



54 and the additions were constructed to extend 4.4 feet away from the front façade of the house.  
 55 The additions encroach 2.4 feet into the Westaire front setback.  
 56 If the front variance is approved, the structure will be consistent with some of the houses in the  
 57 neighborhood. Although the additions extend into the front setback, they are minimal in total  
 58 size (79 sq ft) and are supported by piers at the front of the house (one foot over the ground  
 59 level). The additions provide architectural detail to the house and the front yard contains large  
 60 trees and mature landscaping, this should minimize the impact to the surrounding  
 61 neighborhood. The petitioner has submitted a letter signed by 19 neighbors in support of the  
 62 variance request.

63

#### 64 **Questions to Staff by the Board**

65

66 D. Gregorka (To M. Kowalski) – Matt, are we basing the setback on an average? (Yes, the  
 67 setback average on this one is about 25 ft. on this one). The existing addition space, although  
 68 we're going back to make this official, how do we know what is existing and what was built  
 69 without code? (The Building Official inspected this and said that it is in conformance with code  
 70 – and this was caught when the current owner filed for a legitimate building permit, and would  
 71 meet code from here out as well. This was caught when it was evaluated for that permit.)  
 72 (The petitioner can comment later, but I believe the interior is only roughed out as well, and all  
 73 future inspections on this work will have to be code compliant).

74

75 J. Carlberg – The petitioner states that removing this work would be difficult due to the original  
 76 construction of the house. Can staff verify that? (M. Kowalski – I cannot).

77

#### 78 **Presentation by the Petitioner**

79

80 Mr. Larry Nisson, owner of this property was present to speak on behalf of the appeal. He  
 81 stated that he had hired an architect to look at this and that this can be completed in  
 82 compliance with the building code. "I've hired him to do the drawings and make this  
 83 compliant." When I purchased the home, I visited the neighbors and they stated that for the  
 84 last ten years the house had been an eyesore on the block. The former owner started this,  
 85 never finished it, and the neighbors stated that they would like to see it finished.

86

87 The home is a modular type home, and the contractor stated that this will cause problems in  
 88 trying to disassemble this from the original structure. (The petitioner couldn't substantiate  
 89 exactly what that entailed).

90

#### 91 **Questions to the Petitioner by the Board**

92

93 D. Tope – When did you purchase the property? (May or June of this year. When I looked at  
 94 the neighborhood, I noticed another home two doors down that has a portion that sticks out a  
 95 foot further than mine, and I assumed incorrectly that this was ok).

96

97 **Public Comment** - None. The chair mentioned that there were two pages of signatures from  
 98 neighbors which support the petition.

99

#### 100 **Discussion by the Board**

101

102 D. Gregorka – This is tough – he ended up with this situation because he did the right thing  
 103 and submitted for a legal permit and then found that there was an encroachment into the front  
 104 setback, which is pretty minimal. This is just information for discussion.

105

106 D. Tope (To M. Kowalski) - Did you do the hypothetical exercise that "if the petitioner had  
107 come to you as if this addition didn't exist, and you based it on the current request of adding  
108 this portion, would you have suggested that this had a unique situation and/or had a basis for  
109 qualifying for a variance? (*M. Kowalski – I did not*)  
110

111 D. Tope – Do you have any prior experience with other people who have come before the ZBA  
112 you with similar cases?  
113

114 M. Kowalski – No. Every case is unique. If you look at the neighborhood, it's a minimal  
115 encroachment. If you say, "is it necessary to the functionality of the home? No, probably not,  
116 but it's there now and the parcel itself is not that unique.  
117

118 D. Tope – Would the practical difficulty standard have any impact on a petition to add these  
119 structures? (Yes, it's one of the standards). Substantial justice being done? This one bothers  
120 me the most. All of the people that come before us with a request to be able to build into the  
121 front setback have to meet a practical difficulty – have to meet a uniqueness standard – can't  
122 be judged on financial profit or loss. My quandary in this is that substantial justice is not being  
123 met as I don't see any of the standards that we use in approving requests like this.  
124

125 C. Kuhnke – I'll draw up some comments without signaling that I actually support this, as I  
126 haven't decided yet, but this is a modest, small house that is set toward the back of the lot, and  
127 the most practical place to add on is in the front setback. It is a minimal encroachment, and  
128 according to the applicants contractor, it would ruin the integrity of the home to remove this, so,  
129 and this is one of the things that we would have discussed, had he not built it yet.  
130

131 D. Gregorka – (To M. Kowalski) – Do you guys go out and measure this? (No. We use  
132 averaging and GIS aerial photos.  
133

134 S. Briere – I looked at the subdivision, and want to ask staff if these are all modular homes? (I  
135 didn't look at that). Due to the shape of the homes on the aerial view, it would imply that it  
136 started out as a neighborhood that started out as small rectangular homes that have been  
137 altered at some point. If that's the case and we're talking about substantial justice, we would  
138 need to know that.  
139

140 J. Carlberg – This neighborhood has considerable variety which would support the statement  
141 that this is not out of line with the rest of the neighborhood. I find that someone buying this and  
142 having this problem in place is a practical difficulty to change what is in place. I think that  
143 someone having to undergo the cost of removing it is a substantial injustice. We know that  
144 people are staying in their homes more and more and trying to make them livable, so I think  
145 this is quite a challenge in this neighborhood of small homes.  
146

147 D. Gregorka – Mentioned that due to the fact that the Board does not have a full compliment of  
148 members this evening, that the petitioner will need five affirmative votes out of six to pass the  
149 variance. In the past, we have offered the option to the applicant to table this until the next  
150 meeting when there may be additional members present.  
151

152 D. Tope – Stated that she is interested in the comments made by Sabra Briere – substantial  
153 justice - did others get variances for the same type of thing in the past? Also, this is a corner  
154 lot, and this is what corner lot rules do to small houses on small lots – they restrict the ability to  
155 do exactly what Jean talked about – make your home livable.  
156

157 W. Carman – So I'm troubled by the thought that we would say that a small house on a corner  
158 lot deserves variances by virtue of the zoning itself -- that is exactly what we're not supposed

159 to do. We are supposed to look at the lot and say ‘there is something about this property that  
 160 makes it unusable.’ That isn’t true. If they had come to us without this being built, we wouldn’t  
 161 have approved it. I’d like to explore giving them a permission to alter a non-conforming  
 162 structure rather than a variance.

163  
 164 C. Kuhnke – And this would put them into virtually the same place as most of the city – that the  
 165 property becomes non-conforming. *(Further Discussion by the Board regarding this issue).*  
 166

### 167 **MOTION**

168  
 169 Moved W. Carman, Seconded by D. Gregorka, **“In the case of ZBA10-005, 1020 Westaire**  
 170 **Way, that the Zoning Board of Appeals grants Permission To Alter a Non-Conforming**  
 171 **Structure in that the alteration complies as nearly as practicable with the requirements**  
 172 **of the Zoning Chapter and the following finding of facts:**

- 174 1. **The additions are minimal in total size, and due to the original setback, the**  
 175 **additions encroach a maximum of 2 ½ feet into the front setback;**
- 176 2. **The alteration will not have a detrimental effect on neighboring property;**  
 177
- 178 3. **The structure will be consistent with some of the houses in the neighborhood and**  
 179 **although the addition extends 79 feet into the front setback, the addition provides**  
 180 **architectural detail to the house and has been supported by nineteen neighbors,**  
 181 **per attached plans)**

182  
 183 **On a Voice Vote – MOTION TO APPROVE – PASSED – UNANIMOUS**  
 184 ***Permission to Alter a Non-Conforming Structure - Approved.***

### 185 186 **C-2 ZBA10-006 – 509 North Ashley Street**

187  
 188 David C. Crouse is requesting one variance from **Chapter 55 Section 5:28** (R1C Single-  
 189 Family) of 2 feet 6 inches from the side setback of 5 feet to permit construction of a carport  
 190 addition 2 feet 6 inches from the rear property line. *(\*\* This petition was dismissed in March*  
 191 *2010 due to no petitioner being present at the meeting. Per the Rules of the Zoning Board*  
 192 *of Appeals, the petition was dismissed and could not be re-heard for 4 months.)*  
 193

### 194 **Description and Discussion**

195  
 196 The petitioner is proposing to construct a 336 square foot unenclosed carport with roof deck  
 197 above. The roof deck will not be enclosed and will be accessed through a proposed door on  
 198 the second floor. The carport will be eight feet tall attached to the house on one side and  
 199 supported by 4 posts on the other side. The carport will also provide cover to the side door of  
 200 the house. According to Chapter 55, 5:59, a carport is an accessory building and is not  
 201 permitted in the required side open space. The proposed carport will extend 14 feet from the  
 202 house and will result in a two foot 6 inch side setback, requiring a variance of two feet six  
 203 inches from the site setback requirement of 5 feet. There is 16 feet 6 inches in between the  
 204 house and the side property line.

205  
 206 The requested variance is minimal in area and will have a minimal impact in the required side  
 207 yard. In addition, Chapter 55, Section 5:54(c) does permit certain architectural features such  
 208 as eaves to project two feet into the required open space. The petitioner is requesting 2 feet 6  
 209 inch variance from the five foot side setback requirement in order to allow placement of the  
 210 posts within the required setback.  
 211

212 **Questions to Staff by the Board**

213

214 D. Gregorka – If petitioner so chose, he could build a detached garage up to the property line?  
 215 (No, it would have to be 3 feet from the property line). So if the carport weren't attached, he  
 216 would need a 6" clearance? (Yes).

217

218 **Presentation by the Petitioner**

219

220 Mr. David Crouse was present to speak on behalf of the petition and explained the need for the  
 221 carport and the hardships associated with the property.

222

223 **Questions to the Petitioner by the Board**

224

225 D. Gregorka – Have you spoken to any of your neighbors about this? (Yes, and all are in  
 226 support with the exception of the home next door which is condemned and we could not  
 227 contact the owner).

228

229 The chair once again notified this petitioner that there are only five board members present,  
 230 and a unanimous vote would have to take place in order to approve the request. The  
 231 petitioner had no objection to finishing the hearing. Chair read 4 letters of support.

232

233 **Public Comment** - None.

234

235 **Discussion by the Board**

236

237 D. Gregorka - Felt that the structure was a bit larger than it needs to be. (Petitioner stated that  
 238 there are window wells that stick out two feet from the home, and the posts to the structure  
 239 have to be positioned this way.)

240

241 W. Carman – I understand he would like to have this, but I don't see the hardships, nor does it  
 242 meet the standards and I don't think it is even the minimum request.

243

244 S. Briere – Stated that due to the drive configuration (angular) is the reason for the request. Is  
 245 there a way to economically address that issue? (M. Kowalski – with the basement window  
 246 wells being there, there is no shortcut for what he needs). (*Additional discussion*).

247

248 **MOTION**

249

250 Moved D. Gregorka, Seconded by D. Tope, **“In the case of ZBA10-006, 509 North Ashley  
 251 Street, the Board grants a variance of 2' 6” from the required side setback of 5', per  
 252 Chapter 55, Section 5:28. The alteration complies as nearly as practicable with the  
 253 requirements of the Zoning Chapter and the following finding of facts and the attached  
 254 plans:**

255

- 256 **1. The alleged hardships are not peculiar to the property and result from**
- 257 **conditions which do not generally exist throughout the city;**
- 258 **2. The alleged hardships or practical difficulties or both, which would result from**
- 259 **a failure to grant a variance do not include substantially more than a mere**
- 260 **inconvenience or inability to gain a financial return;**
- 261 **3. The variance does not significantly affect neighboring properties, supported**
- 262 **by letters from neighbors;**
- 263 **4. The circumstances of this particular request are self-imposed;**

264 **5. The variance request is not the minimum request possible to achieve use of**  
 265 **the structure.**

266  
 267 **On a Voice Vote – MOTION TO APPROVE – FAILED – UNANIMOUS**  
 268 **Request for variance – Denied.**

269  
 270 **D. OLD BUSINESS –**

271  
 272 C. Kuhnke – At our Organizational meeting last month we amended our rules, and the rules  
 273 state that a majority vote of the members must vote after a period of thirty days, but we don't  
 274 have those rules in front of us.

275  
 276 D. Tope – Why are the amended rules not here?

277  
 278 M. Kowalski – They are in the attorney's office for review.

279  
 280 C. Kuhnke – Why does the attorney get to review our rules? (M. Kowalski – It's standard  
 281 procedure. They have to make certain that they don't violate any law, etc.)

282  
 283 **E. NEW BUSINESS - Open discussion regarding past variances.**

284  
 285 W. Carman – Regarding the Zoro Project, we did meet and there is a public meeting on August  
 286 4<sup>th</sup>. Anyone can attend that meeting and make comments.

287  
 288 **F. REPORTS & COMMUNICATIONS – None.**

289  
 290 **AUDIENCE PARTICIPATION – GENERAL – None.**

291  
 292 **ADJOURNMENT**

293  
 294 Moved by D. Gregorka, Seconded by D. Tope **“that the meeting be adjourned.”**

295  
 296 **On a Voice Vote – MOTION TO ADJOURN - PASSED - UNANIMOUS**

297  
 298 Adjournment – 7:07 p.m. **(Submitted by: Brenda Acquaviva, Administrative Support**  
 299 **Specialist V – Zoning Board of Appeals)**

300  
 301  
 302  
 303  
 304 \_\_\_\_\_  
 Carol Kuhnke, Chairperson

\_\_\_\_\_ Dated ZBA Minutes