

**CALIFORNIA COASTAL COMMISSION**

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# W7a

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Hearing Date:	10/16/19

## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 6-19-0609

**Applicant:** Domenic J. Lupo

**Agent:** Tim Golba and Isabela Guzman

**Location:** 3680 Mission Boulevard, Mission Beach, San Diego, San Diego County (APN: 423-595-10)

**Project Description:** Demolition of an existing 2-story, 2,173 sq.ft. 4-unit residence and construction of a new 3-story, 3,532 sq.ft. duplex with two attached tandem garages totaling 826 sq.ft. and roof decks on a 3,281 sq.ft. lot.

**Staff Recommendation:** Approval with Conditions

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### SUMMARY OF STAFF RECOMMENDATION

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

The subject property is located on the north side of the intersection of the east-west Ostend Court pedestrian right-of-way, which serves as an access and visual corridor for this part of Mission Beach, and Mission Boulevard, which serves as the main accessway into and out of the Mission Beach community and to the ocean and bayfront beaches in Mission Beach. The existing development includes a front yard patio and wooden fence that extend approximately 2 ½ feet south beyond the front property line into the 10-foot wide public right-of-way, as well as encroachments into the building setback required along Mission

6-19-0609 (**Domenic J. Lupo**)

Boulevard. The proposed project includes removal of all encroachments and all new development will be on private property.

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 rights-of-way 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 the Commission staff is recommending several special conditions. **Special Conditions No. 1 and 2** require submittal of final site construction and landscaping plans that limit landscaping in the public view corridors to a height of three feet and remove any private encroachments within the public right-of-way. **Special Condition No. 3** prohibits development activity during the busy summer months from Memorial Day Weekend through Labor Day in order to remove the potential of development activity impeding coastal access. **Special Condition No. 4** requires the property owner to submit a written agreement that acknowledges and accepts the construction timing limitations. **Special Condition No. 5** 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. 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.

Commission staff recommends **approval** of coastal development permit application 6-19-0609 as conditioned.

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### **APPENDICES**

Appendix A – Substantive File Documents

### **EXHIBITS**

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Location Maps](#)

[Exhibit 3 – Site Plan](#)

[Exhibit 4 – Elevations](#)

[Exhibit 5 – Landscaping Plan](#)

## **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 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**

This permit is granted subject to the following special conditions:

### **1. 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 Golba Architecture Inc. dated 9/11/19 and date-stamped received 9/13/19, except that they shall comply with the following:

- i. All development, including brick pavers and decorative concrete, located outside the property line as generally depicted in [Exhibit 3](#) shall be removed and a note will be added to the Proposed Site Plan to indicate all development will be removed from the public right-of-way.
  - ii. Any 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 Ostend 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. Revised 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 be in substantial conformance with the landscape plans prepared by Golba Architecture Inc. that are dated 9/11/19 and date-stamped received 9/13/19 and shall include the following:
- i. All proposed development, including brick pavers and decorative concrete, located outside the property line as generally depicted in [Exhibit 5](#) shall be removed.
  - ii. A view corridor, fifteen feet wide, shall be preserved in the south yard area adjacent to Ostend Court. All proposed landscaping in the south yard area shall be maintained at a height of three feet or lower (including raised planters) to preserve the views along Ostend Court towards the ocean.
  - iii. No landscaping or hardscape shall be retained or erected within the ten-foot wide Ostend Court pedestrian right-of-way. Trees may not overhang into the public right-of-way.
  - iv. 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.

- v. Any fencing and walls, including glass walls, trellis walls, and retaining walls, in the southern yard setback area along Ostend Court and the eastern yard setback area along Mission Boulevard shall not exceed a height of three feet above the existing grade or proposed grade, whichever is lower.
- vi. 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 through 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 through 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 subject property currently contains a 2-story, 2,173 square foot, 4-unit residence including two attached tandem garages fronting Ostend Court in the Mission Beach community of the City of San Diego. The proposed development will demolish the existing residence and construct a new 3-story, 30-foot high, 3,532 sq.ft. duplex with two attached tandem garages totaling 826 sq.ft. and roof decks on a 3,281 sq.ft. lot. The existing development is considering non-conforming in terms of both the allowed density on site and encroachments into public property and setbacks. While there are currently 4 units on-site, the Mission Beach Planned District Ordinance (PDO) of the San Diego Municipal Code states that a single lot of 2,000 to 2,4000 square feet in the R-S subdistrict is entitled to a maximum of 2 dwelling units. Thus, while the project does represent a reduction in density, it will bring the site into conformance with the certified

LCP. In addition, there currently exists approximately 2 ½ feet of front yard patio and a wooden fence that encroach into the Ostend Court public right-of-way, as well as a portion of the building that encroaches into a required setback along Mission Boulevard. The proposed duplex would be in conformance with the allowed density and all of the proposed yard improvements will be rebuilt within the legal property lines and setbacks, outside of the public right-of-way. The site is located in the original permit jurisdiction of the Coastal Commission where Chapter 3 of the Coastal Act is the standard of review ([Exhibit 1](#)).

The project site is located on the north side of Ostend Court, an east-west public pedestrian right-of-way within an existing residential area zoned R-S ([Exhibit 2](#)). It is also located directly west of Mission Boulevard, which constitutes the first public roadway and is the main accessway into and out of the Mission Beach community and to the ocean and bayfront beaches in Mission Beach. 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 Local Coastal Program (LCP).

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 to the shoreline from Mission Boulevard. Additionally, while Ostend Court is legally mapped as a ten-foot wide public right-of-way, the existence of private encroachments in the forms of walls and patios along its length, including some on the subject property, have narrowed the pedestrian right-of-way to approximately five feet in width, impacting the ability of the public to access the coast.

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. As proposed, no encroachments will take place into the property setbacks or height limitation, including the decks facing Ostend Court, Mission Boulevard, and the alley, as well as the roof decks ([Exhibit 4](#)). All encroachments in the Ostend Court public right-of-way will be removed. To ensure that public views and public access towards the ocean are protected, **Special Condition No. 1** requires the applicant to submit final plans confirming that no structures will be located in the view corridors and all existing development will be removed from the public right-of-way. Because the preliminary landscape plan submitted shows some of the existing encroachments remaining, **Special Condition No. 2** requires the applicant to submit a revised final landscaping plan with no encroachments and with all landscape and hardscape in the northern yard area consisting of low-lying materials not exceeding three feet in height ([Exhibit 5](#)).

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. 3** prohibits any development during peak summer months when public access could be impacted and **Special Condition No. 4** requires the property owner to submit a written agreement indicating that the landowner 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 No. 6** requires recordation of the permit conditions against the property to ensure future property owners are aware of the above mentioned 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. 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 of any parcel containing a structure that is 45 or more years old. In this particular case, the City's Development Services 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 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 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 feet wide) and a public boardwalk (approximately 20 feet 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 No. 5** 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. The applicant has also indicated that the subject property does not have a history of flooding and site topography slopes from west to east, meaning that even if water were to crest the boardwalk along Ocean Front Walk, it would drain east towards Mission Boulevard. This section of Mission Boulevard also slopes south, which would assumedly prevent water from flooding this corner property and allow for flow southeast of the site. Finally, the proposed lowest finished floor of the structure (6.27' MSL) is well above the flow line in Mission Boulevard (5.30' to 5.08' MSL).

## **B. 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. The project will remove encroachments in the public right-of-way, which will contribute to the enhancement and preservation of scenic views within the view corridor. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.

### **C. 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. 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.

### **D. COASTAL HAZARDS**

Coastal Act Sections 30235 and 30253 acknowledges that seawalls, revetments, and other such “hard” structures designed to forestall erosion also alter natural landforms and natural shoreline processes. Accordingly, with the exception of coastal dependent uses, Section 30235 limits the construction of shoreline protective works to those required to protect existing permitted structures or public beaches in danger from erosion. Section 30253 requires that new development be sited, designed, and built in a manner to not require construction of shoreline protection devices that would substantially alter natural landforms along the shoreline.

The proposed development has been designed to withstand periodic flooding and, as proposed, is unlikely to require shoreline protection due to the location of the project as well as the wide beach and seawall along the public boardwalk that are located seaward of the site. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30235 and 30253 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.

### **G. 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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Certified Mission Beach Precise Plan
- Certified Mission Beach Planned District Ordinances
- City of San Diego Land Development Code