

RESOLUTION NUMBER R- 308490

DATE OF FINAL PASSAGE OCT 08 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO GRANTING NEIGHBORHOOD DEVELOPMENT
PERMIT NO. 1063079 – GOLDFINCH STREET PROJECT –
PROJECT NO. 270034.

WHEREAS, Claudio Canive and Leyla Larijani, Owner/Permittee, filed an application with the City of San Diego for a Neighborhood Development Permit to retain existing and modified retaining walls and improvements within the public right of way, located at 3232 Goldfinch Street, and legally described as Lot 1, Block 373 of Horton's Addition, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by L.L. Lockling, filed in the Office of the County Recorder, San Diego County, in the Uptown Community Plan area, in the RS-1-7 Zone; and

WHEREAS, on May 16, 2013, the Planning Commission of the City of San Diego considered Neighborhood Development Permit (NDP) Permit No. 1063079, and pursuant to Resolution No. 4910-PC voted 5-0-1 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 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 October 8, 2013, 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. 1063079:

NEIGHBORHOOD DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE
SECTION 126.0404:

1. The proposed development will not adversely affect the applicable land use plan. The project site, located at 3232 Goldfinch Street, proposes to allow the existing and modified site retaining walls and access improvements fronting the existing single family residence to remain within the public right-of-way, along the west side portions of Goldfinch Street, south of West Thorn Street within the Uptown Community Plan's (UCP) Residential Element, Low-Density Residential (5-10 du/ac.) designation.

The existing single family residence with frontage improvements and retaining walls on a single 5,000 square-foot lot is consistent with UCP's low-density residential use within a "single-family protected" neighborhood, in which only one detached dwelling unit per lot is permitted. Therefore, the project will continue to not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The project proposes to allow the existing and modified site retaining walls and access improvements fronting the single family residence at 3232 Goldfinch Street to remain within the public right-of-way. The associated permit controlling development and operation of the project will contain conditions addressing project compliance with applicable local, regional, state, and federal regulations to prevent detrimental impacts to the health, safety, and welfare of persons residing in and around the project site, including all applicable Building Code requirements.

The project proposes to permit a privately owned and maintained structure, approximately 35 linear feet of retaining walls and front access steps, within the right-of-way for a public street, parallel to the front property line owned by the project's Owner/Permittee. The proposed retaining wall constitutes an encroachment requiring a Neighborhood Development Permit (NDP) and an Encroachment, Maintenance, and Removal Agreement (EMRA).

The existing retaining wall is necessary to retain the contours of the existing slope and the development footprint of the single family residence. Therefore, the proposed encroachment is directly related to preserving the existing single family residence and allowing continued public travel along the fronting sidewalk that benefits a public purpose, will not be detrimental to the public health, safety, welfare. The City would provide the Owner/Permittee with permission to maintain the encroachment on the City's public right-of-way with the execution and recordation of an EMRA, which requires that Owner/Permittee maintain the encroachment in a safe and

sanitary condition and that it does not affect the public's health, safety or general welfare. Therefore, the proposed development will not be detrimental to the public health, safety or welfare.

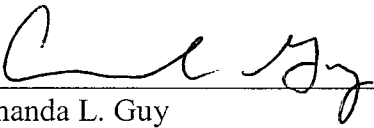
3. The proposed development will comply with the applicable regulations of the Land Development Code, including any allowable deviations pursuant to the Land Development Code. The project proposes to allow the existing and modified site retaining walls and access improvements fronting the single family residence at 3232 Goldfinch Street to remain within the public right-of-way. The project's underlying zone is RS-1-7 (Residential Zone), which allows a mix of light industrial and office uses. The existing residential development meets the current underlying RS-1-7 zoning standards and regulations.

The project proposes to permit a privately owned and maintained structure, approximately 35 linear feet of retaining walls and front access steps, within the right-of-way for a public street, parallel to the front property line owned by the project's Owner/Permittee. The proposed retaining wall constitutes an encroachment requiring a NDP and an EMRA. The proposed project does not request any deviations and therefore, with the execution of the NDP and EMRA, the proposed development would be consistent with the Land Development Code. Therefore, the proposed development will comply with the applicable regulations of the Land Development Code, including any allowable deviations pursuant to the Land Development Code.

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. 1063079 is granted to Claudio Canive and Leyla Larijani, 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 
Amanda L. Guy
Deputy City Attorney

ALG:mm
09/18/2013
Or.Dept:DSD
Doc. No. 569784_5

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

INTERNAL ORDER NUMBER: 24002454

Neighborhood Development Permit No. 1063079
3232 GOLDFINCH STREET PROJECT NO. 270034
City Council

This Neighborhood Development Permit No. 1063079 is granted by the City Council of the City of San Diego to Claudio Canive and Leyla Larijani, husband and wife as joint tenants, Owner, and Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0401. The 0.87-acre site is located at 3232 Goldfinch Street in the RS-1-7 Zone within the Uptown Community Plan area. The project site is legally described as Lot 1, Block 373 of Horton's Addition, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by L.L. Lockling, filed in the Office of the County Recorder, San Diego County.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to retain existing and modified retaining walls and improvements within the public right of way as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated October 8, 2013, on file in the Development Services Department.

The project shall include:

- a. Approximately 35 linear feet of existing and modified retaining walls, fronting the existing property and within City public right of way; and
- b. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by October 8, 2016.
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 all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
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 building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
9. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is

required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If 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.

ENGINEERING REQUIREMENTS:

11. The Owner/Permittee shall obtain a public right-of-way permit for the construction of the retaining walls in the public right-of-way.

12. Prior to the issuance of any construction permits, the Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement (EMRA), for the retaining walls in the public right-of-way, satisfactory to the City Engineer.

13. The Owner/Permittee shall modify existing frontage retaining walls to allow a six (6) feet visibility triangle area pursuant to SDMC sec. 131.0449(a)(8).

PLANNING/DESIGN REQUIREMENTS:

14. 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.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this 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.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on October 8, 2013 and [*Approved Resolution Number*]. **R-308490**

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Tim Daly
Development Project Manager

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

**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.**

Owner/Permittee

By _____
CLAUDIO CANIVE OR
LEYLA LARIJANI,
HUSBAND AND WIFE
AS JOINT TENANTS

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

Passed by the Council of The City of San Diego on OCT 08 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 08 2013.

(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT
as interim Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 308490