

September 4, 2007

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

**Regular Meeting of  
September 11, 2007**

SUBJECT: TEXT AMENDMENT TO CLARIFY SECTION 17.52.070 OF THE ZONING  
ORDINANCE PERTAINING TO REBUILDING OF DAMAGED  
NONCONFORMING STRUCTURES

**Planning Commission Recommendation**

To introduce the attached ordinance to clarify the provisions of Section 17.52.070 regarding nonconforming commercial buildings in residential zones, and residential uses that exceed 45-units per acre.

**Background**

Pursuant to Council direction the Planning Commission reviewed the issue of rebuilding damaged nonconforming structures in C-1, C-3 and residential zones, and recommended no substantive changes to Section 17.52.070 as adopted by the City Council in November, 2006, which allows rebuilding in all zones. The Commission, however, is recommending minor clarifications to this code section.

**REBUILDING DAMAGED STRUCTURES IN AREAS OUTSIDE THE C-2 ZONE:**

When the City Council adopted an ordinance to revise the code regarding rebuilding damaged nonconforming structures in November, 2006, the Council also directed the Planning Commission to study the ramifications of these changes on properties outside the downtown C-2 zone. The revised 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.


The City Council's decision to adopt this revision 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<sup>1</sup>. By abandoning the 50% rule, the City Council recognized the hardships caused when a property owner is required 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 creates the same hardship when a building is severely damaged or destroyed. For residential property the existing nonconforming condition may be the number of units, and if the building cannot be rebuilt to its prior condition families could be displaced.

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.

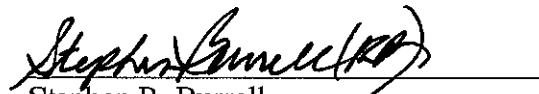
In summary, the Commission concurred that the general rule regarding restoration should not vary by zoning district, since it reflects a general policy on how to deal with hardships that are involuntarily placed on property owners when structures are damaged or destroyed.

**Analysis:**

Section 17.52.070 as revised, however, needs clarification as it is silent with respect to rebuilding a nonconforming commercial use in a residential zone (for example "Granny's Market" on Monterey Boulevard), and also is inconsistent with State Law as it excludes reconstruction of existing residential uses that exceed 45 units per acre. Therefore, the Commission concurs with staff's recommendation that Section 17.52.070 be amended to correct these oversights.

  
Ken Robertson, Acting Director  
Community Development Department

CONCUR:

  
Stephen R. Burrell,  
City Manager

**Attachments:**

1. Proposed Ordinance
2. Planning Commission Minutes
3. City Council Minutes (November ,2006)

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<sup>1</sup> 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.

ORDINANCE 07-

AN ORDINANCE OF THE CITY OF HERMOSA BEACH,  
CALIFORNIA, AMENDING SECTION 17.52.070 OF THE ZONING  
ORDINANCE PERTAINING TO REBUILDING OF DAMAGED  
NONCONFORMING STRUCTURES

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 July 17, 2007, to review and consider clarifications to Section 17.52.070 of the Zoning Ordinance, and based on the evidence and testimony receive, recommended that said Section be amended.

Section 2. The City Council held a duly noticed public hearing on September 11, 2007, to consider the recommendation of the Planning Commission.

Section 3. Based on the evidence considered at the public hearing, and the record of decision of the Planning Commission, the City Council makes the following findings:

1. Section 17.52.070, as revised in November, 2006, does not address the issue of rebuilding a nonconforming commercial use in a residential zone and is inconsistent with State Law as it does not allow reconstruction of existing residential uses that exceed 45 units per acre.

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

Section 4. Based on the foregoing, the Planning Commission hereby recommends that the Hermosa Beach Municipal Code, Title 17-Zoning, Chapter 17.08, 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;

1 e. ~~The density of the buildings or buildings on site does not exceed forty five~~  
2 ~~(45) units per acre;~~

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

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

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

10 B. Commercial/Industrial Buildings

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

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

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

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

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

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

5  
6 **PASSED, APPROVED and ADOPTED** this 11th day of September, 2007, by the following  
7 vote:

- 8            AYES:
- 9            NOES:
- 10           ABSTAIN:
- 11           ABSENT:

12  
13 \_\_\_\_\_  
14 PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California

15 ATTEST:

16 APPROVED AS TO FORM:

17 \_\_\_\_\_  
18 City Clerk

19 \_\_\_\_\_  
20 City Attorney

21 Date: \_\_\_\_\_

22 F:\B95\CD\CC\ord damaged buildings.DOC

unless someone re-subdivides the entire area.

Chairman Kersenboom closed the public hearing.

**MOTION** by Commissioner Hoffman, seconded by Commissioner Allen, to **MERGE** the property at 2441 Valley Drive, comprised of two existing lots. The motion carried as follows:

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

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**15. TEXT 04-4 -- Text amendment to clarify Section 17.52.070 of the Zoning Ordinance pertaining to reconstruction of damaged nonconforming buildings.**

Staff Recommended Action: To recommend approval of said text amendment.

Acting Director Robertson stated that Council has directed the Planning Commission to review the issue of rebuilding nonconforming structures in the C-1, C-3, and residential zones; noted that the Planning Commission reviewed this and recommended that no substantive changes be made to that section of the code, which was modified by City Council in November 2006; and stated that the Planning Commission also concurred with staff at the April meeting regarding its clarification of this code section. He explained that the section as revised by Council is silent with respect to rebuilding a nonconforming use in a commercial use in a residential zone and is also inconsistent with state law, as it does not allow reconstruction of existing residential uses that exceed 45 units per acre; and that staff is recommending those clarifications to that section, while at the same time recommending City Council otherwise not change the amendments as they adopted in November.

Vice-Chairman Perrotti noted his understanding the City does have structures and residential buildings that exceed the 45 units per acre.

Acting Director Robertson concurred with Vice-Chairman Perrotti's comment.

Chairman Kersenboom opened the public hearing. There being no input, Chairman Kersenboom closed the public hearing.

**MOTION** by Commissioner Hoffman, seconded by Commissioner Pizer, to **APPROVE TEXT 04-4 -- Text amendment to clarify Section 17.52.070 of the Zoning Ordinance pertaining to reconstruction of damaged nonconforming buildings, as recommended by staff.** The motion carried as follows:

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

Chairman Kersenboom recessed the meeting at 9:06 P.M. and reconvened the meeting at 9:14 P.M.

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

**RECESS AND RECONVENE**

Chairman Allen recessed the meeting at 8:41 p.m. and reconvened the meeting at 8:45 p.m.

**HEARING(S)**

**10. A-14 -- Appeal of Director's decision to base the height measurement on a convex sloping lot at 931 Monterey Boulevard.**

Staff Recommended Action: To direct staff as deemed appropriate.

Director Blumenfeld stated as permitted under the height ordinance, the applicant is requesting consideration of alternate points on the north and south property lines where the survey and topographic profiles show a convex condition; noted that staff believes there is a convex condition which exists on this site; and that staff is looking for confirmation of this convex slope by minute order.

Chairman Allen opened the public hearing.

Jeff Briggs, applicant, noted his support of this request.

There being no further input, Chairman Allen closed the public hearing.

**MOTION** by Chairman Allen, seconded by Commissioner Hoffman, to determine by minute order that the lot at 931 Monterey Boulevard is a convex sloping lot. Motion carried as follows:

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

**11. TEXT 04-4 -- Special Study for a Text Amendment to nonconforming ordinance regarding rebuilding of damaged nonconforming structures in C-1, C-3, Industrial and Residential zones.**

Staff Recommended Action: To recommend amended code Section 17.52.070 be applicable to C-1, C-3, industrial and residential zones, and that nonconforming commercial and residential uses also be included in the draft amendment.

Senior Planner Robertson stated that in November 2006, City Council adopted an ordinance to revise Section 17.520.70, which addressed reconstructing damage to nonconforming buildings; noted this allows complete restoration of nonconforming buildings to their pre-damaged condition; advised that before this change, the code only allowed a complete restoration if the building was damaged less than 50 percent of replacement cost; explained that Council adopted the ordinance to apply to all commercial, industrial, and residential properties; that Council also directed the Planning Commission to study the ramifications of these changes on properties

outside the Downtown C-2 zone; and that Council decision to adopt this provision to broadly cover all uses reflects a general policy on how to deal with calamities that create hardships for property owners. He noted this policy is also consistent with the policy in many nearby cities; that in reviewing the rules for rebuilding damaged nonconforming structures found in other nearby cities, he advised that staff found no cities vary the rebuild rules by different zones or different districts; that it was also found two other cities (Long Beach and El Segundo) mimicked provisions of this City's recent code adoption that allow complete restoration of damaged nonconforming structures throughout the city; however, in Torrance, Redondo Beach and Manhattan Beach, they still have a 50-percent rule. By abandoning the 50-percent rule, he stated City Council recognizes that hardships caused by forcing to rebuild to meet current codes, parking is often the nonconforming issue and implementing a 50-percent rule for any commercial property would create the same hardship should a building be severely damaged or destroyed that applies in another zone. He added that for residential properties, the existing nonconforming condition may be the number of units; that if the units cannot be rebuilt in their pre-damaged condition, it could potentially displace residential households; also, that by abandoning the 50-percent rule, it has resolved many problems associated with making the replacement cost calculations.

In following up on Council's direction, Senior Planner Robertson noted staff's recommendation that the rule regarding restoration should not vary by zone since it reflects a general policy on how to deal with calamities or hardships that are involuntary; and that staff recommends in addition to not vary by zone, that the code section be amended to correct these oversights and allow reconstruction of nonconforming buildings, as noted in staff report. He advised that this matter will be set for public hearing for the next Planning Commission meeting.

It was the consensus of the Commission to concur with staff recommendation.

**MOTION** by Chairman Allen, seconded by Commissioner Hoffman, to **APPROVE** TEXT 04-4 -- Special Study for a Text Amendment to nonconforming ordinance regarding rebuilding of damaged nonconforming structures in C-1, C-3, Industrial and Residential zones and for staff to proceed with a public hearing on this matter. Motion carried as follows:

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

Commissioner Pizer commended staff on their thorough report.

~~12. CUP 06-9 -- 90-day review of the auto spa in The Hermosa Pavilion at 1601 Pacific Coast Highway.~~

~~Staff Recommended Action: To reschedule the review of the project to three months after the business re-opens.~~

~~Director Blumenfeld explained that due to the owner's poor health and his inability to operate this business for a while, staff is suggesting this issue be evaluated in three months.~~

~~It was the unanimous consensus of the Commission to reschedule CUP 06-9 -- 90-day review of the auto spa in The Hermosa Pavilion at 1601 Pacific Coast Highway to the regularly scheduled meeting in three months.~~



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).