

CALIFORNIA COASTAL COMMISSION

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

Filed: January 29, 1998
49th Day: March 19, 1998
180th Day: July 28, 1998
Staff: John T. Auyong
Staff Report: March 19, 1998
Hearing Date: April 7-10, 1998
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-97-233-A1

APPLICANT: Randy and Mary Johnson AGENT: Brent Sears

PROJECT LOCATION: 206 Ocean Avenue, City of Seal Beach, County of Orange

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a pool, spa, concrete patio, planter walls, pool equipment enclosure, barbecue, landscaping, and 358 cubic yards of grading (cut); and removal of an existing 32 square foot section of enclosed living area from the neighboring residence at 208 Ocean Avenue.

DESCRIPTION OF AMENDMENT: Raise the existing block walls on the east side property line (between the subject site and 208 Ocean Avenue) and seaward property line to 6 feet high above the level of grade as measured from the exterior side (208 Ocean Avenue) of the wall. Construct a new block wall on the subject site immediately adjacent to the common wall on the west side property line (between the subject site and 204 Ocean Avenue). The proposed new block wall would be 6 feet high above the level of grade at 204 Ocean Avenue. The proposed walls are needed to comply with City codes requiring property walls on lots with a swimming pool to be 6 feet high as measured from the level of grade outside the subject site.

LOCAL APPROVALS RECEIVED: City of Seal Beach Approval-on-Concept

SUBSTANTIVE FILE DOCUMENTS: Coastal development permits 5-96-049 and 5-97-233 (Johnson)

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

Pursuant to Section 13166 of Title 14 of the California Code of Regulations, if the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material.

In this case, the Executive Director determined that the changes to the proposed project were immaterial and the project, as conditioned in the original permit, remains consistent with the relevant Chapter 3 Coastal Act policies. A letter of objection (see Exhibit B) to the Executive Director's determination of immateriality was received on March 10, 1998, within the ten working day objection period.

SUMMARY OF STAFF RECOMMENDATION:

Staff is of the opinion that the objections raised are non-Coastal Act issues and that the proposed project is otherwise consistent with the Chapter 3 policies of the Coastal Act. The staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of Chapter 3 of the Coastal Act.

I. APPROVAL

The Commission hereby grants an amendment to permit no. 5-97-233 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. CONDITIONS

No new conditions of approval are imposed by this permit amendment. All previously imposed conditions of approval remain in effect and are not changed by this permit amendment.

III. FINDINGS AND DECLARATIONS

A. Project Description

1. Previously Approved Projects

On June 13, 1996, the Commission approved coastal development permit 5-96-049 (Johnson) for the demolition of an existing home and construction of a new home on the subject site, subject to special conditions regarding conformance to geotechnical recommendations. Subsequently, on September 9, 1997, the Commission approved coastal development permit 5-97-233 (Johnson) for backyard improvements for the home approved by coastal development permit 5-96-049. The improvements consisted of construction of a pool, spa, concrete patio, planter walls, pool equipment enclosure, barbecue, landscaping, and 358 cubic yards of grading (cut); and removal of an existing 32 square foot section of enclosed living area from the neighboring residence at 208 Ocean Avenue.

2. Proposed Amendment Description

Under the proposed amendment to permit 5-97-233, the applicants plan to raise the existing block walls on the east side property line (between the subject site and 208 Ocean Avenue) and seaward property line to 6 feet high above the level of grade as measured from the outside of the subject site. The applicants also propose to construct a new block wall on the subject site immediately adjacent to the common wall on the west side property line (between the subject site and 204 Ocean Avenue).

It is staff's understanding that a new wall is proposed because the neighbor (at 204 Ocean Avenue) on whose property half the existing wall is located does not consent to raising the existing wall. This neighbor is also the objector. The proposed new block wall would be 6 feet high above the level of grade at 204 Ocean Avenue.

The proposed walls are needed to comply with City codes requiring property walls on lots with a swimming pool to be 6 feet high as measured from the level of grade outside the subject site. Because the subject site is on a beach, the proposed improvements are not exempt from obtaining a coastal development permit pursuant to Section 13250 of Title 14 of the California Code of Regulations.

B. Objection Received

The person objecting to the proposed project resides at 204 Ocean Avenue, immediately adjacent to the project site, and raises issues which are not Coastal Act issues. One non-Coastal Act objection raised is that the proposed wall adjacent to the existing side wall between the subject site and the property at 204 Ocean Avenue would cut off light, air flow, and private view. The proposed side wall would only extend the length of the backyard of the subject site and property at 204 Ocean Avenue, ending before the homes. The protection of private views is not a Coastal Act issue.

The proposed project is being proposed to meet City codes dealing with child safety matters regarding swimming pools which is not a Coastal Act issue. The objector contends that the design and location of the proposed wall would not be child-safe. In summary, the Commission finds that the issues raised by the objector are non-Coastal Act, local issues best dealt with by the City of Seal Beach. Potential relevant Coastal Act issues raised by the proposed project are public views and public access addressed in Section IV.C. of this report.

C. Chapter 3 Policy Analysis

1. Public Views

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed project involves the construction of new perimeter walls and increasing the height of existing perimeter walls around the side yard and beach side of the subject site. The purpose of the proposed project is to comply with City codes requiring property walls on lots with a swimming pool to be six feet high as measured from the level of grade outside the subject site. Because the level of grade of the adjacent property at 204 Ocean Avenue is a few feet higher than the grade of the subject site, the proposed wall adjacent to the property at 204 Ocean Avenue maybe as high as nine feet when measured from the subject site.

The proposed project, however, would not block public views to and along the coast since; 1) the subject site is not immediately adjacent to one of the street-ends which provides vertical public access and public view opportunities, 2) several homes in the vicinity have walls as high as the proposed walls, and 3) the gaps created by side yard setbacks between homes along this stretch of Ocean Avenue do not provide public view corridors to the ocean from the street since the gaps are blocked by existing walls and landscaping. Therefore, the Commission finds that the proposed project would be consistent with Section 30251 of the Coastal Act.

2. Public 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 sea and the first public road (Ocean Avenue). The proposed development would not result in an intensification of use of the site. The proposed development would not result in direct adverse impacts, neither individually nor cumulatively, on physical vertical or lateral public access. Vertical access is provided by the nearby 2nd Street and 3rd Street street-ends. Lateral access and public recreation opportunities are available at the adjacent public beach. 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 which conforms with the Chapter Three policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

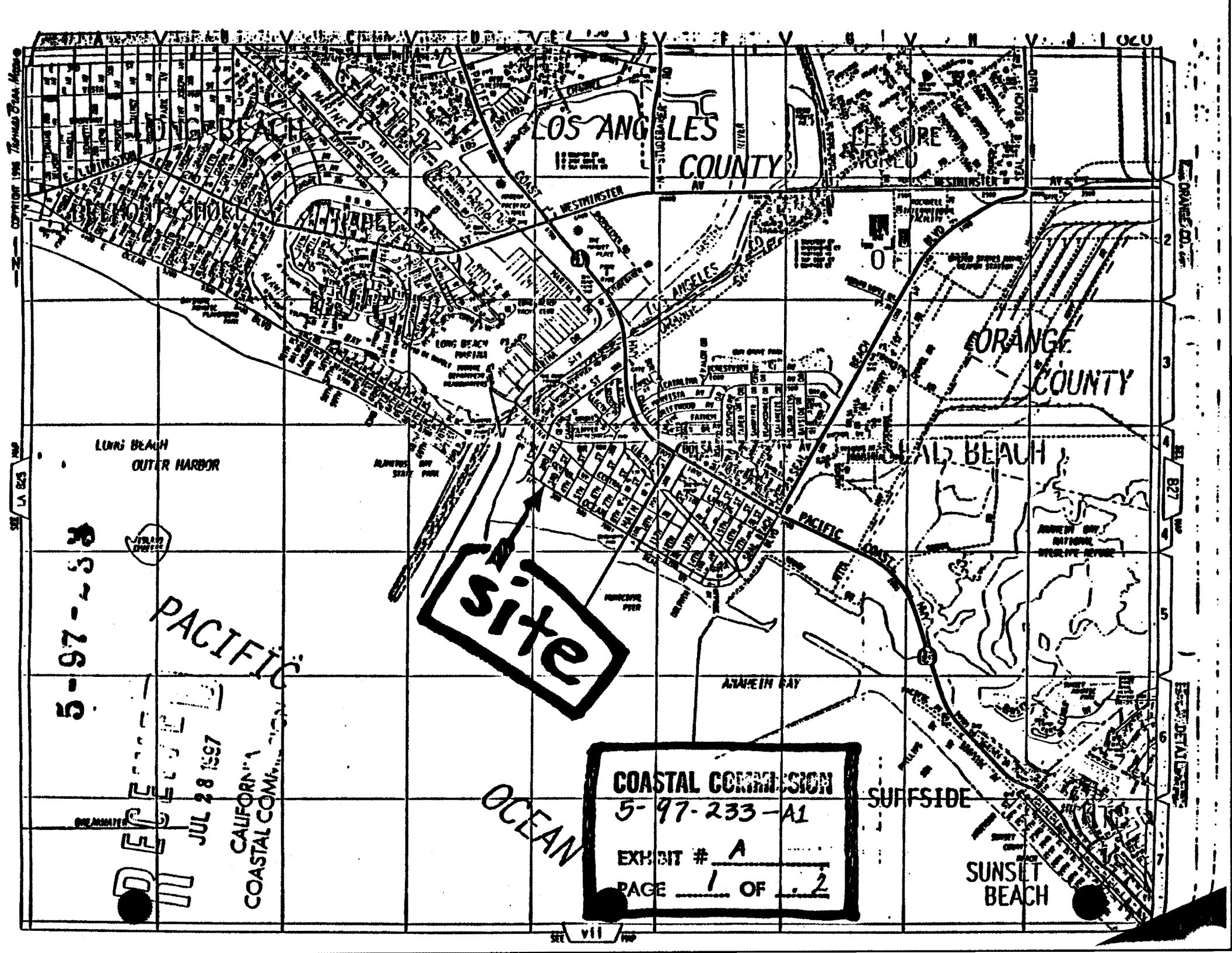
The proposed development is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified local coastal program consistent with the Chapter Three policies of the Coastal Act.

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)(A) 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 effect which the activity may have on the environment.

The proposed development is located in an urban area. Development already exists on the subject site. All infrastructure necessary to serve the site exist in the area. The proposed project is consistent with the policies of Chapter Three of the Coastal Act. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

9702F:jta



LOS ANGELES
COUNTY

ORANGE
COUNTY

site

COASTAL COMMISSION
5-97-233-A1
EXHIBIT # A
PAGE 1 OF 2

PACIFIC

OCEAN

SUNSET

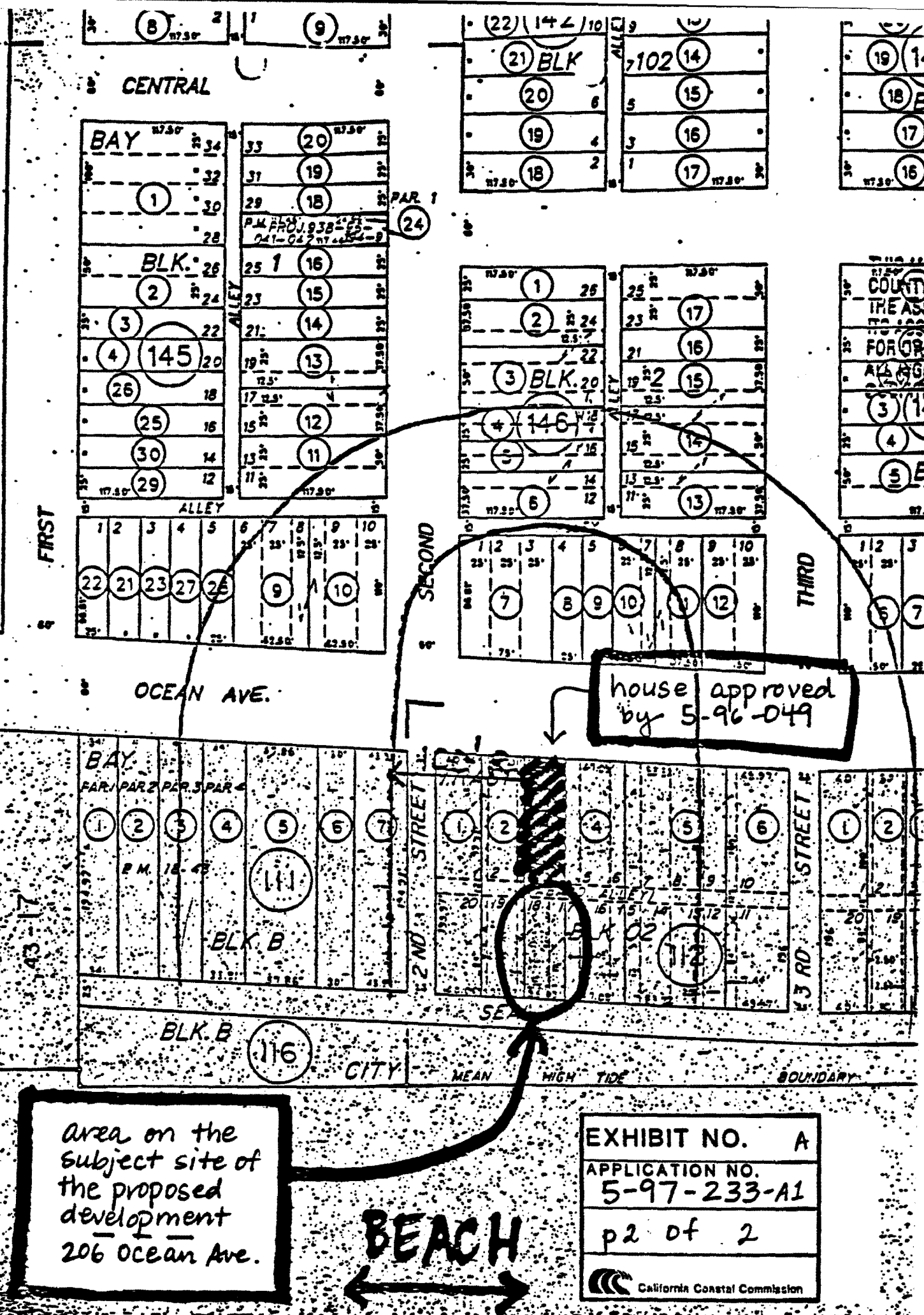
SUNSET
BEACH

JUL 28 1997

CALIFORNIA
COASTAL COMMISSION

5-97-233

DECLINED



Michelle A. Brendel, Ph.D.
219 Seal Beach Blvd., Suite A
Seal Beach, Ca. 90740
562-431-4095
March 8, 1998

California Coastal Commission
South Coast Area
P.O. Box 1450
200 Oceangate, 10th Floor
Long Beach, Ca. 90802-4416

"CERTIFIED MAIL -- RETURN RECEIPT
REQUESTED Z 464 175 551"

RECEIVED
MAR 10 1998

CALIFORNIA
COASTAL COMMISSION

Dear Sir or Madam:

Re: Permit No. 5-97-233-A1
206 Ocean Avenue, Seal Beach, Ca. 90740

This letter is an objection to the proposed permit amendment.

Attached is copy of Seal Beach City Code 419.4. The proposed wall on the west side of the property between the subject property and my home at 204 Ocean Avenue does not meet the City Code.

Your notice indicates the proposed permit amendment is to, "Construct a new block wall on the subject site immediately adjacent to the common wall on the west side property line (between the subject site and 204 Ocean Avenue.)" The key words are "immediately adjacent". Furthermore, the notice indicates, "The proposed wall would be 6 feet high above the level of grade at 204 Ocean Avenue."

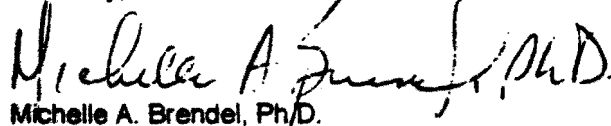
The level of grade on our property is significantly higher than the level of grade at 206 Ocean Avenue. This means that the wall that will be put up will probably be 8 or 9 feet high and will be a "soundwall" cutting off light, air flow and view. Furthermore, an "immediately adjacent" wall will allow a child to get a foothold on the lower walls in my yard which are in close proximity to the common wall which would be "immediately adjacent" to the new wall providing a very dangerous situation of successive "steps" over the wall surrounding the pool. Note that the Seal Beach City Code is specifically concerned with the access from the exterior of the wall and states, "Fences or walls shall be located a sufficient distance from any structure, shrubbery or tree, or hillside grade which could be used to assist a child to scale the fence or wall." The proposed wall does not meet these requirements.

Attached is photo of the backyard and pool at 206 Ocean Avenue. Note that the owners have already proceeded with the building of planters without regard for this protective wall. To meet code I believe the owners would have to build their wall significantly closer to the their pool and remove their planters so that a child could not reach or step from the common wall to the pool fence and I believe that would need to be a distance of at least 4 or 5 feet.

Please note in the photograph that the wall towards the beach is only a chain link fence and the pool is visible from the beach creating an attractive nuisance for children. As you can see, there is a significant amount of water in the pool without adequate fencing and I think your commission should address this serious health and safety issue.

Please deny this request. I do not think you have adequate information before you regarding the actual wall that will need to be built and the "footholds" already in existence that must be taken into consideration so that a child cannot gain access to this pool.

Sincerely,


Michelle A. Brendel, Ph.D.

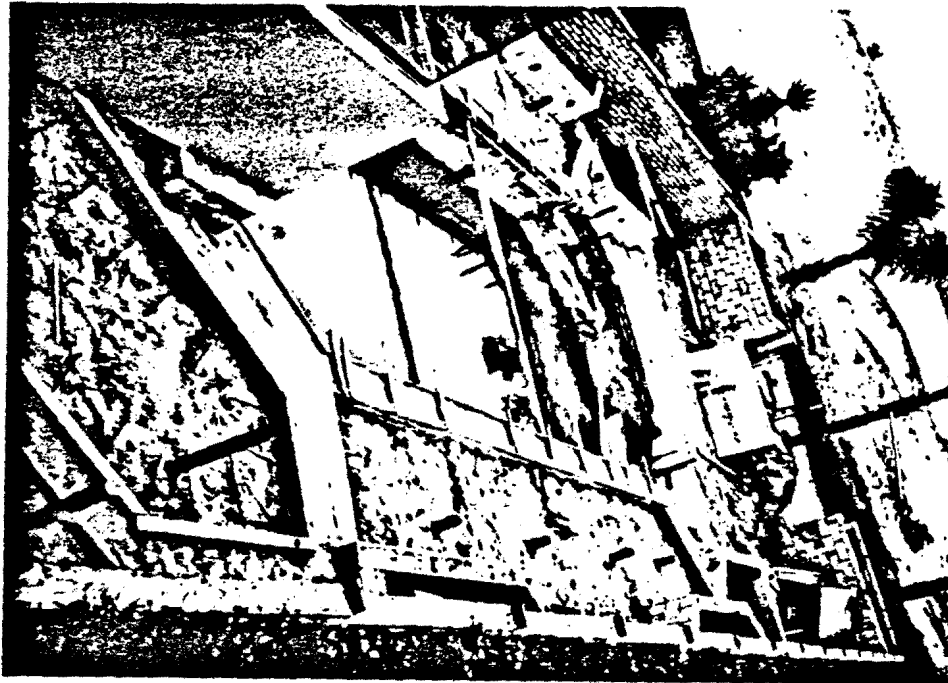
att: photo & City Code
cc: Keith Till, City Manager, City of Seal Beach

5-97-233-A1
COASTAL COMMISSION
objection Letter

EXHIBIT # B

PAGE 1 OF 3

(208 Ocean Ave.)
↑



↑ (204 Ocean Ave.) ↓

5-97-233-A1
COASTAL COMMISSION
objection letter (photo)

↓
(204 Ocean Ave.)

EXHIBIT # B
PAGE 2 OF 3

419.4 Pool Fences. Pools to be completely fenced, gates to have latches. Every swimming pool, pond or other body of water 18 inches or more in depth at any point shall be surrounded by a fence or wall not less than 6 feet in height measured on the exterior side. No such fence or wall shall be constructed and maintained with openings or projections such that a toddler or small child may gain a foothold and climb over. Openings between vertical members shall not exceed 4 inches, and the distance between horizontal members, accessible from the exterior, shall not be less than 4 feet 6 inches. Fences or walls shall be located a sufficient distance from any structure, shrubbery or tree, or hillside grade which could be used to assist a child to scale the fence or wall. Gates and doors opening through such enclosures shall be self-closing and self-latching with release located on the pool side as to prevent release from the exterior. A self-latching tumbler lock may be installed so that the gate can be opened from the exterior with a key.

EXCEPTION: When approved by the Building Official, public swimming pools under continuous supervision may be operated with gates or door unlocked. Except for single family residences, the fence and walls shall be so locked as to allow access to all living units without entering the pool enclosure. The fence or walls shall serve to isolate the pool from other activities and structures and shall be located within 50 feet of the pool. Gates in such enclosures shall be located in view of the pool. A building wall without doors may be used as part of such pool enclosures when within 50 feet to the main front door shall not be through the swimming pool enclosure. The swimming pool enclosure for single family residences may include dwelling walls with windows and doors.

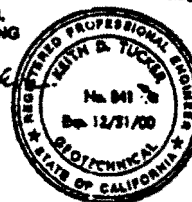
10. Section 502 - PREMISES IDENTIFICATION is hereby deleted and the following substituted:

502 - PREMISES IDENTIFICATION

Approved numbers or addresses shall be placed on all new and existing buildings in such a position that is plainly visible and legible from the street or road fronting the property. Said numbers shall be of non-combustible materials and shall contrast with their background. All multi-unit residential and commercial buildings shall have numbers or addresses placed above or immediately adjacent to all doors that would allow fire department access in an emergency situation. In no case shall the numbers be less than four (4) inches (102 mm) in height for residential and

We appreciate this opportunity to be of service to you. If you have any further questions, please do not hesitate to contact the undersigned.

Keth D. Tucker
Project Engineer
R.G.E. 041

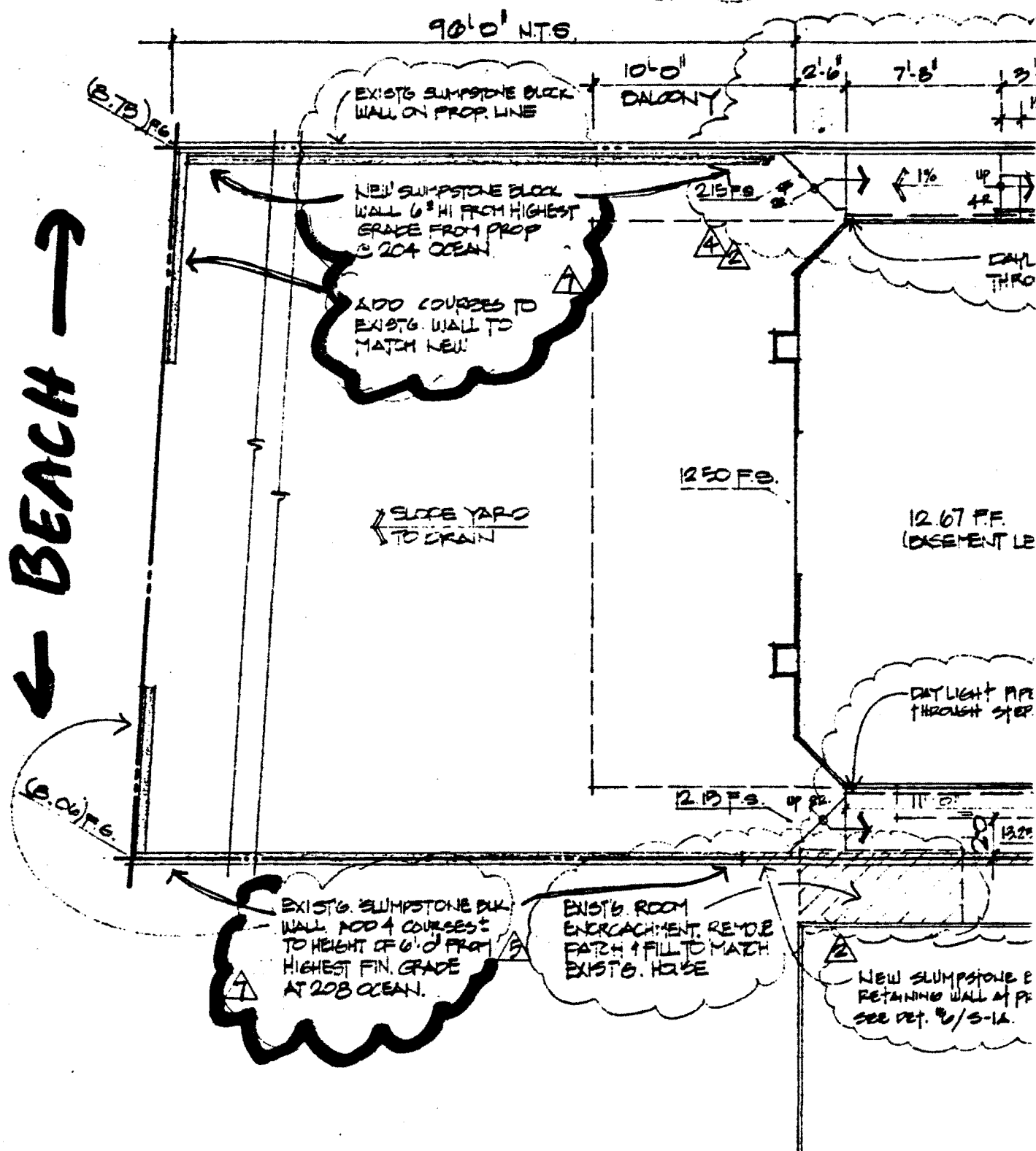


Mark Burtcholder
Mark Burtcholder
Project Manager

EXHIBIT # 2

PAGE 7 OF 7

EXIST
204



Randall L. Johnson, M.D.

Mary Merino Johnson

206 Ocean Avenue • Seal Beach, CA 90740

Telephone (562) 431-1416 • Fax (562) 431-6416

RECEIVED
MAR 18 1998

March 15, 1998

California Coastal Commission
South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802

5-97-233-A1
COASTAL COMMISSION
Applicant's response letter

Subject: Permit amendment 5-97-233-A1

EXHIBIT # D
PAGE 1 OF 1

Dear Commissioners,

I am writing you in response to the letter of objection by Michelle Brendel dated March 8, 1998.

We are asking for a wall that is 6 feet high above each adjacent property grade as required by the City of Seal Beach because we are in the process of building a pool and spa. The 6 feet requirement is the standard requirement that all other homes with pools in Seal Beach must meet, including five or six that are currently on the beach on our street in Seal Beach. This would not constitute a "soundwall" or special privilege but will in fact comply with city code and will not be "8 or 9 feet high." as alleged by Brendel. Please note that Brendel's property has large elevated planters that are about two feet above the natural grade and that is what is causing us the need to build this wall on her side. (attached photographs)

We have already proceeded with planters and the gunite of the pool after receiving permits from the Coastal Commission and the City of Seal Beach. It was only after we started did the City realize that our walls needed to be raised about 18". The neighbors at 208 Ocean, the Siggers, have graciously given us written permission to add to the existing common wall. Brendel is not interested in raising the common wall so we are forced to construct a new wall.

The chain link fence referenced in the letter is obviously a temporary construction fence that will be replaced by a permanent structure on completion of this project.

Please approve this permit amendment since it is intended only to meet City of Seal Beach code and nothing more.

Sincerely,



Randall L. Johnson, MD

cc: Keith Till, City Manger, Seal Beach