



# City of Santa Barbara

## Community Development Department

www.SantaBarbaraCA.gov

November 29, 2012

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Mr. Caldwell;

Thank you for your letter dated May 24, 2012 regarding the preparation of Zoning Information Reports (ZIR) and violations found during that process. We have had a number of internal meetings over the past couple of months with Jim Armstrong, Steve Wiley, key planning staff, and myself. This letter serves as our response.

We are committed to resolve these issues as best as possible and propose that we consider an ordinance amendment to streamline parts of the ZIR process and the review and permitting process when violations need to be abated.

#### Purpose of ZIRs

We agree that the function of the ZIR has evolved over time. Originally, the purpose of the ZIR was to inform a potential buyer of the zoning and permitted use of the property. Street and planning files may have been researched, but archive plans were rarely checked. The majority of zoning violations noted in the ZIR were not followed-up with enforcement actions. Overtime, the ZIR has evolved to also include obvious building code violations such as new square footage, illegal dwelling units, or conversion of non-habitable space to habitable space. It has also become an important record for the abatement of zoning and building code violations found on site. We feel this evolution is warranted as ZIRs are an important mechanism to ensure a quality housing stock in the City and abate potentially unsafe conditions.

#### As-Built Issues

We recognize there are problems with some previous ZIRs not documenting every violation that may have existed on the property at the time the ZIR was prepared. There are various reasons why there are sometimes discrepancies between previous ZIRs and ZIRs prepared today. One reason is the level and/or quality of the research previously performed during the preparation of the previous ZIRs. Prior to 1996, City staff did not have easy access to the archive plans as they were located off-site. Today, the archive plans are located on-site and are routinely reviewed as part of the record check performed for each ZIR.

During the preparation of a ZIR, Staff researches planning and street files, archive plans, historic research documents, Sanborn Maps, and County Assessor records to try and find evidence in the record as to when a "new" improvement first appeared. Staff looks to see if the improvement might have been covered by a previous City approval, may have been a field change during construction signed off by a Building Inspector, or if it took place at a time when the City did not require a certain permit and the zoning standards were different. Based on this research, staff uses judgment to

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resolve issues and signoff on some improvements when there is at least some credible evidence to allow the improvement to remain.

However, if information in the record clearly indicates a violation of zoning or building codes has occurred, staff cannot overlook those "as-built" improvements.

#### Possible Zoning Ordinance Amendment to Address As-Built Issues

Currently, some "as-built" improvements require a modification of a zoning standard and approval by the Staff Hearing Officer (SHO). Staff expedites and streamlines this process by meeting directly with the applicant, placing the project on the next available Staff Hearing Officer agenda, and not charging the applicant a double fee for the "as-built" improvements. At present the modification process is the only official way for staff to resolve a situation where the improvements are not in compliance with the Zoning Ordinance.

To try to improve this situation, Staff intends on pursuing an amendment to the Zoning Ordinance to allow the Staff Hearing Officer to grant administrative approval of modifications for minor zoning regulations in instances where discrepancies in the record are discovered and it is evident that the improvement has been there for a very long time. It is important to note that not all discrepancies will be solved by this amendment. Additional time and expense could still be required to resolve the more major discrepancies through the modification process and construction permits.

This new ordinance will need to be initiated by Council and other workload assignments will need to be considered to allow staff to work with the Planning Commission, Council, and the public in the review and identification of improvements that may qualify for these administrative modifications. We hope you see the value in pursuing such an amendment and will be able to support our efforts in this area.

#### Enforcement of Health and Safety Violations

Planning Staff continues to focus enforcement efforts on health and safety violations identified in ZIRs such as illegal dwelling units and new habitable space. Staff estimates that between 10-15 percent of all ZIRs issued have immediate enforcement issues. Not pursuing enforcement on these major violations would not solve the issue of "new" identified violations in a ZIR. It would only push the abatement of the violation to a later date and would require the new property owner to abate the violation with the next building permit issued for the property.

#### Reliance On Disclosure Process Instead of ZIRs

Your letter states that the ZIR may have become "an unnecessary evil" given all the required disclosures and utilization of professional inspectors during real estate transactions. Staff believes there are important differences between the ZIR and the other disclosures. To our knowledge, no City record check is required as part of these disclosures. The property owner must state whether they are aware of any additions, alterations, or repairs that may have been made without the necessary permits or may not be in compliance with building codes.

For whatever reason, this does not always seem to be occurring as evidenced by what we hear from realtors and owners about the issues staff finds in the ZIR process. It is common to hear that they did not know the particular improvement was built without City approval or permits at the time they bought the property. Planning Staff considers ZIRs to be necessary to properly inform buyers of the status of the improvements on the property and to abate zoning and building code violations.

#### Requirement for ZIRs

Not identifying zoning and building code violations at the time of sale has the potential to more significantly impact future property owners in the long term. Staff does not support the complete elimination of ZIRs for all residential properties as they provide important information to the prospective buyer and provide the mechanism to remove unsafe conditions on the site. Over time, City staff has seen fewer illegal units in ZIR inspections. The use of ZIRs has evolved to provide a self-correcting mechanism for abating illegal dwelling units. If the requirement for a ZIR was eliminated, overtime staff believes the City would experience an increase in illegal dwelling units and unpermitted and potentially unsafe construction.

#### Cost of ZIRs

ZIRs are one of the few services provided by the Planning Division that are intended to be full cost recovery. Staff believes that it is not appropriate to have tax payers subsidize private real estate transactions. If the cost was reduced below that which it costs the City to provide the service, the level of service would either have to be reduced accordingly or the funds would have to be taken from another program in the Planning Division. Planning Staff is preparing an in-house fee study for the next budget cycle. Based on preliminary results, we have found that our current ZIR fee for 1-4 units accurately reflects the cost of preparing ZIRs for those numbers of units. However, it appears that our fee for properties which have 5 or more units on site may be too high. A fee reduction will be proposed for those properties in the next budget cycle.

Thank you for your efforts to engage us in the discussion of improving the ZIR process. We look forward to meeting with you to discuss this letter and moving forward to seek Council direction on a possible Zoning Ordinance amendment.

Sincerely,



Paul Casey

Assistant City Administrator/Community Development Director

cc: Mayor and Council  
Jim Armstrong, City Administrator  
Steve Wiley, City Attorney  
Bettie Weiss, City Planner  
✓ Susan Reardon, Senior Planner

