

AGENCY:	Planning Commission
MEETING DATE:	Feb 27, 2020
PREPARED BY:	S McCormick
PRESENTED BY:	S McCormick

AGENDA ITEM SUMMARY REPORT

APPLICATION NO.: Interpretation 1-19/20

OWNER/APPLICANT: Michael E. Mihos

AGENT: Rob Borcich

PROJECT: Zoning Ordinance Interpretation for Additional 12-month Extension of Non-Conforming Use at 225 N Main Street.

LOCATION: 225 N Main Street

APN: 008-151-16-00

LOT SIZE: 0.36 acres

ZONING: Central Business District

ENVIRONMENTAL DETERMINATION: Statutorily exempt from CEQA pursuant to section 015301 existing facilities of the 2020 CEQA Guidelines.

SURROUNDING LAND USES: NORTH: Mixed Use
EAST: CA Hwy 1
SOUTH: Retail
WEST: Offices

APPEALABLE PROJECT: Can be appealed to City Council
 Can be appealed to California Coastal Commission

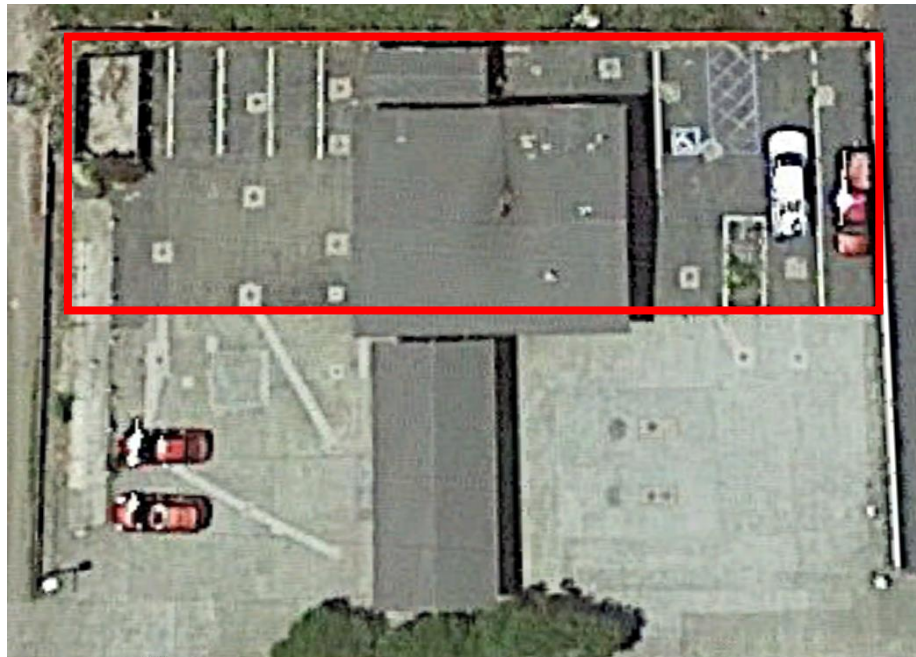
BACKGROUND:

On February 12, 2019 the Planning Commission considered a zoning ordinance interpretation regarding the continuance of a non-conforming use at 225 N Main Street. The property operated for many years as a gas station and/or an auto repair shop in the Central Business District. The service station closed in 2016 and the former (and current) property owner, who is the applicant for this request did not have control of the property. Typically, the non-conforming status of a non-conforming use is lost if the non-conforming use is discontinued for a period of 12 months or more. However, the Director may grant a Minor Use Permit to allow an extension of that period for an additional 12 months if unusual circumstances prevent the timely re-establishment of the use.

Due to the irregular timeframe and specific circumstances, the Director opted to bring this matter to Planning Commission for interpretation in 2019. At that time, the Planning Commission decided to interpret the zoning ordinance to allow the pre-existing non-conforming use to continue. The basis for the determination was: 1) the uncertainty about when the previous business actually closed, and 2) the lack of site control by the current owner to re-establish the non-conforming use given the foreclosure process.

The following special conditions were placed on the business license, so that the operation of a potential service station would conform with §17.42.180, which provides development standards for Service Stations (Attachment 1 – February 12, 2019 Staff Report).

Special Condition 1: Parking shall be limited to the back half of the lot (as illustrated by the red square below) and all vehicles shall be screen from view along the public right of way by a redwood fence and landscaping, as approved by the Director of Community Development. The illegal nonconforming sign on the south east of the property shall be removed prior to approval of a business license.



Special Condition 2: Outdoor activities on the service station site shall be limited to fueling, replenishing air, water, oil and similar fluids, and the replacement of minor parts (e.g., lamp bulbs, wiper blades, and other similar items) requiring only the use of small hand tools while a vehicle is being serviced at the pump island. Other minor auto repair activities shall occur entirely within an enclosed structure.

Special Condition 3: There shall be no outdoor display of equipment or merchandise.

Special Condition 4: Vehicles shall not be parked on sidewalks, parkways, driveways, or alleys, and shall not be parked on the premises for the purpose of sale.

Special Condition 5: Outdoor storage and display cabinets are prohibited. The outdoor storage of tires such as, property tax relief with the implementation of Mills Act program or developing a business improvement district is prohibited. No outdoor vending machines are allowed.

Special Condition 6: Tow truck operations are allowed, however no abandoned, disabled, junked, wrecked, or otherwise non-operational motor vehicles shall remain on site for more than five days, and all such vehicles shall be stored entirely within an enclosed structure. No more than 8 non-working vehicles may be stored on the facility at any one time.

Special Condition 7: Convenience sales (the sale of beer and wine, other drinks, food, and/or other merchandise) is allowed however the floor dedicated to such activities shall be limited to 1,000 SF. Additionally, the four parking spaces for this use shall be signed and striped to the approval of the Director of Community Development.

Special Condition 8: If, for any reason, the service station ceases to sell gasoline for more than 115 out of 120 days, all gasoline pumps and signs shall be removed from the site and all gasoline storage tanks shall be removed or filled in compliance with Federal and State regulations, subject to the approval of the Fire Department.

Special Condition 9: Landscaping shall be installed, permanently maintained and, if necessary, replaced, in compliance (and prior to approval of the occupancy permit) and in accordance with the following standards: 1) minimum of 15 percent of the entire site shall be landscaped; 2) boundary landscaping is required along the property line abutting Main Street, except for driveways; 3) landscaped areas shall have a minimum width of eight feet, and 4) shall be separated from abutting vehicular areas by curbing at least six inches higher than the abutting pavement.

ISSUE:

The applicant is requesting a second and final extension for a 12-month period of non-conforming status in order to settle environmental issues on the site, prior to reestablishing a service station. The Coastal Land Use and Development (CLUDC) Code Chapter 17.90 establishes regulations for nonconforming land uses, structures, and parcels that were lawful

before the CLUDC was adopted. A detailed set of requirements for the loss of the non-conforming status is provided, as follows:

17.90.050 - Loss of Nonconforming Status

A. Termination by discontinuance.

1. If a nonconforming use of land or a nonconforming use of a conforming structure is discontinued for a continuous period of 12 months or more, all rights to legal nonconforming status shall terminate.
2. The Director shall base a determination of discontinuance on evidence including the removal of equipment, furniture, machinery, structures, or other components of the nonconforming use, disconnected or discontinued utilities, or no business records to document continued operation.
3. **The Director may grant a Minor Use Permit to allow an extension of that 12-month period for a period not to exceed an additional 12 months if the Director finds that circumstances of a significant or unusual nature prevent or have prevented the timely reestablishment of the use.**
4. Once the rights to a legal nonconforming status have terminated, any further use of the site or structure shall comply with the regulations of the applicable zoning district and all other applicable provisions of this Development Code.

As noted above in section A3, an extension of the 12-month period allowing non-conforming use could be granted for an additional 12-month period, if the review authority finds that circumstances of a significant or unusual nature prevent or have prevented the timely reestablishment of use.

Circumstances on site that have prevented the timely reestablishment of a service station include:

- Remediation activities involving the previous owner of the site, Phillips-66 and North Coast Regional Water Quality Board;
- Permitting process with Mendocino County Department of Environmental Health; and
- Escrow pending on the above processes.

If the Planning Commission chooses to determine that the pre-existing non-conforming use should not be extended for an additional 12-month period, the basis for this decision would be that the one-year non-conforming extension to reestablish a service station has passed and the circumstances preventing the timely reestablishment of service station use does not merit special consideration. If this is the determination of the Planning Department, the City would initiate code enforcement on the property owner requiring:

1. All above ground gas tanks be removed from the site;
2. All existing underground storage tanks be removed or filled to the satisfaction of Mendocino County Environmental Health Department and the North Coast Regional Water Quality Board;
3. The site is remediated from all significant environmental impacts, as approved by the North Coast Regional Water Quality Board and Mendocino County Environmental Health Department; and

4. The abandoned signage on the site be removed.

RECOMMENDED PLANNING COMMISSION ACTION

Make a determination/interpretation of the zoning ordinance as to an extension of the non-conforming land use at 225 N Main Street.

ATTACHMENTS

1. February 12, 2019 Staff Report

NOTIFICATION

1. "Notify Me" Subscriber List: Fort Bragg Downtown Businesses