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CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

Filed: August 14, 1997
49th Day: October 2, 1997
180th Day: February 10, 1998
Staff: John T. Auyong *gamm*
Staff Report: September 18, 1997
Hearing Date: October 7-10, 1997
Commission Action:

**RECORD PACKET COPY**STAFF REPORT: APPEALSUBSTANTIAL ISSUE

APPEAL NO.: A-5-DPT-97-260

LOCAL GOVERNMENT: City of Dana Point

DECISION: Permit granted with conditions by the Planning Commission on July 16, 1997

APPLICANT: Don Smith

PROJECT LOCATION: 34383 Dana Strands Road, City of Dana Point, Orange County

PROJECT DESCRIPTION: Removal of deck railings and construction of glass solarium structures to enclose four (4) existing decks on the seaward side of an existing four (4) unit condominium building within fifty (50) feet of a coastal bluff edge. The square footage of the floor area of the decks would not be expanded.

APPELLANT: Don Smith

SUBSTANTIVE FILE DOCUMENTS: (See Appendix A)

SUMMARY OF STAFF RECOMMENDATION - ISSUES TO BE RESOLVED:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed for the following reasons: the appellant objects to two conditions of the City's approval; (1) drainage to be directed to the street, and (2) a five foot side setback - however, the City of Dana Point's conditions of approval of CDP97-09 are necessary to bring the proposed project into conformance with the provisions of the certified local coastal program.

I. STAFF RECOMMENDATIONS - MOTIONS AND RESOLUTIONS

The staff recommends that the Commission find that Appeal No. A-5-DPT-97-260 of the City of Dana Point Planning Commission's approval with conditions of coastal development permit CDP97-09 raises "NO substantial issue" with the grounds listed in Section 30603(b) of the Coastal Act.

Motion on Substantial Issue

I move that the Commission determine that Appeal No. A-5-DPT-97-260 raises NO substantial issue as to conformity with the certified local coastal program for the City of Dana Point.

A majority of the Commissioners present is required to pass the motion.*

* Staff recommends a YES vote which would result in the finding of "NO substantial issue" and the adoption of the following findings for a determination of "NO substantial issue."

II. APPELLANT'S CONTENTIONS

The applicant is appealing the City of Dana Point's approval of coastal development permit CDP97-09 for his proposed enclosure of four existing decks on an existing residential building. Thus, the applicant is the appellant. The appellant objects in particular to two conditions of approval of CDP97-09: (1) the requirement that drainage from the proposed deck enclosures be directed to the street, and (2) the requirement that the proposed deck enclosures be set back five feet from the side yard property line.

The appellant contends that the drainage requirement is not needed because runoff from the existing decks already drains onto the bluff, and the existing runoff actually sinks into the sandy soil rather than running over the surface and causing erosion. Further, the appellant contends that the condition to direct the runoff to the street would create erosion by the street since there are no sewer or storm drain systems in the area into which runoff would be diverted, and the few streets in the area for the most part don't have curbs. Thus, the appellant contends that the runoff would be uncontrolled at the street and result in erosion.

In addition, the appellant contends that the five foot side property line set back is unreasonable given a surveying error from 1923 which was discovered in 1986. This error resulted in all side property lines of lots in the area, including the subject site, being off by two feet. Therefore, the existing building, including the decks proposed to be enclosed, is built three feet from the northerly side property line rather than five feet as originally thought. The appellant thus contends that the proposed enclosures for the existing decks should also be allowed to be set back three feet, the same as the existing decks, rather than five feet as conditioned by the City.

The appellant also contends that the LCP provisions for the area of the City in which the subject site is located are intended for new, large scale development and not minor improvements to existing structures. Further, the appellant contends that compliance with the conditions to which he objects would add fifty percent to the cost of the proposed project.

III. APPEAL PROCEDURES

A. LCP History - Standard of Review

The subject site is governed by the Dana Point Specific Plan/Local Coastal Program. The Dana Point Specific Plan/Local Coastal Program was originally certified in 1986, when Dana Point was still unincorporated Orange County. The City of Dana Point ("City") LCP was certified as submitted on September 13, 1989. This 1989 certification included the adoption of the Dana Point Specific Plan/Local Coastal Program as part of the City's LCP. The subject site was covered by this certification action.

After certification of a local coastal program ("LCP"), Section 30603 of the Coastal Act provides for appeals to the Coastal Commission of certain local government actions on coastal development permit ("CDP") applications. The standard of review for appeals is consistency with the certified LCP.

B. Appealable Development

Pursuant to Section 30603(a) of the Coastal Act and CDP ordinance Section 7-9-118.6.(g)(4)a., only certain development is appealable. One of the appealable types of development is approved development located within 300 feet of the top of the seaward face of any coastal bluff. The proposed development would be located within 300 feet of the seaward face of a coastal bluff and thus is appealable.

C. Qualified Appellants

Section 30625 of the Coastal Act provides for appeals of local coastal development permits by "aggrieved persons" and applicants. Permit applicants are one type of "aggrieved person" pursuant to Section 30801 of the Coastal Act and CDP ordinance Section 7-9-118.6.(g)(3)a. Mr. Don Smith is the applicant and thus is an "aggrieved person" and a qualified appellant.

D. Grounds for Appeal

Pursuant to Section 30603(b) of the Coastal Act, grounds for appeal of an appealable development are limited to an allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies of Chapter 3 of the Coastal Act.

E. 49 Day Waiver

Section 30621(a) of the Coastal Act provides that a hearing on an appeal shall be set no later than 49 days after the date on which an appeal is filed. The appeal was received on August 14, 1997. The applicant for the proposed project signed a 49 day waiver on August 19, 1997 (see Exhibit B). Thus, the applicant waived, pursuant to Coastal Act Section 30625(a), the 49 day time limit specified in Coastal Act Section 30621(a).

F. Exhaustion of Local Appeals

The appellant did not appeal CDP97-09 to the City Council. Section 13573(a)(4) of Title 14 of the California Code of Regulations provides that exhaustion of local appeals shall not be required if the local government charges a fee for local appeals. Since the City charges for appeals of Planning Commission decisions to the City Council, the appellant did not have to exhaust all local appeals in order to appeal CDP97-09 to the Coastal Commission.

IV. LOCAL GOVERNMENT ACTIONS

The City of Dana Point Planning Commission passed Resolution No. 97-07-16-28 approving CDP97-09, the subject of this appeal, on July 16, 1997. The appeal period to the City Council expired on July 31, 1997. In approving CDP97-09, the City imposed conditions of approval, including a requirement to direct drainage from the proposed solarium deck enclosures to the street, and a five foot minimum clearance from the proposed solariums to the side property lines.

V. FINDINGS

A. Project Description

The applicant is proposing to remove the railings of four existing decks on the seaward side of an existing four-unit condominium building. The applicant further proposes to enclose these four decks by constructing glass solarium structures on the decks. The square footage of the decks is not proposed to be expanded.

B. Previous Coastal Commission Action

Prior to LCP certification, the Commission approved coastal development permit 5-82-527 regarding the existing, pre-Coastal Act structure on the site. The permit approved adding one dwelling unit, replacing a carport with a garage, upgrading the septic tank, and conversion to condominiums. The Commission approved the permit with one special condition limiting seaward encroachment. The applicants, one of whom is the appellant, later filed an amendment to delete this condition. The Commission approved the deletion because the applicants had revised the proposed project to limit seaward encroachment.

C. Permit Required

Section 13253(b)(1) of Title 14 of the California Code of Regulations and CDP ordinance Section 7-9-118.5. require a coastal development permit for improvements to an existing structure where the structure or proposed improvements would encroach within 50 feet of the edge of a coastal bluff. The subject site is a coastal blufftop lot on the Dana Point Headlands. The existing decks of the existing structure are located within fifty feet of the edge of the bluff. The proposed deck enclosure/solarium structures would result in seaward encroachment of internal floor area within fifty feet of the bluff edge. Therefore, the proposed project requires a coastal development permit.

D. Substantial Issue Analysis

1. Grounds for Appeal

As described previously, Coastal Act Section 30603(b)(1) limits grounds for an appeal to an allegation that the approved development does not conform to the standards of the certified LCP or the public access policies of the Coastal Act. The appellant is not alleging that the development as conditioned by the City is not in conformance with the certified LCP or the public access policies of the Coastal Act. Further, the conditions imposed by the City are consistent with the certified LCP. Therefore, the Commission finds that the subject appeal raises no substantial issue.

2. Drainage Condition

Dana Point Specific Plan/Local Coastal Program Watershed Management Policy 17 states:

The potential for bluff erosion will be mitigated through proper grading and streetflow drainage within the required building setback from the bluff.

The subject site is a blufftop lot on the Dana Point Headlands. The proposed development would be located within the 25 foot blufftop setback specified in the LCP. The City imposed a special condition requiring that drainage running off the outside of the proposed deck enclosures be directed to the street and not be allowed to run off onto the bluff. The appellant objects to this condition.

The appellant contends that there are no sewer or storm drain systems on the Dana Point Headlands because most of the area is undeveloped. The few roads that do exist on the Headlands do not, for the most part, have curbs to control runoff. Thus, the appellant contends that there is no method for controlling runoff once it gets to the street. Therefore, the appellant contends that to direct drainage from the proposed deck enclosures to the street, as required by the City's condition, would result in erosion occurring near the street.

Further, the appellant contends that runoff from the existing decks currently drains onto the bluff now anyway, and the proposed development would not exacerbate this situation. In addition, the appellant contends that the bluff is actually a 90 foot high sand dune and so the existing runoff sinks directly into the sand, rather than running off the surface and causing erosion. The appellant has not provided a geotechnical report to substantiate this contention. Also, the appellant contends that the LCP policies were intended for new, large-scale development and not minor improvements to existing structures.

However, the Commission finds that it is important to avoid the potential for bluff erosion. The direction of water to the street would reduce the potential for bluff erosion, consistent with LCP Watershed Management Policy 17. Further, LCP Watershed Management Policy 17 does not limit its applicability only to new development.

Therefore, the Commission finds that the City's imposition of the special condition requiring drainage to be directed to the street is necessary to bring the proposed project into conformance with the certified LCP provisions. Thus, the Commission finds that the appeal raises no substantial issue with respect to this contention by the appellant.

3. Five-foot Setback Condition

The City imposed a special condition of approval requiring a five foot setback from the side property lines for the proposed deck enclosures. The appellant objects to this condition. The appellant contends that, because of a mistake in a property survey taken in 1923, all side lot lines of lots in the area, including the subject site, are off by two feet. The appellant contends that the existing building was built in the mistaken belief that it was set back five feet from the northerly side property line when in fact it is set back only three feet, due to the two foot discrepancy.

The City imposed a special condition of approval requiring the proposed deck enclosures to be set back five feet from the northerly side property line. Because of the two foot discrepancy described above, the existing deck is set back three feet from the northerly side property line. As a result, if the proposed deck enclosures are built as conditioned by the City, there would be a two foot wide area of unenclosed deck area. This would be the result of the difference between the five foot setback required for the proposed deck enclosures and the as-built three foot setback of the decks being enclosed. The appellant objects to the special condition of approval because it would result in a two foot wide area of unenclosed deck area.

The subject site is zoned H-A-HDR-2 (CD) by the LCP. This zone applies to ten mostly built out lots in Subarea "A" of the Dana Point Headlands. This zone allows for High Density Residential development. The site development standards for this zone provide for five foot setbacks from the side property lines. Therefore, the City's condition of approval requiring the five foot side yard setback is consistent with the provisions of the City's LCP.

The appellant contends that the Coastal Commission accepted the two foot surveying mistake in 1986, when the discrepancy was discovered. Staff cannot find any record or indication of the Commission's acceptance of the surveying mistake. In addition, the LCP was effectively certified on February 5, 1986. Thus, the Commission delegated its permitting authority to the County (prior to the City's 1989 incorporation) for the certified area on that date. Further, in certifying the LCP, the Commission found that a five foot setback is consistent with the Coastal Act. There are no provisions in the certified LCP to allow new development to encroach within the required sideyard setback due to existing sideyard encroachment.

In addition, the City's Engineering Department has indicated that the Uniform Building Code ("UBC") requires a five foot setback for the proposed deck enclosures. Therefore, even if the LCP required less than a five foot side setback, the appellant still would have to adhere to a five foot side setback because of the UBC. Further, this condition only affects the proposed enclosure of the two decks adjacent to the northerly side property line and

not all four decks. Thus, the Commission finds that the proposed development as conditioned by the City is consistent with the LCP provisions and that the appellant's contention raises no substantial issue.

E. Invalid Contentions

The appellant's contention that the City's conditions of approval would increase the cost of the proposed project by fifty percent is not a contention related to the LCP. Therefore, the Commission finds that this contention is invalid.

Substantive File Documents and Exhibits

1. Dana Point Specific Plan/Local Coastal Program
2. Appeal of CDP97-09 by Don Smith (Exhibit A)
3. 49 Day Waiver (Exhibit B)
4. City of Dana Point Planning Commission Resolution No. 97-07-16-28
(Exhibit C)
5. Agenda Report
6. City of Dana Point file for CDP97-09

Exhibit D: Vicinity Map

Exhibit E: Plans

Exhibit F: Letters from the Appellant/Applicant

9518F:jta

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT
(Commission Form D)

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AUG 14 1997

PETE WILSON, Governor

CALIFORNIA
COASTAL COMMISSION

Please Review Attached Appeal Information Sheet Prior To Completing
This Form.

RECEIVED
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CALIFORNIA
COASTAL COMMISSION

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

DON W SMITH
26015 PORTAFINO DR,
MISSION VIEJO, CA 92691 (714) 837-5370
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF DANA POINT CDP 97-09
2. Brief description of development being appealed: APPROVAL WITH SPECIAL CONDITIONS WHICH ARE UNREASONABLE FOR A MINOR PROJECT.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 34283 DANA STRAND ROAD, DANA POINT
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: CDP-97-09
 - c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A5-DPT-97-260

DATE FILED: 8.14.97

DISTRICT: S. Coast

H5: 4/88

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COASTAL COMMISSION
Appeal

EXHIBIT # A
PAGE 1 OF 3

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. ☒ Planning Commission
b. City Council/Board of Supervisors d. Other

6. Date of local government's decision: 7-16-

7. Local government's file number (if any): CDP97-09

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

NONE

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) NONE

(2)

(3)

(4)

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COASTAL COMMISSION

Appeal

SECTION IV. Reasons Supporting This Appeal

EXHIBIT # A

PAGE 2 OF 3

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

- ① Dana Point will not have a LCP for minor projects on the Headlands bluffs for another two years, El Knight, C.D.D. Regulations being applied to this minor project were designed for new major construction. ② The requirement that the solarium enclosure be set back ^{2 feet} from the edge of the existing deck is unreasonable when the building and deck has been approved for a 3 foot setback. ③ Directing additional water to the street compounds an already serious erosion problem when this water flows unrestricted onto the Headlands because there are no sewers to dispose of this water. (see prior letter) ④ The total job cost is \$20,600. and the economic burden caused by the conditions imposed could add 50% to the job costs.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification *I'm trying to improve the living conditions of my tenants*

The information and facts stated above are correct to the best of my/our knowledge.

AG-DPT-97-260
COASTAL COMMISSION
Appeal

Don Smith

Signature of Appellant(s) or
Authorized Agent

EXHIBIT # A
PAGE 3 OF 3

Date 8-12-1997

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071



RECEIVED
AUG 21 1997

CALIFORNIA
COASTAL COMMISSION

49-DAY WAIVER

Re: Application No. A5-DPT-97-260

I hereby waive my right to a hearing within 49 days after the application has been filed. I request that the referenced application be scheduled for consideration at the next possible (Southern) meeting of the California Commission meeting.

8-19-1997
Date


Signature of Applicant or Authorized Agent

*Please circle your preference

A5-DPT-97-260
COASTAL COMMISSION
49 Day Waiver

EXHIBIT # B
PAGE 1 OF 1

RESOLUTION NO. 97-07-16-28

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT CDP97-09 TO ALLOW THE REMOVAL OF DECK RAILINGS AND CONSTRUCTION SOLARIUM STRUCTURES TO ENCLOSE FOUR (4) DECKS ON THE SEAWARD SIDE OF AN EXISTING FOUR (4) UNIT CONDOMINIUM WITHIN 50 FEET OF A COASTAL BLUFF EDGE LOCATED AT 34383 DANA STRAND ROAD.

Applicant: Don Smith
File No. FF# C610-70/CDP97-09/
34383 DANA STRAND ROAD

RECEIVED
AUG 28 1997

CALIFORNIA
COASTAL COMMISSION

The Planning Commission for the City of Dana Point does hereby resolve as follows:

WHEREAS, a verified application for certain property, to wit:
34383 Dana Strand Road (APN 672-291-39)

WHEREAS, the applicant has made an application to remove deck railings and construct solarium structures to enclose four (4) decks on the seaward side of an existing four (4) unit condominium within fifty (50) feet of a coastal bluff edge; and

WHEREAS, said verified application constitutes a request as provided by Title 9 of the Dana Point Municipal Code; and

WHEREAS, the subject property is governed under the provisions of the Dana Point General Plan and the Dana Point Zoning Code, which contains provisions related to development of bluff-top lots in the coastal overlay zone; and

WHEREAS, the Planning Commission did, on the 16th day of July, 1997, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to Coastal Development Permit CDP97-09.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A) That the above recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the Commission adopts the following findings and approves the following

AG-DPT-97-260 from City file
Exhibit C: Resolution of Approval, p. 1 of 6

conditions;

Findings:

- 1) That the proposed project is consistent with the Dana Point General Plan and Local Coastal Program in that the proposed project is consistent with Land Use Element Policy 4.2 *"Consider the constraints of natural and man-made hazards in determining the location, type, and intensities of new development."*, and Public Safety Element Policy 1.9 *"New bluff top development should be designed and located to so as to ensure geologic stability and to eliminate erosion, or destruction of the site or surrounding area."*
- 2) That the proposed project complies with the applicable provisions of the Dana Point Specific Land Use/Local Coastal Program.
- 3) That the proposed project complies with the applicable provisions of the Dana Point Zoning Code.
- 4) That the proposed project complies with all other applicable requirements of state law and local ordinances.
- 5) That the proposed project qualifies as a Section 15303 (Class 3 - New Construction or Conversion of Small Structures) Categorical Exemption from the provisions set forth in the California Environmental Quality Act (CEQA) because it consists of small deck enclosures which will not result in seaward encroachment or expansion of the existing decks.
- 6) That the proposed project will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in an adopted Local Coastal Program Land Use Plan, nor will it obstruct any existing public views from any public road or from a recreation area to and along the coast in that the subject property is not adjacent to any existing, proposed or planned public accessway and the deck enclosures would not affect any such accessway. As the proposed deck enclosures are located in the rear yard of a blufftop lot, the proposed structures would not have any impact on any known public views to and along the coast from a public road or recreational area.

A-5-DPT-97-260
COASTAL COMMISSION
Resolution of
Approval C
EXHIBIT #
PAGE 2 OF 6

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- 7) That the proposed project will not adversely affect marine resources, environmentally sensitive areas, or archaeological or paleontological resources in that the site is not adjacent to any marine resources and contains no known environmentally sensitive areas and therefore would have no adverse affect on any such resource or area. The proposed project involves no grading and therefore would have no adverse affect on any known archaeological or paleontological resources.
- 8) That the proposed project will not adversely affect recreational or visitor-serving facilities or coastal scenic resources in that the subject site is not adjacent to any recreational, visitor-serving facilities or coastal scenic resources and will consequently will not have any affect on such elements.
- 9) That the proposed project will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources in that the subject site does not contain any environmentally sensitive habitats or scenic resources and is not adjacent to any parks or recreation areas so that no particular siting or design treatments or buffer areas are required to address such resources.
- 10) That the proposed project will minimize the alteration of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards in that the proposed project involves no grading and has been conditioned to collect and direct run off drainage from the existing decks to Dana Strand and therefore the affect on natural landforms and risks from geologic and erosional forces will be minimized. The subject property is not located in any known flood hazard area and the deck enclosures pose no additional fire hazard.
- 11) That the proposed project will be visually compatible with the character of the surrounding areas, and where feasible, will restore and enhance visual quality in visually degraded areas in that the proposed deck enclosures will enhance the appearance of the existing decks and maintain visual compatibility with the existing residence and the surrounding area.
- 12) That the proposed project conforms with the General Plan, Zoning Code, applicable Specific Plan, Local Coastal Program, or any other applicable adopted plans and programs in that the proposed deck enclosures comply with all applicable provisions of the Dana Point General Plan and Zoning

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COASTAL COMMISSION

Resolution of 12)

Approval C

EXHIBIT # _____

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A-5-DPT-97-260 from City file

Code as it is consistent with policies encouraging the preservation of coastal bluffs and with development standards requiring the direction of drainage away from the coastal bluff face.

Conditions:

A. General:

1. Approval of this application is for the construction of four (4) solarium deck enclosures to decks on the seaward side of an existing four (4) unit condominium at 34383 Dana Strand Road. Subsequent submittals for this project shall be in substantial compliance with the plans (Exhibit 'A') presented to the Planning Commission, and in compliance with the Dana Point Zoning Code.
2. Approval of this application is valid for a period of twenty-four (24) months from the date of determination. If the use approved by this action is not established within such period of time, the application shall be terminated and shall thereafter be null and void.
3. The application is approved as a precise plan for the location and design of the uses, structures, features, and materials, shown on the approved plans. Any relocation, alteration, or addition to any use, structure, feature, or material, not specifically approved, will nullify this approving action. If any changes are proposed regarding the location or alteration of a use or structure, an amendment to this permit shall be submitted for the Community Director's approval. If the Community Development Director determines that the proposed change complies with the provisions and the spirit and intent of this approval action, and that the action would have been the same for the amendment as for the approved plot plan, he may approve the amendment without requiring a new public hearing.
3. Failure to abide by and faithfully comply with any and all conditions attached to the granting of this permit shall constitute grounds for revocation of said permit.

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COASTAL COMMISSION

Resolution of 4.
Approval

EXHIBIT # C

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A5-DPT-97-260 from City file

The applicant, and applicant's successors, heirs, and assigns, shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any claim, action, or proceeding against the City, its agents, officers, or employees to attack, set aside, void, or annul the approval

granted by this Resolution, when such action is brought within the appropriate statute of limitations.

The applicant, and the applicant's successors, heirs, and assigns, shall further defend, indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, actions, or proceedings against the City, its agents, officers, or employees arising out of or resulting from the negligence of the applicant or the applicant's agents, employees or contractors.

5. The applicant and applicant's successors in interest shall be fully responsible for knowing and complying with all conditions of approval, including making known the conditions to City staff for future governmental permits or actions on the project site.
7. The applicant and applicant's successors in interest shall be responsible for payment of all applicable fees.

B. Prior to issuance of a building permit, the applicant shall meet the following conditions:

Engineering:

The solarium enclosures shall be designed to provide drainage to the street. All surface and subsurface runoff shall be directed to the nearest acceptable drainage facility via sump pumps if necessary, as determined by the Director of Public Works.

Building:

1. Plan check submittal for the enclosures shall include building plans, structural calculations and energy calculations.
- The enclosures shall comply with local and state building code regulations, including 1994 UBC, UMC, UPC and 1993 NEC.
3. The building department requires a five (5) foot minimum clearance from the enclosures to property lines.

California Coastal Commission:

1. The proposed construction methods shall not result in bluff instability which would be inconsistent with the LCP Geologic Hazards policies

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Resolution of Approval
EXHIBIT # C
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including the following:

- a. Heavy Machinery shall not be placed temporarily near the bluff edge.
- b. Drainage for rain falling on the proposed enclosures should be directed to the street to minimize bluff erosion, consistent with the LCP Watershed Management Policy 17 and LCP Geologic Hazards Policy 22.

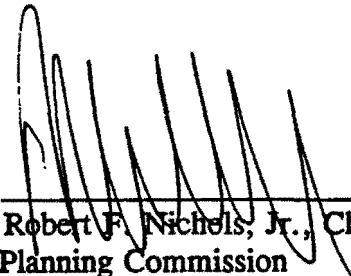
PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 16th day of July, 1997, by the following vote, to wit:

AYES: Denton, James, Neibauer, Nichols, Schoeffel

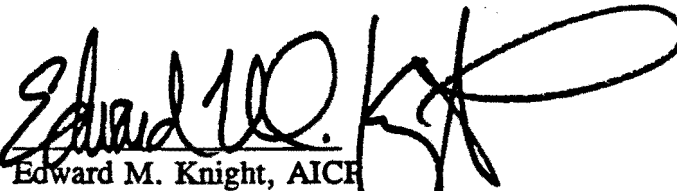
NOES: None

ABSENT: None

ABSTAIN: None


Robert F. Nichols, Jr., Chairman
Planning Commission

ATTEST:


Edward M. Knight, AICP
Community Development Director

A5-DPT-97-260
COASTAL COMMISSION
Resolution of Approval

EXHIBIT # c
PAGE 6 OF 6

A5-DPT-97-260
from City file

SOUTH LAGUNA

THREE ARCH BAY

PACIFIC OCEAN

site

DANA POINT

LAGUNA NIGUEL

DANA POINT HARBOR

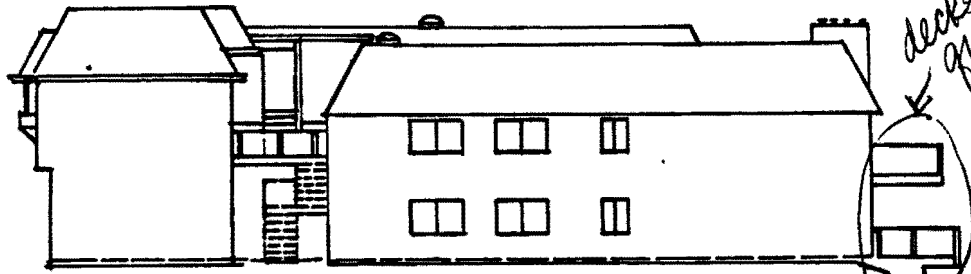
A-5-DPT-97-260
COASTAL COMMISSION
VICINITY MAP
EXHIBIT # D
PAGE 1 OF 1

- SEE V H0
- 1 DAYCREST PL
 - 2 TANNY PORT
 - 3 PLACID HARBOR DR
 - 4 ROCKPORT
 - 5 REDGILL CT
 - 6 SANDSTONE CT
 - 7 WINDY WATER CT
 - 8 STONECREST
 - 9 CROSSCREEK
 - 10 WINDHILL PT
- SEE V J5
- 1 SPIN DRIFT CT
 - 2 SANDY LUNAR CT
 - 3 MISSING TIDE CT
 - 4 SEABIRD WY
 - 5 SEA MIST WY
 - 6 STARDUST WY
 - 7 SUNFISH WY
- SEE V G1
- 1 NEW CHARDON
 - 2 PICKEY CLOSE

- SEE V J6
- 1 ST OF THE ANCHOR LANTERN
 - 2 ST OF THE WESTERN LANTERN
 - 3 ST OF THE SHORE LANTERN
 - 4 ST OF THE STANDARD LANTERN
 - 5 ST OF THE PORT LANTERN
 - 6 ST OF THE COVE LANTERN
- SEE V H5
- 1 SEA OIL CT
 - 2 SEAHORN CT
 - 3 MOON RING CT
 - 4 DIVERS CT
 - 5 SEA SHELL WY
 - 6 EVENING STAR DR
 - 7 SEACALL WY
 - 8 NORTH STAR WY
 - 9 MORNING STAR LN

**"THE BREAKERS"
CONDOMINIUM PLAN**

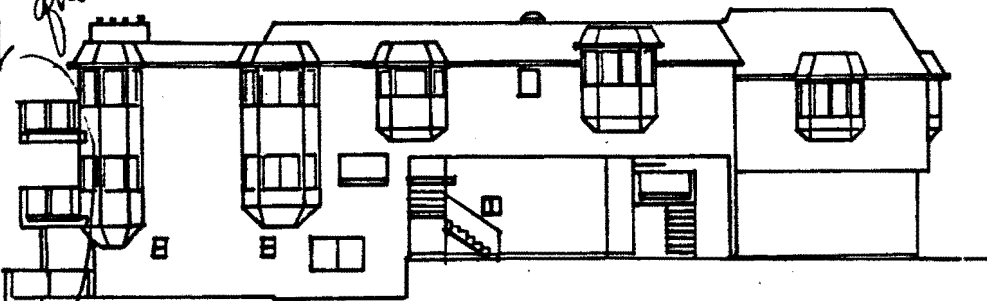
FOR PARCEL 1 AS SHOWN ON A MAP FILED IN BOOK _____, PAGES
OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.



NORTH ELEVATION

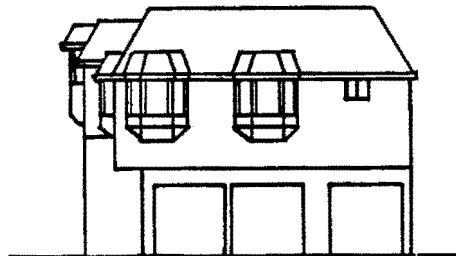
(VIEW LOOKING TO THE SOUTHWEST)

decks in question



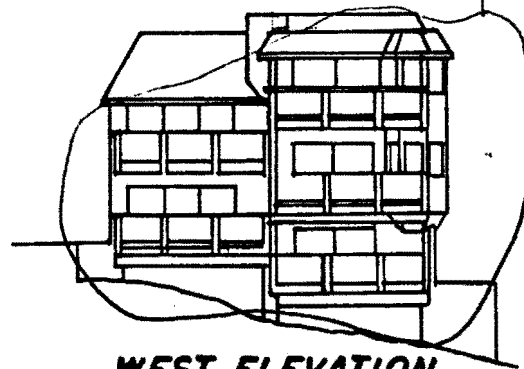
SOUTH ELEVATION

(VIEW LOOKING TO THE NORTHEAST)



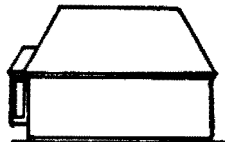
EAST ELEVATION

(VIEW LOOKING TO THE NORTHWEST)



WEST ELEVATION

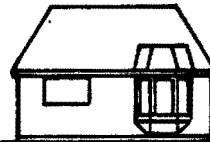
(VIEW LOOKING TO THE SOUTHEAST)



NORTH



SOUTH



EAST



WEST

DETACHED GARAGE ELEVATIONS

EXTERIOR ELEVATIONS

SCALE: 1"=16'

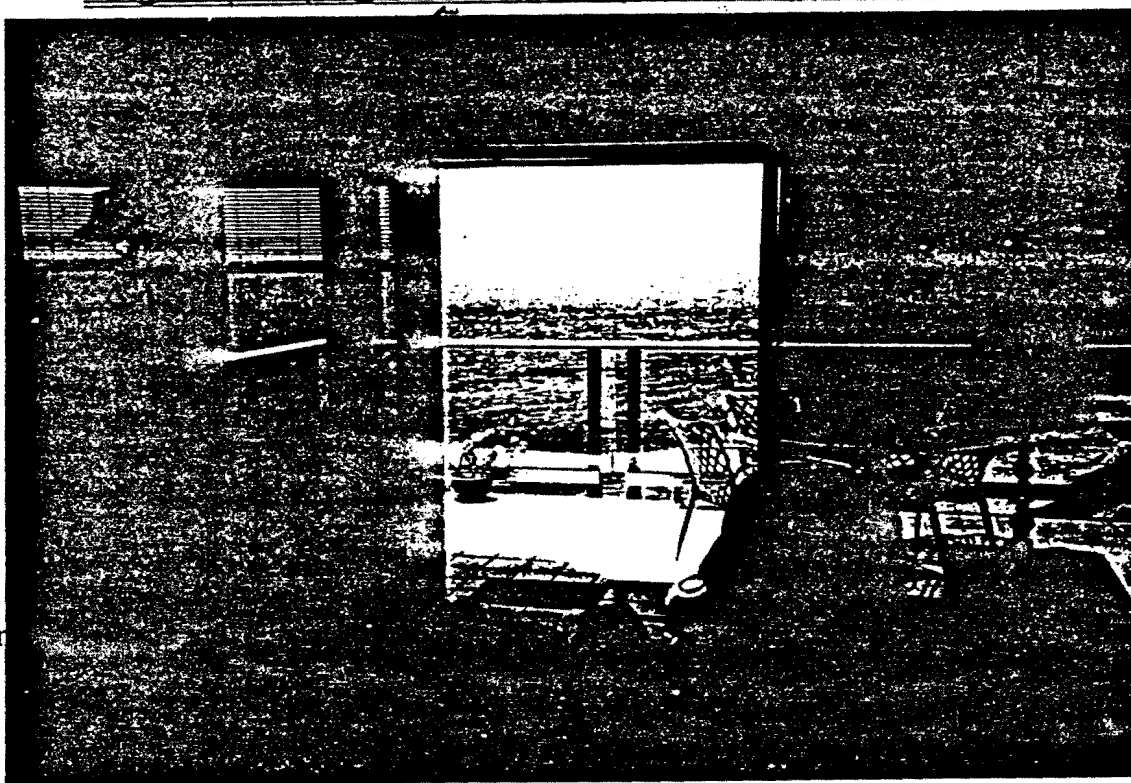
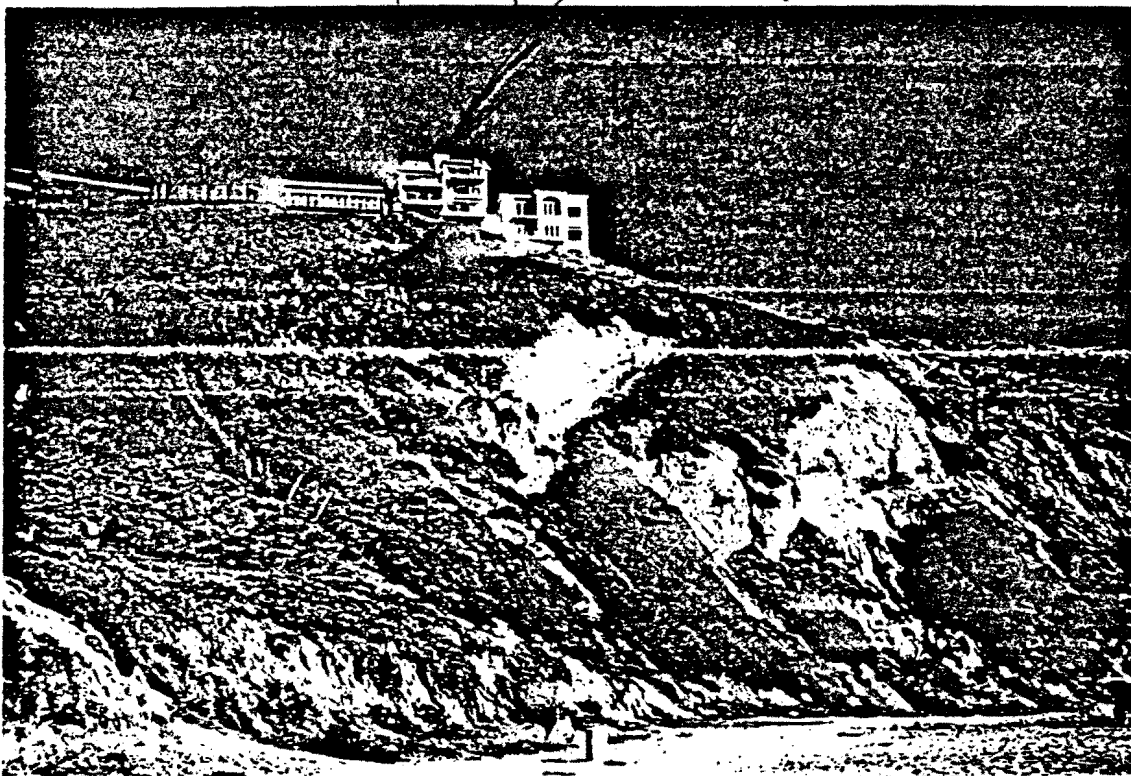
*AS-DPT-97-260
from city file*

Exhibit E: Plans,

p. 1 of 2

Photograph Log of existing conditions - please submit a minimum of eight (8) photographs of the existing site. Photographs should be taken from locations as shown in the photograph location map example below.

subject building viewed from beach below



view of deck from inside building

Please refer to the map above.

NOTE:

*A5-DPT-97-260 from city file
Exhibit E: Plans
p. 2 of 2*

Mr. John J. Anyong, Staff Analyst
California Coastal Commission
South Coast Area Office
200 Oceangate, 10th floor
Long Beach, Ca. 90802-4302

Aug. 1997
RECEIVED
AUG 6 1997

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Anyong:

Thank you for your informative letter of
July 25th.

It appears that that the appeal period
from the Planning Commission to the City Council
has expired. I have not been informed that
the City has notified the Coastal Commission
that the Planning Commission decision is
final so I must assume that it has
been done and that your ten working
day appeal period has or is about to
begin. Please accept this appeal as
having been filed during your ten
working day appeal period.

The requirement that drainage be
directed to the street creates an erosion problem
that is much more serious than if rain
were allowed to fall in a ^{manhole} ~~normal manner~~
This is because there are no covers on the
Dana Point Headlands in which to dispose
of this accumulated rainfall and this
concentrated volume of water runs down
the street gutter and off onto the ground
creating an erosion problem.

A-5-DPT-97-260: Exhibit F, p. 1 of 5, Appellant's letters

When I began construction⁽¹⁾ of my building in 1986 I had a set back of 5 feet, as required by the Uniform Building Code, determined by a prior survey in 1967 which confirmed a survey made in 1923. At the same time in 1986 the owner of the adjacent property to the south had a survey made of his lot which revealed that a 2 foot error was made in the 1923 survey. The error moved the lot lines of all the properties on the bluff 2 feet south so now all of the buildings on the bluff have a 3 foot setback on their north line. Sana Point was not incorporated at that time and it was Orange County that granted me a variance and subsequently accepted by the Coastal Commission.

(1) A major remodel of an existing building built in 1967 rebuilt from the same foundation.

In view of the fact that the variance approved the 3 foot set back of the building and the decks, I do not believe I need

approval to enclose the decks, as it relates to the set back, because I am not encroaching into the approved 3 foot setback.

I am writing from northern California and I do not have photocopy facilities. It will be appreciated if you will copy the letter and send a copy to Mr. Edward Knight and return a copy to me at the below address.

Thank you again for your help.

Sincerely,
Don L. Smith

26015 Portafino Dr.
Mission Viejo, Ca. 92691

A-5-DPT-97-260
COASTAL COMMISSION
Appellant's Letters

EXHIBIT # F

PAGE 3 OF 5

RECEIVED
CITY OF DANA POINT
COMMUNITY DEVELOPMENT
DEPARTMENT

July 18 ~~JUL 21~~ 1997 12 48 PM '97

Mr. Edward M. Knight, AICP
Community Development Director
City of Dana Point
33282 Golden Lantern
Dana Point, Ca. 92629

RECEIVED
AUG 28 1997

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Knight:

Thank you for approving my application to enclose 4 decks on my property at 34383 Dana Strand Road, however, we both know that the conditions imposed effectively killed the application. Why did you encourage me to proceed with the application and spend over \$1,000.00 when you knew it would be denied.

We both know that all of the lot lines along the bluff are in error because of a survey error in 1923. In 1986 I discovered the error and the County and the Coastal Commission granted me a variance allowing a 3' setback on my north line. Because of the survey error all of the lots on the bluff are in violation of the Uniform Building Code which requires a 5' setback. I'm sure you are not foolish enough to deny every property owner on the bluff a building permit because of this survey error.

Silliest of all is your requirement that all the rain that falls on the deck enclosures be drained to the street. The rain now falls on the upper 8' decks and runs off onto the 10' decks below and then onto the ground. Enclosing the decks does not change the rain flow pattern in any manner. Geological drillings show that the building is on a 90' sand dune. The rain does not run off, it sinks into the sand causing no bluff erosion.

I hereby request a line setback variance for the enclosures, elimination of the rain collection nonsense and approval without conditions.

Sincerely,

Don W. Smith

Don W. Smith

26015 Portafino Drive
Mission Viejo, Ca., 92691
Copy Doug Darnell

Mrs. Edward L. Gallagher, Councilmember
John Auyong, Coastal Commission

A-5-DPT-97-260
COASTAL COMMISSION

Appellants Letters

EXHIBIT # F

PAGE 4 OF 5

DISTRIBUTION:

Denton ✓
Reitauer ✓

JAMES ✓

NICHOLS ✓

SCHOEFFEL ✓

KNIGHT ✓

STAFF DO Mr. Doug Darnell, Planning Technician

PLNGSECY ✓ City of Dana Point

ATTORNEY ✓ 33282 Golden Lantern

PUBLIC/PRESS ✓ Dana Point, Ca., 92629

OTHERS

FF#0610-70/CDP97-09
Dear Mr. Darnell:

COMPLETED 7/16 BY DB

RECEIVED
CITY OF DANA POINT
COMMUNITY DEVELOPMENT
DEPARTMENT

JUL 14 3 20 PM '97

RECEIVED
AUG 28 1997

CALIFORNIA
COASTAL COMMISSION

Thank you for your letter of July 10th in regard to the subject project FF#0610-70/CDP97-09.

You will recall that we discussed the following items of concern:

1. That rain falling on the existing decks runs from the existing 8' wide decks and falls on the 10' decks below and then to the ground. Rain falling on the enclosures will follow the same pattern, in no way increasing or changing the existing flow pattern. There is very little if any run off because the building is sitting on sand and the rain quickly sinks into the ground.

2. Structural calculations could not be accurately determined because during construction I had the contractor add additional floor joists to the deck beyond what the plans called for. In regard to the energy calculations, the enclosures which will enclose existing glass doors should reduce the energy need to heat the units by almost doubling the "R" factor.

3. One of the main reasons for a 5' setback requirement is to minimize the danger of fire. Even though a survey error in 1923, discovered in 1986 when I remodeled the building, left only a 3' setback on the north line, the minimum distance to the adjoining building is 10' and should relieve any concerns in regard to fire. Your thought of setting the enclosures back 2' would create a problem between the enclosures and the existing glass doors because the building wall from the corner to the glass door is only 2'.

It will be appreciated if you will present these comments to the members of the Commission.

COASTAL COMMISSION for your help.

Appellant's Letters

EXHIBIT # F

PAGE 5 OF 5

A-5-DPT-97-260

Sincerely,
Don W. Smith
Don W. Smith

26015 Portafino Drive
Mission Viejo, Ca., 92691

FILE COPY