

RESOLUTION NUMBER R-289737

ADOPTED ON FEBRUARY 17, 1998

WHEREAS, Balboa-Genesee, LLC, Owner/Permittee and Applicant, and San Diego Gas & Electric Company [SDG&E], Owner, filed an application with The City of San Diego for a permit to demolish a portion of an existing office space and construct additional new medical office, retail commercial, a restaurant, and on-site tenant storage space, totaling a maximum 138,218 square feet; landscaping in the public right-of-way and on the private property; and implement other associated improvements as described in Planned Commercial Development/Community Plan Implementation Overlay Zone Type "B"/Conditional Use Permit No. 96-7558 [Project]; and

WHEREAS, the 4.60 acre site is located at the northwest corner of the intersection of Balboa and Genesee Avenues, and is legally described as Lots 1 and 2 of Clairemont Towers in the City of San Diego, County of San Diego, State of California, according to Map thereof Number 11432, filed in the Office of the County Recorder of San Diego County on January 31, 1986, and SDG&E property (see Attachment A of attached permit) in the Clairemont Mesa Community Plan area, in the R-1-5, CO, and CA zones; and

WHEREAS, the Planning Commission of The City of San Diego, by a unanimous vote, conditionally approved the Project; and

WHEREAS, David A. Potter, on behalf of the Clairemont Mesa Planning Committee, and Matthew A. Peterson, on behalf of the Applicant, appealed the decision of the Planning Commission to the Council of The City of San Diego; and

WHEREAS, the matter was set for public hearing on February 17, 1998, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Planned Commercial Development/Community Plan Implementation Overlay Zone Type "B"/Conditional Use Permit No. 96-7558:

**1. The proposed use will fulfill an individual and/or a community need and will not adversely affect the neighborhood, the City's Progress Guide and General Plan or the adopted community plan.**

The proposed commercial development will fulfill an individual and community need by allowing the renovation, upgrade, and redevelopment of a site built in the 1960's. The redevelopment will provide facilities that can offer a variety of services and products to the community. The proposed redevelopment of the site will comply with all the current regulations in effect for this property.

The site is designated in the community plan as being within the commercial core. To address the unique and special requirements of the site, features have been included in the proposed design to meet these requirements. These features are identified as and not limited to providing landscaping exceeding the area and quantity requirements of the City-Wide Landscape Regulations and the Planned Commercial Development Ordinance, providing a comprehensive pedestrian walkway system for the ease of pedestrian movement in and through the site. Walkways shall be constructed using above-standard materials, such as interlocking unit pavers and exposed colored aggregate concrete throughout the site. In addition, the renovation of existing buildings and construction of new buildings with coordination of facade materials, relief, detailing, and use of color articulates the site as one unified development to compliment and fit within the community. High standards of architecture and site planning are being integrated into the design to foster a compact commercial development with pedestrian convenience and a feeling of human scale.

The redevelopment of this site will benefit the community and City by the renovation and upgrade of the site to current standards of the community plan, the Municipal Code and the City's Progress Guide and General Plan. Conditions of approval have been added and will be enforced to assure that the development will not have an adverse impact to the community and City.

**2. The proposed use will not be detrimental to the health, safety and general welfare of persons residing or working in the area and will not adversely affect other properties in the vicinity.**

Conditions of approval require compliance with several operational constraints intended to assure the continued health, safety and general welfare of persons residing or working in the area. Conditions of approval address lighting, the generation of noise, the appearance of landscaping, and the use of parking lots are specifically addressed for the continued operation of the site. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code, and Municipal Code regulations governing the construction and continued operation of a commercial center apply to this site to prevent adverse affects to those persons or other properties in the vicinity.

**3. The proposed use will fully comply with the relevant regulations of the Municipal Code in effect for this site.**

Specific conditions of approval require the continued compliance with all relevant regulations of the Municipal Code effective for this site and has been written as such into the Permit No. 96-7558. No deviations or variances are requested or granted with the approval of this application. All relevant regulations shall be complied with at all times for the life of the project.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the appeal of David A. Potter, on behalf of the Clairemont Mesa Planning Committee is approved, and Planned Commercial Development/Community Plan Implementation Overlay Zone Type "B"/Conditional Use Permit No. 96-7558 is hereby granted to Balboa-Genesee, LLC, Owner/Permittee and Applicant, and San Diego Gas & Electric Company [SDG&E], Owner, under the terms and conditions set forth in the permit attached hereto and made a part hereof, subject to the following conditions:

A. Retain the Planning Commission's conditions 1 and 2 as stated in City Manager's Report P-98-017 regarding refuse collection and securing the parking lot in the easement area; and add the following conditions:

1. Prior to the issuance of a certificate of occupancy for any building, an 8' high block wall shall be constructed along the western boundary of the San Diego Gas and Electric property. The exact location is subject to Development Services approval.

2. In the event that Balboa Avenue is widened in the future, the Applicant shall continue to provide a minimum 5' landscape strip within the boundaries of the subject property.

3. The architecture of all tenant improvements shall comply with Exhibit A, dated December 18, 1997, on file in the office of Development Services.

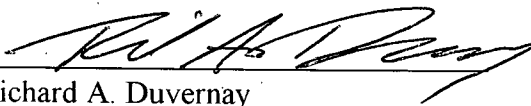
4. The approved sign program shall not allow any deviations or variances from the City-Wide Sign Regulations of Municipal Code section 101.1100.

5. The Project shall be subjected to a three-month mandatory review by the City Manager so that any potential adverse impacts can be addressed.

B. Allow the drive through operation to function throughout the night, but the dining room would close between 11:00 p.m. and 7:00 a.m., as proposed by the Applicant, and the drive through external speakers shall not be operated from 9:00 p.m. to 8:00 a.m., as proposed by the Planning Commission.

APPROVED: CASEY GWINN, City Attorney

By

  
Richard A. Duvernay  
Deputy City Attorney

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03/04/98  
04/08/98 COR. COPY  
Or. Dept: Clerk  
R-98-921  
Form=permitr.frm  
Reviewed by John Fisher

**RECORDING REQUESTED BY  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES**

**AND WHEN RECORDED MAIL TO  
CITY CLERK  
MAIL STATION 2A**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**PLANNED COMMERCIAL DEVELOPMENT/COMMUNITY PLAN IMPLEMENTATION  
OVERLAY ZONE "B"/CONDITIONAL USE PERMIT 96-7558  
BALBOA GENESEE TOWERS  
CITY COUNCIL**

This Planned Commercial Development/Community Plan Implementation Overlay Zone "B"/Conditional Use Permit is granted by the Council of The City of San Diego to BALBOA-GENESEE, LLC, OWNER/PERMITTEE and SAN DIEGO GAS AND ELECTRIC COMPANY, OWNER pursuant to Sections 101.0910, 101.0457 and 101.0510 of the Municipal Code of the City of San Diego.

1. Permission is hereby granted to Owner/Permittee to demolish a portion of the existing office and retail space and construct additional new medical office, retail commercial, a restaurant and on-site tenant storage space totaling a maximum 138,218 square feet, landscaping in the public right-of-way and on the private property, and implement other associated improvements (as described herein) on a 5.8 acre site located at the northwest corner of the intersection of Balboa and Genesee Avenues. The project site is legally identified as Lots 1 and 2 of Clairemont Towers in the City of San Diego, County of San Diego, State of California, according to Map thereof Number 11432, filed in the Office of the County Recorder of San Diego County on January 31, 1986 and SDG&E easement legal description (see Attachment A) and is located in the R-1-5000, CO and CA zones.

2. The Permit shall consist of the following facilities and site improvements as identified by size, dimension, location and quantity on the associated Exhibits "A," approved for the project, dated February 17, 1998, on file in the office of Development Services:

- a. Demolition of 22,400 square feet of existing office, 10,990 square feet of retail, and 3,010 square feet of fast food restaurant space;
- b. Retention of 45,658 square feet of existing office space and 34,484 square feet of existing medical office space;
- c. Construction of 36,955 square feet of retail space, 19,000 square feet of storage space for on-site tenants only and 2,121 square feet of restaurant space;
- d. Drive through pick-up for a pharmacy and restaurant.

- e. Landscaping within the public right-of-way and on the private property including a permanent underground electrically controlled automated irrigation system;
- f. Off-street surface parking facilities (refer to Condition 13);
- g. Entry monument, temporary and permanent signage as shown on the Exhibit "A," Comprehensive Sign Plan, dated February 17, 1998, on file in the office of Development Services;
- h. Improvements in the public right-of-way;
- i. Pedestrian improvements within the property as detailed on the plans; and
- j. Accessory improvements determined by the City Manager to be consistent with the development standards and criteria in effect for this site per the existing CO and CA Zones, the Clairemont Mesa Community Plan, State CEQA Guidelines, the City-Wide Landscape Regulations and Landscape Technical Manual and the Planned Commercial Development/Community Plan Implementation Overlay Zone "B"/Conditional Use Permit Ordinance.

3. This Permit shall only be valid if and when a subdivision map is recorded in accordance with the Subdivision Map Act to create the proposed parcels of Tentative Map No. 96-7558. If the Map does not record within three years from the date of this Permit approval, this Permit shall be deemed null and void.

4. The Planned Commercial Development/Community Plan Implementation Overlay Zone "B"/Conditional Use Permit 96-7558 shall comply with the conditions of Tentative Map No. 96-7558.

5. This project shall be subjected to a three month mandatory review by the City Manager so that any potential adverse impacts can be addressed.

6. No permit for grading or building of any facility shall be granted nor shall any activity authorized by this Permit be conducted on the premises until:

- a. The Owner/Permittee signs and returns the Permit to Development Services; and
- b. This Permit is recorded by Development Services in the Office of the County Recorder.

7. Only the uses enumerated in this Permit shall be permitted to operate on the property. Permission to operate uses not listed in this Permit requires an amendment to this Planned Commercial Development/Community Plan Implementation Overlay Zone "B"/Conditional Use Permit.

8. The restaurant shall be allowed to operate twenty-four hours, however, the dining room shall be closed and locked from 11:00 p.m. to 7:00 a.m. and the drive thru external speaker shall not be operated from 9:00 p.m. to 8:00 a.m.

9. All refuse collection, compacting, processing and parking lot sweeping shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Sunday.
10. Prior to the issuance of a certificate of occupancy for any building, an 8' high block wall shall be constructed along the western boundary of the San Diego Gas and Electric property. The exact location to be subject to Development Services approval.
11. In the event that Balboa Avenue is widened in the future, the applicant shall continue to provide a minimum 5' landscape strip within the boundaries of the subject property.
12. Prior to the issuance of any sign permit, a sign program shall be reviewed and approved by the Sign Code Administrator. The approved sign program shall not allow any deviations or variances from the City-Wide Sign Regulations of Municipal Code section 101.1100.
13. No fewer than 478 off-street parking spaces shall be provided on the property in the approximate location shown on Exhibit "A," dated February 17, 1998, on file in the office of Development Services. This quantity is less than the standard parking requirement as a result of a peak hour, shared parking arrangement. Parking space dimensions shall be consistent with Chapter X, Article 1, Division 8 of the Municipal Code. All parking spaces, regardless of ownership, shall be permanently maintained and available for the exclusive use and benefit of tenants and patrons of the commercial project and not converted for any other use. Any action which prevents the free and unencumbered use of all parking on this site constitutes a violation of this Permit and may constitute grounds for the revocation of this Permit. Parking spaces and aisles shall be clearly marked and conform to Zoning standards.
14. The Owner/Permittee shall cause the parking lot located in the R-1-5000 zone (the 150 westerly feet of the project) to be secured by chain and lock, or other means approved by Development Services, nightly at 10:00 p.m., and unsecured again each morning no earlier than 7:00 a.m.
15. All grading shall conform to requirements in accordance with Municipal Code sections 62.0401 through 62.0423, satisfactory to the City Engineer.
16. The drainage system proposed with this development is subject to the approval of the City Engineer.
17. Prior to the issuance of any grading permits, notes shall be placed on the grading plans indicating that a temporary hydroseed mix, together with a temporary irrigation system, shall be applied and installed to all disturbed areas of the property if construction of buildings on the parcels is not begun within ninety (90) days from the completion of the grading activity.
18. Prior to the issuance of any building permits, the Owner/Permittee shall enter into an encroachment removal agreement with the City and/or California State Department of Transportation (Caltrans) for any improvement (walls, landscaping, sculpture, etcetera) located in the public right-of-way, satisfactory to the City Engineer.
19. Prior to the issuance of any building permits, complete building, grading, signage and landscaping plans shall be submitted by the Owner/Permittee to the City Manager for approval. All plans shall be in substantial conformity to Exhibit "A," dated February 17, 1998, on file in the office of Development Services. No changes,

modifications or alterations shall be made unless appropriate amendment of this Permit shall have been granted.

20. Prior to the issuance of any building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," dated February 17, 1998, Landscape Concept Plan, on file in the office of Development Services. No changes, modifications or alterations shall be made unless appropriate amendment of this Permit shall have been granted.

21. Prior to the issuance of any Certificate of Occupancy for any building, it shall be the responsibility of the Owner/Permittee to perform the following:

- a. Obtain a NO FEE STREET TREE PERMIT for all street trees in the public right-of-way from the Transportation Department, Streets Division, Street Tree Section.
- b. Install all approved landscape and obtain all required landscape inspections.
- c. If transfer of this property is to occur, prior to any transfer of ownership, the Owner/Permittee shall notify and obtain signatures on a no fee street tree permit from any subsequent property owner. Copies of these approved documents must be submitted to the City Manager.

23. If any existing or installed landscape indicated on the approved plans is damaged or removed during demolition, construction, or at any time after issuance of any permit or Certificate of Occupancy, it shall be repaired and/or replaced in kind and equivalent size per the approved plans within 30 days by the Owner/Permittee. Three years from the date of occupancy, the replacement size for all damaged, dead or removed plant material shall be an equivalent size of the specific plant at the time of damage, death or removal to the satisfaction of the City Manager. Prior to three years from the date of occupancy, the replacement size shall be the same size as the original installation as indicated on the building permit set of drawings.

24. All approved landscape shall be maintained in a disease, weed and liter free condition at all times and shall not be modified or altered unless this Permit has been amended. Modifications such as severely pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

25. Prior to the issuance of any building permits, the Owner/Permittee shall:

- a. Ensure that building address numbers for each building are visible and legible from the street in conformance with the Uniform Fire Code section 901.44.
- b. Show the location of all existing fire hydrant(s) nearest this property on the plot or site plan in conformance with the Fire Department Policy #F-85-1 and Uniform Fire Code section 903.2.
- c. Provide access in conformance with Fire Department Policy A-93-1 for roadways, signs, red curbs and/or turning radius according to Uniform Fire Code sections 901 and 902.



- d. Post indicator valves, Fire Department connections, and alarm bell to be located on the address/access side of the structures in conformance with the Uniform Fire Code section 1001.4.

26. Prior to the issuance of any building permits, complete outdoor lighting information shall be submitted to the City Manager for review and approval. Complete lighting information shall include a plan view photometric analysis indicating an isofoot candle plot and/or a point by point plot to include all areas within the private property and to extend a minimum of fifty (50) feet beyond the property line; construction details as necessary to direct installation of the outdoor lighting system; manufacturers name, fixture model name and number; including all necessary shields, visors, prisms, lenses and reflectors; and a lighting plan locating each fixture in plan view with a legend. The outdoor lighting system shall be designed, manufactured and installed to allow shading, adjusting, and shielding of the light source so all outdoor lighting is directed to fall only onto the same premises as light sources are located.

Prior to the issuance of any occupancy permit, a night inspection shall be required to verify compliance of the outdoor lighting system. No light shall be directed to fall outside the property line. Light levels along the perimeter of the property shall be measured no higher than two footcandles. Light levels throughout the Planned Commercial Development/Community Plan Implementation Overlay Zone "B"/Conditional Use Permit shall be the least practical level necessary to effectively illuminate the operation. Sky glow or light halo shall be reduced to the greatest extent practical and in no case shall initial light levels be measured exceeding seventeen footcandles anywhere within the site. The Owner/Permittee, or an authorized representative, shall provide an illuminance meter to measure light levels as required to establish conformance with the conditions of this Permit during the night inspection. Night inspections will require additional fees as determined by the City Manager.

27. Prior to the issuance of any occupancy permit, the Owner/Permittee shall conform to Municipal Code section 62.0203, "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the Owner/Permittee shall obtain the required permits for work in the public right-of-way, satisfactory to the permit issuing authority.

28. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.

29. Recordation of this Permit shall constitute establishment of the project and utilization of the Permit. The property shall not be used for any other purpose unless an amendment to this Planned Commercial Development/Community Plan Implementation Overlay Zone "B"/Conditional Use Permit is approved.

30. This Planned Commercial Development/Community Plan Implementation Overlay Zone "B"/Conditional Use Permit may be revoked if there is any material breach or default in any of the conditions of this Permit. Revocation may be instituted by The City of San Diego.

31. This Planned Commercial Development/Community Plan Implementation Overlay Zone "B"/Conditional Use Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out.

33. The use of textured or enhanced paving shall be permitted only with the approval of the City Engineer and City Manager, and shall meet standards of these departments as to location, noise and friction values, and any other applicable criteria.

34. The Owner/Permittee shall comply with all requirements of the Uniform Building Code (UBC) and secure all necessary building permits prior to construction.

35. No merchandise, material or equipment shall be stored on the roof of any building on site, except as allowed through a previous permit.

36. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void. However, in such event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition back to the discretionary body which approved the Permit for a determination by that body as to whether all the findings necessary for the issuance of the Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

37. This development may be subject to a building permit park fee in accordance with San Diego Municipal Code section 96.0401 et seq.

38. This development may be subject to payment of School Impact Fees at the time of issuance of building permits, as provided by California Government Code section 53080(b) (Stat. of 1986, ch. 997), in accordance with procedures established by the City Manager.

39. This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.

40. The issuance of this Permit by The City of San Diego does not authorize the applicant for said Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).

41. The architecture of all tenant improvements shall comply with Exhibit "A," dated February 17, 1998, on file in the office of Development Services.

APPROVED by the Council of The City of San Diego on February 17, 1998, by Resolution No. R-289737.

## ATTACHMENT A

### SDG&E EASEMENT LEGAL DESCRIPTION

The following described property is a portion of Pueblo Lots 1221 and 1222 and furthermore a portion of San Diego Gas and Electric property as described in Book 6354, Page 342, Official record as recorded in the Office of the County Recorder of San Diego County and more particularly described as follows:

Beginning at the most northwesterly corner of Lot 1, Clairemont Towers, Map 11432 as recorded in the Office of the County Recorder of San Diego County, said point being the *true point of beginning*, thence proceeding southerly along the most westerly line of the aforementioned subdivision boundary of Map 11432 south 1 35'27" east, 339.00' to a point; said point begin the most southerly corner of the subdivision boundary of Map 11432; thence parallel to and 51.00' northwesterly of the centerline of Balboa Avenue, (State Route 274) south 66 30'22" east, 161.66', to a point, said point lying on the easterly line of east Clairemont Unit One, Map 3601 recorded in the Office of the County Recorder, County of San Diego and on the westerly line of the aforementioned San Diego Gas and Electric property, thence northerly along the easterly line of east Clairemont Unit Number One and westerly line of San Diego Gas and Electric property north 1 35'27" west to a point, said point lying south 88 24'33" west of the *true point of beginning*; thence north 88 24'33" east, 150.00' more or less to the *true point of beginning*.

The above property is a portion of the aforementioned San Diego Gas and Electric property per book 6354 and is not necessarily a legal lot.

AUTHENTICATED BY THE CITY MANAGER

By \_\_\_\_\_

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**The undersigned Permittee**, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

**BALBOA-GENESEEE, LLC**  
Owner/Permittee

By \_\_\_\_\_

**SAN DIEGO GAS & ELECTRIC**  
Owner

By \_\_\_\_\_

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1180 et seq.**

3/4/98

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