

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



F22a

A-5-NPB-18-0006 (NICHOLSON CONSTRUCTION)

AUGUST 10, 2018

CORRESPONDENCE

From: Jon Engleking jon@supergcapital.com
Subject: Support of the project at 2607 Ocean Boulevard
Date: December 4, 2017 at 3:01 PM
To: Ung, Rosalinh RUn@newportbeachca.gov



Dear Rosalinh Ung,

I'm writing this in support of the home at 2607 Ocean Boulevard.

My family has lived in CDM and Newport Beach for over 15 years and upgrading of older properties is good for our neighborhood and community. A new house in that location would be great, as the existing house is super old and is in very poor condition and is an eyesore to China Cove.

A 4200 square-foot house in CDM is not a mansion and its unfair of certain people to characterize it as such for no real reason. In fact, you recently approved 7 much larger condos up to 7000 square feet each only a hundred yards from the property in the Aerie Project at Carnation and Ocean. How can you say a 4200 square foot single family house is a mansion?

Thank you for allowing my input.

Sincerely,

Jon Engleking
1533 Priscilla Lane
Newport Beach, CA 92660.

From: **Spencer Maxwell Brown** Spencer.Brown@colorado.edu
Subject: Support of Home at 2607 Ocean Boulevard
Date: December 4, 2017 at 4:28 PM
To: Ung, Rosalinh RUng@newportbeachca.gov

SM

Rosalinh,

As a CDM resident, I think the proposed project adds substantial value to the community. A new home would be great as the existing home is old and falling apart. I grew up in CDM and am very familiar with the area. A house of the proposed size is in no way too large for the area and would increase value for the surrounding community. It seems that a small number of people are opposing the project and gaining disproportionate momentum. I wanted to provide my opinion as I walk/bike past this area all the time and think the proposed project would be a meaningful addition to the area. Please feel free to give me a call to discuss, if desired.

My address:
700 ½ Carnation Ave
Corona del Mar, CA 92625

Thanks,
Spencer Brown
(949) 375-3678

From: Paul Julian pjulian@advancedonline.com
Subject: Support of Home at 2607 Ocean Boulevard
Date: December 6, 2017 at 9:11 AM
To: Ung, Rosalinh RUng@newportbeachca.gov



Hello Rosalinh,

My Family has owned property about 100 yards down Ocean Blvd. from this site for almost 14 years. We are happy to see this proposed development as it is the world-class type of home that this world-class City deserves! I have seen some of Tom's developments and they set the bar for homes in the area. The size of this home is well within the scale of what CDM can support. I don't see any negatives to this development.

Thank you for this consideration.

Sincerely,
Paul Julian

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ARES, Inc. operating under California License # 00881503

From: Patrick Charriou patrick@sageinvestco.com
Subject: Support of Home at 2607 Ocean Boulevard
Date: December 5, 2017 at 8:37 AM
To: Ung, Rosalinh RUng@newportbeachca.gov

PC

Dear Rosalinh,

I am hereby voicing my support for the Nicholson Companies' project at 2607 Ocean Boulevard:

I love Newport Beach and I moved twenty years ago from Europe because I respect and love the American way of life which bottom line is Freedom. I have been made aware of Tom Nicholson's plan for the existing home which is close to a century old... And due to the very high market price paid for the land to the previous owners, developers who are investing in improving our community and taking lots of risks doing so, are forced to build larger and more expensive homes in order to turn a profit. Please don't let a handful of people prevent this developer from making this project a success. The proposed home is similar to its neighboring recent homes. Such upgrade is great for the entire neighborhood, and obviously great for the City's finances thanks to the corresponding property taxes.

Thank you,

Patrick Charriou
2671 Point del Mar
Corona del Mar CA

From: Marc Cole marc.cole@gmail.com
Subject: Support of Home at 2607 Ocean Boulevard
Date: December 5, 2017 at 8:30 AM
To: Ung, Rosalinh RUn@newportbeachca.gov

MC

Dear Rosalinh

I'm writing in support of the Ginsbergs and their proposed CDM home. We are 4 year residents of Newport Coast. I know the Ginsberg family well and not only are they terrific neighbors, they build beautiful homes. I happen to think 2607 Ocean as proposed is an attractive home and will improve China Cove – but it shouldn't matter what I think or any other resident thinks of the design. Please don't allow a very small number of people opposing the project (and likely oppose ALL projects) to control the process.

Thank you

Marc and Alanna Cole

17 Chatelaine

Newport Coast

From: Jason Krotts jkrotts@redallc.com

Subject: Support of Home at 2607 Ocean Boulevard

Date: December 4, 2017 at 9:16 PM

To: Ung, Rosalinh RUn@newportbeachca.gov

Cc: Koetting, Peter pkoetting@newportbeachca.gov, Zak, Peter pzak@newportbeachca.gov, Weigand, Erik eweigand@newportbeachca.gov, Dunlap, Bill bdunlap@newportbeachca.gov, Kleiman, Lauren lkleiman@newportbeachca.gov, Kramer, Kory kkramer@newportbeachca.gov, Campbell, James JCcampbell@newportbeachca.gov

JK

Dear Ms. Ung and Members of the Planning Commission;

Please accept this e-mail as support for the proposed residential redevelopment of 2607 Ocean Blvd. (PA2016-170). I am a 20 + year resident of the City of Newport Beach and proud real estate developer whom recently completed the development of a medical office campus located in the Santa Ana Heights area. I find myself in a unique position supporting this project as earlier this year I (and another family member who is a +40 year resident of Ocean Blvd.) opposed the neighboring redevelopment of the Dawson home located at 2741 Ocean Blvd (PA2015-224). The Dawson project (PA2015-224) received approvals in April, 2017 for an approximately 10,000 SF home which required both height and setback variances along Way Lane in China Cove.

In reviewing the planning application and agenda packet, it is my understanding the new Ginsberg residence will be 4,200 SF (approximately 60% smaller than previously approved, but similar projects) which hardly constitutes being coined a "McMansion" as it has been referenced by many in the opposition. I would also argue the total square footage of the proposed home is either similar or on the lower end of many of the existing or newer neighboring properties in CDM.

While I understand the commissions objective is to uphold and administer the guidelines set within the City, I find it very difficult to understand how their positions can be swayed by a few loud voices who do not fully understand the complexities of city planning, land use or owners property rights. Many of the homes located in China Cove or along the Ocean Blvd. blufftop have been granted variance. It is inconceivable for many of these homes to have been developed or redeveloped without some conditional approval due to complex site constraints.

Cities govern by the development standards created based on a fundamental understanding of all things being equal. While efforts to uphold these standards and policies are often the rule, many times there are circumstances which create conflict within these policies. As here, the Planning Commission must weigh denying a private individual the right to redevelop their property or allow minor exclusions to the rule which will allow for safer, smarter and more economical development. While I am sure the members of SPON who oppose the project have good intentions, it is not their right to steer city policy on what does and doesn't get approved, especially if these loud voiced don't actually live near the project! In discussing the project with various members of the community, virtually no one from the immediate community of China Cove opposes this project. Rather they see it as a benefit, one which will add value to the neighborhood and increase property values and tax revenues for the City.

That being said, I am in agreement with staff and fully support the project and urge the commission to approve.

Regards,

Jason Krotts

Jason Krotts
Principal



4100 MacArthur Blvd., Suite 120
Newport Beach, California 92660
p: 949.743.1463 | m: 949.636.1187
www.REDALLC.com

From: Brian Flood brian@brianflood.net
Subject: Support of Home at 2607 Ocean Boulevard
Date: December 4, 2017 at 5:16 PM
To: Ung, Rosalinh RUng@newportbeachca.gov

BF

Dear Mr. Ung, I understand that there are some residents who oppose the development of the home at 2607 Ocean Blvd. I read an article on this in the paper and thought it was odd because it did not appear that any views would be impacted by the development. The whole area is developed and this home at something like 4000 sq.ft, is FAR from being an over-development for the area. There are home 3 times this size in the area. Appropriate development, as I feel this project will be, is good for the local economy, good for the city (increased property tax revenue) and good for the neighborhood (increased values). The homeowner has a right to improve his property and I hope a few unhappy residents don't influence the City of Newport Beach to deny the homeowner this right.

Sincerely,

--Brian Flood
412 De Sola Terrace
Corona del Mar, CA 92625
949-813-5058

From: Bill Bird bill@executivemovingsystems.com
Subject: Support of Home at 2607 Ocean Boulevard
Date: December 5, 2017 at 1:14 PM
To: Ung, Rosalinh RUng@newportbeachca.gov

BB

Dear Rosalinh,

A McMansion? It has recently come to my attention that a small group of folks, outside of the area, in which the above 70 year old home resides, is having issues with a local developers plans to construct a new 4200 square foot home in its place. Maybe I am not clear, but it seems as though all new homes being built are in the range of 3500 to 4800 square feet. As you should know, there are many larger homes in this immediate area.

Upgrading old homes to new in our community is good thing for the neighborhood particularly when the existing home is in total disrepair. I live in CDM and am encouraged to see the quality structures being built in our community with the few quality builders in the area. It seems to me that we should be supportive of this project, particularly with the parameters and scope of the residence. Our area is lively and vibrant as a result of the homes being built and encourages new residents to relocate to our beautiful location. As a matter of fact I have two sets of friends attempting to find land in Corona Del Mar currently with the intent to build their dream home as well. Please don't allow a small group of folks opposing the project to control the process by inhibiting development within our city when a project clearly is within the scope of our cities improvement initiatives.

We all look forward to approval of this project.

My Best,

Bill Bird
President

Executive Moving Systems Inc.

Phone: 714-688-4800

www.ExecutiveMovingSystems.com

✉ : Bill@ExecutiveMovingSystems.com

☎ : [714-688-4800](tel:714-688-4800)



From: Tony Guanci tony.guanci@balboacorp.com
Subject: 2607 Ocean Blvd.
Date: December 4, 2017 at 3:32 PM
To: Ung, Rosalinh RUng@newportbeachca.gov

TG

Dear Rosalinh,

I am emailing you today in support of the development at 2607 Ocean Blvd. I have lived and owned homes in Corona Del Mar for over 30 years on Carnation and current at 2525 Ocean Blvd Unit A6. If you are familiar with Channel Reef, my unit is the Penthouse at the corner of the building which overlooks not only the jetty, wedge, and China Cove Beach but it also faces the site of the new development. The existing building is in total disrepair, an eye sore and needs to be taken down. Having a home 4,200 sq feet in my opinion is no different then many of the existing new homes on the cliff and would fit in fine with the existing number neighborhood. For nearly 5 years I was also on the Board of Channel Reef and pushed real hard for the beautification of not only our property (first phase recently completed) but also for the renovation and redevelopment of the neighboring properties. I believe that the development of 2607 Ocean will add not only to the values of all the surrounding properties but it will complete a much needed facelift to the portion of the cliff which currently looks like a rats nest! If you have any questions or need to speak with me my address is below. Thank you and please do not let a few folks with no direct impact dictate your decision.

Sincerely,
Tony Guanci
2525 Channel Reef,
Unit A6
Corona Del Mar, Ca 92660

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From: Gart Sutton gart@gartsutton.com
Subject: 2607 Ocean Blvd
Date: December 5, 2017 at 3:07 PM
To: Ung, Rosalinh RUn@newportbeachca.gov

GS

Rosalinh: I have been a resident of Corona del Mar for over 40-years. I use to live in China Cove...on Way Lane, across the street from the 2607 Ocean Blvd residence that overlooks China Cove. That was 1991 and that house was even an eye-sore back then.

China Cove is a CdM landmark community that deserves any upgrade that someone is willing to make. Please do what you can to pave the way towards improving our community and allowing this home to be built.

You know and I know, a 4,200 square foot home isn't "mansionization." It is comparable or even smaller than most all new structures being built in the immediate neighborhoods.

Thank you for addressing this issue and providing a prompt solution. Gart Sutton
949.375.2104

Marko Crawford Barker

1827 Port Seabourne Way
Newport Beach, CA 92660
tel: 949.246.3949

December 4, 2017

Planning Commission
City of Newport Beach
100 Civic Center Drive (First Floor, Bay B)
Newport Beach, CA 92660

RE: Proposed New Single Family Home at 2607 Ocean Boulevard


Dear Planning Commission,

I live in Newport Beach and I am writing to ask you to approve the new home in China Cove. I think the new home will be a great update to the property by replacing the existing 60+ year-old home.

I've researched Nicholson Construction and they have been building homes for 30+ years with over 20 years of home building in Newport Beach. They build high quality homes – and have been such a solid business that they successfully built homes during the recession. I think a homebuilder who survived the recession must be good – really good. The way I have been thinking about it, this company takes old properties throughout the city and invests time and money to improve them. In addition to improving them, they are increasing the values of the properties, which result in helping all of us in the community through nicer neighborhoods and increased tax revenue.

I can't imagine that the 4,500 square foot home is too big for this area. I drove by this week and there are several homes up the street from this one and there is one that is under construction and looks like it is going to be noticeably larger than this subject home. I am guessing that any of the homes on that hillside bluff have variances for setbacks or other stuff so that they can build what they have. I don't think what they are asking for is out of proportion to what others have built in the area. Please support this project and approve this project.

Thank you,

DocuSigned by:

6B1FD61051A0476...
Marko Crawford Barker

From: [Karen James](#)
To: SouthCoast@Coastal
Cc: [Jim Mosher](#)
Subject: Public Comment on August 2018 Agenda Item Friday 22a-Appeal No. A-5-NPB-18-0006 (Nicholson Construction, Newport Beach)
Date: Wednesday, August 01, 2018 1:38:26 PM

Please approve Appeal No. A-5-NPB-18-0006

This is another example of the City of Newport Beach approving a variance that is detrimental to the public and only benefits one individual.

It is laughable that the city's mitigation idea to solve the public view blockage is by requiring a transparent wall.

The wall should be eliminated to guarantee its transparency.

Warren H. James
2627 Cove St.
Corona del Mar, CA
kjdelmar@yahoo.com

HART | KING

ATTORNEYS AT LAW

Ronald J. Thommarson
rthommarson@hartkinglaw.com

May 18, 2018

Our File Number: 36939.021/4820-9344-4966v.1

VIA E-MAIL

California Coastal Commission
South Coast Area Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302
Email: southcoast@coastal.ca.gov

Re: **Appeal of Coastal Development Permit - Ginsberg Residence Project**
Appeal Ref No.: A-5-NPB-18-0006
Appellant: James M. Mosher
Site: 2607 Ocean Blvd., Corona del Mar, CA
Coastal Dev. Permit No.: CD2017-080

Dear Honorable Commissioners:

This office represents John Cummings, Sr., a resident of Corona del Mar, California. This letter concerns Mr. Cummings' comments and concerns regarding the Ginsberg Residence Project referenced above (the "Project"). We write to you to relay our client's comments and concerns about the Project, as well as his support for the above-referenced appeal ("Appeal") submitted by Appellant James M. Mosher.

Mr. Cummings submitted written objections to the City of Newport conveying his objections to the Project in advance of the December 7, 2017 meeting of the Newport Beach Planning Commission. He appeared in person at the Planning Commission hearing and spoke out in opposition to the Project and the City's approval of a coastal development permit for the Project, as did the undersigned acting on Mr. Cummings' behalf. As such, Mr. Cummings is qualified to submit comments and testimony in support of the Appeal pursuant to the Commission's applicable regulations set forth at 14 Cal. Code Regs. §13117. A copy of our December 7, 2017 correspondence to the City of Newport Beach Planning Commission is enclosed for your reference.

Our client strongly agrees that, as noted in the Commission's staff report dated February 23, 2018, this Project raises a substantial issue of a violation of the California Coastal Act's public access policies and the City of Newport Beach's Local Coastal Program (the "LCP"). The Project will have considerable adverse impacts on public views and coastal bluff landforms.

A. Statement of Appealability

Local actions taken in the issuance of a coastal development permit may be appealed to the Coastal Commission with respect to developments "located between the sea and the first public road or within 300 feet of the inland extent of any beach or the mean high tideline of the sea where there is no beach, whichever is the greater distance." (California *Public Resources Code* § 30603(a)(1).)

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The Project is appealable under the foregoing provision, as it is located within 300 feet of the beach at China Cove and/or the mean high tide line.

In addition, the appellant is excused from the requirement to exhaust local appeals with the City of Newport Beach because the city charged an appeal fee for filing or processing the appeal. (14 Cal. Code Regs. § 13111(a).)

B. The Project Is Inconsistent with the LCP and the Public Access Policies of the Coastal Act

A locally-issued coastal development permit must be consistent with the policies and standards set forth in the certified LCP. (California *Public Resources Code* § 30604.) As set forth below and noted in the February 23, 2018 report of Coastal Commission staff, the Project fails to meet this requirement. At a minimum, a substantial issue exists as to whether the Project is consistent with the LCP and the public access policies of the Coastal Act.

1. The Project Will Adversely Affect Public Views from Nearby Public Rights of Way along Ocean Boulevard and the Fernleaf Ramp

As of May 12, 2018, story poles had been erected to depict the size and scale of the Project and its effect on public view ways. Attached to this correspondence are several photos taken on the afternoon of May 12, 2018 showing the story poles on the Project site from the vantage point of Ocean Boulevard and the Fernleaf Ramp leading down from Ocean Boulevard to Fernleaf Avenue. The enclosed photos clearly illustrate that the Project will block considerable public views of the beach and the ocean from both vantage points.

In its current form and design, the Project violates the policies set forth in the Coastal Land Use Plan ("CLUP") in the LCP, particularly the following:

- CLUP Policy 4.4.1-1 to "Protect . . . the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas."
- CLUP Policy 4.4.1-2 to "Design and site new development, including landscaping, so as to minimize impacts to public coastal views."
- CLUP Policy 4.4.1-3 to "Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons."
- CLUP Policy 4.4.1-6 to "Protect public coastal views from the following roadway segments: . . . Ocean Boulevard . . ."
- CLUP Policy 4.4.1-7 to "Design and site new development, including landscaping, on the edges of public coastal view corridors, including those down public streets, to frame and accent public coastal views."

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- CLUP Policy 4.4.2-4 to "Prohibit projections associated with new development to exceed the top of [the] curb on the bluff side of Ocean Boulevard."

The attached photos reveal considerable blockage of public views of the water and the beach in violation of the foregoing policies:

1. Photo 1 depicts the public view from Ocean Boulevard overlooking the channel, China Cove, and Catalina. The story poles reveal that the new Project will block existing public views of the beach and water leading into Newport Bay.
2. Photo 2 depicts a closer-in look at the public view from Ocean Boulevard overlooking the channel and Catalina. It gives a better view of the blockage of public views of the bay and beach from Ocean Boulevard.
3. Photo 3 presents another angle from Ocean Boulevard overlooking the Project. The lines between story poles are visible and run horizontally across the frame. A structure at the level of the line will block public views of the Channel, the jetty, and the Wedge.
4. Photo 4 was taken from the top of the Fernleaf Ramp where it meets Ocean Boulevard. This photo shows how the Project will largely block public views of the water down toward the channel mouth.
5. Photo 5 was taken from the Fernleaf Ramp overlooking China Cove toward Catalina. Again, public views of the channel and the open water will be blocked.
6. Photo 6 is a closer in view from the Fernleaf Ramp over the Project. This photo demonstrates that the Project will block public views of the channel and the open water beyond toward Catalina.
7. Photos 7 and 8 were taken from farther down the Fernleaf Ramp looking toward Catalina. As you can see from the story poles depicted in this photo, much of the public view of the water and Catalina will be blocked from this vantage point, particularly for members of the public ascending the ramp toward Ocean Boulevard.
8. Photo 9 was taken from the Fernleaf Ramp overlooking the Project site. It again demonstrates the blockage of public views of the bay from the public right of way on this street.

In addition, the Project appears to be very close to exceeding the height of the top of the curb on the bluff side of Ocean Boulevard. Even if the highest point of the Project may not exceed the top of the curb, its depth and dimensions will still result in considerable adverse impacts to the public views from Ocean Boulevard toward the channel leading into Newport Bay and the bay itself. This violates the letter and the spirit of the above-quoted policies.

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2. The Project Is Not Designed to Minimize Adverse Effects on Protected Coastal Bluffs

The CLUP also expressly notes that coastal bluffs in the Corona del Mar area are a prominent natural land form and “are an important part of the scenic and visual qualities of the coastal zone and are to be protected as a resource of public importance.” (CLUP § 4.4.3, p. 4-77 – “Natural Landform Protection.”)

Corona del Mar is unique in that significant development on local bluff faces has been allowed in the past. However, the CLUP expressly notes that “Development in these areas is allowed to continue on the bluff face to be consistent with the existing development pattern and to protect coastal views from the bluff top. However, development on the bluff face is controlled to minimize further alteration.” (CLUP § 4.4.3, p. 4-78 – “Coastal Bluffs.”) Policy 4.4.3-9 of the CLUP provides that “Where principal structures exist on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views.” Accordingly, the CLUP requires minimum setbacks and design measures to minimize adverse effects on protected coastal bluffs and public views.

Both public views and existing natural landforms are coastal resources of regional and statewide concern. As noted in the Commission’s February 23, 2018 staff report, the Project site is located on a coastal bluff on the seaward side of Ocean Boulevard. To the north and west of the Project are undeveloped bluff faces owned by the City of Newport Beach. The Project, as approved with a local variance, will encroach substantially into the required 10-foot setbacks along Ocean Boulevard (providing only a 3-foot setback) and Way Lane (providing for no setback). A substantial issue exists with respect to the Project’s likely impact on (and alteration of) sensitive coastal bluff landforms and the Project’s deviation from the predominant line of existing development, which is detrimental to public coastal views as set forth above and conflicts with the Coastal Act’s recreational and public access policies.

C. The Commission Should Find that A Substantial Issue Exists and Conduct A De Novo Review of the Project

We request that you please review and consider these comments in connection with the appeal of the Project and the Commission’s findings and analysis of whether a substantial issue exists with respect to the Project’s inconsistency with the LCP and public access policies of the Coastal Act.

We respectfully submit that the Commission should find that a substantial issue exists and undertake a de novo review of the Project pursuant to Section 30625(b)(2) of the Coastal Act. The Project as designed threatens to pose significant adverse effects on public coastal views and sensitive coastal bluffs. In addition, the foregoing de novo review should include a review of the Project’s consistency with the public access and recreation policies of the Coastal Act in accordance with Public Resources Code § 30604(c.)

Honorable Commissioners
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On behalf of Mr. Cummings, we urge the members of the Commission to vote "**NO**" on the motion to determine that the Appeal raises no substantial issue with respect to the grounds on which the appeal has been filed. We further urge the members of the Commission to make a finding that the Project **is not consistent** with the LCP or with the public access and recreation policies of the Coastal Act.

The Appeal should be granted, and approval of the above-referenced coastal development permit should be overturned. Thank you for your time and thoughtful consideration.

Sincerely,

HART KING



Ronald J. Thommarson

Enclosures (photos of the Project site taken May 12, 2018)

cc: C. William Dahlin, Esq. (via email)
John Cummings, Sr. (via email)



Photo 1

The public view from Ocean Boulevard overlooking the channel, China Cove, and Catalina. The story poles reveal that the new Project will block existing public views of the beach and water leading into Newport Bay.



Photo 2

A closer in look at the public view from Ocean Boulevard overlooking the channel and Catalina, demonstrating the blockage of public views of the bay and beach from Ocean Boulevard



Photo 3

A view from the Fernleaf Ramp overlooking the Project. The lines between story poles are visible and run horizontally across the frame. A structure at the level of the line will block public views of the Channel, the jetty, and the Wedge.

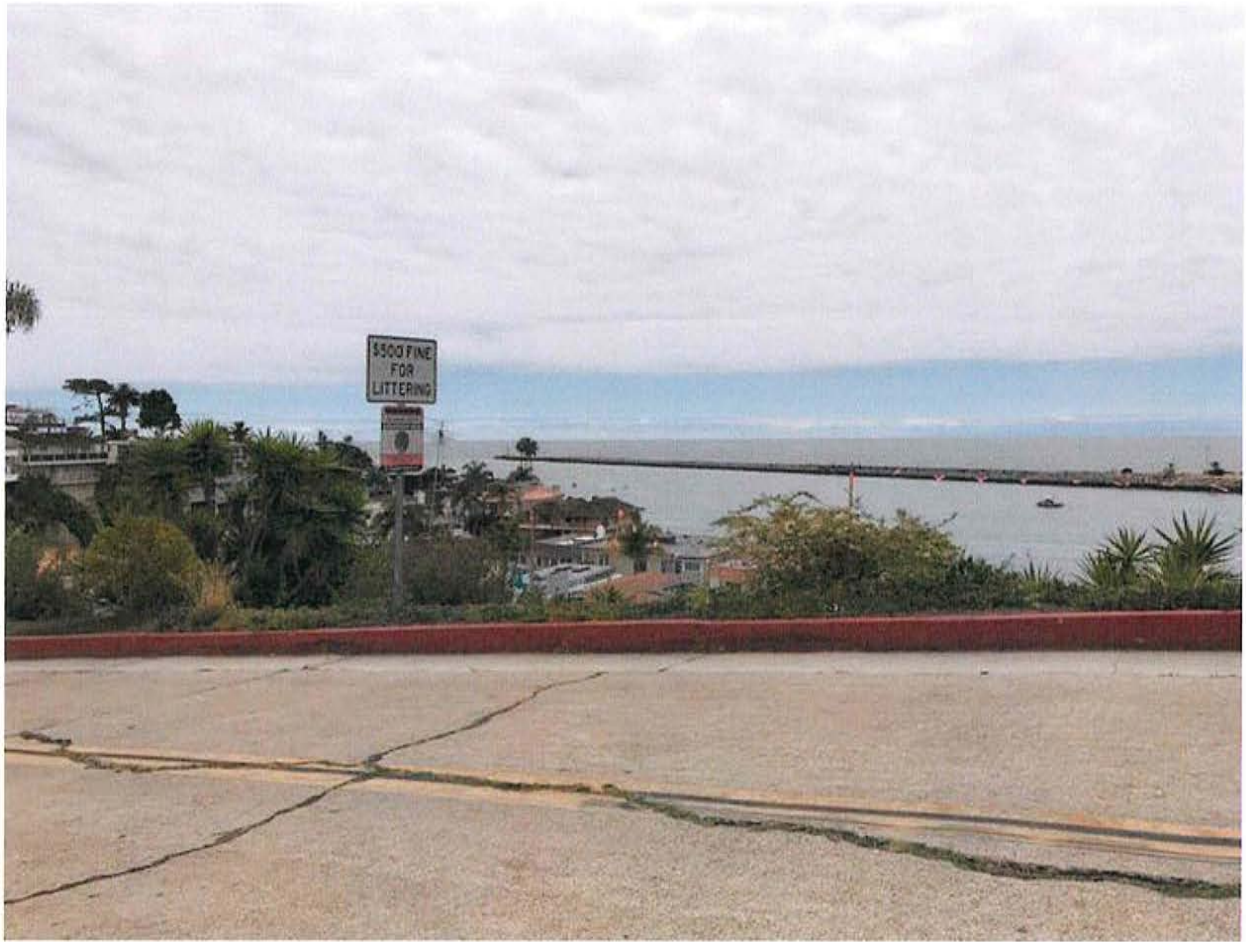


Photo 4

Photo taken from the top of the Fernleaf Ramp where it meets Ocean Boulevard. This photo shows how the Project will largely block public views of the water down toward the channel mouth.



Photo 5

Photo taken from the Fernleaf Ramp overlooking China Cove toward Catalina. Public views of the channel and the open water will be blocked.



Photo 6

A closer view from the curb on the Fernleaf Ramp overlooking the Project. The Project will block public views of the channel and the open water beyond toward Catalina.



Photo 7

A photo taken farther down the Fernleaf Ramp looking toward Catalina. Much of the public view of the water and Catalina will be blocked from this vantage point.



Photo 8

A photo taken from the Fernleaf Ramp from the vantage point of traffic ascending to Ocean Boulevard once again shows that the entire public views of the water and Catalina will be blocked from this vantage point.

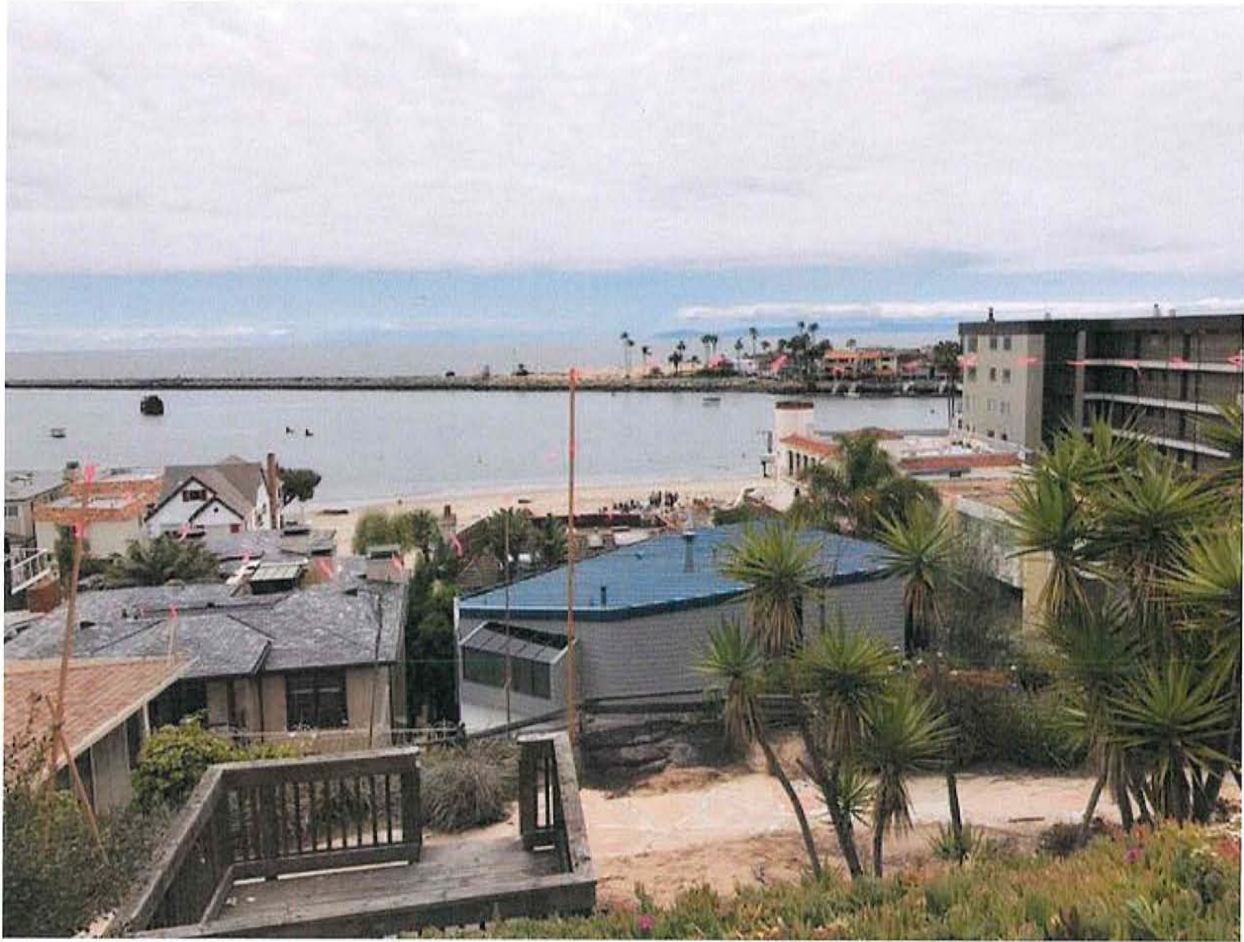


Photo 9

Photo from the Fernleaf Ramp overlooking the Project site. It again demonstrates the blockage of public views of the bay and the beach from the public right of way on this street.

HART | KING

ATTORNEYS AT LAW

Ronald J. Thommarson
rthommarson@hartkinglaw.com

December 7, 2017

Our File Number: 36939.021/4849-7658-4024v.1

VIA E-MAIL

Ms. Rosalinh Ung
Associate Planner
City of Newport Beach
Planning Commission
100 Civic Center Drive
rung@newportbeachca.gov

Re: **Ginsberg Residence Project (PA2016-170)**
Site: 2607 Ocean Blvd., Corona del Mar, CA
Variance No.: VA2016-005
Coastal Dev. Permit No.: CD2017-080
December 7, 2017 Commission Meeting Agenda Item 5

Dear Ms. Ung:

This office represents John Cummings, Sr., the owner of a residence on Ocean Boulevard in Corona del Mar. The Cummings residence is located across Ocean Boulevard from the site of the Ginsberg project referenced above (the "Project"). We write to you to relay our client's objections to the Project and to the findings set forth in the Newport Beach Planning Commission's staff report prepared for Item number 5 on the agenda for the Planning Commission meeting scheduled for December 7, 2017 at 6:30 p.m.

On behalf of Mr. Cummings, we respectfully request that the Planning Commission take into account the following issues in its consideration of the Project:

1. The Commission's December 7, 2017 staff report recommends a finding that the Project is exempt from the California Environmental Quality Act ("CEQA") pursuant to 14 Cal. Code Regs. § 15303 for "New Construction or Conversion of Small Structures." However, the foregoing regulation expressly states that it applies to the construction of a limited number of small structures and the conversion of existing small structures where only minor exterior modifications are made. However, the Project consists of major construction at the site, including the demolition of an existing home, extensive excavation, and construction of a substantially larger new residence.
2. The single-family residence exemption from CEQA applies only where there is no substantial evidence of significant environmental impact. (*See Public Resources Code* § 21080; 14 Cal. Code Regs. § 15061(b)(3).) The sensitive bluff top location of the Project and the extensive scope of the anticipated excavation and construction activities pose a risk of significant environmental impact. The construction management plan attached to the staff report reflects that substantial excavation will take place at the site, which is located on an environmentally sensitive coastal bluff top. The plan indicates that upwards of 20 truckloads of dirt will be removed from the site over 2-3 months. It also

Ms. Rosalinh Ung, Associate Planner
City of Newport Beach, Planning Commission
December 7, 2017
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reflects that the overall Project is expected to require approximately 28 months to complete. It is therefore not entitled to a categorical exemption from CEQA.

3. The Project poses a significant environmental risk due to unusual circumstances. (See *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086.) The need to maintain the integrity of the coastal bluff top in an environmentally sensitive coastal area is significant.
4. Section 30600(c) of the California Coastal Act provides for the issuance of Coastal Development Permits directly by the California Coastal Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. We understand that the City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in section 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity, rather than the City of Newport Beach, with respect to the required coastal development permit.
5. Section 30251 of the Coastal Act states, in relevant part: "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas." The Project is located on a sensitive bluff face and is visible from Ocean Boulevard and the public sidewalks along the street and in more distant views from Big Corona beach. It is necessary to ensure that new development be sited and designed to protect views to and along the ocean and minimize the alteration of existing natural landforms consistent with Section 30251 of the Coastal Act and the City of Newport Beach's existing policies to protect public views, including those in the City's Zoning Code and certified Land Use Plan.
6. The City's Zoning Code stresses among its goals the need to "protect the character, social, and economic vitality of neighborhoods." (Zoning Code § 20.10.020.) As set forth in numerous other letters and emails from other residents of the neighborhood, this Project is not in keeping with the character of the neighborhood, and the requested variance is not consistent with those that have been granted (or denied to) other property owners in the vicinity.
7. The construction management plan for the Project reflects that it will have significant and adverse effects on the neighborhood, including traffic impacts from partial closures of Ocean Boulevard, significant construction traffic, and the like over a period of more than two years.

Ms. Rosalinh Ung, Associate Planner
City of Newport Beach, Planning Commission
December 7, 2017
Page 3

We respectfully request that the Planning Commission (1) consider these issues and include this correspondence in the administrative record of this evening's hearing, and (2) deny the Project proponent's application for a permit and variance in its present form and require that the foregoing issues be addressed and resolved.

Thank you.

Sincerely,

HART KING

A handwritten signature in black ink, appearing to be 'RJT', followed by a long horizontal line extending to the right.

Ronald J. Thommarson

cc: C. William Dahlin, Esq. (via email)
John Cummings, Sr. (via email)
John H. Cummings, III (via email)

Ronald J. Thommarson

From: Ronald J. Thommarson
Sent: Thursday, December 07, 2017 2:01 PM
To: 'rung@newportbeachca.gov'
Cc: C. William Dahlin; jc3wstatesdev@sbcglobal.net
Subject: Ginsberg Residence - Project PA2016-170 / Agenda Item 5 for December 7, 2017 NB Planning Commission Meeting
Attachments: Ltr to City NB Planning Commission 12.7.17 objecting to Ginsberg project (signed) 4811-0117-8712 v.1.pdf

Dear Ms. Ung,

Please see the attached correspondence in regard to Item Number 5 for the December 7, 2017 meeting of the Newport Beach Planning Commission. Thank you very much.

Sincerely,

Ron Thommarson

Hart | King

Ronald J. Thommarson | Associate

4 Hutton Centre Drive, Suite 900
Santa Ana, CA 92707
Tel. 714-432-8700 x344
Fax. 714-546-7457

rthommarson@hartkinglaw.com
www.hartkinglaw.com

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Real Estate Litigation & Transactions
Manufactured Home Communities
Construction Litigation
Trust and Estate Litigation
Trademark, Copyright & Branding

From: Stephen Perkins sperkins@royalsg.com
Subject: In Support of 2607 Ocean Boulevard
Date: December 4, 2017 at 3:37 PM
To: Ung, Rosalinh RUn@newportbeachca.gov
Cc: Stephen Perkins sperkins@royalsg.com



Dear Rosalinh Ung,

I'm writing this in support of the home at 2607 Ocean Boulevard.

My family has lived in CDM and I have grown up in and around Newport Beach since College and seeing the upgrading of older properties is good for our neighborhood and community. A new home in this location would be great, as the existing home which was built in the 1950s and is long over due to be torn down and is not only a hindrance to the safety of the Neighborhood but causing a Devaluation to the neighborhood as well and more a current Eyesore to China Cove specifically.

A 4200 square-foot home in CDM is not a Large home for this neighborhood and two listen to these statements in the Audience at the last meeting held at the City is just not factual and its unfair of certain people to characterize it as such for no real reason other than potential hidden agendas. In fact, you recently approved 7 much larger condos up to 7000 square feet each only a hundred yards from the property in the Aerie Project at Carnation and Ocean. How can you say a 4200 square foot single family house is too large or as mentioned a mansion?

Thank you for allowing us to have input.

Steve Perkins
237 Carnation Ave
Corona Del Mar Ca 92625

From: SouthCoast@Coastal
To: Sy_Fernie@Coastal
Cc: Schwing_Karl@Coastal
Subject: FW: Continued e-mail on my public comments on March 2018 agenda item Wednesday 11a -appeal no. A-5-NPB-18-0006 (Nicholson Construction , Newport Beach)"
Date: Thursday, August 02, 2018 1:43:57 PM

Sonia Beckford

-----Original Message-----

From: Kent Moore [<mailto:kentmoore@roadrunner.com>]

Sent: Wednesday, August 01, 2018 5:27 PM

To: SouthCoast@Coastal

Subject: Continued e-mail on my public comments on March 2018 agenda item Wednesday 11a -appeal no. A-5- NPB-18-0006 (Nicholson Construction , Newport Beach)"

(Continued) and a new, city-built fence continues to block public access. Nevertheless, the Newport Beach Planning Commission has approved this project. The neighborhood and surrounding residents are grateful that this unwise approval has been appealed to your Commission. (F22a). I do hope that you find "substantial issue" with this proposed project and reject the City's current ruling. Weren't public views to be protected by CNB's Local Coastal Program? And why these numerous variances? To many of us long-time residents "this is just more of the City's continuing trend toward what we call "Mansionization" Please do not allow more of our beautiful "Old Corona Del Mar" bluff faces to be disturbed by this type of construction. I'm told that even some of your staff have found possible Coastal Act inconsistencies and problems which would affect the development of this project. Thank you for considering my comments. Kent Moore, 210 Carnation Ave. Corona Del Mar (949) 244 -1832

Sent from my iPhone

From: SouthCoast@Coastal
To: Sy_Fernie@Coastal
Cc: Schwing_Karl@Coastal
Subject: FW: "Public comment on March 2018 agenda item Wednesday 11a- Appeal no. A-5-NPB-18-0006 (Nicholson Construction, Newport Beach)"
Date: Wednesday, August 01, 2018 4:49:47 PM

Sonia Beckford

-----Original Message-----

From: Kent Moore [<mailto:kentmoore@roadrunner.com>]
Sent: Wednesday, August 01, 2018 4:49 PM
To: SouthCoast@Coastal
Subject: "Public comment on March 2018 agenda item Wednesday 11a- Appeal no. A-5-NPB-18-0006 (Nicholson Construction, Newport Beach)"

Dear Commissioners:

I am writing you regarding the undeveloped bluff face at 2607 Ocean Blvd. in Corona Del Mar. After reviewing the literature, it is obvious to me and my neighbors that the proposed development on this bluff would seriously block public views which are supposedly protected by the Coastal Act. In fact, an old wooden fence leading down the bluff from Ocean Blvd. to the site of the proposed project has prevented public access to these spectacular views for the 40 plus years I have lived here.

From: SouthCoast@Coastal
To: Sy_Fernie@Coastal
Cc: Schwing_Karl@Coastal
Subject: FW: "Public Comment on August 2018 Agenda Item Friday 22a-Appeal No. A-5-NPB-18-0006 (Nicholson Construction, Newport Beach)"
Date: Wednesday, August 01, 2018 1:28:27 PM

Sonia Beckford

From: Karen James [mailto:kjdelmar@yahoo.com]
Sent: Wednesday, August 01, 2018 10:28 AM
To: SouthCoast@Coastal
Cc: jimmosher@yahoo.com
Subject: "Public Comment on August 2018 Agenda Item Friday 22a-Appeal No. A-5-NPB-18-0006 (Nicholson Construction, Newport Beach)"

Commissioners:

The Newport Beach Planning Commission has seen fit to continually ignore the zoning laws and grant variances to building projects that are will beyond the parameters of what is allowed and keeping with the character of our town.

The project at 2607 Ocean Blvd. is another example of an out of scale mansion, that is not only too large for the building space, but blocks ocean views, which are now available to the general public.

the Planning Commissioners have granted privileges to this builder that include a transparent privacy wall for a roof top swimming pool. This pool will be built into a previously undisturbed bluff. This is a variance that cannot be enforced. the builder will either put up curtains, shades or plant foliage to block the ocean views to maintain his privacy.

Please approve the Appeal Number A-5-NPB-18-0006, as the City of Newport Beach did not follow the Coastal Commission's mandate for protection public ocean views.

Sincerely,

Karen K. James
2627 Cove Street
Corona del Mar, CA 92625
kjdelmar@yahoo.com

From: [Jim Mosher](#)
To: Sy_Fernie@Coastal
Cc: SouthCoast@Coastal
Subject: Comment on August 2018 Agenda Item Friday 22a - Appeal No. A-5-NPB-18-0006 (Nicholson Construction, Newport Beach)
Date: Friday, August 03, 2018 3:04:17 PM
Attachments: [F22a-8-2018 \(2607 Ocean Blvd - NB\) - comment from Jim Mosher.pdf](#)

Fernie,

Please find attached a comment on the next Friday's 2607 Ocean Boulevard appeal item (F22a).

Should it be of interest I noticed a few minor typos while reading the staff report:

Page 18, last paragraph:

"by installing a gate and restricting public access **to** a significant amount of public view land"

and

"The property upon which the applicant is proposing to install **a** gate is public property."

Page 20, last paragraph:

"The issue here is whether the City has authority to approve a project that is inconsistent with the floor area **ratio** and setback requirements of its certified LCP." [not "ration" -- but as explained in my comment, it is really "floor area **limit**"]

Page 21, middle paragraph, there is again a reference to:

"inconsistent with the floor area **ratio** and setback requirements"

which you might want to consider changing to **limit** per the IP's [Table 21.18-2](#) (FAL = 1.5 in Corona del Mar).

It was a pleasure meeting you a few weeks ago!

Yours sincerely,

Jim Mosher

Date of comment: August 3, 2018
Agenda Item: **F22a-8-2018**
My position: **support staff recommendation**

Fernie Sy, Coastal Program Analyst
200 Oceangate, Suite 1000,
Long Beach, CA 90802

Re: Appeal Number A-5-NPB-18-0006 (Nicholson Construction, 2607 Ocean Boulevard,
Corona del Mar, City of Newport Beach)

Dear Mr. Sy,

As the appellant, I obviously support your recommendation that the Commission find my appeal raises substantial issues of enough statewide significance to warrant a de novo hearing.

Since the staff report includes, among its exhibits, letters from the applicant and City (dated from February and March) questioning the grounds for the appeal, I have attached the notes I sent you on February 20 explaining in more detail my concerns about the City's approval.

Because it is not mentioned in the staff report (and only in passing in my attachment) I would like to emphasize that my concerns about the impact of this project on public views are not confined to the views **from** the top of the bluff (or from the ramp, which I think are also important), but include impacts on public views looking back **to** the bluff from the harbor and the beaches beyond. As reproduced on staff report page 11, the most fundamental view protection policy of the City's CLUP, Policy 4.1.1-1, protects views **to** coastal bluffs, as well as **from** them. The CLUP recognizes a designated and protected public view point directly across the harbor from China Cove, in the popular visitor area at "West Jetty View Park" (along Channel Road, adjacent to the "the Wedge"). And although not formally designated as public view points (perhaps because they were too obvious and numerous to list), the views of coastal resources **from** the water and beaches are clearly among the most treasured and in need of protection.

A century ago, China Cove was completely surrounded by coastal bluffs. It still is, but most of them are no longer visible. Those to the west of the project site have been completely obliterated by the pre-Coastal Act "Channel Reef" apartment complex. Those on the Lookout Point side of China Cove, east of the Fernleaf Ramp, have been similarly obliterated by pre-Coastal Act bluff-face single family residential development. The segment of bluff remaining between the historic Kerkhoff Lab and the eastern edge of the ramp Wedge (see attached photo, below) is the last remnant of China Cove's natural coastal setting still visible to the public from the harbor and the Wedge.

In this connection, CLUP Policies 4.4.3-8 and 4.4.3-9 generally prohibit new development (such as this) on bluff faces, but allow it along Ocean Boulevard as long as it is "*sited in accordance with the predominant line of existing development in order to protect public coastal views.*" Adherence to the PLOED is normally thought of as protecting views of the bluffs by preventing new development from cascading *down* them from the *top*. In this case, the City has a pattern of low-rise, relatively unobtrusive development at the *bottom* of a bluff, and by ignoring this policy and allowing new development to cascade *up*, above the PLOED, the City is allowing an existing view of statewide significance to be just as permanently, and sadly, obliterated.

It bothers me that none of this was even remotely considered in the City's approval of the CDP.

Regarding the City's March 22, 2018, letter justifying variances (staff report Exhibit 8), I would like to note it makes vague references to a basis found in "State law and local zoning regulations." The "State law" being referred to is presumably California Government Code Section 65906, and the "local zoning regulations" are presumably Title 20 ("Planning and Zoning") of the Newport Beach Municipal Code. However, Gov. Code Sec. 65906 is a section of state law not applicable to charter cities like Newport Beach unless they adopt it, and while the Coastal Act makes many references to the Government Code, it does not, to the best of my knowledge, cite or incorporate Section 65906. In addition, per the definitions of Coastal Act (Public Resources Code) Section 30122, the only "zoning ordinances" applicable to interpretation of the Coastal Act are the ones certified by the Coastal Commission in an LCP. The City of Newport Beach went to great pains to place its LCP zoning ordinances in a new Title 21 ("Local Coastal Program Implementation Plan"), separate from and completely independent of Title 20. To the best of my knowledge neither NBMC Title 20 or Government Code Sec. 65906 have ever been certified by the Coastal Commission as part of the City's LCP.

Moreover, the argument made by City staff to the Planning Commission at its November 9, 2017, hearing as to the need for variances was that, however it had to be justified in law, a variance was needed in this case because the lot shape and setbacks of 2607 Ocean Boulevard made the new property owner unable, without relaxation of the setbacks, to achieve the same Floor Area Ratio (FAR) as owners of similarly sized lots. The problem with this is that FAR is the ratio of floor area to *gross lot size*. It is used to regulate commercial development in Newport Beach. Residential development is regulated differently: by Floor Area Limit (FAL), which is the ratio of floor area to the *buildable area* of the property, which is, in turn, the lot size minus the setbacks. The setbacks on residential lots are purposeful and are intended to preserve open space between homes. As a result of their shapes and setbacks, some residential lots of a given gross lot size have a smaller buildable area than others. They are *not* all supposed to be allowed the same FAR.

In fact, 2607 Ocean Boulevard, without any variances, already has smaller setbacks than most of those to which it was being compared, and if its setbacks result in little buildable area on the west side of the bluff, it is my opinion that is by design and not an error.

Yours sincerely,



James M. Mosher, Ph.D.
2210 Private Road
Newport Beach, CA. 92660
jimmosher@yahoo.com



Undated public view of China Cove Beach *from* Newport Harbor

Source: https://www.californiabeaches.com/wp-content/uploads/2014/09/IMG_6885-Large-2-1000x612.jpg

Supplemental Explanation of A-5-NPB-18-0006 Appeal Issues

(2607 Ocean Blvd, Newport Beach, local approval [CD2017-080](#))



To clarify my reasons for seeking state review of the City of Newport Beach Planning Commission's local December 7, 2017, approval of a Coastal Development Permit allowing demolition of an existing 2,260 sf single family home and its replacement with a much more view-impeding 4,500 sf home on a scenic coastal bluff face on which the CCC's certified development standards allow at most 2,865 sf of development: My understanding of the Coastal Act is that it is intended to ensure, for the benefit of present and future generations, that development in the Coastal Zone will be sized and sited to minimize impacts to coastal views, coastal resources and the public's access to them. This is achieved, as I understand it, through the public approval of Coastal Development Permits, which, when issued by a city, must be in compliance with that city's certified Local Coastal Program. Achieving the Act's goals thus requires both substantive and procedural compliance with the LCP, and, within the appeal area, a potential for Coastal Commission review of the local jurisdiction's understanding of what is required for compliance.

A review of this particular approval of a CDP for residential re-development on the bluff face at 2607 Ocean Blvd seems particularly important for the education of the Newport Beach staff,

decision makers and public (myself included) because it is the first CDP application to have come before the Newport Beach Planning Commission since final certification of the LCP's [Implementation Plan](#) in late January 2017.

The present appeal was more particularly submitted because the project appeared to raise significant Coastal Act compliance issues as to views, and potentially access and natural resources, yet its review by the Planning Commission seemed not only sloppy and incomplete, but almost totally lacking in reference to the many standards in the LCP, whose intent is not yet fully understood.

As former Newport Beach Planning Commissioner (and Chair) Michael Toerge separately reminded City staff and the PC in written comments on the day of the hearing: ***"The adoption of this LCPIP brings forth additional planning considerations that do not appear to have been addressed in the review of this project. I urge the commission to continue the project and direct staff to address the applicable components of Title 21 before seeking commission action."*** ([page 197](#) of 256 page public record for [CD2017-080](#)) – a sentiment echoed in my own written comments starting on [page 179](#), and in my rejected [appeal to the City Council](#).

Unfortunately, former Commissioner Toerge's recommendation for a continuance was ignored, and the result is approval of a CDP via a deeply flawed and error-ridden PC [Resolution No. 2075](#).

As they did in the applicant's letter of justification, where compliance with the LCP is dismissed in two paragraphs on handwritten [page 34](#) of the November 9, 2017, PC staff report, Findings in support of the CDP approval appear as a kind of afterthought, starting on page 5 of 11 of Resolution 2075. The Findings (which parrot the applicant's incorrect assertion that the property is *not* between the first public road and the sea) appear to be a cherry-picked list of project features staff feels are compliant with the LCP, with no consideration of any of the areas in which the proposal might be out of conformity.

In that regard, local staff's December 7, 2017, [Draft Resolution of Denial](#) actually concisely states one of the most obvious discrepancies with the LCP and most obvious reasons for denial (***"the Development does not comply with floor area limitation and setbacks"***), but no written discussion of why this was *not* a problem can be found.

Instead, at the top of [page 6 of 11](#), Resolution of Approval 2075 cites the prior granting of a variance to the standards of Title 20 as justification for ignoring the CCC-certified standards of Title 21. This is particularly disturbing, not only because the approval of the Title 20 variances made no findings of consistency with the LCP, but because authority for the City to be able to grant variances to the Title 21 development standards, and the circumstances and findings under which that would be allowed, is currently pending before the Coastal Commission as a major amendment to the IP (in oral testimony, not reflected in the resolution, the Community Development Director stated he had the authority to allow the PC to grant variances to IP standards if they could make the findings he deems appropriate, although there does not appear to be any written determination to back that up).

Without belaboring this overriding concern of how the IP development standards can be ignored with no authority to do so yet granted to the City by the CCC in the IP, additional key points I think need review include the following:

- The CCC-certified setback of 10' from Ocean Blvd is already reduced from the 20' required for other properties, presumably in recognition of the buffer supplied by the public land outside the red box in the aerial view at the start of the present document.
- Because the entire property is steeply sloping, and height limits are imposed relative to grade, reducing the 10' to 3' allows the structure to be built taller, increasing view impacts (even if below the Ocean Blvd curb height), contrary to the Coastal Act requirement to minimize impacts, and the requirements of IP [Sec. 21.30.100](#).
- According to the applicant, additionally reducing the 10' Way Lane setback to 0' allows the presently undeveloped western part of the property to be developed. While that may be good for an applicant wanting to develop as much as possible, it seems contrary to the Coastal Act goal of minimizing impacts to coastal resources (in this case a bluff visible not only from above, but also looking inland from the beach, harbor and beyond).
- Resolution 2075 dismisses any consideration of impacts to public views if the construction is below the curb height on Ocean Blvd. While the Ocean Blvd curb height imposes a *limit* that cannot be exceeded, one assumes it is not a "right," but rather has to be balanced against other LCP considerations (just as the basic height limit from grade is not a "right" if it exceeds the curb height) – otherwise the LCP would allow approval of things such as the adjacent Channel Reef apartment complex where the private extension of Ocean Blvd at curb height has totally blocked the public's view of the entire harbor and ocean.
- Even if construction to Ocean Blvd curb height is the *only* criterion for public view protection, that standard was presumably formulated on the assumption that what might extend to that height would be a rooftop – not an entertainment deck (such as we have now seen proposed on an extended roof of the Balboa Theater). The PC not only required no analysis (that is computer simulations in topographic context) of what the approved roof deck would look like from public viewpoints, but imposed no conditions on such things as the extent to which the deck could be populated with non-permanent but equally view-blocking accessories (potentially reaching well above curb height) or brightly lit at night. That seems a very important omission.
- The applicant dismissed impacts to views from the China Cove Ramp by falsely telling the Planning Commission (with no rebuttal from City staff) that pedestrians are not allowed on the ramp. Not only is this false, but because there is no public parking at the base of the ramp, it ignores the hundreds of paddlers and kayakers who trundle down it to access the beach and harbor (not being able to use the steep steps). The importance of views from the ramp, and the protection of them afforded by the Coastal Act, if any, is one of the many issues that needs review.
- Finding A.5 in Resolution 2075 assures the public there will be no invasive plants, but I am unable to find any condition of approval supporting that (the point is somewhat moot, since the proposal is essentially to fill the entire hillside with building and leave no plantings).

- Since Finding B.1 in Resolution 2075 falsely asserts the development is not between the nearest public road and the sea. It is unclear what required additional scrutiny has been missed as a result of that false assumption.
- Finding B.2 in Resolution 2075 further asserts there are no pedestrian access ways on the bluff side of Ocean Blvd. That is a rather strange assertion, not only in view of the pedestrian ramp to China Cove, but in view of Condition of Approval 22, which requires the applicant to extend the bluff top sidewalk. It is unclear what additional analysis was missed in view of these mistaken assumptions.
- Condition of Approval 27 assures the public that no staging or storage of materials will be allowed in the public rights of way, even though the approved [Construction Management Plan](#) notes such staging will be unavoidable in certain phases of the project.
- Condition of Approval 29 assures the public there will be no impact to public parking spaces, even though the Construction Management Plan, on the page just cited, acknowledges there will be (*"There will be occasion when nearby legal parking spaces will be used by personnel, however we are strongly encouraging personnel to carpool."*).
- In addition to the above points, the Planning Commission approval gave no consideration to the fate of the public land between the private property and Ocean Blvd (illustrated as the area outside the red box in the illustration at the start of the present document). Since this application was filed, the formerly open path starting at the red arrow has been fenced off to the public. Private communications since the Planning Commission hearing suggest City staff will be encouraging the applicant to move the entry to the path to the east, but it appears the plan is to ask the City Council to allow the applicant to fence off the entire area from public access. This will be one of the few properties along Ocean Blvd at which public view property is fenced off for private use. Not only does the consistency of that proposal with the Coastal Act seem to need review, but great public interest has been shown in this project (as evidenced by the many letters in the agenda packet), and among the things to come out of that has been a proposal to open part or all of this City land as a more formal public view park, in likely conflict with the present proposal to privatize it.

From: [Ronald J. Thommarson](mailto:Ronald.J.Thommarson@SouthCoast@Coastal)
To: SouthCoast@Coastal
Cc: [Sy. Fernie@Coastal](mailto:Sy.Fernie@Coastal)
Subject: Public Comment on August 2018 Agenda Item Friday 22a - Appeal No. A-5-NPB-18-0006 (Nicholson Construction, Newport Beach)
Date: Friday, August 03, 2018 6:39:00 PM

Honorable Commissioners,

We write to submit further comments in support of the above-referenced appeal. These comments are submitted on behalf of a concerned neighbor, John Cummings, Sr., of Corona del Mar.

We have received and reviewed copies of correspondence submitted to Coastal Commission staff, including March 22, 2018 letters submitted in opposition to the appeal by (1) Mr. John Ramirez of MLJ Resources, LLC, and (2) the City of Newport Beach.

Mr. Ramirez' correspondence outlines the history of the appealed project and certain modifications that have been made to diminish the project's scale and size, as well as past concerns about non-compliance with the Coastal Act and the City of Newport Beach's certified Local Coastal Program (LCP). This information both reveals and underscores that this project, and therefore the appeal, raises a substantial issue with respect to the grounds on which appeal was filed and whether the locally approved development may adversely impact public shoreline views that are protected by the LCP. We urge the Commission to adopt the recommendations made in the staff report and find that a substantial issue exists.

The City's comments relate more to the substantive merits of the appeal and go beyond the scope of the August 10 determination of whether a substantial issue exists. Nevertheless, the City's discussion of its finding in support of a variance omits that the property at issue has been used as a residence for many years and fails to show that it cannot reasonably continue in that use without a variance. The Coastal Act and LCP exist to protect the public interests of access to the coast and preserving public coastal views. The right to develop property is not unfettered and "is subject to reasonable restraints to avoid societal detriment." (See *Whaler's Village Club v. California Coastal Commission* (1985) 173 Cal.App.3d 240, 253.) Similarly, a variance is not justified simply to enhance the value of a given property. (See *Stolman v. City of Los Angeles* (2004) 114 Cal.App.4th 916, 8 Cal.Rptr.3d 178, 186 ("If the property can be put to effective use, consistent with its existing zoning . . . without the deviation sought, it is not significant that the variance sought would make the applicant's property more valuable or that it would enable him to recover a greater income.") The City's comments further show that a substantial issue exists and that a de novo appeal hearing is appropriate.

Thank you very much.

Sincerely,

Ron Thommarson

Hart | King

Ronald J. Thommarson | Senior Counsel
4 Hutton Centre Drive, Suite 900
Santa Ana, CA 92707
Tel. 714-432-8700 x344
Fax. 714-546-7457

rthommarson@hartkinglaw.com
www.hartkinglaw.com

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From: [Jim Mosher](#)
To: Sy.Fernie@Coastal
Subject: Additional Comment on August 2018 Item F22a - Appeal No. A-5-NPB-18-0006 (Nicholson Construction, Newport Beach)
Date: Monday, August 06, 2018 7:43:42 AM

Fernie,

In further reviewing the materials posted for this week's Item F22a, I noticed there is a typo in the **title pages** for both the [Exhibits](#) and the [Correspondence](#) that have been posted in advance of the meeting.

Both of those files are labeled: "A-5-**DPT**-18-0006 (NICHOLSON CONSTRUCTION)"

I believe you intended to say: "A-5-**NPB**-18-0006 (NICHOLSON CONSTRUCTION)"

Also, I think the **Correspondence** file may create a somewhat misleading impression in the minds of the Commissioners, since it does not contain **all** of the correspondence received by the Commission regarding this appeal.

As you know, Friday's substantial issue hearing is a continuation of one originally scheduled for March 7, 2018, in Oxnard where it was announced as Item W11a, and if I am counting correctly the [correspondence received by the CCC on this issue at that time](#) consisted of 24 emails supporting the appeal and none opposed to it -- yet none of that appears to be being seen by the Commission at the present, continued hearing.

In addition, the present batch of correspondence contains copies of 12 letters supporting the development sent to the City planner in connection with **the City's** December 7, 2017, hearing. That, again, may create the misimpression the local community was largely in support of the project at that time when in fact the opposite seems to be true. As indicated in the spreadsheet of interested parties attached to my appeal in your Exhibit 1, in connection with its [December 7 hearing](#) the City received something like 17 letters in support and 56 in opposition. That was itself continued from a [November 9, 2017, City Planning Commission hearing](#) at which only 1 letter was received in support and 40 in opposition.

Yours sincerely,

Jim Mosher

From: Jim Mosher <jimmosher@yahoo.com>
To: "Fernie.Sy@coastal.ca.gov" <Fernie.Sy@coastal.ca.gov>
Cc: "SouthCoast@coastal.ca.gov" <SouthCoast@coastal.ca.gov>

Sent: Friday, August 3, 2018 3:04 PM

Subject: Comment on August 2018 Agenda Item Friday 22a - Appeal No. A-5-NPB-18-0006
(Nicholson Construction, Newport Beach)

Fernie,

Please find attached a comment on the next Friday's 2607 Ocean Boulevard appeal item (F22a).

Should it be of interest I noticed a few minor typos while reading the staff report:

Page 18, last paragraph:

"by installing a gate and restricting public access **to** a significant amount of public view land"

and

"The property upon which the applicant is proposing to install **a** gate is public property."

Page 20, last paragraph:

"The issue here is whether the City has authority to approve a project that is inconsistent with the floor area **ratio** and setback requirements of its certified LCP." [not "ration" -- but as explained in my comment, it is really "floor area **limit**"]

Page 21, middle paragraph, there is again a reference to:

"inconsistent with the floor area **ratio** and setback requirements"

which you might want to consider changing to **limit** per the IP's [Table 21.18-2](#) (FAL = 1.5 in Corona del Mar).

It was a pleasure meeting you a few weeks ago!

Yours sincerely,

Jim Mosher