



# Supplemental Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

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Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: December 12, 2022 Meeting date: December 12, 2022

Subject: Appeal No. 21-016 - Appeal of Planning Commission Resolution No. 21-11 (18868 Pacific Coast Highway; Owner/Appellant, Farshid Etaat)

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**RECOMMENDED ACTION:** : Adopt Resolution No. 22-39, determining the California Environmental Quality Act (CEQA) does not apply to the project, denying Appeal No. 21-016 and denying Coastal Development Permit No. 17-075 for the construction of a 3,778 square foot, two-story, single-family beachfront residence with an approximately 375 square foot attached garage, decks, retractable beach stairs, onsite wastewater treatment system, grading, retaining walls, hardscape, and seawall; including Variance (VAR) No. 17-024 for the single-family residence to extend seaward of the building stringline, VAR No. 18-022 for the first and second floor decks to extend seaward of the deck stringline, and VAR No. 20-042 for a greater than 50 percent reduction of the front yard setback, and Offer-To-Dedicate No. 21-002 for a lateral access easement across the property located in the Single-Family Medium Density (SFM) zoning district at 18868 Pacific Coast Highway (PCH) (Etaat).

**DISCUSSION:** Attached to this report is the revised Resolution 22-39 with redline changes (Attachment B) as well as the clean Resolution 22-39 (Attachment A) for Council's consideration.

**ATTACHMENTS:**

Attachment A – Resolution 22-39: Clean

Attachment B – Resolution 22-39: Revised (redline)

## RESOLUTION NO. 22-39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU, DETERMINING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT DOES NOT APPLY TO THE PROJECT, DENYING APPEAL NO. 21-016, AND DENYING COASTAL DEVELOPMENT PERMIT NO. 17-075 FOR CONSTRUCTION OF A 3,778 SQUARE FOOT, TWO-STORY, SINGLE-FAMILY BEACHFRONT RESIDENCE WITH AN APPROXIMATELY 375 SQUARE FOOT ATTACHED GARAGE, DECKS, RETRACTABLE BEACH STAIRS, ONSITE WASTEWATER TREATMENT SYSTEM, GRADING, RETAINING WALLS, HARDSCAPE, AND SEAWALL; INCLUDING VARIANCE NO. 17-024 FOR THE SINGLE-FAMILY RESIDENCE TO EXTEND SEAWARD OF THE BUILDING STRINGLINE, VARIANCE NO. 18-022 FOR THE FIRST AND SECOND FLOOR DECKS TO EXTEND SEAWARD OF THE DECK STRINGLINE, AND VARIANCE NO. 20-042 FOR A GREATER THAN 50 PERCENT REDUCTION OF THE FRONT YARD SETBACK, AND OFFER-TO-DEDICATE NO. 21-002 FOR A LATERAL ACCESS EASEMENT ACROSS THE PROPERTY LOCATED IN THE SINGLE-FAMILY MEDIUM DENSITY ZONING DISTRICT AT 18868 PACIFIC COAST HIGHWAY (ETAAT)

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

### SECTION 1. Recitals.

A. On July 20, 2017, an application for Coastal Development Permit (CDP) No. 17-075 was submitted to the Planning Department by applicant, Guy Gniadek, on behalf of the property owner, Farshid Etaat. The application was routed to the City geotechnical consultant reviewers, City Environmental Health Administrator, City Biologist, City coastal engineering consultant reviewers, City Public Works Department, Los Angeles County Waterworks District No. 29 (WD29), Los Angeles County Fire Department (LACFD), and the California State Lands Commission (CSLC) for review.

B. On May 23, 2019, Planning Department staff conducted a site visit to document site conditions, the property, and surrounding area.

C. In January 2021, story poles were installed to demonstrate the location, height, and bulk of the proposed project.

D. On January 8, 2021, staff conducted a site visit to determine visual impacts and document the story poles.

E. On January 12, 2021, a Notice of Coastal Development Permit Applications was posted on the subject property.

F. On January 20, 2021, the application was deemed complete by the Planning Department.

G. On January 21, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and on January 26, 2021, was mailed to all property owners and occupants within a 500-foot radius of the subject property.

H. On February 16, 2021, the Planning Commission continued the item to March 1, 2021, at the applicant's request to allow the applicant time to review and respond to public correspondence.

I. On March 1, 2021, the Planning Commission continued the item to March 15, 2021, at the applicant's request to allow the applicant time to review and respond to public correspondence.

J. On March 15, 2021, the Planning Commission continued the item to April 19, 2021, and directed the applicant to reinstall the story poles on March 26, 2021, from 12 pm to 7 pm for staff, Planning Commission, and the public to view.

K. On March 26, story poles were reinstalled on the property per the Planning Commission's request.

L. On April 19, 2021, the item was continued the item to June 21, 2021, at the applicant's request to allow for time to redesign aspects of the project.

M. On June 21, 2021, the Planning Commission continued the item to July 19, 2021.

N. On July 2, 2021, story poles were reinstalled on the property per the revised plans, and staff conducted a site visit to determine visual impacts and document the story poles.

O. On July 19, 2021, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, written materials, public testimony, and other information in the record. The Commission directed staff to return with an updated resolution denying the project and describing the Commission's inability to make the findings for the CDP and stringline variances, including the lack of special circumstances or exceptional characteristics applicable to the subject property such that strict application of the zoning ordinance deprives the property of privileges enjoyed by other properties in the vicinity, and the granting of such variances or modifications will be detrimental to the public interest, safety, health or welfare and will be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is location.

P. On August 2, 2021, the Planning Commission reviewed and adopted Resolution No. 21-02 denying the project.

Q. On September 16, 2021, the applicant filed an appeal of the denial.

R. On July 9, 2022, story poles were reinstalled on the property. City staff conducted a site visit to determine visual impacts and document the story poles.

S. On July 28, 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 500-foot radius of the subject property.

T. On August 22, 2022, the City Council continued the item to the September 12, 2022 Regular City Council meeting.

U. On September 12, 2022, the September 12, 2022 Regular City Council meeting was cancelled and the subject item was continued to the September 27, 2022 Adjourned Regular City Council meeting.

V. On September 27, 2022, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, reviewed, and considered written materials, public testimony, and other information in the record. The City Council directed staff to return with an updated resolution memorializing denial of the Project per the direction of the City Council.

W. On December 12, 2022, the City Council reviewed and considered the revised resolution.

## SECTION 2. Environmental Review

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15270, CEQA does not apply to projects which a public agency rejects or disapproves.

## SECTION 3. Appeal of Action.

The appeal filed by Guy Gniadek (Applicant/Appellant) contends that the findings in the Planning Commission's denial are not supported by the evidence and there was a lack of a fair or impartial hearing regarding its application CDP No. 17-075 for construction of a new 3,778 square foot, two-story, single-family residence with a 375 square foot two-car attached garage, plus hardscape, grading, retaining walls, seawall, and installation of a new onsite wastewater treatment system (OWTS), including Variance (VAR) No. 17-024 for the proposed single-family residence to extend seaward of the building stringline, VAR No. 18-022 for first and second story decks to extend seaward of the deck stringline as measured from the nearest adjacent decks, and VAR No. 20-043 for a greater than 50 percent reduction of the front yard setback located in the Single-Family Medium (SFM) zoning district at 18868 Pacific Coast Highway (Project).

## SECTION 4. Findings for Denial.

Based on the evidence contained within the record, including the agenda report for the project and the hearing on September 27, 2022 and pursuant to the City's Local Coastal Program Local Implementation Plan (LIP), including Sections 13.7(B) and 13.9, the City Council makes the findings of fact below and denies CDP No. 17-075 based on the evidence in the record as described herein.

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the project conforms to all applicable Local Coastal Program (LCP) and Malibu Municipal Code (MMC), codes, standards, goals, and policies required for the grant of the requested CDP, inclusive of the requested variances. More specifically:

- The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed project satisfies all of the required beachfront residential development standards of the SFM residential zoning district; and the City Council has determined that the proposed project does not satisfy all such standards.

- The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that there are special circumstances or exceptional characteristics applicable to the subject property, including size, topography, location or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification, which findings are required for Variance Nos. 17-024 and 18-003 for the proposed single-family residence and first and second story decks to extend seaward of the building stringline; and the City Council has determined that there are not such special circumstances or exceptional characteristics;
- The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that granting the requested variances or modifications will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located or (ii) detrimental or injurious to the public interest, safety, health or welfare; and the City Council has determined that granting the requested variances or modifications will be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located and/or detrimental to the public interest, safety, health or welfare;
- The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variances will not (i) constitute a special privilege to the applicant or property owner or (ii) be contrary to or in conflict with the general purposes and intent of this chapter, and to the goals, objectives and policies of the LCP; and the City Council has determined that the granting of the variances will (i) constitute a special privilege to the applicant or property owner and/or (ii) be contrary to or in conflict with the general purposes and intent of this chapter, and to the goals, objectives and policies of the LCP.
- The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject site is physically suitable for the proposed variances; and the City Council has determined that the subject site is not physically suitable for the proposed variances; and
- The Applicant / Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed variances comply with all requirements of State and local law (VAR Nos. 17-024 and 18-022) (LIP Section 13.26.5); and City Council has determined that proposed variances do not comply with all such requirements.

#### SECTION 5. Required Permit Findings.

Based on the evidence contained within the record the City Council further finds and determines as follows regarding the specific findings required for approval of the Project and hereby denies CDP No. 17-075.

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the Project, as proposed, is consistent with and satisfies the applicable LCP codes, standards, goals, and policies, and the Council finds that it is not consistent with or satisfies the same. Among other things, the Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed project, including both the structure and the decks, is sited as far landward as practicable, and the Council finds that it is not and thus does not present the least environmentally damaging alternative.

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

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

The proposed project does not conform with the LCP because the proposed project requires variances in order to conform to the LCP and the findings for VAR Nos. 17-024, 18-022, and 20-042 as provided below. Further, the Council finds that the variance requests are not supported by evidence, and that the Applicant/Appellant has not met its burden, and as a result the Council does not make the findings required. The Council does not find that the subject property has special circumstances or exceptional characteristics which necessitate variances for the structure stringline, deck stringline, and front yard setback. Due to the failure to obtain the variances from the stringline requirements for the structure, decks, and front yard setback the project is not consistent with the LCP.

*Finding 3. The project is the least environmentally damaging alternative.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed project is sited as far landward as practicable and is the least environmentally damaging alternative, and the Council finds that it is not so located or the least environmentally damaging alternative. The evidence in the record shows that locating the proposed structure farther landward would mitigate impacts to coastal resources and reduce vulnerability to coastal hazards and negative environmental impacts by reducing exposure to wave uprush. The applicant has not demonstrated that a more landward structure/deck would not be feasible, only that development farther seaward is preferred by the Applicant/Appellant despite the negative impacts of such development. It is anticipated that an alternative project without the requested variances would offer environmental advantages and could provide additional benefits/reduce the negative impacts of the project. The proposed location of the structure would also have the negative effect of pushing future development further seaward because neighboring properties would be able to use the new stringline established by this project to move their own buildings farther seaward.

**B. VAR No. 17-024 for single-family residence to extend seaward of the required building stringline (LIP Section 13.26.5)**

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject property presents special circumstances or exceptional characteristics which deprives the property of privileges enjoyed by other property in the vicinity and under the identical zoning classification, and the Council finds such circumstances or exceptional characteristics do not exist. Several of the immediate surrounding beachfront residences are built further landward than the proposed development. The applicant did not demonstrate that a stringline compliant residence would be deprived of privileges enjoyed by other property in the vicinity. LIP Section 3.6(G)(3)(a) requires the stringline to be located on the nearest adjacent corner of the upcoast and downcoast dwelling. If the proposed residence were to be in line with the closest upcoast and downcoast dwellings, it would be consistent with other surrounding residences and subsequently, the owner would not be deprived of privileges enjoyed by others. The proposed project did not locate the stringline point to the nearest upcoast dwelling and therefore, the proposed building stringline extends beyond an appropriate placement of the proposed residence. The stringline rule is an infill development standard used to establish beachfront structure setbacks, based on the location of neighboring structures. Extending the stringline further seaward would then allow for future development on neighboring properties to extend seaward as well which is in conflict with LCP Land Use Plan (LUP) Policy 4.23 and LIP Section 10.4(B).

*Finding 2. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.*

LUP Policy 4.23 and LIP Section 10.4(B) requires that new development on a beach or oceanfront bluff be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at

any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new development shall be elevated above the base flood elevation and sited as far landward as possible to the maximum extent practicable. The evidence in the record has not demonstrated that the proposed project is sited as far landward as possible, and that the structure design will reduce hazard vulnerability. Therefore, if the variance were granted, it would be detrimental to public safety and injurious to the property.

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variance will not constitute a special privilege to the applicant or the property owner, and the Council finds granting the variance would constitute such a special privileged. Other nearby homes have been constructed landward of the proposed stringlines. In addition, the granting of the variance would allow the proposed residence to have stringline privileges that are seaward of neighboring residences which would set a stringline variance precedent that is out of compliance with LIP Section 3.6(G)(3)(a). This would also have the negative effect of pushing future development further seaward because neighboring properties would be able to use the new stringline established by this project to move their own buildings farther seaward.

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variance will not be contrary to or in conflict with the general purposes and intent of Chapter of the LCP, nor to the goals, objectives and policies of the LCP, including LUP Section 4.30, and the Council finds that granting the variance would be contrary to or in conflict with the same. The proposed project does not conform to the stringline measurement methodology of the LIP, the Applicant/Appellant has not demonstrated that the project is the least environmentally damaging alternative, and the project is, therefore, more vulnerable to coastal hazards. As the required variance findings are not made, as described above and below, , the granting of the variance would be contrary to or in conflict with the general purposes and intent of LIP Chapter 13 and/or the goals, objectives, and policies of the LCP. The granting of the variance would also push future development further seaward because neighboring properties would be able to use the new stringline established by this project to move their own buildings farther seaward.

*Finding 8. The subject site is physically suitable for the proposed variance.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject site is physically suitable for the proposed variance as the site could accommodate a more appropriate stringline that is in drawn from the corners of the adjacent structures, and the Council finds the site is not suitable for the proposed variance. The granting of the proposed variance would allow for a larger residential structure that is physically suitable for the subject site. The subject site will accommodate a structure that is set back farther from the ocean, as required by the LIP, and pushing it farther towards the ocean has negative impacts associated with further exposure to wave uprush and the pushing future development further seaward because neighboring properties would be able to use the new stringline established by this project to move their own buildings farther seaward.



*Finding 9. The variance complies with all requirements of State and local law.*

As described above, the Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the variance complies with all requirements of State and local law, and the Council finds that it does not.

**C. VAR No. 18-022 for the first and second floor decks to extend seaward of the deck stringline (LIP Section 13.26.5)**

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject property presents special circumstances or exceptional characteristics which deprives the property of privileges enjoyed by other property in the vicinity and under the identical zoning classification, and the Council finds such special circumstances or exceptional characteristics do not exist. Several of the immediate surrounding beachfront residences are built much further landward than the proposed development. The applicant did not demonstrate that a stringline compliant residence would be deprived of privileges enjoyed by other property in the vicinity. LIP Section 3.6(G)(3)(b) requires the deck stringline to be located on the nearest adjacent corner of the upcoast and downcoast deck. If the proposed decks were to be in line with the nearest upcoast and downcoast decks, it would be consistent with other surrounding residences and subsequently, the owner would not be deprived of privileges enjoyed by others. The proposed project did not locate the stringline point to the nearest upcoast deck and therefore the proposed adjusted deck stringline extends beyond an appropriate placement of the proposed decks. Residential developments with rear decks in the immediate area are built in compliance with the LCP and MMC without necessitating a variance.

*Finding 2. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.*

LUP Policy 4.23 and LIP Section 10.4(B) requires that new development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new development shall be elevated above the base flood elevation and sited as far landward as possible to the maximum extent practicable. The applicant has not demonstrated that the proposed structure has been sited as far landward as possible to the maximum extent practicable.

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variance will not constitute a special privilege to the applicant or the property owner, and the Council finds granting the variance would constitute such a special privilege. Other nearby decks have been constructed landward of the proposed stringlines. This would allow a deck farther seaward than is allowed for other properties in the vicinity. In addition, the granting of the variance it would allow the proposed residence to have stringline privileges that are seaward of neighboring residences which would set a stringline precedent that is out of compliance with LIP Section 3.6(G)(3)(a), and lead to development further seaward.

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variance will not be contrary to or in conflict with the general purposes and intent of Chapter 13 of the LCP, nor to the goals, objectives and policies of the LCP, and the Council finds that it would be contrary to or in conflict with the same. The proposed project does not conform to the stringline measurement methodology of the LIP, the Applicant/Appellant has not demonstrated that the project is the least environmentally damaging alternative, and the Project is vulnerable to coastal hazards. As the required variance findings are not made, as described above, the granting of the variance would be contrary to or in conflict with the general purposes and intent of LIP Chapter 13 and/or the goals, objectives, and policies of the LCP.

*Finding 8. The subject site is physically suitable for the proposed variance.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject site is physically suitable for the proposed variance, and the Council finds the site is not suitable for the proposed variance. The site could accommodate a more appropriate stringline that is drawn from the nearest adjacent corner of the upcoast and downcoast deck which would then be in conformance with LIP Section 3.6(G)(3)(b).

*Finding 9. The variance complies with all requirements of State and local law.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the variance complies with all requirements of State and local law, and the Council finds that it does not so comply.

**D. VAR No. 20-042 for a greater than 50 percent reduction of the front yard setback (LIP Section 13.26.5)**

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject property presents special circumstances or exceptional characteristics which deprives the property of privileges enjoyed by other property in the vicinity and under the identical zoning classification, and the Council finds such special circumstances or exceptional characteristics do not exist. The first floor of the proposed structure is able to conform to the front yard setback requirement per Section 17.40.040(A)(7)(a). The evidence in the record does not demonstrate a special circumstance or characteristic that the second floor would not be able to meet the front yard setback requirement in compliance with the LCP and MMC without necessitating a variance.

*Finding 2. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variance will not be detrimental to the public's interest, safety, health or welfare, and the Council finds that it would be so detrimental. Among other things, granting of the variance would allow the proposed residence to have a front yard setback closer to the roadway than necessary and would set a precedent for new development in the area to request a front yard setback variance despite being able to meet the requirement of Section 17.40.040(A)(7)(a).

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variance will not constitute a special privilege to the applicant or the property owner, and the Council finds that granting the variance would constitute such a special privilege. The manner of the proposed encroachment into the standard setback is substantively different than other reductions that have been allowed.

*Finding 8. The subject site is physically suitable for the proposed variance.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject site is physically suitable for the proposed variance, and the Council finds that it is not. Among other things, the site is able to accommodate the required front yard setback as the evidence in the record demonstrates that the first floor is able to meet the required front yard setback.

*Finding 9. The variance complies with all requirements of State and local law.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the variance complies with all requirements of State and local law, and the Council finds that it has not—particularly as described above.

#### **E. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)**

*Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed project is the least environmentally damaging alternative, and the Council finds that it is not. The evidence shows the proposed project is not sited as far landward as practicable and therefore, it is not the least visually intrusive and least environmentally damaging option. If the residence were to comply with stringline rules or be located further landward, which would reduce visual impacts from the beach and be in conformance with LUP Policy 4.23 and LIP Section 10.4(B) which requires new developments to be sited as far landward as possible to the maximum extent practicable. The evidence in the record has not demonstrated that the proposed project is sited as far landward as possible.

*Finding 4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.*

The proposed project could be reduced in size and building footprint, which would lessen significant adverse impacts on scenic and visual resources.

#### **F. Hazards (LIP Chapter 9)**

*Finding 1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons, and the Council finds it would be subject to the same. As the proposed residence is requesting stringlines that would allow the residence to be sited further seaward, the proposed project would have a higher risk of flood, tsunami hazards, and be subject to wave uprush.

*Finding 2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions, and the Council finds that it will have such impacts. Since the evidence in the record shows that the applicant has not demonstrated that the proposed structure is located as far landward as practicable, the proposed project would potentially have increased flood hazards and wave uprush due to project design and location. The increased exposure to coastal hazards could have an adverse impact on site stability and structural integrity over time.

*Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.*

Evidence in the record does not support the claim that the proposed project is the least environmentally damaging alternative as the proposed project is subject to coastal hazards described in Finding 1 and is not sited as far landward as possible, as required by LUP Policy 4.23 and LIP Section 10.4(B). Locating the proposed structure farther landward would mitigate impacts to coastal resources and reduce vulnerability to coastal hazards and negative environmental impacts by reducing exposure to wave uprush.

*Finding 4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.*

The proposed project could have been reduced in size and building footprint thereby moving it further landward to avoid or substantially lessen impacts from coastal hazards.

#### **G. Shoreline and Bluff Development (LIP Chapter 10)**

*Finding 1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed project will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons, and the Council finds the project will have such impacts. The site is subject to coastal hazards and the design of the proposed residence could potentially affect shoreline sand supply and other resources due to the project design.

*Finding 2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed project will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons, and the Council finds the project will have such impacts. The site is subject to coastal hazards and the design of the proposed residence would affect shoreline sand supply and other resources due to the project design.

*Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.*

Evidence in the record does not support the claim that the proposed project is the least environmentally damaging alternative. Locating the proposed structure farther landward would mitigate impacts to coastal resources and reduce vulnerability to coastal hazards and negative environmental impacts by reducing exposure to wave uprush. The applicant has not demonstrated that a more landward structure/deck would not be feasible, only that development farther seaward is preferred by the Applicant/Appellant despite the negative impacts of such development. The proposed location of the structure would also have the negative effect of pushing future development further seaward because neighboring properties would be able to use the new stringline established by this project to move their own buildings farther seaward.

*Finding 4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.*

The proposed project could have been reduced in size and building footprint thereby moving it further landward to avoid or substantially lessen impacts on shoreline sand supply or other resources.

*Finding 5. The shoreline protective device is designed or conditioned to be sited as far landward as feasible to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, and there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and it is the least environmentally damaging alternative.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the shoreline protective device is designed or conditioned to be sited as far landward as feasible to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, and there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and it is the least environmentally damaging alternative. The Council further finds that the project and shoreline protective device could be located further landward, which would further mitigate the adverse impacts on local shoreline sand supply, public access and coastal resources.

SECTION 6. City Council Action.

Based on the foregoing findings and evidence contained within the record, the City Council hereby denies CDP No. 17-075, VAR Nos. 17-024, 18-022, and 20-042.

SECTION 7. The City Clerk shall certify the adoption of this resolution.

PASSED AND ADOPTED this 12<sup>th</sup> day of December 2022.

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PAUL GRISANTI, Mayor

ATTEST:

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KELSEY PETTIJOHN, City Clerk  
(seal)

APPROVED AS TO FORM:

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

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TREVOR RUSIN, 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 Malibu Municipal Code and Code of Civil Procedure

RESOLUTION NO. 22-39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU, DETERMINING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT DOES NOT APPLY TO THE PROJECT, DENYING APPEAL NO. 21-016, AND DENYING COASTAL DEVELOPMENT PERMIT NO. 17-075 FOR CONSTRUCTION OF A 3,778 SQUARE FOOT, TWO-STORY, SINGLE-FAMILY BEACHFRONT RESIDENCE WITH AN APPROXIMATELY 375 SQUARE FOOT ATTACHED GARAGE, DECKS, RETRACTABLE BEACH STAIRS, ONSITE WASTEWATER TREATMENT SYSTEM, GRADING, RETAINING WALLS, HARDSCAPE, AND SEAWALL; INCLUDING VARIANCE NO. 17-024 FOR THE SINGLE-FAMILY RESIDENCE TO EXTEND SEAWARD OF THE BUILDING STRINGLINE, VARIANCE NO. 18-022 FOR THE FIRST AND SECOND FLOOR DECKS TO EXTEND SEAWARD OF THE DECK STRINGLINE, AND VARIANCE NO. 20-042 FOR A GREATER THAN 50 PERCENT REDUCTION OF THE FRONT YARD SETBACK, AND OFFER-TO-DEDICATE NO. 21-002 FOR A LATERAL ACCESS EASEMENT ACROSS THE PROPERTY LOCATED IN THE SINGLE-FAMILY MEDIUM DENSITY ZONING DISTRICT AT 18868 PACIFIC COAST HIGHWAY (ETAAT)

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

SECTION 1. Recitals.

A. On July 20, 2017, an application for Coastal Development Permit (CDP) No. 17-075 was submitted to the Planning Department by applicant, Guy Gniadek, on behalf of the property owner, Farshid Etaat. The application was routed to the City geotechnical consultant reviewers, City Environmental Health Administrator, City Biologist, City coastal engineering consultant reviewers, City Public Works Department, Los Angeles County Waterworks District No. 29 (WD29), Los Angeles County Fire Department (LACFD), and the California State Lands Commission (CSLC) for review.

B. On May 23, 2019, Planning Department staff conducted a site visit to document site conditions, the property, and surrounding area.

C. In January 2021, story poles were installed to demonstrate the location, height, and bulk of the proposed project.

D. On January 8, 2021, staff conducted a site visit to determine visual impacts and document the story poles.

E. On January 12, 2021, a Notice of Coastal Development Permit Applications was posted on the subject property.

F. On January 20, 2021, the application was deemed complete by the Planning Department.



G. On January 21, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and on January 26, 2021, was mailed to all property owners and occupants within a 500-foot radius of the subject property.

H. On February 16, 2021, the Planning Commission continued the item to March 1, 2021, at the applicant's request to allow the applicant time to review and respond to public correspondence.

I. On March 1, 2021, the Planning Commission continued the item to March 15, 2021, at the applicant's request to allow the applicant time to review and respond to public correspondence.

J. On March 15, 2021, the Planning Commission continued the item to April 19, 2021, and directed the applicant to reinstall the story poles on March 26, 2021, from 12 pm to 7 pm for staff, Planning Commission, and the public to view.

K. On March 26, story poles were reinstalled on the property per the Planning Commission's request.

L. On April 19, 2021, the item was continued the item to June 21, 2021, at the applicant's request to allow for time to redesign aspects of the project.

M. On June 21, 2021, the Planning Commission continued the item to July 19, 2021.

N. On July 2, 2021, story poles were reinstalled on the property per the revised plans, and staff conducted a site visit to determine visual impacts and document the story poles.

O. On July 19, 2021, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, written materials, public testimony, and other information in the record. The Commission directed staff to return with an updated resolution denying the project and describing the Commission's inability to make the findings for the CDP and stringline variances, including the lack of special circumstances or exceptional characteristics applicable to the subject property such that strict application of the zoning ordinance deprives the property of privileges enjoyed by other properties in the vicinity, and the granting of such variances or modifications will be detrimental to the public interest, safety, health or welfare and will be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is location.

P. On August 2, 2021, the Planning Commission reviewed and adopted Resolution No. 21-02 denying the project.

Q. On September 16, 2021, the applicant filed an appeal of the denial.

R. On July 9, 2022, story poles were reinstalled on the property. City staff conducted a site visit to determine visual impacts and document the story poles.

S. On July 28, 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 500-foot radius of the subject property.

T. On August 22, 2022, the City Council continued the item to the September 12, 2022 Regular City Council meeting.

U. On September 12, 2022, the September 12, 2022 Regular City Council meeting was cancelled and the subject item was continued to the September 27, 2022 Adjourned Regular City Council meeting.

V. On September 27, 2022, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, reviewed, and considered written materials, public testimony, and other information in the record. The City Council directed staff to return with an updated resolution memorializing denial of the Project per the direction of the City Council.

W. On December 12, 2022, the City Council reviewed and considered the revised resolution.

## SECTION 2. Environmental Review

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15270, CEQA does not apply to projects which a public agency rejects or disapproves.

## SECTION 3. Appeal of Action.

The appeal filed by Guy Gniadek ([Applicant/Appellant](#)) contends that the findings in the Planning Commission's denial are not supported by the evidence and there was a lack of a fair or impartial hearing regarding its application CDP No. 17-075 for construction of a new 3,778 square foot, two-story, single-family residence with a 375 square foot two-car attached garage, plus hardscape, grading, retaining walls, seawall, and installation of a new onsite wastewater treatment system (OWTS), including Variance (VAR) No. 17-024 for the proposed single-family residence to extend seaward of the building stringline, VAR No. 18-022 for first and second story decks to extend seaward of the deck stringline as measured from the nearest adjacent decks, and VAR No. 20-043 for a greater than 50 percent reduction of the front yard setback located in the Single-Family Medium (SFM) zoning district at 18868 Pacific Coast Highway (Project).

## SECTION 4. Findings for Denial.

Based on the evidence contained within the record, including the agenda report for the project and the hearing on September 27, 2022 and pursuant to the City's Local Coastal Program Local Implementation Plan (LIP), including Sections 13.7(B) and 13.9, the City Council makes the findings of fact below and denies CDP No. 17-075 based on the evidence in the record as described herein.

The ~~findings for the proposed project determining~~ [Applicant/Appellant has failed to establish, much less by a preponderance of the evidence,](#) that the project conforms to all applicable Local Coastal Program (LCP) and Malibu Municipal Code (MMC), codes, standards, goals, and policies, ~~as all of the required findings for the CDP and variances cannot be made. The following findings could not be made:~~ [required for the grant of the requested CDP, inclusive of the requested variances.](#)  
[More specifically:](#)

- The ~~findings related to LIP Chapter 13 determining that the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program cannot be made due to~~ Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed project ~~not~~ meetingsatisfies all of the required beachfront residential development standards of the SFM residential zoning district; and the City Council has determined that the proposed project does not satisfy all such standards.
- The ~~findings for Variance Nos. 17-024 and 18-003 for the proposed single-family residence and first and second-story decks to extend seaward of the building stringline cannot be made due to a lack of evidence showing~~ Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that there are special circumstances or exceptional characteristics applicable to the subject property, including size, topography, location or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification; which findings are required for Variance Nos. 17-024 and 18-003 for the proposed single-family residence and first and second story decks to extend seaward of the building stringline; and the City Council has determined that there are not such special circumstances or exceptional characteristics;
- The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that granting ~~of~~ the requested variances or modifications will ~~be detrimental to the public interest, safety, health or welfare and will be not be~~ detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located; or (ii) detrimental or injurious to the public interest, safety, health or welfare; and the City Council has determined that granting the requested variances or modifications will be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located and/or detrimental to the public interest, safety, health or welfare;
- The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variances will not (i) constitute a special privilege to the applicant or property owner; ~~the granting of such variances will~~ or (ii) be contrary to or in conflict with the general purposes and intent of this chapter, and to the goals, objectives and policies of the LCP; and the City Council has determined that the granting of the variances will (i) constitute a special privilege to the applicant or property owner and/or (ii) be contrary to or in conflict with the general purposes and intent of this chapter, and to the goals, objectives and policies of the LCP.
- ~~The subject site is not physically suitable for the proposed variances; and~~
- The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject site is physically suitable for the proposed variances; and the City Council has determined that the subject site is not physically suitable for the proposed variances; and
- The Applicant / Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed variances ~~do not~~ comply with all requirements of State and local law (VAR Nos. 17-024 and 18-022) (LIP Section 13.26.5); and City Council has determined that proposed variances do not comply with all such requirements.

## SECTION 5. Required Permit Findings.

Based on the evidence contained within the record the City Council further finds and determines as follows regarding the specific findings required for approval of the Project and hereby denies CDP No. 17-075.

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the Project, as proposed, is consistent with and satisfies the applicable LCP codes, standards, goals, and policies, and the Council finds that it is not consistent with or satisfies the same. Among other things, the Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed project, including both the structure and the decks, is sited as far landward as ~~possible thereby being~~ practicable, and the Council finds that it is not and thus does not present the least environmentally damaging alternative, ~~the proposed project necessitates stringline variances for both the structure and decks.~~

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

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

The proposed project does not conform with the LCP because the proposed project requires variances in order to conform to the LCP and the findings for VAR Nos. 17-024, 18-022, and 20-042 as provided below. Further, the Council finds that the variance requests are not supported by evidence, and that the Applicant/Appellant has not met its burden, and as a result the Council does not make the findings required. The Council does not find that the subject property has special circumstances or exceptional characteristics which necessitate variances for the structure stringline, deck stringline, and front yard setback. Due to the failure to obtain the variances from the stringline requirements for the structure, decks, and front yard setback the project is not consistent with the LCP.

*Finding 3. The project is the least environmentally damaging alternative.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, in the record shows, that the proposed project is ~~not~~ sited as far landward as ~~possible and therefore is not~~ practicable and is the least environmentally damaging alternative, and the Council finds that it is not so located or the least environmentally damaging alternative. ~~Locating the~~ The evidence in the record shows that locating the proposed structure farther landward would mitigate impacts to coastal resources and reduce vulnerability to coastal hazards and negative environmental impacts by reducing exposure to wave uprush. The applicant has not demonstrated that a more landward structure/deck would not be feasible, only that development farther seaward is preferred by the Applicant/Appellant despite the negative impacts of such development. It is anticipated that an alternative project without the requested variances would offer environmental advantages and could provide additional benefits/reduce the negative impacts of the project. The proposed location of the structure would also have the negative effect of pushing future development further seaward because neighboring properties would be able to use the new stringline established by this project to move their own buildings farther seaward.

**B. VAR No. 17-024 for single-family residence to extend seaward of the required building stringline (LIP Section 13.26.5)**

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject property ~~does not present~~ presents special circumstances or exceptional characteristics which deprives the property of privileges enjoyed by other property in the vicinity and under the identical zoning classification, and the Council finds such circumstances or exceptional characteristics do not exist. Several of the immediate surrounding beachfront residences are built further landward than the proposed development. The applicant did not demonstrate that a stringline compliant residence would be deprived of privileges enjoyed by other property in the vicinity. LIP Section 3.6(G)(3)(a) requires the stringline to be located on the nearest adjacent corner of the upcoast and downcoast dwelling. If the proposed residence were to be in line with the closest upcoast and downcoast dwellings, it would be consistent with other surrounding residences and subsequently, the owner would not be deprived of privileges enjoyed by others. The proposed project did not locate the stringline point to the nearest upcoast dwelling and therefore, the proposed building stringline extends beyond an appropriate placement of the proposed residence. The stringline rule is an infill development standard used to establish beachfront structure setbacks, based on the location of neighboring structures. Extending the stringline further seaward would then allow for future development on neighboring properties to extend seaward as well which is in conflict with LCP Land Use Plan (LUP) Policy 4.23 and LIP Section 10.4(B).

*Finding 2. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.*

LUP Policy 4.23 and LIP Section 10.4(B) requires that new development on a beach or oceanfront bluff be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new development shall be elevated above the base flood elevation and sited as far landward as possible to the maximum extent practicable. The evidence in the record has not demonstrated that the proposed project is sited as far landward as possible, and that the structure design will reduce hazard vulnerability. Therefore, if the variance were granted, it would be detrimental to public safety and injurious to the property.

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variance will not constitute a special privilege to the applicant or the property owner~~because other~~, and the Council finds granting the variance would constitute such a special privileged. Other nearby homes have been constructed landward of the proposed stringlines. In addition, the granting of the variance would allow the proposed residence to have stringline privileges that are seaward of neighboring residences which would set a stringline variance precedent that is out of compliance with LIP Section 3.6(G)(3)(a). This would also have the negative effect of pushing future development further seaward because neighboring properties would be able to use the new stringline established by this project to move their own buildings farther seaward.

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that he granting of the variance would will not be contrary to or in conflict with the general purposes and intent of Chapter of the LCP, nor to the goals, objectives and policies of the LCP, including LUP Section 4.30, and the Council finds that granting the variance would be contrary to or in conflict with the same. The proposed project ~~also~~ does not conform to the stringline measurement methodology of the LIP, the Applicant/Appellant has not demonstrated that the project is the least environmentally damaging alternative, and the project is, therefore, more vulnerable to coastal hazards. The Council is unable to make all of the As the required variance findings in support of the variance, therefore are not made, as described above and below,, the granting of the variance would be contrary to or in conflict with the general purposes and intent of LIP Chapter 13, ~~and/or~~ the goals, objectives, and policies of the LCP. The granting of the variance would also push future development further seaward because neighboring properties would be able to use the new stringline established by this project to move their own buildings farther seaward.

*Finding 8. The subject site is physically suitable for the proposed variance.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject site is not physically suitable for the proposed variance as the site could accommodate a more appropriate stringline that is in drawn from the corners of the adjacent structures, and the Council finds the site is not suitable for the proposed variance. The granting of the proposed variance would allow for a larger residential structure that is physically suitable for the subject site. The subject site will accommodate a structure that is set back farther from the ocean, as required

by the LIP, and pushing it farther towards the ocean has negative impacts associated with further exposure to wave uprush and the pushing future development further seaward because neighboring properties would be able to use the new stringline established by this project to move their own buildings farther seaward.

*Finding 9. The variance complies with all requirements of State and local law.*

~~Due to the findings~~As described above, the Applicant/Appellant has failed to establish, much less by a preponderance of the evidence ~~in the record does not demonstrate,~~ that the variance complies with all requirements of State and local law, and the Council finds that it does not.



**C. VAR No. 18-022 for the first and second floor decks to extend seaward of the deck stringline (LIP Section 13.26.5)**

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject property ~~does not present~~ presents special circumstances or exceptional characteristics which deprives the property of privileges enjoyed by other property in the vicinity and under the identical zoning classification, and the Council finds such special circumstances or exceptional characteristics do not exist. Several of the immediate surrounding beachfront residences are built much further landward than the proposed development. The applicant did not demonstrate that a stringline compliant residence would be deprived of privileges enjoyed by other property in the vicinity. LIP Section 3.6(G)(3)(b) requires the deck stringline to be located on the nearest adjacent corner of the upcoast and downcoast deck. If the proposed decks were to be in line with the nearest upcoast and downcoast decks, it would be consistent with other surrounding residences and subsequently, the owner would not be deprived of privileges enjoyed by others. The proposed project did not locate the stringline point to the nearest upcoast deck and therefore the proposed adjusted deck stringline extends beyond an appropriate placement of the proposed decks. Residential developments with rear decks in the immediate area are built in compliance with the LCP and MMC without necessitating a variance.

*Finding 2. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.*

LUP Policy 4.23 and LIP Section 10.4(B) requires that new development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new development shall be elevated above the base flood elevation and sited as far landward as possible to the maximum extent practicable. The applicant has not demonstrated that the proposed structure has been sited as far landward as possible to the maximum extent practicable.

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variance will not constitute a special privilege to the applicant or the property owner ~~because other~~, and the Council finds granting the variance would constitute such a special privilege. Other nearby decks have been constructed landward of the proposed stringlines. This would allow a deck farther seaward than is allowed for other properties in the vicinity. In addition, the granting of the variance it would allow the proposed residence to have stringline privileges that are seaward of neighboring residences which would set a stringline precedent that is out of compliance with LIP Section 3.6(G)(3)(a), and lead to development further seaward.



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

~~The project is not consistent with the LCP, the Coastal Act, and other applicable regulations, which allow the Council to approve a variance only if it makes all of the findings of fact supported by substantial evidence. The proposed project does not conform to the stringline measurement methodology of the LIP, has not demonstrated that it is the least environmentally damaging alternative, and is vulnerable to coastal hazards. The Council is unable to make all of the findings in support of the variance, therefore, the granting of the variance would be contrary to or in conflict with the general purposes and intent of LIP Chapter 13, and the goals, objectives, and policies of the LCP.~~

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variance will not be contrary to or in conflict with the general purposes and intent of Chapter 13 of the LCP, nor to the goals, objectives and policies of the LCP, and the Council finds that it would be contrary to or in conflict with the same. The proposed project does not conform to the stringline measurement methodology of the LIP, the Applicant/Appellant has not demonstrated that the project is the least environmentally damaging alternative, and the Project is vulnerable to coastal hazards. As the required variance findings are not made, as described above, the granting of the variance would be contrary to or in conflict with the general purposes and intent of LIP Chapter 13 and/or the goals, objectives, and policies of the LCP.

*Finding 8. The subject site is physically suitable for the proposed variance.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject site is ~~not~~ physically suitable for the proposed variance ~~as the~~, and the Council finds the site is not suitable for the proposed variance. The site could accommodate a more appropriate stringline that is drawn from the nearest adjacent corner of the upcoast and downcoast deck which would then be in conformance with LIP Section 3.6(G)(3)(b).

*Finding 9. The variance complies with all requirements of State and local law.*

~~The evidence in the record does not demonstrate that the variance complies with all requirements of State and local law.~~

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the variance complies with all requirements of State and local law, and the Council finds that it does not so comply.

**D. VAR No. 20-042 for a greater than 50 percent reduction of the front yard setback (LIP Section 13.26.5)**

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject property ~~does not present~~presents special circumstances or exceptional characteristics

which deprives the property of privileges enjoyed by other property in the vicinity and under the identical zoning classification, and the Council finds such special circumstances or exceptional characteristics do not exist. The first floor of the proposed structure is able to conform to the front yard setback requirement per Section 17.40.040(A)(7)(a). The evidence in the record does not demonstrate a special circumstance or characteristic that the second floor would not be able to meet the front yard setback requirement in compliance with the LCP and MMC without necessitating a variance.

*Finding 2. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variance will not be detrimental to the public's interest, safety, health or welfare ~~because it~~, and the Council finds that it would be so detrimental. Among other things, granting of the variance would allow the proposed residence to have a front yard setback closer to the roadway than necessary and would set a precedent for new development in the area to request a front yard setback variance despite being able to meet the requirement of Section 17.40.040(A)(7)(a).

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

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the granting of the variance will not constitute a special privilege to the applicant or the property owner, and the Council finds that granting the variance would constitute such a special privilege. The manner of the proposed encroachment into the standard setback is substantively different than other reductions that have been allowed.

*Finding 8. The subject site is physically suitable for the proposed variance.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the subject site is ~~not~~ physically suitable for the proposed variance-as, and the Council finds that it is not. Among other things, the site is able accommodate the required front yard setback as the evidence in the record demonstrates that the first floor is able to meet the required front yard setback.

*Finding 9. The variance complies with all requirements of State and local law.*

~~The evidence in the record does not demonstrate that the variance complies with all requirements of State and local law.~~

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the variance complies with all requirements of State and local law, and the Council finds that it has not—particularly as described above.

#### **E. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)**

*Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.*

The Applicant/Appellant has ~~not demonstrated~~failed to establish, much less by a preponderance of the evidence, that the proposed project is the least environmentally damaging alternative, and the Council finds that it is not. The evidence shows the proposed project is not sited as far landward as ~~possible~~practicable and therefore, it is not the least visually intrusive and least environmentally damaging option. If the residence were to comply with stringline rules or a be located further landward, which would reduce visual impacts from the beach and be in conformance with LUP Policy 4.23 and LIP Section 10.4(B) which requires new developments to be sited as far landward as possible to the maximum extent practicable. The evidence in the record has not demonstrated that the proposed project is sited as far landward as possible.

*Finding 4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.*

The proposed project could be reduced in size and building footprint, which would lessen significant adverse impacts on scenic and visual resources.

#### **F. Hazards (LIP Chapter 9)**

*Finding 1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons, and the Council finds it would be subject to the same. As the proposed residence is requesting stringlines that would allow the residence to be sited further seaward, the proposed project would have a higher risk of flood, tsunami hazards, and be subject to wave uprush.

*Finding 2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.*

The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions, and the Council finds that it will have such impacts. Since the evidence in the record shows that the applicant has not demonstrated that the proposed structure is located as far landward as ~~possible~~practicable, the proposed project would potentially have increased flood hazards and wave uprush due to project design and location. The increased exposure to coastal hazards could have an adverse impact on site stability and structural integrity over time.

*Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.*

Evidence in the record does not support the claim that the proposed project is the least environmentally damaging alternative as the proposed project is subject to coastal hazards described in Finding 1 and is not sited as far landward as possible, as required by LUP Policy 4.23 and LIP Section 10.4(B). Locating the proposed structure farther landward would mitigate impacts to coastal resources and reduce vulnerability to coastal hazards and negative environmental impacts by reducing exposure to wave uprush.

*Finding 4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.*

The proposed project could have been reduced in size and building footprint thereby moving it further landward to avoid or substantially lessen impacts from coastal hazards.

## **G. Shoreline and Bluff Development (LIP Chapter 10)**

*Finding 1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.*

~~Evidence in the record does not demonstrate~~The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed project will have no significant adverse

impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons, and the Council finds the project will have such impacts. The site is subject to coastal hazards and the design of the proposed residence could potentially affect shoreline sand supply and other resources due to the project design.

*Finding 2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.*

~~Evidence in the record does not demonstrate~~ The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the proposed project will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons, and the Council finds the project will have such impacts. The site is subject to coastal hazards and the design of the proposed residence would affect shoreline sand supply and other resources due to the project design.

*Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.*

Evidence in the record does not support the claim that the proposed project is the least environmentally damaging alternative. Locating the proposed structure farther landward would mitigate impacts to coastal resources and reduce vulnerability to coastal hazards and negative environmental impacts by reducing exposure to wave uprush. The applicant has not demonstrated that a more landward structure/deck would not be feasible, only that development farther seaward is preferred by the Applicant/Appellant despite the negative impacts of such development. The proposed location of the structure would also have the negative effect of pushing future development further seaward because neighboring properties would be able to use the new stringline established by this project to move their own buildings farther seaward.

*Finding 4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.*

The proposed project could have been reduced in size and building footprint thereby moving it further landward to avoid or substantially lessen impacts on shoreline sand supply or other resources.

*Finding 5. The shoreline protective device is designed or conditioned to be sited as far landward as feasible to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, and there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and it is the least environmentally damaging alternative.*

~~Evidence in the record shows that the applicant did not meet their burden of proof in demonstrating that the~~ The Applicant/Appellant has failed to establish, much less by a preponderance of the evidence, that the shoreline protective device ~~could not be feasibly sited further~~ is designed or conditioned to be sited as far landward as feasible to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and ~~did not provide~~ public access, and there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources- and it is the least environmentally damaging alternative. The Council further

finds that the project and shoreline protective device could be located further landward, which would further mitigate the adverse impacts on local shoreline sand supply, public access and coastal resources.

SECTION 6. City Council Action.

Based on the foregoing findings and evidence contained within the record, the City Council hereby denies CDP No. 17-075, VAR Nos. 17-024, 18-022, and 20-042.

SECTION 7. The City Clerk shall certify the adoption of this resolution.

PASSED AND ADOPTED this 12<sup>th</sup> day of December 2022.

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PAUL GRISANTI, Mayor

ATTEST:

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KELSEY PETTIJOHN, City Clerk  
(seal)

APPROVED AS TO FORM:

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

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TREVOR RUSIN, 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 Malibu Municipal Code and Code of Civil Procedure