

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

7575 METROPOLITAN DRIVE, SUITE 103

SAN DIEGO, CA 92108-4402

767-2370

**Fri 9a**

RECORD PACKET COPY

Filed: 6/07/01
49th Day: Waived
Staff: BP-SD
Staff Report: 1/15/02
Hearing Date: 2/5-8/02

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Oceanside

DECISION: Approval with Conditions

APPEAL NO.: A-6-OCN-01-88

APPLICANT: Dr. William Stoner

Agent: Eitan Aharoni

PROJECT DESCRIPTION: Extension of local coastal development permit authorizing demolition of a 1,900 sq. ft. duplex and construction of a two-story, 29-foot high 3,862 sq. ft. single-family residence, garage, patio and deck on a 4,875 sq.ft. blufftop lot containing an existing riprap revetment. Approximately 150 cubic yards of imported fill is proposed.

PROJECT LOCATION: 1105 South Pacific Street, Oceanside, San Diego County.
APN 152-075-0200

APPELLANTS: Commissioners Kruer and McCoy

STAFF NOTES: On February 22, 1999 the City approved the coastal development permit for the project. However, the Notice of Final Action (NOFA) from the City was never sent to the Commission's San Diego office as required. The development permit was never issued and the City subsequently approved a time extension of the coastal development permit on May 7, 2001. Commissioners Kruer and McCoy appealed the time extension for the coastal development permit.

On Appeal No. A-6-OCN-01-122 (to be heard prior to this appeal), the Commission will act on the appeal of the City's original approval of the proposed development. Staff is recommending that the Commission find Substantial Issue on that appeal. If the Commission does find Substantial Issue regarding A-6-OCN-01-122, that action will entirely supercede the coastal development permit approved by the City. The coastal development permit for which the City granted the extension that is the subject of this appeal (A-6-OCN-01-88) will then no longer be in effect, therefore there will be no local coastal development permit to extend.

Staff is recommending that the Commission find No Substantial Issue on this appeal on the grounds that the Commission's action on the appeal of the City's original approval of the project will render the extension of the city-issued CDP moot.

SUMMARY OF STAFF RECOMENDATION:

Staff is recommending that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Oceanside Local Coastal Program (LCP), Regular Coastal Permit RC-11-98, Variance V-7-98, A-6-OCN-99-20/Wilt, A-6-OCN-99-133/Liguori, A-6-OCN-00-71/Alanis, A-6-OCN-01-122/Stoner, Limited Geotechnical Investigation and Evaluation of Existing Shoreline Protection by Anthony-Taylor Consultants, dated January 18, 1999

I. Appellant Contends That:

The appellants contend that the project is inconsistent with several of the current policies and ordinances of the certified LCP pertaining to community character, protection of public views and public access. Specifically, the appellants contend that as approved by the City the project 1) extends to the limit of the stringline which may result in adverse impacts on public views from nearby vertical accessways; 2) the City did not make any findings regarding the project's consistency with neighboring development, i.e., did not indicate the relationship of the size or bulk of the proposed structure to other structures in the project area as required by the LCP; and 3) the City failed to document the seaward extent of the existing revetment or to assure that the new development would not require additional protection seaward of the existing alignment in the future.

II. Local Government Action:

On February 22, 1999 the City approved the project subject to conditions, however, it did not send a notice of final action regarding its approval to the Commission. The City subsequently approved a time extension on May 7, 2001. The project was approved with conditions requiring the applicant to assume the liability of developing at an oceanfronting site and a condition that limits the maximum height of the roof tower element to not exceed 37 feet. The City sent a notice of final action regarding the extension to the Commission. In response to a request from Commission staff, the City subsequently provided the Commission with a notice of final action regarding the original permit.

III. Appeal Procedures

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean

high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo 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 present 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 permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process is 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. At the time of the de novo hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-OCN-01-88 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de

novo. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. *A-6-OCN-01-88* does not present a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations:

1. **Project Description/Permit History.** Proposed is a time extension for the City-issued coastal development permit authorizing demolition of a 1,900 sq. ft. duplex and construction of a two-story, 29-foot high 3,862 sq. ft. single-family residence, garage, patio and deck on a 4,875 sq.ft. blufftop lot containing an existing riprap revetment. Approximately 150 cubic yards of imported fill is proposed. The remainder of the Project Description/History section of the Substantial Issue findings for A-6-OCN-01-122 are incorporated herein by reference.

The certified LCP has a section regarding standards for permit extensions. Section 2124 provides that prior to granting a permit extension, the approving authority must find based on substantial evidence in the record that the permit will not be contrary to or in violation of any current policy, ordinance, rule or regulation. The granting of the extension may be conditioned to bring the permit into conformity and consistency with current policies, ordinances, rules and regulations including, in this case, the requirement that the project be consistent with the certified Oceanside LCP.

On Appeal No. A-6-OCN-01-122 (to be heard prior to this appeal), the Commission will act on the appeal of the City's original approval of the proposed development. Staff is recommending that the Commission find Substantial Issue on that appeal. If the Commission does find Substantial Issue regarding A-6-OCN-01-122, that action will entirely supercede the coastal development permit approved by the City. The coastal development permit for which the City granted the extension that is the subject of this appeal (A-6-OCN-01-88) will then no longer be in effect, therefore there will be no local coastal development permit to extend.

Staff therefore is recommending No Substantial Issue on the grounds that the Commission's action on the appeal of the City's original approval of the project will render the appeal of the extension of the city-issued CDP moot.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
DIEGO, CA 92108-4402
(619) 767-2370

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Patricia McCoy
Mailing Address: 132 Citrus Avenue
Imperial Beach, CA 91932
Phone Number: (619) 423-0495

SECTION II. Decision Being Appealed

1. Name of local/port government: Oceanside
2. Brief description of development being appealed: The proposal includes a time extension for demolition of 1,900 sq.ft. duplex and construction of a 2-story, 33-foot high, 4,875 sq.ft. single family residence on a 4,875 sq.ft. oceanfronting lot containing an existing riprap revetment.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
1105 South Pacific Street, Oceanside, APN 152-075-02
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: A-6-OCN-01-088

DATE FILED: 6/7/01

DISTRICT: San Diego

RECEIVED

JUN 07 2001

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

EXHIBIT NO. 102
APPLICATION NO.
A-6-OCN-01-088

Commission Appeal

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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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

Date of local government's decision: 5/7/01

Local government's file number (if any): RC-11-98

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

William Stoner
35490 Pony Trail Road
Hemet, CA 92545

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.

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

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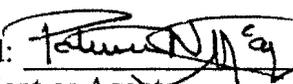
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE attachment A dated 6/7/01

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.

Signed: 
Appellant or Agent

Date: 6/7/01

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

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(619) 767-2370



June 7, 2001

ATTACHMENT "A"—Stoner Appeal

The proposal involves a time extension for a permit approved in 1999 (RC-11-98, Variance 7-98) for demolition of a 1,900 sq.ft. duplex and construction of a 2-story, 33-foot high, 3,862 sq.ft. single-family residence on an oceanfronting lot containing an existing riprap revetment. The approval also included a variance for a 2-foot roof encroachment above the zoning height limit of 27 feet. The 4,875 sq.ft. site is located on the west side of South Pacific Street, just north of Oceanside Boulevard in the City of Oceanside. The surrounding area is comprised of single- and multi-family dwellings on similar sized lots.

Section 2124 (d) of the certified Oceanside LCP addresses time extensions for permits and states that prior to granting a permit extension, the approving authority must make certain findings that include, among others, the following:

The plan, permit or variance will not be contrary to or in violation of any current policy, ordinance, rule or regulation. The granting of the extension may be so conditioned as to bring the plan, permit or variance into conformity and consistency with current policies, ordinances, rules and regulations

In review of the City's action, it appears the development approved for extension is not consistent with several of the current policies and ordinances of the certified LCP pertaining to community character, protection of public views and public access.

Two LUP Policies (#4, #8) of the "Visual Resources and Special Communities" Section of the certified Oceanside Land Use Plan (LUP) are applicable and state:

4. The City shall maintain existing view corridors through public rights-of-way;
8. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

The certified LCP requires new development to be compatible in size, scope and scale to surrounding structures. As noted above, the proposed development will more than double the size of the existing structure on the site and proposes an increase in height of 2 ft. above the maximum height allowed by zoning. However, the City did not make any findings regarding the project's consistency with neighboring development, i.e., did not indicate the relationship of the size or bulk of the proposed structure to other structures in the project area as required by the above LUP policy regarding community character. This issue was important on two previous Oceanside appeals the Commission has reviewed in the subject area (ref. A-6-OCN-99-20, Wilt; A-6-OCN-99-133, Liguori). Thus, the proposed development may be out of scale and character with surrounding development.

Additionally, Section 1703 of the certified implementing ordinances (zoning code) addresses the stringline and states:

Notwithstanding any other provisions of this section, buildings or structures located on lots contiguous to the shoreline shall be compatible in scale with existing development and shall not extend further seaward than the line established on the "Stringline Setback Map", which is kept on file in the Planning Division. Appurtenances such as open decks, patios and balconies may be allowed to extend seaward of the Stringline Setback line, providing that they do not substantially impair the views from adjoining properties.

The proposed residence will extend out to the maximum limits of the stringline as depicted on the certified Stringline Map (i.e., 71 feet from the front property line). The Commission has found in other actions on appealable developments in Oceanside that the maximum stringline is not a development "right" the applicant is entitled to automatically. The Commission has found instead that buildout to the maximum stringline can only be achieved when found consistent with all other provisions of the certified LCP. In this case, important public views exist across the subject site from the Forrester Street access stairway to the north and the Oceanside Blvd. vertical accessway to the south of the subject site. According to the City, the proposed structure will be constructed consistent with the stringline of the multi-family structure on the north but seaward of the existing duplex and seaward of the existing single family structure to the south. Because the proposed project would extend further seaward than the existing structure and the structure to the south, the project may result in adverse impacts on public views from the identified public accessways. The City failed to address this issue in its approval.

The project also has the potential to result in adverse public access impacts. Section 19.B.19 of the certified Seawall Ordinance requires:

Shoreline structures as defined in Article II shall be allowed when required to serve coastal dependent uses or to protect proposed or existing structures in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and other coastal resources; and where the construction is in conformance with the City's Local Coastal Plan.

Currently a riprap revetment exists along the shoreline portion of the lot. The certified LCP allows shoreline protective devices to protect existing development and requires that such devices not have adverse impacts on sand supply and coastal resources such as public access. The LCP provides the option to either conform to the City's seawall detail or provide a wave uprush study to determine whether new development will be adequately protected from wave uprush. A geotechnical report was prepared in 1999 which analyzed the existing revetment and determined it was functioning as intended. No improvements to the revetment were authorized with the City actions. However, the City and the geotechnical report did not address the adequacy of the existing revetment to protect the proposed residence in its seaward location, or whether modifications to the revetment should occur to reduce beach encroachment given the existing development the riprap was built to protect was being removed. The concern relates to potential further seaward encroachment on the beach by the revetment to protect the proposed new development and the associated impacts to public access. The City failed to document the

seaward extent of the existing revetment or to assure that the new development would not require additional protection seaward of the existing alignment in the future. Additionally, a concrete patio and deck is proposed seaward of the stringline. The LCP allows appurtenances such as open decks, patios and balconies to extend seaward of the Stringline Setback line, providing that they do not substantially impair the views from adjoining properties. However, both structures have substantial below grade footings and could be considered permanent structures that may be subject to erosion in the future. Absent an updated wave uprush study, it cannot be determined if any further augmentation of the revetment is or will be necessary to protect the proposed home (or the proposed deck/patio).

In summary, the City failed to analyze the development's conformity with LCP standards regarding scale and character, public view blockage and the impacts of shoreline protective structures on public access. The city also failed to recognize past Commission precedent regarding the above issues. Thus, the proposal raises a concern regarding consistency with the certified LCP.