

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

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**Thu 22d**

Filed: 7/22/04
49th Day: 9/9/04
180th Day: 1/18/05
Staff: LRO-SD
Staff Report: 9/23/04
Hearing Date: 10/13-15/04

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-04-75

Applicant: Ron Fletcher

Agent: Golba Architecture

Description: Removal of an unpermitted privacy wall located within the public right-of-way and reconstruction to the western property line. Also proposed is construction of a new third floor and remodeling of existing two-story, 1,537 sq.ft. duplex and the request for after-the-fact approval for conversion of the units to condominium ownership.

Lot Area	2,067 sq. ft.
Building Coverage	1,003 sq. ft. (49%)
Pavement Coverage	693 sq. ft. (34%)
Landscape Coverage	371 sq. ft. (17%)
Parking Spaces	2
Zoning	Mission Beach Planned District – R-N
Plan Designation	Residential North (36 dua)
Project Density	42.1 dua
Ht abv fin grade	30 feet

Site: 3855 & 3857 Ocean Front Walk, Mission Beach, San Diego, San Diego County. APNs 423-315-29; 423-578-15; 423-581-18; 423-582-16

STAFF NOTES:Summary of Staff's Preliminary Recommendation:

Staff recommends approval of the proposed project. The primary issues raised by the subject development relate to removal of an unpermitted privacy wall extending 3 feet into the public right-of-way, building setbacks and extent of demolition. However, through the proposed remodeling of the existing duplex structure, the privacy wall will be removed and reconstructed on private property. In addition, although the existing structure is a legally non-conforming building that currently does not meet the current building setbacks from the public boardwalk nor provide adequate on-site parking, the proposed development will not result in an increase in the degree of non-conformity. Special conditions address the timing for the removal of the unpermitted privacy wall and

timing of construction to prevent impacts to public access. As conditioned, staff has determined that the proposed project is consistent with the certified LCP and the public access and recreation policies of the Coastal Act.

Substantive File Documents: Certified Mission Beach Precise Plan and Planned District Ordinance

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-04-75 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit 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 development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, revised final site, building and elevation plans for the

permitted development. Said plans shall be stamped approved by the City of San Diego and be in substantial conformance with the plans submitted by Golba Architecture, dated 7/1/04, except they shall be revised to reflect the following:

- a. The existing planter/privacy wall within the public right of way shall be deleted. Any replacement wall shall be located entirely on private property.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Condition Compliance. WITHIN SIXTY (60) DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this coastal development permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

3. Removal of Planter/Privacy Wall. WITHIN SIXTY (60) DAYS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT or within such additional time as the Executive Director may grant for good cause, the applicants shall remove the planter/privacy wall located within the public right of way.

4. Timing of Construction. No construction shall take place for the project between Memorial Day weekend and Labor Day of any year. Access corridors and staging areas shall be located in a manner that has the least impact on public access via the maintenance of existing public parking areas and traffic flow on coastal access routes (No street closures or use of public parking as staging areas).

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. Proposed is the remodeling of an existing two-story, 1,537 sq.ft. duplex including the addition of a third story with exterior deck. Also proposed is the removal of an existing unpermitted privacy wall that encroaches three feet into an adjacent public right-of-way (Ocean Front Walk) and reconstruction/relocation of the wall onto private property along the western property line. The proposal will include interior remodeling as well as removal of portions of the exterior walls resulting in a three-story, 1,931 sq.ft. duplex on a 2,067 oceanfront lot. Presently, the existing structure consists of a two-story duplex. The existing lower level unit contains two bedrooms, a kitchen, bath and living area. The upper floor unit contains two bedrooms, a study, kitchen, bath and living area. Through the proposed remodel, the

interior of the first floor unit will be upgraded without a change to the number of bedrooms. The second story unit however, will include demolition of several exterior walls and will consist of the addition of a third level master bedroom with bathroom resulting in a total of three bedrooms. In addition, an exterior stairway that is along the west frontage of the existing structure next to the public boardwalk is proposed to be removed. The existing stairway currently intrudes into the front yard setback area and does not meet the current building setbacks. A new exterior stairway will be constructed along the north frontage of the structure and is designed to meet all required building setbacks. Also proposed is after-the-fact approval for the conversion of the duplex units to condominium ownership.

The subject site is located adjacent to the public boardwalk (Ocean Front Walk) at the southeast corner of Ocean Front Walk and Tangiers Court in the community of Mission Beach in the City of San Diego.

The project site is within the Commission's area of permit jurisdiction. Thus, the standard of review is Chapter 3 policies of the Coastal Act, with the certified LCP used as guidance.

2. Public Access. Coastal Act sections 30210, 30211 and 30212(a) are applicable to the project and state the following:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212(a)

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or, [...]

In addition, Section 30252 of the Act also states:

The location and amount of new development should maintain and enhance public access to the coast by...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

The boardwalk is a heavily-used recreational facility frequented by pedestrians, bicyclists, skaters, skateboarders, runners, and persons in wheelchairs. The walkway is accessible from the east/west streets off of Mission Boulevard, and provides access to the sandy beach at stairways located at various points along the seawall. Currently, the boardwalk is bordered by residential development on the east constructed at varying times over the years such that some existing structures do not meet the current setback requirements (non-conforming structures) as well as some structures and private improvements encroach into the public right of way of the boardwalk. However, given that the vast majority of the homes along the boardwalk currently meet the building setback, the goal is that over time when existing non-conforming structures are redeveloped, that the structures will be pulled back to observe the required building setbacks and, thus, will result in the removal of the encroachments in the public right-of-way. The presence of these encroachments represent an impact to public access in the area both in terms of physical access as well as visual access. The majority of the privacy walls are all in an alignment with one another except for those few zero lot line sites (no building setback) which have a privacy wall that extends out further west than the rest of the privacy walls. This not only poses a physical impediment to mobility along the boardwalk in that one could accidentally ride their bike into such a wall or walk into it, it also poses a visual intrusion into the "public" boardwalk area and creates a sense of "privacy" along the boardwalk, that is intended for public use.

The existing unpermitted "privacy wall" on the project site is composed of keystone blocks and varies in height between approximately one foot to three feet in height and is situated west of the existing duplex structure. The wall is located three feet in the City's public right-of-way. The subject site is one of approximately 26 structures (residences and/or businesses) that are on a zero-lot line or within one foot of the zero lot line. These structures were built at a time when it was legal not to have a setback and the property owners were permitted to build a privacy wall to encroach into the landscaped buffer area adjacent to the public boardwalk. However, prior to authorization for such privacy walls, the City required that these developments first obtain an encroachment removal agreement (ERA) to assure they can be removed in the future. The ERA's require that the wall be removed if the property is ever redeveloped. In this particular case, the existing privacy wall was built without a coastal development permit in apparent violation of the Coastal Act. In addition, no encroachment removal agreement was obtained from the City.

To address this concern, the applicant is proposing to remove the unpermitted wall through the subject permit application and to rebuild the wall entirely on private property along the western property line. This will result in the removal of a potential public access impediment, thus resulting in improvements to public access along the boardwalk

consistent with the Coastal Act. However, the project plans submitted do not include the new wall relocated to the western property line. As such, Special Condition #1 requires submittal of final revised plans showing deletion of the existing wall and that the new proposed wall be located entirely within the property lines of the subject site. In order to ensure implementation of the applicant's proposal to remove the unpermitted wall, Special Condition #3 requires the applicant to remove all portions of the existing unpermitted wall within the public right of way within 60 days of the issuance of this permit unless additional time is granted by the Executive Director for good cause.

Given that the project site is adjacent to the public boardwalk, in order to assure that no impacts to public access occur from construction activities, the project has been conditioned such that no construction shall take place between Memorial Day weekend and Labor Day of any year. In addition, the condition further requires that access corridors and staging areas shall be located in a manner that has the least impact on public access through a number of means including no street closures or use of public parking as staging areas, etc

With regard to parking, the Mission Beach Planned District Ordinance requires two spaces per each residential unit. However, the subject building is a legal non-conforming structure that was built at a time before parking standards were established. Only two parking spaces are currently provided for the structure where four are required pursuant to the Mission Beach Planned District Ordinance. In this particular case, the applicant is remodeling the existing structure and increasing the size of the second-story unit including the addition of a third story. However, the existing duplex will remain two-units. Specifically, the proposed change to the second level unit will result in an increase from two-bedrooms (and a study) to three bedrooms, however, this does not trigger the need for additional parking and is thus, not an increase in the degree of non-conformity of the existing structure. In addition, the change to condominium ownership also does not require additional on-site parking. Therefore, because the proposed project will not result in an increase to the degree of non-conformity of the existing residential structure, the proposed project can be found consistent with the applicable policies of the Coastal Act cited previously.

3. Existing Non-Conforming Structures. The duplex structure which exists on the property today is non-conforming with respect to required development setbacks from property lines. The existing residential duplex structure extends up to the western property line (with a small portion extending beyond the western property line into the public right-of-way of Ocean Front Walk – the public boardwalk) and does not provide the 7 ft. building setback as required by local ordinances that are also part of the certified LCP (Mission Beach Planned District Ordinance). Specifically, an exterior stairway protrudes beyond the western property line. However, through the proposed remodelling of the structure, this stairway will be removed and a new exterior stairway will be provided on the north elevation of the subject structure. The new stairway will observe all required building setbacks. With the removal of the stairway from the west elevation, the existing structure will observe a maximum 3'7" setback where 7' is required. The

structure will observe the required building setbacks along its northern and south frontages (10 feet and 0 feet, respectively).

In addition, an existing privacy wall also encroaches into the City's right-of-way. The principal structure (duplex) and 3 ft. high privacy wall are nonconforming structures because they are inconsistent with local law that is part of the certified LCP. However, as noted in the previous finding, the applicant proposes to remove the unpermitted privacy wall and to construct a new wall entirely on private property along the western property line. With the removal of the exterior stairway, there will be ample room on the subject site to build the privacy wall on the western property line.

A potential issue with the proposed remodel is with regard to the extent of demolition of the proposed structure since it is a non-conforming building that does not currently meet the required building setbacks or on-site parking requirements. As noted above, the applicant proposes to demolish portions of a 1,537 sq.ft., two-story duplex and rebuild and expand the structure resulting in a 2,135 sq.ft., three-level duplex. In addition, the majority of the first floor will remain the same as existing with major interior work and removal of interior walls at the second level. In addition, a new third story (master bedroom) is proposed which will be part of the second-story unit.

In its approval of past projects involving partial demolition and reconstruction of an existing structure, the Commission has found that if more than 50% of the exterior walls of a structure are being demolished, the proposal constitutes the development of a new structure and therefore, the entire structure must be brought into conformance with the current requirements. In this particular case, the detailed demolition plans submitted by the applicant indicate that approximately 38% of the exterior walls are being demolished with 62% to remain. Through the proposed remodeling, the existing second-story unit will be increased in size to include a large living area and an entirely new third floor consisting of a master bedroom and bathroom; however this change does not result in the need to provide additional parking. In addition, the proposed development does not result in an increase to the number of units on site; the existing building is two units and will remain two units. As such, the proposed project will not result in an increase in the degree of non-conformity. Thus, the Commission finds that the proposed remodel in the manner proposed is consistent with the Chapter 3 policies of the Coastal Act.

4. Visual Quality. Section 30251 of the Coastal Act requires, in part, that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of surrounding areas. The existing residences along the boardwalk vary widely in architectural style and appearance. Development along the entire length of the boardwalk from Mission Beach to Pacific Beach is highly varied. However, for those 26 properties that are located within the zero-lot line or have less than a 2-foot setback from the western property line, the City permitted the privacy walls to be constructed within the 3-foot wide landscaped buffer/landscaped strip. Because these walls intrude into that landscaped strip, they pose an adverse visual impact.

As such, over time, when the previously-conforming properties are redeveloped, the existing development should be moved back to observe all of the building setbacks, the privacy walls that were built into the public right-of-way should be removed, and a new wall should be built on the western property line thus returning the 3-ft. wide landscape buffer area back to the City for landscaping and maintenance. In the proposed project, the applicant is proposing to remove the privacy wall that was installed without the required coastal development permit or encroachment removal agreement from the City. The applicant further proposes to reconstruct the wall on the western property line of the subject site which will also result in the removal of the portion of the residential structure that intrudes into the public right-of-way. However, the project plans submitted do not include the new wall relocated to the western property line. As such, Special Condition #1 requires submittal of final revised plans showing deletion of the existing wall and that the new proposed wall be located entirely within the property lines of the subject site. In addition, in order to ensure implementation of the applicant's proposal to remove the unpermitted wall, Special Condition #3 requires the applicant to remove all portions of the existing unpermitted wall within the public right of way within 60 days of the issuance of this permit unless additional time is granted by the Executive Director for good cause. Through removal of this encroachment, public views to and along the boardwalk will be enhanced. In addition, the proposed remodeled structure will remain visually compatible with the character of the surrounding area. Therefore, the Commission finds the proposed development consistent with the visual protection policies of the Coastal Act.

5. No Waiver of Violation. The proposed project includes a request for the removal of a privacy wall extending into the public right-of-way that was constructed without a coastal development permit and the request for after-the-fact approval for conversion of the two existing units to condominium ownership. To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition #2 requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. In addition, in order to ensure implementation of the applicant's proposal to remove the unpermitted wall, Special Condition # 3 requires the applicant to remove all portions of the existing unpermitted wall within the public right of way within 60 days of the issuance of this permit unless additional time is granted by the Executive Director for good cause.

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

6. Local Coastal Planning. The subject property is zoned R-N for Residential North at a density of 36 dwelling units per acre in the certified Mission Beach Precise Plan. The proposed development is consistent with that designation with a proposed

density of 30 dwelling units per acre. Although the existing duplex structure is presently non-conforming in terms of its building setbacks and on-site parking, the proposed increase in number of bedrooms of the second-story unit (including the addition of a third story to the unit) and conversion to condominium ownership does not result in the need for additional on-site parking. As such, the proposed development does not result in an increase to the degree of non-conformity of the structure. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Mission Beach community.

7. Consistency with the California Environmental Quality Act (CEQA).

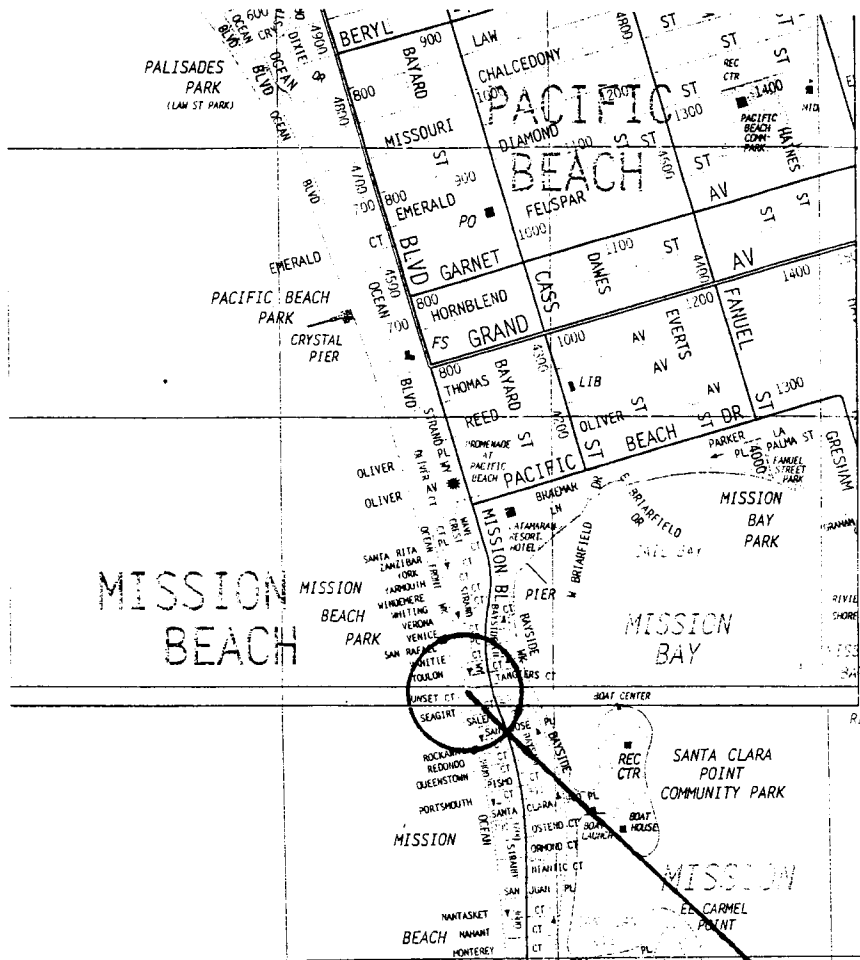
Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing unpermitted development and timing of construction to avoid impacts to public access will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

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 on which the Commission voted on the application. 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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. 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.
5. 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.



SITE

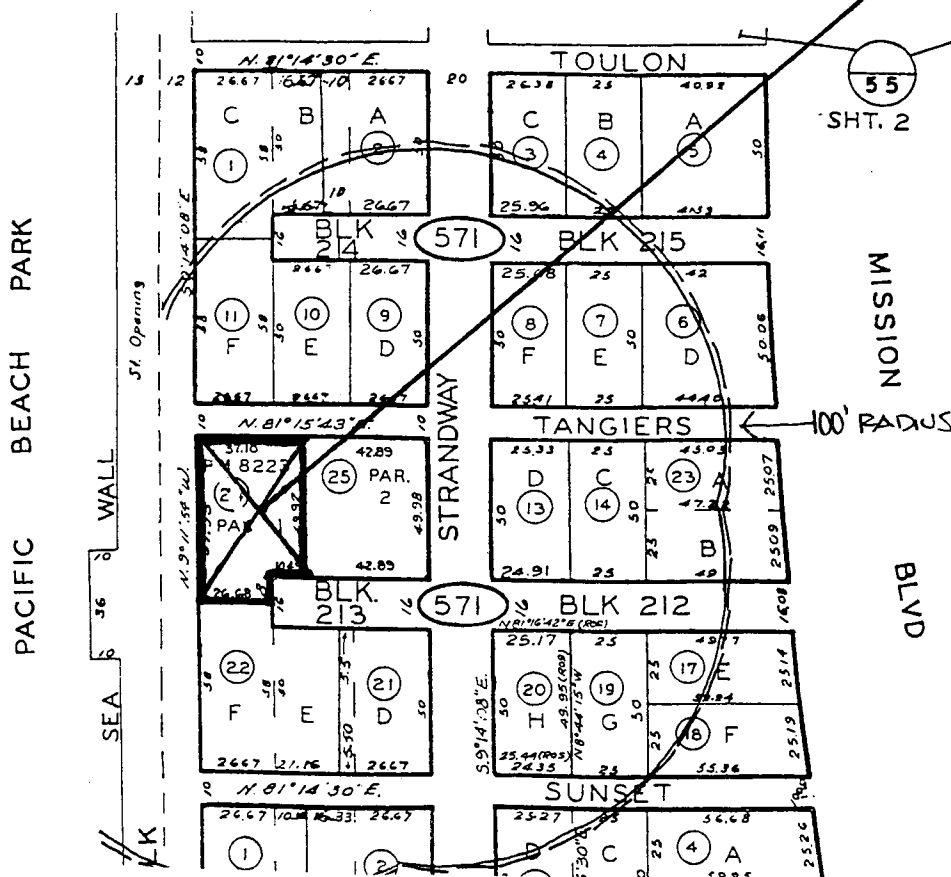


EXHIBIT NO. 1
APPLICATION NO.
6-04-75
Location Map

