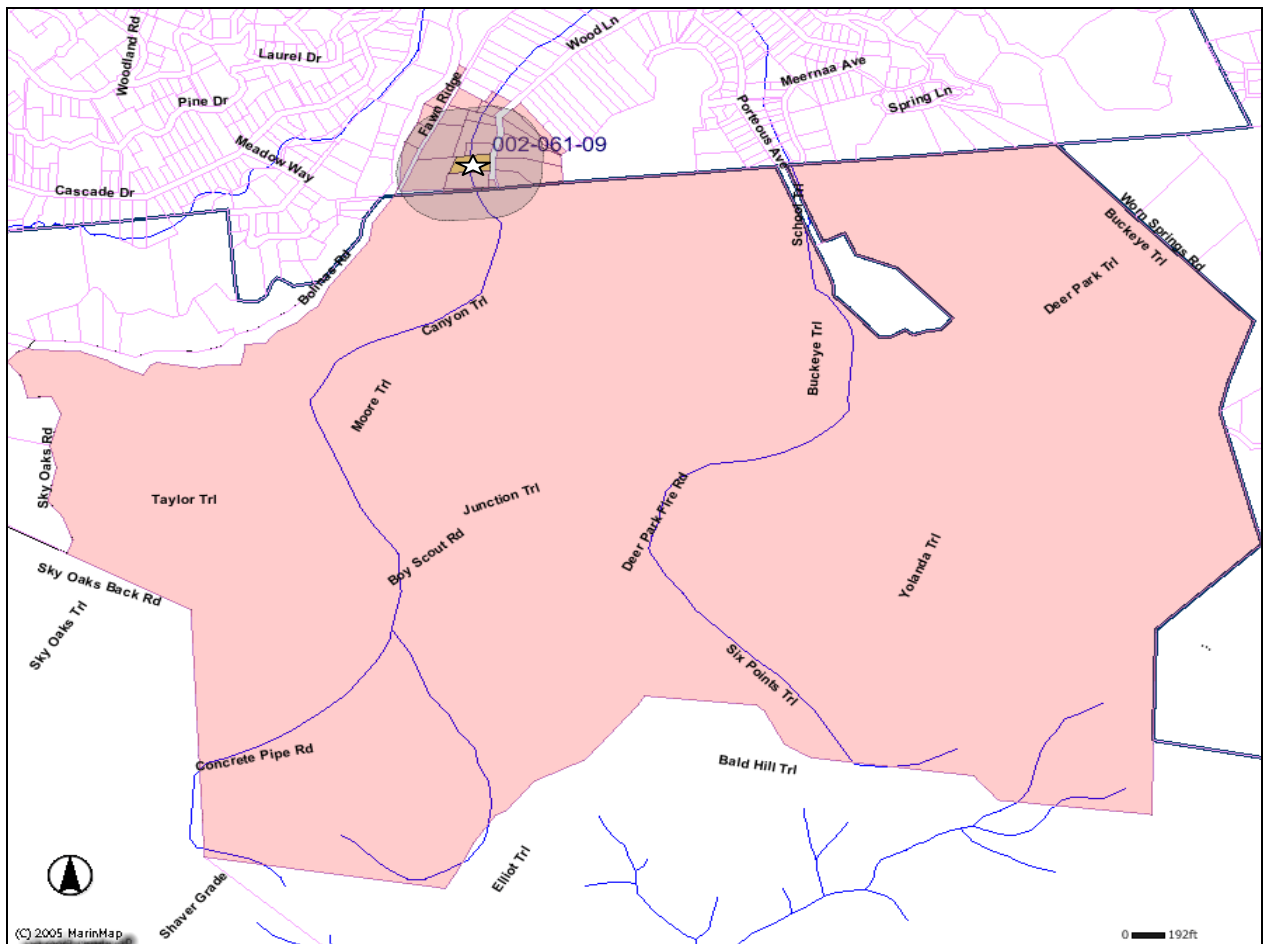


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: July 18, 2013
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
LOCATION: 130 Wood Lane; Assessor's Parcel No. 002-061-09
PROJECT: Unpermitted Carport
ACTION: Use Permit and Setback Variance; Application # 13-23
APPLICANT: John Leimer
OWNER: Suzanne Quentin
CEQA STATUS: Categorically exempt, § 15303(e)



130 WOOD LANE

BACKGROUND

The 16,524 square foot site slopes up from Wood Lane at an average rate of 35% although the house location at the front of the property is relatively level.

The original home was built in 1930 prior to the Town's incorporation in 1931. The Planning Commission approved the substandard side setback maintained by the house and a variance from the covered parking requirement to allow a 50% remodel and addition of the home in 1986.

DISCUSSION

The Building Official noted that a new carport was constructed on the property in required setbacks without the required discretionary planning approvals or a building permit in April of 2013. The Staff sent a letter to the owner advising her that the structure either had to be legalized or be removed on April 4, 2013.

The owner has applied for a Use Permit and Side Setback Variance to legalize the 234 square foot open carport in its current location where it has been constructed into the minimum required 5 foot western side setback and maintains less than a ½ foot setback.

The construction requires the approval of the following discretionary permits by the Planning Commission:

A Use Permit

Town Code § 17.080.050(C) requires that parcel with a 35% slope must be 27,000 square feet in size and 125 feet wide to meet the lot size and width requirements. If the site does not meet the size and width requirements, the same section of the Code requires that a Use Permit be obtained from the commission prior to any physical improvement. The site is only 16,524 square feet in size and 100 feet wide so legalization of the carport requires the approval of a Use Permit.

The Town Code requires that residential properties be provided with at least one covered parking space. The design of the carport is in keeping with the design of other covered parking structures in the neighborhood and throughout Fairfax and it does not change the single-family character of the site.

Variances to the Setback and Parking Regulations

Town Code 17.050.070(B)(2) requires that structures on properties with over a 10% slope maintain minimum side yard setbacks of five (5) feet.

Town Code 17.052.010(B) indicates that, "No off street parking spaces or garages, carport or other accessory structure for parking use, required or additional thereto, shall be located in a required side yard setback.

The southwestern corner of the carport almost touches the west side property line and 45 square feet of the corner encroaches into the required setback. Therefore, the project requires an exception to the above restrictions.

The purpose of the Variance process is to allow variation from the strict application of the Zoning Ordinance regulations, where, by exceptional narrowness, shallowness or unusual shape of a property, or by exceptional topographic condition of the site or other extraordinary condition of the property, the enforcement of the setback and parking restrictions would involve practical difficulties or cause undue hardship unnecessary to carry out the spirit of the Zoning Ordinance.

In order to approve the requested variances the Commission must be able to make the following legal findings with respect to the site and project:

1. Because of special circumstances applicable to the property, including size, shape, topography, location of surroundings, the strict application of this title will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.
2. The variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification, and is consistent with the objectives of this title.
3. The strict application of this title would result in excessive or unreasonable hardship.
4. The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

The front portion of the site is flat. There is a large level parking area at the front of the residence where the carport could have been constructed in compliance with the regulations. In fact, reorienting the front of the carport 6 feet to the east would have resulted in a conforming structure. Staff is unable to make the findings required to recommend approval of the structure in its current location.

Other Agency/Department Comments

Only the Building Official commented that the structure needs a building permit if approved by the Commission whether it is approved in its currently location or is relocated to conform.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.

3. Move to approve the Use Permit but deny the required Setback and Parking regulation Variances based on the following findings and subject to the following conditions:

Suggested Findings For Approval of the Use Permit

The code requires that each residential property be provided with at least one (1) covered parking space and the design of the carport is similar to that of other covered parking structures found throughout the neighborhood and other residential areas in Fairfax. Therefore, approval of a use permit for a single-car parking structure on the site does not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.

The development and use of the carport, once it is relocated out of the required side setback where parking is prohibited by the Town Code, shall not cause excessive or unreasonable detriment to adjoining properties or premises.

Approval of the use permit to allow a covered space on the site will bring the property into compliance with the covered parking requirement found in Town Code § 17.052.010(D).

Approval of the use permit, with the carport and parking located out of the minimum five (5) foot side yard setback, will result in equal or better development of the premises than would otherwise be the case.

Suggested Findings for Denial of the Setback and Parking Variances

There are no special circumstances or features of the land area, such as size, shape or topography that make it impossible to locate a carport on the site in compliance with the regulations. A small shift to the east in the alignment of the carport with respect to the side property line will result in compliance.

The variance or adjustment will constitute a grant of special privilege because the site has several areas where a complying carport could be built.

Relocation of the carport to a conforming location is physically possible. Therefore, the strict application of this title to legalize the unpermitted carport will not result in an unreasonable hardship for the owner.

Recommended Condition of Approval

The carport shall be moved out of the required 5 foot side setback after a building permit is obtained for the structure in a conforming location.

ATTACHMENTS

- Exhibit A - Applicant’s supplemental information
- Exhibit B – Other agency/department comments

