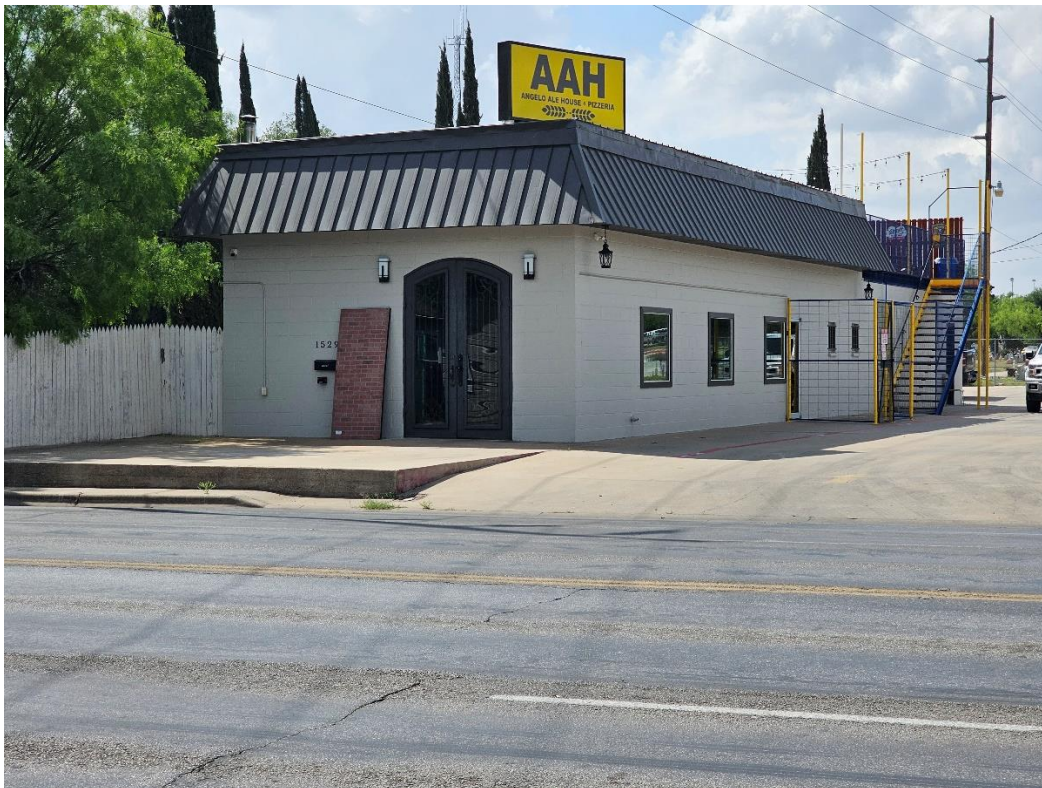


**ZONING BOARD OF ADJUSTMENT – May 1, 2023  
STAFF REPORT**



<b>APPLICATION TYPE:</b>		<b>CASE:</b>	
Variance		ZBA23-06: Block 1, Delmar Place Addition 60 Ft. X 115.4 Ft. of Monroe Street just east of Lot 1	
<b>SYNOPSIS:</b>			
<p>The Applicant has submitted a request for approval of a variance from Section 501.A of the Zoning Ordinance to allow for a 0' front yard setback in lieu of the required 25' on W Avenue N.</p>			
<b>LOCATION:</b>		<b>LEGAL DESCRIPTION:</b>	
1529 W Avenue N		Block 1, Delmar Place Addition 60 Ft. X 115.4 Ft. of Monroe Street lying east of Lot 1	
<b>SM DISTRICT / NEIGHBORHOOD:</b>		<b>ZONING:</b>	<b>FUTURE LAND USE:</b>
SMD District #5 – Karen Hesse Smith ASU – College Hills Neighborhood		Neighborhood Commercial (CN)	Commercial
			<b>SIZE:</b>
			0.214 acres
<b>NOTIFICATIONS:</b>			
<p>13 notifications were mailed within a 200-foot radius on April 13, 2023. No letters have been received to date in support or opposition.</p>			
<b>STAFF RECOMMENDATION:</b>			
<p>The staff's recommendation is the <b>APPROVAL</b> of the variance from 501.A of the Zoning Ordinance to allow for a street front setback of 0' in lieu of the required minimum 25' be allowed.</p>			
<b>PROPERTY OWNER/PETITIONER:</b>			
Applicant: Shake & Bake Enterprises LLC			
<b>STAFF CONTACT:</b>			
Sherry L. Bailey Senior Planner (325) 657-4210, Extension 1546 <a href="mailto:sherry.bailey@cosatx.us">sherry.bailey@cosatx.us</a>			

**Additional Information:** Staff met with the applicant both in the office and at their site. Their request is to fence in the front raised slab to make a courtyard where they can place tables with umbrellas where customers can sit outside, eat their pizza, and drink their beverages (to include alcohol). At some point in the past, a former owner poured a cement slab in the front yard. This raised the slope in the very front and made the whole area even. It is not unreasonable to assume that the previous owner utilized that area for their business. That is what the Shake and Bake group would like to do. Utilize that cement area for usable space. There will be a short (3') fence, that will be anchored into the pad and the tables will be inside of that fenced space. Their lot is small, but they have been inventive in their approach to usable space. They have a contract for additional parking on the adjacent business lot since that lot's busy time is daytime hours and Angelo Ale House's busy time is evening hours. The front sitting area and the upstairs area's noise will not infringe on the surrounding neighborhood. The area is commercially zoned, with the cemetery to the east and college rental housing to the south and across W Avenue N, which is a heavily trafficked, local street.



**Variances:** Section 207(F) of the Zoning Ordinance requires that an applicant for a variance must show that a hardship exists and that the Zoning Board of Adjustment make an affirmative finding that each and every one of the following six (6) criteria are met:

1. **Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial.** The lot was elevated and paved in the past and eliminates the front yard as a useable design element when originally developed, but allows for creative outdoor use of the area. It is easily noticed. (see above)

2. **These special circumstances are not the result of the actions of the applicant.**  
The front yard has been cemented and raised for years. The applicant would just like to use what others have been able to use.
3. **Literal interpretation and enforcement of the terms and provisions of this Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship.**  
The applicant would like to have the ability to use the outside seating on good weather days. It would be a positive for a new business and a unique offering. There are some other similar uses close to the College.
4. **Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of this Zoning Ordinance and substantial justice.** If the variance were granted as requested, staff believe that this would allow use of an area that otherwise would not serve any purpose.
5. **Granting the variance will not adversely affect adjacent land in a material way.** Granting the variance would not have an adverse effect on adjacent land.
6. **Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.** Section 104.2 of the Zoning Ordinance states that the purpose of the Ordinance is to “Protect the character and the established pattern of development in each area.”

**Allowed Variances:**

In addition to the above criteria, in exercising its authority to grant a variance, per Section 207.D of the Zoning Ordinance, the Zoning Board of Adjustment must affirmatively find that one or more of the following circumstances applies:

1. **SPECIAL CIRCUMSTANCES RESULTING IN UNNECESSARY HARDSHIP.** *Where special circumstances exist on the property related to the size, shape, area, topography, surrounding conditions or location that do not generally apply to other property in the same zoning district, and that the circumstances are such that strict application of this zoning ordinance would create an unnecessary hardship or deprive the applicant of reasonable use of the land or building.*
2. **OVERRIDING PUBLIC INTEREST.** *If the variance further an overriding public interest or concern, including, but not limited to: (a) Preserving the natural environment, (b) Promoting maintenance or reuse of older urban or historic buildings, or (c) Helping to eliminate a nonconforming use at another location.*
3. **LITERAL ENFORCEMENT.** *If it is found that the literal enforcement and strict application of this Zoning Ordinance will result in extraordinary circumstances inconsistent with the general provisions and intent of this ordinance, and that, in granting the variance, the spirit of the ordinance will be preserved and substantial justice done.*

**Recommendation:**

Staff's recommendation is for **APPROVAL** of the variance from 501.A of the Zoning Ordinance to allow for a front setback of 0', which will match the existing elevated pad in lieu of the required minimum 25'.

**Attachments:**

Aerial Map  
Photographs

### AERIAL MAP

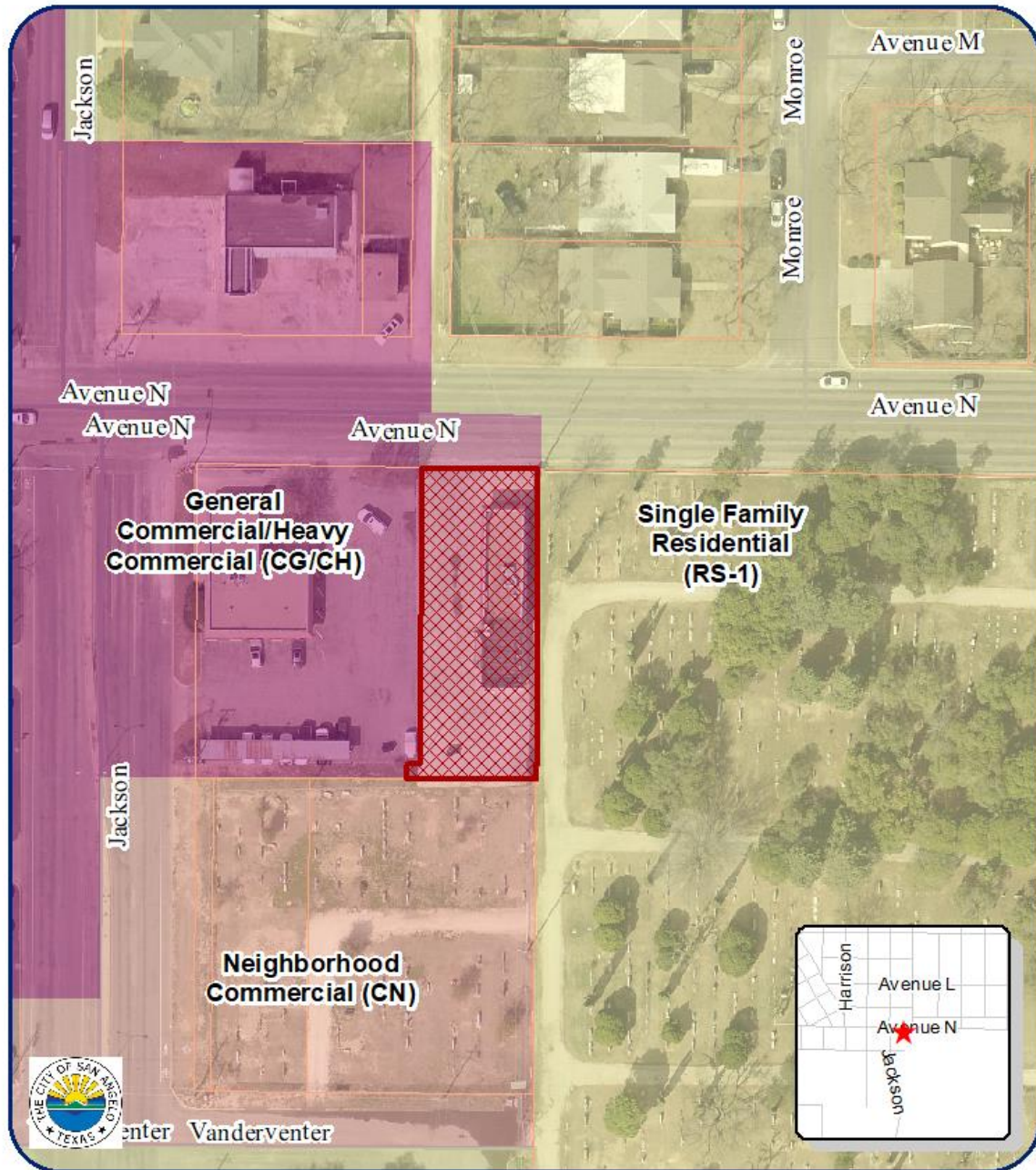


**Aerial Map**  
**1529 W Ave N**  
Council District: #5 Karen Hesse Smith  
Neighborhood: Ft. Concho Neighborhood  
Scale: 0.000 0.003 0.006 0.009 0.012 Miles

**Subject Properties:** ——— (red line)  
**200' Buffer:** ——— (green line)  
**Notified Properties:** ——— (blue line)

N  
▲

**ZONING MAP**

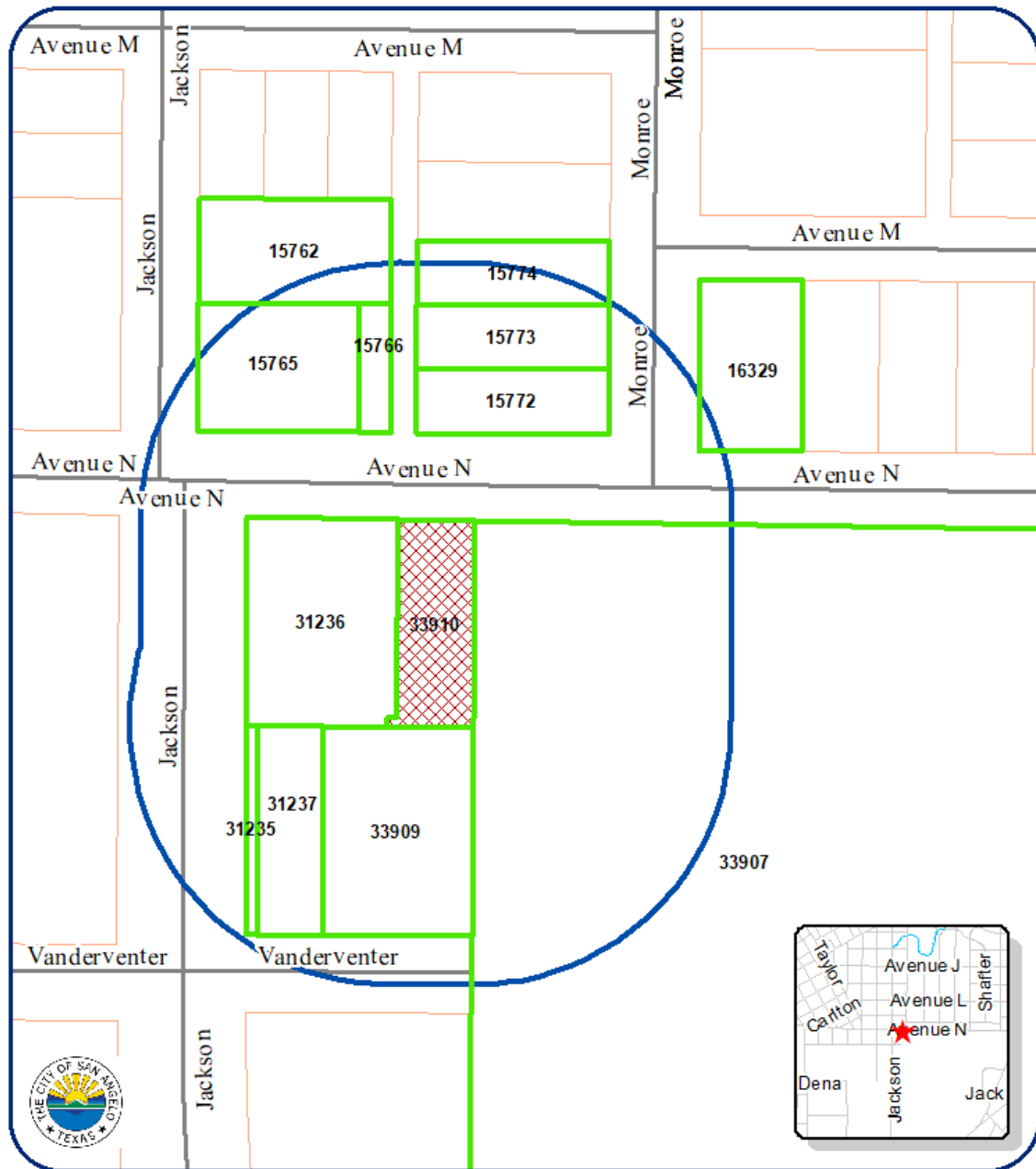


**Zoning Map**  
**1529 W Ave N**  
Council District: #5 Karen Hesse Smith  
Neighborhood: Ft. Concho Neighborhood  
Scale: 0.00825 0.013 0.0195 0.026  
0 0.0125 0.025 0.0375 0.05 Miles




**Subject Properties:** ——— (Red line)  
**200' Buffer:** ——— (Green line)  
**Notified Properties:** ——— (Blue line)


N  
▲

**200' NOTIFICATION**



**200' Notification Map**  
**1529 W Ave N**  
 Council District: #5 Karen Hesse Smith  
 Neighborhood: Ft. Concho Neighborhood  
 Scale: 0.00 0.01 0.02 0.03 0.04 Miles

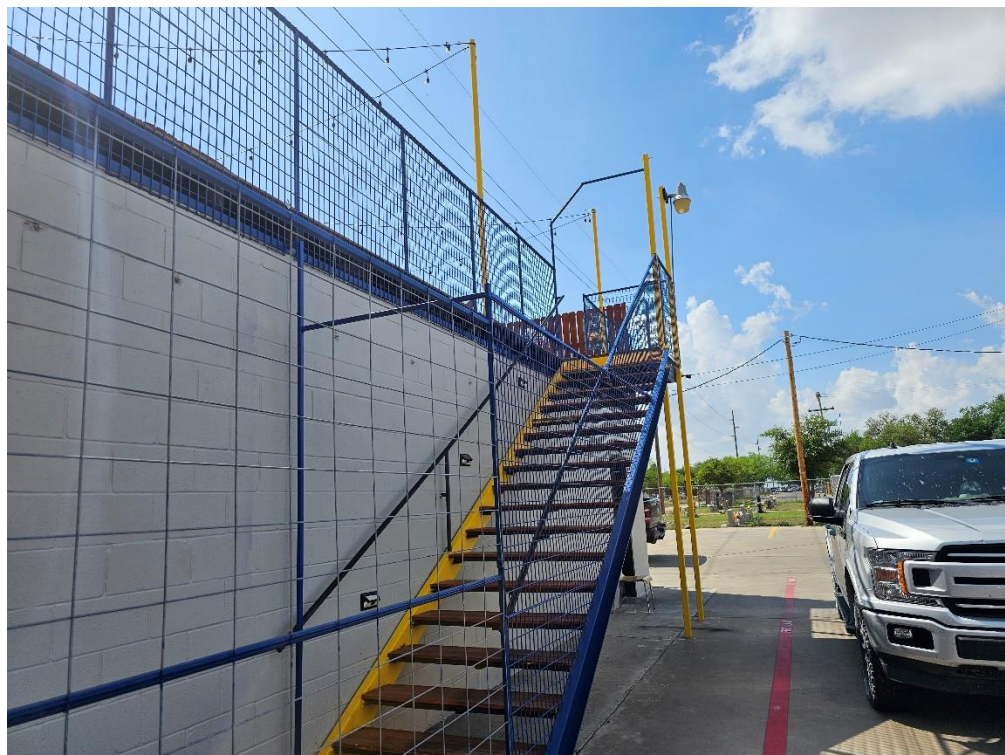
Subject Properties:   
 200' Buffer:   
 Notified Properties: 



**Photos of the Site and Surrounding Area**



**EXISTING CONCRETE PAD SHOWING IT IS ADJACENT TO SIDEWALK**



**STAIRS TO ROOFTOP SEATING AREA**





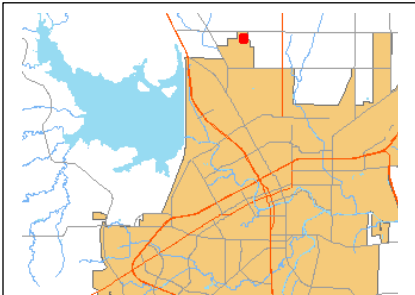
**OVERALL PICTURE OF THE SITE SHOWING NEIGHBORHOOD**



**REAR PARKING ADJACENT TO CEMETERY**

**ZONING BOARD OF ADJUSTMENT – May 1, 2023**  
**STAFF REPORT**



<b>APPLICATION TYPE:</b>		<b>CASE:</b>	
Variance		ZBA23-07: 5629 Oriole Drive	
<b>SYNOPSIS:</b>			
<p>The applicant has submitted a variance request from Section 502.B of the Zoning Ordinance to allow for a <b>20-foot front yard setback instead of the required 40-foot in the Ranch and Estate (R&amp;E) Zoning District</b>, in order to erect a carport to cover vehicles parked in front of the existing garage.</p>			
<b>LOCATION:</b>		<b>LEGAL DESCRIPTION:</b>	
5619 Oriole Dr.		Acres 1.831 acres: Green Acres Estates, Section 4, Blk.12. Lot 12	
<b>SM DISTRICT / NEIGHBORHOOD:</b>	<b>ZONING:</b>	<b>FUTURE LAND USE:</b>	<b>SIZE:</b>
SMD District #2 – Tom Thompson Lake View Neighborhood	Ranch & Estate (R&E)	Neighborhood	1.831 acres
<b>NOTIFICATIONS:</b>			
<p>13 notifications mailed within 200-foot radius on April 13, 2023.                  No responses received to date in support or opposition.</p>			
<b>STAFF RECOMMENDATION:</b>			
<p>Staff’s recommendation to the Zoning Board of Adjustment (ZBA) is to <b>approve</b> a variance from 502.B of the Zoning Ordinance to allow for a 20-foot front setback, in lieu of the required 40-foot front setback, at 5619 Oriole Drive.</p>			
<b>PROPERTY OWNER/PETITIONER:</b>			
Applicant: Robert Sanford			
<b>STAFF CONTACT:</b>			
Sherry Bailey Senior Planner (325) 657-4210, Extension 1533 <a href="mailto:sherry.bailey@cosatx.us">sherry.bailey@cosatx.us</a>			

**Additional Information:** Staff met with the applicant (Mr. Sanford) when he came to Permits to apply for a carport permit. Mr. Sanford had already constructed the carport, but did not realize he had to have a permit. In the discussion, it was discovered the applicant lived in the R&E Zoning District, and a minimum 40-foot front yard setback is required. Thus, the reason for a variance request before he can apply for the building permit. The applicant stated that he is used to rural-type property and small-town requirements and did not realize that he would need a building permit and a variance for a carport. Staff is working with him to accomplish the steps he needs to go through. The applicant built a substantial carport that meets the design guidelines staff would have recommended so staff is recommending that the variance be granted.

**Variances:** Section 207(F) of the Zoning Ordinance requires that an applicant for a variance must show that a hardship exists and that the Zoning Board of Adjustment make an affirmative finding that each and every one of the following six (6) criteria are met:

1. **Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial.** The applicant says that he is not familiar with City building requirements, most of his life had been in rural areas and very small towns.
2. **These special circumstances are not the result of the actions of the applicant.** The front yard setback is off of Oriole Drive, which has a country area feel and no curb and gutter. The area is zoned R&E. He did not realize a permit was required, which was his fault, and not an attempt to bypass a City Ordinance. As soon as it was explained, he submitted the application. While the construction without a permit is the fault of the applicant, this application would have been recommended by City staff if it had been submitted prior to construction.
3. **Literal interpretation and enforcement of the terms and provisions of this Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship.** The applicant has added a carport that reflects the color and design of his home. It is attractive, and staff has received calls from his neighbors to say they support what he has done.
4. **Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of this Zoning Ordinance and substantial justice.** If the variance were granted the use of the land would not be contrary to the public interest and would be a positive addition to the home and the neighborhood.
5. **Granting the variance will not adversely affect adjacent land in a material way.** Granting the variance would not have an adverse effect on adjacent land. As stated above the neighbors have indicated their support of his project.
6. **Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.** Section 104.2 of the Zoning Ordinance states that the purpose of the Ordinance is to “Protect the character and the established pattern of development in each area.” Staff believes that granting this variance will not disrupt the pattern of development in this area.”

**Allowed Variances:**

In addition to the above criteria, in exercising its authority to grant a variance, per Section 207.D of the Zoning Ordinance, the Zoning Board of Adjustment must affirmatively find that one or more of the following circumstances applies:

1. **SPECIAL CIRCUMSTANCES RESULTING IN UNNECESSARY HARDSHIP.** *Where special circumstances exist on the property related to the size, shape, area, topography, surrounding conditions or location that do not generally apply to other property in the same zoning district, and that the circumstances are such that strict application of this zoning ordinance would create an unnecessary hardship or deprive the applicant of reasonable use of the land or building.*
2. **OVERRIDING PUBLIC INTEREST.** *If the variance further an overriding public interest or concern, including, but not limited to: (a) Preserving the natural environment, (b) Promoting maintenance or reuse of older urban or historic buildings, or (c) Helping to eliminate a nonconforming use at another location.*
3. **LITERAL ENFORCEMENT.** *If it is found that the literal enforcement and strict application of this Zoning Ordinance will result in extraordinary circumstances inconsistent with the general provisions and intent of this ordinance, and that, in granting the variance, the spirit of the ordinance will be preserved and substantial justice done.*

**The applicant believes their request is in keeping with the development of homes in this area of town.**

**Recommendation:**

Staff's recommendation is for the Zoning Board of Adjustment (ZBA) to **APPROVE** a variance from 502.B of the Zoning Ordinance to allow for a front yard setback of 20-feet in lieu of the required 40-feet in order to build a carport in front of the existing garage.

**Attachments:**

Aerial Map  
Photographs  
Site Plan

### Aerial Map



**Future Land Use Map**  
**5619 Oriole Dr. ZBA23-07**  
Council District: SME #2 Tom Thompson  
Neighborhood: Lake View  
Scale: 0.000 0.0025 0.005 0.0075 0.01 Miles

Subject Properties: ———  
20 FT. Variance: ———  
Notified Properties: ———

N

**Photos of Site and Surrounding Area**



**Front View**



**Approaching the house, the carport is barely visible**

**Plat Map**



**The detail on the carport shows the matching color scheme, the matching roof pitch, and the construction attempt to blend with the home.**