

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE
GAZEBO LOCATED AT 461 VISTA RIDGE DRIVE, SITE DEVELOPMENT PERMIT NO. SD09-0002**

WHEREAS, on March 30, 2009, an application was submitted by Javier R. Mercado, 461 Vista Ridge Drive, Milpitas, CA 95035, to locate an accessory structure on the rear portion of the property at 461 Vista Ridge Drive. The property is zoned Single Family Residential with 'S' Zone Overlay and Hillside Combining District (APN: 042-30-0007); and

WHEREAS, on or around April 17, 2009, the Planning Division reviewed the application for compliance with the General Plan, Zoning Ordinance and other applicable requirements and found the application complete; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the City Council determine that this project is categorically exempt pursuant to Section 15303 (e) of the CEQA Guidelines; and

WHEREAS, on April 22, 2009, the Planning Commission held a duly noticed public hearing on the subject application and considered evidence presented by City staff and the applicant, and recommended approval subject to the Conditions of Approval; and

WHEREAS, on June 2, 2009, the City Council reviewed the subject application and considered evidence presented by staff.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The project is categorically exempt from further environmental review pursuant to Section 15303 (e) "Accessory Structures" of the CEQA Guidelines.
3. The project proposal is consistent with General Plan Policy 2.a-I-16 and 2.a-I-18 in that the gazebo is in an open space area and is a park like use. The gazebo design, materials and colors are of earth tones and match the existing buildings on the property and no grading is required for this project.
4. The project proposal is consistent with the Hillside Combining District Ordinance in that it meets all Site and Architectural Guidelines.
5. The project proposal is consistent with the Milpitas Zoning Ordinance in that the design of the gazebo is aesthetically harmonious with the surrounding development in that it utilizes color, materials, and the style of the existing dwellings located on the property.
6. Based on the entirety of the record, which includes without limitation, the Planning Commission public hearing, including staff report, project plans and minutes prepared in connection thereto, the City Council does hereby approve Site Development Permit No. SD09-0002, subject to the above findings and Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED this _____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

EXHIBIT 1

**CONDITIONS OF APPROVAL
SITE DEVELOPMENT PERMIT NO. SD09-0002**

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards reviewed by the Planning Commission on April 22, 2009, and in accordance with these Conditions of Approval. (P)

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)

2. Site Development Permit No. SD09-0002 shall become null and void if the project is not commenced within 18 months from the date of approval. The project shall be constructed as shown on the approved plans dated April 22, 2009. (P)

Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of DS09-0002 if said request is made, filed and approved by the Planning Commission prior to the expiration dates set forth herein. (P)

3. Applicant shall plant taller trees to block the view of the gazebo from neighboring homes. (PC)

(P) = Planning Division

(PC) = Planning Commission

~~Commissioner Tiernan would like to make sure the project creates something memorable, not just a cookie-cutter design, that the City can be proud of.~~

~~Vice Chair Mandal asked staff if there is recycled water access in this area. Mr. James Lindsay does not think that there is access in this area, but if there is access the City will utilize it for landscaping.~~

X. PUBLIC HEARING

3. SITE DEVELOPMENT PERMIT NO. SD09-0002.

Tiffany Brown, Junior Planner, presented a request to locate an accessory structure (gazebo) on the rear portion of the property located at 461 Vista Ridge Drive. Ms. Brown said the gazebo is consistent with the General Plan and Zoning Hillside Combining District. Ms. Brown recommended adopting Resolution No. 09-019 recommending approval of the project subject to the conditions of approval to the City Council.

Commissioner Ciardella asked what material is used on the pathway between the house and gazebo. Ms. Brown stated that the walkway is asphalt.

Commissioner Ciardella asked what kind of asphalt it was. Ms. Brown stated it was black asphalt.

Commissioner Ciardella asked if this gazebo and walkway were going to be screened by any shrubbery. Ms. Brown stated that current proposal does not include plants screening the walkway, but they are screening the gazebo.

Commissioner Ciardella would like a condition to have the pathway screened with shrubbery to avoid the sight of a large patch of asphalt on the hillside.

Chair Williams asked staff what situation caused this application to be coming to the Commission after it has been built. Ms. Brown stated that the City received a complaint that a gazebo had been built without the benefit of Planning Commission approval. Staff responded to the complaint and the City has been working with the applicant to bring the gazebo into compliance. Mr. Sheldon AhSing added that if the structure is smaller than a given square footage it does not require a Building permit.

Commissioner Tiernan asked what happens when someone builds something that doesn't require Building permits who later finds out there was a different review required; are there penalties. Ms. Brown stated the Code Enforcement Division handles the complaint and deferred the question to Mr. Lindsay for further clarification. Mr. Lindsay stated the Code Enforcement staff makes a site visit to confirm a violation exists and then works with the property owner to bring them into compliance. He added the City has an Administrative Review process that staff has the discretion to use, and if a property owner is not taking steps towards compliance the City can impose a fine. In this case the property owner has been working with staff to get compliance and no fines have been imposed.

Commissioner Tiernan asked if there is not a permit required was the property owner within his rights to build this structure as it is. Mr. Lindsay stated that is correct, this gazebo does not require building permits and the property owner was within their right to build it without a building permit. However, the property owner did not consult the Planning Department to verify the gazebo is within zoning regulations.

Commissioner Tiernan asked what recourse residents have when a project is built without the appropriate process. Mr. Lindsay stated that this Public Hearing is the recourse.

Commissioner Galang asked if he would need a site development permit to replace an

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existing gazebo with a taller one. Ms. Brown stated that it would depend on the property's zoning and staff recommends the individual come to the counter where a planner can look up the information for their individual property to determine the regulations.

Commissioner Galang asked what happens if there is a violation. Ms. Brown stated that Code Enforcement receives the complaint and checks with the Planning Division to see if it really is a violation. A planner looks up the property information to determine its zoning regulations and if it is a violation of the zoning ordinance.

Javier Mercado, 461 Vista Ridge Dr, mentioned that in 2008 he applied for and received permission to build a gazebo from the Home Owner's Association. He began construction, when a neighbor raised concerns about the gazebo. Mr. Mercado spoke with the concerned resident and attempted to work out the issues. When the City was following up on the neighbor's complaint, a City Building Inspector determined the structure was exempt from building permits, but expressed a concern with the property being on the hillside and stated it may require Planning approval. Mr. Mercado stated he has worked with planning staff and has submitted a complete packet for approval. Mr. Mercado also commented on the letters sent from his neighbors.

Chair Williams asked if there are already shrubs planted around the gazebo. Mr. Mercado stated there are shrubs planted and Ms. Brown showed pictures with the various views of the gazebo. Mr. Mercado added that the pathway is not asphalt it's actually gravel with a coat of the black oil sprayed on asphalt to keep the gravel from spreading; the pathway is not visible from neighboring homes or streets.

Chair Williams opened the Public Hearing.

Dan Le Vasseur, 375 Vista Ridge Dr, stated the Home Owner's Association does not post agendas to their meetings to encourage input and with Mr. Mercado being on the Board he voted on his own gazebo. Mr. Le Vasseur described several incidents in which he went thru great lengths to accommodate his neighbors. Mr. Le Vasseur stated that it doesn't matter how many shrubs are added they won't cover the roof.

Carol Peterson, 442 Vista Ridge Dr, stated she is asking the City for assistance because they cannot communicate with the Home Owner's Association. She stated that when people are in the gazebo are visible from her home and if she can see them then they can see her. She is opposed to the gazebo.

Motion to close the public hearing.

M/S: Mandal, Sandhu

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

Chair Williams asked the Assistant City Attorney to clarify the Commission's role; should they follow the state guidelines. Mr. Bryan Otake explained that the Commission should review the findings and determine if the project is compliant with the zoning regulations, hillside regulations, site and architectural guidelines and California Environmental Quality Act.

Vice Chair Mandal mentioned he understands the points made by all parties and the issues with Home Owner's Association, but the Commission must review the application

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based on the rules of the Commission.

Commissioner Ciardella asked if Mr. Mercado would be willing to plant taller trees. Mr. Mercado stated he is willing to do anything except take the gazebo down

Commissioner Ali asked if the item can be continued to give the applicant and HOA time to resolve the issues.

Commissioner Tabladillo mentioned she would prefer that the Commission act on this application tonight rather than continuing the item to the next meeting.

Motion to adopt Resolution No. 09-019 approving the project, subject to the conditions of approval and the following condition added by the Commission.

1. Applicant shall plant taller trees to block the view of the gazebo from neighboring homes.

M/S: Ciardella, Tabladillo

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

XI. ADJOURNMENT

The meeting was adjourned at 10:05 p.m. to the next regular meeting of May 13, 2009.

Respectfully Submitted,

James Lindsay
Planning & Neighborhood
Services Director

Debbie Barbey
Recording Secretary

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MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: April 22, 2009

APPLICATION: SITE DEVELOPMENT PERMIT NO. SD09-0002

APPLICATION
SUMMARY:

A request to receive approval for an existing accessory structure (gazebo) on the rear portion of the property.

LOCATION:
APPLICANT:
OWNER:

461 Vista Ridge Drive / (APN: 042-30-0007)
Javier R Mercado, 461 Vista Ridge Drive, Milpitas, CA 95035
Javier R Mercado, 461 Vista Ridge Drive, Milpitas, CA 95035

RECOMMENDATION:

Staff recommends that the Planning Commission:
1. Close the public hearing; and
2. Adopt Resolution No. 09-019 recommending approval of the project subject to the conditions of approval to the City Council.

PROJECT DATA:
General Plan/
Zoning Designation:

Hillside very low density / Zoned Single Family Residential (R1)

Special Overlays:

Hillside Combining and Site and Architectural Overlay Districts (H-S).

CEQA Determination:

Categorically exempt from further environmental review pursuant to Section 15303 (e) of the California Environmental Quality Act (CEQA) guidelines.

PLANNER:

Tiffany Brown

ATTACHMENTS:

- A. Resolution No. 09-019
- B. Site Plans
- C. Pictures
- D. Public Comments

LOCATION MAP



BACKGROUND

The existing hillside home was approved and built in 1993. Subsequent permits were approved to allow for a second family unit. Last year the City received a complaint that stated a gazebo was built on the hillside without benefit of planning review and approval. Staff responded to the complaint and worked with the owner, Javier R. Mercado, in informing him of the planning review process and gave him the forms to submit a Site Development Permit. According to the Hillside Combining District, Section 45.09 of the Milpitas Zoning Ordinance, all accessory structures require a Site Development Permit with a recommendation from the Planning Commission and approval of the City Council. On March 30, 2009, owner Javier R. Mercado, submitted an application in order to comply with the City’s Ordinance with a request to keep the location of the gazebo on the rear portion of his property.

PROJECT DESCRIPTION

The property and adjacent properties are zoned Single Family Residential with Hillside Combining District and Site and Architectural Overlay District. The applicant is proposing to locate a 64-square foot (8’ x 8’ x 12’) gazebo on the rear portion of the property with a connecting pathway that is 2.3’ wide and 180’ long. The applicant is proposing the gazebo so he may enjoy the views from the hillside. A vicinity map is included on the previous page and see Attachment C for pictures of the gazebo.

Development Standards

Table 1
Development Standards

	<i>Zoning Ordinance</i>	<i>Project</i>
<u>Accessory Structures</u>		28” X 180’ feet Pathway
<u>Setbacks</u> (Section 54.08 Minimum)		
Front Yard	Must be located in the rear yard	Located in Rear yard
Side Yards	3 Feet	North Property Line: 55’
Rear Yard	3 Feet	West Property Line: 22’
<u>Impervious surfaces / Lot Coverage</u> (Section 45.17 Maximum)	10% of lot 19,366 sq. ft.	Existing: 16,198 sq. ft. Total with Gazebo and Pathway: 16,682
<u>Floor Area Ratio</u> (Maximum) (Section 45.17 Maximum)	1,200 sq. ft.	64 sq. ft.
<u>Building Height</u> (Maximum)	17 feet	12’

Architecture

The materials used for the gazebo include wood that is painted white with terracotta tiling for the roof, which match the existing dwellings on the property.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 2
General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-16: Limit new development in the Hillside Area to only Very Low Density Residential, open space and park uses.</i>	Consistent.
<i>2.a-I-18: To ensure that development in the foothills is in keeping with the natural character of the hillside, and that views are protected, require city review and approval of all proposed development or major alterations to existing development in the hillside. As part of the review, ensure that:</i> <ul style="list-style-type: none"> ▪ <i>landscaping is of a type indigenous to the area;</i> ▪ <i>that building designs, materials and colors blend with the environment; and</i> ▪ <i>grading is minimized and contoured to preserve the natural terrain quality.</i> 	Consistent.

The project proposal is consistent with the General Plan in that the gazebo is in an open space area and is a park like use. The gazebo design, materials and colors are of earth tones and match the existing buildings on the property and no grading is required for this project.

Hillside Combining District

The Hillside Combining District has specific Site and Architectural Guidelines. These guidelines are as follows:

- Avoid Unreasonable Interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference will views and privacy.

The location of the gazebo will not interfere with views or privacy of adjacent property owners. To insure that the privacy for neighboring properties has been taken into consideration, the applicant has planted shrubbery around the side of the gazebo. See Attachment B.

- Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.

The gazebo placement did not replace more than 64 square feet of landscaping and the property owner planted shrubbery around the northern side.

- Minimize Perception of Excessive Bulk. The design of the proposed main and/or accessory structures in relation to the immediate neighborhood should minimize the perception of excessive bulk.

The gazebo is a 64-square foot accessory structure that stands a maximum of 12 feet tall. The walls are open woodwork which allows you to see through the structure, minimizing the perception of bulk.

- Impairment of Light and Air. The proposed main or accessory structure shall not unreasonably impair the ability of adjacent properties to utilize solar energy.

As stated previously, the walls on the gazebo are of open woodwork which allows both light and air to pass through.

- Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.

No grading is required for this structure.

The proposed gazebo is in compliance with all of the above guidelines for the Hillside Combining District within the City Zoning Ordinance.

Zoning Ordinance

A Site Development Permit may be granted by the Planning Commission or the City Council if all of the following findings are made:

- The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.
- The project is consistent with the Milpitas Zoning Ordinance.
- The project is consistent with the Milpitas General Plan

The design of the gazebo is both aesthetically harmonious with the surrounding development in that it utilizes color, materials, and the style of the existing dwellings located on the property. The project is consistent with both the General Plan and the Zoning Ordinance.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is categorically except pursuant to Section 15303 (e) for "Accessory Structures" of the California Environmental Quality Act (CEQA) guidelines.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, Staff received two public comments. The comments oppose approval of the Site Development Permit because they feel the gazebo is intrusive. See Attachment D for more detail.

CONCLUSION

The project proposal to construct a gazebo at a residence is consistent with the Zoning Code's accessory structure standards and is in compliance with the General plan, and Hillside Combining District.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission recommend approval of SITE DEVELOPMENT PERMIT NO. SD09-0002, subject to the attached Resolution and Conditions of Approval to the City Council.

Attachments:

- A. Resolution No. 09-019
- B. Site Plans
- C. Pictures
- D. Public Comments

RESOLUTION NO. 09-019

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING SITE DEVELOPMENT PERMIT NO. SD09-0002, TO ALLOW FOR A GAZEBO ON THE REAR PORTION OF A HILLSIDE RESIDENCE LOCATED AT 461 VISTA RIDGE DRIVE.

WHEREAS, on March 30, 2009, an application was submitted by Javier R. Mercado, 461 Vista Ridge Drive, Milpitas, CA 95035, to allow for a 64 square foot, 12-foot tall gazebo to be located on the rear portion of the property. The property is located within the Single Family Residential Zoning District with Hillside Combining District and Site and Architectural Overlay (R1-H-S) (APN: 042-30-007); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project categorically exempt from further environmental review pursuant to Section 15303 (e) of the California Environmental Quality Act (CEQA) guidelines; and

WHEREAS, on April 22, 2009, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The project is categorically exempt from further environmental review pursuant to Section 15303 (e) "Accessory Structures" of the California Environmental Quality Act (CEQA) guidelines; and

Section 3: The project proposal is consistent with General Plan Policy 2.a-I-16 and 2.a-I-18 in that the gazebo is in an open space area and is a park like use. The gazebo design, materials and colors are of earth tones and match the existing buildings on the property and no grading is required for this project.

Section 4: The project proposal is consistent with the Hillside Combining District Ordinance in that it meets all Site and Architectural Guidelines.

Section 5: The project proposal is consistent the Milpitas Zoning Ordinance in that the design of the gazebo is both aesthetically harmonious with the surrounding development in that it utilizes color, materials, and the style of the existing dwellings located on the property.

Section 6: The Planning Commission of the City of Milpitas hereby recommends approval to the City Council of Site Development Permit No. SD09-0002, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on April 22, 2009.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on April 22, 2009 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Cliff Williams				
Aslam Ali				
Lawrence Ciardella				
Alexander Galang				
Sudhir Mandal				
Gurdev Sandhu				
Noella Tabladillo				
Mark Tiernan				

EXHIBIT 1

**CONDITIONS OF APPROVAL
SITE DEVELOPMENT PERMIT NO. SD09-0002**

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on April 22, 2009, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance.

2. Site Development Permit No. SD09-0002 shall become null and void if the project is not commenced within 18 months from the date of approval. The project shall be constructed as shown on the approved plans dated April 22, 2009.

Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of DS09-0002 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.

3. Applicant shall plant taller trees to block the view of the gazebo from neighboring homes.
(PC)

VISTA RIDGE DRIVE

APN: 042-30-007
ZONING: RI-H

TABULATIONS
LOT AREA: 193,658 SF
(E) RESIDENCE: 5,650 SF

ALLOWABLE IMPERVIOUS SURFACE CALC.

193,658 SF X .10 = 19,366 SF
19,366 SF < 30,000 SF (MAX) O.K.

IMPERVIOUS SURFACES:

- 1. (E) DRIVE: 8,412 SF
- 2. (E) WALK: 1,325 SF
- 3. (E) RESIDENCE/
GARAGE: 3,936 SF
- 4. (E) TENNIS COURT: 5,046 SF
- 5. (E) PATIO: 601 SF
- 6. (N) GUEST HOUSE: 1,100 SF
- 7. (E) WELL PADS: 294 SF
- 8. (E) WELL ACCESS: 3,333 SF
- 7. (E) SHEDS: 255 SF

TOTAL: 24,202 SF
ALLOWABLE AREA -19,366 SF
NET DIFFERENCE: 4,836 SF

IMPERVIOUS SURFACES REDUCTION
(EXISTING SURFACES TO BE REMOVED)

- 8. (E) WELL ACCESS: 3,333 SF
- 7. (E) SHEDS: 255 SF
- 4A. TENNIS COURT: 1,300 SF
(PARTIAL)

TOTAL: 4,888 SF < 4,836 SF

MAXIMUM STRUCTURE

(E) RESIDENCE: 5,650 SF
5,650 SF (20) = 1,130 SF
1,130 SF ALLOWABLE

(N) GUEST HOUSE: 1,100 SF
1,100 SF < 1,130 ALLOW.

MERCADO RESIDENCE

REVISIONS
OWNER REVIS

PROF
SITE

DATE:
PROJECT NO.:
DRAWN BY:

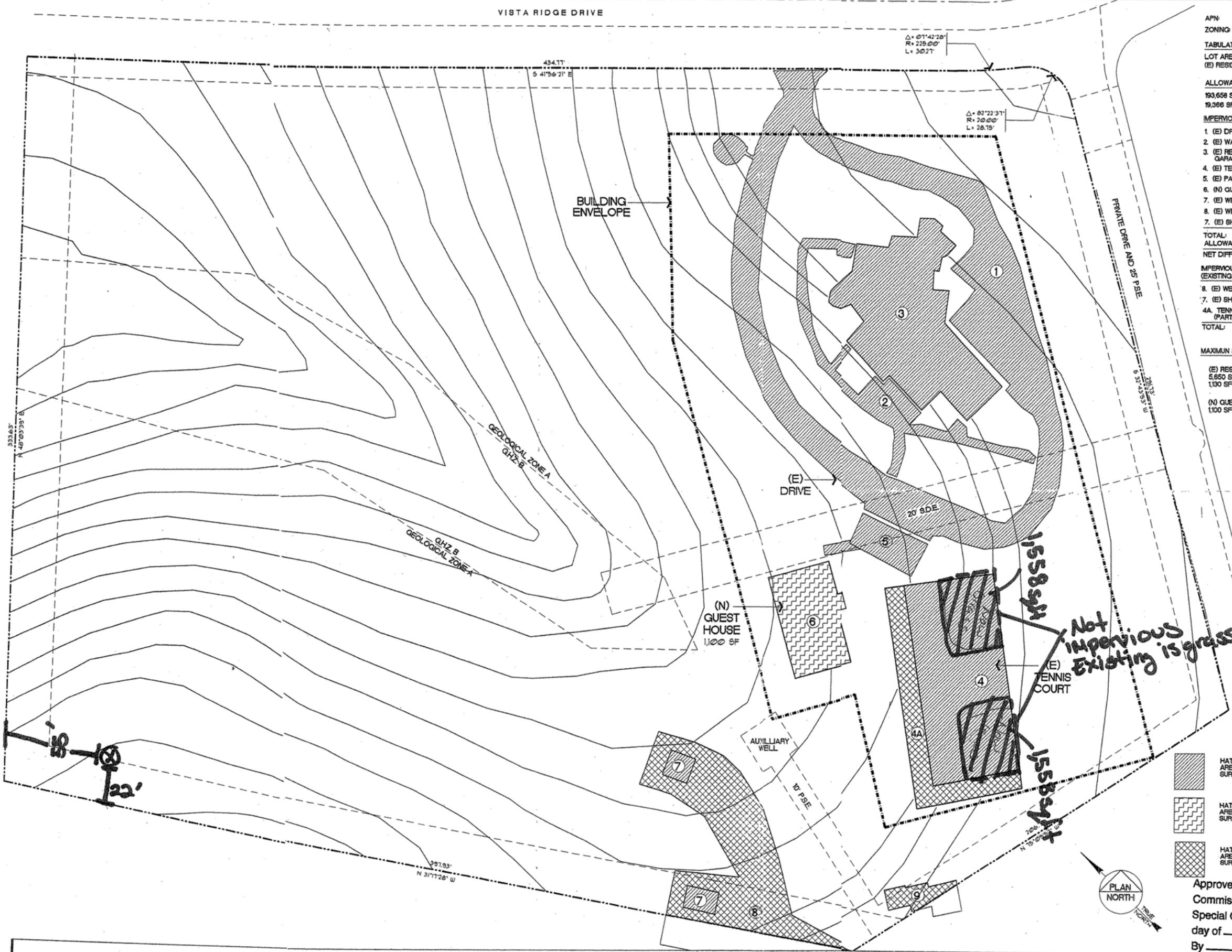
-  HATCHING INDICATES AREAS OF (E) IMPERVIOUS SURFACES TO REMAIN
-  HATCHING INDICATES AREAS OF NEW IMPERVIOUS SURFACES
-  HATCHING INDICATES AREAS OF (E) IMPERVIOUS SURFACES TO BE REMOVED

Approved by the Milpitas Planning Commission, subject to 10 Special Conditions, this 13 day of Feb, 2002
By [Signature]



1"=20' 1

Approved by the Milpitas City



PROPOSED SITE PLAN

View of Gazebo



View from gazebo looking toward neighbors house after planting shrubs.



Another view from Gazebo



Carol and Kurt Petersen
442 Vista Ridge Drive
Milpitas, CA 95035

To: Tiffany Brown
Project Planner
Milpitas Planning Commission
City of Milpitas, CA

From: Carol and Kurt Petersen

Re: Request to Deny a Permit for an Accessory Structure (Gazebo) on the Property at
461 Vista Ridge Drive, Milpitas, CA

April 14, 2009

Dear Tiffany,

This is a request to have The Milpitas Planning Commission deny the granting of a site development permit for an accessory structure (gazebo) on the rear portion of the property located at 461 Vista Ridge Drive. We live across the street from this property. The owner of the property, Mr. Javier Mercado, who is currently on the Board of Directors for the Spring Valley Heights Homeowners Association, built the gazebo up the hill on the rear portion of his property. The HOA has an Architectural Committee which reviews and approves all structures and add-ons to all properties before the homeowners seek a city permit. Our knowledge is that the approval was verbally granted by the Board of Directors, of which Mr. Mercado is a member.

Enclosed please find photos of the gazebo, which is overlooking directly into our front door and living and dining areas and our front bedroom, clearly constituting an invasion of privacy to our daily life. From our living room windows we have a view of the rolling hills which we paid for in the price of our lot. In addition, our house was designed to take advantage of this view. Now the gazebo is directly in the middle of that view. The gazebo stands out totally in disharmony with the surroundings and negatively impacts our property value. Building this gazebo is a very inconsiderate act by the neighbors and it is very unfortunate that the association granted approval without notifying the immediately surrounding neighbors. We strongly request and urge the city to deny the site development permit of said accessory structure and also to enforce the relocation of said structure.

Sincerely,



Carol Tao Petersen



Kurt Petersen

View from the front door



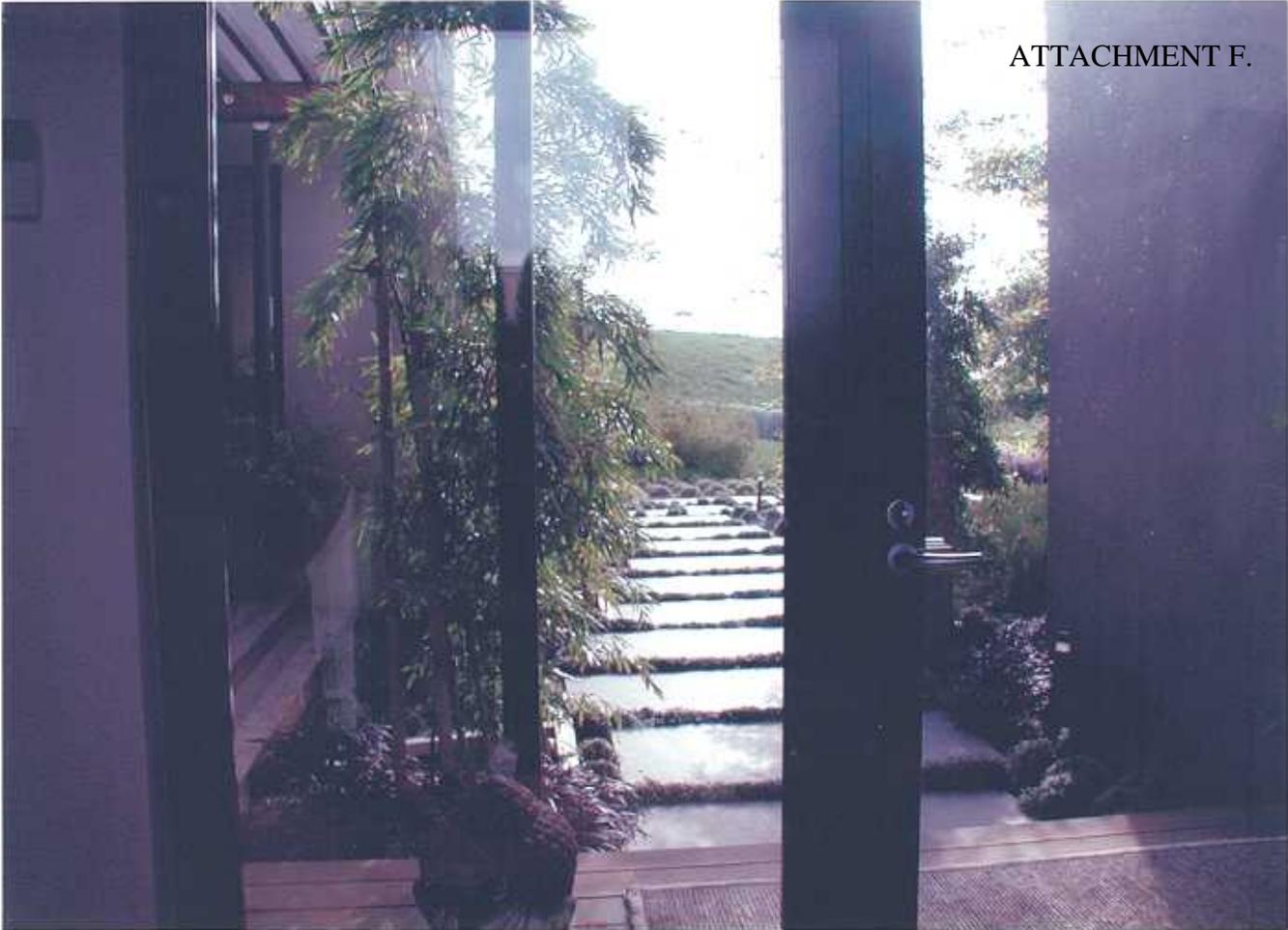
View from the gazebo overlooking Family, Dining, Front door, Front Billboard



*Looking out from family
Room window*



*Looking out from family sitting
area*



Looking out from front door

Tiffany Brown
Milpitas Planning Commission
4/16/09

Re: Sight Development Permit SD09-0002 (Mercado gazebo)

Statement and photos from:
Dan LeVasseur
375 Vista Ridge Drive
Milpitas, CA 95035
408-262-2224

I live next door to the Mercado residence. The gazebo in question seriously impacts my privacy and the view on the entire back side of my home, and is not in harmony with the intent of the Hillside Ordinance. In fact the gazebo is visible from everywhere on my lot except directly in front of the house on the street side, and has a negative impact on my property value. Other neighbors and visitors have also complained, asking "What's that doing there?", because it looks out-of-place. (I invite members of the commission to my home to see for themselves.) The building was initially constructed without HOA approval or City permits. To mitigate these concerns, I'm requesting the gazebo to be relocated next to the owner's residence where he can enjoy it privately, and I can reclaim my right to a peaceful enjoyment of my own property.

BACKGROUND

This is a narrative of events in chronological order.

8/28/08 - I noticed posts going up on the hill in back of my house; I called Dick Tetschlag and left a message (Dick is VP of the HOA's BOD). I didn't hear back.

8/29/08 - I called Bob Scott, president of the BOD; he said Mr. Mercado mentioned the gazebo at a meeting, but that's about it.

8/30/08 - Mr. Mercado stopped by my house, apparently prompted by Mr. Scott. He said the BOD approved the gazebo and that they had talked about it for two months. I showed him what the gazebo looked like from the back of the house and the pool, and he said "I see what you mean that this invades your privacy." "It wasn't my intent to spy on you, but I'll only go up there one or two times a year". I suggested he put low benches there instead since he'll only be up there a few times a year, and he said "It's too late, the concrete's already poured." I said I was very angry to the point of considering moving, and "how could the HOA approve this without mentioning it to me". I also told him he needed a permit from the City because this was Hillside zoned. In spite of my concerns the gazebo was nearly completed over that Labor Day weekend.

9/2/08 - I contacted the City building department. I told them the gazebo is built on a 20' wide Equestrian Easement, and that a 40' setback is required from the rear and side property lines, which the gazebo is not in conformance with (not to mention an impervious surface issue; a

walkway up to the gazebo was added later). Subsequently the building department informed me a building permit is not required, but the matter was being forwarded to the planning department.

9/4/08 - Dick Tetschlag returned my phone call, and said he will look into the gazebo and put it on the next BOD meeting agenda, per my request. He checked the previous three monthly meeting minutes of the BOD and couldn't find any mention of the Mercado gazebo. It was put on the agenda for the Wednesday 9/17/08 meeting. I told Dick I worked late on Wednesdays and I most likely couldn't make the meeting, and besides I didn't want to get into a verbal confrontation with Mr. Mercado, who coincidentally is also on the BOD. In a subsequent community newsletter it was stated that "after a thorough review", the gazebo was passed by a vote of 4-1 by the BOD. This happened without any input from myself or the other neighbors most affected by the gazebo. (Since there is no architectural committee in our development, the BOD handles all such issues.) Apparently they were in a hurry to dispose of this issue before the upcoming HOA annual meeting which was a few days later, on 9/20/08.

SUMMARY STATEMENT

If Mr. Mercado is allowed to keep this totally unnecessary structure, it's a green light for anybody to build first then ask questions later.

The gazebo is an eyesore sitting there at the top of a rolling hill adjacent to a cow pasture, invading the privacy of my home and others, and violates the Hillside Ordinance. The gazebo is closer to my house than the Mercado residence.

The gazebo invades our privacy in that any time my family is in the kitchen, breakfast nook, family room, stairway, or upstairs bedrooms, it's in our face (unless we close all the blinds). Anytime I'm swimming laps in the pool, using the outside barbecue, sitting on the outside patio, working in my garage or anywhere on the "private" side of the house (the "back yard" as most people would call it) it catches your eye and detracts from the rustic hillside landscape, like a red bull's eye or obvious overhead security camera. In fact, after a while, you don't see the hill, you just see the gazebo, and the hill is secondary. Look at the pictures and you'll see what I mean.

After years of stressful construction and the financial hardship of building a hillside home (not to mention living in an extremely expensive community with declining property values) we're forced to have to look at this structure.

Mr. Mercado added some small shrubs around the gazebo, which don't do anything to block it from anyone's view, as you can see from the pictures.

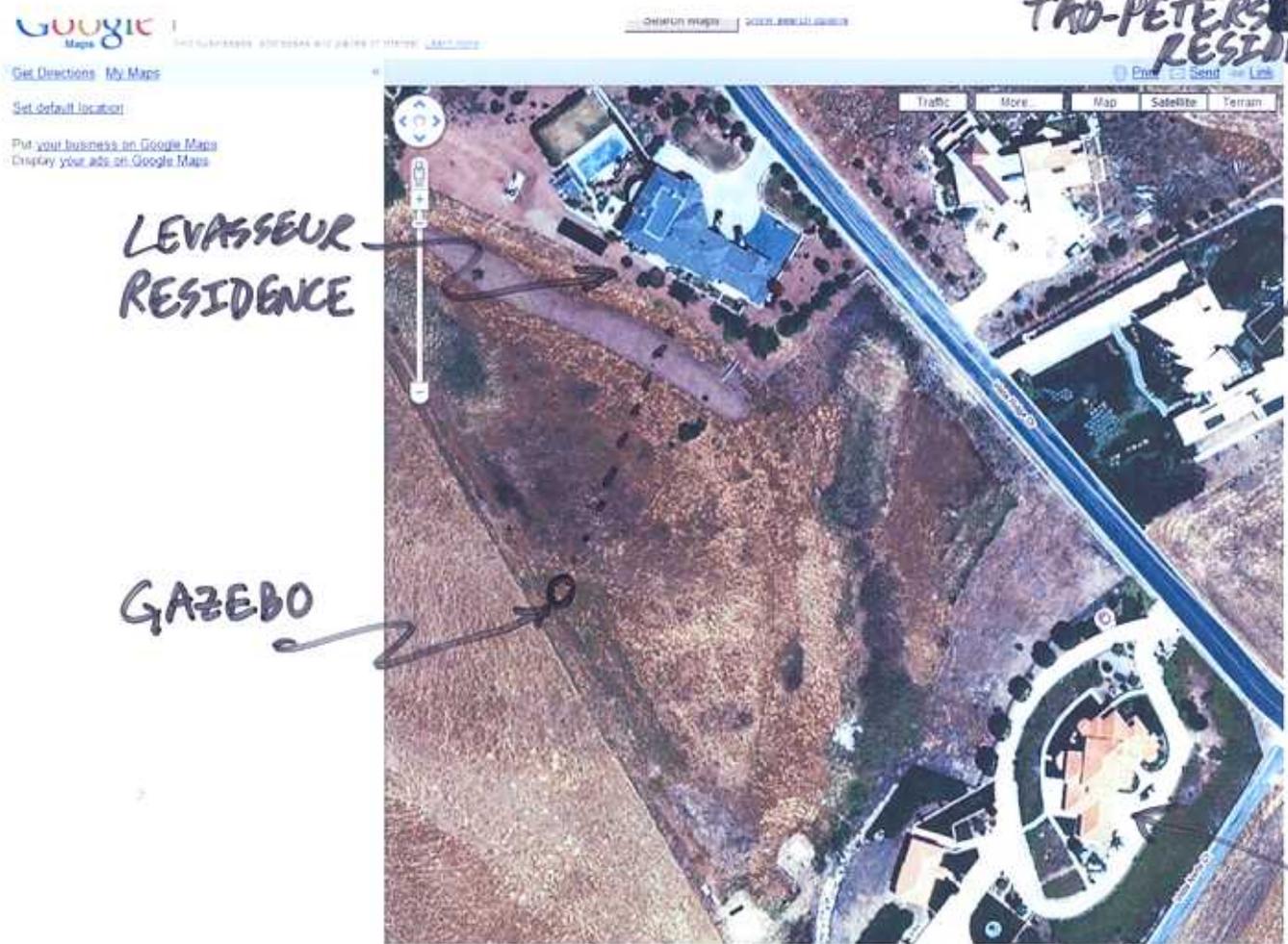
ATTACHMENTS

1. View of the back of my house from the hill. You can see inside every room on that side of the house.

2. Overhead view showing the location of nearby residences. The gazebo is considerably closer to my house than the Mercado residence.
3. Close-up of my pool, the BBQ patio, and decks, from the hill.
4. Close-up of the back of my house, where we spend most of our family time. The gazebo is visible from the north, west, and south sides of the house.
5. View of the gazebo from an upstairs bedroom.
6. View of the gazebo from my pool when I'm swimming laps or sun bathing.



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②

MERCADO RESIDENCE

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