



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Planning and Building



Date: May 22, 2013
Board Meeting Date: June 4, 2013
Special Notice / Hearing: 300 Feet
Vote Required: Majority

To: Honorable Board of Supervisors

From: Jim Eggemeyer, Community Development Director

Subject: Consideration of an appeal of the Planning Commission's approval of a Non-Conforming Use Permit and Off-Street Parking Exception to allow the expansion of a non-conforming house on a non-conforming parcel to allow encroachments into the required setbacks and daylight planes and to allow one covered parking space where two are required, at 4 Perry Avenue, in the unincorporated West Menlo Park area of San Mateo County

RECOMMENDATION:

The Board Subcommittee recommends the Board of Supervisors deny the appeal and approve the Non-Conforming Use Permit and Off-Street Parking Exception for a revised version of the project, County File Number PLN 2012-00056, by making the required findings and subject to the conditions of approval listed in Attachment A.

BACKGROUND:

On April 9, 2013, the San Mateo County Board of Supervisors considered an appeal of the Planning Commission's approval of a Non-Conforming Use Permit and Off-Street Parking Exception to allow the expansion of a non-conforming house on a non-conforming parcel that will result in encroachments into required setbacks and daylight planes and allow one covered parking space where two are required.

Based on information provided by staff and evidence presented at the hearing, the Board of Supervisors continued the matter for a period up to 120 days to allow a Board Subcommittee to meet with both the applicants and appellants to discuss additional options for the project.

DISCUSSION:

On April 19, 2013, the Board Subcommittee met with the applicants and their architect to discuss alternative design options that the Subcommittee would be willing to consider. At that meeting, it was impressed upon the applicants that the Subcommittee

was seeking a reduction in the amount of second story front yard encroachment as well as a reduction in the proposed floor area ratio.

Based upon statements made at the April 9 Board hearing, the applicants' architect prepared conceptual plans that were presented to the Subcommittee. This new alternative moves the fourth bedroom (which had previously encroached into the front yard setback) from the second floor to the first floor and places it behind the garage. This alternate location will result in a 10-foot encroachment into the rear yard setback, as shown on Attachment B of this memo. While reducing the rear yard setback, this revised design will reduce the perception of visual massing within the front setback, immediately adjacent to the street, and place it in an area that is less visible and reduces the visual impact to the Perry Street view corridor.

Indicated below is a comparison table that includes the original project, three alternatives discussed at the Board hearing on April 9, 2013 and the revised project (Alternative 4) indicating lot coverage, floor area, and floor area ratio.

| STANDARD | EXISTING | ORIGINALLY PROPOSED | ALT 1 APPELLANT | ALT 2 STAFF | ALT 3 APPLICANT | ALT 4 REVISED |
|-------------------------|----------|---------------------|-----------------|-------------|-----------------|---------------|
| LOT COVERAGE 50% | 32% | 45.5% | 40% | ±43.21% | 45.5% | 50.17% |
| FLOOR AREA (SF) | 990 | 2,682 | 2,277 | 1,750 | 2,550 | 2,628 |
| FLOOR AREA RATIO (%) | 32% | 85.8% | 73% | 56% | 81.6% | 84.1% |

On May 10, 2013, the Board Subcommittee also met with members from the appellant group and the neighborhood (the Group) to discuss the revised project. The Group had an opportunity to review the revised project prior to the meeting with the Board Subcommittee on May 10, 2013. The Group provided the Board Subcommittee with statistical information regarding the revised project and compared to other homes on Perry Avenue. In addition, the Group continued to express concerns regarding the number of exceptions requested by the applicants. These exceptions include allowing the existing structure to remain and be substantially remodeled, allowing floor area beyond required setbacks, and allowing only one covered parking space where two are required. The Group continues to believe the redesign should be reduced in floor area and redesigned to be more compliant with the standards for this zoning district, including required first and second story setbacks.

On May 21, 2013, the Board Subcommittee met with the applicants to discuss the applicants' concerns regarding the revised project indicated above. The applicants also shared with the Subcommittee their outreach efforts with the neighborhood regarding their redesign. As a result of this meeting and understanding the concerns of the

neighbors, the applicants believe the revised design is a reasonable compromise addressing the neighbors' concerns while also meeting the applicants' design objectives.

The Board Subcommittee's discussions with both the Group and the applicants focused largely on the question of the required Use Permit finding that the proposed development is "proportioned to the size of the parcel on which it is built." The Group asserts that as a matter of mathematical calculation, the proposed development does not conform to the same mathematical ratio of floor area to parcel size as several surrounding houses. Staff's own research determined that the floor area measurements provided to assert the Group's arguments were inconsistently applied — for example, covered porch area was sometimes included in floor area and sometimes excluded. This points out a difference in viewpoint between the applicants and the Group: the applicants would prefer that the question of proportionality to the lot be determined based upon aesthetic factors, such as the apparent size of the house from the public right-of-way, rather than a purely mathematical ratio. According to this view, an extensive covered porch, while technically counting as part of the defined floor area of a house, might not add to the apparent size of the house from the public right-of-way, and the house might look well-proportioned to the lot notwithstanding the addition of defined floor area. A different design could technically comply with a mathematical ration, but might not be designed in such a way as to appear well-proportioned to the lot — for example, when the visual bulk of the house is massed entirely to along the front setback line.

The Board Subcommittee believes the applicants' approach to the "proportioned" question for the Use Permit finding has merit. The primary purpose of controlling house size within a residential zone is not to control the number of occupants of a house or the way of life of the inhabitants, but rather to achieve consistency in the **appearance** of a house in relation to its neighborhood in terms of size. On standard- or larger-sized lots with ample setbacks, the question can be mathematical and will be established by the zoning. By contrast, in cases where a Use Permit is required, the purpose of the finding is not solely mathematical, but comes down to a matter of decision-maker judgment. The requirement that a house be proportioned to the size of its lot is a method of achieving the zoning objective of uniformity of apparent size. If a design requiring a Use Permit effectively achieves a proportionality to its lot size through design elements that make the house appear proportioned to the lot, the finding can be made at the Board's discretion.

Finally, the Board Subcommittee inquired through staff whether alleged errors in the permit approval process had any effect on the question of the Board's approval. As is sometimes the case, the design presented for approval by the Board is substantially different from the original proposal. In other words, the question now at hand is different from the question before. As projects change and are refined, the duty of the Planning Department is to attempt to summarize the project in relation to the applicable standards at each stage of the decision-making process. We do not believe that any statements or reports in the planning process that preceded this decision are the

product of anything more than a difference of perspective, or a different way of applying the facts to the standards, and we see no error in the process that would have any effect on the Board's own decisions.

SUMMARY:

For the revised project, the Board Subcommittee is recommending approval and adoption of the required findings, including the conditions of approval. They believe the revised project reduces the building's second story massing and by relocating that floor area to the first floor in the rear yard is less visible and reduces the visual impact from Perry Avenue.

The previous staff report to the Board of Supervisors for the April 9, 2013 public hearing is included as Attachment C for reference.

ATTACHMENTS:

- A. Recommended Findings and Conditions of Approval
- B. Revised Project Plans and Elevations
- C. Board of Supervisors Staff Report for April 9, 2013 Public Hearing:
 - 1. Executive Summary
 - 2. Memo to the Board of Supervisors
 - 3. Attachments A-K

COUNTY OF SAN MATEO
PLANNING AND BUILDING DEPARTMENT

RECOMMENDED FINDINGS AND CONDITIONS OF APPROVAL

Permit File Number: PLN 2012-00056

Board Meeting Date: June 4, 2013

Prepared By: Mike Schaller, Project Planner

For Adoption By: Board of Supervisors

RECOMMENDED FINDINGS:

Regarding the Environmental Review, Find:

1. That this project is categorically exempt pursuant to Section 15301(e) of the California Environmental Quality Act, related to the minor alteration of existing private structures where the addition will not result in an increase of 10,000 sq. ft. if the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and the area in which the project is located is not environmentally sensitive.

Regarding the Use Permit, Find:

2. That the establishment, maintenance, and/or conducting of the proposed use will not, under the circumstances of the particular case, result in a significant adverse impact, or be detrimental to the public welfare or injurious to property or improvements in said neighborhood. Given the constraints of the substandard parcel and existing non-conforming dwelling, the proposed additions, as depicted on the plans presented to the Board of Supervisors on June 4, 2013, would not be detrimental or injurious to the dwellings in the surrounding area and will have a negligible impact on the neighborhood.
3. That the proposed development is proportioned to the size of the parcel on which it is built. The question of proportion is not solely a mathematical consideration, but also relates to the question of visual scale in relation to the surrounding patterns of development. The revised design, as depicted on the plans presented to the Board of Supervisors on June 4, 2013, is proportioned appropriately to the size of the parcel when viewed in relation to other residences in the neighborhood.
4. That all opportunities to acquire additional contiguous land in order to achieve conformity with the Zoning Regulations currently in effect were investigated and proven to be infeasible. Acquisition of adjacent private property is not possible.
5. That the proposed development is as nearly in conformance with the Zoning Regulations currently in effect as reasonably possible. Due to the non-conforming

size of the parcel and the existing dwelling's non-conforming setbacks, the proposed additions as depicted on the plans presented to the Board of Supervisors on June 4, 2013, conform to the regulations to the extent reasonably possible. The revised design will result in a structure on the subject parcel that is comparable and proportional to the pattern of development on adjacent parcels in the vicinity.

6. That the use permit approval does not constitute a granting of special privileges to the property owner. The granting of a use permit will not permit or authorize land uses that are substantially different from existing land uses in the neighborhood. The use permit will also not authorize a structure that is substantially different from other adjacent parcels. An immediately adjacent parcel is also substandard and developed with a two-story dwelling comparable to what is proposed by the applicants.

Regarding the Off-Street Parking Exception, Find:

7. That the establishment, maintenance and/or conducting of the off-street parking facilities, as depicted on the plans presented to the Board of Supervisors on June 4, 2013, is as nearly in compliance with the requirements as is reasonably possible. Given the constraints of the substandard parcel's shallow depth and minimal front and side yard allowance, adding a second covered space is not possible. In addition, the width does not allow for additional opportunities for a second garage space.
8. That the establishment, maintenance and/or conducting of the use will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to the property or improvements in said neighborhood. The proposed project will still provide one covered parking space within the single-car garage. The project will also provide one uncovered space on the driveway. Approval of the proposed project will not alter existing parking demand on the site, nor reduce parking availability. There is no evidence to suggest that approving the requested exception will create new parking impacts to the neighborhood.

RECOMMENDED CONDITIONS OF APPROVAL:

Current Planning Section

1. This approval applies only to the proposal, documents, and revised plans described in this report and submitted to and approved by the Board of Supervisors on June 4, 2013. Modifications beyond that which were approved by the Board of Supervisors will be subject to review and approval by the Community Development Director and may require review at a public hearing. Minor modifications that are largely consistent with this approval may be approved at the discretion of the Community Development Director.

2. At the time of application for a building permit, the applicants shall provide an erosion and sediment control plan, which demonstrates how erosion will be mitigated during construction of the house. This mitigation shall be in place for the life of the project. The approved plan shall be implemented prior to issuance of a building permit.
3. The applicants are required to submit a stormwater management plan, which delineates permanent stormwater controls that shall be in place throughout the grading, construction and life of the project.
4. All construction activity shall be in accordance with the noise standards established under the County Noise Ordinance.
5. Prior to the issuance of a building permit, the applicants shall submit paint samples to the Planning and Building Department for review and approval. A Building Inspector will check the approved colors in the field prior to finalization of the building permit. The proposed paint color shall be compatible with surrounding residences.
6. The proposed addition shall incorporate permanent stormwater control measures in conformance with the Bay Area Stormwater Management Agencies Association (BASMAA) Guidelines.
7. All existing significant and heritage trees shall be protected prior to and during all demolition and construction activities. The applicants shall establish and maintain tree protection zones which shall be delineated using 4-foot tall orange plastic fencing supported by poles, located as close to the tree drip line as possible while still allowing room for construction to safely continue. The applicants shall maintain tree protection zones free of equipment and material storage and shall not clean any equipment within these areas. Should any large roots or large masses of roots need to be cut, the roots shall be inspected by a certified arborist prior to cutting. Any root cutting shall be monitored by an arborist and documented.
8. The required covered and uncovered parking spaces shall be kept clear and available for the parking of operating vehicles at all times.
9. Consistent with Section 6135(7)(b) of the San Mateo County Zoning Regulations, if a residential non-conforming structure is demolished or removed from the site, it shall only be rebuilt or replaced by a structure that conforms with the zoning and building code regulations currently in effect, and Section 6135(5)(a) of the San Mateo County Regulations, if any non-conforming portion of the structure is proposed to be removed, replacement shall conform with the zoning regulations currently in effect (e.g., any non-conforming building foundation removed shall be replaced in a conforming location).

Building Inspection Section

10. Prior to pouring any concrete for foundations, written verification from a licensed surveyor must be submitted which will confirm that the required setbacks as shown on the approved plans have been maintained.
11. An automatic fire sprinkler system will be required. This permit must be issued prior to or in conjunction with the building permit.
12. If a water main extension, upgrade or hydrant is required, this work must be completed prior to the issuance of the building permit, or the applicants must submit a copy of an agreement and contract with the water purveyor which will confirm that the work will be completed prior to finalization of the building permit.
13. A site drainage plan will be required. This plan must demonstrate how roof drainage and site runoff will be directed to an approved disposal area.
14. Sediment and erosion control measures must be installed prior to beginning any site work and maintained throughout the term of the permit. Failure to install or maintain these measures will result in stoppage of construction until the corrections have been made and fees paid for staff enforcement time.
15. This project must comply with the Green Building Ordinance.
16. All drawings must be drawn to scale and clearly define the whole project and its scope.
17. Please call out the right codes on the code summary: "The design and/or drawings shall be done according to the 2010 Editions of the California Building Standards Code, 2010 California Plumbing Code, 2010 California Mechanical Code, and the 2010 California Electrical Code."

Department of Public Works

18. Prior to the issuance of the building permit, the applicants will be required to provide payment of "roadway mitigation fees" based on the square footage (assessable space) of the proposed building per Ordinance No. 3277.
19. The applicants shall have prepared, by a registered civil engineer, a drainage analysis of the proposed project and submit it to the Department of Public Works for review and approval. The drainage analysis shall consist of a written narrative and a plan. The flow of the stormwater onto, over, and off the property shall be detailed on the plan and shall include adjacent lands as appropriate to clearly depict the pattern of flow. The analysis shall detail the measures necessary to certify adequate drainage. Post-development flows and velocities shall not exceed those that existed in the pre-developed state. Recommended measures

shall be designed and included in the improvement plans and submitted to the Department of Public Works for review and approval.

Menlo Park Fire Protection District

20. Install a NFPA 13-D fire sprinkler system under a separate fire permit since the addition/remodel exceeds 50% of the existing floor area. Fire sprinkler system shall comply with Menlo Park Fire Protection District Standards.
21. Install smoke detectors in each sleeping area, the area outside sleeping areas and at each floor stair landing. Install carbon monoxide detectors outside the sleeping areas and on each level of the house. Smoke and carbon monoxide detectors shall be interconnected for alarm.
22. The applicants shall provide at least 4-inch tall with 1/2-inch stroke illuminated address numbers. The address shall be visible from the street and contrasting to its background.
23. Approved plans and approval letter must be on site at time of inspection.
24. Final acceptance of this project is subject to field inspection.