

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585 - 1800

Staff: K. Kemmler
Staff Report: 4/29/04
Hearing Date: 5/13/04
Commission Action:



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STAFF REPORT: REVOCATION REQUEST

APPLICATION NO.: R-4-01-145

APPLICANT: Hassan Pascal Hessami

PROJECT LOCATION: 5960 Cavalleri Road, City of Malibu (Los Angeles County)

PROJECT DESCRIPTION: Request for revocation of a previously approved coastal development permit to construct a new 6,535 sq. ft., 24 ft. high, two story single family residence with 836 sq. ft. attached garage, new driveway, pool/spa, new septic system and 980 cu. yds. of grading (490 cu. yds. cut and 490 cu. yds. fill).

PERSON REQUESTING REVOCATION: Elliott Dolin

SUBSTANTIVE FILE DOCUMENTS: CDP #4-01-145.

PROCEDURAL NOTE: The California Code of Regulations, Title 14 Division 5.5, Section 13105 states that the grounds for the revocation of a coastal development permit are as follows:

- a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;
 - b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.
-

I. APPLICANT'S CONTENTION

The request for revocation contends that grounds for revocation in Section 13105(b) exist due to failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application. The contentions as to non-compliance with notice provisions include the following:

- 1) the person requesting the revocation, Mr. Dolin who is an adjacent neighbor, nor his representative who constitutes an interested party having submitted written notice of interest in the subject application, were notified of the re-scheduled Commission hearing date (See Exhibit 1).

II. STAFF RECOMMENDATION:

Staff recommends that the Commission deny the request for revocation on the basis that no grounds exist for revocation under either Section 13105(a) or (b).

MOTION: *I move that the Commission grant revocation of Coastal Development Permit 4-01-145.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the request for revocation and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

The Commission hereby denies the request for revocation of the Commission's decision on coastal development permit no. 4-01-145 on the grounds that there is no:

- a) intentional inclusion of inaccurate, erroneous or incomplete information in connection with the coastal development permit application where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on the permit or deny the application;
- b) failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on the permit or deny the application.

III. STAFF ANALYSIS

A. PROJECT DESCRIPTION & BACKGROUND

On March 6, 2002, the Commission approved Coastal Development Permit No. 4-01-145 (Hessami) for construction of a new 6,535 sq. ft., 24 ft. high, two story single family residence with 836 sq. ft. attached garage, new driveway, pool/spa, new septic system and 980 cu. yds. of grading (490 cu. yds. cut and 490 cu. yds. fill). The permit was approved with seven special conditions regarding (1) geologic recommendations, (2) drainage and polluted runoff control, (3) landscaping and erosion control, (4) wildfire waiver, (5) future improvements, (6) color restriction and (7) condition compliance, which were satisfied prior to issuance of the permit. The coastal permit was issued and returned signed on February 26, 2003.

The proposed project site is located on Cavalleri Road just north of Pacific Coast Highway and east of Kanan Dume Road in an existing developed neighborhood in the City of Malibu. The subject property is a nearly rectangular parcel encompassing approximately 1.9 acres. The property is relatively flat to gently sloping and descends from Cavalleri Road towards Kanan Dume Road and a branch of Walnut Canyon Creek to the south, a designated blueline stream. The Walnut Canyon Creek riparian corridor is a designated disturbed sensitive resource area when it crosses Pacific Coast Highway to the south of the subject property. The proposed project site can be viewed from various scenic resource areas, including a designated scenic highway and a public hiking and equestrian trail.

Staff was informed of a potential grading violation on the subject site by Alan Robert Block in a letter dated January 29, 2002 written on behalf of the adjacent neighbor, Elliott Dolin. Staff noted in the staff report dated February 14, 2002 that "[i]t appears from comparison of the topography survey for the underlying subdivision coastal permit to the topography survey submitted by the applicant dated June 6, 2001 that minor grading has occurred on the subject site without the required coastal development permit. It is likely that this minor landform alteration occurred during the construction of the road previously permitted via the coastal permit for the underlying subdivision or more recent vegetation clearance activities. The applicant submitted a grading plan with this permit application, which indicates that the unpermitted grading lies within the footprint of the proposed grading. As such, the Commission finds that the unpermitted grading is minor in nature and does not result in adverse impacts to coastal resources. Thereby finding that approval of the proposed grading plan shall resolve any violation of the Coastal Act."

In CDP 4-01-145, the Commission found that, as conditioned with the seven special conditions listed above, the project is consistent with all relevant sections of the Coastal Act with respect to geologic and wildfire hazards, water quality, visual resources and violations.

B. GROUNDS FOR REVOCATION

Coastal Act Section 13105(b)

Pursuant to 14 California Code of Regulations (C.C.R.) Section 13108, the Commission has the discretion to grant or deny a request to revoke a coastal development permit if it finds that any of the grounds, as specified in 14 C.C.R. Section 13105 exist. 14 C.C.R. Section 13105 states, in part, that the grounds for revoking the permit shall be as follows: (1) that the permit

application intentionally included inaccurate, erroneous or incomplete information where accurate and complete information would have caused the Commission to act differently; and (2) that there was a failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to act differently.

The South Central Coast District office received a written request for revocation of the subject coastal development permit on April 2, 2002 from Alan Robert Block on behalf of Elliott Dolin who owns an adjacent property upslope of the project site (Exhibit 1). The request for revocation is based on the grounds that neither Mr. Dolin, an adjacent neighbor, nor his attorney, Mr. Block, who had previously submitted written correspondence expressing interest in the subject application, received notice of the re-scheduled Coastal Commission hearing in March 2002. The letter written by Mr. Block states that the project does not have final approval-in-concept from the City of Malibu and that the neighbor, Mr. Dolin, had an appeal pending regarding the site plan review. He asserts that the applicant submitted erroneous information to the City of Malibu upon which the approval-in-concept for the project was based. Mr. Block contends that the Commission cannot lawfully accept an application for filing or approve a project without a valid approval-in-concept from the City. Along with the coastal permit application, the applicant, Mr. Hessami, submitted plans stamped with an approval-in-concept by the City of Malibu dated July 18, 2001. The Commission approved the proposed project on March 6, 2002. Staff confirmed with the City of Malibu Planning Director, Drew Purvis, that the applicant still had approval-in-concept on April 18, 2002. Thus, the project had a valid approval-in-concept from the City when the Commission deemed the application filed and approved the project.

The revocation request does not suggest that the subject permit should be revoked on grounds that the application intentionally included inaccurate, erroneous or incomplete information in where accurate and complete information would have caused the Commission to act differently. Therefore, the revocation request for the subject permit will only be discussed in relation to grounds of Section 13105(b). Grounds for revocation in 13105(b) contain three essential elements or tests which the Commission must consider:

- a. Did failure to comply with the notice provisions of Section 13054 occur?
- b. If the person(s) were not notified as required, were the views of the person(s) not notified not otherwise made known to the Commission (emphasis added)?
- c. If the answer to a and b is yes, would knowledge of those views have caused the Commission to require additional or different conditions or deny the application?

Staff mailed hearing notices for the first scheduled Commission hearing on January 22, 2002 to notice the project's hearing in February 2002. The neighbor requesting the revocation, Mr. Dolin, received notice of the scheduled Commission hearing in February 2002 for the subject application. Commission staff received a letter from Mr. Block, the neighbor's attorney, via fax on January 30, 2002, which was attached as an addendum to the staff report for the February hearing (see Exhibit 2). The letter from Mr. Block informed Staff of some potential grading violations on the site, so Staff ultimately pulled the item from the February agenda to investigate the issue further. Staff subsequently modified the staff report to include a description of the after-the-fact grading and include it in the project in order to resolve the violation per the applicant's request. Staff noted in the staff report dated February 14, 2002

that "[i]t appears from comparison of the topography survey for the underlying subdivision coastal permit to the topography survey submitted by the applicant dated June 6, 2001 that minor grading has occurred on the subject site without the required coastal development permit. It is likely that this minor landform alteration occurred during the construction of the road previously permitted via the coastal permit for the underlying subdivision or more recent vegetation clearance activities. The applicant submitted a grading plan with this permit application, which indicates that the unpermitted grading lies within the footprint of the proposed grading. As such, the Commission finds that the unpermitted grading is minor in nature and does not result in adverse impacts to coastal resources. Thereby finding that approval of the proposed grading plan shall resolve any violation of the Coastal Act."

Once the item was re-scheduled for the March 2002 Commission hearing, Staff mailed hearing notices out for the project to the same list of people previously noticed, including Mr. Dolin, on February 15, 2002. No hearing notices were returned, so Staff does not have any evidence that Mr. Dolin was not noticed properly. It is true that the Commission failed to notice Mr. Block, as a known interested party, of the Commission hearing.

The second test for grounds for revocation is if the person(s) were not notified as required, were the views of the person(s) not notified not otherwise made known to the Commission? In Mr. Block's letter regarding the request for revocation of the coastal permit, he references the first letter dated January 29, 2002, which informs staff of the "illegal" grading activities and alleged "false and misleading information" submitted by the applicant to the City and the "pending appeal," states that the project does not have approval-in-concept from the City, and requests that the project be pulled from the Consent Calendar of the Feb. 2002 hearing. No new information has been presented by Mr. Block or Mr. Dolin since the approval of the project by the Commission. The primary basis for the request for revocation is the lack of approval-in-concept from the City of Malibu. It is clear that the views of the persons not notified were known and addressed by Staff and the Commission in its review and approval of the project.

The third element or test the Commission must consider is if the persons were not notified pursuant to the notice provisions of Section 13054 and the views of those persons were not otherwise made known to the Commission, would knowledge of those views have caused the Commission to require additional or different conditions or deny the application? In this case, the neighbors were notified of the March 2002 hearing, although the adjacent neighbor's attorney was not, as required by the applicable noticing provisions, however, Staff notes that the views of those persons were made known to the Commission via correspondence from the neighbor's attorney, Mr. Block, prior to the approval of the project. Had these views not been made known to the Commission, would knowledge of them have caused the Commission to act differently?

The request for revocation rests on the neighbor's assertion that the project did not at the time and does not now have a valid approval-in-concept. It was explained to Staff by Mr. Dolin's attorney, Mr. Block, during previous correspondence, that Mr. Dolin had appealed the project at the City founded on a private view issue and subsequently withdrew the appeal based on an agreement between the applicant and himself to modify the height of the proposed residence to Mr. Dolin's satisfaction. Once the opportunity to appeal had passed, Mr. Dolin asserted that the topography survey submitted by the applicant to the City Planning Department was inaccurate and consequently the proposed height of the residence was not as it had been represented to Mr. Dolin, therefore, the basis for his appeal withdrawal was erroneous, thus, he should have the right to reinstate his original appeal. Staff attempted to contact the City in

order to ascertain the status of the appeal and the approval-in-concept for the project. Staff had a telephone conversation with Drew Purvis, Planning Director, on April 18, 2002 in which Mr. Purvis stated that the City had determined the submitted topography survey to be accurate and that the project did in fact have a valid approval-in-concept. Mr. Purvis informed Staff that the City was in the process of reviewing Mr. Dolin's claim to a right to appeal and that the City would decide on whether or not to grant the right to appeal in approximately 60 days. It has since been communicated to Staff that the appeal was never heard.

Along with the coastal permit application, the applicant submitted plans stamped with an approval-in-concept by the City of Malibu dated July 18, 2001. The Commission approved the proposed project on March 6, 2002. Staff confirmed that the applicant still had approval-in-concept on April 18, 2002. Thus, the applicant had a valid approval-in-concept from the City when the Commission reviewed and approved the project. Finally, the Commission found that, as conditioned with the seven special conditions previously mentioned, the project is consistent with all relevant sections of the Coastal Act.

Staff notes that the person requesting the revocation of the coastal permit, Mr. Dolin, is involved in a dispute with the applicant, Mr. Hessami, over the height of the house, which is a private view issue and has no bearing on any Coastal Act issues. Exhibit 2 contains evidence to this effect.

Therefore, the Commission finds that although the adjacent neighbor's attorney, being a known interested party, was not notified, the Commission was aware of the views of the person(s) not notified when the project was presented at the March 2002 hearing. Further, the Commission finds that, even if failure to comply with the notice provisions of Section 13054 occurred, and the views of the person(s) not notified had not been made known, those views would not have altered the Commission's decision on the coastal development permit.

For the reasons set forth above, the Commission finds that the grounds for revocation contained in Section 13105(b) are not satisfied, and as mentioned, the request for revocation does not assert that grounds for revocation of the subject permit exist in Section 13105(a). Therefore, the Commission finds that the revocation request should be denied on the basis that the grounds for revocation under Section 13105(a) or (b) have not been satisfied.

ALAN ROBERT BLOCK
OF COUNSEL
MICHAEL N. FRIEDMAN

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 27, 2002

VIA U.S. MAIL AND FAX (805) 641-1732

California Coastal Commission
89 South California Street, Suite 200
Ventura, California 93001

Attn: Ms. Kara Kemmler

Re: CDP Application No. 4-01-145 (Hessami)
5960 Cavalleri Drive, Malibu
REQUEST FOR REVOCATION

Dear Ms. Kemmler:

As you know this office represents Mr. Elliot Dolin, the owner of the residence located at 5970 Cavalleri Road. Mr. Dolin's residence is located adjacent to and upslope from the above-referenced real property

On or about on January 29, 2002, this office forwarded you correspondence, a copy of which is attached hereto for your review, which requested that the application for the subject project be pulled from the Commission's Consent Calendar agenda scheduled for February 5, 2002, in light of the fact that the project did not as of that date, and, *still does not*, have a final approval in concept from the City of Malibu. I was present at the Commission's hearing on February 5, 2002, and the matter was pulled from the Consent Calendar agenda.

Without question, neither Mr. Dolin, an immediately adjacent neighbor, and/or this office received notice that the application was being re-scheduled for the Commission's March 2002 agenda. This afternoon I spoke with Drew Purvis, the Director of Planning for the City of Malibu, who confirmed that this project has yet to receive a final approval in

EXHIBIT NO. 1
R-4-01-145
REQUEST FOR REVOCATION LETTER

~~RECEIVED~~
MAR 30 2002
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
Re: CDP Application No. 4-01-145 (Hessami)
March 27, 2002

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concept.

Title 14, California Code of Regulations, Section 13105 provides as follows under Grounds for Revocation:

"Grounds for revocation of a permit *shall* be ... (b) failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application."

Section 13054 (a) provides that all property owners receive written notice of all proposed hearings regarding an application within 100 feet of their property. *Mr. Dolin did not receive any written notice of the March 2002 hearing date.* Section 13054(a) further provides that the applicant provide "suitable notice" to "other interested persons" besides those owning or occupying real property within 100 feet of the subject property. As such, this office, after having given written notice of our interest in this matter via our correspondence of January 29, 2002, should have *also* been provided with "suitable notice" of the March 2002 hearing.

The Commission's failure to provide notice to both Mr. Dolin, and this office, deprived us of our due process rights. Section 13054(c) specifically provides that the Commission "shall revoke a permit it determines that the permit was granted without proper *notice*" *Correct section citation should read "(c)"* notice having been given."

It is respectfully requested that the approval be suspended and revocation proceedings commenced pursuant to Section 13106 - 13108.

Unless the Executive Director will agree to waive the necessary approval in concept, which clearly would be a most unusual in this situation, this office does not understand how the Commission can approve the application.

As you were previously advised in our correspondence of January 29, 2002, the information in our possession strongly suggests that the applicant has engaged in illegal grading activity without any permit from either the City of Malibu or the Coastal Commission, and that the applicant has submitted false and misleading information to the City of Malibu upon which his "original" approval-in-concept was approved by the Planning Director. *That approval-in-concept is not final in that an appeal filed by Mr. Dolin is still pending.*

California Coastal Commission
Re: CDP Application No. 4-01-145 (Hessami)
March 27, 2002

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Thank you for your consideration of this matter. If you have any questions or comments regarding this matter, please call me at your earliest convenience.

Very truly yours,

**LAW OFFICES OF
ALAN ROBERT BLOCK**
A Professional Corporation


ALAN ROBERT BLOCK

cc: Elliott Dolin
Drew Purvis
Jack Ainsworth

Tu 4b

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585 - 1800



ADDENDUM

To: Commissioners and Interested Persons

From: South Central Coast District Staff

Subject: Agenda Item 4b, Tuesday February 5, 2002
Coastal Development Permit No. 4-01-145 (Hessami)
5960 Cavalleri Road, Malibu, Los Angeles County

The purpose of this addendum is to attach correspondence opposing the proposed project from a neighbor received via fax on January 30, 2002.

Correspondence attached

ALAN ROBERT BLOCK
OF COUNSEL
MICHAEL N. FRIEDMAN

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FEB 4 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

January 29, 2002

VIA U.S. MAIL AND FAX (805) 641-1732

California Coastal Commission
89 South California Street, Suite 200
Ventura, California 93001

Attn: Ms. Kara Kemmler

Re: CDP Application No. ⁴ ~~5~~-01-¹⁴⁵ ~~154~~ (Hessami)
5960 Cavalleri Drive, Malibu

Dear Ms. Kemmler:

This office represents Elliot Dolin, the owner of the residence located at 5970 Cavalleri Road. Mr. Dolin's residence is located adjacent to and upslope from the above-referenced real property. It is our understanding that the above-referenced application is scheduled for a hearing before the Commission on February 5, 2002, and that it is an item on the Commission's consent calendar. The purpose of this letter is to request that the item be removed from the consent calendar and set for a full hearing.

The grounds for this request is that we have information which strongly suggests that the applicant has engaged in illegal grading activity without any permit from either the City of Malibu or the Coastal Commission, and that the applicant has submitted false and misleading information to the City of Malibu upon which his approval-in-concept was approved by the Planning Director. That approval-in-concept is not final, and an appeal filed by Mr. Dolin is still pending. Therefore, we believe that the application for CDP No. 5-01-154 is incomplete and should not proceed to a hearing. If the Commission does elect to proceed with a hearing, we recommend that the application be denied based upon the applicant's submission of false, inaccurate and incomplete data regarding the subject property and the development proposed thereon.

California Coastal Commission
Re: CDP Application No. 8-01-154 (Hessami)
January 29, 2002 4 145

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The facts upon which our request is made are contained in a letter which we have sent to the City's Planning Director, Barry Hogan. We have enclosed herewith a copy of that letter, along with several exhibits.

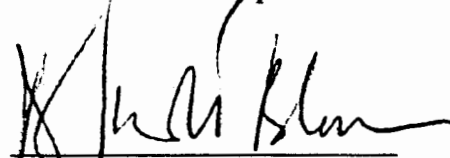
We understand that the basis for Mr. Dolin's objection to the proposed development may not involve a Chapter 3 Coastal Act policy. However, a local approval-in-concept, unless waived by the Executive Director, is required for all coastal permit applications. A local approval-in-concept, if obtained fraudulently or upon false pretenses, should not support the approval of a coastal development permit, and Mr. Dolin's appeal of said approval-in-concept may well require the permit applicant to submit a revised project to the Commission, requiring new and further review, particularly of on-site grading which is of concern to the Commission and which does implicate Chapter 3 policies of the Coastal Act.

Therefore, we sincerely hope that you will bring this issue to the attention of the Coastal Commissioners and that the Commission take the appropriate steps to see that this project is reviewed based upon a full, complete and accurate record.

Thank you for your consideration of this matter. If you have any questions or comments regarding this matter, please call me at your earliest convenience.

Very truly yours,

**LAW OFFICES OF
ALAN ROBERT BLOCK**
A Professional Corporation


ALAN ROBERT BLOCK

cc: Mr. Elliott Dolin

ALAN ROBERT BLOCK
OF COUNSEL
MICHAEL N. FRIEDMAN

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

January 28, 2002

VIA U.S. MAIL AND FAX (310) 456-3356

Barry K. Hogan
Planning Director
City of Malibu
23555 Civic Center Way
Malibu, California 90265

Re: Plot Plan Review (PPR) No. 99-142
Site Plan Review (SPR) No. 99-055
5960 Cavalleri Road (Pascal Hessami)
APPEAL OF PLOT PLAN AND SITE PLAN APPROVALS

Dear Mr. Hogan:

This office represents Elliot Dolin, the owner of the residence located at 5970 Cavalleri Road. Mr. Dolin's residence is located adjacent to and upslope from the above-referenced real property. The purpose of this letter is to confirm that Mr. Dolin's appeal is still pending, and should be set for a hearing. My understanding of the relevant facts is as follows:

STATEMENT OF FACTS

On July 14, 1999, the City Planning Department received an application from Mr. Pascal Hessami for the construction of a 24-foot high single family residence with swimming pool and new septic system at 5960 Cavalleri Road ("subject property"). The application was incomplete at the time it was submitted and remained that way for nearly two years.

Between February 15, 2001, and May 10, 2001, Mr. Dolin, who was in escrow to purchase his residence at 5970 Cavalleri Road ("Mr. Dolin's property"), visited the City Planning Department on three occasions. Each time he requested information as to whether

Mr. Barry K. Hogan, Esq.
Re: 5960 Cavalleri Road
January 29, 2002

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any development was proposed for the subject property which is located immediately below the property he was in escrow to purchase. On each occasion Mr. Dolin was erroneously told that no application had been submitted for any development on the subject property. Thereafter, on May 15, 2001, Mr. Dolin closed escrow for the purchase of his property at 5970 Cavalleri Road.

In or about the first week of June 2001, Mr. Dolin was informed by a neighbor that notice had been given by the City of a hearing regarding a plot plan and site plan review application for the subject property. Mr. Dolin never received any such notice from the City himself despite the fact that his property is adjacent to the subject property. Nonetheless, upon receipt of belated notice of the hearing, Mr. Dolin contacted the City and spoke with Meredith Elguira about the proposed development. He also returned to the City Planning Department and, this time, was allowed to review the file for the proposed development.

Mr. Dolin expressed concern about the height of the proposed residence because he believed it would block the primary view from the rear of his property of the valley below his property, as well as a portion of his ocean view and his view of the headlands of Point Dume. Ms. Elguira made an appointment to visit Mr. Dolin's property for an inspection. In the meantime, story poles were erected on the subject property allegedly to represent the four (4) corners of the proposed residence. Each story pole was represented to be 24 feet from natural grade.

On May 28, 2001, Memorial Day, at about 7:00 p.m., illegal grading was performed at the subject property. At least one of the story poles was knocked down at that time. On May 30, 2001, the City issued a Notice of Violation for the illegal grading. A copy of the Notice is attached hereto as Exhibit 1.

Ms. Elguira did not inspect the subject property until about June 15, 2001 at which time she took photographs. The story poles had been relocated prior to her visit and only three (3) were erect at the time. Ms. Elguira expressed concern about the illegal grading and, upon her subsequent investigation, she related to Mr. Dolin that the applicant had submitted an outdated topographic map which had been altered to make it appear as if it had been recently prepared.

Nothing further was done, to our knowledge, by the Planning Department with respect to Mr. Dolin's concerns about his view blockage or the illegal grading prior to June 21, 2001, at which time the PPR and SPR were approved. A copy of the Notice of Approval, with an Affidavit of Acceptance of Conditions executed by Mr. Hessami, is attached hereto as Exhibit 2.

Mr. Barry K. Hogan, Esq.
Re: 5960 Cavalleri Road
January 29, 2002

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On June 29, 2001, Mr. Dolin wrote to you, indicating his desire to appeal your approval of the plot and site plans for the proposed development. A copy of Mr. Dolin's letter to you is attached hereto as Exhibit 3. Mr. Dolin also submitted his check in the sum of \$332.50 for the appeal's filing fee.

On or about July 10, 2001, Mr. Dolin was contacted by Ms. Elguira, who informed Mr. Dolin that the applicant had agreed to revise his plans to reduce the elevation of the proposed residence by five (5) feet. Mr. Dolin agreed to review the revised plans at the Planning Department.

On July 16, 2001, Mr. Dolin reviewed the revised plans which appeared to confirm that the elevation of the proposed residence would be five (5) feet lower than previously depicted. Based on this, Mr. Dolin wrote to you later that date, stating that he would agree to rescind his appeal "[i]f what was communicated to me is correct and the pad elevation has, in fact, been reduced," and *"provided that it is determined and communicated to me that the story poles presently in place on the site accurately reflect the height that was previously approved."* A copy of Mr. Dolin's letter to you, dated July 16, 2001, is attached hereto as Exhibit 4.

On July 18, 2001, you issued an amended plot plan and site plan approval, subject to an additional 4 conditions. The new conditions required the applicant to submit a new grading plan (although the amount of grading authorized is not stated.) The maximum height of the proposed structures is 24 feet from *finished* grade, not natural grade. Finally, you required that the maximum impermeable coverage not exceed 24,648 square feet. A copy of the amended Notice of Approval, with an Affidavit of Acceptance of Conditions executed by Mr. Hessami, is attached hereto as Exhibit 5.

In late September or early October, after having received no confirmation from the City that the proposed residence on the subject property would be five (5) feet lower than the on-site story poles, Mr. Dolin went to the Planning Department and spoke to Ms. Elguira as to whether the city was in receipt of any evidence from the applicant that the story poles accurately represented the height of the originally approved residence. Ms. Elguira reviewed the file at this point, and found that the applicant had never submitted any evidence that the story poles had ever been measured or surveyed, and advised my client that the applicant would be required to provide this evidence.

Having heard nothing from the city regarding this matter, Mr. Dolin hired a surveyor to measure the elevations and height of the story poles on the subject property. Although the elevations were measured in November 2001, the surveyor did not complete the map of his

Mr. Barry K. Hogan, Esq.
Re: 5960 Cavalleri Road
January 29, 2002

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results until the first week of January 2002. A reduced copy of the map is attached hereto as Exhibit 6.

Based upon the survey information received, it appears that the top of the story poles on the west side are at elevation 396.13 to the north, and 392.17 to the south. However, the top of the proposed residence in the revised plans is not five (5) feet below these elevations. To the contrary, the top of the proposed residence is depicted in the revised plans to be at elevation 398 to the north and 397 to the south. Thus, the revised plans depict a residence which, on the west side, is two (2) feet higher than the story poles to the north and five (5) feet higher than the story poles to the south. At the southwest corner, where the view impairment from Mr. Dolin's property is greatest, the top of the proposed residence will be ten (10) feet higher than was represented to him..

Inasmuch as Mr. Dolin was informed that the height of the proposed residence would be reduced by five (5) feet, and that the story poles accurately reflected the height of the proposed residence as approved on June 21, 2001, Mr. Dolin reasonably concluded that the height of the proposed residence would be five (5) feet lower than the top of the story poles. Instead, the west side of the proposed residence, as revised is actually 2-5 feet higher than the story poles. Therefore, the predicate upon which Mr. Dolin agreed to rescind his appeal is false, and Mr. Dolin should be allow to proceed with his appeal.

Please advise us as soon as possible when a hearing can be scheduled on Mr. Dolin's appeal. Please note, also, that Mr. Hessami's application for a coastal development permit is scheduled for a hearing on February 5, 2002. Because Mr. Dolin is entitled to have his appeal heard, there is no final approval-in-concept upon which a coastal development permit may be sought.

We request ask that you communicate to the Coastal Commission's staff planner assigned to this project, Kara Kemmler, at (805) 585-1800, the fact that an appeal is pending on the approval-in-concept given, so that Mr. Dolin's appeal rights are not prejudiced. There is absolutely no justification for giving any benefit to a developer that has engaged in illegal grading and has provided the City with false or inaccurate information as did Mr. Hessami. The City should allow Mr. Dolin a full and fair appeal before the developer is allowed to proceed to the next stage in the approval process.

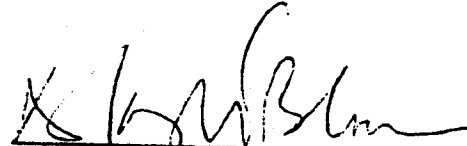
Thank you for your consideration of this letter. If you have any questions or comments regarding this matter, you may call me at any time.

Mr. Barry K. Hogan, Esq.
Re: 5960 Cavalleri Road
January 29, 2002

Page 5

Very truly yours,

**LAW OFFICES OF
ALAN ROBERT BLOCK**
A Professional Corporation


ALAN ROBERT BLOCK

cc: Mr. Elliott Dolin
Christi Hugin, Esq.

Address / Location: 5960 Cavalleri Road

Owner: _____

NOTICE IS HEREBY GIVEN THAT THE FOLLOWING VIOLATION(S) OF THE MALIBU MUNICIPAL CODE HAVE BEEN IDENTIFIED ON THE REFERENCED PROPERTY.

☒ **STOP ALL WORK!**

☒ Building Code Section 301(a)
PERMITS REQUIRED.

☐ Plumbing ☐ Electrical ☐ Mechanical

☐ Building Code Chapter 99
SUBSTANDARD BUILDING/CONDITIONS/PROPERTY

☒ Zoning Code Section _____
DEVELOPMENT W/O PERMITS OR APPROVALS

① ^{stop all} Grading without permits or
Planning approval

② come into city Hall and Relate
Full scope of work.

③ Correct/call for Inspection

Failure to comply with this order is a misdemeanor and may lead to a penalty assessment of \$1,000 for each day in violation (MMC Section 1200.A.) Call (310) 456-2489 for information.

5-30-01 1 PM Bob Brunner
Date / Time Inspector / Officer

RECEIVED

FEB 4 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT



City of Malibu

Planning Department

· 23555 Civic Center Way - Malibu, CA 90265 ·
(310) 456-2489 ext. 227 FAX (310) 456-3356
email melguira@ci.malibu.ca.us

June 21, 2001

RECEIVED

FEB 4 2002

Mr. Pascal Hessami
12331 Riverside Drive, Unit # 7
Valley Village, CA 91607

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Reference: **PLOT PLAN & SITE PLAN REVIEW
DETERMINATION**
Plot Plan Review No.99-142
Site Plan Review No. 99-055
5960 Cavalleri Road

On July 14, 1999, the City Planning Department received an application for a project located at 5960 Cavalleri Road. The project consist of a new single-family residence with a maximum height of 24 feet, a swimming pool and a new septic system. Staff determined on May 4, 2001, that the application was **COMPLETE** and noticed the project.

On June 21, 2001, the proposed revised project was reviewed for conformance with the design and development standards of the City's Zoning Ordinance. Staff finds that the project meets the intent of the Malibu General Plan and Municipal Code and is in **CONFORMANCE** with all zoning standards. The City Geologist, City Environmental Health Specialist, City Biologist, and the Fire Department have also recommended review and clearance.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Director has analyzed the proposal as described above. The Planning Director has found that this project is listed among the classes of projects which have been determined not to have a significant effect on the environment which, therefore, shall be exempt from the provisions of CEQA. Accordingly, a **CATEGORICAL EXEMPTION, CLASS 3(a)**, has been issued.

☐ City of Malibu - Planning Department ☐
5960 Cavalleri Road (Hessami)

Page 1 of 5

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You may concurrently submit your plans to the city's Building and Safety Department for plan check while your plans are being reviewed by the California Coastal Commission.

The Planning Director has **APPROVED** your project **IN CONCEPT** subject to the following conditions listed below.

Site Plan Review Findings

The applicant is requesting site plan reviews for height increase above the base 18 feet up to a maximum of 24 feet. Approval of the site plan review request is based on the provisions of the City of Malibu Municipal Code pertaining to site plan review, and the following findings as stated in Article IX, Section 9.4.23(D):

1. *That the project does not adversely affect neighborhood character* in that the construction is for a new single-family residence that meet the average height of the existing surrounding residences.
2. *That the project protects the natural resources and complies with the City's land use policies, goals and objectives, as defined by staff* in that the project is located on an existing developed lot. The project protects the natural resources and complies with the City's land use policies, goals and objectives.
3. *That the project provides maximum feasible protection to significant public and private views* in that the proposed project will not block the primary views of the surrounding properties. The subject property is in a valley and is several feet lower than the existing surrounding residences.
4. *That the project does not affect solar access* in that the proposed project will be located several feet away from the existing single family residences in the area. It will not affect the solar access of the adjacent neighbors.
5. *That the project will not adversely affect the City's ability to prepare a General Plan* in that the land use proposed is consistent with the General Plan Land Use Map and that the proposed development is an accessory addition to a developed parcel..
6. *That the project is consistent with the General Plan* in that the project is consistent with the General Plan in that the use and development are conforming to the Zoning Ordinance and consistent with the land use goals, policies and objectives.
7. *The proposed project complies with all applicable requirements of state and local law* in that the project complies with all applicable requirements of state and local laws since Building and Safety Department and California Coastal Commission permits will be required prior to construction.

Conditions of Approval

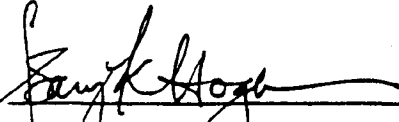
1. The permit and rights conferred in this approval shall not be effective until the applicant first signs and returns this decision accepting the conditions set forth below. The applicant shall file this form with the Planning Department within 30 days of the Planning Director's decision.
2. This Plot Plan Review Determination shall be copied in its entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans prior to submitting to Building and Safety.
3. This permit shall become null and void if not exercised within one (1) year after approval or exemption by the California Coastal Commission. A one (1) year extension may be granted by the Planning Director if a written request is made and if the project and applicable zoning standards have not changed.
4. Prior to final building approval or certificate of occupancy, the applicant shall receive planning sign-off for compliance with conditions of approval.
5. The Planning Director is authorized to make minor changes to the approved plans or any of the conditions if such modifications shall achieve substantially the same results as would strict compliance with said plans and conditions.
6. Except as specifically changed by conditions of approval, the proposed development shall be constructed in substantial conformance with the plans stamped and on file with the Planning Department. In the event the project plans conflict with any condition of approval, the condition shall control.
7. All structures shall conform to the Building and Safety Department, Geology, Environmental Health, Biology, and Los Angeles County Fire Department requirements. Notwithstanding this review, all required permits shall be secured.
8. Prior to final Planning approval, the applicant shall submit plans architectural plans showing the proper scale.
9. Prior to final Planning approval, the applicant shall receive final approval for the landscape plan.
10. No grading is being proposed with this project.
11. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.

☐ City of Malibu - Planning Department ☐
5960 Cavalleri Road (Hessami)

Page 3 of 5

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If you have any questions, please contact the case planner for this project Meredith T. Elguira, Associate Planner at (310) 456-2489, extension 227 or at melguira@ci.malibu.ca.us.


Barry K. Hogan
Planning Director

June 21, 2001
Date Published



AFFIDAVIT OF ACCEPTANCE OF CONDITIONS

The undersigned property owner (or agent of the property owner) acknowledges receipt of the City of Malibu Planning Director decision of approval and agrees to abide by all terms and conditions thereof. The permit and rights conferred by this approval located at 5960 Cavalleri Road shall not be effective until the signed acknowledgment has been returned to the City of Malibu, no later than July 21, 2001.

Date

June 25-2001

Signature of Property Owner/Agent

RECEIVED

JUN 26 2001

PLANNING DEPT.



RECEIVED

FEB 4 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Elliott Dolin
8222 Melrose Ave., Suite 202
Los Angeles, CA 90046

June 29, 2001

Mr. Barry K. Hogan, Planning Director
City of Malibu
Planning Department
23555 Civic Center Way
Malibu, CA 90265

Re: Site Plan Review No. 99-055
5960 Cavalleri Road

Dear Mr. Hogan:

As the owner of the single-family home located at 5970 Cavalleri Road (the property contiguous to the project proposed at 5960 Cavalleri Road), I hereby appeal the determination of June 21, 2001 in which you issued concept approval for this project. Although a planning staff member visited the site, for reasons described below I am not in agreement with the evaluation and subsequent staff recommendation that was made.

At the time the planner visited my home to assess the site, there was grading equipment present at the proposed project site. This equipment had been operated on the morning of May 28, 2001, Memorial Day and a legal holiday. This equipment was also operated during evening hours on subsequent days. There were only 3 story poles standing when the planner visited my home. A fourth pole has since been erected and the poles have been moved. While I am told the grading equipment was there for the purpose of brush "grubbing", it seems illogical that this would not have been done *prior* to placement of the story poles. During the application evaluation period, it has been difficult to accurately determine the implications that your approval might have on my property.

Given the present and most recent placement of the story poles, this project, at a height of 24 feet, sits squarely in the line of sight of the main living and recreational portion of my home, substantially impacting what I consider to be my primary view. The design and placement of this proposed structure does not provide "maximum feasible protection" to my view. At the very least, I would have hoped that some placement and height considerations been incorporated into the project by the applicant prior to submission of this application, but no apparent effort has been made to mitigate this view blockage.

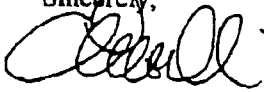
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P. 003

Mr. Barry K. Hogan
June 29, 2001
Page two

Please advise me as to the date of the hearing for this appeal. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elliott Dolin".

Elliott Dolin

NOV. -07' 01 (WED) 16:22

P. 004

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FEB 4 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Elliott Dolin
8222 Melrose Ave., Suite 202
Los Angeles, CA 90046

July 16, 2001

Barry K. Hogan, Planning Director
City of Malibu
Planning Department
23555 Civic Center Way
Malibu, CA 90265

Re: Site Plan Review No. 99-055
5960 Cavalleri Road

Dear Mr. Hogan:

I have been informed by Meredith Elguira, Associate Planner, that a revised plan has been submitted in connection with the above referenced project. I was informed that the changes include a reduction of the structure's overall elevation by generally 5 feet (3 feet minimum in some portions) as a result of grading and lowering the building pad. In addition, that the roofline will no longer include a trellis over a second story deck.

If what was communicated to me is correct and the pad elevation has, in fact, been reduced, I would rescind my appeal of your approval of this project provided that it is determined and communicated to me that the story poles presently in place on the site accurately reflect the height that was previously approved. Thus, a height generally 5 feet below the previous roofline should make the level of impact on my property acceptable.

Thank you for your cooperation.

Sincerely,



Elliott Dolin



City of Malibu

RECEIVED

Planning Department

FEB 4 2002

23555 Civic Center Way - Malibu, CA 90265

(310) 456-2489 ext. 227

FAX (310) 456-3356

email melguira@ci.malibu.ca.us

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 18, 2001

Mr. Pascal Hessami
12331 Riverside Drive, Unit # 7
Valley Village, CA 91607

Reference: **PLOT PLAN & SITE PLAN REVIEW
DETERMINATION**
Plot Plan Review No.99-142
Site Plan Review No. 99-055
5960 Cavalleri Road

On July 14, 1999, the City Planning Department received an application for a project located at 5960 Cavalleri Road. The project consist of a new single-family residence with a maximum height of 24 feet, a swimming pool and a new septic system. Staff determined on May 4, 2001, that the application was **COMPLETE** and noticed the project.

On June 21, 2001, the proposed revised project was reviewed for conformance with the design and development standards of the City's Zoning Ordinance. Staff finds that the project meets the intent of the Malibu General Plan and Municipal Code and is in **CONFORMANCE** with all zoning standards. The City Geologist, City Environmental Health Specialist, City Biologist, and the Fire Department have also recommended review and clearance.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Director has analyzed the proposal as described above. The Planning Director has found that this project is listed among the classes of projects which have been determined not to have a significant effect on the environment which, therefore, shall be exempt from the provisions of CEQA. Accordingly, a **CATEGORICAL EXEMPTION, CLASS 3(a)**, has been issued.

☐ City of Malibu - Planning Department ☐
5960 Cavalleri Road (Hessami)

Page 1 of 5

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You may concurrently submit your plans to the city's Building and Safety Department for plan check while your plans are being reviewed by the California Coastal Commission.

The Planning Director has **APPROVED** your project **IN CONCEPT** subject to the following conditions listed below.

Site Plan Review Findings

The applicant is requesting site plan reviews for height increase above the base 18 feet up to a maximum of 24 feet. Approval of the site plan review request is based on the provisions of the City of Malibu Municipal Code pertaining to site plan review, and the following findings as stated in Article IX, Section 9.4.23(D):

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Conditions of Approval

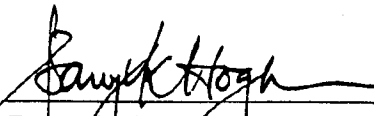
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3. This permit shall become null and void if not exercised within one (1) year after approval or exemption by the California Coastal Commission. A one (1) year extension may be granted by the Planning Director if a written request is made and if the project and applicable zoning standards have not changed.
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8. Prior to final Planning approval, the applicant shall submit plans architectural plans showing the proper scale.
9. Prior to final Planning approval, the applicant shall receive final approval for the landscape plan.
10. No grading is being proposed with this project.
11. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.



Amended conditions to avoid an appeal submitted by Mr. Elliot Dolan on July 2, 2001.

12. Unless otherwise amended the above conditions shall apply to the proposed project.
13. Wet-stamped grading plans shall be submitted and approved by the Building and Safety Department prior to the issuance of the Final Planning Approval. Condition No. 13 shall supersede Condition No. 10.
14. The maximum height of the proposed structure shall not exceed 24 feet from the finished grade to the top of the roof.
15. The maximum impermeable coverage shall not exceed 24, 648 square feet.

If you have any questions, please contact the case planner for this project Meredith T. Elguira, Associate Planner at (310) 456-2489, extension 227 or at melguira@ci.malibu.ca.us.



Barry K. Hogan
Planning Director

July 19, 2001
Date Published



AFFIDAVIT OF ACCEPTANCE OF CONDITIONS

The undersigned property owner (or agent of the property owner) acknowledges receipt of the City of Malibu Planning Director decision of approval and agrees to abide by all terms and conditions thereof. The permit and rights conferred by this approval located at 5960 Cavalleri Road shall not be effective until the signed acknowledgment has been returned to the City of Malibu, no later than August 19, 2001.

Date

July 26 - 2001

Signature of Property Owner/Agent

