

April 9, 2007

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

**Regular Meeting of
April 17, 2007**

SUBJECT: REBUILDING OF DAMAGED NONCONFORMING STRUCTURES C-1, C-3,
INDUSTRIAL AND RESIDENTIAL ZONES

Recommendations:

To recommend that the City Council allow rebuilding of structures in all zones pursuant to the ordinance adopted by the City Council in November of 2006 to amend Section 17.52.070 of the Zoning Ordinance.

To recommend modifications to Section 17.52.070 regarding nonconforming commercial buildings in residential zones, and residential uses that exceed 45-units per acre.

Background:

On November 28, 2006, the City Council adopted an ordinance to revise the provisions of Section 17.52.0 which address reconstructing damaged nonconforming buildings. This ordinance allows complete restoration of nonconforming buildings to their pre-damaged condition. Before the change, the code only allowed complete restoration if the building was damaged less than 50% of replacement cost (with some exceptions for residential uses). The issue came to light in connection with Sharkeez restaurant which was substantially fire damaged in May 2006. Sharkeez is nonconforming to current parking requirements and would have not been able to rebuild without paying parking in-lieu fees for both the rebuilt portion and the expanded area.

While the Council adopted the ordinance to allow complete restoration for all commercial, industrial and residential properties, the Council also directed the Planning Commission to study the ramifications of these changes on properties outside the downtown C-2 zone.

The prior code did contain a distinction between commercial and residential uses, allowing restoration to nonconforming commercial properties only if the damage was less than 50%, while providing an exception for residential uses to be completely restored. The exception for residential uses was added in 1994 and was necessary to meet the requirements of the State Government Code, Section 65852.25 of the Planning and Zoning law, which precludes cities from enacting any ordinance that prohibits restoration of multi-family dwellings involuntarily destroyed.

Analysis:

The City Council's decision to adopt this revision to broadly cover all uses reflects a general policy on how to deal with calamities that create hardships for property owners, whether it involves a residential, commercial, or manufacturing building. This policy is also consistent with the policy in nearby cities. In reviewing the rules for rebuilding damaged nonconforming structures found in other nearby cities, staff previously found that no city varies the rebuild rules by different zones, or different districts (other than residential multi-family exception to meet State Law). Also it was

found that two other nearby cities, El Segundo and Long Beach have provisions that allow the complete restoration of a damaged nonconforming structure like the rules recently adopted by Hermosa Beach. A 50% damage limitation is in effect in the other three cities surveyed, Torrance, Redondo Beach, and Manhattan Beach.

By abandoning the 50% rule, the City Council recognized the hardships caused by forcing to rebuild to meet current codes. In the downtown district and other commercial zones parking is often the nonconforming issue, and implementing the 50% rule for any commercial property, whether downtown, on P.C.H, or on Aviation Boulevard would create the same hardship should a building be severely damaged or destroyed. For residential property the existing nonconforming condition may be the number of units, and if the units cannot be rebuilt it will displace residential households.

Also, abandoning the 50% rule has resolved many problems associated with making the "replacement cost" calculation, which is extremely difficult for any structure severely damaged by fire.

In summary, staff does not believe the rule regarding restoration should vary by zone, since it reflects a general policy on how to deal with hardships that are involuntarily placed on property owners when structures are damaged or destroyed.

CLARIFICATION ITEMS

Section 17.52.070, as revised, is silent with respect to rebuilding a nonconforming commercial use in a residential zone (for example Granny's Market on Monterey Boulevard), and also appears to be inconsistent with State Law as it does not allow reconstruction of existing residential uses that exceed 45 units per acre. Therefore, staff is recommending that Section 17.52.070 be amended to correct these oversights, and to allow reconstruction of nonconforming buildings in these situations, by making the following correction:

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

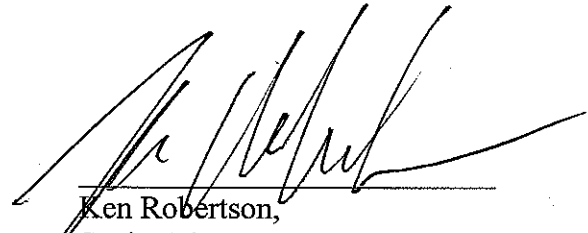
A nonconforming commercial or industrial building ~~located in the commercial or manufacturing zones~~ damaged by fire, explosion or other casualty or act of God, or the public enemy, may be restored to its pre-damaged condition and the occupancy or use of such building or part thereof which existed 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.



Sol Blumenfeld, Director
Community Development Department



Ken Robertson,
Senior Planner

Attachments:

1. Ordinance No. 06-1276
2. Survey of Nearby City's Provisions

ORDINANCE 06-1276

AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA,
AMENDING THE HERMOSA BEACH MUNICIPAL CODE, TITLE 17 –
ZONING, PERTAINING TO RECONSTRUCTION OF NONCONFORMING
BUILDINGS

THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH DOES HEREBY
ORDAIN AS FOLLOWS:

SECTION 1. The Planning Commission held a duly noticed public hearing on October 17, 2006, and recommended amending the Zoning Ordinance with respect to reconstruction of nonconforming buildings.

SECTION 2. The City Council held a duly noticed public hearing on November 28, 2006, to consider the recommendation of the Planning Commission to amend the Municipal Code pertaining to reconstruction of nonconforming buildings.

SECTION 3. The subject text amendment is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to the general rule set forth in Section 15061(3) of the CEQA Guidelines, as there is no possibility that the proposed modifications to the text may have a significant effect on the environment.

SECTION 4. The City Council finds that the amendments to the Zoning Ordinance contained herein are consistent with the Hermosa Beach General Plan in that the proposed amendments modify and clarify the provisions that pertain to the reconstruction of nonconforming buildings, which will allow reconstruction of damaged buildings in order to preserve the existing character of neighborhoods, consistent with the policies of the Land Use Element.

SECTION 5. Hermosa Beach Municipal Code; Title 17-Zoning; Chapter 17.52, Nonconforming Buildings and Uses; Section 17.52.070 is hereby amended to read 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

1 as long as the cause of the destruction is not intentionally perpetrated by the owner and provided
2 that:

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

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

15 B. Commercial/Industrial Buildings

16 A nonconforming commercial or industrial building located in the commercial or
17 manufacturing zones damaged by fire, explosion or other casualty or act of God, or the public
18 enemy, may be restored to its pre-damaged condition and the occupancy or use of such building or
19 part thereof which existed at the time of such destruction may be continued as long as the cause of
20 the destruction is not intentionally perpetrated by the owner and provided that:

- 21 1. The rebuilt structure does not exceed the gross floor area and footprint of the
22 building prior to damage or destruction;
- 23 2. There is no increase in the occupant load of the building or of any nonconforming
24 condition;
- 25 3. The damaged building can be duplicated to its pre-damaged condition in
26 compliance with current building and safety codes;
- 27 4. Reconstruction includes installation of a fully code complying fire sprinkler system.

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

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

8 **SECTION 6.** This ordinance shall become effective and be in full force and effect from and
9 after thirty (30) days of its final passage and adoption.

10 **SECTION 7.** Prior to the expiration of fifteen (15) days after the date of its adoption, the
11 City Clerk shall cause this ordinance to be published in the Easy Reader, a weekly newspaper of
12 general circulation published and circulated, in the City of Hermosa Beach in the manner provided
13 by law.

14 **SECTION 8.** The City Clerk shall certify to the passage and adoption of this ordinance,
15 shall enter the same in the book of original ordinances of said city, and shall make minutes of the
16 passage and adoption thereof in the records of the proceedings of the City Council at which the
17 same is passed and adopted.

18 **PASSED, APPROVED and ADOPTED** this 12th day of December 2006, by the
19 following vote:

20 AYES: Bobko, Keegan, Reviczky, Tucker, Mayor Edgerton
21 NOES: None
22 ABSTAIN: None
23 ABSENT: None

24 _____
25 **PRESIDENT** of the City Council and **MAYOR** of the City of Hermosa Beach, California

26 ATTEST:

27 _____
28 City Clerk

26 APPROVED AS TO FORM:

27 _____
28 City Attorney

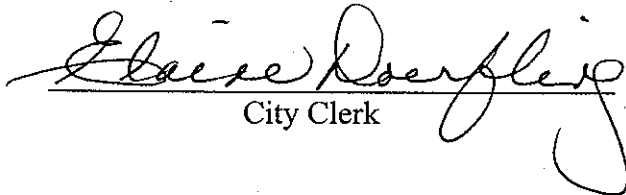
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF HERMOSA BEACH

I, Elaine Doerfling, City Clerk of the City of Hermosa Beach, California, do hereby certify that the foregoing Ordinance No. 06-1276 was duly and regularly passed, approved and adopted by the City Council of the City of Hermosa Beach at a regular meeting held at the regular meeting place thereof on the 12th of December 2006, and said ordinance will be published in the Easy Reader newspaper on December 21, 2006.

The vote was as follows:

AYES:	Bobko, Keegan, Reviczky, Tucker, Mayor Edgerton
NOES:	None
ABSENT:	None
ABSTAIN:	None

DATED: January 9, 2007


City Clerk

5. PUBLIC HEARINGS

- a. TEXT AMENDMENT AMENDING CHAPTER 17.52, NONCONFORMING ORDINANCE, RECONSTRUCTION OF DAMAGED NONCONFORMING BUILDINGS. Memorandum from Community Development Director Sol Blumenfeld dated November 20, 2006.

Community Director Blumenfeld presented the staff report and responded to Council questions. City Attorney Jenkins also responded to Council questions.

The public hearing opened at 8:02 p.m. Coming forward to address the Council on this item were:

Ron Newman – Hermosa Beach resident and business owner, read a letter he had received and submitted to the City in support of the ordinance; urged the Council to make the proposed change so that he could rebuild his building lost to a fire seven months ago;

Shirley Cassell – Hermosa Beach, said Mr. Newman should not have to pay an in-lieu parking fee because the business owners had signed over parking to the City in the past; said he also should not have to wait any longer to rebuild his building and resume his business;

Art Yoon – Hermosa Beach, spoke in support of the proposed Code revision; said it would not only help the Newmans but would also protect any other business owner who faced such a loss; said that type of tragedy should not have additional burdens imposed by the City to postpone reopening a business;

Mike Lacey – Hermosa Beach Comedy and Magic Club, supported the Code revision; said he had a near tragedy but luckily a fire set by an arsonist was quickly extinguished; said with the current ordinance, he would have faced in-lieu parking fees that he could not have afforded, forcing him to close his business;

Carla Merriman – Hermosa Beach Chamber of Commerce and Visitors' Bureau Executive Director, spoke in support of amending the current ordinance; said almost 50% of businesses never re-open following a disaster such as fire, earthquake, or flood, 29% close within the next two years and there is an 80% failure rate because (1) most are not insured at realistic levels that take into account the loss of business, (2) there is a loss of customers to competitors, and (3) the cost of building materials has increased 200% since Katrina; said the City's current code makes it almost impossible for a grandfathered business to re-open successfully; noted that the cities of Pasadena and El Segundo offer incentives to assist businesses after a disaster;

Greg Newman – Hermosa Beach resident and property owner, said the current code is unfair and should be changed; said any business could be vulnerable to a disgruntled employee or angry patron and many could not rebuild if forced to pay very high fees for in-lieu parking; urged the Council to amend the current code so they can reconstruct

their building and resume serving the community and the people they care about;

Jolene Blaze – owner of Cantina Real, said her family would not be able to re-open if their business was destroyed by fire and asked the Council to make this change for the benefit of all the businesses on Pier Plaza;

Pat Love – Hermosa Beach, spoke in support of revising the current ordinance and urged the Council to make this change for the sake of grandfathered businesses in the City; and

Patty Egerer – Hermosa Beach, suggested that the commercial and residential portions of this ordinance be considered separately, with the commercial portion being adopted at this time so the business suffering the fire can rebuild and the residential portion being restudied and considered at a later time.

The public hearing closed at 8:25 p.m.

Action: To approve the staff recommendation to waive full reading and introduce Ordinance No. 06-1276, entitled "**AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA, AMENDING THE MUNICIPAL CODE, TITLE 17 – ZONING, PERTAINING TO RECONSTRUCTION OF NONCONFORMING BUILDINGS,**" amended as follows:

- (1) Section 5, change paragraph A to read: "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 intentionally perpetrated by the owner and provided that..."
- (2) In Section 5, change paragraph B to read as follows: 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 intentionally perpetrated by the owner and provided that..."

Motion Tucker, second Mayor Edgerton. The motion carried, noting the dissenting vote of Bobko.

Further Action: To direct the Planning Commission to review the residential portion of this ordinance and to study the ramifications of the commercial portion of this ordinance applying to more than the C-2 zone.

Motion Reviczky, second Bobko. The motion carried, noting the dissenting votes of Tucker and Mayor Edgerton.

The meeting recessed at 8:55 p.m.

The meeting reconvened at 9:22 p.m., with item 6(a).

City	Provision	Less Than 50%	50% or Less	Unspecified	Residential Exception
Redondo Beach	A nonconforming use in a structure destroyed due to an involuntary event to the extent of fifty (50%) percent of more of its square footage at the time of its partial destruction may not be re-established and any new structure shall conform to all the requirements of City laws upon reconstruction	X			No
Manhattan Beach	A. Whenever a structure that does not comply with the standards for front yards, side yards, rear yards, height of structures, maximum floor area, distances between structures, driveways, or usable open space prescribed in the regulations for the district in which the structure is located, or the use of which does not conform with the regulations for the district in which it is located, is destroyed by fire or other calamity, or by the public enemy to the extent of fifty percent (50%) or less, the structure may be restored and the nonconforming use may be resumed, provided that a complete application for the necessary building permits for restoration is received by the Community Development Department within twelve (12) months of the destruction occurrence, and the project is diligently pursued to completion.	X			Residential structures in R districts including nonconforming uses, and conforming residential uses in the CD, Cl, or CNE districts that do not conform to standards for setbacks, height of structures, distance between structures, maximum buildable floor area, open space, or lot area per unit, may be rebuilt with the same floor area, upon issuance of building permits and/or use permits, if applicable, whatever the extent of the damage, provided there is no increase in any nonconformity.
Long Beach	Any building containing a nonconforming use or any nonconforming structure may be repaired and restored to its nonconforming state if the need for repairs or restoration shall be the result of fire, explosion, earthquake, imminent public hazard, acts of terrorism, sabotage, vandalism, warfare or abatement of earthquake hazard in accordance with City regulations. Such restoration shall comply with the following conditions: A. Level of Restoration: The damaged use or structure may be repaired or rebuilt to the area and footprint of the previous use or structure. Alternatively, the use or structure may be repaired or rebuilt to a more conforming area or footprint. B. Additional Floor Area Added: If during restoration and/or reconstruction additional floor area is added, the use or structure shall abandon its nonconforming status. C. Time Limit: The repairs must be commenced within one year of the event causing damage to the use or structure, and the repairs must be diligently pursued until completed.			X	N/A
Torrance	A damaged nonconforming building(s) or structure(s) on the same lot may be repaired, reconstructed or restored, provided that the expense of such structural repair, reconstruction or restoration does not exceed fifty (50) percent of the replacement cost of the building(s) or structure(s) on the same lot at the time such damage occurred.		X		Except as provided in this paragraph 2), and subject to paragraph 4) below, whenever a nonconforming building(s) or structure(s) on the same lot is damaged in excess of fifty (50) percent of its replacement cost at the time of damage, the repair, reconstruction or restoration of such building(s) or structure(s) shall conform to all the regulations of the district in which it is located and it shall be treated as a new building(s) or structure(s). A) Whenever a multiple-family residential building(s) or structure(s), of three (3) or more units, on the same lot is damaged in excess of fifty (50) percent of its replacement cost at the time of damage, it may be repaired, reconstructed, or restored in accordance with the zoning requirements of this Division that were in effect at the time it was first constructed. Minor modifications including but not limited to additional parking, changes to building floorplan, footprint or elevation may be made, subject to Planning Director approval and provided that: 1) Total number of units is not increased; 2) Total number of bedrooms is not increased; 3) Total square footage of living a
El Segundo	A nonconforming building partially damaged or completely destroyed by fire, explosion or other casualty or act of God or the public enemy may be restored or rebuilt and the occupancy or use of the building or part which existed at the time of the partial or complete destruction may be continued subject to all other provisions existing at the time of original construction			X	N/A
Hawthorne	A nonconforming building damaged or partially destroyed to the extent of not more than fifty percent of its appraised value at the time of its destruction by fire, explosion, flood, or other casualties or act of God or the public enemy, such value to be determined by the who shall receive, consider, and evaluate any evidence such as would customarily be considered in eminent domain proceedings, may be restored and the occupancy or use of such building or part thereof which existed at the time of such partial destruction or damage may be continued subject to all other provisions of this chapter, but the restoring of such nonconforming building shall not serve to extend the abatement date of the original building.		X		Where a residential use located on property which becomes nonconforming because of a conflict with the city's adopted land use element of the general plan designating the property as freeway commercial/mixed use; or where the zoning is C-1 (freeway commercial/mixed use); or where the zoning is residential and the general plan land use element designates the property as general commercial, may be rebuilt by obtaining the necessary building permits from the director of building and safety, provided the construction shall comply with the current building codes.