

CALIFORNIA COASTAL COMMISSION

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 Staff: CP-LB
 Staff Report: 2/23/2000
 Hearing Date: March 14-17, 2000
 Commission Action:

STAFF REPORT: PERMIT AMENDMENT**APPLICATION NUMBER:** 5-95-116-A2**APPLICANT:** W. Paul Bailey**AGENTS:** Patrick J. Cunningham & Rana Makarem, C & C Partners,**PROJECT LOCATION:** 2601 Grand Canal, Venice, City of Los Angeles,
Los Angeles County.**DESCRIPTION OF PROJECT ORIGINALLY APPROVED JULY 11, 1995 (5-95-116):**

Demolition of a one-story, 595 square foot single family residence, and construction of a 30-foot high, two-story with basement, 2,700 square foot single family residence with an attached two-car garage.

DESCRIPTION OF FIRST AMENDMENT REQUEST APPROVED JANUARY 14, 1999:

Revised project resulting in the construction of a three-story, 30-foot high (with 39-foot high roof access structure), 3,425 square foot single family residence with an attached two-car garage.

DESCRIPTION OF CURRENT AMENDMENT REQUEST (5-95-116-A2):

Remove impervious patio and replace with a pervious yard area to comply with special condition one of Coastal Development Permit 5-95-116.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed amendment with a special condition that requires the applicant to complete, within ninety days of Commission action, the proposed development that is necessary to bring the previously approved development into conformance with special condition one of Coastal Development Permit 5-95-116 (i.e., remove impervious patio and replace with a pervious yard area). The applicant agrees with the recommendation.

PROCEDURAL NOTE:

The development proposed by this amendment request is proposed to rectify an alleged violation of special condition one of the underlying permit, Coastal Development Permit 5-95-116, which requires the maintenance of a 450 square foot uncovered and pervious yard area between the front of the structure and the front (canal) property line. The Executive Director has determined that the proposed amendment is a material amendment due to the alleged violation of the permit condition. If the applicant or an objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. [14 California Code of Regulations 13166].

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **APPROVE** the permit amendment application with a special condition:

MOTION

"I move that the Commission approve the proposed amendment to Coastal Development Permit 5-95-116 pursuant to the staff recommendation."

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

I. Resolution to Approve a Permit Amendment

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. Special Condition

The five original special conditions of Coastal Development Permit 5-95-116, as amended by 5-95-116-A1, remain unchanged by this amendment (Appendix A). The following special condition is in addition to the five existing special conditions of the permit.

1. Project Completion

Within ninety (90) days of Commission action on this amendment request, or within such additional time as the Executive Director may grant for good cause, the applicant shall complete the development approved by this amendment (remove impervious patio and replace with a pervious yard area) that is necessary to comply with special condition one of Coastal Development Permit 5-95-116. Pursuant to this requirement, the permittee shall notify the Executive Director in writing of the commencement of the removal of the existing impervious patio from the site. Such written notice shall be sent to the Commission's Long Beach office within 48 hours of the commencement of the removal of the existing impervious patio from the site. A site inspection by Commission staff shall verify whether the site is in compliance with this condition and special condition one of Coastal Development Permit 5-95-116. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

III. Findings and Declarations

The Commission hereby finds and declares:

A. Project History and Description

On July 11, 1995, the Commission approved Coastal Development Permit 5-95-116 for the demolition of a one-story single family residence, and construction of a 30-foot high, three-level, 2,700 square foot single family residence. Coastal Development Permit 5-95-116 was issued on March 28, 1996.

On January 14, 1999, the Commission approved an after-the-fact coastal development permit amendment (5-95-116-A1) for a revised project that resulted in a three-story, 30-foot high (with 39-foot high roof access structure), 3,425 square foot single family residence with an attached two-car garage. The Commission's approval of amendment 5-95-116-A1 permitted the applicant to construct a larger residence with a one hundred square foot roof access structure that exceeds the Venice Canal's thirty-foot height limit by nine feet (See Appendix A for amended special condition four of Coastal Development Permit 5-95-116). The approved single family residence has been constructed and is currently being occupied.

The currently proposed amendment (5-95-116-A2) relates to the pervious yard area requirement of special condition one of Coastal Development Permit 5-95-116, which states:

1. Pervious Yard Area

In order to provide a setback for access, visual quality, and to protect the water quality and biological productivity of the canals, an uncovered and pervious yard area totaling no less than 450 square feet shall be maintained in the front yard area between the front of the structure and the front (canal) property line. No fill or building extensions shall be placed in or over the 450 square foot pervious front yard area with the exception of fences or permeable decks at grade. Fences in front yard areas shall not exceed 42 inches in height.

The 450 square foot front yard area situated between the residence and the front (canal) property line is currently improved with an impervious patio that does not comply with special condition one above. The applicant proposes to remove the currently existing impervious patio in the front yard area and replace it with a pervious yard area in order to bring the property into compliance with special condition one above (Exhibit #3).

B. Pervious Yard Area Requirement

The project site is a 2,700 square foot lot situated on the west bank of Grand Canal in the Venice Canals residential area (Exhibit #2). The neighborhood is comprised of both old and new one, two and three-story single family residences, and a few non-conforming duplexes.

The Commission has recognized in both prior permit and appeal decisions that the canals area of Venice is a coastal neighborhood of unique character. In 1975, the Commission developed a set of building standards for the Venice Canals area through hearing and voting on various permits. These standards reflect conditions imposed in a series of permits heard prior to that time. Since then, a set of special conditions, which are periodically updated, have been routinely applied to coastal development permits in the Venice Canals area to address the Coastal Act issues of public access, habitat protection, water quality, preservation of community character, and scale of development. The conditions imposed on the coastal development permits ensure that the development approved in the Venice Canals neighborhood is consistent with the Coastal Act.

One of the special conditions that the Commission has imposed on all new residential projects in the Venice Canals neighborhood is the requirement for the maintenance of a pervious yard area on each canal-fronting lot to absorb and filter rainwater and site drainage before it enters the canals. One purpose of this requirement, which is consistent with the recommendations of the Santa Monica Bay Restoration Project Action Plan, is to reduce the amount of non-point source pollutants that enter the Venice Canals and Ballona

Lagoon. The Coastal Act requires special protection of areas of special biological significance like the Venice Canals and Ballona Lagoon.

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 entrainment, 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 Commission has found that Ballona Lagoon and the Venice Canals are sensitive habitat areas that must be protected. The Venice Canals are located up stream from Ballona Lagoon, within the Ballona Wetlands system. The introduction of urban runoff, including pesticides, garden fertilizers, and runoff from impervious surfaces, can reduce the water quality of the canals which directly impacts the biological productivity of the system. The Ballona Wetlands system is habitat for many species of marine biota, including the state and federally listed endangered least tern.

The Commission has consistently conditioned projects in the Venice Canals to provide and maintain a large pervious front yard as a setback from the canal to enhance public access, to provide an area for percolation to protect the water quality and biological productivity of the canals, and to protect community character by maintaining a comparable scale between buildings in the area. No fill nor building extensions are permitted to be placed in or over the required pervious front yard area with the exception of fences or permeable decks at grade.

When the Commission approved Coastal Development Permit 5-95-116 for construction of a single family residence on the site, the typical requirement for the maintenance of a 450 square foot pervious front yard area was imposed by the Commission and accepted by the applicant. The figure of 450 square feet is based on an average setback of fifteen feet across the thirty-foot width of the subject lot. The Commission's front yard setback

requirement is defined in square footage rather than an absolute lineal measurement to allow for changes in plane which can add architectural interest.

The project plans approved pursuant to Coastal Development Permit 5-95-116 and amendment 5-95-116-A1 set the proposed structure back 17.5 feet from the canal property line (Exhibit #2). Although a stairway is permitted to extend partly into the front yard area, the approved plans provided the required 450 square feet of uncovered and pervious front yard area. The area covered by the stairway was not included in the required 450 square foot yard area.

The applicant accepted the Commission's special condition to maintain the required 450 square foot pervious yard area and recorded a deed restriction on the property to ensure continuous and ongoing compliance with the requirement by any and all future landowners [*Los Angeles County Instrument No. 96-266694, 2/15/96*]. The Commission has consistently required that applicants record the pervious yard area requirement on the property deeds to ensure continuous and ongoing protection of coastal resources and compliance with the requirement (See Appendix A for special condition two of Coastal Development Permit 5-95-116).

The front yard area where the 450 square feet of pervious yard area is required to be maintained is currently improved with an impervious patio that does not comply with special condition one above. It does not comply due to the impervious nature of the existing patio which has been recently constructed using solid tiles. The applicant proposes to remove the existing impervious patio in the front yard area and replace it with a pervious yard area in order to bring the property into compliance with special condition one above (Exhibit #3).

The applicant's proposed plan for the required 450 square foot pervious yard area, shown on Exhibit #3 of this report, would bring the site into compliance with special condition one of the underlying coastal development permit. The proposed plan provides a minimum of 450 square feet of pervious yard area as required, and no fill or building extensions are proposed to be placed in or over the 450 square foot pervious front yard area with the exception of a fence, two planters, and a 73 square foot permeable deck proposed to be constructed with stones placed in sand (no grout).

The Commission has permitted some solid materials, such as permeable decks and planters, to be placed in the required 450 square foot yard area because permeable decks and planters do not conflict with the intent of the requirement which is to provide an area for percolation and to protect community character by maintaining a comparable scale between buildings in the area. A fifteen-to-twenty percent maximum has been used by Commission staff as a guideline to limit the amount of area covered by solid materials in the proposed 450 square foot pervious yard area. Each piece of solid material in the 450 square foot area reduces the actual permeable area provided on the site. Therefore, a fifteen-to-twenty percent limit on the area covered by solid materials is necessary in order to ensure compliance with the intent of the special condition.

The applicant's proposed plan to provide and maintain a 450 square foot pervious front yard area complies with the intent of special condition one of Coastal Development Permit 5-95-116. Therefore, staff recommends that the Commission approve the proposed amendment to the permit with a special condition that requires the applicant to complete, within ninety days of Commission action, the proposed development that is necessary to bring the previously approved development into conformance with special condition one of Coastal Development Permit 5-95-116 (i.e., remove impervious patio and replace with a pervious yard area). As conditioned, the proposed amendment is consistent with the Chapter 3 policies of the Coastal Act.

C. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires Commission approval of coastal development permit application to be supported by a finding showing the application, 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 and permit amendment, as conditioned, has been found consistent with the habitat and coastal access policies of the Coastal Act. All adverse impacts have been minimized and there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact that 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.

D. Violation

A portion of the development which has already occurred on the site does not conform to the special conditions and plans approved under Coastal Development Permit 5-95-116 (Bailey) and amendment 5-95-116-A1. A 450 square foot uncovered and pervious yard area has not been provided and maintained between the front of the structure and the front (canal) property line as required by special condition one of Coastal Development Permit 5-95-116. The development proposed by this amendment would restore the required 450 square foot uncovered and pervious yard in the area between the front of the structure and the front (canal) property line, and would bring the project into conformance with the previous coastal development permit action for the site.

Although development has taken place prior to submission of this permit amendment, consideration of this application has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit amendment does not constitute a waiver of any legal action with regard to any alleged violation of the Coastal Act, nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

APPENDIX A

The following are the original special conditions of Coastal Development Permit 5-95-116 as approved by the Commission on July 11, 1995, and amended on January 14, 1999.

1. Pervious Yard Area

In order to provide a setback for access, visual quality, and to protect the water quality and biological productivity of the canals, an uncovered and pervious yard area totaling no less than 450 square feet shall be maintained in the front yard area between the front of the structure and the front (canal) property line. No fill or building extensions shall be placed in or over the 450 square foot pervious front yard area with the exception of fences or permeable decks at grade. Fences in front yard areas shall not exceed 42 inches in height.

2. Deed Restriction

Prior to issuance of the coastal development permit, the applicant shall submit a deed restriction for recording, subject to the review and approval of the Executive Director, and free of prior liens and encumbrances which the Executive Director determines may affect the interest conveyed, which shall provide for the maintenance of not less than 450 square feet of uncovered and pervious yard area in the front yard adjacent to the canal property line in order to maintain an access corridor, preserve water quality, and protect the biological productivity of the canals. Uncovered means that no fill nor building extensions shall be placed in or over the pervious yard area with the exception of fences or permeable decks at grade. Fences in front yard area shall not exceed 42 inches in height. The deed restriction shall run with the land, binding on all heirs and assigns of the applicant.

3. Parking

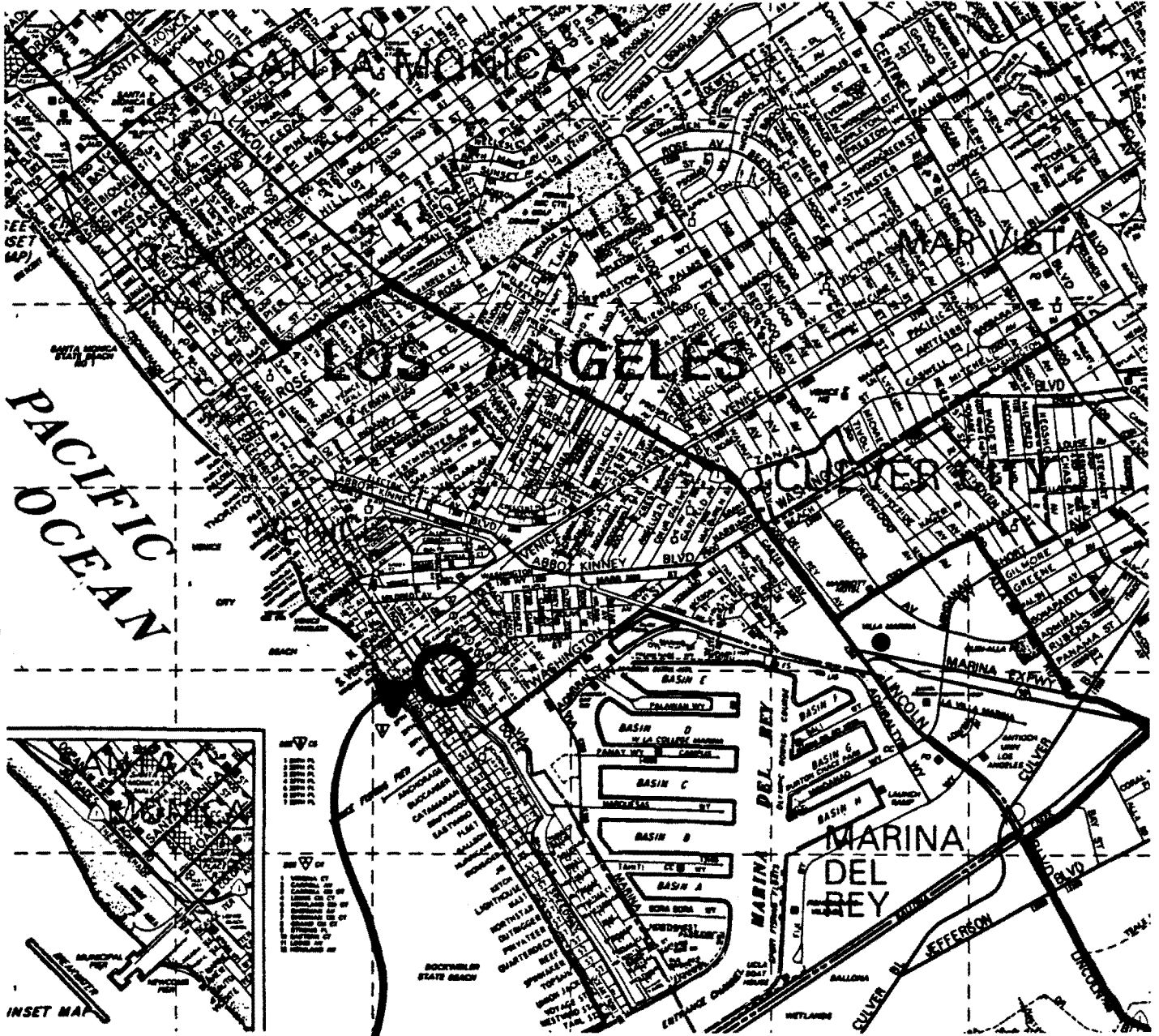
A minimum of three parking spaces shall be provided and maintained on the site.

4. Height (as revised per Amendment 5-95-116-A1)

The height of the roof shall not exceed thirty feet above the elevation of the centerline of the canal walkway. One roof access structure, with a footprint not exceeding 100 square feet in area, may extend up to 39 feet above the elevation of the centerline of the canal walkway as shown in the approved plans. In order to reduce the visual impact of the roof access structure from the canal walkway which fronts the site, the roof access structure shall be set back a minimum of 50 linear feet from the canal walkway which fronts the site. Roof deck railings and roof equipment enclosures may not exceed 42 inches above the thirty-foot roof elevation.

5. Drainage

Prior to issuance of the coastal development permit, the applicant shall submit plans, subject to the review and approval of the Executive Director, for a one hundred cubic foot french drain or other water filtering device which provides equivalent on-site percolation. The french drain or other water filtering device must be constructed and maintained as shown on the final approved plans.



Site

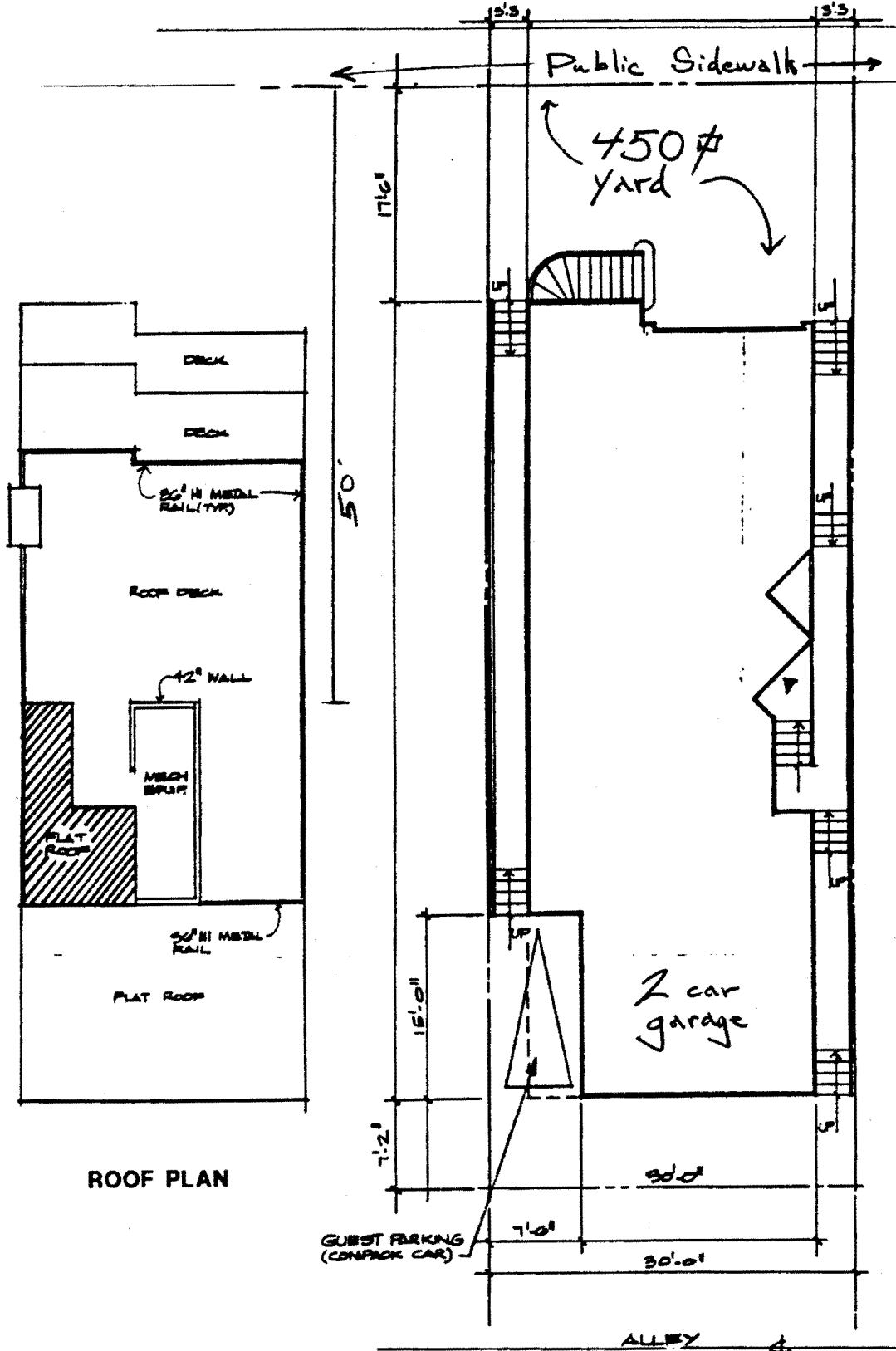
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EXHIBIT # 1

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GRAND CANAL



ROOF PLAN

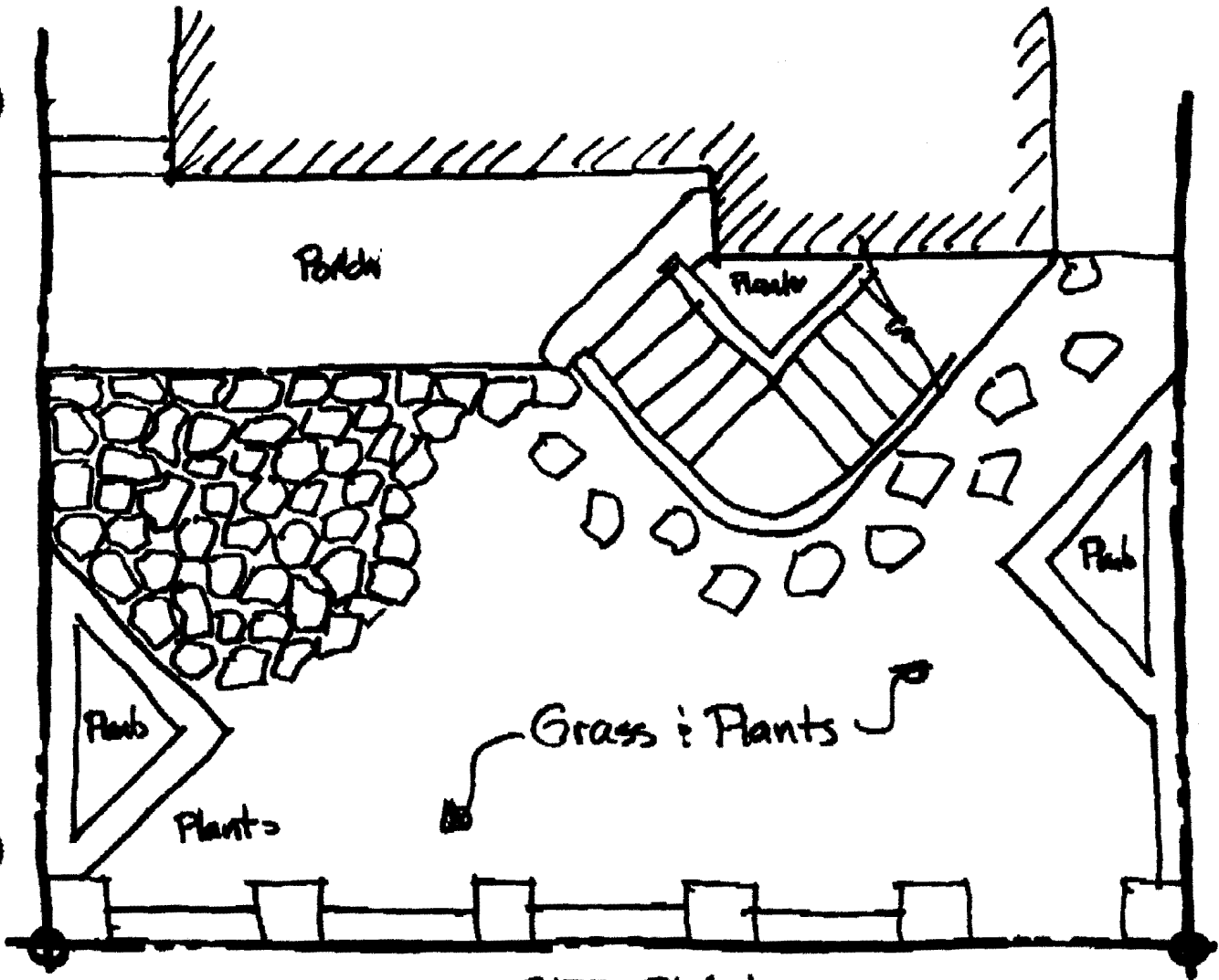
SITE PLAN

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EXHIBIT # 2

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SITE PLAN

<u>40</u>	455.625	(Total Permissible Area)
	- 450	(less required Permissible Area)
	<hr/>	
	5.625	
	+ 67.5	(15% allow coverage of perm. area)
	<hr/>	
	73.125	


 Proposed s.f. of
 stones placed in
 sand - no grout

NO

