

## **Attachment No. PC 3**

Staff Responses to Appeal

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## **Staff Responses to Appeal**

### **Reason 1:**

*In February, the City Council endorsed the early stages of a long-range Ocean Boulevard Vision Plan to enhance the public experience along the boulevard's entire length, including the area impacted by PA2022-0315.*

### **Response to Reason 1:**

On February 14, 2023, the City Council held a Study Session to review the Ocean Boulevard Vision Plan. The goal of the Vision Plan is to enlarge certain sidewalks, improve landscaping, which includes an improvement recommendation to monitor, trim, and remove existing hedges that restrict the ocean views. The Vision Plan also recommends that the Parks, Beaches and Recreation Commission review all new encroachment permits on Ocean Boulevard to ensure that the public benefit is not lost within the right-of-way. The Vision Plan is still in the study phases and has not been adopted. However, the project does comply with the preliminary goals outlined by the Vision Plan. The applicant is not proposing any improvements or encroachments in the right-of-way. The applicant has agreed to a condition of approval to restrict all landscaping to below Ocean Boulevard curb height which will enhance public views in comparison to existing conditions. The proposed additions are all below curb height and include the removal of three existing chimneys which are currently above the curb height and affect public views of the ocean from Ocean Boulevard.

### **Reason 2:**

*While it may remove three small chimneys from the roof of a large existing structure, and minor amounts of massing on that structure's Way Lane side, it adds massive new development to the previously undeveloped bluff segment abutting Ocean Boulevard, in violation of the above policies (Policies 4.4.1-1 through 4.4.1-8, 4.4.3-8 and 4.4.3-9).*

### **Response to Reason 2:**

All additions and alterations to the principal structure comply with the Ocean Boulevard top of curb height limit pursuant to Section 21.30.060(B)(4) (Structures on Ocean Boulevard) of the NBMC. The project does not include an increase in the overall roof height of the residence previously authorized by Variance No. 1137, and therefore does not reduce existing views to the harbor and ocean. There is also no seaward extension of the upper floor. The addition to the upper floor is in the front of the property below the curb height of Ocean Boulevard and in compliance with the required 10-foot front setback. The upslope addition towards Ocean Boulevard does not impact the existing view of the harbor and ocean. The addition has been designed to be on the land-side of the existing home to ensure that the public views beyond the extent of the upper floors are preserved.

### **Reason 3:**

*And while a new restriction of vegetation to below building height is welcome, the new development will not only be added to an area where the policies clearly prohibit it, but the new structures, much larger than needed to achieve the applicant's primary design objective of creating interior connections between floors, will constitute a new and permanent obstruction to future enhancement of views toward the ocean and harbor entrance.*

### **Response to Reason 3:**

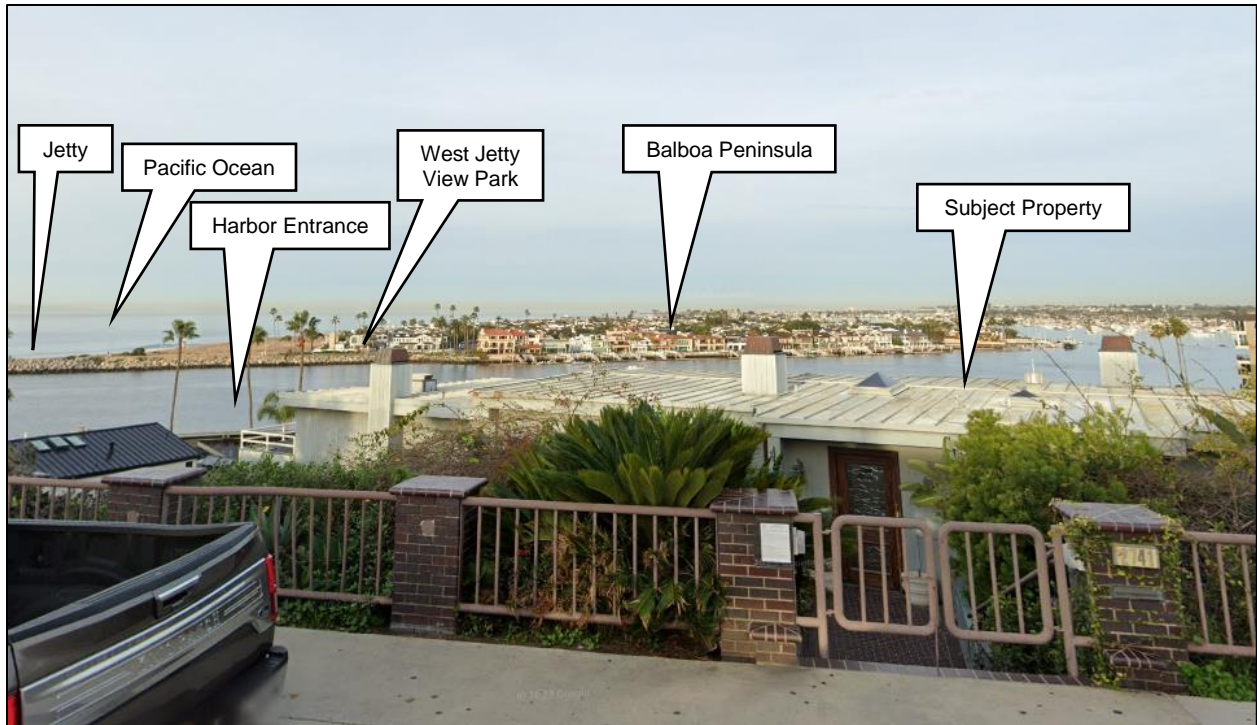
While the proposed interior staircase, which allows interior access between the various floors, is an important objective for the applicant's proposal, the applicant also seeks additions to create a more livable residence. The addition and alterations include the reconfiguration of interior spaces, improving exterior spaces, and adding a variety of living areas which are suitable for the applicant's private use. The areas of addition are within the maximum allowable floor area limits of the property and there are no deviations to height or setbacks with the request. The areas of addition are below the maximum height limitations, including the Ocean Boulevard top of curb.

### **Reason 4:**

*CLUP Policy 2.2.5-1 states, in relevant part, that "Legal nonconforming structures shall be brought into conformity in an equitable, reasonable, and timely manner as rebuilding occurs. Limited renovations that improve the physical quality and character of the buildings may be allowed." The proposed 2,511 square feet, or more, addition of office, entryways and more, all visible from Ocean Boulevard, goes well beyond what is needed to achieve the applicant's stated intent "to provide interior access to all residential levels." Although Policy 2.2.5-1 is not mentioned in the resolution, Fact L.5 cites the provision of NBMC Subsection 21.38.040(G), which goes even further by allowing additions only to a nonconforming structure that "does not block or impair public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas." In this case the existing non-conforming structures most definitely blocks views of the harbor from Ocean Boulevard, as well as views to the bluff from the harbor. It would, therefore, appear to be ineligible for additions."*

### **Response to Reason 4:**

As addressed by Fact 5.a in support of Finding L in the draft resolution, the project is consistent with Policy 2.2.5-1 (Nonconforming Structures and Uses). The existing residence was authorized by Variance No. 1137 and includes portions of the roof which exceed the Ocean Boulevard curb height. However, there is an expansive view of the harbor and ocean for motorists and pedestrians on Ocean Boulevard, and the existing residence does not block the view nor significantly impair it. When viewing west from Ocean Boulevard, there are existing views of the harbor, harbor entrance, Pacific Ocean, the jetty, West Jetty View Park, the Balboa Peninsula, and beyond (See Figure 1, below).



*Figure 1: Westerly View from Ocean Boulevard*

When viewing southeast from Ocean Boulevard, there are existing views of the Pacific Ocean, the extended jetty into the ocean, Lookout Point, and Ocean Boulevard towards Corona del Mar State Beach. There are multiple existing palm trees that impair the view of the ocean. However, these trees are not located on the subject property but are instead maintained by the City as part of the public bluff area.



*Figure 2: Southwesterly View from Ocean Boulevard*

Overall, the project is proposing to improve the public view of the harbor and ocean, as viewed from Ocean Boulevard, through the removal of existing chimneys and maintenance of landscaping below the highest point of the residence.

#### **Reason 5:**

*Policy 4.4.1-1 requires the City to “Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.” Fact L.6 of the resolution claims consistency with this policy (one of the two it mentions) by virtue of the proposals to remove three chimneys, shorten the length of guardrail along Ocean Boulevard and limiting landscaping “to be below the highest point of the residence.” This analysis ignores the fact that these minor visual enhancements are more than offset by the vast new bulk added to the Ocean Boulevard viewshed and that the looser limitations on the landscape height were part of the City’s abandonment of public right-of-way, which was never reviewed for consistency with the CLUP.*

#### **Response to Reason 5:**

As addressed by Fact 5.b in support of Finding L in the draft resolution, the project is consistent with Policy 4.4.1-1 of the CLUP. There is no increase in the height of the existing residence, which was authorized by Variance No. 1137. The project design protects, as well as enhances, public views as it removes three chimneys from the roof and strictly limits the height of landscaping. Additionally, the guardrails along Ocean Boulevard are proposed to be reduced from existing conditions. Staff believes that these changes, along with the fact that the addition does not exceed the Ocean Boulevard curb height, will improve public views for motorists and pedestrians travelling on Ocean Boulevard.

#### **Reason 6:**

*Policy 4.4.1-2 promises to “Design and site new development, including landscaping, so as to minimize impacts to public coastal views.” The existing structure already blocks views. The new structures proposed to be added to the bluff face will further impact the limited existing views looking along Ocean Boulevard toward the ocean, especially the views looking downward along the bluff toward the harbor entrance. Moreover, the new structures will permanently foreclose enhancement of those views if the bluff face at the neighboring property, 2735 Ocean Boulevard, were ever restored to a more natural state.*

#### **Response to Reason 6:**

As illustrated in Figures 5 and 6 of the Staff Report, staff does not believe that the proposed addition will impact the views of the harbor and ocean along Ocean Boulevard. As previously discussed, the proposed additions are below the Ocean Boulevard curb height, and the project includes the removal of existing chimneys which currently are an impact to the view. The project also includes the reduction of guardrails along Ocean

Boulevard and a limitation on landscape height. There are existing City trees located adjacent to the property which currently impair public views towards the ocean. Furthermore, it is speculative to assume the property owner next door would voluntarily demolish their residence and return the bluff to a more natural state, nor would the policies and regulations of the City's LCP require such restoration.

**Reason 7:**

*Policy 4.4.1-3 promises to "Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons." The resolution's Fact. L.6 acknowledges this policy and that the proposal involves significant alteration to an existing bluff. However, it appears to claim the alterations will "not be noticeable from the Ocean Boulevard" because they will be "below the curb height and the bluff is below the view plan of the visitors on Ocean Boulevard." Although the views in this area are currently degraded by overgrown, non-native vegetation, this "fact" ignores the fact that visitors, particularly pedestrians on the abutting sidewalk, can and will look not only horizontally, but also down, over and along the bluff and see the alterations. And whatever their visibility (which we believe will be high), there is no evidence the alterations have been minimized.*

**Response to Reason 7:**

As addressed by Fact 5.d in support of Finding L, the project is consistent with Policy 4.4.1-3 of the CLUP. Although the policy requires the alteration to bluffs to be minimized, it does not prohibit it. Two large natural bluff areas are proposed to remain. The proposed addition in the front of the lot is within the buildable area of the lot. The project minimizes the alteration of the property's natural topography where possible. Furthermore, the expansion of the building footprint is concentrated between the existing dwelling and Ocean Boulevard opposite of Lookout Point Park, thereby preserving significant portions of the bluff area adjacent to the public area between the property and public walkway adjacent to Lookout Point.

**Reason 8:**

*Policy 4.4.1-4 states "where appropriate, require new development to provide view easements or corridors designed to protect public coastal views or to restore public coastal views in developed areas." The value to the public of a possible view easement, and why one is not appropriate in this case, is not addressed in the resolution.*

**Response to Reason 8:**

As addressed by Fact 5.f in support of Finding L, the project is consistent with Policy 4.4.1-4 of the CLUP. The existing development was authorized by Variance No. 1137 which established the current height limitations of the upper floor. The required height limitation of the previously mentioned Section 21.30.060(B)(4) (Structures on Ocean Boulevard) of the NBMC essentially provides the same result as a view easement, as it

does not permit any structures to exceed the Ocean Boulevard curb height. Furthermore, the project is consistent with the policy as it restores the public coastal views through the removal of three existing chimneys, limits the height of landscaping, and reduces the number of guardrails on Ocean Boulevard.

**Reason 9:**

*Policy 4.4.1-5 promises the City will “Where feasible, require new development to restore and enhance the visual quality in visual degraded areas.” PA2022-0315 is definitely in a visually degraded area. Proposed Condition of Approval 16 (“All landscaping located on private property, including trees, shall be maintained to be below the highest point of the residence”) hardly ensure the bluff will be restored to a natural state in keeping with the City’s long-range Ocean Boulevard Vision Plan.*

**Response to Reason 9:**

As addressed by Fact 5.g in support of Finding L, the project is consistent with Policy 4.4.1-5 of the CLUP. Staff does not believe that the project location is located in a visually degraded area. The area provides a vast and expansive view of the harbor and ocean and includes nearby viewpoints such as Lookout Point and Inspiration Point. The project site is also located near the Corona del Mar State Beach ramps, which provides direct access to the beach and additional views of the ocean. The proposed remodel and addition seek to visually enhance the existing residence, which has been left vacant for some time and requires interior and exterior enhancements. Although the Vision Plan has been addressed in the response to Reason 1, above, staff emphasizes that the Vision Plan has not been approved or adopted by the City. The Vision Plan studies public rights-of-ways and public spaces, where the proposed project is located on private property and within the property’s required setbacks and buildable area.

**Reason 10:**

*Policy 4.4.1-6 requires protection of public coastal views from a number of roads, including, specifically, Ocean Boulevard – a fact acknowledged in the resolution.*

**Response to Reason 10:**

As previously mentioned, the proposed additions to the existing residence comply with the requirements of Section 21.30.060(B)(4) (Structures on Ocean Boulevard) of the NBMC, which implements this policy in the coastal zone. Other than the proposed guardrails along the property line, the areas of addition are all proposed to be under the Ocean Boulevard curb height, which will protect existing views. The project is also enhancing public views by removing existing chimneys, reducing guardrails, and limiting landscape height.



### **Reason 11:**

*Policy 4.4.1-7 promises to “Design and site new development, including landscaping, on the edges of public coastal view corridors, including those down public streets, to frame and accent public coastal views.” PA2022-0315 adds significant new permanent development along the edge of a public coastal view corridor, but does nothing to frame or accent those views, including for the pedestrian for whom the new development will be most visible.*

### **Response to Reason 11:**

As addressed in Fact 5.i in support of Finding L, the project is consistent with Policy 4.4.1-7 of the CLUP. The property is located on Ocean Boulevard and is directly adjacent to Lookout Point. The project has been designed so public views from Lookout Point will not be altered. Figures 5 and 6 of the staff report have been included to demonstrate the existing and proposed views of the harbor and ocean. Staff believes that the proposal ultimately improves the public view from Ocean Boulevard with the removal of the existing chimneys, reduction of guardrails along Ocean Boulevard, and limitation of landscape height. The project includes two large bluff areas, as seen in Figure 4 above, where there will be no new construction. Leaving these areas as natural bluff provides a transition from the residential zone on Ocean Boulevard and Way Lane to the public view point of Lookout Point and the Corona del Mar State Beach.

### **Reason 12:**

*Policy 4.4.3-8 commits the City to “Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development or public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.” While acknowledging PA2022-0315 proposes new development on Ocean Boulevard bluff face, where it would normally be explicitly prohibited, the Zoning Administrator’s approval essentially ignores this policy, apparently on the theory that the bluffs around China Cove are not cited in the “Bluff Overlay District” of the Implementation Plan. We do not believe that exempts them from the scope of this more general policy, nor there is any way the proposed development could be regarded as consistent with any “predominant line of existing development.” Specifically, when Corona del Mar was first subdivided in 1904, the China Cove bluff faces were not assigned lot numbers, but instead appear to have been reserved as shared open space. We are not aware of how residences began to be carved into the foot of the bluff, but as the CLUP acknowledges “The initial subdivision and development of these areas occurred prior to the adoption of policies and regulations intended to protect coastal bluffs and other landforms. Development in these areas is allowed to continue on the bluff face to be consistent with the existing development*

*pattern and to protect coastal views from the bluff top. However, development on the bluff face is controlled to minimize further alteration.” As Fact P.3 of the resolution notes, until October 1999, the entire area in which the new bluff face development is proposed was public right-of-way, it is not, and never has been, part of any “existing development pattern.” Indeed, the original subdivision shows a continuous band of public right-of-way from what is now Goldenrod to Lookout Point. As a result, the existing bluff face at 2741 Ocean is not part of any existing line of development, predominant or not. Because of that, Policy 4.4.3-8, in its effort to right the wrongs of past years, and preserve what little is left of our Ocean Boulevard coastal bluffs, clearly prohibits development on it.*

## **Response to Reason 12**

The Project is consistent with Policy 4.4.3-8 of the CLUP, which prohibits development on bluff faces, except private development on certain coastal bluff faces including Ocean Boulevard when consistent with the predominant line of development. Section 21.28.040 (Bluff Overlay District) of the NBMC, implements said policy by establishing special development standards on identified bluff areas, consistent with the predominant line of development. In this case, the Property is not located in the Bluff Overlay District due to the extensive existing development along the block. Neighboring properties, such as 2735, 2727, 2723, 2711, and 2701 Ocean Boulevard have all developed the entire bluff face from Ocean Boulevard to Way Lane that include the principal residences and accessory structures such as stairs, walkways, parking spaces, driveways, and ornamental landscaping. Furthermore, consistent with the intent of this policy, the Project preserves significant areas of undisturbed bluff. There is an existing bluff area on the southwestern part of the lot directly below a public bluff part of Lookout Point park proposed to be preserved. Additionally, a bluff area located at the southeastern portion between the Property and the public walkway is proposed to be preserved.

## **Reason 13:**

*Policy 4.4.3-9 states that “Where principal structures exist on coastal bluff faces along Ocean Boulevard, Carnation Avenue, and Pacific Drive in Corona del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principle structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.” Again, this is an instance where a pre-Coastal Act principal structure exists, intruding into a coastal bluff face, inconsistent with modern views of coastal resource protection. Although the City has not honored the Policy 4.4.3-9 mandate to formally establish a predominant line of development for this segment of the Ocean Boulevard bluff faces, PA2022-0315 does not propose new development sited in accordance with any existing line of development. Instead, it proposes to create an entirely new line of development, permanently and irrevocably impacting the public’s enjoyment of coastal views.*

### **Response to Reason 13:**

Section 4.4.3-9 is implemented by Section 21.30.030 (Natural Landform and Shoreline Protection) of the NBMC, which establishes development standards on coastal bluffs. Since the subject property is not located within a bluff or canyon overlay, nor is it in a planned community, Section 21.30.030 defaults the setback requirements for the property as required by the development standards for that coastal zoning district. In this case, the property is located in the R-1 coastal zoning district, which requires a ten-foot front setback pursuant to Setback Map S-10B. Therefore, the property is subject to the development standards of the R-1 coastal zoning district and not the Bluff Overlay district, as it was specifically excluded from the overlay. As previously mentioned, the majority of the bluff adjacent to the subject property has been altered and redeveloped with landscaping, walls, driveways, parking spaces, and walkways. The proposed addition between the existing residence and Ocean Boulevard complies with the required setbacks and is consistent with the existing and expected development pattern of the neighborhood.

### **Reason 14:**

*NBMC Section 21.38.040.G.2 states "When reviewing an application for an expansion of a nonconforming residential structure, the review authority shall consider" and lists three factors that must be considered, as follows:*

- 2. Expansion shall be limited to a maximum of fifty (50) percent of the gross floor area of the existing structure; expansion of residential structures may be permitted up to a maximum of seventy-five (75) percent with the approval of a coastal development permit. When reviewing an application for an expansion of a nonconforming residential structure, the review authority shall consider:*
  - a. Whether the nonconforming structure can be modified to, or replaced with, a conforming structure that would restore or enhance visual quality in a visually degraded area;*
  - b. Whether the nonconforming structure, with or without the proposed addition, is visually compatible with the character of the surrounding area; and*
  - c. Whether the nonconforming structure is architecturally or historically significant;*

*Note that this is different from the provision in the Zoning Code, [NBMC Sec. 20.38.040.G.1](#), which requires a discretionary review based on special considerations (different from these) only when the requested addition to a nonconforming residence exceeds 50 percent. In the present case, the review authority will have before it "an application for an expansion of a nonconforming residential structure." And while I believe because the existing structure blocks coastal views Sec. 21.38.040.G.1 prohibits any expansion, should your staff report suggest expansion is possible, then Sec. 21.38.040.G.2 requires consideration of the three questions, irrespective of the magnitude of the requested expansion.*

#### **Response to Reason 14:**

The project expands the residence to 8,292 square feet, which is a 2,511-square-foot addition and less than the 2,890.5 square feet (50 percent) allowed for expansion of a nonconforming structure. Therefore, the proposed addition to the existing home complies with the 50 percent addition limit in Section 21.38.040(G) of the Implementation Plan. In response to *Consideration “a”* of referenced code section, the subject property is not located in a visually degraded area as evidenced by the view analysis. The area of the project provides a vast and expansive view of the harbor and ocean and includes nearby viewpoints such as Lookout Point and Inspiration Point. The project includes the removal of existing chimneys that currently exceed the Ocean Boulevard curb height and impair public views. Additionally, the project significantly reduces the amount of safety railings along Ocean Boulevard and is conditioned to limit the height of landscaping in order to enhance public views. In response to *Consideration “b”*, the project is visually compatible with the neighborhood, as it is the most southerly residence located on the Ocean Boulevard bluff which includes a row of six relatively large single-unit residences. When traveling south on Ocean Boulevard towards Corona del Mar State Beach, these residences are visible at or below the Ocean Boulevard curb height when looking east towards the harbor. Additionally, tall landscaping is planted and maintained along both the public right-of-way and private property. The project includes additions below the curb height which will maintain compatibility with the surrounding neighborhood. In response to *Consideration “c”*, although the existing nonconforming structure was constructed in 1962, the structure has no architectural significance and is not included on the City’s Historic Resource Inventory.