

PUBLIC HEARINGS

**CITY COUNCIL
FEBRUARY 22, 2005**

To: Mayor and City Council

From: George J. Rodericks, City Manager

SUBJECT: Consideration of Variance Permit No. 0607; Encroachment of 10 inches into the required side yard setback of 5 feet for a detached fireplace – Location: 10321 Prado Woods (Jim Isaacs)

BACKGROUND

The applicant is requesting permission to complete construction on an approved detached fireplace that encroaches 10 inches into the required side yard setback of 5 feet.

AUTHORITY

Variance Permits

The Zoning Code authorizes the City Council to approve Variances from the terms of the zoning chapter when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the zoning chapter deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone. The City Council shall make the following findings before granting a Variance Permit:

1. That strict or literal interpretation and enforcement of the regulation would result in an practical difficulty or unnecessary physical hardship inconsistent with the objectives of the Zoning Code; or
2. That there are exceptional or extraordinary circumstances or conditions applicable to the property or the intended use of the property that do not apply generally to other properties in the same zone; or
3. That strict or literal interpretation and enforcement of the regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone; and
4. That the granting of the variance will not constitute the granting of a special privilege; and
5. That the granting of the variance will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

A Variance is required for any reduction in a required setback area.

FINDINGS

The subject property is located at 10321 Prado Woods and is a corner lot in the R-1 Residential District. Lot areas within this district vary in size from 8,000 square feet to 15,000 square feet. The lot is improved with a single-family residential dwelling and surrounding uses are residential.

Through the Site Plan Review process, the applicant began construction of a detached patio cover and fireplace. On the approved plans, the applicant noted that the structure was to be located 5 feet from the side property line. As the project construction progressed, the applicant was notified by the Building Inspector based on a complaint that the fireplace encroached into the required side yard setback of 5 feet. After determining the exact location of the property line, the applicant found that the structure encroached into the 5 foot setback by 10 inches. The applicant was notified that in order to leave the structure in its present location, a Variance would be required. Absent a Variance approval, the structure would need to be modified or relocated to conform to the Code requirements.

Variance permits require that the City Council find that the strict or literal interpretation of the Code would result in a practical difficulty or unnecessary physical hardship that is inconsistent with the objectives of the Zoning Code. The Council must also find that there are exceptional or extraordinary circumstances applicable to the property that do not apply generally to other properties in the same zone. Staff is unable to identify findings for a Variance on this property.

Based on a review of the project application, while the proposed addition meets the requirements of height, lot coverage, and floor area, the fireplace does not meet the objectives of the Villa Park Zoning Code with respect to setback requirements and a Variance is required.

The Villa Park Code allows for an Administrative Adjustment for Variance requests that do not exceed a 25% reduction in the required setback and the applicant's request does not exceed a 25% reduction; however, findings for a Variance are still required.

CEQA COMPLIANCE

This project is exempt from requirements of the California Environmental Quality Act by Section 15303 – New Construction or Conversion of Small Structures – Class 3. Class 3 includes the construction of new structures; the installation of new equipment and facilities in small structures; and the construction of a single-family residence or a second dwelling unit in a residential zone.

FISCAL IMPACT

None.

STAFF RECOMMENDATION

Staff cannot recommend approval.

APPROVAL MOTION

Adopt Resolution No. 2005-2801, a Resolution of the City Council of the City of Villa Park approving Variance Permit No. 0607, Encroachment of 10 inches into the required side yard setback of 5 feet for a detached fireplace; Location 10321 Prado Woods.

RECOMMENDED ACTION

It is recommended that the City Council conduct a Public Hearing, review the application, and make appropriate findings thereto.

CONDITIONS OF APPROVAL

1. The structure(s) shall be in accordance with approved plans on file with the City Clerk. Any significant deviation from the approved plans will require subsequent approval by the City Council through a separate Public Hearing. All work will be suspended on the project until such approvals are obtained.
2. Building permits and approvals must be obtained prior to commencement of construction. If the approval is after-the-fact, building permits and approvals are still required. Pursuant to section 9-2.20 of the Villa Park Municipal Code, every permit issued by the City's Building Official shall expire by limitation and become null and void if the building or work authorized by such permit is not completed through final inspection within the allowed time from the date of issuance of such permit, which time shall be as follows: up to 5,000 square feet, 12 months; 5,000 to 10,000 square feet, 18 months; over 10,000 square feet, 24 months. Failure to complete the project within such time shall be grounds for revocation of the discretionary approval. Such revocation will place the property owner in violation of the City's Zoning Ordinance and subject the property owner to possible civil or criminal legal action by the City.
3. Noise associated with construction, repair, remodeling, or grading may only take place between the hours of 7 a.m. and 8 p.m., Monday through Friday and 8 a.m. to 8 p.m. on Saturday. Noise associated with the preceding shall not take place at any time on Sunday or a Federal holiday.
4. Separate review and approval by the City Engineer is required for all grading, driveway approaches, street improvements, sewer connections, and work within the right-of-way or City easement prior to issuance of any building permit for the project. Additional conditions may apply.

5. If deemed necessary by the City Engineer, a street dedication and improvement bond shall be required for all work exceeding three hundred (300) square feet of floor area prior to issuance of any building permit.
6. If deemed necessary by the Building Inspector or City Engineer, a cash bond in the amount of \$575 shall be posted to protect the City from any damages to any public improvements impacted directly or indirectly by the proposed improvements.
7. Temporary toilet facilities are not permitted in the front setback areas.
8. This Variance Permit shall lapse and become void one year following the date of approval unless prior to the expiration of one year, a building permit is issued and construction is commenced and diligently pursued toward completion on the site.
9. This Variance Permit may be renewed for an additional period of one year, provided that prior to the expiration of one year from the date when it or the renewal of same became effective, an application for renewal is filed.
10. Construction activities must comply with all applicable NPDES Best Management Practices (BMP's), as determined by the City Building Inspector and City Engineer, to include, but not limited to: Erosion Control Measures, Perimeter Protection, Sediment Capturing, Waste Management, and Materials Management.
11. Fireplace structure shall be located no closer than 4 feet 2 inches to the side property line and shall be screened from view by vegetation from adjacent properties. Landscaping shall be implemented within six months of a building permit final inspection. Failure to implement the landscaping shall be grounds for revocation of the discretionary approval. Such revocation will place the property owner in violation of the City's Zoning Ordinance and subject the property owner to possible civil or criminal legal action by the City.