

November 20, 2006

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

**Regular Meeting of
November 28, 2006**

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

Planning Commission Recommendation:

To introduce and waive full reading of the attached ordinance approving changes to Section 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 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

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 revision allows both residential and commercial properties to be rebuilt and eliminates the 50% damage threshold and Planning Commission review. Residential property may be rebuilt as long as it conforms closely to current zoning standards, complies with current building codes, the cause of the damage was not intentional and the basic structural features related to setback, floor area and room size can duplicated. Commercial and industrial buildings, not intentionally damaged, may be rebuilt in commercial and manufacturing zones, as long as there is no increase in gross floor area, building footprint, building occupant load or increase any other nonconforming condition and the building conforms to building codes including the provision of a fully code complying fire sprinkler system. 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.

Therefore, the code has been made consistent between commercial and residential property. An entirely code based administrative review has replaced the discretionary review previously required by the Planning Commission and the reconstruction process has been streamlined allowing commercial and residential property owners to rebuild without supplying a detailed cost estimate for reconstruction.



Sol Blumenfeld, Director
Community Development

Concur:



Stephen R. Burrell
City Manager

Notes:

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

Attachments:

1. Ordinance
2. Chapter 17.52 Nonconforming Ordinance

ORDINANCE 06-

AN ORDINANCE OF CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, TO AMEND 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 damage 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 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)
2 percent 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
6 building, any such deviation shall conform in all respects with the current requirements of
7 this title.

8 B. Commercial/Industrial Buildings

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

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

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

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

32 Section 7. This ordinance shall become effective and be in full force and effect from and
33 after thirty (30) days of its final passage and adoption.

34 Section 8. Prior to the expiration of fifteen (15) days after the date of its adoption, the
35 City Clerk shall cause this ordinance to be published in the Easy Reader, a weekly newspaper of
36 general circulation published and circulated, in the City of Hermosa Beach in the manner
37 provided by law.

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Section 9. The City Clerk shall certify to the passage and adoption of this ordinance, shall enter the same in the book of original ordinances of said city, and shall make minutes of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted.

PASSED, APPROVED and ADOPTED this 14th day of November, 2006, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

Date: _____

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Chapter 17.52

NONCONFORMING BUILDINGS AND USES

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)