

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal No.: A-5-NPB-22-0052

Applicant: Dan Gannon

Agent: Sherman Stacey

Local Government: City of Newport Beach

Local Decision: Approval with Conditions

Appellants: Preserve Orange County and Clark Collins

Project Location: 20 Bay Island, Newport Beach, Orange County

Project Description: Appeal of City of Newport Beach local Coastal Development Permit No. CD2021-081 for the demolition of a 3,560 sq. ft. single family residence; construction of a new 4,402 sq. ft. three-story, single-family residence, hardscape, drainage facilities, and approximately 194 sq. ft. of landscaping; adjustment to the off-street parking requirements with a parking management plan for one on-site golf-cart parking space and two standard parking spaces at an existing parking garage at 501 West Bay Avenue; an increase of the allowed building height from 24 feet to 28 feet for flat portions of the roofs and from 28 feet to 33 feet for sloped portions of the roof.

Staff Recommendation: No substantial issue.

IMPORTANT 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, appellant(s), persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The Commission received an appeal (**Exhibit 4**) from Preserve Orange County and Clark Collins of the City of Newport Beach approval of local CDP CD2021-081 (**Exhibit 3**). The City approved the demolition of an existing 3,560 sq. ft., 2-story single-family residence and construction of a new 4,402 sq. ft. three-story, single-family residence, hardscape, drainage facilities, and approximately 194 sq. ft. of landscaping, adjustment to the off-street parking requirements with a parking management plan for one on-site golf-cart parking space and two standard parking spaces at an existing parking garage at 501 West Bay Avenue, an increase of the allowed building height from 24 feet to 28 feet for flat portions of the roofs and from 28 feet to 33 feet for sloped portions of the roof (**Exhibit 2**). The project site is located at 20 Bay Island (**Exhibit 1**). The existing single-family residence was constructed in 1930 and designed by a distinguished architect, Gilbert Stanley Underwood.

The appellants contend that **1)** the proposed development does not conform to the Newport Beach LCP IP Section 21.30.105 Cultural Resource Protection; and **2)** that the proposed development does not conform to the LCP LUP Section 4.5.2 Historical Resources.

The requirements of IP Subsection 21.30105(B) apply to CDP applications involving structures or sites listed on the Newport Beach Register of Historical Property; the California Register of Historical Resources; or National Register of Historic Places; or on a site where evidence of potentially significant historical resources is found in an initial study conducted in compliance with CEQA. As the single-family residential structure at 20 Bay Island is not on any such list, and the City determined that the project was exempt from CEQA requirements, IP Subsection 21.30105(B) therefore does not apply to this CDP application.

The appellants acknowledge that the single-family residence at 20 Bay Island is not included in any local, State, or National historic resource lists but contend that the City's

Ad Hoc Historic Preservation Advisory Committee's last Historic Resources Inventory conducted 30 years ago in 1992 was an "alarmingly incomplete" survey. The appellants contend that if the survey had been properly conducted, then the single-family residence at 20 Bay Island would have been listed on the City's 1992 Historic Inventory. They believe the residence at 20 Bay Island would have met the 50-year significant threshold at the time of the 1992 survey. Bay Island itself was identified in the 1992 Historic Resources Inventory as a Class 3 "local historic site" that is "a building, structure, object, site or natural feature of local significance only. The property (i.e., Bay Island as a whole) is representative of historic/architectural themes of local importance." The 1992 inventory however, was not approved by the City Council but continues to serve as a guide to possible local historical resources.

Even if the subject single-family residence at 20 Bay Island had been included in the Newport Register of Historical Property, a CDP for the demolition of the structure could still be issued in compliance with the LUP. LUP Policy 4.5.2-1 simply requires photo documentation of inventoried historic structures prior to demolition. However, different protections are afforded to structures identified as a historical resource in the California Register of Historical Resources. If a resource meets the criteria for registration, it may be nominated by any individual, group, or local government to any state registration program at any time. Resources do not need to be locally designated before being nominated to a state program nor do they need to be registered at the state level before being nominated to the National Register. As previously stated, the subject single-family residence proposed for demolition is not listed on any register of historical resources. Therefore, the appellants' contention that the CDP was issued in non-compliance with the LUP Section 4.5.2 on Historical Resources does not raise a substantial issue.

Staff recommends the Commission find that no substantial issue exists with respect to the grounds on which the appeal was filed and the project's consistency with the certified Local Coastal Program (LCP). The City's approval of the project will not prejudice the implementation of the LCP. The motion and resolution can be found on **Page 5**.

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EXHIBITS

Exhibit 1 – Project Location
Exhibit 2 – Project Plans
Exhibit 3 – Local CDP No. CD2021-081
Exhibit 4 – Appeal

I. MOTION AND RESOLUTION – NO SUBSTANTIAL ISSUE

Motion:

I move that the Commission determine that Appeal No. A-5-NPB-22-0052 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 finds that Appeal No. A-5-NPB-22-0052 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.

II. APPELLANTS' CONTENTIONS

On September 15, 2022 Krista Nicholds on behalf of Preserve Orange County and Clark Collins, a Newport Beach resident jointly filed an appeal of City of Newport Beach local CDP No. CS2021-081 (**Exhibit 3**). The appellants raise the following concerns with the City-approved development:

- 1) the proposed development does not conform to the Newport Beach Local Coastal Program Implementation Plan Section 21.30.105 Cultural Resource Protection
- 2) the proposed development does not conform to the Local Coastal Program Coastal Land Use Plan Section 4.5.2 Historical Resources.

III. LOCAL GOVERNMENT ACTION

On July 7, 2022, the City of Newport Beach Planning Commission approved local Coastal Development Permit CD2021-081 (**Exhibit 3**). The Planning Commission approved the project with special conditions. The Planning Commission determined that the project was categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15303, Class 3 (New Construction) after a determination that the project would have no potential to have a significant effect on the environment.

The City's Notice of Final Local Action was received by the Commission's South Coast District office on August 31, 2022, and the Commission's required ten working-day appeal

period was established. The subject joint appeal was received on the last day of the appeal period on September 15, 2022. No other appeals were received.

IV. 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 CDPs. Development projects approved by cities or counties may be appealed if they are 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.

The project site is 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. (Section 30603(a)(1).)

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in Section 30603(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.

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a). If the Commission finds that the appellants' contentions raise no substantial issue, the action of the local government becomes final.

Qualifications to Testify before the Commission

If the Commission, by a vote of three 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 applicants, the appellants, 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.

Upon the close of the public hearing, the Commission will vote on the substantial issue

question. 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 LOCATION AND DESCRIPTION

Bay Island is a private 5.5-acre single legal lot in Newport Harbor operated as a stock cooperative with 25 individual building sites developed predominately with two- and three-story single-family homes, shared open space, recreational areas, and a clubhouse. Bay Island is a private island located on the north end of Island Avenue on the Balboa Peninsula accessible to residents only via a gated pedestrian bridge. With the exception of golf carts, vehicles are not permitted on the small island. The subject site is located at 20 Bay Island (**Exhibit 1**) on the west side of the island. Bay Island is designated as Multiple-Unit Residential (RM) Coastal Zoning District, which allows for the development of a single-family residence subject to RM standards in the Implementation Plan. The current use on the site is a single-family residence.

The proposed project involves the demolition of a 3,560 sq. ft., 2-story single-family residence and construction of a new 4,402 sq. ft. three-story, single-family residence, hardscape, drainage facilities, and approximately 194 sq. ft. of landscaping, adjustment to the off-street parking requirements with a parking management plan for one on-site golf-cart parking space and two standard parking spaces at an existing parking garage at 501 West Bay Avenue, an increase of the allowed building height from 24 feet to 28 feet for flat portions of the roofs and from 28 feet to 33 feet for sloped portions of the roof and compliance with the minimum 9.0 (NAVD 88) minimum Finished Floor Elevation (**Exhibit 2**).

Since Bay Island is only accessible by a pedestrian bridge, none of the 23 existing residences on the island provide on-site vehicle parking. The City approved an adjustment to off-street parking requirements through a parking management plan (per Implementation Plan Section 21.40.110) which includes the use of two off-site parking spaces in an existing 49-space parking structure owned in common by Bay Island residents located at 501 West Bay Avenue and provision of one enclosed golf cart storage space on-site in a garage attached to the proposed new residence. Therefore, the project meets the parking requirement of three spaces for a single-family residential dwelling with 4,000 sq. ft. or greater of floor area.

The existing single-family residence designed by Gilbert Stanley Underwood and constructed in 1930 is of a wood frame construction, red brick foundation and chimney, and wood shiplap siding in the Colonial Revival style of a Cape Cod domestic design popular in coastal communities in the 1930s and 1940s (**Exhibit 4**).

B. LOCAL COASTAL PROGRAM CERTIFICATION

The City of Newport Beach LCP was effectively certified in January 2017. The City’s LCP is comprised of a Land Use Plan (LUP) and Implementation Plan (IP). There is one area of deferred certification in the City (Banning Ranch). The standard of review for this appeal is consistency with the certified Local Coastal Program and with the public access policies of the Coastal Act.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act requires the Commission to conduct a de novo review 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). The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. However, Section 13115(c) of the Commission’s regulations lists the following five factors as appropriate considerations in determining whether an appeal raises a substantial 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.

Staff is recommending that the Commission find that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603(a) of the Coastal Act.

D. SUBSTANTIAL ISSUE ANALYSIS

Contention 1: The proposed development does not conform to the Newport Beach Local Coastal Program Implementation Plan Section 21.30.105(B) Historical and Architectural Resources

The appellants cite Section 21.30.015(B)(1) of the City’s Implementation Plan portion of the certified Local Coastal Program (LCP) pertaining to historical and architectural resources. The section states as follows:

B. Historical and Architectural Resources.

1. Applicability. The requirements in this subsection of this section shall apply to all coastal development permit applications involving the expansion, reconstruction, structural alteration, or demolition of structures or sites having one or more of the characteristics listed below:
 - a. A site listed, or containing a building, monument, object, or structure that is listed, on the:
 - i. Newport Beach Register of Historical Property;
 - ii. California Register of Historical Resources; or
 - iii. National Register of Historic Places.
 - b. A site where evidence of potentially significant historical resources is found in an initial study conducted in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code Sections 21000 et seq.).

In this case, the existing single-family residence at 20 Bay Island is not a site listed on any of these registries.

According to board members and staff of Preserve Orange County (one of the appellants) who meet the Secretary of the Interior’s Professional Qualification Standards in architectural history, history and preservation, the property would qualify for eligibility for the California Register of Historical Resources due to the residence’s age, its intact Colonial Revival architectural style, and its association with master architect Gilbert Stanley Underwood. The appellants believe that the City failed in its obligation to search for evidence of potentially significant historical resources (due to the 1930 date of construction) and did not inform the Planning Commission of possible historical and architectural significance of the residence proposed for demolition. The appellants believe that there is substantial evidence¹ that the property is a historic resource as defined by CEQA, but that the City uncovered none of it because it failed in its obligation to conduct a CEQA Initial Study.

At the time of the City’s CEQA review, no evidence of potentially significant historical resources at the subject site was uncovered by the City nor provided by the applicant or any other interested party, and the City determined that the project was exempt from CEQA requirements. Thus, no CEQA Initial Study was deemed necessary. Therefore, IP Section 21.30.015(B)(1)(b) would not apply to this CDP application. Consequently, the appellants’ contention that the proposed project does not comply with IP Section 21.30.015 does not raise a substantial issue.

¹ Under Criterion 3 for embodying the “distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values.”

Contention 2: Approval of the CDP would not have been possible if the City did not consistently defy the Local Coastal Program Coastal Land Use Plan Section 4.5.2 on Historical Resources.

The appellants cite LUP Section 4.5.2 Historical Resources, which lists the four properties listed as State of California Historical Landmarks, three properties listed in the National Register of Historic Places, four properties listed as historic or potentially historic in the California Historic Resources Information System and seven properties listed in the Newport Beach Register of Historical Property recognized for their local historical or architectural significance. The subject site at 20 Bay Island is not included on any of these lists. The appellants contend that the City has been negligent in its duty to periodically inventory and update the Newport Beach Register of Historical Property per LUP policy. The appellants cite LUP Policy 4.5.2-1 and Policy 4.5.2-2, which state as follows:

LUP Policy 4.5.2-1 Maintain and periodically update the Newport Beach Register of Historical Property for buildings, objects, structures, and monuments having importance to the history or architecture of Newport Beach and require photo documentation of inventoried historic structures prior to demolition.

LUP Policy 4.5.2-2 Provide incentives, such as granting reductions or waivers application fees, permit fees, and/or any lies placed by the City to properties listed in the National or State Register or by Newport Beach Register of Historical Property in exchange for preservation easements.

The appellants are aware that the single-family residence at 20 Bay Island is not included in any local, State, or National historic resource lists but contend that the City's Ad Hoc Historic Preservation Advisory Committee's last Historic Resources Inventory conducted 30 years ago in 1992 was an "alarmingly incomplete" survey. The appellants contend that if the survey had been properly conducted, then the single-family residence at 20 Bay Island would have been listed on the City's 1992 Historic Inventory. They believe the residence at 20 Bay Island would have met the 50-year significant threshold at the time of the 1992 survey. Bay Island itself was identified in the 1992 Historic Resources Inventory as a Class 3 "local historic site" that is "a building, structure, object, site or natural feature of local significance only. The property (i.e., Bay Island) is representative of historic/architectural themes of local importance." The 1992 inventory however, was not approved by the City Council but continues to serve as a guide to possible local historical resources.

Even if the subject single-family residence at 20 Bay Island had been included in the Newport Register of Historical Property, a CDP for the demolition of the structure could still be issued in compliance with the LUP. LUP Policy 4.5.2-1 simply requires photo

documentation of inventoried historic structures prior to demolition. However, different protections are afforded to structures identified as a historical resource in the California Register of Historical Resources. If a resource meets the criteria for registration, it may be nominated by any individual, group, or local government to any registration program at any time. Resources do not need to be locally designated before being nominated to a state program nor do they need to be registered at the state level before being nominated to the National Register. As previously stated, the subject single-family residence proposed for demolition is not listed on any register of historical resources.

Therefore, the appellants' contention that the CDP was issued in non-compliance with the LUP Section 4.5.2 on Historical Resources 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 with the relevant provisions of the Coastal Act. The City adequately supported its approval of the project's consistency with the applicable policies of the certified LCP. The City concluded that the project is exempt from CEQA. Therefore, there is a sufficient degree of factual and legal support for the local government's decision, and this factor supports a finding of no substantial issue.

2. The extent and scope of the development as approved by the local government. The local government approved a CDP which scope of work includes the demolition of a 90-year-old single-family residence designed by a prominent architect of national importance. The proposed new residence would be compatible with the community character consisting of large 2- and 3-story single-family residences on Bay Island. The proposed development is an allowable use, consistent with the land use designation for the site. The scope of work is limited to infill urban development and is not anticipated to have substantial impacts to coastal resources or public access to the coast. Therefore, this factor supports a finding of no substantial issue.

3. The significance of the coastal resources affected by the decision. The appellants are concerned that the project would result in the loss of a potentially architecturally and historically significant resource. The subject structure is currently not identified as a historic resource in the certified LUP and thus the requirements in the IP pertaining to historical and architectural resources do not apply to project. Therefore, this factor supports a finding of no substantial issue.

4. The precedential value of the local government's decision for future interpretations of its LCP. The proposed project is consistent with the policies and requirements of the certified LCP, and the City interpreted the LCP in a manner that is consistent with the visual resources, community character, public access, and coastal

resource protection policies of the Coastal Act. Thus, the City's decision will not set an adverse precedent for interpretation of the LCP. This factor supports a finding of no substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance. The appeal raises a local issue pertaining to the possible historic and/or architectural significance of a private residential structure proposed for demolition and located on a private, gated island community. The protection of cultural resources itself is an issue of statewide concern. However, the subject single-family residence, though designed by a prominent architect of national importance, is not listed on any list of historic structures. The proposed project is consistent with the LCP and as a result no impacts are proposed to coastal resources. 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.

Appendix A – Substantive File Documents

1. City of Newport Beach certified Local Coastal Program.
2. City of Newport Beach Select Mtg Staff Report, Gannon Residence (PA2021-305) (CD2021-081) dated July 7, 2022