

November 6, 2002

**Honorable Chairman and Members of the  
Hermosa Beach Planning Commission**

**Regular Meeting of  
November 19, 2002**

SUBJECT: DETERMINATION OF THE LEGALITY OF A NONCONFORMING  
RESIDENTIAL BUILDING

LOCATION: 402 28<sup>TH</sup> STREET

APPLICANT: JOHN K. GIESREGEN  
402 28<sup>TH</sup> STREET  
HERMOSA BEACH, CA 90254

REQUEST: DETERMINATION ON WHETHER TWO DWELLING UNITS WERE  
LAWFULLY CREATED AND CONSTITUTE A LEGAL NONCONFORMITY  
PURSUANT TO SECTION 17.60 OF THE ZONE CODE.

**Recommendation**

Direct staff as deemed appropriate.

**Background**

LOT SIZE	2,396 square feet
ZONING:	R-2
GENERAL PLAN:	Medium Density Residential
BUILDING AREA:	1,275 Square Feet

The subject property contains a one-story single family residence and a detached garage. The single family residence is 915 square feet and a second unit on the property, located in the detached garage, is 360 square feet.

A single family residence was permitted and constructed in 1948. A permit for alterations was issued in 1954 which had plans attached which showed a detached garage. A permit was issued in 1961 to close one-half of the double garage to make "maid's quarters" (defined as accessory living quarters).<sup>1</sup> The permit had a note written in the upper left corner stating "affidavit no rental." There is no permit or records that indicate a second kitchen was included in the project, nor would one have been allowed in 1961. According to the Zoning Ordinance adopted in 1956, accessory living quarters were not allowed to have any kitchen facilities or be rented or otherwise used as a separate dwelling. No other City records show any permit application or approval for the second kitchen.

The property is zoned R-2. Pursuant to current zoning requirements only one dwelling would be allowed due to the lot size. Section 17.12.050 of the Zone Code states the minimum lot area per

dwelling unit shall be not less than 1,750 square feet. Thus a property with two dwelling units must have 3,500 square feet of lot area to comply with current zoning requirements. The subject property has a lot area of 2,396 square feet. Therefore the current use (2 units) is nonconforming to Section 17.12.050 of the Zone Code. The current zoning of R-2 dates back to 1943. Since the adoption of the changes to the Zoning Ordinance in 1943, no more than two units would have ever been allowed on the subject property because of the less than required lot size.

### **Analysis**

Chapter 17.60 of the Zoning Ordinance gives a property owner the opportunity to request validation of current conditions which otherwise violate zoning or current building and safety requirements “when city records and actual property use conflict.” The Commission may validate that these conditions are legally nonconforming if the evidence warrants such determination. The kind of evidence the Commission has previously used in approving legal determinations includes: county assessor information, building permits and plans, Residential Building Reports, and the Sanborn Map. Also, Section 17.60.020 provides that when it can be shown that dwelling units constructed prior to January 1, 1959, were constructed in accordance with then applicable laws, that said dwelling is not substandard within the intent and meaning of Assembly Bill No. 475, and that the use of said dwelling has been consistent since January 1, 1959, then said residential dwelling unit or units shall be declared legally nonconforming.

The evidence available to staff is limited to the building permit records on file, a Residential Building Report issued in 1981, and the Sanborn Map (lasted updated in 1957) which provides a legal record of the physical character of a property for insurance purposes. Based on the permit records, no evidence exists that building permits were applied for or obtained that changed the whole detached garage into a separate dwelling unit with a second kitchen. The conversion of the garage to living quarters was considered a zoning violation in 1972, 1976 and 1978 (see the attached letters sent to the two previous owners of the property dated 8/16/72, 1/76, and 1/25/78). The 1981 Residential Building Report indicates that the building is a single family residence (with one kitchen) plus living quarters in part of the garage, and also notes that the south half of the garage should be open for automobile parking. The Sanborn Map shows the property as having a dwelling unit with a detached accessory building.<sup>2</sup>

The applicant asserts that the subject use was lawfully created and the use of the second dwelling unit has been consistent since it was created. The applicant has provided additional information obtained from the County Assessor’s office, an independent appraisal service, and Consolidated Disposal Service. The Assessor’s information is a computer printout showing that the property is being taxed for two units, and that the front unit (the single family residence) was built in 1949 and the rear unit was built in 1954. The Assessor’s information also includes a property sketch indicating (by way of hand written note) that the garage was converted to living area with kitchen and  $\frac{3}{4}$ bath in 1961. Other than the incongruous dates for when the rear unit was permitted (1954 on the printout and 1961 on the property sketch), the Assessor’s information seems to corroborate the applicant’s claim that two units were created and assessed property taxes. The appraisal report prepared by C.R. Pollard & Company, dated March 6, 2001, indicates the property is a duplex, and that the “rear unit was originally constructed as a garage, (but) was legally converted many years ago.” The information from Consolidated Disposal Service is a computer printout also showing that the property has two units.

In order to return the property to one unit with detached maid's quarters, the second kitchen located in the maid's unit would have to be removed and the southern half of the garage made accessible as an off-street parking facility. The building otherwise appears to comply with the Building Code.

In summary, the limited evidence available seems to place in serious doubt that the second kitchen was legally constructed, and that the south half of the garage was legally converted to living area. Further, the building permit records show that the "maid's quarters" were not to be used as a rental.

CONCUR:

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Scott Lunceford  
Planner Assistant

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Sol Blumenfeld, Director  
Community Development

Attachments

1. Resolutions
2. Photos
3. Location Map
4. Code Enforcement Report (includes permit history)
5. Copies of Notice of Violation letters
6. Copies of relevant building permit and Residential Building Report records
7. Applicant Submitted Materials:
  - Letter and Application
  - Appraisal Report
  - County Assessor's printout 3/8/02
  - County Assessor's sketch of property
  - Data Quick copy from Consolidated Disposal Service 3/18/02

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Footnotes

1. As defined in the current Zone Code, a **guest house** or **accessory living quarters** means living quarters within a main building for the use of persons employed on the premises, or for temporary use by guests of the occupants of the premises. Such quarters shall have no kitchen facilities and shall not be rented or otherwise used as a separate dwelling unit. Guest houses and accessory living quarters are subject to the issuance of a conditional use permit and are not allowed in accessory buildings.
2. As defined in the current Zone Code, an **accessory building** means a building, part of a building or structure or use which is subordinate to, and the use of which is incidental to that of the main building, structure or use on the same lot. Where the wall of an accessory building has a common wall or a portion of a common wall not less than four feet in length, such accessory building shall be considered as a part of the main building.

