



AGENDA MEMO - COMMUNITY DEVELOPMENT

PLANNING COMMISSION MEETING DATE: DECEMBER 12, 2023

DEPARTMENT: COMMUNITY DEVELOPMENT

ITEM DESCRIPTION: APPLICANT/OWNER: GISEL PEDROZA AGUILAR

**** STAFF RECOMMENDATION(S) ****

CASE NUMBER	RECOMMENDATION	REQUIRED FOR APPROVAL
23-0522-VAR1	Staff recommends DENIAL, if approved subject to conditions:	

**** NOTIFICATION ****

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 10

NOTICES MAILED 276

PROTESTS 0

APPROVALS 0

**** CONDITIONS ****

23-0522-VAR1 CONDITIONS

Planning

1. A Variance (23-0522-VAR1) is hereby approved to allow a zero-foot separation where six feet is required, and to be located in front of the primary dwelling for an existing Residential Accessory Structure [Carport].
2. A Variance (23-0522-VAR1) is hereby approved to allow a zero-foot side yard setback where five feet is required for an existing Patio Cover [Patio Cover 1].
3. A Variance (23-0522-VAR1) is hereby approved to allow a zero-foot side yard setback where five feet is required for an existing Patio Cover [Patio Cover 2].
4. A Variance (23-0522-VAR1) is hereby approved to allow a one-foot side yard setback where three feet is required, a one-foot rear yard setback where three feet is required, and a one-foot separation from the primary dwelling where six feet is required for an existing Residential Accessory Structure [Casita].
5. A Variance (23-0522-VAR1) is hereby approved to allow a six-foot tall front yard wall/fence where five feet is the maximum height allowed.
6. A Variance (23-0522-VAR1) is hereby approved to allow a total accessory structure coverage of 103 percent of the primary dwelling floor area where 50 percent is the maximum allowed.
7. This approval shall be void two years from the date of final approval, unless exercised pursuant to the provisions of LVMC Title 19.16. An Extension of Time may be filed for consideration by the City of Las Vegas.
8. All necessary building permits shall be obtained and final inspections shall be completed in compliance with Title 19 and all codes as required by the Building and Safety Division.
9. These Conditions of Approval shall be affixed to the cover sheet of any plan set submitted for building permit.
10. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

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Public Works

11. Submit a License Agreement for landscaping and private improvements (fence/wall) in the Silver Birch Lane public right-of-way prior to the issuance of permits for these improvements. If requested by the City, the applicant shall remove property within the public right-of-way at the applicant's expense pursuant to the terms of the City's License Agreement. The installation and maintenance of all private improvements in the public right of way shall be the responsibility of the applicant and any successors in interest to the property and assigns pursuant to the terms of the License Agreement. Coordinate all requirements for the License Agreement with the Land Development Section of the Department of Community Development (229-4836).

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**** STAFF REPORT ****

PROJECT DESCRIPTION

The applicant is requesting a Variance of various residential development standards that would allow building permits to be issued for two existing Residential Accessory Structures, two existing Patio Covers and an unpermitted front yard wall/fence at an existing single family dwelling at 1800 Silver Birch Lane.

ISSUES

- The requested Variance is the result of a Code Enforcement Case (#CE21-05287) for the subject property. If approved, building permits must be obtained for the structures and front yard wall/fence. If denied, the structures and front yard wall/fence must be removed or brought into compliance with Title 19 and building codes.
- A Variance (23-0522-VAR1) is requested to allow a zero-foot separation where six feet is required, and to be located in front of the primary dwelling for an existing Residential Accessory Structure [Carport]. Staff does not support the request.
- A Variance (23-0522-VAR1) is requested to allow a zero-foot side yard setback where five feet is required for an existing Patio Cover [Patio Cover 1]. Staff does not support the request.
- A Variance (23-0522-VAR1) is requested to allow a zero-foot side yard setback where five feet is required for an existing Patio Cover [Patio Cover 2]. Staff does not support the request.
- A Variance (23-0522-VAR1) is requested to allow a one-foot side yard setback where three feet is required, a one-foot rear yard setback where three feet is required, and a one-foot separation from the primary dwelling where six feet is required for an existing Residential Accessory Structure [Casita]. Staff does not support the request.
- A Variance (23-0522-VAR1) is requested to allow a six-foot tall front yard wall/fence where five feet is the maximum height allowed. Staff does not support the request.
- A Variance (23-0522-VAR1) is requested to allow a total accessory structure coverage of 103 percent of the primary dwelling floor area where 50 percent is the maximum allowed. Staff does not support the request.

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ANALYSIS

A Code Enforcement Case (CE21-05287) has been ongoing since November 2021 to monitor progress of either removal or legalization of the subject Residential Accessory Structures, Patio Covers and the front yard wall/fence.

There are four existing and unpermitted structures that do not meet Title 19 requirements, which consist of two Residential Accessory Structures [Carport and Casita] and two Patio Covers [Patio Cover 1 and 2]. The Residential Accessory Structure [Casita] is located within the rear yard area and the Residential Accessory Structure [Carport] is located within the front yard area. The Patio Cover [Patio Cover 1] is located south of the primary dwelling and the Patio Cover [Patio Cover 2] is located north of the primary dwelling. There is a third patio attached to the rear portion of the primary dwelling; however, it meets patio cover setbacks and will be reviewed during building permits. Per the submitted site plan, the front yard wall/fence ranges from five to six feet in total height and ranges from six feet solid to three feet solid base and two feet wrought iron.

The subject site is zoned R-1 (Single Family Residential), which is intended to provide for the development of single family detached dwellings in a suburban setting. Title 19.06.070 requires the following concerning Residential Accessory Structures in the R-1 zoning district:

- Minimum rear yard setback: 3 feet
- Minimum side yard setback: 3 feet
- Separation from primary dwelling: 6 feet

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Title 19.06.070 requires the following concerning patio covers:

- Minimum rear yard setback to post: 5 feet
- Minimum side yard setback to post: 5 feet

Based on the submitted plans, the following components are part of this Variance request, with the Title 19 code provision that applies:

Issue	Applicable code section
A total accessory structure coverage of 103 percent of the primary dwelling floor area where 50 percent is the maximum allowed.	19.06.070
A six-foot tall front yard wall/fence where five feet is the maximum allowed.	19.06.070
A zero-foot side yard setback where five feet is required for a patio cover [Patio Cover 2].	19.06.070
A zero-foot side yard setback where five feet is required for a patio cover [Patio Cover 1].	19.06.070
A one-foot separation from the primary dwelling where six feet is required for a Residential Accessory Structure [Casita].	19.06.070
A one-foot rear yard setback where three feet is required for a Residential Accessory Structure [Casita].	19.06.070
A one-foot side yard setback where three feet is required for a Residential Accessory Structure [Casita].	19.06.070
A zero-foot separation from the primary dwelling where six feet is required for a Residential Accessory Structure [Carport].	19.06.070
Residential Accessory Structure [Carport] located in front of the primary structure where such is not allowed.	19.06.040

Due to building code requirements, staff notes that some of the structures may be difficult to obtain permits for. Building codes require structures to be set back five feet from property lines or have properly fire-rated construction. A structural engineer must certify all plans for unpermitted structures.

There is no hardship related to the site's physical characteristics that would warrant deviation from Title 19 requirements. Staff therefore recommends denial of the Variance, with conditions if approved. If denied, the structures must be brought into conformance and permitted or removed from the property in a timely manner.

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FINDINGS (23-0522-VAR1)

In accordance with the provisions of Title 19.16.140(B), the Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature."

Additionally, Title 19.16.140(L) states:

"Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution."

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by allowing existing unpermitted and noncompliant accessory structures, patio covers, and a front yard wall to remain on the property where their removal or placement within required setbacks would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site's physical characteristics, it is concluded that the applicant's hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by Planning, Fire, Building, Code Enforcement, etc.</i>	
11/16/21	Code Enforcement opened a Case (#CE21-05287) regarding unpermitted structures at 1800 Silver Birch Lane. During an inspection, Code Enforcement staff noted an unpermitted front yard wall/fence and structures. The case remains active, pending results of this Variance request (23-0522-VAR1).

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<i>Most Recent Change of Ownership</i>	
01/18/11	A deed was recorded for a change in ownership.

<i>Related Building Permits/Business Licenses</i>
There are no related Building Permits/Business Licenses.

<i>Pre-Application Meeting</i>	
09/28/23	A pre-application meeting was held with the applicant to discuss the submittal requirements for a Variance.

<i>Neighborhood Meeting</i>
A neighborhood meeting was not required, nor was one held.

<i>Field Check</i>	
11/01/23	Staff conducted a routine field check in which the front yard wall/fence, carport, and two patio covers were observed. Staff was unable to see the casita, as it is located within the rear yard. No other issues were noted.

<i>Details of Application Request</i>	
<i>Site Area</i>	
Net Acres	0.14

<i>Surrounding Property</i>	<i>Existing Land Use Per Title 19.12</i>	<i>Planned or Special Land Use Designation</i>	<i>Existing Zoning District</i>
Subject Property	Residential, Single Family, Detached	L (Low Density Residential)	R-1 (Single Family Residential)
North			
South			
East			
West			

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<i>Master and Neighborhood Plan Areas</i>	<i>Compliance</i>
Las Vegas 2050 Master Plan Area: Downtown South	Y
<i>Special Area and Overlay Districts</i>	<i>Compliance</i>
No Applicable Special Area or Overlay Districts	N/A
<i>Other Plans or Special Requirements</i>	<i>Compliance</i>
Trails	N/A
Las Vegas Redevelopment Plan Area	N/A
Interlocal Agreement	N/A
Project of Significant Impact (Development Impact Notification Assessment)	N/A
Project of Regional Significance	N/A

DEVELOPMENT STANDARDS

Pursuant to 19.06, the following standards apply:

<i>Standard</i>	<i>Required/Allowed</i>	<i>Provided</i>	<i>Compliance</i>
Min. Setbacks – Residential Accessory Structures <ul style="list-style-type: none"> • Rear (Casita) • Side (Casita) 	3 Feet 3 Feet	1-Foot 1-Foot	N* N*
Min. Setbacks – Patio Covers <ul style="list-style-type: none"> • Side (Patio Cover 1) • Side (Patio Cover 2) 	5 Feet 5 Feet	0 Feet 0 Feet	N* N*
Max. Lot Coverage - Accessory Structures	Not to exceed 50% of the floor area of the principal dwelling unit	103%	N*
Min. Separation from Principal Dwelling	6 Feet	0 Feet	N*
Wall Height – front yard setback area	2 Feet solid wall base / 5 Feet overall height	6 Feet	N*
Accessory Structure Location Placement (Carport)	No accessory structure is permitted in front of the primary structure	In front of the primary structure	N*

*A Variance (23-0133-VAR1) has been requested to allow deviation of various Title 19 residential development standards.