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Appeal Filed:	5/25/2023
Action Deadline:	8/4/2023
Staff:	Breylen Ammen - SC
Staff Report:	6/22/2023
Hearing Date:	7/12/2023

STAFF REPORT
SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number:	**A-3-MCO-23-0018**
Applicant:	**Isabella 2 LLC**
Appellant:	Concerned Neighbors at Carmel Point
Local Government:	Monterey County
Local Decision:	Coastal development permit application number PLN180523-AMD1 approved by the Monterey County Board of Supervisors on April 18, 2023.
Location:	26308 Isabella Avenue (APN 009-451-015) in the Carmel Point neighborhood, unincorporated Monterey County.
Project Description:	Construction of a 1,837-square-foot two-story single-family residence and associated development including a driveway, fencing, and the removal of 4 coast live oak trees, all on a vacant residential lot.
Staff Recommendation:	No Substantial Issue

IMPORTANT HEARING PROCEDURAL NOTE

Please note that this is a substantial issue only hearing, and testimony will be taken *only* on the question of whether the appeal raises a substantial issue. Such testimony is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits), so please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

SUMMARY OF STAFF RECOMMENDATION

Monterey County approved a CDP for the construction of a roughly 1,800-square-foot single-family residence and related development at 26308 Isabella Avenue in the Carmel Point neighborhood within unincorporated Monterey County. The site is one of a handful of vacant lots in this predominantly built-out residential neighborhood bordered by the Carmel River to the south, the Pacific Ocean to the west, and the City of Carmel-by-the-Sea to the north and east.

The Appellant contends that the County's approval of the project is inconsistent with the provisions in the Monterey County LCP related to the maximum allowable floor area ratio (FAR) (i.e., that the County's approval of a variance to provide for a residence with a FAR of 51 percent rather than the LCP's maximum of 45 percent was improper), and that the County's approval process raised questions regarding its LCP consistency. After reviewing the local record, Commission staff recommends that the Commission find that the County's CDP approval does not raise a substantial issue with respect to the project's conformance with the County's LCP.

While the Appellant raises valid arguments related to the appropriateness of the County's FAR variance findings, the LCP is rather broad in providing decisionmakers the discretion in making these findings, which the County, including through its Board of Supervisors, did in this case. Thus, there does not appear to be anything obviously legally inconsistent with the County's use of the variance process for this project (i.e., the issue appears to be one of disagreement between the Appellant and the County on the appropriateness of the FAR variance rather than one of legal permissibility). And, most importantly for Coastal Act/LCP purposes, the outcome of issuing the variance in this case would not result in any significant coastal resource impacts. The County approval results in a residence that is only 219 square feet larger than what the FAR standard dictates for this site. This is a relatively small amount of square footage considering that the project site is located in a fully built-out, mostly grid-like residential neighborhood and is not visible from the shoreline or any public access vantage points (other than its own street frontage on Isabella Avenue). And although good planning

dictates that variances only be utilized in rare cases when truly unique circumstances exist (and not necessarily in this case since the circumstance is a smaller lot than compared with the neighborhood average), such a variance is not precluded by the LCP and the additional square footage allowed in this case would not result in coastal resource impacts. In sum, while the variance does raise some questions related to its application for this project, these are not substantial LCP compliance and coastal resource impairment issues.

And finally, with respect to the project's procedural aspects, while it is true the project took a rather circuitous route through the County's local process, including through certain project revisions and multiple Board of Supervisors approval hearings, nothing in the local record suggests any impairment of public participation or LCP procedural compliance problems. The project was properly approved by the County through multiple noticed public hearings (including exhausting all opportunities for local appeals), and the appeal process to the Commission herein is the culmination of that effort. In short, this contention too does not raise a substantial LCP conformance issue.

In conclusion, the County approved a relatively modest single-family residence in a built-out residential neighborhood away from the shoreline. While the residence is technically a few hundred square feet larger than what the LCP would otherwise allow, the County followed the LCP's variance provisions to provide for that deviation, and such extra square footage does not raise coastal resource problems. As such, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP application for this project. The single motion necessary to implement this recommendation is found on page 5 below.

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EXHIBITS
Exhibit 1 – Project Location Maps
Exhibit 2 – County Final Local CDP Action Notice with County Approved Project Plans
Exhibit 3 – Appeal of County CDP Decision

1. MOTION AND RESOLUTION

Staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission would not take jurisdiction over the underlying CDP application for the proposed project and would not conduct further hearings on this matter, and that the local government CDP decision stands and is thus final and effective. To implement this recommendation, staff recommends a yes vote on the following motion which, if passed, will result in the recommended no substantial issue finding. If the motion fails, then the Commission will have instead found a substantial issue and will instead take jurisdiction over the subject CDP application for future hearing and action. The motion passes only by an affirmative vote of a majority of the Commissioners present.

> ***Motion:*** *I move that the Commission determine that Appeal Number A-3-MCO-23-0018* ***raises no substantial issue*** *with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a* ***yes*** *vote.*
>
> ***Resolution to Find No Substantial Issue.*** *The Commission finds that Appeal Number A-3-MCO-23-0018 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 Program and/or the public access and recreation policies of the Coastal Act.*

2. FINDINGS AND DECLARATIONS

A. Project Location and Description

The County-approved project is located at 26308 Isabella Avenue (APN 009-451-015) on a small, roughly 3,500-square-foot undeveloped parcel in the residential Carmel Point neighborhood of unincorporated Monterey County. The Carmel Point neighborhood is bounded by Scenic Road and the Pacific Ocean to the west, and the City of Carmel-by-the-Sea to the north and east, and Carmel River State Beach and lagoon to the south. The neighborhood is mostly built out with suburban-scale single-family lots and residences. The LCP-designated minimum lot size is 6,000 square feet, although a number of lots, including the subject parcel, are smaller than this minimum, having been subdivided prior to the certification of the LCP. The project site and surrounding parcels are designated Medium Density Residential (MDR) in the Carmel Area Local Coastal Program (LCP) Land Use Plan (LUP) and zoned MDR/2 (medium density residential) in the Implementation Plan (IP), which allows for single-family residential development at a maximum density of two units per acre. The project site is located roughly in the center of the neighborhood and is one of only a handful of undeveloped lots in the area.

The County-approved project involves construction of a 1,837-square foot two-story single-family residence and associated residential development including a driveway, fencing, and the removal of 4 coast live oak trees. The approval included modifications

to parking standards, including to allow no covered parking and an allowance for parking in the front setback, as well as a variance to allow an increase in the maximum allowed floor area ratio (FAR)[1] from 45 percent to 51 percent.

See **Exhibit 1** for location maps and see **Exhibit 2** for the County-approved project plans.

B. Monterey County CDP History and Approval

On May 26, 2021, the Monterey County Planning Commission approved a CDP for a 2,100-square foot two-story single-family residence and associated development, as well as parking modifications and a variance to allow an increase in the FAR from 45 percent to 58.4 percent (County CDP Application No. PLN180523). That approval was appealed to the Board of Supervisors who, after deliberation, upheld the Planning Commission's approval and denied the appeal on August 24, 2021. The project was then appealed to the Coastal Commission. Prior to the appeal being heard by the Coastal Commission, the Applicant notified Commission and County staff of their desire to modify certain portions of the project contested in the appeal, namely, further reduction in FAR and grading quantities and elimination of the internal stairway to the roof and a six-foot chimney. Subsequently, Monterey County withdrew the FLAN and the Applicant applied to the County to incorporate the proposed changes into the project's CDP.

On February 9, 2023, the Monterey County Zoning Administrator approved the project with those proposed changes. That approval was then appealed to the Board of Supervisors who, after deliberation, upheld the Zoning Administrator's approval and denied the appeal on April 18, 2023, thus constituting the County's final decision on the entirety of the proposed residential project. The Coastal Commission's Central Coast District Office received the County's Final Local CDP Action Notice (see **Exhibit 2**) on May 11, 2023, and the Commission's ten-working-day appeal period for this action began on May 12, 2023 and concluded at 5 p.m. on May 25, 2023. One valid appeal (discussed below) was received during the appeal period.

C. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) 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) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission.

[1] FAR is a percentage that is calculated by dividing the floor area of a development by the parcel size.

This County CDP decision is appealable to the Commission because the project involves development that is a conditional use in the MDR zoning district. In this case, the conditional use is development within 750 feet of known archaeological resources.

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., such appeals are only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49-working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline.

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination.[2] At this stage, the Commission may only consider issues brought up by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such hearing is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

[2] The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no substantial issue…" (California Code of Regulations, Title 14, Section 13115(b)). Section 13115(c) of the Commission regulations provides, along with past Commission practice, 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 and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation 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, and may make a substantial issue determination for other reasons as well.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, if applicable, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

D. Summary of Appeal Contentions

The Appellant contends that the project raises an LCP consistency issue relating to the allowable FAR and that the variance granted by the County to exceed the maximum 45 percent FAR is not appropriate, and not supported by evidence or longstanding principles of good planning. Specifically, the Appellant contends that the County's approval of a residence with a 51 percent FAR on an undeveloped lot presents an unfair special privilege not granted to others and that no special circumstances exist in this case that merit a variance to this standard. In addition, they assert that FAR, as a proportional standard of the size of a home relative to the size of the lot, allows for appropriately sized development on all sized parcels, and that deviation from this standard presents a dangerous precedent. The Appellant also contends some procedural issues with the County's processing of the project as a CDP amendment to the originally-approved and appealed CDP decision. Please see **Exhibit 3** for the appeal contentions.

E. Substantial Issue Determination

1. Floor Area Ratio (FAR)

In addition to overarching policies intended to protect and enhance coastal resources, the LCP also includes specific objective development standards that implement those broad policies. These include requirements related to site density, building coverage, structure setbacks and heights, and FAR, all of which are standard planning tools that establish appropriate development parameters for a specific zoning district or area. IP Section 20.12.060.F provides a 45 percent FAR requirement for MDR-zoned parcels, thereby meaning that residences' maximum square footage must be no more than 45 percent of the total size of the lot on which it sits. The County approved a variance in this case to allow an increase in the allowable FAR to 51 percent for the proposed residence after making the three LCP-required variance findings pursuant to IP Section 20.78.040 (i.e., related to special circumstances, special privileges, and allowed use).

Specifically, the County found that a variance to allow a 51 percent FAR was appropriate because it would not enable a type of use incompatible with the zoning of the parcel (i.e., it is allowing for a residence similarly sized to adjacent residences in this residential neighborhood); the parcel is uniquely small (the smallest on Isabella Avenue) and so the application of a 45 percent FAR would deprive the subject property of privileges enjoyed by other property owners in the vicinity; and granting an FAR variance was not a unique privilege granted to this property because other properties in the area have also received FAR variances. In addition, the County found that the variance request was quite small, resulting in 219 square feet of additional square footage for the approved residence (i.e., a strict application of the 45 percent FAR requirement would result in a residence of 1,618 square feet, and the County's 51 percent approval resulted in a house of 1,837 square feet).

The Appellant contends that no legal or factual support exists for the variance to the FAR standard in this case and that the County's approval of the variance is improper for the following reasons. First, while the property is in fact the smallest parcel on Isabella Avenue, other similarly sized lots exist in the area, as well as five other residences on the same block that have a smaller floor area than the County-approved project, three of which have smaller floor areas than the 1,618 square feet allowed under the LCP-required 45 percent FAR maximum. Next, while the County has issued variances to the FAR standard for other projects in Carmel Point, those previous variances were for projects that *reduced* the FAR on existing developed properties, resulting in a more LCP consistent residence despite remaining above the 45 percent maximum required by the LCP. Furthermore, those projects were located on lots developed before the LCP was certified and as such were considered to be legal non-conforming development. The Appellant also asserts that the County-approved project is located on an undeveloped lot, so applying the FAR variance in this case is not comparable to other instances of FAR variances, and that that rationale (i.e., they have approved this same variance on multiple occasions) is misleading. The variance to the FAR standard in this case would be the first such one for an undeveloped parcel in the Carmel Point neighborhood. The appeal broadly observes that the FAR standard, being proportional, treats all lots fairly, regardless of size, and the fact that some nearby lots are larger and can thus have a larger house is not a reason to allow an FAR variance.

As described above, the County-approved project does exceed the required 45 percent FAR and the County made the three variance findings required to allow the exceedance of this standard. With respect to the validity of those findings, and the appropriateness of considering variances for FAR generally, the LCP does in fact list modifications to FAR as one of the development standards that may be considered for a variance (IP Section 20.78.020). While one of the three required variance findings involves an objective determination (i.e., related to allowed use in the zoning district), the LCP allows for more subjective determinations and decisionmaker discretion in making the other two findings (related to special circumstances and special privileges).

The County used its discretion in this case to determine that there was in fact a special circumstance (namely the small size of the lot compared to surrounding lots) and that

no special privilege was being afforded to the Applicant (because other FAR variances had been approved in the area, and the average floor area for residences in the immediate vicinity is roughly 2,800 square feet, a floor area that is approximately 1,000 square feet larger than the County-approved project). It could be argued that site development standards, such as FAR, setbacks, site coverage, etc. should almost never be altered or modified given their importance in establishing and maintaining the LCP's overall allowable development pattern for an area or zoning district. While the Appellant raises valid arguments related to the appropriateness of the County's findings, the LCP is rather broad in providing decisionmakers the discretion in making these findings, which the County, including through its Board of Supervisors, did in this case. Thus, there does not appear to be anything obviously legally inconsistent with the County's use of the variance process for this project (i.e., the issue appears to be one of disagreement between the Appellant and the County on the appropriateness of the FAR variance rather than one of legal permissibility). And, most importantly for Coastal Act/LCP purposes, the outcome of issuing the variance in this case would not result in any significant coastal resource impacts. The County approval results in a residence that is only 219 square feet larger than what the FAR standard dictates for this site. This a relatively small amount of square footage considering that the project site is located in a fully built-out, mostly grid-like residential neighborhood and is not visible from the shoreline or any public access vantage points (other than its own street frontage on Isabella Avenue). And although good planning dictates that variances only be utilized in rare cases when truly unique circumstances exist, and not when an Applicant desires a certain project design or configuration that cannot fit within the LCP's existing standards, such a variance is not precluded by the LCP and the additional square footage allowed in this case would not result in coastal resource impacts.

In short, the County's approval of a CDP for the proposed project does not raise a substantial issue of LCP conformance with respect to site development standards, variance provisions, or overall coastal resource protection.

2. CDP Approval Process

As described above, the project took a circuitous route to its final 2023 CDP approval by the Monterey County Board of Supervisors and subsequent appeal to the Commission. The CDP was originally approved on appeal in 2021 by the Monterey County Board of Supervisors and was subsequently appealed to the Coastal Commission. Before the appeal was heard by the Commission, the FLAN was withdrawn by County because the Applicant intended to modify the project to be more consistent with the LCP, including reducing FAR from 58 percent to 51 percent, eliminating certain project design elements, and reducing grading. These changes were then incorporated into the project, and after the Board of Supervisors' approval, the FLAN for the entire project was resubmitted to the Commission for its requisite appeal period. The Appellant appealed the project within this window.

The Appellant raises questions as to the appropriateness of this process, including whether the County's processing of the project changes should be considered an amendment to the base CDP or not. The LCP is silent on how to process project

changes at the local level once a CDP has been appealed to the Commission. However, it should be noted that the County's withdrawal of the FLAN and their subsequent approval of an amended project to incorporate needed changes to address identified LCP consistency issues has been a common practice for decades in Monterey County (as well as other jurisdictions in the coastal zone). This process allows for the local government to 'fix' CDP problems. And importantly, including for this case, public participation was provided, including opportunities for local appeal to the Board of Supervisors and ultimate appeal to the Commission. Thus, nothing in this process appears to raise any LCP consistency issues related to CDP processing. It should also be noted that although the County used the terminology 'amendment' to describe the changes made, the entirety of the project was being heard, evaluated, and approved. Indeed, the County's CDP says that "Once approved, the proposed Amendment (PLN180523-AMD1) will be the operating entitlement for the subject property."

In sum, for these reasons, the County's approval of a CDP amendment for the project does not raise a substantial issue of LCP conformance with the CDP approval process.

3. Conclusion

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity and/or Coastal Act public access conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of Coastal Act public access and/or LCP conformance. The Commission's regulations lay out the following five factors that it may consider when determining whether the issues raised in a given appeal are "substantial" (14 CCR section 13115(c)): the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well. In this case, these five factors, considered together, support a conclusion that the County's approval of a CDP for this project does not raise a substantial issue of LCP conformance.

As described above, the County has a reasonable and supportable record based on the facts and the law that the FAR variance can be approved, and the project can otherwise be found LCP consistent. The approved residence is an allowable use in the MDR zoning district, and it meets all applicable numerical site development standards with the exception of FAR. To allow for the project to exceed the allowable FAR, the County followed the LCP's variance procedures and made the required findings to allow for the exceedance. While, as described above, principles of good planning dictate that variances should only be granted in exceptional situations, the resulting project would not be outside the bounds of the neighborhood's development pattern or character. And importantly, the scope of the project is limited to a single residence inland from the

immediate shoreline in a location where it does not affect any significant coastal resources. The County-approved project would have an insignificant effect on the general public's enjoyment of the coastal zone in this part of the coast and appears to raise local issues focused on a single neighborhood (and really just this location within it) as opposed to those of regional or statewide significance. And although the LCP would benefit from clarification on the process for project changes once a CDP has been approved and appealed, the ultimate outcome does not appear to have suffered as a result, either from an LCP consistency or precedential standpoint. To the degree there is any precedential value to the FAR variance, while in this case it is not comparable in nature to the other FAR variances approved in the area (i.e., those that have been approved for redeveloped residences), there are few lots of similar small size to the subject property, and even fewer which have not yet been developed. Resultingly, even if the County's decision does have some precedential value with regard to LCP interpretation, the number of projects it would apply to would be insignificant. The approval of a relatively minor FAR variance in this case is not, and should not be construed to be, a reinterpretation of the LCP to allow for any property in this neighborhood that desires such a variance to attain one. Thus, the five factors, both individually and when considered together, stand for a no substantial issue conclusion.

For the reasons stated above, the Commission finds that Appeal Number A-3-MCO-23-0018 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.

3. APPENDICES

A. Substantive File Documents[3]

- Monterey County CDP PLN180523
- Monterey County CDP PLN180523-AMD1

B. Staff Contacts with Agencies and Groups

- Monterey County Department of Housing and Community Development – Planning Services

[3] These documents are available for review from the Commission's Central Coast District office.