



Town Council Agenda Report

Date: December 10, 2019 Item No. 14

To: Honorable Mayor and Town Council

Subject: DEVELOPMENT CODE AMENDMENT NO. 2019-015, AN AMENDMENT TO TITLE 9 "DEVELOPMENT CODE" OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE TO ALLOW LEGAL, NONCONFORMING, MULTI-FAMILY PROJECTS CONSISTING OF TWO (2) TO FOUR (4) UNITS LOCATED WITHIN THE SINGLE-FAMILY RESIDENTIAL (R-SF) ZONING DESIGNATION TO BE FULLY REPAIRED OR REPLACED IN THE EVENT OF FIRE OF OTHER DAMAGING EVENT.

From: Douglas Robertson, Town Manager

Submitted by: Pam Cupp, Senior Planner
Planning Department

Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

- A. **Determine** that, pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), the project is exempt from environmental review because the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA.
- B. **Find** the facts presented within the staff report, including the attached Planning Commission Resolution No. 2019-018 adopted November 6, 2019, support the required Findings for approval of the proposed Development Code Amendment and adopt the Findings.
- C. **Move** to waive the reading of Ordinance No. 524 in its entirety and read by title only.
- D. **Introduce** Ordinance No. 524 approving Development Code Amendment No. 2019-015; and
- E. **Direct** staff to file a Notice of Exemption with the San Bernardino County Clerk of the Board.

SUMMARY:

In March of 2018 the Town Council adopted Resolution 2018-07 and Ordinance No. 500 amending the Town of Apple Valley General Plan Land Use Element by modifying the land use designation of 356 parcels from Medium Density Residential (R-M) to Single-Family Residential (R-SF). This action also modified the zoning designation of the same 356 parcels from Multi-Family Residential (R-M) to Single-Family Residential (R-SF). The zone change was necessary because these particular parcels were financially unfeasible to develop with multi-family units based upon the distance to sewer infrastructure. Seventy-six (76) of the parcels modified contained existing multi-family units.

As part of the land use and zone change approval, the Town Council wanted to ensure that the existing multi-family projects would be allowed to rebuild in the event of a fire or other damage. This amendment will allow these multi-family structures effected the by the above action to rebuild in the event of fire or another damaging event. The modifications proposed were initially included in broader Code Amendment that was subsequently Tabled by the Town Council. The issue regarding legal nonconforming multi-family units was again moved forward at the May 1, 2019 joint meeting.

ANALYSIS:

The Development Code has provisions for the orderly termination of nonconforming uses and structures. A legal, nonconforming use is one which lawfully existed prior to the effective date of the Development Code, or subsequent amendments, which is no longer permitted in the land use district in which it is located. Legal nonconforming uses may be altered or enlarged with the review and approval of a Conditional Use Permit by the Planning Commission. Regarding repair of damaged or partially destroyed nonconforming structures, the Development Code states the following:

“D. Repair of Damaged or Partially Destroyed Structures

1. A legal nonconforming structure(s) containing a nonconforming use which is damaged or partially destroyed by fire, natural disaster or any other calamity to the extent that the cost of restoration does not exceed seventy-five (75) percent of the assessed value of the entire structure based on the assessment roll current immediately prior to the time of damage or destruction, may be restored and the nonconforming use resumed. Notwithstanding subsection 9.07.020.B, *Discontinuance/Resumption Prohibited*, of this Code, Restoration shall be started within one (1) year and shall be diligently pursued to completion.
2. When the cost of repair or reconstruction exceeds seventy-five (75) percent of said evaluation, or the structure is voluntarily razed or is required by law to be razed, the structure shall not be restored except in full conformity with the regulations for the district in which it is located and the nonconforming use shall not be resumed, except as permitted within this Chapter.
3. **Exception.** The provisions of Section 9.07.030 (D) 1. shall not apply to legal nonconforming single-family homes located in the R-M or M-U zones. Legal nonconforming single-family homes damaged or destroyed to any extent in these

zones may be replaced, at the square footage meeting the requirements of Table 9.28.040-B (Minimum Unit Size).”

It is recommended the multi-family structures consisting of two (2) to four (4) units located within the Residential Single-family zone be included as exceptions to above paragraph 3.

A complete strike-thru/underline version of the proposed changes can be reviewed within the attached Planning Commission report from the November 6, 2019 public hearing for Development Code Amendment No. 2019-015.

NOTICING:

Development Code Amendment No. 2019-015 was advertised as a Town Council public hearing in the Apple Valley News newspaper on November 29, 2019.

ENVIRONMENTAL REVIEW:

Development Code Amendment No. 2019-015 will allow existing legal, nonconforming multi-family structures with up to four (4) units to be repaired or replaced in the event of fire or other damage. It will not promote development or have any effect upon the environment. Therefore, staff has determined that the project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA.

REQUIRED FINDINGS:

An Amendment to the Development Code requires that the Town Council address two (2) required “Findings”, as listed within Development Code Section 9.06.060. For Council consideration, the required Findings are listed below, along with a comment addressing each. If the Council concurs with these comments, it may be adopted. If the Council wishes to modify the offered comments, after considering input and public testimony at the public hearing, modifications to the Findings and Code Amendment can be included.

A. The proposed amendment is consistent with the General Plan; and

Comment: The General Plan is the blueprint for the community’s future growth. Specific Goals and Objectives are provided within each of the adopted General Plan’s State-mandated Elements. Supporting the continued operation and occupancy of legal nonconforming multi-family structures will further the goals of the Housing Element by preserving multi-family housing stock. Therefore, Development Code Amendment No. 2019-015 is consistent with the General Plan.

- B. The proposed amendment will not be detrimental to the public health, safety or welfare of the Town or its residents.

Comment: The legal nonconforming multi-family structures proposed for an exception relating to repair and replacement in the event of fire or other damage are existing structures located within established neighborhoods. Allowing these structures to be repaired or replaced will not be detrimental to the public health, safety or welfare of the Town or its residents.

Fiscal Impact:

Not Applicable

Attachments:

Ordinance No. 524

Planning Commission Staff Report

Planning Commission Resolution No. 2019-018

ORDINANCE NO. 524

AN ORDINANCE OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY MODIFYING CHAPTER 9.07 “NONCONFORMING USES AND STRUCTURES” TO ALLOW LEGAL, NONCONFORMING MULTI-FAMILY STRUCTURES CONTAINING UP TO FOUR (4) UNITS AND LOCATED WITHIN THE SINGLE-FAMILY RESIDENTIAL (R-SF) ZONING DESIGNATION TO BE REPAIRED OR REPLACED IN THE EVENT OF FIRE OR OTHER CALAMITY.

WHEREAS, The General Plan of the Town of Apple Valley was adopted by the Town Council on August 11, 2009; and

WHEREAS, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and

WHEREAS, On May 1, 2019, the Town Council initiated a Development Code Amendment to allow legal nonconforming multi-family structures located within the Single-Family Residential (R-SF) zoning designation the opportunity to be completely repaired or replaced in the event of a fire or other calamity;

WHEREAS, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and

WHEREAS, On November 6, 2019, the Planning Commission of the Town of Apple Valley conducted a duly noticed public hearing on Development Code Amendment No. 2019-015, receiving testimony from the public and adopting Planning Commission Resolution No. 2019-018 forwarding a recommendation to the Council; and

WHEREAS, Specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Chapter 9.07 “Nonconforming Uses and Structures” to allow legal, nonconforming multi-family structures containing up to four (4) units and located within the Single-Family Residential (R-SF) zoning designation to be repaired or replaced in the event of fire or other calamity; and.

WHEREAS, Development Code Amendment No. 2019-015 is consistent with the Town's General Plan and Title 9 "Development Code" of the Municipal Code of the Town of Apple Valley and shall promote the health, safety, and general welfare of the citizens of the Town of Apple Valley; and

WHEREAS, The project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, On November 29, 2019, Development Code Amendment No. 2019-015 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

WHEREAS, On December 10, 2019, the Town Council of the Town of Apple Valley conducted a duly noticed and advertised public hearing on Development Code Amendment No. 2019-015, receiving testimony from the public and

NOW, THEREFORE, the Town Council of the Town of Apple Valley, State of California, does ordain as follows:

Section 1. Find that the changes proposed by Development Code Amendment No. 2019-015 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

Section 2. Pursuant to Section 15061(b)(3) of the State Guidelines to Implement the California Environmental Quality Act (CEQA), it can be determined that the Code amendment is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty, as with the proposed Code Amendment, that there is no possibility that the proposal approved under Development Code Amendment No. 2019-015 will have a significant effect on the environment and, therefore, the Amendment is EXEMPT from further environmental review.

Section 3. Amend paragraph 3 of Subsection 9.07.030(D) "Repair of Damaged or Partially Destroyed Structures" of Chapter 9.07 "Nonconforming Uses and Structures" to read as follows:

"3. **Exception.** Legal nonconforming single-family homes located in the R-M or M-U zones or legal nonconforming multi-family projects consisting of no more than four (4) units located within the R-SF zone damaged or destroyed by fire or other calamity may be repaired as needed, and if replaced, shall meet the requirements of subsection 13b "Minimum dwelling unit size" of Table 9.28.040-A "Site Development Standards".

Section 5. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

Section 6. Effective Date. This Ordinance shall become effective thirty (30) days

after the date of its adoption.

Section 7. Severability. If any provision of this Ordinance, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provisions of this Ordinance are declared to be severable.

Approved and Adopted by the Town Council and signed by the Mayor and attested to by the Town Clerk this ____ day of _____, 2019.

Honorable _____, Mayor

ATTEST:

Ms. La Vonda M. Pearson, Town Clerk

Approved as to form:

Approved as to content:

Mr. Thomas Rice, Town Attorney

Mr. Douglas B. Robertson, Town Manager



DATE: November 6, 2019 Item No. 4

CASE NUMBER: Development Code Amendment No. 2019-015

APPLICANT: Town of Apple Valley

PROPOSAL: An amendment to Title 9 "Development Code" of the Town of Apple Valley Municipal Code to allow legal, nonconforming, multi-family projects consisting of two (2) to four (4) units located within the Single-Family Residential (R-SF) zoning designation to be fully repaired or replaced in the event of fire or other damaging event.

LOCATION: Town-wide

ENVIRONMENTAL DETERMINATION: Staff has determined that the project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA.

PREPARED BY: Ms. Pam Cupp, Senior Planner

RECOMMENDATION: Adopt Planning Commission Resolution No. 2019-018

BACKGROUND

On January 17, 2018, the Planning Commission held a public hearing for General Plan Amendment No. 2017-002 and Zone Change No 2017-002. Planning Commission Resolution No. 2017-003 recommended to the Town Council that it adopt a Resolution amending the Town of Apple Valley General Plan Land Use Element by modifying the land use designation of 356 parcels from Medium Density Residential (R-M) to Single-Family Residential (R-SF). The Commission further recommended the Council adopt an Ordinance modifying the zoning designation of the same 356 parcels from Multi-Family

Residential (R-M) to Single-Family Residential (R-SF). In March of 2018 the Town Council adopted Resolution 2018-07 and Ordinance No. 500 as recommended by the Planning Commission.

Of the 356 parcels rezoned, seventy-six (76) properties contain existing multi-family structures, each containing two (2) to four (4) each. As part of this approval, the Planning Commission and Town Council wanted to ensure that the existing multi-family projects would be allowed to rebuild in the event of a fire or other damage. This amendment will allow these multi-family structures effected the by the above action to rebuild in the event of fire or another damaging event. The modifications proposed were initially included in broader Code Amendment that was subsequently Tabled by the Town Council. The issue regarding legal nonconforming multi-family units was moved forward at the May 1, 2019 joint meeting.

ANALYSIS

The Development Code has provisions for the orderly termination of nonconforming uses and structures. A legal, nonconforming use is one which lawfully existed prior to the effective date of the Development Code, or subsequent amendments, which is no longer permitted in the land use district in which it is located. Legal nonconforming uses may be altered or enlarged with the review and approval of a Conditional Use Permit by the Planning Commission. Regarding repair of damaged or partially destroyed nonconforming structures, the Development Code states the following:

“D. Repair of Damaged or Partially Destroyed Structures

1. A legal nonconforming structure(s) containing a nonconforming use which is damaged or partially destroyed by fire, natural disaster or any other calamity to the extent that the cost of restoration does not exceed seventy-five (75) percent of the assessed value of the entire structure based on the assessment roll current immediately prior to the time of damage or destruction, may be restored and the nonconforming use resumed. Notwithstanding subsection 9.07.020.B, *Discontinuance/Resumption Prohibited*, of this Code, Restoration shall be started within one (1) year and shall be diligently pursued to completion.
2. When the cost of repair or reconstruction exceeds seventy-five (75) percent of said evaluation, or the structure is voluntarily razed or is required by law to be razed, the structure shall not be restored except in full conformity with the regulations for the district in which it is located and the nonconforming use shall not be resumed, except as permitted within this Chapter.
3. **Exception.** The provisions of Section 9.07.030 (D) 1. shall not apply to legal nonconforming single-family homes located in the R-M or M-U zones. Legal nonconforming single-family homes damaged or destroyed to any extent in these zones may be replaced, at the square footage meeting the requirements of Table 9.28.040-B (Minimum Unit Size).”

It is recommended the multi-family structures consisting of two (2) to four (4) units be included as exceptions to above paragraph 3. Staff is further recommending deletion of

the section number to which the exceptions apply. It is not the intent to exempt damaged property from the timeliness of the repair as outlined in above Paragraph 1, or allow a structure to be rebuilt that is voluntarily razed as in Paragraph 2. The intent is to allow these properties to be repair or replaced in the event of fire or other damaging event without associating the cost of repair to the structures assessed valuation. Of further note, the Table identified in Paragraph 3 is duplicative and will be recommended for removal as part of a future Code Amendment. Staff is recommending modifying the Table reference as appropriate.

Staff is offering the following modifications to Subsection 3 of Section 9.07.030(D) "Repair of Damaged or Partially Destroyed Structures" of Chapter 9.07 "Nonconforming Uses and Structures" for the Commission's consideration with strike-throughs for deletions and additions shown as bold underline:

3. **Exception.** ~~The provisions of Section 9.07.030 (D) 1 shall not apply to~~ Legal nonconforming single-family homes located in the R-M or M-U zones **or legal nonconforming multi-family projects consisting of no more than four (4) units located within the R-SF zone** ~~Legal nonconforming single-family homes damaged or destroyed~~ **by fire or other calamity** ~~to any extent in these zones may be~~ **repaired as needed, and if** replaced, at the square footage meeting **shall meet** the requirements of **subsection 13b "Minimum dwelling unit size" of Table 9.28.040-A B** "Site Development Standards". ~~(Minimum Unit Size).~~

FINDINGS

An amendment to the Development Code requires that the Planning Commission address two (2) required "Findings", as listed within Development Code Section 9.06.060. For Commission consideration, the required Findings are listed below, along with a comment addressing each. If the Commission concurs with these comments, they may be adopted and forwarded to the Council for its consideration of the Development Code Amendment. If the Commission wishes modifications to the offered comments, after considering input and public testimony at the public hearing, modifications to the Findings and Code Amendment recommendations can be included into the information forwarded to the Council for consideration.

A. The proposed amendment is consistent with the General Plan; and

Comment: The General Plan is the blueprint for the community's future growth. Specific Goals and Objectives are provided within each of the adopted General Plan's State-mandated Elements. Supporting the continued operation and occupancy of legal nonconforming multi-family structures will further the goals of the Housing Element by preserving multi-family housing stock. Therefore, Development Code Amendment No. 2019-015 is consistent with the General Plan.

B. The proposed amendment will not be detrimental to the public health, safety or welfare of the Town or its residents.

Comment: The legal nonconforming multi-family structures proposed for an exception relating to repair and replacement in the event of fire or other damage are existing structures located within established neighborhoods. Allowing these structures to be repaired or replaced will not be detrimental to the public health, safety or welfare of the Town or its residents.

NOTICING

Development Code Amendment No. 2019-015 was advertised as a public hearing in the Apple Valley News newspaper on October 25, 2019.

ENVIRONMENTAL REVIEW

Development Code Amendment No. 2019-015 will allow existing legal, nonconforming multi-family structures with up to four (4) units to be repaired or replaced in the event of fire or other damage. It will not promote development or have any effect upon the environment. Therefore, staff has determined that the project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA.

RECOMMENDATION

Following receipt of public input and discussion by the Commission, it is recommended that the Commission move to approve Planning Commission Resolution No. 2019-018 forwarding a recommendation that the Town Council amend Title 9 "Development Code" of the Town of Apple Valley Municipal Code as outlined within the staff report.

PLANNING COMMISSION RESOLUTION NO. 2019-018

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL ADOPT DEVELOPMENT CODE AMENDMENT NO. 2019-015 AMENDING TITLE 9 “DEVELOPMENT CODE” OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE, BY MODIFYING CHAPTER 9.07 “NONCONFORMING USES AND STRUCTURES” TO ALLOW LEGAL, NONCONFORMING MULTI-FAMILY STRUCTURES CONTAINING UP TO FOUR (4) UNITS AND LOCATED WITHIN THE SINGLE-FAMILY RESIDENTIAL (R-SF) ZONING DESIGNATION TO BE REPAIRED OR REPLACED IN THE EVENT OF FIRE OR OTHER CALAMITY.

WHEREAS, The General Plan of the Town of Apple Valley was adopted by the Town Council on August 11, 2009; and

WHEREAS, Title 9 “Development Code” of the Municipal Code of the Town of Apple Valley was adopted by the Town Council on April 27, 2010; and

WHEREAS, Title 9 (Development Code) of the Municipal Code of the Town of Apple Valley has been previously modified by the Town Council on the recommendation of the Planning Commission; and

WHEREAS, On May 1, 2019, the Town Council initiated a Development Code Amendment, directing staff to draft language to allow legal nonconforming multi-family structures located within the Single-Family Residential (R-SF) zoning designation the opportunity to be completely repaired or replaced in the event of a fire or other calamity;

WHEREAS, Specific changes are proposed to Title 9 “Development Code” of the Town of Apple Valley Municipal Code by amending Chapter 9.07 “Nonconforming Uses and Structures” to allow legal, nonconforming multi-family structures containing up to four (4) units and located within the Single-Family Residential (R-SF) zoning designation to be repaired or replaced in the event of fire or other calamity; and,

WHEREAS, on October 25, 2019, Development Code Amendment No. 2019-015 was duly noticed in the Apple Valley News, a newspaper of general circulation within the Town of Apple Valley; and

WHEREAS, staff has determined that the project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, on November 6, 2019 the Planning Commission of the Town of Apple Valley conducted a duly noticed and advertised the public hearing on Development Code Amendment No. 2019-015 receiving testimony from the public; and

WHEREAS, Development Code Amendment No. 2019-015 is consistent with the Land Use Element goals and policies of the Town's General Plan and Title 9 "Development Code" of the Municipal Code of the Town of Apple Valley and shall promote the health, safety, and general welfare of the citizens of the Town of Apple Valley.

NOW, THEREFORE, BE IT RESOLVED that in consideration of the evidence presented at the public hearing, and for the reasons discussed by the Commissioners at said hearing, the Planning Commission of the Town of Apple Valley, California, does hereby resolve, order and determine as follows and recommends that the Town Council make the following findings and take the following actions:

Section 1. Find that the changes proposed by Development Code Amendment No. 2019-015 are consistent with the Goals and Policies of the Town of Apple Valley adopted General Plan.

Section 2. The project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State Guidelines to Implement CEQA, which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question, the proposed Code Amendment, may have a significant effect on the environment, the activity is not subject to CEQA.

Section 3. Amend paragraph 3 of Subsection 9.07.030(D) "Repair of Damaged or Partially Destroyed Structures" of Chapter 9.07 "Nonconforming Uses and Structures" to read as follows:

"3. **Exception.** Legal nonconforming single-family homes located in the R-M or M-U zones or legal nonconforming multi-family projects consisting of no more than four (4) units located within the R-SF zone damaged or destroyed by fire or other calamity may be repaired as needed, and if replaced, shall meet the requirements of subsection 13b "Minimum dwelling unit size" of Table 9.28.040-A "Site Development Standards".

Approved and Adopted by the Planning Commission of the Town of Apple Valley this 6th day of November 2019.

Vice-Chairman Bruce Kallen

ATTEST:

I, Maribel Hernandez, Secretary to the Planning Commission of the Town of Apple Valley, California, do hereby certify that the foregoing resolution was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held on the 6th day of November 2019, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ms. Maribel Hernandez, Planning Commission Secretary