

**CALIFORNIA COASTAL COMMISSION**

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**Th14a**

**A-6-DMR-21-0018 (Ocean Front LLC)**

**February 10, 2022**

**CORRESPONDENCE**



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*Coastal Property Rights, Land Use & Litigation*

February 4, 2022

Honorable Chair Brownsey and Commissioners  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

**RE: Agenda Item Th14a: De Novo Hearing: A-6-DMR-21-0018 (City of Del Mar)**

Dear Honorable Chair Brownsey and Commissioners:

Our firm represents the applicant (2610 Ocean Front LLC) for this project located at 2610 Ocean Front, Del Mar, California 92014 (APN 299-065-07). We have reviewed the staff report published on January 20, 2022. Although we do not agree with the staff's perspective regarding the existing residence's parking, we agree with staff's ultimate conclusion. Therefore, we respectfully request that the California Coastal Commission **approve** the proposed second-story accessory dwelling unit (ADU) and adopt the findings contained in the staff report.

### Project Overview

The existing development is an approximately 944 square foot single-story residence located on a 1,753 square foot lot. On February 2, 2021, the City of Del Mar's Director of Planning and Community Development approved CDP20-016 to convert an approximately 380 square foot attached 2-car garage into an approximately 392 square foot ADU, increasing the overall height of the existing structure from approximately 11.5 feet to 16 feet. The city's approval was appealed to the Commission on February 23, 2021, by a neighbor, Mark Wyland. At the Commission's April 2021 substantial issue hearing for this project, the Commission found that a substantial issue existed concerning the grounds on which the appeal was filed, namely, the loss of off-street parking.

At the suggestion of Commission staff, the project architect, Bokal & Sneed Architects, submitted revised architectural plans on July 21, 2021, to place the ADU above the existing garage, with the garage remaining to provide off-street parking. This new design resolves the alleged parking issue. As a result, Coastal staff now recommends approval based upon the second-story ADU plans.

### Established History of a Two-Story Residence

A two-story home was located on this lot for over 65 years before being demolished to construct the current single-story residence. As the permit history below indicates, the original 1990 permit was approved for a 2-story residence, but the previous owners allowed the permit to lapse. Regardless, there is an established history of a two-story residence on the subject property. The permit history consists of:

*8-89-305*: In January 1990, the Commission approved the construction of a vertical seawall on the western property line to protect the two-story home on the site.

*6-90-57*: The Commission authorized the demolition of the two-story, single-family residence. The seawall approved by CDP #6-89-305 was authorized to remain.

*6-93-182*: The Commission authorized the construction of a single-family residence with an attached two-car garage. Though the applicant complied with the special conditions and the permit issued, the home was never constructed, and the permit expired.

*6-97-163*: The Commission approved the construction of the single-story residence that exists today.

### Neighborhood Consistency

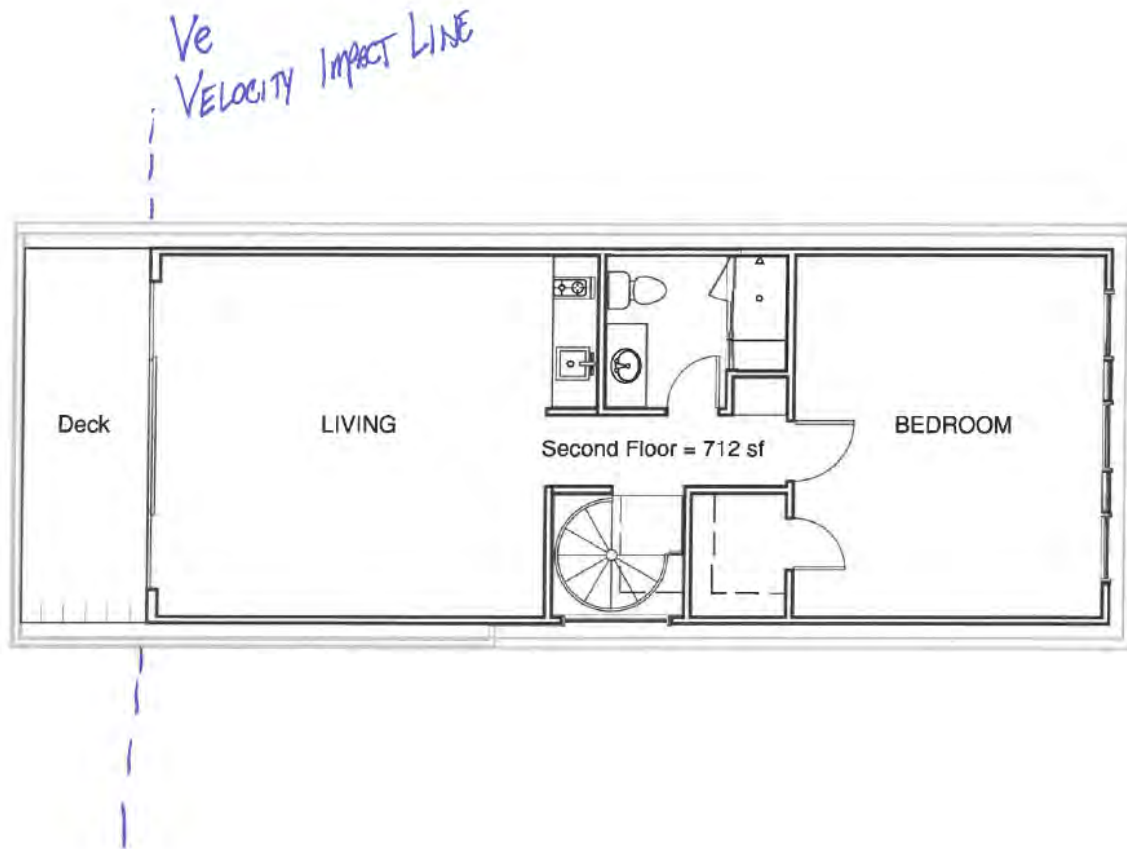
The proposed project will be compatible with the character and scale of the surrounding area. The vast majority of the single-family residences surrounding the subject site are two-story residences. Two-story residences are permitted on shoreline lots within the City's R1-5B Zone, and this site is not an exception. As one can see in the recent image below (taken February 3, 2022), our client's house is surrounded by two-story, single-family residences to the north, south, and east.



### Compliance with Special Conditions

Special Condition #1 requires the proposed residence to be designed for sea-level rise over the structure's lifetime. Like all residences located along the entire strip of beach, we recognize that the lot is located in the Base Flood Zone 'C' and within the Velocity Impact Zone (VE) on the FEMA map. Consequently, Bokal & Sneed Architects designed the second story ADU to be set back east of the VE Zone Boundary, as demonstrated in the conceptual elevation below. In addition, structural steel supports will ensure that the second story will not be compromised if the first floor should ever be flooded.

*Proposed Elevation Indicating Location of ADU Outside of the VE Zone:*



### Protection of Private Views

The Commission did not file the appeal for this project. The appeal was filed by the neighbor to the east, Mr. Wyland, whose sole concern is to protect the private view from the window of his second-story office. As the Commission is aware, the Coastal Act does not protect private views. (See *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 494 [noting that “neither state nor local law protects private views from private lands and the rights of one private landowner cannot prevail over the rights of another private landowner except in accordance with uniformly applied standards and policies as expressed in the City’s general plan, redevelopment plan, local coastal program, and zoning ordinances”].)

Nevertheless, Mr. Wyland has a documented history of fighting any development proposal for this property to protect his private view. Indeed, after the city approved of the applicant’s proposed ADU, Mr. Wyland’s attorney, Julie Hamilton, contacted our clients and threatened to file an appeal if the ADU’s height was not significantly lowered. If not lowered, he would utilize the “parking” argument as the purported grounds for his appeal. Because of Mr. Wyland’s abuse

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of process and his disingenuous legal strategies, the applicant and its predecessors have been restricted from enjoying the same use of their property as their neighbors, including Mr. Wyland. Lastly, it should be noted that Mr. Wyland constructed his home when the previous two-story house existed on the subject property.

The staff report correctly indicates that the site does not obstruct public views or beach access points on 26th Street and 27th Street. The certified Local Coastal Program (LCP) does not afford protection of private views. There are no public views available across this site that the project's redesign would impact. The applicant has mooted the alleged basis for Mr. Wyland's appeal by retaining all existing parking in the revised design.

### Conclusion

The creation of new ADUs in existing residential areas is a promising strategy for increasing the housing supply in the coastal zone while avoiding significant adverse impacts on coastal resources. Moreover, as designed, the proposed second-story ADU would not be threatened by sea-level rise. It would be located approximately eleven feet above grade and behind the FEMA Velocity Impact Boundary. Thus, we agree with staff's recommendation to approve the second-story ADU as consistent with Del Mar's LCP and the Coastal Act. We appreciate your time and consideration of this matter and will be available for questions at the hearing.

Sincerely,

AANNESTAD ANDELIN & CORN LLP



Lee M. Andelin



The Law Office of  
Julie M. Hamilton

February 9, 2022

Chair Donne Brownsey  
California Coastal Commission  
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**VIA EMAIL**

**RE: Appeal No. A-6-DMR-21-0018  
2610 Ocean Front, Del Mar**

Dear Chair Brownsey:

I represent the appellant, Mark Wyland. Mr. Wyland opposes the conversion of the existing garage at 2610 Ocean Front to a 392 sq.ft. accessory dwelling unit (ADU). The project site, at 1,753 sq.ft., is not suitable for an accessory dwelling unit. The proposed ADU will eliminate off-street parking for the existing residence and the proposed ADU. In response to the loss of parking, Coastal Commission staff recommends the Coastal Commission require the applicant to build the alternative second story ADU provided by the applicant. The 2018 ADU ordinance certified by the Coastal Commission does not allow second story ADUs as recommended by the Coastal Commission staff.

Mr. Wyland agrees with the staff's findings related to public access. Removal of parking in this location will result in an increased demand for on-street parking in an area that has limited on-street parking available. This loss of parking will reduce public access to the beach in violation of the LCP and Coastal Act policies. Mr. Wyland also agrees with staff the standard of review is the certified LCP as well as the public access and recreation policies of Chapter 3 of the Coastal Act.

We disagree with the staff findings related to Community Character/Visual Resources. The staff report quotes policies from the land use plan but fails to consider the regulations of the implementing ordinances. The implementing ordinances certified by the Coastal Commission in 2018 do not allow second story ADUs and do not allow ADUs that exceed 14 feet in height as

follows:

- The ADU shall be limited to the first story or basement level unless the ADU would be located within an existing structure with existing access to the first story level. (§30.91.040.K.1, p. 26 of the certified LCP.)

Staff is recommending an alternative with a second story ADU in violation of §30.91.040.K.1 of the certified LCP.

- The maximum building height of any new building construction or expansion of an existing structure for the ADU shall not exceed 14 feet. (§30.91.040.L., p. 26.)

The applicant's current proposal is 16 feet high, exceeding the standards by 2 feet. The alternative presented in compliance with the staff recommendation is 26 feet high, exceeding the height limit by 12 feet.


- The ADU shall comply with the required setbacks of the applicable zone, except when converting an existing non-conforming structure to an ADU. (§30.91.040.N)

The project site is located in the R1-5B Zone, which requires side yard setbacks of 5 feet. (DMMC §30.15.070.C.1.) The applicant is proposing a side yard set back of 4 feet, in violation of the certified LCP and the Del Mar Municipal Code.

The proposed ADU is not consistent with the certified LCP. As proposed the ADU removes parking required for the existing residence causing significant impacts on public access. The staff recommended alternative of a second story ADU does not meet the development standards of the certified LCP because it exceeds the allowable height and does not meet the required setbacks. Therefore, the findings cannot be made to approve the coastal development permit for the proposed ADU and the permit must be denied.

Thank you for your time and consideration of the issues raised in this letter. I remain available if you need additional information or further clarification.

Regards,



Julie M. Hamilton  
Attorney for Mark Wyland



Chair Donne Brownsey  
California Coastal Commission  
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