



County of San Mateo

Inter-Departmental Correspondence

Department: PLANNING AND BUILDING

File #: 18-1030

Board Meeting Date: 11/13/2018

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Steve Monowitz, Community Development Director

Subject: Consideration of an appeal of the Zoning Hearing Officer's approval of a Non-Conforming Use Permit, pursuant to Sections 6133 and 6173 of the San Mateo County Zoning Regulations, to enlarge an existing non-conforming single-family residence on a non-conforming parcel, by adding 180 sq. ft. to the first floor, while maintaining non-conforming side yard setbacks of 2' (right side) and 3' (left side) where 5' is the minimum required side yard setback; a new 698 sq. ft. second-story which will encroach into the 16'45 degree daylight plane; and to allow the second required covered parking space to be uncovered and tandem to an existing one-car garage; on a non-conforming 2,549 sq. ft. parcel located at 338 Rutherford Avenue in the unincorporated Redwood City (Sequoia Tract) area of San Mateo County.

County File Number: PLN 2017-00517 (Kameli)

RECOMMENDATION:

Recommendation to deny the appeal and uphold the Zoning Hearing Officer's (ZHO) decision to approve the Non-Conforming Use Permit (PLN 2017-00517), by making the required findings and adopting the conditions of approval in Attachment A.

BACKGROUND:

The appellant is appealing the ZHO's approval of a Non-Conforming Use Permit to enlarge an existing non-conforming single-family residence on a non-conforming parcel located in the Sequoia Tract area of San Mateo County.

The appeal asserts that the project can only be approved through the issuance of multiple variances; the project fails to comply with the Zoning Regulations; the findings are not supported by evidence; the project is inconsistent with the County's General Plan; the County's action fails to comply with the California Environmental Quality Act (CEQA); too many exceptions are being requested; the addition is not appropriately sized and massed to the project parcel or neighborhood; and the daylight plane protrusion will have a detrimental impact on adjacent homes, including the appellant's home, and constitutes a taking. The appellant is also concerned that approval of the subject project would set a

precedent for the neighboring substandard size parcel (located between the project parcel and the appellant's property) to seek similar exceptions that would directly impact the appellant's property.

Planning Commission Hearing: At its public hearing on July 25, 2018, the Planning Commission voted (2-2) on a motion to deny the appeal and uphold the Zoning Hearing Officer's approval of the Non-Conforming Use Permit. Without a majority of the Commissioners in support, the motion to deny the appeal failed, and no subsequent motion was made. As a result, the Zoning Hearing Officer's decision to approve the Non-Conforming Use Permit remained in effect. On August 8, 2018, the appellant filed this further appeal of the ZHO's approval.

ZHO Hearing: At its public hearing on April 5, 2018, the ZHO approved the Non-Conforming Use Permit by making the required findings and imposing the conditions of approval presented in Attachment A of this report. On April 19, 2018, the appellant filed the initial appeal of the ZHO's decision.

Project Proposal: The applicant is requesting a Non-Conforming Use Permit to enlarge an existing non-conforming single-family residence on a non-conforming parcel by adding square footage to the first floor and constructing a new second floor. The first floor addition will maintain the existing non-conforming side yard setbacks and the proposed second story will encroach into the required daylight plane. The proposed project is located on a non-conforming 2,549 sq. ft. parcel in the Sequoia Tract area of San Mateo County.

The proposed first floor additions involve extending the 2' non-conforming right side yard setback 14' toward the front of the parcel to create a new front entrance where the front wall will be flush with the front-facing garage door/wall, and extending the 3' left yard side setback at the garage 3'-3" toward the front of the parcel to move the existing one-car garage slightly forward. The minimum required side yard setbacks of the "S-74" Zoning District are 5 feet. Additionally, the proposed new 698 sq. ft. second-story will slightly encroach into the 16'/45 degree daylight plane that is required in the "S-74" Zoning District, but otherwise will be recessed from the first floor footprint in compliance with the minimum 5' side yard setbacks.

The applicant is also requesting an exception to the Zoning Regulations' requirement for two covered, side-by-side parking spaces. The applicant is proposing an uncovered tandem parking space in the driveway, in front of the existing one-car garage (which will be maintained).

Report Prepared By: Summer Burlison, Project Planner; 650/363-1815

Appellant: William Hertlein

Owner/Applicant: Ehsan Kameli

Location: 338 Rutherford Avenue, Redwood City (Sequoia Tract)

APN: 069-321-260

Size: 2,549 sq. ft.

Parcel Legality: The project parcel is legal per permitted construction of the existing single-family

residence in 1959, a principally permitted use.

Existing Zoning: R-1/S-74 (Single-family residential/5,000 sq. ft. lot minimum)

General Plan Designation: Medium Density Residential

Sphere-of-Influence: Redwood City

Existing Land Use: Single-Family Residence

Water Supply: California Water Service Company - Bear Gulch District

Sewage Disposal: Fair Oaks Sewer Maintenance District

Flood Zone: Zone X (area of minimal flood hazard); Community Panel No. 06081C0303E, effective October 16, 2012.

Environmental Evaluation: Categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Guidelines Section 15301, Class 1, which exempts minor alterations of an existing structure with negligible or no expansion of use, including, specifically a residential addition of less than 10,000 sq. ft. of floor area on a site in an urbanized area, zoned for residential use, where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

Setting: The subject property is a flat, 2,549 sq. ft. parcel fronting Rutherford Avenue in the established single-family residential Sequoia Tract area of San Mateo County. Existing surrounding development includes a mix of one- and two- story single-family residences on conforming and non-conforming sized parcels.

Chronology:

<u>Date</u>	- <u>Action</u>
December 11, 2017	-Non-Conforming Use Permit application, PLN 2017-00517, submitted.
January 26, 2018	-Application deemed complete.
March 15, 2018	-ZHO hearing; item continued to allow the applicant an opportunity to meet with a nearby property owner opposing the project.
April 5, 2018	-ZHO hearing; project approved.
April 19, 2018	-Appeal of the ZHO's decision filed.
July 25, 2018	--Planning Commission hearing; no motion is passed. ZHO's approval stands.
August 8, 2018	-Further appeal of the ZHO's decision filed (due to result of the Planning Commission hearing).

DISCUSSION:**A. PREVIOUS ACTIONS**

On March 15, 2018, the Zoning Hearing Officer continued consideration of the project to allow the applicant an opportunity to meet with an opposing concerned neighbor to discuss the project in more detail before a decision was rendered. The opposing neighbor expressed concern at this public hearing about the adequacy of notice for the public hearing; that the addition is not appropriately sized and massed to the project parcel or neighborhood; the daylight plane protrusion will have a detrimental impact on the neighbor's home; and that approval of the project would set a precedent for the neighboring substandard sized parcel to seek similar exceptions that would directly impact the appellant's property.

On April 5, 2018, the Zoning Hearing Officer approved the project after hearing testimony that the applicant and opposing neighbor had conducted a meeting, that re-notification was mailed out for the public hearing; and upon making the findings and imposing the conditions of approval recommended by staff, included as Attachment A to this Board of Supervisors' report. The opposing neighbor filed an appeal to the Planning Commission on April 19, 2018; see Attachment D for the complete appeal.

The Planning Commission considered the appeal on July 25, 2018, and voted (2-2) on a motion to deny the appeal and uphold the Zoning Hearing Officer's approval of the Non-Conforming Use Permit; one Planning Commissioner was absent from the meeting. Without a majority of the Commissioners voting in favor of the motion, the motion failed, and no subsequent motion was made. Therefore, the ZHO's approval stands. The opposing neighbor filed an appeal to the Board of Supervisors on August 8, 2018, see Attachment F for the complete appeal.

B. BASIS FOR APPEAL TO THE BOARD OF SUPERVISORS

The appellant's key points of appeal are summarized below followed by staff's response.

1. *The project can only lawfully be approved through the issuance of multiple variances; and variance findings cannot be made.*

Staff's Response: The County's Zoning Regulations offer several methods for granting exceptions from the zoning standards. A Non-Conforming Use Permit is one of those methods that allows relief from the strict application of Zoning Regulations when an existing parcel is determined to be non-conforming (i.e., the parcel was legally created and developed, but due to zoning changes over the years, does not conform to the Zoning Regulations currently in effect). The Zoning Regulations, in Section 6133.b(2) (of the Zoning Non-Conformities Chapter), allow an applicant to seek a Non-Conforming Use Permit for proposed development on an existing improved non-conforming parcel, such as that being sought under the current application, upon making the findings listed in Section 6133.b(3). (The required findings are discussed in Section C.2 below.) Therefore, findings to support the granting of a variance are not necessary, as staff has determined that a variance is not the appropriate mechanism to

provide an exception under the circumstances. The pursuit of a variance exception is appropriate for properties with very unique circumstances where due to those unique circumstances, the property cannot realize a similar level of development to what neighboring properties have. In the subject case, a substandard parcel is not particularly unique, as substandard parcels are scattered throughout the Sequoia Tract neighborhood. Therefore, the County provides the Non-Conforming Use Permit process as a means to provide some flexibility for reasonable development in these types of situations. The availability of a Non-Conforming Use Permit for the development or re-development of non-conforming parcels is an important consideration when the County occasionally undertakes the modification of its Zoning Regulations, because each change to the Regulations can have the effect of rendering an existing form of development to be non-conforming. If the variance process were the only available process for seeking permission to further develop a parcel whose development was rendered non-conforming due to a heightened restriction of a text amendment to the Zoning Regulations, the County would see a lot more opposition to modifications to its zoning, because property owners would experience a potentially permanent loss of development potential. As it stands, the County's provision for a Non-Conforming Use Permit for parcels in these circumstances provides a flexible way to allow sensible, low-impact development to occur notwithstanding unique features of the parcel that might not qualify for a variance. In other words, interpretation that a variance is required in such a circumstance would place a number of parcels into uncertain legal status and permanently establish some zoning non-conformities in perpetuity without any path for redevelopment.

2. *The project is inconsistent with the County's General Plan, specifically Visual Quality Policies and Urban Land Use Policies, and therefore does not protect or enhance the character of the Sequoia Tract Neighborhood.*

Staff's Response: The appellant raises concern over the project's compliance with General Plan Visual Quality Policy 4.15 (*Appearance of New Development*) and Policy 4.36 (*Urban Area Design Concept*), which seek to promote and enhance good design, site relationships and other aesthetic considerations; maintain and improve upon the appearance and visual character of development in urban areas; and ensure that new development in urban areas is designed and constructed to contribute to the orderly and harmonious development of the locality.

The applicant proposes to add a second-story to an existing one-story single-family residence in an urban single-family residential neighborhood consisting of one and two-story residences. Approval of the project, with the requested exceptions from the Zoning Regulations, will not result in a significant change in the appearance or visual character of development in the neighborhood. Specifically, the proposed addition is designed to be compatible with the typical hip and gable styled one- and two-story residences in the neighborhood.

The appellant also raises concern over the project's compliance with General Plan Urban Land Use Policy 8.15 (*Land Use Compatibility*), Policy 8.35 (*Zoning Regulations*), Policy 8.37 (*Density*), Policy 8.38 (*Parcel Sizes*), and Policy 8.39 (*Height, Bulk, and Standards*), which seek to protect and enhance the character of existing single-family

areas; ensure that development is consistent with land use designations, continue to use zoning districts which regulate development by applying specific standards; regulate maximum densities to ensure the level of development is consistent with land use designations, plan for the efficient provision of public facilities, services, and infrastructure, and minimize exposure to natural and man-made hazards; regulate minimum parcel size to ensure parcels are usable and developable, establish orderly and compatible development patterns, protect public health and safety, and minimize significant loss of property values; and regulate height, bulk, and setback requirements to ensure that the size and scale of development is compatible with parcel size, provide sufficient light and air in and around structures, ensure that development of permitted densities is feasible, and ensure public health and safety.

As previously mentioned, the project consists of an addition to a single-family residence in a single-family residentially zoned neighborhood where all public facilities, services, and infrastructure are available; furthermore, the project site is not exposed to any known natural or man-made hazards. The substandard project parcel was created by a 1912 subdivision, and developed with the existing single-family residence in 1959. The parcel and development have become non-conforming as a result of the County's zoning and rezoning of the neighborhood over years past; however, the project proposes no change in the development pattern of the area as a single-family residential neighborhood, or in development density. Additionally, the project will not impact public health or safety, or be expected to significantly impact property values. As discussed in Section B.10 below, the size and scale of development is compatible with the parcel size and will cast minimal shadow on neighboring properties over the majority of a day.

3. *The County's action fails to comply with the California Environmental Quality Act (CEQA) as a categorical exemption from Class I of the CEQA Guidelines only applies to projects that involve "negligible or no expansion of use beyond that existing at the time of the lead agency's determination." Additionally, the project may result in significant impacts related to aesthetics, land use/planning, and construction-related air quality, traffic, and noise.*

Staff's Response: The CEQA Guidelines, Section 15301, Class I, provide a categorical exemption for, among other things, minor alterations to existing private structures involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The CEQA Guidelines provide examples of projects that would qualify for this Class 1 categorical exemption. One such example is additions to existing structures provided that the addition will not result in an increase of more than 10,000 sq. ft. if (a) the project is in an area where all public services and facilities are available to allow for the maximum development permissible in the General Plan, and (b) the project area is not located in an environmentally sensitive area. (CEQA Guidelines Section 15301(e).) The project proposes a residential addition of less than 10,000 sq. ft. of floor area on a parcel that is located in the urbanized Sequoia Tract neighborhood, which is not an environmentally sensitive area. The parcel is designated for residential use and all public services and facilities are available to the project site. The subject property is currently developed with a single-family residential structure. The project, if approved, would continue the same intensity of use of the subject

property, that is, use as a single-family residence. The addition of 878 sq. ft. to the existing residence does not constitute an expansion of the existing use; rather, the project facilitates a continuation of the same single-family residential use in a larger structure.

Because the project qualifies for the Class 1 categorical exemption, no further environmental review is required. There are no unusual circumstances on the project site or its surroundings that would distinguish this project from other minor residential additions. However, staff notes that the project is designed to be compatible with the surrounding one- and two-story residential homes in the neighborhood; will continue the same single-family residential use, as permitted by the parcel's zoning; and will only generate temporary air quality, traffic, and noise impacts expected of any residential development in a residentially zoned area. No further environmental review is required under CEQA.

4. *The applicant made no attempt to comply with existing zoning regulations; and the project fails to comply with zoning regulations.*

Staff's Response: The applicant has made a reasonable attempt to comply with the zoning regulations given the existing non-conforming site conditions and S-74 zoning development standards. Testimony at the Zoning Hearing Officer's hearing on April 5, 2018, and at the Planning Commission hearing on July 25, 2018, indicated that the proposed plans were prepared in consideration of the Zoning Regulations, and that the applicant reduced the scope of the project due to the designer's consideration of the limits of the Zoning Regulations.

The applicant has provided Attachment G to illustrate alternative options that would allow compliance with the daylight plane standard. The illustrations show that the only ways to eliminate encroachment into the daylight plane for the second story addition is to either narrow the second story, currently proposed at 13'-7" wide (maximum), to approximately 7'; or reduce the height of the upper floor side walls from 8' to 4'-10". These options were rejected as they were considered too limiting in their attempt to maximize usable floor area on the second story of an already constrained site. The exceptions requested under the Non-Conforming Use Permit were determined to be reasonable based on existing conditions and the integrity of the proposed design.

5. *The findings are not supported by evidence; the proposed project does not satisfy two of the five findings required to approve the Non-Conforming Use Permit under Section 6133; and the applicant was granted too many variances, including intrusion into the daylight plane (Section 6300.4.30), side yard setbacks (Section 6300.4.26), enlargement of a non-conforming structure (Section 6135.4), a major remodel of a non-conforming structure (Section 6135.5.b), and parking regulations (Section 6119).*

Specifically, in violation of Section 6133.b.3.a. (finding), the proposed development is not proportioned to the size of the parcel on which it is being built. Additionally, in violation of Section 6133.b.3.c. (finding), the proposed development is not as nearly in conformance with the zoning regulations currently in effect as is reasonably possible.

Staff's Response: See staff's discussion in Section C.2. regarding the Zoning Hearing Officer's findings, which resulted in approval of the requested permit by the Zoning Hearing Officer on April 5, 2018.

The Zoning Regulations provide no limit on the number of exceptions that can be requested under a Non-Conforming Use Permit. Additionally, Section 6137 of the Zoning Nonconformities Chapter of the Zoning Regulations allows an applicant to seek a Non-Conforming Use Permit for any exceptions from the otherwise restrictive non-conforming development standards contained within the Chapter, such as those being sought under the current application.

6. *Based on an initial survey of 246 properties on, and immediately surrounding, the 300 block of Rutherford Avenue, the average Floor Area Ratio (FAR) is 27.1%, with non-conforming lots in the area averaging 29.7%. Only six properties surveyed exceed a 52% maximum floor area ratio. These six properties were constructed or remodeled prior to 2004 and the passage of the S-74 ordinance. In 14 years since the passing of the S-74 zoning regulations, not a single variance to the maximum floor area ratio has occurred in the surveyed area, even on non-conforming lots of which there are many.*

The project proposal is not consistent with the neighborhood as it would be two-times larger in floor area than the neighborhood average and would be the largest home per floor area square-footage percentage in all of the Sequoia Tract neighborhood.

Staff's Response: The proposed project will not violate the maximum allowed FAR under the S-74 zoning regulations as the proposed building floor area is 1,642 sq. ft. where 2,600 sq. ft. is allowed. Staff nevertheless reviewed 241 parcels in the immediate vicinity of the project parcel, generally covering the parcels that the appellant surveyed. Of the 241 parcels studied, shown on the map provided in Attachment J, staff found that 67 of the parcels are substandard in size (i.e., less than 5,000 sq. ft. in parcel size), with 23 of those 67 parcels being approximately the same substandard size (2,550 sq. ft.) as the project parcel. The average floor area of these 23 substandard sized parcels is 760 sq. ft. (or 30.75% if expressed as a percentage) and it does not appear any of these (substandard sized) parcels have undergone substantial modifications since the S-74 zoning regulations were enacted in 2004.

The Sequoia Tract is an older neighborhood with most of the houses built around the 1950s. Permit records indicate nine Home Improvement Exceptions (HIE's) have been granted throughout the neighborhood between 1999 to 2010, with six of the ten granted prior to the enactment of the S-74 regulations. The HIE approvals have primarily been granted for reduced setbacks, as identified in Attachment K. Additionally, two Non-Conforming Use Permits have been granted, not including the current application, for reduced setbacks in the Sequoia Tract neighborhood; one prior to and one after enactment of the S-74 regulations. When expressed as a percentage, the project proposes a 64.4% floor area ratio; however, the S-74 zoning regulations do not set a percentage for maximum floor area on substandard sized parcels. Instead, the S-74 zoning regulations established a fixed maximum floor area value of 2,600 sq. ft. for any parcel less than or equal to 5,000 sq. ft. in size.

With regard to the appellant's concern about the proportionality of the project to the parcel and neighborhood, the project design consists of a first floor width of 19' from sidewall to sidewall, and a second floor that will be inset 2'-6" from the first floor left sidewall and 4'-6" from the first floor right sidewall to help reduce the building's volume on the site. The proposed second story maintains the minimum 20' setbacks from the front and rear property lines. As the proposed, the new second story complies with setback standards, and the project is below the maximum allowed square footage; accordingly, staff has concluded its design is appropriately proportioned to the size of the parcel and compatible with other homes in the neighborhood.

The 300 block of Rutherford Avenue is primarily comprised of older single-story homes, with four two-story homes along the project parcel side of Rutherford Avenue, one of which is on a substandard 4,080 sq. ft. parcel. Additionally, there are several two-story homes in the greater Sequoia Tract neighborhood that are situated on substandard parcels of similar size to the project parcel, see Attachment M. The size and design of the proposed project is consistent with the mix of one- and two-story houses built on a range of parcel sizes in the Sequoia Tract area.

7. *The proposed FAR ignores the original intent of the S-74 ordinance, as well as Section 6300.4.22, which states that "In the case where a requirement, standard, or provision conflicts with another requirement, standard, or provision...the most limiting provision shall take precedence and govern." The maximum allowed FAR of 2,600 sq. ft. for the project parcel equates to a 52% FAR based on a conforming 5,000 sq. ft. (or greater) parcel. Therefore, is a 52% ratio not the more limiting standard?*

Staff's Response: The S-74 standards for Maximum Floor Area specify that for parcels less than or equal to 5,000 sq. ft. in size, the allowed maximum floor area is 2,600 square feet. The FAR limit for substandard sized parcels under the S-74 zoning standards is a fixed value, and is not further limited by the actual size of the parcel. See staff's response to appeal point No. 10 below for discussion regarding the original intent of establishing the maximum floor area as part of the S-74 zoning regulations.

8. *The appellant is concerned that while approval of the subject project does not set legal precedence, it would establish precedence for approval of the adjacent substandard sized parcel to propose similar development, with encroachment into the daylight plane, which would impact the appellant's property.*

Staff's Response: Approval of the subject project would not set a precedent for the approval of similar development on the adjacent substandard sized parcel. If exceptions from the zoning standards are necessary for a proposed development on the adjacent parcel, that property owner would be required to apply for and obtain their own discretionary non-conforming use permit, which would include an independent evaluation of the project's potential impacts on neighboring properties.

9. *The intrusion into the daylight plane is significant and unnecessary and will have a detrimental impact on the adjacent homes, including the appellant's property, and constitutes a taking. The daylight plane encroachment is more than "slight," as stated*

by County staff, as the entire length of the house, 55', on both sides, will encroach into the daylight plane. The north side of the second story would encroach just short of 3' of livable space into the daylight plane, or almost 20% greater than the ordinance allows, which is a significant encroachment. The daylight plane encroachment was a primary contribution of the S-74 zoning ordinance as previously none had existed for the neighborhood. Section 6300.4.30 of the S-74 zoning regulations allows encroachment of architectural features, such as dormers or gables, to extend into the daylight plane no more than 20' in continuous or cumulative length on each side, where the proposed encroachment exceeds this allowance by more than double the allowance.

Staff's Response: The new second-story addition has been recessed from the existing first floor non-conforming sidewalls in order to comply with the minimum required 5' side yard setbacks (from property lines). Based on the project plans, the maximum width of the second story will be 13'-7" with a maximum height of 21'-7(1/4)" (grade to roof peak) where 28' is the maximum height allowed. As previously mentioned, the applicant's designer has stated that the only way to eliminate encroachment into the daylight plane is to narrow the second story; however, this is not a reasonable option for the applicant from a cost to utilization perspective and would discourage the applicant from pursuing a second-story addition and thus prevent them from being able to meet their objective of gaining additional floor space for their growing family. Furthermore, the proposed width of the second floor is already relatively minimal at 13'-7" wide. The maximum building code height for a habitable floor is 7', where the project proposes 8', which is considered by the Building Inspection Section to be a typical height clearance for a habitable floor. The daylight plane encroachment will be just less than 3' of vertical wall along 34' of the right side of the second story, and just less than 2' of vertical wall along 53' of the left side of the second story. Attachment O illustrates that these encroachments are relatively minimal in light of the entire project proposal. The project applicant has provided a shadow study, Attachment P, which illustrates that the project will cast the most shade on the neighboring property at 334 Rutherford Avenue during the morning, and by noon there would be minimal shade impacts to the adjacent property. Given the extent of the proposed daylight plane encroachment, the amount of shade cast onto the neighboring property that could be eliminated if the project complied with the daylight plane standard is negligible.

The upper walls of the second story are not "architectural features" that are regulated under Section 6300.4.30 of the S-74 zoning standards, which allows architectural feature encroachments under specified criteria (i.e., no more than 20' of continuous or cumulative length and no more than 24' in height); therefore, this provision does not apply to the project. Instead, the daylight plane encroachment requires an exception from the daylight plan standard, which the applicant is seeking under the subject application.

According to the 2004 Staff Report presented to the Board of Supervisors for adoption of the S-74 zoning regulations, included as Attachment N, the daylight plane was established to reduce the impact of tall walls looming over neighboring houses and yards, to help protect privacy, and prevent the blockage of sunlight onto the neighboring properties. The adjacent neighboring properties include a similarly developed one-story single-family residence at 334 Rutherford Avenue on a substandard sized parcel (right

side of project site), with the appellant's one-story single-family residence at 330 Rutherford Avenue adjacent to this (neighboring) parcel, and a one-story single-family residence at 342 Rutherford Avenue on a conforming sized parcel on the left side of the project site (see Attachment J). Any direct impacts from the project proposal would be on these two adjacent neighboring properties and would not extend to the appellant's property at 330 Rutherford Avenue. Staff has received letters of support for the project from the adjacent neighboring properties at 342 and 334 Rutherford Avenue, 358 Rutherford Avenue, and directly across the street at 341 Rutherford Avenue (see Attachment W).

The proposed second floor has been inset to comply with 5' side yard setbacks. Additionally, the second floor does not contain extensive windows that would present a concern for privacy, and the shadow study provided in Attachment P demonstrates that there will be minimal shadow cast on neighboring properties for a majority of the day. The appellant has not provided any evidence in support of the claim that approval of the project would constitute a taking.

10. *The proposed project is not in compliance with the intent of the S-74 Zoning District ordinances, which were specifically passed at the request of the neighborhood in 2004 after numerous community meetings and unanimous approvals by both the Planning Commission and Board of Supervisors.*

Staff's Response: Prior to adoption of the S-74 zoning regulations in 2004, the Sequoia Tract neighborhood was zoned R-1/S-7 (Single-family residential/5,000 sq. ft. lot minimum). The S-7 zoning regulations are relatively liberal with regard to development standards as they only provide minimum setbacks, maximum building height, and maximum lot coverage; there are no maximum floor area or daylight plane standards in the S-7 zoning regulations.

Former S-7 Zoning Development Standards

Lot minimum	5,000 sq. ft.
Front yard setback	20 ft.
Side yard setbacks	5 ft.
Rear yard setback	20 ft.
Maximum building height	3 stories / 36 ft.
Maximum lot coverage	50%

The Sequoia Tract neighborhood is comprised of modest single-family redominantly 5,000 sq. ft. parcels with some larger parcels ranging in size from 10,000 sq. ft. to 20,000 sq. ft. Over the preceding few years leading up to the adoption of the S-74 zoning regulations, the neighborhood had started to see several modest single-family homes torn down and replaced with substantially larger houses ranging in size from 3,000 sq. ft. to 6,000 sq. ft., including some large parcels being subdivided and developed with large houses, all in compliance with the liberal S-7 zoning development standards. Residents grew concerned over the change from an otherwise modestly developed neighborhood to one with larger homes. In response to this growing concern, the S-74 regulations were developed to control house size, height, and bulk and shape that the S-7 zoning development standards lacked.

House Size/Floor Area

The S-74 zoning regulations introduced a Maximum Floor Area restriction where previously none existed (under the S-7 regulations). The intent of establishing a Maximum Floor Area was to address the growing concern over larger homes being built on standard sized 5,000 sq. ft., or larger sized, parcels in order to preserve the existing character of a modestly developed single-family residential neighborhood. Residents felt the larger 3,000 sq. ft. to 6,000 sq. ft. homes that were starting to be introduced into the neighborhood would obtrusively stand out from the smaller homes and would visually and aesthetically disturb the harmonious scale of buildings in the neighborhood. The proposed project, which would result in a 1,642 sq. ft. home, is not of a magnitude similar to that which motivated the establishment of Maximum Floor Area restriction in the S-74 zoning regulations.

Height

The S-74 zoning regulations modified the maximum building height from three stories/36' to a reduced two stories/28' to address residents' concerns that three-story homes overwhelm neighboring one- and two-story homes and can cast long, dark shadows and invade privacy. The proposed project is in compliance with the maximum allowed building height of the S-74 zoning regulations as it will be two stories, and less than 22' in height.

Bulk and Shape/Daylight Plane

The S-74 zoning regulations introduced a daylight plane standard where previously none existed (under the S-7 regulations) in order to reduce the impact of tall walls looming over neighboring houses and yards, to help protect privacy and prevent the blockage of sunlight. While the impetus of establishing a daylight plane was to control larger homes that were starting to be developed in the neighborhood in the few years prior to 2004, which were cited to be in the realm of 3,000 sq. ft. to 6,000 sq. ft. homes, the proposed project includes a second-story addition that modestly protrudes into the daylight plane. See appeal point No. 9 above for further staff discussion on this concern.

11. *The project qualifies as a major remodel pursuant to Section 6132.9 of the zoning regulations as it would add more than 100% to the current structure's value (i.e., 878 sq. ft. addition to an existing 764 sq. ft. house); however, is not being treated as such by the County. As a major remodel, pursuant to Section 6135.5 of the non-conforming regulations, where any non-conformity violates the required zoning standard by 50% or more, the entire structure shall conform with the zoning regulations currently in effect. The existing north side setback violates the required zoning standard by 56%, therefore, shouldn't the project be required to conform to all zoning regulations currently in effect, including side yard setbacks?*

Staff's Response: The addition of a second story is considered an "enlargement" (i.e., the state of a land use or structure after it has been expanded to cover more land area,

consume more air space, or increase its intensity on the site) of a non-conforming structure, pursuant to Section 6132.4 of the Zoning Nonconformities regulations. Enlargements are required to comply with the Zoning Regulations currently in effect, but Section 6135.4 does not require the existing nonconformities to be brought up to current Zoning Regulations.

However, the non-conforming regulations also provide an option to seek a Non-Conforming Use Permit, which can provide relief from any provision of the Zoning Non-Conformities regulations that restricts the continuation, enlargement, reestablishment, or replacement of a non-conforming use, structure, or situation (Section 6137). This is the mechanism by which the applicant is seeking to extend the non-conforming side yard setbacks (on the first floor), continue the existing non-conforming parking situation (of one covered parking space and one tandem uncovered parking space), and encroach into the daylight plane for a second-story addition.

C. CONFORMANCE WITH THE ZONING REGULATIONS

1. Development Standards

The project parcel is zoned R-1/S-74 (Single-family residential/5,000 sq. ft. lot minimum). The project parcel is a non-conforming sized 25' wide by 101.97' long parcel (2,549 sq. ft.). Furthermore, the existing one-story single-family residence is non-conforming for side yard setbacks. A summary of the project's zoning compliance is provided in the table below:

R-1/S-74 Zoning Development Standards

Standard	Required	Existing	Proposed
Minimum Lot Width	50 ft.	25 ft.*	No change**
Minimum Lot Area	5,000 sq. ft.	2,549 sq. ft.*	No change**
Minimum Front Yard Setback	20 ft.	24.3 ft.	20.04 ft.
Minimum Right Side Yard Setback	5 ft.	2 ft.*	2.5 ft.**
Minimum Left Side Yard Setback	5 ft.	3.4 ft.*	3.4**
Minimum Rear Yard Setback	20 ft.	20.4 ft.	20.4 ft.
Maximum Lot Coverage	50%	39%	46%
Maximum Building Floor Area	2,600 sq. ft.	764 sq. ft.	1,642 sq. ft.***
Maximum Building Height	28 ft. / 2 stories	14 ft. / 1 story	21' - 7 (1/4)" / 2 stories
Maximum Daylight Plane Setback	16' / 45° at side setback lines	Complies	Encroachment**
Minimum Covered Parking	2	1*	1**
Minimum Lot Width	50 ft.	25 ft.*	No change**

* Non-conforming. ** Proposal requiring a Non-Conforming Use Permit. *** Garage square Development Standards for Maximum Floor Area.

Non-Conforming Sized Parcel:

Based on the above table and pursuant to Section 6133.3.b(2) of the County's Zoning Regulations, the proposed project entails enlarging an existing non-conforming residence (i.e., side yard setbacks) on an improved non-conforming sized parcel where

the proposed enlargements will not conform with the R-1/S-74 development standards; thus, a Non-Conforming Use Permit is required. The minimum required parcel size in the “S 74” Combining District is 5,000 sq. ft. where the existing legal, developed parcel is only 2,549 sq. ft. in size.

Non-Conforming Setbacks:

The project proposes non-conforming side yard setbacks on the first floor to accommodate the addition of 180 sq. ft. for a garage extension and new front entry, where the minimum side yard setbacks required are 5' pursuant to Section 6300.4.26 of the Zoning Regulations. The first-floor additions will result in an extension of the existing non-conforming 3' left side yard setback and 2' right side yard setback.

Non-Conforming Daylight Plane:

The project proposes a new 698 sq. ft. second story on an existing one-story residence. The proposed second story will encroach into the daylight plane required under Section 6300.4.30 of the Zoning Regulations (see Attachment O, which illustrates the proposed daylight plane encroachments). Otherwise, the new second story will comply with all setback and height limit requirements of the zoning district, as well as the maximum building floor area for the parcel.

Non-Conforming Covered Parking:

Additionally, the project proposes to maintain a non-conforming one (1) car garage with one (1) tandem uncovered parking space (i.e., driveway) where two (2) covered side-by-side parking spaces are required pursuant to Section 6119 of the Zoning Regulations. The Zoning Regulations require two covered parking spaces for the addition of one (1) bedroom on the new second floor for a new total of three bedrooms.

2. Non-Conforming Use Permit Regulations

The existing residence was constructed in 1959 and is a legal non-conforming structure on a legal non-conforming parcel. Section 6133.3.b(2) of the Zoning Regulations requires the issuance of a use permit when proposed development on an improved non-conforming parcel will not comply with the Zoning Regulations currently in effect. Sections 6135.4 and 6136.4 of the Zoning Regulations allow a non-conforming structure (i.e., setbacks) and a non-conforming situation (i.e., covered parking) to be enlarged provided the enlargement conforms with the Zoning Regulations currently in effect. Where a proposed enlargement does not comply with the Zoning Regulations currently in effect, Section 6137 (*Exceptions*) allows an applicant to request a non-conforming use permit, as requested under the subject application. Therefore, in order to approve the requested Non-Conforming Use Permit, the following findings, as required by Sections 6133.3.b(3) and 6137 (*Exceptions*), must be made:

- a. *That the proposed development is proportioned to the size of the parcel on which it is being built.*

The project parcel is substandard in size. The R-1/S-74 Zoning District standards allow a maximum lot coverage of 50%, where the proposed project will result in a lot coverage ratio of 46%. Additionally, the zoning standards allow a maximum floor area square footage of 2,600 sq. ft. (for parcels less than or equal to 5,000 sq. ft. in size). The project proposes a floor area of 1,642 sq. ft., thereby complying with the maximum floor area requirement of the zoning district. Furthermore, the new second floor will be recessed from the first floor to comply with the setbacks of the zoning district and to comply with the daylight plane requirement of the S-74 Zoning District to the degree possible. Therefore, the proposed project is adequately proportioned to the size of the project parcel.

NOTE: The maximum allowed floor area square footage of 2,600 sq. ft. happens to exceed the size of the project parcel, which is 2,549 sq. ft. Therefore, the following information is provided as a percentage comparison based on a standard-sized parcel to aid in determining whether the proposed project is adequately proportioned to the size of the project parcel. When expressing the floor area as a percentage, on a conforming sized 5,000 sq. ft. parcel, the maximum floor area allowed of 2,600 sq. ft. is 52%; this percentage will increase as the parcel size decreases from 5,000 square feet. The proposed floor area expressed as a percentage of the project parcel is 64.4%, which is staff has determined is a reasonable increase in ratio from the floor area ratio that would result on a conforming-sized 5,000 sq. ft. parcel.

- b. *That all opportunities to acquire additional contiguous land in order to achieve conformity with the zoning regulations currently in effect have been investigated and proven to be infeasible.*

The subject Sequoia Tract subdivision was established in 1912 with existing residential development dating back to 1959. Rutherford Avenue consists of a mix of conforming and non-conforming-sized parcels with the project parcel being adjacent to two conforming-sized developed parcels (left side and rear) and one non-conforming-sized developed parcel (right side). None of the adjacent conforming-sized parcels significantly exceed the minimum lot size for the applicable zoning district or have additional net land to offer the project parcel (once the development standards are applied for those adjacent parcels). Additionally, the adjacent parcels are under separate private ownership and not available for purchase based on the applicant's inquiry to adjacent property owners. Furthermore, given the housing shortage in the County, staff would not encourage the consolidation of adjacent individually developed parcels with the project parcel as it would result in the reduction of housing supply.

- c. *That the proposed development is as nearly in conformance with the zoning regulations currently in effect as is reasonably possible.*

Given the existing nonconformities on the project site and one-story single-family residence (i.e., parcel size, (first floor) side yard setbacks, and covered parking); the proposed project will allow a substantial addition to an existing residence without a significant exacerbation of nonconformities. The project will continue

nonconformities in parcel size, side yard setbacks (for the first floor), and covered parking. The proposed second floor will slightly encroach into the “16’/45 degree” side setback daylight planes of the “S-74” zoning regulations; however, the new second floor addition is proposed to be recessed from the first floor (thereby narrowing this floor down to 13’-7” wide) in order to comply with the minimum 5’ side yard setbacks, maximum allowed floor area (see Section 2.a. above for further discussion), and height allowance of the “S-74” development standards. Further narrowing of the second story to comply with the daylight plan requirement has been determined to be infeasible by the project applicant.

Off-street parking will be provided by a one-car garage and a tandem uncovered parking space in the driveway. Given the narrow width of the parcel and residence, the proposed parking configuration is as reasonably in compliance with the parking standards as possible since providing a second covered parking space would eliminate a front entrance to the residence and access to the new second story. The square footage and long, narrow configuration of the residence limits the applicant’s options to achieve a functional floor plan layout that would allow the addition of a second covered parking space. Therefore, the project is as nearly in compliance with the current Zoning Regulations as possible.

- d. *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 to coastal resources, or be detrimental to the public welfare or injurious to property or improvements in the said neighborhood.*

The proposed project is not in the coastal zone. Surrounding development in the Sequoia Tract neighborhood consists of a mix of conforming and non-conforming sized parcels that support one- and two-story single-family residences. The proposed project will continue to utilize the parcel for single-family residential purposes and will maintain existing nonconformities (i.e., parcel size, first floor side yard setbacks, and covered parking) while adding a new second story to accommodate a third bedroom and living space.

The nearest adjacent neighbor (at the right side property line) to the project site is a similar non-conforming one-story single-family residential development with non-conforming side yard setbacks. The proposed second floor of the subject project has been recessed on both sides to comply with the minimum 5’ side yard setbacks of the “S-74” development standards and proposes minimal windows along the right side property line to minimize privacy impacts onto the adjacent neighbor. The proposed second story will encroach into the daylight plane; however, the encroachment area is minimal and will not generate a significant adverse impact to the neighbor or area, as demonstrated by the shadow study in Attachment P.

Out of the 12 developed parcels fronting Rutherford Avenue, along the subject block of the project parcel, only three (3) homes maintain two-car garages and

are all of those located on conforming-sized parcels. The remaining developments consist of zero to one-car garages with at least one (1) tandem uncovered parking space in the driveway. Furthermore, six of the parcels on the subject block are non-conforming in size. The project parcel and the adjacent parcel to the right are the smallest parcels on the subject block, with only 25' lot widths. Nonetheless, the project does propose to continue the use of a one-car garage with one uncovered tandem parking space in the driveway to minimize street parking impacts along Rutherford Avenue.

Therefore, as proposed, the project will not generate any significant adverse impacts to or be detrimental to the public welfare or injurious to property or improvements in the neighborhood.

- e. *That the use permit approval does not constitute a granting of special privileges.*

Approval of a Non-Conforming Use Permit for the proposed project does not constitute the granting of a special privilege as the Zoning Regulations Non-Conformities Chapter provides the same exception process for similar parcels under the same conditions. Additionally, the proposed project will allow a single-family residence of reasonable size compared to other residences in the neighborhood.

D. ENVIRONMENTAL REVIEW

This project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15301, Class 1, for a residential addition of less than 10,000 sq. ft. of floor area on a site in an urbanized area, zoned for residential use, where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

County Counsel as reviewed the report as to form.

Approval of this project contributes to the Shared Vision 2025 of a Livable Community by providing an affordable and reasonable option for the property owner to revitalize and expand an existing residence for continued single-family residential use.

FISCAL IMPACT:

No fiscal impact.

ATTACHMENTS:

- A. Recommended Findings and Conditions of Approval
- B. Vicinity Map
- C. Zoning Hearing Officer Approval Letter, dated April 6, 2018
- D. Zoning Hearing Officer Appeal, filed April 19, 2018
- E. Planning Commission Decision Letter, dated August 8, 2018
- F. Planning Commission Appeal, filed August 8, 2018
- G. Alternative Daylight Plane Options
- H. S-74 Zoning District Regulations
- I. Zoning Nonconformities Regulations

- J. Map of Reviewed Properties
- K. Exceptions Table
- L. Street Views of Project Site
- M. Developed Substandard Parcels
- N. Board of Supervisors Staff Report, dated November 17, 2004, regarding the consideration of an amendment to the County Zoning Regulations to create the "S-74" Zoning District regulations and consideration of rezoning lands zoned R-1/S-7 in the Selby Neighborhood (Sequoia Tract) to R-1/S-74 to control house size and height
- O. Daylight Plane Rendering
- P. Shadow Study Plan
- Q. Existing/Proposed Site Plans
- R. Existing Roof and Floor Plans
- S. Proposed Floor Plans (First and Second Floor)
- T. Proposed Elevation and Roof Plans
- U. Boundary and Topographic Survey
- V. Owner's Statement
- W. Letters of Support