

November 14, 2006

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

**Regular Meeting of
November 21, 2006**

SUBJECT: PROPOSED AMENDMENT TO CHAPTER 17.52 REGULATING REBUILDING
AND PERCENTAGE OF DESTRUCTION OF NONCONFORMING BUILDINGS.

Planning Commission Recommendation:

To adopt the attached resolution approving changes to 17.52. 070 - Reconstruction of a damaged nonconforming building.

Background:

On September 12, 2006, Council members Edgerton and Tucker recommended that the Planning Commission be directed to address the inconsistency between nonconforming residential and commercial building reconstruction when damaged more than 50%. The matter was referred to the Planning Commission. The inconsistency issue came up in connection with Sharkeez restaurant, which was substantially fire damaged in May 2006. Sharkeez has no on-site parking and is therefore nonconforming to current parking requirements.

On October 17, 2006 the Planning Commission considered draft revisions to Chapter 17.52 and recommended that reconstruction provisions of the Nonconforming Ordinance currently applicable to residential property also apply to commercial property. The Commission reviewed the practical and philosophical issues related to the proposed changes including the purpose for limitations on rebuilding, equity concerns related to compliance (particularly as applied to parking) and the community impacts of delaying code compliance for nonconforming buildings. The Commission felt that it was more important to recognize the specific conditions of a commercial neighborhood, the unique conditions related to the particular business and the potential hardship that arises from applying current development standards without discretion to a substantially damaged building.

The consensus of the Commission was that if there is no change to the gross floor area or building footprint, then a commercial building may be rebuilt without full compliance under the Zone Code and conversely full code compliance should be required if the reconstruction exceeds the original building footprint or gross floor area. There was also discussion to require mandatory fire sprinkler installation for building reconstruction since older commercial buildings generally do not have them and are exempt from building code requirements to install them if they have less than 3,500 sq. ft. of floor area.¹ In recognizing the unique conditions that apply to Pier Plaza relative to on-site parking, the Commission also discussed a future amendment to the Parking Ordinance to allow reconstruction without requiring additional parking as long as the reconstructed building did not increase in gross floor area, building footprint or in the number of occupants.

Analysis:

Existing regulations allow the rebuilding of damaged residential buildings which do not conform to one or more Zone Code standards back to its previous level of nonconformity, regardless of

the amount that the building has been damaged, up to and including complete destruction (see attached). However, if a nonresidential nonconforming building is damaged by more than 50%, the Code requires that any reconstruction of the building conform to all code standards, e.g. height, setbacks, parking, etc. The proposed a code change with new provisions shown in underline, allows reconstruction of commercial and residential properties as follows:

17.52. 070 Reconstruction of a damaged nonconforming building.

A. Residential buildings

A nonconforming residential building damaged by fire, explosion or other casualty or act of God, or the public enemy, may be restored to its pre-damaged condition and the occupancy or use of such building or part thereof which existed at the time of such destruction may be continued as long as the cause of the destruction is not intentional (i.e. through arson or other means perpetrated by the owner), and provided that:

- a. The rebuilt structure conforms as closely as possible to current parking and other zoning standards (such as setbacks);
- b. There is no increase in any nonconformity;
- c. The density of the buildings or buildings on site does not exceed forty-five (45) units per acre;
- d. The height of the building or buildings does not exceed twenty (20) percent more than permitted by the zone in which it is located;
- e. The basic structural features, setbacks, floor area, and room sizes can be duplicated in compliance with current building and safety codes;

Should the restoration deviate in any respect from the pre-damaged condition of the building, any such deviation shall conform in all respects with the current requirements of this title.

B. Commercial/Industrial Buildings

A nonconforming commercial or industrial building located in the commercial or manufacturing zones damaged by fire, explosion or other casualty or act of God, or the public enemy, may be restored to its pre-damaged condition and the occupancy or use of such building or part thereof which existed at the time of such destruction may be continued as long as the cause of the destruction is not intentional (i.e. through arson or other means perpetrated by the owner) and provided that:

- a. The rebuilt structure does not exceed the gross floor area and footprint of the building prior to damage or destruction;
- b. There is no increase in the occupant load of the building or of any nonconforming condition;
- c. The damaged building can be duplicated to its pre-damaged condition in compliance with current building and safety codes;

- d. Reconstruction includes installation of a fully code complying fire sprinkler system.

Should the restoration deviate in any respect from the pre-damaged condition of the building, any such deviation shall conform in all respects with the current requirements of this title.

- C. If damage to structures is so widespread throughout the city due to a major emergency (such as an earthquake or citywide fire) that the city council or other government authority declares a state of emergency, this section will be superseded by any action of the city council taken at that time in regards to reconstruction of damaged buildings.

The proposed revisions allow commercial property owners to rebuild without supplying a detailed cost estimate for reconstruction and without Planning Commission approval as long as the reconstruction is consistent with the original building size, building footprint, occupant load for the building and the building is reconstructed with code complying sprinkler system.



Ken Robertson
Senior Planner

Concur:



Sol Blumenfeld, Director
Community Development Department

Notes:

1. HBMC – Section 904.2.3.1 Group A, 904.2.8 Group M Occupancies.

Attachments:

1. Resolution
2. Chapter 17.52 Nonconforming Ordinance

P:/NonconformingOrdRevPC

RESOLUTION P.C. 06-34

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA, TO RECOMMEND AMENDING THE ZONING ORDINANCE PERTAINING TO RECONSTRUCTION OF NONCONFORMING COMMERCIAL BUILDINGS

The Planning Commission of the City of Hermosa Beach does hereby resolve as follows:

Section 1. The Planning Commission held a duly noticed public hearing on October 17, 2006, to consider amending the Zoning Ordinance with respect to reconstruction of nonconforming commercial buildings, and to consider allowing exceptions to the current rule that nonconforming buildings can only be restored if damaged less than 50% of reasonable replacement cost.

Section 2. Based on the evidence considered at the public hearing, the Planning Commission makes the following findings:

1. The requirements pertaining to reconstruction of nonconforming buildings (Section 17.52.070), allow reconstruction only if the building is damaged not more than 50% of its reasonable replacement cost. Buildings damaged more than 50% shall not be restored except in the full compliance with zoning requirements.

2. Section 17.52.070(B) includes an exception that residential building that meet certain criteria may be restored whatever the extent of damage, but no exception exists for commercial buildings.

3. Adding a similar exception for commercial buildings will allow reconstruction of commercial buildings more than 50% damaged that if not allowed to be reconstructed would negatively affect the character of commercial districts in the City.

Section 3. Based on the foregoing, the Planning Commission hereby recommends that the Hermosa Beach Municipal Code; Title 17-Zoning; Chapter 17.52, Nonconforming Buildings and Uses; Section 17.52.070 be amended as follows:

17.52.070 Reconstruction of a damaged nonconforming building.

A. Residential buildings

A nonconforming residential building damaged by fire, explosion or other casualty or act of God, or the public enemy, may be restored to its pre-damaged condition and the occupancy or use of such building or part thereof which existed at the time of such destruction may be continued as long as the cause of the destruction is not intentional (i.e. through arson or other means perpetrated by the owner).and provided that:

a. The rebuilt structure conforms as closely as possible to current parking and other zoning standards (such as setbacks);

b. There is no increase in any nonconformity;

c. The density of the buildings or buildings on site does not exceed forty-five (45) units per acre;

1 d. The height of the building or buildings does not exceed twenty (20) percent
2 more than permitted by the zone in which it is located;

3 e. The basic structural features, setbacks, floor area, and room sizes can be
4 duplicated in compliance with current building and safety codes;

5 Should the restoration deviate in any respect from the pre-damaged condition of the building,
6 any such deviation shall conform in all respects with the current requirements of this title.

7 **B. Commercial/Industrial Buildings**

8 A nonconforming commercial or industrial building located in the commercial or
9 manufacturing zones damaged by fire, explosion or other casualty or act of God, or
10 the public enemy, may be restored to its pre-damaged condition and the occupancy or
11 use of such building or part thereof which existed at the time of such destruction may
12 be continued as long as the cause of the destruction is not intentional (i.e. through
13 arson or other means perpetrated by the owner) and provided that:

- 14 a. The rebuilt structure does not exceed the gross floor area and footprint of the
15 building prior to damage or destruction;
16 b. There is no increase in the occupant load of the building or of any
17 nonconforming condition;
18 c. The damaged building can be duplicated to its pre-damaged condition in
19 compliance with current building and safety codes;
20 d. Reconstruction includes installation of a fully code complying fire sprinkler
21 system.

22 Should the restoration deviate in any respect from the pre-damaged condition of the
23 building, any such deviation shall conform in all respects with the current requirements of
24 this title.

25 C. If damage to structures is so widespread throughout the city due to a major emergency
26 (such as an earthquake or citywide fire) that the city council or other government authority
27 declares a state of emergency, this section will be superseded by any action of the city
28 council taken at that time in regards to reconstruction of damaged buildings.

29

VOTE:	AYES:	Hoffman, Allen, Kersenboom, Perrotti, Pizer
	NOES:	None
	ABSTAIN:	None
	ABSENT:	None

CERTIFICATION

I hereby certify the foregoing Resolution P.C. 06-34 is a true and complete record of the action taken by the Planning Commission of the City of Hermosa Beach, California, at their regular meeting of October 17, 2006.

Kent Allen, Chairman

Sol Blumenfeld, Secretary

November 21, 2006

Date

Chapter 17.52

17.52.020 Continuance and maintenance.

NONCONFORMING BUILDINGS AND USES

Sections:

- 17.52.010 General Goals.
 17.52.020 Continuance and maintenance.
 17.52.030 Expansions, remodeling and alteration.
 17.52.035 Requirements for buildings nonconforming to parking requirements.
 17.52.040 Nonconforming use limits other uses.
 17.52.050 Change in status of nonconforming use.
 17.52.060 Nonconforming commercial and manufacturing businesses subject to the requirement for a conditional use permit.
 17.52.070 Reconstruction of a damaged nonconforming building.

17.52.010 General Goals

The goals of the City related to the nonconformity that exists throughout the City as a result of zone changes and ordinance amendments are as follows:

A. To allow buildings, whether they are occupied by a nonconforming use or nonconforming to zoning standards, to remain and be maintained, and to allow limited alteration and expansion of said buildings when certain criteria are met and to encourage such alteration and expansions to incorporate architectural consistency within the project;

B. To encourage restoration and maintenance of existing residential buildings;

C. To limit expansion of nonconforming buildings and uses that are deficient as to parking, or significantly exceed residential density requirements." (Ord. 05-1257 § 5, 2005; 95-1124 § 1 (part), 1995: prior code Appx. A, § 13-0)

The nonconforming use of a building may be continued, provided any structural alteration or expansion shall comply with Section 17.52.030. When a use which is nonconforming to the use regulations for the district where it is located is vacated or discontinued for ninety (90) consecutive days or more, the nonconforming use will be deemed abandoned, and any future use of such building shall conform to the provisions of the zone in which it is located.

A nonconforming structure may be maintained and the use therein continued, provided any structural alteration or expansion shall comply with Section 17.52.030.

Routine maintenance and repairs, repairs and/or replacement to plumbing, electrical wiring and similar work, shall not be considered structural alterations within the meaning of this Chapter, and may be performed on nonconforming structures and buildings containing nonconforming uses. (Ord. 05-1257 §6, 2005; 95-1124 § 1 (part), 1995: prior code Appx. A, § 13-1)

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 that currently conform to the provisions of this Title may be removed and replaced, as long as the foundation and floor systems remain intact.

b. Any existing nonconforming portions of the structure (e.g. a wall nonconforming to a yard requirement, or a roof nonconforming to height requirements) may be partially modified or altered only to the extent necessary to satisfy the Uniform Building Code as recommended by a certified structural engineer but shall not be completely removed and replaced, and if completely removed must be brought into compliance with current requirements.

2. Expansion allowed:

a. Maximum of fifty (50) percent expansion in floor area of the existing building(s) on the building site that existed prior to October 26, 1989, provided that for residential uses the expansion does not result in greater than 3,000 square feet of floor area for each dwelling unit but in no event exceeds 5,000 square feet of total floor area for the building site. The percentage increase in floor area shall be calculated by comparing the existing floor area (excluding any expansion that occurred after October 26, 1989), against the proposed increased floor area excluding garages, accessory structures, basements that are completely below grade, and balconies or decks.

b. Expansion not permitted if residential density exceeds forty-five (45) units per acre.

c. For buildings nonconforming to current parking requirements of Chapter 17.44 pertaining to off-street parking, refer to Section 17.52.035.

B. Nonconforming Buildings.

1. Structural removal allowed:

a. Portions of the structure that currently conform to the provisions of this Title 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 nonconforming to height requirements) may be partially modified or altered only to the extent necessary to satisfy the Uniform Building Code as recommended by a certified structural engineer but shall not be completely removed and replaced, and if completely removed must be brought into compliance with current requirements.

2. Expansion allowed:

a. Maximum of one hundred (100) percent expansion in floor area of the existing building(s) on the building site that existed prior to October 26, 1989, provided that for residential uses the expansion does not

result in greater than 3,000 square feet of floor area for each dwelling unit but in no event exceeds 5,000 square feet of total floor area for the building site. The percentage increase in floor area shall be calculated by comparing the existing floor area (excluding any expansion that occurred after October 26, 1989), against the proposed increased floor area excluding garages, accessory structures, basements that are completely below grade, and balconies or decks.

b. Expansion shall conform to current codes.

c. For buildings nonconforming to current parking requirements of Chapter 17.44 pertaining to off-street parking, refer to Section 17.52.035.

d. 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 100% increase in floor area." (Ord. 05-1257 § 7, 2005; 95-1124 § 1 (part), 1995: prior code Appx. A, § 13-2)

17.52.035 Requirements for buildings nonconforming to parking requirements.

A. The following limitations on expansion apply to residential buildings on building sites containing two dwelling units or less that are

nonconforming as to the number of parking spaces required on the building site, including guest parking spaces, based on the number of parking spaces available that meet all the requirements of Chapter 17.44, or that meet the exceptions of subsection B. In the event of conflict between the limitation contained in this section and Section 17.52.030, the more restrictive shall apply.

1. Building site provides less than one parking space per unit: A maximum expansion of one hundred (100) square feet of floor area may be constructed; provided, however, that up to five hundred (500) square feet may be added if one or more parking spaces are added to the building site, even if the resulting total is less than one parking space per unit.

2. Building site provides one or more but less than two parking spaces per unit: A maximum expansion of five hundred (500) square feet may be constructed.

3. Building site provides two or more parking spaces per unit but provides 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 or street 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 17 feet 6 inches (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 or Street Setback: As necessary to provide a 20-foot turning radius

Residential buildings that have the minimum required parking spaces meeting at least the criteria contained in this exception and have no other nonconforming conditions shall be considered conforming buildings and are not subject to the expansion limitations of this chapter.

C. Building sites containing three or more dwelling units shall not be expanded in floor area unless the site provides two parking spaces per unit plus one guest space for every two units.

D. Nonresidential buildings in a C or M zone nonconforming as to parking may be expanded only if applicable parking requirements for the amount of the expansion area are satisfied.

E. 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. (Ord 05-1257 §8, 2005)

17.52.040 Nonconforming use limits other uses.

While a nonconforming use exists on any lot, and it is the only use on the lot, no new use may be established thereon even though such other use would be a conforming use. While a nonconforming use occupies a portion of a lot or building with multiple uses no new use may be established within that portion of the lot or building which the existing nonconforming use occupies. (Ord. 95-1124 § 1 (part), 1995: prior code Appx. A, § 13-3)

17.52.050 Change in status of nonconforming use.

If an existing nonconforming manufacturing, commercial or residential use is vacated or removed and it is succeeded by another use, this shall be deemed the termination of the existing nonconforming use, and thereby immediately loses any vested right to continue. A nonconforming use may be succeeded by a use which is itself nonconforming, provided the degree of nonconformity is less intensive (e.g., requires less parking or results in fewer dwelling units).

It is the intent of this section to allow for an improvement in the degree of nonconformity of a use utilizing existing structures. It is not intended to

allow the construction of new structures in violation of the provisions of this chapter.

The planning commission shall make determinations as to whether a use is less intensive upon request. (Prior code Appx. A, § 13-4)

17.52.060 Nonconforming commercial and manufacturing businesses subject to the requirement for a conditional use permit.

A. Nonconforming Alcohol Beverage Establishment--On and Off-Sale. This conditional use permit process, established pursuant to this chapter, shall apply to establishments which sell alcohol and fall into any category of use which requires a conditional use permit in order to sell alcoholic beverages in the city. All establishments which do not possess a conditional use permit for the sale of alcoholic beverages on the effective date of Ordinance No. 86-865 shall be required to apply for a conditional use permit within two years of the effective date of the ordinance codified in this chapter.

Upon the filing of an application, each establishment must diligently prosecute its application and receive a conditional use permit under the standards in effect at the time of the effective date of this ordinance. Said application must be heard before the planning commission within six months of the filing of the application. Any applicant may be granted an extension of time within which to receive their conditional use permit if they can demonstrate to the planning commission there is good cause for an extension of time necessary to receive the permit.

If no permit is either sought or granted within the time periods specified above, such establishment shall no longer have the legal authority to sell alcoholic beverages within the boundaries of the city.

B. Remaining Nonconforming Commercial and Manufacturing Establishments Subject to the Requirement for a Conditional Use Permit. The conditional use permit process, established pursuant to this title, shall apply to the types of business establishments as identified on the commercial and manufacturing permitted use lists in Chapters 17.26 and 17.28. All such establishments which do not possess a conditional use permit as required by

Chapters 17.26 and 17.28 on the effective date of Ordinance No. 90-1041 shall be required to apply for a conditional use permit within two years from the date of receiving notification from the city of the requirement to apply for a conditional use permit.

Upon receiving notification from the city, each establishment shall have a maximum of two years to apply for a conditional use permit, and once application is made it must diligently pursue its application and receive a conditional use permit. Said application must be heard before the planning commission within six months of the filing of the application. Any applicant may be granted an extension of time within which to receive their conditional use permit if they can demonstrate to the planning commission there is good cause for an extension of time necessary to receive the permit.

If no permit is either sought or granted within the time periods specified above, the establishment, or the portion of the establishment, conducting an operation subject to a conditional use permit requirement shall no longer have the legal authority to operate. (Prior code Appx. A, § 13-5)

17.52.070 Reconstruction of a damaged nonconforming building.

A. A nonconforming building damaged to the extent of not more than fifty (50) percent of reasonable replacement cost at the time of its destruction by fire, explosion or other casualty or act of God, or the public enemy, may be restored and the occupancy or use of such building or part thereof which existed at the time of such partial destruction may be continued subject to all other provisions of this chapter.

B. A nonconforming building damaged more than fifty (50) percent of reasonable replacement cost at the time of its destruction by fire, explosion, or other casualty or act of God, or the public enemy, shall not be restored except in full conformity with the regulations for the zone in which it is located and the nonconforming occupancy or use of such building shall not be resumed.

1. Exceptions. Nonconforming residential buildings located in residential zones may be restored whatever the extent of the damage if

approved by the planning commission based on the guidelines set forth below; provided, that the rebuilt structure is made as conforming as possible in terms of parking standards and/or other zoning standards such as setbacks; and further provided there is no increase in any nonconformity.

a. The density of the buildings or buildings on site does not exceed forty-five (45) units per acre;

b. The height of the building or buildings does not exceed twenty (20) percent more than permitted by the zone in which it is located;

c. The basic structural features, setbacks, floor area, room sizes can be duplicated in compliance with current building and safety codes;

d. The cause of the destruction is not intentional through arson or other means.

C. The extent of damage or partial destruction shall be based on the ratio of the estimated cost of restoring the structure to its conditions prior to such damage or partial destruction to the estimated cost of duplicating the entire structure as it existed prior thereto. Estimates shall be made or shall be reviewed and approved by the director of building and safety and shall be based on the International Conference of Building Officials data.

D. Disputes as to the interpretation of the provisions of this section or any requested waiver of subsection B(1) for residential structures in residential zones shall be heard and resolved by the planning commission, subject to appeal to the city council. Subsection B(1)(d) cannot be waived.

E. If damage to structures is so widespread throughout the city due to a major emergency (such as an earthquake or citywide fire) that the city council or other government authority declares a state of emergency, this section will be superseded by any action of the city council taken at that time in regards to reconstruction of damaged buildings. (Ord. 93-1086 § 1, 1993; prior code Appx. A, § 13-6)