

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036

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Permit Application No. 6-95-157/EL

Date January 17, 1996

ADMINISTRATIVE PERMIT

APPLICANT: Apponaug Corporation/Dr. James Levin

PROJECT DESCRIPTION: Construction of a six-foot-high masonry fence and windscreen extending 50 feet along the western property line and approximately 15 feet along the southern property line of a 3,500 sq.ft. site developed with an existing single-family residence.

PROJECT LOCATION: 2204 Ocean Front, Del Mar, San Diego County.  
APN 299-097-12

EXECUTIVE DIRECTOR'S DETERMINATION: The findings for this determination, and for any special conditions, are discussed on subsequent pages.

NOTE: The Commission's Regulations provide that this permit shall be reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, a permit will not be issued for this permit application. Instead, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

DATE and TIME: February 8, 1996      LOCATION: U. S. Grant Hotel  
9:00 a.m., Thursday                      326 Broadway  
San Diego, CA

IMPORTANT - Before you may proceed with development, the following must occur:

For this permit to become effective you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, we will send you an authorization to proceed with development. BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE PERMIT AUTHORIZATION FROM THIS OFFICE.

PETER DOUGLAS  
Executive Director

By: *Ellen L. Riley*

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. 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. Compliance. All development must occur in strict compliance with the proposal as 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 development during construction, 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.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

Pursuant to Public Resources Code Section 30624, the Executive Director hereby determines that the proposed development, subject to Standard and Special Conditions as attached, is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, 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, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. Any development located between the nearest public road and the sea is in conformity with the public access and public recreation policies of Chapter 3.

The applicant is proposing to construct a masonry fence and windscreen along the western property line, and a portion of the southern property line, as an accessory structure to an existing single-family residence on the beachfront in Del Mar. The proposed structure will extend a total of 65 linear feet (50 feet across the western side and 15 feet along the southern), and will be a total of nine feet in height, including a three-foot-deep, below-grade

foundation. The fence/windscreen is proposed to provide privacy for the residents and is neither proposed nor designed as a shoreline protective device.

The subject site is located at the northwest corner of 22nd Street and Ocean Front in Del Mar. Although it is a developed shoreline site, it does not have any existing shoreline protective devices. There is a continuous seawall south of 22nd Street, fronting several properties, and shoreline protection further to the north, although the home immediately north does not have any shoreline protection either. However, it has been recognized for some time that all of the low-lying lots between Seagrove Park and the mouth of the San Dieguito River are and most likely will continue to be subject to impacts from storm waves. The vast majority of the residences in the area are protected by some form of device, and with very few vacant lots in the vicinity, new seawalls represent infill development. This particular site sits at a slightly higher elevation than many others, although it is undoubtedly subject to some level of impact from severe storms.

This is a somewhat unique situation in which the applicant is not requesting a permit to construct a seawall, but only seeks to construct a privacy fence to separate the existing home from the public beach. It will be sited on the western and southern property lines, and will thus not encroach on any public sandy beach area. Should the need arise in the future for shoreline protection for the existing home, the proposed masonry fence would have to be removed or relocated to accommodate shoreline protection on private property. Moreover, the proposed fence/windscreen would not itself be considered a structure worthy of shoreline protection under Section 30235 of the Coastal Act. Special Condition #1 requires the applicant to acknowledge that the fence is expendable and cannot be used as justification for future shoreline protective devices, although such a claim could be made for the existing residence should it become threatened in the future.

In addition, there remains an inherent risk to construction of any structure along the shoreline. Special Condition #2 requires the applicant to record a deed restriction recognizing this risk and waiving any liability on the Commission's part for allowing this development. Pursuant to Section 13166(a)(1) of the Commission's Administrative Regulations, an application may be filed to remove Special Condition #2 from this permit if the applicants present newly discovered material information regarding the existence of any hazardous condition which was the basis for the condition, if they could not with reasonable diligence have discovered and produced such information before the permit was granted.

Section 30251 of the Coastal Act provides for the protection of scenic coastal areas and for the compatibility of new and existing development. Most homes along the shoreline have some form of perimeter fencing, either garden walls, seawalls or fences. The proposed fence will extend six feet above grade and will be masonry with a plexiglass windscreen. This design is visually, if not structurally, similar to many seawalls along this stretch of coastline. Thus, the development is consistent with Section 30251 of the Act.

Section 30604(c) of the Coastal Act requires that a specific access finding be provided for every project located between the first coastal road and the sea. Sections 30210 and 30212 of the Act further call for the maximization of public access opportunities and require that access be provided in conjunction with developments located between the first coastal road and the sea unless, among other things, adequate access exists nearby. The project site is located on the beachfront in Del Mar, which is heavily used year-round by sunbathers, swimmers and others involved in beach activities. Adequate vertical access to the adjacent beach already exists to the immediate south at the 22nd Street streetend and the beach itself is in public ownership.

The site is designated for Medium Density Residential uses in the certified City of Del Mar LCP Land Use Plan, and is currently zoned R1-5B; it is developed consistent with those designations with a single-family residence. The proposed fence/windscreen does not require any discretionary permits from the City of Del Mar, and has already been granted an administrative design review approval. The proposed development is entirely contained within private property, and is landward of the Shoreline Protection Area (SPA) Line; thus, it is consistent with the City's certified development criteria for oceanfront lots. Furthermore, the proposal, as conditioned, has been found consistent with all applicable Chapter 3 policies of the Coastal Act. Therefore, as conditioned, it is not anticipated that project approval will result in adverse impacts to any coastal resources.

SPECIAL CONDITIONS: 1. Future Shoreline Protection. Prior to authorization to proceed with development, the applicant shall acknowledge in writing that the fence and windscreen herein approved are accessory structures, not designed as shoreline protective devices, which are expendable and not worthy of future protection under Section 30235 of the Coastal Act.

2. Assumption of Risk: Prior to the authorization to proceed with development, the applicant [and landowner] shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from storms and wave action, and (b) the applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

ACKNOWLEDGEMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

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Applicant's Signature

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Date of Signing

(5157R)