



**CITY OF NOVATO**  
COMMUNITY DEVELOPMENT

DATE: January 26, 2023

TO: City Council  
City Manager  
Community Development Director

FROM: Steve Marshall, Zoning Administrator

SUBJECT: Zoning Administrator's Hearing of January 26, 2023

**NEW ITEMS:**

**B.1. - SIBRIAN RESIDENCE ADDITION  
P2022-027; VARIANCE  
CEQA CATEGORICALLY EXEMPT – SECTION 15301  
APN 141-285-14; 1101 MIRABELLA AVENUE**

Conduct a public hearing, consider, and possibly approve a variance accepting a portion of an unpermitted 225-square foot residential addition to encroach within the required street-side setback at 1101 Mirabella Avenue.

**PRESENT**

Steve Marshall, Zoning Administrator  
Jeff Howe, representing Carlos & Mary Sibrian

**PUBLIC HEARING**

Zoning Administrator Marshall opened the hearing.

Zoning Administrator Marshall reviewed the staff report and asked if Mr. Howe had any questions about the report or concerns about the recommended conditions of approval.

Mr. Howe didn't have any questions or concerns and noted he supported the observations and recommendation presented in the staff report.

No members of the public attended the hearing.

Zoning Administrator Marshall confirmed there were no public comments received regarding the proposal.

Zoning Administrator Marshall approved the variance based on the analysis and findings presented in the staff report.

Zoning Administrator Marshall noted there is an appeal period of ten (10) calendar days.

## **FINDINGS**

### **1. CEQA Finding**

The proposed project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) and the City of Novato Environmental Review Guidelines, pursuant to CEQA Guidelines Section 15301 - Existing Facilities. Section 15301 exempts additions to existing structures provided that the addition will not result in an increase in floor area of more than 50 percent of existing floor area before the addition, or 2,500 square feet, whichever is less. The subject addition is 225-sf which is less than 50 percent of the existing floor area of the primary home before the addition, and less than 7 2,500 square feet. The project therefore meets the criteria for this CEQA exemption.

### **2. Variance Findings**

In accordance with Sections 19.42.070.F. of the Novato Municipal Code, the Zoning Administrator hereby makes the following findings supported by the facts presented in the staff report:

- a. Granting the Variance is consistent with the General Plan and any applicable specific plan;
- b. Granting the Variance would not constitute a grant of special privileges inconsistent with the limitations on other properties in the vicinity and in the same zoning district;
- c. There are special circumstances applicable to the property (e.g., location, shape, size, surroundings, topography, or other conditions), so that the strict application of this Zoning Ordinance denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts or creates an unnecessary and non-self imposed, hardship or unreasonable regulation which make it obviously impractical to require compliance with the development standards;
- d. Granting the Variance is necessary for the preservation and enjoyment of substantial property rights possessed by other property owners in the same vicinity and zoning district and denied to the property owner for which the Variance is sought; and
- e. Granting the Variance would not be materially detrimental to the public interest, health, safety, convenience, or welfare of the City, or injurious to the property or improvements in the vicinity and zoning district in which the property is located.

## **ACTION TAKEN**

The Zoning Administrator approved the Variance subject to the conditions of approval below.

## **CONDITIONS OF APPROVAL**

1. The approval granted herein shall not become effective until all appropriate fees billed by the City of Novato to the application account are paid in full in accordance with the City's Cost Base Fee System. Failure to pay said fees may result in the City withholding issuance of related building permits, certificate of occupancy, and recordation of final maps or other entitlements.
2. Indemnity and Time Limitations
  - a. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys, or employees, to attack set aside, void or annul the City's decision to approve the application and associated environmental determination at issue herein. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by the applicant, the City, and/or parties initiating or bringing such action.
  - b. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, employees, and attorneys for all costs incurred in additional investigation (such as the environmental determination at issue herein or any subsequently required Environmental Document), if made necessary by said legal action and if the applicant desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
  - c. The applicant indemnifies the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
  - d. Unless a shorter period applies, the time within which judicial review of this decision must be sought is governed by California Code of Civil Procedure, Section 1094.6.
  - e. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. The applicant is hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

## **FURTHER ACTION**

The decision of the Zoning Administrator is final unless a written appeal along with the appeal fee are submitted to the Community Development Department within 10-days of the date of the action.

The meeting was closed.