



## STAFF REPORT

**To: PLANNING COMMISSION**

**Prepared by: William L. Dillard, Code Enforcement Inspector**

### **General Information:**

**Owner: Richard C. Duncan**

**Location: 1227/1229 Escobar St., Martinez.**

**Zoning: R2 Residential/Common Units Duplex.**

**Proposal: Appeal hearing for Administrative Citation #130, re: M.M.C. Section 15.04.035 – Structure over 6 ½ ft high or 100 sq ft.**

### **RECOMMENDATION**

Uphold Staff's finding of non-compliance with M.M.C. Section 15.040.035 - regarding structures over 6 ½ ft. high or 100 sq. ft. and M.M.C. Section 8.20.101 (C) – storage of vehicles on private property (per letter dated November 20, 1990 to Richard Duncan). In addition uphold the issuance of Administrative Citation # 130 in the amount of \$100.00 for failure to comply by not removing illegal structure and stored vehicles within public view.

### **SITE DESCRIPTION**

**This parcel (0.0903 acres) is a double front property located in subdivision "Town Martinez" bordered on the south side by Escobar St. and on the North side by Marina Vista St., zoned R2 Residential/Common Units, with a Land Use Description of Duplex.**

### **CASE HISTORY**

Zoning Administrator Staff Report dated November 20, 1990 (Exhibit "C"), this report addresses the ongoing issue of storage of vehicles outside at the rear of the property. The owner (Mr. Duncan) requested a variance needed to construct a garage to house these cars. With a condition that once the garage is built, no cars be stored outside.

On October 15, 2005 a complaint was received of storage of vehicles outside within public view and the construction of a "Pole Tent Awning" at this location (photo Exhibit "D"). On October 19, 2005, a "Courtesy Warning Notice" (Exhibit "D") was mailed to

Mr. Duncan for compliance to remove the vehicles and Pole Tent Awning. On October 31, 2005 Code Enforcement received a letter requesting an extension of 90 days for compliance from Mr. Duncan (Exhibit "E"). Mr. Duncan was given an extension until November 28, 2005 for compliance (Exhibit: "F"). Pole Tent Awning and vehicles removed, case closed.

A Citizen's Complaint was received on September 10, 2012 of a "Pole Tent Awning" and several vehicles stored within public view at 1229 Escobar St.. On September 12, 2012 an "Courtesy Warning Notice" (Exhibit "G") for Municipal Code Violation Section: 15.04.035 – Structure (pole tent awning) over 6 ½ ft. high or 100 sq. ft. was mailed to Mr. Duncan. Compliance was requested within 30 days of the notice. On October 15, 2012 and inspection of the property at 1229 Escobar St. was made for compliance verification (Exhibit "H"). The Pole Tent Awning and several vehicles were still present at the location. On October 16, 2012 an Administrative Citation for \$100.00 was issued to Mr. Duncan for non-compliance to Section 15.04.035 of the M.M.C. (Exhibit "I").

Mr. Duncan filed a letter of appeal on October 25, 2012 to the Administrative Citation. Mr. Duncan was contacted and advised how to file a proper appeal and on November 9, 2012 an appeal letter (Exhibit "J") was received by the City. A hearing date with the Hearing Examiner was set for December 11, 2012 at 7:00pm at City Hall (Council Chambers).

1229 Escobar Street;

- The "tent" located within the rear yard of 1229 Escobar Street (adjacent to the Marina Vista right-of-way and a detached garage, for which a variance to rear yard setbacks and coverage limitations was granted in 1991) is an *accessory structure* as defined by code:

**22.04.520 - Structure.** *"Structure" means anything constructed or erected which requires a location on the ground, including a building but not including a fence or a wall used as a fence.*

**22.04.530 - Structure, Accessory.** *"Accessory structure" means an attached or detached subordinate structure, which is, subordinate in size and incidental to the use of the main structure or the main use of the land, and which is located on the same site with the main structure or use.... Examples of detached accessory structures include, but are not limited to... garages, carports, storage sheds, greenhouses, gazebos, and secondary housing units.*

- The following limitations apply to *Accessory Structures* in the Subject R-2.5 (Multi-Family Residential, 2,500 sq. ft. site area per dwelling unit) Zoning District.

## 22.12.265 – Accessory Structures (as revised July 2007)

**B.2 Maximum Height.** *The height of an accessory structure may not exceed one story or 15 feet. Exceptions to exceed either the 1 story, or 15 feet maximum, or both, may be granted with approval of a use permit.*

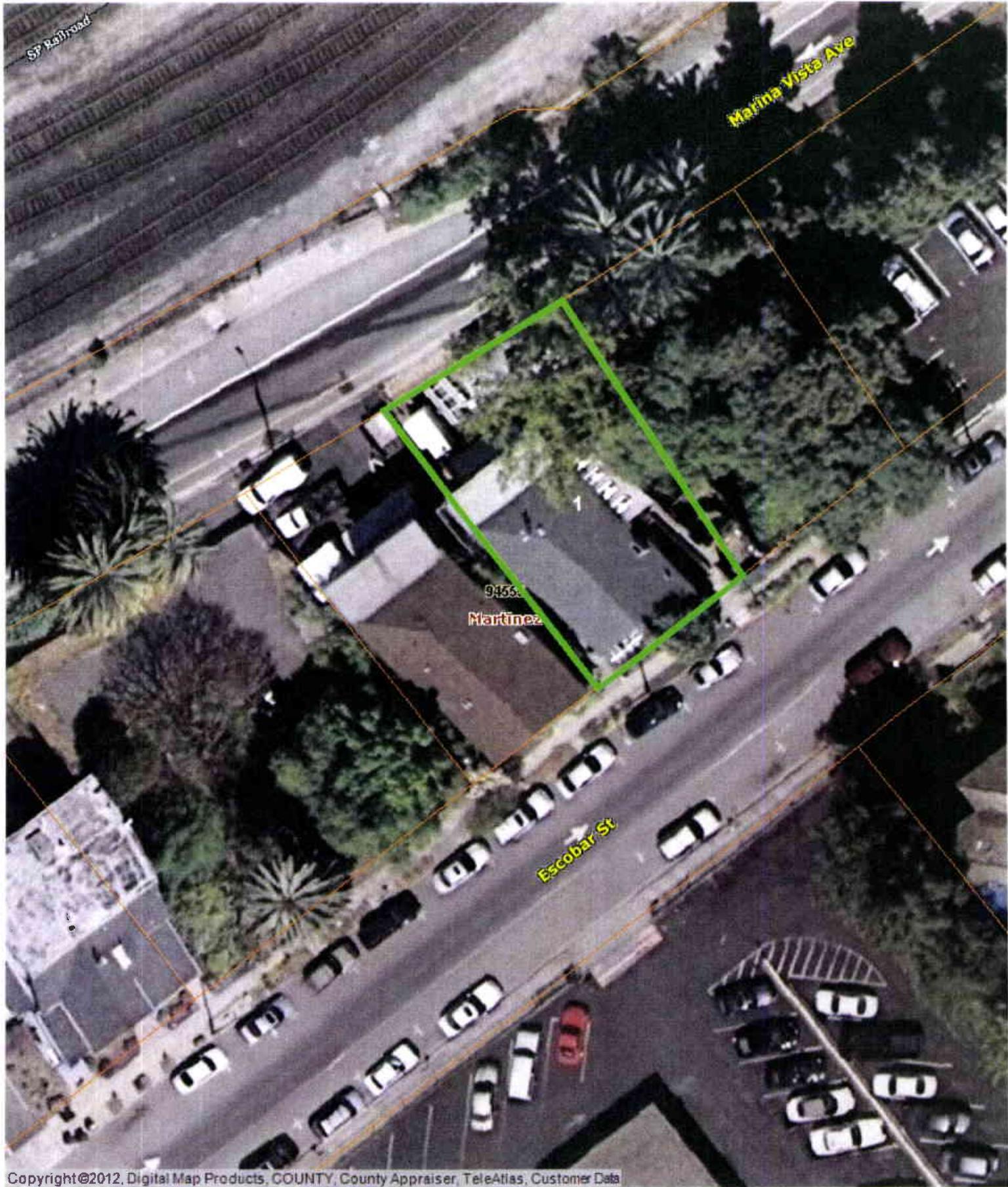
**B.3 Exceptions to Minimum Yard Requirements for Accessory Structures Within Minimum Required Rear Yards.** *Provided that the accessory structure(s) do not cover more than 25% of the minimum rear yard otherwise required < which is 25' in the subject R2.5 District >, accessory structure(s) may be placed, or partially placed, within such minimum required rear yards, subject to.... a minimum setback of 5 feet... from the rear and interior side property lines that are adjacent to the otherwise required minimum rear yard.*

- In January 1991, the Zoning Administrator was able to make the necessary findings for a variance to allow the construction of the existing 2-car garage (which has no rear yard setback and exceeds the 25% coverage limitation), as there was no other potential location for a garage on the site. The approval of the existing garage was also predicated on the garage being used to store what had been an unsightly collection of non-operational vehicles and stored items visible from the Marina Vista right-of-way.
- The current tent structure would require approval of an additional variance, as it too exceeds the above limitations for accessory structures. But with an existing 2-car garage already on the property, there does not appear to be any “special circumstances” for which approval for an additional variance could be granted. Furthermore, the retention of the tent structure would be inconsistent with the intent of the City’s approval of the garage in the first place, which to make a “visual improvement” by reducing the clutter viewed from the Marina Vista right-of-way.
- In addition, the tent structure would block access to the “tuck-under” garage below the dwelling units. Section 22.36.030.B requires that garages for multi-family units “*not be used for storage by any outside party nor used for habitation by any party. There shall be at all times in every garage in the City sufficient space to park at least one automobile.*” While both the “tuck-under” and 1991 garage have been used for storage, it would be a violation of the above parking code section to allow a second structure to block access to what should remain accessible parking for the multi-family use.

EXHIBITS:

- A - Site Context Map and Aerial Photo
- B - M.M.C. Section 15.04.035(105.2A)
- C - Zoning Adm. Staff Report, dated November 20, 1990
- D - Courtesy Warning Notice (10-19-2005) with photo
- E - Letter (requesting 90 day extension for compliance) dated 10-31-2005
- F - Letter of extension from City, dated 11-07-2005
- G - Courtesy Warning Notice (09-12-2012)
- H - Compliance Photo (10-15-2012)
- I - Administrative Citation (10-16-2012) with photo
- J - Letter (request for Appeal) dated 11-09-2012





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EXHIBIT: "A"  
Pg. 2 of 2



1" = 30'



CitvGIS

**15.04.035 Section 105.2 Amended—Exempted Work.**

Section 105.2 of the International Building Code is hereby amended as follows:

**105.2 Exempted Work.** A building permit will not be required for the following:

- A. One-story detached accessory buildings used as tool and storage sheds, playhouses, and similar uses, provided the projected roof area does not exceed 100 square feet and 6 feet, 6 inches, in height.
- B. Fences not over 6 feet in height when in compliance with other applicable codes.
- C. Cases, counters and partitions not over 5 feet high.
- D. Retaining walls not over 3 feet in height measured from grade to top of cut or fill unless supporting a surcharge or impounding Class I, II or III liquids.
- E. Platforms, walks and driveways not more than 18 inches above grade and not over any basement or story below.
- F. Painting, papering and similar finish work.
- G. Temporary motion picture, television, and theatre stage sets and scenery.
- H. Window awnings supported by an exterior wall of Group R, Division 3, and Group M occupancies when projecting not more than  $\frac{1}{3}$  the distance to a property line, providing the projection does not exceed 54 inches.

(Ord. No. 1358 C.S., § 1, 12-15-2010.)

TO: ZONING ADMINISTRATOR

FROM: Barbara Bacon, Assistant Planner **BB**

Applicant,

Owner: Richard Duncan

Location: 1229 Escobar Street

Proposal: Construction of a garage set back zero feet from the sideyard and rearyard property line where five feet are normally required.

Requested

Approvals: Variance #90-53, Design Review #90-90.

Recommendation Approval of the proposal subject to the attached conditions.

Existing Conditions

Site Size: Approximately 4,000 square feet

Zoning: R-2.5 (Multi-family residential, 2,500 square feet per dwelling unit).

Nearby  
Improvements: Fully improved

Environmental Review

Exempt from the requirements of CEQA, Class 5a, Minor Alterations in Land Use Limitations.

Discussion

This property fronts on Escobar Street, the rear property line fronts on Marina Vista. The applicant has been storing antique cars outside at the rear of the property for some time. He would like to construct a 17x28 foot garage to house these cars. It does not appear that it would be possible to build a garage on this lot without requiring a variance. There are some large palm trees located on the property to the east, which are closer to the roadway than the proposed garage would be, and further to the east there is a very high retaining wall along the edge of the roadway. The view of the garage would be softened by these features as you drive down Marina Vista.

Since enclosing the cars would be a visual improvement over the open storage and the area is unique in that there are a lot of nonconforming structures, staff recommends approval of the variance with a condition that once the garage is built, no cars be stored outside.

November 20, 1990

ZONING ADMINISTRATOR STAFF REPORT

ITEM NO.

The applicant has done a lot of work on the design of the existing residence. He plans to build the garage to continue this design theme. Staff believes it will be an attractive addition to the area and recommends approval of the Design Review.

BB:251.310

Vicinity Map  
Conditions of Approval



NOVEMBER 1990



EXHIBIT: "C"

Pg 3 of 3



BUILDING DEPARTMENT  
CODE ENFORCEMENT DIVISION  
CITY OF MARTINEZ (925) 372-3598

525 HENRIETTA STREET  
MARTINEZ, CA 94553

**COURTESY WARNING NOTICE**

Date: 10-19-05

Time:

Infraction  Other

Name:

Property Owner: Richard C. Duncan

Address:

Address: 1227 Escobar St., Martinez, Ca.

Parcel # 373-260-005

Site Address: 1227 Escobar St., Martinez

Date Notified: 10-19-05

Method of Delivery:

**Code Violations:**

Storage of In-operable vehicles on private property. Non-permitted structure – Pole Tent/Awning.

**Municipal Code Reference(s):** Section: 8.20.010 (C) – In-Operative Vehicles.

Section: 15.04.035 - Structure over 6 ½ Ft. High or 100 Sq. Ft. require proper permits.

Section: 8.36.030 (o) – Property Nuisance, vehicles left in a state of partial repair.

**Violation May Be Corrected By:**

Remove Pole Tent/Awning until proper permits are applied for and received. Remove all stored vehicles that are not in compliance with M.M.C. Section 8.20.010 & Section 8.36.030.

**Compliance requested within 15 days of this notice. Failure to comply can result in an Administrative Citation.**

**INFORMATION ABOUT THIS NOTICE.** This violation is a public offense which is not punishable by imprisonment. A person charge with this violation shall not be entitled to a trial by jury, shall not be entitled to have the public defender or other counsel appointed at public expense for representation unless he is arrested and not released on his written promise to appear, his own recognizance, or a deposit of bail. Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions, including but not limited to powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trail and burden of proof. (*References Calif. Penal Code Sections 17, 19c, 19d.*)

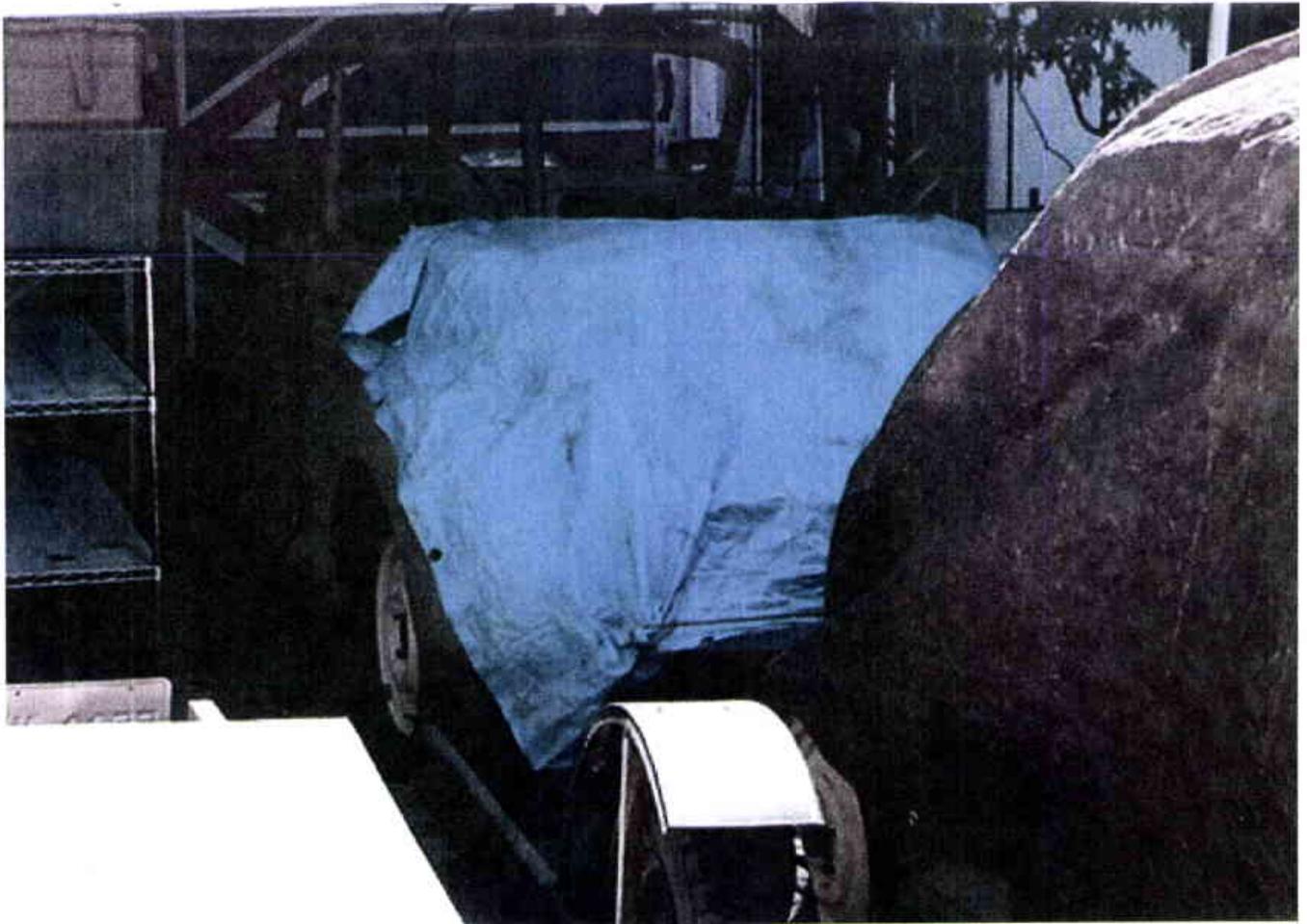
Signature of Responsible Party \_\_\_\_\_

Issuing Officer: W. L. Dillard, Code Enforcement Inspector 925-372-3598

(over)

EXHIBIT: "D"

Pg 1 of 2



1229 ESCOBAR ST.

OCT. 15, 2005



EXHIBIT: "D" Pg 2 of 2

October 31, 2005

City of Martinez  
525 Henrietta Street  
Martinez, CA. 94553



Attn: Mr. Bill Dillard  
Code Enforcement Officer

Subject: Courtesy Warning – 1227 Escobar Street, Martinez  
Dated 10-19-05

Gentlemen,

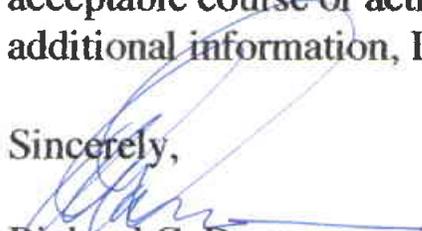
I am in receipt of your Courtesy Warning Notice of Code Violations at subject property and have initiated actions to bring the stated violations into compliance. As of this date, two vehicles have been sold and a third is in the process of being made operable and will be completed within 10 days.

Due to the nature of my hobby of car restoration/collection, there are logistics and economic factors that will require additional time in order to fully comply with your notice.

Therefore, I am requesting an extension of 90 days from this date to complete the necessary tasks for full compliance.

Per our meeting, I trust that this will be a satisfactory and acceptable course of action. If you have any questions or need additional information, I can be reached at 229-2500.

Sincerely,

  
Richard C. Duncan

cc: Dave Scola – Building and Construction Director

EXHIBIT! "E"



## City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

November 7, 2005

Richard Duncan  
1227 Escobar St.  
Martinez, CA 94553

Subject: Courtesy Warning Notice (Dated 10/19/05)

Dear Mr. Duncan:

This is a response to your letter of October 31, 2005. You are here by given until January 1, 2006 to remove stored vehicles that are in violation.

Compliance for removal of pole tent/awning and metal fence posts is requested by Monday (11/28/05). Failure to comply by these dates can result in an administrative citation of up to \$100.00 per day of non-compliance.

If you have any questions or need additional information, please call me at 372-3598.

Sincerely,

A handwritten signature in cursive script that reads "Bill Dillard".

Bill Dillard  
Code Enforcement Inspector

cc: David Scola

EXHIBIT: "F"



BUILDING DEPARTMENT  
CODE ENFORCEMENT DIVISION  
CITY OF MARTINEZ (925) 372-3598

525 HENRIETTA STREET  
MARTINEZ, CA 94553

**COURTESY WARNING NOTICE**

Date: 09-12-2012

Time:

Infraction  Other

Name:

Property Owner: Richard C. Duncan

Address:

Address: 1229 Escobar St., Martinez, Ca. 94553

Parcel # 373-260-005

Site Address: 1227 Escobar St., Martinez, Ca. 94553

Date Notified 09-12-2012

Method of Delivery: Mail

**Code Violations:**

Pole Tent Awning. Stored materials (tiles) on pallet within public view.

**Municipal Code Reference(s):**

Section: 15.04.035 – Structure over 6 ½ ft. high and 100 sq. ft.

**Violation May Be Corrected By:**

Remove Pole Tent Awning and all stored materials within public view.

**COMPLIANCE REQUESTED WITHIN 30 DAYS OF THIS NOTICE.**

Failure to comply can result in an Administrative Citation of \$100.00 per notice of non-compliance.

**INFORMATION ABOUT THIS NOTICE.** This violation is a public offense which is not punishable by imprisonment. A person charged with this violation shall not be entitled to a trial by jury, shall not be entitled to have the public defender or other counsel appointed at public expense for representation unless he is arrested and not released on his written promise to appear, his own recognizance, or a deposit of bail. Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions, including but not limited to powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof. (*References Calif. Penal Code Sections 17, 19c, 19d.*)

Signature of Responsible Party \_\_\_\_\_

Issuing Officer: W. L. Dillard, Code Enforcement Inspector 925-372-3598

(over)

EXHIBIT "G"



10/15/2012

EXHIBIT: "H"



ADMINISTRATIVE CITATION      Citation # 130  
 City of Martinez                      Case No. 2030899  
 Neighborhood Improvement Services

<b>Date of Citation</b> 10-16-2012	Time: <input type="checkbox"/> AM <input type="checkbox"/> PM	<b>Day of Week</b> TUESDAY
<b>Violation Location/Address</b> 1229 Escobar St., Martinez, Ca. 94553		
<b>Citation Issued To (Owner or Business)</b> Richard C. Duncan		
<b>Address if different than violation</b> 634 Talbart St.		
<b>City</b> Martinez	<b>State</b> Ca. 94553	<b>Zip</b>
<b>Driver's License No.</b>		
<b>You are being issued an Administrative Citation for this violation in lieu of Criminal Prosecution. Additional violations may result in Criminal Prosecution and/or additional Administrative fines.</b>		
This violation(s) was originally brought to your attention on 09-12-2012, and you have not corrected or resolved the violation(s).		
<input type="checkbox"/> 1 <sup>st</sup> VIOLATION \$100.00	Refer to the back of this citation for information on paying the amount indicated.	
<input type="checkbox"/> 2 <sup>nd</sup> VIOLATION \$200.00		
<input type="checkbox"/> 3 <sup>rd</sup> VIOLATION \$500.00		
<b>Violation Code &amp; Section</b>	<b>Description of Violation(s)</b>	<b>Fine Amount(s)</b>
Section: 15.04.035 - Pole tent awning structure over 6 ½ ft high and 100 sq. ft.		<b>\$100.00</b>
<b>FINE DUE BY: 10-29-2012</b>	<b>Total:</b>	<b>\$100.00</b>
<b>In addition to the fine the following corrections must be made by:</b>		
Remove Pole tent awning structure and pallet of tiles. All stored vehicles are required be stored out of public View (not just under car covers) per agreement of letter dated November 20, 1990 (conditions of approval for Variance of garage structure).		
FAILURE TO COMPLY BY NOVEMBER 1, 2012 CAN RESULT IN ADDITIONAL ADMINISTRATIVE CITATIONS.		
<b>Issuing Officer</b> W. L. Dillard, Code Enforcement Inspector		
<b>Date 10-16-2012</b>		
<b>NOTE: TO AVOID ADDITIONAL CITATIONS, PLEASE COMPLY.</b>		
<b>Questions regarding this citation, call Code Enforcement Department: 925-372-3598</b>		

EXHIBIT: "I"

November 9, 2012

Dave Scola  
Director of Public Works  
City of Martinez  
525 Henrietta Street  
Martinez, Ca 94553



SUBJECT: Request for Appeal  
Administrative Citation #130  
Case # 2030899

Dear Mr. Scola,

Your letter of October 29, 2012 outlines additional requirements of Section 1.15.080 (A) Appeals which were not previously mentioned as necessary in filing for an appeal as follows:

**(1) Imposition of Fine-**

Given that I did not have the opportunity to submit information as provided in Section 1.15.070 (Determination of Fine) combined with requirement for deposit of the \$100.00 fine as required in Section 1.15.080 (B) constitutes undue harassment.

**(2) No Administrative Fine**

Original Courtesy Warning Notice cited Section 15.04.035- structure over 6 ½ ft and 100 sq ft area. This section amended as Section 105.2 of IBC by ordinance # 1358 c.s. dated 12-15-2010 refers to exempted permanent structures not requiring building permits.

Temporary Structures are covered in the 2009 IBC Section 31003 as "membrane" and "non membrane." Membrane (non rigid) structures under 200 sq ft in area with duration of use of 180 days or less per year are permissible.

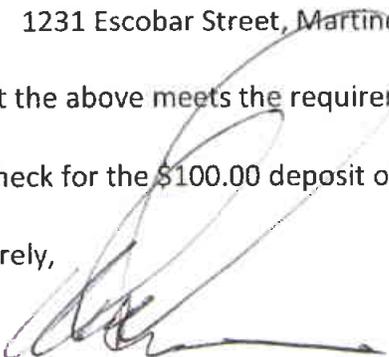
**(3) Address-**

Richard Duncan  
1231 Escobar Street, Martinez, Ca 94553

I trust the above meets the requirement you referenced in your letter of October 29, 2012.

My check for the \$100.00 deposit of the fine, made payable to the City of Martinez is enclosed.

Sincerely,



Richard Duncan  
925-864-8309

EXHIBIT: "J"