

RESOLUTION NO. 24-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU, GRANTING APPEAL NO. 23-004, FINDING THE DENIAL EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, RESCINDING THE ADOPTION OF MITIGATED NEGATIVE DECLARATION NO. 20-003 AND INITIAL STUDY NO. 20-003, AND DENYING COASTAL DEVELOPMENT PERMIT NO. 09-067 FOR THE CONSTRUCTION OF A NEW 7,693 SQUARE FOOT, 20-ROOM MOTEL ABOVE A NEW SUBTERRANEAN PARKING GARAGE, SURFACE PARKING LOT, ROOFTOP DECK WITH SWIMMING POOL, SPA AND BAR AREA, GRADING, RETAINING WALLS, LANDSCAPING, A NEW ONSITE WASTEWATER TREATMENT SYSTEM, INCLUDING VARIANCE NO. 18-030 FOR CONSTRUCTION ON SLOPES STEEPER THAN 3 TO 1, VARIANCE NO. 18-031 FOR A RETAINING WALL THAT IS AN INTEGRAL PART OF THE BUILDING IN EXCESS OF 12 FEET IN HEIGHT, VARIANCE NO. 20-035 FOR SURFACE PARKING WITHIN THE REQUIRED FRONT YARD SETBACK, AND SITE PLAN REVIEW NO. 18-025 FOR A BUILDING HEIGHT IN EXCESS OF 18 FEET, NOT TO EXCEED 24 FEET FOR A FLAT ROOF; DENYING CONDITIONAL USE PERMIT NO. 18-002 FOR A MOTEL IN THE COMMERCIAL VISITOR-SERVING-1 ZONING DISTRICT AND SALE OF ALCOHOL; AND NOT ALLOW THE PLANNING DIRECTOR TO SUBMIT A LETTER OF PUBLIC CONVENIENCE OR NECESSITY FOR THE SALE OF ALCOHOL, LOCATED IN THE COMMERCIAL VISITOR SERVING-1 ZONING DISTRICT AT 22959 PACIFIC COAST HIGHWAY (SURFRIDER PLAZA, LLC)

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

SECTION 1. Recitals.

A. On November 4, 2009, an application for Coastal Development Permit (CDP) No. 09-067, was submitted for the Malibu Surfrider Plaza Project (Former Project) consisting of a new commercial plaza providing 7,713 gross square feet of floor area between two buildings and 82 surface and subterranean parking spaces, located at 22959 Pacific Coast Highway (PCH) in the Commercial Visitor Serving-1 (CV-1) zoning district, by Surfrider Plaza, LLC. The application was routed to the City Geotechnical consultant reviewers, City Environmental Health Administrator, City Biologist, City Public Works Department, Los Angeles County Fire Department (LACFD), and Los Angeles County Waterworks District No. 29 (WD29).

B. On November 5, 2009, the Los Angeles Regional Water Quality Control Board (LARWQCB) approved Resolution No. R4-2009-007, banning the use of onsite wastewater treatment systems (OWTS) in the area. On September 21, 2010, the State Water Regional Control Board (SWRCB) approved that same resolution, thereby amending the State Basin Plan. The adopted plan for a specific Prohibition Area includes the Project Site. Since an application for the Project Site was submitted prior to the adoption of Resolution No. R4-2009-007, the application is listed on Table 4-zz as being eligible for a new OWTS.

C. On June 15, 2017, a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) for the Former Project was published in a newspaper of general circulation within the City of Malibu. The 30-day public review period ran from July 19, 2017.

D. On June 27, 2017, the Environmental Review Board (ERB) reviewed and considered the Former Project, written reports, Initial Study (IS) No. 16-003/MND No. 17-001 and provided recommendations to the Planning Commission.

E. On June 11, 2018, the Surfrider Plaza, LLC (applicant) submitted revised plans for a new motel instead of the previously submitted commercial retail plaza. The revised project plans were then routed to all applicable City departments and County agencies for review. Conditional Use Permit (CUP) No. 18-002, Variance (VAR) Nos. 18-030, 18-031 and 20-035, Site Plan Review (SPR) No. 18-025, and Joint Use Parking Agreement (JUPA) No. 18-001 were added to the Malibu Inn Motel Project (Project).

F. On June 17, 2020, staff deemed the application complete.

G. On February 19, 2021, a Notice of Intent to Adopt a MND was published in a newspaper of general circulation within the City of Malibu. The 30-day public review period ran from February 19, 2021 to March 22, 2021. The Draft IS/MND No. 20-003 was circulated again for another 30-day review period, directed towards agencies due to a file discrepancy, that began on March 29, 2021 and ended on April 28, 2021.

H. On June 10, 2021, a Notice of Coastal Development Permit Application was posted on the subject property.

I. On June 24, 2021, Planning Department staff conducted a site visit to document site conditions, the property and surrounding area.

J. On August 5, 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 August 26, 2021, a Notice of Adjournment was issued for the August 26, 2021 Special Planning Commission meeting and adjourned to the September 8, 2021 Adjourned Regular meeting to allow staff additional time to gather additional information and for the applicant to install story poles to represent the proposed motel building.

L. On September 8, 2021, the Planning Commission continued the item to the November 1, 2021 Regular Planning Commission meeting.

M. On November 1, 2021, the Planning Commission continued the item to the December 6, 2021, Regular Planning Commission meeting.

N. On December 6, 2021, the Planning Commission continued the item to the January 11, 2022, Special Planning Commission meeting.

O. On January 11, 2022, the Planning Commission continued the item to the April 4, 2022, Regular Planning Commission meeting.

P. On April 4, 2022, the Planning Commission continued the item to a date uncertain.

Q. On March 23, 2023, 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.

R. On April 17, 2023, the Planning Commission continued the item to the May 31, 2023, Special Planning Commission meeting.

S. On May 31, 2023, 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. In a 3-2 vote, the Planning Commission directed staff to bring back as a consent item an updated resolution approving the proposed project with revisions to several of the required findings and conditions of approval.

T. On July 17, 2023, the Planning Commission adopted revised Resolution No. 23-24 under the consent calendar.

U. On July 23, 2023, the City received an appeal (Appeal No. 23-004) of the Planning Commission July 17, 2023, decision from the Malibu Township Council (Appellant).

V. On February 29, 2024, 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.

W. On March 25, 2024, the City Council continued the subject item to the May 13, 2024, Regular City Council meeting.

X. On May 13, 2024, 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 granting the appeal and denying the project, as proposed, in accordance with the Council's findings. As part of the Council's deliberations, a straw poll was conducted wherein the project site was not considered a "coastal bluff" but a "hill" by a majority of the Council.

Y. On September 9, 2024, the City Council reviewed and considered the resolution containing the findings of fact, among other reasons, to grant the appeal, find the denial exempt from the California Environmental Quality Act (CEQA), rescind the IS/MND adoption, deny the project, and not allow the Planning Director to submit of a letter of public convenience or necessity for the sale of alcohol to the State Department of Alcoholic Beverage Control (ABC).

## SECTION 2. Appeal of Action.

The appeal filed by the Appellant contends the appeal should be granted and the project application denied based on following alleged issues with the project:

1. Violates zoning
2. Violates coastal bluff provisions
3. Excessive grading and violates related requirements
4. Violates building height restrictions
5. Violates retaining wall height restrictions

6. Violates rear yard and bluff setbacks
7. Requires traffic study
8. Violates parking provisions
9. Lack of Environmental Impact Report (EIR) and general CEQA compliance
10. Requires noise study
11. Pool use is not permitted
12. Low-cost accommodations mitigation is not addressed
13. Sale of alcohol is not permitted
14. Conditions do not protect cultural resources
15. Violates wastewater disposal requirements
16. Project is not consistent with the General Plan
17. Findings are not supported for two variances and other discretionary requests
18. Proposed project is not accurately reflected in the conditions of approval
19. Lack of impartial hearing
20. Planning Commission decision is contrary to law

In the May 13, 2024 Council Agenda Report, Planning Department staff analyzed and addressed Appellant's contentions.

### SECTION 3. Findings for Granting the Appeal.

Based on evidence contained within the record, including the content of the Council Agenda Reports, Planning Commission Agenda Reports, and the testimony and materials considered by the Planning Commission and the City Council, the City Council hereby makes the following findings of fact, among other reasons, to grant the appeal, find that the denial is exempt from CEQA, rescind the Planning Commission's adoption of IS/MND No. 20-003, deny CDP No. 09-067, VAR No. 18-030 (construction on slopes), VAR No. 18-031 (retaining wall height), VAR No. 20-035 (parking in front yard setback), SPR No. 18-025 (building height), and CUP No. 18-002 (motel use and sale of alcohol), and not allow the Planning Director to submit a letter of public convenience or necessity for the sale of alcohol to ABC as described herein.

The Appellant has demonstrated that findings made, in part, in the Planning Commission's adoption of the IS/MND and decision on the CDP, VARs, SPR, CUP, and authorization for the Planning Director to submit a letter of public convenience or necessity to the ABC for the sale of alcohol are not supported by the totality of the evidence. As further described in Section 4, the Council considered the IS/MND together with the comments received during the public review process and determined that the analysis is insufficient and/or inadequate for the project as proposed. As further described in Section 5, the Council finds that the applicant has not met its burden in demonstrating that special circumstances, exceptional characteristics, and compatibility with neighborhood character exist and/or provided a preponderance of the evidence that supports the findings required for the requested CDP, CUP, and entitlements to grant relief from required development standards in the Malibu Municipal Code (MMC) and Local Coastal Program (LCP) Local Implementation Plan (LIP). As further described in Section 6, the Council is unable to authorize the Planning Director to submit a letter of public convenience or necessity for the sale of alcohol to ABC based on the findings of fact to deny the CUP.

#### SECTION 4. Environmental Review and Rescinding Adoption of IS/MND.

1. The City Council has analyzed the proposed project pursuant to the authority and criteria contained in 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.

2. The City Council considered the IS/MND together with the comments received during the public review process and determined that the analysis contained in IS/MND No. 20-003 is insufficient to decide that the project, as proposed, will not have a significant effect on the environment. As such, the Council determined that IS/MND No. 20-003 is inadequate for the project, as proposed. This determination is based on the following findings, among other reasons: the project proposes a use that is inconsistent with the CV-1 zoning district; the analysis insufficiently analyzed noise impacts on adjacent uses including an assembly use and private preschool and youth educational programming/school associated with an assembly use; the analysis insufficiently analyzed traffic impacts on PCH; and the analysis insufficiently analyzed cumulative impacts associated with potential future growth in the vicinity by the granting of variances for construction on slopes steeper than 3 to 1, retaining wall height in excess of 12 feet, and the construction of surface parking in the required front yard setback.

#### SECTION 5. Findings to Deny the Entitlements.

Based on the evidence contained within the record, including the agenda report for the project, the Council hearing on May 13, 2024, the prior hearings and written correspondence, verbal testimony and written correspondence submitted, the materials in the record, and pursuant to LIP Sections 13.7(B) and 13.9, and MMC Section 17.72.060, the City Council makes the findings of fact below and denies the project as proposed for these reasons and others as described above and below.

The Council's action includes the denial of CDP No. 09-067 for the construction of a new 7,693 square foot, 20-room motel above a new proposed subterranean parking garage, surface parking lot, rooftop deck with swimming pool, spa and bar area, grading, retaining walls, landscaping, a new OWTS, VAR No. 18-030 construction on slopes steeper than 3 to 1, VAR No. 18-031 for a retaining wall in excess of 12 feet in height, VAR No. 20-035 for construction of surface parking within the required front yard setback, and SPR No. 18-025 for a building height in excess of 18 feet, not to exceed 24 feet for a flat roof, and CUP No. 18-002 for a motel in the CV-1 zoning district and sale of alcohol; and also does not allow the Planning Director to submit a letter of public convenience or necessity for the sale of alcohol to ABC, located in the CV-1 zoning district at 22959 PCH.

The project, as proposed, is not consistent with the applicable LCP and MMC codes, standards, goals, and policies of the General Plan. The findings for denial, among other reasons, are provided in more detail below.

##### **A. General Coastal Development Permit (LIP Chapter 13)**

1. The proposed project is located in the CV-1 zoning district and, while the project site is zoned for commercial use including overnight accommodations, the proposed use is considered a hotel as defined in LIP Section 2.1 and not a motel as purported by the applicant. Pursuant to LIP Section 2.1, a "hotel" is a "facility offering transient lodging accommodations to

the general public and providing additional services, such as restaurants and meeting rooms.” The project, as proposed, includes 20 guest rooms and suites, 47 subterranean and surface parking spaces (nearly double the minimum required parking for a “motel” use at this site which is 23 to 24 spaces depending on anticipated employees), and accessory/additional uses/services including a prep kitchen and two open/unrestricted restrooms on the main level, ancillary prep kitchen on the upper level, and a 3,139 square foot rooftop deck with a swimming pool/spa, bar, fire pits, elevator access from the main level to the rooftop deck, internal stair access from the upper level to the rooftop deck, and two exterior stair accessways from grade (surface parking area) to the rooftop deck. The rooftop space is designed as a functional event/entertainment space that would have the ability to provide food, beverages, and alcohol service. The event/entertainment space has the ability to result in public visitors being brought to the site despite the applicant’s position that the space would only be used by “motel” guests. The applicant further requested an increase to double the number of temporary events allowed at the site. Per LIP Section 2.1, a “motel” is a “a facility offering transient lodging accommodations to the public in a group of attached or detached buildings containing guest rooms, some or all of which have a separate entrance leading directly from the outside of the building to automobile parking space conveniently located on the lot or parcel of land, does not provide accessory uses such as restaurants or meeting rooms, and not otherwise open to the public.” The Council’s determination is further supported by the orientation of the proposed parking to the building entry and guest rooms, distance from the parking to the guest rooms, the type of parking operations and facility proposed (valet and mechanical stacked parking), and the ability for parking to be rented to the public and/or used by the project for their larger events. While motels are a conditionally permitted use in the CV-1 zoning district, hotels are not. The requested VARs and SPR are not supported by the evidence, the applicant has not met its burden in demonstrating the proposed project is entitled to relief from required development standards in the LIP and MMC due to special circumstances or exceptional characteristics, and/or that a preponderance of the evidence supports the findings required for the requested entitlements. Therefore, CDP Finding A in LIP Section 13.9 cannot be made for the requested CDP as the project does not conform with the LIP.

2. The project proposes a hotel use that is inconsistent with the CV-1 zoning district and also includes a building structure and parking facility that are not consistent with the CV-1 zone standards including building height, construction on slopes, retaining wall height, and parking location. The applicant could propose a motel use that is consistent with the CV-1 zoning district and redesign a project that removes the accessory/additional uses/services associated with a hotel, such as the rooftop deck, swimming pool/spa, bar, and prep kitchen. An alternative design for a motel and/or orientation of the footprint on the parcel could reduce the size, bulk, height, cut/fill and retaining wall profile of the proposed building including the interior/exterior rooftop stair accessways and rooftop elevator, as well as reduce or eliminate the need for relief via variances and/or a SPR from City required development standards. Therefore, CDP Finding C in LIP Section 13.9 cannot be made for the requested CDP as the applicant did not demonstrate that the project, as proposed, is the least environmentally damaging alternative.

**B. Variance for Construction on Slopes Steeper than 3 to 1 (MMC Section 17.72.060)**

The applicant has not met its burden in demonstrating the proposed project is entitled to construction on slopes steeper than 3 to 1 per MMC Sections 17.40.080(A)(6) and 17.72.060 due

to special circumstances or exceptional characteristics, and/or that a preponderance of the evidence supports the findings required for the requested VAR No. 18-030.

1. Based on the proposed design and orientation of the footprint on the parcel, the applicant has not demonstrated that the proposed 46-foot-tall retaining wall (with a total height of 50 feet above the bottom of the subterranean parking level) is similarly enjoyed by other properties in the vicinity and under the identical zoning classification. Several properties in the vicinity referenced in support were developed pre-Cityhood or under different development standards. Had the applicant demonstrated that the subject property had unique characteristics that met the standard for a variance, the applicant would only be eligible for the minimum relief necessary from the required MMC standards to facilitate reasonable use of the property for practical and possible development consistent with the allowable uses. Variances are intended to be granted in extreme and limited circumstances where compliance with required MMC standards makes impractical or impossible reasonable use of a property in the same manner that other property of like character in the same vicinity and zone. Therefore, VAR Finding A in MMC Section 17.72.060 cannot be made for the requested variance as the project proposes a hotel use that is inconsistent with the CV-1 zoning district and the requested variance facilitates the development of a subterranean structure and tall retaining wall to accommodate the proposed hotel use, and accessory/additional uses/services, such as a rooftop deck, swimming pool/spa, bar, prep kitchen, interior/exterior rooftop stair accessways, and rooftop elevator that increase the size, bulk, and footprint of the proposed structure and orientation of the footprint on the parcel.

2. Based on the proposed footprint of the building and proposed setback from PCH, including the lobby, subterranean garage, and accessory/additional uses/services to accommodate the proposed use, the applicant has not demonstrated that the extent of the encroachment into slopes steeper than 3 to 1 is a privilege enjoyed by other property in the vicinity and under the identical zoning classification. Granting the variance for the project, as proposed, would facilitate a use that is inconsistent with the CV-1 zoning district and the development of a project that has not requested the minimum relief from the required MMC standards to allow for reasonable use of the property for practical and possible development consistent with the allowable uses. Therefore, VAR Finding C in MMC Section 17.72.060 cannot be made for the requested variance.

3. Construction on slopes steeper than 3 to 1 in the CV-1 zoning district is permissible and, where an applicant meets its burden in demonstrating a proposed project is entitled to construct on slopes steeper than 3 to 1 per MMC 17.40.080(A)(6), a variance for construction on slopes can be consistent with the zoning designation. However, the project proposes a use that is inconsistent with the CV-1 zoning district and the requested variance facilitates the development of accessory/additional uses/services associated with a hotel use that is contrary to and in conflict with the purpose and intent of the CV-1 zone which is to "provide for visitor serving uses, including motels and bed and breakfast inns, which serve visitors and residents which respect the rural character and natural environmental setting" (MMC Section 17.26.010). The CV-1 zone carries forward the Vision and Mission Statement of the General Plan which, in part, states that "Malibu is a unique land and marine environment and residential community whose citizens have historically evidenced a commitment to sacrifice urban and suburban conveniences in order to protect that environment and lifestyle, and to preserve unaltered natural resources and rural characteristics...". Hotels are a conditionally permitted use in the CV-2 zoning district, not the CV-1 zoning district, would require additional required parking, and would allow for additional services to be developed such as areas used for consumption of food or beverages, public recreation areas, assembly areas and meeting rooms. Compared to motels, hotels require one additional space

per room and additional parking for areas used for the consumption of food and beverages among other uses. Further, the granting of a variance would facilitate the development of a project that has not requested the minimum relief from the required MMC standards to allow for reasonable use of the property for practical and possible development consistent with the allowable uses. Further, the granting of a variance has the potential of setting precedent for inconsistency on future uses and development on adjacent lots similarly zoned. Therefore, VAR Finding E in MMC Section 17.72.060 cannot be made for the requested variance.

**C. Variance for Retaining Wall in Excess of 12 Feet in Height (LIP Section 13.26)**

The applicant has not met its burden in demonstrating the proposed project is entitled an increase in the maximum retaining wall height per LIP Sections 8.3(C) and 13.26 due to special circumstances or exceptional characteristics, and/or that a preponderance of the evidence supports the findings required for the requested VAR No. 18-031.

1. Based on the proposed design the applicant has not demonstrated that there are special or exceptional characteristics of the Property such that, absent the proposed 46-foot-tall retaining wall (with a total height of 50 feet above the bottom of the subterranean parking level), the property would be deprived of privileges enjoyed by other properties in the vicinity and under the identical zoning classification. Had the applicant demonstrated that the subject property had unique characteristics that met the standard for a variance, the applicant would only be eligible for the minimum relief necessary from the required LIP standards to facilitate reasonable use of the property for practical and possible development consistent with the allowable uses. Variances are intended to be granted in extreme and limited circumstances where compliance with required LIP standards makes impractical or impossible reasonable use of a property in the same manner that other property of like character in the same vicinity and zone. The applicant could propose a motel use that is consistent with the CV-1 zoning district and redesign a project that removes the accessory/additional uses/services associated with a hotel, such as the rooftop deck, swimming pool/spa, bar, prep kitchen, interior/exterior rooftop stair accessways, and rooftop elevator. An alternative design and/or orientation of the footprint on the parcel could reduce the size, bulk, height, cut/fill and retaining wall profile of the proposed building, as well as reduce or eliminate the need for relief by a variance for retaining wall height. Therefore, VAR Finding A in LIP Section 13.26.5 cannot be made for the requested variance.

2. The proposed retaining wall design is conceptual and as presented, the applicant has not established through a preponderance of the evidence that the standing wall design would not be detrimental or injurious to the property or improvements in the same vicinity and zone, or substantially change in design due to structural stability requirements per the building code. Even in concept, the applicant did not present enough information on the standing wall design to sufficiently demonstrate the potential stability of the wall including the type of reinforcement, wall thickness, and adequacy of the supporting slab foundation. Given the proposed wall height of 46 feet (with a total height of 50 feet above the bottom of the subterranean parking level), which is comprised of subterranean garage space, topped with fill and an exposed wall segment above, VAR Finding B in LIP Section 13.26.5 cannot be made for the requested variance as the proposed design appears to lack a supporting base and other information to sufficiently accommodate structural integrity.

3. Based on the proposed design and profile of the subterranean garage and fill, the applicant has not established through a preponderance of the evidence that the proposed 46-foot-

tall retaining wall (with a total height of 50 feet above the bottom of the subterranean parking level), which is well above the LIP's 12-foot height limit, would not be a special privilege. Sufficient properties in the CV-1 zoning designation were not identified or presented that received relief from City development standards for retaining wall heights of similar height and profile (as the proposed project) regulated by LIP Section 8.3(C). Other properties have been developed in this area on similar lots that did not require such a variance, particular to the extent sought by the applicant. Therefore, VAR Finding C in LIP Section 13.26.5 cannot be made for the requested variance.

4. The project proposes a use that is inconsistent with the CV-1 zoning district and the requested variance facilitates the development of accessory/additional uses/services associated with a hotel use that is contrary to and in conflict with the LCP. The proposed use is considered a hotel as defined in LIP Section 2.1 and not a motel as purported by the applicant. The proposed use includes 20 guest rooms and suites, 47 subterranean and surface parking spaces (nearly double the minimum required for a motel use at this site which is 23 to 24 spaces depending on anticipated employees), and accessory/additional uses/services including a prep kitchen and open/unrestricted restrooms on the main level, ancillary prep kitchen on the upper level, and a 3,139 square foot rooftop deck with a swimming pool/spa, bar, fire pits, elevator access from the main level to the rooftop deck, internal stair access from the upper level to the rooftop deck, and two exterior stair accessways from grade (surface parking area) to the rooftop deck. The rooftop space is designed as a functional event/entertainment space that would have the ability for food, beverage, and alcohol service. The event/entertainment space has the ability to result in public visitors being brought to the site despite the applicant's position that the space would only be used by "motel" guests. The applicant further requested an increase to double the number of temporary events allowed at the site. While motels are a conditionally permitted use in the CV-1 zoning district, hotels are not. Hotels require additional parking thereby increasing the onsite need for development to accommodate that type of use. Compared to motels, hotels require one additional space per room and additional parking for areas used for the consumption of food and beverages among other uses. Therefore, VAR Finding D in LIP Section 13.26.5 cannot be made for the requested variance.

5. The development of retaining walls in the CV-1 zoning district is permissible and, when an applicant meets its burden in demonstrating a proposed project is entitled an increase in maximum retaining wall height per LIP Section 13.26, a variance for retaining wall height can be consistent with the zoning designation. However, the project proposes a use that is inconsistent with the CV-1 zoning district and the requested variance facilitates the development of accessory/additional uses/services associated with a hotel use that is contrary to and in conflict with the purpose and intent of the CV-1 zone which is to "provide for visitor serving uses, including motels and bed and breakfast inns, which serve visitors and residents that are designed to be consistent with the rural character and natural environmental setting" (LIP Section 3.3(J)(1)). Hotels are a conditionally permitted use in the CV-2 zoning district, not the CV-1 zoning district, would require additional required parking, and would allow for additional services to be developed such as areas used for consumption of food or beverages, public recreation areas, assembly areas and meeting rooms. Compared to motels, hotels require one additional space per room and additional parking for areas used for the consumption of food and beverages among other uses. Further, the granting of a variance would facilitate the development of a project that has not requested the minimum relief from the required LIP standards to allow for reasonable use of the property for practical and possible development consistent with the allowable uses. Further, the granting of a variance has the potential of setting precedent for inconsistency on future uses and

development on adjacent lots similarly zoned. Therefore, VAR Finding G in LIP Section 13.26.5 cannot be made for the requested variance.

6. The project proposes development on a predominant slope and while a retaining wall would be necessary to maintain a horizontal structural setback to the toe of the slope, the proposed design is conceptual. As presented, the applicant has not established through a preponderance of the evidence that the standing wall design would not substantially change in design due to structural stability requirements per the building code. Even in concept, the applicant did not present enough information on the standing wall design to sufficiently demonstrate the potential stability of the wall including the type of reinforcement, wall thickness, and adequacy of the supporting slab foundation. Given the proposed wall height of 46 feet (with a total height of 50 feet above the bottom of the subterranean parking level), which is comprised of subterranean garage space, topped with fill and an exposed wall segment above, VAR Finding H in LIP Section 13.26.5 cannot be made for the requested variance.

**D. Variance for Construction for Surface Parking within the Required Front Yard Setback (LIP Section 13.26)**

The applicant has not met its burden in demonstrating the proposed project is entitled to the construction of surface parking within the required front yard setback per LIP Sections 3.14.5(A)(2) and 13.26 due to special circumstances or exceptional characteristics, and/or that a preponderance of the evidence supports the findings required for the requested VAR No. 20-035.

1. Based on the proposed design and use as a hotel, an increased parking demand would be required on the site including additional parking for rooms and food and beverage use among other uses. The applicant has not demonstrated that the requested parking location for the use as a hotel and associated scale of development to support the use as a hotel is a privilege enjoyed by other similarly situated property in the vicinity and under the identical zoning classification. The site is a vacant lot and despite being used for many years to facilitate commercial parking for the adjacent Aviator Nation Dreamland retail and restaurant use (former Malibu Inn commercial building), parking has been a legal, non-conforming use on the project site. Therefore, VAR Finding C in LIP Section 13.26.5 cannot be made for the requested variance as the project proposes a use that is inconsistent with the CV-1 zoning district and the requested variance would authorize parking in the front yard setback for a scale of development associated with an inconsistent use in the CV-1 zoning district.

2. The project proposes a use that is inconsistent with the CV-1 zoning district and the requested variance facilitates the development of accessory/additional uses/services associated with a hotel use that is contrary to and in conflict with the LCP. The proposed use is considered a hotel as defined in LIP Section 2.1 and not a motel as purported by the applicant. The proposed use includes 20 guest rooms and suites, 47 subterranean and surface parking spaces (which is nearly double the minimum required for a motel use at this site), and accessory/additional uses/services including a prep kitchen and open/unrestricted restrooms on the main level, ancillary prep kitchen on the upper level, and a 3,139 square foot rooftop deck with a swimming pool/spa, bar, fire pits, elevator access from the main level to the rooftop deck, internal stair access from the upper level to the rooftop deck, and two exterior stair accessways from grade (surface parking area) to the rooftop deck. The rooftop space is designed as a functional event/entertainment space that would have the ability for food, beverage, and alcohol service. The event/entertainment space has the ability to result in public visitors being brought to the site despite the applicant's position

that the space would only be used by “motel” guests. The applicant further requested an increase to double the number of temporary events allowed at the site. While motels are a conditionally permitted use in the CV-1 zoning district, hotels are not. Hotels require additional parking thereby increasing the onsite need for development to accommodate that type of use. Compared to motels, hotels require one additional space per room and additional parking for areas used for the consumption of food and beverages among other uses. An alternative design and/or orientation of the footprint on the parcel could reduce parking profile associated with uses consistent with the CV-1 zoning designation, as well as reduce or eliminate the need for relief by a variance for parking in the front yard setback. Therefore, VAR Finding D in LIP Section 13.26.5 cannot be made for the requested variance.

3. Siting parking in the front yard setback in the CV-1 zoning district is permissible and, when an applicant meets its burden in demonstrating a proposed project is entitled locate parking for a conforming CV-1 use per LIP Section 13.26, a variance for parking in this location can be consistent with the zoning designation. However, the project proposes a use that is inconsistent with the CV-1 zoning district and the requested variance facilitates a scale of development and accessory/additional uses/services associated with a hotel use that is contrary to and in conflict with the purpose and intent of the CV-1 zone which is to “provide for visitor serving uses, including motels and bed and breakfast inns, which serve visitors and residents that are designed to be consistent with the rural character and natural environmental setting” (LIP Section 3.3(J)(1)). Hotels are a conditionally permitted use in the CV-2 zoning district, not the CV-1 zoning district, would require additional required parking, and would allow for additional services to be developed such as areas used for consumption of food or beverages, public recreation areas, assembly areas and meeting rooms. Compared to motels, hotels require one additional space per room and additional parking for areas used for the consumption of food and beverages among other uses. Further, the granting of a variance would facilitate the development of a project that has not requested the minimum relief from the required LIP standards to allow for reasonable use of the property for practical and possible development consistent with the allowable uses. Therefore, VAR Finding G in LIP Section 13.26.5 cannot be made for the requested variance.

#### **E. Site Plan Review for Construction in Excess of 18 Feet in Height (LIP Section 13.27.5)**

The applicant has not met its burden in demonstrating the proposed project is entitled an increase in maximum building height in excess of 18 feet up to 24 feet for a flat roof per LIP Sections 3.8(A)(1)(b) and 13.27.5(A) due to consistency with the LCP and neighborhood character, and/or that a preponderance of the evidence supports the findings required for the requested SPR No. 18-025.

1. The project proposes a hotel use that is inconsistent with the CV-1 zoning district and also includes a building structure and parking facility that are not consistent with the CV-1 zone standards including building height and construction on slopes. The applicant could propose a motel use that is consistent with the CV-1 zoning district and redesign a project that removes the accessory/additional uses/services associated with a hotel, such as the rooftop deck, swimming pool, spa, bar, prep kitchen, interior/exterior rooftop stair accessways, and rooftop elevator. An alternative design for a motel and/or orientation of the footprint on the parcel could reduce the size, bulk, height, cut/fill and retaining wall profile of the proposed building, as well as reduce or eliminate the need for relief via a SPR from City required development standards. The requested SPR is not supported by the evidence, the applicant has not met its burden in demonstrating the proposed project is entitled to a maximum increase in the LIP’s development standards for height

associated with an allowable use in the CV-1 zoning district, and/or that a preponderance of the evidence supports the findings required for the requested entitlement. Therefore, SPR Finding 1 in LIP Section 13.27.5(A) cannot be made for the requested site plan review.

2. The project proposes a use that is inconsistent with the CV-1 zoning district and as such, includes accessory/additional uses/services, a subterranean structure, tall retaining wall with secondary retaining wall above, a slope setback between the rear of the building and retaining wall, and a layered design due to slopes and retaining walls that give the appearance of an approximately 50-foot tall, four-story building that is not consistent with the appearance of other buildings in the area and the character of the neighborhood. The applicant could propose a motel use that is consistent with the CV-1 zoning district and redesign a project that removes the accessory/additional uses/services associated with a hotel, such as the rooftop deck, swimming pool/spa, bar, prep kitchen, interior/exterior rooftop stair accessways, and rooftop elevator. Therefore, SPR Finding 2 in LIP Section 13.27.5(A) cannot be made for the requested site plan review as designed.

**F. Conditional Use Permit for New Motel Use and Sale of Alcohol (MMC Section 17.66.080)**

1. The proposed project is located in the CV-1 zoning district and, while the project site is zoned for commercial use including overnight accommodations, the proposed use is considered a hotel as defined in MMC 17.02.060 and not a motel as purported by the applicant. Pursuant to MMC Section 17.02.060, a "hotel" is a "a facility offering transient lodging accommodations to the general public and providing additional services, such as restaurants and meeting rooms." The project, as proposed, includes 20 guest rooms and suites, 47 subterranean and surface parking spaces (nearly double the minimum required for a motel use at this site which is 23 to 24 spaces depending on anticipated employees), and accessory/additional uses/services including a prep kitchen and open/unrestricted restrooms on the main level, ancillary prep kitchen on the upper level, and a 3,139 square foot rooftop deck with a swimming pool/spa, bar, fire pits, elevator access from the main level to the rooftop deck, internal stair access from the upper level to the rooftop deck, and two exterior stair accessways from grade (surface parking area) to the rooftop deck. The rooftop space is designed as a functional event/entertainment space that would have the ability for food, beverage, and alcohol service. The event/entertainment space has the ability to result in public visitors being brought to the site despite the applicant's position that the space would only be used by "motel" guests. The applicant further requested an increase to double the number of temporary events allowed at the site. Per MMC Section 17.02.060, a "motel" is a "facility offering transient lodging accommodations to the public in a group of attached or detached buildings containing guest rooms, some or all of which have a separate entrance leading directly from the outside of the building to automobile parking space conveniently located on the lot or parcel of land, does not provide accessory uses such as restaurants or meeting rooms, and not otherwise open to the public." The Council's determination is further supported by the orientation of the proposed parking to the building entry and guest rooms, distance from the parking to the guest rooms, the type of parking operations and facility proposed (valet and mechanical stacked parking), and the ability for parking to be rented to the public and/or used by the project for their larger events. While motels are a conditionally permitted use in the CV-1 zoning district, hotels are not. Therefore, CUP Finding A in MMC Section 17.66.080 cannot be made as the request for a conditionally permitted use is not supported by the evidence, the applicant has not met its burden in demonstrating the proposed use is compatible with the MMC, General

Plan, neighborhood character, and vehicular access and circulation, and/or that a preponderance of the evidence supports the findings required for the requested CUP.

2. The project proposes a use that is inconsistent with the CV-1 zoning district and as such, includes accessory/additional uses/services, a subterranean structure, tall retaining wall with secondary retaining wall above, a slope setback between the rear of the building and retaining wall, and a layered design due to slopes and retaining walls that give the appearance of an approximately 50-foot tall, four-story building that is not consistent with the appearance of other buildings in the area and the character of the neighborhood. While the proposed building is larger than surrounding neighboring buildings, it has the potential of setting precedent for future development on adjacent lots similarly zoned. Therefore, CUP Finding B in MMC Section 17.66.080 cannot be made.

3. Without the approval of three variances and one SPR to relieve the property from City development standards, including construction on slopes, retaining wall height, parking in a front yard setback, and building height, the project site is unable to support the proposed use and project design. Without the variances and SPR, the project site would not have enough parking to accommodate the proposed use and commercial parking accommodations for Aviator Nation Dreamland (former Malibu Inn commercial building) – a retail and restaurant use that shares parking with the project site. The applicant could propose a motel use that is consistent with the CV-1 zoning district and redesign a project that removes the accessory/additional uses/services associated with a hotel, such as the rooftop deck, swimming pool/spa, bar, prep kitchen, interior/exterior rooftop stair accessways, and rooftop elevator. An alternative design for a motel and/or orientation of the footprint on the parcel could reduce the size, bulk, height, cut/fill and retaining wall profile of the proposed building, as well as reduce or eliminate the need for relief via variances and/or a SPR from City required development standards. Therefore, CUP Finding C in MMC Section 17.66.080 cannot be made.

4. The project proposes a rooftop deck event/entertainment area, swimming pool/spa, and bar that the evidence shows is likely to result in adverse noise impacts on an adjacent assembly use and private school use. The project proposes the sale of alcohol adjacent to a private preschool and youth educational programming/school associated with the assembly use. Without the requested VARs, the project site would not have enough parking to accommodate commercial parking accommodations for Aviator Nation Dreamland (former Malibu Inn commercial building) – a retail and restaurant use that shares parking with the project site. Therefore, CUP Finding D in MMC Section 17.66.080 cannot be made.

5. The project proposes a use that is conditionally permitted in the CV-2 zoning district and inconsistent with the subject CV-1 zoning district where the project site is located. Therefore, CUP Finding E in MMC Section 17.66.080 cannot be made for the requested CUP as the project would not be compatible with existing and future land uses in the CV-1 zone.

6. As proposed, the project has limited vehicular access and circulation in/out of the site and could result in traffic safety concerns as the site would only be able to accommodate a right-turn (westbound) from the site onto PCH wherein drivers would have to travel to the nearest controlled intersection that permits a U-turn (identified by the project's traffic study to be within 100 feet of the project site at the Malibu Pier) where drivers would need to leave the site and make an entry into U-turn lane near the center of PCH. The project's traffic study cites to the City's PCH Safety Study that found the most common type of collisions along this segment of PCH are rear-end collisions associated with excessive vehicle speed and sudden stops made for mid-block

pedestrian crossings or vehicles making left- or U-turns. Left turns (eastbound) from the project site onto PCH are proposed to be prohibited (and traffic was studied based on this) but the project does not include any improvements to PCH, such as a median barrier, to prevent a left turn from the site onto PCH (eastbound) or from PCH (eastbound) into the site. Therefore, CUP Finding G in MMC Section 17.66.080 cannot be made due to limited vehicular access and circulation in/out of the site for the proposed use with accessory/additional uses/services, traffic safety with drivers existing the property and using the U-turn, and no improvements being proposed to PCH to prevent a left turn from the site onto PCH (eastbound) or into the site from PCH (eastbound).

7. The proposed building would be larger than surrounding neighboring buildings and, as designed to accommodate the proposed hotel use, appears out of character with development in the vicinity. As proposed, the project is contrary to and in conflict with the Vision and Mission Statement of the General Plan which, in part, states that “Malibu is a unique land and marine environment and residential community whose citizens have historically evidenced a commitment to sacrifice urban and suburban conveniences in order to protect that environment and lifestyle, and to preserve unaltered natural resources and rural characteristics...”.

SECTION 6. Determination Not Allowing a Letter of Public Convenience or Necessity to be Submitted

According to ABC, a letter of public convenience or necessity may be required for the overconcentration of licenses. Based on the findings of fact denying CUP No. 18-002, including 4. *CUP Finding D* in Section 5, the City Council finds that the proposed use is inconsistent with the CV-1 zoning district and has the potential to be detrimental to the public health, safety, or general welfare including due to the sale of alcohol adjacent to a private preschool and youth educational programming/school associated with an assembly use. The Council does not allow the Planning Director to prepare and submit a letter of public convenience or necessity for the proposed use to ABC.

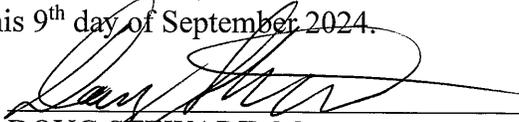
SECTION 7. City Council Actions.

1. Based on the foregoing findings and evidence contained within the record, the City Council hereby rescinds the adoption of IS/MND No. 20-003, denies CDP No. 09-067, VAR Nos. 18-030, 18-031, and 20-035, SPR No. 18-025, and CUP No. 18-002, and does not allow the Planning Director to submit a letter of public convenience or necessity for the sale of alcohol to ABC.

2. The City Council also directs that, should any project be proposed at the subject site (22959 Pacific Coast Highway) in the future, at minimum a Phase 1 Archaeological Investigation shall be prepared and submitted to the City as part of the development application review process.

SECTION 8. The City Clerk shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 9<sup>th</sup> day of September 2024.

  
\_\_\_\_\_  
DOUG STEWART, Mayor

ATTEST:

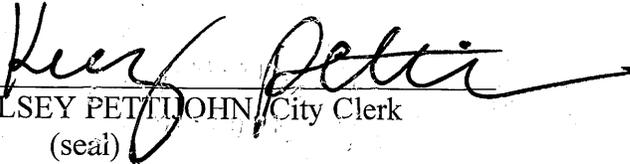
  
\_\_\_\_\_  
KELSEY PETTIJOHN, City Clerk  
(seal)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
TREVOR RUSIN, Interim City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 24-46 was passed and adopted by the City Council of the City of Malibu at the Regular meeting thereof held on the 9<sup>th</sup> day of September 2024 by the following vote:

AYES: 5 Councilmembers: Grisanti, Silverstein, Uhring, Riggins, Stewart  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0

  
KELSEY PETRUJOHN, City Clerk  
(seal)