

## CALIFORNIA COASTAL COMMISSION

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**Prepared July 22, 2010 (for August 11, 2010 Hearing)**

**To:** Coastal Commissioners and Interested Persons

**From:** Dan Carl, District Manager  
Susan Craig, Coastal Planner

**Subject:** **Appeal A-3-SCO-10-025** (Appeal by Lisa and William Shawver of Santa Cruz County decision granting a coastal development permit with conditions to Alex and Kristine Ingram to construct an addition to an existing single family residence at 7 Rockview Drive in the Pleasure Point/Live Oak area of Santa Cruz County). Filed: May 18, 2010. 49th Day: July 6, 2010 (waived).

#### Recommendation

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which appeal A-3-SCO-10-025 was filed. Staff recommends a **YES** vote on the following motion and resolution:

**Motion and Resolution.** I move that the Commission determine and resolve that Appeal Number A-3-SCO-10-025 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Coastal Act Section 30603 regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.

Passage of this motion and resolution will result in a finding of no substantial issue and adoption of the following findings. By such action, the Coastal Commission declines to take jurisdiction over the coastal development permit (CDP) for this project, Santa Cruz County's action becomes final and effective, and any terms and conditions of the Santa Cruz County decision remain unchanged. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

#### Permit History

The initial CDP for the project was approved by the County in November 2008 (local application number 07-0755). That permit authorized a remodel and second story addition to an existing single-story residence on a nonconforming parcel<sup>1</sup> consisting of reconfiguring and adding 90 square feet to the first story, demolishing a nonconforming 432-square foot garage and replacing it with a conforming 232 square foot garage, and constructing a new second story (965 square feet) and deck (60 square feet). A coastal development permit for a greater than 800 square foot addition to a nonconforming structure, a variance to devote more than 50% of the front yard width to a driveway, and a variance to reduce the required side yard setback from 5 feet to about 2 feet (to accommodate a new stairway) were approved. The County received minimal public comment regarding the project and there were no objections by

<sup>1</sup> The project site is nonconforming because the width of the property is 25 feet and the minimum required width in the R-1-5 zoning district is 50 feet.



interested parties in advance of or during the public hearing. The approval was not appealed to the Commission. However, no building permits were issued for County CDP 07-0755 and the CDP was not exercised.

In April 2009, the Applicants were granted CDP 09-0124, which revised and superseded County CDP 07-0755. Relative to CDP 07-0755, County CDP 09-0124 increased the size of the proposed garage, decreased the second story addition (from 965 square feet to 440 square feet) and increased the size of the proposed second story deck (from 60 square feet to 98 square feet). The revision resulted in a second story that was approximately half the size of that approved in 2008 under the previous CDP. County CDP 09-0142 also resulted in elimination of the previously permitted exterior stairs that encroached into the side yard setback. This permit was exercised on August 13, 2009.

On January 21, 2010, while construction was underway pursuant to CDP 09-0142, the Applicants applied to the County for a change order to allow construction of a larger addition very similar to what was approved in November 2008 under County CDP 07-0755.<sup>2</sup> The County approved the change order on February 9, 2010. However, the change order was only to the building permit and not to the CDP, and was not recognized by the required CDP action. In any event, construction proceeded on the larger addition, as was approved by the County's change order.

In February 2010, the County received a complaint from the owner of the adjacent parcel that the construction occurring at 7 Rockview Drive exceeded the work authorized by CDP 09-0142. A stop-work order was issued on February 25, 2010 and on March 15, 2010 the County formally suspended the change order and the building permit, and the Applicants subsequently applied for a new CDP (CDP 10-0080) to recognize the changes.

Complicating the County's review of CDP 10-0080 was that since the original CDP was approved, the LCP had materially changed in a way that directly affects the proposed project. Specifically, in June 2009, shortly after the approval of CDP 09-0142, the Commission certified an amendment to the County's LCP that required coastal bluff areas to be deducted from gross site area when determining net site area and floor area ratio (FAR).<sup>3</sup> On the subject property, the deduction is substantial because a portion of the property includes the coastal bluff and the area seaward of it. The newly certified LCP requirements equate to a loss of over 2,000 square feet of net site area from the parcel, and therefore the FAR calculation increased from about 40% at the time the original CDP was approved in 2008 to 59% under the new rules for the new CDP application, even though the amount of floor area in the project remained virtually the same.

## Findings

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<sup>2</sup> Under the change order and the County approval that is the subject of this appeal, the project would result in a second story addition 17 square feet smaller and a deck 65 square feet larger than the project approved under CDP 07-0755.

<sup>3</sup> For residential uses, the County allows a Floor Area Ratio of 50% of the net site area of a property. For example, the maximum allowable square footage of a house on a parcel that has a net site area of 5,000 square feet is 2,500 square feet.



On April 14, 2010, Santa Cruz County approved CDP 10-0080, authorizing an addition to and remodel of the existing single family dwelling, consisting of a 948 square foot addition of living space to the second story and construction of a 125 square foot second story deck. Given that the project has already been substantially constructed, such a CDP was de facto partially after the fact. The project is substantially the same as approved by the County in 2008, except that, due to the net site area LCP amendment approved in June 2009, the current approval included a variance to allow the FAR to exceed the 50% maximum for the site's zoning district. Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because it is located between the sea and the first public road paralleling the sea, and is located within 300 feet of the mean high tide line and within 300 feet of the top of the seaward face of the coastal bluff. The Appellants contend that this approval is inconsistent with the procedural requirements of the Santa Cruz County Local Coastal Program, that the floor area ratio variance should not have been granted, that the variance for a side yard setback was not approved, that the approval of an addition requires a sprinkler system to ensure that the Appellants' property is protected from fire, and that the design of the project has impacted the Appellants' "light, air, and solar opportunities."<sup>4</sup>

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.<sup>5</sup> Commission staff has analyzed the County's Final Local Action Notice for the development (Exhibit 1), the Appellants' claims (Exhibit 2), and the relevant requirements of the LCP (see also Exhibit 2). The appeal raises no substantial issue with respect to the LCP as follows:

First, regarding the procedural contentions, while it is true that the County should have authorized any changes through an amendment to the CDP, as opposed to a building permit change order, the County's approval of the current CDP (10-0080) has addressed and rectified this previous procedural error.

Second, regarding the Appellants' contention that the County neglected to approve a variance for the side yard setback<sup>6</sup>, while the County did approve such a variance under CDP 07-0755, all components of the addition approved under CDP 10-0080 meet the required 5-foot side yard setback and no variance was required. The project does include some improvements (such as new siding, paint, etc.) to the first floor portion of the *existing* house that has historically encroached into the side yard setback, but the LCP does not require that these existing improvements be moved out of the setback. In this case, the approved addition meets the LCP's 5-foot side yard setback requirement.

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<sup>4</sup> Since the appeal was filed, the Appellants have sold their 9 Rockview Drive home, which is located immediately next door to the subject site along the bluff.

<sup>5</sup> The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

<sup>6</sup> The R-1-5 zoning district requires a 5-foot side yard setback.



Third, regarding the contention that the addition requires a sprinkler system, the Appellants cite sections of the County code that are not part of the certified LCP. These non-LCP sections do require the installation of a fire sprinkler system as part of the project, and the County indicates that this requirement will be addressed during the building permit and building inspection phases of the development.<sup>7</sup>

Fourth, regarding the variance to increase the floor area ratio from the LCP maximum of 50% to 59%, while this property is not highly unusual in the Pleasure Point area in terms of its nonconforming size and other parcel constraints, this is an unusual and unique case in terms of the project history and the associated timing of the passage of the new LCP net site area standards that reduced the net site area of the parcel from 5,603 square feet<sup>8</sup> in the 2008 project approval to the current 3,425 square feet. The case is made all the more unique by the fact that these Applicants pursued appropriate permits, were authorized to change the project, and have already largely constructed the project pursuant to authorizations provided by the County, and by the fact that this history and process (including related to the CDP) spans the certification of an LCP amendment that modified relevant rules in a material way. The Commission is unaware of any other project with facts like this, i.e. an already partially constructed project that was authorized by the County outside of the required CDP process. Given the complex and unique history and the facts of this specific case, the County's approval of the variance to floor area ratio is peculiar to this specific situation only. Also, the additional FAR in this case leads to a fairly limited additional massing (just under 300 square feet) for a fairly modest SFD development overall in this context without significant public view impacts. Granted, the site is adjacent to the shoreline and a public access area, and the authorized improvements result in increased massing in this viewshed, but the improvements should generally blend into the existing built environment at this location and should not significantly impact public views.

The surrounding neighborhood is comprised of an eclectic mix of residential design themes and one and two-story homes, and the expanded residence would not be atypical in that respect, and would be compatible with the surrounding neighborhood. With respect to views from the beach, the new addition should effectively blend into the background of existing residential development that prominently forms the backdrop for that viewshed. Even though the proposed project will incrementally add to the amount of development within the public viewshed, the development is minor in relation to the nature of the existing built environment and the effect that it has on the public viewshed. The Commission concurs that as sited and designed, the project would blend appropriately into the established eclectic community character of the Pleasure Point area, and that the project adequately protects public beach views to the extent required by the LCP. In the future, the Commission expects that the net site area requirements will be adhered to for other proposed projects in the County that have been affected by the new standards and that do not have the unusual permit history of this particular case.

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<sup>7</sup> Personal Communication on 7.16.2010 with Paia Levine, Principal Planner, Santa Cruz County Planning Department.

<sup>8</sup> The property is 5,853 gross square feet in area. A deduction for the South Palisades right-of-way area resulted in a net site area of 5,603 square feet in 2008.



Finally, with respect to the Appellants' contentions that the County-approved project has affected their "light, air, and solar opportunities," the proposed project meets the LCP's setback and height<sup>9</sup> requirements. The sections of the code that the Appellants cite regarding solar design and access are specific to solar energy systems. The County-approved project would not impede the use of any existing or future solar energy system on the neighboring property.

In sum, the project approved by the County is consistent with all aspects of the County's certified LCP, with the exception of the newly modified policies related to the project's floor area ratio. Under the circumstances presented in this unique situation, however, this inconsistency does not raise a significant issue under the factors that typically guide the Commission in this determination. The County has provided sufficient factual support for its decision, given the permitting history here and the extent of development already undertaken by the Applicants. In addition, the proposed development is relatively small in extent and scope, and the appeal primarily raises only local issues. More importantly, approval of this development will not create a poor precedent for future interpretation of the FAR provisions of the LCP because this is the only project that could be eligible for a variance from these requirements due to the timing of the approval of the LCP amendment and the construction of the addition. Finally, while this project could affect the visual resources in this area, which are significant coastal resources, the construction of this particular addition will not significantly impact the viewshed in this area or the community character. Therefore all of these factors weigh in favor of a finding of no substantial issue.

For the reasons stated above, the Commission finds that Appeal Number A-3-SCO-10-025 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified LCP.

Exhibits:

Exhibit 1: Santa Cruz County's CDP decision

Exhibit 2: Appeal of Santa Cruz County's CDP decision (including applicable Santa Cruz County Implementation Plan standards)

Exhibit 3: Applicants' Response to Appellants' Contentions

Exhibit 4: Correspondence

Click on the link above  
to go to the exhibits.

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<sup>9</sup> Regarding height, the approved addition under CDP 10-0080 is about 3 feet less in height than the County's 2008 (07-0755) approval (23 feet 3 inches versus 26 feet 6 inches).

