

## RESOLUTION NO. 18-0105

### RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL AFFIRMING THE DIRECTOR'S DECISION TO GRANT A MINOR EXCEPTION AMENDMENT FOR THE REMODEL OF A THREE-UNIT RESIDENTIAL STRUCTURE AT 1208 THE STRAND SUBJECT TO CERTAIN CONDITIONS

THE MANHATTAN BEACH CITY COUNCIL HEREBY RESOLVES, FINDS AND DETERMINES AS FOLLOWS:

SECTION 1. On February 13, 2018, the Manhattan Beach Community Development Director ("Director") approved a Minor Exception Amendment for a residential renovation project located at 1208 The Strand (the "Remodeling Project"). In 1969, 1208 The Strand was built as a triplex in the coastal section of the City. In 1981, the Planning Commission and the California Coastal Commission approved the conversion of a triplex to a three-unit condominium (Units A, B and C). On August 13, 2014, a Minor Exception was approved for an interior remodel of Unit C and exterior remodel of the entire structure. Each condominium is owned by a different trust. For the purposes of this Resolution, the trusts are collectively referred to as the "Property Owners."

SECTION 2. The Remodeling Project is located in the Residential High Density (RH) zone. The RH zone is a highly dense and compact zone where many of the structures were built prior to the adoption of current zoning regulations. Thus, such structures are treated as "legal, non-conforming" structures. In particular, many of the existing structures abutting The Strand, a pedestrian walkway overlooking the sand and the ocean, are on narrow lots that do not meet Zoning Code required setbacks, parking or open space. The building located at 1208 The Strand is legal non-conforming because its setbacks, guest parking and open space do not meet current Code requirements.

SECTION 3. Manhattan Beach Municipal Code (MBMC) Section 10.84.120(F)(2) grants the Director the authority to approve a "Minor Exception" to allow remodels and renovations of existing legal non-conforming residential uses without complying with current zoning restrictions. MBMC Section 10.848.010 provides: "Minor exceptions are generally intended to allow certain alterations and additions to certain nonconforming pre-existing structures. Minor Exceptions are also intended to encourage home remodeling and additions to existing smaller older legal non-conforming homes. The provisions strive to balance the community's desire to maintain smaller older homes while still allowing some flexibility to encourage these homes to be maintained and upgraded, as well as enlarged below the maximum allowed square footage instead of being replaced with larger new homes." Without such a procedure, owners of older, non-conforming homes would not be able to remodel or update their homes without demolishing the structure and building a new home.

SECTION 4. On April 22, 2016, construction plans were submitted and a building permit was issued on February 27, 2017 for the interior remodel of the top floor (Unit C) and an exterior remodel of the entire building. During construction, dry rot and termite damage was discovered. On March 30, 2017, a permit was issued to rebuild and repair existing front decks due to dry rot and

termite damage. On August 22, 2017, a stop work notice was issued due to a neighbor's complaint that the deck on the third floor protruded too far to the west, interfering with that neighbor's view, and that there appeared to be too much demolition. Upon inspection, staff discovered that structural improvements had been performed on walls and on Units A and B that were not part of the plans approved in connection with the Minor Exception.

SECTION 5. On August 31, 2017, the Property Owners submitted revised plans for the additional work. The project valuations and building valuations of the remaining structure were revised to reflect all of the new work to ensure that the remodeling would meet the Minor Exception criteria requiring that at least ten percent of the existing structure be retained. The City's Building Official reviewed the plans and confirmed the value of the proposed work and the retention value of the existing structure. On February 13, 2018, the Director approved a Minor Exception Amendment to authorize the additional work. This Amendment is the subject of the two appeals referenced in Section 8 below.

SECTION 6. MBMC Section 10.84.120(F)(2) grants the Director the authority to approve, conditionally approve or deny a Minor Exception for remodels of existing legal non-conforming residential uses. The Director shall approve or conditionally approve the Minor Exception provided she can make the following findings:

- a) The proposed project will be compatible with properties in the surrounding area, including, but not limited to, scale, mass, orientation, size and location of setbacks, and height.
- b) There will be no significant detrimental impact to surrounding neighbors, including, but not limited to, impacts to privacy, pedestrian and vehicular accessibility, light, and air.
- c) There are practical difficulties which warrant deviation from Code standards, including, but not limited to, lot configuration, size, shape, or topography, and/or relationship of existing building(s) to the lot.
- d) That existing non-conformities will be brought closer to or in conformance with Zoning Code and Building Safety requirements where deemed to be reasonable and feasible.
- e) That the proposed project is consistent with the City's General Plan, the purposes of the Zoning Code and the zoning district where the project is located, the Local Coastal Program, if applicable, and with any other current applicable policy guidelines.

The Director made such findings, and conditionally approved the Minor Exception Amendment.

SECTION 7. The Remodeling Project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Sections 15301 and 15332 based on staff's determination that the Remodeling Project is a minor infill development and will not have a significant impact on the environment. The Remodeling Project is for minor alterations to an existing private structure which will not result in any expansion of the existing residential use. Furthermore, the Remodeling Project is on a site less than five acres in size, is surrounded by residential

development, and is consistent with applicable General Plan policies and will not result in any significant adverse impacts as discussed elsewhere in this Resolution.

SECTION 8. The owner of the single family residence located at 1212 The Strand (immediately to the north of the Remodeling Project) filed a notice of appeal of the Director's decision on February 26, 2018. The Planning Commission considered the appeal on April 25, 2018. After providing an opportunity for the Appellant and her attorney to speak, the Planning Commission affirmed the Director's decision. On May 7 and 8, 2018, the Appellant and the owner of the single family residence located at 1200 The Strand (two houses to the south) each filed appeals of the Planning Commission decision. In their appeals, the Appellants allege:

- a) The Remodeling Project does not meet the Minor Exception criteria of a remodel.
- b) The Remodeling Project is not compatible with properties in the area.
- c) The Remodeling Project is detrimental to surrounding neighbors.
- d) It is not unreasonable to bring the condominium project's non-conformities into Code compliance.
- e) The new staircase interferes with 1212 The Strand side yard access.
- f) No evidence supports that ten percent of the structure remained or how project valuation was calculated.
- g) Too little of the building remains, and the Remodeling Project should be considered new construction.
- h) The proposed Remodeling Project requires a Coastal Development Permit.

In addition, an Appellant alleged that the owners of 1208 The Strand have made misrepresentations to the City and neighbors and that there appears to be a conflict of interest and bias by the City in favor of the owners of 1208 The Strand and against the owner of 1212 The Strand. However, the Appellants failed to present to the City Council any evidence of misrepresentations, conflict of interest or bias.

SECTION 9. On June 19, 2018, the City Council considered the appeals. Evidence, both written and oral, was presented to the Council. All persons wishing to address the Council regarding the Remodeling Project were given an opportunity to do so. City staff presented a staff report supporting the Director's determination. The Building Official explained how he arrived at his determination that at least ten percent of the existing structure is retained. The value used by the City is based on building valuation data provided by the International Code Council to assist cities with determining permit fees for a jurisdiction and does not include land cost or actual construction costs in most cases. The Building Official relied on documents that establish that the City has been using the same valuation formula since at least 2003. Representatives of the Property Owners and one of the Property Owners spoke in favor of the Minor Exception. The Appellants and their representatives spoke in opposition to the Minor Exception, insisting that a Minor Exception is inappropriate for the scale of work contemplated, and that the Property

Owners should be required to conform to all existing development standards. The City Attorney entered into the record all relevant documents, including the documents relied upon by the Building Official and Director, and all documents presented by the Property Owners and the Appellants.

SECTION 10. Based upon substantial evidence contained in the record, including the facts stated in Sections 1-9 of this Resolution and pursuant to MBMC Chapter 10.84, the City Council hereby finds:

a) The Remodeling Project will be compatible with properties in the surrounding area, including, but not limited to, scale, mass, orientation, size and location of setbacks, and height. The Remodeling Project is located in the RH zone of the City. The residence was built as a three-unit apartment complex in 1969 and converted to a three-unit condominium with approval of the Coastal Commission and City in 1981. Three-unit condominiums are allowed in the RH zone. The existing residence is compatible in scale, mass, orientation, size and height with other residences in the surrounding area, and the Remodeling Project neither changes the scale, orientation or location of the setbacks nor increases the mass, size, square footage, height or footprint of the residence.

b) There will be no significant detrimental impact to surrounding neighbors, including, but not limited to, impacts to privacy, pedestrian and vehicular accessibility, light, and air. The Remodeling Project will create no impacts on privacy, pedestrian and vehicular accessibility, light, and air. As noted in subsection a) above, the Remodeling Project will not change the scale, mass, size, square footage, height or footprint of the existing residence. In addition, at the request of the neighbor immediately to the south (who is not an appellant) the size of the westerly deck on the third floor will be reduced.

As noted above, the residence is located in a dense, highly compacted area where most, if not all of the residences, are legal, non-conforming. The existing staircase encroached into the north side yard setback and its railings encroached onto the neighboring property at 1212 The Strand. The staircase ascended with a 16-foot “run” of stairs from The Strand to the third floor. The stairs provided the only access to the second and third floor units. A civil engineer’s report demonstrated that the staircase was corroded and had to be replaced. Due to a change in California Building Codes, a run of stairs without a landing may now not exceed 12 feet. Consequently, the staircase could not be restored to in its exact configuration because of the 16-foot run. The staircase has been redesigned so that the run of stairs goes up approximately eight feet to a landing. There is an entry at the landing which provides access to the third floor unit from an interior stairway. The outside landing then drops a few steps and continues to the entry to the second floor unit. This entry has not been changed from its original location. The stairs then continue down to The Strand as before. The stairs do not encroach any further into the side yard setback than they did previously and the encroachment of the railing onto 1212 The Strand has been eliminated. The minor alteration to the configuration of the staircase to conform to current Building Codes does not create any adverse impact on the residence located at 1212 The Strand, or any other property. It does not impact privacy, interfere with pedestrian access thereto, or create any impacts on light glare or air circulation.

c) The site contains practical difficulties which warrant deviation from Code standards, including, but not limited to, lot configuration, size, shape, and the relationship of the existing building to the lot. It is not possible to conform to existing Zoning Code provisions without essentially demolishing the entire building to eliminate the nonconformities on the north, south and east setbacks. It would not be possible to retain three units on the property because of the current Code guest parking requirement.

d) Existing non-conformities will be brought closer to or in conformance with Zoning Code and Building Safety requirements where deemed to be reasonable and feasible. Zoning Code nonconformities are being brought closer to the requirements in that the intrusion of the top floor deck into the setback is being reduced. Additionally, there will no longer be an encroachment of the stairway onto 1212 The Strand. For the reasons stated in subsection c) immediately above, it is not reasonable or feasible to require the Property Owners to bring the other non-conformities into conformity because the structure would have to be demolished, and the new structure would be even more narrow than the existing structure.

All new construction will meet the requirements of the 2016 California Building Code. Structural deficiencies have been eliminated and safety features have been added.

e) The Remodeling Project is consistent with the City's General Plan, the purposes of the Zoning Code and the zoning district where it is located, and the Local Coastal Program and with any other current applicable policy guidelines. The Remodeling Project is in the High Density Residential General Plan land use area and high density residential zoning. This area and zoning specifically accommodates condominiums, and three stories are allowed under both the General Plan and the area's Residential High Density (RH) zoning classification. The Coastal Commission approved the three-unit condominium in 1981, and the remodeling does not affect the residence's consistency with the City's Local Coastal Program. No new coastal permit is required for the Remodeling Project because the project does not include an addition, there is no increase in height and it is not considered to be a new building.

The Amendment to the Minor Exception is also consistent with the Goals and Objectives of the City's Housing Element which encourage the preservation of existing neighborhoods, discourage the construction of overly large dwellings, and provide for the preservation of less costly modest dwelling. (Goal I, Policy 1, Program 1a; Goal II.) The Housing Element makes reference to the use of Chapter 10.68 of the Zoning Code, Nonconforming uses and Structures. Testimony was provided that the three condominiums at 1208 The Strand are relatively small and more affordable than other residences along The Strand.

SECTION 11. In addition to the substantial evidence presented to satisfy the findings required by the Municipal Code for a Minor Exception, the Building Official and Director presented substantial evidence to support the City's determination that a minimum of ten percent of the existing structure, based on project valuation as defined in MBMC Section 10.68.030, will be retained. It is reasonable for the Building Official to rely on building valuation data provided by the International Code Council to assist cities with determining permit fees and on the City's long-established practice in determining project and retention valuations in connection with Minor Exceptions.

SECTION 12. Based upon the foregoing, and after considering all of the evidence in the record, the City Council hereby affirms the decision of the Community Development Director to approve a Minor Exception, subject to the following conditions:

1. The Remodeling Project shall be in substantial conformance with the plans submitted to, and approved by the Director on February 13, 2018.

2. The Property Owners shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from and against any claims, damages, actions, causes of actions, lawsuits, suits, proceedings, losses, judgments, costs, and expenses (including, without limitation, attorneys' fees or court costs) in any manner arising out of or incident to this approval, related entitlements, or the City's environmental review exemption determination thereof. The Property Owners 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, including any award of attorney's fees. The City shall have the right to select counsel of its choice. The Property Owners shall reimburse Indemnitees for any and all legal expenses, fees, and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Nothing in this Condition shall be construed to require the Property Owners 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 entitlements granted, the City shall estimate its attorney's fees and expenses for the litigation. The Property Owners shall enter into an agreement with the City that requires the Property Owners to deposit the estimated amount and reimburse the City for additional attorney's fees and expenses incurred in connection with the litigation in the event the attorney's fees and expenses incurred exceed the deposit. The Property Owners shall replenish the deposit as necessary within 10 business days of receiving notice from the City.

3. ***Terms and Conditions are Perpetual; Recordation of Covenant.*** The provisions, terms and conditions set forth herein are perpetual, and are binding on the Property Owners, their successors-in-interest, and, where applicable, all tenants and lessees of the site. Further, the Property Owners shall record a covenant indicating their consent to the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The covenant is subject to review and approval by the City Attorney. The Property Owners shall deliver the executed covenant, and all required recording fees, to the Department of Community Development within 30 days of the adoption of this Resolution. The Director may, upon a request by the Property Owners, grant an extension to the 30-day time limit.

SECTION 13. The City Council's decision is based upon each of the totally independent and separate grounds stated herein, each of which stands alone as a sufficient basis for its decision.

SECTION 14. The time within which judicial review, if available, of this decision must be sought is governed by California Code of Civil Procedure Section 1094.6, unless a shorter time is provided by other applicable law. The City Clerk shall mail by first class mail, postage prepaid, a certified copy of this Resolution and a copy of the affidavit or certificate of mailing to both Appellants and any other persons or entities requesting notice of the decision.

SECTION 15. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED July 17, 2018.

Ayes:

Noes:

Absent:

Abstain:

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AMY HOWORTH  
Mayor

ATTEST:

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LIZA TAMURA  
City Clerk