



## STAFF REPORT

**TO:** Manzanita Planning Commission  
**FROM:** Walt Wendolowski, Contract Planner  
**SUBJECT:** Planning File – Nonconforming Variance Staff Report  
**DATE:** March 14, 2023

### I. BACKGROUND

- A. **APPLICANT:** Kegan Flanderka (Base Design + Architecture).
- B. **PROPERTY LOCATION:** The property is located on the north side of Ocean Crest Lane, approximately midblock. The site address is 8880 Ocean Crest Lane, and the County Assessor places the property within Township 3 North; Range 10 West; Section 32BD; Tax Lot 3000.
- C. **PARCEL SIZE:** The site contains approximately 4,998 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:** The land is zoned Medium Density Residential (R-2) and is located within an identified Dune Overlay zone.
- F. **ADJACENT ZONING AND LAND USE:** All adjacent property is zoned R-2 and is primarily developed with single-family residential uses.
- G. **REQUEST:** The applicants are requesting approval of a Variance to modify a Nonconforming Use (structure).
- H. **DECISION CRITERIA:** This application will be evaluated against the criteria listed in Ordinance 95-4 Section 7.02 (Expansion of a Non-Conforming Use); Section 8.020 (Circumstances for Granting a Variance); and the Medium Density Residential (R-2) Zone standards in Section 3.010(3).

### II. APPLICATION SUMMARY

- A. The applicants wish to expand and refurbish the existing residence. Improvements include retention of the existing east wall of the residence, associated improvements to the wall, interior, and adjoining roof, and extending the wall for an additional 22' to the

north to incorporate for a small single-story addition. The existing garage will be moved and replaced with a carport. The structure will remain single-story, with a height of 12-feet, 4-inches.

- B. Based on the submitted site plan the existing east wall is only 0.8 feet from the side property line which is less than the 8-foot minimum setback requirement in the R-2 zone [Section 3.010(3)(d)]. While a portion of the wall will be demolished this 0.8-foot setback will be retained as part of the expansion to the north. The existing home is therefore a nonconforming use (structure) and the proposal classified as an expansion of a nonconforming use (structure).
- C. 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. Per the applicant's submitted site plan and narrative (see Sheet A1.01), the existing home has a building footprint of 1,393 square feet. The addition will contain approximately 431 square feet of area. However, in conjunction with removal of the garage, the modified home will effectively contain 1,623 square feet of area. The net increase in area is approximately 16.5% which is less than the 20% limit.

After further review of the plans, the Building Official was able to examine the site with greater precision and determined the existing footprint of the house is approximately 1398 square feet. According to Tillamook County, the living space is currently at 958 square feet and the garage is 288 square feet. Based on Assessor's records, at some point after 2005 it appears garage was converted to living space without a corresponding building permit. Ultimately, the addition will increase the total building square footage to 1,766 square feet, bringing the proposed expansion to 26.2%, which exceeds the 20% limitation.

- D. In either event, the applicant will need to clarify this discrepancy between the submitted plans and narrative, and the information provided by the Building Official. Assuming this can be resolved to the satisfaction of the Code requirement, the request must still comply with the Variance decision criteria. This action is subject to 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 sets up the specific review criteria. Each criterion, and associated finding, is noted below with the *applicants' comments in italics*:

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 looked for evidence of a past lot line adjustment or examples of other variances for this condition but was unable to. Public records for variances granted to neighbors in this area are not available. However, in reviewing County provided GIS tax maps, many properties (upwards of 76%) within the same tax map (03N10W32B) appear to have similar conditions where the existing structures sit within City of Manzanita ordinance setbacks, appearing to be a common condition that other property owners in the area may encounter and need some leniency in the zoning ordinance to rectify.*

The request effectively increases the size of the residence. Nothing in the request identifies any specific issue or unique circumstance associated with the site. The lot contains a single-family home, which per nonconforming provisions, may be continually maintained. Maintaining the home, does not require expansion of its non-conforming aspect.

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: To design within the parameters of the zoning ordinance, we would be removing a large portion of the existing structure, creating a structural challenge that would be cost prohibitive and result in the demolition of the existing structure in its entirety, scrapping the site, and proceeding with a new build all together. Both the design team and the property owners believe it is important to preserve the existing structure as much as possible from both an ecological standpoint as well as from a contextual perspective. The approval of this variance would allow this structure to be retained, while providing the property owners the ability to make the necessary envelope improvements and programmatic changes required for this to be their primary residence.*

The issue is whether the variance is necessary for the preservation of a property right. It must be noted the property contains a single-family home which may be continually maintained. While the applicants may prefer the home improvements and addition, the variance is not required to preserve the owners' property rights.

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: For this property's particular condition, the applicant attempted to be mindful of the existing architecture and neighborhood context. The property owner's wish is to utilize as much of the existing house as possible. The design reuses the existing roof (with upgrades to improve the building's envelope) and utilizes the existing exterior walls of the East and West sides of the house to preserve the already established structural load path (as this is a post and beam structure). The proposed design adds less than 500 sf to the overall footprint of the home in order to accommodate their day- to-day lifestyle, as this will be their primary residence. The most efficient, cost effective, and vernacular solution for the addition is to continue the exterior walls straight back from their existing location. This will be the least invasive option structurally and aesthetically and allow the property's existing street frontage and developed trees to be preserved.*

...

*The applicant's design is an attempt to be as minimally invasive as possible to the structure of this existing home. This variance will allow the applicant to proceed with what is believed to be the best design option given the circumstances surrounding this existing residence and its lot, maximizing the reuse of the existing structure and its square footage, with minimal impact to the site trees, street frontage, and connection to the surrounding neighborhood context.*

Nothing in this request requires the construction of this design, including expansion of the building. Again, the owners retain the right to maintain the structure and certainly have the option of modifying the interior of the existing footprint. If anything, the request would extend a significantly substandard setback at the likely detriment to the neighbor to the east. Denial of the variance protects the property rights of these neighbors by not allowing any further encroachment toward their property into the required setbacks.

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

*FINDINGS: The applicant did not identify a particular hardship associated with the property that requires an increase in the building size and maintaining the non-conforming setback. However, the applicant noted the option of meeting Code requirements by removing the structure in its entirety and constructing a new residence.*

- C. There is no evidence the proposed dwelling increase is the result of an extraordinary condition or circumstance that is beyond the control of the property owner. The home was purchased with the current nonconformity. Although nonconforming, the existing residence may be continually maintained and repaired. Further, nothing prohibits removal of the residence and construction of a residence of similar design and in compliance with the R-2 zone standards. Further, denial of the variance does not eliminate the owner's right to maintain the existing or any residence on the property.

#### IV. RECOMMENDATION

City staff finds the proposal does not comply the applicable Variance criteria and recommends the Planning Commission deny the request.

#### V. PLANNING COMMISSION ACTION

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