

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**W25a****ADDENDUM**

May 5, 2008

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM W25a**, COASTAL COMMISSION PERMIT AMENDMENT APPLICATION #5-87-042-A3 (Anderson) FOR THE COMMISSION MEETING OF **May 7-9, 2008**.

Correspondence

Attached are two letters received on May 5, 2008 related to Coastal Development Permit Amendment Application #5-87-042-A3(Anderson), Item W25a. Staff is recommending approval of the amendment which will result in a lot subdivision for condominium purposes to separate the restaurant space on the ground floor from the bed and breakfast inn and owner's unit space on the upper floors for purposes of separate ownership with three special conditions.

Correspondence from Mr. Daniel Bogoshian, neighbor and property owner at 117 Coronado Lane, San Clemente, directly to the rear of the subject property at 610 Avenida Victoria requests the Commission continue the item to a future hearing until the pending Coastal Development Permit (CDP) violation regarding compliance with the project's parking requirements is resolved and requests the Commission investigate other possible CDP violations related to public right of way encroachments. The second letter is from Mr. John Mckinley property owner at 600, 602, and 612 Avenida Victoria and 119 Coronado Lane, San Clemente requesting the Commission provide "the same out of the box thinking regarding parking issues" when reviewing his future coastal development permit applications.

Approval of this CDP amendment as recommended by staff does not set a new precedent regarding the typically applied parking standards for mixed-use designated properties in the City of San Clemente as is implied by Mr. Mckinley's letter. The special conditions imposed under CDP 5-87-042-A2 requires the typically applied parking standards for a restaurant establishment. The intent of the special conditions regarding the provision of parking for the restaurant portion of the project have not been met to the Executive Director's approval and constitutes a violation of the CDP conditions.

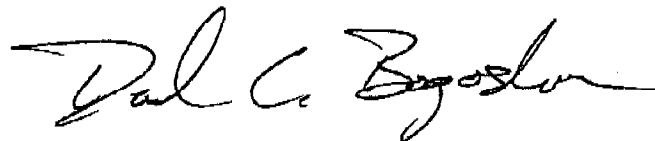
Through this application for an amendment, however, the applicant is not seeking authorization for development that would affect the parking requirements imposed by CDP 5-87-042-A2. The development before the Commission is thus unrelated to the existing violation on the property. The proposed development for subdivision of air space does not include any change to the structure or intensification of use and will not further affect the public's ability to gain access to, and/or to make use of, the coast or nearby recreational facilities.

Staff will investigate Mr. Bogoshian's comments regarding possible unpermitted encroachments on the subject site. However, staff does not recommend removing the item from the Commission's May 2008 agenda until the pending CDP violation is resolved. All of the conditions imposed under the original CPD approval still apply. Therefore, staff recommends keeping the item on the Commission's current May 7-9, 2008 hearing.

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Date: Fri, 2 May 2008 11:53:50 -0700 (PDT)
From: "DANIEL BOGOSHIAN" <dannycb@flash.net>
Subject: California Coastal Commission Permit #5-S7-042-A3
To: danielbogoshian@yahoo.com

To The California Coastal Commission: As a resident property owner directly to the rear of the applicant, I hope that you will please consider continuing permit amendment application # W 25a pending evidence of compliance of the applicant's current and future parking contracts. Additionally, the Commission should be aware that the applicant may have encroached into the public right of way both front and rear of his property and may wish staff to investigate and recommend additional conditions to this permit amendment application. Thank you for considering my concerns, Daniel C. Bogoshian 117 Coronado Ln. San Clemente CA 92672



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California Coastal Commission
Permit #5-87-042-A3

To Whom it May Concern:

I am formally requesting to be put on the record in reference to the parking situation with Mr. Anderson's property located at 612 Avenida Victoria, San Clemente California 92672.

In the future I would expect the same out of the box thinking in regards to the parking issues for my upcoming development as well as any other considerations, waivers and variances extended to Mr. Anderson.

My Best Regards,



John Mckinley
600/602/612 Avenida Victoria San Clemente Ca. 92672
119 Coronado Lane San Clemente Ca. 92672
Phone # 949 492 1720
e-mail: info@seahorsesanclemente.com

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South Coast Area Office
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Filed: September 11, 2007
180th Day: March 9, 2008
270th Day: June 7, 2008
Staff: Liliana Roman-LB
Staff Report: April 17, 2008
Hearing Date: May 7-9, 2008
Commission Action:

W25a

STAFF REPORT: PERMIT AMENDMENT**AMENDMENT**

APPLICATION No.: 5-87-042-A3

APPLICANT: Rick Anderson

PROJECT LOCATION: 610 Avenida Victoria, San Clemente, Orange County.

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Conversion of an existing 3-story single-family dwelling to an 8-unit bed and breakfast inn and subsequently amended to convert proposed street level parking garage to a restaurant with parking for the inn provided off-site and parking for the restaurant provided by the purchase of in-lieu parking certificates.

DESCRIPTION OF AMENDMENT: A lot subdivision for condominium purposes of an existing commercial building consisting of a restaurant on the ground level and bed & breakfast inn and related owner's unit on the upper levels for purposes of ownership of the restaurant space separately from the bed & breakfast inn and related owner's unit space.

LOCAL APPROVALS RECEIVED: City of San Clemente Approval in Concept, 9/05/07.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits 5-87-042(Anderson), 5-87-042-A1(Anderson), 5-87-042-A2 (Anderson).

SUMMARY OF STAFF RECOMMENDATION: Staff is recommending approval of the amendment as proposed which will result in a lot subdivision for condominium purposes to separate the restaurant space on the ground floor from the bed and breakfast inn and owner's unit space on the upper floors for purposes of separate ownership with three special conditions.

PROCEDURAL NOTE

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The proposed amendment was determined to be material because it affects conditions required for the purpose of protecting a coastal resource. Staff is recommending approval of the proposed changes to the special condition because protection of coastal resources (parking in the Pier Bowl area) will not be adversely effected by the permit amendment.

I. STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 5-87-042-A3 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. 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. Conditions Imposed Under Original

Unless specifically altered by this amendment, all standard and special conditions imposed under Coastal Development Permits No. 5-87-042, 5-87-042-A1, and 5-87-042-A2 remain in effect.

2. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-87-042-A3. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (b) shall not apply to the entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to divisions of land, conversion to condominiums, and repair and maintenance activities 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. 5-87-042-A3 from the Commission or shall require an additional coastal development permit from the Commission.

3. Generic Deed Restriction

PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (5-87-042-A3), the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, 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 amendment, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a graphic depiction and legal description of the entire parcel or parcels governed by this permit amendment and a copy of the staff report for this permit

amendment. 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 amendment 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. AMENDMENT PROJECT DESCRIPTION

In its action on the original permit on March 26, 1987, the Commission approved a coastal development permit to convert an existing three-story single-family residence to an 8-unit bed and breakfast inn with one manager/owner unit and a ground level parking garage providing ten on-site parking spaces. The Commission subsequently approved amendment 5-87-042-A1(Anderson) to allow access to the parking garage from Avenida Victoria, subject to a special condition to purchase "in-lieu" parking certificates for the public parking spaces lost on-street due to the necessary curb cut on Avenida Victoria. A second permit amendment was approved on February 9, 1989 to convert the proposed ground level parking garage fronting Avenida Victoria to a restaurant with approximately 1,200 square feet of service area and 93 seats and to provide eight (8) nearby off-site parking spaces to satisfy the bed and breakfast parking requirement and the purchase of 23 in-lieu parking certificates to provide the required restaurant parking requirement.

The current amendment request is for a lot subdivision for condominium purposes to separate the restaurant space on the ground floor from the bed and breakfast inn and owner's unit space on the upper floors. The proposed special conditions require a deed restriction and specify that any future development on the site requires an amendment to this permit or a separate Coastal Development permit.

The subject site is located at 610 Avenida Victoria, San Clemente. The nearest beach public access is immediately across the street from the subject site, adjacent to the San Clemente Pier.

The Commission approved the previous permit amendment, 5-87-042-A2, subject to two (2) special conditions: 1) a requirement to submit evidence of a legally binding agreement to purchase twenty-three (23) in-lieu parking certificates which are specifically designated to create additional parking spaces in the Pier Bowl area only, and 2) a requirement that the applicant record a deed restriction which provides evidence of a contractual off-site parking agreement between the permittee and San Clemente Cove which provides that eight (8) off-site parking spaces shall be exclusively provided and maintained for patrons of a bed and breakfast inn operation at 610 Avenida Victoria, San Clemente, CA and that the Commission shall be notified in writing of any termination or breach of this lease

agreement and an alternative parking agreement shall be submitted at a location acceptable to the Executive Director. These special conditions remain in effect.

B. RECREATION AND VISITOR SERVING FACILITIES

Section 30213 of the Coastal Act states in relevant part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

The subject site is located in the Pier Bowl in the 100 block of Avenida Victoria facing the municipal pier; with surrounding uses such as commercial, motel, and condominiums. The Pier Bowl area is the primary visitor-serving beach destination point in San Clemente.

The proposed subdivision for condominium purposes will allow for the subdivision of air space for ownership of the restaurant space on the site's ground floor separately from the bed and breakfast inn and related owner's unit on the floors above the restaurant. No exterior or interior changes are proposed as part of the subdivision request. No proposed condo-hotel conversion or intensification of use is proposed. However, the proposed permit amendment raises concerns that future development of the project site including intensification of use may potentially result in a development that is not consistent with the Coastal Act. To assure that future development is reviewed for consistency with the applicable policies of the Coastal Act, the Commission imposes a special condition to the permit amendment requiring that all proposals for future improvements return to the Commission for review through an amendment to this permit or issuance of a separate Coastal Development Permit. Additionally, the Commission imposes a generic deed restriction to ensure that future owners of the subdivided property are aware of the special conditions imposing affirmative obligations on the new property owner(s) or occupant(s). As conditioned, the development is in conformance with the Coastal Act recreational and visitor serving policies.

C. ACCESS

Parking

Section 30252 of the Coastal Act states, in relevant part:

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.

When a private development does not provide adequate on-site parking, users of that development who arrive by automobile are forced to occupy public parking used by visitors to the coastal zone. Access to the public beach and municipal pier is located immediately adjacent to the project site at the Pier Access Point (Exhibit 3). The relative proximity of these public coastal access facilities to the project site gives good reason for the need for adequate parking for private development. Insufficient parking on the project site may result in users of that development taking up spaces that the public may use to access areas such as the public beach and municipal pier. Thus, all private development must provide adequate on-site parking to minimize adverse impacts on public access.

In 1989, the Commission issued permit amendment CDP 5-87-042-A2 for conversion of the bed and breakfast ground floor to a 1,200 square foot, 93 seat restaurant with two special conditions, 1) evidence of a legally binding agreement to purchase twenty-three (23) in-lieu parking certificates which are designated to create additional public parking spaces in the Pier Bowl area only and 2) a deed restriction which provides evidence of a contractual off-site parking agreement between the permittee and San Clemente Cove which provides that eight (8) off-site parking spaces shall be exclusively provided and maintained for patrons of the bed and breakfast inn operating at 610 Avenida Victoria, San Clemente, CA.

The applicant has maintained a current lease agreement for eight (8) private parking spaces located within one block of the subject site at San Clemente Cove to replace the required bed and breakfast parking previously proposed for the building's ground floor level where the restaurant now exists. However, the applicant has not fulfilled the intent of the Coastal Commission's condition to meet the restaurant's parking requirements.

In prior permit approvals for restaurants in San Clemente, the Commission has found the City's parking standard of one parking space per four seats adequate. Issuance of the 1989 CDP amendment was contingent on the applicant's participation in the City's in-lieu parking program *with the intent* that the in-lieu fees would be adequate to create 23 new parking spaces in the Pier Bowl area. The applicant entered into an agreement with the City to purchase the required 23 in-lieu parking certificates required by the City and Coastal Commission CDP condition. The City's in-lieu parking program's standard price of each parking certificate was set at \$10,000 each (as determined by the City sufficient to create one parking space). The in-lieu parking fees totaled \$230,000.

However, according to City records, the applicant petitioned the City for a reduction in the fee for the in-lieu parking certificates he owed the City, due to financial hardship he experienced during the construction of the bed & breakfast inn. A City Council action in November 1998 lowered his total debt of \$230,000 required for the creation of 23 parking spaces in the Pier Bowl area to \$28,500, thereby pardoning the remainder of the debt. The City also suspended use of the in-lieu parking program at this time. However, this City action did not change the conditions of CDP 5-87-042-A2, and there was no follow-up CDP amendment to reflect this change in the terms and conditions of the permit. The intent of the CDP condition is for the establishment of 23 parking spaces funded by money paid by the applicant into the in-lieu parking program. The applicant is therefore in violation of the terms and conditions of permit amendment 5-87-042-A2.

The most recent parking data of the area is from a 1995 parking needs assessment of the Downtown, Pier Bowl and North Beach areas conducted by IBI Group. The study established the parking supply at 554 spaces and estimated parking demand to be 410 spaces, deeming parking supply in the Pier Bowl adequate. The study also projected non-residential and beachgoer demand to increase to 783 spaces by 2005. In addition, it proposed reductions in parking standards due to shared-use parking, and it recognized the potential of an in-lieu parking program (with fees reduced by half) for the Pier Bowl when feasible, otherwise the study concluded that every development should be required to provide parking on-site regardless of its size.

The applicant has not provided more recent parking studies or parking counts of the area. Nor has the applicant provided evidence of any new public parking spaces created with the in-lieu parking fee collected by the City or information regarding the use of those funds.

Coastal Act Section 30252 requires that development maintain and enhance public access to the coast by providing adequate parking facilities. The intent of the special condition under the previous 1989 amendment (CPD 5-87-042-A2) was to provide the required parking spaces for the restaurant and bed and breakfast inn developments to avoid public beach access impacts. Funds necessary for the creation of 23 parking spaces (including funds already paid to the in-lieu parking program) are still required under CDP 5-87-042-A2 to provide public access improvements specific to the Pier Bowl area. Any modification to the requirement must be done through an amendment to this permit by the Commission.

As originally conditioned, the development of the inn and restaurant was consistent with the Commission's typically applied parking standards and would not adversely affect the public's ability to gain access to and/or to make use of the coast and nearby recreational facilities. However, as the in-lieu parking fees did not result in the creation of the required new parking, the project is not consistent with public access policies of the Coastal Act and constitutes a violation.

Through this application for an amendment, however, the applicant is not seeking authorization for development that would affect the parking requirements imposed through the prior amendment. The development before the Commission is thus unrelated to the existing violation on the property, which is discussed below. The proposed development for subdivision of air space does not include any change to the structure or intensification

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

D. VIOLATION

Development has occurred on the subject site that does not fully comply with the terms and conditions of the underlying CDP 5-87-042-A2, including failure to provide for the purchase of 23 parking spaces, as required by Special Condition No. 1 of CDP 5-87-042-A2. Special Condition No. 1 states:

Prior to transmittal of the Coastal Permit the applicant shall submit, for the review and approval of the Executive Director, evidence of a legally binding agreement to purchase twenty-three (23) in-lieu parking certificates which are designated to create additional public parking space in the Pier Bowl Area only.

In the findings of the staff report for CDP 5-87-042-A2 it is clearly stated that the purchase of in-lieu parking certificates was necessary to provide funds for construction of the 23 parking spaces necessary for a project of this size. No in-lieu fee parking program specific to the Pier Bowl existed at the time the permit was approved, thus, the Commission found it necessary to require the applicant to provide evidence of an agreement to participate in an in-lieu parking fee program upon its establishment. The CDP was issued after such evidence was provided to staff. Clearly, to provide the required parking for the restaurant, evidence of the agreement alone would not suffice; to satisfy the condition, the agreement must be carried out.

The City calculated the cost of 23 certificates to be approximately \$230,000 based on an estimated cost of acquisition and construction of 23 typical parking spaces. The applicant paid \$5,048 towards the total in-lieu fee and then petitioned the City in 1998 to reduce his outstanding obligation to the City to \$28,462. The applicant argued that his restaurant accounted for only 15% of the parking demand in the Pier Bowl, thus the fee should be based on the cost of providing 3.45 parking spaces (23 parking spaces X 15%). The City agreed to lower the outstanding fee to \$28,462, which, according to documents submitted by the applicant, the applicant has paid. However, since the cost of acquisition and construction of 23 typical parking spaces has not decreased since \$230,000 was established as the in-lieu fee, \$33,474 is clearly not sufficient to fund construction of the 23 parking spaces the Commission required in CDP 5-87-042-A2. Any change to the project's parking requirement would require a permit amendment.

Non-compliance with the terms and conditions of an approved permit constitutes a violation of the Coastal Act. The applicant is not proposing to address the violation as part of this pending amendment application. Although development has occurred on the subject site that does not fully comply with the terms and conditions of an approved permit, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit amendment does not constitute a waiver of any legal action with regard to any alleged violations nor does it

constitute an admission as to the legality of any development undertaken on the subject site in non-compliance with the terms and conditions of the underlying permit.

D. LOCAL COASTAL PROGRAM

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. 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.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of San Clemente Planning Division is the lead agency for California Environmental Quality Act (CEQA) purposes. On July 25, 2007, the City deemed the proposed project Categorical Exempt as a Class 3 exemption pursuant to CEQA Guidelines Section 15301(k) as the project consists of the subdivision of an approved commercial building for common-interest ownership, with no physical change occurring. The Coastal Commission adopts additional mitigation measures, found below, to ensure that the proposed project will conform with the requirements of the Coastal Act. The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. A special condition for future improvements to return to the Commission for review is imposed. As conditioned, the proposed project has been found consistent with the public access policies of the Coastal Act.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which 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.

