

W 58

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

245 W. BROADWAY, STE. 380

P.O. BOX 1450

LONG BEACH, CA 90802-4416

(310) 590-5071

Filed: November 7, 1996
49th Day: December 26, 1996
180th Day: May 6, 1997
Staff: John T. Auyong
Staff Report: December 18, 1996
Hearing Date: December 10-13, 1996
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 5-96-225

APPLICANT: Susan Greenspun Fine AGENT: John M. Garcia

PROJECT LOCATION: 6104 West Oceanfront, City of Newport Beach, Orange County

PROJECT DESCRIPTION: Construction on a vacant lot of a new 3,328 square foot, three-story, 29 foot high, single-family residence with attached 354 square foot two-car garage, a one-car carport, 220 square feet of upper level deck area, and ground level patio encroachments (10'4"x40' surface area) onto the Oceanfront public right-of-way on the seaward side of the property. The encroachments involve the replacement of an existing patio wall and slab with a new 3' high masonry patio wall with an automatic closing gate and a concrete patio slab.

Lot area:	3,000 square feet
Building coverage:	1,446 square feet
Pavement coverage:	1,476 square feet
Landscape coverage:	78 square feet
Zoning:	R-2
Land Use Plan designation:	Two Family Residential

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-in-Concept 1679-96

SUBSTANTIVE FILE DOCUMENTS: De Minimis Waiver 5-96-151 (Fine); Coastal Development Permits 5-93-114, 5-94-091, 5-95-010, and 5-96-106 (City of Newport Beach (street-ends)), 5-94-054 (Riegelsberger), 5-94-178 (RJH Properties), and 5-94-280 (Hood); City of Newport Beach Certified Land Use Plan

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development, located between the nearest public roadway and the shoreline, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 including the public access and recreation policies of Chapter 3, 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 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. 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 this permit is reported to the Commission. 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. 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. Deviation from Approved Encroachments

The only encroachment onto the City of Newport Beach Oceanfront public right-of-way allowed by this coastal development permit is a new 3' high, 8" thick masonry patio wall running around the edge of a new four inch thick, 10'4"x40' concrete patio slab, and a new automatic closing gate between the patio and the beach. Any additional development in the public right-of-way or improvements to these approved encroachments cannot occur without an amendment to this coastal development permit from the Coastal Commission or its successor agency.

2. Submission of Encroachment Permit

Prior to commencement of construction of the encroachments described herein, the applicant shall submit, for review and approval by the Executive Director,

a copy of a valid, approved Annual Ocean Front Encroachment Permit from the City of Newport Beach authorizing the development into the public right-of-way approved by this permit.

3. City's Right to Revoke Encroachment Permit

Approval of this coastal development permit shall not restrict the City's right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right-of-way.

IV. Findings and Declarations.

A. Project Description

The applicant is proposing to construct a new 29 foot high single-family residence on a vacant lot located immediately adjacent to a public beach. De Minimis Waiver 5-96-151 was previously approved for the applicant's proposal to demolish the residence that existed on-site. However, an existing patio wall on the beachside was not demolished as part of that application.

The proposed residence would consist of 1,446 square feet of enclosed living area on the first floor, along with a 354 square foot two-car garage and a 9'-4"x10'-0" one-car carport. The proposed second floor would have 1,510 square feet of enclosed living area and 102 feet of exterior deck area. The proposed third floor would have 372 square feet of enclosed living area and 118 square feet of exterior deck area.

The proposed project includes a ground-level patio surrounded by a patio wall on the beachside of the site. The patio would replace an existing patio wall and slab with a new three foot (3') high, eight inch (8") thick concrete block masonry patio wall with an automatic closing metal gate and a concrete patio slab. The dimensions of the new patio are forty feet (40') wide (i.e. from side property line to side property line) and fifteen feet, four inches (15'4") deep (i.e. from the house towards the sea).

The seaward most portion of this patio would encroach into the City of Newport Beach Oceanfront public right-of-way (see Exhibits B and C). The public right-of-way is City owned land for street purposes. The portion of the new patio which would encroach onto the public right-of-way would be ten feet, four inches (10'4") deep (i.e. seaward from the beachside property line) and 40' wide. This would be the same depth of encroachment as the existing patio encroachment which was not demolished under De Minimis Waiver 5-96-151.

B. Public Access/Recreation

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the

people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

1. Encroachments

The proposed development includes construction of patio encroachments onto the City of Newport Beach Oceanfront public right-of-way on the seaward side of the home. The City holds the public right-of-way for street purposes. The public right-of-way is designated on assessor's parcel maps as Oceanfront street. The portions of Oceanfront in the central part of the Balboa Peninsula near the City's two municipal piers is developed with a public walkway/bikeway. In the vicinity of the subject site, however, the City has never constructed any part of Oceanfront street but it has at times addressed the possibility of constructing a bike path and pedestrian walkway in the right-of-way in this area. The public right-of-way in this area is currently unimproved and consists of sandy beach area. Thus, the proposed encroachments will reduce the amount of public sandy beach area available for public access and recreation and could interfere with the City's future use of the right-of-way for public access.

The proposed encroachments would contribute to the cumulative adverse impact on beach use resulting from the various existing encroachments on the public right-of-way in the area. In addition, the encroachments could make it difficult in the future for the City to improve the public right-of-way for lateral access purposes. For instance, the public right-of-way could be used to extend the City's concrete bikeway/walkway along the beach. The bike path currently runs inland in the vicinity of the subject site.

In 1991, the Commission certified an amendment to the City of Newport Beach Certified Land Use Plan ("LUP"). The LUP acknowledges the adverse public access impacts that will result from development on the sandy beach area which is owned by the City for street purposes. This cumulative impact is addressed by a mitigation plan. The mitigation plan requires that all encroachments onto the City's Oceanfront public right-of-way, including the proposed encroachment, must be approved by an Annual Ocean Front encroachment permit issued by the City. The fees generated by these encroachment permits are then used to fund the improvements of street-ends in the area, including the provision of two metered public parking spaces per street-end.

The fees vary depending on the depth (i.e. seaward from the beachside property line) of permitted encroachment onto the Oceanfront public right-of-way. The proposed 10'4" depth of encroachments are within the fifteen feet (15') maximum depth of encroachment allowed in this area by the LUP encroachment policies.

The LUP encroachment policies prohibit encroachments: (1) between 36th and "A" Streets, (2) on Peninsula Point, (3) which would interfere with vertical public access, (4) that require the issuance of a City Building Permit, or exceed three feet in height, and (5) that existed prior to October 22, 1991, and which did not have an approved encroachment permit prior to that date. The proposed encroachment does not fall into one of these categories of prohibited encroachments.

LUP Encroachment Policy 5.A. contains the mitigation plan which requires the City to reconstruct thirty-three (33) unimproved street-ends between 36th Street and Summit, and the City will use its best efforts to improve three or more street-ends per year. To date, the Commission has approved coastal development permits 5-93-114, 5-94-091, 5-95-010, and 5-96-106 (City of Newport Beach) for the improvement of nineteen (19) of the 33 street-ends. Of these, the street-ends for 37th through 50th Streets have been completed. The street-end improvements for 51st through 55th Streets are currently under construction. The City anticipates submitting a coastal development permit application for improvements to the street-ends of 56th through 59th Streets sometime in 1997. In addition, the hard surface walkway perpendicular to Seashore Drive at Orange Avenue required by Policy 5.A. has been completed.

When it certified the LUP amendment allowing these encroachments, the Commission found that, if developed consistent with this mitigation plan for street-improvements which enhance vertical public access, encroachments onto the City's Oceanfront public right-of-way would be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act. The Commission's findings of denial as submitted and approval as modified of City of Newport Beach LUP Amendment 90-1, as described in the staff reports dated December 4, 1990 and May 28, 1991 respectively, are hereby incorporated by reference.

The Commission finds that the proposed encroachments are consistent with the LUP policies, i.e. they are located in an approved encroachment zone, the applicant has submitted the approved oceanfront encroachment permit, and the City is continuing to carry out the public access improvements that are necessary to mitigate the adverse impacts of the encroachments. Section 13250 of the California Code of Regulations provides that development such as the proposed encroachments are not exempt from obtaining a coastal development permit pursuant to Coastal Act Section 30610(b). However, to ensure that no further encroachments occur unless the coastal development permit is amended, the coastal development permit is also being conditioned so that future deviations from the approved encroachments require an amendment to this permit. This would allow the Commission to evaluate future encroachment deviations for adverse public access and recreation impacts.

As a condition of the City's issuance of an encroachment permit, the permittee waives their right to contest the ability of the City to remove the encroachments in order to build public access improvements within the public right-of-way. The permit is thus being conditioned further to provide that issuance of the coastal development permit does not restrict nor interfere

with the City's right to revoke its encroachment permit, without cause, in order to construct public access and recreation improvements in the public right-of-way. This would ensure future opportunities for public access and recreation.

Further, the Commission previously approved coastal development permits 5-94-054 (Riegelsberger), 5-94-178 (RJH Properties) and 5-94-280 (Hood) which incorporated similar conditions to minimize the adverse impacts to public access resulting from similar encroachments in the area. Therefore, the Commission finds that the proposed encroachments onto the public right-of-way, only as conditioned, would be consistent with the public access and recreation policies of the Coastal Act.

2. Development on Private Property

Section 30212 of the Coastal Act states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

The subject site is located between the nearest public roadway and the shoreline. The proposed single-family residence would not be an intensification of use over the previously existing single-family residence on-site. The proposed project would provide three parking spaces, consistent with the Commission's regularly used standard of two spaces per residential dwelling unit. Vertical access to the beach exists via the 61st and 62nd Street street-ends, three and two lots over respectively from the subject site. Therefore, the Commission finds that adequate public access from the nearest public roadway to the shoreline exists nearby. Therefore, no vertical access is necessary with the proposed development.

C. Local Coastal Program

Section 30604(a) of the Coastal Act provides that, prior to certification of a local government's local coastal program ("LCP"), the Commission shall issue a coastal development permit if the permitted development would not prejudice the ability of the local government to prepare an LCP that is in conformity with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan ("LUP") component of its LCP was originally certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the complete LCP has not been prepared nor

certified. Therefore, the Commission issues CDPs within the City based on development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3.

A public right-of-way on land owned by the City which is the Oceanfront "paper" Street, runs between private property and the beach along West Newport and the Balboa Peninsula. Portions of the right-of-way are developed with a public bikeway/walkway. The public bikeway/walkway provides public access and recreation opportunities. However, in West Newport (including the vicinity of the subject site) and the eastern end of the Balboa Peninsula, the public right-of-way is unimproved. Because the public right-of-way in these areas is not physically improved and instead is sandy beach area, there are no public improvements to serve as a barrier preventing private encroachment onto the public beach.

There had been a history of mostly minor private development, primarily improvements such as patios, decks, and landscaping, which had been built onto the public right-of-way in a hodge-podge manner. Because these improvements were "on a beach," pursuant to Sections 13250 and 13253 of the Commission's regulations, they are not exempt from coastal development permit requirements pursuant to Coastal Act Section 30610(b) which exempts improvements to single-family homes from coastal development permit requirements. Many of these encroachments were not approved by coastal development permits and therefore were in violation of the Coastal Act.

Therefore, the City submitted LUP Amendment 90-1 as a way to address these encroachments. On January 9, 1991, the Commission denied as submitted City of Newport Beach LUP Amendment 90-1 to establish policies regarding encroachments of private development onto public rights-of-way along the beaches of West Newport and the Balboa Peninsula. On June 11, 1991, the Commission approved the LUP amendment with suggested modifications. The Commission found the amendment as modified to be consistent with the Chapter 3 policies of the Coastal Act. The City accepted the suggested modifications which are now a part of the LUP.

As modified, the LUP encroachment policies include encroachment zones of varying depth out onto the public right-of-way and a three foot vertical height limit on structures allowed in these zones. The LUP policies prohibit encroachments which would interfere with access and which would be so significant in nature as to require the issuance of a City building permit. The encroachments as proposed conform to the standards for height and depth-of-encroachment contained in the LUP policies.

The LUP amendment as certified by the Commission established a program to mitigate the adverse impacts of the encroachments by using encroachment permit fees to fund street-end improvements. LUP Encroachment Policy 6B provides that, as a condition of approval of the encroachment permit, property owners waive and give up any right to contest the validity of the unimproved public right-of-way on which the encroachments are located. Policy 6B further provides that City encroachment permits are revokable, without cause, if the

City proposes to construct public improvements on the public right-of-way. The coastal development permit is also being conditioned to ensure that the approval of the coastal development permit does not restrict nor interfere with the City's right to revoke the encroachment permits.

The Commission found the LUP Encroachment policies as modified to be consistent with Sections 30210, 30211, 30212, and 30214 of the Coastal Act. The proposed development, as conditioned, conforms to the LUP Encroachment policies and the public access policies of Chapter 3 of the Coastal Act. Therefore, the Commission finds that the proposed development, as conditioned, would not prejudice the ability of the City of Newport Beach to prepare an LCP in conformity with the Chapter 3 policies of the Coastal Act.

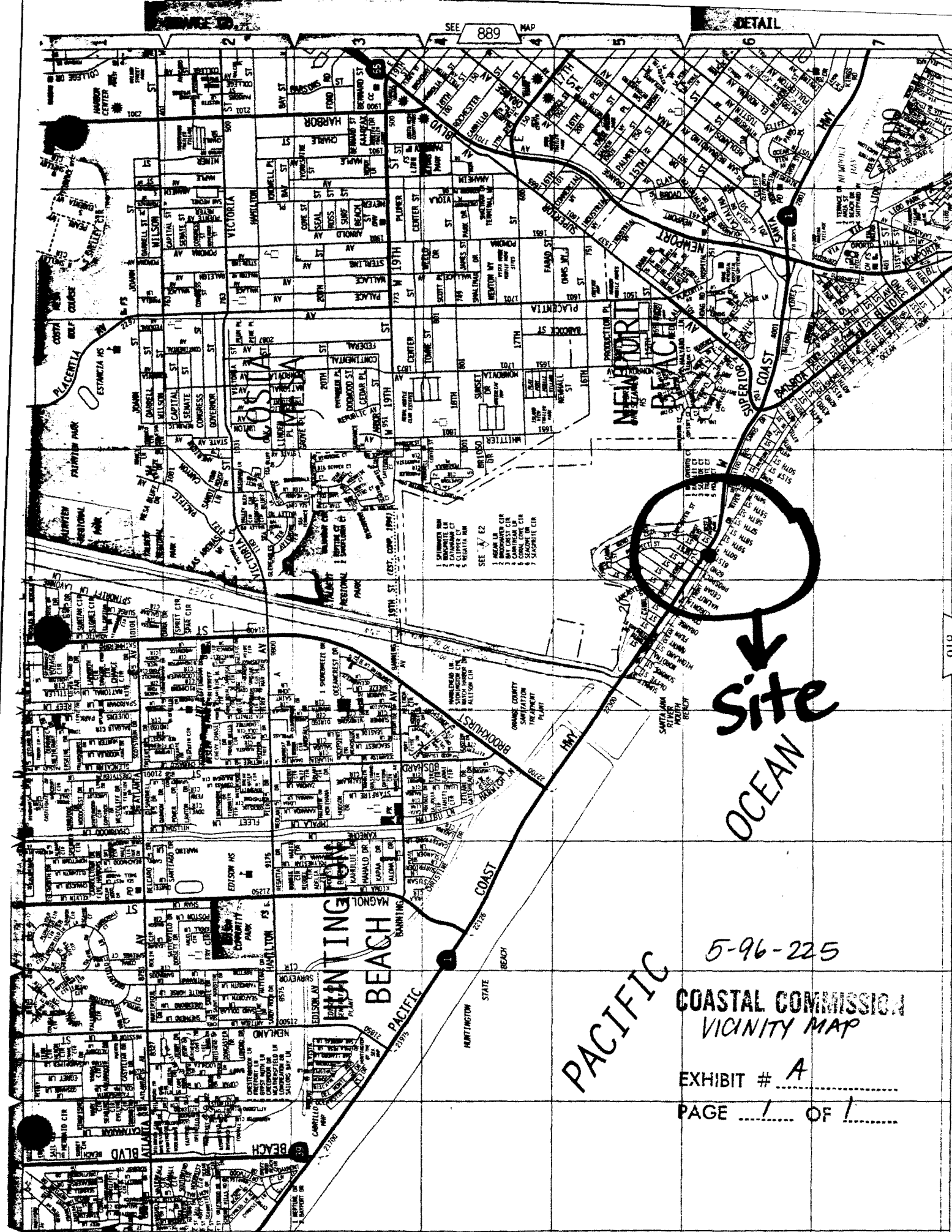
D. California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the public access and recreation policies of the Coastal Act. Mitigation measures include conformance with the standards of the City's LUP encroachment policies and submission of the approved City encroachment permit, the fees from which are used to fund street-end improvements to enhance public access, will minimize all adverse impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

In addition, development previously existed on the site. The proposed development would not result in an intensification of use of the site. The proposed project would be infill development in an urbanized area. All infrastructure necessary to serve the proposed project exists in the area. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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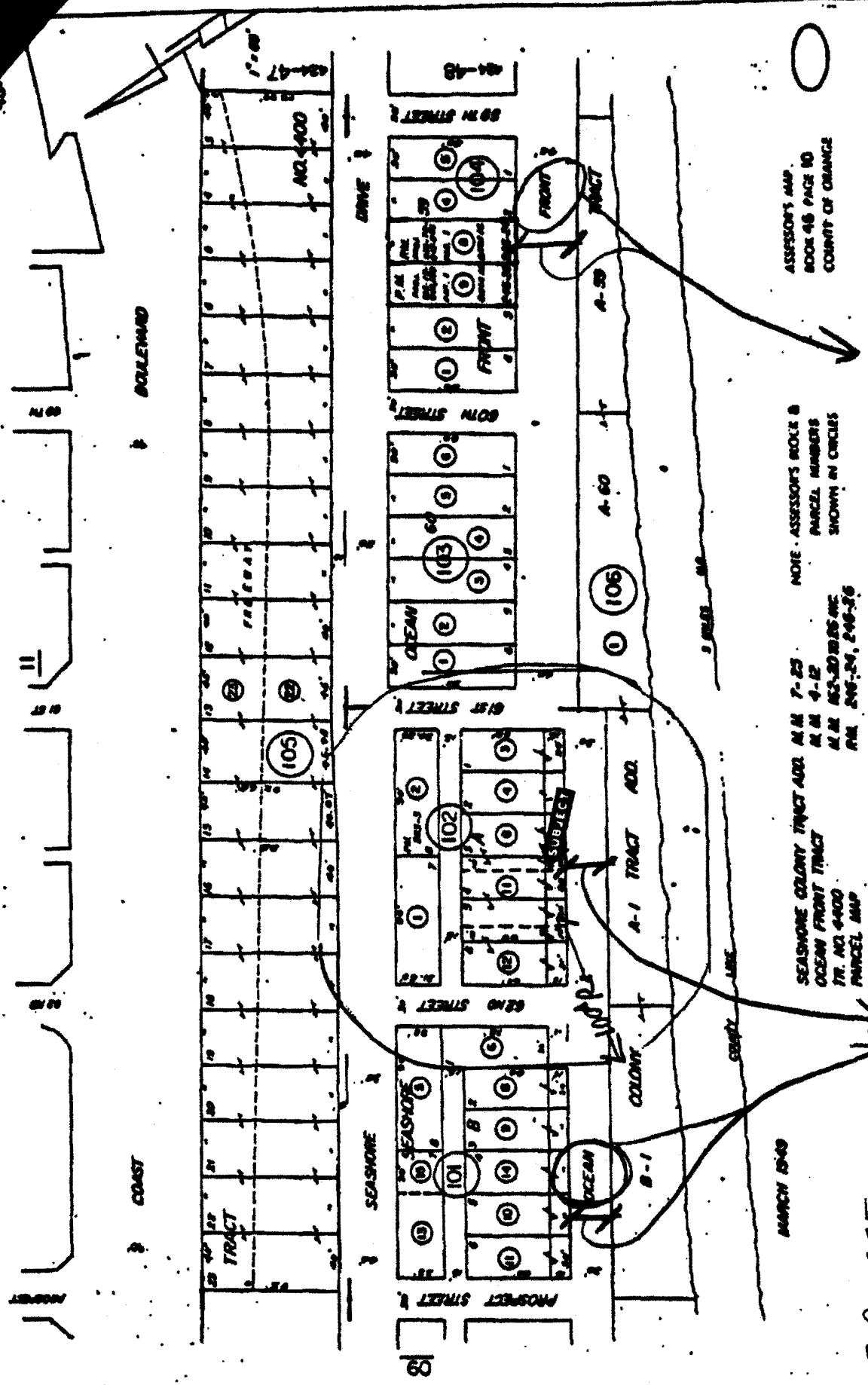
5-96-225

COASTAL COMMISSION

VICINITY MAP

EXHIBIT # A

PAGE 1 OF 1



ASSESSOR'S MAP
BOOK 416 PAGE 10
COUNTY OF ORANGE

NOTE: ASSESSOR'S BLOCK &
PARCEL NUMBERS
SHOWN IN CIRCLES

SEASHORE COLONY TRACT ADD. AL 11 7-23
OCEAN FRONT TRACT AL 11 4-12
TR. NO. 4400 AL 11 125-30 125 ARE.
PARCEL MAP RM. 246-24, 246-26

MARCH 1949

5-96-225
COASTAL COMMISSION
oceanfront street public right-of-way
oceanfront right-of-way

COASTAL COMMISSION

5-96-225
encroachments - site plan

depth of seaward encroachment onto

Oceanfront right-of-way

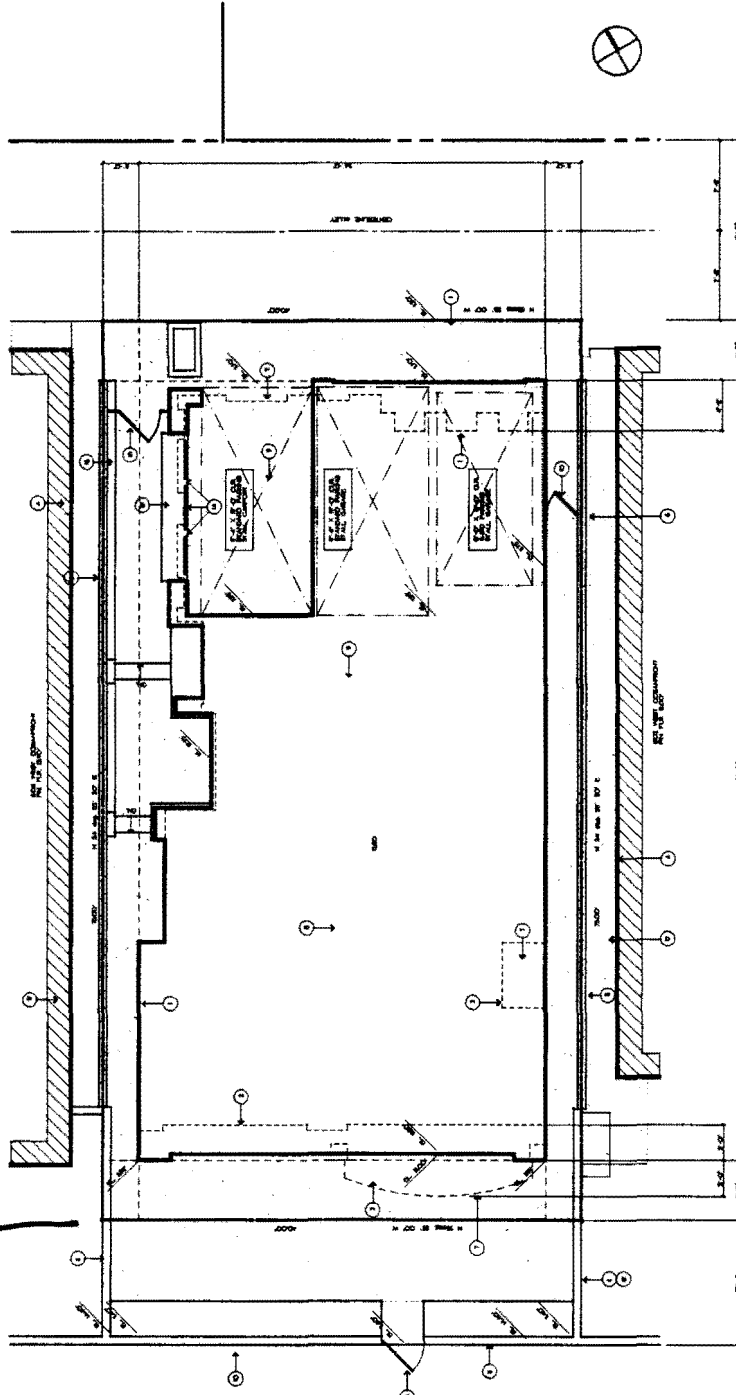
EXHIBIT #

PAGE

1 OF 1

Susan G. Fine Residence
Mr. Susan G. Fine
C/O A. O'Connell
Newport Beach, California 92663

John M. Clark
ARCHITECT
11111 BAYVIEW
NEWPORT BEACH, CALIF. 92663

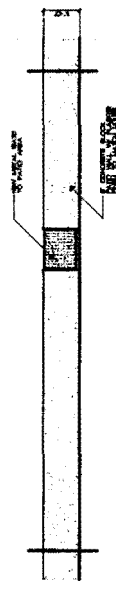


SITE PLAN

- 1. NEW 10' WIDE RIGHT-OF-WAY
- 2. NEW 10' WIDE RIGHT-OF-WAY
- 3. NEW 10' WIDE RIGHT-OF-WAY
- 4. NEW 10' WIDE RIGHT-OF-WAY
- 5. NEW 10' WIDE RIGHT-OF-WAY
- 6. NEW 10' WIDE RIGHT-OF-WAY
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- 14. NEW 10' WIDE RIGHT-OF-WAY
- 15. NEW 10' WIDE RIGHT-OF-WAY
- 16. NEW 10' WIDE RIGHT-OF-WAY
- 17. NEW 10' WIDE RIGHT-OF-WAY
- 18. NEW 10' WIDE RIGHT-OF-WAY
- 19. NEW 10' WIDE RIGHT-OF-WAY
- 20. NEW 10' WIDE RIGHT-OF-WAY

KEYNOTES

PATIO WALL ELEVATION AT BEACH ENCROACHMENT



RECEIVED
5-96-225
NOV 7 1996

COASTAL COMMISSION
SOUTH COAST DIVISION

CITY OF NEWPORT BEACH ANNUAL OCEAN FRONT ENCROACHMENT PERMIT

(Please print or type. Please hand - making 3 copies.)

APPLICATION FOR: <input type="checkbox"/> EXISTING IMPROVEMENT <input type="checkbox"/> NEW IMPROVEMENT (CHECK ONE) <input checked="" type="checkbox"/> EXISTING IMPROVEMENT MODIFIED <input type="checkbox"/> RENEWAL		Permit # OF- <u>EN1195</u> Depth of Encroachment <u>15' 11"</u> Amount Fee Paid \$ <u>453.68</u> Receipt # <u>7/15/94</u>
ADDRESS OF ENCROACHMENT <u>6104 W. OCEANFRONT</u>		
APPLICANT'S NAME <u>SUSAN G. FINE</u>	ADDRESS <u>18 QUAIL HOLLOW DRIVE HENDERSON, NV. 89104</u>	Phone <u>(714) 760-9135</u>
OWNER'S NAME <u>SUSAN G. FINE</u>	ADDRESS <u>18 QUAIL HOLLOW DRIVE HENDERSON, NV. 89104</u>	Phone <u>(714) 760-9135</u>
CONTRACTOR'S NAME <u>SEAPORT CONSTRUCTION</u>	ADDRESS <u>5 UPPER NEWPORT PLAZA NEWPORT BEACH, CA</u>	Office Phone <u>622-1866</u> Job Site Phone
CONTRACTOR'S CITY BUSINESS LICENSE NO. <u>00012667</u> * STATE LICENSE NO. <u>573333</u> *		
The applicant hereby makes application to <u>REPLACE EXISTING PATIO WALL AND SLAB WITH NEW 3' HIGH MASONRY PATIO WALL AND CONCRETE PATIO SLAB. GATE MUST HAVE AN AUTOMATIC CLOSER.</u>		
(See attached plans)		
WORKERS' COMPENSATION INSURANCE (Required by Section 9800 of Labor Code) * <input type="checkbox"/> Applicant has furnished to the city a certificate of workers' compensation insurance issued by an admitted insurer and conforming to Section 9800 of the Labor Code; or an exact copy thereof certified by the insurer. The insurance certificate shows the expiration date of the policy. If the policy lapses or is cancelled, this permit shall be deemed to be revoked. Insurer <u>UNICARE</u> Policy No. <u>SA50-1096-1602</u> Expiration Date <u>10-1-97</u>		
The terms and conditions of this permit are as stated in the Oceanfront Permit Agreement. Owner hereby acknowledges that he has read and understands said terms and conditions, and that he agrees to abide by them. <u>[Signature]</u> <u>11/6/96</u> (Owner's Signature) (Date)		
SPACE BELOW THIS LINE FOR OFFICE USE		
SPECIAL CONDITIONS OF APPROVAL REQUIRED BY CITY: <u>COASTAL COMMISSION</u> <u>5-96-225</u> <u>Approved encroachment permit</u> EXHIBIT # <u>D</u>		
PERMIT ISSUED BY: <u>[Signature]</u> PAGE <u>1</u> OF <u>2</u>		
DATE ISSUED: <u>11/6/96</u> EXPIRATION DATE OF PERMIT: June 30, <u>1997</u>		
PERMIT DENIED <input type="checkbox"/>		

* Only required for modifications and new improvements.

5-96-225

White - Permit

Pink - Temporary
Office Copy

Yellow - Applicant

EXHIBIT "A"

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

SKETCH FOR ENCROACHMENT PERMIT NO. OF- _____

5-96-225

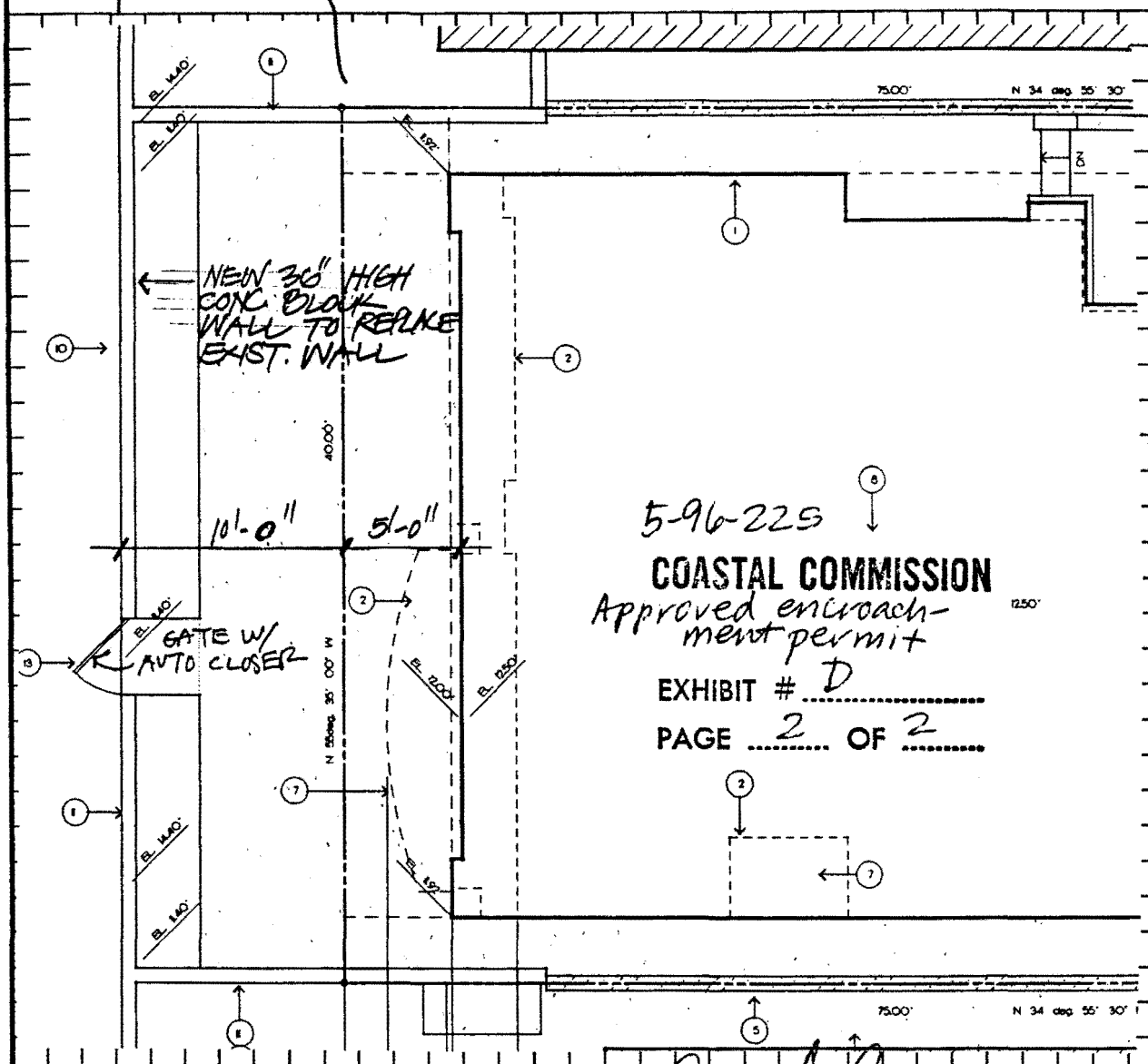
NOV 7 1996

(Sketch to be drawn in triplicate)

Scale 1" = 8'-0"
width of encroachment onto
right-of-way

Job Address 6104 West Oceanfront
Newport Beach, CA.

Owner Susan G. Fine
(714) 760-9135



Preparer's Signature

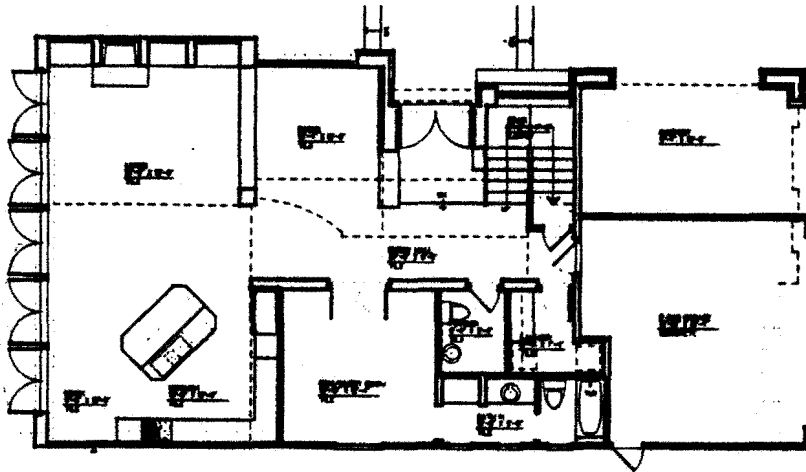
Date

Applicant's Signature

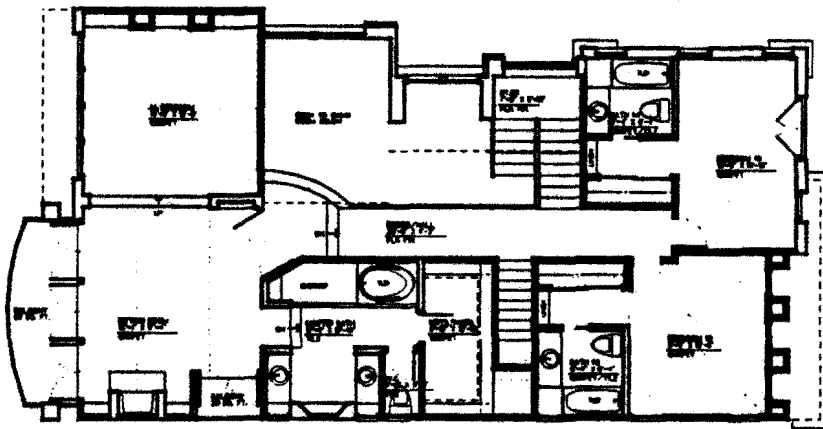
Date

Please make a sketch of the encroachments showing all property lines, setbacks, existing structures, existing patio improvements, dimensions and elevations above or below existing grade.

Works shall be done in accordance with City Ocean Front Policy L-14 and 18



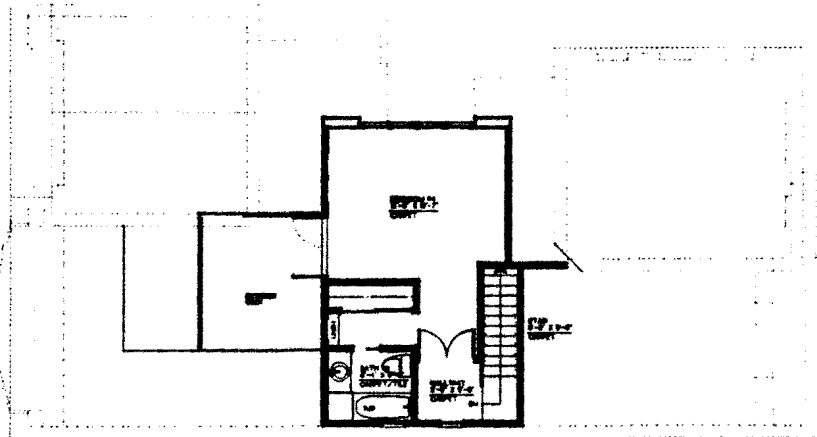
LOWER FLOOR PLAN



UPPER FLOOR PLAN

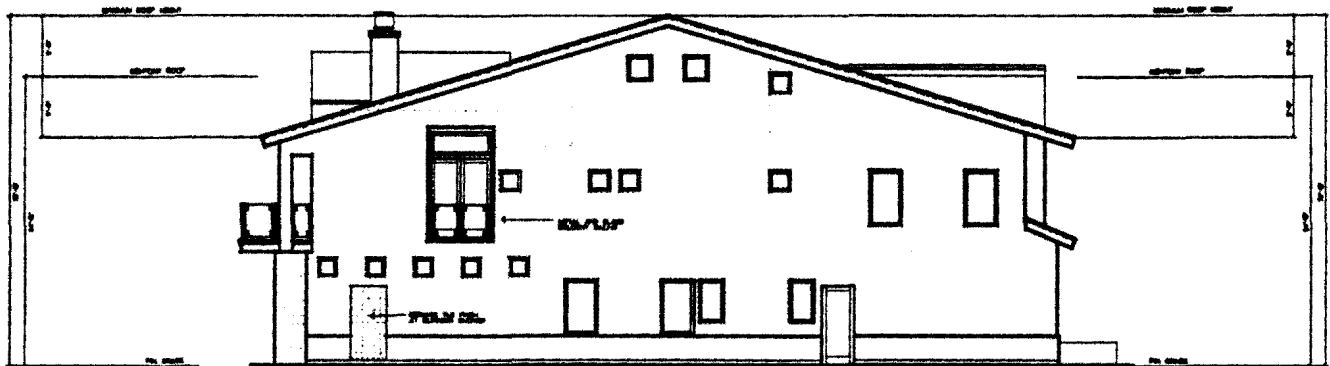
5-96-225
COASTAL COMMISSION
plans

EXHIBIT # E
 PAGE 1 OF 3



1/2" = 1'-0"

MEZZANINE LEVEL FLOOR PLAN



EAST SIDE ELEVATION

5-96-225
COASTAL COMMISSION
plans

EXHIBIT # E

PAGE 2 OF 3

COASTAL COMMISSION 5-96-225

plans

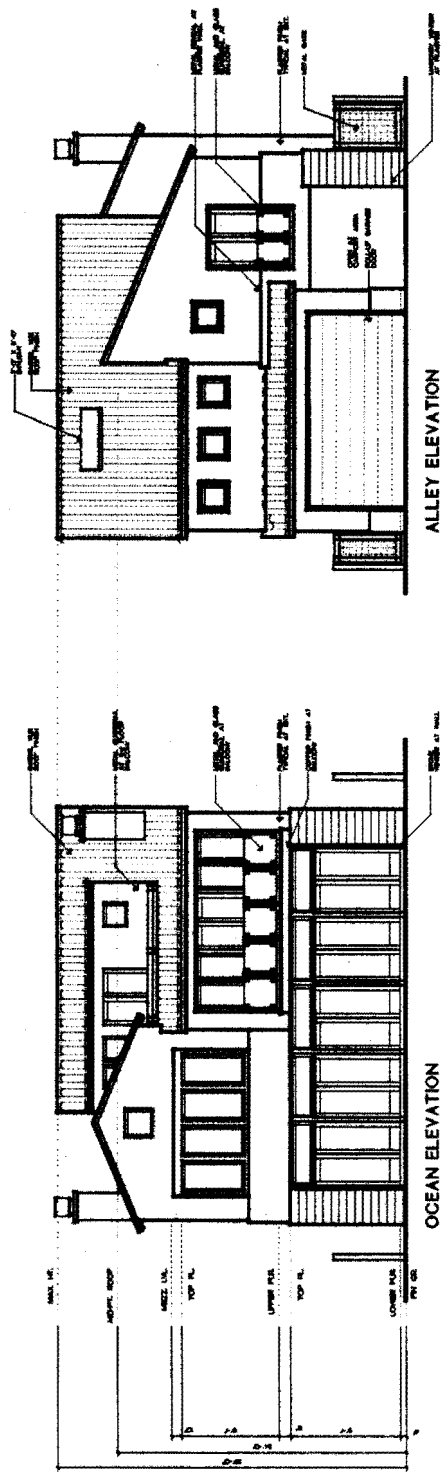
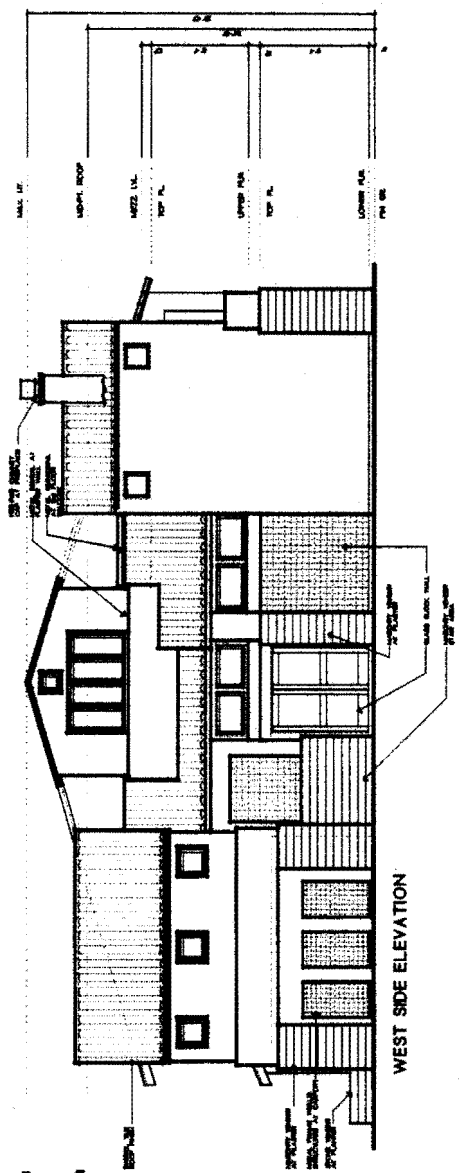
EXHIBIT # E

PAGE 3 OF 3

RECEIVED
5-96-225
NOV 7 1996

CALIFORNIA
COASTAL COMMISSION
WITH COAST ELEVATION

Susan G. Fine Residence
1014 R. Overland
Marina Beach, California 90268



EXTERIOR ELEVATIONS

A4.1