



Council Agenda Report

Item 6c

Department: Community Development
Cost Center: 4003
For Agenda of: 1/11/2022
Placement: Public Hearing
Estimated Time: 45 Minutes

FROM: Michael Codron, Community Development Director
Prepared By: Walter Oetzell, Assistant Planner

SUBJECT: REVIEW OF AN APPEAL OF THE PLANNING COMMISSION'S
DECISION TO UPHOLD THE DENIAL OF A SETBACK REDUCTION
REQUEST AT 1953 CHORRO ST. (APPL-0512-2021)

RECOMMENDATION

Adopt the draft Resolution entitled, "A Resolution of the City Council of the City of San Luis Obispo, California, denying an appeal and upholding the Planning Commission's decision to uphold the Community Development Director's decision denying a request for a Discretionary Exception from Side and Rear Setback Standards for an Accessory Structure at 1953 Chorro Street (APPL-0512-2021)."

REPORT-IN-BRIEF

After receiving a Stop Work Order and a Notice of Violation issued by City Code Enforcement staff, regarding installation of a large accessory structure without permit and within required setbacks in the southwest corner of the property at 1953 Chorro Street, the property owner, Todd Miller, filed a Director's Action application requesting a reduction in side and rear setback standards to accommodate the structure.

As more fully described below in this report, the application was ultimately denied by the Community Development Director, on finding that placement of the structure within setbacks as proposed would be inconsistent with the neighborhood character and development pattern, with the City's historical preservation standards for Master List Historic Resources, and that it would have adverse visual and scale effects on neighboring properties, contrary to the intent of the City's development standards for setbacks. Furthermore, no apparent site characteristics or improvements making adherence to setback standards impractical or infeasible could be identified.

Mr. Miller filed an appeal of the Director's decision, disputing the findings upon which the decision was made. That appeal was considered by the Planning Commission, who upheld the decision. Subsequently Mr. Miller filed an appeal of the Commission's decision, which is now being brought to the City Council for consideration.

DISCUSSION

Background

On July 5, 2019, City Code Enforcement staff issued a Notice of Violation to Todd Miller, the owner of the property at 1953 Chorro Street, and posted a Stop Work Order on the property, upon observing a large accessory structure installed in the southwest corner of the property, noting permit requirements and setback standards applicable to the work (see Notices and Photos, Attachment B, and Neighborhood Overview, Figure 2, below)

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, which was 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 1994.¹

On September 9, 2019, Mr. Miller filed Director's Action application DIR-0599-2019 requesting an exception to setback requirements, to reduce the required side and rear setbacks from the standard five feet down to eighteen inches, in order to accommodate the structure, described as a "pre-fab metal carport" (see Project Plans, Attachment C). The application was determined to be incomplete on September 27, 2019.

As described in the statement accompanying the Appeal Form (Attachment D), the appellant had subsequent discussion with various City staff regarding the structure, its conformance to building and fire safety regulations, and items described in the Incomplete Letter and on September 29, 2020, Mr. Miller submitted revised plans in response to that letter. The application was again determined to be incomplete on October 20, 2020, noting inconsistency with historical preservation policies and standards and a requirement for review by the City's Cultural Heritage Committee.

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 at the site visit and the information available in the record file, the application was denied by the Community Development Director on July 14, 2021 (see Decision Letter, Attachment E) based on several findings regarding:

- 1. 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);

¹ Added to the Inventory as the Oliver House, by Council Resolution 8352, as a good example of "Queen Anne Victorian" style and for its association with an early farming family of immigrants in the area

2. **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;
3. **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
4. **Absence of site characteristics or improvements** that make adherence to Zoning Regulations impractical or infeasible, according to required findings.

On August 9, 2021, Mr. Miller filed an appeal of the Director's decision, citing the Director's findings for denial and stating disagreement with the Director's findings. As discussed below, the Commission upheld the Director's decision denying the setback reduction request.

Finally, on September 17, 2021, Mr. Miller filed an appeal of the Commission's decision (see Appeal Form, Attachment D), which is the subject of this report.

Previous Council or Advisory Body Action

On September 8, 2021, the Planning Commission considered Mr. Miller's appeal of the Director's decision denying the original setback reduction request. The Commission discussed the failure of the appellant to secure a construction permit before installing the structure and considered the character of the site and surroundings as well as the existence, or lack, of physical constraints or circumstances that might make conformance to setback standards impractical or infeasible. By a vote of 5-1-1 (with one Commissioner absent) the Commission voted to uphold the decision of the Director to deny the setback request (see Planning Commission Meeting Minutes and Resolution, Attachment F).

Policy Context

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)).

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).



Figure 1: Neighborhood Pattern (Google Maps)

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 G (Required Findings).

As described in the decision letter denying the application (Attachment E), 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.

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, above) 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).² Existing dwellings and accessory structures in the vicinity are constructed of conventional residential building materials, such as wood or masonry.

While a limited number of accessory structures in the vicinity may be observed within side or rear setbacks (Figure 2, above), 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 appellant indicates that a permitted structure was located on the property in about the same location. Aerial imagery (Figure 3) shows a small accessory structure in the rear of the property, but no corresponding permit record is found in City



Figure 3: Prior Accessory Structure

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 accessory building is an entirely new structure subject to current setback standards.



Figure 2: "Pre-Fab Carport" Accessory structure (completed, left; under construction, right)

² The depth of a required setback increases with building height above 12 feet (see Zoning § 17.18.020 (B))



Figure 4: Accessory Structure, right wall

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 typify 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 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 had been described by the Appellant in the application submittal or in his subsequent correspondence.

With the current appeal, however, the appellant notes the presence of a large Canary Islands Palm tree that "would prevent egress of vehicles in, and out of the garage" if the building were sited in conformance to minimum setback standards.

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. Engineering staff evaluated the plans for siting of the accessory structure, both in its present position and in a location conforming to setback standards and found that in both cases the Canary Islands Palm tree did not present a significant impediment to vehicle access to the structure. Although Engineering Standards call for turn-around space, allowing cars to exit the property in a forward motion, for deep driveways (over 100 feet), exceptions from this requirement are commonly made for residential development where circumstances permit, and such an exception would likely be made in the case of installation of a properly sited garage structure on this property.

The structure installed is a very large pre-fabricated structure and 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 that the requested exception would be “nonetheless consistent with the intent of setback standards.”

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),³ 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).⁴ The HPPG provide that construction on properties



Figure 5: 1953 Chorro, Primary Dwelling

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).

³ 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/department-directory/community-development/planning-zoning/general-plan

⁴ Historical Preservation documents available online at: www.slocity.org/government/department-directory/community-development/historic-and-archeological-preservation

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.

Public Engagement

Public notice of this meeting has been provided to owners and occupants of property near the subject site and published in The New Times and posted on the City's website. The agenda for this meeting was posted online, consistent with adopted notification procedures for development projects.

CONCURRENCE

Staff from the Building & Safety Division, Engineering, and the Fire Department reviewed plans and materials submitted with the original setback reduction request (application DIR-0599-2019), in terms of conformance to building and fire safety regulations and Engineering Standards. Building and Fire concluded that, as a metal building, the structure could conform to applicable building and fire codes. Engineering evaluated maneuverability across the driveway and into the proposed accessory structure and concluded that the Canary Islands Palm tree was not an impediment to vehicle access to a garage sited in conformance to setback standards.

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).

FISCAL IMPACT

Budgeted: No
Funding Identified: No

Budget Year: 2021

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	N/A	\$	\$	\$
State				
Federal				
Fees				
Other:				
Total	\$	\$0	\$	\$0

Consideration by the City Council of an appeal of a decision made by the Planning Commission does not directly result in expenditure of funds and thus has no fiscal impact to the City. Staff resources committed to the review of appeals are included in the annual budget appropriation for the Community Development Department.

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. In the case that the appeal is upheld, construction of a large accessory structure on the property remains subject to review by the Cultural Heritage Committee (CHC), who would provide a recommendation to the Community Development Director (for Minor Development Review), 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 appropriate decision maker for final action (as described in Alternative 1 above).

ATTACHMENTS

- A – Draft Resolution denying an Appeal for a property located at 1953 Chorro St.
- B – Code Enforcement Notices and Photographs
- C – Project Plans (1953 Chorro)
- D – Appeal Form and Statement (APPL-0512-2021)
- E – Decision Letter (DIR-0599-2019)
- F – Planning Commission Meeting Minutes and Resolution (Sept. 8, 2021)
- G – Required Findings (Zoning Regulations – Excerpts)