



THE CITY OF SAN DIEGO

## REPORT TO THE CITY COUNCIL

DATE ISSUED: November 26, 2008 REPORT NO.: 08-173

ATTENTION: Council President and City Council  
Agenda of December 2, 2008

SUBJECT: Appeal of the Kretowicz Residence-Project No. 138513, Council  
District 1, Process Four.

REFERENCE: Planning Commission Report No. PC-08-120 (Attachment 6).

**REQUESTED ACTION:** Should the City Council approve or deny the appeal of the Planning Commission's decision to approve previously constructed improvements and additions to an existing single-family residence, which includes a new trellis and jacuzzi; and the Planning Commission's decision to deny a proposed guest quarters on a 22,725 square foot site located at 7957 Princess Street in the La Jolla Community Plan Area?

**STAFF RECOMMENDATION:**

1. **CERTIFY** Negative Declaration No. 138513;
2. **DENY** the appeal; **APPROVE** Site Development Permit No. 482270; and
3. **DENY** Neighborhood Use Permit No. 581890.

**SUMMARY:**

**Planning Commission Recommendation:**

On October 9, 2008, the Planning Commission heard the proposed project and voted 5-0-2 to approve staff's alternative recommendation to Certify Negative Declaration No. 138513, Approve Site Development Permit No. 482270, and Deny Neighborhood Use Permit No. 581890. The motion was made by Commissioner Naslund, second by Commissioner Ontai, with Commissioner Otsuji recusing and Commissioner Smiley not present (Planning Commission Resolution No. 4463-PC).

At the hearing, the applicant had agreed to a Deed Restriction to waive all rights to future shoreline protective devices associated with the property, if the requested Site Development Permit No. 482270 was approved. Staff has reviewed the request in conjunction with the "Alternative Recommendation," and had agreed to the condition, Condition No. 29, which was added to the Site Development Permit (Attachment 7). In addition, language was added to the permit, item (g), for the correction of the original Site Development Permit No. 108967, which was recorded as Site Development Permit No. 8967 (correction of permit number only).

### Background:

The project site is located at 7957 Princess Street (Attachment 1), the northern terminus of Princess Street, west of Spindrift Drive (Attachment 2). The site contains three legal lots, two of the lots are at the nexus of a coastal bluff and coastal canyon, and are located in the RS-1-7 Zone. The third lot is approximately 436 square feet in size and is located at the terminus of Princess Street, and is located in the SF Zone of the La Jolla Shores Planned District (Attachment 3). The site is within the La Jolla Community Plan Area, Coastal Overlay Zone (Appealable Area), Coastal Height Limitation Overlay Zone, Sensitive Coastal Overlay Zone, the Beach Impact Area of the Parking Impact Overlay Zone, Residential Tandem Parking Overlay Zone, and Transit Area Overlay Zone. The zoning designations allow for single family residential and the La Jolla Community Plan (LJCP) designates the proposed project site for single family use (5-9 dwelling units per acre). Princess Street is a public street and the cul-de-sac located at the terminus of the street is within the public right-of-way.

The property originally contained an existing two story single family residence constructed prior to 1915, and the prior owner of the property obtained three Coastal Development Permits (and one appeal) that were issued by the California Coastal Commission and the State Coastal Commission for several additions and modifications to the existing structure. A brief history of the coastal actions, appeals, litigation, and permits are located in Attachment 4-Permit History.

The property was purchased by the current applicant in 1993, and is developed with a two-story, 7,249 square foot, single family residence with an attached two car garage, and detached accessory structures. The property has undergone several improvements, modifications, and additions by the current owner that were constructed without obtaining an amendment to the original Coastal Development Permits and/or without obtaining building and public improvement permits pursuant to Neighborhood Code Compliance Department (NCCD) Case No. NC40952. On December 6, 2007, NCCD issued a Notice of Civil Penalty Hearing which was scheduled for December 18, 2007. After the public hearing, a Civil Penalty Administrative Enforcement Order was issued by the Administrative Hearing Officer on December 26, 2007 (Attachment 5). This order required the immediate cessation of all work at the property, payment of civil penalty and costs, and all violations to be added to the plans and included in Project No. 138513 (this project). A brief history of the current owner's coastal actions, appeals, litigation, permits, and Civil Penalty Hearing are located in Attachment 4-Permit History.

### Project Description:

The proposed project includes improvements, modifications, and additions to the existing single-family residence, the project site, and the accessory structures that have been previously constructed as outlined in the Planning Commission Report No. PC-08-120 (Attachment 6). The request included a new trellis addition over the second floor deck and a new jacuzzi, which includes new retaining walls and a raised platform. An existing detached accessory building is located at the terminus of Princess Street and was approved on January 28, 1969, pursuant to Building Permit No. E40921, and a portion or 1/3 of this structure is within the public right-of-way. The applicant was proposing to use the



remodeled detached accessory building as a guest quarters. However, the approval of the Neighborhood Use Permit (NUP) for guest quarters would grant habitable living space/use within the public right-of-way, which creates a life and safety issue for those living and sleeping in the structure, a liability for the City, and did not benefit a public purpose. The Planning Commission denied the request for the NUP on the reasons stated above.

Development of the proposed project requires the approval of a Process 4 Site Development Permit (SDP) to amend SDP No. 108967 for development on a premise containing sensitive coastal bluffs, and for encroachments established and maintained in the public right-of-way when the applicant is not the record owner of the property on which the proposed encroachment will be located; and a NUP for a proposed guest quarters in the existing accessory building within the public right-of-way. Because the project utilizes renewable technologies and qualifies as a Sustainable Building under Council Policies 900-14 and 600-27, the land use approvals have been processed through the Affordable/In-Fill Housing and Sustainable Buildings Expedite Program.

The Coastal Development Permit (CDP) will be processed and issued by the California Coastal Commission (as an amendment to the original coastal development permit issued by the Commission) once all of the City's actions have been completed. A brief history of the current owner's coastal actions, appeals, and litigation are located in Attachment 4-Permit History.

#### APPEAL:

On October 23, 2008, an appeal application of the Planning Commission's decision and the Environmental Determination was submitted by Greg Rodriguez of Wertz McDade Wallace Moot and Brower representing George Krikorian, the next door neighbor from the proposed project site (Attachment 10). The grounds for the appeal were stated as the "Finding Not Supported" and "City-wide Significance." The following are the five descriptions of the grounds for the appeal with staff's response:

1. The certified Negative Declaration for the Project is inadequate since it fails to consider future development that will reasonably occur with approval of the Kretowicz Residence (the "Project"). Since an off-site public viewing area was never constructed, despite being a condition of the last amendment granted to the current Coastal Development Permit governing the property located at 7957 Princess Street, it is a "reasonably foreseeable" consequence of the Project that either an off-site public viewing area, coastal access near the Project site or funding for alternative coastal access will be part of the Project and all three possibilities should be considered in any environmental document for the Project. Thus, a new environmental document should be prepared by staff to address the potential environmental impacts of all reasonably foreseeable development as a result of the Project as required under the California Environmental Quality Act ("CEQA").

Staff Response: The City of San Diego, as Lead Agency under CEQA, conducted an Initial Study for the Project, which does not include an off-site public viewing area, and determined that the Project would not have a

significant effect on the environmental (direct physical change or a reasonably foreseeable indirect physical change to the environment), and a Negative Declaration was prepared.

The CDP will be processed and issued by the California Coastal Commission (as an amendment to the original CDP issued by the Commission) once all of the City's actions have been completed. The applicant did have a pending amendment application to their permit (California Coastal Commission Permit No. A-133-79-A2/F60760-A3) that was withdrawn on July 3, 2008, by the applicant. The amendment application did include a proposed public viewing area within the public right-of-way at the intersection of Spindrift Drive and Princess Street. However, during the course of this review by the California Coastal Commission it was determined that the proposed public viewing area was not necessarily viable and will not be included in any future applications.

The applicant will be responsible for coordinating with the California Coastal Commission and the City of San Diego once an application for an amendment to the original CDP has been filed. This application will address conditions from the original CDP for providing an alternative public viewshed and public access. However, the Project has already been designed to provide a proposed emergency lifeguard access along the eastern side of the property and no future physical changes will be required to accommodate this access. The California Coastal Commission is exclusively responsible for the CDP and or amendments pursuant to Section 126.0717 of the Land Development Code (LDC).

2. The Planning Commission failed to make findings as required under CEQA stating why a new and more comprehensive environmental document is not required despite a reasonably foreseeable consequence of the Project being that some type of coastal access will have to be granted and there is a fair argument that such coastal access may have a significant impact on the environmental and that such impacts may need to be mitigated to a level of insignificance, if not studied more comprehensively by an environmental impact report.

Staff Response: As stated above, the California Coastal Commission is exclusively responsible for the CDP and or amendments pursuant to Section 126.0717 of the LDC. This application will address conditions from the original CDP for providing an alternative public viewshed and public access. However, the Project has already been designed to provide a proposed emergency lifeguard access along the eastern side of the property and no future physical changes will be required to accommodate this access. The Initial Study for the Project determined that it would not have a significant effect on the environmental (direct physical change or a reasonably foreseeable indirect physical change to the environment), and a Negative Declaration was prepared. Therefore, the Planning Commission was able to determine that the Negative Declaration was the appropriate environmental document and was able to certify the document.



3. The property located at 7957 Princess Street has a “controversial” history with the City of San Diego, including numerous Code violations issued to the current owner dating back to 2001 and the need for a code compliance hearing to be held at the end of 2007. The decision of the Planning Commission is of City-wide significance and should be overturned since it inappropriately condones and rewards ignoring the law and the City’s adopted land development procedures that have been carefully put in place. By approving the Project, the City weakens the important development review process that has been put in place to ensure community harmony and safety for the residents of San Diego.

Staff Response: The NCCD issued a Notice of Civil Penalty Hearing, which was held on December 18, 2007. After the public hearing, a Civil Penalty Administrative Enforcement Order was issued by the Administrative Hearing Officer on December 26, 2007 (Attachment 5). This order required the immediate cessation of all work at the property, payment of civil penalty and costs, and all violations to be added to the plans and included in Project No. 138513 (this project).

The fact that a Civil Penalty Hearing was held and all violations were included in the Project for the Planning Commission’s consideration is a testimony that the City of San Diego does have the appropriate mechanisms in place to enforce its laws and the City’s adopted land development procedures. Therefore, the decision of the Planning Commission does not have a City-wide significance and would not weaken the development review process.

4. Currently, there is a non-conforming detached structure that is part of the Project and which is located in the public right-of-way. The decision to allow this structure and other un-permitted improvements to remain in the public right-of-way is an issue of the City-wide significance, especially when one considers the need for emergency vehicle access to the home and structures surrounding the Project, and liability to the City should an accident occur to a person while inside the detached structure.

Staff Response: The existing detached accessory building is located at the terminus of Princess Street and was approved on January 28, 1969, pursuant to Building Permit No. E40921. A portion or 1/3 of this structure is within the public right-of-way and has previous conforming rights for the premise and use under the LDC. Princess Street is a public street and the cul-de-sac located at the terminus of the street is within the public right-of-way. Princess Street runs parallel to Spindrift Drive for approximately 2/3 of its length, and serves the proposed project site and two other single family residences before it connects to Spindrift Drive. Princess Street is a dedicated public street and emergency vehicle access would still be able to provide services to the three residences on the street. The improvements within the public right-of-way do not impair the function of Princess Street and are subject to removal under the provisions of an encroachment agreement. Therefore, the decision of the Planning Commission would not have a City-wide significance.

5. The Planning Commission failed to consider the history of Code violations on the property located at 7957 Princess Street and failed to impose conditions on the Permit granted to ensure the Applicant complies with the conditions of the Permit, Particularly with regard to the condition that the detached structures currently in the public right-of-way not be used for living or sleeping purposes. The need for such conditions is of City-wide significance due to the fact that these structures are located in the public right-of-way and may subject the City and the taxpayers to liability.

Staff Response: The history of the code violations were documented within the Planning Commission Report No. PC-08-120 and were presented at the public hearing prior to the Planning Commission's motion to Certify Negative Declaration No. 138513 and Approve Site Development Permit No. 482270; and Deny Neighborhood Use Permit No. 581890. The permit for the project does contain language that does restrict the use of the detached accessory building as noted in Site Development Permit Condition No. 32: "The detached accessory building located at the front of the property and partially within the public right-of-way shall not be used for living or sleeping purposes." Therefore, the Planning Commission did consider the history of code violations on the property as part of their decision and the project would not have a City-wide significance.

Conclusion:

The previously constructed improvements, modifications, and additions to the existing single-family residence are located within the existing foot print of the residence and are consistent with the development regulations. The proposed new jacuzzi and new trellis meets the intent of the regulations for the sensitive coastal bluffs guidelines and provides the required 5 feet setback from the established coastal bluff edge. The addition to the existing detached accessory building is consistent with the development regulations on size, location, and setbacks. The other accessory structures and improvements within the public right-of-way would not impair the function of the right-of-way and contains the provision for removal, relocation, or restore the Encroachment as directed by the City Engineer, or in the case of an emergency, as determined by the City. The granting of the Encroachment requires the Property Owner to defend, indemnify, protect and hold harmless the City, its agents, officers, and employees from and against any and all liability.

Therefore, staff recommends to the City Council to deny the appeal and uphold the Planning Commission's decision to Certify the Negative Declaration No. 138513, Approve the Site Development Permit No. 482270, and Deny the Neighborhood Use Permit No. 581890.

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




## COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On September 4, 2008, the La Jolla Community Planning Association voted 11-0-2 to recommend approval of the proposed project with conditions to exclude the proposed jacuzzi and the trellis on the seaward side which does not conform to the environmental sensitive lands guidelines and forward the recommendation to the City.

Staff Response: The proposed new jacuzzi and new trellis at the main second floor deck, located on the western portion of the property, would be located 5 feet from the established coastal bluff edge. Both structures would be located on top of existing retaining walls and columns that support the existing deck structure. The proposed structures are not adding additional load-bearing support structures that would result in geologic impacts to the sensitive coastal bluff; therefore, the proposed jacuzzi and trellis meets the intent of the regulations for the sensitive coastal bluffs guidelines and provides the required 5 feet setback from the established coastal bluff edge.

## KEY STAKEHOLDERS (& Projected Impacts if applicable):

DUK Trust/ Ure R. Kretowicz and Diane M. Kretowicz

  
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Kelly Broughton  
Director, Development Services Department  
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William Anderson  
Deputy Chief Operating Officer:  
Executive Director of City Planning and  
Development

## ATTACHMENTS:

1. Project Location Map
2. Aerial Photograph
3. Zoning Map
4. Permit History
5. Civil Penalty Administrative Enforcement Order, December 26, 2007
6. Planning Commission Report No. PC-08-120
7. Site Development Permit No. 482270
8. Site Development Permit Resolution No. 4463-PC-1
9. Negative Declaration No. 138513 Resolution No. 4463-PC-2
10. Appeal Application dated October 23, 2008
11. Project Plans (11 x 17)