

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

767-2370

RECORD PACKET COPY**Tue 11c**

Filed: 1/24/01
 49th Day: 3/14/01
 180th Day: 7/23/01
 Staff: BP-SD
 Staff Report: 2/28/01
 Hearing Date: 3/13-16/01

STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Carlsbad

DECISION: Approval with Conditions

APPEAL NO.: A-6-CII-01-20

APPLICANT: Thoryk Architecture

PROJECT DESCRIPTION: Demolition of an existing 3,344 -sq. ft. three unit residential structure and construction of a two-story, 28-foot high, 3,572 sq.ft. single family dwelling and attached 416 sq.ft garage on an 8,712 sq.ft. blufftop site. Also proposed is removal of an existing wooden bluff stairway and installation of a new concrete stairway, planter, drainage structure and decks on the bluff face.

PROJECT LOCATION: 3075 Ocean Street, Carlsbad (San Diego County) APN 155-104-04

APPELLANTS: Coastal Commissioners Patrick Kruer and Patricia McCoy

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Carlsbad Local Coastal Program (LCP)/Mello II Segment, Carlsbad Coastal Development Permit CDP 99-53

I. Appellant Contends That:

The appellants contend that the City's approval is inconsistent with Carlsbad LCP provisions pertaining to shoreline development, public access, coastal bluff protection, ocean setback (stringline) and the water quality provisions in the certified LCP.

II. Local Government Action:

The proposed development was approved by the City of Carlsbad Planning Commission on January 3, 2001. The conditions of approval address drainage impacts to the ocean, public access and consistency with the certified Mello II LCP.

III. Appeal Procedures:

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process is the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

IV. **MOTION:** *I move that the Commission determine that Appeal No. A-6-CII-01-20 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a NO vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-6-CII-01-20 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. **Findings and Declarations.**

The Commission finds and declares as follows:

1. **Project Description/Permit History.** The proposal includes demolition of an existing 3,344 sq. ft. three unit residential structure and construction of a two-story, 28-foot high, 3,572 sq.ft. single family dwelling and attached 416-sq.ft garage on an 8,712 sq.ft. blufftop site in the City of Carlsbad. Also proposed is removal of an existing wooden bluff stairway and installation of a new concrete stairway, planter, drainage structure and decks on the bluff face. The City approved approximately 40 cubic yards of balanced grading, ostensibly for a deeper foundation for that portion of the residence that is seaward of the existing structure.

The project site is a coastal bluff located on the west side of Ocean Street, between Oak and Carlsbad Village Drive in the northern part of the City of Carlsbad. The eastern third of the lot (street side) is relatively flat, with steep slopes towards the middle of the lot, than leveling out as it reaches the beach. The site contains an existing concrete seawall with a quarry stone toe and quarry stone on the slope above the wall. According to the applicant, the existing shoreline protection extends across about 5 properties and is about 260 feet in length.

The project area is an established residential infill area (Residential Medium High Land Use Designation based on a density of 19 du/ac) with nearby commercial development

located inland of the project site. Carlsbad State Beach is located approximately 350 feet to the south of the project site.

The standard of review is consistency with the certified City of Carlsbad Local Coastal Program, Mello II segment and the public access policies of the Coastal Act.

2. Stringline. The proposed project is a single family dwelling on a bluff top lot. The certified LCP prohibits new development along the ocean from extending further seaward than a "stringline" drawn between adjacent sites. The goal of limiting new development from extending beyond the stringline is to restrict encroachment onto the shoreline and preserve public views along the shoreline. Section 21.204.050B of the Coastal Shoreline Development Overlay provides:

New development fronting the ocean shall observe at a minimum, an ocean setback based on a "stringline" method of measurement. No enclosed portions of a structure shall be permitted further seaward than allowed by a line drawn between the adjacent structure to the north and south; no decks or other appurtenances shall be permitted further seaward than those allowed by a line drawn between those on the adjacent structures to the north and south. A greater ocean setback may be required for geologic reasons and if specified in the Local Coastal Program.

Additionally, Policy 7-12 of the Mello II LUP states:

Seaward of Ocean Street

New development on the seaward side of Ocean Street shall observe at a minimum, an ocean setback based on a "stringline" method of measurement. No enclosed portions of a structure shall be permitted further seaward than allowed by a line drawn between the adjacent structure to the north and south; no decks or other appurtenances shall be permitted further seaward than those allowed by a line drawn between those on the adjacent structures to the north and south. The policy shall be used on single family, "infill" parcels, and a greater ocean setback may be required for geologic reasons.

The proposed project is new development on the seaward side of Ocean Street. The City found that the project is consistent with the above stringline provisions of the LCP. However, the City applied the stringline incorrectly. The Commission has interpreted the above cited stringline provision of the LCP to require that the "stringline" be measured from the nearest point of adjacent structures immediately to the north and south of the proposed development (ref. CDP Nos. 6-90-25/Kunkel; 6-90-299/Rowe; 6-92-107/Phillips and 6-95-144/Bownes). In this instance, however, the City measured the stringline line from the middle portion of the adjacent structure to the north that juts further seaward than the rest of the structure. Consequently, as approved by the City, the above grade portion of the proposed structure is sited approximately 7 feet further seaward than if measured from the closest corner of the building, inconsistent with the

LUP policy and shoreline ordinance. This results in new development being sited further seaward on the bluff face and nearer the ocean, with potential adverse impacts to public views.

Additionally, the new residential structure also includes a mechanical equipment room which is proposed beneath the proposed elevated concrete deck on the western side of the proposed residence. Grading into the bluff face is required to locate the mechanical equipment room; the room would be approximately 8-feet high and will extend approximately 3-feet above grade. It appears the mechanical equipment room, which is attached to the main residential structure, represents the most seaward portion of the proposed residence and as such, should comply with the stringline associated with the principle structure. As the seawardmost portion of the home, the proposed mechanical equipment room will extend approximately 18-feet seaward of the "principal structure" stringline as determined by staff.

Additionally, the proposed project is also inconsistent with the stringline for accessory structures. The proposed development includes a large concrete planter (12' x 5'), "cosmetic" boulders, private stairs and a drainage structure, all seaward of the proposed residence on the bluff face. The concrete stairs and drainage structure extend to beach level at approximate elevation 10 MSL. The proposed planter extends to elevation 16 MSL, about mid way on the bluff. However, planters and other similar structures on the adjacent sites are located at least 11-feet upland of the subject planter, no lower than elevation 21 MSL. Finally, the proposal includes the installation of large boulders on the bluff face seaward of the mechanical equipment room at approximate elevation 20 MSL. According to the applicant, the boulders are "cosmetic" (are decorative and would not affect bluff stability); however, the Commission finds they must be considered accessory structures for purposes of determining the accessory stringline. As such, the boulders extend approximately 5-feet seaward of the accessory stringline identified by the City. Thus, the Commission finds the proposed development raises a substantial issue with the stringline provisions of the LCP with regards to both the main residence and accessory stringlines.

3. Landform Alteration/Coastal Bluff Preservation. The Mello II LUP contains policies that address bluff preservation. Policy 4-1 provides:

(d) Undevelopable Shoreline Features

No development shall be permitted on any sand or rock beach or on the face of any ocean bluff, with the exception of accessways to provide public beach access and of limited public recreation facilities.

In its approval of the project, the City cited the project's conformance with the blufftop development provisions of the Coastal Shoreline Development Overlay. The overlay is intended to provide land use regulations along the Carlsbad shoreline including beaches, bluffs and the land area immediately landward thereof. The purpose of the overlay zone is to ensure that the public's interest in maintaining the shoreline as a unique recreational

and scenic resource is adequately protected. Additionally, the overlay ensures public safety and public access will be assured and promotes avoidance of the adverse geologic and economic effects of bluff erosion. Section 21.204.050 of the Coastal Shoreline Development Overlay zone provides:

Uses permitted by the underlying zone map may be permitted on non-beach areas subject to granting of a Coastal Development permit for coastal shoreline development issued pursuant to the procedures of Chapter 21.201 of this title, unless specifically prohibited by policies or other applicable ordinances in the approved Carlsbad Local Coastal Program. Non-beach areas are defined as areas at elevations of 10 feet or more above mean sea level. Permitted uses are subject to the following criteria:

- a. Grading and Excavation - Grading and excavation **shall be the minimum necessary** (emphasis added) to complete the proposed development consistent with the provisions of this zone and the following requirements:

[...]

- 1). Building sites shall be graded to direct surface water away from the top of the bluff, or alternatively, drainage shall be handled in a manner satisfactory to the City which will prevent damage to the bluff by surface and percolating water.
- 2) No excavation, grading or deposit of natural materials shall be permitted on the beach or the face of the bluff except to the extent necessary to accomplish construction pursuant to this section.

To preserve coastal bluffs, the Commission has typically interpreted the above section to mean that only at-grade structures not requiring grading and which are consistent with the appropriate stringline are permitted on a bluff face. The Commission has found that "the minimum necessary" for new development on the bluff face means at-grade and ephemeral (like the existing wooden stairs on the site) without requiring excavation which makes such improvements more "permanent" (ref. CDP Nos. 6-92-100/Fulton; 6-92-232/Weldon and 6-93-100/Gilstrap). As noted, the project is proposing a mechanical equipment room seaward of the residence which would require grading within the bluff face. The proposed mechanical equipment room would require approximately 6-feet to 8-feet of excavation below the bluff face's existing grade and would extend approximately an additional 18-feet seaward of the residence.

Additionally, as noted, the project is proposing permanent appurtenant structures (concrete deck, retaining area for the concrete deck, a concrete planter, concrete stairs and a drainage device) on the bluff face which will require excavation into the bluff. Thus, the proposed structures on the bluff face do not appear to be consistent with the bluff protection provisions of the certified LCP. Based on the above, the Commission finds the proposed development raises a substantial issue with respect to conforming with the bluff preservation provisions of the certified LCP.

4. Shoreline Development/Hazards. The Mello II LUP contains policies that address coastal erosion. Policy 4-1 provides:

(a) Development Along Shoreline

For all new development along the shoreline, including additions to existing development, a site specific geologic investigation and analysis similar to that required by the Coastal Commission's Geologic Stability and Bluff Top Guidelines shall be required; for permitted development, this report must demonstrate bluff stability for 75 years, or the expected lifetime of the structure, whichever is greater. Additionally, permitted development shall incorporate, where feasible, subdrainage systems to remove groundwater from the bluffs, and shall use drought-resistant vegetation in landscaping, as well as adhering to the standards of erosion control contained in the Carlsbad Master Drainage Plan. A waiver of public liability shall be required for any permitted development for which an assurance of structural stability cannot be provided.

Additionally, Section 21.204.110 of the Coastal Shoreline Development Overlay zone requires that new development must be sited appropriately with respect to hazards.

The LUP policy requires that bluff stability must be demonstrated through a geotechnical reconnaissance. The City's approval finds that the proposed development conforms to the Coastal Shoreline Development Overlay Zone, but the findings are not substantiated by the geotechnical report for the project; the geotechnical report upon which the City relied did not conform to the requirements established by the LCP for such reports. Thus, the City's finding regarding the geologic stability and safety of the proposed development lacks foundation. The LCP requires a geotechnical report to consider how bluff stability would be affected by marine erosion. The geotechnical report relied on by the City did not even acknowledge the existence of an existing concrete seawall with a quarry stone toe; thus, the effect of wave uprush on bluff stability was not addressed. By failing to identify the existing shoreline protection, the geotechnical report also failed to address the adequacy of the existing protection to protect the proposed improvements and the potential need for future protection. Thus, while the LCP allows shoreline protection to protect existing development, in this case, the required findings were not made to ensure the proposed development is appropriately sited so as to be safe from coastal erosion without requiring future additional shoreline protection.

Section 21.204.120 of the Coastal Shoreline Development Overlay requires an assumption of risk be recorded as a deed restriction to address development in a hazardous location. This was not secured in the City's approval. Thus, as approved by the City, the development raises a substantial issue with regard to the consistency of the proposed development with the shoreline hazard provisions of the certified LCP.

5. Public Access. Section 21.204.070(A)1 of the Coastal Shoreline Development Overlay requires that "Development shall be sited and designed in a manner which does

not interfere or diminish the potential public rights based on historic public use....” The subject lot extends to the mean high tide line and includes sandy beach that has been historically used by the public. Thus, there’s a possibility that the public may have established prescriptive rights over the applicant’s property. Although the City acknowledged public use of the beach on the applicant’s property inland of the mean high tide line by finding that 25-feet of sandy beach was available on the property for public use, the City failed to address how public access would be affected by the existing shoreline protection and the proposed improvements. Section 21.204.060 (Requirements for Public Access) provides:

A. Lateral Public Access:

1. Minimum Requirements. Development shall be **conditioned** (emphasis added) to provide the public with the right to a minimum 25 feet of dry sandy beach at all times of the year. The minimum requirement applies to all new developments proposed along the shoreline requiring any type of local permit including a building permit, minor land division or any other type of discretionary or nondiscretionary action.

Section 21.204.070(A)1 of the Coastal Shoreline Development Overlay requires that “mechanisms for guaranteeing the continued public use of the site shall be required in accordance with Section 21.204.080. Section 21.204.080 identifies that legal instruments (Deed restrictions, Offers to Dedicate, Outright Grant of Fee Interest, etc.) are required for guaranteeing public access unless an area of “equivalent public access” has been provided in the immediate area of the project site. Securing public access through a legal instrument on the beach portion of the lot was not required by the City for the subject development. Additionally, no findings were made with regards to the availability of equivalent public lateral access on the site.

Section 21.204.090 (Site Plans Required) of the Coastal Shoreline Development Overlay requires the location of the bluff line and beach be identified. The City’s approval failed to address the relationship of the existing and proposed improvements to the mean high tide line by requiring a current beach profile which include the location of the mean high tide line. Because the location of the mean high tide line is always changing, it is important to get as accurate measurement of the current mean high tide as possible to assure, in this case, that the existing shoreline protection is on private property and would not adversely affect public access along the beach. As noted, the City did not address the status of the existing shoreline protection (seawall and quarry stone) on the beach portion of the lot. The Commission has found that shoreline protection can have adverse impacts to public access by way of displacing sandy beach that has been historically available for public use and by causing scour and subsequent loss of beach as wave energy is deflected from shoreline protective devices onto the beach. By failing to address the how the existing shoreline protection could affect public access, the Commission finds substantial issue exists with regard to the consistency of the proposed development with the public access policies of the LCP.

6. Public Views. Section 21.204.100(c) of the overlay states "Ocean Views - Buildings, structures, and landscaping will be so located as to preserve to the degree feasible any ocean views as may be visible from the nearest public street." The City did not address long-term preservation of public views. While the City found that the project maintains 5-foot side yard setbacks (where views could be available from Ocean Street to the beach), it did not assure preservation in perpetuity of these public views. The site plan indicates "see through" fences will be installed in the side yard to preserve public views. However, such fences might be replaced with a solid fence sometime in the future and preservation of public views should have been assured in the City's permit because the LCP allow fences to be replaced without a coastal development permit. However, no condition was imposed that required the side yards to be maintained as such in the future. Thus, the City's approval raises a substantial issue with the visual resource provisions of the certified LCP.

7. Water Quality. Chapter 15.12, "Stormwater Management And Discharge Control", of the certified Carlsbad Zoning Ordinance requires "Best Management Practices" (BMPs) to prevent or reduce to the maximum extent practicable (MEP) the discharge of pollutants directly or indirectly into waters of the United States. The purpose of the ordinance is to reduce pollutants in storm water discharges, including those pollutants taken up by storm water as it flows over urban areas (Urban runoff), to the maximum extent practicable and to reduce pollutants in storm water discharges in order to achieve applicable water quality objectives for surface waters in San Diego County. The intent of the ordinance is to protect and enhance the water quality of watercourses and wetlands in a manner pursuant to and consistent with the Clean Water Act and California Regional Water Control Board NPDES Permit No. CA108758, Order 90-42 and any amendment or revision.

Policy 4-6 of the Mello II LUP, "Sediment Control" Practices, provides:

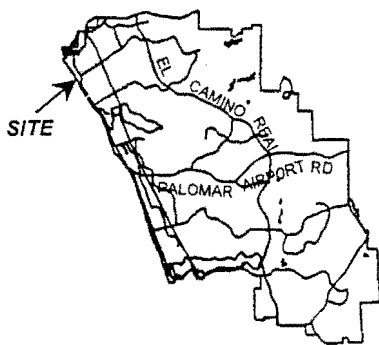
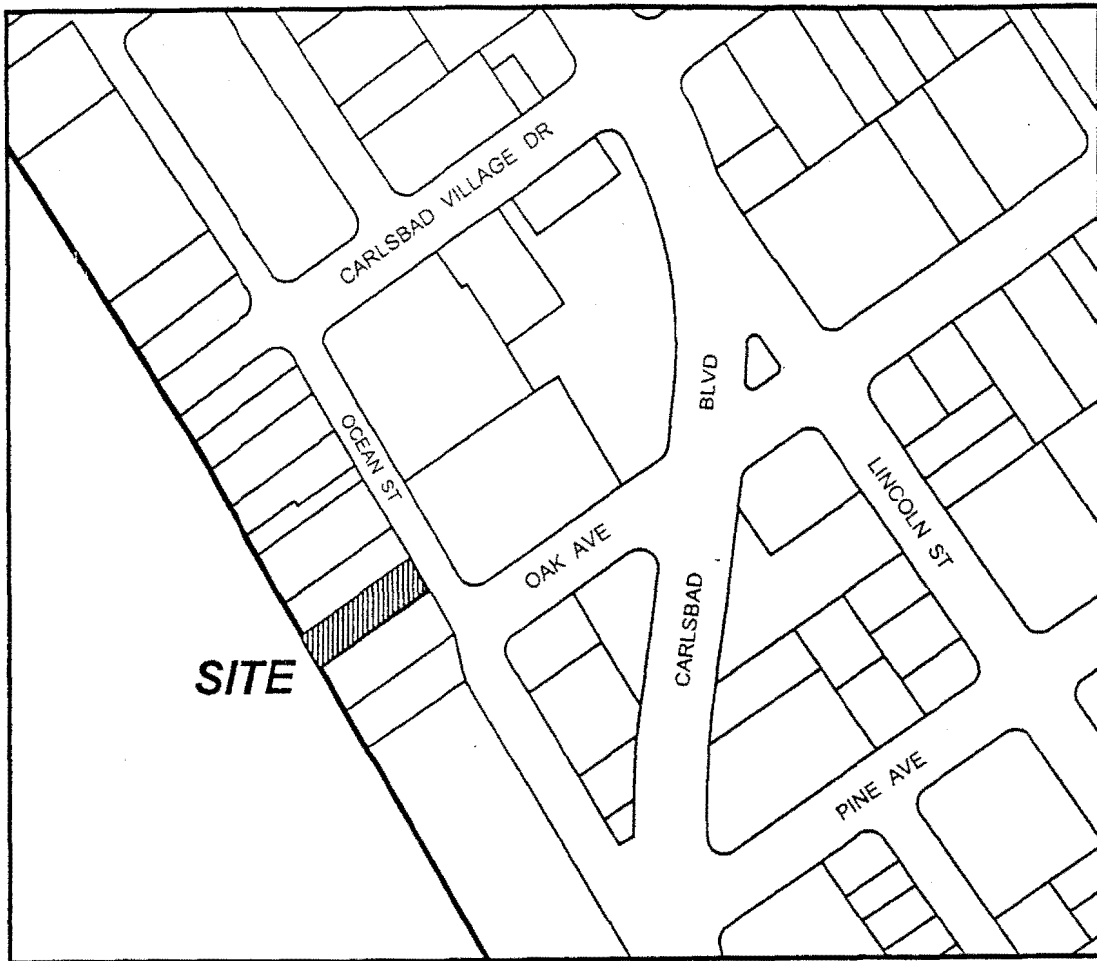
Apply sediment control practices as a perimeter protection to prevent off-site drainage. Preventing sediment from leaving the site should be accomplished by such methods as diversion ditches, sediment traps, vegetative filters and sediment basins. Preventing erosion is of course the most efficient way to control sediment runoff.

In its approval, the City made findings that the project must comply with its NPDES permit by utilizing best management practices to eliminate or reduce surface pollutants when planning any changes to the landscaping and surface improvements. However, the City's permit does not specifically address proposed changes to existing improvements and the potential impacts to water quality. The certified Stormwater Ordinance requires that both the quantity and quality of runoff be addressed to maintain water quality. While the City found that quantity would be addressed by collecting runoff in a proposed drainage system that uses drains, swales and an energy dissipater near the toe of the bluff, it failed to address the quality of the runoff as required in the ordinance. The City found that the project maintained approximately the same amount of impervious surfaces as the pre-existing project and for that reason quality of runoff need not be addressed.

However, the certified LCP requires that best management practices be utilized to assure the quality of the water leaving the site has been addressed to the maximum extent practicable and this was not done. Therefore, the City's approval appears to be inconsistent with the above provisions of the certified LCP.

For the reasons above, the Commission finds the City's approval appears to be inconsistent with applicable provisions of the certified LCP and thus a Substantial Issue exists with the City's approval of the project.

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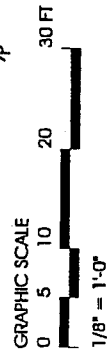
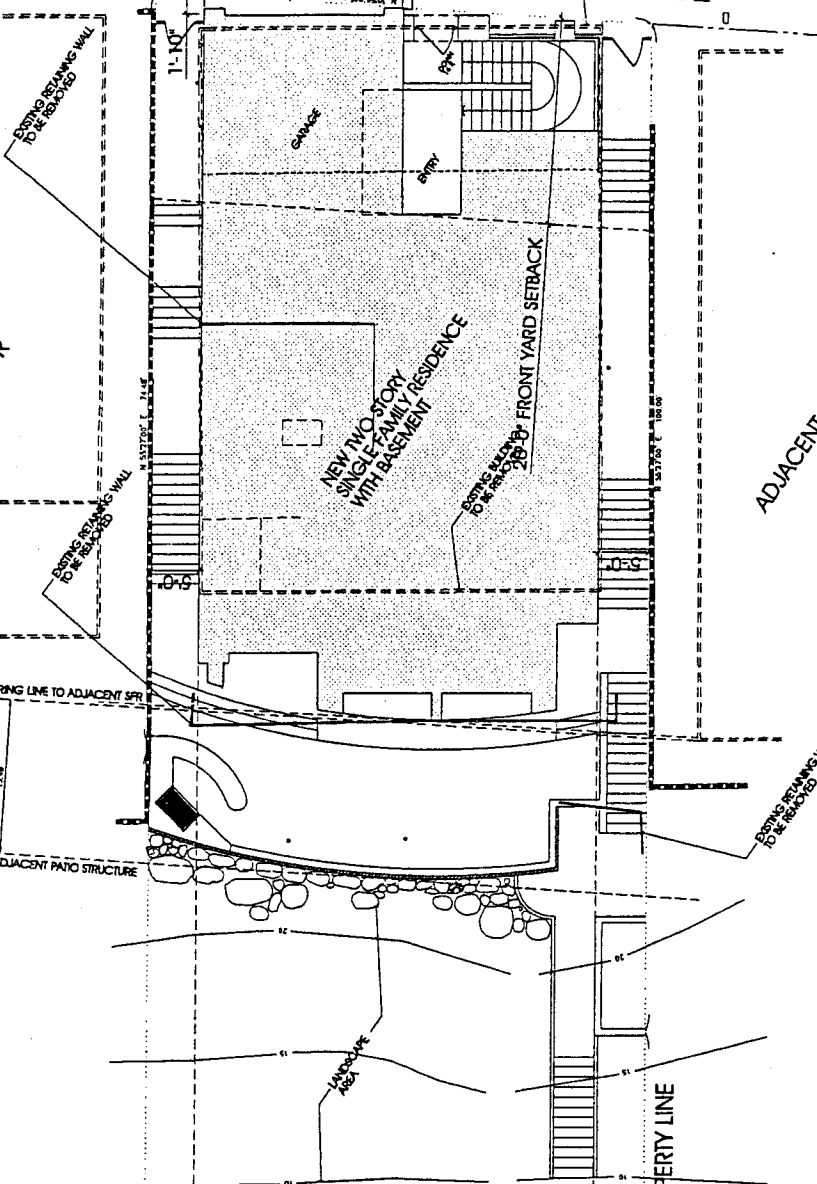
QUIRK RESIDENCE

CDP 00-50/V 00-401

EXHIBIT NO. 1
APPLICATION NO. A-6-CII-01-20
Location
California Coastal Commission

OCEAN STREET

EXISTING WALLS TO BE REMOVED



PROPERTY LINE

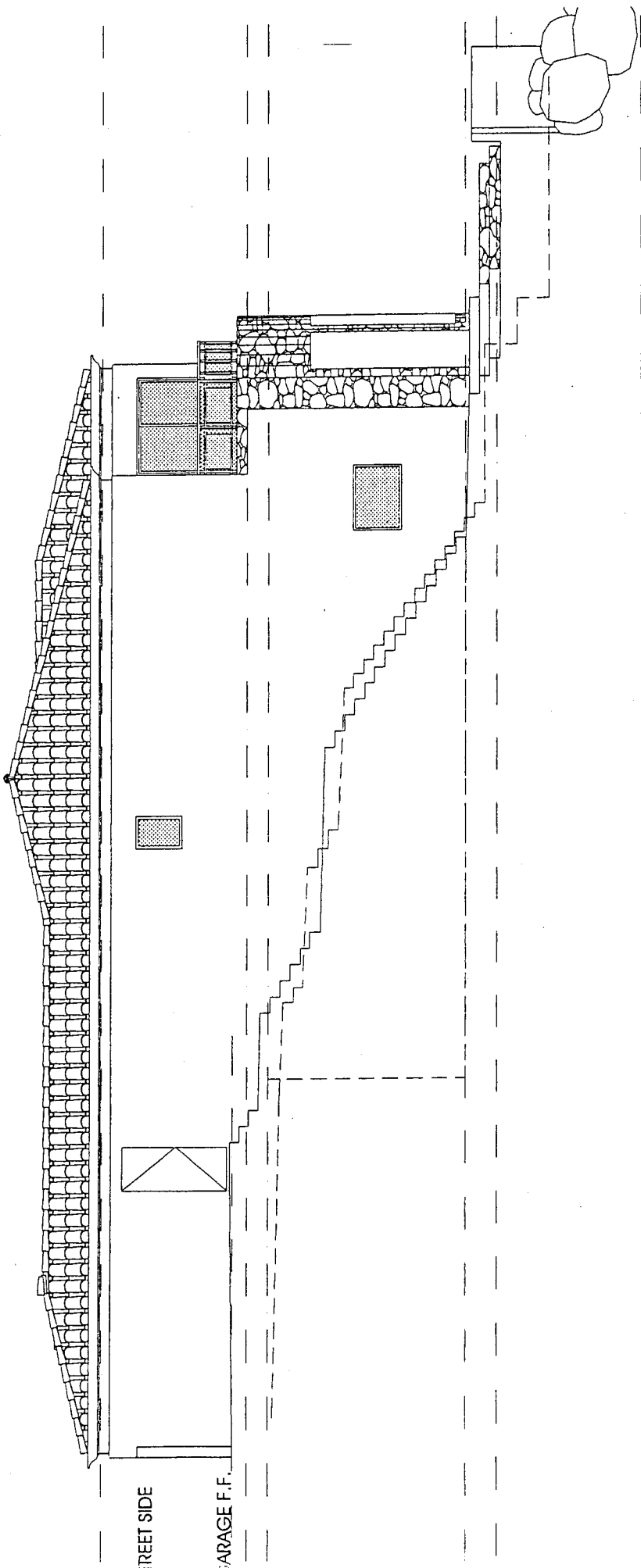
5'-0" SIDE YARD SETBACK

5'-0" SIDE YARD SETBACK

PROPERTY LINE

SITE PLAN
1/8"-1'-0"


EXHIBIT NO. 2
APPLICATION NO. A-6-CII-01-20
Site Plan
California Coastal Commission

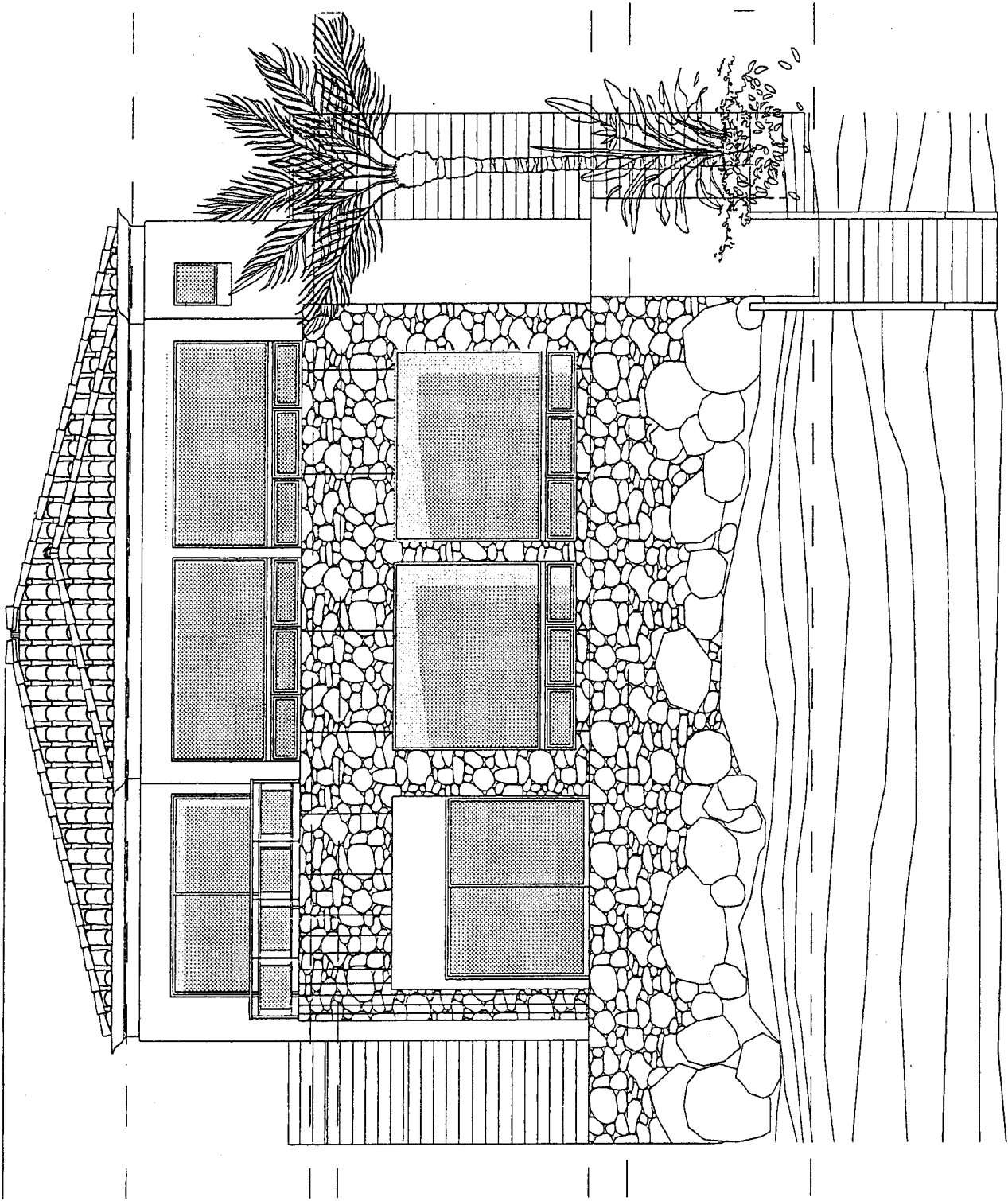


STREET SIDE


GARAGE F.F.

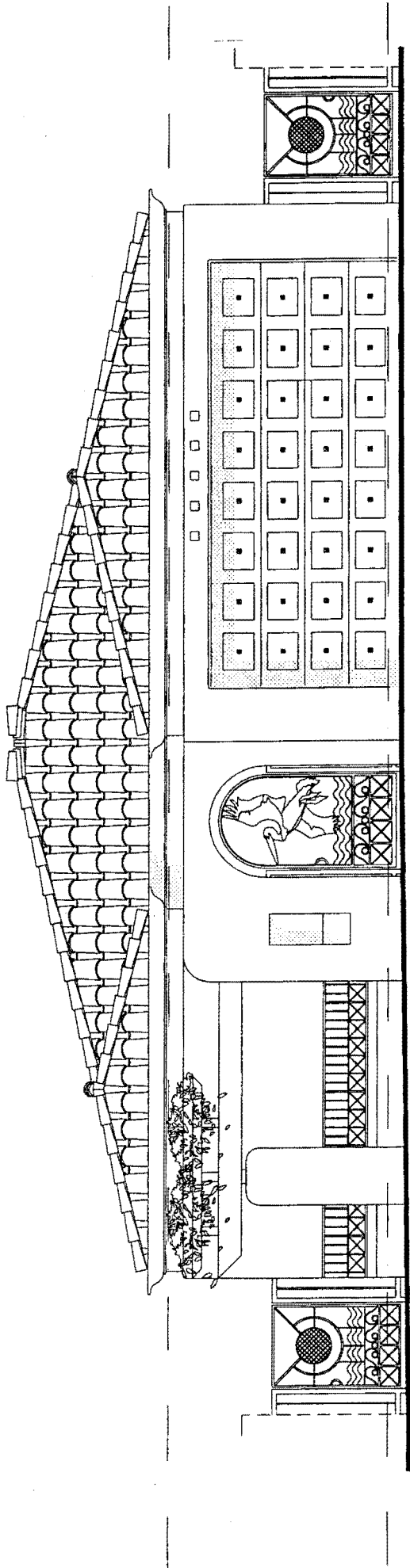
WEST ELEVATION
1/4"=1'-0"

EXHIBIT NO. 3
APPLICATION NO.
A-6-CII-01-20
Elevation
 California Coastal Commission




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

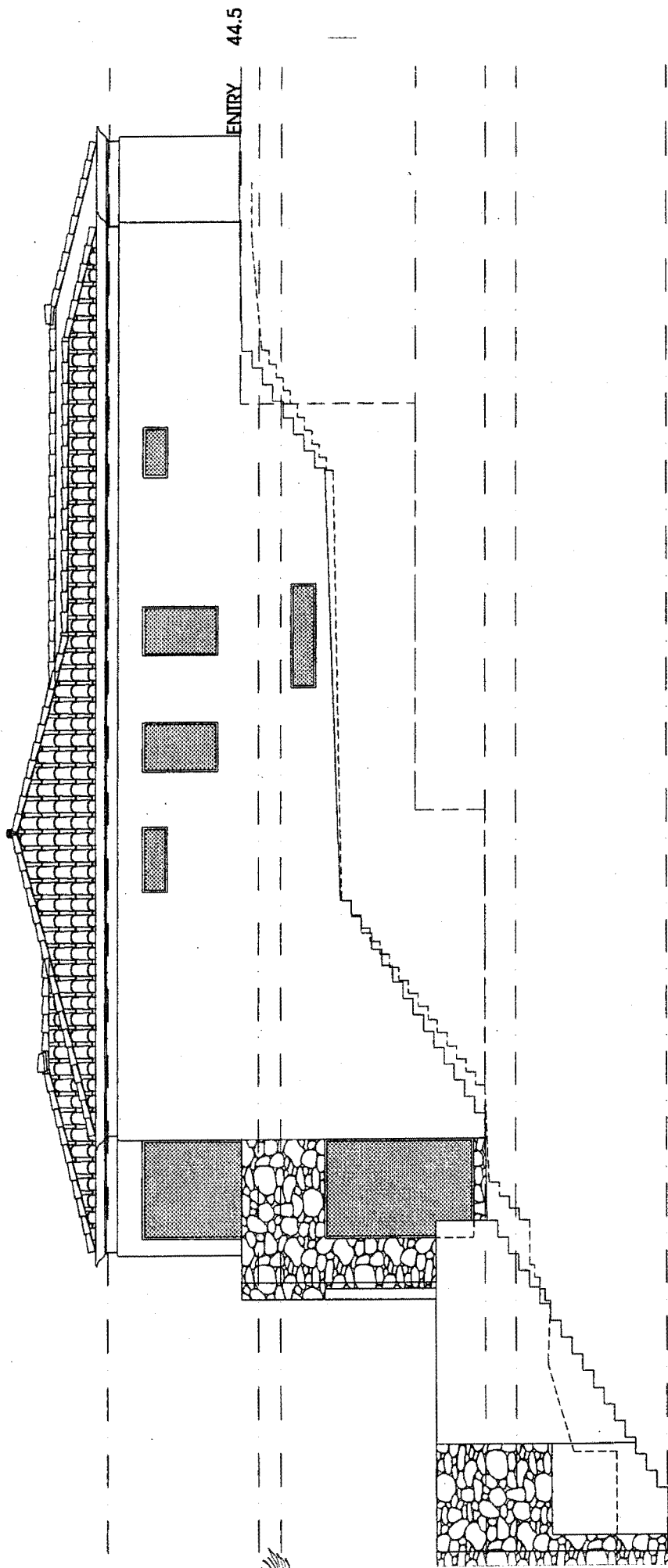
EXHIBIT NO. 4
APPLICATION NO.
A-6-CII-01-20
Elevation
 California Coastal Commission




NORTH ELEVATION

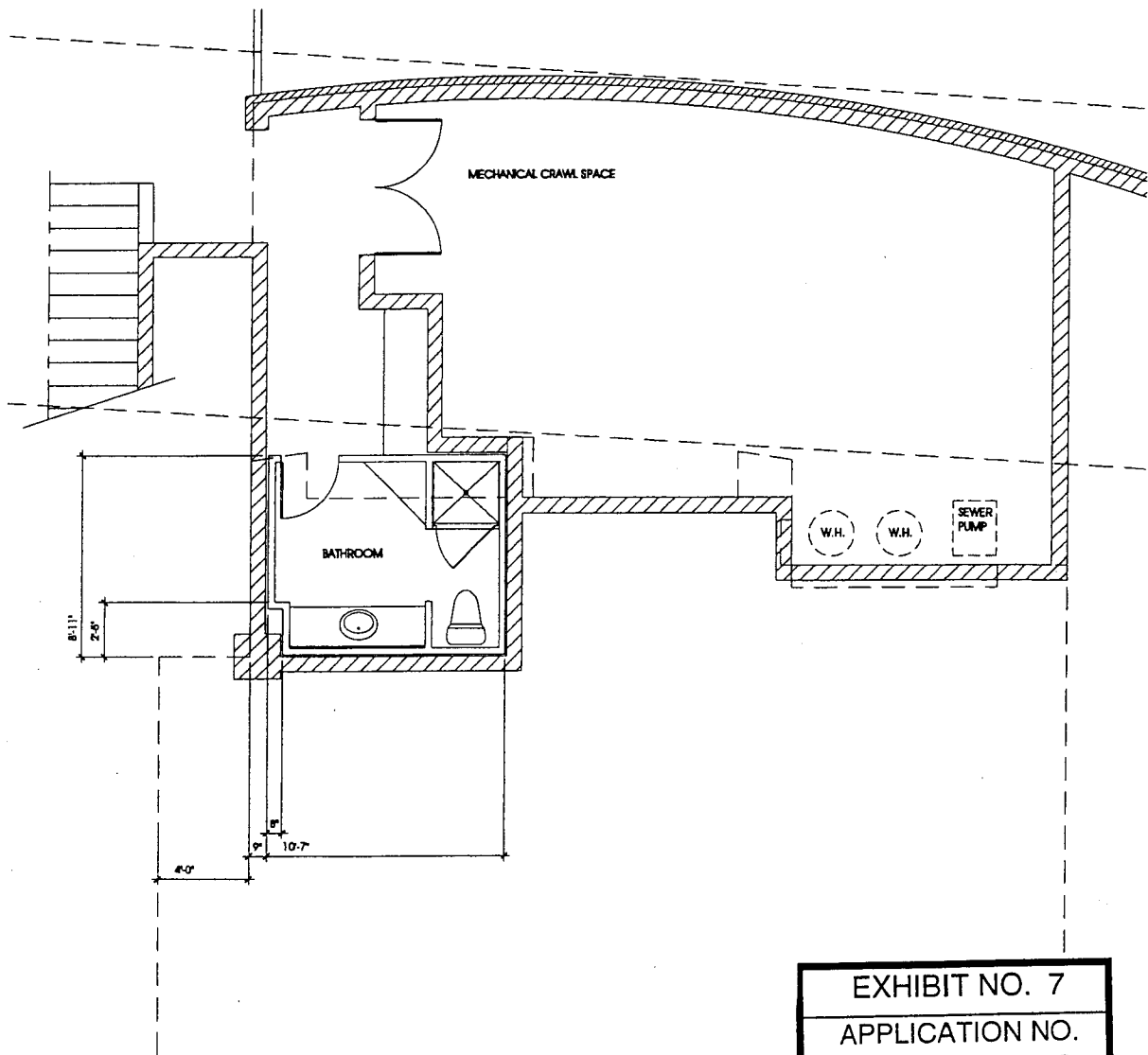
1/4"=1'-0"

EXHIBIT NO. 5
APPLICATION NO.
A-6-CII-01-20
Elevation
 California Coastal Commission




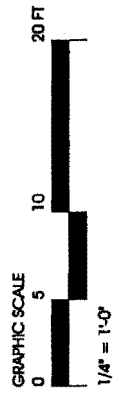
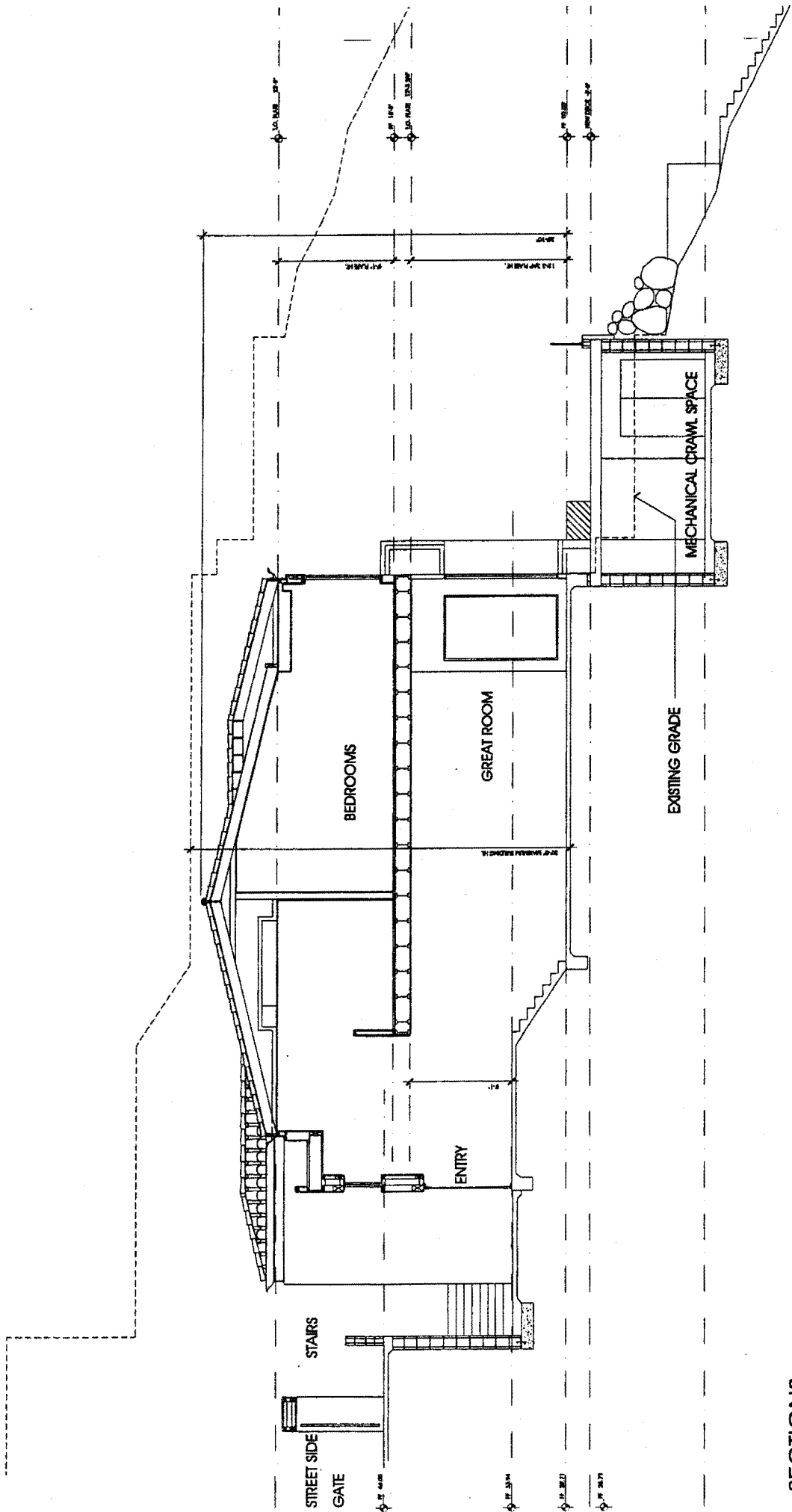
EAST ELEVATION
1/4" = 1'-0"

EXHIBIT NO. 6
APPLICATION NO.
A-6-CII-01-20
Elevation
 California Coastal Commission



PARTIAL LOWER LEVEL
92 SF

EXHIBIT NO. 7
APPLICATION NO. A-6-CII-01-20
Partial Lower Level
 California Coastal Commission



SECTIONS
1/4" = 1'-0"

EXHIBIT NO. 8
APPLICATION NO. A-6-CII-01-20
Mechanical Equipment Room
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Patrick Kruer
Mailing Address: 2445-5th Avenue, #400
San Diego, CA 92101
Phone Number: 619 231-3637

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carlsbad
2. Brief description of development being appealed: Demolish 3-unit residential structure and construct new 28 ft. high single-family dwelling and accessory improvements on blufftop lot.
3. Development's location (street address, assessor's parcel no., cross street, etc.)
3075 Ocean Street, Carlsbad, APN 203-251-08
4. Description of decision being appealed:
 - a. Approval; no special conditions:
 - b. Approval with special conditions:
 - 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: A-6-CII-01-020

DATE FILED: 1/24/01

DISTRICT: San Diego

EXHIBIT NO. 9
APPLICATION NO. A-6-CII-01-20
Commission Appeal
Page 1 - 6
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
- b. City Council/Board of Supervisors
- c. Planning Commission
- d. Other

Date of local government's decision: January 3, 2001

Local government's file number (if any): CDP 00-50

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

Thoryk Architecture
1235 Shafter Street,
San Diego, CA 92106

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.

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.

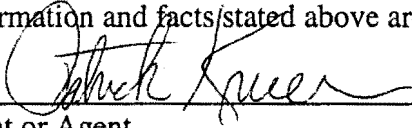
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE attachment A

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.

Signed: 
Appellant or Agent

Date: 1/24/01

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



ATTACHMENT "A" --Quirk Appeal

The proposal includes demolition of an existing three unit residential structure and construction of a two-story, 28-foot high, 3,572 sq.ft. single family dwelling and attached 416 sq.ft garage on a 8,712 sq.ft blufftop site within the Mello II plan area of the Carlsbad Local Coastal Program segment. Also proposed is removal of existing wooden bluff stairway and installation of a new concrete stairway, drainage structure and decks on the bluff face. The project site is a coastal bluff located on the west side of Ocean Street, between Oak and Carlsbad Village Drive. The eastern third of the lot is relatively flat, with slopes of 25% or greater towards the middle of the lot, than leveling out as it reaches the beach. No shoreline protection is proposed, although rock is proposed on the bluff face at the base of the seawall or retaining wall that supports the deck. Existing riprap is located at the base of the bluff and a small retaining wall. The City approved approximately 40 cubic yards of balanced grading, ostensibly for a deeper foundation for that portion of the residence that is seaward of the existing structure. The standard of review for this project is primarily the Mello II LUP and the Coastal Shoreline Development Overlay Zone.

The City found that the project was proposed on the bluff and bluff face and cited the project's conformance with the blufftop development provisions of the overlay. Section 21.204.050-"Uses Not On The Beach Subject to Coastal Shoreline Development Permit" provides:

Uses permitted by the underlying zone map may be permitted on non-beach areas subject to granting of a Coastal Development permit for coastal shoreline development issued pursuant to the procedures of Chapter 21.201 of this title, unless specifically prohibited by policies or other applicable ordinances in the approved Carlsbad Local Coastal Program. Non-beach areas are defined as areas at elevations of 10 feet or more above mean sea level. Permitted uses are subject to the following criteria:

- a. Grading and Excavation - Grading and excavation **shall be the minimum necessary** (emphasis added) to complete the proposed development consistent with the provisions of this zone and the following requirements:
 - 1). Building sites shall be graded to direct surface water away from the top of the bluff, or alternatively, drainage shall be handled in a manner satisfactory to the City which will prevent damage to the bluff by surface and percolating water.
 - 2.) No excavation, grading or deposit of natural materials shall be permitted on the beach or the face of the bluff except to the extent necessary to accomplish construction pursuant to this section.
- b. New development fronting the ocean shall observe at a minimum, an ocean setback based on a "stringline" method of measurement. No enclosed portions of a structure shall be permitted further seaward than allowed by a line drawn between the adjacent structure to the north and south; no decks or other appurtenances shall be permitted further seaward than those allowed by a line drawn between those on the adjacent structures to the north and south". A

greater ocean setback may be required for geologic reasons and if specified in the Local Coastal Program.

The Commission has interpreted the above section to mean that only at-grade structures are permitted on a bluff face which are consistent with the appropriate stringline and do not require grading. The Commission has found that "the minimum necessary" for new development on the bluff face means at-grade and ephemeral (like the existing wooden stairs on the site) without requiring excavation which makes such improvements more "permanent". The project is proposing permanent structures (concrete deck, retaining area for the concrete deck, equipment room, a concrete planter, concrete stairs to down the bluff face to beach level, and a drainage device down the bluff face to beach level) seaward of the residence on the bluff face which will require excavation and, as such, appear to be inconsistent with the above provisions of the certified LCP.

The City found that the project is consistent with the stringline provisions of the LCP. However, as approved, the stringline is measured incorrectly (is measured from the seawardmost portion of the adjacent residence to the north when it should be measured from the adjacent corner of the structure). This results in the structure being sited approx. 7 feet seaward of the allowable stringline, inconsistent with the overlay and resulting in new development being sited further seaward on the bluff face and nearer the ocean. Additionally, the project is inconsistent with the stringline for accessory structures. The proposed equipment room, planter, stairway and drainage structure are seaward of and more substantial than similar accessory improvements on adjacent lots and as noted above would require grading on the bluff face.

The overlay requires that new development be sited appropriately with respect to hazards. The City's approval identifies that the proposed development will conform to the Coastal Shoreline Development Overlay Zone but the findings are not substantiated by the geotechnical report. The geotechnical report found that bluff stability would be unaffected by the development. A slope stability analysis was done and the City found that appurtenant structures were sited beyond the 500-year flood zone and as such were safe from ocean hazards. However, the analysis did not address wave action or erosion potential as required by the overlay. Section 21.204.110(8) requires the effects of marine erosion on bluffs be evaluated and subsection (2) of the same section requires that "historic current and foreseeable cliff erosion and possible changes in shore configuration" be evaluated. The geotechnical report also failed to identify the nature and purpose of the proposed rock in front of the retaining wall that supports the deck improvements and the existing concrete wall that extends up to one foot high above the sandy beach portion of the lot for the width of the lot. The geotechnical report also failed to address the need for existing protection, the potential need for future protection and/or the associated impacts to public access. While the LCP and Coastal Act allows shoreline protection to protect existing development, in this case, the proposed development may be inappropriately sited so as to require future shoreline protection.

The City's approval also failed to address the relationship of the existing and proposed improvements to the mean high tide line by requiring a current beach profile. In Section 21.204.090 Boundaries and Topography, the LCP requires the boundaries and existing topography of the property, the location of the bluff line and beach be identified. No beach

profile or topographic survey of the entire site was identified or evaluated. Although the City acknowledged public use of the beach inland of the mean high tide line, the overlay requires that "development shall be sited and designed in a manner which does not interfere or diminish the potential public rights based on historic public use" (Section 21.204.070(A)1). The City did not require a study that determined where the proposed improvements were in relation to the mean high tide line and how access would be affected by such improvements. By failing to acknowledge that lateral access opportunities exist on the site, the City failed to require a condition which would assure that public access would be protected as required in Section 21.204.060.

Section 21.204.120 of the overlay requires an assumption of risk be recorded as a deed restriction to address development in a hazardous location. This was not secured in the City's approval and neither was the potential hazard of wave action and runup identified.

The City did not address preserving public views in perpetuity. Section 21.204.100(c) of the overlay states "Ocean Views - Buildings, structures, and landscaping will be so located as to preserve to the degree feasible any ocean views as may be visible from the nearest public street." While the City found that the project maintains 5-foot side yard setbacks from Ocean Street, it did not assure their preservation. The site plan indicates see through fences will be installed in the side yard so that public views will be maintained from Ocean Street to the beach. However, no condition was imposed that required the side yards to be maintained as such in the future. As approved, the fences could be changed in the future to a design and construction that would block views of the ocean.

The certified Stormwater Ordinance requires that both the quantity and quality of runoff be addressed to maintain water quality. While the City found that quantity would be addressed by collecting runoff in a proposed drainage system that uses drains, swales and an energy dissipator near the toe of the bluff, it failed to address the quality of the runoff as required in the ordinance. The City found that the project maintained approximately the same amount of impervious surfaces as the pre-existing project and for that reason quality of runoff need not be addressed.