

**ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
October 28, 2021**

MEMBERS PRESENT

Chair John Coker
Vice Chair Brandon Mund
Bonnie Leitch
Cynthia Foster
Steve Quidley

STAFF PRESENT

Chris Looney, Planning and Development Services Director
Nathan Brown, Assistant City Attorney
Maddison O'Kelley, Planner
Sam Hunter, Assistant Planner
Stacy Snell, Planning Manager
Jean Drew, Assistant Director of Planning and Development Services

MEMBERS ABSENT

None.

Chair Coker called the meeting to order at 6:23 p.m. Roll was called, and a quorum declared.

3. APPROVAL OF MINUTES

Motion by Vice Chair Mund, seconded by Member Foster, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of August 25, 2021. The motion carried (5-0-0).

4. INDIVIDUAL ITEMS FOR CONSIDERATION

(A) ZB21-0005 Hold a public hearing and consider a request for two variances: 1) Section 3.3-2(b)(1)(iii) to allow a proposed addition to encroach up to 4 feet and 4 inches into the required 15-foot corner side setback ; and, 2) Section 3.3-2(b)(1)(iv) to allow a proposed attached carport to encroach up to 20 feet into the required 20-foot garage setback in the "R-2" Single-Family and Two-Family District, addressed at 325 S. Santa Clara. (Applicant: Kristen Burnup; Case Manager: Maddison O'Kelley)

Ms. O'Kelley presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states the subject property is a narrow corner lot which requires a significant corner-side setback for new construction and that there is not enough room to construct the proposed addition at the rear of the house due to an existing rear porch and large pecan trees. The applicant states the home was built in 1925 in the colonial style and if the addition was constructed in front of the home, it would destroy the architectural symmetry of the house and the historic colonial façade which the applicant intends to maintain. The applicant further states there is not sufficient space to construct the addition on the other side of the house. Staff notes the subject property meets the minimum width for corner lots in the "R-2" and setback requirements are not a special circumstance of the land itself since their impact on development of the subject property is shared with other residential properties with the same zoning. Furthermore, while the intent to preserve the existing face can be challenging to achieve while maintain the required setbacks, the façade is not considered a special circumstance of the land itself and there is sufficient room behind the house for an addition) **and**
- 2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the proposed addition would maintain the same setback as the existing detached carriage house at the rear of the property. The applicant further cites the age of the home, stating it was constructed without central air conditioning, one bedroom, and a cast iron stove to cook on. The applicant describes various improvements made to the home since its initial construction, however, the applicant states the home is still too small to accommodate a modern standard of living and that a primary suite is needed on the first floor of the home. The applicant states the reason for the addition is to

accommodate older guests and the limited mobility of the property owner. The applicant then states the carport is necessary to protect vehicles parked on the driveway from inclement weather. Staff notes the substantial property right to use the property for a residential dwelling is not removed due to the corner side setback or garage setback requirements as space remains behind the house. Staff also notes that because carports are not required by the zoning ordinance, they are not considered a substantial property right of the applicant. The property does not have any local, state, or federal historical landmark designations.) **and**

- 3) **That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states the variance should not be detrimental to public health, safety or welfare.) **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;** (The applicant believes the variance should not prevent orderly use of other land within the area. Staff notes all neighboring properties will still be required to comply with zoning ordinance standards for any new construction and the permit construction plans must meet the minimum requirements of the building code for structures built within 5 feet of a property line.) **and**
- 5) **That an undue hardship exists;** (The applicant cites the limited use of the property due to the antiquated construction of the home as an undue hardship. The applicant further states the hardship is not self-created due to the age of the home nor is it personal, because the layout of the home would be challenging for any elderly or disabled person from using the house. The applicant states the hardship is not financial because the disfunction and layout of the home cannot be resolved at a specific cost. The applicant further states the proposed layout would allow for proper drainage on the lot, because there is a downward slope toward the house from Marguerite Street, where water tends to pool at the side of the house. The applicant states the addition and carport would allow the applicant to capture water through gutters before it collects and damages the home. Staff has not identified a physical hardship due to the nature of the land itself that is not shared by other residential property within the neighborhood. Staff did not identify a significant change in grade on the lot that would result a hardship in construction due to drainage.) **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states the addition is a modest size that is necessary to make the home more livable and accessible for the property owner. The applicant further states a 10-foot setback from the corner side property will be maintained which still allows for adequate sight distance and that the intent for the request is to preserve the historic character of the home while allowing for necessary updates to bring it up to a modern standard of living. Staff acknowledges the historic character of the home and the intent to preserve the facade while expanding the footprint of the house. Staff notes there are additional requirements for structures built within 5 feet of a property line under the building code that will be subject to review upon permit application for the carport. The property has not sought local historic landmark designation so it is unknown if the proposed addition would be in character with the historic characteristics of the house.)

Chair Coker asked if there were any questions for staff.

No one spoke.

Chair Coker asked if the applicant would like to speak.

James and Kristen Burnup elaborated on the intent behind their request.

Discussion followed on the proposed setback of the addition, the proposed setback of the carport, clarification as to why the addition could not be added to the rear of the house, and hardships on the property.

Chair Coker asked if anyone would like to speak in favor.

Kip Legler stated he is in favor of the request citing the character and aesthetics of the neighborhood.

Chair Coker asked if anyone would like to speak in opposition.

No one spoke in opposition.

Motion by Cynthia Foster to vote on each variance separately. Motion failed due to lack of second.

Motion by Vice Chair Mund, seconded by Member Foster, to approve the proposed variance to Section 3.3-2(b)(1)(iii) to allow a proposed addition to encroach up to 4 feet and 4 inches into the required 15-foot corner side setback and deny the proposed variance to Section 3.3-2(b)(1)(iv) to allow a proposed attached carport to encroach up to 20 feet into the required 20-foot garage setback in the "R-2" Single-Family and Two-Family District, addressed at 325 S. Santa Clara. Motion failed (2-2-1) with Member Leitch and Member Quidley in opposition and Chair Coker abstained.

Motion by Member Quidley, seconded by Member Leitch, to approve the proposed variances to 1) Section 3.3-2(b)(1)(iii) to allow a proposed addition to encroach up to 4 feet and 4 inches into the required 15-foot corner side setback; and, 2) Section 3.3-2(b)(1)(iv) to allow a proposed attached carport to encroach up to 20 feet into the required 20-foot garage setback in the "R-2" Single-Family and Two-Family District, addressed at 325 S. Santa Clara. Motion failed (3-2-0) with Member Vice Chair Mund and Member Foster in opposition.

Motion by Member Leitch, seconded by Chair Coker, to vote on each variance separately. Motion carried (5-0-0).

Motion by Vice Chair Mund, seconded by Member Leitch, to approve the proposed variance to Section 3.3-2(b)(1)(iii) to allow a proposed addition to encroach up to 4 feet and 4 inches into the required 15-foot corner side setback in the "R-2" Single-Family and Two-Family District, addressed at 325 S. Santa Clara. Motion carried (5-0-0).

Due to lack of a motion, the proposed variance to Section 3.3-2(b)(1)(iv) to allow a proposed attached carport to encroach up to 20 feet into the required 20-foot garage setback in the "R-2" Single-Family and Two-Family District, addressed at 325 S. Santa Clara was denied.

(B) ZB21-0006 Hold a public hearing and consider a request for a variance to Section 3.4-2(b)(1)(iii) to allow a proposed carport addition to the main structure to encroach up to 4 feet and 3 inches into the required 5-foot side setback in the "R-1A-6.6" Single-Family District, addressed at 186 E. Lincoln Street. (Applicant: Chandler Gray; Case Manager: Maddison O'Kelley)

Ms. O'Kelley presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant cites the property's 50-foot width and the existing 3-foot side setback encroachment of the home as two special circumstances that affect the land. The applicant states the proposed sunshade (carport) would follow along the edge of the house, but, due to the city's setback requirements, the sunshade would not be in compliance with the 5-foot side setback requirement. Staff notes that the minimum width for all interior lots in "R-1A-6.6" is 60 feet and that the subject property is only 50 feet wide. However, there are several residential districts within the city where 50-foot wide lots exist and 5-foot wide setbacks are maintained. Setback requirements are not a special circumstance of the land itself since their impact on development of the subject property is shared with other residential properties with the same zoning. Furthermore, the applicant states the purpose of the carport's proposed location is to keep it in line with the existing house, but the house is set back approximately 3 feet from the property line. Additional explanation has not been provided as to why it would be necessary for the carport to be constructed 9 inches from the side property line, 27 inches closer than the existing house.) **and**

- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the existing driveway was permitted in 2001 and that he would prefer to build the sunshade in the same location as the driveway. The applicant further states the intent of the variance request is to enhance the home and better protect his vehicles without constructing a fully enclosed garage. The applicant states granting the variance would help protect his vehicles which would provide a reasonable use of the land. Staff notes the substantial property right to use the property for a residential dwelling is not removed due to the width of the lot nor the side setback requirement.) **and**
- 3) **That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states the variance should not be detrimental to public health, safety or welfare.) **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;** (The applicant believes the variance should not prevent orderly use of other land within the area. Staff notes all neighboring properties will still be required to comply with zoning ordinance standards for any new construction and the permit construction plans must meet the minimum building code requirements for structures built within 5 feet of a property line.) **and**
- 5) **That an undue hardship exists;** (The applicant cites the width of the lot, age of the dwelling, and the year in which the property was platted as hardships that affect the land itself due to each circumstance predating the modern standard for garages and off-street parking for vehicles. The applicant further states that most homes in the neighborhood have a structure used to protect vehicles and the applicant would like to do the same. Staff has not identified a physical hardship due to the nature of the land itself that is not shared by other residential property within the neighborhood. Staff acknowledges the lot is only 50 feet wide where the district requires 60-foot wide interior lots, however, a carport of 18.5 feet in width would appear to have sufficient room on the lot to be located to maintain the 5-foot setback.) **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states all other features, other than the side setback, of the proposed carport will conform to city regulations. The applicant further states the two-post carport will be neutral in color and set back further from the front property line than neighboring garages and carports. Staff acknowledges the carport's conformity to all other requirements adopted within the zoning ordinance as proposed. Staff notes there are additional requirements for structures built within 5 feet of a property line under the building code that will be subject to review during the permit application for the carport per Section R302.1(1) of the International Residential Code.)

Chair Coker asked if there were any questions for staff.

Discussion followed on the setback distance of the carport from the side property line.

Chair Coker asked if there were any questions for the applicant.

Chandler Grey elaborated on the intent behind the request and stated they spoke with property number 6 on the notification map to make sure they would be okay with the request.

Bob Grey provided further clarification.

Discussion followed on the hardship.

Chair Coker asked if anyone would like to speak in favor.

Marilyn McDonald stated she is in favor of the request.

Violet Tanneberger stated she is in favor of the request.

Chair Coker asked if anyone would like to speak in opposition.

No one spoke.

Chair Coker called for a motion or discussion from the board.

Motion by Vice Chair Mund, seconded by Member Quidley, to approve the proposed variance to Section 3.4-2(b)(1)(iii) to allow a proposed carport addition to the main structure to encroach up to 4 feet and 3 inches into the required 5-foot side setback in the “R-1A-6.6” Single-Family District, addressed at 186 E. Lincoln Street. Motion carried (4-1-0) with Member Leitch in opposition.

(B) ZB21-0009 Hold a public hearing and consider a request for a variance to Section 3.3-9(b)(2)(iii) to allow a proposed dwelling to encroach up to 10 feet into the required 15-foot corner side setback in the “C-3” Commercial District, addressed at 394 Kessler Street. (Applicant: Michael Leal; Case Manager: Maddison O’Kelley)

Ms. O’Kelley presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states the property is at the corner of Kessler Street and Sanger Avenue and is a corner lot that is subject to the 15-foot required corner side setback for residential properties. The applicant states that Sanger Avenue is an unused, dead-end street and as a result, the subject property functions similarly to an interior lot where the corner-side setback is not needed to maintain adequate sight-distance. Staff notes the lot is approximately 10 feet narrower than the minimum lot width of 70 feet for corner lots in the “C-3” district and less than 50% of Sanger Avenue adjacent to the subject property is improved. There are no vehicular access points on this segment of Sanger Avenue and the extension of Sanger Avenue is not likely.) **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the variance is necessary to maximize the buildable area of the lot while also remaining consistent with other properties in the neighborhood. Staff notes that, although the increased setback can create be more challenging to design a structure that can accommodate the width of the buildable area, the substantial property right to use the property for a residential dwelling is not removed due to the corner-side setback requirement.) **and**
- 3) **That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states the variance should not be detrimental to public health, safety or welfare and that the 15-foot corner side setback is not needed to maintain sight distance for vehicles since Sanger Avenue is a dead end. Staff acknowledges that the impact to the surrounding area is likely minimal and that the terminus of Sanger Avenue is unimproved.) **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;** (The applicant believes the variance should not prevent orderly use of other land within the area. Staff notes all neighboring properties and subsequent structures will still be required to comply with zoning ordinance standards for any new construction.) **and**
- 5) **That an undue hardship exists;** (The applicant cites the location of Sanger Avenue as a hardship by technically classifying the lot as a corner lot, even though it functions as an interior lot. The applicant further states the neighbor to the south of the subject property has replatted their property in such a way that does not allow the applicant to acquire the adjacent right-of-way to provide for a larger buildable area and remove the constraints created by the development standards in the district. Staff has not identified a physical hardship due to the nature of the land itself that is not shared by other residential corner lots within the neighborhood.) **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states granting of the variance will be in harmony with the spirit and purpose of the zoning ordinance. Staff acknowledges the purpose of the corner-side setback requirement is to ensure adequate sight-distance for passing vehicles and to maintain the line of sight for building by creating a standardized setback. In this circumstance, the sight-distance and building setback line are not relevant to the subject property’s development due

to the lack of vehicular activity this portion of Sanger Avenue adjacent the subject property.)

Chair Coker asked if there were any questions for staff.

Chair Coker asked if there were any questions for the applicant.

Michael Leal elaborated on the intent behind the request.

Discussion followed on the location of the site and details of the house being moved.

Chair Coker asked if anyone would like to speak in favor.

No one spoke.

Chair Coker asked if anyone would like to speak in opposition.

No one spoke.

Chair Coker called for a motion or discussion from the board.

Motion by Member Leitch, seconded by Vice Chair Mund, to approve the proposed variance to Section 3.3-9(b)(2)(iii) to allow a proposed dwelling to encroach up to 10 feet into the required 15-foot corner side setback in the "C-3" Commercial District, addressed at 394 Kessler Street. Motion carried (5-0-0).

5. STAFF REPORT

A) Election of Officers

Chair and Vice Chair

Motion by Vice Chair Mund, seconded by Member Foster, to nominate John Coker to continue as Chair. Motion carried (5-0-0).

Motion by Member Leitch, seconded by Member Quidley, to nominate Brandon Mund to continue as Vice Chair. Motion carried (5-0-0).

B) Briefing with no action regarding forthcoming amendments to various development-related ordinances to streamline processes. *Christopher Looney, Planning and Development Services Director.*

Mr. Looney presented.

Discussion followed.

C) Appointment of a Zoning Board of Adjustment representative to the Unified Development Code Citizens Advisory Committee. *Christopher Looney, Planning and Development Services Director.*

Mr. Looney presented.

Motion by Vice Chair Mund, seconded by Chair Coker, to appoint John Coker as the Zoning Board of Adjustment representative to the Unified Development Code Citizens Advisory Committee. Motion carried (5-0-0).

Cynthia Foster asked what timeframe the meetings will be held.

Member Foster asked to be the alternate to Chair Coker.

Discussion followed and the Board agreed to recommend Member Foster as an alternate to Chair Coker if he was unable to attend

D) New Board and Commission Application and Term Expiration Process. *Stacy Snell, Planning*

Manager.

Mrs. Snell presented on the timeline for reappointments.

Discussion followed on how the board will be informed on their reappointment.

6. ADJOURNMENT

Vice Chair Mund adjourned the meeting at 7:25 pm.

Chair

Date

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