

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: September 26, 1997
49th Day: November 14, 1997
180th Day: March 25, 1998
Staff: John T. Auyong *John*
Staff Report: October 16, 1997
Hearing Date: November 4-7, 1997
Commission Action:

**STAFF REPORT: CONSENT CALENDAR RECORD PACKET COPY**

APPLICATION NO.: 5-97-278

APPLICANT: Richard and Betty Thompson AGENT: Todd Schooler

PROJECT LOCATION: 4207 Seashore Drive, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Demolish two dwelling units and construct a 34'6" high, three level, 3094 square foot single-family dwelling unit with attached 416 square foot two-car garage, roof deck, one uncovered parking space, and patio encroachments onto the Ocean Front public right-of-way (10 foot maximum depth of encroachment)

Lot area: 2,510 square feet
Building coverage: 1,578 square feet
Pavement coverage: 932 square feet
Parking spaces: Three
Zoning: R-2
Land Use Plan designation: Two Family Residential

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-in-Concept 1466-97

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal development permits 5-93-114, 5-94-091, 5-95-010, and 5-96-106 (City of Newport Beach), 5-90-060 (Schonlau), 5-94-054 (Riegelsberger), 5-94-178 (RJH Properties), 5-94-280 (Hood), 5-96-218 (Collins), 5-96-225 (Fine), 5-97-171 (Barnes), and 5-97-243 (701 Lido Partners)

SUMMARY OF THE STAFF RECOMMENDATION

Staff recommends approval of the proposed project with special conditions regarding; (1) a permit amendment is required for future development on the Ocean Front public right-of-way, (2) submission of the City's approved encroachment permit and signed agreement, and (3) the City's right to revoke its encroachment permit; to mitigate the adverse impacts on public access and public recreation resulting from the proposed private beachside patio encroachments onto the public right-of-way.

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 Acknowledgement. The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application, or in the case of administrative permits, the date on which the permit is reported to the Commission. Construction 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 construction 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 of 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.

III. Special Conditions.

1. Deviation from Approved Encroachments. The only encroachment onto the City of Newport Beach Ocean Front public right-of-way allowed by this coastal development permit is a 10'x30' patio encroachment with planter walls not more than 36" tall and a fire pit. Any development in the public right-of-way, including improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit from the Coastal Commission.
2. Encroachment Permit and Agreement. Prior to commencement of construction of the encroachments onto the Ocean Front public right-of-way described herein, the applicant shall submit, for the review and approval of the Executive Director, a copy of a valid, approved Annual Ocean Front Encroachment Permit and signed Agreement from the City of Newport Beach authorizing the development approved by this coastal development permit which would encroach onto the public right-of-way. The applicant shall comply with the provisions of the approved Encroachment Permit and Agreement.
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 demolish two detached dwelling units and construct a 34'6" high, three level, 3094 square foot single-family dwelling unit with attached 416 square foot two-car garage, one uncovered parking space, roof deck, and private patio encroachments onto the Ocean Front public right-of-way (10 foot maximum depth of encroachment). The public right-of-way is City owned land for street purposes.

The proposed private patio encroachments consist of a 10'x30' patio area with planters and a fire pit. The proposed encroachments are an extension of a proposed ground level patio located on private property on the seaward side of the subject site. The subject site is located between 36th Street and 52nd Street which is an area of the City that allows private encroachments on the public right-of-way up to ten feet beyond the seaward property line.

B. Previous Commission Action

The Commission approved De Minimis Waiver 5-90-060 (Schonlau) for demolition of the two existing dwelling units and construction of a two unit condominium with six parking spaces at the subject site. The approved development was never constructed.

C. Public Access - Public Recreation

1. Encroachments

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.

The proposed development includes construction of private patio encroachments onto the City of Newport Beach Ocean Front public right-of-way on the seaward side of the subject site. The City holds the public right-of-way for street purposes. The public right-of-way is designated on assessor's parcel maps as Ocean Front street. The portion of Ocean Front in the central part of the Balboa Peninsula near the City's two municipal piers is developed with a public walkway/bikeway.

In West Newport in the vicinity of the subject site, however, the City has never constructed any part of Ocean Front for street purposes but it has at times addressed the possibility of constructing a public bike path and pedestrian walkway in the right-of-way in this area. The public bike path currently runs inland in the vicinity of the subject site. The public right-of-way in the area is unimproved and consists of sandy beach. Thus, the proposed private encroachments onto the public right-of-way would reduce the amount of sandy beach available for public access and public recreation. Further, the proposed encroachments would make it difficult in the future for the City to improve the public right-of-way for public lateral access.

Other homes in West Newport have private patio encroachments onto the public right-of-way. In 1991, the Commission certified with suggested modifications an amendment to the City of Newport Beach Land Use Plan ("LUP"). The LUP acknowledges the adverse public access impacts that result from private encroachments onto the public right-of-way which is owned by the City for street purposes.

The proposed private encroachments would contribute to the cumulative adverse impact on public beach use resulting from the various existing private encroachments onto the public right-of-way in the area. This cumulative adverse impact is addressed by a mitigation plan. The mitigation plan requires that all private encroachments onto the City's Ocean Front public right-of-way, including the proposed encroachments, 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 public right-of-way. The ten foot (10') depth of the proposed private encroachments are in compliance with the 10' maximum depth of encroachment allowed in this area (36th Street to 52nd Street) by the LUP encroachment policies.

LUP Encroachment Policy 5.A. contains the mitigation plan which requires the City to improve thirty-three (33) unimproved street-ends between 36th Street and Summit Avenue. Required improvements include paving unimproved street-ends, installation of sidewalks, and two metered public parking spaces per street-end. Policy 5.A. requires the City to 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 street ends from 37th through 55th Streets.

In certifying LUP Amendment 90-1 with suggested modifications, the Commission found that, if developed consistent with this mitigation plan for street-end improvements in West Newport which enhance vertical public access, private encroachments onto the City's Ocean Front public right-of-way would be consistent with the public access and public 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.; (1) they are located in an approved encroachment zone, and (2) the City is continuing to carry out the public access improvements that are necessary to mitigate the adverse public access impacts of the private encroachments.

Section 13250 of Title 14 of the California Code of Regulations provides that development such as the proposed private encroachments are not exempt from obtaining a coastal development permit because any improvements to homes on a beach, such as the proposed development, are not exempt. However, the proposed project is being conditioned so as to put the applicant on notice that future development on the public right-of-way requires an amendment to this permit. This would allow the Commission to evaluate future development in the public right-of-way for adverse public access and public recreation impacts.

The project is further being conditioned for submission of the approved City encroachment permit and encroachment agreement prior to commencement of construction. The encroachment permit is not being required prior to issuance of the coastal development permit because the City generally does not issue encroachment permits until after it receives the approved coastal development

permit. The approved encroachment permit would be evidence that the applicant is participating in the LUP mitigation plan; thus mitigating the adverse public access impacts of the proposed private encroachments.

As a condition of the City's approval of an encroachment permit, the permittee must sign an encroachment agreement in which the permittee waives his or her 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 proposed project is thus being conditioned, consistent with the City's certified LUP (Encroachment Policy 6B), 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), 5-94-280 (Hood), 5-96-218 (Collins), 5-96-225 (Fine), 5-97-171 (Barnes), and 5-97-243 (701 Lido Partners, Ltd.) which incorporated similar conditions to minimize the adverse impacts to public access and public recreation resulting from similar private encroachments onto the public right-of-way in West Newport. The Commission did not impose similar conditions on De Minimis Waiver 5-90-060 (Schonlau) because the development did not propose encroachments onto the public right-of-way, and LUP Amendment 90-1 had not yet been certified.

Therefore, the Commission finds that the proposed private encroachments onto the public right-of-way, only as conditioned, would be consistent with Sections 30210 and 30211 of the Coastal Act.

2. Seawalls

LUP Encroachment Permit Policy 6.C. states:

The encroachment permit shall also specify that the construction of any seawall, revetment or other erosion control devices, if necessary, shall occur within, or as close as feasible to, private property. Seawalls shall not be located in a more seaward alignment to protect private development in the encroachment zone.

Condition #6 of the City's "Oceanfront Encroachment Permit Agreement" states:

The Authorized Improvements shall not serve as a justification for the construction of erosion control devices oceanward of private property. Seaward revetments or other control devices, if necessary, shall be installed in accordance with the Coastal Act and placed as close to the property line as feasible.

Construction of seawalls can have adverse public access impacts. First, if a seawall is constructed on public property, the footprint of the seawall eliminates beach area which would be used for public access and public recreation. Second, depending on the location of the seawall, vertical public access to the beach may be blocked. Third, depending on the design of the

seawall, erosion of the public beach may result. Erosion of the beach would reduce the area which would be available for use for public lateral access and public recreation.

This current application does not include a request for any type of shoreline protective device. Further, by accepting the encroachment permit and signing the City required encroachment agreement, the applicant agrees to limit, if not completely eliminate, future encroachment of any necessary seawall onto the public Ocean Front right-of-way. The coastal development permit is being conditioned for the submittal of the approved encroachment permit and agreement, as well as compliance with the provisions of the encroachment permit and agreement. This would reduce adverse public access and public recreation impacts which may result from future construction of a seawall.

Further, the coastal development permit is being conditioned so that any future development in the public right-of-way would require an amendment to this permit. This would allow the Commission to review any seawall which may be proposed to be constructed in the public right-of-way for adverse public access and public recreation impacts. Therefore, as conditioned, the Commission finds the proposed development to be consistent with Sections 30210 and 30211 of the Coastal Act.

3. Provision of Access

Section 30212 of the Coastal Act states, in relevant 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:

(2) adequate access exists nearby . . .

The subject site is located between the nearest public roadway and the shoreline. The proposed development would provide three parking spaces (a two-car garage and one uncovered space), which is adequate based on the Commission's regularly used standard of two spaces per residential dwelling unit. Vertical public access is provided by the ends of nearby 42nd and 43rd Streets. Lateral public access is provided by the adjacent public beach. As conditioned, the proposed development would not result in direct adverse impacts, neither individually nor cumulatively, on physical lateral or vertical public access. Therefore, the Commission finds that no public access is necessary with the proposed development. Thus, the Commission finds that the proposed development would be consistent with Section 30212 of the Coastal Act.

D. 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 ("LCP") which conforms with the Chapter Three policies of the Coastal Act.

The City of Newport Beach Land Use Plan ("LUP") was originally certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the Commission issues coastal development permits within the City based on development's consistency with the Chapter 3 policies of the Coastal Act. The certified LUP 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 "paper" Ocean Front street, runs between private property and the beach in West Newport. 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.

The City submitted LUP Amendment 90-1 as a way to address these private encroachments onto the public right-of-way. On January 9, 1991, the Commission denied as submitted LUP Amendment 90-1 to establish policies regarding encroachments of private development onto the unimproved public rights-of-way along the the beaches of West Newport and the Balboa Peninsula. On June 11, 1991, the Commission approved LUP Amendment 90-1 with suggested modifications. 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 encroachments as proposed under the subject permit application conform to the standards for height and depth-of-encroachment contained in the LUP policies.

LUP Amendment 90-1 as certified by the Commission established a program to mitigate the adverse impacts on public access resulting from encroachments onto the public right-of-way by using encroachment permit fees to fund street-end improvements in West Newport. 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 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 as well as the public access and public recreation policies of Chapter 3 of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, would not prejudice the City of Newport Beach's ability to prepare a local coastal program consistent with the Chapter Three policies of the Coastal Act.

E. 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 development is located in an urban area. All infrastructure necessary to serve the site exist in the area. The proposed project has been conditioned in order to be found consistent with the public access and public recreation policies of Chapter Three of the Coastal Act. Mitigation measures requiring; (1) a permit amendment is required for future development on the Ocean Front public right-of-way, (2) submission of the City's approved encroachment permit and signed agreement, and (3) the City's right to revoke its encroachment permit; will minimize all significant 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. Therefore, the Commission finds that the proposed project, as conditioned, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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ORANGE CO. MAP

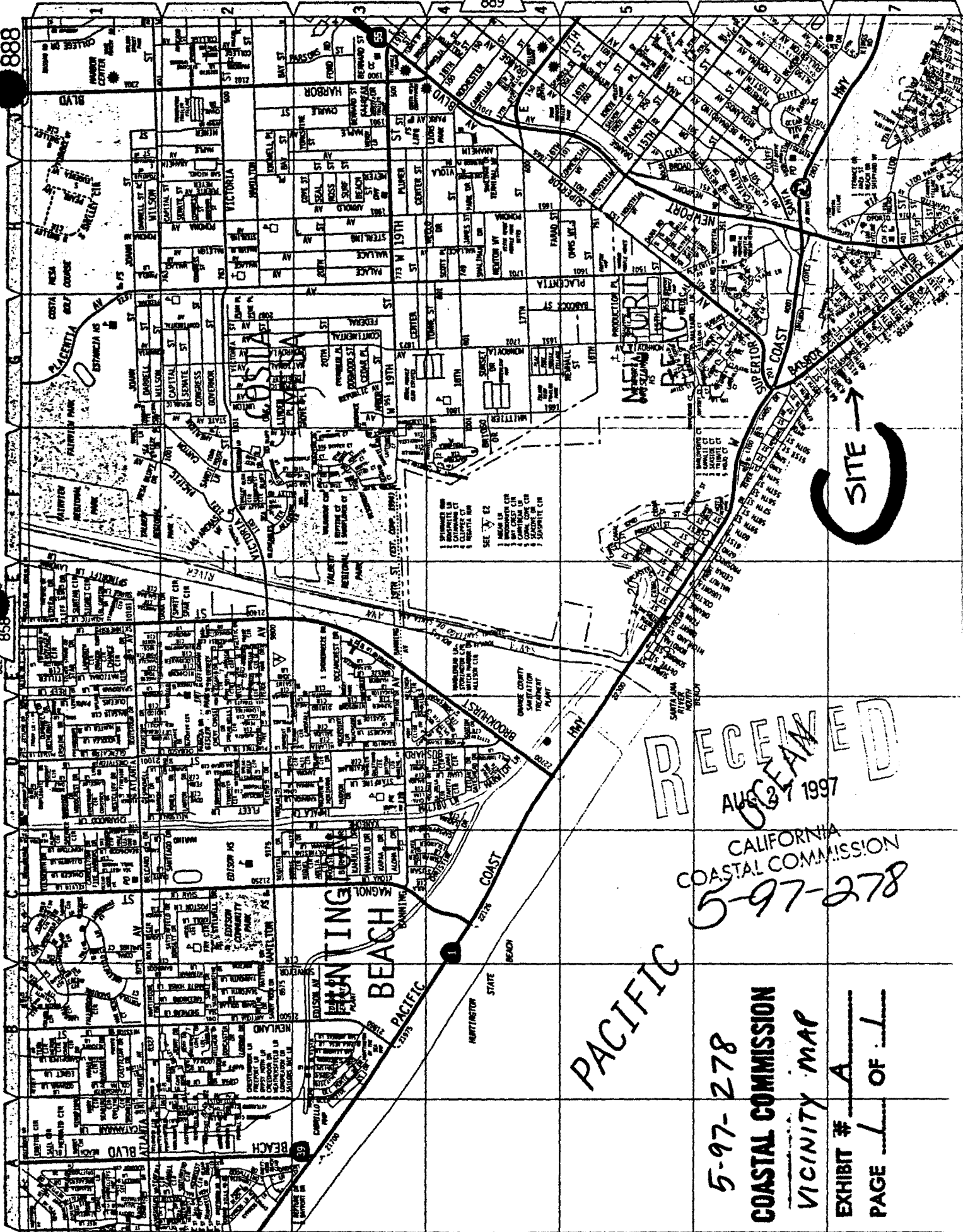
SEE 889 MAP

DETAIL

888

SEE 858

887 SEE MAP



SITE →

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PACIFIC

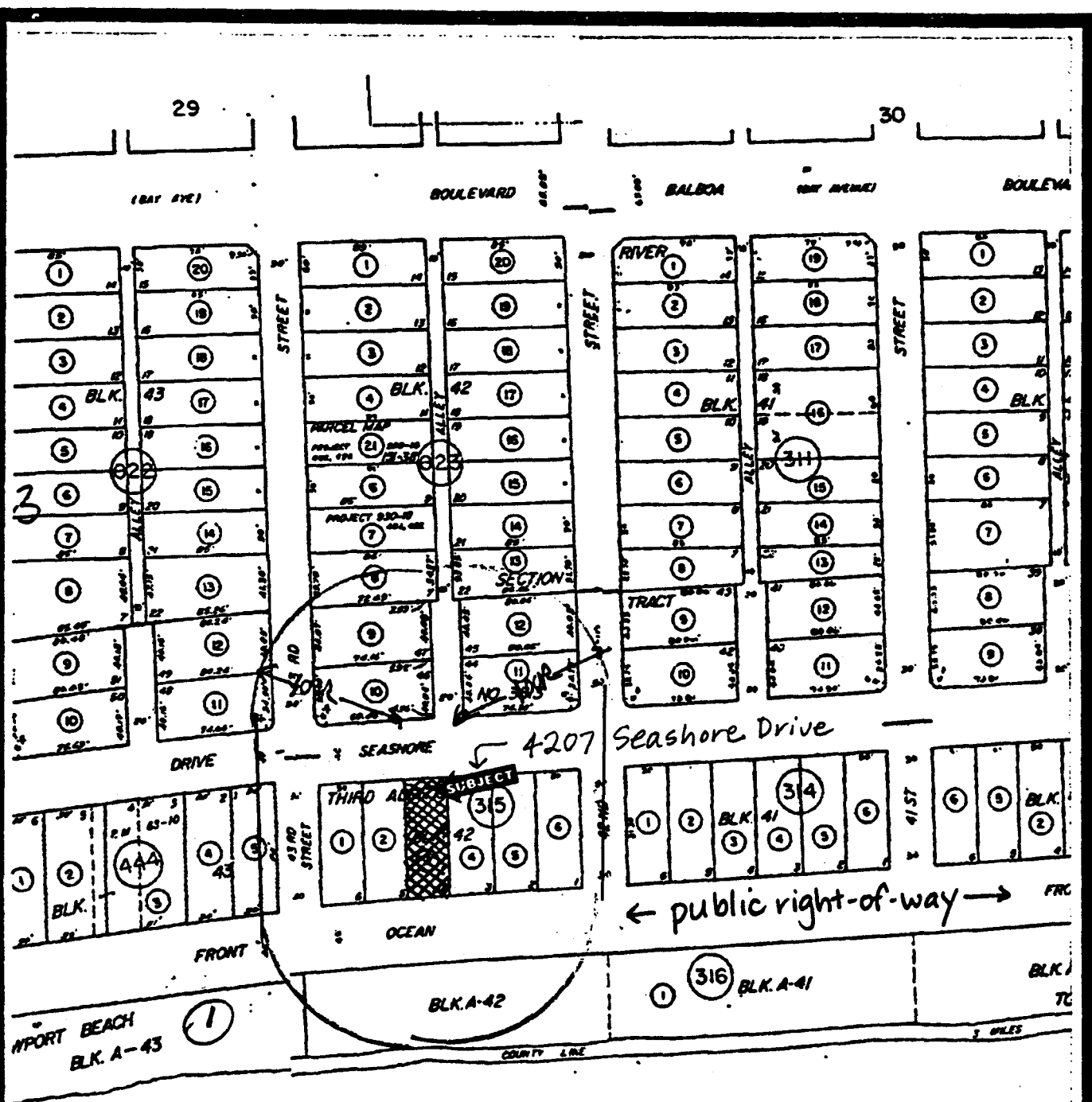
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COASTAL COMMISSION

VICINITY MAP

EXHIBIT # A

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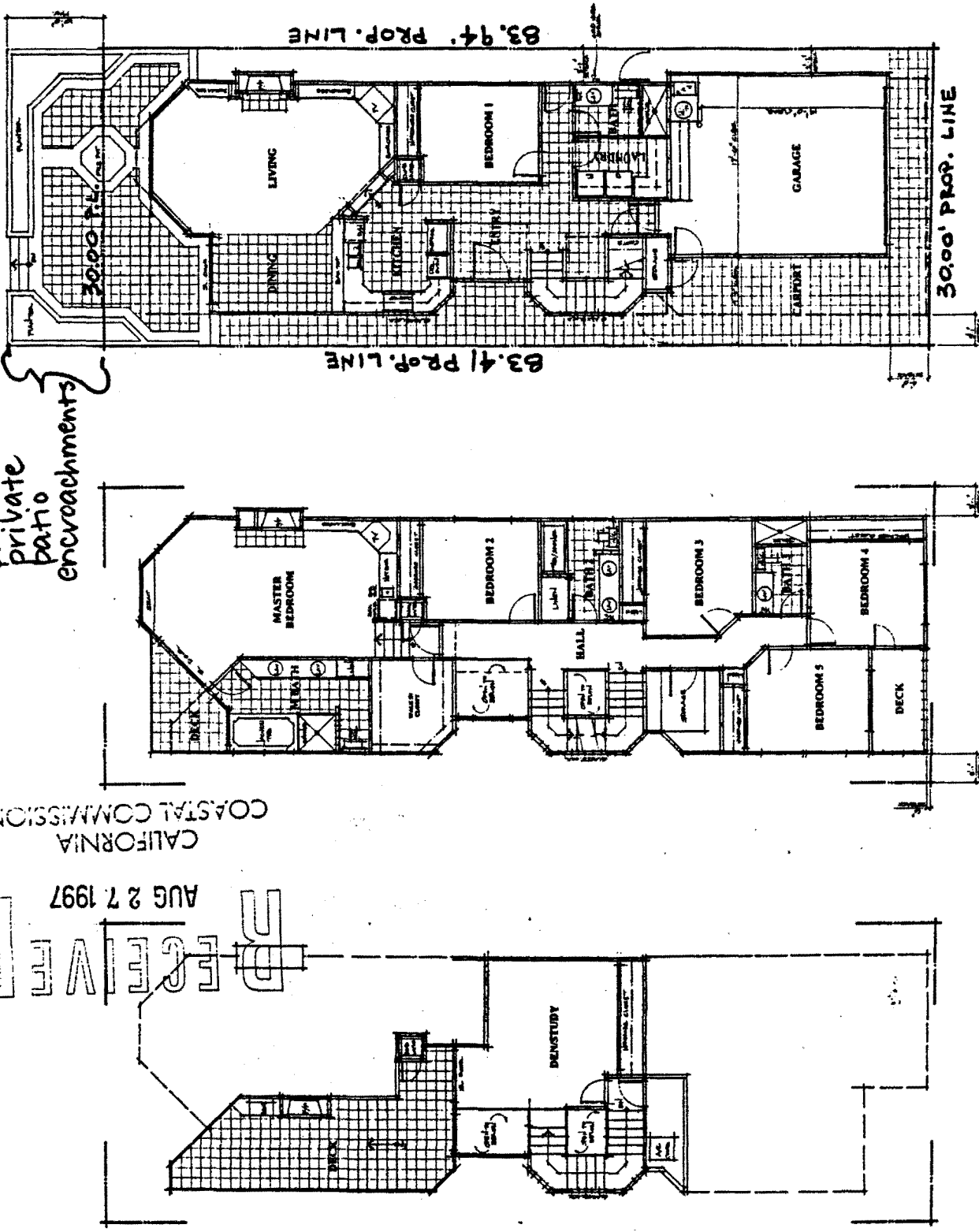
ASSESSOR'S MAP
BOOK 424 PAGE
COUNTY OF OI

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public right-of-way

EXHIBIT # B
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proposed
private
patio
encroachments



5-97-278: Exhibit C; Plans Page 1 of 2

THIRD FLOOR PLAN

SECOND FLOOR PLAN

FIRST FLOOR PLAN

SEASHORE DRIVE



5-97-278

Todd
Schooler
Architect & Planner

Project Location:
4207 SEASHORE DRIVE
NEWPORT BEACH, CA

A NEW CUSTOM RESIDENCE FOR:
RICHARD E. & BETTY JOYCE THOMPSON
11361 ORANGEVIEW ROAD
SANTA ANA, CA 92705

A NEW CUSTOM RESIDENCE FOR:
 RICHARD E. & BETTY JOYCE THOMPSON
 11361 ORANGEVIEW ROAD
 SANTA ANA, CA 92705

4287 SEASHORE DRIVE
 NEWPORT BEACH, CA

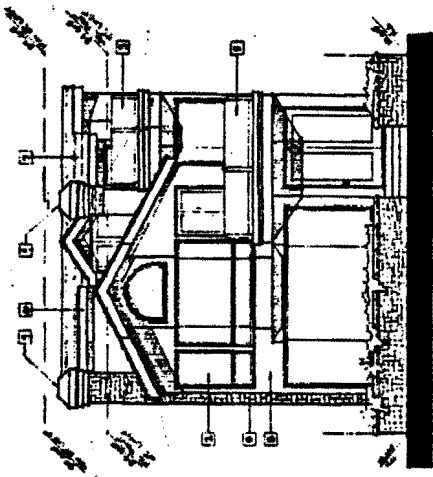
Project Location :

Todd
 Schork
 architects & planners
 800-451-1111

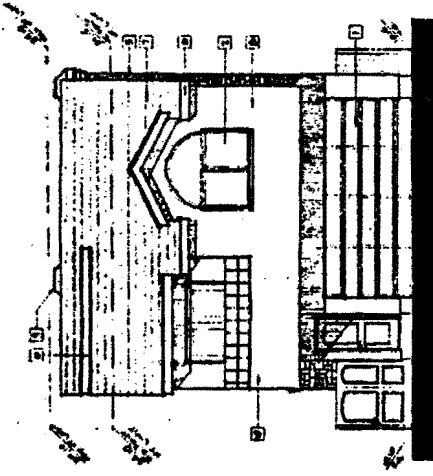
Copyright Todd Schork & Associates Architects & Planners 1997	2
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ILLUSTRATION KEY

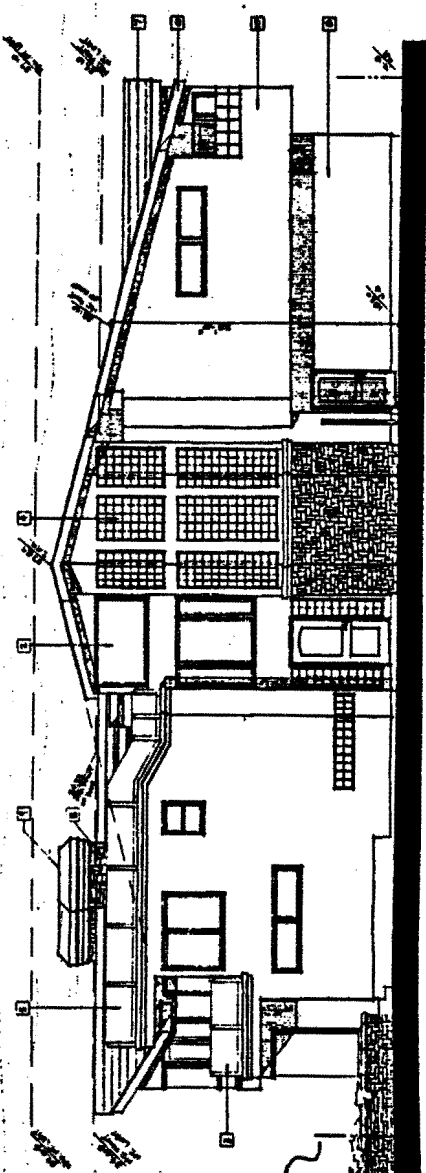
1. Main entrance door
2. Main entrance porch
3. Main entrance steps
4. Main entrance roof
5. Main entrance wall
6. Main entrance window
7. Main entrance balcony
8. Main entrance ramp
9. Main entrance stairs
10. Main entrance gate
11. Main entrance fence
12. Main entrance driveway
13. Main entrance parking
14. Main entrance landscaping
15. Main entrance lighting
16. Main entrance security
17. Main entrance alarm
18. Main entrance camera
19. Main entrance intercom
20. Main entrance phone



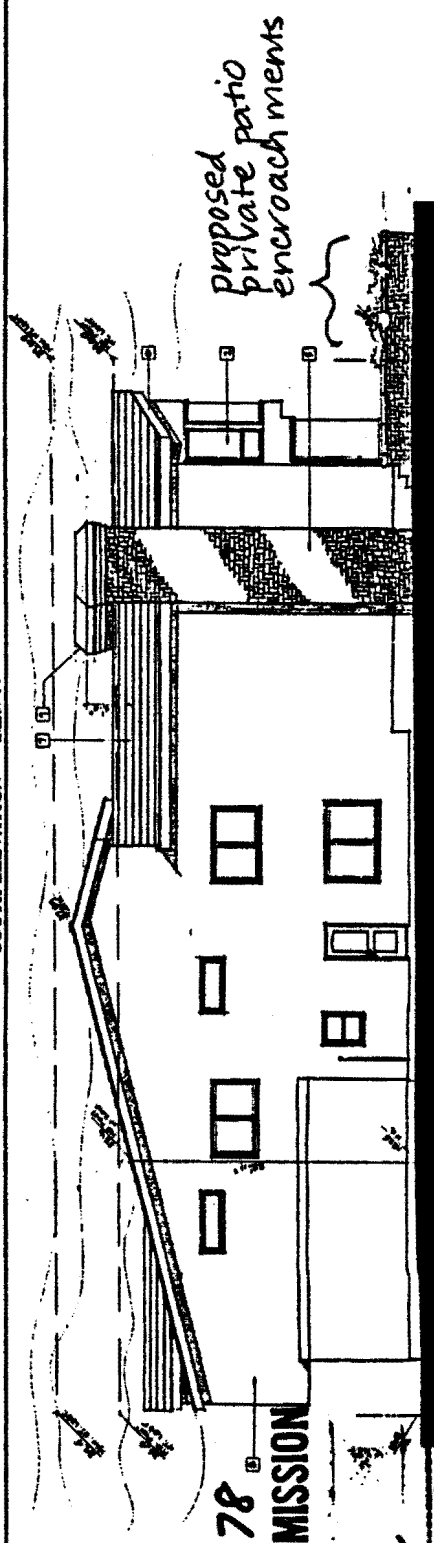
WEST ELEVATION SCALE 1/4" = 1'-0"



EAST ELEVATION SCALE 1/4" = 1'-0"



SOUTH ELEVATION SCALE 1/4" = 1'-0"



NORTH ELEVATION SCALE 1/4" = 1'-0"

5-97-278
 COASTAL COMMISSION
 Plans C

EXHIBIT # 2 OF 2

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