



City of Sunnyvale

Agenda Item

24-0491

Agenda Date: 4/22/2024

REPORT TO PLANNING COMMISSION

SUBJECT

Proposed Project: Appeal of a decision by the Zoning Administrator denying a **VARIANCE** to legalize an existing 112 square foot detached accessory structure in the rear yard of a single-family property with a two-foot, five-inch side setback where four-foot minimum is required, and a two-foot, two-inch rear yard setback where ten-foot minimum is required.

Location: 160 South Pastoria Avenue (APN: 165-15-007)

File #: PLNG-2023-0642

Zoning: R-2 (Low Medium Density Residential)

Applicant / Owner: Scott McClennan (applicant) / Tracy and Scott McClennan (owner)

Environmental Review: Class 3 Categorical Exemption relieves this project from the California Environmental Quality Act (CEQA) provisions.

Project Planner: Robby Miller, 408-730-7429, rmiller@sunnyvale.ca.gov

REPORT IN BRIEF

General Plan: Low-Medium Density Residential

Existing Site Conditions: Single-family home

Surrounding Land Uses

North: Single-family home

South: Single-family home

East: Single-family home

West: Duplex

Issues: Substandard setbacks and unpermitted construction in backyard.

Staff Recommendation: Deny the appeal and uphold the decision of the Zoning Administrator to deny the Variance for the accessory structure.

BACKGROUND

On July 10, 2023, a Neighborhood Preservation code enforcement case NP-2023-2879 was opened involving a large, unpermitted accessory structure in the rear yard.

On September 1, 2023, a Planning Application for a Variance was submitted to legalize the accessory structure with substandard side and rear setbacks.

On November 29, 2023, the Zoning Administrator held a public hearing where they received staff and applicant presentations, asked clarifying questions of staff and the applicant, and considered the public comments. Following deliberation, the Zoning Administrator concurred with staff's recommendation concluding that a decision to approve this application would grant a special privilege to this property which is not granted to other properties in the neighborhood with the same physical characteristics. Additionally, there were other feasible locations on the subject property where an accessory structure may be constructed that met zoning code requirements including requirements

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for the side and rear setbacks. While there have been other Variances in the neighborhood, only one was applicable because it was for an accessory structure. However, the conditions for granting that Variance do not exist on the subject site and therefore, would not support this project. Based upon the above, the Zoning Administrator denied the Variance application based upon the Findings for Denial in Attachment 6. Additionally refer to the minutes of the Zoning Administrator meeting in Attachment 7.

On December 14, 2023, the Applicant filed an appeal of the Zoning Administrator's decision.

Description of Proposed Project

The single-family property has an unpermitted accessory structure located near the northeastern corner of the rear yard which the applicant is proposing to legalize for use as a home office. As constructed, the accessory structure is 112-square foot in size, has a building height of 9 feet 11 inches as measured from grade; has a left side yard setback of 2 feet 5 inches (where a minimum of 4 feet is required); and has a rear setback of 2 feet 2 inches (where a minimum of 10 feet is required). The applicant also proposes to relocate the unpermitted air conditioning unit to the west side of the office (facing the main residence). Refer to the site and architectural plans in Attachment 4.

Per Sunnyvale Municipal Code (SMC) Section 19.40.030, accessory structures with an 8-to-15-foot height require a Miscellaneous Plan Permit (MPP) with public notice. Per SMC Section 19.40.040, detached habitable spaces and utility buildings with an 8-to-15-foot height are required to provide a minimum side yard setback of 4 feet, and a minimum rear yard setback of 10 feet. Therefore, a Variance is required to authorize an accessory building with reduced side yard and rear yard setbacks.

See Attachment 1 for a map of the vicinity and mailing area for notices.

Previous Actions on the Site

A Neighborhood Preservation complaint was filed in 2023 for unpermitted accessory structure in the rear yard. Two closed code enforcement cases were found, including car repair in the driveway in 2015 and another for having a storage pod in the driveway in 2012. In 2015, a Design Review Planning application was approved for a first-floor addition to an existing single-family home. Multiple building permits have been issued over the years for plumbing, electrical, roofing, and related to the 2015 addition.

ENVIRONMENTAL REVIEW

A Class 3 Categorical Exemption relieves this project from the California Environmental Quality Act (CEQA) provisions. Class 3 Categorical Exemptions include construction of a limited number of new, small facilities or structures including accessory structures such as garages, carports, patios, swimming pools, and fences.

DISCUSSION

Site Layout and Architecture

The subject property is located midblock on the east side of South Pastoria Avenue near the intersection with Lewis Avenue, a few blocks west of downtown Sunnyvale. The 5,750 square foot

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parcel contains a 1,508 square foot home and a 280 square foot attached garage, a rear yard uncovered deck, five trees with trunk diameters ranging in size from two inches to eighteen inches in the rear yard, and the unpermitted accessory structure. The existing floor area ratio (FAR) is approximately 31 percent.

Adjacent homes are a mix of single- and two-family dwellings. The lots in this subdivision are typically 50 feet wide and line up evenly in a grid, with side and rear yards mirroring each other. Detached garages are typically located behind the residence towards the rear yard. Neighboring sites include the following:

- 164 South Pastoria Avenue is located to the right, or south of the project site, and is a one-story single-family home.
- 156 South Pastoria Avenue is located to the left, or north of the project site, and is a one-story single-family home. A 5-foot 8-inch-high solid wood fence separates the properties.
- 159 Waverly Street is located to the rear, or east of the project site, and is a one-story single-family home. An approximately 6-foot-tall solid wood fence separates the properties.

The proposed design of the accessory structure is a rectangular floor plan accessed from a large sliding door facing into the rear yard at the south elevation. The wood structure has a shed roof which starts at 8 feet 7 inches on the north side and rises to 9 feet 11 inches on the south side or the interior lot side. The accessory structure has a contemporary design style with vertical cedar wood and corrugated metal siding, dark window and door frames, and a shed roof.

Applicant's Variance Justifications

The applicant's original Variance justification letter was included in the attachments for the Zoning Administrator staff report (see Attachment 6). The original letter includes a few justifications not mentioned in the Appeal letter (Attachment 5), including:

- For Finding #1, the property has a relatively long, narrow property shape.
- For Finding #1, the office use is not similar to the uses for other accessory structures like sheds and should not have to follow the same development standards.
- The office serves as the best affordable option for a work-from-home parent with a family of four.

The applicant filed an appeal of the Zoning Administrator's decision to deny the Variance and provided an additional justification letter with the following points for consideration (see Attachment 5):

- The office does not currently impede views. Moving it to meet setbacks or converting it to an ADU could impede neighbors' views more.
- The office does not pose a health or safety hazard in any way.
- The neighbors on all sides voiced their support for the structure.
- The office provides many of the same housing benefits as an ADU structure.
- Other similar structures with greater impacts granted variances in the neighborhood.
- The structure was built to fit under the 120 square foot limit that allows minimal setbacks, but the height slightly exceeds the stipulated height on the side of the structure farthest from the

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side property line.

- Moving it would be an undue hardship financially.

Development Standards and Variance

Pursuant to SMC 19.84.010, granting of a Variance is intended to address practical difficulties, unnecessary hardships or results inconsistent with the general purposes of the zoning district, which may occur through the strict application of standard zoning requirements. Three required findings are needed to support granting of a Variance. There are two Variances being requested: 1) A 2-foot, 5-inch left side yard setback (where 4 feet is the minimum required), and 2) a 2-foot, 2-inch rear yard setback (where 10 feet is the minimum required).

Finding 1 pertains to physical constraints of the site such as size, shape, or topography. The site is not constrained in that the rectangular shape of the property and the lot dimensions of approximately 50 feet wide by 115 feet deep are similar to other lots on the same street. The subject parcel's size, shape and topography do not present a unique or unusual circumstance that may warrant special consideration through a Variance. Moreover, the flat open backyard and the parcel's existing floor area ratio of 31%, when 45% is allowed in the R-2 zoning district, provides the applicant space to add or relocate additional floor area outside the required setbacks. As such, there are no exceptional or extraordinary circumstances or conditions existing on-site that would support a Variance and denial of the Variance would not deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.

Finding 2 pertains to projects that will not be materially detrimental to the public welfare or injurious to the property and within the immediate vicinity and in the same zoning district. Finding 2 appeared to have been met at the time of the Zoning Administrator public hearing; however, that is no longer the case based upon subsequent communication from an affected neighbor who clarified their concerns that the unpermitted structure was too close to the property lines, was constructed without a city permit, and was too tall and visible. Therefore, the project does not appear to meet Finding 2.

Finding 3 pertains to precedence could not be met because there is only one other Variance related to an accessory structure in the neighborhood and the granting of that Variance for a workshop and covered parking space with 6.5 foot rear setback when 10 feet is the minimum and 33 percent rear yard coverage when 25 percent is the maximum enabled the property to construct a two-car garage; thereby, bringing the overall property into compliance with the zoning code with respect to required parking. The circumstances with the current Variance application are different, and if approved, would set a new precedence for the review of future unpermitted accessory structures.

For more detail, please see the Recommended Findings for Denial in Attachment 2.

Response to Applicant's Letter

The following is a summary of the applicant's new justifications and an analysis of the points.

- Whether the Office is Similar to Other Accessory Structures:
Pursuant to the Sunnyvale Municipal Code (SMC), accessory structures by definition may include a variety of structures including office, playroom, art studio, etc. Accessory structures may include both conditioned and unconditioned spaces and are similar in nature in that they are accessory to the primary residential use and are regulated by SMC Chapter 19.40

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Accessory Structures. An accessory structure that is over eight feet in height is subject to review through a Miscellaneous Plan Permit process and must meet applicable zoning code requirements including setbacks, lot coverage, etc.

- *Whether the Office Meets Health and Safety Standards:
The California Building Code does see this structure as a potential fire safety hazard because the exterior wall is less than 5 feet from the property line and will require fire resistance construction. As the accessory structure was constructed without the benefit of city permits, it is not clear whether the structure can be modified to meet applicable life and safety regulations.*
- *Whether there is Neighborhood Support:
The property owner of 155 Waverly Street, rear diagonal neighbor, expressed concerns regarding the office location being too close to property lines, height, design, and that it was constructed without benefit of a city issued permit.*
- *Whether a Home Office has the Same Benefits as an ADU:
Accessory Dwelling Unit (ADU) has been identified as a housing option that may help address the housing needs in the city. With the lens of facilitating housing production in mind, the city has adopted specific regulations to encourage ADUs. The unpermitted accessory does not meet the requirements for an ADU with respect to height and side and rear setbacks. Additionally, the 112 square foot home office does not include required features for an ADU such as permanent provisions for living, sleeping, eating, cooking, and sanitation.*

The option of converting the office into an ADU as a way to legalize the structure was presented to the applicant; however, the applicant declined and is instead requesting reduced side and rear yard setback Variances.

- *Other Variances in the Neighborhood:
Staff's research of the block showed that there has been one Variance application for an accessory structure, at 386 South Pastoria Avenue, since the original subdivision of neighborhood. That Variance provided a reduced rear setback of 6½ feet (where 10 feet was required) and allowed a 33% rear yard lot coverage (when 25% was the maximum allowed) in order to allow an addition to an existing legal nonconforming detached one-car garage; thereby, bringing the on-site parking into compliance with the zoning code by providing two covered parking spaces on-site. The proposed addition to the detached garage met all other development standards for accessory structures.*

The Variance for 386 South Pastoria Avenue corrected a non-conforming parking situation; whereas the current situation was created due to unpermitted construction work resulting in an accessory structure that does not meet requirements for side setback and rear setback. The subject accessory structure does not bring the site into closer compliance with other aspects of the zoning code, is not located on a site with unique circumstances and, if approved, would set a precedence by granting special privileges not enjoyed by owners of properties with similar characteristics in the surrounding neighborhood.

- *120 square foot Accessory Structure:*

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The applicant noted the accessory structure was designed to be less than 120 square foot. This may be alluding to a brochure titled "Work Not Requiring A Building Permit" where Item 2 of the brochure discusses that structures that do not exceed 120 square feet may be exempt from building permits provided that the structure does not have any utility connections. The subject accessory structure was constructed with electrical outlets and connections, that would have triggered the requirement for a building permit. Additionally, whether an accessory structure is exempt from requirements for Building Permits, they are still required to meet zoning code requirements. Building Code and Zoning Code requirements are different and serve different objectives. Both sets of requirements must be met.

- Financial Consideration:

The Sunnyvale zoning code does not permit the city to review an applicant's financial circumstances, nor is staff trained to determine financial feasibility of applicants, when evaluating whether a Variance application meets the required Findings in SMC Chapter 19.84.050.. As such, this is not a valid justification that may be considered.

Given that two of the three required findings for a Variance cannot be met, and that the above additional justifications cannot be considered, staff recommends that the Planning Commission deny the appeal and uphold the Zoning Administrator's decision to deny the Variance.

PUBLIC CONTACT

112 notices were sent to surrounding property owners and residents within 300 feet of the subject site in addition to standard noticing practices for appeals, including on-site posting.

The City received letters in support from neighbors at 159 Waverly Street, 156 South Pastoria Avenue, and 164 South Pastoria Avenue citing the existing structure has little to no impact on them. The City also received one letter in opposition from the neighbor at 480 Lincoln Avenue citing concerns regarding: 1) fire personnel not having adequate space to maneuver around the structure in case of an emergency, and 2) "the four corners of the other three adjoining lots...if other owners elect to do the same thing, the corner would be quite congested...this starts to feel more like an organic growth of a maze of unplanned sheds scattered about."

At the November 29, 2023, Zoning Administrator public hearing, two neighbors at 164 South Pastoria Avenue and 156 South Pastoria Avenue voiced support for the Variance noting that any changes to the location or structure could have greater impacts on them.

On March 3, 2024, a call was received from the owner of 155 Waverly Street. The owner voiced concerns about the office location, height, and design, as well as the fact that it was constructed without a permit.

The above-mentioned public comments are included in Attachments 6 and 8. No additional letters or calls have been received at time of staff report production.

ALTERNATIVES

1. Deny the appeal and uphold the Zoning Administrator's decision to deny the Variance for the accessory structure based on the Recommended Findings for Denial in Attachment 2.
2. Grant the appeal and approve the Variance for the accessory structure, subject to revised

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Findings for Approval (presented by the Planning Commission) and the Recommended Conditions of Approval in Attachment 3.

3. Alternative 2 with modifications.

STAFF RECOMMENDATION

Alternative 1: Deny the appeal and uphold the Zoning Administrator's decision to deny the Variance for the accessory structure based on the Recommended Findings for Denial in Attachment 2.

As noted above in the staff report, the Findings for a Variance cannot be met with the project as proposed. The applicant does have alternatives to correct the current issues with the accessory structure.

Prepared by: Robby Miller, Associate Planner
Approved by: Julia Klein, Principal Planner
Approved by: Shaunn Mendrin, Planning Officer

ATTACHMENTS

1. Vicinity and Noticing Map
2. Recommended Findings (Denial)
3. Alternative Action - Conditions of Approval and Standard Requirements (if appeal is granted)
4. Site and Architectural Plans
5. Appeal Letter from Applicant
6. Link to Zoning Administrator Staff Report, November 29, 2023
7. Excerpt of Final Minutes of the Zoning Administrator Hearing of November 29, 2023
8. Public Comments