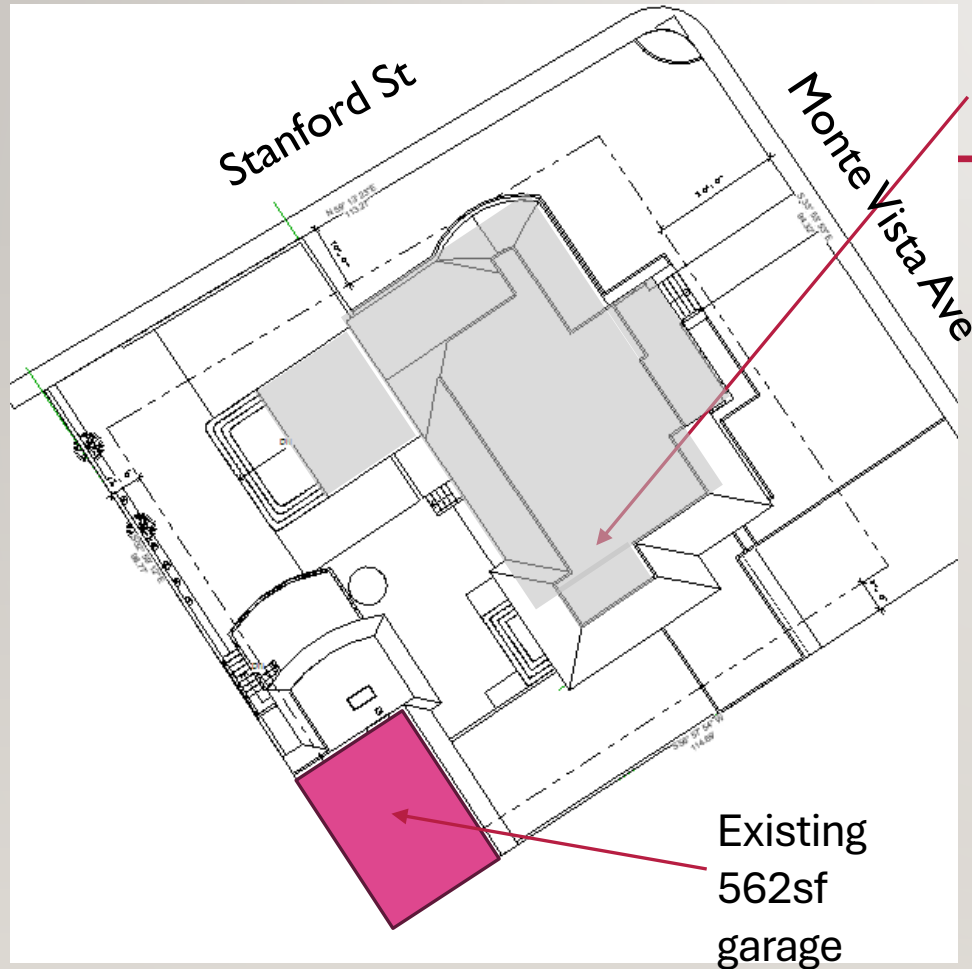


# APPEAL TO APPROVE ACCESSORY DWELLING UNIT APPLICATION

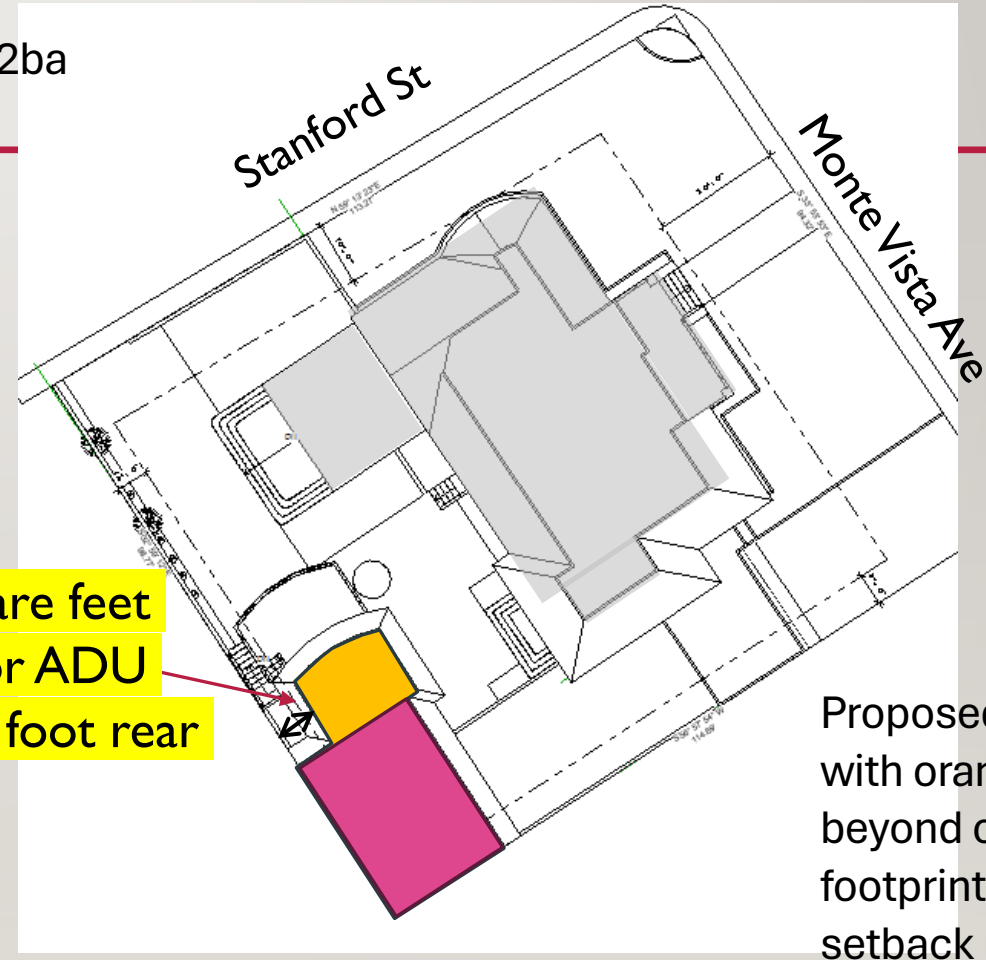
*PP2022-3712/PP2024-7815  
79 MONTE VISTA AVENUE*



# ADU PROPOSAL AND SETBACKS



188 square feet  
added for ADU  
with 6.5 foot rear  
setback



## Case to be made in support of applicant's ADU located at 79 Monte Vista Avenue

- Present evidence zoning administrator denial decision is without merit as stated by the law
- Present Senator's clarifying email which summarizes the correct ADU law's that are used to approve ADU's
- Respond to staff report concerning pre-existing ADUs within setbacks and height
- Provide supportive evidence located in California Government Code in HUD Handbook





# **Untruthful and Misleading Information Presented by Staff**

1. Staff analysis is not correct: we are converting a portion of our garage to an ADU.
2. The proposed building does not significantly exceed the dimensions of the existing garage structure
3. The proposed structure does not exceed the height limitation as defined in the law
4. Evidence of 2-story units within four feet of rear lot lines have been permitted within City limits

# CALIFORNIA GOVERNMENT CODE 66314 (D)(7)

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(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same **dimensions** as an existing structure that is converted to an accessory dwelling unit **or a portion of an accessory dwelling unit**...

Current District Senator, Dr. Aisha Wahab, **verified** with the **Senate Housing Committee** which responded: “This does not speak to height requirements, which.. is the barrier you are confronting.”



**HEIGHT REQUIREMENTS ARE ESTABLISHED IN GC 66321**

**UNDER THIS GC SECTION IT AUTHORIZES LOCALS TO IMPOSE A HEIGHT LIMIT OF 16 FEET ON A DETACHED ADU (HOWEVER IF THE PROPERTY IS LOCATED WITHIN ½ MILE OF A MAJOR TRANSIT STOP LOCALS CAN ONLY IMPOSE A HEIGHT LIMIT OF 18FT FOR A FLAT ROOF**  
(AN EXTRA TWO FEET IS ALLOWED TO ACCOMMODATE A PITCHED ROOF).  
LOCALS CAN ALLOW FOR A GREATER HEIGHT,

**BUT THE LAW PROHIBITS THEM FROM REQUIRING AN ADU TO BE SHORTER THAN THOSE LIMITS.**



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“THE SECTION OF THE GOV CODE YOU ARE REFERRING IN YOUR MESSAGE IS NOW GOV CODE 66314 (D)(7) DUE TO RESTRUCTURING OF ADU LAWS IN 2024. THAT SECTION SPECIFIES THAT:

**A LOCAL AGENCY’S ORDINANCE SHALL NOT REQUIRE A SETBACK FOR AN ADU THAT IS BUILT IN THE SAME LOCATION AND TO THE SAME DIMENSIONS AS AN EXISTING STRUCTURE. “**



**“IF I UNDERSTAND YOU CORRECTLY, YOU ARE TRYING TO BUILD AN  
ADU ON TOP OF A GARAGE AND THE HEIGHT OF THAT STRUCTURE  
WOULD EXCEED 16/18 FT.**

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IT'S POSSIBLE THAT THE CITY HAS AN ORDINANCE THAT WOULD  
PROHIBIT THAT DEVELOPMENT. LOCAL AGENCIES ARE ALLOWED TO  
**WAIVE REQUIREMENTS** IN THEIR ORDINANCE BUT THAT IS AT THEIR  
DISCRETION. ”

***THE CITY IS OUT OF COMPLIANCE AND HAS NO  
ORDINANCE DUE TO IT BEING OBSOLETE, THEREFORE  
MUST COMPLY WITH THE STATE LEGISLATION***





CALIFORNIA GOVERNMENT CODE 66321  
ADDRESSING HEIGHT  
“*HIGH-QUALITY TRANSIT CORRIDOR*”

**Height requirements are established** in this section that “authorizes locals to impose a height limit of 16 feet on a detached ADU **however,** if the property is located within ½ mile of a major transit stop, local (jurisdictions) can only impose a height of 18 feet for a flat roof”

*[Barbara.LedesmaHineHalt@sen.ca.gov](mailto:Barbara.LedesmaHineHalt@sen.ca.gov); Senator Dr. Aisha Wahab District Representative*



# CAN A LOCAL AGENCY REFUSE TO PERMIT AN ADU OR JADU BECAUSE OF NONCONFORMING ZONING CONDITIONS?

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**NO.** STATE ADU LAW LIMITS A LOCAL AGENCY'S ABILITY TO DENY A PERMIT APPLICATION DUE TO THE CORRECTION OF EXISTING, NONCONFORMING ZONING CONDITIONS. NONCONFORMING ZONING CONDITIONS ARE PHYSICAL IMPROVEMENTS ON A PROPERTY THAT DO NOT CONFORM TO CURRENT ZONING STANDARDS. (GOV. CODE, § 66313, SUBD. (H)). FOR 66323 UNITS, A LOCAL AGENCY CANNOT CONDITION APPROVAL ON THE CORRECTION OF NONCONFORMING ZONING CONDITIONS (GOV. CODE, § 66323, SUBD. (C)).

*Citation: CALIFORNIA DEPARTMENT OF  
HOUSING AND COMMUNITY DEVELOPMENT  
**ACCESSORY DWELLING UNIT HANDBOOK***

# ARE SETBACKS REQUIRED FOR ADUS/JADUS CREATED WITHIN AN EXISTING STRUCTURE OR REPLACING AN EXISTING STRUCTURE?

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NO SETBACK SHALL BE REQUIRED FOR AN ADU OR JADU CREATED WITHIN AN EXISTING LIVING AREA OR ACCESSORY STRUCTURE OR AN ADU CREATED IN A NEW STRUCTURE IN THE SAME LOCATION AND TO THE SAME DIMENSIONS AS AN EXISTING STRUCTURE (GOV. CODE, § 66314, SUBD. (D)(7)).

*Citation: CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
ACCESSORY DWELLING UNIT HANDBOOK*

“No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.” Senator’s office verified dimensions in this legislation does not address height.

***Citation: Government Code 66314 Article 2 (d)(7)***





Government Code Section  
66314:Addresses building  
ADU within nonconforming  
site



Government Code Section  
66321:Addresses Height  
allowance of 18 feet



Government Code Section  
66313:Addresses cannot  
deny to correct  
nonconforming as a  
condition for ADU Approval



Government Code Section  
66322:Addresses proposed  
project does not create a  
threat to public health or  
safety



By applying these sections it  
authorizes Council to  
overrule zoning  
administrator

# EXAMPLES OF PERMITTED, LEGAL-NONCONFORMING GARAGES WITH SECOND STORY ADU'S WITHIN 4 BLOCKS

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# CITY ACKNOWLEDGES IT IS OUT OF COMPLIANCE

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**“Because the City of Watsonville’s ADU Ordinance is out of compliance with the state law, the City utilizes government code sections 66314-66332 to regulate ADU development within the City.”**

If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision (SB 897), that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this subdivision”



## **Just Cause to Override Zoning Administrators Decision**

- Conflict of interest of planning commissioner was not disclosed
- Non-compliant with State ADU laws
- No alternative resolution was provided to commissioners
- Out of date information provided by Zoning Administrator
- Selective information provided in staff's presentation to commissioners
- Motion made was forced, with no second until the attorney interjected
- No proper instructions from staff to planning commissioners
- Denial was more restrictive than State law and original ADU conditional approval received, which was acted upon
- Applicant "acted upon" conditional approval for PP 2022-3712, but was issued a new application to deny the project without notifying applicant
- Wrong site map information was misleading that was provided to commissioners

## CONCLUSION IS TO: MOTION TO APPROVE

ALL NECESSARY PERMITS FOR THE APPLICATION OF PLANS FOR THE CONSTRUCTION OF AN ACCESSORY DWELLING UNIT AS SUBMITTED BY HERBERT GOMEZ FOR THE PURPOSE TO CONSTRUCT NEW HOUSING CITING SPECIFIC SUPPORTIVE STATE LEGISLATION:

*REFERENCES:* GOVERNMENT CODE SECTION 66321, 66314 (D)(7); 66313, 66322  
SENATE BILL 897; APPLICATION(S) PP2022-3712/PP2024-7815

