

**NEWPORT BEACH PLANNING COMMISSION MINUTES
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, AUGUST 9, 2018
REGULAR MEETING – 6:30 P.M.**

I. **CALL TO ORDER** – The meeting was called to order at 6:30 p.m.

II. **PLEDGE OF ALLEGIANCE** – Vice Chair Weigand

III. **ROLL CALL**

PRESENT: Chair Peter Zak, Vice Chair Erik Weigand, Secretary Lauren Kleiman, Commissioner Bill Dunlap, Commissioner Peter Koetting, Commissioner Kory Kramer (arrived at 6:33 p.m.), Commissioner Lee Lowrey

ABSENT: None

Staff Present: Community Development Director Seimone Jurjis, Assistant City Attorney Michael Torres, Senior Planner Jaime Murillo, Associate Planner Chelsea Crager, Assistant Planner David Lee, Administrative Support Technician Patrick Achis

[The Commission heard Item Numbers 2-9 prior to Item Number 1.]

IV. **ELECTION OF OFFICERS**

ITEM NO. 1 NOMINATION AND APPOINTMENT OF OFFICERS

Summary:

The Planning Commission's adopted rules require the election of officers. Officers include the Chair, Vice Chair, and Secretary, and they would serve for a one-year term.

Recommended Actions:

1. Find this action not subject to the California Environmental Quality Act ("CEQA") pursuant to 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3;
2. Nominate Planning Commission officers consisting of Chair, Vice Chair, and Secretary; and
3. Appoint the officers by majority approval of a motion.

Commissioner Kramer noted the longstanding tradition of nominating officers based on seniority and mistakenly nominated Commissioner Kleiman rather than Commissioner Dunlap for Secretary at the July 19th meeting.

Motion made by Commissioner Kleiman and seconded by Commissioner Kramer to approve Commissioner Zak as Chair, Commissioner Weigand as Vice Chair, and Commissioner Dunlap as Secretary.

AYES: Zak, Weigand, Kleiman, Dunlap, Koetting, Kramer, Lowrey

NOES: None

ABSTAIN: None

ABSENT: None

V. **PUBLIC COMMENTS**

None

VI. **REQUEST FOR CONTINUANCES**

None

VII. CONSENT ITEMS**ITEM NO. 2 MINUTES OF JULY 19, 2018****Recommended Action:**

1. Approve and file

Motion made by Vice Chair Weigand and seconded by Commissioner Koetting to approve the draft minutes of the July 19, 2018 meeting as presented.

AYES: Zak, Weigand, Kleiman, Dunlap, Koetting

NOES: None

ABSTAIN: Lowrey

ABSENT: Kramer

VIII. CONTINUED BUSINESS:**ITEM NO. 3 HINTON AND MALONEY RESIDENCE (PA2017-208)**

Site Location: 3200 Ocean Boulevard

Summary:

A request for a coastal development permit to allow the construction of a new 7,421-square-foot, single-family residence and a 694-square-foot three car garage. The application also includes a request for a variance to allow the residence to encroach 5 feet into the required 10-foot rear setback and exceed the maximum floor area limit.

Recommended Action:

1. Conduct a public hearing;
2. Find the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303, Article 19, of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act under Class 3, (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2018-023 approving Coastal Development Permit No. CD2017-091 and Variance No. VA2017-002.

Assistant Planner David Lee reported that the project proposes to demolish an existing single-family residence and construct a new single-family residence. The existing home was constructed in 1948. Required setbacks are 24 feet at the front, 4 feet at the sides, and 10 feet at the rear. The existing structure encroaches into the side and rear setbacks. The proposed residence will encroach 5 feet into the rear setback and exceed the maximum floor area limit. The square footage of the basement is not included in the proposed home's total floor area. The subject lot in Corona del Mar is unique in that it does not abut an alley. The rear setback acts as a side setback, for which 3 or 4 feet would otherwise be required, because the lot abuts an adjacent residential property. The distance between the proposed residence and the adjacent residence to the rear will be 10 feet, 10 inches. Prior to 1948, Lots 7 and 8 were oriented to face Ocean Boulevard; whereas, the current lots are oriented to face Larkspur Avenue. The current orientation of the lots creates disproportionate setbacks for the subject lot, and decreases the buildable area, the maximum floor area, and the floor area ratio (FAR) of the lot. If Lots 7 and 8 were still oriented to Ocean Boulevard, the buildable area would be 67 percent for Lot 8 and 65 percent for Lot 7. The maximum floor area would be 5,335 square feet with an FAR of 1.009 for Lot 8 and 4,247 square feet with an FAR of 0.96 for Lot 7. In the current orientation, the buildable area decreases to 52 percent for 3200 Ocean Boulevard and 47 percent for 210 Larkspur Avenue; the maximum floor area decreases to 4,234 square feet with an FAR of 0.777 for 3200 Ocean and 2,993 square feet with an FAR of 0.708 for 210 Larkspur. Most lots in the area have FAR values greater than 1.0. The proposed project has an FAR of 0.958. Thirteen of 376 lots are oriented similar to the subject lot, and 11 of the 13 lots deviate from required setbacks and floor area or have nonconforming structures. The current orientation of the lots deprives the subject property of privileges

enjoyed by other properties. Granting a variance would not be a special privilege because the proposed FAR and 5-foot setback will be consistent with surrounding lots and will not be detrimental to the surrounding area. The proposed structure will provide better private views for 210 Larkspur than a Code-compliant structure. To protect the private view for 210 Larkspur, staff has included a condition of approval for 204 square feet of open space at the northwesterly corner of the subject lot. Because the proposed structure exceeds the maximum floor area and the lot is located within the coastal zone, the project requires a coastal development permit. The project does not impact public views and neither provides nor inhibits coastal access. Staff requests two additional conditions of approval for removal of all trees located within the side setback abutting Larkspur Avenue and the front setback and for no trees to be planted in the planter area near the intersection of Larkspur Avenue and Ocean Boulevard. Staff recommends the Commission approve the application.

In response to Commissioners' questions, Senior Planner Jaime Murillo explained the how the floor area is calculated, the 4,528 square feet. Under authority granted to him, Community Development Director Jurjis utilized the variance procedure stated in the Zoning Code as the Local Coastal Plan (LCP) does not contain a variance procedure. Staff is awaiting a California Coastal Commission hearing on the City's amendment to include a variance procedure in the LCP. A Commission decision to approve the project may be appealed to the City Council or the Coastal Commission. An appeal of the Commission's decision regarding the Ginsberg project, based on the lack of a variance procedure in the LCP, is scheduled for August 10, 2018, before the Coastal Commission.

Commissioners Kleiman, Dunlap, Lowrey, and Weigand reported meetings with the applicant and the consultant. Commissioners Kramer, Koetting, and Zak reported no ex parte communications.

Chair Zak opened the public hearing.

John Ramirez, consultant for Nicholson Construction, advised that the applicant requests a coastal development permit and a variance for a 4,500-square-foot home with a three-car garage and a subterranean basement. No trees or large shrubs are proposed in the setback areas. The basement includes a storage area for vehicles. The first floor is comprised of a great room, kitchen, office, and powder room. Bedrooms are located on the second floor. The proposed roof deck will be confined within the architecture of the existing structure. No parts of the structure will exceed the height limit. The facades facing Larkspur and Ocean will be a combination of smooth stucco and stone with many windows. Over the last several months, project representatives have met with the community and staff to modify and improve the design of the home. The size of the home has been reduced since the first submission. In response to comments, the architect incorporated retractable glass to open up the interior and exterior of the building as well as the view corridor along Larkspur. By not building the house to the setback and not planting trees or large shrubs in the setback along Larkspur, 210 Larkspur will have a nice view corridor. The proposed home design is compatible with the neighborhood and responsive to community feedback.

In reply to Commission inquiries, Mr. Ramirez indicated lifts will move vehicles into the basement. Once a vehicle has been moved into the basement, a lid will cover the space between the basement and garage so that another vehicle can park in the garage.

Jim Mosher believed the City did not have the authority to grant variances in the coastal zone. Beyond that, the findings for granting a variance could not be made. A property owner had no right to the same FAR as neighboring properties and no right to exceed the 1.5 floor area limit.

Ken Alber, the adjacent property owner of 210 Larkspur, remarked that he worked with staff and the applicant to address his concerns and now supports the project.

Brant Dahlfors, 211 Larkspur, wished to ensure the large shrubs and trees on the subject property do not recur in the future.

Chair Zak closed the public hearing.

In answer to Commissioners' queries, Community Development Director Jurjis clarified that the Coastal Commission will determine whether a substantial issue exists in the Ginsberg project. Staff informs applicants of the risks of seeking a variance that is subject to a coastal development permit. The issues before the Coastal Commission on August 10 are public access, view protection, and variance procedures in the Ginsberg project. Coastal Commission staff is recommending a substantial issue for the Ginsberg project. The Code does not contain a requirement for ventilation of a subterranean garage, and staff does not anticipate any noise issues because the subterranean garage will be built of concrete. An applicant's representative explained that a hydraulic system will operate the garage lift and cover, and the system should not be a noise issue.

Chair Zak felt a continuance of the project would be prudent in light of the Coastal Commission's review of the Ginsberg project the following day. Commissioner Kleiman concurred. The Commission did not have clear legal authority to grant a coastal development permit with a variance.

In response to Commissioner Dunlap's question, Assistant City Attorney Michael Torres recommended the Commission continue the project rather than make its approval contingent upon a Coastal Commission determination.

Commissioner Koetting remarked that each applicant faces a risk of the Commission's decision being appealed. The Commission has sufficient information to approve or deny the project. In response to Commissioner Koetting's inquiry, Senior Planner Murillo clarified that a building permit would not be issued during the 14-day appeal period.

Chair Zak reiterated the need to continue the project as the Ginsberg appeal is based on the variance procedure.

The applicant's representative anticipated the appeal before the Coastal Commission would require some time to reach a conclusion. The applicant is aware of the risks of proceeding with the project and requests the Planning Commission approve or deny the project at the current time.

Commissioner Kleiman commented that the City did not have the authority under the existing LCP to grant a variance. While the Coastal Commission could provide some information the following day, she suspected that would not happen.

Commissioner Dunlap understood Commissioners' concern regarding the Ginsberg appeal; however, the applicant submitted its application almost a year prior. In addition, the applicant accepts the risks of an appeal.

Vice Chair Weigand suggested a second appeal of the same issue to the Coastal Commission could inspire the Coastal Commission to move more quickly.

Motion made by Vice Chair Weigand and seconded by Commissioner Lowrey to find the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 (New Construction or Conversion of Small Structures); and adopt Resolution No. PC2018-023 approving Coastal Development Permit No. CD2017-091 and Variance No. VA2017-002 with the additional conditions of approval recommended by staff.

AYES: Weigand, Dunlap, Kramer, Lowrey, Koetting
NOES: Zak, Kleiman
ABSTAIN: None
ABSENT: None

IX. PUBLIC HEARING ITEMS

ITEM NO. 4 DEAN RESIDENCE (PA2017-167) Site Location: 16 Bay Island

Summary:

A coastal development permit to allow the construction of a new 4,379-square-foot, single-family residence and adjust the off-street parking requirements with a parking management plan. In addition, the applicant requests an increase in the allowed building height to 28 feet for flat roofs and 33 feet for sloped roofs pursuant to the provisions of Use Permit No. UP3618. The design includes hardscape, drainage facilities, and approximately 194 square feet of landscaping. With approval of the height allowance, the project complies with all applicable development standards.

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2018-024 approving Coastal Development Permit No. CD2018-054, including an adjustment to off-street parking requirements, and allow for an increased height limit.

Associate Planner Chelsea Crager reported the applicant requests approval of a coastal development permit with a height increase for a single-family residence. The Zoning Administrator has approved a coastal development permit to allow the demolition of the existing home on the site. Bay Island is accessible by a gated pedestrian bridge. Golf carts are the only vehicles permitted on Bay Island. Bay Island is regulated by a Planned Residential Development Overlay, which was adopted by a use permit. The use permit is intended to create development standards that maintain the unique characteristics of Bay Island. Building sites on Bay Island are located within the multiunit residential zoning district. The use permit allows a maximum height of 33 feet with Planning Commission approval. The use permit was not incorporated into the Local Coastal Program (LCP); therefore, Title 21 development standards apply to this project. The Commission must find that the proposed structure is consistent with the height and scale of surrounding dwellings. Prior to 1972, the R-3 zoning district allowed a maximum height of 35 feet; therefore, many dwellings on Bay Island exceed the height limit set in the use permit. Bay Island is a single property with multiple zoning districts. Title 21 development standards are analyzed on an entire island scale. The proposed residence complies with standards for setback and floor area. The use permit requires two parking spaces per residence be located in an offsite parking structure; however, Title 21 requires three onsite parking spaces. The applicant proposes a parking management plan of two parking spaces located in an offsite structure and one onsite parking space for a golf cart. The offsite parking structure provides 49 spaces for 23 homes on Bay Island and is located approximately 600 feet from the pedestrian bridge. The proposed dwelling complies with Title 21 building envelopment requirements and with development standards for height, setback, floor area, and bulk. The proposed residence will not significantly change views. There is no public access to Bay Island, and the applicant does not propose any changes to access. Staff recommends the Planning Commission approve the application.

Commissioner Koetting reported he met with the applicant. All other Commissioners reported no ex parte communications.

Chair Zak opened the public hearing.

Ian Harrison, project architect, advised that the applicants accept the conditions of approval.

In response to Commissioner Koetting's query, Mr. Harrison explained the method for removing demolition debris from the site.

Wade Cable, 10 Bay Island and Bay Island Club President, indicated the Bay Island Club found the project to be consistent with its guidelines and the use permit. The Bay Island Club received no public comment in opposition to the project. Demolition debris will be removed via the pedestrian bridge.

Jim Mosher noted Drawings A-4 and A-5 depict a porch extending to the property line, which does not comply with the use permit requirement for porches not to encroach more than 5 feet into the front yard/water side setback.

Mr. Harrison clarified that setbacks on Bay Island are measured from the water, and the project complies with the setback requirement and with Bay Island Club requirements.

Chair Zak closed the public hearing.

Motion made by Commissioner Kramer and seconded by Commissioner Koetting to find the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303, (New Construction or Conversion of Small Structures); and adopt Resolution No. PC2018-024 approving Coastal Development Permit No. CD2018-054, including an adjustment to off-street parking requirements and allow for an increased height limit.

AYES: Zak, Weigand, Kleiman, Dunlap, Koetting, Kramer, Lowrey
NOES: None
ABSTAIN: None
ABSENT: None

ITEM NO. 5 ACCESSORY DWELLING UNIT ORDINANCE (PA2018-099)
Site Location: Residential Zones Citywide

Summary:

Amendments to the Zoning Code and Local Coastal Program revising the City's regulations pertaining to Accessory Dwelling Units (ADU) to conform with Government Code Section 65852.2, as amended and effective on January 1, 2018. Specifically, the amendment would establish regulations permitting the development of accessory dwelling units in conjunction with single-family residences in all residential zoning districts.

Recommended Action:

1. Conduct a public hearing;
2. Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the CEQA Guidelines, which states that the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code are exempt from the requirements of CEQA;
3. Adopt Resolution No. PC2018-025 recommending the City Council approve Zoning Code Amendment No. CA2018-003 modifying regulations pertaining to accessory dwelling units; and
4. Adopt Resolution No. PC2018-026 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2018-002 to the California Coastal Commission.

Senior Planner Jaime Murillo reported that staff proposes changes to the Zoning Code pertaining to Accessory Dwelling Units (ADU) in response to changes in state law that became effective in 2018. Both state law and City regulations treat new construction of and conversion to an ADU separately. For conversions the existing ordinance requires approval of an ADU located within any existing single-family dwelling or within an accessory structure on a single-family-zoned lot. The City cannot regulate unit size or require additional parking. The City can ensure the side and rear setbacks are sufficient for fire safety. With respect to new construction, the City requires ADUs to be constructed in single-family zoning districts only, to be constructed on lots containing a minimum of 5,000 square feet, to contain no more than 750 square feet, and designed to match the principal structure. In addition, detached ADUs are limited to one story with a maximum height of 14 feet. One parking space per bedroom with a maximum of two parking spaces is required for new construction of ADUs, and the spaces may be uncovered, tandem, or utilize mechanical lifts. The City cannot require additional parking if an ADU is located within one-half mile of a transit stop or within a block of a carshare program. Under the latest revisions to state regulations, a maximum of one parking space per ADU, regardless of the bedroom count, is required in new construction.

Conversion of existing space to an ADU is allowed within any existing single-family dwelling located in a single-family or multifamily zoning district. Staff also proposes a revision to allow new construction of an ADU on a multifamily-zoned lot. New construction would be limited to lots containing a minimum of 5,000 square feet and one single-family residence, to 750 square feet in size, and to requiring one parking space. Requirements for owner occupancy of one of the dwelling units and prohibitions against short-term rental of ADUs would remain in effect. Staff recommends the Planning Commission recommend Council adoption of the proposed amendments to the Zoning Code and submission of a Local Coastal Program (LCP) amendment to the California Coastal Commission. With City Council approval of the amendments, staff will submit them to the California Department of Housing and Community Development (HCD). Staff has communicated with HCD staff regarding the proposed amendments and does not anticipate HCD commenting on the amendments.

In reply to Commissioners' queries, Senior Planner Murillo clarified that in new construction the combined floor area of the main living structure and the ADU must comply with the maximum floor area allowance for the site. Section 3(C) of the Planning Commission Resolution addresses ADU conformance to all other applicable provisions of the Municipal Code. ADUs may be rented for periods longer than 30 days. ADUs may contain less than 750 square feet. An ADU must have facilities for food preparation, sanitation, and sleeping. There are no Americans with Disabilities Act (ADA) requirements for ADUs. If a planned community allows single-family development, ADUs would be allowed per the City's regulations. However, many planned communities have existing Covenants, Conditions and Restrictions (CC&Rs) and homeowner associations that prohibit second dwelling units; however, state law does not supersede CC&Rs.

Chair Zak opened the public hearing.

Jim Mosher remarked that staff proposes amending the LCP, which is still pending before the California Coastal Commission. Perhaps the proposed amendment should be substituted for the pending amendment.

Chair Zak closed the public hearing.

Motion made by Commissioner Kramer and seconded by Vice Chair Weigand to find the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15282(h); adopt Resolution No. PC2018-025 recommending the City Council approve Zoning Code Amendment No. CA2018-003 modifying regulations pertaining to accessory dwelling units; and adopt Resolution No. PC2018-026 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2018-002 to the California Coastal Commission.

AYES: Zak, Weigand, Kleiman, Dunlap, Kramer, Lowrey, Koetting
NOES: None
ABSTAIN: None
ABSENT: None

In reply to Commissioner Koetting's request for additional information, Senior Planner Murillo advised that three applications for new construction of ADUs and five applications for conversion to ADUs have been submitted since adoption of the ordinance.

X. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION

None

ITEM NO. 7 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Summary:

Update on Planning Commission or City Council Items

Community Development Director Jurjis reported staff will present the Planning Commission's recommendations for Council "L" Policies to the City Council on August 14. The August 23 Planning Commission meeting will be canceled. The Harbor Point Senior Living project is scheduled for the September 6th meeting as a study session item. He will provide an update of the August 10 Coastal Commission hearing to the Commission.

In answer to Vice Chair Weigand's question, Community Development Director Jurjis advised that the applicant requested a study session to obtain Commission and community feedback regarding revisions made following the prior presentation to the Commission.

ITEM NO. 8 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT

None

ITEM NO. 9 REQUESTS FOR EXCUSED ABSENCES

Commissioners Koetting, Dunlap, and Kramer advised that they would not be available for the September 6, 2018 meeting of the Commission.

XI. ADJOURNMENT – 8:06 p.m.

The agenda for the August 9, 2018, Planning Commission meeting was posted on Friday, August 3, 2018, at 3:49 p.m. in the Chambers binder, on the digital display board located inside the vestibule of the Council Chambers at 100 Civic Center Drive and on the City's website on Friday, August 3, 2018, at 3:20 p.m.

Peter Zak, Chairman

Bill Dunlap, Secretary