

June 14, 2005

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

**Regular Meeting of
June 21, 2005**

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

Recommendation:

That the Planning Commission review the draft ordinance amendment with respect to provisions related to nonconforming *buildings* as the first of two steps in making a final recommendation toward amending Chapter 17.52. The remaining step will be to review and consider changes to the provisions regarding nonconforming *uses*, and the specific code changes regarding nonconformities to parking requirements which effect both nonconforming buildings and uses.

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. 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.

The Planning Commission has reviewed the draft changes at the January meeting, and directed staff to prepare an analysis of the impact of the proposed changes, and possible other options. These analysis of hypothetical build-out under different scenarios were distributed to the Planning Commission for review in May, 2005, and are also attached for reference.

Analysis

Nonconforming Buildings: Amount of Remodel/Expansion Allowed

Nonconforming buildings or 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). 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 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 can produce confusion for homeowners of nonconforming properties and do not encourage preserving older homes in the city.

The following summarize the previous recommendations to address these issues:

- ❑ 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.

Other approaches discussed and evaluated in the hypothetical build-out tables were to allow expansion up to a fixed number such as 1,000 square feet or 2,000 square feet, or up to a 1:1 floor area to lot area ratio, rather than a percentage of the existing structure.

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. 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 (i.e. a wall with a nonconforming setback, or a roof over the height limit) cannot be removed and replaced, and that the existing floor/foundation system must be retained. This permits removal of studs or other structural framing when necessary. Otherwise, if the building is completely demolished the new construction obviously must be made to comply with the current requirements.

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Attachments:

1. Partial Draft Ordinance Amendment for Nonconforming Buildings.
2. Hypothetical build-out analysis.

Draft Ordinance Changes – Nonconforming Buildings

(Starting with Section 17.52.030 B)

B. Nonconforming Buildings.

1. Structural removal allowed:

- a. Portions of the structure which currently conform the provisions of the Zoning Ordinance may be removed and replaced, as long as the foundation and floor system remain intact.
- b. Any existing nonconforming portions of the structure (e.g. a wall nonconforming to a yard requirement, or a roof non-conforming to height requirements) cannot be removed and replaced, and if removed must be brought into compliance with current requirements.

- a. ~~Roofs may be removed to add additional stories;~~
- b. ~~Up to thirty (30) percent existing linear feet of exterior walls and thirty (30) percent of floor area;~~
- c. ~~Planning commission approval required to remove more than specified above.~~

2. Expansion/remodel allowed:

- a. Up to one hundred (100) percent expansion/~~remodel~~ in floor area of the existing building(s) on the building site of the current replacement cost of the existing building(s) excluding any expansion that has occurred after October 26, 1989. Greater than fifty (50) percent up to one hundred (100) percent requires planning commission approval. (the increase in floor area is determined by comparing the increased habitable floor area vs. the existing as a percentage, and excludes garages, accessory structures, and balconies or decks) (Replacement cost based on building valuation data provided by the International Conference of Building Officials (ICBO), with remodeling computed at fifty (50) percent of the value for new construction);
- b. Expansion must conform to current codes (except existing nonconforming side yards may be extended if within ten percent of current side yard standard);
- c. Existing nonconforming side yards may be continued and extended subject to planning commission approval;
- d. For buildings nonconforming to current parking requirements of Chapter 17.44 pertaining to off-street parking, refer to Section 17.52.235-Section 17.44.140 ;
- e. ~~Any garage expansion for parking shall not be included in the allowed expansion.~~
- f. Existing nonconforming stairways: Existing nonconforming stairways that encroach into required yard areas and that provide legally required access to legal dwelling units, may be fully reconstructed if beyond repair, provided no other reasonable location is available that does not require

major reconfiguration or alteration of the structure. Said stairways, if reconstructed or replaced to allow continued access to the dwelling unit, shall be constructed in conformance with Chapter 34 of the Uniform Building Code; shall be constructed of non-combustible materials; shall conform to handrail, guardrail, tread depth, and riser requirements; and, shall not contain storage areas below. No replacement of said stairways shall be allowed in conjunction with an expansion and/or remodel project that exceeds a 50% increase in replacement cost to existing buildings on the site. (Ord. 98-1188 §4 12/08/98)