



April 9, 2024

John Beery  
2292 Faraday Avenue, Suite 100  
Carlsbad, CA 92008

**SUBJECT: V 2023-0004 (DEV2023-0118) – MCGERVEY KITCHEN ADDITION/GARAGE VARIANCE**

The City Planner has completed a review of your application for a Minor Variance, V 2023-0004 at 830 Citrus Place (APN 206-040-31-00). The project is a request to reduce the required front and rear yard setbacks from 20 feet to 11 feet and 20 feet to 5 feet, respectively, for a new 708-square-foot detached garage with a 640-square-foot accessory dwelling unit (ADU) and 125-square-foot terrace on the second floor, and to reduce the front yard setback from 20 feet to 7 feet for an 80-square-foot kitchen addition to the existing single-family residence. Pursuant to Carlsbad Municipal Code (CMC) Section 21.201.060.B1, the kitchen addition and garage are exempt from obtaining a Coastal Development Permit (CDP). The ADU is being considered under a separate Minor Coastal Development Permit (CDP2023-0042) but is included herein for information.

After careful consideration of the circumstances surrounding this request, the City Planner has determined that the four findings required for granting a Minor Variance can be made and therefore, **APPROVES** this request based on the following findings and conditions.

**Findings:**

1. That because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification in that **the lot size is substandard at 6,770 square feet, which is approximately 90% of the 7,500 square foot minimum lot size for the R-1 zone. The site consists of two lots that have been combined (PM 714) to make one lot, with the rear portions of the original lots dedicated to the state for the Interstate 5 freeway. In addition to being substandard in lot size, the project site is wide and shallow in dimensions and has a concave front property line. The minimum required lot depth is 90 feet, and the entire lot is under 90 feet with some portions only 46 feet in depth. The lot size and shape make it impossible to meet the minimum 20-foot depth for a two-car garage and maintain the required 20-foot front yard and rear yard setbacks. In addition, the kitchen addition will create more usable space and will encroach no closer to the front and rear yard setbacks than the existing home.**
2. That the variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located and is

subject to any conditions necessary to assure compliance with this finding in that **the surrounding neighborhood consists of lots that generally meet the requirements of the R-1 zone, and, therefore, are not as constrained as the subject site. There is no feasible way to construct a new detached garage that would meet development standards and setback requirements. Because the existing home encroaches into the front and rear yard setbacks, there is no feasible way to add onto the kitchen and meet setback requirements.**

3. That the variance does not authorize a use or activity which is not otherwise expressly authorized by the zone regulation governing the subject property in that **the granting of a minor variance to construct a detached garage and kitchen addition does not authorize a use which is not otherwise expressly permitted by the zoning regulations in that a one-family dwelling is allowed by right withing the R-1 zone. Therefore, a deviation from the setback standards does not authorize a use or activity which is not authorized by the zone.**
4. That the variance is consistent with the general purpose and intent of the general plan and any applicable specific or master plans in that **the project consists of the construction of a new detached garage and kitchen addition on a lot with an existing single-family home and garage. The proposed uses are expressly authorized by the Zoning Ordinance and General Plan regulations governing the subject property. The granting of a Minor Variance for reduced front and rear yard setbacks does not allow for or authorize a use not expressly permitted.**
5. In addition, in the coastal zone, that the variance is consistent with and implements the requirements of the certified local coastal program and that the variance does not reduce or in any manner adversely affect the protection of coastal resources as specified in the zones included in this title, and that the variance implements the purposes of zones adopted to implement the local coastal program land use plan in that **the project consists of the construction of a kitchen addition and detached garage with ADU above with reduced setbacks, in an area designated for single-family residential development. The proposed detached garage and ADU will have an overall height of 27 feet. The proposed project will not obstruct view of the coastline as seen from public lands or the public right-of-way, nor otherwise damage the visual beauty of the coastal zone. Furthermore, no agricultural uses exist on the site, nor are there any sensitive resources located on the site. The proposed project in not located in an area of known geologic instability or flood hazard. Given that the site does not have any frontage along the coastline, no public opportunities for coastal shoreline access or water-oriented recreational activities are available. Furthermore, the subject property is a developed parcel that does not include steep slopes nor native vegetation. In addition, the site is not located in an area prone to landslides, or susceptible to accelerated erosion, floods, or liquefaction. Therefore, granting such a variance to construct a kitchen addition and new detached garage that encroaches into the front and rear yard setbacks will not adversely affect the Local Coastal Program.**
6. That the City Planner has determined that the project is exempt from the requirements of the California Environmental Quality Act (CEQA) per **Section 15305(a) – Minor Alterations in Land Use Limitations** – of the State CEQA Guidelines and will not have any adverse significant impact on the environment.

**Conditions:**

1. The City Planner does hereby **APPROVE** the Minor Variance, **V 2023-0004**, for the project entitled **MCGERVEY KITCHEN ADDITION/GARAGE (Exhibits "A" – "B")**, dated **April 9, 2024**, on file in the Planning Division and incorporated by this reference, subject to the conditions herein set forth. Development shall occur substantially as shown unless otherwise noted in these conditions.
2. If any of the following conditions fail to occur; or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the city shall have the right to revoke or modify all approvals herein granted; deny or further condition issuance of all future building permits; deny, revoke or further condition all certificates of occupancy issued under the authority of approvals herein granted; record a notice of violation on the property title; institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. No vested rights are gained by Developer or a successor in interest by the city's approval of this **Minor Variance**.
3. Staff is authorized and directed to make, or require the Developer to make, all corrections and modifications to the **Minor Variance** documents, as necessary to make them internally consistent and in conformity with the final action on the project. Development shall occur substantially as shown on the approved Exhibits. Any proposed development different from this approval, shall require an amendment to this approval.
4. The Developer shall comply with all applicable provisions of federal, state, and local laws and regulations in effect at the time of building permit issuance.
5. If any condition for construction of any public improvements or facilities, or the payment of any fees in-lieu thereof, imposed by this approval or imposed by law on this Project are challenged, this approval shall be suspended as provided in Government Code Section 66020. If any such condition is determined to be invalid this approval shall be invalid unless the City Council determines that the project without the condition complies with all requirements of law.
6. Developer/Operator shall and does hereby agree to indemnify, protect, defend, and hold harmless the City of Carlsbad, its Council members, officers, employees, agents, and representatives, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees incurred by the city arising, directly or indirectly, from (a) City's approval and issuance of this **Minor Variance**, (b) City's approval or issuance of any permit or action, whether discretionary or nondiscretionary, in connection with the use contemplated herein, and (c) Developer/Operator's installation and operation of the facility permitted hereby, including without limitation, any and all liabilities arising from the emission by the facility of electromagnetic fields or other energy waves or emissions. This obligation survives until all legal proceedings have been concluded and continues even if the city's approval is not validated.
7. This approval shall become null and void if building permits are not issued for this project within 24 months from the date of project approval.

8. Prior to the issuance of the **building permit**, Developer shall submit to the city a Notice of Restriction to be filed in the office of the County Recorder, subject to the satisfaction of the City Planner, notifying all interested parties and successors in interest that the City of Carlsbad has issued a **Minor Variance** on the property. Said Notice of Restriction shall note the property description, location of the file containing complete project details and all conditions of approval as well as any conditions or restrictions specified for inclusion in the Notice of Restriction. The City Planner has the authority to execute and record an amendment to the notice which modifies or terminates said notice upon a showing of good cause by the Developer or successor in interest.

## NOTICE

Please take **NOTICE** that approval of your project includes the “imposition” of fees, dedications, reservations, or other exactions hereafter collectively referred to for convenience as “fees/exactions.”

You have 90 days from the date of final approval to protest imposition of these fees/exactions. If you protest them, you must follow the protest procedure set forth in Government Code Section 66020(a) and file the protest and any other required information with the City Manager for processing in accordance with Carlsbad Municipal Code Section 3.32.030. Failure to timely follow that procedure will bar any subsequent legal action to attack, review, set aside, void, or annul their imposition.

You are hereby FURTHER NOTIFIED that your right to protest the specified fees/exactions DOES NOT APPLY to water and sewer connection fees and capacity charges, nor planning, zoning, grading or other similar application processing or service fees in connection with this project; NOR DOES IT APPLY to any fees/exactions of which you have previously been given a NOTICE similar to this, or as to which the statute of limitations has previously otherwise expired.

This decision may be appealed by you or any other member of the public to the Planning Commission within ten days of the date of this letter. Appeals must be submitted in writing to the Planning Division at 1635 Faraday Avenue in Carlsbad, along with a payment of \$900. The filing of such appeal within such time limit shall stay the effective date of the order of the City Planner until such time as a final decision on the appeal is reached. If you have any questions regarding this matter, please feel to contact Megan McElfish at (442) 339-5153 or by email at [Megan.McElfish@carlsbadca.gov](mailto:Megan.McElfish@carlsbadca.gov).

Sincerely,



**ERIC LARDY**  
City Planner

CJ:MM:cf

c: Scott and Lori McGervey, 830 Citrus Place, Carlsbad, CA 92008  
Nichole Fine, Project Engineer  
Data Entry  
Laserfiche/File Copy