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STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government: City of San Diego

Decision: Approved with Conditions

Appeal Number: A-6-LJS-21-0049

Applicant: David and Pamela Leidy

Location: 6216 Avenida Cresta, La Jolla, San Diego, San Diego County (APN: 357-012-13)

Project Description: Demolition of an existing 2-story, 1,876 sq. ft. single family residence with attached 2-car garage and construction of a new 2-story over basement, 7,983 sq. ft. single family residence including 405 sq. ft. attached two-car garage and 661 sq. ft. companion unit on a 0.24-acre lot.

Appellants: Dr. Lawrence Bogle

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 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

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

The locally approved project is to demolish an existing two-story, 1,876 sq. ft. single family residence with attached 2-car garage and construct a new two-story over basement, 7,983 sq. ft. single family residence, including an attached 405 sq. ft. 2-car garage and attached 661 sq. ft. accessory dwelling unit on a 0.24-acre lot at 6216 Avenida Cresta in the La Jolla community of the City of San Diego, one block inland from the coast.

The appellant contends that the project is inconsistent with the certified Local Coastal Program (LCP) for the City of San Diego, specifically with regard to policies in the La Jolla Community Plan, which serves as the certified Land Use Plan (LUP) for the La Jolla segment of the City. The appellant contends that the approved project is not in conformance with the La Jolla Community Plan's policies regarding community character due to the approved residence's modern, rectangular design in a neighborhood majority composed of sloped tile-roofed Spanish-style residences, as well contending that its design massing the bulk and scale of the two-story residence on the northeast corner of the lot, with no step back between the first and second floors, does not conform with the La Jolla Community Plan's policies regarding transition in bulk and scale between properties and maintaining the visual integrity of the streetscape.

An architectural survey of the nearby properties submitted by the applicant and reviewed by staff demonstrates that the surrounding neighborhood contains a varied range of styles and sizes, with one- and two-story residences of California modern, Spanish revival, and French eclectic, such that the community character is not limited to clay-tiled sloped roofs or Spanish architecture. Nothing in the City's LCP requires a single architectural style; the community plan specifically notes that single family residential development in La Jolla Covers a spectrum of densities and architectural styles and expressions. Furthermore, regarding the transition of bulk and scale between the approved project and neighboring residences, the approved residence has an architecturally articulated street frontage that reaches a height of approximately 26 feet as viewed from the street and observes a 20-foot front yard setback, with the central portion of the residence's street frontage being one-story and set back approximately 12 feet from the southern property line, while the two-story northern street frontage is set back 6 feet, 3 inches from the northern property line. All of these setbacks and heights are in compliance with the requirements of the certified LCP and will not result in a structure that is out of character with the use, scope, or scale of the surrounding neighborhood.

A-6-LJS-21-0049

Leidy

Thus, because there are no identified substantial inconsistencies with the LCP, staff recommends that the Commission determine that the project raises no substantial issue regarding conformance with the certified LCP.

Standard of Review: Certified City of San Diego Local Coastal Program.

TABLE OF CONTENTS

| | |
|----------------------------------------------------|----|
| I. APPELLANTS CONTEND | 5 |
| II. LOCAL GOVERNMENT ACTION | 5 |
| III. APPEAL PROCEDURES | 5 |
| IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION | 7 |
| V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION..... | 7 |
| A. Project Description and Background | 7 |
| B. Community Character | 8 |
| C. Substantial Issue Factors..... | 13 |

EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Approved Plans](#)

[Exhibit 4 – Appellant’s Appeal](#)

[Exhibit 5 – City Notice of Final Action](#)

[Exhibit 6 – Applicant’s Response](#)

[Exhibit 7 – §131.0461 of LDC](#)

I. APPELLANT CONTENDS

The appellant contends that the approved two-story over basement single family residence's architectural design and building envelope does not conform with the certified LCP's policies regarding the protection of community character and maintenance of the visual integrity of the streetscape due to the approved project's modern design and concentration of the bulk and scale of the residence in the northeast corner of the property with no additional step back of the second story from the first story and side yard, providing inadequate visual transition between the subject property and the neighboring residence. The appellant also asserts the City should not have exempted the project under the California Environmental Quality Act (CEQA).

II. LOCAL GOVERNMENT ACTION

The project was approved with conditions by the City of San Diego hearing officer on June 9, 2021.

III. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be 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 this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, those allowed to testify at the hearing will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date,

reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

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

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process 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 portion of the hearing, any person may testify.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§ 30625(b)(2).) Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

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 the 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.

The Commission may, but need not, assign a particular weight to a factor.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

The City of San Diego has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located within 300 feet of the coast. Therefore, before the Commission considers the

appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City does not raise a substantial issue with regard to the appellant's contentions regarding coastal resources.

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

Motion:

I move that the Commission determine that Appeal No. A-6-LJS-21-0049 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

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:

The Commission hereby finds that Appeal No. A-6-LJS-21-0049 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

A. Project Description and Background

The locally approved project is to demolish an existing 2-story 1,876 sq. ft. single family residence with attached 2-car garage and construct a new 2-story over basement, 7,983 sq. ft. single family residence, including an attached 405 sq. ft. two-car garage and attached 661 sq. ft. accessory dwelling unit on a 0.24-acre lot at 6216 Avenida Cresta in the La Jolla community of the City of San Diego, one block inland from the coast. The project site is surrounded on all sides by similarly sized residential lots also containing one- and two-story single-family residences. [\[Exhibit 2\]](#)

The site is within an area of the City's permit jurisdiction, appealable to the Coastal Commission due a portion of the property being located within 300 feet of the inland extent of the beach (Section 30603(a)(1)). The La Jolla Community Plan, which serves as the certified Land Use Plan for the community, and the Land Development Code, which serves as the certified Implementation Plan, are the standard of review.

B. Community Character

On Page 76 of the La Jolla Community Plan, Section 2 of the “Plan Recommendations” in the “Residential Land Use” chapter addresses “Community Character” and states the following:

2. Community Character

a. In order to maintain and enhance the existing neighborhood character and ambiance, and to promote good design and visual harmony in the transitions between new and existing structures, preserve the following elements:

- 1) Bulk and scale - with regard to surrounding structures or land form conditions as viewed from the public right-of-way and from parks and open space;
- 2) Street landscape - with regard to size and shape or generalized type of planting materials;
- 3) Hardscapes - with regard to pavement types, patterns or lack of patterns, colors, widths, colors and contours;
- 4) Street fixtures - with regard to type, size and location (street light fixtures, benches, street signage);
- 5) Site fixtures - with regard to height, type, material and location (fences, walls, retaining walls, curb cuts and driveways);
- 6) Curbs, gutters and street pavements -with regard to types and materials; and
- 7) Public physical and visual access as identified in Figure 9 and Appendix

b. In order to regulate the scale of new development, apply development regulations to all residential properties in La Jolla that proportionally relate the building envelope to the existing lot dimensions. Apply minimum side and rear yard setback requirements that separate structures from adjacent properties in order to prevent a wall effect along the street face as viewed from the public right-of-way. Side yard setbacks should be incrementally increased for wider lots.

c. In order to promote transitions in scale between new and older structures, create visual relief through the use of diagonal or off-setting planes, building articulation, roofline treatment and variations within front yard setback requirements.

d. For large lots in single dwelling unit areas, apply development regulations that will limit the perceived bulk and scale differences relative to surrounding

lots. Apply a sliding scale for floor area ratios that will decrease building scale as the lot size increases.

e. In order to address transitions between the bulk and scale of new and older development in residential areas, maintain the existing 30-foot height limit of the single dwelling unit zones and Proposition D. Structures with front and side yard facades that exceed one story should slope or step back additional stories, up to the 30-foot height limit, in order to allow flexibility while maintaining the integrity of the streetscape and providing adequate amounts of light and air.

f. Review and revise applicable Planned District Ordinance (PDO) residential regulations to implement the community character recommendations in this Plan.

Beyond the plan recommendations above, the “Residential Land Use” chapter of the La Jolla Community Plan has a section entitled “Community Character,” with findings that expand on the intent and basis of the plan recommendations in greater detail. The “Community Character” section of the chapter on Page 68 states in part that:

Single dwelling unit residential development in La Jolla covers a spectrum of densities and architectural styles and expressions. One of the more critical issues associated with single dwelling unit development is the relationship between the bulk and scale of infill development to existing single dwelling units. New construction of single dwelling unit homes have tended to be larger in size than the traditional development in some neighborhoods.

[...]

In some areas of La Jolla, certain features that contribute to community character are quite evident. However, in many areas, residential diversity is emphasized more than a uniform theme or development pattern.

[...]

Common development patterns or streetscape themes that reoccur within the public domain or right-of-way of a particular block or occur throughout the entire neighborhood can be identified. These features help to contribute to a neighborhood's sense of identity and place within the community. Neighborhoods do not have static or clearly defined boundaries. Elements of character blend from one area to another, and it is this association of varying elements which create neighborhood character. Public amenities such as sidewalks, curb side vegetation, street furniture, fences or walls should be considered important elements to neighborhood character.

The appellant cites to the bulk and scale sub-sections (a)(1) [community character] and (e) [transitions] of Section 2 of the Plan Recommendations in his appeal of the City's approval of the new residence, arguing that the approved modern design – a

rectangular two-story structure consisting of substantial glass paneling and straight vertical, segmented, blocky facades with minimal sloping elements – is in stark contrast to the neighboring residences adjacent to the subject property and substantially out of character with what the appellant argues is the area’s predominant architectural theme of Spanish architecture and sloped, tiled roofs. Furthermore, the appellant argues that the approved design’s concentration of the residence’s two-story bulk and scale in the northeast corner of the lot without any step back of the second floor from the first floor nor sloping of the roof from the front and side yard does not comply with the plan recommendation calling for upper story step backs to create a more fluid visual transition between new and existing structures.

Community Character

The subject site is located in a single-family residential community south of the village area of La Jolla. The neighborhood is entirely built-out with streets, sidewalks, and residential structures. The nearest public accessways to the beach are at the terminus of Palomar Avenue, approximately 1,500 feet to the north of the site, and a Camino de la Costa viewpoint and accessway approximately 400 feet to the south. The lot itself is approximately 300 feet inland of the shoreline, and there are no public coastal views over or adjacent to the site.

Regarding the first contention, the appellant points to the prominence of Spanish-style residences with sloping clay tiled roofs as well as residences with sloping shingle roofs as the identifying themes of the community area around the subject property. However, as seen in aerials and architectural survey of the surrounding neighborhood in the applicant’s response [[Exhibit 6](#)], the area is composed of a mix of architectural styles, sizes, and colors, with the Spanish style, while being prominent, not present to such levels as to the exclusion of other styles. While roof material and design are noticeable architectural features that can influence the appearance of a structure and, through them, the character of the community, such character is rarely defined by the presence of just a single architectural feature. Nothing in the City’s LCP requires a single architectural style, indeed, the community plan specifically notes “[s]ingle dwelling unit residential development in La Jolla covers a spectrum of densities and architectural styles and expressions.” The aforementioned architectural survey of the nearby residences demonstrates the existence of the architectural diversity alluded to in the La Jolla Community Plan. As such, there does not appear to be such an overwhelming architectural character in the area surrounding the subject property such that the locally approved design constitutes an unacceptable departure from it. Rather, the predominant character is single family residences of one- and two-stories with a density of 5-9 dwelling units per acre, comprised of a mix of architectural styles that are setback from the street frontage and side yards, with which the approved design conforms.

As the appellant states in his appeal, this portion of La Jolla was surveyed in 2004 by the La Jolla Historical Society as a potential “La Jolla Hermosa Historic District.” While the La Jolla Historical Society is not a City department but rather a 501(c)(3) nonprofit, the neighborhood was ultimately not granted historic district status, and the subject property itself is not designated as historic. While the appellant states that four historically designated residences are within 1200 feet of the subject property, some

being in the Spanish eclectic style and others in the French eclectic, they are not being impacted by the proposed development, nor is there any regulation or policy indicating that they establish the neighborhood character.

Thus, because the community character of the neighborhood surrounding the subject property is not defined just by the presence of clay-tiled sloped roofs or Spanish architecture, nor is such a specific design required by the LCP, the approved architectural design for the new residence does not raise a substantial issue.

Bulk and Scale Transitions

Regarding the second contention, the appellant argues that the lack of upper floor and sloped roof setbacks on the two-story segment of the approved residence concentrated on the property's northeast corner does not conform with the La Jolla Community Plan's recommendation that such setbacks be included to create smooth visual transitions between new and existing structures.

Specifically, the appellant cites the following section of the community plan:

- e. In order to address transitions between the bulk and scale of new and older development in residential areas, maintain the existing 30-foot height limit of the single dwelling unit zones and Proposition D. **Structures with front and side yard facades that exceed one story should slope or step back additional stories**, up to the 30-foot height limit, in order to allow flexibility while maintaining the integrity of the streetscape and providing adequate amounts of light and air. [Emphasis added]

The approved residence contains one- and two-story elements over its basement, garage, and mechanical area. The residence would be L-shaped, with the structure's eastern façade occupying the northern two-thirds of the street frontage with a 20-foot front yard setback, and the sloping driveway occupying the southern third. Along the eastern street frontage, the southern wing of the residence in the middle of the street frontage would be one story and set back approximately 12 feet from the southern property line, while the northern portion of the residence at the northeast corner, as well as the entirety of the residence along the northern property line, would be two stories and set back 6 feet, 3 inches from the northern property line. [\[Exhibit 3\]](#)

The above-cited LUP policy the appellant points to requires structures with front and side yard facades that exceed one story to slope or step back the stories above the first story but does not require a specific amount of length of setback or slope. The more specific requirements for setbacks and angled building envelopes for residential structures are contained in the Land Development Code, the City's Implementation Plan.

The subject property is designated in the La Jolla Community Plan as "Low Density Residential" with a density of 5 – 9 dwelling units per acre, and is zoned RS-1-5. Section 131.0431 of the Land Development Code contains the tables listing the development regulations for the City's various residential zones, with section

131.0431(b) containing Table 131-04D specifically regulating the RS zones and listing minimum lot dimensions and setbacks, as well as maximum structure height, floor area ratio, and lot coverage.

Table 131-04D of Section 131.0431(b) states that for structures in the RS-1-5 zone the minimum front yard setback is 20 feet, and the minimum side yard setback is determined by multiplying the average lot width by 0.08. The approved structure complies with the required 20-foot front yard setback and side yard setback, in this case calculated as 6.14 feet (6 feet, 1.43 inches).

The maximum allowable structure height is “24/30” feet. The “24/30” height requirement is in reference to Section 131.0444, which regulates the angled building envelope plane in residential zones. This Section requires that for residential lots between 75 feet and 150 feet in average width, which includes the subject property, starting at 24 feet in height, the structure must angle back from the property line at 30 degrees until reaching the maximum 30-foot height limit. The façade of the approved structure is approximately 26 feet in height at the northeast corner along the street frontage and northern property line, with the second floor reaching approximately 24 feet with a 2-foot parapet above that. While the parapet is located within the aforementioned 30-foot angled setback above 24 feet in height, Section 131.0461(a)(1) of the Land Development Code states that “[r]oof projections such as eave, cornice, and eyebrow projections may extend into the required yard or into the space above the angled building envelope” subject to various requirements regarding the extent of the projection, distance from the property line, etc., with which the approved residence complies. [\[Exhibit 7\]](#)

Additionally, related to the first issue of community character, the neighborhood area surrounding the subject property is composed of a mix of one- and two-story residences, with both residences to the north and south of the subject property being two-stories as well, as shown by a survey in the applicant’s response material. [\[Exhibit 6\]](#) The approved residence, while substantially larger than the existing structure, is within the size range of residences in the neighborhood and would not be substantially different in size from its neighbors, especially as viewed from the public right-of-way.

Thus, the project approved by the City is consistent with all of the LCP requirements regarding community character and bulk and scale. No impacts to coastal resources will result from the project, and no substantial issue is raised.

CEQA

Finally, the appellant contends that the residence was improperly exempted from the California Environmental Quality Act (CEQA) and that a full environmental review should have been conducted. The alleged deficiencies of the City’s CEQA review are not a valid basis for an appeal to the Commission. As discussed previously, Section 30603(b)(1) states that the grounds for an appeal shall be 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 of Chapter 3 of the Coastal Act.

C. Substantial Issue Factors

As discussed above, on review by staff of additional information provided by the applicant, there is factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of no substantial issue. The objections to the project suggested by the appellant do not raise any substantial issues of regional or statewide significance.

APPENDIX A – Substantive File Documents

- City of San Diego Coastal Development Permit Notice of Final Action dated June 30, 2021
- Appeal of Local Government Coastal Development Permit, submitted by Philip Merten on behalf of Dr. Lawrence Bogle, dated July 7, 20201