

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-18-0689

Applicant: Renetta and Jim Haas

Agent: David Lombardi

Location: 731 Yarmouth Ct, Mission Beach, San Diego, San Diego County (APN: 423-316-08)

Project Description: Demolition of existing 1-story, 768 sq. ft. single family residence and construction of a new 3-story, 30-ft. tall, 1,412 sq. ft. single family residence with attached 340 sq. ft. two-car carport on a 0.03-acre lot.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by this project relate to the protection of public views and public access.

The subject property is located on the south side of the east-west Yarmouth Court pedestrian right-of-way, which serves as an access and visual corridor for this part of Mission Beach. The existing development includes a front yard patio and low wall that extend approximately 2 ½ feet north beyond the front property line into the 10-foot wide public right-of-way, which due to private encroachments on neighboring properties has been substantially narrowed to only 5 feet in width.

The Mission Beach community was established over a century ago, and historically, there have been a variety of privately maintained fences, walls, decks, landscaping, and patio improvements located within the various public rights-of-way in Mission Beach. Over the years, both the City of San Diego and the Commission have approved permits to remove these private encroachments as the various residential properties have come forward to redevelop.

As proposed, the entire existing residence will be demolished and rebuilt. New development adjacent to public rights-of-way should be sited and designed without the use of public property. Cumulatively, private encroachments significantly reduce the width of public rights-of-way, thereby reducing the usability of these public accessways to the shoreline. The gradual removal of the private encroachments on a project-by-project basis when each site redevelops will greatly facilitate the future expansion of the boardwalk and sets clear expectations for property owners that public accessways should not be used for private residential purposes.

While the proposed project will not block any public views to the beach, visual resources could be impacted if the required view corridors were blocked by landscaping as it grows in the future. In addition, the presence of construction workers and equipment in such a densely populated, popular beach area could impact public access by occupying public parking spaces for storage or blocking public right-of-ways to and along the beach, especially during the summer months when beach use is at its peak.

The project site is located along a pedestrian right-of-way between Mission Boulevard and the beach. As a near-shore development, the proposed project could be subject to coastal hazards such as flooding as sea level rise increases. Although there is an existing seawall located seaward of the development that protects the public boardwalk a block to the west of the subject site, the subject project should not be designed to rely on the seawall.

To address these potential adverse impacts, Commission staff is recommending several special conditions. **Special Condition No. 1** requires submittal of revised final site construction and landscaping plans that limit landscaping in the public view corridors to a height of three feet and remove existing and proposed development from the Yarmouth Court pedestrian right-of-way. **Special Condition No. 2** prohibits development activity during the busy summer months from Memorial Day Weekend to Labor Day in order to remove the potential of development activity impeding coastal access. **Special Condition No. 3** requires the property owner to submit a written agreement that acknowledges and accepts the construction timing limitations. **Special Condition No. 4** requires the applicant to acknowledge the development is proposed in a site subject to coastal hazards and assume the risks of development. **Special Condition No. 5** requires the applicant to record a deed restriction against the property that imposes the conditions of the permit for the purpose of providing notice to future property owners. Therefore, as conditioned, the project will be consistent with the Chapter 3 policies of the Coastal Act, and no impacts to coastal resources are anticipated.

Commission staff recommends **approval** of coastal development permit application 6-18-0689 as conditioned.

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EXHIBITS

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-18-0689 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit 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 approves coastal development permit 6-18-0689 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

This permit is granted subject to the following standard conditions:

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

This permit is granted subject to the following special conditions:

1. Submittal of Revised Final Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a full-size set of the following revised final plans, modified as required below:

- (a) Final Project Plans that substantially conform with the plans submitted to the Commission, titled “Haas Residence” and received at the San Diego Commission office on July 24, 2018, except that they shall be modified as required below:
 - i. All development located within the 10-ft. wide Yarmouth Court pedestrian right-of-way shall be removed and no new development shall be erected within the right-of-way.
- (b) Final Landscape/Yard Area Plans that substantially conform with the plans submitted to the Commission, titled “Haas Residence” and received at the San Diego Commission office on September 7, 2018, and shall include the following:
 - i. A view corridor, 10 feet wide and measured from the southern boundary of the Yarmouth Court pedestrian right-of-way, shall be preserved in the north yard area adjacent to Yarmouth Court. All proposed landscaping in the north yard area shall be maintained at a height of three feet or lower (including raised planters) to preserve the views along Yarmouth Court toward the ocean.
 - ii. No landscaping or hardscape shall be erected within the 10-ft. wide Yarmouth pedestrian right-of-way.
 - iii. All landscaping shall be drought tolerant, native or non-invasive plant species. All landscape materials within the identified view corridors shall be species with a growth potential not to exceed three feet at maturity. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or 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 “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. If using potable water for irrigation, the project shall use water-conserving emitters (e.g. microspray) and drip irrigation. Use of

weather-based irrigation controllers and reclaimed water for irrigation is encouraged.

- iv. Any fencing and walls, including glass walls, trellis walls, and retaining walls, in the northern yard setback area along Niantic Court shall not exceed a height of three feet above the existing grade or proposed grade, whichever is lower.
- v. A written commitment by the applicant that five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director a landscaping monitoring report, prepared by a licensed Landscape Architect or qualified resource specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the Permittee, or successor in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or qualified resource specialist and shall specify measures to remediate those portions of the approved landscaping plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

- 2. **Timing of Development.** No construction shall take place for the project from Memorial Day Weekend to Labor Day of any year. When construction takes place, access corridors and staging areas shall be located in a manner that has the least impact on public access via the maintenance of existing public parking areas and traffic flow on coastal access routes (e.g., no street closures or use of public parking as staging areas).
- 3. **Written Agreement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the property owner shall submit a written agreement, in a form and content acceptable to the Executive Director, that acknowledges and accepts the timing of development approved pursuant to Special Condition No. 2, and provide a weekly construction schedule to confirm that no construction will occur from Memorial Day Weekend to Labor Day.
- 4. **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, sea level rise, erosion 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.

5. **Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval documentation demonstrating that the applicant 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 the 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 or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The proposed development will demolish the existing 1-story single family residence and construct a 3-story, 30-ft. tall, 1,412 sq. ft. single family residence with 340 sq. ft. carport on a 0.03-acre lot. The property is located at 731 Yarmouth Court in the Mission Beach community of the City of San Diego, in the original permitting jurisdiction of the Coastal Commission where Chapter 3 of the Coastal Act is the standard of review.

Because the existing structure is several decades old, it is subject to the City of San Diego's review for historical significance. Section 143.0212 of the City's Land Development Code provides that the City shall determine the need for a site-specific survey for the purposes of obtaining a construction permit or development permit for development for any parcel containing a structure that is forty-five or more years in age. In this particular case, the City's Development Services Department did not find the structure to be eligible for historical designation, and there is no evidence that the structures have historic value.

B. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

The project site is located on the south side of Yarmouth Court, a ten-foot wide east-west public pedestrian right-of-way within an existing residential area zoned R-N ([Exhibit 2](#)). Due to the dense nature of development in Mission Beach, the pedestrian courts, walks, and places, in conjunction with the vehicular alleys, serve as the primary means for the public to travel within Mission Beach and get to the boardwalk and beaches.

The Mission Beach community was established over a century ago. Due to the age of the community and several of the structures within it, there exist various private encroachments into the public rights-of-way. Over the years, these private encroachments

have been addressed through periodic permit actions, either large actions such as the City of San Diego's widening of the Mission Beach boardwalk (CDP No. 6-01-029), or as various private property owners have come forward to redevelop their properties.

On this particular block, there are a number of homes, including the subject property, which currently have non-conforming setbacks from and encroachments into Yarmouth Court. In the case of the subject property on Yarmouth Court, it currently contains encroachments in the form of a patio and a low wall that extend approximately two-and-a-half feet into the ten-foot wide Yarmouth Court right-of-way. In combination with the encroachment of neighboring residences next to and across from the property, the majority of Yarmouth Court has been narrowed from its ten-foot legal width to five feet, impacting the ability of the public to utilize the right-of-way to reach the boardwalk and beach.

The issue of the encroachment into the Yarmouth Court pedestrian right-of-way is distinct from the issue of potential view impacts to the Yarmouth Court view corridor from landscaping within the front yard setback. The front yard setbacks for all the properties in Mission Beach are measured from the outer boundaries of the mapped public right-of-ways, and these setbacks, in combination with the rights-of-way, constitute the public view corridors. To protect the view corridors from blockage, the certified LCP limits landscaping and hardscape within the front yard setbacks to no more than three feet in height, which the applicant proposes to do and which this permit is conditioned to require.

However, while the proposed project plans measure the ten-foot front yard setback from the property line along the southern boundary of the Yarmouth Court pedestrian right-of-way, the plans also show the existing encroachments – a low wall and some patio space – being retained in the public right-of-way, in non-conformance with current development requirements.

When the existing principal structures on a site are demolished – as is the case with the proposed project – the entire site must be brought into compliance with current requirements, including removal of any encroachments. Therefore, in order to address the encroachment, increase public right-of-way, and bring the property up to current standards, **Special Condition No. 1** requires revised plans that will remove any existing or proposed development from the public right-of-way. In response to this condition, the applicant has responded that the property's front encroaching wall is in line with the front walls of all the other properties along this stretch of Yarmouth Court, and that the Commission has overseen permitting for improvements on the other Yarmouth properties without requiring their encroachments to be pulled back.

Review of the Commission's permit history shows that the majority of the Commission's actions for properties along this stretch of Yarmouth Court have been for remodels or minor additions to existing, previously conforming residences. Because those permit actions did not constitute redevelopment, the applicants were not required to bring the entirety of the property into current conformance at that time.

The Commission has approved three permits for the redevelopment of nearby properties: 6-08-064 (725 Yarmouth, next door to the subject property), 6-16-0805 (747 Yarmouth), and 6-17-0271 (710 Yarmouth). In all three of the approved permits, the approved projects did not propose to retain or create any encroachment into the public right-of-way. Conditions on each of these permits also require that a view corridor a minimum of 10 feet wide shall be preserved in the yard areas adjacent to Yarmouth Court, where all proposed landscaping in the yard area must be maintained at a height of three feet or lower (including raised planters) to preserve views toward the ocean.

Nevertheless, staff has identified that at 725 Yarmouth Court and 747 Yarmouth Court, the properties' developments do not appear to be in conformance with the permits' approved plans and currently encroach into the public right-of-way. These apparent violations will be addressed through a future, separate enforcement action. The property owner at 710 Yarmouth appears to have pulled back the previously encroaching wall out of the public right-of-way as required by their approved plans. Thus, when considering each matter, the Commission has consistently required that encroachments into the public right-of-way be removed in order to restore maximum public access to the shoreline and protect view corridors. Although other encroachments in the public right-of-way on Yarmouth Court will remain for the time being, the gradual removal of the encroachments on a case-by-case basis when each site redevelops will result in the entire block being opened up for public access over time. Removing the encroachments sets clear expectations for property owners that public accessways may not be used for private residential purposes. Combined with the requirement for the view corridor setback and landscape height limits, the project, as conditioned, can be found consistent with the public access provisions of Chapter 3 of the Coastal Act.

Regarding the provision of on-site parking, the certified LCP requires the provision of two parking spaces per dwelling unit, which will be provided in a partially-enclosed carport in the rear of the property off the alley.

Because many of the lots in Mission Beach, including the subject site, are constrained and have limited access and space to accommodate construction activities and staging, demolition and construction activity could impede public access by occupying public parking spaces or blocking public right-of-ways with materials or debris. Therefore, **Special Condition No. 2** prohibits any development during the peak summer months when public access could be impacted and **Special Condition No. 3** requires the property owner to submit a written agreement indicating that they acknowledge and accept the construction timing limitations and will submit a weekly construction schedule to confirm that work will not occur during summer. **Special Condition No. 5** requires recordation of the permit conditions against the property to ensure future property owners are aware of the above mentioned protections and conditions.

Thus, the proposed development, as conditioned, can be found in conformance with the public access policies of Chapter 3 of the Coastal Act.

C. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The proposed development is similar in height, bulk, and scale to the surrounding residential development. The proposed project is also consistent with the development standards pertaining to setback and floor area ratio contained in the City's certified Local Coastal Program (LCP).

In the Mission Beach neighborhood, the public right-of-way of the various courts and places, which are generally east-west running streets, as well as the yard setbacks of the adjacent properties comprise the community's public view corridors. Because the project is located between the first public road and the sea, there is the potential for the project to impact views to the shoreline from Mission Boulevard.

The Commission typically reviews projects to ensure that any new development does not encroach into the yard setback areas, which could impede public views to and along the ocean. Such encroachments could include structures and/or landscaping. As proposed, no structures are located in the view corridors ([Exhibit 3](#)). There is potential for landscaping in the northern yard area to impede views west towards the ocean. To ensure that public views towards and along the ocean are protected, **Special Condition No. 1** requires the applicant to submit final plans indicating that no structures will be located in the view corridors. In addition, **Special Condition No. 1** requires the applicant to submit a final landscaping plan requiring all landscape and hardscape in the northern yard area to consist of low-lying materials not exceeding three feet in height

D. COASTAL HAZARDS

Section 30253 of the Act states, in part:

New development shall do all of the following:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction*

of protective devices that would substantially alter natural landforms along bluffs and cliffs.

[...]

Sea level rise is expected to exacerbate existing coastal hazards by raising mean water levels and extending flood zones inland. As noted in the Commission's 2015 Sea Level Rise Guidance and other studies, increased sea level is expected to cause increased inundation of beaches, reduced accretion, or increased erosion of beaches. The Mission Beach community is a low-lying area on a narrow peninsula situated between the Pacific Ocean to the west and Mission Bay to the east, which currently experiences periodic flooding that will likely increase with sea level rise. Because there is a wide sandy beach (approximately 200 ft. wide) and a public boardwalk (approximately 20 ft. wide) protected by a seawall between the subject property and the Pacific Ocean, wave run up and overtopping are not expected to significantly impact this inland site over the life of the proposed rebuild; however, as a near-shore property, the proposed development may be threatened by sea-level rise at some point in the future.

Because periodic storm and flood events occur throughout the Mission Beach community, **Special Condition No. 4** requires the applicant to acknowledge the risk of building in a hazardous location and ensures that the risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the applicant enjoying the benefits of its private new development, and not the public.

F. LOCAL COASTAL PLANNING

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Mission Beach community.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

effect which the activity may have on the environment. The City of San Diego determined that the residential project was exempt from CEQA and required only ministerial approval.

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

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6-18-0689 (**Renetta and Jim Haas**)

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS