

**CALIFORNIA COASTAL COMMISSION**

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# W12a

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Hearing Date: 11/16/2022

## STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

**Appeal No.:** A-5-HNB-22-0053

**Applicant:** Scott Ong

**Agent:** Joseph Plan

**Local Government:** City of Huntington Beach

**Local Decision:** Approval with Conditions

**Appellant:** Cheryl DeMarco

**Project Location:** 16422 Barnstable Circle, Huntington Beach, Orange County (APN: 178-062-19)

**Project Description:** Appeal of City of Huntington Beach Coastal Development Permit 22-001 to construct a 3,276 sq. ft. addition, including a 2,238 sq. ft. second floor addition and a 1,038 sq. ft. third floor addition, with a total of 322 sq. ft. of balconies to an existing 2,324 sq. ft. one-story single-family residence at an overall height of 33'11".

**Staff Recommendation:** No Substantial Issue.

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**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.

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## SUMMARY OF STAFF RECOMMENDATION

The City-approved project appealed to the Commission is for the construction of a 3,276 sq. ft. addition, including a 2,238 sq. ft. second floor addition and a 1,038 sq. ft. third floor addition, with a total of 322 sq. ft. of balconies to an existing 2,324 sq. ft. one-story single-family residence at an overall height of 33ft – 11in. The existing residence will maintain a 451 sq. ft. attached garage.

The project site is located at 16422 Barnstable Circle in the Huntington Harbor area of Huntington Beach, Orange County. The project is located on a 5,116.6 square foot lot, zoned RL (Residential Low Density). A single-family residence exists on the subject lot and surrounding lots.

No local appeal was filed within the City's local appeal period. The City's Notice of Final Local Action (NOFA) was received by the Commission's South Coast office on September 1, 2022. During the Commission's 10 working-day appeal period, Cheryl DeMarco filed an appeal on September 16, 2022. The appellant contends that: **1)** The applicant's plans do not depict an accurate rear yard setback and would not meet the required rear yard setback pursuant to certified Zoning Code Section 210.06; **2)** The maximum lot coverage is more than the maximum lot coverage allowed pursuant to certified Zoning Code Section 210.06. Adding a new front roof area and maintaining the existing lot coverage would make this a non-conforming structure; **3)** Pursuant to certified Zoning Code Section 210.06(V) a solid patio that is open on at least two sides may be permitted with an additional 5% site coverage. Appellant argues that the applicant needs to show how this is met as it is part of the non-conforming lot coverage; **4)** The required parking is not shown on the plans and the minimum 2-car garage is not dimensioned pursuant to certified Zoning Code Section 231.04. The turn-in garage does not have the minimum turning radius pursuant to certified Zoning Code Section 231.18; **5)** The balcony facing the neighbors is closer than the 20 feet required in Zoning Code Section 210.06(W); **6)** The minimum 40% landscaping in front is not met pursuant to certified Zoning Code Section 210.06(S); **7)** The area of enlargement to a non-conforming structure in any five-year period shall not exceed 50% of the area of the structure as it exists on the effective date of the ordinance codified in this chapter pursuant to certified Zoning Code Section 236.06, and **8)** The preparer of the plans is not a licensed business in the State of California.

Regarding the concerns related to setbacks that would adversely impact the neighboring site by blocking private views, the Coastal Commission typically enforces setback requirements to protect public views, public access, sensitive habitat, or to guard against coastal hazards. Here, the setback questions raise none of those issues. In addition, the City's approval included a prior-to-issuance condition to ensure the proper setbacks were used. The contentions related to the other minor inconsistencies with the Zoning Code requirements in the Implementation Plan such as lot coverage, landscaping, and turning radius will have no impact on public views or public access, as there are no public harbor views or public access to and along the harbor across the site. With respect to lot coverage, the City has been applying a lot coverage exemption that was included in earlier iterations of the zoning code, but was inadvertently left off of the certified IP. The City has

asserted that a 55% lot coverage applies to the subject lot, although this lot coverage exemption is not part of the certified IP. If the City is continuing to administer the 55% lot exclusion, the City should apply for an IP amendment to add this provision to the certified IP and avoid future confusion. However, in this case, the expanded lot coverage does not adversely impact public views or public harbor access because neither resource exists in this area. The City stated in its Findings for Approval that “Coastal Development Permit No. 22-001...conforms with the public access and public recreation policies of Chapter 3 of the California Coastal Act in that the project will not impede public access, recreation, or views to coastal resources.” In approving the proposed development, the City considered the applicable development regulations of the Zoning Codes and the project’s conformity to the Coastal Act and concluded that the development as proposed is consistent with the development standards of the LCP and the Chapter 3 policies of the Coastal Act. The local government’s findings for the approval of the coastal development permit adequately support its determination that the proposed development conforms to the policies of the LCP.

Staff recommends that the Commission determine that the appeal raises **no substantial issue** with respect to the grounds on which the appeal was filed. The motion to carry out the staff recommendation is on page 5.

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**EXHIBITS**

- [Exhibit 1 – Vicinity Map and Project Site](#)
- [Exhibit 2 – City Approved Plans](#)
- [Exhibit 3 – City’s Determination](#)
- [Exhibit 4 – Appeal](#)

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** I move that the Commission determine that Appeal No. A-5-HNB-22-0053 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 of the majority of the Commissioners present.

**Resolution:** The Commission hereby finds that Appeal No. **A-5-HNB-22-0053** 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 policies of the Coastal Act.

## II. APPELLANTS' CONTENTIONS

The Commission received a Notice of Final Local Action (NOFA) for City of Huntington Beach Local CDP No. 22-001 on September 1, 2022. Local CDP No. 22-001 approves the addition to an existing single-family residence.

On September 16, 2022, Cheryl DeMarco filed an appeal ([Exhibit 4](#)). The appellant contends that the City's approval does not comply with the City's certified LCP. More specifically, the appellant raises the following concerns with the City-approved development:

- 1) The applicant's plans do not depict an accurate rear yard setback and would not meet the required rear yard setback pursuant to certified Zoning Code Section 210.06.
- 2) The maximum lot coverage is more than the maximum lot coverage allowed pursuant to certified Zoning Code Section 210.06. Adding a new front roof area and maintaining the existing lot coverage would make this a non-conforming structure.
- 3) Pursuant to certified Zoning Code Section 210.06(V) a solid patio that is open on at least two sides may be permitted with an additional 5% site coverage. Appellant argues that the applicant needs to show how this is met as it is part of the non-conforming lot coverage.
- 4) The required parking is not shown on the plans and the minimum 2-car garage is not dimensioned pursuant to certified Zoning Code Section 231.04. The turn-in garage does not have the minimum turning radius pursuant to certified Zoning Code Section 231.18.
- 5) The balcony facing the neighbors is closer than the 20 feet required in Zoning Code Section 210.06(W).
- 6) The minimum 40% landscaping in front is not met pursuant to certified Zoning Code Section 210.06(S).

- 7) The area of enlargement to a non-conforming structure in any five-year period shall not exceed 50% of the area of the structure as it exists on the effective date of the ordinance codified in this chapter pursuant to certified Zoning Code Section 236.06.
- 8) The preparer of the plans is not a licensed business in the State of California.

### **III. LOCAL GOVERNMENT ACTION**

The City held a public hearing for the local CDP on August 17, 2022. Five (5) members of the public spoke at the hearing, all of whom were in opposition to the project. Cheryl DeMarco, a city resident, spoke in opposition to the project, citing concerns that the plans were not drafted by a licensed architect, the proposed structure is non-conforming, and the lot coverage is not consistent with the zoning code requirements. Ricky Ramos, the Zoning Administrator for the City, indicated that only plans submitted for building permits are required to be stamped by a licensed architect. Tess Nguyen, the Associate Planner for the City, indicated that the existing building is legally non-conforming and that the proposed addition maintains the existing footprint. James DeMarco, resident, spoke in opposition to the project, citing concerns that the plans were not drafted by a licensed architect. Greg Hamer, resident, spoke in opposition to the project, citing concerns with the proposed height of the building, and the potential shading, views, and property value impacts. Mr. Ramos stated that private views are not protected by the LCP. Mr. Hamer indicated that the Covenants, Conditions and Restrictions (CC&Rs) protect private views and Mr. Ramos noted that CC&Rs are under the HOAs authority. Lisa Seitz, resident, spoke in opposition to the project, citing concerns with the potential privacy impacts on her adjacent residence, as well as the potential impact to her ability to install solar panels. Margaret Muller, resident, spoke in opposition to the project, citing concerns with the massing and height, as well as the potential parking impacts. Coastal Development Permit 22-001 was approved with conditions by the Zoning Administrator of the City of Huntington Beach on August 17, 2022 ([Exhibit 3](#)). No appeals were received by the Zoning Administrator.

On September 1, 2022, the Coastal Commission South Coast District Office received a valid Notice of Final Action (NOFA) for Local CDP 22-001. The Commission issued a Notification of Appeal Period on September 2, 2022. On September 16, 2022, Cheryl DeMarco filed an appeal during the ten (10) working day appeal period. The appeal period ended on September 16, 2022, at 5:00pm. No other appeals were received by the Commission.

### **IV. APPEAL PROCEDURES**

After certification of LCPs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Development approved by cities or counties may be appealed if it is located within certain geographic appealable areas, such as projects located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of a coastal bluff.

Section 30603 of the Coastal Act states in relevant part:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:
- (1) Developments approved by the local government 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) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea and is within 300 feet of the inland extent of a beach. In this case, the project site is located adjacent to Huntington Harbor, which is a tidally-influenced body of water.

### **Grounds for Appeal**

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(b)(1):

- (b)(1) 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.

The grounds for appeal under Section 30603 of the Coastal Act 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) 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.

If the Commission finds that the appellants’ contentions raise no substantial issue as to conformity with the certified LCP, the action of the local government becomes final.

### **Qualifications to Testify before the Commission**

If the Commission, by a vote of 3 or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in Section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. In this case, the City’s record reflects that Cheryl DeMarco, James DeMarco, Greg Hamer, Lisa Seitz, and Margaret Muller opposed the project in person at the local hearing. Testimony from other persons must be submitted

in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow at a later date, during which the Commission will take public testimony.

## **V. FINDINGS AND DECLARATIONS – NO SUBSTANTIAL ISSUE**

### **A. PROJECT DESCRIPTION AND LOCATION**

The City's action on local CDP 22-001 approved construction of a 3,276 sq. ft. addition, including a 2,238 sq. ft. second floor addition and a 1,038 sq. ft. third floor addition, with a total of 322 sq. ft. of balconies to an existing 2,324 sq. ft. one-story single-family residence at an overall height of 33ft., 11in [\(Exhibit 2\)](#). The third-floor habitable area will be located within the confines of the second-story roof volume. The existing residence will maintain a 451 sq. ft. garage. The proposed addition will occur entirely on a developed site.

The project site is a waterfront lot located at 16422 Barnstable Circle [\(Exhibit 1\)](#) in a residential neighborhood of Huntington Beach Harbor, Orange County. The site, zoned RL (Residential Low Density), is currently developed with a 2,324 sq. ft. one-story 15 ft. high single-family residence on a 5,116.6 sq. ft. lot. The proposed project fronts Barnstable Circle, a two-lane street, and is surrounded by single-family residential development. There is no public harbor access adjacent to the site. The closest public harbor access point is Humboldt Park, located 0.3 mi. northeast of the project site. The site is located in an area where development approved by the City of Huntington Beach pursuant to its certified LCP is appealable to the Coastal Commission.

### **B. LOCAL COASTAL PROGRAM CERTIFICATION**

The City of Huntington Beach Local Coastal Program was certified by the Commission in March 1985. The Implementation Plan was comprehensively updated in 1995. The Land Use Plan/Coastal Element was comprehensively updated in 2000. The City's Coastal Element makes up the Land Use Plan portion of the certified LCP. The City's Zoning and Subdivision Ordinance, including a number of Specific Plans, comprises the Implementation Plan portion of the certified LCP. The standard of review for the proposed development is the City's certified Local Coastal Program (LCP).

### **C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act. Section 13115(c) of the Commission's 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 relevant provisions of 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 local issues, or those of regional or statewide significance.

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

Staff is recommending that the Commission find that **no substantial issue** exists with respect to the grounds on which this appeal has been filed.

#### **D. SUBSTANTIAL ISSUE ANALYSIS**

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government are the project's conformity with the policies of the LCP. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with the policies of the LCP.

#### **Contention 1: The applicant's plans do not depict an accurate rear yard setback and would not meet the required rear yard setback pursuant to certified Zoning Code Section 210.06.**

The appellant contends that the applicant's plans do not depict an accurate rear property line. The appellant asserts that as a result, the rear setback is incorrect and would not meet the required rear yard setback for lots zoned as RL pursuant to certified Zoning Code Section 210.06. The appellant also adds that the addition of the rear balcony will project into the setback even more.

The table below, which is included in the City's certified Implementation Plan (IP) under Zoning Code Section 210.06, describes the required setbacks for residential development.

**Property Development Standards for Residential Districts**

	RL	RM	RMH-A Subdistrict	RMH	RH	RMP	Additional Provisions	
Minimum Building Site	6,000	6,000	2,500	6,000	6,000	10 ac.	(A)(B)(C)	(3410-300)
Width (ft.)	60	60	25	60	60	N/A		(3334-607, 3410-300)
Cul de sac frontage	45	45	-	45	45	N/A		(3334-607, 3410-300)
Minimum Setbacks							(D)(R)	(3334-607, 3410-300)
Front (ft.)	15	15	12	10	10	10	(E)(F)	(3334-607, 3410-300)
Side (ft.)	3:5	3:5	3:5	3:5	3:5	-	(G)(I)(J)	(3334-607, 3410-300)
Street Side (ft.)	6:10	6:10	5	6:10	6:10	10	(H)	(3334-607, 3410-300)
Rear (ft.)	10	10	7.5	10	10	-	(I)(J)	
Accessory Structure							(U)	(3334-607, 3410-300)
Garage							(K)	(3334-607, 3410-300)
Projections into Setbacks							(L)(R)	(3334-607, 3410-300)
Maximum Height (ft.)								
Dwellings	35	35	35	35	35	20	(M)	(3334-607, 3410-300)
Accessory Structures	15	15	15	15	15	15	(M)(R)	(3410-300)
Maximum Floor Area Ratio (FAR)	-	-	1.0	-	-	-		(3334-607, 3410-300) (3410-300)
Minimum Lot Area per Dwelling Unit (sq. ft.)	6,000	2,904	*	1,742	1,244	-		(3334-607, 3410-300)
Maximum Lot Coverage (%)	50	50	50	50	50	75	(V)	(3334-607, 3410-300)

The appellant contends that the rear setback is 9'2", which is less than the minimum 10 ft. rear yard setback for properties zoned as RL. Typically, the Coastal Commission enforces setback requirements to protect public views, public access, sensitive habitat, or to guard against coastal hazards. Here, the setback questions raise none of those issues. There is no direct public access on the seaward side of the residences, so the proposed project would not encroach into any public rights-of-way. Thus, the proposed setback in this case would not have an adverse impact on public access in the area. Furthermore, the City's approval of Coastal Development Permit 22-001 included measures to ensure the proper setbacks were used. The City added Special Condition (1)[a] stating "The minimum rear yard setback is 10 feet from the bulkhead per Use Variance No. 689. The rear building setback shall be drawn from the bulkhead to comply with this requirement." The City required the applicant to submit revised plans to correct the harbor setback prior to construction of the project. Therefore, the City adequately interpreted its setback policies in its review of the project. Therefore, this contention does not raise a substantial issue with regard to the policies in the Certified Land Use Plan (LUP) and Chapter 3 of the Coastal Act.

**Contention 2: The maximum lot coverage is more than the maximum lot coverage allowed pursuant to certified Zoning Code Section 210.06. Adding a new front roof area and maintaining the existing lot coverage would make this a non-conforming structure.**

The appellant asserts that the maximum lot coverage is more than the maximum lot coverage allowed pursuant to certified Zoning Code Section 210.06, which is cited above. The current lot coverage for the property is 54%, which is more than the 50% maximum for lots zoned as RL. The applicant further attests that adding a new front roof area while maintaining the existing lot coverage would result in this structure being a non-conforming structure. During the Public Hearing for the City, Ms. Nguyen indicated that the existing building is legally non-conforming and that the proposed addition maintains the existing footprint.

In response to this contention, the City noted that earlier iterations of the Zoning Code included a 55% maximum site coverage for all lots that abut a park, recreation area, school, public waterway, or flood control/public right-of-way that is at least 100 ft. wide. However, in the 1994 Zoning Code update, this provision was inadvertently omitted from the Zoning Code provisions. The City maintains that this 55% lot coverage exception is still in effect, and therefore applies this exception to all qualifying properties. In its analysis of this project, the City concluded that the 55% lot coverage exclusion applied to the subject residence due to its location adjacent to the harbor.

The Huntington Beach IP (which is comprised of the Zoning Code) was certified in 1995, after the 1994 Zoning Code update. As such, the 55% lot coverage exclusion was not incorporated into the certified IP. If the City is continuing to administer the 55% lot exclusion, the City should apply for an IP amendment to add this provision to the certified IP and avoid future confusion.

Until an IP amendment is certified by the Commission, the City's approval of the project with 54% lot coverage is inconsistent with the certified IP as currently written. However, in this case, the expanded lot coverage does not adversely impact public views or public harbor access because neither resource exists in this area. In addition, the overall height of the approved structure would be consistent with the height limit of the area as well as the surrounding development. Therefore, this contention does not rise to the level of substantial issue.

**Contention 3: Pursuant to certified Zoning Code Section 210.06(V) a solid patio that is open on at least two sides may be permitted with an additional 5% site coverage. Appellant argues that the applicant needs to show how this is met as it is part of the non-conforming lot coverage.**

The appellant contends that the applicant must show how the applicant meets the requirements of certified Zoning Code Section 210.06(V). This Zoning Code states that solid patio covers open on at least two sides may be permitted at an additional 5% site coverage. The appellant asserts that this would be part of the non-conforming lot coverage. The City's approval included special condition (1)[b] in their staff report to assure that the front porch be redesigned to have two open sides. The City requires that the revised plans be submitted for approval during the building permit process prior to construction. As stated earlier, the City has asserted that a 55% lot coverage applies to the subject lot, although this lot coverage exemption is not part of the certified IP. Furthermore, the City appears to have included the patio in its 54% lot coverage calculation.

As stated previously, the 54% lot coverage is inconsistent with the certified IP because the 55% lot coverage exemption is not included in the certified policies. However, the City-approved patio would not adversely impact public access or public views because members of the public cannot see or access the harbor from the road at this site. No other coastal resources would be adversely impacted by the approved patio. Thus, this contention does not rise to the level of substantial issue.

**Contention 4: The required parking is not shown on the plans and the minimum 2-car garage is not dimensioned pursuant to certified Zoning Code Section 231.04. The turn-in garage does not have the minimum turning radius pursuant to certified Zoning Code Section 231.18.**

The appellant asserts that the required parking is not shown on the plans and that the minimum 2-car garage is not dimensioned on the plans pursuant to certified Zoning Code Section 231.04.

The table below, which is included in the City’s certified Implementation Plan (IP) under Zoning Code Section 231.04, describes the required off-street parking for residential development.

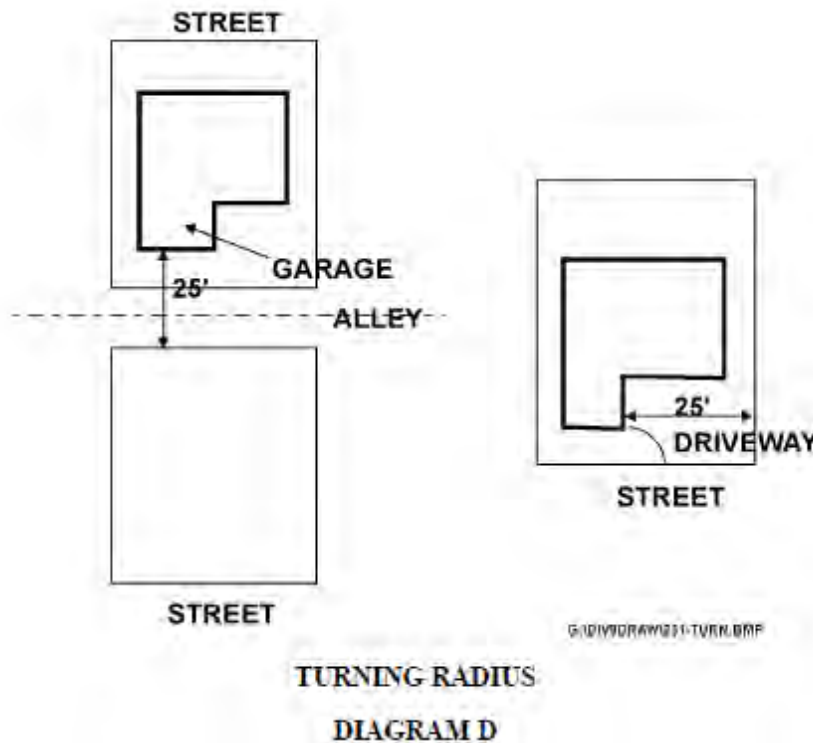
<b>OFF-STREET PARKING SPACES REQUIRED: SCHEDULE A</b> (3334-6/97)	
<b>Use Classification</b>	<b>Spaces</b>
<b>Residential</b>	
Single-family Dwellings	
<u>New construction</u>	
0-4 bedrooms	2 enclosed and 2 open
5 or more bedrooms	3 enclosed per unit and 3 open per unit
<u>Existing Dwellings</u>	
0-4 bedrooms	2 enclosed and 2 open <sup>1</sup>
5 or more bedrooms	2 enclosed per unit and 3 open per unit <sup>1</sup>
<u>In the RMH-A district</u>	
	2 enclosed spaces per unit with up to three bedrooms, and 1 space for each additional bedroom; 1 additional space per dwelling where no on-street parking is allowed
Multi-family Dwellings	
Studio/one bedroom	1 enclosed space per unit
2 bedrooms	2 spaces (1 enclosed) per unit
3 or more bedrooms	2.5 spaces (1 enclosed) per unit
Guests	0.5 space per unit

<sup>1</sup>Open spaces may be behind any required spaces and/or on a street adjacent to the property. On-street parking may not be reserved for residents and/or guests but must be available to the general public on a first-come, first-serve basis.

As shown in the table above, residential single-family dwellings that have 0-4 bedrooms must have 2 enclosed and 2 open parking spaces. The appellant argues that the applicant’s project plans do not show how this parking requirement is met.

The appellant also contends that the turning radius for the turn in garage is not the minimum of 25ft that is required in Zoning Code 231.18(D)[3]. Zoning Code section 231.18(D)[3] states,

“The minimum turning radius for any garage, carport, or open parking space, entered directly from an alley or driveway, shall be 25 feet. (See Diagram D)”



According to the plans, the current turning radius for the garage is 23’ – 4 ½”, which is less than the 25-foot minimum turning radius required in certified Zoning Code Section 231.18(D)[3]. Although the turning radius is less than the requirement in the certified zoning code, the garage is not being reoriented, so the ability to access the two covered parking spaces would not be altered by the project. The project will not create any new parking demand and will not take away any existing public parking; therefore this contention does not raise a substantial issue in relation to the LUP or Chapter 3 of the Coastal Act.

**Contention 5: The balcony facing the neighbors is closer than the 20 feet required in Zoning Code Section 210.06(W).**

The appellant cited Section 210.06(W) of the City’s Zoning Code, a component of the City’s Local Coastal Program:

“Properties subject to residential privacy design standards shall: Orient upper story balconies toward the subject home’s front or rear yard areas, a public street, or permanent open space. The yard area or direction faced by the longest side of the balcony shall determine the orientation. A minimum 20-foot separation between the exterior face of the balcony or deck and the existing adjacent structure may be provided if orientation requirements cannot be met.”

The appellant contends that the second story balcony in the rear of the property is facing the neighbors and therefore, pursuant to Zoning Code section 210.06(W), it should be a minimum of 20 feet from the neighboring home. The appellant argues that the balcony is closer than the 20-foot requirement in the Zoning Code. This contention primarily raises concerns regarding private views, as there are no public views being impacted by the construction of the balcony. The Certified LCP and the policies in Chapter 3 of the Coastal Act protect public views, not private views. Additionally, Zoning Code Section 210.06(W) is not a certified Zoning Code therefore, this does not raise a substantial issue.

**Contention 6: The minimum 40% landscaping in front is not met pursuant to certified Zoning Code Section 210.06(S).**

Certified Zoning Code Section 210.06(S)[1] states,

“A minimum 40% of the front yard shall be landscaped. For single family residences in the RMH-A subdistrict, a minimum 3-foot-wide landscape planter along the front property line (excluding max. 5 ft. wide walkway) may be provided in lieu of the 40% requirement. A maximum 18-inch-high planter wall may be constructed along the front property line.”

The appellant contends that the front yard does not meet this 40% minimum landscaped requirement. The project plans are not clear as to the extent of landscaping that will take place; however, if less than 40% of the front yard is landscaped this would not impact coastal resources and would reduce the need for watering and irrigation. So, although the landscaping may not be consistent with the Certified Zoning Code requirements, this contention does not raise any substantial issues regarding the Land Use Plan or the policies in Chapter 3 of the Coastal Act.

**Contention 7: The area of enlargement to a non-conforming structure in any five-year period shall not exceed 50% of the area of the structure as it exists on the effective date of the ordinance codified in this chapter pursuant to certified Zoning Code Section 236.06.**

Section 236.06 of the certified IP states, in relevant part:

C. Nonconforming structures may be altered or enlarged provided that the alteration or enlargement is in conformance with applicable provisions of Titles 21 and 22.  
(3254-10/94)

D. Additions to nonconforming structures proposed to be constructed at the existing nonconforming yard setbacks shall be subject to Director approval and Neighborhood Notification pursuant to Chapter 241. (3254-10/94, 3679-12/04)

E. The area of enlargement to a nonconforming structure in any five year period shall not exceed 50% of the area of the structure as it exists on the effective date of this ordinance.

The appellant cited Section 236.06 of the City's Certified Zoning Code, a component of the City's Local Coastal Program, that "The area of enlargement to a nonconforming structure in any five-year period shall not exceed 50% of the area of the structure as it exists on the effective date of this ordinance." The appellant contends that because this is a non-conforming structure the applicant should not be allowed to add more than 50% of the existing structure.

In response to this contention, the City acknowledges that the existing residence is a nonconforming structure. The City also asserts that the 50% maximum area addition does not apply to this nonconforming structure because the structural footprint would not increase. Section 236.06(C) permits alterations and enlargement to nonconforming structures as long as the work conforms to the applicable Zoning Code standards. Section 236.06(E) notes that the area of enlargement shall not exceed 50% of the area of the structure as it exists on the effective date of the ordinance.

The issue in this case appears to be a semantic one, as the policy does not clarify whether the term 'enlargement' refers to additions in general, or just additions that increase the overall footprint of the residence. The appellant seems to interpret the policy as restricting square footage additions to 50%, whereas the City appears to interpret the policy as restricting the footprint enlargement to 50%.

The City could amend the IP to clarify whether 'enlargement' refers to any addition, or just additions that increase the structural footprint. However, in this case, the City's interpretation of the policy – the allowance of a more than 50% increase in floor area because the structural footprint is not being changed – would not adversely impact public access or public coastal views, or other sensitive coastal resources. Therefore, this finding does not rise to the level of substantial issue.

**Contention 8: The preparer of the plans is not a licensed business in the State of California.**

The appellant asserts that the preparer of the plans is not a licensed business in the State of California. Grounds for appeal must be consistent with the City's Certified LCP and the Coastal Act. This contention is not based on misinterpretation or inconsistencies of the Certified LCP and Chapter 3 of the Coastal Act; as such this contention is not a basis for appeal and does not raise a substantial issue.

**SUBSTANTIAL ISSUE FACTORS:**

The Commission typically applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(2).

**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.** The City’s approval of the project presents some minor inconsistencies regarding the Implementation Plan (IP), specifically the Certified Zoning Code requirements for the site. These inconsistencies are related to setbacks, lot coverage, landscaping and turning radius of the garage. With respect to the lot coverage, the City has been applying a lot coverage exemption that was included in earlier iterations of the zoning code, but was inadvertently left off of the certified IP. Although there are some potential minor inconsistencies with the requirements in the IP, the City adequately determined that the project would not adversely impact coastal resources, including public access and public coastal views, pursuant to the Coastal Act Chapter 3 public access policies. Therefore, this factor supports a finding of no substantial issue.

**2. The extent and scope of the development as approved or denied by the local government.** The City-approved development is to construct an addition to an existing single-family residence in a highly developed area. It is consistent with the development standards applicable to the site. The overall height will match the surrounding properties. Thus, the extent and scope of the proposed development approved by the City is not extensive and this factor supports a finding of no substantial issue.

**3. The significance of the coastal resources affected by the decision.** The City-approved project is a single-family residence that is generally consistent with the mass, scale, and character of the surrounding neighborhood, and consistent with the pattern of development in this neighborhood. There are no public views or public access to and along the harbor across the site. The proposed development will not interfere with any existing public access. The appellant’s contentions imply that the project may adversely impact private views and overall property privacy. However, these are not considered to be coastal resources that are protected by the certified LCP or the Coastal Act. Therefore, the Commission finds that the proposed project would not impact sensitive coastal resources. This factor weighs in favor of a finding of no substantial issue.

**4. The precedential value of the local government’s decision for future interpretations of its LCP.** The proposed development presents some minor inconsistencies with the Zoning Code Requirements for the site, such as setbacks, lot coverage, landscaping, and the turning radius for the garage. More specifically, the City’s continued usage of an uncertified lot coverage exemption policy may set a precedent for future development. However, the City sufficiently demonstrated that no coastal resources will be impacted by the proposed development. Therefore, the decision of the local government on this project would not set an adverse precedent for future permit decisions made in the City’s coastal zone. This factor supports a finding of no substantial issue.

**5. Whether the appeal raises local issues, or those of regional or statewide significance.** The primary concerns raised by the appeal are minor inconsistencies with the Zoning Code Requirements, such as lot coverage, landscaping and the turning radius for the garage which are local rather than regional or statewide issues. Therefore, the City’s approval does not raise issues of regional or statewide significance; this factor weighs in favor of a finding of no substantial issue.



**Conclusion**

In conclusion, the Commission finds that **no substantial issue** exists with respect to whether the local government action conforms with the policies of the City's certified LCP and the public access policies of the Coastal Act.