

**Stephen Lawton**

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October 6, 2020

Robert Reber  
Director of Community Development  
City of Hercules  
111 Civic Drive  
Hercules, California

**RE: Local ADU Regulations for the Historic District**

On behalf of the ownership of Assessor's Parcel Number 404-170-010-7,  
I provide comment on the subject action.

**BACKGROUND****Historical Significance**

In 1878 and shortly thereafter, most of the land in the Refugio Creek watershed was purchased by the men of the California Powder Works. The seller had married an heiress to the estate of the Mexican commandante Ignacio Martinez. He had acquired the land in 1824 out of the occupation, subjugation and genocide by Spanish missionaries of the original holders, who were the native Californians of the Karkin or Huchiun tribelets of the Ohlone peoples.

Beginning in 1881, the new factory here produced dynamite in increasing quantities. By the end of the 19th Century, it produced more than half of the dynamite made on the Pacific coast. Also made here were important contributions to the science and technology of explosives by Captain W.R. Quinan, whose work is still used today. In 1896 employees founded the Hercules Club with the strong support of management. The building for the Club's social activities, completed after the Spanish War of 1899, became the social center of the small community, stabilizing the workforce.

In 1900 the company incorporated the City of Hercules, the third municipality of Contra Costa County, to secure governance of its factory site. In 1905 the DuPont company acquired control of California Powder Works, adding it to their national monopoly on explosives manufacture. The DuPont company invested heavily in the factory, constructing production lines such as an acid plant on Hercules Point and town buildings such as the brick Administration headquarters and the

redwood social hall dedicated to Captain Quinan. The company built about 200 homes for the various classes of workers and managers. DuPont, forcibly reorganized in 1913 as Hercules Powder, added production lines for new explosive chemical products. At the end of World War I, this was the largest TNT (trinitrotoluene) factory in America, with 3,000 workers producing one-third of all TNT used by the United States in the Great War.

The Hercules Works played an important role in supplying explosives for commercial use in the western United States for construction, mining and farming, and again for military uses in World War II. In the post-war years, the emergence of competitive explosive products reduced demand. Explosives production ceased in 1964; agricultural chemicals were produced until 1972. The company considered developing this nine square mile factory site for residential use, but abandoned that role and began to sell large tracts to homebuilders.

It was truly a factory and a town, with the company operating also as a City. The affairs of City government were controlled by its factory managers. Assistant Superintendent Warren McBryde exercised public leadership beyond the plant boundary, serving as County Supervisor and leading the 1914 effort to fund the first paved road in Contra Costa, San Pablo Road from Albany to Rodeo.

In 1972, the company began surrendering its control over the municipal government by adopting a General Plan, and in 1973 by adopting a new municipal code. In 1974, the first for-sale homes were built in a subdivision of a tract in the upper Refugio Valley. Homebuilders delivered thousands of homes in planned subdivisions south of San Pablo Avenue, away from the lower Refugio Valley and the San Pablo Bay frontage where the remaining factory buildings were located.

On August 2, 1980, the remaining 36 factory buildings were placed on the National Register of Historic Places with significance as the only remaining example of an explosives-company town in the United States. The Tax Reform Act of 1976 provided incentives for preservation of historic properties. In 1984, after eight years of planning and financing, construction was completed in the subdivision of twenty restored homes on Bay and Pinole Streets, with final sales commencing in 1990. In 1989, the City received a grant to repair and partially restore the Clubhouse, which was used as a public facility. Since then, eleven buildings originally listed as nationally significant were demolished as a result of property development.

**Equitable Regulation of Historic Properties**

Through this homebuilding growth period, the City's financial position was good, with adequate revenue from development fees and sales tax from the petroleum refinery operating on the site of today's Victoria by the Bay. In May 1978 the City Council reduced the property tax rate. The next month, California voters adopted Proposition 13 with the effect of making the lower property tax rate permanent, thus reducing revenue. When Pacific Refining Company ceased operations in 1993, revenue plunged further. The City turned to its reserves for funding and, later in the decade, activated the borrowing power of its Redevelopment Agency. One consequence of this permanent municipal austerity was a focus of resources towards new construction, deferring reviews of codes and preparation of required standards. This austerity persists today, even as the population grows.

The City's General Plan and Zoning Ordinance and the Hercules Redevelopment Agency's Redevelopment Plan guided residential and commercial development through the end of the 20<sup>th</sup> Century, with an update circa 1998 now in force. This land-use control framework enacted the award-winning 1972-era planning vision that implemented the marketing promises made by the homebuilders of the 1970s and 1980s to their customers. Development standards and discretionary reviews protected the single-family neighborhoods from change. Hercules homeowners relied on these development standards to resolve disputes and provide some certainty with respect to their neighborhoods.

The situation in the Historic District was different. The Zoning Ordinance designated an "H - Historic Overlay District" comprising the twenty homes on Bay and Pinole Streets, plus additional land uphill including Quinan Hall, the Clubhouse and the Administration building. Decisions about modifications to the historic resources were to be recommended by the Planning Commission sitting as a Historic Resources Advisory Board ("HARB").

However, as of 2003 the standards called for in Section 20.500 had not been prepared and did not exist. Homeowners in possession of these nationally important properties, built for purposes entirely different from any others in the City, were placed in a situation where decisions about major modifications, or even window replacement, were to be made at the complete discretion of an appointed board unfamiliar with, and no mandate to follow, recognized preservation practices.

Aegis, a private developer, had restored twenty homes, those that remained standing out of the hundreds of workers' homes built in the early 20<sup>th</sup> Century. Aegis' painstaking restoration work complied with the

standards of the Secretary of the Interior in order to obtain a tax incentive for preservation of nationally important historic resources. After a holding period, the developer sold the homes individually beginning in about 1989. The new cohort of homeowners proposed no substantial alterations until 2003, when the first major modification was proposed and disputed. The HARB held resolution of the dispute until standards were first produced.

### **Importance of Preservation**

The Hercules Guidelines for Historic Preservation (“Guidelines”) adopted in 2004-06 now provide the standards for alteration of the subject properties. It is important to these private homeowners that the City applies the Guidelines and updates them with care.

Historic buildings with restrictions are typically more expensive to operate and maintain, with no compensating tangible value. Private homeowners enjoy their assets as having cultural value, and the City at large - all other property owners - enjoys the free benefit of having the story of its authentic cultural history physically embodied in this collection of buildings.

The Tax Reform Act of 1976 provides substantial assistance in the form of tax credits for the restoration of historic properties. However, there are few direct financial benefits for ownership and proper maintenance.<sup>1</sup> To qualify for any current or future benefits, the properties must be maintained according to recognized standards. In the case of the “Hercules Village” listing on the National Register of Historic Places, it is not just the character-defining features on individual buildings, but the entire collection of buildings that defines the historic character which is of national importance. Rules of the private homeowner association are not material. These twenty homeowners have a reasonable expectation and reliance upon the City to apply and update the Guidelines with care.

### **LOCAL IMPLEMENTATION OF THE STATE ADU MANDATE**

California, the Bay Area, Contra Costa County and Hercules exhibit a chronic condition of housing underproduction. It is a major public policy challenge. Since 2011, the Bay Area has produced 4.25 jobs for each new housing unit produced. The consequences of underproduction are well-known: unaffordability, inequality, homelessness and hardship. Since most of these consequences are not felt by incumbent homeowners, and

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<sup>1</sup> Contra Costa County has recently invoked a program under the Mills Act that enables owners to reduce their property tax burden. In 2007 as Chair of the Historical Landmark Advisory Committee, I guided a recommendation to the Board of Supervisors that the County adopt these Mills Act procedures.

since the policies of most of California's 482 cities reflect the interests of those homeowners<sup>2</sup>, the State has been forced to act. In 2016 the first of a series of bills<sup>3</sup> effectively mandated that local governments must approve, without discretion, accessory dwelling units ("ADUs") even in single-family zones. These modest reforms have had a significant and growing impact on housing production across the State. Among the positive effects of the ADU mandate is the mitigation of unsafe living conditions in previously illegally occupied units, often in garages, with thousands of examples now seen in Los Angeles County's Inland Empire.

### **The Guidelines and Occupancy**

The Guidelines provide practical advice for maintenance and invoke the Secretary of the Interior's "Standards for the Preservation of Historic Properties." Almost universally in the United States, the basic principle guiding preservation of historic properties is to objectively identify and protect features of significance that define historic character.<sup>4</sup> Applying this principle to the subject properties, the Guidelines limit new additions to 150 square feet, including a 20 square foot outbuilding for a net 130 square feet, limited to one story. Additions are to be compatible in scale, placed to the rear, and distinguishable in materials applied.

The Historic District lies within a single-family zone. The Guidelines are silent on the matter of accessory dwelling units. At the time and under the circumstances in which the Guidelines were prepared, the potential for these properties to support more than one dwelling unit was not at issue and was not considered.

The Guidelines would most likely be interpreted to prohibit the construction of additional stories on the alley-loaded, single-story garage buildings to create an ADU. The Guidelines could be updated to allow multiple occupancies. It is unlikely that the main buildings could support more than one dwelling unit internally. Therefore, additional units could only occur by provisioning the existing garages for occupancy. Such occupancies, if compliant with the Guidelines for any exterior changes, would not affect character-defining features.

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<sup>2</sup> Such policies, originating in a different time and often for actual purposes of racial and class exclusion, include the single-family zoning and discretionary review features exhibited in Hercules.

<sup>3</sup> In 2016 I appeared before Committees of the Senate and Assembly in favor of SB 1069, the first of the ADU bills.

<sup>4</sup> No other structures, which were all built commercially for sale to consumers in Hercules, possess these features.

There would be important impacts of this approach, chiefly parking. A garage occupancy would displace one of the two spaces now provided and potentially increase demand for parking by the new ADU occupants.

**Recommendation**

As so often occurs in California, a story that begins with a genocide and monopoly concludes with the regulation of land for the storage of private automobiles. The historical record of these buildings during their reference period is unclear as to the form and use of the rear garages or outbuildings.<sup>5</sup> It is known, however, that these homes were built for people who walked to work. Minimum parking regulations were conceived and adopted after World War II. When the houses were restored, two off-street parking spaces were provided on each lot: one single-car garage and one pad or driveway.

The Guidelines should be updated to allow one ADU unit per property and to reduce off-street parking requirement to one space per property.

Respectfully,

A handwritten signature in black ink, appearing to read "Stephen Lawton", with a stylized flourish at the end.

Stephen Lawton

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<sup>5</sup> Photographic evidence shows outbuildings, but no on-site parking, during at least one period of time.