-1-461 to the appropriate commission within three days of receipt of this letter. If you decide to appeal my decision please contact my office for further information. If you have any additional questions, please let me know.

Sincerely,

Gregory L. Guernsey, AICP, Director
Planning and Development Review Department

cc. Leon Barba, PE, Building Official

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Attachment #2
Project Chronology

4518 Rivercrest Drive – Chronology

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- **Aug 22, 2011 - The applicant requested a site plan exemption to repair, reinforce, maintain, and modify an existing boat dock on Lake Austin at 4518 Rivercrest Drive. The letter states that “The existing dock was legally constructed under city permits SP-02-0322D and 2003-006263-BP”. The request further stated that there were 15 existing piers which were to remain, one pier would be added, and miscellaneous items (replace siding, roofing, railings, etc) would be conducted.**
- **Aug 24, 2011 - Site plan exemption DA-2011-0813 was approved.**
- **Sept 1, 2011 - Building Permit 2011-079160-BP was issued for the work described in the site plan exemption application.**
- **May 10, 2012 – Inspection by Senior Environmental Inspection Specialist Rick Rasberry found that the dock had been demolished down to the bottom deck level and approximately 14 new steel pilings had been added to support three upper levels where there had previously only been one upper level. A Stop Work Order was issued for work exceeding the scope of the site plan exemption and for failure to obtain an approved site plan.**

Research revealed that the existing dock at 4518 Rivercrest Drive did not qualify for a site plan exemption because it was not legally constructed. The existing dock failed the building permit final inspection on two occasions in 2005 and never received a passing final BP inspection or a CO/CC. The existing dock was also subject to the requirements of an approved site plan (SP-02-0322DS) and an Administrative Variance dated 12/5/02 which required the second story structure to be open or screened. It was enclosed on three sides. An engineers concurrence letter (LDC 25-8-182) indicating completion in conformity with the site plan was never submitted.

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Attachment #3
Site Plan Exemption Request



Planning and Development Review Department

P.O. Box 1088, Austin, Texas 78767

One Texas Center, 505 Barton Springs Road

Telephone: (512) 974-6370 Fax: (512) 974-2423

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Site Development Exemption Request

DA-2011-0813

Site Address: 4518 RIVERCREST DRIVE

Project Name: 4518 RIVERCREST DRIVE

Legal Description: LOT J, BLOCK G, AQUA VERDE SUBD., BK 25, PG 50

Zoning: _____ Watershed: LAKE AUSTIN Flood Plain? ☒ Yes ☐ No

Existing Land Use(s): BOAT DOCK

Proposed Land Use(s): BOAT DOCK

Brief/General Description of the Development being sought:

(SEE ATTACHED LETTER)

Attach a detailed description of the proposed development in a memorandum or letter and a site plat or survey plan that graphically indicates, but is not limited to,:

- | | |
|--|--|
| <input checked="" type="checkbox"/> existing trees | <input checked="" type="checkbox"/> limits of construction |
| <input checked="" type="checkbox"/> buildings | <input checked="" type="checkbox"/> type of construction |
| <input checked="" type="checkbox"/> parking areas | <input checked="" type="checkbox"/> location of construction |
| <input checked="" type="checkbox"/> roadways/streets | <input checked="" type="checkbox"/> accessible parking |
| <input checked="" type="checkbox"/> all areas of impervious cover levels (existing & proposed) | <input checked="" type="checkbox"/> access route |
| <input checked="" type="checkbox"/> erosion controls (i.e.: silt fencing, tree protection) | <input checked="" type="checkbox"/> on-site sewage (septic) systems and drain fields |

1. BRUCE S. AUPPERLE, P.E.


(PRINT NAME)

do hereby certify that I am the

☐ owner ☒ owner's agent (to act as the owner's agent, written authorization from the owner must be provided) of this described property, and in this capacity, submit this request for exemption from the site plan submittal requirements pursuant to Chapter 25-5-2 of the Austin City Code.

Furthermore, I certify and acknowledge that:

1. Although the proposed development does not require a formal site plan approval, it may require, prior to beginning any site work, the approval of the subdivision or issuance of a building, remodel, and/or demolition permit;
2. Although the proposed development complies with all applicable zoning regulations, it does not prohibit enforcement of restrictive covenants and/or deed restrictions;
3. The approval of this exemption request does not constitute authorization to violate any provisions of the Austin City Code or other applicable requirements, which includes the use or occupancy of the improvement.
4. The approval notice with paid receipt shall be clearly posted on-site and protected from the elements at all times.



Signature of Requester

Date: 8/22/11

Address: 2219 WESTLAKE DR. #110, AUSTIN, TX 78746

Telephone: 512 422 7838

Please indicate how you wish to receive a copy of the results of the review:

☒ FAX: 512 329 8241 ☒ E-mail Address: AUPPERLE@ATT.NET

DAC

Site Development Exemption

Revised: 10.22.2010

Departmental Use Only

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Project Name: 4518 Rivercrest Dr		Case Number: 2011-0813		Applicant Name: Bruce Apperle	
<input checked="" type="checkbox"/> If Required	Reviewer	Date	Comments		
<input checked="" type="checkbox"/> Site Plan		8-24-11	<input type="checkbox"/> SPOC*		
Green House					
<input checked="" type="checkbox"/> Transport		8-29-11	<input type="checkbox"/> SPOC*		
Green pr					
<input checked="" type="checkbox"/> Drainage			<input type="checkbox"/> SPOC*		
Environ					
<input checked="" type="checkbox"/> Environ		8-24-11	<input type="checkbox"/> SPOC*		
Zoning					
<input checked="" type="checkbox"/> AFD	DL	8/25			
<input checked="" type="checkbox"/> AWU	MDL	8-24-2011	N/A		
<input checked="" type="checkbox"/> Plumbing	N/A MDL	8-24-2011			
<input checked="" type="checkbox"/> AE	N/A	8-24-11			

* SPOC - Single Point of Contact

<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Determined to be a <input type="checkbox"/> Revision <input type="checkbox"/> New Project
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Building permit required? ☐ Yes ☐ No ☐ N/A
 Smart Housing Project? ☐ Yes ☐ No
 Qualifies for exemption per Section 25-5-2(____)

Check all that apply:

☐ Review Fee(s) Not Required
☐ Site Plan Correction/ Exemption Review Fee
☐ Change of Use Review Fee
☐ Phasing Review: _____ phases
☐ Landscape Inspection: _____ acres
☐ Shared Parking Review



Aupperle Company

2219 Westlake Drive #110, Austin, Texas 78746

Phone & Fax (512) 329-8241

Email: Aupperle@att.net

Texas Board of Professional Engineers Registration Number P-1994

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August 22, 2011

Development Assistance Center
Planning and Development Review Department
City of Austin
P.O. Box 1088
Austin, Texas 78767

Re: Engineer's Summary Letter
Request for Site Plan Exemption
Repair, Reinforce, Maintain & Modify Existing Boat Dock at 4518 Rivercrest Drive
Related Permits: SP-02-0322D, 2003-006263-BP

Development Assistance Center:

On behalf of the owner of the referenced dock we are requesting an exemption to provide a site plan in order to repair, reinforce, maintain and modify the existing residential dock at 4518 Rivercrest Drive. The existing dock was legally constructed under City permits SP-02-0322D and 2003-006263-BP. No additional variances are required from City Code. No further board or commission approvals are required. There will be no increase in the existing footprint of the dock. It is our understanding that there are fifteen existing pilings and that all are to remain. No bulkhead construction is proposed. A red-stamped copy of the site plan SP-02-0322D and photos of the existing dock are enclosed for your records.

A general description of the proposed work follows.

Lower Deck: Remove side walls, reinforce end wall, resurface deck, relocate spiral stair to storage area, replace stepped landing with a ramp, add/replace one pile to support storage area

Upper Deck: Resurface deck, add internal stairs to new roof deck, convert slopped roof over storage area to a ramp, and install new railings, siding and roof.

Please let us know if you require any additional information.

Very truly yours,

Aupperle Company


Bruce S. Aupperle, P.E.




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August 2, 2011

City of Austin
Planning and Development Review Department
PO Box 1088
Austin, TX 78716

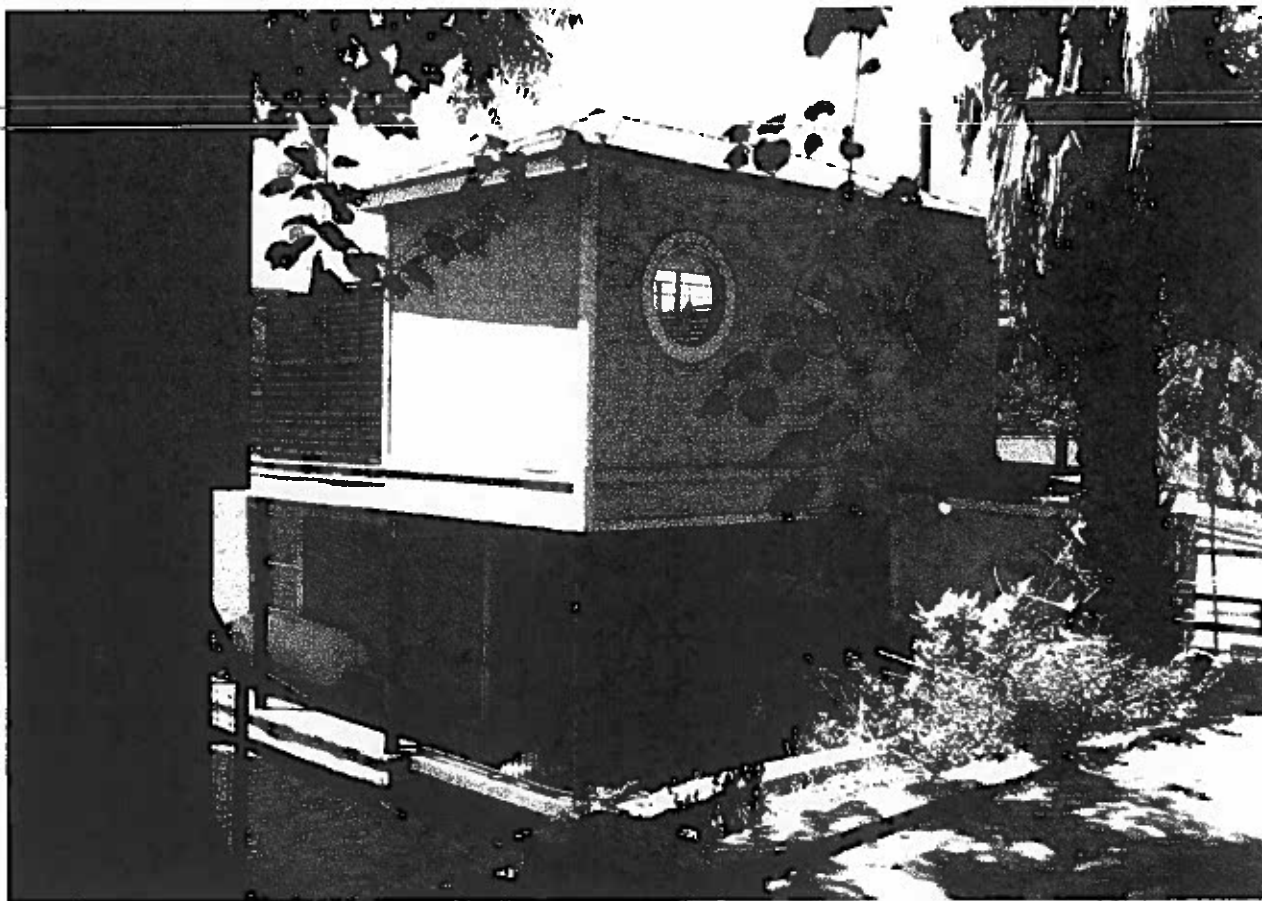
To Whom It May Concern:

I own the property described at 4518 Rivercrest Drive. I wish repair, reinforce, maintain and modify my existing boat dock and bulkhead on the property. Bruce S. Aupperle, P.E. and Aupperle Company are our authorized agents for the City of Austin applications needed for the subject property. Please contact us if you have any questions.

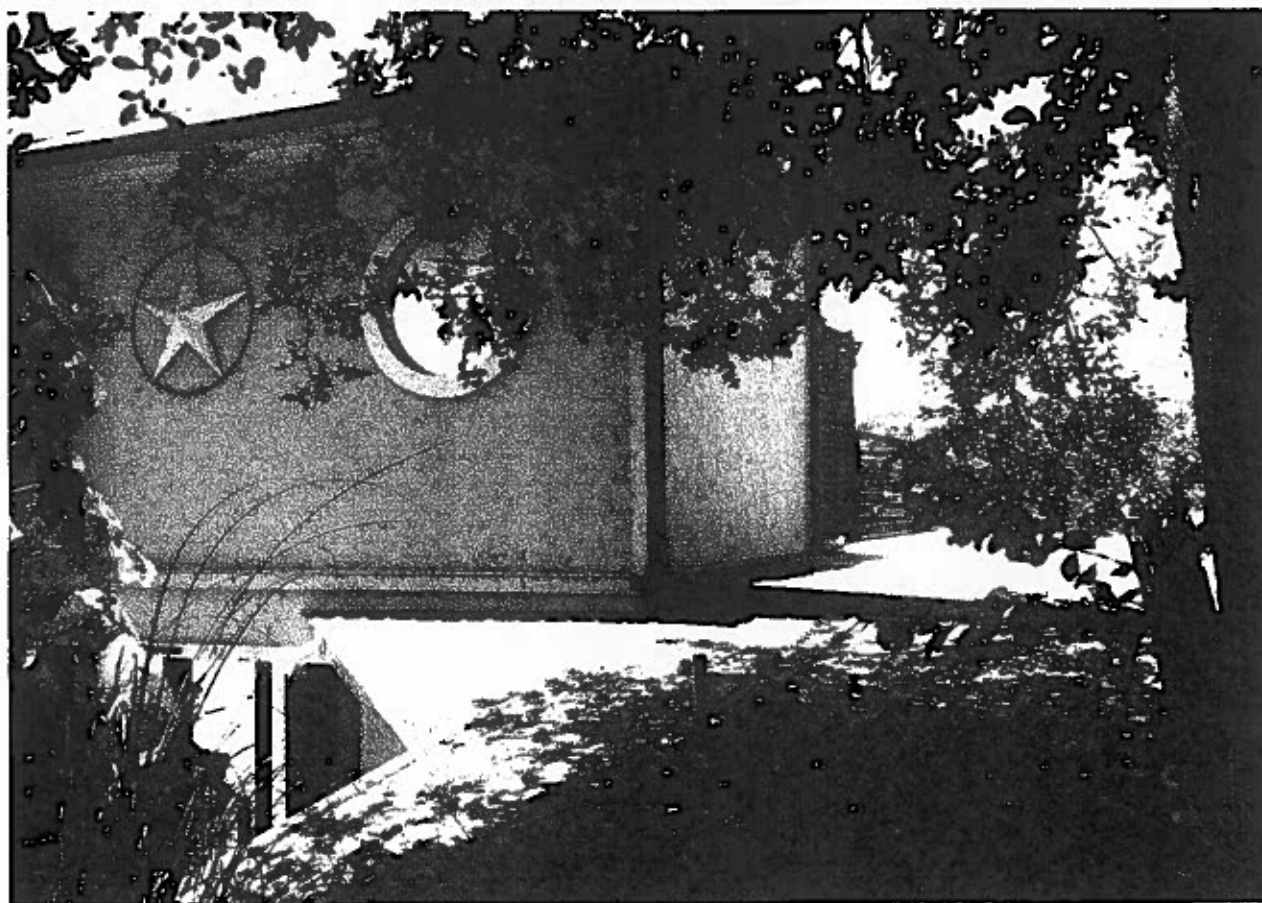
By: 

Lica E. Pinkston
411 Brazos Lofts #310
Austin, TX 78701

4518 RIVERCREST

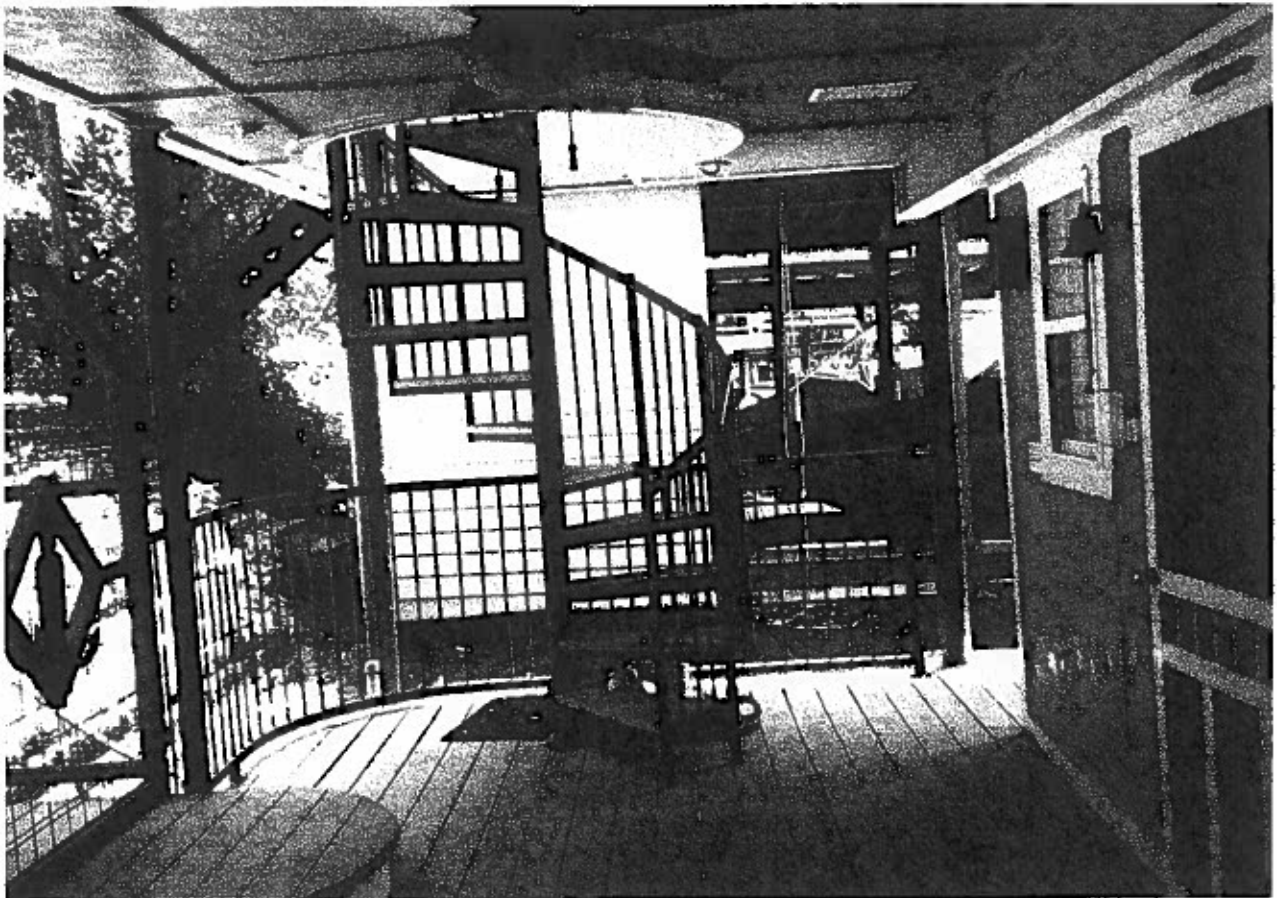
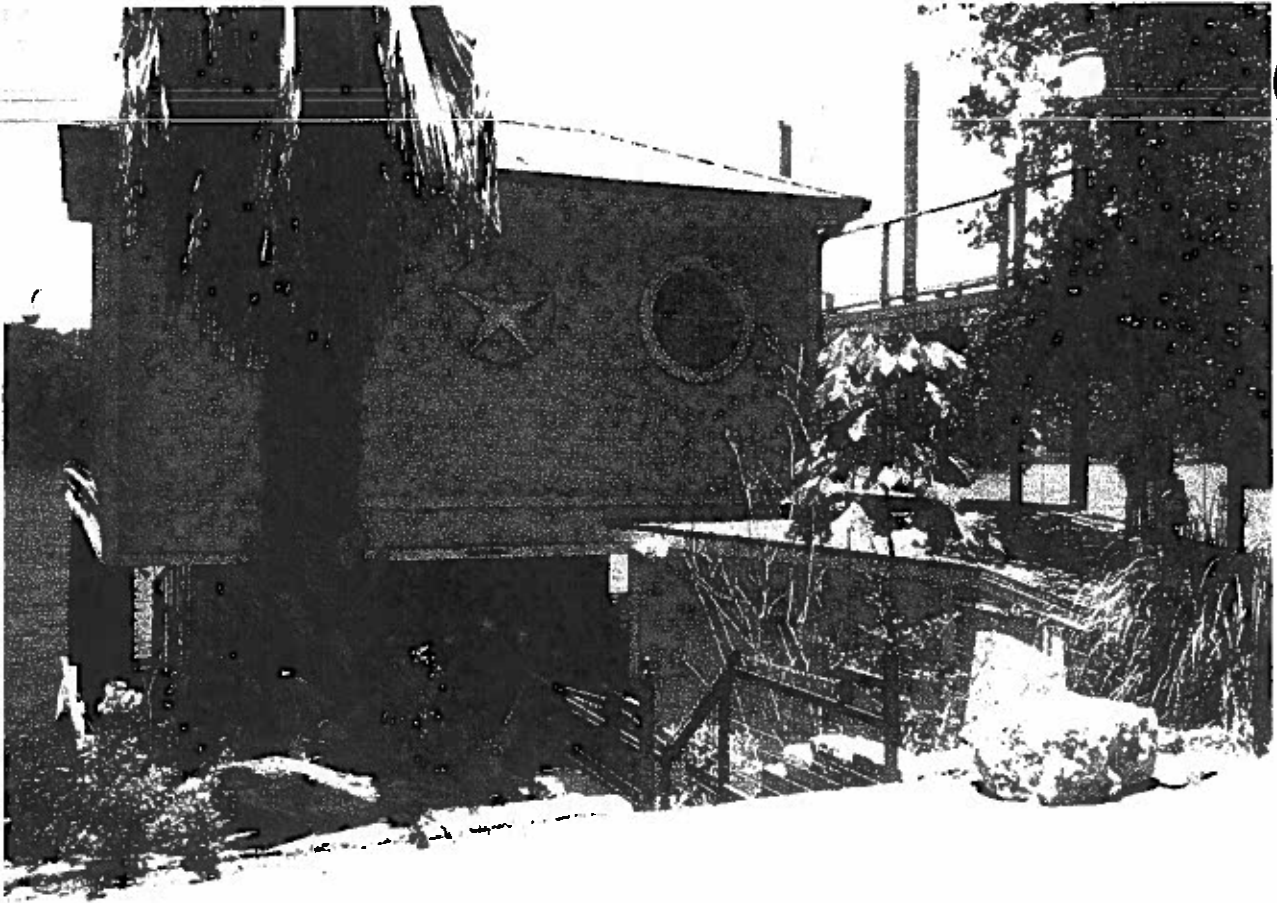


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4518 RIVERCREST

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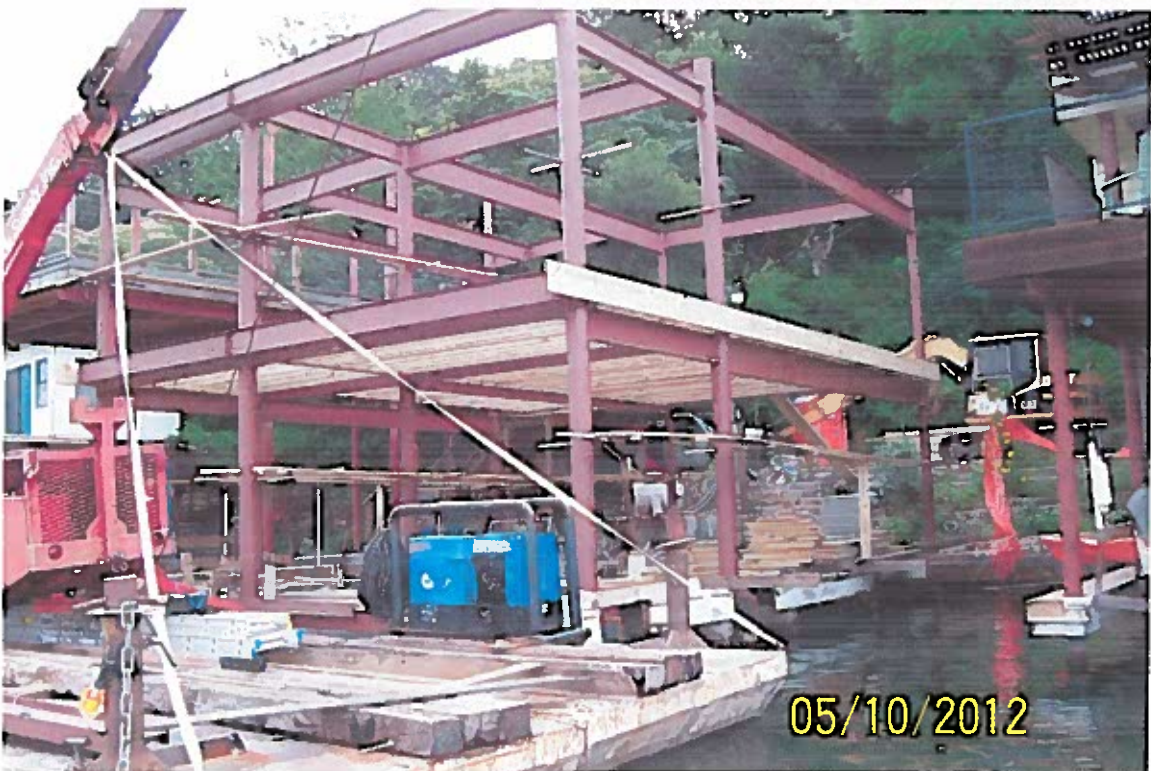


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Attachment #4
Project Photos

4518 Rivercrest Drive

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4518 Rivercrest Drive

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