



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: May 16, 2007 REPORT NO.: 07-091

ATTENTION: Council President and City Council

SUBJECT: Stebbins Residence - Project No. 51076, Council District 2,  
Process Four Appeal

REFERENCE: Report to the Planning Commission No. PC-07-010 (Attachment 26)

REQUESTED ACTION: Should the City Council approve or deny an appeal of the Planning Commission's decision to approve a Coastal Development Permit (CDP), and Site Development Permit (SDP) to allow the demolition of an existing duplex, and the construction of a new three-story single family residence above a basement garage, with a deviation from the regulations for Special Flood Hazard Areas?

STAFF RECOMMENDATION:

1. **DENY** the appeal and UPHOLD the Planning Commission's decision to **APPROVE** Coastal Development Permit No. 147134, and Site Development Permit No. 389939.
2. **CERTIFY** Mitigated Negative Declaration No. 51076, and **ADOPT** the Mitigation, Monitoring, and Reporting Program.

SUMMARY:

Planning Commission Decision:

On March 1, 2007, the City of San Diego Planning Commission certified the Mitigated Negative Declaration and approved the proposed project (Attachment 8). The unanimous decision to approve the project was preceded by a February 8, 2007 hearing, wherein the Planning Commission directed the applicant to demonstrate and further clarify the flood-proofing techniques employed in the project design.

Appeal Issues:

On March 14, 2007, an appeal of the Planning Commission's decision was filed asserting factual error, conflict with other matters, findings not supported, new information, and city-wide significance (Attachment 13). These issues are discussed further in this report.

### Background :

The project is located at 5166 West Point Loma Boulevard within the Ocean Beach Precise Plan and Local Coastal Program Land Use Plan (Attachment 1). The Precise Plan designates the 0.057-acre site and surrounding neighborhood for multi-family land use at a maximum density of 25 dwelling units per acre (Attachment 2). The site is zoned RM 2-4 and subject to the applicable regulation of the Land Development Code (Attachment 4).

The single-story, 1,250 square-foot duplex was constructed in 1955. The project site is surrounded by established multi-family residential developments to the west, east, south and Ocean Beach Dog Park to the northwest. The San Diego River is located approximately 650 feet to the north of the proposed development and the Pacific Ocean to the west (Attachment 3).

### Project Description:

The project is requesting a Coastal Development Permit (CDP) and a Site Development Permit (SDP) in accordance with the City of San Diego Land Development Code to demolish an existing single-story duplex and construct a three-story single-family residence on a 2,500 square-foot lot. The project includes a request to deviate from the applicable Environmentally Sensitive Lands (ESL) Regulations to allow a portion of the new structure to be located below the base flood elevation in order to provide below grade parking on the property. The Coastal Development Permit is required for the demolition and new construction on the property and the Site Development Permit is required to allow for the deviation to the ESL regulations`.

The proposed 1,749 square-foot single family residence would include an office, master bedroom, two bathrooms and a patio on the first level; a kitchen, dining room, living room, bathroom and two decks on the second level; and a loft and a deck on the third-floor level. The project would also include a subterranean two-car garage with a storage area. The design of the structure is a contemporary style utilizing clean straight lines, multiple building planes and façade articulations, large balconies and metal and glass accents (Attachment 5). The proposed design would comply with all of the applicable development regulations of the RM-2-4 Zone including the 30-foot height limit.

Whereas the new structure may represent a notable change from that of the existing structure and, would be dissimilar to the row of old duplexes, the design of the residence would be consistent with new single-family homes throughout the Ocean Beach community and compatible with adjacent two and three-story structures in the neighborhood. Likewise, the proposed residential structure would be consistent with the Ocean Beach Precise Plan that envisioned new and revitalized development, and the project would conform to the Land Development Code regulations with the approval of the appropriate development permits.

### Community Plan Analysis:

The project site is located on one side of a block consisting of 1-story duplexes. The architectural style of the existing duplexes is virtually identical and has been determined not to be historically significant. Many of the structures are dilapidated and in need of repair/remodeling and the proposal would be consistent with the Ocean Beach Action Plan's objective to "Renovate substandard and dilapidated property" (Residential Element) and "Promote the continuation of an economically balanced housing market, providing for all age groups and family types" (Residential Element).

As originally submitted, the project included the demolition of the existing duplex and construction of a 1,751 (original proposal) square-foot three-story dwelling and subterranean parking garage. Staff initially had concerns regarding the bulk and scale portrayed in the first submittal as it lacked the off-setting planes and building articulation of the final design. The issue of bulk and scale was addressed when the applicant, after meeting with staff, incorporated several design changes that served to further break down the bulk of the original submittal in a manner that preserves the character of small-scale residential development in the community.

The revised project would be consistent with the Ocean Beach Precise Plan. At three stories, the project would be of a larger scale than immediately surrounding development. However, the project would more closely match 2-story structures on the block to the immediate north of West Point Loma Boulevard. In addition, the project area is mapped within the 100-year floodplain and the restrictions on development within the floodplain require that the first floor be 2 feet above the base flood elevation, which would effectively render the ground floor uninhabitable for most properties in this area. This condition and the RM-2-4 zone requirement that 25 percent of FAR be utilized for parking led the applicant to waterproof the garage in order to avoid having part of the ground floor level devoted to parking, which, in turn, would have drastically reduced habitable space. The project proposal includes a modest increase in square footage from 1,250 to 1,749 and the applicant has submitted a design that is well-articulated with pronounced step backs on both the second and third stories which would enhance pedestrian orientation along the public right-of-way. The third story roof is also sloped down in front to further break up the scale of the proposal. Further, the proposal observes the thirty-foot height limit of the Coastal Overlay Zone.

Staff concluded that the proposed design typifies "small-scale" low-density development and would be consistent with both the Ocean Beach Precise Plan and the Action Plan goals for redevelopment and owner occupied housing. This determination was based on the well articulated design which reduces the bulk of the structure and observes the Coastal Overlay height limit while mindful of the site's physical constraints and regulatory issues which include the floodplain and zoning limitations on floor area ratio.

The project is located between the first public right-of-way and the ocean and therefore issues of coastal access (physical and visual) must be addressed. The proposal would not impact any physical access to the coast. In addition, there are no public view corridors

identified in the area by either the Ocean Beach Precise Plan or the Ocean Beach Action Plan. Nonetheless, the project would respect setback requirements and a three foot view corridor would be provided along the east and west sides of the property through a deed restriction to preserve views toward Dog Beach and the San Diego River.

Environmental Analysis:

The project site is within the 100 year floodplain and is therefore considered environmentally sensitive land. However, previous site grading and construction of the existing duplex completely disturbed the site. The property is relatively flat with an elevation of 8 feet above mean sea level. The site does not include any sensitive topographical or biological resources and is neither within or adjacent to Multi-Habitat Planning Area (MHPA) lands. A Mitigated Negative Declaration dated November 2, 2006, has been prepared for this project in accordance with State CEQA guidelines, and a Mitigation, Monitoring and Reporting Program is required for Archaeological Resources to reduce any potential impacts to below a level of significance.

The Initial Study for the project also addressed geologic conditions, human health/public safety, historical resources, and water quality. (Prior to preparing the Initial Study, staff also evaluated potential impacts in all of the issue areas listed in the MND's Initial Study Checklist.)

Project-Related Issues:

**Appeal Issues:**

On March 14, 2007, an appeal was filed by Mr. Randy Berkman, and Mr. Larry Watson asserting factual error, conflict with other matters, and findings not supported, new information, and city-wide significance (Attachment 13). These issues are addressed below in the approximate order they appear within the appeal and include staff's response:

Appeal Issue No. 1: Appellant asserts that the **Council Policy 600-14** is not addressed in the MND.

Staff Response: The intent of Council Policy 600-14 is to promote the public health, safety and general welfare, and to minimize public and private losses due to flooding and flood conditions in specific areas by regulating development within Special Flood Hazard Areas. Council Policy 600-14 was incorporated into the Land Development Code, Environmentally Sensitive Lands Section (143.0145 and 143.0146) as a part of the 2000 Land Development Code update and is no longer in effect as a regulatory document. Therefore, it is not necessary to reference it in the Mitigated Negative Declaration.

Appeal Issue No. 2: Appellant claims that **New Information** was provided during the hearing which was not disclosed in the MND.

Staff Response: Development Services originally determined that the proposed project could not be supported by staff. However, after consultation with the City Engineer and

further review of the proposed water proofing, flood control methods and the structural design of the project, staff concluded that the deviation to allow the building below the base flood elevation could be favorably recommended to the decision maker. The Mitigated Negative Declaration was prepared and distributed for public review on September 18, 2006. The environmental document is based on the final project and identified that the proposed project included a deviation for underground parking. There is no CEQA requirement for the lead agency to discuss project revisions that occurred throughout the review process or how staff arrived at final project determinations prior to public review of the CEQA document.

Appeal Issue No. 3: Appellant claims that **FEMA Technical Bulletin 6-93** "Strictly Prohibits" parking under residence in Flood Plains. The appeal also states that **FEMA Technical Bulletin 3-93** was improperly cited in the MND because it applies to non-residential structures.

Staff Response: The FEMA Technical Bulletins are not applicable to the project and staff determined that the proposed subterranean parking may be permitted with a Site Development Permit requesting a deviation to the Environmentally Sensitive Lands (ESL) Regulations of the Land Development Code which are the basis for project review in a Flood Plain. The staff determination was based on consultation with the City Engineer after review of the proposed dewatering and flood-proofing techniques incorporated into the project and made conditions of the Site Development Permit. The technical bulletins were not referenced in the MND but did appear in the previous Planning Commission report (Attachment 12) in an effort to represent how deviations can be permitted with the appropriate engineering techniques.

Appeal Issue No. 4: Appellant claims that **potential consequences of approving sub-surface parking under residence in a flood plain**, and that any new construction must comply with the requirements of Vol. 44 of the Code of Federal Regulations and NFIP.

Staff Response: New construction must comply with the applicable sections of the City of San Diego Municipal Code and the Uniform Building Code. The Municipal Code implements Chapter 44 of the Code of Federal Regulation which provides guidelines for city regulations and the National Insurance Program.

Appeal Issue No. 5: Appellant asserts that the proposed project is **inconsistent with Ocean Beach Precise Plan**, referring to illustration on page 116 of the Precise Plan.

Staff Response: The illustration on page 116 of the original Ocean Beach Precise Plan was intended to illustrate what could be developed on typical lots, not to mandate a specific development type. In addition, this provision was based on a prior 24 foot height limit of the Ocean Beach Precise Plan which was amended in 1983 to 30 feet in conjunction with the 30-foot height limit initiative. The proposed project would include underground parking, respect the required setbacks and provide additional step backs and articulation at the second and third levels. Alternative designs with surface parking would likely require additional deviations to applicable development regulations or produce undesirable box-

like bulky structures that would be inconsistent with the Ocean Beach Precise plan.

Appeal Issue No. 6: Appellant claims that evidence of visual impacts was not disclosed in the MND.

Staff Response: As outlined on Page 4 of the Initial Study in the MND, conditions of the permit include recording a deed restriction preserving a three foot wide visual corridor along the east and west property lines. In addition, the proposed second story of the structure has been stepped back and the third floor has a sloped roof at a 5:12 pitch. Please refer to Figure 3 in the MND. Therefore, no impacts to visual quality would occur.

The project was revised throughout the review process and incorporated several building articulation methods, in particular increasing second story setbacks, to mitigate the apparent bulk of the prior design. Staff has determined that the final design preserves and enhances views from elevated public areas and those adjacent to the beaches, as much as possible, given the allowed thirty foot height limit. Staff believes that the underground parking configuration allows the flexibility to increase setbacks that contribute to a design that protects coastal views. Staff determined that the combination of flood plain related site constraints, the observance of setbacks, a well-articulated design with pronounced second and third-story setbacks on front and rear elevations provides visual interests and preserves site lines. Additionally, the project observes the Coastal Overlay Zone height limit and would ensure that the project would not adversely affect views from elevated and/or beach areas or impact any physical access to the coast. Finally, the proposal would be consistent with OB Precise Plan policy to, “Renovate substandard and dilapidated property.”

Appeal Issue No. 7: Appellant claims that the proposed project would also adversely affect the following policy: “That yards and coverage be adequate to insure provision of light and air to surrounding properties, and that those requirements be more stringent where necessary for buildings over two stories in height...Proposal would cast shadows over neighboring building/residence and impact air circulation...”

Staff Response: The development regulations of the underlying RM-2-4 zone have incorporated yard and setback requirements to ensure that adequate light and air would be available to surrounding properties. The proposed project would respect the setback requirements of the RM-2-4 zone. Additionally, increased step backs would be provided on the second and third stories which would further contribute to the provision of light and air for surrounding properties.

Appeal Issue No. 8: Appellant claims that evidence of cumulative impacts to neighborhood character and loss of affordable housing/conflict with Ocean Beach Precise Plan is not addressed in the MND.

Staff Response: The project is not deviating from the applicable development regulations of the RM-2-4 Zone and therefore staff does not believe there would be cumulative impacts to neighborhood character if surrounding properties developed in a manner consistent with the recommended density of the Precise Plan and in conformance with the allowable bulk

and scale established by the zone.

Coastal Overlay Zone Affordable Housing Replacement Regulations of the City's Land Development Code apply to demolition of residential structures with three or more dwelling units. At one unit on the site, these regulations would not apply to the project site. In addition, the Ocean Beach Action Plan calls for the renovation of substandard and dilapidated property of which the existing structure qualifies.

The reconstruction of a single-family residence does not constitute a substantial impact to affordable housing, nor would it create a displacement of housing.

Appeal Issue No. 9: Appellant claims that the dewatering operation might cause settlement or has potential impacts to adjacent properties not addressed in the MND.

Staff Response: As outlined on page 3 of the Initial Study, the contractor for the project must comply with Section 02140 of the City of San Diego Clean Water Program (CWP) Guidelines which would protect adjacent properties during the dewatering process. Therefore, no impacts would occur.

Appeal Issue No. 10: Appellant claims that **almost without exception, FEMA requires that habitable structures (including basements/underground parking) be one foot above the base flood)**

Staff Response: 44 CFR 60.6 Variances and Exceptions authorizes communities to grant variances to the regulations set for in Sections 60.3, 60.4, 60.5. As previously stated, the City of San Diego adopted the Land Development Code in the year 2000 and incorporated Flood Plain management development criteria into the Environmentally Sensitive Lands Regulations section. The ESL Regulations permit deviations by the local authority with a Site Development Permit. This determination has been confirmed by a FEMA Natural Hazards Program Specialist of the Mitigation Division.

Appeal Issue No. 11: Appellant claims that Section 60.6(b)(2) states: "The administrator shall prepare a Special Environmental Clearance to determine whether the proposal for an exception under paragraph (b)(1) of this section will have significant impact on the human environment.

Staff Response: This section does not apply to any local authority that has adopted Flood Plain management regulations. Please refer to staff response of appeal issue 10 above.

Appeal Issue No. 12: Appellant claims that the Stebbins Residence does not meet the FEMA standards for granting of a Variance for undergrounded parking of residence in the floodplain (Exceptional hardship).

Staff Response: Deviations to environmentally sensitive land which includes flood plains are subject to and decided in accordance with the applicable regulations of the Land Development Code. FEMA standards for granting a variance are incorporated into the Land Development Code and implemented by the City of San Diego.

Appeal Issue No. 13: Appellant claims that deviations must not be subject to tidal flooding. The Coastal Commission has required wave run up studies for redevelopment of residences which are located on the final street before the beach as this project.

Staff Response: Properties subject to tidal flooding are identified on FEMA Maps as Zone “V” whereas, this project lies within zone “A” therefore, the project site is not considered to be subject to tidal flooding.

Appeal Issue No. 14: The appellant claims that the **Retaining walls** necessary to develop the subterranean parking might be considered shoreline protection devices.

Staff Response: The retaining walls are not shoreline protection devices. Shoreline protection devices are normally associated with coastal beach and coastal bluff erosion. The project site is not located on the beach or bluff and therefore does not require a protective device. The retaining walls are a part of the garage structure and necessary for the proposed construction.

Appeal Issue No. 15: The appellant claims that the **Findings required to approve the project are not supported** citing conflict with FEMA requirements, City Council Policy 600-14 and the Land Development Code.

Staff Response: Staff reviewed the proposed project in accordance with the applicable regulations of the Land Development Code and determined that the draft findings necessary to approve the project can be affirmed by the decision maker. It has been confirmed by FEMA staff that the City of San Diego Land Development Code provides the applicable development regulations for deviations to projects located within the flood plain and that the ESL regulations implement FEMA requirements at the local level. Further, it has been determined that the technical aspects of City Council Policy 600-14 have been incorporated into the Land Development Code as part of the 2000 Code update effort. Therefore, staff believes the project, including the deviation to allow a portion of the structure below the base flood elevation, is supported by the draft findings.

Appeal Issue No. 16: The appeal states that the City Engineer does not have the authority to violate FEMA regulations as stated in section on why a FEMA Variance is not merited.

Staff Response: As previously stated, FEMA recognizes the City of San Diego Land Development Code as the regulatory basis for development in the flood plain and has confirmed that the decision making body of the local agency has the authority to approve deviations consistent with the ESL regulations. The City Engineer reviewed the proposed project including the dewatering requirements and flood-proofing techniques and recommended to the decision maker that the project could be supported.

Appeal Issue No. 17: The appeal asserts that the Mitigated Negative Declaration cites FEMA Technical Bulletin 3-93 for Non-Residential structures to justify approval of sub-surface parking for a residential structure.

Staff Response: This FEMA bulletin is not referenced in the MND. As previously stated, the Technical Bulletin was cited in the previous Planning Commission report (Attachment



12) in an effort to represent how deviations can be permitted with the appropriate engineering techniques.

Appeal Issue No. 18: Appellant refers to a Local Coastal Program/**CD Coastal Shoreline Development Overlay Zone** (Appendix B in Ocean Beach Precise Plan) which is, "intended to provide land use regulations along the coastline area including the beaches, bluffs, and land immediately landward thereof. Such regulations are intended to be in addition and supplemental to the regulations of the underlying zone or zones, and where the regulations of the CD Zone and the underlying zone are inconsistent, THE REGULATIONS OF THE CD ZONE SHALL APPLY."

Staff Response: This Overlay Zone, intended to provide additional land use regulations along all shoreline properties, **was developed as a "suggested model" ordinance as something that, "should be established" (see p. 150 of Ocean Beach Precise Plan). It was not adopted as part of the Ocean Beach Precise Plan** and so does not provide any regulations that are supplemental to the regulations of the underlying zone. As such, the recommendations for Development Criteria regarding "permanent or temporary beach shelters" ( p. 183) and the, "area lying seaward of the first contour line defining an elevation 15 feet above mean sea level", described by appellant, are not part of the adopted policy recommendations of the Ocean Beach Precise Plan and should not be referenced in connection with review of this proposed project.

FISCAL CONSIDERATIONS: None with this action. All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None. This action is an appeal of a Process Four Planning Commission decision to approve the project.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The Ocean Beach Planning Board met on July 5, 2006. There were two motions presented concerning this property and neither one passed.

- The first motion was to approve the project as presented. The motion failed by a vote of 4-4-0
- The subsequent motion was to deny the project as presented due to the bulk and scale. This motion also failed by a vote of 4-4-0.

Various board members noted that the new residence would represent a significant improvement over the existing duplex, and would improve the character of the general neighborhood. In addition, the change from a duplex to a single family residence would reduce density in the area.

Various board members noted concerns about the height of the project, and that other properties on the block might be re-developed to similar heights, altering the character of the neighborhood. Their concern is that subsequent development might create a corridor of tall buildings on the block. The suggestion was to restrict the project to two stories.

KEY STAKEHOLDER: David Stebbins, Owner/Applicant.

CONCLUSION

Staff has determined that the proposed project is consistent with the Ocean Beach precise Plan and Local Coastal Program and conforms to the applicable regulations of the Land Development Code. Staff has concluded, in consultation with a FEMA Natural Hazards Program Specialist - Mitigation Division, that the proposed deviation is permitted by local authority with an approved Site Development Permit. Further, staff concluded that the permit conditions applied to this action are appropriate and adequate to ensure that the proposed subterranean parking would not adversely affect surrounding properties. Staff determined that the design and site placement of the proposed project is appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. Staff believes the required findings can be supported as substantiated in the Findings (Attachment 8) and recommends that the City Council deny the appeal and upholds the approval of the project as conditioned.

---

Marcela Escobar-Eck  
Director  
Development Services Department

---

James T. Waring  
Deputy Chief of Land Use and  
Economic Development

ATTACHMENTS:

1. [Location Map](#)
2. [Precise Plan Land Use Map](#)
3. [Aerial Photographs](#)
4. [Project Data Sheet](#)
5. [Project Development Plans](#)
6. [Site Photos](#)
7. [Compatible Structures in Neighborhood](#)
8. [Planning Commission Resolution of Approval](#)
9. [Proposed Draft Permit](#)
10. [Draft Environmental Resolution](#)
11. [Community Planning Group Recommendation](#)
12. [Report to the Planning Commission No. PC-07-010](#)
13. [Appeal Application \(Dated March 14, 2007\)](#)
14. [Ownership Disclosure Form](#)