

**CITY OF MANHATTAN BEACH
[DRAFT] PLANNING COMMISSION
MINUTES OF REGULAR MEETING
NOVEMBER 10, 2010**

The Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 10th day of November, 2010, at the hour of 6:30 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

A. ROLL CALL

Present: Andreani, Lesser, Paralusz, Seville-Jones, Chairman Fasola
Absent: None
Staff Present: Laurie Jester, Acting Director of Community Development
Robert Wadden, Jr., City Attorney
Eric Haaland, Associate Planner
Esteban Danna, Assistant Planner
Recording Secretary, Sarah Boeschen

B. APPROVAL OF MINUTES – October 27, 2010

Commissioner Andreani requested that paragraph 9 on page 5 of the October 27 minutes be revised to read: “Commissioner Andreani indicated that the parapet as proposed by the applicant looks more attractive than the existing shed roof. She ~~said that~~ asked if the applicant’s suggested modifications to the front roofline are considered structural changes.”

Commissioner Andreani commented that her recollection that there was a consensus of the Commissioners to not hear issues that are not properly noticed, which was not reflected in the October 27 minutes.

Chairman Fasola indicated that he recalls that the Commission left the decision regarding hearing items that had not been properly noticed to the discretion of the Community Development Director.

Acting Director Jester said that it was discussed that the Commissioners had an agreement that they did not want to hear items that were not properly noticed, and that can be passed to the City Council in the staff report.

Commissioner Andreani indicated that her understanding is that the Commissioners felt it was not appropriate for an item to come before them that had not been properly noticed.

Chairman Fasola said that it was decided at the end of the discussion at the last hearing that the decision of whether an item should be brought forward at a meeting without proper notice should be left to the discretion of the Community Development Director.

The Commissioners agreed to add language at the end of the “Planning Commission Items” section of the minutes to read: “The Commissioners agreed that the decision of whether to bring an item before the Commissioners without proper notice be left to the discretion of the Community Development Director.”

Commissioner Seville-Jones requested that language be added after the third paragraph on page 4 of the minutes to state: “The Commissioners agreed to defer to the Chairperson’s judgment given the differing views of the Commissioners and staff.”

Action

A motion was MADE and SECONDED (Lesser/Paralusz) to **APPROVE** the minutes of October 28, 2010, as amended.

AYES: Andreani, Lesser, Paralusz, Seville-Jones, Chairman Fasola
NOES: None
ABSENT: None
ABSTAIN: None

C. AUDIENCE PARTICIPATION

D. BUSINESS ITEMS

E. PUBLIC HEARINGS

11/10/10-2 Consideration of a Coastal Development Permit and Minor Exception to Allow an Addition to an Existing Single Family Residence at 120 29th Place (Lobner)

Commissioner Lesser disclosed that he and his wife had consulted with the project architect in the past, but he has no financial interest in the project and feels he can consider the item fairly.

Associate Planner Haaland summarized the staff report. He indicated that the proposal is for a 250 square foot addition to an existing single family residence. He commented that the proposal is to retain a nonconforming rear portion of the building; to retain nonconforming parking with the addition of a new single car garage space; and to have a reduction in the required amount of open space by 30 square feet. He stated that an additional notice was provided after the previous hearing in order to clarify that the item would be considered at this meeting in addition to the previous one. He indicated that the proposed new construction is in compliance with all standards except for the Minor Exception. He commented that Minor Exceptions are intended to encourage retention of existing buildings rather than tearing them down and building new structures to the maximum size permitted.

Chairman Fasola opened the public hearing.

Jay Stevenson, the project architect, commented that his understanding is that there is a possibility that they would be able to revise the plans to be closer to their original proposal provided that they submit letters of approval from the adjacent residents.

Acting Director Jester said that staff is working with the architect to allow minor modifications to the front portion of the structure as long as the changes would not impact the neighbors and are not structural.

In response to a question from Commissioner Lesser, Acting Director Jester indicated that any changes that would be allowed by staff would be to the Minor Exception that is currently before the Commission. She pointed out that an amendment to the existing Variance is not being considered.

In response to a question from Commissioner Lesser, **Mr. Stevenson** said that his understanding is that the applicants do not intend to request an amendment to the Variance

provided that they are allowed some additional flexibility in working with staff with the Minor Exception.

In response to a question from Commissioner Paralusz, Acting Director Jester said that letters have been received from the adjacent neighbors on both sides of the subject property indicating that they do not object to the proposal. She indicated that staff has not received any other comments.

Commissioner Andreani asked if it would be appropriate to add a requirement under “Special Conditions” in the Resolution that the address be changed from 120 29th Place to 125 29th Street. She commented that the front of the home faces on 29th Street, and changing the address would make it consistent within the neighborhood.

Associate Planner Haaland pointed out that there is a possibility of changing the address during plan check before the building permit is issued. He said that an address change is typically not included as part of a planning approval such as this one, as it is typically dependent upon the Fire and Police Departments.

Chairman Fasola closed the public hearing.

Commission Discussion

Commissioner Seville-Jones indicated that the purpose of continuing the item was to allow any neighbors that wanted an opportunity to address the Commission since the required noticing period had not been met at the last hearing. She indicated that the project is nicely designed and is only in front of the Commission because it is located in the Coastal Zone. She said that she feels the plans are consistent with the findings for allowing the Minor Exception.

Commissioner Andreani said that the project is a nice improvement to the neighborhood. She commented that adding a parking space as proposed would be a benefit.

Commissioner Lesser said that he supports the project as presented. He stated that the project could have been designed to be larger, and he feels the necessary findings can be met.

Commissioner Paralusz stated that she also supports the project. She thanked the architect for coming before the Commission at both hearings and working with staff.

Chairman Fasola said that he feels it is good project and that the required findings can be met. He commented that any small details that the architect and property owners may wish to add can be addressed with staff.

Action

A motion was MADE and SECONDED (Andreani/Paralusz) to **APPROVE** Consideration of a Coastal Development Permit and Minor Exception to Allow an Addition to an Existing Single Family Residence at 120 29th Place

AYES: Andreani, Lesser, Paralusz, Seville-Jones, Chairman Fasola
NOES: None.
ABSENT: None
ABSTAIN: None

Acting Manager Jester said that the item will be placed on the agenda for the City Council under receive and file items for the City Council meeting of December 7, 2010.

11/10/10-3 Consideration of Two Appeals of the Director of Community Development's Decision to Approve a Remodel Project for 3404 The Strand/3405 Ocean Drive

Acting Director Jester said that a petition was received from the property owner which will be provided to the Commission. She commented that staff has also received the structural plans for the project. She indicated that any decision of the Community Development Director is able to be appealed. She said that in this case adjacent neighbors were concerned that the amount of work that was occurring was above the scope of the demolition permit that was approved. She indicated that a stop work order was placed on the project. She indicated that staff worked closely with the building official, and it was determined that the remodel did not exceed 50 percent valuation of the existing development. She commented that there are only three separate valuations that may be placed on construction; \$160.00 per square foot for new construction; \$140.00 per square foot for major remodels of existing homes; and \$80.00 per square foot for standard remodels. She said that staff feels the proposal is a typical standard remodel. She indicated that staff felt it was important to allow the neighbors to raise their concerns to the Commission.

Assistant Planner Danna provided a power point presentation, summarizing the staff report. He said that a building permit application was submitted for the subject remodel in January of 2010, and staff reviewed the plans and issued corrections in February. He indicated that a demolition permit was issued in March. He stated that neighboring residents later contacted the City and raised concerns that the demolition went beyond the scope of the approved permit. He said that a stop work order was placed on the property in June. He indicated that the applicant then withdrew the building permit application and resubmitted the building plans to reflect the new scope of work for the project. He stated that staff issued a courtesy notice of the decision to approve the revised project, and subsequently two appeals were received from neighboring residents. He pointed out that the new permit does not exceed the 50 percent building valuation. He commented that the original permit for the existing structures was issued in 1973, 37 years ago. He indicated that The Strand unit has legal nonconformities with the south side setback, open space, and the deck projection. He said that the Ocean Drive unit has legal nonconformities with the height; the number of stories; the south, north, and east side setbacks; and the amount of open space. He commented that square footage is not being added as part of the remodel, and the construction does not exceed 50 percent valuation. He pointed out that the method of determining height measurement was different in 1973 than it is currently.

Assistant Planner Dana said that Manhattan Beach Municipal Code Section 10.68.030(e) provides an exception for the nonconforming height of structures regardless of the building valuation if the reason for the excess height is due to the method under which the structure was measured. He indicated that the proposed project is not increasing the discrepancy between the existing conditions and the current Code standards and is consistent with the purpose and intent of the nonconforming portion of the Code. He stated that the proposed remodel is also not increasing the degree of nonconformities, and no square footage is proposed to be added. He indicated that the first appeal that was received challenged the legality of the 1973 permit and staff's valuation determination. He stated that the second appeal challenged the legality of the original permit as well as the need for a Minor Exception and staff's authority and jurisdiction.

He stated that the statute of limitations for filing an appeal of the original permit issued in 1973 has expired. He indicated that the appellants argue that the plans show that there was an issue

with the height and side yard; however, those claims are based on conceptual plans submitted in 1980 for an extension of the balcony. He indicated that the original 1973 plans have no handwritten notes regarding issues with the height or setbacks. He commented that the project valuation is determined by the plan check engineer based on the scope of work proposed. He indicated that a valuation of \$80.00 per square foot is used for standard remodels where the majority of the existing structure is remaining. He indicated that a valuation of \$140.00 per square foot is used for a major remodel where the majority of the existing structure is being removed and rebuilt. He commented that new construction is given a valuation of \$160.00 per square foot. He indicated that work that is considered as a standard remodel include interior and exterior renovations; electrical; plumbing; mechanical; structural upgrades and alterations; reroofing; changing floor plans; changing windows; and interior and exterior finishes. He commented that major remodels are near complete demolition of an existing structure and include removal of the roof, floor and wall framing. He stated that the plan check engineer and staff felt that the scope of the project is typical for a standard remodel. He showed photographs of examples of construction with the different valuations. He also showed photographs of the construction at the subject site.

Assistant Planner Danna stated that the Community Development Department has the authority and jurisdiction to issue building permits for new construction, additions to existing structures, and remodels to existing structures if such projects meet all necessary Municipal Code requirements. He commented that the Community Development Department does not have legal authority to deny a building permit for the subject project since it is not a discretionary application; it does not exceed the 50 percent building valuation; and it meets all necessary Code requirements. He indicated that the City does not have the authority to require conformance with the current zoning standards for the nonconforming portions of the structures that are not being altered, as the project does not exceed 50 percent in building valuation. He indicated that the appeal period for the original 1973 permit has expired; the valuation is consistent with similar remodel projects throughout the City; the project does not exceed 50 percent in building valuation; a Minor Exception is not applicable and not required; the Community Development Director has the authority to issue a building permit; and the project is within the scope of the Manhattan Beach Municipal Code.

In response to a question from Commissioner Andreani, Assistant Planner Danna said that the property is two separate units and is permitted as a duplex. He said that a condominium would require a review process, and the subject site would most likely not qualify for a condominium project.

In response to a question from Commissioner Andreani, Assistant Planner Danna indicated that there are a total of six garage spaces for both structures.

In response to a question from Commissioner Lesser, Assistant Planner Danna indicated that the statute of limitations for appealing the original permit issued in 1973 has long since expired, and the Commission does not have jurisdiction to review the height as was granted pursuant to the 1973 permit.

In response to a question from Commissioner Lesser, City Attorney Robert Wadden said that the statute of limitation would typically last 90 days after the permit becomes final. He commented that the appeal period would be 6 months if the challenge were based on CEQA requirements. He commented that there would be exceptions for allowing an appeal after the statute of limitations had passed if it were demonstrated that there was a deliberate attempt to conceal problems with the building permit. He said that there would need to be substantial facts to indicate that there was a deliberate attempt to conceal that the building permit was not

granted properly. He said that he has never seen a case where an appeal of a permit is granted after such a long time period has passed since the expiration of the statute of limitations.

In response to a question from Commissioner Lesser, Assistant Planner Danna said that there is not written evidence of the methodology used in determining height for this particular project. He indicated that the maximum height limit in 1973 was 30 feet.

In response to a question from Commissioner Seville-Jones, Assistant Planner Danna indicated that both structures would be considered as not exceeding the 50 percent valuation because they both include 100 percent remodels with no addition of square feet.

In response to a question from Chairman Fasola, Assistant Planner Danna said that the project would still be valued at \$80.00 per square foot if the stucco, the roofing tiles and more interior walls were removed. He indicated that the determination depends on the particular project and the work that is being done. He said that projects that are valued at \$140 per square foot are basically structures that are being rebuilt with only the slab and a couple of walls from the original building remaining.

In response to a question from Commissioner Fasola, Assistant Planner Danna said that the new 50 percent valuation was adopted on May 1, 2010, and the demolition permit for the project was issued in March.

Public Comments

David Rickles, appellant and a resident of the 3400 block of Ocean Drive, said that the height of the existing Ocean Drive structure is well over the current height limit. He commented that the neighbors thought that the height of the structure would be lowered to meet current standards when a major remodel was done. He indicated that they were disappointed to hear that the property owners were planning to do an extensive remodel without changing the height of the Ocean Drive structure. He said that they were told that the nonconforming height of the rear structure was grandfathered in under Manhattan Beach planning guidelines. He stated, however, that his understanding of the Code language is that nonconforming height of a legal nonconforming structure must be brought into compliance with current standards as part of a major remodel. He stated that the Ordinances were written so that major remodels would not lock in highly significant violations of the current standards to the detriment of future generations. He commented that it was clear when the property owner extensively demolished the interior of both buildings that the project would be considered a major remodel. He indicated that another neighbor, **Thornton Stone**, did a calculation and determined that the height of the Ocean Drive structure was taller than the maximum permitted in 1973.

Dr. Rickles indicated that their appeal is questioning the appropriateness of the project being exempted under Manhattan Beach Municipal Code Section 10.68.030, as the exception is intended for an originally conforming structure. He stated that his cousin, **Rena Rickles**, confirmed that his reading of the Code language is correct. He indicated that **Ms. Rickles** sent a letter to the City to raise their concerns and received no response. He said that a building permit was then issued. He indicated that they then appealed the decision of the Planning Department to issue the permit. He stated that they would like an explanation of how staff's decision can be justified which seems to conflict with the intent of public policy. He said that he feels allowing the permit would set a precedent for interpreting the 50 percent rule which would allow nonconforming bulky structures to remain.

Commissioner Paralusz pointed out that the City is interpreting a major remodel as demolition of basically the entire structure to the slab. She stated that the subject structures are not being

demolished down to the slab, and there is not any increase in the amount of square footage. She asked the reasoning for **Dr. Rickles** in considering the project a major rather than a standard remodel given staff's distinction.

Dr. Rickles said that other examples of projects where staff has valued fairly extensive renovations as standard remodels do not include major objectionable nonconforming features that are being locked in for future generations.

Commissioner Seville-Jones commented that the property owners bought the home with an expectation that it was built to Code, and she asked if it is fair to now require them to change the height.

Dr. Rickles said that the subject structure stands out as being much taller than the others in the area. He indicated that the height of the subject structure has an impact on all of the surrounding neighbors and would continue to have an impact for years into the future if it is allowed to remain. He commented that his understanding is that structures are to be brought into compliance as they are modernized.

Commissioner Seville-Jones pointed out that much of the existing structure is being retained. She said that the question is how long the nonconformities should be allowed to exist.

Dr. Rickles commented that the structure is basically being completely remodeled.

Thornton Stone, appellant and a resident of the 100 block of 34th Place, said that the Ocean Drive structure was never conforming to the maximum permitted height in 1973, and it is difficult to accept that the discrepancy was not realized originally.

Chairman Fasola pointed out that it has been stated by the City Attorney that the statute of limitations to appeal the height permitted for the original structure has long since passed.

Mr. Stone stated that it clearly could not have not been missed that the height was not in compliance at the time the original Certificate of Occupancy was signed. He indicated that signing off on the height of the structure as it exists is not a small error. He commented that no one would ask the property owners to change the height if nothing were being done to the home; however, the reason the height is being questioned now is because of the proposed remodel. He indicated that now is the time to correct the height of the building because of the remodel. He stated that legal nonconformities are features that conformed to the Code at the time they were built and the Code requirements were later changed. He stated that it is questionable to apply the 50 percent valuation rule to the subject structure when the height was not compliant at the time it was built. He commented that a portion of the roof and the stairwell are proposed to be replaced which would definitely be considered major remodeling. He said that classifying all of the construction as either a standard or major remodel does not allow for consideration that different portions of the project may be classified differently. He stated that the guidelines do not specify that major remodels must be considered as new construction. He commented that adding a valuation of any portion of the remodel at \$140.00 per square foot would put it over the 50 percent threshold. He said that it appears the plans were redone under the new standards intentionally to allow it to remain under the 50 percent threshold.

Commissioner Paralusz asked as to the reason the height is being challenged now with the subject remodel and was not challenged when the balcony was added in 1981.

Mr. Stone commented that the residents rely on the City to follow the Code requirements and expect that the calculations for the height of structures to be done correctly. He indicated that it was not until he checked the Code language and the measurement of height that it became apparent to him the Code requirements were not met. He said that the inspector and staff at the time the structure was built should have been aware that the Code requirements were not being met. He stated that he feels the error should not be compounded by allowing the structure to remain at its current height when it is basically being rebuilt. He indicated that his opinion is that the entire project is a major rather than standard remodel.

Rena Rickles, representing David and Bonnie Rickles, said that they are not questioning whether the original height was permitted but rather are challenging the application of Code Section 10.68.030 that the nonconforming height can remain with the remodel since the original methodology for determining height was not followed. She commented that she had called the City Attorney regarding their concerns and received no response. She indicated that she had also called staff prior to this hearing and received no response. She commented that the guidelines for applying a valuation of \$80.00 per square foot for standard remodels apply to changing rooms within the structure. She indicated that a valuation of \$140.00 for a major remodel applies when there is a new floor plan, drywall, and stucco replacement. She pointed out that with the subject remodel there are major holes in the side of the building in addition to the replacement of windows and doors. She commented that the remodeling includes as much as three stories of the wall being torn out on the side of the structure. She said that there is a court case against the City of Manhattan Beach in 1994 regarding the application of the word "value" by staff. She indicated that a word must be given the meaning by the City that is common to the community unless there is language in the Ordinance that it be defined differently. She indicated that the valuation of the remodel must be applied in a manner in which everyone agrees and is relying on it. She said that it appears that there was an intention that the remodel fit under the 50 percent valuation with the new standards. She indicated that it was clear before the new standards were adopted in May of 2010 that if a remodel went beyond a certain point that the existing nonconformities would need to be brought into compliance with the current standards.

Ms. Rickles indicated that if staff's decision is permitted to stand, any existing large home could be completely gutted and rebuilt and remain for an additional 40 years. She commented that the original proposal was for demolition of 29 percent of the existing structure. She indicated that the applicants went beyond demolition of 29 percent of the structure to gut the entire building and would have continued if a complaint was not made by one of the neighboring residents. She said that it should have been reflected in their original application in 2009 if the property owners were aware that their plans would involve demolition of more than 29 percent of the existing structure. She said it appears that the property owners were attempting to go beyond the original approval that allowed them to remain within the 50 percent valuation. She indicated that the 2009 structural report does not show the major reconstruction that was being done to the site. She said that the property owners should have come to the City for an amendment to their original permit when they realized the scope of work would involve more than demolishing 29 percent of the existing structure, and the scope of work was not brought to the attention of the City until a complaint was raised by a neighboring resident.

In response to a question from Commissioner Seville-Jones, **Ms. Rickles** said that before the new building valuation standards were applied in May, the scope of work of the project would not have allowed it to remain under the 50 percent valuation.

In response to a question from Commissioner Paralusz, **Ms. Rickles** said the case she referred to against the City of Manhattan Beach is *Manhattan Sepulveda Limited v. The City of Manhattan Beach*, Cal.App.4th 865.

Acting Director Jester indicated that she called **Ms. Rickles** several weeks ago and received a second call from **Ms. Rickles** shortly before the hearing but was in meetings and unable to return her call. She pointed out that the function of the City Attorney is to support staff and he does not return phone calls from the general public. She pointed out that the language of the Building Code specifies that final building permit valuation shall be set by the building official.

Albro Lundy, representing the property owners, the Nelsons, said that the City's building official makes the determination regarding the 50 percent valuation for projects. He stated that the property owners did not intend to rebuild the structure to the maximum allowed but rather only intended to upgrade the existing home. He stated that they feel the project is conforming as indicated by staff.

Angela Nelson, the owner of the subject property, said that their intent was to preserve the existing structure in renovating the home for their family. She indicated that they never had the intention of tearing the existing structure down and building a home to the maximum allowed. She said that their intent was to renovate the existing home without altering the height. She stated that they found many issues once the demolition began which included toxic fiberglass in both structures, water damage that resulted in mold and mildew, plumbing clogs in The Strand unit, and safety concerns with the north side exterior staircase on the Ocean Drive unit. She said that everything has been done to Code. She stated that the delays to the project have caused them financial hardship. She commented that she is still paying taxes, insurance and the mortgage on the property while the construction is halted. She pointed out that staff is not biased and understands the laws and the Code. She requested that the Commission uphold the determination of staff and deny the appeal.

Chairman Fasola opened the public hearing.

Jan Rhees, a resident of the 1800 block of North Poinsettia, said that she is not sure anyone would have bought the property if they knew that there was such an issue regarding the height of the structure. She pointed out that problems with structures do surface once demolition begins during a remodel. She said that only a homeowner should make the determination as to whether they wish to remodel an existing home or build a new structure. She said that people would be scared to buy a property if they are uncertain of their ability to remodel. She commented that it is completely inappropriate for neighboring residents to persuade or threaten a property owner into rebuilding or significantly altering their home rather than remodeling. She indicated that the property owners purchased the home with the intent of remodeling it, and it is misplaced for the adjacent property owners to voice their long standing concerns regarding the height on the property owners. She indicated that the property owners should be entitled to the enjoyment of their home, and they have already had to wait six months on the project while construction has been halted.

Kathy Straus, a resident of the 100 block of 35th Street, said that it is obvious that the home is higher than other properties in the area. She said that the neighboring residents were glad that the structures were going to be remodeled because they thought the height would be brought into conformance with current standards. She said that the structures are currently larger than is permitted. She stated that the remodeling of the property is a good opportunity for the property to be brought into compliance with current Code requirements.

Don Kinsey, a resident of the 3400 block of The Strand, said that the property owners are spending the money to remodel an old house, which is a benefit to the neighborhood. He commented that they are not moving any exterior walls or changing the height, and any remodel would involve upgrading the electrical wiring and plumbing. He said that he would accept staff's recommendations. He pointed out that building a new home would result in a massive structure and would take three years to complete. He stated that most of the people that are impacted most likely bought after 1973 and were aware of the height of the existing structures at the time. He commented that the only reason the neighbors are objecting to the proposal is to enhance their views. He said that the property owners have lived in the South Bay for over 20 years, are community oriented, and have worked hard to be able to purchase their home.

J.D. Roth said that he and Mr. Nelson had dreams of one day living in homes near each other with their families on The Strand, and they have both worked very hard for many years to make it possible. He commented that it has been very sad to watch the Nelsons lose faith in their neighbors over the last six months. He stated that nothing has been said about the height of the subject structure in 22 years until the property was sold and a remodel was started by the new owners. He commented that the neighboring property owners should have purchased the property when it was for sale so that they could change it if they had such a great concern with the height. He indicated that the property owners have the right to remodel the existing structure.

Jerry Saunders, a resident of the 100 block of 35th Street, said that a major remodel would be a good opportunity to bring the height into compliance if the building did exceed the permitted height in 1973. He suggested that approval should be given to allow the structure to be at the maximum height limit that was permitted in 1973.

Wayne Partridge, a resident of the 3500 block of The Strand, stated that the neighbors have lived next to the house for many years. He said that staff has done an excellent job of reviewing the permit that was issued and the appeals that were submitted. He stated that it appears to him that the remodel meets the conditions of the Code. He said that there is no proof that the structure violated the 1973 height limit, which should be irrelevant in any event.

Tara Joyce, a resident of Redondo Beach, said that she is concerned that they could be delayed in remodeling if they buy a property in Manhattan Beach and there are complaints raised by the neighbors. She said that it does not seem fair that the property owners can be delayed for months because of an appeal when all of the permits have been approved.

Robert Schumann, the owner of 3600 The Strand, said that the appeal is simply about the views of the neighbors. He said that many of the neighbors bought their homes knowing the height of the subject property, which was legal and conforming before the new standards made it legal nonconforming. He pointed out that the Mansionization Committee felt it was important to preserve legal nonconformities in order to encourage remodeling. He said that the type of nonconformities were not differentiated as to height, setbacks or parking. He stated that the property owners should have the protection of being able to maintain their legal nonconforming height in remodeling their property. He commented that he does not feel there is a legal or factual basis by which the decision of staff can be challenged. He commented that his impression is that the adjacent homeowners who made the appeals were disappointed when they learned that the existing structures would be remodeled rather than torn down and they decided to appeal staff's decision to grant the permit as a result. He said that he would urge the Commission to deny the appeal and allow the property owners to move forward with their remodel.

Michael Devine, a resident of the 3400 block of The Strand, said that it was first indicated to them that the project would be a very minor remodel of approximately 29 percent of the existing structure. He indicated that after the demolition began, pieces of glass, steel and wood fell into his yard. He said that he then looked at the site and realized that the entire inside of the structure was being torn out, which would seem to be considered a major remodel. He indicated that he did not previously realize that a house could basically be rebuilt from the inside and still remain under the 50 percent valuation.

Jackie May, a resident of the 200 block of 10th Street, asked if the real estate agent is required to make a potential buyer aware of any problems if something is nonconforming or not legal before selling a home. She commented that it appears tearing out all of the electrical and plumbing would result in more than 50 percent of the cost of the remodel.

Dennis Harris, a resident of the 3200 block of The Strand, said that the homeowners should be allowed to remodel up to the 50 percent valuation.

Lonnie Mason, a resident of the 2800 block of The Strand, commented that the subject appeal makes her very nervous about renovating the rear structure on their property. She said that she hopes that the property owners will feel welcome in the neighborhood regardless of the outcome of the appeal.

Viet Ngo, a Manhattan Beach resident and United States citizen, suggested that the Commissioners consider the precedent as indicated by the City Attorney. He pointed out that the court sided with the property owner and against the City in the case of Manhattan Sepulveda Limited v. The City of Manhattan Beach. He requested that the City Attorney provide his opinion on that case to the Commission and the City Council. He said that Commission should protect the property owners, who should not have to suffer financially and emotionally. He requested that the Commission accommodate the property owner and allow the remodel. He commented that the property owners have been suffering and should not have to face any further losses.

Michelle Belitz, a resident of the 600 block of 15th Street, asked why the laws were not changed before the property owners invested their money in the property.

Ms. Rickles said that anyone looking at purchasing the subject home would be on notice that the height is not in conformance with the adjacent properties. She commented that the applicants would still be able to have a wonderful home if the appeal is granted. She stated that the existing structure is already exceeding the maximum permitted size, which is contrary to the goal of Mansionization to preserve smaller existing homes. She commented that it was known that the nonconformities would need to be brought into compliance if a remodel exceeded the 50 percent valuation. She indicated that the contractor for the project did not inform the City that they were going to exceed the 50 percent valuation, although it is clear that it was the intent. She said that the neighbors did not raise their concerns previously because they realized that they did not have the right to request that the nonconformities be brought into compliance until the 50 percent valuation was being exceeded with the remodel. She indicated that the project does classify as a major remodel under the new guidelines that are in place.

Todd Nelson, the owner of the subject property, said that he wants to be able to complete the project as fast and as nice as possible. He said that he loves being in the community and wants to be a good neighbor.

In response to a question from Commissioner Paralusz, City Attorney Wadden commented that the case law in *Manhattan Sepulveda Limited v. The City of Manhattan Beach* does not apply in this case, as there is not an issue with having a plain meaning in interpreting a statute.

In response to a question from Commissioner Seville-Jones, City Attorney Wadden said that a case that would more closely apply to the subject instance is *Anderson v. the City of La Mesa*. He indicated that the Court decided in that case that a building permit issued by the city was still in effect after a Certificate of Occupancy was denied when the home was built with an insufficient setback that was approved in error by the city.

In response to a question from Commissioner Lesser, City Attorney Wadden indicated that the Building Official has the authority to place a valuation on a project as a standard or major remodel. He indicated that the methodology used in determining the valuation is standardized and consistent for all projects.

In response to a question from Commissioner Seville-Jones, Assistant Planner Danna said that staff has required that the access staircase to the third level for the Ocean Drive structure be removed. He indicated that constructing a new staircase to access the first level would still be considered under the \$80.00 per square foot valuation because it would be replacing only half of the existing staircase. He said that the principal plan check engineer and the senior building inspector found no reason to suggest that the project should be valued as a major remodel.

Commissioner Andreani said that she is concerned that the scope of the project was increased and yet the valuation remained under 50 percent.

Assistant Planner Danna said that the application was originally submitted using the old method of determining valuation. He pointed out that the applicant has the right to withdraw their application and submit a new application at any time. He said that the scope of the work had changed sufficiently for the Building Department to require that the new valuation standards be applied even if the original application had not been withdrawn. He indicated that the determination was made that the revised proposal still remained under 50 percent valuation.

In response to a question from Commissioner Paralusz, Acting Director Jester said that she made the decision to change the standards for determining valuation, as the existing standards were quite old and needed updating. She commented that they looked at the policies of many other local cities in revising the standards. She said that the valuation has an effect on the fees that are collected by the City. She pointed out that determining valuation is an administrative decision and is decided by the Building Official.

Chairman Fasola closed the public hearing.

At 9:55, a 10 minute recess was taken.

Commission Discussion

Commissioner Paralusz said that she does not support the appeal. She indicated that the property owners and staff have been acting in conformance with the Building Code and Ordinances. She said that the statute of limitations has run on the 1973 property. She said that the Commission does not have the authority to change the approval that was done in 1973. She indicated that she is convinced the remodel does not exceed the 50 percent valuation, is not increasing the existing nonconformity and the remodeling is consistent with the goals of mansionization. She indicated that the method of determining valuation for the subject project as a standard remodel is consistent with other projects and is fair. She said that the City did

address the neighbors' concerns and stopped work on the project when the complaint was raised. She said that she feels **Mr. Schumann** is correct that the neighbors had an expectation when the property were purchased that it would be torn down and rebuilt to the current standards and were disappointed when the property owners chose instead to remodel. However, she indicated that the property owners are acting within their rights, and the neighbors do not have the right to dictate what is done with the property.

Commissioner Seville-Jones pointed out that the goal of preserving existing homes does also sometimes apply to larger existing homes and not just small homes. She commented that larger homes are also a part of the history of the community. She said that the property owners are allowed to remodel their home under the Mansionization Ordinance. She stated that the property owners do have property rights and have relied on the City's laws. She indicated that she does not think that someone would look at their house and think they should need to investigate the reason why it was built higher than others in the area. She said that it is not the duty of the real estate agent to disclose nonconformities unless the prior property owner made them aware of issues with the home. She indicated that there must be confidence in the rules that are being applied within the City or otherwise property values will go down. She commented that the appeal period has ended regarding the 1973 height. She indicated that she does not agree with the appellant's interpretation that Section 10.68.030 should not apply to the subject project. The project is consistent with the Code requirements, it is not a grey area, and the valuation clearly does not exceed 50% compared with similar projects. She said that she hopes that the appellants will factor in whether or not they feel they have had a fair hearing before the Commission before pursuing the issue further. She indicated that while the issues that have been raised by the appellants are interesting, she does not feel they defeat the plain meaning of the language in the Code. She said that any consideration of changing the policy regarding preserving larger homes is for a separate discussion and is not at issue for this subject application.

Commissioner Andreani commented that staff's consistency in determining the valuation of projects has been established. She indicated that projects can not be stopped simply because neighbors do not like them, and remodeling of existing structures should be encouraged. She indicated there is no increase in discrepancy with the non-conformities. She commented that the appellants have the option of appealing the decision of the Commission to the City Council if they feel that the Commissioners are incorrect in their comments. She said that it is clear that the Code was fairly interpreted by staff.

Commissioner Lesser said that he can uphold the decision of the Community Development Director. He indicated that the subject structure is large and the remodeling does include a great deal of renovation. Indicated, however, that the Community Development Director has followed the intent of the Code language. He stated that the project meets the larger objective of preserving existing homes under mansionization regulations. He said that property owners should be encouraged to renovate existing properties, and granting the appeal would undermine that policy. He said that the property owners have followed the rules and have worked with staff. He commented that he does not believe there has been any abuse of discretion in staff's interpretation of the law and the decision is fair. He indicated that there is no evidence that would warrant the statute of limitations being tolled in this case. He said that he hopes the appellants will feel they have had a fair hearing of their arguments and will not pursue the issue further.

Chairman Fasola commented that he does not feel this is so clear cut. The statute of limitations has long passed to appeal the approval of the height of the existing structure. However, he indicated that he does have a concern based on the building valuation description in Exhibit F; the project seems to fall under the "major remodel" category. Also, that the project would be

over 50 percent under the previous method of determining valuation when it was originally approved.

Commissioner Paralusz pointed out that the property owners withdrew their original permit that was submitted under the prior method for determining valuation, which they had a right to do. She said that the rules that apply are under the new building valuation guidelines that were in effect when the new application was submitted.

Commissioner Seville-Jones pointed out that the new method of valuation would apply even if the original application were not withdrawn because of the substantial revisions that were made to the plans.

Commissioner Lesser said that staff changed the method for determining valuations for reasons that were completely separate from this application.

Commissioner Andreani commented that the new method for determining valuation did apply to the revised plans for the more extensive remodel.

Action

A motion was MADE and SECONDED (Lesser/Andreani) to Deny Two Appeals of the Acting Director of Community Development's Decision to Approve a Remodel Project for 3404 The Strand/3405 Ocean Drive

AYES: Andreani, Lesser, Paralusz, Seville-Jones, Chairman Fasola
NOES: None
ABSENT: None
ABSTAIN: None

Acting Director Jester indicated that the item will be placed on the City Council's Consent Calendar for their meeting of December 7, 2010.

11/10/10-4 Consideration of a Coastal Development Permit to Allow Reconstruction of Selected Segments of Concrete and Asphalt Bike Trail on Los Angeles County Beach Property Along the Entire Length of the Manhattan Beach Coastline

Associate Planner Haaland summarized the staff report. He stated that the proposal is for a County project to rehabilitate 1,000 linear feet of existing beach bike path within the City as part of an overall 7-plus mile upgrade. He said that the project would involve detours on the bike path for 8 segments within the City. He commented that the largest detour proposed is along Vista Del Mar from El Segundo through the El Porto parking lot. He indicated that staff is suggesting that bicycle traffic be routed onto Ocean Drive for other portions of the upgrading rather than detouring bicycles onto The Strand. He indicated that there would be limitations of access and use of the bike path during the construction period but the project's intent is to improve long term access and safety. He stated that staff is recommending approval with conditions that a final bicycle detour plan be prepared for review by the City Engineer and Planning staff; that there be no detours on the bicycle path during the summer or on weekends; that no detours be done through The Strand or beach stairs; and that a single detour be done if more than one segment is being done at one time rather than having separate detours.

Commissioner Lesser asked regarding the feasibility of not allowing detours on weekends when significant sections of pavement would be torn up as part of the renovations.

Associate Planner Haaland said that Community Development staff would not typically be able to inspect and enforce that the bicycle paths would remain open and usable on the weekends during construction. He commented, however, that the City Engineer feels that it would be feasible to avoid having detours on weekends with fast setting concrete.

Commissioner Lesser commented that he would like further details regarding how the bicycle detour would be done along Vista Del Mar.

In response to a question from Commissioner Lesser, Associate Planner Haaland indicated that the properties along The Strand have been notified of this hearing. He indicated that staff does not yet have details regarding the notice that would be provided to bicyclists of the detours. He commented that it is possible to add language regarding the notice that is provided to the bicyclists.

Acting Director Jester commented that staff has also worked closely with the South Bay Bicycle Coalition and the Bicycle Master Plan Group. She indicated that those groups can provide emails to their members regarding the detours.

Commissioner Andreani said that she does have a major concern with rerouting bicyclists along 45th Street and onto Vista Del Mar in the City of El Segundo. She commented that Vista Del Mar becomes a 45 mile per hour driving zone and there is no bicycle lane or shoulder. She asked if it would be appropriate to discuss the use of the bicycle path for bicyclists only.

Chairman Fasola commented that the issue of the bicycle path being used by bicyclists only is not part of the present application.

Chairman Fasola commented that he would prefer that the renovations to all of the sections be done at one time. He pointed out that repairing one section at a time would result in the construction taking much longer to complete and would disrupt the bicycle path for a longer period.

Steve Malesky, representing the County, said that the County is able to comply with any conditions that are imposed for the project. He indicated that no rights-of-way would be altered as a result of the project, and the path will not be changed apart from being upgraded. He commented that it is possible that an unforeseen circumstance could result in the use of the bike path being disrupted during weekends. He indicated that the plan, however, would be for construction to occur on Monday and Tuesdays with the concrete then curing for an additional three days. He said that the sections to be renovated were chosen according to the constraints of the County's budget. He indicated that the project would require approximately ten days of work if they work as rapidly as possible and are permitted to detour bicycle traffic on weekends. He said that the work would take approximately six to eight weeks if the work is segmented. He stated that the work would be completed more quickly if the condition were removed restricting detours on weekends.

In response to a question from Commissioner Seville-Jones, **Mr. Malesky** said that prohibiting detours on weekends would increase the cost by less than double, and the project would take 6-8 weeks to complete. If work is allowed on two consecutive weekends, the project could be completed in about two weeks.

Chairman Fasola said that he would be in favor of the improvements being done as quickly as possible.

Chairman Fasola opened the public hearing.

There being no one in the audience wishing to speak on the issue, Chairman Fasola closed the public hearing.

Commission Discussion

In response to a question from Commissioner Lesser, Associate Planner Haaland said that the City Engineer did recommend prohibiting detours on the weekends. He said that the City Engineer felt that the increased use of the bicycle path makes it worthwhile to avoid having detours on weekends.

Commissioner Lesser said that he is sensitive that people want to be able to use the bicycle path on weekends.

Commissioner Paralusz said that she feels it is important that the Coastal Development Permit be approved in terms of providing safety. She commented that she is sensitive to having the bike path remain open on weekends but is also sensitive that the cost of the project would be increased if no detours are permitted on weekends. She said that having bicycle traffic on Vista Del Mar would impact traffic. She indicated, however, that motorists would be noticed about the additional bicycle traffic along the street during construction.

Commissioner Andreani stated that she would agree with recommending that the project be done as quickly as possible and that work be permitted to occur on weekends. She commented that she is sensitive to disruption of the bicycle path; however, she feels that having the work completed as quickly as possible is the best option. She said that she would recommend that a lane be devoted to bicycles along Vista Del Mar in El Segundo during construction. She pointed out that closing only a portion of the lane would make it more dangerous for bicyclists.

Commissioner Seville-Jones commented that she is struggling as to whether she would support allowing detours of the bicycle path on weekends.

Chairman Fasola said that it would be preferable to close the bike path and have all of the construction done at one time rather than for the sections to be done separately with each requiring a detour.

Commissioner Paralusz pointed out that compressing the schedule would also result in less of a chance that the project would be delayed due to weather.

Commissioner Lesser said that he has a concern with changing the language of Special Condition 10 on page 3 of the draft Resolution without the Traffic Engineer having an opportunity to provide further input.

Chairman Fasola said that he has considered the input from staff and the County and is prepared to vote on the Resolution.

Commissioner Seville-Jones requested that the County avoid closing a lane of traffic on Vista Del Mar during the morning commuting hours.

In response to a question from Commissioner Seville-Jones, Associate Planner Haaland said that an option would be to allow the County to have the bicycle path closed for two weekends provided that extensive prior notice is given of the closure.

Commissioner Lesser said that he would also suggest that multiple signs be posted along the bike path regarding the closures.

Acting Director Jester said that signs could be posted along The Strand prior to the construction to provide bicyclists with advance notice of the days the path would be closed.

Chairman Fasola suggested that the language of Special Condition 10 be revised to delete the portion after the first sentence and to instead simply include language stating that construction shall be prohibited during the summer months.

Commissioner Paralusz indicated that she would not support allowing bicyclists to use the walking path along The Strand as a detour and would not support deleting the second sentence of Special Condition 10.

Mr. Malesky pointed out that the plan would be for bicyclists to be instructed to walk rather than ride their bicycles on the detours along The Strand.

Commissioner Paralusz commented that she still would not support allowing people walk their bicycles along The Strand as a detour, as it would significantly increase the amount of pedestrian traffic along The Strand.

Commissioner Lesser pointed out that his recollection is that bicycle traffic was detoured onto Ocean Drive while the sewer project was being completed.

Commissioner Seville-Jones said that people may still be tempted to ride even if they are instructed to walk their bikes along The Strand. She said that she agrees with Commissioner Paralusz that it would not be appropriate to detour bicycles along The Strand.

The Commissioners agreed to revise the language of the third sentence of Special Condition 10 to generally indicate that obstructions/detours from normal bikepath operations will not be permitted on any Saturday or Sunday other than once for two consecutive weekends weather permitting with substantial advance notice, and provided the weekend detours contribute to an overall shortened project work schedule.

Action

A motion was MADE and SECONDED (Seville-Jones/Lesser) to **APPROVE** Coastal Development Permit to Allow Reconstruction of Selected Segments of Concrete and Asphalt Bike Trail on Los Angeles County Beach Property Along the Entire Length of the Manhattan Beach Coastline with the revised language to Special Condition 10 on page 3 of the draft Resolution to generally indicate that obstructions/detours from normal bikepath operations will not be permitted on any Saturday or Sunday other than once for two consecutive weekends weather permitting with substantial advance notice, and provided the weekend detours contribute to an overall shortened project work schedule.

AYES: Andreani, Lesser, Paralusz, Seville-Jones, Chairman Fasola
NOES: None
ABSENT: None
ABSTAIN: None

Acting Director Jester indicated that the item will be placed on the City Council's Consent Calendar for their meeting of December 7, 2010.

F. DIRECTORS ITEMS

Acting Director Jester said that the City Attorney suggested that staff bring back a draft Resolution to the Commission to verify their decision to deny the appeal for the project at 3404 The Strand/3405 Ocean Drive. She indicated that the regular meeting of November 24 is not scheduled to take place, as it is the day before Thanksgiving. She stated that she will let the Commissioners know if a special meeting will be scheduled for approval of a Resolution.

G. PLANNING COMMISSION ITEMS

H. TENTATIVE AGENDA December 8, 2010

I. ADJOURNMENT

The meeting was adjourned at 11:20 p.m. to Wednesday, November 24, 2010, in the City Council Chambers, City Hall, 1400 Highland Avenue

SARAH BOESCHEN
Recording Secretary

ATTEST:

LAURIE JESTER
Acting Community Development Director