



# City of Sunnyvale

## Agenda Item

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24-0640

Agenda Date: 5/28/2024

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### 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 feet 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](mailto: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 April 22, 2024, the Planning Commission held a public hearing where they received staff and applicant presentations, asked clarifying questions of staff and the applicant. Following deliberation, the Commission continued the project to Tuesday, May 28, 2024, to allow time for additional research. For more information, please refer to the Planning Commission staff report and minutes in Attachments 5 and 6.

#### 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. The unpermitted structure does not meet the minimum 4 feet side and 10 feet rear setback requirements; and was constructed without the benefit of required building permits and inspections as the structure is habitable and has a utility connection. Through this planning application, the applicant is seeking

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two Variances for reduced side and rear yard setbacks. If the Variances are approved, the project would be subject to the required building permits and inspections.

### **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**

At the April 22, 2024 public hearing, the Planning Commission directed staff to provide the planning application and building permit history for: 1) accessory structures located on properties within 300 feet of the proposed project site; and 2) Variances that were referenced by staff during the November 29, 2023 Zoning Administrator public hearing. Staff's research is included as Attachment 7 along with a reference map. The research indicated that where a Variance was granted, the required findings from SMC 19.84.050 had been met.

#### **1. Accessory Structures and Accessory Dwelling Units within 300 feet**

Staff located two (2) approved Variances for accessory structures at 805 Coolidge Avenue and 777 West Washington Avenue. The Variance requests were for reduced side and rear setbacks for detached two-car garages. The Variances were granted based on other neighbors in the vicinity having similar setbacks for detached garages and substandard lot sizes compared to other lots in the neighborhood which are typically 50 feet wide and lot size of 5,750 square feet. Specifically, 805 Coolidge Avenue has a lot width of 41.5 feet and 4,018 square foot lot size, and 777 West Washington Avenue has a lot width of 36.5 feet and 3,650 lot size. Both projects were built with the benefit of a building permit.

#### **2. Referenced Variances**

During the November 29, 2023 Zoning Administrator public hearing, staff referenced four (4) Variances associated with the following properties: 119 South Pastoria Avenue, 168 South Pastoria Avenue, 386 South Pastoria Avenue, and 389 South Pastoria Avenue.

119 South Pastoria Avenue was granted a Variance for a reduced rear setback to allow an Accessory Dwelling Unit (ADU) and garage. The garage had been previously built with permits and staff discovered it would need a Variance during the review for the ADU above the garage. Records about this ADU are incomplete; but the building permit appears to be expired.

168 South Pastoria Avenue was granted a Variance for reduced second story side setbacks to allow a two story ADU with garage. Reduced setbacks provided safe car access into and out of the garage. The ADU was built pursuant to a building permit.

386 South Pastoria Avenue was granted a Variance for a reduced rear yard setback and increased rear yard coverage for an accessory structure. The Variance remedied a nonconforming one-car garage. The owner obtained a building permit for the project.

389 South Pastoria Avenue was granted a Variance for a reduced second floor rear yard setback for an ADU. The variance was justified by several factors, including a need for increased privacy, to move out of a root zone for 3 large oak trees, and because the property

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backed up to school grounds. The owner obtained a building permit for this project.

Per SMC 19.84.040, all three of the required findings must be made in order to approve a Variance. While the above data provides additional information about the surrounding properties, the data does not alter the required findings to support a Variance which cannot be made based on the facts of the proposed detached accessory structure.

The requested side and rear yard setback deviations for the accessory structure are inconsistent with the intent and purposes of the setback regulations found within SMC Title 19. The accessory structure setback requirements in the zoning code were established through a public process to provide separation and lessen impacts on adjacent properties. Setback requirements are consistently applied across projects. Deviations from setback requirements may be granted through the Variance process; however, there is no precedence in granting Variances based upon the justifications that have been submitted by the applicant, nor are there any hardships associated with the site that may warrant consideration under the Variance findings.

Specifically, SMC 19.84.010 states “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.” The project site is located in an established neighborhood where lots have a typical lot width of 50 feet and lot size of 5,750 square feet, and the subject site has the same lot width and size as adjacent properties; therefore, lot size is not considered a hardship in this case. Additionally, there are no physical characteristics of the site, such as steep topography, that warrants the Planning Commission’s consideration of the requested Variances (the subject site is flat). Lastly, if setback Variances are granted in this case, it may send an unintended message encouraging the construction of detached accessory structures that do not meet applicable code requirements and without the benefit of city permit(s) and inspections; and that applicants can remedy the mistake after the fact and apply for Variances.

Therefore, staff recommends that the appeal be denied, and the Zoning Administrator’s decision to deny the Variance is upheld. The recommended Findings for Denial are in Attachment 1.

Should the Planning Commission find that the facts of the project justify granting of the appeal and wish to approve the Variance, staff is seeking Planning Commission direction to make the Findings for Approval pursuant to SMC 19.84.040. Additionally, if the Variance requests are approved, the project shall be subject to the Conditions of Approval in Attachment 2.

### **PUBLIC CONTACT**

Public noticing was provided prior to the April 22, 2024, Planning Commission public hearing. No additional public hearing is required because the Planning Commission continued the project to a specific date on May 28, 2024, to allow time for staff research.

No additional public comments 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 1.
2. Grant the appeal and approve the Variance for the accessory structure, subject to Findings for Approval (which will need to be presented by the Planning Commission) and the Recommended

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Conditions of Approval in Attachment 2.

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 1.

As noted above in the staff report and in the April 22, 2024 staff report, the Findings for a Variance cannot be met based upon the facts of the proposed project. Additionally, there are alternatives which would enable the applicant to correct the current issues with the accessory structure such as applying for applicable permit(s) to convert accessory structure to an Accessory Dwelling Unit (ADU).

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

**ATTACHMENTS**

1. Recommended Findings (Denial)
2. Recommended Conditions of Approval (if appeal is granted)
3. Link to Zoning Administrator Staff Report on November 29, 2023
4. Excerpt of Final Minutes of the Zoning Administrator Hearing on November 29, 2023
5. Report to Planning Commission [24-0491, April 22, 2024] (without attachments)
6. Excerpt of Draft Minutes from the Planning Commission Hearing on April 22, 2024
7. Variance Research