

RESOLUTION NO. 2024-xx

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF EUREKA CONDITIONALLY APPROVING A VARIANCE TO ALLOW AN UNPERMITTED ACCESSORY DWELLING UNIT TO REMAIN WITHIN A REQUIRED SETBACK AREA AT 1125 BAY STREET (APN: 002-151-010)

WHEREAS, Ashley Gouthier, the Applicant and property owner, is requesting approval of a Variance to allow deviation from minimum rear and side property line setback standards for an Accessory Dwelling Unit (ADU) that was constructed without permits at 1125 Bay Street (APN: 002-151-010); and

WHEREAS, the City's Code Enforcement inspected the property on February 13, 2024 (Case No. CE-24-126), and found that the residence was an unpermitted ADU. Google Earth Imagery suggests that the ADU structure was constructed in the early 2000s. The Applicant purchased the property in 2013, and has been renting the ADU to tenants since 2014; and

WHEREAS, the property is located in the One-Family Residential (RS-6,000) Zoning District, with a Low Density Residential (LDR) Land Use Designation; and

WHEREAS, under California Government Code §66314(d)(7), a setback of no more than four feet from the side and rear lot lines is required for ADUs, and the unpermitted ADU is currently located two feet, nine inches from the side and rear lot lines; therefore, a Variance is needed; and

WHEREAS, per Eureka Municipal Code (EMC) §10-5.2501, the City is empowered to grant variances in order to prevent or lessen such practical difficulties and unnecessary physical hardships as would result from a strict or literal interpretation and enforcement of certain regulations; and

WHEREAS, a Variance is a discretionary action subject to environmental review in accordance with the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission of the City of Eureka did hold a duly noticed public hearing at City Hall in the City of Eureka, and via Zoom, on November 13th 2024 at 5:30 PM, to consider the request; and

WHEREAS, the Planning Commission has reviewed the subject application in accordance with Eureka Municipal Code Title 10, Chapter 5, Article 25 (Variances), and after due consideration of all testimony, evidence, and reports offered at the public hearing, does hereby find and determine the following facts:

1. That the strict or literal interpretation and enforcement of the four-foot setback regulation for ADUs would require either the demolition or relocation of the unit, causing undue hardship by displacing the current tenant.
2. This property presents an exceptional circumstance: the ADU has been in use, and denying the Variance would not only result in tenant displacement but also conflict with the City's pro-housing goals.

3. A strict or literal interpretation and enforcement of the specified regulation would deprive the Applicant of privileges enjoyed by other property owners in the same zoning district, as several properties on Bay Street have existing structures within setback areas that were established prior to the adoption of the City's zoning regulations.
4. That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district, as the unpermitted ADU aligns with the development pattern of the area and ensures consistent treatment of properties in the district.
5. Granting the Variance to allow the unpermitted ADU to remain within the four-foot setbacks will not be detrimental to public health, safety, or welfare, nor will it be materially injurious to nearby properties, as the Variance will prompt the Applicant to correct Building Code violations, ultimately enhancing the safety of the ADU for tenants.
6. The Variance is consistent with the certified Local Coastal Program and the purposes of the RS-6,000 Zoning District, and granting the variance will not reduce or in any way adversely affect the protection of coastal resources.
7. The project is exempt from CEQA pursuant to CEQA Guidelines §15303(e), Class 3 (New Construction or Conversion of Small Structures), which exempts the construction and location of limited numbers of new small structures including an ADU in a residential zone. The project is also exempt pursuant to §15305, Class 5 (Minor Alterations in Land Use Limitations), which consist of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including minor setback Variances not resulting in the creation of any new parcel. The property is flat and the proposed Variance is to allow for a reduced minimum setback, not for any change in land use or density. Therefore, the project is exempt under the Class 3 and 5 exemptions.

WHEREAS, in the opinion of the Planning Commission of the City of Eureka, the proposed application should be approved subject to the following conditions. Compliance with conditions will be to the satisfaction of Development Services – Planning unless noted otherwise.

- a. Building and Fire Department Approvals. The Applicant shall obtain a Building Permit to legalize the ADU to the satisfaction of Development Services – Building and Humboldt Bay Fire.
- b. Coastal Development Permit. Prior to final Building Permit approval, the Applicant shall apply for and obtain a Coastal Development Permit for the ADU.
- c. Variance Authorization. This Variance is for an ADU; if the Coastal Development Permit and/or Building Permit for the ADU are not approved, the Variance is no longer valid and the property owner must apply for a subsequent Building Permit to remove or relocate the structure to comply with current setback standards.
- d. Inadvertent Discovery Protocol. All ground disturbing activities are subject to the City's standard protocol for inadvertent archeological discovery (cultural or historical artifacts) as follows:
 - i. If archaeological resources are encountered during construction activities, all onsite work shall cease in the immediate area and within a 50-foot buffer of the

discovery location. A qualified archaeologist will be retained to evaluate and assess the significance of the discovery, and develop and implement an avoidance or mitigation plan, as appropriate. For discoveries known or likely to be associated with native American heritage (prehistoric sites and select historic period sites), the Tribal Historic Preservation Officers for the Bear River Band, Blue Lake Rancheria, and Wiyot Tribe are to be contacted immediately to evaluate the discovery and, in consultation with the project proponent, City of Eureka, and consulting archaeologist, develop a treatment plan in any instance where significant impacts cannot be avoided. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. Historic archaeological discoveries may include 19th century building foundations; structure remains; or concentrations of artifacts made of glass, ceramic, metal or other materials found in buried pits, old wells or privies.

- ii. If paleontological resources, such as fossilized bone, teeth, shell, tracks, trails, casts, molds, or impressions are discovered during ground-disturbing activities, work shall stop in that area and within 100 feet of the find until a qualified paleontologist can assess the nature and importance of the find and, if necessary, develop appropriate treatment measures in conformance with Society of Vertebrate Paleontology standards, and in consultation with the City of Eureka.
- iii. In the event of discovery or recognition of any human remains during construction activities, the landowner or person responsible for excavation would be required to comply with the State Health and Safety Code section 7050.5. Construction activities within 100 feet of the find shall cease until the Humboldt County Coroner has been contacted at 707-445-7242 to determine that no investigation of the cause of death is required. If the remains are determined to be, or potentially be, Native American, the landowner or person responsible for excavation would be required to comply with Public Resources Code (PRC) section 5097.98. In part, PRC section 5097.98 requires that the Native American Heritage Commission (NAHC) shall be contacted within 24 hours if it is determined that the remains are Native American. The NAHC would then identify the person or persons it believes to be the most likely descendant from the deceased Native American, who in turn would make recommendations to the landowner or the person responsible for the excavation work for the appropriate means of treating the human remains and any associated grave goods within 48 hours of being granted access to the site. Additional provisions of PRC section 5097.98 shall be complied with as may be required.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Eureka does hereby approve the application.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Eureka in the County of Humboldt, State of California, on the 13th day of November, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Meredith Maier, Chair, Planning Commission

Attest:

Cristin Kenyon, Executive Secretary