

## Quackenbush, Alexandria

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**From:** Amelung, Andrew  
**Sent:** Tuesday, December 3, 2024 8:47 AM  
**To:** Quackenbush, Alexandria; Ramirez Vega, Angelica  
**Cc:** Hawkes, Trevor  
**Subject:** FW: Final thoughts before the meeting on Wednesday  
**Attachments:** GS Napa County Variance Application.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged



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**From:** Greg Siewert <gregsiewert@gmail.com>  
**Sent:** Sunday, December 1, 2024 2:58 PM  
**To:** Amelung, Andrew <andrew.amelung@countyofnapa.org>; Hawkes, Trevor <trevor.hawkes@countyofnapa.org>; Encinas, Anthony <anthony.encinas@countyofnapa.org>  
**Subject:** Final thoughts before the meeting on Wednesday

[External Email - Use Caution]

Hi all,

Thanks for moving this along. A few final thoughts and questions:

First, I'd like to ask you to re-consider the "no" recommendation. I realize that you've all put quite a bit of thought into this already. However, the exact nature of our request wasn't ever really clear even to me until recently. Around the time we had the "Pre-application meeting", I couldn't have articulated exactly what we were asking for and now I can. Our variance request boils down to this:

1. The pavilion can be 2 feet from the side lot line rather than 5.
2. The pavilion can be 2 feet from the rear lot line rather than 5.
3. The pavilion can be 5 feet from the future carport rather than 8.

I think when it's boiled down to its essence, our request is modest and well within the scope of what the variance process is intended for.

Attached is the new draft of the variance application. In addition to general re-writing, I've added a graphic showing the allowable area for a utility structure on our property. Let me know if you have any questions about any of the changes.

A few questions:

- Did I understand correctly that Andrew was preparing an official report with the "No" recommendation? If so, can I see it?
- The notification I received said 9:00 AM. Is that my actual slot or is that just when the meeting starts?

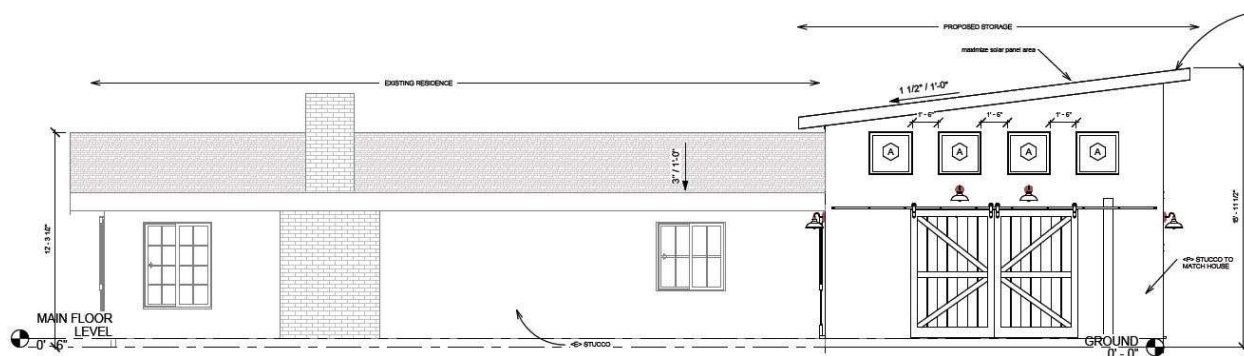
Thanks,  
Greg

Greg and Heather Siewert  
2234 Sandra Drive – Napa, CA  
APN: 042-081-012-000

## Variance Application 11-30-24



Figure 1: Solar Pavilion



*Figure 2: Proposed Enclosed Carport*

## Table of Contents

Variance Application for Solar Pavilion.....	1
Table of Figures.....	2
Site Plan 2234 Sandra Drive:.....	3
Executive Summary:.....	5
Project Narrative.....	6
County Application Prompt 1:.....	6
Solar Pavilion – What makes this a unique and exceptional circumstance? .....	6
1) The presence of a county-approved solar array.....	6
2) This structure has existed without complaint for over 20 years .....	7
3) An exterior corner lot and onerous setbacks is space-limiting for utility structures .....	9
County Application Prompt 2:.....	10
Solar Pavilion – The Benefits Provided and the Hardships if Removed.....	10
1) Without a variance, the county would require the demolition of a solar installation that it permitted .....	10
2) The structure is an essential component of the property and its demolition would cause a serious and unnecessary Hardship to the Applicants .....	11
3) The structure is consistent with other non-compliant buildings in the area .....	12
County Application Prompt 3:.....	13
Conclusion:.....	14

## Table of Figures

Figure 1: - Solar Pavilion.....	1
Figure 2: Proposed Enclosed Carport.....	1
Figure 3: Site Plan Overview 2234 Sandra Drive.....	3
Figure 4: Carport seen to the right of house. Structure to be demolished. ....	4
Figure 5: Solar Pavilion Side View .....	4
Figure 6: Solar Permit Site Plan 2020.....	7
Figure 7: Pavilion is visible as far back as 2002.....	8
Figure 8: Setback constraints of a corner lot .....	9
Figure 9: Random House Cluster in Union Surveyed for Likely Non-Compliant Structures <b>Error! Bookmark not defined.</b>	
Figure 10: Results of Survey for Likely Non-Compliant Utility Structures .....	13

### Site Plan 2234 Sandra Drive:

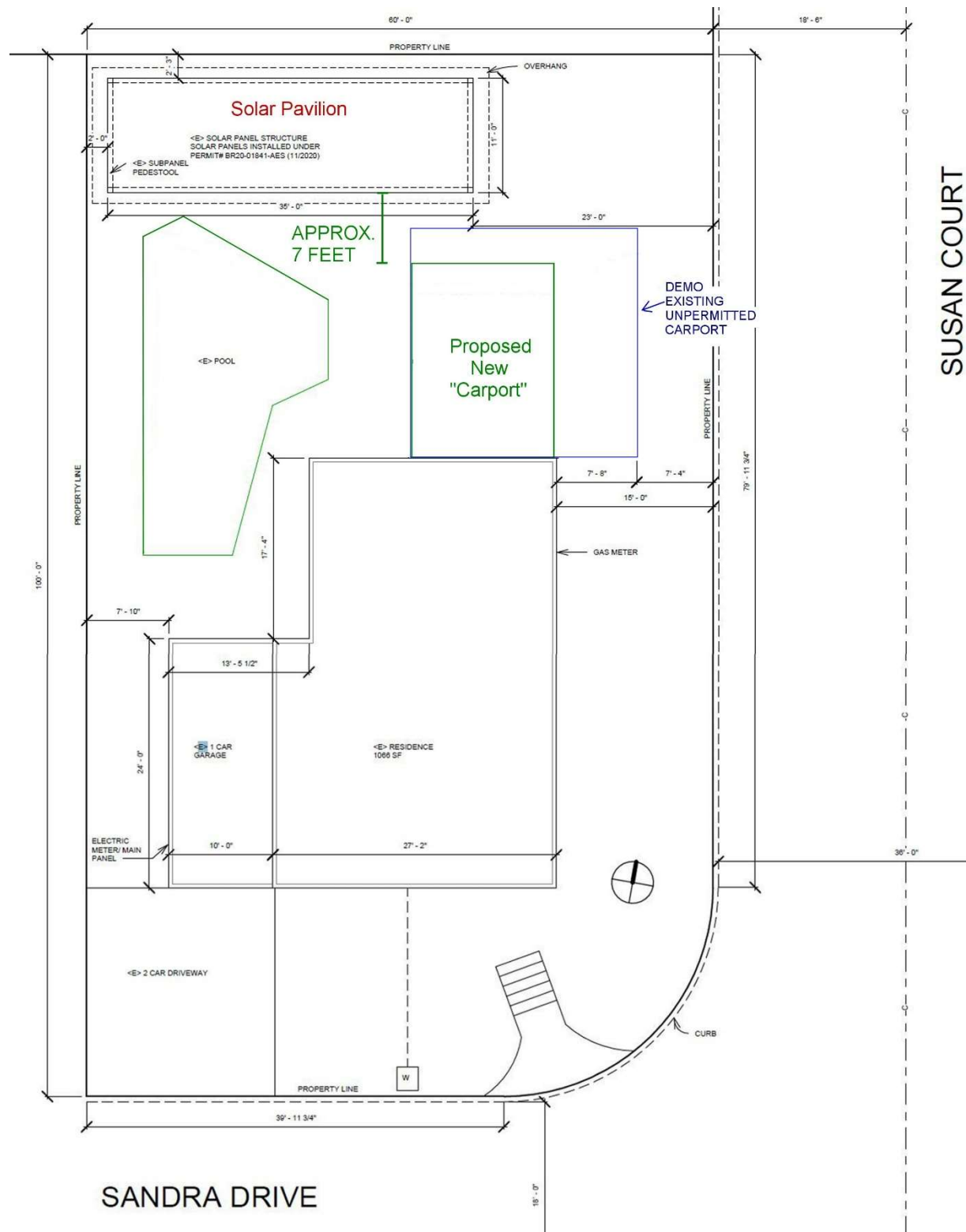
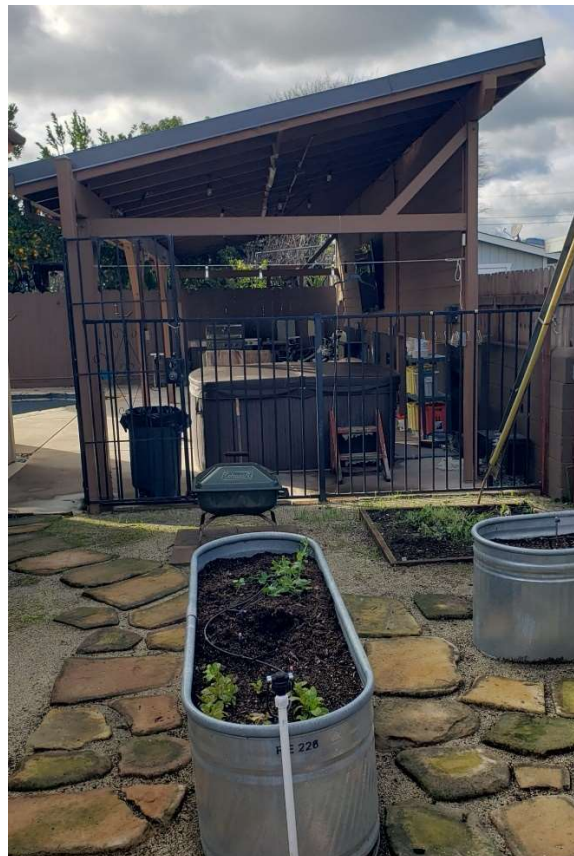


Figure 3: Site Plan Overview 2234 Sandra Drive





*Figure 4: Carport seen to the right of house. Structure to be demolished.*



*Figure 5: Solar Pavilion Side View*

## Executive Summary:

- The applicants seek a variance for a solar pavilion which is non-permitted and violates setback requirements.
  - In summary, the applicants are requesting that:
    1. The pavilion can be 2 feet from the side lot line rather than 5.
    2. The pavilion can be 2 feet from the rear lot line rather than 5.
    3. The pavilion can be 5 feet from the future carport rather than 8.
- A Code Violation has been filed against this structure as well as a carport that is also on the property. Both structures were un-permitted and violate county setback requirements.
- The age of both structures is unknown; they were built long before the applicants purchased the property. Satellite records show them at least back to 2002 – the earliest date satellite imagery is available in adequate resolution. The property was purchased by the applicants in 2011.
  - The “Carport” *Figure 3* and *Figure 4*, is an open air structure and a complaint was filed against it which resulted in the involvement of Napa County Code Enforcement. A permit has been obtained to demolish this structure and it is the applicant’s intent to rebuild a smaller, enclosed structure which complies with all setbacks except the required 8’ to the solar pavilion. *Figure 2*
  - The “Solar Pavilion” *Figure 1* and *Figure 3* has had no known complaint. It came to the attention of Code Enforcement when they were on site regarding the Carport.
- The applicants seek a variance with the following components:
  - The new carport structure will be closer to the Solar Pavilion than the required 8’.
    - Note: The focus of this variance application is the solar pavilion. The only variation from county zoning requirements which regards the carport is the setback to the pavilion. By necessity, this setback includes both structures.
  - The Solar Pavilion would be preserved in its existing location. This structure does not meet the setbacks for the side and rear lot lines. It also will not meet the setback to the new carport once it is built.
- The reasons why the applicants believe a variance is justified are as follows:
  - The solar pavilion houses 10 panels of a solar array which was approved by Napa County in 2020. This is a unique and exceptional circumstance which does not apply to neighboring properties.
  - The pavilion has been in place for decades. The applicants understand that this does not justify a non-compliant structure. However, it has been a part of the neighborhood without incident or complaint.
  - Non-compliant utility structures are common in this area of Napa and legalizing this structure would not amount to a special privilege. Rather, it would prevent an unnecessary and prejudicial hardship to the applicants. A variance would allow them to exercise their property rights in the same manner as their neighbors.

## Project Narrative

### County Application Prompt 1:

**Please describe what exceptional or extraordinary circumstances or conditions apply to your property (including the size, shape, topography, location or surroundings), which do not apply generally to other land, buildings, or use and because of which, the strict application of the zoning district regulations deprives your property of the privileges enjoyed by other property in the vicinity and under identical zoning classification.**

Solar Pavilion – What makes this a unique and exceptional circumstance?

#### **1) The presence of a county-approved solar array.**

The “Solar Pavilion” is a roofed structure at the rear corner property line *Figure 1*. It houses 10 panels of a solar array which was permitted by Napa County in 2020. The permit for the solar array clearly shows the location of the structure, which was known to County planning and building at that time *Figure 6*. In their lifetime, these panels have generated over 20 Megawatt hours of electricity. In fact, the applicants are contracted to add 4 more panels to the pavilion in the coming years.

The presence of this solar array and the fact that it was installed with an approved permit constitutes a unique and exceptional circumstance that is inherent to the property. To the applicant’s knowledge, there are no other properties in the vicinity who have been required to demolish a structure with an approved solar installation. A variance to allow the continued existence of this structure would not amount to a special privilege to the applicants, but would instead prevent the suffering of prejudicial difficulties and unnecessary hardships caused by its removal.

California has set forth aggressive targets for reducing greenhouse gas emissions and transitioning towards renewable energy sources. By investing in solar panels, the applicants are actively contributing to the state's renewable energy objectives. The pavilion not only serves their personal energy needs but also aids in reducing the carbon footprint associated with traditional energy sources. By allowing the continued use of these solar panels, Napa County would demonstrate its commitment to supporting environmentally friendly initiatives within the community.

In preparation for the solar installation, the pavilion was extensively renovated with quality construction and fire-safe materials. It is the intent of the applicants to ensure that the structure is properly permitted following the variance and that it complies with all county requirements other than the setbacks as noted.

Integrating solar panels into structures like pavilions enhances their functionality and sustainability. The panels provide shade and protection from the elements while simultaneously generating clean energy. This dual-purpose design optimizes land use and promotes resource efficiency, which is in line with California's principles of sustainable development and smart growth. The applicants urge Napa County to consider these factors favorably when reviewing the application.



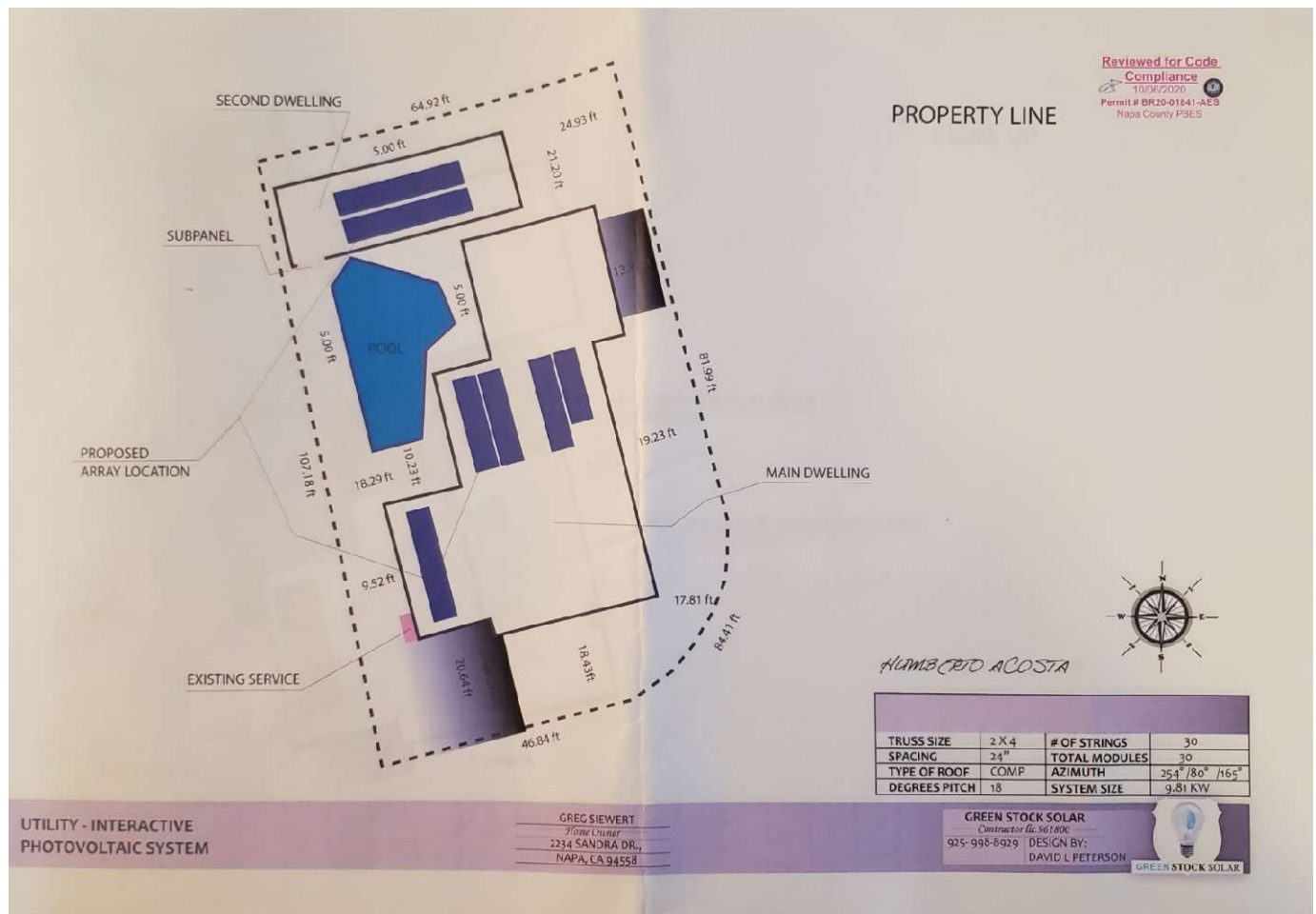


Figure 6: Solar Permit Site Plan 2020

## 2) This structure has existed without complaint for over 20 years

The applicants understand that the mere passage of time without complaints does not constitute a legal justification for the non-compliance of a structure.

However, when considering the impact on the neighborhood from this pavilion, its age is important context. Satellite imagery shows that it has existed at least as far back as 2002 – as far back as Google Earth has imagery of sufficient resolution [Figure 7](#). So, the structure is more than 20 years old, and possibly much older. It certainly existed long before the applicants purchased the property in 2011. In all of this time, there has been no known complaint against it. The matter that brought the property to the attention of Napa County Code Enforcement (the carport) was unrelated to the pavilion.

There are several reasons why the County should take into account the age of this structure when considering its decision:

- a) **Evidence of Community Acceptance:** The fact that it has existed for over two decades without complaints suggests it has blended into the community without causing issues or grievances. This should be interpreted as tacit acceptance by the local community, indicating the structure does not negatively impact the neighbors or the neighborhood's character.
- b) **Reliance on the Existing Structure:** Over the years, both the current and former property owners have come to rely on the existence of the structure. Its utility and aesthetic values contribute positively to its surroundings.
- c) **No Safety or Health Complaints:** The lack of complaints over an extended period implicitly suggests that the structure does not pose a safety or health hazard. This is an important consideration, as one of the primary reasons for zoning and building codes is to ensure public safety.
- d) **Change in Regulations:** Sometimes, structures become non-compliant due to changes in zoning laws, building codes or neighborhood norms, not because they were initially built illegally. Because the date that the structure was built is unknown, so too is the precise climate of zoning regulations that prevailed in Napa County at the time.



Figure 7: Pavilion is visible as far back as 2002

### 3) Restrictive setbacks and a corner lot is space-limiting for utility structures

The applicants enjoy having a house on an exterior corner for its ample parking and opportunities to garden in the front yard etc. However, the nature of the setbacks with the road means that the “rear” of the property becomes shrunken and the practical area for utility structures is diminished greatly. The setback to any structure on the property is 28 ft from the centerline of the road plus 6 feet. This amounts to 20 feet from the edge of the road. 2722 square feet of the property are within this road setback. That represents 39% of the 6969 square foot property. This figure does not include the side or rear setbacks. When those are taken into account, the practical area to put such a structure is non-existent.

Having a house on an exterior corner is a unique feature in the unincorporated area of this property. A survey of the area encompassed by the County-required title search showed that of the 405 properties, only 64 of them were on an exterior corner – less than 16%. *Figure 8*

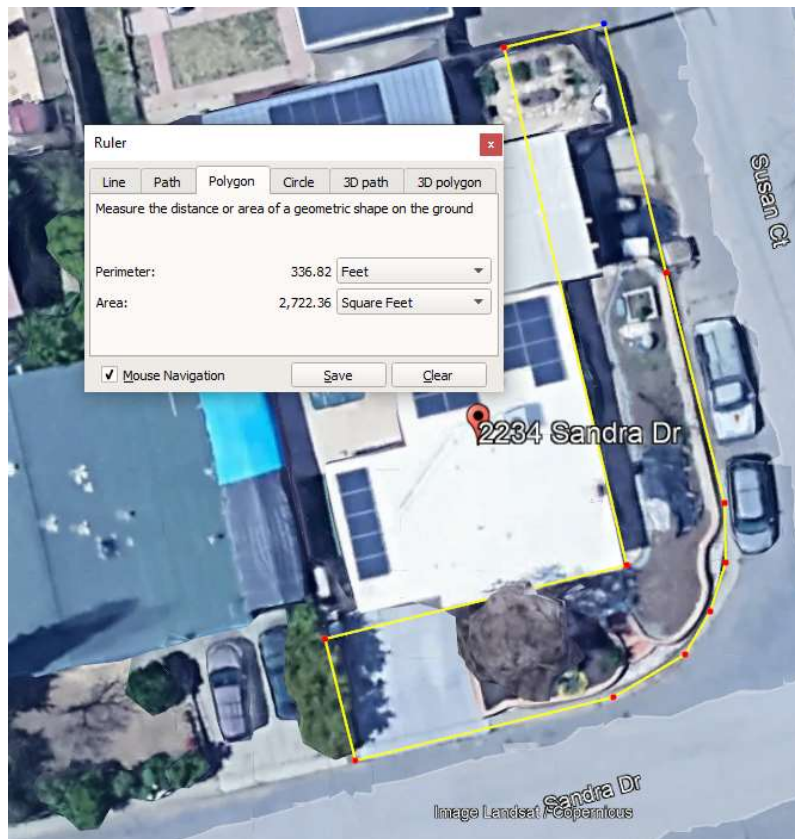


Figure 8: Setback constraints of a corner lot

Furthermore, the setbacks for the rear and side lot lines (5 feet) and the setback to other structures (8 feet) are highly restrictive on small lots. In [Figure 9: Allowable Area for Utility Structures](#) - The area available to build utility structures is shown in green. The allowable area to build a utility structure is shown in green and amounts to a small, irregular shape which is mostly occupied by the pool.

How do other neighbors in this vicinity comply with the restrictive setbacks? Mostly they don't. See [Figure 10: Results of Survey for Likely Non-Compliant Utility Structures](#).

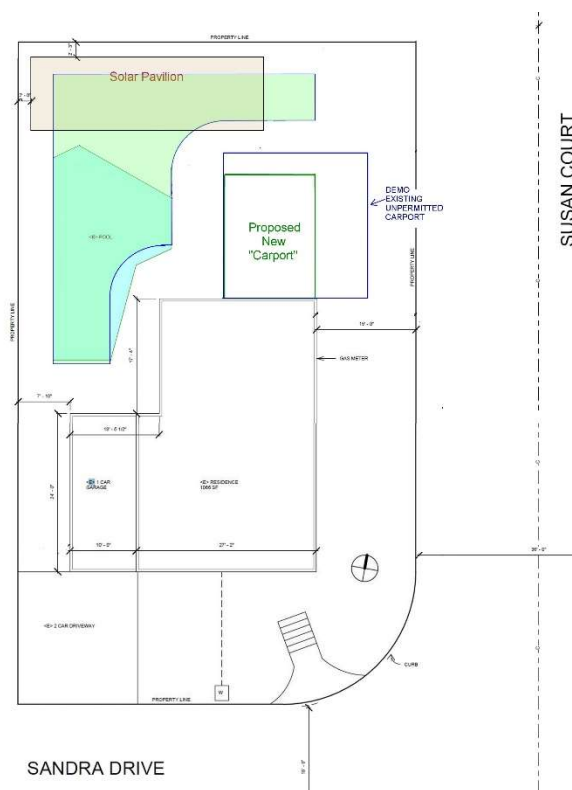


Figure 9: Allowable Area for Utility Structures - The area available to build utility structures is shown in green.

## County Application Prompt 2:

**Please state why the granting of your variance request is necessary for the preservation and enjoyment of your substantial property rights.**

### Solar Pavilion – The Benefits Provided and the Hardships if Removed

- 1) Without a variance, the county would require the demolition of a solar installation that it permitted**

The granting of the variance is necessary for the preservation of the applicant's property rights because without it, they will be required to demolish a structure that Napa County permitted for solar.

There is no other space on the property for these 10 panels. The roof of the house, which already contains the rest of the solar array, has no other location where the roofing material is suitable for installation. If the variance isn't granted and the structure has to be demolished, then the panels will have to be removed and disposed of along with the associated electronic components. Without the variance, the structure cannot be put to effective use consistent with its existing zoning.

The demolition of this structure would prejudicially harm the Applicants in financial losses of:

- The recent improvements that were made to accommodate the solar.
- The cost of the demolition itself.
- The aesthetic damage it would create to the yard area and the resulting remediation which would be required.

**2) The structure is an essential component of the property and its demolition would cause a serious and unnecessary Hardship to the Applicants**

This pavilion is essential for the full utilization and enjoyment of the applicant's property. It not only provides a shaded, outdoor space for gatherings but also helps them to significantly reduce their carbon footprint by generating clean, renewable energy. The panels on this pavilion generate over 5 Megawatt-hours of electricity every year.

In Napa County, where summer temperatures can be intense, the solar pavilion is not just an architectural enhancement but a critical safeguard for the homeowners against the dangers of the sun. Temperatures over 100 ° F have become commonplace and in September of 2022, Napa hit its record high of 114° F. This structure provides essential shade while enjoying the outdoor space, thereby aligning with California's proactive stance on heat illness prevention.

California has been at the forefront of addressing the impacts of heat on health, implementing policies that extend beyond the workplace to ensure all residents are protected from the dangers of excessive heat exposure.

The dual benefit of the solar pavilion—providing essential shade while harnessing renewable energy—exemplifies a commitment to environmental sustainability and public health. This aligns with California's renewable energy initiatives and its public health directives aimed at minimizing heat-related health risks.

The applicants did not build the solar pavilion but they have maintained and improved it over the years. It serves as a seating area out of the sun and shade from which the rest of the backyard and the pool can be enjoyed. It's a great spot for entertaining and is architecturally in line with the Napa Valley Aesthetic. It is an asset to the property and the working-class neighborhood in which it resides. Granting a variance for this solar pavilion will not only enhance the quality of life for the homeowners but will also support Napa County's leadership in promoting health-conscious and environmentally sustainable living spaces.

### **3) The structure is consistent with other non-compliant buildings in the area**

Does this matter? The applicants understand that their neighbor's non-compliant structures do not justify their own non-compliant structure. This is not a case of: "well, they did it too so we get to do it". The commonplace presence of other non-compliant structures in Union is important for 2 reasons:

1. "Parity" is an important concept to establish in the granting of a variance. The existence of other non-compliant structures in the area establishes an implicit property right that is being afforded to other homeowners and is being denied to the applicants. The reality of building practices in Union should be taken into account when considering this structure. The solar pavilion is by no means exceptional and the granting of a variance would merely allow the applicants to enjoy their property rights in a matter similar to their neighbors, it would not amount to a special privilege.
2. Selective enforcement of the law is problematic. The complaint-based system used by Napa County Code enforcement causes the law to be applied sporadically based on an arbitrary, anonymous process. The complaint that brought this property to the attention of code enforcement was not about the solar pavilion, it was about the carport. The applicants are committed to working with code enforcement to demolish the carport and bring it into compliance. The solar pavilion should be allowed to remain as-is.

The applicants have made the decision not to catalog or describe other non-compliant structures in the area. Making specific comparisons with other properties is the way that Napa County recommends making a case for a variance. The applicants are not taking this action for reasons that are both altruistic and practical.

The altruistic reason is that the applicants understand first-hand the hardships that ensue when a property is targeted by code enforcement. It has cost them greatly in time, money and anxiety. If unsuccessful, they will be forced to pay for the destruction of their own property. The applicants do not wish any of their neighbors to be subjected to this. Napa County Code enforcement has made it clear that they would be obligated to act on any specific information about non-compliant structures that were included in this document.

The practical reason why these specific comparisons will not be made is that unlike the anonymous complaint which was lodged against the applicants, the variance process is not anonymous. This document will be a matter of public record. If the applicants caused unsuspecting neighbors to be targeted by Code Enforcement it would expose them to a credible threat of retaliation.

The reality is that in the unincorporated area known as "Union", non-compliant utility structures are extremely common. People are trying to make the most of their small properties and building utility structures is often the means to do this. Given the setback constraints on these small lots, these buildings are almost universally non-compliant.



As a compromise to detailing specific non-compliant structures, the applicants have surveyed a randomly selected, non-adjacent cluster of 18 houses that is in a different part of Union. A structure was deemed to be “likely non-compliant” if it was more than 6 feet tall and violated the setback requirements to the lot lines. Careful measurement was not necessary because in every case these structures were built directly against the lot lines.

The unsurprising result of this survey was that 14 of the 18 properties (78%) had likely non-compliant structures. See [Figure 10](#) It is possible that this is an undercount, as there may be unlawful additions to houses which would not obviously be non-compliant. For example, the applicant’s carport would not have been flagged by this survey as it is not close to the lot line and appears to be a part of the house.

Property Reference Number:	Likely Non-Compliant Structures Present	# of Likely Non-Compliant Structures
1	Yes	1
2	Yes	1
3	Yes	1
4	Yes	1
5	No	0
6	Yes	2
7	Yes	1
8	Yes	1
9	Yes	1
10	No	0
11	No	0
12	Yes	1
13	Yes	2
14	Yes	1
15	No	0
16	Yes	1
17	Yes	2
18	Yes	1
Total:	14	
Percent:	78%	

*Figure 10: Results of Survey for Likely Non-Compliant Utility Structures*

### County Application Prompt 3:

**Please state why the granting of your variance request will not adversely affect the health or safety of persons residing or working in the neighborhood of your property, and will not be materially detrimental to the public welfare or injurious to property or improvements in your neighborhood.**

In the history of the solar pavilion, which is over 20 years old, there has never been a single known neighbor complaint regarding it. It is a well-built, attractive structure that improves the quality of the applicant’s property. The applicants will ensure that this structure meets building and zoning requirements in all respects other than meeting setbacks.

In regards to the carport, a complaint was made to code enforcement only about repair work that was being done to the roof. It was this complaint which brought the property and the solar pavilion to the attention of code enforcement. The applicants are cooperating with code enforcement to remediate the violation by demolishing the structure in order to build a compliant building. The permit for the demolition has already been obtained and when the structure is re-built, it will materially improve the quality of their property and the neighborhood generally. Architectural plans have already been attained. See [Figure 2: Proposed Enclosed Carport](#)

In preparation for the solar installation, improvements were made to the pavilion structure which enhanced its fire safety. The roof of the pavilion is metal and the rear privacy wall is made of concrete board.

There are no health or safety issues regarding the solar pavilion and it is now the applicant's intent to legalize its presence through the Variance process. No neighboring homes have direct frontage from living space windows or functional yard areas to this structure. It creates material substantial benefit to the Applicants property, without hardship upon any other property or property owners.

The applicants look forward to incorporating the input of their neighbors and implementing whatever reasonable suggestions are put forth during this process. For example, they would be willing to make modifications to the rear of the privacy wall to make it more attractive as viewed from other properties. They are confident that the end result will be a better, more attractive neighborhood.

### Conclusion:

Greg and Heather Siewert are committed to finding a successful path forward in dealing with the code violations that were filed against their property. They believe that the Variance process along with the demolition and re-building of the carport are the best means to achieve this. The applicants acknowledge the need to remediate the conditions that existed on their property prior to its purchase. They have put forth substantial hard work and finances to this effort and they expect that much more of both will be required. The applicants hope that the County can be a partner in finding a solution that respects the zoning regulations of Napa County while also protecting their right to enjoy their property to its full use.