

Property Owner: Brian Rich  
Applicant: Brian Rich  
Hearing Examiner #: MV 2015-2  
Planning # Brian Rich Expansion of a Non-Conforming Building, PL15-101  
Hearing Date: November 4, 2015  
Decision Date: November 6, 2015  
Decision Summary: Recommend Approval.

### I. FINDINGS OF FACT

This matter came before the 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. According to records maintained by the Skagit County Auditor, Brian R. Rich is the owner of a home identified by the Auditor as Parcel No. P28314, and commonly known as 1308 S. 12<sup>th</sup> Street, in Mount Vernon.
2. Mr. Rich proposes to construct a garage, which will be 23 feet in depth and 10.5 feet in width.
3. The garage is proposed to be constructed within 2 feet of the south property line of the property.
4. According to records maintained by the Skagit County Auditor, an existing single-family home was constructed on the property in 1939. Photographs submitted by the applicant show the home to be a single story, with a sloping roof.
5. The applicant proposes to construct a garage as an extension of the existing single family residence on the site.

6. The south exterior wall of the existing residence extends into the southerly side yard setback, and thus the existing residence does not conform with the minimum side yard setback as set forth in 17.15.070 (B) MVMC. The existing side yard setback on the southerly side is 2 feet. The minimum side yard setback in the R-1 zone is five feet.
7. The applicant's proposed garage would continue the non-conforming setback along the south property line. The depth of the garage is 23 feet.

**B. Permitting Process**

8. Chapter 14.05 of the Mount Vernon Municipal Code (MVMC) contains permit specific procedural requirements for, in part, the City's Zoning code, Title 17. The expansion of a non-conforming use is characterized by Section 14.05.060 MVMC as a Type IV permit.
9. 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.
10. Section 17.102.070 MVMC establishes those criteria that are to be considered in making a decision on a Conditional Use Permit application.

**C. Public Notice**

11. On October 15, 2015 a Notice of Application for Approval to Expand a Non-Conforming Building was issued by staff.
12. On October 16, 2015 a 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.
13. On October 19, 2015 the Notice of Application & Public Hearing was published in the City's newspaper of record, the Skagit Valley Herald.
14. On October 17, 2015 the subject site was posted with a Land Use sign.

**D. Public Participation.**

15. No comments were received by the City in response to the Notice of Application.
16. An open record hearing was held before the hearing examiner on November 4, 2015 at the time and location identified in the Notice of Application. No members of the public attended the hearing.

**E. Zoning and Land Use.**

17. The project site is zoned \*Single-Family Residential, with a maximum density of 7.26 du/ac (R-1, 7.0). The Comprehensive Plan Designation is Single-Family High Density (SF-HI).
18. There are pre-existing residential structures surrounding the subject site; the zoning for the surrounding structures is also R-1, 7.0.
19. A number of homes in the immediate vicinity of the project site encroach into the side yard setback. The home immediately south of the project site has a garage that appears to encroach on the side yard setback similar to the encroachment of the house constructed on the subject property.

**F. Traffic.**

20. No additional vehicular traffic will result from the proposed project. Traffic patterns are unexpected to be altered by the project.

**G. Critical Areas.**

21. 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. 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.

5. 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. The neighboring home to the immediate south of the project has a garage that also encroaches to a similar extent, although the garage is constructed to the rear of the property. In this case, the proposed garage will be constructed at the front of the applicant's property.

The existing home has a two foot side yard setback. Extending the existing southerly wall and additional 23 feet (the depth of the garage) will have a negligible effect on the appearance of the area. Use of the built-area for a garage is consistent with the single-family nature of the neighborhood, and will have a negligible effect on the use of the affected area.

Construction of a garage, which will include minimal storage areas, will have a positive impact on the neighborhood to the extent that storage is available for items commonly used in typical households.

6. Effect on Traffic Patterns. Traffic patterns will not be impacted by the project.
7. Adequacy of Parking Facilities. Parking facilities will not be affected by the construction of a garage.
8. 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.

9. 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 which conform to the existing zoning.

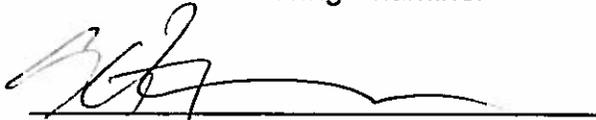
Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing examiner makes the following Recommendation:

### **RECOMMENDATION**

A Permit for the expansion of a non-conforming building, file No. PL15-101 be APPROVED subject to applicable construction requirements set forth in state law and/or the Mount Vernon Municipal Code.

RECOMMENDATION MADE this 6th day of November 2015.

Mount Vernon Hearing Examiner



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



*No one @ home*

**SIGN IN SHEET**  
**November 4, 2015 – Brian Rich Expansion of a Non-Conforming Structure**

	Name	Address	City/State/Zip	Phone	Email
1.					
2.					
3.					
4.					
5.					
6.					
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**AFFIDAVIT OF MAILING**

I, **Linda Beacham**, hereby declare as follows:

1. I am an employee of the City of Mount Vernon, Mount Vernon, Washington, a United States citizen, over the age of eighteen years, and am competent to testify to the matters set forth herein.
2. On **November 10, 2015** I mailed via the United States mail, to the following parties the **PL15-010 HEX Decision & Memo Dated November 10, 2015**  
Brian Rich, Applicant

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed in Mount Vernon this **10th** day of **November 10, 2015**.

*Linda Beacham*

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Linda Beacham



TO: Mr. Brian Rich

FROM: Rebecca Lowell, Senior Planner

DATE: November 10, 2015

SUBJECT: Hearing Examiner Recommendation for File, PL 15-101

Attached is the Hearing Examiner's recommendation for **APPROVAL** for the above-referenced project.

Mount Vernon Municipal Code 14.05.110(H)(4) allows an applicant or party of record to ask the Hearing Examiner to reconsider his decision on the portion of the application where a recommendation was made.

A request for reconsideration must be made within ten days after the written Hearing Examiner decision has been rendered. With regard to this application this means that a request for reconsideration must be made on or before November 20, 2015. All requests for reconsideration must comply with the Mount Vernon Municipal Code (MVMC). A copy of the MVMC can be obtained from the Community & Economic Development Department; or it can be viewed on the City's web site at: <http://www.ci.mount-vernon.wa.us>.

This project is currently scheduled to have our City Council make their final decision on this project on **December 9, 2015** at 7 p.m. at the Police and Court Campus located at 1805 Continental Place in Mount Vernon, at a closed record hearing. If a request for reconsideration of the Hearing Examiner's recommendation is made to the Hearing Examiner; or if staff is not able to be placed on the Council's agenda, then the City Council's closed record hearing will be rescheduled.

The complete case file is available for review within the Community & Economic Development Department.

If you have any questions, or if you need additional information, do not hesitate to give me a call.