

From: Harp, Aaron
Sent: Monday, September 09, 2019 8:17 AM
To: Brown, Leilani
Subject: FW: Proposed RM zoning change

From: Chris Nielson
Sent: Friday, September 6, 2019 1:28 PM
To: Dixon, Diane ; O'Neill, William ; Avery, Brad ; Duffield, Duffy ; Muldoon, Kevin ; Herdman, Jeff ; Brenner, Joy
Cc: Leung, Grace ; Jurjis, Seimone ; Murillo, Jaime ; Jacobs, Carol ; Harp, Aaron ; Summerhill, Yolanda ; Campbell, Jim ; Heidi Nielson
Subject: Proposed RM zoning change

Dear Council -

My name is Chris Nielson. My wife Heidi and I own three buildings on the boardwalk there in the 20th block on the Peninsula (2002 W Oceanfront, 2004 W Oceanfront and 2001 Court Street). We appreciate your service to the City of Newport Beach.

I am writing to object to proposed changes to the development standards and design rules for RM structures. There are many reasons to leave RM zone rules as they currently are.

Reducing height and FAR allowances of one-unit and two-unit structures on RM lots would not significantly change the appearance of massing and height in RM-zoned neighborhoods. Property owners could still build to the same height and visual mass if they put three units on their property, and many properties in RM-zoned neighborhoods have already been built out to the full extent allowed.

The proposed change would unintentionally reward those who have already fully built out their properties while financially penalizing owners who've held back from a full buildout so far. We've been told the rule changes could significantly lower property values for homes that are not yet fully built out in RM zones. That sends a message incompatible with the spirit of the proposed rule change. Why penalize those who haven't participated in "mass and height" increase in their neighborhood?

It would put some properties in a situation of being permanently dominated by larger structures nearby without the owners having the future right to build out their property in a comparable, compatible way, as they could under current rules.

The rule change will create a situation in which many properties that are fully compliant with current zoning rules will suddenly be made nonconforming. Nonconforming status adds complications for property owners needing to do major repairs or replace structures, creates extra work for planning staff, and can create confusion or concern for future buyers that could affect property value.

This rule change is likely to significantly reduce value of many RM-zoned properties without a corresponding demonstrated significant benefit.

These properties were purchased with certain rights and expectations about what could be done with them, and those rights have an effect on the financial value of the property.

This approach to addressing height and mass inappropriately targets every RM-zoned neighborhood when it's not a significant problem in many RM neighborhoods. As a resident suggested at the August 19 community meeting, “mansionization” is an issue that’s been brought up related to other neighborhoods in the city – not necessarily the small pockets of RM neighborhoods. It isn’t a problem in the 1800 block or 2000 block of West Ocean Front, for example.

Changing RM zoning rules isn’t the right vehicle for addressing the issue of height and massing in the city. The effect of the proposed rule change amounts to downzoning or spot zoning specific properties in RM-zoned neighborhoods.

For owner-occupied properties that are not fully built out to current allowed dimensions, the proposed rule change can create personal upheaval, stress, and a rush to sell or submit plans for new structures. It could force a long-time resident to choose between quiet enjoyment of their home or selling that home before it loses value. A rush to submit plans could put pressure on planning staff and would achieve the opposite effect of what the rule change is supposed to accomplish.

The flexibility offered by RM zoning rules is historically a benefit of RM zoning in Newport, regardless of how many units are built on a lot, and that is fair and equitable. RM zoning was never restricted to those who would build three or more units on their lot. It just gave people the *option* to build more than one or two units if they wanted. In the 1800 block of West Ocean Front, as an example, for decades the neighborhood included duplexes, triplexes and single-family houses in a relatively busy setting including vacation rentals and other rentals. Not everyone would want to live in that setting, but the value of the flexible building options in the RM zone offset the downsides of living around multi-tenant properties in a busy area.

There’s been no net negative change in character of the RM neighborhoods where we live. Again using the 1800 block of West Ocean Front as an example, it has never been a “cottagey” block. From the early 1960s, most buildings in the neighborhood were boxy duplexes with the occasional triplex. The buildouts that have happened there in recent years have been, for the most part, an aesthetic improvement over what was there before. No “massing” problem has harmed the character of the block in a way that would justify taking financial value away from owners who have so far held off on building out to the maximum amount allowed.

We hope you will drop the proposed changes to the RM zoning rules at your September 10 study session, which is what we’ve been told City staff will recommend.

Chris Nielson

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From: Ron Yeo <ronyeoarchitect@gmail.com>
Sent: Sunday, September 08, 2019 8:05 AM
To: Dept - City Council
Cc: Jurjis, Seimone
Subject: Re: Item SS 5 – September 10, 2019

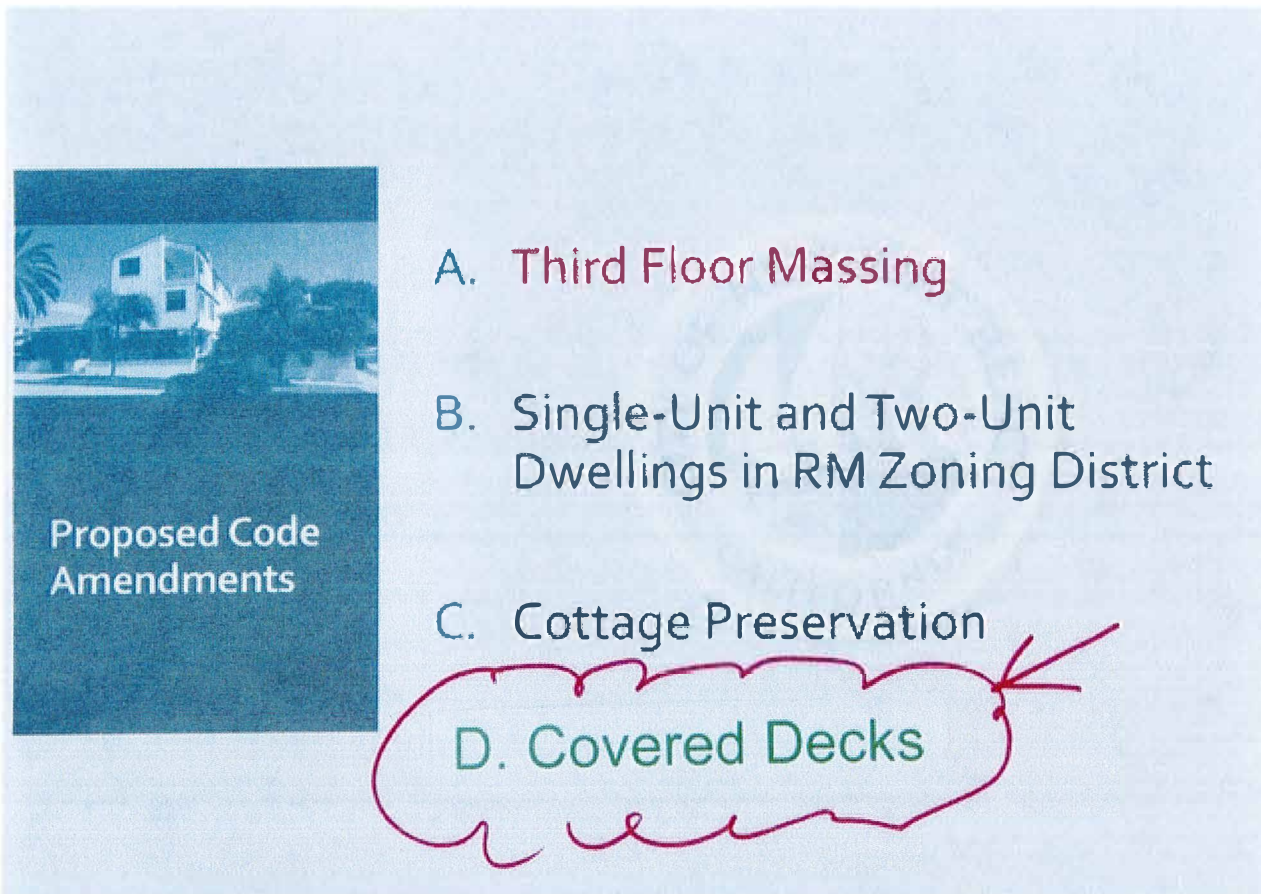
Honorable Mayor and members of the City Council.....

I was out of town and not able to attend the August 19th staff presentation of the "Residential Design Standards", but was impressed with the quality that I was able to review on the City's website. Staff should be congratulated for communicating complex issues in an easily understanding way.

The necessity for these potential code changes came about because the Planning Staff felt that the "revisions to the height limit" had "UNINTENDED CONSEQUENCES".

I believe the existing height limit is not in conformance with the General Plan where it results in projects that do not conform to "Maintaining the character of the neighborhood".

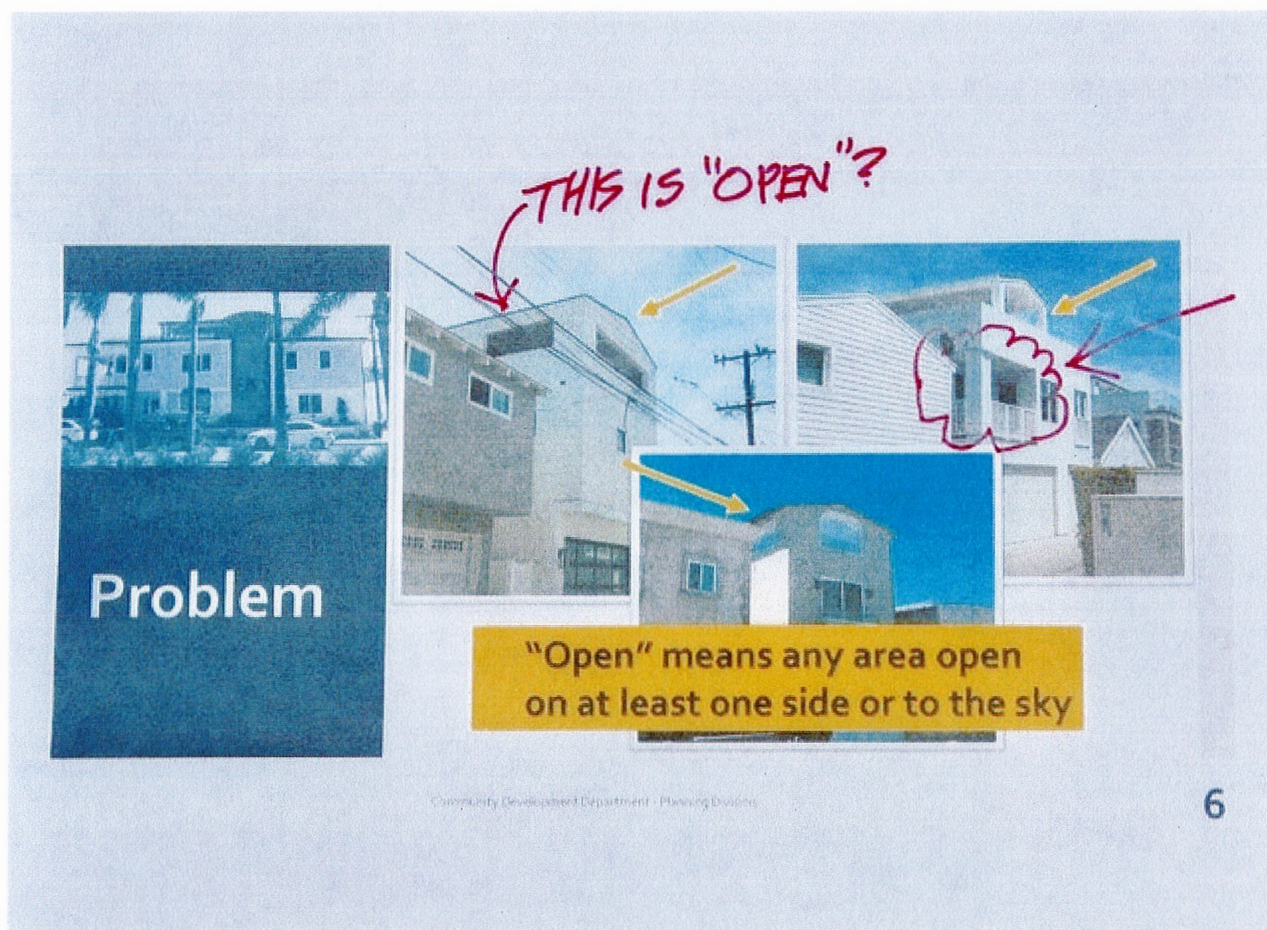
As comprehensive as the staff "presentation" is, it did not address fully the problem of "Covered Decks".



Proposed Code Amendments

- A. Third Floor Massing
- B. Single-Unit and Two-Unit Dwellings in RM Zoning District
- C. Cottage Preservation
- D. Covered Decks

In order to properly address reducing height and bulk of single-unit dwellings and duplexes you have to understand that one of the KEY elements of the problem is "COVERED DECKS". And not just on the 3rd floor.



Nor does staff recommend any changes to the definition of "OPEN" as referred to about decks.

I recommend that the Council direct staff to consider including that decks that are covered by over 20% to be included within the allowable square footage of the project.

I am also concerned that if the Governor signs SB 330, much of what we are trying to accomplish will be a waste of time and resources.

- i) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city as in effect January 1, 2018. Less intensive uses means reductions in height, density, floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements or maximum lot coverage limitations or anything that would lessen the intensity of housing.

Thank you

September 10, 2019, Council Item SS5 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 SS5. Code Amendment Update Related to Residential Design Standards (PA2019-070)

Regarding not allowing single-family homes constructed in RM zones to be built the same standards as RM structures – which seems the most controversial of these matters – I agree with the [letter](#) from architect James Carlson to the effect that the relaxed height standards are intended as an incentive to encourage and make possible multi-unit construction. Allowing the relaxed standards to be applied to a single-family home on the same lot defeats their purpose.

It should also be understood that the standards designed for RM construction are not so much “relaxed” as simply different from those for R-1 or R-2 construction. Throughout the City, they allow for slightly greater maximum height (33’ vs. 29’) and a greater allowance for required parking areas (200 sf per space), but outside of Corona del Mar and Balboa Island the allowed floor area (not counting the garage space) is actually *less* than in a single or two-family zone (a 1.75 Floor Area Limit compared to a very generous 2.00 for R-1 and R-2 –see NBMC [Sec. 20.18.03](#)).

Beyond this there is a housing *density* issue which the Council needs to come to grips with, especially in view of the state-declared “housing crisis.” Residential land use planning in Newport Beach has, from its beginning in 1936 (with [Ordinance No. 440](#)), employed a hierarchical structure with a succession of zones (R-1, R-2, etc.) in which each allows everything allowed in the “lower” zone plus more. But the failure to use lots to their full designated potential means the City cannot accommodate its planned growth, and allowing one lot to be developed below its designated limit creates pressure to find new sites elsewhere. As the City has become built out those new sites no longer exist. So the failure to “enforce” the zoning in one area will force the rezoning of some other, which is unfair to both.

This problem is especially acute and indefensible in the Coastal Zone, in which when developing a state-certified [Coastal Land Use Plan](#), the City agreed to not only zones, but a series of sub-zones with specific residential density ranges promised for each. Thus, instead of the single RS-D (“Single Unit Residential Detached”) of the [General Plan](#), the CLUP [Land Use and Development](#) chapter (and corresponding maps) designates properties as RSD-A (0.0 – 5.9 DU/AC), RSD-B (6.0 – 9.9 DU/AC), and so on. This is presumably intended to prevent reduction of density through lot mergers in the “B” and higher areas. Similarly, in the Coastal Zone we have not just “RM” but RM-A (0.0 – 5.9 DU/AC), RM-B (6.0 – 9.9 DU/AC), and so on.

The family property at 1824 West Ocean Front referred to in the long [email](#) from former Deputy City Attorney Catherine Martin Wolcott is a particularly flagrant example of failure to honor the CLUP vision for development in the Coastal Zone. The City has evidently promised the family a “right” to rebuild a single-family home spanning what was originally three lots with the highest density designation in the City, RM-E (30.0-39.9 DU/AC) (per [Figure 2.1.5-1](#); they are also labeled “36/ac” in General Plan [Fig. LU5](#)). A single dwelling on 0.26 acres, achieving a density

of 3.90 du/ac, may be a nice piece of private property for the Martin family to enjoy, but it utterly fails to implement the vision of the certified plan and in that failure excludes other families from their chance to live on the beach.

While the smaller lots on this block need 2 or 3 units each to maintain consistency with the CLUP, it might be noted that at her last meeting on August 29, the Zoning Administrator approved (as [Item 3](#)) a Coastal Development Permit for the *replacement* of the *existing* duplex at 1808 and 1808 ½ West Ocean Front with a single-family home built to the limits of the RM standards – throwing both that property and the block as a whole further out of compliance with the CLUP.

In view of both the housing crisis and compliance with certified plans, this is a disturbing trend.

I would also like to address the “takings” argument which the Council is likely to hear if any attempt to increase regulation of development in the RM zones is proposed.

“Takings” is a reference to the clause in the Bill of Rights at the end of the [Fifth Amendment](#) to the United States Constitution (“*nor shall private property be taken for public use without just compensation*”) and to the closely related [Article I, Sec. 19](#) of the California Constitution’s Declaration of Rights. It seems to be mentioned as a veiled threat that although the government *may* impose regulations that diminish the resale value of private property, it is *obligated* based on these provisions to pay the owners the difference in value, thereby creating a strong incentive *not* to regulate.

Even the late Supreme Court Justice Antonin Scalia, arguably the most pro-property-rights and anti-government-regulation justice in recent memory, acknowledged the original meaning of such provisions was limited to a *physical* taking of private property by the government for its use (such as appropriating land for a public facility). Despite that, he *did*, at one time (in *Lucas v. South Carolina Coastal Council*, [505 US 1003](#)), get a bare majority of the Supreme Court to agree that to the modern mind a compensable *regulatory* taking *could* occur. But the circumstances are extremely rare: among other things, the regulations must deprive the property of *all* economic value, effectively making the property completely unusable to its owner.

Here the possible proposed regulations not only serve eminently reasonable public purposes (including fulfilling the intent of the land use plans), but they most certainly *don’t* deprive any properties of *all* economic value. As a result, even though some owners may be disappointed in their expectation to build a 33-foot tall single-family home replete with unregulated third story decks, I do not believe the Council has to fear the City will be forced to pay compensation if it enacts revised land use regulations.

From: Denys Oberman <dho@obermanassociates.com>
Sent: Monday, September 09, 2019 2:49 PM
To: Dept - City Council; Brown, Leilani
Cc: Denys Oberman; Peggy Palmer; JWatt4@aol.com; Fred Levine; Laura Curran
Subject: Comment- for the Public Record-Proposed Amendments to Residential Development Standards

PLEASE ENTER MY COMMENTS INTO THE PUBLIC RECORD IN CONNECTION WITH THE CITY COUNCIL STUDY SESSION RE. PROPOSED AMENDMENTS TO RESIDENTIAL DEVELOPMENT STANDARDS.

Mayor and Council Members:

We appreciate that the City Council has initiated ,and City staff has prepared, certain amendments to the City's Residential Development Standards.

The amendments are focused on third floor massing, "beach cottage" preservation, and control of intensification of the current RM zone.

We appreciate the amendments, as they begin to address some of the slippage that has occurred with perpetual variances granted relative to residential building height and envelope, which has been to the detriment of the character and integrity of our residential neighborhoods. Control of excess height and mass is important to maintaining the core of the residential Zoning scheme.

Building envelopes, heights and densities on residential lots have been carefully crafted to preserve many elements of the high quality community inherent in Newport Beach's attractiveness and value : light, air, aesthetics, safety, soil/slope stability, and blending with views and surrounding natural environment.

Newport Beach, in its efforts to allow individuals to "maximize their property value", has become confused that this inherently means, No Limits. This type of thinking has caused a compounding, and damaging impact on surrounding properties, many of our most charming and already-valuable neighborhoods, and the unique natural environmental surroundings that exist in Newport Beach.

We encourage the City Council to uphold clear, responsible standards, and to actively discourage the egregious abuse of Variances that are inconsistent with the true intent of a legitimate variance, and detrimental to many neighbors/neighborhoods. A Classic example of Abuse of Variances without legitimate rationale is the Reed property and residence, scheduled for public hearing at Sept 10 City Council session.

In addition to consideration of the proposed code amendments, we also request that the Council specify that authorities and permissions under the LCP NOT include blanket approval of projects whose proposed designs violate the policies in the General Plan and the Municipal Codes. Projects in the Coastal Zone should be subject to the same review and approval where they propose variations/deviations that any other project would be subject to.

We assume that additional review of Residential Development Standards, and active efforts to control their erosion and variance abuse, will also include Setbacks around residential properties. These are critical for the same reasons as stated in my comments,above.

Please also enter this comment into the Public Record in connection with the Appeal of the Reed Residential Variance for 1113 Kings Road, scheduled for Council Session of Sept . 10.

Thank you for your consideration.

Denys H. Oberman
Resident and Community stakeholder

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(NOTE- please disregard the printed signature and confidentiality notice, below, as these do not relate to our comments. Thank you.)

Regards,
Denys H. Oberman, CEO



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