



Planning & Community Development Department

Appeal Zoning Administrator Determination #55

City Council
November 29, 2021





Z.A. Determination #55

Planning & Community Development Department

- Determination:
 - > Determination by the Zoning Administrator that a nonconforming Medical Services – Extended Care land use at 1450 North Fair Oaks Avenue lost its nonconforming status pursuant to PMC Section 17.71.060.B1, when the nonconforming use was discontinued for a continuous period of at least 12 months (Termination of Nonconforming Use by Discontinuance).
- Appeal:
 - > Appeal of the decision of the Board of Zoning Appeals to uphold Zoning Administrator's Determination #55 that the nonconforming Medical Services – Extended Care use, located at 1450 North Fair Oaks Avenue, did not lose its nonconforming status.



Background

Planning & Community Development Department

- **March 16, 2011:** Golden Cross Health Care obtained a Business License with the City of Pasadena.
- **May 4, 2020:** A California Department of Public Health Healthcare–Associated Infections Program (HAI) nurse conducted an on-site assessment of the facility:
 - Determined that the facility had not fully complied with the recommendations given to the facility during previous trainings
 - Documented noncompliance with cohorting and other COVID-19 infection prevention and control protocols
- **May 15, 2020:** 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.
- **June 10, 2020:** Golden Cross license suspended by the Licensing and Certification Program division of CDPH. Medical Services – Extended Care use was discontinued.
- **June 11, 2020:** Golden Cross residents evacuated; have not returned to this day.



Background

Planning & Community Development Department

- **February 2021**: Inspector General issued report titled “Improving Oversight and Accountability Within Skilled Nursing Facilities: Second Interim Report.”
- **May 24, 2021**: Licensing and Certification Program of CDPH permanently revoked Golden Cross Health Care’s license to operate the facility because they had not complied with the statutory obligation to renew the license.
 - Pursuant to Pasadena Municipal Code Section 17.71.060.A.2, due to the revocation of the required license to operate the nonconforming use, the use shall cease and be abated.
- **June 10, 2021**: Facility has had no residents residing there, no medical services provided, and the nonconforming use has been discontinued for a continuous period of 12 months.
 - Pursuant to PMC Section 17.71.060.B.1, because the nonconforming use was discontinued for a continuous period of at least 12 months, the facility lost its nonconforming status.



Determination Timeline

Planning & Community Development Department

Before the City Council is an appeal of a decision made by the Board of Zoning Appeals.

- **June 16, 2021**: Zoning Administrator's Determination #55 that a nonconforming Medical Services – Extended Care land use lost its nonconforming status due to disuse.
- **June 28, 2021**: Appeal of the Zoning Administrator's Determination by the owner of the facility, "1450 N Fair Oaks LLC."
- **August 19, 2021**: Board of Zoning Appeals heard the appeal of the Zoning Administrator's Determination; Determination upheld.
- **August 26, 2021**: Appeal of the Board of Zoning Appeals decision to uphold the Zoning Administrator's Determination by the owner of the facility.

The hearing before the City Council is a *de novo* hearing where the Council has no obligation to honor the prior decision and has the authority to make an entirely different⁵ decision.



Land Use and Definition

Planning & Community Development Department

- Zoning:
 - > 1450 North Fair Oaks Avenue is zoned FGSP-RM-16, which prohibits the Medical Services – Extended Care land use.
- Medical Services – Extended Care (land use):
 - > “[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)



Termination of Nonconforming Use

Planning & Community Development Department

- PMC Section 17.71.060.B.(1), (3), and (4):
 - 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.**



Termination of Nonconforming Use (cont.)

Planning & Community Development Department

- PMC Section 17.71.060.A.2:
 - A. **Termination for violation of or change of use.** Whenever any of the following facts are found to exist with reference to a nonconforming use, the nonconforming protection/benefits provided by this Chapter shall cease, and the use shall be abated, except as otherwise allowed by this Chapter.
 - 2) The revocation or termination or suspension of any license or permit that is required in order to operate the nonconforming use;



Board of Zoning Appeals (BZA) Public Hearing

Planning & Community Development Department

August 19, 2021 – Board of Zoning Appeals heard the Appeal of the Zoning Administrator's Determination.

- Staff made a presentation and recommended that the BZA uphold the Determination and addressed the assertions in the appeal, which included:
 - That the use of the property did not cease on June 10, 2020, and in fact, has never ceased and is still active today.
 - That the owner of the property, '1450 North Fair Oaks, LLC,' has maintained the property in a condition to receive patients despite the operator's license, 'Golden Cross Health Care,' being suspended.
 - Use of facility was continued because 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.
 - The appellant contests that the use as a Medical Services – Extended Care facility has continued even though no patients reside on-site.



BZA Public Hearing – August 19, 2021 (cont.)

Planning & Community Development Department

Appellants Presentation

- Prior to the hearing, the appellant submitted a written letter to the Board of Zoning Appeals for review discussing additional reasons they believe the City erred.
- The appellant then presented the following reasons to the Board of Zoning Appeals:
 - (1) The Determination did not comply with the legal standard for abandonment of nonconforming rights, as delineated by California courts;
 - (2) That the City has not offered the required evidence to support loss of nonconforming property rights under the Zoning Code;
 - (3) That the suspension of use was involuntary and temporary and should be allowed to continue as a matter of equity and fairness; and,
 - (4) That the property's land use is not dictated by the CDPH license.



BZA Public Hearing – August 19, 2021 (cont.)

Planning & Community Development Department

Staff Response:

- 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.
 - > That the facility “provided care on a 24-hour basis for persons requiring regular medical attention.”
 - > As there are no persons residing on the property to receive such services due to the suspension of the license, this is not possible.
 - > 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.
 - > The appellant has not presented any evidence to support the assertions that the actual, as described in the land use definition, use was in continual operation.
 - > The license to operate the Medical Services – Extended Care was suspended in June 2020 and then revoked by the state in May 2021.
- Board of Zoning Appeals motioned to uphold the Zoning Administrator’s Determination.
 - > Motion resulted in a 4-0 vote by the four members present.
- **August 26, 2021** – Decision was appealed by the property owner of 1450 N. Fair Oaks Avenue.



Summary of Appeal – City Council

Planning & Community Development Department

- Appellant cites the following:
 - (1) The Zoning Administrator Determination did not comply with the legal standard for abandonment of nonconforming rights, as delineated by California courts;
 - (2) The City has not offered the required evidence to support loss of nonconforming property rights under the Zoning Code; and,
 - (3) The suspension of use was involuntary and temporary and should be allowed to continue as a matter of equity and fairness.
 - (4) The property's land use is not dictated by the CDPH license.



Summary of Evidence and Conclusion

Planning & Community Development Department

- Staff considered the appeal, and based on the evidence, the Zoning Administrator's Determination was correctly made.
 - > The nonconforming use was discontinued on June 10, 2020, when the license required to provide patients with services was temporarily suspended.
 - > Residents were vacated on June 11, 2020 and Golden Cross was not able to provide patients with care after this date.
 - > Golden Cross's License to operate a SNF was permanently revoked on May 24, 2021 by CDHP.
 - > No residents currently reside at 1450 North Fair Oaks Avenue.
 - > No license or permit to operate the facility as a Medical Services – Extended Care use was issued for the subject site prior to June 10, 2021 nor have residents been allowed to return.
 - > No evidence was provided by the appellant to support the continuance of the nonconforming use.
- Thus on June 10, 2021, the discontinuance of the nonconforming use



Staff Recommendation

Planning & Community Development Department

- Therefore, it is recommended that the City Council uphold the Board of Zoning Appeals decision to:
 - > Uphold the Zoning Administrator's Determination #55, that the nonconforming Medical Services – Extended Care land use at 1450 North Fair Oaks Avenue lost its nonconforming status due to disuse and shall not be reestablished.

Appeal Zoning Administrator Determination #55

City Council
November 29, 2021





PMC Section 17.70.060

Planning & Community Development Department

17.71.060 - Abatement and Termination

Nonconforming uses and structures shall be subject to abatement and termination of the use, in the following manner:

- A. Termination for violation of or change of use. Whenever any of the following facts are found to exist with reference to a nonconforming use, the nonconforming protection/benefits provided by this Chapter shall cease, and the use shall be abated, except as otherwise allowed by this Chapter.
 - 1) Violation of any applicable law;
 - 2) The revocation or termination or suspension of any license or permit that is required in order to operate the nonconforming use;
 - 3) A change from a nonconforming use to another nonconforming use;
 - 4) A change from a nonconforming use to a conforming use;
 - 5) An increase or enlargement of the area, space, or volume of the structure or land occupied by or devoted to the nonconforming use except if the structure is nonconforming with respect to setbacks, height, distance between structures, architectural projections, staircase and landing area encroachments, and the requirements of the City's adopted Building Code are met. No new additions or alterations shall increase existing nonconformities; or
 - 6) A structural alteration, except as required by law.
- B. Termination of nonconforming uses by discontinuance.
 - 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.
 - 2) A nonconforming use within a structure shall also lose its nonconforming status if the structure is moved any distance on the site for any reason, or is removed from the site.
 - 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.
 - 5) The use of the site after the discontinuance or removal of a nonconforming use shall comply with all current requirements of this Zoning Code and the subject zoning district.
 - 6) This Section shall not apply to nonconforming uses which do not comply with the residential density regulations for the subject zoning district.