

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
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# F13a

Appeal Filed: 4/27/18  
 49th Working Day: 7/9/18  
 Staff: J. Phelps-V  
 Staff Report: 5/17/18  
 Hearing Date: 6/8/18

## **STAFF REPORT: APPEAL NO SUBSTANTIAL ISSUE**

**APPEAL NUMBER:** A-4-SBV-18-0032

**APPLICANT:** Steven Wallace

**APPELLANT:** Alexander J. Annala, PhD, Trustee of the Aboody-Annala Revocable Trust

**LOCAL GOVERNMENT:** City of Ventura

**LOCAL DECISION:** Approval with Conditions of Coastal Development Permit ACDP-11-16-38011 and Variance V-12-16-38011

**PROJECT LOCATION:** 1195 Winthrop Lane, Ventura (APN: 081-0-062-350)

**PROJECT DESCRIPTION:** Construction of a new 284 square foot laundry room addition, an 867 square foot half story addition with a 220 square foot balcony, and demolition of 159 square feet of the second floor of an existing 1,894 square foot single family residence, and an administrative variance to increase the lot coverage from 40% to 57.12% and to reduce the side yard setback from 10-feet to 5-feet, 3-inches.

**STAFF RECOMMENDATION:** No Substantial Issue

**MOTION & RESOLUTION:** Page 5

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NOTE: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the *de novo* phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

## SUMMARY OF STAFF RECOMMENDATION

The Commission's role at the "substantial issue" phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed, which can include a claim that the approved development is not in conformity with the applicable provisions of the certified Local Coastal Program (LCP) or with the public access policies of the Coastal Act (Pub. Res. Code §§30210-14). Staff recommends that the Commission, after public hearing, determine that **no substantial issue exists** with respect to the grounds on which the subject appeal has been filed. The motion and resolution for a "no substantial issue" finding are found on **page 5**.

The subject coastal development permit (CDP) was approved by the City of Ventura Administrative Hearing Officer on April 4, 2017. This action was then appealed to both the Planning Commission and City Council by Alexander J. Annala, on behalf of the Aboody-Annala Revocable Trust. Ultimately, the City Council upheld the Planning Commission's action, thereby approving CDP No. ACDP-11-16-38011 and Variance V-12-16-38011 for modifications to an existing single family dwelling at 1195 Winthrop Lane. The project is located on a 0.08-acre beachfront parcel within a residentially developed neighborhood in the Pierpont Beach area of the City of Ventura.

The contentions of the appeal relate to development standards required by the Local Implementation Plan (LIP), including standards related to scenic and visual resources, community character, and noticing. However, the appeal does not reference any specific City of Ventura LUP policy and only references a single LIP provision related to these allegations, Section 24.465, which relates to non-conforming development.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question". In previous decisions on appeals, the Commission has been guided by five factors, which are: 1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; 2) the extent and scope of the development as approved or denied by the local government; 3) the significance of coastal resources affected by the decision; 4) the precedential value of the local government's decision for future interpretations of its LCP; and 5) whether the appeal raises only local issues or those of regional or statewide significance.

Applying these five factors to the issues raised by the subject appeal demonstrates that the proposed project does not raise a substantial issue with the policies of the City's certified LCP regarding scenic and visual resources, community character, and development standards required by the LIP.

Applying the five factors identified above, the Commission finds that although there are no special circumstances affecting the project site, the City did have substantial evidence to conclude that the variance granted complies with all other standards specified in the LIP, the development is relatively minor in scope, doesn't have a significant adverse effect on coastal resources, has little precedential value, and doesn't raise issues of regional or statewide significance. Furthermore, although the approved project does not fully comply with LIP Section 24.465.030, components of the subject development would be brought closer to conformity with the development standards of the LIP, and the approved project meets all other required standards. Therefore, the appeal does not raise a substantial issue as to the City's application of the cited policies of the LCP, and staff recommends the Commission find that no substantial issue exists with regard to the grounds of the appeal.

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### EXHIBITS

Exhibit 1.	Vicinity Map
Exhibit 2.	Aerial Photograph
Exhibit 3.	Project Plans
Exhibit 4.	Appeal by Alexander J. Annala
Exhibit 5.	Final Local Action Notice

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## **I. APPEAL JURISDICTION AND PROCEDURES**

### **A. APPEAL PROCEDURES**

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit (CDP) applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal development permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

#### **1. Appeal Areas**

Approvals of CDPs by cities or counties may be appealed if the development authorized is to be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea; 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 greater; on state tidelands; or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603(a)). Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603(a)(4)). Finally, developments that constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603(a)(5)).

In this case, the project site is located on Winthrop Lane, in the City of Ventura (Exhibits 1-2). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Ventura indicates that the appeal jurisdiction for the area extends between the first public road and the sea, which includes the subject property. As such, the City's CDP for the subject project is appealable to the Commission.

#### **2. Grounds for Appeal**

The available grounds for an appeal of a local government approval of development 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 set forth in the Coastal Act. (Coastal Act Section 30603(b)(1)).

#### **3. Substantial Issue Determination**

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the "substantial issue" question. A majority vote of the Commissioners present is required to determine that an appeal raises no substantial issues and that the Commission will therefore not review the merits of the appeal *de novo*. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

#### **4. De Novo Permit Hearing**

Should the Commission determine that a substantial issue exists, the Commission will consider the CDP application de novo. The applicable test for the Commission to apply in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and, if the development is between the sea and the first public road paralleling the sea, the public access and recreation policies of the Coastal Act. (Coastal Act Section 30604(b) & (c)).

#### **B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL**

The project that is the subject of this appeal was approved by the City of Ventura Administrative Hearing Officer on April 4, 2017. The action by the Administrative Hearing Officer was appealed to the City of Ventura Planning Commission by Alexander J. Annala, PhD., on behalf of the Aboody-Annala Revocable Trust, within the local appeal period, on April 17, 2017. On October 11, 2017 the Planning Commission denied the appeal and approved the subject project. This action was then appealed to the City of Ventura City Council by Alexander J. Annala, PhD., on behalf of the Aboody-Annala Revocable Trust, within the local appeal period, on November 2, 2017. The appeal was denied and the permit for the project was approved by the City Council on April 9, 2018.

The City's Notice of Final Action for the project was received by Commission staff on April 13, 2018 (Exhibit 5). Commission staff provided notice of the ten working day appeal period, which began on April 16, 2018 and ended on April 27, 2018. Alexander J. Annala, PhD., trustee of the Aboody-Annala Revocable Trust, filed the subject appeal on April 27, 2018, during the Commission's appeal period (Exhibit 4). Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal and requested that the City provide its administrative record for the permit. The administrative record was received on May 7, 2018. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission, which would be July 9, 2018. Finally, according to Section 30625(a), the applicant can waive that time limit.

## **II. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE**

**MOTION:** *I move that the Commission determine that Appeal No. A-4-SBV-18-0032 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, and the local action will become final and effective. 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-4-SBV-18-0032 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.

**III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE**

The Commission hereby finds and declares:

**A. PROJECT DESCRIPTION AND BACKGROUND**

The Coastal Development Permit (CDP) that was approved by the City of Ventura (City) consists of construction of a new 248 square foot laundry room addition to the first floor, an 867 square foot half story addition with a 220 square foot balcony above the second floor, and demolition of 159 square feet of the second floor of an existing 1,894 square foot single family residence located at 1195 Winthrop Lane (Exhibits 1-2). In addition, the City also approved an administrative variance to increase the lot coverage above the 40% maximum from the existing 58.5% to 57.12% (a 1.38% reduction of coverage) and to reduce the side yard setback to be less than the required 10 feet, from the existing 5-feet to 5-feet, 3-inches (a 3-inch reduction of setback encroachment). The resulting residence would be 2,602 square feet, with 322 square feet of balcony area, and an attached 921 square foot garage/laundry room. The third story of the residence would occupy only a portion of the full first and second floor footprints. City staff characterizes this design as 2.5 stories.

The approved project is located on a 0.08-acre beachfront parcel within a residentially developed neighborhood in the Pierpont Beach area of the City of Ventura between Pierpont Boulevard and the Pacific Ocean. The surrounding area is developed with both single-family and multi-family residences. Specifically, the subject parcel is zoned Single Family Beach (R-1-B).

The subject CDP and variance for the project was originally approved by the City of Ventura Administrative Hearing Officer on April 4, 2017. This action was then appealed to both the Planning Commission and City Council by Alexander J. Annala, PhD., on behalf of the Aboody-Annala Revocable Trust. Ultimately, the City Council upheld the Planning Commission’s action and approved the subject CDP and variance.

**B. APPELLANT’S CONTENTIONS**

The City’s final action on the subject CDP and variance was appealed to this Commission by Alexander J. Annala, PhD., trustee of the Aboody-Annala Revocable Trust, the owner of a property located directly adjacent to the subject property. The appeal was filed on April 27, 2018, and is attached as Exhibit 4. The contentions of the appeal relate to development standards required by the Local Implementation Plan, scenic and visual resources, community character, and noticing. Specifically, the appellant asserts that the approved project would eliminate public views from Winthrop Lane, would be inconsistent with the neighborhood character, and that the approved half story addition resulting in a 2.5-story residence would have adverse impacts on the “peace, quiet, calm, airflow, light, views, and privacy of the neighbors.” The appellant also asserts that the existing non-conforming residence would continue to be non-conforming with the

approved improvements, and that it is inconsistent with the non-conforming development provisions of the LCP to continue to grant variances to exceed the lot coverage and setback standards rather than require that the structure be brought into conformance with those standards. In addition, the appellant asserts that the City failed to provide adequate, timely notice of the Administrative, Planning Commission, and City Council Hearings and that the subject notices failed to adequately describe the subject project. In his appeal, the appellant attached the same appeal form that he had submitted to the City of Ventura as part of his appeal to the Planning Commission and City Council, as well as an additional analysis that the appellant submitted to the City Council. The appeal does not reference any specific City of Ventura LUP policy or LIP provision related to these allegations, except for one LIP provision, Section 24.465, which relates to non-conforming development regulations.

### C. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally-approved project's conformity to the policies contained in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. In this case, the appellant did not cite the public access policies of the Coastal Act as a ground for appeal or raise any public access-related issues. Additionally, the appellant did not cite any specific policy or provision of the certified City of Ventura LCP regarding the scenic and visual resources, community character, or noticing. With regard to the contentions of the appeal relating to development standards, the appellant did cite a provision of the LCP relating to non-conforming development.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., Title 14, Section 13115(b)).

In evaluating the issue of whether the appeal raises a substantial issue, the Commission considers the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significant.

In this case, for the reasons discussed below, the Commission determines that the appeal raises no substantial issue with regards to the grounds on which the appeal has been filed, as discussed below.

## **1. Visual Resources, Community Character, and Development Standards**

The City of Ventura LCP contains policies which require that community identity be maintained, that new development is compatible with the characteristics of existing development, and that visual impacts are considered. The LCP also contains provisions which require that the total building area, or maximum lot coverage, for a lot within the R-1-B zone not exceed 40% of the total lot area, that describe the purpose of the variance procedure, and that outline the required findings that must be made for administrative variances. Lastly, the LCP contains provisions for nonconforming development.

Community Design Goal One of the City of Ventura LUP states:

*Maintain community identity that preserves the open space and natural views/capes/resources that surround and traverse the City so as to promote and sustain a livable environment for residents and visitors alike.*

City of Ventura LUP Policy 1.2 of Objective One- City Identity states:

*Encourage design compatible with the positive characteristics of existing development.*

City of Ventura LUP Policy 1.10 of Objective One- City Identity states in relevant part:

*Continue to review proposed projects on a project-specific basis and determine whether they could result in significant adverse visual impacts.*

Part C of Section 24.121.060 of the City of Ventura LIP states:

*The total building area of a lot in the R-1-B zone, including accessory structures, shall not occupy more than 40% of the lot area.*

Section 24.535.010 of the City of Ventura LIP states in relevant part:

*Chapter 24.535 establishes the variance procedure to provide a procedure for review and decisions regarding applications for variances from certain otherwise applicable standards or regulations where special circumstances related to development of a site might deprive property of privileges enjoyed by other properties in the vicinity.*

Section 24.535.120 of the City of Ventura LIP states:

*In order for the decision-making authority to approve a variance, findings must be made by the decision making authority as follows:*

- 1. For administrative variances, all the following findings set forth in this subsection 1. must be made:*
  - a. The project authorized by the variance is consistent with the policies and provisions of the comprehensive plan and with the purposes and requirements of this zoning ordinance;*
  - b. The project authorized by the variance is compatible with existing improvements and consistent with the scale and character of existing development in the same vicinity or zone;*

- c. *The project authorized by the variance will not be detrimental to or adversely impact adjacent properties;*
- d. *Approval of the variance does not grant a special privilege inconsistent with the limitations on other properties in the same vicinity or zone;*
- e. *Approval of the variance is not based on economic hardship.*

Section 24.465.030 of the City of Ventura LIP states in relevant part:

*Buildings or other structures that are nonconforming as to setback, yard, height, lot coverage, or other zoning regulations may be repaired, replaced, or added to, only to the extent permitted by this section:*

1. *Additions. A nonconforming building or other structure may be added to, provided that the portion of the building or other structure comprising such addition complies with all requirements of this zoning ordinance including, but not limited to, setback, yard, height, and lot coverage.*  
...
4. *Remodels, and other additions or alterations. Notwithstanding any provisions of subsections 1. and 3. of this section to the contrary, in any instance where a person proposes to, or commences to, alter, expand, or add to an existing nonconforming building or structure and nonconforming portions of the nonconforming building or structure are demolished in the course of such alterations, expansions, or additions, all nonconforming portions of the building or structure so demolished shall be reconstructed in compliance with all height, setback, yard, lot coverage and other regulations applicable for the zone in which the nonconforming building or structure is located. The requirements of this subsection 4. shall apply regardless of whether such demolition is determined by the building official to be necessary to comply with the Uniform Building Code or required for the protection of the public health and safety.*

The appellant asserts that public views from Winthrop Lane would be eliminated by construction of the project. The project site is located in the Pierpont Beach neighborhood, which is extensively developed with both single-family and multi-family residences. The project site is located at the end of Winthrop Lane, adjacent to the beach, as depicted on Exhibit 2. Public access along Winthrop Lane primarily consists of biking or walking down the lane from Pierpont Boulevard to Pierpont Beach. Public views of the beach are available when looking down the lane, towards the ocean. However, because of existing residential development, when on Winthrop Lane, views of the beach cannot be seen when looking upcoast or downcoast. Pursuant to the CDP approved by the City, the total lot coverage of the subject residence would decrease, and the subject residence would not extend further seaward. Additionally, the approved residence conforms to the height requirements of the LCP. As such, no public views of the beach or ocean that are currently available would be eliminated by construction of the subject project.

The appellant also asserts that the approved development is inconsistent with the neighborhood character and that the subject addition on the second story (half story addition, resulting on a 2.5-

story residence) would have adverse impacts on the “peace, quiet, calm, airflow, light, views, and privacy of the neighbors.” As mentioned above, the project area is located within a developed residential neighborhood, with a mix of one-story, two-story, and 2.5-story residences. The size, height, and bulk of existing structures in this neighborhood are similar to the proposed residence. Furthermore, as noted within the City’s staff report, there are five other residences located within 300-feet of the project site that are also 2.5-stories.

The existing non-conforming residence would continue to be non-conforming with the approved improvements and the appellant asserts that it is inconsistent with the non-conforming development provisions of the LCP to continue to grant variances to exceed the lot coverage and setback standards rather than require that the structure be brought into conformance with those standards. The City approved CDP allows for modifications to an existing single-family residence, and the approved administrative variance allows for a maximum lot coverage of 57.12% and a side yard setback of 5-feet, 3-inches. The City’s action on the subject CDP includes the findings required by Section 24.535.120 of the LIP for administrative variances. However, the findings made by the City rely on the fact that several similar lot coverage variances, including one on the subject property in 1977, have been issued in the immediate vicinity of the project site as evidence to support approval of the subject variance. As described within Section 24.535.010 of the LIP, the issuance of a variance can occur when special circumstances related to development of a site might deprive property of privileges enjoyed by other properties in the vicinity. In this case, the City made no findings that there are any special circumstances affecting the project site or project that would deprive the property of privileges enjoyed by other properties in the area. Nor does the record disclose any such special circumstances. So, it appears that the basis for approving the variance is not fully consistent with the required LIP standards. Nonetheless, the project meets all other standards required for an administrative variance. Specifically, the project authorized by the variance is consistent with the scale and character of existing development in the same vicinity or zone; the project will not be detrimental to or adversely impact adjacent properties; approval of the variance does not grant a special privilege inconsistent with the limitations on other properties in the same vicinity or zone; and approval of the variance is not based on economic hardship. In this case, although the approved variance allows the lot coverage to exceed the 40% maximum, the total lot coverage will actually decrease by 1.38% when compared to the existing lot coverage and the total building footprint would be reduced. Additionally, as described within the City staff report, within 300 feet of the subject property 10 other variances for increased lot coverage above the 40% maximum have been issued. As such, even with the increased lot coverage variance, the structure will be consistent with the scale and character of existing development in the same neighborhood.

As mentioned above, in addition to a variance for lot coverage, the City also approved a variance to allow for a reduced side yard setback. As depicted on Exhibit 2, the subject residence is located at the terminus of Winthrop Lane, immediately adjacent to the beach. Along the seaward side of the Pierpont Community there is a “paper street” named Shore Drive that is undeveloped. Although for all intents and purposes Shore Drive is not a roadway, the City considers all residences located at the terminus of the lanes within the Pierpont Community to be located on corners. In the case of the project site, the City considers the subject residence to be located at the corner of Winthrop Lane and Shore Drive. As a corner lot, the setback requirement is 10-feet. Currently, the side yard setback of the existing residence is 5-feet. The subject variance approved

by the City would increase this setback to 5-feet, 3-inches. In the R-1-B zone, if a property is not located on a corner, the side yard setback requirement is 5-feet. As such, if not for Shore Drive, the subject side yard setback would conform to the side yard setback requirements. However, the findings made by the City to support the side yard setback variance again rely on the fact that several similar side yard setback variances, including one on the subject property in 1977, have been issued in the immediate vicinity of the project site as evidence for approval of the subject variance. Similar to the findings made by the City with regard to the variance for increased lot coverage, it appears that the basis for approving the side yard variance is not fully consistent with the variance standards. Nonetheless, the project meets all other standards required for an administrative variance, including that the project authorized by the variance is consistent the scale and character of existing development in the same vicinity or zone; the project will not be detrimental to or adversely impact adjacent properties; approval of the variance does not grant a special privilege inconsistent with the limitations on other properties in the same vicinity or zone; and approval of the variance is not based on economic hardship.

In his appeal, the appellant also raises issue with the variance that was approved in 1977, stating that the total lot coverage of the existing residence is not consistent with that which was approved. The subject residence was originally constructed in 1957. In 1977, a variance was granted to reduce the required front yard setback from 17-feet to 8-feet, to reduce the side yard setback adjacent to Shore Drive from 8-feet to 5-feet, to reduce the required rear yard setback from 21.25-feet to 20-feet, and to increase the permitted lot coverage from 35% to 48.96%. City staff analyzed this assertion and determined that, based upon a review of historic documents and maps, it appears the survey of the property line measurements that was completed pursuant to the 1977 variance was imprecise and inaccurate, which led to calculation of an incorrect lot coverage percentage. As such, although there has been no change in the footprint of the residence since 1977, the percent lot coverage of the existing residence varies from that identified within the variance findings. Despite the fact that there is a discrepancy, this assertion raised by the appellant does not relate to the current variance in the CDP that is the subject of this appeal.

Further, the appellant asserts that the project approved by the City constitutes a complete demolition and rebuild of the existing residence (rather than simply additions and modifications) and cites the requirements of IP Section 24.465.030 regarding non-conforming development. Portions of the existing single-family residence would be demolished; however, the front portion of the home, including the garage and bedrooms, would be modified, but not demolished. Parts 1 and 4 of LIP Section 24.465.030 require that new additions, remodels, or alterations comply with the development standards of the LCP, including those relating to setbacks and lot coverage.

The existing development is compliant with all zoning regulations with the exception of the following legal non-conforming elements; front yard setback, side yard setback, side yard projections, and lot coverage. The variance approved by the City would reduce encroachment into the Shore Drive side yard setback by 3-inches and reduce the existing lot coverage by 1.38%, thereby decreasing the degree of non-conformity. The front yard setback and side yard projections would be unchanged. In their analysis, City staff notes that these setbacks are considered to be legal non-conforming. Additionally, the City also required a permit condition which states that the development must be brought into conformance with all standards of Section 24.465.030(4) in the future, if all portions of the subject residence that are not proposed to be modified as a component of the subject project, are demolished. However, in this case, the

City did not require that all components of the nonconforming development be brought into conformance pursuant to the requirements of Section 24.465.030(4), and in their analysis, the City does not address these requirements, or describe why they have not been applied to the subject development. As such, the project approved by the City is not fully consistent with the requirements of Section 24.465.030. However, as described above, portions of the subject development would be brought closer to conformity with the development standards of the LIP, and the approved project meets all other required standards. The project approved by the City is consistent with the scale and character of existing development in the same neighborhood and would not be detrimental or adversely impact adjacent properties or coastal resources.

#### Factors Considered in Substantial Issue Analysis

The standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the appealable development's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the contentions of the appeal relate to development standards required by the Local Implementation Plan, scenic and visual resources, community character, and noticing. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following five factors that are addressed below.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. In this case, the lot coverage and side yard setback variance were addressed in the staff report and both the Planning Commission and City Council resolutions of approval. As discussed above, the City made the required findings for the approved administrative variance. While it does not appear that there are any special circumstances affecting the project site, the City did have substantial evidence to conclude that the variance granted complies with all other standards required for an administrative variance. Furthermore, although the approved project does not fully comply with LIP Section 24.465.030, components of the subject development would be brought closer to conformity with the development standards of the LIP, and the approved project meets all other required standards. The City's record includes evidence and legal support for the City's findings that the development is otherwise consistent with the policies and provisions of the certified LCP.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the project consists of modifications to an existing single-family residence in a residentially developed area of the City. Given that this lot is small and the development type is consistent with the surrounding area, the extent and scope of the subject development is not large.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, there would be no significant coastal resources affected by the decision. As previously discussed, the project site is a small lot that is developed and that is located in a developed residential community. There are no significant coastal resources and no environmentally sensitive habitat area (ESHA) on the site

that would be negatively affected by the subject project, and the project will be compatible with the character of the surrounding area and will have no adverse impacts on visual resources. As such, there are no significant coastal resources on the site that would be negatively affected by the project.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for the future interpretation of its LCP. In this case, the project will not adversely impact scenic and visual resources and is compatible in scale and character with surrounding residences. Thus, although the City's decision may serve as precedent for when it requires non-conforming structures to come into conformity with lot coverage and setback standards in the LCP, it does not deal with a situation where the decision will allow a project to avoid conforming with important coastal resource protection standards and therefore allow ongoing, significant coastal resource impacts. Accordingly, the decision does not serve as precedent for future interpretation of the LCP's conformity provisions in contexts where coastal resource protection standards and significant coastal resource impacts are at issue. As such, the City's decision will have no adverse precedential value for future interpretation of the coastal resource protection standards of its LCP.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. In this case, the appeal raises issues with regard to development standards that in the case of the subject project only relate to local issues, and does not have regional or statewide significance.

In sum, the City's failure to fully conform to LIP standards and make all required findings for the variances does not raise a substantial issue in this unique case. Policies that require legal, non-conforming structures to come into conformity with existing LCP standards when they are redeveloped are very important, and they help ensure that structures in hazardous locations or areas where they have ongoing, significant impacts to coastal resources will not be allowed to remain in perpetuity. However, where—as here—the non-conformities relate to setback and lot coverage issues that have only minimal impacts on views and little or no impact on other significant coastal resources, the City's failure to precisely conform with LIP policies is not a significant issue that warrants having the Commission take the appeal.

## **2. Noticing for City of Ventura Hearings**

The appellant asserts that the City failed to provide adequate, timely notice of the Administrative, Planning Commission, and City Council Hearings and that the subject notices failed to adequately describe the subject project. The LCP requires that notice be given at least 10 calendar days before a hearing. The City's administrative record for the subject project contains copies of noticing documents, including copies of newspaper notices and addresses where the subject notices were mailed. Specifically, a public hearing notice with a full project description was posted in the Ventura County Star prior to all three City hearings, and individual notices (also with full project descriptions) were sent to all owners and occupants of residences located within 1,000 feet of the project site at least 10 calendar days before each hearing. City records show that notice was sent to two of the appellant's residences, and that neither notice was returned to the City as undeliverable. Therefore, the Commission finds that the assertion of the appeal that the City hearings were noticed incorrectly does not raise a substantial issue.

**D. SUBSTANTIAL ISSUE REVIEW CONCLUSION**

For the reasons discussed above, no substantial issue is raised with respect to the consistency of the approved development with the policies of the City's certified LCP regarding scenic and visual resources, community character, and development standards required by the Local Implementation Plan. Applying the five factors identified above, the Commission finds that although there are no special circumstances affecting the project site, the City did have substantial evidence to conclude that the variance granted complies with all other standards specified in the LIP, the development is relatively minor in scope, doesn't have a significant adverse effect on significant coastal resources, has little precedential value, and doesn't raise issues of regional or statewide significance. Furthermore, although the approved project does not fully comply with LIP Section 24.465.030, components of the subject development would be brought closer to conformity with the development standards of the LIP, and the approved project meets all other required standards. Therefore, the Commission finds that the appeal does not raise a substantial issue as to the City's application of the cited policies of the LCP.

## **APPENDIX 1**

### **Substantive File Documents**

Staff Reports for City of Ventura Coastal Development Permit No. ACDP-11-16-38011 and Administrative Variance No. V-12-16-38576; Variance No. M-1933; Planning Commission Resolution No. CD-2017-23; City Council Resolution No. 2018-018.