



County of Santa Clara

Department of Planning and Development
County Government Center, East Wing, 7th Floor

70 West Hedding Street
San Jose, CA 95110
Phone: (408) 299-5700
www.sccplandev.org

STAFF REPORT
Zoning Administration
October 5, 2023
Item No. 2

Staff Contact: David Horwitz, Assistant Planner
(408) 299-5795, david.horwitz@pln.sccgov.org

File: PLN23-127 **Land Use Permit for a Variance for a Detached Residential** **Accessory Structure**

Summary: Consider a request for a Variance application concerning an unpermitted 240 square foot workshop on a Hillside, interior lot abutting two streets. The Variance seeks to allow for encroachment of the unpermitted structure into the required setback of 25% lot depth for an interior lot abutting two streets, allowing for encroachment to 25 feet from the edge of the Redwood Drive right-of-way. Should a Variance be granted, a Building Permit will be required to legalize the existing structure. There are no additional associated improvements.

Owner: Peter Heller
Applicant: Peter Heller
Address: 17971 Oak Drive, Los Gatos, CA
APN: 544-36-042
Supervisory District: 5

Gen. Plan Designation: Hillside
Zoning: HS
Lot Size: 8,712 square feet (0.20 acres)
Present Land Use: Single-Family
HCP: Not in HCP Area

RECOMMENDED ACTIONS

- A. Deny the Variance request.

ATTACHMENTS INCLUDED

- Attachment A – CEQA Determination
- Attachment B – Preliminary Conditions of Approval
- Attachment C – Location and Vicinity Map
- Attachment D – Proposed Plans
- Attachment E – Pre-Application Review Letter
- Attachment F – Variance Statement of Circumstance

PROJECT DESCRIPTION

The Variance application submitted by the applicant states that the request is to decrease a rear yard 50-foot setback to a 20-foot setback to accommodate an unpermitted accessory structure. Following review of the application materials, staff understands that the Variance requests encroachment of the unpermitted accessory structure into the required setback, versus a setback reduction. As discussed in this report, staff also estimate the required 25% lot depth setback to be roughly 46 feet, with the unpermitted accessory structure sitting roughly 25 feet from the Redwood Drive right-of-way. Additionally, the Variance request proceeds a recorded violation, VIO20-0153, describes a large building easily viewed from Redwood Drive, being built without a permit.

The scope of the proposed project involves a Variance request for encroachment of an unpermitted accessory structure constructed within the rear setback on a lot with an existing single-family residence. The Variance seeks to allow for encroachment of the unpermitted structure into the required setback of 25% lot depth for an interior lot abutting two streets, allowing for encroachment to 25 feet from the edge of the Redwood Drive right-of-way.

The existing residence was reconstructed with a series of permits issued in the early 1990's. The existing accessory structure is noted to be used as a "workshop" by the property owner and was built without a permit on an existing pad in 2020. There are no grading improvements or additional associated improvements with the workshop. The subject parcel is classified as an interior lot abutting two streets as the property fronts both Oak Drive and Redwood Drive. Therefore, §4.20.020(F)(2) of the County Zoning Ordinance applies to this property, mandating a 25% lot depth setback for residential accessory structures as measured from both the Oak Drive and Redwood Drive rights-of-way.

The lot depth of the subject parcel is roughly 205 feet along its east-side boundary. However, the lot boundaries are recorded from the center of the rights-of-way of Oak Drive and Redwood Drive. This reduces the effective lot depth to roughly 184 feet. Therefore, the required setback for an accessory structure is roughly 46 feet from the edge of the rights-of-way. The unpermitted workshop sits roughly 25 feet from the north property line fronting Redwood Drive. The applicant's intent is to legalize the unpermitted workshop. Thus, the Variance request is required to allow the unpermitted structure to encroach 21 feet into the required 46-foot setback, measuring 25 feet from the Redwood Drive right-of-way. Because no civil survey was provided with this application, all measurements in this report are rough estimates.

Setting/Location Information

The property is within the Redwood Estates community in the Santa Cruz Mountains, sitting 193 feet away from the Santa Cruz Highway (CA 17) right-of-way. The property takes access from Oak Drive, a private road. As stated, the lot depth of the subject parcel is roughly 204.74 feet along its east-side boundary and roughly 178.07 feet along its west-side boundary. The property has a frontage of roughly 42.46 feet along Oak Drive and a frontage of roughly 70.46 feet along Redwood Drive.

The primary use on the property is single-family residential, where the existing two-story residence contains 1,560 square feet of living space. The residence has a 450 square foot uncovered deck at the rear of the residence facing Redwood Drive. The front yard of the property

abutting Oak Drive contains a wooden pergola and gravel driveway with a temporary carport structure. The property is served by an onsite wastewater treatment system (OWTS) whose septic tank and leach field also occupy the south-yard of the property.

The lot size totals 8,712 square feet, or 0.20 acres, and the existing residence sits near the center of the property. There is roughly 13'-6" between the existing residence and the fence along the west-side property boundary, and roughly 5'-6" between the existing residence and the fence along the east-side property boundary. The County of Santa Clara GIS Mapping Online (gismo) estimates the lot to have an average slope of 13.5%. The south half of the lot is the most level part of the property. The north half of the lot slopes steeply toward Redwood Drive; the elevation drops 115 feet from the edge of the uncovered deck to the Redwood Drive right-of-way, over roughly 48 horizontal feet.

The parcel is within the County and State Landslide Hazard Zone, the wildland urban interface (WUI), and the State Responsibility Area (SRA). There is tree coverage from one single old growth redwood tree in the north corner of the property, and smaller evergreen trees in the north-yard of the property and along the side boundaries of the property.

The existing conditions of the subject property are common to the Redwood Estates community. The majority of lots are roughly 0.20 acres in size and contain residences ranging from 700 square feet to 1,500 square feet, originally built as cabins in the early to mid-20th century. Many properties in the community contain more than one accessory structure.

Project alternatives

Project alternatives may be considered to gauge the necessity of a Variance. The Building Permit for the reconstruction of the single-family residence, County File No. 1991-10077, establishes residential front and rear setbacks of 30 feet and a side setback equivalent to 10% of the lot width. Per § 4.20.020 (G)(1) of the County Zoning Ordinance, an accessory structure attached to the residence would be subject to the setbacks imposed on that residence. The existing residence is set back roughly 100 feet from Oak Drive and 47 feet from Redwood Drive. A 240 square foot workshop of similar dimension could be attached to the residence to replace a portion of the uncovered deck or constructed under the uncovered deck. Additionally, Attachment D shows that there may be adequate area to construct an accessory structure of similar size on the western side of the property between the residence and the property line.

REASONS FOR RECOMMENDATIONS

A. Environmental Review and Determination (CEQA)

The project proposes to legalize a small accessory structure. As such, the project qualifies for a Class 3, Section 15303 (e) accessory (appurtenant) structure Exemption from CEQA.

B. Project/Proposal

1. General Plan: Hillsides

2. **Zoning Standards:** The Zoning Ordinance specifies the required development standards for residential accessory structures in the Hillside Zoning District, as summarized below. The proposed project requires a Variance for its current location.

<u>Accessory Structure</u>	
Setbacks (HS; Interior Lot abutting two street):	Not located within the portion of the lot representing one-fourth of the depth of the lot nearest either street
Height:	12 feet maximum
Stories:	1-story maximum

Table A: Compliance with Development Standards for Accessory Structures

STANDARDS & REQUIREMENTS	CODE SECTION	Meets Standard (Y/N)*
Height	§ 4.20.020 (E)(1)(a)	Y
Located in Rear Yard or Minimum 75 Feet from Front Property Line	§ 4.20.020 (E)(2)	N*
Minimum Separation Between Residence and Accessory Structure	§ 4.20.020 (E)(4)	Y
Rear Yard Coverage	§ 4.20.020 (E)(5)	N/A
Interior lot abutting two streets	§ 4.20.020 (F)(2)	N*

*See a detailed discussion of these development standards within the body of the Variance Findings in Section C below

C. Variance Findings:

Pursuant to Section 5.70.020 of the County Zoning Ordinance, 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 does not meet the required findings are followed in plain text.

1. **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**

Accessory structures on interior lots abutting two streets are required to meet a 25% lot depth setback from each frontage line. The residence occupies the general center of the lot. A detached accessory structure could be placed in an area along the western side of the residence based on the information within the submitted site plan on page two of Attachment F.

The front yard abutting Oak Drive contains the septic tank and leach field serving the property. The Oak Drive frontage is significantly shorter than the Redwood Drive frontage of the property, effectively eliminating front yard from development. Nonetheless, residential accessory structures must be located in the rear half of the lot or at least 75 feet from the front property line (§4.20.020 (E)(2)). The rear yard abutting Redwood Drive is slightly constrained by topography; any area that may be outside of the setback would require grading to establish a building pad, which is a standard requirement for construction site preparation.

Given there is an area on the property where a detached accessory structure could be placed in a code-compliant fashion, Staff finds it difficult to make the required finding allow for encroachment of an unpermitted accessory structure into the 25% lot depth setback.

As such, this finding cannot be made.

2. 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.

In context to the subject property, the surrounding neighborhood has similar characteristics related to rear yards and topography. As noted in the Project Description, many lots in the Redwood Estates community were created in the early to mid-20th Century and do not conform with the current minimum lot sizes associated with the HS zoning district. Many residences were constructed prior to adoption of the County Zoning Ordinance or Building Permit requirements in 1947 and are therefore legal non-conforming. Steep terrain also poses a challenge to new development on parcels in this neighborhood. The subject property has minimal development area due to the required setbacks of interior lot abutting two streets, lot configuration, the topography of the site, and existing, legal improvements limiting where new structures may be developed on site.

In a Statement of Circumstance submitted with the Variance application, the applicant (homeowner) states that the road on the north boundary of the subject property, Redwood Drive, is a driveway to the neighboring property, 17958 Redwood Drive, not a road. The Statement also claims that the undeveloped area directly across from the subject property is an unbuildable part of the 17958 Redwood Drive property. Staff reviewed County records to find that Redwood Drive is a road, not a driveway. While the undeveloped land across from the subject property is currently

undeveloped, there is no indication that the land is undevelopable nor is there indication that the land must remain undeveloped.

The applicant also asserts in the Statement of Circumstances that there are ten properties near the subject property that have accessory structures within less setback than specified by the Zoning Ordinance. Staff researched each example offered by the applicant to determine if they establish precedence in permitting accessory structures on interior, double frontage lots encroaching within the required 25% lot depth setback. Four of the examples are detached garages within the required setback. These do not establish precedence because § 4.20.020 (F) of the County Zoning Ordinance allows for a parking structure within the front yard of a lot by application of a Special Permit. The Ordinance ascertains such setback-exempt structures apply to a garage, carport, or other parking structure only. The remaining examples do not suggest precedence because the structures in question are either attached to an existing single-family residence, or are legal nonconforming to a side setback but are outside of the 25% lot depth setback, or are located on a lot not classified as an interior lot abutting two streets.

The applicant identified a structure at 18091 Idalyn Dr, Los Gatos (APN: 544-37-079) that received a Variance via County File No. 8045-27-42-01V to reduce the front yard setback for a detached garage from 75 feet to 45 feet. The property is characterized as an interior lot abutting two streets, with an average slope of roughly 29.5%. The property has an effective lot depth of roughly 216 feet, requiring a 25% lot depth setback of 54 feet for detached residential accessory structures. This puts the structure in question within the 25% lot depth setback. The structure is 988 square feet; 542 square feet of the detached structure is garage/parking space. The remaining 446 square feet is a separate storage room with interior access to the garage and exterior access to the remainder of the property. Per County File No. 8045-27-42-01V, the Variance approval was granted because the lot's topography is characterized by a limited flat area in the front portion which abruptly drops off where the rear wall of the garage would be situated. This slope factor precludes practical alternatives for garage placement. This existing structure would not meet the requirements for a Special Permit as required by § 4.20.020 (F) because it is larger than 600 square feet and is not used solely as a parking structure. As such, the Variance approved via County File No. 8045-27-42-01V may establish precedence toward permitting of accessory structures on interior, double frontage lots within the required 25% lot depth setback because the current Code does not allow for means of permitting such a structure outside of a Variance.

However, this application involves a recorded violation where the applicant constructed a structure without permits. Balancing the conditions of the project site with the fact that the accessory structure was already constructed without permits, the request for a Variance to allow for the retention of an unpermitted accessory structure is a possibility that a special privilege would be granted in this situation that is inconsistent with the limitations upon other properties in the vicinity.

As such, this finding cannot be made.

Staff Recommendation

In conclusion, the characteristics of the subject property limit the developable area for a detached accessory structure to some degree, however, there is a portion of the property where a detached accessory structure can be constructed in a manner consistent with the Zoning Ordinance. Furthermore, because the application involves a recorded violation to retain an unpermitted structure, staff cannot find that the granting of a Variance would not constitute special privilege. The unique circumstances and findings of fact described in the body of this report conclude that application is not a satisfactory candidate for Variance approval because all of the required findings cannot be made.

ADDITIONAL INFORMATION

Public Comments

No public comments were received as of the posting of this report.

BACKGROUND

On March 26, 2020, Code Enforcement received a complaint that the property owner was building a large building that may become a hazard. A Notice of Violation was filed under County File No. VIO20-0153 and forwarded to the applicant on April 23, 2021. On May 21, 2021, the applicant submitted an Application Request for a Building Permit for the unpermitted workshop. The applicant was informed at this time that because the lot has two street frontages, no accessory structure is allowed within the first 25% of the lot as measured from each street frontage. The application was then converted to an Application Request for a Variance Pre-Application.

A pre-application meeting was held January 6, 2022. A Pre-Application Letter was sent to the applicant on February 10, 2022 (Attachment E). The homeowner was notified in the Pre-Application letter that a Variance application should include a survey to identify the distance measured from the Redwood Drive right-of-way to the structure in order to calculate the setback as required by the Zoning Ordinance and the location of the structure. The homeowner was also informed that the Variance request should only amount to the distance needed for the project. The property owner submitted a Variance application on July 5, 2023, and the file for PLN23-127 was created on July 19, 2023. The property owner was notified that the application was deemed complete on August 14, 2023.

On September 21, 2023, a public notice was mailed to all property owners within a 300 radius and was also published in the Post Records on September 22, 2023. As of September 28, 2023, staff has received no comments from the public related to the project.

STAFF REPORT REVIEW

Prepared by: David Horwitz, Assistant Planner

DocuSigned by:

David Horwitz

Reviewed by: Samuel Gutierrez, Principal Planner

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[Signature]

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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	APN(S)	
PLN23-127	544-36-042	9/28/2023
PROJECT NAME		APPLICATION TYPE
Detached residential accessory structure; 17971 Oak Drive, Los Gatos, CA 95033		Variance
OWNER	APPLICANT	
Peter Heller	Peter Heller	
PROJECT LOCATION		
17971 Oak Drive, Los Gatos, CA 95033		
PROJECT DESCRIPTION		
<p>Variance application concerning an unpermitted 240 square foot workshop on a Hillside, interior lot abutting two streets. The Variance seeks to reduce the interior lot abutting two streets setback for accessory structures from 25% of the lot depth (approximately 46 feet) to 20 feet from the edge of the Redwood Drive right-of-way. Should a Variance be granted, a Building Permit will be required to legalize the existing structure. There are no additional associated improvements.</p>		
<p>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.</p>		
CEQA (GUIDELINES) EXEMPTION SECTION		
<p>Section 15303(e) - Class 3(e): One detached residential accessory structure in a residential zone. The proposed project's environmental impacts were analyzed, resulting in a Categorical Exemption. The project will not create any significant environmental impacts as the project minimizes grading and impacts to the natural terrain. Additionally, there are no special status species, or sensitive habitat mapped in the development area. The project meets the County-required setback from a watercourse. As such, the project qualifies for a Class 3, Section 15303 (e) accessory (appurtenant) structures Exemption from CEQA.</p>		
COMMENTS		
<p>The subject property is in an area zoned to allow single-family residential development and allows for accessory structures by right. The project is similar to other development in the neighborhood. No special status species or habitat exists in the project site, and the project will not impact any watercourses or sensitive or protected wildlife or plant species.</p>		

APPROVED BY:

David Horwitz, Assistant Planner

David Horwitz

Signature

9/28/23

Date

Attachment B

Preliminary Conditions of Approval

ATTACHMENT B
PRELIMINARY CONDITIONS OF APPROVAL FOR VARIANCE

Date: September 18, 2023
Owner/Applicant: Peter Heller
Location: 17971 Oak Drive, Los Gatos (APN: 544-36-042)
File Number: PLN23-127
CEQA: Categorically Exempt – Section 15303, Class 3(e)

Project Description: Variance application to allow for encroachment of the unpermitted structure into the required setback of 25% lot depth for an interior lot abutting two streets, allowing for encroachment to 25 feet from the edge of the Redwood Drive right-of-way. Should a Variance be granted, a Building Permit will be required to legalize the existing structure. There are no additional associated improvements.

If you have any question regarding the following conditions of approval, call the person whose name is listed below as the contact for that agency. They represent a specialty and can provide details about the conditions of approval.

Agency	Name	Phone	E-mail
Planning	David Horwitz	(408) 299-5795	david.horwitz@pln.sccgov.org
Building Inspection		(408) 299-5700	

STANDARD CONDITIONS OF APPROVAL

Building Inspection

1. Submit an application for a Building Permit for legalization of the existing accessory structure. For detailed information about the requirements for a building permit, obtain a Building Permit Application Instruction handout from the Building Inspection Office or visit the website at www.sccbuilding.org.

Planning

2. Development must take place in substantial conformance with the approved plans as presented at the Zoning Administrator hearing on October 5, 2023, consisting of plans submitted July 19, 2023, and as modified by the Conditions of Approval. Any additional changes to the proposed project or modification to the design may require a modification to the land use permit for Variance, and associated fees, and may result in additional environmental review, pursuant to the California Environmental Quality Act. Changes are required to be submitted for review and approval by the Planning Division of the Department of Planning and Development.
3. This approval does not otherwise approve any unpermitted structures located on the property. All structures and grading located within Santa Clara County jurisdiction that require a permit are subject to compliance with and issuance of County permits.

4. Building and grading permits shall be submitted to the Building Inspection Office concurrently.
5. The reduced setback shall only apply to allow the encroachment of the subject accessory structure into the required setback equal to 25% of the lot depth. Pursuant to the approved **Variance specific to the proposed** detached accessory structure as shown within the approved plans dated on July 19, 2023, shall maintain the following minimum setbacks:

Oak Drive: 25% of the lot depth Sides: N/A Redwood Drive: 25'0"
6. The detached accessory structure shall not exceed 12'-00" in height above the final grade at any location.
7. No trees are authorized to be removed without seeking permission from the Planning Division of the Department of Planning and Development.
8. The structure shall remain painted a dark, earthen tone with light reflectivity value of less than 30.

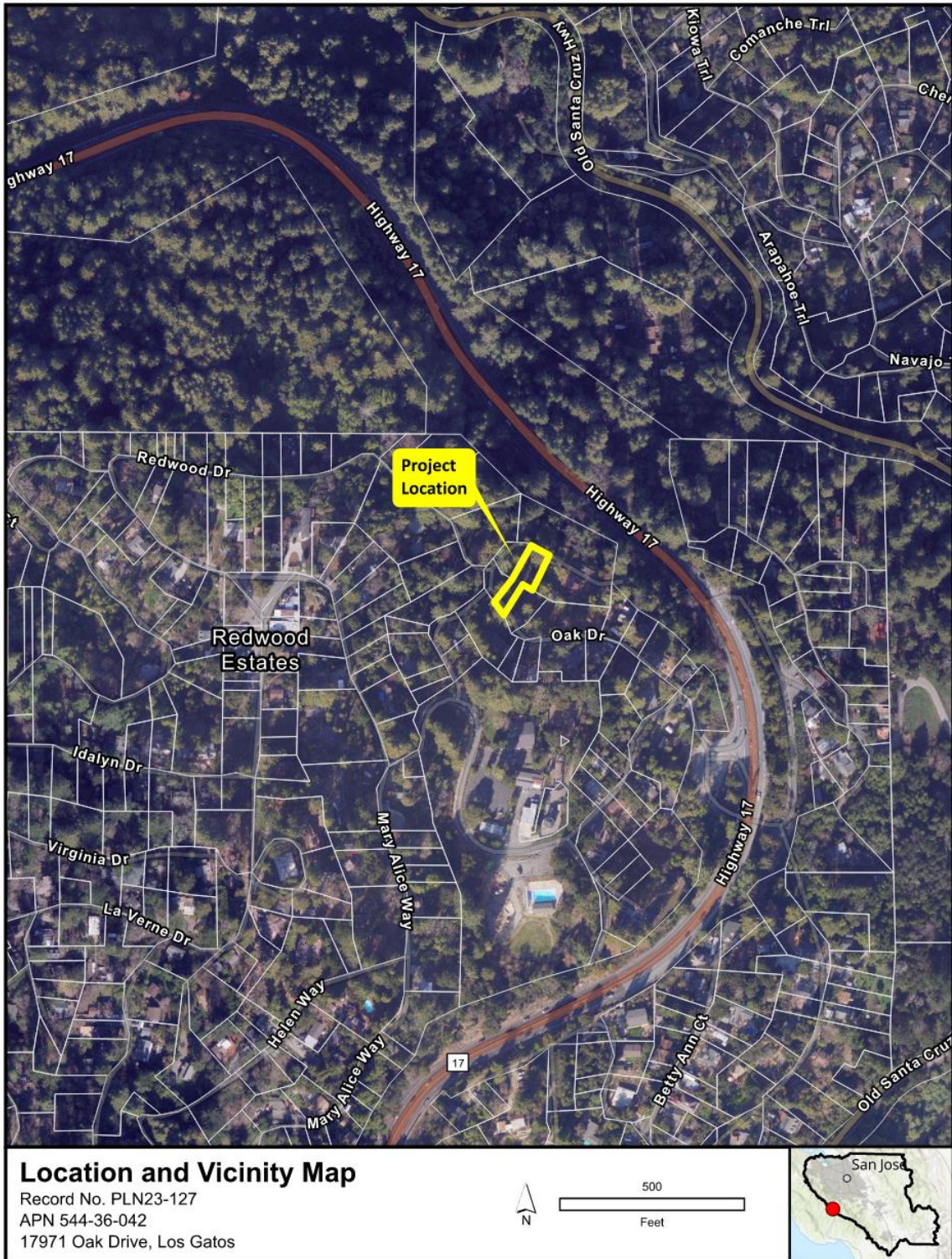
CONDITIONS OF APPROVAL TO BE COMPLETED PRIOR TO PERMIT ISSUANCE

Planning

9. **Prior to issuance of any permits**, the applicant shall pay all reasonable costs associated with the work by the Department of Planning and Development.
10. **Prior to issuance of a building permit**, and pursuant to Zoning Ordinance Section 5.20.125 record a Notice of Permit and Conditions with the County Office of Clerk-Recorder to ensure that successor property owners are aware that certain conditions of approval shall have enduring obligation. Evidence of such recordation shall be provided **prior to building permit issuance**.

Attachment C

Location and Vicinity Map

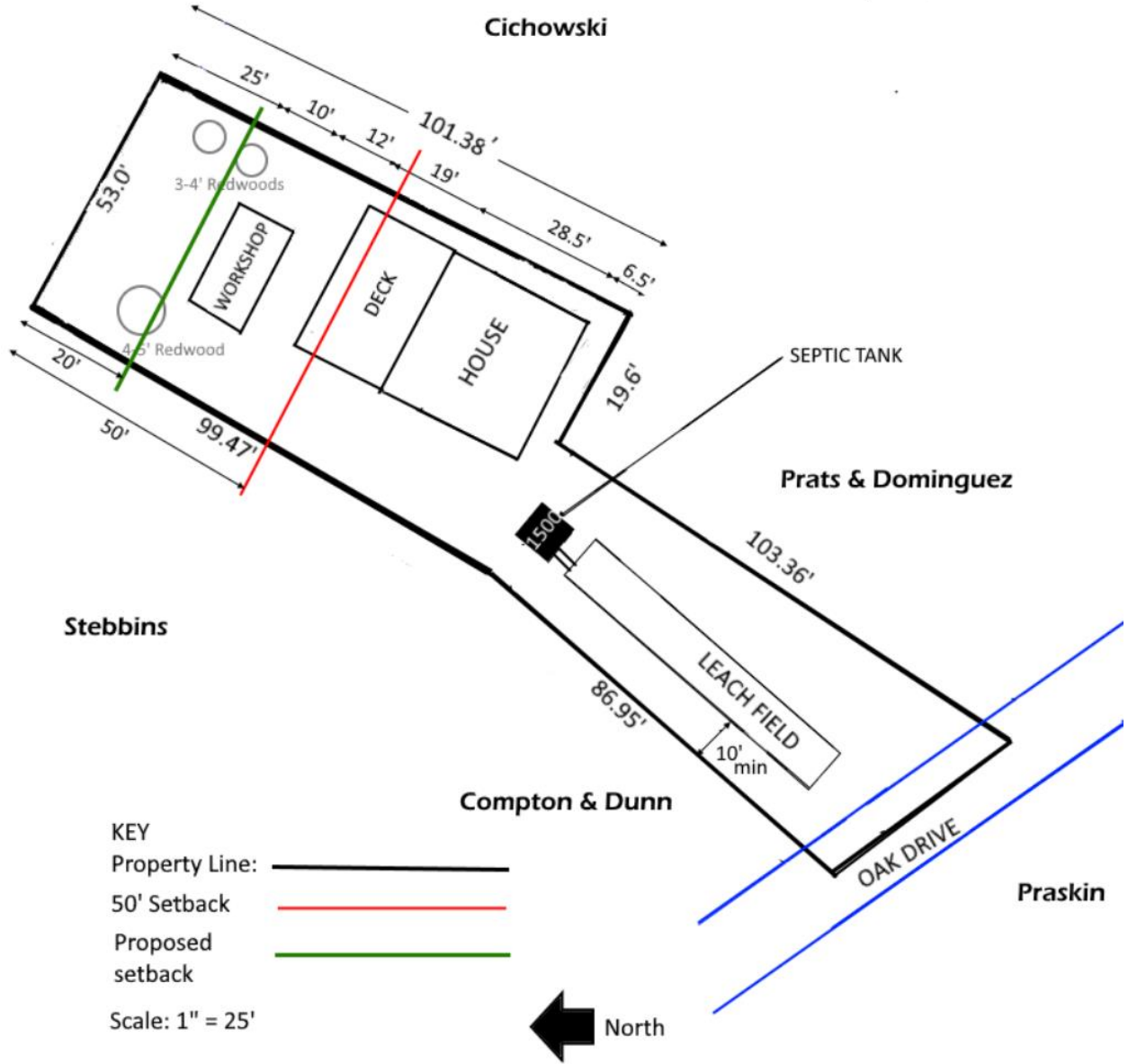


Attachment D

Plans

Site Plan for Mr. Pete Heller
17971 Oak Drive Los Gatos CA 95033
APN 544-36-042

Lot Size: 9,147 sq. ft.



AR21-0896
Heller Workshop
17971 Oak Drive
Los Gatos CA 95033
Site Plan
Rev 6.0

Attachment E

Pre-Application Review Letter

County of Santa Clara

Department of Planning and Development

County Government Center, East Wing, 7th Floor

70 West Hedding Street

San Jose, CA 95110

Phone: (408) 299-5700

www.sccplandev.org



February 10, 2022

Pete Heller
17971 Oak Drive
Los Gatos, CA 95033

County Record #: PLN21-185-PRE
Subject: Pre-Application for proposed Variance to reduce the setback from approximately 49 feet to 20 feet for an accessory structure
Site Location: 17971 Oak Drive, Los Gatos, CA 95033 (APN 544-36-042)
Date Received: October 18, 2021

Dear Mr. Heller,

This letter summarizes comments associated with the pre-application of the proposed Variance to reduce the front setback from 25% (Staff estimates this to be 49 feet, a survey would be required to accurately determine the required setback) to 20 feet to legalize an unpermitted workshop and abate VIO21-0096. A Pre-Application meeting regarding the proposed application took place on January 6, 2022, attended by the following County Staff:

Agency	Name	Phone	E-mail
Santa Clara County Planning Division	Robert Cain Xue Ling	(408) 299-5706	robert.cain@pln.sccgov.org

Please see the following comments for any future application submittal related to the proposed Variance. Any changes in the project description or scope of work could result in new or modified application requirements, and/or issues of concern, which are specific to the project described by the applicant for purposes of this pre-application.

Proposed Project

The project proposes a legalizing an unpermitted workshop (detached accessory structure) on a lot with an existing single-family residence within the north yard. The existing residence was reconstructed and with an addition following earthquake damage in a series of permits issued in 1990/1991. This parcel is classified as an interior lot abutting two streets, and therefore § 4.20.020 (F)(2) of the County Zoning Ordinance applies to the setback requirements from right-of-way of Redwood Drive and Oak Drive. The applicant requests a Variance to reduce the setback measured from Redwood Drive right-of-way to 20 feet to accommodate the unpermitted structure.

Information Needed for a Formal Variance Application

Should the applicant wish to proceed with a Variance application, please submit all required documents provided on the Variance Checklist (Attachment B). Please note that the site plan should include all existing and proposed improvements, including setback distances.

When submitting the formal Variance application, please provide a survey prepared by a certified surveyor to identify the length of the lot where the structure is located, and the distance measured from Redwood Drive right-of-way to the structure. The information is needed to calculate the setback as required by the Zoning Ordinance and the location of the structure. The requested variance amount should be the amount needed for the project (i.e., do not request a reduction to 20 feet if a reduction to 22 feet would be sufficient).

The site plan should note that Oak Drive and Redwood Drive are not County maintained roads. Accurately locate and show existing onsite wastewater treatment system; applicant can obtain as-built drawing for septic permit #50552. Plans should also note grading totals (or state no grading required) and increase in impervious surface area created by the workshop (or state no new impervious surface area).

Please note that grading quantities over 150 cubic yards of cut or fill depths over 5 feet require a Grading Approval. New impervious surface area over 2,000 square feet requires a Drainage Permit.

If a Variance is granted, a Building Permit will still be required to legalize the structure. While structural plans are not required at the Variance stage, a geologic report that includes an evaluation of slope stability is required due to the parcel's location within a State and County Landslide Hazard Zone.

Fire Safety

In addition to Zoning Ordinance considerations, the subject property is located in the State Responsibility Area and the project appears not to conform with the SRA/VHFHSZ Fire Safe Regulations. Specifically, this project does not appear to meet requirements for setbacks and for access roads.

§ 1276.01. Setback for Structure Defensible Space.

- (a) All parcels shall provide a minimum thirty (30) foot setback for all buildings from all property lines and/or the center of a road.
- (b) When a thirty (30) foot setback is not possible for practical reasons, which may include but are not limited to parcel dimensions or size, topographic limitations, or other easements, the local jurisdiction shall provide for same practical effect.
 - (i) Same practical effect requirements shall reduce the likelihood of home-to-home ignition.
 - (ii) Same practical effect options may include, but are not limited to, noncombustible block walls or fences; five (5) feet of noncombustible material horizontally around the structure; installing hardscape landscaping or reducing exposed

windows on the side of the structure with a less than thirty (30) foot setback; or additional structure hardening such as those required in the California Building Code, California Code of Regulations title 24, part 2, Chapter 7A.

Article 2 Emergency Access and Egress

§ 1273.00. Intent

Roads and driveways, whether public or private, unless exempted under 14 CCR § 1270.02(d), shall provide for safe access for emergency wildfire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent with 14 CCR §§ 1273.00 through 1273.09.

§ 1273.01. Width.

- (a) All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by local jurisdictions or local subdivision requirements. Vertical clearances shall conform to the requirements in California Vehicle Code section 35250.
- (c) All driveways shall be constructed to provide a minimum of one (1) ten (10) foot traffic lane, fourteen (14) feet unobstructed horizontal clearance, and unobstructed vertical clearance of thirteen feet, six inches (13' 6").

§ 1273.02. Road Surfaces

- (a) Roads shall be designed and maintained to support the imposed load of fire apparatus weighing at least 75,000 pounds and provide an aggregate base.
- (b) Driveways and road and driveway structures shall be designed and maintained to support at least 40,000 pounds.
- (c) Project proponent shall provide engineering specifications to support design, if requested by the local authority having jurisdiction.

§ 1276.01. Setback for Structure Defensible Space.

- (c) Structures constructed in the SRA are required to comply with the defensible space regulations in Title 14. Natural Resources Division 1.5. Department of Forestry and Fire Protection Chapter 7. Fire Protection Subchapter 3. Fire Hazard.

Development Standards

The subject lot is zoned HS and is recorded as 8,712 square feet (approximately 0.2 acres). Accessory structures in rural zones on parcels smaller than 2.5 acres are required to be 75 feet from the front property line or ultimate right-of-way (§ 4.20.020 (E)(2)). For properties such as this one, an interior lot abutting two streets, the setback can be reduced to one quarter of the length of the lot (§ 4.20.020 (F)(2)). Because of the irregular shape of this lot, the setback line from each street varies and a survey is necessary to determine the exact setback at the proposed project site; however, Staff estimates that this setback is approximately 49 feet.

Background

The property is located in Redwood Estates, a rural community in the Santa Cruz Mountains near Los Gatos in unincorporated Santa Clara County. Many of the lots were created prior to 1940 and do not conform with current minimum lot sizes associated with the HS zoning district, and many residences were constructed prior to adoption of the County Zoning Ordinance or building permit requirements in 1947 and are therefore legal non-conforming. Steep terrain also poses a challenge to new development on some parcels in this neighborhood.

Site Characteristics Relevant to the Consideration of a Variance

- The subject parcel is 8,712 square feet in size, abutting Redwood Drive on the north and Oak Drive. The existing single-family residence and unpermitted workshop take access from Oak Drive, and there is no access from Redwood Drive to the development on the property.
- Because of how the road network was laid out in this community, many of the lots are double-fronted. The applicant provided 10 examples of structures nearer one of the two roads than 25% of the property; of these Staff confirmed that one detached garage was constructed with permits within the 25% setback requirement (18155 Santa Ana Road, detached garage built to 30' setback from road (building permit 1995-55342, no variance on record), and one property has a legal-nonconforming garage near the road (21560 Madrone Drive, house built in 1924, would be allowed today with a Special Permit due to the slope of the lot). The Eight other examples provided cannot be used to support this variance request. They include attached garages (which follow different setbacks), properties on corner lots (which have different setbacks), or unpermitted structures.

Discussion

The Zoning Ordinance § 5.70.020 states the following:

A variance may not be granted unless both of the following findings can be made:

- 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*
- 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.*

These findings are consistent with the variance provisions of Section 65906 of the California Government Code.

Based on the physical characteristics of the subject lot and the above nature of the proposed development, staff has concerns with the proposed Variance in consistency with the above-mentioned Finding A. Given the topography information is not submitted, staff is unable to access whether there is alternative location to accommodate an accessory structure of the same size. When submitting the formal Variance application, please demonstrate there is no other place that meets the setback requirement on the lot (25% of the lot length) to accommodate the unpermitted structure. Additional research concerning the character of the neighborhood is necessary to assess whether the required Finding B stipulated in § 5.70.020 can be made. A Variance application will

be heard with a decision rendered by the Zoning Administration Hearing Officer in a Zoning Administration Hearing. Staff will complete and post a staff report with a recommendation of approval or denial seven (7) days prior to the Hearing for the Officer's consideration and the public input. This letter does not conclude the staff's recommendation of approval and denial. The required Findings for a Variance are attached in Attachment A.

Full analysis and making of findings to grant a Variance cannot be provided prior to an application being submitted and deemed complete for processing. A public hearing will be required by the Zoning Administration Hearing Officer. This preliminary review is intended to provide you with a basis for making an informed opinion as to whether to pursue a Variance application. If you make a submittal for the Variance application, additional comments and requirements may be provided once your application is received and fully reviewed by Staff and outside agencies. If you have any questions, please reach me at (408)-299-5706.

Sincerely,



Robert Cain
Associate Planner

Attachments:

- Attachment A – Variance Findings
- Attachment B – Variance Checklist

Attachment F

Variance Statement of Circumstances

**Variance Request for 17971 Oak Drive Los Gatos:
Decrease 50' setback to 20' in rear yard
to accommodate accessory structure**

Provide background on why the variance is being requested

In 2021 I requested a building permit for the accessory structure I built in my rear yard. After multiple communications with the Planning Department, I was informed that “Because the lot has two street frontages, per County Zoning Ordinance Section 4.20.020(F)(2), no accessory structure is allowed within the first 25% of the lot as measured from each street frontage”. In my case that would require a 50 foot setback, which is not feasible to implement since it would overlap with the existing house. Upon meeting with the planning department I was informed I would need to request a variance to reduce the rear yard setback in order to retain the structure. In fact, without a variance, I could not have any accessory structure of any size anywhere on the property due to the existing septic system in the front yard.

Describe the project for which you are requesting consideration of a variance

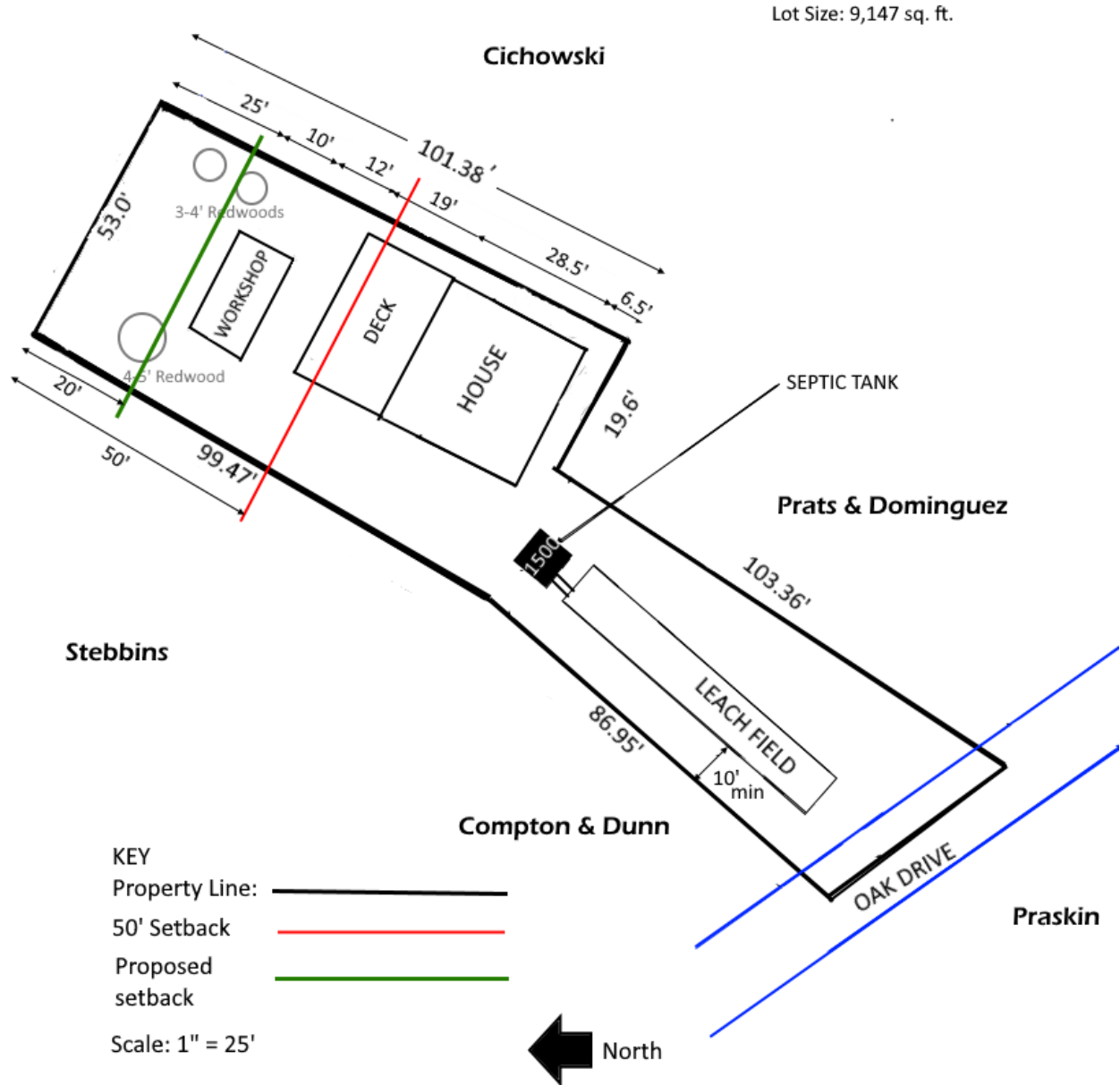
This variance request is for a 240 square foot accessory structure (shed) in my rear yard. It is placed on a pre-existing pad that previously housed a pergola. It has no plumbing, HVAC or propane.

The structure is used for storage and as a personal (non-commercial) workshop to build furniture, decorative boxes, clocks and ornaments for family and friends. Example projects include a wooden urn for my father who passed away in April, a crib for my granddaughter, and a dining table for a neighbor. I took great lengths to make the structure fit with the yard and the pre-existing pad, and to be aesthetically pleasing to the neighborhood.



Interior view

Show on the preliminary plans the requested Variance and proposed setback encroachment areas



The diagram above shows the layout of the property. The red line shows that a 50' setback would interfere with the existing deck/house. The green line shows the requested setback to enable an accessory structure to be permitted.

Describe the unique physical characteristics of the property that can be considered as the basis for the proposed Variance. Such characteristics may include size, shape, topography, location, or similar characteristics that have an actual bearing on the reasonable use and development of the property.

The property is referred to as an interior lot. This is defined as a parcel that is bounded by a street in the front and another in the rear. In my case Oak Drive is in front and Redwood Drive is in the rear. The property has a septic tank and leach field in the front yard thereby eliminating the front yard from being used for an accessory structure. The rear yard has only 45' from the rear of the deck to the property line. That means there simply isn't space available to meet the 25% specified by County Zoning Ordinance Section 4.20.020(F)(2). Therefore a variance is necessary in order to have any accessory structure of any size on the property. That is because the 25% setback requirement applies equally to a shed of under 120 square feet—for which a building permit is not even required.

Explain why the property characteristics or circumstances, together with the applicable regulation(s) of the zoning ordinance, represent a substantial and detrimental hardship that precludes reasonable use and development of the property.

The application of zoning code 4.20.020(F)(2) presents a substantial and detrimental hardship because it precludes me from having an accessory structure—of any size—on my property. An accessory structure is an important and substantial need since there isn't space available in my house nor is the house an appropriate location for woodworking due to the dust created. Further evidence of the need for accessory structures is provided by the many such structures in place in the neighborhood.

Explain whether and to what extent other properties in the vicinity of subject property and under identical zoning designation possess similar characteristics or circumstances.

There are quite a few properties in the vicinity and under identical zoning that have accessory structures with less setback than specified by zoning ordinance 4.20.020(F)(2). In fact, there is precedent for a variance on such properties. The property at 18091 Idalyn Drive, also on an interior lot, received a variance to reduce setback from 75' to 45' because of topography. There are many other properties in my neighborhood, and under identical zoning, that possess accessory structures with less setback than specified by interior lot zoning. Table 1 below identifies 10 properties with permitted accessory structures on interior lots all having setbacks of under 75' and less than 25%. This is because Redwood Estates is set on a hillside with sloping lots thus creating the need for small or, in some cases, near zero setbacks.

Table 1. Accessory structures on interior lots with less setback than called for by 4.20.020(F)(2)

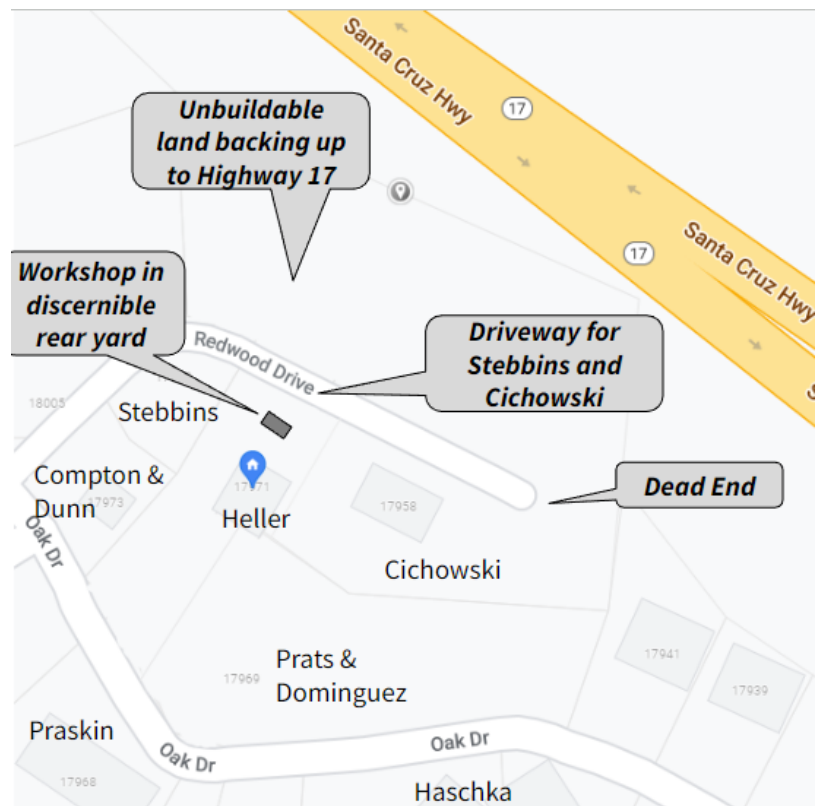
Address	Setback in feet	Setback in %	Lot depth	Permit(s)
21550 Madrone Drive	0	0%	228	2003-27449-00
18184 Gloria Court	42	17%	250	1980-33567-00
18178 Zella Ct	3	2%	185	2005-31637-00
21577 Locust Dr	31	22%	140	2013-52268-00
18091 Idalyn Drive	45	19%	235	2001-19901-00 & 2001-19901-01
18085 Idalyn Drive	26	16%	163	1990-1853-00
21404 Madrone Dr	33	14%	230	2018-65269-00
21534 La Salle Drive	25	20%	126	1962-64026-00
21777 Virdelle Dr	45	20%	230	2005-30683-00
21699 Summit Rd	53	23%	230	1979-29775-00

Key: gray shading indicates setback values provided within the building permit; white background indicates distances computed from Google Maps

Explain any other considerations that should be taken into account.

Additional considerations relate to Redwood Drive, the rear facing road:

1. The northern side of Redwood Drive, across the road from my property, is an unbuildable portion of 17958 Redwood Drive that backs up to Highway 17. That means there will never be a neighboring house on the opposite side of Redwood Drive.
2. Redwood Drive is a dead end, not a thoroughfare. It serves only as a driveway to access two properties (17958 Redwood Drive and 17968 Redwood Drive).



Granting a Variance requires the County to make State-mandated findings. Include statements that you believe directly support making the following findings.

- 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*

The strict application of 4.20.020(F)(2) presents a substantial and detrimental hardship. It deprives my property of privileges enjoyed by other properties—specifically an accessory structure. Without the grant of a variance no accessory structure of any size is possible.

- 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 grant of a variance does not grant my property any special privileges. There are at least 10 other properties in my neighborhood, and under identical zoning, that possess accessory structures with less setback than specified by interior lot zoning.

Summary and Key Facts

- Property is within Redwood Estates, a hilly, mountain community just south of downtown Los Gatos.
- Variance request is to reduce rear yard setback (north side) of property from 50 feet to 20 feet for an accessory structure (shed) due to the unique topography of the property. Since my property is on an interior lot, County Zoning Ordinance Section 4.20.020(F)(2) requires a 25% setback which is 50' in my case.
- Justification for variance to 4.20.020(F)(2):
 - (a) The application of 4.20.020(F)(2) deprives my property of privileges enjoyed by other properties in the vicinity and under identical zone classification. Specifically I cannot have a shed or accessory structure of any size without the variance.
 - (b) This variance would not constitute a grant of special privileges since many properties on interior lots have accessory structures with variances and/or less setback than specified in 4.20.020(F)(2).
 - Example: 18091 Idalyn Drive, also on an interior lot, received a variance to reduce setback from 75' to 45' because of topography.
 - There are at least nearby 10 properties on interior lots with permitted accessory structures having setbacks less than 75' and less than 25%.

- The structure in review is only viable in one location on the property. Placement of the structure in the front yard is not feasible since it would conflict with the existing septic tank and leach field. At the required 50' rear yard setback, the structure would overlap with the existing house and deck. Hence this request to reduce rear yard setback to 20 feet.
- There is broad community support for the structure. Five immediate neighbors and two others within 500' of the property have written letters of support to the county. (Those letters are included below in Appendix 1.)

Appendix 1: Letters of Support

Seven of my neighbors have written to the county stating their support for this variance and the associated building permit. Those letters are shown below.

David & Shannon Stebbins
17968 Redwood Drive
Los Gatos, CA 95033

Home: 408-353-5477

July 16, 2021

Carl Hilbrants, Sr. Planner
Santa Clara County Planning Department
70 West Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

REGARDING: Pete Heller
Property: 17971 Oak Drive
Los Gatos, CA 95033

Dear Mr. Carl Hilbrants,

We are writing in support of our neighbor, **Pete Heller**. Our property, located at 17968 Redwood Drive, is immediately adjacent to his.

It is our understanding that Pete has applied for a permit for his backyard workshop and that the county has found an issue simply because the property has two street frontages. The county's ordinances are in place to protect neighbors, but from our perspective, there is nothing that raises concern for our safety and wellbeing, nor the safety of our property.

We feel the structure on Pete's property is well built. It is appropriately set back from the road. It is not even visible from anyone else's property but ours and one other neighbor. We enjoy seeing the building, as it fits in beautifully with Pete's house and the surroundings. In fact, we believe it enhances both neighboring properties, and we have no objections or concerns about it.

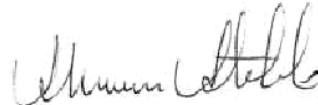
We request that you consider an exception and ask for authorization for Pete to proceed with permitting. This will be good for Pete, for us as neighbors, and for the county.

Thank you for taking time to read through our opinions, requests, and support of Pete.

Sincerely,



David W. Stebbins



Shannon L. Stebbins

Carl Hilbrants
Senior Planner
Santa Clara County Planning Department
70 West Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

Dear Mr. Hilbrants,

We are writing to support our neighbor Pete Heller's request for a building permit. Our house is immediately adjacent to his. We are located at 17969 Oak Drive.

Pete let us know he has applied for a permit for his backyard workshop and that the county has found an issue related to the house site having two street frontages. We know the county's ordinances are intended to protect neighbors, but in this case there's nothing we're in need of protection from.

The reality is we like the structure Pete built. It's well constructed and appropriately set back. It's not visible from our house but we enjoy seeing it when we take walks. It fits in well with Pete's house and our neighborhood. We believe it enhances the feel of our community and property values.

Therefore we ask that you find a way to move ahead with permitting. This will be good for Pete, for us as neighbors, and for the county.

Regards,

Two handwritten signatures in black ink. The first signature on the left is 'MP' and the second signature on the right is 'ARANTXA'.

Mario Prats and Arantxa Dominguez

July 26, 2021

Carl Hilbrants
Senior Planner
Santa Clara County Planning Dept.
70 West Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

Regarding: #AR21-0896

Attention:
Carl Hilbrants,

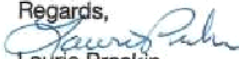
I am writing this letter to support my neighbor, Pete Heller @ 17971 Oak Dr. Los Gatos, CA 95033 (#AR21-0896) who constructed a workshop on his property. The beautiful workshop design is consistent with the feel of the neighborhood and its location seems sufficiently set back from the road and should not be any cause for concern.

We understand that there may be some issues with the county due to the property fronting on two roads. I hope this can all be resolved, as it is a very attractive workshop that blends well with the natural environment and seems an adequate distance from the road.

I live directly across the street from Mr. Heller. He is retired and moved into our community of Redwood Estates 2 years ago and has been a great addition to our neighborhood. He is the kind of neighbor people hope will move in next door, helpful, kind and friendly. Pete has been there to lend a helping hand to the older residents on the street and it is comforting to know that there is someone like him around.

Thank you for your consideration and assistance to help Pete Heller keep his retirement wood shop.

Regards,


Laurie Praskin
17968 Oak Dr.
Los Gatos, CA 95033

408/497-2604

Carl Hilbrants
Sr. Planner
Santa Clara County Planning Department
70 West Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

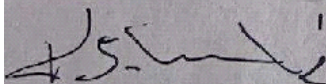
Dear Mr. Hilbrants,

Pete Heller is our immediate neighbor. Our house is located at 17958 Redwood Drive. We're writing because we're in favor of his application for a building permit. We support his application and would appreciate the county finding a workaround for the issue you've identified.

We understand the purpose of county ordinances is to protect neighbors. However we are writing to assure you there's nothing we need protection from regarding Pete's workshop. While it's a fact Pete's house lies between two streets, this is entirely unimportant. What is important is that the structure Pete built is well designed and is properly set back from the road and the property lines. Furthermore it's not visible to anyone but us and one other neighbor. We like it because it looks good and fits in nicely with Pete's house and our neighborhood. We believe it enhances the property values and are quite happy with it.

Therefore we ask that you proceed with issuing a permit. This will be good for Pete, for us as neighbors, and for the county. Moving ahead will enable you to spend your energy addressing actual (versus theoretical) building problems.

Regards,



Shaw and Ken Cichowski

Carl Hilbrants
Senior Planner
Santa Clara County Planning Department
70 West Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

Dear Mr. Hilbrants,

We are writing to support our neighbor Pete Heller's request for a building permit. He lives next door to us. Our address is 17973 Oak Drive.

Pete told us that he has applied for a permit for his backyard workshop and that the county has found a seemingly arbitrary issue related to the house site having two street frontages. We know the county's ordinances are intended to protect neighbors, but in this case please know there's nothing we're in need of protection from.

The reality is we like the structure Pete built. It's well constructed and appropriately set back. It's not visible from our house but we enjoy seeing it when we take walks. It fits in well with Pete's house and our neighborhood. We believe it enhances the feel of our community and property values.

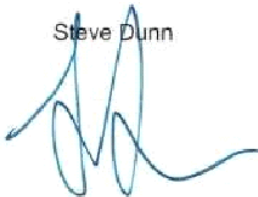
Therefore we ask that you find a way to move ahead with permitting. That would be a win-win-win since it'll be good for Pete, for us as neighbors, and for the county.

Regards,

Sue Compton



Steve Dunn



Mr. Carl Hilbrants
Senior Planner
Department of Planning and Development
Santa Clara County
70 W Hedding Street
San Jose, CA 95110

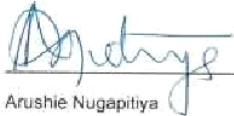
Dear Mr. Hilbrants,

This letter is regarding the permit request for the workshop on property location 17971 Redwood Dr, Los Gatos, CA 95033. Mr. Pete Heller has informed us that he has applied for a permit for his backyard workshop, but has encountered issues due to county regulations. We live two houses down the street from him.

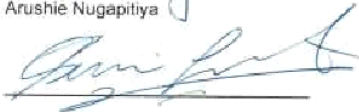
We believe it is appropriately located in Mr. Heller's backyard. While it provides a beautiful view from the inside, it has not obstructed the view of the lovely trees in the neighborhood. We consider it an improvement to our neighborhood community. We are delighted to see a beautifully architected structure that enhances the neighborhood.

We are writing to kindly request that you proceed with issuing the permit requested by our neighbor Mr. Heller. We greatly appreciate you finding an exception to the existing regulation and granting Mr. Heller a permit for his workshop.

Sincerely,



Arushi Nugapitiya



Senani Gunaratna

17989 Redwood Drive
Los Gatos, CA 95033

Carl Hilbrants
Senior Planner
Santa Clara County Planning Department
70 West Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

Dear Mr. Hilbrants,

We are writing to request that you work with our neighbor Pete Heller to enable his building permit request to proceed. He lives a few doors down the street from us. Our address is 18037 Redwood Drive.

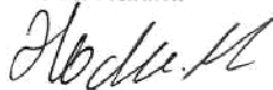
Pete told us that he has applied for a permit for his backyard workshop. That seems unnecessary to us since the workshop is neatly tucked away in his backyard. But since the county is forcing Pete to get a permit we wanted to say that it is beautifully designed and nicely constructed. It is most certainly an asset to the community. We enjoy seeing it when we take walks in the neighborhood.

Pete also let us know that the county has found a technical issue related to the house site having two street frontages. We understand that the county's ordinances are supposed to protect the neighbors. In theory it makes sense to have rules. But in Pete's case there is zero relevance to having two roads going by his house. That is an arbitrary and unnecessary rule that you should find an exception for.

In summary, Pete's workshop fits into the neighborhood and is a positive asset. Please work with your team to find a way to proceed with permitting.

Best regards,

Hoda Hakimi



Hoss Hakimi

