

To: Mayor and Ross Town Council
From: Elise Semonian, Senior Planner
Re: Alpert, Basement Exception Application, 30 Baywood Avenue, File 1854
Date: January 31, 2012

I. Project Summary

Owner: Jeff Alpert and Lisa Wing-Alpert
Location: 30 Baywood Avenue
A.P. Number: 72-072-14
Zoning: R-1:B-20 (Single Family Residence, 20,000 sq. ft. min. lot size)
General Plan: Low Density (1-3 units per acre)
Flood Zone: Zone X (outside 1-percent annual chance floodplain)

II. Project Description:

Request for Basement Exception to legalize approximately 975 square feet of finished basement area, improved by a prior owner. No exterior changes are proposed. The applicants also request the Town Council to waive covered parking for the site (1 covered space required, carport approved in 2005 and not built) to allow a 2004 building permit to be closed. The applicants request the Council to waive construction completion penalties associated with the 2004 project.

Lot area	10,862 square feet
Existing Floor Area Ratio	20.4%
Proposed Floor Area Ratio	29.4% (15% permitted)
Existing Lot Coverage	19.3%
Proposed Lot Coverage	19.3% (15% permitted)
Existing/Proposed Impervious Areas	no change

The existing residence is nonconforming in setbacks.

III. Discussion

The applicants are requesting a Basement Exception to retain approximately 975 square feet of finished basement area, improved by a prior owner. No exterior changes are proposed. The applicants are also requesting the Council to approve a variance from the covered parking requirement for the site so they do not have to reconstruct a carport demolished by a prior owner.

The residence has approximately 2,200 square feet of legally finished living area on the upper and lower levels. According to tax assessor records, most of the existing lower level/basement area dates back to the 1950's. However, the room at the base of the stairwell (see plan attached) was finished without permits prior to their purchase of the site. There is room on site for 5 vehicles to park fully off Baywood Avenue.

The prior owner remodeled the residence with a building permit issued on February 12, 2004. The construction completion deadline was February 12, 2005. The construction was finished by November 30, 2004. However, the Town did not final the project since the owner demolished the carport, the required covered parking, during construction. The prior owner was required to rebuild the carport and received approval of variances to reconstruct it on January 13, 2005. The carport was not built. The carport approval expired on January 13, 2006.

Construction of the carport, or a variance from the covered parking requirement, is necessary for the applicants to final the 2004 project and stop construction completion penalties. The applicants request a basement exception and variance from the covered parking requirement to legalize the space and final the permit for the construction at the site.

Under the new Zoning Code Chapter 18.46, Exceptions for Basements and Attics, the Town Council may approve exceptions to development regulations such as setback requirements and floor area limits to approve finished basement areas if the Council can make the required findings. As detailed in the findings below, staff believes that there are sufficient facts to make all of the required findings.

The site has adequate off street parking that is not readily visible from the street or neighbors, meeting the intent of the covered parking requirement. The carport approved in 2005 required three variances: floor area, lot coverage and side setback. Council approval of a single variance to waive the covered parking requirement results in fewer nonconforming conditions at the site, with no negative impact to neighborhood parking.

The prior owner submitted a \$2,500 construction completion penalty deposit in 2004. The deposit is incrementally forfeited to the Town if the property owner does not complete construction by the time limit (RMC Sec. 15.50.080(c)). The deposit was fully forfeited by March 27, 2005, when \$2,600 in penalties had accrued.¹ The Town Council should direct the building department staff to transfer this deposit to the general fund. Staff recommends that the Town Council consider the project completion date to be March 27, 2005 and authorize the building official to final the 2004 permit, and waive \$100 in construction completion penalties (\$2,600 penalty - \$2,500 deposit = \$100). The applicants would be required to obtain a new building permit to legalize the basement room.

IV. Recommendation, Findings, & Conditions

Staff recommends that the Council approve the covered parking variance, determine that the construction completion date for the 2004 permit is March 27, 2005, waive \$100 in construction completion penalties, and approve the basement application with the following findings and conditions:

¹ By February 9, 2012, \$2,463,000 in construction completion penalties apply to the project. Pursuant to Section 105.5 of the California Building Code, the building permit expired on May 29, 2005. Construction completion penalties up to the permit expiration date are \$24,400.

Findings

1. This project is categorically exempt from the requirement for the preparation of environmental documents under the California Environmental Quality Act (CEQA) under CEQA Guideline Section 15301, existing facilities.
2. Approve the covered parking variance since five parking spaces are available on site; the site topography is constrained so that any parking structure requires setback, lot coverage and floor area variances; and the uncovered parking is not readily visible to the public or neighbors, which meets the intent of the covered parking requirement. The applicant did not create the hardship by, for example, converting garage or carport space to living space.
3. Area to be improved is an existing area created prior to September 12, 2011, in an existing residence built prior to September 12, 2011. *The basement area existing since at least 2003.*
4. Basement area to be improved has a ceiling height 5.5 feet or greater. *The basement area to be improved has a ceiling height of over 6.5'.*
5. For attic improvements only: the improvements proposed do not change the exterior appearance of the structure by adding dormers, raising the roof ridge, addition of windows, or any other exterior modifications. *Not an attic.*
6. For basements:
 - a. If the structure is in a Special Flood Hazard Area (SFHA) identified on the town Flood Insurance Rate Map and/or in an area that is known for flooding, the finished floor level of the improvements must be above the base flood elevation. *Not applicable (N/A) – not in SFHA*
 - b. Modifications proposed to the building exterior cannot materially increase the visible mass of the building and modifications, such as new windows, must be compatible with the design of the existing improvements and shall not create privacy issues. The Council may limit the size of light wells to the minimum size necessary to satisfy California Building Code requirements for light, ventilation and emergency egress. *N/A – no exterior changes proposed*
 - c. Any modifications to site drainage must be designed by a licensed engineer and shall result in no net increase to the rate or volume of peak runoff from the site compared to pre-project conditions. Any new mechanical pumps or equipment shall not create noise that is audible off site. *Not applicable (N/A) – no changes to drainage are proposed.*

7. The fire chief must confirm that there is adequate water supply for firefighting purposes for the site, or that the project includes measures to provide adequate water supply for firefighting purposes. *Fire Chief confirmed adequate water supply on September 21, 2011.*
8. The site has adequate parking. For purposes of this section, adequate parking shall mean that the site complies with at least the minimum number of parking spaces required for the zoning district (covered or not covered). If the site does not comply with the covered parking requirement, the Town Council may require covered parking to be provided. The Town Council may consider the size of the residence, number of bedrooms, and the size and use of the proposed attic and/or basement area and may require additional parking up to the following:

<i>Total site floor area (excluding covered parking)</i>	<i>Required off street parking</i>
1,300 square feet to 3,300 square feet	3 spaces
Over 3,300 square feet	4 spaces

9. The project complies with the most recent California Residential Code adopted by the Town. *Conditions of approval require an after-the-fact building permit. The project is required to comply with the most recent code.*
10. Excavation, grading or cutting shall not exceed 35 cubic yards. If the project involves excavation, grading or cutting for a basement space, new floor area shall not exceed 20% of the existing floor area. *No grading or cutting is proposed.*

Conditions of Approval for 30 Baywood (to be reproduced on the first page of the plans submitted for building permit):

Conditions

1. The approval legalizes the existing improved basement area, as shown on the plans reviewed by the Town Council on February 9, 2012.
2. The Town approves a covered parking variance for the site and authorizes the building official to consider the 2004 building permits final and complete as of March 27, 2005. The Town waives \$100 of the construction completion penalty and directs building department staff to transfer the remaining \$2,500 construction completion penalty deposit, paid by the prior owner, to the general fund account.
3. The floor area exempted under this approval shall not be traded off for non-basement floor area, or an addition with more apparent mass, in the future.

4. The applicants shall obtain a building permit for the area improved and the plans shall be subject to current code requirements. If the use of the area is limited under the building code, the plans shall clearly note the use limits on the plans.
5. The Building and Public Works Director may require any existing downspouts to dissipate on site, if they currently do not, to comply with the Town's stormwater ordinance (Chapter 15.54).
6. As provided in Title 15, Section 15.50.060, no building permit shall be issued within nine months of final inspection or expiration of an antecedent building permit.
7. **NO CHANGES FROM THE APPROVED PLANS SHALL BE PERMITTED WITHOUT PRIOR TOWN APPROVAL. RED-LINED PLANS SHOWING ANY PROPOSED CHANGES SHALL BE SUBMITTED TO THE TOWN PLANNER PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS.**
8. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.