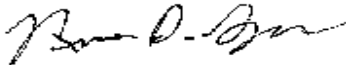


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Erik V. Lundquist, Senior Planner
VIA: Lynn Goldberg, Planning & Building Director
DATE: January 7, 2014
SUBJECT: Appeal of Planning Commission Approval of Variance 2013-6 Allowing Setback Reductions for Construction of Residence and Carport at 1332½ Berry Street, Including Categorical Exemption Pursuant to CEQA Guidelines

APPROVAL FOR FORWARDING:



Richard D. Spitler, City Manager

ISSUE

2 Consideration of an appeal filed by Robert and Marianne Hitchcock regarding the
3 Planning Commission's decision to approve variance application VA 2013-6 that allows
4 reduced setbacks for the construction of a one-bedroom dwelling unit and a carport at
5 1332½ Berry Street

RECOMMENDATION

7 Adopt a resolution denying the appeal, sustaining the Planning Commission's decision
8 and approving the variances

BACKGROUND

10 On September 11, 2013, the Planning Commission approved variance application VA
11 2013-6, allowing reduced setbacks for the replacement of an existing dwelling unit and
12 the construction of a carport at 1332½ Berry Street, based on the Code-required
13 findings, with six conditions of approval (see Attachments 7 through 9 for a copy of the
14 Planning Commission staff report, which provides details of the application, PC
15 Resolution 2013-28, which contains the findings adopted by the Planning Commission
16 supporting their approval of the project and excerpts from the Commission minutes).

17 On September 23, 2013, the neighbors adjoining the property to the south filed an
18 appeal of the Planning Commission's action, requesting that the City Council reverse
19 the Planning Commission's approval of variance application VA 2013-6 (see Attachment
20 2). In a supporting written statement, they claim that the Planning Commission was
21 wrong in granting the appeal and opined that the required variance findings cannot be
22 made. The City Council summarily denied the appeal on October 1, 2013, but after
23 reconsidering the matter on November 19, 2013, decided to hear the appeal and set the
24 hearing for January 7, 2014.

25 On October 1, 2013, the City Council approved a variance to the regulations of Title 18,
26 Floodplain Management, allowing the construction of the residence and carport within
27 the Napa River floodway.

SITE CONDITIONS

28 The subject property is within a residential neighborhood across from Calistoga
29 Elementary School. Aside from the school, the primary use in the area is residential.
30 Lots in the area were created in 1871 by the T.M. Morgan Map and have been
31 developed over time. The property is zoned R-3 Residential/Professional Office Zoning
32 District, which permits the development of single-family residences, duplexes and
33 triplexes; and multi-family dwellings by conditional use permit. Adjoining properties to
34 the south and east are also zoned R-3.

35 The subject parcel has an area of approximately 24,397 square feet (.53 acres).
36 Improvements on the parcel include a one-story 1,852 square-foot duplex (1328 and
37 1332 Berry Street) and a one-story 875 square-foot structure with a one-bedroom
38 dwelling unit and attached garage (1332½ Berry Street).

39 A gravel driveway runs from Berry Street along the southern property line accessing the
40 garage and existing uncovered gravel parking at the rear of the property behind the
41 dwelling unit. The Napa River borders the property to the north with several mature
42 trees located along its banks and along the property lines.

43 Per the Napa County Assessor, it appears the dwelling unit to be replaced was
44 constructed around 1940. The dwelling unit has been reasonably maintained but is
45 small, lacks functionality and needs repair. The dwelling unit does not have any
46 historical significance, per the criteria set forth in the California Environmental Quality
47 Act.

48 Approximately two-thirds of the subject property is precluded from development
49 because of its proximity to the Napa River. Approximately one-third is located within the
50 river itself, below the top of bank, and another one-third is located within 35 feet of the
51 top of bank, an area in which the Calistoga Municipal Code¹ prohibits any construction.
52 In addition to the constraints posed by the river, the driplines of two large trees that are

¹ CMC Section 19.08.070

53 protected by the Code² are located in close proximity to the remaining developable
54 portion of the site (see Attachment 4).

55 The southwest portion of the existing dwelling unit is approximately 2 feet 7 inches from
56 the side property line, which is considered a non-conforming setback because it does
57 not meet the minimum 5-foot side yard setback required for one-story structures. (The
58 existing unit complies with all other development standards of the Zoning Code, such as
59 maximum size, height and lot coverage.)

60 The adjacent property to the south, on which the appellants' residence is located, is
61 developed with a two-story single-family residence, a detached garage and a carport.
62 As shown on the site plan, this residence is located approximately 45 feet south of the
63 shared property line.

VARIANCE REQUEST

64 The property owners wish to demolish the existing dwelling unit/garage structure and
65 construct a 931 square-foot dwelling unit in the same general location. They also
66 propose to construct a 510 square-foot carport in the southernmost corner of the
67 property to provide replacement covered parking to protect vehicles from the elements
68 and detritus from overhanging trees.

69 When a structure is demolished, the Zoning Code requires a replacement structure to
70 comply with the minimum development standards. In this case, a 5-foot side yard
71 setback is required³. The property owners are requesting a 1-foot variance to the 5-foot
72 side yard setback requirement for the new dwelling unit in order to maintain the
73 maximum distance from the river and provide sufficient access to the proposed carport.

74 Additionally, a 3-foot variance to the 5-foot side and rear yard setback requirements⁴ is
75 requested in order to locate the carport outside the minimum 35-foot top of riverbank
76 setback.

ANALYSIS OF APPEAL

78 Approval of the requested variance requires that all four mandatory findings be made
79 pursuant to CMC Section 17.42.020. The appellants maintain in their appeal application
80 that there is insufficient factual basis to support the mandatory findings.

A. Required Findings

82 Each of the required findings are listed below, followed by a summary of the appellants'
83 statement and staff's suggested supporting evidence for the finding. Please refer to the
84 appeal form for the complete text of the appellants' statements.

85 1. **Required Finding:** *Conditions apply to the property that do not apply generally*
86 *to other properties in the same zone or vicinity, which conditions are a result of*

² CMC Section 19.01.040

³ CMC Section 17.19.030(F)(2)

⁴ CMC Section 17.19.030(G)(2)

87 *lot size or shape, topography, or other circumstances over which the applicant*
88 *has no control.*

89 Appellants' Assertions: The appellants observed that Napa River protection
90 regulations apply to all properties within the floodplain, including the appellants'.
91 Therefore, the subject parcel is not unique.

92 Supporting Evidence: The subject property is constrained by required minimum
93 river setbacks and tree protection measures, as shown on Attachment 4, which
94 render approximately two-thirds of the subject property as undevelopable. While
95 many properties are located within the river's floodplain, the development of most
96 of the other R-3-zoned properties in the city is not constrained by required
97 minimum river setbacks or tree protection measures that are present in this case.
98 Those properties that do feature these characteristics are not constrained to the
99 extent that the subject property is (i.e., approximately two-thirds of the subject
100 site). Neither of these physical characteristics is within the control of the property
101 owner.

102 **2. Required Finding:** *The variance is necessary for the preservation of a property*
103 *right of the applicant substantially the same as is possessed by owners of other*
104 *property in the same zone or vicinity.*

105 Appellants' Assertions: The appellants assert that the applicants already have
106 three units on their property, which is the same right as other owners of R-3
107 zoned property.

108 Supporting Evidence: The General Plan allows far more than 3 units on a .56-
109 acre property. The High Density Residential designation calls for the
110 development of between 10 to 20 dwelling units per acre. Therefore, the
111 maintenance of 3 dwelling units on the site is substantially below the 5 to 11 units
112 that are allowed by the General Plan and possessed by owners of other R-3
113 properties in the City. The side and rear yard setback variances are necessary
114 to preserve the ability to replace the existing dwelling unit and covered parking at
115 a density that works toward achieving the minimum number of units called for by
116 the General Plan and consistent with other R-3 properties, while protecting the
117 site's natural resources. It would be very difficult to increase the number of units
118 on the site beyond 3, given the site constraints and the limitations on making
119 substantial improvements to the duplex, which significantly encroaches into the
120 minimum river setback. Furthermore, approving reduced setbacks for the
121 proposed carport would provide the same right enjoyed by the appellants, whose
122 garage has a non-conforming rear yard setback of approximately three feet (two
123 feet less than the five-foot minimum).

124 **3. Required Finding:** *The authorization of the variance will not be materially*
125 *detrimental to the purposes of this Title, be injurious to property in the zone or*
126 *vicinity in which the property is located, or otherwise conflict with the objectives of*
127 *City development plans or policies.*

128 Appellants' Assertions: The appellants assert that their privacy will be lost
129 because occupants of the new units will be staring down into their private open
130 space.

131 Supporting Evidence: The purposes of Title 17, Zoning, are to: 1) assist in
132 providing a definite plan of development for the City, and to guide, control and
133 regulate the future growth of the City in accordance with the City's General Plan,
134 and 2) protect the established character of the City and the social economic
135 stability of agriculture, residential, commercial, industrial, historical and other
136 resource areas within the City which assures the orderly and beneficial
137 development of such areas.

138 The construction of a dwelling unit within four feet of a side property line and a
139 carport within two feet of side and rear property lines will not impede the City's
140 overall development plan or increase growth beyond the 1.35% limitation
141 established in the General Plan. Locating these improvements as far from
142 protected natural resources as possible would be consistent with the General
143 Plan's desire to conserve the ecosystem that enhances the community.

144 Furthermore, the design of the improvements would be in keeping with
145 Calistoga's eclectic mix of architectural styles by providing designs that are
146 complementary to the existing duplex on the property and are in keeping with the
147 character of surrounding developments by integrating design features such as
148 outlookers and shingled gabled ends.

149 Authorization of the variance would not be injurious to other properties. The City
150 Council previously adopted Resolution 2013-087, which allowed the dwelling unit
151 and carport to be constructed within the floodway. The City Council found that
152 replacing the substandard structure with one that meets the current floodplain
153 construction standards would result in a safer environment for the subject
154 property properties in the vicinity.

155 The subject approval is for a variance of one foot for the side yard setback of the
156 replacement dwelling unit (which would provide over one additional foot of
157 setback than the current unit) and three feet for the side and rear yard setbacks
158 for the carport. These minor setback variances are not injurious to the property in
159 the vicinity. The privacy concerns noted by the appellant include concerns about
160 the height and windows on the dwelling structure; concerns that do not involve
161 the decreased one-foot setback, but rather the structure in general. The structure
162 would be allowed without a variance if it were set back one additional foot. The
163 decreased setbacks are not injurious to other properties.

164 Further, potential privacy impacts on the appellants would be minimized by the
165 six-foot high fence, driveway, hedge and carport (that is closed in on its southern
166 side) that would visually and physically separate the proposed one-story
167 residence from the appellant's residence and rear yard. The finished floor
168 elevation of the new one-story residence would not be substantially different from
169 that of the neighboring residence, which is elevated several feet. It is typical for a

170 person to be able to see over a property line fence when standing in their home
171 because the finished floor is generally raised several feet above grade. The three
172 windows on the southern face of the proposed residence, adjoining the shared
173 property line, are not associated with high use areas that would promote viewing
174 into the appellants' property; they would be located in the bathroom, above a
175 bedroom desk and in the dining room. Furthermore, the proposed residence's
176 back door is located on its east side, oriented away from the appellant's
177 residence. And, as noted above, the structure with the proposed windows and
178 elevation would be allowed if it were set back one additional foot.

179 There is ample room on the appellants' property to plant evergreen vegetation to
180 screen the proposed residence or their private open space area to ameliorate
181 any perceived privacy impacts, similar to what already exists along their
182 driveway.

183 4. **Required Finding:** *The variance requested is the minimum variance which will*
184 *alleviate the hardship.*

185 Appellants' Assertions: The appellants assert that any hardship is created by the
186 applicants because there are options to complying with the regulations without
187 the need for a variance.

188 Supporting Evidence: Development on the site is subject to environmental
189 protection regulations and zoning district regulations. Per CMC Section
190 19.08.070(B) the construction of structures, earthmoving activities, grading or the
191 removal of vegetation may not occur within 35 feet from the top of bank of the
192 Napa River in order to protect the health safety and welfare and to otherwise
193 preserve the natural resources. CMC Chapter 19.01 prohibits removal of
194 protected trees, or parking or construction within their driplines, since they
195 contribute to the health, safety and well-being of the community. Moving the
196 proposed improvements further away from the southern property line could
197 adversely affect the site's protected natural resources. The applicants have
198 requested minimal decreased setbacks to address the site's constraints (one foot
199 for the dwelling and three feet for the carport) and have even increased the
200 existing setback of the dwelling structure.

201 **B. Additional Concerns**

202 In the written statement accompanying their appeal, the appellants raise several other
203 issues that are addressed below.

- 204 • Environmental Review The appellants object to the use of a categorical
205 exemption for the variance application. As noted in the section below, the Class 5
206 exemption, CEQA Guidelines Section 15305, specifically allows applies to minor
207 alterations in land use limitations in areas with an average slope of less than
208 20%, which do not result in any changes in land use or density, including but not
209 limited to set back variances not resulting in the creation of a new parcel. The
210 requested setback variances would have the effect of mitigating potential

211 environmental impacts by separating them from the site's natural resources as
212 much as possible. In addition, the construction of the replacement dwelling and
213 the carport are also exempt under CEQA Guidelines 15302 (Replacement or
214 Reconstruction) and 15303 (New Construction or Conversion of Small
215 Structures).

216 It should be noted that the proposed application would not increase the size or
217 degree of non-conformity. In fact, the setback of the replacement residence from
218 the shared property line would actually be 1 foot 5 inches greater than that of the
219 existing structure.

220 Lastly, there is no reasonable possibility that the activity will have a significant
221 effect on the environment due to unusual circumstances (per CEQA Guidelines
222 15300.2). For example, the property in question does not involve scenic
223 resources visible from a scenic highway, hazardous waste or historical
224 resources. Therefore, the above categorical exemptions remain applicable.

225 • Maximum size of unit The appellants are concerned that the proposed dwelling
226 exceeds the maximum floor area allowed for a "second dwelling." The proposed
227 dwelling is, in fact, not a "second dwelling" as defined by state law or the CMC.
228 Such units, commonly known as "granny units," are allowed on lots with one
229 single-family residence, which is not the circumstance in this case.

230 • Setback type The appellants question whether a side yard or rear yard setback
231 is applicable to the proposed residence. The Zoning Code defines the rear yard
232 as meaning that area of a lot lying between the property's rear lot line and the
233 building setback line. The area at issue here is not between the rear lot line and
234 the building setback line, but rather between the side lot line and the building
235 setback; therefore it is subject to the side yard setback of five feet.

236 • Setback for rear of building Apart from the written appeal, the appellants also
237 question the project's conformance with CMC Section 17.38.020 (E), which
238 requires a 10-foot setback where the rear of a dwelling faces a side lot line. Staff
239 believes the intent of this regulation is to provide sufficient room to access a back
240 door at the rear of a dwelling. In this case, the secondary access to the proposed
241 dwelling occurs on the east side of the structure – towards the rear lot line – and
242 not the south side adjoining the side property line. Therefore, this setback does
243 not apply.

244 **PROPOSED CONDITIONS OF APPROVAL**

245 Since this hearing is *de novo*, the City Council may consider whether to add, modify or
246 delete conditions of approval adopted by the Planning Commission. Staff suggests that
247 the City Council adopt conditions of approval similar to those adopted by the
248 Commission, with the exception of Conditions No. 5 and 6.

249 Condition No. 5 requires approval of a variance allowing the replacement dwelling and
250 carport within the floodway, subject to the review and approval of the City Council. On
251 October 1, 2013, the City Council adopted Resolution 2013-087 approving a floodway

252 variance. Therefore, this condition is no longer warranted and staff suggests that it not
253 be imposed.

254 Condition No. 6 states:

255 *“Work with staff, the applicant to work with staff, to prevent or to deal with*
256 *the windows on the back side of the house that can possibly lead to bad*
257 *neighbor feelings, and I leave that up to staff and the applicant to work this*
258 *out.”*

259 This condition is worded verbatim from Chairman Manfredi’s motion and has the
260 potential to be misinterpreted. As demonstrated in the aforementioned findings, the
261 design of the windows in question are not relative to the variance. Therefore, staff
262 suggests that this condition not be imposed.

263 In addition, we recommend that a condition be added to require the applicants to
264 indemnify, hold harmless and defend the City in the event of litigation, as follows:

265 *“Applicant shall indemnify, hold harmless and defend (with legal counsel chosen*
266 *by City) the City, its officials, employees and representatives from and against*
267 *any and all claims, damages, liabilities, actions or proceedings, including any*
268 *CEQA challenge, arising out of the City's approvals associated with this action.*
269 *Applicant shall also pay all filing court costs and similar out-of-pocket expenses.”*

270 **PUBLIC COMMENTS**

271 Aside from submissions from the appellants, no other written public comments have
272 been received regarding this project since the Planning Commission meeting of
273 September 11, 2013.

274 **ENVIRONMENTAL REVIEW**

275 The proposed project is Categorical Exempt from the requirements of the California
276 Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15305 (Minor
277 Alterations in Land Use Limitations), as well as Sections 15302 (Replacement or
278 Reconstruction) and 15303 (New Construction or Conversion of Small Structures). .

279 Section 15305 applies to minor alterations in land use limitations in areas with an
280 average slope of less than 20%, which do not result in any changes in land use or
281 density, including but not limited to set back variances not resulting in the creation of a
282 new parcel. Sections 15302 and 15303 apply to the construction of new structures.

283 **FINANCIAL IMPACT**

284 Staff time, attorney services, preparation of written documentation and direct expenses
285 associated with the processing of this variance application have been offset by the
286 applicant through application processing fees. A \$200 filing fee from the appellants was
287 also used to offset associated costs. Long-term economic benefits to the City of
288 Calistoga associated with development of the proposed project in terms of increased
289 revenue production (i.e., property tax) are anticipated to be minimal.

290 **PUBLIC NOTICING**

291 Pursuant to CMC Section 17.02.200, notice of the Planning Commission public hearing
292 was given in the manner provided by Sections 65090 through 65096 of the California
293 Government Code. The public hearing notice was published in the local newspaper 10
294 days prior to the hearing. A notice of the hearing was mailed to the property owners and
295 to surrounding property owners within 300 feet of the subject property as shown on the
296 latest equalized assessment roll 10 days prior to the hearing. The public hearing notice
297 was also posted on the subject property, on the City's website and at the City Hall,
298 among other locations within the city limits.

299 Notice of the City Council appeal hearing was handled in the same manner as the
300 Planning Commission's public hearing.

ATTACHMENTS

1. Draft Resolution Denying Appeal and Sustaining the Planning Commission's Action
2. Appeal from Robert and Marianne Hitchcock filed September 23, 2013
3. Vicinity Map
4. Site Plan including neighboring property prepared by Mary Sikes & Assoc. received December 13, 2013
5. Floor Plans and Elevations prepared by Mary Sikes & Assoc. received September 3, 2013
6. Variance application filed by Scott LeStrange and Linda Poggi-LeStrange
7. Planning Commission Staff Report dated September 11, 2013 (without attachments)
8. Planning Commission Resolution No. 2013-28
9. Planning Commission Minutes Excerpt from September 11, 2013
10. Appellants' Letter to Planning Commission dated September 11, 2013
11. City Council Resolution 2013-087, Floodway Variance
12. Correspondence from Robert Hitchcock