

**FINDINGS and
CONDITIONS OF APPROVAL**

FINDINGS AND CONDITIONS OF APPROVAL FOR COUNTY FILE #CDVR19-01051, RYAN BOSWORTH (APPLICANT) AND RYAN BOSWORTH & TOMMY TRAN (OWNERS)

FINDINGS

I. Variance Findings

- 1. Required Finding:** *That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations of other properties in the vicinity and the respective land use district.*

Project Finding – Living Space Addition and Wooden Deck: The subject property is within the Port Costa, which was established in the 1880s, although many of the lots were developed in the early 1900s. Many homes in the immediate vicinity were constructed prior to the adoption of the County zoning ordinance and thus have side yards that are substandard to today's requirements. The project involves constructing 185-square-foot first floor, and 951-square-foot second floor additions to an existing single-family residence, as well as a new wooden deck. Like many properties in the surrounding area, the subject property is substandard with respect to the 6,000-square-foot minimum lot size and 60-foot minimum average lot width for the R-6 zoning district. The living space addition will be constructed at the same distance from the side property lines as the existing residence but will extend the residence slightly further south on the site. The new wooden deck with a 1-foot, 10-inch side yard on the western property boundary reduces the impact of the current substandard side yard of the existing deck which is 6-inches from the west property line. The living space addition results in a 1,775-square-foot residence that remains in the range of house sizes in the area. In the R-6 Single-Family Residential district, one detached single-family dwelling, plus accessory structures, is an allowed use. As improvements to older homes on substandard lots in the area occur, it is expected that other property owners will be faced with similar setback challenges. Consequently, according to CDD records, five other properties within Port Costa have been granted similar side yard variances for additions, most recently as 2001. Thus, approval of this variance request for a living space addition and wooden deck is not a grant of special privilege considering the, current siting of the residence and similar development pattern of the surrounding area.

Project Finding – Retaining Wall: The project involves constructing a concrete retaining wall up to 6 feet in height to replace an existing wooden retaining wall for the improved safety and secure use of the rear yard. As conditioned, the project will not constitute a grant of special privilege in this part of the County where nearby residences face similar circumstances due to the steep and varied topography in the area. The new retaining wall is a reasonable remedy to an existing hazardous situation and is largely a replacement of an existing structure.

Project Finding – Tandem Off-Street Parking Spaces: The existing driveway and parking area is located on the eastern side of the subject property and provides for up to two, 8-foot, 8-inch-wide tandem off-street parking spaces with a 0-foot side yard (where 10 feet is required). Like other narrow properties in the Port Costa area, there is little usable land outside of the side yard of the property to provide two off-street parking spaces as required by the R-6 zoning district. Therefore, approving the variance for a 0-foot side yard for two tandem off-street parking spaces will not constitute a grant of special privilege inconsistent with the limitations of other properties in the vicinity.

- 2. Required Finding:** *That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.*

Project Finding – Living Space Addition and Wooden Deck: The special circumstance of the substandard side yards of the property was created when the house was built in 1939. The existing single-family residence was built on the 3,300-square-foot lot with a 1-foot, 10-inch side yard along the western property boundary, and an 8-foot, 9-inch side yard along the eastern property boundary. Therefore, although they will not encroach further into the side yard areas than the existing construction, the 1,142-square-foot addition and the new wooden deck do not conform to the requirements of the R-6 Single-Family Residential District. However, the property's buildable area is constrained by the substandard size of the lot as well as the substandard, 33-foot average width, and if enforced, the R-6 zoning district standards would leave the lot with a developable width of only 18 feet. Many feasible options for expanding the existing residence or rebuilding the residence would likely require a variance. In addition, other properties in the vicinity have been granted similar side yard variances for additions to expand their living space. Thus, due to the special circumstances applicable to the subject property, granting of the variance request is necessary to ensure that the current rights available to the subject property are preserved, similar to how properties in the vicinity and within the R-6 zoning district continue to enjoy similar privileges.

Project Finding – Retaining Wall: As is the case with many of the lots in the project vicinity, the topography at the northern area of the subject property is a special circumstance. The northern area of the property abuts a steep upward slope to a roadway and hilly open space. The applicant's proposal to replace the existing wooden retaining wall with a concrete retaining wall will structurally support the hillside and increase the safety and enjoyment of the property. Placing the retaining wall elsewhere on the subject property, outside of the setback, would not accomplish this goal and would constitute a loss of usable, flat land for the owner. Rebuilding the existing retaining wall will allow the property owner to take

advantage of property rights enjoyed by other properties in the vicinity and within the identical land use district.

Project Finding – Tandem Off-Street Parking Spaces: There is little usable land outside of the side yard of the property to provide two off-street parking spaces as required by the R-6 zoning district. Denying the variance for a 0-foot side yard for two tandem off-street parking spaces will deprive the subject property of rights enjoyed by other properties in the vicinity and within the R-6 Single-Family Residential District.

3. Required Finding: *That any variance authorized substantially meets the intent and purpose of the respective land use district in which the subject property is located.*

Project Finding: The intent and purpose of the R-6 Single-Family Residential District is to promote the orderly development and maintenance of residential uses and the accessory structures and uses normally auxiliary to a single-family dwelling. This includes allowing residential dwelling improvements and additions compatible with the surrounding neighborhood. The variance will allow the property owners to construct additions and a new wooden deck to their existing single-family residence that will be compatible with other single-family residences in the vicinity. The location, design, and height of the retaining wall does not hinder the intent and purpose of the respective land use district, but instead supports the steep hillside on and behind the subject property, thereby increasing safety for the property owners. The variance will allow the property owners to provide for two off-street parking spaces as intended by the R-6 zoning district. The use of the subject property will remain residential, with one single-family residence.

II. Small Lot Design Review Findings

Prior to the issuance of a building permit on a substandard lot, the Zoning Administrator must review the proposed structure's compatibility and impact on the surrounding neighborhood in terms of the following:

Location: The existing residence is located towards the center of the property and is setback approximately 25 feet from the street frontage on the south and 35 feet from the frontage on the north, with a 1-foot, 10-inch side yard on the west and an 8-foot, 9-inch side yard on the east. As designed, the additions extend the home approximately 10 feet towards the southern property line, while the footprint at the rear of the home is maintained. With the proposed 15- and 34-foot front setbacks, the residence will maintain a fairly central position on the property with respect to the two frontages and will maintain the side yard footprints of the residence. The wooden deck and wading pool are located at the rear of the house between the retaining wall and the base of the sloped area of the lot, which are the most ideal locations for these improvements and provide a private, outdoor

area for the property owners to enjoy. In addition, the retaining wall needs to be at base of the slope and to encroach within the side yard and primary frontage to retain the hillside. Generally, the residence and improvements remain consistent with the development pattern found in the surrounding Port Costa neighborhood.

1. **Size:** The 1,142-square-foot addition will increase the size of the residence to 1,781 square feet. The total building footprint of the residence, new wooden deck, and wading pool is approximately 1,131 square feet, which equates to approximately 34% coverage of the 3,300 square-foot lot. Nearby residences generally range in size from approximately 662 square feet to 5,141 square feet. Therefore, the residence will remain compatible with other residences in the vicinity regarding size.
2. **Height:** The 2nd floor addition will increase the height of the residence to 30 feet, 10-inches, which is below the maximum 35-foot height allowed in the R-6 zoning district. The height of the two-story home is consistent and compatible with the adjacent two-story homes and other two-story residences in the vicinity. The new concrete retaining wall will range from approximately 1 foot to up to 6 feet in height and is consistent with similar walls used to retain earth for the safety and enjoyment of a residential property.
3. **Design:** The neighborhood mainly consists of homes bungalow, craftsman, stick, Queen Anne, and cottage architectural styles. The contemporary Queen Anne design style of the living space addition and balconies complies with design guidelines for the Port Costa Historic District and is compatible with the architectural styles in the area.

III. Exception Request Findings

The applicant has submitted an exception request in accordance with Chapter 92-6 of the County Code. Below is a list of the required exception findings along with staff's discussion of their existence for the proposed project:

1. **Required Finding:** *That there are unusual circumstances or conditions affecting the property.*

The applicant is proposing an alteration of an existing structure within a historic district where neighboring primary and secondary structures are constructed in close proximity to one another and encroach on various County prescribed setbacks. The applicant's lot is sub-standard in size, with the total lot size representing approximately one-half (3,300 square feet) of the standard lot size with an R-6 zoning designation. The property is traversed sub-grade by a public sewer line, for which the applicant has received an encroachment permit, and a storm water culvert, for which the applicant is proposing an easement that adheres to the standard County prescribed guidelines for new construction, with exception

of the nominal building encroachment on the western portion of the lot as outlined in the submitted plan set.

2. **Required Finding:** *That the exception is necessary for the preservation and enjoyment of substantial property rights of the Applicant.*

Given the sub-standard size of the existing lot, the County storm water setback requirements would render nearly 10% of otherwise usable lot square footage as unusable to construct a primary structure. When combined with the prescribed County primary and secondary building setback requirements, these standard setback requirements as applied to the applicant lot would render approximately 60% of the total lot size as unusable for the construction of a primary structure. As such, the magnitude of the proposed storm drain easement is substantial when compared to the total lot size.

Additionally, given the relatively narrow width of the existing/proposed building (approximately 20 feet) and the asymmetric path of travel west-to-east across the property line, reducing the primary structure size in order to strictly conform to the prescribed storm drain easement requirements has a substantial impact ipso facto on the overall structure dimensions outside of the setback. Reducing the proposed building footprint to conform to the standard prescribed storm drain easement would, therefore, create an additional, unintended burden on the applicant for the portion of the house that does not encroach on the proposed storm drain easement area. The proposed overall structure and improvements as submitted are, as outlined by the County staff findings, consistent with the other neighboring structures with the historic neighborhood and R-6 zoning.

3. **Required Finding:** *That the granting of the exception will not be materially detrimental to the public welfare or injurious to other property in the territory in which the property is situated.*

Considering the nominal dimensions of the encroachment into the proposed standard storm drain easement area and the relative positioning of adjacent neighboring structures within the historic district to the storm water pipe, the granting of this exception will not be materially detrimental nor injurious to other property.

IV. CEQA Findings

The proposed project is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301(e) that exempts additions to existing structures that are less than 2,500 square feet or do not exceed 50 percent of the existing structure, whichever is less, and Section 15301(d) that exempts restoration or rehabilitation of damaged structures to meet current standards of health and safety.

CONDITIONS OF APPROVAL FOR COUNTY FILE #CDVR19-01051

Project Approval

1. **Variance approval** is granted for the following:
 - A 1-foot, 10-inch side yard (where 5 feet is required) along the western property boundary; an 8-foot, 9-inch side yard (where 10 feet is required) along the eastern property boundary; and a 10-foot, 7-inch side yard aggregate (where 15 feet is required) all for first and second story additions to an existing single-family residence and a wooden deck;
 - A 0-foot side yard along the western property boundary (where 3 feet is required) and a 17-foot, 6-inch front setback along the northern boundary for a retaining wall over 3-feet in height; and
 - A 0-foot side yard along the eastern property boundary (where 10 feet is required) for two tandem off-street parking spaces.
2. **Small Lot Design Review approval** is granted to allow the construction of living space additions, covered balcony and porch additions, a new wooden deck and wading pool, and a retaining wall all as shown on the approved plans.
3. **Exception approval** is granted for a 2.5-foot building footprint clearance (where 3-feet is required) from the culvert wall, as determined by a County approved field survey. The overall easement width required pursuant to the County Ordinance Code is preserved.
4. The approvals described above are granted based on and as shown on the following documents:
 - Application and materials received by the Department of Conservation, Community Development Division (CDD) on November 18, 2019.
 - Topographic Survey received on February 24, 2021.
 - Revised project plans received on March 5, 2021.

Any deviation from the approved plans shall require review and approval by the CDD and may require the filing of an application for a new Variance or Small Lot Design Review Permit.

General Provisions

5. Grading and building permits from the County shall be obtained, as necessary, for any development approved as part of this permit.

6. **At least 30 days prior to CDD stamp-approval of plans for issuance of a building or grading permit or initiation of uses granted under this permit, whichever occurs first,** the applicant shall submit a report in compliance with the conditions of approval of this permit for review and approval of the CDD. The report shall list each condition followed by a description of what the applicant has provided as evidence of compliance with that condition. The CDD may reject the report if it is not comprehensive with respect to the applicable requirements for the requested permit. The permit compliance review is subject to staff time and materials charges, with an initial deposit of \$1,500.00 for DCD review, which shall be paid at the time of submittal of the compliance report.

Historical Resources (Port Costa Historic District)

7. **Prior to CDD stamp-approval of plans for the issuance of building permits,** the applicant shall submit a color palette for the exterior of the residence to staff of the CDD for review and approval.
8. **Prior to final building inspection,** applicant shall submit as-built color photographs to staff of the CDD for review and verification that the approved elevations (including design and shown exterior building materials) were correctly executed on site.

Application Costs

9. This variance permit application was subject to an initial deposit of \$1,000.00. Applications are subject to time and material costs if the application review expenses exceed the initial deposit. **Any additional fees due must be paid prior to an application for a grading or building permit, or 60 days of the effective date of this permit, whichever occurs first.** The fees include costs through permit issuance and final file preparation. Pursuant to Contra Costa County Board of Supervisors Resolution Number 2019/553, where a fee payment is over 60 days past due, the Department of Conservation and Development may seek a court judgement against the applicant and will charge interest at a rate of ten percent (10%) from the date of judgement. The applicant may obtain current costs by contacting the project planner. A bill will be mailed to the applicant shortly after permit issuance in the event that additional fees are due.

Construction Restrictions

10. The owners and their contractors shall comply with the following restrictions and requirements:
 - A. All construction activities, including delivery of construction materials, shall be limited to the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday, and are prohibited on State and Federal holidays on the calendar dates that these holidays are observed by the State or Federal government as listed below:

New Year's Day (State and Federal)
Birthday of Martin Luther King, Jr. (State and Federal)
Washington's Birthday (Federal)
Lincoln's Birthday (State)
President's Day (State and Federal)
Cesar Chavez Day (State)
Memorial Day (State and Federal)
Independence Day (State and Federal)
Labor Day (State and Federal)
Columbus Day (State and Federal)
Veterans Day (State and Federal)
Thanksgiving Day (State and Federal)
Day after Thanksgiving (State)
Christmas Day (State and Federal)

For details on the dates the State and Federal holidays occur, please visit the following websites:

Federal: <http://www.federalreserve.gov/aboutthefed/k8.htm>

State: <http://www.sos.ca.gov/state-holidays/>

- B. Transporting of heavy equipment and trucks shall be limited to weekdays between the hours of 9:00 AM and 4:00 PM and prohibited on Federal and State holidays.
- C. A good faith effort shall be made to avoid interference with existing neighborhood traffic flows and to minimize project-related disruptions to adjacent properties.
- D. Construction equipment and materials shall be stored onsite.
- E. The construction site shall be maintained in an orderly fashion. Litter and debris shall be contained in appropriate receptacles and shall be disposed of, as necessary.
- F. Any debris found outside the site shall immediately be collected and deposited in appropriate receptacles.
- G. All stationary noise-generating equipment such as air compressors and concrete pumps shall be located as far away from adjacent residences as possible.

Drainage Culvert

- 11. At least **45 days prior to the issuance of any building or grading permit**, the property owner must calculate and establish the Base Flood Elevation (B.F.E) and

submit to the Contra Costa County Public Works Department and CDD for consideration and verification. The property owners may need to obtain a 1010 Drainage Permit due to the existence of a culvert and Bull Valley Creek traversing the subject property.

12. **Prior to CDD stamp-approval of plans for issuance of a building permit**, the applicant shall obtain a field survey based on “pot-holing” the culvert’s physical location on the subject property, or other approved underground location assessment.
13. **At least 30 days prior to CDD stamp-approval of plans for issuance of a building permit**, the applicant shall submit a licensed structural engineer’s report which verifies that the construction and location of the foundation of the residence will not compromise the structural integrity of the existing drainage culvert, or the culvert wall, based on the location identified in the County approved field survey.

PUBLIC WORKS

CONDITIONS OF APPROVAL FOR PERMIT CDVR19-01051

Applicant shall comply with the requirements of Title 8, Title 9, and Title 10 of the Ordinance Code. Any exception(s) must be stipulated in these Conditions of Approval. Conditions of Approval are based on the site plans submitted to the Department of Conservation and Development, Community Development Division, on October 21, 2020.

COMPLY WITH THE FOLLOWING CONDITIONS OF APPROVAL PRIOR TO ISSUANCE OF A BUILDING PERMIT AND PRIOR TO INITIATION OF THE USE PROPOSED UNDER THIS PERMIT.

14. A private storm drain easement, conforming to the width specified in Section 914-14.004 of the County Ordinance Code, shall be dedicated over the existing storm drain line traversing the site for use of the owners of Lots 15 and 16, Block 3, Town of Port Costa (CC Public Works Map T-173).

Exception

Applicant shall be granted a 2.5-foot width (where 3-feet is required) from the outside culvert wall to the building footprint as determined by the County approved field survey. The overall required easement width prescribed by the Code is preserved.

ADVISORY NOTES

ADVISORY NOTES ARE NOT CONDITIONS OF APPROVAL; THEY ARE PROVIDED TO ALERT THE APPLICANT TO ADDITIONAL ORDINANCES, STATUTES, AND LEGAL

REQUIREMENTS OF THE COUNTY AND OTHER PUBLIC AGENCIES THAT MAY BE APPLICABLE TO THIS PROJECT.

- A. NOTICE OF OPPORTUNITY TO PROTEST FEES, ASSESSMENTS, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS PERTAINING TO THE APPROVAL OF THIS PERMIT.

Pursuant to California Government Code Section 66000, et seq., the applicant has the opportunity to protest fees, dedications, reservations or exactions required as part of this project approval. To be valid, a protest must be in writing pursuant to Government Code Section 66020 and must be delivered to the Community Development Division within a 90-day period that begins on the date that this project is approved. If the 90th day falls on a day that the Community Development Division is closed, then the protest must be submitted by the end of the next business day.

- B. Additional requirements may be imposed by the following agencies and departments:
- Contra Costa County Building Inspection Division
 - Contra Costa Environmental Health Division
 - Crockett-Carquinez Fire Protection District
 - Crockett Sanitary District
 - Contra Costa Water District

The Applicant is strongly encouraged to review these agencies' requirements prior to continuing with the project.

- C. The Applicant is advised that a subsequent design review or variance approval may be required if the results of the County approved field survey pursuant to COA #12 and/or the structural engineer's report pursuant to COA #13 indicate that the location or design of the residence will need to be altered.