

County of Santa Clara

Department of Planning and Development
Planning Office

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STAFF REPORT Zoning Administration January 14, 2020 **Item #2**

Staff Contact: Xue Ling, Associate Planner
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File: PLN20-159

Variance to Reduce a Side Yard Setback & Eliminate Parking

Summary: A Variance request to reduce the east side yard setback to 9'-10" to legalize construction that occurred, which was misrepresented on the original building plans. The scope of the construction project, as modified, includes a rebuild of the existing residence (new residence) without a one-car covered parking space, a two-story addition, and a junior accessory dwelling unit (JADU), totaling approximately 3,347 square feet.

Owner: Sathish Karunakaran and Umashankari Krishnamoorthy

Gen. Plan Designation: USA of Cupertino

Applicant: Sathish Karunakaran

Address: 22150 Cloverly Court, Los Altos

APN: 326-12-044

Supervisory District: 5

Zoning: R1-10

Lot Size: 10,579 square feet

Present Land Use: Single-family Residence

HCP: Not in HCP Area

RECOMMENDED ACTIONS

- A. Accept a Categorical Exemption, under Section 15303(a) of the CEQA Guidelines, Attachment A; and
- B. Deny the approval.

ATTACHMENTS INCLUDED

Attachment A – Statement of Exemption from the California Environmental Quality Act

Attachment B – Plans and Vicinity Map for the Proposed Variance Application

Attachment C – Approved Building Permit Plans File No. DEV18-70077 (not including Revisions)

Attachment D – Applicant's Variance Statement of Circumstances

Attachment E – Updated/Current Setback Survey prepared by OSUNA Engineering Inc.

Attachment F – Inspection Records and Site Photographs of DEV18-70077

Attachment G – Initial Survey around July 28, 2020

Attachment H – JADU Plan Check Corrections/Comments (Planning only)

PROJECT DESCRIPTION AND BACKGROUND

The subject application is a request for a Variance to eliminate the required one-car parking space and reduce the side yard setback to 9'-10" in order to legalize construction that occurred, which was misrepresented on the original building plans submitted by the Applicant and issued by the County. On February 27, 2020, the original Building Permit (DEV18-70077 – See Attachment C) was issued for a 'rebuild' of a new single-family residence. Within these plans, portions of the existing residence were proposed to remain. Pursuant to the Zoning Ordinance definition of *Floor Area, gross* (Zoning Ordinance Code Section 1.30.030), total floor area of the residence is 4,440 square feet, including a 1,093-square foot double-counted, vaulted ceiling that is greater than 15 feet in height. For clarification within this report, this square footage is calculated differently than the square footage for Building Code/Permit purposes (3,347 square feet).

As identified on the originally approved site plan (Attachment C), the setbacks indicated on the plans submitted to the County for the existing residence were inaccurately illustrated as legal nonconforming, and appeared to encroached into the side setbacks, measuring 7'-6 ½" from the east property line to the rear of the residence, and ~7'-2 ¼" from the west property line to the center of the residence garage. Despite being declared a rebuild, the new additions indicated by the Applicant (show as hatched area – see Attachment C) were illustrated and proposed to be outside of the required 10'-0" side setbacks for the R1-10 zoning district, with no JADU or addition to the garage proposed.

During the initial construction of the above-mentioned project, County Inspectors disapproved the foundation inspection and requested a setback survey letter on March 16, 2020 (see Attachment F). Shortly thereafter, on March 18, 2020, the foundation inspection was disapproved again. On April 1, 2020, through an unscheduled inspection, the County Inspectors observed unapproved demolition of the residence and issued another correction to submit a revision for the additional demolition of a majority of the existing walls (see Attachment F).

The permit revision addressing the demolition was subsequently submitted by the Applicant on May 28, 2020 (DEV18-70077 REV1). However, construction continued, and several inspection types were disapproved prior to the issuance of the revision permit on July 8, 2020. County Inspectors requested the setback survey letter again on July 16, 2020. The residence was essentially rebuilt in its entirety during these disapproved inspections (see Attachment F for Photos from July 24, 2020).

On or around July 28, 2020, the property owner provided a survey letter prepared by a licensed surveyor, OSUNA Engineering Inc., to County Inspection Staff for only the eastern side of the property (see Attachment G). The survey indicated that the property lines illustrated on the original project plans, along the eastern side of the residence, were orientated differently. In other words, the newly constructed residence has an east side yard setback of 9'-10" along the east side of the property. This is contrary to what was indicated on the originally submitted and approved plans. As a result, a portion of the new two-story residence that was proposed 'outside' of the setbacks on the approved plans (indicated as hatched "addition"), was actually built closer to the east side property line, measuring 9'-10" from the eastern property line to the rebuilt

residence (Attachment G – Initial Survey around July 28, 2020). As a result, County Inspection Staff put a “HOLD” on all inspections on July 29, 2020.

Between August 2020 and October 2020, the Applicant obtained a second revision to their Building Permit (DEV18-70077-REV2), and continued construction. County inspections ensued, with continued corrections, and some partial approvals.

On October 21, 2020, the Applicant submitted a Pre-application for a Variance request to reduce the east side yard setback for the rebuilt residence to allow a 9’-10” setback along the east side property line. The Pre-Application meeting was originally scheduled to be held on November 4, 2020, however the meeting was postponed to allow County Inspection Staff to conduct additional investigation of the construction on-site. It is important to note that the plans submitted by the Applicant for the Pre-Application indicated an existing, nonconforming 8’-6 ½” setback (10’-0” setback required) along the west (emphasis added) side property line to an existing garage (as illustrated on the plans submitted). That same day, November 4, 2020, County Inspection Staff discovered a 114.6-square foot addition to the front/north of the existing garage that was not clearly identified, and inconsistently drawn, on the originally submitted site plans, demolition plan, floor plans, subsequent revision plans, and Pre-Application plans.

On November 9, 2020, Staff held the Pre-Application meeting, which is required by the County Zoning Ordinance for Variance requests. At that meeting, County Staff described the process for a Variance application and indicated initial issues of concern with regard to the request, including discrepancies in all the plans submitted to the County, as well as the survey submitted. At the meeting, the Applicant discussed an alternative to propose a JADU where the garage is located, and where the additional setback encroachment was confirmed. At that meeting, County Planning Staff informed the Applicant that they have the right to request a JADU, however a one-car garage was highly recommended to be maintained and Staff would not be able to approve the JADU until after the Variance request is finalized.

On November 17, 2020, the Applicant submitted all required materials for a Variance application, which was accepted by Planning Staff for review. On the same day, the Applicant also submitted another revision to their Building Permit (DEV18-70077-REV4) to modify their construction plans to include a JADU. The Applicant’s intention is legalize an additional encroachment along the west side property line by converting the garage of the rebuilt residence and the previously unidentified addition on the site plans into a JADU. After submitting an updated and signed survey (see Attachment E), the Variance application was deemed complete for processing on December 16, 2020. It is important to note that Staff continues to find discrepancies within all plans submitted to the County. For additional information related to the JADU, see Additional Information section of this report.

The subject Variance application request by the Applicant is to reduce the east side yard setback from 10’-0” to 9’-10” for a “new residence.” The scope of the entire project, as modified, includes a rebuild (majority) of the existing residence (new residence) without providing a required one-car covered parking space, a two-story addition, and a JADU, totaling approximately 3,347 square feet (not including the double-counted floor area for Planning purposes). The Variance request by the Applicant is to only accommodate a reduced setback

along the east side property line, based on the current design submitted by the Applicant, however the request also includes the elimination of the one-car covered parking space requirement by the Zoning Ordinance for a new single-family residence.

Setting/Location Information

The subject property is located within the Cupertino urban service area (USA), in the Creston neighborhood, to the west of Stevens Creek and south of Highway 280. The neighborhood is comprised of properties on similarly-sized lots (over 10,000) which meet the minimum size for lots within the R1-10 zoning district (emphasis added), and are developed with residences ranging in sizes from 1,300 square feet to 3,500 square feet, which also appear to have one- to two-car garages to meet the required covered parking. As the access road to the subject property, Cloverly Court is a County-maintained Road.

REASONS FOR RECOMMENDATIONS

A. Environmental Review and Determination (CEQA)

The proposed project’s environmental impacts were analyzed, resulting in a Categorical Exemption from CEQA under Section 15303(a) new single-family residence (See Attachment A).

B. Project/Proposal

- 1. General Plan:** Urban Service Area, City of Cupertino
- 2. Approved Building Site:** The site is exempt from Building Site Approval (BSA), as it is located within the County’s R1-10 Zoning District, pursuant to Ordinance Code Section C12-309.2-Exemption for Certain Urban Districts. The subject parcel was created by Creston Unit 3 Subdivision, in February 1955 (Tract No. 1456).
- 3. Zoning Standards:** Single-family residences are an allowed use in the R1-10 Zoning District. The Zoning Ordinance specifies the required development standards as summarized below:

Front Setback:	25-feet
Side Setback:	10-feet
Rear Setback:	25-feet
Height:	35-feet
Stories:	2-stories

Note: The application requests a Variance to reduce the side yard setback from 10’-0” to 9’-10” along the east side property line, with a JADU along the west side property line, and a parking variance to eliminate one-car covered parking space.

C. Findings and Conclusions – Variances Section 5.70.020

A Variance may be considered and justified to enable discretionary relief from the development standards of the Zoning Ordinance where it can be clearly determined that based on the unique circumstances and characteristics of the lot, enforcement of the applicable standards would preclude reasonable use and development of the lot. Furthermore, the unique circumstances involved must be substantial and detrimental, and

must relate directly to the characteristics and circumstances of the lot, such that any Variance approved logically and reasonably provides a remedy for a specific hardship(s). In the following discussion, the scope of review findings are identified in **bold** text, and an explanation of how the project meets or doesn't meet the required finding is followed in plain text.

A. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under identical zoning classification; and

The subject lot is 10,579 square feet in area, which is considered a standard lot size with respect to the minimum 10,000 square feet prescribed by the Zoning Ordinance to create a lot within the R1-10 Zoning District. A majority of the lots within the neighborhood have lot sizes that are 10,000 square feet or larger, thereby not qualifying and not recognized as a substandard neighborhood or subdivision. The lot is rectangular in shape, with an average width of 70 feet and an average length of 135 feet, which is not atypical in the neighborhood. There are no watercourses or steep slopes on the property that potentially create development constraints. Although a five (5)-foot wide Public Utility Easement (PUE) is located along the rear property line, it is within the required 25-foot rear setback, and does not decrease the total developable area on the lot. Furthermore, all properties within the neighborhood are observed to have one- or two-car garages taking access from the road right-of-way. As such, the shape and size of the lot do not constitute circumstances that make the subject property relatively unique in its zoning district and neighborhood context.

The originally approved building permit plans depicted the 2-story portion of the "addition" along the east property line to be 10'-11 ¾", and no addition was indicated on the site plan to the front/north of the existing garage, along the west property line. The survey prepared by OSUNA identified the addition along the east property line was built at 9'-10". The November 4, 2020 inspection confirmed a 114.6-square foot addition to the front/north of the existing garage that was not clearly noted on the originally approved plans, or several subsequent plans submitted to the County. The garage (now JADU) addition extended 6'-0" to the front of the garage, and was built with an 8'-6" setback, measured from the west property line, 1'-6" into the required setback.

Zoning Ordinance Sections 4.20.110 (A) and (C) provides setback encroachment allowance for certain architectural features, and special setback reduction based on the size, width, and depth of lots that meet certain requirements. However, these allowed setback reduction clauses do not apply to the encroachments that occurred on the subject property. This is because the property meets the minimum lot size for the zoning district and does not have an exceptionally large depth-to-width ratio.

Furthermore, as previously noted, this property is similar in size and configuration to a majority of the properties in the neighborhood.

In addition, Zoning Ordinance Section 4.20.110 (C)(4)(c) and (d) allows the extension of existing side yard encroachments for setback-nonconforming dwellings, if *‘the additional area of encroachment may not be more than one story nor taller than the existing adjoining wall’* and *‘no greater setback encroachment may result.’* The submitted surveys (Attachments E and G) try to illustrate that the rebuilt residence and additions along the east side of the property line are located closer to the east property line than the previously existing residence, and Staff has confirmed that the drawings illustrate that a portion of the encroachment is two-story. The Applicant cannot utilize these allowances for nonconforming structures, because the residence is a ‘rebuild’ (Ordinance Code Section C1-22(a)), and the Ordinance Code states that *“a residential project classified as a rebuild...shall be treated as a new residence.”* New single-family residences are required to meet all development standards, including setbacks. Furthermore, pursuant to Zoning Ordinance Section 4.50.030(A), nonconforming buildings are only permitted to be expanded or structurally altered provided they *“...substantially maintain their structural form and integrity...[and] in the course of construction, if the walls become disconnected from supporting ceiling and roof joists and all bracing perpendicular walls, they relinquish their right to maintain a nonconforming setback...”* Therefore, Staff is unable to support a setback Variance because the subject project is a new single-family residence and there are no special circumstances applicable to the subject property (size, shape, topography, location or surroundings) that deprive the property owner from privileges enjoyed by other properties in the vicinity. The property could easily accommodate a single-family residence that meets all required setbacks, while also providing additional yard space in the front and rear of the property. The lot could also easily accommodate the required one-car, covered parking space for a new single-family residence.

The subject Variance request was initiated due to a misrepresentation and miscalculation of the property line locations on the submitted plans, a misinterpretation of the proposed additions along the east and west sides, failure to provide requested survey documentation in a timely manner, and not constructing per plans (exceeding demolition).

For the reasons provided above, the grant of this Variance appears to be a grant of special privileges inconsistent with the privileges and limitations affecting neighboring properties. Therefore, staff is unable to make this finding.

B. The grant of the variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the zoning district in which the subject property is located.

The subject property is located within a neighborhood created by the Creston Subdivision in 1955. The neighborhood is comprised of flat urban lots and served by County-maintained Roads, with the majority of the parcels developed in the 1950s. Although the originally approved plans for these residences are not all available in County records, aerial and GIS programs on file with the County identify that the required side yard setback of 10'-0" is commonly met or exceeded within the neighborhood.

Based on Staff's research on the neighborhood within the County's jurisdiction, bordered by Highway 280, Foothill Boulevard, and Stevens Creek Elementary, a total of four (4) Variance requests, plus three (3) 'Administrative Variance' requests, have been processed. It is important to note, prior to the establishment of Zoning Ordinance Section 4.20.110(C)(4), which now allows a nonconforming residence to have an addition that is limited in area to maintain a nonconforming setback, 'Administrative Variance' approvals were granted to legally constructed structures to allow encroachment extensions along an existing non-conforming wall plane, if the total encroaching area was 50 square feet or less in a urban area. In other words, the three (3) Administrative Variance approvals were not "standard" Variance approvals and were not required for staff to make Variance findings. They were also not issued for rebuilds or new single-family residences. Furthermore, the encroachments allowed through these Administrative Variances would be accommodated without a Variance through the current Zoning Ordinance. Additionally, two (2) of the "standard" Variance requests were denied, with one denied by the Boards of Supervisors as an appeal. The other two "standard" Variances do not include a request that is comparable to the subject application. They are an entirely different Variance requests.

With respect to the elimination of the required one-car covered parking space, Staff finds that granting a Variance to reduce/eliminate the parking would be a grant of special privileges that is inconsistent with the limitations upon other properties in the neighborhood and zoning district. Based on an aerial survey of the neighborhood, and reviewing the Variances issued in the neighborhood (above), Staff finds that the residences in the neighborhood appear to all provide one- or two-car garages. Furthermore, none of the Variances issued in the neighborhood are for a parking variance.

As such, based on the neighborhood development history, characteristics, development pattern, and the limited number of previous Variances, staff is unable to make this Variance finding.

In conclusion, based on the findings of the facts described in the body of this report, Staff is unable to make the required findings pursuant to Zoning Ordinance Section 5.70.020. In the absence of unique circumstances relating directly to the lot characteristics and neighborhood development patterns, enforcement of the applicable standards on this property would not

preclude any reasonable use and development of the lot. The grant of the Variance would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the zoning district in which the subject property is located. Therefore, Staff recommends that the Zoning Administration Hearing Officer deny the Variance request to allow setback reduction and elimination of one required covered parking space for a new single-family residence on the subject property.

ADDITIONAL INFORMATION

Compliance Agreement (Ordinance Code Section C1-71)

As the project under construction (DEV18-70077 and all revisions) for the new single-family residence does not meet the approved plans, the subject property is in violation/conflict with the County's Ordinance Code and Zoning Ordinance. Section C1-71 of the County Ordinance Code requires property owners with code violations to enter into a Compliance Agreement before the issuance/approval of *any* permits under Division C, including building permits, grading permits, land use approvals, or revisions/modification of these permit types. The language of Ordinance Code Section C1-71 is below in *italics*:

“Violations or conflicts of laws. – No permit required by this title shall be issued to any applicant, and no final inspection shall be made in connection with any premises or portion thereof upon which there exists a conflict with any County ordinance or state law.

Permits may be issued to applicants in connection with any premises or portion thereof on which there exists a conflict with any County Ordinance or state law if the applicant has executed a compliance agreement and is in the process of completing or has completed the repairs, construction, or reconstruction described in the compliance agreement.”

A Compliance Agreement is an agreement between a property owner and the County outlining the required process and steps to abate a code violation. It is important to note that the County and Hearing Officer may not approve a project if a Compliance Agreement has not been signed by the respective parties prior to commencement of the public hearing or a final decision. As of the preparation of this report, a Compliance Agreement had not been finalized or signed.

Therefore, if by the time of the scheduled public hearing, a Compliance Agreement has not been secured, and the Hearing Officer does not agree with Staff's recommendation to deny the project, then the Hearing Officer will not be able to approve the project, and the following alternative action could be taken by the Hearing Officer:

- 1) Continue the project to a date uncertain, with direction to secure a Compliance Agreement before returning to a duly noticed public hearing, and request Staff to prepare Conditions of Approval for adoption.

JADU Plan Check Corrections

As noted in the Project Description and Background section of this report, the applicant has proposed a JADU to try to remedy an encroachment along the west side yard property line. Staff has notified the Applicant that the County cannot approve the JADU as currently designed and due to the fact that the project is in conflict with Ordinance Code Section C1-71. The comments provided for the JADU revision plan check are attached for reference purposes only to this report (see Attachment H).

Response to Applicant's Statement of Circumstances

The Statement of Circumstances provided by the property owner listed three main justifications for the Variance request: a) the 'tapering' shape of the site, b) the existing setback legal non-confirming residence, and c) the timing of the encroachment being found. As discussed above, the subject site's characteristics do not create hardship significant enough to justify the Variance finding. The Zoning Ordinance allows further encroachment for an addition to an existing setback non-confirming residence, however the subject project is a complete rebuild and new single-family residence that is subject to all required and standard setbacks. Furthermore, any encroachments would be required to be considered and approved by Planning Division prior to the issuance of the Building Permit (emphasis added). The County records show the Inspection Office disapproved the foundation on March 16 and March 18, 2020, and there is no County record indicating the foundation was signed-off (approved) by the County Inspection Staff. The Applicant submitted a photograph of the on-site job card that illustrates a line called "setback" with a date of March 18, 2020 and initials. This information is not consistent with any documentation in the County files. In speaking with County Inspection Staff, this was an error and was not the accurate location for that date. Furthermore, the Applicant did receive all the "Inspection Reports" whereby the foundation and setback survey was requested several times by the County Inspection Staff (Attachment F). Even though a 'stop-work' order should have been placed on the property earlier, the timing of the encroachment being found is not the reason for the occurred encroachment, and is not based on the nature and characteristics of the subject site for making a Variance finding. Instead, the reason for the encroachment are due to the fact that the plans were inaccurately drawn and additional demolition beyond the approved scope occurred without approval.

Public Notice

A public notice was mailed to all property owners within a 300 radius on January 4, 2021, and was published in the Post Records on January 4, 2021.

STAFF REPORT REVIEW

Prepared by: Xue Ling, Associate Planner



Reviewed by: Leza Mikhail, Principal Planner & Zoning Administrator


Attachment A

Statement of Exemption from the California Environmental Quality Act (CEQA)

Attachment A

STATEMENT OF EXEMPTION

from the California Environmental Quality Act (CEQA)

FILE NUMBER PLN20-159	APN(S) 326-12-044	 1/7/2021
PROJECT NAME Single-Family Residence; 22150 Cloverly Court, Los Altos, CA, 94024	APPLICATION TYPE Variance	
OWNER Sathish Karunakaran and Umashankari Krishnamoorthy	APPLICANT Sathish Karunakaran	
PROJECT LOCATION 22150 Cloverly Court, Los Altos, CA, 94024		
PROJECT DESCRIPTION A Variance request is to reduce the side setback from ten (10)-feet to nine feet ten inches (9'-10") to legalize an encroachment into the eastern side yard setback occurred during construction. All discretionary development permits processed by the County Planning Office must be evaluated for compliance with the California Environmental Quality Act (CEQA) of 1970 (as amended). Projects which meet criteria listed under CEQA may be deemed exempt from environmental review. The project described above has been evaluated by Planning Staff under the provisions of CEQA and has been deemed to be exempt from further environmental review per the provision(s) listed below.		
CEQA (GUIDELINES) EXEMPTION SECTION Section 15303(a): one single-family residence in a residential zone		
COMMENTS The subject property is located in an area where all public services and facilities are available. There are no watercourses, special status habits, nor steep slopes on the subject property. The scope of the proposed development does not include tree removal or earthwork outside the proposed building footprint.		
APPROVED BY:		
Xue Ling, Associate Planner	 _____ Signature	_____ 12/16/2020 Date

Attachment B

Plans and Vicinity Map for the Proposed Variance Application

Attachment C

Approved Building Permit Plans File No. DEV18-70077
(not including Revisions)

Attachment D

Applicant's Variance Statement of Circumstances

Attachment E

Updated/Current Setback Survey Prepared by OSUNA
Engineering Inc

Attachment F

Inspection Records and Site Photographs of DEV18-70077

Attachment G

Initial Survey around July 28, 2020

Attachment H

JADU Plan Check Corrections/Comments (Planning only)