

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Laguna Beach, CA 90802-4302
(562) 590-5071



W8a

Filed: April 6, 1998
49th Day: Opened and Continued
180th Day: August 4, 1998
Staff: SFR-LB
Staff Report: May 21, 1998
Hearing Date: June 8-11, 1998
Commission Action:

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

APPEAL NUMBER: A-5-LGB-98-141

LOCAL GOVERNMENT: City of Laguna Beach

DECISION: Approval with special conditions.

APPLICANT: Judy Gray and Darrin Trudeau

AGENT: Brion Jeannette

PROJECT LOCATION: 132 McKnight Drive in the City of Laguna Beach, County of Orange

PROJECT DESCRIPTION: The addition of a 1059 sq. ft. second story to an existing 2612 sq. ft. single family residence. The resultant structure (habital area) will be 3671 sq. ft. in size and will be 20 feet high. The addition of a 656 sq. ft. second floor deck and the removal of two trees (Allpo Pine) from the front yard.

APPELLANTS: Joseph and Maureen Fuszard

SUMMARY OF STAFF RECOMMENDATION
ISSUES TO BE RESOLVED

Staff recommends that the Commission, after conducting a public hearing, determine that **NO SUBSTANTIAL ISSUE EXISTS** with respect to the grounds on which the appeal has been filed because the project, as conditioned by the City of Laguna Beach, is consistent with the certified Laguna Beach Local Coastal Program and the public access policies of the Coastal Act.

The appellants contend that the second story addition approved by the City is inconsistent with the City's certified Local Coastal Program since the addition would intrude on the views enjoyed from existing residences. The appellants also note that

the Laguna Beach Design Review Board failed to make the required public access findings for proposed development between the first public road and the sea.

Commission staff recommends that the Commission find that the appeal of the local government action raises no substantial issue because the private view issue was evaluated appropriately by the Laguna Beach Design Review Board in conformance with the Laguna Beach certified Local Coastal Program. Furthermore, Commission staff also recommends that the Commission find no substantial issue because the appeal does not pertain to the protection of a significant coastal resource and does not raise a statewide concern.

SUBSTANTIVE FILE DOCUMENTS:

1. Local Coastal Program for the City of Laguna Beach
2. City of Laguna Beach materials submitted as the file for Coastal Development Permit 97-56 issued by the City of Laguna Beach.

STAFF RECOMMENDATION - MOTION AND RESOLUTION

A. MOTION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission find that Appeal No. A-5-LGB-98-141 of the City of Laguna Beach's action of approval of Coastal Development Permit 97-56, raises **NO SUBSTANTIAL ISSUE** with the grounds listed in Section 30603(b) of the Coastal Act.

RESOLUTION:

The Commission determines that no substantial issue exists as to conformity with the certified Local Coastal Program with respect to the grounds on which an appeal has been filed pursuant to Public Resources Code Section 30603, as discussed in the following findings.

MOTION:

*I move that the Commission determine that Appeal No. A-5-LGB-98-141 raises **NO** substantial issue as to conformity with the certified Local Coastal Program for the City of Laguna Beach.*

Staff recommends a **YES** vote. This would result in the finding of no substantial issue and the adoption of the following findings and declarations. A majority of Commissioners present is required to pass the motion.

FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

I. APPELLANT'S CONTENTIONS

The appellants broadly contend that the project site is over built and the additional development approved by the City would be injurious to neighboring properties (Exhibit 1 is a copy of the appellants appeal). Though the appeal was received on April 8, 1998, within the ten working day appeal period, Commission staff received a supplement to the appeal on May 20, 1998 from the appellants' lawyer (Exhibit 7).

The appellants specifically contend, that the project exceeds required lot coverages by encroaching into the required twenty-five foot bluff top rear yard setback, and will exceed height limits. Consequently, according to the appellants, the development approved by the City will deprive the neighbors of existing views of the ocean from their residences.

Additionally appellants contend that the development approved by the City would be precedent setting since it would be incompatible with the mass and scale of existing homes. The appellants also contend that the City of Laguna Beach has failed to evenly enforce its regulations. Finally, the appellants contend in the supplement to their appeal that the Design Review Board did not include a public access finding as required by Section 30604(c) of the Coastal Act for development which is between the first public road and the sea.

II. APPEAL PROCEDURES

A. APPEALABLE DEVELOPMENT

Pursuant to Section 30603(a) of the Coastal Act and Section 25.07.006 of the City of Laguna Beach's Zoning Code, only certain types of development may be appealed to the Coastal Commission. The types of appealable development include development that is between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or the mean high tideline of the sea where there is not beach, whichever is the greatest distance. Based on this criteria, the decision of the City of Laguna Beach to approve CDP 97-56 is appealable to the Commission because the proposed development is between the first public road and the sea.

B. GROUNDS FOR APPEAL

Pursuant to Section 30603(b) of the Coastal Act, the grounds for appealing a coastal development permit to the Commission is an allegation that the development does not conform to the standards of the City of Laguna Beach's Local Coastal Program or the public access policies of Chapter 3 of the Coastal Act.

III. LOCAL GOVERNMENT ACTIONS

In October 1997 the applicants applied to the City of Laguna Beach for a coastal development permit to construct a second story addition to an existing single family residence. The Design Review Board conducted three public hearings on the proposed project and approved the project with conditions on January 29, 1998. During the course of these public hearings the applicant revised the project description to reduce the size of the second story addition from 1320 sq. ft. to 1059 sq. ft. to allow a view corridor. At its January 29th meeting, the Design Review Board conditioned the project to require the removal of two large pine trees from the applicant's front yard. The common name of these trees is Allpo Pine (*pinus Halapensis*). These trees are each about forty feet tall with a spread of about 25 feet and are believed to be around twenty years old. Exhibit 6 contains a copy of the City's coastal development permit, the resolution of the Design Review Board, and the minutes of the meeting.

The decision of the Design Review Board to approve the project, as conditioned, was appealed by the current appellants to the Laguna Beach City Council. The City Council conducted two public hearings and sustained the decision of the Design Review Board on March 17, 1998. On March 25, 1998 the Long Beach Office of the Coastal Commission received the City's "*Notice of Final Local Action for Coastal Development Permits*" (Exhibit 6). The appellants' filed their appeal with the Coastal Commission on April 6, 1998. The Commission's appeal period closed on April 8, 1998 without any additional appeals being received.

The City's action in approving coastal development permit 97-56 occurred concurrently with two other local government actions. One was the approval of Variance 6453 and the other was the approval of Design Review 97-227. Variance 6453 was to allow the existing non-conforming use, in the form of the encroachment into the rear yard setback to continue and for a second story addition to exceed a fifteen foot height limit. City staff concluded in March 1998 that a height variance was not required. Consequently the variance by the City was to allow the existing non-conforming use to continue. Only coastal development permit 97-56 is subject to this appeal.

IV. PROJECT DESCRIPTION AND LOCATION

The project site is located at 132 McKnight Drive in the City of Laguna Beach. Exhibit 2 is a location map. Exhibit 3 shows the project site in relation to adjacent properties. Exhibit 4 shows the site plan. The project as approved by the City is for the addition of a 1059 sq. ft. second story to an existing 2612 sq. ft. single family residence. The resultant structure will be 3671 sq. ft. in size (habital space) and will be 20 feet high. The approved project also includes the addition of a 656 sq. ft. second floor deck and the removal of two pine trees from the front yard.

V. SUBSTANTIAL ISSUE ANALYSIS

The contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with the certified LCP and that the Design Review Board has failed to make a required finding in its approval of the second story addition. The term "*substantial issue*" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicated simply that the Commission will hear an appeal unless it "*finds that the appeal raises no significant question*" (California Code of Regulations, Title 14, section 13115(b)). To find substantial issue on this appeal, the Commission will assess whether the appeal raises a substantial issue of consistency with the City's certified Local Coastal Program. In making that assessment the Commission considers whether the appellants' contentions raise significant concern in terms of the extent and scope of the approved development, the support for the local action, the project being precedential, that a significant coastal resource would be affected, or that the appeal has statewide significance. The allegations made by the appellants do not raise substantial issues of conformity with the City's certified Local Coastal Program. Therefore, for the reasons discussed below the Commission exercises its discretion and determines that the appeal raises no substantial issue.

Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5

1. Consistency with the City's certified Local Coastal Program

The appellants contend that the City of Laguna Beach approved development that is inconsistent with the City's certified Local Coastal Program. The appellants broadly contend that the project site is over built and the additional development proposed would be injurious to neighboring properties. Specifically, the appellants contend that the project exceeds required lot coverages by encroaching into the rear yard setback and will exceed height limits. Consequently the proposed development will deprive the neighbors of existing views of the ocean from their residences.

Additionally, the appellants contend that the proposed development would be precedent setting since it would be incompatible with the mass and scale of existing homes. Finally, the appellants contended that the City of Laguna Beach has failed to evenly enforce its regulations.

Two policies from the City's Land Use Plan of the City's Local Coastal Program are relevant to reviewing the appellants concerns. These two policies are 12-D and 7-A. Policy 12-D is found in Topic 12 of the City's Land Use Plan which contains the policies related to view preservation. Topic 12 recognizes the importance of preserving scenic amenities for both the public and private property owners. Further, the City recognizes that the consideration of views extends beyond private property interests to encompass community and public views, particularly those from public roadways, state scenic highways and community open space.

The City's Land Use Plan goes on to state that the protection of public and private views is regulated by the Design Review Board to ensure that view preservation criteria are achieved. This approach is contained in Policy 12-D. Policy 12-D of the City's Land Use Plan states: *"As part of the Design Review Process, maximize the preservation of views of coastal and canyon areas from existing residences, and public view points while respecting rights of property owners proposing new construction."*

The second policy which applies comes from the City's Open Space and Conservation Plan and is contained in Topic 7. Topic 7 discusses the protection of Visual Resources from hillside and coastal areas. Policy 7-A states: *"Preserve to the maximum extent feasible the quality of public views from the hillsides and along the City's shoreline"*.

The Land Use Policies of the City Local Coastal Program are implemented through the City's Zoning Code. The existing single family residence is an existing non-conforming structure because of an inadequate rear yard setback. Section 25.56.008 of the Zoning Code applies to projects involving additions to non-conforming structures. Section 25.56.008, in part, states: *"In the event that a building is nonconforming only because of noncompliance with the required*

yard regulations and access requirements, then additions and enlargements may be made thereto, provided such additions and enlargements comply in every respect with the provisions of this title and provided that the total aggregate floor area included in all such separate additions and enlargements does not exceed fifty percent of the floor area contained in such building, structure or improvement prior to making of such additions and enlargements."

Based on the plans for the second story addition submitted to Commission staff, the existing home is 2612 sq. ft. in size. Based on Section 25.56.008 of the Zoning Code, a second story addition of up 1306 sq. ft. could be allowed provided that the addition complies with all existing setback regulations. Further, evaluation of the project's impact on private and public views according to the City's Local Coastal Program is subject to the review of the Design Review Board.

In addition, the Commission has intentionally not entered the arena of attempting to mediate among individual property owners by attempting to protect views of the sea from the windows of private homes or from other places where the public is not welcome to enter at will. While the approval of an addition to existing residence in an established neighborhood which enjoys spectacular views of the coastline undoubtedly raises a significant concern among those who stand to lose a small portion of a view to which they have become accustomed, the Commission finds that such view impacts do not rise to regional or statewide significance. Consequently, the Commission finds that this appeal raises no substantial issue.

The second story addition as approved by the City is for a 1059 sq. ft. second story which is within the allowable total of 1306 sq. ft. As required by the Local Coastal Program, the proposed project was reviewed by the Laguna Beach Design Review Board. When the applicant first applied to the Design Review Board, the proposed second floor addition was 1320 sq. ft. in size which exceeded the fifty percent limit. As a consequence of the review process with the Design Review Board, the size of the second story addition was reduced by 261 sq. ft. and the project was conditioned for the removal of two large pine trees to provide a view corridor (Exhibits 5 and 6) for the benefit of the neighbors on the other side of McKnight Drive. This view corridor would not promote a public benefit as the existing house would continue to block the view of the ocean from McKnight Drive.

Though the Design Review Board found that the project was appropriately modified to address the private view concerns, the appellants still contend through their appeal to the Commission: that the project site is overbuilt, that the project was inappropriately "*re-characterized*", and that the project would be injurious to neighboring properties. The appellants are correct in asserting that the existing residence encroaches into required rear yard setbacks. However, the foot print of the existing structure is not being modified. The City's Zoning

Code as cited above "grandfathers" the existing non-conforming development provided that the proposed addition does not exceed fifty percent of the existing structure and that the addition complies with yard setback and access regulations. The proposed addition does not exceed fifty percent of the existing structure. Further, as required by the Zoning Code the second story addition complies with current setback and height standards. There is no requirement that the existing setback encroachments be corrected.

The appellants go on to state in the appeal to the Commission that the project was inappropriately "*re-characterized*" while going through the approval process. When the project was originally submitted to the City of Laguna Beach, the applicant applied for a height variance for the proposed addition. Height limits for buildings within the City of Laguna Beach are (depending on location) determined by the slope of the lot. The applicant at the time the application was submitted believed that a fifteen foot height limit existed based on the slope of the two lots owned by the applicant and applied for a variance to allow for a twenty foot tall structure. In the Agenda Bill (City Staff Report) for the March 17, 1998 City Council meeting on the appeal by the appellants of the decision of the Design Review Board, City staff concluded that the proposed second story addition would not require a height variance for a twenty foot tall structure based on using only the buildable lot owned by the applicant. The existing house is located solely on the buildable lot. Consequently the scope of the variance was revised by the City to permit the existing house to continue as a legal non-conforming use.

The appellants' further contend (in the supplement to the appeal) that the variance approved by the Design Review Board is flawed since the proposed development would exceed the thirty percent lot coverage and would be an addition of over fifty percent. The City Zoning Administrator at the March 17, 1998 City Council meeting stated that lot coverage was not subject to a variance as it would be a discretionary approval of the Design Review Board. The plans submitted by the applicant to the Commission do not depict any increase in the footprint of the building which means that the lot coverage would remain the same. Further, as previously stated, existing non-conforming uses are allowed to continue provided that additions to the existing structure do not exceed fifty percent.

The applicant owns two lots, one of which is non-buildable. The existing house is located entirely on the buildable lot. These two lots are shown in Exhibit 4. Lot "A" of Exhibit 4 is the non-buildable lot. The applicant used this non-buildable lot in conjunction with the buildable lot when computing the allowable height for the proposed addition when making the application for a coastal development permit with the City. The decision of the City to base the computation of the height limit for the proposed second story addition by using only the slope of the buildable lot is not a re-characterization of the project.

Next, the appellants contend in their appeal to the Commission that the second story addition approved by the City would be injurious to neighboring properties. In making this assertion the appellants state that the City has limited structures along this bluff to one level above street grade (15 feet), that the development approved by the City is not consistent with the other bluff top structures, and that the neighboring property owners rely on even enforcement of height limits.

To address this concern the applicants' architect surveyed other homes in the vicinity of the project site. Since 1979, the City has apparently approved a total of seven other homes that would be at least twenty feet tall and similar in overall square footage. The applicant's architect further, notes that both houses adjoining the property in question have been approved by the City for second story additions. A second story addition is currently under construction for the house located at 130 McKnight Drive.

The appellants submitted their own survey stating that the City had denied two height variance for 120 and 122 McKnight Drive and had required that four other homes on McKnight Drive to be set into the bluff to conform to height limits. The appellants' however, do not go into detail concerning the City's denial of the height variances for 120 and 122 McKnight Drive which means that the relevance of the two variance denials to the appeal can not be ascertained.

Moreover, the City Council in upholding the decision of the Design Review Board found that: *"The requested variance is necessary for the preservation of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the same vicinity and zone, in that other properties in the immediate vicinity have second stories and legal nonconforming setbacks."*

Based on this information the City has historically approved second story additions in the general vicinity of the project site. Even though some neighbors may have their views partially obstructed as the appellants contend, the development as approved by City is consistent with prior City actions and has been modified through the local hearing process, as previously discussed, to minimize adverse impacts on the views enjoyed by neighboring residences.

Finally, the appellants, through their legal representative, have stated that the Design Review Board failed to include a finding that the second story addition as approved by the City was in conformance with the public access and recreation policies of the Coastal Act. The lack of these findings is a procedural error on the part of the Design Review Board. Though this error occurred, this error is not substantive to the appeal since the second story addition will not have an impact on public access and public recreation opportunities. Other than raising the issue, the appellants have made no contention that the second story addition

would adversely impact coastal access or public recreation. The basis for the appeal, on the part of the appellants, is the assertion that the second story addition approved by the City will block the private views enjoyed by the neighbors.

In approving the Coastal development permit 97-56 the Design Review Board found that "... *the visual impacts of the development have been minimized because the proposed structure is similar in size to neighboring buildings therefore maintaining compatibility with surrounding development.*" The Commission concurs with the findings of the City's Design Review Board and finds that the second story addition as approved by the City raises no substantial issues with respect to the City's certified Local Coastal Program.

2. Significance of the Appeal

The appellants contentions do not raise significant concerns in terms of the project being precedential setting, that a significant coastal resource would be adversely affected, or that the appeal has statewide significance. Basically this is a dispute between neighbors concerning the preservation of one neighbor's view versus the other neighbor's right to build an addition. The project site is in a built out residential neighborhood and would not have public view impacts. If the proposed project affected a public view of the ocean from a public park, public view point, or public coastal access road then the impact of project may be considered significant. As previously discussed in a prior section of this staff report, the project was appropriately reviewed by the Design Review Board as required by Policy 12-D to address the view concerns of existing neighboring residences.

Moreover the development as approved by the City would not have an adverse impact on public access since the project site does not provide public access since it already has a single family residence on-site and the addition of a second story would not change the intensity of use at the site. Public access exists nearby at Crescent Bay Point Park. The appellants, however, through a letter received on May 20, 1998 (Exhibit 7) have raised the issue of public access as a procedural error on the part of the City of Laguna Beach. This issue was not raised at the time the appellants initially filed their appeal with the Commission and was received after the close of the Commission's appeal period.

Section 30604(c) of the Coastal Act requires that for every coastal development permit issued for development between the nearest public road and the sea that a specific finding must be made that the development is in conformity with the public access and recreation policies of the Coastal Act. Such a finding was not made by Design Review Board in its approval of the second floor addition. Even

though the Design Review Board did not make the required public access finding, the Commission finds that the appeal raises no substantial issue since the second story addition to the existing single family residence would not change the use of the site in regards to access, plus Crescent Bay Point Park is an existing park nearby. Accordingly this appeal has not identified a significant adverse impact on a coastal resource (such as a public view or public access) nor does it raise a significant statewide concern. Therefore, Commission finds that the second story addition as approved by the city raises no substantial issue with respect to the grounds on which it was appealed or conformance with the public access policies of the Coastal Act.

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)

RECEIVED
APR 6 1998

CALIFORNIA
COASTAL COMMISSION

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

SECTION I. Appellant(s)

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

JOSEPH FUSZARD & MAUREEN SHEA-FUSZARD
135 McKNIGHT DRIVE
LAGUNA BEACH, CA 92651 (714) 376-2116
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Laguna Beach

2. Brief description of development being appealed: Proposal for additions to a single family residence including additions above the ground floor, aggregate additions exceeding 50% of the original structure, several variances re: encroachments

3. Development's location (street address, assessor's parcel no., cross street, etc.): 132 McKnight Drive Laguna Beach

- 4. Description of decision being appealed:
a. Approval; no special conditions:
b. Approval with special conditions: conditioned on tree removal
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-LGB-98-141 (A-5-LGB-98-

DATE FILED: 4.6.98

DISTRICT: South Coast / Long Beach

H5: 4/88

EXHIBIT No. 1
Application Number: A-5-LGB-98-141
Copy of Appeal
California Coastal Commission

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: 03/17/98

7. Local government's file number (if any): LCP 97-56

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:

Judy Gray
132 McKnight Drive
Laguna Beach, CA 92651

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) Brion Jeannette Architecture
470 Old Newport Blvd.
Newport Beach, CA 92663

(2) Ninette Wilson
131 McKnight Drive
Laguna Beach, CA 92651

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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)

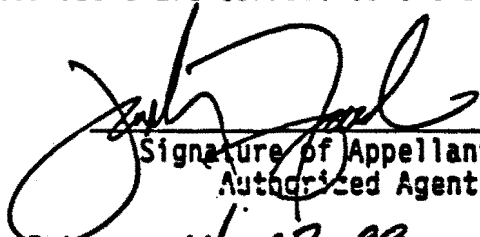
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

-SEE ATTACHED-

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

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



Signature of Appellant(s) or
Authorized Agent
Date 01.07.98

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 _____

**APPEAL OF COASTAL DEVELOPMENT PERMIT APPROVED UNDER
AUTHORITY OF LOCAL COASTAL PLAN OF CITY OF LAGUNA BEACH**

LOCAL COASTAL DEVELOPMENT PERMIT 97-56 approved in conjunction with:

Design Review 97-227 Additions above ground floor level, additions exceeding 50% of the original structure

Variance 6453 Exceed the maximum allowable height, not to bring existing non-conforming conditions into compliance - side yard and bluff-top setbacks

Appellant requests that the permit issued under authority of the City's Certified Local Coastal Plan (LCP) be re-evaluated by the California Coastal Commission, and overturned due to the fact that it does not conform to the standards set forth in the City's Certified LCP -- the source of its authority to approve development along the sensitive coastal bluff.

The City's plan discusses building height as being a "a critical determinant" and that tall buildings

"...would cause problems by intruding on views enjoyed from existing homes"

"...are a barrier which destroys the feeling of being near the ocean."

(1) The project is overbuilt already:

- exceeds allowable size on the sides by encroaching into the side yard setbacks
- Encroaches dangerously into the bluff top setback; bluff erosion has reduced the bluff top setback to only about 36 inches
- Encroaches into setbacks, while not fully utilizing the interior portions of the lot so as to keep a courtyard in the center
- Exceeds lot coverage ratios already, by a substantial margin
- Now seeks to expand into the last remaining restricted space: height

From the above points, it appears the applicant is being permitted to build in a sensitive bluff top location with virtually no limitations (setbacks, coverage, height)

(2) The building site was inappropriately "re-characterized" midstream through the approval process:

The application was modified materially between the Design Review hearing on 01/29/98 and the City Council Meeting on 03/03/98. The legal building site was modified, by excluding a portion of the property in order to diffuse a variance necessary for height.

Excluding a portion of the property for the purpose of securing certain approvals:

- Is inconsistent with the recognition of lot size, permitting, and approvals of this and other similar, neighboring properties. For example, a 1986 remodel of the project incorporated the entire building site to achieve compliance with lot coverage ratios, but is now being excluded for the purpose of calculating a height limitation
- Is not supported by a current, comprehensive, certified topographical survey, nor documentation on how or why a landlocked, unbuildable lot can be separated for purposes of securing certain approvals.

Even though some maps show the 2 parcels which make up the building site as separate lots, for the purpose of development, they should be considered as one.

- Was a material issue in the decision, as the administrative record shows that various Design Review Board and City Council Members indicated that they would not have been able to make the necessary findings to approve a variance for height.

(3) The project is injurious to neighboring properties

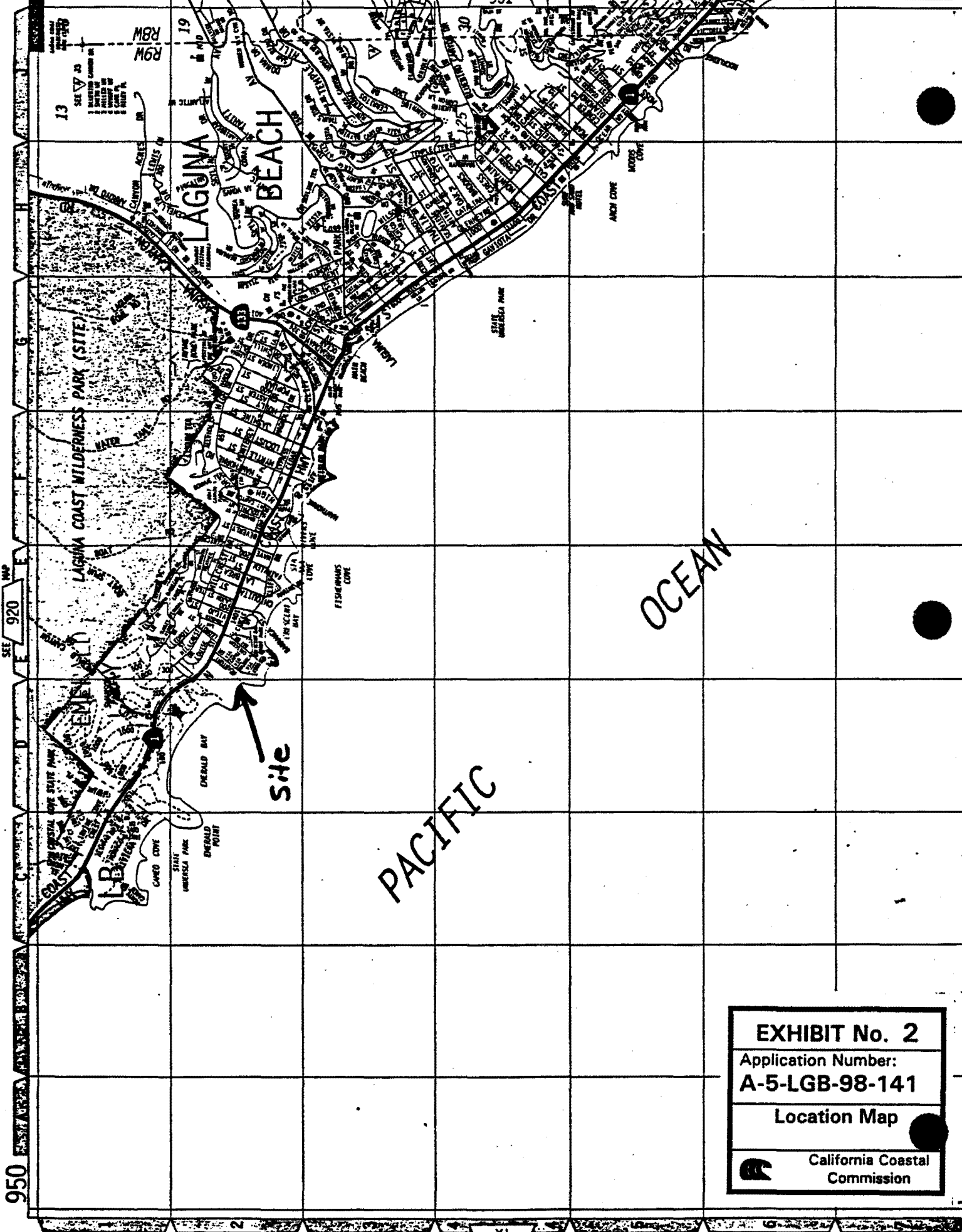
Involves the construction of a building squarely in the center of where the appellant and other neighbors enjoy the sun setting into the ocean

The City's long pattern of Local Coastal Plan interpretation and enforcement has been to limit structures along this bluff to one level above street grade (15 ft.)

The additional height introduces a mass and scale which is not consistent with the other bluff top structures

Neighboring property owners rely on the long pattern of consistent, even enforcement of height limitations on bluff top projects

It can be expected that it will be necessary to extend this privilege to all of the bluff top property owners evidencing the same circumstances, several of whom have been denied this exact request for height in the past. To do so, would be the equivalent of a re-zoning of the street without due process. The appropriate method for this action is a zoning plan amendment, and an appropriate amendment to the certified LCP, which is a legislative action, not an administrative action. The result of this project will be either a special privilege, or a rezoning of the area without due process.



SEE 920 MAP

950

13

R8W
R9W

19

LAGUNA BEACH

LAGUNA COAST WILDERNESS PARK (SITE)

EMERALD BAY

EMERALD POINT

Site

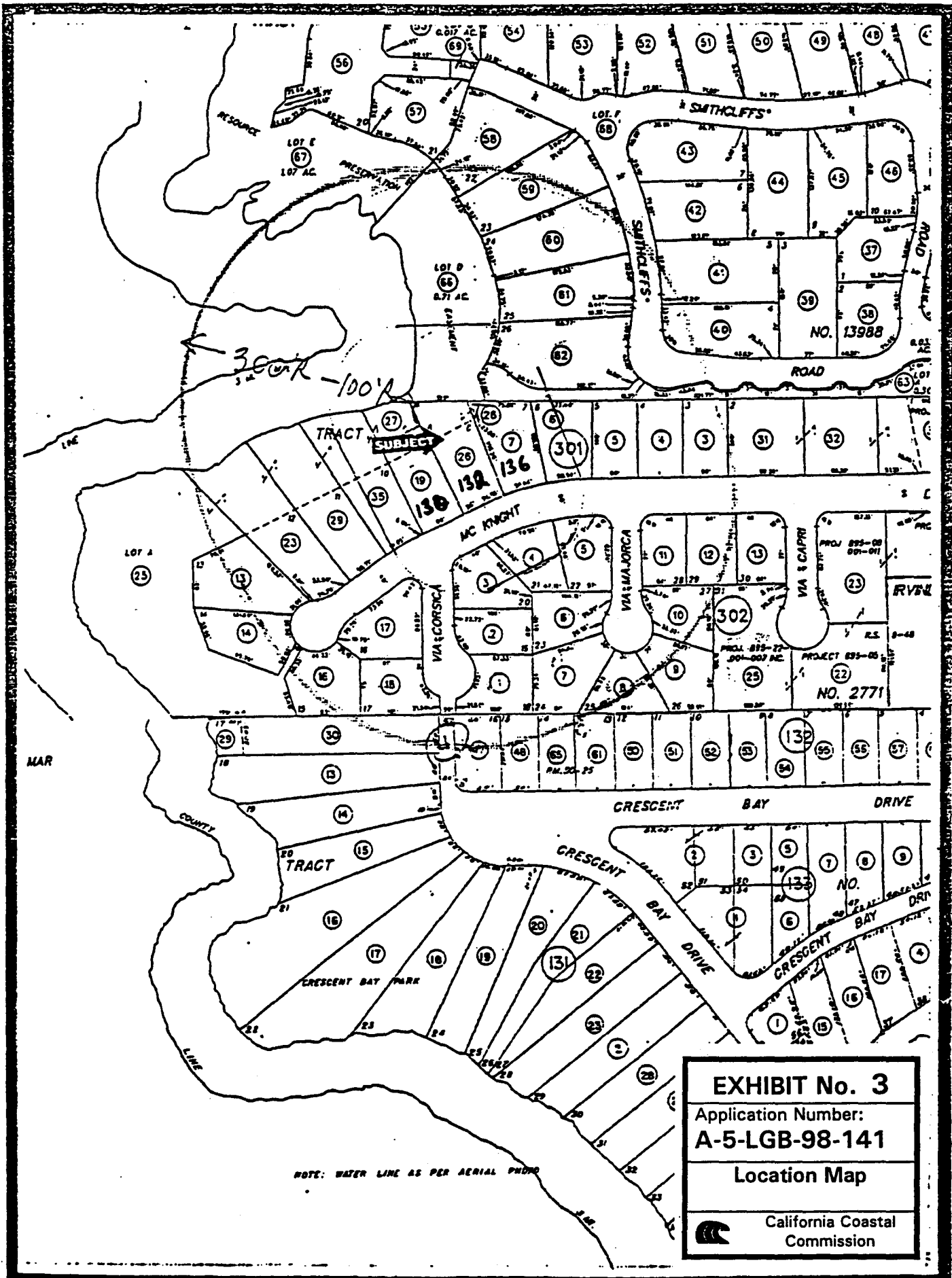
FISHING COVE

PACIFIC OCEAN

EXHIBIT No. 2
Application Number: A-5-LGB-98-141
Location Map
California Coastal Commission

DRANE, CO. MAP

DETAIL



Ownership Map

RECEIVED
 MAR 25 1998
 ZONING DIVISION
 CITY OF LAGUNA BEACH, CA

LOT "A"

N763°13'00"E 57.05'

STEEP SLOPE

N13°34'30"E 66.32'

5' PUBLIC UTILITY EASEMENT

CREST OF BLUFF

N71°06'26"E 23.67'

87.0

98.6

3/4" PIPE
L.S. 3064

82.0

3/4" PIPE
L.S. 3064

4.62'

DECK

99.0

EXISTING
2 - STORY
RESIDENCE

RIDGE EL=116.37

F.F.=94.31

EXISTING WALL
N763°13'00"E 103.31'

DIRT

EXISTING EAVE

CONC. WALK

97.2

EXISTING
RESIDENCE
F.F.=100.00

RIDGE EL=112.81

COURT-
YARD
99.60'

EXISTING
RESIDENCE
G.F.=99.61

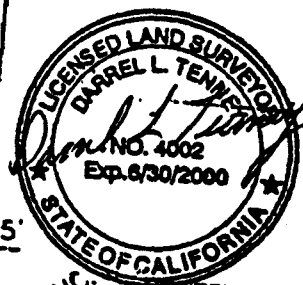
5.5'

RIDGE
EL=114.77

EXISTING
1 - STORY
RESIDENCE

F.F.=100.55

99.62'



DATE OF SURVEY
JUNE, 1996

4.65'

3/4" PIPE
L.S. 3064

22.85'

EXISTING EAVE

GRASS
100.24

GRASS
DRIVE

19.61'

PLANTER

4.95'

TAG IN CONC.
L.S. 3064

98.70

N13°47'00"E 28.00'

R=325.00 L=28.98

98.50 TC

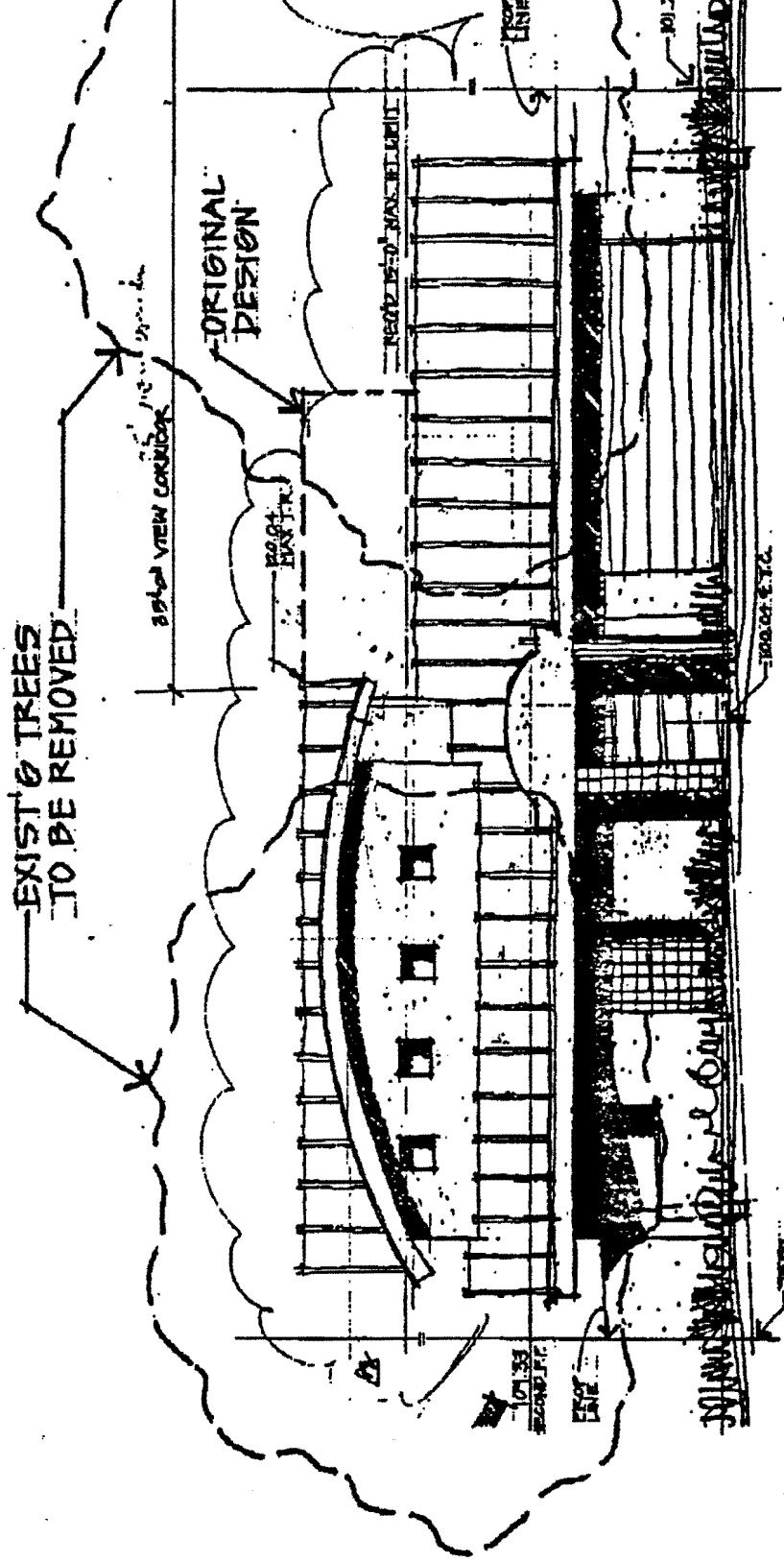
100.04 TC

McKNIGHT DRIVE

98.62

99.91

EXHIBIT No. 4
 Application Number:
A-5-LGB-98-141
 Site Plan
 California Coastal
 Commission




EAST ELEVATION

SCALE 1/4" = 1'-0"

GRAY/TRUDEAU RESIDENCE

132 MCKNIGHT DRIVE
LAGUNA BEACH, CA
PERMIT # : A-5-LGB-98-141

EXHIBIT No. 5	
Application Number: A-5-LGB-98-141	
Sketch of Residence	
	California Coastal Commission



Jeanette & Associates, Inc.
ARCHITECTURE
430 Millington Boulevard - Huntington Beach, CA 92648 - Tel: 714/366-5884 - Fax: 714/366-5885
REGISTERED ARCHITECTS - LICENSED ARCHITECTS



February 4, 1998

Judy Gray and Darrin Trudeau
132 McKnight Drive
Laguna Beach, CA 92651

Dear Ms. Gray and Mr. Trudeau:

SUBJECT: APPROVAL OF VARIANCE 6453, DESIGN REVIEW 97-227 AND COASTAL DEVELOPMENT PERMIT 97-56 AT 132 MCKNIGHT DRIVE

At a regular meeting of the Board of Adjustment/Design Review Board of the City of Laguna Beach held on Thursday, January 29, 1998, action was taken granting approval of Variance 6453, Design Review 97-227 and Coastal Development 97-56 at 132 McKnight Drive on the condition that the two large trees in the front yard be removed.

All variance, design review and coastal development permit grants automatically expire within two years of their approval unless a request for an extension, in writing, is received by the Board prior to the aforementioned expiration. No further notice will be given of this expiration.

The Municipal Code provides that a building permit cannot be issued until ten (10) business days have elapsed, thus allowing time for adjacent property owners to appeal the action if they so desire.

Additionally, this approval does not authorize you to begin construction. Full construction drawings must first be submitted to the Building Division for detailed plan check and compliance with applicable State and Municipal Laws, and Building, Plumbing, Electrical and Mechanical Codes, as well as the appropriate fees.


If you wish any further information regarding this action, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Tilton, Jr.", with a long horizontal flourish extending to the right.

John R. Tilton, Jr., A.I.A.
Zoning Administrator

Enclosures (2)

EXHIBIT No. 6
Application Number: A-5-LGB-98-141
City CDP and Minutes
 California Coastal Commission

5-LGB-97-191



NOTICE OF FINAL LOCAL ACTION
FOR COASTAL DEVELOPMENT PERMITS

RECEIVED
MAR 25 1998

The following project is located within the City of Laguna Beach Coastal Zone

Applicant: Judy Gray and Darrin Trudeau

Mailing Address: 132 McKnight Drive, Laguna Beach, CA 92651

CALIFORNIA
COASTAL COMMISSION

Coastal Development Project No.: 97-56

Project Description: Second story addition to a single-family residence

Location: 132 McKnight Drive

On January 29, 1998 a coastal development permit application for the project was

- approved
- approved with conditions
- denied

Ten business days right-of-appeal ends February 12, 1998

- This action was taken by:
- City Council
 - Design Review Board
 - Planning Commission

The action (X) did () did not involve a local appeal; in any case, the local appeal process has been exhausted. Findings supporting the local government action and any conditions imposed are found in the attached report.

This project is

- not appealable to the Coastal Commission
- appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Applicants will be notified by the Coastal Commission if a valid appeal is filed. Appeals must be in writing to the appropriate Coastal Commission district office and in accordance with the California Code of Regulation Section 13111.

cc: Coastal Commission
Property owner/agent
All known interested persons



RESOLUTION CDP 98-005

**A RESOLUTION OF THE DESIGN REVIEW BOARD OF THE
CITY OF LAGUNA BEACH APPROVING COASTAL DEVELOPMENT PERMIT
APPLICATION NO. 97-56**

Whereas, an application has been filed in accordance with Title 25-07 of the Laguna Beach Municipal Code, requesting a coastal development permit for the following described property located within the City of Laguna Beach:

132 McKnight Drive
053-301-26

and;

Whereas, the review of such application has been conducted in compliance with the requirements of Title 25.07, and;

Whereas, after conducting a noticed public hearing, the Design Review Board has found:

1. The project is in conformity with all the applicable provisions of the General Plan, including the Certified Local Coastal Program and any applicable specific plans in that the visual impacts of the development have been minimized because the proposed structure is similar in size to neighboring buildings therefore maintaining compatibility with surrounding development.
2. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act in that the proposed project, as conditioned to minimize impacts on the visual and scenic quality of coastal resources, does not present any adverse impacts on the environment.

NOW, THEREFORE, BE IT RESOLVED, that a coastal development permit is hereby approved to the extent indicated:

Permission is granted in the R-1 Zone to construct a second story addition to a single-family residence.

BE IT FURTHER RESOLVED, that the following conditions are necessary to assure that the approval hereby authorized is in compliance with the Local Coastal Program:

1. The Coastal development permit hereby allowed is conditioned upon the privileges granted herein being utilized within two years after the effective date hereof, and should the privileges authorized hereby fail to be executed or utilized, or where some form of construction work is involved, such construction or some unit thereof has not actually commenced within such two years, and is not diligently prosecuted to completion, this authority shall become null and void, and any privileges granted hereby shall lapse. The Design Review Board, after conducting a noticed public hearing, may grant a reasonable extension of time for due cause provided the request for extension is filed in writing with the Department of

Community Development prior to the expiration of said initial two-year period, along with any required fees.

BE IT FURTHER RESOLVED, that the subject coastal development permit shall not become effective until after an elapsed period of ten (10) business days from and after the date of the action authorizing such permit.

PASSED on January 29, 1998, by the following vote of the Design Review Board of the City of Laguna Beach, California.

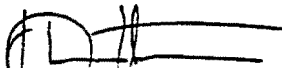
AYES: Oligino, Dietrich, Lovett, Morgenlander

NOES: Noppenberger

ABSENT: None

ABSTAIN: None

ATTEST:



Staff Representative



Chairman Oligino

Board of Adjustment Resolution No. CDP 98-005

9. VARIANCE 6453, DESIGN REVIEW 97-227 AND COASTAL DEVELOPMENT PERMIT 97-56: JUDY GRAY AND DARRIN TRUDEAU, 132 MCKNIGHT DRIVE, APN 053-301-26, CONTINUED FROM THE MEETING OF JANUARY 15, 1998, APPROVED WITH CONDITIONS

The applicant requests Design Review for additions to an existing single-family residence, including additions above the ground floor level, aggregate additions exceeding 50% of the original structure, encroachment into the additional rear setback, construction in an environmentally sensitive area and approval of a local Coastal Development Permit. The proposed addition requires variance approval to exceed the maximum allowable height [25.10.008(D)] and to not bring existing nonconforming site conditions (setbacks) into compliance [25.56.008].

Brion Jeannette, project architect, said that in accordance with the Board's direction at the last hearing he had enhanced the view corridor between the subject property and the adjacent Schilling lot to approximately 35 feet by decreasing the width of the second story. This was accomplished by moving the theater to the lower level and relocating the office to the second level. Mr. Jeannette presented a view analysis showing the relationship of the proposed addition to the Fuszard's proposed addition. The addition is sited to accommodate the wishes of the neighbor at 136 McKnight to maintain an approximate 20-foot privacy setback.

Mr. Noppenberger pointed out that McKnight is comprised of a series of blufftop lots with 14-foot height limits and a series of flat lots with more generous height limits. This property is at the confluence of the two areas. Mr. Noppenberger was looking for something about the property that makes it more like the second series of lots, but could only find attributes of the ocean bluff lots. He noted that the adjacent house did not require a variance for the second story addition. Mr. Noppenberger was concerned that approval of the variance would establish a precedent by granting rights that other property owners did not have.

Testimony in Opposition: Joe Fuszard, 135 McKnight noted that a property one door away was denied a variance. He commented that the project maximizes lot coverage and said that a variance for height would be a special privilege that would amount to rezoning the street. Maureen Shay Fuszard said they purchased their non-blufftop home because they felt their view corridor was protected by statutes that prohibited second story additions to the property at 132 McKnight.

Rebuttal: Mr. Jeannette said the site is surrounded by two-story buildings, and the variance is justified by topography and land configuration. He said the second floor has substantially less square footage than allowed. He pointed out that the Fuszard's proposed addition has a closet or dressing room on the side looking toward his client and does not make the best use of the view possibilities.

Staff noted that if the oceanward portion of the site were not attached, the allowable height would be greater, but lot coverage would be less.

Board Comments: Mr. Lovett had been concerned about granting a variance that involved a view impact. He felt the design had been significantly improved to open up a substantial view corridor. He could approve the project conditioned on removal of the trees.

Ms. Morgenlander noted that the Boardmembers had said that they would be more willing to approve the variance if the view corridor were improved. She could see special circumstances that create certain restrictions. She was not invited to the home of the neighbor across the street, but the project had been substantially changed and she could support it if she were comfortable with the wording of the justification.

Mr. Dietrich thought the second story was a substantial property right enjoyed by other neighbors. He did not see it as a special privilege since the neighbors on both sides have approved second stories. The only issue is view equity. He commented that the design had been adjusted to his satisfaction, and he was comfortable with

the variance justification. His remaining concern was the railing on the west; he would like it to be glass for a more open view.

Mr. Noppenberger said he had always liked the design and felt it would probably be an attribute to the community, but he could not find substantial and unique differences about the lot relative to other oceanfront lots. He felt that granting the variance would set a dangerous precedent, making it possible for each of the other neighbors to make the same request. He commented that a lot of effort has been made to keep that part of the neighborhood single story, and many people have bought lots relying on the premise that it would remain that way. He could not support the variance.

Mr. Oligino commented that he had said at the last hearing that if the structure were reconfigured to substantially improve the view corridor, he could support the project. He felt it was consistent with the pattern of development and could justify the variance on lot configuration and unique topography. He would condition his support on removal of the two large trees.

Ms. Morgenlander made a motion, seconded by Mr. Lovett, to approve Variance 6453, Design Review 97-227 and Coastal Development Permit 97-56 at 132 McKnight Drive on the condition that the two large trees in the front yard be removed, with the variance based on topography and lot configuration and the coastal development permit based on 1G and 3B. The motion carried 4-1 with Mr. Noppenberger voting in opposition.

10. DESIGN REVIEW 97-208 AND COASTAL DEVELOPMENT PERMIT 97-50: DAVID MARTIN AND FRANK THOMPSON, 665 BUENA VISTA WAY, APN 641-373-33, CONTINUED FROM THE MEETING OF JANUARY 15, 1998, CONTINUED TO THE MEETING OF FEBRUARY 5, 1998

The applicant requests Design Review for a new single-family residence, including review for a new structure, elevated decks, encroachment into the additional rear setback, grading and approval of a local Coastal Development Permit.

Ms. Lenschow participated for Mr. Noppenberger.

Staff noted a request from the applicant for a continuance to the meeting of February 5, 1998. Ms. Morgenlander made a motion, seconded by Mr. Lovett to continue Design Review 97-208 and Coastal Development Permit 97-50 at 665 Buena Vista Way to the meeting of February 5, 1998. The motion carried unanimously.

11. VARIANCE 6459 AND DESIGN REVIEW 97-242: MARIO SCHEFL, 2907 ROUNSEVEL TERRACE, APN 656-166-15, CONTINUED FROM THE MEETING OF JANUARY 22, 1998, APPROVED

The applicant requests Design Review for additions to an existing single-family residence that include additions above the ground floor level, aggregate additions that exceed 50% of the original structure, elevated decks, retaining walls and encroachment into the additional rear setback. The proposed project requires a Variance to: 1) encroach into the required side yard [25.10.008(3)]; 2) encroach into the required front yard with an elevated entry bridge [25.50.008]; 3) exceed the maximum allowable driveway slope [25.52.008(3)]; and 4) to not bring nonconforming setbacks and garage size into compliance [25.56.008].

The applicant said he had eliminated the encroachment into the required rear yard by designing a balcony to replace the deck. Staff noted that the trash area in the side yard needed to be moved back within the setback.

JACKSON, DEMARCO & PECKENPAUGH

A LAW CORPORATION

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RETIRED

WRITER'S DIRECT DIAL NUMBER:

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INTERNET:

dcs278@jdpplaw.com

OUR FILE NUMBER:


27307

May 19 1998
RECEIVED
MAY 20 1998

CALIFORNIA
COASTAL COMMISSION

VIA OVERNITE EXPRESS

California Coastal Commission
c/o Steven Rynas
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, California 90802-4302

EXHIBIT No. 7
Application Number: A-5-LGB-98-141
May 19, 1998 Letter
 California Coastal Commission

Re: *Appeal Number: A-5-LGB-98-141; 132 McKnight Drive, Laguna Beach ("Project")*

Dear Honorable Commission Members:

We represent Joseph Fuszard in connection with his appeal of the City of Laguna Beach's approval of Coastal Development Permit 97-56, which also included approval of Variance Application 6453 and Design Review 227 (collectively "Approvals"). Pursuant to our prior conversations with Steven Rynas of your staff, we provide the following letter brief to assist you in your consideration of Mr. Fuszard's appeal.

1. INTRODUCTION.

Mr. Fuszard challenges a proposed second-story addition to an existing single-family residence which is situated on an ocean-side, bluff-top site between the shoreline and the first public road paralleling the sea ("Property"). (See Exhibit D.) The addition would raise the height of the Property so as to block their neighbors' view and create a fortress on the bluff. The Approvals conflict with express provisions of the Laguna Beach Local Coastal Plan, in that both lot coverage and the proposed height exceed permissible levels.

Primarily, the appeal focuses on the City's inconsistent treatment of the Property in violation of the Local Coastal Program. The Property consists of two lots: Lot 8 (the "Residence Lot") and Lot A (the "Bluff Lot"). If the Residence Lot and the Bluff Lot are considered as one lot, then the owner could not build a second story without a height variance. If the lots are viewed as separate lots, then the existing structure and any additions violate the City's Local Coastal Plan lot coverage provisions. The City avoided both the height variance and lot

Honorable Coastal Commission Members
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coverage issue by stating that the height variance was not required because the two lots were severable and could be considered independently. At the same time, the City avoided the lot coverage issue by stating that the two lots are to be viewed as one lot. This inconsistency was never resolved and invalidates the Approvals because they violate the Local Coastal Plan. Additionally and independently, the Approvals are invalid because the City failed to adopt a mandatory finding in support of the coastal development permit.

Permitting the Project to proceed as approved would not only eliminate ocean and sunset views which contribute substantially to the appeal and value of Mr. Fuszard's and his neighbors' homes, the Approvals confound a long and consistent history of preserving the height restrictions for the bluff-top homes in this area. This precedent will take a responsibly maintained corridor which preserves both ocean and land views and replace it with massive structures which exceed both the coverage and height specifications of the Local Coastal Plan.

2. BACKGROUND.

The properties at issue are located in the City of Laguna Beach. Mr. Fuszard's home is directly across the street from the Property which is located at 132 McKnight Drive. As more thoroughly discussed below, the City has historically restricted the properties fronting the bluff, including this Property, as to second-story additions because of the impact on the ocean views enjoyed by surrounding homes, including Mr. Fuszard's.

The City of Laguna Beach's Local Coastal Plan includes, among other things, the entirety of the Laguna Beach Zoning Code, Title 25 of the Municipal Code ("Zoning Code"). (See Laguna Beach Resolution No. 92.014, a copy of which is attached hereto as Exhibit A.) Coastal Development Permits accompanying applications for variances are initially considered and passed upon by the City's Board of Adjustment/Design Review Board. (Zoning Code, §§ 25.05.025, subd. (E) and 25.07.012, subd. (D).) All decisions by the Design Review Board are appealable to the City Council. (Zoning Code, § 25.05.070.)

The Approvals permit the applicant to add a proposed second-story addition to the Property. The original application for the Approvals included, *inter alia*, a request for a height variance. The height variance was an essential part of the Design Review Board's approval of the Project on January 29, 1998.¹

¹At least two City Council members, Councilwoman Blackburn and Councilman Freeman, are on record that they would not approve a height variance for the Project due to the impact on neighboring properties. (Ex. C, p. 34, ll. 22-24 and p. 37, ll. 2-4.)

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The height variance was originally sought because the Property did not comply with Zoning Code section 25.10.008, subdivision (D)(3)(c), which determines the maximum height of a residence based upon the percentage slope of the grade. At the Design Review Board stage, the slope for the Project was calculated utilizing the entire Property owned by the applicant. It was only later, at the City Council appeal, that a distinction was raised between the Residence Lot and the Bluff Lot. While still before the Design Review Board, the Project's own architect recognized that the Project necessarily included both the Residence Lot and the Bluff Lot because it could not satisfy coverage considerations without both lots. (Minutes of June 12, 1997, Design Review Board Meeting, attached as Exhibit B ["Mr. Jeannette (Project's architect) said the proposed project is asking for a variance with *lot A* as part of the parcel. If *lot A* is disconnected, there would be an issue of lot coverage, but not of height," italics in original].)

Indeed, members of the Design Review Board recognized the competing and irreconcilable considerations of the lot dissection and height variance. (*Id.* ["... Mr. Oligino agreed that the applicant cannot have it both ways. Either it is a small lot and the project exceeds lot coverage if *lot A* is excluded, or if *lot A* is included, the proposed project is not in conformance with the height," italics in original].) Ultimately, the Design Review Board's approval of the Project included the height variance premised upon calculations of both the Residence Lot and the Bluff Lot, mooting further concern regarding lot coverage issues.

On appeal of the Approvals to the City Council, presumably anticipating the Council's unwillingness to grant the height variance, the Project proposal was modified to carve out the Bluff Lot for height purposes. This focused the Council's attention on the coverage issue. In his March 17, 1998, presentation to the Council, Zoning Administrator John Tilton addressed the issue by stating that lot coverage "is not a variance condition. That is simply a design review guideline to exceed lot coverage." (Transcript of March 17, 1998, City Council meeting, p. 4, ll. 10-13, a copy of which is attached hereto as Exhibit C.) Councilwoman Blackburn specifically pressed Mr. Tilton on this point of lot coverage not being a variance issue, and Mr. Tilton responded without elaboration that it is simply a design review "guideline." (*Id.* at pp. 5-6, ll. 11-6.)

As he had done with the Design Review Board, Mr. Fuszard provided the Council with a thorough showing that the City has a long history of restricting the height of residences along the bluff area of which this Project is a part. (See Exhibit D, attached hereto.) In order to preserve the shoreline appearance and views of neighboring properties, the City Council previously denied height variances at 120 McKnight and 122 McKnight. Expansion along the bluff has been accomplished almost exclusively via excavation of the bluff for lower levels. The applicant frequently referenced during the Design Review Board and Council meetings the fact that his two immediate neighbors have second stories. However, the record is clear that the

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neighbor to the north is not a bluff lot and is subject to different height provisions of the Zoning Code, and the neighbor to the south, 130 McKnight, is a legal non-conforming structure whose second story was built prior to the relevant height regulations. (*Id.* See also Ex. C, pp. 17-18, ll. 22-23.)

Following Mr. Tilton's presentation and public comments, Council members expressed concern that arbitrarily carving out the Bluff Lot for purposes of these Approvals would set a dangerous precedent for other property owners along the bluff to thwart the Zoning Code's height limitations in the future. Staff and Counsel for the City stated they would not rule out that possibility.

Nonetheless, the City Council denied the appeal of the Approvals stating that without the inclusion of the height variance, expressly opposed by Council members, and having been instructed that lot coverage was merely a "guideline" and not a variance issue, they found no basis upon which to overturn the Approvals. (Ex. C, pp. 34-38, ll. 22-22.)

3. THE CITY'S ACTION VIOLATES ITS OWN LOCAL COASTAL PLAN.

The Approvals violated the City's own Zoning Code and Local Coastal Plan. Zoning Code section 25.56.008 prohibits additions to or enlargements of nonconforming structures, unless the structure and all improvements "are made to conform in every respect" with applicable Zoning Code provisions. However,

"In the event that a building is nonconforming only because of noncompliance with the required yard regulations and access requirements, then additions and enlargements may be made thereto, provided such additions and enlargements comply in every respect with the provisions of this title and provided that the total aggregate floor area included in all such separate additions and enlargements does not exceed fifty percent of the floor area contained in such building, structure or improvement prior to the making of such additions and enlargements." (Section 25.56.008, a copy of which is attached as Exhibit E.)

Given this ordinance, any nonconforming aspect of the Project, including lot coverage, does require a variance unless all other aspects of the section are satisfied. Here, assuming that the coverage concerns do fit into the category of "yard regulations" referenced in the section, neither of the two accompanying provisos are satisfied. First, the proposed additions do not "comply in every respect with the provisions of this title." The Approvals expressly

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include a variance for setbacks as to the side yards, as well as the bluff area. (Resolution 98.023, a copy of which is attached as Exhibit F; Comments of Mr. Tilton at March 17 City Council meeting, Ex. C, p. 5, ll. 1-8; Design Review Board Minutes, December 18, 1997, a copy of which is attached at Exhibit G.)

Second, the proposed additions do exceed 50 percent. (Exs. B and G; Comments of Mr. Tilton at March 17 City Council meeting, Ex. C, p. 5, ll. 2-3.)

Given the Project's failure to satisfy section 25.56.008, it is clear the lot coverage matter is not merely a design "guideline," and a mandatory aspect of the Zoning Code and Local Coastal Plan will be violated if the Project is permitted to continue as approved. The Project's specifications provided by Mr. Tilton to the City Council establish the coverage violation. (See Ex. C, pp. 3-4, ll. 24-13.) Utilizing the applicant's and staff's area calculation of 6,393 square feet² for the Residence Lot without the Bluff Lot, the permissible coverage -- calculated pursuant to Zoning Code section 25.10.008, subdivision (E)(1)(c) -- is 38.62 percent. This would allow a building footprint not to exceed 2,469 square feet. The applicant's Site Plan states that the existing footprint is 2,751 square feet. This approximately 300 square foot excess results in coverage of approximately 43% and is expressly recognized in the notations on the City's copies of the Site Plan which are maintained at City Hall.

4. THE CITY'S TREATMENT OF THE PROJECT IS INCONSISTENT.

In 1986, the owners of the Property sought approval for "alterations and additions" to the Project property, including a permit by the Commission. Throughout that approval process, the description utilized for the property include both the Residence Lot and the Bluff Lot. (See notice of Approval in Concept to the California Coastal Commission, attached hereto as Exhibit I ["Legal Description: the Residence Lot and a portion of Lot 'A'[:] Tract No. 2771, Laguna Beach, California"].)

Additionally, it can not be disputed, that for purposes of the subject Approvals, the Design Review Board resolved the question of the lot coverage issue by including both lots and adopting a height variance.

From the record, it is clear that the inclusion or deletion of the Bluff Lot was -- regardless of motive -- arbitrary and contributed significantly to the Approvals at each stage. At the Design Review Board stage, Board members stated outright that the applicant "could not

²The 6,393 square feet figure is provided both on the Site Plan presented to the City Council on March 17 and the engineer's specifications included in the City Planning file which is attached hereto as Exhibit H.

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Page 6

have it both ways." With only one lot, lot coverage was a problem; with both lots, height was a problem. The Project's architect recognized the impasse, and sought the height variance.

When the Project moved to the City Council, with an already professed resistance to a height variance, the Bluff Lot was carved out and what was previously recognized as a variance issue became a mere design "guideline." The Project's two-prong failure to satisfy section 25.56.008's requirements, however, demonstrates otherwise. A variance is required.

It is clear the Design Review Board had concerns about lot coverage, and it is equally clear that the City Council had concerns about a height variance. These competing issues were not resolved by the administrative process, but rather circumvented at the expense of express Zoning Code and Local Coastal Plan provisions. Shifting the foundational terms and specifications upon which the Approvals were argued in one forum before presentation to another forum is not appropriate.

5. FAILURE TO MAKE REQUIRED FINDINGS IN SUPPORT OF COASTAL DEVELOPMENT PERMIT.

Section 25.07.012, subdivision (G), of the Zoning Code mandates that three specific findings be made in support of a coastal development permit. The second of these three mandatory findings reads:

"Any development located between the sea and the first public road paralleling the sea is in conformity with the certified local coastal plan *and with the public access and public recreation policies of Chapter 3 of the Coastal Act.*" (Section 25.07.012, subdivision (G)(2), emphasis added.)

Resolution No. 98.023, the Council's rejection of the appeal and approval of the Coastal Development Permit, fails to include this mandatory finding. (Ex. E.) A copy of the tract map for the area (included with Ex. D) illustrates that the subject lot is located between the sea and McKnight Drive, the first public road paralleling the sea. The failure to provide such a mandatory finding is in and of itself grounds for remand of the approval. (See 14 Cal. Code Regs. 13119; Pub. Res. Code, § 30604, subd. (c). See also *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.)

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6. A "SUBSTANTIAL ISSUE" REGARDING THE CITY'S APPROVALS IS PRESENT AND THE COMMISSION SHOULD DENY ANY ADDITIONAL COASTAL DEVELOPMENT PERMIT.

It is our understanding that the Commission's consideration of Mr. Fuszard's appeal is essentially a two-prong analysis. First, the Commission will determine whether there is a "substantial issue" with regard to the City's approval. Assuming the Commission finds a substantial issue, it will proceed with its own de novo hearing regarding the merits of the application. (See, generally, 14 Cal. Code Regs. 13110 et. seq.) The grounds for this appeal are proper for Commission consideration pursuant to Public Resources Code section 30603, subdivisions (a)(1) and (a)(2).

The standard of review for the appeal is whether the Project "meets the requirements of Public Resources Code Sections 30604(b) and (c)." (14 Cal. Code Regs. 13119, emphasis added.) This Project and the Approvals satisfy neither section.

Section 30604, subdivision (b) provides:

"After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program."

The Approvals are irreconcilable with the express language of the City's Local Coastal Plan as well as a consistent history of enforcement. The early stages of the administrative proceedings revealed the fatal flaw in the Project: if the Property included the Residence Lot and the undevelopable Bluff Lot, a height variance is required; if the Property only includes the Residence Lot, the Property has insufficient lot coverage and cannot be approved. However, rather than fixing the problem and proceeding accordingly, the Project proponents effected a virtual bait-and-switch on the City, confounding the intent and purpose of the administrative review process. The Commission is now presented with a Project wholly irreconcilable with the Local Coastal Plan, prohibiting the issuance of any coastal development permit.

The second, independent basis for the Commission's review of the City's decision is subdivision (c) of section 30604 which provides:

"Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any

Honorable Coastal Commission Members
Steven Rynas
May 19, 1998
Page 8

body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200)."

The City's failure to make this mandatory finding in support of the coastal development permit violates its Local Coastal Plan, in and of itself constituting a substantial issue invalidating the approval. Further, its oversight of the issue renders the record inadequate to support a finding by the Commission consistent with section 30604, subdivision (c).

7. CONCLUSION.

The subject Approvals confound both the express language of the Local Coastal Plan and a consistent history of limiting the height of bluff-lining residences by the City. We do not believe the City intended this result, but rather found itself with no alternative given the eleventh-hour changes in the requested approvals and misinformation by City staff regarding what aspects of the Project required a variance. At the final tally, the Council members had no alternative but to reject the appeal. The information before them at that final meeting, however, was riddled with errors, omissions, and inaccurate guidance regarding the powers and obligations of the Council and Design Review Board.

Further, the Council rightly was concerned about the Approvals setting a dangerous precedent. Approximately eight other lots have a similar "Lot A," the exclusion of which would eviscerate the Zoning Code height restrictions which have consistently maintained a uniform corridor along the bluff top.

Mr. Fuszard respectfully requests that the Commission reject the City's approval of the coastal development permit for the Property. Further, as proposed the Property is irreconcilable with the Local Coastal Plan and no investigation has been made to support the mandatory finding that the development is in conformity with the Coastal Act.

Respectfully submitted,


David C. Smith

Honorable Coastal Commission Members

Steven Rynas

May 19, 1998

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