



STAFF REPORT

January 14, 2009

To: Board of Zoning Appeals
Fr: Karen Miller, Planner
Re: Application No. SW-BZA-2887

APPLICATION INFORMATION

Applicants/Owners: Albert L. and Hilda D. Chapman

Requested Action: Variance to allow a 10-foot front yard setback where 50 feet is required in the RUR, Rural Zoning District.

Purpose: To construct a 504 square-foot detached carport (21 feet deep and 24 feet wide)

Legal Description: Part of the NW Quarter of the NW Quarter of Section 18, Township 15, Range 22

Site Address: 37305 W. 207th Street (also known as "West Braun Street")

Existing Land Use and Zoning: Residential and Agricultural uses and RUR, Rural District zoning

Existing Improvements: House and Seven Accessory Buildings

Site Size: 4.5 acres

Proposal: This is a request for a variance to allow a 21' x 24' metal carport to have a 10-foot front yard setback [measured from the Official Street Line (OSL)] where 50 feet is required in the RUR, Rural Zoning district. The applicant has indicated that the carport will be located on a recently poured concrete pad in front of the house and that it will have a brown roof and white trim. The carport will be constructed with a roof and support posts and will be open on all sides. (See attached picture for an example of the type of carport the applicant proposes to use.) The purpose of the carport is to protect the applicant's personal vehicles from snow and ice during the winter.



Figure 1: Aerial of subject parcel.

Other Related Actions/Approvals Required to Comply with the Zoning Regulations:

- **Approval of two related Conditional Use Permits (CUPs) is also required prior to locating the proposed accessory building in ANY location on the applicant's property:** Locating the proposed carport on the applicant's property also requires approval of Conditional Use Permits for:

1) **oversized accessory buildings** (the 4.5-acre parcel is allowed 1,950 square feet of accessory buildings and there currently exists over 3,800 square feet of accessory buildings) and

2) **exceeding the number of accessory buildings allowed** (a parcel less than 10 acres is allowed three accessory buildings and there are currently seven on the property).

The Southwest Consolidated Zoning Board considered the above two CUP requests at its December business meeting and recommended approval. The BOCC is scheduled to consider the CUPs on January 29, 2009. If this variance request is approved, such approval should be made contingent upon the landowners obtaining the above-referenced CUPs.

- **Zoning Regulation Amendment to allow accessory buildings in the front yard:** Previously, the *Zoning Regulations* did not allow accessory buildings to be located in the front yard. On December 11, 2008, however, the BOCC amended the *Zoning Regulations* to allow accessory buildings in front yards, under certain conditions. The applicant's request now

complies with the provisions of this recent regulation change. Locating the carport in the front yard, therefore, is no longer an issue.

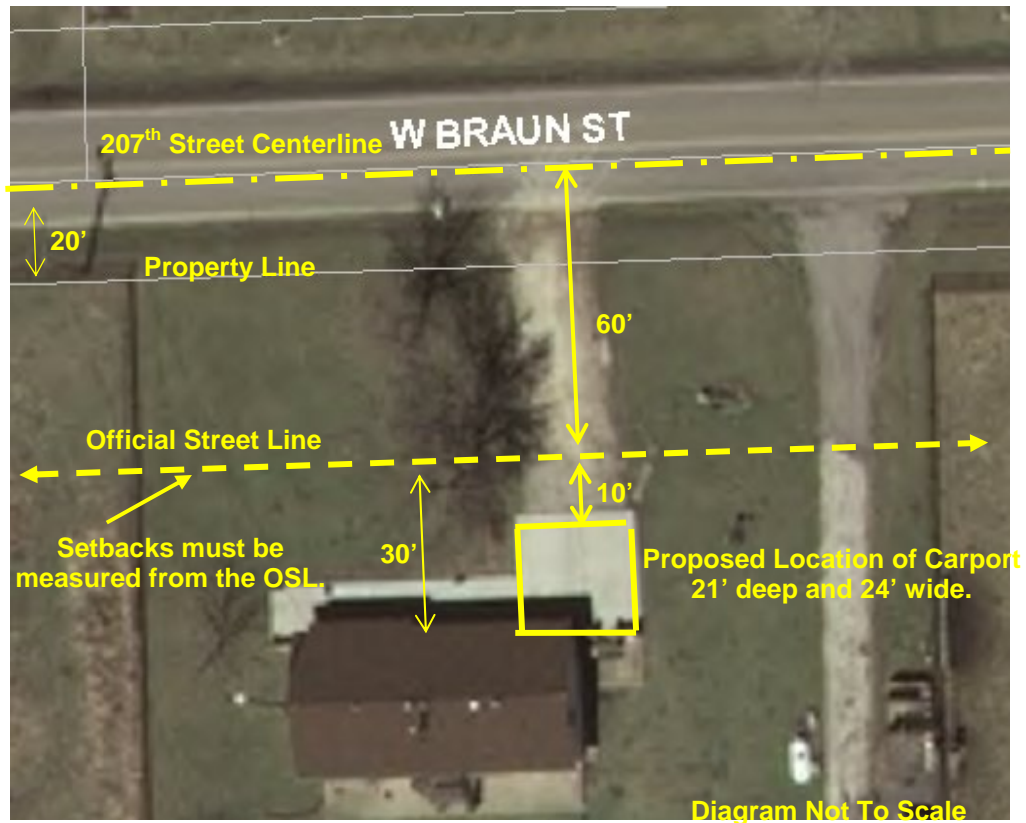


Figure 2: Official Street Line and Setbacks of the Subject-Property

BACKGROUND INFORMATION

Zoning/Building History: County records show the house on the subject-parcel was constructed in 1972. The applicant has resided on the property since 1975. The property was zoned RUR, Rural District upon adoption of the 1994 *Zoning and Subdivisions Regulations*.

Comprehensive Plan:

The *Rural Comprehensive Plan: A Plan for the Unincorporated Area of Johnson County* (Plan) indicates this site is in the Urban Fringe Policy Area. The Urban Fringe Policy Area includes proposals for close coordination between the County and the adjacent city. The Plan does not directly speak to requests for variances. City of Edgerton staff has indicated that, "...our current code would allow this construction to take place in the city limits of Edgerton. Our [city] current code on Accessory buildings is 35' front yard setback..." (See correspondence from the City of Edgerton, attached.)

General Character of the Area:

This property is located in a transitional area between the City of Edgerton to the north of the property and rural areas dominated by agricultural uses and houses on at least 10 acres to the south, east, and west of the property. The subject-parcel fronts onto 207th Street, which is one of the City’s southern borders. Bull Creek streamway, the railroad, and U.S. Interstate 35 run diagonally southeast of the property. A natural gas pipeline facility is located between the applicant’s property and the railroad. (See Figure 3.)

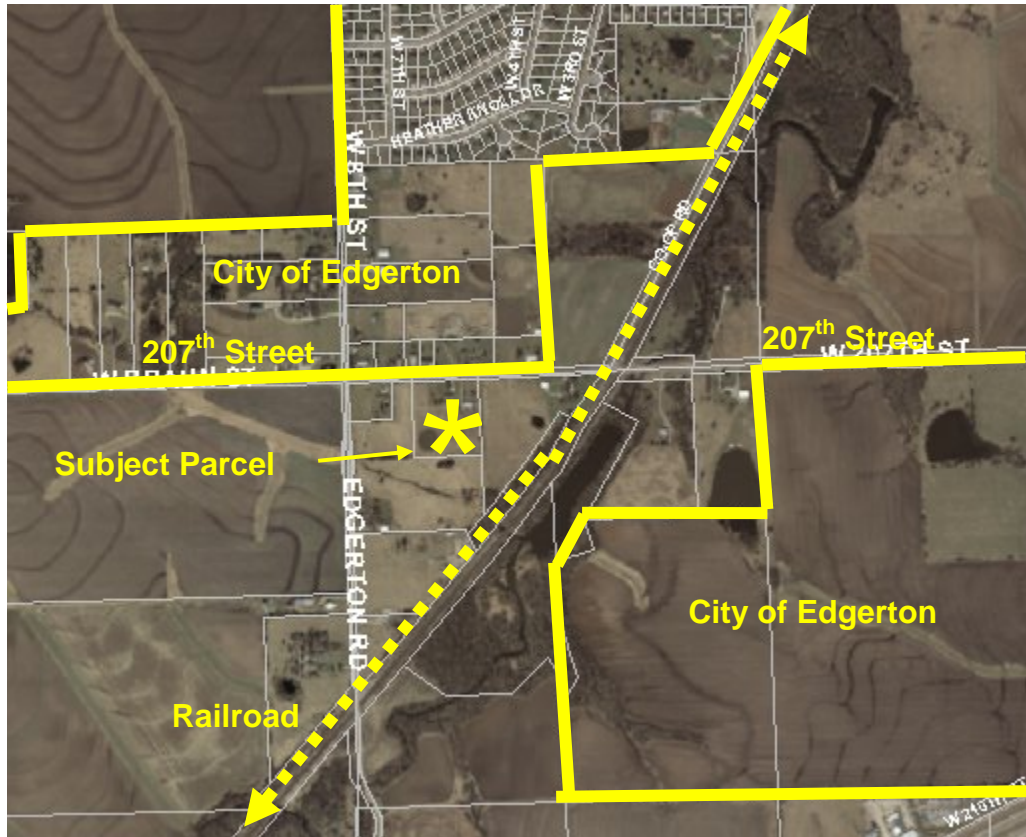


Figure 3: Vicinity Map

Infrastructure – Roads:

Access to this property is from 207th Street (also known as Braun Street) which is a CARNP-designated Type I Minor Arterial with a chip-seal surface. The existing infrastructure is adequate for the proposed accessory building.

BZA AUTHORITY

According to the *Regulations*, in specific cases, the BZA may recommend a variance from the specific terms of the *Regulations* which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the *Regulations* will, in an individual case, result in unnecessary hardship for the applicant, and provided that the spirit of the *Regulations* shall be observed, public safety and welfare secured, and substantial justice done. A request for a variance may be granted in such individualized cases, upon a finding that all of the following conditions/criteria have been met:

1. The variance requested arises from such condition which is unique and which is not ordinarily found in the same zoning classification, and is created by the Zoning Regulations and not created by an action or actions of the property owner or applicant.
2. The granting of the variance will not adversely affect the rights of adjacent property owners or residents.
3. The strict application of the provisions of the zoning regulations of which the variance is requested will constitute an unnecessary hardship upon the property owner represented by the application.
4. Granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.
5. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Applicable Regulations: The following are excerpts from the regulations that are applicable to this variance request:

Article 9, Section 2(D)(2)(a) defines the required front yard setback in the RUR, Rural District:

Front Yard: The depth of the front yard shall be at least fifty (50) feet. The **required front yard setback** shall be provided and maintained from all street frontages.

Article 2, Section 3 defines "Official Street Line:

"Official Street Line"

A line for the future widening or opening of a street or road at sixty (60) feet from the section line, or half-section line, or centerline along all Major Arterial Streets and along all Minor Arterial Streets in unincorporated Johnson County as indicated in the Comprehensive Arterial Road Network Plan (CARNP). **Required Yards abutting a CARNP-designated Major Arterial Street or a Minor Arterial Street shall be measured from the Official Street Line**, if applicable. (See "Yard, Required" for more information regarding the measurement of Yards.)

Applying the Regulations to this Application: The subject-parcel has RUR, Rural District zoning (which has a 50-foot required front yard setback) and fronts onto 207th Street (a minor arterial street which has an Official Street Line 60 feet from its centerline). The 50-foot front yard setback is measured from the Official Street Line (OSL). Therefore, all new buildings on

the applicant's property must be located at least 110 feet from the centerline of 207th Street. (See Figure 2.)

STAFF ANALYSIS

Planning staff have reviewed the variance requested in terms of the following five criteria in accordance with Article 3, Responsible Authorities and Administrative Duties, Section 5, Board of Zoning Appeals, subsection F(2). A request for a variance may be granted only after a finding that all of the following five criteria have been met.

- a. *The variance requested arises from such condition which is unique and which is not ordinarily found in the same zoning classification, and is created by the Zoning Regulations and not created by an action or actions of the property owner or applicant.*

There are two parts to this section as follows:

1. The variance requested arises from such condition which is unique and not ordinarily found in the same zoning district:

Carport Easily Moved: The carport will be constructed with a roof and support posts and is open on all sides. Unlike typical accessory buildings that are permanent, this carport is portable and can be easily moved.

No Existing Attached Garage: The existing house on the subject-property does not have an attached or detached garage. The carport will be the only structure to shelter personal, daily-use vehicles and as such needs to be close to the house.

The House's Setback from the Official Street Line (OSL): The house is 30 feet from the Official Street Line (OSL) where 50 feet is required. At the time the house was constructed it complied with the then existing County-required front yard setback. The house predates adoption of the OSL and as such is now considered to be legally nonconforming with respect to front yard setback. The carport is proposed to be 20 feet closer or 10 ft. from the OSL. The carport is proposed in conjunction with the existing house and will extend the nonconformity by 20 ft.

The Size of the Lot: The property is zoned Rural District. Lot sizes are typically 10 acres and larger. The subject property is 4.5 acres.

The Degree to which Similar Conditions are Present in the Neighborhood: The purpose of this section is to examine the general pattern of setbacks within the area. The houses located on the north side of 207th Street are located within the City of Edgerton. The City of Edgerton has not adopted an OSL. Under the City's regulations, the proposed carport would be allowed to be located 35 feet from the property line – or encroach upon the OSL by 15 feet. Of the eight houses fronting onto 207th Street between Edgerton Road and the railroad tracks, six (including the applicant's house) have similar setbacks from the OSL (which is defined as 60 feet from the centerline of 207th Street) that range between 27 and 35 feet. The remaining 2 houses are even closer to the OSL and have setbacks of 4 and 8 feet from the

OSL. Additionally, a barn located on the abutting property to the east of the subject-property is 44 feet from the **centerline** of 207th Street – or 16 feet **inside** of the OSL. Therefore, none of the houses in this area meet the setback from the OSL and one barn actually lies within the OSL. The carport's proposed setback of 10 feet from the OSL is greater than three structures within the area. (See Figure 4.)

Conclusion: There are unique conditions which are not normally found in the same zoning classification.



Figure 4: Setback of other Structures in the Neighborhood

2. The variance requested is created by the Zoning Regulations and not created by an action or actions of the property owner or applicant:

The owner presently has no practical or convenient protection for personal vehicles (e.g., protection from ice and snow). There are outbuildings on the rear of the property in the pasture, but these are not convenient to the home. Given the location of the existing residence, the front yard is the conventional as well as logical area in which to locate a

carport. Furthermore, the applicant is prevented from placing the carport on the east side of the house by the location of the propane gas line and on the west side of the house by the location of the septic tank. However, though less practical, the carport could be located in an area behind the house, north of the pasture gate, and adjacent to the field driveway. (See Figure 5.)

The owner has several options for the protection of personal vehicles: 1) construction of a garage attached to the house, 2) construction of a detached garage, 3) construction of a carport attached to the house, and 4) construction of a detached carport. All of the more convenient options would, however, require a variance.

Conclusion: Even though it may not be the most convenient location, there are other locations/options where the carport can be placed that would conform with the required setback from the OSL. The need for a variance request is, therefore, considered to be created by the actions of the property owner.



Figure 5: Residential and Agricultural Uses within the Subject-Parcel

- b. *The granting of the variance will not adversely affect the rights of adjacent property owners or residents.*

The subject-parcel is within an established residential area. All of the eight homes in this area fronting on 207th Street have either approximately the same setback as the house on the subject parcel (30 feet from the OSL) or a lesser setback. Six out of eight houses in this area have an enclosed detached garage or barn associated with the house. The house located directly east of the parcel has an associated accessory building (barn) in front of the house that encroaches approximately 16 feet upon the OSL and is only 24 feet from the property line. A house located directly north of the subject parcel has one detached garage behind the house and one detached garage with the same front yard setback as the house. Four houses in this area have detached garages behind the house. One house in this area does not have a detached garage.

Conclusion: The proposed carport is consistent with the pattern of detached accessory buildings in the neighborhood and would not adversely affect the rights of adjacent property owners or residents.

- c. *The strict application of the provisions of the zoning regulations of which the variance is requested will constitute an unnecessary hardship upon the property owner represented by the application.*

The hardship to the property owner if the variance is not granted would be that:

1. He could not place the carport in a location that is convenient and accessible to the house.
2. He could not place the carport so that it is accessible to the residential driveway, sidewalk and street.
3. If he locates the carport on either side of the house he would interfere with the propane tank gas line and the septic system.
4. Placing the carport adjacent to the field driveway would interfere with maneuvering equipment (i.e., tractors and boom truck).

Conclusion: The strict application of the provisions of the zoning regulations would constitute an unnecessary hardship by requiring a less convenient and practical as well as less conventional location for the proposed carport.

- d. *Granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.*

The purpose of the OSL is to: 1) plan for and coordinate the future development of property with the future adjacent road improvements, 2) ensure a uniform setback of buildings that will be located back an appropriate distance from the OSL in order to enhance the safety of those dwellings on the property, and 3) mitigate any potential adverse incompatibilities. Approval of the variance would place the carport within 10 feet of the future right-of-way and immediately adjacent to the typical 10-foot utility easement that runs along most right-of-way lines. (See Memo dated October 16, 2008 from Public Works staff.) However, as noted previously, the carport can be easily moved if necessary.

Additionally, this parcel is adjacent to the City of Edgerton and the proposed setback would be allowed by the City's regulations – which is significant because the subject-parcel is in the Urban Fringe Policy Area of *Rural Comprehensive Plan: A Plan for the Unincorporated Area of Johnson County*.

Conclusion: Allowing a carport in the proposed location is not opposed to the spirit and intent of the County's Regulations because: 1) the carport is proposed to be constructed in a manner that is portable and easily moved when needed and 2) the applicant's parcel is in the Urban Fringe Policy Area and the City of Edgerton's regulations would allow the proposed setback.

- e. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.*

At this time, the proposed location of the carport will not adversely affect the public health, safety, morals, etc.

However, if 207th Street is widened and improved the carport will most likely abut the edge of a 10-foot utility easement and will be 10 feet from the edge of the pavement. (See Memo dated October 16, 2008 from Public Works staff.) At some point, the carport would likely need to be moved. However, because of the portable nature of the carport, moving it will not be difficult. Furthermore, the cost to address the easily-moved, open-sided carport will be small compared to the costs incurred to address the setback issues of the existing eight houses and barn fronting onto 207th Street between Edgerton Road and the railroad.

Conclusion: The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare because of the portable nature of the carport.

Public Works Department Staff Comments: Recommends denial of variance. See attached memorandum dated October 16, 2008.

City of Edgerton: See attached-e-mails.

Environmental Comments: “A review of the Pollution Control investigation records did not find any incidents on or in the vicinity of the referenced address,” per an email dated October 20, 2008.

RECOMMENDATION

Planning staff recommends **denial** of the requested variance.

Reason for Recommendation of Denial: The conditions requiring the variance were caused by the actions of the property owner and not created by the Zoning Regulations.

Proposed Finding and Conclusion (Denial)

Planning staff recommends that the following be adopted by the Board of Zoning Appeals:

I. Preface

In its review of the subject application, the BZA has summarized the written reasons that form the basis of our decision, which appear below. It was not intended, nor should it be considered, that the summarized reasons are exclusive in nature, as the entire record of the proceedings regarding the application remains, and is, ultimately the supporting rationale of our decision.

II. Finding and Conclusion (Denial)

1. A. FACT

Even though it may not be the most convenient location to the house, there is an area that is in the residential yard, behind the house, and abutting the field driveway in which the carport can be placed that would conform to the required setback from the Official Street Line.

B. CONCLUSION

The conditions requiring the variance were caused by the actions of the property owner and not created by the Zoning Regulations.

ALTERNATE FINDINGS AND CONCLUSIONS

If the BZA decides to approve the variance request, rather than deny it, the BZA should be prepared to summarize, for inclusion in the minutes of the meetings, its reasons for approval, which will serve as its written decision on the application. Planning staff have prepared proposed stipulations to accompany a recommendation of approval and will present them to the BZA upon request.

Attachments: Applicant's Narrative
 Site Plan
 Photograph of Proposed Carport
 Public Works Memorandum dated October 16, 2008
 City of Edgerton E-mails
 Environmental Department E-mail dated October 20, 2008