

## **November 9, 2023, Planning Commission Item 2 Comments**

These comments on a Newport Beach Planning Commission [agenda item](#) are submitted by:

Jim Mosher ( [jimmosher@yahoo.com](mailto:jimmosher@yahoo.com) ), 2210 Private Road, Newport Beach 92660 (949-548-6229).

### ***Item No. 2. DAWSON RESIDENCE (PA2022-0315)***

Five other people and I are asking the Planning Commission to review the approval of a Coastal Development Permit allowing the Dawsons to develop the slope above their property at 2741 Ocean Boulevard. That review presents the Commission with what may seem a difficult decision, for while the staff report argues for the Dawson's right to develop their property, the granting of the CDP has to be considered from the perspective of our state's [Coastal Act](#), and our [Local Coastal Program](#), which are intended to protect the public's competing right to enjoy coastal resources, including preservation and enhancement of the continuous greenbelt that has long existed on the seaward side of Ocean Boulevard – of which the subject slope is still perceived by most as a part of our long-treasured Lookout Point Park.

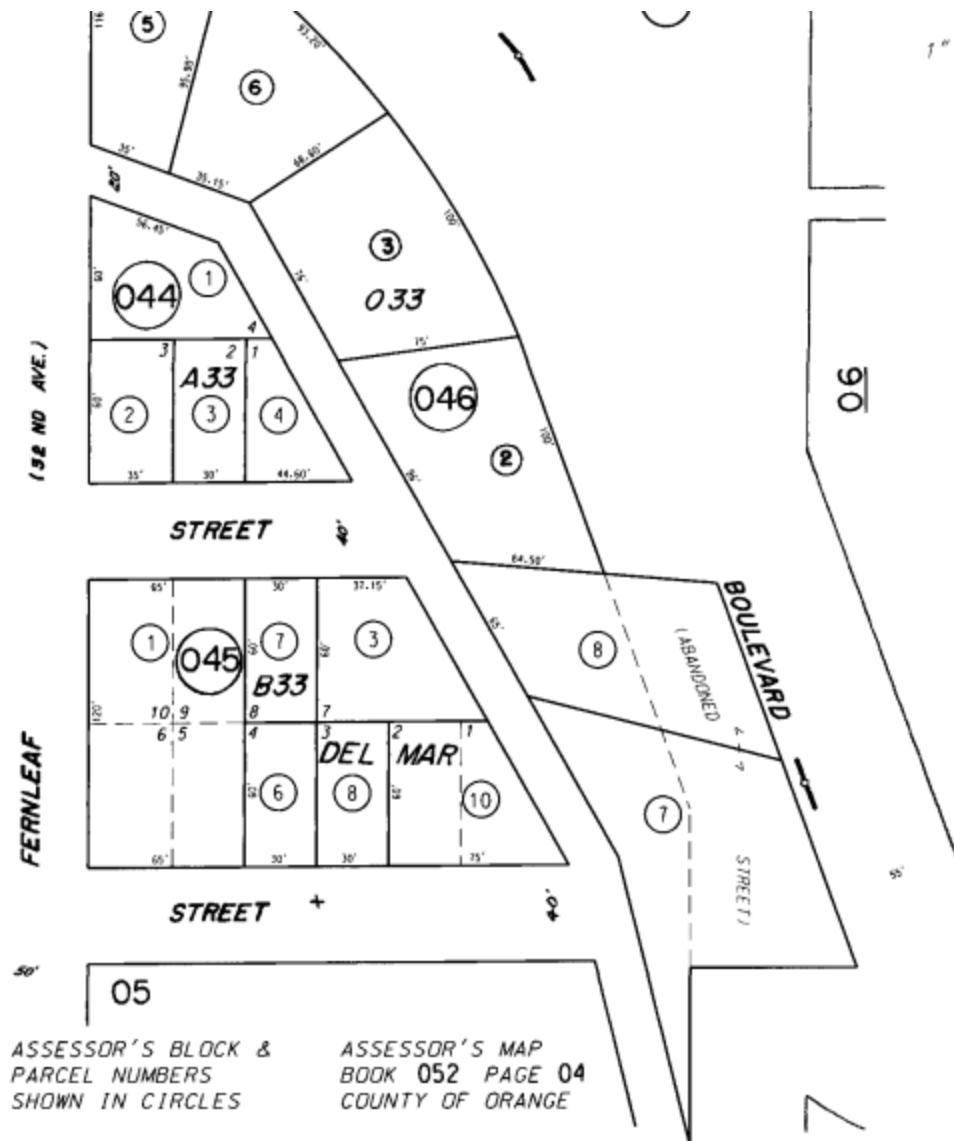
Indeed, the City itself has one department – Public Works – currently [directed](#) by our Council to prepare a plan to improve the entire length of the Ocean Boulevard greenbelt so it can be enjoyed as a more beautiful and publicly accessible continuous park, while another department – Community Development – seems directed to enable private development of the same space.

While arguments can be made that the requested development is allowed under the City's [Planning and Zoning](#) regulations, even though it will spoil the continuity of existing and potentially enhanced greenbelt, we believe that from the Coastal Act perspective, this application for a CDP must be denied.

From that perspective, this seems, at least to me, a request for development inconsistent with our Local Coastal Program on land over which the applicant has questionable rights.

### **Adding Public Right-of-Way to 2741 Ocean Blvd Requires a CDP**

As the staff report correctly observes, in 1998 our City Council adopted [Resolution No. 98-66](#) abandoning the Ocean Blvd public right-of-way on which most of the proposed development would occur. As illustrated by the Orange County [Tax Assessor's map](#), this created a highly anomalous situation in which two private parcels purportedly now intrude nearly to the centerline of what was originally designated as a major public thoroughfare:



By staff's estimate this added 5,556 square feet to the formerly 4,971 square foot parcel at 2741 Ocean Boulevard, more than halving its density (dwelling units per acre), and created 3,964 square feet of entirely new buildable area at 2741 Ocean, where only 2,727 square feet had existed, significantly increasing the allowed intensity of development in this coastal resource rich area.

As suggested in [my comments](#) the day prior to the August 10 Zoning Administrator hearing, the problem with this from a Coastal Act perspective is that [Section 30106](#) of the Coastal Act has, since 1976, defined a "change in the density or intensity of use of land," including such things as private owners merging lots, as "development" requiring a Coastal Development Permit,<sup>1</sup> yet

<sup>1</sup> Using the search function on the [Coastal Commission website](#) to look for "vacation of" yields dozens of examples of agencies seeking CDP's to vacate public right-of-way, often denied. See particularly the [W17a-11-2007](#) report upholding the denial of a CDP to vacate PROW in Venice, California, challenged by litigation, [Electric Pointe, LLC v. California Coastal Commission](#), Cal: Court of Appeal, 2nd Appellate Dist., 5th Div. 2009, resolved by both the trial and appellate courts in favor of the Coastal Commission's belief that abandonments are indeed development requiring a CDP.

Resolution No. 98-66 was adopted without the CDP that is apparently still required to make it effective. In 2016, this requirement was memorialized in [Section 21.44.045](#) of our LCP Implementation Plan, but it was equally applicable in 1998.

More recently, with the recording of [Resolution No. 2014-89](#), the City [attempted to abandon](#) part of the unused public right-of-way of Buena Vista Boulevard, along the Peninsula harborfront, again without the CDP required to complete the action. In two subsequent cases, where adjoining homeowners sought CDP's to redevelop their homes, [W8b-5-2015](#) and [W7g-3-2017](#), the Coastal Commission warned that the City's vacation of PROW was unpermitted, and that no development on the purportedly abandoned land can be approved until a CDP validating the abandonment has been approved.

Under [Public Resources Code Section 30625\(c\)](#), decisions of the Coastal Commission are expected to guide local governments in their future actions. So, following the Coastal Commission's example, it would seem the Planning Commission should be pausing consideration of the Dawsons' development request until a CDP validating the Resolution No. 98-66 abandonment has been granted.

### **Previous Variances Do Not Apply to CDP**

The staff report correctly notes that variances to existing zoning standards were granted to 2741 Ocean Boulevard in [1961](#), [1986](#) and [1988](#) (the latter, apparently, retroactive, if such things are allowed, to justify elements built inconsistent with the 1986 variance). In addition, a Council action in [1960](#), apparently unreviewed by the Planning Commission of the day, allowed the roof of the original residence to exceed the Ocean Boulevard curb height by one foot.

However, from the Coastal Act perspective, under which the CDP request has to be reviewed, none of this is relevant.

Our Local Coastal Program Implementation Plan, codified as [Title 21](#) of our Municipal Code, was adopted in 2016, establishing new and independent development standards by which Coastal Development Permit applications were to be reviewed.

As NBMC [Section 21.12.020.D](#) says: ***“Where conflict occurs between the provisions of this Implementation Plan and any other City Code title, chapter, resolution, guideline, or regulation, the Coastal Land Use Plan and this Implementation Plan shall control.”***

The variances described above were both to non Local Coastal Program regulations and prior to the adoption of LCP standards, with which most conflict. While the variances may have made most, but not all, of what currently exists on 2741 Ocean Boulevard legal when it was constructed, any parts of that which deviated from the 2016 IP development standards became “legally nonconforming” with regard to the issuance of CDP's.

### **Existing Nonconforming Structure Impairs Views, Precluding Expansion**

The staff report does not make it easy to be sure exactly what features of the existing residence are nonconforming with respect to the local Planning and Zoning code. The footnote to Table 1 suggests it is too close to Way Lane and to the property on the north. Condition of Approval No. 35 in the draft resolution suggests there is a wall built, not just too close, but *in* the Way Lane

public right-of-way that does not yet have an encroachment permit, and one of the plans suggests portions of the northernmost garage were built over the north property line. As noted above, much more, including building heights, is undoubtedly nonconforming with respect to the Local Coastal Program development standards adopted in 2016.

As to the consequences of nonconformity, it seems important for the Planning Commission to understand that in 2017, the City [requested](#) amendments to the original LCP Implementation Plan to, among other things, allow expansion of nonconforming residences by up to 75% of the existing floor area.

In reviewing that request, the Coastal Commission proposed, and the City Council eventually [accepted](#), strict new controls on what nonconforming residences could be added to. Those are now codified in [NBMC Section 21.38.040.G](#), and must be followed in approving CDP requests. Details of the changes can be found in the [Addendum](#) to Item 24b on the Coastal Commission's Wednesday, December 12, 2018, [agenda](#). In short, the Commission agreed to remove the previous restriction to 50% additions, and allow, but not promise, up to 75% additions, but subject to a strict multi-part review. One part sets up various criteria that must be met before the approval of *any* addition can be considered. Another part provides factors that need to be considered in deciding *how much* addition (up to 75%) should be allowed.

As the staff report acknowledges, Ocean Boulevard is a designated [Coastal View Road](#) in the LCP, and among the circumstances that must exist before *any* addition can be considered is that the existing nonconforming structure "*Does not block or impair public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas.*"

The staff report correctly notes that there are expansive coastal views near and over the existing structure. However, the test is not whether views exist, but whether the existing nonconforming structure impairs them.

The following comparison of a black and white [photo](#) from August 1, 1948, when there was no development on the bluff, to a color photo from a similar location in 2023, leaves little doubt that the view that was once visible from this coastal view road is no longer visible. Likewise, the staff report indicates the proposed addition will not be visible to those looking toward the bluff from the China Cove beach or the harbor or the designated public view point West Jetty Park, because its location on the [formerly prominent bluff](#) is hidden by the existing nonconforming building. Similarly, public views [along the bluff](#) from Ocean Boulevard have obviously been impaired by the bluff face development, including by the existing home at 2741 Ocean Boulevard.

So despite the existence of views from other locations, and even the remnants of views remaining over the roof of 2741 Ocean Boulevard, it seems indisputable that this is an application involving a nonconforming structure that impairs public views compared to what they would be without it. Under the strict new development standard of NBMC Subsection 21.38.040.G.1.b, that precludes approving a CDP for any expansion to it.



**Example of public view from Ocean Boulevard, above Shell Street, in 1948:**



**Example of impaired public view from similar location in 2023:**



Even if the existing building did not already impair views, the permissible amount of addition would be limited by the considerations required in Subsection 21.38.040.G.2, which do not appear to be addressed in the proposed resolution.

For example, more expansion could be considered if the existing structure were “*architecturally or historically significant*,” which this is not. Less expansion would be considered if “*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*,” which this likely could be.

### **Applicant Even Seeks to Increase, Rather Than Correct, Nonconformities**

In addition to the amendments to the Implementation Plan that preclude expanding nonconforming structures that impair public coastal views, I believe there is a general principle that one does not permit changes to nonconforming structures that increase the degree of nonconformity, which in the Coastal Development Permit context appears to be codified in Subsection 21.38.040.G.4, which requires that “*The addition shall comply with all applicable development standards and use regulations of this Implementation Plan.*”

In the present case, the staff report acknowledges the request includes the addition of a swimming pool, but is vague about its location. The plans suggest it will be added on the second level, above one of the garages, and largely in the required rear setback area along Way Lane. Such an addition appears inconsistent with the development standards of the Implementation Plan. Like the City’s Zoning Code, Subsection D.15 of [Section 21.30.110](#) (Setback Regulations and Exceptions) says “*Swimming pools, spas, and other similar devices/equipment that are placed directly upon the existing grade and are less than forty-two (42) inches in height may be located within a required front, side, or rear setback area other than those abutting an alley.*” The proposed pool appears to be neither directly upon the required grade or less than 42 inches in height. It might be noted that a similar pool proposal was a major stumbling block to a 2017 development proposal by the Dawsons, and had to be removed before the Planning Commission approved permits, which, incidentally, they did without consideration of Coastal Act issues (see [Item 3](#) from the Planning Commission’s April 6, 2017, meeting).

### **Whoever Owns It, The Bluff is Protected**

Hopefully the preceding comments have established: (1) that in the eyes of the Coastal Act, the 1998 abandonment of public right-of-way required approval of a Coastal Development Permit to complete, for which reason the Planning Commission should defer consideration of this application until that issue has been resolved, and (2) that under the regulations of the Implementation Plan, additions to the existing view-impairing building are not allowed.

Should the owners of 2741 Ocean Boulevard be able to get the City to resolve the first issue in their favor, and come back with a proposal eliminating or seeking relief from the deviations from LCP standards that make it nonconforming, the question remains whether they would then have a right to develop the currently undeveloped slope that has long appeared to be an extension of Lookout Point Park.

The staff report correctly notes that the China Cove bluffs are not part of the Implementation Plan’s [Bluff Overlay District](#), where negotiated lines of development have been established. This

seems more likely inadvertent than intentional. In certifying the Implementation Plan, the Coastal Commission and their staff had hundreds of pages of complicated code to review. The amendments they suggested show they did notice City staff had omitted the majestic bluffs around the Upper Bay. They may not have noticed every omission.

In any event, one standard that the Planning Commission must apply in approving a CDP, as set forth in NBMC [Section 21.52.015.F](#), is that the request “*Conforms to all applicable sections of the certified Local Coastal Program,*” which includes the City’s [Coastal Land Use Plan](#) as well as its Implementation Plan. So the view and bluff protection policies of the CLUP apply whether or not they are explicitly implemented.

The staff report also correctly notes that in areas like China Cove, that are not part of the Bluff Overlay District, under Subsection 21.30.030.C.1.d of the Implementation Plan’s Natural Landform and Shoreline Protection provisions the setbacks defer to the normal setbacks of the district, rather than to the special ones set in the Bluff Overlay. But adhering to setbacks does not ensure a right to develop if the development conflicts with other policies.

It may be of interest to the Planning Commission that, like the Implementation Plan, our Coastal Land Use Plan, as adopted in 2005, was the product of back-and-forth between the City and the Coastal Commission. The City’s own original proposal to ensure bluff protection was to completely prohibit any development on natural slopes greater than 40% unless such a prohibition deprived the owner of any economic use of their property (see [originally proposed Policy 4.4.3-5](#)). That standard would have clearly prohibited approval of the current request to build on the slope adjoining Lookout Point Park.

The policies were [rewritten and consolidated](#),<sup>2</sup> removing that inflexible standard, but in our appeal, we list numerous of the rewritten view and bluff protection policies that the application appears inconsistent with..

Chief among those are Coastal Land Use Policy 4.4.3-8, which, aside from public improvements allowed subject to various conditions, 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,*”<sup>3</sup> and Policy 4.4.3-9, which repeats 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.*”

The staff report suggests the pattern of development on the China Cove bluffs has been to build from Way Lane up to the Ocean Boulevard setback. But that is a “pattern” of development, not a “line.” The line was established by the setbacks, which were generally 10 feet seaward of the public right-of-ways established during the [original subdivision](#) of Corona del Mar in 1904.

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<sup>2</sup> Reasons for the changes are in the [Coastal Commission staff report](#).

<sup>3</sup> Staff reads a following sentence (“*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*” as allowing *private* development adhering to those standards. They appear, however, to be standards that *public improvements* must adhere to, to be allowed.)

Fronting the subject property, that included the 80-foot wide Ocean Boulevard right-of-way, crossed by the 50-foot wide Goldenrod (originally "33rd Avenue") view corridor that extended over Pirate's Cove.

The setback lines have controlled the line of development since its inception. And although some properties, including 2741 Ocean Boulevard have obtained variances allowing them to intrude up to the original right-of-way lines, none of them have ever gone beyond that line. Because of that historical restriction, the predominant line of development cannot possibly be landward of the original right-of-way. If anything, 2741 Ocean, with its variance, is already beyond the line and too close to Ocean Boulevard.

This reason, alone, suggests the slope above 2741 Ocean Boulevard, even if it was legally abandoned, is not available for private development.

## **Conclusion**

The staff report recommendation seems to suggest the Planning Commission has no option but to deny the appeal. The Planning Commission should be aware that [Section 21.64.030.D](#) of the Implementation Plan gives them several other options.

For the reasons stated above, I believe the Planning Commission's proper option, indeed its duty under the Coastal Act, is to deny the Coastal Development Permit, or at the very least, as in the case of the Coastal Commission's actions on the Buena Vista Boulevard properties, to defer action on it until the City has obtained<sup>4</sup> the separate CDP necessary to complete the abandonment of the property on which the Dawsons propose to build.

In summary, even if the abandonment had been approved by the Coastal Commission, the plain language of the Implementation Program does not allow an addition to the existing nonconforming structure. Even if it did, the slope on which the addition is proposed is not land the LCP makes available for development.

While this result may seem inconsistent with non-LCP code sections that would allow private development in the same areas, applying our Local Coastal Program, as written, to this, and all, CDP applications is the Planning Commission's duty. And it is needed to preserve the Ocean Boulevard greenbelt for the enjoyment of present and future generations.

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<sup>4</sup> Originally, the City would have had to apply to the Coastal Commission. Now that its Local Coastal Program has been certified, it can approve its own CDP, but its decision will be appealable to the Coastal Commission.



**From:** [J Kirkowski](#)  
**To:** [Planning Commission](#)  
**Subject:** Ocean Boulevard Project  
**Date:** November 08, 2023 9:53:39 AM

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**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Planning Commissioners,

Good morning. This Thursday, I understand that you are considering the approval of plans for the residence at 2741 Ocean Boulevard in CDM. I further understand this was approved this past August by the Zoning Administrator.

As a resident of Corona Del Mar, I believe this project will enhance China Cove and improve values in Corona Del Mar village as well as the Newport Beach Harbor. I therefore wanted to send a note of support for its approval.

Regards,  
John Kirkowski

**From:** [Michal Dawson](#)  
**To:** [Planning Commission](#)  
**Subject:** Support for the Dawson project at 27441 Ocean Blvd, CDM  
**Date:** November 08, 2023 11:19:25 AM

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**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

I am writing to support the Dawson remodel & addition project @ 2741 Ocean Blvd, CDM. I support the project because it will beautify the neighborhood & improve views.

I believe it meets all city codes / requirements. No new variances. They have been working on getting the property improved for the pas 9 yrs. This project will increase property values as well.

I hope the Planning Commission will approve the Dawson's plans for a remodel and let the project begin.

Sincerely,

Michal L. Dawson

**From:** [Jurjis, Seimone](#)  
**To:** [Rodriguez, Clarivel](#)  
**Subject:** FW: 2741 Ocean Blvd. Corona del Mar, Ca  
**Date:** November 08, 2023 4:12:41 PM  
**Attachments:** [image001.png](#)

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**Seimone Jurjis**  
Assistant City Manager /  
Director of Community Development  
Community Development Department  
Office: 949-644-3282  
  
100 Civic Center Drive  
Newport Beach, CA 92660

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**From:** Karen K James <kjdelmar@yahoo.com>  
**Sent:** November 08, 2023 3:34 PM  
**To:** Dept - City Council <CityCouncil@newportbeachca.gov>  
**Cc:** Kathy Hamilton <cocoh1@icloud.com>; Karen Carlson <kkc2616@aol.com>; Susan Maher <susanmaher@cox.net>  
**Subject:** 2741 Ocean Blvd. Corona del Mar, Ca

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

I strongly oppose the approval of this applicant to add 2,511 s/f and a swimming pool to an already overbuilt existing property. This property already sits on a fragile cliff and any further development could seriously compromise the ground and neighboring properties. I am at a loss to imagine, how this applicant was able to persuade the planning staff to approve these variances.

Why is this applicant allowed to disregard the building codes?

Sincerely,  
Karen James  
2627 Cove St.  
Corona del Mar, CA  
9495149717

**From:** [Raquel Dawson](#)  
**To:** [Planning Commission](#)  
**Subject:** Our Family Home  
**Date:** November 08, 2023 4:17:56 PM

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[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Planning Commissioners,

Thank you for your service to our community and your contribution to making Newport Beach a city the public enjoys and admires, and a city residents love being a part of and calling home. Our city is world-renowned for many reasons and your leadership helps make the city the best it can be.

My husband Craig and I own a home located at 2741 Ocean Blvd., which is before you on appeal this Thursday, November 9th. Craig and I were both born and raised in Los Angeles but Newport Beach became our home in 1999 and has been in our hearts ever since. All three of our children were born at Hoag Hospital and grew up playing and swimming at Big Corona and China Cove.

In 2017, we obtained approval from the Planning Commission to tear down our existing home and rebuild an entirely new home with variances. As luck would have it, soon after receiving approval for our new home, Craig was relocated overseas and our home plans were put on hold. During this hold, we gave renewed consideration to our housing plans and we decided to pivot from an entirely new house to a remodeled and refreshed home. After speaking with our neighbors, we felt that a scaled-down remodeled home would be less impactful to our neighbors while still accomplishing our goals of having a home to raise our kids. We have spent years assembling a local project team and working with our architect and City staff to design a remodeled home that complied with the City's Municipal Code and Local Coastal Program. It took a long time, and there were many compromises that we had to make along the way. Still, we feel quite proud of the home remodel project that we ultimately settled on and obtained approval from the City's Zoning Administrator.

Leading up to the Zoning Administrator hearing we spent time with our neighbors in China Cove and Corona del Mar to share our remodeling plans and to address any questions they may have. Thus, you can imagine our disappointment and surprise to learn that despite our best efforts our project was appealed by a lead appellant who lives miles away from our home in the Back Bay area of the City, and did not reach out to us in advance of the Zoning Administrator hearing to express any concerns. Nevertheless, we reached out to the appellants and extended an invitation to meet and discuss their concerns with our home. They agreed to meet with our team, and we spent time addressing each of their concerns. We felt that given the success of this meeting, the appellants may even consent to withdrawing their appeal, but alas they are determined to proceed so that the Planning Commission may have an opportunity to review and discuss our home remodeling project, which is their right.

2741 Ocean Blvd is a unique property given its topography and location. It's an odd-shaped lot, on a steep slope, with a constantly changing elevation throughout the property. As one leaves Newport Harbor, one can admire the beauty of China Cove. 2741 Ocean Blvd has the luxury of being the last home one sees on the hillside as you leave the harbor. It's a unique location. It's also a property that needs improvement. It needed improvement when we bought the home in 2014 and it needs it more now. The plans you are being asked to approve not only create the home our family has been dreaming about, and wanting to enjoy but also beautifies the neighborhood and the harbor views in the least invasive way.

We have worked in good faith to meet the appellants in the middle and to reach a compromise. Based upon our discussions with the appellants we understand their concerns are:

1) Project blocks views - This project only enhances views including views of the harbor. We are removing three chimneys, overgrown landscape, and massing from the original structure. The increased open space makes the home feel less like a big block structure on the bluff. The additional space added to the home is all below curb height as the LCP requires.

2) Palm trees blocking views - The palm trees the appellants are concerned about are on city property. Personally, we love them. They help create beautiful So Cal views out to the harbor and ocean. Admittedly, they could use more regular trimming which will open up views; but again these are city trees.

3) Study's Tile Roof - The appellants questioned our choice of roof color and material. It seems they think it does not fit in the neighborhood but our team members pointed out all the tile roofs in China Cove that were seen from our home. A tile roof is important to the aesthetics of our home design. We compromised to change the color given they thought it was too orange/red despite the fact China Cove, particularly Shell Street, has several homes with the same tile color.

We were asked about a green roof. We explained that we have a low slope and tight height limit so this is not an option given the study needs to be below curb height. We investigated this further and have discovered that a green roof is a financial liability. It's difficult to insure homes with a green roof given these roofs are prone to leaks. We offered the idea of a vine on the exterior wall of the study to create greenery but appellants didn't seem supportive of the vine.

4) Street improvement and sidewalks - One of the appellants, Dan Herman, is a member of a city committee or a city consultant who is helping develop the Ocean Blvd Vision Plan. He wants to widen sidewalks including the one in front of our home. The Ocean Blvd Vision Plan is under study, has not been adopted, and does not regulate our remodeling project. Furthermore, the Ocean Blvd. Vision Plan is focused on improving public, not private land. In any event, we believe our remodeling project is consistent with the Ocean Blvd Vision Plan because it will improve the public views and aesthetics along Ocean Blvd.

5) Bluff Overlay District - Mr. Jim Mosher, in particular, believes the codes that apply to the Bluff Overlay District should apply to our property. The China Cove Bluff is a developed bluff, and it is not part of the Bluff Overlay District. Our property is not regulated by the predominant line of development, instead the City's LCP established required setbacks, also known as the buildable area. Our addition is within the buildable area and is below the top of curb. Our plans were carefully designed, at considerable expense, to follow all of the city's codes with no new variances under the guidance of the city.

We trust that after you have a chance to consider our remodeling plans at the November 9th Public Hearing you will reach the same conclusion that the Zoning Administrator has already reached and approve our plans.

Our family appreciates your time and thoughtful consideration of our remodeling plans.

Regards,

Craig and Raquel Dawson