



STAFF REPORT

TO: Manzanita Planning Commission
FROM: Walt Wendolowski, Contract Planner
SUBJECT: Planning File – Nonconforming Variance Staff Report
DATE: February 10, 2022

I. BACKGROUND

- A. **APPLICANT:** Matthew Lewis Construction, LLC (for property owned by David E. Grein and Margaret Moore).
- B. **PROPERTY LOCATION:** The property is located on the east side of Carmel Avenue, approximately 200-feet north of its intersection with Laneda Avenue. The site address is 180 North Carmel Avenue and the County Assessor places the property within Township 3 North; Range 10 West; Section 29BD; Tax Lot 14200.
- C. **PARCEL SIZE:** The site contains approximately 7,500 square feet.
- D. **EXISTING DEVELOPMENT:** The subject property contains a residence, fronts a public street and is served by public sewer and water.
- E. **ZONING:** High Density Residential/Limited Commercial (R-4).
- F. **ADJACENT ZONING AND LAND USE:** All adjacent property is zoned R-4 and is primarily developed with single-family residential uses.
- G. **REQUEST:** The applicants are requesting approval of a Variance to expand a Nonconforming Use (structure).
- H. **DECISION CRITERIA:** This application will be evaluated against the following provisions in Ordinance 95-4: Section 7.060 (Nonconforming Uses) and Section 8.020 (Variances).

II. APPLICATION SUMMARY

- A. The applicant began repairs on a roof damaged by a wind storm. In addition to the roof repair, the height of the home's north wall was increased to accommodate additional improvements within the home. Unfortunately, it appears the northeast corner of the existing home is only 8-feet from the rear property line which is less than the 10-foot minimum setback requirement. This makes the existing home a nonconforming use.

- B. While the wall increase and roof alterations are relatively minor, they nevertheless enlarge the use. Enlargement of a nonconforming use or structure (Section 7.020) is permitted, subject to the approval of a Variance. An increase cannot exceed 20% of the existing nonconforming area. For the record, the building footprint is unaltered, the increase is in the height of the wall. In addition, Section 7.060 states the alteration of a nonconforming use requires a public hearing before the Commission. As part of their review, the Commission must determine that the action is not detrimental to the City, neighborhood, or Plan policies.

III. CRITERIA AND FINDINGS - VARIANCE FOR NONCONFORMING STRUCTURE

- A. Article 8 contains the provisions to address variance applications. Section 8.010 notes the Planning Commission may authorize variances from the requirements of this Ordinance where it can be shown that owing to special and unusual circumstances related to a specific lot, strict application of the Ordinance would cause an undue or unnecessary hardship. No variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located.

FINDINGS: The proposal would allow expansion of a nonconforming use. Based on provisions in Ordinance 95-4, this is the only available option to permit the expansion.

- B. Section 8.020 establishes the specific review criteria. Each criterion, and associated finding, is noted below:

- 1. Exceptional or extraordinary circumstances apply to the property and result from lot size or shape, topography, or other circumstances over which the owners of the property have no control.

FINDINGS: The applicant noted the submitted building plans were drawn by an architect. It appears the architect was unaware of the existing nonconforming setback thereby creating the situation the contractor inherited. The contractor completed a significant amount of work before the error was discovered. On balance, this is a situation of which the contractor had no control.

- 2. The variance is necessary for the preservation of a property right of applicant substantially the same as owners of other property in the same zone or vicinity possess.

FINDINGS: As noted, the contractor completed a significant amount of work on the existing residence, a use permitted within the R-4 zone. Completion of the work would maintain that right.

- 3. The variance would not be materially detrimental to the purposes of the Ordinance, the Comprehensive Plan, or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City policy.

FINDINGS: This issue centers on an existing structure's nonconforming setback. Nothing in the expansion appears to violate any other setback, height or other development standard. Further, the request does not alter the use or character of the home.

4. Variance request is the minimum variance which would alleviate the hardship.

FINDINGS: This is somewhat unusual in that there no degree of variance. Any work on the home that changes the size (e.g., wall height) or shape would require a variance. Therefore, there is no "minimum" that would alleviate the hardship.

- C. Section 7.060 (Public Hearing Required) reads as follows: *"Alteration, restoration, replacement or resumptions of a nonconforming use shall only be done after a public hearing and determination by the Planning Commission that the action is not detrimental to the City or the neighborhood, or the policies of the Comprehensive Plan."*

FINDINGS: The property is zoned for, and currently contains, a residential use in an area of single-family homes. Overall, the building will remain the same relative size and is therefore not expected to have a detrimental impact to the City or neighborhood. Otherwise, the Comprehensive Plan does not offer specific guidance as to nonconforming uses or structures. Based on these factors, staff concludes the expansion of the nonconforming use will not be detrimental to the community of violate Plan policies.

- D. This is a somewhat unusual variance request. Any action taken on this home that alters a wall or expands the footprint would be subject to a variance to expand a nonconforming use. Complicating matters is the contractor worked off of incorrect site plan information, information provided by the professional who designed the improvements. While it is open to question whether the variance could or would be approved prior to beginning construction, denying the request would serve no effective purpose as construction started and the contractor is working toward completion.

IV. RECOMMENDATION AND CONDITIONS OF APPROVAL

City staff finds the proposal could comply the applicable Variance criteria. If approved by the Planning Commission, staff recommends the following Conditions:

- A. The variance shall be limited to the proposed expansion of a nonconforming use. All work on the residence shall conform to the approved building plans.
- B. The applicant is advised any modification from the approved building plans may require additional land use application and review.
- C. Compliance with these conditions shall be the sole responsibility of the applicant.

V. PLANNING COMMISSION ACTION

- A. The Planning Commission has the following options:
 - 1. Approve the application, adopting findings and conditions contained in the staff report;
 - 2. Approve the application, adopting modified findings and/or conditions;
 - 3. Deny the application, establishing findings as to why the application fails to comply with the decision criteria.
- B. Staff will prepare the appropriate Order for the Chair's signature.