
From: John T. Reilly <jt.reilly@sbcglobal.net>
Sent: Friday, September 21, 2018 7:54 AM
To: Dept - City Council; City Clerk's Office; Info@SPON-NewportBeach.org
Subject: Public Comments: 3200 Ocean Blvd Project

It seems that most projects and remodels in this town are built by exception . . . exception to the existing General Plan and Zoning Codes. Why is that? Why do we bother with plans, codes and a building department? All we really need is a big red rubber stamp that says "APPROVED".

I will be casting my votes on November 6 for Brenner, Stoaks and Englebrecht who are more in tune with their constituents and the concerns they have expressed again and again about retaining the unique culture and character of Newport Beach. That means applying our existing rules and codes to development requests that threaten to forever change the face of our neighborhoods while creating traffic and congestion throughout all of Newport Beach.

John Reilly
Corona del Mar

From: City Clerk's Office
Sent: Thursday, September 20, 2018 7:09 PM
To: Mulvey, Jennifer; Rieff, Kim
Subject: FW: Public Comments: 3200 Ocean Blvd Project Approval Review

From: Maureen Buffington
Sent: Thursday, September 20, 2018 7:08:57 PM (UTC-08:00) Pacific Time (US & Canada)
To: Dept - City Council; City Clerk's Office; info@lineinthesandpac.org
Subject: Public Comments: 3200 Ocean Blvd Project Approval Review

Respected Members of the Council:

I wish to protest the 3200 Ocean Blvd Project. This is not Malibu. Newport Beach is a town where many are retired middle income, living in neighborhoods we have loved for many years. Progress is inevitable, but constantly changing the city plan (that we all approved) in bits and pieces as individual developers wish to bypass the zoning rules is not the way to proceed.

Please say no to 3200 Ocean Bd.

Thank you,
maureen buffington
110 Yorktown
Newport Beach 92660

From: City Clerk's Office
Sent: Thursday, September 20, 2018 5:27 PM
To: Mulvey, Jennifer; Rieff, Kim
Subject: FW: Public Comments: 3200 Ocean Blvd Project Approval Review

From: nbfeller
Sent: Thursday, September 20, 2018 5:27:27 PM (UTC-08:00) Pacific Time (US & Canada)
To: Dept - City Council; City Clerk's Office; info@lineinthesandpac.org
Subject: Public Comments: 3200 Ocean Blvd Project Approval Review

We don't need anymore large homes filling the entire lot. Enough is enough. We have lived here since 1966—and what a difference—and not always to the good of the city. Frank and Shirley Feller

Subject: FW: Public Comments: 3200 Ocean Blvd Project Approval Review

From: Herdman, Jeff

Sent: Thursday, September 20, 2018 2:38:36 PM (UTC-08:00) Pacific Time (US & Canada)

To: Bob; Dept - City Council; City Clerk's Office; info@lineinthesandpac.org

Subject: Re: Public Comments: 3200 Ocean Blvd Project Approval Review

Bob,

Thanks for submitting your opinion on the "call up" I did on this project for next Tuesday's Council Meeting. I just think we should take another close look.

Jeff Herdman
NB City Council

From: Bob <byant@aol.com>

Sent: Thursday, September 20, 2018 2:04:26 PM

To: Dept - City Council; City Clerk's Office; info@lineinthesandpac.org

Subject: Public Comments: 3200 Ocean Blvd Project Approval Review

I am opposed to the variance granted to the home at 3200 Ocean Blvd. I am also opposed to the mansionization of our neighborhoods.

Bob Yant
2113 Seville Ave.
Newport Beach, CA 92661
949 673-8474

Subject: FW: Variance - 3200 Ocean Blvd.

Dear City Council:

I oppose the request for variance made by the owners of 3200 Ocean Blvd. scheduled for hearing at the September 25, 2018 City Council meeting. According to the Staff Report the request involves the destruction of the existing single family home on the property to permit the construction of a new single family home requiring the following variances from the applicable zoning standards:

".....allowing the development of a new 7,276-square-foot, single-family residence and a 688-square-foot three-car garage. The application includes a request for variance to allow the residence to encroach 5 feet into the 10-foot rear yard setback and exceed the maximum floor area limit."

Newport Beach Municipal Code 20.52.090 A. states the purpose of a variance which mirrors state law as well:

"20.52.090 Variances.

A. Purpose. A variance provides a process for City consideration of requests to waive or modify certain standards of this Zoning Code when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same zoning district."

In short, a variance can't be a grant of special privileges inconsistent with the limitations on the other properties in the vicinity and zone.

Courts have long held that a zoning variance must be grounded in conditions peculiar to the particular lot as distinguished from other properties in the vicinity and zone. Unnecessary hardship therefore occurs where the natural condition or topography of the land places the landowner at a disadvantage vis-à-vis other landowners in the area, such as peculiarities of the size, shape or grade of the parcel. Case law also has discerned in the hardship requirement an additional finding that the hardship be substantial and that the exception sought must be in harmony with the intent of the zoning laws. Govt. Code 65906; Committee to Save the Hollywoodland Specific Plan (2008) 161 Cal. App. 4th 1168; Craik v. County of Santa Cruz (2000) 81 Cal. App. 4th 880.

Long ago, the California Supreme Court stated that at best only a small fraction of any one zone can qualify for a variance. Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal. 3d. 506. Additionally, the California Supreme Court held that if the property can be put to effective use consistent with the existing zoning without the variance sought, it is not significant that the variances being sought would make the applicant's property more valuable, or that they would enable to recover a greater income, nor that they would relieve him from undesired costs in compliance with the existing restrictions. Broadway, Laguna etc. Assn v. Board of Permit Appeals (1967) 66 Cal. 2d. 767, 775.

Applying the above legal standards to the Staff Report demonstrates the absence of substantial hardship on the part of the property owners and instead shows their desire to maximize the scale and value of their proposed project. Thus, granting the above variance would constitute a grant of special privileges in violation of state law and the Newport Beach Municipal Code.

As noted above, the California Supreme Court stated that at best only a small fraction of any one zone can qualify for a variance, Id. Yesterday, I met with City Staff to determine the number of variances of a type similar to those sought for 3200 Ocean Blvd. that have been previously granted for Corona Del Mar. since 2010. While we were unable to determine a precise number for Corona Del Mar as a whole, City Staff did provide me with the following information regarding variances granted for properties on Ocean Blvd. since 2013.

Address	Variance	Year
2607 Ocean Blvd.	Height, Floor Area, Set Back, Encroachment	2017
2741 Ocean Blvd.	Height, Set Back, Encroachment	2015
2723 Ocean Blvd.	Height, Set Back, Encroachment	2014
2525 Ocean Blvd.	Height, Accessory Structures	2014
3235 Ocean Blvd.	Height, Set Back, Encroachment	2013

The above demonstrates that the proposed variance for 3200 Ocean Blvd. would be the sixth granted by the City on Ocean Blvd. alone since 2013. Hardy a small fraction for properties on the same street let alone the same zone of Corona Del Mar.

Finally, a review of the Staff Report reveals numerous emails from neighboring property owners requesting the Planning Commission and now the City Council reject the proposed project as being incompatible with the immediate neighborhood. In particular there is the continuing complaint of the "Mansionization of Corona Del Mar." Courts have long held that it is necessary for an administrative agency to consider the interest of neighboring property owners in reaching a decision whether to grant or deny a land-use entitlement and that those opinions alone can serve as grounds for denial. SP Star Enterprises, Inc. v. City of Los Angeles (2009) 173 Cal. App. 4th. 459; Harris v. City of Costa Mesa (1994) 25 Cal. App. 4th 963.

In the present case, the foregoing certainly demonstrates the "Mansionization" of Ocean Blvd if not of Corona Del Mar as a whole. On these grounds alone the City Council should reject the property owners' application.as the City has simply granted too many variance for the area in violation of guidelines established by state law and, in particular, the California Supreme Court.

In conclusion, for all of the reasons above the City Council should reject the application for a variance for 3200 Ocean Blvd.

Very truly yours,

Bruce Bartram
2 Seaside Circle
Newport Beach, CA 92663

Subject: Fwd: 3200 Ocean Blvd.
Date: Sunday, September 23, 2018 7:12:36 PM

From: SHARI CIKO <shariciko@cox.net>
Date: September 22, 2018 at 7:02:33 PM PDT
To: <citycouncil@newportbeachca.gov>
Subject: 3200 Ocean Blvd.
Reply-To: SHARI CIKO <shariciko@cox.net>

I support Council Member Herdman's call for review on the above-referenced property. The overbuilding in Newport is reaching ridiculous proportions and should not be allowed at this location - nor any other.

"Mansionization" only ruins our beautiful city.

Thank you for your time and attention to my email.

Shari Ciko

Spyglass Hill

Subject: Fwd: Public Comments: 3200 Ocean Blvd Project Approval Review
Date: Sunday, September 23, 2018 7:12:50 PM

From: Jeff Schaffer <jpschaffer@gmail.com>
Date: September 22, 2018 at 3:30:55 PM PDT
To: <citycouncil@newportbeachca.gov>, <cityclerk@newportbeachca.gov>, <info@lineinthesandpac.org>
Cc: Michelle Schaffer <mrs.schaffer@gmail.com>
Subject: Public Comments: 3200 Ocean Blvd Project Approval Review

To Whom It May Concern,

We'd like to express our support for the work Line in the Sand is doing on behalf of all residents of Newport Beach. We don't believe it's in the best interests of the citizens to allow developers to continue over-building every parcel they can buy, just for their singular benefit, at the expense of the entire community. We're stuck living with their monstrosities forever while they move onto the next place to ruin. Please don't let it keep happening in Newport Beach.

Sincerely,

Jeff and Michelle Schaffer

Subject: FW: Agenda Item 18
Date: Sunday, September 23, 2018 7:23:49 PM

From: Mary Roosevelt
Sent: Sunday, September 23, 2018 7:23:45 PM (UTC-08:00) Pacific Time (US & Canada)
To: City Clerk's Office
Subject: FW: Agenda Item 18

I would like to add this comment to my letter below.

There are now too many “exceptions” from what was defined in the code and the regulations in the General Plan, which the people of Newport Beach Voted on in 2006.

Everyone needs to respect that. Thanks .

Mary Roosevelt

From: Mary Roosevelt <mwroosev@outlook.com>
To: "jherdman@newportbeachca.gov" <jherdman@newportbeachca.gov>
Sent: Sunday, September 23, 2018 4:58 PM
Subject: Agenda Item 18

Dear Council member Herdman,

I am really concerned about the size of the houses being built in Corona del Mar. Recently I have been impacted by a huge new home taking out my city and mountain views. Worse than that all their windows and roof deck look directly into the second floor of my home. I can lie in bed and watch and hear their television on their roof deck, to say nothing of the loudspeakers installed to amplify the already loud music, when played. Of course they see right into my home too. This has certainly made my home less desirable, should I ever decide to sell it.

I am even more concerned about the two properties being submitted for construction on Ocean Boulevard, particularly 2607. I have expressed elsewhere my objection to the general public losing the views of China Cove to satisfy one man's desire for a very large home. There is no need to spoil Corona del Mar like this. The owners of such proposed properties will possibly be increasing their property values at the expense of other homeowners like me, and other taxpayers who pay to live her because it is (was) so beautiful. This also applies to the proposed “mansion” for 3200 Ocean Boulevard.

Many of these properties are second homes. They are not neighbors in the true sense of the word, and this will also impact the ambiance of Corona del Mar.

I am not able to attend the meeting, but I suggest that anyone who thinks all this building of large homes is attractive should take a look at the two new homes on the bluffs at the end of Ocean Blvd, and Seaview Avenue. Both are obstructing the beautiful views up the channel.

Thank you.

Sincerely,

Mary Roosevelt

Subject: FW: Public Comments: 3200 Ocean Blvd Project Approval Review
Date: Sunday, September 23, 2018 2:18:17 PM

From: Don & Doris
Sent: Sunday, September 23, 2018 2:18:11 PM (UTC-08:00) Pacific Time (US & Canada)
To: Dept - City Council; City Clerk's Office; info@lineinthesandpac.org
Subject: Public Comments: 3200 Ocean Blvd Project Approval Review

We are very much against the 3200 Ocean Blvd. Project!!! We have lived in Corona del Mar since 1964 and at our present address of 3708 Ocean Blvd. since 1971. In the years we have seen too much overbuilding in our town!!! Our small quaint village has become an eyesore because of the permits to build homes too large for the lots! Who needs 6 bedrooms and 8 bathrooms for 2 people!?!?

Please please consider the neighbors and neighbors when issuing building permits.

Also a time limit on the building of a home should be enforced. Other cities do this and we do think a time frame for a project should be considered.

Thank you, Donald and Doris Stoughton

Subject: FW: Public Comments: 3200 Ocean Blvd Project
Date: Sunday, September 23, 2018 2:24:41 PM

From: Don & Doris
Sent: Sunday, September 23, 2018 2:24:35 PM (UTC-08:00) Pacific Time (US & Canada)
To: Dept - City Council; City Clerk's Office; Info@SPON-NewportBeach.org
Subject: Public Comments: 3200 Ocean Blvd Project

My husband and I have been residents of Corona del Mar since 1964. We certainly have seen a great deal of change in the quaint small town we moved in to! And NOT for the better!!!

We are so against the overbuilding of the small lots in CdM!!!! It not only impacts the streets with the over parking of cars that belong in their own garages but in the open space between the homes. Please tell me what family of 2/4 persons needs 3 levels of a home with 6 bedrooms and 8 bathrooms?????

Also putting a time limit of the building of a residence would be more than helpful!!!! We have had a home in our neighborhood under construction for at least 3 years. NO this is not acceptable!!!

Other cities put a building limit – why can't Newport Beach do the same????

Thank you, Doris and Don Stoughton 3708 Ocean Blvd., Corona del Mar, Ca. 92625

September 23, 2018

Dear City Council members:

You will have the opportunity on Sept 25 to decide what action to take regarding 3200 Ocean Blvd. There is certainly a heightened interest in the mansionization of old CdM and this is an opportunity for you to address this particular request as well as potentially open a conversation about mansionization in general, a topic of great interest to your constituents.

Nicholson Construction has the property in escrow and is asking to increase the sq footage of a future home by more than 30% through the variance process. The property lies on Ocean Blvd and has a wider than average frontage on Ocean Blvd, which has a deeper than average setback. There are a number of other similarly shaped lots along Ocean Blvd, all of which have home sizes appropriate to the buildable area of the original configuration of the lot. In fact, the current buildable area (FAR) of 3200 Ocean is slightly larger than the average similarly configured lot on Ocean Blvd.

I have heard that Mr. Nicholson has worked with the neighbor to preserve a view plane in exchange for adjustments of setbacks in the back of the property and I am supportive of this agreement. There is a mechanism in the zoning code exclusive of the variance that could allow this to occur. I am not supportive of a massive increase of sq footage, in fact mansionization, for no other reason than the developer would like to build a larger house. The character of a neighborhood is dependent on its zoning laws. If you feel that the zoning of old CdM is not appropriate, perhaps the tool that should be used is to reconsider existing zoning rules rather than granting variances that do not meet the required criteria.

Please also consider that the Local Coastal Plan does not allow variances. This seems to have been an error on the part of Newport Beach, since we wrote the LCP and submitted it to the Coastal Commission for approval. It is a fixable problem, although oddly enough, the next item on your agenda are modifications to the LCP and don't include this issue. However, since there is no process for granting a variance in the LCP, you do not appear to be able to legally grant the variance under the LCP until this is corrected.

Thank you,

Susan Skinner

From: [City Clerk's Office](#)
To: [Mulvey, Jennifer](#); [Rieff, Kim](#)
Subject: FW: Public Comments: 3200 Ocean Blvd Project Approval Review
Date: Monday, September 24, 2018 7:44:55 AM

From: jack scrivner
Sent: Monday, September 24, 2018 7:44:41 AM (UTC-08:00) Pacific Time (US & Canada)
To: Dept - City Council; City Clerk's Office; info@Cdmra.org
Subject: Public Comments: 3200 Ocean Blvd Project Approval Review

We are extremely concerned about the massive building and density changes occurring in our community. These changes have created unbearable traffic and parking issues for our neighborhoods. We support maintaining the smaller building mass of 1.5 in Corona del Mar.

We furthermore, would hope that the city would take a hard look at the number of multi unit dwellings being built. Where there was once one unit with 2 cars there is now two units with 4 cars and to make matters worse no one seems to use their garage for parking their car these days. The parking is OUT OF CONTROL!

Respectively submitted,
Jack Scrivner

From: [City Clerk's Office](#)
To: [Mulvey, Jennifer](#); [Rieff, Kim](#)
Subject: FW: Comment for Council on Sept 25 Agenda Item 18
Date: Monday, September 24, 2018 11:12:34 AM

From: Nancy Otis
Sent: Monday, September 24, 2018 11:12:31 AM (UTC-08:00) Pacific Time (US & Canada)
To: City Clerk's Office
Subject: Comment for Council on Sept 25 Agenda Item 18

Dear Mayor Duffield and Members of the Council,

We have been residents of Corona Del Mar for 50 yrs. We were never in favor of the "mansions" that has occurred. Now we understand that there are requests to build over and above the existing allowances. Laws are not made to be broken!!! Please uphold the ordinances now in place. Most sincerely

Ray and Nancy Otis
Sent from my iPhone

Subject: FW: Objection to Variance PA2017-208 / Hinton and Maloney Residence
Date: Monday, September 24, 2018 3:29:45 PM

From: Raquel Dawson
Sent: Monday, September 24, 2018 3:29:40 PM (UTC-08:00) Pacific Time (US & Canada)
To: Dept - City Council; City Clerk's Office
Subject: Objection to Variance PA2017-208 / Hinton and Maloney Residence

Dear City Council,

I am writing to the City of Newport Beach to once again formally object to the approval of PA2017-208 (Hinton and Maloney Residence). I have been a homeowner in the Corona Del Mar Village since 2002.

In the case of the Hinton and Maloney Residence (PA2017-208 / 3200 Ocean Blvd), a setback variance should not be granted. **Previous owners of this lot made the decision to reduce the property's buildable area in order to increase the ocean views of the property when they reoriented the property with the one next door.** They opted to give up buildable area for ocean views which have a higher economic value. Thus, this property should follow code and be built with setbacks that follow code and a 1.5xFAR limit, excluding the 2748 square foot basement.

Sincerely,

Raquel Dawson
2741 Ocean Blvd, Corona Del Mar 92625

Subject: FW: City Council meeting, 9-25-18, Item 18, development at 3200 Ocean, Corona del Mar
Date: Monday, September 24, 2018 3:59:44 PM

From: Kent Moore
Sent: Monday, September 24, 2018 3:59:38 PM (UTC-08:00) Pacific Time (US & Canada)
To: City Clerk's Office
Subject: City Council meeting, 9-25-18, Item 18, development at 3200 Ocean, Corona del Mar

Dear Members of the Council:

I write in the hopes that you might reconsider your position regarding the proposed 3200 Ocean Blvd. development in Corona Del Mar.

As you are aware, the developer has asked for variances which would far exceed city standards.

In the past, my neighbors and I have expressed concerns regarding this so-called "Mansionization" that has been taking place in our community. As a 47 year resident, I purchased my home because of the unique character of Corona Del Mar. I strongly object to what has taken place in the past few years. Just look at my street, the 200 block across from Carnation Bluff. How would you all like to see these massive developments across from your property as you go out every day? Virtually all bay views have disappeared.

My neighbors and I moved here years ago hoping the city would continue to use good judgement as it approved further development in our "village." And we were further buoyed by the Coastal Commission granting Newport Beach the ability to adopt its own Local Coastal Program. What happened!??

What is so unique about 3200 Ocean Blvd. that the owners are allowed to expand to this massive footprint? Why aren't you applying the rules that you yourselves have enacted and then following those rules??

Does our Local Coastal Program give you the right of non-adherence to our present zoning codes regarding setbacks and allowable floor area? If so, when was the City given that authority by Coastal?

Please don't act hastily on this vitally important matter and wait for clearer guidelines to come down from the Commission. Your constituents will thank you.

Thanks for your consideration.

Kent Moore, 210 Carnation, Corona Del Mar
(949) 244-1832

Sent from my iPhone

September 25, 2018, City Council Item 18 Comments

The following comments on an [item](#) on the Newport Beach City Council [agenda](#) are submitted by:

Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 18. Call for Review of the Approval of the Variance and Coastal Development Permit for 3200 Ocean Boulevard (PA2017-208)

Please see also the SPON [Watch List page](#).

Overview

As I [noted to the Planning Commission](#), this item is unusual in that the staff reports have never included a written statement from the applicant (at least that I have seen) explaining what is being requested, why it is being requested and how the requested deviations from the established zoning regulations can be rationalized. Instead, City staff appears to have left to carry the ball and pitch the proposal to decision makers on behalf of the applicant.

Staff's resulting recommendation for **approval**, as expressed in the staff report, seems to be based on a number of misconceptions. Among them:

1. That the City is free to grant deviations from the development standards proclaimed in our recently certified Local Coastal Program because, it is said, the Coastal Act was never intended to restrict any of the rights to develop afforded by other regulations (see staff report page 18-47).
2. That there is no relevance to the restriction stated in our Zoning Code that the floor area of homes in Corona del Mar is limited to 1.5 times the buildable area on the lot (after correction for setbacks, a so-called Floor Area Limit of 1.5). Instead, there is an implied property right in Corona del Mar to build homes with a floor area roughly equal to the total square footage of the lot (a so-called Floor Area Ratio of 1).
3. That the supposedly unique configuration of 3200 Ocean Blvd is impinging on that implied "right."

In response to those three specific points, I would, as I hope to explain in more detail below, submit that the request for deviations from the Zoning Code and LCP should be **denied** for the following reasons:

1. The provisions in the LCP *are* intended to constrain development in the Coastal Zone, and to take precedence over what might be allowed by other more permissive zoning regulations. The City's current authority to deviate from what the Coastal Commission has certified as consistent with the Coastal Act is highly questionable. Coastal Development Permits allowing development exceeding those standards should not be granted until the City's authority to do that has been clarified.
2. The restriction of residential development throughout Newport Beach by FAL rather than by FAR is purposefully intended to limit lots with different shapes and configurations to

different FAR's. The 1.5 FAR in Corona del Mar is intentional and its enforcement is part of the right of all residents to know the neighborhood they have bought into will develop in a predictable fashion. The resulting lower FAR at 3200 Ocean Blvd is not an aberration that needs to be corrected. It is, instead, an example of how the FAR rule is intended to work.

3. 3200 Ocean Blvd is not unique. It is just 1 of at least 27 cases in Corona del Mar, alone, where long, skinny lots that once backed up to an alley have been subdivided to create a corner lot without alley access – a situation which (if the existing setback rules are not working) I think should be dealt with by enacting a new district-wide or citywide rule, rather than by granting one-off exceptions. In some cases, building into the code-established setbacks, or changing the setbacks, has been allowed. But in no case that I am aware of has a CdM property owner been allowed to exceed the 1.5 FAR.

About Property Rights

Some people have the not-unreasonable idea that a property owner in the United States should be allowed to build whatever they like on their property, without any interference from the government. That attitude is reflected in the letters on pages 18-105 through 18-112 of the staff report.

However, it has long been recognized that development on one property affects the rights of others. Zoning regulations, which have been widely around for about 100 years, have been developed on the premise that for people to get along peacefully and safely in a city setting it is necessary to establish clear development rules which property owners can assume will be followed by all. The letters on pages 18-89 through 18-102 are from people who equally reasonably expect their government to strictly enforce the rules it has established.

About Setbacks – And a Time Changing Them Was Easier for Developers

A requirement to set development back from the property lines is a typical regulation limiting the right to develop on residential lots.

In Newport Beach, residential setbacks are legislatively established by the City Council in Tables 2-2 and 2-3 ([Section 20.18.030](#)) of the Zoning Code, unless otherwise established by the Council in the Setback Maps of [Section 20.80.040](#). They can be changed by ordinance.

[Section 20.52.050.B.2](#) allows discretionary approval of encroachments by up to 10% of the required distance, and [Section 20.52.090](#) allows variances from the standards in exceptional circumstances.

Before 2010, in cases where a corner lot had equal exposures to two streets, the Zoning Code also allowed the Planning Director to administratively decide which exposure was the “front” and which a “side” of the lot.

Although nothing about that was supposed to change, in the 2010 update of the Zoning Code, that passage became garbled into the “Alternative Setback Area Location” provision of [Section 20.30.110.C](#).

Despite the high hurdles for changing setback requirements by modification, variance or legislation, staff took this, for a while, as license to arbitrarily change setbacks upon request, with no required findings or public process at all.

For example, on June 21, 2011, the present applicant, Nicholson Construction, was able to get the setbacks at 211 Heliotrope changed from the Council-adopted standards simply by submitting a diagram of what they wanted and getting staff to sign off on it with staff approval [SA2011-012](#) (see staff report page 18-69)

According to the [Case Log](#), that is how the present application for 3200 Ocean Blvd started.

However, staff seems to have had some misgiving about the ease with which setbacks were being changed (and being made inconsistent with those set by the Council), for when an applicant asked for more than staff was willing to give, as in [SA2012-002](#) for 211 Orchid (see staff report page 18-70), staff's position was submitted to the Planning Commission for their concurrence – although still with no clear findings.

The present staff report does not mention this messy history of setback regulation in Newport Beach (and the resulting crazy-quilt of changes, encroachments and inconsistencies), but it seems to acknowledge that staff should not just arbitrarily change setbacks as an applicant may request.

The staff report also does not explain why a variance procedure is more appropriate than a legislative change applicable to all corner lots.

About Floor Area Regulation – FAL vs. FAR

The “facts” in proposed Resolution No. 2018-73 that are purported to support a variance to the code-imposed Floor Area Limit of 1.5 for 3200 Ocean appear to be based solely on the idea that 3200 Ocean should be allowed the same Floor Area Ratio as some other properties.

It is important to understand that FAL is not the same as FAR. FAL is the ratio of floor area to the buildable area on the lot (the footprint after the setbacks have been removed). FAR is the ratio of the floor area to the total area of lot (ignoring the setback areas).

FAL is what is regulated on residential lots. FAR is not.

As a result, there is no inherent right to be able to build to the same FAR as a neighbor with a different lot configuration and different setbacks.

Requirements for Granting Variances

Although not from Newport Beach, the Marin County [Variance Fact Sheet](#) is a useful reference explaining the factors that can and cannot be considered in weighing the appropriateness (and legality) of varying from the development standards proclaimed in a zoning code.

Among the most fundamental requirements for granting a variance is that there is something unique about the property.

As a corner lot not abutting an alley, 3200 Ocean Blvd is different from its neighbors, but it is not at all unique. As indicated above, there are something like 27 such lots in Corona del Mar, alone. If there is truly some hardship imposed by the setback rules in the present Zoning Code, that is a large enough number that the Council should be proposing some new setback rule uniformly applicable to them.

Whatever the correct setbacks for corner lots should be, none of the corner lots I am aware of have asked, or been allowed, to exceed the 1.5 Floor Area Limit. Granting that would truly be a special privilege given to this one lot for no reason I can perceive.

The Deal with 210 Larkspur

As indicated by the letter on staff report page 18-103, by offering a private view easement, City staff has won the support of the neighbor at 210 Larkspur for allowing 3200 Ocean to build closer to his property line than the City code allows. Not only is the agreement of a neighbor not a valid grounds for approving a variance according to the Marin County Fact Sheet, but it is unclear why protecting a view necessitates an even larger house than could be built within code.

Coastal Act Issues

The most obvious Coastal Act issue is that the City's recently certified Local Coastal Program gives the City no authority grant the present requests for deviations from the development standards promised in the LCP.

As part of the [Major LCP Clean-up Package](#), submitted by [Resolution No. 2017-56](#) on September 12, 2017, the City Council has pending before the Coastal Commission a request to amend the LCP to give it power to grant modifications and variances to the development standards in it. The matter has not yet been heard, and the power has not yet been granted.

Yet City staff asserts the City has the authority anyway. The authority is claimed to result from a "Director Interpretation" of the LCP. Even though such interpretations are supposed to be appealable, this one appears never have been committed to writing. If the logic behind it is that revealed in the last paragraph on staff report page 18-47, then it relies on multiple misinterpretations of the relevant laws, as indicated in my August 9, 2018, [comments to the Planning Commission](#).

In a move similar to what is being requested here, involving the same development company and relying on the same questionable Director Interpretation, on December 7, 2017, the Planning Commission granted variances for a residential project at [2607 Ocean Blvd](#). The City's authority to do that is currently on appeal. It might be heard in December, but it has not yet decided, aside from the CCC deciding the City's action raised "substantial issues" regarding its compliance with the Coastal Act.

The ridiculousness of the City's position is apparent from page 6 of 9 of the proposed Resolution No. 2018-73 (see staff report page 18-10). At the top of that page, the resolution acknowledges it is for development "*that exceeds the maximum floor area and encroaches five*

(5) feet into a required ten (10) foot rear setback,” followed immediately by facts purported to support a required finding that the development “*Conforms to all applicable sections of the certified Local Coastal Program.*” It seems common sense that the development cannot conform to the sections if it deviates from them.

As the two Planning Commissioners who voted against granting the present CDP noted, since their previous approval of deviations without clear authority to do so is under appeal to the Coastal Commission, it would seem prudent to grant no more such approvals until that matter has been resolved. Despite the indemnification clause in the proposed conditions of approval, further granting of variances without authorization has the potential to involve the City in expensive, wasteful and completely unnecessary appeals and litigation.

Setting that issue aside, the main Coastal Act issue with development on this property would likely be its impact on the public views of the ocean looking down Larkspur.

Although the Larkspur side of 3200 Ocean is currently the front of the home, and is proposed to continue be, it is treated as a “side” and construction is required to be setback only 4’ from the sidewalk, compared to 20’ at 210 Larkspur and 15’ for the remainder of Larkspur.

Logically, the setbacks of the buildings should increase as one moves closer to the ocean, opening a public vista.

Hence if the 3200 Ocean owner wants to build closer to the rear lot line than the LCP allows, it would seem reasonable that rather than simply allowing that, it be treated as a trade-off, with the open space being lost along the rear lot line being added to the more publicly critical open space along the Larkspur frontage.

From: Raquel Dawson
To: [Dept - City Council](#); [City Clerk's Office](#)
Subject: Objection to Variance PA2017-208 / Hinton and Maloney Residence
Date: Monday, September 24, 2018 3:29:45 PM

Dear City Council,

I am writing to the City of Newport Beach to once again formally object to the approval of PA2017-208 (Hinton and Maloney Residence). I have been a homeowner in the Corona Del Mar Village since 2002.

In the case of the Hinton and Maloney Residence (PA2017-208 / 3200 Ocean Blvd), a setback variance should not be granted. **Previous owners of this lot made the decision to reduce the property's buildable area in order to increase the ocean views of the property when they reoriented the property with the one next door.** They opted to give up buildable area for ocean views which have a higher economic value. Thus, this property should follow code and be built with setbacks that follow code and a 1.5xFAR limit, excluding the 2748 square foot basement.

Sincerely,

Raquel Dawson
2741 Ocean Blvd, Corona Del Mar 92625

From: Kent Moore
To: [City Clerk's Office](#)
Subject: City Council meeting, 9-25-18, Item 18, development at 3200 Ocean, Corona del Mar
Date: Monday, September 24, 2018 3:59:44 PM

Dear Members of the Council:

I write in the hopes that you might reconsider your position regarding the proposed 3200 Ocean Blvd. development in Corona Del Mar.

As you are aware, the developer has asked for variances which would far exceed city standards.

In the past, my neighbors and I have expressed concerns regarding this so-called "Mansionization" that has been taking place in our community. As a 47 year resident, I purchased my home because of the unique character of Corona Del Mar. I strongly object to what has taken place in the past few years. Just look at my street, the 200 block across from Carnation Bluff. How would you all like to see these massive developments across from your property as you go out every day? Virtually all bay views have disappeared.

My neighbors and I moved here years ago hoping the city would continue to use good judgement as it approved further development in our "village." And we were further buoyed by the Coastal Commission granting Newport Beach the ability to adopt its own Local Coastal Program. What happened!??

What is so unique about 3200 Ocean Blvd. that the owners are allowed to expand to this massive footprint? Why aren't you applying the rules that you yourselves have enacted and then following those rules??

Does our Local Coastal Program give you the right of non-adherence to our present zoning codes regarding setbacks and allowable floor area? If so, when was the City given that authority by Coastal?

Please don't act hastily on this vitally important matter and wait for clearer guidelines to come down from the Commission. Your constituents will thank you.

Thanks for your consideration.

Kent Moore, 210 Carnation, Corona Del Mar
(949) 244-1832

Sent from my iPhone

From: Lynn Lorenz
To: [Dept - City Council](#); [City Clerk's Office](#); info@lineinthesandpac.org
Subject: Public Comments: 3200 Ocean Blvd Project Approval Review
Date: Tuesday, September 25, 2018 9:19:17 AM

Dear Council and Planning Staff members:

It is very disappointing to think that Newport Beach City Government is once again trying to work around zoning and building codes to grant exceptions to yet another project, albeit to a homeowner. Once you open that can of worms, you have no choice but to keep doing so, throwing guidelines and rules into chaos.

You are there to serve the community as a whole, not individuals who want to selfishly break the rules.

I hope that you will find the strength and sense of fair-play to "just say no."

Respectfully submitted,

Lynn Lorenz

434 Redlands Avenue

959 646 2054

Sent from my iPhone