

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
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Filed: June 5, 1996
49th Day: July 24, 1996
180th Day: December 2, 1996
Staff: RMR/LB **RMR**
Staff Report: June 6, 1996
Hearing Date: July 9-12, 1996
Commission Action:



RECORD PACKET COPY

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 5-96-102

APPLICANT: Mr. & Mrs. John Rafferty AGENT: Darryl Cartozian

PROJECT LOCATION: 414 and 416 38th Street, Newport Beach, Orange County

PROJECT DESCRIPTION: Demolish residence at 414 38th Street. Demolish seawall across lots at 414 and 416 38th Street. Construct new seawall across both lots at 414 and 416 38th Street. Construct improvements to residence at 416 38th Street. Build new structure at 414 38th Street to be attached to the existing structure at 416 38th Street. Combine both lots.

Lot area:	6,000 sq. ft.
Building coverage:	2942 sq. ft.
Pavement coverage:	2750 sq. ft.
Landscape coverage:	308 sq. ft.
Parking spaces:	2
Plan designation:	Two Family Residential
Ht abv fin grade:	22'8"

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

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan, Coastal Development Permits 5-95-106 (Rafferty) and 5-93-339 (Rafferty)

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve the proposed development with a special condition regarding removal of construction materials.

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. Removal of Construction Materials

Disturbance to the harbor bottom and intertidal areas shall be minimized. Local sand, cobbles, or shoreline rocks shall not be used for back fill or construction material. All construction materials shall be stored landward of the seawall and shall be removed at the conclusion of construction to the approved land disposal site.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description

The applicant is proposing to combine two lots for one residence. The residence at 416 38th Street will remain, with minor modifications consisting of converting a garage to enclosed living space. The residence at 414 38th Street will be demolished and a two-story structure constructed which will connect with the residence at 416 38th Street. The existing seawall across both properties will be demolished and a new seawall constructed in the same location. The new structure at 414 38th Street will not extend seaward of the existing residence. New patios will be constructed on both lots between the residential structure and the seawall.

The project site fronts on Newport Bay in the City of Newport Beach. Two waivers have previously been issued for 416 38th Street (5-95-106 and 5-93-339) for modifications to a pier and additions to the residence.

B. Protective Structures

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible. (emphasis added)

The applicants have submitted a letter from Noble Consultants, Inc. regarding the status of the existing seawalls and recommendations for future action. In addition, the applicants submitted two letters in response to staff questions regarding the demolition of the existing seawalls and construction of the proposed seawall.

As part of the project the applicant is proposing to demolish the two existing seawalls and replace them with one poured-in-place, tied-back, concrete seawall. Both the residences at 414 38th Street and 416 38th Street have existing seawalls. The seawall at 414 38th Street is a poured in place concrete seawall which is evidencing cracking and has large gaps underneath the wall. The seawall at 416 38th Street consists of poured in place concrete piers with timber walls between the piers.

The applicants will place a plywood curtain wall immediately on the seaward side of the existing seawall. Then the applicants will excavate behind the seawall to install the concrete deadman and remove the existing seawalls. The plywood curtain wall will then become the outer form for the proposed seawall which will consist of poured in place concrete with tie-backs attached to the concrete deadman. The plywood wall, with geotextile fabric on the landward side, will prevent sediment from entering the bay during construction of the seawall. Once the seawall is complete, the outer plywood form will be

removed. Construction debris will be taken to the nearest approved land disposal dump site.

The proposed new seawall will be constructed to today's standards and will be substantially safer than the previous seawalls. The existing seawalls are old and are experiencing signs of stress. In the event of failure of the seawalls the soils behind the seawall would be subject to erosion and migration causing differential settlement and damage to the residence. The new seawall is necessary to protect the existing structure at 416 38th Street. No seaward encroachment will occur as a result of the proposed seawall. In addition, because the seawall will be replaced in the exact same location there will be no additional impacts to shoreline processes. The proposed seawall will be located in the same location as the previous seawalls. Therefore the proposed development of a new seawall across both lots is necessary to protect existing structures and conforms with Section 30235 of the Coastal Act regarding coastal protective structures.

C. Coastal Access and Recreation

Section 30212 of the Coastal Act states:

(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.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30604(C) of the Coastal Act requires that permit applications between the nearest public road and the shoreline of any body of water within the coastal zone shall include a public access and recreation finding.

The proposed project is located in Newport Harbor. There is an existing public park with access to the water located several hundred feet away. The project is located between the first public road and the sea. A public access dedication can be required pursuant to section 30212 only if it can be shown that the development either individually or cumulatively directly impacts physical public access, i.e., impacts historic public use, or impacts or precludes use of Public Trust Lands.

In this situation, the development is located between the sea and the first public road. Improvements at 416 38th Street consist of converting an existing garage to enclosed living space and does not increase either the use or square footage of the residence. The existing structure and garage at 414 38th Street will be demolished and a new structure will be built connecting to 416 38th Street. The new structure does not extend seaward of the previous residence and will remain a single family residential use. In addition, the existing seawalls will be demolished and will be reconstructed at the exact same location as the previous one. Therefore, the proposed development does not constitute new development requiring access under 30212(a).

The development will not create adverse impacts, either individually or cumulatively on public access and will not block public access from the first public road to the shore. Therefore, the Commission finds that the proposed development is consistent with the public access and recreation policies of the Coastal Act.

D. Water Quality

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed development involves construction adjacent to the marine environment and there is the possibility that the construction activity could cause sediment or other pollutants to enter the harbor and adversely impact water quality. The existing seawalls will be demolished and removed and a new seawall constructed across both lots. The applicant has submitted evidence that a supported plywood form with geotextile fabric on the landward side will be placed immediately seaward of the existing seawall. This plywood structure will prevent sediment and other materials from entering the bay once the existing seawalls are removed.

However, in order to protect the marine environment from degradation, all construction materials and machinery shall be stored away from the water. In addition, no construction materials not essential for the project improvements shall be placed in the bay. Any materials removed from the harbor bottom shall be placed back on the harbor bottom or against the bulkhead at the conclusion of construction as per special condition 1. Only as conditioned does the Commission find that the proposed development conforms with the resource protection policies of Section 30231 of the Coastal Act.

E. Land Use Plan

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. The proposed development, consisting of the demolition and construction of a single-family residence and the demolition and construction of a seawall at the same location, is consistent with the policies contained in the certified Land Use Plan. Therefore, the Commission finds that 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).

F. 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, as conditioned, has been found consistent with the protective structures, marine water quality and coastal access and recreation policies of Chapter 3 of the Coastal Act. 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.

EXHIBIT NO. 1

APPLICATION NO. 5-96-102

JICINIM



California Coastal Commission

CALIFORNIA COASTAL COMMISSION
SOUTH COAST DISTRICT

MAY 15 1996

Project Site

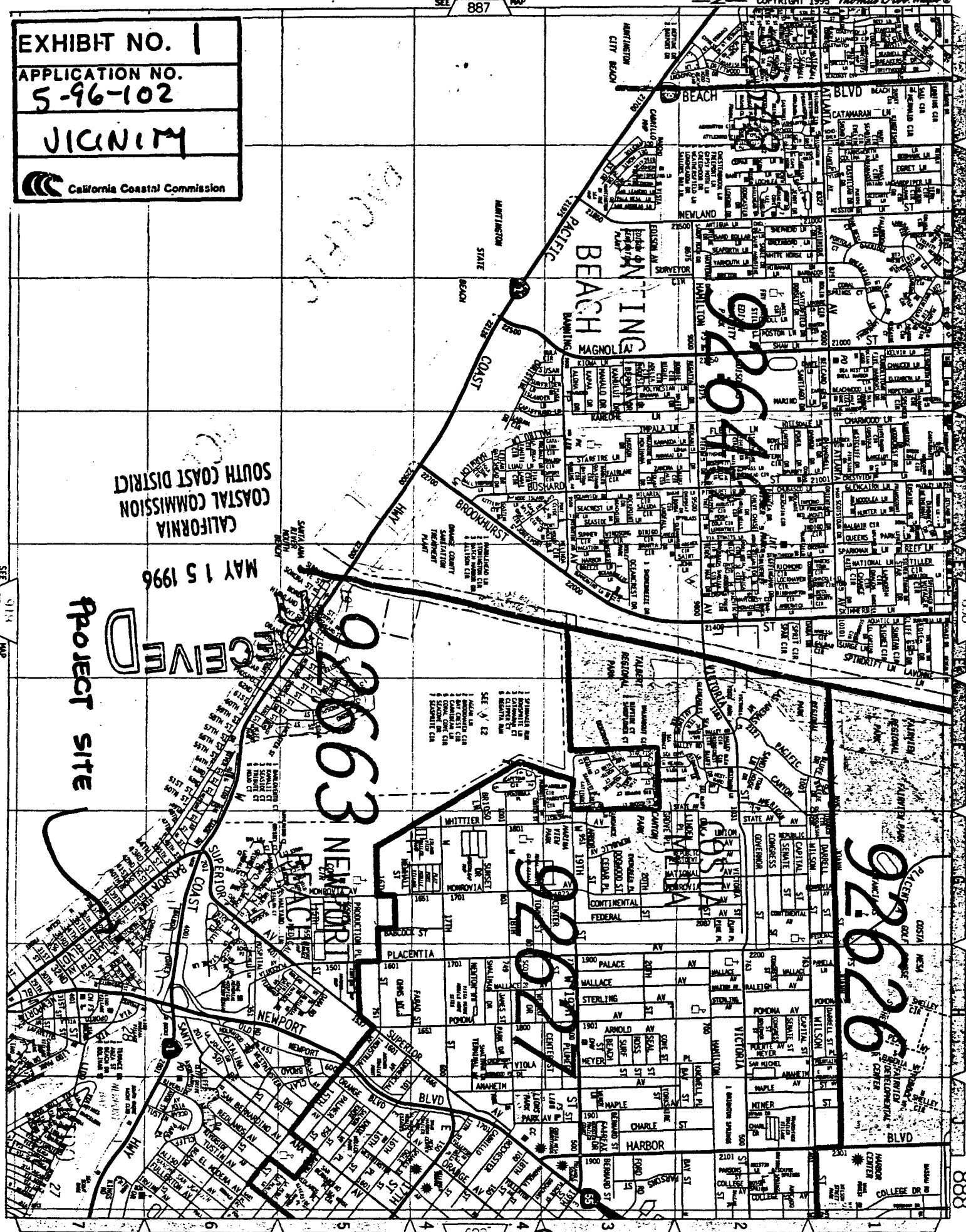
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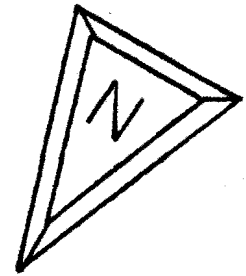
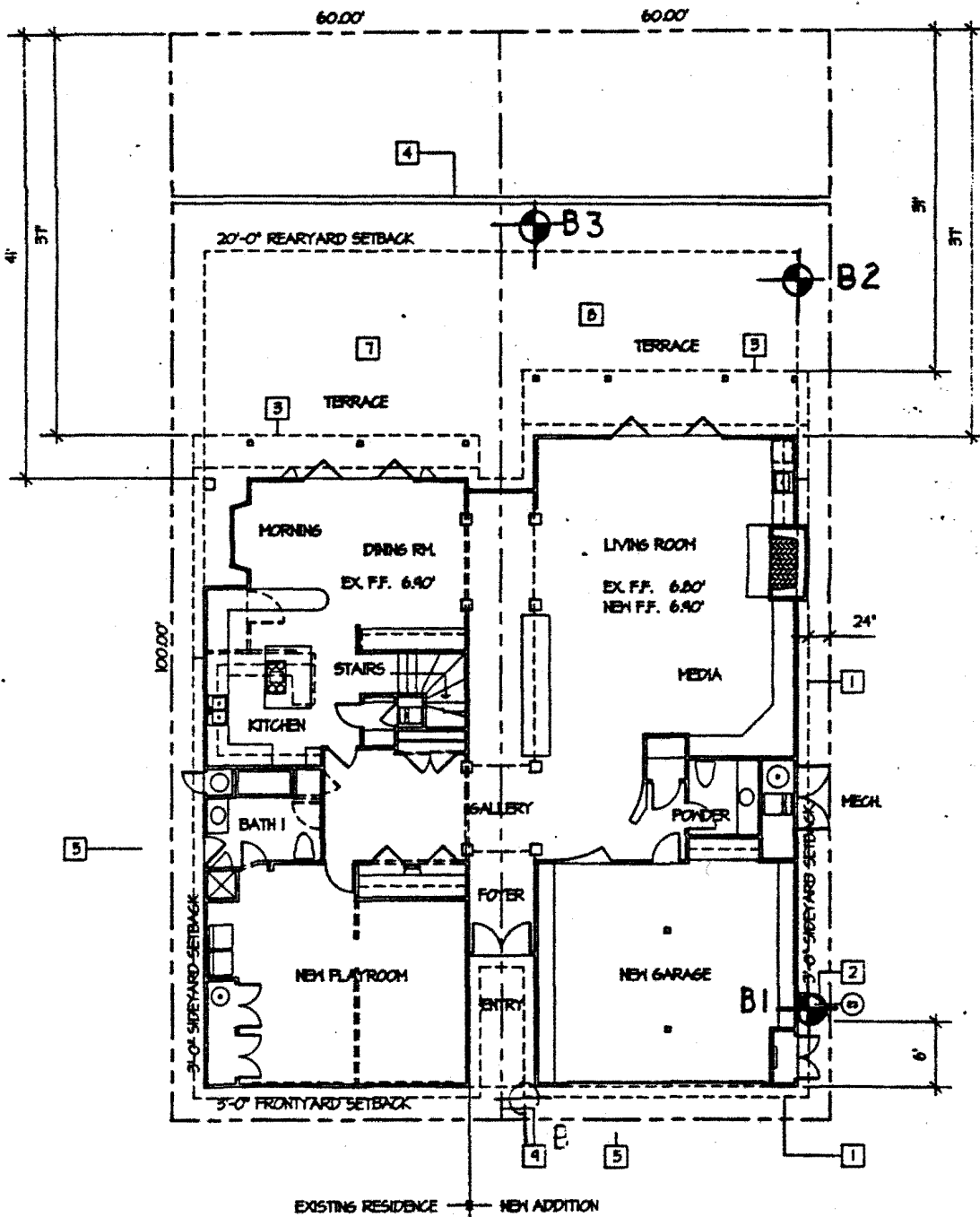


SEE 913 MAP

888

WEST WATERWAY

PLOT
PLAN



SCALE
1" = 8'

●—B—#
DENOTES
APPROX.
BORING
LOCATION

38TH STREET

EXHIBIT NO. 2
APPLICATION NO. 5-96-102
SITE PLAN
California Coastal Commission

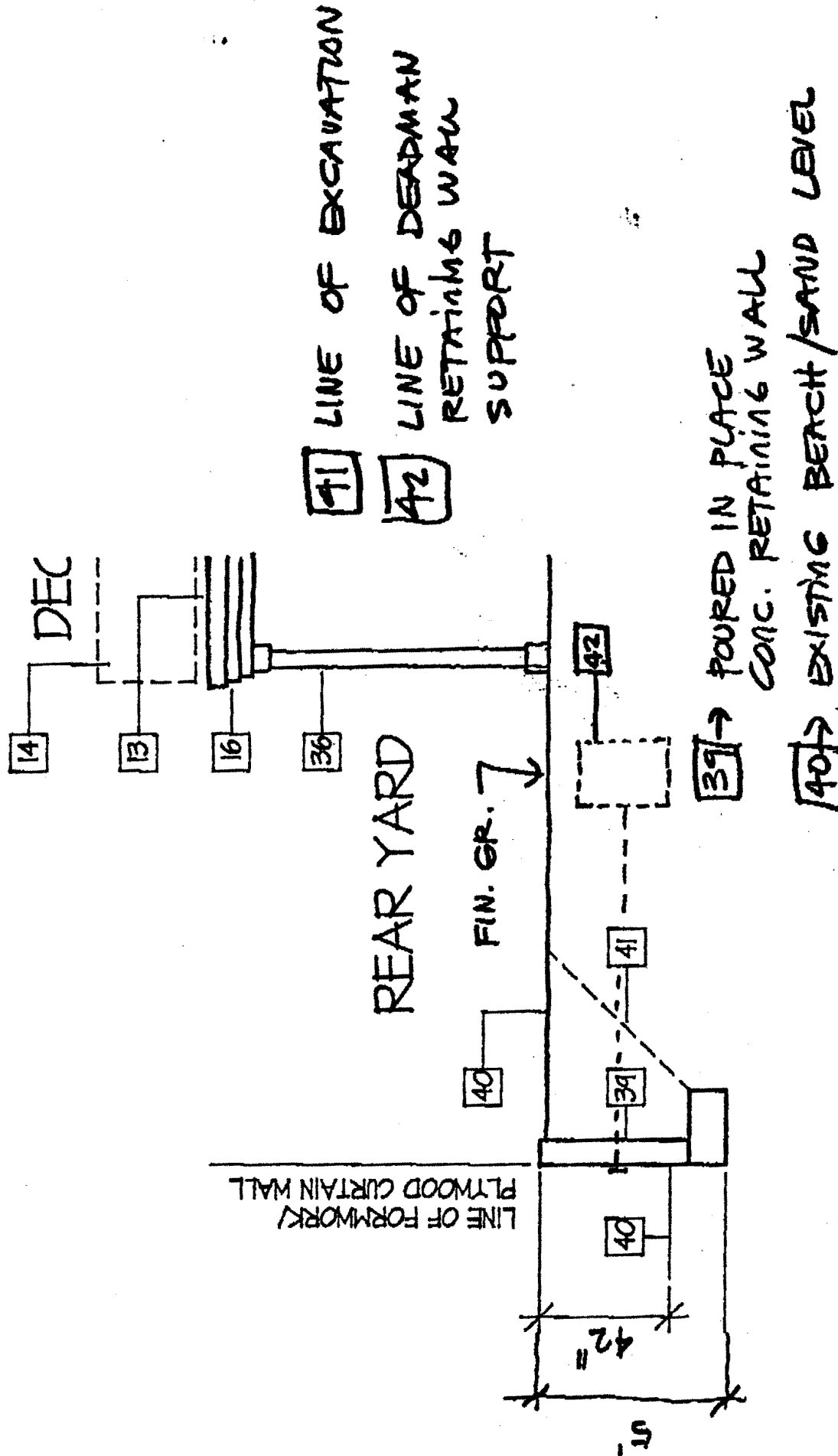


EXHIBIT NO. 3
APPLICATION NO. 5-96-102
SEAWALL