

**SPECIAL CALL CITY COUNCIL MINUTES  
MONDAY, NOVEMBER 30, 2015 9:30 A.M.  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**PRESENT:** Mayor Jay Kramer; Vice Mayor Randy Old; Councilmember Pilar Turner; Councilmember Richard Winger and Councilmember Harry Howle **Also Present:** Wayne Coment, City Attorney and Tammy Vock, City Clerk

**1. CALL TO ORDER**

**A) Roll Call**

Mayor Kramer opened the meeting and the Clerk performed the roll call.

**B) Pledge of Allegiance**

Mayor Kramer led the Council and the audience in the Pledge of Allegiance to the flag.

**2. PUBLIC COMMENT**

**3. PUBLIC HEARING – QUASI-JUDICIAL**

**A) Application #A15-000006 Submitted by Law Firm of Michael O’Haire, Esq. Appealing the Planning and Zoning Board’s Decision Denying a Requested Variance from the 15-Foot Side Property Line Setback for the Extension of an Existing Carport**

Mayor Kramer followed the order of proceedings for a Quasi-Judicial hearing.

Mrs. Tammy Vock, City Clerk, read the case title. There was no ex parte communications disclosed by the City Council. The Clerk swore in everyone testifying at today’s meeting en masse. Any exhibits presented at the meeting will be marked for identification and kept by the City Clerk.

Mr. Tim McGarry, Planning and Development Director, stated that the requested variance is to allow an encroachment of 5 feet into the required side yard setback of 15 feet in Section 61.06 of the Code of Ordinances for a distance of 10 feet along the west side yard lot line. The property is located at 455 Greytwig Road and zoned R-1A. The existing conditions are this is a 2,350 square foot single family residence with an accessory swimming pool occupied on the site. The residence was built in 1956. The lot is 20,900 square feet with a width of 95 feet and length of 220 feet. The variance requested is to allow the construction of an attached carport within the 15 foot side yard setback.

Mr. McGarry explained that the existing residence is located 10 feet from the side yard property line. At the time the residence was constructed in 1956, the setback requirements was either 15 feet or 10 percent of the width of the front building line, whichever amount was smaller. As the lot width was 95 feet, the required side yard setback at the time the residence was built was 9.5 feet. The current setback requirement is 15 feet, which was enacted sometime in the seventies. The property owners propose to construct a carport to be attached to their residence that would extend 10 feet towards Greytwig Road from the current existing porch parallel to and 10 feet from the west side property line.

This extension would be an expansion of the non-conformity that would require a variance to be permitted.

Mr. McGarry stated for a variance to be granted an applicant must satisfy all the criteria of Section 66.02 and Section 66.03 (Attachment D on file in the Clerk's office). He said a variance is only authorized if due to the circumstances unique to the applicant's property itself and not shared by other properties in the area. A variance is only authorized if it is created by an undue and unnecessary hardship caused by the zoning regulations. A variance hardship cannot be self-created; it must be the land, not the nature of the project, which must be unique and create the hardship. The mere preference of what a property owner wants to do with their property does not constitute a hardship entitling the owner to a variance.

Mr. McGarry explained that according to Section 66.03 the appellant must demonstrate that the requested variance complies with the specific review criteria of Section 66.03 in order for the City Council to overturn the Planning and Zoning Board's decision and grant the variance. The required finding that the application of the zoning ordinance causes an exceptional and unique hardship was met with the response from the appellants saying the home was constructed of concrete block and had been built encroaching five (5) feet into the west side yard setback area and only 10 feet from the side line either before the current setback was required; slab and structure cannot be moved or removed without damage to the entire house, conversion of what appears to be the original carport into part of the main structure eliminated parking and parking space, requiring guests to park in a narrow street. The Code does not cause a unique hardship in that the house met the 1956 side yard setback from the R-1A zoning district. Numerous lots in the neighborhood have the same lot width and length configuration of the subject property, which hardly makes the circumstances unique only to the owners' property. At the time the house was constructed, the minimum required side yard setback for a lot with a width of 95' was 9.5'. The existing regulations for R-1A set a 15' setback for all R-1A zoned lots with a minimum lot width of 75.' Since the minimum lot width is 75' and the lot size is 10,000 square feet in the R-1A district, a case can hardly be made that the current zoning regulations are creating an exceptional hardship for the property. The response regarding the movement of the entire house is not germane as the issue has to do with the location of the carport, unless the appellant is trying to make the argument that the entire house must be moved to accommodate the proposed carport within the current setback requirements. However, as the subject lot is 20 feet wider than the required minimum lot width and twice the minimum lot size for R-1A lots, the property owners have or had ample opportunity to properly design improvements to the residence and property to allow for the construction of the carport in a location desired by the them, but compliant with the existing zoning regulations. The required finding that the exceptional and unique hardship is not due solely to the owner's actions brought a response from the appellant that said encroachments existed when the home was purchased were not caused by applicants and were encroachments when the home was built. The purchase of a property that is not nonconforming with the Code is not and does not create a hardship. The hardship was created entirely by the property owners who purchased the property with the nonconforming setback. This nonconformity should have been discovered by the property owners during due diligence. In staff's testimony at the Planning and Zoning Board hearing on the variance request, staff indicated that the property owners had not explored other alternative locations on the property. The property is larger than the minimum requirements for R-1A zoned properties both in terms of the lot width and lot size. The existing porch and residence is located 45' from the Greytwig right-of-way that would allow alternate locations for the carport to meet the 15' setback. In Exhibit "B," the appellant states that evidence was provided at the Planning and Zoning Board hearing that the location of the septic system eliminated other constructions options. Although no specific location was provided at the hearing, a research of the records indicate that the present owners, who purchased the

property in 2013, have made several improvements to the property including a backyard swimming pool, an 832 square foot addition to the existing residence, and installation of a new septic tank and drain field.

Mr. McGarry stated that the variance is not compatible with the physical characteristics of the neighborhood as improvements made to other properties in the neighborhood must and have complied with the 15' setback. The appellant responded that the variance granted would be in harmony with the intent and purpose of the Code as the remaining setback area will continue as it has for decades. Mr. McGarry felt if the variance was granted it would not be in harmony with the intent of the Code, as it increases the non-conformity of the existing structure. The property owners should have considered their need for a carport when making decisions regarding other improvements to the property in 2013. Staff has demonstrated that no exceptional and unique hardship exists for the granting of the variance. Staff finds that the variance does not meet all of the specific review criteria pursuant to Section 66.03 for the granting of the variance and finds no basis that an exceptional and unique hardship exists and that the request for the variance was created solely by the actions and decisions of the property owners. Staff recommends that the City Council uphold the decision of the Planning and Zoning Board and deny the variance based on the findings that the variance does not meet all the specific review criteria of Section 66.03 of the Code.

Mr. Howle asked if originally there was a carport. Mr. McGarry answered yes and explained that the carport was converted to a porch. Mr. Howle asked when this was done. Mr. McGarry said that he could not find anything in the old records. He said when Mr. and Mrs. Wilson purchased this property those improvements had already been made.

Mr. Michael O'Haire, Esquire, was at today's meeting on behalf of the property owners. He showed on the doc cam a photo of the house (made part of the Exhibits). His clients are asking to extend a carport, which there used to be a carport. They are looking at one of the larger lots in the beach area. It is a half acre. At the Planning and Zoning Board meeting, some of the members were asking him questions that he could not answer, such as where the drain field was located. Mr. Peter Robinson a neighbor on that street attended the Planning and Zoning Board meeting and indicated that all of the neighbors on the street were in favor of having the variance granted. He showed another photo which depicted the property line between this house and the neighbor's house. He said if you read the Planning and Zoning Board minutes, at the end of the meeting it was suggested that a continuance of the meeting might be suitable to give him (Mr. O'Haire) time to fill in the gaps and answer the questions he wasn't able to answer at that meeting. Then one of the Board members made a motion not to grant the variance and said there was not enough information provided. He said that was not a good reason for denying the request. He said Mrs. Marjorie Wilson (property owner) was present to speak at today's meeting. Mr. O'Haire brought up that Mr. McGarry gave some other options. He said the first option of putting the carport in the rear of the property would not work because of the huge Oak Tree that is in place. The Oak Tree has a diameter of 2' and no way would they want to destroy this tree. He said it is a hardship to live in a neighborhood and be subject to the sun and have to come out to a hot car. He said if you drive up and down Greytwig you will notice that the neighborhood has ancient Oak Trees and the Oak Trees are rough on a car. He said a car under cover is much to be desired if you live on Greytwig. The second option made by Mr. McGarry would be to have the parking structure in the middle of the yard, which would not do a thing for the house or the neighborhood. He said it would be nice to have the carport close to the house, so when it is raining you don't get wet going into the house. He said it would be shameful to put a new driveway or a carport in the front yard. This hardship is not shared by most of

the other people on the street and people on the beachside at large. At the Planning and Zoning Board meeting he didn't hear any reason given for denying the variance.

Mr. Howle asked where the drain field was located.

Mrs. Marjorie Wilson (presently sworn in) said the drain field is located on the east side of the house. She did not think there was problem to put the carport where it was originally located.

Mr. Howle asked where the original slab was located.

Mrs. Wilson explained starting from the lattice (referring to the photo of the house) going forward where the solid wall is located now.

Mr. McGarry explained if they went up against the wall the 10 feet would not be big enough for a car.

Mr. O'Haire agreed with Mr. McGarry. In order for a car to fit into the carport it would have to be 20 feet.

Mrs. Turner commented that the numbers on the preliminary drawing are difficult to read.

Mr. Howle explained the reason for his question was the same if someone buys property near the Airport there is going to be noise if they live in the path where airplanes come and go. The same thing goes for being able to put cars in a carport or garage. It is nicer than seeing the cars sitting out in the driveway.

Mr. O'Haire and Mrs. Wilson commented that Greytwig is a unique street in that the houses have a lot of frontage and this carport would not encroach into the street because there is so much frontage.

Mrs. Turner commented that when looking at the aerial photo, the carport would be consistent with the existing structure. She also noted that Mr. Robinson checked with the surrounding neighbors who had no problem with the variance request.

Mrs. Wilson commented that her next door neighbor said he was going to be at today's meeting (not in attendance) and he told her that he has no problem with this request.

Mayor Kramer noted that when looking at the aerial that was provided to Council that it looks like the carport would extend approximately 5 feet from the rest of the home.

Mr. O'Haire explained from a straight line it would be 5 feet further.

Mr. Winger had some questions about the carport. Mr. O'Haire explained that Mr. McGarry was unable to locate any of the records when the change of the carport was made.

Mr. Kramer asked if the proposed driveway was going to be concrete for the entire length. Mrs. Wilson answered yes.

Mrs. Turner asked Mrs. Wilson when she purchased the property. Mrs. Wilson said in 2013.

Mr. Mark Mucher was sworn in and said that he lives two blocks from this property. He has studied this material and this seems ridiculous. There is no further encroachment to the side yard setback. He is in favor of approving this appeal. When he purchased his home on Indian Lilac, he went to the closing of the house and on the title they found a 2" setback problem and he had to request a 2" variance. The reason he is telling Council this story is because he hopes they will be practical and allow the variance.

At this time, Mr. McGarry was asked for his rebuttle.

Mr. McGarry stated that there are rules and regulations that have to be followed. He said there are a lot of other lots in this same situation. There are options where this carport can go. He doesn't know the impact the Oak Tree would have if the carport is placed around back. He said just because neighbors want this doesn't change the Code. He said whether or not the variance is approved a precedence will not be set. He said if they look at the criteria in the Code there is no flexibility. He stands by his recommendation.

Mayor Kramer said he was finding himself getting to the point this extension lies within a footprint already there. Mr. McGarry told him there will be a side yard encroachment.

Mr. O'Haire commented that an error is being made here and that was no owners of this house created the encroachment. It occurred when the City changed the encroachment from 10 feet to 15 feet. He said the 15 foot side yard setback was not the creation of the homeowner. The hardship is not something disastrous and granting this variance sets a precedent, which is true of any variance, but it is not a reason to deny this application.

Mr. McGarry commented that the Code changed in the 1970's, which is what is still there today.

Mr. Winger asked what legal ramifications does setting the precedence have. Mr. Coment explained that each variance stands on their own merits based on the criteria.

Mrs. Wilson stated that the other options suggested would not work for her.

Mr. Howle commented that they are here to approve or deny this variance and have set criteria to look at. He said pursuant to Section 66.02, the City Council shall deny the variance if it finds that the approval would do any of the following: a) constitute any change in the districts shown on the zoning map; b) impair adequate supply of light or air to adjacent property; c) unreasonably increase the congestion in public streets; d) increase the danger of fire or panic; e) imperil the public safety; f) unreasonably increase overcrowding of land; or g) imperil the health or general welfare of the inhabitants of the city. He said the wonderful thing about a variance is that it creates a situation for a change and betterment that would not happen without change. He doesn't think granting this variance would cause the neighbors any hardship and aesthetically it would not look bad.

Mrs. Turner referred to staff's analysis and pointed out in Section 66.02 staff finds that the proposed variance, if granted, would not cause any of the adverse impacts listed in (a) through (g). She suggested to Council that this issue be grandfathered in as it complies with the Code that existed at that time. Also, the neighbors support this project, the new homeowners have made an investment in the property and the variance will not set a precedent.

Mr. Winger commented that what he has learned from Codes is that there is not a perfect Code or law that fits all situations. Sometimes there has to be room to have a variance granted. He would accept the request to move 10' further forward along the same line that the house was built on.

Mrs. Turner made a motion that based on the competent substantial evidence presented and the applicable Code provisions that the City Council reverses the Planning and Zoning Board's decision and grants the 5 foot setback variance extending 10 feet from the front of the house. Mr. Howle seconded the motion.

Mayor Kramer commented that he doesn't like the idea of changing the rules. He wouldn't have a problem with staff bringing back something to modify their Code. However, he does feel by granting this variance it will help the neighborhood.

The Clerk polled the Council and the motion passed 5-0 with Mr. Howle voting yes, Mr. Winger yes, Mrs. Turner yes, Mr. Old yes, and Mayor Kramer yes.

#### **4. ADJOURNMENT**

Today's meeting adjourned at 10:25 a.m.

/tv