

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CA 90802-4830
(562) 590-5071



W13b

LCP-5-NPB-22-0056-1, Part C (City of Newport Beach)

May 8, 2024

Correspondence

Date of comment: May 3, 2024

Date of hearing: May 8, 2024

Agenda Item: W13b-5-2024

My position: needs extensive modifications before approval

To: Fernie Sy
California Coastal Commission
301 E. Ocean Blvd, Suite 300
Long Beach, CA, 90802-4830

Re: **City of Newport Beach LCP Amendment No. LCP-5-NPB-22-0056-1 (Part C)**

Dear Mr. Sy,

I have a special interest in this item regarding nonconforming residential uses and structures in Newport Beach both because my own residence is in the R1-6000 coastal zoning district that is, in part, the subject of the proposed IP amendments, and because I have an appeal pending regarding additions to a nonconforming residence for which substantial issue was found in February ([Item Th14a-20-2024](#)). In researching that item, I noticed the Commission-requested modifications to the City's last request to amend IP [Chapter 21.38](#) (Nonconforming Uses and Structures) – part of the multi-faceted [Item W24b-12-2018](#) – inadvertently introduced an error that this would seem an ideal time to correct.

Need to Correct Previous Error in IP Subsection 21.38.020.B

That last request to amend IP Chapter 21.38 sought to increase the limit for expansion of floor area in nonconforming residences from 50 to 75%, and focused on [Subsection 21.38.040.G](#) (Nonconforming Structures ... Additions). Commission staff recommended modifications, later accepted by the City, which renumbered the subparagraphs of that subsection, changing what had formerly been Subsection 21.38.040.G.1 to Subsection 21.38.040.G.2 (see Suggested Modification #5 on [page 14](#) of the 30-page staff report).

Unnoticed by Commission staff or me at the time, former Subsection 21.38.040.G.1 is referred to in IP [Subsection 21.38.020.B](#) (Applicability ... Exemptions): "*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.*" [emphasis added]

> To reference the intended subparagraph of Section 21.38.040(G), after the renumbering adopted in 2018, the highlighted "(1)" needs to be changed to "(2)".

(for verification, see the generally parallel provisions in the City's Planning and Zoning Code, from which the IP language was originally copied, with [Subsection 20.38.020.B](#) pointing to [Subsection 20.38.040.G.1](#) – which has been modified and renumbered as Subsection 21.38.040.G.2 in the IP)

Need to Modify City's Latest Request

The recommendation to approve the requested IP amendments as submitted is troubling to me.

While issues such as whether certain residential lots should be allowed 4-foot side yard setbacks when the IP requires at least a 6-foot one may not have great Coastal Act significance,¹ the problem

¹ Especially since the restriction does not seem to have been uniformly applied, with the equally large lots of, say, Irvine Terrace not being subject to it.

I see is that the requested amendments are over broadly written, which, like the hastily written 2018 modifications, adds new and unnecessary ambiguities to the IP, inconsistent with LUP policies.

It is also troubling that some of the salient policies are not mentioned in the analysis, including their purpose which, as stated in [CLUP](#) Section 2.2.5, is “to establish policies to limit the expansion of nonconforming structures and uses to the maximum extent feasible and to bring these structures and uses into conformity in a timely manner, without infringing upon the constitutional rights of property owners.”

And that of the policies it does mention, such as Policy 2.2.5-4, the analysis relies on incorrect information such as (on page 9) that “The R-1-6,000, R-2-6,000 and RM-6,000 zones that are affected by this LCPA, are not located within protected view corridors or areas that contain important visual resources.” On the contrary, R-1-6,000 properties abut significant visual resources such as lower Buck Gully, the Shore Cliffs and Dover Shores bluffs, and designated view points, such as Galaxy View Park.

Some caution, therefore, seems warranted before over-exempting future development on these properties from IP protections.

Among the omitted LUP policies are:

2.2.5-1. 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.

2.2.5-3. When proposed development would involve demolition or replacement of 50 percent or more of the exterior walls of an existing structure that is legally non-conforming due to a coastal resource protection standard, the entire structure must be made to conform with all current development standards and applicable policies of the Coastal Land Use Plan..

2.9.3-8. Continue to require properties with nonconforming parking to provide code-required off-street parking when new uses, alterations or additions result in increased parking demand.

Requested Footnotes Need Revision or Deletion

The first and most obviously overbroad new provision is the footnotes requested to be added to IP Tables 21.18-2, 21.18-3 and 21.8-4 (see [pages 11 and 12](#) of the current staff report).

Those footnotes propose to create an exception to the 6-foot side setback requirement, which has been in effect since the “-B” combining district was added to these properties (now called R-1-6,000,

R-2-6,000, and RM-6,000) by [Ordinance No. 635](#) in late 1950, and which was adopted as the LCP standard when the IP was certified in 2017.

The stated purpose, most clearly explained in an October 20, 2022, [staff report](#) to the City Planning Commission, is to allow the walls of nonconforming principal residences built with substandard (but legal at the time) side setbacks to be continued along the same line.

Specifically, it is intended to correct the inadvertent omission of a rule stemming from a 1964 City [Ordinance No. 1076](#), which (at a time when the “-6,000” series districts were subclasses of “R-1-B,” “R2-B” and “R4-B”) said in pertinent part:

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

That eventually morphed into a footnote in the pre-2010 Zoning Code saying:

B Overlay District. An addition to the principal building shall be allowed to be constructed to the side yard setback line in effect at the time the principal building was constructed.

which appears to be the basis of the footnote the City proposes to append to the IP standards:

(7) An addition to the principal structure shall be allowed to be constructed to the side yard setback in effect at the time the principal structure was constructed provided the addition meets applicable building and fire code standards.

It will be noted **this says nothing about there being an existing structure built to a less restrictive standard or extending existing non-conforming structural walls.** Instead, it says when an application is received to make an addition to a perfectly conforming principal structure on a R-1-6,000, R-2-6,000 or RM-6,000 property, the required side yard setback certified with the IP in 2017 is superseded, if less restrictive, by the City standard at the time of construction, allowing the construction of what would normally be regarded as a new nonconforming structure to be found “conforming.”

Again, the difference between a 4- and 6-foot setback may not be a major issue, but giving applicants owning these properties carte blanche to choose between an LCP development standard and some less restrictive earlier City standard seems wholly **inconsistent** with the stated purpose of the policies in CLUP Section 2.2.5, which, as quoted earlier, says that while recognizing the past, the intent of the LCP is to *replace* outdated development standards with the more modern ones of the LCP, not to *revert* to older, uncertified standards (as the language in red, above, proposes to do).

Requested Exemption Language is Also Problematic

The City's other proposed IP change regarding the R-1-6,000, R-2-6,000, and RM-6,000 districts also appears overbroad.

It requests adding the following provision to IP [Subsection 20.38.040.H](#) (Exceptions):

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 subsequent to the original construction shall be exempt from the limits of this section.

This seems to stem from the mistaken belief on the part of City staff, echoed in the present CCC staff report (see page 7), that City [Ordinance No. 1076](#) "*also exempted properties within the "B Overlay" from development restrictions within the nonconforming code provisions, meaning they were not considered or treated as nonconforming properties.*"

As quoted above, this was clearly *not* part of the ordinance, whose purpose was limited to allowing properties with a formerly legal side setback to be extended at the same formerly legal setback. The remainder of the ordinance expressly identified such properties as nonconforming and required the addition to comply with all other restrictions applicable to additions to nonconforming structures:

Such repairs, alterations or additions must comply with all requirements of this Article in effect on the date the application for a building permit is filed except as otherwise provided in this section."

The later "B Overlay District" exemption footnote this morphed into (reproduced on the preceding page) was an inaccurate attempt to summarize the original intent.

The problem with the proposed amendment in red, above, is that while the exemption it creates is provided only to properties whose only nonconformity is a deficient side setback, it doesn't just allow the extension of a wall, but it appears to exempt them from *all* "the limits" of the *entirely* of [Section 20.38.040](#), which is unlikely to be the intent.

The intent may have been to only exempt the property (which it acknowledges to be nonconforming) only from the limitation that an addition be in conformity with the current side setback standard (Subsection 20.38.040.G.4).

Or the intent may have been to exempt it from that plus the limitation on the allowable size of the addition (Subsection 20.38.040.G.4) – although exempting from that would be a bit strange since in the existing exemption provided by Subsection 21.38.020.B (a needed correction to which was discussed at the beginning of this letter), nonconforming setbacks is the one nonconformity that *doesn't* relieve properties of the size limitation on additions.

However, since it says these "-6,000" properties with nonconforming side setbacks "*shall be exempt from the limits of this section,*" they will also be exempt from Subsection 20.38.040.A, which means

the can *replace* 50% of more of the structure without bringing it into conformity. Is that the intent? If so, it seems inconsistent with LUP Policy 2.2.5-1.

The proposed language would also seem to exempt a “-6,000” property with nonconforming side setbacks from the Subsection 20.38.040.G.5 limitation requiring additional parking to be provided if an addition increases the floor area above specified thresholds – something an addition to a completely conforming property would need to do.

Exempting these properties from the Subsection 20.38.040.G.4 limitation that an addition be in compliance with IP standards, and the Subsection 20.38.040.G.3 that the combined floor area after an addition not exceed the limit for the district also give the “-6,000” properties with noncompliant side setbacks greater privileges than fully compliant properties.

Those seem inconsistent with the policies intended to bring nonconforming properties into conformity, and not increase the degree of nonconformity.

To avoid those inconsistencies, I believe the proposed amendments need to be modified to something closer to, and limited to, their intended purpose.

Summary and Suggestions

1. As explained in the first section at the start of this letter, IP Subsection 21.38.020.B needs to be amended to correct the cross-reference error introduced in 2018.
2. I do not believe the proposed footnotes to Tables 21.18-2, 21.18-3 and 21.8-4 are 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*” (staff report, page 7), 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.”

This would allow the extension, but not relieve it of the other limitations on additions to nonconforming structures, such as the limitation on size.

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). However, I can think of no reason for doing that, for, as stated previously, that was never the purpose of 1964's [Ordinance No. 1076](#) which created the exception the City is trying to insert into the LCP.

5. Alternatively, the Commission may notice that 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.

Additional Information

Despite the City's request to amend the IP, the problem it wishes to address regarding legally nonconforming side yard setbacks may be one that exists more outside the coastal zone than in it.

Despite the statement on page 7 of the staff report that the exception may be needed because "*Many of the properties located in the zoning district were permitted and developed under the County of Orange and then later annexed by the City of Newport Beach,*" I have been unable to find a single instance of a R-1-6,000, R-2-6,000 or RM-6,000 property in the coastal zone that was developed prior to its annexation by the City.

Indeed, few have even been subjected to changing City standards.

The "B-" "combining district" imposing the minimum 6-foot side yard setback on certain 60-foot and wider residential lots was created by [Ordinance No. 635](#) in late 1950 and applied initially only to Shore Cliffs (Tract 1116, subdivided in 1946) and Corona Highlands (Tract 1237, subdivided in 1949). The other "-6,000" properties in the coastal zone have never been subject to anything other than the IP's 6-foot requirement. How many Shore Cliffs and Corona Highlands properties were developed before Ordinance No. 635 (when the otherwise standard 4-foot side yard was allowed) is unknown to me, but I would guess it is few.

Yours sincerely,

James M. Mosher, Ph.D.
2210 Private Road
Newport Beach, CA. 92660