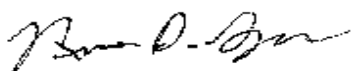


City of Calistoga Staff Report

TO: Honorable Mayor and City Council
FROM: Lynn Goldberg, Planning and Building Director
DATE: October 20, 2015
SUBJECT: **Calistoga Municipal Code Amendment to Rescind and Replace Chapter 17.44, Nonconforming Uses (ZOA 2015-6)**

APPROVAL FOR FORWARDING



Richard D. Spitler, City Manager

1 **ISSUE:** Consideration of a Calistoga Municipal Code amendment to rescind and
 2 replace Chapter 17.44, Nonconforming Uses, primarily to 1) allow the replacement of a
 3 nonconforming residential structure if it is destroyed and 2) delete the provision allowing
 4 the Planning Commission to require a nonconforming use to annually apply for a use
 5 and occupancy permit

6 **RECOMMENDATION:** Following a public hearing, introduce the ordinance to rescind
 7 and replace Chapter 17.44, Nonconforming Uses, and waive its first reading.

8 **BACKGROUND:** The City Council approved amendments to the Community
 9 Commercial Zoning District at its August 18th meeting. At that time, it considered a
 10 request by Michael Quast to not delete single-family residences as a conditionally-
 11 permitted use in the Community Commercial Zoning District because existing
 12 residences would become non-conforming and have problems obtaining insurance,
 13 loans and mortgages.

14 Staff noted that continuing to allow single-family residences would be inconsistent with
 15 the General Plan Community Commercial land use designation. However, in recognition
 16 of the problems that the non-conforming situation represents, staff recommended that
 17 the Council direct staff to initiate a Zoning Code amendment to allow residential
 18 structures in a commercial or industrial district to be reconstructed if they are destroyed.
 19 The Council directed staff to initiate such a Zoning Code amendment.

20 **DISCUSSION:** The following significant amendments to Chapter 17.44 are proposed, in
 21 addition to "housekeeping" revisions:

- 22 • Add a provision allowing a nonconforming residential structure to be replaced,
23 provided that:
- 24 1. The number of dwelling units is not increased, unless allowed by the
25 applicable zoning district.
- 26 2. The replacement structure complies with all applicable development
27 standards, unless a variance is approved.
- 28 3. A building permit for the replacement structure is applied for within one
29 year of the former structure's destruction and construction is diligently
30 pursued.
- 31 • Delete Section 17.44.070, which allows the Planning Commission to require the
32 owner or occupant of any land or building classified as a nonconforming use to
33 make application for a use and occupancy permit, and annually thereafter apply
34 for renewal of said permit. Since the land or building is a nonconforming use, it
35 would not be possible for the owner or occupancy to apply for a use permit.

36 **ENVIRONMENTAL REVIEW:** The proposed amendment is exempt from the California
37 Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines,
38 as it can be seen that they would not result in any impacts on the physical environment.

39 **PLANNING COMMISSION REVIEW:** The Planning Commission considered the
40 proposed Code amendment at a public hearing on September 9, 2015, and adopted PC
41 Resolution 2015-21 recommending its approval to the Council.

42 **CONSISTENCY WITH COUNCIL GOALS AND OBJECTIVES:** The proposed
43 amendments would help to fulfill Goal 7 *Address the community's housing needs* and
44 Objective 1 *Maintain the existing housing stock in good condition* of the City Council's
45 goals and objectives for Fiscal Year 2015-16.

46 **FISCAL IMPACT:** There could be a minor fiscal impact associated with the proposed
47 Code amendment if property values increase as a result of residential replacement.

ATTACHMENTS

1. Draft ordinance
2. Existing Chapter 17. 44, Nonconforming Uses with red-lined revisions
3. Excerpt from September 9, 2015 Planning Commission meeting minutes

ORDINANCE NO. 2015-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA AMENDING THE CALISTOGA MUNICIPAL CODE TO RESCIND AND REPLACE MUNICIPAL CODE CHAPTER 17.44 NONCONFORMING USES (ZOA 2015-6)

WHEREAS, certain residences located in residential, commercial and industrial zoning districts are deemed nonconforming and therefore may have problems obtaining insurance, loans and mortgages; and

WHEREAS, allowing nonconforming residential structures to be replaced if they are destroyed is consistent with the City’s desire to maintain its housing stock; and

WHEREAS, the Planning Commission reviewed the proposed Code amendment at a public hearing on September 9, 2015, and after considering the public record, including the staff report and findings, adopted PC Resolution 2015-21 forwarding a recommendation that the City Council approve the proposed Code amendment; and

WHEREAS, the proposed amendment is not subject to the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

WHEREAS, the City Council of the City of Calistoga reviewed and considered this ordinance at a public hearing on October 20, 2015, noticed in accordance with state and local law, and which included the written and oral staff report, the Planning Commission’s recommendation and comments received from the general public and interested agencies and parties.

NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE

Findings. The above recitals are incorporated herein as if set forth herein in full and each is relied upon independently by the City Council for its adoption of this ordinance.

SECTION TWO

CMC Chapter 17.44 Nonconforming Uses is hereby rescinded and replaced with the following:

Chapter 17.44

NONCONFORMING USES

Sections:

- 17.44.010 Continuation, alterations and extensions.
17.44.020 Discontinuance.
17.44.030 Replacement following destruction.
17.44.040 Completion of nonconforming structure.
17.44.050 Prohibited nonconforming uses.

39 17.44.010 Continuation, alterations and extensions.

40 Subject to the provisions of this section, a nonconforming use or structure
41 may be continued and maintained in reasonable repair but shall not be
42 altered or extended, except that:

- 43 A. The extension of a nonconforming use to a portion of a structure
44 that was provided for the nonconforming use at the time the
45 ordinance codified in this title was adopted shall be permitted
46 provided the parking requirements pursuant to CMC Chapter 17.36,
47 Off-Street Parking and Loading, are met.
- 48 B. A structure conforming as to use but nonconforming with respect to
49 height, setback or coverage may be altered or extended if the
50 alteration or extension does not further deviate from the standards
51 of this title.
- 52 C. Any structure or use for which parking facilities do not meet the
53 requirements of CMC Chapter 17.36 shall be considered a
54 nonconforming use. Such nonconforming uses may continue, but
55 no enlargement, expansion or increase in the number of
56 businesses shall be made on the lot or within existing structures
57 unless the entire parking requirements of CMC Chapter 17.36 for
58 the expanded floor area or use intensification are met or an in-lieu
59 parking fee can be applied in accordance with such title.

60 17.44.020 Discontinuance.

- 61 A. If a nonconforming use is replaced by another use, the new use
62 shall conform to this title.
- 63 B. If a nonconforming use is discontinued for a period of 180 days, all
64 future use shall conform to the current provisions of this title.

65 17.44.030 Replacement following destruction.

- 66 A. If a nonconforming structure or a structure containing a
67 nonconforming use is destroyed by any cause to an extent
68 exceeding 60 percent of fair market value as indicated by the
69 records of the County Assessor, a future structure or use on the
70 site shall conform to this title.
- 71 B. Notwithstanding the above, a nonconforming residential structure
72 may be replaced, provided that:
- 73 1. The number of dwelling units is not decreased.
 - 74 2. The replacement structure complies with all applicable
75 development standards, unless a variance is approved.

- 76 3. A building permit for the replacement structure shall be
77 applied for within two years of the former structure's
78 destruction and construction shall be diligently pursued.

79 17.44.040 Completion of nonconforming structure.

80 Nothing contained in this title shall require any change in the plans,
81 construction, alteration, or designated use of a structure for which a permit
82 has been issued and construction work has commenced prior to the
83 adoption of this title, or any amendment thereto, that caused the structure
84 or use to become nonconforming. However, such structure shall be
85 completed and in use within two years from the time the permit was
86 issued.

87 17.44.050 Prohibited nonconforming uses.

88 The following nonconforming uses are prohibited:

- 89 A. A nonconforming use not involving a structure.
90 B. A nonconforming use involving a structure having an assessed
91 value of less than \$1,000.

92 **SECTION THREE**

93 Environmental Review. This action has been reviewed in accordance with the
94 California Environmental Quality Act, CEQA Guidelines Section 15061(b)(3), the
95 “general rule” exemption. The City has determined that because it can be seen with
96 certainty that there is no possibility that the proposed amendments will have an impact
97 on the environment, this ordinance is therefore exempt from CEQA under the general
98 rule.

99 **SECTION FOUR**

100 Severability. If any section, subsection, subdivision, paragraph, sentence,
101 clause, or phrase in this ordinance or any part thereof is for any reason held to be
102 unconstitutional or invalid or ineffective by any court of competent jurisdiction, such
103 decision shall not affect the validity or effectiveness of the remaining portions of this
104 ordinance or any part thereof. The City Council hereby declares that it would have
105 passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase
106 thereof irrespective of the fact that any one or more subsections, subdivisions,
107 paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or
108 ineffective.

109 **SECTION FIVE**

110 Effective Date. This Ordinance shall take effect thirty (30) days after its passage
111 and before the expiration of fifteen (15) days after its passage, shall be published in
112 accordance with law, in a newspaper of general circulation published and circulated in
113 the city of Calistoga.

