

January 10, 2005

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

**Regular Meeting of
January 18, 2005**

SUBJECT: REVIEW OF CHAPTER 17.52 REGULATING NONCONFORMING BUILDINGS AND USES.

Recommendation:

That the Planning Commission review the draft ordinance amendment in the attached draft resolution, request desired changes if any, and forward the amendment to the City Council with a recommendation of approval.

Background:

During 2004, the City Council expressed concerns about the City's Zoning Code regulations governing buildings and land uses which do not conform to current regulations, especially with respect to the need to permit limited expansions when there is added parking provided.¹ Staff addressed this issue in its December 24 report to Council, as well as other aspects of the nonconformity regulations that are ambiguous and difficult to implement. The City Council reviewed the information submitted and directed that the issue be referred to the Planning Commission for review of an ordinance amendment to correct the problems.

Analysis:

Many properties in the City are nonconforming to one or more regulations in the Zoning Code. When a homeowner comes to the Community Development Department with questions about improving their home there is a high probability that he or she will have to deal with the City's regulations regarding "nonconformities". Structures and properties that are nonconforming include "nonconforming buildings" which may have been constructed in conformity to the regulations in effect at the time but which do not meet current regulations such as:

- ❑ Setbacks from property lines,
- ❑ Building height,
- ❑ Parking and parking setback requirements
- ❑ Open space requirements
- ❑ Lot coverage

Properties containing "nonconforming uses" include those that contain uses not now permitted in the zone, such a residential uses in a commercial district, or containing more units than permissible in the zone.

There are often cases where the existing rules for nonconformities are too restrictive, and prevent what is otherwise reasonable expansion and remodeling projects. Also, the rules currently require Planning Commission review when certain thresholds are met, which causes delay and greater uncertainty for a homeowner. The rules themselves, with respect to limitations on demolition, can be very complex and difficult to interpret, implement, and reasonably enforce, and may conflict with building and safety code requirements for upgrading older structures. As a result, homeowners are often confused by the

¹ For example, in one case the City Council sustained the decision of the Planning Commission to deny approval of a variance for expansion to an existing three-unit residential building that is a nonconforming use since it could not make the mandatory findings, but felt the law should be made more flexible to accommodate such projects that add parking.

complex rules with respect to what can be demolished and what can be added, and often decide either to not improve the property or to sell the property to a developer, which results in the demolition of the existing dwelling unit. Therefore, staff is recommending review of the following issues:

1. Amount of Remodel/Expansion Allowed

Nonconforming structures are permitted to be remodeled and expanded up to 50% of the replacement cost of the building and up to 100% with Planning Commission approval (excluding any remodel/expansions that have occurred since October 26, 1989). Nonconforming uses are limited to 50% period, with no opportunity to exceed 50%. For residential properties, these remodel/expansions must provide at least two parking spaces per unit and for commercial property parking must be provided for the expansion only. Replacement cost is calculated based on building valuations established by the International Conference of Building Officials (ICBO). This requires literally an accounting of the type of remodeling and expansion that is proposed (i.e. habitable living area is calculated at different factors than garages, deck structures, or other accessory structures) and involves a staff judgment call as to what constitutes remodeling and how to value remodeling. Sometimes the plans are poorly prepared without adequate investigation of the structural portions to be preserved or the owner may decide to misrepresent the information. These regulations produce confusion for homeowners of nonconforming properties and do not encourage preserving older homes in the city. Some suggestions for simplifying this process and minimizing delays and costs with Planning Commission review are:

Structures:

- ❑ Allow up to 100 % expansion in floor area without Planning Commission approval when 2 parking spaces per unit are provided for nonconforming structures. Disregard interior remodeling, decks and garages or other accessory structures from allowable footage (*Currently, anything above 50% requires Planning Commission approval based on valuation.*)
- ❑ Allow up to a 500 square-foot increase in floor area without Planning Commission approval required for nonconforming structures when there is one space per unit or when parking is added to an existing building with no parking. Disregard interior remodeling, decks and garages or other accessory structures from allowable footage. (*Currently, a 250 square-foot expansion is allowed with one space per unit*)
- ❑ Calculate the amount of expansion based on footage and omit confusing calculations based on valuation.

Uses:

- ❑ Allow up to 50% increase in floor area for nonconforming uses, and disregard remodeling of interiors based on footage not valuation and no P.C. approval. (*Currently, up to 50% expansion/remodel valuation calculation includes building interiors*)
- ❑ Allow up to a 500 square-foot increase in floor area without Planning Commission approval required for nonconforming uses when there is one space per unit or when parking is added to an existing building with no parking. Disregard interior remodeling, decks and garages or other accessory structures from allowable footage. (*Currently, a 250 square-foot expansion is allowed with one space per unit*)
- ❑ Calculate the amount of expansion based on footage and omit confusing calculations based on valuation.

Historic Landmark Buildings:

- Allow buildings designated as Historic Landmarks to remodel with no accounting of “valuation” and no limitation providing the work is consistent with the requirements of Section 17.53.140 Certificate of Appropriateness in the City’s Historic Preservation Ordinance.

The proposed changes will eliminate Planning Commission review of some projects involving nonconformities. However, there will not be a material effect without the review as the following table indicates. Over the last ten years, almost all of the residential proposals taken to the Commission have been approved:

NONCONFORMING RESIDENTIAL REMODELS REVIEWED BY PLANNING COMMISSION		
YEAR	APPROVED	DENIED
2004	7	0
2003	10	1 (pdp)
2002	9	0
2001	7	0
2000	7	0
1999	9	1
1998	15	0
1997	11	0
1996	5	1
1995	4	0
Totals	84	3

It should also be emphasized that, under the amended regulations, the Community Development Director will have the authority to refer any proposal which may have substantial adverse impacts on neighboring residents or other landowners to the Planning Commission.

2. Structural Removal Allowed

Presently, when a nonconforming structure is expanded under the existing regulations the amount of structural removal is limited. The code states that up to 30% of existing linear feet of exterior walls and 30% of existing floor area may be removed (with a limit of 10% for nonconforming uses). These numbers can be exceeded with Planning Commission approval. However, when an old building is opened up with the intent of replacing less than 30 percent of the existing wall, it is often found that the entire wall is structurally unsound (e.g. because of dry rot or termite damage) and that the whole wall must be replaced for Building Code and safety reasons. Thus, through no fault of their own, property owners are often compelled to remove rotted and damaged framing in violation of approved plans, or they are required to construct “sister” studs adjacent to the old lumber. In either case, the project is delayed because construction is not carried out pursuant to approved plans.

These requirements require homeowners to submit detailed demolition floor plans, and then require staff time to make the 30% calculation, and at the inspection phase require staff to determine what constitutes removal (i.e. how many studs have to remain, what is counted as removal when a new window or door opening is proposed, etc.). Further, site conditions differ from the plans, and it is a judgment call as to whether to allow variation from the plan so the building can be constructed in compliance with Building Codes. These limitations frustrate homeowners who want a safe building

and do not really understand the law, and frustrate neighbors who observe construction, which does not agree with the plans they have reviewed at City Hall.

To avoid this confusion, staff recommends eliminating the percent removal limitation. Instead, the code should be amended to indicate that the existing nonconforming portion of the structure cannot be removed and that the existing floor system must be retained. This permits removal of studs or other structural framing when necessary without violating the Ordinance. Otherwise, if the building is completely demolished the new construction obviously must be made to comply with the current requirements.

3. Requirements for Buildings Nonconforming to Parking Requirements

Additional requirements for buildings nonconforming to parking further limit the allowed expansion as noted above. In order to increase the allowable expansion for residential buildings that contain at least one parking space per unit, or for projects which add parking, staff suggests the following changes:

Less than 1 per unit	100 sq. ft. expansion, (<i>same as the current requirement</i>)
1 space per unit or new parking is added	500 sq. ft. expansion, no P.C. approval (<i>currently only 250 square feet is allowed, and no credit is given for added parking and expansions to nonconforming uses require P.C. review</i>)
2 spaces per unit (but insufficient guest parking)	100% expansion nonconforming structures and 50% nonconforming uses

For clarification purposes, staff also recommends that this section of the Zoning Code related to buildings nonconforming to parking, presently in Chapter 17.44, be made a part of the nonconforming regulations in Chapter 17.52, and be amended for clarification purposes.

Environmental Review:

This code amendment is categorically exempt from environmental review pursuant to the California Environmental Quality Act Guidelines, Section 15305, Class 5: Minor Changes in Land Use Limitations, because the amendment would make minor changes in the regulation of nonconformities.

Sol Blumenfeld, Director
Community Development Department

Attachments:
Draft Ordinance Amendment

