



## PLANNING COMMISSION AGENDA REPORT

**SUBJECT:** APPEAL OF DIRECTOR'S DECISION TO DENY A DIRECTOR'S ACTION APPLICATION (DIR-0599-2019) REGARDING A REQUEST FOR SETBACK EXCEPTIONS TO ACCOMMODATE AN 800 SQUARE-FOOT ACCESSORY STRUCTURE

**PROJECT ADDRESS:** 1953 Chorro Street

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**FILE NUMBER:** APPL-0512-2021

**FROM:** Brian Leveille, Senior Planner

### RECOMMENDATION

Adopt the draft resolution (Attachment A) denying the appeal and upholding the Community Development Director's decision to deny the Director's Action application DIR-0599-2019, regarding a request for a reduction of the required side and rear setback requirements to accommodate placement of an accessory structure on the property at 1953 Chorro Street.

### SITE DATA

<b>Appellant</b>	Todd Miller
<b>General Plan</b>	Medium Density Residential
<b>Zoning</b>	Medium-Density Residential (R-2)
<b>Site Area</b>	7,500 sq. ft.
<b>Environmental Status</b>	Categorically Exempt from environmental review (CEQA Guidelines § 15270: Projects Which Are Disapproved)



### SUMMARY

On July 5<sup>th</sup>, 2019, City Code Enforcement staff issued a Notice of Violation to the owner of the property at 1953 Chorro Street and posted a Stop Work Order on the property, upon observing installation of a large accessory structure in the southwest corner of the

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property, noting permit requirements and setback standards applicable to the work (see Notices and Photos, Attachment B).

On September 9<sup>th</sup>, 2019, Todd Miller, the property owner, filed Director's Action application DIR-0599-2019 requesting an exception to setback requirements, to reduce the side and rear setbacks from five feet to eighteen inches, in order to accommodate the structure, described as a "pre-fab metal carport" (see Project Plans, Attachment C).

In April 2021, Planning staff met on site with Mr. Miller to review the site conditions, including the placement of the accessory structure on the property. Based on the observations made in the site visit and the information available in the record file, the application was denied by the Community Development Director on July 14<sup>th</sup>, 2021 (see Decision Letter, Attachment D) based on several findings regarding:

- Inconsistency of the proposed placement of the accessory structure, within side and rear setbacks, with the neighborhood character and development pattern as required by Zoning Regulations § 17.70.170 (D) (2) (d) (ii);
- Inconsistency with the Historic Preservation Ordinance due to the size, scale, and industrial character and appearance of the accessory structure with the primary dwelling on the site, which is a Master List historic resource;
- Adverse visual and scale effects on neighboring properties from the placement of the structure within setbacks, contrary to the intent of setback standards set out in Zoning Regulations § 17.70.170 (A); and
- Absence of site characteristics or improvements that make adherence to Zoning Regulations impractical or infeasible, according to required findings.

Denial findings are discussed in further detail in the Analysis of Appeal section of this report, below.

On August 9<sup>th</sup>, Todd Miller, the property owner, filed an appeal of the Director's decision (see Appeal Form, Attachment E). The appeal cited the Director's findings for denial and consisted of a statement disagreeing with the Director's findings.

## **1.0 COMMISSION'S PURVIEW**

As provided in Zoning Regulations § 17.126.040, decisions of the Community Development Director are appealed to the Planning Commission, for their consideration.

## **2.0 PROJECT SITE**

The subject property is a residential lot measuring 7,500 square feet in area (50 feet wide and 150 feet deep) located on the west side of Chorro Street, about 125 feet north of High Street, within a Medium-Low Density Residential (R-2) Zone. It is developed with a single-family dwelling built between 1890 and 1910 and relocated to the site (from 40 Prado Road) in 1993. It was included in the City's Inventory of Historic Resources as a Master List Resource in 1994 (added as the Oliver House by Council Resolution 8352), as a good

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example of “Queen Anne Victorian” style and for its association with an early farming family of immigrants in the area.

### 3.0 ANALYSIS OF APPEAL

Development of an accessory structure requires approval of a building permit from the City’s Building & Safety Division (Zoning § 17.70.010 (D) (1)). Additionally, accessory structures must conform to all applicable Zoning Regulations, including setback standards (Zoning § 17.70.010 (C) (1)).



Figure 1: 1953 Chorro

Under Director’s Action application DIR-0599-2019, the Community Development Director was asked to consider reducing the side and rear setbacks by 3 ½ feet (from required 5 feet to 18 inches), as provided in Zoning Regulations § 17.70.070 (D) (2), to accommodate the accessory structure installed in the southwest corner of the site. Such exceptions may be granted in certain circumstances, upon making the findings for an individual exception, along with the Required Findings for Director’s Action set out in Zoning § 17.108.040 (A). An excerpt from the City’s Municipal Code describing the required findings for a setback exception and for approval of a Director’s Action application is provided for convenience as Attachment F (Required Findings).

As described in the decision letter denying the application (Attachment D), staff was unable to make three of the required findings for setback reductions, and the structure itself could not be found to be consistent with the City’s Historical Preservation policies, therefore the setback reduction could not be granted. The four findings upon which denial of the application was based have been cited by the Appellant as the basis for his appeal of the Director’s decision (Attachment E).

Neighborhood Development Pattern (Finding #1). In order to grant a setback reduction, the Director must find that, in the case of a detached single-story accessory structure, the structure is consistent with the traditional development pattern of the neighborhood (Zoning Regulations § 17.70.170 (D) (2) (d) (ii) (b)). This neighborhood is characterized by the placement of primary dwellings at or near the 20-foot front setback limit (see Figure 2) and, as is common in an R-2 Zone, additional dwelling units to the rear of a lot, subject to minimum 5-foot side and rear setbacks applicable within the R-2 Zone (Zoning Regulations § 17.82.20 (A) & (B)). Likewise, new accessory structures are subject to the same minimum 5-foot side and rear setback standards (for structures up to 12 feet in height).<sup>1</sup> Existing dwellings and accessory structures in the vicinity are constructed of conventional residential building materials, such as wood or masonry.

<sup>1</sup> The depth of a required setback increases with building height above 12 feet (see Zoning § 17.18.020 (B))



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**Figure 2: Neighborhood Pattern (Google Maps)**

While a limited number of accessory structures in the vicinity may be observed within side or rear setbacks, such accessory structures are of a small scale, typically single-car garages or storage sheds of limited depth and width, which are most commonly “legal non-conforming” structures pre-dating the City’s setback standards.

The applicant has indicated that a permitted structure was located on the property in approximately the same location. Aerial imagery appears to show a smaller accessory structures in the rear yard area of the property, but no corresponding permit record is



**Figure 3: "Pre-Fab Carport" Accessory structure (completed, left; under construction, right)**

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found in City records. Nonconforming Provisions in the City's Zoning Regulations which may have allowed continued use of a prior nonconforming accessory structure would not apply to the new carport building, as the prior structure has been demolished and the new carport building is an entirely new structure subject to current setback standards.

At 20 feet in width and 40 feet in depth, the new accessory structure is about double the size of typical legal non-conforming accessory structures in the neighborhood. Its metal construction also represents a departure from the predominant wood and stucco building materials that dominate construction in this neighborhood. The surrounding neighborhood does not contain similarly sized accessory structures and exceptions have not been provided for reduced setbacks for structures of similar size or material.

Adverse Effects (Finding #3). Required findings for Director's Action approval call for consideration of, and measures to address, any potential impacts to surrounding properties (Zoning § 17.108.040 (A) (3)). The visual impact from the unusually large size of the subject accessory structure and its incongruous metal material are made more noticeable to adjacent properties when placed almost directly against the property's boundaries. The structure rises several feet above the boundary fence and no natural



**Figure 4: Accessory Structure, right wall**

elements such as tall hedges or trees are present to screen the structure from view of neighboring properties. Setback standards are intended, among other purposes, to help determine the pattern of building masses and open areas within neighborhoods (Zoning § 17.70.170 (A)). Placement of this large metal building closer to neighboring properties than permitted under current setback standards does not provide adequate consideration of adverse visual and scale effects on surrounding properties arising from the pattern and lack of open area that would result from the proposed setback reduction.

Impracticality or Infeasibility of Conformance (Finding #4). Approval of a Director's Action application is also subject to finding that, in light of site characteristics or existing improvements that make strict adherence to the regulations, including setback standards, impractical or infeasible, a project nonetheless conforms with the intent of Zoning Regulations (Zoning § 17.108.040 (A) (4)). Here, there are no discernable site characteristics or existing improvements that render strict adherence to the setback standards impractical or infeasible, and none were described by Appellant in the application submittal or in his subsequent correspondence.

As a rectangular lot measuring 7,500 square feet in area (50 feet wide by 150 feet deep) and developed only with a modestly-sized single-family dwelling, the property is not of unusual size or shape and existing improvements present no barrier to adherence to setback standards. The structure itself is a very large pre-fabricated structure and



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granting a setback exception to accommodate a building that was not designed to fit this particular site would be inconsistent with the intent of setback standards and the exceptions thereto. In addition to lack of basis for making the required finding that strict adherence to the setback standards is infeasible or impractical, staff could not find the requested exception to be nonetheless consistent with the intent of setback standards (see Adverse Effects, above).

Historical Character (Finding #2). The Conservation and Open Space Element (COSE) of the City's General Plan sets out policies for the protection of historical and architectural resources (see COSE § 3.3),<sup>2</sup> and as described in Section 12.4 of the General Plan Land Use Element, these policies are implemented through the City's Historic Preservation Ordinance (SLOMC Ch. 14.01) and supporting Historic Preservation Program Guidelines (HPPG).<sup>3</sup> The HPPG provide that construction on properties that contain listed historic resources shall conform to those General Plan policies and to the Historic Preservation Ordinance and supporting Guidelines (HPPG § 3.1.1). In particular, new accessory structures are to complement the primary structure's historic character through compatibility with its form, massing, color, and materials (HPPG § 3.4.1 (c)).

The accessory structure installed on this property does not satisfy this guideline, and therefore, is inconsistent with General Plan policies for preservation of historic and architectural resources. It is an unusually large accessory structure, at 800 square feet in area and 40 feet in depth, about 70% of the size of the 1,130 square-foot Oliver house. It exhibits a functionally-oriented industrial appearance that contrasts with the Oliver House's Victorian (Queen Anne) form, detailing, and decoration, and is constructed of a utilitarian metal material without apparent relation to the wood-sided Oliver House, apart from the horizontal orientation of its metal siding. For these reasons, the accessory structure is not seen to complement the Oliver house in form, massing, color, or materials, and granting a setback exception to accommodate the structure could likewise not be found consistent with General Plan policies, as implemented through the City's historical preservation policies.



<sup>2</sup> Relevant policies include Policy 3.3.1: Significant historic and architectural resources should be identified, preserved and rehabilitated; and Policy 3.3.4: New buildings in historical districts, or on historically significant sites, should reflect the form, spacing and materials of nearby historic structures. The General Plan can be accessed online at: [www.slocity.org/government/departments-directory/community-development/planning-zoning/general-plan](http://www.slocity.org/government/departments-directory/community-development/planning-zoning/general-plan)

<sup>3</sup> Historical Preservation documents available online at: [www.slocity.org/government/departments-directory/community-development/historic-and-archeological-preservation](http://www.slocity.org/government/departments-directory/community-development/historic-and-archeological-preservation)

#### **4.0 CONCLUSION**

Exceptions from setback standards, as requested under Director's Action application DIR-0599-2019, could not be approved because the required findings for such an exception, as set forth in Zoning Regulations § § 17.70.170 & 17.108.040, could not be made, as described above. The appeal of the Director's decision to deny the application does not identify authority indicating misapplication of the setback standards or any factual inaccuracies on which the decision to deny was based. No information has been provided with this appeal demonstrating that a setback exception is appropriate in this case, or that could serve as the basis for making the required findings necessary to approve the requested setback exception.

#### **5.0 ENVIRONMENTAL REVIEW**

Denial of a reduction in Setback Standards is not subject to the California Environmental Quality Act (CEQA), as described in CEQA Guidelines § 15270 (Projects Which Are Disapproved).

#### **6.0 ALTERNATIVES**

1. Uphold the appeal and adopt a resolution granting a Discretionary Exception from side and rear setback standards, reducing the required setback to 18 inches to accommodate the accessory structure.

This action is not recommended since the appeal provides no justification for granting a setback exception or any basis for making the required findings necessary to approve a setback exception. Staff could not uncover any basis on which to find that the structure could comply with Historic Preservation Ordinance and Historic Preservation Program Guidelines, which require the structure to be complementary to the primary structure in form, massing, color, and materials. Any consideration to uphold the appeal should first include a continuance to allow the Cultural Heritage Committee (CHC) to review and provide a recommendation on the project, to provide a basis for required CEQA findings and findings of conformance with the City's General Plan and Historic Preservation Ordinance and Guidelines.

2. Continue consideration of the item to a future date, with relevant guidance to staff and applicant including an opportunity for review by the CHC so that the project may then return to the Planning Commission for action (as described in Alternative 1 above).

#### **7.0 ATTACHMENTS**

- A – Draft Planning Commission Resolution denying the Appeal for 1953 Chorro
- B – Code Enforcement Notices and Photographs
- C – Project Plans for 1953 Chorro
- D – Decision Letter (DIR-0599-2019)
- E – Appeal Form (APPL-0512-2021)
- F – Required Findings (Zoning Regulations – Excerpts)