



CONSTRUCTION BOARD OF APPEALS AGENDA REPORT

SUBJECT: Appeal of Administrative Citation for Construction Without a Permit

PROJECT ADDRESS: 1973 Royal Way

BY: Steve Sheats, Code Enforcement Officer
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FROM: Anne Schneider, Chief Building Official

RECOMMENDATION: Uphold the Administrative Citation for constructing a retaining wall without a permit.

SITE DATA

Appellant	Diane and John Villa, Residents
Zoning	R-1-S
Appeal Submittal	June 12, 2017
General Plan	Low Density Residential
Site Area	~14,500 Square feet
Code Violation	California Building Code §A105.1



SUMMARY

On October 13, 2016 Code Enforcement staff received a request for field investigation regarding possible unpermitted construction at 1973 Royal Way. Staff attempted to do an inspection however no one was home when staff arrived. A business card was left at the residence with a request to contact staff as soon as possible. While staff was at the residence they observed what appeared to be a concrete block wall under construction.

On October 14, 2016, after a Stop Work Order was posted, Mr. Villa contacted Code Enforcement Officer Steve Sheats and agreed to meet on-site for an inspection. During the inspection, Mr. Villa was advised that a permit would be required for the retaining wall. Mr. Villa came to the Building Department to apply for a permit but was advised that per California Building Code section 105.1 he would need to submit plans approved by a licensed engineer prior to obtaining a permit. Mr. Villa disagreed with this requirement and left. A Notice of Violation was issued for construction without a permit.

On April 3, 2017 Code Officer Sheats checked to see if Mr. Villa had obtained the required building

permit. Since no permit had been obtained an Administrative Citation was issued. Mr. and Mrs. Villa appealed the citation.

1.0 BOARD'S PURVIEW

The Construction Board of Appeals' role is to determine if the violation exists.

2.0 PROJECT INFORMATION

2.1 Site Information/Setting

The subject property is located on Royal Way in San Luis Obispo. The immediate neighborhood consists of single family homes. According to the San Luis Obispo County Assessor's Office, the three-bedroom residence was constructed on the property in 1991.

Site Size	~14,500
Present Use & Development	Single-family residence
Access	Royal Way
Surrounding Use/Zoning	North: R-1 (Single-family residences) South: C/OS (Conservation/open space) East: R-1 (Single-family residences) West: R-1 (Single-family residences)

2.2 Background

October 13, 2016

Staff followed up on a concern regarding possible unpermitted construction. No one was home at the initial visit although what appeared to be a concrete block wall under construction was seen from the public right of way. Contact information was left at the front door of the main house requesting the occupant contact Code Enforcement.

October 14, 2016

Code Enforcement Staff attempted to make contact at the residence again, but the property owner was not home. From the public right of way, staff was able to see through an open gate to the backyard. A large scale retaining wall was observed to be under construction. A Stop Work Order was issued. Later in the day, John Villa called and agreed to meet for an on-site inspection. During the inspection Mr. Villa was advised that a permit would be required. Mr. Villa came into the Building Department to apply for a permit. He was advised that plans would need to be approved by a licensed engineer. Mr. Villa disagreed and left.

October 17, 2016

A Notice of Violation was sent to the address for construction without a permit with a compliance date of November 16, 2016.

October 25, 2016

Mr. Villa contested the Notice of Violation and requested a Director's Review.

January 18, 2017

From the public right of way in front of the residence, a clear view into the backyard revealed that work had continued on the retaining wall, despite the Stop Work Order. Additional concrete blocks were added to the wall.

January 23, 2017

A Director's Determination as issued which upheld the Notice of Violation. A new deadline of February 23, 2017 was given for submitting plans.

February 14, 2017

A follow-up Stop Work Order was hand delivered to Mr. Villa at the residence due to a permit still not being obtained. Due to citizen concerns that work had continued on the wall, despite the original Stop Work Order, Mr. Villa was questioned if work on the wall had continued. He denied any further work was done. While walking on a public trail behind the residence (Sterling Trail) work being conducted on the retaining wall was visible. It appeared that pavers were being cut and laid.

March 28, 2017

An inspection from a neighboring property revealed that work had continued on the retaining wall. Pavers had been laid on a large section of the wall.

April 3, 2017

An Administrative Citation issued due to no permit being obtained.

April 13, 2017

Mr. and Mrs. Villa appealed the citation.

June 5, 2017

A letter was sent informing Mr. and Mrs. Villa that the requested appeal was incomplete and therefore rejected. A deadline of June 15, 2017 was given to request to have a hearing by the Construction Board of Appeals.

June 12, 2017

Complete appeal request received from Mr. and Mrs. Villa to have a hearing by the Construction Board of Appeals.

2.3 Appeal

The Appellant refutes the applicability of the violations stating Permit Required - California Building Code (CBC) A105.1 – See attachment 7 – Appeal request

3.0 APPEAL EVALUATION

3.1 Consistency with Building Regulations

The City's adopted codes include the California Residential Code and California Building Code, which states that "Any owner or authorized agent who intends to construct, enlarge, alter, repair,

move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.” Under the category “Work Exempt from Permit” it lists “Retaining walls that are not over 4 feet (1219mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.” There are multiple levels of the retaining wall which, in total, are over four feet. In addition, the wall supports a surcharge as it is built on a hillside. There are no permits on file for the retaining wall.

A retaining wall serves to support soil and other materials so as to create a difference in height between the two sides of a wall. A basement exterior wall is an example of a retaining wall that is found in everyday life. The interior side has a lower elevation for the floor than the elevation of the outside of the building. Retaining walls are used in many locations to transition from a higher to lower level, using a combination of flat and sloped areas of soil. The retaining wall can also support a surcharge which is a) soil mounded up (“not level”) at the upper surface of the retaining wall or b) a material other than soil which is supported by the wall. A surcharge loading exists any time a weight or “load” other than flat, well-drained soil exists in close proximity to a retaining wall. Such loads can be mounded or sloped dirt, concrete paving, a vehicle path (driveway), water saturated soil, or any other material that exceeds the nominal loading of clean well-drained soil.

A retaining wall that is less than 4 feet in height, from the bottom of the footing for the wall to the top of the wall is exempt from a permit, provided that the wall does not support any surcharge loading. In constructing a retaining wall on a hillside, the sloping surface above the retaining wall creates a surcharge loaded lower wall. The retaining wall must not support any loads except level well drained soil. Even water retaining behind a wall can cause a structural failure and potential collapse of the retaining wall. Installation of paving above a retaining wall to support a patio or other area for use is also a surcharge. Removing the soil above a retaining wall to create a flat space does not eliminate the surcharge loading as the next higher wall above the lowest wall may then surcharge the lower wall.

A series of walls extended up a hillside with insufficient separation between the walls to eliminate the weight of one wall acting as a surcharge on the lower wall creates a surcharged lower wall that must meet the design requirements of the California Building Code to be permitted. The design of a retaining wall requiring a permit must be prepared, stamped and signed by a licensed professional, either an Architect or a Civil/Structural Engineer.

The appellant contends that permits and approvals are not required for the retaining wall, stating that it is not over four feet. Photos of the walls in question show various heights as noted by the number of 8” tall concrete blocks shown above the soil, varying from less than 48” exposed above grade to as much as 9-8” blocks for an exposed height of 6 feet (72”).

The licensed professional retained to design the retaining walls requiring permits will identify and distinguish between walls that are exempt from permit and those that require design and a permit. The submission of that design will be reviewed for compliance with the Code and a permit issued. The work requiring a permit will be inspected and the work identified as exempt from permit will be

verified as meeting the criteria for an exempt wall.

4.0 CONCLUSION

The retaining wall was built without the proper permit. Plans need to be prepared by a licensed Engineer or Architect.

5.0 ALTERNATIVES

1. Grant the appeal based on different or modified findings.
2. Continue the action and request that staff and/or the appellant provide more information.

6.0 ATTACHMENTS

1. Notice of Violation (October 17, 2016)
2. Appeal (October 25, 2016)
3. Directors Decision (January 23, 2017)
4. Administrative Citation (April 3, 2017)
5. Administrative Citation Appeal (April 13, 2017)
6. Administrative Citation Appeal Rejection Letter (June 5, 2017)
7. Administrative Citation Appeal (June 12, 2017)
8. Example of retaining wall that would not require a permit
9. Photos of retaining wall at 1973 Royal Way