

Randall Adams

From: David Bernstein <davidrbernstein@yahoo.com>
Sent: Tuesday, August 18, 2026 2:34 PM
To: Riley Rhodes
Cc: Randall Adams
Subject: Written opposition — Application 251357, Item 2, Zoning Administrator hearing August 21, 2026
Attachments: Opposition_Brief_App_251357 (v5).pdf

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Subject: Written opposition — Application 251357, Item 2, Zoning Administrator hearing August 21, 2026

Dear Ms. Rhodes,

Attached is written opposition to Application No. 251357 (APN 028-221-16, 154 Sunny Cove Drive), which is Item 2 on the Zoning Administrator's agenda for Friday, August 21, 2026 at 9:00 a.m.

I submit this on behalf of Milly Rose LLC, owner of the adjoining property at 145 18th Avenue, Santa Cruz. I am a manager of the LLC.

Could you please confirm that the brief has been received, that it will be transmitted to the Zoning Administrator in advance of the hearing, and that it will be made part of the administrative record for this application. I also ask that Milly Rose LLC be added to the notice list for all further actions on this application and this parcel, and that the LLC be served with the Final Local Action Notice if the application is approved in any form.

I intend to speak briefly at the hearing.

Thank you for your help.

David Bernstein, Manager
Milly Rose LLC
145 18th Avenue, Santa Cruz, CA 95062
408 857 9872
davidrbernstein@yahoo.com

WRITTEN OPPOSITION TO APPLICATION NO. 251357

Variance and Coastal Development Permit — APN 028-221-16 — 154 Sunny Cove Drive, Santa Cruz

TO: Deputy Zoning Administrator, County of Santa Cruz; Randall Adams, Project Planner

FROM: David Bernstein, Manager, Milly Rose LLC, owner of 145 18th Avenue, Santa Cruz, CA 95062 (APN 028-221-24)

DATE: August 21, 2026 — Zoning Administrator hearing, 9:00 a.m., Item 2

RE: Application No. 251357 — Owner Ed Shimmon / Applicant Dee Murray — request to DENY, or in the alternative to CONTINUE as not ripe for decision

I. INTEREST AND CAPACITY

145 18th Avenue immediately adjoins the subject parcel. The rear wall of the structure at issue is built directly on the shared fence line between the two properties.

The property is owned by Milly Rose LLC. I am a manager of the LLC and I appear in that capacity, not as an individual owner. The house has been in my wife's family since the 1930s, through four generations, and the LLC exists to keep it in the family. Family members have occupied it at various times; it is presently occupied by a long-term tenant rather than by the family.

Milly Rose LLC is a property owner aggrieved by the proposed action within the meaning of Chapter 18.10 of the Santa Cruz County Code. Please direct all notices on this application to the LLC at the address above.

The sequence

I reported this structure to the County on April 21, 2025 (Service Request 19285). It was red tagged on April 24, 2025. Code Compliance opened Case No. NV25236 on April 25, 2025, citing the structure for exceeding 120 square feet, having electric, and being located within the side and rear yard setbacks. Application 251357 was filed on August 26, 2025, four months after the red tag. So far as I have been informed, NV25236 remains open, no Stipulation and Order has been executed, and the red tag has not been lifted.

None of this appears anywhere in the staff report. The project description before the Zoning Administrator reads only "Proposal to recognize the construction of a storage shed." The County's own citation of the same structure, by its own investigator, is not mentioned.

II. THE RECORD IS NOT RIPE FOR DECISION

Setting aside for a moment whether the findings can be made at all, the record before the Zoning Administrator is missing facts that each of the required findings depends on. The following eleven items are unresolved on the face of the staff report and its exhibits. Each is identified in detail in the sections that follow.

1. Parcel area. The record states three different figures — 3,833, 3,883 and 4,000 square feet. The sole special circumstance supporting the variance is that the parcel is below the 4,000 square foot minimum. (Section III)

2. Lot coverage. The coverage calculation on Exhibit D is computed against 4,000 square feet, and the same sheet states a second, different coverage figure. Recomputed against the County's own parcel area, coverage appears to exceed the maximum. (Section III)
3. The position of the roof relative to both property lines. The surveyed detail locates the walls and draws an eave line only on the two sides facing the applicant's residence. (Section VII)
4. Whether the eaves along the side and rear property lines had been removed when the survey was performed, or were present and not measured. (Section VII)
5. The location of the existing fence relative to the property line, which the record does not state. (Section VII)
6. Whether a Record of Survey has been filed with the County Surveyor for this work. (Section VII)
7. Fire district review. Conditions II.A.3 and II.B defer all building and fire code review, and Central Fire Protection District review, to the building permit stage. No fire agency has evaluated this structure as built. (Sections VI and VIII)
8. The separation between the structure and the light well, and whether it meets the three-foot minimum separation between structures required by SCCC 13.10.611(D)(7). No dimension on the plans states it. (Section VIII)
9. Whether the structure contains built-in heating or cooling. Under Table 13.10.611-1 that is the amenity distinguishing a non-habitable accessory structure from a habitable one, and every finding in the packet rests on the non-habitable classification. The record does not say. (Section VIII)
10. The basis for the determination in Exhibit F that the project is appealable to the California Coastal Commission, and the applicable appeal jurisdiction map. (Section V)
11. The status of Code Compliance Case No. NV25236 — whether it remains open, whether a Stipulation and Order has been executed, and whether the red tag posted April 24, 2025 remains in effect. (Section I)

A finding must rest on evidence in the record. Where the evidence has not been gathered, the finding cannot be made, and the proper disposition is denial or a continuance — not approval subject to conditions that defer the missing facts to a later, non-public stage of review.

III. THE RECORD CONTAINS THREE DIFFERENT PARCEL AREAS, AND THE ONLY SPECIAL CIRCUMSTANCE DEPENDS ON WHICH ONE IS CORRECT

The staff report identifies a single special circumstance supporting the variance: “the small size of the parcel (at less than the minimum lot size for the zone district).” The record does not establish that fact. It contains three conflicting figures:

- Staff Report, page 2, and Exhibit F (Parcel Information): 3,833 square feet (GIS).
- Applicant's own written variance findings: 3,883 square feet.
- Applicant's plan set, Exhibit D, Project Data block: 4,000 square feet.

If the parcel is 4,000 square feet it meets the R-1-4 minimum, and the sole stated special circumstance disappears entirely.

The lot coverage calculation is computed on the disputed figure

The coverage table on Exhibit D totals 1,745 square feet and reports it as 43.6 percent against a 45 percent maximum. That percentage is derived from a 4,000 square foot parcel. Using the County's own GIS figure of 3,833 square feet, the same 1,745 square feet is approximately 45.5 percent — over the maximum. Separately, the Project Data block on the same sheet states lot coverage of 1,651 square feet (41 percent), a third figure inconsistent with the calculation table beside it.

The County's own Parcel Research Report for APN 028-221-16, dated August 16, 2026, states the parcel area as "3,833.28 (ESTIMATE)." The County expressly labels its own figure an estimate. The Parcel Location Map does not resolve the conflict either: scaled against the scale bar printed on that map, the parcel measures approximately 40 feet by 96 to 98 feet, which brackets both figures and cannot distinguish between them at the precision this finding requires.

No document in this record states the parcel area as a measured fact. A licensed surveyor was retained by the applicant and was on the property. He was not asked for the area. The sole special circumstance supporting this variance rests on a number nobody has established.

No finding of conformance with site standards can be supported until the parcel area is fixed by the County and the coverage calculation is redone against it. I request that this reconciliation be made in writing, on the record, before any action is taken.

IV. THE VARIANCE FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

A decision-making body must bridge the analytic gap between the raw evidence and the ultimate decision. *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515. Findings that restate the conclusion do not satisfy that requirement. Each of the three variance findings in Exhibit B has that defect.

A. Finding 1 (special circumstances) is circular, and a code-compliant alternative was available

Finding 1 states that the variances "are recommended in order to allow a small accessory structure located in the rear yard behind the existing residence." That is the outcome sought, offered as the reason for granting it. It identifies no physical constraint that prevents a conforming structure.

The record affirmatively establishes that a conforming structure is feasible. Page 2 of the staff report states that County Code permits non-habitable accessory structures up to 120 square feet and 10 feet in height within three feet of the side and rear property lines with no discretionary approval at all, and that the applicant was advised to build to that standard or, alternatively, to seek a variance. The lot is not what prevents storage on this parcel; the desired size of the structure is.

Government Code section 65906 permits a variance only where, because of special circumstances, strict application of the ordinance deprives the property of privileges enjoyed by other property in the vicinity under identical zoning classification. A preference for a larger structure than the code allows is a personal circumstance, not a property circumstance. See *Broadway, Laguna, Vallejo Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 767. A small lot explains a small structure. It does not explain a zero setback.

B. Finding 2 (not detrimental) rests on an analogy, not on evidence about this structure

Finding 2 supports the conclusion that the project is not materially detrimental by reasoning that it is "similar to garages that are allowed to be constructed to a zero foot setback on smaller parcels." A garage

is a different structure type with different code treatment, and the comparison is not evidence about the conditions actually presented here. The finding does not address:

- Combustible construction. Exhibit D specifies 2x4 studs, 7/16-inch OSB exterior sheathing and 1/2-inch plywood sheathing.
- Glazed openings in the walls sited within a few tenths of a foot of the property lines (Section VI below, and Exhibits A, B and D).
- The fire load documented in the application file — e-scooters, e-bikes and gas motorbikes stored in a wood-framed structure against the property line (Exhibit G).
- The clear width of the passage between the structure and the residence, which the plans never dimension (Section VIII below).

The County itself cited this structure for having electric. Because it was built without a permit, none of that wiring has ever been inspected.

No fire agency finding exists in this record. Condition II.B defers Central Fire Protection District review, and Condition II.A.3 defers building and fire code compliance details, to the building permit stage. The Zoning Administrator is being asked to find no material detriment before the agency responsible for that judgment has looked at the structure as built.

That has been the position since April 2025. For sixteen months the structure has remained in use, with uninspected wiring and the contents described above, while enforcement has been held in abeyance with no Stipulation and Order and no compliance deadline. Deferring the safety review again, to a stage that follows this approval, extends that condition rather than resolving it.

C. Finding 3 (special privilege) relies on structures whose legality is never established

Finding 3 rests on other accessory structures in the neighborhood, “many of which are located within required yard setbacks.” Our own parcel is one of them: the garage at 145 18th Avenue is a lawful nonconforming structure predating current setback standards. It was lawful when it was built and remains lawful for that reason — and it is not a privilege any property may replicate by new construction. As to the rest, the record does not establish that any of them was permitted at its location.

Section 65906 measures deprivation against privileges lawfully enjoyed by comparable property. Whether these structures are lawfully nonconforming, as ours is, or were never permitted at all, neither category supports this variance — and the report establishes neither.

See *Minney v. City of Azusa* (1958) 164 Cal.App.2d 12. To the extent the referenced structures are lawful nonconforming uses predating current standards, the zoning scheme contemplates their eventual elimination rather than their replication. *City of San Diego v. McClurken* (1951) 37 Cal.2d 683.

V. THE COASTAL DEVELOPMENT PERMIT FINDINGS ARE NOT SUPPORTED, AND THE PROJECT IS NOT SHOWN TO CONFORM TO THE CERTIFIED LOCAL COASTAL PROGRAM

This application seeks a coastal development permit as well as a variance, and the coastal findings in Exhibit B are separate, independently required, and separately deficient. Exhibit F states that the site is inside the Coastal Zone and that the project is appealable to the California Coastal Commission. I raise each of the following as an issue of conformity with the certified Local Coastal Program and with the public access policies of Chapter 3 of the Coastal Act, and I expressly preserve them.

- Development was undertaken without any coastal authorization. The structure was built in the coastal zone with no coastal development permit. The application asks the County to recognize it after the fact. That history is relevant to LCP conformity and is not addressed anywhere in the findings.
- Finding (A) is internally inconsistent. It states that the non-habitable accessory structure “is a principal permitted use within the zone district.” Page 2 of the same report states that the structure is “ancillary to the principal permitted residential use.” An accessory structure is by definition not the principal permitted use.
- Finding (B) — that no easement or development restriction encumbers the site — is supported only in part. The surveyed detail locates the walls inside the property line but does not locate the roof relative to either line. See Section VII.
- Finding (C) is supposed to establish consistency with the coastal design criteria and special use standards of SCCC 13.20.130 and 13.20.140. Its entire support is that the colors and materials match the existing residence. That is a design review answer to a coastal standards question.
- Findings (D) and (F) — public access. Staff concedes the project is located between the shoreline and the first public road. The analysis is that beach access is available at Sunny Cove and the site is not a priority acquisition parcel. The findings do not analyze the LCP access, recreation and visitor-serving policies as applied to development on this parcel.
- Finding (E) — other LCP standards. Exhibit F identifies the site as a mapped “Scenic beach viewshed.” The finding asserts visual compatibility and does not analyze the LCP scenic resource policies.

The setting described in the applicant’s own findings is the setting the LCP access policies govern

The applicant’s written variance findings describe this location as an extremely popular public beach recreation area; state that the adjacent public sidewalk and street areas are crowded with pedestrians and vehicle traffic at all hours on weekends and throughout the summer; and state that the area is known for large public gatherings and frequent nighttime beach recreation requiring oversight by the Sheriff’s Office. The applicant offered that description to justify the need for enclosed storage.

It is also, in the applicant’s own words, a description of an intensely used public access and recreation node. The parcel fronts Sunny Cove Drive directly opposite the head of the public paths down to the beach. That is precisely the context in which the LCP access, recreation and visitor-serving policies are meant to be applied, and the findings apply none of them. The County cannot rely on the intensity of public use as the reason a variance is warranted and simultaneously treat the availability of public access as the reason no access analysis is required.

Statutory findings and appeal jurisdiction

The County has determined that this site lies between the shoreline and the first public road: Coastal Development Permit Finding (F) so states, and the staff report repeats it. That phrase is a term of art. The “first public road paralleling the sea” is defined by regulation — a road that connects with other public roads to form a continuous public access system and that generally parallels and follows the shoreline — and is not simply the nearest street to the parcel.

Public Resources Code section 30604(c) therefore applies. For development between the nearest public road and the sea, the approving body must make a specific finding that the development is in conformity

with the public access and public recreation policies of Chapter 3 of the Coastal Act. Findings (D) and (F) recite two conclusions and cite no policy. That is not the finding the statute requires.

Exhibit F states that the project is appealable to the California Coastal Commission. Appeal jurisdiction under Public Resources Code section 30603(a)(1) extends to development approved by a local government between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

Appeal jurisdiction therefore does not turn on how Sunny Cove Drive is characterized. The 300-foot alternative applies whichever distance is greater, and either basis is independently sufficient. The County has already made the determination. The record does not, however, disclose which basis applies or contain the applicable post-certification appeal jurisdiction map. I request that the basis for the Exhibit F determination be stated in the record, and that Milly Rose LLC be served with the Final Local Action Notice for this application.

VI. THE PLANS SHOW A WINDOW IN A WALL AT THE PROPERTY LINE, WHICH THE COUNTY'S OWN ZERO-SETBACK STANDARD PROHIBITS

Finding 2 is supported by the reasoning that this structure is “similar to garages that are allowed to be constructed to a zero foot setback on smaller parcels.” If that comparison is sound, it resolves this question, because the County’s zero-setback garage provision carries an express condition.

SCCC 13.10.611(D)(6)(a) permits a detached garage on a residentially zoned parcel smaller than 10,000 square feet to be located within the side and rear setback areas, and subsection (D)(6)(b) permits a garage up to zero feet from the rear or interior side property line with an administrative site development permit. Subsection (D)(6)(a)(i) provides: “There shall be no windows, doors, or other openings on garage walls that are less than five feet from the side or rear property lines.”

The surveyed detail on Exhibit D places the walls of this structure approximately two tenths and five tenths of a foot from the property lines. The window schedule on Exhibit D lists a 128-inch split picture transom and an 82-inch picture transom, and Exhibits A, B and D below show a transom window in the wall facing 145 18th Avenue.

The comparison selected to support the finding is therefore the same comparison that forbids the openings. Either the garage standard is an apt measure of what is acceptable at a zero setback in this County, in which case a wall with windows two tenths of a foot from a property line does not meet it; or the comparison is not apt, in which case Finding 2 rests on nothing at all. It cannot support the approval and be set aside as to the openings at the same time.

The building code reaches the same result on the walls facing the property lines

California Residential Code section R302.1 and Table R302.1(1) require fire-resistance-rated construction for exterior walls with a fire separation distance of less than five feet, and prohibit openings where the fire separation distance is less than three feet. Fire separation distance is measured at right angles from the face of the wall to the closest interior lot line.

So that this objection is understood precisely: R302.1 contains an exception for walls of a dwelling and its accessory structures located on the same lot. That exception addresses the relationship between this structure and the applicant’s own residence. It has no application to the walls facing the property lines, which is where this objection is directed.

Condition II.A.3 defers all of this to the building permit, requiring only that final plans include “notes and details indicating compliance with all applicable building and fire code requirements.” The consequence is that the Zoning Administrator would approve a specific design that cannot be built as drawn, and any conforming redesign will differ materially from the approved Exhibit D.

VII. THE SURVEY LOCATES THE WALLS. IT DOES NOT LOCATE THE ROOF ON EITHER PROPERTY LINE

Exhibit D includes a detail bearing the stamp of Jeff B. Nielsen, Licensed Land Surveyor No. 6832, of Mid Coast Engineers (Job No. 25085). It shows the shed footprint at 13.00 by 18.00 feet and annotates the offset from the property line as five tenths of a foot on one line and two tenths of a foot on the other. It expressly distinguishes a “foundation line” from an “eave line.”

The eave line, however, is drawn only on the two sides of the structure that face the applicant’s own residence and rear yard. On the two sides that face the property lines, no eave line is shown at all — only the wall dimension. The record therefore establishes where the walls sit and is silent on where the roof edge sits relative to either property line.

That silence is the whole question. The annotated wall offsets are two tenths and five tenths of a foot. A roof edge, drip edge or flashing projecting further than that distance crosses the line. The staff report states at page 2 that the applicant “is also proposing to remove any eaves or other extensions that extend beyond the walls of the shed along the side and rear property lines,” which indicates that projections along those two lines presently exist. Exhibit D itself carries two “REMOVE O.H.” annotations on those same two sides. The photographs at Exhibits B and D below show the roof assembly extending past the shared fence, and Exhibit B shows a roof beam that has been cut back.

The record also does not state where the fence sits relative to the property line. That single dimension determines whether a roof edge overhanging the fence also crosses the boundary, and it is not given anywhere.

I request that the following be placed in the record before any action is taken: (a) the complete full-size Nielsen survey and the surveyor’s field notes, rather than the reduced detail printed on the plan sheet; (b) whether the eaves along the side and rear property lines had been removed at the time the survey was performed, or were present and not measured; (c) the dimension from each property line to the outermost edge of the roof assembly, including drip edge and flashing; (d) whether the existing fence was located by the survey, and its offset from the property line; and (e) written confirmation of whether a Record of Survey has been filed with the County Surveyor pursuant to Business and Professions Code section 8762, and if not, the basis on which one was not required.

A roof projection over a neighboring parcel is not cured by a setback variance and the County has no authority to authorize one. If the application is approved in any form, I request that it be conditioned on removal of all eaves, roof edges, drip edges and flashing beyond the wall plane on the side and rear property lines, and on written verification by a licensed surveyor, after that removal, that no portion of the structure or its roof assembly crosses onto 145 18th Avenue.

VIII. THE SEPARATION BETWEEN THE STRUCTURE AND THE LIGHT WELL IS NOT DIMENSIONED, AND MAY NOT MEET THE COUNTY’S THREE-FOOT MINIMUM

SCCC 13.10.611(D)(7) provides that the minimum separation between an accessory structure and any other structure on a parcel, “including encroachments included in subsection (D)(6)(a) of this section, shall be no less than three feet, or as provided by the California Building Code, whichever is greater.” The standard applies by its terms even to structures permitted into a reduced setback; no allowance elsewhere in the section buys relief from it. The exceptions, at subsections (D)(7)(a) and (b), are limited to water tanks, garden trellises, garden statuary, birdbaths, freestanding barbecues, play equipment, swimming pool equipment, freestanding air conditioners, heat pumps and similar HVAC equipment, and ground-mounted solar systems. A light well is not among them.

Exhibit D annotates two dimensions in the space between this structure and the residence: five feet seven inches at the upper portion, and three feet six inches where the residence steps out. Projecting into that same space, the plan shows a structure labeled “LIGHT WELL @ GROUND LEVEL.” The applicant’s own lot coverage table on the same sheet counts the light well at 35 square feet, so the applicant has treated it as a structure for the purpose of calculating coverage.

It is also a permitted feature of the residence. Building permit B-132628 constructed the dwelling with a 1,032 square foot basement, and change order B-141384, issued March 6, 2014, added the “skylight @ lightwell.” The light well is established construction in the County’s own permit record, not an incidental site feature.

The three-foot-six-inch dimension is measured to the wall of the residence, not to the light well. The light well projects further into the passage than that wall, and the resulting separation is not dimensioned anywhere in the plan set. Scaled from the drawing it appears to be materially less than three feet, though the plan’s own two annotated dimensions do not scale consistently against one another. The point is not my estimate; it is that no figure is given.

This is a site standard of the zone district, not a building code question. The variances sought are to the required side and rear yard setbacks. No modification of the separation standard in subsection (D)(7) has been applied for, noticed, or analyzed anywhere in the record. If the separation is less than three feet, the structure does not comply with a County standard that this application does not even ask to vary, and Discretionary Permit Finding (b) — substantial conformance with the intent and requirements of all pertinent County ordinances — cannot be made.

The light well is glazed at grade. It is not a walking surface and cannot be traversed on foot or with equipment, so whatever separation exists is not usable as a passage. Condition II.B defers Central Fire Protection District review to the building permit stage, so the agency that would evaluate access along that passage has not seen it and could not evaluate it from these plans in any event, because the dimension is not on them.

The record does not establish the amenity that governs the non-habitable classification

Every finding in this packet — variance, coastal, discretionary and site development — rests on the classification of this structure as a non-habitable accessory structure. Under Table 13.10.611-1 the amenity that distinguishes the two classes is built-in heating and cooling: not allowed in a non-habitable accessory structure, and heating required in a habitable one. Use for sleeping purposes is likewise not allowed in a non-habitable structure.

The record nowhere states whether this structure contains built-in heating or cooling. The applicant asserts the classification and should be asked to state it. I make no argument from the interior finish of the structure, because Table 13.10.611-1 allows insulation and finished wall covering in both classes.

Three measurements would resolve Sections VII and VIII

Together with the items requested in Section VII above, the applicant should be required to produce a single dimensioned survey showing three things: the outermost edge of the roof assembly, including drip edge and flashing, relative to each property line; the location of the existing fence relative to those lines; and the clear separation between the wall of this structure and the light well.

Three measurements. None of them appears anywhere in this record, and each is required by a different standard the Zoning Administrator is being asked to apply — the first by the limits of the County’s authority over a neighboring parcel, the second because it determines whether a roof edge overhanging the fence also crosses the boundary, and the third by SCCC 13.10.611(D)(7). A licensed surveyor has already been retained for this project and has been on the site.

IX. THE STRUCTURE DOES INTERFERE WITH LIGHT, AIR AND PRIVACY, CONTRARY TO THE APPLICANT’S WRITTEN ASSERTION

The applicant’s written variance findings state, at page 2: “It does not interfere with air or light or privacy of adjoining or adjacent properties.”

That statement is not correct. The structure interferes with all three, and it does so as a matter of the dimensions and orientation shown on the applicant’s own plans, not as a matter of anyone’s impression of it.

The structure stands in the rear yard of 154 Sunny Cove Drive, immediately behind the fence that divides the two properties. It presents a solid wall approximately 18 feet long and 11 feet 9 inches high, standing on the property line. A transom window is set in that wall above the fence line, looking into the rear yard of 145 18th Avenue. The Exhibit D window schedule lists a 128-inch split picture transom and an 82-inch picture transom; Exhibits A, B and D below show the installed window above the fence.

- Light. It takes light. A solid wall of that height and length standing on the property line blocks direct sun across the adjoining rear yard through the afternoon. The shade it casts is visible in Exhibit A below.
- Air. It obstructs air. An 18-foot run of solid wall placed on the line replaces what the Zoning Ordinance requires to be 15 feet of open rear yard, and blocks air movement across the boundary along that entire run.
- Privacy. It overlooks the yard. A window set above the fence line, in a wall standing on the property line, looks directly into the adjoining rear yard, which is occupied by a tenant. There is no separation, no screening, and no distance for either to occur in.

The required rear yard setback in this district is 15 feet. What a 15-foot rear yard setback exists to protect is light, air and separation between adjoining rear yards. Reducing it to zero for a wall of these dimensions is not an incidental consequence of the variance; it is the precise impact the standard was adopted to prevent. Neither Variance Finding 2 nor Discretionary Permit Finding (a) mentions light, air or privacy anywhere, so the assertion went into the record untested.

The point also returns to the comparison staff selected. SCCC 13.10.611(D)(6)(b) permits a garage at a zero setback on a parcel of this size only upon a finding that it “will not unreasonably infringe on adequate light, air, or privacy of adjacent residences,” and subsection (D)(6)(d) applies the same test to a garage exceeding the height or story limit in a required setback. Staff selected that comparison. On this record the finding it requires cannot be made.

X. THE CEQA DETERMINATION IS NOT SUPPORTED

The Notice of Exemption relies on the Class 3 categorical exemption for new construction of small structures (CEQA Guidelines section 15303) and states, without analysis, that none of the conditions in section 15300.2 apply. Section 15300.2 withholds the Class 3 exemption where the project is located in a particularly sensitive environment, where cumulative impacts of successive projects of the same type are significant, or where unusual circumstances create a reasonable possibility of a significant effect. This site is inside the coastal zone, within a mapped scenic beach viewshed, and between the shoreline and the first public road. The exemption also describes new construction, while this application seeks recognition of construction already completed without permits. The Notice of Exemption in the packet is unsigned and undated.

XI. RELIEF REQUESTED

- Deny Application No. 251357. The findings required for the variance and the coastal development permit cannot be made on this record.
- Or continue the item until the eleven matters identified in Section II are resolved. If continued, I ask that it be continued to a date certain. Case NV25236 has been open since April 2025 with no Stipulation and Order and no compliance deadline of any kind.

Denial takes nothing from the applicant. Shawna Rooks, the Code Compliance Investigator assigned to Case No. NV25236, wrote to me on July 31, 2025:

“If compliance cannot be met, they will need to remove and/or reduce and move the accessory unit to meet exempt requirements.”

A non-habitable accessory structure of up to 120 square feet and 10 feet in height, at the three-foot side and rear setbacks, requires no variance, no coastal development permit and no discretionary approval of any kind. That is what the County told the applicant to do when it first found out.

Each point above is detailed in the sections of this brief.

Respectfully submitted,

David Bernstein, Manager

Milly Rose LLC, owner of 145 18th Avenue, Santa Cruz, CA 95062

EXHIBITS — PHOTOGRAPHS OF THE STRUCTURE AS BUILT

Photographs A through F were taken from 145 18th Avenue or from the shared property line. Exhibit G is from the application file.



Exhibit A. *View from the rear yard of 145 18th Avenue. The structure stands above the shared fence, with a window above the fence line looking into the yard. The shade it casts is visible across the yard.*

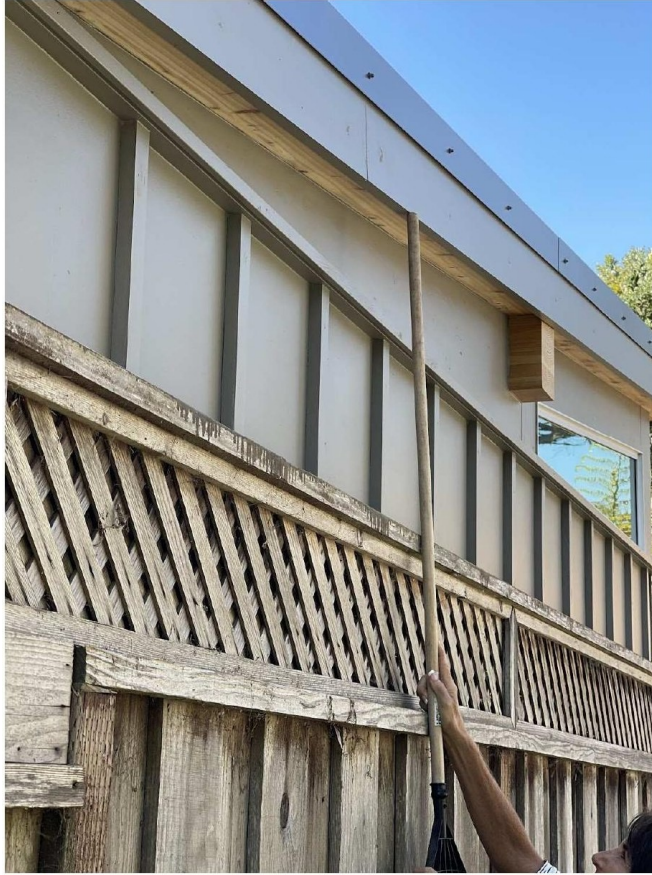


Exhibit B. *The roof assembly projecting past the fence line. The roof beam has been cut back at the line.*



Exhibit C. *The cap of the shared fence, notched to accommodate the wall of the structure.*



Exhibit D. *The wall at the property line, with a glazed opening, and the roof edge above the fence.*



Exhibit E. *The same condition on the opposite side line, toward the adjoining property.*



Exhibit F. *Windows and sliding glass doors in the wall facing the residence, and the glazing at grade on the residence visible at right — the light well discussed in Section VIII.*



Exhibit G. *Interior as documented in the application file: e-scooters, e-bikes and gas motorbikes, with finished flooring, cabinetry and electrical outlets.*

Randall Adams

From: David Bernstein <davidrbernstein@yahoo.com>
Sent: Tuesday, August 18, 2026 2:43 PM
To: Riley Rhodes
Cc: Randall Adams; Shawna Rooks
Subject: Re: Written opposition — Application 251357, Item 2, Zoning Administrator hearing August 21, 2026

******CAUTION:**This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.****

Subject: Supplement to written opposition — Application 251357, Item 2, August 21 hearing

Dear Ms. Rhodes,

Further to the written opposition I filed earlier today on Application No. 251357, I am submitting one short supplement. Section II, item 11 of my brief asked whether a Stipulation and Order has been executed in Code Compliance Case No. NV25236. That question has now been answered by the County.

Shawna Rooks, the Code Compliance Investigator assigned to the case, wrote to me this afternoon, copying Mr. Adams:

On Tuesday, August 18, 2026 at 02:34:19 PM PDT, Shawna Rooks
<shawna.rooks@santacruzcountyca.gov> wrote:

Hello David,

A Stipulation and Order was created and proposed to the property owner, but they were not interested in signing as they were preparing to submit for the Discretionary. As there is a permit in review, the code case is at a standstill until the end of the Discretionary review timeline.



Shawna
Rooks
(she/her)
Code
Compliance
Investigator
III
Community
Development
&
Infrastructure-
Planning
Division

Two points follow, and I state them without characterizing anyone's decision. First, a compliance agreement setting deadlines was drawn up and offered, and it was not signed. Case NV25236 has therefore been open since April 2025 with no compliance deadline of any kind. If the Zoning Administrator continues this item, I respectfully ask that it be continued to a date certain, since nothing else in the record establishes any schedule. Second, the County confirms that enforcement resumes at the conclusion of the discretionary review, which bears directly on the relief requested in Section XI of my brief.

Please include this supplement with my written opposition in the administrative record for Application No. 251357, and confirm receipt.

Thank you.

David Bernstein, Manager
Milly Rose LLC
145 18th Avenue, Santa Cruz, CA 95062
408 857 9872
davidrbernstein@yahoo.com

=====

On Tuesday, August 18, 2026 at 02:34:07 PM PDT, David Bernstein <davidrbernstein@yahoo.com> wrote:

Subject: Written opposition — Application 251357, Item 2, Zoning Administrator hearing August 21, 2026

Dear Ms. Rhodes,

Attached is written opposition to Application No. 251357 (APN 028-221-16, 154 Sunny Cove Drive), which is Item 2 on the Zoning Administrator's agenda for Friday, August 21, 2026 at 9:00 a.m.

I submit this on behalf of Milly Rose LLC, owner of the adjoining property at 145 18th Avenue, Santa Cruz. I am a manager of the LLC.

Could you please confirm that the brief has been received, that it will be transmitted to the Zoning Administrator in advance of the hearing, and that it will be made part of the administrative record for this application. I also ask that Milly

Rose LLC be added to the notice list for all further actions on this application and this parcel, and that the LLC be served with the Final Local Action Notice if the application is approved in any form.

I intend to speak briefly at the hearing.

Thank you for your help.

David Bernstein, Manager
Milly Rose LLC
145 18th Avenue, Santa Cruz, CA 95062
408 857 9872
davidrbernstein@yahoo.com

Randall Adams

From: David Bernstein <davidrbernstein@yahoo.com>
Sent: Wednesday, August 19, 2026 10:16 AM
To: Riley Rhodes
Cc: Randall Adams; Shawna Rooks
Subject: Re: Written opposition — Application 251357, Item 2, Zoning Administrator hearing August 21, 2026
Attachments: Second_Supplement_App_251357.pdf

******CAUTION:**This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.****

Subject: RE: Written opposition — Application 251357, Item 2, hearing August 21, 2026

Ms. Rhodes, Mr. Adams,

Attached is a second supplement to my written opposition on Application No. 251357, responding to the staff report as revised on the afternoon of August 18 — hours after my opposition was filed.

The staff report revisions are four, and they are visible in strikethrough on the face of the revised report. The parcel grew from 3,833 to 4,000 square feet. The stated source of that figure changed from the County's own GIS to the applicant's plans. And in two places — the variance discussion and Finding 1 — the special circumstance was replaced: the small size of the parcel gave way to the location of the existing residence.

No survey was performed in the interval. The County's own Parcel Research Report, generated August 16, still states 3,833.28 (ESTIMATE).

The recommendation did not change. Only the reason for it did.

The figure is not incidental. The lot coverage table on the applicant's plans reports 1,745 square feet as 43.6 percent — which holds only on a 4,000 square foot denominator. On the County's own recorded figure of 3,833, the same 1,745 square feet is approximately 45.5 percent, against a 45 percent maximum. The parcel size therefore determines whether this project complies with lot coverage at all, and it remains unmeasured. The applicant's licensed surveyor has been on this property and has still not been asked for the area.

The supplement sets out why the replacement finding cannot be made either: the parcel's discretionary history contains no variance of any kind before this application, the residence was sited in full compliance in 2013–14 and left a rear yard which is actually larger than the code requires, and on the applicant's own dimensions a fully conforming 120 square foot shed fits behind that residence today. As the supplement puts it, a special circumstance identified only after the previous one failed, stated in different words but supporting the identical recommendation, is not a finding — it is a conclusion in search of a reason.

Please include this supplement with my written opposition in the administrative record for Application No. 251357, forward it to the Zoning Administrator in advance of Friday's hearing, and confirm receipt. I would also ask that the Zoning Administrator be advised that I will request he state on the record which parcel-size figure, and which special circumstance, any decision rests on.

Thank you.

David Bernstein, Manager
Milly Rose LLC
145 18th Avenue, Santa Cruz, CA 95062
408 857 9872
davidrbernstein@yahoo.com

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On Tuesday, August 18, 2026 at 02:42:54 PM PDT, David Bernstein <davidrbernstein@yahoo.com> wrote:

Subject: Supplement to written opposition — Application 251357, Item 2, August 21 hearing

Dear Ms. Rhodes,

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**Shawna
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Two points follow, and I state them without characterizing anyone's decision. First, a compliance agreement setting deadlines was drawn up and offered, and it was not signed. Case NV25236 has therefore been open since April 2025 with no compliance deadline of any kind. If the Zoning Administrator continues this item, I respectfully ask that it be continued to a date certain, since nothing else in the record establishes any schedule. Second, the County confirms that enforcement resumes at the conclusion of the discretionary review, which bears directly on the relief requested in Section XI of my brief.

Please include this supplement with my written opposition in the administrative record for Application No. 251357, and confirm receipt.

Thank you.

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Subject: Written opposition — Application 251357, Item 2, Zoning Administrator hearing August 21, 2026

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Could you please confirm that the brief has been received, that it will be transmitted to the Zoning Administrator in advance of the hearing, and that it will be made part of the administrative record for this application. I also ask that Milly Rose LLC be added to the notice list for all further actions on this application and this parcel, and that the LLC be served with the Final Local Action Notice if the application is approved in any form.

I intend to speak briefly at the hearing.

Thank you for your help.

David Bernstein, Manager
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SECOND SUPPLEMENT TO WRITTEN OPPOSITION — APPLICATION NO. 251357

Response to the Staff Report as Revised August 18, 2026

TO: Deputy Zoning Administrator, County of Santa Cruz; Randall Adams, Project Planner

FROM: David Bernstein, Manager, Milly Rose LLC, owner of 145 18th Avenue, Santa Cruz, CA 95062 (APN 028-221-24)

DATE: August 19, 2026 — for the hearing of August 21, 2026, 9:00 a.m., Item 2

On the afternoon of August 18, hours after my written opposition was filed, the staff report for this application was revised. This supplement responds to that revision. The changes are shown in strikethrough on the face of the revised report, so they can be stated exactly.

I. WHAT CHANGED

- Page 2: “The subject property is a ~~3,833~~ 4,000 square foot lot.” The parcel grew 167 square feet.
- Exhibit F: “Parcel Size: ~~3,833~~ 4,000 square feet (~~GIS~~ Plans).” The source of the County’s parcel figure changed from the County’s own GIS to the applicant’s plans.
- The variance discussion: “The special circumstance in this case is ~~the small size of the parcel (at less than the minimum lot size for the zone district)~~ location of the existing residence on the property.”
- Finding 1: “~~The small size of the parcel and~~ the location of the existing residence on the lot ~~are~~ is the special circumstance affecting the subject property.”

The recommendation did not change. Only the reason for it did.

II. THE PARCEL SIZE WAS NOT RESOLVED. IT WAS CONCEDED AND REPLACED

My opposition identified three conflicting parcel areas in the record — 3,833, 3,883 and 4,000 square feet — and asked that the figure be established as a measured fact before any finding rests on it. The revision does not establish anything. No survey was performed between the morning the discrepancy was identified and the afternoon the number changed. The County simply set aside its own GIS figure and adopted the notation on the applicant’s plans, and Exhibit F now cites “Plans” — with “GIS” struck out — as the source of the County’s own parcel data.

The County’s records now contradict each other. The County’s Parcel Research Report for APN 028-221-16, generated August 16, 2026 — two days before the revision — states the parcel area as “3,833.28 (ESTIMATE).” The revised staff report states 4,000. An applicant’s unverified plan notation, adopted over the agency’s own record without measurement, is not substantial evidence of anything. It is a choice.

The choice also has consequences the revision does not address. The lot coverage table on Exhibit D reports 1,745 square feet as 43.6 percent — a figure that is lawful only on the 4,000 square foot denominator. On the County’s own recorded figure of 3,833, the same coverage is approximately 45.5 percent, over the 45 percent maximum. The parcel size now selects between a lawful project and an

unlawful one, and it remains unmeasured. The applicant's licensed surveyor has been on this property. He has still not been asked for the area.

III. THE NEW SPECIAL CIRCUMSTANCE FAILS AS A MATTER OF LAW

Findings exist to “bridge the analytic gap between the raw evidence and ultimate decision.” *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515. They run from evidence to conclusion. Here the conclusion has stood still for a year while the finding beneath it was replaced — in tracked changes, three days before the hearing, immediately after the original finding was shown to be unsupportable. Analysis performed in that direction is not the analysis *Topanga* requires. And the strikethrough itself is an admission: the County has now conceded, on the face of its own report, that the sole special circumstance relied upon since August 2025 could not be made.

The replacement fares no better. In *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, the approving body found that the “unique location” and “existing development of the site” were special circumstances supporting a variance. The Court of Appeal held findings of exactly that shape insufficient. “Location of the existing residence on the property” is “existing development of the site” in different words. The finding the County adopted on Tuesday is the finding that case rejected.

See also *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, annulling a variance and reaffirming that the grant of a variance is the exception rather than the rule, and that the hardship must inhere in the property rather than in the owner's preferences; and Government Code section 65906, under which the circumstance must deprive the property of privileges enjoyed by other property in the vicinity under identical zoning.

The case that upholds a variance grounded in an existing residence's location is instructive for what it required. In *Eskeland v. City of Del Mar* (2014) 224 Cal.App.4th 936, the site fell approximately 50 feet, slopes exceeded 25 percent, the existing house occupied the one small level building pad, the house predated the setback standard, and alternative designs were studied and found to be limited by the topography. Every element of that record is inverted here. This parcel's slope is 2 to 3 percent — the County's own Exhibit F — with no mapped geologic, fire, or habitat constraint of any kind. The residence was built in 2013–2014 under current standards. And no alternatives analysis exists, because none is needed: the staff report itself states that a conforming alternative exists and that the applicant was advised to build it.

IV. THE RESIDENCE SITS EXACTLY WHERE THE CODE PLACES A RESIDENCE ON THIS LOT

The County's own records answer whether the location of this residence is “special.”

The parcel's complete discretionary history consists of Application 06-0414 (certificate of compliance), 09-0126 (the coastal development permit under which the residence was built), 121174 (a time extension), and 131098 (a minor variation limited to interior floor plans and exterior finishes). No variance has ever been applied for or granted on this parcel before Application 251357. The residence was sited through a full coastal development permit and design review, in compliance with every setback of the R-1-4 district. A placement the County itself approved as fully conforming is the standard condition of the lot. It cannot twelve years later become the special circumstance that excuses noncompliance.

The applicant's own plans confirm it arithmetically. Exhibit D annotates the shed's rear offset at 0.5 feet, the shed's depth at 13.08 feet, and the gap between shed and residence at 3 feet 6 inches at the step and 5 feet 7 inches beyond it. Adding those dimensions, the residence's rear wall stands approximately 17.1 to 19.2 feet from the rear property line. The required rear yard in this district is 15 feet. The residence therefore left a rear yard larger than the code minimum — on a flat, rectangular lot — precisely as every neighboring residence has done. The aerial photograph in the applicant's own submission shows the pattern: a row of mid-lot houses, each with a rear yard, none distinguishable from this one. A circumstance shared by every property in the vicinity is the opposite of a special circumstance under section 65906.

V. ON THE APPLICANT'S OWN DRAWINGS, A CONFORMING SHED FITS BEHIND THE RESIDENCE WHERE IT STANDS

The decisive test of the new finding is whether the residence's location actually deprives this property of the privilege its neighbors enjoy — a code-exempt storage structure of up to 120 square feet and 10 feet in height, at three-foot side and rear setbacks. It does not, and the applicant's own dimensions prove it.

Place a 120 square foot shed — ten feet deep by twelve feet wide — at the three-foot rear setback. It occupies the yard from 3 feet to 13 feet off the rear line. The distance remaining to the residence is 17.1 minus 13, or 4.1 feet: clear of the three-foot minimum separation between structures required by SCCC 13.10.611(D)(7), with margin, and with greater margin still on the 19.2-foot portion of the yard. The fully conforming shed fits behind the residence exactly as the residence is placed.

What does not fit is a 234 square foot shed: three feet of setback plus 13.08 feet of depth leaves roughly one foot to the residence. The constraint on this lot is therefore not the location of the house. It is the size of the structure the applicant chose to buy. That is a personal preference, not a circumstance of the property. *Broadway, Laguna, Vallejo Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 767. The lot does not prevent a lawful shed. The residence does not prevent a lawful shed. The only thing either prevents is this shed.

VI. THE CLAIMED CIRCUMSTANCE AND THE RELIEF REQUESTED DO NOT CORRESPOND

There is a final defect, and it is geometric. The residence lies on the opposite side of the shed from the property lines. The variances requested reduce the rear and side yard setbacks — the standards protecting the neighboring parcels. Whether this structure stands at zero feet or at three feet from a neighbor's boundary is entirely unaffected by where the applicant's house sits; the house's location bears only on the gap on the other side of the shed. A variance is supposed to remediate the identified hardship. This one relieves standards that have nothing to do with it. If the location of the residence were genuinely the hardship, the relief sought would concern the separation from the residence — and no such relief has been requested, noticed, or analyzed.

VII. WHAT REMAINS AFTER THE REVISION

Take the revised report on its own terms. The parcel is now 4,000 square feet — a standard lot meeting the district minimum. It is rectangular. It is flat, at 2 to 3 percent. The County's Exhibit F maps no geologic hazard, no fire hazard, no sensitive habitat. The residence was placed in full compliance, through the County's own permit process, without a variance. Every attribute in the County's own parcel sheet now describes an ordinary property, indistinguishable from its neighbors. Under Government Code

section 65906 the special circumstance must be what sets this property apart from the others in the vicinity. After Tuesday's revision, the only thing that sets it apart is the unpermitted structure seeking approval — and a special circumstance identified only after the previous one failed, stated in different words but supporting the identical recommendation, is not a finding. It is a conclusion in search of a reason.

The variance findings could not be made on the original report. They cannot be made on the revised one. I renew the requests in my written opposition: deny the application, or continue it to a date certain with the parcel actually surveyed — its area, the position of the roof assembly on both property lines, the location of the fence, and the separation from the light well — by the licensed surveyor the applicant has already retained. I also ask that, whatever action is taken, the Zoning Administrator state on the record which parcel-size figure, and which special circumstance, the decision rests on.

Please include this supplement with my written opposition in the administrative record for Application No. 251357.

Respectfully submitted,

David Bernstein, Manager

Milly Rose LLC, owner of 145 18th Avenue, Santa Cruz, CA 95062