



North Fair Oaks Community Council
San Mateo County Coordinated
Departmental Response



Date: June 1, 2015
NFOCC Meeting Date: June 25, 2015
Special Notice / Hearing: None
Vote Required: Majority

To: Members, North Fair Oaks Community Council

From: Dave Holbrook, Project Planner

Subject: Consideration of a Non-Conforming Use Permit, pursuant to the San Mateo County Zoning Regulations Sections 6137, to: (1) legalize a bedroom addition with a 4'8" side yard where a minimum 5' setback is required at the rear of a legal non-conforming single-family residence, (2) allow a one-car covered parking space to remain where two-car covered parking spaces are required; and (3) legalize an illegally constructed detached accessory building located 10" and 1' 6" from rear and side property lines, respectively, where minimum 3' setbacks are required; located at 638 18th Avenue in the unincorporated North Fair Oaks area of San Mateo County. County File Number: PLN2014-00311.

RECOMMENDATION:

Recommend to the Planning Commission whether the Council concludes that the required finding for the Non-Conforming Use Permit? can be made.

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 property or improvements in said neighborhood.

PROPOSAL:

The applicant is requesting a Non-Conforming Use Permit to: (1) legalize a bedroom addition at the rear of a legal non-conforming single family residence which maintains a 4' 8" side yard setback where a minimum 5' setback is required, (2) allow one-car covered parking to remain where two-car covered parking spaces are required (triggered by the third bedroom addition); and (3) legalize a detached accessory building (built without permits; improved as an office) located 10" and 1' 6" from rear and side property lines, respectively, where minimum 3' setbacks are required.

BACKGROUND:

Report Prepared By: Dave Holbrook, Senior Planner, 650/363-1837

Owners: Nihal and Yasemin Denari

Applicant: Gregory Denari

Location: 638 - 18th Street, North Fair Oaks

APN: 060-144-150

Parcel Size: 5,350 sq. ft.

Existing Zoning: R-1/S-73 (Single-Family Residential/5,000 sq. ft. lot minimum)

General Plan Designation: Medium Density Residential

Sphere-of-Influence: Menlo Park

Existing Land Use: Single-Family Residence

Water Supply: California Water Service Co.

Sewage Disposal: West Bay Sanitary District

Flood Zone: Zone X (Area of minimal flood hazard)

Environmental Evaluation: Categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15301, Class 1, for a minor alteration to an existing private structure (a Single-Family Dwelling) where the intensification of the use is negligible.

Setting: The subject property is developed with a one-story, 1,336 sq. ft., single-family residence, built in 1938, a detached 590 sq. ft. one-car garage (assumed to have been built at or near time of original house) and a detached 162 sq. ft. building (used as an office) located in the left rear corner of the property to with substandard setbacks. An attached covered patio attached to the back of the house was legally built with a permit in 1967. The owner's proposal to legalize both the conversion of that patio to a third bedroom/bathroom, to maintain the one-car garage, and to legalize the detached "office" building comprise the three issues prompting this permit application. The project site is surrounded by other R-1 zoning and development and is located one block north of Marsh Road and the town limits of Atherton.

Chronology:

November 13, 2007 - Previous owner submits building permit (BLD2007-01173 for foundation work on rear addition to house. It is "Failed," since it's associated with an addition that was constructed without permits, whereby the owner is informed that the addition will need to be legalized. Accompanying site plan shows the addition to be 13' x 14'. (182 sq. ft.) in size and does not show the detached building in the left rear corner of the parcel. There is no subsequent activity or response to this permit's comments or the Building Inspection Section's directive.

January 11, 2008 - Building Inspection Section (Building) receives complaint of the attached patio to rear of house being converted (to a bedroom/bathroom) without permits. Soon thereafter, Building receives letter from previous owner stating that he had purchased the property in 2000 in an "As Is" condition and that he had not changed the structure in any way.

February 25, 2008 - Building issues a Stop Work Notice (SWN2008-00011) regarding the illegally constructed addition to the back of the house.

April 27, 2009 - Building sends a letter to previous owner reminding him of the issued Stop Work Notice and of the consequences of not responding to it.

April 25, 2014 - New owner (Denari) applies for and is issued Building Permit (BLD2014-00722) to demolish unpermitted addition (cited above); this permit provides a 120-day deadline, by which time the addition shall either have been demolished or legalized. Submitted site plan also shows the detached "office" structure building located in the right rear of the property. Although it has clearly been remodeled and improved over the years, it was not built with permits and does not comply with the required minimum 3' side/rear setbacks. Staff clarifies with owner that any subsequently submitted planning application to legalize the house (bedroom) addition must also deal with this detached building as well.

August 22, 2014 - Owner submits subject Planning application to legalize house addition, the continuation of non-conforming parking, and the detached "office" building.

DISCUSSION:

a. **Non-Conforming House Addition and 1-Car Covered Parking.** The original house is considered a legal, non-conforming structure because while it maintains a 3' 8" side setback toward the front (where a 5' setback was and currently is required), it was built legally and approved in 1939. In 1967, a rear covered patio was legally added to the back of the house, set back a bit further, but still maintaining a legal, non-conforming 4' 8" side setback. Surveys to confirm setbacks were generally not required prior to 1990, thus, such non-conformities are common with older houses and subsequent additions. The rear addition that is a subject element of this application generally represents a replacement of that patio; although legalizing its construction still requires an exception because of the substandard side setback and, thus, the NC Use Permit. The detached

1-car garage is considered both a legal, non-conforming structure and situation relative to the NC Regulations, since it has estimated to have been built with the main house in or around 1938, long before detached structures' building location requirements or parking requirements were adopted. Generally unchanged since it was built, its non-conforming status derives from providing only one-car covered parking where current regulations would require 2 covered spaces for two or more bedrooms (the rear addition adds a third bedroom).

Pursuant to the Zoning Nonconformities (NC) Chapter of the Zoning Regulations, Section 6135.4 (*Enlargement of Non-Conforming Structures*) states that a non-conforming structure's enlargement must comply with current zoning regulations (e.g., legalizing the non conforming addition to the back of the non-conforming house). Section 6136.1 (Continuation of Non-Conforming Situations) states that a non-conforming situation (as the one-car covered parking represents) may continue to exist providing all other provisions of the NC Chapter are met (which is not the case, since the added third bedroom would require that 2-car covered parking be provided). However, Section 6137 (Exceptions) allows for the Planning Commission to grant a use permit to except any provision in the NC Regulations to continue or enlarge a non-conforming structure or situation. The legal non-conforming development elements on the subject parcel are the addition attached to the back of the house and the existing detached one-car garage.

Accordingly, the NC Use Permit Exception requires that the following finding, pursuant to the Zoning Regulations, Chapter 24 (Use Permits), Section 6503, be made:

Find 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 property or improvements in said neighborhood.

(1) Use Permit Finding For the Addition at Back of House. As discussed previously, the subject addition (of a third bedroom and bathroom) generally occupies an area that had been developed with a legally built covered patio that maintained a similar non-conforming side setback (4' 8" where 5' is required). Thus, the current addition generally poses no adverse impact to the neighbor or the surrounding neighborhood that wasn't present from the previous covered patio. Additionally, its use as a third bedroom is typical of the number of bedrooms that residences in this neighborhood have.

(2) Use Permit Finding For Maintaining the Detached 1-Car Garage. While the 1-car garage is a legal, non-conforming situation, it's the addition of the third bedroom that, pursuant to the NC Regulations, triggers the requirement to provide a second covered parking space. The Use Permit this application seeks includes retaining only the 1-car garage, due to the unreasonable or undoable task of reconstructing the garage, house, or both to provide compliant 2-car covered parking. One scenario that fails is to reconstruct a 2-car covered parking structure (be it a carport or garage) attached to the house. However, with two side-by-side parking stalls requiring an interior width

dimension of 18', that would leave 3' or less (where a 5' side setback is required) to the parcel's left side property line. It is not intended that a Use Permit would be used to require or promote new development with resultant substandard setbacks. Likewise, it could be argued that the owner could merely remove the 1-car garage and, instead, run a driveway back between the house and the left property leading to a new (location and setback compliant) 2-car covered parking structure toward the rear of the property (where there is ample room, (with or without the illegal detached "office" building). It is not typical that a Use Permit would require, simply as a condition of approval, implementation of this degree of demolition and reconstruction for just having added a third bedroom to the house. Finally, room for an additional uncovered parking space, albeit tandem in front of the 1-car garage, is available.

b. Non-Conforming Detached "Office" Building

While the detached "office" building is not disallowed as an accessory building, it was built without permits after 1980, with side and rear yard setbacks less than the required 3' minimum, making this an illegal and non-conforming structure. The NC Regulations provide no such exceptions to remedy a structure both non-conforming and built without permits. Approval of a Use Permit to allow such a building to be legalized would create a problematic precedent that could be detrimental to the public welfare or injurious to property or improvements in the neighborhood.

FISCAL IMPACT:

None

ATTACHMENTS

- A. Vicinity/Zoning Map
- B. Parcel Survey
- C. Existing/Proposed Site Plan
- D. "As-Built" Floor Plan of Existing Residence, Garage and Detached "Office" Building
- E. Site Photos