

October 11, 2004

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

**Regular Meeting of
October 19, 2004**

SUBJECT: DETERMINATION OF THE LEGALITY OF A NONCONFORMING RESIDENTIAL BUILDING

LOCATION: 1533 MANHATTAN AVENUE AND 1534 PALM DRIVE

APPLICANT: JOE BIANCULLI
213 N. DIANTHUS STREET
MANHATTAN BEACH, CA 90266

REQUESTS: DETERMINATION OF WHETHER A 4TH DWELLING UNIT ON THE PROPERTY, LOCATED ADJACENT TO THE GARAGE ON PALM DRIVE, IS A LEGAL NONCONFORMING DWELLING UNIT.

Recommendation

To direct Staff as deemed appropriate.

Background

LOT SIZE	3000 (30' x 100')
ZONING:	R-3
GENERAL PLAN:	High Density Residential
BUILDING AREA (1534 PALM):	Approx. 940 Square Feet
AREA OF "UNIT" IN QUESTION:	Approx. 290 Square Feet

The subject property contains two detached two-story structures. The building fronting on Manhattan Avenue (1533 Manhattan) contains two dwelling units, constructed in 1957, in accordance with permit No. 9630, for construction of a two-family dwelling. The building on Palm Drive is much older, and contains a small 650 square foot one-bedroom unit on the second story and a two-car garage and a very small "unit" containing 290 square-feet on the first floor. The City does not have the original permit record for this building, as it pre-dates 1924.

A building permit was issued in October 15, 1958 to remove the stairway, which had connected to the upper and lower floors. This permit was issued after the work had been completed, and was issue only after affidavit #3271, allowing a shower, toilet, lavatory and "rumpus" room was recorded on September 25, 1958, and which states that the these "will be solely for necessary uses and not for an additional dwelling unit or rented room."

On February 3, 1971 a residential building report was issued indicating that the "toilet-lavatory-rumpus room in the main building not be used as a separate rental unit."

The 1957 Sanborn Map shows the Palm Drive structure to be a single two-story dwelling unit.

The property is currently zoned R-3. Pursuant to current zoning requirements two dwelling units would be allowed due to the lot size. Therefore the current use (whether 3 units or 4 units) is nonconforming. The current minimum size for a dwelling unit is 600 square feet square feet for a one-bedroom unit. In 1957 the zoning designation was R-3.

Staff inspected the property on October 13, 2004 and found the building and floor layout consistent with the submitted plans. The 290 square foot “unit” contains a small bedroom (7’ X 9’) which is substandard to current U.B.C. requirements for the size of a room, and a small living room with adjacent kitchen separated by an eating bar. The living room is also substandard to current U.B.C. requirements for a living room, and the kitchen is more like an efficiency, containing an under the counter refrigerator and small sink and small range/stove. While there were no significant code violations, the small rooms sizes were noted, and a substandard ceiling height of 7’5” (the U.B.C. requires a minimum of 7’6”).

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, based on the evidence presented, may validate that these conditions are legally nonconforming.

The evidence available to staff included the records in the building permit file as noted above, the Sanborn Map which provides a legal record of the physical character of a property for insurance purposes, and L.A. County tax records. Based on the permit records, as noted, no evidence exists that building permits were applied for or obtained to allow a kitchen in the rumpus room. In fact, when permits were granted in 1958 (after-the-fact) the permits were contingent upon a filing of an affidavit that the new “rumpus” room would not become a dwelling unit. The Sanborn Map (dated 1957) shows the building as two stories and as a single-family dwelling. Also, based on the L.A. County tax assessor information, the property has been taxed based on their records as three total units on the property.

The applicant, however, purchased the property in 1971, with the understanding that it had four units. To support this argument he has submitted a Veterans Administration appraisal report from 1971, which shows that the property contained four units (one two bedroom unit, and three one bedroom units, and 4 bathrooms). Also, the applicant has submitted rental records from 1971, hazard insurance documents, and city records for payment of guest parking passes for two units at 1534 Palm Drive at least two times in the past. Also, the applicant has been paying refuse bills and business license fees for a 4-unit apartment. These various documents corroborate the applicant’s argument that the property has continuously been used as 4-units, at least since 1971.

The applicant also points out that building permits (plumbing and electrical) have been issued and finalized for improvements to the Palm Drive units in 1972 and 1987, 1997, and 1999 and at these times the City took no action to identify this unit as illegal. However, the applicant’s argument that this somehow constitutes tacit or de facto approval is incorrect. The purpose of those inspections was not related to evaluating or making a determination with respect to the legality of the dwelling unit, but was specific to the electrical and plumbing work.

Another document in the record, field inspection notes from 1975, shows the building at 1534 Palm Drive as being one dwelling unit. The applicant notes that the document apparently originally indicated 2-units, but the document was modified to show one unit, and the final note is that “no building or zoning violations.” Given the ambiguity in this document, staff finds it to be inconclusive, and recommends that it not be considered.

In summary, there is clearly a conflict between city records and the private records obtained by the applicant. Also, there are some ambiguous and inconclusive documents in the record. However, the strongest evidence shows that the building at 1534 Palm was constructed as a single unit (the Sanborn maps), and when modified in 1958 with the elimination of the stair, the downstairs was clearly for the purpose of a rumpus room, as agreed to by the owner at that time, and was never to be another rental unit. Apparently some time later, between 1958 and 1971, a kitchen was added to the unit, and it was rented separately. There is no record of a permit for a kitchen, or for plumbing for a sink. The current owner bought the property in 1971, with the understanding it was four units (as shown in the private appraisal and insurance documents), and obtained building permits and a final approval for electrical and plumbing upgrades shortly thereafter, but has been paying taxes as three units.

The consequences of making this unit legal, is that the City would be authorizing the continued use of a 290 square foot substandard unit, both substandard to size and some building code requirements. If not declared legal, it will have to return to its original approval as a rumpus room affiliated to and rented with the upstairs unit, even though it has separate access, and the kitchen would have to be removed.

CONCUR:

Ken Robertson
Senior Planner

Sol Blumenfeld
Community Development Director

Attachments

1. Building Permit Chronology
2. Current tax assessor's roll data
3. Photos
4. Sandorn Map
5. Applicant submittal including documentation and plans

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