

La Jolla Shores Permit Review Committee
Special Meeting Minutes
Wednesday, December 19, 2012

Committee members in attendance: Helen Boyden (chair), Laura DuCharme Conboy, Dolores Donovan, Janie Emerson, Tim Lucas, Phil Merten, John Schenck. Not present: Myrna Naegle.

1. **Non-Agenda Public Comment – 2 minutes each:** No comments

2. **Chair Comments**

- The Rickards residence was passed by the LJCPA on consent
- The Gaxiola residence was continued by the LJCPA for re-presentation of the exhibits.
- The LJCPA has been informed that the EIR for the UCSD Hillel Center for Jewish Life project will be re-circulated. A new public review period will be established with a new date for the close of public comment. It is not known when this will occur. The basic 362 page document may be accessed at http://docs.sandiego.gov/citybulletin_publicnotices/CEQA/Hillel_EIR.pdf There are a number of appendices totaling a similar number of pages. They were all dated October 31, 2012 on the City website. The re-circulated document should be reposted on the City website. Tim Lucas reported that the applicant was making some edits. These usually appear as strikeouts and inserts.
- LJS AB agendas have an official posting URL of: <http://www.sandiego.gov/planning/community/profiles/lajolla/pddoab.shtml>
- The Viterbi project will not be heard until some issues are resolved with the City.

3. **Costebelle Residence –Second hearing**

- PROJECT NUMBER: 295796
- TYPE OF STRUCTURE: Single Family residence
- LOCATION: 7940 Costebelle Way
- PROJECT MANAGER: Paul Godwin; 619-446-5190; pgodwin@sandiego.gov
- OWNER’S REP: CA Marengo; 858-459-3769; camarengo@san.rr.com
- **Project Description:** Amend the previously approved Site Development Permit #4522, two-building Single Family Residence on a 26,994 sf lot at 7940 Costebelle Way, partially built, abandoned and recently re-permitted with modifications (10-2225), currently under construction. Modifications requested here to Building “A” include adding a third floor consisting of an art studio/bedroom/living room/kitchen complex (now two stories above street level) and modifications to the lowest floor and mezzanine, (entertainment room), with a net enlargement of GFA from 1,266 sf to 2,040 sf for Building “A” with no changes to any previously permitted 5,118 sf lower main Building “B.” Additions to deck and patio area, raising that square footage from 1126 sf by 1,622 sf of new disturbance to 2,748 sf. Environmentally Sensitive Lands, Brush Management Zone, Coastal Height Limit and Geologic Hazard zones.

Previous PRC action, November 27, 2012 – see minutes for full details.

Motion: Naegle; second: Merten

Continue item for purposes of revising the plan to comply with the city's rules for maximum overall structure height.

Motion carries: 5-2-1; approve: Donovan, Lucas, Merten, Naegle, Schenck; oppose: Conboy, Emerson; abstain: Boyden (chair)

Seeking: Amendment to SDP for Environmentally Sensitive Lands. Process Three

12-19-2012 meeting

Presented by: CA Marengo

The plans being presented are dated 11/29/12 and a review copy has been submitted to the city as well. The stairwell has been modified so that there is a 6' gap from the stairwell to the pool. The lap pool has been shortened so that the stairwell/stairway structure is 6' away. The two structures on the lot are considered separate according to city code, so the

height measurements for Prop D are made separately for each structure. This addresses one of the committees concerns from last time. This change has been reviewed and approved by Peter Chou at the city. There was a prop D height issue raised previously by a city reviewer regarding the rounded front of building "B," which had to do with which plane measurements were made in. They had attached a separate detailed drawing to address the issue, but the reviewer apparently didn't consider it. The city field crew went out again to the site and cleared the height issues as well, including the issue with building "B" that has the rounded front.

The building "A" structure plans have not changed since the November 27 meeting, including the 3-car garage. They are proposing a 516 sq ft third floor addition to this building and are seeking an SDP for it. The addition has a bedroom/artist studio, a full bathroom, a kitchen (stove, double sink, refrigerator) and a living room. This is considered either a guest quarters or a companion unit.

The committee felt that with a kitchen it would be categorized as a companion unit Both are considered allowable uses in the latest update to the LJ Shores PDO. There are three parking spaces in the garage, two for the main house and one for the companion unit, so the off-street parking requirements are met.

Marengo pointed out that the main house is three floors below in a separate structure, so having a kitchen here is a matter of convenience when a guest is staying there. The issue of a kitchen did not trigger any comments from the city reviewers.

Merten: The description of a companion unit is covered under chapter 14 article 1 of the SD Municipal Code. It appears that this article was not incorporated into the latest version of the PDO? **Boyden:** The latest version of the PDO does incorporate Article 14 for these Separately Regulated Uses [document verified]. **Marengo:** When the code was previously updated, this article was not included due to issues in the coastal zone that needed to be worked out. **Boyden:** These changes to the LJSPDO were made in the Seventh Update to the Land Development Code that went to effect in October 2011 for areas outside the Coastal Overlay Zone. They will not go into effect in the Coastal Overlay Zone until approved by the Coastal Commission. This project is not in the Coastal Overlay Zone. **Boyden:** Guest units or Companion units are allowed, but they have to conform to the SDMC.

Conboy: Is this a flat roof structure? **Marengo:** Yes. **Conboy:** The code says that the maximum height for a flat roof structure is 21'. **Marengo:** They are at 19'. **Conboy:** That is measured from the street. **Boyden:** What is the maximum structure height? **Marengo:** You can't do it that way, that is not how it works. The maximum structure height is more than 30' due to the slope. **Emerson:** reading from the MC: The SDMC says that the maximum structure height for companion units located above a garage with a flat roof is 21'. The maximum for a sloped roof with at pitch of 3:12 is 30'. How do you measure maximum structure height? **Marengo:** I think you should just vote against it then, how much of this do I have to go through? I had my first review from you and got so much benefit from it that it was overwhelming and I don't know what to do with it all. So just vote on it and I can work it out. I have had two reviews with planning and coastal. **Emerson:** So how tall is this? There is a floor underneath this. **Marengo:** There are two floors underneath this. I would rather just take the vote and move on. I appreciate it. You guys spend so much extra time with me, and I don't want to cause all that attention. It just doesn't seem right. **Emerson:** So your premise is that it meets the 21' limit because it is measured from the street up? **Marengo:** Yes, it is under the 21' limit and it is on a sloped lot so it has a differential from the back side. If you are looking at what the code is supposed to be doing is controlling it from the visual aspect (from the street). The design has been through the site development and coastal planners twice. I feel confident with what we have done. We are in the building process and asking for an amendment to the project and are doing it the right way with community review, not just asking the city for a plan change.

Conboy: Can I see a side elevation? What are the elevations as the building extends? **Marengo:** It starts out at 19' and then the ground slopes significantly. It won't meet the 21' limit, because with a lot sloping this much it is impossible to meet such a requirement. Let's imagine that this is a regular house, and you have the same sort of regulations for a house on a slope (points to the elevations and outlines a building envelope). **Emerson:** Sure. **Marengo:** But we can read the code anyway we like Phil? I am sorry I am answering back, but you can only play this game so far, and then I've got to answer back. And it's going to happen on cycles, and I will cut my losses on some of them, but others I am not going to cut my losses on. And it is all recorded right here for you.

Merten: I would like to respond if I may. You have a steeply sloping site, and one of the things that this committee does is to make sure that your project complies with the community plan and key provisions of the SD Municipal Code. And in this particular case, the ordinance regarding companion units says that the structure heights should not be more than. . .

Marengo: (interrupting) So you are going to ??? [could not discern the word] the whole thing. . . **Merten:** Please let me

finish. **Boyden:** Let him finish. **Merten:** The section on structure height puts structure height in italics, which means it is referenced in the code. There is a section in the code which talks about measuring structure height in italics, and talks about measuring the height of the building from the lowest point of the building where it hits grade. That's how building height is measured. So I believe that your companion unit over the garage exceeds the structure height for this section. Now, I believe that there is some validity to the fact that this code section was probably written to control the height of the building from the street. I agree with that. But the important thing here is to make sure that whatever is approved, is approved in accordance with the rules. So I think there is a very good case to be made that you could be granted a variance for an over-height building which is only 19' above street level. So you simply get a variance, dot your "i's" and cross your "t's" and you don't set a precedent for the next applicant that comes in and tries to do something. **Marengo:** Come on, are we really going to go through this? That was a beautiful piece of poetry there? I mean, for a guy who does architecture who says that nothing should have to go through a variance, every time I hear him give a presentation on what you could do, he goes, "oh this could be a perfect candidate for a variance". How many times have you said that since sitting on this board? Every time. . . So let's just cut to the chase, you believe that it needs a variance, so that's a vote no. So if you [the board] want to vote no all the way across the board, vote no.

Emerson: Can I ask a question? If this is guest quarters instead of a companion unit, does that make a difference?

Boyden: No. They both have the same height limit. **Schenck:** Is it detached? Is it defined that way? **Emerson:** So if it is a detached guest unit and has a hot plate instead of a stove, does that make a difference? **Marengo:** I believe that this is supposed to regulate a guest quarters that is off by itself as a separate structure, and this is not the case. So that's all I am trying to say. **Emerson:** I am just trying to understand here, and not put a round peg in a square hole. **Marengo:** I appreciate that, I am just trying to not get sucked into it and I keep getting sucked into it. **Boyden:** I realize that we can get tangled up into semantics and. . . **Marengo:** I just like the way it went on the previous review with Sasha, with the scribble out and draw in a driveway and do all that stuff on the plan and hand that in, and with me its like "oh, we can't do that," and in the second review we have analyzed it further than just separating the pool. Now we are questioning other things, which you missed your point in the first half, where if you had done your job as a volunteer. . . and so you could continue this as long as you want. And you can give me the dissertation, but I have sat in your seat, I like to say I know enough of the code to stay out of trouble. But you love to talk about variances, I'm sorry, that's your thing, and for somebody who says follow the regs, you love to profess that variance thing because it leads to more subjectivity, and you love subjectivity. **Emerson:** The motion [from the previous meeting] did have to do with height according to this. . . **Marengo:** Agreed. But not for the same purpose. **Emerson:** Correct. **Marengo:** And we changed it specifically for that. **Boyden:** I appreciate your changing that. This is a very difficult property and a very unusual site. . . **Marengo:** Truthfully, vote it down if that makes you feel better and you think you are not setting a precedent. My own burden is on me. I know what I have to do. So if that is how you are reading it and believe that, and you think that is what the code is professing, then all I have is to blame myself for wanting to rush through that process. Simple as that. Because he [Merten] is just going to go to Tony to ask the CPA to deny it, so I am going to have this day in court at the hearing and not here. So why are we wasting our time.

Boyden: Any members have any further questions?

Lucas: Needed clarifications on what the city field team looked at when they came out. Marengo explained that a civil engineer and senior supervisor had come out when they first took over the site and measured the building "B" pad and building height and confirmed that they conformed to what had been permitted. The city field team came out and re-measured. . . **Boyden:** The field check had nothing to do with the proposed third story addition. **Marengo:** It had to do with a member of this committee's beliefs on what the plans were showing. Right, Phil [Merten]?

Merten: If I may clarify, so the committee knows. When he presented his plans the last time he had with him the building permit set of the project which is currently in construction. And that building set shows the stairway coming over the pool linking with the house and all that. Marengo recognized at the time that there were not the separations between those structures. **Marengo:** I didn't want to argue with you. I didn't want to argue the point about the 6' vertical. **Merten:** Apparently, you thought that the comment had some validity, because you altered the plans to create separation. **Marengo:** No. Let's not confuse things. What I did not want is what we are doing right now. **Merten:** What I did was I sent an email message to Tony Crisafi and Joe LaCava, the president and vice president of the LJ CPA, stating that we were shown permit plans of a building permit that was issued for a project that did not comply with the SD Municipal Code, because all of the structures were linked together, and therefore the height of the lower building in combination with the upper building exceeded the maximum allowable building height and exceeded the Proposition D limitations. And I said that I thought the building department should know that they issued a permit in error for a project that did not comply with the regulations. I am happy to see what CA Marengo is presenting here today. He dealt with that issue, he changed the pool and

stairs, he separated them, so that his application for an amended permit now is in compliance in that regard. That is what I did I think that the city needs to know when they don't do a thorough enough review and issue a permit in error, that they ought to be called on it. CA has corrected it and done the right thing. **Marengo:** So instead of accepting that, we have gone one step further into height delineations of what a companion unit is. We don't stop with this. You came with this material prepared. That's not something you all of a sudden saw and thought, "wait a minute, let me see regulation 8.5 again. . . ." Let's not elongate this description process, 'cause you keep doing that. You keep professing everything we have heard before. I just want a vote.

Boyden: Anything else?

Lucas: Still needs some clarifications for the minutes on what exactly was measured or inspected by the city field team. Boyden gave a recap of the project history and the building "B" height issue that was caused by a City mis-read of the plans. Marengo responded to the question describing the plane of the rounded area of building "B," the partially constructed lower building. Building "A" has not been built yet, so there is nothing to be measured there. The plans are what are being reviewed and the building will be inspected during and after construction. He presented the latest city cycle response showing that they had cleared the building "B" height issue and stairway issue.

The committee had discussion regarding if the third floor addition had a 3 in 12 pitched roof, would it comply to the 30' height limit for an above garage living quarters, given the 10% offset you get for a sloped lot. The committee and Marengo speculated on that and also whether having a kitchen changes what the code requirements any. The consensus was that due to the steep slope of the lot that any of these changes wouldn't affect anything. Marengo believes that the height regulations for living quarters above the garage are measured from the street level. He sits on the code review team that looked at this regulation. It was intended to keep backyard buildings from getting larger and higher than the main house. No one contemplated a situation like this on a steep slope, like a Laguna Beach home. This design meets the intent of the code. They comply with the 525 sq ft maximum living space for the structure and the structure is less than 25% of the lot size.

Merten: Previously I brought up the parking regulations that you have to have a 20' driveway for two spaces of guest parking. The regulations also say that if you don't have a 20' driveway, you can put those guest parking spots on the street in front of your property. This site on a cul-du-sac does not have space in front of the property. However, there is ample street parking in the area and I think a variance should be granted. Per the SD Municipal Code, the purpose for a variance procedures is to provide relief for cases in which, for special circumstances, including topography, the strict application of development regulations would deprive the property owner from privileges enjoyed by other property owners in the vicinity and under the same land use designation. The way to make this legal, and cross all the "t's" and dot all the "i's" and not set a precedent is to simply request a variance on the height of his guest unit and a variance for not complying with the parking regulations, because there is a lot of parking on the street away from this project. We are not just trying to comply with the intent, but with the actual regulations. The way to comply is to get variances.

Public Comment: None. No members of the community present.

Boyden: Discussion is now closed. We are ready for a motion.

Motion: Conboy **Second:** Emerson

In recognition of the difficult nature of this site, we find that this project complies with the spirit and intent of the underlying regulations. We recommend approval of the project, based on plans dated 11/29/2012.

Motion carries: 3-1-3

Approve: Conboy, Emerson, Schenck

Oppose: Merten

Abstain: Boyden (chair), Lucas (reason: Not clear as to what the new PDO requirements for a companion unit are based on recent updates to the Municipal Code. Also, the confrontational nature of this discussion has made it difficult to understand the potential height and parking issues, so an informed decision could not be made), Donovan (reason: Abstaining for reasons similar to those stated by Lucas with one additional reason. It isn't clear if it is possible to approve a project based on intent of the regulations as opposed to complying with or asking for a variance.).

Discussion on motion:

Merten: We have required other applicants to comply with the SD Municipal Code. I can not support this motion because we are granting this applicant something that we don't grant the other applicants.