

**AGENDA MEMO****CITY COUNCIL MEETING DATE: MARCH 3, 2010****DEPARTMENT: PLANNING AND DEVELOPMENT****ITEM DESCRIPTION: VAR-36904 - APPLICANT/OWNER: ANGELO P. BALDARE**

**** CONDITIONS ****

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

Planning and Development

1. This approval shall be void one year from the date of final approval, unless a business license has been issued to conduct the activity, if required, or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.
2. Permits for all structures shall be obtained from the Department of Building and Safety within 30 days of final approval.

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**** STAFF REPORT ****

PROJECT DESCRIPTION

A Variance is requested to allow a six-inch side yard setback where five feet is required for an existing carport at 1401 Fay Boulevard. The original carport had allegedly been constructed in the same location at the time of construction of the primary dwelling, but had recently been demolished and then rebuilt without permits. An approved Variance is required to allow the location of the structure. Staff recommends denial, as there is no hardship associated with the physical characteristics of the site. The rebuilt carport is subject to the current code, which requires a side yard setback of at least five feet. If this request is denied, the existing carport structure must be removed.

ISSUES

- The original carport had allegedly been constructed in the same location at the time of construction of the primary dwelling, but was recently rebuilt without permits, making the structure subject to current zoning standards.
- The carport structure is currently not in compliance with Title 19.08 setback requirements, nor have any building permits been obtained.
- Several single family residential properties in the area contain carports on the side of the dwelling at or near the side property line. No variances have been granted for encroachment of these structures into the side yard setback.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
07/31/97	A deed was recorded for change of ownership of the subject property.
07/11/07	A Code Enforcement case (#55427) was processed for an illegal curb cut at 1401 Fay Boulevard facing Michael Way. The case was closed by Code Enforcement on 08/02/07.
10/13/09	A Code Enforcement case (#82922) was processed for a homeowner engaged in remodeling projects without permits, a block wall on a shared property line that was not to code, room additions, and a carport structure encroaching into a neighbor's property. A follow-up inspection on 10/28/09 found that a permit for the wall was obtained, a variance for the carport encroachment was submitted and that no room additions were constructed. The case was closed by Code Enforcement on 10/28/09.
01/28/10	The Planning Commission voted 6-0 to recommend APPROVAL (PC Agenda Item #24/ss).

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<i>Related Building Permits/Business Licenses</i>	
c. 1962	A single-family residence was constructed at 1401 Fay Boulevard.
09/18/97	A building permit (#97019271) was issued for a detached shed at 1401 Fay Boulevard. The permit was completed on 11/07/97.
10/27/09	A building permit (#150178) was issued for an existing CMU wall on the south side of the property at 1401 Fay Boulevard. The permit received a final inspection on 11/02/09.

<i>Pre-Application Meeting</i>	
11/24/09	A pre-application meeting was held to discuss the submittal requirements for a Variance to the required side yard setback for a carport.

<i>Neighborhood Meeting</i>	
A neighborhood meeting was neither required nor held.	

<i>Field Check</i>	
12/22/09	A field check was conducted, where the following was noted: • There is an existing carport on the south side of the primary dwelling; • There is a secondary gated driveway access to the property from Michael Way, but no approved curb cut or driveway exists.

<i>Details of Application Request</i>	
<i>Site Area</i>	
Gross Acres	0.17 Acres

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	Condominiums	ML (Medium Low Density Residential)	R-PD11 (Residential Planned Development – 11 Units per Acre)

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<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Area Plan		X	N/A
<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Purpose and Overlay Districts			
A-O Airport Overlay District (105 Feet)	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

Pursuant to Title 19.08, the following standards apply:

<i>Standard</i>	<i>Required/Allowed</i>	<i>Provided</i>	<i>Compliance</i>
Min. Lot Size	6,500 SF	7,504 SF	Y
Min. Lot Width	65 Feet	60 Feet	N*
Min. Setbacks (Principal Dwelling)			
• Front	20 Feet	24 Feet	Y
• Side	5 Feet	6 Inches	N
• Rear	15 Feet	62 Feet	Y
Max. Lot Coverage	50%	38%	Y
Max. Building Height	Lesser of 2 stories or 35 feet	1 Story	Y

**The lot is legally nonconforming with respect to lot width.*

ANALYSIS

The site plan indicates that the existing carport is located on the south side of the primary dwelling. Plans for the original carport are not available for purposes of comparison; however, the rebuilt carport is approximately 574 square feet and is situated approximately six inches from the south property line. A masonry wall is located on or abutting this property line.

Per Title 19.16.010, a structure that was lawful before the effective date of Title 19 or amendments to Title 19 may be permitted according to the provisions of Title 19.16 until removed or abandoned. In the case of the subject property, the original structure was removed and rebuilt without building permits. Therefore, the nonconforming status was lost, and the structure was thereafter subject to all current Title 19 standards. A five-foot side yard setback, applicable to primary structures within R-1 zoning districts, is required. The existing carport is currently not in compliance with Title 19.08 and the structure was built without permits. If this request is approved, building permits for the existing structure still must be obtained from the Department of Building and Safety.

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The site plan also indicates a large non-habitable accessory structure (Class II) to the rear of the primary dwelling, labeled as “Workshop.” Two additional accessory structures (Class II) abut the north side of the workshop. The site plan shows that these two structures are located 2.58 feet from the north property line. A condition of approval for this request, if approved, requires building permits for all structures, including these two accessory structures, to be obtained within 30 days of final approval. These structures must be demonstrated to meet current code requirements, or a Variance will be required if they are to be kept on the property.

As there is no hardship associated with the physical characteristics of the site, failure to meet code requirements with regard to the carport is self-imposed and staff cannot recommend approval.

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 19.18.070(L) 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 rebuilding a structure subject to current setback requirements prior to obtaining the necessary building permits. Removal of the structure from the side yard 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.

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NEIGHBORHOOD ASSOCIATIONS NOTIFIED 18

NOTICES MAILED 347 (By City Clerk)

APPROVALS 5

PROTESTS 0