

**OC DEVELOPMENT SERVICES REPORT**

**DATE:** March 7, 2024

**TO:** Orange County Zoning Administrator

**FROM:** OC Development Services / Planning Division

**SUBJECT:** Planning Application PA21-0164 for a Site Development Permit, Use Permit, and Variance.

**PROPOSAL:** The applicant is requesting a Site Development Permit, Use Permit and Variance to the Zoning Administrator to legalize 357 square feet addition, 155 square feet second story loft, and 188 square feet single car garage of unpermitted construction. Site Development Permit is for an addition built within the Floodplain FP-2 District and for the installation of 6-foot-high fence in the front yard setback. Use Permit to modify the 2 covered parking spaces requirement to 1 covered and 1 uncovered space. Variance to reduce the side yard setback to 12 inches and front yard setback to the 0 feet.

**ZONING:** A1 (FP-2) “General Agricultural” with a “Floodplain” Overlay; Silverado-Modjeska Specific Plan

**GENERAL PLAN:** 1B “Suburban Residential”

**LOCATION:** The project is located at 31329 Halfway Road, Silverado, CA 92676, within the Third (3rd) Supervisorial District (APN: 105-192-10).

**APPLICANT:** John and Marie Kirchberg, Property Owner

**STAFF CONTACT:** Ilene Lundfelt, Associate Planner  
Phone: (714) 667-9697 E-mail: [Ilene.Lundfelt@ocpw.ocgov.com](mailto:Ilene.Lundfelt@ocpw.ocgov.com)

**RECOMMENDED ACTIONS:**

OC Development Services/Planning recommends the Zoning Administrator:

1. Receive the staff report and public testimony as appropriate; and

2. Find that the proposed project is exempt from CEQA per Section 15301 Class 1 Exemption (Existing Facilities) provides for addition to existing structures and uses on the same site as the approved principal use and Section 15303 Class 3 Exemption (New Construction or Conversion of Small Structures) provides for construction for accessory structures including patio cover and fence; and
3. Approve Planning Application PA21-0164 for a Site Development Permit, Use Permit, and Variance subject to the Findings and Conditions of Approval provided as attachments #1 and #2, respectively, to this report.

### **BACKGROUND AND EXISTING CONDITIONS:**

The subject property, lot 9 and 10 of Tract 691 (31329 Halfway Road), is located within the unincorporated community of Silverado in the County of Orange. The site is zoned A1 (FP-2) "General Agricultural" with a "Floodplain" Overlay District. The subject site is an irregular shaped shallow lot confined with Silverado Creek along the rear of the property. The lot is 3,360 square feet in size and has a width of 60 feet with an average depth of 54.5 feet. The property has an existing 573 square foot single story dwelling established in 1932.

### **PROPOSED PROJECT:**

The applicants are requesting a Site Development Permit, Use Permit, and Variance to legalize unpermitted construction that was completed prior to the current owners purchasing the home. It is likely that the additions to the property was completed roughly 30 years ago. The applicants are requesting to legalize 357 square feet of unpermitted living space of which approximate 230 square feet was built on a floodplain, 155 square feet second story loft, and 188 square feet single car garage. A Site Development Permit is required to legalize the portion of the addition that was built in the floodplain and to allow for a 6-foot fence in the front yard.

A Use Permit is required to reduce the parking requirement to one covered parking and one uncovered parking in the driveway, when two covered parking spaces is required.

A Variance is being requested to reduce the side yard setback from 5 feet to 12 inches and reduce the front yard setback to the property line.

All the proposed improvements have been completed since the purchase of the home and the property currently has an active code enforcement case.

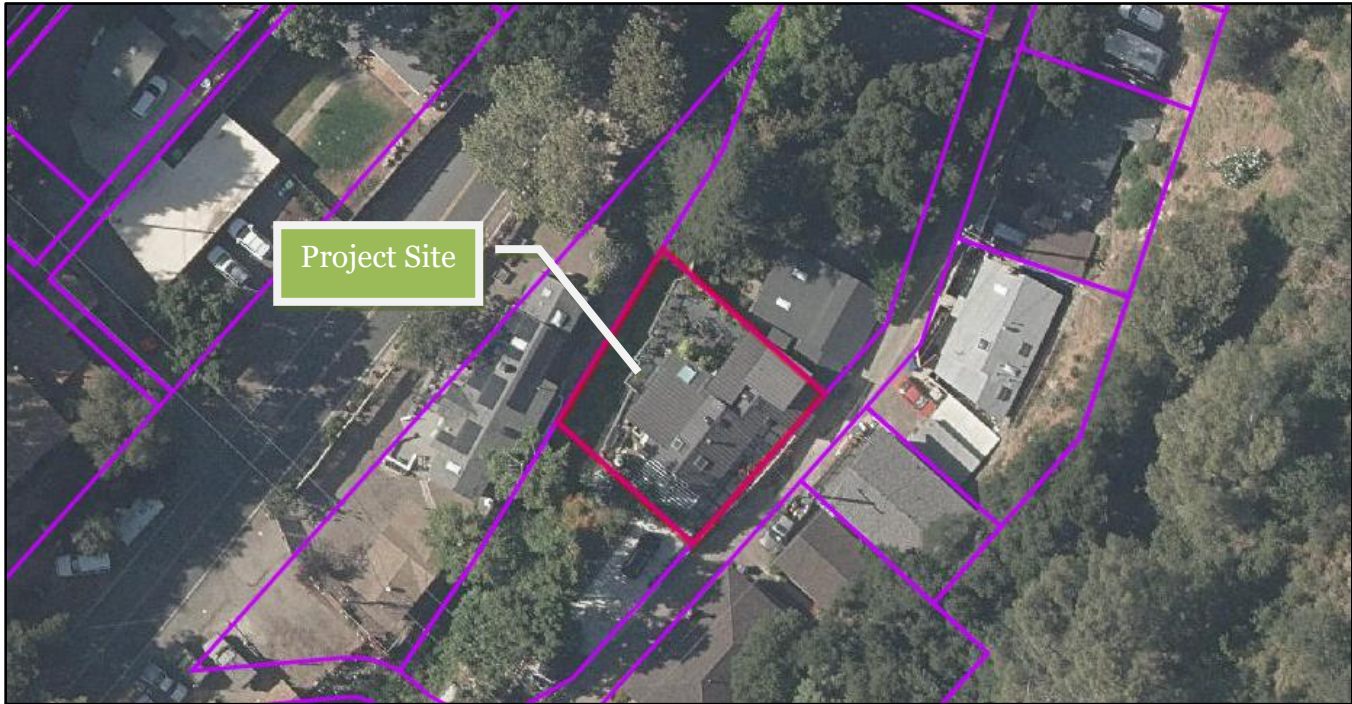
**SURROUNDING LAND USES:**

The project site is a residential use and is surrounded on four sides by residential uses. Zoning and existing land uses for the project site is as follows:

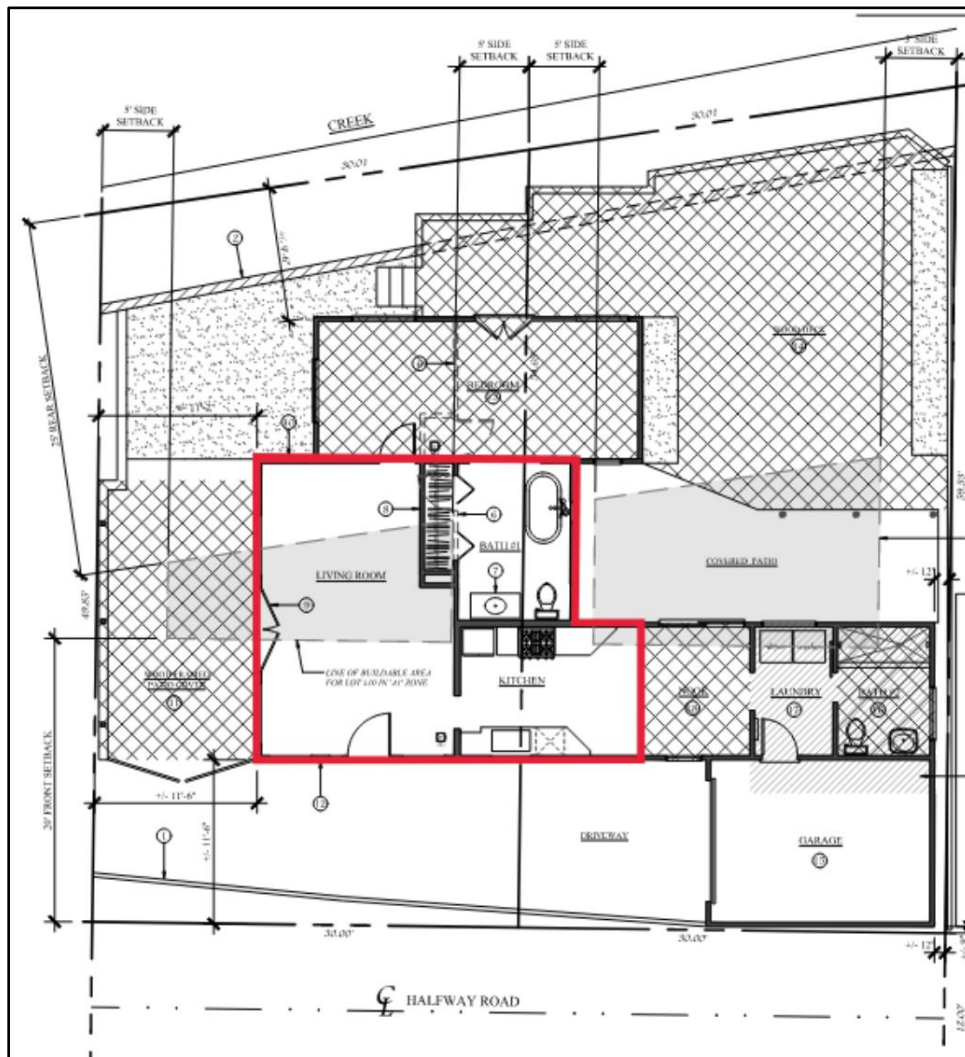
DIRECTION	ZONING DISTRICT	EXISTING LAND USE
Project Site	A1 (FP-2) "General Agricultural" District with a Floodplain Overlay	Single Family Dwelling
North	A1 (FP-2) "General Agricultural" District with a Floodplain Overlay	Single Family Dwelling
South	A1 "General Agricultural"	Single Family Dwelling
East	A1 "General Agricultural"	Single Family Dwelling
West	A1 (FP-2) "General Agricultural" District with a Floodplain Overlay	Single Family Dwelling

**PROJECT SITE**

An aerial photograph of the Project site and surrounding properties is provided below.



### SITE PLAN



### DISCUSSION/ANALYSIS:

Below is a table comparing the development standards for the A1 “General Agriculture” district with the Applicant’s proposal.

STANDARD	PERMITTED	PROPOSED
Building Site Area	2 dwelling units per acre (Silverado-Modjeska Specific Plan)	7,665 square feet (existing)

STANDARD	PERMITTED	PROPOSED
Structural Front Setback	8 Feet 2 inches Per 7-9-61.12	0 feet*
Structural Side Setback	5 Feet	12" right side* 11 feet 2-inch left side
Structural Rear Setback	8 Feet 2 inches Per 7-9-61.12	9 feet 6 inches
Maximum Building Height	35 Feet	17 feet
Maximum Fence and Wall Height	3.5 Feet front setback 6 Feet side setback	6 Feet (Front)*
Parking	2 covered spaces minimum	1 covered parking* 1 uncovered parking*

\*Indicates deviation from Site Development Standards

Site Development Permit

A Site Development Permit is requested as the portion of the property is within the FP-2 “Floodplain” Overlay District. Approximately 230 square feet of the unpermitted addition was built in the floodplain. Since the addition is already built and existing, staff is requiring Condition of Approval 8 for a Flood Plain Elevation Certificate to identify the base flood elevation and certify that the lowest floor of the addition is at least 1 foot above the Base Flood Elevation (BFE).

In addition, the owners are also requesting a Site Development Permit for an over-height fence in the front yard. As per Section 7-9-64 (f), Modifications permitted: Exceptions and modifications to the fence and wall height provisions may be permitted subject to the approval of Site Development Permit by the Director for fences/walls eight (8) feet or less, or approval of a Use Permit for fences/walls greater than eight (8) feet by the Zoning Administrator per section 7-9-125. In addition to the findings required by section 7-9-125, the following findings shall also be made prior to the approval of a fence or wall height Use Permit application:

- (1) The height and location of the fence or wall as proposed will not result in or create a traffic hazard.
- (2) The location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental, or incompatible with other permitted uses in the vicinity.

The proposal consists of a solid wood fence that is 6 feet in height along the front property line for privacy. The fencing does not significantly block or obstruct view lines. The location, size and design of the wall is consistent with similar improvements throughout the area and will not be objectionable, detrimental, or incompatible with other permitted uses in the vicinity. Staff recommends that the two required findings to modify the permitted wall height can be made.

#### Use Permit

A Use Permit is being requested for an off-street parking modification to allow for 1 covered parking space and 1 uncovered parking space, when 2 covered parking spaces are normally required for single family residences. The 2 parking spaces will be accommodated on-site: with one-car garage and one uncovered parking space in the driveway. The Orange County Zoning Code did not require any off-street parking for a single-family residence until 1949. The original home on the property was constructed in 1932 and did not include any covered or uncovered parking spaces. Given the project site's irregular shape of the lot and the property being in the floodplain the prior owner designed a one-car garage that would best accommodate the site. The applicants will be able to provide 2 off-site parking spaces on the property.

#### Variance

A Variance is being requested to reduce the side yard setback from the required 5 feet to 12 inches and the front yard setback from the required 8 feet 2 inches (shallow building site 7-9-61.12) to 0 feet to be able to legalize the unpermitted construction. The project site legal non-conforming established in 1924. The original home was established in 1932. Sometime between 1966 to the present, a previous owner constructed 357 square feet of unpermitted living space, 155 square feet second story loft, and 188 square feet single car garage.

Pursuant to Zoning Code Section 7-9-125.6 (d), to approve a Variance, two (2) specific findings need to be made. These findings are:

1. Special Circumstance: There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed in the vicinity and subject to the same zoning regulations.
2. No Special Privileges: Approval of the application will not constitute a grant of special privileges, which are inconsistent with the limitations place upon other properties in the vicinity and subject to the same zoning regulations when specified conditions are complied with.

#### Special Circumstance:

The property, due to its irregular shape and natural landscape, is constrained by setback requirement and a natural creek running along the rear of the property which would disallow a use of the property and is consistent with similar uses in the surrounding neighbor and is compatible with adjacent residences.

No Special Privileges:

Similar projects in the Silverado area have been proposed and approved. Below is a table of similar projects approved that are of a similar nature to the proposed project.

APPLICATION	LOCATION	PERMITTED	APPROVED SETBACK
PA120018	31325 Silverado Canyon Road	Variance to reduce the side yard setback from 5 feet to 3 feet; rear yard setback from 8.5 feet to the property line. Use Permit for an off-street parking reduction to zero off-street parking spaces.	Side yard: 3 feet Rear Yard: 0 feet
UP84-39Z VA 84-71Z	31342 Silverado Canyon Road	Use Permit and Variance to reduce the off-street parking requirement	
VA82-23Z	29462 Silverado Canyon Road	Variance to reduce the front setback from 20 feet to 6 feet	Front Yard: 6 feet
V-7765	30115 Silverado Canyon Road	Use permit for a detached single car garage in the front setback. Variance for the construction of a detached two car garage with a second story guest house within front and side yard setback.	Front Yard: 15 feet Side Yard: 0 feet

Staff finds that the two required findings for a variance can be made. Multiple variances for reduction of the required setbacks have been previously approved in this vicinity and this proposal is typical of those previous approvals. Staff believes approval of the requested reduction in setback would not constitute the granting of special privileges, as there are many previously approved variances within the vicinity for setback reductions, along with numerous non-conforming properties.

**REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A copy of the planning application and the proposed site plan were distributed for review and comment to appropriate County division. Staff has reviewed all comments received, and where appropriate, has addressed the comments through recommended Conditions of Approval, which are provided as Attachment 2. Public notices were mailed to all owners of record within 300 feet of the subject property and posted at the County Administration South building located at 601 N. Ross Street, Santa Ana, CA 92701; and the notice was published in a local publication at least ten days prior to this public hearing,



as required by established public hearing posting procedures. As of the writing of this staff report, no comments raising issues with the project have been received from OCFA or other County divisions.

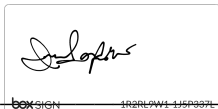
**CEQA COMPLIANCE:**

The proposed project is exempt from CEQA per Section 15301 Class 1 Exemption (Existing Facilities) provides for addition to existing structures and uses on the same site as the approved principal use and Section 15303 Class 3 Exemption (New Construction or Conversion of Small Structures) provides for construction for accessory structures including patio cover and fence.

**CONCLUSION:**

Staff has closely reviewed the applicant’s request for Site Development Permit to build in the floodplain and install a six foot fence in the front setback area; the Use Permit to modify the 2 covered parking spaces requirement to 1 covered and 1 uncovered space.; and the Variance to reduce the side yard setback to 12 inches and front yard setback to the 0 feet and has been found to be compatible with the adjacent residential uses. Staff recommends Zoning Administrator approval of Planning Application PA21-0164 for Site Development Permit, Use Permit and Variance subject to attached Findings and Conditions of Approval.

Submitted by:



Ilene Lundfelt, Associate Planner  
OC Development Services/Planning

Concurred by:



Scarlet Duggan, Land Use Manager  
OC Development Services/Planning

**ATTACHMENTS:**

1. Recommended Findings
2. Recommended Conditions of Approval
3. Applicant’s Letter of Justification
4. Environmental Documentation NOE PA21-0164
5. Site Photos
6. Site Plans



**APPEAL PROCEDURE:**

Any interested person may appeal the decision of the Zoning Administrator on this permit to the OC Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$500 filed at the County Service Center, 601 N. Ross Street, Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to OC Development Services/Planning Division.