

*City of Las Vegas*

**AGENDA MEMO - COMMUNITY DEVELOPMENT**

**CITY COUNCIL MEETING DATE: MARCH 15, 2023**

**DEPARTMENT: COMMUNITY DEVELOPMENT**

**ITEM DESCRIPTION: APPLICANT/OWNER: ROMIE C. HERNANDEZ, JR. AND  
BRITTANY A. HERNANDEZ**

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

<b>CASE NUMBER</b>	<b>RECOMMENDATION</b>	<b>REQUIRED FOR APPROVAL</b>
22-0092-VAR1	Staff recommends DENIAL, if approved subject to conditions:	

**\*\* NOTIFICATION \*\***

**NEIGHBORHOOD ASSOCIATIONS NOTIFIED** 14

**NOTICES MAILED** 154 (by City Clerk)

**PROTESTS** 1

**APPROVALS** 0

**\*\* CONDITIONS \*\***

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**22-0092-VAR1 CONDITIONS**

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**Planning**

1. All Variance requests as noticed are hereby denied with the exception of the Variance request to allow an accessory structure (RV Storage) to not be aesthetically compatible with the main dwelling where such is required.
2. 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.
3. 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 Department of Building and Safety.
4. These Conditions of Approval shall be affixed to the cover sheet of any plan set submitted for building permit.
5. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

**Public Works**

6. Contact the Southern Nevada Health District to determine if the existing septic system permit will accommodate the proposed action. If not, contact the Sanitary Sewer Engineering Section of the Department of Public Works to coordinate connection to public sewer prior to the issuance of permits.

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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 three existing unpermitted accessory structures and an unpermitted front yard wall at an existing single family dwelling at 3919 Helen Avenue.

**ISSUES**

- At the 02/14/23 Planning Commission meeting, the applicant agreed to either remove the subject accessory structures or alter them to conform to Title 19 requirements, except for the requirement for the RV Storage structure to be aesthetically compatible with the main dwelling, which was recommended for approval as part of the Variance.
- City staff requested that a voluntary neighborhood meeting be held to discuss the request with owners in the area. This meeting was scheduled for 01/05/23 at Claude and Stella Parson Elementary School General Purpose Room, 4100 Thom Boulevard.
- The existing wall and structures were constructed without building permits prior to current ownership of the property. There is an open Code Enforcement action on this property. If approved, building permits must be obtained for the structures. If denied, the structures must be removed or brought into compliance with Title 19 and building codes.

**ANALYSIS**

The owner acquired the property in October 2020 with all of the structures in place as they are today. A Code Enforcement Case (CE21-02084) has been ongoing since May 2021 to monitor progress of either removal or legalization of these structures. Aerial imagery from Clark County indicates the recreational vehicle storage structure has been in place since at least 2017. An extension of the rear carport to the property line appears to have occurred in 2010, and the south side canopy appears to have been constructed in 2004.

The subject site is zoned R-E (Residence Estates). Title 19.06.060 requires the following concerning residential accessory structures:

- Minimum rear yard setback: 5 feet
- Minimum side yard setback: 5 feet
- Separation from primary dwelling: 6 feet

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- Patio cover rear yard setback to post: 15 feet
- Patio cover side yard setback to post: 10 feet
- Maximum height: 2 stories or 35 feet, whichever is less; any structure within 10 feet of a property line shall not exceed the height of the principal dwelling unit

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

<b><i>Issue</i></b>	<b><i>Applicable code section</i></b>
Zero-foot side yard setback for existing canopy on south side of property where 5 feet is required	19.06.060 (Table 2)
Zero-foot side yard setback for existing recreational vehicle canopy where 5 feet is required	19.06.060 (Table 2)
Zero-foot rear yard setback for existing carport used for equipment storage where 15 feet is required	19.06.060 (Table 4)
16-foot tall existing detached canopy where it cannot exceed the height of the principal dwelling (where located within 10 feet of a property line)	19.06.060 (Table 3)
15-foot tall existing detached recreational vehicle canopy for existing storage where it cannot exceed the height of the principal dwelling (where located within 10 feet of a property line)	19.06.060 (Table 3)
Zero-foot separation from the principal building on site where a minimum of 6 feet is required for the 16-foot tall canopy	19.06.060 (Table 2)
Accessory structures are not aesthetically compatible with the main dwelling where such is required	19.06.040.C
3-foot tall existing screen wall in the front yard setback area where a maximum of 2 feet solid wall is allowed	19.06.060 (Table 7)

There is a porte cochere attached to the front of the house that also appears to be unpermitted. From the submitted plans, this appears to conform to current R-E setback standards. There are also some interior walls that do not have a valid permit. It is unclear from the plans whether they conform to zoning code requirements.

Due to building code requirements, staff has some concern 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. Additionally, there can be no openings in the structure within the setback area. The applicant is considering constructing a building wall to fill in the opening on the south side of the 16-foot tall canopy structure in order to obtain a permit. As structures within 10 feet of the property line cannot exceed the height of the residential dwelling, this is included in the Variance request. A structural engineer must certify all plans for unpermitted structures.

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An existing patio cover (carport) that extends to the rear property line is located to the south side of an existing detached garage at the rear of the property. In the R-E zoning district the rear yard setback for patio covers is 15 feet. At the pre-application meeting, the applicant stated that the patio cover could be moved to conform to the zoning code requirement; however, the plans do not indicate that the structure will be moved.

During a field inspection, staff verified that the metal structures are not aesthetically compatible with the primary dwelling. Staff could not determine the aesthetic compatibility of the rear carport structure.

In each instance, there is no hardship related to the site's physical characteristics that would warrant deviation from code standards. In some instances, the structures could be moved to conform to 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.

**FINDINGS (22-0092-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 and a front yard wall to remain on the property where their removal or placement within required setbacks would allow conformance to the Title

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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**

<b><i>Related Relevant City Actions by Planning, Fire, Bldg., etc.</i></b>	
08/12/10	Code Enforcement opened a Case (CE-93609) regarding unpermitted structures at 3919 Helen Avenue. Staff held a pre-application meeting with the then-owner of the property, but a variance application was not filed. The case was resolved 09/29/13 by Code Enforcement.
05/10/18	Code Enforcement opened a Case (CE-189055) regarding unpermitted structures at 3919 Helen Avenue. The case was resolved 09/08/18 by Code Enforcement.
05/19/21	Code Enforcement opened a Case (CE21-02084) regarding unpermitted accessory structures in the rear and a carport and garage within required setbacks at 3919 Helen Avenue. During an inspection, Code Enforcement staff noted an unpermitted front yard wall. The case remains active.
11/15/22	The Planning Commission voted to abey this request for a Variance (22-0092) to the January 10, 2023 Planning Commission meeting at the applicant's request.
01/10/23	The Planning Commission voted (6-0) to HOLD IN ABEYANCE 22-0592-VAR1 to the February 14, 2023 Planning Commission meeting.
02/14/23	The Planning Commission voted (7-0) to recommend APPROVAL of a request TO ALLOW A ZERO-FOOT SIDE YARD SETBACK FOR TWO EXISTING DETACHED ACCESSORY STRUCTURES (CLASS II) [RECREATIONAL VEHICLE CANOPY AND STORAGE CANOPY] WHERE FIVE FEET IS REQUIRED, A ZERO-FOOT REAR YARD SETBACK FOR AN EXISTING ACCESSORY STRUCTURE (CLASS II) [DETACHED CARPORT] WHERE 15 FEET IS REQUIRED, THE HEIGHT OF TWO EXISTING DETACHED ACCESSORY STRUCTURES (CLASS II) [RECREATIONAL VEHICLE CANOPY AND STORAGE CANOPY] TO EXCEED THE HEIGHT OF THE MAIN DWELLING WHERE SUCH IS NOT ALLOWED, A ZERO-FOOT SEPARATION FROM THE MAIN DWELLING WHERE SIX FEET IS REQUIRED FOR AN EXISTING DETACHED ACCESSORY STRUCTURE (CLASS II) [STORAGE CANOPY], ACCESSORY STRUCTURES (CLASS II) TO NOT BE AESTHETICALLY COMPATIBLE WITH THE PRINCIPAL DWELLING UNIT WHERE SUCH IS REQUIRED AND A THREE-FOOT FRONT YARD SCREEN WALL WHERE TWO FEET IS ALLOWED on 0.70 acres at 3919 Helen Avenue (APN 138-12-110-030), R-E (Residence Estates) Zone, Ward 5 (Crear).

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<b>Most Recent Change of Ownership</b>	
10/06/20	A deed was recorded for a change in ownership.

<b>Related Building Permits/Business Licenses</b>	
1958	The single family dwelling at 3919 Helen Avenue was constructed.
01/10/91	A building permit (#91094107) was issued for a three-foot tall block wall on the interior of the property at 3919 Helen Avenue. A final inspection was not approved and the permit expired 07/10/91.
07/25/91	A building permit (#91114454) was issued for a 960 square-foot detached garage at 3919 Helen Avenue. A final inspection was not approved and the permit expired 01/25/92.

<b>Pre-Application Meeting</b>	
02/09/22	A pre-application meeting was held to discuss submittal requirements for a Variance application. Staff and the applicant discussed various changes needed to the plans and justification letter before project submittal. It was suggested that the applicant obtain written letters of support from the neighbors or volunteer to hold a neighborhood meeting prior to the public hearing for the Variance to explain the request and address any concerns.
08/01/22	A follow-up consultation between staff and the applicant occurred after staff received hard copies of the remaining application materials, resulting in project reauthorization.

<b>Neighborhood Meeting</b>	
01/05/23	A neighborhood meeting was not required; however, staff encouraged the applicant to hold a voluntary meeting, which was held at Claude and Stella Parson Elementary School General Purpose Room, 4100 Thom Boulevard. There were 14 persons in attendance, including the applicant and one Ward 5 staff member.

<b>Field Check</b>	
08/03/22	The site contains a single-family dwelling in a rural neighborhood. Staff observed a metal canopy structure with masonry support posts between the house and the wall on the south side of the property and a prefabricated metal RV garage at the rear along the south side of the property. The rear detached garage or storage carport could not be seen from the Helen Avenue right-of-way.

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<b>Details of Application Request</b>	
<b>Site Area</b>	
Net Acres	0.70

<b>Surrounding Property</b>	<b>Existing Land Use Per Title 19.12</b>	<b>Planned or Special Land Use Designation</b>	<b>Existing Zoning District</b>
Subject Property	Single Family, Detached	DR (Desert Rural Density Residential)	R-E (Residence Estates)
North	Single Family, Detached	DR (Desert Rural Density Residential)	R-E (Residence Estates)
South	Single Family, Detached	DR (Desert Rural Density Residential)	R-E (Residence Estates)
East	Convalescent Care Facility/Nursing Home	DR (Desert Rural Density Residential)	R-E (Residence Estates)
West	Single Family, Detached	DR (Desert Rural Density Residential)	R-E (Residence Estates)

<b>Master and Neighborhood Plan Areas</b>	<b>Compliance</b>
Las Vegas 2050 Master Plan Area: Rancho	Y
<b>Special Area and Overlay Districts</b>	<b>Compliance</b>
RP-O (Rural Preservation Overlay) District	Y
<b>Other Plans or Special Requirements</b>	<b>Compliance</b>
Trails	N/A
Las Vegas Redevelopment Plan Area	N/A
Interlocal Agreement	N/A

<b>Other Plans or Special Requirements</b>	<b>Compliance</b>
Project of Significant Impact (Development Impact Notification Assessment)	N/A
Project of Regional Significance	N/A

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**DEVELOPMENT STANDARDS**

*Pursuant to Title 19.06, the following standards apply:*

<b>Standard</b>	<b>Required/Allowed</b>	<b>Provided</b>	<b>Compliance</b>
Min. Lot Size	18,000 SF	30,492 SF	Y
Min. Lot Width	100 Feet	110 Feet	Y
Min. Setbacks – accessory structures			
• Side (storage canopy)	5 Feet	0 Feet	N
• Side (RV canopy)	5 Feet	0 Feet	N
• Rear (carport)	15 Feet	0 Feet	N
Max. Lot Coverage - Accessory Structures	50 % of rear yard 50 % of side yard	26 % of rear yard 24 % of side yard	Y
Max. Accessory Structure Building Height*	May not exceed height of principal dwelling (13 Feet) where located within 10 feet of PL	16 Feet	N
Min. Separation from Principal Dwelling	6 Feet	0 Feet	N
Wall Height – front yard setback area	2 Feet solid / 5 Feet overall height	3 Feet solid / 3 feet overall	N

\*Building height is defined by Title 19.18 as the distance between the average finished grade along the front of a building and either the highest point of the coping of a flat roof; the deck line of a mansard roof; or the average height level between the eaves and ridge line of a gable, hip or gambrel roof.