



MILPITAS PLANNING COMMISSION STAFF REPORT

April 9, 2025

APPLICATION: **HILLSIDE RESIDENCE ADDITION – 860 Evans Road – Minor Site Development Permit No. MS24-0257 and Zoning Variance No. VA25-0001:** A Minor Site Development and Variance Permit to allow for an attached 1,082 square-foot covered deck to an existing single-family dwelling on a 0.8-acre site in the Single-Family Residential – Hillside Zoning District, located at 860 Evans Road. The Project also includes a Variance request to further encroach into the required 40-foot side setback of the Hillside Combining District.

RECOMMENDATION: **Staff recommends that the Planning Commission recommend denial to the City Council of the Variance request for Minor Site Development Permit No. MS24-0257 and Variance No. VA25-0001 to allow for a proposed covered deck to encroach into the required side yard setback.**

LOCATION:
Address/APN: 860 Evans Road (APN 029-06-016)
Area of City: Northeastern portion of the City of Milpitas in the hillside area

PEOPLE:
Project Applicant/Owner: Hien Nguyen
Project Planner: Randy Baez, Associate Planner

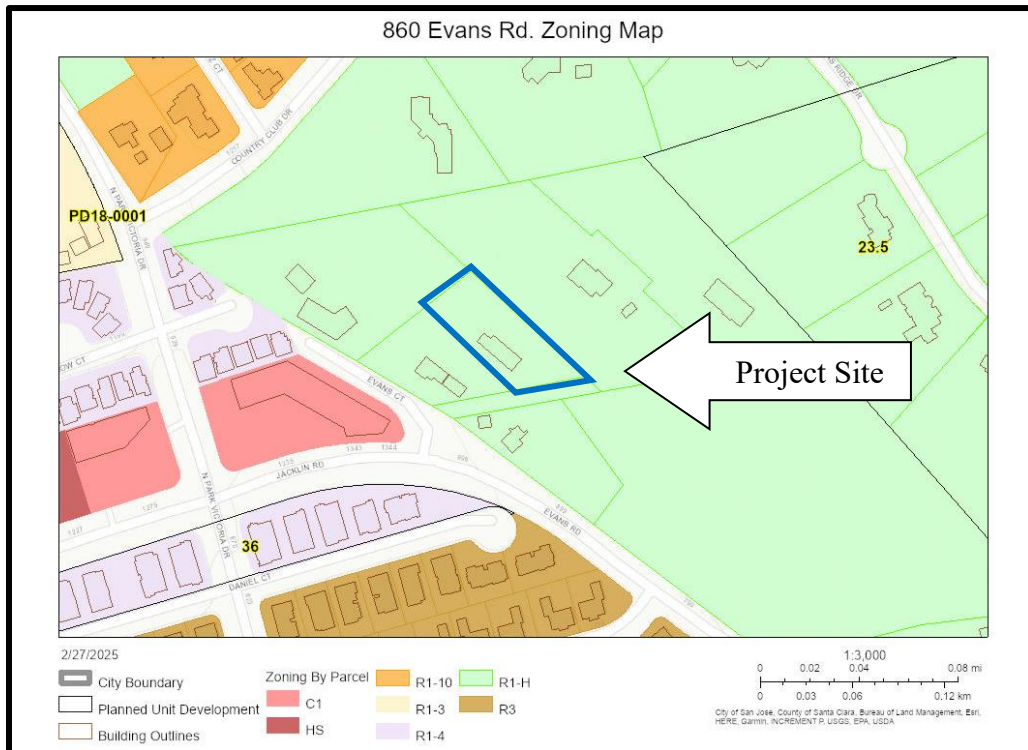
LAND USE:
General Plan Designation: Hillside Low-Density (HLD)
Zoning District: Single Family Residential-Hillside (R1-H)
Planned Unit Development: None
Site Area: 0.8 acres

ENVIRONMENTAL: Categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303(a) (New Construction or Conversion of Small Structures) and Section 15305 (Minor Alterations in Land Use Limitations).

Map 1 **3D Aerial Project Location**



Map 2 **Zoning Map**



BACKGROUND

History

The existing 1,796 square-foot single-family home does not have any related Planning entitlements as it was constructed before the Hillside Combining District was adopted in 1992. The City does not have the original Building permits on file, but the oldest Building permits show that the existing dwelling had been constructed since at least 1969.

On October 15, 2024, the applicant filed a Minor Site Development Permit for initial staff review on the proposed hillside development project. After the first round of review of the application, staff determined that a variance request would be necessary in order to approve the covered deck in the proposed location.

On February 13, 2025, the applicant applied for a Variance Permit to deviate from the Hillside development standards for setbacks as established in Section XI-10-45 of the Milpitas Municipal Code (MMC).

Process

Pursuant to MMC Section XI-10-57.06(B)(2), the City Council shall have approval authority, upon recommendation by the Planning Commission, of any Variance application relating to developments within the Hillside (-H) Overlay District. The City Council shall hold a public hearing, with notice as required in MMC Section XI-10-64, Development Review Process, review the application and the Commission's recommendation and render its decision.

While other Minor Site Development Permits can be processed at the Zoning Administrator or staff level pursuant to MMC Sections XI-10-57.03 and XI-10-64.02, concurrent applications are consolidated so that final action on the project is made by the highest review authority responsible for making a decision on the applications for the project pursuant to MMC Section XI-10-64.03. Furthermore, pursuant to MMC Section XI-10-45.09-2, no building permit may generally be issued for the construction or expansion of a single-family structure or accessory structure in the Hillside (-H) Overlay District until such structure has received a site and architectural review approval by the Planning Commission and the City Council.

PROJECT DESCRIPTION

Overview

The Project site is a developed 0.8-acre parcel located on Evans Road, near the intersection of North Park Victoria Drive and Jacklin Road. The property and neighboring properties are zoned R1-H Single Family Residential – Hillside. The Project site is at least 1,500 feet west of the hillside crest line as established in the Hillside development regulations (MMC Section XI-10-45). A vicinity map of the subject site location is shown on Map 1.

The Application

The applicant is requesting a Minor Site Development Permit and a Variance to construct a 1,082-square foot, attached, accessory building (covered deck) on a 0.8-acre lot. The following is a summary of the applicant's requests:

1. *Minor Site Development Permit:* To allow development of a 1,082 square-foot covered deck, attached to an existing 1,796 square-foot single-family residence. The proposed covered deck would be an expansion to a non-conforming building.
2. *Variance Permit:* To deviate from one of the Hillside development standards for side setbacks, which requires a minimum distance of 40 feet for primary structures from side property lines. Pursuant to MMC Section XI-10-54.08(A)(3)(a), accessory buildings structurally attached to the main building are treated as part of the main building in terms of development standards including setbacks.

Location and Context

The Project site is located in the northeastern portion of the City of Milpitas in the hillside area. Map 2 and Table 1 provide a summary of the Zoning and Land Uses surrounding the site:

Table 1:
Surrounding Zoning and Land Uses

	General Plan	Zoning	Existing Use
Subject Site	Hillside Very Low Density (HVL)	Single-Family Residential-Hillside (R1-H)	Single-family home
North	Hillside Very Low Density (HVL)	Single-Family Residential-Hillside (R1-H)	Single-family home
South	Hillside Very Low Density (HVL)	Single-Family Residential-Hillside (R1-H)	Single-family home
East	Hillside Very Low Density (HVL)	Single-Family Residential-Hillside (R1-H)	Vacant
West	Hillside Very Low Density (HVL)	Single-Family Residential-Hillside (R1-H)	Religious assembly, Baitul Baseer Mosque

PROJECT ANALYSIS

General Plan and Zoning

Milpitas General Plan 2040

The General Plan designation for the Project site is Hillside Very Low Density (HVL). The General Plan details the goals, objectives, and policies for the City's Hillside Area. It is characterized by gentle to steep slopes, grassy terrain with some scrub and trees, wildlife, geologically unstable areas, the Ed R. Levin County Regional Park, and a feeling of remoteness from the more urban portions of the City. The Hillside Low Density designation allows a maximum of one (1) housing unit per 10 gross acres. Table 2 outlines the proposed Project in relation to applicable General Plan policies.

Table 2:
General Plan Consistency

Policy	Conformance
<i>CD 7-1 Maintain the visual character of hillsides, recognizing both the importance of the exposure of hillside development from off-site public views and the importance of providing panoramic public views from and of hillsides.</i>	Inconsistent. In the proposed location, the Project may alter the existing visual character of the rolling Hillside in that the proposed setbacks are not consistent with the existing Zoning Standards that have been in place since 1992. Based on the site plan submitted by the applicant, the home will encroach into the required 40-foot side yard setback. However, the project will not significantly increase any existing impediment to the ability for public views of the hillsides.
<i>CD 7-2 Minimize the alteration of existing landforms and maintain the natural topographic characteristics of the hillside areas, allowing only minimal disruption.</i>	Consistent. The proposed Project will be situated at the flattest portion of the lot to limit the disruption to the existing natural topography by limiting cut and fill. A portion of the Project is partially proposed within the footprint of an existing deck and will not disrupt the existing topography of the hillside areas.
<i>CD 7-3 Protect the natural character of hillside areas by means of contour grading to blend graded slopes and terraces with the natural topography.</i>	Consistent. Minimal contour grading will be required for the construction of the new enlarged deck due to its location on the flattest areas of the lot. All contours for the home and access driveway will remain the same and will continue to blend with the natural site contours. The driveway follows the natural contours, does not require steep cuts, and follows the natural grade of the existing Hillside.
<i>CD 7-4 Avoid mass graded pads within hillside areas. Smaller steps or grade changes should be used over single, large, slope banks to the greatest extent feasible.</i>	Consistent. The existing graded pad for the home is situated on a flat portion of the parcel and will not be modified. Grading follows the site's natural contours in an effort to preserve the natural terrain.

<i>CD 7-5 Ensure that any change in hillside land use is accompanied by appropriate safety measures and that the environmental constraints are adequately addressed, especially with respect to runoff and erosion.</i>	Consistent. No changes are proposed to the existing land use and zoning designation, as the subject site will continue to be used as a single-family residence. Construction of the proposed covered deck should meet current building code requirements, and the Engineering Department will review all construction documents for compliance with applicable stormwater and erosion management requirements. In accordance with MMC Section XI-10-45.17-3, the amount of impervious surface on the site shall be less than 8,000 sq. ft.
<i>CD 7-6 Require hillside development to incorporate architecture, scale, massing, building form, building color, roof materials, and landscaping to reflect the natural hillside setting.</i>	Inconsistent. The attached accessory building (covered deck) is proposed with a side yard setback of five feet. The minimum required side yard setback within the Hillside Combining District is 40 feet. The proposed Project would encroach approximately 35 feet into the required setback, which would not reflect the natural hillside setting.

Milpitas Zoning Ordinance

The site is located in the R1-H Single-Family Residential-Hillside Combining District. The "H" Hillside Combining District promotes and encourages the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular constraints associated with the development of hillside areas, including, but not limited to, geologic problems, slope, safe access, and visibility.

Per MMC Section XI-10-45.17-3, the subject parcel is less than 3.0-acres, so the maximum size of the proposed residence does not exceed 6,000 square feet, and the amount of impervious surface coverage on the site will be less than 8,000 square feet. Table 3 demonstrates the Project's partial consistency with the applicable development standards of the R1-H zone. The Table notes that the Project is not entirely consistent with the requirements of the "H" Hillside Combining District in that the proposed structure further encroaches into the required 40-foot side setback. The applicant is requesting a Variance to address this issue, which is discussed in a later section of this report.

Table 3:
Summary of Development Standards

Standards	Hillside Requirements	Proposed	Complies
Front Setback	25 ft. minimum when avg. slope is <16%. Otherwise, 40 ft. minimum	40 ft. 6 in. from the property line	Yes

Standards	Hillside Requirements	Proposed	Complies
Side Yard Setback	40 ft. minimum	5 ft. 1 in. on the west and 10 ft. and 11 in. on the east.	No. Proposed project requires approval of a Variance
Rear	40 ft. minimum	127 ft and 2 inches	Yes
Size of Main Residence	6,000 sq. ft. maximum (lots < 3 acres)	1,796 sq. ft.	Yes
Impervious Surfaces	8,000 sq. ft. maximum (lots < 3 acres)	<8,000 sq. ft.	Yes
Building Height (Maximum)	17 ft. and one story west of crestline	One story or 13 feet and 11 inches	Yes
Parking	Two spaces required	Four spaces (two inside garage & two outside)	Yes
Crestline Zone of Protection	The crestline zone of protection is defined as the area westerly of the perceived crestline and between the perceived crestline and an elevation one hundred (100) feet below.	The proposed accessory building is located significantly more than 100 feet below the crestline, and so no part of the covered patio would visually protrude into the crestline zone of protection area. The height of the proposed structure is less than the existing dwelling.	Yes

In addition to the development standards outlined above, the proposed Project must also comply with the Site and Architectural Guidelines for new hillside development outlined in MMC Section XI-10-45.09-7. The Planning Commission and City Council must consider the Site and Architectural Guidelines as part of their review of proposed projects in the "H" Hillside Combining District. As demonstrated in Table 4 below, staff has determined that the proposed Project is inconsistent with the Hillside Site and Architectural Guidelines.

Table 4
Hillside Zoning Ordinance Compliance

Site and Architectural Guidelines <i>Section 45.09-7</i>	Consistency Finding
<i>(a) Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed primary or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.</i>	Inconsistent. The proposed attached accessory building (covered deck) is located on a developed 0.8-acre lot with proposed side setbacks ranging from 5 feet to 10 feet, 11 inches along the southern property line. The nearest existing residence is located less than 100 feet to the southwest, and a home on the adjacent lot to the northeast is located approximately 200 feet away. The placement of the proposed covered deck and close proximity to the side property lines may affect the views and privacy on adjacent lots.
<i>(b) Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.</i>	Consistent. The Project site is currently developed with a single-family dwelling, with a few shrubs on the higher sloped northern portions of the lot. Two trees will be removed as part of this request, but they would be subject to the City's tree removal permit process. The proposed covered deck will be located on a relatively flat portion of the lot that will not require additional grading and follows the existing contours of the site. Therefore, the natural landscape will remain preserved.
<i>(c) Minimize Perception of Excessive Bulk. The design of the proposed main and /or accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.</i>	Inconsistent. The proposed attached accessory building (covered deck) is situated on the southwest portion of the site, attached to the existing single-family dwelling. The dwelling has an existing non-conforming 11-foot side setback as measured from the property line to an attached sunroom. The steep topography of the site and the reduced setback will increase the visual impact of the proposed structure and perception of excessive bulk. The proposed covered deck will not exceed the maximum building heights in the R-1-H Zoning District. No new landscaping is proposed at this time.
<i>(d) Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably</i>	Consistent. The proposed detached accessory building (covered deck) will not exceed the maximum building heights in the R-1-H Zoning District; however, the proposed setbacks do not

Site and Architectural Guidelines <i>Section 45.09-7</i>	Consistency Finding
<i>impair the ability of adjacent properties to utilize solar energy.</i>	meet the Hillside development standards. The existing dwelling currently has a side setback of 11 feet as measured from the property line to an attached sunroom. With the proposed covered deck, the structure would encroach even further into the required 40-foot side setback. The nearest residence to the south is less than 100 feet away, while the residence to the north is approximately 200 feet away. However, the proposed covered deck should not unreasonably impair the light and air of adjacent properties.
<i>(e) Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.</i>	Consistent. The amount of grading is only limited to the removal of dirt for the proposed deck posts. The proposed covered deck will be built on a flat portion of the lot, which would eliminate the need for significant grading. The existing driveway will not be modified. All grading shall comply with the grading ordinance criteria.

Site & Architectural Design

The Project site is developed with a 1,769 square-foot single-family residence and 690 square-foot attached two-car garage. The existing dwelling has a rear yard setback of 123 feet and 4 inches, an east side setback of 68 feet, a west side setback of 11 feet, and a front yard setback of 40 feet and 6 inches. The development standards of the “H” Hillside Combining District establish a minimum side setback of 40 feet. This proposal would further encroach into that required setback and would result in a side setback between 5 feet and 1 inch and 10 feet and 11 inches.

The proposed 1,082 square-foot attached, covered deck is designed with a 42-inch “dwarf wall” that will match the stucco of the existing residence. A flat roof for the covered deck is also proposed and will match the materials of the existing composition shingle roof. All exterior colors, materials and finishes are natural earth-tones creating harmony with the surroundings.

Grading and Landscaping

The proposed covered deck would be located on the flattest portion of the lot, thus minimizing the amount of grading required. The amount of grading is only limited to the removal of dirt for the proposed deck posts. The existing driveway will not be modified. All grading shall comply with the grading ordinance criteria and would require civil plans to be reviewed prior to any Building permit issuance. No additional landscaping is proposed as part of this Project.

Crestline Zone of Protection

The development standards of the "H" Hillside Combining District establish a "Crestline Zone of Protection" to preserve the natural quality of the crestline and the slopes immediately below, when viewed from the valley floor MMC Section XI-10-45.06-2 defines the crestline zone of protection as "the area westerly of the perceived crestline and between the perceived crestline and an elevation one hundred (100) feet below. In the area within three hundred (300) feet easterly of the crestline, structure heights shall be restricted so that no structure extends above the crestline sight line." The perceived crestline is defined in MMC Section XI-10-45.06-3 as "the crestline identified when viewed from the three (3) closest viewpoints of those nine (9) [viewpoints] shown on the zoning map and designated as "VP." All proposed new hillside development must demonstrate compliance with the crestline zone of protection, as outlined in MMC Section XI-10-45.06-5.

MMC Section XI-10-45.06-2 outlines an objective standard that restricts building heights for structures located within three hundred feet easterly of the crestline. Specifically, the standards state that: 1) structure heights shall be restricted so that no structure extends above the crestline [sight] line; and 2) no structure may visually intrude into the "crestline zone of protection" area. The proposed accessory building is located significantly more than 100 feet below the crestline, and so no part of the covered patio would visually protrude into the crestline zone of protection area.

Variance

Even for legal non-conforming buildings, the Zoning Ordinance states:

In the R1, R2 and R1-H Districts, a legal nonconforming building or structure shall not be added to or enlarged in any manner unless the addition or enlargement conforms to all development standards and regulations of the district in which it resides, including, but not limited to height, yard setbacks, maximum lot coverage, impervious surface coverage, and maximum size of residence regulations of said district. In addition, a legal nonconforming building or structure shall not be added to or enlarged unless existing front yard paving is brought into conformance.

(MMC XI-10-56.02(D)(1).) Accordingly, the proposed project must conform to all development standards and regulations, including specific yard setbacks.

A Variance is a type of permit approved by the City that sanctions deviations from the adopted Zoning Ordinance regulations related to physical development standards, such as lot size, building setback, and height limits. The purpose and intent of the variance process is to provide relief from the substantive provisions of the City's Zoning Ordinance when the strict application of these provisions would deprive the property for which the Variance is sought of privileges enjoyed by other properties in the vicinity and under the same zoning classification because of special circumstances applicable to the property (including, but not limited to size, shape, topography, location or surroundings).

As discussed in the previous section, the proposed Project requires approval of a variance by the City Council to allow for the development of an attached accessory building (covered patio) to encroach into the required side setback of the "H" Hillside Combining District.

Planning staff do not recommend approval of a variance because there is no evidence of special circumstances applicable to the property that would warrant this deviation from generally applicable zoning standards. Rather, such variance would extend to this property privileges that are not enjoyed by other properties in the vicinity.

Alternatives

In order to meet the setback requirements of the “H” Hillside Combining District, it is not feasible to have an attached accessory building structure along the southwest side of the existing single-family residence. However, Staff has provided alternatives for the applicant that may provide similar amenities, which are included below:

- *Install a deck without a roof.* The uncovered deck would be considered an accessory structure instead of an accessory building and would be subject to a 3-foot side setback requirement.
- *Install a detached patio cover, gazebo, pergola, or similar structure.* This detached structure would also be subject to a 3-foot side setback but would have to adhere to the MMC Sec. XI-10-54.08(B)(7) including a maximum height of 12 feet. This project would be feasible at the rear of the property.
- *Install an attached covered deck in a new location.* Although the Project site is developed with a non-conforming side setback along the southwest boundary, it may be feasible to develop an attached accessory building (covered deck) along the northeast side of the single-family residence. The dwelling currently has a side setback of at least 68 feet along that side.

FINDINGS FOR APPROVAL (OR DENIAL)

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action. Outlined below are separate findings for approval of a Minor Site Development Permit; and a Variance to allow the Project to deviate from minimum setback requirements imposed by the Hillside development standards.

Minor Site Development Permit Findings (Section XI-10-57.03(F))

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development:*

As described within the staff report, the architectural design and site planning of the proposed accessory building (covered deck) is not compatible with the neighboring homes within the Hillside Combining District due to proposed location. The required minimum side setback is 40 feet and as little as 5 feet is proposed.

2. *The Project is consistent with the Milpitas Zoning Ordinance:*

As described within the staff report, the proposed home is not consistent with all of the development standards in MMC Section 45.09-7(a) of the Single-Family Hillside Zoning

district, particularly with regards to side yard setbacks. In order to grant exceptions to the Zoning Ordinance, a Variance request would need to be approved.

3. The Project is consistent with the Milpitas General Plan:

The Project is consistent with Policy CD 7- 5 of the Milpitas General Plan, which establishes that land uses allowed in the Hillside Area shall be limited to Very Low Density Residential, parks, and open space. The proposed accessory building (covered deck) will not change the land use of the property and will continue to be used as a single-family dwelling.

The Project is not entirely consistent with the intent of the General Plan, specifically General Plan Policy section regarding Hillside Development and Preservation Policy CD 7-6 which requires “hillside development to incorporate architecture, scale, massing, building form, building color, roof materials, and landscaping to reflect the natural hillside setting.” The proposed Project would encroach approximately 35 feet into the required 40-foot side yard setback, which would not reflect the natural hillside setting nor is it compatible with similar single-family residences within the vicinity of the area.

Variance

To grant the exceptions to allow the proposed accessory building (covered deck) to extend into the required side yard and approve the request for a Variance, the following findings must be made pursuant to Milpitas Municipal Code Section XI-10-57.06(F)(1):

- 1. Due to special circumstances applicable to the subject property including size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity under identical zone classifications.*

The subject property is one of five properties within the immediate vicinity that are developed with single-family dwellings. The subject property was developed prior to the adoption of the City’s Hillside Combining District, resulting in non-conforming setbacks along the southwest property line. Other adjacent properties are also non-conforming in terms of side setbacks, although they have not requested to further encroach into those setbacks at this time. There are, however, no special circumstances of the property that require this accessory building to be located in this area and encroach into the side setback. Rather, the proposed accessory building could have been relocated elsewhere on the property in a manner that could meet all development standards of the “H” Hillside Combining District. There are also alternative avenues for substantially similar development on the property identified in the staff report. Far from depriving the subject property of privileges enjoyed by other properties in the vicinity under identical zone classifications, the proposed variance would grant the property a special privilege by allowing an expansion of a non-conforming building not otherwise available to similarly situated properties.

- 2. The granting of the Variance is necessary for the preservation of a substantial property right possessed by other property in the same vicinity and zone and otherwise denied the subject property.*

The granting of the Variance for the attached accessory building (covered deck) is not considered a substantial property right for the proposed location. The existing dwelling currently has a non-conforming side setback of 11 feet as measured from the property line to an attached sunroom. With the proposed covered deck, the structure would encroach even further into the required 40-foot side setback. The 5-foot side yard setback for the proposed covered deck would be substantially closer to the property line than any of the properties within the same vicinity of the Project site. Furthermore, an uncovered deck within the proposed location, a covered deck located elsewhere on the property, and other alternatives discussed in the staff report likely would not have required a Variance. The applicant has not demonstrated that the proposed location of the deck is the only feasible location within the property.

3. *The required conditions of approval assure that the adjustment authorized will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity subject to the same zoning regulations.*

The Variance would apply to the provision of not allowing structures and buildings within the required 40-foot side yard setback. The Planning Commission and City Council may grant exceptions to these requirements pursuant to the guidelines set forth in Subsection 45.09-7, outlined in Table 4 above. Conditions of approval may be added by the Planning Commission to ensure that the Variance will not constitute a grant of special privileges. In this case, however, the granting of a Variance would allow the expansion of a non-conforming structure, including further encroachment into a setback toward other residential structures, in contravention of MMC Section XI-10-56.02(D)(1). The proposed variance would grant a special privilege by allowing a greater encroachment into the side setback than other properties are allowed.

4. *The granting of the Variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

The proposed attached accessory building (covered deck) for a single-family residence is located on a 0.8-acre lot with non-conforming southwest side setbacks between 11 to 26 feet. The nearest existing residences is located less than 100 feet to the south, and an additional residence is located approximately 200 feet to the north, on adjacent lots. Further encroachment into this setback could therefore negatively impact adjacent properties, including the privacy, air, and light afforded to those properties. Additionally, if approved, the proposed variance would establish a precedent for other properties in the vicinity to further encroach into their side yard setbacks, which would have a greater negative cumulative impact on the neighborhood. However, the Project site is located at least 1,500 feet away from the Crestline so the structure should not obstruct views of the Hillside.

5. *The granting of a variance is consistent with the General Plan and the intent of this title.*

The Project is not entirely consistent with the intent of the General Plan, specifically General Plan Policy section regarding Hillside Development and Preservation Policy CD

7-6 which requires “hillside development to incorporate architecture, scale, massing, building form, building color, roof materials, and landscaping to reflect the natural hillside setting.” The proposed Project would encroach approximately 35 feet into the required 40-foot side yard setback, which would not reflect the natural hillside setting nor is it compatible with similar single-family residences within the vicinity of the area.

ENVIRONMENTAL REVIEW

The proposed Project is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15303(a) (New Construction or Conversion of Small Structures) and 15305 (Minor Alterations in Land Use Limitations).

PUBLIC COMMENT/OUTREACH

Staff provided public notice for the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on March 21, 2025. In addition, 44 notices were sent to owners and occupants within 500 feet of the project site. A public notice was also provided on the project site, on the City's Website, www.milpitas.gov, and posted at City Hall.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open the Public Hearing to receive comments;
2. Close the Public Hearing; and
3. Adopt Resolution 25-006, recommending the City Council deny Minor Site Development Permit No. MS24-0257 and Variance VA25-0001, which would allow the development of an accessory building attached to an existing single-family residence to encroach into the required 40-foot side yard setback, in conformance with the development standards of the R1-H Single-Family Residential-Hillside Zoning District, subject to the findings.

ATTACHMENTS

A: Resolution 25-006

B: Project Plans

C: Variance Request and Justification from Applicant

RESOLUTION NO. 25-006

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, RECOMMENDING DENIAL OF MINOR SITE DEVELOPMENT PERMIT NO. MS24-0257 AND ZONING VARIANCE NO. VA25-0001 TO ALLOW FOR AN ATTACHED 1,082 SQUARE-FOOT COVERED DECK TO AN EXISTING SINGLE-FAMILY DWELLING ON A 0.8-ACRE SITE IN THE SINGLE-FAMILY RESIDENTIAL – HILLSIDE ZONING DISTRICT, LOCATED AT 860 EVANS ROAD (APN: 029-06-016)

WHEREAS, pursuant to the California Environmental Quality Act (Public Resources Code, § 21000 et seq.), the State CEQA Guidelines (California Code of Regulations, title 14, § 15000 et seq.) (collectively, “CEQA”), the City of Milpitas is the lead agency for the proposed project described below; and

WHEREAS, on October 15, 2024, Hien Nguyen (the “Applicant”) applied to the City of Milpitas for Minor Site Development Permit No. MS24-0257.

WHEREAS, on February 13, 2025, the Applicant applied to the City of Milpitas for a Variance Permit (VA25-0001) to deviate from the setback requirement for a residence in the Single Family Residential-Hillside (R1-H) district required under the Municipal Code.

WHEREAS, Milpitas City Staff conducted a full analysis of the Project to ensure compliance with the City’s General Plan, Zoning Ordinance, Engineering Design Requirements and all other applicable laws, regulations and standards, as all further explained in detail in City staff report to the Planning Commission; and

WHEREAS, on April 9, 2025, the Planning Commission held a duly noticed public hearing on the subject application, at which all those in attendance were given the opportunity to speak on the Project; and

WHEREAS, the Planning Commission has considered all the written and oral testimony presented at the public hearing in making its decision; and

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

SECTION 1. Recitals

The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. Record

The location and custodian of the documents or other material which constitute the record of proceedings upon which this decision is based is within the Planning Department, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California 95035

SECTION 3. California Environmental Quality Act (CEQA)

This Project is categorically exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303(a) (New Construction or Conversion of Small Structures) and Section 15305 (Minor Alterations in Land Use Limitations). As proposed, the Project includes a Variance request to encroach into the required side yard setback. The proposed Project is not entirely consistent with the Milpitas General Plan and Zoning Ordinance, but there are no circumstances present that would require a subsequent Environmental Impact Report (EIR) or Negative Declaration.

SECTION 4: Minor Site Development Permit (Section XI-10-57.03(F))

The Planning Commission makes the following findings based on the evidence in the public record in opposition to Minor Site Development Permit No. MS24-0257:

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

As described within the staff report, the architectural design and site planning of the proposed accessory building (covered deck) is not compatible with the neighboring homes within the Hillside Combining District due to proposed location. The required minimum side setback is 40 feet and as little as 5 feet is proposed.

2. *The Project is consistent with the Milpitas Zoning Ordinance.*

As described within the staff report, the proposed home is not consistent with all of the development standards in MMC Section 45.09-7(a) of the Single-Family Hillside Zoning district, particularly with regards to side yard setbacks. In order to grant exceptions to the Zoning Ordinance, a Variance request would need to be approved.

3. *The proposed use must be consistent with the Milpitas General Plan*

The Project is not entirely consistent with the General Plan 2040 – City of Milpitas, as demonstrated within Table 1, below:

Table 1: General Plan Consistency

General Plan Goal / Policy	Consistency Finding
<i>Policy CD 7-5 Ensure that any change in hillside land use is accompanied by appropriate safety</i>	Consistent. The Policy establishes that land uses allowed in the Hillside Area shall be limited to Very Low Density Residential, parks, and open space.

General Plan Goal / Policy	Consistency Finding
<i>measures and that the environmental constraints are adequately addressed especially with respect to runoff and erosion.</i>	The proposed accessory building (covered deck) will not change the land use of the property and will continue to be used as a single-family dwelling.
<i>Policy LU-7-6 Require hillside development to incorporate architecture, scale, massing, building form, building color, roof materials, and landscaping to reflect the natural hillside setting.</i>	Inconsistent. The proposed Project would encroach approximately 35 feet into the required 40-foot side yard setback, which would not reflect the natural hillside setting nor is it compatible with similar single-family residences within the vicinity of the area.

SECTION 5: Variance (Section XI-10-57.06(F)(1))

To grant exceptions to allow the proposed accessory building (covered deck) to extend into the required side yard and approve the request for a Variance, the following findings must be made pursuant to Milpitas Municipal Code Section XI-10-57.06(F)(1):

1. *Due to special circumstances applicable to the subject property including size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity under identical zone classifications.*

The subject property is one of five properties within the immediate vicinity that are developed with single-family dwellings. The subject property was developed prior to the adoption of the City's Hillside Combining District, resulting in non-conforming setbacks along the southwest property line. Other adjacent properties are also non-conforming in terms of side setbacks, although they have not requested to further encroach into those setbacks at this time. There are, however, no special circumstances of the property that require this accessory building to be located in this area and encroach into the side setback. Rather, the proposed accessory building could have been relocated elsewhere on the property in a manner that could meet all development standards of the "H" Hillside Combining District. There are also alternative avenues for substantially similar development on the property identified in the staff report. Far from depriving the subject property of privileges enjoyed by other properties in the vicinity under identical zone classifications, the proposed variance would grant the property a special privilege by allowing an expansion of a non-conforming building not otherwise available to similarly situated properties.

2. *The granting of the Variance is necessary for the preservation of a substantial property right possessed by other property in the same vicinity and zone and otherwise denied the subject property.*

The granting of the Variance for the attached accessory building (covered deck) is not considered a substantial property right for the proposed location. The existing dwelling

currently has a non-conforming side setback of 11 feet as measured from the property line to an attached sunroom. With the proposed covered deck, the structure would encroach even further into the required 40-foot side setback. The 5-foot side yard setback for the proposed covered deck would be substantially closer to the property line than any of the properties within the same vicinity of the Project site. Furthermore, an uncovered deck within the proposed location, a covered deck located elsewhere on the property, and other alternatives discussed in the staff report likely would not have required a Variance. The applicant has not demonstrated that the proposed location of the deck is the only feasible location within the property.

3. *The required conditions of approval assure that the adjustment authorized will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity subject to the same zoning regulations.*

The Variance would apply to the provision of not allowing structures and buildings within the required 40-foot side yard setback. The Planning Commission and City Council may grant exceptions to these requirements pursuant to the guidelines set forth in Subsection 45.09-7, outlined in Table 4 above. Conditions of approval may be added by the Planning Commission to ensure that the Variance will not constitute a grant of special privileges. In this case, however, the granting of a Variance would allow the expansion of a non-conforming structure, including further encroachment into a setback toward other residential structures, in contravention of MMC Section XI-10-56.02(D)(1). The proposed variance would grant a special privilege by allowing a greater encroachment into the side setback than other properties are allowed.

4. *The granting of the Variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

The proposed attached accessory building (covered deck) for a single-family residence is located on a 0.8-acre lot with legal non-conforming southwest side setbacks between 11 to 26 feet. The nearest existing residences is located less than 100 feet to the south, and an additional residence is located approximately 200 feet to the north, on adjacent lots. Further encroachment into this setback could therefore negatively impact adjacent properties, including the privacy, air, and light afforded to those properties. Additionally, if approved, the proposed variance would establish a precedent for other properties in the vicinity to further encroach into their side yard setbacks, which would have a greater negative cumulative impact on the neighborhood. However, the Project site is located at least 1,500 feet away from the Crestline so the structure should not obstruct views of the Hillside.

5. *The granting of a variance is consistent with the General Plan and the intent of this title.*

The Project is not entirely consistent with the intent of the General Plan, specifically General Plan Policy section regarding Hillside Development and Preservation Policy CD 7-6 which requires “hillside development to incorporate architecture, scale, massing, building form, building color, roof materials, and landscaping to reflect the natural hillside setting.” The proposed Project would encroach approximately 35 feet into the required 40-

foot side yard setback, which would not reflect the natural hillside setting nor is it compatible with similar single-family residences within the vicinity of the area.

SECTION 6: Planning Commission Decision

The Planning Commission of the City of Milpitas hereby adopts Resolution No. 25-006, denying and recommending denial of Minor Site Development Permit No. MS24-0257 and Zoning Variance Permit No. VA25-0001.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on April 9, 2025.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on April 9, 2025 and carried by the following roll call vote:

COMMISSIONER		AYES	NOES	ABSENT	ABSTAIN
Chia Ling Kong					
Michael Caulkins					
Mercedes Albana					
Dipak Awasthi					
Alexander Galang					
Parveen Gupta					
Sonia Medina-Ashby					

Randy Baez

From: Hong Dao <hongkdao@gmail.com>
Sent: Tuesday, December 10, 2024 8:43 AM
To: Hien Nguyen
Cc: Tu Tran; Randy Baez
Subject: Re: Permit for 860 Evans Rd Milpitas

Follow Up Flag: Follow up
Flag Status: Completed

CAUTION: EXTERNAL SENDER

This email originated from outside the organization. Do NOT click links or open attachments unless you recognize the sender and know the content is safe. Report suspicious messages to the IT Helpdesk.

Hi Randy,

If given the opportunity, we would like to respectfully plead our case for a variance for our proposed covered deck.

1. Our land is mostly of steep slopes, which rendered our buildable pad to be much smaller than the actual acreage.
2. The buildable pad is unfavorably skewed to the property line on the down slope neighboring another unbuildable portion of the land below. (it's a wide stretch of unbuildable land, so our proposed deck will not interfere with the neighbor's privacy, nor in any way hinder their ability to expand.)
3. The setback law of 40 feet will further diminish our buildable pad by more than half
4. The side we proposed for the enclosed deck is the only side where we can enjoy the view, which is the best feature of the land. If it cannot be covered, we wouldn't be able to enjoy our property's best feature sheltered from the elements.
5. The recommendation of building the deck on the opposite side of the land will be met with its own constraints, not to mention the exorbitant costs involved
6. Short of trying to buy 40 feet of the land below to satisfy the setback rule, which in itself is another costly proposition, there's no other way we can manage to improve our property.

As a result, please grant us a variance for our proposed enclosed deck based on our particular placement of the buildable pad and the constraints put on our ability to improve on our structure's value.

Thank you for your consideration, and we're hoping for a more favorable outcome for our project.

Best regards,
Hong & Tu

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On Mon, Dec 9, 2024 at 4:24 PM Hien Nguyen <ssdesigneng@gmail.com> wrote:

Hi Randy

Please review the record and let us know if the owner is still able to build a covered deck as requested in the submitted plan.

Thank you,
-Hien