

Attachment No. PC 2

Application of Appeal

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Appeal Application

City Clerk's Office
100 Civic Center Drive / P.O. Box 1768
Newport Beach, CA 92658-8915
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AUG 24 '23 PM 3:58
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Appeals are time sensitive and must be received by the City Clerk within the specified time period from a decision or final action by a decision-maker. It is advisable to consult with the Department managing the issue if there is question with regards to appealing an action. This is an appeal of the:

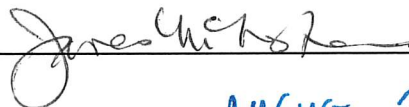
- ☐ (CDD222)Community Development Director Action to the Planning Commission - \$2116
- ☐ (CDD222)Zoning Administrator Action to the Planning Commission - \$2116
- ☒ (CDD222)Coastal Development Application CDP Appeal from Zoning Admin to the Planning Commission (only if appeal is solely based on the CDP portion of the application) – No Fee
- ☐ (CDD222)Planning Commission Action to the City Council - \$2116
- ☐ (CDD222)Community Development Director Action to the Harbor Commission - \$1250
- ☐ (CDD222)Harbor Commission Action to the City Council (CDD – Planning) - \$940
- ☐ (CDD222)Hearing Officer Action to the City Council - \$2116
- ☐ (CDD223)Building Official/Fire Marshal Action to the Building/Fire Board of Appeals - \$1768
- ☐ (CDD224)Chief of Police Action on an Operator License to the City Manager - \$946
- ☐ (RSS073)City Manager Action on a Special Events Permit to the City Council - \$1823
- ☐ (HBR001)Harbormaster Action to the Harbor Commission - \$1250
- ☐ (HBR001)Harbor Commission Action to the City Council (Harbor Department) - \$940
- ☐ (PBW018)Public Works Director Action to Harbor Commission - \$1250
- ☐ (PBW018)Harbor Commission Action to City Council (Public Works Department) - \$940
- ☐ Other - Specify decision-maker, appellate body, Municipal Code authority and fee: _____

Appellant Information:

Name(s): Jim Mosher (additional co-appellant names listed on attachment)
Address: 2210 Private Road
City/State/Zip: Newport Beach, CA 92660
Phone: (949) 548-6229 Email: jimmosher@yahoo.com

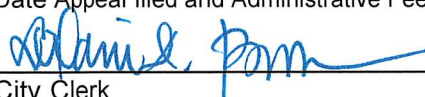
Appealing Application Regarding:

Name of Applicant(s): Blues 1905 LLC Date of Final Decision: August 10, 2023
Project No.: PA2022-0315 Activity No.: PA2022-0315
Application Site Address: 2741 Ocean Boulevard
Description of application: Coastal Development Permit to remodel and expand residence onto Ocean Blvd bluff face
Reason(s) for Appeal (attach a separate sheet if necessary): see attached

Signature of Appellant:  Date: 8/24/2023

FOR OFFICE USE ONLY:

Date Appeal filed and Administrative Fee received: AUGUST 24, 2023


City Clerk

cc: Department Director, Deputy Director, Staff, File



Attachment to Appeal Application - PA2022-0315 (Dawson Residence, 2741 Ocean Blvd)

Additional appellants:

1. Ron Yeo
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(949) 395-0901 ronyeoarchitect@gmail.com
2. Daniel Herman
503 Poinsettia Ave., Corona del Mar CA 92625
(714) 366-5786 danh@rhdo.com
3. Walt Howald
PO Box 622, Corona Del Mar, CA 92625
949-922-9926 walt@howald.us
4. Bill and Jinx Hansen
3334 E. Coast Highway #295, Corona del Mar CA 92625
949-675-7600 jinxst@pacbell.net

Reason(s) for Appeal:

A fundamental principle and requirement of California's Coastal Act, as enunciated in Public Resources Code Section 30251, is that: "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting."

Newport Beach's Local Coastal Program recognizes these important Coastal Act mandates by committing to numerous policies, including, especially relevant here, Policies 4.4.1-1 through 4.4.1-8, and 4.4.3-8 and 4.4.3-9 to not only protect, but enhance coastal views and preserve existing landforms. They give the area impacted by PA2022-0315 extra protection by designating the entirety of Ocean Boulevard in Corona del Mar as a Coastal View Road, and specifically prohibiting any new development on Ocean Boulevard bluff faces unless determined to be consistent with the predominant line of existing development.

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.

PA2022-0315, as presently proposed, is a step backwards.

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.

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.

Finding an appropriate balance between private needs and public policy is a complex issue that requires more than staff evaluation and approval. This appeal from the Zoning Administrator to the Planning Commission is intended to make possible that fuller discussion.

Consistent with our Municipal Code and LCP, this appeal requests a de novo reconsideration of staff's approval of the PA2022-0315 CDP by a panel our fellow citizens.

Without limiting the issues that may be raised on appeal, our specific reasons for filing this appeal include the following:

- The Zoning Administrator's resolution of approval (ZA2023-056) cites two CLUP policies with which PA2022-0315 is purportedly consistent, but ignores the many with which it appears inconsistent.
- As an example, 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 structure 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
- 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 limit 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 landscape height were part of the City's abandonment of public right-of-way, which was never reviewed for consistency with the CLUP.

- 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.
- 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 plane of 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.
- 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.
- Policy 4.4.1-5 promises the City will “Where feasible, require new development to restore and enhance the visual quality in visually 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 ensures the bluff will be restored to a natural state in keeping with the City’s long-range Ocean Boulevard Vision Plan.
- 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.
- 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 pedestrians for whom the new development will be most visible.
- 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 an 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. Since nothing has ever been built on the former 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.

- 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 [sic] 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.

In summary, PA2022-0315 proposes major additions to a non-conforming structure that appears eligible for none. Even if the structure were eligible for additions, PA2022-0315 does not do so in a way that preserves coastal landforms. It also does not preserve existing views and is not designed to enhance degraded ones.

For all these reasons, and likely more, we feel staff’s approval of the Coastal Development Permit is inconsistent with the City’s Coastal Land Use Program, and an appeal to the Planning Commission is warranted.

From: Jim Mosher <jimmosher@yahoo.com>
Sent: September 25, 2023 10:52 AM
To: Lee, David
Cc: jinxst@pacbell.net; ronyeoarchitect@gmail.com; danh@rhdo.com; walt@howald.us
Subject: Re: Dawson Appeal

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David,

Thank you for your response to my questions.

Reviewing our appeal form this morning, I believe the grounds for appeal are fairly clearly stated, and I hope you, after reviewing them, will be supporting the appeal, or at least remaining neutral.

In addition to the need for analysis of the proposal's compatibility with the City's nascent Ocean Boulevard Vision Plan, with which my co-appellants are more conversant than me, I would like to add these two points of clarification:

1. The most fundamental question seems to be whether NBMC [Subsection 21.38.040.G](#) permits *any* addition to the existing nonconforming structure.

I would respectfully suggest that in concluding that it does, the original analysis may have misread the code.

Subsection 21.38.040.G.1.b clearly renders *ineligible* for additions any *existing* nonconforming structure that impairs coastal views.

Staff may have misread this as asking, instead, whether the proposed *addition* would impair views more than they already are impaired. Unfortunately, it is difficult to know, for the analysis of this issue in Facts in Support of Finding L.6 of [Resolution No. ZA2023-056](#) is confined to a reference to "Facts in Support of Finding L.13 and M.1." Neither of those, nor anything else I can find in the resolution, addresses *view blockage by the existing structure* (with the exception of acknowledgments that the existing chimneys "partially impede" or "interfere with" public views).

We believe it is undeniable that the *existing* nonconforming structure at 2741 Ocean impairs views, not only of the ocean, but of the harbor, especially from the sidewalk and view road when looking in the direction of China Cove (with the beach totally blocked). Because of that, NBMC Subsection

21.38.040.G.1.b renders the existing structure at 2741 Ocean ineligible for *any* additions.

2. As pointed out in our appeal, even if additions *were* allowed (which we don't believe they are), or an entirely new structure were proposed, the original analysis did not address the CLUP policies allowing bluff face construction only within "the predominant line of existing development."

I cannot guess what your analysis of this issue will be, but in addition to the reasoning mentioned in the appeal, I would point out that your department has historically used a stringline analysis to establish the predominant line. The application of that method to the last structure in a row is unclear, but I would point out that on aerial photos, the adjacent structure at 2735 Ocean Blvd. is the main anomaly beyond the predominant line connecting existing structures. Allowing incursions similarly close to the boulevard at 2741 Ocean would be adding yet another anomaly, not respecting the existing line.

I hope this gives you additional food for analysis, and that you will be supporting the appeal.

Yours sincerely,

Jim Mosher

On Thursday, September 21, 2023 at 04:04:18 PM PDT, Lee, David <dlee@newportbeachca.gov> wrote:

Hi Jim,

You can support more information if you would like. I would prefer for any new information to be included by October 5 so that staff can include it as an attachment to the report. If you would like staff to analyze or respond to additional information, please submit it before September 26 as I need to send my report to the attorney's office for review.

Thank you,

From: Jim Mosher <jimmosher@yahoo.com>
Sent: October 02, 2023 4:31 PM
To: Lee, David
Cc: jinxst@pacbell.net; ronyeoarchitect@gmail.com; danh@rhdo.com; walt@howald.us
Subject: Re: Dawson Residence Appeal (PA2022-0315)

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

David,

I realize your deadline for suggesting issues needing further analysis has passed. However, in reviewing the PA2022-0315 materials presented to the Zoning Administrator on August 10, I notice something that appears to have been omitted.

Namely, NBMC [Sec. 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%.

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.

I do not believe the Zoning Administrator was asked to consider these three questions. Hopefully the Planning Commissioners will, should they think any expansion is allowed.

-- Jim

On Tuesday, September 26, 2023 at 10:44:56 AM PDT, Lee, David <dlee@newportbeachca.gov> wrote:

Hi Jim,

Received and will include in the report.

Thanks,



David Lee

Senior Planner

Community Development

Office: 949-644-3225

100 Civic Center Drive

Newport Beach, CA 92660

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