

**City Manager's Report****August 28, 2018 City Council Meeting****Prepared By: Andrew Painter, City Planner****Pierre Rivas, Development Services Director****Item#: 11.1**

**Subject:** 1. Approve Variance 18-01 to allow for a reduction in the required side yard setback from ten (10) feet to 1 ½ feet for an existing carport at 948 Oak Terrace Road and 2. Find that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303 and 15305 of the State CEQA Guidelines.

**Background:** At the June 19, 2018 Regular Meeting of the Planning Commission, a public hearing was conducted to consider Variance (VAR) 18-01. Commission Members List, Kiehne, Frenn and Saragosa were present at the meeting. Member Dziuba was absent. Also present were the project applicant and property owners Jodi Krieger and Mark Brunelle.

Commission discussion included the Commission's narrowed scope of considering only the setback question and not the aesthetics or construction of the carport structure, required findings necessary to approve or disapprove a variance request, and the adequacy of information in the application record to make findings to substantiate the variance request.

After a motion to continue the item for 60 days was not approved by the Commission that would have allowed the applicant to bolster their application as to the special circumstances present on the subject site to warrant the variance, a second motion was made by Member List that was seconded by Chair Frenn to approve the request. This motion also failed with Members List and Frenn voting yes and Members Kiehne and Saragosa voting no. The Planning Commission meeting minutes of August 19, 2018 are included in **Exhibit B**.

The 2-2 vote outcome on the motion to approve the variance request did not reach a majority vote of the quorum, therefore the application was not approved or denied by the Planning Commission. Pursuant to Article 8(a) and (c) of the Planning Commission Bylaws, as follows, this item is now before the City Council for consideration.

*Article 8. Voting of the Planning Commission Bylaws*

*(a) Every official act taken by the Planning Commission shall be by resolution or motion adopted by the affirmative vote of the majority of the members constituting a quorum. Other general and routine matters may be approved by general consent.*

*(b) The usual voting sign on all Planning Commission matters will be by the Recording Secretary orally polling the Commission.*

*(c) In the event a formal application fails to be either approved or denied by the Planning Commission, the application will automatically be forwarded to the City Council for action.*

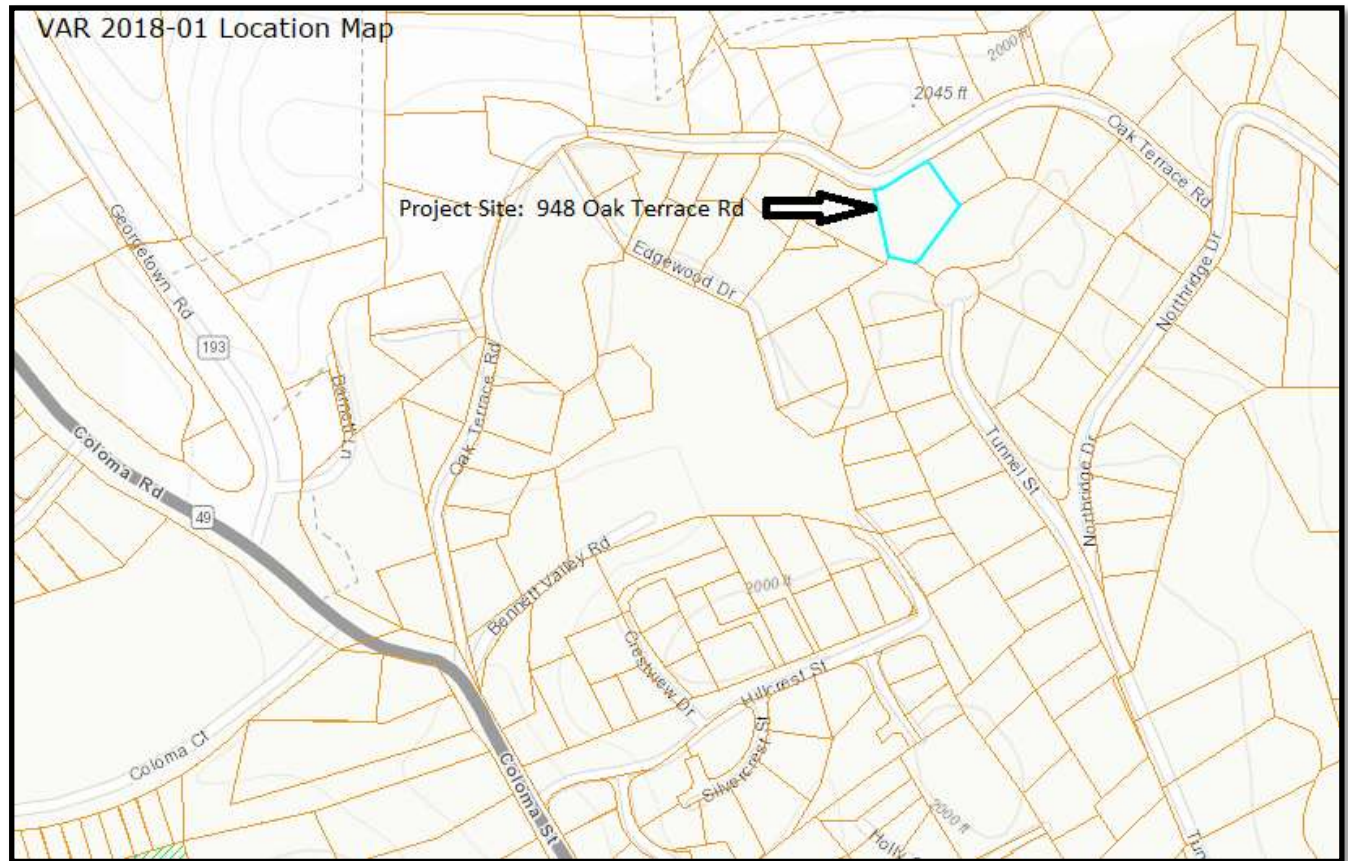
**Project Description:** The application involves a Variance request to allow for an existing carport, constructed without permit, to be located 8.5 feet into the side yard setback area reducing the setback as required pursuant to Zoning Code Section 10-5-6(D)5 from 10 feet to 1 ½ feet from the property line. The carport comprises 456 square feet of floor area and a roof ridge height of 15 feet. The carport is detached from the existing attached garage located adjacent and east.

The applicants' reasons for having the carport is to have a place to store their larger vehicles on their property to protect them from pine tree limb drop and sap, and that Oak Terrace Road is narrow and has no shoulder for on-street parking. The applicants chose the proposed location for the carport where it is less visible from public view, tree removal was not necessary, and where the site has less slope with a flatter turnaround area for vehicles. The Applicant Submittal Package (contained in **Exhibit B**) contains their written statement, photos, and a letter of support from Robert Patton dated May 26, 2018, who is the property owner directly adjoining and west of the carport project site.

This Variance request is a result of a code enforcement investigation involving construction of a carport without obtaining first a variance for encroaching into the side yard setback and without obtaining a required construction permit.

**Project Site Background:**

<i>Applicants/Property Owners:</i>	Jodi Krieger Trust, Parvarti Revocable Trust
<i>Property Location Information and Assessor's Parcel Number (APN):</i>	948 Oak Terrace Road Lot 31 of the North Ridge Subdivision, Unit No. 2 (Recorded 1961) See Figure A and B APN 050-451-05
<i>Existing General Plan Land Use Element designation:</i>	Low Density Residential
<i>Existing Zoning classification:</i>	R1-20,000 Single Family Residential Zone (Section 10-5-6)
<i>Site Size</i>	0.43 acres (18,730 square feet)
<i>Existing Conditions:</i>	2,205 square feet single-family residence and attached garage
<i>Surrounding land uses and Zoning:</i>	The subject property is located within a neighborhood that is surrounded by other single-family residences to the north, south, east, and west in the R1-20,000 and R1-10,000 Zones. See Figure C
<i>Previous Applications / Entitlements:</i>	1990: Construction Permit Number 8579 – approval of original 2-story single-family dwelling and garage. Permit No. 8854 – approval for 300 square foot deck; 2009: Permit No. 15461 – approval of reroof; 2014: Permit No. 17291 – approval of window changeouts; 2015: Permit No. 17354 – approval of front and rear deck demolition, new LPG, new front deck, stairway and front entrance; 2015: Permit No. 17881 – approval of new front deck. All permits are finalized.

**Figure A.**

**Figure B.**  
**Street View of**  
**948 Oak**  
**Terrace Road**

**Figure C. Zoning**

This parcel was legally created, being Lot 31 of North Ridge Subdivision Unit No. 2.

Neighboring Oak Terrace Road parcel addresses of 930, 940, 962, 970, 980 and 990 located on the same side of the street as the subject location share characteristics with the project location:

- 1) Each is located within the R1-20,000 zone (R1-20);
- 2) Each has a parcel area less than the minimum 20,000 square feet of the R1-20 zone;
- 3) Each parcel slopes downhill from the street;
- 4) Homes constructed on each lot have base floor elevations located below the street surface and meet minimum zoning setbacks.
- 5) Mature trees are located on each parcel.

The applicants state that an existing metal carport was torn down to accommodate the turnaround and new carport. No City permit records exist for the former metal carport.

In addition to the subject application, there have been two other variance applications relating to setbacks near the subject property. Of those two, both were approved by the Planning Commission as shown in the following table.

Although there have been previous variance requests in the area of the subject property, each variance request is considered on its own merit, based on site conditions and circumstances.

<b>Application/Request</b>	<b>Date of Action</b>	<b>Staff Recommendation</b>	<b>Final Action</b>
<b>990 Oak Terrace Road –</b> <b>VAR 2011-03:</b> Allow a four-foot setback to accommodate a detached RV cover due to an existing 15’ wide recorded easement owned by the El Dorado Irrigation District (“EID”), with an 18” underground waterline located within the property.	8/ 21/2012	Approval	Approved by the Planning Commission
<b>914 Oak Terrace Road –</b> <b>VAR 2013-01:</b> Allow a side yard setback of 2’ where a setback of 6’ is required under the R1-10,000, Single-Family Residential zone (Zoning Ordinance Section 10-5-7(D)(5)). Variance needed for the construction of a new home of approximately 800 square feet to replace a 450 square feet in floor area home built on the property line.	01/21/2014	Approval	Approved by the Planning Commission

**Environmental Review:** The application is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15303, Class 3, and Section 15305, Class 5. A Class 3 exemption includes the construction and location of limited numbers of new, small facilities or accessory structures. A Class 5 exemption includes minor side yard variances in areas with an average slope of less than 20%. The site has an average slope of less than 20%. One carport structure, an accessory structure in a residential zone, constitutes as a categorical exemption of CEQA under Section 15303(e). The side yard setback variance request meets the CEQA Class 5 exemption criteria under Section 15305(a). The application is therefore consistent with these categorical exemptions.

**City Authority Regarding Variance Requests:** Per Zoning Ordinance Section 10-3-5, the City may grant a variance that would authorize a specific exception to any regulation within the Zoning Ordinance, but only when because of special, specific, circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by the other properties in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

As a quasi-adjudicatory action, findings of fact that support a decision to approve, approve with conditions, or deny a variance request must be adopted. Defensible findings are based on the pertinent evidence that is within the public record. Such findings must provide the factual basis that lead to the decision Council to determine that special circumstances applicable to the property exist or do not exist, and that authorizing the variance would not grant or would grant special privileges.



**Staff Analysis:**

**General Plan Consistency:** The General Plan Land Use Designation for this site is Low Density Residential. The General Plan describes the purposes of the Low Density Residential as the following:

1. *Provide for single-family residential development in areas with urban-level services and facilities, but limited for development by topography and terrain.*
2. *Create conditions conducive to a desirable low-density environment and protect it from encroachment by unrelated and incompatible uses.*

*Allowable uses described for this designation includes detached single-family homes, secondary residential units, public and quasi-public uses, and similar and compatible uses.*

*Density Range: 1.01 to 4.00 dwelling units per gross acre.*

A carport is considered an accessory structure to the existing residential use of the site. The application is consistent with the Low Density Residential Designation in that it involves the development of a structure compatible with and accessory to an existing single-family residential use.

**Zoning Ordinance Compliance:** The site is located in the R1-20 Single-Family Zone (Section 10-5-6). The stated purpose of the zone classification is to:

1. *Provide for single-family residential development in areas with urban level services and facilities, but limited for development by topography, terrain, or other physical and environmental constraints.*
2. *Provide housing in areas conducive to low density development and protect such areas from incompatible development.*
3. *Insure light, air, privacy and usable open spaces for residential living.*
4. *Provide for those facilities primarily serving the neighborhood and serving it best by being located within it, providing such facilities are in the appropriate locations and in harmony with the neighborhood.*

A single-family dwelling and accessory uses are permitted within the R1-20 Zone District. A carport structure is consistent with the R1-20 Zone in that it is accessory to the established residential use on the subject site.

Structures are subject to the following development standards per Section 10-5-6(D) of the Zoning Ordinance:

<b>General Regulation (development standards)</b>	<b>R1-20 Standard</b>	<b>Existing Conditions</b>	<b>Degree of Conformity</b>
Maximum Building Height	35 feet	15 feet to roof peak	Conforms to Standard
Front Yard Minimum	20 feet	+65 feet	Exceeds Standard
Side Yard Minimum	10 feet	1.5 feet	Carport Substandard by 8.5 feet
Rear Yard Minimum	30 feet	+60 feet	Exceeds Standard
Maximum Building Coverage	35%	14.2% (Home + Garage + new Carport)	Conforms to Standard

The application requires a Variance because the constructed carport was developed 8.5 feet into the 10 feet side yard setback area. The applicants indicated that their reasons for the carport are to have a place to store their larger vehicles on their property to protect them from pine tree limb drop and sap, and that Oak Terrace Road is narrow and has no shoulder for off pavement parking. The applicants chose the proposed location where it is less visible from public view, tree removal was not necessary, where the site has less slope, and where a flatter turnaround for vehicles could be constructed.

City Council could find the Variance request to be reasonable in that the carport would not appear to adversely affect the adjacent property owners, Robert and Sheryl Patton, closest to the constructed carport, as evidenced by their letters of support. The City Council could also find the request would facilitate the carport at its current location without the burden of eliminating landscape features and mature trees.

A permit for the construction of the structure is required. Due to the building's close proximity to the side property line, fire resistant construction materials may be required at the property line area. The owner/applicant is aware that the plan review fees will not be reimbursed if the variance is not approved by City Council.

#### **Public Notice and Comment:**

The Planning Division did the following to comply with Section 10-3-6(B) of the Zoning Ordinance: (1) Provided written notice to all property owners within 500 feet of the external boundaries of the subject property; and (2) provided a written notice that was published in the Mountain Democrat on August 8, 2018. Letters received are included in Attachments 2,3, and 4.

#### **Options:**

1. Approve the requested variance as recommended by staff.
2. Conceptually deny the variance request and direct staff to return to the Council with findings for denial.

**Cost:** None.

**Budget Impact:** None.

**Recommendation:**

1. Approve Variance 18-01 to allow for a reduction in the required side yard setback from ten (10) feet to 1 ½ feet for an existing carport at 948 Oak Terrace Road and (2) Find the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303 and 15305 of the State CEQA Guidelines; based on the Findings and subject to the Conditions of Approval contained in **Exhibit A**.



M. Cleve Morris, City Manager



Pierre Rivas, Development Services Director

**Exhibits:**

- A: Staff recommended Findings and Conditions of Approval
- B: Letter/information packet from Blair Will, Pioneer Law Group, LLP, submitted on behalf of applicants, dated August 16, 2018

**Attachments:**

1. Minutes of the August 19, 2018 Planning Commission
2. Letter from Bob and Sheryl Patton, dated May 26, 2018
3. Letter from Glen and Patti Farrington dated June 19, 2018
4. Letter from Bob and Sheryl Patton, dated August 9, 2018