

CALIFORNIA COASTAL COMMISSION

14th CENTRAL COAST AREA
1400 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 841-0142

Filed: 5/18/99
49th Day: 7/6/99
180th Day: 11/14/99
Staff: GT-V
Staff Report: 9/21/99
Hearing Date: 10/12-15/99
Commission Action:



STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Carpinteria

DECISION: Approved with No Conditions

APPEAL NO.: A-4-CPN-99-119

APPLICANT: Chris Clemens

PROJECT LOCATION: 4921 Sandyland Road, Carpinteria, Santa Barbara County

PROJECT DESCRIPTION: After-the-fact remodel and addition to an existing single family beachfront residence with a seaward extension for a total area of 2,221 sq. ft.

APPELLANTS: Mary Clark, Vince Mezzio, and Gerald Velasco

SUBSTANTIVE FILE DOCUMENTS: City of Carpinteria Local Coastal Program, City of Carpinteria Coastal Development Permit file, Clemens, Sandyland Road.

SUMMARY AND STAFF RECOMMENDATION

Staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed for the following reasons: the seaward addition to the existing residential structure is inconsistent with the applicable shoreline development policies of the City's certified Local Coastal Program; no public hearing was held and no Coastal Development Permit was required as provided by the certified Coastal Appeals Overlay District section of the Zoning Ordinance. Should the Commission find that a substantial issue exists, the de novo hearing will be scheduled for the next available Commission hearing.

STAFF NOTE: This appeal was opened and continued at the Commission's meeting of June 7, 1999. Pursuant to Section 30621 of the Coastal Act, an appeal must be heard within 49 days from the date an appeal of a Coastal Development Permit issued pursuant to a certified Local Coastal Program is received. Two appeals of the above-described decision were received in the Commission office on May 17 and 18, 1999 and filed on May 18, 1999. In accordance with Section 13112 of the Administrative Regulations, staff requested on May 26, 1999 that the local government forward all relevant documents and materials regarding the subject permit. After several additional requests were made to obtain the administrative record it was subsequently received on September 14, 1999.

I. PROJECT DESCRIPTION AND HISTORY

The project consists of the remodel and addition to an existing single-family beachfront residence resulting in a total area of 2,221 square feet. The approved development includes a seaward extension of the existing structure onto the sandy beach. The project, which has already been constructed, was originally approved by the City pursuant to an Administrative Permit in error rather than the required Coastal Development Permit on November 16, 1998. The City issued a Notice of Final Action on April 8, 1999. That notice was determined to be insufficient since it contained no written findings for approval. The City subsequently issued an amended Notice of Final Action on May 3, 1999, which was received on May 5, 1999. However, that notice was subsequently rescinded by the City pursuant to a letter dated May 25, 1999 based on the fact that no CDP had been issued by the City. The City decided to rely on the Administrative Permit and not to require any further discretionary review and to allow the applicant to proceed with construction at his own risk in light of the appeal to the Coastal Commission.

II. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act (Section 30603) provides for appeals to the Coastal Commission of certain local government actions on Coastal Development Permits. Development approved by counties and cities may be appealed, in certain circumstances, for example if they are: (1) located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is the greater distance; (2) located on tidelands, submerged lands, or public trust lands or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff; (3) located in a sensitive coastal resource area (PRC Sec. 30603[a]). Furthermore, development approved by a County may be appealed if it is not designated as a principal permitted use in the zoning ordinance or zoning district regardless of its geographical location within the Coastal Zone (PRC Sec. 30603[a][4]). As noted above, this project is appealable because it is located between the first public road and the ocean.

For development approved by a local government with a certified Local Coastal Program, the grounds for the appeal are 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 of the Coastal Act.

Section 30625(b) of the Coastal Act requires that the Commission hear an appeal unless the Commission determines that no substantial issue is raised with respect to the grounds on which the appeal has been filed pursuant to PRC Section 30603. If the staff recommends a "substantial issue" determination and no Commissioners object, the Commission may 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 an opportunity to address whether the appeal raises a substantial issue. It takes a majority of the Commissioners present to find that no substantial issue is raised.

Should the Commission find that a substantial issue is raised by the appeal, the Commission will proceed to a full de novo public hearing on the merits of the project at the same time or at a subsequent meeting. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program pursuant to Section 30604(b) of the Coastal Act. In addition, PRC Section 30604(c) of the Coastal Act requires that, for development between the first public road and the sea, as is true in the case of this project, a finding must be made by the Coastal Commission that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. Thus, with respect to public access and recreation questions, the Commission is required not only to consider the certified LCP, but also Chapter 3 policies when conducting a de novo hearing on a project which has been appealed.

Finally, the only persons qualified to testify before the Commission during the substantial issue stage of the hearing are the applicant, persons who opposed the application before the local government (or their representative), and the local government; all other persons may submit testimony in writing to the Commission or Executive Director. Any person may testify during the de novo stage of an appeal.

III. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The City issued an administrative building permit for the development on November 16, 1998 without requiring a Coastal Development Permit. The City was subsequently informed that the permit was issued erroneously as an over-the-counter permit and asked to issue a CDP and a Notice of Final Action indicating that the project was appealable to the Commission. Although the City declined to require a CDP after-the-fact it issued a Notice of Final Action on April 8, 1999. That notice was determined to be insufficient by Commission staff because it did not contain findings for approval. The City issued an amended Notice on May 3, 1999 which contained findings that the proposed development was in conformity with the City's certified LCP.

The Notice of Final Action was received on May 5, 1999. An appeal was received from Mary Clark on May 17, 1999 and from Vince Mezzio and Gerald Velasco on May 18, 1999. Both appeals were received within the ten working day appeal period provided by the Commission's regulations. Since no public hearing was provided by the City and a CDP was not required the appellant's standing relative to exhaustion of local appeals was established pursuant to Section 13573(a)(3) of the California Code of Regulations. The regulation provides that exhaustion of all local appeals shall not be required if ... an appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this article.

Pursuant to Section 30261 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. In accordance with the Commission's regulations, staff requested all relevant documents and materials from the City to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The administrative record was subsequently received from the City on September 14, 1999, nearly four months after the appeals were filed.

Since the Commission did not receive all requested documents and materials in time to allow consideration at the June 7-11, 1999 hearing, the Commission opened and continued the hearing pursuant to 14CCR Sec. 13112.

IV. APPELLANT'S CONTENTIONS

All three appellant's cite the fact that no public hearings were held relative to issuance of a Coastal Development Permit, as required by the City's certified Zoning Ordinance, as a ground for appeal. In addition, all three appellants contend that the seaward extension of development beyond an established building line on the beach and a side yard extension into a view corridor are inconsistent with the City's certified LCP. The appellant's cited PRC Section 30251 which is contained within the Land Use Plan and Policy 4-1 of the LUP's Visual Resources Section which states that new development ... adjacent to ... beaches ... shall be designed and sited to prevent adverse impacts on the visual quality of these resources. The appellant's also contend that a solid concrete retaining wall beneath the new deck is inconsistent with the Seawalls and Shoreline Structures Section of the LUP.

V. RESOLUTION

A. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Public Resource Code Section 30603. A majority of Commissioners present is required to pass the motion. Staff recommends a No vote on the following motion:

MOTION: I move that the Commission determine that Appeal No. A-4-98-225 raises no substantial issue with respect to the grounds on which the appeal has been filed.

Staff recommends a "NO" vote on the motion would result in the finding of substantial issue and the adoption of following substantial issue findings. A majority of the Commissioners present is required to pass the motion.

VI. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description and History / Local Government Action

The project consists of the remodel and addition to an existing single-family beachfront residence resulting in a total area of 2,221 square feet. The project site is a beachfront lot located at 4921 Sandyland Road in the City of Carpinteria in Santa Barbara County. The approved development includes a seaward extension of the existing structure onto the sandy beach. Carpinteria City Beach, a public beach, is located seaward of the project site.

The project, which has already been constructed, was originally approved by the City pursuant to an Administrative Permit in error rather than the required Coastal Development Permit on November 16, 1998. No conditions of approval were applied to the permit. The City issued a Notice of Final Action on April 8, 1999. That notice was determined to be insufficient since it contained no written findings for approval. The City subsequently issued an amended Notice of Final Action on May 3, 1999, which was received on May 5, 1999. No specific findings were included other than a statement that the development conformed to the City's certified LCP. However, that notice was subsequently rescinded by the City pursuant to a letter dated May 25, 1999 based on the fact that no CDP had been issued by the City. The City decided to rely on the Administrative Permit and not to require any further discretionary review and to allow the applicant to proceed with construction at his own risk in light of the appeal to the Coastal Commission.

B. Substantial Issue Analysis

Pursuant to PRC Section 30603 and 30625, the standard of review for a substantial issue determination on appeal for development between the first public road and the sea or within 300 feet of the inland extent of the beach or of the mean high tide line where there is no beach, whichever is greater, is that substantial issue exists with respect to the grounds on which the appeal has been filed relative to the development's conformance to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the development is located between the nearest public road and the sea and adjacent to a public sandy beach. Although the appellants did not cite the public access policies of the Coastal Act as grounds for appeal, should the Commission find Substantial Issue based on the grounds which have been cited, public access would be addressed in the de novo public hearing.

All three appellants cite the fact that no public hearings were held relative to issuance of a Coastal Development Permit, as required by the City's certified Zoning Ordinance, as a ground for appeal. In addition, all three appellants contend that the seaward extension of development beyond an established building line on the beach and a side yard extension into a view corridor are inconsistent with the City's certified LCP. The appellant's cited PRC Section 30251 which is contained within the Land Use Plan and Policy 4-1 of the LUP's Visual Resources Section which states that new development ... adjacent to ... beaches ... shall be designed and sited to prevent adverse impacts on the visual quality of these resources. The appellant's also contend that a solid concrete retaining wall beneath the new deck is inconsistent with the Seawalls and Shoreline Structures Section of the LUP.

The first contention is that no public hearings were held and no Coastal Development Permit was issued by the City as required by the certified Zoning Ordinance. Chapter 14.48 of the Zoning Ordinance provides the Coastal Appeals Overlay District and sets forth special permit procedures for development located in the coastal appeals area, as defined by the zoning map. The new addition and remodel approved by the City qualify as development as provided in the Coastal Act and are located within the mapped appeals area.

The intent of the Coastal Appeals Overlay District is to provide opportunities for the maximum amount of public participation in the review of such development by requiring a Coastal Development permit and a public hearing. The Overlay provides for appeals to the Coastal Commission and requires that "prior to approving a permit for development in the coastal appeals area, the planning commission and/or the city council shall make the determination that the development is in conformance with all applicable policies of the coastal land use plan and the recreation and access implementation program."

In this case, the City approved the development as an "over-the-counter" administrative permit with no conditions and no findings for approval. No public hearings were held and no Coastal Development Permit was required as provided in the certified Zoning Ordinance although a Notice of Final Action issued by the City contained a finding that the development was in conformance with the LCP. This determination was not made by the planning commission or city council as required by the Zoning Ordinance, however.

In conclusion the procedural means followed by the City in issuing an administrative building permit rather than the required Coastal Development Permit and the failure to hold a public hearing are not in conformance with the procedural requirements of the certified coastal Zoning Ordinance. Therefore, the Commission finds that the appellants contentions raise a substantial issue with respect to the grounds that the development was not approved in conformance with the certified Zoning Ordinance.

An additional contention raised by the appellants is that the seaward extension of the structure included in the new development beyond a building line established by adjacent structures and a side yard extension into a view corridor is inconsistent with

PRC Section 30251 contained in the certified Land Use Plan and Policy 4-1 of the LUP's Visual Resources Section. PRC Section 30251 is taken verbatim from the Coastal Act and states that "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 ..." (emphasis added). Policy 4-1 provides that "broad, unobstructed views from the nearest public street to the ocean ... shall be preserved to the extent feasible." This policy also states that new development "located on or adjacent to ... beaches ... shall be designed and sited to prevent adverse impacts on the visual quality of these resources."

The City's approval of the project contained no findings or analysis relative to the LCP's visual protection policies. The LCP contains no specific "stringline" policy which has been used by the Commission and other local governments to prevent seaward encroachment of development in numerous permit actions. The appellants contend that a building line similar to a stringline was used by the Commission in two appeals from 1985, however, no specific evidence was submitted to support the contention. Staff has requested the files from State archives but they have not been received to date.

Regardless of the absence of a specific stringline policy in the certified LCP, the Commission finds that Section 30251 and Policy 4-1 are applicable to the development, particularly the seaward extension aspect. The Commission has found that seaward extension of development on a sandy beach can adversely impact public views in numerous past permit actions and has utilized the stringline policy to minimize or prevent such impacts.

In addition, as indicated above, the City's approval contained no findings or analysis relative to the visual protection policies of the LCP. Therefore, for the reasons stated above, the Commission finds that the appellants contentions raise substantial issue with respect to the grounds that the development, as approved by the City, is not consistent with Section 30251 and Policy 4-1 of the certified LCP.

Finally, the appellants contend that a solid concrete retaining wall beneath the new deck is inconsistent with the Seawalls and Shoreline Structures section of the LUP. A solid wall is shown on the project plans beneath the deck at the seaward edge of the structure, however neither the plans nor the permit issued by the City describe a seawall or retaining wall. Since the wall is a component of the seaward extension of the structure its location and purpose will be addressed at the de novo stage of the appeal hearing should the Commission find Substantial Issue relative to the seaward encroachment issue discussed above.

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

RECEIVED
MAY 18 1999



Please Review Attached Appeal Information Sheet Prior To ^{completing} This Form.

SOUTH CENTRAL COAST DISTRICT
CALIFORNIA COASTAL COMMISSION

SECTION I. Appellant(s)

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

Vince Mezzio / Gerald B Velasco
4925 D Sandyland
Carpinteria CA 93013 (805) 684-6937
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Carpinteria City

2. Brief description of development being appealed: Permit for remodel of single family dwelling

3. Development's location (street address, assessor's parcel no., cross street, etc.): ~~4925~~ 4921 Sandyland Road Carpinteria, CA

4. Description of decision being appealed:

- a. Approval; no special conditions:
- b. Approval with special conditions: _____
- c. Denial: _____

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

EXHIBIT NO. /
APPLICATION NO.
A-4-LPN-99-119

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: 11/16/98

7. Local government's file number (if any): _____

SECTION 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:

Chris Clemens
4921 Sandyland Rd.
Carpinteria, CA 93013

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) Mary Anderson
4923 Sandyland Rd
Carpinteria CA 93013

(2) Mary Clark
4925 E Sandyland Rd
Carp, CA 93013

(3) Ken Duncan
4903 Sandyland Rd
Carpinteria, CA 93013

(4) _____

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.

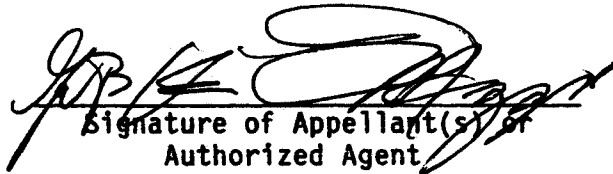
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

- ① A 6'-8' concrete retaining wall has been built on the southerly portion of the site, the ocean side, that we understand is in violation of Flood Control requirements
- ② We do not believe that Flood Control has been notified or inspected the site
- ③ Projection of building into required side yards that restricts view corridor from the North to the south.
- ④ See attachment.

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.


Signature of Appellant(s) or
Authorized Agent

Date 5-17-99

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 _____

ATTACHMENT

The proposed construction (actually near completion) violates PRC Section 30251, Policy 4-1 with respect to the line of construction down the beach as well as the Carpinteria certified local coastal program at 3.4 and §30251. The structure pushes further out to the ocean than any of the adjacent structures with the effect of obstructing the view along the beach.

By way of background, the property at 4925 and 4921 Sandyland have the same property line facing the beach. When the parcel at 4925 was developed in 1985 the City required an extra 5 foot set back from the rear property line ostensibly to preserve the existing building line and the view along the beach. Both the City of Carpinteria and the Coastal Commission paid close attention to the issues presented herein at that time. The issue was virtually ignored by the City with this construction.

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



RECEIVED
MAY 17 1999

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

SECTION I. Appellant(s)

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

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

MARY M. CLARK
4925 SANDYLAND ROAD #E
CARPINTERIA, CA 93013 (805) 687-5053
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF CARPINTERIA, 5775 CARPINTERIA AVE, CARPINTERIA, CA 93013

2. Brief description of development being appealed: 4921 SANDYLAND RD, CARPINTERIA, CA 93013

SUPPOSED RE-HAB

3. Development's location (street address, assessor's parcel no., cross street, etc.): 4921 SANDYLAND RD, CARPINTERIA BETWEEN LINDELL AVENUE & ELM - BEACH SIDE

- 4. Description of decision being appealed: I DO NOT KNOW WHAT
- a. Approval; no special conditions: APPLIES HERE AS I AM
- b. Approval with special conditions: NOT PRIVY TO THE LEGAL
- c. Denial: RAMIFICATIONS

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

EXHIBIT NO. 2
APPLICATION NO.
A-4-CPN-99-119

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

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

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

6. Date of local government's decision: _____

7. Local government's file number (if any): _____

PLEASE SEE ATTACHED LETTER (COPY) WHICH WAS DELIVERED BY HAND TO CITY HALL ON MONDAY, MAY 10, 1999.

SECTION 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:

I CANNOT SUPPLY

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.

REQUESTED INFORMATION ON THIS PAGE AS I HAVE NOT BEEN INVOLVED ON A DAILY BASIS

(1) _____

(2) _____

(3) _____

(4) _____

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.)

PLEASE SEE ATTACHED LETTER WHICH
INCLUDES REASONS WHICH I BELIEVE
WILL SUPPORT THE COASTAL COMMISSION'S
NEED TO QUICKLY LOOK INTO THIS
MATTER.

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.


Signature of Appellant(s) or
Authorized Agent

Date May 13, 1999

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 _____

Copy
May 8, 1999

Ms. Samantha Orduno, City Manager
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, California 93013

Re: Construction in progress at
4921 Sandyland Road, Carpinteria

Dear Ms. Orduno:

I own and permanently live in a unit next door to the east of the construction I have noted.

Over the past few months I have been aware that there are certain discrepancies between what has been built and what the codes and laws are. Inasmuch as my expertise is not in the building field, I can make little comment as to the inconsistencies and violations which have occurred.

My interest and extreme concern, however, is what is now obviously a detriment to all who live adjacent to or on the beach near this project. What happened to the sight lines? How can the City not require this construction to abide by the rules that the builder of my building faced? Where on the original plans was a third floor balcony drawn? When was that approved? How can the City grant variances (note: plural variances) as has been done without proper procedures? When were public hearings held? So, there have been unfortunate difficulties and position turnovers at City Hall. Does that make it lawful and reasonable to allow what has happened here?

I invite you, the City Council, the Planning Commission and all other interested parties to come down here and see what is happening. The Clemens Construction Company has been allowed to push their building toward the ocean with no setback requirements as were necessary when my building was built. They have been allowed to put on a third story deck with heavy columns to support it. Obviously, there is a planned railing of some kind around that deck. If such a railing matches what is sitting on and yet to be installed on the second floor deck, there might as well be a wall on the third floor. Again, when and how was the approval for this deck given? **THERE IS A PLANNED STAIRWAY TO THE SAND FROM THE SECOND FLOOR DECK. THAT WILL CLEARLY INFRINGE UPON THE PEOPLES' BEACH.**

It was my understanding that openings were to be left on the beach side of the building to allow water flow should a storm force water to the structure. What I see is solid and heavily reinforced cement with lattice work affixed to it. Any rush of water will not affect this building but WILL seriously affect the buildings on either side.

It was my further understanding that the ground floor of the building was to be for storage. Take a look-- it looks habitable to me.

Who ever allowed the Clemens Construction Company to build just inches from the property line on the west side of the building?

The plans for this building were drawn by a well known and reputable architect and Mr. Clemens himself is a California licensed builder. What has gone wrong here? The architect knew what he was doing and Mr. Clemens had to know what he was doing....

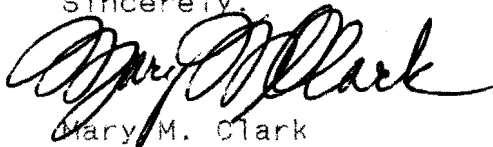
Come and visit this area. See how the building to the west of the construction site is dwarfed. See how some owners of units of Beach Club to the west of the site can no longer see toward Ventura.

I understand that this construction qualified as a rehab with a necessarily set figure for total cost. This is one very large joke. Perhaps I am wrong but I thought that an existing wall or walls had to be preserved. I'd suggest that you try to find one or them.

Property in Carpinteria has been owned by my family for the past twenty-seven years. I love the place. I've supported the City, the purchase of the Bluffs, the Summer Beach Program, the hockey arena, the skateboard area, etc. I am proud to live here. However, I am not proud of what the City has allowed to happen here.

I will appreciate a reply to my letter.

Sincerely,



Mary M. Clark

4925 Sandyland Road, #F
Carpinteria, California 93013
(805)684-5653

cc-- Members of the City Council
cc-- Coastal Commission

LAW OFFICES OF JANA ZIMMER
2640 Las Encinas Lane
Santa Barbara, CA. 93105

EXHIBIT NO. ?
APPLICATION NO.
A-4-CPN-99-119

Phone: 805/563-1591

Fax: 805/687-4156

email: jzimmer@rain.org

July 9, 1999

California Coastal Commission
89 California Street
Ventura, CA. 93013

Attn: James Johnson

Re: Appeal No. A-4-CPN-99-119
4921 Sandyland Road Carpinteria

RECEIVED
JUL 12 1999
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Dear Mr. Johnson:

This office has been retained to represent Mr. Vincent Mezzio, Mrs. Mary Clark and Mr. Gerald Velasco, the appellants in the above matter. Appellants own properties adjacent and to the east of the project site. This letter will constitute our *preliminary* submittal on the issues on appeal. For the reasons set forth below, we contend that the staff should recommend that the Coastal Commission should find substantial issues exist with respect to the Carpinteria LCP, hold a 'de novo' hearing, and grant the appeal. The Commission should also direct the applicant to abate those portions of the construction which violate Coastal Act and Carpinteria LCP policies. We are informed and believe that the various violations of City ordinance and LCP policy in this case were knowing and intentional.

The project being appealed was described by the City as a 'remodel' and 'rebuild' of an existing single family residence with a total area of 2,221 square feet.

Appellant contends:

1. The approval of the construction violates the City's certified LCP and numerous provisions of the certified coastal zoning ordinance as further set forth below.
2. The construction constitutes a demolition and replacement of the entirety of an existing structure with a structure which is significantly larger in size, bulk and volume, and was subject to a new coastal development permit. The building permit was unlawfully issued because the

requisite coastal permit and findings were not made.

1. Procedural Requests

A. For the reasons set forth below, we request that the Commission take administrative notice and include in its record of this appeal file documents from the 1985 appeal and new permit proceedings at Mr. Mezzio's property. The appeal was filed on July 17, 1985, #A-4-CPN-85-10 by Commissioners Nutter and McNeil. The permit which was ultimately issued by the Commission in resolution of the appeal, 4-85-378 contained conditions which address the identical issues raised by Mr. Mezzio's current appeal, and to which he agreed.

The foregoing documents are relevant to Mr. Mezzio's contention that the Commission's decisions in 1985 constitute a precedential determination of substantial issue under the Coastal Act, as the facts underlying the current appeal are precisely the same concerns raised by the Commission's appeal of Mr. Mezzio's project next door in 1985. We contend that the City's failure to apply the same standards and policies to Mr. Clemens' project constitutes a denial of equal protection to Mr. Mezzio, and completely undermines the Commission's prior decision affecting Mr. Mezzio and other members of the public.

B. We are also requesting that the Commission issue subpoenas and/or otherwise demand production of documents from Mr. Clemens, his contractors, architects and employees, for documents, including but not limited to indemnification agreements with present and past architects, and evidence of any and all expenditures made, and the dates thereof, in connection with the project. Mr. Clemens, as we understand it, is a state licensed contractor and is in a position to know the rules and regulations applicable to building projects. Mr. Mezzio is informed and believes that the construction which has been performed on Mr. Clemens property and which violates the City's ordinances and the Coastal Act was done in knowing and intentional violation of the applicable laws. Mr. Clemens attorney has argued that the City is estopped from revoking and/or rescinding its approvals on the theory of vested rights/ equitable estoppel.

These documents are relevant to any claim that Mr. Clemens might make that he relied in good faith in reliance on permits unlawfully or erroneously issued by the City of Carpinteria. Apart from the fact that the Coastal Commission is not bound by any errors made by the City, the City itself has failed to honor the stay provisions in the Coastal Commission regulations. Notwithstanding the knowledge of both the applicant and the City that Mr. Mezzio and others have objected to this project and that an appeal was filed, the City has continued to perform inspections and to allow the construction to be virtually completed and the building to be occupied while the appeal was pending.

2. History

The property on which the proposed development is located was subject to an agreement

between the City the State and the owner determining a judgment line defining the seaward extent of the property along the beach. S.B.S.C. # 79327.

In 1985 appellant Mezzio received approval of a seven unit condominium project from the City of Carpinteria, located at 4925 Sandyland. An appeal was filed by two Commission members, Mr. Mel Nutter and Ms. Carolyn McNeil stating the following grounds:

1. Notice of the local hearing was inadequate. [details omitted]
2. The proposed development will interfere with lateral public access and recreational use of a dry sand beach in conflict with LCP policies 7-1,7-2,7-13,7-15,7-16, 7-20 relative to access and recreation and policies 3-3 relative to shoreline structures. Further, the development of patio, planters and walls on the beach interferes with public access in a manner inconsistent with Chapter III of Coastal Act policies.
3. **Development of walls and buildings further seaward than a 'stringline' between existing beachfront development will fail to protect public views and be incompatible with the physical scale of the neighborhood.**
4. **By virtue of the location further seaward than existing development and in an area subject to a seasonal berm constructed by the City for shoreline protection, the development does not comply with shoreline erosion setback requirements.**

Appeal #A-4-CPN-85.

In order to dispose of the appeal, Mr. Mezzio, who then owned the entire property, agreed to a new permit with extensive conditions. Those conditions included Mr. Mezzio's acceptance of a reduction from seven to six units, and a stringline for the building, and a separate stringline for decks, walls and walkways, as well as dedication of a lateral access easement to the public.

In the staff report recommending approval of a revised permit, the Commission analyzed the projects compliance with Section 30251 requiring protection of views to and along the ocean, and found that without the stringline, the development would violated the Act and Policy 4-1 of the Carpinteria certified Land Use Plan found that 'the use of a stringline will insure protection of visual quality and coastal views consistent with the Coastal Act and the certified LCP. The staff report relied on a case in the City of Santa Barbara, Mori, Permit 4-82-452, in which the Commission allowed the deck and building respectively to extend no further seaward on an ocean front lot than the decks and buildings already constructed on adjacent lots to the east and west.

3. The Approved Project Raises Substantial Issues of Conformance with the Certified LCP

The City has allowed construction further seaward than existing development, in violation of

Section 30251 and prior precedential decisions, and has allowed, without holding the hearings or making the findings required by law for variances, expansion into the sideyard setbacks of the Clemens property in a manner which impairs views to the ocean and violates Carpinteria LCP Policy 4-1. Apart from the fact that the policies of the Coastal Act and the LCP would be completely undermined by allowing this approval to stand, the approval constitutes a denial of due process and equal protection: there is no rational basis for the inconsistent application of the law to these adjacent properties.

As the City's file documents demonstrate, the City failed to require a Coastal Development Permit, and failed to make the findings required by law. Among the City's violations of its own certified coastal zoning ordinance are the following:

1. The City issued a building permit for the project on November 16, 1998 without requiring any coastal permit of any kind. The City therefore violated Carpinteria Municipal Code Section 14.60.040, which requires a coastal development permit except in certain specific circumstances. There was no proper determination of exemption made, no proper determination that the project was minor, and no record of findings as required by Section 14.60.040.8. Furthermore, the ordinance expressly prohibits the finding that an 'administrative permit' is proper if the project is within the appeals or permit jurisdiction. There was no notice given to the Coastal Commission as required. The City subsequently became aware of amendments and deviations from the plans it did approve, but failed to take action to revoke the permit. These deviations are admitted in a letter from the City dated April 3, 1999. Because of all of these violations, the Appellants were deprived of their right to notice, and an opportunity to participate in the permit process. Denial of the right to participate violates the public participation provisions of the Coastal Act, Section 30006 of the Public Resources Code, among other provisions of law.
2. The project did undergo review at the City ABR. However, the Appellants are excused from the requirement of exhaustion of administrative remedies because the plans failed to comply with the submittal requirements under the Code, which specifically required plans to depict the adjacent buildings. See, Muni Code Section 2.36.090. Because the plans reviewed did not comply with this requirement, appellants were precluded from effectively participating in the AIR hearings, because *they had no way of discerning the actual encroachment of the rear of the building toward the ocean, and therefore its impact on views to and along the coast.* There was nothing in the published Agenda or project description which put the public on notice of the actual extent of the encroachment beyond the previously established string lines to the east on Mr. Mezzio's property. Furthermore, the plans did not portray the decks/balconies so as to place the public on notice of the obstruction of views. These violations became apparent during the course of construction, at which time the Appellants immediately and repeatedly informed the City of their concerns, and attempted to gain compliance with the law.
3. Furthermore, the BAR approval specifically conditioned the project on compliance with all setbacks, including the five foot sideyard setback. The City was fully aware that the construction deviated from those plans, but instead of requiring a variance (again, which would have required

a public hearing and provided for appeal to the Council), the City purported to retroactively 'approve' the violation without any such hearing. This violation impacts the view corridors between the buildings between the public street and the beach, again violating the Local Coastal Plan.

4. The City issued a *deficient* Notice of Final Action on April 8, 1999, approximately six months after it issued the building permit. The Coastal Commission required a new notice. That new notice, Amended Notice of final Action dated May 3, 1999, recited that "the following findings were made as of the November 16, 1998 action date. This attempt to retroactively make findings on a prior determination that was never authorized was a nullity.

5. The City is aware of the fact that the original plans have also been compromised by the construction of a masonry wall at the south side of the building, and is aware that this creates the potential for flood damage to the subject *and surrounding properties*. The City has failed to require abatement of this violation. [See, Letter of April 22, 1999 from Durlinger to Mezzio] The City is aware that the basement areas provide the potential for additional living space.

6. The project is not exempt from Coastal Permit requirements. The project was misrepresented as a remodel when it consisted of a replacement of an older structure with a completely new structure, substantially larger in volume, bulk and square footage. The property is not a single family residence. The property historically consisted of four rental units, which were converted to two condominiums in 1989. When Mr. Clemens applied for a permit he represented the project to be a remodel and addition.

Numerous additional changes/violations have occurred and have been tolerated by the City during construction. The valuation and the square footage on the building permit severely understate the scope and size of the construction. The two walls which were to remain in order for this construction to be defined as a 'remodel' have been removed. The applicant violated sideyard setback requirements by popping out walls for over thirty feet for the full two stories, without obtaining approval of a modification and /or variance from the City. As a result of these unpermitted ¹projections, the remaining view corridor from the public street to the ocean is almost completely obscured. The applicant also constructed, without approval or any plans or engineering, a retaining wall seven to eight feet high. Furthermore, the construction includes provision for a 'ground floor' space which appellants believe will be used for additional habitable space.

Notwithstanding appellants' repeated oral and written requests, (see, e.g. letter from Velasco dated April 9, 1999), the City has failed and refused to suspend permits or comply with the automatic stay provisions of the Coastal Commission's regulations.[Zimmer letter to City, June

¹The City has taken the position that it could approve these projections after the fact and without going through a discretionary approval process, notwithstanding the requirements of the City ordinance.

24, 1999] Thus, the construction is almost complete, and is now occupied by the Clemens family. Currently, apart from the sideyard setback violations and view obstruction, there are two decks/balconies which extend beyond the stringline and substantially impair views along the coast from appellants' properties and properties to the east and west.

Based on the prior appeal by two Commissioners on the precise grounds stated in Appellants' appeal herein, there can be no question that the case presents a substantial issue. Based on the facts and the evidence contained in the City's own files, as well as additional evidence the appellants will provide prior to the hearing, the appeal should be granted.

Very Truly Yours,



Jane Zimmer

CITY of CARPINTERIA, CALIFORNIA

EXHIBIT NO. 4
APPLICATION NO.
A-4-CPN-99-119

RECEIVED
MAY 11 1999

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

AMENDED NOTICE OF FINAL ACTION

May 3, 1999

Members of the City Council
J. Bradley Stein - Mayor
Gary Nielsen - Vice Mayor
Donna Jordan
Michael Ledbetter
Richard Weinberg

Samantha Orduño, City Manager

**THE FOLLOWING PROJECT IS LOCATED WITHIN THE
CITY OF CARPINTERIA'S COASTAL ZONE
AND FINAL ACTION HAS BEEN TAKEN**

Applicant: Chris Clemens	Agent: Clemens Construction
Address: 4921 Sandyland Road Carpinteria, CA 93013	Address: 4921 Sandyland Road Carpinteria, CA 93013
Phone: (805) 682-6559	Phone: (805) 682-6559
Project Location: 4921 Sandyland Road	
Application File No.: N/A	
Filing Date: June 30, 1998	
Action Date: November 16, 1998	

Action: <input checked="" type="checkbox"/> Approved	Condition of Approval: <input type="checkbox"/> Attached
<input type="checkbox"/> Approved with conditions	Findings: <input checked="" type="checkbox"/> Attached
<input type="checkbox"/> Denied	

Project Description:

An Administrative Coastal Development Permit to remodel and rebuild an existing single-family beachfront residence with a total area of 2,221 square feet.

The subject project is:

- Not in the Coastal Commission Appeal Jurisdiction
- Appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Applicants will be notified by the Coastal Commission of the conclusion date of the appeal

period. Appeals must be in writing to the appropriate Coastal Commission district office.

Findings of Approval:

In regard to the issuance of a coastal development permit, the following findings were made as of the November 16, 1998 action date.

1. The proposed development is in conformity with the city's certified local coastal program.
2. The development is in conformity with the public recreation policies of Chapter 3 of the California Coastal Act.

G:/Users/Paul/Clemens



APPLICATION and PERMIT

PERMIT NO. 06706

DIVISION OF BUILDING AND SAFETY - CITY OF CARPINTERIA
5775 Carpinteria Avenue, Carpinteria, Calif. 93013
Phone 684-5405

Date of Application 6/30/98
 Address of Job 4921 Sandyland Road
 Lot _____ Parcel 3-850-14 Tract _____
 Owner Chris Clemens/Lannie Lou Address same Phone 684-1557
 Contractor Clemens Constr. Address same Phone SAME
 Arch., Eng. or D'tam'n Robert Klammer Address 429 Wyola, SB Phone 563-1886

BUILDING GROUP

TYPE _____ DIVISION _____

Erect

Add 500 sqft unsec. underfloor & 554 sqft

Alter second floor & 500sqft 1st fl 1st fl

Convert _____

Demolish 500 sq ft 2nd fl & 320 sqft loft

Move _____

Rooms	ROOF	EXT. WALLS	FLOOR
<u>One</u> Families	<input type="checkbox"/> Wood Shingles	<input type="checkbox"/> Wood Siding	<input type="checkbox"/> Wood
<u>Two</u> Storero	<input type="checkbox"/> Comp. Shingles	<input type="checkbox"/> Stucco	<input type="checkbox"/> Slab
	<input type="checkbox"/> Tile	<input type="checkbox"/> Masonry	<input type="checkbox"/>
	<input type="checkbox"/> Built Up	<input type="checkbox"/> Steel	
	<input type="checkbox"/>	<input type="checkbox"/>	

AREA		
overall <u>2221</u> Sq. ft. @ _____	Bldg.	\$ _____
_____ Sq. ft. @ _____	Porch	\$ _____
_____ Sq. ft. @ _____	Garage	\$ _____
_____ Sq. ft. @ _____	Carport	\$ _____
_____ Sq. ft. @ _____	Auto. Sprinklers	\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____
	Total Valuation	\$ <u>140,000.</u>

House Type _____

Remarks: Remodel & add to existing single family home.

RECEIVED

MAY 24 1999

CALIFORNIA COASTAL COMMISSION SOUTH CENTRAL COAST DISTRICT

CERTIFICATE OF APPLICANT

I hereby acknowledge that I have read this application, front and back, and state that the above is correct and agree to comply with all City Ordinances and State Laws regulating Building Construction.

Lannie Lou
Owner or Authorized Agent

FEE
 Issuance = \$30 **PLUMBING** \$75

8 Traps @ \$5 _____

1 Water Heater @ \$5 _____

Water Piping _____

Sewer Connection _____

Gas Piping Outlets _____

FEE
 Issuance = \$30 **ELECTRICAL** \$96

Temp. Service _____

Outlets _____

Service _____

2,221 Sq. Ft. Bldg. @ \$.03 = \$66 _____

Sq. Ft. Gar _____

Main Ser. _____ Ampe _____

FEE
 Issuance = \$30 **MECHANICAL** \$96

Fan(s) _____

Furnace _____

Repair or Alter. _____

Air Conditioning _____

2,221 Sq. Ft. Bldg. @ .03 = 66 _____

SUMMARY OF FEES

Advance Plan Check	\$ 530.
Building Permit	\$ 1,227
Plan Check	\$ 791
Plumbing Permit	\$ 75
Electrical Permit	\$ 96
Mechanical Permit	\$ 96
SUBTOTAL	\$ _____
SMIP	\$ 14
NEW CONSTRUCTION TAX	\$ _____
TOTAL FEE	\$ 2,299.
Less deposit	-530.
Now due	1,769.

Receipt No. 1093
 Date 11/18/98
 Received by R. Orduno

Receipt No. _____
 Date _____
 Received by _____

Maximum Floor Live Load _____
 Certificate of Occupancy Number _____
 Date Certificate Issued _____

Date of Approval 11/16/98
 BUILDING OFFICIAL
 City of Carpinteria
 By Samantha Orduno, City Manager

