

<b>AGENCY:</b>	Planning Commission
<b>MEETING DATE:</b>	Feb 12, 2019
<b>PREPARED BY:</b>	M Jones
<b>PRESENTED BY:</b>	M Jones

## AGENDA ITEM SUMMARY REPORT

**APPLICATION NO.:** Interpretation 1-19

**OWNER:** Michael E. Mihos

**APPLICANT:** Michael E. Mihos

**AGENT:** Michael E. Mihos

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

**LOCATION:** 225 N Main Street

**APN:** 008-151-1600

**LOT SIZE:** 0.36 acres

**ZONING:** Central Business District

**ENVIRONMENTAL DETERMINATION:** Statutorily exempt from CEQA pursuant to section 015301 existing facilities of the 2018 CEQA Guidelines.

**SURROUNDING LAND USES:**  
NORTH: Duncan Engineering, Qualcomm (windows)  
EAST: Mendocino Chocolates, Parking Lot  
SOUTH: Fed Ex, Napa Auto Parts  
WEST: Alley, Lime Industries

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

### ISSUE:

This property was operated for many years as a gas station and/or an auto repair shop in the Central Business District. It was operated as a legal non conforming use since at least 2001, which is defined by the Coastal Land use and Development Code as follows:

- D. Nonconforming use. A use of land and/or a structure (either conforming or nonconforming) that was legally established and maintained before the effective date of this Development Code or any subsequent amendments thereto, but does not conform to the current Development Code requirements for allowable land uses within the applicable zoning district.

The CLUDC provides a detailed set of requirements for the loss of the non-conforming status 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 A1, the non-conforming status for a non-conforming use is lost if the non-conforming use is discontinued for a period of 12 months or more. However, as noted in A2, 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.

The timeline below does not clearly provide a basis for the Director to allow the property owner to re-establish this non-conforming use at this address:

1. Robs Classic Cars operated a gas station and repair business at this location from 2007 through 2013, as evidenced by a current business license through the entirety of this time period.
2. On July 15, 2014 the current owner, Michael Mihos, sold the property to Randall and Vivian Resse.
3. Randall and Vivian Reese operated 225 N Main Street as a full service gas station with minor repair, however the timeline for this operation is unclear. The Reese's had a valid business license in 2014, which they did not renew. However, the operation was the subject of multiple code enforcement letters over the years,

which may indicate continued operation. The code enforcement record starts in 2015 with letters regarding illegal signage and a fallen down shed, which were abated in 2015. From 2016 through June of 2017 eight violation letters were sent out for improper storage of tires. The tires were finally removed in late 2017.

4. The current owner began foreclosure procedures on July 30<sup>th</sup> 2018.
5. The foreclosure was completed on December 12, 2018 and Michael Mihos re-secured possession of the property.

Per section 17.90.050a2, it is difficult to determine exactly when the business ceased operations. As noted above the previous owners (the Reeses) appear to have operated 225 N Main Street as a gas station/auto repair facility at least through 2016 and possibly through sometime in 2017.

The foreclosure process gives the Director sufficient reason to allow the continuation of the non-conforming use, if the use has been abandoned less than 24 months ago. However, if the use was abandoned prior to Feb 2017, the director does not have the authority to provide a continuation of the non-conforming use.

Staff is seeking an interpretation from the Planning Commission regarding whether or not to allow the property owner to retain the non-conforming status for a service/gas station at this property. Staff has prepared some brief issues for your consideration as you deliberate on this issue:

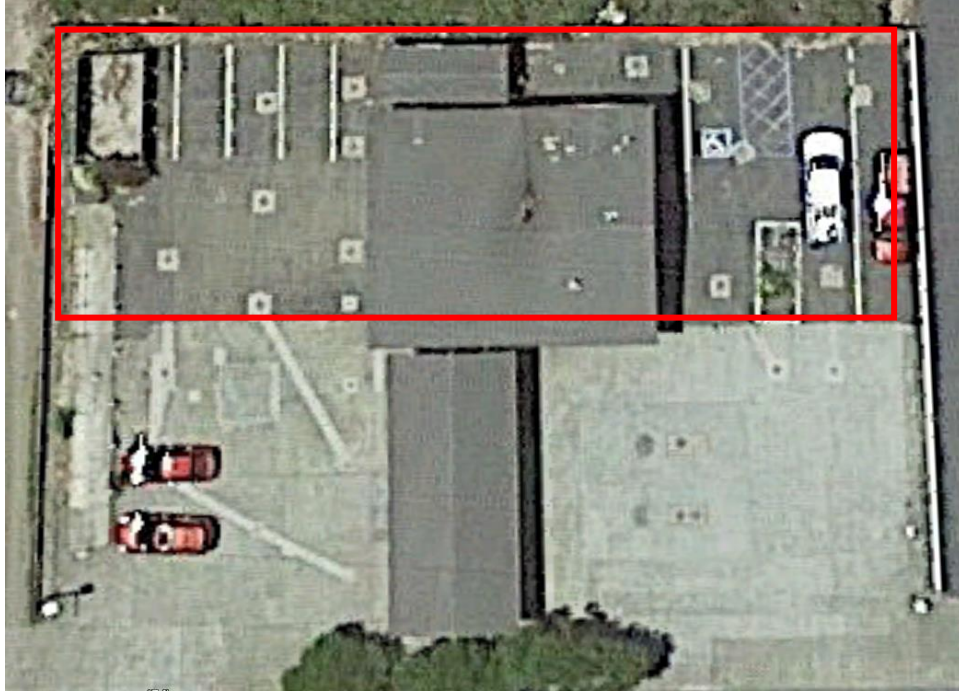
1. The property owner has not had legal possession of his property for over five years in order to re-establish the non-conforming use status (by either selling or renting the property as a gas station or for minor repairs). Normally a new property owner would acquire such a property with a buyer-be-ware decision making frame; as this was a foreclosure the original/current property owner repossessed a property over which they had no site control and over which they could not exercise buyer be ware.
2. The gas station, as a non-conforming use, could be considered compatible with other uses in the direct neighborhood, which include: 1) two other repair shops within the CBD (the Shop, at the corner of Oak and Main Street, and Napa Auto Part's repair facility at the corner of Alder and Main Street; 2) and other eclectic use types, including the Fire station, Fort Bragg Plumbing and Electrical, Fed Ex, a hair salon, a window retailer, an engineer's office and the outdoor store.
3. The existing building and site lay out do not lend themselves well to reuse by another allowable use type (office, retail, restaurant, etc.), as the existing site improvements are suitable only for a gas station or a minor auto repair and maintenance shop. A new use would likely require the property owner to demolish the existing structures and fill in (and abandon in place) the existing below ground gas tanks, at considerable cost, and redevelop the site for another use.

4. The property owner has had a lot of interest from businesses who would like operate a minor auto repair and maintenance business at 225 N Main Street. Staff can independently confirm that there is a shortage of vacant auto repair shops in town that can serve this purpose.
5. The site was subject to the comprehensive remediation of site soils in 2009 and does not currently pose a risk to health or safety.
6. This site has been underutilized for many years and it has been the subject of multiple code enforcement letters against the interim owners.

Based on these issues, if the Planning Commission decides to interpret the zoning ordinance to allow the pre-existing non-conforming use to continue, the basis for the determination would be two fold: 1) 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.

If this approach is taken, staff recommends that the following special conditions be placed on the business license for operation of the property, so that the operation conforms with the operating requirements for service stations, which are listed under 17.42.180.

**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 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 are 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.

If the Planning Commission chooses to determine that the pre-existing non-conforming use has been lost, the basis for this decision would be that the two year time limit to re-establish the use has already passed. If this decision is made by the Planning Department the City would initiate code enforcement on the property owner requiring that:

1. All existing underground storage tanks be filled with sand or concrete;
2. All above ground gas tanks be removed from the site; and
3. The abandoned signage on the site be removed.

## **RECOMMENDED PLANNING COMMISSION ACTION**

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

1. Shall this non-conforming status be extended or not?
2. What is the basis for your interpretation?

## **ATTACHMENTS**

1. Aerial and Site Photos
2. Letter from Mike Mihos dated January 14, 2019