

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



F21b

Appeal Filed: 11/8/2019
Action Deadline: 1/24/2020
Staff: Brian O'Neill - SC
Staff Report: 11/27/2019
Hearing Date: 12/13/2019

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number: A-3-SLO-19-0207

Applicants: Barry Purchase

Appellant: Glen Oelker

Local Government: San Luis Obispo County

Local Decision: Coastal development permit (CDP) application number DRC2017-00058 approved by the San Luis Obispo County Board of Supervisors on July 16, 2019.

Location: 210 Cerro Gordo Avenue (APN 064-372-014) in the unincorporated community of Cayucos in San Luis Obispo County.

Project Description: Construct a four-story 3,400-square-foot single-family residence with an 850-square-foot garage on a 4,000-square-foot undeveloped lot; variance for grading on slopes in excess of 30%.

Staff Recommendation: No Substantial Issue

Important Hearing Procedure 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 three 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 the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

San Luis Obispo approved a coastal development permit (CDP) to construct a four-story 3,400-square-foot single-family residence with an 850-square-foot attached garage on a 4,000-square-foot undeveloped lot and allow for grading on slopes in excess of 30% located at 210 Cerro Gordo Avenue in the unincorporated community of Cayucos. The sloped project site is located two blocks inland from Highway 1 at the very eastern edge of the Coastal Zone and is surrounded by other residential development

The Appellant contends that the County-approved project raises LCP consistency questions relating to the manner in which the County calculates building heights on slopes; the residence would impact scenic views; and the project is out of scale with the surrounding neighborhood. After reviewing the local record, Commission staff has concluded that the approved project does not raise a substantial issue with respect to the project's conformance with the San Luis Obispo County LCP.

Specifically, in terms of measuring building height, the County correctly measured height as the vertical distance from the highest point of the residence to the average of the high and low points of natural grade. The approved residence is within the LCP maximums of 28 feet from average natural grade and also within the maximum of 28 feet from finished grade. In terms of scenic views, the County required visual simulations that demonstrate the approved residence will not extend above the hillside ridgeline and that the infill development is similar in height to the surrounding residential development. Finally, as the proposed development is located inland of a coastal bluff parcel, and will require minimal grading, the project is consistent with the LCP's landform alteration policies. Finally, with respect to community character, the County found that the project meets all applicable development standards related to height, required articulation, coverage, massing, and setbacks. Additionally, the County provided documentation that there are numerous similarly sized four-story residences in the surrounding neighborhood.

As a result, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 4 below.

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APPENDICES

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EXHIBITS

Exhibit 1 – Project Site Map

Exhibit 2 – Project Site Images and Photographic Simulations

Exhibit 3 – County’s Final Local Action Notice

Exhibit 4 – Approved Project Plans

Exhibit 5 – Appeal of San Luis Obispo County’s CDP Decision

Exhibit 6 – Applicable LCP Policies and Standards

I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. 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 a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-SLO-19-0207 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603. I recommend a yes vote.*

***Resolution to Find No Substantial Issue.** The Commission finds that Appeal Number A-3-SLO-19-0207 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 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.*

II. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION AND LOCATION

The County-approved project is located at 210 Cerro Gordo Avenue in the unincorporated community of Cayucos in San Luis Obispo County. The project site is located two blocks inland from Highway 1 at the very eastern edge of the Coastal Zone. The project site is vacant and surrounded by residential development, although the lot immediately to the east of the site is also vacant. The lot is sloped from front to back (roughly north to south). The parcel is zoned Residential Single Family, which allows for one residential structure per acre.

See **Exhibit 1** for a location map; see **Exhibit 2** for photographs of the site and surrounding area, as well as photo-simulations of the proposed residence; and see **Exhibit 4** for the approved project plans.

B. SAN LUIS OBISPO COUNTY CDP APPROVAL

On February 28, 2019 the San Luis Obispo County Planning Commission (PC) approved a CDP for the proposed residential project. That decision was appealed to the County Board of Supervisors, which upheld the PC's approval and denied the appeal on July 16, 2019. See **Exhibit 3** for the County's Final Local Action Notice.

The County's Final Local Action Notice was received in the Coastal Commission's Central Coast District Office on November 7, 2019. The Coastal Commission's ten-working-day appeal period for this action began on November 8, 2019 and concluded at 5 p.m. on November 22, 2019. One valid appeal (see below) was received during the appeal period.

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) 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) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. The County's approval of this project is appealable because the LCP does not designate one single principally permitted use within residential single family zoning districts and thus all uses within this district are appealable.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b)(2) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that "no substantial issue" is raised by such allegations.¹ Under Section 30604(b), if the Commission conducts the de novo portion of an appeals hearing (upon making a determination of "substantial issue") and finds that the proposed development is in conformity with the certified LCP, the Commission must issue a CDP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is not located between the nearest public road and the sea and thus this additional finding would not need to be made (in addition to a finding that the proposed development is in conformity with the San Luis Obispo County LCP) if the Commission were to approve the project following the de novo portion of the hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons opposed to the project who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal (if applicable).

¹ The term "substantial issue" is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has considered the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. Even when the Commission chooses not to hear an appeal (by finding no substantial issue), appellants nevertheless may obtain judicial review of a local government's CDP decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, Section 1094.5.

D. SUMMARY OF APPEAL CONTENTIONS

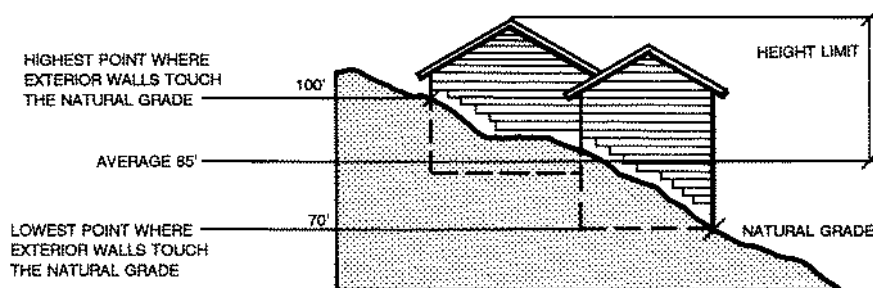
The Appellant contends that the County-approved project raises LCP consistency questions relating to building height, protection of visual resources, and community character. Specifically, the Appellant contends that the approved project would violate applicable LCP provisions because: 1) the residence would be located on a steep slope and the manner in which the County calculates building heights on slopes allows for building heights greater than 28 feet as measured from the bottom of the slope; 2) the residence would impact scenic views, and 3) the project is out of scale with the surrounding neighborhood. Please see **Exhibit 5** for the appeal contentions.

E. SUBSTANTIAL ISSUE DETERMINATION

The San Luis Obispo LCP is divided geographically into four areas,² each with its own LCP area plan. The subject property is located within the area governed by the Estero Area Plan (EAP). The LCP also includes an LUP (titled the Coastal Zone Framework) and an Implementation Plan (titled the Coastal Zone Land Use Ordinance (CZLUO)), both of which are applicable throughout all four LCP areas.

1. Building Height

The LCP provides specific direction regarding how to measure building heights on sloped sites. CZLUO Section 23.04.0122 (see **Exhibit 6**) states that height “is to be measured as the vertical distance from the highest point of the structure to the average of the highest and lowest points where the exterior walls would touch the natural grade.” The CZLUO also provides the following visual guidance demonstrating how to measure building height:



MEASUREMENT OF HEIGHT - EXAMPLE 1

The EAP states that building heights in this location are to be limited to 28 feet. The County-approved plans clearly identify the average slope and demonstrate that the approved residence is within the 28-foot height limit (see **Exhibit 4**). Additionally, the County conditioned its approval to require verification from a licensed surveyor that the building height does not exceed 28 feet from the average slope. Thus the County measured building height in accordance with the

² The County's four areas are: North Coast, Estero, San Luis Bay, and South County.

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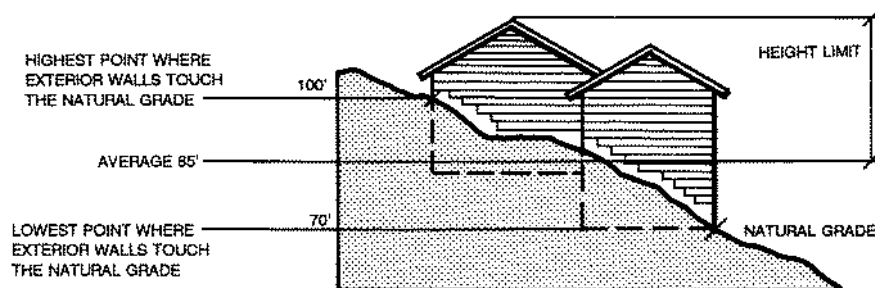
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requirements of CZLUO Section 23.04.0122 and the County’s approval, as conditioned, ensures that the residence will not exceed the LCP’s 28-foot height limit for this area.

The Appellant contends that the EAP mistakenly allows for building heights greater than 28 feet on steep slopes because it allows height to be measured from average grade, therefore allowing buildings greater than 28 feet as measured from the lower portion of the lot. However, as shown above in the LCP’s “Measurement of Height – Example 1”, the CZLUO specifically describes how to measure building heights on sloped sites, and the approved project conforms with the LCP in this regard. . Additionally, EAP Chapter 7 Cayucos Urban Area Policy V.C. (**Exhibit 6**) also specifically limits “building face” heights to 28 feet as measured from finished grade in order to reduce the apparent mass of buildings, and also requires building articulation to reduce massing. The approved residence conforms to the LCP’s 28-feet-from-finished-grade requirement. The approved project also conforms to the LCP’s requirement for building articulation because each upper story of the residence is stepped back from the story immediately below it and the rear wall of the residence, which is the most visible side of the residence, also includes significant articulation to enhance the overall design and avoid massing. See **Exhibit 4** for the approved project plans.

In sum, the County correctly measured building height in accordance with the requirements of the CZLUO and the proposed project is within the EAP’s required building height. Thus the project does not raise a substantial issue of LCP conformance with regard to building heights.

2. Visual Resources

The EAP includes specific visual resource protection requirements for development within the project site area (see **Exhibit 6**). The “Highway 1 – Cayucos Critical Viewshed” covers areas inland of and generally visible from Highway 1. The designation is “not intended to keep those hillsides pristine or deter development,” but rather is to ensure that structures generally do not detract from the overall scenic view and, in particular, do not silhouette above hilltop ridgelines.

The Appellant contends that the approved residence is inconsistent with the LCP’s visual protection policies and detracts from views from Highway 1, particularly due to the LCP’s method for calculating height on slopes. However, the LCP’s specified height limits are maximums, not entitlements, and other LCP visual resource protection policies, such as CZLUO Section 23.04.210(c), ensure that new development will not significantly impact public views, including by requiring that development not be seen to extend beyond ridgelines. In this particular case, the County required visual simulations (see **Exhibit 2**) that demonstrate the proposed project will not extend above the ridgeline, which is prohibited by the LCP. The project is infill development, similar in height to surrounding residential development, and will not detract from the overall scenic view of the already partially developed hillside.

Thus, this contention does not raise a substantial issue in terms of the project’s conformance with the visual resource protection policies of the LCP.

3. Community Character and Neighborhood Compatibility

The LCP typically protects community character and neighborhood compatibility through various development standards (e.g. requirements for building heights, lot coverage, floor area ratio, setbacks, etc.). The EAP implements more exacting development standards in certain “small-scale” neighborhoods, none of which are applicable to the approved project.

The Appellant contends that the project does not fit in with the character of the surrounding development, again referring to the building height and stating that the approved residence is four stories tall. However, the County found that the project meets all applicable development standards related to height, required articulation, coverage, massing, and setbacks. The LCP does not specifically limit the number of stories in a residential development if all other development standards are met, which is the case here. Additionally, the County provided documentation (see **Exhibit 2**) that there are numerous four-story residences in the surrounding neighborhood.

In sum, the project is infill development that meets all of the development standards that were designed to protect community character and neighborhood compatibility, and the project is similar in size to surrounding development. For these reasons, the project does not raise a substantial issue of LCP conformance with respect to community character and neighborhood compatibility.

F. CONCLUSION

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP for such development. At this stage, the Commission has the discretion to find that the project does not raise a substantial issue of LCP conformance. As explained above, the Commission has in the past considered the following five factors in its decision of whether the issues raised in a given case are “substantial”: the degree of factual and legal support for the local government’s decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County’s decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, support a conclusion that this project does not raise a substantial issue of LCP conformance. First, the County based its conclusions on project plans that demonstrate the project meets the development standards of the LCP, including with respect to accurately determining the project’s building height on a slope. The County required visual simulations that demonstrate the project will not have an adverse impact on visual resources in the area and provided an analysis of the existing development in the surrounding area to ensure that the project is compatible with the neighborhood (community character). Thus, the County has provided adequate factual and legal support for its decision that the approved development would be consistent with the certified LCP. With respect to the second factor, the approved project is a single-family residence located at the inland edge of the Coastal Zone in a mostly developed neighborhood with residences of a similar size and scale, and thus the extent and scope of the development does not raise a substantial issue, nor do the coastal resources potentially affected by the development raise a substantial issue. Because the

County's approval of the project is consistent with the LCP, a finding of no substantial issue will not create an adverse precedent for future interpretation of the LCP. Finally, the project does not raise issues of regional or statewide significance, but rather only issues of local significance to those in the immediate vicinity of the project.

For the reasons stated above, the Commission finds that Appeal Number A-3-SLO-19-0207 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS³

- “Engineering Geology Investigation Report Lot 35, Cerro Gordo Avenue,” Geosolutions, Inc., September 29, 2017.

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- SAN LUIS OBISPO COUNTY PLANNING AND BUILDING DEPARTMENT

³ These documents are available for review in the Commission’s Central Coast District office.