



AGENDA ITEM REPORT

TO: Trinidad Planning Commission

FROM: Trever Parker, City Planner

DATE: May 10, 2017; revised May 15, 2017

RE: Reinman 2013-11A-R: Revocation of an After-the-fact Approval of Design Review and a Coastal Development Permit.

Please bring your material from the April 19th meeting. I do not have a lot of new information regarding the project or the violations to provide to you. But I did want to give you some additional procedural information.

What Happens if Permit is Revoked

If the 2013-11A permit is revoked, that does not necessarily mean that the property will go back to exactly what it was prior to the unpermitted construction. A lot of the work that was done only required building permits and not Design Review. And there are various uses for a garage other than parking that do not require Planning Commission approval. Unfortunately, Trinidad's old ordinances are not always comprehensive enough to provide black and white answers. That makes it all the more important for the Planning Commission to pursue development of policies and standards for permitting detached living spaces as directed by the City Council and recommended by staff.

At this point we do have enough of a history of reviewing various garage conversion requests that there is some precedent to fall back on. If you look at the list of work done on the back space that was included with the March 2014 staff report and with last month's packet, my notes in italics describe what approvals are needed for each work item. The bottom line though, is that I would have to work with the owner and building inspector to determine what would have to be removed, what could remain, and what could be modified there without the further planning approvals should the permit be revoked. It is not necessarily a simple answer.

Take the first item on the list as an example of how complicated this is. It is my understanding that the original, approximately 20' x 40' structure, was used as a carport / boat storage. Design Review is not generally required for demolition, but it is required for additions or alterations to existing structures. If the existing structure were

proposed as a new project, how the regulations apply depend on how it was altered from the previous structure. Accessory structures up to 500 sq. ft. in area are exempt from design review. However, the garage structure is already over 1,000 sq. ft., so any additions to it would require Design Review. But the 10' x 20' covered area should be considered a modification of the previous 800 sq. ft. carport/shed structure, which may require Design Review, depending on the scope of the changes. Unfortunately, since the old structure was built before the 70's, we have no plans for it, so it is impossible to tell how it changed in terms of height, materials, etc. Keep in mind that if the Design Review approval were to be revoked, the owner would be able to put back a 20' x 40' structure similar to the one that was removed. Repair or replacement of existing structures is exempt from Design Review.

In terms of the use of the garage for other than parking, there are many options. It could be used for storage, a workshop (e.g. woodworking), fish and game processing, a game room, hobby room, music room, art studio, etc. All of this can happen with just building permits and no Planning Commission approval. The shower/tub would need to come out, but these types of spaces are allowed to have half-baths and interior remodeling without planning review. The Planning Commission does not have authority to revoke the Building Permits for work that does not require Planning Commission approval. Building Permits by themselves are ministerial, which means there is no City discretion – either they meet the building codes or they don't. If they do, then there is no mechanism for the City to deny or revoke one. And since all the work has already gotten building permits, it necessarily meets codes, and revocation of 2013-11A will not affect that work. This includes most of the interior work, and things like windows, doors and siding. Therefore, it does not seem that revoking the permit would actually resolve many of the neighbors concerns and complaints; though it would not be able to be used as a bedroom or other permanently occupied space.

Recommended Process for Violations & When is Permit Revocation Appropriate

The enforcement process ranges from immediate compliance after one request/notification by the City, to long, drawn-out legal battles. Nuisance abatement is the most common process for correcting ongoing violations, particularly those that are not allowable and can not be permitted. The City has a fairly robust nuisance abatement ordinance that was updated in 2004, whereby fines can be issued and liens placed against the property for the costs of gaining compliance. It authorizes the City to eventually do the necessary work itself to correct the violation and bill the property owner for it. There are a lot of legal steps involved prior to that though. Ideally, compliance is gained after the first violation "courtesy" letter, and no further action by the City is required. Nuisance abatement is useful in a variety of situations, including enforcement of conditions of approval.

There could, however, be a situation where conditions can no longer be complied with that would warrant permit revocation. For example, the City of Blue Lake's ADU ordinance requires that the property owner live in one of the units (so does Trinidad's

uncertified ADU ordinance). So when second units are permitted, this requirement is included as a condition of approval. There was an instance in Blue Lake recently in which the owner subsequently moved off the property and rented both units after a second unit was permitted under those rules. The owner did not want to take the option of moving back to the property or selling it, so City revoked the second unit permit. However, the entire structure was not required to be removed, just the kitchen and shower so that it was no longer an independent living unit.

Another situation in which revocation may make sense could be if a project has not yet been constructed, but conditions have somehow changed, or new information come to light since the approval that would alter the findings used for approval. However, this is an unlikely scenario. The changed conditions or new information would have to be very substantial. It would not include something like a neighbor saying that they didn't realize the project would block their views. It could be that something in the application was misrepresented, like not disclosing a wetland on the building site.

The situation where permit revocation may be the most useful would be for a Use Permit for which the approved use ends up causing a nuisance. Use Permits don't generally authorize physical development; that would be a separate permit process, such as Design Review. Therefore, the Use Permit could be revoked without also requiring removal of physical improvements. As described at the April meeting, there is legal precedent for this scenario.

There may also be situations where violations are not complied with, even after several attempts/requests have been made. In this case, the City may find that revoking a permit is the most prudent course of action. However, since compliance was not forthcoming, the Nuisance Abatement process would likely still be necessary to gain compliance after permit revocation.

The situation at 407 Ocean does not fall into any of these categories. Staff still does not recommend revoking the permit Reinman 2013-11A. The main reason being that there are currently no violations on the property to justify doing so. In addition, there presumably are no nuisances occurring because the property is currently vacant. Further, revoking the permit will not have the effect of turning the structure back into a garage as is being requested by the neighbors, since most the work that was done did not require Planning Commission approval. Finally, revocation would eliminate the limitations that were put on the property as conditions of that permit approval.

Option for Revocation

This is not an outcome to be taken lightly. As described at the last meeting, as far as staff knows, there are no outstanding violations on the property; all structures and uses are in compliance with City codes and the Planning Commission approval of 2011-13A. Specific findings would need to be made in order to legally justify the permit revocation. This could include revision of one or more of the required Design Review

and View Protections findings that were used to approve the project. But since those are mostly aesthetic, such a decision should also include specific findings related to the violation and justification as to why the permit is being revoked even when the property is now in compliance with all conditions. This could include things such as impacts to the neighborhood that are specific to granting of the permit. The findings should not be based on the property owner outside of the history of violations. They also should not just be based on nuisances caused by the tenants, which could occur in any single-family residence; again they must be specific to the Design Review approval and how that has led to such impacts. In making such findings, the Planning Commission should consider precedence of existing and future similar situations.

As an alternative to revocation, it has been suggested that the permit could be modified by incorporating additional conditions of approval. In particular, it has been suggested that a condition be added to require periodic inspections of the property to ensure that all conditions and City requirements continue to be met. That could potentially be done as part of this hearing process. It would be straightforward if the property owner agrees to a new condition, but the City Attorney was unsure if it could be added without his agreement. Section 17.72.090, which authorizes the Planning Commission to revoke a permit makes no mention of modifying it.

Appeal Potential

If the Planning Commission revokes or modifies the permit, that would be an appealable action. However, deciding not to revoke or modify the permit would not be appealable, because it does not constitute an action; it is a decision to not take action. Section 17.72.100 of the Zoning Ordinance sets forth and regulates the appeal process. It begins: *"In the case of any variance, conditional use permit, design review permit, coastal development permit, or denial of a proposed change in the zoning map by the planning commission, and in the case of any order, requirement, decision or other determination made by any city employee, the procedures for appeals shall be as provided as follows:"* Deciding not to take action on an existing permit does not fall into one of those categories.

Staff Recommendation

Staff still suggests that the appropriate course of action at this point is to develop City-wide protocols and standards for permitting detached living spaces as directed by the City Council. This should make future decision-making easier and help to avoid similar problems in the future. Because there are currently no existing violations at 407 Ocean, staff does **not** feel that permit revocation is necessary or justified. Staff does support the idea of modifying the permit to add a condition to require periodic inspections of the property to ensure that conditions continue to be met.

Attachments

Memo from the City Attorney date May 11, 2017

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May 11, 2017

To: Planning Commission
From: Andrew Stunich

Re: Notice of Intent to Revoke Permit

General Law Regarding Permits:

Once a use permit has been properly issued the power of a municipality to revoke it is limited. (Trans-Oceanic Oil Corp. v. Santa Barbara, 85 Cal.App.2d 776, 783.) Of course, if the permittee does nothing beyond obtaining the permit it may be revoked. (Trans-Oceanic Oil Corp. v. Santa Barbara, supra.) Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to the protection of which he is entitled. (Trans-Oceanic Oil Corp. v. Santa Barbara, supra, at pp. 784—787; Dobbins v. Los Angeles, 195 U.S. 223, 239; Jones v. City of Los Angeles, 211 Cal. 304, 309—312.) I believe these same rules apply to a design review permit.

When a permittee has acquired such a vested right, it may be revoked if the permittee fails to comply with reasonable terms or conditions expressed in the permit granted. (Trans-Oceanic Oil Corp. v. Santa Barbara, supra, 85 Cal.App.2d at p. 783) or if there is a compelling public necessity. (Jones v. City of Los Angeles, supra, 211 Cal. at p. 314.)

In revoking a permit lawfully granted, due process requires that a governmental agency act only upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation.

A compelling public necessity warranting the revocation of a use permit for a lawful business may exist where the conduct of that business constitutes a nuisance. (Jones v. City of Los Angeles, supra, 211 Cal. 304, 315—317.) The principle underlying this rule is that if such a business constitutes a nuisance it can be removed under the police power of a municipality to prohibit and enjoin nuisances.

Construction that violates a municipal code also constitutes a nuisance. (Golden Gate Water Ski Club v. County of Contra Costa (2008) 165 Cal.App.4th 249, 255.)

Although a permittee must be given reasonable notice and opportunity to be heard before the City may revoke a permit, there is no precise manner of hearing which must be afforded; a formal evidentiary hearing, with sworn testimony, full rights of confrontation, and cross-examination, is not required. (See Mohilef v. Janovici (1996) 51 Cal.App.4th 267, 286, 293-298 [revocation of previously permitted use under a vested permit].) Nor does due process require the adoption of other

formal rules of evidence, such as the hearsay rule, which might place an undue burden on the City. (Id. at pp. 293, 295.)

Analysis:

How the foregoing rules apply to the instant case is not completely clear because I cannot find any direct case on point. I could not find one case where a City wanted to revoke a design review permit due to past violations and claims of nuisances related to the property and this is at least the third time I have tried to find such a case. However, this is not a clean case of just a design review permit. This case is odd because it is not clear if the permit is actually a de facto CUP. It is a permit issued with conditions that go beyond design review. It has all the earmarks of a CUP and it may have been legal to issue it as a CUP given that as I understand the facts, the permit was not sought in advance. Hence, the permit-holder may not have been entitled to the permit as a matter of right thus making the CUP that was issued perfectly legal. Plus, the time to challenge the conditions has run, but I fear if a new permit or modified permit is issued, it may re-trigger the statute of limitations.

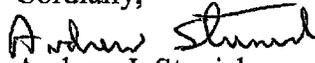
Consequently, even though a nuisance action is a safer way to deal with problems at the subject location, it may well be lawful to revoke the permit if the Planning Commission finds long-term nuisance conditions that are likely to continue. In speaking with neighbors, it appears that sufficient evidence of ongoing nuisance problems may exist, but a full determination should depend on what is presented at the hearing.

On the other hand, we are in many ways still dealing with a design review permit and it is not even clear to me if revoking it would address any of the ongoing nuisances claimed by neighbors. I have discussed the matter with some neighbors and they relate a long history of problems that will be shared with the Planning Commission at the hearing of this matter.

My Advice Remains As Follows: As a general rule, nuisance issues should NOT be resolved via revoking permits. With no clear case on point we are begging for litigation if we revoke the permit with no guarantee as to the result. This is an unusual fact pattern with no clear precedent and the outcome of such cases are impossible to predict with certainty. However, if the facts establish that revocation will help alleviate long-term problems associated with the property, a permit revocation may well hold up under such facts, but I cannot guarantee it or even give a high degree of confidence. Depending on the facts presented at the hearing, it could be 50-50 chance of success case, if litigated.

If the decision was mine, given the uncertainty, I would not revoke the permit unless very strong facts support a clear connection to revoking the permit and alleviating some of the nuisances. Another option would be to ask the permit-holder to agree to new conditions that would allow for periodic verification that the structure will not be converted back to a separate rental unit.

Cordially,


Andrew J. Stunich

The Draft General Plan Circulation Element is available for download at the following link:

<http://www.trinidad.ca.gov/phocadownload/PlanningCommission/GeneralPlanUpdate/circulation%20pc%20approved.pdf>