

CALIFORNIA COASTAL COMMISSION

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F18c

ADDENDUM

April 12, 2021

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item F18c**, Coastal Commission Permit Application **#A-6-DMR-21-0018 (Ocean Front, LLC)**, for the Commission Meeting of April 16, 2021.

The purpose of this addendum is to attach a response letter from the applicant to the staff report, dated April 5, 2021, and to respond to the applicant's response to the staff report. The applicant's full response letter with attachments is available in the Correspondence for this item. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~strikethrough~~ and additions shall be underlined:

1. On Page 4 of the staff report, add the applicant's response letter to the staff report, dated April 5, 2021 and attached to this addendum as a new exhibit, as follows:

Exhibit 6 – Applicant Response to Staff Report dated April 5, 2021

2. In response to the applicant's assertion that the appeal was filed to protect private views, add the following after the last sentence of the "Appellants Contend" section on Page 5 of the staff report:

The applicant suggests that the appellant is concerned with private view impacts. However, the appellant does not raise any contentions related to potential view impacts from the proposed development.

3. In response to the applicant's assertion that requiring replacement parking is inconsistent with state law, add the following before the first full paragraph on Page 10 of the staff report:

The applicant asserts that no replacement parking should be required because recent changes in state law prohibit replacement parking and new parking requirements for garage conversions. As described in Subsection A Standard of Review, the City of Del Mar approved this project pursuant to ADU regulations that have not yet been certified as part of the LCP. The currently certified LCP provisions relating to accessory dwelling units and parking requirements are the standard of review for this appeal. The currently certified LCP does require replacement parking for the primary dwelling unit where an existing garage is demolished or converted to an ADU, and therefore, this project raises a substantial issue.

4. In response to the applicant's assertions that the staff report relies on assumptions, rather than facts regarding the parking demand generated by ADUs and impacts to surrounding street parking; and that the certified LCP does not require parking for the ADU and, therefore, the project is consistent with the certified LCP, revise the first full paragraph on Page 10 of the staff report as follows:

In addition, the approved project does not provide parking for the new ADU. Chapter 30.91.040(P) of the LCP requires one off-street parking space for a new ADU unless one of five listed exemptions apply. Although the City did not make any findings about whether a parking exemption applies for this project, the site is located within one half mile of a bus stop and thus, the certified LCP does not require parking for the ADU. Nevertheless, when an ADU is added to a residentially developed site, it typically brings with it additional off-street parking needs; and when existing garages or carports are converted into ADUs, there is a potential to reduce the availability of on-street parking for visitors if the parking for the ADU and primary dwelling unit cannot be made up on-site. The applicant contends that these are assumptions and no facts have been presented to support a finding that this ADU will increase parking needs or that the elimination of the existing garage will reduce availability of on-street parking for visitors. The project raises questions about parking needs, and analysis of supporting facts is appropriate in de novo review of this project.

Although the certified LCP does not require off-street parking for the new ADU in this location, the failure to provide replacement parking for the primary dwelling unit remains inconsistent with the certified LCP. Because the existing parking on the site will be eliminated and not replaced, and no parking is proposed for the new ADU, there will be no off-street parking for residents of either the primary dwelling unit or the ADU. Thus, the elimination of all parking at the site raises a substantial issue.

5. In response to the applicant's assertion that staff did not consider how public transit could serve the residents and beach visitors, add the following as a new paragraph after the first full paragraph on Page 10 of the staff report:

The applicant suggests that the availability of public transit within close proximity to the site means that the ADU resident will not need a car and that the public

can access the coast via transit. However, the applicant has not suggested that this resident relies on public transit, rather than a car, and did not provide any facts or evidence to indicate how many coastal visitors use public transit to access coastal resources or the beach in this area. This appeal raises important questions about parking and public access, and the role that public transit can play in facilitating coastal access and off-setting parking needs is an issue best addressed at the de novo stage.

6. In response to the applicant's assertion that the proposed project does not alter or lessen any coastal resources, add the following as a new paragraph after the last paragraph on Page 10 of the staff report:

Coastal access is an important coastal resource embodied and protected by the Coastal Act and the City's LCP. Providing lower-cost housing in the coastal zone may lessen adverse impacts on coastal resources for those that would otherwise need to drive to the coast, but many people will still need to drive to the coast to access beaches and other coastal amenities. Not providing replacement parking for the primary dwelling unit on-site, as required by the certified LCP, lessens coastal resources by reducing available on-street parking for those that drive to the coast and limits recreational opportunities for coastal visitors. Therefore, the appeal raises a substantial issue.

7. In response to the applicants' conclusion that the application and approval are consistent with the City's certified LCP, add the following after the second sentence of the last paragraph on Page 11 of the staff report:

The City of Del Mar approved this project pursuant to its updated ADU regulations. However, the revisions to the City's ADU ordinance have not yet been certified as part of the LCP and should not be used as guidance in determining whether the subject development raises substantial issue.

April 5, 2021

Hon. Chair Steve Padilla and Commissioners
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

RE: Applicant's Response to Appeal No. A-6-DMR-21-0018

Dear Hon. Chair Padilla and Commissioners:

I represent the homeowners (Ocean Front LLC) located at 2610 Ocean Front, Del Mar, California, 92014 (APN: 299-065-07). I have reviewed the appeal filed by Mark Wyland, via his representative Julie Hamilton, of the City of Del Mar's approval of the Accessory Dwelling Unit (ADU) and the corresponding Administrative Coastal Development Permit (CDP) No. CDP20-016. Additionally, I have reviewed the Coastal Commission Staff Report published March 25, 2020.

On behalf of the owners, we respectfully request that the California Coastal Commission find that the appeal presents no substantial issue concerning the City's approval of the ADU as the application is consistent with the City of Del Mar's Local Coastal Plan (LCP) and the State's legislative mandate to implement additional housing opportunities and alternative transportation.

On February 2, 2021, the City of Del Mar's Director of Planning and Community Development approved CDP20-016. The proposed project is negligible. It consists of converting an approximately 380 square foot attached 2-car garage into an approximately 392 square foot ADU, an increase in height from approximately 11.5-feet to 16-feet to an existing approximately 944 square foot single-story residence located on a 1,753 square foot lot.

Introduction

The appeal before you today is focused exclusively on the matter of parking. Although, in actuality, it is protecting a private white water view, we will assume that it is centered on parking. Accepting this assumption, Coastal Staff has contradicted themselves in the applicable Staff Report. On page 10, Coastal Staff states the following, "*Chapter 30.91.040(P) of the LCP requires one off-street parking space for a new ADU unless one of five listed exemptions apply. Although the City did not make any findings about whether a parking exemption applies for this project, the site is located within one half mile of a bus stop and **thus, the certified LCP does not require parking for the ADU**. Nevertheless, when an ADU is added to a residentially developed site, it typically brings with it additional off-street parking needs; and when existing garages or carports are converted into ADUs, there is a potential to reduce the availability of on-street parking for visitors if the parking for the ADU and primary dwelling unit cannot be made up on-site."*

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The phrase "*Nevertheless*" is one-sided and at best misleading. If the situation were reversed, I would not substantiate the same argument in direct conflict with the LCP as Coastal Staff has reiterated that the basis of review is the City of Del Mar's certified LCP. Staff agrees that "*the certified LCP does not require parking for the ADU.*" The statements "*it typically*" or "*there is a potential*" are assumptions and not based on concrete facts (or at least none were provided/cited by Coastal Staff). As a result, Coastal Staff has inserted their assumptions in what should be a factual analysis.

Coastal Staff's assertion that garage conversions must provide replacement parking is extreme and inappropriate. State law prohibits both replacement parking and new parking requirements for garage conversions. Gov. Code §§65852.2(a)(1)(D)(xi),(d)(3). Coastal Staff's proposal would require replacement parking for a converted two-car garage where state law mandates zero spaces. "*...per the recent state law changes, a local ordinance may not require a minimum lot size, owner occupancy of an ADU, fire sprinklers if such sprinklers are not required in the primary dwelling, or replacement offstreet parking for carports or garages demolished to construct ADUs*" (John Ainsworth, Implementation of New ADU Laws, April 21, 2020)

Further, Coastal Staff has not accounted for public transit availability in their analysis. Indeed, public transit availability impacts the need for parking for ADU residents, even within the Coastal Zone. As a result, Coastal Staff's judgment is inconsistent with state, regional, and local efforts to support alternative transportation modes. As the Commission is aware, local public transit is an effective strategy in reducing greenhouse gas emissions. In direct contrast to this is this appeal's antiquated emphasis on purely maximizing parking.

Outside of the parking debate, "*The creation of new ADUs in existing residential areas is a promising strategy for increasing the supply of lower-cost housing in the coastal zone in a way that may be able to avoid significant adverse impacts on coastal resources*" (John Ainsworth, Implementation of New ADU Laws, April 21, 2020)

It begs the question, what is the true priority of the California Coastal Commission in 2021? Continued support for the traditional automobile or support for additional housing opportunities utilizing alternative transportation modes?

The Concealed Issue

If the subject property were not located in the Appealable Jurisdiction, we would not be here today having this discussion. The simple garage conversion would have been processed ministerially, with no option of appealing the project based on parking. In actuality, we are here today for the reason that the neighbor has a documented history of appealing any proposal for this property due entirely to his private view from the office of his residence. As you are aware, private views are NOT protected, only public views under the Coastal Act. View blockage is a "substantial issue" pertaining to public views, not blockage of private residences' views (Section 30251, Article 6 of Chapter 3 of the Coastal Act).

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Evidence of this is that Mr. Wayland reached out to my clients requesting that the ADU's height be lowered, or else an appeal would be filed. There was no mention of any parking concerns at that time, further establishing that the lack of parking is a convenient scheme.

Refresher on California ADU Regulations

Overview of Legislation

As of January 1, 2020, AB 68, AB 587, AB 670, AB 881, and SB 13 each changed requirements on how local governments can and cannot regulate ADUs and JADUs, to increase statewide availability of smaller, more affordable housing units. Effective January 1, 2020, the new legislation updates existing Government Code Sections 65852.2 and 65852.22 concerning local government procedures for review and approval of ADUs and JADUs. AB 881 (Bloom) made numerous significant changes to Government Code section 65852.2. In their ADU ordinances, local governments may include specific requirements addressing design guidelines and the protection of historic structures. However, per the recent state law changes, a local ordinance may not require a minimum lot size, owner occupancy of an ADU, fire sprinklers if such sprinklers are not required in the primary dwelling, or replacement off-street parking for carports or garages demolished to construct ADUs. In addition, a local government may not establish a maximum size for an ADU of less than 850 square feet or 1,000 square feet if the ADU contains more than one bedroom. (Gov. Code §65852.2(c)(2)(B).) Section 65852.2(a) lists additional mandates for local governments that choose to adopt an ADU ordinance, all of which set the "maximum standards that local agencies shall use to evaluate a proposed [ADU] on a lot that includes a proposed or existing single-family dwelling." (Gov. Code § 65852.2(a)(6).)

What is an ADU? What is a JrADU?

As outlined in California Government Code section 65852.2, an Accessory Dwelling Unit (ADU) is a smaller (detached or attached) secondary dwelling unit with complete, independent living facilities (kitchen and bathroom) that is located on the same parcel as a primary dwelling unit (existing or proposed). The ADU can be located within or attached to a single dwelling unit, within a multiple dwelling unit building, or in a separate detached structure.

As outlined in California Government Code section 65852.22, a Junior ADU (JrADU) is a small dwelling unit (500 square feet maximum in size) that is developed within the walls of a single dwelling unit (existing or proposed). The JrADU must have a separate entrance, efficiency kitchen, and access to a bathroom either within the JrADU or via shared access with the primary dwelling unit. A JrADU is allowed only within the single dwelling unit and is not permitted within an accessory structure or multiple dwelling unit developments.

Specifically, *Section 65852.2 (a) (1)* states that a local agency may, by Ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The Ordinance shall do all of the following:(xi) When a garage, carport, or covered parking structure is demolished in conjunction with constructing an accessory

dwelling unit or converted to an accessory dwelling unit, the local agency **shall not require that those off-street parking spaces be replaced.**

Do the new ADU laws apply to jurisdictions located in the Coastal Zone?

Yes.

ADU laws apply to jurisdictions in the Coastal Zone but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (1)). This statement specifically calls out "*resource protection policies*." The proposed project **does not "alter or "lessen" any coastal resources**. According to Mr. Ainsworth, "... *LCPs should ensure that new ADUs are not constructed in locations where they would require the construction of shoreline protective devices, in environmentally sensitive habitat areas, wetlands, or in areas where the ADU's structural stability may be compromised by bluff erosion, flooding, or wave uprush over their lifetime.* (John Ainsworth, Implementation of New ADU Laws, April 21, 2020). The preceding examples are clear "coastal resources" worth protecting. None of these examples are at risk by this application.

Local Regulatory Background

City of Del Mar ADU Ordinances: 932 and 966

Ordinance 932 (see attached for reference) was adopted by City Council on October 2, 2017, and certified by the Coastal Commission as an LCP amendment on February 8, 2018. At the time, that Ordinance complied with State law. However, on January 1, 2020, a new State ADU laws package took effect and invalidated certain provisions of the Del Mar Municipal Code related to ADUs. Overall, the new ADU regulations further limit local jurisdictions' ability to impose development standards on new ADUs, expand the circumstances where ADUs may be approved, and further streamline the process to require approval of a complete ADU application within 60 days of submittal. In response to the 2020 state laws, the City Council adopted Ordinance 966 on January 1, 2020 (see attached for reference) and submitted the LCP amendment to the CCC on August 24, 2020 (LCP-6-DMR-20-0044-2). On October 15, 2020, CCC approved a one-year time extension.

City of Del Mar LCP Chapter 30.91.040

Chapter 30.91.040(P) of the LCP states: The ADU shall provide one off-street parking space (covered or uncovered) unless one of the following parking exemptions applies, in which case no parking is required:

1. The ADU would be located within the existing primary dwelling unit.
2. The ADU would be situated in an existing accessory building on the property.
3. The ADU would be found on a property within one-half mile of public transit, including a bus route, train station, or paratransit service, if applicable.

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4. The ADU would be located in an architecturally and historically significant district or on a property listed in the California Register of Historic Places.
5. The ADU would be located on a property within one block of a designated car-share parking location.

Both the 2017 Ordinance 932 and the 2020 Ordinance 966 stipulate when parking can be required for an ADU. The subject property complies with two of the five exemptions listed directly above, **so regardless of which Ordinance Coastal Staff considers, a parking space would not be required.**

Analysis: Chapter 3 of the Coastal Act

The appellant and Coastal Staff claim that the application conflicts with Chapter 3 of the Coastal Act. According to Staff, "*... most coastal visitors are not fortunate enough to live right by the coast, requiring them to drive and park in order to enjoy this public resource.Thus, in order to ensure that public access is not reduced, particularly for coastal visitors who must drive in and find parking in order to access the coast, and to avoid disproportionately impacting inland communities and their rights to coastal access, projects that reduce off-street parking must ensure that they do not lead to a reduction in shoreline and beach area on-street parking.*"

Commission Staff is dating themselves by implying that the only means of accessing the public beach is by "driving." First, this is an assumption that is not based upon fact. Second, the local neighborhood, whereby the subject property is located, is served by a highly popular and well-utilized bus line (Bus 101). The 101 Bus has 69 stops departing from UTC Transit Center and ending in Oceanside Transit Center. There are four (4) bus stops along the short stretch of Camino Del Mar to support the local neighborhood (north and south-bound stops located on 24th and 29th). These are facts versus Coastal Staff's assumptions that the only manner in which to access the beach is for individual cars to drive and find public parking.

According to Section 30212.5 of the Coastal Act, "*Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*" It is essential to draw attention to the fact that Section 30212.5 of the Coastal Act is somewhat outdated and, most importantly, unsustainable in today's climate change context. By requiring additional parking for automobiles, the Commission only further substantiates the vicious cycle of supporting greenhouse gas-producing automobiles rather than supporting alternative transportation, such as public buses or rideshare options. Again, a widely used public bus route is less than a mile away (approximately a 3-minute walk) from the subject property. Why is this not a consideration in 2021?

Conclusion

The creation of new ADUs in existing residential areas is a promising strategy for increasing the supply of lower-cost housing in the coastal zone in a way that will avoid significant adverse impacts on coastal resources. **Most notably, the application IS CONSISTENT with the City's**

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certified LCP. For these key reasons, we respectfully request that the Commission find that the City's approval of the project does not support a substantial issue determination on appeal. I appreciate your time and consideration of this matter and will be available for questions at the hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Chandra Slaven". The signature is written in a cursive, flowing style.

Chandra Slaven, AICP
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Enclosures: City of Del Mar ADU Ordinances: 932 and 966