

VARIANCE NO. 765358
WHITNEY MIXED USE PROJECT NO. 182513 [MMRP]

FINDINGS:

Variance - Section 126.0805

1. There are special circumstances or conditions applying to the land or premises for which the variance is sought that are peculiar to the land or premises and do not apply generally to the land or premises in the neighborhood, and these conditions have not resulted from any act of the applicant after the adoption of the applicable zone regulations. The Project site is located at the corner of Avenida de la Playa, El Paseo Grande and Calle Clara in the La Jolla Shores Commercial Center district. The La Jolla Shores Planned District Ordinance (LJSPDO) prohibits parking in the front half of the ground floor. Accordingly, parking must be provided from the rear of the property off Calle Clara. Calle Clara is 30 feet wide. Pursuant to the definition of an alley in the San Diego Municipal Code, Section 113.0103 an alley is a maximum of 25 feet wide. However, pursuant to the City's Street Design Manual an alley is 20 feet wide, but may be wider to accommodate utilities. Utilities are located in Calle Clara. Accordingly, the fact that Calle Clara is 30 feet wide is not the only factor to be used in determining whether it is an alley. The narrowest street as defined in the City's Street Design Manual is 30 feet from curb to curb in a 48-foot right of way plus sidewalks. Calle Clara does not have a 48-foot right of way nor does it have sidewalks or curbs on the south side where the project is located. Technically, the northern "half" of Calle Clara is 20 feet wide while the southern "half" is only 10 feet wide. There are curbs along a small portion of the northern side of Calle Clara, but not on the south side. Development along the southern side observes a zero-foot setback as allowed in the LJSPDO. Garage doors for all development on the south side of Calle Clara are located on the property line and none observe the visibility triangles required in Municipal Code Section 113.0273. Calle Clara has therefore, traditionally functioned as an alley, not a street.

The applicant did not create the physical conditions and configuration of the streets or of the lot on which the project is proposed. The conditions which require the Variance have not resulted from any act of the applicant after the adoption of the applicable zoning regulations. The proposed project has been developed with visibility triangle areas and curb cuts consistent with development along an alley. Therefore, special circumstances exist whereby the regulations related to visibility triangles for an alley rather than a street are appropriate in this case. Other than Land Development Code sections 113.0273(a) and 113.0273(c), Measuring Visibility Area, which require a Variance to approve the proposed project, the project will comply with all other applicable regulations of the Land Development Code.

2. The circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premises and the variance granted by the City is the minimum variance that will permit the reasonable use of the land or premises. The project is a mixed use development with approximately 2,000 square feet of ground floor commercial/retail uses and two residential units of approximately 3,200 and 2,900 square feet respectively above the retail. The property is located at 2202 and 2206 Avenida de la Playa, the corner of Avenida de la Playa and El Paseo Grande, in the Commercial Center (CC) Zone of the La Jolla Shores Planned District (LJSPD) in

the La Jolla Community Plan and Local Coastal Land Use Plan (Plan) area. Each side of Avenida de la Playa, along the three block retail corridor, is developed with commercial uses facing the street and vehicular and service access from the rear of the lots. Along the north side of Avenida de la Playa, the rear lot access is on Calle Clara, a 30-foot public right of way that previously functioned as an alley when subdivision block development was established.

The subject lot is 50 feet wide and parking is required to be accessed from Calle Clara and limited to the rear of the lot. The required minimum off street parking spaces for the development of two residential units and commercial space cannot be provided within this limited area, which necessitates the development proposing underground parking to supplement the ground level parking. Therefore, two point of vehicular access, one for the underground and one for the retail parking spaces is required. Without a variance the maximization of the commercial site would be reduced. The full effect of compliance with the visibility area regulations may result in abandonment of the project and the other improvements to the site would not be realized. While there may be other regulations that could be selected from which to vary, the visibility area variance is the minimum variance to allow a reasonable use of the land. However, pursuant to SDMC sec. 113.0273(b), the proposed project will still provide a 10 feet by 10 feet visibility triangle area at the intersection of El Paseo Grande and Calle Clara, in which Calle Clara would be deemed to function as an alley instead of a street. Other than Land Development Code sections 113.0273(a) and 113.0273(c), Measuring Visibility Area, which require a Variance to approve the proposed project, the project will comply with all other applicable regulations of the Land Development Code.

3. The granting of the variance will be in harmony with the general purpose and intent of the regulations and will not be detrimental to the public health, safety, or welfare. The regulations from which the variance is sought, Land Development Code sections 113.0273(a) and 113.0273(c), Measuring Visibility Area, are intended to assure safe pedestrian and transportation access to and from a property. In this case Calle Clara functions as an alley, and the project's parking access is consistent with development requirements adjacent to a public right of way alley. Pursuant to SDMC sec. 113.0273(b), the proposed project will still provide a 10 feet by 10 feet visibility triangle area at the intersection of El Paseo Grande and Calle Clara, in which Calle Clara would be deemed to function as an alley instead of a street. Therefore the project is in harmony with the general purpose and intent of the regulations and would be consistent with off-street parking and service access for all the properties fronting on Avenida de la Playa with rear access to Calle Clara.

In addition, all infrastructure improvements will be constructed and operationally complete prior to occupancy of any structures to assure water, wastewater, electrical, gas, and telephone services will be provided to the development. Prior to construction all structures will be reviewed by professional staff for compliance with all relevant and applicable building, electrical, mechanical and fire codes to assure the structures will meet or exceed the current regulations. As such the proposed development will not be detrimental to the public health, safety, and welfare. Granting the variance will be in harmony with the general purpose and intent of the regulations and will not be detrimental to the public health, safety, or welfare.

4. The granting of the variance will not adversely affect the applicable land use plan. If the variance is being sought in conjunction with any proposed coastal development, the required finding shall specify that granting of the variance conforms with, and is

adequate to carry out, the provisions of the certified land use plan. The project is a mixed use development with approximately 2,000 square feet of ground floor commercial/retail uses and two residential units of approximately 3,200 and 2,900 square feet respectively above the retail. The property is located at 2202 and 2206 Avenida de la Playa, the corner of Avenida de la Playa and El Paseo Grande, in the Commercial Center (CC) Zone of the La Jolla Shores Planned District (LJSPD) in the La Jolla Community Plan and Local Coastal Land Use Plan (Plan) area.

The Plan's Land Use Map identifies the site for commercial and mixed use. The La Jolla Shores Planned District Ordinance (LJSPDO), as codified in the San Diego Municipal Code, establishes the zoning regulations to implement the policies of the General Plan and the La Jolla Community Plan. The purpose of the CC zone is to accommodate community-serving commercial services, and retail uses. The project site is specifically located along Avenida de la Playa in La Jolla Shores and the specific recommendations for the various commercial areas are regulated and detailed in the La Jolla Shores Planned District Ordinance. The CC Zone allows for commercial services on the ground floor area of a development that does not exceed 6,000 square feet and dwelling units with a minimum floor area of 400 square feet.

The project will comply with all relevant regulations of the Land Development Code with the exception of sections 113.0273(a) and 113.0273(c), Measuring Visibility Area. Establishing visibility areas on a development is intended to assure safe pedestrian and transportation access to and from a property. Consistent with the Plan's commercial and mixed use designation and the LJSPDO's CC zoning, the proposed development is required to provide adequate off-street parking to serve the proposed two residential units and commercial space, especially within the Beach Impact Area of the coastal overlay zone.

As noted in Variance Findings No. 1 and 2, the project site's rear lot area is located on Calle Clara in which the public right of way functions as an alley rather than a street. Consistent with the LJSPDO, off-street parking would be located in the rear. The Variance would allow the mixed use development to provide adequate access and off-street parking along Calle Clara by applying visibility area features consistent with an alley designation rather than a street. Without a variance the maximization of the commercial site would be reduced and the full effect of compliance with the visibility area regulations may result in abandonment of the project.

In consideration of all facts, the proposed mixed use development is consistent with the La Jolla Community Plan and Local Coastal Land Use Plan, the LJSPDO regulations, and granting of the variance conforms with, and is adequate to carry out, the provisions of the certified land use plan.

MICROFILMED AT
12:1 REDUCTION

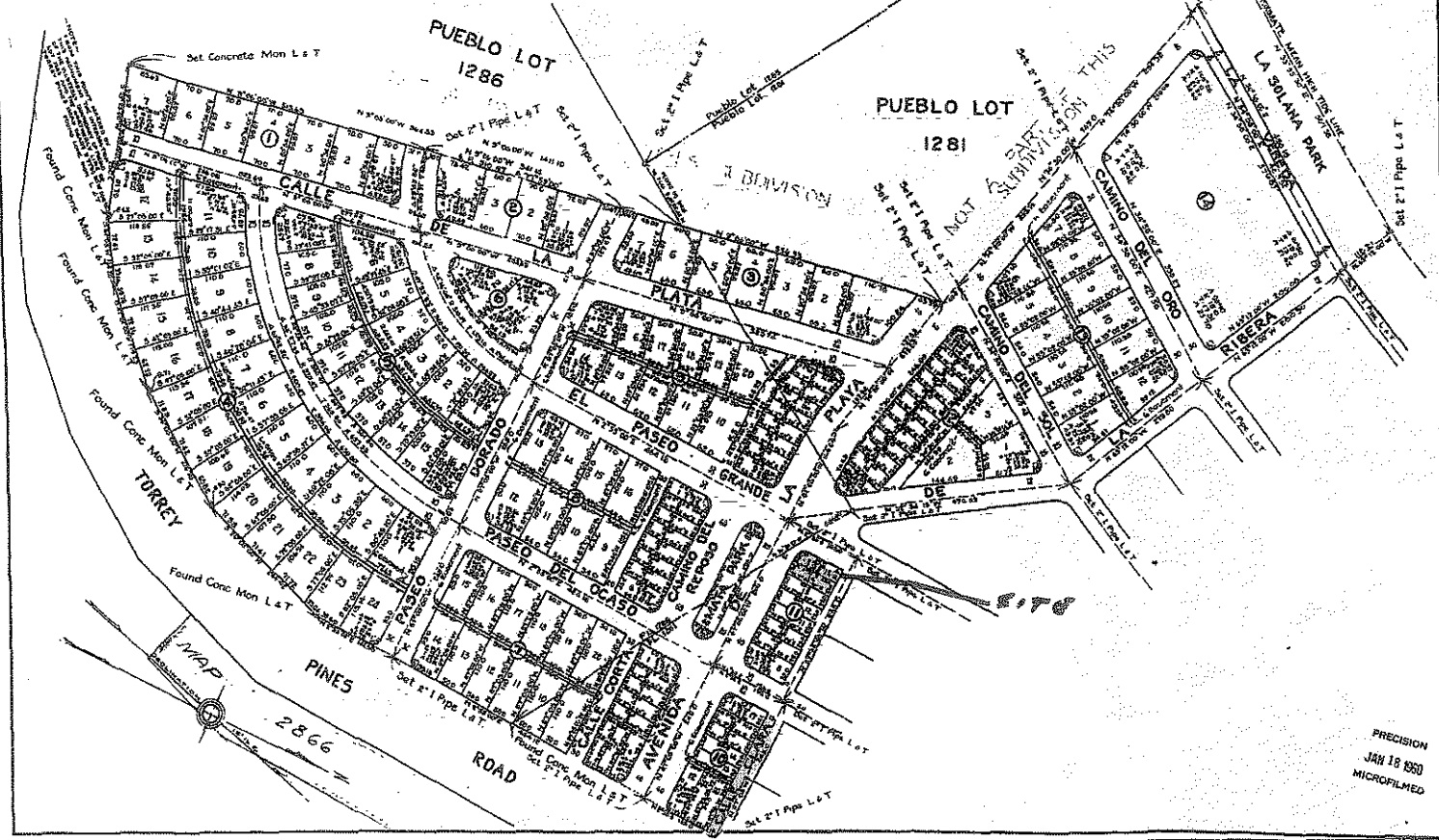
74045-5161 1913 Sheet 2

MICROFILMED

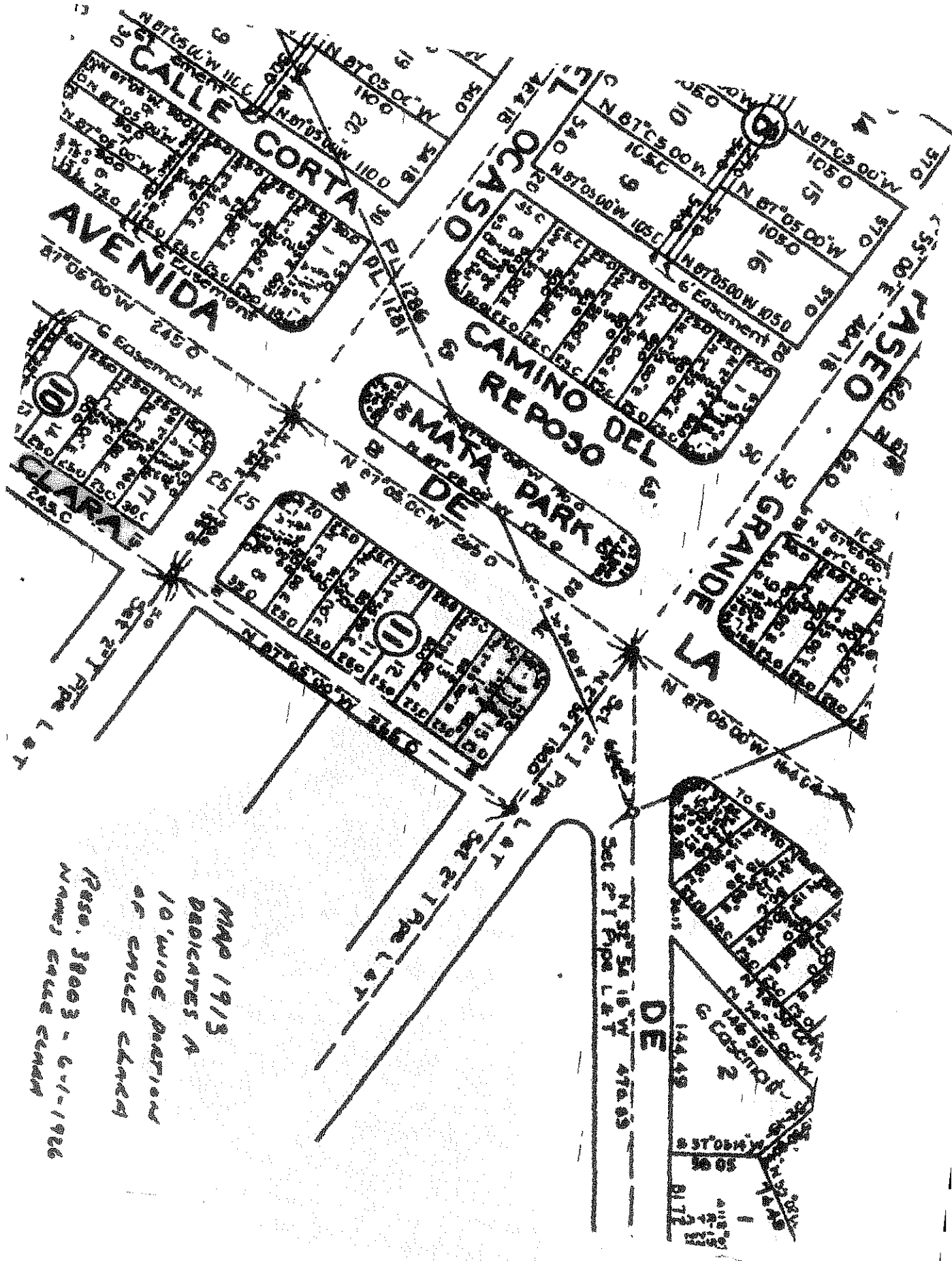
SHEET 2 OF 4 SHEETS

LA JOLLA SHORES UNIT NO 1

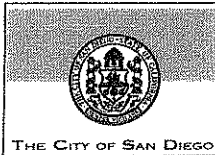
BEARINGS ARE DERIVED FROM
"LA JOLLA VISTA" AND "TURKEY
PINES ROAD"
SCALE 1 INCH = 100 FEET.



PRECISION
JAN 18 1950
MICROFILMED



MAP 1913
 DEDICATES A
 10' WIDE PORTION
 OF CALLE CLARAY
 RESSO, 38003 - 6-1-1926
 NAME, CALLE CLARAY



City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101
(619) 446-5210

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
MARCH 2007

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- Process Two Decision - Appeal to Planning Commission
 Process Three Decision - Appeal to Planning Commission
 Process Four Decision - Appeal to City Council
 Environmental Determination - Appeal to City Council
 Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

Name

La Jolla Community Planning Association

Address

P. O. Box 889

La Jolla

City

State

CA

Zip Code

92037

Telephone

858.488.0160 (direct)

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Tim Martin, Architect

4. Project Information

Permit/Environmental Determination & Permit/Document No.:

Date of Decision/Determination:

City Project Manager:

Whitney MU/CDP,SDP,Var./PN182513/MND(#23432518)

July 28, 2010

Tim Daley

Decision (describe the permit/approval decision):

Hearing Officer approved the Coastal Development Permit and Site Development Permit, took no action on the Variance

& certified the Mitigated Neg Dec.

5. Grounds for Appeal (Please check all that apply)

- Factual Error (Process Three and Four decisions only)
 Conflict with other matters (Process Three and Four decisions only)
 Findings Not Supported (Process Three and Four decisions only)
 New Information (Process Three and Four decisions only)
 City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

1. The community planning group voted 14-1-1 to recommend denial of the application & 12-2-2 to file an appeal of the HO decision.

2. Incorrect application of §1510.0301 in judging the bulk and scale of the building

3. Incorrect application of §1510.0301(b) in judging disruption of the architectural unity of the area.

4. Incorrect application of the LDC in applying §1510.0401(i) (k) and (o).

5. Incorrect application of §1510.0107(a) and §1510.0310 in applying §113.0273 in not applying Visibility Triangles

and/or ignoring the Variance request.

6. Non-compliance with §121.0308(a) in granting the Site Development and Coastal Development Permits.

7. Findings can not be made for either the Variance (as originally applied by DSD), the CDP, or the SDP.

8. Incorrect analysis and erroneous recommendations made by the Environmental Review Section as contained in the Final

Mitigated Negative Declaration and subsequent errata.

9. Other issues that may be raised at hearing.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: Joseph LaCava, President, La Jolla CPA Date: 10 August 2010

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

 THE CITY OF SAN DIEGO	City of San Diego Development Services 1222 First Ave. 3rd Floor San Diego, CA 92101 (619) 446-5210	<h2 style="margin:0;">Development Permit/ Environmental Determination Appeal Application</h2>	FORM DS-3031 MAY 2010
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See information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

- 1. Type of Appeal:**
- | | |
|--|--|
| <input type="checkbox"/> Process Two Decision - Appeal to Planning Commission | <input type="checkbox"/> Environmental Determination - Appeal to City Council |
| <input checked="" type="checkbox"/> Process Three Decision - Appeal to Planning Commission | <input type="checkbox"/> Appeal of a Hearing Officer Decision to revoke a permit |
| <input type="checkbox"/> Process Four Decision - Appeal to City Council | |

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

Name: BERNARD I. SEGAL E-mail Address: BISAPC@AOL.COM
 Address: 2406 VALLECITOS CT. LA JOLLA CA 92037 Telephone: (310) 567-8607

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

4. Project Information	Date of Decision/Determination:	City Project Manager:
Permit/Environmental Determination & Permit/Document No.: <u>182513</u>	<u>7-28-10</u>	<u>TIM DALY</u>

Decision (describe the permit/approval decision):

HEARING OFFICER AUTHORIZED A PERMIT IN MIXED-USE PROJECT NO. 182513.

- 5. Grounds for Appeal** (Please check all that apply)
- | | |
|---|---|
| <input checked="" type="checkbox"/> Factual Error (Process Three and Four decisions only) | <input checked="" type="checkbox"/> New Information (Process Three and Four decisions only) |
| <input checked="" type="checkbox"/> Conflict with other matters (Process Three and Four decisions only) | <input type="checkbox"/> City-wide Significance (Process Four decisions only) |
| <input checked="" type="checkbox"/> Findings Not Supported (Process Three and Four decisions only) | |

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)


THE GROUNDS FOR APPEAL ARE SET FORTH IN EXHIBIT 1 ATTACHED HERETO. THE WORD "PROJECT" IN EXHIBIT 1 REFERS TO THE PROPOSED WHITNEY DEVELOPMENT AT 2202-2206 AVENIDA DE LA PLAYA, LA JOLLA, CA 92037. THE WORD "APPLICANT" AS USED IN EXHIBIT 1 REFERS TO THE PERSON WHO IS LISTED AS THE APPLICANT FOR THE PERMIT TO CONSTRUCT THE PROJECT

RECEIVED

AUG 11 2010

DEVELOPMENT SERVICES

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:  Date: AUG 11, 2010

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

RECEIVED

ATTACHMENT 12(B)
182513

AUG 11 2010

EXHIBIT 1

DEVELOPMENT SERVICES

1. The grounds stated the letter dated July 22, 2010 from Bernard I. Segal to Hearing Officer, a copy of which is attached hereto as Exhibit 1-1.
2. The Response of La Jolla Community Planning Association to the Mitigated Negative Declaration filed by the applicant, a copy of which is attached hereto as Exhibit 1-2.
3. The written arguments contained in the correspondence sent to the Development Services Department by Phil Merten, architect, including those arguments contending that Calle Clara in La Jolla Shores is a street and not an alley, and those arguments contending that the City is required to follow the criteria set forth in the Design Manual.
4. The grounds set forth in the appeal of "La Jolla Shores Tomorrow".
5. The Hearing conducted by Chris Larson on July 28, 2010 was unfair and violated due process of law for the following reasons: He failed to grant a continuance of the Hearing despite the fact that the report from the City was furnished to members of the public requesting notice only a day or two before the Hearing. He limited statements from members of the public to 2 minutes each, thereby making it virtually impossible to present a complete opposition to the project. After terminating public comment, he inquired of the City staff whether the City in the past has granted a permit where a street functioned as an alley, and upon receiving an affirmative response, elected to treat Calle Clara as an alley despite the fact that by definition in the Land Development Code, it is a street. He found no need for a variance where, by Code, a variance was required. After ruling that a variance was not necessary, he failed to re-open public comment so that inquiry could be made by the public as to the circumstances in which the City previously treated a street as an alley. He failed to follow the criteria in the La Jolla PDO and the La Jolla Design Manual. He granted a permit under circumstances where a variance was required, and he failed to make the findings required for a variance.
6. By allowing the construction of a mixed use building in La Jolla Shores with a floor area ratio one-third larger than could be built anywhere else in the City on similarly zoned property, the City has unconstitutionally discriminated against the residents of La Jolla Shores.
7. The City is required to apply to La Jolla Shores the maximum floor area ratios allowed elsewhere in the City in similarly zoned property, and the City did not apply those floor area ratio maximums when it granted the permit to the applicant.
8. The City granted the project a permit without applying to it the criteria prescribed in the La Jolla Shores PDO and La Jolla Shores Design Manual.

9. From the manner in which the project was approved, it appears that the City has improperly decided not to give full effect to the La Jolla Shores Design Manual, which is an integral part of the La Jolla PDO.

10. The City failed to treat Calle Clara as a street, and thereby allowed driveways and curbs not permitted by Code.

11. In treating Calle Clara as an alley and not a street without granting a variance, the permit for the project was issued in violation of the Code and is therefore invalid.

ATTACHMENT 1 ~~24~~(B) 2513

EXHIBIT 1-1

BERNARD I. SEGAL

2406 Vallecitos Ct.
La Jolla, CA 92037

TELEPHONE:
(310) 567-8607

email: BISAPC@aol.com

July 22, 2010

VIA FEDERAL EXPRESS

RECEIVED

AUG 11 2010

DEVELOPMENT SERVICES

Hearing Officer
202 C Street
San Diego, California 92101

Re: Project No. 182513
WHITNEY MIXED USE
2202 and 2206 Avenida de la Playa
La Jolla, California 92037

Dear: Sir:

I am a resident of La Jolla Shores in La Jolla, and I am opposed to the City of San Diego granting a permit or variance to the Applicant of the above-described Mixed-Use Project No 182513 ("the project").

A POINT OF ORDER: For the reasons set forth in paragraph 9 below, the Notice of Hearing setting this matter for hearing on July 28, 2010 is fatally defective, and because of that the City has no jurisdiction to conduct the Hearing, and it should be postponed.

MY SUBSTANTIVE OBJECTIONS: I oppose the project based upon each and all of the following grounds:

EXHIBIT 1-1

Hearing Officer
July 22, 2010
Page 2

1. At the last public meeting in La Jolla Shores on June 9, 2010, the applicant admitted that unless Calle Clara is considered an alley and not a street, the project as presently designed does not have sufficient parking to comply with code. This is because if Calle Clara is a street (and not an alley), the project as presently designed would lose the two surface spaces that are part of the present design, and thereby fall short of the code parking requirement. But Calle Clara is street not an alley, because an alley means a public way that is no wider than 25 feet, whereas the Land Development Code defines a street as being 30 feet from property line to property line, and Calle Clara is 30 feet wide. To overcome this inherent obstacle to the project a variance would be necessary. However, the Applicant's original application did not seek a variance, and, as far as I am aware, the application was never amended to seek a variance, and certainly was never amended at any time before the La Jolla Community Planning Association (the "LJCPA") held a public hearing on this project. In addition to the LJCPA, the La Jolla community at large has never been notified that a variance was being sought, and has never had the opportunity to voice its objection to a variance.

2. Assuming Calle Clara is a street, the Notice of Hearing (Internal Order No. 23432518) setting the hearing for July 28, 2010 is jurisdictionally defective because it fails to disclose that to grant a permit for the project, a variance would have to be granted and also fails to disclose that the applicant would be asking the Hearing Officer to grant a variance. Separately, Section 112.0505 of the Municipal Code requires that there be a specific Notice of an Application for Variance, which means that there cannot be a hearing until that Notice has been sent to all interested parties, with adequate time for interested parties to comment thereon. The City staff cannot simply convert the original application to an Application for Variance and proceed to a variance hearing without having given the requisite Notice and afforded the requisite comment opportunity.

3. Section 126.0805 (a) through (d) of the San Diego Municipal Code requires that four specific findings must be made in

Hearing Officer
July 22, 2010
Page 3

order to grant a variance. In order to make the finding in subsection (b), the City must find:

"The circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premises and the variance granted by the city is the minimum variance that will permit the reasonable use of the land or premises."

Neither the Applicant nor the City has made ANY showing that the variance being sought is the minimum variance that will permit the reasonable use of the land or premises. And no reasonable person could conclude that erecting a second and third story condominium of 3,000 square feet each "is the minimum variance that will permit the reasonable use of the land and building".

4. The LJCPA and the La Jolla Shores residents have never had an opportunity to comment on whether the proposed variance is the minimum variance that will permit the reasonable use of the premises.

5. The project does not afford the adjacent property sufficient light and ventilation, thereby setting a precedent for future applicants who collectively would drastically change the entire La Jolla Shores neighborhood.

6. The massiveness and overreaching square footage of the project makes it totally incompatible with the immediately adjacent property and in violation of the La Jolla PDO 1510.0301, effective April 26, 2007, which reads in part: "No structure will be approved that is so different from that of an adjacent parcel in quality, form, materials, color and relationship as to disrupt the architectural unity of the area." The floor area ratio of this proposed Whitney project is one-third greater than the adjacent building, one third greater than any other property on Avenida de la Playa, and one third greater than allowed anywhere else in the City of San Diego on a similarly zoned property.

Hearing Officer
July 22, 2010
Page 4

7. If this project is allowed to be built with the present floor area ratios, it would set a precedent that would make it difficult for the City to deny the same floor area ratios to other applicants on the same block of Avenida de la Playa, and elsewhere on Avenida de la Playa, so as to allow conversion of that avenue, with its wonderfully quaint stores, into a "canyon" between massive structures that would drastically change the entire look, feel, and livability, of La Jolla Shores.

8. The Lack of Adequate Notice and Information From the City: The City's staff has never sent out notice of whether the applicant has applied for a variance, has never made available in written form whether it recommends approval of the project, or even whether a variance is required for the project, and if so, the specifics as to why it is required, and what the City's position is if a variance is required. The City has never responded to numerous requests asking whether it agrees that Calle Clara is a street rather than an alley, thereby keeping the opponents of this project in the dark as to whether the Applicant must seek a variance. The lack of information coming from the City has made it so difficult for the opponents of this project to know what the issues are, that it is unfair for the hearing to go forward on July 28, 2010. In short, the City has set the present July 28, 2010 hearing date prematurely, and it should be postponed until the City has disclosed whether a variance has been requested, the basis for it, the City's position with respect to it, the City's position with regard to whether Calle Clara is a street or alley, and if a variance is being sought, why the LJCPA should not be given an opportunity to comment on it.

MOST IMPORTANT: If the Applicant is seeking a variance, no hearing on this project should be held until the Applicant has made a showing that: "The circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premises and the variance granted by the city is the minimum variance that will permit the reasonable use of the land or premises." The City should inform all interested parties that a

Hearing Officer
July 22, 2010
Page 5

variance is being sought, the basis and scope of it, and the showing made in support of it.

The Notice of Hearing is also defective because it does not give the name of the Hearing Officer, and because the named Applicant (Tim Martin) is not the real party in interest.

9. In October, 2009, the LJCPA voted 14-1-1 to recommend non-approval of the project. Unless this voice of the La Jolla Shores community is to be totally disregarded, its overwhelming vote should be honored by denying the permit being sought by the Applicant.

10. I have read with interest the email correspondence sent by Phil Merten to the Project Manager, Tim Daly, and to other City officials in opposition to this project. I hereby incorporate by reference the arguments made, the authorities cited, and the questions asked by Mr. Merten as if they were set forth at length herein. I join in his opposition.

Very truly yours,

Bernard I. Segal

cc Tim Daly, Project Manager

BIS:ajj

Hearing Officer San Diego July 22, 2010



La Jolla Community Planning Association

RECEIVED

April 2, 2010

Comments Regarding the
Whitney Mixed Use - Draft Mitigated Negative Declaration
Project No. 182513 / SAP No. 23432518

AUG 11 2010

DEVELOPMENT SERVICES

Ms. Holly Smit Kicklighter, Environmental Planner
Development Services Department

Thank you for the opportunity respond to the referenced Draft Mitigated Negative Declaration and for extending the response period to April 2, 2010. The La Jolla Community Planning Association has reviewed the DRAFT Mitigated Negative Declaration for the project reference above. Please accept the following comments pertaining to the DRAFT document.¹

INITIAL STUDY CHECKLIST

Issue 1

Page 1 of the Initial Study Checklist (Page 23 of the Initial Study), under the heading of AESTHETICS / NEIGHBORHOOD CHARACTER, Paragraph 1.C. asks: "Will the proposal result in Project bulk and scale, materials, or style which would be incompatible with surrounding development?" The response is "No". An additional response is "See 1A above".

However, Paragraph 1A states: "Development would conform to required heights and setbacks per the City Land Development Code. See Initial Study".

Paragraph 1A refers to the "City Land Development Code"; however the list of references at the end of the document, omits the Land Development Code. When reviewing AESTHETICS / NEIGHBORHOOD CHARACTER, the Initial Study Checklist apparently only considered the City's General Plan, the Community Plan (but ignored key sections of the Community Plan referenced in the Appendix), and a View Corridor Analysis by the applicant; but apparently ignored the Land Development Code.

The City Land Development Code includes the La Jolla Shores Planned District Ordinance (LJSPDO) which incorporates the La Jolla Shores Design Manual (LJSDM). The General Design Regulations (Sec. 1510.0301) of the LJSPDO and the LJSDM establish specific design criteria to be used in the evaluation of the appropriateness of all development in La Jolla Shores Planned District. The General Design Guidelines of the LJSDM state: "The fitting in of new development, is, in a broad sense, a matter of scale...it requires a careful assessment of each

¹ Text in red is quoted from the Mitigated Negative Declaration while text in blue is quoted from the referenced documents.

Letter to Holly Smit Kicklighter
 RE: Whitney Mixed Use - Draft Mitigated Negative Declaration
 Project No. 182513 / SAP No. 23432518
 Date: April 2, 2010
 Page 2 of 5

building site in terms of the size...and a very conscious effort to achieve a balance and compatibility in the design of a new building...Good Scale depends on a bulk that is not overwhelming." (p.3) and "To conserve important design character in La Jolla Shores, some uniformity of detail, scale, proportion, texture, materials color and building form is necessary."

The Design Manual continues with the following mandates regarding this "bulk & scale" issue:

- "Large buildings interposed into communities characterized by small scale structures without adequate transition *should be avoided*" (p.4);
- "Visually strong building which contrast severely with their surroundings *impair the character* of the area." (p.4)
- " Structures *shall conform or complement* the general design and bulk of the buildings in surrounding and adjacent areas." (p.4);
- " new buildings should be *made sympathetic* to the scale, form and proportion of older development; (p.5)
- new designs should *promote "harmony* in the visual relationships and transitions between new and older buildings." (p.5); and
- "extreme contrasts in color, shape and organization of architectural elements *should be avoided*, so that new structures do not stand out in excess of their importance." (p.6)
 [emphasis added]

The proposed project does not conform to the mandates of the *LJSPDO* nor the *LJS Design Manual* and is incompatible with surrounding development . The proposed design violates every tenet of the *LJSPDO* and *LJS Design Manual* regarding "bulk and scale". The proposed design would impose on the neighborhood the exact opposite result from that intended by the *LJSPDO* and the *LJS Design Manual*:

- The structure would be *so different* in form and relationship as to disrupt the architectural unity of the area. (Contrast with PDO section 1510.0301, Design Manual p. 2);
- Good *scale would not be achieved* because there is no balance and compatibility with older buildings and the bulk of the proposed structure would overwhelm adjacent development (Contrast with Design Manual p. 3);
- The proposed development is *not sympathetic* to the scale, form and proportion of adjacent older development (p.5);
- The scale, form and proportion of the proposed development *does not transition* to the scale, form and proportion of adjacent older development (Contrast with Design Manual p. 4);
- The proposed height, bulk, shape and color of the proposed development *will stand out* in excess of its importance in the neighborhood (p.6)

The *Design Principal* section of the *General Design Regulations* of the *LJSPDO* (Sec. 1510.0301) and the *LJS Design Manual* (p.2), both state that: "no structure will be approved that is so different in quality, form, materials, color and relationship as to disrupt the architectural unity of the area."

The DRAFT responses to both paragraphs 1A and 1C are incorrect. The correct response in both cases is "Yes"

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Issue 2

Under the heading of AESTHETICS / NEIGHBORHOOD CHARACTER, Paragraph 1.D. asks: "Will the proposal result in substantial alteration to the existing character of the area? The response is "No". An additional response is "See 1A above". This response is not correct.

Presently the existing commercial buildings directly fronting Avenida de la Playa in the Commercial Center zone of La Jolla Shores with street facades do not exceeding 2 stories. The existing 3-story buildings next door present themselves as 2-story facades respecting the scale, form and proportion of adjacent older development while providing an interior 3-story space. In contrast to the existing development pattern, the proposed project will present a three story facade directly facing Avenida de la Playa, as well as a three story facade directly facing El Paseo Grande.

There are 13 corner parcels on Avenida de la Playa in the Commercial Center zone of La Jolla Shores. Currently there are seven two story structures and six one story or less structures on these corner parcels. The corner lot structures are generally low-rising buildings with edifices that step back and up from their street property lines resulting in a visually open environments at the street corners. *The height, bulk and mass of the proposed three story project is in direct contrast to the openness of the area's corner lots, and would substantially alter the predominate corner lot development pattern.*

The existing commercial buildings on Avenida de la Playa immediately adjacent and east of the proposed project are set back from their front property lines and provide small pedestrian oriented public spaces along the street in front yards of the buildings. However, significant portions of the south exterior wall of the proposed project front directly on the front property line and disrupt the established building setback along this block. Without question, the proposed project *will substantially alter the existing character* of the commercial area. The correct responses should be "Yes"

Page 1 of the Initial Study Checklist (Page 23 of the Initial Study), under the heading of AESTHETICS / NEIGHBORHOOD CHARACTER, Paragraph 1.C. asks: "Will the proposal result in Project bulk and scale, materials, or style which would be incompatible with surrounding development?" The response is "No". Under the same heading, Paragraph 1.D. asks: "Will the proposal result in substantial alteration to the existing character of the area? The response is "No".

The City Land Development Code includes the *La Jolla Shores Planned District Ordinance (LJSPDO)* which incorporates the *La Jolla Shores Design Manual (LJSDM)*. The General Design Regulations (Sec. 1510.0301) of the *LJSPDO* and the *LJSDM* establish specific design criteria to be used in the evaluation of the appropriateness of all development in La Jolla Shores Planned District. The General Design Guidelines of the *LJS Design Manual* state: "The fitting in of new development, is, in a broad sense, a matter of scale...it requires a careful assessment of each building site in terms of the size...and a very conscious effort to achieve a balance and compatibility in the design of a new building...Good Scale depends on a bulk that is not overwhelming." (p.3)

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The La Jolla community contains five distinct commercial areas: La Jolla Downtown, Pearl Street, La Jolla Boulevard, Bird Rock and Avenida de la Playa. Development in the first four commercial areas is regulated by the *La Jolla Planned District Ordinance (LJPDO)*. The maximum permitted Floor Area Ratio for commercial development in the four areas is an FAR of 1.3. The maximum permitted Floor Area Ratio for mixed use development (commercial / residential) is an FAR of 1.7. Existing development on Avenida de la Playa is the smallest in size and scale and the most residential in character of all the commercial areas and is regulated and limited by the General Design Regulations of the *La Jolla Shores Planned District Ordinance (LJSPDO)* and the *La Jolla Shores Design Manual*. The largest Floor Area Ratio so far approved for any project since the approval of the LJSPDO in the Commercial Center Zone on Avenida de la Playa was an FAR of 1.7. In contrast to the small scale residential character of surrounding mixed use development, the Whitney Mixed Use project proposes a Floor Area Ratio of 2.34, **which is a 37 percent larger than any previously approved project under the LJSPDO or the LJPDO**. If approved, the bulk and scale of the substantially larger Whitney Mixed Use project will be incompatible with surrounding development and substantially alter the existing character of the area. **The correct responses to both checklist questions should be "Yes"**.

Issue 3

Page 8 of the Initial Study Checklist (Page 32 of the DRAFT Initial Study), under the heading of LAND USE, paragraph A states: "The project is consistent with the land use designation and applicable policies of the Community Plan". This statement is *not correct*.

The Community Commercial statement for Avenida de la Playa in the COMMERCIAL LAND USE ELEMENT on page 107 of the *LA JOLLA COMMUNITY PLAN* states: "The commercial structures that exist along this 4-block commercial district have generally maintained their original building scale and pedestrian orientation despite development pressures to expand over the years." The COMMERCIAL LAND USE ELEMENT on page 98 of the *LA JOLLA COMMUNITY PLAN* states: "The City should seek to strengthen the existing commercial districts by requiring pedestrian-related amenities with development, such as plazas and courtyards, ..." Additionally, the PLAN RECOMMENDATIONS Section of the COMMERCIAL LAND USE ELEMENT of the *LA JOLLA COMMUNITY PLAN* states: "Incorporate open spaces such as plazas, courtyards, tables or bench areas with shade trees or overhead trellises into the design of new commercial projects." The proposed project does not contain a plaza, courtyard, bench area, shade trees, overhead trellis or any pedestrian oriented features for public enjoyment anywhere within the project. The proposed project is *clearly inconsistent* with the applicable policies and recommendations of the Community Plan in this regard.

INITIAL STUDY

Paragraph IA (page 1 of the Initial Study Checklist) also says "See Initial Study". Page 18 of the *Initial Study* then states:

"The following environmental issues were considered during the review of the project and were determined not to be significant.

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Aesthetics/Visual Quality

The project site is in a residential neighborhood and has previously been developed. The proposed project would be compatible with the underlying zone (see Land Use discussion) and the Community Commercial designation. The main physical change to the site with project is that the current one-story buildings would be replaced with a three-story building."

The *Initial Study fails to include* a discussion of Aesthetics or Visual Quality as it relates to the requirements of the underlying zone. The study only says the project would be compatible with the underlying zone and the Community Commercial designation, but *fails to consider* the *General Design Regulations* or the *Design Principal* section of the LJSPO or the policies and recommendations of the *La Jolla Shores Design Manual* governing project compatibility aesthetics and visual quality, *all of which are requirements* of the underlying zone as contained in the Land Development Code.

For all the reasons contained in the Initial Study Checklist section above, the Initial Study statement regarding Aesthetics / Visual Quality compatibility with the underlying zone is incorrect. The proposed project is *not compatible* with the aesthetics and visual quality requirements of the underlying zone.

For all the reason listed above the **Mitigated Negative Declaration is inadequate** and should be rewritten to address the issues of Aesthetics/Neighborhood Character, Land Use, and Aesthetics/Visual Quality which are significantly affected by the proposed project and which require appropriate measures to mitigate those impacts.

Thank you for your consideration.

Sincerely,
La Jolla Community Planning Association



Joe LaCava, President



City of San Diego
 Development Services
 1222 First Ave. 3rd Floor
 San Diego, CA 92101
 (619) 446-5210

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
 MAY 2010

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

- 1. Type of Appeal:**
- Process Two Decision - Appeal to Planning Commission Environmental Determination - Appeal to City Council
- Process Three Decision - Appeal to Planning Commission Appeal of a Hearing Officer Decision to revoke a permit
- Process Four Decision - Appeal to City Council

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.010a)

Name: La Jolla Shores Tomorrow, c/o Julie M. Hamilton, Attorney at Law		E-mail Address: julie@jmhiltonlaw.com	
Address: 2835 Camino del Rio S., Suite 100	City: San Diego	State: CA	Zip Code: 92108
		Telephone: (619) 278-0701	

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Tim Martin, Martin Architecture

4. Project Information Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
Whitney Mixed Use – Project No. 182513	July 28, 2010	Tim Daly

Decision (describe the permit/approval decision):
 Coastal Development Permit, Site Development Permit, Variance, and Tentative Map Waiver, Mitigated Negative Declaration;

To demolish existing structures and construct a new three-story building with basement parking, including two condominium units and a commercial condominium unit space of approximately 2,000 square feet on a 0.09 acre site.

- 5. Grounds for Appeal (Please check all that apply)**
- Factual Error (Process Three and Four decisions only) New Information (Process Three and Four decisions only)
- Conflict with other matters (Process Three and Four decisions only) City-wide Significance (Process Four decisions only)
- Findings Not Supported (Process Three and Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

The proposed project will adversely affect the applicable land use plan because its bulk and scale is out of character with the commercial community.

The proposed project will not comply to the maximum extent feasible with the Land Development Code because the project does not incorporate required visibility triangles, has not provided adequate information regarding the effect of the subterranean garage on pumping and subsidence, removes at least one public parking space, and does not conform in bulk and scale to the community.

There are no special circumstances to justify a variance because all properties on that block are similarly situated, the project is on a flat, rectangular, unconstrained lot with access to three streets, and the owner is not deprived of reasonable use.

The proposed mitigation of potential significant effects to archeological/paleontological resources is ineffective because the language allows modification of required mitigation.

An EIR is required because the initial study failed to consider substantial evidence indicating significant impacts on aesthetics, community character, and the inconsistency with applicable land use plan.

See attached presentation dated July 28, 2010 and attached letter dated April 5, 2010.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: Julie Hamilton Date: August 11, 2010

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.



Julie M. Hamilton
Attorney at Law

Holly Smit Kicklighter
Associate Environmental Planner
City of San Diego
Development Services
1222 First Avenue, MS 501
San Diego, CA 921101

**Re: Whitney Mixed Use Project - PTS No. 182513
Comments on Mitigated Negative Declaration**

Dear Ms. Smit Kicklighter:

I am providing the following comments on behalf of my client; La Jolla Shores Tomorrow. These comments are based on my review of the proposed Mitigated Negative Declaration (MND) and the project file in Development Services. The California Environmental Quality Act (CEQA) requires the preparation of an environmental impact report (EIR) if there is substantial evidence in the record to support a fair argument the proposed project may result in significant impacts on the environment. The proposed project will result in significant impacts to aesthetics/neighborhood character, hydrology/water quality and land use that have not been mitigated; therefore an EIR is required.

I. AESTHETICS / NEIGHBORHOOD CHARACTER.

There is substantial evidence in the record to support a fair argument the proposed project will substantially degrade the existing aesthetics and neighborhood character of the commercial center in La Jolla Shores. The applicant is proposing a three-story, mixed use building with 2,214 square feet of retail space on the first floor and two "for-rent" residential units on the second and third floors. The applicant will be providing seven parking spaces via ground level parking on the rear of the building and a 5-car, subterranean parking garage. As currently designed, the project is a three-story, 10,000¹ square foot building on a 4,000 square foot lot. The setbacks range from no setback on the north and west sides of the building to a maximum of six inches on the eastern side of the building. The floor area ratio ("FAR") of the proposed project is 2.34.

The Commercial Center of the La Jolla Shores Community is defined by small two and three-story buildings with a FAR of less than 2. Since the adoption of the La Jolla Shores Planned District Ordinance, no building has been permitted with an FAR greater than 1.7. The third story on all recently permitted buildings is substantially set

¹ Relying on the definition of gross floor area provided in Municipal Code Section 113.0234

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April 5, 2010
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back from the street facade of the structures and is essentially designed in the "shopkeeper" fashion with commercial/office space on the first floor and residential on the second floor. A few of the "shopkeeper" buildings have an attic third floor with peaked roofs that are well set back from the street.

The massive three-story structure proposed to be built in this quaint commercial area will result in a negative aesthetic that will substantially alter the character of the Commercial Center. The bulk, scale, materials and style of the proposed project is incompatible with surrounding development; in particular the "shopkeeper" buildings immediately east of the proposed project. The proposed project will have a significant impact on the aesthetics and neighborhood character of the La Jolla Shores Commercial Center.

IX. HYDROLOGY/WATER QUALITY

The MND fails to analyze the impact of the proposed basement on the flow and quality of groundwater or consider the impact of the basement on geologic stability. The placement of the basement and elevator well below the groundwater table requires specific engineering to protect the basement from groundwater intrusion and to avoid subsidence. Engineering solutions to protect against groundwater intrusion into the basement may range from waterproofing the structure to subsurface drains. It is unclear how this protection will occur; how subsurface water will be disposed and what type of permits will be required for this disposal. The La Jolla Shores PDO only allows for pumping subsurface waters in an emergency. The PDO requires the discharge from such a system be pumped onto the public street and does not allow connection to the storm drains. The design for such a system must be shown in detail on the plans submitted for approval. In my review of the plans; I have been unable to find any detail showing the pumping system for the subterranean garage or a subsurface drain system to prevent water from entering the garage.²

Similarly, the La Shores PDO requires the applicant to provide detail of a system for the avoidance of any subsidence of adjoining or nearby structures; both during and after construction. The plans shall indicate the procedures to be taken in the event subsidence occurs and the owner of the proposed project must provide an independent testing laboratory to monitor continuously for subsidence. Again, in my review of the plans I did not find detail of a system for the avoidance of any subsidence; nor did I find the procedures to be taken in the event subsidence occurs. There is no mitigation measure requiring the service of an independent laboratory to monitor the project for subsidence as required by the PDO.

If the lead agency (in this case the City of San Diego) fails to study an area of possible environmental impact, a fair argument may be based on the limited facts in the

² San Diego Municipal Code Section 1510.0403(b)

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record. "Deficiencies in the record may actually enlarge the scope of the fair argument by lending a logical plausibility to a wider range of inferences."³ The City's complete failure to consider the impacts of protecting the structure from groundwater intrusion and the potential for subsidence results in a significant deficiency in the record and certainly enlarges the scope of the fair argument the project results in significant environmental impacts. The inclusion of specific policies in the PDO addressing the impacts of structures below the groundwater table is sufficient evidence to support a fair argument any structure built below the water table may have significant impacts. The City's failure to consider and properly mitigate these impacts is not consistent with the requirements of CEQA for a mitigated negative declaration; therefore an environmental impact report must be prepared.

X. LAND USE

There is substantial evidence to support a fair argument the proposed project may cause significant land use impacts. The project site is located in the Commercial Center Zone of the La Jolla Shores Planned District. The project must be reviewed for consistency with the La Jolla Shores Planned District Ordinance, the La Jolla Shores Design Manual, the La Jolla Community Plan and Local Coastal Program and the San Diego Land Development Code.

"The California Coastal Act has designated La Jolla as a "special community" of regional and state-wide significance. This designation is embodied in all land use policies and plan recommendations contained in this plan. This designation emphasizes the importance of La Jolla as a prime visitor destination and has been used as basis for the approval of special grants to conserve and enhance the special character of La Jolla."⁴

In keeping with the designation of La Jolla as a special community; the La Jolla Community Plan and LCP specifically requires that improvements within the commercial center on Avenida de la Playa retain small scale establishments and focus on enhancing the pedestrian environment. This policy language is further defined through the language of the La Jolla Shores Planned District Ordinance and the La Jolla Shores Design Manual. The General Design Regulations of the La Jolla Shores PDO incorporates the La Jolla Shores Design Manual and clearly states that no structure will be approved that is so different in quality, form, materials, color and relationship as to disrupt the architectural unity of the area.⁵

The La Jolla Shores Design Manual contains the following statements:

³ *Sundstrom v. County of Mendocino*, supra, 202 Cal. App. 3d at 311.

⁴ La Jolla Community Plan and Local Coastal Program Land Use Plan, p. 26

⁵ San Diego Municipal Code Section 1510.0301(b)

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- Large buildings interposed into communities characterized by small-scale structure without adequate transition should be avoided.
- Structures shall conform or compliment the general design and bulk of buildings in surrounding and adjacent areas.
- Promote harmony in the visual relationships and transitions between new and older buildings.
- New buildings should be made sympathetic to the scale, form and proportion of older development...
- Extreme contrasts in color, shape and organization of architectural elements should be avoided, so that new structures do not stand out in excess of their importance. Materials should be compatible with the existing character of La Jolla Shores.

The applicant is proposing a three-story building with an FAR of 2.34 in an area characterized by two-story buildings with an FAR less than 2. Although there are a few three-story buildings along Avenida de la Playa, the third story on these buildings are well set back from the facades along Avenida de la Playa; resulting in a small scale village appearance.⁶ The proposed building is entirely out of scale with the surrounding development, disrupts the harmony in the visual relationships between the proposed building and existing development, and represents a contrast in shape that will cause this building to stand out in excess of its importance.

As stated above, the proposed project also fails to comply with the requirements of the La Jolla Shores PDO related to structures below the groundwater table.

These failures to meet the requirements of the La Jolla Community Plan and Local Coastal Program Land Use Plan, the La Jolla Shores Planned District Ordinance and the La Jolla Shores Design Manual will result in a significant land use impact. Approval of a structure so out of character with the existing commercial development along Avenida de la Playa could set a precedent to allow other disproportionate buildings in the Commercial Center Zone; in contravention to the many policies governing development in this zone. The land use impacts of this project are substantial and cannot be mitigated; therefore an environmental impact report must be prepared.

CONCLUSION

There is substantial evidence in the record to support a fair argument the proposed project may result in significant environmental impacts; therefore the City of San Diego cannot approve the Tentative Map Waiver,⁷ Coastal Development Permit and Site

⁶ There are two exceptions, built prior to adoption of the La Jolla Shores PDO and the impetus for adoption of the PDO and Design Manual

⁷ The project description is flawed in that the Initial Study describes the project as the construction of two "for-rent" units; but the project approvals authorize a tentative map waiver. Will the residential units be

Holly Smit Kicklighter
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Development Permit for this project without preparation of an environmental impact report.

Thank you for your time and attention to this matter, I remain available if you have any questions or need additional information.

Very truly yours,


Julie M. Hamilton

CC: Client

separately owned and owned separately from the retail space? What kind of governing documents will be required?

La Jolla Shores Tomorrow Opposition to Whitney Project



7/28/2010, Hearing Officer
Public Hearing

La Jolla Shores Tomorrow Opposition to
Whitney Building

Findings

The Required Findings for a Variance,
Tentative Map Waiver, Site
Development Permit, Coastal
Development Permit, and Final MND
Cannot be Made.

Public Health, Safety and Welfare Findings

- **SDMC § 126.0805(c) – Findings for a Variance**
 - The granting of the variance will be in harmony with the general purpose and intent of the regulations and will not be detrimental to the public health, safety, or welfare.
- **SDMC § 125.0440(e) – Findings for a Tentative Map Waiver**
 - The design of the subdivision or the type of improvement will not be detrimental to the public health, safety, or welfare.
- **SDMC § 126.0504(a)(2) – Findings for a Site Development Permit**
 - The proposed development will not be detrimental to the public health, safety, and welfare.

The Required Public Health, Safety, and Welfare Findings Cannot Be Made

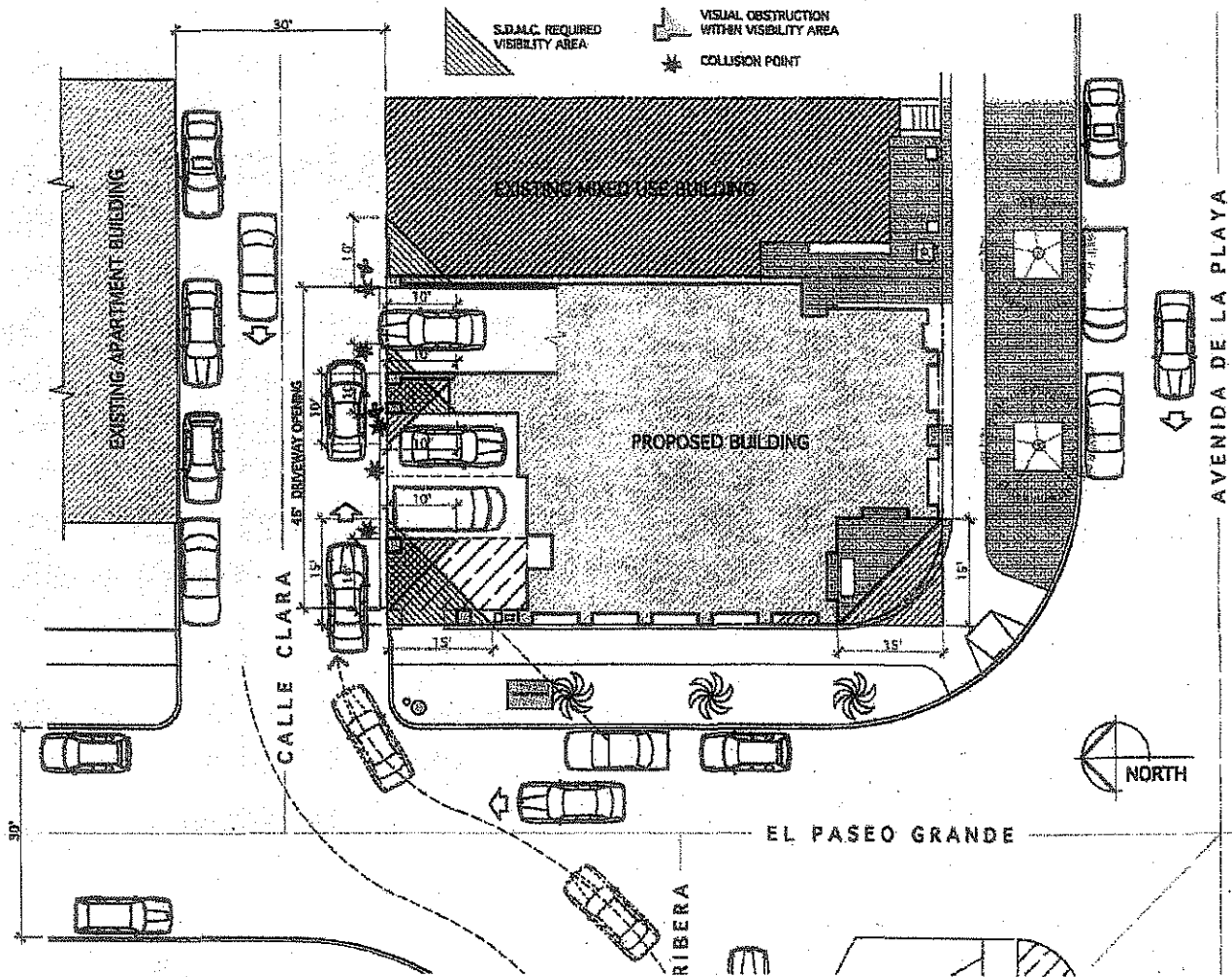
Required Visibility Triangles SDMC § 113.0273

- The visibility area is a triangular portion of a premises formed by drawing one line perpendicular to and one line parallel to the property line or public right-of-way for a specified length and one line diagonally joining the other two lines.
 - (a) For visibility areas at the intersection of streets, two sides of the triangle extend along the intersecting property lines for 25 feet and the third side is a diagonal line that connects the two.
 - (b) For visibility areas at the intersection of a street and alley, two sides of the triangle extend along the intersecting property lines for 10 feet and the third side is a diagonal line that connects the two.
 - (c) For visibility areas at the intersection of a street and driveway, one side of the triangle extends from the intersection of the street and the driveway for 10 feet along the property line. The second side extends from the intersection of the street and driveway for 10 feet inward from the property line along the driveway edge and the third side of the triangle connects the two.
 - (d) Where the required front and street side yards measure less than 25 feet when combined, that measurement or 15 feet, whichever is greater, establishes the visibility area at the street intersection.

Whitney Project

- **As currently designed, the project does not provide required visibility triangles for the exit of the parking garage onto Calle Clara.**
- **Visibility triangles ensure adequate site distance for vehicles exiting onto a street.**
- **Without the required visibility triangles, cars will have to pull halfway out of the garage before they can see, or are visible to, other vehicles and pedestrians.**

Required Visibility Triangles



7/28/2010, Hearing Officer
Public Hearing

La Jolla Shores Tomorrow Opposition to
Whitney Building

Land Use Plan Findings

- **SDMC § 126.0805(d) – Findings for a Variance**
 - The granting of the variance will not adversely affect the applicable land use plan. If the variance is being sought in conjunction with any proposed coastal development, the required finding shall specify that granting of the variance conforms with, and is adequate to carry out, the provisions of the certified land use plan.
- **Cal Gov Code § 66474(a) – Findings for a Tentative Map Waiver**
 - A legislative body of a city or county shall deny approval . . . If it makes any of the following findings: That the proposed map is not consistent with applicable general and specific plans.
- **SDMC § 126.0504(a)(1) – Findings for a Site Development Permit**
 - The proposed development will not adversely affect the applicable land use plan.
- **SDMC § 126.0708(a)(3) – Findings for a Coastal Development Permit**
 - The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

The Required Land Use Plan Findings Cannot Be Made

La Jolla Community Plan and Local Coastal Program Land Use Plan

- “The California Coastal Act has designated La Jolla as a **“special community”** of regional and state-wide significance. This designation is embodied in all land use policies and plan recommendations contained in this plan. This designation emphasizes the importance of La Jolla as a prime visitor destination and has been used as the basis for the approval of special grants to conserve and enhance the special character of La Jolla.” (p. 26)

Whitney Project

- **The proposed building violates the Coastal Act by imposing on the community a massive and disruptive structure.**
- **The project will adversely affect La Jolla Shores as a prime visitor destination and will detract from the special character of the community.**

The Required Land Use Plan Findings Cannot Be Made

La Jolla Community Plan and Local Coastal Program Land Use Plan

- “The City should encourage small lot development consistent with the traditional rhythm and spacing of buildings along major retail-oriented streets.” (p. 98)
- “Retain small scale establishments and install street trees to provide shade and enhance pedestrian environment.” (p. 107)

Whitney Project

- **The Whitney Building represents a massive block out of proportion to the traditional rhythm and spacing of the “shopkeeper” development along Avenida de la Playa.**
- **The Whitney Building is a massive structure adjacent to small scale development that disrupts the pedestrian environment by providing long lengths of sheer walls with little relief and no setback from the sidewalk.**

The Required Land Use Plan Findings Cannot Be Made

La Jolla Community Plan and Local Coastal Program Land Use Plan

- “Avoid abrupt transitions in scale between commercial buildings and adjacent residential areas. Utilize transitions in bulk and scale to create visual interest and create a sense of enclosure for pedestrians; gradual transitions in scale between commercial and residential uses are preferred.” (p. 102)
- “Incorporate open areas such as plazas, courtyards, tables or bench areas with shade trees or overhead trellises into the design of new commercial projects.” (p. 103)

Whitney Project

- The three-story sheer facade along Calle Clara causes an abrupt transition between the Avenida de la Playa commercial center and the two-story residential development on the north side of Calle Clara.
- The Whitney Building fails to provide any pedestrian amenities or open areas, such as a plaza, courtyard, reasonable bench area with shade trees or overhead trellises. Rather the Whitney Building provides a small corner area with one proposed shade tree.

Land Development Code Findings

- **SDMC § 125.0122 – Findings for a Tentative Map Waiver**
 - The decision maker may approve a Map Waiver if the decision maker finds that the proposed division of land complies with requirements of the Subdivision Map Act and the Land Development Code.
- **SDMC § 126.0504(a)(3) – Findings for a Site Development Permit**
 - The proposed development will comply with the applicable regulations of the Land Development Code.
- **SDMC § 126.0708(a)(3) – Findings for a Coastal Development Permit**
 - The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

The Required Land Development Code Findings Cannot Be Made

La Jolla Shores PDO

- **Purpose and Intent**
 - The development of land in La Jolla Shores should be controlled so as to protect the area's unique ocean-oriented setting, architectural character and natural terrain and enable the area to maintain its distinctive identity as part of one of the outstanding residential areas of the Pacific Coast. (SDMC §1510.0101(b))
- **Design Principle**
 - No structure shall be approved that is so different in quality, form, materials, color, and relationship as to disrupt the architectural unity of the area. (SDMC §1510.0301(b))

Whitney Project

- The La Jolla Shores Planned District Ordinance and Design Manual require new development be controlled to protect the community character of the area. These requirements demand that new development should be compatible with the bulk and scale of surrounding development.
- The commercial center is a quaint district defined by small two and three-story buildings, with substantial setbacks on all third stories.
- The project proposes a massive three-story building, with a gross floor area of 8,950 square feet on a 4,000 square foot lot.

The Required Land Development Code Findings Cannot Be Made

La Jolla Shores Design Manual

- “Large buildings interposed into communities characterized by small-scale structures without adequate transition should be avoided.” (p. 4)
- “Visually strong buildings which contrast severely with their surroundings impair the character of the area.” (p. 4)

Whitney Project

- **The Whitney Building provides sheer facades along all four property lines with minimal relief and articulation.**
- **The bulk and scale of the proposed building will substantially degrade the existing aesthetics and neighborhood character of La Jolla Shores.**

The Required Land Development Code Findings Cannot Be Made

La Jolla Shores Design Manual

- “Structures shall conform or complement the general design and bulk of the buildings in the surrounding and adjacent areas.” (p. 4)
- “New buildings should be made sympathetic to the scale, form and proportion of older development...” (p. 5)

Whitney Project

- The highest floor area ratio in the community since adoption of the La Jolla Shores PDO is 1.7. The Whitney Building has a FAR of 2.26 -- a 33% increase over any other building permitted under these regulations. The FAR is indicative of its incompatibility with the surrounding community.
- The proposed building is not sympathetic to the existing shopkeeper style of development, which features substantial setbacks, and/or peaked roofs on third stories.

The Required Land Development Code Findings Cannot Be Made

La Jolla Shores PDO

- Triangular visibility areas are required. (SDMC § 113.0273)
- The La Jolla Shores Planned District Ordinance allows the construction of structures below the water table only if specific conditions are met. (SDMC §1510.0403)
- Access to coastal resources must be maintained.

Whitney Project

- As currently designed, the project does not provide required visibility triangles for the exit of the parking garage onto Calle Clara.
- The Whitney project includes a subterranean garage constructed below the ground water table, but has failed to provide adequate information:
 - Pumping
 - Condo ownership
 - Subsidence
- There is public parking along both sides of Calle Clara. The project would remove at least one public parking space and hinder public access to the coast.

Additional Variance Findings

- **SDMC § 126.0805(a)**
 - There are special circumstances or conditions applying to the land or premises for which the variance is sought that are peculiar to the land or premises and do not apply generally to the land or premises in the neighborhood, and these conditions have not resulted from any act of the applicant after the adoption of the applicable zone regulations.
- **SDMC § 126.0805(b)**
 - The circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premises and the variance granted by the City is the minimum variance that will permit the reasonable use of the land or premises.

The Required Additional Variance Findings Cannot be Made

Special Circumstances

- The “special circumstances” must be peculiar to the land or premises and do not apply generally to the land or premises in the neighborhood, and these conditions have not resulted from any act of the applicant after the adoption of the applicable zone regulations. (SDMC § 126.0805(a))
- A variance may be granted only when “special circumstances” applicable to the property exist, including size, shape, topography, location, or surroundings. (Gov. Code § 65906)

Whitney Project

- There are no “special circumstances” which justify granting a variance.
- All properties on that block are similarly situated on Calle Clara, a 30-foot street, and are not deprived of reasonable use.
- The proposed project is located on a standard, unconstrained lot.
 - Access to 3 streets
 - Flat
 - Rectangular
 - No grading
- The problem is that this standard La Jolla lot cannot support the massive development proposed.
- The applicant needs a variance because it cannot accommodate parking required for the intensity of use.

Final MND Findings

- **Public Resources Code § 21081(a)(1)**
 - Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
- **CEQA Guidelines § 15064**
 - An EIR is required whenever it can be fairly argued, on the basis of substantial evidence, that a project may have a significant impact.

The Required Final MND Findings Cannot Be Made

Public Resources Code § 21081(a)(1)

- Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
- The Final MND determined that the proposed project could have a significant environmental effect on archaeological and paleontological resources.

Whitney Project

- The keystone of the mitigation is the presence of a full-time monitor during construction/grading/excavation/trenching activities.
- The Final MND incorporates language that allows the removal of the monitor for unspecified safety concerns.
- The removal of the monitor renders the proposed mitigation ineffective.
- An EIR is required.

The Required Final MND Findings Cannot Be Made

CEQA Guidelines § 15064

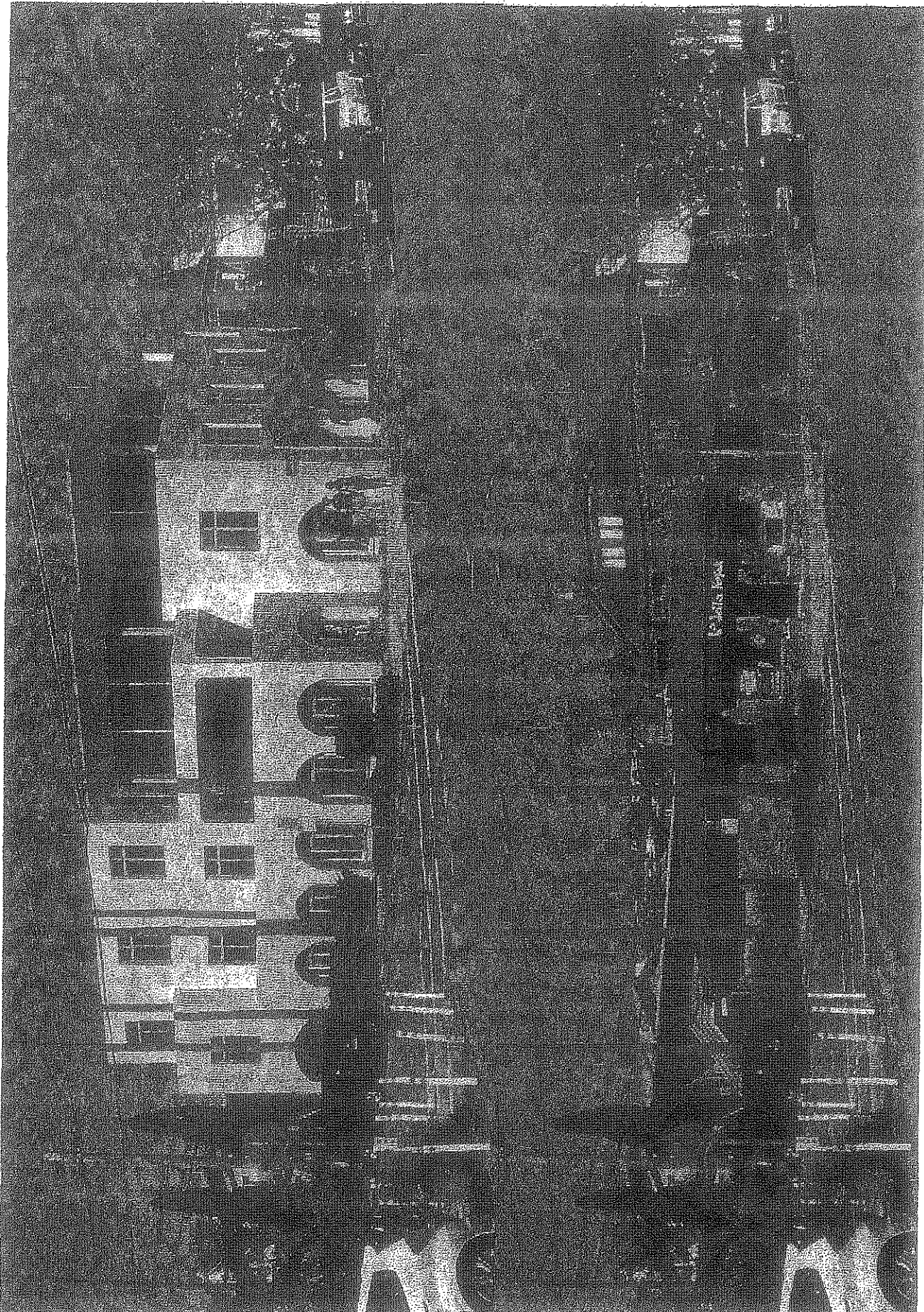
- An EIR is required whenever it can be fairly argued, on the basis of substantial evidence, that a project may have a significant impact.

Whitney Project

- Failed to consider potential impacts of a variance.
- Failed to consider substantial evidence indicating significant impacts on aesthetics and community character.
- Failed to consider the inconsistency of the project with the applicable land use plans.
- An EIR is required.

The Required Findings Cannot Be Made

- The project is detrimental to the public health, safety and welfare.
- The project is not consistent with the La Jolla Shores Community Plan and Local Coastal Program Land Use Plan.
- The project is not consistent with the Land Development Code.
- The Final MND does not reduce impacts to a level of insignificance.



7/28/2010, Hearing Officer
Public Hearing

La Jolla Shores Tomorrow Opposition to
Whitney Building