

September 19, 2017

George Schroeder  
Planner  
City of Sunnyvale  
Planning Division  
2310 North First Street, Suite 200  
San Jose, CA 95131

RE: **584 Crawford Dr. Expansion and Upgrade  
Appeal to Zoning Administrator's Position**

Dear George,

As requested, the following is our appeal letter addressing the Zoning Administrator's position of our variance for 584 Crawford Drive. We understand that our Basis of Appeal will be based on the portion of the denial by the zoning administrator, however there are still components of the process and codes that have not been fully explained or make no sense with regards to "property development equity", even on Crawford Drive. Our desired action is for the Planning Commission to allow for us to move forward with our variance. For full edification to the Planning Commission, the following is the statement from your email regarding the denial by the zoning administrator (Refer to attached email):

"I wanted to let you know that the Zoning Administrator made the decision today to deny the Variance and Design Review application at 584 Crawford Dr. The reason for the denial is that there are options to redesign the floor plan with an increased setback that meets the code requirement. The finding is that there are no exceptional or extraordinary circumstances or conditions applicable to the property or use that prevents the design from meeting the combined side yard setback requirement."

We hope that the Planning Commission can look past staff's stringent interpretation of current codes, that are detrimental to long-term residents with exceptional or extraordinary conditions, and see that we are not asking for any more privileges than our neighbors are already afforded.

Our Basis for Appeal are the following items:

1. Exceptional and Extraordinary Conditions of the Property
2. Undue Hardship to Deviate from Existing Plan
3. Consistent Code Interpretation
4. Inconsistency of "Property Development Equity"

**1. Exceptional and Extraordinary Conditions of the Property**

City staff continues to evaluate that our property is not exceptional or an extraordinary condition. There is not another property in Sunnyvale that has the same condition as us, therefore that is exceptional as defined in the Webster Dictionary. The County allowed for an existing garage to be placed out of compliance in 1956 and then again allowed the property owner to expand that non-compliant garage in 1997 to 1210 square feet. No-one in Sunnyvale has a similar situation as us and this situation is unique to this property. This exceptional

condition has created a major cost impact to our plans that would not normally have been an issue on other properties.

In addition, the Planning Commission should know that the existing condition should be fully evaluated because of the unusual Talisman Tract setup. The property dwelling to the west of our property is more than 45 feet away from my dwelling. If the setback along the garage was for safety, fire protection or privacy then the existing condition exceeds those requirements. The City needs to evaluate not just the existing condition of the property but the existing condition as a whole. I was told that, if I had an easement with the west property, stating that no structure can be built any closer than 5'-6" from the property line then a variance was not needed. This would provide a restriction for future development. That makes no sense, because we do not know if the property will have future development and we do not know, in the future, if the minimum setback between two properties is supposed to be 8'. If an easement is acceptable to City staff then the existing condition is acceptable for the current code as it stands today. This extraordinary condition currently meets guidelines between dwellings and should be part of the evaluation process.

## **2. Undue Hardship to Deviate from Existing Plan**

City staff has suggested that there are other alternatives to our plan to meet the setback guidelines. The following are the suggestions and the impacts to the alternative solutions:

- a. Removal of the garage and rebuild to meet setbacks.
  - i. We have evaluated this solution and the cost impact to remove and replace a 1200 square foot garage with plumbing and subpanel would be an additional cost of \$60,000 to \$80,000.
- b. Provide a 5' breezeway through the middle of the development. The breezeway would be between the existing garage and the new expansion.
  - i. The form and function of such a solution is not ideal. No designer and city planning would allow for a 5' alley way to be placed between the garage and the main house. It does not create a safe zone, is an inefficient use of space and is cost prohibitive.
  - ii. The cost for this solution would include additional foundation work, additional walls, exterior finishes, additional roofing configuration and hardscape in the alley way. That would be a cost impact of \$30,000 to \$35,000.
- c. Provide a setback of 12'-8" instead of 10'-0" on the east side of the property.
  - i. This increased setback considerably impacts form and function inside the house, creating jogs in hallways, squeezing a great room and master bedroom and impacting costs.
  - ii. The cost for this solution would include additional foundation work, relocation of existing bearing walls, adding new bearing walls, additional carpentry for the roof structure to accommodate the jog and removal of a tree in the back yard. With this increased set back we have to go further into the property and remove a 40' heritage tree. Another extraordinary condition. That would be a cost impact of \$25,000 to \$30,000.

Because of the extraordinary conditions of this property we would be responsible for major cost impacts. Therefore, we are not afforded the same privileges as others on the street and especially our neighbor to the east of us.

### **3. Consistent Code Interpretation**

City Staff continues to interpret the combined setback of 20% however continues to dismiss Code 19.50.020. If City staff strictly interprets Code 19.50.020 they would have to conclude that we have a non-conforming dwelling and we can expand upon that dwelling as long as there is not an increase in non-conformities. Our intention is to extend the dwelling at the same 10' separation to the existing east property line. Therefore, this plan does not increase any existing nonconformities, we will have the same 12'-4" combined setback.

For reference, Code 19.50.020 is stated below:

"A building legally built and occupied as a dwelling, in all zoning districts except R-1 and R-2, which does not meet current development standards except for lot area per dwelling unit may be repaired, altered, enlarged or replaced without requiring a variance provided:

- 1) No increase in non-conformities will result; and
- 2) Any required permits are obtained."

The existing structure was legally built with permits through the County of Santa Clara. It is not an R-1 or R-2 structure and does not meet the current setback standards. However, the code is specifically intended to guard against past codes that are now considered non-compliant. This code allows for the structure to be enlarged as long as the existing setbacks do not have an increase of nonconformities.

To date, we have not been given any interpretation of the intent of Code 19.50.020. We have been told it does not pertain to this situation, without explanation. Codes are not to be interpreted for convenience but for intended purposes and our situation is ideal for this intended purpose of the code. Residents should not be penalized for inconsistent interpretation of Codes.

### **4. Inconsistency of "Property Development Equity"**

It appears that property development is continually inconsistent especially with older properties. There appears to be double standards when it comes to residential property development, creating public perception of inequities. One example of double standards resides between our property and the neighbor to the west. They were afforded the ability to place a gutter less than 12 inches from the property line but City Planning has denied my development to continue a 10' setback, consistent with the existing structure (See reference attachment C-1). Is the neighbor enjoying the benefit of more privacy and safety by placing the new structure at 12'-8" opposed to 10'-0"? The answer is no, however we are asked to pay a premium to have considerably less benefit than our neighbor is afforded. It does not make sense to ask one neighbor to be 12'-8" away from the property line and the other neighbor can be less than a foot.

In addition, the inconsistency of code requirements and impacts to the neighborhood are continually felt as we have seen with a 4100 square foot eye-sore structure that is being built on my street (See attachment). To date, the City cannot tell me why a structure of this magnitude is acceptable but an expansion to the back of our property, that will not be seen, is not acceptable. The public perception is that affluent people can demolish their existing homes and create mega-homes. While the less affluent residents are penalized to follow a setback code that was established for new developments not necessarily existing conditions. Following strict guidelines that were arbitrarily instituted for existing structures is not a proper solution for property development equity.

Finally, this letter should serve as our Basis for Appeal that clearly exhibits that this is an Extraordinary and Exceptional Condition. In addition, our desired action is to receive approval to move forward with our variance request. We look forward to Planning Commission hearing and strongly believe that our situation is different than other properties and that our situation should not be punitive because of a strict interpretation of the code.

If you should have any questions or comments, please do not hesitate to contact me directly at (408) 828-9258 or via email at [bob.fuselier@gmail.com](mailto:bob.fuselier@gmail.com).

Sincerely,

A handwritten signature in black ink, appearing to be "M FL", likely representing the initials of the home owners.

Home Owners Bob Fuselier and Lisa Orlando



Bob Fuselier <bobfuselier@gmail.com>

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## ZA Decision 584 Crawford Drive

11 messages

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George Schroeder <GSchroeder@sunnyvale.ca.gov>

Thu, Aug 31, 2017 at 5:37 PM

To: Bob Fuselier <bobfuselier@gmail.com>

Cc: Orlando Lisa <orlando\_lisa@cusdk8.org>

Hi Bob,

I wanted to let you know that the Zoning Administrator made the decision today to deny the Variance and Design Review application at 584 Crawford Dr. The reason for the denial is that there are options to redesign the floor plan with an increased setback that meets the code requirement. The finding is that there are no exceptional or extraordinary circumstances or conditions applicable to the property or use that prevents the design from meeting the combined side yard setback requirement.

There is a fifteen day appeal period from this date. An appeal to the Planning Commission is made by filing an application, providing a written basis for the appeal, and paying an appeal fee of \$174.50 by end of business on September 15, 2017. The application form is available here - <https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?BlobID=23616>

I will be back in the office next Tuesday and can answer any questions you have then.



George Schroeder

Senior Planner

Community Development Department

Phone: 408-730-7443

[Sunnyvale.ca.gov](http://Sunnyvale.ca.gov)

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