

CALIFORNIA COASTAL COMMISSION

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Filed: June 5, 2007
49th Day: July 24, 2007
180th Day: December 2, 2007
Staff: Fernie Sy-LB
Staff Report: August 16, 2007
Hearing Date: September 5-7, 2007
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NUMBER: 5-07-129

APPLICANT Keith Scheinberg

AGENT: Tim Johnson

PROJECT LOCATION: 1942 Galaxy Drive, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Remodel and addition of 660 square feet of living space to an existing one-story, 3,434 square foot single-family residence with an attached 676 square foot two-car garage on a bluff top lot. No grading, landscaping or work in the rear yard is proposed.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept (No. 0624-2007) dated April 10, 2007.

SUMMARY OF STAFF RECOMMENDATION:

The subject site is a coastal bluff top lot located between the first public road and the sea in Newport Beach). The primary issues addressed in this staff report are the conformance of the proposed development with the geologic hazard policies of the Coastal Act.

Staff is recommending **APPROVAL** of the proposed project with **FOUR (4) SPECIAL CONDITIONS** regarding: **1)** additional approvals for any future development; **2)** evidence of conformance with geotechnical recommendations; **3)** assumption of risk; and **4)** a Deed Restriction against the property.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Letter from Commission staff to TJ Design dated May 8, 2007; *Soil Engineering Report (File No. 32950.01)* prepared by American Geotechnical, Inc. dated June 1, 2007; Letter from Parlee Engineering received May 19, 2007; Letter from TJ Design to Commission staff received June 5, 2007; and Letter from American Geotechnical, Inc. dated June 5, 2007.

LIST OF EXHIBITS

1. Location Maps
 2. Site Plan
 3. Floor Plan
 4. Elevation Plans
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STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

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 and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit 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

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

3. 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.

III. SPECIAL CONDITIONS

1. FUTURE DEVELOPMENT

This permit is only for the development described in Coastal Development Permit No. 5-07-129. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-07-129. Accordingly, any future improvements to the single-family residence and appurtenances authorized by this permit, including a change in use and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-07-129 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

2. CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS

- A.** All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the geologic engineering investigations: Letter from American Geotechnical, Inc. dated June 5, 2007; and *Soil Engineering Report (File No. 32950.01)* prepared by American Geotechnical, Inc. dated June 1, 2007
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the Executive Director's review and approval, final design and construction plans, including foundations, grading and drainage plans along with evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering reports.
- C.** 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 a Commission amendment unless the Executive Director determines that no amendment is legally required.

3. **ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNIFY**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

4. **DEED RESTRICTION**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. **PROJECT LOCATION, DESCRIPTION AND PREVIOUS APPROVAL ON SITE**

1. **Project Location and Description**

The subject site is located at 1942 Galaxy Drive within the City of Newport Beach, Orange County (Exhibit #1). The lot size is 10,441 square feet and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Residential Estate (Low Density Residential) and the proposed project adheres to this designation. The project is located within an existing developed urban residential area. Existing single-family residential development is located to the North, West, and South of the project site. To the East of the project site is a coastal bluff, a tieback supported retaining wall and the Upper Newport Bay Ecological Reserve (UNBER). The overall height of the bluff slope is approximately 80-feet and from the toe of the retaining wall to the bay below and is an approximately 1.3:1 to 3:1 (horizontal: vertical) slope.

The applicant is proposing a remodel and addition of 660 square feet of living space to an existing one-story, 3,434 square foot single-family residence with an attached 676 square foot two-car garage on a bluff top lot. No grading, landscaping or work in the rear yard (adjacent to the bluff) is proposed. Post project, the single-family residence will be one-story and will not exceed 14-feet above existing grade and will consist of 4,110 square feet with an attached 660 square foot two-car garage (Exhibits #2-4).

The proposed additions will take place at two locations. The first location will be along the street side of the property on an existing concrete entry pad and will take about half of the total proposed 676 square foot addition. The second location will be along the southern side yard of the property on an existing concrete patio pad and take the remaining half of the proposed 676 square foot addition. This side yard addition will not extend more bluffward/bayward than the existing residence. In addition, the development is located landward of the homes flanking the subject site.

The proposed development is located on a bluff above Upper Newport Bay, which is subject to erosion. At the rear of the lot adjacent to the bluff is an existing tieback supported retaining wall that addressed previous bluff stability issues (bluff stabilization was reviewed by the Commission in March 1985 (Coastal Development Permit No. 5-85-062)). To address bluff erosion with the proposed project, the applicant has submitted geotechnical investigations prepared by American Geotechnical, Inc. The investigations state that the tieback supported retaining wall is performing well and the slope has no signs of instability. As part of the existing tieback supported retaining wall, the rear portion of the existing home was underpinned using pipe piles. The geotechnical investigations recommend that while a shallow foundation is adequate for the addition located along the street, pipe piles should also be utilized in conjunction with the shallow foundation for that part of the proposed addition closest to the bluff edge. The Commission's staff geologist and engineer have reviewed the project and agree with the investigations' conclusions.

The proposed development is located on a bluff above Upper Newport Bay, which is subject to erosion, but to potentially only very modest wave attack due to the subject site's location within the inner bay Upper Newport Bay. The property is located about 80-feet above sea level adjacent to Upper Newport Bay and doesn't include the bluff face and bay below, so the project site is not subject to flooding or erosion forces caused by wave action, tidal changes or a rise in sea level. However, the bluff is subject to tidal changes and a rise in sea level and associated erosive forces.

The City's certified Land Use Plan (LUP) requires that any new bluff top development is sited a sufficient distance from the bluff edge, but not less than 25-feet from the bluff edge, to ensure stability. The proposed additions are set back a minimum of 25-feet from the bluff edge, which at this location, is sufficient to ensure stability of the proposed development. Therefore, the proposed development does conform to the bluff edge setback requirements noted above.

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, without controls on future development, the applicant could construct amenities to the proposed home that would have negative impacts on coastal resources, and could do so without first acquiring a coastal development permit, due to the exemption for improvements to existing single-

family residences in Coastal Act Section 30610 (a). In order to prevent the current authorization from allowing such future negative effects, it is necessary to ensure that any future development -- including the development of amenities that would otherwise normally be exempt -- will require a permit. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **SPECIAL CONDITION NO. 1**, which is a future improvements special condition.

The geotechnical consultant has found that the proposed development is feasible provided the recommendations contained in the geotechnical reports prepared by the consultants are implemented in regards to the design and construction of the project. The geotechnical recommendations address foundations and footings. In order to ensure that risks of development are minimized, as per Section 30253, the Commission imposes **SPECIAL CONDITION NO. 2**, which states that the geotechnical consultant's recommendations should be incorporated into the design of the project.

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from bluff and slope instability, erosion, landslides and wave uprush the risk is not entirely eliminated. Galaxy Drive has been prone to bluff failures on a consistent basis. Therefore, the standard waiver of liability condition has been attached via **SPECIAL CONDITION NO. 3**.

The proposed development is located on a lot with an existing single-family residence. The proposed development will not change the use or intensity of use of the site. The adjacent Upper Newport Bay Ecological Reserve provides public access and public recreation opportunities. The proposed development, as conditioned, will not result in any adverse impacts to existing public access or recreation in the area. Upon completion of the project, the development will remain as a single-family residence. The proposed development would provide adequate parking based on the Commission's regularly used parking standard of two (2) parking spaces per individual dwelling unit.

2. Previous Approval On Site

Administrative Permit No. 5-85-062-[Braman]

In March 1985 the California Coastal Commission approved Administrative Permit No. 5-85-062 for the stabilization of earth and bluff beneath and immediately adjacent to an existing single-family residence overlooking Upper Newport Bay. The project was approved subject to two (2) Special Conditions: 1) an assumption of risk deed restriction; and 2) submittal of revised plans.

B. HAZARDS

Development adjacent to the ocean and the edges of coastal bluffs and hillsides is inherently hazardous. Development which may require a bluff, hillside, or shoreline protective device in the future cannot be allowed due to the adverse impacts such devices have upon public access, visual resources, and shoreline processes. To minimize risks to life and property and to minimize the adverse effects of development on coastal bluffs, hillsides, and shoreline processes the development has been conditioned to require one or more of the following: adherence to the geotechnical recommendations, an appropriate set-back from the edge of a bluff or hillside, to prohibit the construction of protective devices (such as a retaining wall or shoreline protective

device) in the future, for a drainage and runoff plan to minimize the percolation of water into the hillside or bluff, and to require that the landowner or any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development, which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

F. LOCAL COASTAL PROGRAM (LCP)

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

South Coast Region

JUN 5 2007

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PROPERTIES BY WIND OR

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ACTIVES AND SOLVENTS
WASH WATER CONCRETE.

WITH ULTIMATE

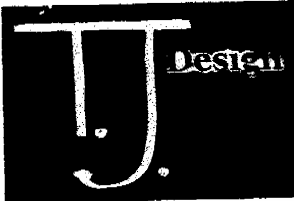
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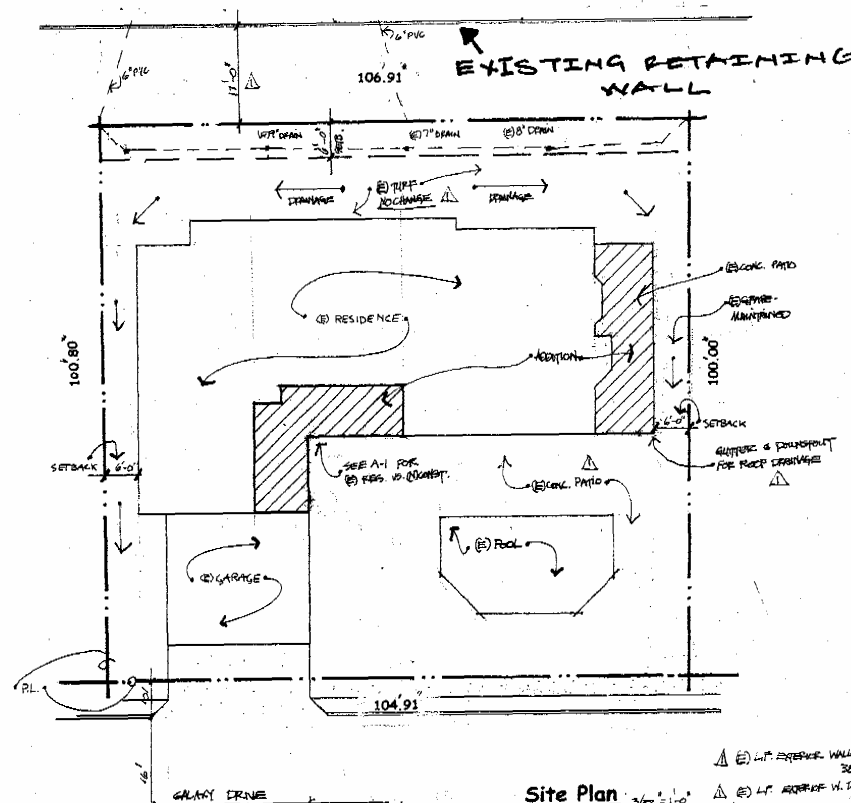
SCALE, AND STOCKPILES
DRAINAGE FACILITIES.



CALIFORNIA COASTAL COMMISSION

UPPER NEWPORT BAY
ECOLOGICAL
RESERVE

Vicinity Map



EXISTING RETAINING WALL

GALAXY DRIVE

Site Plan 1/32" = 1'-0"

| Revisions | By |
|-----------|-----------|
| 1 | A.C.C. TJ |
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| | |
| | |
| | |
| | |

TJ Design
 5215 River Avenue
 Suite A
 Newport Beach, CA 92663
 (949) 515-3713

Scheinberg Residence Remodel
 1942 Galaxy
 Newport Beach, CA. 92663

| Drawn | Scale |
|---------|---------------|
| M.M. | 3/16" = 1'-0" |
| 3/10/07 | 3/16" = 1'-0" |
| JT | 3/16" = 1'-0" |
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| | |
| | |

T-1

| AREA | | SHEET INDEX | |
|---------------|----------------|-------------|-------------------------------|
| Existing | 3434 sf | T-1 | Title Sheet, Site Plan, Notes |
| New | 676 sf | A-1 | Proposed Floor Plan |
| TOTAL: | 4110 sf | A-2 | Proposed Elevations |
| Garage | 660 sf | A-3 | Proposed Elevations |
| Lot Size | 10,491 sf | T-24 | TITLE 24 |

COASTAL COMMISSION

EXHIBIT # **2**

PAGE **1** OF **1**

