



City of Lovington

City Commission

and

Planning & Zoning

Work Session

May 14, 2014

Variance

- Use Variance
 - Waives limitations pertaining to the use of land or a structure to allow a use prohibited by zoning ordinance



Variances

Use Variances

- Applicant must demonstrate that application of the zoning ordinance causes an unnecessary hardship and an inability to generate a reasonable return on investment



Use Variance Requirements

- No reasonable return on investment
 - Must be shown as a specific fact.
 - An unsupported opinion of the owner is not accepted as such inability
 - This alone cannot be used as proof



Use Variance Requirements

- Unique Circumstances
 - Inability for return does not apply to or affect other lots or parcels in the immediate vicinity subject to the same regulations which amount to more than a mere inconvenience



Use Variance Requirements

- Not self created
 - Inability to yield return is not the result of any action or inaction by the owner or their predecessors in title.
 - Acquisition or improvement at any time after enactment of provision shall raise a rebuttal that the inability to realize a return is a result of the owners own actions.



Use Variance Requirements

- Essential Character of Area
 - No harm to public welfare or materially injurious to the enjoyment, use, or development of property in the vicinity.
- No Other Remedy
 - No means other than requested variance by which the hardship can be avoided or remedied to a degree to permit the economic use of subject lot or parcel



Variance

- Area Variance
 - Applicant must show that due to unique physical characteristics of the property, conformance is unfeasible or impractical.



Area Variance

- Physical requirement such as dimensions or setback
- Yard, space, and bulk requirements
- Expansion, structural alterations, or enlargement of a non-conforming use
- Requirements applied to all districts
- City-wide design standards



Area Variance Requirements

- Benefits
 - Granting a variance outweighs the detriment to health, safety, and welfare of neighborhood or community.
- Essential Character of the Area
 - No undesirable change created



Area Variance Requirements

- No Other Remedy
 - Benefit sought by applicant cannot be achieved by some method feasible for the applicant to pursue
- Significance
 - Request is not substantial



Area Variance Requirements

- Physical and Environmental Conditions
 - No negative impact to physical or environmental conditions in neighborhood or district

- Not self created



Applicants Need to Answer

- Will enforcement of the ordinance result in a hardship or practical difficulty?
- Is the hardship self imposed?
- Is the condition unique to the property, or is it common to other properties within the area?
- Will the requested variance injure the adjacent property?
- Will the requested variance be contrary to orderly development in the area?



Carports

Background

- Prior to 2014, the carport ordinance had only been enforced when a complaint was filed. Lack of enforcement led to an increase in nonconforming carports.
 - Created uncertainty
 - Inequitable
- City Commission Meeting March 10, 2014 approved amendments to relax several restrictions in the carport ordinance
 - Allowed for larger carports
 - Allowed unattached carports in Zones B and C
 - Allowed properties with garage to have a carport



Nonconforming Carports

- March 10 carport amendments resolved four nonconforming types:
 - Over sized – Carports over 480 square feet (two car) were nonconforming. Code was changed to permit up to 720 square feet (three car).
 - Detached in Zones B and C – In all zones carports had to be attached to the main structure. Zones B and C allow for apartment complexes, duplexes, and mobile homes. Requirement made it very difficult for these structures to conform.
 - Conforming Materials and Character in Zones B and C – In all zones carports were required to use materials and building style that conformed to the main building (i.e. brick home, brick carport). As with the unattached requirement, this placed a burden on apartment complexes, duplexes, and mobile homes.
 - Garage – The prior code prohibited a carport if the property had a garage. Staff, Planning and Zoning, and City Commission did not see the benefit of this requirement. The code was amended to repeal this requirement.



Nonconforming Carports

- Five common types that remain nonconforming:
 - Inadequate design – Any accessory building in excess of 120 square feet must meet state building code requirements
 - Detached – Carports in Zone A (single-family residential) that do not attach to the home
 - Conforming Materials and Character – Carports in Zone A (single-family residential) that do not use materials and building style (i.e. brick home, brick carport) of the home
 - Insufficient setbacks – Carports in all zones that do not meet the minimum 5 foot setback
 - Concrete driveway – Carports that do not use a concrete driveway for access

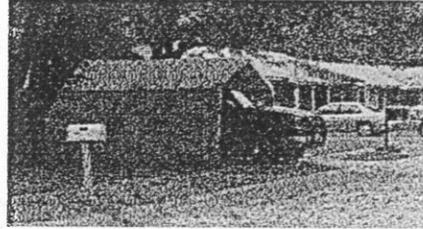


Potential Concerns

- Inadequate design
 - Governed by state law, however, requirements in place to ensure structure is sound and can withstand the elements
- Detached, conforming materials and character, and concrete driveway
 - Design standards intended to maintain character of neighborhood
- Setbacks
 - Without proper setbacks potential public safety hazard with other vehicles and pedestrians, as carport posts that are too close to street and/or sidewalk creates blind spots



Potential Concerns



Options to Reduce Nonconforming Carports

1. Grandfather existing nonconforming carports
 - Property owner complete permit for preliminary approval and would be provided with limited period of time to have carport inspected and approved by state building inspector. Final approval provided after follow-up city inspection and proof of building permit provided. Carport could remain until which time became structurally unsound, destroyed or required more than 50% improvement.
2. Change the existing carport ordinance
 - Carports would still have to meet the state building code, however, the City Commission could amend the ordinance to further relax other restrictions, such as allowing detached carports, conforming materials and designs, setbacks, and removing the driveway requirement.
3. Issue variances on a case-by-case basis
 - Using the variance criteria discussed earlier, review each nonconforming carport and determine if a variance is appropriate. Carports would still have to meet the state building code.



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Lovington, NM Code of Ordinances

Chapter 17.20

"A" SINGLE-FAMILY DWELLINGS DISTRICT

Sections:

- 17.20.010 Regulations-In general.
- 17.20.020 Permitted uses.
- 17.20.030 Height restrictions.
- 17.20.040 Front yard requirements-Carport.
- 17.20.050 Side yard requirements-Carport.
- 17.20.060 Rear yard requirements-Carport.
- 17.20.070 Intensity of use.
- 17.20.080 Carports-Additional requirements.

17.20.010 Regulations-In general.

The regulations set forth in this chapter or set forth elsewhere in this title when referred to in this chapter are the "A" single-family dwelling district regulations. (Prior code § 11-3-1 (part))

17.20.020 Permitted uses.

A building or premises shall be used only for the following purposes:

- A. Single-family dwellings of not less than eight hundred square feet of floor space of a permanent nature. Specifically excluding trailer houses and mobile homes, notwithstanding the fact, the mobile home is set on a permanent foundation and the wheels and mobile characteristics removed;
- B. Municipality owned or operated parks and playgrounds;
- C. Churches;
- D. Public schools, elementary and high, and educational institutions having a curriculum the same as ordinarily given in public schools;
- E. Golf courses, except miniature courses and driving tees operated for commercial purposes;

F. Nurseries and truck gardening, but not the raising of poultry, pets or livestock for strictly commercial purposes or on a scale that would be objectionable because of noise or odor to surrounding residences;

G. Home occupations;

H. Accessory buildings and uses customarily incident to the above uses, not involving the conduct of a business, including a private garage. Any accessory building that is not a part of the main structure shall be located not less than sixty feet from the front lot line;

I. Temporary buildings for uses incidental to construction work, which buildings shall be removed upon the completion or abandonment of the construction work;

J. Church or public building bulletin board not exceeding ten square feet in area and temporary signs not exceeding six square feet in area appertaining to the lease, hire or sale of a building or premises; provided, however, that there shall be no more than one such sign on any one lot. (Prior code § 11-3-1 (a))

17.20.030 Height restrictions.

No building shall exceed two and one-half stories or thirty-five feet in height, except as provided in Section 17.16.030 of this title. (Prior code § 11-3-1 (b))

17.20.040 Front yard requirements-Carport.

A. There shall be a front yard having a depth of not less than twenty-five feet, unless forty percent or more of the frontage on one side of the street between two intersecting streets is improved with buildings that have observed a front yard line having a variation in depth of not more than ten feet in which case no building shall project beyond the average front yard so established, but this regulation shall not be interpreted to require a front yard of more than thirty-five feet. Where lots have double frontage, the required front yard shall be provided on both streets.

B. A carport no larger than four hundred eighty square feet or twenty feet long and twenty-four feet wide may be added and attached to the structure, but only if it meets the following:

1. It must attach to a permanent building.
2. It must match or conform to the permanent building in materials, character and design.
3. It must not have walls or doors interfering with vision.
4. It must have its roof supported in conformance with the state building code as modified from time to time. "
5. It must be constructed of metal or wood of such design and size as to adequately and safely support the structure and shall conform to the design and materials of which it is attached.
6. Ingress and egress must be assured by a concrete driveway the width of the carport.

7. The front yard must be a depth of at least five feet before reaching the area immediately below the roof of the carport. (Ord. 344 (part), 1987: prior code § 11-3-1 (c) (1))

17.20.050 Side yard requirements-Carport.

A. There shall be a side yard on each side of the one story portions of buildings having a width of not less than five feet and a side yard on each side of the two story portions of buildings having a width of not less than seven and one half feet. The side yard on the street side of a corner lot shall not be less than fifteen feet, except as to lots of record as of August 9, 1960. The side yard line in regard to such lots of record shall be that which has been established by usage, but in no case less than five feet.

B. A carport shall be allowed if it meets the following:

1. It must attach to a permanent building.

2. It must match or conform to the permanent building in materials, character and design but in no event shall it contain plastic materials.

3. It must not have walls or doors interfering with vision.

4. It must have its roof supported in conformance with the state building code as modified from time to time.

5. Ingress and egress must be assured by a concrete driveway the width of the car port.

6. The side yard must be a width of at least five feet before reaching the point immediately below the roof line of the carport. (Ord. 344 (part), 1987: prior code § 11-3-1(c) (2))

17.20.060 Rear yard requirements-Carport.

A. There shall be a rear yard having a depth of not less than thirty feet or twenty percent of the depth of the lots, whichever amount is smaller.

B. A carport shall be allowed if it meets the following:

1. It must attach to a permanent building.

2. It must match or conform to the permanent building in materials, character and design.

3. It must not have walls or doors interfering with vision.

4. It must have its roof supported in conformance with the state building code as modified from time to time.

5. Ingress and egress must be assured by a concrete driveway the width of the car port. (Ord. 344 (part), 1987: prior code § 11-3-1 (c) (3))

17.20.070 Intensity of use.

Every lot shall have an area of not less than seven thousand square feet per family; except that, if a lot has less area than required in this chapter and was a lot of record prior to February 12, 1971, the effective date of the ordinance codified in this section, such lot may be used for one single-family dwelling, provided that all other district regulations are observed. The single-family dwelling may have a carport provided it has no garage and provided that all requirements provided in this chapter are strictly complied with. (Ord. 344 (part), 1987: prior code § 11-3-1 (c) (4))

17.20.080 Carports-Additional requirements.

A. The city manager and/or his approved personnel shall inspect and approve, if all requirements are properly met:

1. The location and design of all carports;
2. The carport after it is finally completed;
3. All city and state regulations and rules must be complied with.

B. A city permit must be obtained and all city requirements complied with. Current lists of city requirements shall be provided to each applicant after issuance of a building permit. Such list may be changed from time to time as deemed necessary by the city manager.

C. A state building permit must be secured and all state rules complied with.

D. In an area where the construction of carports violates local private restrictive covenants, the city shall not approve or allow the construction or modification of carports unless and until all city requirements have been met and the approval has been obtained of all the homeowners on petitioner's block.

E. This chapter shall in no way limit or compromise the rights of any past, present or future land owner who has standing to enforce any existing or future private restrictive covenants dealing with the subject matter of this section.

F. Any carport constructed without obtaining prior approval by virtue of this contract shall be in violation of this chapter and subject to penalties of ninety days in jail and/or a three hundred dollar fine.

G. If a structure, including a carport, is built (1) without prior approval, (2) with prior approval, but does not conform to the petition, the city shall notify the landowner by certified mail:

1. That the structure does not conform to this chapter;
2. That demand is made that the structure be modified to conform to this chapter;
3. That if the structure is not made to conform within the time allotted, the structure will be torn down within fifteen days from the mailing of such notice;
4. That the city will tear the structure down and bill the landowner for the cost of tearing the structure down;
5. That if payment is not made within thirty days after demand for payment, the city will file a lien against the landowner's property for the amount plus interest that is allowed by law. (Ord. 344 (part),

1987: prior code § 11-3-1 (c) (5-12))

ORDINANCE NO. 520

An ordinance of the City of Lovington, New Mexico, amending Title 17, Chapter 17.20 – “A” Single-Family Dwelling District, of the Lovington Municipal Code.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 17, CHAPTER 17.20 BE AND HEREBY IS AMENDED AS FOLLOWS:

17.20.040 Front yard requirements – Carport.

B. A carport no larger than seven hundred twenty (720) square feet may be added and attached to the structure, but only if it meets the following:

17.20.070 Intensity of use.

Every lot shall have an area of not less than seven thousand square feet per family; except that, if a lot has less area than required in this chapter and was a lot of record prior to February 12, 1971, the effective date of the ordinance codified in this section, such lot may be used for one single-family dwelling, provided that all other district regulations are observed.

APPROVED, PASSED, AND ADOPTED this _____ day of _____, 2014.

CITY OF LOVINGTON

SCOTTY GANDY, MAYOR

ATTEST:

CAROL ANN HOGUE, CITY CLERK

ORDINANCE NO. 521

An ordinance of the City of Lovington, New Mexico, amending Title 17, Chapter 17.24 – “B” Multiple Dwelling District, of the Lovington Municipal Code.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 17, CHAPTER 17.24 BE AND HEREBY IS AMENDED AS FOLLOWS:

17.24.050 Yard regulations

- A. Yard size regulations shall be the same as in the “A” single family dwelling district.
- B. Carport regulations shall be the same as in the “A” single family dwelling district, except:
 - i. Carports are not required to be attached to a permanent building; and
 - ii. Carports are not required to match or conform to the permanent building in materials, character, and design.
- C. All interior courts shall have a width equal to at least the height of the highest part of the building forming the court.

APPROVED, PASSED, AND ADOPTED this _____ day of _____, 2014.

CITY OF LOVINGTON

SCOTTY GANDY, MAYOR

ORDINANCE NO. 522

An ordinance of the City of Lovington, New Mexico, amending Title 17, Chapter 17.22 –
Manufactured Homes and Mobile Homes, of the Lovington Municipal Code.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 17,
CHAPTER 17.22 BE AND HEREBY IS AMENDED AS FOLLOWS:

17.22.150 Carports

Regulations of Chapter 17.24 shall apply.

APPROVED, PASSED, AND ADOPTED this _____ day of _____, 2014.

CITY OF LOVINGTON

SCOTTY GANDY, MAYOR

ATTEST:

CAROL ANN HOGUE, CITY CLERK