



STAFF REPORT

TO: PLANNING COMMISSION

PREPARED BY: Corey Simon, Senior Planner

REVIEWED BY: Dina Tasini, Contract Planner

GENERAL INFORMATION

APPLICANT: David Claydon, Designer

OWNER: Marcia & John Hetzler

LOCATION: 1146 Arlington Way (372-114-021)

PROPOSAL: Construction of new third story with approximately 504 square feet (to replace existing attic) to an existing two-story single-family residence. A Use Permit is required to allow: a) a maximum building height of approximately 28' where a maximum of 25' and two stories is normally permitted, and b) a total floor area of 1,857 square feet, where a maximum of 1,208 square feet is normally permitted (which is the normally permitted maximum floor area ratio of .30 of size of the subject 4,026 square foot hillside lot). A Variance is required to allow the addition to match the structure's existing 2½ foot and 3½ foot side yard setbacks, where a minimum of 10 feet is normally required.

GENERAL PLAN: Central Martinez Specific Area Plan; Group 1 Residential, Single-family dwellings, Minimum 6,000 sq. ft. site area.

ZONING: R-6.0 (Single-Family Residential: 6,000 sq. ft. min. lot size)

ENVIRONMENTAL REVIEW: Staff proposes that the Planning Commission find that this permit be categorically exempt (CLASS 1 - Existing Facilities and CLASS 5 - Minor Alterations in Land Use Limitations) from the requirements of CEQA. If the Planning Commission adopts this proposed finding, no further environmental review would be required by State law.

RECOMMENDATION

Approve 11PLN-0035 for the construction of third story addition as proposed, subject to draft conditions of approval.

BACKGROUND and SITE CONTEXT

The subject building site, located in the hillside neighborhood west of Downtown, is a legally non-conforming site with an area of approximately 4,026 square feet where 6,000 square feet is required and an approximate lot width of 48 feet where a minimum of 60 feet is required. The applicant is requesting approval of a Use Permit and variance to allow for a 504 square foot third story addition.

Most homes in this wooded neighborhood have diminutive styles from the 1920’s and 1930’s. The subject residence, on a steep downsloping lot, currently appears as a small single-story home from the street. The two-story rear elevation is largely screened by existing vegetation. The existing home has minimal side yards (approximately 3 to 4 feet), and both the constrained lot size and steep topography greatly limit options to expand the modest two-bedroom home.

ZONING COMPLIANCE

The table below provides the code requirements applicable to the proposed new residence on this lot. A “Y” in the table indicates conformance.

CRITERIA	MINIMUM REQUIRED OR (MAXIMUM ALLOWED)	EXISTING	PROPOSED	CONFORMITY
Floor area	1,209 s.f. (.30 of site size)	1,353 s.f. (.34 of site size)	1,857 s.f. (.46 of lot size)	Use Permit Req’d
Building height	25’/Two story	22’/Two story	28’/Three story	Use Permit Req’d
Front yard	20 feet	18 feet	25 feet (at addition)	Y
Side yards	10 feet	2.5 feet/3.5 feet*	2.5 feet/3.5 feet	Variance Req’d
Rear yard	25 feet	35 feet	<i>(no change)</i>	Y
Site Coverage	40%	33%	<i>(no change)</i>	Y

* Existing two-story structure is nonconforming. Variance required to add new story with existing nonconforming setbacks.

DISCUSSION

Use Permit – Height Exception

A Use Permit is requested to allow for a 504 square foot, third story addition (partially replacing the existing attic), creating an 28’/ three story residence when the normally maximum permitted height is 25’/two-story. As a hillside site, the maximum permitted height is measured from the natural grade plane, and although the proposal will exceed

the technically permitted height limits, it will still appear as a conforming residence from the front. Furthermore, the front wall plane of the addition is set approximate eight feet behind the lower story, preserving the front portion of the existing roof and the appearance of single-story design.

Based on the photo simulations provided by the applicant, it appears that the added height will not significantly alter the appearance of the residence when viewed from off-site, either from at the street or from residences below. The residence will still match the existing neighboring properties' scale and does not appear to negatively impact neighbor's views.

Use Permit – Floor Area Exception

A Use Permit is requested to allow an addition that will result in a residence with a total floor area of greater than 1,353 square feet (which is the normally permitted maximum floor area of .30 of the lot size on a hillside lot). The proposed 1,857 square foot residence is 648 square feet greater than the 1,209 square feet permitted for this hillside property. However, the Zoning Ordinance allows for flexibility by allowing the development of larger homes with the benefit of Use Permit approval. As per the discussion above, the addition appears to be consistent with the intent of the Floor Area Provisions of the Hillside Development Regulations which is to "encourage compatibility with existing homes in the neighborhood", and thus the requested exception appears appropriate.

NOTE: the subject 4,026 sq. ft. site was consolidated with a 1,800 sq. ft. site directly across the street in 1983, when the City approved a minor subdivision and a portion of surplus property ("Lot 1") was acquired by the then owners of 1146 Arlington Way (as illustrated in Attachment "Minor Subdivision 556-83"). While the two sites are one legal parcel - Parcel B and B₁ of Parcel Map 108 PM 51 - the City's Floor Area Ratio Regulations specifically apply to a building "site," and thus 4,026 sq. ft is considered the "site area."

Variance

A Variance is requested to allow an exception to the normally required 10 minimum side yard, allowing a third story to vertically extend the nonconforming 2.5' side yard at the westerly property line and 3.5' at the easterly property line. The lot is nonconforming in width, with 48' when 60' is normally required. Both the constrained lot size and steep topography greatly limit options to expand the modest two-bedroom home, creating the special circumstances warranting variance approval. Two additional points regarding the requested side yard setback exception should be noted:

- The newly proposed third-story is only 14' deep, greatly minimizing any potential loss of light and air to adjoining neighbors. The neighbors to the west at 1148 Arlington have indicated their support (letter attached).
- Building Codes require "one hour fire rated construction" within five feet of a property line. The applicant has reviewed his concept with the City's Building Official, and has modified is preliminary submittal to show compliance. (e. g. use of hardboard siding, stucco siding and fixed fire rated windows at the addition).

ATTACHMENTS

Site Context Map

Correspondence

Illustration of Minor Subdivision MS 556-83

Draft Resolution and Conditions of Approval

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SITE CONTEXT MAP

USE PERMIT/VARIANCE FOR
HETZLER RESIDENCE – 3RD STORY ADDITION

1146 ARLINGTON WAY

PLANNING APPLICATION # 11PLN-0035



**Hetzler Residence
Roofing Remodel Project**

1146 Arlington Way
Martinez, CA 94553



To: City of Martinez
Building Department
525 Henrietta Street
Martinez, CA 94553

Dear Sir/Madam:

I am a resident in the vicinity of 1146 Arlington Way, Martinez, CA, and I have reviewed the project description and discussed the plans with the property owners/residents.

I am satisfied the project will have no adverse impact on my property.

We fully support this project!

1148 Arlington Way, Martinez, CA 94553

Street Address

Lisa & Jonathan Spars

Printed Name

[Signature]

Signature

8/11/2011

Date

RESOLUTION NO. 11-09 [DRAFT]

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MARTINEZ,
APPROVING USE PERMIT TO ALLOW AN EXCEPTION TO THE NORMALLY
PERMITTED MAXIMUM BUILDING HEIGHT OF 25' AND TWO STORIES AND
MAXIMUM PERMITTED FLOOR AREA OF 1,208 SQUARE FEET AND A VARIANCE
TO ALLOW THE ADDITION TO MATCH THE STRUCTURE'S EXISTING 2½ FOOT
AND 3½ FOOT SIDE YARD SETBACKS, WHICH ARE LESS THAN REQUIRED IN THE
R-6.0 ZONING DISTRICT AT 1146 ARLINGTON WAY (APN: 372-114-021)
Permit # 11PLN-0035**

WHEREAS, the City of Martinez has received a request for Use Permit allow a maximum building height of approximately 28' where a maximum of 25' and two stories is normally permitted and a total floor area of 1,857 square feet, where a maximum of 1,208 square feet is normally permitted (which is the normally permitted maximum floor area ratio of .30 of size of the subject 4,026 square foot hillside lot); and a request for a Variance to allow the addition to match the structure's existing 2½ foot and 3½ foot side yard setbacks, where a minimum of 10 feet is normally required; and

WHEREAS, the proposal is consistent with the policies of the General Plan and with the land use designation which is Central Martinez Specific Area Plan; Group 1 Residential, Single-family dwellings, Minimum 6,000 sq. ft. site area; and

WHEREAS, the zoning applicable to the property is R-6.0 (Family Residential: 6,000 sq. ft. minimum site area per dwelling unit; 6,000 sq. ft minimum lot size) which allows for single family structures on legally non-conforming parcels; and

WHEREAS, the design of the proposed new residence is generally consistent with development standards of the R-6.0 designation and the requirements for the granting of exceptions to those regulations where applicable; and

WHEREAS, the project is categorically exempt from the requirements of CEQA, under Sections 15301 and 15305 of the Guidelines; and

WHEREAS, the Planning Commission of the City of Martinez held a public hearing on June 27, 2006, and listened to testimony from the public.

NOW, THEREFORE, the Planning Commission of the City of Martinez resolves as follows:

1. The above recitals are found to be true and constitute part of the findings upon which this resolution is based.
2. In order to approve the Use Permit application, the Planning Commission must make the following findings, which it hereby does:

- (a) **The proposed location of the conditional use is in accord with the objectives of this title, and the purposes of the district in which the site is located.** The request to allow an addition where the residence will exceed the normally permitted maximum height and floor is appropriate, given how the proposed project, with the conditions of approval implemented, will be visually compatible with the height and scale of the existing single family homes in the immediate vicinity.
 - (b) **The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.** The location of the residence is in a neighborhood with other single family residential units of a size not dissimilar to the proposed. The proposal will fit in, rather than conflict, with the uses in the immediate area. Therefore the proposed new residence will be consistent with surrounding uses and would not be detrimental to public health, safety or welfare, or be materially injurious to properties in the vicinity.
 - (c) **The proposed conditional use will comply with each of the applicable provisions of this title.** With the exceptions sought as a part of the proposal, the proposal complies with all other applicable provisions of this title including development standards for the R-6.0 zoning.
3. In order to approve the Variance application, the Commission must make the following findings, which it hereby does:
- (a) **Strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty;** The enforcement of the typically required 10' side yard setbacks would result in practical difficulty, in that such front and side yards would limit the logical placement of a building addition due to the nonconforming width, nonconforming lot area, and steepness of the lot.
 - (b) **There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified on the same zoning district;** The 4,026 square foot lot size, steepness of the slope and limitations created by the existing residence combine to make conformance with the requirements of the R 6.0 Zoning District difficult, and not generally found in other properties in the R 6.0 Zoning District.
 - (c) **Strict or literal interpretation and enforcement of the specified regulations would deprive the applicant of privileges enjoyed by the owners of other properties;** A strict enforcement of the minimum side yards would effectively limit the buildable area of the addition, depriving the applicant of the privilege of a 40' wide building envelope that can be enjoyed

by owners of more typically shaped properties with a conforming 60' width.

- (d) **Granting of the variance will not constitute a grant of special privileges inconsistent with the limitations of other properties;** Granting this variance is not a special privilege, in that the encroachment into the normally required side yards is needed to compensate for the limitations created by the small size of the parcel and the steepness of the hill on which it sits. Furthermore, the granting of this variance would not preclude other property owners in a comparable situation and with similar limitations to apply for a variance that can meet all applicable standards and findings for the granting of such a variance.

- (e) **The granting of the variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to property or improvements in the vicinity;** The proposed new residence will not appear incongruous in the context of adjacent properties or generally of Arlington Way, characterized by sloping lots with development clustered close to the street frontage, resulting generally in similarly minimal side yards, therefore the granting of the variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to property or improvements in the vicinity.

NOW, BE IT FURTHER RESOLVED that the Planning Commission approves the requested Use Permit and Variance (11PLN-0035), subject to conditions of approval, incorporated herein by this reference.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a regular meeting of said Commission held on the 23rd day of August, 2011

AYES:

NOES:

ABSENT:

BY: _____
Rachel Ford
Planning Commission Chair

Corey M. Simonl
Contract Planner

CONDITIONS OF APPROVAL [DRAFT]

AS APPROVED BY: PLANNING COMMISSION

Project Name: Hetzler Residence; Use Permit and Variance for 3rd story addition

Site Location: 1146 Arlington Way

I. Description of Permits

These conditions apply to and constitute the approval of:

- A. A Use Permit to allow a maximum building height of approximately 28' where a maximum of 25' and two stories is normally permitted, and a total floor area of 1,857 square feet, where a maximum of 1,208 square feet is normally permitted (which is the normally permitted maximum floor area ratio of .30 of size of the subject 4,026 square foot hillside lot).
- B. A Variance to allow the addition to match the structure's existing 2½ foot and 3½ foot side yard setbacks, where a minimum of 10 feet is normally required.

II. Exhibits

The following exhibits are incorporated as conditions of approval, except where specifically modified by these conditions:

EXHIBIT	DATE RECEIVED	PREPARED BY	PAGES
Site & Floor Plan, Elevations and photos of existing and proposed conditions	Aug 15, 2011	David Claydon, Designer	9

III. Conditions

- A. The applicant shall secure the applicable building permit(s) prior to construction. Construction shall comply with all applicable requirements of the Chief Building Official, City Engineer and Contra Costa Fire District, which include but is not limited to:
 - 1. Drains from new roof shall be reconnected to the existing drains.
 - 2. All new/replaced construction shall be "one hour fire rated" (with fixed and rated windows, if windows are proposed) within five feet of a property line.
- B. Building and roof colors for the addition shall approximately match those existing, and as shown on the photos simulations provided by the applicant, or comparable as approved by staff.
- C. All construction activities shall conform to the City's Noise Control Ordinance, Chapter 8.34 of the Municipal Code: Construction activities are limited to the

hours of 7:00 a.m. to 7:00 p.m., Monday through Friday; and 9:00 a.m. to 5 p.m. Saturday and Sunday. The permittee shall post a sign on the site notifying all workers of these restrictions.

- D. A City Encroachment Permit is required for any work within the City Right-of-Way.

IV. Validity of Permit and Approval

- A. Zoning Administrator approval is subject to appeal to the Planning Commission within ten calendar days of the approval.
- B. All permits and approvals shall expire in one year from the date on which they became effective (unless extended under C) unless either: (i) a building permit is obtained and construction begun within the one year time period or (ii) if the approvals include the approval of a subdivision, the Tentative Map and all concurrently approved permits or approvals shall expire in two years from the date on which they became effective (unless extended under C) and providing that the Final Map or Parcel Map has been filed with the City Engineer within the two year time period. The *effective date* of the subject permit and approval is the day on which any contingency (created by requiring an action of the City Council on a rezone, general plan amendment and/or the filing of an appeal) is removed. Unless an appeal is filed, the *effective date* of the permit and approval is August 23, 2011.
- C. The time extension of the expiration date, August 23, 2012, of a permit or approval can be considered if an application with required fee is filed at least 45 days before the original expiration date. (Otherwise a new application is required.) A public hearing will be required for all extension applications, except those involving only Design Review. Extensions are not automatically approved: Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require or permit denial.
- D. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Martinez, or other public agency having jurisdiction.
- E. The permittee, John & Marcia Hetzler/David Claydon, Designer, shall defend, indemnify and hold harmless the City and 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 Zoning Administrator's decision to approve 11PLN-0035. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such action whether incurred by John & Marcia Hetzler/David Claydon, Designer, the City, and/or the parties initiating or bringing such action.

- F. John & Marcia Hetzler/David Claydon, Designer shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the Negative Declaration), if made necessary by said legal action and if John & Marcia Hetzler/David Claydon, Designer 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.
- G. In the event that a claim, action or proceeding described in Subsection E, above, is brought, the City shall promptly notify John & Marcia Hetzler/David Claydon, Designer of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that John & Marcia Hetzler/David Claydon, Designer is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with John & Marcia Hetzler/David Claydon, Designer in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where John & Marcia Hetzler/David Claydon, Designer has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.
- H. John & Marcia Hetzler/David Claydon, Designer shall indemnify the City for all the City's costs, fees, and damages, which the City incurs in enforcing the above indemnification provisions.
- I. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirement, 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. You are 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 you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.