Council Agenda Report

City Council Meeting
06-13-22
Item
3.A.1.

To: Mayor Grisanti and Honorable Members of the City Council

Prepared by: Jessica Thompson, Senior Planner

Approved by: Richard Mollica, Planning Director

Approved by: Steve McClary, Interim City Manager

Date prepared: May 31, 2022 Meeting date: June 13, 2022

Subject: Coastal Development Permit No. 14-073, Variance Nos. 18-002, 18-003, 18-004, 18-008, 18-009, and Minor Modification No. 18-001 - An application for a new single-family residence and associated development

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RECOMMENDED ACTION: Adopt Resolution No. 22-16, denying Appeal No. 21-017 upholding the Planning Commission's denial of Coastal Development Permit No. 14-073 to construct a new 2,825-square foot, two-story, single-family residence, including a 483-square foot attached two-car garage, rooftop deck, swimming pool, spa and associated equipment, barbeque, outdoor fireplace, retaining walls, hardscaping, grading, and installation of a new alternative onsite wastewater treatment system, and denying Variance No. 18-002 for construction in excess of 18 feet in height, up to 43.25 feet for the single-family residence, and denying Variance No. 18-004 to allow the portions of the building in excess of 18 feet in height to exceed two-thirds the area below 18 feet in height located in the Rural Residential Two-Acre zoning district at 33386 Pacific Coast Highway (PCH) (180 PCH, LLC).

DISCUSSION: On May 9, 2022, the City Council held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record. The City Council voted to bring back a revised resolution to deny the proposed project as a consent item that reflects the Council's discussion and determinations on this item. The revised resolution is attached for the Council's consideration.

EXHIBIT: City Council Resolution No. 22-16

RESOLUTION NO. 22-16

A RESOLUTION OF THE CITY OF MALIBU CITY COUNCIL DENYING APPEAL NO. 21-017 AND DENYING COASTAL DEVELOPMENT PERMIT NO. 14-073 TO CONSTRUCT A NEW 2,825-SQUARE FOOT, TWO-STORY, SINGLE-FAMILY RESIDENCE, INCLUDING A 483-SQUARE FOOT ATTACHED TWO-CAR GARAGE, ROOFTOP DECK, SWIMMING POOL, SPA AND ASSOCIATED EQUIPMENT, BARBEQUE, OUTDOOR FIREPLACE, RETAINING WALLS, HARDSCAPING, GRADING, AND INSTALLATION OF A NEW ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM, AND DENYING VARIANCE NO. 18-002 FOR CONSTRUCTION IN EXCESS OF 18 FEET IN HEIGHT, UP TO 43.25 FEET FOR THE SINGLE-FAMILY RESIDENCE, AND DENYING VARIANCE NO. 18-004 TO ALLOW THE PORTIONS OF THE BUILDING IN EXCESS OF 18 FEET IN HEIGHT TO EXCEED TWO-THIRDS THE AREA BELOW 18 FEET IN HEIGHT LOCATED IN THE RURAL RESIDENTIAL TWO-ACRE ZONING DISTRICT AT 33386 PACIFIC COAST HIGHWAY (180 PCH, LLC) AND FINDING THE ACTION EXEMPT FROM CEQA

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

SECTION 1. Recitals.

A. On November 25, 2014, an application for Coastal Development Permit (CDP) No. 14-073 to construct a new 2,376 square foot, two-story, single-family residence, with a 449 square foot attached two-car garage, rooftop deck, swimming pool, spa and associated equipment, barbeque, outdoor fireplace, retaining walls, landscaping, hardscaping, grading, and installation of a new onsite wastewater treatment system and to merge a portion of APN No. 4473-019-006 with the subject lot and another portion to the adjacent lot (33398 Pacific Coast Highway, CDP No. 14-072). The application was submitted to the Planning Department by the property owner, 180 PCH, LLC, and was routed to the City geotechnical staff, City Environmental Health Administrator, City Coastal Engineer, City Biologist, the City Public Works Department, Los Angeles County Waterworks District 29 (WD29), and the Los Angeles County Fire Department (LACFD) for review.

B. On April 17, 2015, a Notice of Coastal Development Permit Application was posted on the subject property.

C. On July 15, 2015, the Applicant submitted revised project plans.

D. On June 19, 2017, the Applicant submitted approved LACFD access plans.

E. During September of 2017, the Applicant installed story poles on the subject property.

F. On September 15, 2017, Planning Department staff conducted a site visit to document site conditions, the property and surrounding area.

G. On March 8, 2018, 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 the April 2, 2018, the Planning Commission meeting was canceled, and the item was continued to the April 16, 2018 Regular Planning Commission meeting.

I. On April 16, 2018, the Planning Commission opened the public hearing, and at the request of the Applicant, the item was continued to allow the Applicant additional time to address the Commission's concerns.

J. On January 7, 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.

K. On February 1, 2021, the Planning Commission continued the item to the February 16, 2021, Regular Planning Commission meeting.

L. On February 16, 2021, the Planning Commission, at the Applicant's request, continued the item to a date uncertain to allow the Applicant to pursue redesign options.

M. On August 12, 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.

N. On the September 8, 2021, the Planning Commission continued the item to October 4, 20221 Regular Planning Commission meeting.

O. On October 4, 2021, the Planning Commission adopted Planning Commission Resolution No. 21-06, denying CDP No. 14-073, Variance (VAR) No. 18-002 and VAR No. 18-004.

P. On October 14, 2021, 180 PCH LLC, filed a timely appeal of Planning Commission Resolution No. 21-06.

Q. On April 14, 2022, 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 radius of 500 feet from the subject property and all interested parties.

R. On May 9, 2022, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record.

SECTION 2. Appeal of Action.

The appeal filed by 180 PCH LLC contends that the findings for the project can be made and the project can be approved, further denial of the project will result in due process and equal protections violations and the City's further denial of the project will result in a taking. In the associated Council Agenda Report, Planning Department staff analyzed and addressed Appellant's contentions.

SECTION 3. Findings for Denying the Appeal.

Based on the evidence contained within the record, including the agenda report for the project and the hearing on May 9, 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 determines that the Applicant / Appellant has failed to establish, let alone by a preponderance of the evidence, the findings required for the Project and makes the findings of fact below denying the project based on the evidence in the record as described herein.

A. The Council finds that the size and massing of the project, the height of the project, and the visual impacts of the project, among other concerns, prevent the Council from making the required findings and provide evidence supporting the Council's decision to deny the project. The Council finds that alternative project designs that address these concerns would also better meet the goals and policies of the City's Local Coastal Program and General Plan, and that the Applicant/Appellant has failed to establish that these concerns cannot be addressed.

The Planning Commission granted the Applicant/Appellant multiple continuances to pursue redesign options to reduce the height, size, visual impacts and massing of the structure so that the proposed development would have less impacts, particularly on scenic views. The Applicant/Appellant has been apprised of these concerns and provided the opportunity to revise the proposed project, but has only provided minor alterations to the plans, and has not presented alternatives that would reduce the overall height, size, visual impacts and massing of the project or proven such alternatives are not feasible.

B. The Applicant/Appellant has failed to establish that denying the project would result in a due process or equal protection violation. The subject item has had a fair and impartial public hearing before the Planning Commission twice, and six continuances providing the Applicant due process. Additionally, the City has granted the Applicant the opportunity, on multiple occasions, to redesign the project in order to bring the structure into conformance with the MMC and LCP and/or establish the variance findings required. If the Applicant/Appellant redesigned the residence and/or reduced the size of the structure, only variances that result in less deviation from the City's height limitations and massing would be required. In particular, because there is a potential alternative design that could result in a lower structure height, reduced massing, and reduced bulk, and also because the Applicant/Appellant has failed to establish such alternatives are infeasible, the City Council does not make the findings required for variances for construction in excess of 24 feet in height (LIP Section 13.26) or to allow for a second floor in excess of two-thirds of the first floor to the extent requested (LIP Section 13.26).

C. The Applicant/Appellant has failed to establish by a preponderance of the evidence that the denial of the project would render the project economically infeasible and/or would result in a taking of the property. The Appellant has failed to establish that \ the height, massing, bulk, TDSF and negative visual impacts are required to the extent requested in order for

the project to be economically viable.

The Applicant/Appellant did not pursue a design that resulted in a smaller project size or a design that is more in line with the City's minimum development standards. Nor did the Applicant/Appellant seek alternative variances (such as from the enclosed parking requirements), or propose a specific plan or alternative development including, but not limited to, a single project across the three lots or a project on each individual lot. The Applicant/Appellant has essentially proposed only one form for the Project and has declined to make any substantial changes to the Project to address its negative impacts or bring it closer to compliance with the City's LCP. The Council does not conclude that variances could not be obtained for development on the property or that the site is not developable, only that it cannot make the findings required for the Project as proposed.

The Project proposes essentially the maximum amount of development possible on the site, despite the impacts that would result from such development. It would be unreasonable for Applicant/ Appellant to assume such a level of development would be possible when the lots were purchased given the limitations of the MMC and LCP, the highly visible nature of the lots, and the impacts such a level of development would have. This level of development would also not be possible if the three parcels were not merged into two.

The City's LCP and LUP are carefully designed to protect coastal resources, including scenic and visual resources. These resources in particular are highly protected and valued by these documents. Coastal bluffs are sensitive coastal resources and, as a result, development on such locations is limited. Development in such locations is also particularly prominent and visible, especially when such development expands the limits of development—as is the case for the proposed Project. The design chosen for the Project directly conflicts with these important public purposes for the reasons discussed above and below.

SECTION 4. 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 5. Required Permit Findings.

Based on the evidence contained within the record, including the Agenda Report, and pursuant to Local Coastal Program Local Implementation Plan (LIP) Sections 13.7(B) and 13.9, the City Council makes the findings of fact below, and denies CDP No. 14-073 to construct a new 2,342-square foot, two-story, single-family residence, with a 483-square foot attached two-car garage, rooftop deck, swimming pool, spa and associated equipment, barbeque, outdoor fireplace, retaining walls, landscaping, hardscaping, grading, and installation of a new onsite wastewater treatment system, and denying VAR No. 18-002 for construction in excess of 18 feet in height, up to 43.25 feet for the single-family residence, and denying VAR No. 18-004 to allow the portions of the building in excess of 18 feet in height to exceed two-thirds the area below 18 feet in height.

The project, as proposed, is not consistent with the applicable LCP and Malibu Municipal Code (MMC), codes, standards, goals, and policies. The proposed structure maximizes the TDSF allowable for the property, includes additional massing and development beyond the TDSF, includes unnecessary height beyond that required for fire department access, and is designed in a

manner that negatively impacts visual resources in a highly visible location from neighboring properties. An alternative design that meaningfully reduces the height, size of the structure, bulk or visual impacts has not been submitted. A reduction in the height and size of the proposed structure would lessen visual impacts as well as bring the structure closer to conformance with the MMC and LCP. The Applicant/Appellant also did not propose alternatives such as constructing one residence across the three lots (only one garage would be required in such a proposal) or proposing three residences (which would reduce the bulk of the project due to setback requirements).

A. General Coastal Development Permit (LIP Chapter 13)

1. The proposed project is located in the RR-2 residential zoning district, an area designated for residential uses. The proposed project has been reviewed for conformance with the LCP by the Planning Department, City Biologist, City Environmental Health Administrator, City Public Works Department, City Coastal Engineer, City geotechnical staff, WD29, and LACFD. The City Council finds that the variance requests are not supported by the evidence and as a result does not make the findings required. Due to the height and two-thirds rule departures from the LIP requirements, and failure to obtain variances from these requirements, the project is not consistent with the LCP.

2. Based on review of the plans, evidence shows the Appellant could redesign and reduce the size, bulk, visual impacts, and height of the proposed structure. As a result, the general CDP findings cannot be made and the project would not be the least environmentally damaging alternative. An alternative design could lower the overall height of the proposed structure, reduce the scope, number and/or type of variances required, and reduce impacts on the environment and visual impacts which are an environmental impact. It is anticipated that an alternative project would offer environmental advantages and could provide additional benefits/reduce the negative environmental impacts of the project.

B. Variance Findings for construction in excess of 24 feet in height (LIP Section 13.26)

1. The Applicant/Appellant has proposed a structure that, at its highest point, is 43.25 feet above finished grade. The Applicant/Appellant has not provided substantial evidence demonstrating that the variance requested is required to prevent the owner from being deprived of privileges enjoyed by other property in the vicinity and under the identical zoning classification. In addition, the evidence shows the extent of height requested, a height of 43.25 feet, is not needed to develop the site similarly to other properties in the vicinity under the same zoning classification.

2. An alternative design could lower the building height, which would reduce view impacts to neighboring properties. The evidence shows the excessive height proposed, in this highly visible area, will have negative impacts on visual resources and thus be detrimental to the public's interest and/or detrimental or injurious to the property or improvements in the same vicinity and zone as the subject property.

3. Other properties in the area, under the same zoning designation, is limited to 24 feet in height, and allowing this threshold to be exceeded so that maximum TDSF and development can be achieved on the lot, and an unnecessarily tall garage, would constitute a special privilege. Such a variance is not necessary, and the Applicant/Appellant has not provided substantial evidence showing granting this variance would not constitute a special privilege. In addition, the evidence shows granting a variance to a height that obstructs blue water views, and which is beyond that is required for the Applicant/Appellant to enjoy the privileges enjoyed by other homes in the vicinity

with the identical zoning classification, would constitute a special privilege.

4. The granting of the variance will be contrary to, and in conflict with, the general provisions and intent, goals, objectives and policies of the LCP and the General Plan. Specifically, General Plan Land Use Policy 2.3.2 which addresses the City's height limits for development with the goal of preserving rural development through the limitation of height.

5. The project requires a variance because the subject site is not physically suitable to develop a residence that has a flat roof and is no higher than 24 feet above-grade, due to the required fire department access. While any development would require a variance for height, potential alternative designs could result in a building height lower than the proposed building height; therefore, this finding cannot be made.

6. The Applicant/Appellant has proposed a structure that, at its highest point, is 43.25 feet above finished grade. Because there appears to be alternative designs that could lower the height of the proposed structure and bring it more in compliance with the code, the finding that the variance complies with all requirements of state and local law cannot be made.

C. Variance to Allow for a Second Floor in Excess of Two-Thirds of the First Floor (LIP Section 13.26)

1. The subject site is dominated by a steep slope that descends to the beach below. The top of the structure is at elevation 72.50 feet above sea level, and portions of the first floor exceed 18 feet above finished or natural grade. The project, as designed, includes 2,002 square feet above the first floor so that the Applicant/Appellant can maximize TDSF and development on the property. The Applicant/Appellant has not shown that this is necessary to prevent the Applicant/Appellant from being denied privileges enjoyed by other properties in the vicinity with the same zoning classification.

2. The purpose of the two-thirds regulation is for both reduced massing and orienting development so as to minimize view blockage from adjacent properties. As proposed, well more than two-thirds of the structure will be above 18 feet. The evidence shows that allowing the size and bulk proposed to be located above the first floor would cause negative visual impacts in this highly visible location and thus be detrimental/injurious to the public interest and property/improvements in the vicinity and zone where the property is located. These negative impacts could be eliminated or reduced by smaller or less bulky project.

3. The granting of the variance would constitute a special privilege to the Applicant/Appellant as it would allow the Applicant/Appellant to obstruct blue water views and create negative visual impacts by constructing so much of the project above the first floor. These negative impacts could be reduced or eliminated through a smaller or less bulky project, but may require the Applicant/Appellant to have a project that does not maximize TDSF and development on the property. Prioritizing the Applicant/Appellant's ability to maximize TDSF and development over these negative from development above the first floor would be a special privilege. In addition, the Applicant/Appellant has not provided substantial evidence demonstrating it would not be such a special privilege.

4. The granting of the variance will be contrary to the goals, objectives and policies of the LCP and General Plan, specifically, General Plan Land Use Objective 1.4 which provides for development that is consistent with the preservation of the natural topography and viewshed protection. The general purpose and intent of the two-thirds size limit of the second floor is to

reduce aesthetic impacts of a box-like structure and to minimize view blockage from adjacent properties. As discussed earlier, there appears to be a design alternative would lessen view impacts to neighboring properties.

5. The project requires a variance because the subject site is not physically suitable for the structure that is proposed. The structure could be modified to lower the proposed structure, or reduce its size/bulk, and thus increase the structure's compliance with the two-thirds requirement. Such changes would reduce the negative visual impacts of the project.

6. Because there appear to be alternative designs that potentially could lower the height of the proposed structure and bring it more in compliance with the code, the City Council is unable to make the finding that the variance complies with all requirements of state and local law.

D. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)

1. The City Council cannot make all of the required findings for LIP Chapter 6 because, as previously stated in Section A, the proposed project, as designed and conditioned, is not the least environmentally damaging alternative because an alternative design which would lower the height and reduce the size of the proposed residence appears to be possible.

E. Hazards (LIP Chapter 9)

1. The City Council cannot make all of the required findings for LIP Chapter 9 because, as previously stated in Section A, the proposed project, as designed and conditioned, is not the least environmentally damaging alternative because an alternative design which would lower the height and reduce the size of the proposed residence appears to be possible.

F. Shoreline and Bluff Development (LIP Chapter 10)

1. The City Council cannot make all of the required findings for LIP Chapter 10 because, as previously stated in Section A, the proposed project, as designed and conditioned, is not the least environmentally damaging alternative because an alternative design which would lower the height of the proposed residence appears to be possible.

SECTION 6. City Council Action.

Based on the foregoing findings and evidence contained within the record, the City Council hereby denies CDP No. 14-073, VAR No. 18-002 and VAR. No. 18-004, subject to the conditions set forth herein.

SECTION 7. 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 13th day of June 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

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