



Planning Commission Staff Report

February 28, 2007
Item 6.a.

- SUBJECT:** PAP-103 (Appeal of PV-140)
- APPLICANTS/
APPELLANTS:** Garrett and Peter Nowak
- PROPERTY OWNER:** Garrett Nowak
- PURPOSE:** Appeal of the Zoning Administrator's approval of a variance from the Pleasanton Municipal Code for a reduced side yard setback to retain an existing trellis/carport on the south side of the existing residence located at 3590 Glacier Court South.
- GENERAL PLAN:** Medium Density Residential
- ZONING:** R-1-6,500 (Single-Family Residential) District
- LOCATION:** 3590 Glacier Court South
- ATTACHMENTS:**
1. Exhibit "A," Site Plan, Elevations, Firefree 88[®] Brochure, and Attachment "A," Applicant's List of Properties in the Valley Trails Neighborhood with Similar Structures
 2. Zoning Administrator's Approval Letter dated December 8, 2006, with Exhibit "B," Conditions of Approval
 3. Application of Appeal dated "Received December 26, 2006"
 4. Minutes of the December 7, 2006, Zoning Administrator Hearing
 5. Location Map
 6. Aerial Photograph of the Property
 7. Original Plot Plan for 3590 Glacier Court South
 8. Letter from Fay Thomas, 3559 Glacier Court South
 9. Staff Photographs of the Trellis/Carport

I. BACKGROUND

On November 23, 2005, Garrett Nowak applied to retain an existing trellis/carport located on the southern side of the property at 3590 Glacier Court South. The applicant built the trellis/carport approximately two years ago without obtaining planning/zoning approval or a building permit. The applicant originally constructed the structure with portions encroaching approximately eight-inches into the neighboring property at 3590 Glacier Court South. Last year, the applicant cut back several inches of the structure.

This application is the result of a code enforcement action. In response to a complaint by an adjacent property owner, the City's Code Enforcement Officer inspected the property. After determining that the trellis did not comply with the three-foot minimum side yard setback required by the Municipal Code, the City's Code Enforcement Officer contacted the applicant in February 2005. The applicant was informed that he would have to remove/modify the structure to comply with the setback requirements or request that a variance be granted by the City to retain the structure. After the applicant did not respond to several letters by the City to comply with this request, a Code Enforcement compliance hearing was scheduled. The Hearing Officer ordered the applicant to apply for a variance for the structure. The applicant submitted a variance application in response to this order.

Zoning Administrator Hearing

The variance application was reviewed by the Zoning Administrator at a public hearing held on December 7, 2006. Detailed information on this meeting is provided by the attached minutes (see Attachment #4). The applicant's attorney, Mr. Darin Judd, attended the hearing on behalf of the applicant. No other public was present at the hearing. At the hearing, staff stated that the proposed trellis/carport would be overbearing to the adjacent property to the south and adversely impact the light, air, open space, and views between properties. Staff also noted that the structure does not comply with Building Code. Staff recommended approval of the variance application with a requirement that the applicant modify the existing trellis to provide a two-foot southern side yard setback to the unsupported overhang and a three-foot southern side yard setback to the support posts. Mr. Judd stated that the trellis was built to shelter a trailer with jet skis. Mr. Judd indicated that the applicant built the structure in the side yard to address neighbors' complaints when the trailer was previously stored in the front yard. Mr. Judd indicated that there is a gas meter on the side of the house and there wouldn't be adequate room to fit the jet ski trailer if the trellis posts were moved in as recommended by staff. Mr. Judd requested that his client be granted a zero foot setback variance with the structure modified such that it is located entirely on Mr. Nowak's property with no support posts common with the fence and/or that if a setback is required, then it be minimized to 1/2-foot in order to allow the trailer to fit below the trellis. Mr. Judd indicated that his client would paint the structure with fire-resistant paint in order to meet Building Code requirements.

The Zoning Administrator indicated that the Chief Building Official determined that not only would the fire-resistant paint be required to meet Building Code requirements, but also a one-hour wall measuring 12½-feet tall would need to be constructed along the entire southern side of the trellis. The Zoning Administrator indicated that a solid wall along the property line would be unacceptable from an aesthetic standpoint and probably also to the neighbors. The Zoning Administrator indicated that there is justification to grant the variance to allow the unsupported eave to encroach one foot into the required three-foot setback due to the substandard lot width and area, but not to allow the structure to be built up to the property line.

After hearing all public testimony, the Zoning Administrator approved the variance application subject to the staff recommended conditions of approval with a modification to Condition No. 2 to require that the applicant provide at least a three-foot southern side yard setback to the trellis support posts. The Zoning Administrator indicated that the change to condition no. 2 would allow the structure to be designed without support posts to allow the applicant to use a cantilever design that would allow the trailer to fit under the trellis. The Zoning Administrator also required that the applicant obtain a building permit for the trellis within 60 days.

On December 26, 2006, an appeal was filed by Garrett Nowak, the applicant, and Peter Nowak, the applicant's father. The appeal is currently before the Planning Commission for consideration.

II. SITE DESCRIPTION

The applicant's property is on a corner lot located southwest of the intersection of North Valley Trails Drive and Glacier Court South in the Valley Trails neighborhood. The generally rectangular-shaped lot measures approximately 68 feet wide by 100 deep, and is approximately 6,770 square feet in area. The lot is relatively flat in topography. A detached single-family home is located on the subject property. Detached single-family homes surround the applicant's lot.

III. PROPOSED PROJECT

The applicant has proposed to retain the existing trellis/carport that is located on the southern side of the property. The trellis/carport is attached to the southern side of the house and measures approximately 11-feet wide by 24-feet long by 10-feet tall. The structure is constructed of stained redwood. As shown on the site plan, the structure is set back approximately 32½ feet from the front property line and 43 feet from the rear property line. Staff notes that the proposed plans do not accurately show the location and construction of the existing trellis along the southern property line. The plans show that the support posts of the trellis/carport are set back approximately four inches from the side property line and that the structure is located entirely on Mr. Nowak's property. As currently installed, the support posts

of the trellis/carport are actually the same 4” by 4” support posts used for the southern side property line fence (please see photographs below and Attachment #9). Assuming that the fence is located on the side property line as shown on the site plan, then several portions of the structure currently overhang the property line (e.g., half of the 4” by 4” support posts, the 2” by 10” ledger and bolts, portions of the 2” by 8” beams, etc.) as the property line is located in the center of the fence. With the appeal, the appellants have proposed to modify the structure so that the trellis/carport support posts would be adjacent to the side property line fence and the structure would be located entirely on Mr. Nowak’s property.

Staff notes that the applicant’s site plan does not accurately identify the northern (street side) property line. Please see the original plot plan for the property (Attachment #7) for the accurate location of this property line.



IV. NEIGHBORS’ CONCERNS

Although no neighbors attended the Zoning Administrator hearing, two neighbors had previously informed staff that they opposed the application. Debbie Sloan, the adjacent neighbor to the south at 3576 Glacier Court South, has expressed concerns with the aesthetics of the structure as currently built. She feels that the structure is unattractive as a result of the applicant cutting back the upper portions of the trellis that were overhanging onto her property. Fay Thomas, 3559 Glacier Court South, submitted a letter (Attachment #8), expressing her concerns with the aesthetics of the structure and the potential for debris to blow off of the trellis roof onto the adjacent property.

V. ANALYSIS

Municipal Code Requirements

The applicant's property is zoned R-1-6,500 (Single-Family Residential). The R-1-6,500 District requires an accessory structure such as the proposed trellis/carport to be set back a minimum of three feet from the side property line, five feet from the rear property line, and 23 feet from the front property line. Architectural projections, such as an unsupported eave or overhang, may encroach two feet into the rear yard setback and four feet into the front yard setback, but may not encroach into the three-foot side yard setback. Therefore, the applicant is seeking a variance from the side yard requirement in order to allow the trellis/carport to be modified with a zero-foot side yard setback.

As previously noted, a portion of the trellis/carport currently crosses the property line by a few inches. Staff notes that a variance cannot be granted to allow a structure to cross a property line. Furthermore, the Building Code doesn't allow a structure to cross a property line unless a non-buildable easement has been granted by the adjacent property owner. Therefore, the structure will need to be modified so that no portion of the structure crosses the property line. The applicant has noted that the structure would be modified so that it doesn't cross the property line.

Accessory structures exceeding 10 feet in height are subject to administrative design review approval. Since the subject trellis is 10-feet tall, administrative design review approval is not required for the structure.

Building Code Requirements

The Building Code requires that structures built within the first three feet adjacent to a property line (a two-foot setback is allowed for an overhang) must be one-hour fire rated construction without openings. The applicant has proposed to apply a fire-resistant paint (Firefree 88[®]) to the trellis structure, which the applicant has indicated provides a two-hour fire rating. The City's Building and Safety Division has indicated that the fire-resistant paint would meet the one-hour fire rating requirement, but the structure would still need to meet the "no openings" requirement. In order to meet the no opening requirement, the applicant would need to construct a one-hour rated solid wall between the trellis and the side property line. The solid wall would need to be 12½-feet tall (the height of the trellis/carport plus a 30-inch tall parapet) and be constructed along the entire southern side of the trellis/carport.

Discussion

The applicant's lot is generally rectangular-shaped and measures approximately 68 feet wide, 100 feet deep, and 6,770 square feet in area. The site development standards for the City's R-1-6,500 District requires a minimum lot width of 65 feet (80 feet for corner lots), a minimum lot depth of 100 feet, and a minimum lot size of 6,500 square feet (8,000 square feet for corner lots). Therefore, the subject lot is deficient with respect to the minimum lot width and area requirements of the R-1-6,500 District. These factors make compliance with the R-1-6,500 side yard setback requirements more difficult on the subject lot than on lots which meet the R-1-6,500 standards. Therefore, staff believes that it could support a side yard setback variance for the trellis/carport. However, staff does not feel that granting a zero-foot side yard variance is supportable as a 10-foot tall structure, even an open-sided trellis, built adjacent to the side property line would be overbearing to the adjacent property to the south. Furthermore, as noted above, if the trellis overhang was located less than two feet to the side property line and if the trellis support posts were located less than three feet to the side property line, then a 12½-foot tall solid wall would need to be constructed along the entire southern side of the trellis to comply with Building Code. Staff believes that such a structure would be unattractive and adversely affect the light, open space, and views between the applicant's and the southern neighbor's properties. Therefore, staff recommends that the Commission uphold the Zoning Administrator's action and require that the applicant modify the structure to provide at least a three-foot side yard setback to the support posts and a two-foot side yard setback to the unsupported overhang.

Staff notes that the applicant provided a list (see Attachment "A") of the addresses of several homes in the Valley Trails neighborhood with similar structures. Of the 21 addresses on the list, staff found that three had variances granted to reduce the side and/or rear yard setback of an accessory structure. In 1972, the Board of Adjustment granted a variance to allow a patio cover to be located two inches from the side property line at 3559 Glacier Court South. In 1973, the Board of Adjustment granted variances to allow a patio cover to be located 12 inches from the rear property line and 18 inches from the side property line and to allow a boat awning to be located 12 inches from the side property line of 3839 Mesa Verde Court. In 1989, the City Council (on appeal) granted a variance to allow a carport to be located 18 inches from the side property line of 3866 Mammoth Cave Court. Therefore, staff feels that granting a variance to the applicant to allow the trellis overhang to encroach one foot into the three-foot setback would not be precedent setting nor would it be granting a special privilege to the applicant.

VI. VARIANCE FINDINGS

Any variance must be reviewed in light of the three specific findings required by state law. The variance is granted not by degree, but based only upon specific facts and site conditions which support the findings. The applicant must demonstrate:

- 1. That because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the provisions of this chapter deprives such property of privileges enjoyed by other properties in the vicinity and under identical zoning classification;**

The site development standards for the City's R-1-6,500 District requires a minimum lot width of 65 feet (80 feet for corner lots), a minimum lot depth of 100 feet, and a minimum lot size of 6,500 square feet (8,000 square feet for corner lots). At approximately 68 feet wide and 6,770 square feet in area, the lot on which the applicant's residence is located is not comparable to corner lots in a "typical" R-1-6,500 neighborhood developed in conformance with the City's R-1-6,500 zoning standards. These factors make compliance with the R-1-6,500 requirements more difficult on the subject lot than on lots which meet the R-1-6,500 site development standards. Therefore, staff feels there are circumstances unique to this property, and that the first finding can be made for the variance, as conditioned by the Zoning Administrator.

- 2. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitation on other properties classified in the same zoning district;**

In order for this finding to be made, there must exist a relationship between the special circumstances applicable to the property and the variance in question. As stated above, staff believes the lot width and area are unique and limit the applicant's placement of the trellis/carport within the side yard setback requirement. Additionally, other properties in the Valley Trails neighborhood have been granted similar side yard variances for accessory structures. Therefore, there is direct relationship between the uniqueness of the lot and the variance in question and that by granting the subject variance, staff does not feel that the Zoning Administrator will be granting a special privilege to the applicant that is inconsistent with other properties in the same zoning district. Therefore, staff feels that the second finding can be made, as conditioned.

- 3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.**

The purpose for having setback regulations is to allow for open spaces for light, air, and views between properties and to foster harmonious and workable relationships among properties. As proposed, staff believes that the proposed trellis/carport would be overbearing to the adjacent property to the south and adversely impact the light, air, open space, and views between properties. Furthermore, the structure would be detrimental to the public health, safety, and welfare as it wouldn't comply with Building Code.

However, as conditioned by the Zoning Administrator with two- and three-foot side yard setbacks to the overhang and posts, respectively, staff believes that the proposed structure would not be overbearing to the adjacent property to the south, nor adversely impact the light, air, open space, and views between properties. In addition, the increased setbacks would allow the structure to comply with the Building Code without the need for fire resistive paint or an unsightly solid wall along its southern side. Therefore, as conditioned by the Zoning Administrator, staff believes that the granting of the variance would not be detrimental to the public health, safety, or general welfare or materially injurious to properties in the area, and this third finding can be made.

VII. PUBLIC NOTICE

Notice of the hearing for the appeal was mailed to those property owners and tenants within 1,000 feet of the subject site. Prior to the Zoning Administrator hearing, staff received a phone call from Debbie Sloan, 3576 Glacier Court South, indicating her opposition of the trellis as currently constructed and received a letter from Fay Thomas, 3559 Glacier Court South, indicating her opposition to the proposed variance application. At the time this report was written, staff had not received any additional comments or concerns from any of the adjacent property owners or tenants.

VIII. ENVIRONMENTAL REVIEW

Projects of this nature are categorically exempt from the requirements of the California Environmental Quality Act (CEQA), Class 3, Section 15303(e), "New Construction or Conversion of Small Structures," and Class 5, Section 15305, "Minor Alterations in Land Use Limitations." Staff believes that the project meets the conditions of the Class 3 and 5 exemptions. Therefore, no environmental document accompanies this report.

IX. CONCLUSION

As proposed by the applicant, staff continues to believe that all three of the required findings for the variance cannot be made for this case. Staff does not feel that granting a zero-foot side yard variance is supportable as a 10-foot tall structure, even an open-sided trellis, built adjacent to the side property line would be overbearing to the adjacent property to the south. Furthermore, as noted above, if the trellis/carport overhang was located less than two feet to the side property line and if the trellis support posts were located less than three feet to the side property line, then a 12½-foot tall solid wall would need to be constructed along the entire southern side of the trellis to comply with Building Code. Staff believes that such a structure would be unattractive and adversely affect the light, open space, and views between the applicant's and the southern neighbor's properties. Therefore, staff recommends that the Commission uphold the Zoning Administrator's approval, which requires that the structure be modified to provide a two-foot

southern side yard setback to the unsupported overhang and at least a three-foot southern side yard setback to the support posts.

X. STAFF RECOMMENDATION

Staff recommends that the Commission deny the appeal and uphold the Zoning Administrator's approval of Case PV-140.

For comments or questions concerning this project, please call: Steve Otto, Associate Planner (phone: 931-5608 or email: sotto@ci.pleasanton.ca.us)