

December 8, 2004

**Honorable Mayor and Members of the
Hermosa Beach City Council**

**Regular Meeting of
December 14, 2004**

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

Recommendation:

That the City Council direct staff to return with a draft ordinance.

Background:

Previously the City Council expressed concerns about the nonconforming ordinance with respect to the need to permit limited expansions when there is added parking provided.¹ Staff suggested at that time that it would take the opportunity to present other aspects of the law that are ambiguous and difficult to implement.

Analysis:

Many properties in the City are nonconforming to one or more regulations in the Zone Code. When a homeowner comes to the Community Development Department with questions about improving their home there is a high probability that he or she will have to deal with the City's regulations regarding "nonconformities". Structures and properties that are nonconforming include "nonconforming buildings" which do not meet current regulations such as:

- ❑ Setbacks from property lines,
- ❑ Building height,
- ❑ Parking and parking setback requirements
- ❑ Open space requirements
- ❑ Lot coverage

Properties containing "nonconforming uses" include those that contain uses inconsistent with the zone, such a residential uses in a commercial district, or containing more units than permissible in the Zone.

There are often cases where the existing rules for nonconformities are too restrictive, and prevent what is otherwise a reasonable expansion and remodeling projects. Also, the rules currently require Planning Commission review when certain thresholds are met, which causes delay and greater uncertainty for a homeowner. The rules themselves with respect to limitations on demolition can be very complex and difficult to interpret, implement, and reasonably enforce, and may conflict with building and safety code requirements for upgrading older structures. As a result, homeowners are often confused by the complex rules with respect to what can be demolished and what can be added, and often decide either to not improve the property, or sell the property to a developer which results in the demolition of the existing dwelling unit. Therefore, staff is recommending review of certain issues with the present regulations, such as the following:

¹ The City Council sustained the decision of the Planning Commission to deny approval of a variance for expansion to an existing three-unit residential building that is a nonconforming use since it could not make the mandatory findings, but felt the law should be made more flexible to accommodate such projects that add parking.

1. Amount of remodel/expansion allowed

Nonconforming 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). Nonconforming uses are limited to 50% period, 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). This requires literally 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 produce confusion for homeowners of nonconforming properties and do not encourage preserving older homes in the city. Some suggestions for simplifying this process and minimizing delays and costs with Planning Commission review are:

Structures:

- ❑ Allow up to 100 % expansion without Planning Commission approval when 2 parking spaces per unit are provided for nonconforming structures. (*Currently anything above 50% requires Planning Commission based on valuation.*)
- ❑ Allow up to 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 and building valuation is calculated*)
- ❑ Calculate the amount of expansion based on footage and omit confusing calculations based on valuation.

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*)
- ❑ Allow up to 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 and building valuation is calculated*)
- ❑ Calculate the amount of expansion based on footage and omit confusing calculations based on valuation.

Either:

- ❑ Allow buildings designated as Historic Landmarks to remodel with no accounting of “valuation” and no limitation providing the work is consistent with the requirements of Section 17.53.140 Certificate of Appropriateness in the City’s Historic Preservation Ordinance.

2. Structural removal allowed

Presently, when a nonconforming structure is expanded pursuant to the above, 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 (with a limit of 10% for nonconforming uses). 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 cannot be 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. Otherwise, if the building is completely demolished the new construction obviously must be made to comply with the current requirements.

1. Parking Requirements in Nonconforming Buildings and Uses

Less than 1 per unit	100 sq. ft. expansion, no P.C.approval
1 space per unit or new parking is added	500 sq. ft. expansion, no P.C.approval
2 spaces per unit or new parking is added	500 sq. ft. expansion, up to 100% expansion nonconforming structures and 50% nonconforming uses

For clarification purposes staff also recommends that this section related to nonconforming parking be made a part of the nonconforming regulations, in Chapter 17.52.

Sol Blumenfeld, Director
Community Development Department

Concur:

Stephen R. Burrell,
City Manager