



## AGENDA REPORT SUMMARY

**Meeting Date:** September 26, 2023 *This item was continued from June 27, 2023*

**Subject** Appeal of the Planning Commission's Decision on the Design Review and Variance Applications SC22-0029 & V23-0002 at 5790 Arboretum Drive

**Prepared by:** Jia Liu, Associate Planner  
Stephanie Williams, Planning Services Manager

**Reviewed by:** Nick Zornes, Development Services Director  
Jolie Houston, City Attorney

**Approved by:** Gabriel Engeland, City Manager

**Attachment(s):**

1. Draft Resolution
2. Project Plans
3. Appeal Application Form
4. May 18, 2023, Planning Commission Draft Meeting Minutes
5. May 18, 2023, Planning Commission Agenda Report
6. Appellant Request for Continuance
7. Letters from the Appellant for September 26, 2023 Meeting

**Initiated by:**

Marwan and Lisa Eways, Applicant

**Previous Council Consideration:**

None

**Fiscal Impact:**

None

**Environmental Review:**

If the City Council upholds the Planning Commission's decision, then no environmental review is required under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270 ("Projects Which are Disapproved") because CEQA does not apply to projects which are disapproved. If the City Council approves the appeal application, then it may find that the project is categorically exempt under Section 15301 ("Existing Facilities") of the CEQA Guidelines because it involves an alteration and addition to an existing single-family dwelling in a residential zone within



**Subject:** Appeal of the Planning Commission’s Decision on the Design Review and Variance Applications (SC22-0029 & V23-0002) at 5790 Arboretum Drive

---

size limits specified in Section 15301(e), and none of the circumstances stated in CEQA Guidelines Section 15300.2 apply.

**Summary:**

- The project applicant applied for a Design Review and Variance applications to allow an addition to an existing single-family residence consisting of an approximately 190 square-foot addition and 465 square-foot deck on the first story and an eight square-foot addition and 327 square-foot deck on the second story. The variance is requested for a 16-foot and six-inch, second-story side setback for the second-story deck, where a 25-foot side setback is required.
- The Planning Commission considered the project at a public hearing on May 18, 2023, and unanimously denied the request.
- The applicant appealed the Planning Commission’s “straw vote” decision and results.

**Background**

Property History and Existing Site Conditions

The 4,697 square foot home was originally approved in 2003 by the County of Santa Clara when the property was within the County’s jurisdiction. In 2006, the neighborhood, commonly known as Woodland Acres Neighborhood, was annexed into the City. As one of the properties in the annexed neighborhood, any new development on the property is subject to current City standards.

As the original development was subject to the County’s zoning regulations, which have less restrictive setbacks than current city regulations, the existing house is a legal non-conforming structure. The non-conformities include the two side setbacks that currently require 20-foot first story setback and 25-foot second story setback compared to the existing house’s 15-foot side setbacks for both the first and second stories (see Attachment 2 – Project Plans).

The property is a sloped lot with the home located on the more level portion of the property towards the street and the rear yard is sloped with an approximately 30-foot elevation difference within a 100-foot depth. The rear yard also appears to remain undisturbed with some existing vegetation including two trees that are close to the proposed deck areas.

Design Review Commission Meeting

On February 15, 2023, the Design Review Commission (DRC) discussed the proposed design review application in a public meeting. The staff report recommended approval to the DRC, subject to a specific condition that requires the revision of the second-story deck to comply with the required second-story setback resulting in a setback of 25 feet instead of the proposed sixteen feet and six inches. However, the applicant opposed this condition and expressed the intent to the DRC to seek a variance to allow the non-compliant side setback for the deck as proposed. The DRC subsequently continued the item to a meeting date uncertain and advised the applicant to apply for a concurrent variance application to proceed per the applicant’s request.



**Subject:** Appeal of the Planning Commission's Decision on the Design Review and Variance Applications (SC22-0029 & V23-0002) at 5790 Arboretum Drive

---

### Planning Commission Meeting

Following the zoning code amendments to implement the City's 2023-2031 Housing, the Design Review Commission has since been dissolved and the review authority for design review applications for single-family residential developments has been delegated to the Zoning Administrator and the review for variance applications delegated to the Planning Commission. Because the variance request is subject to Planning Commission review, the design review request was bundled with the variance request and was considered by the Planning Commission at their meeting of May 18, 2023. It should be noted that there was one commissioner absent from the meeting for a total of six commissioners present at the meeting.

Staff recommended denial of the project to the Planning Commission due to the inability to make all three required variance findings codified in Los Altos Zoning Code (LAZC) Section 14.76.070 B. Because of the recommendation of denial for the variance, staff also recommended denial to the design review as the project does not meet the underlying zoning development standards and cannot meet the findings of the design review per LAMC Section 14.76.060.

During deliberation and discussion, three Commissioners verbally expressed support and three Commissioners expressed opposition to the requested variance. After consideration of staff's recommendation, public testimony, and the applicant's presentation which expressed their desire for their project to be heard by the City Council, the Planning Commission unanimously voted (6-0 vote with one commissioner absent) to deny the project.

### Appeal

On May 31, 2023, the applicant appealed the Planning Commission's decision to the City Council within the permissible 14-day appeal period. The application appeal form with the applicant's reason for appeal can be found in Attachment 3.

### **Discussion/Analysis**

#### Design Review Application

As discussed previously, the existing home is a nonconforming structure. The proposed 190 square-foot addition on the first floor and eight square-foot addition at the second floor are consistent with the current City development standards, including the side setbacks. The proposed first floor deck expansion along the rear elevation has a proposed 15-foot side setback, where the required minimum setback is 20 feet (shown as the area in red in Figure 1 below) which is allowed per Section 14.10.080 E. of the Zoning Code which allows limited nonconforming expansions without a variance as follows:

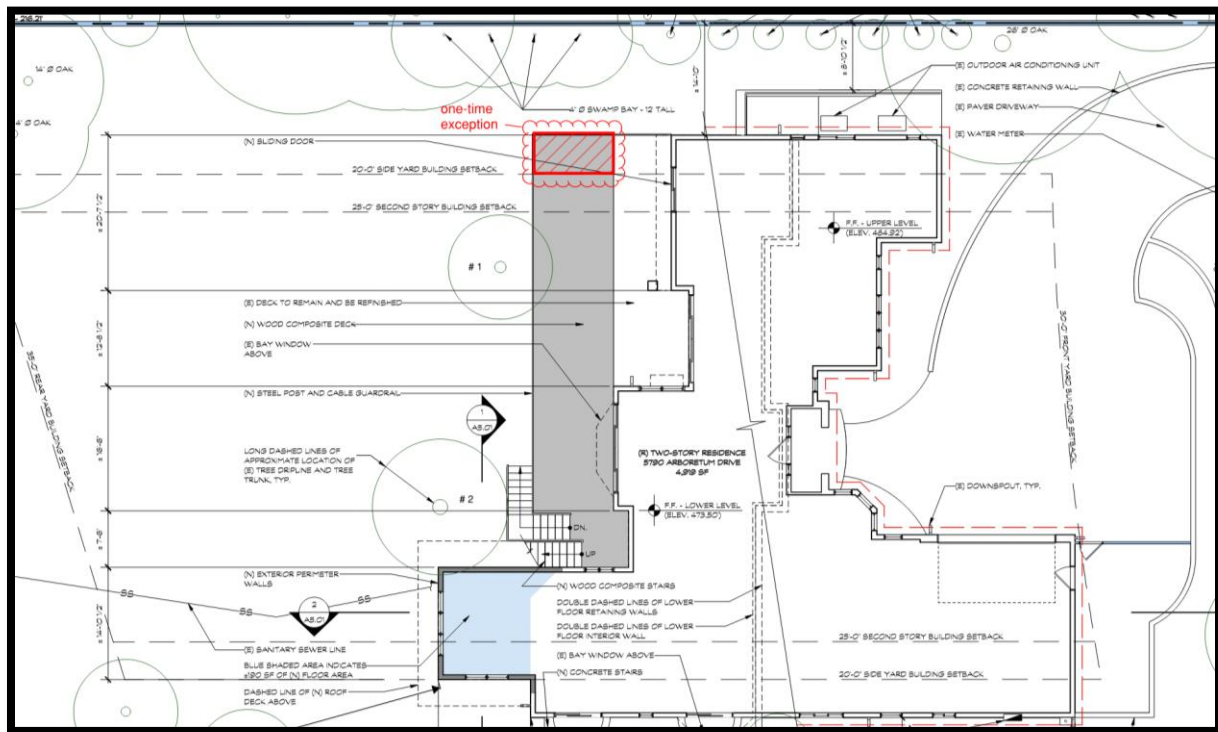
*Where a building legally constructed according to existing yard and setback regulations at the time of construction encroaches upon currently required setbacks, the city planner may approve one encroaching setback to be extended by no more than twenty (20) feet or fifty (50) percent, whichever is less, along its existing building line without a variance, subject to the following provisions:*



**Subject:** Appeal of the Planning Commission’s Decision on the Design Review and Variance Applications (SC22-0029 & V23-0002) at 5790 Arboretum Drive

1. The extension may only be applied to the first story.
2. Only one such administrative extension may be permitted for the life of the building. Other extensions may be considered, subject to the filing of a variance application.
3. Extensions are only permitted for the main structure and cannot result in a further encroachment into any required setback area.

**Figure 1**

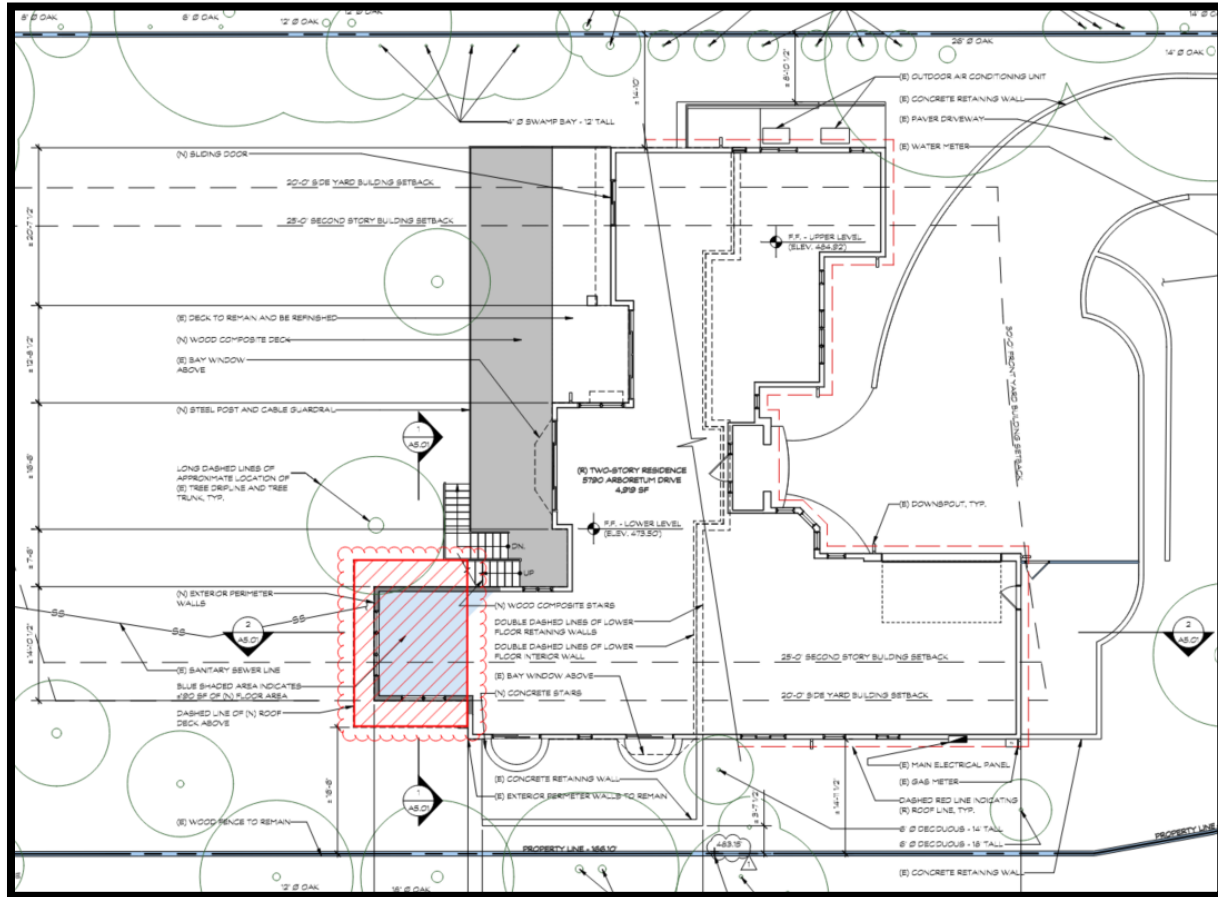


The second story deck (shown as the red area in Figure 2 below) is located on top of the proposed first story addition with a side setback of 16 feet and six inches where 25 feet is required and the allowance for limited nonconforming expansions without a variance only applies to the first story. To achieve the proposed design, the applicant is requesting a variance.



**Subject:** Appeal of the Planning Commission's Decision on the Design Review and Variance Applications (SC22-0029 & V23-0002) at 5790 Arboretum Drive

**Figure 2**



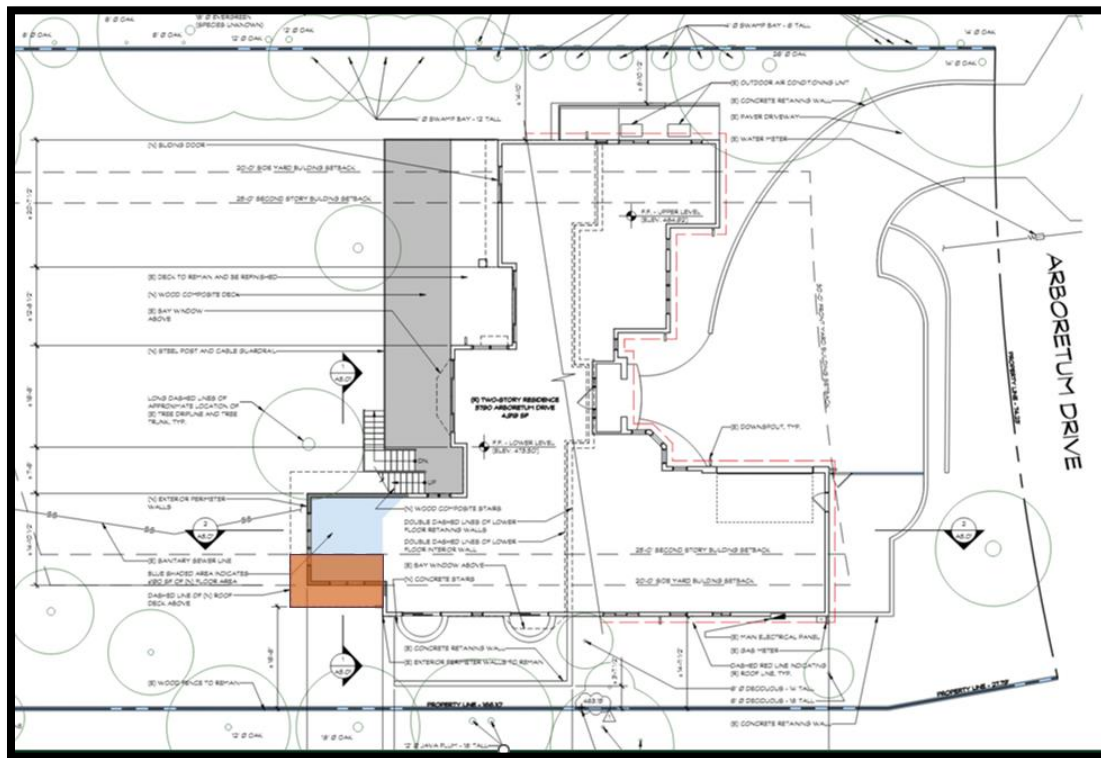
Variance Application

The variance being requested is for a reduction to the second story side setback. The proposed second story deck is proposed atop the first-story addition that will result in an eight-foot and six-inch encroachment into the required 25-foot setback. The encroachment is highlighted in yellow shown in Figure 3 below.



**Subject:** Appeal of the Planning Commission's Decision on the Design Review and Variance Applications (SC22-0029 & V23-0002) at 5790 Arboretum Drive

**Figure 3**



Pursuant to LAMC Section 14.76.070 B., a variance may be granted only when all three findings cited below can be made. The third criterion derives from state law (see Government Code Section 65906) and shall be strictly construed.

1. That the granting of the variance will be consistent with the objectives of the zoning plan set forth in Article 1 of Chapter 14.02;
2. That the granting of the variance will not be detrimental to the health, safety, or welfare of persons living or working in the vicinity or injurious to property or improvements in the vicinity; and
3. That variances from the provisions of this chapter shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the provisions of this chapter deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications.

As part of the variance application submittal requirements, the applicant provided a variance justification letter that is enclosed as part of the Planning Commission agenda report in Attachment 4. This letter outlines the applicant's explanation why they believe the requested variance should be granted by demonstrating how each finding is met.





**Subject:** Appeal of the Planning Commission's Decision on the Design Review and Variance Applications (SC22-0029 & V23-0002) at 5790 Arboretum Drive

---

Regarding Finding No. 1, the applicant believes the project meets two objectives set forth in LAMC Chapter 14.02 including Subsection F - To protect and enhance real property values within the city; and Subsection G - To conserve the city's natural beauty, to improve its appearance, and to preserve and enhance its distinctive physical character.

Based on the given statement, staff has found that this finding cannot be justified because it does not meet the objective of ensuring a harmonious and convenient relationship among land uses, as specified in Subsection B that will deviate the second story side setback standard from the city's zoning regulations.

Furthermore, staff finds the granting of the variance is not necessary to allow the property owners the reasonable enjoyment of their property because there are alternative deck design options available that can achieve the same goal. For example, the proposed deck can be expanded towards the north to comply with the second-story side setback while still providing the same size deck in a slightly different configuration. Another option to consider is expanding the existing second-story terrace through the hallway. With the possibility of other design solutions, staff does not believe that this finding can be made.

Regarding Finding No. 2, the applicant felt the finding could be made for several reasons. First, the deck is located at the rear of the house, making it invisible from the street, and its small size and lower elevation than the street further contribute to its inconspicuousness. Second, there are no privacy concerns since the deck is not aligned with neighboring structures but is instead proposed to be built with a proposed privacy screening wall. The deck will also be screened by existing screening vegetation. Additionally, the neighbors have expressed support, and two adjacent properties already have non-compliant second-floor decks.

However, staff found that granting this variance could have negative impacts on the surrounding area because the project does not meet the zoning setback standards established to provide better ventilation, sound isolation, reduced lighting and glare, increased landscaping, and access to emergency services between properties and structures. Additionally, staff found that the two adjacent properties with non-compliant second-floor decks do not establish a pattern because:

- The property at 5810 Arboretum Drive, located to the south side, was developed prior to the annexation of the Woodland Acres Neighborhood. The existing non-compliant deck is a legal non-conforming structure, like the house.
- The property at 5770 Arboretum Drive, located to the north side, was granted a variance and design review application (12-V-11 and 12-SC-56) in 2013 by the Design Review Commission for construction of a new two-story house. The granted variance includes a reduction in the side setbacks at both stories. However, staff does not believe that this example is analagous since the property at 5770 Arboretum Drive has an average lot width that is less than 100 feet. In 2015, a zoning code amendment was adopted through Ordinance No. 2015-114 that allows properties with a lot width less than 100 feet in the R1-20 Zoning District to be subject to the R1-10 Zoning District's



**Subject:** Appeal of the Planning Commission’s Decision on the Design Review and Variance Applications (SC22-0029 & V23-0002) at 5790 Arboretum Drive

---

development standards. Therefore, the reduced side setbacks at both floors at 5770 Arboretum Drive are currently compliant.

Regarding Finding No. 3, the applicant believes that the property has several special circumstances that justify this variance application for approval. These circumstances include steeply sloping topography, the inability to comply with design guidelines without exception to the side yard setback, the existing legal non-conforming structure compared to the current City's setback requirements due to development prior to annexation, and the need to preserve a mature oak tree while designing an outdoor space.

Staff acknowledged the existence of the site’s conditions with a steep slope throughout the rear yard. Due to this topography, staff is supportive of the proposed idea of a second story deck with a larger size than other proposed second-story decks on relatively flat lots. However, the slope is not considered special circumstance that would deprive the property owners’ privileges because the owners have other options to achieve similar results for the enjoyment of their property by implementing a modified deck design as staff explained earlier in the report.

In addition, the non-conformity of the existing home due to its development under the County’s regulations does not justify further deviations from the current City setback requirements. The applicant has already utilized an administrative zoning code exception to align the expansion of the first-story deck with the existing non-conforming first-story side setback. Staff believes that the current zoning code recognizes the existence of non-conforming structures and acknowledges the homeowners' desire to align new developments with these structures in a limited manner, ensuring fairness for all residential property owners.

### **Recommendation**

1. Uphold the Planning Commission’s denial of Design Review and Variance Applications SC22-0029 & V23-0002 at 5790 Arboretum Drive and find no environmental review is required under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270 (“Projects Which are Disapproved”) because CEQA does not apply to projects which are disapproved.
2. On June 17, 2023 the appellant notified staff that they would be unable to attend the Public Hearing scheduled for June 27, 2023 and requested a continuance of the item (Attachment 6). Staff’s recommendation is to continue the Public Hearing to date certain of September 26, 2023 at 7:00 p.m. based on the appellant’s request.