

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: May 28, 2008
49th Day: July 16, 2009
180th Day: November 24, 2009
Staff: Liliana Roman-LB
Staff Report: July 22, 2009
Hearing Date: August 12-14, 2009
Commission Action:

**Item F5b****STAFF REPORT: CONSENT CALENDAR**

APPLICATION NUMBER: 5-09-102

APPLICANT: Mr. and Mrs. John K. O'Brien

AGENT: Bradford C. Smith

PROJECT LOCATION: 3905 Seashore Drive, Newport Beach (Orange County)

PROJECT DESCRIPTION: Demolition of an existing one-story single family residence and construction of a new 2,143 sq. ft., 29 feet high, two-story single family residence with attached 410 sq. ft. garage, roof deck, minimal grading for site preparation, hardscape improvements and minimal landscaping, no beachfront encroachments

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept (No. 0608-2009) dated May 15, 2009

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan and *Coastal Hazard and Wave Runup Study for 3905 Seashore Drive, Newport Beach, CA prepared by GeoSoils, Inc. dated May 19, 2009;* *Geotechnical Engineering Investigation of Proposed Residence at 3905 Seashore Drive, Newport Beach, CA by Coast Geotechnical, Inc. dated April 6, 2009.*

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing construction of a new beach-fronting single-family residence. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events.

Staff is recommending **APPROVAL** of the proposed project with **eight (8) special conditions** regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) conformance with the submitted drainage plan; 4) bird strike prevention; 5) landscape requirements; 6) storage of construction materials, mechanized equipment and removal of construction debris 7) future development; and 8) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

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.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Project Plans
-

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. **Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, wave uprush and sea-level rise; (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.

2. **No Future Shoreline Protective Device**

- A. By acceptance of this permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-09-102 including, but not limited to, the residence, garage, foundations, and patio, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, sea-level rise or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. **Drainage Plan**

The applicant shall conform to the site drainage details depicted in the drainage plan dated April 20, 2009 and received in the Commission's office on June 16, 2009 indicating use roof downspouts directed to permeable surfaces and a bottomless trench drain along the rear property line for on-site percolation of runoff. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur

without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Bird Strike Prevention

The applicant shall conform to the bird strike prevention details depicted on the site/roof plan dated April 20, 2009 and received in the Commission's office on June 16, 2009 indicating use of etched glass railing/screenwall on the proposed roof deck and second story balcony/deck. Where the back or front yard of the residence abuts a coastal sandy beach, there shall be walls, fences, gates, safety devices and boundary treatments, as necessary, to protect coastal habitat. Ocean front railings, screenwalls, fences and gates subject to this permit shall use materials designed to minimize bird-strikes with the railing, screenwall, fence, or gate. Materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, etched or partially etched glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed. All materials shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director.

5. Landscaping - Drought Tolerant, Non Invasive Plants

Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).

6. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
- (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.

7. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-09-102. 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. 5-09-102. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to 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. 5-09-102 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

8. Generic Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have 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 AND DESCRIPTION

The subject site is located at 3905 Seashore Drive in the City of Newport Beach, Orange County (Exhibits 1 and 2). The lot size is 1,982 square feet. The City of Newport Beach Land Use Plan (LUP) designates the site as High Density Residential; the proposed project is a single-family residence allowable under this designation. The project is located within an existing urban residential area on an oceanfront lot between the mouth of the Santa Ana River and the Newport Pier.

The applicant is proposing to demolish an existing one-story single-family residence and garage and construct a new ocean-fronting, 2,143 sq. ft., 29 feet high, two-story single family residence with attached 410 sq. ft. garage, roof deck, minimal grading for site preparation, hardscape improvements and minimal landscaping (Exhibit 3). The site is a beachfront lot located between the first public road and the sea. There is a wide sandy beach (approximately 350 feet wide) between the subject property and the Pacific Ocean. Due to its oceanfront location, the project site may be potentially exposed to the hazard of wave up-rush during a severe storm event or possible future sea level rise.

Furthermore, due to the oceanfront location of the proposed tempered glass screenwall (fence/railing) along the roof deck and second story deck/balcony, there is a substantial risk of bird strikes to the screenwalls. Glass walls are known to have adverse impacts upon a variety of bird species. Birds are

known to strike glass walls causing their death or stunning them which exposes them to predation. Some authors report that such birds strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat). Some type of boundary treatment is typically required where the back or front yards of residences abut wetlands, coastal bluffs, bays or oceanfront. There are a variety of methods available to address bird strikes against glass. For instance, glass can be frosted or etched in a manner that renders the glass more visible and less reflective. In the case of fences or walls, alternative materials can be used, such as wood, stone, or metal (although this approach isn't usually palatable when there is a desire to see through the wall). Use of frosted or etched glass, wood, stone or metal material is preferable to other types of treatments such as appliqué because of the lower maintenance and less frequent replacement that is required. The project includes glass railing/screenwalls along the ocean facing roof deck and second story balcony. As depicted on the site/roof plan, the applicant is proposing etched-glass at both of these locations as a bird strike prevention method to provide protection to coastal avian species. **Special Condition 4** requires the applicant follow their plan for bird strike prevention treatment on the proposed glass railings.

The proposed project will not have an adverse effect on public access. The project meets the Commission's typical parking requirement (2 spaces per residential unit) and is designed to be compatible with the character of the surrounding development. The Commission has found through previous permit actions in this area that the City's setback is acceptable for maintaining public access and addressing visual impacts. The proposed residence is consistent with the City's 10-foot required setback from the seaward property line. The project site is located along the portion of Ocean Front that is not developed with the City's paved beachfront lateral public access way (boardwalk). Vertical public access to the public beach is available at the end of 39th Street, approximately 60 feet south of the site and lateral public access is available along the wide sandy beach immediately seaward of the subject site. No encroachments are proposed into the adjacent public beach. The LUP encroachment policies allow encroachment onto the Oceanfront right-of-way in the area of the subject site, which is on Seashore Drive between the Santa Ana River and 52nd Street. Encroachments in this area may be up to a maximum of 15 feet oceanward of the rear (ocean facing) property line within an ocean ward prolongation of the side property lines. The LUP policies allow encroachments only if they do not interfere with access to the beach or ocean, when a building permit is not required, and subject to payment of a mitigation fee. The applicant is not proposing a beach encroachment with this coastal development permit application. Any future development in the encroachment area, including any work covered by a City issued beach encroachment permit, would require a coastal development permit or an amendment to this coastal development permit per Section 13250 of the California Code of Regulations as pursuant to Coastal Act Section 30610(a). To ensure that no encroachments occur without an approved amendment to this coastal development permit or approval of a new coastal development permit, **Special Condition 7** is imposed requiring future improvements return to the Commission for review. This would allow the Commission to evaluate future encroachment deviations for adverse public access and recreation impacts.

To address water quality concerns, the applicant is proposing water quality improvements as part of the proposed project, such as roof downspouts and concrete swales to direct roof and on-site runoff from all of the site's impervious areas to a bottomless trench drain along the length of the garage at the alley for on-site infiltration and ultimately reaching the municipal storm drains in the rear alley and also directing surface runoff to permeable surfaces along the side yards. The drainage system is designed to retain concentrated and surface sheet flow water within the site. Minimal planter landscaping is proposed as the side yards and front patio will be paved. Proposed planter beds will contain drought tolerant, non-invasive plants such as cacti, Mexican sage and dymondia groundcover. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council

(<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, as proposed, the landscape plan contains drought tolerant plants to minimize the use of water on the site. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. A special condition has been imposed requiring the applicant to comply with the above requirements.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned for one or more of the following: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and 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 to the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

As conditioned, 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 conditioned, the development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, one or more of the following: the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

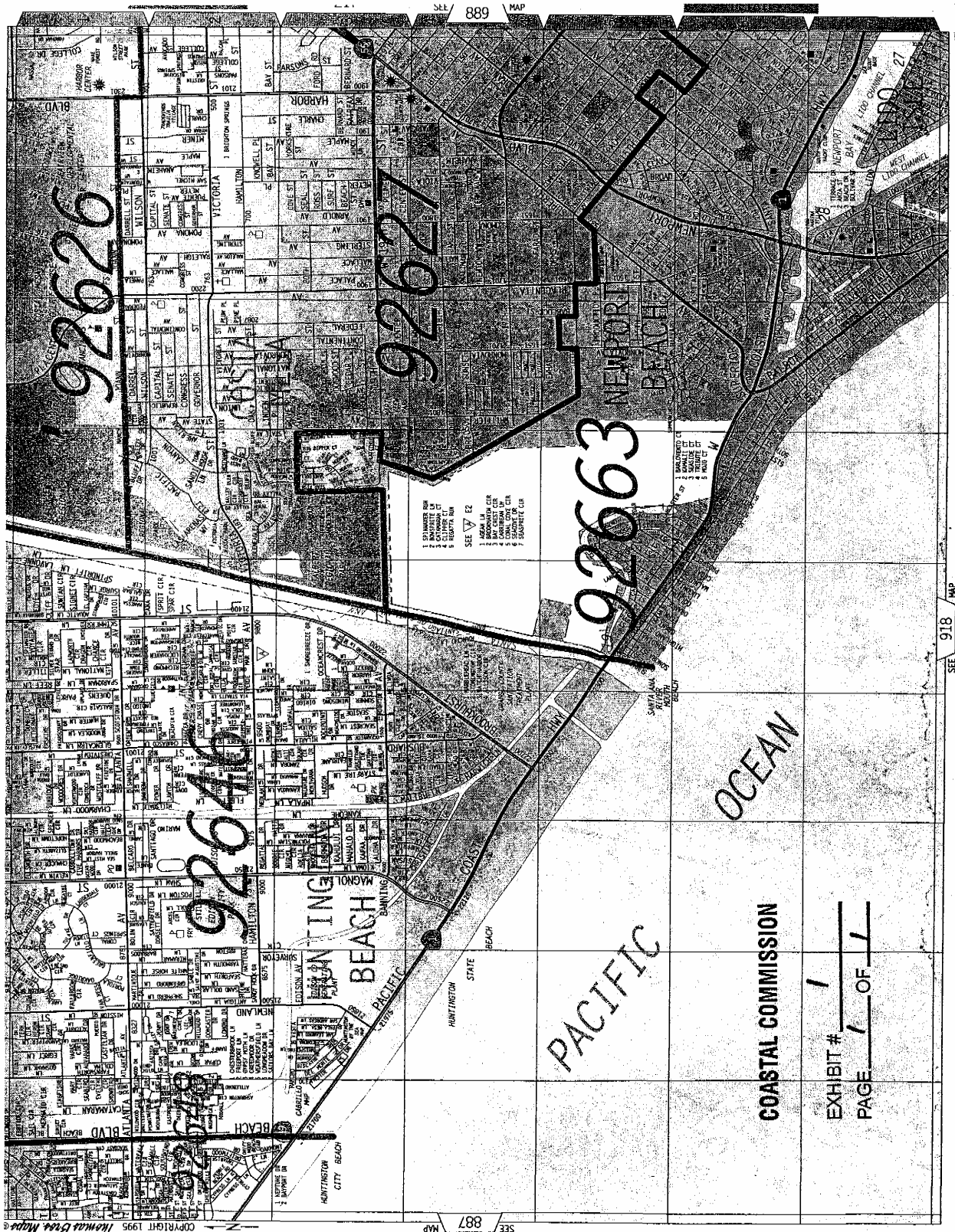
To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions 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.

G. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005. 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 an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

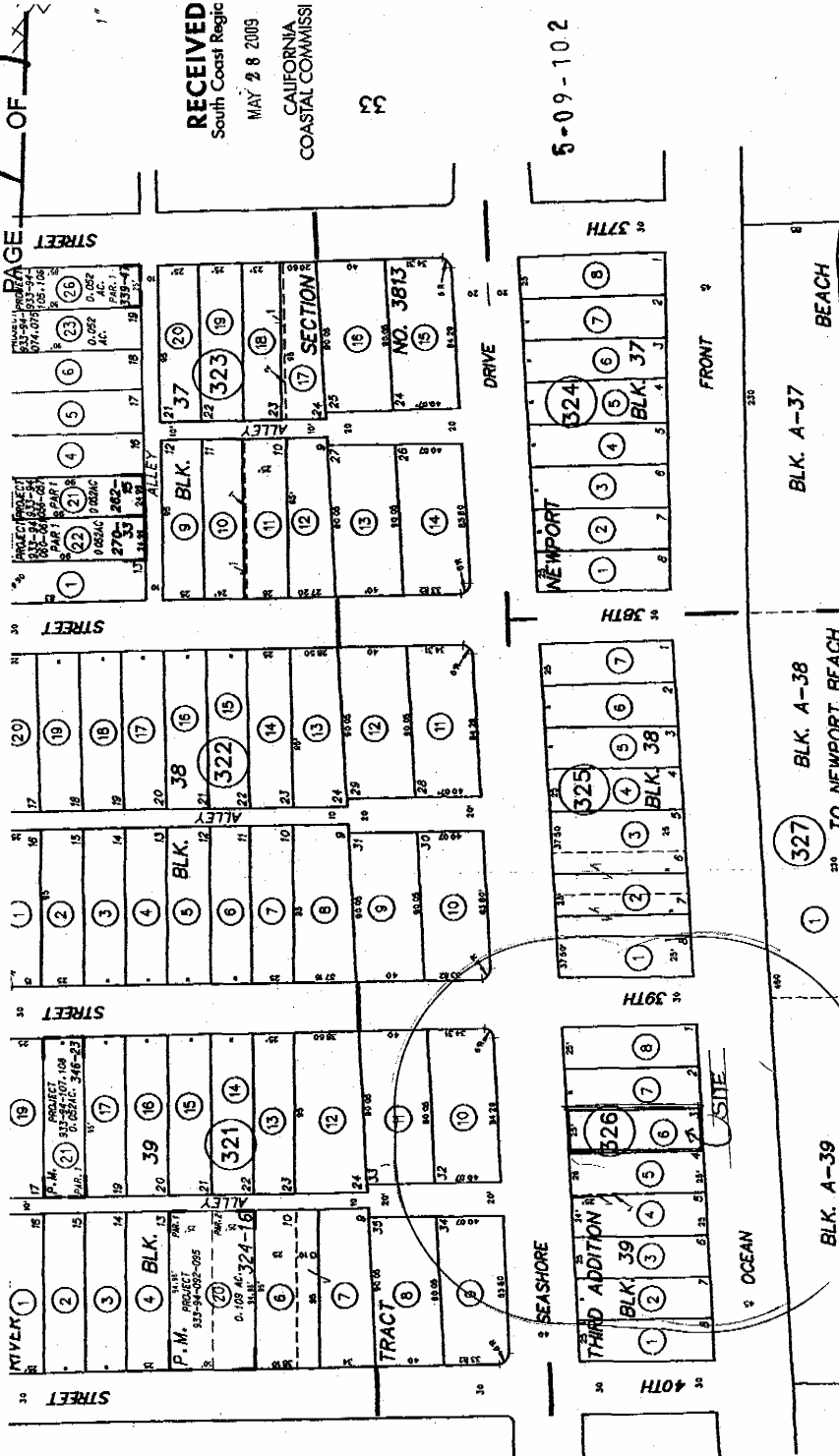
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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.



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EXHIBIT # 2
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NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

TRACT NO. 3813 M.M. 162-111019 Inc.
PARCEL MAP P.M. 262-15,270-33,324-16
PARCEL MAP P.M. 339-47,346-23

NEWPORT BEACH M.M. 3-26
3RD ADD. TO NEWPORT BEACH M.M. 3-31
RIVER SECTION M.M. 4-25

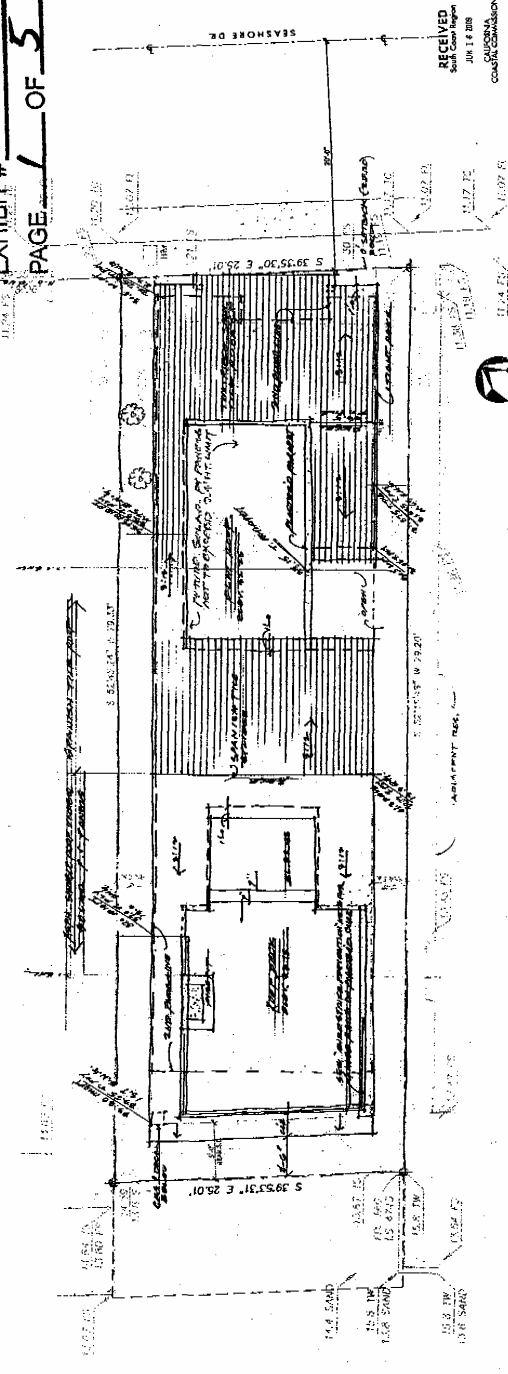
MARCH 1984

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EXHIBIT # 3
 PAGE 1 OF 5

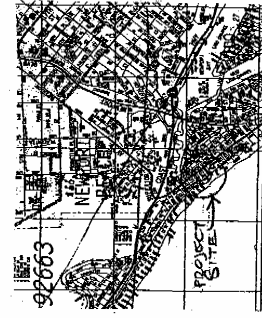
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| BRADFORD C. SMITH, ARCHITECT (949) 631-3882 - e: bcsmith@bcsm.com 425 30th STREET, SUITE 22 NEWPORT BEACH, CALIFORNIA 92663 | SITE / ROOF PLAN | JOHN & ANA O'BRIEN 3905 SEASHORE DR. NEWPORT BEACH, CA 92663 |
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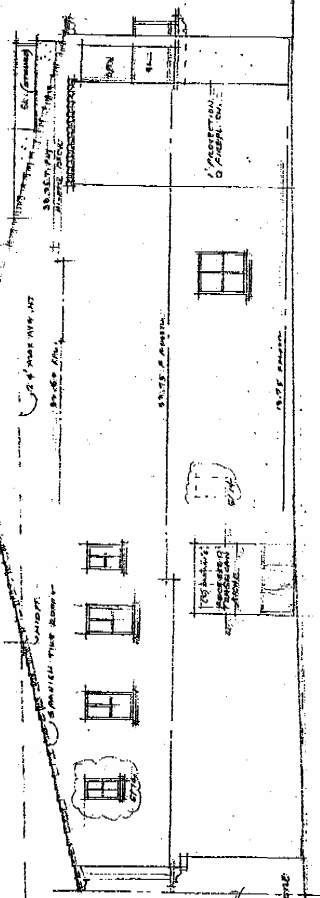
PARCEL DESCRIPTION

LOT AREA 126,192 sq. ft. = 1,882
 FRONT YARD SETBACK 10' = 800
 " GARAGE 410
 SECOND FLOOR 1,192
 " DECKS 195
 THIRD FLOOR 71
 " (ROOF) DECK 368
 TOTAL DECK 368
 ATTACHED SPACE 2,140
 SEPARATE AREA 12' 2,553
 COURT SPACE (7.5' x 100') 5,078 sq. ft.



SITE / ROOF PLAN

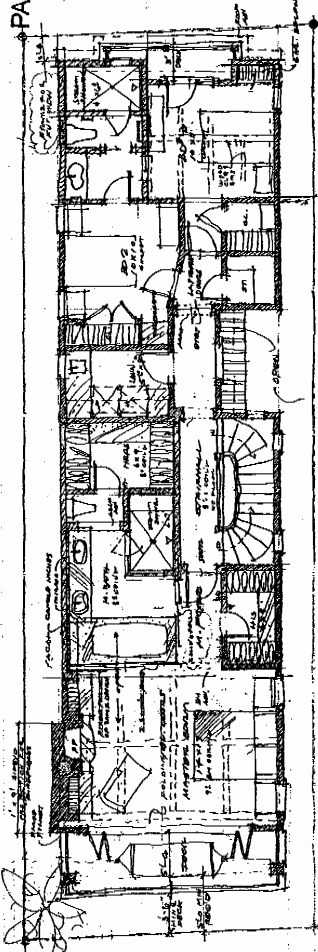
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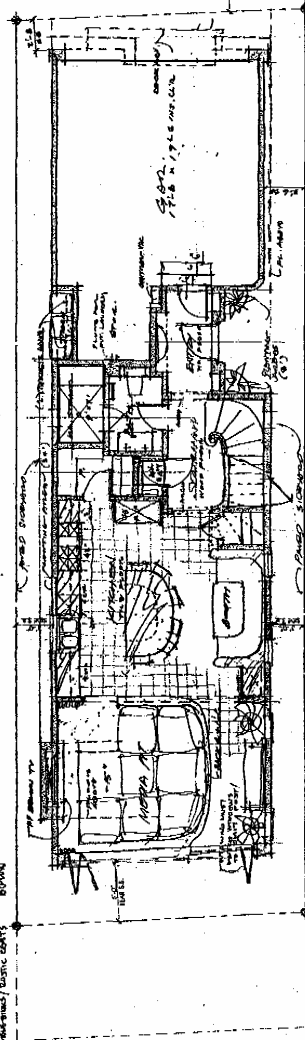
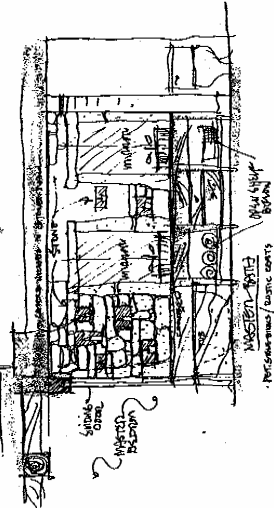
LEFT SIDE / NORTH ELEV.

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EXHIBIT # 3
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SECOND FLOOR PLAN
 SCALE: 1/8" = 1'-0"

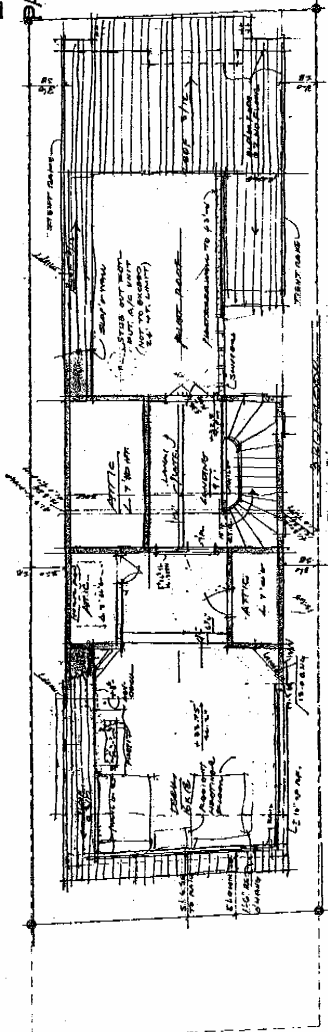


FIRST FLOOR PLAN
 SCALE: 1/8" = 1'-0"

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| BRADFORD C. SMITH, ARCHITECT (949) 631-3682 • bsmith@bcsmith.com 425 30th STREET, SUITE 22 NEWPORT BEACH, CALIFORNIA 92663 | | | | | | FIRST & SECOND FLOOR PLANS | | | JOHN & ANA O'BRIEN A NEW HOME FOR 3905 SEASHORE DR. NEWPORT BEACH, CA 92663 | | | SHEET 2 |

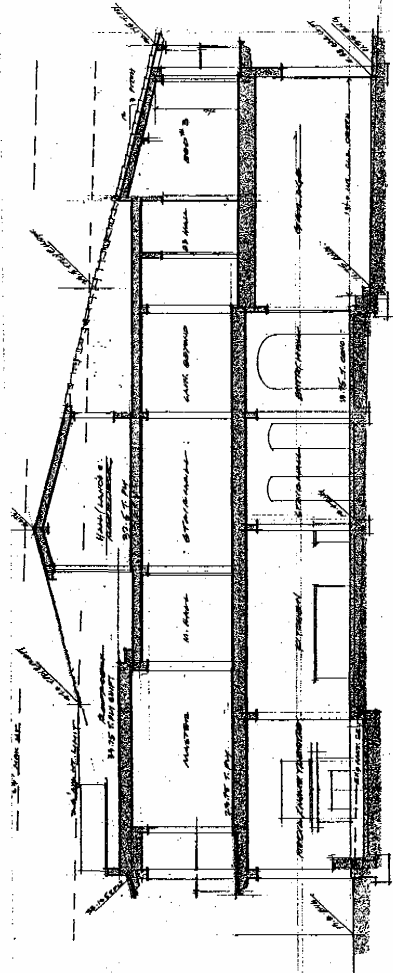
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EXHIBIT # 3
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THIRD FLOOR PLAN
SCALE 1/8" = 1'-0"

REVISED 5/18/89

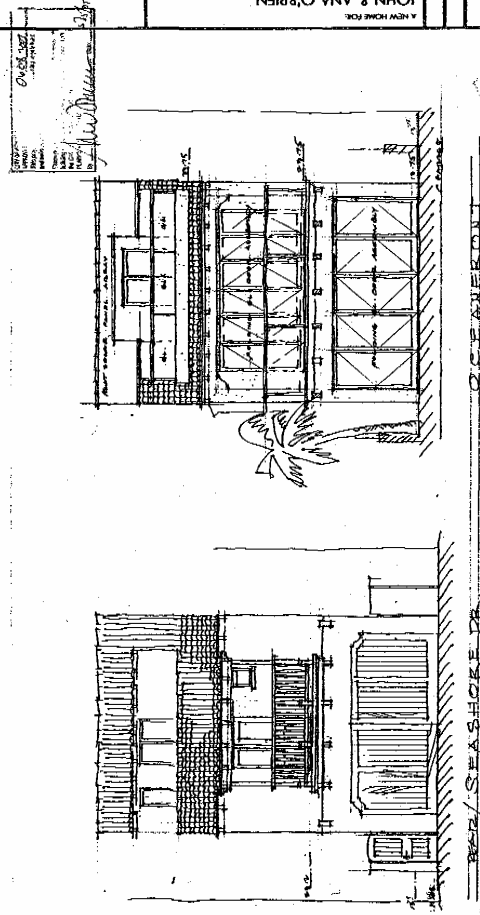
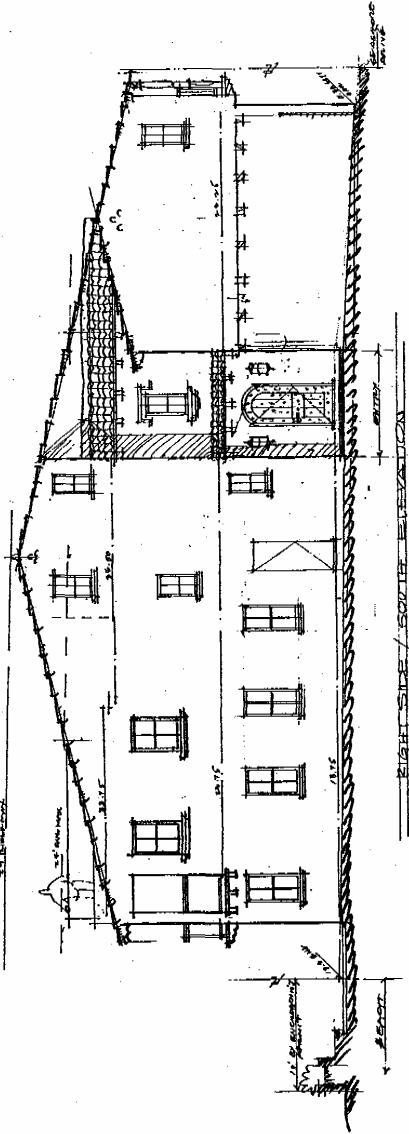


BUILDING SECTION
SCALE 1/8" = 1'-0"

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|---|---|--|---|
| JOHN & ANA O'BRIEN 3905 SEASIDE DR. NEWPORT BEACH, CA 92663 | BRADFORD C. SMITH, ARCHITECT 425 30th STREET, SUITE 22 NEWPORT BEACH, CALIFORNIA 92663 (949) 631-2882 - e: bsmith@bcsm.com | THIRD FLOOR PLAN & BUILDING SECTION 'A' | 3 |
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EXHIBIT # 3
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| | | | |
|---|--|--|--|
| 4 | A NEW HOME FOR JOHN & ANA O'BRIEN 3905 SEASHORE DR. NEWPORT BEACH, CA 92663 | BRADFORD C. SMITH, ARCHITECT (949) 631-3682 - c/o: bcsmith@bcmart.com 425 30th STREET, SUITE 22 NEWPORT BEACH, CALIFORNIA 92663 | DATE: 11/11/10 DRAWN BY: [Signature] CHECKED BY: [Signature] |
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