

***City of Riverside
Board of Zoning Appeals Meeting***

***May 25, 2021
7:00 P.M.***

Members Present: Chuck Childers, Chairman
Jerry Richardson
Tim Schneider
Reece Timbrook

Members Absent: none, one open position on BZA

Staff Present: Nia Holt, Zoning Administrator
Gary Burkholder, Community Development Director
Katie Lewallen, Clerk of Council

CALL TO ORDER: Chairman Childers called the City of Riverside Board of Zoning Appeals meeting to order at 7:00 p.m.

ROLL CALL: Mr. Childers, present; Mr. Richardson, present; Mr. Schneider, present; and Mr. Timbrook, present.

APPROVAL OF MINUTES: Chairman Childers motioned to approve the meeting minutes of April 27, 2021. Mr. Schneider seconded. On call of the roll: Mr. Childers, yes; Mr. Schneider, yes; Mr. Richardson, yes; and Mr. Timbrook, yes. **Motion carried.**

HEARING OF APPEALS:

- A. BZA Case # 21-0006 – 4199 Silver Oak Street (Parcel I39 00302 0015) – R-3, Medium Density Single-Family Residential District**
 - **Variance from the City of Riverside Unified Development Ordinance to allow an encroachment into the required front yard setback as identified in UDO Section 1107.05(D)(1)(c).**
 - **Minimum Front Yard Setback**

Ms. Holt briefly reviewed the variance requested to allow an encroachment to the front yard setback. The requirement is 20'; the request is for 11', a 55% encroachment. She provided background information about the property located on the corner of Silver Oak Street and Meadowsweet Drive. The applicant proposes to construct a 21 square foot wooden porch in the front yard. It will be a bi-level porch with two sets of steps and handrails. The new structure will be built over existing steps. Staff received calls from adjacent property owners only requesting to see the variance files. She presented the zoning map, an aerial map, the site plan, and site photos from different angles. She reviewed the standards for approval. She stated that the spirit and intent behind the zoning requirements would not be observed should the variance be granted. It

does not meet the required setback. Staff recommends denial of the variance.

Mr. Timbrook asked if what is there now is considered steps and not a porch. Ms. Holt replied yes. Mr. Burkholder stated that in front it does cover a flowerbed. Mr. Schneider stated a number of these homes in Riverside and Dayton are doing things like this because they are having to repair them due to the age of the homes; they are anywhere from 48 – 51 years old. Mr. Timbrook replied he has seen this; it is steps with a flowerbed around it. Discussion was held on how close it was to Silver Oak.

Chairman Childers opened the public hearing. No one wished to speak on the matter. Chairman Childers closed the public meeting at 7:09 pm.

Discussion was held among board members particularly on the age of the homes and repairs needed. All agreed that it was a straight forward request.

Chairman Childers reviewed the findings of fact for Case #21-0006, minimum front yard setback. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the presumption that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would yield a reasonable return and that there cannot be a beneficial use of the property without the variance. It is noted that the applicant would need to repair the existing break stairs and install a handrail for safety reasons. The BZA finds the variance is substantial since the request is a 55% encroachment into the required setback. The BZA finds that the essential character of the neighborhood **would not** be substantially altered and adjoining properties would not suffer substantial detriment as a result of the variance. There are several other porches with brick steps and handrails on Silver Oak Street. The structure would not substantially alter the essential character of the neighborhood with the large encroachment in the required setback. The BZA finds that the owner's predicament **can** be obviated through some method other than the requested variance. The present steps can be repaired and the handrail installed or removed from the existing steps and install a smaller porch. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance. They also take into consideration the city's zoning staff recommends denying the variance as requested. The BZA finds that the appellant **has** met the burden of showing that practical difficulties exist for a variance as requested.

On a motion by Mr. Childers, seconded by Mr. Schneider, it was moved that the variance be granted as requested. On call of the roll: Mr. Childers, yes; Mr. Schneider, yes; Mr. Richardson, yes; and Mr. Timbrook, yes. **Motion carried.**

B. BZA Case # 21-0007 – 754 Minnesota Drive (Parcel I39 00618 0074) – R-3, Medium Density Single-Family Residential District

- **Variance from the City of Riverside Unified Development Ordinance to allow a 6 ft. fence in the front yard setback as identified in UDO Section 1107.05 (D)(1)(c) and 1115.01 (E)(3)(a).**

- **Minimum Front Yard Setback**
- **Maximum Fence Height**

Ms. Holt stated there are two variances for this case one for minimum front yard setback, 20' minimum setback requesting a 9' encroachment – a variance of 45% encroachment, and one for maximum fence height, 36" fence height maximum requesting a 36" increase – a 100% variance increase. She stated it is a corner lot on the corner of Minnesota Drive and Guernsey Dell Avenue. She reviewed the case summary. She presented the zoning map, an aerial map, a site plan, and site photos from different angles. She stated there is a curve in the street that presents some concerns for the height of the fence. She reviewed the standards for approval. She stated that the spirit and intent behind the zoning requirement would not be observed should the variance be granted. If the variance is denied, the applicant can still construct a 6' privacy fence as long as that fence does not encroach in the front lawn setback. Regarding the fence height, the spirit and intent behind the zoning requirement would be observed should the applicant bring the fence back to be in line with the house and not encroach on the front yard setback. Staff finds that the front yard setback reduction is not adequately justified and does not meet the standards for approval. Staff recommends denial of this variance. For the requested variance in fence height, staff recommends approval only if the front yard setback variance is denied.

Chairman Childers asked if the fence will come to the pole as shown in the site photo. Ms. Holt stated it would go all the way around in place of the chain link fence. Chairman Childers asked if staff recommended taking the fence back to the end of the primary structure. Mr. Timbrook stated if they did that they would not need the one variance. Ms. Holt showed that the property is actually two lots. They would lose just lose the part outside the fence between the fence and the road. Mr. Burkholder stated on that property it is considered a front lawn and a 6' fence is not permitted. Chairman Childers stated they always have that corner lot problem. Mr. Schneider asked what the rationale was for bringing it back to the house. Mr. Burkholder replied so that it was not in the setback. He added that a 3' fence can be in a front yard setback, but they are concerned about 6' fences in the front lawn setbacks because if that proliferates there will be a lot of blocking. In their internal discussions, if it was moved back, there wouldn't be a need for the variance because the 6' fence would be allowed. Discussion was had on corner lots.

Chairman Childers opened the public hearing. Mr. James Blythe took the oath to give sworn testimony. He stated that the backyard is nowhere near the stop sign where it will hurt anything. He does not think the fence will make much difference there. He is trying to get his whole yard; he uses the back door and will have to take a different way thorough the house instead of letting his dog out the back door where he stays at night. None of his neighbors have had a problem with him putting a fence up. He stated his rear neighbor said he will help him go in half on the fence in back. The neighbor across the street stated she didn't have a problem and neither did the guy behind her that owns that house. He is trying to get rid of the old jalopy fence that has cement in the holes. He will have to cut the fence out and break the cement out. All the way around the house the fence is in cement. It is not going to be fun, but it will make his house look a lot better if he didn't have ugly stuff sitting there. He stated his fence will not block the stop sign. He is way back at the stop sign; not that anybody stops at it anyway. Chairman Childers stated that he is using up the whole setback; in other words, he is going all the way down to the sidewalk or grass, whatever is there. It is 100%. If it were 50% it would be an easier case. Mr. Timbrook said it is only a 45% variance; the 100% is on the height.

Mr. Timbrook stated that it does go around the curve right there and they were talking about Forest Ridge earlier and they live around the curve and people cut it short or long. With the 6' fence in the corner, it gets a little harder to see than it was before, right? Mr. Blythe stated the stop sign has been there since he was a kid and they don't stop there. Mr. Timbrook added there is one on Berrywood like that. He stated that city staff is concerned about the curve on Guernsey Dell it kind of becomes pseudo-blind. Chairman Childers asked how big is the deck sticking out now. Mr. Blythe replied it was 16' long from the door to the back of the house. Discussion was held on bringing the fence over to the other fence with the deck and that there would still need to be a variance. Chairman Childers stated they cannot rewrite the variance request, but they could deny the current variance though he still wants something. Mr. Blythe stated he didn't care if he could slide it over some. Chairman Childers stated they don't know what that 'some' is. He would have to redo the site plan and come back. Mr. Blythe stated there is more room than they think going around that corner. He stated he is far enough away from the stop sign, and he is not blocking it. Mr. Timbrook added he was not as concerned about the curve as there is a fence there already. He does not see a problem and the new fence would look better than the one that is there now. He would put it where the fence is now. Ms. Holt stated they can continue the case to get the measurement if that is what they want to do. Chairman Childers stated they have done that before and he doesn't want to go down that road again. Mr. Timbrook stated it will not change what the applicant has already requested.

Mr. Richardson stated the setback that it has even with the fence in the picture that is showing right now and the speed limit and the amount of room and the grass with the edge of the fence and the grass over to the road, he is not concerned with a 6' fence there. He does not think it is going to be at the speed limit people should be going through there that it will not impede anybody's view as they are going around. He is good with it.

No one else had any comments or questions. Chairman Childers closed the public hearing at 7:35 pm.

Chairman Childers reviewed the findings of fact for Case #21-0007a – minimum front yard setback. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would yield a reasonable return and that there can be a beneficial use of the property without the variance. The 6' fence would need to be placed in line with the principal structure so that it does not encroach in the front yard. The BZA finds that the variance is substantial; the requested variance is 45% encroached into the required setback. The BZA finds that the essential character of the neighborhood **would not** be substantially altered, and adjoining properties would not suffer a substantial detriment as a result of the variance. The BZA finds that the owner's predicament **can** be obviated through some method other than by the requested variance. The fence could be installed flush with the façade of the principal structure. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance. They also take into consideration that the city's zoning staff recommends denying the variance as requested. The BZA finds the appellant **has** met the burden of showing that practical difficulties exist.

Chairman Childers motioned that the variance be granted as requested. Mr. Schneider seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Schneider, yes; Mr. Richardson, yes; and Mr. Timbrook, yes. **Motion carried.**

Chairman Childers reviewed the findings of fact for Case #21-0007b – maximum fence height. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would not yield a reasonable return and there cannot be a beneficial use of the property without the variance. The UDO requires a sturdy fence of not less than 48” in height to prevent a child from crawling or otherwise passing through or under the fence. The applicant requires a variance to meet this safety standard. The BZA finds that the variance is substantial; the requested variance is 100% since the request fence is 6’, which is twice what is allowed. The BZA finds that the essential character of the neighborhood **would not** be altered. By allowing this variance, the applicant will meet the safety requirements. They also take into consideration that the city’s zoning staff requires approval only if the front yard setback is denied. The BZA finds the appellant **has** met the burden of showing that practical difficulties exist for a variance for fence height.

Chairman Childers motioned that the variance be granted as requested. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Richardson, yes; and Mr. Schneider, yes. **Motion carried.**

C. BZA Case # 21-0008 – 1440 Cosmo Court (Parcel I39 101618 0035) – R-3, Medium Density Single-Family Residential District

- **Variance from the City of Riverside Unified Development Ordinance to allow an encroachment into the required side yard setback as identified in UDO Section 1107.05(D)(1)(d).**
 - **Minimum Side Yard Setback**

Ms. Holt reviewed the variance to allow an encroachment into a required side yard setback. The requirement is 5’ minimum setback and the request is for a 5’ encroachment, 100% variance encroachment. The applicant has constructed a 414 sq. ft. carport on the south side of their property attached to the principal structure and encroaches entirely into the required side yard. She presented the zoning map, an aerial map, the site plan, and site photos from different angles. She reviewed the standards for approval. She stated setbacks are required to ensure that a property owner can maintain the structures on the property without encroaching on their neighbor’s land. Staff recommends denials of the requested variance.

Mr. Burkholder stated that this is a recurring problem with carports that are being built without permits. There are some more coming in the near future. They realize that maybe variances were granted in the past, but the reason they recommend denial that no permits are issued; they are built as in the case last year they come in and say they already built it. Staff feels if they are built without a permit and they total encroach on side yards, it is not only creating current problems,

but it creates problems for future home owners if the adjacent properties sell. It is encouraging encroachment on someone else's property. They can't even verify if it is on the neighbors property or not. They continue to get comments stating everyone else has done it so they continue to do it. It makes staff's job difficult to enforce the zoning code, if every violation of the code is granted a 100% variance.

Chairman Childers opened the public hearing. Mr. Tom Carusone took the oath to give sworn testimony. Mr. Carusone stated in his particular neighborhood there are 10 carports exactly like his, right up to the property line. They all have the same narrow side yard between the garage and property line. He presented photos to the board. He stated he was unaware he needed the permit. He sees them throughout the community and did not know he needed a permit and that is why he didn't get one. He has lived in Riverside for over 40 years. He would like to stay here. He ran out of room and needs a little more space. He thought the carport would be a solution to his problem. He raised five kids on Cosmo Court; he likes the neighborhood and wants to stay there. He has renovated all the homes he has lived in in Riverside. He is a woodworker and carpenter. He does good work on his house and keeps the property values up on his house and the neighborhood. That is important to him. He likes to fix things and has a truck he needed to store and work on. He built the structure correctly, spending nearly \$14,000 as he wanted it to last a long time and blend well with the house and neighborhood. He feels with as many carports and awnings why is he being targeted. He asked if he has to tear his down will the city make others tear theirs down. He feels he is being isolated. He spoke to his neighbor on the side of the carport before he built it and he had no issues with it. When he had the slab poured, it was purposely poured 10" – 12" to allow a bit of leeway so it is not on his property. He brought with him a handful of letters from his neighbors and nobody has a problem with the carport. They appreciate the fact that he built it right and it blends in well with the neighborhood. Chairman Childers asked if any of the people came with him. Mr. Carusone replied there are people on Zoom waiting to speak. He needed more space to work on his truck and miscellaneous projects so they aren't all over the driveway. This was the best alternative. He retires in a few years and wants to stay in Riverside. His son and daughter-in-law live two houses away. If he has to tear it down most likely he will have to move to find more area to do his hobbies. He went through three plats and found 45 carports and has pictures. A majority of them are almost all the way up to the property line. The ones in his plat are up to the property line. He is asking them to approve the variance so he can stay in his home. Chairman Childers asked when he built it. Mr. Carusone replied he built it at the end of last summer to early fall. Chairman Childers stated some of the carports were probably built before they were a city. Mr. Carusone replied that from the photos most of those are not 30 years old. Most of the carports are from within 10 years ago. He feels he is the kind of person they would want in Riverside as he takes care of his home and there are parts that are not as nice. He takes pride in his property and in his work. Discussion was held on the fence next to the carport being the same wood. Mr. Carusone stated he built that for his neighbor as he is elderly.

Mr. Timbrook asked if he could comment about the storm water concern the city has as he sees there are gutters. Mr. Carusone replied there are gutters and downspouts. When the contractor built the slab for the carport...he called ahead of time "to call before you dig" so he tried to do the right thing to see if there were any utilities. His contractor also dug the pit in the back corner of the lot and filled it with stones, a French drain, that will help out with any excess storm water. That storm water is going to come down regardless if the carport is there or not. Discussion was

held on the drain and gutters. Mr. Timbrook asked why the closed in side rather than open as most are in the city. Mr. Carusone replied he needed a dry place to work on and store his truck.

Mr. Burkholder commented that he did have a nice conversation with Mr. Carusone and are empathetic to the plight. Any time there is an underground utility locate, the code enforcement investigates to see if new construction is taking place and if the applicant has obtained a permit. In this case, he did not. It is not a targeting, it is a systematic approach to get ahead of the projects before they get built. He asked when it was built. Mr. Carusone replied the slab was poured in early summer. Mr. Burkholder stated he thinks the code enforcement officer drove by and noticed fairly new construction and he checked there was no permit. He added that while he may not have thought he needed a permit, on other additions to the house he did obtain a permit. Mr. Carusone commented that it was for the house. Mr. Burkholder stated that attached accessory structures also require a permit and some inspections. Mr. Carusone stated he wasn't trying to hide anything; his biggest question is why isn't the code being enforced as these structures are out there everywhere. He is aware that code enforcement has a purpose. Discussion was held on enforcement of the code.

Chairman Childers stated that what they decide on doing on this, afterwards, Mr. Carusone may wish to go before council and tell them what is going on how he feels targeted and others around him are not getting permits. He stated they cannot do anything about that and he knows there are people who want to speak on the matter. Mr. Timbrook added their power is only over the variance. Mr. Carusone restated that if he is required to take it down he is going to have to move as he is getting ready to retire in a couple of years and he has a couple of hobbies and needs the dry space to live comfortably in his home.

Ms. Dawn Horstman took the oath to give sworn testimony. She stated that she is the neighbor directly on the opposite of the house that the carport is on. She thinks it looks very nice. It is a close neighborhood and Mr. Carusone is a neighbor one would want to have. He is always making improvements to the neighborhood to his property. It is a cul-de-sac and they are all very close, many with children. She is aware he is close with the neighbor on the side of the carport. The parking can be frustrating in a cul-de-sac. He does have a lot of hobbies and is always working out in his garage so she can see the need for it, especially, since he has children that are driving now, too. She explained the frustration of not having parking when someone comes over and getting blocked in. She does not have a problem with the carport. She knows he will take care of the carport.

Ms. Robin Stebrile took the oath to give sworn testimony. She stated her and her husband, Mark Stebrile, live on Laramie Drive and are backyard neighbors to Mr. Carusone. They have been friends and neighbors of Mr. Carusone for over 25 years. She stated he takes great care of his property and does everything he can to enhance the value. He would do nothing intentionally to deter from the property of the neighborhood. He checks with neighbors before he does anything, and she agrees with his feeling of being targeted. There are other things in the neighborhood that demand attention and they are being ignored. This is something beautiful and well-constructed and he is potentially being penalized for it. His home is well cared for and his children are well behaved. They couldn't ask for a better neighbor.

Mr. Terry Kidd took the oath to give sworn testimony. He stated he lives on the side of the

carport. He has no problems with the carport. Mr. Carusone helps him when he needs it and Mr. Kidd helps Mr. Carusone when he needs it. He wished that every neighbor was like him.

Mr. Nick Carusone took the oath to give sworn testimony. He stated he lives around the corner and has a perfect view of the carport that does nothing but increase the value and blends in with the house.

Mr. Ronald Barker took the oath to give sworn testimony. He stated he lives at 1452 Balsam; his backyard faces the front of Mr. Carusone's residence. He has no issue with the construction and feels it looks fantastic. He is new to the area and the Carusones have been welcoming. The carport blends beautifully with the property.

Mr. Gary Toole took the oath to give sworn testimony. He stated he has lived in the neighborhood since 1958. He owns two properties across from each other on Balsam Drive within the 300-foot zone of that cause him to get a letter about this. He has no problem with the carport as it blends it with the house. Mr. Carusone does quality craftsman work. He already discussed the drainage, and he did call before he dug.

Mr. Christopher Lowen took the oath to give sworn testimony. He stated that he lives across the street from Mr. Carusone at 1441 Cosmo Court. He has being neighbors with Mr. Carusone for over 10 years. He does good work to his home. The structure looks great and he has no issue.

Chairman Childers close the public hearing at 8:18 pm. Mr. Timbrook stated the carport looks better than most carports. Mr. Schneider agreed. He added he sees what the city is saying, and that permits are needed ahead of time, but that may be a later discussion. Mr. Richardson agrees with what Mr. Schneider was saying and also sees what Mr. Carusone says as the enforcement is getting out of hand but taking this one in totality with all the people there for it and no one to speak against it. He is torn in the middle. Mr. Schneider stated he understands where the city is coming from if someone moves and the neighbor moves in and has issue with the property line dispute. He does understand about people being good neighbors. Things like this could cause an issue. It was a lot of money spent on the project. Mr. Timbrook added that there has been a lot of information not relevant to the variance request, but one of the things not irrelevant is the testimony of all the neighbors around it. It is emotional maybe not logical, but they heard from almost everyone on the cul-de-sac, one of the backyard neighbors, and people around the corner. He understands later there could be a property line dispute, but thousands of other houses in Riverside could have the same problem. They have had a similar request a few months ago. It also follows the shape and form of the primary structure, the house. Chairman Childers stated he does not think the property line issue is an issue as they checked that before they did it. He thinks anyone buying can't raise that issue and then say they don't want them there. That would happen when they are buying. Mr. Timbrook stated he believes a person will pay more money rather than less with a carport on it because it is by a property line. Mr. Schneider stated they can decide on this case, but they need to mitigate this problem from happening again. Mr. Timbrook stated it is not in their purview as they can look at their rules, but cannot change the process. Mr. Schneider wants to determine how they can prevent these cases from happening in the future. Mr. Timbrook replied that is a future discussion for someone else. Chairman Childers stated he does not know how they could prevent it. All they can do is decide what they see in front of them. In this case, no one was against it. The people who spoke were in favor and they have to

look at it every day. Mr. Richardson stated with everything that has been brought up he is okay with the variance.

Chairman Childers reviewed the findings of fact for Case #21-0008 – minimum side yard setback. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would yield a reasonable return and there can be a beneficial use of the property without the variance and without adding any additional square footage to the existing structure. The BZA finds that the variance is substantial since the requested variance is 100% encroachment into the side yard. The BZA finds that the essential character of the neighborhood **would not** be substantially altered, nor would adjoining properties suffer substantial detriment as a result of the variance. They find the owners predicament could be obviated through some method other than a variance by not building the carport. They find the spirit and intent behind the zoning ordinance would be observed by granting the variance. The intent is to allow ordinary development of neighbors of the city. They also take into consideration the zoning staff recommends denying the variance for the addition as requested. The BZA finds the appellant **has** met the burden of showing that practical difficulties exist for a variance for the addition as requested.

Chairman Childers motioned that the variance be granted as requested. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Richardson, yes; and Mr. Schneider, yes. **Motion carried.**

ADJOURNMENT: Chairman Childers motioned to adjourn; Mr. Schneider seconded the motion. All were in favor; none opposed. **Motion carried.** The meeting adjourned at 8:26 pm.

Chairman

Date