

PUBLIC HEARINGS

**CITY COUNCIL
MARCH 23, 2004**

To: Mayor and City Council

From: George J. Rodericks, City Manager **GR**

SUBJECT: Consideration of Conditional Use and Variance Permit No. 0582; Detached Gazebo & Outdoor Fireplace; and Garage Addition encroaching into the required side yard setback – Location: 9482 Florence Circle (Mark Winn)

BACKGROUND

The applicant is requesting permission to construct a detached gazebo and outdoor fireplace. In addition, the application is requesting permission to construct an attached 4-car garage encroaching into the 15 foot required side yard setback.

AUTHORITY

Conditional Use Permits

In order to give the City's current zoning regulations the flexibility necessary to achieve the objectives of the Zoning Code, the City Council has the authority to permit conditional uses subject to the approval of a Conditional Use Permit. Because of their unusual characteristics, Conditional Use Permits require special review and consideration so that they may be located properly with respect to the objectives of the City's zoning regulations and with respect to their effects on surrounding properties. To achieve these objectives, the City Council is empowered to grant and to deny applications for conditional use permits and to impose reasonable conditions upon the granting of such permits. The City Council shall make the following findings before granting a Conditional Use Permit:

- 1) The project is in accord with the objectives of the Villa Park Zoning Code and the purpose of the Zone in which it is located.
- 2) The project is not detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
- 3) The project complies with all applicable provisions of the Zoning Code.

Article 23-6.6 of the Villa Park Municipal Code requires a Conditional Use Permit for all accessory structures exceeding seven (7) feet in height and for the addition of garage spaces totaling 4 or more.

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.

Article 23-6.7 of the Villa Park Municipal Code specifies that properties in the E-4 Small Estate Zone be maintained with a side yard setback of 10 percent of the average lot width, but not less than 10 feet.

FINDINGS

The subject property is located at 9482 Florence Circle and is in the E-4 zoning district. Lot areas within this district are a minimum of 20,000 square feet. The subject property is approximately 21,935 square feet. Surrounding uses are residential.

The property is maintained with a 10 foot wide storm drain easement along the west property line. Surface use of this area of the property is prohibited. Setbacks are calculated from any existing easement lines that prohibit surface use of the property. Therefore, the applicant's setback is to be calculated from the edge of the easement line. Ten percent of the average lot width is approximately 12 feet 6 inches. Including the easement, the required west side yard setback is 22 feet 6 inches.

The applicant is requesting permission to construct a detached, 63 square foot gazebo with a height of 15 feet from adjacent finish grade. The applicant is also requesting permission to construct an outdoor fireplace with a height shown on the plans as 18 feet from adjacent finish grade. However, these structures appear to be built into the slope using the back edge of the fireplace as a retaining wall into the slope. The height of these structures can be measured from average existing grade. *A condition has been added that restricts the height of these structures to 15 feet as measured from average existing grade.*

Detached structures require a Conditional Use Permit; are limited to a height of 15 feet; and must abide by the ten (10) foot setback requirement. Based on a review of the project application, with the proposed conditions, the proposed project meets the objectives of the Villa Park Zoning Code and complies with lot coverage, floor area, and height requirements. However, the garage addition does not comply with setback requirements.

The applicant is proposing to encroach into the required west side yard setback by 10 feet 6 inches. The Villa Park Code allows for an Administrative Adjustment for Variance requests that do not exceed a 25% reduction in the required setback. The requested application exceeds a 25% reduction in the required setback.

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.

The topography of the lot is extremely sloped leaving the applicant little space in which to develop. In addition, the parcel is encumbered with a sewer easement that restricts the applicant's ability to develop along the west property line. It is staff's opinion that there are sufficient findings for the granting of a Variance request and maintaining the west side yard setback at 12 feet 6 inches, 10 feet of which is the required storm drain easement.

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 recommends approval of this application.

APPROVAL MOTION

Adopt Resolution No. 2004-2743, a Resolution of the City Council of the City of Villa Park approving Conditional Use and Variance Permit No. 0582, a detached gazebo and outdoor fireplace; and a 4-car garage encroaching into the required west side yard setback, with conditions; Location: 9482 Florence Circle.

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. 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.
4. 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.
5. 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.

6. Temporary toilet facilities are not permitted in the front setback areas.
7. This Conditional Use and 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.
8. This Conditional Use and 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.
9. 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.
10. A landscape plan shall be submitted and approved by the City's Community Development Committee prior to completion of plan check through the City's Building Department. Landscaping shall be implemented pursuant to the approved plan within six months of issuance of any applicable Certificate of Occupancy. Failure to implement the plan 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.
11. The gazebo and fireplace shall be measured from average existing grade and shall not exceed a height of 15 feet.
12. The west side yard setback shall be 12 feet 6 inches as measured from the west property line.