

Minutes of the Hearing Officer meeting held on Wednesday, December 8, 2021 at 12:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Jim Harland, Hearing Officer
Jared Hall, Planning Division Manager
Briant Farnsworth, Deputy City Attorney
Kevin Carlston, Applicant

Jim Harland opened the meeting and welcomed those present. He reviewed the public meeting rules and procedures.

CONFLICT OF INTEREST

Mr. Harland stated that he has no conflicts of interest for this agenda.

CASE #1580 – Kevin Carlston – 5721 South Ridge Creek Road – Project #21-129

Kevin Carlston was present to represent the request. Jared Hall presented the request for a variance to front yard setback at 5721 South Ridge Creek Road. The variance request is to Section 17.100.080 of the Murray Land Use Ordinance regarding the 25' minimum required front yard setback. The property has a single-family home in the R-1-8 zone. The R-1-8 zones front yard setback is 25' and this case involves a porch cover. The applicants have been remodeling the exterior of the home and in doing so begun to add this porch. It was brought to our attention that it needed a permit and in reviewing the permit staff planners realized the porch extended beyond what is allowed. We allow things like covered porches, bay windows, eaves, awnings, to extend up to 4' into that front yard setback. This is about 13" beyond what we could allow for that cover. Since it is a request for variance its reviewed under the five tests of hardship that the state code dictates:

A. The literal enforcement of the Land Use Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance.

The literal enforcement of that 13" is not necessary to carry out the purpose being the continuity and visual look of the street. Parking in the front yard is accommodated by the driveway that is forced by that 25' setback, none of those are impacted by this request.

There are three factors relative to this request that convince Staff the application can meet this test:

- The requested variance is relatively small at only 13" when the 4' exception for structures like the porch cover are considered.
- The requested variance could be granted with specificity to the porch itself; there would be no impact to the off street parking, open space, or visual continuity.
- There is a retaining wall located 5' from the sidewalk along the front property line. This further negates any impact to visual continuity or open space that the variance would have on the area.

Staff finds that the application **meets** this requirement for granting a variance.

B. There are special circumstances attached to the property that do not generally apply to other properties in the district.

The circumstances described in item A, relate to the nature of the request rather than to the property itself. The home was not in violation of any setbacks or other requirements of zoning when the remodel and addition of the porch cover began. Staff finds no special circumstances attached to the property itself which relate to the requested variance. The variance request arises due to circumstances created by the applicant's actions and not any issue peculiar or special to the subject property. Staff finds that the application **does not meet** this requirement for granting a variance.

C. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the district.

The requested variance is small; just over one foot. The required setback is 25', but the ordinance already allows exceptions for structural elements like the covered porch, balconies, eaves, and bay windows to encroach up to 4'. The zoning ordinance already allows for the applicant's porch to be covered, and to a greater extent than the main body of the home at 25'. Staff cannot conclude that granting the variance is essential to the enjoyment of a substantial property right. Staff finds that the application **does not meet** this requirement for granting a variance.

D. The variance will not substantially affect the General Plan and will not be contrary to the public interest.

The requested variance would have no practical impacts that would be in any way contrary to the public interest or have any impact upon the General Plan. The rock retaining wall in the front yard makes less of an impact to the visual continuity. Staff finds that the application **meets** this requirement for granting a variance.

E. The spirit of the Land Use Ordinance is observed, and substantial justice done.

In review of this case Staff sees no practical impact from the requested variance, and Staff finds that granting the variance will not violate the spirit of the ordinance, and that the application **meets** this requirement for granting a variance.

Staff is recommending denial of the application for the variance because it doesn't meet all the tests of hardship.

Mr. Harland stated that given the 13" deviation within the ordinance structure, the verbiage does specify the 4' allowance. One could argue there is already an allowance given. Considering the small amount of overage here, is there any other deviation that the ordinance allows. Mr. Hall verified that the 4' is the deviation allotment and would be

interpreted with cornices, eaves and bay windows. The encroachment goes beyond that allowance. He added, there isn't a less stringent way to look at variances, some cities have special exceptions if the violation or encroachment is less than a certain percentage of the full setback then we could ask the hearing officer for a special exception to the rule based on circumstances and those circumstances don't necessarily have to rise to that five test levels of hardship. Mr. Harland clarified that the variance must meet all five tests.

The applicant, Craig Hall with Bennett, Turner, Johnson, Adir representing Mr. and Mrs. Carlson. They readily admit they should have obtained a building permit for the concrete work and installation of the porch, they have attempted to remediate that and have met all the conditions of issuing a building permit. They had the concrete porch and the footings and foundations x-rayed to verify the appropriate re-bar and structural integrity was there. They are requesting to consider this application as a clean variance of 13.5" ignoring the faux pas. The non-issuance of the building permit has no relevance to whether the variance be granted. He asked to present some pictures and wanted to only address two and three of the five tests of hardship. The special circumstances on the property are the curb and gutter which are flat and even with the sidewalk. To the east toward the house the landscape strip goes to a 4' high rock wall, the rock wall is there because the front yard has such a steep grade that it makes it impractical for landscaping and utilization by the landowner for any functions, which is a unique situation on that lot. There is no restriction on how far out concrete work can go, it is not to be compliant with a 25' setback requirement. The front porch already violates the 25' setback. The covering that is partially completed, and below that the sidewalk is 4' wide. The porch had to come out that far so that it wasn't 2' narrower than the sidewalk, which is also a unique condition, otherwise it creates a safety hazard. The poles that are supporting the porch there is a 2' wide block. Based on engineering principals it had to be 2' wide and 2' square and placed in that location to meet engineering standards. They were informed that there is a 2/3-1/3 rule and that is where the poles would need to be. If the 2' block was to be moved in to be on top of the porch it would be in compliance but then it creates a safety issue due to being less than a 2' space. The special circumstance there was not created by the Carlstons, the sidewalk was installed at 4' prior to their buying of the house two years ago. The support for the porch cannot be put on the porch from a safety standpoint, there is no alternative. There are special circumstances not created by the Carlstons that exist on the property. They are at fault for violations of building in the front setback without a variance, but the special circumstances are not. This is an 8,000 sq ft lot, a house that faces west which is also a special circumstance due to the glaring sun from the west which destroyed their front door. The porch is intended to shield from weather conditions but also to protect the structural integrity of their home and property. In addition to the protection the porch will enhance the home. There is a home seven doors down that has encroached into the setback for many, many years more than 13". There are 12 letters from the adjacent neighborhood that are directly affected by this porch and none of them have objections to it. With those points it does meet all five criteria. There is enough evidence in the record upon which justification of granting a 13" variance to allow finishing the project which will not be a detriment to the neighborhood.

Mr. Harland specified that the concrete is not part of this measurement as far as the setback and suggested reducing the overhang by 13". There was some discussion about how it can be done to comply.

Kevin Carlston, applicant, thanked everyone for their time and stated they are trying to remedy the situation and make things right. There was a lot of forethought put into the entrance placement. The slope has been addressed and the sidewalk has been preserved. The placement is to provide coverage that would adequately cover the width of the existing walkway. The suggestions made are valid and we have considered, but the placement was to ensure the proper coverage is made given the slope and element issue.

Mr. Harland reiterated that this could have all been avoided by obtaining a permit and would have been addressed at that stage prior to construction. The applicant agreed. Mr. Hall stated he disagrees and clarified they would have applied for a variance and build it so it was in the proper location with the correct engineering complied with. Mr. Carlson admitted the sequencing of this is off but the forethought of it all and the planning was approached carefully and responsibly and its to our own fault we have should have gone to the city, we asked others we trust for suggestions and the thought was that this would not need a permit from the consensus. Mr. Harland countered what Mr. Hall contended that a variance wouldn't have been requested automatically for 13".

Telacia Carlston, stated her address as 5721 South Ridge Creek. She reiterated they didn't know, they thought it was just a shade covering to protect the front door. She added they would have asked for one if they had known. This is needed for shelter and to avoid hardships with the elements.

Mr. Harland opened the hearing for public comment. The following comments were made:

Michael Carlston, 5736 Ridge Creek Road

I live three houses away and here to support the granting of the variance.

There was a comment emailed in:

Rick and Sandra Thueson

We express our hope and desire that you grant Kevin Carlston's application for "a front yard setback variance in order to have a covered porch/canopy at the property at 5721 South Ridge Creek Road." We live directly across the street from Kevin's home (5722 South Ridge Creek Road). We have lived here for over 20 years. The home the Carlston's now own has NEVER looked better. It was neglected for many years because of the ill health of the previous owner. The Carlston's took on a monumental project when they bought this home. Everything they have done has improved their property and has enhanced our entire neighborhood. We have no concern with their application to Murray City and hope that you will grant approval for the covered porch/canopy that they have requested. Thank you for allowing us to provide our public comment.

No further comments were made, and Mr. Harland closed the public comment portion.

Mr. Hall wanted to add that there is some merit to the comments Craig Hall made of the porch. The need for a permit is not punitive it is merely compliance and to that end there is always willingness to consider within the confines of the ordinance. Regardless of the outcome of this, if there are other ways we can approach it we will.

Mr. Hall wanted to relay how the porch will enhance the home.

Mr. Harland stated he will continue to review this based upon the facts that were presented in the staff report and what was learned during the hearing. The final decision and report will be made by Wednesday, December 15, 2021 by noon.

There was no other business.

The meeting was adjourned at 1:20 p.m.

A handwritten signature in black ink, appearing to read "Jared Hall". The signature is fluid and cursive, with a horizontal line underneath it.

Jared Hall, Manager

Community Development Planning Division