



City of Colorado Springs

City Hall
107 N. Nevada Avenue
Colorado Springs, CO
80903

Master

File Number: CPC AP 20-00146

File ID: CPC AP 20-00146

Type: Planning Case

Status: Agenda Ready

Version: 2

**Agenda
Section:**

In Control: City Council

File Created: 10/29/2020

Project Name: Carport - 930 Nolte Dr W

Final Action:

Title: Postpone an appeal of the Planning Commission's decision to uphold the Notice and Order to Abate for violation of a carport in the 25-foot front yard setback to the February 22, 2022 City Council meeting.

Quasi-Judicial

Presenter:

Kurt Arnoldussen, Senior Code Enforcement Officer, Planning and Community Development
Peter Wysocki, Director of Planning and Community Development

Internal Notes:

Code Sections:

Agenda Date: 02/22/2022

Sponsors:

Enactment Date:

Est. Time:

Hearing Date:

Drafter: ELobato@SpringsGov.com

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
2	1	1/4/2021	Peter Wysocki	Approve	1/4/2021
2	2	1/4/2021	Benjamin Bolinger	Approve	1/6/2021
2	3	1/4/2021	Charae McDaniel	Approve	1/6/2021
2	4	1/4/2021	Wynetta Massey	Approve	1/6/2021
2	5	1/4/2021	Jeff Greene	Approve	1/6/2021

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Planning Commission	11/19/2020	approved				Pass

Action Text: Motion by Commissioner Rickett, seconded by Commissioner Slattery, to deny the appeal and uphold the Notice and Order to Abate the land use code violation issued at 930 West Nolte Drive on October 21, 2020, and issue a compliance date of December 19, 2020, based on the finding that the appeal does not meet the criteria for granting an appeal as outlined in City Code Section 7.5.906.A.4 and 7.5.1007. The motion passed by a vote of 5:0:4:0

Notes: Staff presentation:

Kurt Arnoldussen, Senior Code Enforcement Officer, presented a PowerPoint with the scope and intent of this Notice and Order to Abate.

- The property is zoned PUD and is located 930 W Nolte Dr. (Planned Unit Development)
- Front yard setback for the PUD 18-25 feet

Courtesy Letter

- September 30, 2020 Neighborhood Services responded to a complaint about a carport in the front yard setback.
- September 30, 2020 a Courtesy Letter was issued for the carport in the front yard setback. The Courtesy Letter explained the violation, and the City of Colorado Springs Code that prevents Structures in the Front Yard Setback.
- The Courtesy Letter requested the carport be removed or contact with Planner or Code Enforcement by October 16, 2020.
- October 21, 2020 the carport was not removed and there was no contact with the owner.

Notice and Order to Abate

- October 21, 2020 there was no change to the property and a Notice and Order to Abate issued
- Notice and Order set a deadline of November 6, 2020 to abate the violation
- On October 28, 2020 the owner filed for an Appeal of an Administrative Decision to the City Planning Commission.

Staff is asking Planning Commission to:

- Deny the appeal, uphold the Notice and Order, and set deadline for 30 days to have the Carport removed

Appellant Presentation:

Robert Gallagher, 930 Nolte Drive

- This was all new to us than that there was a setback.
- This carport has been up for 10 years. And we have never been challenged or questioned.
- The complaint was not directed at my court. The complaint was actually directed at a different of plaintiff on this case. That was where the initial complaint came from. I don't know why they said I had the initial complaint that wasn't bound towards me and was actually them.
- Mr. Gallagher questioned the right of way comment and said there was no right of way blocked from either direction.

- Mr. Gallagher said he is on a corner lot and you can see right through.
- It was mentioned that backing up becomes a problem, and that is not the case.
- Mr. Gallagher said initially when they were told to break it down, that the city employee had mentioned that we have no case. We could appeal it, but you're going to lose.
- The city employee said you could go through any systems you would like to appeal and you're just going to lose.
- Mr. Gallagher wanted to know when the setback of the front was established and by whom
- He said he was not part of an HOA
- And, and I do concur with whoever that was that spoke earlier about the fact that we the setback location in some cases is a you know, past the yard as the actual frame of the house.
- They mentioned garage use and Mr. Gallagher has a single car garage. This is not an expensive area, we're kind of a low-income area
- His garage holds a motorcycle and he cannot fit a motorcycle and a car into a single car garage
- To protect his assets from the hailstorms, he bought the carport
- We need to relook at the zoning and the setback because citizens are being told that they cannot protect their own assets in their own yard that they pay taxes on
- Mr. Gallagher said he was in the service for over 20 years, and served four times in the protection of our assets for our country, and yet he cannot protect his own vehicles in his own yard
- Mr. Gallagher said he was curious about the timeline. Why now? Why do the structures need to come down now like it is all of a sudden an emergency? With COVID-19, with the holiday season here and with winter, they're telling us in the middle of winter to go ahead and tear it down.
- It took a four-man crew to put Mr. Gallagher's carport together and put it up.
- Mr. Gallagher said he does not have the financial or physical ability to take the carport down.
- Mr. Gallagher said he was told by Mr. Arnoldussen that it was not his concern and that that they're going to tear it down if we couldn't.
- Even when Mr. Gallagher mentioned that he was a veteran with 60% disability and would need help to do it again. Mr. Arnoldussen told him it doesn't matter. He didn't care it needed to come down.
- Mr. Gallagher said that we just really need to relook at the zoning and the setback and that the citizens of Colorado Springs have the right to protect their own vehicles.
- We need whatever process there is to start to get this changed.

Questions:

Commissioner Rickett asked if the carport was within the 18-foot setback would it be considered an auxiliary structure that would need to be permitted or not permitted or what's the status of the structure itself?

Mr. Arnoldussen said if the carport was 18-feet back, it would be up to the Regional Building to approve the building permit and the City would look at the lot coverage to see if it would need a permit or variance.

Commissioner Rickett verified if it would be a permitted structure. It's not like a 10 by 10 shed under 100 feet that you don't have to permit. So, the carport itself would be a permitted structure, is that correct?

Mr. Arnoldussen said they would have to take a look at the height of the structure, the total lot coverage and what's allowed for the PUD development plan.

Ms. Meggan Herington, Assistant Director of Planning & Community Development, added that there is no allowance for any type of accessory structure in a front yard setback. And that front yard setback is 25 feet. So, it wouldn't require a building permit if it were under 200 square feet in size. But the zoning code would not allow it in the front yard setback, regardless of the size.

Commissioner Rickett thanked Ms. Herington and said that was an even better explanation.

Citizen Comments:

Gerald Miller

- Has a complaint against code enforcement officers
- They come in like stormtroopers (Star Wars reference)
- They help murderers, drug dealers, bank robbers, car thieves but they can't help the disabled
- Has stuff in his yard that is not bothering anybody, but they come after him and not the neighbors
- Filed a complaint with the police department on the code enforcement officers and the police refuse to respond
- City Council and the Mayor have stopped talking to him
- Under new senate bill 20-217 no one is immune from prosecution anymore, not even the judges

Larry Stewart

- Has received one of the letters from Code Enforcement as well
- Lives in the Pikes Peak Park area on Dogwood Drive
- There have been about 6+ letters sent out for the exact same thing

- This is happening Nolte Drive neighborhood and in the Pikes Peak Park neighborhood
- Mr. Stewart said in his mind, code enforcement is going after a few people, and you have to go after everybody in Colorado Springs
- Why can't people protect their assets from hail damage, when you've had cars totaled two years in a row and then you have to replace it and lose \$16,000 to \$20,000 in equity. It just does not make sense.
- The comment Mitch Hammes made on TV makes no sense about obstruction of view. A carport does not obstruct the view if it is built correctly and there are no sides on it
- When you talk about obstruction of view when backing out of the driveway, well, people have trees in the front yard by the sidewalk, there are vehicles parked in the street that you cannot see past
- Hazard to pedestrians because of a carport - what about the sidewalks that are sticking up and are trip hazards, if pedestrians are crossing into his yard, they are trespassing
- Where does it come into effect that a carport is an obstruction and a nuisance to pedestrians?
- Let us revisit this code because this is a removable structure. If it was a permanent structure, then yes, it needs permitted
- If Mr. Stewart ever moves, he will be taking his carport with him
- The carport actually adds value to the house

Jack Richards

- Mr. Richards lives on Dogwood Drive in the Pikes Peak Park neighborhood
- Concur with everyone else
- His carport does not obstruct the view, it is wide open, and does not even go up to the sidewalk
- Mr. Richards is 80-years old and handicap and is not able to get around very well
- In the wintertime, if he had to walk to his car through the snow to get to his vehicle and fell, he would have to lay there until someone came by to help him because he can't get up on his own
- Mr. Richards put the carport up more than 15 years ago and nothing has ever been said about it until now
- Mr. Richards wants this code to be reevaluated

Sharon McGee

- Ms. McGee lives at 3640 Dogwood Drive
- Ms. McGee would like to know if there was any way for them to just pay a fee once a month or once a year to keep the carports
- People are more than willing to pay a fee to keep the carports to protect the

cars

- When Ms. McGee bought her home, the garage had already been turned into a den with only 20% of the garage remaining, which her car will not fit into
- Before the carport was built, she would have to run outside and cover the car with blankets and towels
- Before she built the carport, she consulted with the city to see if there was licensing required, and there was nothing (inaudible)
- This is the first time of her hearing about a code
- Ms. McGee asked if the carport violations are just for the south part of town, or for the entire Colorado Springs area? Ms. McGee just wants to make sure they are not being singled out
- Ms. McGee said she was just asking because with all of the suffering and the people dying and people trying to feed their families that this is a real issue
- The entire city should not have to pay because somebody had a dispute with someone else
- The south part of town is where the working poor live and asked for a chance for them to keep their carports

Kathy (inaudible)

- Kathy lives on Dogwood with the seven other homes on the block that have carports and they are not unsafe
- Anyone who says they are afraid they will hit my carport should be that far up on her driveway because they are trespassing
- The city staff who was taking pictures of everybody's houses was very rude and did not really want to explain what he was doing, but said he would see us next week
- Kathy's truck will not fit in her garage with the motorcycle inside as well as the lawnmower and other items
- On Social Security and does not have the money to have the carport removed
- Kathy thanked everyone for listening

Carol Graham, 4975 Web Drive

- Completely agrees with everyone who has been speaking
- Late husband put the carport up and it has been up for 17 years and no one has ever said a word
- Ms. Graham said she had no complaints about the city staff who came to her door and that he was nice
- Why are we doing this now during COVID
- Ms. Graham said is she expected to get a bunch of people to come to her house to give her estimates to remove her carport
- Money is just not flowing freely right now, why are you doing this?

- Believes there is one person out there who has an issue with somebody in their neighborhood and that caused the system to go after all of us
- Seems like the southeast is always getting picked on and we get belittled for where we live
- Ms. Graham said her house and carport are very nice
- Nobody has trouble backing out of her driveway
- It's the cars on the street that you have to watch out for because you can't see around them
- Something needs to be done to address this and asked for a moratorium

Collette Cook, 4975 Nolte Drive North

- Received complaints on her house because of the carport
- Has sent in pictures showing there are gutters on her carport that drains in her yard
- It is the thickest metal that anyone can use
- Has a chairlift in her garage because she takes care of her disabled daughter
- Has taken care of several people and had been able to get them into the house without the snow, hail or rain
- Been told by the city that carports are trashy, and City Council does not like them
- Has gone around to get signatures from everybody in her neighborhood in the range of her house and not one of them have said that my carport was trashy
- There are no issues backing up
- Prior to putting up her carport she went to Pikes Peak Regional Building and spoke to Mike Maloney and asked him if a permit was required for the carport, and he said as long as you are five feet away from your next door neighbor's property line you are good

Renee Gallagher, 930 Nolte Drive

- When they first got their carport, they had city zoning come out and measure the carport and they said it had to be a certain foot above the sidewalk, they measured it and it was fine
- That carport has protected the property for the last 10 years and there have been no issues
- City staff informed the Gallaghers that they had 15 days to remove the carport and Ms. Gallagher had COVID at the time and would not have been able to help her husband
- Due to this stressful situation they have lost sleep
- Does not make sense that someone can come to your home on your property and tell you what you can and cannot have in your yard
- Just doing their best to protect what little bit of property they have

Bill Hoffman,

- Mr. Hoffman said he has had his carport for approximately 17 to 19 years
- It has saved vehicles many times during the time of the hailstorms
- Wants to know why everybody in the city doesn't have to get rid of their carports
- Why isn't everyone getting a notice at the same time to remove their carport, which should be an exact date for everybody
- Carports are not a nuisance; they save money as far as insurance goes

Sharon Walden, Dogwood Drive

- Had carport for about 20 years now
- Has two cars, one goes in the garage and the other under the carport
- Have had no complaints from anyone
- There is nothing wrong with carports and we need them to protect our car from the hail
- Thinks it is wrong to make people take their carports down because they are needed to protect property
- Agrees with what everyone else said

Sarah Brown, 4975 Nolte Drive

- Mother, Collette Cook spoke earlier
- Said the carport protects the driveway from getting rain, snow and ice, which she would not be able to get up the driveway on her own and that's frustrating
- The complainant does not understand the struggles she goes through and why they need the carport
- The carport is designed so that people walking past her home can walk safely on the sidewalk without fear of falling on ice or slipping
- There has to be some kind of protection for the homeowner
- Take into consideration the elderly or the handicapped because they are unable to get into their home

Michael (inaudible)

- Put in a carport in 2016 after the really bad hailstorm that caused over a billion dollars' worth of damage
- Having a hard time understanding why our representatives are attacking us for trying to protect our property from something like that
- Agreed with what everyone else said
- Thinks the planning and zoning commission should revisit this issue due to all the elderly and handicapped who have already spoken
- If we can't get the setback rules changed, would like to visit the possibility of getting some sort of a compromise in the form of an exception for carports of a specific build as long as they are safe and not encroaching on neighbor's

property

Chair Graham wanted to thank all of the citizens for their comments and that he appreciated them taking the time to do so.

Questions of Staff:

Commissioner Rickett asked Ms. Herington to re-read the code that does not allow any structures in the front setback of a house. Commissioner Rickett said he was asking that because he wants the citizens to understand what the code is.

Commissioner Rickett also said he will probably go against the ruling, but because he did not want to sit through 60 of these appeals for carports, he suggested we take a look at this again and maybe make this somehow more of a PR campaign.

Commissioner Rickett said basically, here is the code and everybody needs to understand that code. He agreed with the COVID comments and said because of the time and because of what is going on, he thought maybe a short moratorium but that everybody needs to understand by "x" date the code will be enforced.

Mr. Ben Bolinger, City Attorney's office, said when we have these appeal hearings, we are not setting policy and we are not writing a new ordinance about (inaudible). We are just deciding if there is a violation or not. So the fundamental question is, on this one instance, this before us, not all the people who spoke and their carports that we know nothing about, the one thing before us is did this gentleman who received a notice of order, does he have an accessory structure in the setback in a manner that violates code.

Commissioner Rickett said that yes, we know that.

Mr. Peter Wysocki, Director of Planning and Community Development said the relevant code section regarding the setbacks or accessory structures and the front setback is 7.3.105 paragraph one, basically, states that accessory structure cannot be located in the front yard setback. For that matter accessory structures cannot be located in any setback, notwithstanding whether they need a building permit or not.

Mr. Wysocki said he wanted to echo Mr. Bolinger's comments that we're not here to debate whether or not carports are good, bad or indifferent. We're here to discuss the appeal, and there's obviously very clear appeal criteria that have been provided in your packet. There are criteria that relate to whether or not we error in our interpretation or enforcement of city code, whether it was unreasonable. So, you will need to make those findings to grant the appeal. We can discuss how we process code complaints, but you also have to remind yourselves, and I need to remind you to is that we also have a party that filed a complaint. And that party expects the city to enforce the city's code. So, keep that in mind as well. But there is another side of this argument that we have residents, city residents that have filed a complaint and they expect us to follow the code

Commissioner Rickett said that is exactly what we are here to do to follow the codes and provide feedback.

Mr. Wysocki said one other thing is we've kind of concentrated on the issue at hand, which is a carport within a front yard setback. The code doesn't prohibit individuals to build sheds, outside the setbacks to store lawn mowers, motorcycles, bicycles, a whole bunch of things. Homeowners have the ability to build sheds within the proper setbacks, to provide additional space in their garages to park their vehicles. So, let's kind of look at this a little more comprehensively that, in this case, yes, carports are being used for parking of vehicles in the driveway, because there is no space in the garage. Well ask yourself, how can one make more space in one's garage? And there are other remedies for those instances. I'm not here advocating how you should vote, but just something to think about as you render a decision.

Commissioner McMurray said he knew that we are focused just on a single situation here, but it sounds like we have a fairly large number of these. Do we have a sense of how many carports in total we are dealing with in this situation?

Mr. Arnoldussen said since the appeal started, they have received about 33 complaints that were issued letters for between yesterday and Monday, and today five more complaints were received. Mr. Arnoldussen said he thought all of those except one were anonymous.

Commissioner McMurray wanted to know if those 33 complaints were for the same property or for different carports. Mr. Arnoldussen said it was 38 carport complaints in total for individual properties. He said he was unsure where the number 60 came from, but it is 38 roughly.

Commissioner McMurray asked if the complaints were all within the general geography of these two properties. Mr. Arnoldussen said the complaints were initially on the southeast side, but now they are coming up to Murray and Galley and spreading throughout the city.

Commissioner McMurray said the only criteria that he was interested in getting a better understanding of is about the reasonableness of the decision. How do we interpret unreasonable? Do we have any precedent or understanding terms of where that standard has been applied? Is there anything you can help us to understand or how we should consider that term?

Mr. Wysocki said these review criteria for appeals are very generic in nature. The most common interpretation of that would probably be on sort of a rough proportionality or Nexus for development, exactions, i.e., conditions that may not be warranted by a project. How they apply to a code enforcement case, there is no clear, decisive answer other than if there was some room for interpretation or if our

enforcement was a little capricious or inconsistent, that may best apply in the case of that particular criteria on to a code enforcement appeal.

Mr. Bolinger added that you should not interpret it to mean that you think that the code itself is unreasonable. The City Council writes the code and that is the code that we live with. They can change it if they are motivated to do so by citizen complaints or something. But for purposes of an appeal, it would only be if there was some unreasonable interpretation of evidence or an unreasonable interpretation of the code.

Commissioner McMurray said some of the commenters noted the financial hardships. Mr. Bolinger said financial hardship would not fall under the unreasonable category. The city code itself probably has reasonable accommodations for people with disabilities and those kinds of things, but that is not what was raised up. The specific issue that is in question is whether there is an accessory structure in the front yard setback.

Commissioner Almy said he agreed with all of the discussion that's going on. He said the commissioners charge is clearly to decide if this is a code violation or not and whether the appeal has any merit. He said that is fairly straightforward. Commissioner Almy mentioned that some people talked about a temporary structure and knows there are some carports that are nothing more than metal and you stick them into the ground, and you can pull it up and move it pretty much any old time. Commissioner Almy asked whether there is a difference between that and the carports that appear to be permanent structures.

Mr. Wysocki asked if he meant it was attached or like an open garage. Commissioner Almy said that some of them almost look like a tent but it is made out of metal that is fairly light. One of the callers mentioned the fact that he would take his with him if he moved. Commissioner Almy wanted to know if that had any bearing on the use of the setback area.

Mr. Wysocki said no, not in this instance. Mr. Arnoldussen added the carports being talked about today, as the owners have mentioned, were on the property for about 10 years, so it is not really temporary.

Commissioner Almy said that was his other point. That we're talking about some of these things having been in place for 10 plus years. It's sort of interesting that all of a sudden, we've started paying attention to it from code enforcement. That does not make the code enforcement wrong at all, in fact, the technical part of it is fairly clear. The fact that it's been there that long, again, What's the rush? And can you work out some sort of plan of action to get the thing rectified? In other words, you may not have to take down the whole carport, you may have to just lop off 10 feet and basically rebuild it. As the city attorney offices has suggested there are political sides. We've got a neighborhood that's getting a lot of attention, trying to boost it up,

and it doesn't have a lot of spare money floating around. In fact, the people who have been charged with violations do have the option to go through their city council member to make their case on that side, regardless of which way this appeal goes. So again, it's pretty much the technical side of it now, what's the law? It's pretty easy to judge that, but we still have a human dimension to this that has to be addressed somewhere along the way.

Mr. Wysocki wanted to share that this is not personal. We certainly recognize the needs of our citizens, and we're here to help. This topic has come up to city council. There are a number of constituents that contacted Councilwoman Avila. The council discussed whether or not to direct staff to amend city code to address specifically carports. At this point, there has been no direction given to staff from city council to either initiate a code amendment or to issue any type of moratorium on enforcement of the carport due to COVID or other circumstances. So, this issue did gravitate already outside of the appeal process up to City Council, and again, there's been no direction given to staff to change code or to stop enforcement.

Chair Graham said the code is pretty clear and now our job as commissioners is just to make sure we are following what that code is. With that being said, Chair Graham feels that city council should look at this and make a determination. Chair Graham said he thought that some of the citizens' points of view are valid concerns when it comes to the protection of their property and the higher insurance premiums because of hail damage. Looking at it from their point of view, Chair Graham said he would be a little upset too, and the fact that we have let these carports exist for 10 to 20 years and now all of a sudden it is an issue. Chair Graham said he thinks city council needs to address this and that the citizens need to talk to their respective council representative to voice their concerns on this particular issue. Chair Graham reiterated that the commissioner's job is to say whether there is a violation of code or not.

Rebuttal:

Mr. Gallagher said he wanted to emphasize that he liked the code amendment idea. Right now, there are only 38 just in the immediate area but when you expand it throughout the city, you are going to go into the hundreds. The complaints that are coming in are directed by one person, not several. The additional complaints that came in again are being directed by one person. Mr. Gallagher mentioned the gentleman who said this needs to be addressed with the entire city, not just the in this particular area. What about the grandfather clause? Several carports have been there 15 to 20 years. And there are people with handicaps.

Mr. Gallagher said he heard everybody say it is just about what the code says. It doesn't mean that it is right. We need to look at that and fix it. Mr. Gallagher re-emphasized the fact there is the timeline. No one understands nor does anybody know why now and why the structures need to come down now. We would like to see adding at a minimum an exemption and for this to be relooked at.

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Commissioner Rickett made the motion to deny the appeal and uphold the Notice and Order to Abate with the caveat that he does not want to make the citizens take these down at this time. He wants this to go before city council to address hundreds if not thousands of these carports that around the city.

Commissioner Graham asked for the city attorney to advise if the date can be extended on when the carports need to be taken down. Mr. Bolinger said he gets this question every time there is a hearing on a Notice and Order. Mr. Bolinger said that no, it is an administrative function for the code enforcement to work with the property owner to work through the appropriate remedies. The commissioners are just finding yes or no there was a violation.

Commissioner Rickett said he was struggling with this one, but he will keep the motion as it is written.

Aye: 5 McMurray, Commissioner Graham, Commissioner Slattery,
Commissioner Rickett, and Commissioner Almy

Absent: 4 Commissioner Raughton, Commissioner Wilson, Chair Hente, and
Commissioner Eubanks

2 City Council 01/12/2021 postpone to a date City Council 07/13/2021 Pass
certain

Action Text: Motion by President Pro Tem Strand, seconded by Councilmember Avila, to postpone the appeal regarding 930 West Nolte Drive until the July 13, 2021 City Council meeting and requesting the Administration suspend enforcement on existing carports as long as there are no health and safety concerns involved and any new carport structure construction within the twenty-five feet setback is not permitted until the appropriate City Code can be amended. The motion passed by a vote of 9-0-0-0

Notes: Please see comments in Agenda item 12.I.

Aye: 9 Councilmember Avila, Councilmember Gaebler, Councilmember Geislinger, Councilmember Knight, Councilmember Murray, Councilmember O'Malley, Councilmember Skorman, President Strand, and Councilmember Williams

2 City Council 07/13/2021 postpone to a date City Council 09/14/2021 Pass
certain

Action Text: Motion by Councilmember Williams, seconded by Councilmember Helms, to postpone the appeal of the Notice and Order to Abate to the September 14, 2021 City Council meeting pending the outcome of the proposed ordinance to allow front yard carports. The motion passed by a vote of 8-0-1-0

Aye: 8 Councilmember Donelson, President Pro Tem Helms, Councilmember Henjum, Councilmember Murray, Councilmember O'Malley, Councilmember Skorman, President Strand, and Councilmember Williams

Absent: 1 Councilmember Avila

2 City Council 09/14/2021 postpone to a date City Council 01/11/2022 Pass
certain

Action Text: Motion by Councilmember Williams, seconded by Councilmember Avila, to postpone the appeal of the Notice and Order to Abate to the January 11, 2022 City Council meeting pending the outcome of the proposed ordinance to allow front yard carports. The motion passed by a vote of 9-0-0-0

Aye: 9 Councilmember O'Malley, President Strand, Councilmember Williams, Councilmember Avila, Councilmember Donelson, President Pro Tem Helms, Councilmember Henjum, Councilmember Murray, and Councilmember Skorman

2 City Council 01/11/2022 postpone to a date City Council 02/22/2022 Pass
certain

Action Text: Motion by Councilmember Donelson, seconded by Councilmember Williams, that the postponement for the appeal for the Short Term Rental permit for 116 South Fourteenth Street to the February 22, 2022, City Council meeting in order for staff to refine the internal STR policy regarding ownership per the request of the Planning Commission discussion be approved. The motion passed by a vote of 8-0-0-0

Aye: 8 Councilmember Avila, Councilmember Donelson, President Pro Tem Helms, Councilmember Henjum, Councilmember Murray, Councilmember O'Malley, President Strand, and Councilmember Williams

Text of Legislative File CPC AP 20-00146

Title

Postpone an appeal of the Planning Commission's decision to uphold the Notice and Order to Abate for violation of a carport in the 25-foot front yard setback to the February 22, 2022 City Council meeting.

Quasi-Judicial

Presenter:

Kurt Arnoldussen, Senior Code Enforcement Officer, Planning and Community Development
Peter Wysocki, Director of Planning and Community Development

Summary:

Owner: GALLAGHER ROBERT R

Appellant: GALLAGHER ROBERT R

Location: 930 WEST NOLTE DR.

The application is an appeal of the City Planning Commission's decision to uphold the Notice and Order to Abate for violation of a carport (Accessory Structure) within the 25-foot front yard setback. The property is zoned PUD. Pursuant to the Development Plan the front yard setback is 18 and 25-feet. In addition, Section 7.3.105(A)(1)(a) indicates that accessory structures are not permitted within the front setback, regardless of size or height.

7.2.201. ACCESSORY STRUCTURE: A structure that is located on the same lot and detached and separate from the principal building. Accessory structures shall be incidental to the principal structure and devoted exclusively to an accessory use. Examples of accessory structures may include, but are not limited to: garages, carports, sheds, storage buildings, play structures, gazebos, arbors, greenhouses, barns, saunas, and other similar buildings. Fences and walls that exceed six feet (6') in height are considered accessory structures.

Background:

On September 25, 2020, an anonymous complaint ("*a car port in drive way that is not allowed in colorado city limits. needs to be removed*") was made about a carport located within the front setback, on Nolte Dr. After inspection and confirming that the location of the carport was a violation of both City of Colorado Springs Zoning Code Section 7.3.104, which outlines residential setbacks, and Section 7.3.105(A)(1)(a), which precludes Accessory Structures of any size or height from being located in the front setback. On September 30, 2020 Neighborhood Services issued a Notice and Order to abate for the carport being within the 25-foot front yard setback.

After issuance of the Notice and Order, Neighborhood Services did not receive a

response from the owner and upon inspection on October 21, 2020, the carport was still located both within the front setback and City Right-of-Way. On October 28, 2020 the owner filed an appeal to the City Planning Commission for the Notice and Order.

On November 19, 2020 the City Planning Commission heard the appeal and upheld the Notice and Order. The City Planning Commission required that the carport be removed either in 30 days or by December 19, 2020. On November 30, 2020 the owner filed an appeal of the City Planning Commission's decision. In the appeal the owner stated, "*I am deeply concerned and feel like my rights as a tax paying citizen and a Combat Veteran are being taking from me. How can I have a carport for 10+ years on my own property and a complaint from an unknown source (could be a renter, not even a home owner) cause me and at least 60 others to change our way of life.*"

Previous Council Action:

N/A

Financial Implications:

N/A

City Council Appointed Board/Commission/Committee Recommendation:

On November 19, 2020 the City Planning Commission voted unanimously to uphold the Notice and Order and required the carport either be removed in 30 days or by December 19, 2020.

Stakeholder Process:

The public notification process consisted of providing notice to adjacent property owners within five-hundred (500) feet of the site, which included the mailing of postcards on two occasions; prior to the City Planning Commission hearing and prior to the City Council hearing. The site was also posted during the two occasions noted above. Four emails were received in support of the carports being in the front yard setback and one email was received in opposition to the carport being in the front yard setback. Since November 2020, an anonymous complainant made about 54 complaints around the city for carports in the front yard setback.

Alternatives:

1. Uphold the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;
3. Reverse the action of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration

Proposed Motion:

Postpone the appeal of the Notice and Order to Abate to the February 22, 2022 City Council meeting pending the outcome of the proposed ordinance to allow front yard

carports.

Summary of Ordinance Language

N/A

