

From: [Yonkers, Ken J - NEWPORT BE CA](#)
To: [Planning Commissioners](#)
Subject: Residential Design Standards Code Amendments (PA2019-070)
Date: Wednesday, September 16, 2020 8:09:50 AM

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Dear Planning Commission:

We have emailed you previously but as this is on your agenda for tomorrow, we wanted to revisit this important issue.

The Little Balboa Island Property Owners' Association recently solicited opinions and took a poll of our constituents through Constant Contact on the proposed setback requirements. We did not attempt to steer their vote or decision and provided the City's link for further information.

Eighty-one percent (81%) of the respondents were in favor of the proposed setback requirements.

Of the various associations on Balboa island, please note that we are also the only association that is a Property Owners Association.

We also wanted to make you aware that the Little Balboa Island Property Owners' Association Board unanimously voted in favor of the proposed setback requirements and that is our official position.

If this does not work for all of Newport, the residents of Balboa Island seem overwhelmingly in favor and request this be put in place at least for Balboa Island properties.

If you would like any additional information or feedback, please let us know.

Thank you for your work on this.

Best regards,
Ken

Ken Yonkers, President

[Little Balboa Island Property Owners' Association](#)
[P.O. Box 74](#)
[Balboa Island, CA 92662](#)
[949-683-7805](#)

The Little Balboa Island Property Owners' Association is dedicated to maintaining a safe, enjoyable, and harmonious neighborhood while increasing the value of its members' properties.

Please visit our website: littlebalboaisland.org

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From: [Sanjeet Nijjar](#)
To: [Planning Commissioners](#)
Subject: Third Story Massing Amendment Support
Date: Wednesday, September 16, 2020 11:39:02 AM

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Dear Newport Beach Planning commissioners,

As a Peninsula Point Neighbor, we urge you to approve the amendments to the third story guidelines. This will help to mitigate the effects felt in our neighborhood due to third story massing.

Thank you for your help with this.

-Sanjeet S. Nijjar
2046 Seville Ave
Newport Beach CA 92661.

I Also am the owner of these Peninsula Point Properties.

1717 Miramar Dr
2150 Miramar Dr
417 Seville
1515 E Balboa
1418/1416 E Balboa
1714 Plaza Del Norte
1747 Plaza Del Sur

Sent from my iPhone 11 Pro Max

From: [John Bibb](#)
To: [Planning Commissioners](#)
Subject: Third story residential structures
Date: Wednesday, September 16, 2020 11:51:32 AM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

As a Peninsula Point Neighbor, we urge you to approve the amendments to the third story guidelines. This will help to mitigate the effects felt in our neighborhood due to third story massing.

Thank you

John Bibb

421 M Street

Sent from my iPhone

Sept 16,, 2020

City of Newport Planning Commission

Re:PA 2019-070- 3rd story amendments

Planning Commissioners,

I am relieved to see the City take the first step in attempting to mitigate the negative effects of the current third story guidelines. I have worked as a design professional on many projects over the last 40 years in Newport Beach. I also have owned a home in town for the last 30 years. At the urging of many of my neighbors and clients that reside on Peninsula Point, I have been actively attending the community workshops that the Planning department was sponsoring to evaluate the current massing problems we are experiencing.

The proliferation of the third story mass has adversely affected the character and value of many properties including my own. It has taken away natural wind patterns thus necessitating the need for more Air conditioning in the Summer. It has blocked much needed sunlight which has increased the need for more heat in the Winter. And, most importantly, it has virtually eliminated the character that brought most residents to our neighborhoods in the first place. Furthermore, I have personally been hired to design mitigation additions to bring back privacy lost from neighbors' third story structures looming over a given property. This domino effect is clearly counter productive towards maintaining an overall scale in our neighborhoods.

As a designer, I am all too familiar with the nuanced wording of the third story guidelines. The third story rule was intended to reduce some of the mass by requiring it to be 15' from the front and rear setbacks. However, the error was that it did not specify covered patios. Clearly, this was an oversight because the advent of these roofs over patios did nothing to reduce mass and help to maintain neighbors' natural light and wind patterns. Moreover, many of these approved covered roofs were then closed in and illegally converted into living space. This is why I have argued about the absurdity of the third story guidelines for years.

The real issue isn't actually square footage, it is massing. My argument from day one was to create a massing envelope for each property thus ensuring that each neighbor can retain some meaningful amount of sunlight and air circulation. During the workshops and behind closed doors I argued and lobbied for this effectively hoping for a maximum perimeter height of 22' with all four sides increasing at a 45 degree angle until the maximum height of 29' was reached. No square footage limitation within that envelope. Simple! Easy to administer and a huge boost to preserving light, wind, and character. Sadly that is not what is being proposed. Regardless, what the Planning Staff is proposing is a compromise solution based on many public meetings based on lots of input.

The proposal to eliminate covered patios within the first 15' of the rear and front setbacks along with counting all covered areas as square footage will provide meaningful relief to our

neighborhoods. We are not proposing a reduction in allowable square footage on a lot. That hasn't changed. Therefore we haven't reduced the value of such properties. Rather, we are inching towards preserving the value of the existing properties.

Myself along with many of my neighbors strongly urge you to approve this amendment as an initial step towards preserving our neighborhoods..

Sincerely

Mark Becker
Mark Becker Incorporated
410 Belvue Lane,
Newport Beach, CA
92661
mbecker@markbecker.com
510-589-5547

From: [Kathie Malcomb](#)
To: [Planning Commissioners](#)
Subject: Third story amendment
Date: Wednesday, September 16, 2020 12:18:46 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

As peninsula point neighbors, we urge you to approve the amendment to the 3rd story guidelines. This will help to mitigate the effects felt in our neighborhood due to 3rd story massing.

Kathie and Bill Malcomb

From: [Mark Zablan](#)
To: [Planning Commissioners](#)
Subject: Approve Amendment to 3rd Story Massing
Date: Wednesday, September 16, 2020 12:25:09 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Planning Commission,

As a Peninsula Point Neighbor, we urge you to approve the amendments to the third story guidelines. This will help to mitigate the effects felt in our neighborhood due to third story massing.

I have lived on the peninsula for a while, in 3 different homes and most recently I built my current residence near The Wedge. Extending roof structures over roof decks up to the front and rear setbacks will be quite imposing and an unintended consequence of the original code, not to mention a blemish in our beautiful and unique community.

Thank you,

Mark Zablan
Channel Rd

From: [Rick Taylor](#)
To: [Planning Commissioners](#)
Subject: Third Story Amendments
Date: Wednesday, September 16, 2020 12:30:15 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

To whom it may concern:

As a 20 year resident of Peninsula Point I urge you to approve the amendments to the third story guidelines. It is a small but important measure to help limit third story massing that is changing the landscape of the Peninsula.

Thank you,

Rick Taylor
2130 E. Balboa Blvd
Newport Beach, Ca. 92661
949.402.3577

From: [Roberta Schmidt](#)
To: [Planning Commissioners](#)
Date: Wednesday, September 16, 2020 12:35:08 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

As a long time resident of the Balboa Peninsula Point I am urging the Planning Commission to approve the limitation of building/massing upon the 3rd stories of homes. To keep the historical integrity of the Peninsula the amendment limiting the expansion/massing of the third story would really be to the benefit of all residents in the area.

Your truly,

Roberta Schmidt
1805 E. Balboa Blvd.

From: [A. A.](#)
To: [Planning Commissioners](#)
Subject: Third Story Massing
Date: Wednesday, September 16, 2020 12:49:00 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

hello,

I wanted to send a quick note, As a Peninsula Point Neighbor, we urge you to approve the amendments to the third story guidelines. This will help to mitigate the effects felt in our neighborhood due to third story massing. Thank you for your time..

best,

Adrienne Armstrong

From: [Sarah Donovan](#)
To: [Planning Commissioners](#)
Subject: Limit building please
Date: Wednesday, September 16, 2020 1:08:59 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello!

"As a Peninsula Point Neighbor, we urge you to approve the amendments to the third story guidelines. This will help to mitigate the effects felt in our neighborhood due to third story massing."

And if you could limit the McMansions that would be great too. Lots and lots of large empty homes.

Sincerely,
Sarah Donovan

From: [Cathy Kinney](#)
To: [Planning Commissioners](#)
Subject: Approve the amendment to 3rd story guidelines
Date: Wednesday, September 16, 2020 1:21:47 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good afternoon,

As a longtime resident of Peninsula Point I urge you to approve the amendments to the third story guidelines. As each cute little beach house is torn down another huge lot line to lot line home is built, creating more and more mass in our small neighborhood. Amending the policy to keep the third story structures in the middle of the home would help to mitigate this massing and maintain the charm of our neighborhood.

Thank you for your consideration,

Cathy Kinney
Belvue Lane

From: [adrienne.matros](#)
To: [Planning Commissioners](#)
Subject: Third Story Guidelines Peninsula Point
Date: Wednesday, September 16, 2020 1:25:40 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Planning Commission,

As long time residents of the Peninsula Point, we and our neighbors urge you to approve the amendments to the third story guidelines. This will help to mitigate the effects felt in our neighborhood due to third story massing.

Sincerely,

Rick and Adrienne Matros

From: [Tim Collins](#)
To: [Planning Commissioners](#)
Subject: Planning amendment- 3rd story roof decks
Date: Wednesday, September 16, 2020 1:45:35 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Commissioners, I support your proposed action tonight.
Such an ordinance will reduce the adverse impacts on our Peninsula Point neighborhood due due excessive massing.
Thank you for your commitment to this needed change.

Sent from my iPhone

From: [Chris Budnik](#)
To: [Planning Commissioners](#)
Subject: Fw: New Residential Design Standards proposed for your property (PA2019-070)
Date: Wednesday, September 16, 2020 3:39:40 PM
Attachments: [Newport Heights Analysis RDS changes.pdf](#)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Planning Commission,

As you can see below, I worked with Jaime Murillo to assess the impact of the proposed changes on several sample properties in the Newport Heights/Cliff Haven area.

City staff has previously indicated that no significant impact is expected for larger lots yet the attached analysis shows a definite impact. While I can understand the need for the proposed changes in dense areas with small lots, I do not see benefit for larger lots. To the contrary, the analysis shows these changes negatively affect existing designs in Newport Heights/Cliff Haven yet fail to address the use of industrial/commercial designs for residential structures.

Very few property owners are aware of these proposed changes and city staff admittedly has not done a comprehensive analysis of the impacts to larger lots. Unfortunately Covid 19 makes it impossible to educate folks in person or circulate a petition requesting changes to this proposal.

For these reasons, I request these proposed changes be applicable only to lots less than 45 feet wide. Given the large number of R1 standards the city already has in place for different Associations, it should not be difficult to manage one more standard in order to avoid imposing these changes on large lots.

Sincerely,
Christopher Budnik

----- Forwarded Message -----

From: Chris Budnik <clbudnik2003@yahoo.com>
To: carol@thedrufamily.com <carol@thedrufamily.com>
Sent: Wednesday, September 16, 2020, 11:53:22 AM PDT
Subject: Fw: New Residential Design Standards proposed for your property

Hello Carol,

Below is the email I sent to Newport Heights Association members with the powerpoint presentation I helped create with city staff. I am sorry to hear the folks in Cliff Haven may be completely unaware of the proposal. All of this is being done without formal notification to property owners. Please forward this information to your members. The proposal is supposed to be on the agenda for the Planning Commission meeting tomorrow, 9/17.

If it were not for Covid19, I would circulate a petition to make sure the proposed changes do not apply to our properties. We may have design problems to solve in our area but the proposed changes do not address them. For lack of a petition, the only tools we have are emails to city council.

Thanks for your help with this!

Best Regards,
Chris
Vice President
Newport Heights Association Board

----- Forwarded Message -----

From: Chris Budnik <clbudnik2003@yahoo.com>
To: chris budnik <clbudnik2003@yahoo.com>
Sent: Monday, August 10, 2020, 12:13:05 PM PDT
Subject: Fw: New Residential Design Standards proposed for your property

----- Forwarded Message -----

From: Chris Budnik <clbudnik2003@yahoo.com>
Sent: Monday, August 3, 2020, 09:23:10 PM PDT
Subject: New Residential Design Standards proposed for your property

Fellow Members,

Your ownership rights to develop your property may be changing.

Attached is an analysis of proposed changes to R1 and R2 Residential Design Standards. The purpose was to estimate how proposed changes would affect our neighborhood. I suggested five sample properties and Jaime Murillo (City Planner) did a fantastic job in reviewing each change against all five designs.

My thoughts:

The house at 510 Kings Road would be impacted and could no longer be built under the proposed changes. I personally like the design. I find it attractive and artistic. I would prefer to encourage more houses like it versus prohibit them.

We don't have a problem in our area with 3 story designs on skinny lots so I recommend we change the Proposal and have the changes only apply to lots which are less than 45 feet wide. This exempts our area yet allows the proposal to be enacted for the benefit of other neighborhoods.

I know other Board members have different thoughts on this subject but the opinions of all homeowners should be taken into account. Please take a few minutes to review the attachment and share your thoughts and ideas.

The state of CA has confirmed the Proposal is compliant with recent legislation (SB330) so it should show up on city meeting agendas within the next two months.

Sincerely,

Chris

Proposed Changes to Residential Design Standards Potential Impacts to Newport Heights (PA2019-070)

Prepared for the Newport Heights Improvement Association

Jaime Murillo – Principal Planner

Jmurillo@newportbeachca.gov; (949) 644-3209

July 31, 2020

Project Webpage:

www.newportbeachca.gov/residentialdesignstandards

Background

- A comprehensive Zoning Code update in 2010 included changes to building height measurement standards and definition of gross floor area that have inadvertently resulted in proliferation of covered third level decks and bulkier residential building designs. Despite measuring the same in terms of enclosed gross floor area, newer development appears larger and at times out of scale with the pre-2010 development.
- As a result of community concerns related to the bulk and mass associated with new single- and two-unit dwelling developments in the City, the City Council held a study session on April 23, 2019, and directed staff to prepare amendments regulating these concerns.
- Third story designs are commonly utilized in older communities with smaller lots, such as Corona del Mar, Balboa Island, West Newport, and the Balboa Peninsula, to maximize the development potential of these small lots.
- Given the larger lot sizes in Newport Heights, third level designs are less common and the proposed changes are not expected to have a significant impact on the design of typical new development in the area.
- This analysis is not comprehensive, but intended to provide an illustrative example of how recent development in Newport Heights would have been affected by these proposed amendments. The analysis includes 5 properties in the area suggested by Chris Budnik, a NHIA Board Member.

Proposed Code Revisions That May Impact Newport Heights Development

Planning Commission - September 17, 2020
Item No. 3b Additional Materials Received
Residential Design Standards Code and LCP Amendments (PA2019-070)

Revisions to Third Floor Standards

- Third floor step backs* would apply to covered deck areas (currently applies only to enclosed floor area).
- Third floor side step backs would apply to lots 30 feet wide or greater (currently applies to lots wider than 30 feet).
- Maximum covered third floor area (enclosed or unenclosed) limited to 50 percent of buildable area. Uncovered deck area would remain unrestricted.

Clarification of Gross Floor Area

- *Unfinished* attics with a ceiling height of 6 feet or higher would count as floor area (currently only finished attics count).
- Covered patios, decks, and balconies above the first floor would count as floor area unless completely open on at least two sides, rather than one side.
- Carports only open on one side would count as floor area.

**A step back is an additional offset of a wall of building feature beyond the minimum setback line.*



Typical Newport Heights Lot

401 Fullerton Ave

50' x 127.5'
6375sf

Standard	Current Code	Proposed Code (new req's in red)	401 Fullerton Ave (Actual Construction)
Setbacks			
Front	20'	No Change	20'
Sides	4'	No Change	4'
Rear	5'	No Change	5'
Buildable Area (B)	4305 sf	No Change	
Max Floor Area (2XB)	8,610 sf	No Change	7260 sf (1350 sf below maximum)
Height	24' flat/29' sloped	No Change	24' flat/29' sloped
3 rd Floor Step Backs (measured from PL) • Front- 35' • Sides-6' • Rear-20'	Enclosed Area only Front/Rear/Side	Enclosed and Unenclosed Front/Rear/Side	Not affected, 3 rd floor deck is uncovered and is not subject to current or proposed changes.
3 rd Floor Enclosed Area (15% of B)	646 sf	No change	Not affected, no 3 rd floor enclosed area
3 rd Floor Covered Area (50% of B)	N/A	2152.5 sf	Not affected, no 3 rd floor covered area
Open Volume (15% of B)	646 sf min.	No Change	818 sf
Covered Patios on 2 nd and 3 rd floor count as floor area	Less than 1 side completely open	Less than 2 sides completely open	House design not affected
Attics count as floor area	Finished space with 6' + ceiling height	Finished or unfinished space with 6' + ceiling height	House design not affected

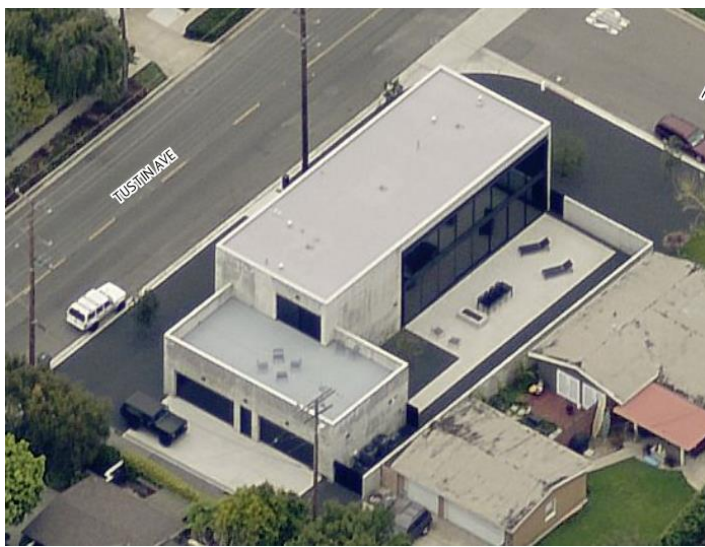


Typical Newport Heights Lot

328 Fullerton Ave

50' x 127.5'
6375sf

Standard	Current Code	Proposed Code (new req's in red)	328 Fullerton Ave (Actual Construction)
Setbacks			
Front	20'	No Change	20'
Sides	4'	No Change	4'
Rear	5'	No Change	5'
Buildable Area (B)	4305 sf	No Change	
Max Floor Area (2XB)	8,610 sf	No Change	4718 sf (3892 sf below maximum)
Height	24' flat/29' sloped	No Change	23'9" flat/25' 10" sloped
3rd Floor Step Backs (measured from PL) • Front- 35' • Sides-6' • Rear-20'	Enclosed Area only Front/Rear/Side	Enclosed and Unenclosed Front/Rear/Side	Not affected, no 3 rd floor
3rd Floor Enclosed Area (15% of B)	646 sf	No change	Not affected, no 3 rd floor
3rd Floor Covered Area (50% of B)	N/A	2152.5 sf	Not affected, no 3 rd floor
Open Volume (15% of B)	646 sf min.	No Change	3665 sf
Covered Patios on 2nd and 3rd floor count as floor area	Less than 1 side completely open	Less than 2 sides completely open	House design not affected
Attics count as floor area	Finished space with 6' + ceiling height	Finished or unfinished space with 6' + ceiling height	House design not affected



Larger Newport Heights Lot

630 Tustin Ave

66'x 142'
9372sf

Planning Commission - September 17, 2020
Item No. 3b Additional Materials Received
Residential Design Standards Code and LDC Amendments (PA2019-070)

Standard	Current Code	Proposed Code (new req's in red)	630 Tustin Ave (Actual Construction)
Setbacks			
Front	20'	No Change	20'
Sides	4'	No Change	4'
Rear	10'	No Change	10'
Buildable Area (B)	6496 sf	No Change	
Max Floor Area (2XB)	12,992 sf	No Change	4738 sf (8254 sf below maximum)
Height	24' flat/29' sloped	No Change	24' flat
3 rd Floor Step Backs (measured from PL) <ul style="list-style-type: none">Front- 35'Sides-6'Rear-25'	Enclosed Area only Front/Rear/Side	Enclosed and Unenclosed Front/Rear/Side	Not affected, no 3 rd floor
3 rd Floor Enclosed Area (15% of B)	974 sf	No change	Not affected, no 3 rd floor
3 rd Floor Covered Area (50% of B)	N/A	3248 sf	Not affected, no 3 rd floor
Open Volume (15% of B)	974 sf min.	No Change	2960 sf
Covered Patios on 2 nd and 3 rd floor count as floor area	Less than 1 side completely open	Less than 2 sides completely open	House design not affected
Attics count as floor area	Finished space with 6' + ceiling height	Finished or unfinished space with 6' + ceiling height	House design not affected



Larger Newport Heights Lot

320 Fullerton Ave

60' x 127.5'

7,650 sf

Standard	Current Code	Proposed Code (new req's in red)	320 Fullerton Ave (Actual Construction)
Setbacks			
Front	20'	No Change	20'
Sides	4'	No Change	4'
Rear	5'	No Change	5'
Buildable Area (B)	5340 sf	No Change	
Max Floor Area (2XB)	10,678 sf	No Change	5602 sf (5077 sf below maximum)
Height	24' flat/29' sloped	No Change	24' flat/27' sloped
3 rd Floor Step Backs (measured from PL) <ul style="list-style-type: none">Front- 35'Sides-6'Rear-20'	Enclosed Area only Front/Rear/Side	Enclosed and Unenclosed Front/Rear/Side	Not affected, no 3rd floor or covered deck
3 rd Floor Enclosed Area (15% of B)	801 sf	No change	Not affected, no enclosed 3 rd floor area
3 rd Floor Covered Area (50% of B)	N/A	2,670 sf	Not affected, 3 rd floor deck is uncovered
Open Volume (15% of B)	801 sf min.	No Change	1585 sf
Covered Patios on 2 nd and 3 rd floor count as floor area	Less than 1 side completely open	Less than 2 sides completely open	House design not affected
Attics count as floor area	Finished space with 6' + ceiling height	Finished or unfinished space with 6' + ceiling height	House design not affected



Larger Newport Heights Lot

510 Kings Rd

Approx. 60' x 151.6'
9,100 sf

Standard	Current Code	Proposed Code (new req's in red)	510 Kings Rd (Actual Construction)
Setbacks			
Front	20'	No Change	20'
Sides	4'	No Change	4'
Rear	10'	No Change	25'
Buildable Area (B)	6,333 sf	No Change	
Max Floor Area (2XB)	12,666sf	No Change	6844 sf (5822 sf below maximum)
Height	24' flat/29' sloped	No Change	24' flat/29' sloped
3rd Floor Step Backs (measured from PL) • Front- 35' • Sides-6' • Rear-25'	Enclosed Area only Front/Rear/Side	Enclosed and Unenclosed Front/Rear/Side	Affected, covered 3rd floor deck would encroach 6 feet into 15-foot front step back deck
3rd Floor Enclosed Area (15% of B)	950 sf	No change	Not affected, 266 sf enclosed third floor
3rd Floor Covered Area (50% of B)	N/A	3166 sf	Not affected, 339 sf total covered proposed
Open Volume (15% of B)	950 sf min.	No Change	2291 sf
Covered Patios on 2nd and 3rd floor count as floor area	Less than 1 side completely open	Less than 2 sides completely open	House design not affected
Attics count as floor area	Finished space with 6' + ceiling height	Finished or unfinished space with 6' + ceiling height	House design not affected

From: [John Rogers](#)
To: [Planning Commissioners](#)
Subject: Amendment
Date: Wednesday, September 16, 2020 3:44:11 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

As a 20 year Peninsula Point Neighbor, we urge you to approve the amendments to the third story guidelines. This will help to mitigate the effects felt in our neighborhood due to third story massing.

Thank you. John Rogers

From: [Murillo, Jaime](#)
To: [Lee, Amanda](#); [Rodriguez, Clarivel](#); [Palencia, Ketschy](#)
Subject: FW: Planning Commission Agenda Item No. 3 - Residential Development Standard Changes
Date: Wednesday, September 16, 2020 4:05:05 PM

From: Catherine Wolcott <catherinewolcott@hotmail.com>
Sent: Wednesday, September 16, 2020 4:00 PM
To: Koetting, Peter <pkoetting@newportbeachca.gov>; Weigand, Erik <eweigand@newportbeachca.gov>; Lowrey, Lee <llorey@newportbeachca.gov>; Ellmore, Curtis <CEllmore@newportbeachca.gov>; Klaustermeier, Sarah <sklaustermeier@newportbeachca.gov>; Kleiman, Lauren <lkleiman@newportbeachca.gov>; Rosene, Mark <mrosene@newportbeachca.gov>
Cc: Jacobs, Carol <cjacobs@newportbeachca.gov>; Jurjis, Seimone <sjurjis@newportbeachca.gov>; Campbell, Jim <JCampbell@newportbeachca.gov>; Murillo, Jaime <JMurillo@newportbeachca.gov>; Waite, David P. <DWaite@coxcastle.com>; Carol Martin <candwmartin@sbcglobal.net>; Bill Martin <bmartinworks@sbcglobal.net>
Subject: Planning Commission Agenda Item No. 3 - Residential Development Standard Changes

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To the Chairman and members of the Newport Beach Planning Commission;

I am writing as one of the legal representatives and successor beneficiaries of the Martin Family Trust, owner of the property located at 1824 West Ocean Front. The Martin Family Trust hereby submits its comments regarding Agenda Item No. 3 on the Planning Commission's September 17, 2020 agenda.

In recognition of some of the changes staff has made to their recommendations since the May 7, 2020 Planning Commission meeting, I am communicating directly on behalf of the Martin Family Trust rather than through our outside counsel at Cox, Castle & Nicholson. If the portions of the amendments affecting the RM zoning districts are adopted as currently written and recommended by staff, it is my hope (and our outside counsel's) that Cox, Castle's future involvement may be unnecessary.

We appreciate that staff recognizes that the development standards amendments proposed at the May 7, 2020 Planning Commission meeting would result in a reduction of the maximum allowed floor area ratio on our property. Reducing the currently allowed floor area ratio would be a clear violation of the State of California's Housing Crisis Act of 2019 (SB 330).

We also support the changes staff made to allow covered but unenclosed third-floor decks to not be counted against the buildable area limit of the third floor in the RM zoning districts.

We agree that the existing covered deck provisions have been abused in some other areas of town, and some third floor covered decks have been illegally enclosed, but a covered deck that must remain open on at least two sides should not create a situation in which the City's zoning laws can be similarly abused.

We still don't think the "wedding cake" appearance that the proposed new third floor setbacks could create in the RM zones is the best solution to the problem of perceived massing. We still believe that, rather than adopting the proposed changes to third-floor setbacks, imposing some of the design standards currently suggested in NBMC Section 20.48.180(B)(2) could break up portions of long, unarticulated exterior walls where they can be seen by the public in a more visually attractive manner than straight two-foot side setbacks. However, in the spirit of compromise and cooperation, we are willing to accept this change so long as the other staff recommendations pertaining to third floors in RM zoning districts are adopted as written.

Regarding the request from some Newport Heights residents that their area be exempted entirely from the changes, I would suggest that if exemptions are to be considered, our particular already-nearly-built-out RM-zoned block should be exempted as well, for reasons I have been arguing on the record since May 2019.

Thank you for your consideration,
Catherine Martin Wolcott

September 17, 2020, Planning Commission Item 3 Comments

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

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

Item No. 3. RESIDENTIAL DESIGN STANDARDS CODE AND LCP AMENDMENTS (PA2019-070)

Staff Report

The presentation of this item is confusing.

Page 10 announces an attachment “PC 5 Current Redline/Strikeout Version of Amendments” referring, it turns out, to attachments to the *current* staff report. But after encountering the also-announced “Attachment No. PC 4 (May 7, 2020, Planning Commission Staff Report)” on page 37, one finds a long series of numbered attachments starting on page 61 that include (starting on page 79) and “Attachment No. PC 6 Redline Strikeout Version of Amendments” which turns out to be the redline from May 7, not the currently proposed one, which is found in a similar-looking attachment starting on page 117.

Possibly the Planning Commissioners have hardcopy binders with tabs distinguishing the sections, but for the public it is frustrating trying to navigate this mass of documents in which no distinction is made between ones that are current and ones that have been superseded.

Compliance with SB 330

As to its substance, much is made of having fulfilled the promise to seek an assurance from HCD that the proposal is consistent with the “no reduction of potential intensity” requirement of 2019’s [SB 330](#). The answer received from HCD, however, is only as good as the question asked (as well as the thoroughness of the person supplying the answer). For reference, the passage asked about was the new Government Code Subsection 66300(b)(1)(A), reproduced on page 154 of the staff report, which prohibits the enactment (before January 1, 2025) of zoning regulations restricting properties to a “**less intensive use**” from what was allowed on January 1, 2018, where “less intensive use” is defined to include “**new or increased setback requirements**.”¹

The HCD respondent writes (page 151) “*The **pending revisions generally reduce bulk and mass** to step back covered third floor decks. HCD understands **the revisions do not impact the ability to achieve maximum densities** independently or cumulatively in combination with all other development standards*” (emphasis added).

¹ It seems worth noting that Subsection 66300(b)(1)(A) **separately** prohibits new laws restricting properties “to a **less intensive use**” or “reducing the **intensity of land use**.” Our staff seems to have focused on the latter, implying, for example, a new height restriction would be acceptable if it didn’t decrease the potential floor area, and therefore the overall intensity that could be developed. Subsection 66300(b)(1)(A) explicitly says that under the first criterion, **any** new height reduction is a prohibited enactment of “a less intensive use,” as is **any** new or increased setback requirement, independent of whether they are mitigated by the relaxation of some other development standard or standards. Indeed, among the explicitly prohibited actions, what HCD staff seems to have focused on -- new reductions in allowed **density** -- is just one of *many* prohibited enactments. The net effect on density is by no means the final or exclusive arbiter of compliance.

With all due respect, the respondent, who identifies himself as HCD's "Land Use & Planning Unit Chief," seems concerned solely with residential **density** (dwelling units per acre – which the current proposal does not affect) while this subparagraph within SB 330 seeks to protect **intensity** of use (structure size – which the respondent seems to think it's OK to reduce).

Moreover, the correspondence is careful, on both sides, to describe the changes as involving new "**step back**" requirements – a term that does not appear in the current or proposed Zoning Code (starting on page 17), but which a reasonable person is likely to assume means an architectural concept in which one walls on one floor are required to be stepped back from those on the floor below. Yet, despite this description of the requirement, both the existing and proposed code clearly impose a **setback** requirement on the third floor structures. In particular, it requires them to be set back, effectively, a stated distance from the property line,² not from the walls of the floors below. And per the table on page 5, these third floor setback requirements are being newly applied to construction in the RM, R-BI and R-2 (25' wide lots or less) districts. Despite the HCD letter assuring us this doesn't reduce housing densities, such a change appears to violate SB 330's prohibition against imposing, before 2025, new or increased setback requirements.

Possibly HCD knows something about the intent of SB 330 that is not evident from its text, and possibly SB 330 was intended to prohibit new setback requirements *only* when they reduce the square footage that can be built, which our own staff is careful to confirm they do not. But neither of those is what SB 330 says, and my understanding is what matters is what the text says, not what we or an administrative agency would like it to say. In this case the text (no "new or increased setback requirements") is unambiguous, as is the violation of it.

Comments on Proposed Resolutions

(handwritten) **Page 15**, item 5: "... As a result, third floor and open volume area standards are not being applied in the Balboa Island residential community nor to single- and two-unit dwellings constructed on RM lots **Citywide citywide**. ... Application of the front and rear third floor step back requirements to these narrow lots will **provide** improve building scale as viewed from streets and alleys." [If "provide" is retained, the following word should be "**improved**".]

Page 16, top paragraph: "Furthermore, no changes in overall height limits, allowable floor area, lot coverage, or **setbacks** are proposed that would lessen the allowable intensity of housing **site sites**. Each lot will maintain the same allowed height limits, building **setbacks**, and floor area limits as previously entitled, and the application of third floor and open volume regulations would not preclude the ability for a homeowner to achieve the same development intensity."

[For the reasons stated above, I disagree with the claim that no changes to building setbacks are being proposed. Clearly, new setback requirements are being imposed on third-floor construction in certain districts.]

² From page 19, the proposed code (Sec. 20.48.180.A.2.c) reads "Enclosed floor area and covered deck area located on the third floor shall be set back a minimum of fifteen (15) feet from the front and rear setback lines and for lots thirty (30) feet in width or greater a minimum of two feet from each side setback line, including bay windows." In other words, the required **third floor setback** from the property line is the ground floor setback plus 15 or 2 feet as applicable.

Page 17: The intended interplay between the “Minimum required open space (applicable to 3 or more units)” note and the “Single-unit and two-unit dwellings developed on a single site” statement under “Additional Requirements” is not clear. What if there are three units on an RM property but they are individually single or two-unit? Or a single-unit structure on a site with a separate 3-unit structure?

Page 18:

- “1. *Applicability. The development standards in this subsection ~~shall~~ apply to all R-1 ~~Zoning Districts~~, R-B1 ~~Zoning District~~, all R-2 ~~Zoning Districts~~, and ~~to all~~ RM Zoning Districts Citywide, except as provided below.*” [The word “shall” adds absolutely nothing. Nor do the other words crossed out.]
- In “a.i.”, the reason for including RM but exempting RMD is not clear. Both allow detached multi-family structures.
- “iii. *Residential developments consisting of three or more units ~~in the~~ on a parcel in a RM Zoning District.*”
- “b. *Limited Application. This subsection shall be limited in its application as provided below.*”
- “ii. ~~Residential~~ For residential developments consisting of one or two units in the RM Zoning District, only subsections (A)(2)(c) and (A)(3) shall apply.”

Pages 18 and 19: It is very strange, and I see no explanation, at least in the resolution, for why the transition to a smaller amount of development allowed on a third floor (from 20% to 15% of buildable area in subparagraph 2.a) happens when the lot is “**wider than thirty** (30) feet,” but the requirement (in subparagraph 2.c) to provide a 2-foot additional side setback is purposely being changed to start when the lot is “**thirty** (30) feet in width **or greater**.” That seems designed to create disputes about whether a lot is 29.99’ wide (20% limit with 0 additional side setback), 30.00’ wide (20% limit with 2’ additional side setback) or 30.01’ wide (15% limit with 2’ additional side setback). That infinitesimal change in the latter threshold could also be argued to rather arbitrarily make nonconforming a lot of construction that was legal when it was built. I think it would be wise to adopt a uniform dividing point.

Page 20:

- 1.a. “iii. *Any interior portion of a structure that is accessible and that measures more than six feet from ~~finished~~ floor to ceiling; and*” [? The intent, according to the staff report is to include unfinished areas, but it’s unclear to me how the floor (or ceiling, for that matter) can be used as reference if it isn’t finished. But **couldn’t all these new additions to gross floor area be viewed as reducing the allowed intensity of development?**]
- 1.b. “ii. *Covered decks, balconies or patios open, with the exception of required safety railings and minimal structural supports, on at least two sides, ~~with the exception of required safety railings and minimal structural supports~~.*”

- 2.a."ii. Any interior portion of a structure that is accessible and that measures more than four feet from **finished** floor to ceiling."

The same suggested changes would apply to the parallel provisions in Title 21.

From: [Mary Boyle](#)
To: [Planning Commissioners](#)
Subject: Planning Commission resident feedback
Date: Wednesday, September 16, 2020 4:52:45 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Planning Commission,

In consideration of your meeting tomorrow and to ensure that you hear from impacted residents of the Peninsula Point, I urge you to approve the amendments to the third story guidelines. This will help to mitigate the effects felt in our neighborhood due to third story massing. The neighborhood is starting to look and feel much like a similar peninsula/island, that being Manhattan: taller buildings, street tunnels, limiting light and airflow, projecting noise. Those building, often new to the neighborhood and/or spec builders, don't realize that they won't use the third floor space often.

Community is built in this neighborhood, and I would argue all Newport neighborhoods, along the sidewalks and front porches and decks. That's where the joy is.

Sincerely,

Mary Boyle
Peninsula Point Miramar Dr. Resident

Sent from my iPhone