



ITEM #1

OC DEVELOPMENT SERVICES REPORT

DATE: October 2, 2025

TO: Orange County Zoning Administrator

FROM: OC Development Services/Planning

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

PROPOSAL: The applicant is requesting approval of a Site Development Permit, Use Permit, and Variance from the Zoning Administrator to permit the unpermitted construction of living space within a designated floodplain, and overheight fence in the side and front setback, modification to the parking requirement, and reduced side and front setback for the unpermitted additions.

GENERAL PLAN DESIGNATION: 1B “Suburban Residential”

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

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

APPLICANT: John and Marie Kirchberg, Property Owner

STAFF CONTACT: Ilene Lundfelt, Associate Planner
Phone: (714) 667-9796 Email: Ilene.Lundfelt@ocpw.ocgov.com

RECOMMENDED ACTIONS

OC Development Services/Planning recommends the Zoning Administrator:

1. Receive staff report and public testimony as appropriate; and,
2. Find that the project is categorically exempt from California Environmental Quality Act (CEQA) Class 1 (Existing Facilities) and Class 3 (New Construction or Conversion of Small Structures) pursuant to CEQA Guidelines Section 15301 and 15303; and
3. Approve Planning Application PA21-0164 for a Site Development Permit, Use Permit, and Variance subject to the attached Findings (Attachment 1) and Conditions of Approval (Attachment 2).

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. Most of the improvement described in the proposal have been completed prior to the applicant's purchase of the home as shown in Site Photos (Attachment 3). The property is currently the subject of an active code enforcement case.

The project was reviewed by the Zoning Administrator on March 7, 2024. During the public hearing, a comment was received indicating the presence of an unpermitted 8-foot fence along the side property line. In response, the applicant submitted a request to permit the existing 8-foot fence along the side of the property and to increase the height of an unpermitted 6-foot fence along the front property line to 8 feet. A decision was not made at the March 7, 2024, public hearing and the item was continued to a later date to allow time to review and process updated plans from the applicant to address the existing unpermitted 8-foot fencing on the subject property.

PROPOSED PROJECT

The applicants are requesting approval of a Site Development Permit, Use Permit, and Variance to permit the unpermitted construction that was completed prior to their purchase of the home. It is estimated that the additions to the property were constructed approximately 30 years ago. The request includes the following unpermitted construction: (1) 357 square feet of unpermitted living space, of which approximately 230 square feet was constructed within a designated floodplain, (2) a 155-square-foot second-story loft, (3) a 188-square-foot single-car garage, and (4) overheight front and side yard fences as shown on the Applicant's Letter (Attachment 4) and the Site Plan (Attachment 5).

A Site Development Permit is required for the 230 square feet bedroom addition located within the floodplain and to permit an existing unpermitted 8-foot fence in the side yard where the maximum fence height shall be six (6) feet, and to increase the height of the existing unpermitted front property fence from six (6) feet to 8 feet where the maximum solid fence height shall be three and one-half (3.5) feet.

A Use Permit is requested to modify the parking requirement for two covered parking spaces to allow one covered parking space and one uncovered space within the driveway.

A Variance is requested to reduce the required side yard setback from 5 feet to 12 inches and to reduce the front yard and side yard setback to zero (0) feet to accommodate for the single-car garage with loft and the unpermitted bathroom addition.

SURROUNDING LAND USE

The project site is a residential use and is surrounded by existing residential uses. The zoning and existing land use for surrounding properties 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

DISCUSSION/ANALYSIS

Below is a table comparing the development standards for A1 "General Agriculture" District with the proposed project:

STANDARD	REQUIRED	PROPOSED
Building Site Area	2 dwelling units per acre or 21,780 square feet (Per Silverado-Modjeska Specific Plan)	7,665 square feet (existing)
Structural Front Setback	8 Feet 2 inches (15% of average depth per Zoning Code Sec. 7-9-61.12 – Building Line on shallow building site)	0 feet*
Structural Side Setback	5 Feet	12 inches right side* 11 feet 2-inch left side
Structural Rear Setback	8 Feet 2 inches (15% of average depth per 7-9-61.12 – Building Line on shallow building site)	9 feet 6 inches
Maximum Building Height	35 Feet	17 feet

STANDARD	REQUIRED	PROPOSED
Maximum Fence and Wall Height	3.5 Feet front setback 6 Feet side setback	8 Feet (Front and Side) *
Parking	2 covered spaces minimum	1 covered parking* 1 uncovered parking*

*Indicates deviation from Site Development Standards

Site Development Permit

Per Zoning Code Section 7-9-42.6, a Site Development Permit is requested as the rear 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 Floodplain Elevation Certificate to identify the base flood elevation and certify that the lowest floor of the addition is at least one (1) foot above the Base Flood Elevation (BFE).

In addition, the owners are also requesting a Site Development Permit for an overheight fence in the front and side yards. 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 a 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.

The proposal consists of permitting the unpermitted solid eight (8) foot wood fence, located along the side property line; and to extend the unpermitted six (6) foot fence located along the front property line to eight (8) foot to provide additional privacy. The fence request has been reviewed by Planning and Traffic and does not significantly block or obstruct view lines. The location, size, and design of the fence are consistent with similar improvements in the surrounding area and are not anticipated to be objectionable, detrimental, or incompatible with other permitted uses in the vicinity. During the previous public hearing, questions were raised regarding the location of the unpermitted front yard fence. As a result, Condition of Approval 11 requires a site plan to be stamped by a licensed surveyor to be submitted at the time of building permit issuance for all structures located on the property.

Use Permit

Pursuant to Section 7-9-70.9, a Use Permit may be requested to modify off-street parking requirements. The applicants are requesting such a modification to allow one covered parking space and one uncovered parking space, in lieu of the two covered spaces typically required for single-family residences. The two required spaces will be accommodated on-site through a one-car garage and one uncovered space in the driveway. Because the request is for an alternative design to satisfy the off-street parking requirement, rather than a reduction in the number of required spaces, the findings for a reduction under Zoning Code Section 7-9-70.9 do not apply.

The Orange County Zoning Code did not require off-street parking for single-family residences until 1949. The original home on the property, constructed in 1932, did not include any covered or uncovered parking spaces. Due to the irregular shape of the lot and the property’s location within the floodplain, a prior

owner constructed a one-car garage as the most feasible design for the site. The applicants are therefore able to provide the required two parking spaces on the property through a combination of one covered and one uncovered space.

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 (per Section 7-9-61.12 – Building Line on shallow building site) to 0 feet to be able to legalize the unpermitted construction. The project site is legal non-conforming, was established in 1924 and 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 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

APPLICATION	LOCATION	PERMITTED	APPROVED SETBACK
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 – Building and Safety, Traffic, Civil Engineering, and Geotechnical 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, posted at the project site, published in a local newspaper, and posted at the posting kiosk the County Administration building located in Santa Ana, CA 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 project is Categorically Exempt (Class 1) from the provisions of CEQA pursuant to CEQA Guidelines Section 15301, because it provides for addition to existing structures and uses on the same site as the approved principal use and Categorically Exempt (Class 3) from the provisions of CEQA pursuant to CEQA Guidelines Section 15303 because it provides for construction for accessory structures including patio cover and fence.

CONCLUSION

Staff has reviewed the applicant's request for a Site Development Permit, Use Permit and Variance and found that the proposed project to be compatible with adjacent residential uses, including similar

previous approvals. Staff supports approval of the project subject to the attached Findings (Attachment 1) and Conditions of Approval (Attachment 2).

Submitted by:

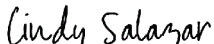
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Ilene Lundfelt, Associate Planner
OC Development Services/Planning

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Cindy Salazar, Division Manager
OC Development Services/Planning

ATTACHMENTS

1. Recommended Findings
2. Recommended Conditions of Approval
3. Site Photos
4. Applicant's Letter
5. Site Plan

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 filed online at myoceservices.ocgov.com or in person at the County Service Center, located at 601 N. Ross St., 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.