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Appeal Filed: 6/1/2023
Action Deadline: Waived
Staff: Kiana Ford - SC
Staff Report: 7/21/2023
Hearing Date: 8/10/2023

STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal Number: A-3-STC-23-0019
Applicant: Daniel and Terry Reed
Appellant: Yossi Vinograd
Local Government: City of Santa Cruz
Local Decision: Coastal development permit application number CP23-0029, approved by the City of Santa Cruz Zoning Administrator on May 11, 2023.
Location: 534 West Cliff Drive (APN 004-281-05) in the City of Santa Cruz, Santa Cruz County.
Project Description: Construction of a new ground floor garage and second floor accessory dwelling unit (ADU) and associated development, including new concrete slabs and utilities, on a residentially-developed nearly 16,000-square-foot parcel.
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

The City of Santa Cruz approved the construction of a detached 789 square-foot two-car garage with a laundry facility and half-bath on the ground floor and a 693 square-foot one bedroom, one and a half bath ADU on the second floor, located on a 15,646-square-foot parcel with an existing residence in a substantially residentially-developed neighborhood.

The Appellant contends that the City's approval of the project is inconsistent with City of Santa Cruz Local Coastal Program (LCP policies) related to private views, primarily because the project would affect the private blue water ocean views from the Appellant's property that lies directly inland of the project site. The Appellant argues that the LCP protects private views, and thus this project runs afoul of this requirement, as well as a property restriction that was a part of the original subdivision in the 1920s that requires preservation of a private view corridor on the subject site. After reviewing the local record, Commission staff recommends that the Commission find that the City's CDP approval does not raise a substantial issue with respect to the project's conformance with the City LCP.

First, with respect to private views, the LCP is rather specific in its application, particularly and explicitly for ADUs, to have such development be sited and designed in such a manner so as to protect public views, including views from public roads, trails, and other scenic areas where the public is allowed. Such provisions are rooted in a long history of implementation of the Coastal Act to similarly only protect views of public importance. Private views, including this particular one from a homeowner's bedroom, may be important to their private interests, but do not address a core issue of public importance to be regulated/protected in a public forum. Thus, while clearly the Appellant's ocean view will be affected by the siting of this particular ADU, it will only adversely affect this private view. The project does not result in any adverse public view impacts, including any existing public ocean views, and thus can be found consistent with LCP public view requirements. As such, the Appellant's contention does not raise a substantial LCP conformance issue.

And second with respect to the underlying property restriction, which provides for a type of private view corridor across the subject property, while the Appellant is correct in that the Commission and City in reviewing development for LCP consistency would look to property restrictions and other encumbrances affecting where and how much development can and cannot occur on a particular property, in this case, the restriction is to protect a private view that is outside the LCP's regulatory scheme for the reasons cited above. It appears that the restriction was placed on the property by the original subdivider of the site in the 1920s so as to address private view issues, rather than required by the City at that time to protect any legitimate public interests. As such, given the particular restriction at play here, the City concluded that the LCP does not require the proposed project to be situated differently on the site. In short, while some property

restrictions addressing coastal resource issues may necessitate a different reviewing lens (e.g., enforcing deed restrictions that prohibit development within sensitive habitats, that protect public views, etc.), this particular restriction only addresses private view issues outside of the LCP context, and thus this contention too does not raise a substantial LCP conformance issue.

As a result, 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 Site Map
- Exhibit 2 – City Final Local CDP Action Notice
- Exhibit 3 – City Approved Project Plans
- Exhibit 4 – Appeal of City CDP Decision

CORRESPONDENCE

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 would stand and would thus be 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-STC-23-0019 **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-STC-23-0019 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 Description and Location

The City-approved project is located at 534 West Cliff Drive (APN 004-281-05) on the inland side of the road and on the west side of the City of Santa Cruz in Santa Cruz County. The project site is located on a 15,646 square-foot parcel that faces the Pacific Ocean, including the famous Cowells surf break and the Santa Cruz Wharf, and is surrounded by and located within a substantially residentially-developed neighborhood. South of the parcel are coastal recreation opportunities, such as Lighthouse Field State Beach and Steamer Lane. The parcel is single-family residentially zoned and contains a roughly 2,000 square foot residence.

The City-approved project includes the construction of a detached 789 square-foot two-car garage with a laundry facility and half-bath on the ground floor and a 693 square-foot one bedroom, one and a half bath ADU on the second floor, which would be located at the back of the existing parcel. The project also includes construction of new concrete slabs as well as associated utility infrastructure. Currently, the parcel houses an existing single-family residence and detached garage/workshop. The proposed project would provide for one covered parking space for the ADU, with the existing garage and workshop to remain on the opposite side of the parcel.

See **Exhibit 1** for a location map and see **Exhibit 3** for the City-approved project plans.

B. City of Santa Cruz CDP Approval

On May 11, 2023 the City of Santa Cruz Zoning Administrator approved a CDP for the proposed project. The Zoning Administrator's approval could not be appealed at the local level since ADU approvals do not require public hearings pursuant to both the LCP and State ADU law. The City's Final Local CDP Action Notice (see **Exhibit 2**) was received in the Coastal Commission's Central Coast District Office on May 22, 2023, and the Coastal Commission's ten-working-day appeal period for this action began on May 23, 2023 and concluded at 5 p.m. on June 6, 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. This City CDP decision is appealable to the Commission because the project site is located within 300 feet of the seaward face of the coastal bluff.

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. Here, the Applicant has waived the 49 working day requirement, and thus the Commission is under no deadline to take an action.

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.¹ 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.

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, 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 City's CDP approval raises LCP consistency questions relating to the protection of private views. Specifically, the Appellant contends that the approved project would violate applicable LCP policies because: 1) the placement of the ADU failed to consider the private viewshed of the property situated directly behind the project site; and 2) the project site has a property restriction that mandates a fifteen-foot

¹ 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.

setback from the north edge of the property line, and the ADU is located within this setback area. Please see **Exhibit 4** for the appeal contentions.

E. Substantial Issue Determination – Views

Applicable LCP provisions

The LCP's Land Use Plan (LUP) includes a number of policies that require new development to be sited and designed in such a way as to protect and maintain public views and viewsheds, including (emphasis added):

LUP Community Design Policy 2.2: *Preserve important public views and viewsheds by ensuring that the scale, bulk, and setback of new development does not impede or disrupt them.*

LUP Land Use Policy 1.6: *Minimize, when practical, obstruction of important views and viewsheds by new development. In the Coastal Zone, development shall be sited and designed to and along the ocean and in scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and to restore visual quality in visually degraded areas.*

Additionally, the IP further specifies policies related to ADUs, including:

IP Section 24.12.148.10(a): *ADUs are allowed in any zone that allows residential uses on lots of any size, in conjunction with a proposed or existing residential use, provided they are sited and designed to avoid adverse impacts to coastal resources, including by conforming with all applicable LCP policies and standards, including those that govern wetlands, streams, environmentally sensitive habitat areas, public views, and coastal bluffs.*

Appellant Contentions

The Appellant contends that the City-approved project would adversely affect the existing private blue water ocean views from the property at 415 Manor Avenue South (located immediately inland of the project site). The appeal specifically cites to Coastal Act Section 30251, claiming that the project does not protect views to and along the ocean and scenic coastal areas consistent with Coastal Act requirements.² In this case,

² The Appellant's interpretation of Coastal Act Section 30251 claims that the policy protects both public and private views, specifically citing to *Schneider v. California Coastal Com.* (2006) 140 Cal.App.4th 1339 (at 1345), as evidence that adding the word "public" to the sentence "Permitted development shall be sited and designed to protect views to and along the ocean..." would be a violation of the law. The Appellant additionally cites to *Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346 as evidence of the Coastal Commission previously enforcing a private recorded easement. However, it is long established that Section 30251 protects public views, including as evidenced by Section 30251 itself which states "[t]he scenic and visual qualities of coastal areas shall be considered and protected as a resource of **public importance**" (emphasis added). Section 30251 must be understood in its entirety, and it is logically inconsistent for it to state that visual qualities are a resource of public importance, but then to read private viewsheds into the section. In addition, the *Schneider* case (at 1345) held that Section 30251 historically protects "public views" and, lastly, there are countless applications of that section by the Commission that mandate it only protect public views. In addition, the main holding of the *Schneider* case concerned the Commission's ability to protect public views from boats on the ocean and did not reach any question regarding the applicability of Section 30251 to private views. As to the reference to the *Feduniak*

the Appellant argues that Section 30251 was intended to protect both public and private views and, therefore, the LCP itself should protect both as well. While Section 30251 is not valid grounds for an appeal to the Commission as it is not a component of the certified LCP nor a part of the public access policies of the Coastal Act, the Appellant's contention can be broadly construed to mean that the LCP should be understood to protect private views and that this project runs afoul of it.

The Appellant also specifically points to a property restriction recorded on the subject property as part of the original underlying subdivision from 1925 that required a 15-foot setback from the north boundary (i.e., the side yard since this is an angled lot where the residence faces to the east) of the proposed project site, and the City's approval allows the ADU/garage within this setback area.³

Analysis

With respect to the LCP protecting private views, a few things to note. First, the LCP is rather specific in its application, particularly and explicitly for ADUs, to have such development be sited and designed in such a manner so as to protect public views, including views from public roads, trails, and other scenic areas where the public is allowed (see, LUP Policy 2.2 and IP Section 24.12.148.10(a) above). Such provisions are rooted in a long history of implementation of the Coastal Act to similarly only protect views of public importance.⁴ Private views, including this particular one from a homeowner's bedroom, may be important to their private interests, but do not address a core issue of public importance to be regulated/protected in a public forum. Thus, while clearly the Appellant's ocean view will be affected by the siting of this particular ADU, it will only adversely affect this private view. The project does not result in any adverse public view impacts, including any existing public ocean views, and thus can be found consistent with LCP public view requirements. As such, the Appellant's contention does not raise a substantial LCP conformance issue.

And second with respect to the subject site's property restriction from the 1920s that provides for a private view corridor across the site, while the Appellant is correct in that the Commission and City in reviewing development for LCP consistency would look to property restrictions and other encumbrances affecting where and how much development can and cannot occur on a particular property, in this case, the restriction is to protect a private view that is outside the LCP's regulatory scheme for the reasons

case, in that instance the property restriction that was upheld by the court was not a private easement, rather it was a condition of a prior CDP approval by the Commission that protected a portion of the site as ESHA and required its restoration. Thus, that case too is not on point, and of little value to the appeal evaluation, other than to the extent it provides a contrast showing a property restriction that protects coastal resources of public – not private – importance, and the way in which enforcement of same is an important public interest and coastal resource function, as distinguished from the property restriction in this case that protects private views.

³ The City's approval allows the ADU to encroach within the 15-foot area identified, but meets the LCP's side yard setback requirements with a setback of 5 feet.

⁴ In reference to 30251 the *Schneider* court held “[h]istorically, the protection of **public** views ‘to and along the ocean and scenic coastal areas’ has been construed to mean land-based scenic views from public parks, trails, roads and vista points.” (Emphasis added) *Schneider v. California Coastal Com.* (2006) 140 Cal.App.4th 1339, 1345–1346

cited above. It appears that the restriction was placed on the property by the original subdivider of the site in the 1920s so as to address private view issues, rather than required by the City at that time to protect any legitimate public interests. As such, given the particular restriction at play here, the City concluded that the LCP does not require the proposed project to be situated differently on the site. In short, while some property restrictions addressing coastal resource issues may necessitate a different reviewing lens (e.g., enforcing deed restrictions that prohibit development within sensitive habitats, that protect public views, etc.), this particular restriction only addresses private view issues outside of the LCP context, and thus this contention too does not raise any substantial LCP conformance issue.

In summary, the City-approved project is for an appropriately sized ADU situated at the rear of a relatively large lot with existing residential development (see **Exhibit 3** for proposed project plans) and is not excessive in bulk or scale for the area, including as many surrounding residential homes are two stories. The project will not adversely affect any public views or otherwise be incompatible with the established residential nature of the neighborhood. The project is not situated between the first public road and the sea, and would not impact public views from the street or sidewalk to the coast and ocean. For the above reasons, the City's approval of a CDP for the project does not raise a substantial issue of LCP conformance with respect to viewshed protection.

Conclusion

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity or public access, 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, but is not limited to, 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 City's approval of a CDP for this project does not raise a substantial issue of LCP conformance. First, the City reasonably found that the project was sited and designed in conformance with the LCP and would not impact public views from the street or sidewalk, and the record shows that there is adequate factual and legal support for the City's decision, including as discussed above. In addition, the proposed project is a relatively small addition within a parcel that already houses residential uses, is surrounded by other single-family developments, is situated more than 100-feet away from the coastal bluff, and has insignificant impacts on public views. As a result, neither the project extent/scope nor the coastal resource significance suggests a substantial

issue. Lastly, the project does not raise issues of regional or statewide significance nor those of LCP precedence since it involves an appropriately-sized and LCP-consistent ADU on an existing developed lot.

For the reasons stated above, the Commission finds that Appeal Number A-3-STC-23-0019 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 Documents⁵

- City of Santa Cruz CDP CP23-0029

B. Staff Contacts with Agencies and Groups

- City of Santa Cruz Community Development Department

⁵ These documents are available for review from the Commission's Central Coast District office.