

**Justification & Compatibility Statement**  
**Moreno Family – Variance Request**  
**145 N. Fraser Drive West, Mesa, Arizona**  
**June 27, 2018**

---

**A. Introduction**

Pew & Lake, PLC, on behalf of the Anthony & Doreen Moreno Family, who own the property located at 145 N. Fraser Drive West, Mesa, Arizona 85203 (APN 138-22-046) (hereinafter, the “Property”) hereby respectfully submit a request for a variance to allow for a 3-foot reduction to the 10-foot street side setback as found in Table 11-5-3 of the Mesa Zoning Ordinance to allow an addition to happen to the family home. It should be noted that construction on the addition to the family home was underway, when a labeling error in the setback distance caused the halting of the construction to allow this variance application to proceed. Stated differently, the construction of the new addition has been placed on hold after the discovery of the need to receive a variance from the street side setback development standard.

**B. Existing Conditions and Request**

The Property is a 12,624 square foot corner lot in the Fraser Fields Subdivision plat, which plat was first recorded with Maricopa County in March of 1946. The existing home was built in 1950, is approximately 2,311 sq. ft. in size and contains two (2) bedrooms and two (2) bathrooms. The Property is zoned RS-9/HD (Historic District Overlay) and within the Fraser Fields Historic District. The Property, and the home prior to the proposed addition, are compliant with all the development standards contained in the Mesa Zoning Ordinance.

While the required front and rear yard setbacks in the RS-9 zone is 15 ft., the actual front of this home was built nearly 41 ft. (40’11”) from the front property line. The rear setback in the RS-9 district is 25 ft. and the home was originally constructed with a rear setback of approximately 38 feet. With the proposed addition of two more bedrooms and a master suite, the rear setback will be approximately 35 ft. The Side (South) setback is required to be at 7 ft., but the home is at 10 ft. The Street Side (North) setback is required at 10 ft. and we are proposing 7 ft<sup>1</sup>. The chart below illustrates these setbacks.

---

<sup>1</sup> Based upon the site plan, the actual setback of the most northern portion of the addition from the property line lies somewhere between 7’-5” and 8’-0”. This is attributed to the age of the subdivision, dimensions taken from center line of streets and assumed property lines. In an abundance of caution this request is being made for 7 feet and will well cover any discrepancy that may exist.

<b>Setback</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Front	15 ft.	41 ft.	41 ft.
Rear	25 ft	38 ft.	35 ft.
Side (South)	7 ft.	10 ft.	10 ft.
Street Side (North)	10 ft.	10 ft.	7 ft.

It should also be noted that under the Mesa Zoning Ordinance, the maximum building coverage of the Property in the RS-9 zoning district is 45%. Under the proposed expansion, lot coverage will increase from 18% to 29%. Photos of the pre-addition home are shown below in Figures 1 & 2.

*Figure 1 - Moreno Home Front Street View – Pre Addition*



*Figure 2 – Moreno Home Side Street View – Pre Addition*



The Moreno Family is in the process of adding three (3) additional bedrooms to the home, and converting one of the older bedrooms into living area, while maintaining the historic Ranch-style architecture, masonry construction, and character of the home, which leads to a strong desire to not alter the front façade and setback of the existing home. This means that the home will change from a 2-bedroom/2-bath home to a 4-bedroom/2-bath home, which is a significant and worthy investment in not only the home, but the neighborhood as well. As noted above, during the construction of the project, it was learned that a labeling error on the City-approved (and City-inspected) plans led to this completely inadvertent mistake of the addition being located within the street-side setback on the north side of the property, adjacent to 2<sup>nd</sup> Street.

Thus, it has become necessary at this point in time, to obtain this variance in order to facilitate the proposed (and approved) addition to the Moreno Family home. For the reason set forth below, even if this simple, innocent labeling error had not occurred, this minor request for a variance is the best solution for allowing the addition to occur.

First, and as noted above, the front setback of the home is already located approximately 41 ft. from the front property line. While this would seem logical to expand the home toward Fraser Drive West, such direction is not the best because of the Fraser Fields Historical Overlay. So, after consultation with City Staff, it was decided that expansion to the front was not feasible, nor desired.

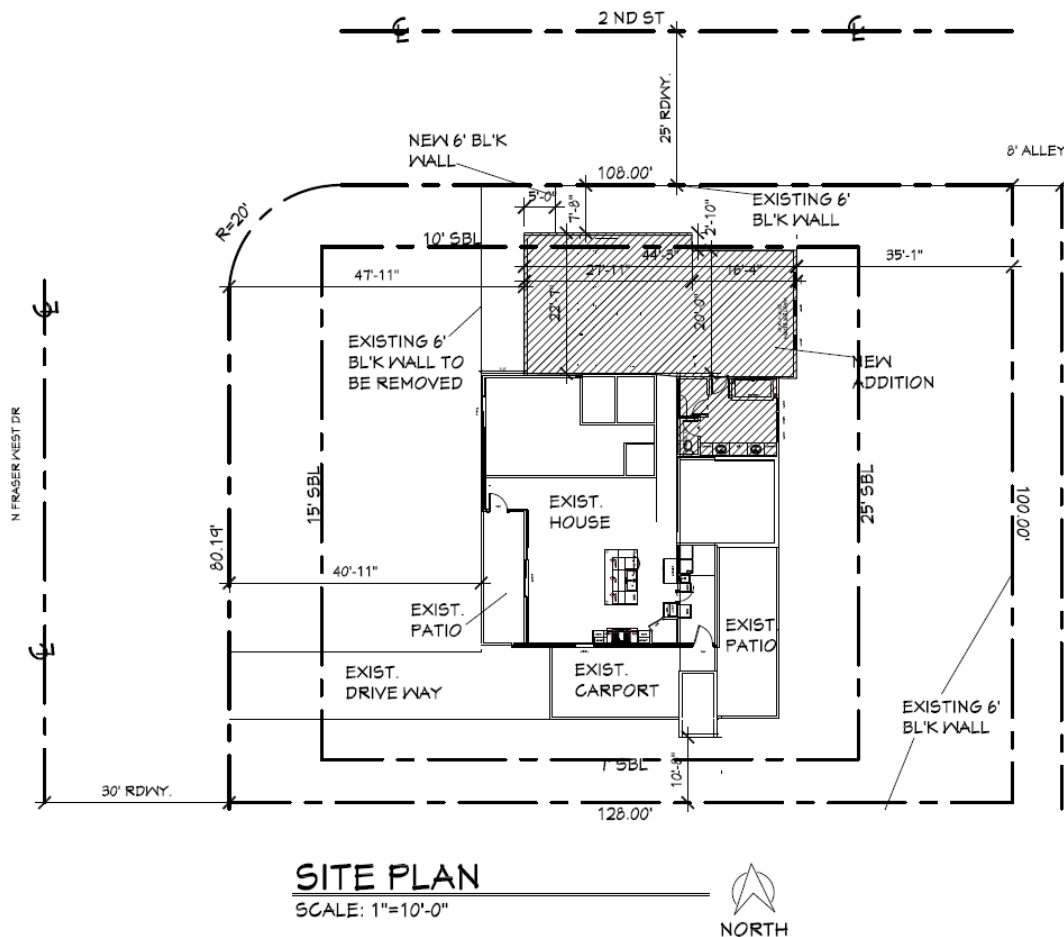
Second, with such a generous front setback, the rear yard of the home is already smaller than many of their neighbors, which as stated previously, this property is not typical RS-9, but it is zoned RS-9 (HD), meaning it comes with additional requirements and considerations. So, the expansion to the family home into the rear yard would prohibit the family from the reasonable use and enjoyment of their Property as the other residents within the Fraser Fields Historic Overlay

District already enjoy. Again, a comparison to typical RS-9 zoned properties is not appropriate in this instance.

Third, expansion on the south side of the Property is precluded by the existing carport and existing layout of the home which places bedrooms of the home on the north. Thus, it is not practical nor feasible to expand to the South, which leaves the only realistic direction to expand to the North. Thus, this request is for a variance to reduce the street side setback requirement from 10 ft. to 7 ft. for approximately 25 ft. Notably, this 25 ft. span is about ½ of the new addition, but only about 1/5 of the total depth of the lot.

We further add that the bulk of the new addition will be located behind a solid, 6-ft. block wall, which has been located behind the front face of the new addition, but before the window of the home since the new bedroom at the NWC of the addition is slated to be a child's bedroom. It should be further noted that a criminal has been exposing himself to minors in the neighborhood over the past few weeks and these incidents have heightened the families desires to ensure that this bedroom window is located behind the 6 ft. block wall. The request is further illustrated by the Site Plan in Figure 3 below.

Figure 3 - Site Plan



### C. Variance Requirements/Justification

In this case, we believe the granting of the variance is completely justified for the Moreno Family's substantial enjoyment of their Property and to be able to better meet the purposes of the Fraser Fields historic overlay, as well as maintain the traditional streetscape and aesthetics of the neighborhood. Also, the addition to the property has zero effect on any adjacent properties and the significant investment will not only increase the Moreno's Property values, but also the property values of the surrounding neighbors.

1. *Special Circumstances apply to the Property.*

Four primary special circumstances exist on the Property including the following:

(a) Additional requirements and considerations placed on the Property due to the Property's inclusion in the Fraser Fields Historic District Overlay.

(b) The home's existing and significant front yard setback,<sup>2</sup> which there is a requirement by staff to retain.

(c) Both owner and city error in plan review, permit approval and construction inspections.

(d) De minimis visual impact of the reduced setback due to it being adjacent to the street and a solid six-foot high block wall along a portion of the north property line.

As noted above, the existence of the Fraser Fields Historic Preservation Overlay has prevented additions to the existing frontage of the home. Historic Preservation Planning Staff informed the Moreno family that expansion to the front of the home would not be permitted under the Historic Preservation Overlay. As a result, expansion of the home must occur elsewhere. As discussed previously, expansion to the north is the only and best alternative. Requiring the expansion to occur in the back of the home would substantially deprive the Moreno's the reasonable use of their backyard similar to other like properties located within the Fraser Fields Historic District.

In BA10-018, the Board of Adjustment similarly found that special circumstances existed on a property seeking a variance from side setback standards. In that case, the existing house structure was built in 1954 and had front and rear setbacks significantly larger than code requirements. The Board of Adjustment found that the enclosure of the homes carport would encroach side setback requirements but that this encroachment was appropriate given the time-period that the homes were built and significant front setback.<sup>3</sup>

---

<sup>2</sup> As previously noted, the home was built in 1950 with a 41 ft. setback from the front of the property. This substantial setback was not required by the subdivision plat and most of the homes in the subdivision, particularly this block of the subdivision, have lesser front setbacks. The RS-9 development standards require only a 15-foot setback from the front property line.

<sup>3</sup> See Zoning Case No. BA10-018, attached hereto as Exhibit "A"

A solid masonry fence is located along the Property's northern border. This fence is allowed under the zoning ordinance and minimizes the visual impact of the requested variance because it already blocks the view. As mentioned previously, the fence is being placed towards the front plane of the home to provide security for the children's bedroom window on the north. Thus, the expansion would not cause a material difference to neighbors, or traffic in the area. The addition that lies at the seven (7) foot setback will largely be contained behind the fence. The front portion of the addition, which won't be contained by the fence, is aligned slightly behind the existing front plane of the home and will blend with the historic style of the home.

2. *The Special Circumstances are not Self-Imposed.*

The Moreno's purchased the home in 2012. The Moreno's seek to maintain their right to make additions to their Property and to maintain the existing backyard usage in substantially the same size and configuration as it has historically existed. The special circumstances are not self-imposed because:

- (a) the significant front yard setback was not created by the Moreno's;
- (b) The Historic Preservation Overlay and staff requirements to avoid change in the front yard were not created by the Moreno's;
- (c) The site plan labeling error was not made in bad-faith; and
- (d) The wall along the northern side yard existed before the Moreno's bought the property.

The unique circumstances by which this variance request became necessary were not purposefully caused by the Moreno's. The site plan was approved by the City of Mesa and the Moreno's proceeded with construction after the site plan was approved. The need for a variance was discovered after construction had commenced, which has now halted, pending outcome of this variance. As noted, the Moreno family, in good faith, proceeded to build the addition when their building site plan had been approved by the City of Mesa. It is unique that they are now faced with the threat that their significant investment in the property is eroded based on the minor error.

3. *Strict Compliance with the Zoning Ordinance would deprive the Moreno's of development options available to other properties in the zoning district.*

The Property is within the RS-9/HD zoning district. As mentioned above, the majority of homes within the Fraser Fields Subdivision have front-yard setbacks far less than 41 ft. Simple analysis of the Fraser Fields subdivision shows an average setback of 25 to 30 ft for most of the homes. The result of this significant setback on the Property is a substantial reduction in the space of the backyard. Again, nothing is indicated on the Plat as to why this home has such a large front yard setback.

Thus, in the instance case, strict compliance with the Zoning Ordinance would deprive the Moreno Family of their property right and substantial enjoyment of their Property, which options are available to other owners in the Fraser Fields Historical Overlay District. Stated differently, additions to other homes in the area could be accomplished without drastically reducing useable

yard. As is well understood, backyards provide opportunities for safe and controlled family and children activities which are outdoor in nature and/or sometimes call for privacy from adjacent roads and properties. If expansion construction were required to take place in the backyard, the Moreno's would not enjoy the same use of their backyard which their neighbors have.

4. *Granting the variance will not grant special privilege or unusual favor to this property.*

Given these circumstances, and the minimal amount of the request, the request is not a self-imposed hardship and to require a less superior design, by all measures, would not be wise. The Moreno home's value would see a boost from the addition and this increase in property value would in return, positively affect the neighborhood. The Moreno's have already invested significant time and money into the expansion. In other words, the denial of the variance would cause an economic hardship on the Moreno family.

All properties in the neighborhood are permitted to add additional rooms. While a common practice is to enclose and add onto the carport portion of the home, that option is not practical nor desirable in this case. Given the dimensions of the Property, addition on the south side near the carport would not serve the spatial needs of the Moreno's. The bedrooms of the existing home are located on the northern side of the home and adding bedrooms to the southern end of the home would create an awkward layout for the home. Importantly, adding the needed bedrooms to the carport side of the home would also require a variance. The bedroom additions will bring the house in line with current building trends and the ability to enjoy a traditionally sized home for a typical sized family.

#### **D. Conclusion**

Given the aforementioned reasons, we believe that the granting of the variance is justified in this circumstance. The requirements of the Historic Preservation Overlay require extension of the house to be accomplished in either the back or side yards. Because of the significant front yard setback, building the addition in the backyard would significantly diminish the reasonable use and enjoyment of the backyard. The current site plan for the side yard extension was approved by the City of Mesa and the labeling error was innocent. The current plans are necessary because the additional rooms are needed to ensure that the significant investment made into the Property by the Moreno family satisfies the family's needs.

It should be further noted that based on a review of the Maricopa County Assessors Map aerial photos, it appears that many homes in the Fraser Fields subdivision are currently in violation of the current side-yard setback requirements. Notably, these conditions likely exist because the side yard setback requirements were different when the homes were built in the 1950's and 60's. Our point in sharing this information is that this small deviation, while not justified by other violations, will not be out of character for the neighborhood.

These facts are similar to Zoning Case No. BA11-029, where the Mesa Board of Adjustment found the fact that many homes in a neighborhood were non-conforming legal uses, regarding side setback requirements, to be persuasive in deciding to grant an encroachment to the

side-yard setback. In that case, many homes in the neighborhood were non-conforming legal uses because the carport was built less than 5 feet from the side property line. The Board of Adjustment found that encroachment was appropriate to enclose the carport.<sup>4</sup> In the Moreno Family's case, enclosing the carport does not make architectural or investment sense. If the Moreno variance were granted, the Moreno's would only be receiving a privilege which similar owners in Mesa have consistently received.

Another example is also instructive here, which is in Case No. BA09-006, the Mesa Board of Adjustment approved the addition of a three-car garage which encroached slightly into the side yard setbacks was allowed in order to bring the house in line with the rest of the neighborhood and current building trends.<sup>5</sup>

In this case, the Moreno's are adding bedrooms in order to have home sized appropriately to fit their family with 5 children and 2 grandchildren. Plus, a 4-bedroom home is not excessive and is a typical, standard sized home. It is also similar to the other homes in the subdivision which have already expanded on their lots.

Moreover, and in this case, we believe that the granting of a variance will not be contrary to the public interest and a literal enforcement of the provisions of the Zoning Ordinance would result in unnecessary property hardships. Finally, because the proposed design is consistent with the existing home and not inconsistent with other homes in the neighborhood, the approval of the variance would not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located.

---

<sup>4</sup> See BA11-029 and BA13-035 attached as Exhibits C-1 and C-2.

<sup>5</sup> See BA09-006 attached as Exhibit B



## **Exhibit A – Zoning Case BA10-018**

**Case No.:** BA10-018

**Location:** 722 East 1st Avenue

**Subject:** Requesting a variance to allow an addition to encroach into the required side yard in the R1-6 zoning district. (PLN-2010-00075)

**Decision:** Approved

**Summary:** This case was on the consent agenda and not discussed on an individual basis.

**Motion:** It was moved by Boardmember von Borstel, seconded by Boardmember Labadie to approve BA10-018 with the following conditions:

1. *Compliance with the site plan and exhibits submitted.*
2. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

**Vote:** Passed 7-0

**Findings:**

**1.1** The existing house structure (1200 square foot) was built in 1954 with a one-car carport and front and side yard setbacks similar to other houses in the vicinity on both sides of the street (1<sup>st</sup> Avenue).

**1.2** The carport (30'x10') is entirely under the existing roof of the house. The carport has attic area with a finished ceiling and lattice screen enclosure between the posts along the west side. The enclosure takes only a portion of the carport, 200 sq.ft. of a possible 300 sq.ft. within the carport, and leaves sufficient space for a single car carport.

**1.3** The addition does not create any additional impact on the surrounding neighbors.

**1.4** The side yards do not meet the minimum 10 foot side yard requirement per current city code. The front and rear setbacks of this house are significantly larger than current code requirements.

**1.5** The houses on this street (1<sup>st</sup> avenue) were built in the 1950's, and do not meet current city code, in particular the side yard setback requirements. The subject parcel (60'x 135') is of similar size orientation as other parcels in the vicinity, and the existing side yard setbacks are similar to the neighboring homes.

**1.6** The addition of 200 square foot living space/family room to the existing house is built by enclosing a portion of the existing carport. The addition is entirely under the current roof.

**1.7** The maximum aggregate roof area for R-2 zoning district is 45% of the lot coverage for the primary dwelling. The roof area for the entire primary dwelling including the addition is only 22.5 percent of the lot area 8,129 square foot.

**1.8** The addition to the home has not exceeded the maximum lot coverage permitted (45%).

## **Exhibit B – Zoning Case BA09-006**

**CASE NUMBER:** BA09-006  
**STAFF PLANNER:** Wahid Alam, AICP-Planner II  
**LOCATION/ADDRESS:** 1023 W. 9<sup>th</sup> Place, Mesa 85201  
**COUNCIL DISTRICT:** Council District 1  
**OWNER/ APPLICANT:** Graham Parker

**REQUEST:** *Requesting a variance to allow an attached 3 car garage with storage space that encroaches into the required side yard in the R1-6 zoning district.*

### **SUMMARY OF APPLICANT’S REQUEST**

The requested variance would allow the construction of a 936 square foot of 3 car garage with storage space, with a building height of 16’-6”.

### **STAFF RECOMMENDATION**

Staff recommends **approval** of case BA09-006, conditioned upon compliance with the materials submitted.

### **SITE CONTEXT**

**CASE SITE:** Single Residence – Zoned R1-6  
**NORTH:** (across 9<sup>th</sup> Place) Single Residences – Zoned R1-6  
**EAST:** (across Westwood) Single Residences – Zoned R1-6  
**SOUTH:** Single Residences – Zoned R1-6  
**WEST:** Single Residences – Zoned R1-6

### **STAFF SUMMARY AND ANALYSIS**

The existing home is in the R1-6 zoning district. The setback requirements are as follows:

Minimum Yard Setbacks					Maximum Roof Area
Front	Side		Street Side	Rear	
	Minimum	Total			
20'	5'	15'	10'	20'	40%

The current setbacks for the existing home are: 17.33’ in the front, 8.16’ in the rear, 3’ in the east side yard and 32’ in the west side yard. The home owner wants to build a 3 car garage with room for extra storage attached to the west side of the home; at the end of the existing driveway. The proposed addition meets the required rear yard setback of 20’, however it encroaches into the required 10’ side yard; reducing it to 6.75’. The proposed 3 car garage together with the existing home would result in an aggregate roof area (lot coverage) of approximately 35.4 percent of the entire lot. This is within the roof coverage maximum of 40 percent of the lot.

The proposed variance requests an allowance to construct a 936 square foot garage within the side yard of the subject parcel. The proposed garage would encroach three feet three inches (3.25’) into the required 10-foot side yard setback.

As justification for the requested variance, the applicant has noted: 1) the original house was built in 1934 and moved to the current site in 1965; 2) the existing single carport is not consistent with the homes in the surrounding neighborhood, most of which contain a minimum two car garage or 3) the addition of a three car garage will bring the house in line with rest of the neighborhood and current building trends; 4) the existing single car port is in poor shape and needs repair. It would not be cost effective to repair or preserve it. It would be much cost effective to build a new three car garage; and 5) the new addition will allow the home owner to store power tools, his truck and other personal property in a secure area. The home owner has reported to police three times in the past for stolen tools.

### **Exhibit C-1 – Zoning Case BA11-029**

<b>Case No.:</b>	BA11-029
<b>Location:</b>	539 North Standage
<b>Subject:</b>	Requesting a Variance to allow a residential addition to encroach into the required side yard in the R1-6 zoning district. (PLN2011-00105)
<b>Decision:</b>	Approved with conditions
<b>Summary:</b>	This case was on the consent agenda and not discussed on an individual basis.
<b>Motion:</b>	<p>It was moved by Board member Jones, seconded by Board member Harris to approve case BA11-029 with the following conditions:</p> <ol style="list-style-type: none"><li>1. <i>Compliance with the site plan and elevations submitted.</i></li><li>2. <i>Compliance with all requirements of the Development and Sustainability Department with regard to the issuance of building permits.</i></li></ol>
<b>Vote:</b>	Passed 7-0
<b>Findings:</b>	
<b>1.1</b>	This variance was approved to allow a room addition to be constructed within the 5-foot side yard setback in the R1-6 zoning district. It was noted that the home was built under different standards and encroached 1.5 feet into the 5-foot side yard setback.
<b>1.2</b>	Current Code required a minimum side yard setback of 5-feet on one side and 10-feet on the other. The subdivision was developed in the mid 1950's and many of the homes in the neighborhood have been constructed closer than 5-feet from the property line on one side. This was common at that time for open carport structures.
<b>1.3</b>	There were special circumstances that applied that were pre-existing and not self-imposed. Strict compliance with the Code requiring the property owner to adhere to the 5-foot side setback would have deprived the property of privileges enjoyed by other properties in the same zoning district. This variance did not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.

## **Exhibit C-2 – Zoning Case BA13-035**

**Case No.:** BA13-035

**Location:** 258 East Franklin Avenue

**Subject:** Requesting a Variance to allow an encroachment into the required side yard in the RS-6 zoning district. (PLN2013-00318)

**Decision:** Approved with Conditions

**Summary:** This item was on the consent agenda and was not discussed on an individual basis.

**Motion:** It was moved by Board member Swanson seconded by Board member Freeman to approve case BA13-035 with the following conditions:

1. *Compliance with the site plan submitted, except as modified by the conditions listed below.*
2. *Provision of the removal of an encroachment into the ten-foot setback by an existing patio at the rear northeast corner of the residence.*
3. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*

**Vote:** Passed (7-0)

### **STAFF ANALYSIS/FINDINGS**

1. The variance approved would allow the encroachment of an existing carport and storage room with a five-foot setback, where a ten-foot setback is currently required by the Zoning Ordinance. The proposal does not expand the building footprint or roofline beyond existing at that side of the home, which conformed to zoning regulations at the time. In addition, the variance has been requested due to a bedroom/bathroom addition proposal that requires code conformance for all structures on the property.
2. The subject site is lot 18 of the El May Villa amended. This subdivision was recorded by Maricopa County in April 1948. A site visit by staff determined that the majority of the residences in this subdivision were built with 5-foot side yard setbacks, or smaller.
3. As justification for the approved variance, the applicant has noted: 1) that the home was constructed in 1955 with a five-foot setback; 2) the existing carport and storage room setback is a pre-existing condition not created by the applicant; 3) strict compliance with setback requirements would deprive the applicant of the ability to make any modifications or additions to the residence; 4) the request does not grant special privilege unavailable to other similar zoned properties.
4. As approved, the five-foot encroachment of the carport and storage room requires the granting of a variance. The Board of Adjustment must find the following items are present to approve a variance:
  - a) *There are special conditions that apply to the land or building.*
  - b) *The special condition was pre-existing and not created by the property owner.*
  - c) *That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.*
  - d) *The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.*
5. Strict compliance with current setback requirements would deprive the property of privileges enjoyed by other properties within the RS-6 Zoning District that are allowed additions to their property. Further, the hardships