

ATTACHMENT D

BZA Staff Report (without Attachments) dated August 19, 2021



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

DATE: AUGUST 19, 2021

TO: BOARD OF ZONING APPEALS

FROM: LUIS ROCHA, ZONING ADMINISTRATOR

SUBJECT: ZONING ADMINISTRATOR DETERMINATION: APPEAL OF A DETERMINATION BY THE ZONING ADMINISTRATOR THAT A MEDICAL SERVICES – EXTENDED CARE LAND USE LOST ITS NONCONFORMING STATUS PURSUANT TO PMC SECTION 17.71.060.B1 (TERMINATION OF NONCONFORMING USE BY DISCONTINUANCE).

RECOMMENDATION:

It is recommended that the Board of Zoning Appeals:

1. Uphold the Zoning Administrator's Determination that the nonconforming use as a Medical Services – Extended Care land use lost its nonconforming status and shall not be reestablished.

EXECUTIVE SUMMARY:

This appeal is in response to a Zoning Administrator's determination made on June 16, 2021 (Attachment "A") that a previous nonconforming Medical Services – Extended Care land use (dba 'Golden Cross Health Care', a skilled nursing facility) lost its nonconforming status after 12 months of disuse. The subject site is located in the FGSP-RM-16 (Fair Oaks – Orange Grove Specific Plan, Multi-Family Residential, 16 Units per Acre) zoning district. As indicated in Zoning Code Section 17.33.040, Table 3-14 (Allowed Uses and Permit Requirements for Fair Oaks/Orange Grove RM-16 district), a Medical Services – Extended Care land use is not permitted in this zoning district. On June 10, 2020, a suspension of the facilities license was issued by the California Department of Public Health in response to the ongoing risk to the health and safety of residents. (Attachment

“B”). All residents were subsequently evacuated from the facility, and, lacking a state license to legally house and treat residents, it has not operated as a skilled nursing facility since then.

The subject Zoning Administrator’s determination (Attachment “A”) originally identified the nonconforming land use as Residential Care, General, but subsequent to the subject appeal, and after additional research, it was determined that the previous use of the facility operated as a skilled nursing facility and is classified as a Medical Services – Extended Care land use. Both uses are not permitted in the FGSP-RM-16 zoning district, are nonconforming land uses and are subject to the same time limits associated with nonconforming uses. As a result, the determination made by the Zoning Administrator on June 16, 2021 that a nonconforming land use lost its nonconforming status after 12 months of disuse, applies to the Medical Services – Extended Care land use.

The Zoning Administrator’s determination on the disuse of the facility was initiated in response to the California Department of Public Health (CDPH) issuing a Temporary Suspension of the license needed by Golden Cross Health Care to operate on June 10, 2020. (Attachment “B”). The suspension was issued as a result of violations that posed an ongoing significant risk to the health and safety of its residents and employees. On June 10, 2020, Golden Cross Health Care was precluded from providing patients with any medical services in their facility and the Medical Services – Extended Care land use was discontinued. On June 11, 2020, CDPH evacuated the facility and residents have not been allowed to return to the facility to this day.

The operational deficiencies of Golden Cross Health Care that posed an “immediate jeopardy” to the residents’ health and safety, and which led to its evacuation and license suspension, as well as the suspension and the evacuation, are well documented as a matter of public record. They were the subject of analysis and reporting by The Los Angeles County Office of the Inspector General, in the report entitled, “Improving Oversight and Accountability Within Skilled Nursing Facilities: Second Interim Report, February 2021, pages 6-12. (Attachment “D”). See, also, “Pasadena nursing home evacuated after failing to provide basic medical services, city says,” Pasadena Star News, June 12, 2020, (Attachment “E”) and “Inside the ‘anarchy’ of Pasadena’s evacuated nursing home,” Pasadena Star New, June 18, 2020 (Attachment “F”); “Residents evacuated from Pasadena skilled nursing facility after state suspends license,” Los Angeles Times, June 13, 2020 (Attachment “G”); “Dozens of Patients Removed from Pasadena Nursing Home,” US News, June 12, 2020 (Attachment “H”)

Pursuant to PMC Section 17.71.060.B1, without any further action by the City, a nonconforming use shall lose its nonconforming status and shall not be reestablished if the nonconforming use is discontinued for any reason for a continuous period of at least 12 months. Based on the information provided by the State, and on the fact that no other permits or licenses were issued to operate the facility at the site prior to the June 10, 2021 date, the Zoning Administrator made a determination that the nonconforming Medical Services – Extended Care use was discontinued for a continuous period of at least 12 months. Therefore, the nonconforming use lost its nonconforming status and shall not be reestablished.

BACKGROUND:

What is before the Board of Zoning Appeals is the appeal of a determination on the part of the Zoning Administrator that a Medical Services – Extended Care use, located at 1450 North Fair Oaks Avenue, lost its nonconforming status as a result of the use being discontinued for a continuous period of at least 12 months.

In 1954, Variance No. 4146 was approved to allow the establishment of a 25-bed surgical hospital at this site, which was not a permitted use at the time, and required approval of a land use Variance to operate. The facility, and related on-site improvements, were built in 1965. At some point the use of the facility transitioned from a surgical hospital into a convalescent home with 96 beds providing skilled nursing facility services. The term convalescent home is synonymous with skilled nursing facilities and the City of Pasadena classifies a skilled nursing facility as a Medical Services – Extended Care land use. The subject property is zoned FGSP-RM-16 and per Zoning Code Section 17.33.040, Table 3-14 (Allowed Uses and Permit Requirements for Fair Oaks/Orange Grove RM-16 district) the zoning district does not permit Medical Services – Extended Care as a land use. As a result, the skilled nursing facility, operated by Golden Cross Health Care, was operating as a legal, nonconforming Medical Services – Extended Care land use until having its license suspended on June 10, 2020.

As detailed further in the Inspector General’s Interim Report, on May 4, 2020, a California Department of Public Health Healthcare-Associated Infections Program (HAI) nurse conducted an on-site assessment of the facility and determined that the facility had not fully complied with the recommendations given to the facility during previous trainings and documented noncompliance with cohorting and other COVID-19 infection prevention and control protocols. Then, “[o]n May 15, 2020 the [Los Angeles County Department of Public Health, Health Facilities Inspection Division (HFID)] identified [six] deficiencies [related to COVID-19 procedures] that posed “immediate jeopardy” to residents’ health and safety. Immediate jeopardy is defined as a situation in which a resident has suffered or is likely to suffer serious injury, harm, impairment or death as a result of a facility’s noncompliance with one or more health and safety requirements.”

After continued failed attempts to remedy the complaints, on June 10, 2020, a Temporary Suspension Order of the facility’s license was issued by CDPH in response to the ongoing risk to the health and safety of residents. (Attachment “B”) According to the report, “by the time the decision was made to evacuate the facility, 71 residents and 32 staff had contracted COVID-19 and 16 residents had died”. On June 11, 2020, the residents were evacuated from Golden Cross Health Care (Golden Cross) and Golden Cross was no longer allowed to provide services to any residents and the use was discontinued.

Given the severity of the conditions and the suspension of the license, the City of Pasadena was following the status of the facility with CDPH. Knowing that the facility had its license to operate suspended in June 2020, in June 2021, the Zoning Administrator reviewed whether the facility had been able to resume activity, and determined that the use had not resumed. Therefore, on June 16, 2021, the Zoning Administrator issued a determination that the nonconforming Medical Services – Extended Care land use lost its

nonconforming status due to disuse of the facility for a period of at least 12 months. This decision was appealed by the appellant on June 28, 2021 (Attachment “C”, Appeal Application) on the basis that the use had not been discontinued for more than 12 months.

OVERCONCENTRATION OF SKILLED NURSING FACILITIES (SNF)

The City of Pasadena’s General Plan identifies ten “Community Places”. The subject facility is located within the Northwest “Community Place” and due to an overconcentration of institutional uses in the Northwest, General Plan Land Use Element Goal 40, Policy 40.2 prohibits a number of new institutional uses (including Medical Services – Extended Care) from locating anywhere within the boundaries of the Northwest “Community Place.”

“Policy 40.2: Institutional Uses Overconcentration:

Prohibit new development of but allow for the improvement of: Single-Room Occupancy, Adult Day Care, General, Medical Services – Extended Care (i.e., Convalescent Facilities), Detention Facilities, Hospitals, Maintenance and Service Facilities, Residential Care, General, or a use classification that includes a use listed here with another use.”

In addition, data indicates that there is an overconcentration of skilled nursing facility (SNF) beds within the City. The CA Department of Public Health, Healthcare Facility Licensing and Certification Program licenses and regulates SNFs in CA and has a database that includes the number of licensed SNF beds at each facility in the state. The number of licensed SNF beds in the City of Pasadena per 100,000 residents is 2.3 times the number in Los Angeles County as a whole. The general occupancy rate of licensed SNF beds in Pasadena, as of July 28, 2021, was only 72 percent, indicating that many licensed beds were unoccupied. This is generally representative of SNF-bed occupancy in Pasadena. As a result, even without the inclusion of the beds previously at Golden Cross, there is a surplus of available SNF beds and no immediate demand for additional SNF beds in Pasadena. Hence, the discontinuation of this specific use will not have a negative impact on health care or available health care.

ANALYSIS:

Land Use Definitions: Medical Services – Extended Care

The Zoning Code classifies Golden Cross Health Care as a “Medical Services – Extended Care” use, which is defined as a land use that is:

“[a]n establishment providing care on a 24-hour basis for persons requiring regular medical attention, but excluding facilities providing surgical or emergency medical services.” (emphasis added)

Golden Cross Health Care previously provided 24-hour skilled nursing services and provided medical attention to patients, thus fulfilling the criteria of the land use. The

integral component that classifies the use of the facility as a Medical Services – Extended Care is the provision of medical attention to persons on a 24-hour basis.

Status of the Nonconforming Use

The subject site is located in the FGSP-RM-16 zoning district. As indicated in PMC Section 17.33.040, Table 3-14 (Allowed Uses and Permit Requirements for the Fair Oaks/Orange Grove Specific Plan RM-16 district), a Medical Services – Extended Care use is not a permitted use in this zoning district. Therefore, Golden Cross Health Care's previous use of the site as a Medical Services – Extended Care use was nonconforming.

Pasadena Zoning Code Chapter 17.71 is entitled "Nonconforming Uses, Structures and Lots" and Section 17.71.060 is entitled "Abatement and Termination" where subsection "B" therein is entitled "Termination of nonconforming uses by discontinuance." Section 17.71.060.B(1)(3) and (4) of the Zoning Code states:

"(1) Without any further action by the City, a nonconforming use shall lose its nonconforming status and shall not be reestablished if the nonconforming use is discontinued for any reason for a continuous period of at least 12 months.

(3) The determination of discontinuance (aka abandonment) shall be supported by evidence, satisfactory to the Zoning Administrator (e.g. the actual removal of equipment, furniture, machinery, structures, or other components of the nonconforming use and not replaced, the turning off of the previously connected utilities, or where there are no business receipts/records or any necessary licenses available to provide evidence that the use is in continual operation).

(4) In an appeal of the Zoning Administrator's determination that the use has lost its nonconforming status by discontinuance, the appellant shall be required to present evidence satisfactory to the Zoning Administrator showing that the use is in continual operation."

The nonconforming use was discontinued on June 10, 2020 due to the suspension of Golden Cross Healthcare's license to operate by the California Department of Public Health. In addition, on June 11, 2020, all residents were evacuated based on advice from the California Attorney General's Office.

Based upon CDPH protocol, Golden Cross was unable to provide residents with medical services when their license was suspended on June 10, 2020. It is at this point that the discontinuance of use commenced. Staff confirmed with CDPH, and other agencies, that new licenses to operate the facility as a Medical Services – Extended Care use were not issued for the subject site prior to June 10, 2021, twelve months after the suspension, nor have residents/patients been allowed back into the facility.

Based on this information, the Zoning Administrator made a determination that the nonconforming Medical Services – Extended Care use was discontinued for a continuous

period of at least 12 months and on June 10, 2021, twelve months following the license suspension, the nonconforming use lost its nonconforming status and could not be able to reestablish. As of the writing of this report, the appellant has not presented satisfactory evidence that the use was in continual operation; refer to appeal discussion (next page).

The timeline below identifies a sequence of events that occurred since the State suspended Golden Cross Health Care’s license. The 12-month period began on June 10, 2020, when the license was suspended by CDPH and ended on June 10, 2021.

Period of 12 months	<ul style="list-style-type: none"> ○ June 10, 2020: Golden Cross Health Care license to operate a skilled nursing facility suspended by CDPH. Commencement of discontinuance. ○ June 11, 2020: All staff and residents of the facility were evacuated from the facility. ○ June 10, 2021: Nonconforming use discontinued for a continuous period of 12 months. ○ June 16, 2021: Zoning Administrator issued determination that the nonconforming use lost its nonconforming status due to disuse. ○ June 28, 2021: Appeal of the Zoning Administrator’s Determination.
---------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Appeal

In their submitted appeal application (Attachment “C”), the appellant asserts that the use of the property did not cease on June 10, 2020, and in fact, has never ceased and is still active today. The appellant supports this assertion by stating that the beds are still at the facility, the medical records are still available at the facility and the office functions of the facility are still proceeding. In addition, in the appeal, the appellant states that while the facility “does not have any patients...[t]he Facility continues to be maintained in a condition to receive patients.” The appellant contests that the use as a Medical Services – Extended Care facility has continued even though no patients reside on-site.

However, in order to maintain a nonconforming use, the use itself has to continue at the subject address—as described in the land use definition in the Zoning Code. This would have required the facility to have “provided care on a 24-hour basis for persons requiring regular medical attention”, which is not possible when there are no persons residing on the property to receive such services due to the suspension of the license. Simply maintaining beds and medical records or an office function of the previous use does not continue the use as a Medical Services – Extended Care use. As of the writing of this report, the appellant has not presented any evidence to support the assertions that the actual use was in continual operation. Furthermore, such use would not be legal as the necessary licenses for patient care have been suspended and are not in place. As a result, the Zoning Administrator correctly determined that the use as a Medical Services – Extended Care use ceased when the facility’s license was suspended and the residents were vacated from the property.

CONCLUSION:

The Zoning Administrator has considered the appeal and has determined that the Determination was correctly made. The nonconforming use was discontinued on June 10, 2020, when the license required to provide patients with medical services was suspended. Staff confirmed that a license was not reinstated or a new license to operate the facility as a Medical Services – Extended Care use was not issued for the subject site prior to June 10, 2021 and thus the discontinuance of use continued for at least 12 months. Therefore, it is recommended that the Board of Zoning Appeals uphold the Zoning Administrator’s Determination that the nonconforming Medical Services – Extended Care land use lost its nonconforming status and shall not be reestablished.

Respectfully Submitted,



Luis Rocha
Zoning Administrator

Prepared by:



Jennifer Driver
Planner

Attachments:

- Attachment A – Zoning Administrator Determination, dated June 16, 2021
- Attachment B – Notice of Temporary Suspension from CDPH, dated June 10, 2020
- Attachment C -- Appeal Application, dated June 28, 2021
- Attachment D – Inspector General’s Interim Report, dated February 2021
- Attachment E -- Pasadena Star News article, dated June 12, 2020
- Attachment F -- Pasadena Star News article, dated June 18, 2020
- Attachment G -- Los Angeles Times article, dated June 13, 2020
- Attachment H -- US News article, dated June 12, 2020