



Supplemental Council Agenda Report

To: Mayor Pierson and Honorable Members of the City Council

Prepared by: Richard Mollica, Assistant Planning Director

Reviewed by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager

Date prepared: August 20, 2020 Meeting Date: August 24, 2020

Subject: Appeal No. 20-009 - Appeal of Planning Commission Resolution No. 20-46 (29623 Cuthbert Road; Owner/Appellant, Colby Family Trust)

RECOMMENDED ACTION: Adopt Resolution No. 20-48 (Attachment A), determining the project is categorically exempt from the California Environmental Quality Act (CEQA); granting Appeal No. 20-009 (Attachment B) and approving Coastal Development Permit (CDP) No. 19-005 to allow for a new single-family residence, second unit, swimming pool/spa, and onsite wastewater treatment system (OWTS), including Site Plan Review (SPR) Nos. 19-072 and 20-013 for construction of the residence and second unit above 18 feet in height, and Minor Modification (MM) No. 19-010 for a 13 percent reduction of the rear yard setback to replace a home destroyed in the 2018 Woolsey Fire, located in the Rural Residential-Two Acre zoning district at 29623 Cuthbert Road (Colby Family Trust).

DISCUSSION: At that time that the Agenda Report for this item was prepared, the attachments associated with Appeal No. 20-001 were inadvertently excluded. Attached to this report is the Appeal Application as well as all attachments submitted by the appellant.

ATTACHMENT: Appeal No. 20-001



City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-7650 · www.malibucity.org

COASTAL DEVELOPMENT PERMIT APPEAL SUBMITTAL

Actions Subject to Local Appeal: Pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals), a decision or any portion of the decision of the Planning Director may be appealed to the Planning Commission by an aggrieved person, and any decision of the Planning Commission may be appealed to the City Council by an aggrieved person.

Deadline and Fees: Pursuant to LIP Section 13.20.1, an appeal shall be filed with the City Clerk within 10 days following the date of action for which the appeal is made, as indicated in the decision. If the tenth day falls on a weekend or a City-recognized holiday, the deadline shall extend to the close of business at City Hall on the first business day (whether whole or partial) following the weekend or a City-recognized holiday. Appeals shall be accompanied by the filing fee of \$500 as specified by the City Council.

To perfect an appeal, the form must be completed, together with all the necessary attachments, and must be timely received by the City Clerk either in person or by mail addressed to City of Malibu, Attn: City Clerk, 23525 Stuart Ranch Road, Malibu, CA 90265. For more information, contact Patricia Salazar, Senior Administrative Analyst, at (310) 456-2489, extension 245.

Part I. Project Information

1. What is the file number of the Coastal Development Permit you are appealing?

CDP-19-005

2. On what date was the decision made which you are appealing?

June 15, 2020

3. Who made the decision you are appealing?

☐

Planning Director

☒

Planning Commission

4. What is the address of the project site at issue?

29623 Cuthbert Road

Part II. Appeal Summary

1. Indicate your interest in the decision by checking the appropriate box.

☒

I am the Applicant for the project

☐

I am the neighbor

☐

Other (describe) _____



2. If you are not the applicant, please indicate the applicant's name:

3. Indicate the nature of your appeal.

- a) Are you appealing the ☐ approval or ☒ the denial of the application or ☐ a condition of approval?
- b) Each approval is accompanied by a list of specific conditions. If you are appealing one or more of the conditions of approval, list the condition number and state the grounds for your appeal. (Attach extra sheets if necessary.)

4. Check the appropriate box(es) to indicate which of the following reasons forms the basis of your appeal:

- ☐ The findings or conditions are not supported by the evidence, or the decision is not supported by the findings: or
- ☐ There was a lack of fair or impartial hearing: or
- ☐ The decision was contrary to law.

You must next provide a specific statement in support of each of the bases for appeal that you have checked above. Appeals that are stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

See attached summary of notice of appeal document entitled "Notice of Appeal Summary"

Each coastal development permitting decision made by the Planning Director or the Planning Commission is accompanied by written findings. The written findings set forth the basis for the decision. If you have checked the first box in this section as a ground for your appeal, you must indicate the specific finding(s) you disagree with and give specific reasons why you believe the finding(s) is/are not supported by the evidence or why the decision is not supported by the findings. Appeals stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

Part III. Appeal Checklist

ALL of the following must be timely filed to perfect an appeal.

1. ☐ Completed Appeal Checklist (This form with appellant's signature)
2. ☐ Appeal Fee \$500

The appeal fee must be submitted in the form of a check or money order made payable to the City of Malibu. Cash will not be accepted.

3. ☐ Certified Public Notice Property Owner and Occupant Addresses and Radius Map

Public Notice of an appeal must conform to the manner in which the original notice was given.

- The addresses of the property owners and occupants within the mailing radius shall be provided on a compact disc in a Microsoft Excel spreadsheet. The spreadsheet shall have the following column headers in row one: 1) name, 2) address, 3) city, state & zip code, and 4) parcel (for APN). The owners should be listed first followed by the occupants. The project applicant's mailing address should be added at the end of the list.
- An additional column for "arbitrary number" may be included if the supplied radius map utilizes such numbers for the purpose of correlating the addressee to their map location.
- Printouts of the excel spreadsheet and radius map, certified by the preparer as being accurate, must be provided.
- The radius map (8½" x 11") shall show a 500 foot radius* from the subject property and must show a minimum of 10 developed properties. A digital copy of the map shall be submitted on the same cd as the mailing addresses.

*Properties zoned RR-10, RR-20, or RR-40 require a 1,000-foot radius notification.

**Note that updated mailing labels may be requested by the project planner prior to deeming the application complete.

Part IV. Signature and Appellant Information

I hereby certify that the appeal submittal contains all of the above items. I understand that if any of the items are missing or otherwise deficient, the appeal is ineffective and the filing fee may be returned. IN ORDER TO PERFECT AN APPEAL, ALL APPEAL SUBMITTALS MUST BE COMPLETE BY THE DEADLINE. NO EXTENSIONS WILL BE ALLOWED FOR APPELLANTS WHO ONLY PARTIALLY COMPLY WITH THESE REQUIREMENTS AS OF THE DEADLINE. IF AN APPEAL IS NOT PERFECTED BY THE DEADLINE, THE DECISION BECOMES FINAL.

Trevor Colby

PRINT APPELLANT'S NAME

TELEPHONE NUMBER

June 25, 2020

APPELLANT'S SIGNATURE

DATE

Appellant's mailing address:

Appellant's email address:

OFFICE USE ONLY

Action Appealed: Planning Commission Resolution No 20-46, June 15, 2020 denial of CDPWF 19-005

Appeal Period: June 16, 2020 through June 25, 2020

Date Appeal Form and required documents submitted: June 25, 2020 Received by: Patricia Salazar

Appeal Completion Date: June 25, 2020 by: Patricia Salazar, Senior Administrative Analyst
(Name, Title)

29623 CUTHBERT ROAD

SUMMARY OF NOTICE OF APPEAL

The lack of an impartial hearing: Commissioners Marx, Uhring and Mazza have demonstrated a pattern of looking for non-valid reasons to delay, block or deny any CDP application for a home larger than 5,000 square feet. Planning commissioners Uhring, Marx and Mazza identified fake, contrived and improper reasons for blocking and delaying the application, as explained below.

Further, while Zoom is the safest method to convene given the pandemic, it also comes with significant technical challenges and is almost impossible to refute false statements. The Zoom meeting had started at 6:30 pm. By 11:00 p.m. the commissioners were clearly exhausted after discussing the other projects for approximately 1 1/2 hours each prior to ours. The commissioners only spent 22 minutes discussing our project. It was not a fair and impartial hearing.

The commissioners were uninterested in listening to Richard Mollica's and Bonnie Blue's responses to their claims. You can see and hear that Mazza was coughing and shuffling papers, thus interrupting Mollica's audio as sound was cutting in and out, especially during Mollica's 2/3 rule compliance explanation. During his claim of the 2/3 rule Mazza said, "I'm tired," and proceeded with contrived calculations while Bonnie Blue is shaking her head "No" in disagreement." The planning department and the available speakers all informed the three commissioners that the proposed home is compliant with any "2/3 rule".

It was claimed by Commissioner Uhring that the 100 foot setback from an Environmentally Sensitive Habitat Area (ESHA) was not met. The planning staff showed that the property is not in an ESHA or ESHA Buffer, as shown on the LCP ESHA and Marine Resource map. The city biologist has confirmed we are not within 100 feet of an ESHA. The planning staff has confirmed we are 120 feet from the ESHA. The National Park Service has provided documentation that our property is approximately 150 feet away from the ESHA and that the brush clearance and "fuel modification" area meets the county's 100 FOOT setback rule. In addition, our house was built in 1955, before the Parks Service acquired the park property. In our plans, we have moved the house farther away from the park from its prior location.

There was 1:30 left of our 15 minutes and we never got to use that time for our responses.

APPEAL ITEM 1A: *"The project fails to comply with the Local Coastal Program or Malibu Municipal Code (MMC). Specifically, the architectural plans do not comply with the two-thirds rule (Local Implementation Plan (LIP) Section 3.6(K)(2) or MMC Section 17.40.040(A)(13)(b)."*

The finding is not supported by the evidence. The Planning Department confirms in the staff report that we do comply, and Commissioner Mazza alleges the project doesn't confirm with the 2/3 rule, but he provided no evidence. Also, our architect provided additional documentation to the Planning department showing that only a minor portion of the building is 2 story high and the rest of the area over 18' in height is due to a high ceiling and not to a 2nd story (floor area where you can stand), confirming that we comply.

APPEAL ITEM 1B: *"The proposed development is not consistent with LIP Section 3.6(F)(6) or MMC Section 17.40.040(A)(6)(f) because the 100-foot setback from the parkland containing Environmentally Sensitive Habitat Area to the north has not been provided."*

This finding is not supported by the evidence. The three commissioners claimed falsely that the house could not be built due to an unspecified "ESHA" issue. The planning department of Malibu recognized and informed the commissioners that according to the LCP ESHA and Marine Resources Map identify the ESHA approximately 120 feet to the north on the parcel owned by the US Government, information that it was ratified by the City Biologist. Moreover, David Szymanski, Superintendent of Santa Monica Mountains NRA and Melissa Brown Law Enforcement Ranger that the National Park Service has an approved brush clearance zone, that extends approximately 150 feet from the boundary between our property and public lands, because the Cuthbert neighborhood was there before the National Park Services purchased the

land, see attached letter and email exchange with the NSA. Due to the ESHA being 120 feet from the property, the location of the fire road, tanks and fuel modification zone, it was determined by the Planning Department that there is not impact to recreation opportunities, that is why the 100' setback is not required. The house not only does not violate any ESHA buffer, but the homeowners and architect had increased the setback from a distant ESHA zone so as to be even further away from the distant ESHA zone.

In fact, Malibu's general plan prioritizes the private property rights of homeowners as a dominant right, superior to any "view shed" rights of hikers, so much so that homeowners can require privacy hedges near trails to ensure homeowner privacy. Any impartial unbiased commissioner who was trying to follow the proper codes and laws would know that an owner's right to build a house set further back from a fire road is not terminated due to losing a home in the Woolsey fire.

See Attached Letters from National Parks Service and Santa Monica Mountains National Recreation Area.

APPEAL ITEM 2: "...the large size of the proposed home is inconsistent with character of the neighborhood." "All of the required findings to grant the site plan review cannot be made. Specifically, the project will adversely affect neighborhood character due to the amount of building square footage proposed which is significantly greater than that of the surrounding properties."

This finding is not supported by the evidence. The three commissioners have for several years now misused a phrase called "neighborhood character," a phrase which is not a binding or enforceable part of any valid Malibu development code, but which they use to delay and block entirely compliant CDP applications. Commissioners Uhring, Mazza and Marx discussed this phrase as part of their justification for voting "no" on the application, and rejected and ignored their own planning department, and six speakers, and letters from 23 long-time Malibu residents, all of whom want the home to be built and the neighborhood to begin the recovery from Woolsey, which can only happen if unbiased and professional decisions are made. The location at issue is Cuthbert Road facing the park, an area that no longer has any definable neighborhood character because 19 out of 20 homes burned to the ground in the Woolsey Fire. They also misuse the phrase "neighborhood character" to justify any delay or "no" vote by pretending that the neighborhood character is defined by the smallest nearby home.

Our story poles have been up since January 12 (162 days and counting) and we have received zero complaints from any neighbor or anyone walking along the fire road. This is a validation of additional neighborhood support.

APPEAL ITEM 3: All of the required findings to grant the minor modification to reduce the rear yard setback cannot be made. Specifically, given the size of the parcel, alternative building pad locations are available that do not require a reduced rear yard setback.

This finding is not supported by the evidence. No alternative locations are available because the view of our neighbor will be affected if the house is relocated to the lower portion of the property. The neighbor next door, John Goodwin, supports the building of our home, but he was not allowed to speak at the hearing despite waiting for five hours. He had applied for a Primary View Determination in 2013, see attached. Moving our house forward would impact his view corridor and he is opposed to that.

We want to build on the existing pad so that there will be no additional disturbances to the land and no additional grading, not only for the house itself, but also to accommodate the fire department's requirements for a T-turnaround. Building on the existing pad will keep a lower profile.



United States Department of the Interior

NATIONAL PARK SERVICE

Santa Monica Mountains National Recreation Area
401 West Hillcrest Drive
Thousand Oaks, California 91360-4223

June 8, 2020

DANIELA RECHTSZAJD

Architect, LEED AP BD+C

5410 Village Green, LA, CA 90016

recdani@gmail.com

310-625-0654

Dear Ms. Rechtszajd:

Thank for your letter dated June 8, 2020. In your letter, you inquired about fuels management near the Busch Road trailhead and adjacent to your client's property at 29623 Cuthert Road.

The National Park Service maintains several fuel modification zones on public lands adjacent to development that existed prior to NPS ownership. One of these fuel modification zones is on the border of your client's property (please see the attached document titled, "Zuma NW (Busch) defensible space project"). This fuel modification zone extends approximately 150 feet from the boundary between your client's property and public lands. This zone is treated annually to provide protection for adjacent development.



Please Melissa Brown at 805-391-1272 if you have any questions or need additional information.

Sincerely,


David M. Szymanski, Superintendent

cc:

Zuma NW (Busch) defensible space project

 defensible space  NPS land

home ignition zone:

 30'  100'  200'

Air photo 8/2010, map by SAMO Fire GIS
robert_s_taylor@nps.gov, 5/1/2013
scale 1:3,000 1 inch = 250 feet



0 50 100 200 300 400 500 Feet



| | |
|------------|-------|
| NW1 | 1.1ac |
| NW2 West | 2.3ac |
| NW2 East | 1.3ac |
| Total area | 4.7ac |





City of Malibu

23825 Stuart Ranch Rd, Malibu, California 90265-4861
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PLANNING DEPARTMENT PRIMARY VIEW DETERMINATION

Primary View Determination: 5555 Busch Drive – John and Kathy Goodwin

On February 15, 2013, staff conducted a primary view determination at 5555 Busch Drive. Staff documented the primary view standing on an outdoor deck, located within ten feet of the exterior wall of the living room, a location chosen by the property owner. The location of the primary view determination photographs were taken from is denoted by a red star in the aerial below.



On February 15, 2013, the view from this location on the property is as follows, from east to west:







