



**City of San Diego  
Development Services**  
1222 First Ave., MS-302  
San Diego, CA 92101

**Development Permit/  
Environmental Determination  
Appeal Application**

**FORM  
DS-3031**

**November 2017**

**In order to assure your appeal application is successfully accepted and processed, you must read and understand [Information Bulletin 505](#), "Development Permits/Environmental Determination Appeal Procedure."**

**1. Type of Appeal:**  Appeal of the Project  
 Appeal of the Environmental Determination

**2. Appellant:** *Please check one*  Applicant  Officially recognized Planning Committee  "Interested Person"  
([Per M.C. Sec. 113.0103](#))

Name: La Jolla Community Planning Association, Diane Kane, President E-mail: info@LajollaCPA.org, dkane002@san.rr.com

Address: P.O. Box 889 City: San Diego State: CA Zip Code: 92038 Telephone: 858-459-9490

**3. Project Name:**

VILLA K-L NDP/CDP

**4. Project Information**

Permit/Environmental Determination & Permit/Document No.: CDP&NDP/619886 MND/345149 PROCESS TWO Date of Decision/Determination: July 30, 2021 City Project Manager: Xavier Del Valle

**Decision(Describe the permit/approval decision):**

Approval of an Amendment to CDP No. 1217056 and an NDP for a remodel and addition to an existing 3,135 square-foot single-family residence with detached 500 square-foot garage and detached 747 square-foot accessory structure with 756 square-foot basement at 1228 Park Row. Includes adding 45 square feet to the single-family residence for a total of 3,180 square feet, converting an existing 487 square-foot section of the detached accessory structure into an ADU, and associated site improvements, all within the Coastal Overlay Zone.

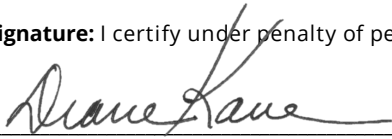
**5. Ground for Appeal(Please check all that apply):**

- Factual Error
- Conflict with other matters
- Findings Not Supported
- New Information
- City-wide Significance (Process Four decisions only)

**Description of Grounds for Appeal** (*Please relate your description to the allowable reasons for appeal as more fully described in [Chapter 11, Article 2, Division 5 of the San Diego Municipal Code](#). Attach additional sheets if necessary.*)

Please see the attached descriptions of three separate Grounds for Appeal and associated Exhibit.

**6. Appellant's Signature:** I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: 

Date: August 12, 2021

**Note: Faxed appeals are not accepted.**

**Clear Form**

## **Section 5: Description of Grounds for Appeal**

### **5.1 Floor Area Ratio Violation**

The Floor Area Ratio (FAR) of the proposed remodel and addition violates Section 131.0446 of the San Diego Municipal Code (SDMC).

The correct **as-built** floor areas, taken from the original construction drawings and certified by the original architect for the project, are listed for each level of the 1228 Park Row project in the attached Exhibit A. The floor areas given in the Notice of Decision (NOD), provided by the applicant based in-part on the original pre-construction permitted dimensions, are factually incorrect as representations of the current as-built residence.

The correct total **as-built** floor area of the existing residence is 4908 square feet, including a 521 square foot detached garage. The proposed remodel and addition would increase this area by 471 square feet, bringing the total to 5379 square feet. The gross lot area is 9425 square feet, and the maximum allowable FAR is 0.55, so the maximum allowable floor area is 5184 square feet. The requested remodeling permit therefore exceeds this allowable 0.55 FAR by 195 square feet, in clear violation of the SDMC.

***This Appeal seeks the Planning Commission's denial of this application because of its non-conformance with the FAR requirements of the SDMC.***

### **5.2 Visibility Areas and Public Safety**

Pursuant to Section 126.0404 of the SDMC, the approval of a Neighborhood Development Permit (NDP) explicitly requires that the proposed development not be detrimental to public safety. Among these considerations is the need for visibility areas adjoining driveways as defined in Section 113.0273 of the SDMC. This is particularly relevant to the subject property because it adjoins a commercial district with resulting heavy use of adjacent public sidewalks, including by children and elderly neighbors with limited mobility.

The driveway on the Park Row side of the property does not conform to the visibility area requirements of this section of the SDMC, even if one takes the liberty of placing the street-side boundaries of the two visibility areas along the sidewalk rather than along the property line as the code specifies. The SDMC also assumes a level driveway that approaches the street perpendicularly. But in this case the driveway approaches the sidewalk at an angle, rising steeply at a measured slope of approximately 21% (not the 13.8% slope shown incorrectly on the current application), so that the visibility of a driver backing up toward the public sidewalk is additionally impaired by having a vantage point looking upward from below the grade of the sidewalk.

In addition, in its open position the edge of the motorized iron gate that adjoins the driveway in the PROW is 4'-1" closer to the street than the adjacent concrete retaining wall, thus reducing the already-limited visibility area for an exiting driver or an approaching pedestrian by roughly half. There is also no indication in the application of either of the property's two massive motorized iron gates being fitted with safety releases or other protections against crushing injuries within the PROW when they are actuated remotely.

While Section 113.0273(c) of the SDMC grants the City Engineer some flexibility in the interpretation of visibility areas, there is no question that the circumstances of the driveway on the Park Row side of this property are considerably more severe than those assumed by this section of the SDMC. Furthermore, the Development Services draft resolution for this project does not provide any justification for its proposed leniency in this regard.

***This Appeal seeks that the Planning Commission require the removal of the unpermitted motorized iron gate on the Park Row side of this property in the interest of public safety and in compliance with the expressed intent of the SDMC.***

### 5.3 Code Enforcement

The applicant seeks under Section 129.0710 of the SDMC the issuance of an NDP for existing concrete retaining walls and gates that were constructed within the PROW without permits more than three years prior to this application. But this same section of the SDMC also clearly requires that a permit be issued **before** such construction can be undertaken.

Further, Section 12.0201 of the SDMC states that “failing to comply with any of the mandatory requirements of this Code shall constitute a misdemeanor” and stipulates substantial fines that may multiply over the period of such infractions. And Section 121.0202 of the SDMC requires the City to develop “policies for consistent and uniform enforcement of the Land Development Code”.

Both the NDP and CDP applications explicitly require compliance with all applicable codes, none of which allow retroactive permitting.

The failure to exercise the enforcement provisions of the SDMC, particularly in such an extreme example involving multiple long-term code violations on this property, erodes the credibility of Development Services to enforce the Code with the members of the community who we represent.

***This Appeal seeks the Planning Commission’s recognition that misdemeanors have been committed and seeks meaningful enforcement by denying this and any other retroactive permit application absent payment of penalties or the removal of unpermitted constructions.***

