

## Balboa Island Preservation Association



*The gem of Newport Beach*

January 28, 2020

Re: Council Vote on the Cottage Preservation Ordinance

Dear Mayor O'Neill and Council Members:

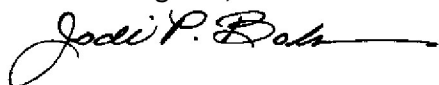
I am writing on behalf on the Balboa Island Preservation Association and its members to ask that the Council vote YES on the approval of the Cottage Preservation Ordinance and the 75% expansion request. A yes vote will not hinder any property rights but, rather, it will enhance the rights of property owners, both existing and prospective, allowing them to expand Cottages rather than scrapping the entire structure because they currently have no options to increase the footprint or square footage of their Cottage.

Our community is dedicated to preserving and promoting our unique history. Preservation cannot succeed without your support and it cannot flourish without community participation. We understand that an approval of the Cottage Preservation Ordinance will not eliminate the construction of new homes, but will give those who are stewards of our unique history a tool to preserve that which is important to our community. Newport Beach Cottages are treasures that have drawn visitors from around the world and many other cities have excellent examples of how this same type of Ordinance has greatly enhanced the ability to retain the charm and unique character of its neighborhoods.

In the New Year, BIPA looks forward to a cooperative relationship with the City and other organizations to preserve and protect those things most important to our community.

John Steinbeck wrote, *"how will we know it's us without our past?"*

Kind regards,



Jodi P Bole, BIPA

## **Email to the City Council on the Changes to the regulations on Cottages**

### **Email to City Council Cottages [citycouncil@newportbeachca.gov](mailto:citycouncil@newportbeachca.gov)**

Mayor and City Council: On behalf of the BIIA and our members, we support the staff recommendation to approve an incentive program for the preservation of cottages. We have presented the information to our residents in our quarterly Island meetings and newsletters with no opposition. Thank you for your efforts and especially your staff for developing this creative incentive program.

The BIIA would also support the recommendation to allow up to 75% expansion instead of the previous proposal of 50%. As I will not be able to attend the meeting and Lee Pearl is also unavailable, please discuss the outreach program for property owners and realtors and determine if there is any way to begin a preliminary permit review process prior to the approval of the Coastal Commission. Finally, we do not support the in-lieu parking fee recommended by Chair Koetting of the Planning Commission.

Terry Janssen  
President BIIA

### **Constant Contact**

Two important Balboa Island related projects are scheduled for the January 28<sup>th</sup> at 7:00 p.m. City Council Meeting. The City with community support is considering a change to the development standards of cottages to allow greater flexibility and less regulation. The City Council will be listening to public comments and a staff recommendation with a likely approval of the changes to the regulations. Please plan to attend to present your opinions and support a positive change to the City requirements to help preserve our special cottages.

Many of us realize that there are over 100 wood benches around the Island(s) and many more wood trash containers. These benches and trash containers are badly in need to refinishing and after two unsuccessful attempts by the City Staff to get a bid the City now has a viable bid. The Staff will be presenting the bid to the City Council for approval. This part is a great thing but in addition, the Staff will be asking the Council for future direction for the Benches. In other words this could be the last time the City will refinish the benches and move to an other alternative for the Benches. I urge you to attend the Council Meeting and express your opinion.

I will be unable to attend but I hope you have time on your calendar to attend. Happy New Year.

Terry Janssen

President

Balboa Island Improvement Association

## January 28, 2020, Council Item 16 Comments

The following comments on an item on the Newport Beach City Council [agenda](#) are submitted by:

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

### ***Item 16. Ordinance No. 2020-4: Introduction of a Cottage Preservation Ordinance (PA2019-181)***

While I appreciate the comprehensive staff report, I remain uncertain about staff's interpretation of the interplay between three sections of the Municipal Code relevant to this issue (not counting the sections of Title 21 mirroring those in Title 20):

1. Existing [Section 15.02.060](#) requires any redevelopment to be brought into complete conformance with current codes when the valuation of the improvements exceeds \$209,000 and adds more than 50% to the market value of the existing building.
2. Existing [Section 20.38.040](#) ("Nonconforming Structures") allows expansion of structures nonconforming for any reason (other than apparently nonconforming parking) to be expanded by 50% (and with Planning Commission approval, up to 75%) over any ten year period without correcting the existing nonconformities. Note: [Section 21.38.040](#) is slightly different and declares replacement of more than 50% of a structure to be a replacement structure.
3. Existing [Section 20.38.060](#) ("Nonconforming Parking") limits the expansion of residential structures lacking the current code-required parking spaces to 10% over 10 years.

Through a system that is not entirely obvious from the code, I believe staff interprets Section 20.38.060 to pre-empt Section 20.38.40, and Section 15.02.060 to preempt both.

As best I can tell, the current proposal, placed in Section 20.38.060, is intended to address *only* existing cottages with too few parking spaces or too small a garage. If they had adequate parking but were nonconforming for some *other* reason (say, violation of current setback standards), they could add up to 50% every 10 years "by right" and up to 75% with PC approval – provided they don't exceed the valuation limit of Section 15.02.060.

However, the proposed Subsection 20.38.060.A.3 (cross-referenced in the proposed revised Section 15.02.060), although placed in section called "Nonconforming Parking," does not say it has anything to do with, or is limited to, parking non-conformities. So I am guessing the exemption from the Section 15.02.060 valuation criteria is intended to apply to expansion of cottages non-conforming for reasons other than parking, provided they stay under the 50%/500 sf cap. Is that correct?

That said, it is unclear to me if the cottage expansion opportunity is intended to be a one-time opportunity? Or if 500 sf can be added repeatedly in separate applications? Or if, in parallel to the existing rules, up to 500 sf can be added in any 10-year period? None of this is clearly stated.



Setting aside those concerns, I would suggest the following changes are needed to the text proposed for introduction:

**Page 16-12**, last paragraph: “WHEREAS, ~~authoring authorizing~~ the amendment to Title 20 of the NBMC would incentivize the preservation of cottages...”

**Page 16-13**, paragraph 4: “WHEREAS, on November 21, 2019, the Planning Commission adopted Resolution No. PC2019-034 by a majority vote (5 ayes, 1 ~~nay no~~), ...”<sup>1</sup>

**Page 16-15**, paragraph 1: “3. Exception for Cottage Preservation. Notwithstanding the provisions of subsections (A)(1)(b) and (A)(2)(b) of this section, additions of up to fifty (50) percent of the existing floor area of the structure, but no more than 500 square feet, are permitted for a single family residential dwelling, duplex, or triplex ~~that when they~~ comply with the following criteria:”

Or better: “3. Exception for Cottage Preservation. Notwithstanding the provisions of subsections (A)(1)(b) and (A)(2)(b) of this section, for a single family residential dwelling, duplex, or triplex, additions of up to fifty (50) percent of the existing floor area of the structure, but no more than 500 square feet, are permitted ~~for a single family residential dwelling, duplex, or triplex that when they~~ comply with the following criteria:”

[I would also strike the word “residential” from the subparagraphs that appear under this. The word adds little and creates the impression there may be non-residential additions to these properties that are allowed without limit. If there is some intent of that sort, it should be made clear in the opening paragraph so it doesn’t have to be repeated in each subparagraph.]

**Page 16-15**, Section 3: “An amendment to the Local Coastal Program (“LCP”) is also underway. LCP Amendment No. LC2019-004 amending Section 21 .38.060 (Nonconforming Parking) of Title 21 of the Newport Beach Municipal Code shall not become effective for projects ~~located in the coastal zone~~ for which the LCP is applicable until approval of the subject LCP amendment by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Newport Beach.”

[The deleted phrase adds nothing, and creates the impression the City feels there could be projects in the coastal zone to which the LCP does not apply, and hence which could be approved prior to CCC certification. Is this a veiled reference to the CCC’s [Categorical Exclusion Order](#) for Newport Beach? And does staff believe cottage preservation projects in the CatEX area can be approved irrespective of their consistency with the LCP? Deleting the phrase does not remove that ambiguity, but I do not believe allowing inconsistencies is what the oddly-worded CatEX says.]

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<sup>1</sup> See PC minutes as reproduced on page 16-55. The PC votes by “ayes & noes” as did the City Council until the City Charter Section 410 was arbitrarily and ignorantly changed in 2012 as part of the notorious single “yes or no” on 38 Charter amendments of Measure EE. “Nays” are not the opposite of “ayes”. They are part of the older alternative “yeas & nays” voting system used by a very few institutions, such as the U.S. Senate.

**Page 16-18**, paragraph 2: “WHEREAS, in 2005, the City of Newport Beach (“City”) adopted the City of Newport Beach Local Coastal Program Coastal Land Use Plan (“Local Coastal Program”) as amended from time to time including most recently on **January 22 February 12**, 2019, via Resolution No. 2019-**816**,”<sup>2</sup>

**Page 16-19**, paragraph 4: “WHEREAS, on November 21, 2019, the Planning Commission adopted Resolution No. PC2019-034 by a majority vote (5 ayes, 1 **nay no**), ...”

**Page 16-20**, Section 2: “LCP Amendment No. LC2019-004 shall not become effective until approved and adopted by the California Coastal Commission, including any modifications suggested by the California Coastal Commission, **and** by resolution(s) and/or ordinance(s) of the City Council of the City of Newport Beach **including any such modifications**.”

**Page 16-23**, mid-page, same corrections as to Title 20, including: “4. Exception for Cottage Preservation. Notwithstanding the provisions of subsections (A)(1 )(b) and (A)(2)(b) of this section, additions of up to fifty (50) percent of the existing floor area of the structure, but no more than 500 square feet, are permitted for a **single family** residential dwelling, duplex, or triplex **that when they** comply with the following criteria:”

Note: I do not understand the preceding “3. Alley Access” subsection of the existing code.

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<sup>2</sup> Newport Beach’s CLUP actually dates back not to 2005, but to 1981/1982. It underwent a major revision with [Resolution No. 2005-64](#), and again, in response to the City’s adoption of its 2006 General Plan, with [Resolution No. 2009-53](#). Since there seems to be no official printed version of the CLUP and since the [online version](#) does not yet reflect it, I cannot be entirely sure [Resolution No. 2019-16](#) is the last CCC-certified and City-adopted revision in the labyrinth of [proposed revisions](#), but I suspect it is.



City of Newport Beach  
100 Civic Center Drive  
Newport Beach, California  
92660  
*Via email*

January 28, 2020

Attention: City Council Members Diane Dixon, Brad Avery, Duffy Duffield, Kevin Muldoon, Jeff Herdman, Joy Brenner and Mayor Will O'Neill

*Re. Cottage Preservation Ordinance*

Dear Mayor O'Neill and Council Members:

Preserve Orange County is a county-wide nonprofit with the mission to work through education and advocacy to promote conservation of our county's historic and cultural resources. Our members are residents and businesses from throughout the county, including Newport Beach.

We wish to congratulate Council Members for initiating the Cottage Preservation Ordinance in May 2019 and encourage you to approve the amended ordinance before you today, including the 75% expansion request. The ordinance will allow property owners to expand their cottages without demolishing the entire structure because they currently have no options to increase the footprint or square footage of their cottage.

This ordinance demonstrates a willingness on the part of City Council to conserve the small residential cottages and beach village atmosphere in your ocean-side neighborhoods. We understand that approving the Cottage Preservation Ordinance will not eliminate the construction of new homes, but will give those who are stewards of Newport's unique history a tool to preserve their cottage if they choose to. Newport Beach cottage communities attract residents and visitors from throughout the world. The ordinance will greatly enhance the ability to retain the charm and unique character of these places.

Sincerely,

A handwritten signature in dark ink that reads "Krista Nicholds".

Krista Nicholds  
President, Preserve Orange County

cc. Ron Yeo, Jodi Patrich, Peggy Palmer

Preserve Orange County 208 W 4<sup>th</sup> Street, Santa Ana, California 92701  
[www.preserveorangecounty.org](http://www.preserveorangecounty.org) 949-482-0125