



**CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT**

TO: Planning Commission

FROM: Laurie B. Jester, Acting Director of Community Development 

BY: Esteban Danna, Assistant Planner 

DATE: November 23, 2010

SUBJECT: Adoption of a Resolution Denying Two Appeals of the Community Development Director's Decision to Approve a Remodel Project Located at 3404 The Strand and 3405 Ocean Drive

RECOMMENDATION

Staff recommends that the Planning Commission **ADOPT** the Draft Resolution.

BACKGROUND

On November 10, 2010, the Planning Commission held a public hearing and denied two appeals of an administrative decision to approve a remodel project located at 3404 The Strand and 3405 Ocean Drive.

DISCUSSION

Upon taking public testimony and discussing the issues raised by the subject appeals, the Planning Commission voted (5-0) to deny the subject appeals. The Commission found that: the appeal period for the original permit issued in 1973 (Permit No. 93304) has expired and is therefore is not revocable, the building valuation assigned by the Building Official is consistent with other projects of similar scope within the City, a Minor Exception is not applicable to the subject project, and the Department of Community Development has authority and jurisdiction to issue a building permit for the subject project.

The Draft Resolution (Exhibit A) details the facts and findings, and memorializes the Planning Commission's action taken on November 10, 2010. The draft minutes for the November 10, 2010 Planning Commission meeting are included as a separate item in this agenda packet. The corresponding Staff Report and attachments are available on the Planning Commission page of the City's website (www.citymb.info).

CONCLUSION

Staff recommends that the Planning Commission **ADOPT** the Draft Resolution.

Attachments:

Exhibit A – Draft Resolution No. PC 10-XX

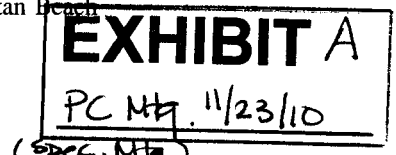
RESOLUTION NO. PC 10-XX

**RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MANHATTAN BEACH DENYING TWO
APPEALS OF THE ADMINISTRATIVE DECISION TO
APPROVE A REMODEL PROJECT FOR A DUPLEX
3404 THE STRAND AND 3405 OCEAN DRIVE**

**THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH,
CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:**

SECTION 1. The Planning Commission of the City of Manhattan Beach hereby makes the following findings:

- A. On February 22, 1973, the City of Manhattan Beach issued Permit No. 93304 for the construction of the subject duplex. The two separate structures, each with one unit, are located on one property. 3405 Ocean Drive includes a six car garage which provides parking for both units.
- B. On November 25, 1974, the City issued a Certificate of Occupancy certifying that the structures were in compliance with the Municipal Code regulating building construction.
- C. On January 22, 2010, a Building permit application was submitted to the City for the remodel of the existing detached duplex.
- D. On March 5, 2010, a demolition permit was issued prior to building permit approval. Several neighboring residents subsequently contacted the City expressing concerns that the demolition was beyond the scope of the approved demolition plans. The demolition in the field included 100% of the interior of both structures.
- E. On June 24, 2010, the Building Division issued a Stop Work order since work performed in the field was not consistent with and was beyond the scope of work on the approved demolition plans.
- F. Between July and September of 2010 Staff received additional information from the project architect, contractor, and home owner and conducted numerous site inspections.
- G. On September 8, 2010, the Community Development Department received two Minor Exception applications for the proposed projects.
- H. Upon review, the Building Division determined that under the building valuation (effective May 1, 2010), for the revised project did not exceed 50 percent building valuation.
- I. On September 15, 2010, the applicant withdrew the original building permit application.
- J. On September 17, 2010 Staff administratively withdrew the Minor Exception applications upon determining that the total estimated construction costs of the subject project did not exceed 50% of the building valuation or did not propose to alter any non-conforming portion of the structure except life-safety features as required by the Building Division. Thus, pursuant to MBMC Section 10.84.120, a Minor Exception is not applicable for this project as proposed.
- K. On September 29, 2010, the applicant submitted a new building permit application for the remodel project to accurately reflect the scope of work. The project is the full remodel of an existing legal non-conforming 5,334 square-foot duplex (two structures).
- L. On October 1, 2010, the Community Development Department issued a courtesy Notice of Decision to interested parties stating that the proposed remodel project complied with all applicable Planning and Building codes and did not exceed 50 percent building valuation.
- M. On October 15 and 18, 2010, Staff received two appeals for the administrative decision to approve the remodel project, in accordance with Chapter 10.100 of the Manhattan Beach Municipal Code (MBMC).



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- N. On October 27, 2010, Staff sent a courtesy notice to the all property owners within a 500 foot radius of the subject property announcing the Planning Commission review of the appeals.
- O. On November 10, 2010, the Planning Commission of the City of Manhattan Beach conducted and closed a public hearing, discussed the item, and voted to deny the subject appeals (5-0 vote).
- P. On November 19, 2010, a courtesy notice was sent to the appellants and applicant announcing the Planning Commission special meeting on November 23, 2010 to adopt Resolution 10-XX.
- Q. On November 23, 2010, the Planning Commission of the City of Manhattan Beach adopted Resolution 10-XX memorializing the facts and findings acted upon by said body at its November 10, 2010 regular meeting.
- R. The subject site is located in Area District III and is zoned Medium Density Residential (RM).
- S. The existing structures on the site were legally constructed under Permit No. 93304 in 1973. Zoning Code requirements have since changed and a number of existing legal non-conformities for each structure exist as follows. Neither structure exceeds the maximum allowed Buildable Floor Area (BFA).

3404 The Strand

- South side setback (3' 1" existing, 3' 4" minimum)
- Open space (245.28 square feet existing, 511 square feet minimum)
- Deck projection length per level (28' 8" existing, 17' 10" maximum)

3405 Ocean Drive

- Height (122' 2" existing, 115' 1½" maximum—7'-½" above the maximum)
 - Number of stories (four-stories existing, three-story maximum)
 - South side setback (3' 2" existing, 3' 4" minimum)
 - North side setback (access stairs to front door and third story required exit)
 - East/rear setback (2' 2" at second and third stories, 5' minimum)
 - Open Space (257.28 square feet existing, 289 square feet minimum)
- T. At the time of permit application in 1973 the method of height measurement was different than the method currently used. The height measurement methodology was revised in 1991, which is the current methodology.
- U. The structure's lowest level of the four stories is a storage closet, non-habitable space, it has no windows and only one 6 foot high access door located beneath the garage level.
- V. MBMC Section 10.68.030E requires that if the total estimated construction cost for any non-conforming structure exceeds 50 percent of the existing building valuation all structures on the site must be brought into conformance with the current zoning code with a few exceptions. The project does not exceed 50 percent in building valuation and is therefore not required to address the existing non-conformities.
- W. MBMC Section 10.68.030E states in part "For the purposes of this section, estimated construction and reconstruction costs shall be determined by the Community Development Director in the same manner as the Community Development Director determines final valuation for the purposes of building permit fees."
- X. The project is consistent with the purpose and intent of the non-conforming portion of MBMC Section 10.68.010, which states in part "While permitting the use and maintenance of nonconforming structures, this chapter is intended to limit the number and extent of nonconforming structures by regulating and limiting their being moved, altered, or enlarged in a manner that would increase the discrepancy between existing conditions and the

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standards prescribed in this chapter and by prohibiting (commercial structures only) their restoration after destruction.” The project does not propose to increase the discrepancy between existing conditions and the current Code standards as the remodel/alterations are within the existing building footprints and there are no additional square footage/enlargements proposed.

- Y. The project is consistent with MBMC Section 10.68.030F which states in part “Nonconforming structures that would be enlarged or altered in any manner that serves to increase the degree of nonconformity shall not be permitted unless a variance or minor exception is obtained, as appropriate.” The project does not propose to increase the degree of the non-conformities as the remodel/alterations are within the existing building footprints and there are no additional square footage/enlargements proposed.
- Z. The Building Official is responsible for determining building valuation pursuant to the 2007 California Building Code, Appendix Chapter 1, Section 108.3. This section states: “Final building permit valuation shall be set by the building official.”
- AA. The City’s published Building Valuation Data sheet differentiates between a standard and major remodel. The project valuation is determined by the Building Plan Check Engineer based on the proposed scope of work.
- BB. Remodel projects similar to the subject project, where the majority of the structure is remaining, are considered a standard remodel valued at \$80 per square-foot. A project is typically considered a major remodel and is assigned \$140 per square-foot when the majority of the existing structure is completely removed and rebuilt, utilizing some of the existing foundations and walls. New residential construction has a valuation of \$160 per square foot.
- CC. The remodel proposes to keep almost the entire structural frame of the existing buildings, including the roof framing, floor framing and foundation. Additionally, exterior walls, including most of the stucco and some interior walls remain. The Plan Check Engineer found that the scope of the project is a very typical proposal for a standard remodel, is consistent with the valuation of remodels of similar scope, and is well within the scope of an \$80 per square foot standard remodel.
- DD. The appeals challenge:
 - 1) The legality of the original 1973 building permit.
 - 2) The Building Department’s determination that the project does not exceed 50 percent building valuation in accordance with MBMC Section 10.68.
 - 3) The need for a Minor Exception pursuant to MBMC Section 10.84.120.
 - 4) The Community Development Department’s authority and jurisdiction to issue a building permit for the subject project.
- EE. All parties presented their concerns to the Planning Commission on November 10, 2010.
- FF. The Planning Commission received public testimony both in favor of and against the subject appeals.
- GG. The appellants believe that hand-written notes on plans available on the City’s public records show that the original duplex was built illegally in 1973. The plans referenced by the appellants are not the approved plans used for the construction of the existing structures in 1973 but rather concept plans in 1980 for a proposed balcony extension on the Ocean Drive unit, subsequently issued with final plans without notes on May 18, 1981.
- HH. Proponents of the appeals stated that they believe: the existing structure at 3405 Ocean Drive is too high, the project should exceed 50 percent building valuation, it is a good opportunity to bring the structure into conformance, and the code should be changed to restrict the preservation of existing non-conforming structures.
- II. Opponents of the subject appeals stated that they believe: the property owners have a right to remodel, the delays caused by appeals are unfair to the property owners, appellants were aware of the non-conforming height for many years but did not raise concerns until

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subject remodel project was filed with the City, the project meets all necessary code requirements, and the neighbors had an unrealistic expectation that the property owners would demolish the existing structures instead of remodeling.

JJ. The Planning Commission discussed the issues presented by all parties. The discussion indicated that: the property owners and staff acted in accordance with Building Codes and Ordinances, the Commission does not have the authority to change the 1973 building permit, the remodel does not exceed the 50 percent building valuation and is not increasing the existing nonconformities, the method of determining valuation for the subject project as a standard remodel is consistent with similar projects in the City, and it follows the City's desire to maintain older structures as evident in the 2008 Mansionization Code amendments.

KK. The Planning Commission hereby finds that:

- 1) Plans for Building Permit No. 93304, permitting the construction of the existing structures in 1973 were approved by City Staff, issued, inspected and subsequently the building permit was finalized. A Certificate of Occupancy certifying that the structures were in compliance with the Municipal Code regulating building construction was issued in 1974.
- 2) The appeal period for the original building permit issued in 1973 (Permit No. 93304) has expired.
- 3) The Community Development Department correctly determined that the scope of this project is a very typical proposal for a standard remodel, is consistent with the valuation of remodels of similar scope, and is well within the scope of an \$80 per square foot standard remodel, as shown by the similar projects and descriptions presented to the Planning Commission at the November 10, 2010 meeting.
- 4) The total estimated construction costs of the subject project does not exceed 50 percent of the building valuation in accordance with MBMC Section 10.68.030 or does not propose to alter any non-conforming portion of the structure except life-safety features as required by the Building Division. Thus, in accordance with MBMC Section 10.84.120 a Minor Exception is not required for this project as proposed.
- 5) The Community Development Department has authority and jurisdiction to issue building permits if and when such projects meet all applicable MBMC Title 10 Zoning requirements. The City does not have the authority to require conformance with current zoning standards for the non-conforming portions of the building that are not altered if the project does not exceed 50 percent building valuation in accordance with MBMC Section 10.68.030. Staff does not have a legal reason to deny a building permit for the subject project since it is not a discretionary application, does not exceed 50 percent in building valuation, and meets all necessary Municipal Code requirements.

SECTION 2. Based on the foregoing findings the Planning Commission of the City of Manhattan Beach hereby DENIES the subject appeals of an administrative decision.

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SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this such decision or to determine the reasonableness, legality or validity of any condition attached to this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution. The City Clerk shall send a certified copy of this resolution to the applicant, and if any, the appellant at the address of said person set forth in the record of the proceedings and such mailing shall constitute the notice required by Code of Civil Procedure Section 1094.6.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its meeting of November 23, 2010 and that said Resolution was adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

LAURIE B. JESTER,
Secretary to the Planning Commission

Sarah Boeschen
Recording Secretary