



**Planning and Development Services**

2001 S. State Street N3-600 • Salt Lake City, UT 84190-4050

Phone: (385) 468-6700 • Fax: (385) 468-6674

[www.msd.utah.gov](http://www.msd.utah.gov)

Case# VAR2021-000362

## Land Use Hearing Officer Summary and Recommendation

**Request Type:** Variance Request

**Meeting Date:** July 21, 2021

**Parcel ID:** 21-07-308-005-0000

**Current Zone:** R-1-6

**Property Address:** 4671 West 5175 South

**Applicant Name:** Regina Guzman

**MSD Planner:** Diana Martinez

**MSD Planning Staff Recommendation:** Denial

### PROJECT DESCRIPTION

The applicant, Regina Guzman, received a notice of non-compliance in late March of 2021 for her carport which was built without a permit. The carport is in violation of the required front and side yard setbacks requirements for Kearns.

The Kearns Ordinance defines a "Carport" as a private garage not completely enclosed by walls or doors. A carport, in the R-1-6 zone, must be a minimum of 25 feet from the front yard property line, and 8 feet from a side yard property line. The applicant's carport is 11 feet from the front yard property line and 1 foot from the side property line, as measured by the Code Enforcement Officer.

### SITE AND VICINITY DESCRIPTION (see attached map)

The subject property is in a single-family neighborhood just north of 5415 South. Most homes in this area are zoned R-1-6, and therefore, have the same front and side yard setback requirements as the applicant.



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## LAND USE CONSIDERATIONS

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Requirement	Standard	Proposed
Front Yard Setback	25 feet	11 feet
Side Yard Setback	8 feet	1 foot

Compatibility with existing buildings in terms of size, scale and height.	Yes
Compliance with the General Plan.	Yes

## ISSUES OF CONCERN/PROPOSED MITIGATION

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The subject property, at the point of where the carport is located, is not square like other lots in this neighborhood due to the curve where the applicant's street (5175 South) turns north into 4660 West. This "special circumstance" is something that does not apply to most properties in this area. However, the MSD Staff believes that the applicant could have built the carport in compliance with Code requirements. A meeting with staff prior to applying for a building permit would have allowed for guidance and some project layout options on the property. This never occurred as the applicant built without a permit. Additionally, Section 19.14.050.D of the Code allows for setback flexibility (please see Kearns Ordinance section below).

In addition, there are other structures (carports, car covers, etc.) on nearby properties that do not meet code requirements but have existed over ten years and therefore have become non-conforming structures. However, the MSD Staff cannot allow for recently built structures constructed without a building permit and inspections as required.



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## ORDINANCE

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### **19.04.110 Carport**

***"Carport" means a private garage not completely enclosed by walls or doors. For the purpose of this title, a carport shall be subject to all of the regulations prescribed for a private garage.***

### **19.14.050.D. Yards:**

*Subject to conditions 1 through 6 below, one of the minimum yard requirements for carports, decks, and covered patios shall be as follows may be reduced to one of the following:*

*Front Yard: 15 feet*

*Side Yard (interior): 3 feet*

*Side Yard (street facing): 10 feet*

*Rear Yard: 10 feet*

*Conditions of approval:*

- 1. The structure is made of durable, permanent materials, (vinyl, canvas, nylon, and other cloth "roofing" materials are not allowed).*
- 2. A carport up to 600 square feet may be free-standing or attached to the dwelling. A deck or patio cover allowed under this provision shall be permanently attached to the dwelling,*
- 3. The structure shall be approved by the building official prior to construction,*
- 4. The applicant shall submit the written approval of the property owner immediately abutting the property line toward which the exception is requested,*
- 5. A carport or patio cover allowed under this provision shall have no exterior walls or panels. A deck allowed under this provision may have walls built up to the height of the railing, but shall not be enclosed with a roof and walls, and*
- 6. No more than 50% of the available (unoccupied) portion of the lot may be covered with structures allowed under this section.*

### **19.92.40 Variances**

*A. Any person or entity desiring a waiver or modification of the requirements of the zoning ordinance as applied to a parcel of property that he/she owns, leases, or in which he/she holds some other beneficial interest may apply to the land use hearing officer for a variance from the terms of the zoning ordinance.*

*B. 1. The land use hearing officer may grant a variance only if:*



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- a. *Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;*
  - b. *There are special circumstances attached to the property that do not generally apply to other properties in the same district;*
  - c. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;*
  - d. *The variance will not substantially affect the general plan and will not be contrary to the public interest; and*
  - e. *The spirit of the zoning ordinance is observed and substantial justice done.*
- 2.
- a. *In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection (B)(1), the land use hearing officer may not find an unreasonable hardship unless the alleged hardship:*
    1. *Is located on or associated with the property for which the variance is sought; and*
    2. *Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.*
  - b. *In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection (B)(1), the land use hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic.*
3. *In determining whether or not there are special circumstances attached to the property under subsection (B)(1), the land use hearing officer may find that special circumstances exist only if the special circumstances:*
- a. *Relate to the hardship complained of; and*
  - b. *Deprive the property of privileges granted to other properties in the same district.*
- C. *The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.*
- D. *Variations run with the land.*
- E. *The land use hearing officer may not grant use variations.*
- F. *In granting a variance, the land use hearing officer may impose additional requirements on the applicant that will:*
1. *Mitigate any harmful effects of the variance; or*
  2. *Serve the purpose of the standard or requirement that is waived or modified.*



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## PLANNING STAFF RECOMMENDATION

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The MSD Planning Staff recommends denial of this Variance application based on the following findings:

1. The requested variance does not comply with Section 19.92.04(B)(1) of the Kearns Ordinance.
2. The requested variance does not comply with Section 19.92.04(B)(2) of the Kearns Ordinance.
3. The requested variance does not comply with Section 19.92.04(B)(3) of the Kearns Ordinance.

Diana,

7-07-21

The carport has been built very well and sturdy. I was unaware of the property lines and the length that is required between properties, being we were on a round about road. When we started the project, I spoke to my neighbor, just to be sure he would be OK with the carport. The main reason we put it up is for safety. The bottom of the drive slopes down and in the winter it can get very icy, even with a little snowfall. Plus it is aesthetically pleasing. We have gutters and downspouts as well to be sure water stays on our property. It would be great if I could keep it up, being I do not have a lot of spare time to do a tear down and then rebuild. I would have to get help, I would not be able to do it on my own.

Thank you,

Regina Guzman



Approx. 11' to property line

Approx. 1' to property line

carport



W 5135 S

W 5135 S

W 5135 S

W 5175 S

W 5175 S

W 5175 S

W 5215 S

W 5215 S

W 5215 S

S 4660 W

S 4620 W

W 024 S

S 4820 W



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