

**WEST VALLEY BOARD OF ADJUSTMENT**

**May 6, 2009**

This meeting was called to order at 6:00 p.m. by Chairperson, Necia Christensen, at 3600 Constitution Boulevard, West Valley City, Utah.

**WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS**

Sioeli Uluakiola, Russell Moore, Scott Spendlove, Mark Farnsworth and Necia Christensen

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman, Hannah Thiel, Jody Knapp and Karon Jensen

**WEST VALLEY CITY LEGAL DEPARTMENT**

Nicole Cottle

**AUDIENCE:**

Approximately thirteen (13) people were in the audience.

**B-3-2009**  
**Joseph Landon – Variance Request**  
**3268 Timeron Drive**

**REQUEST:**

Mr. Joseph Landon has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-305 of the West Valley City Land Use Development and Management Act. This section requires that the minimum rear yard setback be 20 feet in the R-1-10 Zone. The applicant is requesting a variance of 13.5 feet in order to allow a previously constructed addition to remain attached to the existing dwelling.

**BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends low density residential land uses.

- The subject property is known as Parcel Number 14-26-403-007. It is also lot 6 in Meadowlands Planned Unit Development Phase 1A. This subdivision was recorded with the Salt Lake County Recorder's Office in 1996.
- According to Salt Lake County records, the single family dwelling was constructed in 2000. The original building permit for this home did not include the existing addition which is the topic of this application and is presently in violation of City code as it extends into the rear setback.
- The applicant was notified that the location of the awning is in violation of City setback standards. Staff informed the applicant that the location of the addition presented zoning concerns. After discussing these concerns and outlining the variance procedure, the applicant determined that he would request a variance.
- The applicant purchased the home with the subject covered patio in the rear yard setback. As the property is on a corner lot, the applicant would like to consider the rear yard a side yard and maintain the minimum side setback of 6 feet or be granted a variance for 13.5 feet in the rear yard setback.
- Photographs are included in the packet showing the patio cover, from the street. The property in question is 0.18 acres. The parcel has a frontage of 71.75 feet in width in the front, and a depth of 91.06 feet on the north side of the property. Although the property does not represent very unusual characteristics in comparison with other properties in the area, it is a corner lot with a side-entry garage. If the garage entry side had a front door, we could consider that side the front of the home as it meets the minimum front yard setback required in this planned unit development. In addition, the existing home would

maintain the minimum 20 foot setback for the rear yard on the north side of the property if the south side of the property with the driveway was considered the front.

- The applicant has submitted a letter to the Board explaining the reasons why the patio cover is needed, but the variance criteria has not been addressed. Staff will work with the applicant to better address the variance criteria in preparation of the hearing.

Mr. Farnsworth indicated that he had a conflict of interest associated with this application due to religious affiliation and requested to be excused from hearing this application

**Applicant**

**Joseph Landon**

**3268 Timeron Drive**

Mr. Landon distributed photographs to the Board showing corner lots that were within  $\frac{3}{4}$  of a mile of his residence. While reviewing the photos, Mr. Landon noted that the photo shows a neighbor's home that was designed similar to his and was also located on a corner lot. He further explained that the property owners have a patio in the rear of their home which is located two blocks down. I believe that the hardship is with the home being located on a corner lot and the way the home is positioned on the property.

Mr. Landon addressed the variance criteria.

1. 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.
  - a. **The variance is on my property. I am requesting a variance of 13.5 feet into my 20 foot rear yard setback for a covered patio.**
  - b. **My hardship is that my home sits on a corner lot with a side entry garage. As the rear setback is measured from the rear of the home ('rear' defined as the opposite side of the home as the front door), there is not enough room to have a covered patio that meets the ordinance requirements on the west side or 'rear' of my home.**
  - c. **The actual setback on the garage side of my home to the street is slightly greater than the front setback. In addition, the actual setback on the north side of the property, or opposite the garage side, has the same actual setback as the 'rear' setback of my home. If the garage side was considered the front of the home, my home would meet the minimum setbacks for this zone and subdivision per City Ordinances.**
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.

- a. My home is located on a corner lot and has approximately 10 feet more frontage on Timeron Drive than the other homes that are located on corners in this area. This larger frontage provides an opportunity for my home to sit in the middle of the lot, meeting front and rear setback requirements from both street frontages. As the front and rear setback requirements are met on all sides of the home, the variance requested for 13.5 feet in the 'rear' setback would actually place the awning at an approved side yard setback if the front of the home was considered the garage side.**
  - b. I cannot place a covered patio area on the north side of my property, where it would meet the current setback standards, as there is no access to that side of the home to the yard.**
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
  - a. My home is in an area that is zoned for single family homes. The patio cover is located on the west side of my home to provide shade from the sun especially during summer months. The patio cover allows me the opportunity to enjoy my single family home even when the sun is too hot on this side of the property.**
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
  - a. The General Plan classifies my property as low density residential. I would simply like an opportunity to use my property to the full extent as the single family residential use and use my yard during the summer months.**
  - b. In the event of this variance request being granted, I will obtain a building permit for the addition.**
5. The spirit of the zoning ordinance is observed and substantial justice done.
  - a. The spirit of the zoning ordinance is observed as I am only asking for a patio cover onto my existing single family home in a residential single family zone.**

Mrs. Christensen questioned the applicant if the awning was there prior to the time he had bought the home.

Mr. Landon responded that the awning was there before he moved into the home and noted that he had assumed that it had already been approved by West Valley City.

Mrs. Thiel, West Valley City Planner, indicated the building permit that the City issued did not show the patio cover on the plans. She said that she was not sure who added the patio cover and noted that it could have been the original builder. Sometimes builders/contractors go in after the City signs off on the permit and may add the awning or other structures without obtaining the proper building permits.

Mr. Landon said it is somewhat common for realtors and builders to advise people to construct these structures after the final inspection has been completed, although I am not sure if it was the original contractor that built the structure. I bought the home three years ago and the awning was there when I moved in. I made the assumption that it had been approved and I take full responsibility as I should have been more diligent in making sure that it was approved.

Mrs. Christensen questioned if there was anyone present who would like to speak in favor or in opposition to this application.

Mrs. Thiel indicated that she had received one phone call from a neighbor who did not give their name, however they did not express any concerns with this variance request.

Mrs. Christensen suggested the Board review the variance criteria.

#### **Discussion:**

**1. 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.**

Mrs. Christensen stated that the hardship is that this is a corner lot and the frontage is wider than the standard corner lot. Also, a hardship exists due to the fact that if the patio cover was shifted the other way, it would be in compliance with the zoning ordinance.

Mr. Moore indicated that he had driven around the neighborhood and noticed that there were multiple homes designed this same way with the driveway on the side opposite of the front door. It seems that the builder customized the design of the home to fit the corner lots which created a very short backyard.

The Board of Adjustment agreed that this variance criteria has been met.

Mr. Spendlove questioned staff if this was an ordinance violation.

Mrs. Thiel responded that a building inspector had discovered the violation.

**2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mrs. Christensen said the special circumstance attached to the property is the fact that it is a corner lot and there is more frontage on the front of the lot. There is also a hardship in the way the home is situated on the middle of the lot. The applicant

cannot place the structure on the north side because there is no access on that side due to the way the home was built.

Mr. Spendlove noted that awning existed on the property prior to his ownership and that it was not something that the applicant knew about....and he was actually buying into a problem.

Mr. Moore agreed that the special circumstance is the positioning of the home on the property and the very short rear yard setback.

**3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Mrs. Christensen stated that she believes that granting this variance is a property right to help keep the resident cool in the summer and said that all homes designed this way should have this right. I understand his desire to have a patio cover in order to protect his home from being so hot in the summer and to provide the needed shade.

The Board of Adjustment members agreed that this criteria has been met.

**4. The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Mrs. Christensen commented that the variance does not affect the General Plan and is not contrary to public interest. If the home was placed differently on the lot and the front door was where the garage is the next door neighbor would have the patio cover in exactly the same place. The neighbors do not have a problem with this variance request.

**5. The spirit of the zoning ordinance is observed and substantial justice done.**

Mrs. Christensen commented that the applicant is only asking for a patio cover on his single family home in a residential single family zone.

Mr. Spendlove noted that there was not anyone present at the hearing that spoke in opposition to this variance request. He stated that it should not be a liability because it existed prior to Mr. Landon buying the home.

Mr. Moore commented that he had visited the site and expressed that he was not happy about the existence of the awning, however often times with this type of addition contractors don't follow the proper procedure and obtain a building permit. There seems to be a disparity between the time when the home was built and the proper procedures were followed and when the awning was built. Often with this type of addition, the contractors don't seem willing, or maybe they just want to make the sale, but they don't follow the proper procedures and get permits. If the proper

permit had been pulled, we would not be here today. I don't feel that the resident should pay the price for the mistakes and lack of integrity of the builder.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

**Motion**

Mr. Moore stated I move that we approve B-3-2009, in the matter of Joseph Landon, based on the criteria/information that was provided by the applicant.

Mr. Spendlove seconded the motion.

A roll call was taken.

Mr. Uluakiola	yes
Mr. Moore	yes
Mr. Spendlove	yes
Mr. Farnsworth	excused (conflict of interest)
Mrs. Christensen	yes

**Motion carries – all in favor**

\_\_\_\_ - B-3-2009- \_\_\_\_

**B-4-2009**

**Hall Variance**

**3065 South 3140 West**

**R-1-8 Zone**

[Mr. Farnsworth joined the Board as a participating/voting member for the remainder of the hearing.]

D'Aure and Bonnie Hall are requesting a variance from Section **7-6-305** of the West Valley City Code. This section requires that the minimum side yard setback in the R-1-8 zone and on the garage side be 10 feet. The Hall's are requesting a variance of 9 feet in order to keep an existing carport cover which is attached to the dwelling.

**BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends low density residential land uses.

- The subject property is known as lot 7 of the Clinton Downs Phase 3 Subdivision. This subdivision was recorded with the Salt Lake County Recorder's Office in March 1965. The property is currently zoned R-1-8.
- The applicant was recently notified that an addition on the south side of the dwelling is in violation of City setback standards. Section 7-6-305 of the City Code states that the required setback on the garage side of the dwelling shall be 10 feet. The existing carport extends from the dwelling to within 1 foot of the south property line. Thus, a variance of 9 feet is being requested by the applicants.
- As part of the variance process, the applicant's visited with staff and explained that the dwelling was constructed with a single carport. The existing detached garage was added to the property in 1991. At that time, the original carport was removed and the existing carport was constructed. The applicant further explained to staff that the larger carport was constructed primarily to provide a cover during inclement weather and to use for family gatherings.
- Staff inquired about the possibility of reducing the size of the carport to meet the setback requirements. The applicant responded that the structure would be difficult to modify because of its construction. In addition, the applicant stated that if the structure was pulled off property line, the new pole locations would make it difficult to park or use the existing driveway and detached garage.
- The property in question is typical of other lots in this subdivision. The property has a frontage of 75 feet and a depth of 153 feet. The current frontage requirement would be 80 feet in the R-1-8 zone. However, at the time this subdivision was approved, the County did allow a lesser frontage than what West Valley City requires today.
- An existing utility easement exists along the south side of this property. The applicant did obtain approval from Utah Power in December 1990 prior to the construction of the detached garage. A recent letter from Rocky Mountain Power grants this same approval for the carport.
- Staff has included a letter from the applicant along with their responses to the variance criteria. In addition, various letters from adjacent residents have been provided as well as letters from Utah Power and Rocky Mountain Power regarding the easement. Should the Board grant this variance, the applicant will need to obtain the necessary building permits from the City's Building Division.



Mr. Lehman indicated that there is a utility line along the south property which the applicant did obtain approval for when the detached garage was built and for the carport structure as well, although that approval was just recently obtained.

**Applicant:**

D'Aure Hall  
3065 S. 3140 W.

**Favor**

Bob Elzinger  
3081 S. 3140 W.

**Favor**

Doyle Griffith  
3122 W. 3100 S.

**Favor**

Susan Cutler  
3065 S. 3140 W.

**Favor**

Eliza Duthridge  
3055 S. 3140 W.

**Mrs. Bonnie Hall**

**3065 South 3140 West**

The applicant, Bonnie Hall, indicated that the garage was constructed in 1991 and she had obtained the permits and inspections and received approval for the utility easement from UP & L. After the garage was constructed, my husband upgraded the carport and shed and built a larger carport/awning/patio cover. The awning was built to provide shelter for our vehicles and motor home and to be used as a patio for my family and for neighborhood functions. Until I received a citation from the Building Department, I was unaware that there was not a building permit for the awning. The contractor told me he had obtained the building permit and that the price had been included in their fees.

Building Inspection issued a violation notice informing us that we did not have a building permit and stated that I would need to move the awning 10 feet or tear it down. However, it is impossible to move and the structure is very sturdy. There are eight large steel beams going across it plus four steel beams going the other direction. The structure has been there for 18 years and none of the neighbors have had any objections. The patio cover abuts up to the back yards of two different neighbors and both of my neighbors are present, if you have any questions for them. If we were to cut it in half (which is impossible) the poles would go directly right in the middle of the door of the garage and it would be totally useless as far as parking any vehicles in it.

I would like to request a 9 foot variance and have submitted a number of letters of support from residents who live in my neighborhood. Also, I have obtained letters of approval from Utah Power and Light for a one foot easement and recently got a letter for a one foot encroachment from Rocky Mountain Power.

Mrs. Hall addressed the variance criteria.

1. 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.
  - a. The variance is located on my property.
  - b. The garage was built with a permit and was located to the rear of the dwelling. The carport addition was added to make better use of the garage for covered parking in inclement weather. We believe that this is the unreasonable hardship, having a garage without the full benefits of what a garage is supposed to be.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
  - a. Our home was built under Salt Lake County jurisdiction. The frontage of this property is 75 feet. Although it is consistent with other properties in this subdivision, a garage could not have been added to our home due to the limited width of the property.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
  - a. The covered carport will allow us to continue enjoying the benefits of our garage. Although we have a garage and that is a substantial property right, being able to get our garage via this covered structure is needed.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
  - a. The structure in question was built with quality materials that will not deteriorate with weather. The location of this structure is in the rear yard of the dwelling next to us, so there is no impact to neighboring properties. In addition, this structure has been there since shortly after the garage was built in 1991 and no one from the neighborhood has complained.
5. The spirit of the zoning ordinance is observed and substantial justice done.
  - a. The spirit of the zoning ordinance is observed because this addition has been in place for more than eighteen years. Substantial justice would be done by allowing this addition to remain.

Mrs. Christensen asked if there was anyone present in the audience who would like to speak in favor or in opposition to this application.

**Bob Elzinga**  
**3081 South 3140 West**

Mr. Elzinga explained that he is the property owner located directly to the south of the Hall's residence. I purchased my home several years ago with the knowledge of the Hall's carport in place. I personally find no fault whatsoever with the construction. The structure has been very thoroughly built and well maintained. I would ask that the Board of Adjustment grant the variance request for the Halls.

**Doyle Griffith**  
**3122 West 3100 South**

Mr. Griffith indicated that his property backs up to the corner of the home where the awning is located. I have lived in my home for approximately four years and have met the Hall's family. I recognize their effort in trying to improve their home and having a place to park their RV's and providing a place for social gatherings for their family, friends and neighbors. The carport does not stick out like a sore thumb to me as far as looking over my back fence and viewing their home and the awning. In fact, it is pleasing because of the additional help that it affords them. I would like to speak in favor of this variance request and feel that it would not do justice to see that awning torn down or replaced by something that would comply with the ordinance and then cause the garage to not be utilized by the Halls. Also, the carport provides protection from the weather and from the sun.

**Susan Cutler**  
**3065 South 3140 West**

Mrs. Cutler stated that she has lived across the street from the Halls since 1999 and that she has no objections to the carport. I believe that it adds to the property and the Halls have always kept their yard immaculate. Whenever I look into their back yard, I like the feeling of the shelter that the structure provides especially in the summer. I am in favor of the Halls keeping the awning.

**Eliza Duthridge**  
**3055 South 3140 West**

Mrs. Duthridge said she lives on the north side of the Hall's home. I moved into my home in 1997 and we rented the home. One of the reasons that we decided to buy the home was because of our fantastic neighbors to the south, the Halls. They are a stabilizing force in our neighborhood and have been very helpful to a lot of people some of whom are here tonight to support them in their request for this variance. I walk or drive by their house everyday and see the carport. I have always loved the carport and it has been there since I have moved in. I think it is a perfect structure for the use to which

they have put it. Judging from everything that has been said here tonight, I believe that it is a very valid request for granting a variance from West Valley City.

**Discussion:**

Mr. Spendlove questioned if the awning structure is attached to the detached garage.

Mr. Lehman responded that it is not. I believe it is very close, but not physically attached to the detached garage.

The Board of Adjustment discussed the variance criteria related to this application.

**1. 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.**

Mrs. Christensen indicated that the unreasonable hardship is the applicant having a garage without the full benefits of what a garage is supposed to be used for. If the applicants made the carport narrower in order to comply with the Code, they could not access their garage.

Mr. Spendlove remarked that the applicant previously discussed some of the medical hardships associated with this case which I believe would apply under the literal enforcement of the zoning ordinance. I also believe that there is a special circumstance due to the amount of snow that would need to be shoveled in the winter by the applicants if they did not have the carport.

**2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mrs. Christensen commented that the property is 75 feet. Although it is consistent with other properties in the area, at the time the house was built a garage could not have been added under the County ordinances as the County had different requirements.

Mr. Farnsworth remarked that after listening to the discussion, I believe the unique characteristic of the property is the detached garage. Literal enforcement of the ordinance would put the posts right in the middle of the applicant's garage and would make the garage un-useable in terms of access.

**3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Mrs. Christensen stated that the covered carport will continue to allow the applicants to enjoy the full benefits of their garage. They can park their RV under a cover behind the

property and in front of the home so that they are in compliance and they can still have access to the garage.

Mr. Farnsworth said that he had driven down the street and could only find one other house in the neighborhood that had a carport.

Mr. Uluakiola noted that most of the others in the neighborhood are single car carports.

**4. The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Mrs. Christensen responded since the applicant's neighbors are interested in attending this hearing in their behalf, I believe it is not contrary to the public interest nor is it contrary to the City's interest. The structure is very well built and has stood for nineteen years and still looks very nice.

Mr. Farnsworth said the only issue I could see with the carport would be the water run-off, however the next door neighbor is stating that they are okay with the structure.

**5. The spirit of the zoning ordinance is observed and substantial justice done.**

Mrs. Christensen indicated that the carport has been in place for eighteen years and substantial justice would be done by allowing the carport to remain.

Mr. Moore expressed concern that the zoning ordinance clearly shows that a setback is required and this application does not meet the spirit of the zoning ordinance. I personally believe it is large and obstructs the view. The applicant does have a right to have covered parking, however I believe this structure is excessive in height and width and there are no structures of this type in the neighborhood within several blocks. I do not believe this variance request should be approved.

Mrs. Christensen remarked that the carport has been there for eighteen years.

Mr. Moore responded that the time it has been there does not have any bearing on the zoning ordinances.

Mrs. Christensen noted that one of the purposes of coming before the Board is to grant a variance from the ordinance.

Mr. Spendlove said I believe it was a well played presentation by the applicants who brought forth this variance request. It took a lot of effort to get everyone out and they have put together a very good case.

Mr. Uluakiola mentioned that the property has been well maintained for the last eighteen years and all of his neighbors were here to support this application.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

**Motion**

Mr. Spendlove stated in terms of granting a variance for B-4-2009, I move that we grant the variance based upon the Board's discussion of the five variance criteria.

Mr. Uluakiola seconded the motion.

A roll call was taken.

Mr. Uluakiola	yes
Mr. Moore	no
Mr. Spendlove	yes
Mr. Farnsworth	yes
Mrs. Christensen	yes

**Motion carries – majority vote**

\_\_\_\_ - B-4-2009- \_\_\_\_

**B-5-2009**

**Theral and Helen Smith – Variance Request  
3130 S. 3690 W.**

**REQUEST:**

Mr. and Mrs. Smith, have filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-305 of the West Valley City Land Use Development and Management Act. This section requires that the minimum side yard setback adjacent to the garage be 10 feet in the R-1-8 Zone. The applicant is requesting a variance of 8.5 feet in order to allow a previously constructed carport to remain attached to the existing dwelling.

**BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends low density residential land uses.

- The subject property is known as Parcel Number 15-29-327-014 and is zoned R-1-8.
- According to Salt Lake County records, the single family dwelling was constructed in 1978. The original building permit did not include the existing covered carport which is the topic of this application and presently in violation of City code.
- The property in question is reflective of a typical subdivision lot. The frontage is approximately 85 feet in width and 125 feet in depth.
- The applicants were recently notified that the location of the carport, as well as a shed on the north side of the property, are in violation of City setback standards. Staff informed the applicants that the location of these structures not only presented zoning concerns but building code concerns as well. After discussing these concerns and outlining the variance procedure, the applicants determined that they would request a variance for the carport and that the shed would be relocated to comply with the setback standards.
- The applicants have submitted a letter to the Board explaining the reasons why the side yard has been covered. Although the letter explains numerous reasons why the applicant would like the cover to remain, the variance criteria have not been addressed. Staff will work with the applicant to better address the variance criteria in preparation of the hearing.
- Photographs of the carport and shed are included in the packet.

**Applicant**

**Theral Smith**

**3130 South 3690 West**

Mr. Smith explained that he would like to be in compliance with the City and said his intention is to move the shed. He asked for guidance from the Board as to where to place the shed and noted that he didn't have a building permit when the shed was built.

Mr. Smith addressed the five variance criteria:

- 1. 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.**
  - a. The variance is on my property.
  - b. The home was constructed with a single car carport and the home is positioned in such a way that a 2-car carport cannot be built on the site at the required setbacks.
- 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

- a. Our home was built under Salt Lake County jurisdiction and is not in a formal subdivision. The frontage of this property is 82 feet. Although it is consistent with other properties in the area, a double car carport could not have been added to our home due to the location of the dwelling.
- 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**
- a. Granting this variance is essential because without the variance, we would not be able to have an additional structure for covered parking.
  - b. Other neighbors in this area have detached garages or covered carports to more safely and securely store residential items.
- 4. The variance will not substantially affect the general plan and will not be contrary to the public interest.**
- a. The granting of the variance will not affect the general plan because this structure has been there for fifteen years and to the best of our knowledge no one from the neighborhood has complained.
  - b. This variance will not alter the essential character and will not be contrary to the public interest because the structure in question was built with quality materials that will not deteriorate with weather and I will need to obtain a building permit. Through the permitting process, I will make the necessary adjustments to retain any runoff water on my own property.
- 5. The spirit of the zoning ordinance is observed and substantial justice done.**
- a. This variance will not set an unacceptable precedent for future applicants, because each lot will have different circumstances, which may not qualify for a variance.
  - b. The spirit of the zoning ordinance is observed because I am only asking for a covered carport to my existing home.
  - c. The spirit of the zoning ordinance is observed because this addition has been in place for more than fifteen years. Substantial justice would be done by allowing this addition to remain.

### **Discussion**

1. 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.

Mrs. Christensen responded that the City now requires a two car garage and it is not unreasonable for the applicant to have a double covered carport.



2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.

Mr. Farnsworth indicated that the skywalk makes this property unique

Mr. Spendlove commented that the area has gone through special changes since that time and creates unique circumstances.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

Mr. Spendlove noted that due to the property being so close to the skywalk, a variance is beneficial and it is a substantial property right to have a carport. The skywalk would be a distraction and this helps balance it out to keep it positive.

Mrs. Christensen remarked that the applicant had mentioned that things were thrown off of the skywalk by school children and could create potential problems with his vehicles.

Mr. Spendlove stated that other homes in the area have covered parking and there is a need to have a two car garage. The structure blends in well and helps with the intent of minimizing clutter and helps to improve the neighborhood.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

The applicant indicated that the structure has been there for 15 years and was built with quality materials. He stated that through the permitting process he would make the necessary adjustments for runoff.

Mrs. Christensen remarked that the carport is constructed well and looks very nice. There have not been any complaints from neighbors and the applicants will comply with building regulations.

5. The spirit of the zoning ordinance is observed and substantial justice done.

Mrs. Christensen indicated that each lot will have different circumstances which will not set a precedent for them. The spirit of the zoning ordinance is observed because the structure has been there for 15 years.

## **Motion**

Mr. Uluakiola stated, I move that we approve application B-5-2009, Theral Smith, based on meeting the five variance criteria.

Board of Adjustment

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Mr. Spendlove seconded the motion.

A roll call was taken.

Mr. Uluakiola           yes

Mr. Moore               no

Mr. Spendlove         yes

Mr. Farnsworth       yes

Mrs. Christensen     yes

**Motion carries – all in favor**

\_\_\_\_\_ - B-5-2009- \_\_\_\_\_

**OTHER**

The minutes from **March 4, 2009** were approved.

There being no further business the meeting adjourned at 7:25 p.m.

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Karon Jensen, Administrative Assistant