THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: October 8, 2008 REPORT NO.: 08-139

ATTENTION: Council President and City Council
Agenda of October 14, 2008
SUBJECT: Bird Rock Mixed Use Project No. 87287 Council District 1. Process 4 Appeal.

REFERENCE: Planning Commission Report No. PC-08-051.

REQUESTED ACTION: Appeal of the Planning Commission decision to approve a 20,507 square-foot, three-story, mixed-use development consisting of 11 residential units and 7 commercial units, two levels of subterranean parking and a loading area, located at 5702 La Jolla Boulevard in Zone 4 of the La Jolla Planned District within the La Jolla Community Planning Area.

STAFF RECOMMENDATION:

1. **DENY** the appeal and **Certify** Mitigated Negative Declaration No. 87287 and **Adopt** associated Mitigation, Monitoring, and Reporting Program; and
2. **APPROVE:** Coastal Development Permit No. 277553; and
3. **APPROVE:** Site Development Permit No. 279442; and
4. **APPROVE:** Planned Development Permit No. 546450; and
5. **APPROVE:** Tentative Map No. 361919.

SUMMARY:

Planning Commission Action:

On July 17, 2008, the Planning Commission voted 4-0-3 to Certify Mitigated Negative Declaration No. 87287 and Adopt associated Mitigation, Monitoring, and Reporting Program and Approve Coastal Development Permit No. 277553, Site Development Permit No. 279442, Planned Development Permit No. 546450; and Tentative Map No. 361919 as presented in PC Report No. PC-08-051. Included in the motion was a condition requiring the applicant to provide screening on the rear deck area to protect the privacy of the adjacent property owner. Resolution No. 4427-PC.

Background:

The project is proposing to construct a 20,507 square-foot, three-story, mixed-use development consisting of 11 residential units and 7 commercial units, two levels of subterranean parking, and a loading area on a 0.37-acre site, located at 5702 La Jolla Boulevard in Zone 4 of the La Jolla Planned District within the La Jolla Community

Planning area. The site is designated for Neighborhood Commercial land use. The project site is on the northwest corner of La Jolla Boulevard and Bird Rock Avenue. The property is adjacent to single family residential to the west, multi-family mixed-use to the north, and commercial to the south and east (PC Report Attachment 1). The Pacific Ocean is three blocks to the west of the project site.

The project requires three separate discretionary actions to develop the site as proposed. The project is located in the Coastal Overlay Zone and, therefore, requires a Coastal Development Permit. Section 159.0205 of the San Diego Municipal Code also requires that projects subject to the requirements of a Planned District Ordinance such as the La Jolla PDO, obtain a Site Development Permit. Lastly, the project requires a Planned Development Permit to deviate from the two-story restriction and the requirement to take project access from the alley.

The project site is currently vacant. A retail gasoline service station, which included three underground storage tanks, one underground waste oil storage tank, an above-ground waste oil tank and two fuel pump islands has been removed from the site. The oil storage tanks were removed and soil testing was conducted. No significant volume of remaining used oil-impacted soil was found. Extensive monitoring, removal and disposal activities would occur if the project were to be approved and constructed. Staff has no remaining issues with the storage tank or soil contamination issues. The Mitigated Negative Declaration for the project discusses these issues in greater detail.

After the applicant submitted the project to Development Services for initial review they met with the Bird Rock Community Council to present the project and discuss community issues and concerns. The project was presented as a three-story, mixed-use project. The La Jolla Planned District Ordinance requires projects in the Bird Rock area not exceed two stories. Further presentations were then made to the Bird Rock Community Council and Coastal Development Permit subcommittee of the La Jolla Community Planning Association. After several design changes, the applicant brought the project back to the La Jolla Community Planning Association. As a result of mixed input from the community, the applicant is now proposing a design meeting Land Development Code Requirements, while adhering as much as possible to the existing La Jolla Planned Development Ordinance. On June 5, 2008, the La Jolla Community Planning Association voted 7-4-1 to recommend denial of the project. The project was presented to the Planning Commission for consideration on July 17, 2008 and was approved by a 4-0-3 vote.

The Planning Commission approval was appealed by the La Jolla Community Planning Association on July 25, 2008. A second appeal was filed by Ms. Darcy Ashley on July 31, 2008.

Project Description:

The proposed three-story, mixed-use, residential and commercial project was designed to include balconies, archways, building articulation, open space for walkways, a varied roof line, and a public plaza space on the southeast corner of the site that would include a fountain, enhanced paving, benches and landscaped trellises (Attachment 1). The third story portions of the development are set back approximately 30 feet away from La Jolla Boulevard, presenting a two-story appearance at the sidewalk level. The three-story aspect of the project allows the proposed 1.27 Floor Area Ratio to be spread throughout the

development, creating the opportunity for additional open spaces and added landscaping. There are Zone 4, three-story developments in the area, including immediately north of the project, built just before the 1988, two-story restriction in the PDO was approved. La Jolla Boulevard has also been undergoing improvements, including the installation of roundabouts at several intersections along La Jolla Boulevard.

Community Plan Analysis:

The proposed Bird Rock Mixed Use project is located at 5702 La Jolla Boulevard, on a parcel that is designated for commercial use. The proposed project will include 11 residential units, and 7 commercial units on a 16,080 square-foot lot. The proposed use is consistent with the land use designation. The La Jolla Community Plan recommends for commercial uses developed along La Jolla Boulevard to be developed in a traditional boulevard manner with street trees and median landscaping. The community plan also recommends that new structures located along this retail district include mixed-use residential/commercial uses to provide opportunities for more affordable housing in La Jolla. The proposed project is not including affordable housing on site, and will be paying an in lieu fee to meet the Inclusionary Housing Ordinance requirements.

The community plan also recommends for new projects to enhance the sidewalks with decorative or uniform paving to enhance the streetscape. Median landscaping should also be included. La Jolla Boulevard is being enhanced to include median landscaping and sidewalk improvements to include additional landscaping and street lights. The community plan further recommends providing decorative lighting, street trees, benches and other pedestrian amenities to create a stronger pedestrian-oriented image to this commercial district. To implement Plan recommendations, the proposed project includes a public plaza at the corner of La Jolla Boulevard and Bird Rock Avenue. It includes a fountain, benches, trellises, and enhanced paving. The building facades are articulated with the upper stories set back from the ground floor façade and include balconies and archways integrated into the architecture. The community plan also recommends that the proposed project be designed in a pedestrian-oriented manner. The project includes jacaranda trees for street trees to be located adjacent to the curb.

The Community Plan also recommends that projects provide information on energy efficient appliances and technology in marketing materials and within sales offices in order to promote energy savings. For mixed-use projects, either provide or offer as an option, alternative energy technologies to be incorporated into the residences during construction in order to promote energy savings. The proposed project would include a roof-mounted photovoltaic system consisting of solar panels sufficient to generate at least 50 percent of the proposed project's energy consumption, as established by Council Policy 900-14.

The La Jolla Community Plan identifies (in Appendix G on the Coastal Access Subarea Maps pages 183-5) physical and visual access to the ocean. This site is located on those maps and Bird Rock Avenue is identified as having a view corridor to the ocean, passing westward to the ocean on the south side of the site. The proposed development would not impair the visual access to the ocean as it respects the street yard setbacks as required by the Land Development Code. There is also a view cone identified in the Community Plan (Figure 9 Identified Public Vantage Points) at the westerly end of Bird Rock Avenue, but the view cone is not affected by the location of the proposed new structure.

Environmental Analysis:

Environmental analysis of the project reviewed for possible impact to Paleontological Resources, Transportation, Human Health, Public Safety, Hazardous Materials, Geology and Visual Quality. Mitigation measures have been included to monitor construction activities that would reduce any of these potential impacts to Paleontological Resources to below a level of significance. Regarding Transportation impacts, conditions are included in the Mitigation, Monitoring and Reporting Program that would ensure the construction of a traffic signal at the intersection of La Jolla Boulevard and Forward Street, and the applicant would be required to provide a fair-share contribution along the project's frontage for the proposed roundabout at the intersection of La Jolla Boulevard and Bird Rock Avenue. No significant impacts are expected within the Human Health, Public Safety, Hazardous Materials, Geology and Visual Quality categories, and, therefore, no mitigation is proposed for those issue areas.

Appeal Issues:

Two appeals were filed and the issues from both are discussed below:

Issue 1

The appeal contends that both the Staff Report (Report to the Planning Commission) and the Commission's deliberations failed to analyze the key aspect of this proposal for three stories where only two stories are allowed under the La Jolla Planned District Ordinance. The Staff Report contained no discussion of why this unique requirement is in the Ordinance and its importance to the overall goals of the Ordinance. The deliberations touched briefly on this aspect, but failed to discuss and debate one of the findings of the Planned Development Permit; that is: "The proposed development will not adversely affect the applicable land use plan." The Ordinance is an important component of the land use plan.

Response 1

The ability to deviate from development regulations with a Planned Development Permit is the same for communities with an adopted Planned District and city-wide zoning. Therefore, the project would not adversely affect the applicable land use plan. Deviations from the La Jolla PDO are allowable assuming the project would meet the overall purpose and intent of the La Jolla Community Plan and the applicable findings can be affirmed. The proposed deviation to three stories allows the project to achieve the intent of the Community Plan and PDO with respect to building form. The deviation would allow for superior building articulation and would allow the upper portions of the building to be stepped back from the pedestrian areas. The three-story design would also provide for considerably more open areas and public amenities. The improvements afforded by the three-story configuration would be consistent with the desired form and design called for in the La Jolla Community Plan. In addition, the La Jolla Community Plan does not limit buildings to two stories.

Issue 2

A second finding of the PDP is "The proposed development, when considered as a whole, will be beneficial to the community." The appeal contends that both the Staff Report and

the Commission developed highly subjective criteria in discussing this finding, essentially boiling down their arguments to "...it is an attractive building..." While aesthetics are important, they do not rise to the level of "beneficial" in making the findings of the PDP. Further, the draft findings/conditions failed to include or require any benefits offered by the applicant (for example: extra parking, grocery store, etc.) all of which are easily understood and enforceable.

Response 2

Staff disagrees with the assertion that the staff report and the Planning Commission discussion was subjective and was limited to aesthetics. The administrative record shows that the Planning Commissioners noted the proposal to deviate to three stories would allow for pedestrian oriented street level uses along La Jolla Boulevard, provide a public plaza, greater transparency, landscaping in planters, new street trees, varied setbacks, articulation for the second level and stepped back third level. The Commissioners pointed out that the proposed development would incorporate an articulated front façade incorporating a stepped building form, balconies, open space and recessed elements.

Page 3 of the staff report states that "The third story portions of the development are set back away from La Jolla Boulevard, presenting a two-story appearance at the sidewalk level. The three-story aspect of the project allows the proposed Floor Area Ratio (1.27) to be spread throughout the development, creating the opportunity for additional open spaces and added landscaping." The Community Plan Analysis section of the report further describes that the La Jolla Community Plan recommends that projects include decorative lighting, streets trees, benches and other pedestrian amenities to create a stronger pedestrian-oriented image to this commercial district. The report states "To implement Plan recommendations, the proposed project includes a public plaza at the corner of La Jolla Boulevard and Bird Rock Avenue. It includes a fountain, benches, trellises, and enhanced paving. The building facades are articulated with the upper stories set back from the ground floor façade and include balconies and archways integrated into the architecture. The community plan also recommends that the proposed project be designed in a pedestrian-oriented manner. The project includes jacaranda trees to be located adjacent to the curb."

The Planning Commission also pointed out that "A two-story design would also likely fill out more of the site resulting in a project that would utilize the full building envelope (setback to setback)." In this way the Planning Commission was comparing how a two-story structure, strictly adhering to the limit in the La Jolla PDO, would likely result in a building that fills the site space as compared to a three-story, which would be able to step back from the sidewalk area.

In addition, the decision of the Planning Commission to approve the proposed project was based on the staff report, draft permit and draft findings, as well as written and verbal testimony presented at the May 22nd, 2008, June 12th, 2008 and July 17, 2008 hearings.

Commissioner Nasland compared building articulation between a two-story and a three-story design. He discussed, that while a two-story version could include some building articulation, the proposed three-story would result in better articulation and would relate better to the street.

Commissioner Nasland also addressed the issue of this project approval setting a precedent. He discussed the idea of narrowly defining the characteristics of this project that make a deviation acceptable. He indicated that a building at two stories would be bulkier and boxier and would not relate to the neighboring small-scale uses. He pointed out that the three-story version is highly articulated and includes numerous set backs away from the street edge. He observed that the proposed conditions of the street edge would be better, that there would be more openness and a better breakdown of scale. The Commissioners felt that the PDO is trying to provide better project interaction at the street level.

Public testimony from the opposition at the Planning Commission hearing indicated that a prime reason for the two-story limit in the PDO was the development at Fay Avenue and Silverado Street and the how the buildings on all four corners reach the 30-foot height limit. While this proposal includes three stories in portions of the project, these are tiered back away from the sidewalk and, therefore, are sensitive to the intent of the PDO. This is a critical distinction. Other three-story projects submitted in the future that are not sensitive to this issue could not meet the PDP findings. Furthermore, it is clear that, while two-story projects will be required to include some building articulation and landscaping, the openness and building orientation achievable with this three-story proposal would not be possible with a two-story design. Thus, this proposal would clearly result in a better project, while remaining sensitive to the purpose of the PDO. The design is pedestrian in its orientation and would reflect a village atmosphere. The proposal would result in two stories when viewed at the sidewalk just like a two-story project, and yet, would provide a more open, landscaped project that relates to the pedestrian.

Commissioner Otsuji observed the improved pedestrian flow through the project, and commented that the proposal would add great value by its integration with the street. He further commented that the proposal would be less bulky, and that the setbacks would fit better with PDO. Therefore,

Issue 3

The appeal contends that the Planning Commission focused its discussion and based its ruling virtually entirely on the aesthetic appearance of drawings of the project submitted by the applicant. The appeal states that there was no comparable drawing of a version of the project that would comply with the applicable land use plan and the local Planned District Ordinance. Therefore, the Commissioners had no reasonable basis for comparing a conforming and non-conforming project.

Response 3

It is clear from the testimony at the Planning Commission hearing from both the proponents and the opponents, that aesthetic appearance is the primary issue. When the Planning Commission asked the opponents to describe the purpose of the two-story limit in the PDO, the response was that it was created to ensure projects reflected a village look and to limit the height of projects. Limiting bulk and scale and encouraging a village atmosphere are aesthetic issues. Limiting height would be accomplished through the PDO in that projects at two stories would typically not reach the existing 30-foot height limit. This is due to first stories typically rising to perhaps 15 feet and a second story not rising to more than 8 or 10 feet. This would effectively result in a building that would not reach higher than 25 feet.

The village look or character relates to the scale of buildings in the La Jolla area. The buildings at the intersection of Fay Avenue and Silverado Street in La Jolla were mentioned as an impetus to the two-story restriction in the PDO. These buildings loom to three stories at the sidewalk. Projects that would deviate from the two-story restriction would need to be sensitive to this issue and reflect the village motif at the sidewalk.

In addition, when making the Planned Development Permit findings that the resulting project would be a better project than if the development were to strictly adhere to Land Development Code requirements, the Planning Commission examined and discussed the proposed project's attributes resulting from a three-story proposal. These include the project's design to step back from the sidewalk, increased open spaces within the development, additional landscaping and building articulation, and a more pedestrian-oriented design as called for in the La Jolla Community Plan. These are fundamental land use and site design issues that contribute to the overall aesthetic appeal of the project.

Issue 4

The appeal contends that the applicant and Development Services Staff misstated the project's impact on the applicable land use plan and the local PDO, and failed to justify the findings for a Planned Development Permit. Even if a PDP were merited, there is still no basis for making an exception to the two-story limit.

Response 4

The proposed development would be consistent with both the recommended residential density and the multi-family land use prescribed by the La Jolla Community Plan. Page 104, of the La Jolla Community Plan, calls for the Bird Rock area to have mixed-use residential/commercial development, and enhanced sidewalks with decorative/uniform paving, street trees, benches and other amenities. The purpose is to create a stronger pedestrian-oriented image to the Bird Rock commercial district. The project would include these amenities and would enhance the pedestrian experience. The proposed development would also be consistent with the purpose and intent of the La Jolla Planned District Zone 4 and comply with the applicable development regulations of the Land Development Code, including deviations permitted as a part of the discretionary entitlement process through a Planned Development Permit. The La Jolla Community Plan requires that public views to the ocean be protected. The project would not block any identified public views.

Issue 5

The appeal contends that the two-story limit is a central and crucial component of the PDO, separate and apart from the 30-foot height limit. The Commissioners' statements on several occasions indicated that they neither understood the two-story limit, nor gave it any weight in their decision. Instead, they acted as if the only zoning applicable was the 30-foot height limit.

Response 5

The Planning Commission clearly understood the two-story height limit. What was not initially clear to them was why it was adopted into the PDO. The Commissioners asked for

testimony from the opposition side regarding this question. As mentioned above, the opposition indicated the two-story limit was developed as a way to limit building height to less than the 30-foot height limit and to try to ensure developments are sensitive to and reflective of the La Jolla village character. This issue was central in the Planning Commissioners' deliberations. It is precisely why they asked for a deeper understanding of the origins of the PDO and the two-story limit. Following that public testimony and further discussion of the project design, the Planning Commission voted 4-0-3 to approve the project.

Issue 6

The appeal contends that there has been no three-story project approved in the relevant zones since the community-supported PDO was enacted over 20 years ago. The two-story limit enjoys great support in the community and the community has expressed its overwhelming desire that it be enforced. This alone should have carried significant weight with the Commissioners in making their findings. Moreover, the local commissions and the community planning group rejected the project based on the fact that it did not comply with the PDO, using full analysis and appropriate channels. These are precisely the facts the Planning Commission and Development Services staff ignored.

Response 6

Staff believes that the Planning Commission was aware of the development history in the Bird Rock area or the La Jolla community in general. Commission comment centered on the design of the proposal, how it would differ from a two-story alternative, and how the project would look and feel if located at the project site, relative to the existing development. The Planning Commission also considered the La Jolla Community Planning Association's vote to deny the project was 7-4-1. In addition, the Planning Commission heard public testimony and received written correspondence from those both opposing the project, and those in support of it.

Issue 7

The appeal contends that there are city-wide impacts: This ruling pulls the footing out from under all local zoning laws on height and story limitation, and installs instead the 30' height limit as the sole rule west of I-5. By this ruling, the Planning Commission, in essence, has set aside an important aspect of a local zoning law. Approving a project that blatantly violates the local PDO creates a precedent that renders the two-story limit unenforceable against future developers who bring similar projects forward and thus, "busts" the PDO.

Response 7

Staff disagrees with the premise that approving a deviation via a discretionary action with public participation would adversely affect the PDO. Staff further contends that this would not set an undue precedent for future development as all requested deviations are reviewed on a case-by-case basis. The La Jolla PDO would remain as part of the San Diego Municipal Code with the approval of this project. Development projects exceeding two stories would not be approved arbitrarily, or without review against the PDO, the Land Development Code and the La Jolla Community Plan. The purpose and intent of allowing

this flexibility is to ensure that the resulting project would be a better project than if the regulations were strictly enforced. In the case of the proposed project staff believes the deviation would provide significantly better pedestrian amenities, landscaping, building articulation, visual interest, openness and a reduced bulk and scale. By distributing the project Floor Area Ration (FAR) through three stories, the project can provide enhancements consistent with the community plan beyond those of a two-story project. Thus, the proposed project meets the most important PDP finding, as a better project would result. These enhancements would be accomplished while addressing and being sensitive to the origins of the PDO two-story limit. The three-story portions of this proposal would be located on three separate buildings and away from the front of the project site. This would eliminate a looming three-story structure at the sidewalk, preserving the village look and feel.

Issue 8

The appeal contends that the findings cannot be made to certify the Mitigated Negative Declaration and the ruling is inappropriate based on the lack of analysis and information presented. The Commissioners failed to discuss the environmental aspects of the project or the need for an EIR under CEQA. The project has significant impacts that were not addressed in the staff reports or the hearing, despite submissions by the public.

Response 8

On July 17th, 2008, the City of San Diego Planning Commission, as decision-making body of the lead agency (City of San Diego), considered the Mitigated Negative Declaration (MND), together with all public review comments received during the public review process, and found on the basis of the whole record before it that there was no substantial evidence that the project would have a significant effect on the environment. Therefore, the Planning Commission made the determination to certify Mitigated Negative Declaration No. 87287. Pursuant to the California Environmental Quality Act (CEQA), findings are not required for Negative Declarations or Mitigated Negative Declarations (see CEQA State Guidelines, Section 15074 for additional information).

In accordance with CEQA State Guidelines, Section 15105(b), a public review period of 20 calendar days commenced on January 29, 2008 and ended on February 17, 2008. Due to the pubic review period having ended on a Sunday and a scheduled holiday occurring the following Monday (President's Day), the City extended the public review period until the end of Tuesday, February 19, 2008. The City's Environmental Analysis Section received public comments during the public review period, and provided appropriate responses to public comments in the final MND. The final MND was redistributed to all interested parties who provided public comments during the public review process. Per CEQA State Guidelines, Section 15073.5, no "substantial revisions" were required prior to finalization of MND No. 87287 requiring recirculation. The City of San Diego Planning Commission reviewed the public comments and City's responses to public comments received during the public review process, and considered them as part of the City's decision-making process.

FISCAL CONSIDERATIONS: All project costs are being paid by the applicant.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: On June 5, 2008, the La Jolla Community Planning Association voted 7-4-1 to reject the project with the following considerations:

That Bird Rock Station (the Project) does not comply with the current Planned District Ordinance (PDO), including, but not limited to, incorporation of a third story in the design.

That the public benefits claimed for this project are insufficient to justify the requested deviations from the La Jolla PDO.

That approval of the third story element in the project establishes a precedent that significantly diminishes the enforceability of key elements of the current PDO for future developments in La Jolla.

That the three story element can not be justified as just a deviation to the PDO and should require a variance.

KEY STAKEHOLDERS (& Projected Impacts if applicable):

Michael and Olga Krambs, Owners
Mark D. Lyon, Inc., Applicant

Kelly Broughton
Director, Development Services Department

Beth Murray for
William Anderson
Deputy Chief Operating Officer:
Executive Director of City Planning and Development

ATTACHMENTS: Report to the Planning Commission
Appeals