

**CITY OF ALBANY
PLANNING AND ZONING AGENDA
STAFF REPORT**

Agenda date: 6/12/12
Prepared by: ALH

ITEM: 7A

SUBJECT: **Appeal of Building Official Decision: unpermitted stairs constructed in the public right of way-**The applicant is appealing the decision of the building official regarding unpermitted front stairs constructed in the public right of way. The applicant received a building permit for a new foundation. Upon completion of this work, a new stairway was installed in front of the home and encroaches 2 ft. in the public right of way. The stairway construction was not included on the building permit application or plans and was constructed without a building permit. The building official determined that due to the stairs being constructed without a permit and the encroachment in the public right of way, the applicant would be required to remove the unpermitted work. The applicant has appealed this decision to the Planning & Zoning Commission for further review and action.

SITE: 735 Evelyn Ave.

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission deny the appeal and uphold the decision of the Building Official to require removal of the unpermitted stairs within sixty (60) days of the decision.

BACKGROUND

The appellants purchased the home at 735 Evelyn Ave. in December 2011. Prior to moving into the home, a permit application was filed with the City of Albany on December 21, 2011 for the following:

- Foundation replacement
- Lift the home 18" (minimum required by Building Code)
- Construct a cripple wall with 2 x4s
- Repair Siding and extend siding to new cripple wall
- Create crawl space to comply with 18" Code minimum

The plans were plan checked by the City's Building Inspector and a building permit was issued on January 13, 2012. Upon going to the site for the final inspection in April 2012, the inspector noted that the new stairs and hand rail installed at the front of the home were not shown on the building plans or detailed in the scope of work on the building permit application.

Additionally, the stairs were built up the sidewalk, and encroach approximately 2 ft. in the City's right of way. As a result of the unpermitted work and encroachment in the public right of way, a final inspection was not approved and the appellant was told to contact the Planning Department.

Planning staff spoke with the appellant via telephone on April 20, 2012 and explained that City would not support the work constructed in the right of way and noted that a building permit or variance would not be issued for unlawfully constructed structures on City property. The appellant requested to speak with the Building Official to determine if there might be any options to preserve the newly constructed stairway. The Building Official reiterated that the City would not support unpermitted work in the right of way and explained that the stairs would have to be removed or the decision could be appealed to the Albany Planning & Zoning Commission. The appellant filed the appeal of this decision on April 25, 2012.

ANALYSIS

In Albany, sidewalk widths vary on each street. The minimum sidewalk width from the face of the curb to the sidewalk on Evelyn Ave. is 10 ft. The plans which were submitted as part of the building permit show a new hand rail detail, 1 ½" round. Four (4) stairs were shown on the plans. Figure 1 shows the building permit detail.

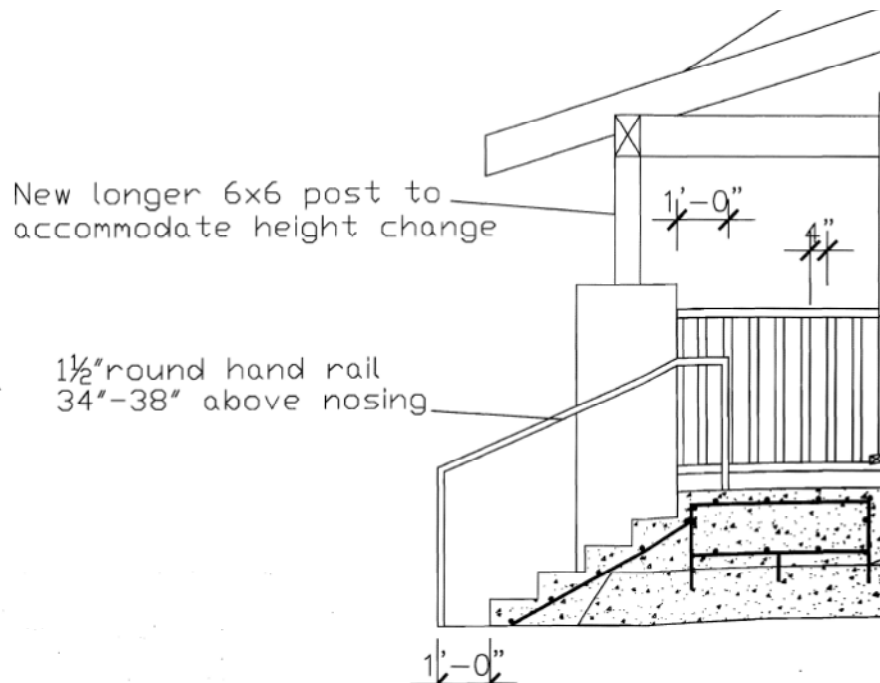


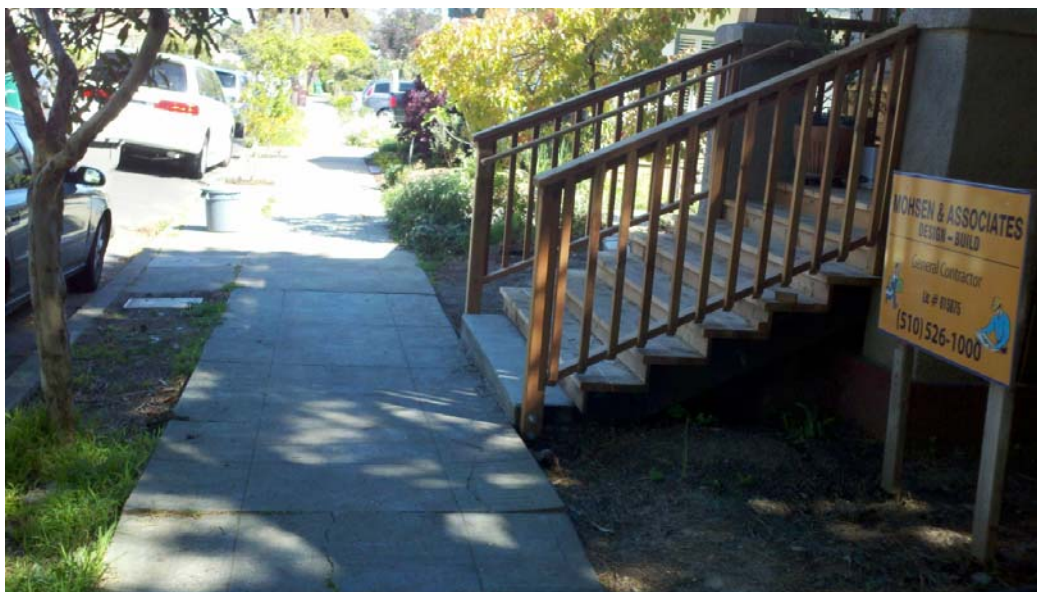
Figure 1. Stairs and Hand Rail detail from Plans



Picture 1. Stairs before work commenced

Picture 1 shows the stairs as they existed prior to construction. There was a front porch, one stair and a landing.

The building inspector took the picture below at the time of final inspection. The picture shows six stairs and a concrete landing adjacent to the sidewalk. Additionally, the handrail installed at the home was not detailed on the plans. The rails create a hazard and obstruction for pedestrians passing by and could cause serious injury.



Picture 2. Stairs constructed

Chapter 14 of the Albany Municipal Code regulates the use of public right-of-way. In summary, the use of public right of way is intended for the use and benefit of the public. Encroachments into the right of way are generally approved for temporary uses or activities only.

The stairs could be returned to their original state as shown in photo 1. Alternatively, the stairs could be reconfigured and constructed in substantial compliance with the approved plans.

Should the Commission choose to overturn the Building Official decision, a variance recognizing the work and circumstances as well as a separate building permit to legalize the construction work, will be required.

Attachments:

1. Building Permit Application
2. Appeal Form
3. City of Albany Street Widths Table