

July 14, 2005

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

**Regular Meeting of
July 19, 2005**

**SUBJECT: REVIEW OF CHAPTER 17.52 REGULATING NONCONFORMING USES AND
17.44 REGARDING EXPANSIONS TO BUILDINGS NONCONFORMING TO
PARKING REQUIREMENTS**

Recommendation:

That the Planning Commission review the draft ordinance amendment with respect to provisions related to nonconforming uses and nonconformity to parking requirements for nonconforming buildings and uses, as the second of two steps in making a final recommendation toward amending Chapter 17.52. The first step, completed at the last meeting, was to make final recommendations regarding specific code changes related to expansion of nonconforming buildings.

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 nonconforming 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 analyses of hypothetical build-out under different scenarios were distributed to the Planning Commission for review in May, 2005.

Analysis:

Properties containing "nonconforming uses" include those that contain uses not now permitted in the zone, such as residential uses in a commercial district, or containing more units than permissible in a zone, such as a duplex in an R-1 zone, or more units than are permissible based on the lot area per dwelling unit requirements in the R-2 and R-3 zones.

Staff is recommending review of the following issues:

1. Amount of Remodel/Expansion Allowed

- ❑ Nonconforming uses are limited to 50% increase in valuation of the building containing the nonconforming use, 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).

Nonconforming 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).* Also, based on input at the previous meeting regarding nonconforming buildings, allow a 50% increase up to a maximum of 3,000 square feet per dwelling unit.
- ❑ 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.

2. Structural Removal Allowed

Presently, when a building containing a nonconforming use is expanded under the existing regulations the amount of structural removal is limited. The code states that up to of 10% of the exterior walls and/or the total floor area of building containing a nonconforming use may be demolished. These numbers can be exceeded with Planning Commission approval. However, when an old building is opened up with the intent of replacing less than 10 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 10% 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 any existing nonconforming portion of the structure cannot be completely 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, and

would permit partial removal of damaged studs in the nonconforming portion of the structure. 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 and noted in the report last month. 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:

No parking or 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

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. This will help avoid confusion, and is a more appropriate location for these provisions. Also this code section is proposed to be further clarified with respect to existing provision that allow existing parking stalls slightly deficient to current dimensional and turning radius requirements to be considered legal parking spaces.

The attached draft ordinance contains the recommendations noted above, and the final language for nonconforming structures. Also, staff is recommending a modification to the provision for expanding nonconforming buildings, as discussed at the last meeting, to allow deficient side yards within 10% of the required dimension to be considered conforming.

Ken Robertson
Senior Planner

Sol Blumenfeld, Director
Community Development Department

Attachments:

1. Complete Draft Ordinance Amendment for Nonconforming Buildings, Uses and Parking.

“17.52.030 Expansion, remodeling and alteration.

Buildings containing nonconforming uses, and nonconforming buildings are subject to the following standards:

A. Buildings Containing Nonconforming Uses.

1. Structural removal allowed:

- a. Portions of the structure which currently conform to 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 completely removed and replaced, and if completely removed must be brought into compliance with current requirements.
- ~~a. Roofs may be removed to add additional stories;~~
~~b. Up to ten (10) percent existing linear feet of exterior walls and ten (10) percent of floor area;~~
~~c. Planning commission approval required to remove more than specified above.~~

1. Expansion/~~alteration~~ allowed:

- a. Maximum of fifty (50) percent increase in floor area of the existing building(s) on the building site not to exceed a maximum of 3,000 square feet of total floor area for each dwelling unit of the current replacement cost of the existing building(s) excluding any expansion that has occurred after October 26, 1989 (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 not permitted if residential density exceeds forty-five (45) units per acre;
- c. Expansion must conform to current codes (except existing nonconforming side yards may be extended if within ten percent of current side yard standard)
- 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.~~

B. Nonconforming Buildings.

1. Structural removal allowed:

- c. 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.
 - d. 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 completely removed and replaced, and if completely removed must be brought into compliance with current requirements.
- ~~d. Roofs may be removed to add additional stories;~~
- ~~e. Up to thirty (30) percent existing linear feet of exterior walls and thirty (30) percent of floor area;~~
- ~~f. 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 not to exceed a maximum of 3,000 square feet of total floor area for each dwelling unit 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 ~~deficient~~ side yards may be extended if within ten percent of the current side yard standard may be extended, and buildings that contain such a deficient side yard within 10% of the requirement as the only nonconforming condition on the property are not subject to the expansion limitation prescribed by this section);
 - 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)

17.52.035 Requirements for buildings nonconforming to parking requirements

- A. For a residential building or buildings nonconforming to the number of parking spaces required on the building site, including guest parking spaces, the following limitations on expansion shall apply based on the number of parking spaces available that meet all the requirements of Chapter 17.44, or that meet the exceptions of sub-section B (These limitations on expansion only apply if more restrictive than the expansion requirements of Section 17.52.030)
1. Less than one parking space per unit: A maximum expansion one hundred (100) square feet of floor area may be constructed, and up to five hundred (500) square feet may be added if a parking space or spaces are added to an existing building even if it results in less than two parking spaces per unit.
 2. Greater than one but less than two parking spaces per unit: A maximum expansion of five hundred (500) square feet may be constructed
 3. Two parking spaces per unit with insufficient guest parking: An expansion as allowed by Section 17.52.030

B. Exception: Existing parking spaces that do not comply with the 20-foot minimum length requirement, turning radius requirements, the minimum 9-foot driveway width requirement, the alley setback requirement, and/or the driveway slope requirement, which provide at least the following for each standard, shall be deemed conforming to these requirements and shall be considered complying parking spaces for existing residential buildings:

- Length: Minimum 18 feet (inside measurement)
- Turning Radius: Minimum 20 feet (measured from far side of alley or street)
- Driveway Width: Minimum 8 feet
- Driveway Slope: Maximum 15%
- Alley Setback: as necessary to provide a 20-foot turning radius
Residential buildings that have parking spaces pursuant to this exception that meet the requirement for minimum number of parking spaces, and have no other nonconforming conditions, shall be considered conforming buildings and are not subject to the expansion limitations of this chapter.

C. For buildings in a C or M zone hereafter expanded, parking requirements for the number of parking spaces pursuant to Section 17.44.030 shall only be applied to the amount of expansion.

D. When the use of an existing commercial, manufacturing or other non-residential building or structure is changed to a more intense use with a higher parking requirement the requirement for additional parking shall be calculated as the difference between the required parking as stated in Section 17.44.030 for that particular use as compared to the requirement for the existing or previous use, which shall be met prior to occupying the building unless otherwise specified in chapter 17.44."

2. Amend Section 17.44.140 to read as follows:

“17.44.140 Requirements for new and existing construction.

A. ~~For every residential dwelling building hereafter erected, parking spaces shall be provided, permanently maintained and permanently available as set forth in Section 17.44.020, Chapter 17.44 including requirements for turning radii, as provided by this chapter, and the parking standards contained herein.”~~

(Delete sub-sections B. thru E, as these sections are being rewritten and relocated to Section 17.52.035 as noted above)