



PLANNING COMMISSION AGENDA REPORT

Meeting Date: May 18, 2023

Subject: SC22-0029 & V23-0002 - 5790 Arboretum Drive

Prepared by: Jia Liu, Associate Planner

Initiated by: Marwan and Lisa Eways, Applicant

Attachments:

- A. Draft Resolution
- B. February 15, 2023 DRC Meeting Minutes
- C. Applicant Variance Justification Letter
- D. Project Plans

Recommendation

Deny the requested design review application (SC22-0029) and variance application (V23-0002) per the findings contained in the attached resolution and find the project exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15270 (“Projects Which are Disapproved”).

Summary

The proposed project is a request for design review and variance 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.

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.

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. The DRC Meeting Minutes for February 15, 2023 are available in Attachment B, and it should be noted that the proposal presented to the Planning Commission remains unchanged from the one discussed at the DRC meeting.

Following the zoning code amendments to implement the City's 2023-2031 Housing Element earlier this year, 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 is being bundled with the variance request for the Commission's consideration.

Analysis

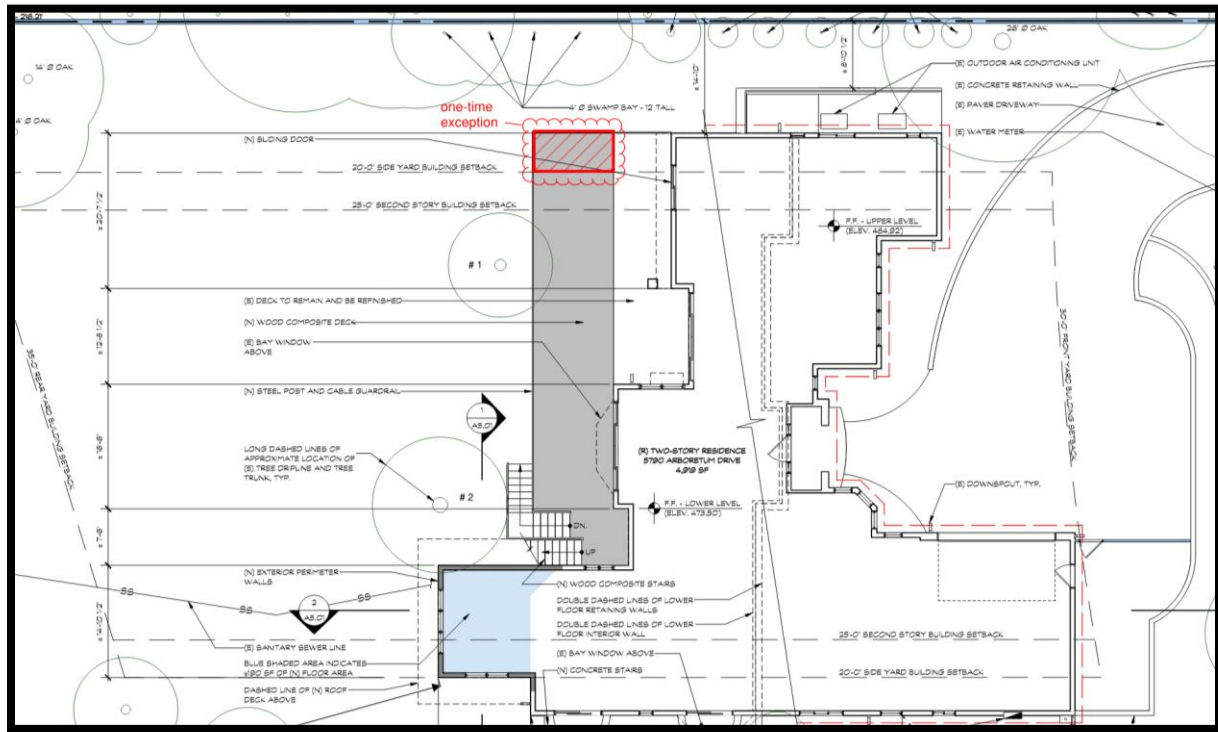
Design Review Application

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:

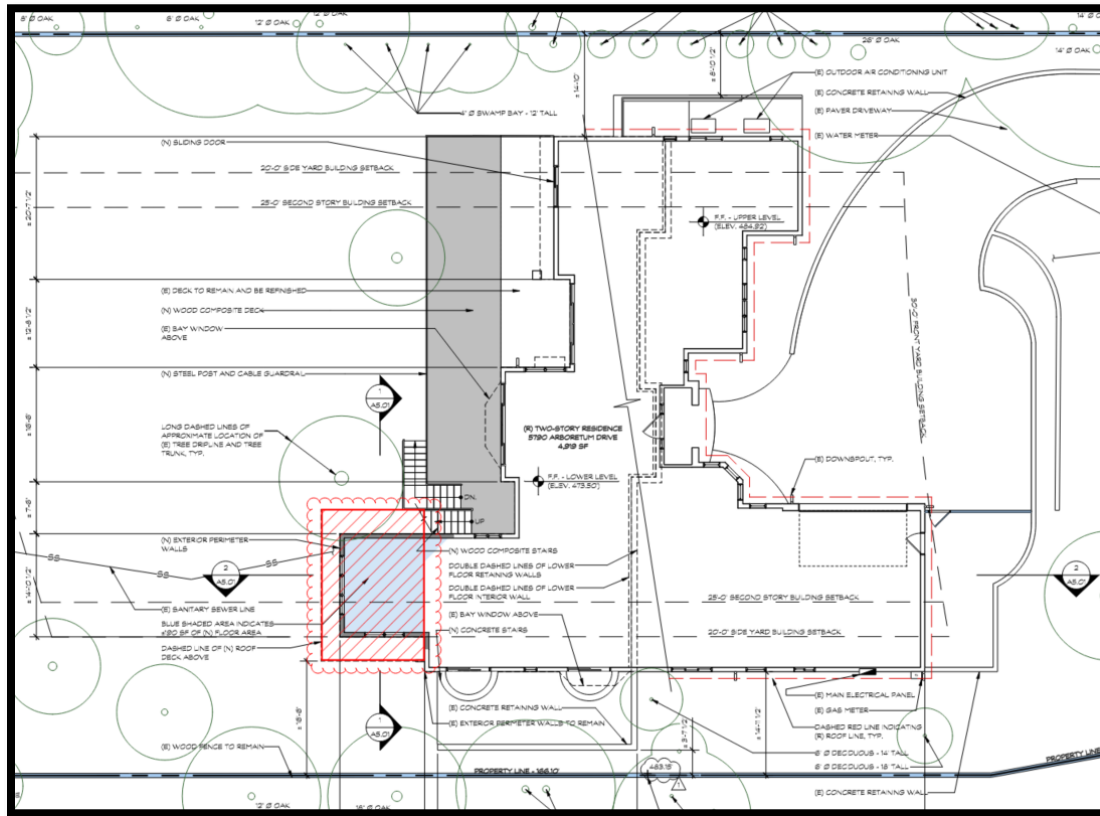
1. The extension may only be applied to the first story.
2. Only one such administrative extension may be permitted for the life of the building. Other extensions may be considered, subject to the filing of a variance application.
3. Extensions are only permitted for the main structure and cannot result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

Figure 2



After thorough analysis of the requested variance, staff found that the variance findings cannot be made as will be further discussed in the next section. Due to the recommendation of denial to the Planning Commission for the variance, staff also recommends 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. Alternatively, the Planning Commission can approve the design review permit conditioned on changes to the project to be consistent with the City's standards.

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.

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 enclosed in Attachment C for the Commission's reference. This letter outlines the applicant's explanation why they believe the requested variance should be granted by demonstrating how each finding is met. 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 would like to raise the question of whether granting the variance is necessary to meet the two objectives that the applicant believes the project meets. Upon review, staff found that there are alternative design options available for the proposed deck 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 by establishing a precedent, which could undermine the integrity of zoning regulations in the area. Also, staff found that the two adjacent properties with non-compliant second-floor decks are not existing precedents 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 would be a precedent to the subject variance application 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 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.

Additionally, 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 exception to allow the first-story deck's expansion in the zoning code acknowledges a non-conforming structure's existence and the desire from homeowners to align new development with the structure in a limited way.

Alternatives

The following alternatives to staff's recommendation may be considered by the Planning Commission:

1. Approve the project as proposed.
2. Deny the variance application and conditionally approve the design review application subject to a condition of approval requiring modifications to the project to be consistent with the City's standards.

Environmental Review

If the Planning Commission adopts the staff recommendation, 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 Planning Commission approves the project, then it may find that the project is categorically exempt from environmental review 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 size limits specified in Section 15301(e), and none of the circumstances stated in CEQA Guidelines Section 15300.2 apply.

Public Notification and Community Outreach

A public meeting notice was posted on the property, mailed to property owners within a 300' radius, and published in the Town Crier. The applicant also posted the public notice sign (24" x 36") in conformance with the Planning Division posting requirements.

The applicant contacted the adjacent neighbors to the southside and northside in the immediate area for the community outreach. No comments from neighbors have been received by staff as of the writing of this report.