



Scenic Pacifica

Incorporated Nov. 22, 1957

PLANNING COMMISSION Agenda

DATE: March 16, 2015
LOCATION: Council Chambers, 2212 Beach Boulevard
TIME: 7:00 PM

ROLL CALL:

SALUTE TO FLAG:

ADMINISTRATIVE BUSINESS:

Approval of Order of Agenda

Approval of Minutes: February 2, 2015

Designation of Liaison to City Council Meeting:

CONSENT ITEMS:

None

PUBLIC HEARINGS:

1. Appeal of Zoning Administrator's decision that Appellant did not timely appeal Zoning Administrator's prior decision that a Coastal Development Permit was not required for construction at 12 Sharon Way (APN 009-291-050). Proposed Action: Deny the appeal.

CONSIDERATION ITEM:

None

COMMUNICATIONS:

Commission Communications:

Staff Communications:

Oral Communications:

This portion of the agenda is available to the public to address the Planning Commission on any issue within the subject matter jurisdiction of the Commission that is not on the agenda. The time allowed for any speaker will be three minutes.

ADJOURNMENT

Anyone aggrieved by the action of the Planning Commission has 10 calendar days to appeal the decision in writing to the City Council. If any of the above actions are challenged in court, issues which may be raised are limited to those raised at the public hearing or in written correspondence delivered to the City at, or prior to, the public hearing. Judicial review of any City administrative decision may be had only if a petition is filed with the court not later than the 90th day following the date upon which the decision becomes final. Judicial review of environmental determinations may be subject to a shorter time period for litigation, in certain cases 30 days following the date of final decision.

The City of Pacifica will provide special assistance for disabled citizens upon at least 24-hour advance notice to the City Manager's office (738-7301). If you need sign language assistance or written material printed in a larger font or taped, advance notice is necessary. All meeting rooms are accessible to the disabled.

NOTE: Off-street parking is allowed by permit for attendance at official public meetings. Vehicles parked without permits are subject to citation. You should obtain a permit from the rack in the lobby and place it on the dashboard of your vehicle in such a manner as is visible to law enforcement personnel.

CITY OF PACIFICA

MEMORANDUM

DATE: March 16, 2015

TO: Planning Commission

FROM: Lee Diaz, Associate Planner

SUBJECT: **Agenda Item No. 1:** Appeal of Zoning Administrator's decision that Appellant did not timely appeal Zoning Administrator's prior decision that a Coastal Development Permit was not required for construction at 12 Sharon Way (APN 009-291-050).

INTRODUCTION:

On January 14, 2015, the City received an appeal from David Blackman ("Appellant" or "Mr. Blackman") asserting that the Zoning Administrator erroneously determined that a Coastal Development Permit was not required for the remodeling of an existing commercial building and site improvements at 12 Sharon Way (see attachment "1," location map), pursuant to a Building Permit issued on May 23, 2013. On January 29, 2015, the City notified Mr. Blackman that his appeal was untimely. On February 2, 2015, the City received a separate appeal from Mr. Blackman of this untimeliness determination. This report addresses the appeal of the Zoning Administrator's decision that the underlying appeal was untimely.

DISCUSSION:

The City of Pacifica Building Division issued a Building Permit on May 23, 2013 for the remodeling of an existing structure and other site improvements at 12 Sharon Way. (See attachment "2," Building Permit.) Prior to issuing the Building Permit, the Zoning Administrator determined that a Coastal Development Permit was not required.

The City's zoning regulations generally do not require a Coastal Development Permit for remodeling construction, e.g., less than 10% increase in building height, bulk or floor area, and where the use will not change. (See Pacifica Municipal Code § 9-4.4303, subdvs. (h)(2) and (h)(3).) The remodeled structure only added approximately 3 feet to the length of the original building footprint. In addition, the applicant did not propose a new use. The structure was previously used as an ancillary office for the Park Estates Mobile Home Park, and the remodeled

structure will continue to be used as an ancillary office for the mobile home park, not as an independent office use. Other site improvements also include landscaping and the addition of on-site parking.¹ Based on his interpretation of the Coastal Development Permit regulations, the Zoning Administrator determined a Coastal Development Permit was not required.

On May 19, 2014, the City inspected the work performed pursuant to the Building Permit. The subject improvements have been substantially completed since approximately February 19, 2015.

As noted above, on January 14, 2015, Mr. Blackman filed an appeal of the approval of the project without a Coastal Development Permit. (See attachment “3,” January 14, 2015 appeal). The appeal was filed more than 18 months after the Zoning Administrator’s decision, and approximately nine months after the commencement and substantial completion of the project, respectively.

Pacifica Municipal Code Section 9-4.3804 provides that appeals from decisions of the Zoning Administrator are due within ten (10) days after the action of the Zoning Administrator.² On January 29, 2015, a letter was sent to Mr. Blackman stating that his appeal was not filed within ten days of the subject action and is thus not timely. (See attachment “4,” Letter, dated January 29, 2015.) In addition, Mr. Blackman was told that his appeal was not timely because the subject improvements have been completed pursuant to the Building Permit.

On February 2, 2015, the City received a separate appeal from Mr. Blackman, which appeals the Zoning Administrator’s decision that the appeal he filed on January 14, 2015 is untimely. (See attachment “5”). This is the appeal now before the Planning Commission.

The February 2, 2015 Appeal Lacks Merit Because the January 14, 2015 Appeal Was Untimely

Notice of the Zoning Administrator’s decision to not require a Coastal Development Permit for the remodeling of the existing building was not publicly provided. However, the issuance of the Building Permit authorizing construction necessarily encompassed a decision that a Coastal

¹ Prior to the remodeling and site improvements, the subject site contained several code violations such as unenclosed storage of vehicles, and construction equipment. The improvements have eliminated the code violations for the site.

² Section 9-4.3804 states: “Appeals from decisions of the Zoning Administrator may be made to the Commission within ten (10) days after the action of the Zoning Administrator. Such appeals shall be in writing and shall be filed with the Zoning Administrator. Upon the receipt thereof, the Zoning Administrator shall forward the appeal, together with the record on the matter, to the Commission. The Commission shall give notice of such hearing as set forth in Section 9-4.3302 of Article 33 of this chapter.”

Development Permit was not required because an effective Building Permit cannot be issued if a necessary Coastal Development Permit has not been issued. (See, e.g., Pacifica Municipal Code § 9-4.4304, subdiv. (o) (“No other local permit shall be effective where a coastal development permit is required ...”).)³

Moreover, the construction commenced prior to May 19, 2014 (when the first inspection occurred), which provided at a minimum constructive notice that all necessary permits had been issued. Thus, Mr. Blackman’s filing of an administrative appeal more than a year and a half after issuance of the Building Permit and more than six months after commencement of construction clearly does not constitute an appeal filed within ten days of the action of the Zoning Administrator, as required by Pacifica Municipal Code Section 9-4.3804. Moreover, the appeal is moot given that the construction has been substantially completed.

RECOMMENDATION:

Staff recommends that the Planning Commission deny the appeal on the ground that Mr. Blackman did not timely appeal the Zoning Administrator’s determination that a Coastal Development Permit was not required for the construction at 12 Sharon Way (APN 009-291-050).

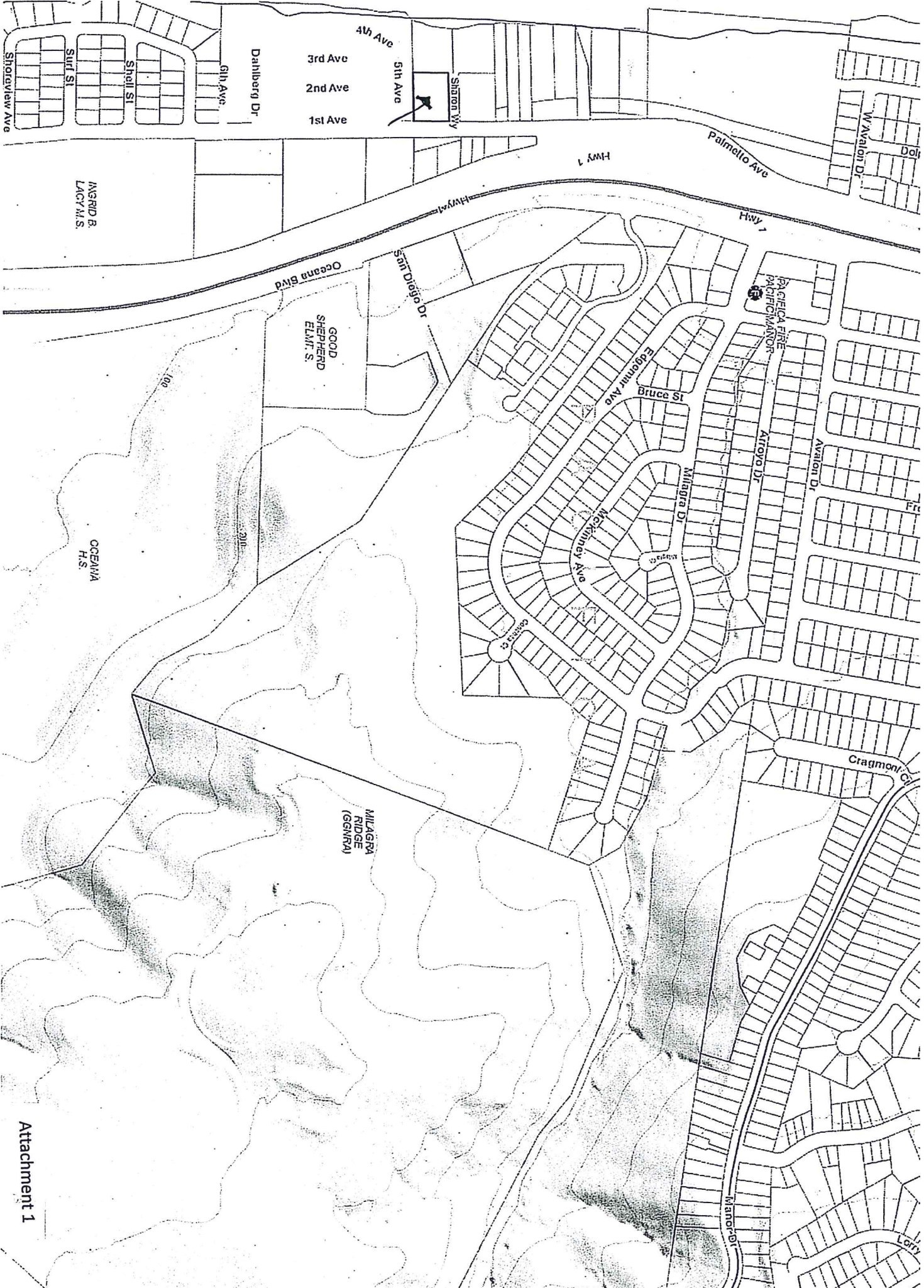
DOCUMENTS ATTACHED:

1. Location Map of 12 Sharon Way
2. Building Permit, dated May 23, 2013
3. Appeal letter from David Blackman, Received January 14, 2015
4. Letter from Zoning Administrator, dated January 29, 2015, re: late appeal
5. Appeal letter from David Blackman, Received February 02, 2015

³ Note also that a Coastal Development Permit is a discretionary permit under the Zoning Code, for which environmental review may be required, whereas the CEQA Guidelines presume that the issuance of a Building Permit is a ministerial act exempt from environmental review. (Compare Pacifica Municipal Code, Title 9, Chapter 4, Articles 43 and 44, and 14 Cal. Code Regs. § 15268.) Thus, generally, a Building Permit for a project would follow a determination regarding the issuance of Coastal Development Permit.

12 Sharon WY

precise boundary data or information, consult official records. Printed Wed Mar 11 2015 08:41:40 AM.



3825070

City of Pacifica BUILDING DEPARTMENT

170 SANTA MARIA AVE. PACIFICA, CA 94044 TEL: (650) 738-7344

No. 41161-13

APPLICATION FOR BUILDING PERMIT

Form with fields: BUILDING ADDRESS (12 Sharon Way), LOT NO., BLOCK, SUBDIVISION, PARCEL NO., USE OF BUILDING (OFFICE), SET BACKS, FRONT, LEFT SIDE, RIGHT SIDE, REAR, OWNER NAME, ADDRESS, CITY, PHONE, ARCHITECT (MVE), ADDRESS (1900 Main St 8th Flr), CITY (Fruine), PHONE (449/809-3388), LICENSE NO. (29135), ENGINEER, ADDRESS, CITY, PHONE, LICENSE NO., GEOTECHNICAL ENGINEER, ADDRESS, CITY, PHONE, LICENSE NO.

Table with columns: CLASS OF WORK, FEES, RECEIPT NUMBER. Rows include: NEW ADDITION ALTER REPAIR OTHER, PLAN CHECK (736.94), BUILDING PERMIT (1133.75), VALUATION: \$125,000.00, SQ. FT. OF BLDG: 1272, GARAGE/CPT, PLUMBING (56.20), OCC. GROUP, TYPE OF BLDG., NO. OF STORIES, ELECTRIC (60.83), HT. OF BLDG., NO. OF UNITS, MAX OCC. LOAD, MECHANICAL (48.95), BEDROOMS, BATHS, USE ZONE, SEISMIC (26.25).

TYPE OF CONSTRUCTION: FRAME, BRICK, STUCCO, CONCRETE, STEEL, OTHER. MICROFILM (15), CAP IMPVMT (1700), INVESTIGATION (5), EDUCATION (8).

JOB DESCRIPTION: Remodel of existing building. PERMIT FINALED.

CONTRACTOR: I hereby affirm that I am licensed under provisions of Chapter 9... License # and Class, City Business #, Name, Address, City, State / Zip, Phone, Signature, Date.

OWNER/BUILDER: I hereby affirm that I am exempt from the Contractor's License Law for the following reason... I, as owner of the property, or my employees with wages as their sole compensation, will do the work... I, as owner of the property, am exclusively contracting with licensed contractors... I am exempt under Sec. B.&P.C. for this reason.

WORKERS' COMPENSATION: I hereby affirm under penalty of perjury one of the following declarations: I have and will maintain a certificate of consent to self-insure for workers' compensation... I have and will maintain worker's compensation insurance... I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California...

I CERTIFY THAT I HAVE READ THIS APPLICATION AND STATE THAT THE ABOVE INFORMATION IS CORRECT. I AGREE TO COMPLY WITH ALL CITY AND COUNTY ORDINANCES AND STATE LAWS RELATING TO BUILDING CONSTRUCTION, AND HEREBY AUTHORIZE REPRESENTATIVES OF THIS CITY TO ENTER UPON THE ABOVE-MENTIONED PROPERTY FOR INSPECTION PURPOSES. NOTICE: THIS PERMIT WILL EXPIRE BY LIMITATION IF WORK IS NOT STARTED IN 180 DAYS OR IF WORK IS ABANDONED FOR MORE THAN 180 DAYS. DO NOT CONCEAL OR COVER ANY CONSTRUCTION UNTIL THE WORK IS INSPECTED AND THE INSPECTION IS RECORDED ON THE JOB CARD. ALL INSPECTION REQUESTS ARE REQUIRED 24 HOURS IN ADVANCE OF THE INSPECTION.

LENDER: I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec 3097, Civ. C.). Lender's Name, Lender's Address.

ISSUED BY: [Signature] DATE: 5/23/13. Signature of Contractor, Owner, or Agent, Address of Agent, City, State, Zip, Phone.

ADDRESS FILE

WHEN PROPERLY VALIDATED • THIS FORM CONSTITUTES A BUILDING PERMIT

THIS APPLICATION IS A BUILDING PERMIT WHEN PROPERLY FILLED OUT, SIGNED, AND PERMIT FEES ARE PAID. PERMISSION IS THEREFORE GRANTED TO DO SUCH WORK AS INDICATED IN THIS APPLICATION SUBJECT TO ALL OF THE PROVISIONS OF THE BUILDING CODE OF THE CITY OF PACIFICA AND RELATED LAWS. THIS PERMIT BECOMES NULL AND VOID IF WORK IS NOT COMMENCED WITHIN 180 DAYS FROM THE DATE OF ISSUANCE AND IS SUSPENDED AT ANY TIME DURING CONSTRUCTION FOR MORE THAN 180 DAYS, AND PROVIDES FURTHER, THAT SUCH SUSPENSION OR ABANDONMENT HAS NOT EXCEEDED (1) YEAR.

City of Pacifica
APPEAL FORM

RECEIVED
JAN 14 2015
CITY CLERK

INSTRUCTIONS:

TO FILE AN APPEAL, COMPLETE THIS FORM AND FILE IT WITH THE CITY CLERK'S OFFICE, CITY HALL, 100 BAYVIEW AVENUE, PACIFICA, CA 94044, NO LATER THAN TEN (10) CALENDAR DAYS OF THE DECISION (No postmarks will be accepted), TOGETHER WITH ANY REQUIRED APPEAL FEE. YOU WILL BE NOTIFIED IN WRITING OF THE HEARING DATE FOR YOUR APPEAL.

APPELLANT: FILL IN BLANKS AND CHECK APPROPRIATE BOXES BELOW. ATTACH ADDITIONAL SHEETS IF NECESSARY. (\$100.00 FEE IS REQUIRED PER APPEAL OF PLANNING COMMISSION DECISION(S), IF FILED BY NON-APPLICANT)

PROPOSED PROJECT:

Title/Name: unknown
Address: 12 Sharon
Applicant/Developer: unknown

APPELLANT:

Name: David Blackman
Address: 375 Keith Ave
Phone (Day): (650) 766-6316

DECISION OF (check one):

- Planning Commission* Parks, Beaches & Recreation Commission Animal Advisory Commission
* \$100 FEE IF FILED BY NON-APPLICANT City Staff (Title): _____

DECISION DATE: Continuous or unknown

DECISION AT ISSUE: APPROVAL OR DENIAL OF: LACK OF

- Use Permit Site Development Permit Tentative Subdivision Map Animal Permit
 EIR or Negative Declaration Coastal Development Permit Variance Administrative Decision
 Parking Exception Home Occupation Permit Tree Removal Permit Other: _____

DESCRIBE DECISION BEING APPEALED: Lack of required Coastal Development Permit
See attached

DESCRIBE GROUNDS FOR APPEAL: See attached

APPELLANT'S RELATIONSHIP TO THE ITEM BEING APPEALED? (check one)

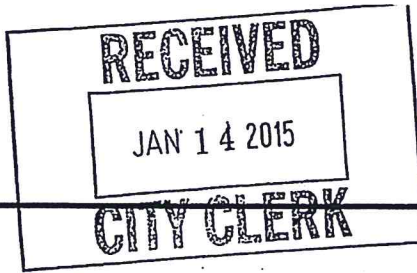
- Project Applicant Neighbor Concerned Citizen Other Upset Citizen

APPELLANT SIGNATURE: X D. Blackman

DATE: 1/14/2015

Received by: Kathy O'Connell Fee Paid: Cash Check 1881 Receipt No. _____
Receipt Date: 1

City Clerk's Office Use Only



Wednesday, January 14, 2015

Sec. 9-4.4305. - Coastal development permit appeal.

Re: 12 Sharon Way

Please consider this an appeal of the decision to not require any coastal development permit for the new commercial building and site improvements at 12 Sharon Way.

This project doesn't have the required Coastal Development permit required by the State of California and Pacifica's municipal Code.

This project is in the Coastal Zone

This is a new commercial building and a change of use from residential to commercial

This project has no Administrative Coastal Develop Permit

This project is excluded from any exception because it is between the ocean and first road.

This project is excluded from any exception because it is on a protected Coastal bluff and is connected to the beach.

Thank you
David Blackman

(650) 766-6316 cell

A handwritten signature in black ink, appearing to read "D. Blackman".



Scenic Pacifica
Incorporated Nov. 22, 1957

January 29, 2015

David Blackman
375 Keith Ave.
Pacifica, CA 94044

Re: Appeal – 12 Sharon Way

Dear Mr. Blackman:

This letter is in response to the appeal you filed on January 14, 2015 relating to 12 Sharon Way. The City of Pacifica Building Division issued a building permit on May 23, 2013 for the remodeling of an existing structure and other site improvements at 12 Sharon Way, which improvements have been completed. Prior to issuing the building permit, the Zoning Administrator determined that a Coastal Development Permit was not required.

Pacifica Municipal Code Section 9-4.3804 provides that appeals from decisions of the Zoning Administrator are due within ten (10) days after the action of the Zoning Administrator. Your appeal was not filed within ten days of the subject action and is thus not timely. In addition your appeal is not timely because the subject improvements have been completed pursuant to the building permit.

The \$100 fee that you paid to file the appeal will be processed and refunded to you.

Sincerely,

Lee Diaz
Acting Planning Director

cc: Kathy O'Connell, City Clerk

CITY OF PACIFICA
Planning, Building, and Code Enforcement
1800 Francisco Blvd. • Pacifica, California 94044-2506
(650) 738-7341 • www.cityofpacifica.org

MAYOR
Karen Ervin

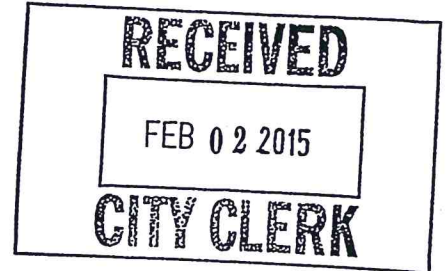
MAYOR PRO TEM
Sue Digre

COUNCIL
Mary Ann Nihart
Mike O'Neill
John Keener



Saturday, January 31, 2015

Appeal of the Planning Director's Decision



Re: 12 Sharon Way

Lee Diaz,

I filed an appeal on January 14, 2015 relating to the planning commission illegally allow construction without a coastal development permit at 12 Sharon Way. It is clear that a Coastal Development Permit and Use Permit are required, subject to CEQA, and public input.

15 days later, On January 29, 2015, you arrogantly heard your own appeal instead of bringing it before the planning commission and/or City council.

Please consider this a separate appeal of your January 29, 2015 decision that my appeal was not timely and bared from being heard at a public forum.

Your expectation of me to file my appeal in timely manner from a decision you did in closed doors behind the public's back is wildly unreasonable.

Under these circumstances my appeal is timely.

What was the date of this secretive decision that a Coastal Development Permit was not required for a New Office building on a Coastal Bluff on a property that includes the beach and ocean in the California Coastal Zone?

What is the grounds of your decision that a Coastal Development permit is not required?

The original appeal is attached

David Blackman