

**Subject:** FW: Comments: General Plan Update Process

**From:** Terri Rhodes [<mailto:terriprhodes@gmail.com>]

**Sent:** Saturday, November 11, 2017 2:40 PM

**To:** Kramer, Kory <[kkramer@newportbeachca.gov](mailto:kkramer@newportbeachca.gov)>; Dunlap, Bill <[bdunlap@newportbeachca.gov](mailto:bdunlap@newportbeachca.gov)>; Koetting, Peter <[pkoetting@newportbeachca.gov](mailto:pkoetting@newportbeachca.gov)>; Kleiman, Lauren <[kleiman@newportbeachca.gov](mailto:kleiman@newportbeachca.gov)>; Lowrey, Lee <[llowrey@newportbeachca.gov](mailto:llowrey@newportbeachca.gov)>; Weigand, Erik <[eweigand@newportbeachca.gov](mailto:eweigand@newportbeachca.gov)>; Zak, Peter <[pzak@newportbeachca.gov](mailto:pzak@newportbeachca.gov)>; Biddle, Jennifer <[JBiddle@newportbeachca.gov](mailto:JBiddle@newportbeachca.gov)>; Campagnolo, Daniel <[DCampagnolo@newportbeachca.gov](mailto:DCampagnolo@newportbeachca.gov)>; Jurjis, Seimone <[sjurjis@newportbeachca.gov](mailto:sjurjis@newportbeachca.gov)>; [info@spon-newportbeach.org](mailto:info@spon-newportbeach.org)

**Subject:** Comments: General Plan Update Process

Why don't you follow your own planning rules instead of making exceptions which gets you into trouble? It sounds simple. Don't allow any variances. Terri Rhodes

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**From:** Susan Skinner <susanskinner949@gmail.com>  
**Sent:** Tuesday, December 05, 2017 9:38 PM  
**To:** Kramer, Kory; Dunlap, Bill; Koetting, Peter; Kleiman, Lauren; Lowrey, Lee; Weigand, Erik; Zak, Peter; Ramirez, Brittany; Campagnolo, Daniel; Jurjis, Seimone; Ung, Rosalinh  
**Subject:** The variance at 2607 Ocean Blvd  
**Attachments:** 2607OceanBlvdPCCComments12-17.docx

Dear Planning Commissioners,

I am attaching my letter regarding the variance for 2607 Ocean Blvd for your review and hope you will take the time to read it.

The main issues are:

- 1) Setting a precedent for future variances and creating a special privilege.
- 2) No other nearby bluff properties have received an increase of sq footage with the exception of 227 feet given to 2700 Ocean in 1985. Homes in China Cove may have a higher FAR but were almost all built prior to the 1997 decrease in FAR from 2 to 1.5.
- 3) Staff considers that the sq footage variance is appropriate because granting the setbacks will create a larger buildable area. Thus, the more generous the city is in reducing setbacks, the larger home is allowed to be built per staff recommendations. Since a standard size lot could not hope to get set back variances, this adds to the special privilege being granted.
- 4) Title 21 has no mechanism for granting a variance.

Thank you for your consideration,

Susan Skinner

December 5, 2017

Dear Planning Commissioners:

I would like to ask you to deny the variance for increased sq footage at 2607 Ocean Blvd. Approval of this variance will constitute a special privilege, which is prohibited by code and will also create a precedent for the next request. (In fact, Nicholson Construction has already made the next variance request for increased sq footage at 3200 Ocean Blvd.) The use of prior variances as a precedent is seen with the setback request since part of the justification for this variance is that other homes along Ocean Blvd have previously received similar treatment.

If a standard shaped lot of 4257 sq feet were used for comparison, the allowable home size would be about 4200 sq feet. Instead, the developer is asking for a home of 4880 sq ft, far in excess of what the standard size lot owner could expect to be approved. Since the intent of the variance process is to allow the owner to have full use of his property without allowing special privileges, it would be inappropriate to allow the excess sq footage. One possible way for the developer to achieve a larger home size is through the construction of a basement, which would not count against the FAR of the house. Planning staff does not perceive any barriers to building a basement.

The developer notes that other bluff properties on Ocean Blvd are larger homes, but they are situated on larger lots. Per planning staff documentation (page 41 of the 11/9 staff report), the floor area analysis for the other bluff top homes on Ocean is an average of 0.97. With the exception of 2711 Ocean (which received a variance for an additional 227 sq ft in 1985), none of the other bluff homes on Ocean have received a variance for additional sq footage.

The developer notes that other homes within China Cove have a larger FAR, but with the exception of 2718 Shell, all the other referenced homes were built prior to 1997. Per Jim Mosher, the FAR for CdM was reduced from 2.0 to 1.5 around 1997. Thus, these homes are non-conforming due to the code change and cannot be used as the standard by which this home is measured.

The variance request for setback changes is appropriate given the shape of the lot, but what I learned on Monday is that planning staff considers the increased sq footage request to be appropriate *because the reduced setbacks will create a larger buildable area*. Thus, if the setback adjustment were less generous, the buildable area would be more in line with a standard shaped lot. Although I have no objection to the setback request, I emphatically object to using the newly increased buildable area as justification for a home larger than 4200 sq ft. In fact, this fact makes granting any additional sq footage even more of a special privilege since a standard size lot could never hope to have a variance granted for setbacks as this owner has proposed.

Please also note that since the recently approved LCP does not give any mechanism for variances, this home will only meet Title 20 standards but not Title 21 standards.

Finally, I call your attention to the height of the garage, which is listed at 18 feet, an unusual use of space. It would appear easy to change out the panels above the garage door into windows. The cynic in me wonders if the intent is to add more living space in the upper part of the garage once the home is built. Also, my understanding is that the 300 sq ft reduction in size between 11/9 and now was made by converting an interior room to a deck, again bringing out the cynic in me as to whether the intent is to convert it back once city approval has been given.

In summary, there are multiple reasons to deny the request for additional sq footage over 4200 sq ft and I ask you to please do so. The applicant deserves the same sq footage as any other homeowner with a standard sized lot, but the excess sq footage requested is a special privilege and should not be allowed.

Thank you,

Susan Skinner

December 6, 2017

RE: Item 5 for December 7, 2017  
Planning Commission Meeting  
Variance No. VA-2016-005  
Ginsberg Residence  
2607 Ocean Blvd., Corona del Mar

Ms. Ramirez and Planning Commissioners:

We oppose the proposed project located at 2607 Ocean Blvd. The existing residence is non-conforming. This would be the perfect opportunity to bring the property into conformance and begin to put an end to the mansionization that is occurring at a faster and faster rate throughout Corona del Mar and other areas of Newport Beach.

Facts in Support of Finding:

1. The strict application of development standards including setbacks and floor area limit, to this constrained lot result in a buildable area of 1,910 square feet and new residence of approximately 2,865 square feet in size. This is significantly diminished compared to other properties in the vicinity and same zone that have an average of 5,500 to 6,500 square feet in size.
2. The condition of the Property directly impacts the allowable floor area for the lot, and the ability to comply with setback requirements. The site constraints create challenges to design a residence of comparable size and position to other properties along Way Lane without providing relief from these code standards.

Based on "Facts in Support of Findings" on Page 11 of the staff report for this property, there is no end to the approval of larger and larger homes. Surely this homeowner was aware of the limitations of the lot when he purchased it. If he wanted to build a 4,807 square home he should have purchased a lot which would allow the construction of a home of that size. Can a homeowner who only has a standard Corona del Mar 30'x 118' lot be granted a variance because they do not have the opportunity to build a house as large as someone who owns a 35'x118' lot, or 40'x118, or 45'x118'... In our opinion finding #1 is routinely used as a "loop hole" and that "loop hole" should be closed.

The staff report is faulty and misleading. Please see following pages for specific information.

Vote NO on all 3 requested variances for this project.

Thank You,

William and Jinx Hansen  
221 Goldenrod Avenue  
Corona del Mar

## Overbuilding of 2607 Ocean Boulevard, Corona del Mar

Lot Size (approximate 110' x 39' avg.)	4,257 sq.ft.
Buildable Area (per Code required setbacks)	1,910 sq.ft.
Maximum FAR (1.5 x Buildable Area)	2,865 sq.ft.
Revised Proposed Building Area	4,807 sq.ft.
<b>Required Buildable Area @ 1.5 FAR =</b>	<b>3,205 sq.ft.</b>

FAR (Floor Area Ratio) is calculated based upon buildable area, **not lot size**.

### Developer's calculation of Open Volume Area is Misleading

**OPEN VOLUME AREA**

BUILDABLE AREA (PER CODE-REQUIRED SETBACKS) = 1,910 S.F.

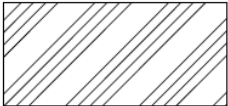
$1,910 \times .15 = 286.5$  S.F. MIN. REQUIRED

OPEN VOLUME 1 = 107 S.F. (PATIO)

OPEN VOLUME 2 = 56 S.F. (BALCONY 2)

OPEN VOLUME 3 = 180 S.F. (ROOF DECK)

343 S.F. OPEN VOLUME PROVIDED

 = OPEN VOLUME AREA (SEE PLAN BELOW FOR LOCATIONS)

OPEN VOLUME AREA TO HAVE 5'-0" MIN WIDTH, AND HEIGHT OF 7'-6" MINIMUM.

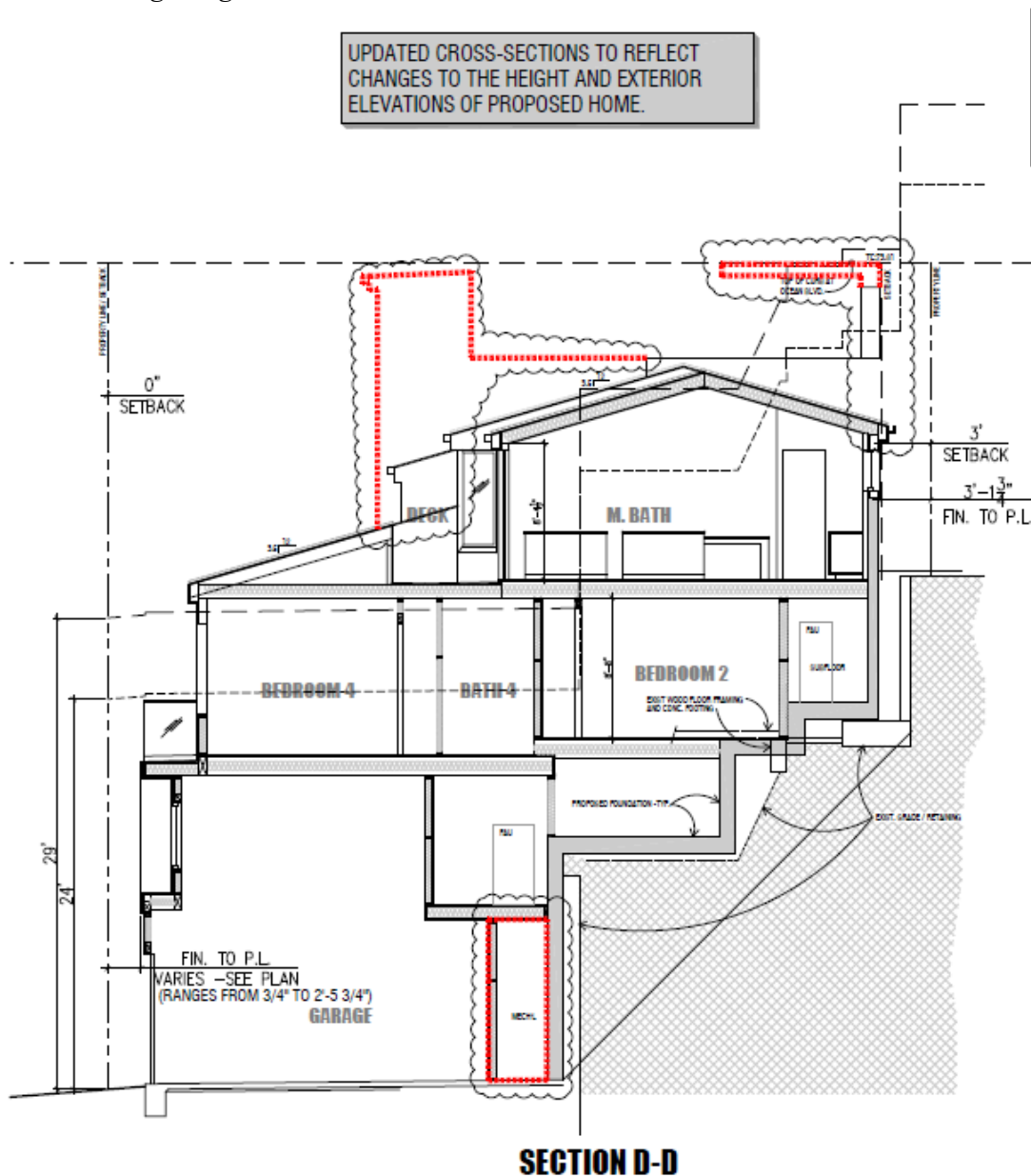
NOTE: NO OPEN VOLUME AREAS ENCROACH INTO THE CODE-REQUIRED SETBACKS

The correct calculation of Open Volume Area should be based on the 3,205 sq.ft. buildable area required to support the proposed structure.

$$3,205 \text{ sq.ft.} \times .15 = \mathbf{480.75 \text{ sq.ft. of Open Volume}}$$

## Building Height - Sloped Roof 29'

The revised building height of the proposed structure could not be found in the exhibits provided. However, based upon the dimensions set out below, the structure roof appears to be at least 35' above the street grade of Way Lane. What happened to the maximum 29' building height?



The developer's proposed structure is a classic example of how overbuilding is allowed to occur. In addition, the topography of the lot should reduce the building size, **not increase it.**

**Subject:** FW: Public Comments: China Cove Project (2607 Ocean Blvd)

**From:** Emkapp [mailto:emkapp@aol.com]

**Sent:** Wednesday, December 06, 2017 3:31 PM

**To:** Ramirez, Brittany <bramirez@newportbeachca.gov>; info@spon-newportbeach.org

**Subject:** Public Comments: China Cove Project (2607 Ocean Blvd)

Gentlemen,

I oppose the proposed approval of variances for the development of the home at 2607 Ocean Blvd. Please enforce the existing zoning and setback requirements. Blocking the public views and substantially changing the nature of this unique neighborhood are not acceptable.

I trust you will **represent the entire community** by enforcing the existing requirements and rejecting the variance requests which are detrimental to the community as a whole.

Thank you for your time and consideration,  
Beth Kiley  
Corona de Mar, CA



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**Subject:** FW: Comments on PC Item 5 (Ginsberg Residence)  
**Attachments:** 2017Dec07\_PC\_AgendaItem5\_Comments\_JimMosher.pdf

—Original Message—

From: Jim Mosher [mailto:jimmosher@yahoo.com]  
Sent: Thursday, December 07, 2017 5:55 AM  
To: jimmosher@yahoo.com  
Cc: Ramirez, Brittany <bramirez@newportbeachca.gov>  
Subject: Fw: Comments on PC Item 5 (Ginsberg Residence)

Dear Planning Commissioners,

The attached comments on the Ginsberg Residence application (PA2016-170) were submitted to Planning Division staff 9 minutes after the 5:00 p.m. deadline specified in your Rules of Procedure. As a result, I have not seen them publicly posted and have no idea if they were forwarded to you.

Since I believe they raise real and significant issues about the Planning Commission's authority to approve the requested Coastal Development Permit, I am taking the liberty to BCC this message directly to you at the seven email addresses listed on the Planning Commission website.

For a CDP to be approved it must be found consistent with the Coastal Act, and for the City to do that it is my understanding it must be found fully consistent with the recently certified LCP, not merely consistent with isolated points selected by the City or with standards unilaterally modified by the City.

It is my belief that the requested CDP cannot be issued, first because the LCP gives the City no authority to deviate from the certified development standards for minimum setbacks and maximum floor area found in the LCP for lots in the Coastal Zone, and second because the proposed construction is wholly at odds with the strong coastal view protection commitments of the LCP – an issue totally ignored in the proposed resolution of approval.

Yours sincerely,

Jim Mosher

— On Wed, 12/6/17, Jim Mosher <jimmosher@yahoo.com> wrote:

> From: Jim Mosher <jimmosher@yahoo.com>  
> Subject: Comments on PC Item 5 (Ginsberg Residence)  
> To: "Brittany Ramirez" <bramirez@newportbeachca.gov>  
> Cc: "Rosalinh Ung" <rung@newportbeachca.gov>  
> Date: Wednesday, December 6, 2017, 5:09 PM Brittany, Please find  
> attached my comments on Planning Commission Item 5, the Ginsberg Residence application (PA2016-170).  
> Yours sincerely,  
> Jim Mosher  
>

## December 7, 2017, Planning Commission Item 5 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. 5. GINSBERG RESIDENCE COASTAL DEVELOPMENT PERMIT AND VARIANCE (PA2016-170, 2607 Ocean Boulevard)***

I have much more to say about this item than can possibly be said in three minutes. Therefore, I am attempting to put part of it in writing.

The bottom line of these rather rambling comments is that whether granting a variance to the City's Zoning Code requirements for 2607 Ocean Boulevard is reasonable or not, it is completely irrelevant to the issuance of a Coastal Development Permit, and the City cannot conceivably make the findings necessary to issue a CDP for the construction as proposed.

### **Granting Variances from the Zoning Code is a Completely Separate Issue, Unrelated to Issuing Coastal Development Permits**

To be built anywhere in Newport Beach, this project, as proposed, would require variances from the development standards of our citywide Zoning Code, which is [Title 20](#) of the [Newport Beach Municipal Code](#).

Because it is to be built in the Coastal Zone, this particular project also requires the issuance of a Coastal Development Permit. The City has been granted the authority to issue such permits as a result of the recent certification, by the California Coastal Commission, of [Title 21](#) of the NBMC as our [Local Coastal Program](#) Implementation Plan. By the City's choosing, Title 21 has its own development standards, separate and distinct from those of Title 20, even though the details are often the same.

The present staff report makes the same mistake of confusing compliance with Title 20 with compliance with Title 21 that the applicant's representative, Mr. John Ramirez, made at the November 9 Planning Commission hearing. While there may be cities in which the General Plan and Zoning Code have been certified by the Coastal Commission as the Local Coastal Program for that city -- so they are indeed one and the same, and compliance with one is compliance with the other -- Newport Beach is not one of those cities. Newport Beach has consciously chosen to have its own standalone Coastal Land Use Plan (separate from the General Plan) and its own standalone Implementation Plan (completely separate from the Zoning Code) for issuing CDP's compliant with its CLUP.

It also seems important to emphasize that while the City's General Plan and Zoning Code are mostly expressions of local preferences in the pattern of development, the authority to issue Coastal Development Permits carries with it a quite different responsibility to see that the statewide resource protection concerns of all people, not just Newport Beach residents, are being respected. The CDP is intended to ensure compliance not just with local preferences, but with the Coastal Act (Public Resources Code, Division 20 [[Section 3000](#) et seq.]).

## City Has No Authority at Present to Allow Deviations from CDP Development Standards

Staff's confusion is apparent when, without citing any justification for the idea, its report implies to the Planning Commission that granting variances to the development standards of Title 20, using mechanisms within Title 20, somehow magically modifies the certified standards in Title 21, and a CDP need only comply with those modified standards. The lack of citation is telling, for nothing whatsoever in the Coastal Act or the LCP (that is, the CLUP and the Title 21 IP) provides the City with any such authority to modify the LCP standards through Title 20, or any other, actions.

Indeed, in July, City staff, through Council adoption of [Resolution 2017-45](#), asked the Coastal Commission for permission to add language to the IP (Title 21) that would allow the City to grant modifications to and variances from the IP standards (see description of proposed [Local Coastal Program Amendments](#) on the SPON website). City staff seems to have assumed its desired modification/variance language would have been regarded as a "minor clean-up" to what had been certified in January. However, Coastal staff insisted adding such language would require a "major" amendment, and no hearing on the matter has yet been scheduled. Indeed, it is not even clear the City has yet formally resubmitted a request for the "major amendment" needed to allow variances from the IP.

In short, whether or not granting this project variances from the *citywide* development standards of Title 20 is appropriate, staff has cited absolutely no authority for issuing a Coastal Development Permit for a project that deviates from the *coastal* standards of Title 21 -- standards which were mutually and publicly agreed to by the City and the Coastal Commission and contain generally identical setback, height and floor area limitations as Title 20 (see NBMC [Sec. 21.18.030](#)), *but with no variance provision*.

**This simple observation makes staff's recommended action impossible for the Planning Commission to adopt:** claiming the City somehow has the authority to grant Title 21 exceptions when such authority has been requested from, but not yet given by, the Coastal Commission seems the height of hubris.

I wouldn't be surprised to hear staff assert at the hearing that the somehow City already has an implied power to grant variances to Title 21, but if that is so, it begs the question of why the City would be asking the Coastal Commission to grant them such power. In addition, it might be noted that none of the variance findings offered in the proposed resolution, since they come from Title 20 rather than Title 21, make any claims about consistency with the intent of the City's LCP.

## Requirements for Compliance with LCP

Expanding on the LCP theme, I believe this is the first [Coastal Development Permit](#) the Planning Commission has been asked to approve. Given that, the staff report is remarkably unhelpful in providing guidance on the steps needed to do so, and the findings offered in support of the issuance of a CDP suggest staff has not bothered to consult, in any depth, either the City's CLUP or its IP. But properly issuing a CDP requires understanding both.

Among the more obvious Coastal Act issues implicated by this project, which staff glosses over or dismisses entirely, are:

1. **Coastal view protection:** staff asserts repeatedly that per Newport Beach codes, construction below the curb height of Ocean Boulevard has no possibility whatsoever of impacting coastal views (which the Associate Planner told the Planning Commission on November 9 consist only of what can be seen looking horizontally and above). That position is clearly divorced from both reality and the LCP.
2. **Public access:** Staff asserts there is no public access issue, but there clearly is when a private land owner has, apparently with the City's permission, blocked off, gated and locked the substantial area of public land at the top of the 2607 Ocean Blvd property, which, as some have pointed out, would be an ideal place for public viewing benches (and may even have been so in the past).
3. **Habitat and natural resource protection:** Staff completely dismisses any possible importance to preserving the presently undeveloped portion of the bluff face at 2607 Ocean Blvd, apparently with the justification that since the City has allowed so many of the bluffs around China Cove to be degraded, who should care about preserving those that remain? (even though caring about the remaining resources is precisely what the Coastal Act is about)

As an example, in considering the coastal view issue, the Commission needs to start with the Coastal Act, which as Section 4.4 of the City's certified [CLUP](#) reminds us, contains, among others, this provision:

[Public Resources Code Sec. 30251](#)

*"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."*

The commitment to this is emphasized by numerous polices in the certified CLUP which the Commission has to be aware of and adhere to in issuing a CDP, including:

**4.4.1-1.** 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.

**4.4.1-2.** Design and site new development, including landscaping, so as to minimize impacts to public coastal views.

**4.4.1-3.** Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.

**4.4.1-4.** 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.

**4.4.1-5.** Where feasible, require new development to restore and enhance the visual quality in visually degraded areas.”

While it's true that, as the staff report emphasizes over and over (but without providing any correct citation – condition of approval instead referring to the corresponding provision in Title 20, which is irrelevant to the CDP), NBMC [Section 21.30.060.B.4](#) (part of the LCP IP) says that *“New structures and additions/changes to existing structures on the bluff side of Ocean Boulevard in Corona del Mar shall not be constructed to a height greater than the elevation of the adjacent curb”* (this also appears, without citation, as a footnote to the development standards tables in Part 2 of the IP), this is a required *limit* that cannot be exceeded. It is not a promise that anything built to that limit will comply with the City's view protection commitments.

While citing the maximum height limit as if it were a right, staff completely fails to consider or remind the Commission of the equally important view protection requirements of [Section 21.30.100](#) of the IP, which implement Section 4.4 of the CLUP. Yet these are much stronger requirements than those found in the corresponding sections of Title 20, and they are the requirements against which appropriate heights for structures in the Coastal Zone must be weighed before a CDP can be issued.

Far from dismissing out of hand (as the staff report does) the possibility that construction beneath the limits allowed by NBMC Section 21.30.060 will have any impact, NBMC Section 21.30.100 *requires* in this case the preparation of a Visual Impact Analysis – a requirement nowhere mentioned in the staff report, and of which none has been provided.

In particular, by not even mentioning Section 21.30.100, staff completely ignores NBMC [Section 21.30.010](#), which explains that when there is a conflict between the various standards, *“the standards that are most restrictive and/or most protective of coastal resources shall prevail.”*

In this case, the protection of widely treasured views of China Cove beach, the harbor entrance and the ocean clearly trumps any claimed “right” of a property owner to build to the maximum heights allowed by the LCP.

The same could be said for the protection of the small amount of undeveloped coastal bluff and public access to the public property at the top of the 2607 Ocean Boulevard lot. The Commission has a duty under the Coastal Act to thoughtfully consider all these issues (including the certified setbacks and absence of any authority to alter them) before issuing a CDP.

### **Inconsistencies in City's Handling of Similar Matters**

In addition to the total inadequacy of staff's analysis of the requirements for issuing a Coastal Development Permit, the present matter highlights a disturbing pattern of inconsistency in the Planning Division's handling of similar matters.

### **Example 1: View Impacts and Coastal Development Permits**

When the Dawson Residence at 2741 Ocean Boulevard was being considered by the Planning Commission earlier this year (PA2015-224, started as [Item 4](#) on October 26, 2016, requesting continuance, heard as [Item 4](#) on February 9, 2017, then continued as [Item 3](#) on April 6, 2017, resulting in [Resolution 2054](#)), the Commission and public were told the impact of the proposed construction on views from Ocean Boulevard (and that it didn't diminish what already existed) was critical, and simulations of the views were provided for consideration, even though none of the proposed construction exceeded the curb height. Here we are (presumably erroneously) told that construction below the curb height has, "by code," no possible impact.

Equally disturbingly, the Commission and public were told the Dawson construction did not need a Coastal Development Permit because it was "categorically excluded." Here (at least in the [November 9 staff report](#), which is oddly not included in the December 7 report) we are told (and I believe correctly) that whenever variances are required, the [Categorical Exclusion](#) does not apply. It now seems clear the City is poised to incorrectly allow the Dawson Project to go forward without a CDP.

### **Example 2: Setback Determinations**

It seems curious (but correct to me) that we are being told a variance is required to allow the 2607 Ocean Blvd construction to encroach into the code-required setbacks.

Yet on February 9, 2017, as [Item 2](#), the Commission concurred in the Director's determination to arbitrarily reduce the Title 20 front setback at 1706 Park Avenue from 20 feet to 10 feet.

And on August 17, 2017, as [Item 3](#), the Commission concurred in the Director's determination to arbitrarily reduce the Title 20 front setback at 102 East Ocean Front from 10 feet to 5 feet.

Although in both these cases the change was in the *size* rather than the *location* of the setbacks, we were told the authority to modify the size of the setbacks lies in NBMC [Section 20.30.110.C](#), which allows the Director to redefine the location of "front," "side," and "rear" when necessary to achieve consistency with the orientation of surrounding lots (itself a strange idea since the code-required setbacks are presumably well-considered and adopted by City Council ordinance).

It seems odd that if the CDD Director was truly empowered to change the size of the code-required setbacks on these other two properties, he could not have equally arbitrarily modified the setbacks on 2607 Ocean Blvd without the property owner having to ask for a variance from the code. But I think the two recent cases in which the size of setbacks was changed without any need to reorient them were erroneous, and, as here, could only have been granted either by variances or by asking the Council to change the codes.



## Propriety of Variances to Title 20

Although I have focused on what I believe is the City's inability to issue a Coastal Development Permit for the proposed construction, I also have to question the propriety of granting variances from the Zoning Code (NBMC Title 20).

I would hope one could assume (see Santa Monica statement, below) the City's zoning has been thoughtfully adopted, with due and careful consideration to the standards being applied to each lot. For example, while the owner may feel that the required setbacks create an impossibly confined buildable area on the western portion of his lot, I would suggest the City may consider that portion, a steeply sloping coastal bluff, as an area that should, essentially, not be developed. Nor I do not believe the code-required setbacks are unreasonably large. In particular, in apparent recognition of the buffer provided by the undeveloped public right-of-way at the top of the bluff, for the Ocean Boulevard lots around China Cove, Setback Maps [10A](#) and [10B](#) have *already* reduced the required front yard setbacks from 20 feet to 10 feet. Further reducing 20 feet to 3 feet has no justification I can think of. And because of the way heights in Newport Beach are measured from the directly underlying grade, relaxing the front yard setback allows the property owner to build higher up the slope, which means a higher structure. Allowing that is clearly detrimental to the public's welfare, since it increases the detrimental impacts to the public's enjoyment of the views over the property.

I also see no evidence the property owner is being deprived of a development right enjoyed by his neighbors. According to the OC Tax Assessor's records, 2607 Ocean Boulevard currently has 2,260 sf of development on a 4,840 sf lot, a ratio of 0.47. The immediately abutting Linda Beek lot at 2616 Way Lane has 1,699 sf of development on a 3,828 sf lot, at a very similar ratio of 0.44. The house next to that to the east, the large Catherine Callendar home at 2620 Way Lane has 5,535 sf of development, but on a much larger lot of 8,100 sf, for an only slightly larger ratio of 0.68.

I further think that what can be built pursuant to the development standards in place at the time of purchase should have some meaning. I agree with Vice Chair Zak that even if a relaxation of the setback requirements was justified by some reason I can't quite fathom (perhaps along Way Ln, but not on the Ocean Blvd side), that should *not* trigger an upward re-evaluation of the allowable floor area based on the relaxed setbacks.

In short, the Commission appears to be faced with a request from a property owner who, instead of using the code-required yard areas in a conventional way, wants to fill the lot with buildings and have his family's outdoor activities occur on the roof of his house. And he wants permission to eliminate the public's protected views of the beach and harbor so the public can't see the property owner and his family while on their roof.

I don't think such a request should be granted.

## Are Past Variances Relevant and Do New Variances Set Precedent?

Although the City has no authority to grant variances to Title 21, it does have a limited, self-proclaimed ability to grant variances to Title 20, pursuant to the provision of NMBC [Section 20.52.090](#).

In its presentations, the applicant has stressed consistency with previous variances granted by the City, and the public has expressed concern that the granting of the present variances (to Title 20) would set precedent for future ones.

In this regard, NBMC Subsection [20.52.090.G](#) states that “*Precedents. Each application shall be reviewed on an individual case-by-case basis and the granting of a prior variance is not relevant or admissible evidence for the granting of a new variance.*”

At the November 9 Planning Commission hearing I made the point that NBMC Sec. 20.52.090.G expresses a policy desire that in Newport Beach the past granting of variances should have no bearing on future ones. In response, the applicant’s representative, Mr. John Ramirez, made the odd statement that only prior variances granted to the subject property are *not* to be considered.

NBMC Sec. 20.52.090.G clearly could have said that, but does not. And I am clearly not alone in the opinion that each variance supposedly being based on unique circumstances, no past variance on that property or any other is relevant. For example, the August 7, 2002, staff report to [Item 7-A](#) on the Santa Monica Planning Commission agenda, the planner explained:

***“A variance, by definition, is not intended to set a precedent for future projects on other properties, particularly if sub-standard lots are the norm in the district, as they are in the OP-1 District. The Zoning Code is legislated by the Council, after careful consideration and public input, to establish certain development standards designed to ensure desirable development in that zone. In this case, the Code allows up to 50% parcel coverage, whereas in the R1 zones elsewhere in the City, where lots are generally larger, 40% is the maximum parcel coverage. Taking a “by right” approach to variances to this standard is contrary to the standard’s intention, which is to define a consistent limitation for all properties. Moreover, the variances granted in prior years were not related to parcel coverage. Each variance request is based on the unique circumstances of the subject property and must be judged accordingly. The granting of past variances does not set a precedent by which a future Zoning Administrator must base a decision if the Zoning Administrator does not find that the subject property has special circumstances that warrant the granting of a variance.”***

In the real world, however, questions of equity and fair play arise, and it is difficult to avoid the notion that the granting of one variances *does* affect another.

In this case, as with all variance requests, I think decision makers should focus on the uniqueness issue. In the present case, not only does the property owner have **unique constraints**, but the granting of a variance would create **unique impacts** on the public’s enjoyment of the China Cove Ramp, which have to be given equal or greater weight.



## Errors in Draft Resolution

Should the Commission choose to adopt the offered “Resolution for Approval,” despite its near total disconnect from the requirements for approving a Coastal Development Permit, the Commission may wish to at least consider correcting some of the obvious inadvertent errors it contains, which include:

**Handwritten page 9:** “4. *The Property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached – 6.0–9.9 DU/AC (RSD-B) and the Coastal ~~Zone~~ Zoning District is Single-Unit Residential (R-1).*”

**Handwritten page 10** (Section 2): “1. *This project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section ~~15315~~ 15303 under Class 3 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.*” [note: The [CEQA Guidelines](#) section cited, 15315, is for minor divisions of land with a slope of less than 20%, which clearly doesn’t apply here. Even after the correction, the applicability of Section 15303 seems questionable to me, for we later learn the present project requires a Water Quality and Hydrology Plan. The necessity for such a plan certainly suggests to me that someone thinks the project has the potential to damage the environment. In addition, there are issues of loss of views and habit (in the undeveloped portion of the bluff face), which are the same issues that led to the need for a full [EIR](#) in the case of the nearby Magonigal Residence application (PA2007-133), which was approved as City Council [Item 19](#) on January 12, 2010 (and which, as built today *did* result in the loss of significant public views from Begonia Park – the public now seeing a garage where it formerly saw the harbor).

**Handwritten page 10** (Section 3.A): “3. *The limited lot depth after applying the 10-foot front and rear setbacks results in a sloping building pad that would be 15 to 33 feet deep.*”

**Handwritten page 10** (Section 3.A): “4. *The lot is disproportionately shallow relative to its width resulting in a long and narrow building envelope. The long narrow portion of the lot would allow a maximum building area only 15 feet in width and represents over 65 percent of the total area of the lot.*” [note: The lot consists of a rectangular part on the west and a part where the width fans larger on the east. If this is trying to say that the rectangular part comprises more than 2/3rds of the area, that seems implausible from the diagrams presented. Indeed, the area of the fanned part looks larger than the rectangular piece to me.]

**Handwritten page 11** (part C): “1. *Without granting the variance request, the Property owner could only build a 2,865 square-foot residence that is substantially smaller than what could be constructed on a typical rectangular R-1 ~~lots~~ lot in Corona del Mar.*”

**Handwritten page 11** (part C): “2. *When comparing the subject lot with other Way Lane bluff lots that are in the same zone, the other lots can accommodate larger ~~with~~ homes with floor areas well above 5,000 square feet on average.*”

**Handwritten page 12** (part E): “6. *To minimize disruption caused by demolition and construction to the nearby residents, the applicant has submitted a construction management plan that has been reviewed and approved by the City’s Public Works Department thereby*

*ensuring no impact **to** public access in the vicinity and to maintain street/emergency access during construction."*

**Handwritten page 14** (Facts in Support of Finding 4): As indicated above, the fact that the Planning Commission has granted variances to the development standards of Title 20 is totally irrelevant to compliance with the development standards of Title 21. None of the "facts" stated for "a" or "b" demonstrate compliance with Title 21, and indeed the project is not. Fact "c" indicates the project is below the allowable height limit, but that does not demonstrate it complies with the view protection standards of the LCP.

**Handwritten page 14:** *"5. Proposed landscaping complies with NBMC Section 21.30.075 (Landscaping). A condition of approval is included that requires drought tolerant and **prohibits invasive species**."* [I am unable to find any condition of approval prohibiting invasive species]

**Handwritten page 14** (Finding B): The presence of facts in support of this finding is curious in that staff has told us elsewhere that this permit is not for *"project ... located between the nearest public road and the sea or shoreline."* If staff is correct about that, the correct fact to state would be that this finding does not apply and does not need to be made.

**Handwritten page 16** (Planning Conditions): *"3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit."* [I wasn't aware this was a "use permit"]

**Handwritten page 18:** *"22. The proposed walkway, stairs, guardrails, **retaining retaining** walls (to support walkway and landings only), landing, drain lines and landscaping within the Ocean Boulevard public right-of-way shall require approval by the City Council."*

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**Subject:** FW: Opposition to variance for 2607 Ocean Blvd, CDM

—Original Message—

From: fequinlan [mailto:fequinlan@aol.com]  
Sent: Wednesday, December 06, 2017 5:09 PM  
To: Ung, Rosalinh <RUng@newportbeachca.gov>  
Subject: Opposition to variance for 2607 Ocean Blvd, CDM

Margaret and Frank Quinlan oppose the variance proposed for 2607 Ocean Blvd. We have lived in CDM since 1980 and walk, as do hundreds of others, almost daily along Ocean Blvd and down the China Cove ramp. The view over the proposed construction site is stunning almost all the way down the ramp. To grant an improper variance that permanently deprives the public of that view is wrong and wrongheaded. It will be nothing more than an extension of the "wall" of construction along the bay side of Carnation abutting Ocean Blvd.

There is an older man who is confined to a wheel chair who sits at the top of the China Cove ramp every day to enjoy the view. Preserving that view for people like him and saving it with a small view park there is a very good and beneficial idea. We encourage it.

We have personally been impacted by overly permissive permitting and lax inspection. We live on Heliotrope and the lot next door (on Seaview) was sold to a speculative builder in a probate sale. On September 11, 2001 I was called to active duty with the Marine Corps. When I returned from duty the next year I found a 2 unit condo on the lot nearly three stories high. Every square inch possible was built. The lot pad was illegally elevated by about two feet resulting in a building that overshadowed ours depriving our lot of air and light. I called the inspector and asked about the illegal pad height and negative drainage from the wrongful pad elevation. He shrugged and said "We'll make the builder put in French drains."

The owner of the small lot and precariously sited construction plan for 2607 Ocean should not be granted an improper variance. He should get no more than the law allows him to build on that lot and if that does not suit him he should find another lot. It is time to end the overly permissive planning approvals and lax inspections in this town. Please do your duty and deny this variance.

Margaret and Frank Quinlan

Sent from my iPad

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**Subject:** FW: 2607 Ocean Blvd. Application

**From:** Mary Ann Hemphill [mailto:mahemphill@msn.com]

**Sent:** Wednesday, December 06, 2017 6:38 PM

**To:** Kramer, Kory <kkramer@newportbeachca.gov>; Dunlap, Bill <bdunlap@newportbeachca.gov>; Koetting, Peter <pkoetting@newportbeachca.gov>; Kleiman, Lauren <lkleiman@newportbeachca.gov>; Lowrey, Lee <llorey@newportbeachca.gov>; Weigand, Erik <eweigand@newportbeachca.gov>; Zak, Peter <pzak@newportbeachca.gov>; Ramirez, Brittany <bramirez@newportbeachca.gov>; Campagnolo, Daniel <DCampagnolo@newportbeachca.gov>; Jurjis, Seimone <sjurjis@newportbeachca.gov>

**Subject:** 2607 Ocean Blvd. Application

December 6, 2017

Dear Planning Commission:

I am quite concerned about the proposed variance requests at 2607 Ocean Boulevard and I very strongly feel that they should be denied.

In reading the proposal and the variance requirements, I see that #5 states, "Granting of the variance will not be detrimental to the harmonious and orderly growth of the city." The presence of a 5,000 square foot home, with reductions in set backs and with proposed features that would extend 14 feet higher than the height limit is absolutely out of place in this special area of Corona del Mar.

The proposed design negatively impacts the beautiful views of the ocean, the China Cove beach, the Wedge and the harbor entrance. Both residents and visitors enjoy this peaceful walk along Ocean Boulevard. Why should one homeowner be allowed to take away this pleasure?

The Municipal Code also states, "Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same

zoning district.” There are no extenuating circumstances in the 2607 Ocean Blvd. plan that warrant a height variance. Building an elevator shaft and a rooftop deck that exceed the height requirement is just for the pleasure of the owners.

The property owners should have been well aware of the code limitations when they purchased the property. They should have thoroughly checked the building restriction on this property and become absolutely fully aware of what they could and could not do on this lot. They should have realized that their purchase did include any entitlements beyond that of building a home according to the Newport Beach Municipal Code. Their purchase did not include entitlements to variances from this code for their personal pleasure.

These owners are not entitled to block a view enjoyed by the public. They are not entitled to negatively impact the views of their neighbors. They are not entitled to waive the setback limits. They are not entitled to exceed the maximum floor area. Period.

That is why we have a Municipal Code and that is why any variances from that code should be thoroughly examined by both the residents and the Planning Commission.

Granting the requested variances for 2607 Ocean Boulevard means that others, feeling equally entitled, will submit similar requests. Once the precedent has been set, there will be no going back.

This application as submitted should be denied.

Sincerely,  
Mary Ann Hemphill  
230 Agate Avenue

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**Subject:** FW: 2607 Ocean Blvd., Corona Del Mar

**From:** Haroldgparker@aol.com [mailto:Haroldgparker@aol.com]

**Sent:** Wednesday, December 06, 2017 7:04 PM

**To:** Kramer, Kory <kkramer@newportbeachca.gov>; Dunlap, Bill <bdunlap@newportbeachca.gov>; Koetting, Peter <pkoetting@newportbeachca.gov>; Weigand, Erik <eweigand@newportbeachca.gov>; Kleiman, Lauren <lkleiman@newportbeachca.gov>; llowery@newportbeachca.gov; Zak, Peter <pzak@newportbeachca.gov>; Ung, Rosalinh <RUng@newportbeachca.gov>

**Cc:** kamkam1943@aol.com; cocoh1@icloud.com; susanmaher@cox.net; secretfallsrancj@yahoo.com; kaymulvaney7@gmail.com; kkc2616@aol.com; harleyjb@earthlink.net; lindadelaney@me.com; joelgraves123@gmail.com

**Subject:** 2607 Ocean Blvd., Corona Del Mar

Good Evening:

We do not understand why the Planning Department would so completely disregard the height and square footage restrictions for 2605 Ocean Blvd. Why have the rules at all?

This is not a small lot. It is more than twice the size of the standard China Cove lots (30 ft. X 60 =2100 sq. ft.) and it is larger than the standard "Flower Street lots" which are typically a little less than 3400 sq. ft. It seems unfair to other citizens who have built houses of sizes more in compliance with the approved square footage and height parameters. We could better understand such variances for someone with an especially tiny lot.

Given the cost of "tear down houses," we can understand why someone wants to build a large as possible home, but this proposed structure so far exceeds the restrictions, by a truly laughable level, and would impact numerous Citizens, many of whom have built new homes more within the framework of the existing regulations.

Disregard for the height limitations is even more egregious. Now that the flags are up, it is easy to see the height and mass of this finished home will be HUGE and will block nice harbor views for many residents and pedestrians.

It seems only a few years ago that a local architect was sent to jail for designing houses that exceeded the height limit by a matter of inches. Since when did the City folks decide to essentially disregard their own regulations? What kind of precedence do you think this establishes?

*Vicki & Harold Parker*

C:2607 Ocean Protest

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**Subject:** FW: Proposed China Cove Development on 2608 Ocean Blvd.

—Original Message—

From: Skinner Nancy [mailto:jskinnermd@aol.com]  
Sent: Wednesday, December 06, 2017 9:10 PM  
To: Kramer, Kory <kkramer@newportbeachca.gov>; Dunlap, Bill <bdunlap@newportbeachca.gov>; Koetting, Peter <pkoetting@newportbeachca.gov>; Kleiman, Lauren <lkleiman@newportbeachca.gov>; Lowrey, Lee <llorey@newportbeachca.gov>; Weigand, Erik <eweigand@newportbeachca.gov>; Zak, Peter <pzak@newportbeachca.gov>; Ramirez, Brittany <bramirez@newportbeachca.gov>; Campagnolo, Daniel <DCampagnolo@newportbeachca.gov>; Jurjis, Seimone <sjurjis@newportbeachca.gov>  
Cc: Ung, Rosalinh <RUng@newportbeachca.gov>  
Subject: Proposed China Cove Development on 2608 Ocean Blvd.

Dear Chairman Koetting and Members of the Planning Commission:

My husband and I drove on Ocean Blvd. yesterday to see how much the view of our beautiful ocean and bay would be cut off if you approve the plan before you tomorrow evening — and it was quite a lot. Those of us who are lucky enough to live in Newport Beach, and especially those who have a bayfront or oceanfront view, need to be mindful of those less fortunate who come to Newport Beach to enjoy the ocean and bay. Preserving public views should be high on everyone's list, right along with maintaining public access to our beaches, bay and ocean. I believe we have a responsibility to the general public to maintain views and access to our bay and beaches.

There are other reasons to deny this project as currently being presented but preservation of views is of great concern. Please vote to deny or re-work the project into an acceptable design that doesn't block views.

Thank you for giving my thoughts your consideration,

Nancy Skinner  
1724 Highland Drive  
Newport Beach, CA 92660

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**Subject:** FW: 2607 Ocean Blvd, CDM

—Original Message—

From: Ashley [mailto:agk77@mindspring.com]  
Sent: Wednesday, December 06, 2017 9:42 PM  
To: Ung, Rosalinh <RUng@newportbeachca.gov>  
Subject: 2607 Ocean Blvd, CDM

To whom it may concern,

I am writing to express my opposition to the application for a zoning exemption for overall square footage at 2607 Ocean Blvd from 4180sf to 4880sf. I am a 16 year resident of Corona Del Mar and enough is enough! Our village charm is all but disappeared. This is not the Port Streets and our lots can not support such volume. No special favors for uber wealthy developers, it is not in the community's best interest.

Thank you,

Ashley Knox  
306 Jasmine Ave



**Subject:** FW: Public Comment - 2607 Ocean Blvd. - Opposition to Variance Request

—Original Message—

From: Derek Ostensen [mailto:derekostensen@me.com]

Sent: Thursday, December 07, 2017 6:56 AM

To: Ung, Rosalinh <RUng@newportbeachca.gov>

Subject: Public Comment - 2607 Ocean Blvd. - Opposition to Variance Request

Good Morning Rosalinh,

As a Public Comment regarding the 2607 Ocean Blvd. application, I would like to express my opposition to the proposed variance request for additional development square footage. I do not believe the City should be intensifying development of the property in a manner that poses negative impacts to the neighbors and community.

Thank you.

Derek Ostensen

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**Subject:** FW: Public Comments: China Cove Project (2607 Ocean Blvd)

—Original Message—

From: Nancy Otis [mailto:nrotis@earthlink.net]

Sent: Thursday, December 07, 2017 8:02 AM

To: Ramirez, Brittany <bramirez@newportbeachca.gov>; info@spon-newportbeach.org

Subject: Public Comments: China Cove Project (2607 Ocean Blvd)

As a long time resident of Corona Del Mar I am so tired of seeing huge homes being allowed to be built. They not only detract from our "village feel" but also often interfere with the view of our beautiful harbor. Please do not allow the home in China Cove to be built at its present specs. What has happened to the building code and regulations? Your job is to see that those are adhered to. Please....stop the mansionization of our community.  
Thank you

Nancy Otis  
721 Larkspur

Sent from my iPhone

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**Subject:** FW: 2607 Ocean Blvd variances

—Original Message—

From: Martha Peyton [mailto:mpeyton112@gmail.com]

Sent: Thursday, December 07, 2017 10:54 AM

To: Kramer, Kory <kkramer@newportbeachca.gov>; Dunlap, Bill <bdunlap@newportbeachca.gov>;

Koetting, Peter <pkoetting@newportbeachca.gov>; Kleiman, Lauren

<lkleiman@newportbeachca.gov>; Lowrey, Lee <llorey@newportbeachca.gov>; Weigand, Erik

<eweigand@newportbeachca.gov>; Zak, Peter <pzak@newportbeachca.gov>; Ramirez, Brittany

<bramirez@newportbeachca.gov>; Campagnolo, Daniel <DCampagnolo@newportbeachca.gov>;

Jurjis, Seimone <sjurjis@newportbeachca.gov>

Cc: Ung, Rosalinh <RUng@newportbeachca.gov>

Subject: 2607 Ocean Blvd variances

Regarding the variances requested for 2607 Ocean Blvd and the adjustments contained in the most recent design. My home is roughly one block from the property. After examining the revised plan, I remain very concerned with the request to exceed the maximum floor area. I recognize the impediments associated with the physical characteristics of the lot and support the reasonableness of setback relief. However, I oppose the granting of additional floor space. I do not believe that the Planning Commission has the power to award additional floor space simply because the allowed size is deemed too small compared with neighborhood homes that occupy larger lots. Granting such a request would, in my judgement, award a special privilege. Moreover, the narrowness of Way Lane argues against the bulk of the proposed structure. In addition, I have read the concerns of Mr. Navarro regarding the threat to views from Ocean Blvd which reinforce my own trepidation with the size and configuration of the structure as viewed from above.

Sincerely,  
Martha S Peyton  
212 1/2 Fernleaf Ave

Sent from my iPad

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**Subject:** FW: 2607 Ocean Variance - FAR Analysis

**From:** Michael Toerge [mailto:strataland@earthlink.net]  
**Sent:** Thursday, December 07, 2017 11:58 AM  
**To:** Ung, Rosalinh <RUng@newportbeachca.gov>  
**Cc:** Michael Toerge <Mike@stratalandco.com>  
**Subject:** RE: 2607 Ocean Variance - FAR Analysis

Thank you Rosalinh – Please forward my comments to the Planning Commission. I will be brief.

I would have thought there would be significantly more attention offered to the recently approved Local Coast Program Implementation Plan than is present in the staff report. The adoption of this LCPIP brings forth additional planning considerations that do not appear to have been addressed in the review of this project. I urge the commission to continue the project and direct staff to address the applicable components of Title 21 before seeking commission action.

Under codes governing the property in Title 20, I see no justification to allow this property to be developed with over a 1.0 Floor Area Ratio.

I question the exceptionally high ceiling and volume in the garage area which appears ripe for additional square footage with some minor after-the-fact modifications.

While not a part of this planning application, the manner in which the walk-way access to Ocean Blvd is modified will have a significant impact on the public view from Ocean Blvd. The top of whatever gate and fence that are installed there must comply with the top of curb height limit. The prior wooden fence that was removed, was built further down the slope so that it did not pierce the top-of-curb height limit. This is a highly visited public location and significant public input should be gathered before the design is approved and an encroachment permit issued. If possible, please forward these comments to the Public Works Department should this project move forward.

Thank you!

Michael Lee Toerge  
Strata Land Company, Inc.  
3810 E Coast Hwy, Ste 2  
Corona del Mar, CA 92625  
Office: (949) 723-1075  
[mike@stratalandco.com](mailto:mike@stratalandco.com)

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**From:** Ung, Rosalinh [mailto:RUng@newportbeachca.gov]  
**Sent:** Thursday, December 7, 2017 11:34 AM  
**To:** 'strataland@earthlink.net' <[strataland@earthlink.net](mailto:strataland@earthlink.net)>  
**Subject:** 2607 Ocean Variance - FAR Analysis



**ROSALINH UNG**  
**Community Development Department**  
Associate Planner  
[rung@newportbeachca.gov](mailto:rung@newportbeachca.gov)  
949-644-3208

**CITY OF NEWPORT BEACH**  
[100 Civic Center Drive, First Floor Bay B, Newport Beach, California 92660](https://www.newportbeachca.gov) | [newportbeachca.gov](https://www.newportbeachca.gov)

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**From:** Ung, Rosalinh  
**Sent:** Thursday, December 07, 2017 7:58 AM  
**To:** 'stradaland@earthlink.net' <[stradaland@earthlink.net](mailto:stradaland@earthlink.net)>  
**Subject:** 2607 Ocean Variance - FAR Analysis

Hi Michael,  
As request, attached for your use is the FAR exhibit for the properties including subject site along the water side of Ocean Blvd. (between Dahlia and Lookout Point). This exhibit was included in the 11/9/17 PC hearing.  
Thanks.  
Rosalinh



**ROSALINH UNG**  
**Community Development Department**  
Associate Planner  
[rung@newportbeachca.gov](mailto:rung@newportbeachca.gov)  
949-644-3208

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[100 Civic Center Drive, First Floor Bay B, Newport Beach, California 92660](https://www.newportbeachca.gov) | [newportbeachca.gov](https://www.newportbeachca.gov)

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**Subject:** FW: Planning Commission Remarks on 2706 Ocean

**From:** Joy Brenner [mailto:joy@joyfornewport.com]

**Sent:** Thursday, December 07, 2017 12:21 PM

**To:** Kramer, Kory <kkramer@newportbeachca.gov>; Dunlap, Bill <bdunlap@newportbeachca.gov>; Koetting, Peter <pkoetting@newportbeachca.gov>; Kleiman, Lauren <lkleiman@newportbeachca.gov>; Lowrey, Lee <llorey@newportbeachca.gov>; Weigand, Erik <eweigand@newportbeachca.gov>; Zak, Peter <pzak@newportbeachca.gov>; Ramirez, Brittany <bramirez@newportbeachca.gov>; Campagnolo, Daniel <DCampagnolo@newportbeachca.gov>; Jurjis, Seimone <sjurjis@newportbeachca.gov>

**Subject:** Planning Commission Remarks on 2706 Ocean

My concern this evening is **not** primarily about the 2706 Ocean Blvd. project, but about the city policies and procedures which have made this another **lightning rod** to our citizens.

After attending many meetings on this project with:

- concerned citizens
- city planning staff and
- even representatives of the builder,

I've come away **amazed at the confusion** over what the owner is legitimately allowed to build, and **further amazed at what has been proposed in the way of variances**. Small variances are understandable, **excessive variances are not**.

**Understanding how to calculate Floor Area Ratio, even on irregular lots, such as this, should not be this difficult to determine**, yet we have spent hours upon hours trying to get to the accurate number.

**BUT the ratio I am most concerned with is the ratio between Perception and Reality.** Many, if not most, of our citizens have the perception that our city is not protecting us. We see buildings around us that have pushed the limits so far, we believe they **MUST** have cheated.

**WE DESERVE BETTER! Our citizens should not have to monitor our City's actions at each and every turn.** We need our city representatives to enact policies which are absolutely

- fair
- transparent
- understandable
- totally above board and
- to have all those in positions of responsibility **follow them to the letter and spirit of the law.**

This not only protects the city, but also the

- builders,
- property owners and
- other residents.

It should not take

- an applicant one and a half years, as this project has, to know what they are going to be allowed to build and
- it should not take that many hours of city staff time, but
- **MOSTLY it should not take EXCESSIVE VIGILANCE by our citizens to make sure no special privilege is being granted to one homeowner over another.**

**ALL of our PROPERTY RIGHTS have to be protected from those who want more than their fair share.**

Our zoning laws need to be so fair and so transparent that citizens can easily determine whether they are being interpreted fairly, or whether special privilege is being granted.

MANY, if not most, of our citizens have lost faith in our city representatives and their willingness to stand up for us. I believe **most of you have read the temperature of our community and IT IS HOT!** Many of us in this room are interested in city government and how it works and we enjoy fostering understanding on issues such as this.

**But, there are a LOT of citizens who are extremely irritated that every time they turn around, it seems another building project is pushing the limits of not only our infrastructure but of our quality of life.**

The city planning staff has gone out of their way to meet with and help us understand the complexities of this particular project and I believe that is a sign of changing times. One of our citizens said recently, that we should get rid of the building officials and just put a rubber stamp on the counter. I don't believe that, but **if our citizens have that perception, then our electeds, their appointees and our city staff have to be vigilant in not only changing that perception, but of changing the climate which fosters that perception.**

**Thank you for your time, attention and service to our community!**

Joy Brenner  
615.5 Marguerite Avenue  
Corona del Mar, CA 92625

# HART | KING

ATTORNEYS AT LAW

Ronald J. Thommarson  
rthommarson@hartkinglaw.com

December 7, 2017

Our File Number: 36939.021/4849-7658-4024v.1

**VIA E-MAIL**

Ms. Rosalinh Ung  
Associate Planner  
City of Newport Beach  
Planning Commission  
100 Civic Center Drive  
[rung@newportbeachca.gov](mailto:rung@newportbeachca.gov)

Re: **Ginsberg Residence Project (PA2016-170)**  
Site: 2607 Ocean Blvd., Corona del Mar, CA  
Variance No.: VA2016-005  
Coastal Dev. Permit No.: CD2017-080  
December 7, 2017 Commission Meeting Agenda Item 5

Dear Ms. Ung:

This office represents John Cummings, Sr., the owner of a residence on Ocean Boulevard in Corona del Mar. The Cummings residence is located across Ocean Boulevard from the site of the Ginsberg project referenced above (the "Project"). We write to you to relay our client's objections to the Project and to the findings set forth in the Newport Beach Planning Commission's staff report prepared for Item number 5 on the agenda for the Planning Commission meeting scheduled for December 7, 2017 at 6:30 p.m.

On behalf of Mr. Cummings, we respectfully request that the Planning Commission take into account the following issues in its consideration of the Project:

1. The Commission's December 7, 2017 staff report recommends a finding that the Project is exempt from the California Environmental Quality Act ("CEQA") pursuant to 14 Cal. Code Regs. § 15303 for "New Construction or Conversion of Small Structures." However, the foregoing regulation expressly states that it applies to the construction of a limited number of small structures and the conversion of existing small structures where only minor exterior modifications are made. However, the Project consists of major construction at the site, including the demolition of an existing home, extensive excavation, and construction of a substantially larger new residence.
2. The single-family residence exemption from CEQA applies only where there is no substantial evidence of significant environmental impact. (*See Public Resources Code* § 21080; 14 Cal. Code Regs. § 15061(b)(3).) The sensitive bluff top location of the Project and the extensive scope of the anticipated excavation and construction activities pose a risk of significant environmental impact. The construction management plan attached to the staff report reflects that substantial excavation will take place at the site, which is located on an environmentally sensitive coastal bluff top. The plan indicates that upwards of 20 truckloads of dirt will be removed from the site over 2-3 months. It also



Ms. Rosalinh Ung, Associate Planner  
City of Newport Beach, Planning Commission  
December 7, 2017  
Page 2

reflects that the overall Project is expected to require approximately 28 months to complete. It is therefore not entitled to a categorical exemption from CEQA.

3. The Project poses a significant environmental risk due to unusual circumstances. (See *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4<sup>th</sup> 1086.) The need to maintain the integrity of the coastal bluff top in an environmentally sensitive coastal area is significant.
4. Section 30600(c) of the California Coastal Act provides for the issuance of Coastal Development Permits directly by the California Coastal Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. We understand that the City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in section 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity, rather than the City of Newport Beach, with respect to the required coastal development permit.
5. Section 30251 of the Coastal Act states, in relevant part: "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." The Project is located on a sensitive bluff face and is visible from Ocean Boulevard and the public sidewalks along the street and in more distant views from Big Corona beach. It is necessary to ensure that new development be sited and designed to protect views to and along the ocean and minimize the alteration of existing natural landforms consistent with Section 30251 of the Coastal Act and the City of Newport Beach's existing policies to protect public views, including those in the City's Zoning Code and certified Land Use Plan.
6. The City's Zoning Code stresses among its goals the need to "protect the character, social, and economic vitality of neighborhoods." (Zoning Code § 20.10.020.) As set forth in numerous other letters and emails from other residents of the neighborhood, this Project is not in keeping with the character of the neighborhood, and the requested variance is not consistent with those that have been granted (or denied to) other property owners in the vicinity.
7. The construction management plan for the Project reflects that it will have significant and adverse effects on the neighborhood, including traffic impacts from partial closures of Ocean Boulevard, significant construction traffic, and the like over a period of more than two years.

HART | KING  
ATTORNEYS AT LAW

Ms. Rosalinh Ung, Associate Planner  
City of Newport Beach, Planning Commission  
December 7, 2017  
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We respectfully request that the Planning Commission (1) consider these issues and include this correspondence in the administrative record of this evening's hearing, and (2) deny the Project proponent's application for a permit and variance in its present form and require that the foregoing issues be addressed and resolved.

Thank you.

Sincerely,

HART KING

A handwritten signature in black ink, appearing to read 'RJT', followed by a long horizontal line extending to the right.

Ronald J. Thommarson

cc: C. William Dahlin, Esq. (via email)  
John Cummings, Sr. (via email)  
John H. Cummings, III (via email)