

CALIFORNIA COASTAL COMMISSION

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W13b

ADDENDUM

DATE: May 7, 2024

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W13b, LCP AMENDMENT NO. LCP-5-NPB-22-0056-1, PART C FOR THE COMMISSION MEETING ON MAY 8, 2024.**

This addendum is designed to achieve the following objectives. First, Section I updates the record by supplementing it with correspondence that Commission staff received after the staff report was issued. Section I also provides responses to some of the issues raised in the recent correspondence, which responses Commission staff proposes the Commission incorporate into its findings. Commission staff's response to comments does not alter staff's recommendation of "Approval as Submitted" for the proposed LCP Amendment (LCPA).

I. CORRESPONDENCE RECEIVED AND RESPONSE TO COMMENTS

On May 3, 2024, Commission staff received one email from Jim Mosher in opposition to the staff recommendation to approve the subject LCPA as submitted. Specifically, Mr. Mosher raises the following concerns:

1. Implementation Plan (IP) Subsection 21.38.020.B needs to be amended to correct the cross-reference error introduced in 2018.
2. The proposed footnotes to Tables 21.18-2, 21.18-3 and 21.8-4 are not necessary or desirable. Applicants should not be able to choose between the certified IP development standard and some earlier City standard. Without the footnotes, "- 6,000" properties with substandard side yard setbacks would, as they are now, be nonconforming, and exceptions to the certified standards for them should be dealt with in Chapter 21.38.
3. Assuming the intent is only to prevent a situation in which "an addition to a structure with a nonconforming side setback cannot be completed in line with the existing residence," then the proposed amendment creating a new exception in Subsection 21.38.040.I.3 should be limited to that with language such as:

“3. R-1-6,000, R-2-6,000, and RM-6,000 Coastal Zoning Districts. Existing principal structures in the R-1-6,000, R-2-6,000, and RM-6,000 Coastal Zoning Districts whose only nonconformity is having been built to a legally nonconforming side yard setback can be extended in alignment with the previously approved setback provided the extension complies with all other provisions of this code.”

4. If the intention is, instead, to treat a R-1-6,000, R-2-6,000 or RM-6,000 property whose only nonconformity is a legally nonconforming side yard setback the same, for all purposes, as a fully conforming property, then that would be more appropriately stated by amending IP Section 21.38.020 (Applicability) or possibly Section 21.38.030 (Determination of Nonconformity).

5. Existing Subsection 20.38.040.I.1 contains similar ambiguities as to exactly what “limitations” oversized residential structures in Corona del Mar and Balboa Village are exempt from, and may wish to continue this item so a more comprehensive review of Chapter 20.38 can be undertaken.

On May 6 and May 7, the City of Newport Beach provided two emails to respond to Mr. Mosher’s comments. These emails are attached to this addendum as Attachment 1. Commission staff responds to Mr. Mosher’s comments below and recommends that the Commission incorporate these responses into its findings as a new Section C (Correspondence and Response to Comments). The current Section C (California Environmental Quality Act (CEQA)) will hence be renumbered as Section D. Commission staff hereby revises its recommended findings to incorporate these responses, so that adoption of the staff recommendation will include adoption of these findings.

Response to Contention No. 1

In his comment letter, Mr. Mosher points out that the Commission approved a previous LCPA in 2018¹ to increase the limit for expansion of the floor area of nonconforming structures from 50% to 75%, subject to suggested modifications. Among other things, the Coastal Commission’s suggested modifications required a renumbering of the subparagraphs of Section 21.38.040.G. Of note, what was formerly Subsection 21.38.040.G.1 was renumbered to 21.38.040.G.2. This section reads as follows:

“2. Expansion shall be limited to a maximum of fifty (50) percent of the gross floor area of the existing structure; expansion of residential structures may be permitted up to a maximum of seventy-five (75) percent with the approval of a coastal development permit. When reviewing an application for an expansion of a nonconforming residential structure, the review authority shall consider:

a. Whether the nonconforming structure can be modified to, or replaced with, a conforming structure that would restore or enhance visual quality in a visually degraded area;

b. Whether the nonconforming structure, with or without the proposed addition, is visually compatible with the character of the surrounding area; and

¹ Refer to Amendment Request No. LCP-5-NPB-17-0084-1, which was effectuated on April 11, 2019

- c. Whether the nonconforming structure is architecturally or historically significant;
- 3. The floor area of any addition, together with the floor area of the existing structure, shall not exceed the allowed maximum floor area for the coastal zoning district;
- 4. The addition shall comply with all applicable development standards and use regulations of this Implementation Plan;
- 5. Additional parking shall be provided in compliance with Section [21.38.060](#) (Nonconforming Parking); and
- 6. The square footage of the required residential parking area additions identified below shall be excluded from the allowed expansion under subsection (G)(2) of this section, but shall be included as gross floor area.

Required Parking	Maximum Excluded Area
One-Car Garage	200 square feet, maximum
Two-Car Garage	400 square feet, maximum
Three-Car Garage	600 square feet, maximum

Mr. Mosher points out that subsection 21.38.020.B (Applicability) incorrectly references the above language as Section 21.38.040(G)(1) instead of Section 21.38.040(G)(2), as follows:

“A structure that was legally constructed prior to October 26, 2010, shall be exempt from the limitations identified in Section 21.38.040(G)(1) unless the structure is nonconforming because it does not comply with the required setbacks.”

The City’s response emails concur that the proposed LCPA incorrectly references the old Subsection of IP Chapter 21.38.040(G). However, in this case, Commission staff does not believe that a suggested modification is necessary to correct this scrivener’s error, as the Commission has accepted corrections to similar scrivener’s errors administratively in LCPAs. The LCP Amendment that authorized the renumbering was deemed to be effective on April 11, 2019, when the Commission determined that the City of Newport Beach’s action to adopt the LCP Amendment with the Commission’s suggested modifications was legally adequate.

Response to Contention No. 2

Mr. Mosher contends that the City's proposed footnote to the current IP Tables 21.18-2, 21.18-3, and 21.8-4 and 21.8.4 (refer to Appendix A of the subject staff report) is unnecessary and overly broad. He asserts that the footnotes imply that when an application is received to make additions to any conforming principal structure on a R-1-600, R-2-6000, or RM-6000, a side yard setback requirement set in the Local Coastal Program (LCP) could essentially be superseded by a less restrictive setback requirement in place at the time of the structure's original construction. Mr. Mosher notes that this would result in a classification of what should be considered a nonconforming structure as a conforming structure.

The City provided two email responses on May 6, 2024 and May 7, 2024 to respond to Mr. Mosher's contentions. In these emails, the city clarified that the footnotes would only apply to residences in the R-1 6000, R-2-6000 and the RM-6000 zones that currently have nonconforming setbacks. Residences in these zones that currently contain conforming side yard setbacks would not be allowed to construct additions with the side setback area; rather, such residences would be required to comply with the LCP's setback requirements.

Response to Contention Nos. 3 and 4.

Mr. Mosher raises particular concern with one of the City's proposed additions to IP Section 20.38.040.H (Exceptions), which reads as follows:

"3. R-1-6,000, R-2-6,000, and RM-6,000 Coastal Zoning Districts. Existing principal structures that are nonconforming only because side yard setback requirements have been amended subsequently to the original construction shall be exempt from the limits of this section."

Mr. Mosher asserts that the language- as currently written- would allow properties that are only nonconforming with respect to side setbacks to be exempt from all of the limits from IP Chapter 20.38.040 (Nonconforming Structures). In other words, Mr. Mosher asserts that properties with nonconforming side setbacks would be allowed to replace 50 percent or more of the existing structure without bringing it into conformity with the LCP, which would be inconsistent with LUP Policy 2.2.5.1, which states:

"Legal nonconforming structures shall be brought into conformity in an equitable, reasonable, and timely manner as rebuilding occurs. Limited renovations that improve the physical quality and character of the buildings may be allowed. Rebuilding after catastrophic damage or destruction due to a natural event, an act of public enemy, or accident may be allowed in limited circumstances that do not conflict with other policies and of the Coastal Land Use Plan."

To further elaborate on this contention, Mr. Mosher asserts that the proposed exception language for nonconforming side setbacks in the R-1-6,000, R-2-6,000, and RM-6,000 zones should be re-written as cited above.

The City's response emails clarify that properties in the R-1-6,000, R-2-6,000, and RM-6,000 Coastal Zoning Districts that only have a nonconforming side yard setback would be treated as a conforming property with respect to the side setback. This was how properties with nonconforming side setbacks were treated in the pre-2010 iteration of the zoning code (i.e. prior to certification of the IP), but was inadvertently not transferred over into the

certified LCP. As stated in the staff report, the intent of the subject LCPA is to incorporate this standard back into the certified LCP to eliminate inconsistent permitting regarding these specific properties. The City further noted that if a property has additional nonconformities (i.e. nonconforming rear setbacks, height, parking, etc.), then the property would be required to conform to the limitations set in Chapter 20.38.040.

Moreover, the City rebutted Mr. Mosher's suggested language change, noting that the intended language was unnecessary and makes the same point as the currently proposed language. After reviewing the language, Mr. Mosher's comments, and the City's comments, Commission staff concurs that the City's currently proposed language sufficiently describes the extent to which properties with only nonconforming side setbacks would be exempt from LCP development standards in the R-1-6,000, R-2-6,000, and RM-6,000 Coastal Zoning Districts.

Response to Contention No. 5

Mr. Mosher's last contention is that IP Section 20.38.040.I.1 does not clearly explain what development standards oversized residences in Corona Del Mar and Balboa Village would be exempt from, and he suggests a continuance until the entire chapter can be reviewed holistically. Staff would note that the scope of this LCPA is limited to clarifying development standards for residences in the R-1-6,000, R-2-6,000, and RM-6,000 Coastal Zoning Districts with nonconforming side yard setbacks. If the City wishes to clarify development standards for nonconforming properties in Corona Del Mar and Balboa Village, it may choose to do so at a later time under a separate LCPA.

Attachment 1: City of Newport Beach email responses to Mr. Mosher's comments

FW: Quick Teams call re: Nonconforming uses/structures?

Murillo, Jaime <JMurillo@newportbeachca.gov>

Tue 5/7/2024 10:43 AM

To: Spencer, Amrita@Coastal <Amrita.Spencer@coastal.ca.gov>

Cc: Perez, Joselyn <JPerez@newportbeachca.gov>

Please see Joselyn’s responses below.

From: Perez, Joselyn <JPerez@newportbeachca.gov>

Sent: May 07, 2024 10:21 AM

To: Murillo, Jaime <JMurillo@newportbeachca.gov>

Subject: RE: Quick Teams call re: Nonconforming uses/structures?

- Comment no. 2:

Mr. Mosher’s comments seem to mistakenly suggest that a property owner can choose which side setback they can apply whereas the amendment is specific in only allowing additions to structures in-line with the existing building. I also believe based on historic versions of the zoning code that there has always been intent to exempt these structures in the former B overlay that are nonconforming only for side setbacks from being considered nonconforming and having the limitations of the nonconforming structure code applied to them. My example comes from the 1960s code, first paragraph:

20.44.090 Exempt Nonconforming Buildings. The following types of nonconforming buildings are exempt from the requirement of a Use Permit for certain repairs, alterations or additions as provided in Section 20.40.070.

(a) Buildings located in R-1-B, R-2-B, R-3-B, and R-4-B Districts which are nonconforming only because amendments of this Title have changed side yard requirements subsequent to the original construction of such buildings. Such nonconforming side yards may be continued in the construction of additions.

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But yes, if the structure is only nonconforming due to side setbacks, they would not be subject to the restrictions of 21.38.040 Nonconforming Structures. If the structure is nonconforming for any other reason, such as rear setback, parking, all limits provided in Title 21 and the CLUP would apply.

- Comment no. 3 is essentially our proposed LCPA amendment, just more wordy. I don’t think it’s helpful.
- Comment no. 4 I disagree with his statement that the intent of the old code was not to exempt properties from being considered nonconforming. I think the code did intend for the properties to get relief from the restrictions assigned to a nonconforming structure



Joselyn Perez
Associate Planner
Community Development
Department
Office: 949-644-3312
100 Civic Center Drive
Newport Beach, CA 92660

From: Murillo, Jaime <JMurillo@newportbeachca.gov>
Sent: May 06, 2024 7:03 PM
To: Spencer, Amrita@Coastal <Amrita.Spencer@coastal.ca.gov>
Cc: Perez, Joselyn <JPerez@newportbeachca.gov>
Subject: RE: Quick Teams call re: Nonconforming uses/structures?

Hi Amrita,

I took a stab at responding to Mosher's 5 suggestions. See below. I will have Joselyn review in more detail tomorrow to see if she has more to add, unless you think my responded below provide you what you need?

1. Mosher is correct that the reference in Subsection 21.38.020.B should have been revised to reference 21.38.040.G.2 as part of a prior LCP Amendment. However, this scrivener's error is not related to the subject LCP Amendment request and a suggested modification to correct this prior scrivener's error is not appropriate at this time if there are no other suggested mods proposed by CCC staff. The reference is correct in the City's Zoning Code (Title 20) Section 20.38.020.B and will be consistently implemented correctly when applying Title 21. We can fix this in a future clean up amendment.
2. The footnotes are necessary to correct the omission from the 2010 Zoning Code Update. The footnote clarifies that the provision only applies to additions to principal structures. Should a homeowner choose to construct a new dwelling, they would have to comply with the current side setback requirement. Furthermore, if dwelling is nonconforming for any purpose such as rear setbacks, height, floor area, parking, etc. , they are still subject to the certified standards for nonconforming structures and uses in Chapter 21.38.
3. Correct, this is the intent and is how these dwellings were treated in the pre-2010 version of the zoning code. However, Mosher's suggested language is unnecessary. The City proposed language is intended to clarify that these dwellings are not considered nonconforming for this purpose only. If the dwellings are nonconforming for other reasons, they will be subject to the certified standards for nonconforming structures and uses in Chapter 21.38. There is nothing in the City proposed language that affords the addition to deviate from any other standard in the IP.
4. Mr. Mosher's suggested modifications are unnecessary. While that could be an alternative way of clarifying, the City's proposed language accomplishes the same thing as discussed above.
5. This comment is unrelated to the proposed LCP Amendment request.

From: Spencer, Amrita@Coastal <Amrita.Spencer@coastal.ca.gov>
Sent: May 06, 2024 3:55 PM
To: Murillo, Jaime <JMurillo@newportbeachca.gov>
Subject: Quick Teams call re: Nonconforming uses/structures?

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

Hi Jaime,

Not sure if you're still on the ADU call- I had to step into another meeting. Do you have a moment afterward to check-in re: the Mosher comment letter?

Amrita Spencer | District Supervisor

CALIFORNIA COASTAL COMMISSION

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5/7/24, 3:15 PM

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California Coastal Commission
Quick Teams call re: Nonconforming uses/structures?
LCP-5-NPB-22-0056-1, Part C
Addendum- Exhibit 1
May 8, 2024