

**City of Culver City, California
Agenda Item Report**

Meeting Date: July 23, 2012		Item Number: <u>PH-1</u>	
CITY COUNCIL AGENDA ITEM: PUBLIC HEARING – Consideration of an Appeal of the Municipal Code Appeal Committee’s Decision on May 16, 2012 to Require Removal of the Kitchen Cabinets Installed in an Illegal Garage Conversion as a Condition of Approval Granting Deferred Compliance.			
Contact Person/Dept.: Sharon Guidry Community Development		Phone Number: 310-253-5940	
Fiscal Impact: Yes ☐ No ☒		General Fund: Yes ☐ No ☐	
Public Hearing: ☒		Action Item: ☐ Attachments: ☒	
Commission Action Required: Yes ☐ No ☐ Date: _____			
Public Notification: Published in the Culver City News (07/12/12); (E-Mail) Meetings and Agendas – City Council (07/20/12).			
Department Approval: Sol Blumenfeld: (07/10/12)		City Attorney Approval: Carol Schwab (by H. Baker) (07/19/12)	
Chief Financial Officer Approval: Jeff Muir (07/19/12)		City Manager Approval: John M. Nachbar (07/20/12)	
<u>RECOMMENDATION:</u> Staff recommends the City Council conduct a public hearing to consider an appeal from Sabrina Jones, owner of residential property located at 4168 Baldwin Avenue (Appellant), of the Municipal Code Appeals Committee (MCAC or Committee) decision to require removal of kitchen cabinets installed in an illegal garage conversion as a condition of deferred compliance. Deferred compliance allowed the property owner additional time to legalize the garage as an accessory residential structure. Staff further recommends the City Council deny the appeal and affirm the MCAC’s decision to require removal of the kitchen cabinets as a condition of deferred compliance. <u>PROCEDURE:</u> 1. Mayor seeks motion from City Council to receive and file the affidavits of publication and posting of notices and correspondence received in response to the public hearing notices; and, 2. Mayor calls for a staff report and the City Council Members may pose questions to staff as desired; and, 3. Mayor seeks a motion to open the public hearing; and, 4. Mayor seeks a motion to close the public hearing after all public testimony has been presented; and, 5. City Council discusses the item and arrives at its decision. <u>BACKGROUND:</u>			

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On April 28, 1997, the City Council adopted Resolution No. 97-R032 approving the City's Code Enforcement Policy (Policy) related to illegal property conversions. (Subsequently, the Policy was re-numbered to Policy No. 2402 by Resolution No. 97-R067, see Attachment 1). The purpose of the Policy was to establish consistent Code Enforcement policies and practices regarding illegal property conversions to ensure compliance with the Culver City Municipal Code (CCMC) and to provide guidance to staff and the MCAC in obtaining compliance. The MCAC is comprised of the Assistant City Manager (sitting as designee of the City Manager), the Community Development Director and the Fire Marshal.

The Policy establishes hearing procedures and guidelines for the MCAC (Attachment 2), which include factors the Committee can consider when determining whether to grant deferred compliance (an extended period of compliance to correct code violations). Those factors are: aggravating or mitigating circumstances surrounding the violation in question, culpability of appellant, effect of violation on neighboring properties, economic hardship of appellant if forced to comply, and other miscellaneous circumstances.

On February 16, 2011, a complaint was filed with Enforcement Services Division alleging a garage was converted into living quarters at the above referenced property. Historical records show that the garage has been converted as far back as 2006. Enforcement action was initiated in 2006 and in 2008 the Appellant was again contacted regarding the illegal garage conversion, however, no action was taken by the Appellant or other responsible parties to correct the violation.

An inspection was conducted on March 22, 2011 by Code Enforcement. The inspection confirmed that the garage was illegally converted into a separate dwelling unit consisting of a bedroom, a second sleeping area, a wall heater, living room, dining area, full kitchen facilities, and a bathroom with a shower, all without required permits or clearance. A Warning Notice was issued to the Appellant to obtain Planning Clearance and Building Permits to either legalize the garage conversion or convert it back to its original permitted use.

The Appellant did not take action after the issuance of the Warning Notice; therefore, on August 4, 2011, Enforcement Services issued an Order to Comply (OTC) which stated that the illegal garage conversion must be brought into compliance by September 6, 2011. An OTC is appealable to the MCAC. On August 19, 2011, the Appellant filed an appeal of the OTC to the MCAC, seeking deferred compliance.

An MCAC hearing was originally held on October 18, 2011. At that time, after reviewing all of the detailed background information presented by staff and discussing the matter with Appellant, the MCAC continued the hearing until May 16, 2012, to allow time for Appellant to determine which of three compliance options she would pursue, and to then obtain a design professional to create a site plan and drawings for submittal to the Planning Division. Additionally, the MCAC instructed

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Appellant to obtain a life safety inspection from the Building and Safety and Fire Prevention Divisions, to address any immediate safety concerns. The inspection was performed and all corrective action was taken. Additionally, Appellant submitted the required plans and drawings to the Planning Division.

On May 16, 2012, the MCAC reconvened. At that hearing, the Committee heard testimony from the Appellant, property co-owner Shamshi Espana, and City staff, including Enforcement Services Manager Sharon Guidry and Associate Planner Josh Williams. After careful consideration of the evidence presented, the MCAC granted a period of deferred compliance until November 30, 2012 to bring the property into compliance. As conditions of approval of deferred compliance, the Committee required removal of all kitchen facilities, including the stove, refrigerator, and kitchen cabinets. The Appellant is appealing only the portion of the Committee's decision that requires removal of the kitchen cabinets.

Staff has applied a significant amount of resources over the years related to the enforcement of this illegal conversion. The total estimated costs associated with the investigation, research, and enforcement of this illegal garage conversion to date is \$7,543.00.¹

These costs do not include staff time associated with attendance at the City Council Appeal Hearing.

DISCUSSION:

In using their discretion to require removal of the kitchen cabinets, the Committee members unanimously concluded that it was appropriate to condition the granting of deferred compliance on the removal of all kitchen facilities, including the stove, refrigerator, and kitchen cabinets. The Committee reasoned that leaving in the kitchen cabinets would increase the probability that the unit could be more easily re-converted to an illegal dwelling unit in the future. They expressed their belief that, in return for granting deferred compliance, the Committee should apply adequate conditions so that the converted space does not become an illegal unit again.

The Committee members further expressed that the Appellant has had a large amount of time to correct the violations and has thus far failed to do so. In granting an additional six months to comply, the Appellant will have had more than one year since the item was first brought before the Committee. (This does not include the time period from the initial enforcement action by Code Enforcement). The Committee concluded that to leave the kitchen facilities in a state where it could be easily converted back to an illegal dwelling unit would not be consistent with the intent of the Policy. (See Attachment 3—Draft Minutes of the May 16, 2012 MCAC hearing). (Note the minutes have not yet been approved by the MCAC since it has not convened since the May 16, 2012 hearing).

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Appellant responded by stating that the CCMC does not establish what type of cabinets may be installed in an accessory residential structure if a property owner sought to lawfully construct such accessory structure before the work has been completed. Staff submits that the CCMC also does not specifically require the water, gas lines, and plumbing fixtures to be capped into the wall as consistently required by the MCAC and the Building and Safety Division; however, that action is necessary to prevent easy reconversion. Further, if an applicant submits plans to lawfully construct an accessory residential structure where no kitchen is proposed, kitchen cabinets are not shown. For City Council's convenience, relevant portions of the CCMC pertaining to Accessory structures are included as Attachment 4.

In using its discretion to require removal of the kitchen cabinets, the MCAC decision was consistent with the premise that proper design influences lawful behavior. Community Policing Through Environmental Design Theory (CPTED) (as defined by the National Crime Prevention Institute) notes that the proper design can lead to a reduction in incidences of unlawful behavior.² Whether the owner can reuse the cabinets or must forfeit the cost for them is not within the jurisdiction of the Committee, but whether the property will become a predestined code enforcement problem most certainly is within its jurisdiction.

When making their decision, the MCAC members reasoned that the CCMC permits accessory residential structures without kitchen facilities. Allowing the kitchen to essentially remain intact would conflict with the lawfully permitted use of the space and cause confusion for future property owners and tenants relative to the intended use of the property. The Committee therefore reasoned that it was necessary to require removal of the kitchen cabinets as a condition of granting deferred compliance.

A letter was sent to Appellant on May 17, 2012, confirming the MCAC decision granting deferred compliance (Attachment 5). Appellant timely appealed the portion of the decision requiring the removal of the kitchen cabinets (Attachment 6). Per the Policy: "The standard of review by the City Council concerning a decision of the Municipal Code Appeals Committee shall be whether the Committee abused its discretion under the guidelines established by the City Council." The "guidelines" referenced are those set forth in the Policy as discussed earlier in the staff report.

FISCAL ANALYSIS:

The cost to the property owner/Appellant to abate the illegal unit has been deferred for over four years. However, the enforcement action in connection with the subject property has cost the City approximately \$7,543.00 in staff time and resources during this period. Overall, the City should expect to reduce the costs for potential repeat enforcement action for the same violation if the cabinets are removed from the premises.

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NOTES:

1. Total estimated staff costs per hour:

Enforcement Services Manager –	12hrs = \$ 671
Deputy City Attorney –	8hrs = \$ 1192
Code Enforcement Analyst –	16hrs = \$ 508
Code Enforcement Officers	17hrs = \$ 648
Associate Planner –	7hrs = \$ 468
Secretary –	19hrs = \$ 620
Committee Chair Martin Cole –	5hrs = \$ 1075
Committee Member Blumenfeld -	6hrs = \$ 564
Committee Member Bowden -	3hrs = \$ 489
Fire Inspector –	4hrs = \$ 504
4 Building Inspectors –	1hr ea. = \$ 176
Sr. Building Inspector –	1 hr = \$ 52
Public Notifications	<u>2 = \$ 576</u>
Total:	\$ 7543

2. The following represent some of the questions typically addressed under CEPTED:

- What is the space supposed to be used for?
- What was the original intended purpose for the space?
- How well does the space support its intended use or its current use?
- Is there conflict?
- Is there confusion or conflict in the manner in which the physical design is intended to control behavior?
- How well does the physical design support the intended function?
- How well does the physical design support the desired or acceptable behavior?

ATTACHMENTS:

1. Resolution No. 97-R067 and Policy 2402
2. Resolution No. 97-R023
3. Draft Minutes of May 16, 2012 MCAC hearing
4. CCMC §17.400.100 – Accessory Residential Structures
5. May 17, 2012 Letter from Enforcement Services confirming deferred compliance
6. May 25, 2012 Letter from Appellant requesting appeal to City Council
7. CCMC §17.700.010 – Definitions
8. CCMC §17.400.095 – Accessory Dwelling Units
9. Photograph of kitchen in illegally converted garage

MOTION:

That the City Council:

(Staff's recommendation) Deny the appeal and affirm the MCAC's decision to require removal of the kitchen cabinets as a condition of deferred compliance.