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COASTAL DEVELOPMENT PERMIT AMENDMENT APPLICATION

Application number3-01-039-A2, Front Street Inn Modifications

Applicant.....Valerie Seymour

Project locationFront Street Inn and Spa at 1140 Front Street near the Morro Bay Embarcadero in the City of Morro Bay, San Luis Obispo County (APN 066-034-012).

Project descriptionMinor interior modifications to an existing two-unit inn and spa approved by the Coastal Commission, and new hot tub, storage shed, deck and fence between the rear of the building and the bluff.

Local approvalsCity of Morro Bay City Council approval of conditional use permit number UP0-179 on April 28, 2008.

File documents.....Coastal Commission coastal development permit (CDP) file 3-01-039 (including through amendment 3-01-039-A1); City of Morro Bay certified Local Coastal Program (LCP).

Staff recommendation ...Approval with Conditions

A. Staff Recommendation

1. Summary of Staff Recommendation

The Applicant proposes to modify the upstairs of the Coastal Commission approved floor plan of the Front Street Inn and Spa development to slightly reconfigure the existing approved caretakers unit in relation to the existing approved two overnight units and three spa treatment rooms, and to add a new fenced hot tub, storage shed, and deck area at the rear of the building. These improvements are mostly minor, but they do raise Coastal Act issues related to protecting priority visitor-serving uses and public views. Fortunately, these issues are likewise relatively minor, and can be readily resolved via special conditions that require the overnight rooms to remain standard operating overnight rooms, and that limit development at the rear of the building to keep it no higher than the height of the approved building. The Applicant and staff are in agreement on the recommended conditions of approval. **As so conditioned, Staff recommends that the Commission approve a CDP with conditions.** The necessary motion is found on the next page.



2. Staff Recommendation on CDP Amendment

Staff recommends that the Commission, after public hearing, **approve** the proposed project subject to the standard and special conditions below.

Motion: I move that the Commission approve the proposed amendment to coastal development permit number 3-01-039 pursuant to the staff recommendation.

Staff Recommendation of Approval: Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit Amendment: The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment..

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 - Exhibit A: Project Location
 - Exhibit B: Site Area Photographs
 - Exhibit C: Existing Coastal Commission Approved Upstairs Floor Plan
 - Exhibit D: Proposed Upstairs Floor Plan and Exterior Development

Click on the link at left to go to the exhibits.



B. Findings and Declarations

The Commission finds and declares as follows:

1. Project Background, Location, and Description

The project site is located just inland of Morro Bay and the Embarcadero at 1140 Front Street in the City of Morro Bay. See Exhibits A and B for maps and site area photos.

Embarcadero History/Standard of Review

Historically, the small community of Morro Bay was developed atop the bluffs adjacent to the tidal flats of Morro Bay proper. The environment of the Bay was drastically modified, however, when the U.S. Navy developed a Navy amphibious base at Morro Bay in the early 1940's. Base construction included development of the north and south breakwaters at the entrance to the Morro Bay harbor, two large "T"-piers extending into the Bay, and an inner harbor rip-rap bulkhead along the transitional edge of the Bay. A navigational channel was dredged through the Bay in this area, and the dredge spoils were deposited behind the bulkhead. These dredge spoils created a fill area that soon became known as the Embarcadero. By the late 1940's the Navy base, including all of its waterfront facilities, was acquired by San Luis Obispo County. This area was developed with various docks, piers, and structures which were generally occupied by a growing fleet of commercial fishing boats and related operations. In 1964, the City of Morro Bay incorporated and assumed jurisdiction over the waterfront land and the related facilities, including the Embarcadero area. Trusteeship of the underlying state tidelands was also transferred to the City at that time, and the City continues to lease out space along the Embarcadero through its proxy relationship to the State Lands Commission.

The Embarcadero is now largely developed with a variety of visitor-serving (overnight units, restaurants, gift shops, etc.) and coastal-related (i.e., kayak rental, commercial and recreational fishing services, etc.) land uses, and the area still retains its eclectic character stemming from its commercial fishing roots and the visitor-serving shops, restaurants, and small hotels that cater to out-of-town visitors. Although more recent redevelopment is altering that historic character somewhat, and bringing a more finished facade to the area, the main character themes remain the same, and the area attracts visitors from far and wide. In fact, Morro Bay and the Embarcadero in particular have become the major tourist attraction of the community and a prime coastal visitor-serving destination with an estimated 1.5 million visitors annually. Although the City of Morro Bay has a certified LCP, the Coastal Commission retains coastal permitting jurisdiction over the Embarcadero area (including the property that is the subject of this amendment application) because of its historic tidelands status. As a result, the standard of review for the proposed project is the Coastal Act, although the certified Morro Bay LCP can provide non-binding guidance.

See Exhibit A for a general location map and an oblique air photo of the site and its general environs.

Project Location and CDP History

The project site is located at 1140 Front Street directly inland and across the road (i.e., across



Embarcadero Road and Front Street) from the City’s commercial fishing T-piers and Harborwalk public recreation path system leading to Morro Rock and Morro Strand State Beach. Front Street at this location is a short “spur” street just inland and parallel to Embarcadero Road that dead ends into a large parking lot adjacent to the Duke Energy plant. The Front Street Inn and Spa building is one of a series of buildings built into and against the bluffs at this location, with residential development atop the bluffs inland of that. The building is approximately 28 feet tall and approximately 7,700 square feet consisting of two-stories with shops on the lower floor and the inn and spa facilities on the upper floor. See Exhibit B for site area photos.

The Front Street Inn and Spa development was originally approved by the Commission in 2001,¹ and that approval was amended in 2004.² As approved and amended, the Front Street Inn and Spa provides for two commercial units on the lower floor (currently occupied by a bakery and a beauty supply store), and a second story with two overnight rooms, three spa rooms, a two-bedroom caretaker’s quarters, and related features (e.g., Inn lobby, office, laundry, etc.).³ See Exhibit C for the existing approved upstairs floor plan.

Project Description

The proposed project would allow minor interior modifications to the approved upstairs floor plan, and would provide for a new fenced hot tub, storage shed, and deck area at the rear of the building. The proposed interior modifications would: reduce the approved spa treatment rooms from three rooms to two; modify the approved caretaker’s quarters from a two-bedroom, two-bath configuration to an enlarged studio apartment with one bath; add an office area within the caretaker’s quarters; add an Inn front desk; and enlarge the utility/laundry area. The proposed exterior improvements include a roughly 150 square-foot deck with a six-foot wide hot tub framed by a five-foot fence on two sides; and a 120 square-foot storage shed that would be approximately 8 feet tall. See Exhibit D for the proposed modified upstairs floor plan and the proposed exterior development plans.

2. Coastal Development Permit Amendment Determination

A. Applicable Policies

As indicated above, the Coastal Act is the standard of review, and the LCP can provide non-binding guidance. Relevant Coastal Act and LCP policies are identified below.

Public Access and Recreation Policies

¹ CDP 3-01-039, approved August 7, 2001.

² CDP amendment 3-01-039-A1, approved May 12, 2004.

³ The original CDP provided for a restaurant on the second floor, but that was changed to the inn and spa units and the caretaker’s quarters through CDP amendment 3-01-039-A1. Although the Applicant has apparently constructed four overnight units (and not the two units and the caretaker’s unit approved) in the time since the first amendment, CDP 3-01-039 as amended authorizes two overnight rooms, two spa rooms, and a caretaker’s quarters.



Coastal Act Sections 30210 through 30224 require that new development maximize public recreational access, provide visitor recreational facilities, protect oceanfront land for recreational use and development, encourage recreational boating facilities, and in general establish a coastal-dependent, visitor-serving, and public recreational access priority over other types of uses and development. In particular:

***Section 30210:** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30213:** Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

***Section 30221:** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless 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.*

***Section 30222:** The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general commercial development, but not over agriculture or coastal-dependent industry.*

Similarly, the LCP also emphasizes visitor-serving priorities for development in the visitor-serving commercial (C-VS) zone applicable to this site. The LCP states:

17.24.120 Visitor-serving commercial (C-VS) district. *Purpose. The purpose of the visitor-serving commercial (C-VS) district is to provide a district for commercial uses intended primarily to serve the needs of tourists and other visitors to the city and not to include commercial uses of a more general nature which are oriented towards residents. Uses in this tourist-oriented district shall also provide for landscaping and related aesthetic improvements which create and enhance the visual attractiveness of the city.*

Public Viewshed Protection
Coastal Act Section 30251 states:

***Section 30213:** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New*



development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Likewise, LCP Section 17.45 (Bluff Development Standards) states in relevant part:

17.45.010 Purpose.

A. Protect Public Views. *To protect public views to and along the ocean and scenic coastal areas, maintain the character of the bluff setting, not impair but facilitate public access, address environmental concerns as provided in the general and local coastal plans.*

...

C. Adverse Visual Impacts. *To mitigate the potential for adverse visual impacts that can be created by blufftop development and to preserve existing public coastal views for the future enjoyment of the city's residents and visitors.*

General Development Policies

Coastal Act Section 30250 states in relevant part:

Section 30250. *New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels...*

The LCP also identifies specific guidelines for lot coverage within visitor-serving commercial (C-VS) zone as follows:

Table 17.24.120(I) Visitor-serving commercial (C-VS) district. Maximum Lot Coverage 60%.

B. Analysis

Interior Modifications

The proposed interior modifications are minor in nature and should not significantly alter the existing approved premise for the site. Although one authorized spa treatment room will be removed, the overnight rooms approved by the Commission in 2004 will remain, and the focus of the development will remain visitor-serving. Really, the main issue raised with the proposed interior modifications is not the changes themselves, rather it is ensuring that the two visitor-serving units are protected so that they remain as standard operating overnight units. Although the Applicant is not proposing that the rooms be used as other than standard overnight rooms, the Commission is aware of issues that have arisen with respect to the phenomenon of overnight stock being sold or leased to private individuals, and then these



rooms are used as quasi-residential units or offered as time-shares. Also, without length of stay limitations even standard operating overnight rooms can take on these characteristics. When such units are individually owned or used in this way, they can become essentially residential investments that constitute a quasi-residential land use with only the possibility of functioning part time as overnight visitor-serving accommodations.

In order to ensure that the visitor-serving utility of the overnight rooms and their ability to accommodate public recreational opportunities is maximized and protected consistent with the Coastal Act, this approval is conditioned to maintain the remaining overnight rooms as standard operating overnight rooms, including by prohibiting their conversion to other unit types (e.g., residential, timeshare, fractional ownership, etc.) and limiting lengths of stay for any individual, group, or family to a 29-day annual limit, including no more than 14 days during the summer peak-season (see Special Condition 2).

Exterior Improvements

The proposed exterior improvements are likewise minor in nature in relation to the existing approved development⁴ and the range of surrounding development more generally. The key Coastal Act question raised by such development is in relation to the public viewshed.⁵ It appears that the only portion of this exterior development that would be publicly visible would be a portion of the fence along the rear side yard (as seen from along the Embarcadero and Beach Street) and possibly the top one-foot or so of the fence and storage shed as seen from more distant vantages looking towards the building frontage itself (see photos in Exhibit B).⁶ In terms of the latter, the Commission has in recent cases ensured that development along Front Street in this area not extend to the top of the bluff so as to provide some visual separation and natural landform relief between Front Street development and the backing bluffs.⁷ In this case, the existing approved development is already nearly as tall as the backing bluffs, thus

⁴ Photos submitted by the adjacent blufftop landowners show what appears to be footings already constructed in the proposed deck area. It is not clear when such development may have occurred, but it was not part of the originally approved project.

⁵ Questions have been raised regarding whether the site is at or over the LCP's allowed coverage limitations cited above. The purpose of these limitations is to ensure that development is appropriately sized and scaled relative to the property and its surroundings (including in terms of protecting views, water quality, etc.). With respect to the Coastal Act, which is the standard of review here, the coverage question in this case boils down to a public viewshed question. For reference, when the Commission originally approved the existing development in 2001, it noted that the approved project was at 64% lot coverage when the LCP allows a maximum of 60%, and it noted that such coverage was consistent with the Coastal Act, including explicitly with respect to public views in this context. Even if the LCP were the standard of review, no significant issue is raised by the additional minor exterior development. In fact, there is some question as to whether the additional development proposed even counts towards lot coverage under the City's code. With respect to the deck, it appears to be excluded from coverage calculations under the LCP's definition of building lot coverage (LCP Section 17.12.092). With respect to the shed, it is a modular/moveable structure that likewise may not count towards coverage either. In terms of the City's action on this point, the City did not identify this issue when it approved the exterior development as consistent with the applicable development standards for the site, including lot coverage maximums.

⁶ Note that the photos show an existing wood fence along rear side yard behind the building in the area where the new fence is proposed. It is not clear when this existing fence was constructed, but it was not part of the originally approved project. In addition, it is constructed on an angle and at what appears to be a higher elevation as a result, while the proposed fence would be constructed across a level plane and at what appears to be a slightly lower maximum elevation (see proposed fence plans in Exhibit D). As a result, the fence shown in the exhibit photos should be used only as a point of reference, and not as representative of what would be constructed per the proposed project.

⁷ See, for example, CDP 3-07-003 (Front Street Hotel) approved December 13, 2007.



leaving a very small bluff margin between the top of the roof plane and the top of the blufftop edge (about a foot or two). Although it would be preferable if this bluff margin were larger to limit overall viewshed impacts, the development was approved at that height by the Commission in 2001. That said, allowing the shed and fence to extend a foot into this minimal margin would only exacerbate this viewshed impact. Granted the incursion itself is fairly minor, and it is viewed against a backdrop of a densely developed built environment, but it would nonetheless further visually “connect” the Front Street development to the development atop the adjacent bluffs, thus degrading the value of the public view, albeit incrementally. Therefore, in order to protect the public view consistent with the Coastal Act’s visual protection policies, the exterior development needs to be brought down so that it is no higher than the top of the building (see Special Condition 1).

With respect to the fencing that would be visible in the rear side yard view (again, see photos in Exhibit B),⁸ the incursion into the viewshed would be relatively minor, and needs to be understood in relation to the context of the public view that is available here. Namely, the side yard view is part of a public viewshed that is almost completely developed as seen from public viewing locations near the project site. The area in question is fairly densely developed, and the fence would be a relatively minor addition to that viewshed. In that context, the addition of a fence in this area, reduced in scale to be no higher than the building itself (as described above), will have an insignificant impact on public views.

Conclusion

The proposed amendment would result in fairly minor changes to the previously approved project, and the associated minor Coastal Act issues can be readily resolved through conditions of approval. As so conditioned, the project can be found consistent with the Coastal Act policies discussed in this finding.

3. Conditions of Approval

A. Standard Conditions

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 Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

⁸ Id.



4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Final Plans.** PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two full sized sets of Final Plans to the Executive Director for review and approval. The Final Plans shall be in substantial conformance with the plans submitted to the Coastal Commission (plans prepared by OMNI Design Group, Inc. dated July 13, 2007 and dated received in the Commission's Central Coast District Office July 15, 2008 – see Exhibit D) except that they shall be revised and supplemented to comply with the following requirements:

- a. **Rear of Building Exterior Development.** All exterior project elements at the rear of the building shall be no higher in elevation than the elevation of the existing building roof.

The Permittee shall undertake development in accordance with the approved Final Plans.

2. **Overnight Room Requirements.**

- a. **Length of Stay Provisions.** The two visitor-serving overnight units shall be open and available to the general public. Rooms shall not be rented to any individual, family, or group for more than 29 days per year or for more than 14 days between Memorial Day and Labor Day.
- b. **Conversion Prohibited.** The conversion of the two visitor-serving overnight units to limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited.

3. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the Permittee's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes,



or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

C. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Morro Bay, acting as the lead CEQA agency, found the project to be a small project that was categorically exempt from CEQA requirements (per CEQA Guidelines Section 15303). The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

