

**FINDINGS PRO AND CON FOR 7 CROSS STREET
VARIANCE
BZA CASE #03-21 VCU ZONE R-1**

Appellant requests a **variance** from *Article 7, Section (4) (c)* **to increase the volume of a non-conforming structure** (manufactured home not on a permanent perimeter foundation and not located in a manufactured home park), a **variance** from *Appendix 3b Lot Area, Coverage, and Setback Requirements (Table 2)* to permit **construction of an enclosed porch with a front yard setback of nineteen (19) feet where twenty-five (25) feet is the permitted minimum**, and approval of a conditional use permit to construct a portable or temporary carport in a residential zoning district.

**VARIANCE FOR ADDING PORCH WITH 19' FRONT SETBACK AND INCREASING
THE VOLUME OF A NON-CONFORMING STRUCTURE**

Athens Township Zoning Code Article 7, Section (4) (c)

*“...On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of non-load bearing walls, fixtures, wiring, or plumbing, provided that **the volume of the structure that existed when it became nonconforming shall not be increased...**”*

Athens Township Zoning Code §2.02 (f) (1) (a) Yard and Area Regulations (R1)

*“...There shall be a setback of **not less than twenty-five (25) feet** from the edge of the public right-of-way to the front line of the building and not less than fifteen (15) feet to the front line of a one story porch or any projection thereof excluding steps and open terraces...”*

□ Practical difficulty because of undue hardship—Because of exceptional or extraordinary conditions pertaining to a specific piece of property, as stated below, a literal enforcement of these regulations will result in practical difficulty or undue hardship that is unnecessary to the achievement of public purposes, such as a lot that;

- Is exceptionally narrow, shallow, unusual in shape; or
- Has exceptional topographical conditions; or
- Is located immediately adjacent to a property that has an extraordinary condition or situation that makes it impossible or extremely impracticable to accomplish the project for which the variance is being sought.

PRO: The manufactured home on the premises is a legal, non-conforming use (setbacks) established before the adoption of the zoning code and therefore the setbacks of the existing structure are “grandfathered”. The requested setback for the porch (19’ where 25’ is the required minimum) is for much less than the existing manufactured home front setback of 13’. In many communities additions to non-conforming structures are administratively permitted without variance if the encroachment is equal to or less than an existing, non-conforming setback. Moving the porch back six (6) feet would create practical difficulty or undue hardship (to the owner) that is unnecessary to the achievement of public purposes. The owner was unaware and the builder neglected to inform that a zoning certificate was needed prior to construction.

CON: The addition could have been located at the required setback if a permit application had been received and review completed prior to construction. The owner was unaware that a permit was required and the contractor failed to notify the owner that a permit was required.

□ Exceptional circumstances—There are exceptional or extraordinary circumstances or conditions applying to the property in question, or to the intended use of the property, that do not apply generally to other properties or classes or uses in the same zone.

PRO: Although there are many similar non-conforming uses in the zoning district R-1 (manufactured homes not on a foundation and not located in a Manufactured Home Park) at this time this is not of a recurring nature.

CON: The addition could have been located at the required setback if a permit application had been received and review completed prior to construction. The owner was unaware that a permit was required and the contractor failed to notify the owner that a permit was required.

□ Preservation of equal property rights—Literal interpretation of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zone and the same vicinity, while a granting of the requested variance will not confer on the applicant any special privilege that is denied to other properties in the same zone and the same vicinity.

PRO: The construction and use of a porch in an R-1 zoning district is a right permitted for all owners and residents of residential structures and no special privilege is being granted.

CON: None noted

□ Minimum variance—The variance granted is the minimum variance required to make possible the reasonable use of the property.

PRO: The request is for a variance of six (6) feet which is only 24% of the 25 ft. requirement and 68% more conforming than the existing manufactured home setback. In addition, there is no request to increase lot coverage in excess of that permitted (20% requested, 30% permitted).

CON: The addition may have been located at the required setback if a permit application had been received and review completed prior to construction. The owner however was unaware that a permit was required and the contractor failed to notify the owner that a permit was required.

□ Absence of detriment—The authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the Zoning Code or the public interest.

PRO: There will be no detriment to adjacent properties because the use of the property is a permitted use (residential), the addition is further from the street than the existing structure, and actually the closest adjacent area is a public alley with accessory storage buildings and not residences.

CON: None noted

□ Not of a general nature—The condition or situation of the specific piece of property, or the intended use of said property, for which variance is sought, one or the other or in combination, is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation.

PRO: At this time there are not so many requests of a recurring nature to make this of a general nature requiring code amendment.

CON: None noted

