

CALIFORNIA COASTAL COMMISSION

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**Th7d**

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180th Day:	05/16/2016
Staff:	S. Vaughn-LB
Staff Report:	03/24/2016
Hearing Date:	04/14/2016

STAFF REPORT: CONSENT CALENDAR

Application No.:	5-15-1757
Applicants:	Cabin 3, LLC
Agent:	Rod Jeheber, Residential Design, Inc.
Project Location:	113 Grand Canal, Newport Beach, Orange County (APN: 050-173-17)
Project Description:	Demolition of two two-story, single-family residences and construction of a 2,900 square-foot, three-story, 29-foot high, single-family residence with an attached 408 square-foot, two-car garage on a 2,550 square-foot bayfront lot.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to demolish two two-story, single-family residences and construct a 29-foot high, three-story, approximately 2,900 square-foot single-family residence with an attached 408 square-foot, two-car garage on a 2,550 square-foot bayfronting, bulkhead lot on Little Balboa Island in the City of Newport Beach, Orange County. The major issues raised by this proposed development concern bay-front development that could be affected by flooding, waves, erosion, storm conditions, and sea level rise or other natural hazards in the future.

Staff recommends **APPROVAL** of the proposed project with (5) **five Special Conditions** to address the issues raised including: (1) **Assumption of Risk, Waiver of Liability and Indemnity**; (2) **Construction Best Management Practices**; (3) **Conformance with the Drainage and Runoff Control Plan**; (4) **Landscaping**; and (5) **Public Rights**.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Plan

Exhibit 3 – Foundation Waterproofing Plans

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 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 permittees 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 permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant 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 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.

2. 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 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; and
- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

3. Conformance with the Drainage and Runoff Control Plan. The applicant shall conform with the Grading Plan/Drainage Runoff Plan prepared by R.C.E. Consulting, Inc. dated September 28, 2015 showing surface drainage directed to French drains near the rear of the site. 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. Landscaping-Drought Tolerant, Non-Invasive Plants. Vegetated landscaped areas shall only consist of native plants (preferably native to Orange County and appropriate to the habitat type) 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>). If potable water is used for irrigation only drip or micro spray irrigation systems may be used. Other water conservation measures shall also be considered, such as use of weather based irrigation controllers.

5. Public Rights. The Coastal Commission’s approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION AND DESCRIPTION

The project site is a 2,550 square-foot Bayfront lot developed with two two-story single-family residences located at 113 Grand Canal, City of Newport Beach, Orange County (**Exhibit 1**). The applicant is proposing to demolish the existing residences and construct a 29-foot high, three-story, approximately 2,900 square-foot single-family residence with an attached 408 square-foot, two-car garage (**Exhibit 2**). The City of Newport Beach Land Use Plan (LUP) designates the site as Two-Unit Residential (R-BI) and the proposed project adheres to this designation. The project is located in a developed residential neighborhood on Little Balboa Island in Newport Bay. Directly east of the project site is a public walkway and Grand Canal connecting to Newport Bay. To the north, south, and west of the site are similar single-family residences. The project is designed to be compatible with the residential character in size and scale of the surrounding development.

The State of California supported the preparation of the 2012 National Research Council's Report, Sea-Level Rise for the Coasts of California, Oregon and Washington: Past, Present, and Future, which is currently considered the best available science on sea level rise for California. That report estimates that sea levels may rise between 1.4 to 5.5 ft. by the year 2100. Given the low and high estimates in sea level rise, extreme high tide still water in Newport Bay will fall between 8.4 feet (7.2 feet (HHT) + 1.4 foot rise in sea level) and 12.7 feet (7.2 feet (HHT) + 5.5 feet = 12.7 feet MLLW). The applicant proposes the project with a 9-foot finished floor elevation, which would be safe from the low estimated rise sea level. However, a 5.5 ft. rise in sea level would exceed the finished floor elevation and result in water up to 3.7 feet higher than the floor during peak tide or tide and wave events. Therefore, the applicant proposes to waterproof the development up to 9.5 feet with a concrete curb that will surround the residence in order to mitigate future flooding hazards if sea level rise approaches the upper range of the NRC projections. **Special Condition 1** requires the applicant to accept responsibility for all hazards associated with coastal development. Waterproofing the development up to 9.5 feet will provide additional protection against flooding should actual flood elevation exceed the anticipated 9 feet.

The project site is located between the first public road and the sea and there is a public walkway between the site and the canal. In order to be consistent with Section 30251 of the Coastal Act and enhance and protect visual resources, the applicant has agreed to observe a minimum five-foot setback from the bay/public walkway fronting property line, which is consistent with past Commission permit action. The minimum five-foot setback from the public walkway property line will maintain open views along the public pedestrian walkway and will also allow the City to incorporate a variety of adaptation measures in response to sea level rise, should they be necessary. Additionally, the project plans show existing encroachments past the walkway/bayfronting property line. The encroachments consist of a garden wall/planter boxes and landscaping. Although the City might allow such encroachments, this coastal development permit is not permitting those encroachments, and they have been marked on the plans as not approved by this CDP.

All storm water runoff is proposed to be directed to two on-site French drains near the rear (alley side) of the property. Adequate water quality measures have been addressed through **Special Conditions 2 & 3**, which require the applicant to observe water quality BMPs during construction and to conform to the drainage plans prepared by R.C.E Consulting, Inc. dated September 28, 2015. **Special Condition 4** ensures that landscaping for the project consists of non-invasive drought tolerant plants.

As conditioned, the proposed development will not result in adverse impacts on coastal resources, public recreation or coastal views. The proposed development will not prejudice the City's ability to prepare a certified Local Coastal Program and is consistent with the designation in the City's certified LUP, past Commission action in the area and Chapter 3 policies of the Coastal Act.

B. HAZARDS AND WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. Furthermore, uncontrolled runoff from the project site and the percolation of water could also affect the structural stability of bluffs and hillsides. To address these concerns, the development, as proposed and as conditioned, incorporates design features to minimize the

infiltration of water and 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, the use of non-invasive drought tolerant vegetation, 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.

C. DEVELOPMENT

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.

D. PUBLIC ACCESS & RECREATION

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

The proposed development, as conditioned, does not interfere with public recreational use of coastal resources. The proposed development, as conditioned, protects coastal areas suited for recreational activities. Therefore, the Commission finds that the proposed development, as conditioned, is in conformity with Sections 30210 through 30214 and Sections 30220 through 30223 of the Coastal Act regarding the promotion of public recreational opportunities.

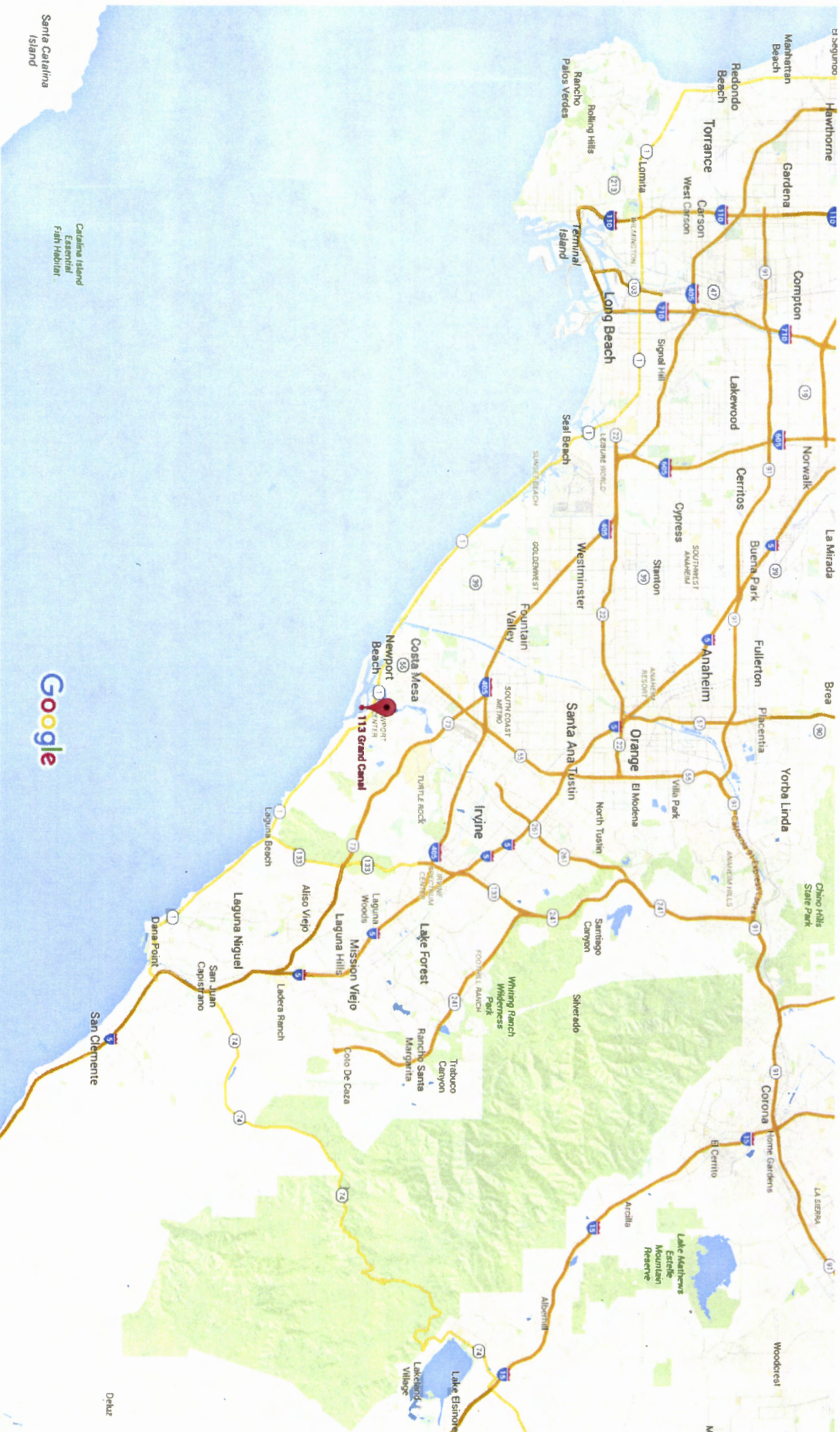
E. LOCAL COASTAL PROGRAM (LCP)

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 last updated in October 2009. 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.

F. 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.

Google Maps 113 Grand Canal



Map data ©2016 Google 2 mi

Google Maps

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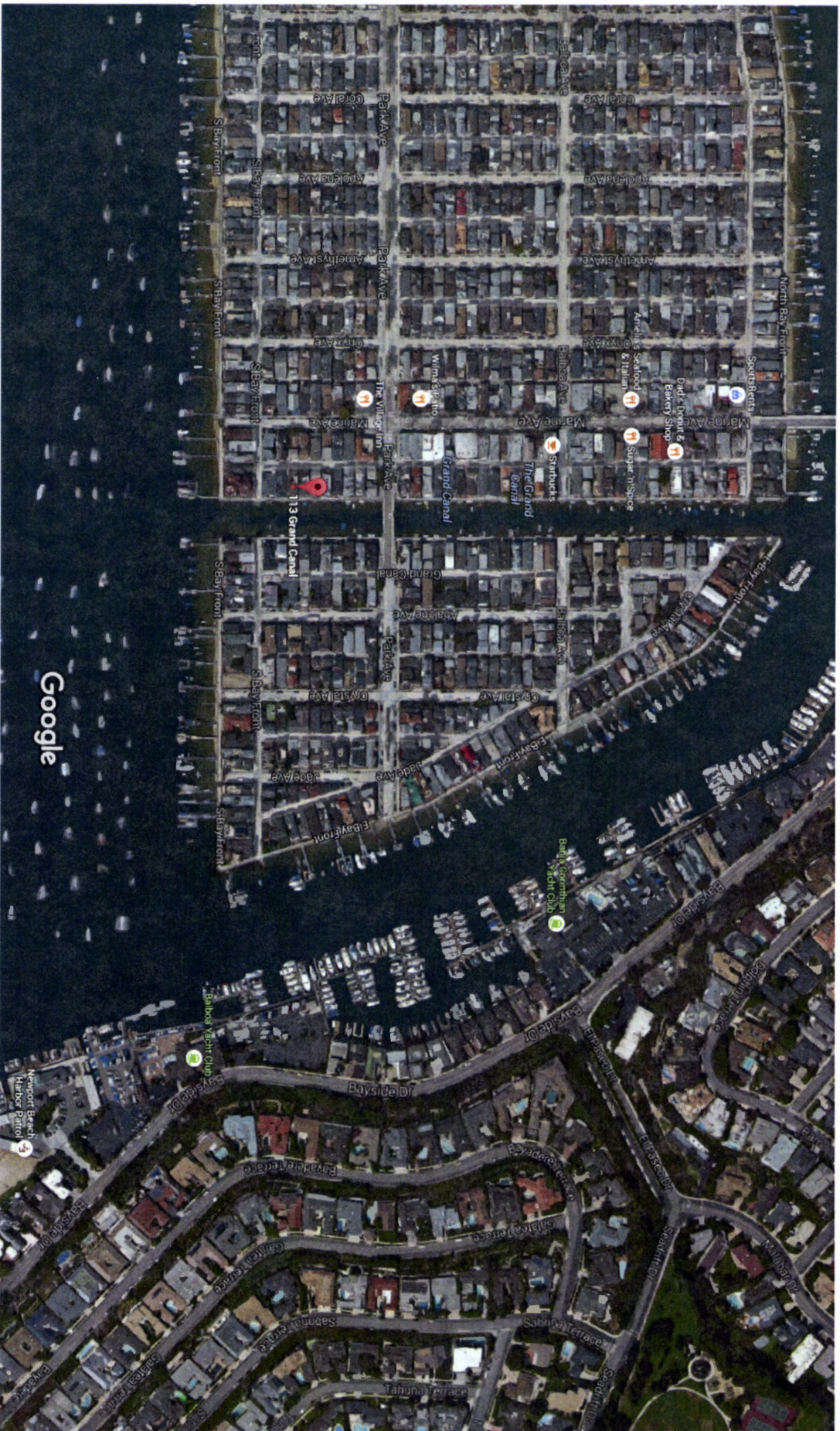
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Google Maps 113 Grand Canal



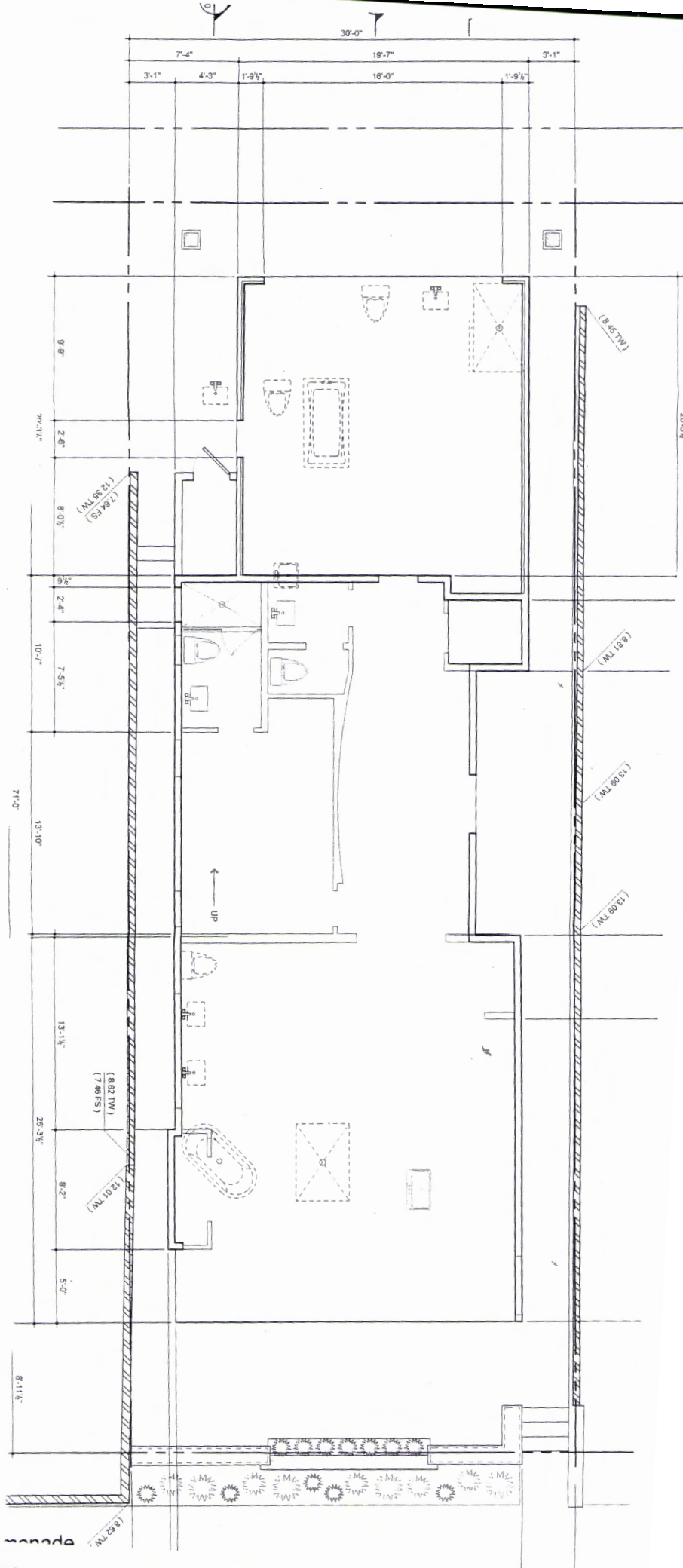
Imagery ©2016 Google, Map data ©2016 Google 200 ft

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25. HGT FOR ROOFS 38.00'

SLATE 35.915

MAX BLDG HGT FOR FLAT ROOFS/RLLG 33.00'

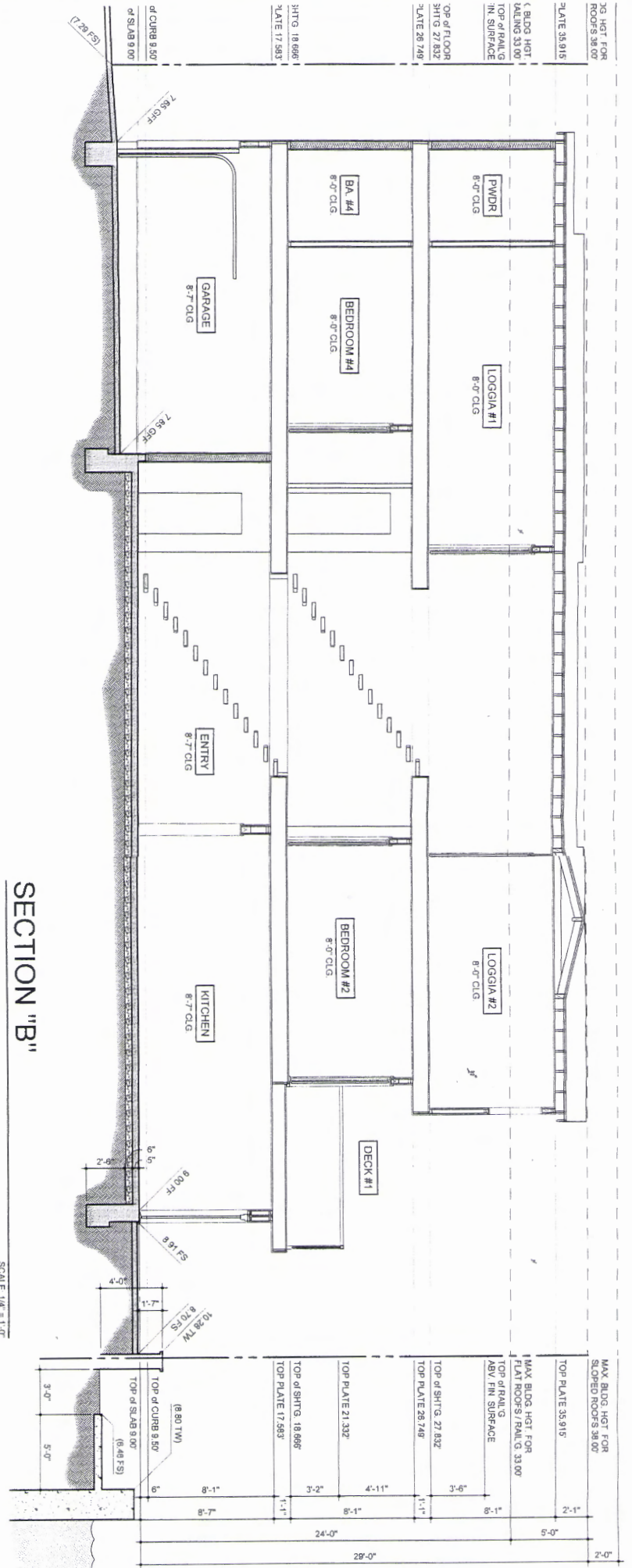
OP OF FLOOR SHTG 27.832

SLATE 28.749

SHTG 18.666

TOP OF CURB 9.50'

TOP OF SLAB 9.00'



SECTION "B"

SCALE 1/4" = 1'-0"

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EXHIBIT #

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