

**AGENDA MEMO - COMMUNITY DEVELOPMENT****CITY COUNCIL MEETING DATE: MARCH 15, 2023****DEPARTMENT: COMMUNITY DEVELOPMENT****ITEM DESCRIPTION: APPLICANT/OWNER: SAUL REGALADO**

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

CASE NUMBER	RECOMMENDATION	REQUIRED FOR APPROVAL
22-0667-VAR1	Staff recommends DENIAL, if approved subject to conditions:	

**** NOTIFICATION ******NEIGHBORHOOD ASSOCIATIONS NOTIFIED** 17**NOTICES MAILED** 175 (by City Clerk)**PROTESTS** 1**APPROVALS** 5

**** CONDITIONS ****

22-0667-VAR1 CONDITIONS

Planning

1. A Variance is hereby approved to allow a zero-foot side yard setback where five feet is required, a 14-foot front yard setback where 20 is required, a zero-foot separation from the main dwelling where six feet is required, and to be located within the front yard setback where such is not allowed for an Accessory Structure (Class II) [Garage].
2. A Variance is hereby approved to allow a three-foot corner side yard setback where five feet is required, a 10-foot front yard setback where 20 feet is required, a zero-foot separation from the main dwelling where six feet is required, and to be located within the front yard setback where such is not allowed for an Accessory Structure (Class II) [Carport].
3. 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.
4. 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.
5. These Conditions of Approval shall be affixed to the cover sheet of any plan set submitted for building permit.
6. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

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**** STAFF REPORT ****

PROJECT DESCRIPTION

The applicant is requesting a Variance of various Title 19 residential development standards for two existing Accessory Structures (Class II) at 601 Biltmore Drive.

ISSUES

- This Variance request is the result of a Code Enforcement Case (#CE22-05226) in which the applicant was cited for two Accessory Structures (Class II) that do not have a building permit or meet Title 19 setback or separation requirements. Staff therefore recommends denial of the request.
- The main dwelling is located on a corner lot and was built in 1942. Per the 1949 Code of Las Vegas Nevada Chapter 24, Section 16, the minimum corner side and side yard setback is five feet.
- If approved, building permits must be obtained for the structures. If denied, the structures must be removed or brought into compliance with both Title 19 and the building code.

ANALYSIS

On September 29th, 2022, Code Enforcement opened a case (#CE22-05226) for 601 Biltmore Drive. The property was observed to have two unpermitted accessory structures located in the front yard and side yard setback areas. The two Accessory Structures (Class II) are being used as a garage and carport. Although the subject Accessory Structures (Class II) were built during the last two years, the main dwelling located at 601 Biltmore Drive was built in 1942 and is located in the R-1 (Single Family Residential) Zone. Per the 1949 Code of Las Vegas Nevada Chapter 24, Section 16, the minimum corner side and side yard setback for the subject site is five feet. However, the Accessory Structure (Class II) [Carport] that is located in the corner side yard does not meet neither the corner side yard nor the side yard setback requirements. During a field inspection, staff verified that the subject Accessory Structures are aesthetically compatible with the primary dwelling.

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The Accessory Structure (Class II) [Garage] was constructed adjacent to the northeast property line and angles from a zero-foot setback at the far northern end of the garage to a four-foot setback to the southern end of the garage where five feet is required. The garage was also constructed with a zero-foot side yard setback where Title 19 requires five feet, a 14-foot front yard setback where 20 is required, a zero-foot separation from the main dwelling where six feet is required, and to be located within the front yard setback where such is not allowed for an Accessory Structure (Class II).

The Accessory Structure (Class II) [Carport] has a three-foot corner side yard setback where five feet is required, a 10-foot front yard setback where 20 feet is required, a zero-foot separation from the main dwelling where six feet is required, and to be located within the front yard setback where such is not allowed for an Accessory Structure (Class II). Although current Title 19 requires a 15-foot corner side yard setback for Accessory Structures within the R-1 (Single Family Residential) Zone, the subject Accessory Structure [Carport] will be held to the 1949 Code of Las Vegas Nevada Chapter 24, Section 16 for the corner side yard setback, which allowed for a minimum corner side setback of five feet.

Staff recommends denial of the request, as there is no evidence of a unique or extraordinary circumstance. The applicant has created a self-imposed hardship by constructing both the carport and garage without a building permit which has resulted in both Accessory Structures not meeting setback requirements. If approved, a Condition of Approval has been added by staff for the applicant to obtain a building permit and the appropriate certificate of occupancy for both accessory structures to ensure they are structurally sound.

FINDINGS (22-0667-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."

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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 constructing two Accessory Structures (Class II) that do not meet setback or separation requirements. Having applied for building permits would have allowed 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, Bldg., etc.</i>	
09/29/22	Code Enforcement processed a case (#CE22-05226) regarding unpermitted structures placed in the required setback areas at 601 Biltmore Drive. The case remains active pending result of this requested Variance (22-0667-VAR1).
01/10/23	The Planning Commission voted (6-0) to HOLD IN ABEYANCE 22-0667-VAR1 to the February 14, 2023 Planning Commission meeting.

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<i>Related Relevant City Actions by Planning, Fire, Bldg., etc.</i>	
02/14/23	The Planning Commission voted (7-0) to recommend APPROVAL of request TO ALLOW A ZERO-FOOT SIDE YARD SETBACK WHERE FIVE FEET IS REQUIRED, A 14-FOOT FRONT YARD SETBACK WHERE 20 FEET IS REQUIRED, A ZERO-FOOT SEPARATION TO THE MAIN DWELLING UNIT WHERE SIX FEET IS REQUIRED AND TO BE LOCATED WITHIN THE FRONT YARD SETBACK AREA WHERE SUCH IS NOT ALLOWED FOR AN EXISTING ACCESSORY STRUCTURE (CLASS II) [GARAGE]; AND AN EXISTING ACCESSORY STRUCTURE (CLASS II) [CARPORT] TO BE LOCATED IN THE FRONT YARD SETBACK AREA WHERE SUCH IS NOT ALLOWED, WITH A THREE-FOOT CORNER SIDE YARD SETBACK WHERE FIVE FEET IS REQUIRED, A 10-FOOT FRONT YARD SETBACK WHERE 20 FEET IS REQUIRED AND A ZERO-FOOT SEPARATION TO THE MAIN DWELLING UNIT WHERE SIX FEET IS REQUIRED on 0.15 acres at 601 Biltmore Drive, (APN 139-27-810-010), R-1 (Single Family Residential) Zone, Ward 5 (Crear)

<i>Most Recent Change of Ownership</i>	
03/11/19	A deed was recorded for a change in ownership.

<i>Related Building Permits/Business Licenses</i>	
There are no related building permits or business licenses.	

<i>Pre-Application Meeting</i>	
11/14/22	A pre-application meeting was held with the applicant to review the submittal process for a Variance request.

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

<i>Field Check</i>	
12/01/22	Staff conducted a routine field check and observed two Accessory Structures (Class II). Staff observed that the Accessory Structures (Class II) are aesthetically compatible and used as a garage and a carport. No other issues were noted.

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Details of Application Request	
Site Area	
Net Acres	0.15

Surrounding Property	Existing Land Use Per Title 19.12	Planned or Special Land Use Designation	Existing Zoning District
Subject Property	Single Family, Detached	Mixed Use (MXU)	R-1 (Single Family Residential)
North	Single Family, Detached		
South	Single Family, Detached		
East	Single Family, Detached		
West	Vacant		C-1 (Limited Commercial)

Master and Neighborhood Plan Areas	Compliance
Las Vegas 2050 Master Plan Area: Downtown Las Vegas	Y
Special Area and Overlay Districts	Compliance
A-O (Airport Overlay) District (200 Feet)	Y
Other Plans or Special Requirements	Compliance
Trails	N/A
Las Vegas Redevelopment Plan Area – Area 1	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 Title 19.06 and 1949 Code of Las Vegas Nevada Chapter 24, Section 16 the following standards apply to the subject Accessory Structure (Class II) [Carport]:

Standard	Required/Allowed	Provided	Compliance
Min. Setbacks			
• Front	20 Feet	10 Feet	N
• Corner	5 Feet	3 Feet	N
Min. Distance Between Buildings	6 Feet	0 Feet	N

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Pursuant to Title 19.06, the following standards apply to the subject Accessory Structure (Class II) [Garage]:

<i>Standard</i>	<i>Required/Allowed</i>	<i>Provided</i>	<i>Compliance</i>
Min. Setbacks			
• Front	20 Feet	14 Feet	N
• Side	5 Feet	0 Feet	N
• Rear	3 Feet	0 Feet	N
Min. Distance Between Buildings	6 Feet	0 Feet	N