



File #: 23-0580, Version: 1

REPORT TO PLANNING COMMISSION

SUBJECT

Proposed Project: Appeal of a decision by the Zoning Administrator denying a **VARIANCE** to legalize an existing 189 square foot detached accessory structure in the rear yard of a single-family property with a ten-inch side setback where four feet minimum is required, and a seven-foot rear yard setback where ten feet minimum is required.

Location: 424 Bryan Avenue (APN: 209-11-034)

File #: PLNG-2022-7714

Zoning: R-2 (Low Medium Density Residential)

Applicant / Owner: Wayne Lin (applicant/appellant)/Thomas Moser (owner)

Environmental Review: Class 1 Categorical Exemption relieves this project from the California Environmental Quality Act (CEQA) provisions.

Project Planner: Drew Taplin, (408) 730-7407, dtaplin@sunnyvale.ca.gov

REPORT IN BRIEF

General Plan: Residential Medium Density

Existing Site Conditions: Single-Family Home

Surrounding Land Uses

North: Single-Family Home

South: Single-Family Home/Duplex

East: Triplex

West: Single-Family Home

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 reduced accessory structure setbacks.

BACKGROUND

Description of Proposed Project

The subject single-family property has an existing, unpermitted accessory structure near the southeastern corner of the rear yard. The 189 square-foot structure has a height of nine feet from grade and has a side yard setback of ten inches to the property line. The applicant is proposing to demolish and rebuild the structure for use as an office/living space in the same footprint.

Approximately 18 square feet of area at the rear of the existing structure would be removed during construction to meet fire code requirements for a finished rear yard setback of seven feet. See Attachment 4 for the site and architectural plans.

Per Sunnyvale Municipal Code (SMC) Section 19.40.030, accessory structures with an eight- to 15-foot height require a Miscellaneous Plan Permit (MPP) with notice. Per SMC Section 19.40.040,

detached habitable spaces and utility buildings with an eight- to 15-foot height require minimum side yard setbacks that match the underlying zoning district, and a minimum of ten feet to the rear property line. The minimum side yard setback in the R-2 zoning district is four feet.

Therefore, a Variance is required to legalize the structure with non-conforming 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 2021 for unpermitted accessory structure construction. Separately, the applicant filed a building permit (BLDG-2022-5036) to convert the existing detached garage in the rear yard to an Accessory Dwelling Unit, which is legal by right under the streamlined process outlined in SMC Section 19.79.030.

ENVIRONMENTAL REVIEW

A Class 1 Categorical Exemption relieves this project from the California Environmental Quality Act (CEQA) provisions. Class 1 Categorical Exemptions include demolition, addition, and repair of existing small structures.

DISCUSSION

Site Layout and Architecture

The subject property is located midblock near the intersection of Bryan Avenue and South Bayview Avenue, a few blocks east of downtown Sunnyvale. The 7,294 square-foot parcel contains a 1,422 square-foot home and 400 square-foot detached garage (now ADU) in addition to the subject accessory structure and rear yard pool. The existing floor area ratio (FAR) is approximately 25%. Adjacent homes are a mix of single- and two-family dwellings. The lots in this subdivision are typically narrow (50-foot widths) and line up evenly in a grid, with side and rear yards mirroring each other, and detached garages typically organized behind the residence towards the rear yard. Accessory structures are also common in the rear yards throughout the neighborhood, especially on single-family home properties.

The adjacent property to the west at 418 Bryan Avenue contains a single-family home while 432 Bryan Avenue on the east side is divided into three dwelling units. Both properties contain small accessory structures in the rear yard. The subject property's accessory structure is setback ten inches from the property line with 432 Bryan Avenue. The site layout of 432 Bryan Avenue is similar to the subject address, with the dwelling units at the front of the lot and a long rear yard and detached garage tucked behind. The final 32 feet of the lot behind the garage is open and contains only grass and low-lying landscaping. An eight-foot solid fence separates the two properties.

The parcel to the rear of the subject property was subdivided from its original form and is developed with two detached homes addressed as 427 and 429 East McKinley Avenue in a flag lot formation. The two-story rear façade of 429 East McKinley Avenue, which spans the width of the parcel, is approximately 14 feet from the rear property line and may have visibility of the accessory structure on the subject property. The proposed fire code modifications to the accessory structure on the subject property would result in a seven-foot setback from the shared property line. The properties are

separated by a seven-foot solid fence.

The proposed design of the accessory structure is a simple boxed floor plan accessed from two large sliding doors facing into the rear yard at the north and west elevations. The structure features a flat roof with a slight overhang towards the pool. Vertical wood siding and the roof design create a somewhat modern aesthetic, which loosely matches the finishes of the main residence that has been updated over time.

Applicant's Variance Justifications

The applicant has provided justifications to support the Variance request and appeal (see Attachment 5). The following is a summary of the justifications:

- The footprint of the accessory structure is dictated by the pool in the rear yard and there are limited alternatives for development.
- The floor area will be used minimally and poses no privacy impacts on neighbors.
- Maintaining the structure and footprint will allow the property owners to use and enjoy their backyard similar to immediate neighbors.

Development Standards

SMC Chapter 19.34 establishes the minimum front yard, side yard, and rear yard building setbacks for all zoning districts. The intent of these regulations is to ensure that structures do not impact the privacy, light, air, and enjoyment of adjacent properties. While the accessory structure on the subject lot is not overly disruptive, the site is not constrained in any way by its size or shape. In fact, the parcel's existing FAR of 25% is well under the 45% allowed in the R-2 zoning district, meaning there is area to develop additional floor area within required setbacks. Moreover, the rectangular lot dimensions of approximately 50 feet wide by 150 feet deep are similar to other lots on the same street.

Staff found three other related variance applications in the surrounding neighborhood within the past ten years. All three were approved with conditions, but each were a minor encroachment of the main house into the front yard setback towards the street.

The applicant references two approved variance applications in their appeal; one of which focused on the reconstruction of a legal nonconforming detached garage in a Heritage Housing district (#2015-8086), and another which granted reduced rear and side yard setbacks to a rear yard garden shed (#2014-7986). While there are similarities between the cases, the subject variance request exceeds each of the cited applications in the scope of deviation from normal development standards. There are no exceptional or extraordinary circumstances or conditions dictated by the size, shape, topography, location, or surroundings of the property that would deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.

In the opinion of staff, the required findings for a variance cannot be met. The requested side and rear yard deviations are unreasonable due to inconsistency with the intent and purposes of regulations found within SMC Title 19 as well as the required findings to grant a variance. See Attachment 2 for recommended Variance denial findings. Therefore, staff recommends that Zoning Administrator's decision to deny the Variance be upheld, and the appeal be denied.

PUBLIC CONTACT

141 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. No letters or calls from the public were received by staff at the time of staff report production.

ALTERNATIVES

1. Deny the appeal and uphold the decision of the Zoning Administrator to deny the Variance for the accessory structure.
2. Grant the appeal and approve the Variance for the accessory structure, subject to the Conditions in Attachment 3.
3. Grant the appeal and approve the Variance for the accessory structure, with modified Conditions.

STAFF RECOMMENDATION

Alternative 1: Deny the appeal and uphold the decision of the Zoning Administrator to deny the Variance for the accessory structure.

Prepared by: Drew Taplin, Associate Planner

Approved by: George Schroeder, Principal Planner

ATTACHMENTS

1. Vicinity and Noticing Maps
2. Recommended Findings (Denial)
3. Recommended Conditions of Approval (if appeal is granted)
4. Site and Architectural Plans
5. Appeal Letter from Applicant