

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
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LONG BEACH, CA 90802-4416
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Filed: 01-11-96
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Staff: RMR-LB
Staff Report: **RMR**
Hearing Date: February 6-9, 1996
Commission Action:



STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 5-95-295

APPLICANT: Jim & Michele Brooks

AGENT: Todd Schooler & Assoc.

PROJECT LOCATION: 5211 Seashore Dr., Newport Beach, Orange County

PROJECT DESCRIPTION: Demolition of an existing single-family residence and attached garage and construction of a 2,241 square foot single-family residence with a 400 square foot garage and deck.

Lot area:	1,800 sq. ft.
Building coverage:	1,208 sq. ft.
Pavement coverage:	538 sq. ft.
Landscape coverage:	54 sq. ft.
Parking spaces:	2
Zoning:	R-1
Plan designation:	Low Density Residential
Project density:	
Ht abv fin grade:	29 feet

LOCAL APPROVALS RECEIVED: Approval in concept from the City of Newport Beach Planning Department

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan, Coastal Development Permit 5-94-178 (RJH Properties)

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies 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 Encroachment Plans

This coastal development permit approves an encroachment onto public beach of a 15 foot by 30 foot, 450 square foot deck with three foot high planters. Any deviation from said deck area from the plans approved by this coastal development permit may require an amendment to this coastal development permit or a new coastal development permit. Prior to commencement of construction, the applicant shall submit evidence, for the review and approval of the Executive Director, that the encroachment permit fee, based on the 15 foot depth of encroachment from the seaward property boundary, has been paid.

2. 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 encroachment permit in order to construct public improvements within the encroachment zone.

IV. Findings and Declarations.

A. Project Description

The applicant is proposing to demolish an existing single-family residence and attached garage and construction of a 2,241 square foot single-family residence with a 400 square foot garage and deck.

The proposed development is a beach-fronting lot in an existing developed area located between the sea and the first public road.

B. Public Access and 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.

Section 30604(c) of the Coastal Act requires that permits issued for development location between the nearest public roadway and the shoreline shall have specific findings that the development conforms to the public access and recreation policies of Chapter 3 of the Coastal Act.

The proposed development consists of demolition of an existing single-family residence and construction of a 2,241 square foot single-family residence. The existing residence currently includes a 10 foot encroachment onto City property. The proposed residence will include a new deck and three foot high planters which will extend 15 feet into the public right-of-way. The public access and recreation issues raised by the proposed development center on the deck encroachment and not the single-family residence.

Although the standard of review for permits in Newport Beach is the Chapter 3 policies of the Coastal Act, the City of Newport Beach Certified Land Use Plan contains encroachment policies which are used for guidance by the Commission to evaluate development involving encroachments. The proposed encroachment consists of a 15 foot deep and 30 foot wide 450 square foot deck with planters.

At issue is whether the encroachment would interfere with public use of the beach. Beachgoers tend to use the beach area closest to the water as opposed to those areas of the beach directly adjacent to homes or other development. The beach at this location is wide, and therefore, the proposed encroachment's obstruction of sandy beach would not have a significant adverse impact on public beach use.

However, the proposed encroachment would add to the cumulative adverse impact on beach use of the various existing encroachments in the area. This cumulative impact is addressed by the City's encroachment mitigation plan contained in the LUP encroachment policies certified by the Commission. All encroachments in the area, including the proposed encroachment, must be approved by City-issued encroachment permits. 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. This mitigation has the direct result of improving coastal access.

The Commission previously approved coastal development permits 5-93-114 (City of Newport Beach), 5-94-091 (City of Newport Beach) and 5-95-010 (City of Newport Beach) for such improvements to street ends in the West Newport area as described in the mitigation program in the Land Use Plan. Therefore, the City has begun to implement the street end improvement program which is mitigation for the loss of sandy beach due to encroachments.

The proposed encroachment is located in an encroachment zone established by the Commission-certified LUP in which the maximum horizontal projection oceanward from the seaward property is fifteen feet. The oceanfront encroachment policy in the certified LUP states:

From 52nd Street to the Santa Ana River, encroachments may extend up to fifteen feet from the property line.

The proposed encroachment conforms with the LUP policy, above. The encroachment, as proposed, would have minimal impacts on recreational use of the beach. However, to ensure that the proposed development does not interfere with beach access and recreation, the permit is being conditioned so that the applicant is informed that any deviations from the approved plans submitted with this application shall require an amendment to this coastal development permit or a new coastal development permit.

In addition, because payment of the encroachment fee is part of the mitigation program approved by the Commission, the permit is being conditioned so that prior to commencement of construction, the applicant shall submit evidence, for the review and approval of the Executive Director, that the encroachment permit fee, based upon the 15 foot encroachment from the seaward property line, has been paid. Therefore, as conditioned for the fee payment, impacts on the use of the beach resulting from the proposed encroachment would be mitigated.

LUP Encroachment Policy 6B provides that property owners waive the right to contest the validity of the oceanfront street easement and that City issued encroachment permits are revokable, without cause, if the City decides to construct public improvements in the encroachment zone. Such public improvements could enhance public recreation and public access opportunities. In order to preserve the City's right in the future to construct public improvements in the encroachment zone, the permit is being conditioned so that an approval of a coastal development permit for the proposed encroachment shall not restrict the City's right and ability to revoke, without cause, an encroachment permit in order to construct public improvements within the encroachment zone.

The proposed development is located at the southern corner of Seashore Dr. and 53rd St. There is an existing beach access located at 53rd St. In addition, the wide sandy beach adjacent to the subject site provides adequate lateral access and public recreation opportunities. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

Only as conditioned for conformance with approved plans, payment of encroachment permit fee, and acknowledgement that Commission approval of this permit shall not restrict the City's right to revoke the encroachment permit, does the Commission find that the proposed development conforms with the access and recreation policies of Chapter 3 of the Coastal Act and the resource protection policies of Chapter 3.

C. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was certified on May 19, 1982. As conditioned the proposed development is consistent with the policies contained in the certified Land Use Plan. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program [Implementation Plan] for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

D. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit application 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). 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 access and recreation policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact which 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.

ENCROACHMENT
AREA
15'

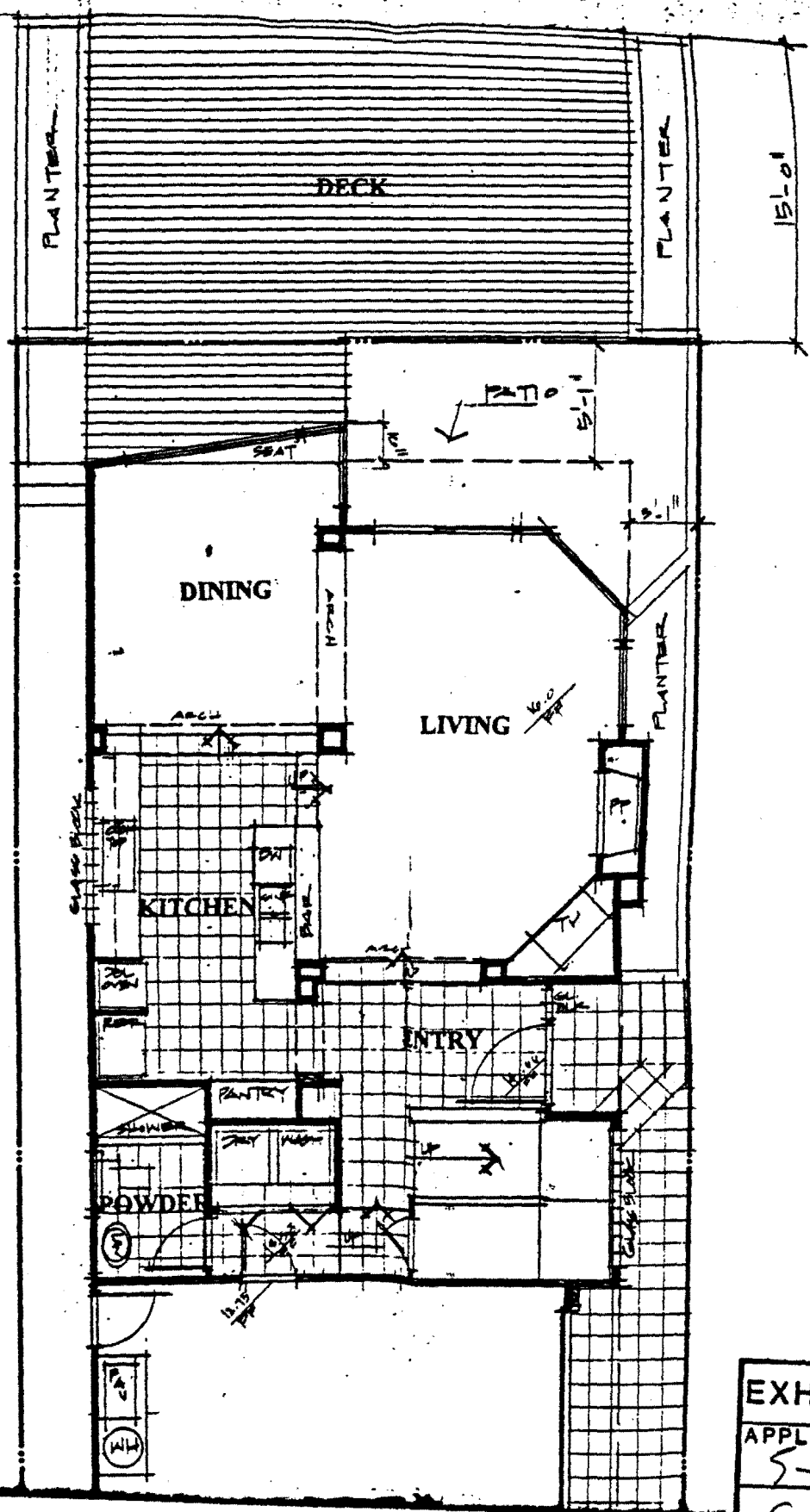


EXHIBIT NO. 2
APPLICATION NO.
5-95-295
SITEPLAN

WEST ELEVATION

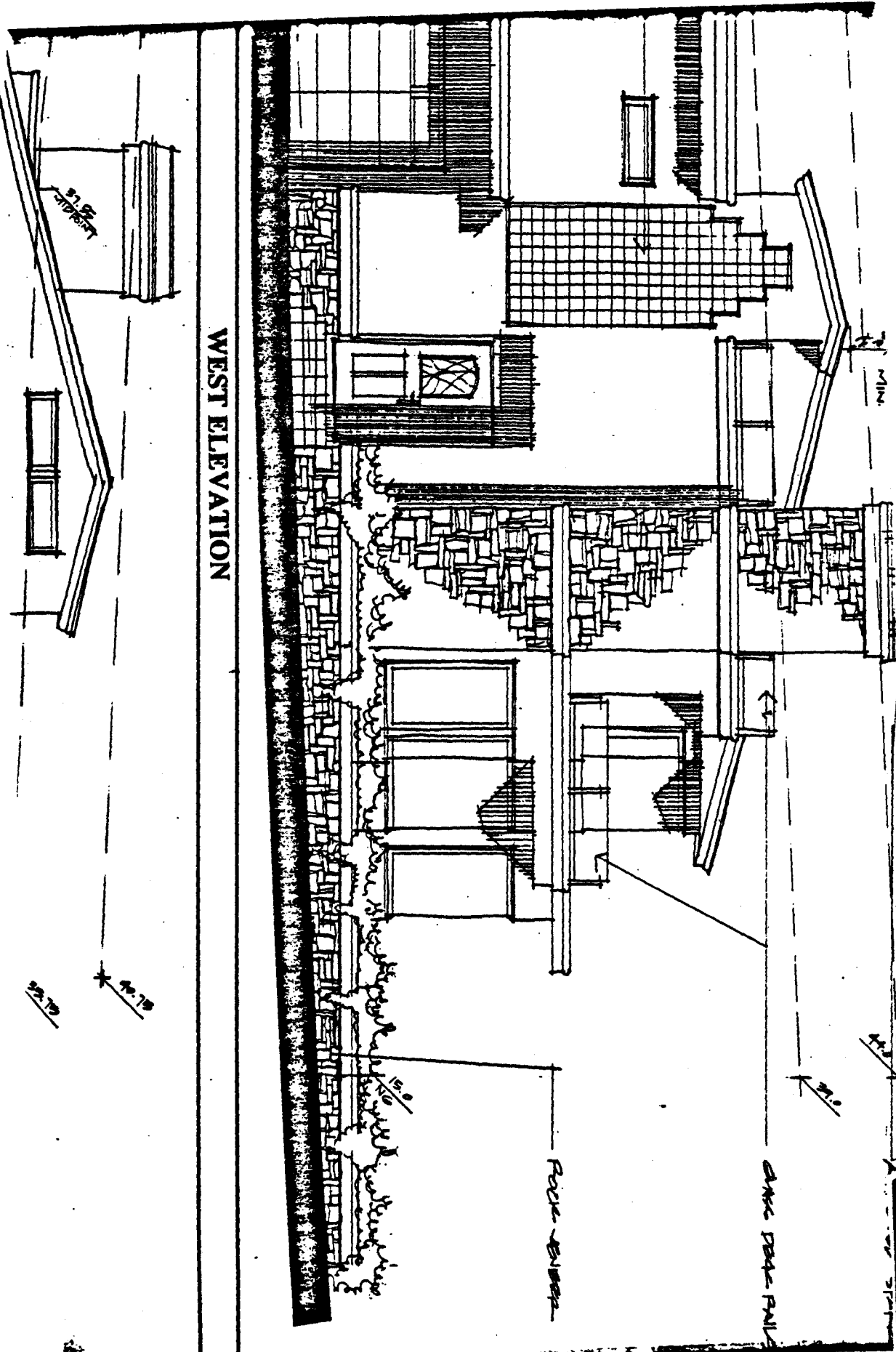


EXHIBIT NO. 3

APPLICATION NO.
5-95-295

ELEVATION



California Coastal Commission



CITY OF NEWPORT BEACH

PUBLIC WORKS DEPARTMENT
P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915
(714) 644-3311

January 9, 1996

Robin Maloney-Rames
CPA II
California Coastal Commission
South Coast Area
245 W. Broadway, Suite 380
P.O. Box 1450
Long Beach, CA 90802-4416

Subject: Coastal Development Permit Application 5-95-295
Brooks Residence, 5211 Seashore Drive

The subject property presently encroaches onto City property 10 feet. The owners have made application to demolish the present encroachment and construct a new patio and deck extending a total of 15 feet into the public right-of-way. The fee for the present encroachment has been paid through May 31, 1996. During the May billing period for the F.Y. 1996-97 the fee will be adjusted to include the additional 5 feet.

I am enclosing a copy of the Encroachment Permit application. When the construction is finished, the City will sign off on the permit and issue it to the owner. The owner is also required to sign an Encroachment Agreement (a copy is enclosed). This is also signed by the City when the construction is completed to the satisfaction of the City.

If you have any questions please give me a call at 644-3311.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Shauna Oyler".

Shauna Oyler
Executive Secretary

/s/

Enclosures

EXHIBIT NO. 4
APPLICATION NO. 5-95-295
LETTER
California Coastal Commission