



Board of Adjustment Variance Staff Report Hearing Date: Nov. 19, 2020

ITEM 1 Spencer Whitham requests a Variance to the side yard setback to allow for an addition to the existing home, located at 1230 E 350 S in the R1.6 zone. Provost neighborhood. Robert Mills (801) 852-6407 rmills@provo.org PLVAR20200336

Applicant: Spencer Whiteham Staff Coordinator: Robert Mills Property Owner: Whiteham, Spencer and Angela Parcel ID#: 35:031:0011 Acreage: .17 acres Number of Properties: 1 Number of Lots: 1 <u>ALTERNATIVE ACTIONS</u> 1. Deny the requested appeal. <i>This action would not be consistent with the recommendations of the Staff Report. The Board of Adjustment should <u>state new findings</u>.</i> 2. Continue to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is December 17, 5:00 P.M.</i>	Current Legal Use: Single family residence Relevant History: Neighborhood Issues: The neighboring property owner on the side which the garage is proposed is not opposed to its construction. Summary of Key Issues: The applicant would like to construct an addition to their home which replaces the existing carport with an attached garage with living area above. The R1 zone requires a ten-foot side yard; the applicant is requesting a variance to allow a four-foot side yard. Staff Recommendation: Staff recommends the Board of Adjustment approve the requested variance.
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OVERVIEW

The applicant requests a variance to the side yard setback requirements of the R1 zone from ten feet to four feet to allow for a home addition that includes a garage with living space above.

RELEVANT HISTORY

The existing dwelling was constructed with a carport that is only five feet from the property line. Although the existing carport would currently be considered an encroachment if it were constructed today, the dwelling was constructed legally, and the encroachment is considered a legal nonconformity.

The length of the existing carport area is approximately 43 feet and 4 inches. Currently, Section 14.36.050(3) of the Provo City Code allows expansion of a noncomplying structure for one half (1/2) the distance of the noncomplying section but does not allow any expansion that would increase the nonconformity. Therefore, the structure could be expanded by an additional 21 feet 8 inches, for a total of 65 feet, but could not encroach any closer to the property line.

The applicant is proposing to expand and enclose the existing carport area to create a single-wide car garage that will hold two cars in tandem and to create a bonus room over the garage. The proposed length of the structure will be 81 feet 8 inches. The applicant is requesting to increase the nonconformity of the proposed structure by reducing the side yard to four feet instead of five feet for 65 feet and to reduce the required side yard setback from 10 feet to 4 feet for approximately 16 feet 8 inches.

FINDINGS OF FACT

- The existing dwelling was constructed legally, including a carport that currently encroaches five feet into the required side yard.
- The five-foot encroachment extends the length of the existing carport, which is approximately 43.33 feet.
- The Provo City Code currently allows for noncomplying structures to be expanded along up to one half (1/2) the distance of the existing nonconformity.
- The existing structure could be expanded to a total of 65 feet, maintaining the five-foot side yard, by right.
- The neighboring property to the west has an existing detached garage that is approximately 3.5 feet from the property line.
- The existing dwelling to the west is between 24 and 26 feet from the property line.
- If approved, the existing detached garage on the neighboring property will be approximately 7.5 feet from the proposed garage and bonus room.

ANALYSIS

1. Section 14.05.030(9), Variances, paragraph (b) of the Provo Municipal Code states that the Board of Adjustment may grant variances if the following criteria are met:

- (i) Literal enforcement of this Title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Title;

Denial of the variance would not cause an unreasonable hardship as the property already has a carport; however, as the property sits, there is no feasible way to build a garage (which offers greater security than a carport) without substantial demolition or an approval of this variance request.

- (ii) There are special circumstances attached to the property that do not generally apply to other properties in the same district;

This property is built to similar lot lines and with an attached carport as the majority of properties in this district are. However, there are properties nearby with attached garages that are less than ten feet to side property lines. 1215 East 350 South, directly across the street, is one example.

- (iii) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

Granting the variance is essential to the enjoyment of a substantial property right. A significant number (though not a clear majority) of properties in the same district have an attached garage. As the property currently sits, granting this variance would be the only feasible way for the property owner to construct an attached garage.

- (iv) The variance will not substantially affect the general plan and will not be contrary to the public interest; and

This variance would not substantially affect the general plan and has not been shown to be against the public interest.

- (v) The spirit of this Title is observed and substantial justice done.

The granting of the variance is not required to observe the spirit of this Title nor do ensure that substantial justice is done as established by the analysis of the remaining criteria.

APPLICABLE ZONING CODES

14.10.080 (2) Side Yard. Except as provided in Subsections (3), (4), (5) and (6) of this Section, each lot or parcel of land in the R1 zone shall have a side yard of not less than ten (10) feet; the combined sum shall be a minimum of twenty (20) feet. Buildings exceeding thirty-five (35) feet in height pursuant to a conditional use permit shall have side yards of at least ten (10) feet per side plus an additional one (1) foot of setback for each two (2) feet of building height over thirty-five (35) feet. Section 14.36.050 (3), relating to noncomplying structures also applies.

CONCLUSIONS

This variance request meets most of the criteria established by Section 14.05.030(9). Specifically, denial would restrict the property owner from constructing an attached garage which is a property right many other people in this district have. In addition, the variance will not substantially negatively affect the general plan nor are neighboring property owners opposed to the home addition.

JUDICIAL APPEAL OF BOARD OF ADJUSTMENT ACTION

Chapter 14.05 provides a process for appeal of a determination by the Board of Adjustment (quoted in part):

04.05.050. Judicial Appeal.

- (i) Any person aggrieved by or affected by any decision of the Board of Adjustment may have and maintain a plenary action for relief from the District Court of competent jurisdiction, provided petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the Board of Adjustment or with the City Recorder.

ATTACHMENTS

- 1. Location Map**
- 2. Existing Site Plan**
- 3. Proposed Site Plan**
- 4. Documentation Submitted by Applicant**

Attachment 1: Location Map



Attachment 2: Existing Site Plan



Attachment 3: Proposed Site Plan



Attachment 4: Documentation Submitted by the Applicant

VARIANCE CRITERIA JUSTIFICATION

(i) Literal enforcement of this Title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Title;

— Enforcement of this title would prevent the property owner from enjoying the convenience and security of having an enclosed garage, which is granted to most properties in the area. As the property sits, there is no way to add a 2 car side-by-side garage. We feel a tandem 2 car garage is the best solution to the challenge.

(ii) There are special circumstances attached to the property that do not generally apply to other properties in the same district;

— Many properties in the immediate area have garages that are less than the setback. Many in the range of 0-4 feet which is less than what is being proposed. Specifics with photos/addresses can be provided. Of note, the neighboring residence is currently setback 24-26 feet from the property. The variance would not have significant visual impact on the setback between properties.

(iii) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

— Security and enjoyment of having an enclosed garage is commonly enjoyed in the immediate area.

(iv) The variance will not substantially affect the general plan and will not be contrary to the public interest; and

— The variance will not substantially affect the plan. The neighboring property owner has indicated they do not have issues with a variance on the subject property.

(v) The spirit of this Title is observed and substantial justice done.

— We feel the spirit of this Title has been observed justice would be fairly done.

VARIANCE REQUEST - 1230 E 350 S PROVO

The current use of permanent structures include primary home with carport. Temporary structures include a shed.

The proposed use of buildings would include the primary home with add-ons within setbacks, converting the carport to a 2 car tandem garage with upper level bonus room, and moving the shed (temporary structure) towards the back of the property to accommodate. To properly convert to a garage would require a variance of the setback on the West side of the property.

In relation to the neighboring property to the West, it currently sits back 24-26 feet from the property line with a driveway and grass in between. There is also a detached garage bordering the subject property in the back which is set back 3.5 feet from the property boundary. With completed proposed changes would be 7.5 feet away. We have discussed purchasing the property and redrawing the property lines, or purchasing part of the property to accommodate, but the current owner has no interest in doing so. They have indicated they are not opposed to us making these proposed changes on our existing property. We are expecting something in writing via US Mail any day and will provide that documentation once received.

The existing setback for the existing carport is 6.5 feet. The current required setback for a garage according to Section 14.10.080(2) is 10 feet. We are requesting the setback on the West side of the subject property be set to 4 feet which would accommodate a wide enough 1 car width garage, tandem to fit 2 cars, and be able to reasonably open doors on both sides of vehicles. The distance between the homes, including the converted and slightly expanded garage on subject property, would range from 28-30 feet. Also of note, the setback on the East (opposite) side of the subject property is 10 feet and would remain.

In considering the feasibility of this request it should be noted that dozens of homes in the immediate area have setbacks by garages in the range of 0-4 feet. Some where properties have structures that join at the property line. It is hoped that the considerably larger distance between the subject property in relation to the neighboring property, when compared to other homes in the area will be plenty sufficient to grant the variance of a 4 foot setback with garage.

Our desire to have the garage stems from some of the recent unrest and general street crime. We feel the ability to keep our vehicles in a garage will better help with the security of property when needed, which currently is not an option.

Granting the variance would also allow us to make all desired adjustments and additions to remain occupying the property vs keeping and renting the property and finding another suitable property elsewhere to meet our desires for security and living space. We feel the request is reasonable, is not opposed by neighbors, and would enhance the look of the neighborhood.

Thank you for your consideration.

Spencer Whitham