APPEAL BRIEF IN SUPPORT OF "REASONABLE ACCOMMODATION"

Date: March 31, 2025

Applicants: James and Melinda Marlar ("Marlars")

Property Address: 500 A Avenue, Coronado, CA 92118

Decision Letter: February 7, 2025, Planning Department ("City"), No. 2024-06

SUMMARY

Longtime residents in their mid-70's and early 80s, both with documented and undisputed orthopedic disabilities, appeal from the City's partial denial of their "reasonable accommodation" request under the federal and California Fair Housing Act (FHA), as incorporated into Coronado's Municipal Code.[1]

Request for a "Reasonable Accommodation:" The Marlars asked to enclose a 290 square foot "L"-shaped flat-roof area over their attached garage in order to (1) install an elevator, and (2) gain accessible storage space. (See, Figure 1).[2]

While the City agreed that the Marlars met all of the Code's legal requirements for "reasonable accommodations," it only partially approved their request. And what it did approve is impractical with respect to the elevator, and it failed to approve any space for storage. (Figure 2). Denial of accessible storage violates the FHA.

Elevator: The City approved the installation of an elevator, but allowed only 76 square feet for that purpose. Of that amount, thirty-six square feet was allotted for the shaft, and 40 sq. ft. for a pathway to the home. This "approval" creates an illusory paradox: "granting" an elevator as a necessity but so restricting the space as to make the approval functionally unworkable.

Accessible Storage: In proposing "alternatives" for storage, the City recognizes that storage is appropriate under the FHA. In rejecting the request, it found that "equivalent" benefits were available to the Marlars, and denied the request on that basis. However, each of those "alternatives" are not of the "equivalent level of benefit" required by the FHA and Coronado's Code, are factually disparate or wholly inaccurate, and thus fail to meet the legal standards.

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[1] Coro. Mun. Code 70.130.010 et seq.

[2] The City states that the space is 321 sq. ft. but that figure was never mentioned until the decision letter of February 7, 2025. A site visit measurement, reference to the scale on the Marlars' submissions, or plans on file, would have shown that number to be inaccurate.

PROCEDURAL BACKGROUND

The Marlars' application for reasonable accommodation stems from orthopedic disabilities that significantly impact their mobility and ability to access portions of their home. In September 2024, they initiated consultations with architects and contractors, who engaged with the City on their behalf, to address these challenges through home modifications. No progress was made.

On November 15, 2024, following these discussions, the Marlars filed their formal Application for reasonable accommodations under Coronado's Fair Housing Act provisions, CMC 70.130.010 *et seq.*, seeking permission for an elevator installation and accessible storage space within the existing property footprint. (see, Figure 1).

The ensuing process involved multiple submissions, including a December 11 Supplement addressing specific concerns raised during a December 3 meeting with the Planning Department, and responses to two letters. In total, the Marlars provided four comprehensive written submissions, comprising 28 narrative pages and 35 detailed exhibits documenting their needs and proposed solutions.

Despite repeated invitations, no representative from the City made an on-site inspection of the property. This omission proved significant, as the City's subsequent determinations rested on incorrect assumptions about the property's physical characteristics. A physical inspection would have minimized or eliminated such inaccurate conclusions.

On February 7, 2025, the City issued its decision. It allowed the elevator, but without explanation limited the square footage to an impractical minimum, only 76 square feet. Of that amount, 36 sq. ft. was allotted for the elevator's shaft, and 40 sq. ft. was left for a "hallway" connection from the elevator to the home. (Decision letter, Conclusions Nos. 2, 4; see, Figure 2). The decision also denied any square footage for accessible storage, even though their 225 sq. ft. attic, which has been their primary storage area since purchasing the home in 2011, is no longer safely accessible and, in addition, 36 sq. ft. of storage will be immediately lost in the garage due to the elevator shaft. (Decision letter, Finding No. 2; Conclusion No. 3; see, Figure 2).

The City based its denial of the storage request solely upon a finding that there were "alternative reasonable accommodations" available to applicants which would "provide an equivalent level of benefit." CMC 70.130.060(B)(1); Decision Letter, Finding No. 2.

Except for the allowed 76 sq. ft., the decision denied any further build-out or enclosure over the remaining portion of the flat-roofed garage, for use either as travel pathways to and from the elevator, or for any safe and accessible storage space.

LEGAL FRAMEWORK AND STANDARDS

Coronado's Municipal Code Section 70.130.010 *et seq.* implements federal and state Fair Housing Act requirements, establishing the framework for reasonable accommodation requests. The Code expressly provides for modifications to existing structures when necessary to enable disabled residents to fully enjoy their homes. Coronado's local framework operates against the backdrop of federal guidance from both the Department of Justice and the Department of Housing and Urban Development, which emphasize that multiple accommodations for an individual may be necessary to achieve meaningful accessibility. Denial of a proper "reasonable accommodation" request has been held to be discriminatory.

Significantly, the City's February 7, 2025 decision letter acknowledged that the Marlars' application satisfied all legal requirements under CMC 70.130.060(A). The City found that the Marlars met the disability threshold and that their request (as to the elevator) was reasonable and necessary. However, the City's denial of their request for accessible storage, and the minor amount of additional square footage for a logical elevator travel pathway, raises significant legal and practical concerns that form the basis of this appeal.

ANALYSIS OF CITY DECISION

A. Inadequacy of Approved Elevator Configuration

The flat-roofed portion of the garage is "L-shaped" because 48 sq. ft. of a bedroom, as well as 30 sq. ft. of the landing, extends over a portion of the garage below. The Marlars' proposal would tie the second-story addition to the main home's existing second-floor interior landing. (Figure 1). The window would be replaced with French doors, leaving intact its half-circle transom so that, in effect, the architectural feature remains the same. The landing's window is a key feature of the Lorton Mitchell/Dorothy Howard home. (See, Figure 3).

The City's approval of only 76 square feet for the elevator installation (36 square feet for the elevator shaft, and 40 square feet for a connecting "hallway") fails to provide functional accessibility. This limited allocation creates several significant problems. (Figure 2).

First, the approved dimensions force an impractical configuration. The City's "hallway" plan would require the elevator to open eastward into a narrow 4' x 10' ft. corridor, creating a tunnel-like approach. (Figure 2). The Marlars' proposal exits the elevator to the north, which is a more desirable construction design. (Figure 1). Of necessity, the travel pathway to access the home's entry point can flow smoothly only with a wider design and more square footage.

Second, the City's unorthodox configuration would necessitate construction of a new wall two feet away and in from the existing outer south wall of the garage (in order to center the "hallway tunnel" on the elevator opening), resulting in an awkward misalignment that would compromise both the structural integrity and architectural aesthetics of the home. (Figure 2). This misalignment would adversely impact the previously mentioned floor-to-ceiling arched window that currently serves as a focal point. (Figure 3). Building a new wall, two feet off from an existing wall, is not only an illogical placement, but is difficult to reinforce and expensive to construct. It is clearly more architecturally functional to build up onto existing walls, rather than build "walls within walls."

Third, the restrictive dimensions would effectively eliminate the ability to convert the entire window space to French doors and to retain the arched transom. The City's allocated 40 sq. ft. "hallway" space creates an off-center, displeasing, asymmetrical opening while simultaneously destroying a key element of the home. (Figure 2).

The City's partial approval is ill-conceived and poorly thought-out, is not a "reasonable" accommodation and ignores discussions concerning the desire to retain and convert the arched window as the entrance to the additional space requested. A site-visit, or even a review of the many exhibits (including photos) provided in the Marlars' filings, would have clarified and made obvious the flaws within the City's impractical and illogical decision, and led ultimately to what Coronado's Code requires, a "reasonable accommodation" that aligns with common sense and rational construction design.

Moreover, there was no explanation for limiting the request to an unworkable amount of space, and no discussions with the Marlars prior to the release of the Decision.

B. Safe and Accessible Storage is Reasonable and Necessary

The second part of the Marlars' request dealt with the need for accessible and safe storage.

Accessible and safe storage also falls within the Fair Housing Act's requirements for allowance of reasonable modifications, intended to enable disabled individuals full enjoyment and use of their homes. According to HUD guidelines, "storage areas" for disabled individuals with mobility impairments must be accessible, designed and located in such a way as will allow people with disabilities to easily maneuver and reach them. Both elevators and accessible storage are considered, by the DOJ and HUD, to be of equal importance to, for example, ramps and accessible parking. In this instance, both an elevator and accessible storage can be smoothly integrated and properly constructed atop the flat-roofed garage's existing footprint.

The City's very act of proposing "alternatives" to the Marlars' request for accessible and safe storage demonstrates that it recognizes storage as a valid disabled category. FHA and HUD guidelines require that this category be accommodated. By rejecting

Marlars' request, and stating that there are only unreasonable "alternatives," the City failed to follow the Code.[3]

The Marlars' attic, which has become inaccessible due to the orthopedic disabilities, has only a drop-down vertical ladder. Because the attic space has become inaccessible, approximately 225 sq. ft. of former storage space is now lost. They will lose another 36 sq. ft. of garage storage due to the placement of the elevator shaft, for a total loss of 261 sq. ft. of what had previously been storage. They are asking for an accommodation of less than half of the amount - in the space over the garage - to replace space now lost due to their disabilities. What the Marlars have requested is reasonable.

The space requested for accessible storage is not large, covering only about 38% of the garage's flat roof. If an elevator has been allowed as a "reasonable and necessary accommodation," it is similarly logical to allow the owners to enclose the remaining flat space, and to use it for accessible and safe storage.

C. Deficiencies in City's Proposed Storage "Alternatives"

The City's finding that "alternative reasonable accommodations" exist for storage misapprehends both the practical realities of the Marlars' disabilities and the legal standards for equivalent accommodation.[4] Each of the City's four proposed alternatives fail to provide the required "equivalent level of benefit" mandated by CMC 70.130.060(B)(1). (Decision Letter, Finding No. 2; Conclusion No. 3).

The four "alternatives" relied on by the City are easily distinguished as not being of an "equivalent level of benefit:"

1. **Attic:** The ironic suggestion that the Marlars should continue to use their attic storage (225 sq. ft.) defies logic and medical reality. Having acknowledged that their disabilities necessitate an elevator for basic floor-to-floor mobility, the City nevertheless proposes that they should be required to utilize a pull-down vertical ladder to gain access to their attic, and then navigate a limited space for storage access. (Figure 4). This recommendation directly contradicts the City's own finding regarding the Marlars' mobility limitations. (Decision Letter, Finding No. 1).

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[3] "There may be instances where a provider [city] believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability....Nevertheless, persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation." Department of Justice - US Attorney's Bulletin, Nov. 2002.

[4] "Equivalent" is defined as "equal in quantity, value, force, meaning, etc." Webster's New World Dictionary (1962). It also means "alike, identical." Black's Law Dictionary (4th edition. 1951).

2. **Off-Site:** The closest public storage facilities are in Imperial Beach or Chula Vista, both requiring at least a 20-mile round trip. The Marlars are 75 and 80 years old. It is uncertain as to how much longer they will be able to drive. Logic cannot equate an accessible storage space, located within one's home, as an "equivalent level of benefit," to driving for miles to a storage locker in another city, for which one pays hundreds of dollars annually. There is no comparable "equivalence," when the logical solution is steps away, level and part of a person's home. Thus, the City's position that this "alternative" offers "an equivalent level of benefit" fails to align with what the Code contemplates and the facts show.

3. **Bedrooms:** The law does not require that disabled individuals substitute or "cannibalize" other rooms, each with other specific functions and uses, and convert them into storage units. Extra bedrooms and their small closets are intended for visiting family and guests, not for changing their purpose into a storage room for items too large for closets or periodically used. Destruction of one part of a home to create accessible storage space satisfies neither the "equivalent" nor "equal enjoyment and use" standards. One could as easily suggest that a kitchen or bathroom be abandoned and used for storage. Suggesting that bedrooms be sacrificed, and used for storage, does not provide the "equivalent level of benefit" nor allow proper "use and enjoyment" of their home as required by CMC Sec. 70.130.030(B).

4. **Basement:** The suggestion that the basement can be used for accessible storage is equally strained, and is also based on inaccurate facts. The home does not have a 1021 sq. ft full basement, as the City states. Half of the home sits above-grade on piers and girders at the ground level. The other half has a 602 sq. ft. finished basement. The City's determination that there are 1021 sq. ft. below ground shows that it did not review final plans within its possession. Moreover, the basement's only access is down a run of 16 stairs.

   It is also impossible, as the City suggests, to "extend" an elevator into the basement space, because no part of the basement extends beneath the garage floor's concrete slab. Moreover, the elevator's approved and only logical placement is at least 16' away from the basement's walls, and not in alignment therewith.

   A site-visit or some kind of communication would have quickly clarified those inaccuracies. But neither occurred. The Planning Department is 3 1/2 minutes, by car, from the subject property. Yet in the two and one-half months that this Application was under submission, no one from the City's Planning Department made any effort to visit the site. Had that minimal effort occurred, the City's inaccurate decision, and this appeal, may have been avoided.

   To make a basement "connection" would require demolition of the entire garage, excavation of the space beneath it, and then re-building an entirely new garage

and second-story. This suggestion, aside from relying on non-existent facts, would be prohibitively expensive, time-consuming, an engineering challenge, and is impractical.

The finished basement does not offer a viable "alternative equivalent" to justify refusal of a minor amount of storage space, which can be easily built over what is now only an open-air space, with a seamless and architecturally compatible tie-in to the existing home, allowing easy access to the main home.

Excessive Fees

Appealing to a City Council for a "reasonable accommodation" under the Fair Housing Act should generally cost little or nothing to file, as the process is designed to be accessible to all disabled individuals. While similar in substance to a "variance," the two are different in the eyes of the law. A "reasonable accommodation" is considered by the Justice Department to be a "protected right" afforded to persons with disabilities. A "variance" is applicable to the general public and requires more extensive plan review.

For "reasonable accommodation" requests, most cities charge nothing (no fee in San Diego), or a minimal fee, to cover costs such as certified letters.

In the Applicants' case, due to the short window to appeal, we have paid these fees ($450 to apply and $684 to appeal for a total of $1134). We request the Council review the fees being charged by the City for "reasonable accommodations," and consider either waiving such fees, or placing the issue on a future agenda to reconsider the fee amounts to be charged for such applications and appeals.

CONCLUSION

Like many aging residents, the Marlars face the challenge of adapting their home to meet their rapidly changing physical needs - a challenge which the Fair Housing Act was specifically designed to address.

The City's "alternative level of equivalent [storage] benefit" suggestions were never raised prior to its February 7, 2025 decision letter, which would have allowed the Marlars an opportunity to respond to the City before it made a decision. A site-visit, correspondence, or indeed any communication, could have laid to rest the impractical or inaccurate assumptions for storage "alternatives," and shown them to be unworkable or factually erroneous. The City Planning Department, by relying on inaccurate facts and impractical suggestions, has misunderstood what the Code mandates, and the way in which a department may approach practical flexibility. There is no basis in the law, nor has any been cited by the City, to deny the Marlars' full

request. Prohibiting disabled individuals from making reasonable modifications that will allow them "full enjoyment" of their premises is considered to be legal discrimination under the FHA.

The Marlars are not asking for special treatment, but only what the law clearly allows.

They have proposed modest, carefully-considered modifications that would preserve their lifestyle and independence while maintaining their property's architectural integrity, beauty and value. The FHA imposes, and Coronado's Code adopts, an affirmative duty to reasonably accommodate persons with disabilities. The City's partial approval of the Marlars' request for "reasonable accommodations," although acknowledging their disabilities, imposes restrictions that render its decision largely theoretical or illusory, and nullifies the Marlars' ability to implement any meaningful accommodation. The City's decision thus fails to "reasonably accommodate" the Marlars' disabilities, as Coronado's Code intends. The Fair Housing Act's reasonable accommodation provisions are not mere suggestions - they are fundamental rights extended to the disabled community.

RELIEF SOUGHT

The Marlars respectfully urge the City Council to approve their request in its entirety, allowing these longtime residents to implement the modifications necessary for their continued independence and dignity, and allow them to "age in place" in the home and community they love.

Respectfully submitted this 31st day of March, 2025

James M. Marlar

Melinda S. Marlar

Attachments

Figure 1: Space requested by Marlars for elevator, travel pathway and storage

Figure 2: City's approved elevator and "hallway"

Figure 3: Landing Window (with dimensions)

Figure 4: Pull-down Ladder, Attic Space (225 sq. ft.) and Garage Corner Storage (Lost due to elevator shaft's 36 sq. ft.)

FIGURE 1

MARLAR PROPOSAL

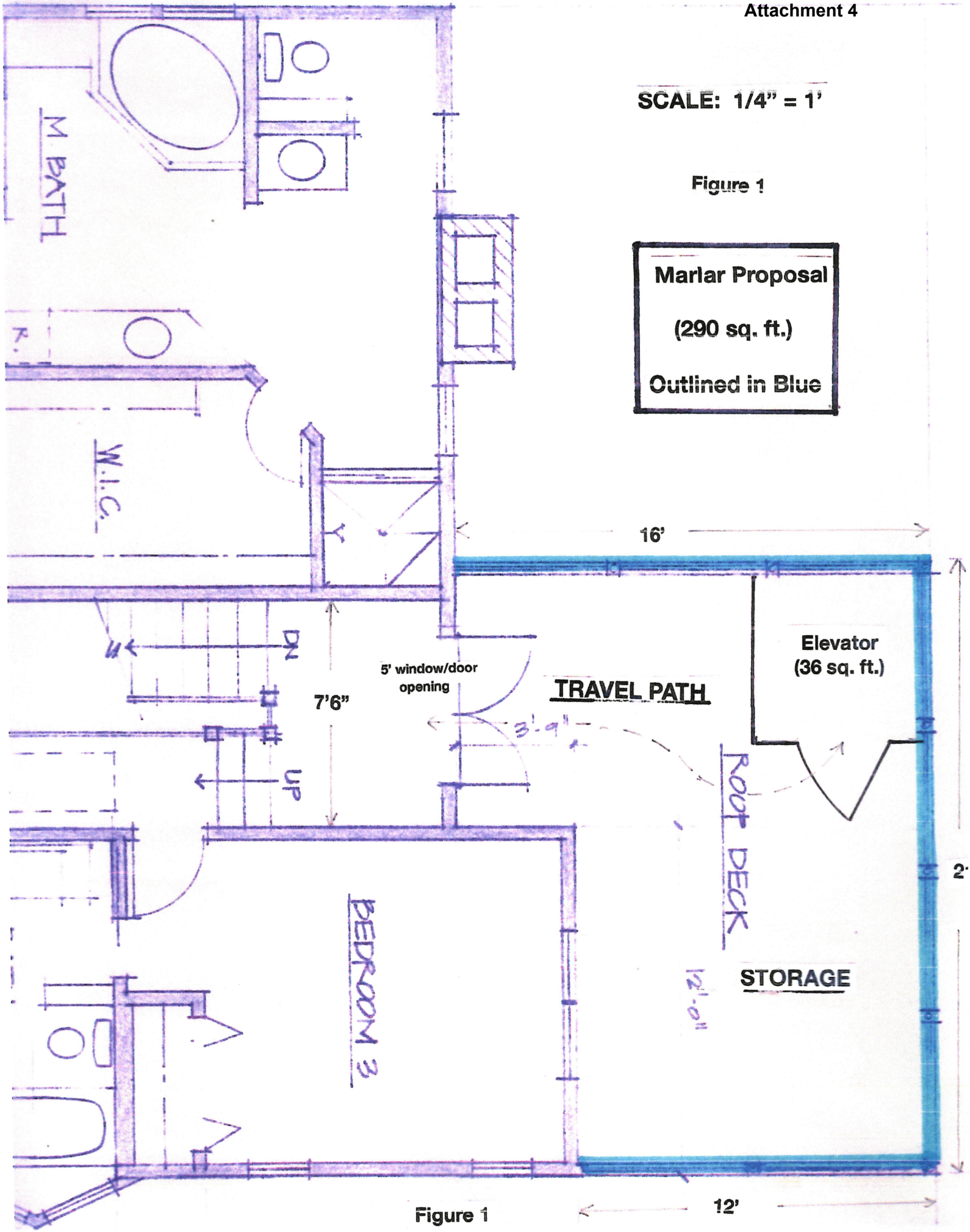

SCALE: 1/4" = 1'
Figure 1
Marlar Proposal
(290 sq. ft.)
Outlined in Blue
M BATH
W.I.C.
16'
DN
UP
7'6"
5' window/door opening
TRAVEL PATH
3'-9"
Elevator
(36 sq. ft.)
ROOF DECK
STORAGE
12'-0"
BEDROOM 3
12'

Figure 1

FIGURE 2

CITY'S APPROVED ELEVATOR

AND

"HALLWAY" DIMENSIONS

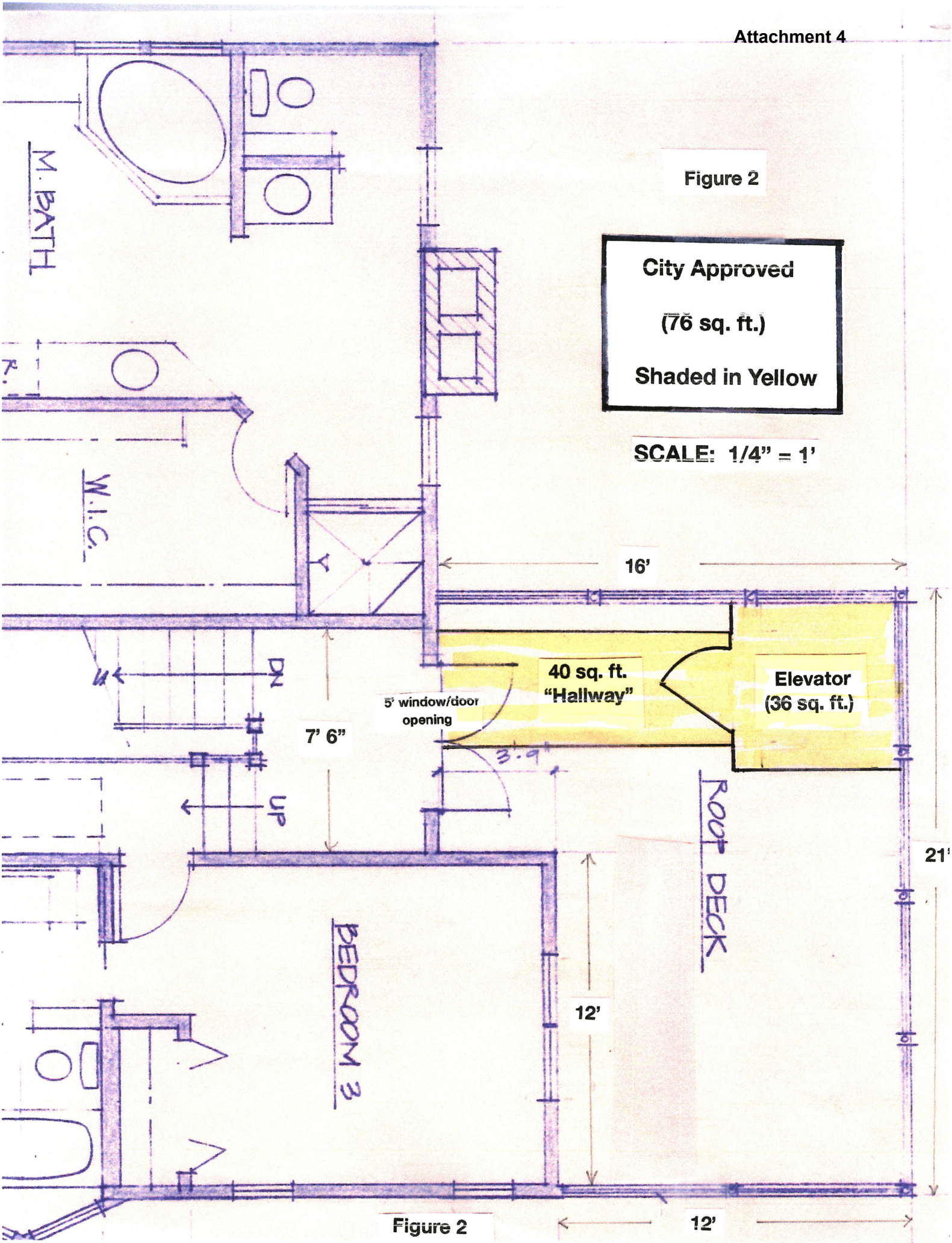


Figure 2
City Approved
(76 sq. ft.)
Shaded in Yellow
SCALE: 1/4" = 1'
M. BATH
W.I.C.
16'
40 sq. ft.
"Hallway"
Elevator
(36 sq. ft.)
5' window/door
opening
7' 6"
3'-9"
DN
UP
ROOF DECK
21'
BEDROOM 3
12'
12'

Figure 2

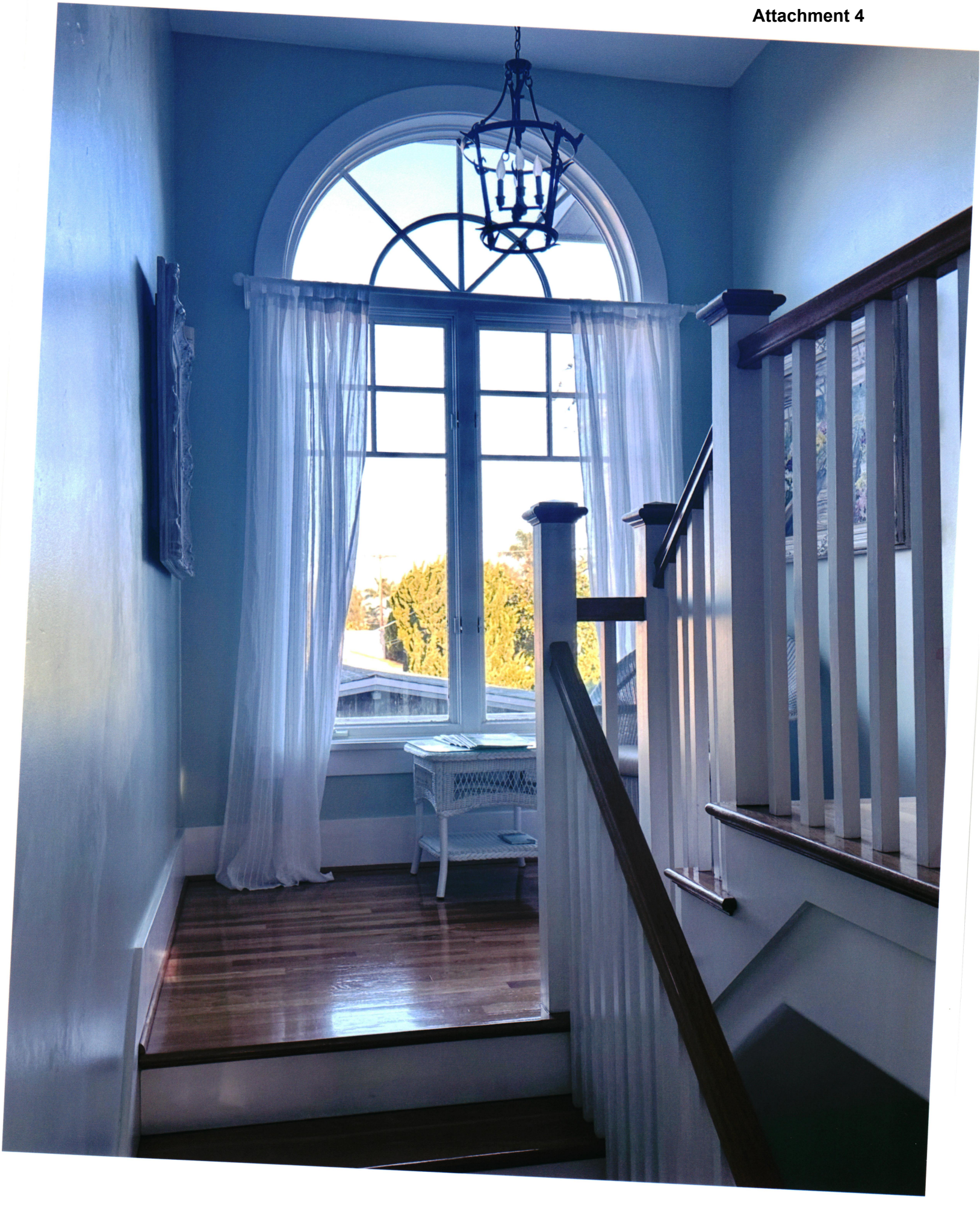
FIGURE 3

PHOTOS: WINDOW AT LANDING

(TO BE CONVERTED TO DOORWAY)

AND

DIMENSIONS



Attachment 4

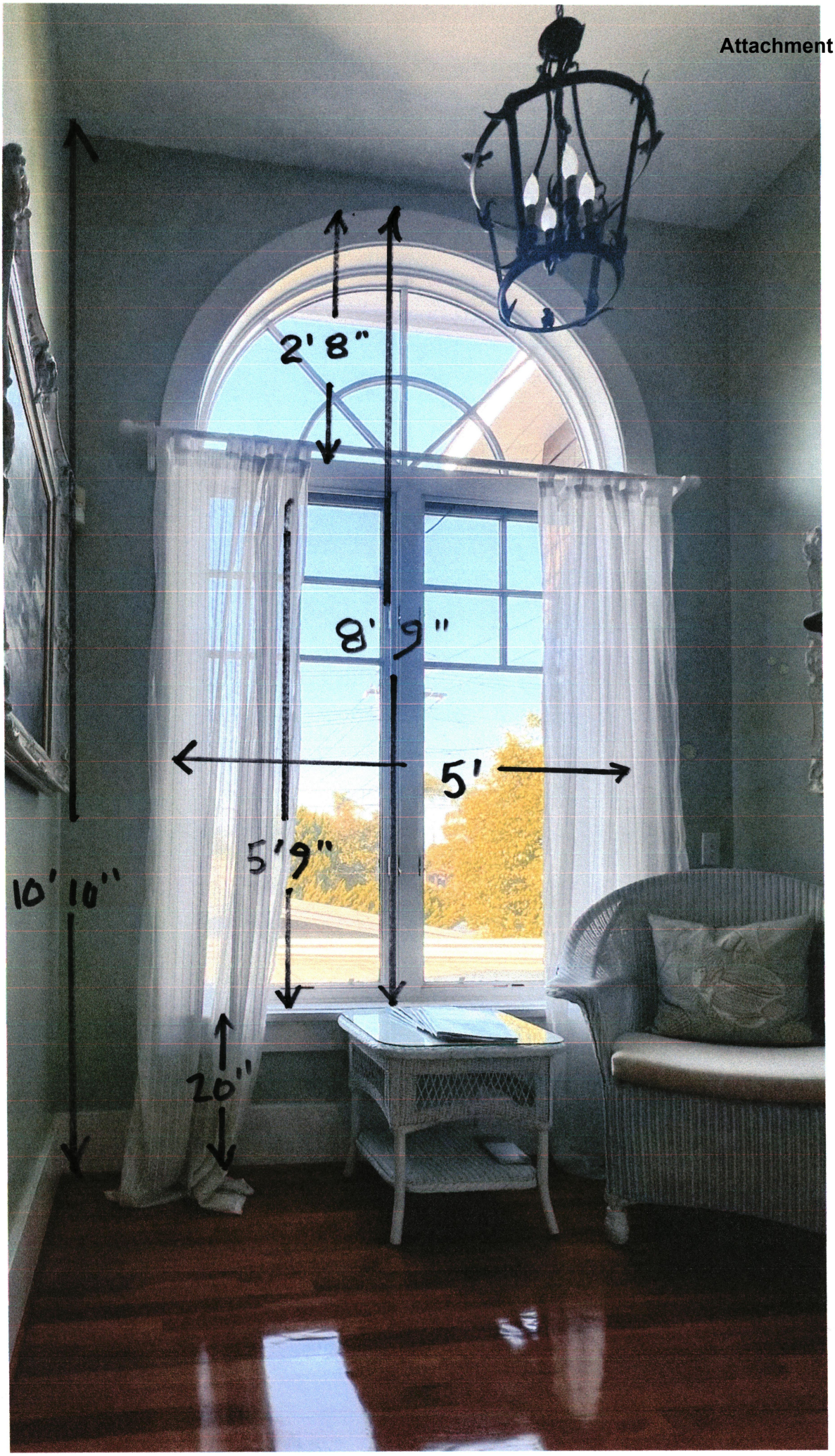


FIGURE 4

PHOTOS:

PULL-DOWN LADDER,

ATTIC SPACE (225 sq. ft.)

AND GARAGE CORNER STORAGE

(Lost to 36 sq. ft. Elevator Shaft)

Attachment 4


GIFT BAGS

Attachment 4

Attachment 4