

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
RECOMMENDATION in the matter of Expansion of a Non-Conforming  
Building.**

**HEARING DATE:** December 5, 2016

**DECISION DATE:** December 14, 2016

**RE:** McCloughen Expansion of a Non-Conforming Building, PL16-106

**APPLICATION DATE:** September 16, 2016

**DECISION SUMMARY:** Recommendation to Approve with Conditions

**PROPERTY OWNER:** Alisoun McCloughen

**PROJECT PROPONENT:** Alisoun & Bryson McCloughen

**DESCRIPTION OF PROPOSAL:** Construction of a ±300 square foot

**Decision Summary:** Recommend Approval with Conditions

**I. FINDINGS OF FACT**

This matter came before the Mount Vernon hearing examiner for public hearing and recommendation to the City Council on the application by the property owner for a land use permit to expand a non-conforming use.

In addition to the Mount Vernon Municipal Code, Comprehensive Plan, and records maintained by the Skagit County Auditor and Skagit County Assessor, those documents identified in the attached Exhibit List were considered by the hearing examiner.

The hearing examiner makes the following Findings of Fact based upon consideration of the exhibits admitted herein, and evidence presented at the public hearing. To the extent that any finding of fact is more properly characterized as a conclusion of law, or vice versa, the hearing examiner adopts it as such:

**A. Project Overview.**

1. **Project Location and Ownership.** According to records maintained by the Skagit County Auditor, Alisoun McCloughen is the owner of a home identified by the Auditor as Parcel No. P52134, and commonly known as 301 South 6<sup>th</sup> Street, in Mount Vernon.
2. **Zoning.** Parcel No. P52134 is zoned Single-Family Residential, with a maximum density of 7.26 du/acre (R-1, 7.0). The comprehensive plan designation is Single-Family High Density (SF-HI). The minimum lot size for a lot within this zone is 4,500 square feet.
3. **Setbacks.** Pursuant to MVMC 17.15.070, the minimum setback requirements are 25 feet for the front yard on arterial streets, and 20 feet on all other streets. Buildings on corner lots and through lots shall observe the minimum front yard setback on both streets.
4. **Maximum land coverage.** Pursuant to MVMC 17.15.080, the maximum land coverage by buildings is 35 percent. The record is unclear as to the existing extent of coverage by the existing building.
5. **Existing Use.** Parcel No. P52134 is a 10,000± s.f. corner lot and is improved with an approximately 2,784± square foot, one-story single-family home with daylight basement and garage built in 1929. The existing home that has two (2) non-conforming front yard setbacks from the face of the structure. The front yard setback from Washington Street is four (4) feet ±; and the front yard setback from South 6th Street is three (3) feet ±.
6. **Arterial.** Neither Washington Street nor Sixth Street is an arterial street.
7. The hearing examiner notes that the application materials submitted to the hearing examiner contain details of construction, including structural details. Building permit approval will occur at a later date under a separate process, and the details of construction have not been reviewed by the hearing examiner, who is unqualified to address such matters.
8. The front elevation of the home shown on the Skagit County Assessor's website is reproduced below:



9. **Project Description.** The applicants propose to construct an approximately 300 square foot deck over the existing driveway. The floor elevation of the deck will be equal to the existing first floor elevation of the house, i.e., above the existing garage. The proposed deck would have a four (4) foot  $\pm$  front yard setback off of Washington Street matching the existing condition of the house. Access to the deck from the existing house will be provided by installing doors into an existing window bay; there will be no stairway from the deck to the grade below.

#### **B. Public Notice**

10. **Notice of Application.** On November 14, 2016 a Notice of Application for Approval to Expand a Non-Conforming Building was issued by staff.
11. **Notice of Public Hearing.** On November 15, 2016 the Notice of Public Hearing & Public Hearing was mailed to all properties within 300 feet of the project site. The notice invited written comments, and advised of the date and time of a public hearing on the proposal.
12. **Land Use sign.** On November 16, 2016 the subject site was posted with a Land Use sign.

13. **Publication.** On November 17, 2016 the Notice of Application & Public Hearing was published in the City's newspaper of record, the Skagit Valley Herald.

**C. Public Participation.**

14. No comments were received by the City in response to the Notice of Application.
15. An open record hearing was held before the hearing examiner on December 5, 2016 at the time and location identified in the Notice of Application. Bryson McCloughen and Stephen Rutledge testified on behalf of the applicant. No members of the public testified at the hearing.

**D. Traffic.**

16. No additional vehicular traffic will result from the proposed project. Traffic patterns will not be altered by the project.

**E. Critical Areas.**

17. There are no known critical areas on the project site, or within the immediate vicinity.

Based upon the foregoing Findings of Fact, the hearing examiner makes the following,

## II. CONCLUSIONS OF LAW

To the extent that any conclusion of law is more properly characterized as a finding of fact, the hearing examiner adopts it as such:

**A. Notification**

1. The content of public notices is established in MVMC § 14.05.150 (A)(2). The notice of application & public hearing notice distributed by the City comply with the content requirements of MVMC § 14.05.150 (A)(2).
2. Notice distribution requirements are established in MVMC § 14.05.150 (A)(3), which provides that notice is to be provided (1) by publication in the newspaper of record; (2) by posting a land use notice board in a conspicuous location on each public street frontage bordering the subject property and visible by members of the public; and (3) by mail. The hearing examiner concludes that appropriate notice was provided. The City properly distributed notices as set forth in the municipal code.

**B. Public Hearing**

3. Pursuant to Section 14.05.070 MVMC, a public hearing is required. The notice of the public hearing was provided by the City in a manner calculated to reach those with an interest in the project, by those means set forth in in Section II(A), above. An open

public hearing was conducted by the hearing examiner in this matter, at which time opportunity was provided for all comments to be heard by the hearing examiner, and which conformed with standard protocols to ensure that due process was provided to all participants.

### C. Review

4. Pursuant to MVMC 17.06.140 (N), a “Nonconforming building” means a building or structure which does not conform in its construction, area, yard requirements or height to the regulations of the district in which it is located.
5. Pursuant to MVMC 17.06.140 (N), a “Nonconforming building use” means the use of a building or structure which does not conform to the regulations of the district in which the use exists.
6. Section 14.05.060 MVMC does not identify the type of permit applicable to the expansion of a non-conforming building use, but does identify the expansion of a non-conforming building as being a Type IV permit. The hearing examiner concludes that section 14.05.060 MVMC is intended to be comprehensive, and that the expansion of a non-conforming building is thus intended to be characterized as a Type IV permit. As such, the hearing examiner concludes that the Type IV permit process is appropriate to this permit application. The hearing examiner further observes that the city and the applicant have followed that permit process to date.
7. Section 14.05.070 MVMC provides that the hearing examiner is to conduct a public hearing, and thereafter make a recommendation to the city council on whether a permit should be granted by the city. The Mount Vernon City Council makes the final decision to approve or deny such a permit.
8. Chapter 17.102 MVMC specifically addresses non-conforming buildings, and non-conforming uses. Section 17.102.020 (B) provides that

*Except as set out below, an existing nonconforming building or structure utilized for a conforming use may be enlarged or expanded only if it conforms to the regulations of this document and of the building code such that, when completed, it will no longer be a nonconforming building or structure.*

9. The sections of the municipal code that immediately follow section 17.102.020 (B), 17.102.025 and 17.102.030 MVMC, establish a process by which a permit can be issued to allow a non-conforming building with a non-conforming use to be expanded through a process wherein the city’s hearing examiner makes a recommendation to the city council and the city council makes a final decision to approve or deny such a request. The hearing examiner concludes that the process established in sections 17.102.025 and 17.102.030 MVMC allow for the expansion of a non-conforming building housing a conforming use.

10. **Review Criteria.** Section 17.102.070 MVMC provides the following criteria to be examined with regard to the expansion of a non-conforming building:

- A. The effect of such enlargement, expansion or reconstruction on the appearance and use of the area that might be affected;
- B. The effect of the granting of such permit on traffic patterns in the area;
- C. The adequacy of parking facilities provided or to be provided;
- 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.

11. **Effect of Expansion on Appearance of the Area.** Construction of the project will result in further encroachment into the setback area. However, such encroachments are not unusual in the neighborhood in which the project is located, and a deck is the type of structure commonly seen in single-family neighborhoods.

The existing home has a 4-foot front yard setback along the north property line of this site. Extending this non-conforming setback to include the width of the proposed deck will have a negligible effect on the appearance and use of the affected area.

12. **Effect on Traffic Patterns.** Traffic patterns will not be impacted by the project.

13. **Adequacy of Parking Facilities.** Parking facilities will not be affected by the construction of the deck, which allows vehicles to be parked beneath the proposed deck.

14. **Effect on Adjacent and Nearby Property.** The project should have a minimal effect on the aesthetics of the neighborhood. A positive financial impact will likely result from the applicant's investment in improvements.

15. In accordance with Section 17.102.080 MVMC, the hearing examiner concludes that the proposed expansion of a non-conforming building will not have a material adverse effect upon the use and enjoyment of the properties within the area.

Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing examiner makes the following Recommendation:


### **RECOMMENDATION**

The hearing examiner recommends that A Permit for the expansion of a non-conforming building, file No. PL16-106 be APPROVED subject to the condition that the applicant comply

with all applicable construction requirements set forth in state law and/or the Mount Vernon Municipal Code.

RECOMMENDATION MADE this 14th day of December 2016.

Mount Vernon Hearing Examiner



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Scott G. Thomas

## **EXHIBIT LIST**

1. Exhibit 1: Staff Report.
2. Exhibit 2: Master Land Use Application Form
3. Exhibit 3: Affidavit of Ownership.
4. Exhibit 4: Applicant's Project Overview
5. Exhibit 5: Proposed Site Plan
6. Exhibit 6: Existing Site Plan (date stamped Sep. 29, 2015)
7. Exhibit 7: Existing Site Plan (date stamped Sep. 29, 2015 and June 7, 2000)
8. Exhibit 8: 2 photographs of exterior front (west) elevation of existing home
9. Exhibit 9: Mount Vernon Cityview map.
10. Exhibit 10: Various photographs of neighboring homes
11. Exhibit 11: Notice of Application and Notice of Public Hearing
12. Exhibit 12: Memorandum to Bob Hyde, et. al., RE: Expansion of Nonconforming Use
13. Exhibit 13: Affidavit of Mailing
14. Exhibit 14: Mailing list
15. Exhibit 15: Affidavit of Land Use Sign Posting