

3330 S 1300 E
Millcreek UT
84106
801-214-2750

File # LUHO-20-002

Land Use Hearing Officer Summary and Recommendation

Request Type: Alter a non-complying structure.

Parcel ID: 16-28-157-004-0000

Current Zone: R-1-8 (Residential Single Family on 8,000 Sq Ft)

Property Address: 3035 S Mountair Drive **Community Council:** Canyon Rim

Planner: Samah Safiullah and Erin O’Kelley

Planning Staff Recommendation: Approval

Applicant Name: Michael Henderson

PROJECT DESCRIPTION

The applicant would like to request to enclose a carport on the subject property. The existing property has a side yard setback of 6’1” from the property line. Per Millcreek code any alteration that involves demolition or construction of a non-complying structure must be approved by the Land Use Hearing Officer. The applicant is requesting that the land use hearing officer approve construction the does not comply with the required 8-foot setback.



Figure 1 Subject property (green) with existing carport (red).

SITE AND VICINITY DESCRIPTION (see attached map)



Applicant’s property is in a very old neighborhood of Millcreek. The surrounding houses built between the 1930s & 1940s have all been added to since original construction. There are many properties in the vicinity that have added carports, garages, or opportunities for additional storage that are attached to the main house.

LAND USE CONSIDERATIONS

Requirement	Existing(Main Building)	Zone Requirement	Proposed
Height	1 story	30 feet	unchanged
Front Yard Setback	20 feet	25 feet	unchanged
Side Yard Setback (Garage)	Approx. 6 feet	8 feet	unchanged
Rear Yard Setback	Approx 17 feet	15 feet	unchanged
Lot Width	55 feet	65 feet at a distance 25 feet from the front lot line	unchanged
Lot Area	6969.6 Sq Ft	Min 8,000 Sq Feet	unchanged
Lot Coverage	25%	25% Maximum	unchanged

Compatibility with existing buildings in terms of size, scale and height.	Yes
Compliance with Landscaping Requirements.	N/A
Compliance with the General Plan.	Yes

ISSUES OF CONCERN/PROPOSED MITIGATION

Staff has not identified any issues with the applicant's proposal.

PLANNING STAFF ANALYSIS

19.04.380 - Noncomplying structure.

"Noncomplying structure" means a building or other structure or portion thereof lawfully constructed in compliance with the zoning ordinance existing at the time of construction, that no longer conforms to the height, area and/or yard regulations in the zone in which it is located due to changes to the zoning ordinance or to subsequent public acquisition of land for public improvements.

19.88.040 Repairs And Alterations Permitted

Repairs and structural alterations may be made to a noncomplying structure or to a structure housing a nonconforming use. Any remodel or structural alteration that requires the demolition of an outside wall of a noncomplying structure shall only be allowed upon approval of the land use hearing officer, unless the new construction complies with the zoning ordinance. The land use hearing officer decision regarding applications for the removal and replacement of outside walls of a noncomplying structure shall be based upon the criteria outlined in MKZ 19.88.070(B)

19.88.070 - Additions, enlargements, moving and reconstruction of a structure.

A. A noncomplying structure or building occupied by a nonconforming use shall not be added to or enlarged in any manner or moved to another location on the lot or reconstructed at another location on the lot except as provided by subsection B of this section unless such additions and enlargements comply with the regulations and intent of this title.

B. A building occupied by a nonconforming use or a noncomplying structure may be added to or enlarged or moved to a new location on the lot or reconstructed at a new location on the lot upon a permit authorized by the land use hearing officer, provided that the land use hearing officer shall find:

1. The addition to, enlargement of, moving of, or reconstruction of the structure at a new location on the lot is in harmony with one or more of the purposes of this title as stated in Section 19.02.020 of this title and is in keeping with the intent of this title;

2. That the proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or structure.

19.02.020 - Purpose of provisions.

This title is designed and enacted for the purpose of promoting the health, safety, morals, conveniences, order, prosperity and welfare of the present and future inhabitants of City, including, among other things, the lessening of congestion in the streets or roads, securing safety from fire and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, securing economy in governmental expenditures, fostering the City's agricultural and other industries, and the protection of both urban and nonurban development.

19.88.150 - Application to have a structure declared a noncomplying structure.

Whenever a structure is in violation of the height or setback provisions of this title, the owner may file an application with the director or director's designee to have the structure declared noncomplying. The director or director's designee shall approve the application when the evidence clearly establishes the following:

- A. The structure has existed at its current location, with the same size, height and setbacks for at least ten years;*
- B. The structure is found by the building official or designee to pose no threat to the health or safety of persons in or around the structure, and;*
- C. The City has not taken enforcement action for the violation for a period exceeding five consecutive years during which the violation existed.*

Planning Staff has declared the existing home as a non-complying structure, since it meets all the requirements mandated by **Section 19.88.150**.

PLANNING STAFF RECOMENDATION

Staff recommends a finding that the project is in harmony with the purposes of the City's zoning ordinance, namely to promote quality single-family neighborhoods that provide residents a comfortable, healthy, safe, and pleasant environment without harming surrounding urban or non-urban development.

Staff recommends a finding that this property does not impose any unreasonable burden upon the lands located in the vicinity of the noncomplying structure. The proposed addition maintains the form and style of the existing structure and is consistent with the historic pattern of development and housing type in the neighborhood.

For the above reasons, staff recommends approval of the request to add walls to a non-complying carport with the existing 8 foot side yard setback.

Appendix:

- 1: Applicant's request**
- 2. Applicant's Exhibits**