



CITY OF

NEWPORT BEACH

City Council Staff Report

November 15, 2022
Agenda Item No. 20

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2022-25: Nonconforming Code and Local Coastal
Program Amendments (PA2022-076)

ABSTRACT:

For the City Council's consideration are amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC). The amendments include two parts: 1) clarifying development allowances for residential uses that are nonconforming due to density; and 2) reinstating a side setback allowance for properties in the R-1-6,000, R-1-7,200, R-1-10,000, R-2-6,000, and the RM-6,000 zoning and coastal zoning districts. The side setback allowance would allow additions in line with the principal structure regardless of the current minimum side setback standards.

RECOMMENDATION:

- a) Conduct a public hearing;
- b) Find the amendments exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. The LCP Amendment is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment;
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2022-25, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Zoning Code Amendment No. CA2022-004 to Amend Sections 20.18.030 (Residential Zoning Districts General Development Standards), 20.38.040 (Nonconforming Structures), and 20.38.050 (Nonconforming Uses) of the Newport Beach Municipal Code to Conform with State Law and Correct Errors Related to Setbacks (PA2022-076)*, and pass to second reading on November 29, 2022; and

- d) Adopt Resolution No. 2022-82, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing the Submittal of Local Coastal Program Amendment No. LC2022-002 to Amend Sections 21.18.030 (Residential Coastal Zoning Districts General Development Standards), 21.38.040 (Nonconforming Structures), and 21.38.050 (Nonconforming Uses) of the Newport Beach Municipal Code to Conform with State Law and Correct Errors Related to Setbacks (PA2022-076).*

DISCUSSION:

Early housing development within the City is characterized by a mixture of single-family, multi-family, and mixed-use housing near commercial and visitor-serving uses. Duplexes, triplexes and fourplexes can be found primarily in the older neighborhoods such as West Newport, the Balboa Peninsula, Balboa Island, and Corona del Mar. Throughout the years, many blocks have been rezoned to lower residential densities. Residential properties that have been legally developed with more dwelling units than allowed under current zoning regulations are considered a nonconforming use (e.g., duplex in a single-family residential zoning district). These properties are subject to the restrictions set forth in NBMC 20.38 and 21.38 (Nonconforming Uses and Structures). The existing code provisions (20.38.050 and 21.38.050) state that a property owner of a nonconforming use is able to alter their residence to reduce the total number of dwelling units to a conforming number; however, the code provisions do not provide clear guidance regarding other allowances such as allowing property owners to make repairs, alterations or improvements to a nonconforming residential use. Due to this lack of clarity, some property owners have not made the needed investments in their property.

Redeveloping these nonconforming properties with a compliant density became infeasible in 2019 with the passage of the Housing Crisis Act of 2019 (SB 330). The law provides, “[a city] shall not approve a housing development project that will require the demolition of residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished.” Although SB 330 was originally set to sunset on January 1, 2025, it was extended to January 1, 2030, with the passage of SB 8 (Chapter 161, Statutes of 2021).

Proposed Amendment

The proposed amendment will revise NBMC 20.38.050 and 21.38.050 (Nonconforming Uses) to clarify that residential properties that are nonconforming due to density may be maintained, altered or expanded pursuant to the limitations of NBMC Sections 20.38.040 and 21.38.040 (Nonconforming Structures). The amendment will allow alterations and additions of up to 50 percent of the floor area of the existing structure provided the addition complies with applicable development standards. Should the property also be nonconforming due to parking, the improvements will be subject to NBMC 20.38.060 and 21.38.060 (Nonconforming Parking), which will limit additions to up to 10 percent of the existing floor area of the structure. A detailed strikeout/underline draft of the proposed amendments is provided as Attachment G (Redline Strikeout Version of Proposed Amendments).

Side Setback Clarification

Prior to the City of Newport Beach's (City's) 2010 comprehensive zoning code update, the NBMC contained an overlay district known as the Combining or "B" District (B Overlay). During the update, the B Overlay was modified and became the R-1-6,000, R-1-7,200, R-1-10,000, R-2-6,000, and the RM-6,000 zoning districts.

Most properties in the B Overlay were originally permitted and developed under the County of Orange and were later annexed by the City. Many of the homes were developed with a smaller side setback than required by the City's B Overlay (e.g., constructed with 5-foot side setback where 6 feet is required). Due to the inconsistency between the actual side setbacks provided and the minimum side setbacks required by the B Overlay, the zoning code was amended in the 1960s to allow properties located within the B Overlay to construct an addition to the principal structure at the existing nonconforming side yard setback. Equally important, the amendment exempted these structures from development restrictions within the nonconforming code provisions, meaning they were not considered or treated as a nonconforming structure.

This allowance was carried through future iterations of the NBMC until as recently as 2010. During the 2010 zoning code update, the provision was inadvertently omitted. As shown in Figure 1, without the provision, an addition to a structure with a nonconforming side setback cannot be completed in the same plane with the existing residence and requires an inward jog to the current required setback. The inward jog in the design of the home creates unnecessary structural complications and forces inconvenient floor plans.

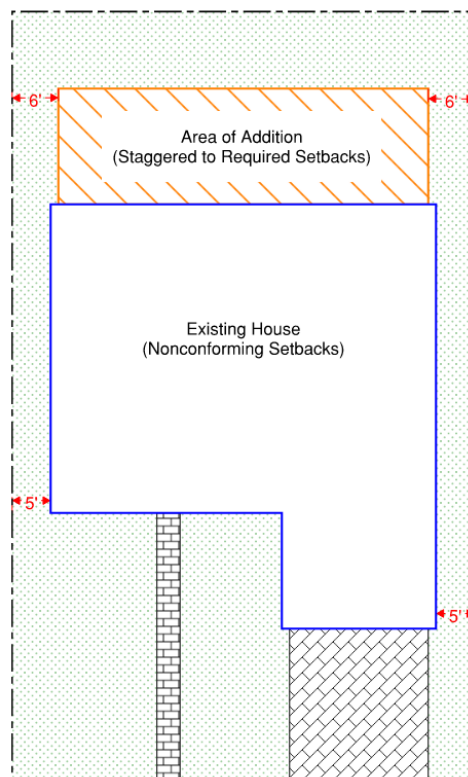


Figure 1: Example nonconforming R-1-6,000 property with an addition staggered to provide the required 6-foot setback.

Proposed Amendment

The proposed amendment will reinstate the omitted provision in both Title 20 and Title 21. Table 2-2 and Table 2-3 of 20.18.030 (Residential Zoning Districts General Development Standards) and Table 21.18-2, Table 21.18-3, and Table 21.18-4 of 21.18.030 (Residential Coastal Zoning Districts General Development Standards) will be amended so that homeowners of former B Overlay properties will once again be allowed to construct an addition in line with the existing development, as shown in Figure 2.

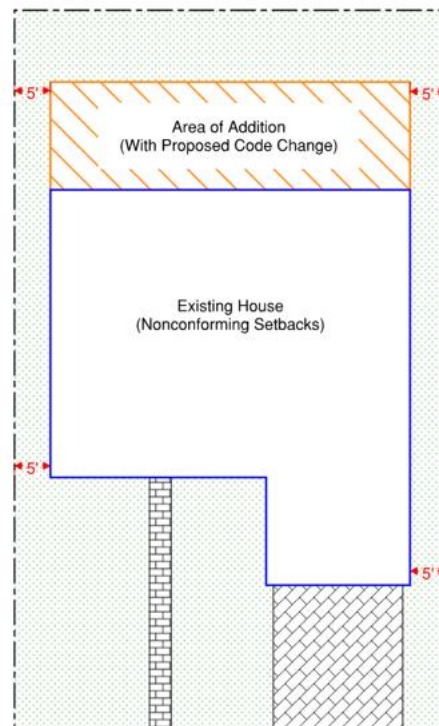


Figure 2: Example nonconforming R-1-6,000 property with an addition in line with the principal structure.

To unencumber these properties from the development restrictions for nonconforming structures, NBMC 20.38.040 (Nonconforming Structures) subsection (H) and NBMC 21.38.040 subsection (I) will be amended to clarify that these structures are exempt from the restrictions of the nonconforming structures section. The proposed language is available as Attachment G (Redline Strikeout Version of Proposed Amendments).

Planning Commission Public Hearing and Recommendation

On October 20, 2022, the Planning Commission considered the proposed amendments and adopted Resolution Nos. PC2022-026 and PC2022-027 (Attachments C and D) recommending approval of Code Amendment No. CA2022-004 to the City Council and recommending that the City Council authorize submittal of Local Coastal Program Amendment No. LC2022-002 to the California Coastal Commission. Meeting minutes are included as Attachment E.

During the public comment portion of the hearing, one member of the public, Mr. Jim Mosher, questioned why the R-1-7,200 zoning district, a former B Overlay district, did not appear to be included in the amendment. Upon further review, staff agrees that the R-1-7,200 district should be included in the amendment to ensure that no former B Overlay property owners with nonconforming side setbacks are inadvertently excluded from the proposed amendment. The attached draft ordinance and resolution include this correction.

California Coastal Commission Review

Any amendments to the LCP, including Title 21, must be reviewed and approved by the City Council prior to submitting the amendment request to the California Coastal Commission (CCC). The CCC is the final decision-making authority on amendments to the certified LCP; however, the City retains the ability to reject an LCP amendment in its entirety if the CCC includes suggested modifications.

Upon approval of the proposed LCP Amendment by the CCC, staff will return to the City Council with an ordinance formally adopting the Title 21 amendment related to nonconformities for properties located within the coastal zone.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

The action proposed is not a project subject to the California Environmental Quality Act (CEQA) in accordance with Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment. The Amendments themselves do not authorize development that would directly result in physical change to the environment. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program.

NOTICING:

Pursuant to Section 13515 of the California Code of Regulations, a review draft of the LCP Amendment was made available, and a Notice of Availability was distributed on September 23, 2022, to all persons and agencies on the Notice of Availability mailing list.

In addition, notice of this amendment was published in the Daily Pilot as an eighth-page advertisement, consistent with the provisions of the Municipal Code and State law. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

Attachment A – Ordinance No. 2022-25
Attachment B – Resolution No. 2022-82
Attachment C – Planning Commission Resolution PC2022-026
Attachment D – Planning Commission Resolution PC2022-027
Attachment E – October 20, 2022 Planning Commission Meeting Minutes
Attachment F – October 20, 2022 Planning Commission Staff Report
Attachment G – Redline Version of Proposed Amendments