



# Administrative Report

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L.1., File # 21-2532

Meeting Date: 6/1/2021

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**To:** MAYOR AND CITY COUNCIL

**From:** BRANDY FORBES, COMMUNITY DEVELOPMENT DIRECTOR

**TITLE**

A CONTINUED PUBLIC HEARING FOR CONSIDERATION OF AN APPEAL OF THE PLANNING COMMISSION DECISION APPROVING THE REQUEST FOR AN ACCESSORY STRUCTURE'S ROOF ATTACHED TO THE REAR ELEVATION OF THE MAIN HOME WITHIN THE REAR SETBACK OF THE REAR UNIT OF AN EXISTING 2-UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT ON PROPERTY LOCATED WITHIN A LOW-DENSITY MULTIPLE-FAMILY RESIDENTIAL (R-2) ZONE AT 2015 SPEYER LANE UNIT B.

**RECOMMENDATION:**

The public hearing is to be structured in the following order, subject to the Rules of Conduct for City Council meetings:

1. Announcement and motion to open public hearing;
2. Motion to receive and file affidavit of publication, case file, and written correspondence;
3. Staff presentation;
4. Public testimony and presentation of evidence;
  - a. Proponent maximum of 1 hour;
  - b. Appellant maximum of 1 hour
  - c. Public comment 3 minutes each;
  - d. Appellant rebuttal 20 minutes;
  - e. Proponent rebuttal 20 minutes.
5. City Council questions;
6. Motion to close public hearing;
7. City Council discussion and debate;
8. Motion and action.

ADOPT BY TITLE ONLY RESOLUTION NO. CC-2105-043, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, GRANTING THE APPEAL AND OVERTURNING THE PLANNING COMMISSION APPROVAL OF THE REQUEST FOR AN ACCESSORY STRUCTURE ATTACHED TO THE REAR ELEVATION OF THE MAIN HOME WITHIN THE REAR SETBACK OF THE REAR UNIT OF AN EXISTING 2-UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT ON PROPERTY LOCATED WITHIN A LOW-DENSITY MULTIPLE-FAMILY RESIDENTIAL (R-2) ZONE AT 2015 SPEYER LANE UNIT B;

OR

ADOPT BY TITLE ONLY RESOLUTION NO. CC-2105-044, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION DECISION APPROVING THE REQUEST FOR AN ACCESSORY STRUCTURE ATTACHED TO THE REAR ELEVATION OF THE MAIN HOME WITHIN THE REAR SETBACK OF THE REAR UNIT OF AN EXISTING 2-UNIT RESIDENTIAL CONDOMINIUM DEVELOPMENT ON PROPERTY LOCATED WITHIN A LOW-DENSITY MULTIPLE-FAMILY RESIDENTIAL (R-2) ZONE AT 2015 SPEYER LANE UNIT B

### **EXECUTIVE SUMMARY**

The property owners of 2015 Speyer Lane Unit B submitted an application to the Planning Division for Administrative Design Review to allow an accessory structure that is attached to the rear elevation of the main home, which encroaches into the rear setback. The application was denied by the Community Development Director, citing the section of the Zoning Code which requires a minimum separation of 5-feet between a dwelling unit and an accessory structure. The property owner appealed the denial of the Administrative Design Review to the Planning Commission.

On March 18, 2021, the Planning Commission held a public hearing, and adopted Resolution No. 2021-03-PR-01 approving the accessory structure's roof to be attached to the rear elevation of the main home. Planning Commission decisions are subject to a 10-day appeal period, and are not final until the appeal period has concluded, with no appeals being filed.

An appeal of the Planning Commission's decision to the City Council was filed on March 19, 2021 by the neighbor directly to the rear of the subject of property. The appeal was made on the grounds that the Planning Commission's decision was attempting to conform with a structure that was already built, and the approval of the Planning Commission does not comply with Redondo Beach Municipal Code (RBMC) Section 10-2.1500(a) Setback Between Buildings. The appeal is now before the City Council for consideration at a public hearing that has been duly noticed as required by State law and local ordinance.

### **BACKGROUND**

The subject property at 2015 Speyer Lane is an existing 2-unit residential condominium development approved in 2001 located within the R-2 Low-Density Multiple-Family Residential Zone. The units were built per the development standards of the R-2 zone, with Unit B having an average 15-foot setback from the rear property line. The R-2 development standards for setbacks have not changed since construction of this project. At the time of construction, the project developer was required to plant trees along the rear property line as a condition of approval.

Beginning in June 2020, the current owners of Unit B began a backyard renovation project. As the scope of the project expanded, neighboring property owners to the rear were concerned as to the removal of the trees, and additionally whether any of the work required permits.

### **Code Enforcement History**

Between June through September 2020, there were repeated Code Enforcement complaints

regarding construction occurring in the rear yard of 2015 Speyer Lane Unit B. A total of five (5) stop work orders were issued to the property owners.

#### Stop Work Order #1

After the initial complaint in June 2020 regarding backyard renovations at 2015 Speyer Lane Unit B, Code Enforcement staff issued a stop work order to the property owners. In response to the stop work order, the property owners contacted the City, at which time they were asked to submit a site plan to the Planning Division detailing the work they were undertaking in their backyard. The owners submitted the site plan which included the following:

- Counter height barbeque island area in the rear northeast corner of the property right
- Freestanding 4-foot high masonry structure base just over 17-feet in width, with a fireplace element in the middle that extended to 9-feet in total height. The fireplace and base structure were proposed in the middle of the backyard, 11-½ feet away the main home, and 3-feet away from the rear property line. The sides of the base structure would be over 16-feet away from the side property lines, on both sides.
- Removal of trees and grass and installation of concrete flatwork

As part of the Planning Division's review, the barbeque island area and freestanding fireplace were considered "accessory structures." The Zoning Code defines an accessory structure as a structure which is subordinate to the main building or structure on the same lot. The code allows for construction of accessory structures in rear yards subject to standards set forth in RBMC 10-2.1500 Accessory Structures in Residential Zones. Per these standards, no setback from side or rear property lines is required for an accessory structure which is not habitable. The standards also require accessory structures to have a minimum 5-foot separation from the dwelling unit and other accessory structures on the same lot. Accessory structures are limited to an overall height of 15-feet. Therefore, as proposed, both the barbeque island area and the fireplace complied with all accessory structure provisions in terms of setbacks, distance from dwelling unit, and distance from each other. Planning Division staff approved the site plan.

After Planning approval, the property owners proceeded for review of the site plan by the City's Building and Safety Division. Planning staff cannot state specifically what occurred at this point. However, after consultation with the Building and Safety Division, the property owner returned to Planning with a revised site plan which lowered the height of the 9-foot portion of the fireplace element down to 4-feet. The barbeque island area remained the same, and all proposed setbacks and separations remained the same. Planning stamped the revised site plan and the property owners were directed to consult with Building and Safety once again. On July 13, 2020, the owners secured permits for gas lines running to the barbeque island and the 4-foot tall fireplace. The structures themselves and the concrete flatwork did not require building permits.

#### Stop Work Orders #2 and #3

In early August 2020, Code Enforcement received another complaint regarding removal of a sliding glass door on the rear elevation of the home, and construction of a concrete structure taller than the property line fence being built near the rear property line. Code Enforcement asked the Senior Building Inspector to visit the site, at which time he confirmed that the sliding glass door replacement

needed a permit, and the masonry structure being constructed was taller the 4-feet that had been approved. A second stop work order was issued by Code Enforcement.

After issuance of the second stop work order, the property owner did contact City staff, but approximately another ten days passed and Code Enforcement received continued complaints that work was still occurring. The Senior Building Inspector visited the property again and issued a third stop work order.

After the third stop work order, at the end of August, the property owners submitted a new site plan for Planning approval of a new accordion-style door on the rear elevation of the home and once again showing the 9-foot tall fireplace structure, as had been shown on the first site plan and then lowered to 4-feet by the property owner. The barbeque island remained as well. Planning approved the new site plan, as all elements still complied with zoning code standards. The property owners were then directed to submit the newly approved site plan to the Building and Safety Division for their review and permitting.

#### Stop Work Order #4

When Building and Safety Division staff reviewed the new proposal, they determined that the sliding door replacement and the 9-foot high fireplace required full architectural drawings done by a licensed professional. Per the property owner, this would now take several more weeks to obtain. During this time, a complaint was submitted to Code Enforcement that work was still occurring, even under the stop work order. The Chief Building Official contacted the property owners directly stating work needed to stop until permits were secured. This "verbal" stop work can be considered the fourth overall.

After a few weeks, the professional drawings were approved, and building permits were issued on September 23, 2020 for the 9-foot tall fireplace structure and the sliding glass door replacement. These updated drawings now noted a distance of approximately 1-foot from the base of the fireplace structure to the rear property line, less than the 3-feet stated in the previously approved site plans. However, the 1-foot setback from the rear property line was still in compliance with the rear setback standards for accessory structures. All other details remained the same.

#### Stop Work Order #5

A month later, in late October 2020, Code Enforcement received a complaint that a roof structure was being erected from the home out towards the fireplace. The complaint included a concern about electrical wiring for lights and heaters that were also part of the roof structure. A fifth stop work order was issued.

Complaints were submitted to Code Enforcement that work continued on the roof structure even after the fifth stop work order.

Approximately a week and half later, on November 2, 2020, the property owner contacted the Planning Division and requested formal Planning review of the roof element as replacing a pergola that had previously existed.

#### Planning Division Review - Attached Pergola

Upon receiving the request from the property owner of 2015 Speyer Lane Unit B to review this new

roof structure as an attached pergola, Planning staff began initial research into the request. Staff accessed the original approval of the 2-unit residential condominium development from the City's archives. The original site plan notes that the rear elevation of Unit B meets a 15-foot rear setback average, as is required of the R-2 zone development standards.

Per RBMC Section 10-2.402 Definitions, a "setback" is defined as the following:

*"(156) **"Setback"** shall mean a required open space on an improved lot which is unoccupied by buildings and unobstructed by structures from the ground upward, except for projections and accessory buildings permitted by the provisions of this chapter. Setbacks shall be measured as the shortest distance between a property line and the nearest vertical support or wall of the building, enclosed or covered porch, or other structure."*

Further, the drawings did not show an attached pergola as part of the original development.

Therefore, since the existing home is built right to the setback requirement, Planning staff determined that an attached pergola would have to be considered under the exception for projections, governed by RBMC Section 10-2.1522 Building and other projections in all zones. Within this section, pergolas are addressed in Section (a)(2)(f) "Other architectural features and structures." The section states such features may be approved to project into a required setback subject to Administrative Design Review and provided that certain elements are not exceed, such as an overall height of 9-feet.

Based on the above information, Planning staff directed the property owner to submit an Administrative Design Review (ADR) application, for which the Community Development Director would render a decision.

On December 8, 2020, the property owners submitted an Administrative Design Review application packet for consideration of an attached pergola.

It is staff's understanding that work continued on the pergola structure and was completed under the fifth stop work order and prior to an application to Planning, as the ADR application included photographs of a completed structure. As of this point, the roof element has not had any structural or electrical review by the Planning or Building Divisions. Additionally, although the fireplace structure had building permits, a final inspection has not yet been done on the structure.

The application was denied by the Community Development Director based on the findings contained in the Notice of Administrative Decision dated December 16, 2020, including that the following:

1. The application stated the structure was replacing an existing pergola. However, research of City records indicated that the original development did not include a pergola, and there are no subsequent permit records for a pergola at this property. Therefore, the pergola that was previously there was not legally permitted. This application would be reviewed as construction of a new pergola.

2. The structure does not qualify as a pergola. The Zoning Code does not define pergola, but the Merriam-Webster dictionary defines a pergola as “a structure usually consisting of parallel colonnades supporting an open roof of girders and cross rafters.” The roof structure is solid, and therefore the structure is not considered a pergola.
3. In order to approve an architectural feature projecting in to the rear setback, the code states that the feature cannot exceed nine (9) feet in height. The structure is 10-feet, 7-inches at its highest point, therefore exceeds the height at which the projection can be approved.
4. The structure extends out and attaches to the fireplace accessory structure. However, the Zoning Code requires a 5-foot separation between structures. Therefore, the roof structure cannot be approved as the posts of the structure must be a least 5-feet away from the base of the fireplace.

The decision suggested that the property owner submit a new application with the following revisions to comply with code:

1. Reduce the overall height of the entire structure to 9 feet, as measured from the ground.
2. Redesign the structure from a solid roof to an open roof with girders and cross rafters, to comply with the intent of a pergola structure.
3. Separate girders and cross rafters of the pergola from the existing accessory structure so that the two structures do not touch at any point. Posts supporting the pergola must also remain independent of the existing accessory structure.
4. Set the posts of the pergola in towards the south and to be at least 5-feet away to from the edge of the existing accessory structure to comply with RBMC Section 10-2.1500(a).
5. The ends of the girders and cross rafters comprising the open roof can encroach no more than 30-inches into this 5-foot distance, per RBMC 10-2.1522(a)(1).

Decisions on Administrative Design Review applications are appealable to the Planning Commission. The December 16, 2020 denial was appealed by the property owners, as the owners were not amenable to any of changes suggested within the decision. As Planning staff worked with the property owners on the appeal, the property owners chose to withdraw the appeal on the attached pergola, concurring with the determination that the structure did not meet the intent of a pergola, but still wishing to pursue some other option that could keep the structure fairly in-tact.

As discussions between staff and the property owners continued, staff opined that since the roof element is attached to the fireplace structure, staff views both the fireplace and roof as one single structure attached to the home. Since the structure is subordinate to the dwelling, it would be an accessory structure. However, the code requires a minimum 5-foot separation between the accessory structure and the dwelling unit. Since the roof is attached to the rear elevation of the main home, it would not comply in that regard.

The owners inquired about the possibility of applying for a Variance from the 5-foot separation requirement. They were informed that they have the right to apply, although staff stated the findings

required to support a Variance could likely not be made. The owners took some time to consider the option.

In a subsequent discussion, the owners stated that they reviewed RBMC Section 10-2.1500 Accessory Structures in Residential Zones, specifically subsection (a) relating to the separation requirement. In their opinion their structure should not be subject to this provision. The heading of the subsection is called "Separation between buildings" and their structure is not considered a building per the Zoning Code definition. They asserted that the structure should not be subject to a Variance application, and that it fully complies.

Thus, the property owner submitted a revised Administrative Design Review application for an attached accessory structure.

### **Planning Division Review - Attached Accessory Structure**

On February 8, 2021, the property owner submitted an application for Administrative Design Review to the Planning Division for consideration of an accessory structure encroaching into the rear setback and attached to the rear elevation of the main home. In this instance, the Administrative Design Review application is utilized as a means for the Community Development Director to review minor developments not subject to other applications procedures.

The accessory structure is comprised of a solid roof element which is attached to the rear elevation of the main home and extending towards the rear property line, with support posts extending to the ground. The roof element then attaches to the fireplace structure, thereby creating one accessory structure which is attached to the rear elevation of the main home. The end of the accessory structure would be within 1-foot of the rear property line.

On February 16, 2021, a Notice of Administrative Decision was issued denying the Administrative Design Review request, based on the following criteria as stated in the decision:

*Redondo Beach Municipal Code (RBMC) Section 10-2.1500 regulates accessory structures in residential zones. RBMC Section 10-2.1500(a) states the following:*

*" (a) **Setbacks between buildings.** The minimum distance between a dwelling unit and an accessory structure, or between two (2) accessory structures on the same site shall be five (5) feet. This subsection shall not be applicable to the R-MHP mobile home park zone."*

*It has been stated by the applicant that the use of the term "buildings" in the heading of this subsection exempts the subject structure from the provision of the minimum distance to the dwelling unit since the applicant's structure is not a "building" per the definition found in RBMC Section 10-2.402. The applicant asserts that the minimum separation from the dwelling unit is not applicable and the structure should be allowed to be attached to the main home, while still being afforded the ability to have as little as a zero rear setback, as allowed for accessory structures under RBMC Section 10-2.1500(c)(4). As proposed, the rear setback of the structure would be 1 ½ feet from the rear property line.*

*RBMC Section 10-2.202 states, in part, "where uncertainty exists regarding the interpretation of any*

*provision of this chapter or its application to a specific site, the Community Development Director shall determine the intent of the provision.” This gives authority and deference to the Community Development Director’s interpretation of the any Zoning Code section in question.*

*Further, pursuant to RBMC Section 10-2.401(g), article and section headings contained in the Zoning Ordinance shall not be deemed to govern, limit, modify or in any matter affect the scope, meaning or intent of any section hereof. Therefore, although “buildings” is stated in the subsection heading, it does not modify the intent of including accessory structures in the immediate sentence following the heading.*

*Based on the authority granted by the Zoning Code as stated above, it is the position of the Community Development Director that the intent of the provision is to include accessory structures in addition to accessory buildings. The first sentence in the subsection references “accessory structure,” thereby, not excluding accessory structures, but rather including them along with “buildings.” Therefore, the proposed structure must be separated from the main home by at least 5 feet to be in compliance with RBMC 10-2.1500 Accessory structures in residential zones.*

The property owner appealed the decision denying their request to the Planning Commission.

#### **Planning Commission Public Hearing**

The Planning Commission held a public hearing on the property owner’s appeal on March 18, 2021 and considered information presented by staff, the property owner, and public testimony. As part of their deliberation, the Commissioners considered the following factors:

1. The Commissioners noted that even if the accessory structure were to be detached from the main home, the rear footprint of the structure complies with the Zoning Code, and therefore it would not change in relationship or aesthetics to the neighboring rear property.
2. Detaching the structure from the main home would lead to a less desirable design due to the following reasons:
  - a. Two additional posts would have to be constructed to support the side of the structure closest to the main home, adding to the bulk of the structure.
  - b. The Zoning Code allows eaves to encroach 30-inches into required separations. In this scenario, the accessory structure’s roof can have eaves extend towards the main home 30-inches, and the rear elevation of the main home can have eaves extend out 30-inches towards the accessory structure. This would potentially result in a design that appears to have a continuous roof, but not as aesthetically desirable as one solid roof element.

Taking all these factors into consideration, the Planning Commission adopted a resolution allowing the accessory structure’s roof to be attached to the main home. A condition was added to the approval, which prohibits any future walls from being added to the accessory structure within 5-feet of the dwelling unit or other accessory structure. Additional conditions were added to mitigate



stormwater run-off from the accessory structure to the neighbor's property, and requiring plantings be installed on either side of the fireplace structure to buffer noise.

### **APPEAL**

An appeal of the Planning Commission's decision to the City Council was filed on March 19, 2021 by the neighbor directly to the rear of the subject of property. The appeal was made on the grounds that the Planning Commission's decision was attempting to conform with a structure that was already built, and the approval of the Planning Commission does not comply with Redondo Beach Municipal Code (RBMC) Section 10-2.1500 Accessory structures in residential zones, subsection (a) Setback Between Buildings.

### **ANALYSIS OF THE PROJECT**

#### **R-2 Rear Setback Requirement**

The property at 2015 Speyer Lane is located within the R-2 zoning district. The R-2 zone development standards require a rear setback of an average of 15-feet, but at no point be less than 10-feet. The concept of setback averaging offers the opportunity for adding articulation and architectural interest, by varying the elevation of a building. For example, a rear elevation can either be designed straight across, with a 15-foot distance to the rear property line, or it can be articulated so that half the elevation can be pushed out as close as 10-feet to the rear property line, but the other half of the elevation is set-in to 20-feet away from the rear property line, so that the average remains at 15-feet. Or some variation of the articulation thereof. At the time of construction for the subject property, Unit B was designed with a straight rear elevation meeting the 15-foot rear setback.

#### **Accessory Structures**

The Zoning Code defines an accessory structure as a structure which is subordinate to the main building or structure on the same lot.

RBMC Section 10-2.1500 Accessory Structures in Residential Zones sets the standards for accessory structures. The first standard states that there must be a minimum distance of 5-feet between the dwelling unit and an accessory structure and between two accessory structures. The next standard limits an accessory structure to one-story in height.

The code then goes on to address accessory structures occupying a rear setback. An accessory structure in a rear setback can be up to 15-feet in height, with perimeter walls not exceeding 10-feet in height. No rear setback is required if the structure is not habitable, except in certain instances. Within the rear 23-feet of a lot, a cumulative 10-foot setback from the side property lines is required, so that the accessory structure can have a zero setback from one side property line, as long as there is at least a 10-foot setback from the other side property line.

#### **Applicability to the current project**

The accessory structure is fully compliant in terms of property line setbacks and height. It is located approximately 1-foot away from the rear property line, where no rear setback is required. The sides of the fireplace base are over 16-feet away from the side property lines, where only a cumulative 10-foot setback would be required. The roof element of the structure is 10-feet, 7-inches at its highest

point, under the 15-foot height limit allowed for accessory structures.

It is staff's opinion the one provision for which the structure does not comply is the required separation from the dwelling unit, as stated in RBMC Section 10-2.1500(a):

***(a) Setbacks between buildings. The minimum distance between a dwelling unit and an accessory structure, or between two (2) accessory structures on the same site shall be five (5) feet. This subsection shall not be applicable to the R-MHP mobile home park zone.***

Under the Zoning Code definition, the owner's structure is not considered a "building" as it is not designed for the enclosure of persons, animals, or property (RBMC Section 10-2.402 Definitions). Therefore, the property owner questions the applicability of this provision to accessory structures, since the heading references the term "buildings." The property owner asserts that their structure fully complies and does not need to be separated from the dwelling unit by 5-feet.

However, as stated previously in this administrative report, pursuant to RBMC Section 10-2.401(g), "article and section headings contained in the Zoning Ordinance shall not be deemed to govern, limit, modify or in any matter affect the scope, meaning or intent of any section hereof." Therefore, although "buildings" is stated in the subsection heading, it does not modify the intent of including accessory structures in the immediate sentence following the heading.

### **SUMMARY**

The City Council is now asked to consider the evidence and testimony presented by staff in this administrative report, by the proponent (property owner), by the appellant (neighbor), and members for the public, to either grant or deny the appeal of the Planning Commission's decision. Granting the appeal will overturn the Planning Commission's approval, and the City Council would make findings that the structure does not fully comply with the Zoning Ordinance. Conversely, by denying the appeal, the City Council would uphold the Planning Commission approval, for which the City Council would make appropriate findings to support its decision.

### **COORDINATION**

The preparation of this administrative report and draft resolution has been coordinated with the City Attorney's Office.

### **FISCAL IMPACT**

Processing of development applications, including hearings before the Planning Commission and City Council, are part of the Community Development Department's work product. Appeal fees have been collected for this matter as outlined in the Community Development Department Master Fee Schedule.

### **APPROVED BY:**

*Joe Hoefgen, City Manager*

### **ATTACHMENTS**

Draft Resolution Granting the Appeal

Draft Resolution Denying the Appeal

Appeal form filed March 19, 2021

Appellant's (neighbor) Materials

Proponent's (property owner) Materials

Architectural Drawings

Planning Commission Resolution No. 2021-03-PR-01

Planning Commission Administrative Report March 18, 2021

Planning Commission Minutes March 18, 2021 (*approved, unsigned*)

Notice of Administrative Decision dated February 16, 2021

Administrative Design Review Application for attached accessory structure

RBMC Section 10-2.1500 Accessory structures in residential zones

RBMC Section 10-2.1522 Building and other projections in all zones

Public hearing notice legal ad proof