

## November 9, 2017, Planning Commission Item 2 Comments

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

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### ***Item No. 2. GINSBERG RESIDENCE COASTAL DEVELOPMENT PERMIT AND VARIANCE (PA2016-170, 2607 Ocean Boulevard)***

My main problems with staff's recommendation are:

1. Inadequate analysis of impact on public views.
2. Approval of Coastal Development Permit for project deviating from LCP development standards.
3. Destruction of small remaining part of coastal bluff.

### ***Public Views***

The staff report mentions that the public views from Ocean Boulevard are protected (as, I believe, are views looking back from the harbor and ocean). While Attachment PC 3 (starting on handwritten page 25) provides a number of views of the **existing** house (including what looks to be a Google Street View from the far side of Ocean Blvd., showing the existing house does not obstruct views from there), it provides no views at all showing how the **proposed** construction will look in context. In particular, no views from points along the edge of Ocean Blvd., and none looking inland from the beach or harbor.

Instead, the impact on visual resources of what will be allowed by the variances is dismissed with the statement (bottom of handwritten page 5) that: "*General Policy NR20.3 requires the protection and enhancement of public view corridors from Ocean Boulevard. The top of the proposed residence at elevation 73.50 feet will not exceed Ocean Boulevard top-of-curb elevation at 73.81 feet, and therefore, public views of the harbor entrance and Pacific Ocean from Ocean Boulevard will not be affected.*"

According to the Front Elevation on Plans Sheet A-3 (handwritten page 63 – and, yes, the “front” of this house is on Ocean Blvd.), those standing at the top of the China Cove will be looking at the back of a screen wall with canopy, 63 feet away and rising to 73.50 feet NAVD 88, just 4 inches below the curb height.

Whether allowed by variance or any other mechanism, it defies imagination how something of that height at that distance could be claimed to “enhance” and not “affect” views. Indeed, it seems likely it would significantly block views of the beach and harbor.

In the absence of compelling visual evidence that this proposal would not degrade public views from Ocean Blvd., I believe this application is inconsistent with both the Natural Resources Element of the [General Plan](#), as well as the [Local Coastal Program](#), and on that basis, if no other, **has** to be denied.

## ***Approval of Coastal Development Permit***

It seems curious the Dawson residential project at 2741 Ocean Boulevard, needing similar variances submitted to the Commission as [Item 4](#) on February 9, 2017, and subsequently approved as [Item 3](#) on April 6, 2017, was claimed to **not** require a Coastal Development Permit because the [Categorical Exclusion Order](#) applied to it **despite** a need for variances; yet this project **needs** a CDP **because** the need for variances makes it ineligible for the Categorical Exclusion. Reading the [CatEX terms](#), I believe the latter interpretation has always been the correct one, and the Dawson application was approved, without a CDP, in error. It is probably too late to correct that, but this application most certainly does need a CDP since the need for variances cause it to fail to meet Special Condition B.4 of the CatEX ("*4. Applicable Zoning. Development pursuant to this exclusion shall conform, unless otherwise limited by this order, to the policies and regulations of the City of Newport Beach Local Coastal Program as certified by the [California Coastal] Commission.*").

As [Item 3](#) on the Council's September 12, 2017, consent calendar, the City Council approved [Resolution No. 2017-56](#), submitting for a second time, among other things, a request for the CCC to approve adding a "*new Implementation Plan Section 21.52.090 to clarify regulations relating to modifications and variances.*" The "clarification," as staff is aware, is needed because the Commission has not yet certified any provisions that would authorize the City to approved CDP's that violate in any way the restrictions in the LCP. And Coastal Commission staff has rejected adding such authorizing language as a "minor amendment."

As a result, the City does indeed have the authority to approve CDP's. But it does **not** have the authority to approve CDP's that deviate in any way from what is explicitly allowed by the currently-certified LCP.

Because of that, this CDP application cannot be approved until all the deviations from the LCP are removed -- and there are many, including, basically, all the Zoning Code deviations for which variances are being sought.

In particular, adherence to a 10 foot setback from the property line facing Ocean Blvd. is required by [Map S-10B](#) in Section 21.80.040 of the [Implementation Plan](#). And it seems disingenuous to suggest that might be understood by the Coastal Commission as "guidance" rather than a "regulation," since the 10 feet is actually already a **relaxation** of the 20 foot front setback that would otherwise be required for R-1 zoning by [Section 21.18.030](#) of the IP. Since nothing to the contrary is shown on the map, that section imposes a requirement for a standard 10 foot setback at the "rear" of the property, on Way Lane.

As to heights, the same section notes the basic limits for this zoning are 24 feet from sloped roofs and 29 feet for sloped one, with a possibility of increases to the limits in [Section 21.30.060\(C\)\(2\)](#). The possible increases are to 28 feet for flat and 33 feet for sloped portions, but they can be approved only with the making of the findings in [Section 21.30.060\(C\)\(3\)](#), some of which can probably not be made in this case (particularly, those related to protection of visual resources).

In short, the proposed development is inconsistent with the LCP, and a CDP allowing it **cannot** be approved.

## ***Destruction of Coastal Bluff***

The photos provided in Attachment PC 3 (starting on handwritten page 25) show the largely intact remnants of a steep coastal bluff in the western part of the property, beyond the existing home. To me, this is a coastal resource worthy of protection, yet the proposed development will completely obliterate essentially all of that within the property lines.

I do not expect to have time before the 5:00 p.m. deadline for submission of written comments on this item to research whether any General Plan, Zoning, Coastal Act or LCP policies or regulations provide protection, but I would like to say that if the existing rules allow such destruction of natural resources, something should be done to change those policies: I don't think the rights associated with ownership of land should include the right to obliterate landforms on it.

## **Other Issues**

1. **Questionable requests for variances:** I fail to see how compliance with the existing regulations would deprive the owners of rights enjoyed by others, or the substantial use of their property. The only definite right I would expect to attach to ownership of an R-1 property would be that adherence to the rules does not deny the owner the ability to build a single family home on the property. In the present case there already appears to be a perfectly serviceable single family home on the property (albeit apparently allowed to intrude into the required setback along Way Lane in return for preservation of compensating open space elsewhere on the property), which the owner is presumably free to remodel.

I don't see where there is any inherent right to build to the same floor area ratio, or any other metric, as might be possible on other lots. By the logic being employed here, it would appear homeowners in the flat parts of China Cove could argue they should be eligible for variances to build structures to the same maximum NAVD 88 height above the harbor as owners on the slopes and bluff top above them, because they are being prevented from doing so by a physical peculiarity of their lot – not having a high enough base to build above.

2. **Traffic impacts:** Regarding the construction haul routes proposed on handwritten page 52, why would we want to allow construction traffic for two years on one of the City's most scenic roads, degrading the experience of being there for residents and visitors alike? (in addition to the construction traffic from the Dawson project, mentioned above, the AERIE project and who knows how many others).
3. **Questions about staff report:**
  - a. On handwritten page 52, why does the Proposed Buildable area (lot minus setback areas) say "No Change"? Doesn't the proposal increase buildable area from 1,910 to 3,456 sf (as suggested by the next line)?

- b. On Plans Sheet A-4-1 (handwritten page 66), why is the interior of the garage what appears to be about 20 feet tall? What function does this vaulted design provide? Doesn't it waste usable space, forcing the living areas to go higher?
- c. Why is it necessary to have access to the roof by elevator? The desire to live on one's roof is a bit unusual to start with, but couldn't access be provided by interior or exterior stairs? Surely there is no inherent right to this? Or to screening to prevent those on the roof from being seen?