

# PLANNING COMMISSION

Agenda Item No.: \_\_\_\_\_  
Date: October 13, 2009

**CASE NUMBER:** PHG 09-0026

**APPLICANT:** Lawrence LePiere

**LOCATION:** On the southwestern corner of Spruce Street and 2<sup>nd</sup> Avenue, addressed as 801 West 2<sup>nd</sup> Avenue.

**TYPE OF PROJECT:** Appeal of an Administrative Decision

**PROJECT DESCRIPTION:** An appeal of an administrative decision to deny a building permit for an expansion of a non-conforming single-family residence, including the addition of a 680 SF carport and the conversion of 800 SF to additional bedrooms/bathrooms.

**STAFF RECOMMENDATION:** Denial of Appeal

**GENERAL PLAN DESIGNATION/TIER:** Urban II (Multi-Family Residential, 12 du/acre)  
Tier 1-Central subarea

**ZONING:** R-2-12 (Multi-Family Residential, 12 dwelling units per acre maximum)

**BACKGROUND/SUMMARY OF ISSUES:** A 2,940 SF, single-family residence exists on the subject site. The residence includes eight bedrooms, four bathrooms and a two-car garage. Building plans were submitted on May 13, 2009, to add a four-car carport to the front of the site and convert the garage and an existing habitable room to four additional bedrooms and two additional bathrooms.

The required setbacks in the R-2 zone are 15 feet in the rear and 10 feet on a street-side. The residence is located six-and one-half feet from the rear property line and five feet from the street-side property line. The existing residence is non-conforming with respect to setbacks.

When building plans were submitted for the proposed improvements in May, 2009, a building valuation was conducted to determine conformance with Zoning Code Article 61, Division 3 (Non Conforming Uses and Structures) by using the 2006-07 Valuation Multipliers of the International Conference of Building Officials (I.C.B.O.). The valuation indicated that the 25% limit of expansions/alterations already had been exceeded and the request for a building permit for additional improvements was denied.

On September 3, 2009, the property owner filed an appeal of the administrative decision to deny the building permit request for the carport and garage/room conversion, based on his interpretation of Article 61, Division 3. Attached to this report are copies of correspondence from the applicant and from the Planning Division.

Staff feels that the issues are as follow:

1. Whether the existing residence is non-conforming.
2. Whether the proposed improvements should be permitted.

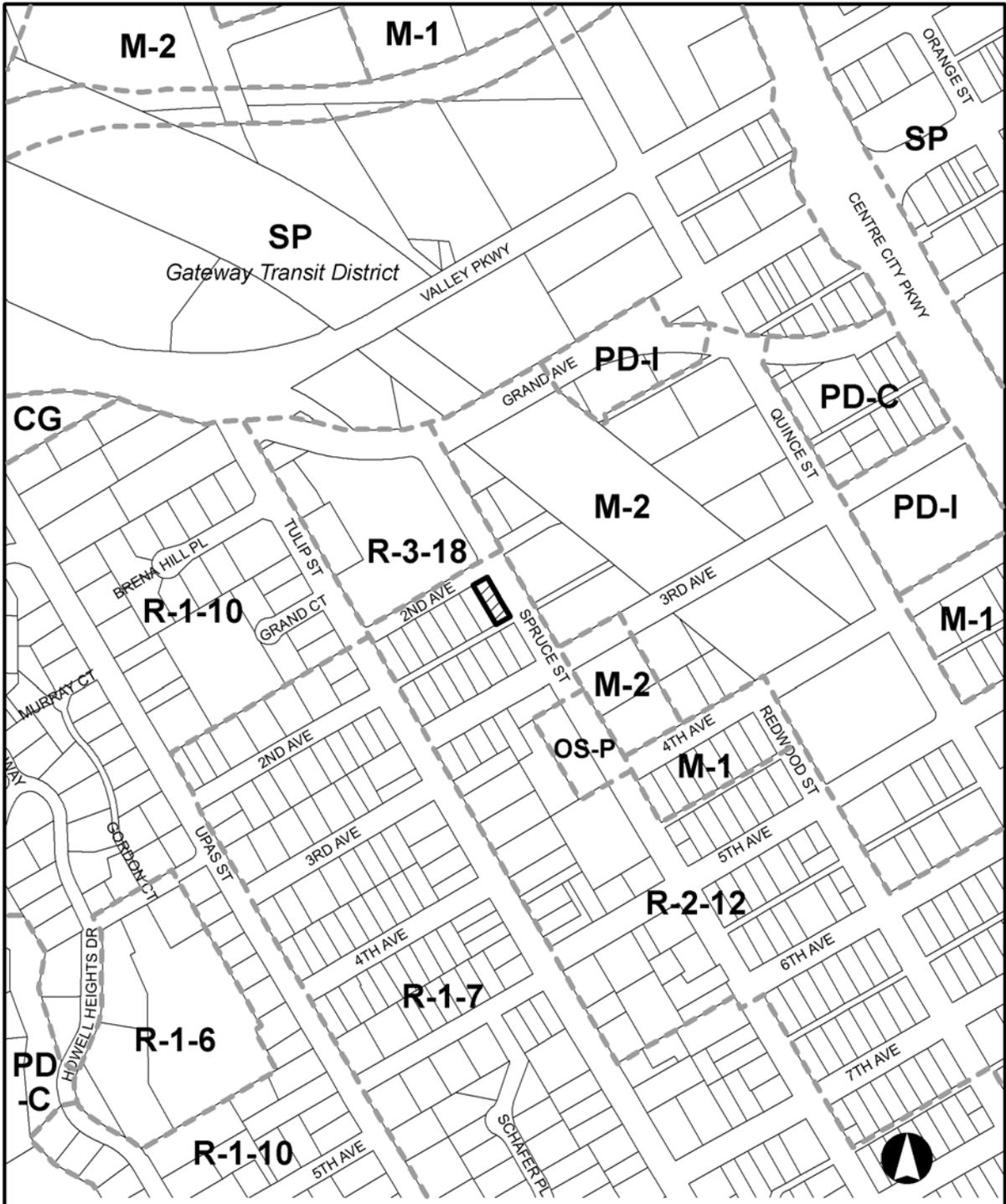
**REASONS FOR STAFF RECOMMENDATION:**

1. The existing structure is non-conforming because it does not conform to the required street side-yard or rear-yard setbacks.

2. Article 61, Division 3, Section 33-1243 (b) allows for voluntary work/improvements to a legal non-conforming structure provided that the total costs of such work do not exceed 25% of the replacement value of the non-conforming use. The valuation of previous additions to the residence totals \$122,641.47, which is greater than the 25% permitted. Therefore the proposed improvements are not permitted pursuant to Zoning Code Section 33-1243(b).

Respectfully submitted,

Kristina Owens  
Assistant Planner II

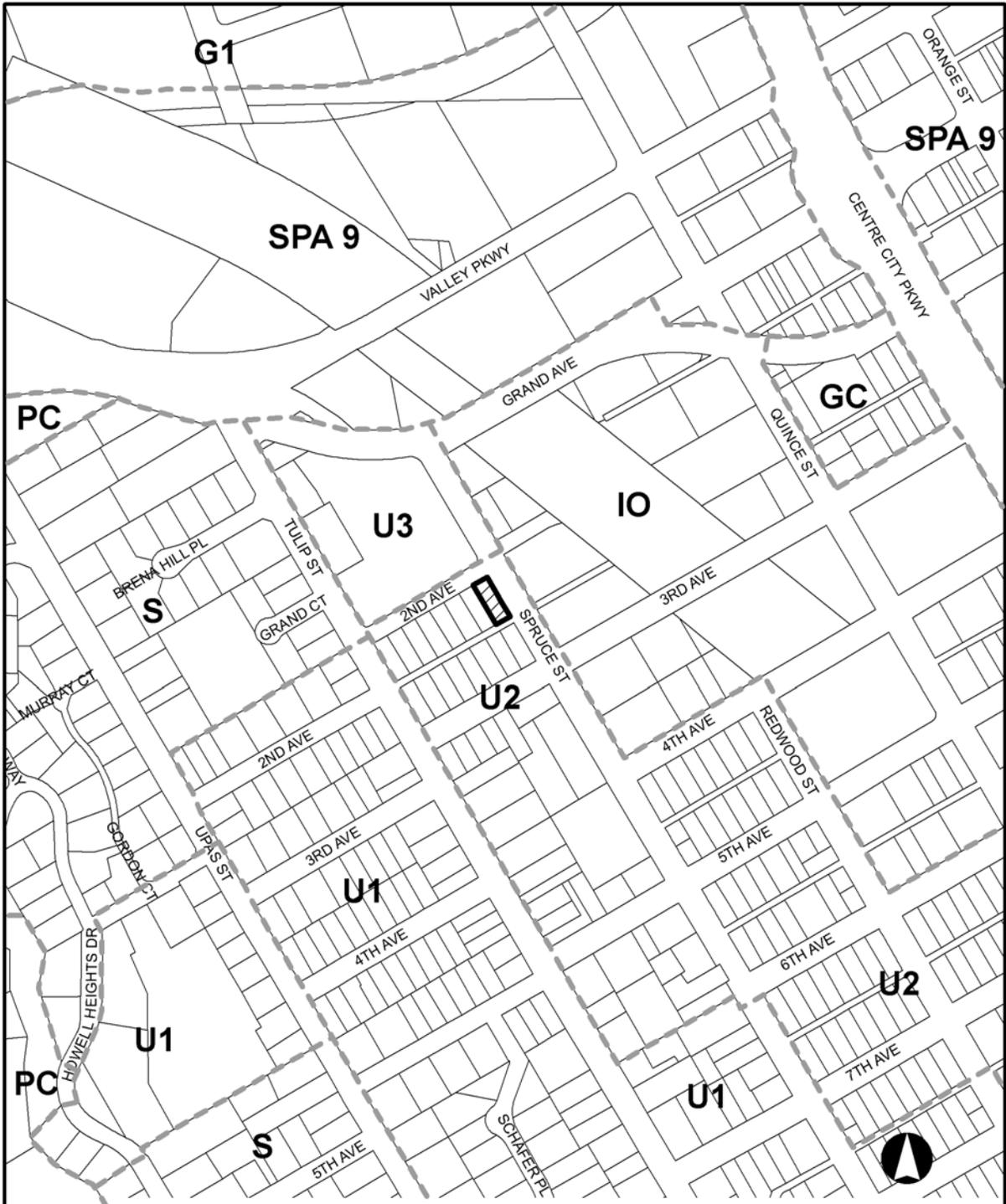


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**PROPOSED PROJECT  
PHG 09-0026**



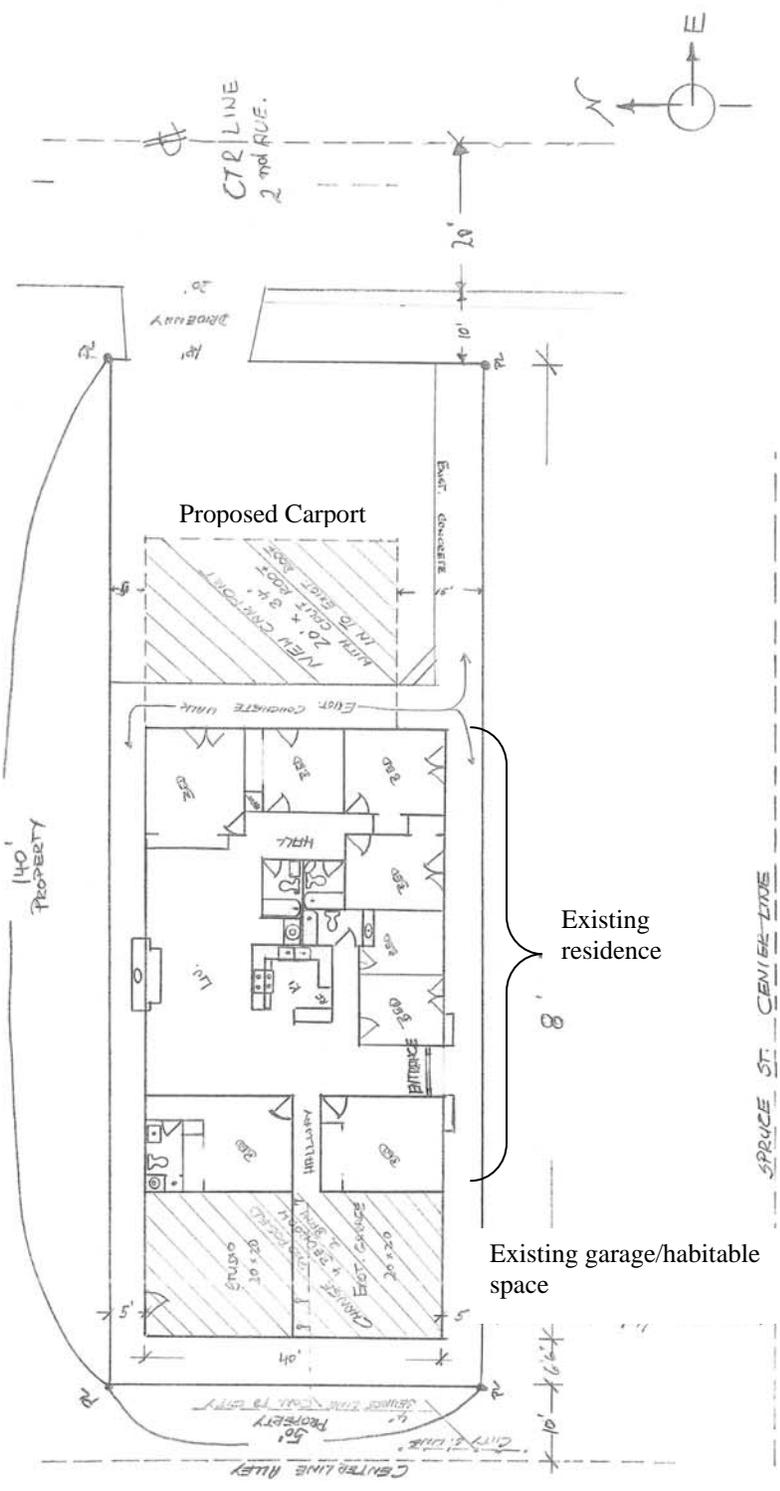
LOCATION/ZONING



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**PROPOSED PROJECT  
PHG 09-0026**





**PROPOSED PROJECT  
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SITE PLAN

**ROOM DEFINITION AND SQUAREFEET**

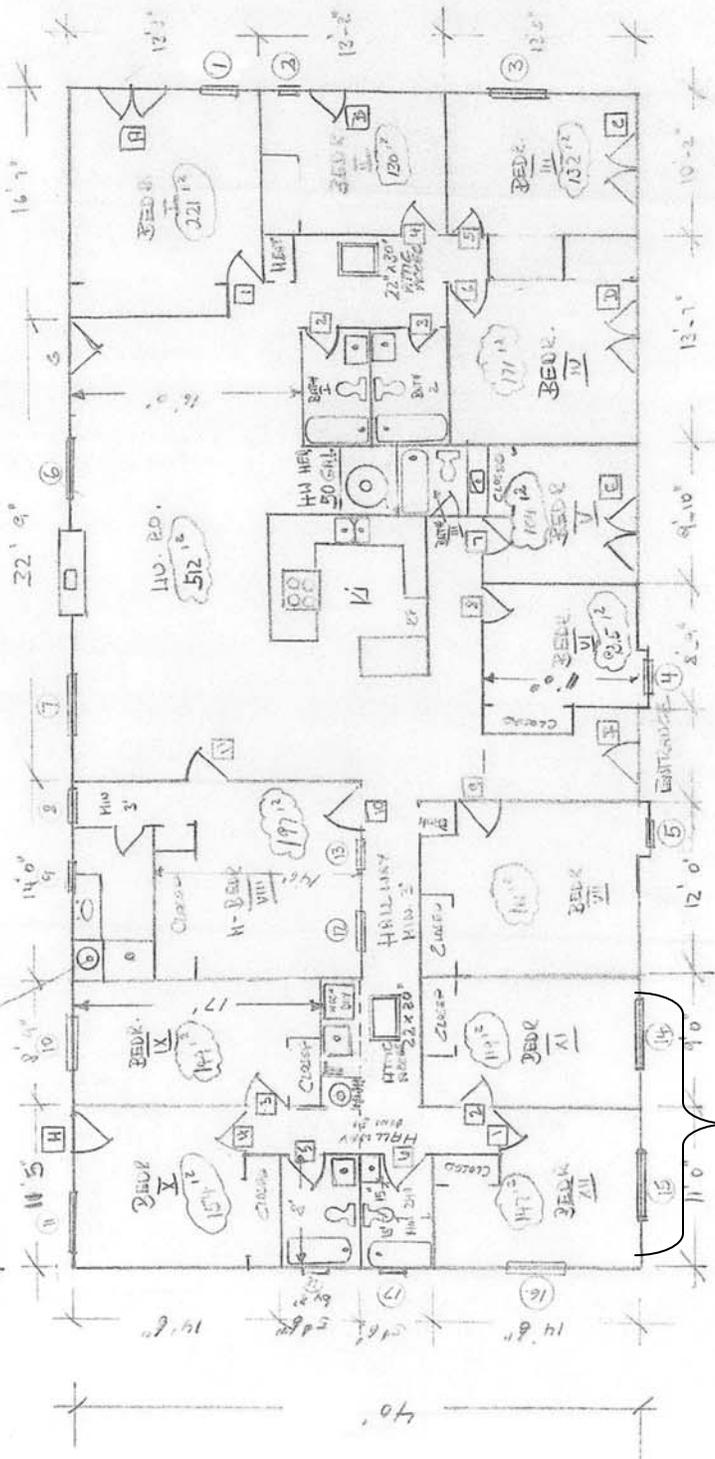
SCALE 1/8" = 1'

CHANGE EXIST. 20.00 HHH TO 40.00 HHH  
AND INSTAL NEW 30' X 30' HHH IN NEW  
BUDGET

EXIST. REG. 83'6"

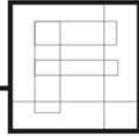
NO CHANGES

PROP. REMOVAL



Proposed  
Bedrooms/  
Bathrooms

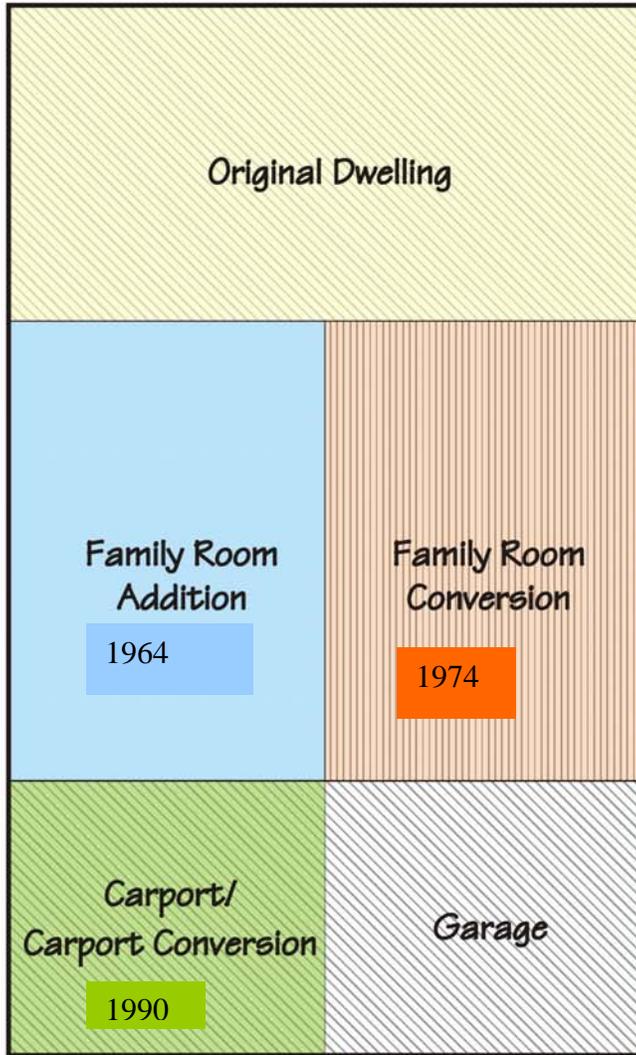
**PROPOSED PROJECT  
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FLOOR PLAN



2nd Ave.



Spruce St.



**PROPOSED PROJECT  
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ASSESSOR'S RECORD



## ANALYSIS

### A. LAND USE COMPATIBILITY/SURROUNDING ZONING

NORTH– R-3-18 (Multi-Family Residential, 18 du/acre maximum) zoning/ A multi-family, attached, residential condominium development is located to the north of the site, across 2<sup>nd</sup> Avenue.

SOUTH– R-2-12 (Multi-Family Residential, 12 du/acre maximum) zoning/ Single-family residences on approximately 7,000 SF lots are located to the south of the site, across an alley.

EAST - M-2 (General Industrial) zoning/The offices and storage yard for Mission Pools and a storage yard for SDG&E are located to the east of the site, across Spruce Street.

WEST - R-2-12 zoning/ Single-family residences on approximately 7,000 SF lots are located to the west of the site.

### B. AVAILABILITY OF PUBLIC SERVICES

1. Effect on Police Service – The Police Department has expressed no concern regarding their ability to continue to provide service to the site.
2. Effect on Fire Service – The site is served by Fire Station No. 1 located at 310 North Quince Street, which is within the response time mandated by the General Plan. The conversion of a garage and habitable space to additional bedrooms and bathrooms, and construction of a new carport would result in an incremental increase in demand for fire services. The Escondido Fire Department indicates that they would add conditions to the project if approved, including requiring fire sprinklers to be installed in the structure, and requiring improvements to the adjacent alley.
3. Traffic – The project site fronts on Spruce Street and 2<sup>nd</sup> Avenue, which are both unclassified in the City's General Plan Circulation Element. Access to the existing on-site, covered parking area is via a public alley. The proposed project includes additional bedrooms within an existing residence and a new carport, and would not add any additional Average Daily Trips (ADTs) to the roadway. The Engineering Division has indicated that existing traffic can be accommodated on the surrounding streets and that the project does not materially degrade the levels of service on the adjacent streets.
4. Utilities – City sewer and water mains with sufficient capacity to serve the project are existing and available within the adjoining street or easement. The project does not materially degrade the levels of service of the public sewer and water systems.
5. Drainage – The project site is not located within a 100-year Flood Zone as indicated on current FEMA maps. The project does not materially degrade the levels of service of the existing drainage facilities.

### C. ENVIRONMENTAL STATUS

1. A Notice of Exemption was issued on October 5, 2009, in accordance CEQA Section 15301, Class 1, "Existing Facilities."
2. In staff's opinion, no significant issues remain unresolved through compliance with code requirements and the recommended conditions of approval.
3. The project will have no impact on fish and wildlife resources as no sensitive or protected habitat occurs on-site or will be impacted by the proposed development.

## **D. CONFORMANCE WITH CITY POLICY/ANALYSIS**

### **General Plan**

The General Plan land use designation on the site is Urban II, which allows multi-family residential development with a maximum density of 12 dwelling units per acre and a minimum lot size of 6,000 SF. The existing structure on the site is a single-family residence.

### **Parking**

Zoning Code Section 33-765 requires two covered parking spaces be provided for a single-family residence. The existing single-family residence has an attached two-car garage. The applicant proposes to convert the garage to living space and provide a new carport with space for four vehicles. The proposed parking would be adequate for the continuing single-family residential use of the site.

### **Whether the Existing Residence is Non-Conforming**

Per Article 12 (R-2 zone) and Article 61, Division 3 (Nonconforming Uses and Structures) of the Escondido Zoning Code, if a legally built structure or use does not conform to the current applicable zoning requirements, then it is considered a legal non-conforming structure/use. The subject residence is considered nonconforming because it does not conform to the required rear-yard and street side-yard setbacks of the R-2-12 zone. The required rear-yard setback is 15 feet while the existing structure is located six-and-one-half feet from the rear property line. The required street-side-yard setback is 10 feet, while the structure is located five feet from the property line.

From building permit records and San Diego County Tax Assessor records it was determined that the original residence, garage, and carport were constructed in 1956. The garage and carport were attached to each other and detached from the main house, making them an accessory structure. A building permit was issued in July, 1964, for an approximately 798 SF family room addition, which connected the garage/carport to the residence. The garage and carport were no longer considered an accessory structure after that time since they were attached to the residence, creating one structure. In 1965, when a revised Zoning Code was adopted with new setback requirements, the structure became non-conforming since it did not meet the required setbacks of the R-2 zone.

### **Whether the Proposed Improvements are Permitted**

An addition was completed with building permits in 1974, for the conversion of a "patio cover" to an approximately 684 SF "family room." At the time this work was permitted and completed, the existing structure already was nonconforming. The most recent room addition was approved in August, 1990, when permits were issued for the conversion of an approximately 400 SF carport to enclosed habitable space. This permit was in conjunction with a building permit to convert some illegal interior modifications back to a single-family residence in compliance with an existing code enforcement case.

When building plans for the proposed improvements were submitted in May, 2009, a building valuation was conducted to determine conformance with Article 61, Division 3 by using the 2006-07 Valuation Multipliers of the International Conference of Building Officials (I.C.B.O.). The valuation breakdown is attached to this report. It indicates that the replacement value of the original nonconforming structure is \$239,337.34 (including the family room addition in 1964). Twenty-five percent of that valuation is \$59,834.33. The valuation of previous building permits in 1974 and 1990 totals \$122,641.47, which is greater than the 25% permitted in the Non-Conforming Use Ordinance. The valuation of the proposed improvements is \$55,040.80.

Section 33-1242(b) of the Non-Conforming Use Ordinance allows voluntary improvements provided the cost of work does not exceed 25% of the replacement value of the non-conforming use. This section further states "...All percentages used in section 33-1243 shall be calculated on a cumulative basis commencing with the initial expenditure." The valuation of the cumulative, prior improvements is equal to 51% of the replacement value of the non-conforming use. The valuation of the proposed improvements is equal to 23% of the replacement value of the non-conforming use. The combined valuation of the proposed improvements and the cumulative improvements is 74% of the replacement value of the non-conforming use. Therefore, a building permit for the proposed improvements cannot be issued because the cumulative value of the voluntary improvements exceeds the 25% limit.

Section 33-1243(b)(1) includes an exception that allows a single-family residence in a single-family residential zone to construct improvements up to 50% of the replacement value of the non-conforming structure. That exception is not valid in this case since the residence is located in a multi-family residential (R-2) zone.

#### Applicant's Perspective

The applicant indicates that he desires to make improvements to his property in order to continue to rent it as a single-family residence. He feels that a building permit should be issued for his proposed improvements since conversion of the garage and adjacent space to additional bedrooms would not increase the non-conformity of the structure, and that the proposed carport is necessary since covered parking is a requirement of the City. He also questions the authority of the Planning Division to implement and enforce sections of the Non-Conforming Use Ordinance and feels that cumulative additions to the structure should not be used to determine the total valuation of improvements. In addition, he does not believe that an absolute limit on improvements of 25% of the replacement value exists in the Zoning Code. Correspondence from the applicant to the City is attached to this report.

**SUPPLEMENT TO STAFF REPORT/DETAILS OF REQUEST**

**A. PHYSICAL CHARACTERISTICS**

The site is located at the southwestern corner of Spruce Street and 2<sup>nd</sup> Avenue. Direct vehicle access also is available from a public alley along the site's southern boundary. The site is fairly level and developed with a single-family residence and attached garage. Vegetation on the site consists of ornamental landscaping. There is no native vegetation on the site.

**B. SUPPLEMENTAL DETAILS OF REQUEST**

1. Property Size:	Approx. 7,000 SF	
2. Size of Structures:	Existing SFR:	2,940 SF
	Existing Garage:	<u>400 SF</u>
	Total:	3,340 SF
	Proposed carport:	680 SF

**C. CODE COMPLIANCE ANALYSIS:**

	<u>Proposed</u>	<u>Required in R-2 zone</u>
1. Parking:		
Single-family residence:	4 covered (2 covered existing)	2 covered
2. Setbacks:		
Front:	50 feet (existing) 24 feet (proposed)	15 feet
Side:	5 feet (existing)	5 feet
Street Side:	5 feet (existing)	10 feet
Rear:	6.5 feet (existing)	15 feet
3. Lot Coverage:	47.7% (existing) 57.4% (proposed)	No maximum
4. Floor Area Ratio (FAR):	0.57 (proposed)	0.6 maximum

**FINDINGS OF FACT**  
**PHG 09-0026**  
**EXHIBIT "A"**

1. The existing residence is located in a multi-family (R-2) zone and is non-conforming due to reduced setbacks in the rear and street-side yards. The residence may be voluntarily altered or enlarged to the extent such modifications conform to Section 33-1243(b) of the Zoning Code. In this case, an absolute limit of 25% of the replacement value of the non-conforming use is established.
2. The 25% valuation is calculated on a cumulative basis commencing with the initial expenditure following the creation of the non-conforming status. The initial expenditure on the subject property for cumulative purposes occurred in 1974 when a patio cover was converted to a family room. A second cumulative addition occurred in 1990 when a carport was enclosed to habitable space.
3. The valuation of the cumulative improvements is equal to 51% of the replacement value of the non-conforming use. The valuation of the proposed improvements is equal to 23% of the replacement value of the non-conforming use. The combined valuation of the proposed improvements and the cumulative improvements is 74% of the replacement value of the non-conforming use.
4. A building permit for the proposed improvements cannot be issued because the cumulative value of the voluntary improvements exceeds the 25% limit, as established by Zoning Code Section 33-1243(b).