



City of Sunnyvale

Excerpt Meeting Minutes - Draft Planning Commission

Monday, April 22, 2024

7:00 PM

Online and Bay Conference Room
(Room 145), City Hall,
456 W. Olive Ave.,
Sunnyvale, CA 94086

No Study Session | Public Hearing - 7:00 PM

7 P.M. PLANNING COMMISSION MEETING

CALL TO ORDER

Chair Pyne called the meeting to order at 7:00 PM.

ROLL CALL

Present: 7 - Chair Martin Pyne
Vice Chair Nathan Iglesias
Commissioner Galen Kim Davis
Commissioner Daniel Howard
Commissioner John Howe
Commissioner Michael Serrone
Commissioner Neela Shukla

PUBLIC HEARINGS/GENERAL BUSINESS

2. [24-0491](#) **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-feet 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

Associate Planner Robby Miller presented the staff report with a slide presentation.

Commissioner Serrone acknowledged that the structure does not meet setback requirements and asked whether a permit for the structure would have been approved had it not included electricity. Associate Planner Miller clarified that accessory structures exceeding 8-foot in height trigger Planning review. Additionally, the structure does not meet side and rear setback requirements which trigger the Variance application.

Commissioner Serrone confirmed with Associate Planner Miller that a Variance would still be required if the applicant submitted a permit for the accessory structure before it had been built.

Commissioner Serrone confirmed with Associate Planner Miller that the unpermitted accessory structure was reported to the City's Neighborhood Preservation division. Principal Planner Julia Klein added that since these complaints are filed anonymously, staff is unable to provide additional details.

Commissioner Serrone asked about the applicant's options in the event the Planning Commission denies the appeal. Principal Planner Klein explained that the applicant may appeal the Planning Commission's decision to the City Council. If the City Council denies the appeal, the applicant may sue the City, remove the unpermitted accessory structure, or convert the structure to an Accessory Dwelling Unit (ADU) that meets City requirements.

At Commissioner Serrone's request, Planning Officer Shaunn Mendrin explained why the rear setback requirement is ten feet.

Commissioner Serrone asked whether the shed in the rear yard of the lot behind the proposed project site is compliant. Associate Planner Miller answered that he did not find a permit for that structure.

Commissioner Serrone confirmed with Principal Planner Klein that it is uncertain whether the proposed project meets life and safety regulations as it was constructed without benefit of building permit and City inspection.

Commissioner Serrone confirmed with Principal Planner Klein that according to California Fire Code, habitable buildings and structures must be fire rated, so fire-proofing the fence would not be a viable option to address the Fire Code

requirements for the detached accessory structure. Principal Planner Klein added that since the accessory structure is unpermitted, staff does not have the ability to verify whether it meets fire code requirements or is safe in general.

Chair Pyne asked whether the proposed project will need to be demolished if it is unable to comply with Condition of Approval BP-6 in the event the Variance is granted. Principal Planner Klein responded that it is difficult to answer this question since the structure's design is uncertain. She added that the applicant may be better able to provide a response to this question. Chair Pyne noted that if the structure does not comply with fire safety codes, Finding 2 could not be met.

Chair Pyne opened the Public Hearing.

Scott McClennan, property owner and applicant, presented additional images and information on the proposed project.

Chair Pyne asked Mr. McClennan whether the accessory structure has a fire-resistance rating according to the California Building Standards Code or whether it may be modified to attain this rating. Mr. McClennan responded that while he is unsure, he would take the proper steps to ensure that the structure complies with the California Building Standards Code and Condition of Approval BP-6.

Commissioner Serrone confirmed with Mr. McClennan that moving the accessory structure to a different location in his backyard would not be cost effective and may result in damaging the structure.

Vice Iglesias asked whether the height of the accessory structure may be reduced to meet the maximum height requirement of eight feet. Mr. McClennan responded that he has not found viable means to reduce the height of the structure and explained why.

Commissioner Shukla noted the importance of Building and Planning review of applications for accessory structures. Mr. McClennan explained why he did not submit an application for the accessory structure and stated that he is willing to go through the permitting process and necessary inspections now.

Commissioner Davis confirmed that Mr. McClennan reviewed a brochure pertaining to accessory structure requirements on the City's website prior to having his own structure built.

Planning Officer Mendrin stated that the “Work Not Requiring a Building Permit” brochure on the City’s website notes that approval from the Planning Division may be required for one-story detached accessory structures depending on the location and height of the accessory structure. Mr. McClennan claimed that the link on this brochure to the “Accessory Structures” brochure was broken at the time he reviewed it.

Commissioner Howard asked whether the applicant’s architect or contractor considered whether a permit would be needed for the subject accessory structure. Mr. McClennan explained his understanding that a permit would not be needed.

There were no public speakers for this agenda item.

Mr. McClennan presented additional information to support his case.

Commissioner Howe confirmed with Associate Planner Miller that there were four approved Variances within the vicinity of the subject accessory structure, and three of them were for ADUs. Commissioner Howe questioned whether those ADUs had a building permit, but research conducted by staff to date focused only on Variances in the area and not building permit history.

Commissioner Howe confirmed with Associate Planner Miller that the neighborhood definition considered in this instance included the blocks adjacent to the proposed project site’s block as well as three additional blocks south of the proposed project site on both sides of the block face.

Commissioner Howe questioned the number of detached structures on properties surrounding 480 Lincoln Avenue. Mr. McClennan was uncertain about how many of these structures were granted a Variance and/or a building permit.

Chair Pyne closed the Public Hearing.

Commissioner Howe questioned whether the Variance for the accessory structure should be approved or denied and provided additional comments on the matter.

Commissioner Howard pointed out that the property on 480 Lincoln Avenue is not in the immediate vicinity of the subject accessory structure.

Commissioner Shukla emphasized the importance of obtaining City approval and required permits for all project types. She added that while she is empathetic to the applicant's case, the subject accessory structure may need to undergo changes to meet state law and City requirements for health and safety. Lastly, she stated that she is in support of denying the appeal.

Vice Chair Iglesias observed that nearly every parcel within the vicinity of the subject accessory structure has an accessory structure in the rear yard.

Commissioner Davis asked whether it would be possible for the Planning Commission to continue this item to a different date to allow staff additional time to research the permit history of accessory structures within the vicinity of the proposed project site. Planning Officer Mendrin advised that the Planning Commission should continue this item to a date certain and noted that staff generally researches the permit history of structures within the noticing radius of the proposed project site which is normally 300 feet.

Commissioner Serrone stated that the Planning Commission does not have the ability to overrule City requirements in the same way that the City Council does. Planning Officer Mendrin added that if the appeal is denied, the applicant may appeal the Planning Commission's decision to the City Council or the City Council may call the item up for review within fifteen days. Commissioner Serrone noted that while he believes the appeal should be denied, he has no concerns with the subject accessory structure if it is fire resistant.

Chair Pyne stated that while the proposed project is subject to existing ordinances, a study issue to reevaluate such ordinances as they apply to similar properties on lots with an R-2 zoning designation would be worth considering.

Commissioner Howard commented that he is unable to make the Findings to support the requested Variance. He added that it is not in the City's interest to grant the Variance for the subject accessory structure since it is unable to serve as an independent living unit that would address the City's housing need. He agreed with Chair Pyne that a study issue to reevaluate applicable standards for accessory structures would be better than determining whether to grant Variances on a case-by-case basis. Lastly, Commissioner Howard confirmed his recommendation to deny the requested Variance.

MOTION: Commissioner Howard moved and Commissioner Shukla seconded the

motion to recommend 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.

Vice Chair Iglesias stated that he may make the Findings to approve the requested Variance and explained his reasoning.

Commissioner Davis confirmed his support of the motion since he lacks the information necessary to approve the requested Variance. He also added that he is in support of continuing the item to a different date.

Commissioner Howe confirmed his agreement with Vice Chair Iglesias and confirmed that he is not in support of the motion.

Commissioner Serrone confirmed with Principal Planner Klein that an ADU does not require additional parking.

Commissioner Serrone noted that he is in favor of continuing the item to a different date so that staff has the opportunity to research and present additional information. He added that granting the requested Variance would be problematic and revealed that he would also like the City Council to consider this item.

Chair Pyne offered his thoughts on whether the proposed project meets the Findings for a Variance. He suggested that continuance of this item to a different date would be appropriate since he does not have sufficient evidence to grant the requested Variance.

Commissioner Howe advised that it would be acceptable to propose a substitute motion to continue the discussion on this item to a later date.

AMENDMENT TO SUBSTITUTE: Chair Pyne moved and Commissioner Howe seconded the motion to substitute the main motion with a motion to continue the discussion on Public Hearing Agenda Item 2 to Tuesday, May 28, 2024 and direct staff to do the following:

Provide the planning application and building permit history for: 1) accessory structures located on properties on both sides of South Pastoria Avenue, between West Evelyn Avenue and West McKinley Avenue, 2) accessory structures located in the vicinity of the proposed project site, and 3) Variances that were referenced by

staff during the November 29, 2023 Zoning Administrator hearing.

FRIENDLY AMENDMENT: Commissioner Howe offered a friendly amendment to specify direction to staff:

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 hearing.

Chair Pyne accepted the friendly amendment.

Commissioner Howe explained that the continuance of this item will allow staff more time to conduct applicable research and the Planning Commission to make an informed decision once additional information is presented to them.

Commissioner Davis voiced his support of the substitute motion.

Commissioner Shukla stated her support of the substitute motion.

Commissioner Serrone confirmed his support of continuing this item to a later date.

The motion for a substitute motion carried with the following vote:

Yes: 6 - Chair Pyne
Vice Chair Iglesias
Commissioner Davis
Commissioner Howe
Commissioner Serrone
Commissioner Shukla

No: 1 - Commissioner Howard

MOTION: Chair Pyne moved and Commissioner Howe seconded the motion to continue the discussion on Public Hearing Agenda Item 2 to Tuesday, May 28, 2024 and direct staff to do the following:

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 hearing.

The motion carried by the following vote:

- Yes:** 6 - Chair Pyne
Vice Chair Iglesias
Commissioner Davis
Commissioner Howe
Commissioner Serrone
Commissioner Shukla
- No:** 1 - Commissioner Howard