



AGENDA MEMO

CITY COUNCIL MEETING OF: OCTOBER 21, 2009

DEPARTMENT: PLANNING AND DEVELOPMENT

**ITEM DESCRIPTION: VAR-35543 - APPLICANT/OWNER: KEITH AND DIANE
PONSTEIN**

**** CONDITIONS ****

Staff recommends DENIAL. The Planning Commission (6-0 vote) recommends APPROVAL, subject to conditions.

Planning and Development

1. All required bldg permits must be obtained, fees paid, and a final inspection approved, within 30 days of final action.
2. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

**** STAFF REPORT ****

PROJECT DESCRIPTION

This is a request for a Variance to allow a five-foot rear yard setback where 15 feet is required for an existing addition to a single-family residence at 5520 Rock Creek Lane. The addition was originally permitted and constructed as a patio cover, which is allowed to encroach into the side or rear building setback areas to within three feet of the property line. The patio cover has since been enclosed without building permits and is now considered to be an addition to the residence, which is required to meet all building setback requirements. Staff is recommending denial of this request because the applicant has created a self-imposed hardship by enclosing the patio cover prior to obtaining the necessary permits, which could have alleviated the need for a Variance. If denied, the addition will have to be restored to its permitted condition, or redesigned to comply with Title 19 standards, prior to obtaining the necessary building permits.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc and Property Sales</i>	
12/19/84	The City Council approved a request for Reclassification of Property (Z-0084-94) generally located between Ann Road and Lone Mountain Road, and Jones Boulevard and Decatur Boulevard, from: R-E (Residence Estates), to: R-D (Single Family Residence, Restricted), R-CL (Single Family Compact Lot), R-1 (Single Family Residence), R-PD9 (Residential Planned Development), and C-1 (Limited Commercial). The Planning Commission and staff recommended approval.
2/19/09	A Code Enforcement case (#74658) was processed for a building addition erected without permits. The owner was advised to obtain permits.
09/24/09	The Planning Commission voted 6-0 to recommend APPROVAL (PC Agenda Item #14/ao).
<i>Related Building Permits/Business Licenses</i>	
05/14/91	A building permit (#91107235) was issued for a single family dwelling located at 5520 Rock Creek Lane. The permit was completed on 09/25/91.
12/14/04	A building permit (#32335) was issued for a 45'x12' patio cover located at 5520 Rock Creek Lane. The permit was finalized on 03/08/05.
05/28/09	An application for a building permit (#137570) was submitted to enclose an existing patio cover, including includes electrical for portable spa, located at 5520 Rock Creek Lane. The Planning and Development Department denied its review on 05/28/09, as it did not meet required setbacks.

<i>Pre-Application Meeting</i>	
07/31/09	A pre-application meeting with the applicant was held where elements of submitting a Variance were discussed the topics included: • The submittal of the application materials and documents. • The meeting dates and deadlines were also discussed.
<i>Neighborhood Meeting</i>	
A neighborhood meeting is not required, nor was one held.	

<i>Field Check</i>	
08/20/09	During a routine site inspection, staff was unable to obtain a clear view of the rear yard of the subject property. The condition of the existing addition could therefore not be determined.

<i>Details of Application Request</i>	
<i>Site Area</i>	
Gross Acres	.17

Surrounding Property	Existing Land Use	Planned Land Use	Existing Zoning
Subject Property	Single-Family Residence	L (Low Density Residential)	R-1 (Single Family Residential)
North	Single-Family Residence	L (Low Density Residential)	R-1 (Single Family Residential)
South	Single-Family Residence	L (Low Density Residential)	R-1 (Single Family Residential)
East	Single-Family Residence	L (Low Density Residential)	R-1 (Single Family Residential)
West	Single-Family Residence	L (Low Density Residential)	R-1 (Single Family Residential)

<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Area Plan	X		Y
Centennial Hills Sector Plan	X		Y
<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Purpose and Overlay Districts			
A-O (Airport Overlay) District	X		Y
Trails		X	N/A
Rural Preservation Overlay District		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

DEVELOPMENT STANDARDS

Please note the applicable code section here (19.08, 19.06, etc.)

Standard	Required/Allowed	Provided	Compliance
Min. Lot Size	6,500 SF	7,449 SF	Y
Min. Lot Width	65 Feet	75	Y
Min. Setbacks			
• Front	20 Feet	20 Feet	Y
• Side	5 Feet	5 Feet	Y
• Rear	15 Feet	5.8 Feet	N

ANALYSIS

The applicant has built an addition on the back side of the residence that encroaches approximately 10 feet into the required 15-foot rear yard setback of the property. The structure is 12 feet wide by 45 feet long and is completely enclosed except for a seven-foot by 12-foot portion at the south end. Based on photos submitted by the applicant, the overall structure appears to be in good condition, and the stucco matches the existing house. Research of the building permit activity found that the applicant had initially obtained permits via Building and Safety for an unenclosed patio cover that was built within the required setback, in conformance with Title 19.08. The structure was later enclosed without obtaining permits. The applicant has created a self-imposed hardship by enclosing the patio and building within the required setback; therefore, staff is recommending denial of this request for a Variance.

FINDINGS

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070L states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by building within the required setback without obtaining the required building permits. Alternative site design would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site's physical characteristics, it is concluded that the applicant's hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

PLANNING COMMISSION ACTION

There was additional support for this project submitted at the Planning Commission Meeting.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 15

ASSEMBLY DISTRICT 13

SENATE DISTRICT 6

NOTICES MAILED 261 by City Clerk

APPROVALS 0

PROTESTS 1