



**MINOR COASTAL DEVELOPMENT PERMIT
NOTICE OF DECISION**

Nov. 15, 2023

Marina Goldstein
160 Tamarack Ave
Carlsbad, CA 92008

RE: CDP 2023-0038/V2023-0002 (DEV2023-0109) – OLDE VILLAGE - OAK

The city has completed a review of the application for a Minor Coastal Development Permit and Minor Variance for the demolition of an existing 1,440-square-foot single-family dwelling and the construction of a 6-foot-high fence along the east and south property lines and an 8-foot-high fence on the north and west property lines. A 6-foot-tall, 12-foot-wide gate is proposed on the south property line to provide access from Oak Avenue. The fencing material is 12.5-gauge welded wire coated with a vinyl finish. Only the 8-foot-tall portions of the fence require a Variance to exceed the six-foot fence height standard. The property is located at 354 Oak Avenue (APN 203-261-03-00), within the Village Center (VC) district of the Village and Barrio Master Plan. The property is located within the coastal zone and outside of the appealable area of the California Coastal Commission.

It is the City Planner's determination that the project, **CDP 2023-0038/V2023-0002 (DEV2023-0109) – OLDE VILLAGE - OAK**, is consistent with the city's applicable Coastal Development and Variance Regulations (Chapters 21.201 - 21.205 and 21.50) and with all other applicable city ordinances and policies. After careful consideration of the circumstances surrounding this request, the City Planner has determined that the findings required for granting a Minor Coastal Development Permit and Minor Variance **can** be made and therefore, **APPROVES** this request based on the following findings and conditions.

Minor Coastal Development Permit Findings:

1. That the proposed development requires no discretionary approvals other than a Minor Coastal Development Permit and Minor Variance.
2. That the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act, in that **the existing residence to be demolished and the proposed 6-foot-tall fence, 8-foot-tall fence and 6-foot-tall gate are not located on a property adjacent to a body of water. Therefore, no opportunities for coastal access are available from the subject site, nor are public recreation areas required of the project.**

3. The proposed development will have no adverse effect on coastal resources, in that **the existing residence to be demolished and the proposed fence are not located on a property adjacent to a body of water, and the entire lot is already disturbed and developed with a single-family home and mature landscaping.**
4. That the proposed development is in conformance with the **Village Area Segment** of the Certified Local Coastal Program and all applicable policies in that **the site is within the Village Center (VC) District of the Village and Barrio Master Plan, which serves as the Local Coastal Program for the planning area. The project proposes the demolition of an existing single-family residence and the construction of a 6-foot-high along the east and south property lines and an 8-foot-high fence on the north and west property lines. A historic resource report was prepared for the existing single-family residence (Kristi Hawthorne, August 2023), which was constructed in 1939. It was determined that the structure does not qualify as a historic resource. The project is not a housing development project as the project does not include the construction of any new residential units and there are currently no plans to build additional/replacement units in the future. The existing structure has been abandoned and boarded up for over five years and has become a popular location for trespassing and illegal dumping. The demolition of the structure is necessary to protect the health and safety of the public. The proposed project will not obstruct views of the coastline as seen from public lands or the public right-of-way, nor otherwise damage the visual beauty of the coastal zone. No agricultural uses currently exist on the site, nor are there any sensitive resources located on the property. Furthermore, the existing single-family residence and the proposed fence/gate are not located in an area of known geologic instability or flood hazards.**
5. The project is consistent with the provisions of the Coastal Resource Protection Overlay Zone (Chapter 21.203 of the Zoning Ordinance), in that **the project will adhere to the city's Master Drainage Plan, Grading Ordinance, Storm Water Ordinance, BMP Design Manual and Jurisdictional Runoff Management Program (JRMP) to avoid increased urban runoff, pollutants, and soil erosion. No undevelopable steep slopes or native vegetation exist on the subject property and the developed site is not located in an area prone to landslides, or susceptible to accelerated erosion, floods, or liquefaction. No habitat buffers or geologic stability setbacks are required of the property.**
6. That the request for a minor coastal development permit was adequately noticed at least ten (10) working days before the date of this decision pursuant to Section 21.201.080(B) and (C) of the Carlsbad Coastal Development Regulations.
7. That the City Planner has determined that the project is exempt from the requirements of the California Environmental Quality Act (CEQA) per Section **15301(l)(1) – Existing Facilities** of the State CEQA Guidelines and will not have any adverse significant impact on the environment.

Minor Variance Findings:

8. That because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification in that **the subject 8-foot-tall fence is located on a property that is slightly lower in elevation to the property directly to the west. The adjacent property directly to the west of the project site is approximately 2 feet higher in elevation than the subject property and contain an approximately 2-foot-tall retaining wall along the property line. Limiting the proposed fence to 6 feet in height would make security inadequate. Two additional feet in wall height over the allowed 6-foot height limitation is required to provide additional security due to topography of the site and the property directly to the west. The Carlsbad Police Department has indicated that the property is a public nuisance and is regularly subjected to trespassing, illegal dumping and other illegal activities due to the abandoned home and insufficient security. Limiting the fencing to 6 feet would deprive the property of adequate security, enjoyed by other properties on Oak Avenue.**

9. That the variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located and is subject to any conditions necessary to assure compliance with this finding in that **the subject 8-foot-tall fence ensures the subject property receives the same benefits (e.g. security) that properties located directly across Oak Avenue receive by having a 8-foot-tall fence along the north and west property lines. The property directly west of the subject property is approximately 2 feet higher in elevation than the subject property; therefore, 2 additional feet of fence height over the allowed 6-foot height limitation is required to provide additional security. The Carlsbad Police Department has indicated the property is a public nuisance and is is regularly subjected to trespassing, illegal dumping and other illegal activities due to the abandoned home and insufficient security. Trespassers are known to travel through 363 Carlsbad Village Drive (a property which also contains an abandoned home under separate ownership) to trespass into the project site. Therefore, the 8-foot-tall fence is necessary for adequate security and to protect public health and safety.**

10. That the variance does not authorize a use or activity which is not otherwise expressly authorized by the zone regulation governing the subject property in that **fences are permitted uses in the Village Center District of the Village and Barrio Master Plan.**

11. That the variance is consistent with the general purpose and intent of the general plan and any applicable specific or master plans in that **the granting of a Minor Variance to allow the subject 8-foot fence is consistent with the general purpose and intent of the General Plan for the Village and Barrio (V-B) land use designation. Any future development will be subject to the Village Center District of the Village and Barrio Master Plan, including density restrictions.**

12. In addition, in the coastal zone, that the Minor Variance is consistent with and implements the requirements of the certified local coastal program and that the Minor Variance does not reduce or in any manner adversely affect the protection of coastal resources as specified in the zones included in this title, and that the Minor Variance implements the purposes of zones adopted to implement the local coastal program land use plan in that **the site is within the VC District of the Village and Barrio Master Plan, which serves as the Local Coastal Program for the planning area. The proposed 8-foot-tall fence will not obstruct views of the coastline as seen from public lands or the public right-of-way, nor otherwise damage the visual beauty of the coastal zone. No agricultural uses currently exist on the site, nor are there any sensitive resources located on the property.**

Conditions:

1. The City Planner does hereby **APPROVE** the Minor Coastal Development Permit and Minor Variance, **CDP 2023-0038/V2023-0002**, for the project entitled **OLDE VILLAGE (Exhibits "A" – "B")**, dated November 14, 2023, on file in the Planning Division and incorporated by this reference, subject to the conditions herein set forth.
2. If any of the following conditions fail to occur; or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the city shall have the right to revoke or modify all approvals herein granted; deny or further condition issuance of all future building permits; deny, revoke or further condition all certificates of occupancy issued under the authority of approvals herein granted; record a notice of violation on the property title; institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. No vested rights are gained by Developer or a successor in interest by the city's approval of this **Minor Coastal Development Permit and Minor Variance**.
3. Staff is authorized and directed to make, or require the Developer to make, all corrections and modifications to the **Minor Coastal Development Permit and Minor Variance** documents, as necessary to make them internally consistent and in conformity with the final action on the project. Development shall occur substantially as shown on the approved Exhibits. Any proposed development different from this approval, shall require an amendment to this approval.
4. The Developer shall comply with all applicable provisions of federal, state, and local laws and regulations in effect at the time of building permit issuance.
5. If any condition for construction of any public improvements or facilities, or the payment of any fees in-lieu thereof, imposed by this approval or imposed by law on this Project are challenged, this approval shall be suspended as provided in Government Code Section 66020. If any such condition is determined to be invalid this approval shall be invalid unless the City Council determines that the project without the condition complies with all requirements of law.

6. Developer/Operator shall and does hereby agree to indemnify, protect, defend, and hold harmless the City of Carlsbad, its Council members, officers, employees, agents, and representatives, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees incurred by the city arising, directly or indirectly, from (a) City's approval and issuance of this **Minor Coastal Development Permit and Minor Variance**, (b) City's approval or issuance of any permit or action, whether discretionary or nondiscretionary, in connection with the use contemplated herein, and (c) Developer/Operator's installation and operation of the facility permitted hereby, including without limitation, any and all liabilities arising from the emission by the facility of electromagnetic fields or other energy waves or emissions. This obligation survives until all legal proceedings have been concluded and continues even if the city's approval is not validated.
7. This approval shall become null and void if building permits are not issued for this project within 24 months from the date of project approval.
8. Developer shall pay the citywide Public Facilities Fee imposed by City Council Policy #17, the License Tax on new construction imposed by Carlsbad Municipal Code Section 5.09.030, and CFD #1 special tax (if applicable), subject to any credits authorized by Carlsbad Municipal Code Section 5.09.040. Developer shall also pay any applicable Local Facilities Management Plan fee for Zone 1, pursuant to Chapter 21.90. All such taxes/fees shall be paid at issuance of building permit. If the taxes/fees are not paid, this approval will not be consistent with the General Plan and shall become void.
9. Prior to the issuance of the **building permit**, Developer shall submit to the City a Notice of Restriction to be filed in the office of the County Recorder, subject to the satisfaction of the City Planner, notifying all interested parties and successors in interest that the City of Carlsbad has issued a **Minor Coastal Development Permit and Minor Variance** on the property. Said Notice of Restriction shall note the property description, location of the file containing complete project details and all conditions of approval as well as any conditions or restrictions specified for inclusion in the Notice of Restriction. The City Planner has the authority to execute and record an amendment to the notice which modifies or terminates said notice upon a showing of good cause by the Developer or successor in interest.
10. Approval of this request shall not excuse compliance with all applicable sections of the Zoning Ordinance and all other applicable city ordinances in effect at time of building permit issuance, except as otherwise specifically provided herein.
11. Prior to hauling dirt or construction materials to or from any proposed construction site within this project, Developer shall apply for and obtain approval from, the City Engineer for the proposed haul route.

Engineering

12. Developer shall comply with the city's Stormwater Regulations, latest version, and shall implement best management practices at all times. Best management practices include but are not limited to pollution control practices or devices, erosion control to prevent silt runoff during construction, general housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the discharge of pollutants to stormwater, receiving water or stormwater conveyance system to the maximum extent practicable. Developer shall notify prospective owners and tenants of the above requirements.

NOTICE

This decision may be appealed by you or any member of the public to the Planning Commission within ten (10) calendar days of receipt of this letter. Appeals must be submitted in writing to the Planning Commission at 1635 Faraday Avenue in Carlsbad, along with a payment of **\$900**. The filing of such appeal within such time limit shall stay the effective date of the order of the City Planner until such time as a final decision on the appeal is reached.

Please take **NOTICE** that approval of your project includes the “imposition” of fees, dedications, reservations, or other exactions hereafter collectively referred to for convenience as “fees/exactions.”

You have 90 days from date of final approval to protest imposition of these fees/exactions. If you protest them, you must follow the protest procedure set forth in Government Code Section 66020(a), and file the protest and any other required information with the City Manager for processing in accordance with Carlsbad Municipal Code Section 3.32.030. Failure to timely follow that procedure will bar any subsequent legal action to attack, review, set aside, void, or annul their imposition.

You are hereby **FURTHER NOTIFIED** that your right to protest the specified fees/exactions **DOES NOT APPLY** to water and sewer connection fees and capacity charges, nor planning, zoning, grading or other similar application processing or service fees in connection with this project; **NOR DOES IT APPLY** to any fees/exactions of which you have previously been given a **NOTICE** similar to this, or as to which the statute of limitations has previously otherwise expired.

Nov. 15, 2023

Page 7

If you have any questions regarding this matter, please feel free to contact Lauren Yzaguirre at 442-339-2634 or by email at Lauen.Yzaguirre@carlsbadca.gov.

CITY OF CARLSBAD



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City Planner

EL:LY:mh

c: Allison McLaughlin, Project Engineer
Laserfiche/File Copy
Data Entry