

**Staff Report
Board of Adjustment
November 8, 2022**

Request: The applicant is requesting a variance from the Unified Land Development Code (ULDC), Article III. Division 1. Table 3-1 “Property Development Standards” to allow a carport to encroach through the minimum front yard setback of 15 feet and into the public right-of-way.

Applicant: Bill J. Bratton

Owner: Bill J. Bratton and Shannon White

Subject Property: 117 North Holly Drive

Parcel Information:

Zoning: Low Density Single Family Residential (SF1)
Use: Single-family dwelling

Surrounding Properties Information:

North: Low Density Single Family Residential (SF1);
West: Low Density Single Family Residential (SF1);
East: Low Density Single Family Residential (SF1);
South: Low Density Single Family Residential (SF1).

Background:

The applicant is requesting a variance to place a carport beyond the front property line and approximately three feet into the public right-of-way. The subject property is located at the northeast corner of Lazy Lane and North Holly Drive with a lot area of 0.45 acres. The property has an existing single-family dwelling, built in 1960, and a new carport, built in 2022. The applicant demolished the original carport and erected a new carport without obtaining the necessary building permits. As such, a code violation case was filed against the applicant and an active hold has been placed on the property until corrective action is taken.

The subject property is located in Lakewood Section E subdivision, and is surrounded by lots that range between approximately 0.3 acres and 0.5 acre. The plat for the property includes a 20 foot building line on the side of the property fronting North Holly Drive; this exceeds the 15 foot minimum setback required by the ULDC. According to ULDC, Article III, Division 1, Section 3.02 - Setbacks, a carport can encroach a maximum of five feet beyond the front yard setback (10 feet from front property line) so long as it is in conformance with the visibility triangle standards.

The original carport on the subject property was built in 1966, and its location did not adhere to the setback requirements of the ULDC, so it was considered a noncompliant structure. According to the ULDC, Article I, Division 3, Sec. 1.27-Nonconformities b. Continuation of noncomplying structure. *“A noncomplying structure that lawfully occupied a land site on April 13, 2013, that does not conform to the standards for front setbacks, side setbacks, rear setbacks, height, screening, floor area of structures, driveways or open space for the district in which the structure is located may be used and maintained, subject to the standards and limitations in this ULDC.”*

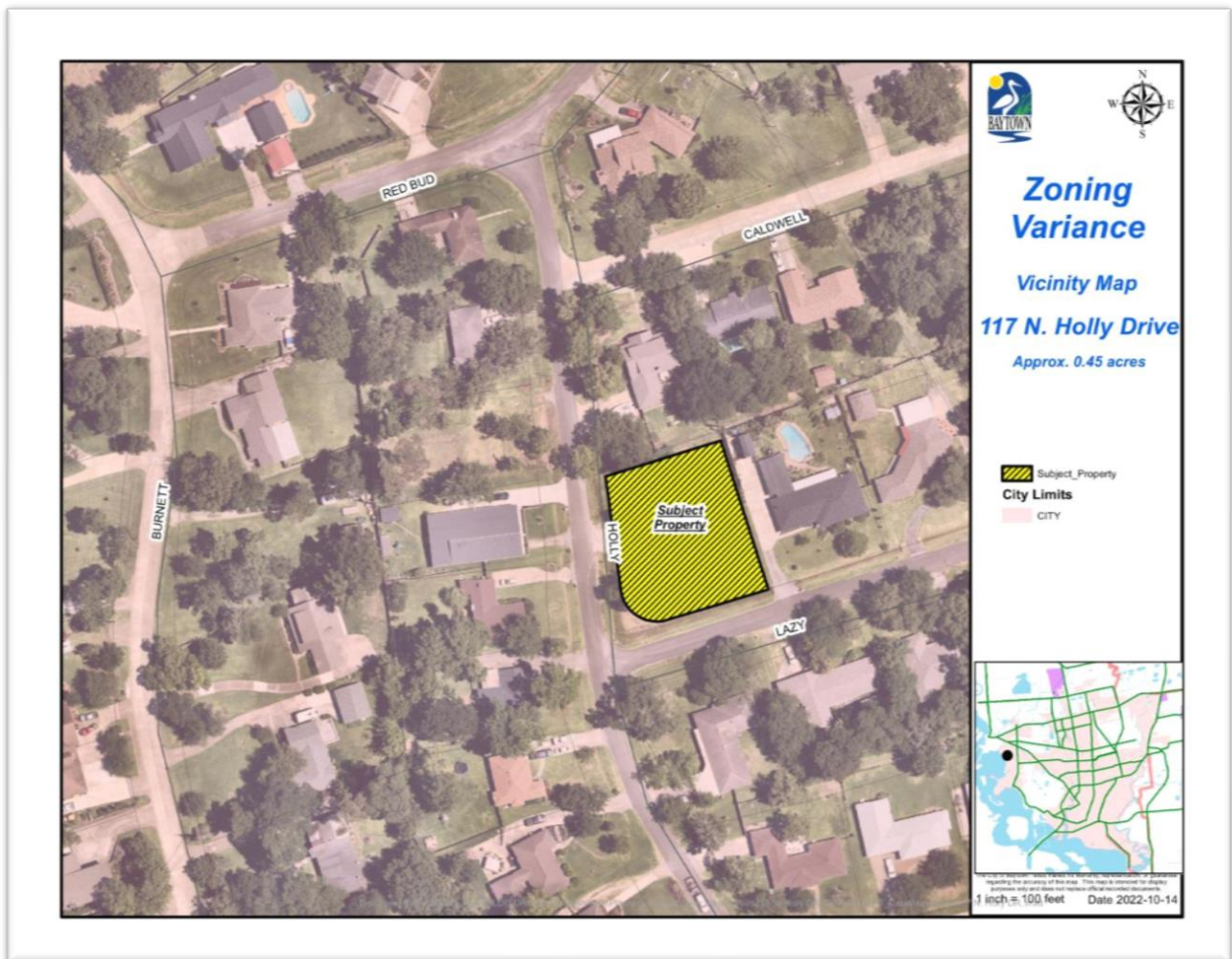


Figure 1. Vicinity Map

Furthermore, ULDC, Article I, Division 3, Sec. 1.27-Nonconformities (c) 3) Repair, maintenance, and alteration states that: *“Any noncomplying structure may be repaired, maintained, or altered; provided, however, that no such repair, maintenance, or alteration shall either create any new noncompliance or increase the degree of the existing noncompliance of all or any part of such structure except in the manner provided in this section or in the variance and special exception regulations of this ULDC.”*

The applicant inherited the house with a carport that encroached the front yard setback (see figure 2). As such, the nonconforming carport structure could be maintained and repaired or altered provided that any alteration shall not create or increase the degree of noncompliance of the structure. Aerial photography from previous years shows the carport in its original location fronting North Holly Drive; the recent survey below shows a small encroachment on the public right of way. Planning staff does not believe that the footprint of the newly-constructed carport has been enlarged; however, it’s evident that the height of the northern portion of the carport has been increased (see figures 5,6,7, and 8), which increases the degree of noncompliance. Secondly, the new carport continues to encroach the public right-of-way.



Figure 2. Google street view captured in June 2011

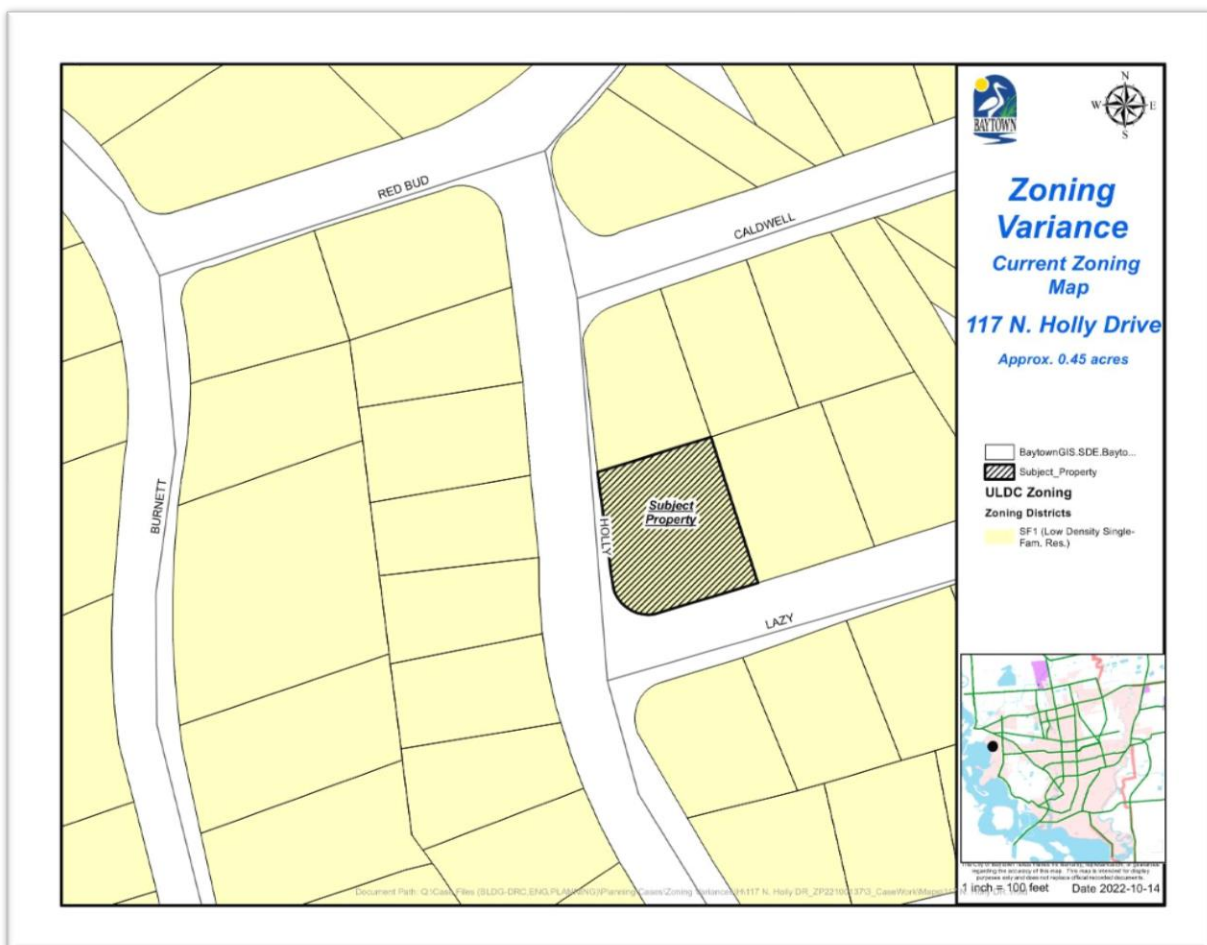


Figure 3. Current Zoning Map

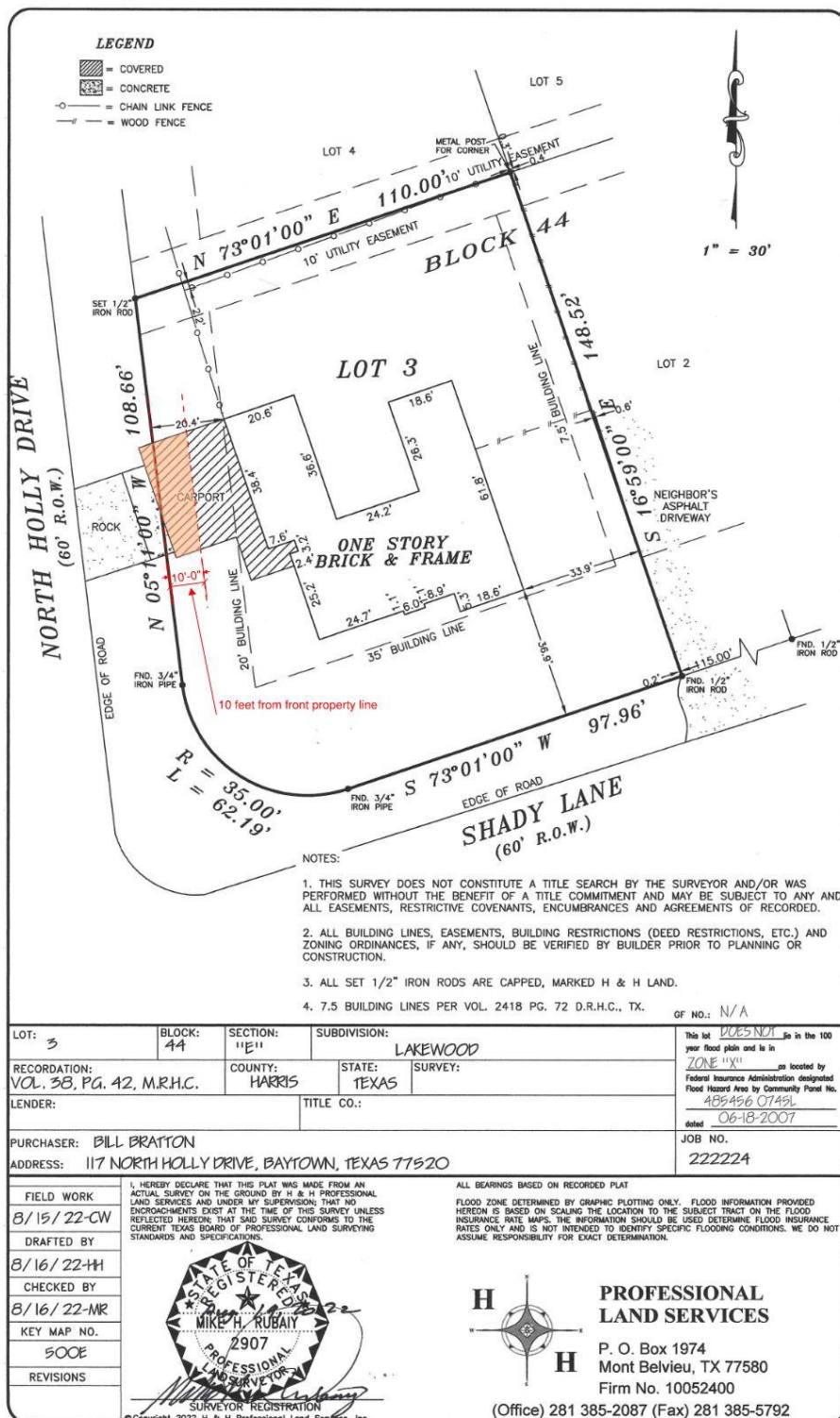


Figure 4. Recent Survey of the property



Figure 5 Existing condition



Figure 6 Existing condition



Figure 7 Existing condition



Figure 8 Existing condition

Variance Criteria – Section 1.29(c), ULDC

The board of adjustment may grant a variance when the applicant demonstrates that the variance request will meet all the criteria below:

1. Ensures the same general level of land use compatibility as the otherwise applicable standards;

The variance request to allow the newly-constructed carport to obtain a zero front yard setback and to encroach the public right-of-way will grant a greater level of land use than what is intended by the applicable standards. The subject property is a corner lot in an SF1 zoning district, and a carport is a permitted use that is allowed to be placed 10 feet from the front property line.

2. Is not a hardship of the applicant's own making;

The hardship is of the applicant's own making. The demolition of the original carport and the construction of the new carport, with greater height, is beyond the scope of alteration that is required to meet today's development standards. Additionally, the subject property is a corner lot, and has a size that could accommodate a new access and/or carport along Lazy Lane.

3. Does not adversely affect adjacent land uses and the physical character of uses in the neighborhood in which the exception is sought because of inadequate buffering, screening, setbacks and other land use considerations;

The proposed carport is considered out of character given the difference in height between its two segments and its encroachment to the public right of way. Additionally, there is no precedent of a similar carport in close proximity to this site.

4. Does not adversely affect property values of adjacent properties in any material way and will improve the property value of the property for which the exception is sought;

It is not anticipated that property values of adjacent properties will be adversely affected by the requested variance. The original carport that existed back in 1966 was at the same location.

5. Furthers the goals and vision of the city as set forth in the comprehensive plan, the vision statement, and an applicable neighborhood plan or redevelopment plan adopted by the city council;

The requested variance will not further the goals of the 2040 Comprehensive Plan's strategies. The carport structure was erected without obtaining necessary building permits and does not meet the 2015 International Building Code.

6. Is generally consistent with the purposes and intent of this ULDC;

The requested variance is considered inconsistent with the intent of the Code. The code allows the applicant to maintain a noncomplying structure without increasing the degree of the noncompliance. The new structure must come to compliance with the setback requirement, building codes, and design requirements for 150 mph wind speed.

7. Is needed as special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same district and are not merely financial;

The original carport structure was erected in 1966. The applicant has the option to apply for a second driveway and a new carport on Lazy Lane and conform to applicable development standards; therefore, the carport does not have to project into the public right-of-way.

8. Is necessary as literal interpretation and enforcement of the terms and provisions of the

dimensional standards would deprive the applicant of rights commonly enjoyed by landowners in the same district and would cause an unnecessary and undue hardship;

The literal interpretation of the code would not deprive the applicant of rights commonly enjoyed by others in the same area and would not create an unnecessary hardship for the applicant. The subject property, approximately 0.45 acres, is a corner lot which would allow the applicant to have a second driveway access to the property and could include a carport in compliance with development standards and the city code of ordinances.

9. Is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest and which would carry out the spirit of this ULDC and would result in substantial justice;

Section 1.27, (c) Noncomplying structures. (2) Applicability states that: “Nothing contained in this section shall be construed to prohibit improvements, maintenance or repair for any part of structures that are inside the existing footprint of a noncomplying structure that do not increase the height of the existing noncomplying structure. Some examples are the following: a water heater may be repaired or replaced within the existing footprint; components, cladding and roofs may be repaired as long as square footage (usable or not usable) is not added to make another story on the building or to exceed the existing footprint of the structure.”

The carport structure encroaches into the public right-of-way, which is contrary to the public interest. The applicant’s request will not carry out the spirit of the ULDC.

10. Will bring the existing and proposed structure closer into compliance with the zoning regulations of this ULDC, or will otherwise improve or enhance public health, safety or welfare.

The variance request will not bring the proposed carport structure closer into compliance with the ULDC’s development standards. The applicant demolished the original carport and built the new one without obtaining the required building permits. The carport structure must be constructed in accordance with all applicable building codes and setback requirements for public safety and welfare.

Recommendation:

Based on the above listed criteria that were not met, staff recommends denial of the applicant’s request for a zero lot line setback.

If the board seeks to approve the applicant’s request, all parts of the carport should be removed from the right-of-way, and the rest of the structure must come into compliance with building codes and wind speed design.