

Planning Commission Staff Report

April 12, 2017
Item 6.a.

SUBJECT: Appeal of P17-0054

**APPLICANT/
APPELLANT:** Greg Creighton

PROPERTY OWNER: Greg Creighton

PURPOSE: Appeal of the Zoning Administrator's approval of an application for Administrative Design Review to retain an existing 11-foot, 7-inch tall open-sided patio cover at the rear of the property.

LOCATION: 989 Crellin Road

GENERAL PLAN: Medium Density Residential

ZONING: R-1-6,500 (One-Family Residential) District

EXHIBITS:

- A. [Zoning Administrator approval letter and conditions of approval dated February 21, 2017](#)
- B. [Approved project plans dated "Received January 30, 2017"](#)
- C. [Appeal letter from Greg Creighton dated "Received March 6, 2017"](#)
- D. [Location and Notification Map](#)

RECOMMENDATION

Uphold the Zoning Administrator's approval and conditions of approval for Case P17-0054.

EXECUTIVE SUMMARY

On January 20, 2017 information was received by City's Code Enforcement Officer from a concerned neighbor indicating that a patio cover was being constructed at 989 Crellin Road. The Code Enforcement Officer inspected the property and determined that it didn't have the necessary City approval or a building permit. After being contacted about the unpermitted construction, Greg Creighton, owner of 989 Crellin Road, submitted an application for Administrative Design Review (ADR) to retain the existing 11-foot, 7-inch tall open-sided patio cover at the rear of the property.

After the ADR public notice was sent out to inform the adjacent neighbors of the application, Mr. and Mrs. Gavin (neighbors residing at 1217 Vintner Way) contacted staff and indicated that they had concerns regarding the subject proposal and the potential impacts to their

home. Concerns expressed by the Gavins included: visibility of the structure from their bedroom sliding glass door at the rear of their house due to its proposed height and closeness to the fence, potential noise if speakers were installed under the patio cover, and potential light spillover if lights were installed under the patio cover. Staff asked the Gavins whether additional landscaping in combination with the existing landscaping would address their view concern; the Gavins indicated it would, and the applicant agreed to the request. The proposal did not mention installation of lighting and speakers, but the applicant indicated that he was planning to install such features within the patio cover in the future. Staff indicated that it would include conditions of approval to address lighting concerns expressed by the neighbors.

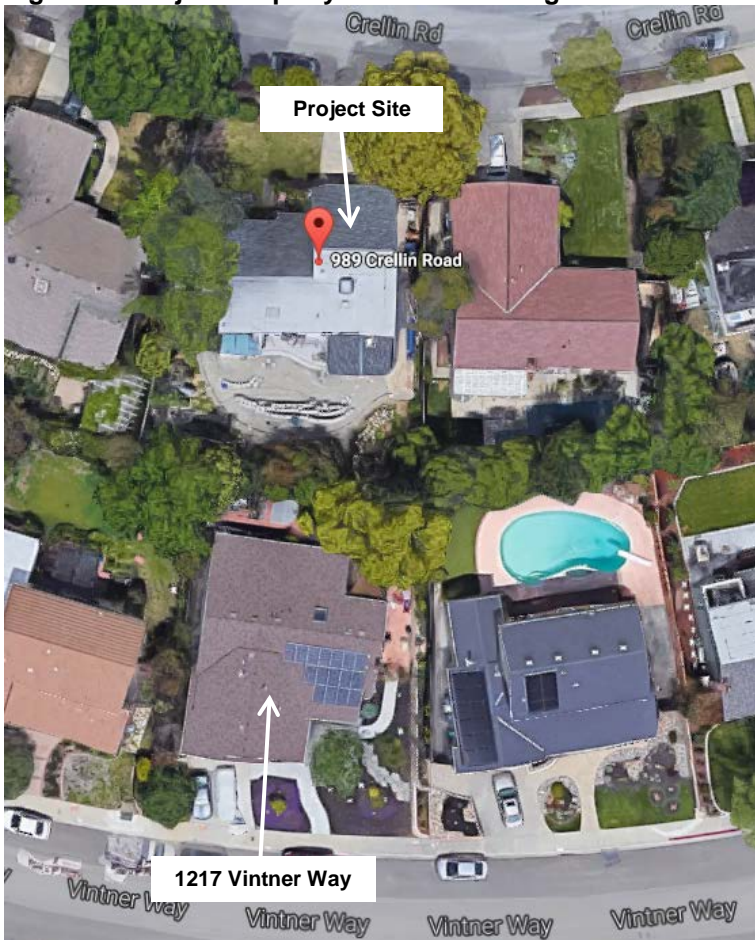
Based on the above discussions with the applicant and neighbors, the Zoning Administrator approved the project on February 21, 2017, subject to six conditions of approval (see Exhibit A for the approval letter). On March 6, 2017 the applicant appealed the Zoning Administrator's approval. In the letter of appeal (Exhibit C), the applicant objected to several of the conditions of approval, including the conditions addressing construction hours, landscaping, lighting, and indemnifying and defending the City against any claim regarding the project approval. Staff notes that these conditions are typical of those applied to smaller-scale development projects in residential neighborhoods throughout the City. The appeal is now before the Planning Commission for review and action.

During a site visit of the neighboring property on April 3, 2017, it was noted that the patio cover construction appears to have been completed, and lighting, a ceiling fan and speakers had been installed.

SITE AND AREA DESCRIPTION

The subject site is located at 989 Crellin Road and contains a single-family home. The lot is approximately 7,000 square feet in area and is surrounded by similarly-sized single-family homes and lots. The project site and the property at 1217 Vintner Way share a 6-foot tall solid wood fence with no significant grade difference between them. The location of the site and the surrounding area are shown in Figure 1 and Exhibit D.

Figure 1: Subject Property and Surrounding Area



PROJECT DESCRIPTION

The property owner wishes to retain an already built 12-foot by 19-foot, 11-foot-7-inch tall open-sided patio cover at the rear of the property. The patio cover consists of wooden posts supporting a composite shingle pitched roof. Lighting fixtures, a ceiling fan and speakers have also been installed. Setbacks for the patio cover are 26 feet, 11 inches from the west property line; 31 feet, 9 inches from the east property line; 11 feet, 9 inches from the rear property line; and 9 feet, 8 inches from the nearest portion of the existing residence (as shown in Exhibit B). The property owner indicated that he did not seek a permit for the new patio cover because he was replacing an existing patio cover. It should be noted that aerial photographs indicate that no patio cover was located in the backyard of the property as recently as July 2015.

ANALYSIS

The ADR process is intended to preserve and enhance the City's aesthetic values and to ensure the preservation of the public health, safety, and general welfare. Accessory structures (such as patio covers) exceeding 10 feet in height are required to obtain ADR approval. Because the patio cover is 11 feet, 7 inches in height, it requires ADR approval. ADR applications are subject to review and approval by the Zoning Administrator. The subject proposal was reviewed and approved with conditions by the Zoning Administrator and

was appealed to the Planning Commission. The Planning Commission is empowered to deny the appeal (approving the project as originally proposed and conditioned), deny the appeal and approve the project with modified conditions, uphold the appeal (therefore granting the requested modifications to the conditions of approval for the project), or deny the project (requiring the applicant to either remove the patio cover or reduce its height to not exceed 10 feet).

Development Standards

In an R-1-6,500 Zoning District, an accessory structure such as a patio cover can be built to a maximum height of 15 feet, with a minimum sideyard set back of 3 feet and a minimum rearyard setback of 5 feet from property line. The proposed patio cover complies with the applicable development standards as prescribed by the Pleasanton Municipal Code (PMC).

Scope of Design Review – Criteria

Chapter 18.20 (Design Review) of the PMC indicates that in order to preserve and enhance the City's aesthetic values and to ensure the preservation of the public health, safety, and general welfare, accessory structures greater than 10 feet in height are subject to the ADR process. Staff notes that even though an accessory structure may comply with the development standards of the applicable zoning district, through the design review process the PMC allows the reviewing body to approve conditions that may be more restrictive than the normal PMC standards to ensure that the public health, safety, or general welfare is preserved, including neighbor concerns. As outlined in the Design Review Chapter, the Zoning Administrator's or Planning Commission's scope of review of project plans shall include such design criteria as:

- Preservation of the natural beauty of the city and the project site's relationship to it.
- Appropriate relationship of the proposed building to its site, including transition with streetscape, public views of the buildings, and scale of the buildings within its site and adjoining buildings.
- Appropriate relationship of the proposed building and its site to adjoining areas, including compatibility of architectural styles, harmony in adjoining buildings, attractive landscape transitions, and consistency with neighborhood character.
- Preservation of views enjoyed by residents, workers within the City, and passerby through the community.
- Relationship of exterior lighting to its surroundings and to the building and adjoining landscape.
- Architectural style, as a function of its quality of design and relationship to its surroundings; the relationship of building components to one another/the building's colors and materials; and the design attention given to mechanical equipment or other utility hardware on roof, ground or buildings.

Staff considers these criteria in its review of all design review applications, including ADR applications. The proposed patio cover would match the architectural style, colors, and materials of the existing residence. However, staff identified conditions of approval to address visibility and other concerns expressed by the Gavins. A new tree or shrub is required as a condition (Condition #3) along the southern property line to help screen views of the patio cover and light spillover from the Gavins' bedroom door. In addition, Condition #4 requires that the lighting installed under the patio cover be of low-intensity and directed downward, and/or shielded so as not to create additional glare at the Gavins' property. The vegetative screening and glare reduction conditions are routinely imposed on small-scale development projects throughout Pleasanton to address neighbor concerns, and are consistent with the requirements of Chapter 18.20 of the PMC. As conditioned, staff believes that the design of the patio cover would be complementary to the design of the existing residence and with the other homes in the neighborhood, and is acceptable.

Appellant's Concerns

The applicant/appellant appealed the Zoning Administrator's approval due to his disagreement with four of the six conditions of approval, as summarized below.

Construction Timing Condition

This condition limits construction to between the hours of 8:00 a.m. to 5:00 p.m. Monday through Saturday, with no construction allowed on State or Federal Holidays or Sundays. These construction limitations are typical of those imposed on small-scale development projects in residential neighborhoods, although they are more restrictive than the baseline construction hours established in Section 9.04.100 of the PMC (8:00 a.m. to 8:00 p.m., Monday through Saturday, and 10:00 a.m. to 6:00 p.m. on Sunday). More restrictive construction hours are typically imposed as conditions of approval when there are residences in close proximity to a development project. The appellant indicated that the condition of approval does not provide enough time for him to work on the project. The applicant indicated that he will be conducting all of the work himself and has requested more flexible construction hours. However, the construction work appears to have been completed.

The baseline construction hours established in the PMC apply to projects not subject to discretionary review and the City can (and does) impose more restrictive construction hours for discretionary applications such as ADRs. This condition is modified on a case-by-case basis to be more restrictive in sensitive areas or due to a neighbor's concern or to be more flexible (e.g., allowing earlier or later hours) if requested by an applicant. For expanded hour requests, the City considers the project scope and whether neighbors have expressed any concerns about construction hours. The Gavins have not indicated any concerns about the hours of construction, but the issue may be moot since the project appears to be completed.

Lighting Condition

This condition of approval requires lighting within the patio cover to be of low intensity and directed downward and/or shielded so as not to shine on neighboring properties. The appellant believes that this condition is too restrictive.

Staff believes that this condition is warranted given the concern raised by the neighbor about glare. In addition, this condition is typical of development projects with exterior lighting and does not place an onerous burden on the applicant.

Landscaping Condition

Staff believes that the planting of a 15-gallon size tree or shrub to fill in the gap in the existing landscaping is a reasonable solution to address the neighbors' view concern (see Figures 2 and 3). However, the appellant believes a 15 gallon tree/shrub poses an onerous financial burden and is requesting to plant a 5 gallon tree/shrub. This condition was included to address the neighbors' concerns about visibility of the patio cover and is consistent with parameters of the Design Review process in the PMC. The City's Landscape Architect indicates that a standard 15-gallon tree could be purchased for approximately \$300.

Figure 2: View From 1217 Vintner Way Backyard



Figure 3: View From Inside the Bedroom at 1217 Vintner Way



Indemnification Condition

Condition of Approval #6 is a standard requirement (in Pleasanton and in other communities) that requires a property owner receiving an approval to: (a) defend (i.e., provide legal counsel or reimburse for legal counsel selected by the City); and (b) indemnify and hold harmless (i.e., protect the City from monetary damages) in the event that the City's approval is subject to a lawsuit by a third party.

This standard condition implements the *General Plan's Economic and Fiscal Element*, "Policy 10: Move towards cost recovery for city facilities and services." Defending against a lawsuit brought by a third party over a private project is a service appropriate for cost recovery for a private development project.

PUBLIC NOTICE

During the initial ADR public notification, only the neighbors that are in close proximity to the site were informed of the application, as stipulated by the PMC. However, because this application has been appealed to the Planning Commission, public hearing notices were mailed to all property owners within 1,000 feet of the subject site prior to the Planning Commission hearing. At the time this report was published, no additional comments were received. The location and noticing maps are included as Exhibit D.

ENVIRONMENTAL ASSESSMENT

This project is categorically exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15303, New Construction or Conversion of Small Structures, Class 3. Therefore, no environmental document accompanies this report.

CONCLUSION

As approved and conditioned, the proposed patio cover complies with the PMC and the identified conditions are routinely imposed on small-scale development projects. This staff report does not include project alternatives or an analysis of project pros/cons because the key discussion topic is whether the conditions of approval are warranted.

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