

## August 9, 2018, Planning Commission Item 3 Comments

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

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### ***Item No. 3. HINTON AND MALONEY RESIDENCE (PA2017-208)***

1. The staff reports for applications for variances typically include a letter from the owner/developer explaining what they are asking for and attempting to justify it.
2. In this case, the applicant seems to have left it to one of the City's assistant planners to rationalize the construction of a 7,276 square foot home (5,216 sf not counting a basement almost as large as the entire existing home) on a 5,445 sf lot with 2,823 sf of buildable area, where the code sanctioned Floor Area Limit restricts construction to 4,234 sf.
3. On page 7 of the staff report the planner has advanced some novel theories to justify the granting of variances to the development standards in the City's Local Coastal Program when the certified LCP grants the City no such authority.
  - a. Public Resources Code [Section 30010](#) – a passage about “takings” requiring compensation – is misread as exempting the Coastal Act from itself. That is, as a statement that the enactment of the Coastal Act was not intended to affect property rights.
  - b. The planner misquotes this as saying “***the Coastal Act*** is “*not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*” [emphasis added]
  - c. It actually says “***This section*** is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.” That is, it *at most* says the *preceding sentence* of Section 30010 about “takings” is not meant to change constitutional law on that question.
  - d. The justification for granting variances to the certified LCP before the Coastal Commission has certified the City's authority to do that remains tenuous, at best.
4. The other fundamental error of the staff report is a persistent refusal to acknowledge that the floor area of residential development in Newport Beach is regulated by Floor Area Limit (FAL) – ***not*** Floor Area Ratio (FAR), the standard used to limit commercial construction.
  - a. Setbacks are purposeful and intended to provide space between residential buildings.
  - b. Setbacks naturally, and purposefully, reduce buildable area.
  - c. The allowed floor area of residential construction is purposefully limited based on the buildable area, not lot size.
  - d. There is no reason residential lot owners should expect to be able to build the same FAR as their neighbors. If they did, it would completely defeat the distinction between FAL and FAR.

5. In this case, the planner asks the Planning Commission, with no compelling reason for doing so, to reduce the rear setback along a 57 foot long area adjacent to 210 Larkspur by 5 feet, increasing the buildable area by 285 sf, from 2,283 to 3,108 sf.
6. Even if one accepted the “need” to reduce the rear setback, and that variances to the LCP can be granted, the increased buildable area would then “justify” building at most  $3,108 \times 1.5 = 4,622$  sf of above-ground floor area.
  - a. Instead, for no obvious reason at all, the planner asks the Commission to approve 5,216 sf, for a FAL of 1.68 compared to the expanded buildable area, or 1.85 based on the code-sanctioned buildable area.
  - b. No evidence is presented that anyone else in neighborhood has such a FAL (the maximum code-sanctioned FAL being 1.5), or what physical peculiarities of this lot would justify it at 3200 Ocean Blvd.
7. It seems clear to me the request should be denied.