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(R-2009-45) 7/28

RESOLUTION NUMBER R- 303976

DATE OF FINAL PASSAGE JUL 28 2008

RESOLUTION GRANTING NEIGHBORHOOD  
DEVELOPMENT PERMIT NO. 186747, AND VARIANCE  
NO. 537644 FOR THE BILLINGSLEY RESIDENCE PROJECT.

WHEREAS, Kirby L. Pray and Marilyn F. Billingsley, Owners/Permittees, filed an application with the City of San Diego for a neighborhood development permit, street vacation and variance to construct a single-family residence known as the Billingsley Residence project, located at 4285 1/3 Goldfinch Street, and legally described as Lots 3 and 4, Block 7, Map No. 334, and that portion of Goldfinch Street vacated by the City Council of the City of San Diego pursuant to Resolution No. R-298161, recorded July 1, 2003, as instrument No. 2003-0819704 of official recordings, in the Uptown Community Plan area, in the RS-1-1 zone; and

WHEREAS, on April 20, 2008, the Planning Commission of the City of San Diego considered Neighborhood Development Permit [NDP] No. 186747 and Variance [VAR] No. 537644, and pursuant to Resolution No. 4390-PC voted to recommend City Council approval of the Permit and Variance; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on JUL 28 2008,

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 Neighborhood Development Permit No. 186747 and Variance No. 537644:

**A. NEIGHBORHOOD DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0404**

**1. Findings for All Neighborhood Development Permits:**

**a. The proposed development will not adversely affect the applicable land use plan.** The Uptown Community Plan designates the proposed 0.16-acre project site for Low-Residential (0-5 dwelling units per acre [du/ac]) and Open Space. Further, the Open Space and Recreation Element of the community plan identifies this project within the Biological/ Geological Zone of the Mission Valley Canyon System. According to recommendations in this zone, only very low residential development density should be allowed on site. The proposed project consisting of a single-family dwelling unit would not adversely impact this recommendation.

As designed the proposed project would implement recommendations in the Urban Design Element for compatibility with the existing architectural detail and overall appearance of the quality development in the surrounding neighborhood and for the incorporation of articulated building facades that relate to the form and scale of surrounding development through the use of compatible setbacks, building coverage, and floor area ratios. Further, the provision of a landscaped non-contiguous sidewalk and shade-producing street trees would implement the goal of enhancing the pedestrian environment.

The proposed project and associated street vacation would not preclude views into the adjacent open space from the existing right-of-way since only a limited portion of the proposed new development would be located within the existing right-of-way. Given the proposed topography attributed to the project site, the proposed variance to allow parking facilities within existing right-of-way would meet the objective in the Transportation Element for ensuring the provision of adequate parking facilities and would not adversely affect the community plan

**b. The proposed development will not be detrimental to the public health, safety, and welfare.** The proposed project would develop a vacant 0.16-acre site with a new 2,973 square-foot single-family residence in the RS-1-1 zone within the Uptown Community Plan area. An environmental Mitigated Negative Declaration was prepared for the

project pursuant to the California Environmental Quality Act [CEQA]. During the environmental review of the project, it was determined that construction could result in significant but mitigable impacts in the areas of Biology, Multi-Habitat Planning Area [MHPA] Land Use Adjacency and Archaeology. A Mitigation, Monitoring and Reporting Program [MMRP] has been established for the proposed development that would require monitoring for historical resources during grading operations, a biological survey prior to construction due to a potential for raptors to nest in the trees that are adjacent to the site and finally, compliance with the MHPA Land Use Adjacency Guidelines be implemented and would reduce potential indirect impacts to below a level of significance. The environmental initial study concluded that no other impacts were associated with the proposed project. The project would be designed reviewed, constructed and inspected pursuant to all applicable uniform building codes and as such would be a safe and permitted structure. Therefore, the proposed development would not be detrimental to the public health, safety, and welfare.

**c. The proposed development will comply with the applicable regulations of the Land Development Code.** The proposed project would develop a vacant 0.16-acre site with a new 2,973 square-foot single-family residence in the RS-1-1 zone within the Uptown Community Plan area. The project is requesting a Neighborhood Development Permit to develop the site due to the presence of Environmentally Sensitive Lands [ESL] in the form of steep hillsides and a small patch of Coastal Sage Scrub on the property. The project is also requesting a public right-of-way vacation which would increase the size of the lot and allow for the proposed single-family dwelling unit. The project has been designed to comply with the development regulations of the RS-1-1 zone and would, with an approved Neighborhood Development Permit, comply with [ESL] Regulations. Therefore, the proposed development would comply with all of the applicable regulations of the Land Development Code.

## **2. Supplemental Findings – Environmentally Sensitive Lands**

**a. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.** The proposed project would develop a vacant 0.16-acre site with a new 2,973 square-foot single-family residence in the RS-1-1 zone within the Uptown Community Plan area. The Uptown Community Plan designates the proposed 0.16-acre project site for Low-Residential (0-5 du/ac) and Open Space. According to recommendations in this zone, only very low residential development density should be allowed on site. Since the project is proposing a single residence in a single-family zone, and the proposed design complies with all applicable development regulations without deviation, the site is physically suited for the design and location of the development. Additionally, the project steps down the hillside and limits grading to excavation of the structural footings resulting in the minimum disturbance to environmentally sensitive lands.

**b. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.** The proposed project would develop a vacant 0.16-acre site with a new 2,973 square-foot single-family residence in the RS-1-1 zone within the Uptown Community Plan area. The project proposes minimal grading by terracing the development and stepping down the slope thereby minimizing alteration of the natural land form. The project is

located in geologic hazard area 52 and is considered suitable for the proposed development. Best Management Practices during construction and post construction would minimize run-off and drainage would be either directed away from the hillside or diverted to a grass swale or rip rap to dissipate flow down the slope. The project includes a brush management plan consistent with the City's Landscape Technical Manual that would minimize fire hazards. The site is elevated and therefore not prone to flood hazard.

**c. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.** The proposed project would develop a vacant 0.16-acre site with a new 2,973 square-foot single-family residence in the RS-1-1 zone within the Uptown Community Plan area. The project proposes minimal grading by terracing the development and stepping down the slope thereby minimizing alteration of the natural land form. The project proposes development adjacent to the City of San Diego's Multiple Species Conservation Program [MSCP] MHPA. Development adjacent to the MHPA is required to conform to all applicable Land Use Adjacency Guidelines (Section 1.4.3) of the MSCP Subarea Plan. Although direct impacts would not occur within the MHPA, the project does have the potential to result in indirect impacts to the MHPA because of the site's adjacency to it. As such, mitigation in the form of compliance with the MHPA Land Use Adjacency Guidelines would be implemented and would reduce potential indirect impacts to below a level of significance. A MMRP, contained in the Mitigated Negative Declaration is included and therefore the proposed development would be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

**d. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan.** The proposed project would develop a vacant 0.16-acre site with a new 2,973 square-foot single-family residence in the RS-1-1 zone within the Uptown Community Plan area. The project proposes development adjacent to the City of San Diego's MSCP MHPA. Development adjacent to the MHPA is required to conform to all applicable Land Use Adjacency Guidelines (Section 1.4.3) of the MSCP Subarea Plan. Although direct impacts would not occur within the MHPA, the project does have the potential to result in indirect impacts to the MHPA because of the site's adjacency to it. As such, mitigation in the form of compliance with the MHPA Land Use Adjacency Guidelines would be implemented and would reduce potential indirect impacts to below a level of significance. A MMRP, contained in the Mitigated Negative Declaration is included and therefore the proposed development would be consistent with the City of San Diego's MSCP Subarea Plan.

**B. VARIANCE – SDMC SECTION 126.0805**

**1. There are special circumstances or conditions applying to the land or premises for which the variance is sought that are peculiar to the land or premises and do not apply generally to the land or premises in the neighborhood, and these conditions have not resulted from any act of the applicant after the adoption of the applicable zone regulations.** The proposed project site is a legal lot created for single-family development in the RS-1-1 zone. However the property is comprised almost entirely of steep slopes that are defined by the City of San Diego Land Development Code as ESL and therefore have limitations applied to the development of the site. The property is accessed from an unimproved paper street and is

the last property of the subdivision prior to the establishment of City owned open space. Based on the existing topography which falls away from the street combined with the limited access provided by the original subdivision, there are special circumstances that apply to this site that do not apply to other properties in the vicinity and which have not resulted from any act of the applicant.

**2. The circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premises and the variance granted by the City is the minimum variance that will permit the reasonable use of the land or premises.** The proposed project site is a legal building lot created for single-family development in the RS-1-1 zone. The application is seeking to develop the site with a moderately sized single-family home compatible with other dwelling units within the vicinity. Based on the steep slopes that constitute a majority of the site, the limitations imposed by the ESL Regulations of the Municipal Code and the requirement to provide two off-street parking spaces for the development, strict application of the Land development Code would result in either an unreasonably small dwelling unit or a development that would be economically unfeasible to design with access and parking thereby depriving the applicant reasonable use of the property. Allowing the project to provide minimum private access improvements and zero street frontage would be the minimum variance necessary and would allow the reasonable development of a single-family home without adversely affecting other properties in the vicinity.

**3. The granting of the variance will be in harmony with the general purpose and intent of the regulations and will not be detrimental to the public health, safety, or welfare.** The granting of the variance would allow the development of a moderate sized single-family home with two off-street parking spaces consistent with the RS-1-1 zone land use designation and development regulations and requirements of the ESL Regulations of the Land Development Code. The development would be consistent with the bulk and scale of other single-family dwelling units in the existing neighborhood. Granting the variance would permit the design flexibility for a dwelling unit that is not dominated by a parking facility or massive grading to access a parking facility which would be likely given the steep topography of the site. Environmental mitigation measures for the proposed development would ensure that the project does not adversely impact sensitive environmental resources on the site or adjacent open space. The project would be engineered, constructed and inspected pursuant to the International Building Code to ensure the development results in a safe and habitable structure. Therefore, granting the variance would be in harmony with the general purpose and intent of the regulations and would not be detrimental to the public health, safety and welfare.

**4. The granting of the variance will not adversely affect the applicable land use plan. If the variance is being sought in conjunction with any proposed coastal development, the required finding shall specify that granting of the variance conforms with, and is adequate to carry out, the provisions of the certified land use plan.** The proposed project would be consistent with the Uptown Community Plan land use designations including the low density residential land use designation for the property and the adjacent open space area. The variance is being requested to permit a street vacation that would result in a legal lot with no street frontage along a dedicated public street. The requirement to provide frontage is an access issue that would be resolved with an access agreement with the adjoining

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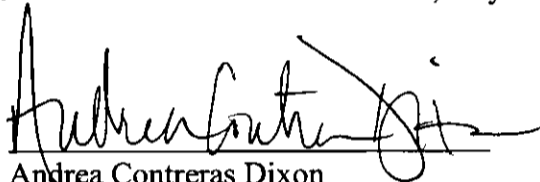
property. The resulting parcel and private access easement would not adversely affect the Uptown Community Plan, therefore, granting the variance would not adversely affect the applicable land use plan. The variance is not being sought in conjunction with a coastal development permit.

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

BE IT FURTHER RESOLVED, that Neighborhood Development Permit No. 186747, and Variance No. 537644 is granted to Kirby L. Pray and Marilyn F. Billingsley, Owners/Permittees, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Andrea Contreras Dixon  
Deputy City Attorney

ACD:cw  
07/10/08  
Or.Dept:DSD  
R-2009-45  
MMS #6483

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

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER 42-3986

**NEIGHBORHOOD DEVELOPMENT PERMIT NO. 186747**  
**AND VARIANCE NO 536744**  
**BILLINGSLEY RESIDENCE - PROJECT NO. 62130**  
CITY COUNCIL

This Neighborhood Development Permit No. 186747 and Variance No. 536744 is granted by the Council of the City of San Diego to Kirby L. Pray and Marilyn F. Billingsley Owners/Permittees, pursuant to San Diego Municipal Code [SDMC] section 126.0404. The 0.16-acre site is located at 4285 Goldfinch Street in the RS-1-1 zone of the Uptown Community Plan. The project site is legally described as Lots 3 and 4, Block 7, Map No. 334, and that portion of Goldfinch Street vacated by the City Council of the City of San Diego pursuant to Resolution No. R-298161, recorded July 1, 2003, as instrument No. 2003-0819704 of official recordings.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owners/Permittees to develop the site with a new 2,973 square-foot single-family residence, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated JUL 28 2008, on file in the Development Services Department.

The project or facility shall include:

- a. A new 2,973 square-foot home and detached 2-car garage;
- b. Landscaping and Brush Management (planting, irrigation and landscape related improvements);
- c. Off-street parking;
- d. A variance to reduce the legal lot frontage to zero feet on a dedicated public right-of-way with an access agreement from Barr Street with the adjacent property; and

- e. 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 in effect for this site.

**STANDARD REQUIREMENTS:**

1. This Permit must be utilized within thirty-six months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this Permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC 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 Owner/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 Owner/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 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 Owner/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 Owner/Permittee 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.