

CALIFORNIA COASTAL COMMISSION

301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CA 90802
(562)590-5071



W12b

A-5-NPB-22-0052 (Gannon Residence)

NOVEMBER 16, 2022

CORRESPONDENCE

Letters in Support of Staff Recommendation

1. Gaines & Stacey LLP dated 11/9/2022

2. Ron Merickel dated 11/8/2022

3. Beaumont Tashjian dated 11/8/2022



5820 Canoga Avenue, Suite 300
Woodland Hills, CA 91367
T (818) 933-0200
F (818) 933-0222
www.gaineslaw.com

November 9, 2022

SENT VIA EMAIL ONLY at SouthCoast@coastal.ca.gov

W12b

Chair Donne Brownsey
Honorable Commissioners
California Coastal Commission
South Coast District Office
301 Ocean Blvd. Suite 300
Long Beach, CA 90802

Re: 20 Bay Island, Newport Beach, CA 92661 (APN: 048-040-02)
Appeal No. 5-NPB-22-0788
Hearing Date: November 16, 2022
Agenda Item: W12b
Support for Staff Recommendation of No Substantial Issue

Dear Chair Brownsey and Honorable Commissioners:

This office represents Dan Gannon (“Gannon”), the owner of 20 Bay Island in Newport Beach (“Property”) with respect to the above-referenced matter. This is an appeal (“Appeal”)¹ of the City of Newport Beach’s (“City”) approval of a Coastal Development Permit (“CDP”) to demolish the existing single-family home and replace it with a new single-family home at the Gannon Property. The purpose of this correspondence is to support the staff recommendation that *no substantial issue* exists for the grounds on which the Appeal was filed and the project’s consistency with the City’s certified Local Coastal Program (“LCP”).

The appellant contends that the project does not conform to the standards set forth in the Newport Beach LCP with respect to historic resources. This claim was not raised by anyone, including appellant, at or before the City hearing at which the project was approved. But even if the issue had been timely raised, the existing residence is not identified or recorded anywhere as a historic resource, nor was there evidence of historic significance in an Initial Study. Without either of these qualifiers, LCP Implementation Plan Section 21.30.105.B(1-5) “Cultural Resource Protection” does not apply. And even if the Property was historic, Policy 4.5.2-1 of the City’s Land Use Plan

¹ Pursuant to a September 19, 2022 email from your staff to City staff, Appeal No. 5-NPB-22-0788 was filed by Preserve Orange County and “joined” by Clark Collins.

(“LUP”) does not prevent demolition. As such, appellants contention that the project does not comply with the LCP does not raise a substantial issue, and the Appeal must be denied.

A. Project Background.

The project consists of the demolition of a 3,560 sq. ft. single family residence and construction of a new 4,402 sq. ft. three-story, single family residence, including hardscape, drainage facilities, and approximately 194 sq. ft. of landscaping, adjustment to the off-street parking requirements with a parking management plan for one on-site golf-cart parking space and two standard parking spaces at an existing parking garage at 501 West Bay Avenue, an increase of the allowed building height from 24 feet to 28 feet for flat portions of the roofs and from 28 feet to 33 feet for sloped portions of the roof per Use Permit No. UP3618, and compliance with the minimum 9.0 (NAVD 88) minimum Finished Floor Elevation (“Project”).

The relevant chronology of events for the Project is as follows:

July 7, 2022: Public hearing on Gannon CDP application in front of the City’s Planning Commission. Only one member of the public submitted written or oral opposition to the project during Planning Commission review (Mr. Fathollahi). Neither Preserve Orange County nor Clark Collins attends or submits comments for the Planning Commission hearing. The Planning Commission approves the CDP.

July 18, 2022: One appeal is filed by third-party (Mr. Fathollahi), appealing the Planning Commission CDP approval to the City Council.

July 21, 2022: Last day to appeal Planning Commission approval of Gannon CDP. Neither Preserve Orange County nor Clark Collins files an appeal by this deadline.

August 15-22, 2022: The City receives miscellaneous emails and a letter from Preserve Orange County and/or Clark Collins to the City regarding opposition to the Gannon CDP.

August 23, 2022 @ 3:30 p.m.: Prior to the City Council meeting, the Fathollahi appeal (the only pending appeal) of the Gannon CDP is withdrawn.

August 23, 2022 @ 4:00 p.m.: The City Council Meeting occurs. At the outset of the meeting, the City Attorney announces that public comment will be taken, if any, but that there will be no hearing on the appeal of the Gannon CDP because the appeal was withdrawn. This is documented by the City Council Meeting Minutes from August 23, 2022: <https://ecms.newportbeachca.gov/Web/PDF/zz0kaqtnvntwzu3bh5cvur2/65/08232022%20-%20Study%20Session%20%20Regular%20Meeting.pdf>

August 24, 2022: The City issues a Notice of Final Action, stating that the Planning Commission approved the Gannon CDP on July 7, 2022 and properly attaches the Planning Commission Resolution, dated July 7, 2022.

September 15, 2022: Preserve Orange County files appeal of July 7, 2022 Planning Commission decision (joined by Clark Collins), alleging it is an aggrieved person because they submitted written and oral comments for the City Council meeting.

B. The Project Conforms to the LCP.

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the mean high tide line of beach or top of the seaward face of a coastal bluff. [Coastal Act Section 30603(a)].

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea. Bay Island is a 5.5-acre legal lot in the Newport Harbor with 24 individual building sites. Bay Island is located on the north end of Island Avenue on the Balboa Peninsula where it is accessible by a gated pedestrian bridge. With the exception of golf carts, vehicles are not permitted on Bay Island. The Island is developed with 23 single-family homes and shared open space, recreational areas, and a clubhouse.

Bay Island was first established prior to 1936 as a recreational club, and it developed as a residential island over the years. On November 24, 1997, the City Council approved Use Permit No. UP3618 (Attachment No. PC 3) to implement a Planned Residential Development (PRD) Overlay and modify the Multi-Family Residential (MFR) development regulations applicable to Bay Island to reflect its unique characteristics. The purpose of the use permit is to ensure that the single-family detached character of Bay Island is maintained despite its MFR zoning designation. The use permit provides development standards and process requirements for development of homes on individual building sites.² The subject building site is located on the west side of the island and is currently developed with a two-story single-family home and basement.

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1), which states: (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division. In this case, Appellant alleges that the Project does not conform to the Newport Beach *Local Coastal Program Implementation Plan Section 21.30.105 Cultural Resource Protection* or the *Local Coastal Program Coastal Land Use Plan Section 4.5.2 Historical Resources* and that the existing residence is historically significant. This section of the LCP states that it applies to all coastal development

² The use permit also authorizes off-site parking in a parking structure located at 501 West Bay Avenue located at the southwest corner of Island Avenue and West Bay Avenue on the Balboa Peninsula.

permits that involve demolition of a “site where evidence of potentially significant historical resources is found in an initial study conducted in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.)” (NBMC Section 21.30.105.B Historical and Architectural Resources.)

The grounds for an appeal of a CDP issued by the local government after certification of its LCP are the standards set forth in the certified LCP and the public access policies of the Coastal Act. (Public access issues have not been raised in this appeal.) The subject CDP is appealable to the Commission due to the project’s location between the sea and the first public road.

Cultural and Historic Resources

a. Appellant’s Contentions

The appellant contends that the project does not conform to the standards set forth in the Newport Beach LCP with respect to historic resources, specifically, alleging that the existing residence is an “eligible” historic resource, and that the demolition of the existing residence is a project as defined by CEQA.

b. Analysis

i. The Project is Exempt from CEQA.

The City found that the Project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 3 exempts the demolition of up to three single-family residences and addition of up to 10,000 square feet to existing structures. The proposed Project consists of the construction of a new 4,402-square-foot single-family residence. The City concluded that there are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of this exemption. “The Project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and *is not identified as a historic resource.*” [Emphasis added.] The corresponding CEQA Notice of Exemption was posted with the Orange County Clerk-Recorder on August 24, 2022.

ii. The Project Complies with all Development Standards.

The subject property is located within the Multi-Unit Residential (RM) Coastal Zoning District. City staff found that the proposed Project complies with NBMC Title 21 (LCP Implementation Plan) Development Standards and conforms to all applicable development standards of the RM

Coastal Zoning District, including floor area limit, setbacks and height as evidenced by the project plans. The City's findings are detailed more fully in the July 7, 2022 Staff Report.

iii. The Existing Residence is Not Identified or Designated as an Historic Resource.

Chapter 6 Historical Resources Element of the City's LCP sets forth the applicable regulations and policy related to historic resources. The City previously conducted a survey and prepared a Historic Resource Inventory that included five "classes" of local historical significance. However, the existing residence is not included in that inventory, nor is it identified as being eligible for National, State, or local designation. Overall, the certified LCP for this area does not specifically designate this specific site as containing a historical structure. The project site is not identified or recorded as a historic resource in the Newport Beach LCP or the Newport Beach Historic Resource Inventory, and therefore was not reviewed as such under the local CDP review process. Therefore, the Appeal does not raise a substantial issue with respect to the project's conformity with cultural and historic resource protection policies in the certified LCP.

Even so, there is no evidence of potentially significant historical resources. The existing residence is not a designated historic resource, nor is it eligible for designation. In fact, although the existing residence was constructed in or around 1930, it has undergone numerous renovations and modifications since that time as evidenced in the November 8, 2022 letter to you from Ronald Merickel and by comparison photos attached hereto as *Exhibit A*.³

In any event, these exterior modifications render the property ineligible for designation because the integrity of the original architecture ceases to exist. For example:

- The base of the covered patio and chimney looks to be covered in plaster or painted white. Currently the brick is exposed in its natural state.
- There was a dark, exterior finish along the entire 2nd floor, covered patio and bay window. Currently it is painted white or a different material, a major departure from the original design.
- The windows on the ground level to the right of the bay window are small and have a higher sill. Currently the sill has been lowered to increase the size of the opening and the last window on the right has been eliminated.
- The windows at the 2nd level just to the right of the chimney have been modified from the original configuration.
- Front and rear entrances were changes.

Additionally, it is important to note that the existing residence includes a basement. (The proposed residence does not.) It is likely that the designer of the original home did not appreciate the inability to waterproof a basement on a sandspit. With a 7-inch rise in the tide since the 1930, this design flaw has resulted in regular flooding of the basement (which then requires pumping) and a

³ Note that the comparison photographs show only the westerly and southerly frontages.

consequential mold problem due to the increased level of moisture. Such circumstances render the existing home uninhabitable and necessitate the full removal of the basement.

The City's LUP Policy 4.5.2-1 states that the City is to "maintain and periodically update the Newport Beach Register of Historical Property [sic] for buildings, objects, structures, and monuments having importance to the history or architecture of Newport Beach and require photo documentation of inventoried historic structures prior to demolition." Gannon does possess professional photographic documentation of the existing residence.

Furthermore, Municipal Code Section 21.30.105.B(1-5) "Cultural Resource Protection" sets forth the City's requirements applicable to all CDP applications involving the expansion, reconstruction, structural alternation, or demolition of historic structures. Even if the existing residence was designated a historic structure, there is nothing in the City requirements that prevents demolition. Instead, the City requires that the applicant shall offer the structure for relocation. In this case, compliance with that requirement would be impossible given that there is no vehicular access to/from Bay Island. Even if the house was historical, it could not be relocated.

In sum, the issues raised by the appellant do not demonstrate that the local government's action is not consistent with the certified LCP. Therefore, the Appeal raises no substantial issue.

C. The Appellant is Not an Aggrieved Person Under Section 30801.

Preserve Orange County and Clark Collins do not have standing to pursue the Appeal. Neither party appeared nor submitted objections regarding the Gannon CDP at the July 7, 2022 Planning Commission meeting. Neither Preserve Orange County nor Clark Collins filed an appeal of the Planning Commission's July 7, 2022 action before the City's appeal deadline of July 21, 2022.

14 CCR 13111 governs the filing of an appeal to the Coastal Commission. Section 13111(a) states in part that "(a) An appeal of a local government's decision on a coastal development permit application (or local government equivalent) may be filed by an applicant or any *aggrieved person who has exhausted local appeals*, or any two (2) members of the Commission..." [Emphasis added.] An appellant must be a) an aggrieved person *and* b) have exhausted local appeals.

Public Resources Code Section 30801 defines "aggrieved person" as "any person who, in person or through a representative, appeared at a public hearing of the commission, local government, or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, local government, or port governing body of the nature of his concerns or who for good cause was unable to do either." In this case, neither Preserve Orange County nor Clark Collins appeared at a public hearing regarding the Gannon CDP. They did not appear at the July 7, 2022 Planning Commission meeting. And since the third party appeal was ultimately withdrawn, there was no further public hearing on the Gannon CDP. Once the appeal was withdrawn, the Planning Commission's decision became the City's final action.

The second requirement to qualify as a valid appellant is the exhaustion of administrative remedies. 14 CCR 13573 governs the exhaustion of local appeals, which states in part that “(a) *An appellant shall be deemed to have exhausted local appeals for purposes of Section 13111 and shall be qualified as an aggrieved person as defined by Public Resources Code Section 30801 where the appellant has pursued his or her appeal to the local appellate body or bodies as required by the local government LCP appeal procedures...*” [Emphasis added.] In this case, the Planning Commission’s decision was not appealed by Preserve Orange County or by Clark Collins. They did not exhaust their administrative remedies. Piggybacking on somebody else’s appeal, which was later withdrawn, and trying to submit comments after the close of public hearing does not satisfy the Section 13573(a) exhaustion requirement.

Because the appeal to the City Council was withdrawn, the only hearing that took place on the matter was the hearing in front of the Planning Commission on July 7, 2022. There was no “good cause” for Appellant(s) to not have communicated their concerns at that time. Appellant Preserve Orange County (and Clark Collins) have no standing to appeal. They did not exhaust their administrative remedies and are not an aggrieved person qualified to appeal the decision of the Planning Commission to the Coastal Commission, which became final on July 22, 2022.

D. Conclusion.

The Gannon family has invested more than 1½ years carefully designing their new home to beautify Bay Island and conform to the community’s character, just like many other Bay Island owners that came before them. The City correctly followed its certified LCP in reviewing and approving the Gannon CDP. And Coastal Commission staff is correct that the CDP was correctly issued because it is in full compliance with the certified LCP, including LUP Section 4.5.2 “Historical Resources.”

For the aforementioned reasons, we hereby request that the Commission follow staff’s recommendation and determine that the Appeal presents no substantial issue.

Sincerely,

GAINES & STACEY, LLP

Sherman L. Stacey

By

SHERMAN L. STACEY

cc: Chelsea Creager, City of Newport Beach (Via Email: ccrager@newportbeachca.gov)

Enclosure

Exhibit A

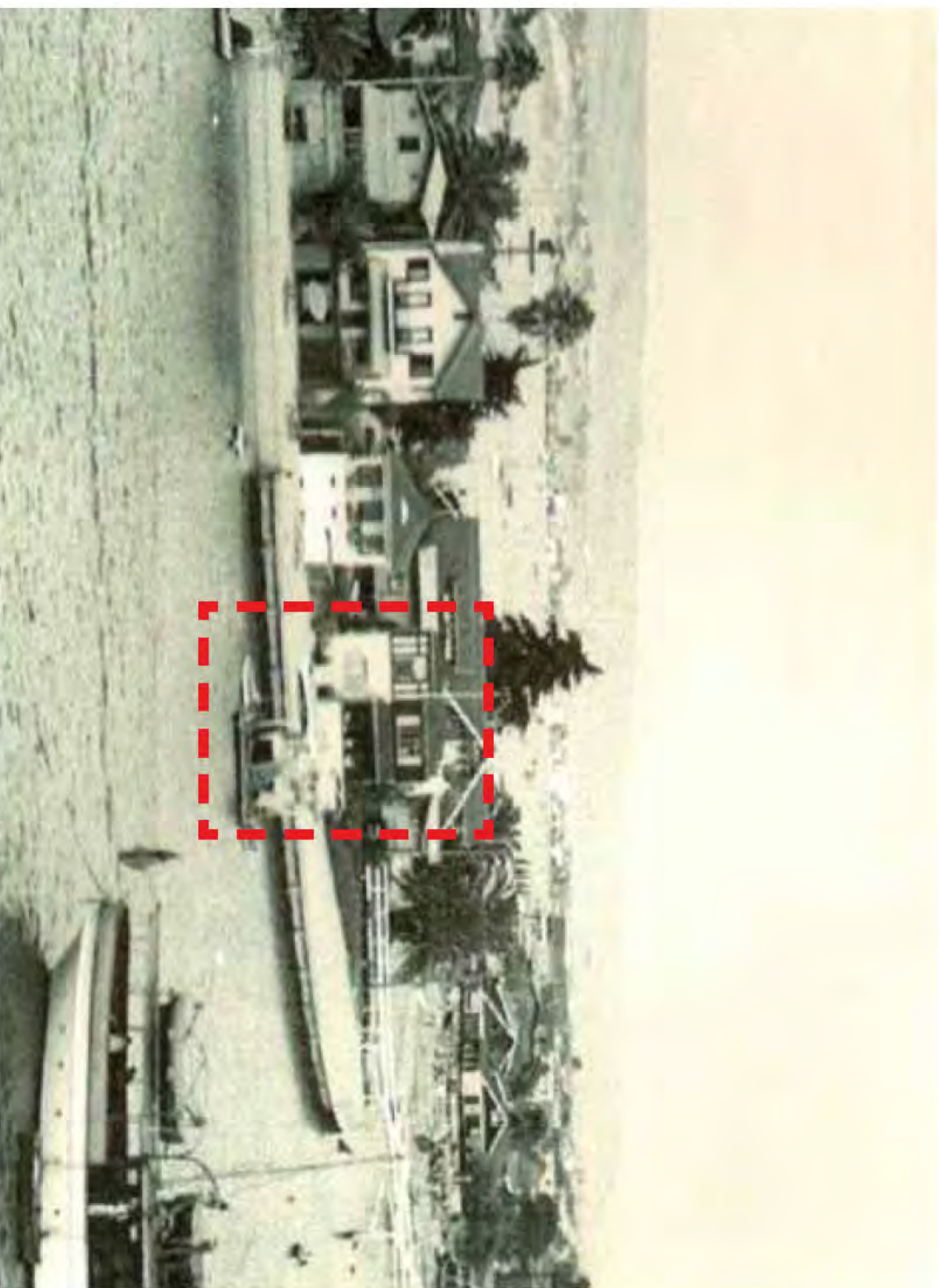


Photo Circa 1935



Photo Circa 2022

GANNON RESIDENCE |

Photographic Comparison

20 BAY ISLAND, NEWPORT BEACH, CA 92661



BRANDON ARCHITECTS

Exhibit A

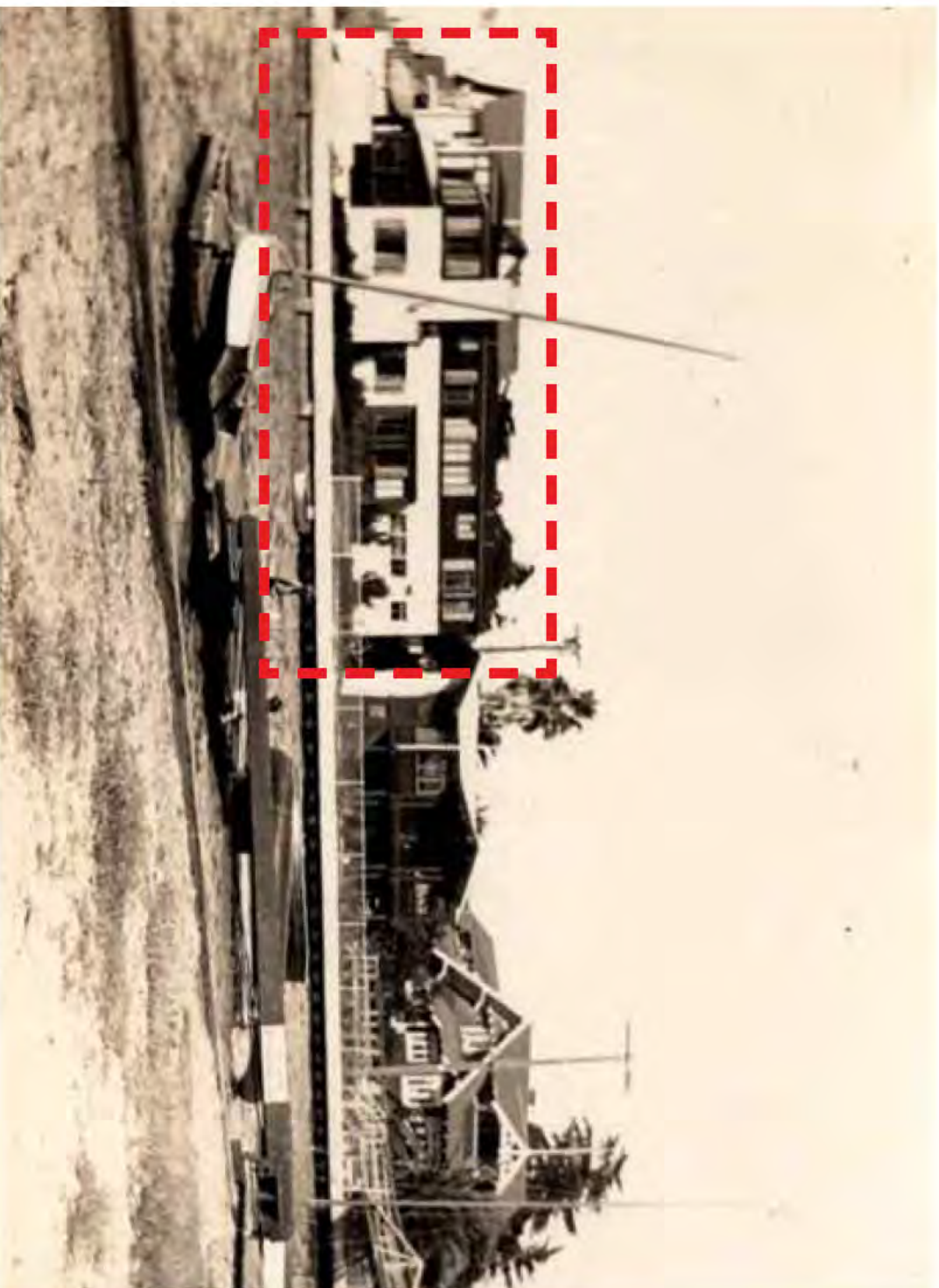


Photo Circa 1935



Photo Circa 2022

GANNON RESIDENCE | Photographic Comparison

20 BAY ISLAND, NEWPORT BEACH, CA 92661

RONALD P. MERICKEL

18 Bay Island
Newport Beach, Ca 92661-1124

Telephone 949-673-7345
E-Mail ronmerickel@yahoo.com

November 8, 2022

Chair Donne Brownsey
Honorable Commissioners
California Coastal Commission
South Coast District Office
301 Ocean Blvd. Suite 300
Long Beach, CA 90802

Re: 20 Bay Island, Newport Beach, CA 92661 (APN: 048-040-02)
Appeal No. 5-NPB-22-0788
Hearing Date: November 16, 2022
Agenda Item: W12b

Letter in Support of Staff Recommendation for No Substantial Issue

Dear Chair Brownsey and Honorable Commissioners,

I have lived on or near Bay Island since 1952. I have been the chairman of the Architectural Committee for Bay Island Club since 1996. My experience over the past 52 years has been as a builder developer of homes. I am personally familiar with 20 Bay Island and urge the Coastal Commission to support staff's recommendation for no substantial issue.

My understanding is that the City of Newport Beach recently approved a Coastal Development Permit (CDP) for the 20 Bay Island owner to demolish the existing house and construct a new house. The appeal to the Coastal Commission claims that the existing house has some historic significance. I disagree with the appeal and hope that the Commission will find that no substantial issue exists.

My family has lived on Bay Island since 1915. As a longtime Bay Island local, I have never heard anyone claim that the 20 Bay Island residence holds any historical significance whatsoever. And, to my knowledge, nobody has ever tried to designate the house a historical resource.

Bay Island has 23 homes built. Since 1992, there have been 9 new homes constructed, 8 major remodels, and 3 lots that are pending City approval for a total 20 new homes out of 23 homes. In other words, what is proposed for Lot 20 is not unusual or unprecedented given the many other rebuilds of Bay Island homes that have come to the end of their useful life.

The Lot 20 home was built in the 1930's by Roger and May Goodan. The architectural style of the house has been changed by later owners. I have a distinct recollection of the existing house

in its earliest years when the house looked much different than it looks today. I have observed several changes to the exterior of the home over the last 28 years, such as the second floor elevation and cantilever dining room were all a natural stain wood. These items have all been painted white, which is a major change from the original architecture. The front and rear entrances both had brick steps and patio landings added to the house after 1994. Even if the original architecture held some significance, it is hard to believe that with so many changes that there would be anything special left about this house. It has more than fulfilled its 90-year lifespan and it is time for it to be replaced.

As an aside, one aspect of the existing house is that it contains a basement. I have seen the basement and heard firsthand from the owner about how it is subject to intermittent flooding. The flooding, in turn, causes persistent mold issues throughout the home. These problems make the home unsustainable, not to mention that a basement at this location on a sandspit is completely impractical and does not conform to current development rules. With the demolition of this house and construction of the new house, current development rules will be implemented and followed, elevating the new home to the standard that is enjoyed by the neighboring residents.

Finally, I should point out that Clark Collins' (Appellant) father, Budge Collins, lived in the Lot 20 home from 4/4/1994 to 6/3/2013. If there was such interest by the Collins' family to make Lot 20 a historical home, why didn't they convert the home to historical status when they owned it? Over the past 9 years since Collins owned the house, the general maintenance and upkeep of the home has greatly deteriorated. The basement has water coming in at high tides and the roots of two large pine trees have entered the foundation. In my general opinion the home is not currently fit to live in due to old electrical, plumbing, and structural issues.

Thank you for your thoughtful consideration. Again, I respectfully request that the Coastal Commission dismiss this appeal, follow staff's recommendation, and find that there is no substantial issue.

Sincerely,

Ronald P. Merickel

cc: Liliana Roman, Coastal Program Analyst



File No.:14397

November 8, 2022

Via Federal Express & Email:
SouthCoast@coastal.ca.gov

Chair Donne Brownsey
Honorable Commissioners
California Coastal Commission
South Coast District Office
301 Ocean Blvd., Suite 300
Long Beach, CA 90802

RE: BAY ISLAND CLUB
- **20 Bay Island, Newport Beach, CA 92661 (APN: 048-040-02)**
- **Appeal No. 5-NPB-22-0788**
- **Hearing Date: November 16, 2022**
- **Agenda Item: W12b**
- **Letter in Support of Staff Recommendation for No Substantial Issue**

Dear Ms. Brownsey,

This law firm represents Bay Island Club. Bay Island Club is submitting this letter in support of the staff recommendation that the Coastal Commission find that **no substantial issue exists** regarding the grounds on which the above-referenced appeal was filed.

Bay Island Club is a California corporation that operates, manages and administers an island in Newport Beach consisting of twenty-four (24) numbered parcels improved with residences, as well as related common area. Bay Island Club is governed by a volunteer Board of Directors. The corporation operates as a stock cooperative and provides housing to its members/shareholders on a cooperative basis consistent with the Island's governing documents. Daniel and Tamar Gannon are members of Bay Island Club and the shareholders of record for 20 Bay Island.

The Gannons seek to remove the existing residence at 20 Bay Island and build a new 3,560 sq. ft. single-family residence. Bay Island Club previously reviewed and approved the Gannons' plans in connection with the Island's internal architectural procedures. Bay Island Club continues to support the Gannons' project.

I am informed that the City of Newport Beach approved a Coastal Development Permit ("CDP") for the project at a July 7, 2022 Planning Commission meeting. My client has no reason to believe that the City did not follow the appropriate CEQA and Local Coastal Program ("LCP") procedures in approving the Gannons' project.

Chair Donne Brownsey
Honorable Commissioners
California Coastal Commission
November 8, 2022
Page 2

The existing residence at 20 Bay Island is not a designated historic resource and Bay Island Club has no information to support that assertion. To the contrary, Club members recount, and City building records reflect, that the home's exterior has been modified over the years and that it is unlikely that any original architectural integrity remains.

Bay Island Club opposes the appeal and supports the Gannons' plans to build a new residence that will enhance the Bay Island community. We respectfully request that the Coastal Commission follows staff's recommendation and finds that no substantial issue exists with respect to whether the City's action conforms with the City's LCP policies and public access policies of the Coastal Act.

Thank you for your consideration.

Very truly yours,

BEAUMONT TASHJIAN

A handwritten signature in cursive script, appearing to read "Tara Radley".

TARA RADLEY, ESQ.

TR:sk

cc: Liliana Roman (Via Email: Liliana.Roman@coastal.ca.gov)