

## RESOLUTION NO. 13-0022

### RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL DENYING AN APPEAL OF A HEIGHT DETERMINATION FOR A COASTAL PERMIT FOR CONSTRUCTION OF A NEW SINGLE FAMILY RESIDENCE AT 301/303 25<sup>TH</sup> STREET

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE, FIND AND DETERMINE AS FOLLOWS:

SECTION 1. On October 12, 2012, Joe Paunovich (“Applicant”), the owner of the property located at 301/303 25<sup>th</sup> Street (the “subject property”) applied for a coastal permit for the demolition of an existing duplex built in 1966 and construction of a new single family three-story residence with an attached two-car garage located on a 33.34 x 52.50 half lot. The subject property is located on the northeast corner of Highland Avenue, a vehicular street, and 25<sup>th</sup> Street, a walkstreet. The project is located in the Coastal non-appealable area, Area District III and zoned Residential High Density (RH). The General Plan and Local Coastal Program/Land Use Plan designation for the property is High Density Residential. The proposed building complies with all development standards, zoning codes and Local Coastal Program requirements. Pursuant to 14 Calif. Code of Regs. Section 15303, the City has determined that the application for a coastal permit is categorically exempt from review under the California Environmental Quality Act (New Construction or Conversion of Small Structures, Class 3 – Construction of a new single-family residence in a residential zone).

SECTION 2. On November 28, 2012, a notice was sent to the surrounding neighbors within the required 100-foot radius notifying them about the proposed project. On December 19, 2012, the Community Development Director (“Director”) issued a Coastal Permit (CA 12-25) approving the demolition of the duplex and construction of the new single family residence. Prior to issuing the Coastal Permit, the Director determined that the height limit of the proposed building shall be determined by using the four corners of the property, pursuant to the Manhattan Beach Municipal Code (“Municipal Code” or “MBMC”). Municipal Code Section 10.60.050 (Measurement of Height) provides, in relevant part:

“This section establishes regulations for determining compliance with the maximum building height limits prescribed for each zoning district and area district or as modified by an overlay district. The procedure involves a two (2) step process: first the reference elevation, defined as the average of the elevation at the four (4) corners on the lot, is determined and then a second limit is imposed to ensure that no building exceeds the maximum allowable height above existing grade or finished grade, whichever is lower, by more than twenty percent (20%).

A. Height shall be measured from a horizontal plane established by determining the average elevation of existing grade at all four (4) corners of the lot. In situations where the elevation of existing grade at a lot corner is not clearly representative of a site topography (because, for example, of the existence of such structures as retaining walls, property-line walls, or planters) the Community Development Director shall select an elevation that minimizes, to the extent reasonably possible, adverse impacts on adjacent properties and encourages some degree of consistency in the maximum building height limits of adjacent properties. Such interpretations may be appealed pursuant to the provisions of Chapter 10.100.

B. No portion of a building shall exceed the maximum allowable height for the zoning district and area district in which the building site is located by more than twenty percent (20%). For purpose of this requirement, height shall be measured from the existing grade or finished ground level grade, whichever is lower.

C. To determine compliance with this section, the Community Development Director may require applicants to submit a topographic survey of the project site, and, if necessary, portions of adjacent sites, prepared by a licensed surveyor or licensed civil engineer, depicting existing contours and the contours of finished grade, if different from existing grade, at elevation change intervals no greater than five (5) feet. Survey measurements also shall indicate the elevations of adjacent curbs and street pavements where no curb exists.”

SECTION 3. On December 27, 2012, the owner (“Appellant”) of the property located at 2501 Crest Drive, immediately adjacent to the subject property on its eastern lot line, filed an appeal of the Director’s height determination. Appellant’s appeal asserts that the Director incorrectly applied the Code, and should have used areas other than the four corners to determine the height limit.

SECTION 4. A duly noticed public hearing was held before the Planning Commission on February 13, 2013 to consider the appeal. At the public hearing, the Planning Commission received and considered all evidence presented, both written and oral, regarding the application. The Commission provided the Appellant’s representatives adequate time to testify in support of the appeal. Appellant’s representatives provided testimony and written documentation in support of the appeal. After the close of the public hearing, the Planning Commission voted 4-0 to deny the appeal. The Appellant appealed the decision of the Planning Commission.

SECTION 5. A duly noticed public hearing was held before the City Council on March 6, 2013 to consider the appeal. The Council considered oral and written evidence, including testimony and written material submitted by the Appellant, the Applicant and others. The Council provided the Appellant’s representatives adequate time to testify in support of the appeal. Appellant’s representatives provided testimony and written documentation in support of the appeal. Other residents spoke in favor of and against the project. The record of the hearing includes the following facts, which the City Council finds to be true and correct:

- A. Applicant proposes to construct a three-story single family residence, with a deck at the top floor on the front and an attached two-car garage accessed from Highland Avenue. The total living area will be 2,864 square feet, under the allowable 2,985 square feet for the lot. The total open space will be 461 square feet, which meets the required 15% of the total living area. The maximum height limit for the building is 138.29 feet per MBMC Section 10.60.050. The proposed height for the building is 138.16 feet, which is under the maximum height limit. According to a 2012 Survey prepared by a licensed civil engineer, the ridge height of the existing building at the highest point is 129.67 feet, which is 8.49 feet lower than the proposed height. On the front facing Highland Avenue, the proposed top eave and the existing eave are at about the same height.
- B. The Director determined the measurement of height pursuant to Municipal Code Section 10.60.050 by utilizing the following process. The Director: (1) inspected the subject property to analyze the existing conditions and surrounding properties; (2) determined the reference elevation, defined as the average of the elevation at the four corners on the lot; (3) considered a second limit to ensure that the proposed building would not exceed the maximum allowable height above existing grade or finished grade, whichever is lower, by more than 20%; and (4) because the elevation of existing grade at the northeast lot corner may not be clearly representative of site topography at that corner, he selected an elevation five feet southerly of that corner at the northwest corner of Appellant's house. That elevation minimizes, to the extent reasonably possible, adverse impacts on adjacent properties and encourages consistency in the maximum building height limits of adjacent properties.
- C. Pursuant to Municipal Code Section 10.60.050, the Director required the Applicant to submit a topographic survey (the "2012 Survey") of the project site prepared by a licensed civil engineer to determine the maximum allowed height of the building. The 2012 Survey depicts spot elevations of existing grade throughout the property. The Director used the 2012 Survey to determine the property corners and to evaluate other conditions and code requirements. Staff requested additional spot elevations on the survey as there were property line walls, planters, or other significant grade variations at or around the property corners. MBMC Section 10.60.050A provides that the Director may interpret corner elevations for consistency and to minimize impacts on adjacent properties.
- D. In addition to the 2012 Survey, the Director considered additional historical documentation. The Director made his determination based upon the supporting documents and information listed below:
1. 2012 Survey – (301/305 25<sup>th</sup> Street) – The Director used the property corner elevations from the subject property survey (2012 Survey) to calculate the maximum allowed height of 138.29 feet.

2. 1989 Survey (2501 Crest Drive) – In 1989, the Appellant added a loft and deck to Appellant’s property located at 2501 Crest Drive, immediately east of the subject property. In connection with that addition, Appellant commissioned a survey (“1989 Survey”). Appellant’s original house was built in the 1930’s and the entire west side of Appellant’s house is built directly on the common rear property line, with no setback. To be consistent with maximum building height limits for adjacent properties, the Director used the 1989 Survey to average the subject property’s northeast property corner (116.9 feet) on the common rear property line with an elevation approximately five feet southerly (the northwest corner of Appellant’s house). The elevation at the northwest corner of Appellant’s house is 115.9 feet. Averaging those two elevations, the Director arrived at 116.4 feet for the northeast corner elevation. The 1989 Survey indicates that there is a grade difference of 2.9 feet between the northwest and southwest corners of Appellant’s lot. By using the average of the two elevations in the northeast corner of the subject property, the Director obtained the identical grade difference of 2.9 feet.
  3. 1913 Street Plan – In order to verify street grading information on Highland Avenue, staff contacted the City’s Engineering Division to obtain historic City information. The street plan from 1913 demonstrates that the property grade before the 25<sup>th</sup> Street Walkstreet was built was steeper towards Highland Avenue than Crest Drive at the rear. The existing grade of the lot is representative of the grade in 1913.
  4. 1966 Topographic Plan – (301/305 25<sup>th</sup> Street) – This plan shows the elevations before the existing duplex at 301 25<sup>th</sup> Street was built. The elevations for all property corners and the maximum height in 1966 compared to 2012 are virtually identical and it demonstrates that the grade has not substantially changed in over 40 years.
  5. 1988 Shoring Plans (2504 Highland Avenue) – This plan is for the original construction of three units at this location. The plan shows that the grade has not changed along the north common side property line for the adjacent full lot directly to the north of the subject lot. The topographic elevations for the common property corners on the north side are consistent with the 2012 Survey.
- E. Some of the surrounding properties to the north are full size lots and were built under the previous Zoning Code which had a different height methodology using multiple elevations; so these buildings are substantially higher (about 12 feet) on Crest Drive and lower (about six feet) on Highland Avenue than the current Code allows. This is a common occurrence for older homes on steep full-size lots in the beach area. If these full-sized lots were to be re-developed per the current Code, the height limit on those properties would be higher than the permitted height limit for the subject property and lower than the permitted height limit for the Appellant’s lot (2501 Crest Drive). When determining building heights, in

accordance with MBMC Section 10.60.050(A), the Director evaluates “consistency in the maximum building height limits of adjacent properties.” This evaluation is based on the maximum height limits permitted by the Code, not the actual existing building heights, which do not reflect current Code standards in this case.

- F. Based upon the above documentation, the corner elevations grades for the subject property have not substantially changed, and the current 2012 Survey is consistent with the 1989, 1988, 1966 and 1913 plans. Staff verified that the elevations of Highland Avenue, Crest Drive, 25<sup>th</sup> Street Walkstreet, and the subject property corner elevations, have not changed significantly in the last 100 years.
- G. Appellant filed the appeal because a portion of the proposed house, if built according to the approved plans, will be about 8-½ feet taller than the existing duplex. The Appellant’s house was built in the 1930’s and is located immediately adjacent to the common rear property line shared with the subject property, with only a few inches of setback from the property line. He claims that the new proposed house will affect his view of the ocean from his house. He objects to the Director using the property corners to determine the maximum height of the proposed building.
- H. The City of Manhattan Beach does not have a view ordinance.
- I. Staff met with the Appellant, the Appellant’s attorney, and his architect to explain the process and reasons for the maximum height determination for the proposed building. Appellant argued that Director should not have used the property corners for the northeast (116.9 and 115.9 averaged to 116.4) and southeast (113.5 actual corner) elevations to determine the maximum height because existing retaining walls have obscured the natural grade of the property. They argued that the natural grade elevation for the northeast corner is 109.2, at a point located in the north side yard about 14 feet west of the northeast corner, below a retaining wall, or 7.2 feet lower than the grade used by the Director. For the southeast corner, the Appellant contends that the natural grade is 108.16, at a point about 18 feet west of the southeast corner, near the front door of the existing house on the walkstreet on 25<sup>th</sup> Street. Instead of using the actual property corners, Appellant contends these other elevations should be used to determine the maximum height of the building. Under the Appellant’s theory, the natural grade is 5.34 feet lower, at the southeast corner, than the actual corner elevation used by the Director, and more than four feet lower than the adjacent 25<sup>th</sup> Street Walkstreet.
- J. The west rear building wall and foundation of Appellant’s property is immediately adjacent to the common rear property line. The corner of Appellant’s house is immediately adjacent to the southeast property corner of the subject property, and Appellant’s house is about five feet away from the northeast property corner of the subject property. The building plans on file for Appellant’s house,

originally constructed in the 1930's, indicate that the foundation on this west rear building wall is about 18 inches below grade. The corner elevations that the Appellant suggests be used would be more than 5-½ feet and 3-½ feet below the bottom of Appellant's existing building foundation at the northeast and southeast property corners, respectively.

- K. Prior to affirming the decision of the Director, the Planning Commission heard public testimony and reviewed the survey information, historical data, and property corner elevations used by the Director to determine the maximum height of the proposed building. The Commission concluded that the grade of the Walkstreet (25<sup>th</sup> Street), Highland Avenue, and Crest Drive, as well as the north side of the property, has not changed historically in over 100 years.
- L. The Planning Commission found that the Director:
  - 1. Complied with Municipal Code Section 10.60.050A, which states that the Community Development Director shall select an elevation that minimizes, to the extent reasonably possible, adverse impacts on adjacent properties and encourages some degree of consistency in the maximum building height limits of adjacent properties;
  - 2. Applied the same elevation differences for the rear property line as was used in Appellant's 1989 Survey, which showed consistency and the same allowable building height; and
  - 3. Used the correct property corners.

SECTION 6. Based upon the facts contained in the record, including but not limited to those stated in this Resolution, and pursuant to the Municipal Code, the City Council hereby finds:

- A. The proposed project complies with all applicable provisions of the City's Zoning Code, the Local Coastal Program and City development standards.
- B. The Director correctly applied the measurement of height in full compliance with Municipal Code Section 10.60.050 and properly used elevations to establish the maximum height elevation of the proposed building. The Director selected three property corners and, as to the northeast corner, averaged two spots to select an elevation that minimizes, to the extent reasonably possible, adverse impacts on adjacent properties and encourages consistency with the maximum building height limits for adjacent properties. The Director's determination is reasonable and supported by substantial evidence. Further, it was not an abuse of discretion.
- C. The proposed project is consistent with the following General Plan goals and policies because the residence is three stories and the project provides required open space and setbacks:

Goal LU-1: Maintain the low-profile development and small-town atmosphere of Manhattan Beach.

Policy LU-1: Limit the height development to three stories where the height limit is 30 feet, or to two stories where the height limit is 26 feet, to protect the privacy of adjacent properties, reduce shading, protect vistas of the ocean, and preserve the low-profile image of the community.

Goal LU-2: Encourage the provision and retention of private landscaped open space.

Policy LU-2.2: Preserve and encourage private open space on residential lots citywide.

Goal LU-3: Achieve a strong, positive community aesthetic.

Policy LU-3.1: Continue to encourage quality design in all new construction.

Goal LU-4: Preserve the features of each community neighborhood, and develop solutions tailored to each neighborhood's unique characteristics.

Policy LU-4.2: Develop and implement standards for the use of walkstreet encroachment areas and other public right-of-way area.

- D. The proposed structure is consistent with the building scale in the Coastal Zone neighborhood and complies with the applicable standards of the Local Coastal Program-Implementation Plan.
- E. The proposed structure is consistent with the residential bulk control as established by the development standards of the Local Coastal Program-Implementation Plan.
- F. The proposed structure is consistent with the 30-foot Coastal Zone residential height limit as required by the Local Coastal Program-Implementation Plan.
- G. The project is consistent with the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976, as follows:
  - 1. Section 30212(a)(2): The proposed structure does not impact public access to the shoreline, adequate public access is provided and shall be maintained along Highland Avenue, 25<sup>th</sup> Street, and Crest Drive.
  - 2. Section 30221: Present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.
- H. The proposed use is permitted in the RH zone and is in compliance with the City's General Plan designation of High Density Residential; the project will not

be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City.

SECTION 7. Based on the foregoing facts and findings and the substantial evidence entered into the record, and pursuant to State law and the City's Municipal Code, the City Council hereby exercises its independent judgment and: (1) denies the appeal of a height determination for the proposed project at 301/303 25<sup>th</sup> Street; (2) upholds the Director's height determination; and (3) directs the Director to issue the coastal permit, subject to the conditions attached hereto as Exhibit A and incorporated by this reference. The City Council's decision is based upon each of the foregoing totally independent and separate grounds, each of which stands alone as a sufficient basis for its decision.

SECTION 8. Section 1094.6 of the California Code of Procedure governs the time within which judicial review, if available, of the City Council's decision must be sought, unless a shorter time is provided by other applicable law. The City Clerk shall send a certified copy of this Resolution to the Appellant and Applicant.

SECTION 9. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19<sup>th</sup> day of March, 2013.

Ayes:  
Noes:  
Absent:  
Abstain:

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Mayor David Lesser

ATTEST:

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City Clerk Liza Tamura



## EXHIBIT A

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Community Development Department.
2. Expiration. The Coastal Development Permit shall expire one year from the date of approval if the project has not been commenced during that time. The Community Development Director may grant a reasonable extension of time for due cause. Said time extension shall be requested in writing by the Applicant or authorized agent prior to the expiration of the one-year period.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the Community Development Director.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Community Development Director.
5. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified persons subject to submittal of the following information to the Community Development Director:
  - a. A completed application and application fee as established by the City's Fee Resolution;
  - b. An affidavit executed by the assignee attesting to the assignee's agreement to comply with the terms and conditions of the permit;
  - c. Evidence of the assignee's legal interest in the property involved and legal capacity to undertake the development as approved and to satisfy the conditions required in the permit;
  - d. The original permittee's request to assign all rights to undertake the development to the assignee; and
  - e. A copy of the original permit showing that it has not expired.
7. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Community Development Director and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

8. The project shall be developed in conformance with all applicable development standards of the RH zoning district, and Chapter 2 of the Local Coastal Program - Implementation Program.

9. The project shall be constructed in substantial compliance with the submitted project description and plans as approved by the Community Development Director on December 19, 2012. Any substantial deviation from the approved plans must be reviewed by the Community Development Director to determine if an Amendment to this Coastal Permit is required.

10. Applicant shall defend, indemnify, and hold the City, its elected officials, officers, employees, volunteers, agents, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") free and harmless from and against any and all claims (including, without limitation, claims for bodily injury, death, or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including, without limitation, attorneys' fees, consequential damages, disbursements, and court costs) of every kind and nature whatsoever (individually, a "Claim," collectively, "Claims"), in any manner arising out of or incident to: (i) this approval and related entitlements, (ii) the City's environmental review of this project, (iii) any construction related to this approval, or (iv) the use of the property that is the subject of this approval. Applicant shall pay and satisfy any judgment, award or decree that may be rendered against City or the other Indemnitees in any such suit, action, or other legal proceeding arising out of or incident to this approval, any construction related to this approval, or the use of the property that is the subject of this approval. The City shall have the right to select counsel of its choice. Applicant shall reimburse the City, and the other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Applicant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Applicant or Indemnitees. This indemnity shall apply to all Claims and liability regardless of whether any insurance policies are applicable. Nothing in this Section shall be construed to require Applicant to indemnify Indemnitees for any Claim arising from the sole negligence or willful misconduct of the Indemnitees. In the event such a legal action is filed challenging the City's determinations herein or the issuance of the coastal permit, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

Acknowledgment:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

Signature of Permittee: \_\_\_\_\_ Date: \_\_\_\_\_