

MEETING DATE: December 13, 2017

PREPARED BY: S. Perkins

PRESENTED BY: S. Perkins

AGENDA ITEM SUMMARY REPORT

APPLICATION NO.: Minor Use Permit 5-17 (MUP 5-17)

OWNER/APPLICANT: Dana and Dorothy Jess

REQUEST: Minor Use Permit to construct a new accessory dwelling unit above an existing garage at 208 Park Street.

LOCATION: 208 Park Street

ASSESSOR'S PARCEL NO.: 008-243-11

ENVIRONMENTAL DETERMINATION: Categorically Exempt from CEQA pursuant to Section 15303 – new construction or conversion of small structures.

SURROUNDING LAND USES:

NORTH:	Single-family residential
EAST:	Single-family residential
SOUTH:	Single-family residential
WEST:	Single-family residential

APPEALABLE PROJECT: Can be appealed to City Council

PROJECT BACKGROUND AND DESCRIPTION

The applicants seek to construct an accessory dwelling unit (ADU) on the second story of an existing garage at 208 Park Street (See **Attachment 1** for project location, and **Attachment 2** for project plans).

Inland Land Use and Development Code (ILUDC) Section 18.42.170(E)(1) requires ADUs over garages be allowed only with an approved Minor Use Permit. The applicant applied for a Minor Use Permit, and on October 5, 2017, City staff mailed notices of the pending application to property owners within 300 feet of the parcel and residents within 100 feet of the parcel, consistent with the City's noticing requirements. Typically the Community Development Director reviews and acts on Minor Use Permits, however "a public hearing will be held only if requested in writing by any interested person before the specified date for the decision." On October 18, 2017, the City received a written request for a public hearing, elevating the decision-making responsibility for this application to the Planning Commission. The hearing request includes the following concerns regarding the second-story ADU:

- Loss of neighborhood privacy
- Increased traffic in dangerous area, and increased danger to pedestrians, particularly children, due to increased traffic
- Impacts to the condition of the alley
- Increased noise in the alley
- Building is taller than others in the neighborhood
- Decrease of property values for adjoining properties
- Blocked views from adjoining properties and reduced daylight

The hearing request allows that a single-story residential structure could be acceptable if the alley is improved, speed limits posted and east-facing windows are eliminated. The complete hearing request/complaint is included as **Attachment 3**.

This analysis is designed to assist the Planning Commission to determine if the project is consistent with the findings required to approve the project. Staff has attached separate resolutions with findings for approval (**Attachment 5**) and for denial (**Attachment 6**), and the Planning Commission should adopt the resolution that receives support from the majority of Planning Commissioners.

ANALYSIS

In order to approve a Minor Use Permit, the Planning Commission must make the five findings. An analysis of the project's consistency with these findings follows below.

18.71.060(F)(1) The proposed use is consistent with the General Plan and any applicable specific plan.

The General Plan designates the parcel as Low Density Residential, which is "intended for single-family residences on standard City lots in residential neighborhoods surrounding the more densely developed core of the City." State law and the City's ordinances consider accessory dwelling units to be allowable in conjunction with existing single-family residences. The proposed use is consistent with the General Plan.

The Housing Element of the General Plan includes policies and programs for the construction of ADUs:

Policy H-2.3 Secondary Dwelling Units: Continue to facilitate the construction of secondary dwelling units on residential properties.

If the Planning Commission approves the proposed development of an ADU on the second story of an existing on-story garage, it would facilitate the construction of secondary dwelling units on residential properties, consistent with Policy H-2.3 of the General Plan.

18.71.060(F)(2) The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Development Code and the Municipal Code.

The following table compares the site planning and development standards applicable to the project to the application, and determines the project’s consistency with the ILUDC.

	Requirement	Application	Consistent?
Use/Zoning	RL Zoning District	Accessory Dwelling Unit	Yes
Setbacks			
<i>Front</i>	5' behind front of primary unit	±80'	Yes
<i>Side</i>	5'	6'	
<i>Rear</i>	10'	20'	
Lot Coverage	40% maximum	±25%	Yes
Floor Area of ADU	960 SF maximum	576 SF	Yes
Height	18' and 1-story or 25' and 2 stories with MUP	24'-6"	Yes, if permit is approved
Entrances	Separate entrance required	Separate entrance proposed	Yes
Windows	At least 20' from directly across neighbor windows	More than 20' from directly across neighbor windows	Yes

If the Planning Commission approves this permit, the project will be consistent with the requirements of the Low Density Residential zoning district and the standards specific to accessory dwelling units.

18.71.060(F)(3) The design, location, size and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity.

An ADU is a permitted use in the RL zoning district, and could be allowed with only a plan check and a Building Permit if not located on the second story. ADUs proposed above garages and other residential accessory structures require the approval of a Minor Use Permit to make sure that the increase in height and building size is compatible with the surrounding community. The existing one-story garage could be converted to a one-story ADU without any discretionary approval since the ILUDC considers the operating characteristics of one-story ADUs compatible with residential districts. The letter requesting a public hearing to review this application listed a number of concerns about the operating characteristics of the proposed second-story ADU that the Planning Commission will have to consider to make this finding. This report addresses these concerns below (note that some of the concerns in the letter are more appropriately addressed under finding 18.71.060(F)(4) below):

- *Increased noise in the alley*

The proposed ADU would increase the residential density of the neighborhood, and could lead to an incremental increase in the noise levels experienced in the neighborhood. However, an ADU could be established by-right on the first story of the existing garage, which would create similar noise impacts to an ADU on the second story. It is possible that sound generated on the second story could travel

further than an ADU on the first story and cause greater impacts in the neighborhood. The City maintains Chapter 9.44 of the municipal code states that “it is unlawful for any person within a residential zone...to create, cause to be created or maintain sources of noise which cause annoyance or discomfort to a reasonable person of normal sensitivities in the neighborhood,” and contains additional restrictions and considerations. If noise were to become an issue and violate Chapter 9.44, the City would pursue code enforcement following receipt of a substantiated complaint. Staff recommends that the noise impacts resulting from a second-story ADU could be mitigated by the City’s existing noise regulations, and would not greatly exceed the noise generated from a by-right single-story ADU.

- *The building is taller than others in the neighborhood*

The proposed ADU would be the only full second-story building on the immediate block. **Attachment 4** shows the use, location, and approximate height of various buildings in the nearby area. There are three existing ADUs in the vicinity of the proposed project, one of which is located off the same alley as the proposed ADU. While there are no other full second-story buildings in the vicinity, there are three buildings (two residences and an ADU) which have steeply pitched roofs with ridgelines approximately twenty feet above grade. The proposed garage with second-story ADU would be 24.5 feet high.

The maximum permitted height in the RL zoning district is 28 feet, with a maximum height for second story ADUs of 25 feet. The proposed structure meets these height requirements, in addition to being only slightly taller than three other structures in the vicinity; however, the Planning Commission may determine that the second-story ADU is not compatible with the existing land uses because it would be taller than other existing structures.

- *Loss of daylight and privacy on adjoining properties, blocked views*

The design of the ADU on the second story could block daylight to adjoining property owners, and a residential use on the second story of the unit could affect the privacy of residents on neighboring properties. Additionally, the increased height could block views currently enjoyed by neighbors. The ordinance requiring a Minor Use Permit for the approval of an ADU on the second story of an existing garage does not provide guidance on specific findings or reasons for approval or denial of these permits for these uses. However, the ordinance was adopted by City Council to ensure that nearby property owners are notified of any proposed second-story structure that might infringe upon neighbor privacy or enjoyment of their property. The ordinance change was adopted in part because of neighborhood concern when a property owner built a 32 foot tall garage and storage building, which was not expressly prohibited prior to ordinance adoption.

The City ordinance has requirements for the location of ADUs to ensure privacy from neighboring residences. ILUDC Section 18.42.170(E)(5) states that an ADU “that is placed twenty feet or less from a residential unit on the same parcel or an adjacent parcel shall not have windows that directly face windows in the other unit. An ADU that is two stories or located over a garage shall not have windows or balconies that directly face a neighboring yard. This limitation applies only to side yards, not windows facing alleys.” The second-story ADU would be located approximately ten feet from the alley right-of-way, and at least 35 feet from the nearest residence. Since the ADU would be on the second story, windows and balconies cannot be allowed on the north or south elevations as they overlook neighboring yards. The proposed ADU includes windows on both the north and south elevations and a porch on the north elevation. If the Planning Commission chooses to approve this application allowing the ADU on the second story, staff recommends including the following condition to ensure compliance with the ILUDC window and balcony standards.

Special Condition 1: An application for a Building Permit to construct the second-story ADU shall not include windows or balconies on the northern or southern elevations.

The application includes windows on the alley-facing elevation, which are permitted per Section 18.42.170(E)(5). However, if the Planning Commission determines that these windows infringe on the privacy of adjacent property owners across the alley, the Planning Commission could require: 1) removal of the windows; 2) the windows be placed high enough on the wall to prevent residents from seeing out and down into neighboring properties; or 3) deny the application. Requiring transom windows or the removal of windows on the alley elevation would require a redesign of the floorplan, as building code requires egress windows from the bedroom in case of emergency. A rearrangement of the floorplan would likely place the bedroom on the western wall, furthest from the alley and other residences, further mitigating impacts to privacy. If the Commission chooses to add a condition to the alley-facing elevation regarding window placement, the following alternate conditions may be considered:

Special Condition 2 (Alt A): An application for a Building Permit to construct the second-story ADU shall not include windows or balconies on the eastern elevations.

Special Condition 2 (Alt B): An application for a Building Permit to construct the second-story ADU shall include only transom-style windows on the eastern elevation, and shall not include balcony on the eastern elevation.

With regard to impacts to views, City ordinances provide protections for public views from the public right-of-way, particularly along the coastline. The City does not protect private views beyond the height and site development requirements for zoning districts. The proposed ADU meets the height requirements for ADUs above garages (25 feet) and the height requirement for the district (28 feet). The property owner could develop a second story on his existing single-family residence without discretionary approval. Private viewsheds are usually protected via private easements between property owners. Denial of this project for the protection of a private residential view would be inconsistent with City policies, would set a precedent that would be extremely difficult to apply uniformly to future projects, and could be vulnerable to a legal challenge. Staff does not recommend the Commission consider private views as part of this application.

The Planning Commission could find that the design, location, size and operating characteristics of the application are compatible with the existing and future land uses in the vicinity based on the following supplemental findings:

1. The proposed second-story ADU will have similar or identical impacts with regard to traffic, density and noise as a single-story by-right ADU;
2. The height of the proposed ADU is consistent with the height of other buildings in the neighborhood; and
3. The approval of a second-story ADU is conditioned such that impacts to the privacy of neighbors are mitigated by removing and/or relocating windows on the ADU.

Alternatively, the Commission could find the application incompatible with land uses in the vicinity, and determine that there is no way it could be compatible with the addition of approval conditions and deny the application. Denial of the application would still permit the property owner to develop a single-story ADU.

18.71.060(F)(4) The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle access and public services and utilities to ensure that the type, density and intensity of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district in which the property is located.

In addition to the concerns discussed in the previous section, the complaint requesting a public hearing for review of this application identifies concerns applicable to this required finding. The discussion that follows reviews the various concerns and contemplates the project's consistency with this finding.

- *Increased traffic in dangerous area, and increased danger to pedestrians, particularly children, due to increased traffic*

The letter requesting this hearing states that “traffic pressure on the alley sized streets in the area” is already impacting circulation and safety, and the traffic associated with a new unit would exacerbate the problem. The City used to prohibit ADUs on properties fronting on streets of substandard width or without alley access to address these and other concerns; however, the State passed AB 2299 and SB 1069 in 2017, greatly restricting the regulations Cities may impose on ADUs. As a result, the City now permits ADUs on parcels fronting on narrow streets, such as this application, pursuant to State law. The applicant could convert the existing single-story garage to a single-story ADU without discretionary approval, and the impacts to traffic in the area would be equivalent to the impacts of traffic in the area for a second-story ADU. While it is possible that the creation of this ADU would increase traffic in the area, staff believes this is not a valid reason to deny the application, since identical impacts would result from the by-right conversion of the existing single-story garage.

It should be noted that the conversion of the existing garage to a single-story ADU would eliminate two off-street parking spaces on the existing alley. The proposal to locate the ADU on the second story of the existing garage preserves these two off-street spaces.

- *Impacts to the condition of the alley*

The creation of the ADU would likely increase traffic in the alley and could lead to an incremental increase in the deterioration of the surface. However, as with the response to the concern about traffic above, a single-story ADU could be established on the alley without discretionary approval, with identical impacts. For this reason, staff does not believe the potential impact on the condition of the alley is a valid reason to deny the application.

- *Decrease of property values for adjoining properties*

One of the purposes of zoning ordinances is to protect property values by segregating incompatible land uses and setting standards for uses to mitigate impacts to the surrounding community. With an approved Minor Use Permit and with the inclusion of recommended Special Condition 1, this application would be consistent with the zoning code. The RL zoning district permits ADUs (by-right when on the first story) and allows the residential density this project proposes. The value of nearby properties already supposes the future permitted land uses in the vicinity, which includes ADUs.

The establishment of an ADU on the second story could impact privacy; however, the proposed application would meet the ILUDC standards for window placement (with the proposed Special Condition 1), and the alternate conditions would further mitigate impacts on privacy.

The Commission could consider the site suitable for the second-story ADU and make this required finding based on the analysis above. However, the Commission could also determine that a second-story ADU is not suitable in terms of size or design, and deny the application. Denial of the application would still allow the development of a single-story ADU.

18.71.060(F)(5) The proposed use complies with any findings required by 18.22.030 (Commercial District Land Uses and Permit Requirements).

The proposed project is not located in a commercial zoning district; therefore, the findings required by 18.22.030 do not apply to this project.

PLANNING COMMISSION ACTIONS

1. Hold a hearing, close the hearing, deliberate and adopt Resolution PC 05-2017 approving Minor Use Permit 5-17 (MUP 5-17) subject to the required and supplemental approval findings and subject to standard and special conditions.
2. Hold a hearing, close the hearing, deliberate and adopt Resolution PC 05-2017 denying Minor Use Permit 5-17 (MUP 5-17) subject to the required and supplemental approval findings and subject to standard and special conditions.

RECOMMENDATION

Staff has no recommendation regarding approval or denial of Minor Use Permit 5-17.

FINDINGS AND CONDITONS

Findings and conditions for approval are included in **Attachment 5**. Findings for denial are included in **Attachment 6**.

ATTACHMENTS

1. Location Map
2. Project Plans
3. Letter – Request for Hearing
4. Inventory of Existing Structures
5. Resolution 05-2017 (for approval)
6. Resolution 05-2017 (for denial)