

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

Application No.:	6-18-0004
Applicant:	Derek Berg
Agent:	Bruce Duggan
Location:	721 Island Court, Mission Beach, San Diego, San Diego County (APN: 423-664-02)
Project Description:	Demolition of existing 1,738 sq. ft., two-story single-family residence and construction of new a 2,395 sq. ft. three-story duplex and companion unit on a 2,400 sq. ft. lot.
Staff Recommendation:	Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by the proposed development relate to public access and protection of public views. The project site fronts the south side of Island Court, a pedestrian right-of-way that runs east-west and serves as an accessway and visual corridor for this part of Mission Beach. The existing development includes brick pavers and a decorative pathway that extend approximately two-and-a-half feet north beyond the front property line into the ten-foot wide public right-of-way. As proposed, all private encroachments will be removed.

While the proposed duplex will not block public views to the beach along the shoreline, visual resources could be adversely impacted if view corridors are blocked by landscaping. The project currently includes planting a new tree in the required fifteen-foot wide front yard

view corridor. The City of San Diego's certified LCP limits where trees can be placed and requires regular maintenance of the tree to ensure public views are not adversely impacted. Therefore, **Special Condition #1** requires submittal of revised final site plans that relocate the proposed tree no further than four to five feet from the proposed duplex and removes any private encroachments within the public right-of-way. **Special Condition #2** limits trees in the view corridor to a maximum of two, within four to five feet of the primary structure, which must be maintained so that branches do not encroach below a height of eight feet above the finished grade. **Special Condition #2** also limits landscaping in the public view corridors other than trees to a height of three feet and removes any private encroachments within the public right-of-way.

In addition, the presence of construction workers and equipment in such a densely populated, popular beach area could adversely impact public access by occupying public parking spaces for storage or blocking public rights-of-way to and along the beach, especially during the summer months when beach use is at its peak. To address these potential adverse impacts, Commission staff is recommending several special conditions. **Special Condition #3** prohibits development activity during the busy summer months between Memorial Day Weekend and Labor Day in order to remove the potential of development activity impeding coastal access. **Special Condition #4** requires the property owner to submit a written agreement that acknowledges and accepts the construction timing limitations. Finally, there are risks associated with building in an area that is likely to be subject to coastal hazards, such as flooding and wave uprush, as sea level rise increases. **Special Condition #6** 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.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial Photo](#)

[Exhibit 3 – Site Photo](#)

[Exhibit 4 – Site Plan](#)

[Exhibit 5 – Front Elevation](#)

I. MOTION

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.

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. Revised Final Plans.

- (a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, revised final plans approved by the City of San Diego

that are in substantial conformance with the plans prepared by Madesign & Drafting received 10/30/18 except that they shall comply with the following:

- i. The twenty-four inch box tree shall be relocated no further than four to five feet from the proposed duplex.
 - ii. All development, including brick pavers and decorative concrete, located outside the property line as generally depicted in [Exhibit No. 4](#) shall be removed.
 - iii. The public area exposed by removing the encroachments must either (1) be left as a dirt patch or (2) paved with concrete that matches the existing Island Court right-of-way. No structures, landscaping, decorative concrete, etc. is permitted within the public right-of-way.
- (b) 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. **Final Landscape/Yard Area Plans.**

- (a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval final landscape plans. Said plans shall first be stamped approved by the City of San Diego and be in substantial conformance with the landscape plans prepared by Madesign & Drafting received 10/30/18 and shall include the following:
- i. A view corridor, fifteen feet wide, shall be preserved in the north yard area adjacent to Island Court. A maximum of two trees, preferably canopy trees, may be planted within four to five feet of the primary structure. Trees must be maintained so that branches do not encroach below a height of eight feet above the finished grade. All other 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 Island Court towards the ocean.
 - ii. No landscaping or hardscape shall be retained or erected within the ten-foot wide Island Court pedestrian right-of-way. Trees may not overhang into the public 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 Island 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.

- (b) 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.
3. **Timing of Development.** No construction shall take place for the project from Memorial Day Weekend to Labor Day of any year. 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).
 4. **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. 3, and provide a weekly construction schedule to confirm that no construction will occur from Memorial Day Weekend to Labor Day.

5. **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.

6. **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 project is for the demolition of a 1,738 square foot, two-story single-family residence and the construction of a new 2,395 square foot duplex including a companion unit on the south side of Island Court in the Mission Beach community of the City of San Diego ([Exhibit 1](#)). The 451 sq. ft. companion unit will be sited on top of the proposed duplex. Existing private concrete pavers and a decorative concrete path located in the public right-of-way south of Island Court will be removed. Three off-street parking spaces will be provided in a newly proposed three-car carport. New landscaping and hardscape improvements are also proposed. The site is located within the original permitting jurisdiction of the Coastal Commission where Chapter 3 of the Coastal Act is the standard of review.

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Island Court is an eastwest public pedestrian right-of-way within an existing residential area zoned R-S ([Exhibit 2](#)). 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 contained in the City's certified LCP.

The certified LCP, used here as guidance, generally requires two parking spaces per a dwelling unit; however, there are some exceptions to the general parking standard. Per the City's Land Development Code Section 1513.0403(b)(1)(A)(i), if a unit is added to a lot that has less than thirty-four feet of frontage on a street or alley and is located in the R-S Subdistrict, then only one-and-a-half parking spaces are required per a dwelling unit. The subject lot only has thirty feet of frontage along the south side of Island Court and thus meets the requirements of this exception. Therefore, the three parking spots proposed in carport sited in the rear yard of the lot satisfy the required parking standard.

With regard to the proposed companion unit, the certified LCP defines "companion unit" as an accessory structure on a residential lot that provides independent living facilities for one or more persons, independent of the primary dwelling unit. An "accessory structure" is defined as a structure, attached or detached from a primary structure that is customarily incidental and subordinate to the primary structure or use. The certified LCP restricts the gross floor area of an attached companion unit to fifty percent of the habitable dwelling, with a maximum increase of 1,200 square feet for an attached or detached companion unit. Companion units that either are sized 500 square feet or less or located within a transit priority area (which includes almost all of Mission Beach) are exempt from parking requirements. The proposed companion unit is consistent with LCP's definition and building standards for companion units. Additionally, the proposed unit is sized 451 square feet and is within a transit priority area, and is thus exempt from parking requirements.

The Commission typically reviews projects to ensure that any new development does not encroach into the yard setback areas, which could impede public views, or into public rights-of-way, which could impede public access. Such encroachments could include structures and/or landscaping.

The certified LCP, used here as guidance, generally requires a five-foot standard interior yard setback; however, a three-foot setback may be applied to a structure that is twenty feet or less above the existing/proposed grade provided that any portion of the structure that exceeds twenty feet in height above the existing/proposed grade observes an additional setback for the remainder of the structure's height, sloping away from the vertical plane at an angle not to exceed forty-five degrees. The project factors in the additional forty-five degree setback in the building design; however, a small portion of the railing for a proposed spiral staircase that provides access to the companion unit encroaches into the sloped setback. No impacts to visual quality, public views, community character, or other coastal resources will result from this minor encroachment in the setback.

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 rights-of-way with materials or debris. Therefore, **Special Condition #3** prohibits any development during the peak summer months when public access could be impacted and **Special Condition #4** requires the property owner to submit a written agreement indicating that it acknowledges and accepts the construction timing limitations and will submit a weekly construction schedule to confirm that work will not occur during summer. **Special Condition #6** requires recordation of the permit conditions against the property to ensure future property owners are aware of the above-noted protections and conditions.

Because the existing structures are several decades old, they are subject to the City of San Diego's review for historical significance. The certified LCP 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 old. In this particular case, the City's Development Services Department did not find the structures to be eligible for historical designation and there is no evidence that the structures have historic value.

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 rise is expected to cause increased inundation of beaches, reduced accretion, and 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 improvements; 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 #5** requires the applicant to acknowledge the risk of building in a hazardous location and ensure 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.

B. COASTAL HAZARDS

The development is located in an area that may be subject to coastal hazards. As conditioned, the risks of property damage or loss arising from such hazards will be borne by the applicant and not the public. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30253 of the Coastal Act.

C. COMMUNITY CHARACTER/VISUAL QUALITY

The development is located within an existing developed area and, as conditioned, will be compatible with the character and scale of the surrounding area and will not impact public views.

In the Mission Beach neighborhood, the public rights-of-way of the various courts and places, which are generally east-west running accessways, 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 of the shoreline from Mission Boulevard.

As proposed, no structures would be located in the view corridors, though there is potential for landscaping in the northern yard area to impede views west towards the ocean. The certified LCP, used here as guidance, generally restricts all landscape and hardscape improvements to three feet in height; however, there is an exception to the three-foot height limitation. A maximum of two trees are allowed as part of the landscape but must be within four to five feet of the primary structure and shall protect pedestrian view corridors by emphasizing canopy trees that can reach a height of twenty-four feet at maturity. Landscaping materials shall not encroach or overhang into the courts and places rights-of-way and view corridors. Additionally, mature trees shall be maintained so that branches do not encroach below a height of eight feet above the finished grade.

The project proposes to locate one 24-inch box tree in the front yard of the property; however, the proposed location for the tree is approximately ten feet from the primary structure, inconsistent with the landscaping standards of the LCP. To ensure that public views and public access towards the ocean are protected, **Special Condition #1** requires the applicant to submit revised final plans depicting the location of the box tree within four to five feet of the proposed duplex. **Special Condition #2** requires the proposed tree be maintained so that branches do not encroach below a height of eight feet above the finished grade or overhang into the Island Court right-of-way. **Special Condition #2** also requires the applicant to submit a final landscaping plan requiring all landscape, other than trees, and hardscape improvements in the northern yard area to consist of low-lying materials not exceeding three feet in height. Thus, the proposed development will not adversely impact public views of the ocean. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.

D. PUBLIC ACCESS/PARKING

As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities.

While Island Court is legally mapped as a ten-foot wide public right-of-way, the existence of private encroachments in the form of walls and patios along its length, including some on the subject property, have narrowed the pedestrian right-of-way to five feet in width, impacting the ability of the public to access the coast. When a lot with encroachments is redeveloped, the Commission has required that the private development be removed (e.g., CDPs #6-18-0266; 6-18-0689).

The subject property currently has private encroachments, consisting of concrete pavers and a decorative concrete path, in Island Court. The project includes removal of all private encroachments, and no new encroachments are proposed in the Island Court

public right-of-way. The removal of the encroachment will leave an approximately seventy-five square foot dirt patch adjacent to the improved Island Court. As conditioned, the exposed right-of-way can be left as a dirt patch or paved with concrete that is consistent with type of concrete used for Island Court. No structures, landscaping, decorative concrete or other design features that would privatize the right-of-way are permitted. **Special Condition #1** requires the applicant to submit revised final plans demonstrating that all development outside of the property line has been removed. **Special Condition #2** reinforces that no landscaping or hardscape improvements shall be retained or erected within the ten-foot wide pedestrian right-of-way. As conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section 30604(c) of the Coastal Act.

E. LOCAL COASTAL PLANNING

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.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City of San Diego determined that no CEQA review was required for the proposed project since it does not require a discretionary permit, but only a ministerial construction permit. As conditioned, there are no feasible alternatives or 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 is consistent with the requirements of the Coastal Act to conform to CEQA.