

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641-0142

TH 17a



Filed: 6/10/96
49th Day: 7/29/96
180th Day: 12/7/96
Staff: MHC
Staff Report: 7/17/96
Hearing Date: 8/13-16/96
Commission Action:

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Santa Barbara

DECISION: Approve with Conditions

APPEAL NO.: A-4-SB-96-105

APPLICANT: James and Kari Ann Gerlach

PROJECT LOCATION: 3349 Cliff Drive, Santa Barbara

PROJECT DESCRIPTION: Miscellaneous modifications to single family residence, including new gates and landscaping, addition to the west end of the dwelling and extension of a patio cover, and a wooden fence along the eastern property line.

APPELLANT: James and Kari Ann Gerlach

SUBSTANTIVE FILE DOCUMENTS: Appeal A-4-SB-96-105; 91-CDP95-0052; City of Santa Barbara Planning Commission Staff Report (with attachments) April 4, 1996; City of Santa Barbara Council Agenda Report (with attachments) May 10, 1996.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed for the following reasons: The proposed project is in conformity with the applicable provisions of the City's Local Coastal Program.

The Commission received a Notice of Final Action from the City of Santa Barbara on May 24, 1996, and an appeal of the City's action on June 7, 1996; the appeal was therefore filed within 10 working days of receipt of the Notice of Final Action by the City as provided by the Commission's Administrative Regulations.

I. Appellants Contentions

The appellant alleges that the wooden fence denied as part of the City's granting of a Coastal Development Permit is consistent with the City of Santa Barbara's Local Coastal Program, and the California Coastal Act, particularly with respect to the City's LCP policies regarding the protection of views, and scenic and visual qualities of the coastline.

The appeal raises a number of procedural issues including the eligibility of the fence for a Coastal Permit Exclusion. Additionally, the appellant raises a number of issues which are not in themselves grounds for an appeal of a locally issued Coastal Development Permit. (See Exhibit 5.)

II. Local Government Action

The City of Santa Barbara approved a Coastal Development Permit (CDP95-0052) for: (1) improvements along the street frontage of the property, including new gates and landscaping, and (2) additions to the west end of the dwelling, including the extension of a patio cover, and (3) denial of a wooden fence along the eastern property line. Only the wooden fence is being contested through this appeal.

The project site is located on a bluff top parcel on Cliff Drive approximately one mile west of Arroyo Burro Beach. The dwelling is located approximately 120 feet from the street; the rear yard consists of a bluff top area which drops off steeply to the beach and ocean. The subject property is zoned A-1 (One Family Residence/SD-3 Coastal Overlay), and is located within the Hillside Design District. (See Exhibits 1 and 2.)

III. Appeal Procedures

The California Coastal Act provides for limited appeals after certification of Local Coastal Programs (LCPs) to the Coastal Commission of local government actions on Coastal Development Permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea, state tide-lands, or along natural water courses.

For development approved by the local government and subject to appeal to the Commission, pursuant to PRC Section 30603 grounds shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code.

The project is situated between the sea and the first public road paralleling the sea (Cliff Drive) and is therefore subject to appeal to the Commission, with the standard of review being the project's consistency with the applicable policies of the local jurisdiction's Local Coastal Program, and the public access policies of the California Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal.

If the Staff recommends "substantial issue" and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will

proceed directly to a de novo public hearing on the merits of the project. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue.

It takes a majority of Commissioners to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the merits on the permit application, the applicable test for the Commission to consider is only whether the proposed development is inconformity with the certified Local Coastal Program.

The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that NO substantial issue exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

Motion

I move that the Commission determine that Appeal NO. A-4-SB-96-055 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

Staff recommends a YES vote on the motion.

A majority of the Commissioners present is required to pass the motion.

V. Findings and Declarations

A. Project Description

The project site is located on a bluff top parcel on Cliff Drive approximately a mile west of Arroyo Burro Beach, and is developed with a single family residence which is setback from the street about 120 feet.

The proposed project consists of a number of developments in connection with the existing single family residence. These include: (1) improvements along the street frontage of the property, including new gates and landscaping, and (2) addition to the west end of the dwelling, including the extension of a patio cover, and (3) a wooden fence along the eastern property line. Only the denial of the wooden fence is being contested through this appeal. (See Exhibits 2 through 4.)

B. Issues Raised by the Appellant

The appellant alleges the proposed wooden fence is consistent with the City's LCP policies regarding the protection of scenic and visual amenities along the coastline. The appeal also raises procedural issues including eligibility of the wooden fence for a Coastal Permit Exclusion under the City's LCP Zoning Ordinance. Additionally, the appellant raises a number of issues which are not in themselves grounds for an appeal of a locally issued Coastal Development Permit. (See Exhibit 5.)

1. Protection of Scenic and Visual Amenities

The principal objection raised by the appellant is the modification of the Coastal Development Permit CDP95-0052 requiring the removal of the wooden fence constructed along the eastern property line. The fence was constructed without benefit of a Coastal Development Permit (See Exhibits 3 through 4.)

The City of Santa Barbara's Local Coastal Program Land Use Policy 5.3 provides, in part, that:

New development in and/or adjacent to existing residential neighborhoods must be compatible in terms of scale, size, and design with the prevailing character of the established neighborhood.

To implement this policy, projects in the Coastal Zone are reviewed by the Architectural Board of Review in accordance with the established rules and procedures.

The project location is in an residential neighborhood developed with single story residential structures on bluff top lots.

The proposed fence is seven feet in height and runs for 63 feet from the edge of the bluff top back towards the front of the parcel along the eastern property line. The previous fence (which has been left in place) tapers down to four feet along the bluff top portion of the back yard. The new fence is therefore substantially larger than the original fence, and is partially visible from the beach below. (See Exhibits 3 through 4.)

The language of Policy 5.3 is broad, and as a result, the Coastal Commission in certifying the policy as part of the City of Santa Barbara's Local Coastal Program has provided the City with wide latitude in ensuring the protection of the scenic and visual amenities of the coastline, particularly where no other more specific or restrictive policy guidance is provided and applicable.

In modifying Coastal Development Permit CDP95-0052 to delete the wooden fence, the City found that the seven foot fence "is incompatible in terms of scale, size, and design with the prevailing character of the established neighborhood." The City also found that the Single-Family Residential Design Guidelines provide "for intergradation of the fences and walls with the structure and the setting, with the height and length of fences and walls being minimized, and that open rather than solid fencing are to be used . . .".

The City further found that none of these guidelines has been met by the subject fence. As such the City found that the fence is inconsistent with the requirements of Policy 5.3. In light of the broad scope of the language of Policy 5.3, the City has appropriately determined that the fence as proposed is inconsistent with the provisions of its certified Local Coastal Program.

The Commission therefore finds that the proposed project, as conditionally approved by the City, is in conformance with the City's certified Local Coastal Program. The appellant's contentions therefore raise no substantial issue.

2. Fence Eligible for a for a Coastal Permit Exclusion

The appellant alleges that the construction of the wooden fence is eligible for a Coastal Permit Exclusion requirement because it is an addition to an existing single family residence. The fence is located on or within 50 feet

of a coastal bluff and, as explained below, is therefore not exempt from the City's Coastal Development Permitting requirements

The City's certified Local Coastal Program requires Coastal Development Permits for all new development. The definition of development upon which the City relies is that found in PRC Section 30106 which provides that development includes "the placement or erection of any solid material or structures . . ." This definition is incorporated into the City's Local Coastal Program Implementation Ordinance at Section 1 (3)(i).

The City's certified Local Coastal Program also contains provisions for exclusions from the coastal permitting process (Categorical Exclusion Order No. E-86-3). This exclusion process provides for the exclusion of certain types of additions to existing single family residences and certain types of repair and maintenance activities from Coastal Development Permit requirements, providing that they do not involve risk of substantial environmental impact as set forth in Section 13250 and 13252 of the California Coastal Commission's Administrative Regulations.

Section 13250 specifically provides that additions to existing single family residences which would encroach within 50 feet of the edge of a coastal bluff, or entail significant alteration of landforms within 50 feet of the edge of a coastal bluff shall require a Coastal Development Permit. Similarly, Section 13252 specifically does not exempt repair or maintenance on coastal bluffs, or work located within 50 feet of the edge of a coastal bluff.

The installation of the fence is therefore are not subject to exemption under the City's Categorical Exclusion Order E-86-3 and the related Coastal Commission Administrative Regulation Sections 13250 and 13252.

The fence therefore constitutes new development subject to the City's Coastal Development Permit requirements. Even if the fence was considered a repair and maintenance of a previously existing fence, its construction would not be exempt from the City's Coastal Development Permit requirements under the City's Exemption Order E-86-3 because the project is located within 50 feet of or on a coastal bluff, and Section 13252 of the Commission's Administrative Regulations specifically does not exempt repair or maintenance on coastal bluffs, or work located within 50 feet of the edge of a coastal bluff. The City has therefore properly asserted its Coastal Development Permitting authority over the development project.

Finally, it should be noted that the City has followed advise provided by the Commission staff regarding the eligibility of the proposed fence for exemption under the City's Coastal Permit Exclusion provisions. (See Exhibit 6.)

The Commission therefore finds that the proposed project, as conditionally approved by the City, is in conformance with the City's certified Local Coastal Program. The appellant's contentions therefore raise no substantial issue.

3. Procedural Irregularities

The appellant alleges that the City's approval with conditions of Coastal Development Permit CDP95-0037 is procedurally flawed. The alleged procedural flaws include: the City's failure to base its decision on relevant factual considerations, consideration of private as distinct from public views, and approval of similar fences in the neighborhood through the Coastal Permit Exemption process.

A review of the extensive administrative record for the City's action on this project does not support the appellants' contentions. The City has followed all of the applicable procedural requirements of its certified Local Coastal Program with respect to this project. It has duly noticed all hearings, prepared detailed analysis of each of the issues raised by the appellants, and adopted findings in support of the City's action which are based on substantial factual information contained in the record.

In making its determination regarding the projects consistency with the City's certified Local Coastal Program, the City has referenced the applicable Local Coastal Program Policies and related Coastal Commission Administrative Regulations. Furthermore, the appellant's have provided no factual information which undermines in any substantive way the procedural soundness of the City's supporting findings.

Finally, the City, as noted above, has broad discretion in reviewing and approving new development in residential neighborhoods consistent with Policy 5.3. In denying the wooden fence the City focused on the protection of community character, not the protection of private views as the appellant alleges. Further, the alleged exemption of other fences through the City's Coastal Permit Exclusion process does not in itself warrant the exclusion of the subject fence, which as noted above, is not exempt because of its location within 50 feet of a coastal bluff.

The Commission therefore finds that the proposed project, as conditionally approved by the City, is in conformance with the City's certified Local Coastal Program. The appellant's contentions, therefore, raises no substantial issue.

4. Consistency with Coastal Act Public Access Policies

The grounds of appeal of a locally issued Coastal Development Permit in areas which lie between the first public road paralleling the sea and the sea include, in addition to consistency with the applicable Local Coastal Program, consistency with the public access policies of the California Coastal Act.

Public Resources Code Section 30210 through 30214 provide that maximum public access shall be provided to and along the shoreline consistent with public safety, military security needs, the protection of environmentally sensitive coastal resources and coastal agriculture, and consistent with the protection of the privacy of adjacent property owners.

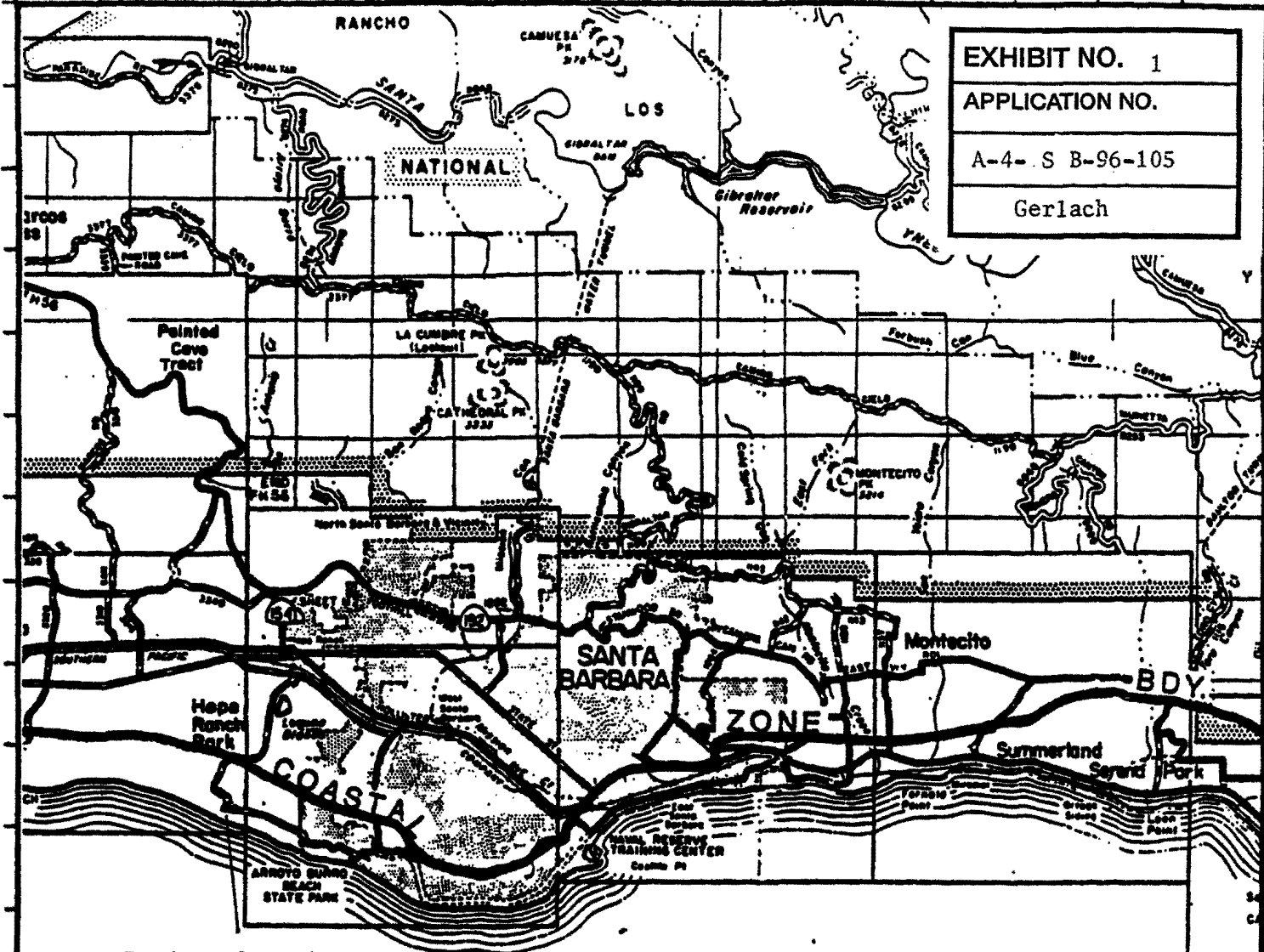
Neither the appellant nor the City have asserted any inconsistency with the applicable Coastal Act access policies, and no public access issues are raised by the proposed project, either as proposed or modified.

The City's decision on the proposed project is therefore consistent with the access provisions of the California Coastal Act and the City's Local Coastal Program previously certified by the Commission.

The Commission therefore finds that the proposed project, as conditionally approved by the City, is in conformance with the applicable access policies of the California Coastal Act as well as the City's certified Local Coastal Program. The appellant's contentions, therefore, raises no substantial issue.

A B C D E F G H I J K L M N O

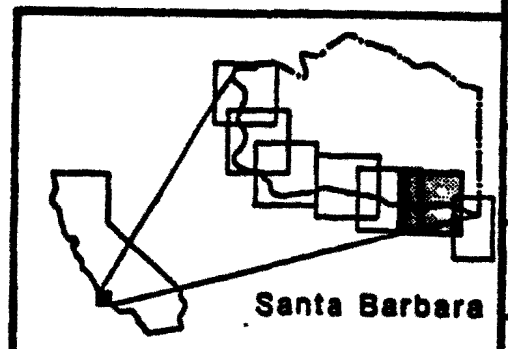
EXHIBIT NO. 1
APPLICATION NO.
A-4- S B-96-105
Gerlach



Project Location

SANTA BARBARA

PACIFIC



Santa Barbara

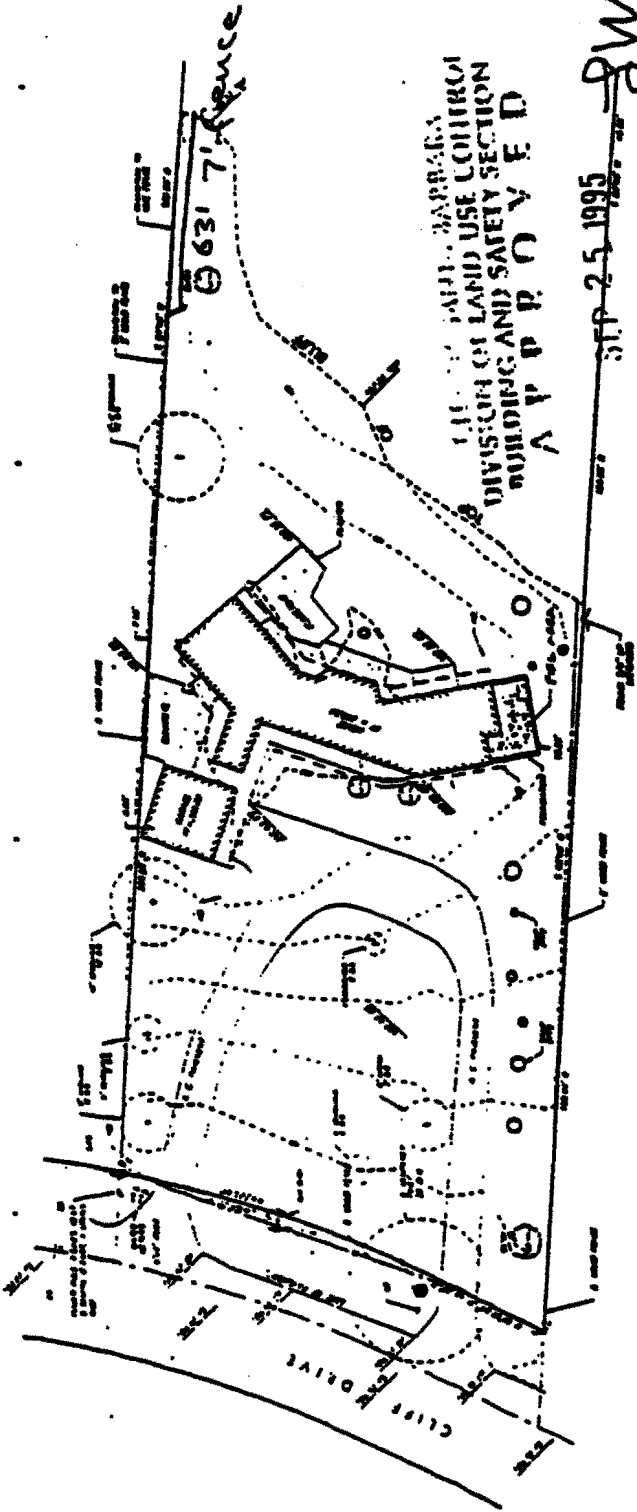
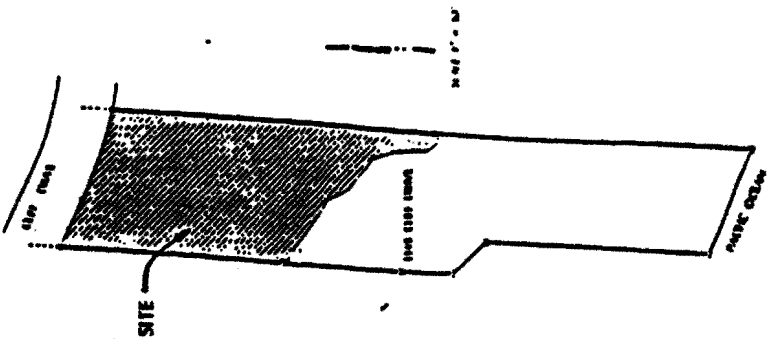


LOCATION MAP



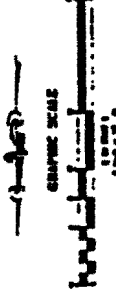
County of Santa Barbara

EXHIBIT NO. 2
APPLICATION NO.
A-4-S' B-96-105
Gerlach



By stamping on this set of plans and your initials, I shall certify that the building set out thereon complies with the requirements of the Building Code of the City of Los Angeles, California, and that the same is in accordance with the provisions of the Ordinance for the purpose of the same. I am not responsible for any errors or omissions in the plans or specifications hereon.

DESCRIPTION	NOTES
1-1	As shown
1-2	As shown
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1-4	As shown
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1-100	As shown



AT 25



STATE OF CALIFORNIA
 SURVEYOR
 LICENSE NO. 12345
 JAMES M. JONES

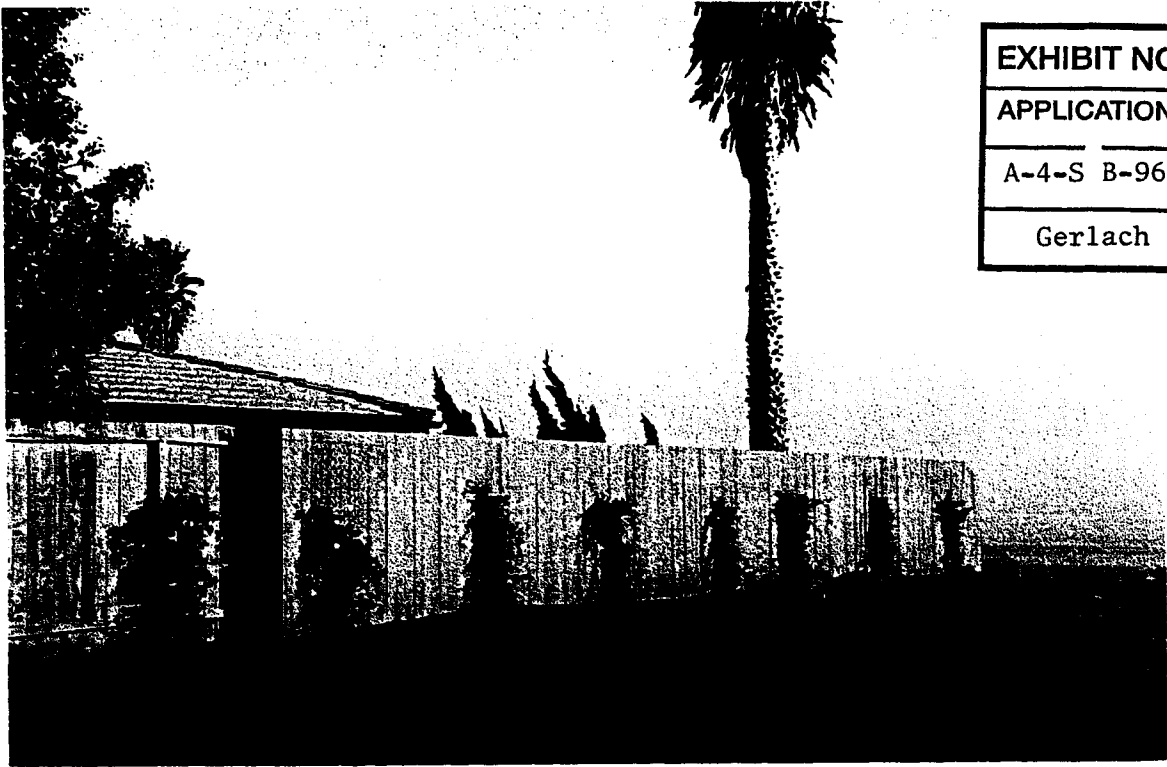


EXHIBIT NO. 3
APPLICATION NO.
A-4-S B-96-105
Gerlach

NEW FENCE 7' REDWOOD
63' IN LENGTH



EXISTING 7' REDWOOD
w/ NEW FENCE

EXHIBIT NO. 4

APPLICATION NO.

a-4-SB-96-105

Gerlach



CONSTRUCTION OF FENCE



EAST VIEW

EXHIBIT NO.	5
APPLICATION NO.	
	A-4-SB-96-105
	Gerlach



CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Jay + Kari Ann Gerlach
3349 Cliff Drive
Santa Barbara CA 93109 (805) 687-4453
 Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Santa Barbara

2. Brief description of development being appealed: 63' length of 7' high wood fence on eastern property line extending to bluff's edge w/ plantings

3. Development's location (street address, assessor's parcel no., cross street, etc.): 3349 Cliff Drive APN 04-80

4. Description of decision being appealed: CDP-95-0052

a. Approval; no special conditions: _____

b. Approval with special conditions: _____

c. Denial: Revocation of Approved LCP

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

RECEIVED

JUN 07 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: May 14, 19967. Local government's file number (if any): CDP 05-0052
Resolution No. 018-96SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Jay + Kari Ann Gerlach
3349 Cliff Drive
Santa Barbara CA 93109

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Joyce Lunt
3427 Sea Ledge Lane
S.B. 93109

(2) Eleanor Weinstock
3429 Sea Ledge Lane
SB 93109

(3) Mary Secord
3339 Cliff Dr
SB 93109

(4) De Loreto on behalf of Bremer
3351 Cliff Drive
SB 93109

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See attached letter

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Konrad Gierlach
Signature of Appellant(s) or
Authorized Agent

Date JUNE 8, 1996

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date _____

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JUN 07 1996

California Coastal Commission
South Central Coast Area
89 South California Street
2nd Floor
Ventura, Ca 93001

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

RE: Appeal of City of Santa Barbara CDP95-0052; Planning
Commission Resolution No. 018-96

Dear Coastal Commission:

We respectfully request an appeal to the May 14, 1996 decision of the City Council of the City of Santa Barbara regarding Coastal Application CDP95-0052. The Planning Commission's and City Council's denial of the discretionary Coastal Development Permit for a wood fence along the eastern property line was not supported and is in conflict with the intent and wording of the California Coastal Act. It is an abuse of discretion and wrongful implementation of the provisions and procedures of the California Coastal Act that occurred on behalf of a private party.

Summary of Points

1. A Coastal Development Permit Exclusion was previously granted along with all necessary building permits. (See attached) After the project was completed, such permits were subsequently revoked due to a neighbor, Planning Commissioner Secord's request.
2. The project is consistent with the California Coastal Act and the City of Santa Barbara Local Coastal Program.
3. "The City has regarded fences and other improvements such as landscaping, patios, decks, and gazebos to be minor...not the type of development which would require review at the CDP level.: (Planning Commission Staff Report, April 5, 1996,p.5)
4. A LCP EXCLUSION, 87-CDA-62, was granted for a similar fence with **IDENTICAL COASTAL ISSUES**; Solid wall, near park or recreation area, visible from scenic route, visible from the beach, and extends to the bluff's edge. Staff found that;
 - "1. The project is consistent with the policies of the California Coastal Act; and
 2. The project is consistent with all applicable policies of the City's Coastal Plan, all implementing guidelines, and all applicable provisions of the Code."
5. Coastal Act Section 30251 states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Coastal and City policies including those in the LCP, do not afford protection

of private views but those concerning the public.

6. There would be no adverse precedent set. (Point 4)

Reasons to Grant the Application for Appeal

Abuse of discretion is evident in that the City has previously granted projects with the same Coastal concerns than the proposed project.

The Planning Commission Staff report found that "Although the fence is visible from the vista point and the beach, the visual effect of the fence was not considered to significantly detract from or obstruct public views." After the Planning Commission denial, City Staff requested that the project be modified regarding the end of the fence, so that there would be no visual impact from the public viewpoints. The Staff reports states, "A number of times the City has looked at issues associated with private views, and the City Council has deliberately avoided regulating or protecting private views. Instead the City's policies focus on the public as it is broadly defined."

The fact that the LCP Exclusion was revoked based on a neighbor complaint was demonstrated in the Councils discussion regarding such neighbor, Dr. Dan Secord, who happens to be the Chairman of the City of Santa Barbara's Planning Commission. The discussion referred to the fence as blocking Commissioner Secord's view, that the fence was not beneficial to Commissioner Secord, and one Councilmember tried to mandate that a compromise between neighbors be required for any permit to be granted.

The proposals made by neighbors as well as City Staff were incorporated into our application that was presented to the Council that lowered the fence to a slope that conforms to the natural slope of the bluff. This request was based on the public view from the beach as well as the vista viewpoint. The latter of the two is a privately owned section of land not designated as an official public turnout.

The Council disregarded the addition to the application and focused on the relationship with Commissioner Secord. Time and time again during the hearing, City Staff and Mrs. Gerlach, the appellant, reminded the Council that the concern was regarding the public view and that private matters should be resolved privately. Private views and privacy are not regulated by Coastal or City policies.

It is concerning that both the Planning Commission and the City Council had previously attended a party at Commissioner Secord's house after Commissioner Secord's complaint was filed. It is also concerning that the City Council conducted a site visit of the project and visited Commissioner Secord's property, yet

did not view the fence from the beach as members of the public, nor did they view other property line fences and hedges to fairly evaluate compatibility.

The Council ignored the previous approval of a LCP Exclusion for a neighbor's fence with identical and additional coastal issues. The application was approved for a 6 foot high, solid wall, 470 feet in length, clearly visible from the scenic highway and beach, as well as being visible from the adjoining public trust land and Arroyo Burro Beach County Park.

In conclusion, we request that you accept the application for appeal based on abuse of discretion, that the City Council disregarded the intent and wording of the Coastal Act by affording protection of a private view, procedurally ignoring the confines of the Coastal Act pertaining to public views, and finding that governmental bodies that incorporate the Coastal Act into the Local Plan must remain consistent. To allow this not to be heard before the Coastal Commission is a blatant disregard for fair treatment regarding our privacy and private property rights.

Sincerely,

A handwritten signature in black ink that reads "Kari A Gerlach". The signature is written in a cursive style with a large initial "K" and a long horizontal stroke at the end.

Jay and Kari Ann Gerlach
3349 Cliff Drive
Santa Barbara, CA 93109
(805) 687-4453

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
 89 SOUTH CALIFORNIA ST., SUITE 200
 VENTURA, CA 93001
 (805) 641-0142



October 30, 1995

Dave D. Davis
 Community Development Director
 City of Santa Barbara
 P.O. Box 1990
 Santa Barbara, CA 93102-1990

EXHIBIT NO. 6
APPLICATION NO.
A-4-SB-96-105
Gerlach

Dear Mr. Davis

Page 1 of 2

RE: Coastal Development Permit Requirements for Development within 50 feet of a Coastal Bluff

This letter responds to your request for a written statement outlining the coastal permitting requirements for development within 50 feet of a coastal bluff, and the requirements specifically pertaining to the construction of a fence on a bluff top property located at 3349 Cliff Drive, Santa Barbara.

As I indicated to you in our recent telephone conversation, I had received an inquiry from the City staff regarding this issue several weeks ago, and advised that: (a) development with 50 feet of a coastal bluff, even though it may be associated with an existing single family residence, was considered to be development subject to coastal permit requirements; and (b) that such development could not be excluded from the coastal permitting requirements under the City's Coastal Permit Exclusion provisions. This basis for this advise is outlined below:

Development is broadly defined in Section 30106 of the Coastal Act to include virtually all physical development or placement of solid material within the Coastal Zone. Section 30610 does provide that the Commission may adopt regulations under which certain types of *de minimus* developments normally regulated under the provisions of the Coastal Act, would be excluded from coastal permit requirements.

The Commission has adopted regulations setting forth the types of development, and the circumstances in which they may occur, which may be excluded from the Coastal Act's coastal permit requirements. These are contained in the Commission's Administrative Regulations in Sections 13250 through 13253. Section 13250(b)(1) specifically provides that the following types of developments require a coastal development permit because they involve a risk of adverse environmental effects:

Improvements to a single-family structure: . . . where the residence or proposed improvements would encroach within 50 feet of the edge of a coastal bluff.

The City's Coastal Permit Exclusion provisions accurately reflect the exemptions from the permit exclusion provisions of the Commission's Administrative Regulations. Specifically, Section (c)(1) of the City's Notice of Exclusion provides that:

Improvements to existing single-family residences in areas other than the exclusion area; provided however, that those improvements which involve a risk of adverse environmental effect or adversely affect public access or result in a change of the intensity of use shall require a coastal development permit, as provided in Administrative Code Section 13520, as amended from time to time.

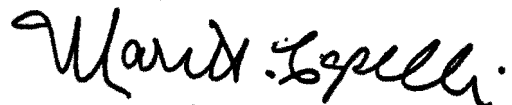
As I explained to your staff, the City may not through interpretation expand the application of its coastal permit exclusion provisions beyond the limits of the Commission's Administrative regulations. The issuance of a Notice of Exclusion for the fence at 3349 Cliff Drive had such an effect.

In summary, the proposed project which was the object of this original inquiry was not covered by the coastal permit exclusion provisions of the City, and requires a coastal development permit. Since the project is located within the area covered by the City of Santa Barbara's certified Local Coastal Program, the project proponent should seek a coastal permit directly from the City of Santa Barbara.

Regarding the recent appeal of the City's issuance of a Notice of Exclusion to the Coastal Commission, please be advised that there are no provisions for an appeal of a coastal permit exclusion to the Commission. We have therefore returned the appeal, along with a copy of this letter, and informed the appellant's representative that they should pursue any concerns they may have with the project through the City's coastal permitting process.

I hope this adequately responds to your inquiry; if you should have any questions regarding this matter, please feel free to contact me.

Sincerely,



MARK H. CAPELLI
Coastal Program Analyst

MHC/