



**ZONING BOARD OF ADJUSTMENTS  
AGENDA**

**Tuesday, November 17, 2020 - 4:00 PM  
Council Chambers, 2nd Floor, City Hall  
209 Pearl Street**

**1. CALL TO ORDER**

- A. \*\*\*DUE TO THE COVID-19 PANDEMIC ALL PERSONS ATTENDING THIS MEETING ARE REQUIRED TO WEAR A FACEMASK AND/OR FACESHIELD AT ALL TIMES\*\*\*

**2. ROLL CALL**

**3. PLEDGE OF ALLEGIANCE**

**4. ADOPTION OF AGENDA**

**5. APPROVAL OF MINUTES**

**6. PROOF OF PUBLICATION/POSTING**

**7. REVIEW OF MEETING PROCEDURES**

**8. PUBLIC HEARINGS**

A. CASE #BA-20-007

Public hearing on the request of Pamela and Eugene Flanagan for a variances from Section 15.09.050, Site Development Regulations in the R-2/Two-Family Residential District, and Section 15.26.050, Exceptions, of the Council Bluffs Municipal Code (Zoning Ordinance) which includes a 35-foot (more/less) front yard setback variance and a variance to allow an accessory structure to be located closer to the front property line than the principal structure on property legally described as Lots 44, 45 and 46, Block 10, Wright's Addition, City of Council Bluffs, Pottawattamie County, Iowa. Location: 2508 5th Avenue.

**9. OTHER BUSINESS**

**10. ADJOURNMENT**

Any questions or concerns regarding this agenda and/or requests for special accommodations at this meeting should be directed to the Community Development Department at (712) 890-5350 or email at [gibbons@councilbluffs-ia.gov](mailto:gibbons@councilbluffs-ia.gov).

## Zoning Board of Adjustment Communication

Department: Community  
Development

Case/Project No.: BA-20-007

CASE #BA-20-007

Council Action: 11/17/2020

Submitted by: Haley Weber,  
Planner

### Description

Public hearing on the request of Pamela and Eugene Flanagan for a variances from Section 15.09.050, Site Development Regulations in the R-2/Two-Family Residential District, and Section 15.26.050, Exceptions, of the Council Bluffs Municipal Code (Zoning Ordinance) which includes a 35-foot (more/less) front yard setback variance and a variance to allow an accessory structure to be located closer to the front property line than the principal structure on property legally described as Lots 44, 45 and 46, Block 10, Wright's Addition, City of Council Bluffs, Pottawattamie County, Iowa. Location: 2508 5th Avenue.

### Background/Discussion

See attachments.

### Recommendation

### ATTACHMENTS:

Description

Type

Upload Date

Staff Report & Attachments

Other

11/10/2020

**TO:** Zoning Board of Adjustment  
**FROM:** Community Development Department

**DATE:** November 17, 2020

**RE:** **CASE #BA-20-007**

**REQUEST:** Public hearing on the request of Pamela and Eugene Flanagan for variances from Section 15.09.050, Site Development Regulations in the R-2/Two-Family Residential District, and Section 15.26.050, Exceptions, of the Council Bluffs Municipal Code (Zoning Ordinance) which includes a 35-foot (more/less) front yard setback variance to allow an accessory structure to be located closer to the front property line than the principal structure on the property legally described as Lots 44, 45, and 46, Block 10, Wright's Addition, City of Council Bluffs, Pottawattamie County, Iowa.

**APPLICABLE  
CODE SECTION(S):**

**Section 15.10.050 Site Development Regulations for the R-2/Low Density Multifamily Residential Zoning District:**

<u>Minimum Setback</u>	<u>Principal Structure</u>	<u>Accessory Structures</u>
<i>Front Yard</i>	<i>25 feet</i>	<i>Greater of 25 feet or existing front setback line of principal structure</i>

**15.26.050 Exceptions.** *Any legal nonconforming residential use of a structure may be enlarged to the extent that an otherwise conforming residential use of a structure could be enlarged under the zoning regulations of the most restricted residential district in which such residential use of a structure would be permitted as a principal use. Any accessory use to a legal nonconforming residential use may be established or enlarged to the extent that such an accessory use to a conforming residential use could be established or enlarged under the zoning regulations for the most restricted residential district in which such residential use would be permitted as a principal use. However, any such enlargement that does not conform under the terms of this title by reason of restriction on area, lot coverage, setbacks, height or other requirements of the most restricted residential district in which such use of a structure would be permitted as a principal or accessory use shall not be allowed.*

**RELIEF SOUGHT:** A 35-foot, more or less, front yard setback variance to allow an accessory structure to be located closer to the front property line than the principal structure

**LEGAL**

**DESCRIPTION:** Lots 44, 45, and 46, Block 10, Wright's Addition, City of Council Bluffs, Pottawattamie County, Iowa.

**LOCATION:** 2508 5<sup>th</sup> Avenue, Council Bluffs, IA 51501

**APPLICANT/OWNER:** Eugene and Pamela Flanagan, 2508 5<sup>th</sup> Avenue, Council Bluffs, IA 51501

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**BACKGROUND INFORMATION** – Eugene and Pamela Flanagan have applied for variances from Section 15.09.050, Site Development Regulations in the R-2/Two-Family Residential District, and Section 15.26.050,

Exceptions, of the Council Bluffs Municipal Code (Zoning Ordinance) which include a 35-foot more/less front yard setback variance to allow an accessory structure to be located closer to the front property line than the principal structure on the property.

The applicant has constructed a roughly 26' wide X 16' deep car port in front of the principal structure at the subject property. As the car port is located in the front yard setback and closer to the front lot line than the principal structure, a variance is required to allow the car port to be located in its current location.

The following attachments have been included for your reference:

Attachment A: Location/Zoning Map

Attachment B: Site Photos

**CURRENT ZONING AND LAND USE** – The subject property is split zoned R-2/Two-Family Residential District and C-1/Commercial District. Surrounding land uses in the vicinity primarily consist of single-family dwellings that are also zoned R-2/Two-Family Residential District. A vacant auto repair shop building is located just southeast of the subject property and is zoned C-1/Commercial District.

**CITY DEPARTMENTS AND UTILITIES** – All City departments and local utility providers were notified of the requested variance. The following comments were received:

- The Community Development Department had the following comments:
  1. The subject property is split zoned R-2/Two-Family Residential District and C-1/Commercial District. Therefore, the most restrictive residential site development standards apply, as per Section 15.26.050, *Exceptions*, of the Municipal Code (Zoning Ordinance). In this instance, the R-1 District standards apply, which state that accessory structures shall have a front yard setback that is the “*greater of 25 feet or existing front setback line of principal structure*.” The front setback line of the existing principal structure is 35-feet more/less. The car port is considered an accessory structure and is required to comply with the 35-foot front yard setback requirement.
  2. The intersection of 5<sup>th</sup> Avenue and South 25<sup>th</sup> Street needs further study by staff to determine if the area is viable for the existing C-1/Commercial District zoning designation to remain or if the area should be downzoned to residential to reflect the predominant development pattern in the area.
  3. While the R-1/Single-Family Residential District and R-2/Two-Family Residential District have separate site development regulations, the minimum setback requirement for accessory structures is identical (“*greater of 25 feet or existing front setback line of principle structure*”) in both districts. Therefore in this instance, if the subject property were to be zoned entirely R-2/Two-Family Residential District, the car port structure would be required to meet the same minimum required setback as they are per Section 15.26.050, *Exceptions*, and could not exist in its current location without an approved variance.
  4. The car port was constructed without an approved building permit from the City, which would include a review by a Planning and Zoning member staff for compliance. At that time, the applicant would have been informed that the car port could not be located in the front yard setback. As the car port sits today, it is located in the required front yard setback and is closer to the front property line than the primary structure.
  5. The subject property has adequate alternate space available in the northwest corner of the property to locate the car port that meets the City’s zoning requirements. The requested variance to allow the car port to be located in the front yard is a design preference.
  6. Per the building code requirements discussed below, if the requested variance is approved, the applicant would be required to locate the car port a minimum of ten (10) feet from the dwelling and five (5) feet from the eastern property line, which would still place the car port structure in the required front yard setback and closer to the front property line than the primary structure.
  7. As shown by the images below obtained from the Pottawattamie County Assessor’s property cards, the original dwelling on the lot was set significantly closer to the street than the current dwelling. Overtime, the previous owners of the property added onto the rear side of the home, eventually

demolishing the original dwelling. Today, the single-family home sits 35-feet back from the property line because of this pattern of site development by previous owners.

2508 5<sup>th</sup> Avenue (1996)



2508 5<sup>th</sup> Avenue (2001)



2508 5<sup>th</sup> Avenue (2019)



8. The car port meets all other R-1 District site development standards, as established in Section 15.08B, R-1/Single-Family Residential District of the Council Bluffs Municipal Code (Zoning Ordinance).
- The Council Bluffs Permits and Inspections Division provided the following comment:
  1. When multiple buildings are built on the same parcel of land the building code requires that a property line be assumed between the buildings for the sake of fire resistive construction. Additionally, when there is a hard property line the same criteria is utilized to protect the

construction and adjacent buildings with the same fire resistive criteria. In this case, both the new carport and the existing house will be required to be altered to a construction standard which will provide one hour fire resistive components and removal of the eaves as they are not permitted in the required yard space that the owner has provided. Additionally, the garage door and windows on the second floor will be required to be removed and the openings upgraded to one hour fire resistive construction. That applies to both carport and the dwelling. If the owner chooses to relocate the carport ten feet from the dwelling this criteria will no longer be required. As to the proximity of the new building to the east property line, it will be required to have the same fire resistive construction up to and including anything which is within five feet of the property line. The eave on that side will be evaluated based on its design but may be required to be reduced in length based on where the owner moves the structure. Additionally, there does not appear to be any footings supporting the structure. The building will be required to be either removed to install footings or jacked up so that footings can be installed. If they are installed and not inspected, they will be required to be made available so that a probe inspection can be done to ensure adequate depth below the frost line.

- The Council Bluffs Fire Department stated they had no comments on the variance request.
- The Council Bluffs Public Works Department stated they had no comments on the variance request.
- Council Bluffs Water Works stated they had no comments on the variance request.

**NEIGHBORHOOD RESPONSE** – All property owners within 200 feet of the subject property were notified of the requested variance. No comments have been received as of the date of this report.

**COMMENTS** - Evidence must be presented to demonstrate that a literal enforcement of the Ordinance will create a hardship for which relief is necessary. The Board of Adjustment shall approve a variance to grant relief when ‘unforeseen applications of this Ordinance...create particular hardships.’ No variance shall be granted unless the Board of Adjustment makes findings of fact based on the standards and conditions that follow. A variance less than requested may be granted by the Board when the record supports the applicant’s right to some relief, but not to the entire relief requested. (§15.02.080 – *Variances*)

1. *The particular property, because of size, shape, topography or other physical conditions suffers singular disadvantage through the application of this ordinance, which does not apply to other properties in the vicinity. The subject property is generally flat and has sufficient parking areas on the property that comply with the parking standards identified in Section 15.23, Off Street Parking, Loading and Unloading, of the Council Bluffs Municipal Code. The subject property is split zoned R-2/Two-Family Residential District and C-1/Commercial District. Therefore, the most restrictive residential site development standards apply, as per Section 15.26.050, Exceptions, of the Municipal Code (Zoning Ordinance). In this instance, the R-1 District standards apply, which state that accessory structures shall have a front yard setback that is the “greater of 25 feet or existing front setback line of principal structure.” The front setback line of the existing principal structure is 35-feet more/less. While the R-1/Single-Family Residential District and R-2/Two-Family Residential District have separate site development regulations, the minimum setback requirement for accessory structures is identical (“greater of 25 feet or existing front setback line of principle structure”) in both districts. Therefore in this instance, if the subject property were to be zoned entirely R-2/Two-Family Residential District, the car port structure would be required to meet the same minimum required setback as they are per Section 15.26.050, Exceptions, and could not exist in its current location without an approved variance. Based on the fact that the subject property contains a single-family dwelling with adequate parking areas and the subject car port being an addition that would otherwise not be required, there is no singular disadvantage on the subject property.*
2. *Because of such disadvantage, the owner is unable to make reasonable use of the affected property. If the requested variance is denied, the applicant can continue to make reasonable use of the property with the existing single-family residential dwelling.*

3. *The disadvantage does not exist because of conditions created by the owner or previous owners of the property. The proposed variance has been requested because the homeowner constructed a car port on the property without an approved building permit. If the homeowner had applied for a building permit, staff would have advised the applicant that the car port could not be administratively approved as proposed. Additionally, the original dwelling on the lot was set significantly closer to the street than the current dwelling. Overtime, the previous owners of the property added onto the rear side of the home, eventually demolishing the original dwelling. Today, the single-family home sits 35-feet back from the property line because of this pattern of site development by previous owners.*
4. *Granting the variance will not confer on the applicant any special privileges that are denied by this ordinance to other properties or structures in the same district. Granting the requested variance will confer a special privilege on the property as other residential properties in the city are required to comply with the minimum front yard setback standards for accessory structures. The applicant has not demonstrated a hardship caused by the Ordinance specific to their property, only a practical difficulty and design preference.*
5. *Granting the variance will not be contrary to the public interest, will not adversely affect other property in the vicinity, and will be in harmony with the purpose and intent of this ordinance. The variance process is to provide a narrowly circumscribed means by which relief may be granted from unforeseen applications of this ordinance that create particular hardships. The request for the above discussed variances are the result of the construction of a car port without an approved building permit and represent only a practical difficulty and design preference and not an unnecessary hardship placed on the subject property by the application of the Zoning Ordinance.*

### RECOMMENDATION

The Community Development Department recommends **denial** of the requested variances from Section 15.09.050, *Site Development Regulations* in the R-2/Two-Family Residential District, and Section 15.26.050, *Exceptions*, of the Council Bluffs Municipal Code (Zoning Ordinance) which includes a 35-foot (more/less) front yard setback variance to allow an accessory structure to be located closer to the front property line than the principal structure on the property legally described as Lots 44, 45, and 46, Block 10, Wright's Addition, City of Council Bluffs, Pottawattamie County, Iowa., based on the reasons stated above.



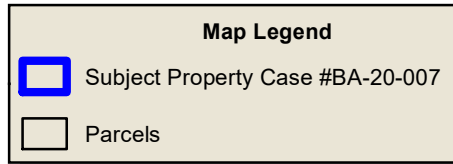
Christopher Gibbons, AICP  
Planning Manager




Haley Weber  
Planner



# CITY OF COUNCIL BLUFFS - ZONING BOARD OF ADJUSTMENT LOCATION/ZONING MAP CASE #BA-20-007



0 20 40  
  
1 inch = 250 feet



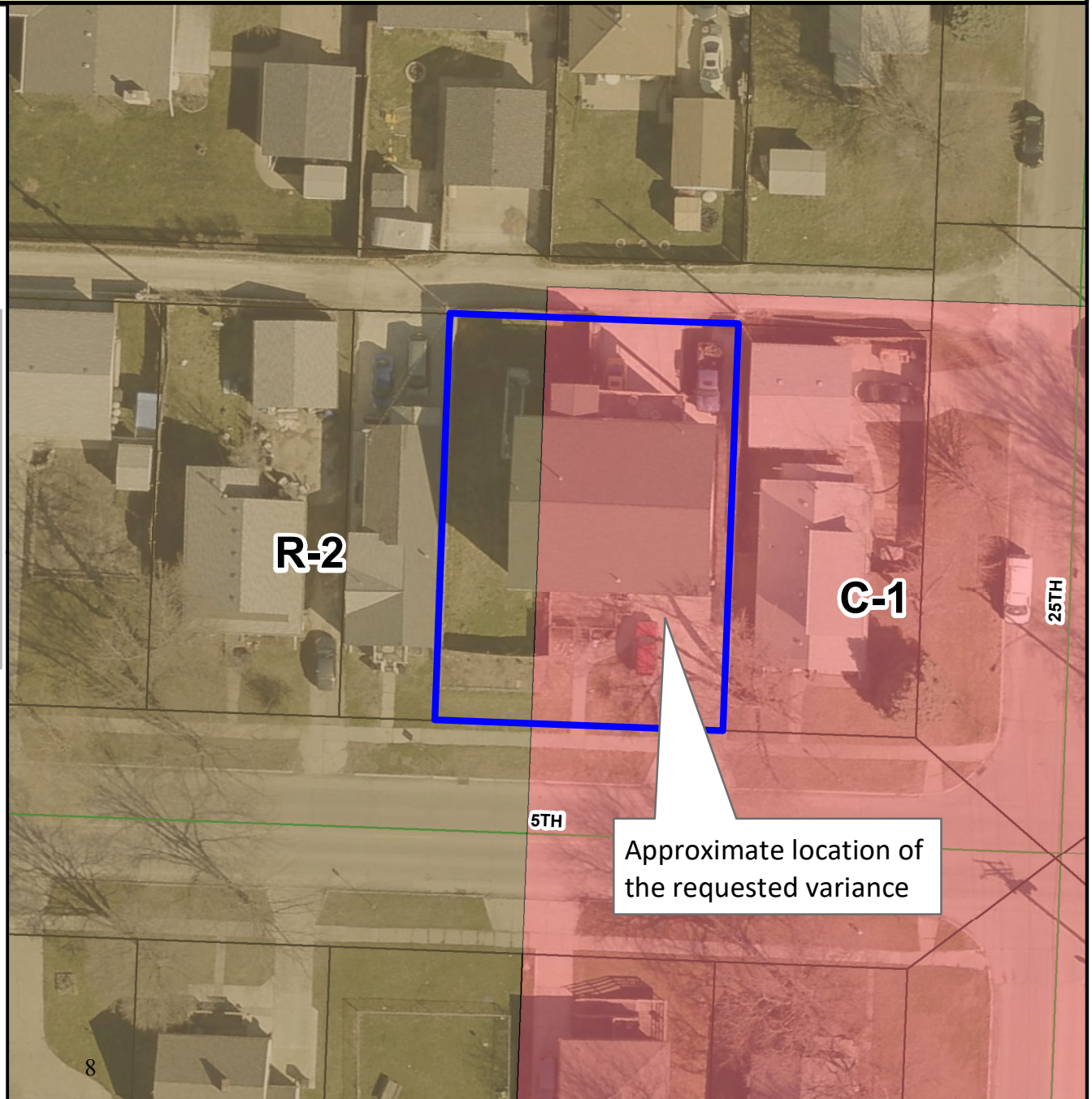
Note: Subject property is highlighted in blue.



Last Amended: 10/26/2020

Council Bluffs Community  
Development Department  
209 Pearl Street  
Council Bluffs, IA 51503  
Telephone: (712) 328.4629

**DISCLAIMER**  
This map is prepared and compiled from City documents, plans and other public records data. Users of this map are hereby notified that the City expressly denies any and all responsibilities for errors, if any, in the information contained on this map of the misuse of the same by the user or anyone else. The user should verify the accuracy of information/data contained on this map before using it. The City assumes no legal responsibility for the information contained on this map.





Attachment B: Site Photos

Car Port at 2508 5<sup>th</sup> Avenue



Rear side of 2508 5<sup>th</sup> Avenue (along alley)

