Th7c

CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



Click here to go to original staff report

ADDENDUM

April 8, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO ITEM Th7c, COASTAL COMMISSION PERMIT 5-15-1704 FOR

THE COMMISSION MEETING OF APRIL 14, 2016.

1. LETTER OF CONCERN

Since the staff report was written, staff received one letter from an opponent of the project, Genera Ryan. The letter opposes the project based on the size of the garage and the height of the proposed project. Both the size of the garage and the height of the proposed structure are consistent with the City of Newport Beach Land Use Plan, and past Commission action in the surrounding area.

Against the trogram RIGHTED South Coast Region 3902 River Ave. Newport Beach, A APR 0 7 2016 92663 April 1,2016 CALIFORNIA COASTAL COMMISSION California Coestal Commission Long Beach, LA fermit 5-15-1704 Dear Sir, I am writing in regards to the building project at 3812 River Ave. Wewport Beach, CA APN 423-304-01. I am against this project. In the future every house torn down and rebuilt will ask the same warver. When our house was built, we Were told if the house was over 2,000 Sy. Feet We Would need a 3 car garage instead of 2. Also

Had the house Could not be over 21 feet In highted,

Please say no to the project, Genera Ryan

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 Filed:
 12/11/2015

 180th Day:
 06/08/2016

 Staff:
 M. Revell-LB

 Staff Report:
 3/24/2016

 Hearing Date:
 4/14/2016

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-15-1704

Applicant: Thomas and Robyn Miller

Agent: Brandon Architects, Inc.

Location: 3812 River Ave., Newport Beach (Orange County)

(APN 423-304-01)

Project Description: Demolition of an existing single family residence, and

construction of a 3,287, three-story, approximately 29 foot high, single-family residence with an attached 487 square foot

two-car garage.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION:

The applicant proposes to demolish a single-family residence, and construct a canal-fronting single family residence with approximately 3,287 sq. ft. of total living area, an attached 487 sq. ft. two-car garage. The proposed project raises issues regarding hazards concerning canal-front development, compatibility with the existing character of the area, impact to public access, and water quality.

Staff is recommending **APPROVAL** of the proposed project with six special conditions for: 1) final revised plans; 2) no future shoreline protective device; 3) construction best management practices; 4) future development; 5) assumption of risk; and 6) deed restriction. The proposed development has been conditioned to assure consistency with the resource protection policies of the Coastal Act.

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APPENDICES

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EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Site Plan

Exhibit 3 – Elevations

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 <u>YES</u> vote. Passage of this motion will result in approval of all of 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 of 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:

This permit is granted subject to the following special conditions:

1. Final Plans and Sea Level Rise Adaptation Measures. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of final plans. The final project plans shall incorporate the following: 1) the perimeter of the foundation and hardscape shall be at a minimum elevation of 9.5 feet NAVD88 to accommodate a rise in sea level; and 2) plans and accompanying analysis of potential adaptation measures to minimize hazards to life and property from potential flooding from sea level rise (up to 5.5 feet) including but not limited to, flood proofing the first floor, elevating the structure, sand bags and, if the site is flooded regularly during routine high tides, possibly converting the lowest building level to non-habitable uses. The final project plans shall be in substantial conformance with the plans dated September 1, 2015. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Newport Beach Community Development Department.

The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

2. No Future Shoreline Protective Device and Future Removal of Development.

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no existing shoreline protective device(s) shall be maintained or expanded and no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-15-1704 including, but not limited to, the residence and garages, foundations, patio and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural coastal hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowners shall remove and/or relocate, in whole or in part, the development authorized by this permit, including the residence and garage, foundations, patio and any future improvements, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above, in subsection A. of this condition. In the event that portions of the development fall to the bay before they are removed, the landowner shall remove all recoverable debris associated with the development from the bay and lawfully dispose of the material in an approved disposal site. Removal of any development from the subject property and from areas bayward of the

subject property shall require an amendment to this coastal development permit or a new coastal development permit, if legally required.

- 3. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris. The applicants 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 applicant 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
 - (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

- **4. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-15-1704 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. 5-15-1704. Accordingly, any future improvements to the single-family house authorized by this Coastal Development Permit No. 5-15-1704, 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. 5-15-1704 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- 5. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant(s) acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding and sea level rise; (ii) to assume the risks to the applicant(s) and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 6. Deed Restriction PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant(s) shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) 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 Description & Location

The applicants propose to demolish the existing 2800 square foot single family residence, and construct an approximately 3,287 square foot, 29 ft. high, three-story, single-family residence with

an attached 487 square foot two-car garage (**Exhibit 2 and 3**). No landscaping is proposed. To address water quality concerns, the applicant proposes to direct site drainage and runoff from roof drains, gutters, and downspouts via area drains which will be directed by subsurface drain pipes toward the existing mainline storm drain system. Regarding water conservation, the applicant intends to comply with the applicable water efficiency and conservation measures of the Governor's Executive Order B-29-15 concerning efficient fixtures and appliances and with the statewide and local regulations pertaining to plumbing fixtures and low flow rates.

The proposed project site is located at 3812 River Avenue in the City of Newport Beach. The subject site is a 2,856 square foot canal-fronting lot, which is surrounded by River Avenue to the Southwest, the Rivo Alto Canal to the Northeast, and single family residences on either side. (**Exhibit 1**). This area of Newport Beach is largely developed with single family residences, and the lot is designated Two Unit Residential (R-2) in the City of Newport Beach LUP, and the proposed project is allowable under this designation. Vehicular access to the site is via River Avenue, as the site fronts the Rivo Alto Canal and there is no frontage road for vehicular access. Vertical public access to the coast (Newport Bay) is available immediately adjacent to the site at the 39th Street-end at the Rivo Alto Canal.

The plans for the proposed project show that the finished floor elevation of the residence will be at 9.0 feet. The project has been designed to be above the maximum highest high tide elevation of 7.2 feet NAVD88 and above the City of Newport Beach design flood height of +9.0 feet NAVD88. While the finished floor will be at 9.00 feet, 1.8 feet above the maximum highest high tide elevation, the proposed development has not been designed for a 3 foot rise in sea level which is the National Research Council's projection for Los Angeles for the year 2100. A 3 foot rise in sea level would result in still water level of 10.2 feet NAVD88 (7.2 feet NAVD88 + 3 feet = 10.2 feet NAVD88). Additionally, the proposed finished floor would also be below the upper range (maximum) of sea level rise projections by 2100, which based on the 2012 National Research Council Report, is 5.5 feet. If there were to be 5.5 feet of sea level rise, an extreme high tide water level of 12.70 feet (7.2 feet + 5.5 feet + 12.70 feet MLLW) would flood the entire site and even an average high tide could exceed the elevation of the proposed finished floor elevation.

In an attempt to minimize risks to life and property from sea level rise-related flood hazards, the applicant has proposed to construct a 6 inch curb or stem wall around the outside perimeter of the foundation, thereby raising the perimeter of the foundation to 9.5 ft. (**Exhibit 2**). This design measure should be sufficient to minimize flood risks from a low to moderate amount of sea level rise. To ensure final plans incorporate the 6 inch curb or stem wall, **Special Condition 1** requires the applicant to submit revised final plans that incorporate the perimeter of the foundation and hardscape to be at a minimum elevation of 9.5 feet NAVD88 to accommodate a rise in sea level, and that show that the development is waterproofed up to a 9.5-foot elevation. Waterproofing the development up to 9.5 feet will provide additional protection against flooding should actual flood elevation exceed the anticipated 9 feet.

Special Condition 1 also requires the applicant identify adaptation measures to deal with potential flooding in the event that the foundation is overtopped. Such adaptation may not result in the installation of or reliance upon shoreline armoring. Acceptable adaptation options could include implementing measures such as flood proofing the first floor, elevating the structure, temporary barriers such as sand bagging, converting the lower floor to non-habitable uses, etc. In the future,

other flood-reduction options may have been developed; however it is important to demonstrate now that there are options other than shoreline armoring for future adaptation. Also, **Special Condition 4** requires the applicant to accept responsibility for all hazards associated with coastal development.

Given that the applicant has chosen to implement the project on a canal front lot despite risks from liquefaction, wave attack, erosion, sea level rise, and storm flooding, the applicant must assume the risks and agree to no future shoreline protective devices. Therefore, the Commission imposes **Special Conditions 2 and 4.** Any future improvements to the single-family house authorized by this Coastal Development Permit No. 5-15-1704, including but not limited to repair and maintenance identified as requiring a permit, will require an amendment to Permit No. 5-15-1704 from the Commission as imposed by **Special Condition 3**. In addition, because the project site is on a canal-front lot and in proximity to coastal waters, the Commission recommends construction-related requirements and best management practices under **Special Condition 3**.

The Commission imposes **Special Condition 6** requiring the applicant to record a Deed Restriction acknowledging that, pursuant to this permit (CDP # 5-15-2007), 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.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. 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 must be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

D. 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 to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff 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, one or more of the following: the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, installation of roof drains, gutters, downspouts, and a drainage system to direct storm water runoff to trench drains. Post-construction best management practices should minimize the project's potential adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to 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.

F. 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, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM (LCP)

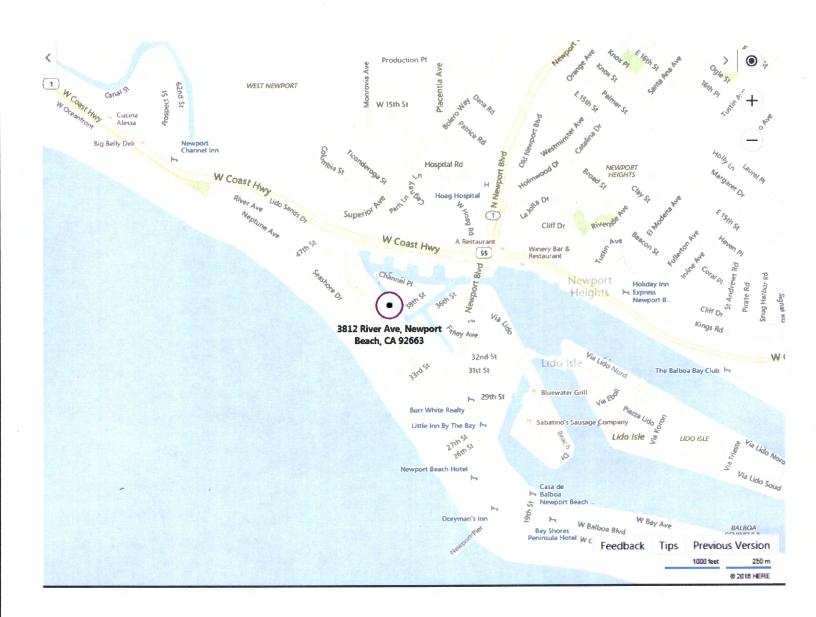
Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

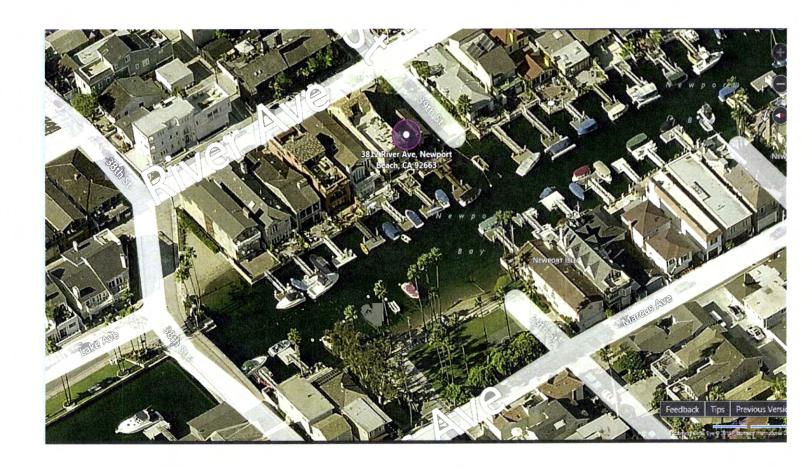
Appendix A - Substantive File Documents

- City of Newport Beach certified Land Use Plan
- City of Newport Beach Approval-in-Concept No. AIC2015055, dated 11/12/15 Coastal Development Permit Application No. 5-15-1704S



COASTAL COMMISSION

EXHIBIT #________PAGE______OF__2___



COASTAL COMMISSION

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