

CALIFORNIA COASTAL COMMISSION

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Filed: May 14, 2014
180th Day: October 18, 2014
Staff: F. Sy-LB
Staff Report: Sept. 18, 2014
Hearing Date: Oct. 8-10, 2014

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-14-0551

Applicants: John & Karen Vallely

Agent: John T. Morgan

Location: 508 South Bay Front, City of Newport Beach (County of Orange)

Project Description: Demolition of an existing two-story single-family residence and construction of a new 2,707 square foot, three-story mixed use building (Commercial and residential). A carport for one Americans with Disabilities Act (ADA) commercial parking space and also a 459 square foot 2-car tandem garage for the residential use will be located on the ground floor. The maximum height of the structure will be 31-feet above finished grade. Grading will consist of 190 cubic yards of cut and 190 cubic yards of fill.

Staff Recommendation: Approval with conditions.

I. MOTION AND RESOLUTION

Motion: *I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution: *The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Conformance with the Parking Management Plan. The applicants shall conform with the parking management plan dated January 23, 2014. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Future Development Restriction. This permit is only for the development described in Coastal Development Permit No. 5-14-0551. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-14-0551. Accordingly, any future improvements to the residence authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-14-0551 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

3. Conformance with Drainage and Run-Off Control Plan. The applicants shall conform with the drainage and run-off control plan received on March 6, 2014 in the South Coast District Office showing roof top and surface drainage directed to permeable areas and trench drains. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris. The permittees shall comply with the following construction-related requirements:

- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
- B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- F. The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;

- G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- J. The discharge of any hazardous materials into any receiving waters shall be prohibited;
- K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

5. Landscaping-Drought Tolerant, Non-Invasive Plants. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

6. Deed Restriction. Prior to Issuance of the Coastal Development Permit, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as

either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is a 2,590 square foot lot currently developed with a two-story single-family residence located at 508 South Bay Front within the City of Newport Beach, Orange County (Exhibit #1). The subject site is located on the south side of Balboa Island located between Agate Avenue and Opal Avenue near the Balboa Ferry landing. Balboa Island is primarily developed with single- and two-unit residential dwellings with some commercial and mixed use near Marine Avenue and Agate Avenue. At the front of the property is a public pedestrian walkway that surrounds the island and then a bulkhead and to the rear is an alley that provides vehicular access. The subject property contains a commercial pier that the property owner uses for a dock rental business. To the adjacent northwest of the subject site is a three-story mixed use building with a City of Newport Beach Coastal Land Use Plan (CLUP) designation of Mixed Use Water Related (MU-W). There are additional properties with this same designation further northwest of this adjacent property as well. To the southeast of the subject site is a duplex with a CLUP designation of Two Unit Residential (RT). The applicants have stated that this CLUP designated RT property was also MU-W until the owner of the property in the 1990's rezoned the property. Located between these identified adjacent sites is the subject site, which the CLUP designates as Mixed Use Water Related (MU-W) similar to the northwest properties, which as designated, are intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses, as well as allow for the development of mixed-use structures with residential uses above the ground floor. The proposed project adheres to this designation.

The City of Newport Beach attracts visitors year round due to its unique recreational opportunities, large harbor, marina facilities and its coastal amenities. Like many beach communities, Newport Beach receives an influx of visitors during the summer. The project site is located on Balboa Island, which, due to its location next to the ocean, serves as a popular area for visitors to the coast.

The proposed project consists of demolition of an existing non-conforming use, a two-story single-family residence, and construction of a new three-story mixed use building consisting of a 765 square foot commercial use on the ground floor and a 1,942 square foot two-story single-family residence located above (Exhibits #2-4). The applicants, which are also the current residents, intend to use the commercial space as an office for the existing dock rental space in front of the property as well as another marina in the harbor that has been in operation for 38 years and live in the residence upstairs. A carport for one Americans with Disabilities Act (ADA) commercial parking space and also a 459 square foot 2-car tandem garage for the residential use will be located on the ground floor. The maximum height of the structure will be 31-feet above finished grade. Grading will consist of 190 cubic yards of cut and 190 cubic yards of fill. The applicants are also proposing to use bird safe glass for a guard rails to reduce the risk of bird strikes.

Due to the constraints of the lot, the proposed project is providing only one off-street parking space and is deficient one parking space for the office use. Pursuant to Chapter 20.40 (Off-Street Parking) of the City of Newport Beach Zoning Code, office uses, such as the one proposed, require one parking space for every 250 square feet of “net” floor area. Originally, the applicants had proposed 604 square feet of “net” office space, which would have required three parking spaces on-site. In order to reduce the number of required off-street parking spaces from three to one due to the constraints provided by the property, the applicants had applied for a conditional use permit and variance from the City of Newport Beach Planning Commission to allow a reduction in the required number of off-street parking spaces pursuant to Section 20.40.1110 (Adjustments to Off-Street Parking Requirements). During the course of the planning commission hearing, the square footage of the commercial use was reduced to a “net” of 500 square feet and thus reducing the required parking to two parking spaces; and consequently resulting in only one deficient parking space. In order to support the reduction of required parking on-site by one parking space, the applicants provided a parking management plan to mitigate the impacts associated with reduction in the number of required parking spaces. The plan addressed on-site parking and alternative transportation by requiring, for example, that the two-car residential tandem garage be open and available for residential parking at all times; that employees shall be encouraged to use alternative transportation modes, including carpooling, bicycling, Balboa Ferry, and public transit; and that the net floor area of the commercial use be limited to 500 square feet. The City’s review also included a review of a 2008 Parking Study, which was prepared under contract with the City that indicated that Balboa Island does not suffer from parking shortage during a majority of the time and that parking is available in the area; except for summer weekends. After consideration, the City of Newport Beach Planning Commission approved the reduction of off-street parking through a conditional use permit and variance. They also approved a variance to allow the development of a smaller commercial and larger residential use than allowed due to the constraints of the site.

Section 30252 of the Coastal Act requires that new development provide adequate parking facilities *or* provide substitute means of serving the development with public transportation so that the development does not adversely affect the public parking supply that supports public access to the beach. As stated previously, the project site is located in an area that supports visitors to the beach and the coastal community. A lack of public parking and/or inadequate public transit discourages visitors from coming to the beach and taking part in other visitor-serving activities in the Coastal Zone. A lack of parking and/or inadequate public transit would therefore have an adverse impact on public access. All development must, as a consequence, provide adequate onsite parking and/or incorporate measures to encourage use of public transit and other modes of non-automobile circulation to minimize adverse impacts on public access. The Commission’s typical approach has been to require all new development to supply off-street parking to support it, so that on-street and/or municipal parking lots can remain available for beach visitors. However, the Commission has also recognized that there are some circumstances where the provision of additional parking isn’t the best approach. In this case which is a small commercial use; constraints of the lot upon the proposed development have resulted in a parking deficiency. Some cases, like this one, would be best served by instead focusing on transportation demand management measures.

As discussed earlier, the applicants have provided a parking management plan to mitigate the impacts associated with reducing the required off street parking by one space. The parking

management plan employed the following mechanisms: 1) a minimum of one off street parking space shall be provided for the commercial use; 2) the two car garage shall be open and available for residential parking at all times; 3) employees and customers shall be encouraged to use alternative transportation modes, including carpooling, bicycling, Balboa Ferry, and public transit; 4) the net floor area of the commercial use is limited to 500 square feet; and 5) future use of the commercial space is limited to uses requiring one parking space for every 250 square feet of net floor area or less. The measures provided in this plan will help mitigate the impact associated with the deficient parking by focusing on transportation demand measures. In order to ensure that the proposed parking management plan is implemented, the Commission imposes **Special Condition No. 1**, which requires the applicants to conform with the parking management plan.

The project site is located on the inland portion of South Bay Front, fronted by the public pedestrian walkway located in front of the property that surrounds Balboa Island and the proposed project will not have an adverse effect on public pedestrian access (Exhibit #1). The City requires a 0' setback from the Bayfront property line/public pedestrian walkway for MW-U designated locations in this area. The applicant designed the project to be setback a minimum 2'-2" from the public pedestrian walkway and will not adversely impact public access and will be consistent with the City setback requirement. Thus, the project's setback will not impact public access.

To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission is imposing **Special Condition No. 2**, which states that any future development or additions on the property requires a coastal development permit from the Commission or its successor agency.

The applicants are proposing water quality improvements as part of the proposed project, consisting of rooftop and surface drainage directed to permeable areas and trench drains, consistent with past Commission action. The measures proposed by the applicants are acceptable. However, in order to ensure that the proposed water quality measures are implemented, the Commission imposes **Special Condition No. 3**, which requires the applicants to conform with the submitted drainage and run-off control plans.

In order to ensure that construction and materials are managed in a manner which avoids impacts to water quality, the Commission imposes **Special Condition No. 4**, which provides guidance for the storage of construction materials, mechanized equipment and removal of construction debris.

The applicants have stated that minimal landscaping work is proposed with the project. The Commission is concerned with the use of non-drought tolerant, invasive plants on project sites. Invasive vegetation can spread quickly and adversely impact native vegetation. Furthermore, any plants in the landscaping plan should be drought tolerant to minimize the use of water. To ensure that these concerns are addressed, the Commission imposes **Special Condition No. 5**, which requires the applicants to only landscape with drought tolerant, non-invasive plants.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 6**, which requires the applicants record a deed restriction against the residential property, referencing all of the above

special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

B. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

C. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. WATER QUALITY

The proposed development has a potential for a discharge of polluted run-off from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing run-off through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the run-off discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

E. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

F. LOCAL COASTAL PROGRAM (LCP)

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Coastal Land Use Plan for the area. Approval of

the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is ministerial or categorically exempt. Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS: Approval-In-Concept from the City of Newport Beach Planning Department dated March 4, 2014; Resolution No. 1932 of the City of Newport Beach Planning Commission for Site Development Review No. SD2013-004, Conditional Use Permit No. UP2013-018 and Variance No. VA2013-009; Parking Management Plan (PA2013-185) dated January 23, 2014; ; Letter from John T. Morgan to Commission staff dated March 3, 2014; Letter from Commission staff to John T. Morgan dated April 4, 2014; ; Letter from John T. Morgan to Commission staff dated March 3, 2014; Information from John T. Morgan to Commission staff received April 21, 2014; and *Geotechnical Engineering Investigation of Proposed New Residence at 508 S. Bay Front, Newport Beach* prepared by *Coast Geotechnical, Inc. (W.O. 458913-01)* dated July 29, 2013.

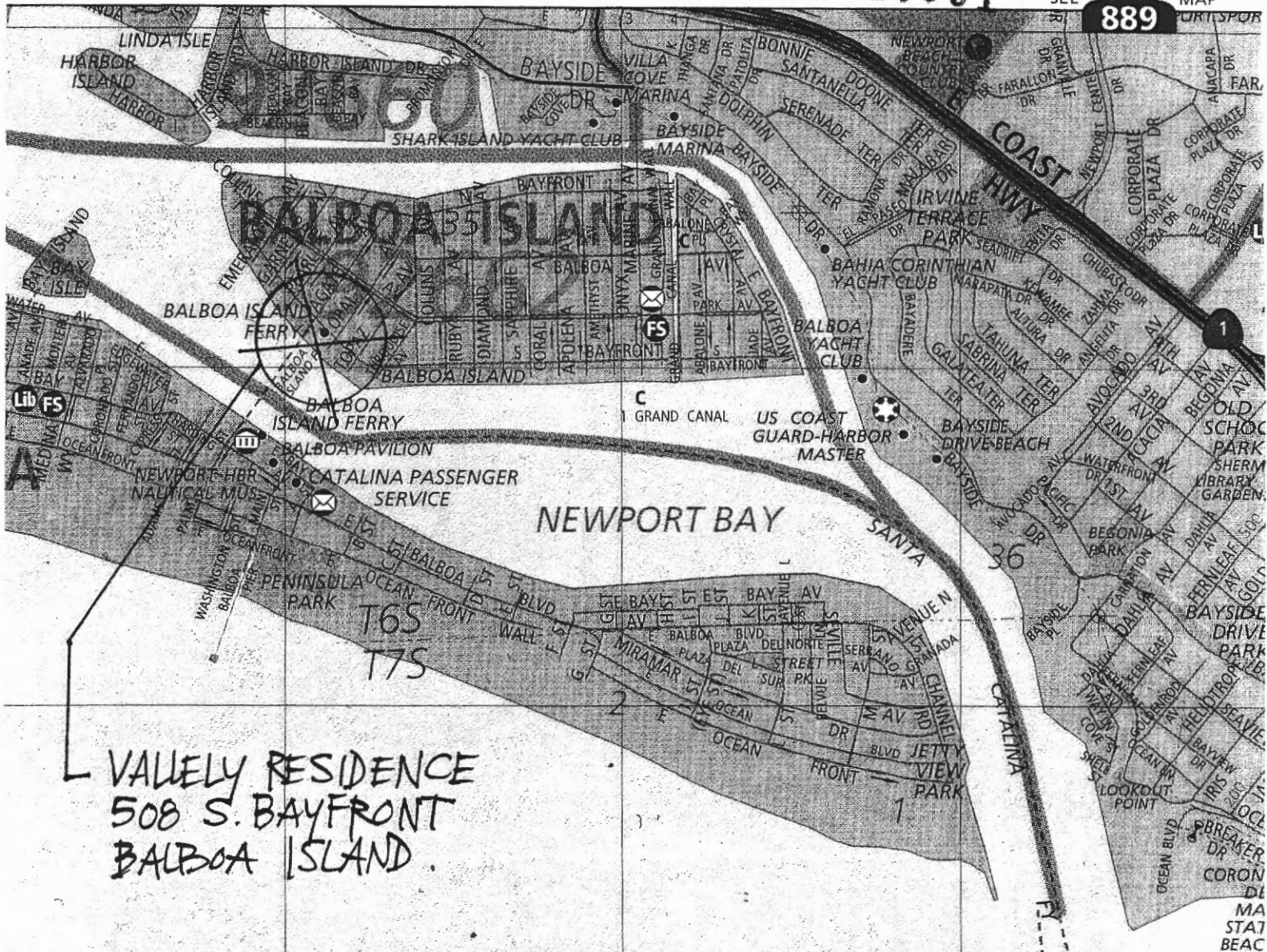
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MAP

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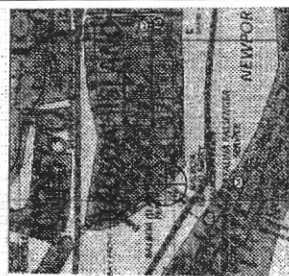
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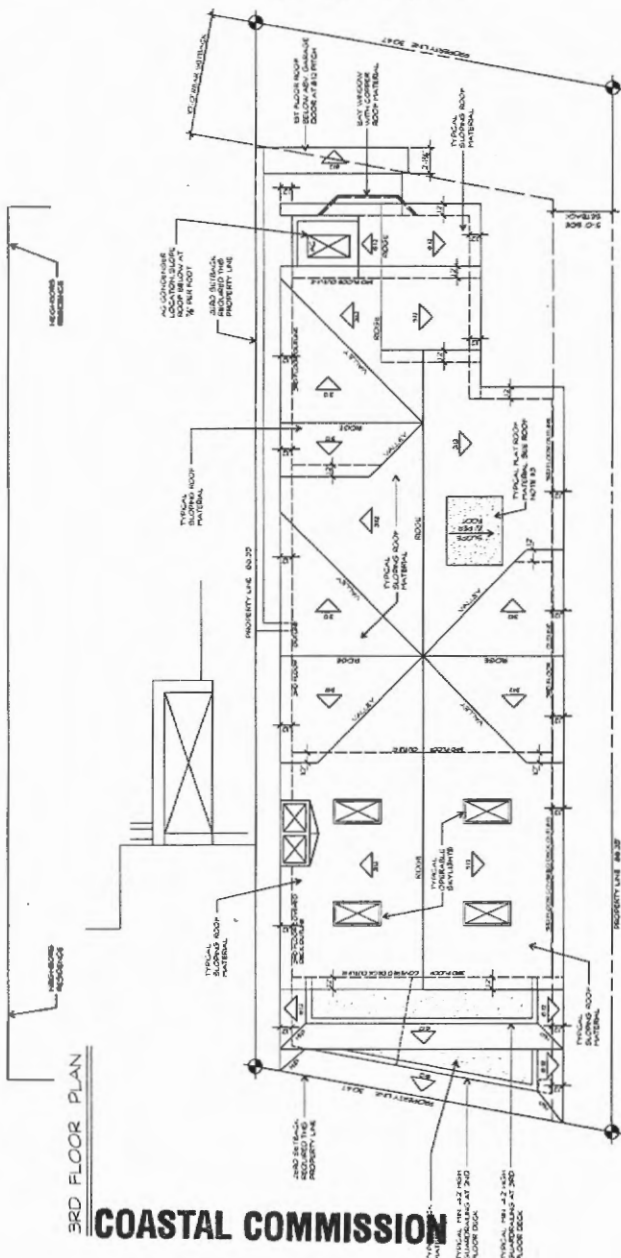
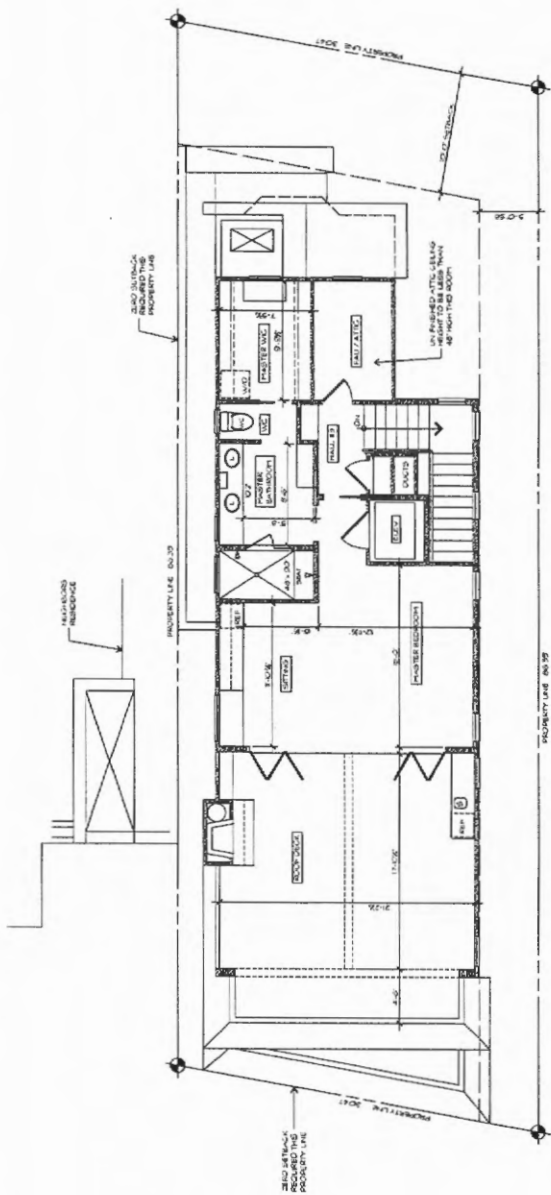
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EXHIBIT # 1
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SITE COSTS - CALGARY-TOWN	
GRADING OFFICE AREA	\$30 000.00
2" FLOOR INSULATION	124 320.00
3' CURB RESIDENTIAL	400 75.00
CONCRETE PAVED	90 000.00
FLASCOFFER PAVED	100 000.00
FLASCOFFER PAINTED	328 000.00
PLANTING	3000.00
LANDING AND PROPERTY LINE WALLS	100 000.00
TOTAL SITE COSTS	1 083 075.00

VICINITY MAP



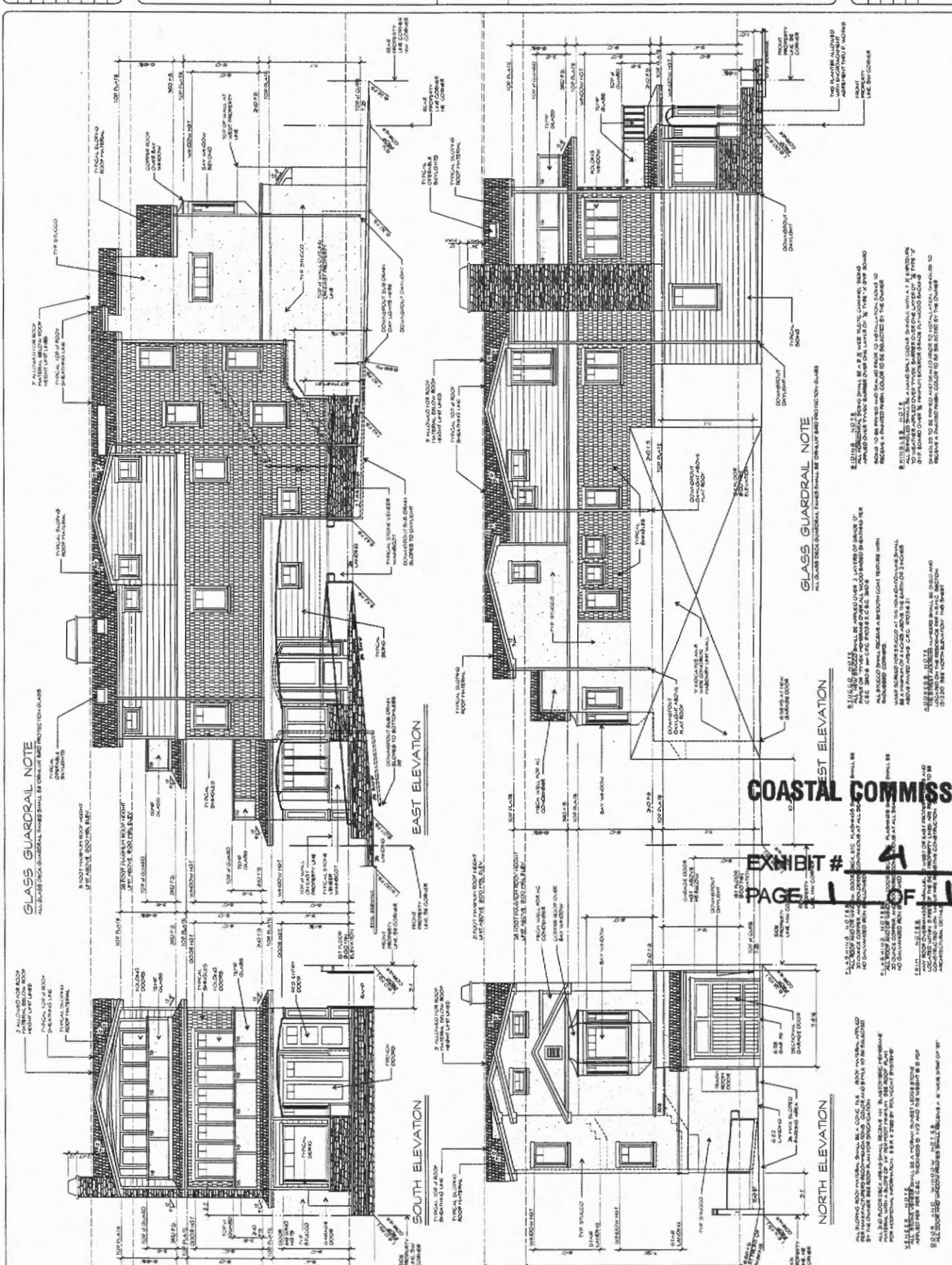
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3RD FLOOR PLAN

ROOF PLAN

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EXHIBIT # 3
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EXHIBIT # 4
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