

RESOLUTION NUMBER R-297102

ADOPTED ON SEPTEMBER 24, 2002

WHEREAS, Bonair Street Associates, LLC, Owner/Permittee, filed an application with the City of San Diego for Coastal Development Permit [CDP] No. 7283 to construct a new, three-story, five-unit condominium building with subterranean parking accessed from the alley known as the Windansea Luxury Condos project, on portions of a .0155-acre site located at 231 Bonair Street, and legally described as Lots 4, 5, and 6 of La Jolla Strand, Map No. 1216, in the La Jolla Community Plan area, in the RM-3-7, Coastal Overlay, Beach Impact Area Parking Overlay, Residential Tandem Parking Overlay, Transit Overlay and Coastal Height Limit Overlay zones; and

WHEREAS, on August 1, 2002, the Planning Commission of the City of San Diego considered Coastal Development Permit No. 7283, and pursuant to Resolution No. 3291-PC voted to recommend City Council approval of the permit; and

WHEREAS, the matter was set for public hearing on September 24, 2002, 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 it adopts the following findings with respect to Coastal Development Permit No. 7283:

COASTAL DEVELOPMENT PERMIT FINDINGS (SAN DIEGO MUNICIPAL CODE [SDMC]/LAND DEVELOPMENT CODE [LDC] SECTION 126.0702):

- 1. The proposed Coastal Development will not encroach upon any existing physical accessway that is legally used by the public or any proposed public accessway identified in a Local Coastal Program Land Use Plan; and the proposed Coastal Development will**

enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program Land Use Plan. The subject property is located approximately 280 feet from the Pacific Ocean. The site is comprised of three lots which front on Bonair Street and back up to an unimproved portion of an alley (named South Lane) at the rear. In this area, Bonair Street is designated as an existing visual access corridor. The proposed demolition of the existing structures and the construction of the five new residential units will not impact any public views to and along the ocean since the proposed project will conform with all setback, height, and floor area ratio requirements. All fencing and landscape within the front setback of the development shall be limited to 3'-0" in height as conditions of permit approval (Conditions 22, 23 and 33). The site is not located along any existing or proposed public accessways identified in the adopted La Jolla Community Plan and Local Coastal Program Land Use Plan. The construction would occur on private property and will conform with Land Development Code requirements.

2. The proposed coastal development will not adversely affect environmentally sensitive lands. The proposed project will occur on an improved site, located within an urbanized area of La Jolla. The project site is located in the coastal area of San Diego, which has a high potential for archaeological resources. At least one known site is located within one mile of the project site. The potential exists for unrecorded sites to be present within the project area. Due to this potential for archaeological resources, a Mitigation Monitoring and Reporting Program [MMRP] has been prepared which reduces potential adverse impacts to below a level of significance.

The Mitigated Negative Declaration No. 40-0337 (PTS No. 1473) prepared for this project further evaluated structural historical resources and geological and soils issues. The existing residential structure on the site was constructed in 1952, is over forty-five years old and required further historic review. A historical report was prepared for this structure, and determined that the structure was not considered historically significant and no mitigation measures would be required for its demolition. In addition, the geotechnical report prepared for the project addressed soil and geologic conditions potentially affecting the project. The consultant was unable to determine if a fault passes through the project site without additional observation during site grading and excavation for the underground parking garage. If the basement excavation will penetrate the overlying terrace deposit and provide an opportunity to observe the fault in the excavation, the consultant may be able to provide an opinion regarding the presence or absence of the fault. According to the consultant, the fault poses a minimal risk. Therefore, if it does pass beneath the subject property, a Notice of Geologic Conditions" would be signed by the owner, notarized, and recorded against the property. If the fault does not pass beneath the structure, no further work would be necessary. Conditions 45, 46 and 47 of the permit respond to this issue. In addition mitigation measures for this situation have been incorporated into the Mitigation, Monitoring and Reporting Program to address this issue, which reduces impacts associated with geology to below a level of significance.

3. The proposed coastal development is in conformity with the certified Local Coastal Program Land Use Plan and complies with all regulations of the certified implementation program. The proposed five residential unit project has been designed to conform with the

adopted La Jolla Local Coastal Program Land Use Plan and is consistent with the recommended residential land use, design guidelines, and development standards in effect for this site per the adopted La Jolla Community Plan and the City of San Diego Progress Guide and General Plan.

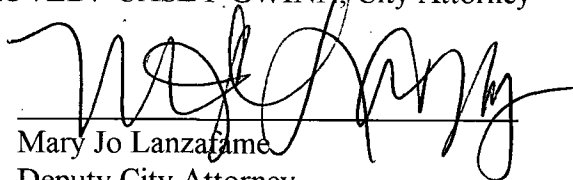
4. For every coastal development permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone, the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act. The project site is not located between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone and is not required to demonstrate conformance with the public access and recreation policies of the California Coastal Act as required by this finding.

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 recommendation of the Planning Commission is sustained, and Coastal Development Permit No. 7283 is granted to Bonair Street Associates, LLC, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By


Mary Jo Lanzafame
Deputy City Attorney

MJL:pev
10/31/02
Or.Dept:Clerk
R-2003-466
Form=permitr.frm
Reviewed by Michelle Sokolowski

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
PERMIT INTAKE, MAIL STATION 501

AND WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

COASTAL DEVELOPMENT PERMIT NO. 7283
WINDANSEA LUXURY CONDOS - PROJECT NO. 1473
CITY COUNCIL

This Permit is granted by the Council of the City of San Diego to Bonair Street Associates, LLC, a California Limited Liability Company, Owner/Permittee, pursuant to the City of San Diego Municipal Code [SDMC]/Land Development Code [LDC]. The 0.155-acre site is located at 231 Bonair Street in the RM-3-7 Zone, the Coastal Overlay Zone (Appealable Area), the Beach Impact Area Parking Overlay Zone, the Residential Tandem Parking Overlay Zone, the Transit Overlay Zone, and the Coastal Height Limit Overlay Zone, within the La Jolla Community Planning Area. The project site is legally described as Lots 4, 5, and 6, La Jolla Strand, Map No. 1216.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to demolish an existing apartment building and garage, and to construct a new, three-story, five-unit condominium building with subterranean parking accessed from the alley, described as, and identified by size, dimension, quantity, type and location on the approved Exhibit "A," dated September 24, 2002, on file in the Office of the Development Services Department. The facility shall include:

- a. The demolition of an existing apartment building and garage, and the construction of a new, approximately 12,195-square-foot, three-story, five-unit condominium building with subterranean parking accessed from the alley;
- b. The abandonment of an existing sewer easement on the property;
- c. The encroachment of a retaining wall within the public alley right-of-way where the applicant is not the record owner of the alley;

- d. Landscaping (planting, irrigation and landscape related improvements);
- e. Off-street parking facilities; and
- f. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the SDMC/LDC in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC/LDC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.

2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

- a. The Permittee signs and returns the Permit to the Development Services Department; and
- b. The Permit is recorded in the Office of the San Diego County Recorder.

3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.

4. This Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

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

7. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. At all bus stops within the project area, if any, the applicant shall be responsible for installing sidewalk improvements where needed to comply with American with Disability Act [ADA] requirements and in accordance with standards contained in the City of San Diego Street Design Manual.

9. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated September 24, 2002, on file in the Office of the Development Services Department. No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. 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 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 entitled as a result of obtaining this Permit. It is the intent of the City that the Owner/Permittee of the property, which is the subject of this Permit, either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner/Permittee of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner/Permittee complies with all the conditions of this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an 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(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed 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.

11. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action, following all appeals.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. The applicant shall comply with the Mitigation, Monitoring and Reporting Program [MMRP] as specified in Mitigated Negative Declaration No. 40-0337, Project No. 1473, satisfactory to the City Manager and the City Engineer. Prior to issuance of any grading permits and/or building permits, mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- Historical Resources
- Geology

PLANNING/DESIGN REQUIREMENTS:

13. No fewer than eleven off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A," dated September 24, 2002, on file in the Office of the Development Services Department. Parking spaces shall comply at all times with requirements of the SDMC/LDC and shall not be converted for any other use unless otherwise authorized by the City Manager.

14. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this Permit. Where there is a conflict between a condition (including exhibits) of this Permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

15. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this Permit.

16. A topographical survey conforming to the provisions of the SDMC/LDC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulations of the underlying zone. The cost of any such survey shall be borne by the Permittee.

17. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

18. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.
19. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.
20. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
21. All uses, except storage and loading, shall be conducted entirely within an enclosed building. Outdoor storage of merchandise, material and equipment is permitted in any required interior side or rear yard, provided the storage area is completely enclosed by walls, fences or a combination thereof. Walls or fences shall be solid and not less than 6 feet in height and, provided further, that no merchandise, material or equipment stored not higher than any adjacent wall.
22. All walls and stairs must conform to SDMC regulations regarding height within the setbacks. This will require that no structure exceeds a height of three feet within the required front setback.
23. Due to the location of the existing view corridor along Bonair Street, all walls and fencing within the required front setback shall be designed and constructed to a maximum height of 3'-0".
24. A visual corridor of not less than the minimum front yard setbacks and running the full width of the premises, shall be preserved as a deed restriction as a condition of Coastal Development Permit approval.
25. No mechanical equipment shall be erected, constructed, or enlarged on the roof of any building on this site, unless all such equipment is contained within a completely enclosed architecturally integrated structure.
26. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials within the SDMC/LDC to the satisfaction of the City Manager. All exterior storage enclosures for trash and recyclable materials shall be located in a manner that is convenient and accessible to all occupants of and service providers to the project, in substantial conformance with the conceptual site plan marked Exhibit "A," dated September 24, 2002, on file in the Office of the Development Services Department.
27. In lieu of providing Fire Department access, the three-story condominium building and subterranean parking garage shall be equipped with a fire sprinkler system satisfactory to the Fire Marshal.

28. The Permit shall comply with the conditions of the final map for Windansea Luxury Condominiums, Tentative Map No. 7282, Project No. 1473.

LANDSCAPE REQUIREMENTS:

29. All plan specifications and notes mentioned in the conditions below shall be consistent with SDMC/LDC section 142.0401 and Landscape Standards, Exhibit "A," dated September 24, 2002, on file in the Office of the Development Services Department.

30. All required landscape shall be maintained in a disease, weed, and litter free condition at all times and shall not be modified or altered unless this Permit has been amended. Modifications such as severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit. The Owner/Permittee shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Land Development Manual.

31. If any required landscape (including, but not limited to, existing or new plantings, hardscape, landscape features) indicated on the approved plans is damaged or removed during demolition, it shall be repaired or replaced in kind and equivalent size per the approved plans within thirty days of completion of construction by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available or an increased number) to the satisfaction of the City Manager.

32. All development shall be conducted to prevent erosion and stop sediment and pollutants from leaving the property to the maximum extent practicable per SDMC section 142.0220. Construction plans shall provide details for preventing untreated, irrigation-generated runoff from flowing directly into the stormwater conveyance system, particularly with regard to the drains from roof, hardscape and planters.

33. Due to the location of the existing view corridor along Bonair Street, all landscape materials within the required front setback shall be trimmed to a maximum height of 3'-0", with the exception being the planting of new palm trees, which shall have a minimum brown trunk height of 8'-0".

34. Prior to final inspection, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape. A No Fee Street Tree Permit, if applicable, shall be obtained for the installation, establishment and on-going maintenance of all street trees.

35. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation plans, details and specifications (including maintenance specifications), shall be submitted to the City Manager for approval.

WASTEWATER REQUIREMENTS:

36. Prior to the issuance of any building permits, the developer shall assure, by permit and bond, the design and construction of all public sewer facilities necessary to serve this development.

37. The developer shall design and construct all proposed public sewer facilities in accordance with established criteria in the most current edition of the City of San Diego sewer design guide. Proposed facilities that do not meet the current standards shall be redesigned or private.

38. The developer shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each lot will have its own sewer lateral or provide CC&R's for the operation and maintenance of on-site private sewer facilities that serve more than one lot.

39. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

WATER REQUIREMENTS:

40. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s) and the removal of all existing unused services within the Bonair Street right-of-way adjacent to the project site, in a manner satisfactory to the Water Department Director and the City Engineer.

41. Prior to the issuance of any building permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s) on each water service, in a manner satisfactory to the Water Department Director and the City Engineer.

42. Prior to the issuance of any building or engineering permits, the Owner/Permittee shall provide CC&Rs for the operation and maintenance of on-site private water facilities that serve or traverse more than a single unit.

43. Prior to the issuance of any certificates of occupancy, public water facilities necessary to serve the development, including services, shall be complete and operational in a manner satisfactory to the Water Department Director and the City Engineer.

44. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Water facilities as shown on the approved Exhibit "A," dated September 24, 2002, on file in the Office of the Development Services Department, shall be modified at final engineering to comply with standards.

GEOLOGY REQUIREMENTS:

45. Prior to the inspection or approval of the foundation, a geologic report prepared with a determination of whether or not the fault passes beneath the structure must be approved by the City Engineer.

46. Following the basement excavation, no further construction shall occur until the report evaluating the fault has been reviewed and accepted by the City Engineer.

47. If the fault does pass beneath the building, and if the consultant states that the fault poses a minimal risk, a "Notice of Geologic Conditions" must be signed by the owner, notarized, and recorded against the property. If the fault does not pass beneath the structure, no further work is necessary.

INFORMATION ONLY

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit and tentative map, may protest the imposition within 90 days of the approval of this development permit and tentative map by filing a written protest with the City Clerk pursuant to California Government Code 66020.

APPROVED by the Council of the City of San Diego by Resolution No. R-297102 on September 24, 2002.

AUTHENTICATED BY THE CITY MANAGER

By _____

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.

BONAIR STREET ASSOCIATES, LLC
a California Limited Liability Company
Owner/Permittee

By _____

By _____

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