



an existing nonconforming two story home, as well as a third story addition. The home's existing nonconformities include the front, interior side, and corner side yard setbacks. The home also does not currently meet open space, driveway visibility, and minimum two car parking requirements. The proposed project maintains these nonconformities and the resulting structure will conform to all other code requirements.

The Planning Commission's decision, on a 5-0 vote, approving the Coastal Development Permit and Variance has been appealed (Attachment). The Municipal Code provides that appeals of Commission decisions are public hearings *de novo*. *De novo* means that the Council must take a "fresh look" at all the evidence presented at the public hearing and, after the public hearing is closed, base its decision on the evidence presented at the hearing.

## **DISCUSSION**

### Background- Proposed Project

The existing site consists of a 588 square foot home with a 321 square-foot oversized one car garage located on a substandard 689.31 square-foot lot. The lot's dimensions are 23 feet wide by 29.97 feet long, and is the smallest known residential lot in the entire city.

The existing two-story structure has several nonconformities. The existing front yard setback along Ocean Drive is 0.55 - 1.15 feet, while the minimum required front yard setback is 5 feet. The existing corner side yard setback along 29th Place is .25 feet, while the minimum required street side yard setback is one foot. The existing interior side yard setback is between 1.15 - 1.75 feet while the minimum required interior side yard setback is 3 feet. It should be noted that the subject property has obtained a two-foot access easement on the property to the north (2916 Ocean Drive) of its interior side yard, which the applicant suggests acts as an effective setback along the nonconforming interior side yard. The existing home also does not provide the minimum amount of required open space.

The applicant proposes a thorough remodel and reconfiguration of the existing first and second floors and the addition of a third story. The remodeling and reconfiguring of the first and second floors will include the removal of the building's stucco and other elements down to the studs, and will require new mechanical, electrical, and plumbing systems. The applicant also acknowledges that he "may be required to change structural members as required if dry rot, termite damage or seismic upgrades are required given [the] age of the home." The proposed plans maintain the existing nonconforming front, corner side, and interior side setbacks in addition to only providing one over-sized single enclosed parking space instead of the required two full sized enclosed parking spaces.

The proposed plans will maintain the nonconforming 124.69 square feet of open space. The minimum amount of open space required is 220 square feet. The applicant, however, is proposing to add a new 30 square foot balcony projecting into the rear yard setback. The new 30 square foot balcony cannot count towards required open space, as the balcony does not meet the minimum size and dimension requirements for a balcony area to be counted as open space. The new 30 square foot balcony can be interpreted as an effort by the applicant to provide more outdoor space in the design, regardless of whether the balcony counts as open space or not.

On June 13, 2018, the Planning Commission held a public hearing and unanimously approved the applicant's request for a Coastal Development Permit and Variance. The complete Planning Commission public record, including resolution, minutes, staff report, and attachments are provided.

### Required Findings

Section 10.84.010 of the MBMC indicates that variances are intended to resolve practical difficulties or unnecessary physical hardships that may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic, or physical conditions on the site or in the immediate vicinity. The City's Zoning Code, Section 10.84.060 B1 and B3 are based upon State Law and requires that each of the following three findings must be met in order for a Variance to be approved.

These required findings are detailed below:

1. Because of special circumstances or conditions applicable to the subject property-including narrowness and hollowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions-strict application of the requirements of the City's Zoning Code would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;
2. The relief may be granted without substantial detriment to the public good; without substantial impairment of affected natural resources; and not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and
3. Granting the application is consistent with the purposes of the City's Zoning Code and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district and area district.

Staff suggests the following findings in support of the Variance for the project:

1. The minimum lot size in Area District III is 2,700 square feet. The majority of lots in Area District III are 30 feet wide by 90 feet long (2,700 square feet), while most lots along The Strand, Manhattan Avenue, Highland Avenue, and Alma Avenue have been subdivided in a 33.33 feet wide by 100 or 105 feet long configuration. There are also many lots in Area District III that are legal nonconforming "half lots", being 30 or more feet wide by 45, 50, or 52.4 feet long (1,350 square feet, 1,500 square feet, or 1,575 square feet, respectively). The applicant's 689 square foot lot is clearly much smaller than the common 1,350 square foot nonconforming half lots found throughout Area District III. Furthermore, the applicant's lot is the smallest known residential lot in the City (Attachment). The applicant's lot is over 100 square feet smaller than the second smallest residential lot in the City, and over 200 square feet smaller than the fourth smallest residential lot in the City.

Applying the strict application of the Code's development standards to this unusual and uniquely small lot would result in a burdensome buildable envelope and an undue hardship on the applicant. Applying the required setbacks to this lot would result in a buildable envelope that would be 19 feet wide by 19.97 feet long, or about 379 square feet. The buildable envelope on a typical Area District III legal nonconforming half lot, for comparison, is 840 square feet; more than double the 379 square foot buildable envelope that would be required on the applicant's lot if no variance was granted. This 379 square foot buildable envelope provides just enough room for a two car garage that meets the minimum garage size requirements.

The applicant has also obtained a two-foot access easement on the neighboring property to the north at 2916 Ocean Drive. This two-foot access easement gives the applicant full access

to the rear two feet of the neighboring property to the north, creating a buffer between the applicant's structure and the neighboring property and lessening the impact of the nonconforming 1.15 - 1.75 foot interior side yard setback that the applicant proposes to maintain. This two-foot access easement is a unique attribute of the subject property and could be taken into account when determining the unique "physical conditions" of the site.

The applicant's restrictively small lot and unique access easement on the neighboring property to the north are unique physical conditions that Staff believes justify relief from the code in order to create a more coherent floor plan and practical living area.

2. The relief may be granted without substantial detriment to the public good as the home is retaining most of its existing footprint and setbacks. The proposed plans are also compatible with neighboring properties, as the neighboring properties are almost all three stories tall. The applicant's easement on the neighboring property to the north also helps create a permanent buffer between the applicant's property and the property to the north.

Furthermore, the applicant has made significant efforts to provide modulation to the structure's front, using different depths and textures to give the home architectural character that benefits the neighborhood. The proposed home is also compatible in terms of scale and mass with other neighboring properties, which range from smaller two-story duplexes to larger three-story single family homes and condominiums.

3. Granting the application is consistent with the purposes of the Zoning Code, in particular Section 10.12.010 B and E, and will not constitute the granting of a special privilege because the setback standards are oriented toward more typical shape, size and depth properties. The proposed project will provide relative setback and bulk consistency with neighboring properties, will ensure adequate light, air, privacy and open space, protect neighboring residents from adverse impacts, and achieve design compatibility.

The proposed project is consistent with the following General Plan goals and policies:

Land Use Element:

Policy LU-1.2- Require the design of all new construction to utilize notches, balconies, rooflines, open space, setbacks, landscaping, or other architectural details to reduce the bulk of buildings and to add visual interest to the streetscape.

*The designer has made a substantial effort to create articulation in the building's façade by creating different depths and using contrasting wall textures and design features including notches and other architectural details.*

LU-3.1- Continue to encourage quality design in all new construction.

*The proposed project is an aesthetically interesting design that also provides a practical floor plan.*

Housing Element:

Policy 1. Preserve the scale of development in existing residential neighborhoods.

*The proposed project's size does not exceed the maximum buildable floor area or maximum height, and is a three-story building surrounded by many other three-story buildings.*

### Planning Commission Discussion

The Planning Commission unanimously approved the applicant's request. The Commission's discussion was focused on the merits of the variance request, with the Commission concluding that applicant's proposed project met all the required variance findings because of the uniquely small size of the applicant's lot.

The Commission also concluded that all the required variance findings could still be met if the project was built as a new home instead of a remodel/addition as proposed by the applicant. The Commission, after consulting with the Community Development Director, concluded that another properly noticed public hearing would need to be held in order to grant a Variance and Coastal Development Permit for the project as a new build instead of a remodel/addition. The City Council notice included a statement that the City Council may consider allowing the same Variance and Coastal Development Permit for a new construction project using the same plans.

### Appeals

Two appeals of the Planning Commission's decision were timely submitted.

The first appeal was submitted by resident and neighbor Bella Stavchansky (Attachment). The appellant's main points are:

- The neighborhood will be affected by the proposed project, including impacts to the appellant's view.
- The applicant should have "understood the limitations of this property (built in 1937) when purchased in 2006. There should have been no presumption that he could ever do anything more than remodel what was already there."
- The applicant is not experiencing hardship, as the applicant could sell the property for a substantial profit
- The granting of the variance would set a bad precedent for other nonconforming homes, including "land locked" lots without vehicular access.

The City does not have a view ordinance, and there are no provisions or mechanisms in the Code that specifically guarantee or secure any property owner's ocean view. The applicant, by remodeling and expanding their home, does not produce an impact on the neighborhood greater than the impact generated by any other property owner in the neighborhood exercising their respective property rights when building a new home or remodeling/expanding their existing home.

The appellant states that the applicant isn't experiencing any hardship and should have assumed the applicant would have limited options to improve the applicant's small home on a small lot. The appellant seems to frame the idea of "hardship" in financial terms. The Code, however, states that variances are intended to alleviate "unnecessary physical hardships that may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic, or other physical conditions on the site or in the immediate vicinity; or from street locations or traffic conditions in the immediate vicinity of the site." Staff has demonstrated in the required variance findings how difficult it is for the applicant to exercise typical property rights because of the unusually small size of his lot.

Staff does not believe an important precedent is being set by granting the applicant's variance

request. Each variance request is unique and is based on the unique physical characteristics of each respective variance applicant's property. Staff believes that the required variance findings have been met by demonstrating that the applicant's lot, which is the smallest residential lot in the City, has a unique set of physical characteristics that, when applying the normal zoning requirements to the lot, create an unusual and unnecessary burden that inappropriately restricts the property rights of the owner.

The second appeal was submitted by attorney Steve Kaplan on behalf of resident and neighbor Lisa Taylor (Attachment). The appellant's main points are:

- The "by right" provisions of MBMC 10.68.030 (A) only allow for the expansion of a legal nonconforming structure by no more than a factor of 10%.
- To seek an addition of buildable floor area square footage to a nonconforming structure in excess of 10%, the variance provisions of MBMC 10.84.010 and MBMC 10.84.020 must be utilized. The explicit language found in MBMC 10.84.010 and MBMC 10.84.020 does not provide for, or allow for, the use of the variance procedures to seek approval of the expansion of floor area to a nonconforming structure by more than a factor of 10%.
- The Planning Commission has given the applicant a special privilege inconsistent with limitations imposed on other properties in the vicinity and in the same zoning and area districts.

The appellant's argument is based on square footage restrictions that apply to nonconforming uses as set forth in MBMC 10.68.030 (A), rather than the requirements for nonconforming structures which are applicable to the applicant's property. MBMC 10.68.030 (A) forbids square footage additions for legal nonconforming *uses*, but provides an exception (10%) for nonconforming uses that are only nonconforming due to lack of a required use permit.

The appellant states that the applicant is getting a special privilege, but Staff has discussed above that the proposed variance is intended to allow development of the property to an extent similar to surrounding properties.

## **PUBLIC OUTREACH**

A notice was published in the paper on July 26, 2018 and mailed to surrounding property owners on July 24, 2018. As of the writing of this report, staff has received two comments supporting the project (Attachment).

## **ENVIRONMENTAL REVIEW**

The Project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15301 and 15303 based on staff's determination that the project consists of a remodel/addition to a small structure consisting of one-single family residence that will not have a significant impact on the environment.

## **LEGAL REVIEW**

The City Attorney has approved as to form the draft resolution.

## **OPTIONS**

The City Council has the following options:

1. Adopt the draft resolution, conditionally approving the project.

2. Amend the draft resolution, to conditionally approve the project with additional or different conditions.
3. Direct staff to draft a resolution containing findings to deny the project.

Staff has drafted a proposed resolution for its consideration.

### **CONCLUSION**

Staff recommends that after conducting the public hearing, the City Council adopt Resolution No. 18-0112, conditionally approving the project.

### **Attachments:**

1. Resolution No. 18-0112
2. Proposed Property Plans
3. Appellant Materials - Bella Stravchansky
4. Appellant Materials - Lisa Taylor
5. Planning Commission Resolution No. PC 18-11
6. Planning Commission Meeting Minutes of June 13, 2018
7. Planning Commission Report, Attachments and Related Material (June 13, 2018)
8. List of Smallest Residential Lots in Area Districts III and IV
9. Public Comments
10. PowerPoint Presentation