

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



March 29, 2012

W26a

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
TONI ROSS, COASTAL PROGRAM ANALYST, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR LCP
AMENDMENT No. 1-11 (Non-Conforming Buildings and Uses) for
Commission Meeting of April 11-13, 2012**

SYNOPSIS

The subject LCP implementation plan amendment was first submitted and filed as complete on December 29, 2009. On March 4, 2011, the City withdrew and immediately resubmitted the proposed amendment in order to have additional time to work with staff to address concerns associated with the proposed amendment. A one year extension request was granted by the Commission on April 13, 2011. Therefore, the last date of Commission action on this item is May 3, 2012. This is the only item submitted as LCP Amendment Number 1-11.

SUMMARY OF AMENDMENT REQUEST

The proposed LCP amendment includes an amendment to the City's Implementation Plan only. The amendment includes the following: 1) Repeal and reenact Chapter 21.48 – Non-Conforming Buildings and Uses; 2) Include new and amended definitions (Chapter 21.04 – Definitions); 3) Repeal Section 21.46.210 (Chapter 21.45 – Yards); 4) Amend Section 21.44.010 (Chapter 21.44 – Parking), and 5) Amend Section 21.45.090-A.2 (Chapter 21.45 – Planned Development). The provisions will apply citywide, with the exception of the Carlsbad Village Area which has its own policies on nonconforming structures and uses. All proposed revisions pertain to non-conforming buildings or uses, and were developed to encourage rehabilitation and/or repair of over-density residential structures and other nonconforming buildings and uses.

SUMMARY OF STAFF RECOMMENDATION

For the most part, the Commission is not chiefly concerned with the abatement and/or regulation of nonconforming structures and uses. However, when there are nonconforming structures that are sited in inherently hazardous areas, such as coastal

bluffs, or adjacent to the shoreline and lagoons where public access, either for recreational purposes or enjoying scenic amenities, may be affected, the Commission does have an interest in abating certain nonconforming structures or the nonconforming elements of specific buildings that adversely impact coastal resources or public recreational opportunities. In particular, along the ocean shoreline, the potential for future shoreline armoring to protect a principal structure that is inappropriately sited in a hazardous location should be considered when evaluating nonconforming structures. The Commission has seen multiple applications over the years for development associated with blufftop structures that are sited too close to the bluff edge, where the piecemeal renovation of these structures has resulted in an essentially fully remodeled, expanded or replaced structure that maintains an inappropriate setback. Often, these fully renovated, remodeled, or replaced homes ultimately end up needing some kind of bluff or shoreline protection, causing adverse impacts to coastal resources. Between the ocean or lagoons and the first public roadway, nonconforming structures with inadequate yard setbacks can also block valuable public view corridors or potential public access opportunities. Therefore, staff is recommending denial of the implementation plan as submitted, then approval of the zoning amendment with two suggested modifications.

The suggested modifications include 1) a new policy to be included in the City's zoning ordinance that addresses nonconforming structures located between the sea and the first coastal road. Specifically, the suggested modification limits redevelopment of nonconforming buildings to demolition and reconstruction resulting in replacement of less than 50% of the existing structure. When a project proposes alteration of more than 50% of the affected structure, the improvements are more than repair and maintenance and the structure should be reviewed as new development. The recommended approach requires that the nonconforming elements be abated and the proposed work be consistent with new development standards. This suggested modification is primarily proposed to address concerns with allowing significant redevelopment of existing residential structures without requiring modern and appropriate geological setbacks. The second suggested modification was included at the City's request to clarify the noticing process for nonconforming construction permits.

The appropriate resolutions and motions begin on Page 4. The suggested modifications begin on Page 5. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 7. The findings for approval of the plan, if modified, begin on Page 12.

ADDITIONAL INFORMATION

Further information on the City of Carlsbad's LCP Amendment No. 1-11 may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of Carlsbad's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties, and Village Redevelopment. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. This amendment modifies the City's Implementation Plan (IP) only.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION I:** *I move that the Commission reject the Implementation Program Amendment for City of Carlsbad LCPA No. 1-11 as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of Carlsbad and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted

- II. MOTION II:** *I move that the Commission certify the Implementation Program Amendment for City of Carlsbad LCPA No. 1-11, if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment for the City of Carlsbad if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications,

conforms with and is adequate to carryout the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

PART III. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Add the following as a new sub-section to the proposed Chapter 21.48 Nonconforming Buildings and Uses:

21.48.055 Structures located between the first public road and the ocean that have nonconforming string line ocean setbacks or side yard setbacks.

Existing lawfully established structures that are located between the first public road and the ocean and have nonconforming “string line” ocean setbacks or side yard setbacks may be maintained, repaired, modified, and expanded consistent with this chapter unless such construction is “new development,” as defined in this section. Additions and improvements to structures may be permitted, provided that such additions or improvements are not considered “new development,” they do not increase the degree of nonconformity, and they comply with current policies and standards of the LCP. For purposes of this section, “new development” shall mean replacement of 50% or more of the structure through additions, expansions, and/or demolition, removal and/or reconstruction of 50% or more of the lineal extent of exterior walls; or demolition, removal and/or reconstruction of a combination of existing exterior walls and interior loadbearing and/or structural walls that equals 50% or more of the total lineal extent of such walls. New development shall also include construction consisting of a 50% increase in floor area.

The 50% wall calculation shall be cumulative, so that any addition, expansion and/or demolition and replacement of a structure that results in modification after the effective date of this ordinance (insert effective date) shall be counted towards the total wall calculation figure.

New development, as defined in this section, shall be required to abate the existing “string line” ocean setback and side yard setback nonconformity and shall comply with all current standards for “string line” ocean setbacks and side yard setback and shall be geologically stable for a minimum of 75 years, or the expected lifetime of the

structure if it is more than 75 years, consistent with Policy 4-1 Coastal Erosion-Development Along the Shoreline of the Land Use Plan.

2. Modify Policy 21.48.080.G.1 as follows:

G. Mailing of Notice of Decision.

1. Not later than seven days following the announcement of a decision ordering that a nonconforming construction permit be granted or denied, a copy of the letter shall be mailed to the applicant at the address shown on the application filed with the planning director, and to any person who requested or spoke at an informal hearing for a nonconforming construction permit, and any person who has filed a written request for a notice of decision.

PART IV. FINDINGS FOR REJECTION OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The proposed LCP amendment includes an amendment to the City's Implementation Plan only. The amendment includes the following: 1) Repeal and reenact Chapter 21.48 – Non-Conforming Buildings and Uses; 2) Include new and amended definitions (Chapter 21.04 – Definitions); 3) Repeal Section 21.46.210 (Chapter 21.45 – Yards); 4) Amend Section 21.44.010 (Chapter 21.44 – Parking), and 5) Amend Section 21.45.090-A.2 (Chapter 21.45 – Planned Development). All proposed revisions pertain to non-conforming buildings or uses, and were developed to encourage rehabilitation and/or repair of over-density residential structures and other nonconforming buildings and uses.

Specifically, the City has indicated that its current nonconforming zoning chapter is no longer applicable, and the proposed new and amended nonconforming buildings and uses chapter would facilitate 1) nonconforming structures and uses to be repaired or altered, 2) nonconforming residential and non-residential structures and nonconforming residential uses to expand through a new administrative Nonconforming Construction Permit, 3) the expansion and replacement of nonconforming non-residential uses by a Conditional Use Permit, and 4) the expansion of residential structures that are nonconforming due to solely inadequate setbacks by up to 40% of their existing floor area or 640 square feet, whichever is less, without the need for an administrative Nonconforming Construction Permit, provided that the expansion area complies with all existing development standards.

The Nonconforming Construction Permit would allow the Planning Director to administratively approve the expansion/replacement of residential and non-residential structures. In order for the Planning Director to approve a Nonconforming Construction Permit, the following findings have to be made: 1) the expansion/replacement would not result in an adverse effect to persons or property, 2) the expansion or repair complies with all fire protection and building code regulations, 3) the resulting structure would be

considered an improvement to, or consistent with, the character of the neighborhood, and 4) the expansion/replacement area complies with all current applicable development standards, including potential changes in parking demand.

The City has indicated that the proposed revisions are necessary because the current language was written about 50 years ago when the primary objective of the City was to abate all buildings and uses that were no longer consistent with its newly developed zoning ordinance. The City has indicated that it has rarely, if ever, abated a nonconforming use or structure pursuant to these provisions, and because the existing nonconforming structures were only allowed typical maintenance, most of the nonconforming structures are in need of large-scale repair, alteration, or replacement. The proposed revision would allow for a streamlined process to facilitate the renovation/replacement of these structures. The City has indicated that any proposed development within the coastal zone would also be required to fulfill all coastal development permit application, noticing, and permit approval requirements consistent with the City's certified LCP.

B. FINDINGS FOR REJECTION

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

a) Purpose and Intent of the Ordinance. The purpose of the ordinance is to govern the alteration, repair, expansion and/or removal of all existing non-conforming structures or uses.

b) Major Provisions of the Ordinance. The major provisions of the proposed ordinance would allow: 1) nonconforming structures and uses to be repaired and altered, 2) nonconforming residential and non-residential structures and nonconforming residential uses to expand by a new administrative Nonconforming Construction Permit, and 3) would allow for the expansion or replacement of nonconforming non-residential uses by a Conditional Use Permit. The ordinance would also maintain provisions preserving the City's right to abate a legal nonconforming use or structure that is no longer desirable and include an abatement process.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The LCP amendment, as proposed, is not adequate to implement the City's certified Land Use Plan (LUP). The following listed policies are applicable and state:

Policy 4-1 Coastal Erosion - Development Along the Shoreline

a. For all new development along the shoreline, including additions to existing development, a site-specific geological investigation and analysis similar to that required by the Coastal Commission's Geologic Stability and Blufftop Guidelines shall be required, for all permitted development, this report must demonstrate bluff stability for 75 years, or the expected lifetime of the structure, whichever is greater.

Additionally, permitted development shall incorporate drought-resistant vegetation in landscaping, as well as adhering to the standards for erosion control contained in the City of Carlsbad Drainage Master Plan. A waiver of public liability shall be required for any permitted development for which an assurance of structural stability cannot be provided.

Policy 4-1 Coastal Erosion - III. Shoreline Structures

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Policy 7-3 – Access Along the Shoreline

The City will cooperate with the state to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize shoreline prescriptive rights. Irrevocable offers of dedication for lateral accessways between the mean high tide line and the base of the coastal bluffs, and vertical accessways where applicable, shall be required in new development consistent with Section 30212 of the California Coastal Act of 1976. There is evidence of historic public use adjacent to Buena Vista Lagoon. Paths crisscross the area near the railroad tracks to the ocean shoreline. Development shall provide access and protect such existing access consistent with the needs to protect the habitat.

Policy 7-12 – Seaward of Ocean Street

New development on the seaward side of Ocean Street shall observe, at a minimum, an ocean setback based on a “stringline” method of measurement. No enclosed portion of a structure shall be permitted further seaward than the adjacent structure to the north and south; no decks or other appurtenances shall be permitted further seaward than those on the adjacent structures to the north and south. This policy shall be used on single-family “infill” parcels, and a greater ocean setback may be required for geologic reasons.

Mello II Policy 8-1:

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad coastal zone to assure the maintenance of existing views and panoramas. Sites considered for development should undergo review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize alterations to topography.

Implementation Plan Chapter 21.204 – Coastal Shoreline Development Overlay
Zone, Section 21.204.050(B)

B. New development fronting the ocean shall observe, at a minimum, an ocean setback based on a “stringline” method of measurement. No enclosed portion of a structure shall be permitted further seaward than the adjacent structure to the north and south; no decks or other appurtenances shall be permitted further seaward than those on the adjacent structures to the north and south. This policy shall be used on single-family “infill” parcels, and a greater ocean setback may be required for geologic reasons.

The City is proposing a wholesale removal and replacement of its existing Nonconforming Buildings and Uses zoning chapter. The City’s intent is to replace not only the outdated language, but to streamline the process by which nonconforming buildings and uses can be repaired, expanded, or replaced. As outlined in greater detail above, under the proposed amendment, the majority of development proposals related to nonconforming structures could be approved administratively. One primary concern associated with this process is that approval of extensive construction on a nonconforming structure may extend the life of an existing structure and potentially increase its degree of nonconformity. In addition, if the City does not include a threshold for establishing when development should be defined as new development, which would therefore require abatement of the nonconformity, the nonconforming structure could actually cause additional coastal resource impacts. Both concerns may result in the persistence of development that is geologically unsafe or located in an area that results in direct impacts to public access or public views. Specific examples would include residential development sited too close to a coastal bluff that may result in the future requirement of shoreline protection, or any structure permitted to maintain a nonconforming sideyard setback, which currently disrupts public ocean views.

The first concern is associated with the potential for proposed development to increase the degree of nonconformity. The City’s proposed revisions would allow nonconforming buildings and uses to be altered, repaired, expanded, or replaced as they currently exist. For example, if an existing structure does not provide adequate side yard setbacks, the proposed revisions would allow alterations, repairs, additions, or replacement of the structure to maintain these reduced setbacks, if the area of expansion or renovation complies with current fire and building code regulations. This process would be approved administratively by the Planning Director. In this example, the non-conforming reduced side yard setback could be maintained, inconsistent with the City’s LCP. The renovation or reconstruction of a structure usually increases its “expected life.” If the reduced setbacks are maintained after such renovation or reconstruction, the nonconformity is effectively extended, thereby increasing the length of time that such nonconformity adversely impacts coastal resources. As a result, opportunities to provide additional public vantage points, public accessways, or additional geological setbacks are eliminated.

While proposals to demolish and reconstruct entire residences and/or buildings would address these concerns through the coastal development permit process, many of the smaller-scale proposals for remodeling and renovations could be approved administratively, thereby significantly abbreviating the coastal development permit review of the proposed development, so that coastal resource impacts are not adequately assessed and addressed. The Commission has seen numerous proposals for remodeling and improvements to single-family homes along the bluffs or shoreline, where extensive work (i.e. up to 49% removal of the exterior walls or all of the interior walls are being removed or a combination of these activities) is being proposed on the entire structure except for the seaward wall, which has a nonconforming setback. In many of these situations, applicants are effectively seeking to reconstruct their homes over time, without addressing the coastal resource impacts associated with their nonconforming location. In order to avoid these types of situations, the Commission finds that the review process for CDPs must include some method for evaluating and determining when development is new development such that inconsistent setbacks should be abated.

The City's LUP contains policies protecting coastal bluff stability, public views and public access. Specifically, the City's LUP includes that "[s]ites considered for development should undergo review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize alterations to topography." By allowing the perpetuation of structures that may "damage the visual beauty of the area," the City would be approving development inconsistent with its certified LCP.

Additionally, the City failed to identify a threshold at which nonconforming buildings and uses would lose their nonconforming status. The City's language would allow for wholesale replacement of a use or structure while maintaining its nonconforming element. In areas where there are potential coastal resource concerns, allowing additions, repairs and replacement of a structure may not be consistent with LCP requirements. As an example, in areas adjacent to coastal bluffs, allowing a nonconforming setback may result in impacts to geologic stability within the life expectancy of the structure. When significant repair, expansion, or replacement of an existing structure is proposed, a threshold should be reached, at which point the proposal should be considered new development that must conform to existing standards. Pursuant to Section 13252 of the Commission's Code of Regulations, the replacement of 50% or more of a structure is not repair and maintenance but instead constitutes a replacement structure. In that regulation, the 50% criterion is used to determine when development is extensive enough that it no longer qualifies as repair and maintenance which could be exempt from permitting requirements under Coastal Act section 30610(d). This criterion is therefore also appropriately used for determining when improvements to an existing structure should be considered a replacement structure that must conform to standards for new development. Specifically, at a certain point, re-siting the structure and abating the nonconforming setback may be necessary to provide adequate geologic setbacks, open public accessways, or open public view corridors. These concerns are not adequately addressed through an administrative process that basically intends to allow improvements and

renovation of nonconforming structures, as long as the area of expansion/renovation complies with current standards, and could result in impacts to a number of coastal resources; inconsistent with the City's certified LCP.

The Commission has generally found that if more than 50% of the linear feet of the existing exterior walls are altered or removed, or extensive renovation of the interior of the structure is proposed along with demolition of less than 50% of the exterior walls such that 50% or more of the structure is replaced, (see recent examples: ref. CDP 6-09-033/Garber, CDP 5-10-31/Paicius, City of Solana Beach LUP) the project should be considered new construction. The significance of this is that existing non-conformities, such as existing development within the geologic setback area or required yard setbacks, must then be brought into conformance.

From a geological perspective, setting development back from the edge of the bluff can substantially decrease risks because the further from the bluff edge development is located, the less likely it is that the development may become threatened by bluff retreat. In addition, by mitigating the threat of bluff retreat, the potential for shoreline armoring or bluff stabilization over time is also reduced, and the adverse impacts to coastal resources and public access precipitated by such work is hopefully avoided. Likewise, setbacks decrease the likelihood of geologic instability. The added weight of development, watering or irrigating plants, and human activity closer to the bluff edge can all increase the rate of erosion and bluff retreat.

As stated above, setting development back away from the bluff edge reduces the likelihood that a shoreline or bluff protection device may be needed in the future. The City's LUP Policy 4. 1. III (sited above) authorizes shoreline protection devices solely to serve coastal dependent uses or to protect *existing structures* or public beaches from erosion. If a structure is modified to the degree that it constitutes new development, it should be constructed in a manner fully compliant with the standards for new development such as geologic setbacks and ensuring stability for the life of the structure without reliance on any protective works, now or in the future. If the new development necessitates future protection, the landform and shoreline processes could be dramatically altered by the presence of the protective system. The City's LCP limits construction of these protective devices because they have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. For all of these reasons, the Commission typically imposes some kind of bluff edge setback with new development. In Carlsbad's case, the bluff edge setback is determined by its stringline setback policy. Therefore, allowing a structure to maintain its blufftop setback, if the location is considered nonconforming based on the established stringline, could result in new development being sited in a location that could result in impacts to a variety of coastal resources.

Moreover, concerns pertaining to geologic stability and the construction of shoreline protection devices should be examined especially conservatively with respect to potential future impacts. Reliable sea level rise projections predict a rise in sea level of at least 1

foot by 2050, and 3 feet by 2100. Such a rise in sea level can have profound effects on the coast. The consequences of a 1-foot to 3-foot (0.3 to 0.9 meter) rise in sea level are far reaching. Open coastal landforms like beaches and bluffs will be exposed to greater and more frequent wave attack. Additionally, there will more potential for erosion and shoreline retreat. As an example, for gently sloping beaches, the general rule of thumb is that 50 to 100 feet of beach width will be lost from use for every foot of sea level rise. Given these predictions, extending the life of a structure in a way that would allow the maintenance of inappropriate geologic setbacks would only further exacerbate these potential impacts.

Additionally, the City's LCP, specifically Policy 8-1, requires that scenic and visual qualities of coastal areas be protected. Setting development farther back from the edge of the coastal bluff and increasing setbacks may all decrease the project's visibility from public areas, and, in some cases, provide new public vantages or access opportunities.

In conclusion, the City failed to address concerns pertaining to the protection of coastal resources when addressing proposals that include the alteration, repair, expansion or replacement of nonconforming structures. By providing a process by which proposals can either extend the expected life of an existing structure or replace the structure outright and still maintain nonconforming setbacks, the City may be approving development that results in the continuance and likely exacerbation of impacts to coastal resources inconsistent with the City's certified LCP. Thus, this amendment, as submitted, must be denied.

PART V. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED

The City's proposed LCP amendment includes the repeal and re-enactment of its chapter on nonconforming buildings and uses. The City has indicated that the current language is outdated and no longer practical in that it primarily consists of timelines and guidelines facilitating the abatement of all existing nonconforming structures. This language was developed almost 50 years ago; and, in that time, very few, and perhaps none, of the nonconforming buildings or uses have been abated. As such, the City is proposing new language that would streamline the permitting process for alterations, repair, expansions, and replacement of such structures. In most cases, existing structures would be permitted to maintain their nonconforming elements, as long as the area of expansion or renovation complies with current codes and building standards.

This presents a number of inconsistencies with the City's certified LCP. Specifically, allowing nonconforming development to maintain its nonconforming element/setback, and doing so administratively, prevents current or future coastal resource impacts from being adequately identified, assessed or corrected; the most pertinent example being residential structures along coastal bluffs being permitted to maintain unsafe geological setbacks.

As previously discussed, the Commission has recently made efforts to set a threshold for defining what level of renovations, improvements, additions, etc. should, based on the extent of the project, be considered new development and therefore brought into conformity. The Commission has quantified “new development” as replacement of 50% or more of the structure through the demolition, removal and/or reconstruction of a combination of existing exterior walls, and interior loadbearing and/or structural walls that equal 50% or more of the total lineal extent of such walls; or a 50% increase in floor area (ref. CDP 6-09-033/Garber, CDP 5-10-31/Paicius, City of Solana Beach LUP). In these past cases, the Commission has attempted to prevent the piecemeal renovation of portions of homes that eventually are renovated or replaced to such an extent that they are essentially new homes.

While considering how to appropriately define new development, the Commission should consider City-specific factors, such as geography, geology and patterns of development when considering development standards for non-conforming structures. In this case, the City of Carlsbad coastline includes limited coastal bluffs, two salt water lagoons (Batiquitos and Agua Hedionda Lagoons), one fresh water lagoon (Buena Vista Lagoon), California State Park lands; as well as traditionally developed lands (residential, commercial, visitor serving development).

For the lagoon-fronting properties, a significant portion of all three lagoons remain undeveloped, and much of this land is protected as open space. Therefore, currently undeveloped lagoon-fronting properties do not raise policy issues because these lands will either remain undeveloped or will be required to adhere to current development standards. The developed lagoon-fronting sites generally do not raise concerns related to the proposed amendment because the existing development conforms to current standards. Staff visited the developed areas of the City’s lagoons and verified that the majority of existing development is newer, provides adequate setbacks, and also provides improved public access. Additionally, any proposed development located adjacent to a lagoon is required to provide increased rear yard setbacks through the resource protection policies of the City’s LCP, such that non-conforming rear yard setbacks do not exist. As such, the Commission determines that, based on the conditions specific to the City of Carlsbad, and verified by Commission staff, lagoon fronting properties within the City of Carlsbad do not present site conditions that raise concerns associated with the abatement or perpetuation of non-conforming structures.

Therefore, the remaining concerns pertaining to the ability of the proposed amendment to adequately carry out the certified LUP are limited, in this case, to abatement of non-conforming structures on ocean-fronting property. As briefly discussed previously, a significant portion of Carlsbad’s oceanfront is owned and maintained by California State Parks and is either undeveloped or developed as South Carlsbad State Beach Campground. However, there are two areas of private oceanfront development Ocean Street and the Terramar neighborhood. Ocean Street is approximately six blocks north to south and includes a mix of development, including the Army Navy Academy, residential structures, hotels and vacation rentals. Terramar is comprised of Tierra Del Oro Road

and Shore Drive and is completely residential. Additionally, there are a small number of ocean-fronting homes located directly south of Terramar and west of Carlsbad Boulevard.

As discussed above, the primary concern associated with the proposed amendment is the provision that would allow significant redevelopment of structures while allowing the development to maintain any non-conforming setbacks. One consequence of this is that the amendment may allow the continued existence of structures on coastal bluffs without adequate geologic setbacks, potentially creating new adverse coastal impacts. The City of Carlsbad's standard for rear yard setbacks for ocean front properties is determined by the "stringline setback." The stringline is determined by drawing a line between the adjacent structure to the north and south. Enclosed structures, decks, or any other appurtenances are not permitted further seaward than the line of development established by the stringline setback. If the City allowed redevelopment of structures located beyond the stringline setback, the location of development may increase the need/opportunity for construction of shoreline protective devices and development on the face of a coastal bluff; inconsistent with the City's certified LCP. Additionally, the perpetuation of reduced rear and side yard setbacks may result in adverse impacts to public views or public access.

To address these concerns, Commission staff is recommending a suggested modification. Suggested Modification #1 allows maintenance, repair, modification and expansion of existing non-conforming structures located between the first coastal road and the sea, as long as such development does not constitute "new development." Additions and improvements that do not constitute new development are also allowed, unless such development increases the degree of nonconformity or does not comply with the current policies and standards of the LCP. This suggested modification also defines what constitutes "new development," such that the proposed development may no longer maintain its nonconforming element. New development is defined to include replacement of 50% or more of the structure through additions, expansions, and/or demolition, removal and/or reconstruction of 50% or more of the lineal extent of exterior walls; or demolition, removal and/or reconstruction of a combination of existing exterior walls and interior loadbearing and/or structural walls that equals 50% or more of the total lineal extent of such walls. New development also includes any construction consisting of a 50% increase in floor area. The calculation of what constitutes 50% alteration of interior and exterior walls would be cumulative, including all proposed development after the date of the certification of the modified ordinance. For example, if an applicant submitted a proposal that resulted in alteration of 30% of the existing walls and then five years later submitted a new application that would alter an additional 30% of a structure's walls, the two applications would be considered together to alter a total of 60% of the structure's walls. The second application would therefore be considered an application for "new development", triggering LCP requirements and standards related to new development. New development must abate any existing nonconforming element or setback, be consistent with all current standards for new development, and be found geologically stable for at least 75 years, or the expected lifetime of the structure if it is more than 50 years. By requiring new development to be consistent with current standards, adequate geological setbacks can be identified and required to be included in

the proposed development, thereby protecting coastal resources. Therefore, the amendment, as modified through Suggested Modification #1, is adequate to carry out the City's certified LUP.

Additionally, providing a threshold by which nonconforming structures will be considered new development, and thus must adhere to all design standards, the City will be applying the same standards to all development in terms of what constitutes demolition versus remodel. The City will also then be applying appropriate setbacks from the bluff edge in a consistent and equitable pattern, making the process fairer for all. This modification also contributes to the creation of a uniform pattern of development that assists future applicants in recognizing and understanding expectations for new development.

Lastly, the City indicated that it failed to include a portion of the most recent noticing requirements language within the noticing section of the new zoning ordinance. As such, Suggested Modification #2 has been included to rectify this error.

In conclusion, the proposed LCP amendment, as modified, defines a threshold by which redevelopment should be considered "new development," and requires that new development be consistent with LCP standards, such as requiring adequate geological setbacks, and protecting coastal views; and the existing nonconforming setback be abated. Through inclusion of the suggested modifications the City's proposed LCP amendment can be found consistent with the City's certified LUP. It shall therefore be approved as modified.

PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in a LCP submittal or, as in this case, a LCP amendment submittal, to find that the approval of the proposed LCP, or LCP, as amended, conforms to CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. (14 C.C.R. §§ 13542(a), 13540(f), and 13555(b)). The Commission finds that approval of the proposed LCP amendment, as submitted, would result in significant impacts under the meaning of the California Environmental Quality Act. Specifically, the proposed LCP amendment as proposed would result in impacts to coastal bluff

stability, public access/recreation, and public views. However, with the inclusion of the suggested modifications, the revised zoning ordinance would not result in significant impacts to the environment within the meaning of the California Environmental Quality Act. Therefore, the Commission finds that approval of the LCP amendment will not result in any significant adverse environmental impacts.

RESOLUTION NO. 2009-211

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, ADOPTING A NEGATIVE DECLARATION AND APPROVING A LOCAL COASTAL PROGRAM AMENDMENT TO AMEND THE IMPLEMENTING ORDINANCE OF THE CARLSBAD LOCAL COASTAL PROGRAM (TITLE 21 - ZONING) TO: 1) REPEAL AND RE-ENACT THE NONCONFORMING BUILDINGS AND USES - CHAPTER 21.48 OF THE ZONING ORDINANCE, 2) INCLUDE NEW AND AMENDED ASSOCIATED DEFINITIONS IN CHAPTER 21.04- DEFINITIONS, 3) REPEAL SECTION 21.46.210 OF CHAPTER 21.46 - YARDS, 4) AMEND SECTION 21.44.010 OF CHAPTER 21.44 - PARKING AND, 5) AMEND SECTION 21.45.090A OF CHAPTER 21.45 - PLANNED DEVELOPMENTS.

CASE NAME: NONCONFORMING BUILDINGS AND USES
ORDINANCE REVISION

CASE NO.: ZCA 09-01/LCPA 09-01

WHEREAS, pursuant to the provisions of the Municipal Code, the Planning Commission did, on June 17, 2009 and July 1, 2009, hold a duly noticed public hearing as prescribed by law to consider a Negative Declaration, Zone Code Amendment (ZCA 09-01) and Local Coastal Program Amendment (LCPA 09-01) and adopted Planning Commission Resolutions No. 6573, 6574 and 6575 recommending to the City Council adoption of the Negative Declaration and approval of ZCA 09-01 and LCPA 09-01; and

WHEREAS, the City Council did on the 11th day of August, 2009 hold a duly noticed public hearing as prescribed by law to consider the Negative Declaration, Zone Code Amendment and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to the Negative Declaration, Zone Code Amendment and Local Coastal Program Amendment.

NOW, THEREFORE, the City Council of the City of Carlsbad, California does hereby resolve as follows:

1. That the above recitations are true and
 2. That the findings and conditions of the
- in Planning Commission Resolutions No. 6573 and 6575 and part hereof by reference, constitute the findings of the City

EXHIBIT #1

Resolution of Approval

LCPA # 1-11 Nonconforming Buildings and
Uses

ORDINANCE NO. CS-050

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A ZONE CODE AMENDMENT TO: 1) REPEAL AND REPLACE THE NONCONFORMING BUILDINGS AND USES - CHAPTER 21.48 OF THE ZONING ORDINANCE, 2) INCLUDE NEW AND AMENDED ASSOCIATED DEFINITIONS IN CHAPTER 21.04-DEFINITIONS, 3) AMEND CHAPTER 21.46 -YARDS TO DELETE SECTION 21.46.210, 4) AMEND CHAPTER 21.44 - PARKING TO REVISE SECTION 21.44.010 AND, 5) AMEND CHAPTER 21.45 TO REVISE SECTION 21.45.090A.

CASE NAME: NONCONFORMING BUILDINGS AND
USES ORDINANCE REVISION

CASE NO.: ZCA 09-01/LCPA 09-01

The City Council of the City of Carlsbad, California, does ordain as follows:

SECTION I: That Title 21 of the Carlsbad Municipal Code is amended to read
as follows:

Title 21**ZONING****Chapters:**

21.48 Nonconforming Lots, Structures and Uses

SECTION II: That Chapter 21.04 of the Carlsbad Municipal Code is amended to
read as follows:

Chapter 21.04**DEFINITIONS****21.04.027 Alter.**

"Alter" means any change to the interior or exterior of a structure that does not result in
an increase to the gross floor area of the structure.

21.04.140.1 Expansion.

"Expansion" means to enlarge or increase the size of an existing structure or use
including the physical size of the property, building, parking and other improvements.

21.04.275 Nonconforming structure.

"Nonconforming structure" means a structure, or port
erected or altered and maintained, but which, because of the

EXHIBIT #2**Ordinance of Approval****LCPA #1-11 Nonconforming Buildings and
Uses**

longer conforms to the current requirements and development standards of the zone in which it is located. (Ord. 9060 § 254)

21.04.278 Nonconforming lot.

"Nonconforming lot" means a lot which was legally created, but which, because of the application of this title to it, no longer conforms to the current requirements and development standards of the zone in which it is located.

21.04.280 Nonconforming non-residential use.

"Nonconforming non-residential use" means a non-residential use which was lawfully established and maintained, but which, because of the application of this title to it, no longer conforms to the current use regulations of the zone in which it is located.

21.04.281 Nonconforming residential use.

"Nonconforming residential use" means a residential use which was lawfully established and maintained, but which exceeds the Growth Management Control Point or the maximum density range of the underlying General Plan Land Use designation

21.04.299.1 Repair.

"Repair" means any improvements to correct deficiencies in a building or structure.

21.04.299.2 Replace.

"Replace" means to construct a structure that is substantially equivalent in size, shape and location to a structure that has been destroyed or demolished.

21.04. 354 Structure.

"Structure" means anything constructed or erected which requires location on the ground or attached to something having a location on the ground, but not including fences or walls used as fences six feet or less in height. All buildings are structures.

(Ord. 9060 § 269)

21.04.355 Substandard lot.

See "Nonconforming lot".

///

1 SECTION III: That Chapter 21.44 of the Carlsbad Municipal Code is amended to
2 read as follows:

3 **Chapter 21.44**

4 **PARKING**

5 **21.44.010 Required off-street parking.**

6 A. Off-street parking, designed in accordance with the requirements of this chapter,
7 shall be provided for:

- 8 1. All newly constructed buildings;
- 9 2. Additions to existing buildings, except for:
- 10 a. An existing single family residence which does not meet the required parking
11 standard (i.e. a two car garage) may expand floor area if a minimum of two off-
12 street parking spaces are provided on-site in a location consistent with Section
13 21.44.060(4).
- 14 3. Any change of use within an existing building.

15 SECTION IV: That Chapter 21.45 of the Carlsbad Municipal Code is amended to
16 read as follows:

17 **Chapter 21.45**

18 **PLANNED DEVELOPMENTS**

19 **21.45.090 Residential additions and accessory uses**

20 A. General.

21 1. Additions and accessory uses shall be subject to all applicable development
22 standards of this chapter, unless otherwise specified in this section.

23 2. Additions to buildings that are legally nonconforming shall comply with the
24 requirements of Chapter 21.48 of this code.

1 SECTION V: That Section 21.46.210 of the Carlsbad Municipal Code is
2 repealed.

3 SECTION VI: That Chapter 21.48 of the Carlsbad Municipal Code is repealed in
4 its entirety and reenacted as follows:

5 Chapter 21.48

6 NONCONFORMING LOTS, STRUCTURES AND USES

7 Sections:

8 21.48.010 Purpose and intent.

9 21.48.020 Applicability.

10 21.48.030 General provisions.

11 21.48.040 Nonconforming lots.

12 21.48.050 Nonconforming residential structures and uses.

13 21.48.060 Nonconforming non-residential structures.

14 21.48.070 Nonconforming non-residential uses.

15 21.48.080 Nonconforming construction permit.

16 21.48.090 Abatement of nonconforming structures and uses.

17 21.48.010 Purpose and intent.

18 A. The purpose and intent of this chapter is to:

19 1. Allow for the development of nonconforming lots that were legally created.

20 2. Establish procedures for the abatement of structures and uses that do not
21 comply with all of the requirements and development standards of this title and which may be
22 adverse to the orderly development of the city and to the public health, safety, or welfare of
23 persons or property.

24 3. Permit the continuation of uses and continued occupancy and maintenance of
25 structures that were legally established but do not comply with all of the requirements and
26 development standards of this title, in a manner that is not adverse to the public health, safety or
27 welfare of persons or property.
28

1 4. Permit the repair, alteration, expansion or replacement of nonconforming
2 structures subject to the regulations herein.

3 5. Permit the expansion or replacement of nonconforming uses subject to the
4 regulations herein.

5 **21.48.020 Applicability.**

6 A. The provisions of this chapter apply to:

7 1. Legally created lots which do not conform to the current requirements and
8 development standards of the zone in which they are located.

9 2. Legally constructed structures and site development features (except for
10 nonconforming signs which are addressed in Section 21.41.130) which do not comply with the
11 current requirements and development standards of the zone in which they are located.

12 3. Legally established uses which do not conform to the current permitted use
13 regulations of the zone in which they are located.

14 **21.48.030 General provisions.**

15 A. It shall be the responsibility of the owner of a nonconforming lot, structure or use
16 to prove to the planning director that such lot, structure or use was lawfully established, existed
17 on the date of adoption or amendment of this chapter, and has existed continuously as defined
18 herein.

19 B. Nothing in this chapter shall be deemed to prevent the strengthening or restoring
20 to a safe condition of any structure or part thereof declared to be unsafe by any city official
21 charged with protecting the public safety, upon order of such official. Repairs and alterations
22 may be made to restore a structure to the same condition that existed prior to damage or
23 deterioration, provided that such repairs or structural alterations conform to the provisions of this
24 chapter.

25 ///

26 ///

27 ///

1 **21.48.040 Nonconforming lots.**

2 A. A nonconforming lot may be developed, provided that the development is
3 consistent with the General Plan and complies with all of the requirements and development
4 standards of the zone, master plan, or specific plan in which it is located.

5 **21.48.050 Nonconforming residential structures and uses.**

6 A. Specific Provisions.

7 1. A nonconforming residential structure and/or nonconforming residential use may
8 be continued and the structure and/or use repaired, altered, expanded or replaced in
9 accordance with the provisions of this chapter provided that the repair, alteration, expansion or
10 replacement does not:

11 a. Result in an additional structural nonconformity; and,

12 b. Increase the degree of the existing nonconformity of all or part of such structure
13 or use (i.e. the addition of a new dwelling unit to an existing over density
14 residential use); and,

15 c. Reduce the number and size of any required existing parking spaces.

16 2. Any expansion of floor area or the addition of a new dwelling unit that results in
17 an increase in parking demand, pursuant to chapter 21.44, shall provide additional parking to
18 satisfy the increase in parking demand.

19 3. An existing single family residence which does not meet the required parking
20 standard (i.e. a two car garage) may expand floor area if a minimum of two off-street parking
21 spaces are provided on-site in a location consistent with Section 21.44.060(4).

22 B. Repair or Alteration.

23 1. A nonconforming residential structure and/or a structure which is occupied by a
24 nonconforming residential use may be repaired or altered subject to issuance of all required
25 discretionary and building permits, provided that the repair or alteration complies with all current
26 fire protection and building codes and regulations contained in Title 17 and Title 18.

27 C. Expansion.

1 1. A nonconforming residential structure and/or a nonconforming residential use
2 may be expanded, so as to occupy a greater area of land or more floor area subject to issuance
3 of all required discretionary and building permits and provided that an application for a
4 nonconforming construction permit is submitted and the planning director approves the findings
5 of fact pursuant to Section 21.48.080(B).

6 2. Where a single-family residential structure is nonconforming only by reason of
7 substandard yards, the provisions of this chapter requiring a nonconforming construction permit
8 for an expansion shall not apply provided that:

9 a. The area of expansion is not more than 40% of the existing floor space prior to
10 the enlargement or a maximum of 640 square feet, whichever is less; and

11 b. The area of expansion, when combined with prior expansions of the
12 nonconforming structure, does not exceed 40% of the floor space that existed prior to any
13 expansions or 640 square feet, whichever is less; and

14 c. The area of expansion shall comply with all current development standards
15 including, but not limited to, setbacks, lot coverage and height limitations; and

16 d. Expansions that exceed the limits of this exception shall require a nonconforming
17 construction permit.

18 D. Replacement in the Event of a Disaster.

19 1. A nonconforming residential structure and/or nonconforming residential use that
20 is destroyed by fire, explosion, or other casualty or natural disaster, may be replaced subject to
21 issuance of all required discretionary and building permits and provided that an application for a
22 nonconforming construction permit is submitted within two years of the date of the disaster and
23 the planning director approves the findings of fact pursuant to Section 21.48.080(B).

24 E. Voluntary Demolition and Subsequent Replacement.

25 1. A nonconforming residential structure and/or nonconforming residential use that
26 is proposed to be voluntarily demolished may be replaced subject to issuance of all required
27 discretionary and building permits and provided that an application for a nonconforming
28

1 construction permit is submitted and the planning director approves the findings of fact pursuant
2 to Section 21.48.080(B) prior to the date of the demolition.

3 **21.48.060 Nonconforming non-residential structures.**

4 A. Specific Provisions.

5 1. A nonconforming non-residential structure may be continued and the structure
6 repaired, altered, expanded or replaced in accordance with the provisions of this chapter
7 provided that the repair, alteration, expansion or replacement does not:

- 8 a. Result in an additional structural nonconformity; and,
9 b. Increase the degree of the existing nonconformity of all or part of such structure;
10 and,
11 c. Reduce the number and size of any required existing parking spaces.

12 2. Any expansion of floor area that results in an increase in parking demand,
13 pursuant to chapter 21.44, shall provide additional parking to satisfy the increase in parking
14 demand.

15 B. Repair or Alteration.

16 1. A nonconforming non-residential structure may be repaired or altered subject to
17 issuance of all required discretionary and building permits, provided that the repair or alteration
18 complies with all current fire protection and building codes and regulations contained in Title 17
19 and Title 18.

20 C. Expansion.

21 1. A nonconforming non-residential structure may be expanded, so as to occupy a
22 greater area of land or more floor area subject to issuance of all required discretionary and
23 building permits and provided that an application for a nonconforming construction permit is
24 submitted and the planning director approves the findings of fact pursuant to Section
25 21.48.080(B).
26

27 D. Replacement in the Event of a Disaster.
28

1 1. A nonconforming non-residential structure that is destroyed by fire, explosion, or
2 other casualty or natural disaster, may be replaced subject to issuance of all required
3 discretionary and building permits and provided that an application for a nonconforming
4 construction permit is submitted within two years of the date of the disaster and the planning
5 director approves the findings of fact pursuant to Section 21.48.080(B).

6 E. Voluntary Demolition and Subsequent Replacement.

7 1. A nonconforming non-residential structure that is proposed to be voluntarily
8 demolished may be replaced subject to issuance of all required discretionary and building
9 permits and provided that an application for a nonconforming construction permit is submitted
10 and the planning director approves the findings of fact pursuant to Section 21.48.080(B) prior to
11 the date of the demolition.

12 **21.48.070 Nonconforming non-residential uses.**

13 A. Specific Provisions.

14 1. A nonconforming non-residential use and/or structure which is occupied by a
15 nonconforming non-residential use may be continued and the structure and/or use repaired,
16 altered, expanded or replaced in accordance with the provisions of this chapter provided that
17 the repair, alteration, expansion or replacement does not:

- 18 a. Increase the degree of the existing nonconformity of all or part of such structure
19 or use; and,
20 b. Reduce the number and size of any required existing parking spaces.

21 2. Any expansion of a non-residential use and/or structure which is occupied by a
22 nonconforming non-residential use that results in an increase in parking demand, pursuant to
23 chapter 21.44, shall provide additional parking to satisfy the increase in parking demand.

24 B. Repair or Alteration.

25 1. A structure which is occupied by a nonconforming non-residential use may be
26 repaired or altered subject to issuance of all required discretionary and building permits,
27

1 provided that he repair or alteration complies with all current fire protection and building codes
2 and regulations contained in Title 17 and Title 18.

3 C. Expansion of Use.

4 1. A nonconforming non-residential use may be expanded, so as to occupy a
5 greater area of land or more floor area within a structure, subject to issuance of all required
6 discretionary and building permits, provided that an application for a conditional use permit is
7 submitted and the planning commission approves the findings of fact pursuant to Section
8 21.42.030(A).

9 D. Relocation.

10 1. A nonconforming non-residential use may be moved, in whole or in part, to any
11 other on-site structure, or to any other portion of the structure, lot or site within or upon which it
12 is located, subject to issuance of all required discretionary and building permits and provided
13 that an application for a conditional use permit is submitted and the planning commission
14 approves the findings of fact pursuant to Section 21.42.030(A).

15 E. Change of Use.

16 1. A nonconforming non-residential use may be changed to a use that is permitted
17 in the zone in which the subject property is located, or may be changed to a use that is more
18 conforming, subject to approval of the planning director and the issuance of a business license.

19 F. Replacement of Use.

20 1. A nonconforming non-residential use may be replaced with the same or a similar
21 use, as determined by the planning director, so long as the replacement use does not expand or
22 in any other manner increase the degree of nonconformity with the use regulations of this title.

23 G. Discontinuance.

24 1. If a structure or parcel of land which is occupied by a nonconforming non-
25 residential use is, or hereafter becomes vacant and remains unoccupied either temporarily or
26 permanently, whether with the intent to abandon the use or not, for a continuous period of one
27

1 year or more, the planning director shall determine and shall notify the owner of the property, via
2 certified return receipt mail, that the nonconforming use has been discontinued and the
3 nonconforming use may not be renewed or reestablished.

4 H. Reestablishment of a Nonconforming Use in the Event of a Disaster.

5 1. A nonconforming non-residential use that is destroyed by fire, explosion, other
6 casualty or natural disaster, may be reestablished subject to issuance of all required
7 discretionary and building permits and provided that an application for a conditional use permit
8 is submitted within **two** years of the date of the disaster, and the planning commission approves
9 the findings of fact pursuant to Section 21.42.030(A).

10 I. Voluntary Demolition and Subsequent Reconstruction.

11 1. A nonconforming non-residential use that is proposed to be voluntarily
12 demolished and subsequently reconstructed, may be reestablished subject to issuance of all
13 required discretionary and building permits and provided that an application for a conditional use
14 permit is submitted and the planning commission approves the findings of fact pursuant to
15 Section 21.42.030(A) prior to the demolition.

16 **21.48.080 Nonconforming construction permit.**

17 A. Authority.

18 1. The planning director or his designee may approve, conditionally approve or
19 deny a nonconforming construction permit as prescribed in this chapter, upon making the
20 findings of fact listed in Section 21.42.080(B) of this chapter.

21 B. Findings of Fact.

22 1. A nonconforming construction permit shall be granted only if the following facts
23 are found to exist in regard thereto:

- 24 a. The expansion/replacement of the structure and/or use would not result in an
25 adverse impact to the health, safety and welfare of surrounding uses, persons or
26 property.
27
28

1 b. The area of expansion shall comply with all current requirements and
2 development standards of the zone in which it is located, except as provided in
3 Subsection 21.48.050(A)(3) of this chapter.

4 c. The expansion/replacement structure shall comply with all current fire protection
5 and building codes and regulations contained in Title 17 and Title 18.

6 d. The expansion/replacement would result in a structure that would be considered
7 an improvement to, or complementary to and/or consistent with the character of
8 the neighborhood in which it is located.

9 C. Application and Fees.

10 1. Application for a nonconforming construction permit may be made by the owner
11 of the property affected or the authorized agent of the owner. Application shall be made in
12 writing on a form provided by the planning department. The application shall state fully the
13 circumstances and conditions relied upon as grounds for the application and shall be
14 accompanied by adequate plans, a legal description of the property involved and all other
15 materials as specified by the planning department.

16 2. At the time of filing the application, the applicant shall pay a processing fee in an
17 amount as specified by city council resolution.

18 D. Notices.

19 1. Upon the filing of an application for a nonconforming construction permit, the
20 planning director shall give written notice by mail or personal delivery to the project applicant,
21 the owner of the subject real property or the owner's duly authorized agent and to all property
22 owners as shown on the latest equalized assessment roll within three hundred feet of the
23 subject property at least fifteen days prior to a decision on the application.

24 E. Decision-Making Process.

25 1. Applications for nonconforming construction permits shall be acted upon in
26 accordance with the decision process identified below:
27

1 a. Any person so notified in accordance with Section 21.48.080(D) above may file
2 written objections or a written request to be heard within ten days after the
3 mailing or personal delivery of the notice. If a written request to be heard is filed,
4 the planning director shall schedule an informal hearing and provide written
5 notice to the applicant and the requestor at least five days prior to the hearing.
6 The hearing is not a formal public hearing.

7 b. An application for a nonconforming construction permit may be approved,
8 conditionally approved or denied by the planning director based upon his/her
9 review of the facts as set forth in the application and review of the circumstances
10 of the particular case.

11 c. The planning director may approve the nonconforming construction permit if all of
12 the findings of fact in Section 21.48.080(B) of this chapter are found to exist.

13 F. Announcement of Findings and Decision.

14 1. Not more than twenty days following the termination of the proceedings for a
15 nonconforming construction permit, the planning director shall announce his/her findings by
16 letter. The letter shall recite, among other things:

17 a. The facts and reasons which, in the opinion of the planning director, make the
18 granting or denial of the nonconforming construction permit necessary to carry
19 out the provisions and general purpose of this title;

20 b. That the nonconforming construction permit be granted or denied; and,

21 c. If the letter orders that the nonconforming construction permit be granted, it shall
22 also recite such conditions and limitations as the planning director may impose.

23 G. Mailing of Notice of Decision.

24 1. Not later than seven days following the announcement of a decision ordering that
25 a nonconforming construction permit be granted or denied, a copy of the letter shall be mailed to
26 the applicant at the address shown on the application filed with the planning director.
27
28

1 H. Appeals.

2 1. In the case of nonconforming construction permits, the action of the planning
3 director may be appealed to the planning commission in accordance with Section 21.54.140 of
4 this title. The planning commission's action to approve, conditionally approve or deny is final.

5 I. Expiration Period.

6 1. Expiration of Permit if Not Exercised.

7 a. Any nonconforming construction permit becomes null and void if not exercised
8 within twenty-four months of the date of approval.

9 2. Extension of Permit if Not Exercised.

10 a. Not more than ninety days or less than forty-five days prior to the expiration of a
11 nonconforming construction permit the permittee may apply to the planning
12 director for an extension of the permit. The planning director may extend the
13 time, without public notice, within which the right or privilege granted under a
14 nonconforming construction permit must be exercised for one additional year
15 upon receipt of a written request from the applicant prior to the expiration of such
16 nonconforming construction permit. In granting such extension the planning
17 director shall make a written finding that neighborhood conditions have not
18 substantially changed since the granting of such nonconforming construction
19 permit.

20 J. Amendment.

21 1. Any approved nonconforming construction permit may be amended by following
22 the same procedure as for approval of a nonconforming construction permit and upon payment
23 of the application fee contained in the most recent fee schedule adopted by the city council.

24 **21.48.090 Abatement of nonconforming structures and uses.**

25 A. If a nonconforming use and/or structure is determined by the planning director to
26 be adverse to the orderly development of the city and/or to the public health, safety, or welfare
27

1 of persons or property, the planning director shall schedule a public hearing by the planning
2 commission to establish the conditions of abatement and the abatement period. The abatement
3 period shall start from the date of the applicable resolution and shall be:

4 1. For all Residential Uses.

5 a. Not less than one or more than five years.

6 2. For all Non-Residential Uses.

7 a. Not less than one or more than ten years.

8 3. For all Nonconforming Structures.

9 a. Not less than three years or more than twenty-five years.

10 4. Nothing in these provisions shall preclude abatement of a nuisance pursuant to
11 Section 6.16.150 of the Carlsbad Municipal Code.

12 B. Public Hearing Notice.

13 1. Notice of said public hearing shall be given as required by Section 21.54.060.

14 C. Public Hearing Evidence.

15 1. The planning commission shall consider at the public hearing, all pertinent data
16 to enable it to arrive at an equitable abatement period which will protect the public health, safety
17 or welfare of persons or property, yet will allow the owner of record, or lessee if applicable, to
18 amortize their investment so that any loss will be minimized.

19 B. The owner or lessee shall be allowed to present any evidence related to the case.

20 C. When setting the abatement period, the planning commission shall take into
21 consideration the type of construction, age, condition, and extent of nonconformity of the
22 structure or use in question; any structural alterations or expansions; and/or the installation of
23 major equipment designed into the structure prior to the date of nonconformity.

24 D. Hearing Decision.

1 1. After the close of the public hearing, the planning commission shall determine
2 and establish by resolution the abatement period, and shall set forth in said resolution all
3 findings and facts upon which the date of such abatement period is based.

4 E. Notice of Decision to Owner.

5 1. The secretary of the planning commission shall formally notify the owner of the
6 property of the action of the planning commission by mailing a copy of the resolution, via
7 certified return receipt mail, within ten days following the date of its adoption by the planning
8 commission.

9 F. Appeal.

10 1. The above action of the planning commission shall be final unless an appeal to
11 the city council is filed in accordance with the procedure provided in Section 21.54.150.

12 G. Recordation.

13 1. The secretary of the planning commission shall transmit a final signed copy of
14 the resolution of the planning commission or city council, whichever is final, to the County
15 Recorder of San Diego for recordation.

16 EFFECTIVE DATE: This ordinance shall be effective thirty days after its
17 adoption, but not until approved by the California Coastal Commission and the City Clerk shall
18 certify to the adoption of this ordinance and cause it to be published at least once in a
19 publication of general circulation in the City of Carlsbad within fifteen days after its adoption.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 INTRODUCED AND FIRST READ at a regular meeting of the
2 Carlsbad City Council on the 11th day of August, 2009, and thereafter

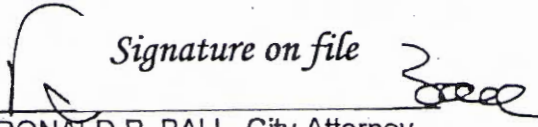
3 PASSED AND ADOPTED at a regular meeting of the City Council of
4 the City of Carlsbad on the 18th day of August, 2009, by the following vote, to wit:

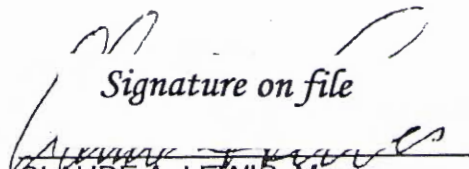
5 AYES: Council Members Lewis, Kulchin, Hall, Packard, Blackburn

6 NOES: None

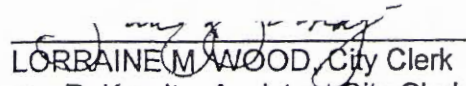
7 ABSENT: None
8
9
10
11

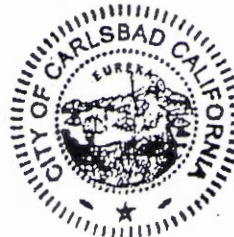
12 APPROVED AS TO FORM AND LEGALITY:

13 *Signature on file*
14 
15 RONALD R. BALL, City Attorney
16 8/19/09.

Signature on file

17 CLAUDE A. LEWIS, Mayor

18 ATTEST

19 *Signature on file*
20 
21 LORRAINE M. WOOD, City Clerk
22 Karen R. Kundtz, Assistant City Clerk
23
24
25
26
27
28



Title 21

ZONING

Chapters:
21.48 ~~Nonconforming Buildings and Uses~~ Nonconforming Lots, Structures and Uses

Chapter 21.04

DEFINITIONS

21.04.027 Alter.

"Alter" means any change to the interior or exterior of a structure that does not result in an increase to the gross floor area of the structure.

21.04.140.1 Expansion.

"Expansion" means to enlarge or increase the size of an existing structure or use including the physical size of the property, building, parking and other improvements.

21.04.275 Nonconforming building structure.

"Nonconforming building structure" means a building structure, or portion thereof, which was lawfully erected or altered and maintained, but which, because of the application of this title to it, no longer conforms to the use, height or area regulations current requirements and development standards of the zone in which it is located.
(Ord. 9060 § 254)

21.04.278 Nonconforming lot.

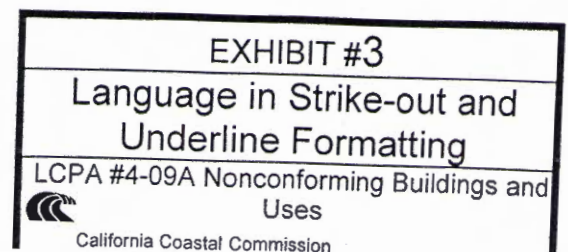
"Nonconforming lot" means a lot which was legally created, but which, because of the application of this title to it, no longer conforms to the current requirements and development standards of the zone in which it is located.

21.04.280 Nonconforming use.

21.04.280 "Nonconforming use" means a use which was lawfully established and maintained but which, because of the application of this title to it, no longer conforms to the use regulations of the zone in which it is located. A nonconforming building or nonconforming portion of the building shall be deemed to constitute a nonconforming use of the land upon which it is located.
(Ord. 9060 § 255)

21.04.280 Nonconforming non-residential use.

"Nonconforming non-residential use" means a non-residential use which was lawfully established and maintained, but which, because of the application of this title to it, no longer conforms to the current use regulations of the zone in which it is located.



21.04.281 Nonconforming residential use.

"Nonconforming residential use" means a residential use which was lawfully established and maintained, but which exceeds the Growth Management Control Point or the maximum density range of the underlying General Plan Land Use designation.

21.04.299.1 Repair.

"Repair" means any improvements to correct deficiencies in a building or structure.

21.04.299.2 Replace.

"Replace" means to construct a structure that is substantially equivalent in size, shape and location to a structure that has been destroyed or demolished.

21.04.355 354 Structure.

"Structure" means anything constructed or erected which requires location on the ground or attached to something having a location on the ground, but not including fences or walls used as fences less than six feet or less in height. All buildings are structures.

(Ord. 9060 § 269)

21.04.355 Substandard lot.

See "Nonconforming lot".

Chapter 21.44

PARKING

21.44.010 Required off-street parking.

A. Off-street parking, designed in accordance with the requirements of this chapter, shall be provided for:

1. All newly constructed buildings;
2. Additions to existing buildings, except for:
 - a. ~~Additions or alterations to an existing one-family dwelling when the addition or alteration results in less than 300 square feet of cumulative additional floor space (over the amount of the original dwelling structure);~~

a. An existing single family residence which does not meet the required parking standard (i.e. a two car garage) may expand floor area if a minimum of two off-street parking spaces are provided on-site in a location consistent with Section 21.44.060(4).

3. Any change of use within an existing building.

SECTION IV: That Chapter 21.45 of the Carlsbad Municipal Code is amended to read as follows:

Chapter 21.45

PLANNED DEVELOPMENTS

21.45.090 Residential additions and accessory uses.

A. General.

1. Additions and accessory uses shall be subject to all applicable development standards of this chapter, unless otherwise specified in this section.

2. ~~Enlargement of~~ Additions to buildings that are legally nonconforming ~~shall comply with the requirements of Chapter 21.48 of this code.~~ ~~by reason of inadequate setbacks is permitted,~~ provided that such enlargement does not increase the floor space more than 40% of that existing prior to such enlargement, and that the new addition complies with the setbacks and lot coverage requirements of this chapter.

Chapter 21.46

YARDS

~~21.46.210. Substandard Lots~~

~~When a lot has less than the minimum required area or width as set forth in any of the zones contained herein, or in a precise plan, and was of record on the effective date of the ordinance codified in this title, such lot shall be deemed to have complied with the minimum lot area or width as set forth in such zone or precise plan. The lot area per dwelling unit shall, however, remain as specified in the applicable area district, except that in no instance shall this provision prevent the erection of a single family dwelling on any substandard lot.~~

~~(Ord. 9060 § 1620)~~

Chapter 21.48

NONCONFORMING LOTS, STRUCTURES AND USES

Sections:

21.48.010 Purpose and intent.

21.48.020 Applicability.

21.48.030 General provisions.

21.48.040 Nonconforming lots.

21.48.050 Nonconforming residential structures and uses.

21.48.060 Nonconforming non-residential structures.

21.48.070 Nonconforming non-residential uses.

21.48.080 Nonconforming construction permit.

21.48.090 Abatement of nonconforming structures and uses.

21.48.010 Purpose and intent.

A. The purpose and intent of this chapter is to:

1. Allow for the development of nonconforming lots that were legally created.
2. Establish procedures for the abatement of structures and uses that do not comply with all of the requirements and development standards of this title and which may be adverse to the orderly development of the city and to the public health, safety, or welfare of persons or property.
3. Permit the continuation of uses and continued occupancy and maintenance of structures that were legally established but do not comply with all of the requirements and development standards of this title, in a manner that is not adverse to the public health, safety or welfare of persons or property.
4. Permit the repair, alteration, expansion or replacement of nonconforming structures subject to the regulations herein.
5. Permit the expansion or replacement of nonconforming uses subject to the regulations herein.

21.48.020 Applicability.

A. The provisions of this chapter apply to:

1. Legally created lots which do not conform to the current requirements and development standards of the zone in which they are located.
2. Legally constructed structures and site development features (except for nonconforming signs which are addressed in Section 21.41.130) which do not comply with the current requirements and development standards of the zone in which they are located.
3. Legally established uses which do not conform to the current permitted use regulations of the zone in which they are located.

21.48.030 General provisions.

A. It shall be the responsibility of the owner of a nonconforming lot, structure or use to prove to the planning director that such lot, structure or use was lawfully established, existed on the date of adoption or amendment of this chapter, and has existed continuously as defined herein.

B. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any city official charged with protecting the public safety, upon order of such official. Repairs and alterations may be made to restore a structure to the same condition that existed prior to damage or deterioration, provided that such repairs or structural alterations conform to the provisions of this chapter.

21.48.040 Nonconforming lots.

A. A nonconforming lot may be developed, provided that the development is consistent with the General Plan and complies with all of the requirements and development standards of the zone, master plan, or specific plan in which it is located.

21.48.050 Nonconforming residential structures and uses.

A. Specific Provisions.

1. A nonconforming residential structure and/or nonconforming residential use may be continued and the structure and/or use repaired, altered, expanded or replaced in accordance with the provisions of this chapter provided that the repair, alteration, expansion or replacement does not:

a. Result in an additional structural nonconformity; and,
b. Increase the degree of the existing nonconformity of all or part of such structure or use (i.e. the addition of a new dwelling unit to an existing over density residential use); and,

c. Reduce the number and size of any required existing parking spaces.

2. Any expansion of floor area or the addition of a new dwelling unit that results in an increase in parking demand, pursuant to chapter 21.44, shall provide additional parking to satisfy the increase in parking demand.

3. An existing single family residence which does not meet the required parking standard (i.e. a two car garage) may expand floor area if a minimum of two off-street parking spaces are provided on-site in a location consistent with Section 21.44.060(4).

B. Repair or Alteration.

1. A nonconforming residential structure and/or a structure which is occupied by a nonconforming residential use may be repaired or altered subject to issuance of all required discretionary and building permits, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

C. Expansion.

1. A nonconforming residential structure and/or a nonconforming residential use may be expanded, so as to occupy a greater area of land or more floor area subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

2. Where a single-family residential structure is nonconforming only by reason of substandard yards, the provisions of this chapter requiring a nonconforming construction permit for an expansion shall not apply provided that:

a. The area of expansion is not more than 40% of the existing floor space prior to the enlargement or a maximum of 640 square feet, whichever is less; and

b. The area of expansion, when combined with prior expansions of the nonconforming structure, does not exceed 40% of the floor space that existed prior to any expansions or 640 square feet, whichever is less; and

c. The area of expansion shall comply with all current development standards including, but not limited to, setbacks, lot coverage and height limitations; and

d. Expansions that exceed the limits of this exception shall require a nonconforming construction permit.

D. Replacement in the Event of a Disaster.

1. A nonconforming residential structure and/or nonconforming residential use that is destroyed by fire, explosion, or other casualty or natural

disaster, may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted within two years of the date of the disaster and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

E. Voluntary Demolition and Subsequent Replacement.

1. A nonconforming residential structure and/or nonconforming residential use that is proposed to be voluntarily demolished may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B) prior to the date of the demolition.

21.48.060 Nonconforming non-residential structures.

A. Specific Provisions.

1. A nonconforming non-residential structure may be continued and the structure repaired, altered, expanded or replaced in accordance with the provisions of this chapter provided that the repair, alteration, expansion or replacement does not:

- a. Result in an additional structural nonconformity; and,
- b. Increase the degree of the existing nonconformity of all or part of such structure; and,
- c. Reduce the number and size of any required existing parking spaces.

2. Any expansion of floor area that results in an increase in parking demand, pursuant to chapter 21.44, shall provide additional parking to satisfy the increase in parking demand.

B. Repair or Alteration.

1. A nonconforming non-residential structure may be repaired or altered subject to issuance of all required discretionary and building permits, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

C. Expansion.

1. A nonconforming non-residential structure may be expanded, so as to occupy a greater area of land or more floor area subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

D. Replacement in the Event of a Disaster.

1. A nonconforming non-residential structure that is destroyed by fire, explosion, or other casualty or natural disaster, may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted within two years of the date of the disaster and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

E. Voluntary Demolition and Subsequent Replacement.

1. A nonconforming non-residential structure that is proposed to be voluntarily demolished may be replaced subject to issuance of all required

discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B) prior to the date of the demolition.

21.48.070 Nonconforming non-residential uses.

A. Specific Provisions.

1. A nonconforming non-residential use and/or structure which is occupied by a nonconforming non-residential use may be continued and the structure and/or use repaired, altered, expanded or replaced in accordance with the provisions of this chapter provided that the repair, alteration, expansion or replacement shall not:

a. Increase the degree of the existing nonconformity of all or part of such structure or use; and,

b. Reduce the number and size of any required existing parking spaces.

2. Any expansion of a non-residential use and/or structure which is occupied by a nonconforming non-residential use that results in an increase in parking demand, pursuant to chapter 21.44, shall provide additional parking to satisfy the increase in parking demand.

B. Repair or Alteration.

1. A structure which is occupied by a nonconforming non-residential use may be repaired or altered subject to issuance of all required discretionary and building permits, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

C. Expansion of Use.

1. A nonconforming non-residential use may be expanded, so as to occupy a greater area of land or more floor area within a structure, subject to issuance of all required discretionary and building permits, provided that an application for a conditional use permit is submitted and the planning commission approves the findings of fact pursuant to Section 21.42.030(A).

D. Relocation.

1. A nonconforming non-residential use may be moved, in whole or in part, to any other on-site structure, or to any other portion of the structure, lot or site within or upon which it is located, subject to issuance of all required discretionary and building permits and provided that an application for a conditional use permit is submitted and the planning commission approves the findings of fact pursuant to Section 21.42.030(A).

E. Change of Use.

1. A nonconforming non-residential use may be changed to a use that is permitted in the zone in which the subject property is located, or may be changed to a use that is more conforming, subject to approval of the planning director and the issuance of a business license.

F. Replacement of Use.

1. A nonconforming non-residential use may be replaced with the same or a similar use, as determined by the planning director, so long as the replacement use does not expand or in any other manner increase the degree of nonconformity with the use regulations of this title.

G. Discontinuance.

1. If a structure or parcel of land which is occupied by a nonconforming non-residential use is, or hereafter becomes vacant and remains unoccupied either temporarily or permanently, whether with the intent to abandon the use or not, for a continuous period of one year or more, the planning director shall determine and shall notify the owner of the property, via certified return receipt mail, that the nonconforming use has been discontinued and the nonconforming use may not be renewed or reestablished.

H. Reestablishment of a Nonconforming Use in the Event of a Disaster.

1. A nonconforming non-residential use that is destroyed by fire, explosion, other casualty or natural disaster, may be reestablished subject to issuance of all required discretionary and building permits and provided that an application for a conditional use permit is submitted within two years of the date of the disaster, and the planning commission approves the findings of fact pursuant to Section 21.42.030(A).

I. Voluntary Demolition and Subsequent Reconstruction.

1. A nonconforming non-residential use that is proposed to be voluntarily demolished and subsequently reconstructed, may be reestablished subject to issuance of all required discretionary and building permits and provided that an application for a conditional use permit is submitted and the planning commission approves the findings of fact pursuant to Section 21.42.030(A) prior to the demolition.

21.48.080 Nonconforming construction permit.

A. Authority.

1. The planning director or his designee may approve, conditionally approve or deny a nonconforming construction permit as prescribed in this chapter, upon making the findings of fact listed in Section 21.42.080(B) of this chapter.

B. Findings of Fact.

1. A nonconforming construction permit shall be granted only if the following facts are found to exist in regard thereto:

a. The expansion/replacement of the structure and/or use would not result in an adverse impact to the health, safety and welfare of surrounding uses, persons or property.

b. The area of expansion shall comply with all current requirements and development standards of the zone in which it is located, except as provided in Subsection 21.48.050(A)(3) of this chapter.

c. The expansion/replacement structure shall comply with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

d. The expansion/replacement would result in a structure that would be considered an improvement to, or complementary to and/or consistent with the character of the neighborhood in which it is located.

C. Application and Fees.

1. Application for a nonconforming construction permit may be made by the owner of the property affected or the authorized agent of the owner. Application shall be made in writing on a form provided by the planning department. The application shall state fully the circumstances and conditions

relied upon as grounds for the application and shall be accompanied by adequate plans, a legal description of the property involved and all other materials as specified by the planning department.

2. At the time of filing the application, the applicant shall pay a processing fee in an amount as specified by city council resolution.

D. Notices.

1. Upon the filing of an application for a nonconforming construction permit, the planning director shall give written notice by mail or personal delivery to the project applicant, the owner of the subject real property or the owner's duly authorized agent and to all property owners as shown on the latest equalized assessment roll within three hundred feet of the subject property at least fifteen days prior to a decision on the application.

E. Decision-Making Process.

1. Applications for nonconforming construction permits shall be acted upon in accordance with the decision process identified below:

a. Any person so notified in accordance with Section 21.48.080(D) above may file written objections or a written request to be heard within ten days after the mailing or personal delivery of the notice. If a written request to be heard is filed, the planning director shall schedule an informal hearing and provide written notice to the applicant and the requestor at least five days prior to the hearing. The hearing is not a formal public hearing.

b. An application for a nonconforming construction permit may be approved, conditionally approved or denied by the planning director based upon his/her review of the facts as set forth in the application and review of the circumstances of the particular case.

c. The planning director may approve the nonconforming construction permit if all of the findings of fact in Section 21.48.080(B) of this chapter are found to exist.

F. Announcement of Findings and Decision.

1. Not more than twenty days following the termination of the proceedings for a nonconforming construction permit, the planning director shall announce his/her findings by letter. The letter shall recite, among other things:

a. The facts and reasons which, in the opinion of the planning director, make the granting or denial of the nonconforming construction permit necessary to carry out the provisions and general purpose of this title;

b. That the nonconforming construction permit be granted or denied;
and,

c. If the letter orders that the nonconforming construction permit be granted, it shall also recite such conditions and limitations as the planning director may impose.

G. Mailing of Notice of Decision.

1. Not later than seven days following the announcement of a decision ordering that a nonconforming construction permit be granted or denied, a copy of the letter shall be mailed to the applicant at the address shown on the application filed with the planning director.

H. Appeals.

1. In the case of nonconforming construction permits, the action of the planning director may be appealed to the planning commission in accordance with Section 21.54.140 of this title. The planning commission's action to approve,

→ anyone who requested spoke a public hearing

conditionally approve or deny is final.

I. Expiration Period.

1. Expiration of Permit if Not Exercised.

a. Any nonconforming construction permit becomes null and void if not exercised within twenty-four months of the date of approval.

2. Extension of Permit if Not Exercised.

a. Not more than ninety days or less than forty-five days prior to the expiration of a nonconforming construction permit the permittee may apply to the planning director for an extension of the permit. The planning director may extend the time, without public notice, within which the right or privilege granted under a nonconforming construction permit must be exercised for one additional year upon receipt of a written request from the applicant prior to the expiration of such nonconforming construction permit. In granting such extension the planning director shall make a written finding that neighborhood conditions have not substantially changed since the granting of such nonconforming construction permit.

J. Amendment.

1. Any approved nonconforming construction permit may be amended by following the same procedure as for approval of a nonconforming construction permit and upon payment of the application fee contained in the most recent fee schedule adopted by the city council.

21.48.090 Abatement of nonconforming structures and uses.

A. If a nonconforming use and/or structure is determined by the planning director to be adverse to the orderly development of the city and/or to the public health, safety, or welfare of persons or property, the planning director shall schedule a public hearing by the planning commission to establish the conditions of abatement and the abatement period. The abatement period shall start from the date of the applicable resolution and shall be:

1. For all Residential Uses.

a. Not less than one or more than five years.

2. For all Non-Residential Uses.

a. Not less than one or more than ten years.

3. For all Nonconforming Structures.

a. Not less than three years or more than twenty-five years.

4. Nothing in these provisions shall preclude abatement of a nuisance pursuant to Section 6.16.150 of the Carlsbad Municipal Code.

B. Public Hearing Notice.

1. Notice of said public hearing shall be given as required by Section

21.54.060.

C. Public Hearing Evidence.

1. The planning commission shall consider at the public hearing, all pertinent data to enable it to arrive at an equitable abatement period which will protect the public health, safety or welfare of persons or property, yet will allow the owner of record, or lessee if applicable, to amortize their investment so that any loss will be minimized.

2. The owner or lessee shall be allowed to present any evidence related to the case.

3. When setting the abatement period, the planning commission shall take into consideration the type of construction, age, condition, and extent of nonconformity of the structure or use in question; any structural alterations or expansions; and/or the installation of major equipment designed into the structure prior to the date of nonconformity.

D. Hearing Decision.

1. After the close of the public hearing, the planning commission shall determine and establish by resolution the abatement period, and shall set forth in said resolution all findings and facts upon which the date of such abatement period is based.

E. Notice of Decision to Owner.

1. The secretary of the planning commission shall formally notify the owner of the property of the action of the planning commission by mailing a copy of the resolution, via certified return receipt mail, within ten days following the date of its adoption by the planning commission.

F. Appeal.

1. The above action of the planning commission shall be final unless an appeal to the city council is filed in accordance with the procedure provided in Section 21.54.150.

G. Recordation.

1. The secretary of the planning commission shall transmit a final signed copy of the resolution of the planning commission or city council, whichever is final, to the County Recorder of San Diego for recordation.

Chapter 21.48

NONCONFORMING BUILDINGS AND USES

- ~~21.48.010 Limitation on other uses.~~
- ~~21.48.020 Removal of nonconforming buildings or change in status of nonconforming use.~~
- ~~21.48.030 Application of chapter.~~
- ~~21.48.040 Nonconforming land use when no structure involved.~~
- ~~21.48.050 Nonconforming use of a conforming building.~~
- ~~21.48.060 Removal of nonconforming buildings.~~
- ~~21.48.070 Commission to determine conditions of abatement.~~
- ~~21.48.080 Alteration, repair or expansion of nonconforming uses.~~
- ~~21.48.090 Alteration of building when nonconforming by reason of inadequate yards.~~
- ~~21.48.100 Public utility exemptions.~~

~~21.48.010 Limitation on other uses.~~

~~While a nonconforming use exists on any lot, no additional use may be established thereon, even though such use would be a conforming use.
(Ord. 9060 § 1700)~~

~~21.48.020 Removal of nonconforming buildings or change in status of nonconforming use.~~

~~If any nonconforming building is removed, every future use of the land on which the building is located shall conform to the provisions of this title. If a nonconforming use vacates and is succeeded by another and more restrictive use, it is evidence that the heavier nonconforming use was ended and thereupon immediately loses any vested right as such. If the substitute use is itself nonconforming, the degree of nonconformity may not subsequently be increased by changing to a less restricted use.
(Ord. 9060 § 1701)~~

~~21.48.030 Application of chapter.~~

~~The provisions of this chapter shall apply to buildings, lands and uses which hereafter become nonconforming due to any reclassification of zones under this title.
(Ord. 9060 § 1702)~~

~~21.48.040 Nonconforming land use when no structured involved.~~

~~In any zone the nonconforming use of land wherein no structure is involved shall be abated within one year from the date the ordinance codified in this title becomes applicable, and any future use of such land shall conform to the provisions of this ordinance. If the nonconforming use of land existing at the time this ordinance takes effect is thereafter discontinued for six months or more, any future use of such land shall conform to the provisions of this title.~~

(Ord. 9060 § 1703)

21.48.050 Nonconforming use of a conforming building.

~~———— (a) ——— IN R ZONES. All nonconforming uses of a conforming building in any of the R-zones shall be discontinued within three years from the date of formal notice to the owner from the planning commission, or not later than five years from the date the provisions of this ordinance becomes applicable to it.~~

~~———— (b) ——— IN C ZONES. Every nonconforming use of a conforming building in a C zone which use is first permitted in a less restrictive zone shall be completely removed before the expiration of a ten-year period measured from the date the ordinance codified in this title becomes applicable to it.~~

~~———— (c) ——— IN M ZONES. The nonconforming use of a conforming building which is devoted to any residential purpose, hospital (except emergency hospitals), hotel, institution or home for the treatment of convalescent persons, alcoholics, the wounded or mentally infirm, lodginghouses, schools, trailers used for human habitation, or trailer parks, shall be completely removed before the expiration of a ten-year period measured from the date the ordinance codified in this title becomes applicable to it.~~
(Ord. 9060 § 1704)

21.48.060 Removal of nonconforming buildings.

~~———— (a) ——— IN R ZONES. Every nonconforming building in any of the R-zones, except residential buildings, churches and schools, which nonconforming building was designed or intended for a use not permitted in the R-zone in which it is located, shall be completely removed or altered to structurally conform to the uses permitted in the zone in which it is located within the herein specified times upon notice from the planning commission, which time is measured from the date of construction. In no case shall this period of time be less than five years from the date of notification by the planning commission. As used in this section the designations "Type 1 Building", "Type 2 Building", "Type 3 Building", "Type 4 Building" and "Type 5 Building", are employed as defined in the existing building ordinance:~~

~~———— (1) ——— If property is occupied by structures of a type for which the existing building ordinance does not require a building permit—One year;~~

~~———— (2) ——— Type 4 or Type 5 buildings (light combustible frame and wood frame)—Forty years;~~

~~———— (3) ——— Type 2 or Type 3 buildings (heavy timber construction and ordinary masonry):~~

~~———— (A) ——— Apartments, offices, hotels or residences having stores or offices below and apartments or offices above—Thirty-five years;~~

~~———— (B) ——— Warehouses, stores, garages, lofts—Thirty-five years;~~

- ~~_____ (C) Factories and industrial Forty five years;~~
- ~~_____ (4) Type 1 Buildings (fire resistant):~~
 - ~~_____ (A) Offices and hotels Forty five years,~~
 - ~~_____ (B) Theatres Fifty years,~~
 - ~~_____ (C) Warehouses, lofts, stores, garages Forty five years,~~
 - ~~_____ (D) Industrial Thirty five years;~~
- ~~_____ (b) IN C ZONES.~~
- ~~_____ (1) Residential structures in a "C" zone existing on the effective date of the ordinance codified in this title shall be considered as nonconforming uses and as such, shall be subject to those provisions of this ordinance which provide that a nonconforming building removed or destroyed may not be replaced by other than a conforming building. Structural alterations or enlargements may be made; provided, that the degree of nonconformity may not be increased by changing to a less restricted residential use or by reducing yard widths less than the prescribed minimum required in R-3 zone;~~
- ~~_____ (2) Every nonconforming building in a C zone which is designed for a use first permitted in an M zone shall be completely removed or altered to conform to those uses permitted in the C zone in which such building is located within the herein specified times, upon notice from the planning commission, which times are measured from the date of construction except that in no case shall this period of time be less than five years from date of such notice by the planning commission. As used in this section, the designations "Type 1 Building", "Type 2 Building", "Type 3 Building", "Type 4 Building" and "Type 5 Building" are employed as defined in the existing building ordinance:~~
 - ~~_____ (A) Where property is unimproved except for structures of a type for which the existing building ordinance does not require a building permit One year,~~
 - ~~_____ (B) Type 4 or Type 5 buildings (light combustible frame and wood frame) Forty years,~~
 - ~~_____ (C) Type 2 or Type 3 buildings (heavy timber construction and ordinary masonry):~~
 - ~~_____ (i) Apartments, offices, hotels or residences having stores or offices below and apartments or offices above Thirty five years~~

- ~~_____ (ii) _____ Warehouses, stores, garages, lofts Thirty five years~~
- ~~_____ (iii) _____ Factories and industrial Forty five years~~
- ~~_____ (D) _____ Type 1 buildings (fire resistant):~~
 - ~~_____ (i) _____ Offices and hotels Forty five years~~
 - ~~_____ (ii) _____ Theatres Fifty years~~
 - ~~_____ (iii) _____ Warehouses, lofts, stores, garages Forty five years~~
 - ~~_____ (iv) _____ Industrial Thirty five years.~~
- ~~_____ (c) _____ IN "M" ZONES.~~
 - ~~_____ (1) _____ Residential structures in an "M" zone existing on the effective date of the ordinance codified in this title shall be considered as nonconforming uses and as such, shall be subject to those provisions of this ordinance which provide that a nonconforming building removed or destroyed may not be replaced by other than a conforming building. Structural alterations or enlargements may be made; provided, that the degree of nonconformity may not be increased by changing to a less restricted residential use or by reducing yard widths less than the prescribed minimum required in R-3 zone.~~
 - ~~_____ (2) _____ Every nonconforming building in the "M" zone which is used for, or devoted to, any hospital (except emergency hospitals), hotel, institution or home for the treatment of convalescent persons, alcoholics, the wounded or mentally infirm, lodginghouses, schools, trailers used for human habitation, or trailer parks, and which nonconforming building was designed or intended for a use not permitted in the "M" zone in which it is located, shall be completely removed or altered to structurally conform to the uses permitted in the zone in which it is located within the herein specified times upon notice from the planning commission, which times are measured from the date of construction, except that in no case shall this period of time be less than five years from the date of such notice. As used in this section the designations "Type 1 building", "Type 2 building", "Type 3 building", "Type 4 building", and "Type 5 building" are employed as defined in the existing building ordinance:~~
 - ~~_____ (A) _____ Where property is unimproved except for structures of a type for which the existing building ordinance does not require a building permit One year,~~
 - ~~_____ (B) _____ Type 4 or Type 5 buildings (light combustible frame and wood frame) Forty years,~~
 - ~~_____ (C) _____ Type 2 or Type 3 buildings (heavy timber construction and~~

ordinary masonry):

- ~~_____ (i) Apartments, offices, hotels or residences having stores or offices below and apartments or offices above—Thirty five years~~
 - ~~_____ (ii) Warehouses, stores, garages, lofts—Thirty five years.~~
 - ~~_____ (iii) Factories and industrial—Forty five years,~~
 - ~~_____ (D) Type 1 buildings (fire resistant):~~
 - ~~_____ (i) Offices and hotels—Forty five years~~
 - ~~_____ (ii) Theatres—Fifty years~~
 - ~~_____ (iii) Warehouses, lofts, stores, garages—Forty five years~~
 - ~~_____ (iv) Industrial—Thirty five years.~~
- ~~(Ord. 9088 §§ 1, 2; Ord. 9060 § 1705)~~

~~21.48.070 Commission to determine conditions of abatement.~~

~~When any nonconforming condition exists in any zone, other than the nonconforming use of land when no structure is involved, it shall be the responsibility of the planning commission, on its own initiative, to fix a date upon which the nonconforming building was established. It shall also be the responsibility of the planning commission to determine whether, by reason of structural alterations or enlargements, or the installation of major equipment designed into the building prior to the date the ordinance codified in this title becomes applicable thereto, it is deemed necessary to establish a later date for abatement than that prescribed herein for the building itself in order to assure that the investment represented by such structural alterations, enlargements or equipment installations may be amortized. In performing this function the commission shall consider all pertinent data in connection therewith to provide the opportunity for the owner of record, or lessee if there be such, to present such evidence as they may possess and which properly relate to such case. When the date of abatement has been determined, the commission by resolution, shall establish such date and shall set forth such facts as bear upon the case upon which the determination of such date of abatement is based, and shall formally notify the owner of such nonconforming property of the action of the commission by mailing to such owner a copy of the formally adopted resolution not later than ten days following the date of subject action by the planning commission.~~

~~(Ord. 9060 § 1706)~~

~~21.48.080 Alteration, repair or expansion of nonconforming uses.~~

~~_____ (a) Except as provided in this section, a nonconforming use or building shall not be altered, improved, reconstructed, restored, repaired, intensified, expanded or extended.~~

~~———— (b) ——— A nonconforming building destroyed to the extent of not more than twenty-five percent of its replacement value as determined by the community development director at the time of its destruction by fire, explosion, or other casualty or act of God, or public enemy, may be restored and the occupancy or use of such building, or part thereof, which exists at the time of such partial destruction may continue subject to all other provisions of this chapter. Such restoration shall not extend the time of abatement as established by this chapter.~~

~~———— (c) ——— Incidental reconstruction, repair or rebuilding of a nonconforming building rendered necessary by ordinary wear and tear and which does not increase the degree of nonconformity of a nonconforming building, nor increase the degree or size of a nonconforming use may be made, provided that:~~

~~———— (1) ——— The aggregate value of such repairs or alterations shall not exceed ten percent of the building's replacement value at the time the building permit is applied for as determined by the community development director;~~

~~———— (2) ——— That such reconstruction, repair or rebuilding complies with the provisions of Title 18 of this code;~~

~~———— (3) ——— Such repairs, reconstruction or rebuilding shall not extend the time of abatement established by this chapter.~~

~~———— (d) ——— A nonconforming use or building may be altered, improved, reconstructed, restored, repaired or extended as may be permitted by the planning commission upon granting of the conditional use permit processed according to the procedures established in Chapter 21.50 of this code. Before a conditional use permit may be granted all provisions of Chapter 21.50 shall be met and it shall be shown that:~~

~~———— (1) ——— The aggregate value of the proposed alteration, improvement, reconstruction, restoration, repair or extension shall not exceed twenty-five percent of the total replacement at the time the conditional use permit is applied for as determined by the community development director of all improvements on the site unless the building or structure is changed to a conforming use. Such aggregate value may be increased up to fifty percent of total replacement for those uses which provide a public service traditionally provided by the city;~~

~~———— (2) ——— The proposed alteration, improvement, reconstruction, restoration, repair or extension is of a type of structure that is specifically designed to be easily removed;~~

~~———— (3) ——— The proposed alteration, improvement, reconstruction, restoration, repair or extension meets all construction setback, coverage, planning and all other applicable requirements of this code.~~

~~In approving such conditional use permit, the planning commission shall establish a date by which all nonconforming structures and uses shall be made conforming or removed from the site. In no event shall the date for such removal or compliance extend beyond the date set according to the provisions of this title for~~

~~abatement of the existing nonconforming use. Extensions of said date for abatement shall be permitted only upon approval of amendment of the conditional use permit and, then, only upon showing of good cause. A conditional use permit or amendment shall be effective only upon execution by the applicant of written acceptance of the conditional use permit, or amendment. Such acceptance shall include an agreement by the applicant to remove all nonconforming uses and buildings or structures, or make them conforming, on or before the date for removal established by the conditional use permit or amendment in exchange for permission to alter, improve, reconstruct, restore, repair or extend.~~

~~The planning director shall cause such conditional use permit, complete with abatement date, or any amendment to the conditional use permit, extending an abatement date, to be recorded at the office of the county recorder within five days after the issuance of the permit or amendment. Any alteration, improvement, reconstruction, restoration, repair or extension undertaken pursuant to the conditional use permit shall be commenced within three months after the issuance of the permit unless an extension is granted by the planning commission.~~

~~(e) No nonconforming building, structure, or use shall be changed to any other nonconforming use, building or structure.
(Ord. NS 675 §§ 76 (part), 79 (part), 2003; Ord. 1261 § 50, 1983; Ord. 1256 § 7 (part), 1982; Ord. 9538 § 2, 1979; Ord. 9060 § 1707)~~

~~21.48.090 Alteration of building when nonconforming by reason of inadequate yards.~~

~~Where a building or buildings, and customary accessory buildings are nonconforming only by reason of substandard yards or open spaces, the provisions of this title prohibiting structural alterations or enlargements shall not apply; provided, that any structural alterations or enlargements of an existing building shall conform to the following:~~

~~(1) That such nonconforming structure may be enlarged or extended to the same degree of nonconformity as may exist but in no event shall such addition or enlargement encroach closer than three feet to any side yard lot line, ten feet to any front line or five feet to any rear lot line;~~

~~(2) That any such enlargement shall not increase the floor space more than forty percent of that existing prior to such enlargement.~~

~~(Ord. 9060 § 1708)~~

~~21.48.100 Public utility exemptions.~~

~~The foregoing provisions of this chapter concerning the required removal of nonconforming buildings and uses and the reconstruction of nonconforming buildings partially destroyed, shall not apply to public utility buildings and structures when such buildings and structures pertain directly to the rendering of the service or distribution such as power generating plants and electrical distribution substations; water wells and~~

pumps; gas storage, metering and valve control stations. Nor shall anything in this article be construed or applied so as to prevent the expansion, modernization or replacement of such public utility buildings, structures, equipment and features as are used directly for the delivery of, or distribution of, the service; provided the provisions of this section shall not exempt from the provisions covering nonconformity of such buildings, structures, or uses as do not immediately relate to the direct service by consumers, such as warehouses, storage yards and the like.
(Ord. 9060 § 1709)

(Existing definitions are for reference)

Chapter 21.04 – DEFINITIONS

21.04.050 Building.

"Building" means any structure having a roof, including all forms of inhabitable vehicles even though immobilized. Where this title requires, or where special authority granted pursuant to this title requires that a use shall be enclosed within a building, this definition shall be qualified by adding "and enclosed on all sides."

(Ord. 9060 § 211)

21.42.210 Lot.

"Lot" means a parcel of record legally created by subdivision map, adjustment plat, certificate of compliance or a parcel legally in existence prior to incorporation of the lot into the jurisdiction of the city. Any parcel created prior to May 1, 1956, shall be presumed to be lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created. A lot shall have frontage that allows usable access on a dedicated public street accepted by the city. This street or easement shall have a minimum right-of-way width of forty-two feet. Special lot and street configurations for affordable housing projects may be allowed subject to the provisions of Section 21.53.120.

(Ord. NS-602 § 1, 2001: Ord. 207 § 7, 1992: Ord. 9605 § 1, 1981: Ord. 9459 § 1 (part), 1976: Ord. 9060 § 241)

ERRATA SHEET

JULY 27, 2009

TO: CITY COUNCIL

FROM: CHRIS DECERBO, PRINCIPAL PLANNER

SUBJECT: NONCONFORMING BUILDINGS AND USES ORDINANCE
 REVISION AND ADOPTION IF NONCONFORMING
 CONSTRUCTION PERMIT APPLICATION FEE - ZCA 09-01/
 LCPA 09-01

This errata incorporates revisions recommended by the City Attorney's office post Planning Commission approval. None of the changes are substantial. Staff is recommending that the City Council include the following revisions:

1. Amend the Draft Ordinance Title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A ZONE CODE AMENDMENT TO: 1) REPEAL AND REPLACE RE-ENACT THE NONCONFORMING BUILDINGS AND USES - CHAPTER 21.48 OF THE ZONING ORDINANCE, 2) INCLUDE NEW AND AMENDED ASSOCIATED DEFINITIONS IN CHAPTER 21.04-DEFINITIONS, 3) AMEND CHAPTER 21.46 - YARDS TO DELETE REPEAL SECTION 21.46.210 OF CHAPTER 21.46 - YARDS, 4) AMEND CHAPTER 21.44 - PARKING TO REVISE SECTION 21.44.010 OF CHAPTER 21.44 - PARKING AND, 5) AMEND CHAPTER 21.45 TO REVISE SECTION 21.45.090A OF CHAPTER 21.45 - PLANNED DEVELOPMENTS.

2. Amend Draft Zoning Ordinance Section 21.44.010.A.1.a as follows:

21.44.010 Required off-street parking.

A. Off-street parking, designed in accordance with the requirements of this chapter, shall be provided for:

1. All newly constructed buildings;
2. Additions to existing buildings, except for:
 - a. An existing single family residence which does not meet the required parking standard (i.e. a two car garage) may expand floor area if a minimum of two off-

EXHIBIT #4

City's Errata Sheet

LCPA #4-09A Nonconforming Buildings and
 Uses



California Coastal Commission

street parking spaces are provided on-site in a location consistent with Section 21.44.060(4).

3. Amend Draft Zoning Ordinance Sections 21.48.010.A.4 and 21.48.010.A.5 as follows:

21.48.010 Purpose and intent.

A. The purpose and intent of this chapter is to:

1. Allow for the development of nonconforming lots that were legally created.

2. Establish procedures for the abatement of structures and uses that do not comply with all of the requirements and development standards of this title and which may be adverse to the orderly development of the city and to the public health, safety, or welfare of persons or property.

3. Permit the continuation of uses and continued occupancy and maintenance of structures that were legally established but do not comply with all of the requirements and development standards of this title, in a manner that is not adverse to the public health, safety or welfare of persons or property.

4. Permit the repair, alteration, expansion or replacement of nonconforming structures subject to the ~~regulations herein~~ requirements of this chapter.

5. Permit the expansion or replacement of nonconforming uses subject to the ~~regulations herein~~ requirements of this chapter.

4. Amend Draft Zoning Ordinance Section 21.48.030.B as follows:

21.48.030 General provisions.

A. It shall be the responsibility of the owner of a nonconforming lot, structure or use to prove to the planning director that such lot, structure or use was lawfully established, existed on the date of adoption or amendment of this chapter, and has existed continuously as defined herein.

B. Nothing in this chapter shall be deemed to prevent the rehabilitation, repair, alteration, strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any city official charged with protecting the public safety, upon order of such official. Repairs and alterations may be made to restore a structure to the same condition that existed prior to damage or deterioration, provided that such repairs or structural alterations conform to the provisions of this chapter.

5. Amend Draft Zoning Ordinance Sections 21.48.050.A.2, 21.48.050.B.1, and 21.48.050.D.1 as follows:

21.48.050 Nonconforming residential structures and uses.

A. Specific Provisions.

1. A nonconforming residential structure and/or nonconforming residential use may be continued and the structure and/or use repaired, altered, expanded or replaced in accordance with the provisions of this chapter provided that the repair, alteration, expansion or replacement does not:

a. Result in an additional structural nonconformity; and,

b. Increase the degree of the existing nonconformity of all or part of such structure or use (i.e. the addition of a new dwelling unit to an existing over density residential use); and,

c. Reduce the number and size of any required existing parking spaces.

2. Any expansion of floor area or the addition of a new dwelling unit that results in an increase in parking demand, pursuant to chapter 21.44, shall provide additional parking to satisfy the increase in parking demand, in compliance with the parking requirements of Chapter 21.44.

3. An existing single family residence which does not meet the required parking standard (i.e. a two car garage) may expand floor area if a minimum of two off-street parking spaces are provided on-site in a location consistent with Section 21.44.060(4).

B. Repair or Alteration.

1. A nonconforming residential structure and/or a structure which is occupied by a nonconforming residential use may be repaired or altered ~~subject to issuance of all required discretionary and building permits~~, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Titles 17 and 18.

D. Replacement in the Event of a Disaster.

1. A nonconforming residential structure and/or nonconforming residential use that is destroyed by fire, explosion, or other casualty or natural disaster, may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted within two years of the date of the disaster and the planning director approves the findings of fact pursuant to Section 21.48.080(B). The planning director may grant an extension to the above two-year application submittal limit upon demonstration of good cause by the applicant.

6. Amend Draft Zoning Ordinance Sections 21.48.060.B.1 and 21.48.060.G.1 as follows:

21.48.060 Nonconforming non-residential structures.

B. Repair or Alteration.

1. A nonconforming non-residential structure may be repaired or altered subject to issuance of all required discretionary and building permits, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Titles 17 and 18.

G. Discontinuance.

1. If a structure or parcel of land which is occupied by a nonconforming non-residential use is, or hereafter becomes vacant and remains unoccupied ~~either temporarily or permanently, whether with the intent to abandon the use or not~~, for a continuous period of one year or more, the planning director shall determine and shall notify the owner of the property, via certified return receipt mail, in writing, that the nonconforming use has been discontinued and the nonconforming use may not be renewed or reestablished.

7. Amend Draft Zoning Ordinance Section 21.48.070.B.1 as follows:

21.48.070 Nonconforming non-residential uses.

B. Repair or Alteration.

1. A structure which is occupied by a nonconforming non-residential use may be repaired or altered subject to issuance of all required discretionary and building permits, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Titles 17 and ~~Title~~ 18.

8. Amend Draft Zoning Ordinance Sections 21.48.080.A.1, 21.48.080.B.1.c, and 21.48.080.E1.b and c as follows:

21.48.080 Nonconforming construction permit.

A. Authority.

1. The planning director or his designee may approve, conditionally approve or deny a nonconforming construction permit as prescribed in this chapter, upon making the findings of fact listed in Section 21.482.080(B) of this chapter.

B. Findings of Fact.

1. A nonconforming construction permit shall be granted only if the following facts are found to exist in regard thereto:

a. The expansion/replacement of the structure and/or use would not result in an adverse impact to the health, safety and welfare of surrounding uses, persons or property.

b. The area of expansion shall comply with all current requirements and development standards of the zone in which it is located, except as provided in Subsection 21.48.050(A)(3) of this chapter.

c. The expansion/replacement structure shall comply with all current fire protection and building codes and regulations contained in Titles 17 and ~~Title~~ 18.

E. Decision-Making Process.

1. Applications for nonconforming construction permits shall be acted upon in accordance with the decision process identified below:

a. Any person so notified in accordance with Section 21.48.080(D) above may file written objections or a written request to be heard within ten days after the mailing or personal delivery of the notice. If a written request to be heard is filed, the planning director shall schedule an informal hearing and provide written notice to the applicant and the requestor at least five days prior to the hearing. The hearing is not a formal public hearing.

b. An application for a nonconforming construction permit may be approved, conditionally approved or denied by the planning director based upon his/her review of the facts as set forth in the application and review of the circumstances of the particular case.

~~_____c._____~~, and ~~the~~ planning director may only approve, or conditionally approve, the nonconforming construction permit if all of the findings of fact in Section 21.48.080(B) of this chapter are found to exist.

9. Amend Draft Zoning Ordinance Sections 21.48.090.A and 21.48.090.C.1 as follows:

21.48.090 Abatement of nonconforming structures and uses:

A. If a nonconforming use and/or structure is determined by the planning director to be adverse to the orderly development of the city and/or to the public health, safety, or welfare of persons or property, the planning director shall schedule a public hearing bybefore the planning commission to establish the conditions of abatement and the abatement period. The abatement period shall start from the date of the applicable resolution and shall be:

1. For all Residential Uses.
 - a. Not less than one or more than five years.
2. For all Non-Residential Uses.
 - a. Not less than one or more than ten years.
3. For all Nonconforming Structures.
 - a. Not less than three years or more than twenty-five years.
4. Nothing in these provisions shall preclude abatement of a nuisance pursuant to Section 6.16.150 of the Carlsbad Municipal Code.

B. Public Hearing Notice.

1. Notice of said public hearing shall be given as required by Section 21.54.060.

C. Public Hearing Evidence.

1. The planning commission shall consider at the public hearing, all pertinent data to enable it to arrive at an equitable abatement period which will protect the public health, safety or welfare of persons or property, yet will allow the owner of record, or lessee if applicable, sufficient time to amortize their investment ~~so that any loss will be minimized.~~

CHRIS DECERBO

