

**DATE ISSUED:** May 19, 2005 **REPORT NO. PC-05-138**

**ATTENTION:** **Planning Commission, Agenda of May 26, 2005**

**SUBJECT:** OSTEND COURT DUPLEX - PROJECT NO. 36924. PROCESS 3

**REFERENCE:** HEARING OFFICER AGENDA OF FEBRUARY 9, 2005, REPORT NO. HO-05-011

**OWNER/  
APPLICANT:** Gregory Zackowski  
Ricardo Torres, Golba Architecture

**SUMMARY**

**Issue(s):** Should the Planning Commission approve or deny an appeal of the Hearing Officer's decision to approve Coastal Development Permit No. 105936, for Ostend Court Duplex, Project No. 39624, for demolition of an existing single family residence and construction of two, two-story above basement, dwelling units?

**Staff Recommendation:** DENY the appeal and APPROVE Coastal Development Permit No. 105936.

**Community Planning Group Recommendation:** The Mission Beach Precise Planning Board considered the project on July 14, 2004 and voted 7-0-0 in favor of the project with four (4) conditions (Attachment 10). The Mission Beach Precise Planning Board reconsidered the project on October 19, 2004 and voted 9-0-0 in denial of the project (Attachment 11).

**Other Recommendations:** None with this action.

**Environmental Review:** The project was determined to be exempt from the State of California Environmental Quality Act (CEQA) Guidelines, Section 15332, Infill Development.

**Fiscal Impact Statement:** None with this action. All cost associated with the processing of this project are paid by the applicant.

**Code Enforcement Impact:** None with this action.

**Housing Impact Statement:** The Mission Beach Precise Plan designates the subject property for medium density residential development at 36 dwelling units per acre. Two residential units are allowed on this site under this density range on the 2,382 square foot site. The project proposes to demolish one existing single family residence and construct two market rate rental units. The impact to the Mission Beach community will be a net increase of one residential unit. The proposed project will result in an overall increase in the housing supply for the City of San Diego.

The proposed project is subject to the Inclusionary Housing Ordinance. The applicant has elected to pay the in-lieu for the Inclusionary Affordable Housing Requirements. The project requires an in-lieu fee of \$1,256.00.

## **BACKGROUND**

A Coastal Development Permit, in the appealable area of the City of San Diego, is a Process Three, Hearing Officer decision per San Diego Municipal Code Section 126.0707(b). The Coastal Development Permit was approved by the Hearing Officer on February 9, 2005. On February 21, 2005, Gary Glover, the chairperson for the Mission Beach Precise Planning Board, appealed the project to the Planning Commission.

The project site is a 2,382 square-foot lot zoned RS in the Mission Beach Planned District and the Mission Beach Precise Plan area. The project is subject to the Coastal Overlay Zone (appealable), and the Coastal Height Limit Overlay Zone. The property is addressed as 807 Ostend Court and is an interior lot (Attachment 1). The site is surrounded by properties also zoned RS and developed with single family residences and multi family residences (Attachment 2 and 3). The Mission Beach Community Plan designates the site for residential development at a Medium-High density of 36 dwelling units per acre (Attachment 2)

The site is currently improved with a one-story single family residence which is proposed to be demolished as the first step in redeveloping the property. The topography of the site is relatively flat and the overall grade differential for the site is approximately 0.75 feet.

## **DISCUSSION**

### **Project Description:**

The applicant is requesting approval of a Coastal Development Permit for the proposed demolition of the existing single family residence and the construction of two, two-story above

basement, dwelling units with one attached two-car garage and two tandem parking spaces. Unit "A" is proposed to be 1,157 square-feet with a 304 square-foot roof deck. Unit "A" contains three bedrooms, two bathrooms, kitchen, dining room and living room. The parking spaces for Unit "A" are located east and adjacent to Unit "B" in an open tandem parking configuration. Unit "B" is proposed to be 1,252 square-feet with a 365 square-foot roof deck. Unit "B" contains two bedrooms, three bathrooms, kitchen, living room, dining room and family room. The parking for Unit "B" is located within the basement of the unit.

Exterior elevations propose stucco walls, vinyl siding, aluminum railings with clear glazing panels between, and windows. Site improvements will include fencing and landscaping.

### **Community Plan Analysis:**

The project is located within the Mission Beach Precise Plan area and is designated for medium density residential development at 36 dwelling units per acre. The proposed development of two residential units conforms to the designated land use and density for the site.

The proposed project is located in a residential neighborhood of Mission Beach along a pedestrian court. The Santa Clara commercial district is located nearby. The relatively small-scale character of the neighborhood has gradually transitioned to multi-story structures that are larger in bulk and scale than previous development. The two proposed two-story above basement structures will be larger than the existing one-story residence; however, the proposed project complies with the development regulations intended to limit the bulk and scale of new development.

The Mission Beach Precise Plan provides for the protection of public views from obstruction by development or landscaping. The proposed project is located on Ostend Court, a pedestrian path with east and west views to Mission Bay and the Pacific Ocean. To protect public views, the development will observe the required 15 foot front yard setback and maintain low growing landscaping coupled with a palm tree to maximize the views from Ostend Court.

The Mission Beach Precise Plan recommends that the physical environment of the residential community be improved through the provision of adequate garbage storage, landscaping, and sufficient parking for residents. The proposed project provides an enclosed exterior trash storage area, four tandem parking spaces, and landscaping to screen the trash enclosure and beautify the street yard. The proposed project meets the intent of the goals and objectives of the Mission Beach Precise Plan to enhance the quality of the physical environment within the community.

### **COMMUNITY PLANNING GROUP RECOMMENDATION**

On July 4 , 2005, the Mission Beach Precise Planning Board voted 13-0-0 to approve the project with four conditions (Attachment 10), which are listed below:

1. *Project has 5 foot side yards as required for elevations in excess of 20 feet without 45 degree slope back:* The proposed project is providing 5 foot side yards, per section 103.0526.6(b), as required within the Mission Beach Planned District.
2. *Southern facing elevation on Unit "A" has 45 degree slope back as required at greater than 20 feet:* During project review, numerous meetings were held with the applicant and Development Services Department Staff. The outcome of a meeting held November 4, 2004, was a department decision to concur with the applicant's interpretation of the Mission Beach PDO regarding grade. Therefore, Unit "A" complies with the Municipal Code and slopes 45 degrees at a height of 20 feet (Attachment 5 – West Elevation). This issue is explained further under the project related issues section of this report.
3. *Ensure that no man-made construction exceeds 3 feet in height in the required 15 foot front yard setback:* The proposed project does not contain man-made construction exceeding 3 feet in height within the required 15 foot front yard setback.
4. *Second level balcony railing shows a portion encroaching a few inches into the eastern side yard setback on Unit "B":* The proposed project has been revised regarding the second level balcony railing on Unit "B". The railing as proposed does not encroach into the eastern side yard setback.

On October 19, 2005, the Mission Beach Precise Planning Board reconsidered the project and voted 9-0-0 to deny the project (Attachment 11). The rationale for denial is listed below:

1. *The denial was based on the structure not sloping back at a 45 degree angle at a height of 20 feet above grade per the San Diego Municipal Code Section 103.0526.5(a):* During project review, a meeting was held with the applicant and Development Services Department Staff on November 4, 2004. The outcome of this meeting was a department decision to agree with the applicant's interpretation of the Mission Beach PDO regarding grade. Therefore, the project complies with the Municipal Code and slopes 45 degrees at a height of 20 feet (Attachment 14).

### **PROJECT-RELATED ISSUES**

During project review, several meetings were held with the applicant and Development Services Department Staff. The outcome of the November 4, 2004 meeting was a department decision to concur with the applicant's interpretation of the Mission Beach PDO regarding grade. Development Services Department Staff also explained to the applicant that until such time as the Mission Beach PDO may be amended or updated, this interpretation was consistent with the language in the Mission Beach PDO and will continue to be allowed. The applicant's interpretation of the Mission Beach PDO has been consistently applied by staff with regards to projects in the Mission Beach Plan Area (Attachment 15).

According to the Mission Beach Planned District, Section 103.0526.5(a), there is a required 15 foot yard setback for projects in the “RS” Zone and adjacent to a “Court”, except for projects that exceed 20 feet in height and are located on the south side of a “Court”. The proposed project is located on the south side of Ostend Court, within the RS Zone and is over 20 feet in total height. Therefore the project is required to have a 15 foot yard setback with an additional setback beginning at 20 feet above grade. At 20 feet above grade, the project shall slope at a 45 degree angle. This angle is measured in a horizontal plane perpendicular to and away from the building wall in either direction (Attachment 6 – West Elevation and Attachment 14 – Mission Beach PDO).

During project review, numerous meetings were held with the applicant and Development Services Department Staff. The outcome of a meeting held November 4, 2004, was a department decision to concur with the applicant’s interpretation of the Mission Beach PDO regarding grade. The applicant is taking grade at 36 inches above pre-existing grade. Therefore, grade for the project is “zero” at 36 inches above existing grade and the 45 degree slope occurs at 20 feet above “grade”. Therefore, Unit “A” complies with the Municipal Code and slopes 45 degrees at a height of 20 feet (Attachment 5 – West Elevation).

Subsequent to the Chairperson of the Mission Beach Planning Group filing the appeal of the project to the Planning Commission, staff contacted Dennis Lynch. Mr. Lynch is a member of the Mission Beach Precise Planning Board who has been actively involved with the review and status of project. Staff contacted Mr. Lynch to request a meeting with Development Services Department Staff, the applicant and members of the community group to resolve the issues listed within the appeal. Mr. Lynch did not agree to the meeting prior to the Planning Commission hearing. Mr. Lynch wants to discuss the project issues at the Planning Commission hearing only.

### **APPEAL ISSUES**

The appellant, chairperson of the Mission Beach Precise Planning Board – Gary Glover, to the Planning Commission was not present at, the Hearing Officer Public Hearing. Dennis Lynch, a member of the Mission Beach Precise Planning Board, contacted the project manager for the outcome of the February 9, 2005 hearing and then filed an appeal on February 21, 2005 (Attachment 9). The issues identified in the written appeal to the Planning Commission, can be categorized in the following:

1. The development is in direct violation of San Diego Municipal Code Section 103.0526.5(a) contained in the Mission Beach Planned District Ordinance (PDO).

Staff’s Response: Mission Beach Planned District Section 103.0526.5(a) states “Ten feet in the “R-N” Subdistrict and 15 feet in the “R-S” Subdistrict except for buildings exceeding 20 feet in height and on the south side of a Court or Place. In this case an additional setback shall be observed beginning 20 feet above grade and sloping back at a 45 degree angle. The angle is measured in a horizontal plane perpendicular to and away from the building wall in either direction.” (Attachment 14)

The project is located on the south side of a Court. The “grade” for the project is at 36 inches above pre-existing grade as part of the planter walls to classify the structure as a two-story above basement (Attachment 6). This interpretation of the Mission Beach PDO was discussed with the applicant and Development Services Department Staff and it was agreed that this interpretation was correct until such time the PDO might be updated to further clarify whether this vertical setback can be taken off of the altered grade or if language would be added specifically calling out “pre-existing” grade. At the time of staff’s review of the project, the measurement of grade was taken at 36 inches above pre-existing grade.

2. The Mission Beach PDO does not allow basements.

Staff’s Response: Staff reviewed the Mission Beach Planned District Ordinance and determined that the Mission Beach PDO is silent on basements within a project’s design as to whether or not they are allowed.

3. The project’s classification of the first floor as a basement is fiction.

Staff’s Response: The project is taking grade at 36 inches from pre-existing grade. Basement is defined within the San Diego Municipal Code (SDMC) as the following “*Basement* means a building area that is wholly or partially below *grade*”. Grade is then defined within SDMC as two types of grade: existing and proposed. However, the Mission Beach PDO is silent on grade and how grade is defined for a project. The proposed project is taking grade at 36 inches above pre-existing grade, therefore, the project can be classified as a two-story, above basement duplex.

4. The project design is an attempt to avoid a three story building classification to avoid an additional fire exit on the top floor, pursuant to the San Diego Building Code.

Staff’s Response: To clarify, the Universal Building Code (UBC) and Universal Fire Code (UFC) are not the same. The project is taking grade at 36 inches from pre-existing grade. Based on this interpretation, the project is classified as two story, above basement. The project will meet all requirements of the UBC when in the construction phase of the project. The Fire Department has reviewed the project and all Fire Department regulations are satisfied.

## CONCLUSION

Staff has reviewed the proposed Coastal Development Permit application and found it to be in conformance with the applicable sections of the San Diego Municipal Code regulating Coastal Development Permits and land use policies. Staff has determined that the required findings can be made as the project meets the applicable San Diego Municipal Code regulations and requirements. Staff recommends approval of the project as proposed.

## **ALTERNATIVES**

1. **Deny** the appeal and **Approve** Coastal development Permit No. 105936 with modifications.
2. **Approve** the appeal and **Deny** Coastal Development Permit No. 105936 if the findings required to approve the project cannot be affirmed.

**Respectfully submitted,**

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**Marcela Escobar-Eck  
Deputy Director, Customer Support and  
Information Division  
Development Services Department**

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**Laura C. Black, Project Manager  
Customer Support and  
Information Division  
Development Services Department**

MEE/LCB

### Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Project Site Plan(s)
6. Project Plans – Building Elevations
7. Draft Permit with Conditions
8. Draft Resolution with Findings
9. Copy of Appeal
10. Community Planning Group Recommendation, July 14, 2004
11. Community Planning Group Recommendation, October 19, 2004
12. Ownership Disclosure Statement
13. Project Chronology
14. Mission Beach PDO, Section 103.0526.5(a)
15. Approved projects in the area with similar design of proposed project.