



# STAFF REPORT *for* SPECIAL PERMISSION TO EXPAND A NON-CONFORMING BUILDING

## STAFF REPORT SUMMARY & CONTENTS

**STAFF RECOMMENDATION:** DENIAL of the Dryden Request for Special Permission for a non-conforming deck and pergola.

**PROJECT SUMMARY:** The Applicant is seeking approval for the construction of a non-conforming deck and pergola built on the south side of an existing single family residence. The deck and pergola were constructed without the benefit of the required City permit(s) and are not observing the required setback from East Kincaid Street.

**ADDRESS:** 425 S. 10<sup>th</sup> Street

**PARCEL #:** P52768    **¼ SEC:** SW    **SEC:** 20    **TWP:** 34N    **RGE:** 04E

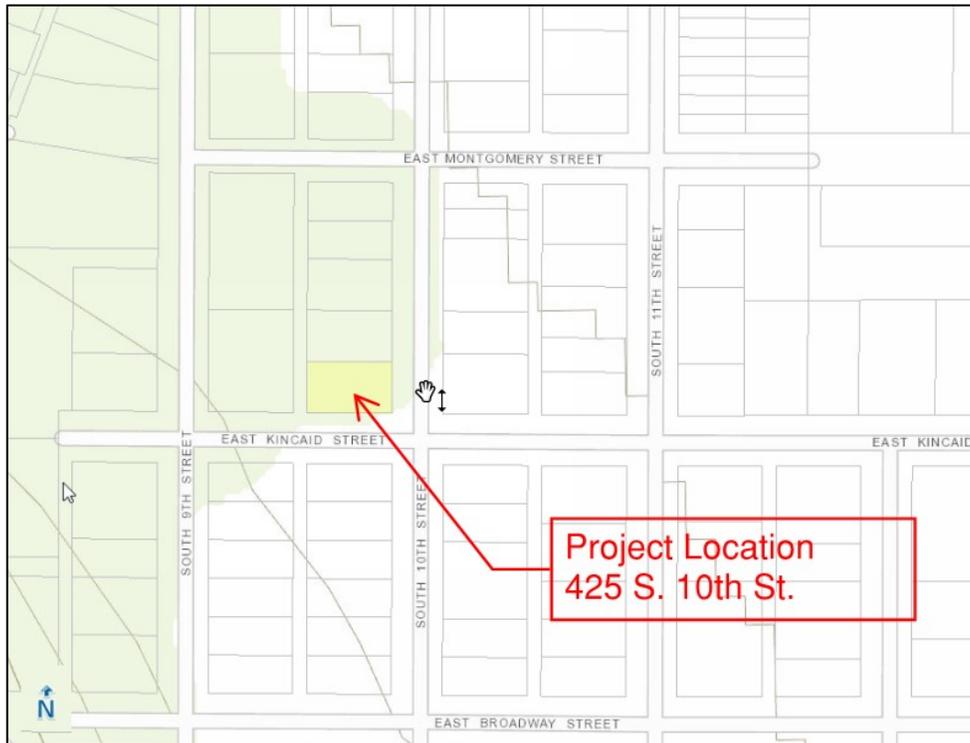
**PROPERTY OWNER:**

Joel & Andrea Dryden  
425 S. 10th Street Mount Vernon,  
WA 98274  
Telephone: 360-391-3297

**APPLICANT:**

Same as Property Owner

**VICINITY MAP:**



**REPORT CONTENTS:**

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## A. PROJECT DESCRIPTION & LOCATION

### PROJECT DESCRIPTION:

The Applicant is seeking approval for the construction of a non-conforming deck and pergola built on the south side of an existing non-conforming single family residence. The deck and pergola were constructed without the benefit of the required City permit(s) and are not observing the required setback from East Kincaid Street.

The existing home is setback approximately 11 feet from its south property line abutting East Kincaid Street. The non-conforming deck extends from the south face of the existing home over the south property line approximately one foot. This means the deck encroaches into the City right-of-way by approximately one foot.

### PROJECT LOCATION:

The proposal property has an address of 425 S. 10th St. The parcel number is P52768, and it is located within a portion of the southwest 1/4 of Section 20, Township 34, Range 4, W.M.

The maps and photo that follow identify the location and elevation of the project site/building.



Aerial photo dated May 2017. The approximate site boundaries are outlined in red.



Photo of the existing encroaching deck and pergola looking north from East Kincaid Street.



Photo from the Skagit County Assessor looking west from south 10<sup>th</sup> Street.

## B. EXHIBIT LIST:

1. Master Land Use Application
2. Project Description from the Applicant
3. Project Plans and Survey from the Applicant
4. City's Notices and Correspondence:
  - 4a. Routing Memo dated November 30, 2018
  - 4b. Technically Compete Letter dated January 28, 2019
  - 4c. Notice of Application that was issued and mailed on April 25, 2019 and published on April 29, 2019,
  - 4d. Comments from Development Services Engineering dated December 10, 2018
  - 4e. Comments from the Fire Marshall dated December 29, 2018
  - 4f. Notice of Public Hearing mailed and published on June 14, 2019
  - 4g. Ordinance 3775 that amended portions of MVMC Chapter 17.102
5. Public Comments
  - 5a. Letter from Michael Marques dated May 10, 2019 in support of the proposal
  - 5b. Mark and Jeanne Johnson not dated in support of the proposal

## C. EXISTING CONDITIONS/FINDINGS OF FACT

<b>OWNER OF RECORD</b>	Joel & Andrea Dryden	<b>PROJECT APPLICANT</b>	Same as Owner of Record
<b>SITE ZONING</b>	Single Family Residential with a maximum density of 7.26 dwelling units per acre (R-1, 7.0).	<b>SITE COMPREHENSIVE PLAN DESIGNATION</b>	Single Family High Density (SF-HI)
<b>SITE ACREAGE</b>	.14 acres		
<b>EXISTING SITE USE &amp; IMPROVEMENTS</b>	Per the Skagit County Assessor: two story, 962 square foot structure with three bedrooms, 1.5 baths, and two covered patio/porches that was built in 1900. Additional improvements include a 384 square foot outbuilding with a 288 square foot loft that was built in 2018.		

**MVMC CHAPTERS  
APPLICABLE TO THE  
PROPOSED PROJECT:**

- Chapter 14.05 Administration of Development Regulations
- Chapter 17.03 Title and Purpose
- Chapter 17.06 Definitions
- Chapter 17.15 Single-Family Residential
- Chapter 17.72 Provisions Applicable to all Districts
- Chapter 17.78 Dimensional Requirements
- Chapter 17.102 Nonconforming Buildings or Uses

**MORE SPECIFIC MVMC  
ITEMS APPLICABLE TO THE  
PROPOSED PROJECT:**

1. The building setbacks the site is subject to are codified in 17.15.070, as follows. Staff notes that neither East Kincaid nor South 10<sup>th</sup> Street are classified as arterial streets.
  - A. Front yard: 25 feet on arterial streets and 20 feet on all other streets. Buildings on corner lots and through lots shall observe the minimum setback on both streets;
  - B. Side yard: five feet. The total of the two side yards shall be a minimum of 15 feet;
  - C. Rear yard: 20 feet. Where a rear yard abuts an alley, accessory buildings such as private garages and carports may be located no closer than eight feet to the rear property line.
2. The subject lot is defined as a corner lot per MVMC 17.06.120, L definitions, definition of Lot, Corner.
3. A front property line is defined as, “any portion of a property that is abutting a street or vehicular access easement or tract; except when an alley is utilized as a secondary access point the property line abutting the alley shall not be a front property line”, see MVMC 17.06.160, P Definitions, definition of Property Line, Front.
4. The deck is classified as a structure as per the definition of structures contained in MVMC 17.06.190, S Definitions, that defines structures as, “...a combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground. Not included are residential fences, retaining walls less than three feet in height, rockeries and similar improvements of a minor character”.
5. MVMC 17.78.080(B) states that, “The following may project into required yard setbacks subject to the provisions of the International Building Code... B. Uncovered porches and platforms which do not extend above the floor level of the first floor: six feet into the front yard...” If the Applicant choose to use this section of the code the existing deck could extend six feet into the front yard setback on Each Kincaid Street; which means that approximately six feet of the deck would need to be removed.

**PERMIT CHRONOLOGY:**

<b>DATE</b>	<b>SUMMARY</b>
9/2018	City informed about potential code violations on the site
9/19±/2018	Staff explains code that would allow partial encroachment into setback codified in MVMC 17.78.080
10/29/2018	Permit Application Submitted
1/23/2018	City Council approval of Ordinance 3775 allows subject permit to be processed
1/23/2019	Permit deemed Counter Complete
1/28/2019	Permit deemed Technically Complete
1/28/2019	Staff requests survey so that setbacks of the structure can be accurately ascertained
4/12/2019	Applicant submits the boundary survey staff requested on 1/28/2019
4/25/2019	Notice of Application (NOA) Issued
4/29/2019	NOA published
5/13/2019	NOA comment period ended
6/12/2019	Notice of Public Hearing (NPH) Issued
4/14/2019	NPH published

## D. APPROVAL CRITERIA & STAFF ANALYSIS

The approval criteria for Special Permission that staff needs to address is contained in MVMC 17.102.070. This section of the code contains the following four (4) criteria. The staff response to each of these criteria follows each listed item.

**A. The effect of such enlargement, expansion or reconstruction on the appearance and use of the area which might be affected.**

The subject deck was built without the benefit of permit(s); resulting in a deck that not only encroaches into the front yard setback, it also encroaches into the right-of-way approximately 1 foot. This means that instead of having the required 20-foot front yard setback along Kincaid Street there is a 0-foot setback spanning the length of the deck. A 0-foot setback effects the appearance and use of the subject site and surrounding areas.

Mount Vernon Municipal Code (MVMC) 17.03.020 contains the Purpose statement for the City's zoning code and states, "The provisions of land use adopted and established in this title are intended to promote the most appropriate and compatible uses of the land within the city; prevent undue concentration of population and avoid overcrowding of land; encourage coordinated development of unbuilt areas; conserve or restore natural beauty and other natural resources; preserve areas and buildings of architectural, cultural or historic significance; facilitate the orderly development and use of transportation, water, sewage and other public services; provide adequate light and air; lessen traffic congestion; and secure safety from fire." Many elements of this purpose statement are the reasons why a 0-foot setback on the subject site results in negative impacts on the appearance and use of the area. More specifically:

1. Compatible uses of the land within the city: the uniform range of setbacks required in the City's single-family residential zones is intended to result in consistent development patterns. The 0-foot setback is not consistent with surrounding development patterns.
2. Prevent undue concentration of population and avoid overcrowding of land: building setbacks in the single-family residential zone help to soften the scale and bulk of structures and assists in making sure the land is not overcrowded.
3. Facilitate the orderly development and use of transportation, water, sewage and other public services: maintenance vehicles, equipment, and personnel charged with the installation, monitoring and maintenance of transportation, water, sewer and other public services (such as power, fiber, cable) could be negatively impacted due to the elimination safe clearance zones that are sometimes needed to complete monitoring, maintenance, and new construction activities within existing rights-of-way.
4. Provide adequate light and air: the 0-foot setback reduces light and air to the structure on the subject site.
5. Secure safety from fire: the space between the street and buildings allows first responders (i.e. fire, police, EMTs) space to operate in an emergency situation. The 0-foot setback means an area that could have been available to first responders is eliminated.

**B. The effect of the granting of such permit on traffic patterns in the area.**

Traffic patterns generated by residents traveling to/from/through the area would not be effected. However, as discussed in subsection A (above), eliminating the setback could potentially impact the ability of emergency services and utility workers to operate effectively.

**C. The adequacy of parking facilities afforded or to be afforded.**

The proposal will not alter existing parking on the subject site.

**D. The effect on adjacent and nearby property or the economic effect of the proposed expansion, alteration or reconstruction on both the applicant and the owners of property in the vicinity.**

As discussed previously the encroachment into the setback has a number of negative effects—light and fresh air at street level; bulk and scale of structure on the lot; impacts to emergency services and utility maintenance workers.

## E. STAFF RECOMMENDATION

To approve the expansion of this nonconforming building the Hearing Examiner must find “that the proposed alteration, expansion or reconstruction will not have a material adverse effect upon the use and enjoyment of the properties within the area which conform to the existing zoning...” (MVMC 17.102.080).

Based on the analysis above, the staff conclusion is that:

- The existing non-conforming deck and pergola will have a material adverse effect upon the use and enjoyment of the properties within the area which conform to the existing zoning.

As such, staff recommends **DENIAL** for the non-conforming deck and pergola for, **File No. PLAN19-0063**

Worth noting is that before the subject permit was submitted staff suggested the Applicant remove enough of the deck such that a five foot setback from East Kincaid Street would be observed. This would mean that approximately six feet of the deck would need to be removed. This suggestion was made because MVMC 17.78.080 allows uncovered porches (a pergola would be considered an uncovered porch for these purposes) that don't extend above the first floor level to extend 6 feet into the front yard setback.

## STAFF SIGNATURE:



Rebecca S. Lowell, Principal Planner

June 17, 2019

Date

## F. NOTES TO THE APPLICANT AND PARTIES OF RECORD

1. This non-conforming use application requires the City's Hearing Examiner make a recommendation, at an open record public hearing that will be forwarded to the City Council, who will make a final decision at a closed record public hearing.
2. The written recommendation for this project will be issued by the Hearing Examiner within 10 days after the date the record closes unless this timeframe is extended per MVMC 14.05.110(H)(2).
3. The Hearing Examiner shall reconsider his/her recommendation if a written request is properly filed by the applicant or a party of record within 10 days of the date of the initial recommendation. A party wishing to file a request for reconsideration of the Hearing Examiner's recommendation shall follow the process outlined within MVMC 14.05.110(H)(4). A copy of this portion of the MVMC can be obtained by contacting the Development Services Department; or it can be downloaded on the City's web site at: <http://www.mountvernonwa.gov>.
4. The process that is the subject of this decision can not authorize construction within a City right-of-way.