

RESOLUTION NUMBER R-304595

DATE OF FINAL PASSAGE JANUARY 13, 2009

RESOLUTION DENYING THE APPEAL AND GRANTING
COASTAL DEVELOPMENT PERMIT NO. 314328 –
1949 GRAND AVENUE TENTATIVE MAP PROJECT,
PROJECT NO. 96319

WHEREAS, Michael E. Turk, managing member of West of Ingraham, LLC, Owner/Permittee, filed an application with the City of San Diego for a Coastal Development Permit to divide an existing 2-story, mixed use apartment building with first floor commercial office and four dwelling unit apartments into four residential condominium units and two commercial office condominium units to be known as the 1949 Grand Avenue Tentative Map Project, located at 1949 Grand Avenue, and legally described as Parcel 2, Parcel Map. No. 2866, in the Pacific Beach Community Planning Area in the CN-1-2 zone, Coastal Overlay Zone (non-appealable), and Coastal Height Limitation Overlay Zone; and

WHEREAS, on October 23, 2008, the Planning Commission of the City of San Diego considered Coastal Development Permit [CDP] No. 314328, and pursuant to Resolution No. 4471-PC-1 voted to recommend approval of the Permit; and

WHEREAS, the Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation appealed the Planning Commission's decision to the Council of the City of San Diego; 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 January 13, 2009, 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. 314328:

**A. COASTAL DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE
[SDMC] SECTION 126.0708**

1. The proposed coastal development will not encroach upon any existing physical access way 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 0.143-acre project site is currently developed with an existing mixed use, residential apartment and commercial office building that includes four residential apartment units and first floor commercial office. The development proposes to divide the existing four dwelling units into residential condominiums along with commercial office condominiums and is located approximately one mile from the coastline. The proposed development is existing and is contained within the existing legal lot area, which will not encroach upon any existing or proposed physical access to the coast. The project site is not located on or adjacent to an identified visual access corridor as identified within the Pacific Beach Local Coastal Program. The project site is situated along Grand Avenue, within a developed multi-family residential and small scale commercial neighborhood. The proposed division into condominiums met the development setbacks and height limit required at the time it was built and the structure will not block any identified visual corridor.

2. The proposed coastal development will not adversely affect environmentally sensitive lands. The 0.143-acre project site is currently developed with a four dwelling unit apartment building with first floor commercial office and does not contain environmentally sensitive lands. The environmental review determined that the project would not have a significant environmental effect on environmentally sensitive lands and was found to be exempt from environmental review under California Environmental Quality Act [CEQA] Guidelines. The project does not propose any grading on any portion of the property and does not propose any encroachment into Environmentally Sensitive Lands.

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 division of the existing mixed use residential apartment and commercial office use building with four dwelling units to be converted into condominium units is located on a site which has a Community Commercial land use designation. During environmental review, it was determined that the project was exempt under the CEQA Guidelines. The project design was also determined to be in compliance with all of the applicable development regulations at the time it was constructed. Due to these factors the


proposed condominium conversion was found to be in compliance with the City of San Diego adopted Pacific Beach Community Plan and the Progress Guide and General Plan and the certified Local Coastal Program Land Use 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 0.143-acre site, currently developed with an existing mixed use apartment with commercial office building that includes four dwelling units, is located within a well developed multi-family residential and neighborhood commercial neighborhood. The project site is not located between the first public road and the sea or coastline. Development of the project will be fully within the private property. The project site is approximately one mile away from the Pacific Ocean. There is no identified public access and public recreation area on or adjacent to the project site and these stated resources will not be impaired by the development of this site. The proposed condominium conversion project has an existing design with access off the existing public alley, with all twelve existing off street parking spaces off the alley. The existing character and pedestrian design of the street will remain unaltered.

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 the appeal of the Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation, is denied; the decision of the Planning Commission is sustained; and Coastal Development Permit No. 314328 is granted to Michael E. Turk, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Keith Bauerle
Deputy City Attorney

KB:hm
01/15/09
Or.Dept:DSD
R-2009-783
MMS#7017

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 42-6071

COASTAL DEVELOPMENT PERMIT NO. 314328
1949 GRAND AVENUE TENTATIVE MAP – PROJECT NO. 96319

CITY COUNCIL

This Coastal Development Permit No. 314328 is granted by the City Council of the City of San Diego to Michael E. Turk, managing member of West of Ingraham, LLC, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0702. The 0.143-acre site is located at 1949 Grand Avenue, in the CN-1-2 zone, Coastal Overlay Zone (non-appealable), and Coastal Height Limit Overlay Zone, within the Pacific Beach Planning Area. The project site is legally described as Parcel 2, Parcel Map No. 2866.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to divide an existing 4-unit apartment building with first floor commercial offices to be converted into four residential condominium units and two commercial office condominium units described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated January 13, 2009, on file in the Development Services Department.

The project or facility shall include:

- a. Division of an existing 2-story, 4-unit mixed use apartment building with first floor commercial offices, into four residential condominium units and two commercial office condominium units on a 0.143-acre property;
- b. Existing Landscaping;
- c. Existing Off-street parking facilities, twelve parking spaces; and
- d. 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. Conversion of the existing units to condominium ownership 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 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 City Manager; 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. This Permit shall become effective with recordation of the corresponding final parcel map for and approval of this project site.
8. 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 the special rights which the holder of the Permit is entitled as a result of obtaining 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.

9. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

ENGINEERING REQUIREMENTS:

10. The Coastal Development Permit shall comply with all conditions of the associated Tentative Map No. 592418 to the satisfaction of the City Engineer.

AFFORDABLE HOUSING REQUIREMENTS:

11. Prior to receiving a parcel map/certificate of compliance, the applicant shall comply with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code). The applicant has elected to pay an in-lieu fee to meet these requirements. Prior to receiving a parcel map/certificate of compliance, the applicant must either pay the entire in-lieu fee amount or enter into an agreement with the San Diego Housing Commission to assure the payment of the in-lieu fee.

12. Prior to receiving a parcel map/certificate of compliance, the applicant shall either show evidence that relocation assistance has been paid to eligible tenants or enter into an agreement with the San Diego Housing Commission to demonstrate conformance with

the Municipal Code provisions for Tenant Relocation Benefits (Chapter 14, Article 4, Division 5, ?144.0503). In addition, applicant must pay the appropriate fees incurred by the Housing Commission for compliance monitoring (Chapter 14, Article 4, Division 5, Sec.144.0502).

PLANNING/DESIGN REQUIREMENTS:

13. No fewer than twelve off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.

14. 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.

15. Prior to issuance of Certificate of Compliance, the project must comply with the Inclusionary Housing Regulations, and the Coastal Zone Affordable Housing Replacement Regulations as determined by the San Diego Housing Commission.

INFORMATION ONLY:

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

APPROVED by the Council of the City of San Diego on January 13, 2009 by Resolution No. 304595.

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.

WEST OF INGRAHAM, LLC.
Owner/Permittee

By _____
MICHAEL E. TURK
Managing Member

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