

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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**RECORD PACKET COPY**

Filed: 12-23-98
49th Day: 02-10-99
180th Day: 06-21-99
Staff: RMR/LB *RMR*
Staff Report: 02-16-99
Hearing Date: March 9-12, 1999
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: **5-98-473**

APPLICANT: Michael & Sybil Carney AGENT: Donald Stine

PROJECT LOCATION: 1030 W. Bay Ave., Newport Beach, Orange County

PROJECT DESCRIPTION: Demolition of an existing single-family residence and construction of a new 29 foot high, two-story, 3,672 square foot single-family residence with a 484 square foot garage and two parking spaces. No grading is proposed.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **approve** the proposed development with conformance with removal of construction materials and provision concerning.

ISSUES OF CONTROVERSY:

The demolition and construction of new homes fronting on Newport Harbor are normally processed as de minimis waivers, unless the applicant is adding a basement or is proposing improvements to the bulkhead. In this instance the applicant is proposing minor repairs to the bulkhead, consisting of replacing the concrete cap and replacing the tie-backs. No other changes are proposed for the existing concrete bulkhead. No changes are proposed for the existing private boating facility.

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

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan

LIST OF EXHIBITS:

1. Project Vicinity Map
 2. Land Use Plan Map
 3. Vicinity Street Map
 4. Proposed Site Plan
 5. Existing Site Plan
 6. Existing Bulkhead and Boat Dock
 7. Letter Amending Bulkhead Improvements
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STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth

below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions.

1. Construction Responsibilities and Debris Removal

The applicants agree not to store any construction materials or waste where it is subject to wave erosion and dispersion. The permittee shall remove from the beach, water and the bulkhead area any and all debris resulting from construction. No mechanized equipment is allowed seaward of the bulkhead at any time.

2. Improvements to Bulkhead

If in the course of demolition and construction of the existing single-family residence, the applicant uncovers structural problems with the existing bulkhead infrastructure (beyond that permitted in this staff report) which require remediation, the applicant shall immediately notify the Executive Director in writing for a determination as to whether any proposed construction on or near the bulkhead requires a coastal development permit or an amendment to this permit. No improvement to the bulkhead shall occur prior to such Executive Director determination and approval of any necessary permit or permit amendment from the Coastal Commission. Moreover, additional work on the bulkhead may require the approval of the California Department of Fish and Game, the Army Corps of Engineers and the Regional Water Quality Control Board.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description

Demolition of an existing single-family residence and construction of a new 29 foot high, two-story, 3,672 square foot single-family residence with a 484 square foot garage and two parking spaces. No grading is proposed. (see Exhibits 1 and 2)

The proposed development site is located in the Balboa Peninsula on Newport Bay. The site is currently occupied by a single-family residence with a concrete bulkhead, pier, platform, ramp and dock. Public access to the Bay is provided at the adjacent street end, however, no lateral or vertical public access is available at the site. There is a public park on the Bay between 9th and 10th streets.

Bay Avenue is developed with single-family residences with private boating recreational facilities.

B. Marine Resources

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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

The applicant is proposing to demolish an existing single-family residence and construct a new single-family residence. The property currently has a concrete

bulkhead and a private recreational boating facility consisting of a pier and platform, gangway and float or dock. No improvements are proposed for the existing boating facility.

The applicant had the bulkhead inspected and determined that the only improvements necessary for the bulkhead were to put a new concrete cap on the bulkhead and replace the tie-backs. There will be no change to the appearance, dimensions or height of the bulkhead (see Exhibit 7). No construction is proposed beyond the existing concrete bulkhead. However, in order to prevent adverse impacts to marine waters and marine life from construction (debris, chemicals, oils, etc. which could harm marine organisms), special condition one of this staff report requires that the applicant store any construction materials landward of the bulkhead, remove any and all construction debris seaward of the bulkhead and not place any machinery in the tidal zone. As conditioned, the Commission finds that the proposed development conforms with Section 30230 and 30231 of the Coastal Act.

In addition, special condition two of this staff report requires that the applicant notify South Coast Commission staff in the event that additional work is required for repair of the existing bulkhead. Any additional work may require a permit or permit amendment from the Commission, as well as approvals from other agencies such as the Regional Water Quality Control Board and the Army Corps of Engineers.

Only as conditioned, does the Commission find the proposed development is consistent with Section 30230 and 30231 of the Coastal Act.

C. Public Access and Recreation

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea includes a specific finding that the development is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. The proposed development is located between the sea and the first public road.

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 proposed development is located on Bay Avenue in the Lower Newport Bay portion of Newport Harbor.

The proposed development consists of the demolition of an existing residence, the construction of a new residence, and minor improvements to the existing bulkhead. No construction is proposed seaward of the existing bulkhead. No improvements are proposed to the existing private boating facility which consists of a pier and platform, ramp and float. The development will have no adverse impacts on coastal access and recreation.

Sections 30210, 30211 and 30212 of the Coastal Act require that new development provide maximum public access and recreation, not interfere with the public's right of acquired access, and provide public access from the nearest public roadway to the shoreline and along the coast except under certain circumstances. Public vertical and lateral access does not exist in the immediate project vicinity because the waterfront in this area is dominated by private boat docks and ramps. Public access to the bay is available at street ends (11th Street) and at a public park between 10th and 9th streets.

In this case the proposed improvement, is the replacement of an existing single-family residence with a new single-family residence. The proposed development does not constitute an intensification of use. The proposed development will not create additional significant adverse impacts to public beach access. Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on public access and recreation and is consistent with Section 30212 of the Coastal Act.

D. Land Use Plan

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal 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 Chapter 3 policies of the Coastal Act.

The Commission certified the Land Use Plan for the City of Newport Beach on May 19, 1982. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan regarding development in coastal waters. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

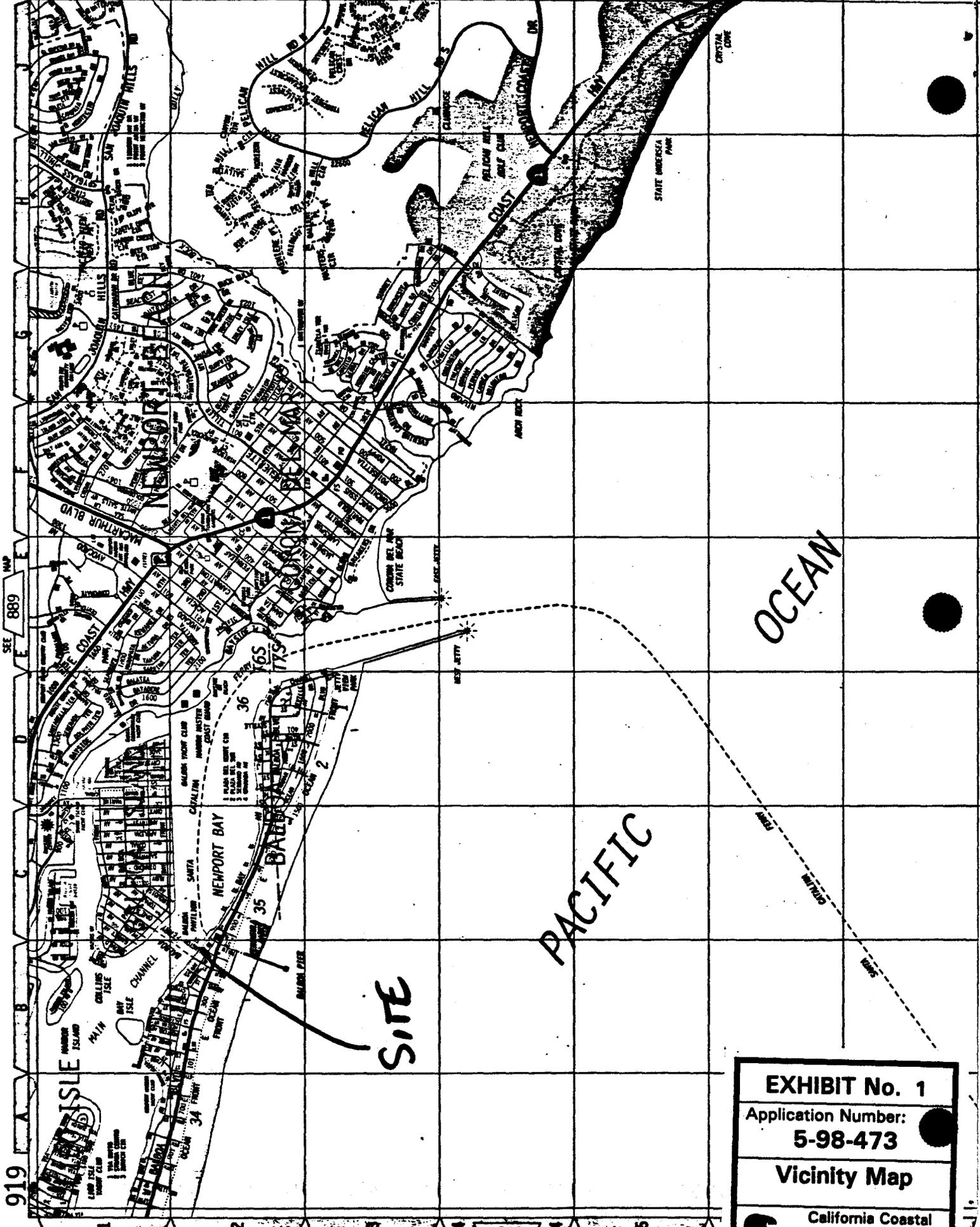
E. Consistency with the California Environmental Quality Act

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 amendment to the coastal development permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(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 project has been conditioned in order to be found consistent with the marine resource protection policies of Section 30230 and 30231 of the Coastal Act. Mitigation measures; special conditions requiring removal of construction debris and notifying the Executive Director in the event additional work is required on the bulkhead, will minimize all adverse effects. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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SEE 889 MAP

919

SEE 918 MAP

EXHIBIT No. 1
Application Number: 5-98-473
Vicinity Map
California Coastal Commission

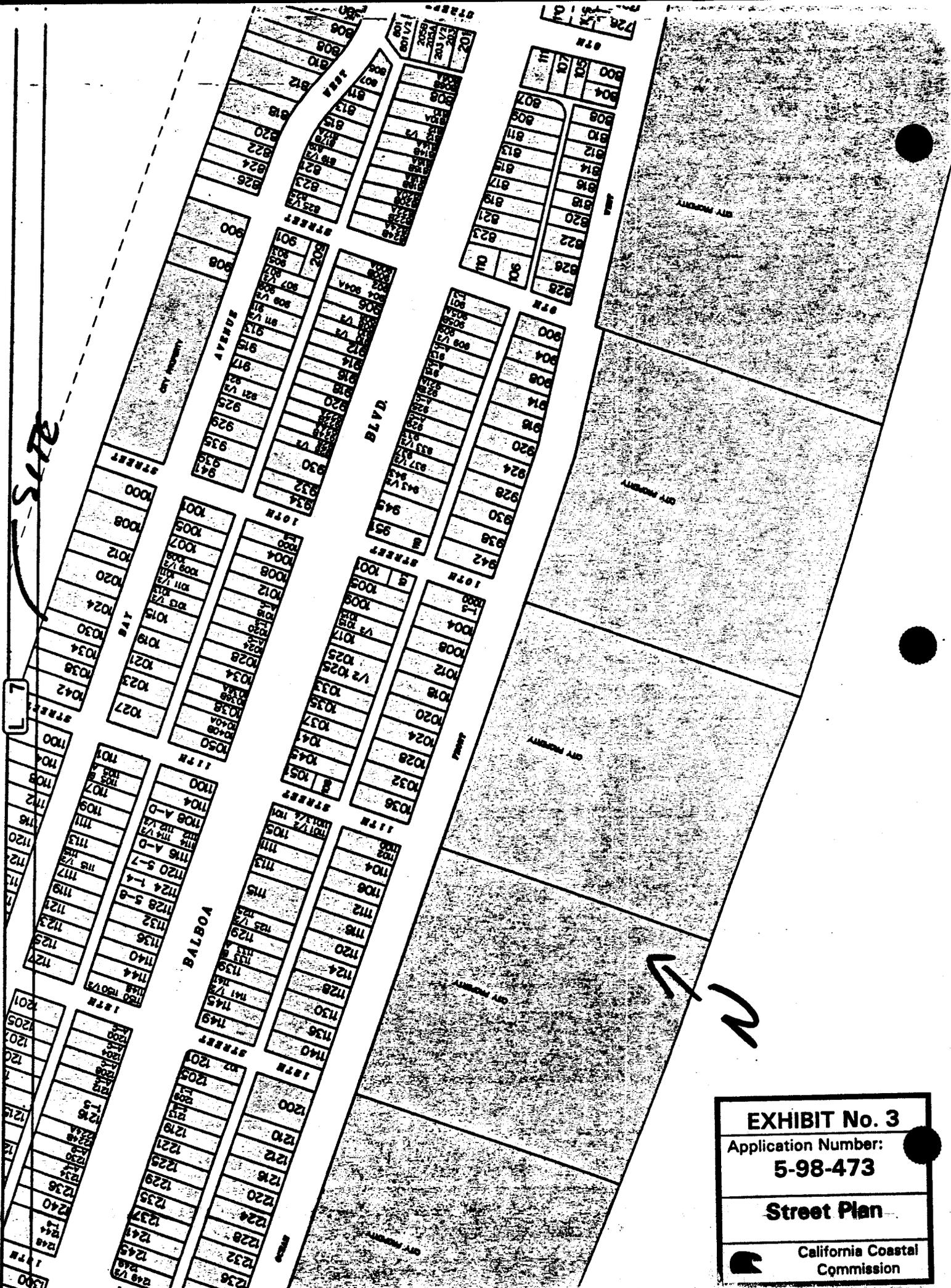
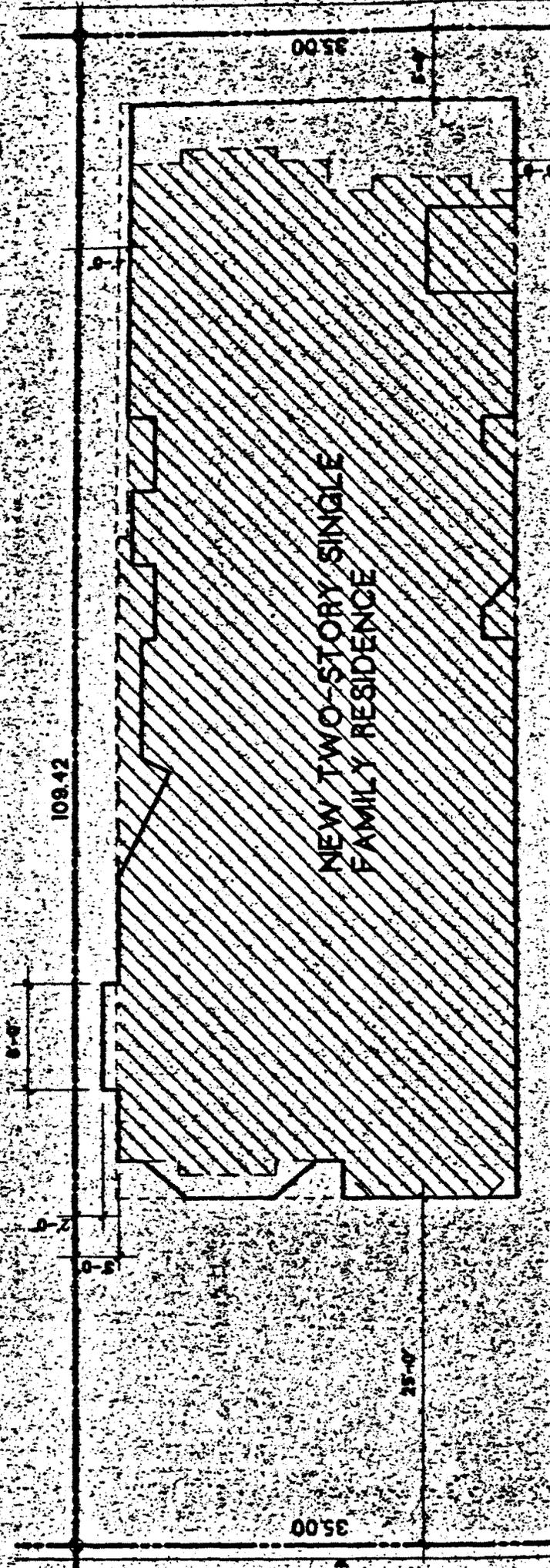


EXHIBIT No. 3
 Application Number:
5-98-473

Street Plan

California Coastal
 Commission



1/8" = 1'-0"

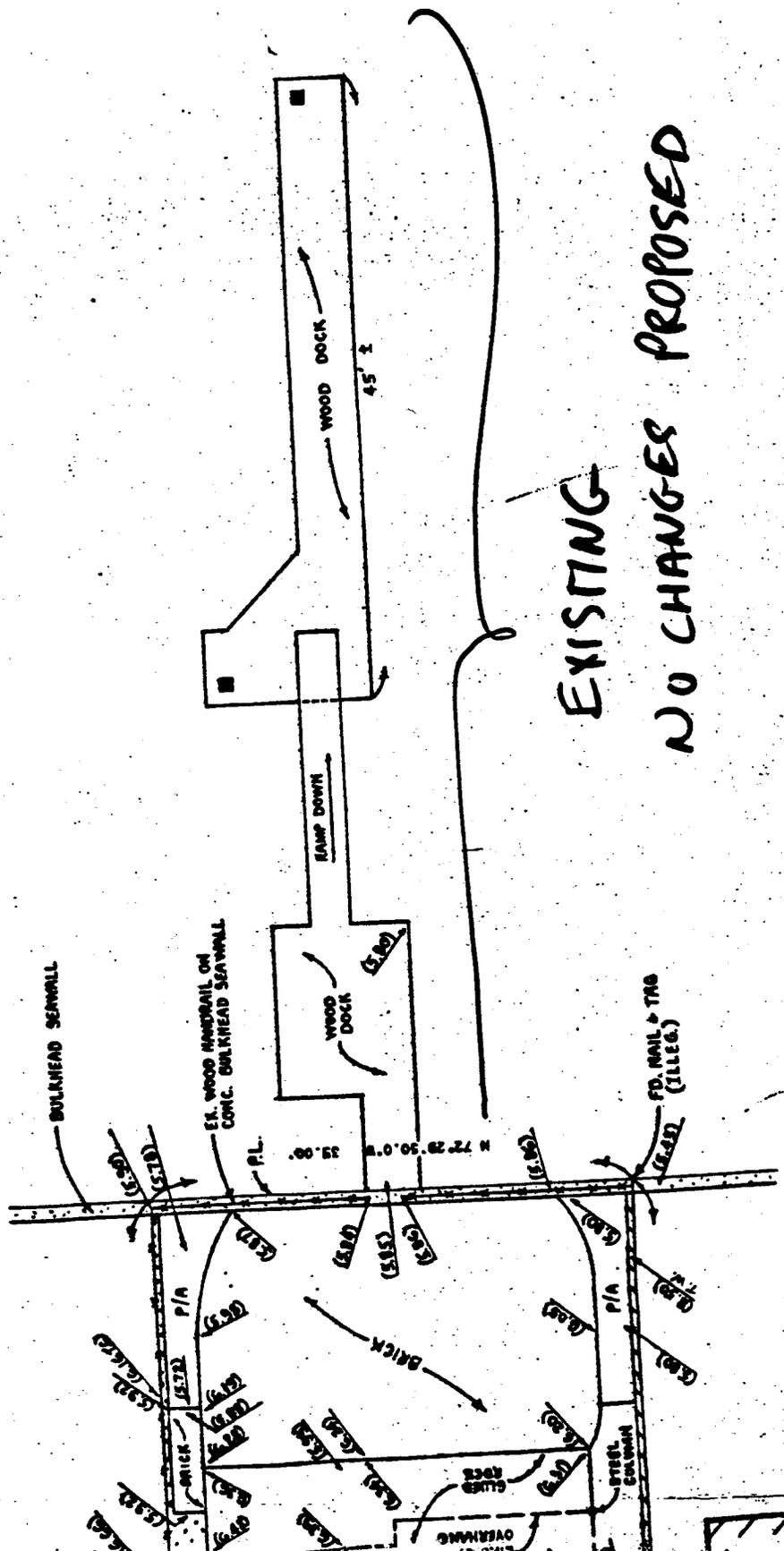
LEGEND:

-  FIRST FLOOR AREA
-  SECOND FLOOR AREA

EXHIBIT No. 4	
Application Number: 5-98-473	
Site Plan	
	California Coastal Commission

CITY OF NEWPORT BEACH 20
 APPROVAL BY CONCEPT NO. 20
 This project conforms to all applicable
 and policies in effect on 8-1-80.
 These plans are not to be used in
 building permit applications without the
 approval of the California Coastal Commission
 PLANNING DEPARTMENT
 By *[Signature]* Feb 1980

LEGEND



EXISTING
 NO CHANGES PROPOSED

EXHIBIT No. 6	
Application Number: 5-98-473	
Dock Plan	
	California Coastal Commission

**STINE
ARCHITECTURE**
Donald Chris Stine - Architect
CALIFORNIA LICENSE NO. 12700

819 West 16th Street, Newport Beach, Ca. 92663 Phone (949) 650-1200 Fax (949) 650-1201
1287 Vista del Lago, San Luis Obispo, Ca. 93405 Phone & Fax (805) 545-0615

November 25, 1998

FAXED TO: 1-562-590-5084

MR. ROBIN MALONEY-RAMES
CALIFORNIA COASTAL COMMISSION
200 Oceangate, Suite 1000
Long Beach, CA 90802-4307

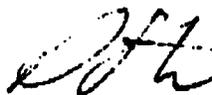
Subject: Application No. 5-98-473
1930 West Bay Avenue, Newport Beach

Dear Mr. Maloney-Rames:

Per our phone conversation today, we wish to modify our application request regarding the bulkhead for this project.

The bulkhead has been inspected by a bulkhead specialist. He stated that the bulkhead wall is in good shape. Only the concrete cap will be replaced along with the tie-backs which anchor the wall to the property. There will be no change to the appearance, dimensions or heights of the bulkhead.

Sincerely,
STINE ARCHITECTURE



Donald C. Stine
Architect 12700

EXHIBIT No. 7
Application Number: 5-98-473
Letter
California Coastal Commission