

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT****Date: August 01, 2016****CASE NUMBER**

6043

APPLICANT NAME

James F. O'Neill

LOCATION1201 Marseille Drive
(Southeast corner of Marseille Drive and Burma Road).**VARIANCE REQUEST****REAR YARD SETBACK:** Rear Yard Setback Variance to allow the construction of a carport within 3' of a side property line in an R-1, Single-Family Residential District.**ZONING ORDINANCE
REQUIREMENT****REAR YARD SETBACK:** The Zoning Ordinance requires a minimum 8' side yard setback for a structure in an R-1, Single-Family Residential District.**ZONING**

R-1, Single-Family Residential

AREA OF PROPERTY

20,000± Square Feet / 0.46± Acre

**TRAFFIC ENGINEERING
COMMENTS**

No comments.

**ENGINEERING
COMMENTS:**

If the Rear Yard Setback variance is approved the applicant will need to have the following conditions met:

- a. The existing drainage patterns and surface flow characteristics will not be altered so as to have a negative impact on any adjoining properties.
- b. Applicant agrees to install adequate BMPs during construction to protect from sediment/pollutants leaving the site.
- c. A Single Family Residential Affidavit (Permitting Section) will need to be submitted with the building permit plans.

**CITY COUNCIL
DISTRICT**

District 4

ANALYSIS

The applicant is requesting a Rear Yard Setback Variance to allow a carport within 3' of a side property line in an R-1, Single-Family Residential District;

the Zoning Ordinance requires a minimum 8' setback for a structure in an R-1, Single-Family Residential District.

The applicant states the reason for the variance request:

There is an existing driveway which extends to the right side of the house. This side of the house leads to the back door which functions as the primary means of entry and egress. The owner wants to add some storage area along the right side of the house and a carport for 2 cars. It is anticipated the project will be completed within 30 days of approval from Board of Zoning Adjustment.

The submitted site plan proposes two options for a potential carport with an attached storage structure; however, neither proposed carport/storage option is illustrated in such a way that Staff can verify their proposed location on the site. Using the dimensions provided by the applicant to illustrate the proposed carport and storage structure on a recent survey of the property, Staff can speculate that Option 1 will infringe on the 25' minimum building setback by 2'±, and by 0.5'± on the 8' minimum side yard setback; and Option 2 will infringe on the 25' minimum building setback by 3'± and by 3.5'± on the 8' minimum side yard setback. Relying on images submitted to the Planning and Zoning Department's GIS Analysts, it appears the applicant wishes to construct Option 2, citing an existing driveway constructed too close to the property line as justification for approval of the variance application by the Board of Zoning Adjustment.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant goes on to state:

The house and driveway were installed long before the current owner purchased the property in 2012.

We had no idea they would install a driveway that was so close to the property line that we could not install a carport.

The site plan does not show a fence we plan to install along the property line. The fence will conform with the required set back from the Road.

At the rear of the driveway toward the back of the house the 8 ft set back from the property line is insufficient space for the storage area and a walkway. We would need a 3 ft. variance which would put us 5 ft. from the property line instead of 8 ft.

The driveway widens as you proceed toward the road but since the drive way was installed at a slight angle therefore to accommodate a 2 car carport the carport would need a 5 ft variance and would only be 3 ft. from the property line instead of 8 ft. But the structure will be shielded by the fence and will comply with the required setback from the road.

In an effort to comply with all zoning requirements we had the engineer look at putting one carport next to the house and the other parallel to the front of the house but the turn would be too sharp considering the required set back from the road.

Let me note that it was very hard for me to anticipate (when I purchased the house) that I would not be able to put a carport on an existing driveway. We have spoken to the neighbor next door (the only one conceivably impacted) and they are fine with the plan as described here and in the plan.

Regarding the existing driveway, such use of the property is exempt from setback requirements of the Zoning Ordinance; and, since Staff cannot discern any carport prior to the current ownership of the house in any aerial photographs, it is reasonable to consider that the driveway was not designed to facilitate such a structure. It should be noted, however, that a Google Street View image from March, 2013 does not reveal a carport, but one is visible in a 2014 City GIS aerial photo of the property and does not meet setback requirements; also, no building permit for said carport was ever obtained. Additionally, Staff was made aware of a violation regarding the unpermitted, initial construction of the proposed carport and storage structure via a complaint to Mobile 311 in March, 2016. The applicant attempted to permit the aforementioned structure, whereby Staff determined the need for the variance application due to the structure infringing on existing setbacks.

With respect to what the applicant mentions is an effort to comply with zoning requirements regarding setbacks, it should be noted that the existing driveway is located to the South of the property where the position of the house impacts the applicant's ability to construct the proposed carport and storage structure within the appropriate setbacks. However, it should also be noted that the lot on which the existing and proposed structures are, and would be, situated is approximately 20,000 s.f., with ample room between the house and the 20' minimum setback along Burma Road to the North of the property; as well as between the house and the back of the property to the East, distances of approximately 80' and 20', respectively. As such, Staff has reason to believe that, given the applicant's statement regarding a door to the rear of the house is the primary means of ingress and egress from the residence, a carport and storage structure could meet setback requirements if they were constructed along a driveway relocated to the North of the home, or perhaps extended to the rear of the home; especially since such a driveway would continue to facilitate ingress and egress to and from the rear of the house. If such an alternative site plan is unfeasible, it is reasonable to believe that a smaller, redesigned carport and storage

structure could accommodate at least one vehicle while meeting setback requirements given the existing site plan.

Lastly, while the neighboring property owner referenced by the applicant may not have an issue with the proposed structures, no evidence of such support has been submitted to Staff for review. However, staff is aware that there may be limitations on where the proposed structures may be located with regards to the location of the existing driveway, thus suggesting a possible hardship. Unfortunately, while the applicant may have been unaware of current Zoning Ordinance regulations regarding setbacks at the time of the proposed structure's initial construction, it does not negate the fact that an unpermitted, nonconforming structure was placed on the property within the past two years; or that the unpermitted construction of the proposed structure was in violation of City ordinances, thus suggesting a self-imposed hardship. Additionally, given the size of the property and the fact that there are adequate distances to the North and East of the property that could accommodate the proposed structures along a relocated driveway, it also suggests a self-imposed hardship; especially since, should relocating the driveway be unfeasible, a smaller or re-designed carport and storage structure could meet setback requirements. Finally, upon review, Staff can verify that two similar variance requests within 1,000' of the subject property were denied by the Board in 1992 and 2008. As such, and given the preceding, the applicant has not presented sufficient evidence demonstrating a hardship as required in Section 64-8.B.6.f.(3).(d). of the Zoning Ordinance; therefore, denial of this request may be appropriate.

RECOMMENDATION: Based on the preceding, staff recommends to the Board the following findings of fact for Denial:

- 1) Granting the variance will be contrary to the public interest in that the applicant has twice violated Section 64-3.C.1.e. of the Zoning Ordinance regarding side and rear yard setbacks within an R-1, Single-Family Residential District, and that similar variance requests in the vicinity have previously been denied;
- 2) Special conditions may exist, including the location of the existing driveway, but not in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship when there is adequate space elsewhere on the property to accommodate the proposed structures; and
- 3) The spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance for the structures since it appears that a smaller, redesigned carport and storage unit could meet the setback requirements of the Zoning Ordinance.

Revised for the August 1, 2016 meeting:

The application was heldover from the June 6, 2016 meeting to allow the submittal of an as-built site plan showing all existing and proposed improvements to the site.

The applicant states:

In response to the courtesy extended to clarify our request and the holdover of #6043 (Case #ZON2016-01041) I have provided the requested 7 copies of the proposed storage area, fence and Carport as well as this cover letter.

The storage area will comply with the setback requirement on all sides; the fence will be constructed on the property line and comply with the setback requirement from Marseille Drive. The carport will comply with the set back from Marseille Drive but does require a variance as shown on the drawing from the engineer (Mr. Ronnie Toomey) which demonstrates how it is located on the existing driveway; and located on the survey done by Mr. Fred Haidt. We originally wanted the carport to extend closer to the property line but in light of concerns raised by the Planning Board in our first request we have opted to live with a structure that is tight but will accommodate 2 cars when there is inclement weather.

We appreciate the extension till the August 1st hearing and have submitted all the clarifying documentation prior to the July 5th date we were advised is the deadline for the August 1st hearing.

I note for the record that while construction of the carport will be aesthetically pleasing and will, I anticipate add some value of the property, the request is for 2 primary reasons: 1) To protect the cars in inclement weather and 2) to provide the safest means of entry and egress as age and physical problems make stairs increasingly problematic for me as I suffer from Rheumatoid Arthritis which necessitated a recent knee replacement. This is our retirement home and we have every expectation we will live in it indefinitely.

We thank you for your consideration and will be present to answer any questions at the hearing on August 1, 2016.

The revised site plan illustrates a proposed carport and storage shed, both of which infringe upon the side yard setback; however, to what distance they do so cannot be verified considering the site plan is not to scale when comparing noted distances versus actual Staff measurements. Considering the proposed structures are illustrated as extending only to the width of the existing driveway, Staff can speculate that infringement on the side yard is limited to approximately 3'. As such, and in considering the inclusion of what is illustrated as a fence along the property line at this location, impact on the neighboring property may be limited. Nevertheless, the applicant has still not considered in what way a carport could be accommodated elsewhere on the property where previous review revealed ample room; particularly in the rear of the property.

Again, Staff is aware of the situation in which the applicant would prefer to continue utilizing the existing driveway, particularly with respect to its location near an existing entrance to the house to facilitate easier access for health reasons; however, variances can only be considered with regards to a hardship associated with the property, precluding any economic hardships.

With ample space upon which to build the proposed carport elsewhere on the property, and the fact that similar variance requests in the vicinity have been denied within the past 20 years, approving the variance may set a precedent on which similar decisions with greater, negative impact to neighboring properties could be influenced. As such, the original findings of fact and subsequent recommendation for denial still stand.

RECOMMENDATION: *Based on the preceding, staff recommends to the Board the following findings of fact for Denial:*

- 1) Granting the variance will be contrary to the public interest in that the applicant has twice violated Section 64-3.C.1.e. of the Zoning Ordinance regarding side and rear yard setbacks within an R-1, Single-Family Residential District, and that similar variance requests in the vicinity have previously been denied;*
- 2) Special conditions may exist, including the location of the existing driveway, but not in such a way that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship when there is adequate space elsewhere on the property to accommodate the proposed structures; and*
- 3) The spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance for the structures since it appears that a smaller, redesigned carport and storage unit could meet the setback requirements of the Zoning Ordinance.*

LOCATOR MAP



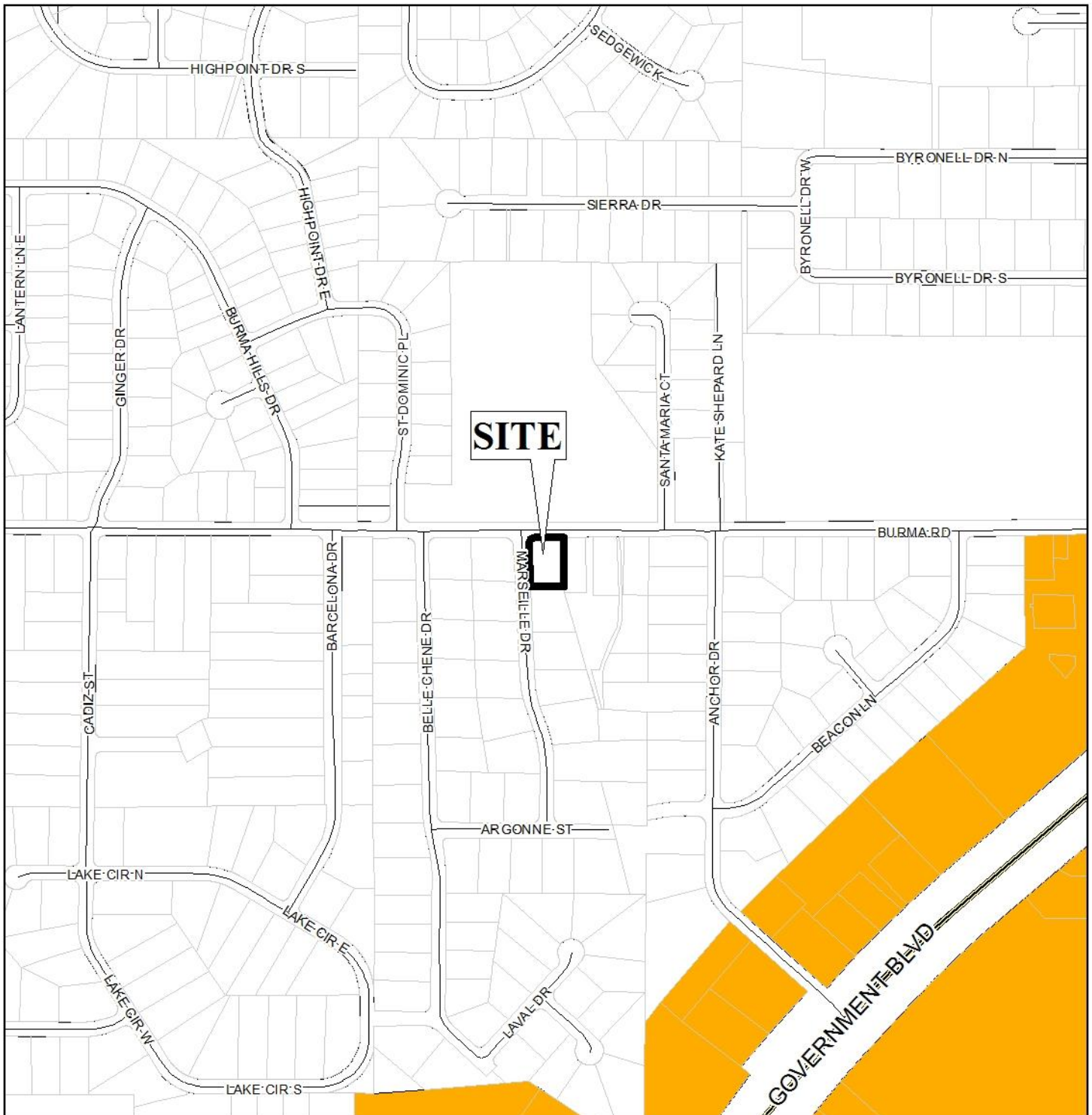
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APPLICANT James F. O'Neill

REQUEST Rear Yard Setback Variance



LOCATOR ZONING MAP



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BOARD OF ADJUSTMENT

VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units. A church is located to the north.

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 R-A	 R-3	 T-B	 B-2	 B-5	 MUN	 SD-WH	 T5.1
 R-1	 R-B	 B-1	 B-3	 I-1	 OPEN	 T3	 T5.2
 R-2	 H-B	 LB-2	 B-4	 I-2	 SD	 T4	 T6



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING AERIAL

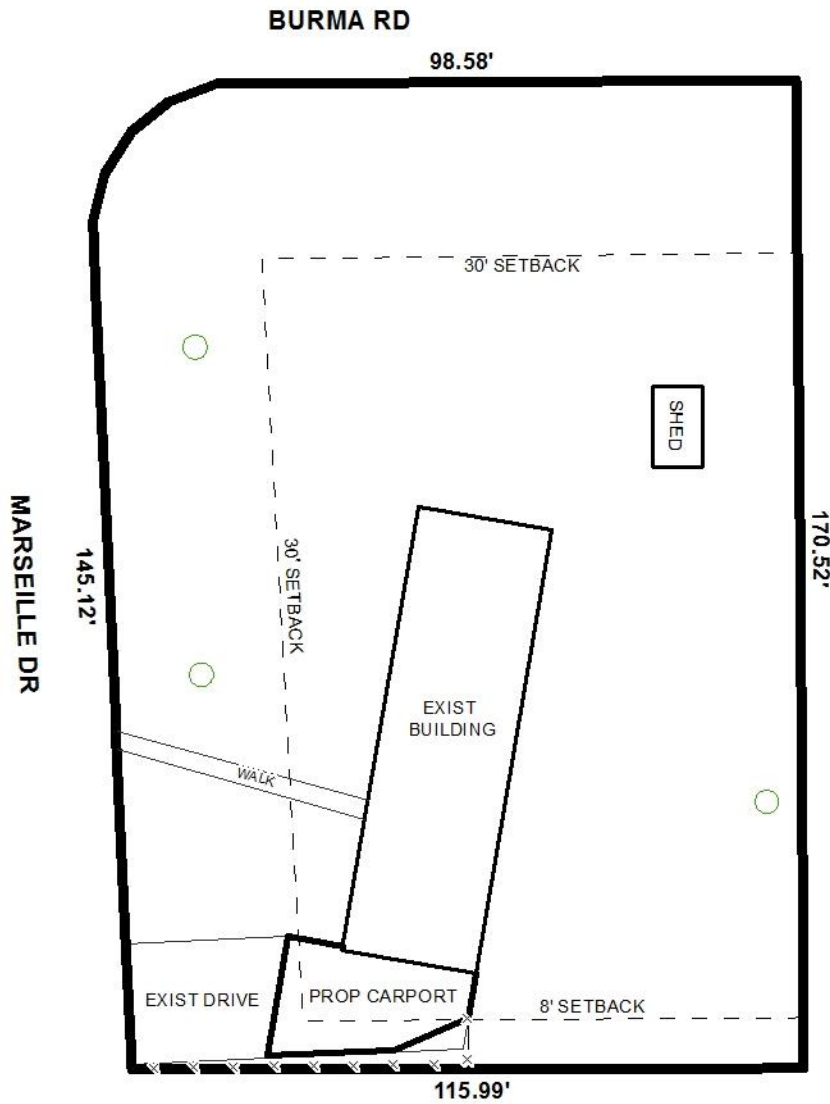


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SITE PLAN

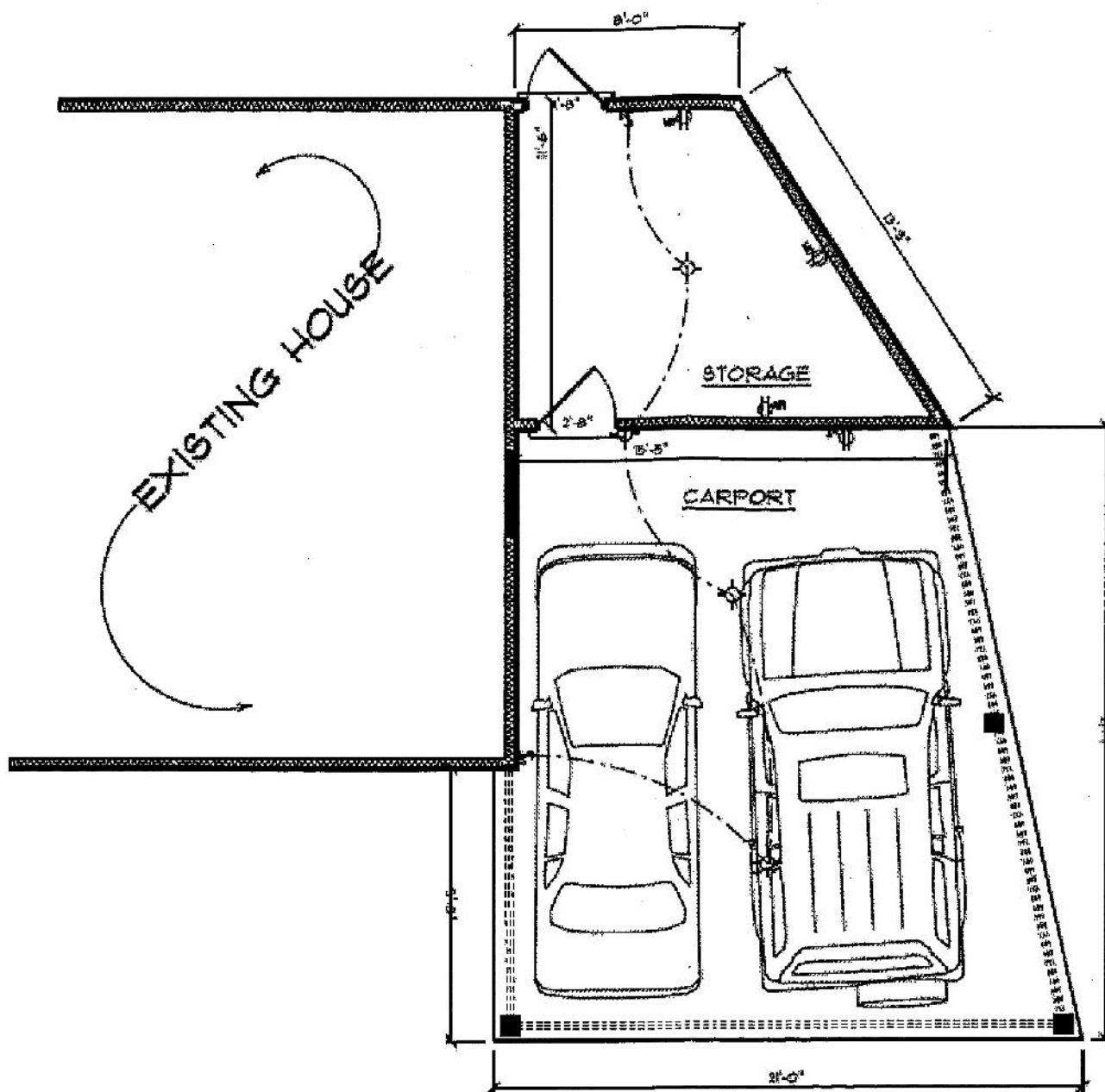


The site plan illustrates the existing buildings, proposed carport, and setbacks.

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DETAIL SITE PLAN

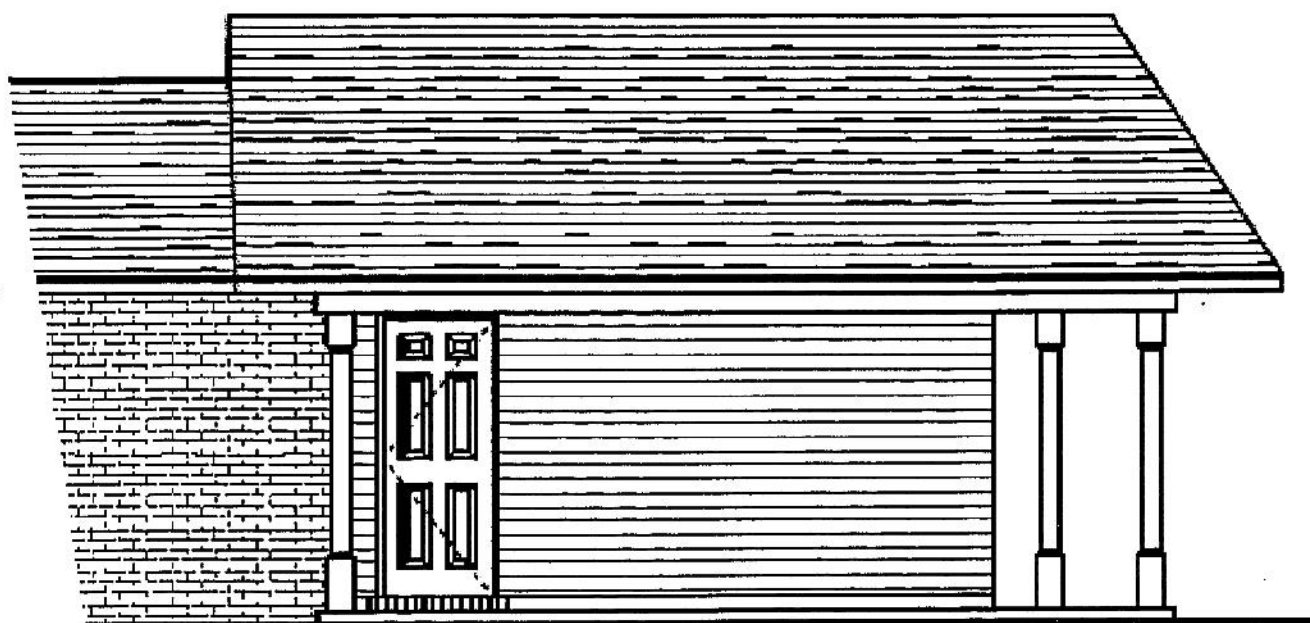


1 | ADDITIONAL CARPORT / STORAGE PLAN
SCALE: 1/4" = 1'-0"

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DETAIL SITE PLAN



2 | FRONT ELEVATION
SCALE: 1/4" = 1'-0"

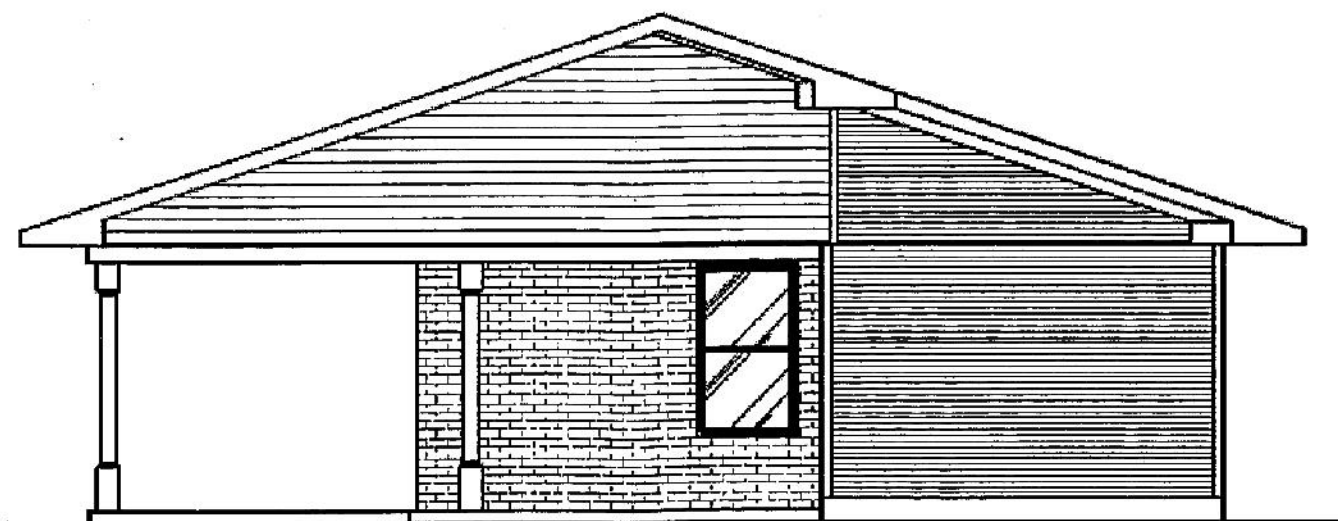
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DETAIL SITE PLAN



3 RIGHT ELEVATION
SCALE: 1/4" = 1'-0"

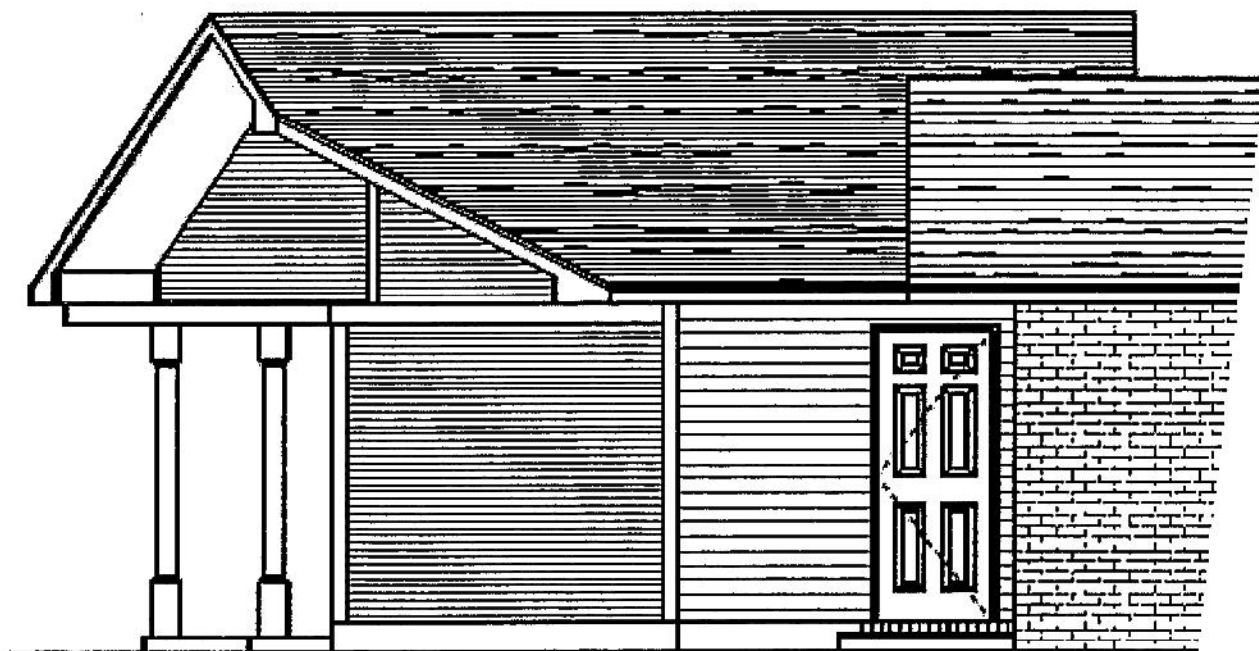
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DETAIL SITE PLAN



3 REAR ELEVATION
SCALE: 1/4" = 1'-0"

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