

CALIFORNIA COASTAL COMMISSION

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Tue 20c

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STAFF REPORT AND RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Oceanside

DECISION: Approval with Conditions

APPEAL NO.: A-6-OCN-06-013

APPLICANT: Don & Joyce Ratkowski

PROJECT DESCRIPTION: Construction of a 3,526 sq. ft., two-story over basement single-family residence on a vacant 3,250 sq. ft. ocean fronting lot.

PROJECT LOCATION: 933 South Pacific Street, Oceanside, San Diego County. APN 150-355-09

APPELLANTS: Coastal Commissioners Sara Wan and Steve Padilla

SUMMARY OF STAFF RECOMMENDATION:

The 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.

SUBSTANTIVE FILE DOCUMENTS: Appeal Applications by Commissioners Wan and Padilla dated 1/30/06; Certified City of Oceanside Local Coastal Program (LCP); Coastal Hazard and Wave Runup Study dated March 2005 by GeoSoils, Inc.

I. Appellants Contend That: The project, as approved by the City, is inconsistent with the certified LCP with respect to protection of public views along the shoreline. In addition, the City failed to adequately address the impacts of existing shoreline protection structures on public access. Thus, they claim that the project, as approved by the City, is also inconsistent with the public access provisions of the LCP, as well as with the public access policies of Chapter 3 of the Coastal Act.

II. Local Government Action: The project was approved, with conditions, by the City of Oceanside Planning Commission on December 19, 2005. Specific conditions were attached which, among other things, require implementation of BMPs and other measure to control erosion and treat runoff from the site, the submittal of landscape plans, recordation of a waiver of liability and a requirement that the revetment be reconfigured to improve shore protection.

III. Appeal Procedures: After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1).

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission 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 the appeal is found to raise a substantial issue, the Commission will proceed to a full public hearing on the merits of the project either immediately 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.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, 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 of the Coastal Act.

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. 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-06-013 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. *A-6-OCN-06-013* presents 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 policies of the Coastal Act.

V. Findings and Declarations.

1. Project Description. The proposed project involves the construction of a two-story over basement, 3,526 sq. ft. single-family residence on a 3,250 sq. ft. ocean fronting lot in the City of Oceanside. The site is located on the west side of South Pacific Street, between Hayes and Marron Streets. The subject site is currently vacant and there is an existing unengineered riprap revetment located along the western portion of the site extending out approximately 10 ft. onto the public beach.

2. Public View Protection. The appellants assert that the proposed project raises several issues with regard to consistency with the certified LCP pertaining to protection

of public views and public access, and consistency with the public access policies of Chapter 3 of the Coastal Act.

Policy #9 of the “Visual Resources and Special Communities” Section of the certified Oceanside Land Use Plan (LUP) is applicable to the proposed development and states:

9. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

The beachfront on this section of shoreline in Oceanside contains a mix of older apartments and single-family homes along with newer condominium developments. The project maintains the required side yard setbacks of 3 feet and complies with the 27 ft. height requirement as well. The proposed home is consistent in size, height and scale with the surrounding community.

No construction is proposed beyond the “stringline” which is measured 88 feet seaward from the front property line. The stringline represents the limits of structural expansion toward the beach. An existing rock revetment is located along the western boundary of the site and extends onto the public beach.

The appellants also contend that the project is inconsistent with the stringline provisions of the certified Local Coastal Program (LCP). Specifically, the appellants contend that as approved by the City, the proposed residence will extend to the limit of the stringline resulting in public view blockage along the shoreline.

With regard to stringline, the certified LCP contains a requirement that new development along the ocean not extend further seaward than a “stringline”. The goal of limiting new development to extend no further seaward than the stringline is to restrict encroachment onto the shoreline and preserve public views along the shoreline. Stringline in the City of Oceanside is determined somewhat differently than in other coastal communities. Rather than drawing a line between the furthest extent of adjacent structures, stringline in the City of Oceanside is determined by a line on a map adopted in 1983. While there is no specific land use plan policy that identifies stringline, Section 1703 of the certified implementing ordinances (zoning code) addresses stringline and states:

Section 1703 (e) (Rear Yard Setbacks)

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 certified “Stringline Setback Map” was developed in 1983 by overlaying an imaginary stringline on an aerial photo of the shoreline in the City of Oceanside. The map shows how far new development may extend towards the ocean. The stringline map was based on existing building patterns, as well as anticipated future developments and remodels/expansions.

The proposed home will extend out to the maximum limits of the stringline as depicted on the certified Stringline Map (i.e., 88 feet from the eastern 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 approved when found consistent with all other provisions of the certified LCP. In this case, important public views exist across the subject site from the Marron Street public accessway to the south of the subject site. According to the City, the proposed structure will be constructed further seaward (but within the limits of the certified stringline) than existing development south of the site. Because the proposed project would extend further seaward than the existing structures to the south, the project may result in adverse impacts on public views from the identified public accessway. Thus, a substantial issue exists with respect to the consistency of the proposed project with the City’s certified Local Coastal Program.

3. Public Access. The appellants assert that the project, as approved by the City, may result in adverse public access impacts. Sections 30210 and 30211 of the Coastal Act are applicable and state:

Section 30210

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

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

In addition, Section 19.B.19 of the certified City of Oceanside 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 appellants assert that the City's review did not confirm the legality of the existing rock and whether or not the existing revetment has been authorized through a valid coastal development permit. While the certified LCP does allow shoreline protective devices to protect existing and proposed development, it 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.

In this particular case, a wave hazard study was prepared in 2005, which analyzed the existing revetment. The study concluded that the existing revetment does not conform to the City's seawall detail and that improvements to the existing revetment are necessary to adequately protect the proposed residence from flooding of the lowest floor and resulting nuisance water damage. The study further recommends that the revetment be reconfigured to include the placement of filter fabric and the addition of approximately six new 4-ton stones. As such, the City conditioned the permit to require this work with a limitation that the revetment not extend any further seaward than what currently exists.

However, the subject site is currently vacant and the existing toe of the revetment is approximately 10 ft. seaward of the westerly property line on the public beach. As the subject site is currently vacant and the existing revetment is located on the public beach, to assure consistency with the public access provisions cited above, the City should have looked at siting the proposed home such that the existing revetment could be eliminated. Thus, re-opening up the beach area currently occupied by the revetment to the public. However, the City failed to address siting of the proposed residence to eliminate the need for shoreline protection. In addition, the City failed to address alternatives that would reduce or eliminate encroachment of the revetment onto sandy beach area currently used by the public.

In summary, the City failed to adequately address the development's conformity with LCP standards regarding public view blockage, limits on shoreline protective devices, and the impacts of shoreline protective structures on public access. The city also failed to recognize past Commission precedent regarding the above issues. Therefore, the Commission finds that a substantial issue exists with respect to the consistency of the local government action with the City's certified Local Coastal Program.