

**NEWPORT BEACH PLANNING COMMISSION MINUTES  
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE  
THURSDAY, FEBRUARY 20, 2020  
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** – Commissioner Ellmore

**III. ROLL CALL**

PRESENT: Chair Peter Koetting, Vice Chair Erik Weigand, Secretary Lee Lowrey, Commissioner Curtis Ellmore, Commissioner Sarah Klaustermeier, Commissioner Mark Rosene

ABSENT: Commissioner Lauren Kleiman (excused)

Staff Present: Deputy Community Development Director Jim Campbell, Assistant City Attorney Yolanda Summerhill, Principal Planner Jaime Murillo, Senior Planner Benjamin Zdeba, Assistant Planner Joselyn Perez, Planning Consultant David Blumenthal, Administrative Support Specialist Clarivel Rodriguez, Administrative Support Technician Amanda Lee

Deputy Community Development Director Campbell reported the item regarding residential design standards should have been removed from the calendar at the January meeting. A community meeting about potential code amendments related to residential design standards will be held on March 9, 2020, at 6:00 p.m. in the Civic Center Community Room.

**IV. PUBLIC COMMENTS**

None

**V. REQUEST FOR CONTINUANCES**

None

**VI. CONSENT ITEMS**

**ITEM NO. 1 MINUTES OF JANUARY 23, 2020**

**Recommended Action:** Approve and file

**Motion** made by Vice Chair Weigand and seconded by Commissioner Klaustermeier to approve the minutes of the January 23, 2020 meeting as presented.

AYES: Koetting, Weigand, Lowrey, Ellmore, Klaustermeier, Rosene

NOES:

ABSTAIN:

ABSENT: Kleiman

**VII. PUBLIC HEARING ITEMS**

**ITEM NO. 2 AMENDMENT TO SETBACK MAP NO. S-1A (PA2019-216)**

**Site Location: 6501 and 6503 Seashore Drive**

**Summary:**

Amendments to Title 20 (Zoning Code) and Title 21 (Local Coastal Program Implementation Plan) revising Setback Map No. S-1A to adjust the required setbacks for property located at 6501 and 6503 Seashore Drive. In conjunction with the amendments, the request includes revocation of Variance No. VA0012 and Modification Permit No. MD2343, which previously authorized setback encroachments on the site for the existing dwelling.

**Recommended Action:**

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment;
3. Adopt Resolution No. PC2020-002 recommending the City Council approve Code Amendment No. CA2019-008;
4. Adopt Resolution No. PC2020-003 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2019-007 to the California Coastal Commission; and
5. Adopt Resolution No. PC2020-004 recommending the City Council revoke Variance No. VA0012 and Modification No. MD2343.

Planning Consultant David Blumenthal reported the intent of the amendment is to make the property consistent with surrounding properties. The duplex, built in 1951, is located at the corner of Walnut Street and Seashore Drive. The property is zoned R-2. Under the 1950 Zoning Code, the City in 1951 granted a variance to deviate from the westerly side setback conditioned upon the applicant providing a 10-foot setback along the alley. In 1978, a modification to allow an encroachment of a second-story addition to the property was approved. The modification allowed the second story a zero setback from Seashore Drive and a 5-foot setback from the alley. In 2010, the Districting Map was replaced with Setback Map S-1A. The applicant proposes to amend Setback Map S-1A in Titles 20 and 21 such that the property's setbacks match other properties in the area.

In response to Chair Koetting's inquiries, Planning Consultant Blumenthal explained that the applicant intends to sell the property. The change will provide slightly more buildable area on the property; however, the City has not been notified of any type of proposed addition or remodel of the existing duplex. Deputy Community Development Director Campbell indicated the Modifications Committee was composed of staff members from the Planning Department, Public Works Department, and Building Division who reviewed modification permits.

Commissioners Rosene, Klaustermeier, Ellmore, and Lowrey disclosed no ex parte communications. Chair Koetting disclosed a site visit. Vice Chair Weigand disclosed a meeting with the applicant's consultant to discuss the merits of the project.

Chair Koetting opened the public hearing.

Devin Lucas, applicant's representative and legal counsel, advised that the Feldman family purchased the property in 1974. With Mr. and Mrs. Feldman's deaths, the trust calls for the sale of the property. In preparing the property for sale, the variance was discovered. The applicant requests the variance be rescinded.

In response to Commissioners' queries, Mr. Lucas indicated the wall within the alley setback would have to be removed in any proposal to redevelop the property. Access to the ocean is located via a public sidewalk adjacent to the property.

Chair Koetting closed the public hearing.

In answer to Chair Koetting's question, Deputy Community Development Director Campbell related that the Coastal Commission may handle the proposed amendment as a de minimis amendment, a minor amendment, or a major amendment.

**Motion** made by Vice Chair Weigand and seconded by Commissioner Rosene to adopt Resolution No. PC2020-002 recommending the City Council approve Code Amendment No. CA2019-008; adopt Resolution No. PC2020-003 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2019-007 to the California Coastal Commission; and adopt Resolution No. PC2020-004 recommending the City Council revoke Variance No. VA0012 and Modification No. MD2343.

AYES: Koetting, Weigand, Lowrey, Ellmore, Klaustermeier, Rosene  
NOES:  
ABSTAIN:  
ABSENT: Kleiman

**ITEM NO. 3      BONAKDAR INSTITUTE (PA2019-171)**  
**Site Location: 20321 Irvine Avenue, Unit F3**

**Summary:**

A conditional use permit to operate a 3,314-square-foot medical office that provides nonsurgical aesthetic treatments focusing on facial and body contouring.

**Recommended Action:**

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment;
3. Adopt Resolution No. PC2020-005 approving Conditional Use Permit No. UP2019-045; and
4. Direct the Community Development Director to prepare a Determination that medical office uses and similar uses are consistent with the purpose and intent of the SP-7/PA district and are, therefore, allowable.

Assistant Planner Joselyn Perez reported the project is located on Irvine Avenue, across the street from the Newport Beach Golf Course, and is abutted by residential uses. The site is zoned Santa Ana Heights Specific Plan - Professional and Administrative Office (SP-7/PA). The zoning district permits no uses by right; rather, the Zoning Code contains a list of allowable uses that are subject to the approval of a minor use permit. Professional and administrative office is a part of the list, but medical office is not; however any use which the Planning Commission finds consistent with the purpose and intent of this district is permitted subject to the Planning Commission's approval of a use permit. The Planning Commission approved similar applications in 2017 and 2019. The applicant proposes to operate a 3,314-square-foot medical office between the hours of 9 a.m. and 5 p.m. Monday through Friday with two employees and adequate parking. The office complex is required to provide 301 parking spaces, which it provides. The main floor accommodates a reception area and four treatment rooms, and the upper level accommodates administrative space only. The project is conditioned to permit only administrative space on the upper level because there is no accessible elevator. Staff believes the use is consistent with the Zoning Code and compatible with surrounding uses; the site is adequate for the use; and approving the use will not be detrimental to the area. A Determination by the Community Development Director will allow the Zoning Administrator to hear future applications for medical office uses.

In reply to Chair Koetting's inquiries, Deputy Community Development Director Campbell advised that during site visits, staff did not observe any issues with parking. Staff provided notice of the application to property owners in the area. With Planning Commission approval, the Director's Determination would find that a medical office is consistent with the purpose and intent of the district. A hearing before the Zoning Administrator rather than the Planning Commission saves the applicant time and money. Should future changes in uses cause a shortfall in parking, the issue would be presented to the Planning Commission for review.

In answer to Vice Chair Weigand's question, Deputy Community Development Director Campbell indicated a definition of uses will be included in the Determination, which will be provided to Commissioners. Staff is currently planning to define uses as small-scale facilities such as a chiropractic office, outpatient surgery center, and cosmetic treatment facility. Vice Chair Weigand preferred the Planning Commission review applications for facilities that involve large numbers of patients that might disrupt surrounding businesses. Assistant City Attorney Yolanda Summerhill added that staff will ensure the definition is consistent with state and federal law and addresses his concerns.

Secretary Lowrey disclosed a conversation with the applicant. Vice Chair Weigand, Chair Koetting, and Commissioners Ellmore, Klaustermeier, and Rosene disclosed no ex parte communications.

Chair Koetting opened the public hearing.

Phil Greer, applicant's attorney, explained that a medical facility with a large number of patients is not feasible in the office complex because of Code restrictions. The proposal is a low-key medical facility that provides outpatient services.

In reply to Chair Koetting's query, Mr. Greer advised that the number of patients per day will be five to seven.

Jim Mosher noted the Planning Commission can call for review an application heard by the Zoning Administrator. Perhaps the Planning Commission should determine whether a zoning district within the Santa Ana Heights Specific Plan allows medical uses. A future owner of the facility could operate it at a much higher volume of patients because the use permit runs with the land.

Chair Koetting closed the public hearing.

In response to Vice Chair Weigand's inquiry, Deputy Community Development Director Campbell indicated the Director's Determination would apply to the subject office complex only, which is designated Professional and Administrative Office (PA) within the Santa Ana Heights Specific Plan. The Business Park designation (BP) within the Santa Ana Heights Specific Plan is already appropriate for medical office uses.

Chair Koetting remarked that parking requirements for medical office uses are too low, and staff should review the standards.

**Motion** made by Commissioner Klaustermeier and seconded by Secretary Lowrey to adopt Resolution No. PC2020-005 approving Conditional Use Permit No. UP2019-045; and direct the Community Development Director to prepare a Determination that medical office uses and similar uses are consistent with the purpose and intent of the SP-7/PA district and are, therefore, allowable.

AYES: Koetting, Weigand, Lowrey, Ellmore, Klaustermeier, Rosene

NOES:

ABSTAIN:

ABSENT: Kleiman

**ITEM NO. 4 ACCESSORY DWELLING UNIT ORDINANCE (PA2019-248)**  
**Site Location: Citywide**

**Summary:**

Amendments to Title 20 (Zoning Code) and Title 21 (Local Coastal Program Implementation Plan) updating regulations pertaining to Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU) to conform with revisions to Government Code Sections 65852.2 and 65852.22 that went into effect on January 1, 2020.

**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. PC2020-006 recommending the City Council approve Zoning Code Amendment No. CA2019-009 modifying regulations pertaining to accessory dwelling units; and
4. Adopt Resolution No. PC2020-007 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2019-008 to the California Coastal Commission.

Planning Consultant Blumenthal reported as of January 1, 2020, the City's existing accessory dwelling unit (ADU) Ordinances were voided by new state laws; therefore, the State's minimum default standards apply until the City adopts an ordinance compliant with state laws. In explaining the difference between ADUs and junior accessory dwelling units (JADU), he noted ADUs are allowed in all residential and mixed-use zones. The maximum size for an ADU is 850 square feet for a one-bedroom unit and 1,000 square feet for a two-bedroom unit. Existing space within a residence can be converted to an ADU or an ADU can be new construction. The State has waived all owner occupancy requirements until January 1, 2025. An ADU may be rented separately from the main dwelling, but it cannot be sold separately from the main dwelling. An ADU is considered a separate unit for application of the Building Code. JADUs are single-family units with a maximum size of 500

square feet. Only existing space may be converted to a JADU. The property owner must live in either the main dwelling or the JADU. A JADU cannot be sold separately from the main dwelling. A JADU may share a bathroom with the main dwelling. A JADU is not considered a separate unit for application of the Building Code. In single-family residential zones, a property may contain an ADU and a JADU. In multifamily residential zones, up to 25 percent of the existing unit count may be ADUs. The requirement for a minimum lot size has been eliminated. The California Department of Housing and Community Development (HCD) has informed staff that no maximum size applies to the conversion of existing space to an ADU or JADU. The height of an attached ADU defaults to the base zone requirements, but the height of a detached ADU is capped at 16 feet. Setbacks for an ADU default to the base zone except 4-foot side and rear setbacks are required if the ADU is detached.

Planning Consultant Blumenthal continued that no replacement parking is required for the conversion of a garage to an ADU or JADU except in the Coastal Zone. Coastal Commission staff has expressed concern that garage conversions will remove necessary parking for coastal access. New state laws indicate that the Coastal Act continues to apply to ADUs and JADUs. One parking space per ADU is required, but the requirement is waived if the property is located within one-half mile walking distance of a transit stop; within one block of a designated carshare pickup/drop-off location; within an architecturally and historically significant historic district; within a permit parking area where on-street parking permits are not offered to ADU occupants; or if existing space entirely within the primary dwelling or an existing accessory structure is converted to an ADU. Public comment noted Table 2.9 of Section 20.22.200 was not included in draft changes. Staff will revise the resolutions to correct scrivener's errors and include changes to Table 2.9.

In response to Chair Koetting's questions, Planning Consultant Blumenthal advised that staff hopes to present the item to the Council in March. The State has not imposed deadlines for revision of ADU Ordinances. An ADU is not allowed in a strictly commercial zone. A standalone ADU cannot be constructed on a vacant lot. State law provides a grace period for the permitting of previously unpermitted conversions. After the grace period, Code Enforcement can take action against unpermitted ADUs. Unpermitted ADUs cannot be counted as housing units until they have been permitted. Deputy Community Development Director Campbell added that staff wishes to act expeditiously. The concern is the parking requirement in the Coastal Zone.

In reply to Vice Chair Weigand's queries, Deputy Community Development Director Campbell indicated staff has not explored incentives for ADU/JADU applicants to provide off-street parking, but they can do that. Planning Consultant Blumenthal related that the City does not have any carshare pickup/drop-off locations or historic districts. In parking permit areas on Newport Island, around Corona del Mar High School, and near Newport Harbor High School, parking for ADUs will be waived if parking permits are not provided to ADU occupants.

In answer to Commissioner Ellmore's inquiry, Planning Consultant Blumenthal reported homeowners' associations (HOA) for single-family zones cannot prohibit ADUs, but can provide reasonable regulations such as architectural standards.

In response to Commissioner Rosene's questions, Deputy Community Development Director Campbell was not aware of any potential deficiencies in water and sewer infrastructure that could be affected by an increase in the number of ADUs. If needed, infrastructure will have to be modified in the future. Principal Planner Jaime Murillo explained that ADUs count toward the City's Regional Housing Needs Assessment (RHNA) requirements; however, HCD will release a memorandum that explains how ADUs will count towards the site inventory requirements of a Housing Element. The City has requested Senator Moorlach and Assembly Member Petrie-Norris amend state law to provide objective standards for the utilization of ADUs and is awaiting replies from them.

In reply to Chair Koetting's queries, Principal Planner Murillo advised that an ADU application is subject to plan check by multiple City departments. Following issuance of a building permit, ADU construction is subject to inspections. State law imposes time limits for cities to issue standard permits.

Chair Koetting opened the public hearing.

David Tanner understood the amendment pertains to the implementation component of the Local Coastal Program (LCP). The practical effect of the amendment to the LCP will allow more than a doubling of the population within the Coastal Zone, which will have significant adverse environmental effects. He recommended the Planning Commission defer the item to the City Council so that the City Council can address the many issues.

Jim Mosher remarked that the City Council and the public would appreciate knowing the difference between the Planning Commission's recommendation to the City Council and the default minimum standards imposed by state law. The findings can state the City does not accept the authority of the state to impose standards on behalf of the City. He questioned whether staff considered areas where ADUs would impact water and sewer infrastructure.

Chair Koetting closed the public hearing.

In reply to Chair Koetting's questions, Assistant City Attorney Summerhill advised that the City Council directed staff to prepare revisions. The State continues to encroach on the City's rights, which the City will have to accept and evaluate. A recent decision in San Jose found that Charter Cities are subject to state law requirements. Deputy Community Development Director Campbell related that HCD will review the standards adopted by the Council. Staff believes the amendments are consistent with state laws. The proposal to prohibit conversions in the Coastal Zone could be viewed differently by HCD and the Coastal Commission. Which state department will prevail is unknown. Staff is processing ADU applications under the state standards, which are more permissive than the proposed standards.

In response to Vice Chair Weigand's inquiries, Deputy Community Development Director Campbell indicated staff proposed a prohibition on conversions in the Coastal Zone because of impacts to coastal access. A study of infrastructure deficiencies would have to include assumptions about numbers of ADUs and population growth. An assumed doubling of the population within the Coastal Zone is high based on the number of ADU applications actually submitted. Sixteen applications for ADU permits have been submitted, and 11 of those are under construction. The General Plan includes infrastructure capacity for many thousands of unbuilt housing units. Staff can discuss a legal challenge to the requirements with the City Council. The Planning Commission can recommend the Council direct staff to evaluate different aspects of the amendments prior to the Council adopting an ordinance. Planning Consultant Blumenthal added that staff reviewed new ordinances in Irvine, Huntington Beach, and Westminster. The proposed amendments are the most conservative in his experience working with other coastal cities.

Commissioner Rosene commented that he has attended seminars about the effects of the state laws. Staff has prepared good amendments to protect the City.

Commissioner Klaustermeier remarked that the need for standards less permissive than the State's minimum standards supports the argument to recommend the proposed amendments to the City Council.

In answer to Commissioner Ellmore's query, Deputy Community Development Director Campbell explained that the General Plan Update Steering Committee has been sunsetted. Staff recommended the Council focus on housing, the Land Use Element, the Circulation Element, and environmental justice policies because of the deadline to complete the Housing Element. The Housing Action Plan supports pushing back on state requirements while working to comply with requirements.

**Motion** made by Vice Chair Weigand and seconded by Commissioner Rosene to adopt Resolution No. PC2020-006 recommending the City Council review Zoning Code Amendment No. CA2019-009 modifying regulations pertaining to accessory dwelling units; and adopt Resolution No. PC2020-007 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2019-008 to the California Coastal Commission.

Assistant City Attorney Summerhill indicated the resolution can be revised to recommend the City Council review the amendment. Deputy Community Development Director Campbell added that a recommendation to review the amendment is within the Planning Commission's purview.

AYES: Koetting, Weigand, Ellmore, Klaustermeier, Rosene  
NOES: Lowrey  
ABSTAIN:  
ABSENT: Kleiman

**VIII. STAFF AND COMMISSIONER ITEMS**

**ITEM NO. 5 MOTION FOR RECONSIDERATION**

None

**ITEM NO. 6 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA.**

Deputy Community Development Director Campbell reported the Council adopted the Cottage Preservation Ordinance and the Lido Isle hedge height amendment. The Council discussed and directed staff to prepare greater protections for short-term rentals. The Planning Commission's March 5 agenda includes a conditional use permit for expansion of Newport Animal Hospital and the annual General Plan progress report.

In reply to Secretary Lowrey's inquiry, Deputy Community Development Director Campbell indicated the City Council will appoint members to the new Housing Element Committee on February 25.

In response to Chair Koetting's question, Deputy Community Development Director Campbell related that staff and the Council are discussing amending the Planning Commission's responsibilities to include review of large-scale traffic issues. Staff has not drafted a policy for Council review and adoption.

**ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES**

None

**IX. ADJOURNMENT – 8:02 p.m.**

**The agenda for the February 20, 2020, Planning Commission meeting was posted on Friday, February 14, 2020, at 11:30 a.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, February 14, 2020, at 12:05 p.m.**

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Peter Koetting, Chairman

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Lee Lowrey, Secretary