
 PLANNING DEPARTMENT

GOVERNMENTAL CENTER



 COUNTY OF SANTA CRUZ

701 OCEAN STREET
FAX (831) 454.2131SANTA CRUZ, CALIFORNIA 95060
(831) 454.2580

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October 20, 1998

Agenda: November 10, 1998

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, California 95060

**SUBJECT: PUBLIC HEARING ON PROPOSED GENERAL PLAN/LCP AMENDMENTS
AND ORDINANCE AMENDMENTS REGARDING RESIDENTIAL
NONCONFORMING USES AND GENERAL NONCONFORMING USE
PROVISIONS**

Members of the Board:

On December 9, 1997, your Board directed that specific revisions be prepared to revise the nonconforming use regulations, that the revisions be presented to the Planning Commission for their review and recommendation, and that the revisions be returned to your Board for final consideration.

Your Board directed that the revisions to the nonconforming use regulations be based on the following:

- The current Nonconforming Use regulations do not fully implement the General Plan/LCP with regard to retaining existing housing stock;
- Not all nonconforming uses should be subject to the same regulations;
- Significantly nonconforming uses (proposed to be defined as those uses that are inconsistent with their General Plan designation) should be subject to limited repair and accelerated elimination; and
- Other nonconforming uses should be allowed various types of improvement, based on their degree of nonconformity.

Because the General Plan contains different policies for residential, commercial, industrial, and agricultural nonconforming uses, your Board also directed that revisions to the Nonconforming Use ordinance be written and presented in phases. The first phase, which is before your Board, contains general provisions that apply to all uses and residential uses. The second phase will contain commercial, industrial, and historic nonconforming use provisions; the third phase will contain agricultural nonconforming use provisions.

On May 27, 1998, the Planning Commission held a public hearing and recommended approval of the revisions, as presented (see Attachment 13).

BACKGROUND

A nonconforming use is a use that was legally established but no longer complies with one or more of the County's land use regulations. Uses can be nonconforming because they predate the adoption of regulations (a preexisting use), or the County's regulations, zoning, or General Plan have been changed since the use was established and the use, which once conformed to all regulations, no longer complies. Examples of common nonconforming uses include:

- A use that no longer meets the density allowed by its zoning and/or General Plan designation, such as Multiple Dwelling Units on a parcel zoned for one single family dwelling.
- A use that is no longer allowed by its zoning and/or General Plan designation, such as a commercial store in a residential area.
- An accessory structure that was legally built but does not meet the current use regulations.
- A use that does not have a required Development Permit, such as an apartment building constructed in 1940.

Nonconforming uses should not be confused with nonconforming structures, or with illegal uses. Nonconforming structures are those that do not meet one or more current site standards, such as setbacks from property lines, height restrictions, or lot coverage. The Nonconforming Structure ordinance (Section 13.10.265 of the County Code) was revised in 1995; staff is not proposing changes to it. Illegal uses are those that were commenced in violation of one or more County regulations. They did not pre-date the County's regulations — they were initiated in violation of the regulations or without the required Development and Building Permits. The amendments before your Commission do not address illegal uses.

Today, because of nearly 40 years of rezonings, and numerous General Plan and ordinance amendments, many parcels in the County contain nonconforming uses. Our present nonconforming use regulations, which are essentially the same as those adopted in 1958, are simple but rigid, offering little flexibility in dealing with the wide range of nonconforming uses. The last comprehensive amendment to the nonconforming use regulations was in 1974. In our judgement, the current ordinance is overly restrictive, dated, and does not distinguish between those nonconforming uses which are innocuous, and those which are detrimental. In addition, the ordinance does not reflect and properly implement the policies of the 1994 General Plan regarding retention of housing stock and continuation of commercial uses.

DISCUSSION OF THE CURRENT NONCONFORMING USE REGULATIONS

The current ordinance (Attachment 7) states that: "Any nonconforming use within the County is detrimental to the orderly development of the County and to the general welfare. It is the intent of the Chapter that nonconforming uses shall be eliminated as rapidly as possible." The ordinance

provisions that follow reflect this basic goal and impose restrictions on structural improvements, expansions, intensification of use, reconstruction after disaster, terminations of nonconforming rights, and so forth (see Attachment 8 for a summary of the current regulations). At one level, these provisions advance standard planning principles, and make sense. Inappropriate uses should generally not be enlarged, or intensified, or perpetuated through significant structural upgrades. However, some nonconforming uses are not objectionable or in basic conflict with surrounding uses. Under the current rules, these more benign nonconforming uses are subject to the same restrictions as the more noxious uses. The following are examples of some of the current restrictions that now apply to all nonconforming residential uses:

The current ordinance prohibits structural repair, structural alteration (except to roofs), physical expansion, and reconstruction (with a few exceptions) of structures containing nonconforming uses. As a result:

A termite damaged wall stud in an existing legal cabin on a property with multiple units in a single family zone cannot be repaired, unless it is designated as the conforming unit. Thus, if there are four units, only one can be altered or repaired structurally. Only nonstructural ordinary repair and maintenance can be done to the other three units.

An old foundation under an existing legal duplex that does not have the currently required Development Permit may not upgrade for seismic safety.

A garage exceeding the current 1000 square foot size limitation that has a dry rotted ceiling joist cannot be repaired.

The current ordinance makes no differentiation in the degree of nonconformity. As an example:

A duplex located on property with a Commercial zoning and General Plan designation is treated the same as a duplex located on property now zoned for single family uses.

POLICY BASIS FOR PROPOSED AMENDMENTS

The Housing Element of the General Plan/Local Coastal Program states:

*According to data generated by the 1980 US Census, 43% **of** the units in the county's unincorporated area were built before 1960. This would indicate that 19,582 units are 30 years of age or older . . . In addition, there are also a significant number of units(11,613 units) that were built during the 1960-1969 period. These units will be approaching 30 years of age in the next decade and may also need housing improvement and modernization. In total, then, there are 19,582 units over the age of 30 years and another 11, 613 units approaching 30 years of age in the unincorporated County. These 31, 195 units represent 59% of all units in the County (unincorporated areas only) as of January, 1990.*

Many of these units, generally because they exceed density, are nonconforming uses. The Housing Element also emphasizes the preservation of existing residential housing stock. As illustrated in the above examples, the express provisions of the current ordinance do not mirror this goal, but in many ways, impede it.

PROPOSED CHANGES TO THE RESIDENTIAL AND GENERAL PROVISIONS NONCONFORMING USE REGULATIONS

The recommended amendments before your Board relax the rules and levels of review for residential nonconforming uses based on the degree of nonconformity. A nonconforming use that is close to conformance is proposed to be able to make more improvements and at a lower level of review than a use that is more nonconforming. Thus, the fundamental purpose of the ordinance for nonconforming uses states: “Nonconforming uses **may** be detrimental to the orderly development of the County. . .”

Staff is proposing two basic categories of nonconforming uses: nonconforming and significantly nonconforming. The concept of “significantly nonconforming” is taken from the Nonconforming Structure regulations and will complement it. Staff is proposing to define significantly nonconforming uses as those that are inconsistent with their General Plan/LCP land use designation. Thus, the fundamental purpose of the ordinance for significantly nonconforming uses shifts in emphasis by stating: “Significantly nonconforming uses **are** detrimental to the orderly development of the County. . .” A significantly nonconforming residential use is one that is located in a Commercial or Industrial General Plan land use category -- the only land use categories that prohibit primary residential uses. A residential use surrounded by commercial or industrial activities is an undesirable situation. It is, therefore, proposed that significantly nonconforming uses be restricted to limited repair and structural alterations for imminent threat.

All other nonconforming residential uses would be allowed to be repaired, altered, or even reconstructed at varying levels of review based on the degree of nonconformity. Current and proposed regulations are generally illustrated in Tables 1 through 3 (Attachment 8). A detailed discussion of each proposed section is found in the annotated ordinance (Attachment 6).

In addition to these basic objectives, the regulations are proposed to be revised, per your Board’s direction, to allow the rehabilitation and reconstruction of accessory structures made nonconforming by the approval, in 1997, of revisions to the Accessory Structures ordinance (see Attachment 10).

The revised ordinance implements Government Code Section 65852.25 (Senate Bill 2112) (Attachment 11). This State law requires local jurisdictions to adopt regulations allowing the reconstruction of multifamily dwellings (including nonconforming multifamily dwellings) **after** catastrophes. Local jurisdictions are allowed some discretion in their approval; review criteria is proposed.

General provisions that apply to all nonconforming uses are being proposed as a separate Section of the County Code. Because structural repair, alterations, and reconstructions will, for the first time, be available to nonconforming uses, new definitions clearly differentiating between these terms are proposed. Other new provisions include: a subsection clearly stating that preexisting legal parcels not meeting current size requirements are conforming and may be developed; an exception to allow structural work even to significantly nonconforming uses if done solely for the purpose of complying with the American with Disabilities Act or Title 24 of the State Building Code; and a requirement that a Statement of Acknowledgment of Nonconforming or Significantly Nonconforming Status be recorded prior to issuance of any permits. Again, a more detailed discussion of these proposed subsections is found in Attachment 6.

PROPOSED GENERAL PLAN CHANGES

Two policies of the General Plan/Local Coastal Program are proposed to be amended (see Attachments 2 and 3):

Policy 2.12.3 would be amended to eliminate the provision for a one time expansion of a residential use on property with a Commercial land use designation. As this use is proposed to be considered significantly nonconforming, expansion of the use would not be consistent with the proposed purpose of the significantly nonconforming use regulations. Expansions of residential uses in approved mixed use developments would remain allowable, and the provision for increased residential to commercial ratio found in the County Code would be added to bring consistency.

Policy 8.4.2 would be amended to strengthen the language for retention of existing nonconforming multifamily housing.

HOUSING ADVISORY COMMISSION REVIEW

The Housing Advisory Commission reviewed the proposed ordinance and General Plan changes at their February and April meetings. On April 1, 1998, the Commissioners voted unanimously to support the ordinance as presented and the concept of preserving existing housing (see Attachment 15).

COMMISSION ON DISABILITIES REVIEW

The Commission on Disabilities reviewed proposed Section 13.10.260(c)7, which allows structural work to any nonconforming use if performed for the sole purpose of coming into compliance with the Americans with Disabilities Act (ADA) or Title 24 of the State Building Code. At their December 12, 1997 meeting, the Commission voted unanimously to support the proposed Section (see Attachment 14).

HISTORIC RESOURCES COMMISSION REVIEW

The Historic Resources Commission reviewed the proposed revisions at their July and August meetings (see Attachment 16).

ENVIRONMENTAL REVIEW

The Environmental Coordinator considered the proposed ordinance and General Plan changes and on February 17, 1998 made the determination to issue a Negative Declaration with no mitigations. The Initial Study and Negative Declaration are attached as Attachment 12.

RECOMMENDATION

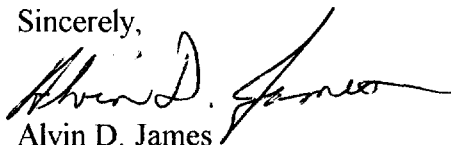
The proposed changes will create flexibility to the Nonconforming Use regulations and help preserve existing housing stock that is benign, accelerate the elimination of existing housing stock that is detrimental to their neighborhoods, implement State law concerning the reconstruction of multifamily

housing destroyed by catastrophe, and bring conformance between the Zoning Ordinance and the General Plan/Local Coastal Program.

It is, therefore, RECOMMENDED that your Board take the following actions:

1. Adopt the attached Resolution amending the County of Santa Cruz Local Coastal Program Implementation Program (Attachment 1); and
2. Adopt the attached ordinance amending various sections of the Santa Cruz County Code (Attachment 4) and certify the Environmental Determination (Attachment 13); and
3. Direct Planning staff to submit this ordinance amendment to the California Coastal Commission for certification as part of the next round of 1998.

Sincerely,



Alvin D. James
Planning Director

RECOMMENDED:



SUSAN A. MAURIELLO
County Administrative Officer

Attachments:

1. Proposed Resolution
2. Proposed General Plan/LCP Amendments
3. "Strikeout" Version of Proposed General Plan/LCP Amendments
4. Proposed Ordinance
5. "Strikeout" Version of Proposed Ordinance
6. Annotated Version of Proposed Ordinance
7. Copy of Current Nonconforming Use Regulations
8. Summary Table of Current and Proposed Regulations
9. Minute Order from Board of Supervisors Meeting of December 9, 1997
10. Minute Order from Board of Supervisors Meeting of May 6, 1997
11. Copy of Government Code Section 65852.25 (Senate Bill 2112)
12. Environmental Review Initial Study and Notice of Determination
13. Planning Commission Resolution and Meeting Minutes of May 27, 1998
14. Commission on Disabilities Letter dated January 9, 1998
15. Housing Advisory Commission Meeting Minutes of April 1, 1998
16. Historic Resources Commission Meeting Minutes of July 2, 1998 and August 20, 1998
17. Correspondence Received

cc: California Coastal Commission
James Samuels
San Lorenzo Valley Property Owners' Association