



# City of Culver City

## Staff Report

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**File #:** 19-698, **Version:** 1

**Item #:** PH-2.

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**CC - PUBLIC HEARING:** Introduction of an Ordinance Amending the Culver City Municipal Code (CCMC), Title 17, Zoning Code, Chapters 17.550 - Variances, Administrative Modifications, Reasonable Accommodations and 17.610 - Nonconforming Uses, Structures, and Parcels.

**Meeting Date:** January 14, 2019

**Contact Person/Dept:** Jose Mendivil/Associate Planner  
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**Phone Number:** (310) 253-5757  
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**Fiscal Impact:** Yes  No

**General Fund:** Yes  No

**Planning Commission:** Yes  No

**Date:** 06/27/18 and 09/12/18

**Public Hearing:**

**Action Item:**

**Attachments:**

**Public Notification:** (E-Mail) Meetings and Agendas - City Council and Planning Commission (01/09/19); (Posted) City Website (01/09/19); (Published) Culver City News (12/27/18).

**Department Approval:** Sol Blumenfeld, Community Development Director (12/26/18)

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### **RECOMMENDATION**

Staff recommends the City Council Introduce an Ordinance approving Zoning Code Amendments related to Nonconforming Uses, Structures, and Parcels and Administrative Modification requests.

### **PROCEDURE**

1. The Mayor seeks a motion to receive and file the affidavit of publication and posting of the public hearing notice.
2. The Mayor calls on staff for a brief staff report and City Council poses questions to staff as desired.
3. The Mayor seeks a motion to open the public hearing.

4. The Mayor seeks a motion to close the public hearing after all testimony has been presented
5. The City Council discusses the matter and arrives at its decision.

## **BACKGROUND**

The proposed Zoning Code Amendments involve three provisions of the Legal Nonconforming Ordinance:

1. Clarification on code language when there is a request to enlarge existing non-conforming continuing uses in residential zones where the General Plan Land Use Designation and Zoning are not consistent;
2. Clarification on code language when there is a request to improve or enlarge legal non-conforming residential structures; and,
3. Legal nonconforming parcels and the use of Administrative Modifications

The proposed Amendment related to use of Administrative Modifications was recommended by the Board of Zoning Adjustments (BZA) which considered a case referral by the Director<sup>1</sup>.

The Planning Commission considered the proposed Amendments regarding enlarging existing residential nonconforming uses and structures at its June 27, 2018, meeting and recommended City Council approval.

The proposed ordinance with amendment language in “~~strikethrough/underline~~” format is included in Attachment No. 1. Attachment No. 1 reflects the Planning Commission’s recommended amendment language and the approved Planning Commission resolutions are included in Attachment Nos. 2 and 3. Planning Commission staff reports and meeting minutes are included in Attachment Nos. 4 through 7

## **DISCUSSION:**

The Zoning Code defines legal nonconforming uses and legal nonconforming structures as follows:

- **Nonconforming Use.** A use of a structure (either conforming or nonconforming) or land that was legally established and maintained prior to the adoption of this Title and which does not conform to current code provisions governing allowable land uses for the zoning district in which the use is located.
- **Nonconforming Structure.** A structure that was legally constructed and which does not conform to current code provisions/standards prescribed for the zoning district in which the structure is located.

The Zoning Code further provides that such uses and structures may be minimally improved as follows:

### 1. Enlargement of Non-Conforming Residential Uses

CCMC Section 17.610.010 - Nonconforming Uses/A. Continuation of Use.

This codes section specifies that any nonconforming use may be maintained and continued, provided there is no increase or enlargement of the area, space, or volume occupied by or devoted to the nonconforming use. Alterations that do not increase or enlarge a nonconforming use may be approved. However, it does not specify the type or extent of alterations permitted when a property is legal nonconforming due to inconsistency between the General Plan Land Use and Zoning designations, or when existing densities on a site are not consistent with the allowable density in the applicable zone.<sup>2</sup>

To provide clarity in permitted alterations to legal nonconforming uses, the proposed amendments prohibit area or density increases of existing nonconforming residential uses (i.e., lots improved with greater densities than allowed per their current Zone and/or General Plan Land Use designation). The Text Amendment clarifies that the prohibited “increase or enlargement” includes increase in height; square footage additions; additions to existing rooms; construction of new rooms; replacement construction of units or portions of units; and construction of additional units.

### 2. Improvements to Legal Non-Conforming Residential Structures

CCMC Section 17.610.020 - Nonconforming Structures

The Zoning Code provides language that allows the construction, enlargement, expansion, and extension of nonconforming structures subject to certain regulations. This section is separate from the section discussed above that addresses nonconforming uses. A use can be conforming to the Zoning Code and General Plan, that is, allowed by both the Zoning Code and the General Plan, but be located within a nonconforming structure (a structure that is nonconforming with regard to height, setbacks, encroachments, or parking).

The proposed Text Amendment modifies CCMC Section 17.610.020.A.1 to allow for alterations. Examples of alterations includes door or window replacements in existing walls and added or reduced wall surface in order to install new windows or doors along an exterior façade.

Additionally CCMC Section 17.610.020.A.3 has been added and provides language clarifying guidelines for improvements to nonconforming single family, two family, and three family dwellings, accessory residential structures (such as garages), and accessory dwelling units. Common residential tenant improvements in the R1, R2, and R3 Zones often involve substantial demolition and reconstruction. The current Zoning Code does not provide a threshold of when an entire residential structure should be brought into compliance when substantial demolition occurs. The new section provides a threshold of more than 50% demolition of both the exterior wall surface area and building footprint measured from dwelling

exterior wall to dwelling exterior wall. Further, the Planning Commission was concerned that a series of demolitions below the 50% threshold over a short period of time would cumulatively result in the same outcome of a full demolition. City staff researched several jurisdictions in Los Angeles County and found that several cities define full demolition as 50% or more demolition of exterior walls or dwelling unit area (Attachment 8). The survey demonstrated that the City of Santa Monica requires compliance with the code if more than 50% demolition of exterior wall elements occur over a five (5) year period. The Planning Commission asked that the 50% threshold also apply to cumulative demolitions over a five (5) year period.

The amendment language will ensure that a proposed demolition resulting in a significant loss of the original dwelling (more than 50%) prompts the required code compliant upgrade for the entire structure including required parking. Cumulative demolitions for any one site over a five (5) year period resulting in more than 50% demolition will also prompt the same code compliance upgrade.

A nonconforming residential structure that must be rebuilt or partially rebuilt due to fire, earthquake, or other calamity will be exempt from these amendments as provided in CCMC Section 17.610.025 - Exemptions and Exceptions. This section allows nonconforming structures damaged by such events to be rebuilt to the Zoning standards at the time they were constructed.

## BZA RELATED AMENDMENTS FOR NONCONFORMING PARCELS

In addition to the amendments discussed above, Zoning Code Amendments discussed below result from the March 28, 2018, BZA meeting. The BZA considered whether or not the Administrative Modification process can be extended to legal nonconforming parcels after it received a referral by the Director of an Administrative Modification request. A property owner wanted to reduce by 10% the rear setback and the driveway length of a new home on a legally created substandard lot through the Administrative Modification process. The Zoning Code does not clearly state this can be done for legal nonconforming parcels.

At the March 28<sup>th</sup> meeting the BZA considered a Zoning Code Interpretation (ZCI) to confirm dwellings on legally established nonconforming parcels can be built with a maximum 10% modification from applicable development standards upon approval of an Administrative Modification (Attachment No. 9 - BZA Determination). They determined that strict application of the Zoning Code may lead to a hardship for nonconforming parcels that are usually less than the current code minimum lot area and/or lot depth and width. Further, the Zoning Code requires that a ZCI be incorporated into the Zoning Code as soon as practical to reflect the Director's (or BZA's) determination.

## Residential Development on Legal Building Sites

Pursuant to Zoning Code Section 17.610.035 - Nonconforming Parcels, a nonconforming parcel is considered a legal building site if the site was legally created in the past. Reasons for a subdivision resulting in a nonconforming parcel include:

- Parcel creation based on previous standards and processes that are no longer in place;
- Lots approved through a variance;
- Conforming lots made nonconforming by government acquisition of a portion of the lot.

The Zoning Code Amendments clarify that through the Administrative Modification review process, a nonconforming parcel may be granted a 10% modification from code standards. The amendments do not allow by-right modifications for nonconforming parcels.

CCMC Chapter 17.550: Variances, Administrative Modifications, Reasonable Accommodations.

Zoning Code Section 17.550.010 specifies the applicability for Variances, Administrative Modifications, and Reasonable Accommodations. Under this section the following language will be added that includes nonconforming parcels as qualified for an Administrative Modification request:

Nonconforming Parcels that comply with the criteria for a legal building site pursuant to Zoning Code Section 17.610.035 shall be eligible for an Administrative Modification request and may be granted an Administrative Modification provided findings pursuant to CCMC Section 17.550.020.A can be made.

CCMC Section 17.610.035 - Nonconforming Parcels

Zoning Code Section 17.610.035 - Sections A and B state applicability and prohibition of further division or reduction for nonconforming parcels. The following new Section C will be added that specifically states nonconforming parcels may be granted an Administrative Modification pursuant to CCMC Chapter 17.550:

A nonconforming parcel may be granted an Administrative Modification pursuant to CCMC Chapter 17.550 provided Administrative Modification findings stipulated in CCMC Section 17.550.020.A can be made. An Administrative Modification approval shall not be considered an expansion of a legal nonconformity.

**CONCLUSION**

In order to provide clarity in the Zoning Code, as well as define “total demolition” when a property must be brought into compliance with the Zoning Code, staff recommends approval of the proposed Zoning Code Amendments modifying and clarifying certain legal nonconforming provisions related to structures and uses. In order to provide clarity in the Zoning Code that allows processing of Administrative Modifications for nonconforming parcels, staff recommends approval of the proposed Zoning Code Amendments related to nonconforming parcels.

**ENVIRONMENTAL DETERMINATION:**

The proposed Zoning Code Amendments (P2017-0227-ZCA and P2018-0158-ZCA) are considered projects pursuant to the California Environmental Quality Act (CEQA). They are considered exempt from CEQA pursuant to CEQA Guidelines Section 15061(b) (3) because it can be seen with certainty that there is no possibility that the project to amend Zoning Code, Chapters 17.550 - Variances, Administrative Modifications, Reasonable Accommodations and 17.610 - Nonconforming Uses, Structures, and Parcels will have a significant effect on the environment. The Project by itself, does not result in any physical changes in the environment because it will only amend the code to limit construction of nonconforming residential uses and structures and extend an existing zoning standard modification process for nonconforming parcels that does not result in a density increase beyond what the zone designation allows.

### **FISCAL IMPACT:**

There is no fiscal impact associated with the introduction of the Proposed Ordinance.

### **ATTACHMENTS:**

1. Proposed Ordinance including Exhibit A - Text Changes in “strikethrough/underline” format
2. Approved Planning Commission Resolution No. 2017-P024
3. Approved Planning Commission Resolution No. 2018-P007
4. June 27, 2018 Planning Commission Staff Report without Attachments
5. June 27, 2018 Planning Commission Meeting Minutes
6. September 12, 2018 Planning Commission Staff Report without Attachments
7. September 12, 2018 Planning Commission Meeting Minutes
8. Survey of Cities - Demolition Threshold
9. BZA March 28, 2018 Interpretation

### **RECOMMENDED MOTION**

That the City Council:

Introduce an Ordinance approving, Zoning Code Amendments related to Nonconforming Uses, Structures, and Parcels and Administrative Modification requests.

### **NOTES**

1. A property owner of a legally created, substandard nonconforming parcel requested an Administrated Modification to reduce the Zoning Code required 20 foot driveway and 10 foot rear setback (for the R2 Zone) by a maximum of 10 percent. The request was presented to the BZA because the code is not explicit on whether the Administrative Modification process can be extended to legal nonconforming parcels. The BZA determined that substandard parcels can be granted an Administrative Modification provided the findings for such a request can be made.

2. For example, properties located between Sherbourne Drive and Sentney Avenue are zoned R2 (permitting up to two dwelling units per lot), with a General Plan Land Use designation of Low Density Single Family (permitting one dwelling unit per lot). Additionally, several properties throughout the City are developed with a density no longer allowed based on the site's current Zone (i.e., three or more units on R2 Zoned lots). A cursory review of R2 Zoned properties with nonconforming densities, indicates that there are at least 17 lots that have more units than the R2 Zone allows, including:

4014 HIGUERA ST  
8947 HUBBARD ST  
8951 HUBBARD ST  
9030 HUBBARD ST  
4064 HURON AVE  
4078 INCE BLVD  
4154 INCE BLVD  
4173 INCE BLVD  
4177 INCE BLVD  
8910 KRUEGER ST  
9022 KRUEGER ST  
9031 KRUEGER ST  
9034 KRUEGER ST  
9036 KRUEGER ST  
9041 KRUEGER ST  
9048 KRUEGER ST  
4114 LAFAYETTE PL