



Agenda Item No. 16.

Staff Report

Date: December 8, 2016

To: Mayor Hoertkorn and Council Members

From: Heidi Scoble, Planning Manager

Subject: Ordinance 677 Amending Ross Municipal Code Chapters 18.52, Nonconforming Structures and Uses

Recommendation

Council consider introduction and first reading of Ordinance No. 677 to amend Ross Municipal Code Chapter 18.52, Nonconforming Structures and Uses, to clarify what constitutes the repair, maintenance, and alteration of a nonconforming structure and to establish a new finding that requires that the project may not increase the nonconformity unless a variance is granted.

Background and Discussion

The Town's nonconforming structures and uses regulations have been in effect since the Town Council's adoption of Ordinance No. 220 that occurred on December 28, 1961. The regulations were written to allow the continued use of a nonconforming structure subject to use limitations (see attachment 3).

On June 12, 2014, the Council adopted Ordinance No. 653 that modified Section 18.52.030, Alterations, to include subdivision (c) of Section 18.52.030 as follows:

(c) Nonconforming structures in a residential zoning district may be enlarged, extended reconstructed or structurally altered with a nonconformity permit approved under Section 18.52.040, except that a floor area ratio variance shall be required to increase the square feet of nonconforming floor area.

At the April 14, 2016 meeting, the Council requested staff to provide a discussion of the current Nonconforming Structures and Uses regulations, what the regulations allow, in addition to providing recommendations regarding possible code amendments to the regulations in order to provide clear direction to property owners, applicants, staff, and decision makers when considering nonconforming structures. On May 12, 2016, staff prepared a staff report regarding

the existing regulations and requested direction from the Council to staff whether the language of the existing regulations is meeting the intent and purpose regarding the treatment of nonconforming structures. At the May 12th meeting, the Council directed staff to work with the General Government Committee regarding potential revisions to the regulations.

On May 19, 2016, the General Government Committee convened to discuss staff recommended code amendments to the regulations in order to provide clarity to language and process regarding the treatment to nonconforming structures and buildings. The Committee members agreed on the recommended amendments as follows.

- Wordsmith Section 18.52.030 to make the language clearer when a Nonconformity Permit is required.
- Add language whereby flexibility may be considered when reviewing nonconformity permits subject to specific criteria such as consistency with the design review criteria and standards, the project would not create any adverse impacts on neighboring properties, and that the project would bring the structure into closer conformity.
- Add a provision to Chapter 18.16 to prohibit the conversion of a garage structure when the garage structure is located within the maximum required setbacks for the appropriate zoning district.
- Add a Design Review trigger per Section 18.41.020 that would require design review for the conversion of a garage into livable space when the garage structure is in compliance with the maximum required setbacks for the appropriate zoning district.

The Committee members concluded their discussion and directed staff to prepare the zoning ordinance code amendments and return to the Town Council with an ordinance accordingly.

The key issue in reconciling the intent and purposes of the existing and proposed nonconforming regulations is to allow the continuance and structural alterations to legal nonconforming structures subject to either a discretionary or ministerial permit, and only when the alterations would not be considered an intensification or exacerbation of the nonconformity. Accordingly, the existing regulations would be amended to address the repair, maintenance, and alteration of nonconforming structures with two options for subsection (e). Subsection (e) is written two ways to either allow the current flexibility when reviewing alterations to nonconforming structures or to be more restrictive and limit the extent for which a nonconformity permit could be allowed verses the requirement for a Variance. Staff is requesting direction from the Council as to which Subsection (e) alternative should be included in the regulations.

The proposed amendments are as follows:

“18.52.030 Repair, maintenance, and alteration of nonconforming structures. No nonconforming use, no nonconforming structure and no structure devoted to a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, unless such structure or use is changed to a structure or use permitted under the regulations specified by this title for the district in which the structure is located except as provided in Chapter 15.56 “Disaster Recovery

and Reconstruction” or this chapter. Nonconforming structures may be enlarged, extended, reconstructed or structurally altered under the following circumstances:

- (a) Interior Work. A building permit may be issued for interior work to repair, maintain, or alter nonconforming structures regardless of whether the work is located in the conforming or nonconforming portion of the structure, provided no new nonconformity is created.
- (b) Exterior Work. A building permit may be issued for work to repair, maintain or improve the exterior of nonconforming structures, including the nonconforming portion of the structure; provided, there are no structural alterations to the structure and no changes to exterior openings (e.g., doors or windows), decks, or roof height of the nonconforming portion of the structure.
- (c) Involuntary Damage. Nonconforming structures that have been involuntarily damaged or destroyed may be repaired or reconstructed to the same configuration, floor area, lot coverage, height, appearance and occupancy as the original building or structure consistent with RMC Section 15.56.020(a)(3). The building official may consult with the town planner to make this determination.
- (d) Building Additions. A nonconforming structure may be added to, without a nonconformity permit, so long as the addition complies with all zoning regulations pursuant to RMC Title 18, including compliance with the R1 and B: Combining District development standards (e.g., setbacks, lot coverage, floor area, height, and parking) and the addition does not affect an existing nonconformity.
- (e) All Other Structural Alterations. A nonconforming structure may be structurally altered to allow doors, windows, decks, roof dormers, and new or modified landscape or hardscape features, such as a trellis, with a Nonconformity Permit as provided under Section 18.52.040. Other none listed structural alterations may be considered under Section 18.52.040 provided that the structural alteration shall not increase, enlarge, or extend the existing nonconformity or nonconformities unless a variance pursuant to RMC Chapter 18.48 is concurrently granted.

OR ALTERNATE LANGUAGE

- (e) All Other Structural Alterations. A nonconforming structure may be enlarged, extended, reconstructed or structurally altered with a Nonconformity Permit as provided under Section 18.52.040, except that a floor area ratio variance shall be required to increase the square feet of nonconforming floor area. [***As currently written per Section 18.52.030(c)***]

If a Nonconformity Permit would be required, the regulations are proposed to include a new finding, per Section 18.52.040(f)(4) that would require the project applicant to demonstrate to

the Council that the project would not increase the nonconformity with applicable zoning regulations and the general plan; or a variance is being granted pursuant to Chapter 18.48.

Sections 18.52.010(c) and 18.52.040(a) would also be reworded to make the language clearer. Attachment 1 contains the language of the proposed ordinance and Attachment 2 contains a comparison of the existing and proposed regulations.

As depicted in the May 19, 2016 minutes, the General Government Committee provided direction that the zoning regulations should be modified to address the conversion of a garage structure when the garage structure is located within the maximum required setbacks for the appropriate zoning district, in addition to a design review trigger for the conversion of a garage into livable space when the garage structure is in compliance with the maximum required setbacks for the appropriate zoning district. The aforementioned regulatory amendments will be presented to the Council at a later date in the future. The purpose of this staff report is to focus only of the proposed regulatory amendments related to Chapter 18.52, nonconforming Structures and Uses, of the Ross Municipal Code.

Fiscal, resource and timeline impacts

No fiscal impact anticipated other than ordinance preparation.

Environmental review (if applicable)

Non-applicable

Attachments

1. Ordinance 677
2. Redline Code Amendments
3. Section 10 113 of Ordinance 220 adopted on December 28, 1961.
4. May 12, 2016 Town Council Minute Excerpt and Staff Report
5. May 19, 2016 General Government Committee Minutes

ATTACHMENT 1

TOWN OF ROSS

ORDINANCE NO. 677

AN ORDINANCE OF THE TOWN OF ROSS AMENDING CHAPTER 18.52 (NONCONFORMING STRUCTURES AND USES) OF THE ROSS MUNICIPAL CODE CLARIFY WHAT CONSTITUTES THE REPAIR, MAINTENANCE, AND ALTERATION OF A NONCONFORMING STRUCTURE

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: The Ross Municipal Code is hereby amendment to read as follows:

- 18.52.010 Requirements generally.
- 18.52.020 Use changed to another nonconforming use.
- 18.52.030 Repair, maintenance, and alteration of nonconforming structures.
- 18.52.040 Nonconformity permit.
- 18.52.050 Provision applicability--Suspension time limit.

SECTION 2: Section 18.52.010 of the Ross Municipal Code is hereby amended to read as follows:

18.52.010 Requirements generally

- (a) Any nonconforming structure may be used and maintained except as otherwise provided in this chapter.
- (b) A nonconforming use lawfully established prior to the adoption of this title may be continued, subject to the limitations hereinafter provided.
- (c) If any nonconforming use is abandoned or discontinued for any reason for a period of twelve months or more, the subsequent use of such land shall be in conformity with the provision of this title.

SECTION 3: Section 18.52.030 of the Ross Municipal Code is hereby amended to read as follows:

18.52.030 Repair, maintenance, and alteration of nonconforming structures. No nonconforming use, no nonconforming structure and no structure devoted to a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, unless such structure or use is changed to a structure or use permitted under the regulations specified by this title for the district in which the structure is located except as provided in Chapter 15.56 "Disaster Recovery and Reconstruction" or this chapter. Nonconforming structures may be enlarged, extended, reconstructed or structurally altered under the following circumstances:

- (a) Interior Work. A building permit may be issued for interior work to repair, maintain, or alter nonconforming structures regardless of whether the work is located in the conforming or nonconforming portion of the structure, provided no

new nonconformity is created.

(b) Exterior Work. A building permit may be issued for work to repair, maintain or improve the exterior of nonconforming structures, including the nonconforming portion of the structure; provided, there are no structural alterations to the structure and no changes to exterior openings (e.g., doors or windows), decks, or roof height of the nonconforming portion of the structure.

(c) Involuntary Damage. Nonconforming structures that have been involuntarily damaged or destroyed may be repaired or reconstructed to the same configuration, floor area, lot coverage, height, general appearance and occupancy as the original building or structure consistent with RMC Section 15.56.020(a)(3). The building official may consult with the town planner to make this determination.

(d) Building Additions. A nonconforming structure may be added to, without a nonconformity permit, so long as the addition complies with all zoning regulations pursuant to RMC Title 18, including compliance with the R1 and B: Combining District development standards (e.g., setbacks, lot coverage, floor area, height, and parking) and the addition does not affect an existing nonconformity.

(e) All Other Structural Alterations. A nonconforming structure may be structurally altered to allow doors, windows, decks, roof dormers, and new or modified landscape or hardscape features, such as a trellis, with a Nonconformity Permit as provided under Section 18.52.040. Other none listed structural alterations may be considered under Section 18.52.040 provided that the structural alteration shall not increase, enlarge, or extend the existing nonconformity or nonconformities unless a variance pursuant to RMC Chapter 18.48 is concurrently granted.

OR ALTERNATE LANGUAGE

(e) All Other Structural Alterations. A nonconforming structure may be enlarged, extended, reconstructed or structurally altered with a Nonconformity Permit as provided under Section 18.52.040, except that a floor area ratio variance shall be required to increase the square feet of nonconforming floor area.

SECTION 4: Section 18.52.040 of the Ross Municipal Code is hereby amended to read as follows:

18.52.040 Nonconformity permit. (a) Purpose and Intent. Many residential structures in the town do not conform to the requirements of this Zoning Code because they were established before the adoption of zoning or before residential floor area limits were established in 1967. The purpose of this section is to allow for the continued existence, reconstruction and modification of nonconforming residential structures, subject to limitations set forth in this section. The intent of these regulations is to protect historic buildings and those that contribute to the Town's small town character; and to permit

zoning nonconformities to be retained or reduced on site redevelopment where they create the same or fewer impacts than strict conformance with town regulations unless a variance is also approved.

SECTION 5: Subdivision (f)(4) is hereby added to 18.52.040 of the Ross Municipal Code is hereby amended to read as follows:

(4) The project does not increase the nonconformity with applicable zoning regulations and the general plan; or a variance is being granted pursuant to Chapter 18.48.

SECTION 5: Inclusion in the Ross Municipal Code. It is the intention of the Ross Town Council that Sections 1, 2, 3 and 4 be made a part of the Ross Municipal Code and that the text may be renumbered or relettered and the word "Ordinance" may be changed to "Section", "Chapter", or such other appropriate word or phrase to accomplish this intention.

SECTION 6: Severability. The Town Council hereby declares every section, paragraph, sentence, cause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 7: This Ordinance shall go into effect thirty (30) days from its adoption, and shall be published or posted as required by law.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the Ross Town Council on the 8th day of December, 2016, and was adopted at a regular meeting of the Ross Town Council on the ___th day of _____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Kathleen Hoertkorn, Mayor

ATTEST:

Linda Lopez, Town Clerk

ATTACHMENT 2

REDLINE VERSION

Chapter 18.52

NONCONFORMING STRUCTURES AND USES

Sections:

- 18.52.010 Requirements generally.
- 18.52.020 Use changed to another nonconforming use.
- 18.52.030 **Repair, maintenance, and alteration of nonconforming structures.**
- 18.52.040 Nonconformity permit.
- 18.52.050 Provision applicability--Suspension time limit.

18.52.010 Requirements generally (a) Any nonconforming structure may be used and maintained except as otherwise provided in this chapter.

(b) A nonconforming use lawfully established prior to the adoption of this title may be continued, subject to the limitations hereinafter provided.

(c) If any nonconforming use is abandoned or discontinued for any reason for a period of twelve months or more, the subsequent use of such land shall be in conformity with the provision of this title. The discontinuance of a nonconforming use for a period of six months or more is, in itself prima facie evidence of abandonment. (Ord. 653 (part), 2014; Ord. 434 §1, 1981; Ord. 416 §1, 1980; Ord. 377 §4, 1977; Ord. 270 §1, 1968; prior code §10 113 (part)).

18.52.020 Use changed to another nonconforming use. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or more restricted classification, but such use shall be subject to other provisions of this title. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

18.52.030 Repair, maintenance, and alteration of nonconforming structures. No nonconforming use, no nonconforming structure and no structure devoted to a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, unless such structure or use is changed to a structure or use permitted under the regulations specified by this title for the district in which the structure is located except as provided in Chapter 15.56 "Disaster Recovery and Reconstruction" or this chapter. Nonconforming structures may be enlarged, extended, reconstructed or structurally altered under the following circumstances:

(a) A nonconforming structure may be altered so long as the exterior dimensions of the structure are not enlarged by the alteration and all other regulations are complied with.

(b) A nonconforming structure may be expanded so long as the expansion complies with all zoning regulations, including required parking.

(c) Nonconforming structures in a residential zoning district may be enlarged, extended, reconstructed or structurally altered with a nonconformity permit approved under Section 18.52.040, except that a floor area ratio variance shall be required to increase the square feet of nonconforming floor area. (Ord. 653 (part), 2014; Ord. 641 (part), 2013; Prior code §10 113 (part)).

(a) Interior Work. A building permit may be issued for interior work to repair, maintain, or alter nonconforming structures regardless of whether the work is located in the conforming or nonconforming portion of the structure, provided no new nonconformity is created.

(b) Exterior Work. A building permit may be issued for work to repair, maintain or improve the exterior of nonconforming structures, including the nonconforming portion of the structure provided, there are no structural alterations to the structure and no changes to exterior openings (e.g., doors or windows), decks, or roof height of the nonconforming portion of the structure.

(c) Involuntary Damage. Nonconforming structures that have been involuntarily damaged or destroyed may be repaired or reconstructed to the same configuration, floor area, lot coverage, height, general appearance and occupancy as the original building or structure consistent with RMC Section 15.56.020(a)(3). The building official may consult with the town planner to make this determination.

(d) Building Additions. A nonconforming structure may be added to, without a nonconformity permit, so long as the addition complies with all zoning regulations pursuant to RMC Title 18, including compliance with the R1 and B: Combining District development standards (e.g., setbacks, lot coverage, floor area, height, and parking) and the addition does not affect an existing nonconformity.

(e) All Other Structural Alterations. A nonconforming structure may be structurally altered to allow doors, windows, decks, roof dormers, and new or modified landscape or hardscape features, such as a trellis, with a Nonconformity Permit as provided under Section 18.52.040. Other none listed structural alterations may be considered under Section 18.52.040 provided that the structural alteration shall not increase, enlarge, or extend the existing nonconformity or nonconformities unless a variance pursuant to RMC Chapter 18.48 is concurrently granted.

OR ALTERNATE LANGUAGE

(e) All Other Structural Alterations. A nonconforming structure may be enlarged, extended, reconstructed or structurally altered with a Nonconformity Permit as provided under Section 18.52.040, except that a floor area ratio variance shall be required to increase the square feet of nonconforming floor area.

18.52.040 Nonconformity permit. (a) Purpose and Intent. Many residential structures in the town do not conform to the requirements of this Zoning Code because they were established before the adoption of zoning or before residential floor area limits were established in 1967. The purpose of this section is to allow for the continued existence, reconstruction and modification of

nonconforming residential structures, subject to limitations set forth in this section. The intent of these regulations is to protect historic buildings and those that contribute to the Town's small town character; and to permit zoning nonconformities to be retained or reduced on site redevelopment where they create the same or fewer impacts than strict conformance with town regulations unless a variance is also approved.

(b) Nonconformity Permit. The town council may permit nonconforming structures in the Single Family Residence and Special Building Site B Districts to be enlarged, extended, reconstructed or structurally altered by approval of a nonconformity permit under this section.

(c) Application. An application for a nonconformity permit shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(d) Review and Approval Authority. The town council shall review and approve, conditionally approve, or deny a nonconformity permit application at a public meeting. The Town Council shall consider the application concurrently with any related application for design review under Chapter 18.41, variance under Chapter 18.48 or demolition permit under Chapter 18.50.

(e) Notice. The town shall mail notice of the meeting at least 10 days prior to the meeting to the property owner and all owners within 300 feet of the property that is the subject of the meeting as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(f) Mandatory findings for nonconformity permit. The town council may approve or conditionally approve a nonconformity permit under this section if the council has facts to support all of the following findings:

(1) The nonconforming structure was in existence at the time the ordinance that now prohibits the structure was passed. The structure must have been lawful when constructed. The property owner has the burden to prove by substantial evidence the nonconforming and legal status of the structure.

(2) The town council can make the findings required to approve any required demolition permit for the structure: The demolition will not remove from the neighborhood or town, nor adversely affect, a building of historical, architectural, cultural or aesthetic value. The demolition will not adversely affect nor diminish the character or qualities of the site, the neighborhood or the community.

(3) The project substantially conforms to relevant design review criteria and standards in Section 18.41.100, even if design review is not required.

(4) The project does not increase the nonconformity with applicable zoning regulations and the general plan; or a variance is being granted pursuant to Chapter 18.48.

(5) Total floor area does not exceed the greater of: a) the total floor area of the existing conforming and/or legal nonconforming structure(s); or b) the maximum floor area permitted for the lot under current zoning regulations. The town shall apply the definition of floor area in effect at the time of the application for a nonconformity permit.

(6) Granting the permit will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

(7) The project will comply with the Flood Damage Prevention regulations in Chapter 15.36.

(8) The fire chief has confirmed that the site has adequate access and water

supply for firefighting purposes, or that the project includes alternate measures approved by the fire chief.

(9) The applicant has agreed in writing to the indemnification provision in Section 18.40.180.

(10) The site has adequate parking. For purposes of this section, adequate parking shall mean that the site complies with at least the minimum number of parking spaces required for the zoning district (covered or not covered). If the site does not comply with the covered parking requirement, the Town Council may require covered parking to be provided. The Town Council may consider the size of the residence and number of bedrooms and may require additional parking up to the following:

<i>Total site floor area (excluding covered parking)</i>	<i>Required off street parking</i>
1,300 square feet to 3,300 square feet	3 spaces
Over 3,300 square feet	4 spaces

(g) Terms and Conditions. Any nonconformity permit approval may include such terms and conditions as deemed necessary or appropriate by the town council to effect the purposes of this ordinance.

(h) Any request that does not comply with the prescribed limitations set forth in this chapter shall require a variance, pursuant to Chapter 18.48. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

18.52.050 Provision applicability--Suspension time limit. The foregoing provisions shall also apply to nonconforming uses and structures created by future amendments to the provisions of this title and any time limit for the suspension of a nonconforming structure or use shall date from the date of the enactment of this title or any amendment which first creates the nonconformity. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

ATTACHMENT 3

light, air, and the public health, safety, comfort, convenience and general welfare. In order to grant any variance, exception or adjustment the findings of the Town Council shall be that the qualifications under (a), 1,2, and 3 of this Sub-Section apply to the land, building, or use for which variance, exception or adjustment is sought, and that such variance shall be in harmony with the general purpose of this Chapter.

Sub-Sec. 112.02 Public Hearing.

(a) A public hearing shall be held as provided in Sub-Sec. 111.02, except that notices need only be mailed to owners within 300 feet and no published notice need be given.

Sub-Sec. 112.03 Revocation.

(a) In any case where the conditions of granting of a variance have not been, or are not complied with, the Town Council shall give notice to the permittee of intention to revoke such variance at least ten (10) days prior to hearing thereon. Notice of such hearing shall be given as provided herein.

(b) In any case where a variance has not been used within one (1) year after the date of granting thereof, then without further notice by the Council, the variance granted shall be null and void. Where a new structure, or an addition to an existing structure, is involved, the failure to secure a building permit and commence construction within said one (1) year period shall be deemed to be such non-use.

Section 10 113 NON-CONFORMING STRUCTURES AND USES.

*Ordinance
220*

Sub-Sec. 113.01

Adopted 12-28-61

(a) Any non-conforming structure lawfully erected prior to the adopting of this Chapter may be used and maintained except as otherwise provided in this Section.

(b) A non-conforming use lawfully established prior to the adoption of this Chapter may be continued, subject to the limitations hereinafter provided, and further provided that such use may not be continued under a change of owner or operator unless or until a Use Permit shall have been issued therefor.

(c) In all "R" Districts, every non-conforming building or structure which was designed, arranged or intended for a use not permitted in "R" Districts shall be completely removed, or altered and converted to a conforming building, structure or use when such buildings or structures have reached or may hereafter reach, the ages hereinafter specified, computed from the date the building was erected. In the case of buildings defined in the Building Code effective in the Town at the effective date of this Chapter as Class I and II, forty (40) years; Class III and IV, thirty (30) years; and Class V, twenty (20) years. Provided, however, that this regulation shall not become operative until twenty (20) years from the effective date of this Chapter.

(d) If any non-conforming use is abandoned or discontinued for any reason, subsequent use of such land shall be in conformity with the provision of this Chapter. The discontinuance of a non-conforming use for a period of six months or more is, in itself prima-facie evidence of abandonment.

Sub-Sec. 113.02 If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of the same or more restricted classification, but such use shall be subject to other provisions of this Chapter.

Sub-Sec. 113.03 No non-conforming use, no non-conforming structure and no structure devoted to a non-conforming use shall be enlarged, extended, reconstructed or structurally altered, unless such structure or use is changed to a structure or use permitted under the regulations specified by this Chapter for such district in which said structure is located; provided, however, that a non-conforming structure may be altered so long as the exterior dimensions of the structure are not enlarged by the alteration and all other regulations are complied with.

Sub-Sec. 113.04 No Building Permit shall be issued for the erection of, alteration or addition to any building or structure contrary to the provisions of this Chapter, or of any amendment thereto, which shall declare a building or structure of that use, type, or location upon a lot, to be prohibited within the district in which it is situated. Each application for a building permit shall be accompanied by a statement as to the use of the building applied for, and on each such application shall be shown an accurate plan for the location of the building drawn to an appropriate scale.

Sub-Sec. 113.05 The foregoing provisions shall also apply to non-conforming uses and structures created by future amendments to the provisions of this Chapter, and any time limit for the suspension of a non-conforming structure or use shall date from the date of the enactment of this Chapter or any amendment which first creates the non-conformity.

Section 10 114. AMENDMENTS, ALTERATIONS, CHANGES IN DISTRICTS

Sub-Sec. 114.01 This Chapter may be amended by changing the boundaries of districts or by changing any other provisions thereof whenever the public necessity and convenience and the general welfare require such amendment by procedure prescribed by law.

Section 10 115 ENFORCEMENT, LEGAL PROCEDURE, PENALTIES.

Sub-Sec. 115.01 All departments, officials and public employees of the Town who are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Chapter and shall issue no such permit or license for uses, buildings, purposes where the same would be in conflict with the provisions of this Chapter.

ATTACHMENT 4

REGULAR MEETING of the ROSS TOWN COUNCIL
THURSDAY, MAY 12, 2016

*****Excerpt*****

1. 6:00 p.m. Commencement.

Present: Mayor Katie Hoertkorn; Mayor Pro Tempore Carla Small; Council Member Elizabeth Brekhus; Council Member P. Beach Kuhl; Council Member Elizabeth Robbins; and Town Attorney Greg Stepanicich.

13. Town Council discussion and direction on Non-Conformity Structures and Uses regulations.

Planning Manager Heidi Scoble summarized the staff report the nonconforming structures and uses regulations and asked the Council to provide direction to staff as to whether the current regulations are sufficient or should be amended to meet the intent of Ordinance No. 653.

Council Member Brekhus appreciated the staff report and pointed out that most jurisdictions have multiple zoning districts that better conform to what is built as Tiburon. Ross has more than 75% nonconforming properties. Planning Manager Scoble added that a lot of development occurred before any regulations were put in place and that there several buildings constructed in setbacks. The nonconforming permit regulations prior to were fairly restrictive.

Council Member Robbins asked staff if this new shift is reasonable or are they exacerbating the nonconformities. Planning Manager Scoble responded that this shift is very difficult because they do not know the thresholds of those changes. It is important to lessen the amount of nonconformities.

Council Member Brekhus was thinking about a house on Popular that had a little dormer that was located in the setback and her recollection is that the Council granted a variance. She appreciated having the flexibility, but with what is in front of the Council they will no longer have that flexibility.

Council Member Kuhl added that the issue is that staff would like less flexibility to make it easier to advise applicants. Planning Manager Scoble explained that staff is not able to provide reasonable direction to an applicant with the regulations as currently written. Mayor Pro Tempore Small added that it is all of their goals, staff and the Council to try and have their regulations and ordinances as clear as possible for everyone.

Council Member Kuhl added that it is a confusing issue and wondered if the way to handle this is for staff to provide specific language. Council Member Brekhus noted that staff is asking for their direction.

Council Member Brekhus suggested giving themselves six months and revisit this to decide whether it is working or not working.

Mayor Hoertkorn opened the public hearing on this item.

May 12, 2016 Minutes

Peter Nelson, Circle Drive resident, believed 85%-95% of homes in Ross are nonconforming, which is important to emphasize. He added that the current zoning setbacks and densities need to change, and trying to enforce the existing zoning is very problematic.

There being no further public testimony on this item, the Mayor closed the public portion and brought the matter back to the Council for discussion.

Council Members Robbins expressed concern for cottages and sheds in regard to making them into living space and felt the language is very confusing and should be modified. Planning Manager Scoble agreed it is challenging. A shed is a conforming use in a residential zoning district such as a cabana or pool house or detached accessory structure is a conforming use. From a planners perspective a nonconforming use would be something not typically permitted in that zoning district.

Mayor Hoertkorn wanted to review the new recommendations proposed by staff that would make sense. Mayor Pro Tempore Small suggested that this be done sooner than later. Mayor Hoertkorn added that whatever development occurs, they want to respect the neighbors. They do not want any provisions in their code that would inadvertently create loopholes.

Council Member Brekhus added that they continue to band aide the zoning code. Mayor Pro Tempore Small stated that the problem is that garages have a different setback. There are a few quick fixes that can occur and then deal with the rest down the road. She further suggested sending this to the General Government Committee to review. The Council agreed.



Staff Report

Date: May 12, 2016

To: Mayor Hoertkorn and Council Members

From: Heidi Scoble, Planning Manager

Subject: Discussion and Direction regarding Chapter 18.52, Nonconforming Structures and Uses, regarding modifications to legal nonconforming structures.

Recommendation

Town Council receive a presentation on the existing Nonconforming Structures and Uses regulations and provide direction to staff as to whether the current regulations are sufficient or should be amended to meet the intent of Ordinance 653.

Background and Discussion

At the April 14, 2016 meeting, the Council requested staff to provide a discussion of the current Nonconforming Structures and Uses regulations, what the regulations allow, in addition to providing recommendations regarding possible code amendments to the regulations in order to provide clear direction to property owners, applications, staff, and decision makers when considering nonconforming structures.

Although the Town of Ross was incorporated in 1908, the first comprehensive zoning ordinance was approved in 1957. Many properties were developed prior to any zoning regulations regarding the development of land, and therefore have been rendered nonconforming. Furthermore, the Town Council's past actions to approve variances and exceptions from land use regulations has also rendered properties nonconforming. As such, regulations to address nonconforming structures and uses were established. The following is a time line regarding the Town's nonconforming structures and uses regulations:

December 28, 1961: Ordinance 220. Second comprehensive zoning ordinance. Section 113.01 of the regulations stated that a nonconforming building or structure shall be completely removed or altered, and required the conversion to a conforming building or structure when such building or structure reached

its effective life. The regulations also allowed that nonconforming structures may be altered so long as the exterior dimensions of the structure are not enlarged by the alteration and all other regulations are complied with.

- January 10, 1963: Ordinance 225. Discontinue nonconforming uses within five (5) years. Regulations explicitly state that if a variance was granted for the use, then the use was not considered nonconforming.
- February 8, 1968: Ordinance 270. All nonconforming uses in the R1 zoning district were required to be discontinued by August 10, 1968 unless a variance as approved.
- September 13, 2012: Ordinance 634. Approved the "In-kind" replacement of nonconforming structures destroyed involuntarily.
- June 12, 2014: Ordinance 653. Established a Nonconformity Permit process to allow property owners to retain existing legal nonconformities without having to require a variance, to allow floor area nonconformities to be retained on site when the design of a project is appropriate, and "to allow other nonconformities to be maintained when reasonable and where they create the same or fewer impacts than strict conformance with the town regulations."

In researching the history of Ordinance 653, it appears as though the citizens of Ross and the Council were concerned with the amount of variances that were being approved to allow for the remodel of nonconforming structures. Prior to the current regulations, Section 18.52.030 required that a nonconforming structure may be altered "so long as the exterior dimensions of the structure are not enlarged by the alteration and all other regulations are complied with." Provided the alteration of a nonconforming structure did not enlarge the exterior dimensions of the building, then a variance was not required and a building permit could be issued.

The Town's current Nonconforming Structures and Uses regulation contained in Chapter 15.82 of the Ross Municipal Code were last updated to read as follows:

18.52.030 Alteration. No nonconforming use, no nonconforming structure and no structure devoted to a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, unless such structure or use is changed to a structure or use permitted under the regulations specified by this title for the district in which the structure is located except as provided in Chapter 15.56 "Disaster Recovery and Reconstruction" or this section.

- (a) *A nonconforming structure may be altered so long as the exterior dimensions of the structure are not enlarged by the alteration and all other regulations are complied with.*
- (b) *A nonconforming structure may be expanded so long as the expansion complies with all zoning regulations, including required parking.*
- (c) *Nonconforming structures in a residential zoning district may be enlarged, extended reconstructed or structurally altered with a nonconformity permit approved under Section 18.52.040, except that a floor area ratio variance shall be required to increase the square feet of nonconforming floor area.*

Although the preamble of Ordinance 653 states that nonconformities may be maintained when reasonable and where they create the same or fewer impacts than strict conformance with the Town's regulations, the above regulations referenced in subsection C gives the Council the discretion to potentially allow for the intensification or exacerbation of a nonconformity if a floor area ratio variance is not being requested.

Permitting alterations of nonconforming structures is not unique to Marin County and all of the local governments within Marin County have codified regulations regarding the treatment of voluntary alterations to nonconforming structures (see Attachment 3). As summarized in Attachment 3, some local governments allow alterations to nonconforming structures provided the nonconformity is not intensified, whereas other communities require strict adherence to the zoning regulations depending on the extent of demolition related to the nonconforming structure. Additionally, some local governments also require some level of other discretionary review, such as Design Review, associated with the alterations to nonconforming structures. In summary, with the exception of City of Sausalito and Larkspur, alterations to nonconforming structures may only occur provided the ***alteration does not increase or exacerbate*** the nonconformity and that any new addition to a nonconforming structures may be permitted provided the ***addition conforms to the current zoning regulations*** (e.g., setbacks, height, lot coverage, floor area, etc.).

Similar to the Town of Ross, the City of Sausalito and Larkspur have a Nonconformity Permit regulatory process that allows for alterations and additions to nonconforming structures. However, unlike the Town of Ross, Sausalito and Larkspur only allow for alterations and additions to nonconforming structures when the changes brings the structure into closer conformity with the applicable zoning regulations and general plan and that any new addition conforms with the applicable zoning regulations. They do not allow existing nonconformities to be increased or exacerbated.

Although the intent of the Nonconforming Structures and Uses regulations appear to discourage nonconformities from being increased, the regulations are written liberally to allow the exacerbation of nonconformities subject to the Nonconformity Permit findings per Section 18.52.040(f)1-9 of the Ross Municipal Code. Essentially, if the requisite findings can be

achieved, then a nonconformity may be increased or exacerbated. As such, based on the intent of Ordinance 653, how the regulations are currently written, and the current practices regarding how other communities address nonconforming structures, the question for the Council is whether the nonconforming structure regulations as currently written are sufficient or whether amendments to the regulations should be considered to make the regulations more clear. If the Council determines the regulations should be amended staff recommends consideration of amending the regulations as follows:

- ✓ Amend subsection C to allow for modifications to the nonconforming structure provided the modifications do not increase the nonconformity.
- ✓ Amend Section 18.41.020, Improvements subject to Design Review, of the Ross Municipal Code to require Design Review for all Nonconformity Permit.

Fiscal, resource and timeline impacts

No fiscal impact anticipated other than ordinance preparation.

Environmental review (if applicable)

Non-applicable

Attachments

1. Ordinance 653
2. Chapter 18.52 of the Ross Municipal Code
3. Summary of Marin County, Cities and Towns nonconforming structures regulations

ATTACHMENT 1

TOWN OF ROSS

ORDINANCE NO. 653

AN ORDINANCE OF THE TOWN OF ROSS AMENDING TITLE 18 "ZONING" OF THE ROSS MUNICIPAL CODE CHAPTERS 18.12 (DEFINITIONS), 18.40 (GENERAL REGULATIONS), 18.41 (DESIGN REVIEW), 18.52 (NONCONFORMING STRUCTURES AND USES) AND TO ESTABLISH A PROCESS FOR THE TOWN COUNCIL TO PERMIT NONCONFORMING CONDITIONS TO REMAIN IN SINGLE FAMILY RESIDENTIAL AREAS

WHEREAS, many residential structures in the Town do not conform to the requirements of the Zoning Code because they were constructed before the adoption of zoning or before residential floor area limits were established in 1967; and

WHEREAS, the existing nonconforming structure regulations have led to many resident requests for variances to allow residents to retain existing nonconformities with site improvement and it is difficult for the Town Council to make the required variance findings with site redevelopment; and

WHEREAS, the Town recognizes that owners have a vested interest in existing floor area and the community benefits when owners upgrade the appearance of site improvements, bring residences up to current codes and safety standards, and reduce other nonconformities; and

WHEREAS, Government Code Section 65850 allows the Town Council to adopt ordinances to regulate the location, height, bulk, number of stories, size and setbacks of buildings and structures and to establish requirements for off street parking; and

WHEREAS, the Town Council would like to permit floor area nonconformities to be retained on site redevelopment where the design is appropriate and to allow other nonconformities to be maintained when reasonable and where they create the same or fewer impacts than strict conformance with town regulations; and

WHEREAS, permitting the continued existence, modification, and expansion of nonconforming residential structures, subject to limitations, promotes the public health, safety, and general welfare; protects property values and the property tax base; and maintain the small town character of the Town; and

WHEREAS, the Town Council adopted a *General Plan 2007-2025* on June 14, 2007 and the *Housing Element 2009-2014* on November 4, 2010 and Government Code Section 65860(a) requires zoning ordinances to be consistent with the general plan; and

WHEREAS, this ordinance, which does not change any existing land uses in the Town, will allow improvement of existing structures and reconstruction of nonconforming floor area, subject to

design review and a demolition permit, furthering Housing Policy 2.0 "Maintain and enhance existing housing" and Program H2.3 "Maintenance of Quality Housing and Neighborhoods;" and is otherwise consistent with the *Town of Ross General Plan and Housing Element*; and

WHEREAS, the Town Council sitting as Planning Commission has reviewed the proposed ordinance, held a public hearing on the proposed revisions, and forwarded the proposed language and their recommendations to the Council for consideration and action; and

WHEREAS, the Advisory Design Review Group has reviewed the proposed ordinance at a public meeting and forwarded their recommendations to the Council through staff; and

WHEREAS, the Town Council has reviewed the proposed ordinance and the Planning Commission's recommendations at a public hearing.

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: Title 18, Chapter 18.12 (Definitions), Sections 18.12.230 "Nonconforming building" which currently provides:

Nonconforming building. "Nonconforming building" means a building or structure or portion thereof which does not conform to the regulations of the district in which it is located.

Shall be deleted and replaced with a new section to read as follows:

Nonconforming structure. "Nonconforming structure" means a building or structure or portion thereof which does not conform to one or more regulations of the district in which it is located.

SECTION 2: Title 18, Chapter 18.40 (General Regulations), Sections 18.40.180 "Indemnification" shall be amended to read as follows:

18.40.180 Indemnification. All applicants and/or owners shall defend, indemnify, and hold the Town harmless along with the Town Council and Town boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding ("action") against the Town, the Town Council, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or alleging any other liability or damages based upon, caused by, or related to the approval of the project. The town shall promptly notify the applicants and/or owners of any action. The Town, in its sole discretion, may tender the defense of the action to the applicants and/or owners or the Town may defend the action with its attorneys with all attorneys fees and litigation costs incurred by the Town in either case paid for by the applicant and/or owners.

SECTION 3: Title 18, Chapter 18.41 (Design Review), Section 18.41.100 "Design review criteria and standards," Subsections 18.41.100(c)(1), 18.41.100(m), 18.41.100(n) and 18.41.100(p) shall be deleted and replaced with the following:

(c) Minimizing Bulk and Mass.

(1) New structures and additions should avoid monumental or excessively large size out of character with their setting or with other dwellings in the neighborhood. Buildings should be compatible with others in the neighborhood and not attract attention to themselves. When nonconforming floor area is proposed to be retained with site redevelopment, the council may consider the volume and mass of the replacement floor area and limit the volume and mass where necessary to meet the intent of these standards.

(m) Privacy. Building placement and window size and placement should be selected with consideration given to protecting the privacy of surrounding properties. Decks, balconies and other outdoor areas should be sited to minimize noise to protect the privacy and quietude of surrounding properties. Landscaping should be provided to protect privacy between properties. Where nonconformities are proposed to be retained, the proposed structures and landscaping should not impair the primary views or privacy of adjacent properties to a greater extent than the impairment created by the existing nonconforming structures.

(n) Consideration of Existing Nonconforming Situations. Proposed work should be evaluated in relationship to existing nonconforming situations, and where determined to be feasible and reasonable, consideration should be given to eliminating nonconforming situations.

(p) Relationship to Development Standards in Zoning District. The town council may impose more restrictive development standards than the standards contained in the zoning district in which the project is located in order to meet these criteria. Where two or more contiguous parcels are merged into one legal parcel, the town council may consider the total floor area of the existing conforming and legal nonconforming structures and may reduce the permitted floor area to meet the purposes of these standards.

SECTION 4: Title 18, Chapter 18.52 (Nonconforming Structures and Uses) shall be deleted and replaced with the following:

Chapter 18.52

NONCONFORMING STRUCTURES AND USES

Sections:

18.52.010	Requirements generally.
18.52.020	Use changed to another nonconforming use.
18.52.030	Alteration.
18.52.040	Nonconformity Permit.
18.52.050	Provision applicability--Suspension time limit.

18.52.010 Requirements generally. (a) Any nonconforming structure may be used and maintained except as otherwise provided in this chapter.

(b) A nonconforming use lawfully established prior to the adoption of this title may be continued, subject to the limitations hereinafter provided.

(c) If any nonconforming use is abandoned or discontinued for any reason, subsequent use of such land shall be in conformity with the provision of this title. The discontinuance of a nonconforming use for a period of six months or more is, in itself prima facie evidence of abandonment.

18.52.020 Use changed to another nonconforming use. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or more restricted classification, but such use shall be subject to other provisions of this title.

18.52.030 Alteration. No nonconforming use, no nonconforming structure and no structure devoted to a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, unless such structure or use is changed to a structure or use permitted under the regulations specified by this title for the district in which the structure is located except as provided in Chapter 15.56 "Disaster Recovery and Reconstruction" or this section.

(a) A nonconforming structure may be altered so long as the exterior dimensions of the structure are not enlarged by the alteration and all other regulations are complied with.

(b) A nonconforming structure may be expanded so long as the expansion complies with all zoning regulations, including required parking.

(c) Nonconforming structures in a residential zoning district may be enlarged, extended reconstructed or structurally altered with a nonconformity permit approved under Section 18.52.040, except that a floor area ratio variance shall be required to increase the square feet of nonconforming floor area.

18.52.040 Nonconformity Permit.

(a) Purpose and Intent. Many residential structures in the town do not conform to the requirements of this Zoning Code because they were established before the adoption of zoning or before residential floor area limits were established in 1967. The purpose of this section is to allow for the continued existence, reconstruction and modification of nonconforming residential structures, subject to limitations set forth in this section. The intent of these regulations is to protect historic buildings and those that contribute to the Town's small town character; to permit floor area nonconformities to be retained on site redevelopment where the design is appropriate; and to allow other nonconformities to be maintained when reasonable and where they create the same or fewer impacts than strict conformance with town regulations.

(b) Nonconformity Permit. The town council may permit nonconforming structures in the Single Family Residence and Special Building Site B Districts to be enlarged, extended, reconstructed or structurally altered by approval of a nonconformity permit under this section.

(c) Application. An application for a nonconformity permit shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional

information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(d) Review and Approval Authority. The town council shall review and approve, conditionally approve, or deny a nonconformity permit application at a public meeting. The Town Council shall consider the application concurrently with any related application for design review under Chapter 18.41 or demolition permit under Chapter 18.50.

(e) Notice. The town shall mail notice of the meeting at least 10 days prior to the meeting to the property owner and all owners within 300 feet of the property that is the subject of the meeting as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(f) Mandatory findings for nonconformity permit. The town council may approve or conditionally approve a nonconformity permit under this section if the council has facts to support all of the following findings:

(1) The nonconforming structure was in existence at the time the ordinance that now prohibits the structure was passed. The structure must have been lawful when constructed. The property owner has the burden to prove by substantial evidence the nonconforming and legal status of the structure.

(2) The town council can make the findings required to approve any required demolition permit for the structure: The demolition will not remove from the neighborhood or town, nor adversely affect, a building of historical, architectural, cultural or aesthetic value. The demolition will not adversely affect nor diminish the character or qualities of the site, the neighborhood or the community.

(3) The project substantially conforms to relevant design review criteria and standards in Section 18.41.100, even if design review is not required.

(4) Total floor area does not exceed the greater of: a) the total floor area of the existing conforming and/or legal nonconforming structure(s); or b) the maximum floor area permitted for the lot under current zoning regulations. The town shall apply the definition of floor area in effect at the time of the application for a nonconformity permit.

(5) Granting the permit will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

(6) The project will comply with the Flood Damage Prevention regulations in Chapter 15.36.

(7) The fire chief has confirmed that the site has adequate access and water supply for firefighting purposes, or that the project includes alternate measures approved by the fire chief.

(8) The applicant has agreed in writing to the indemnification provision in Section 18.40.180.

(9) The site has adequate parking. For purposes of this section, adequate parking shall mean that the site complies with at least the minimum number of parking spaces required for the zoning district (covered or not covered). If the site does not comply with the covered parking requirement, the Town Council may require covered parking to be provided. The Town Council may consider the size of the residence and number of bedrooms and may require additional parking up to the following:

<i>Total site floor area (excluding covered parking)</i>	<i>Required off street parking</i>
1,300 square feet to 3,300 square feet	3 spaces
Over 3,300 square feet	4 spaces

(g) Terms and Conditions. Any nonconformity permit approval may include such terms and conditions as deemed necessary or appropriate by the town council to effect the purposes of this ordinance.

(h) Any request that does not comply with the prescribed limitations set forth in this chapter shall require a variance, pursuant to Chapter 18.48.

18.52.050 Provision applicability—Suspension time limit. The foregoing provisions shall also apply to nonconforming uses and structures created by future amendments to the provisions of this title and any time limit for the suspension of a nonconforming structure or use shall date from the date of the enactment of this title or any amendment which first creates the nonconformity.

SECTION 5: CEQA. The Town Council has determined that the ordinance is categorically exempt from the requirement for the preparation of environmental documents under the California Environmental Quality Act (CEQA) in that the Council finds there is no possibility that the adoption of this ordinance may have significant effects on the environment. The Town Council would require environmental review based on the specific site circumstances for any project subject to discretionary review and certain projects would be exempt under exemptions for new small structures, existing facilities and single family residences (*14 Cal. Code Regs. §15301 and 15303*). The Town Council also considers the project exempt from review under the California Environmental Quality Act under the “common sense” exemption. (*14 Cal. Code Regs. §15061(b)(3)*) since “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” No exception set forth in Section 15300.2 of the CEQA Guidelines (including but not limited to Subsection (b), which relates to cumulative impacts and Subsection (c) which relates to unusual circumstances) applies to the project (*14 Cal. Code Regs. §15300.2*).

SECTION 6: Inclusion in the Ross Municipal Code. It is the intention of the Ross Town Council that Sections 1, 2, 3 and 4 be made a part of the Ross Municipal Code and that the text may be renumbered or relettered and the word “Ordinance” may be changed to “Section”, “Chapter”, or such other appropriate word or phrase to accomplish this intention.

SECTION 7: Severability. The Town Council hereby declares every section, paragraph, sentence, cause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 8: This Ordinance shall go into effect thirty (30) days from its adoption, and shall be published or posted as required by law.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the Ross Town Council on the 8th day of May, 2014, and was adopted at a regular meeting of the Ross Town Council on the 12th day of June, 2014 by the following vote:

AYES: Council Members Kuhl, Brekhus, Hoertkorn, Russell

NOES:

ABSENT: Council Member Small

ABSTAIN:



P. Beach Kuhl, Mayor

ATTEST:



Linda Lopez, Town Clerk

ATTACHMENT 2

Chapter 18.52

NONCONFORMING STRUCTURES AND USES

Sections:

- 18.52.010 Requirements generally.
- 18.52.020 Use changed to another nonconforming use.
- 18.52.030 Alteration.
- 18.52.040 Nonconformity permit.
- 18.52.050 Provision applicability--Suspension time limit.

18.52.010 Requirements generally (a) Any nonconforming structure may be used and maintained except as otherwise provided in this chapter.

(b) A nonconforming use lawfully established prior to the adoption of this title may be continued, subject to the limitations hereinafter provided.

(c) If any nonconforming use is abandoned or discontinued for any reason, subsequent use of such land shall be in conformity with the provision of this title. The discontinuance of a nonconforming use for a period of six months or more is, in itself prima facie evidence of abandonment. (Ord. 653 (part), 2014; Ord. 434 §1, 1981; Ord. 416 §1, 1980; Ord. 377 §4, 1977; Ord. 270 §1, 1968: prior code §10 113 (part)).

18.52.020 Use changed to another nonconforming use. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or more restricted classification, but such use shall be subject to other provisions of this title. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

18.52.030 Alteration. No nonconforming use, no nonconforming structure and no structure devoted to a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, unless such structure or use is changed to a structure or use permitted under the regulations specified by this title for the district in which the structure is located except as provided in Chapter 15.56 "Disaster Recovery and Reconstruction" or this section.

(a) A nonconforming structure may be altered so long as the exterior dimensions of the structure are not enlarged by the alteration and all other regulations are complied with.

(b) A nonconforming structure may be expanded so long as the expansion complies with all zoning regulations, including required parking.

(c) Nonconforming structures in a residential zoning district may be enlarged, extended reconstructed or structurally altered with a nonconformity permit approved under Section 18.52.040, except that a floor area ratio variance shall be required to increase the square feet of nonconforming floor area. (Ord. 653 (part), 2014; Ord. 641 (part), 2013; Prior code §10 113 (part)).

18.52.040 Nonconformity permit. (a) Purpose and Intent. Many residential structures in the town do not conform to the requirements of this Zoning Code because they were established before the adoption of zoning or before residential floor area limits were established in 1967. The purpose of this section is to allow for the continued existence, reconstruction and modification of nonconforming residential structures, subject to limitations set forth in this section. The intent of these regulations is to protect historic buildings and those that contribute to the Town's small town character; to permit floor area nonconformities to be retained on site redevelopment where the design is appropriate; and to allow other nonconformities to be

maintained when reasonable and where they create the same or fewer impacts than strict conformance with town regulations.

(b) Nonconformity Permit. The town council may permit nonconforming structures in the Single Family Residence and Special Building Site B Districts to be enlarged, extended, reconstructed or structurally altered by approval of a nonconformity permit under this section.

(c) Application. An application for a nonconformity permit shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(d) Review and Approval Authority. The town council shall review and approve, conditionally approve, or deny a nonconformity permit application at a public meeting. The Town Council shall consider the application concurrently with any related application for design review under Chapter 18.41 or demolition permit under Chapter 18.50.

(e) Notice. The town shall mail notice of the meeting at least 10 days prior to the meeting to the property owner and all owners within 300 feet of the property that is the subject of the meeting as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(f) Mandatory findings for nonconformity permit. The town council may approve or conditionally approve a nonconformity permit under this section if the council has facts to support all of the following findings:

(1) The nonconforming structure was in existence at the time the ordinance that now prohibits the structure was passed. The structure must have been lawful when constructed. The property owner has the burden to prove by substantial evidence the nonconforming and legal status of the structure.

(2) The town council can make the findings required to approve any required demolition permit for the structure: The demolition will not remove from the neighborhood or town, nor adversely affect, a building of historical, architectural, cultural or aesthetic value. The demolition will not adversely affect nor diminish the character or qualities of the site, the neighborhood or the community.

(3) The project substantially conforms to relevant design review criteria and standards in Section 18.41.100, even if design review is not required.

(4) Total floor area does not exceed the greater of: a) the total floor area of the existing conforming and/or legal nonconforming structure(s); or b) the maximum floor area permitted for the lot under current zoning regulations. The town shall apply the definition of floor area in effect at the time of the application for a nonconformity permit.

(5) Granting the permit will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

(6) The project will comply with the Flood Damage Prevention regulations in Chapter 15.36.

(7) The fire chief has confirmed that the site has adequate access and water supply for firefighting purposes, or that the project includes alternate measures approved by the fire chief.

(8) The applicant has agreed in writing to the indemnification provision in Section 18.40.180.

(9) The site has adequate parking. For purposes of this section, adequate parking shall mean that the site complies with at least the minimum number of parking spaces required for the zoning district (covered or not covered). If the site does not comply with the covered parking requirement, the Town Council may require covered parking to be provided.

The Town Council may consider the size of the residence and number of bedrooms and may require additional parking up to the following:

<i>Total site floor area (excluding covered parking)</i>	<i>Required off street parking</i>
1,300 square feet to 3,300 square feet	3 spaces
Over 3,300 square feet	4 spaces

(g) Terms and Conditions. Any nonconformity permit approval may include such terms and conditions as deemed necessary or appropriate by the town council to effect the purposes of this ordinance.

(h) Any request that does not comply with the prescribed limitations set forth in this chapter shall require a variance, pursuant to Chapter 18.48. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

18.52.050 Provision applicability--Suspension time limit. The foregoing provisions shall also apply to nonconforming uses and structures created by future amendments to the provisions of this title and any time limit for the suspension of a nonconforming structure or use shall date from the date of the enactment of this title or any amendment which first creates the nonconformity. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

ATTACHMENT 3

SUMMARY OF MARIN COUNTY, CITIES, AND TOWNS NONCONFORMING STRUCTURES REGULATIONS

Belvedere

- ✓ Repairs are permitted to keep the structure in good condition.
- ✓ Alterations and additions are permitted if nonconformity is not increased and provided the total floor area added during any ten year period does not exceed fifty percent of the existing gross floor area of the structure.

Corte Madera

- ✓ Alterations and additions are permitted if they do not increase the nonconformity and conform to the zoning regulations (e.g., setbacks, height, building coverage, floor area, etc.).

Fairfax

- ✓ If destroyed up to 49% of replacement cost by fire or other calamity, the structure may be restored.
- ✓ If destroyed over 50% of replacement cost, nonconformities may be maintained, but not increased, and the restoration must conform with zoning regulations "to the greatest extent possible."
- ✓ Variance required for "any discrepancy relative to conformity." Design Review is also required.

Larkspur

- ✓ Allows interior work subject to issuance of a building permit.
- ✓ Allows a building permit to be issued provided there are no exterior changes to the existing structure and that the construction costs do not exceed 60% of the current replacement value.
- ✓ Requires compliance with setbacks regulations if a foundation is removed or replaced.
- ✓ An addition to a nonconforming structure may be allowed provided the addition does not exacerbate the nonconformity and that the addition meets all other zoning regulations (e.g., setbacks, height, building coverage, floor area, etc.).
- ✓ Discretionary Nonconformity Permit process to allow for exceptions to existing single-family nonconforming structures.

Marin County

- ✓ Allows additions to nonconforming structures provided the addition meets all other zoning regulations (e.g., setbacks, height, building coverage, floor area, etc.).
- ✓ If the nonconforming structure is voluntarily demolished (75% or more of the existing structure), then the new structure has to comply with the current zoning regulations.

Mill Valley

- ✓ Single family residence with nonconforming setbacks may be enlarged or modified provided the nonconformity is not increased.
- ✓ Ordinary maintenance and repairs may be made to any non-conforming building or structure, but 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.

Novato

- ✓ Allows additions to nonconforming structures provided the addition meets all other zoning regulations (e.g., setbacks, height, building coverage, floor area, etc.) and the cost of the work does not exceed 50% of the assessed value of the structure in any 24-month period (no limit to bringing a structure up to code).

San Anselmo

- ✓ Building/structure may be replaced in kind (except increasing zero-foot property line setback to a two-foot maximum setback) if constructed before zoning regulations or had building department and planning department approval.
- ✓ Requires a variance to enlarge, extend, or reconstruct with different dimensions.

San Rafael

- ✓ Ordinary maintenance and repairs may be made to a nonconforming structure to keep the structure in sound condition.
- ✓ Alterations and additions are permitted provided the addition meets all other zoning regulations (e.g., setbacks, height, building coverage, floor area, etc.).
- ✓ An administrative design permit is required for any design changes and the design changes should improve the architectural design of the structure or site design of the development
- ✓ Parking must be conforming.

Sausalito

- ✓ Voluntary replication of more than 50% of the building or structure requires a Nonconformity Permit.
- ✓ Voluntary remodel of more than 50% of the building or structure requires a Nonconformity Permit.
- ✓ Substitution, replacement, expansion, and extension of a nonconforming building or structure may be permitted if:
 - ✓ The shift in nonconformity improves the appearance of the building or structure;
 - ✓ Provides a public benefit; and
 - ✓ The shift of nonconformity brings the building or structure into closer conformity with applicable zoning regulations and general plan
- ✓ On-site Parking required to be brought into conformance.

Tiburon

- ✓ Routine maintenance and repairs permitted.
- ✓ Alteration and/or addition permitted if nonconformity is not increased and provided the addition meets all other zoning regulations (e.g., setbacks, height, building coverage, floor area, etc.).
- ✓ Design Review is required for alterations to nonconforming structures.

ATTACHMENT 5



Minutes

Special Meeting of the General Government Committee Ross Town Council Thursday, May 19, 2016

1. **9:00 a.m. commencement.** The meeting commenced at 9:02AM
2. **Open time for public comments** (Limit 3 minutes per speaker on items not on agenda).
None
3. **Discussion of Nonconforming Structures and Uses Regulations**

Planning Manager Scoble discussed recommended changes to the Nonconforming Structures and Uses regulations as summarized in the General Government Committee staff report dated May 19, 2016. The Committee members agreed on the following changes to the provide clarity to language and process regarding the treatment to nonconforming structures and buildings.

- Wordsmith Section 18.52.030 to make the language more clear when a Nonconformity Permit is required.
- Add language whereby flexibility may be considered when reviewing nonconformity permits subject to specific criteria such as consistency with the design review criteria and standards, the project would not create any adverse impacts on neighboring properties, and that the project would bring the structure into closer conformity.
- Add a provision to Chapter 18.16 to prohibit the conversion of a garage structure when the garage structure is located within the maximum required setbacks for the appropriate zoning district.
- Add a Design Review trigger per Section 18.41.020 that would require design review for the conversion of a garage into livable space when the garage structure is in compliance with the maximum required setbacks for the appropriate zoning district.

The Committee members concluded their discussion and directed staff to prepare the zoning ordinance code amendments and return to the Town Council with an ordinance accordingly.

4. Discussion of Exceptions to Basement and Attics Regulations

Planning Manager Scoble discussed recommended changes to the Exceptions to Basements and Attics regulations as summarized in the General Government Committee staff report dated May 19, 2016. The Committee members agreed on the following changes relative to staff's recommendation:

- Strike the words "materially" and "visible" from Section 18.46.060(d)(3)b.
- Add a required finding to Section 18.46.030(d) that would require the project to substantially conform to relevant design review criteria and standards of 18.41.100.
- Add a definition of "Height" and "Grade" to Chapter 18.12.
- Amend Section 18.16.060 to define "Height Limit" in residential zoning districts.

The Committee members concluded there discussion and directed staff to prepare the zoning ordinance code amendments and return to the Town Council with an ordinance accordingly.

5. Future agenda items. None

6. Next meeting date | TBD. None

7. Adjournment. The meeting adjourned at 10.25AM.

The General Government Committee is a Town Council committee composed of two Council members: Council member Elizabeth Robbins as chairperson and Council member Beach Kuhl. The meeting will be held at Ross Town Hall located at 31 Sir Francis Drake Boulevard in Ross. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Town Manager at (415) 453-1453, extension 107 or (415) 453-1950 (Fax). Notification at least 48 hours prior to the meeting will enable the town to make reasonable accommodation to help insure accessibility to this meeting.