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11/17

RESOLUTION NUMBER R- 305426

DATE OF FINAL PASSAGE NOV 17 2009

A RESOLUTION APPROVING COASTAL DEVELOPMENT
PERMIT NO. 472934

WHEREAS, Marco Sanchez and Enrique Salcedo, Owner/Permittee, filed an application with the City of San Diego for Coastal Development Permit [CDP] No. 472934 to demolish the existing building and construct four residential condominium units known as the Habiterra Project No. 136041, located at 7460 Herschel Avenue, and legally described as portions of Lots 30, 31, and 32, Block 16, Center Addition to La Jolla Park, Map No. 915, filed August 4, 1904, in the La Jolla Community Plan area, in the RM-3-7, Coastal Overlay, Coastal Height Limit, Parking Impact, and Residential Tandem Parking Overlay zones; and

WHEREAS, on October 8, 2009, the Planning Commission of the City of San Diego considered CDP No. 472934, and pursuant to Resolution No. 4544-PC voted to recommend City Council approval of the permit; 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, a public hearing is required by law implicating due process rights of individuals affected by the decision, and the Council is required by law to consider evidence at the hearing and to make legal findings based on the evidence presented;

WHEREAS, the matter was set for public hearing on November 17, 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 CDP Permit No. 472934:

A. Coastal Development Permit - 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 access way 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 proposed project is located at 7460 Herschel Avenue on a 0.11 acre site in the RM-3-7, Coastal Overlay, Coastal Height Limit, Parking Impact, and Residential Tandem Parking Overlay zones within the La Jolla Community Plan. The project proposes to demolish an existing building and construct a four unit condominium project. The proposed condominium project will be developed entirely within the private property and will not encroach upon any existing physical access way legally used by the public or any proposed public access way identified in a Local Coastal Program land use plan. There are no existing or proposed public access ways legally used by the public located on the subject private property. The proposed development will be constructed completely within the boundaries of the private property and will observe all required yard setbacks. The La Jolla Community Plan and Local Coastal Program identify the location of all public view corridors within the community and do not identify any such corridor within or along Herschel Avenue. From the property at 7460 Herschel Avenue, there are no views to the ocean or other scenic coastal areas. As such the proposed project will have no effect upon the public views to and along the ocean and other scenic coastal areas as identified in the Local Coastal Program land use plan.

2. The proposed coastal development will not adversely affect environmentally sensitive lands.

The proposed project is located at 7460 Herschel Avenue on a 0.11-acre site in the RM-3-7, Coastal Overlay, Coastal Height Limit, Parking Impact, and Residential Tandem Parking Overlay zones within the La Jolla Community Plan. The project proposes to demolish an existing building and construct a four unit condominium project. The site has been previously developed with a single family structure, landscaping, and other minor improvements. There are no sensitive habitats or species located on the site, nor is the site adjacent to the City of San Diego's Multi-Habitat Planning Area. The proposed project will have no significant environmental effect and is categorically exempt under the California Environmental Quality Act. In the absence of any environmentally sensitive lands present on the site the proposed development will have no adverse affect to or upon 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 project is located at 7460 Herschel Avenue on a 0.11-acre site in the RM-3-7, Coastal Overlay, Coastal Height Limit, Parking Impact, and Residential Tandem Parking Overlay zones within the La Jolla Community Plan. The project proposes to

demolish an existing building and construct a four unit condominium project. The proposed project is located within the La Jolla Community Plan area on a parcel designated for Medium High residential use which would provide for a density range of thirty to forty dwelling units per acre. The site measures 0.11-acres and would be allowed a maximum density of three to four dwelling units. The proposed density is consistent with the land use designation. The project would adhere to policies and objectives established by the community plan in that the design of the proposed structure does not affect any existing physical access way that is legally used by the public or any proposed public access way identified in a Local Coastal Program land use plan. Furthermore the proposed project will have a harmonious physical and aesthetic relationship with other existing structures in the neighborhood. Being determined the proposed project will be consistent with the La Jolla Community Plan policies and objectives the project is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

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.

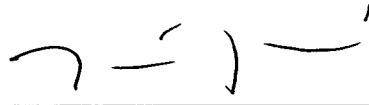
The proposed project is located at 7460 Herschel Avenue on a 0.11-acre site in the RM-3-7, Coastal Overlay, Coastal Height Limit, Parking Impact, and Residential Tandem Parking Overlay zones within the La Jolla Community Plan. The project proposes to demolish an existing building and construct a four unit condominium project. 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. Therefore, the proposed project to demolish an existing building and construct a four unit condominium project will have no effect upon public access and the recreation policies of Chapter 3 of the California Coastal Act and is in conformance with such Act.

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

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that the approved project shall have a maximum floor area of 7,983 square feet as shown on the approved Exhibit "A" drawings referenced by the Coastal Development Permit No. 472934.

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Coastal Development Permit No. 472934 is granted to Marco Sanchez and Enrique Salcedo, Owners/Permittees, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 

Nina M. Fain
Deputy City Attorney

NMF:js
10/19/2009
11/05/2009 Cor. Copy
11/20/2009 Cor. Copy
Or.Dept:DSD
R-2010-293
MMS #10712

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
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: 42-8154

COASTAL DEVELOPMENT PERMIT NO. 472934
HABITERRA - PROJECT NO. 136041
CITY COUNCIL

This Coastal Development Permit No. 472934 is granted by the Council of the City of San Diego to Marco Sanchez and Enrique Salcedo, Owners/Permittees, pursuant to San Diego Municipal Code [SDMC] section 126.0708. The 0.11-acre site is located at 7460 Herschel Avenue in the RM-3-7, Coastal Overlay, Coastal Height Limit, Parking Impact, and Residential Tandem Parking Overlay zones within the La Jolla Community Plan. The project site is legally described as portions of Lots 30, 31, and 32, Block 16, Center Addition to La Jolla Park, Map No. 915, filed August 4, 1904.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owners/Permittees to demolish the existing building and construct four residential condominium units, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated NOV 17, 2009, on file in the Development Services Department.

The project shall include:

- a. Demolition of the existing building and other site improvements and construction of a three story, four unit residential condominium development with two one-bedroom and two two-bedroom units, and a basement parking garage;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking;
- d. Accessory improvements determined by the Development Services Department 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 (36) 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 SDMC requirements and applicable guidelines in affect 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. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
4. This Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor(s) in interest. Any successor(s) in interest 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. In order to secure necessary permits, the Owner/Permittee may be required to complete substantial modifications to the building and site improvements to comply with applicable laws for building, fire, mechanical, plumbing, and disability access requirements.
8. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit were considered and determined to be necessary to make the findings required for this Permit. The holder of this Permit shall 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.

10. The Owner/Permittee 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 Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee 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, Owner/Permittee 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 Owner/Permittee 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 Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

AFFORDABLE HOUSING REQUIREMENTS:

11. Prior to the issuance of the first residential building permit, the Owner/Permittee 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) by payment of the Inclusionary Housing In-Lieu Fee.

ENGINEERING REQUIREMENTS:

12. The Coastal Development Permit shall comply with all conditions of Tentative Map Waiver 477793.

13. Prior to foundation inspection, the Owner/Permittee shall submit a building pad certification signed by a Registered Civil Engineer or a Licensed Land Surveyor, certifying that the pad elevation based on USGS datum is in accordance with the approved plans.

14. Prior to the issuance of the first residential building permit, the Owner/Permittee shall assure by permit and bond the relocation of the existing twenty-four inch storm drain to the satisfaction of the City Engineer, including the City Engineer's inspection and acceptance of all related work.

LANDSCAPE REQUIREMENTS:

15. Prior to issuance of construction permits for public right-of-way improvements, the Owner/Permittee shall submit complete landscape construction documents for right-of-way improvements to the Development Services Department for approval. Improvement plans shall provide for a forty square foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

16. If the Owner/Permittee requests a foundation only permit, a site plan or staking layout plan shall be submitted to the Development Services Department identifying all landscape areas consistent with Exhibit "A," Landscape Development Plan. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as "landscaping area."

17. Prior to issuance of any construction permits for buildings, the Owner/Permittee shall submit complete landscape and irrigation construction documents consistent with the Land Development Manual, Landscape Standards to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A."

18. Prior to Final Inspection, the Owner/Permittee shall 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.

19. The Owner/Permittee shall maintain all landscape in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

20. The Owner/Permittee shall maintain all landscape improvements in the right-of-way consistent with the Land Development Manual, Landscape Standards.

21. If any required landscape, including existing or new plantings, hardscape, landscape features, or other improvements, indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee shall be required to repair and/or replace any landscape in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or prior to a Final Landscape Inspection.

22. The Owner/Permittee shall install root barriers within the public right-of-way to protect existing improvements from damage subsequently caused by the roots of street trees required by this permit, to the satisfaction of the City Manager.

23. The Owner/Permittee shall install a mildew resistant coastal variety of *Lagerstroemia indica* (Crepe Myrtle) as the required street trees shown in the locations on Exhibit "A" along Herschel Avenue, to the satisfaction of the City Manager.

PLANNING/DESIGN REQUIREMENTS:

24. No fewer than six off-street parking spaces [seven provided] 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 authorized by the appropriate City decision maker.

25. A topographical survey conforming to the provisions of the SDMC 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 regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

26. 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.

27. 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.

28. A topographical survey conforming to the provisions of the Municipal/Land Development Code 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 Owner/Permittee.

29. All signs shall comply with the San Diego Municipal Code Chapter 14, Article 2, Division 12, Sign Regulations.

30. All fences and retaining walls shall comply with the San Diego Municipal Code Section 142.0301.

31. No structures or other encroachments over three feet in height are permitted within the visibility triangle.

TRANSPORTATION REQUIREMENTS

32. Prior to the issuance of the first building permit, the Owner/Permittee shall assure by permit and bond the closure of all under-utilized driveways along the project's frontage and replace with curb, gutter and sidewalk, satisfactory to the City Engineer.
33. Prior to the issuance of the first building permit, the Owner/Permittee shall assure by permit and bond the construction of a twenty foot wide driveway along the project's frontage on Pearl Street, satisfactory to the City Engineer.
34. Prior to the issuance of the first building permit, the Owner/Permittee shall assure by permit and bond the construction of a maximum of twenty-five foot wide driveway along the project's frontage on Herschel Avenue, satisfactory to the City Engineer.
35. The Owner/Permittee shall provide and maintain adequate visibility area on both sides of the two proposed driveways along the setback lines of Pearl Street and Herschel Avenue. No obstacles higher than thirty-six inches shall be located within this area, including yet not limited to walls, landscaping, or other improvements.
36. The "study" area as shown on the Exhibit "A" shall not be converted to any other use including a bedroom at any time. The restriction on the change of use for "study" area shall be reflected and disclosed on any future lease and/or sale agreement(s) of the dwelling units on this property.

WASTEWATER REQUIREMENTS:

37. Prior to the issuance of any building permits, the Owner/Permittee shall provide an Encroachment Maintenance and Removal Agreement for the private shared lateral in the public right-of-way.
38. All on-site wastewater systems shall be private.
39. All proposed public sewer facilities shall be designed and constructed in accordance with established criteria in the most current City of San Diego Sewer Design Guide.
40. All proposed private sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and will be reviewed as part of the building permit plan check.
41. The Owner/Permittee shall not install any trees within ten feet of any sewer facilities or in any sewer access easement. No shrubs exceeding three feet in height at maturity shall be installed within ten feet of any public sewer main or within access easements.

WATER REQUIREMENTS:

42. 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) as needed, and the removal of all existing unused services, within the Hershel Avenue and Pearl Street rights-of-way adjacent to the project site in a manner satisfactory to the Director of Public Utilities and the City Engineer.

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 Director of Public Utilities and the City Engineer.

CITY COUNCIL REQUIREMENTS:

44. Prior to the issuance of a building permit, the Owner/Permittee shall indicate on the construction plans each dwelling unit shall have individual water meters to supply water to each dwelling unit, to the satisfaction of the Development Services Department.

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 §66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Council of the City of San Diego on NOV 17, 2009 by
Resolution No. R- 305426.

AUTHENTICATED BY THE CITY MANAGER

By _____

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

MARCO SANCHEZ
Owner/Permittee

By _____
Marco Sanchez
Owner

ENRIQUE SALCEDO
Owner/Permittee

By _____
Enrique Salcedo
Owner

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**