



ITEM V-A: VARIANCE – 616 OAK STREET – KINCAID SECOND UNIT SETBACK VARIANCE – FILE# 2009PL-005 (V-000061)

REQUEST

The applicant requests approval of a Variance to reduce the required rear yard setback from 20' to 6' for an existing 640 square foot second unit. The original detached garage was increased in size, converted to living space, and is being used as a second unit without Planning or Building permits. Pursuant to Section 19.74.020(b) of the City's Zoning Ordinance, approval of a Variance is required to allow exceptions to setbacks exceeding 35 percent of the development standard.

Applicant & Owner– Connie Kincaid

SUMMARY RECOMMENDATION

The Planning & Redevelopment Department recommends that the Planning Commission take the following actions:

- A. Adopt the three (3) findings of fact for the Variance; and
- B. Approve the Variance subject to fifteen (15) conditions of approval.

SUMMARY OF OUTSTANDING ISSUES

The previously existing single car garage has been expanded and is being used as a second dwelling unit without planning clearance or building permits. The owner will be required to obtain after-the-fact building permits for the second dwelling unit if this Variance request is approved by the Planning Commission. The applicant has reviewed and is in agreement with the recommended conditions of approval.

BACKGROUND

The previously existing single car garage was increased in size to 640 square feet, converted to living space, and is currently being used as a second dwelling unit. The owner did not secure building permits or zoning clearance for the conversion. In November 2008, the Building Department Code Enforcement Division received a complaint regarding the converted garage. Code Enforcement responded and the applicant was informed that a Variance and building permits were required for the Second Dwelling Unit. A Variance is required since the structure does not meet the development standards for second units which require a 20 foot rear yard setback.

SITE INFORMATION

Location: 616 Oak Street in the City's Infill area.

Roseville Coalition of Neighborhood Associations (RCONA): The parcel is located within the Cherry Glen Neighborhood Association, which is currently active. A project notice was mailed to the board members of the neighborhood association. To date, no comments have been received from the association.

Parcel Size: The 6,061 square foot interior lot measures 150 feet in length and is 40 feet wide (see Exhibit A).

Zoning/Current Use: The parcel is zoned Planned Development (PD) for Residential Mixed Use and is developed with a 744 square foot single-family residence, a small storage shed, and the 640 square foot unpermitted second unit.

Figure 1



EVALUATION

According to the Planned Development Zoning (Ordinance 3272), a second dwelling unit is principally permitted in this PD zone district. Second dwelling units, when permitted, are subject to the criteria contained in Chapter 19.60 of the Zoning Ordinance. The previously existing single car garage meets the development standards outlined in the Zoning Ordinance for a second dwelling unit except for the rear yard setback requirement. The Zoning Ordinance requires a 20-foot rear yard setback for second dwelling units. The proposed second unit has a six foot rear yard setback which requires the approval of a Variance. Further discussion of the setback Variance is provided in the Findings section of the report below.

FINDINGS

In accordance with Section 19.78.060.G of the Zoning Ordinance, three (3) findings must be made in order to approve a Variance. The required findings for a Variance are listed below in ***italicized bold*** print and are followed by an evaluation.

1. There are special circumstances applicable to the property, including size, shape, topography, location or surroundings, such that the strict application of the provisions of this Zoning Ordinance deprives the property of privileges enjoyed by other property in the vicinity and under identical land use district classification.

The subject property is located within a subdivision that was built in the early 1900s, prior to establishment of current zoning standards. Staff has observed that other residences in the area have rear yard setbacks which are less than current zoning standards. As previously discussed, the applicant proposes to convert the existing garage and addition to a second dwelling unit. The garage structure has been in its current location, with the 6 foot setback from Republican Alley, for many years. Conversion of the structure to a second dwelling unit will have no impact on the current setback from Republican Alley.

Due to its location on Republican Alley, additional increased separation between the structure and the adjacent commercial properties along Vernon Street is provided. This separation insures that any impacts of an additional residence on neighboring parcels will be limited.

Staff has concluded that since the structure to be converted has been in its current location with a 6-foot setback for many years, it is a special circumstance that allows approval of the requested Variance.

2. The granting of the Variance will not be materially detrimental to the public health, safety, or welfare, or injurious to the property or improvements in such vicinity and land use district in which the property is located.

The addition to the garage was constructed without building permits or zoning clearance. If these permits had been applied for the City would have discovered that a Variance was required before conversion. In order to use the structure as a second unit the applicant will be required to obtain the Variance and after-the-fact Building Permits. No additional new structures will be built, nor will the existing structure be modified in any way that would impact the adjacent properties. The Building Department may require changes to the structure that modify the building; however, these changes will not impact the setbacks proposed in this Variance request. The plans associated with this request have been reviewed by affected City Departments and their comments are included as Conditions of Approval.

As discussed above, other properties in the area have residences and accessory structures with rear yard setbacks that do not meet current zoning standards; therefore, the requested setback reduction is consistent with other properties in the area. Approval of the proposed Variance will not impact any existing improvements to the property.

Staff has not identified any detrimental effects of this project upon the public health, safety and welfare; or upon property or improvements in the vicinity of the project site.

A Public Hearing Notice regarding the project was mailed to property owners within 300 feet of the subject property. Staff has not received any comments or concerns about the proposed Variance.

3. The granting of the Variance does not allow a use or activity which is not otherwise expressly authorized by the regulations governing the subject parcel and will not constitute a grant of special privilege inconsistent with the limitations upon other property in the vicinity and under identical zoning classification.

The applicant is entitled to build a second unit on the subject property, per Section 65852 of the Government Code (State of California Planning and Zoning Laws), and Chapter 19.60 of the City's Zoning Ordinance.

The proposed second dwelling unit is a permitted use in the Planned Development Zoning District. The Variance will allow the converted structure to be used as a second dwelling unit without changing the existing setbacks. Because the second unit is located and accessed off of an alley, the increased level of activity associated with the second dwelling unit on this lot will not be detrimental to adjacent neighbors.

The California Legislature, as stated in State Government Code Section 65852, has found that "second units are a valuable form of housing in California." Additionally, it is the Legislature's intent that second-unit ordinances adopted by local agencies provide for the creation of second units and that provisions included in the ordinance do not unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized by local ordinance. State law and the City's Zoning Ordinance permit second units as an acceptable residential use.

The proposed Variance does not allow a use (a residence) that is not otherwise authorized by the regulations of the Zoning Ordinance and/or California Law.

SUMMARY / CONCLUSION

The applicant should have applied for and obtained building permits before constructing the second unit. However, if the applicant is able to secure after-the-fact building permits and bring the structure into compliance with the California Building Code staff believes the Variance is warranted. Condition 2 outlines the steps that must be taken by the owner. If they fail to satisfy the conditions of approval then the Variance approval is void and they can not use the structure as a second unit. Based on the evaluation and discussion above, staff believes that the Planning Commission can make the required findings to approve the request.

ENVIRONMENTAL DETERMINATION

This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15301(e) pertaining to additions to existing structures and pursuant to Section 305 of the City of Roseville CEQA Implementing Procedures.

RECOMMENDATION

The Planning & Redevelopment Department recommends that the Planning Commission take the following actions:

- A. Adopt the three (3) findings of fact for the VARIANCE – KINCAID SECOND UNIT SETBACK VARIANCE – 616 OAK STREET – FILE #2009PL-005 (V-000061); and
- B. Approve the VARIANCE – KINCAID SECOND UNIT SETBACK VARIANCE – 616 OAK STREET – FILE #2009PL-005 (V-000061) subject to fifteen (15) conditions of approval listed below.

CONDITIONS OF APPROVAL FOR VARIANCE #2009PL-005 (V-000061)

1. This Variance approval shall be effectuated within a period of two (2) years from this date and if not effectuated shall expire on **March 12, 2011**. Prior to said expiration date, the applicant may

apply for an extension of time, provided, however, this approval shall be extended for no more than a total of one year from **March 12, 2011**.

2. The applicant shall submit for Building Permits within 30 days of the approval of the Variance. An Occupancy Permit shall be obtained within six months of the approval of the Variance and the Variance shall be effectuated when an Occupancy Permit is obtained from the Building Department. (Planning & Redevelopment)
3. The project is approved as shown in Exhibit A, and as conditioned or modified below. (Planning & Redevelopment)
4. If modified, materials and colors used on the exterior of the second dwelling unit shall be compatible with those used on the existing home. (Planning & Redevelopment)
5. Construction Documents submitted for plan check and permit shall comply with all applicable code requirements including the 2007 California Building Code, 2007 California Mechanical Code, 2007 California Plumbing Code, 2007 California Electrical Code, 2007 California Fire Code and all state and federal mandated requirements in effect at the time of submittal for building permit. (Building)
6. Exterior walls and openings shall be protected as required by 2007 CBC 702.1 & Tbl. 602 with regard to building location to property lines. (Building)
7. Openings shall be limited to 25% of the wall area, per story, when the exterior walls are located greater than 3' but less than 5' to the lot line, as measured from the outermost face of the exterior wall, as required by 2007 CBC 704.8. (Building)
8. Exterior walls shall have the fire resistance and opening protection as set forth in 2007 CBC 702 & 704 and in accordance with such additional provisions as are set forth in Chapter 6 & 7. Projections beyond the exterior wall shall comply with Section 704.2. (Building)
9. Occupancy separations shall be provided between the various groups and divisions of occupancies as set forth in 2007 CBC Table 508.3.3 and as provided for in Section 706 & 406.1.4. (Building)
10. The design criteria used in the City of Roseville is as follows:
 1. Seismic Design Category & Site Class per Section 1613
 2. Exposure B
 3. 85 mph basic wind speed
 4. 3" per hour max. rainfall
 5. No snow loading
 6. Climate zone 11
11. Construction documents submitted for plan check and permit must be signed by the preparer and all engineering must be wet stamped and signed by a licensed architect or engineer. (Building)
12. Limitations for residential conventional construction in Seismic Design Category C, D or E shall apply. Engineering may be required. See 2007 CBC 2308.12 for provisions. (Building)
13. The new structure has created a clearance infraction with the electric service conductor. The service periscope may be raised or the panel is to be relocated to the alley side of the second dwelling. This correction must be made before final sign off. (Electric)

14. The applicant may be required to upgrade the water and sewer services, based on the total number of plumbing fixtures for both the existing and proposed dwelling unit. This determination will be made when building plans for the proposed dwelling unit are submitted to the Building Department. (Environmental Utilities)
15. The applicant will be required to pay applicable sewer connection and water connection fees for the proposed dwelling unit. (Environmental Utilities)

EXHIBITS

A. Site Plan

Note to Applicant and/or Developer: Please contact the Planning & Redevelopment Department staff at (916) 774-5276 prior to the Commission meeting if you have any questions on any of the recommended conditions for your project. If you challenge the decision of the Commission in court, you may be limited to raising only those issues which you or someone else raised at the public hearing held for this project, or in written correspondence delivered to the Planning Director at, or prior to, the public hearing.