



Supplemental Council Agenda Report

To: Mayor Grisanti and Honorable Members of the City Council

Prepared by: Adrian Fernandez, Assistant Planning Director

Approved by: Richard Mollica, Planning Director

Approved by: Steve McClary, Interim City Manager

Date prepared: March 25, 2022

Meeting date: March 28, 2022

Subject: Coastal Development Permit No. 17-089, General Plan Map Amendment No. 21-002, Local Coastal Program Amendment No. 17-004, Zoning Map Amendment No. 17-005, Lot Line Adjustment No. 17-002, Conditional Use Permit No. 17-011, Variance Nos. 18-038, 20-034 and 21-010, Site Plan Review No. 19-008, Minor Modification No. 19-007, Demolition Permit No. 20-026, and Code Violation No. 17-011 – An application for a lot line adjustment to expand the lot into the adjacent mobile home park, and replacement of the existing restaurant and permit previously unpermitted expansion of the restaurant and ground-floor decking attached to the restaurant

RECOMMENDED ACTION: Adopt Resolution No. 22-10 (Exhibit 1) denying Coastal Development Permit No. 17-089, Lot Line Adjustment No. 17-002, Demolition Permit No. 20-026, General Plan Map Amendment No. 21-002, Zone Map Amendment No. 17-011 and Local Coastal Program Amendment No. 17-004 to increase the lot area of the Malibu Country Inn lot with land from the Point Dume Club mobile home park, change the General Plan land use designation, Zoning Map and Local Coastal Program maps from Commercial Visitor Serving-1 (CV-1) to Commercial Visitor Serving-2 (CV-2) and the increased Malibu Country Inn lot area from Mobilehome Residential (MH) to CV-2, replace the existing restaurant, after-the-fact approval of a deck attached to the restaurant and replace a 200 square foot unpermitted storage shed with a 100 square foot storage shed; including Conditional Use Permit No. 17-011 for the hotel and restaurant uses and sale of alcohol for room service and restaurant; Variance (VAR) No. 18-038 for construction of Fire Department stairs on slope steeper than 2.5 to 1; VAR No. 20-034 for legal, non-conforming parking spaces in terms of size, number and aisle width to remain; VAR No.

21-010 from the City's geotechnical standards for factor of safety; Site Plan Review No. 19-008 for the reconstruction of the restaurant in excess of 18 feet; and Minor Modification No. 19-007 for the replacement restaurant to provide a 50 percent reduction of the required front yard setback, located at 6506 Westward Beach Road and 29500 Heathercliff Road (Malibu Country Inn, Corp and Corp, and Point Dume, LTD).

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2021-2022. This project is part of normal staff operations.

DISCUSSION: On March 18, 2022, the original agenda report was distributed without Resolution No. 22-10, which is attached to this supplemental report.

EXHIBIT:

1. City Council Resolution No. 22-10

RESOLUTION NO. 22-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING COASTAL DEVELOPMENT PERMIT NO. 17-089, LOT LINE ADJUSTMENT NO. 17-002, AND DEMOLITION PERMIT NO. 20-026, GENERAL PLAN MAP AMENDMENT NO. 21-002, ZONE MAP AMENDMENT NO. 17-011 AND LOCAL COASTAL PROGRAM AMENDMENT NO. 17-004 TO INCREASE THE LOT AREA OF THE MALIBU COUNTRY INN LOT WITH LAND FROM THE POINT DUME CLUB MOBILE HOME PARK, CHANGE THE GENERAL PLAN LAND USE DESIGNATION, ZONING MAP AND LOCAL COASTAL PROGRAM MAPS FROM COMMERCIAL VISITOR SERVING-1 (CV-1) TO COMMERCIAL VISITOR SERVING-2 (CV-2) AND THE INCREASED MALIBU COUNTRY INN LOT AREA FROM MOBILEHOME RESIDENTIAL (MH) TO CV-2, REPLACE THE EXISTING RESTAURANT, APPROVE AFTER-THE-FACT DECKING ATTACHED TO THE RESTAURANT AND REPLACE A 200 SQUARE FOOT UNPERMITTED STORAGE SHED WITH A 100 SQUARE FOOT STORAGE SHED; INCLUDING CONDITIONAL USE PERMIT NO. 17-011 FOR THE HOTEL AND RESTAURANT USES AND SALE OF ALCOHOL FOR ROOM SERVICE AND RESTAURANT; VARIANCE NO. 18-038 FOR CONSTRUCTION ON A SLOPE STEEPER THAN 2.5 TO 1; VARIANCE NO. 20-034 FOR LEGAL, NON-CONFORMING PARKING SPACES IN TERMS OF SIZE, NUMBER AND AISLE WIDTH TO REMAIN; VARIANCE NO. 21-010 FROM THE CITY'S GEOTECHNICAL STANDARDS FOR FACTOR OF SAFETY; SITE PLAN REVIEW NO. 19-008 FOR THE RECONSTRUCTION OF THE RESTAURANT IN EXCESS OF 18 FEET; AND MINOR MODIFICATION NO. 19-007 FOR THE REPLACEMENT RESTAURANT TO PROVIDE A 50 PERCENT REDUCTION OF THE REQUIRED FRONT YARD SETBACK, LOCATED AT 6506 WESTWARD BEACH ROAD AND 29500 HEATHERCLIFF ROAD (MALIBU COUNTRY INN, CORP, AND POINT DUME, LTD) AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On September 14, 2017, an application for Coastal Development Permit (CDP) No. 17-089 submitted to the Planning Department by the applicant, The Land & Water Co., LLC and behalf of the property owners, Malibu Country Inn, Corp and Point Dume, LTD. General Plan Map Amendment (GPMA) No. 21-002, Local Coastal Program Amendment (LCPA) No. 17-004, Zoning Map Amendment (ZMA) No. 17-005, Lot Line Adjustment (LLA) No. 17-002, Conditional Use Permit (CUP) No. 17-011, Variance (VAR) Nos. 18-038, 20-034 and 21-010, Site Plan Review (SPR) No. 19-008, Minor Modification (MM) No. 19-007, Demolition Permit (DP) No. 20-026 and Code Violation (CV) No. 17-011 were subsequently assigned to the project. The application was routed to the City Biologist, City Environmental Health Administrator, City geotechnical staff, City Public Works Department, Los Angeles County Fire Department (LACFD) and Los Angeles County Waterworks District No. 29 (WD29) for review.

B. On November 5, 2020, staff conducted a site visit and took photographs of the project site.

- C. On April 16, 2021, staff deemed the project complete for processing.
- D. On May 13, 2021, a Notice of Coastal Development Permit Application was posted on the subject property.
- E. On May 27, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.
- F. On June 21, 2021, the Planning Commission continued the item to the August 2, 2021 Regular Planning Commission meeting.
- G. On July 8, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.
- H. On August 2, 2021, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record. The Planning Commission adopted Resolution No. 21-54 recommending to the City Council the approval of the application.
- I. On December 30, 2021, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.
- J. On January 24, 2022, the City Council held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record and directed staff to return with a resolution denying the application in accordance with the Council's findings.
- K. On March 28, 2022, after considering the evidence in the record, and based thereon, the City Council takes the following action denying the proposed project.

SECTION 2. Environmental Review

The City Council has analyzed the proposed project pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA). The City Council finds that pursuant to CEQA Guidelines Section 15270, CEQA does not apply to projects that a public agency rejects or disapproves.

SECTION 3. Coastal Development Permit Findings.

Based on the evidence contained within the record, including the agenda report for the project and the hearing on January 24, 2022, and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP), including Sections 13.7(B) and 13.9, and Malibu Municipal Code (MMC), the City Council hereby makes the findings of fact below denying the project.

This includes the denial of CDP No. 17-089, LLA No. 17-002, and DP No. 20-026, GPMA No. 21-002, ZMA No. 17-011 and LCPA No. 17-004 to increase the lot area of the Malibu Country

Inn lot with land from the Point Dume Club mobile home park, replace the existing restaurant, approve after-the-fact decking attached to the restaurant and replace a 200 square foot unpermitted storage shed with a 100 square foot storage shed; including the denial of CUP No. 17-011 for the hotel and restaurant uses and sale of alcohol for room service and restaurant; the denial of VAR No. 18-038 for construction on a slope steeper than 2.5 to 1; the denial of VAR No. 20-034 for legal, non-conforming parking spaces in terms of size, number and aisle width to remain; the denial of VAR No. 21-010 from the City's geotechnical standards for factor of safety; the denial of SPR No. 19-008 for the reconstruction of the restaurant in excess of 18 feet; and the denial of MM No. 19-007 for the replacement restaurant to provide a 50 percent reduction of the required front yard setback, located at 6506 Westward Beach Road and 29500 Heathercliff Road as further detailed below.

The project, as proposed, is not consistent with the applicable LCP and MMC codes, standards, goals and policies. In addition, the findings required for these entitlements cannot be made based on the information presented. Reasons for denial are provided in more detail below:

A. Coastal Development Permit (LIP Chapter 13)

Finding 1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The project does not conform to the LCP. Without approval of discretionary requests the City Council declines to grant for the reasons explained during the public hearing, the project does not conform to the LCP. In addition, the project includes unpermitted improvements to the existing restaurant that do not conform with the LCP. The evidence does not warrant rezoning the property to CV-2, because, among other things, the project is in conflict with LCP Land Use Plan Policy 5.9 which requires new commercial development to be designed to minimize conflicts with adjacent residential uses, including preserving the character and integrity of the adjacent residential areas. Approving the project would increase the site's non-conformity with the City's LCP by expanding the size of the restaurant building and deck, which requires significant ground-disturbing activities and work that are not permitted without a variance or similar exception from the LCP, and potentially cause nuisance impacts due to the operation of a rooftop deck. Enforcement of conditions that prohibit its lighting or use at night in an area adjacent to residential homes, public use of the swimming pool and service area on the ground-level deck, would also be difficult to enforce as code enforcement staff is generally not available to respond to complaints after hours or on weekends. Public testimony also provided evidence that special events at the existing restaurant have used unpermitted amplified music which has caused a nuisance for the surrounding residential neighborhood. The addition to the restaurant and deck extension expand on steep slopes and adds service area to a second floor that has a greater potential for noise impacts on surrounding residential neighborhood.

B. Variance for Reduced Parking Spaces and to Preserve Non-Conforming Parking Spaces (LIP Section 13.26.5)

Finding 1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, topography, location or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification.

The applicant has not demonstrated that unless it is allowed a reduced number of parking spaces it will be denied the privileges enjoyed by other properties in the vicinity, under the identical zoning classification. Other properties referenced either were not located in the vicinity of the project, such as the Malibu Beach Inn, or did not enjoy the privileges requested by the applicant. Among other things, since the restaurant expansion does not include an expansion of service area, the variance is not required to prevent the applicant from being deprived of the ability to operate with the amount of customer capacity requested.

Finding 3. The granting of the variance will not constitute a special privilege to the applicant or property owner.

The applicant has not demonstrated that granting of the variance will not constitute a special privilege to the property owner in that other surrounding properties have not benefited from maintaining non-conforming parking after redeveloping a site. It would also be a special privilege because the applicant would be allowed to operate with fewer parking spaces than required while others must comply with the parking requirements in the code.

Finding 4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives and policies of the LCP.

The granting of the proposed parking variance will be contrary to and in conflict with the general purposes and intent of the LCP goals, objectives and policies. Providing sufficient parking is a priority of the City's LCP, and failing to meet that requirement can lead to additional negative impacts including the use of visitor-serving public or street parking. Pursuant to LUP Policy 5.4, off-street parking shall be provided for all new development in accordance with the parking provisions to assure there is adequate public access to coastal resources. A modification in the required parking standards through the variance process shall not be approved unless the City makes findings that the provisions of fewer parking spaces will not result in adverse impacts to public access. The applicant did not demonstrate that the requested variance would not adversely impact public access. As previously stated in Section A, Finding 1, the project is also not consistent with LUP Policy 5.9.

C. Variance from the Required Geologic Factor of Safety (LIP Section 13.26.5)

Finding 1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, topography, location or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification.

The applicant is currently operates both a motel and restaurant on the site. While the site does have steep slopes, the applicant has failed to establish that denying the ability to expand the restaurant would deny the applicant privileges enjoyed by other properties in the vicinity and under the identical zoning classification. Among other things, since the restaurant expansion does not include an expansion of service area, the variance is not required to prevent the applicant from being deprived of the ability to operate with the amount of customer capacity requested. The record also does not demonstrate that a rooftop deck is a privilege enjoyed by other properties in the vicinity and under the identical zoning classification.

Finding 3. The granting of the variance will not constitute a special privilege to the applicant or property owner.

The expansion of the restaurant and attached deck are subject to the City's required factor of safety. Since the restaurant expansion does not include an expansion of service area, the variance is not required to prevent the applicant from being deprived of the ability to operate with the amount of customer capacity requested. The granting of the variance would also authorize a rooftop deck and a ground-level deck extension which would constitute as special privileges to the property owner

Finding 4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives and policies of the LCP.

Granting the proposed factor of safety variance is contrary to or in conflict with LCP goals, objectives and policies. The expansion of the restaurant and deck is not necessary for the enjoyment of the property or to provide the same service area requested. Meanwhile, the expansion to the restaurant and deck increase development on a slope that does not meet the required factor of safety thus, is conflict with the LCP, and development on such slopes can have negative impacts on the environment. Allowing the unnecessary expansion also could lead to negative impacts from noise and lighting from the rooftop deck located adjacent to residential homes.

D. Local Coastal Program Amendment

Finding 1. The proposed LCPA meets the requirements of, and is in conformity with, the LCP and policies of California Coastal Act Chapter 3.

The City Council has declined to rezone the property to CV-2. Among other things, the project is in conflict with LCP Land Use Plan Policy 5.9 which requires new commercial development to be designed to minimize conflicts with adjacent residential uses, including preserving the character and integrity of the adjacent residential areas. Approving the project would increase the site's non-conformity with the City's LCP by expanding the size of the restaurant building and deck, which requires ground-disturbing activities and work that are not permitted without a variance or similar exception from the LCP. As a result, the proposed LCPA does not conform with the LCP and policies of California Coastal Act Chapter 3.

SECTION 4. Other Discretionary Requests Findings.

The findings for the other discretionary requests (i.e., GPMA, ZMA, LLA, CUP, SPR, MM and DP) cannot be made because they are connected and reliant upon the approval of the project as a whole.

SECTION 5. City Council Action.

Based on the foregoing findings and evidence contained within the record, the City Council denies CDP No. 17-089, GPMA No. 21-002, ZMA No. 17-005, LCPA No. 21-002, LLA No. 17-002, CUP No. 17-011, VAR Nos. 18-038, 20-034 and 21-010, SPR No. 19-008, MM No. 19-007 and DP No. 20-026.

SECTION 6. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 28th day of March 2022.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

JOHN COTTI, Interim City Attorney

COASTAL COMMISSION APPEAL - An aggrieved person may appeal the Planning Commission's approval to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or by calling (805) 585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the MMC and Code of Civil Procedure. Any person wishing to challenge the above action in Superior Court may be limited to raising only those issues they or someone else raised at the public hearing, or in written correspondence delivered to the City of Malibu at or prior to the public hearing.