

Attachment D

January 28, 2020 Staff Report



CITY OF

NEWPORT BEACH

City Council Staff Report

January 28, 2020
Agenda Item No. 16

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2020-4: Introduction of a Cottage Preservation Ordinance (PA2019-181)

ABSTRACT:

The proposed amendments to the Local Coastal Program (Coastal Land Use Plan and Implementation Plan), Newport Beach Municipal Code (NBMC) Title 20 (Planning and Zoning), and Title 15 (Building and Construction) will provide a voluntary option for homeowners seeking to remodel, but preserve traditional beach cottages. Typically, cottages do not provide all the code-required parking and additions are limited to 10 percent of the existing floor area. The amendments would allow larger additions (up to 50 percent of the existing floor area or a maximum of 500 square feet) without providing the minimum code-required parking when the project would result in the preservation of the cottage character and building envelope that is representative of traditional development patterns in the City.

RECOMMENDATION:

- a) Conduct a public hearing;
- b) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to 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;
- c) Waive reading, read by title only, introduce Ordinance No. 2020-4, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Code Amendment No. CA2019-006 to Amend Title 15 Entitled "Building and Construction" and Title 20 Entitled "Planning and Zoning" of the City of Newport Beach Code Related to Cottage Preservation (PA2019-181)*, and pass to second reading on February 11, 2020; and
- d) Adopt Resolution No. 2020-12, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment No. LC2019-004 to the California Coastal Commission to Amend Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code and the City of Newport Beach Local Coastal Program Coastal Land Use Plan Related to Cottage Preservation (PA2019-181)*.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

INTRODUCTION

Study Session

As a result of growing community concerns related to the loss of small residential cottages and the bulk and mass associated with new single and two-unit dwelling developments in the City, the City Council held a study session on April 23, 2019. At the conclusion of the study session, the City Council directed staff to return with a resolution to initiate code amendments to address these concerns, including incentivizing the preservation of cottages. Study session minutes are included as Attachment C.



Initiation of Code Amendment

City Council Policy K-1 (General Plan and Local Coastal Program) provides that a City-sponsored amendment to the certified Local Coastal Program (LCP) shall be initiated by the City Council. Additionally, NBMC Section 20.66.020 allows amendments to the Zoning Code to be initiated by the City Council. The subject amendment was initiated by the City Council on May 14, 2019 (Attachment D), as one of two proposed amendments under City Council Resolution No. 2019-43 (PA2019-070).

Community Meeting and Outreach

On August 19, 2019, the Community Development Department staff hosted a community meeting to share proposed changes to residential design standards. Notice of the meeting was distributed to affected homeowners' associations, distributed as a *Newsplash* to interested members of community who have requested notice of important planning and land use activities in the City, and distributed to a list of known designers and architects that work in Newport Beach. The meeting was well attended by 64 members of the public, including design professionals.

Included in the discussion were proposed changes to incentivize the preservation of small cottages by allowing increased additions and alterations that provide an option to complete redevelopment of property. The proposed changes related to cottage preservation were supported by meeting attendees. General comments in support included:

- Design professionals explained that it is more difficult to remodel and preserve a cottage than to demolish and reconstruct a new home due to the current restrictive code requirements that are in place. The proposed changes would create a feasible option for preservation by removing these code-related constraints;
- Attendees appreciated the fact that the changes were incentive-based instead of a firm restriction on property owner's rights; and
- The incentive allows a reasonably sized addition for nonconforming structures that do not provide adequate parking, which is appropriate if it discourages property owners from tearing down older cottage structures.

On September 10, 2019, a study session was held with the City Council to share the results of the August 2019 community meeting and proposed code amendments. At the conclusion of the study session, the City Council directed staff to proceed with the cottage preservation amendments as proposed.

Lastly, on November 23, 2019, staff presented the proposed amendments to the Balboa Island Improvement Association with minimal comments received from the community.

Planning Commission Review

On October 17, 2019, staff presented the proposed amendments to the Planning Commission for review and recommendation. At the conclusion of the meeting, the Commission voted to continue the item to allow staff additional time to revise certain aspects of the amendments. Minutes from the October 17, 2019, meeting are included as Attachment E.

On November 21, 2019, staff presented revisions of the proposed amendments to the Planning Commission addressing concerns raised at the prior hearing, including clarifying the applicability of the program, and prohibiting short-term rentals. At the conclusion of the meeting, the Commission voted 5-1 to recommend approval of the amendments to the City Council (Attachments F and G - Planning Commission Resolutions).

The Planning Commission did request the City Council consider increasing the maximum addition allowed under the program from 500 square feet to 750 square feet. Also, for the City Council to consider a requirement for the payment of an in-lieu parking fee. An analysis of these recommendations is provided later in this report. Minutes from the November 21, 2019, meeting are included as Attachment H.

DISCUSSION

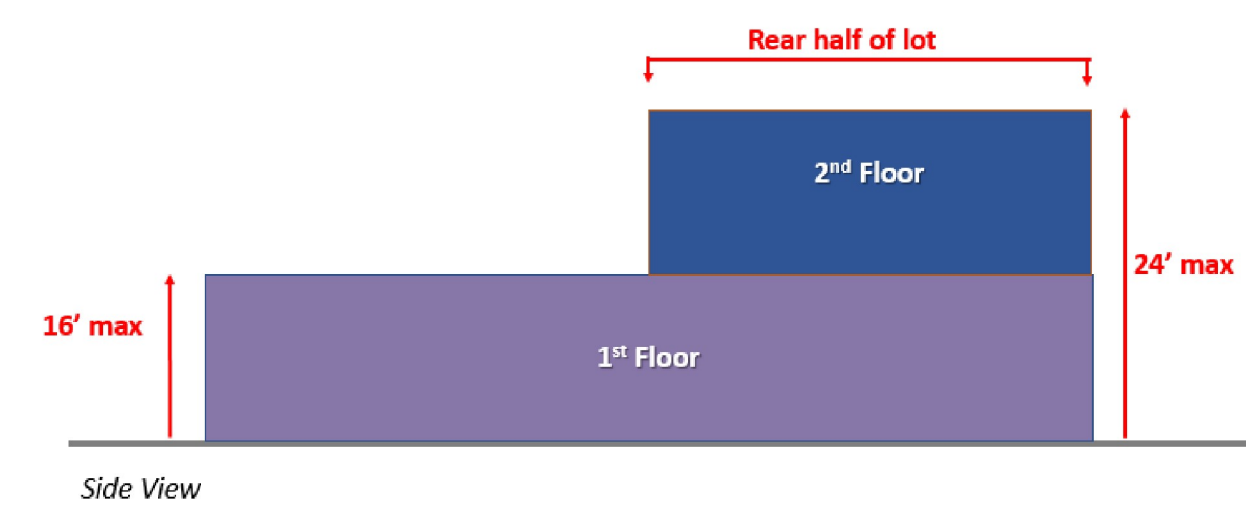
What constitutes a cottage for the purpose of this ordinance?

There is no definition that accurately describes what constitutes a cottage. However, as used by the community, the term cottage refers to the smaller residential dwellings or structures that are representative of the traditional development patterns in the City, particularly in old Corona del Mar, Balboa Island, and the Balboa Peninsula. These structures are typically one-story, with the exception of a small second story above parking in the rear of a lot. Many cottages vary in architectural style and year of construction. Therefore, for the purpose of this amendment, the cottage preservation incentive will be granted for those projects that agree to maintain a building envelope representative of traditional cottages.

The building envelope for cottage preservation eligibility would be limited as follows:

- Front half of lot limited to one story and a maximum height of 16 feet;
- Rear half of lot limited to two stories and a maximum height of 24 feet; and
- Third floors or third floor decks would be prohibited.

Figure 1. Qualifying Building Envelope for Cottage Preservation



Why are we losing cottages?

The primary reason for the loss of cottages is many of these properties were historically used as beach homes or second homes, but are now predominantly used as principal residences. As such, property owners are seeking to maximize the size of their homes to increase the livability and include modern features. Additionally, as property values in the City have significantly increased, property owners are now seeking to construct the maximum allowable floor area and height to ensure they are receiving the highest and best return on their investment.

However, there are property owners who would like to preserve their older cottages, but have run into complications when seeking to remodel to add an extra bedroom or bathroom. Two existing code restrictions lead property owners to demolish the old cottage in favor of developing a new, larger home.

1. Nonconforming Parking Limitations (Title 20 and 21)

As the minimum parking requirements have increased over time, due to changes in zoning requirements, most cottages are nonconforming because they no longer provide the minimum number of parking spaces on-site (e.g., minimum parking requirements for a single-family dwelling increased from zero spaces, to one space, to two spaces per unit). In other cases, the cottages comply with required number of spaces, but no longer comply with current parking size dimensions.

NBMC Sections 20.38.060 (Nonconforming Parking) of the Zoning Code (Title 20) and 21.38.060 (Nonconforming Parking) of the Local Coastal Program Implementation Plan (Title 21) both limit the allowable area of additions for residential dwellings that are nonconforming due to parking to a maximum of 10 percent of the existing floor area of the structure. This 10 percent limitation is typically not sufficient to accommodate the addition of a new master bedroom or justify the cost of a remodel.

Modifying a small cottage to create a two-car garage cannot be done without significantly altering the cottage thus defeating the owner's hope to preserve the small home.

2. Building Code Limitations (Title 15)

Currently, Section 102.7 (Remodel or renovation) of Section 15.02.060 of the NBMC requires a dwelling to be subject to building code regulations as a new structure when the valuation of the permit for a remodel or renovation exceeds 50 percent of the market value of the dwelling. As a result of this 50 percent valuation threshold, many small remodeling and addition projects require substantial improvements beyond the original scope of work in order to comply with building code regulations as if the house is a new construction. Due to this increased scope of work and costs, many property owners decide that it is not financially feasible to maintain their existing residential cottages and instead decide to demolish and rebuild.

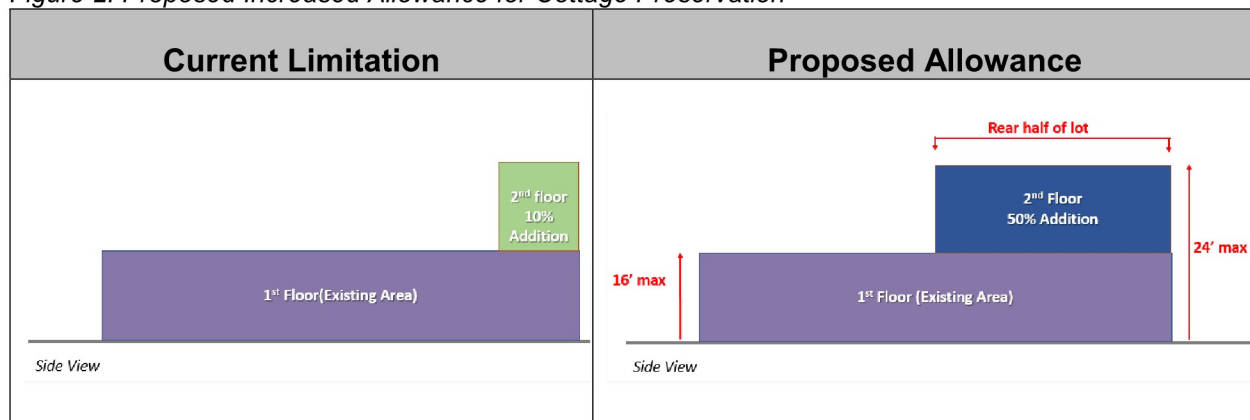
What are the proposed changes/incentives?

In order to loosen constraints discussed above, the following amendments are proposed in exchange for a property owner's commitment to maintain the required cottage building envelope as previously described. An underline/strikeout version of the proposed amendments are included as Attachment I for reference.

1. Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) Changes:

- a. Increase addition limits from ten (10) to fifty (50) percent, with a maximum cap of 500 square feet - Cottages are typically smaller structures that are built significantly below the allowable floor area limitations of a site. Therefore, staff is recommending to increase the allowable area of additions for residential dwellings that are nonconforming due to parking to a maximum of fifty (50) percent of the existing floor area of the structure. This new standard would allow for a reasonably sized addition as a realistic alternative to demolishing and redeveloping their properties. However, in certain situations this may allow for a large addition beyond the original intent. Therefore, a maximum cap of 500 square feet would be allowed.
- b. Require recordation of a revocable deed restriction - It is important to emphasize that this is a voluntary program that affords property owners increased opportunity to remodel and expand their cottage properties in exchange for preserving the cottage building envelope and overall form of the development of the property (i.e., one-story and 16 feet high within front half of lot and two-story, 24 feet high within rear half of lot). To ensure this building envelope is retained and the property owner does not subsequently add additional floor area that violates the prescribed building envelope, a deed restriction would be required. However, the deed restriction would not require that the cottage be preserved indefinitely. Should a property owner desire to redevelop the property in future, the deed restriction would allow redevelopment of the property in compliance with development standards in effect at the time, including providing code-required parking.

Figure 2. Proposed Increased Allowance for Cottage Preservation



2. Title 15 Change - Remove new construction code requirements for eligible cottage preservation projects - In the event that the construction valuation exceeds fifty (50) percent of the value of the structure, only the components of the structure that are affected by the renovation/addition will have to comply with new building code requirements. For example, in the case of a new bedroom addition over the garage, the addition and portions of the existing garage that are affected by the addition will have to comply with current building code requirements. However, the existing one-story component of the house that would remain would no longer have to be fully retrofitted to comply with building code standards as a new home constructed today.

It should be noted, if a property is located within a special flood hazard area as mapped by the Federal Emergency Management Agency (FEMA), a separate valuation threshold will continue to apply as required by FEMA. The FEMA threshold is more restrictive and may trigger a need to substantially improve the existing structure to avoid the identified flood hazard. Improvements would typically include raising the finish floor of the structure, which typically leads property owners to demolish the structure and construct a new home.

Figure 3. Example Cottage Preservation Project



What types of residential development would this apply to?

The intent of these code amendments is to incentivize the preservation of cottages that are representative of the historic areas of the City, such as in Corona del Mar, Balboa Island, and the Balboa Peninsula. A majority of the lots in these areas allow two-unit development and include two-unit cottages. In Corona del Mar, the 300 block of Marguerite Avenue is zoned for multi-unit residential and several of the lots are currently developed with three-unit cottages (See Figure 4 below).

Restricting applicability of these amendments to single-unit dwellings only would have the effect of excluding a majority of the cottages in Corona del Mar and Balboa Island from taking advantage of this new incentive.

Figure 4. Three-unit Cottage Example on Marguerite Avenue



It is not uncommon for a property owner to live in the front unit of a duplex and rent out the smaller, rear unit for income. Allowing a property owner of a duplex to remodel and expand their front unit would provide a realistic alternative to redeveloping the entire property. Therefore, the proposed amendments would apply the cottage preservation incentives to residential developments consisting of three (3) units or less. By restricting the applicability to single-unit dwellings only, staff believes the ordinance would be ineffective and not achieve the desired goal and intent.

Why is Short-Term Lodging prohibited?

Several cottages are currently utilized for short-term lodging. However, the intent of the amendments is to provide an alternative to a homeowner seeking to preserve their cottage while allowing for a reasonable size addition to accommodate kitchen or bedroom expansions and enhance the livability of their homes. Concerns were raised during the Planning Commission discussion that the incentives could be used to further expand cottages used for short-term rentals, increasing occupancy and exacerbating existing potential conflicts these units create, including increased demand for on-street parking and removal of rental units from the housing stock. Therefore, the proposed amendments include a prohibition of the use of the property for short-term rentals. This prohibition will be included in the required deed restriction and any existing short-term lodging permit would be revoked.

Why is Coastal Commission review required?

Properties located in the Coastal Zone (Attachment J) of the City are regulated by the Local Coastal Program (LCP), which is comprised of the Coastal Land Use Plan (CLUP), a policy document, and the Implementation Plan (IP or Title 21), a regulatory document.

Any amendments to the LCP must be reviewed and approved by the City Council, with a recommendation from the Planning Commission, 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.

In addition to the proposed changes to Title 21 as described above, staff is recommending that Coastal Land Use Plan Policy 2.9.3-8 be amended to include a policy to support the proposed Title 21 cottage preservation amendment described above. A change to the policy is important to avoid a determination that the proposed Title 21 code amendment may be inconsistent with the current language of Policy 2.9.3-8. Additionally, regulations in Title 21 require policies in the Coastal Land Use Plan.

2.9.3-8 *Continue to require properties with nonconforming parking to provide code-required off-street parking when new uses, alterations, or additions result in increased parking demand. However, additions of up to fifty (50) percent of the existing floor area, but not greater than 500 square feet, of a residential development of three (3) units or less may be allowed without requiring the code-required parking when the project would result in the preservation of the cottage character of the existing development and a building envelope representative of traditional cottage development patterns in the City.*

Should the City Council approve the proposed ordinance adopting the amendments to Title 15 and 20, the cottage preservation incentives would temporarily only be permissible for developments located outside the Coastal Zone. Upon approval of the proposed LCP amendments by the CCC, staff will return to the City Council with an ordinance adopting the LCP Amendments, thereby allowing the cottage preservation incentives citywide.

Analysis of Planning Commission Recommendation- Increasing Maximum Cap to 750 Square Feet

At the November 21, 2019, Planning Commission meeting, several Balboa Island residents spoke in support of the proposed amendments but requested that the maximum cap on allowable additions be increased from 500 square feet to 750 square feet. The Planning Commission did not make the change to the resolution of approval; however, they requested that staff present the idea to the City Council for further consideration.

After further research and consideration, staff believes retaining a maximum cap of 500 square feet is appropriate and more in line with the original intent of creating these incentives for the following reasons:

- 500 square feet allows for significantly larger additions than what has been permitted in past utilizing the 10 percent addition allowance.
- A typical ancillary bedroom measures approximately 150 to 250 square feet in area. Master bedrooms vary in size, but can generously be accommodated within the 500 square-foot cap.
- For perspective, 750 square feet is the size of a typical one-bedroom apartment unit and could potentially allow the addition of up to three smaller bedrooms to a cottage that may be deficient to parking.

Analysis of Planning Commission Recommendation - Consider Requiring An In-lieu Parking Fee

The Planning Commission also requested that staff present the idea of requiring the payment of an in-lieu parking fee in exchange for use of these incentives when a cottage was nonconforming due to the number of spaces provided. After further consideration, staff believes it would not be appropriate to include an in-lieu fee payment at this time for the following reasons:

- The intent of the amendments is to provide an alternative to redeveloping cottage properties by providing a voluntary option or incentive for preservation. The more restrictions that are imposed for project eligibility reduces the attractiveness of this program and may drive a property owner to redevelop their property (elimination of the cottage). For example, the proposed Building Code exemption that requires the entire structure be brought up to Code was intended to reduce the scope and costs of cottage preservation project. The payment of an in-lieu parking fee would serve as a disincentive to use the proposed cottage preservation incentives.
- The City does not currently have an in-lieu parking fee program in effect. Therefore, to implement and develop an in-lieu parking fee, a comprehensive fee study would need to be completed in accordance to state law requirements (Mitigation Fee Act). This would result in a significant delay in the approval of these amendments.
- Although the hope is that several property owners take advantage of these incentives, it is not expected that there would be a sufficient number of projects for an in-lieu fee program based on cottage preservation projects to have an impact.

ENVIRONMENTAL REVIEW:

The action proposed herein 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 from the CEQA pursuant to State 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. 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. The Amendment itself does not authorize any development and therefore would not directly result in physical change to the environment.

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 October 4, 2019, to all persons and agencies on the Notice of Availability mailing list and posted online. Revisions to the draft LCP Amendment have also been posted online.

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

Lastly, notice of this amendment was emailed to interested parties that attended the community meeting or that have expressed interest in this item.

ATTACHMENTS:

~~Attachment A – Ordinance No. 2020-4~~

~~Attachment B – Resolution No. 2020-12~~

~~Attachment C – April 23, 2019 City Council Study Session Minutes~~

~~Attachment D – Initiation of amendments; City Council Resolution No. 2019-43~~

~~Attachment E – October 17, 2019 Planning Commission Minutes~~

~~Attachment F – Planning Commission Resolution No. PC2019-033~~

~~Attachment G – Planning Commission Resolution No. PC2019-034~~

~~Attachment H – November 21, 2019 Planning Commission Minutes~~

~~Attachment I – Underline/strikeout Version of Amendments~~

~~Attachment J – Coastal Zone Map~~