

Board of Adjustment

Minutes

City Council Chambers, Lower Level September 11th, 2012

Board Members Present:

Nicholas Labadie, Chair
Danette Harris, Vice-Chair
Tyler Stradling
Greg Hitchens
Cameron Jones
Chanel Fitch-Kirkpatrick
Wade Swanson

Staff Present:

Gordon Sheffield
Angelica Guevara
Jeff McVay
Kaelee Wilson
Jason Sanks
Wahid Alam

Board Members Absent:

None

Others Present:

Lennee Eller
Stacie Hamblen
Carolyn Attorion
Irma Letson
Megan Corona
Joseph Garcia
Cordell Ketterling
Keisa Davisson
Alissa Crews
Bryon Seed
Greg Wenz
Bud Hamblen
Carmen Attorian
Gary Attorian
Lauren Blysko
Douglas Attorian
Nita Crannock
Jenna
Mark T. Hamblen
Earl Broderson
Anita Kowalzyn
Christian Pantera
Ernest Dennhardt
Ray Harrison
Maria Mancinas

The study session began at 4:38 p.m. The Public Hearing meeting began at 5:42 p.m. Before adjournment at 8:16 p.m., the following items were considered and recorded.

Study Session began at 4:38 p.m.

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Vice Chair Labadie noted that former Chair McCray had moved from Mesa, and by rule, was required to resign. On behalf of the board, he recognized Mr. McCray's leadership and service to the Board of Adjustment and wished him well with future endeavors.

A. The items scheduled for the Board's Public Hearing were discussed.

B. Zoning Administrator's Report:

1. Mr. Sheffield reminded the Board the October meeting will be on the third Tuesday due to Fall Break.

Study Session was adjourned at 5:25 p.m.

Public Hearing began at 5:42 p.m.

- A. Consider Minutes from the August 14th, 2012 Meeting a motion was made to approve the minutes by Board member Jones and seconded by Board member Harris. Vote: Passed 7-0
- B. Consent Agenda a motion to approve the consent agenda as read was made by Board member Stradling and seconded by Board member Jones. Vote: Passed 7-0
- C. A moment of silence was observed in remembrance of September 11th.

Case No.: BA12-029

Location: 1455 West 7th Pl.

Subject: 1455 West 7th Place (District 3) – Requesting a Variance to allow a detached structure to encroach into the required side yard in the RS-6 zoning district. (PLN2012-00234)

Decision: Continued to the October 16th, 2012 hearing

Summary: This item was on the consent agenda and was not discussed on an individual basis.

Motion: It was moved by Board member Stradling seconded by Board member Jones to continue case BA12-029 to the October 16th, 2012 hearing.

Vote: Passed 7-0

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Case No.: BA12-034

Location: 305 South Val Vista Drive

Subject: 305 South Val Vista Drive (District 2) – Requesting a Variance to allow recreational vehicles to encroach into the required front, side, and rear yards in the RM-4 zoning district. (PLN2012-00299)

Decision: Continued to the October 16th, 2012 hearing.

Summary: This item was on the consent agenda and was not discussed on an individual basis.

Motion: It was moved by Board member Stradling seconded by Board member Jones to continue case BA12-034 to the October 16th, 2012 hearing.

Vote: Passed 7-0

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- Case No.:** BA12-035
- Location:** 851 North Country Club Drive
- Subject:** 851 North Country Club Drive (District 1) – Requesting a Variance to allow a freestanding sign to encroach into the future right-of-way width line in the OC zoning district. (PLN2012-00291)
- Decision:** Approved with conditions.
- Summary:** This item was on the consent agenda and was not discussed on an individual basis. The request was for “We Buy Ugly Houses” sign to encroach into the future right of way width line.
- Motion:** It was moved by Board member Stradling seconded by Board member Jones to approve case BA12-035 with the following conditions:

1. *Compliance with the sign plan submitted, except as modified by the conditions listed below.*
2. *The property owner shall enter into a sign agreement with the City prior to issuance of a sign permit. The sign agreement shall require relocation or removal of the detached monument sign at the owners expense in the event additional right-of-way were required for widening/improvement.*
3. *The detached monument sign shall be designed to include a solid monument base with materials and color compatible with the building architecture.*
4. *The internally illuminated sign panel shall be designed to provide an opaque background so that only the sign copy is illuminated.*
5. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*

Vote: Passed 7-0

FINDINGS

1. The variance approved allows a detached monument sign to encroach approximately 10 to 13 feet into the 65-foot future half-street width for Country Club Drive. The sign would be located outside the existing 52-foot half-street right-of-way for Country Club Drive.
2. As justification for the approved variance, the applicant and property owner noted: 1) location of the sign outside of the future width was not possible as the existing building is located between 60 and 67 feet from the center-line of Country Club Drive; 2) office buildings in the vicinity with similar conditions have monument signs within the future width of Country Club Drive; and 3) the sign will be relocated or removed at the owners expense if needed for future improvements to Country Club Drive.
3. The Sign Regulations of the Zoning Ordinance allows developments in the OC district a maximum of two signs, which can be attached, detached or combination there-of. Strict compliance with the future width Code requirements would deprive the property of sign privileges enjoyed by other properties within the OC Zoning District that are allowed a detached monument sign. Further, the hardship (future width line) that prevents construction

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of a detached sign was not self-imposed and reasonable options to comply with the Code requirements do not exist.

4. A condition of approval has been recommended by staff to address the concern with sign design to ensure the sight is compatible with the style and character of the development and integral design component of the building architecture, landscaping and overall development.

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- Case No.:** BA12-036
- Location:** 1350 South Power Road
- Subject:** 1350 South Power Road (District 6) – Requesting a Special Use Permit for a Comprehensive Sign Plan in the LC zoning district. (PLN2012-00329))
- Decision:** Approved with conditions
- Summary:** Brain Eichenburg, the applicant, represented the case. Brain stated he agreed with the conditions set forth by staff except the condition stating McDonald's is only permitted four signs versus the five the applicant requested. The applicant stated the sign package submitted is only 130 square feet when 160 square feet is allowed by code. Staff member Lesley Davis suggested the "M" and "Playplace" should be grouped together to be considered one sign. Board member Jones stated the square footage seems reasonable. Chair Labadie stated that he understands why the applicant wants the signs in specific places, but they have other options that would meet the Sign Code. Board member Fitch-Kirkpatrick acknowledged that grouping the signs together could look awkward. Board member Hitchens stated most people know there is a Playplace at a McDonald's.
- Motion:** It was moved by Board member Harris seconded by Board member Swanson to approve case BA12-036 with the following conditions:
1. *Compliance with the site plan submitted except as modified by the conditions below.*
 2. *Compliance with all conditions of BA08-036 requiring the replacement of the existing multi-tenant monument sign to conform to the approved design.*
 3. *Placement of the signs must be in compliance with all City of Mesa standards.*
 4. *Attached signage is limited to a total of 4 attached signs with one 14 square-foot sign located on the west side of the building where it is not visible from the public right-of-way.*
 5. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*
- Vote:** Passed 6-1 (Jones-nay)

FINDINGS

1. The approved Special Use Permit (SUP) would allow the modification of the approved Comprehensive Sign Plan (CSP) for the Superstition Spring Center development as it relates to the attached sign for the McDonald's on the northwest corner of Hampton Avenue and Power Road. Specifically, is requesting for a total of 5 attached signs on the building totaling 133.3 square-feet.
2. The existing comprehensive sign plan allowed attached signage that complies with current code requirements. This would allow the applicant to have a total of 3 attached signs with a maximum of 160 square -feet in area. The applicant was proposing 5 attached signs with a maximum of 133.3 square-feet. They are proposing 1 attached sign along Hampton (south side) at 77 square-feet, 1 attached sign along Power Road (east side) at 14 square feet, 2 signs on the north elevations 1 at 14 square feet and 1 at 28.3 square feet and one 14 square foot sign on the west elevation facing the mall.
3. The applicant has stated that the additional signs are justified based on the visibility of the building

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on all four sides. Staff agreed that the additional sign on the west elevation facing the mall is beneficial and the installation of a sign in that location is consistent with what staff has previously supported for a fourth sign located on the rear of a building when it faces an interior shopping center. Staff did not agree that the additional sign on the north elevation is necessary. The applicant is within their square footage to group the signs and have one larger sign on the north elevation rather than two separate signs on that side of the building. A condition of approval has been created that limits the number of attached signs to four signs rather than five.

4. A condition of approval for case BA08-036 required the existing multi-tenant sign along Power Road in front of the McDonald's that they share with the Best Western Hotel and Denny's to be brought into conformance with a new design that is consistent with the monument sign on the south side of Hampton along Power Road. That sign has not yet been replaced with the new sign because no changes had been proposed for any of those three businesses. This proposed change to the McDonald's signage would invoke that change and the new sign will need to be installed as part of an approval of any new signs.
5. The approved modifications to the Comprehensive Sign Plan in conjunction with the recommended conditions ensure that signs will be compatible with, and not detrimental to, surrounding properties.

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Case No.: BA12-037

Location: 1858 West Baseline Road

Subject: 1858 West Baseline Road (District 3) – Requesting a Substantial Conformance Improvement Permit to allow the redevelopment of a commercial building in the LC-PAD zoning district. (PLN2012-00331)

Decision: Continued to the October 16th, 2012 hearing.

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Board member Stradling seconded by Board member Jones to continue case BA12-037 to the October 16th, 2012 hearing.

Vote: Passed 7-0

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Case No.: BA12-038

Location: 606 West Caballero Circle

Subject: 606 West Caballero Circle (District 1) – Requesting a Variance to allow an accessory shade structure to encroach into the required side yard in the RS-9 zoning district. (PLN2012-00332)

Decision: Continued to the October 16th, 2012 hearing.

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Board member Stradling seconded by Board member Jones to continue case BA12-038 to the October 16th, 2012 hearing.

Vote: Passed 7-0

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- Case No.:** BA12-039
- Location:** 1835 East Farmdale Avenue
- Subject:** 1835 East Farmdale Avenue (District 4) – Requesting a Variance to allow an addition to encroach into the required side yard in the RS-6 zoning district. (PLN2012-00342)
- Decision:** Approved with conditions
- Summary:** This case was on the consent agenda and not discussed on an individual basis. This case involved a variance for an existing carport to be enclosed into a garage.
- Motion:** It was moved by Board member Stradling seconded by Board member Jones to approve case BA12-039 with the following conditions:
1. *Compliance with the site plan and exhibits submitted.*
 2. *Compliance with all other zoning development standards for construction of a residential use in the RS-6 district.*
 3. *Compliance with all requirements of the Development Services Division in the issuance of building permits.*
- Vote:** Passed 7-0

FINDINGS

1. The approved variance is being requested by the owner of a property who is renovating a home that was built with a carport in 1974. The owner wishes to upgrade the carport by using the existing foundation and roof structure and enclosing the area as a garage. He contends that many other properties have already completed conversion of the carport into either a garage or expanded living area. He also explains that the conversion will add value to the home and be completed in a way that is harmonious with the home's existing architectural themes.
2. The applicant has provided a Justification and Compatibility Statement for this request indicating the following: There are special conditions that apply to this home. It was constructed under a prior ordinance with a carport feature which is not typical of current home construction trends. Most new homes are built with a 2-car garage. That said, in the original development standards for this lot, an open carport was allowed to encroach into the required 10' side yard setback.
3. Under current standards, the lot is considered to now have a legal non-conforming 4' side yard setback as the encroachment allowance for the carports no longer exists. Enclosure of the garage is considered an expansion on the legal, non-conforming side yard setback. The opposite side of the home has a 5' side yard setback.
4. There are special conditions that apply to this home. It was constructed under a prior ordinance with a carport feature which is not typical of current home construction trends. Most new homes are built with a 2-car garage. That said, in the original development standards for this lot, an open carport was allowed to encroach into the required 10' side yard

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setback. Under current standards, the lot is considered to now have a legal non-conforming 4' side yard setback as the encroachment allowance for the carports no longer exists. Enclosure of the garage is considered an expansion on the legal, non-conforming side yard setback. The opposite side of the home has a 5' side yard setback.

5. The proposed garage is 20' wide and would accommodate two vehicles, to comply with the current Zoning Ordinance. Strict compliance with current code requirements for the side yard setback in this location would preclude the property owner from being able to enclose the existing carport. There is no other reasonable location on the property to locate a 2-car garage.
6. The approved variance does not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property. Most of the properties pre-date current ordinance requirements and approximately 68 homes in the vicinity have upgraded their carports to either enclosed living areas or garages in the past 38 years (see applicant provided exhibit).
7. The property is located in a mature neighborhood of single family homes where setbacks are consistent with other homes in the neighborhood and the conversion of the carport to a garage will have minimal impact and will emulate other properties on the street.

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Case No.: BA12-040

Location: 705 South El Dorado

Subject: 705 South El Dorado (District 3) – Requesting a Special Use Permit to exceed the number of livestock allowed in the RS-9 zoning district. (PLN2012-00327)

Decision: Approved with conditions

Summary: Debra Crews, the applicant and property owner, represented the case before the board. Debra stated she historically has had many animals on her property. She has addressed neighbor's concerns by displacing some of her animals throughout the neighborhood. In the past a neighbor had a complaint about Headstart children coming to the property to look at the animals. When the concern was brought to Debra's attention, she stopped having the children come to her property. Debra explained the home where she kept her horses just went into foreclosure; therefore, the horses now need to come back to her property. The animals are used for research she conducts for Arizona State University. Board member Fitch-Kirkpatrick asked Debra about an email from a neighbor concerning the removal of deceased animals. Debra stated when the animals pass on; they have a service come to the home that takes the animals and buries them by Florence. Board member Hitchens asked the applicant if the commercial activity happens on her property. Ms. Crews responded that the horses go off site to work for a non-profit organization.

The following residents were in opposition: Ernest Denhardt and Greg Wenz. Their concerns consisted of: Property deed states animal rights are for family use, there is an increase in traffic, animals are in front yard, there is not enough space for all of the animals, and those in favor do not live in the neighborhood.

The following residents were in favor: Lennee Eller, Stacie Hamblen, Carolyn Attorion, Irma Letson, Megan Corona, Joseph Garcia, Cordell Ketterling, Keisa Davisson, Alissa Crews, Bryon Seed, Bud Hamblen, Carmen Attorian, Gary Attorian, Lauren Blysko, Douglas Attorian, Nita Crannock, Jenna, Mark T. Hamblen, Earl Broderson, Anita Kowalzyn, and Christian Pantera.

Their comments consisted of: There are only about six children at a time at the property, the carriage is never on site overnight, Debra does such good things for the community with these animals, the carriage is used for rides at Phoenix Children's Hospital, the facilities are clean, animals are in good health, and the animals are family.

The applicant, Debra Crews, addressed several of the concerns. She stated the carriage is only used around Christmas time. The carriage rides are off site. She will have chips down to manage the dust created by the horses. Diane Brady, Animal Control Supervisor, stated before the complaint filed in 2011, the only other complaint was in 2003. Board member Swanson asked the applicant how many animals have historically been kept on the property. Ms. Crews replied that historically about 22 animals have always been kept on the property. Board member Hitchens clarified with the applicant that when the animals pass on, she will not replace them. The applicant confirmed that statement. Discussion amongst board members ensued concerning the time limitation on the Special Use Permit.

Motion: It was moved by Board member Jones seconded by Board member Fitch-Kirkpatrick to

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approve case BA12-040 with the following conditions:

1. *Compliance with the site plan, floor plan, and photograph exhibits submitted.*
2. *Compliance with all other zoning development standards for a residential use in the RS-9 district.*
3. *Compliance with all other requirements of City Code Section 8-6-21 related to Fowl, Rodent, and Livestock Restrictions.*
4. *Compliance with all requirements of the Development Services Division in the issuance of any necessary building permits.*
5. *Special Use Permit is valid for a period of one (1) year, beginning on the date of approval. Following this, the applicant shall present to the Board of Adjustment for renewal of the permit based upon the required findings being met at that time.*

Vote: Passed (4-3) (Nays- Board member Hitchens, Board member Swanson and Board member Stradling)

FINDINGS

1. The approved Special Use Permit was requested by the owner of the property to allow her to keep the number of animals she has more or less maintained on the property for the last 15 years. She currently has: 1 Goat, 1 Zebra, 4 Mini-Horses, and 7 Draft Horses for a total of 13 animals. During that time, the property had received a few complaints from an adjacent neighbor. One complaint was related to property maintenance for animal waste which has been rectified by the owner. The other complaint was related to field trips to the property for children that generated traffic in the neighborhood. This issue was also resolved by discontinuing field trips to the property. The most recent complaint was the keeping of more animals on the property than currently allowed by code without a Special Use Permit. This complaint prompted the filing of this application.
2. City Code allows the keeping of 3 animal points on this property which is the equivalent of 3 Draft Horses. A Special Use Permit is required to exceed this allowance. Based upon the point allocation matrix in the city code, the owner requested approval of 10.5 points. The point allocation is as follows:
 - .5 points = 1 Goat (full-size)
 - 2.0 points = 4 Mini-Horses (.5 points each)
 - 1.0 points = 1 Zebra
 - 7.0 points = 7 Draft Horses
 - 10.5 points = Total**
3. The applicant provided a Justification and Compatibility Statement stating: the property has had a variety of animal types for the last 15 years that have included monkeys, llamas, and the animals already listed in the request. Staff was not aware of what animals may have been on the property prior to 1995.
4. The applicant indicated that the animals are primarily intended for private enjoyment and therapeutic outreach and research.
5. The applicant provided numerous letters of support from neighbors and the community for the keeping of her animals. These letters attest to the care she provides to both the animals as well as the charitable contributions she provides to the community. Many of the animals provide therapy to a wide variety of people including athletes, children, and others. Additional letters explain the love and value the neighbors hold for the animals she keeps as they have become

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part of the neighborhood. A veterinarian also provided a letter of support indicating the animals are well-kept and healthy.

6. The applicant provided a site plan, floor plan, and photographs of the animals' housing facilities indicating the amenities provided for animal comfort as well as property maintenance (attached).
7. The applicant provided detailed descriptions of how the property is in accordance with the following City Code Sections:
 - a. Fowl, Rodent, and Livestock Restrictions 8-6-21 – Meets distance requirements from another person's lawfully erected residence, dining, or sleeping quarters.
 - b. Sanitary Regulations for the Keeping of Livestock 8-6-24 – Meets manure cleaning and removal requirements, as well as necessary drinking and feeding trough standards.
 - c. Conditions Under Which Flied Breed Prohibited 8-6-26 – Clean facilities, The product "Simplify" as part of the animal diet to prohibit larvae development, fly traps and wood chips are all used to control flies.
 - d. Offensive or Noxious Gases or Odors Prohibited 8-6-26 – Manure is picked up 3 times per week and stored away from residential properties until picked up.
 - e. Dust Control Measures are taken through the use of wood chips, pea gravel, and sprinklers.
8. The property is located in a mature neighborhood of large properties with horse privileges and the keeping of animals at this property is consistent with the nature of the overall neighborhood. The applicant has some of the animals kept at other properties from time to time so the impact of all 13 animals is not always felt solely on the subject property. During the summer, 4 horses are taken up north for the season. This helps to lessen the impact of the number of animals in this location.

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- Case No.:** BA12-041
- Location:** 430 North Lewis
- Subject:** 430 North Lewis (District 1) – Requesting a Substantial Conformance Improvement Permit to allow the expansion of an existing worship center in the DR-2 zoning district. (PLN2012-00344)
- Decision:** Approved with conditions
- Summary:** Josh Abraham, the applicant, presented the case to the Board. He explained the request is for a SCIP for a 174 square foot addition. Due to the historic nature of the site, the addition will blend with the current architectural style of the building.
- Several community members from the Washington-Escobedo neighborhood spoke about the request. Ray Harrison, a neighbor, stated he is in favor of the addition as long as it doesn't interfere with the historical integrity of the building. Maria Mancinas, a neighbor, stated she would like to see the storage structure detached. Ms. Mancinas also stated the neighborhood would like to be updated on the process.
- The applicant stated they intend to be as sensitive as possible to the historic nature of the building. It would be impossible to separate the structure due to the current lot constraints.
- Board member Stradling stated the case will still need to go to the Historic Preservation Board where the location of the addition can be discussed further.
- Motion:** It was moved by Board member Fitch-Kirkpatrick seconded by Board member Jones to approve case BA12-041 with the following conditions:

1. *Compliance with the site plan and landscape plan submitted, except as modified by the conditions listed below.*
2. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*
3. *Install landscape material and complete site plan improvements per approved plans before completion of improvement associated with building permit for the proposed additional storage area.*

Vote: Passed (7-0)

Findings

1. The applicant was approved to build the additional storage area to this existing Local Historic Landmark Church. In order to build the additional storage area to this historic building, the applicant requires deviation from the current Code to bring the site into conformance with current standards.
2. Since the existing facility was moved to the current location in 1940, the site does not comply with the current Code.

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3. The applicant has provided sufficient evidence that compliance with current Code requirements would not be possible without significant alteration of the site, resulting in the demolition of existing Local Historic Landmark. To provide substantial conformance with current Code, the applicant will install landscape materials and revise the north parking lot layout to comply with current development standards.

4. The approved site and landscape plans, including staff recommended conditions for approval, substantially conform with the intent of the Code. The additional development that is proposed is consistent with and not detrimental to adjacent properties.

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Case No.: BA12-042

Location: 323 West 9th Place South

Subject: 323 West 9th Place South (District 1) – Requesting a Variance to allow an addition to encroach into the required side yard in the RS-6 zoning district. (PLN2012-00348)

Decision: Approved with conditions

Summary: Dawn and David Upton, the applicants and property owners, presented the case to the board. The request is for an existing carport to encroach into the side yard setbacks. They would enclose a portion of the carport into livable space. Dawn Upton explained they purchased the home with a 302K loan from the FHA. The loan has strict deadlines to when the project needs to be started. Dawn stated she was content with the conditions set forth by staff except the condition stating the applicant would have to submit a survey for permitting. Dawn explained obtaining a survey would push the timeline back even longer and cost additional money that could be used on home renovations. Board member Swanson pointed out that the addition does not encompass the portion of the carport that is encroaching. Mr. Sheffield explained the carport is legal non-conforming. It's not until improvements are being made to a legal non-conforming structure that a variance would need to be obtained for permitting. Staff member Angelica Guevara stated staff is comfortable removing the condition regarding a survey.

Motion: It was moved by Board member Hitchens seconded by Board member Swanson to approve case BA12-042 with the following conditions:

1. *Compliance with the site plan and exhibits submitted.*
2. *Compliance with all requirements of the Development Services Division in the issuance of building permits.*

Vote: *Passed (7-0)*

FINDINGS

1. There are special circumstances applicable to the property, including the shape of the lot.
2. The special circumstances of the property are pre-existing, and were not created by the current property owner.
3. The strict application of the Zoning [Ordinance](#) will deprive such property of privileges enjoyed by other properties of the same classification in the same zoning district.
4. The carport would encroach 10-inches into a required five-foot side yard.
5. The carport overhang has been angled to reduce the level of encroachment.

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6. The variance granted does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located.

1. Other Business:

None

Respectfully submitted,

Gordon Sheffield, AICP
Zoning Administrator

Minutes written by Kaelee Wilson, Planning Assistant