



MEMORANDUM

DATE: February 21, 2013
TO: Planning Commission
FROM: Mike Moore, Planning and Building Director
SUBJECT: Zoning Code and Design Guidelines Interpretations

BACKGROUND:

During the Public Comment portion of the February 11, 2013 meeting, local architect Kim Jessup asked about an interpretation of the Zoning Ordinance that the Planning staff had made regarding the ability to add a second story to a portion of a building that was non-conforming due to an encroachment into an existing setback. There was a brief discussion about the interpretation following the comment, but due to the item not being on the agenda for that evening, the Commission asked that an item be placed on the next agenda to discuss interpretations and address Ms. Jessup's concerns.

Interpretations are a necessary and essential function in the administration of a General Plan, Zoning Ordinance, Design Guidelines and any other related policies and regulations that guide the day-to-day planning and development process. They are an essential part of the process because no matter how well written and timely a particular set of policies, guidelines or regulations are written, there are always circumstances that are either unanticipated or change faster than those applicable policies, guidelines and regulations can be re-written. Interpretations provide a bridge that keep policies and regulations current and consistent with inevitable changes in community values, public interest and the composition and culture of City staff, the Planning Commission and City Council.

On planning matters, staff, the Planning Commission and City Council all have the authority to make interpretations through their respective administrative and discretionary duties. For example, the Zoning Ordinance contains specific sections that provide the authority for staff to make interpretations. Chapter 20.62 (Zoning Administrator) designates the Planning and Building Director, "or other such person as may be appointed by the Director" as the Zoning Administrator (Section 20.62.010) and enumerates the Zoning Administrator "powers and duties" in Section 20.62.020, including sub-section "L", "Interpretation of the Zoning Ordinance as codified in this Title." When granting a Conditional Use Permit, the Planning Commission "may designate such conditions in connection with the use permit as it deems necessary to secure the purposes of this title (Section 20.64.040)." The Zoning Ordinance does not specify what those conditions should be, but leaves it to the Commission to interpret the "purposes of this

title” in order to apply the conditions “it deems necessary” to a given project. In matters of Design Review, Section 20.66.045 (“Limitations on building size, height and setback) states that under certain circumstances, “the City may impose more restrictive size and height limitations and may require greater setbacks and required yards than those specified in the Mill Valley General Plan or this Title.” Although these examples are all from the Zoning Ordinance, the same principles apply to other applicable standards and procedures from local General Plans to the California Environmental Quality Act (CEQA). In the course of its discretionary review authority, the Planning Commission has interpreted the City’s Residential Design Guidelines to support objective standards for lawn area and off-haul.

Interpretations are not made in a vacuum and require a rational basis that can be a combination of many factors, including local custom, community values, ethics, legal precedent and professional practice. Do you apply the “letter of the law” or the “spirit of the law”? Can an interpretation pass the “Red Face Test” (i.e., can you repeat the interpretation in public without being professionally or personally embarrassed)? Does it make sense and satisfy a broad public policy need, or just help a single individual or group of individuals? All of these are important considerations in making an interpretation. Interpretations are also subject to appeal, as in the case of the staff interpretation that a trampoline was not an accessory structure that was heard on appeal by the Planning Commission and the City Council.

The specific issue raised by Ms. Jessup on February 11 has to do with the interpretation of the “Non-Conforming Structure” provisions of the Zoning Ordinance. Section 20.106.166 (A) and (B) define a Non-Conforming Structure as either “a structure, the present design of which is for a non-conforming use; or a structure, which does not comply with comply with the regulations of this Title including, but not limited to, building height, yards and lot coverage.” If a structure is non-conforming according to that definition, then Section 20.60.160 (“Non-conforming structures – Repairs – Alterations”) limits modifications to such structures to “ordinary maintenance and repairs” and “no alterations shall be made exceeding in cost 15% of the total replacement cost of the building or structure in any period of 12 months.” The premise of these regulations is to create a circumstance where gradually and over time (or suddenly in the case of a disaster) the non-conforming structure would become conforming (assuming that the regulations didn’t change again).

Non-conforming use and structure regulations have been around since zoning ordinances were first developed in the 1920’s and have changed little in the intervening years. They were created at a time when uses and buildings were much more intermingled than they are today and were intended to eliminate circumstances where there was a incompatibility among uses or with a given structure or structures that was clearly detrimental to the health, safety and welfare of the community: a steel mill or an abandoned warehouse in a residential neighborhood. Over time, non-conforming regulations have become burdensome to most property owners because they create a condition that the property owner has no ability to remedy, particularly in communities that have developed over a long period of time. For example, in Mill Valley there are many single-family residential properties that do not conform to current building setback requirements. In fact, that seems to be more the rule than the exception. However, they are non-conforming structures as currently defined by the Zoning Ordinance and are, therefore, also subject to the limitations on the repair or alteration of non-conforming structures.

Section 20.60.140 (“Non-conforming uses – Existing uses and buildings”) contains a single sentence exception to the non-conforming structure provisions previously discussed. It says:

“Any single-family residence which is non-conforming as to required yards only may be enlarged or modified provided the non-conformity is not increased.” The issue of modifying existing non-conforming structures had come up early in my tenure here in Mill Valley and while some property owners had the ability to make modifications under the exception in Section 20.60.140 and have the addition comply with current setback requirements, others still had limitations due to the design or location of the existing house, property shape or size or topographic conditions. The interpretation that the exception in Section 20.60.140 could include the ability to enlarge or modify an existing non-conforming structure by going up while not increasing the non-conformity “as to required yards” seemed, in my opinion, to meet the intent as well as the plain reading of the exception statement in Section 20.60.140; provided relief from the unintended consequences of the strict application of the other non-conforming structure provisions of the ordinance; considered other existing conditions on the property; and, based on community response to other project approvals that applied this interpretation – either through the building permit process or through discretionary Zoning Administrator or Planning Commission design review – seemed to be an acceptable application of this particular provision of the Zoning Ordinance. In fact, up until Ms. Jessup’s public comment to the Planning Commission, staff was not aware of any opposition to this particular interpretation.

RECOMMENDATION

There is no specific action required by the Planning Commission. This is an informational and discussion item on the purpose and role of interpretations in the daily administration of the City’s planning and building policies and regulations, generally, and in response to the Commission’s request to address Ms. Jessup’s comments from the February 11 meeting.