



Variance Report

Case #AV25-0010

Board of Adjustment Date: February 10th, 2026

General Information

Project Name	6388 E 78 th Avenue Attached Carport Variance
Location	6388 E 78 th Avenue
Site Size	0.04 acres
Current Zoning	PUD (Planned Unit Development)
Applicant	Joseph Rubio
Property Owner	Joseph Rubio
Case Planner	Omar Yusuf

Request

The property owner, Joseph Rubio, is requesting a variance to reduce the 5-foot setback from the front of the house to a 0-ft setback, a 5-foot reduction for a proposed attached carport (Figure 3).

Background and Case History

The primary structure was built in 1985, and the carport was built in 2020 without a permit. Joseph Rubio purchased the property in 2001. Mr. Rubio is seeking approval for the attached carport to remain at its current location due to his inability to reposition the carport due to health issues. As per the Leyden Street Townhomes PUD, there is no side setback for a carport and as per [Sec. 21-5400. – Accessory Uses and Accessory Structure Table](#) of the Land Development Code (LDC), an attached carport would be allowed. The applicant applied for a building permit (RADD24-00064) in 2024 and received a Code Enforcement violation in 2025 (CODE25-2034). The PUD requires the carport to adhere to the 5-ft setback from the front façade of the home and a variance is required to bring the property into compliance.

The property is located along East 78th Avenue in a residential neighborhood. It is surrounded by other residential properties on all sides. The subject property is surrounded by single family homes located in ADCO (Unincorporated Adams County) to the east and south; a town home to the west; and a single-family home to the north.

Project Analysis

Based on the narrative submitted by the property owner, the property owner states that he has a medical condition that prevents him from excessive sun exposure. The property owner relies on the full length of the attached carport to provide maximum shade from the sun. However,

there is no hardship based on the character of the property as mentioned in the approval criteria identified in [Sec. 21-3222. - Variances. \(3\)\(a\)\(i\)](#). In reference to the adoption of the Leyden Street Townhomes PUD, the regulation that limits the setback of the carport of the front façade was approved by Adams County Planning Commission. Shortly after the adoption of the Planned Unit Development (PUD) the subject property was annexed into City of Commerce City and the city took over jurisdiction of the Leyden Street Townhomes PUD.

Lastly, the proposed variance was reviewed by all relevant Development Review Team agencies, including the South Adams County Water and Sanitation District (SACWSD), South Adams County Fire Department (SACFD), City of Commerce City Planning Division, Engineering Review Division, Building Division, Economic and Community Vitality, and Geographic Information Systems Division with no comments. At this time, there are no outstanding concerns related to this variance request.

Public Comment

At this time, city staff has not received written statements from the public regarding the variance.

Variance Approval Criteria

A decision for this case must be based on the following criteria from [Sec. 21-3222\(3\)](#) of the Land Development Code. An application for a variance may be approved if:

(a) All of the following criteria are met:

- i. **The physical character of the property, including dimensions, topography or other extraordinary situation or condition of the property, creates a situation where the strict enforcement of the standards in this land development code will deprive the property of privileges generally enjoyed by property of the same classification in the same zoning district (hardship);**

Analysis: The 5-ft variance to allow the carport even with the front façade of the house is requested to allow for increased protection from the sun. Although there is no hardship that is imposed by the physical characteristic of property, the current Land Development Code (LDC) does allow an attached carport no farther than the front façade and not closer than 20-ft of the right-of-way. However, the carport does not meet the PUD requirement to set the carport back 5 ft from the front facade. Other single-family attached units with R-2 (Single-Family Attached Residential) zoning district designation would be able to enjoy the placement of an attached carport. ***Therefore, it can be found that this application does not meet criteria (i).***

- ii. **The hardship is not self-imposed;**

Analysis: The property owner constructed the attached carport with no building permit and therefore the hardship was self-imposed ***Therefore, it can be found that this application does not meet criteria (ii).***

iii. The variance will not be of substantial detriment to adjacent property; and

Analysis: Since most residential properties in the city adhere to the accessory structures bulk standards, the current footprint of the attached carport does not encroach past the front façade of the home and is at least 20-ft from the right-of-way. The carport on the property is totally within the side yard of the property and does not encroach into required right-of-way access and obscured by the principal structure which screens it from view of adjacent properties. Additionally, there are no adverse effects to adjacent properties. ***Therefore, it can be found that this application meets criteria (iii).***

(b) One of the following criteria is met:

i. The variance granted is the minimum needed for the reasonable use of the land, building, or structure; or

Analysis: The minimum variance requested of the extra five feet would provide enough coverage for the applicant's property. ***Therefore, it can be found that this application does meet criteria (b)(i).***

ii. The character of the district will not be changed by the granting of the variance.

Analysis: As per the Leyden Street Townhomes PUD, attached carports are allowed if they are 5-ft back from the front façade of the home. Although, per the Land Development Code Sec. 21-5400. – Accessory Uses and Accessory Structure Table, an attached carport is allowed to be flush with the front of the home for similar houses in a straight residential zoning district. Since the PUD and property were annexed into the City of Commerce City from Unincorporated Adams County, the existing configuration of the carport would blend in with other similar structures with R-3 zoning and adjacent properties to the north. Since the property and other properties in the PUD were annexed into the City of Commerce City from unincorporated Adams County, the existing configuration of the carport would blend in with other similar structures and adjacent properties to the north. ***Therefore, it can be found that this application meets criteria (b)(ii).***

Staff Recommendation

Planning staff has found that the application does not meet the approval criteria found within [Sec. 21-3222\(3\)](#) of the Land Development Code, and therefore the Planning Division **does not** recommend the Board of Adjustment approve case AV25-0010.

Considerations for Discussion

1. The variance is to allow a carport flush with the front of the house requiring a 5-foot variance to the PUD standard. Review of the requested variance for the attached carport indicates limited impacts to surrounding properties.
2. The structure will also be reviewed for more technical aspects during the building permit process.
3. The application does not meet the Variance approval criteria.
4. The application was reviewed by all relevant Development Review Team (DRT) agencies, and there are no outstanding comments or concerns.

Potential Motions

Approval

*I move that the Board of Adjustment enter a finding that the requested **variance**, for the property located at **6388 E 78th Avenue** contained in case **AV25-0010**, meets the criteria of the Land Development Code and based upon such finding, approve the **variance**.*

Approval with Conditions

*I move that the Board of Adjustment enters a finding that the requested **variance**, for the property located at **6388 E 78th Avenue** contained in case **AV25-0010**, meets the criteria of the Land Development Code and based upon such findings, approve the **variance** subject to the following conditions:*

[Insert Conditions]

Denial

*I move that the Board of Adjustment enter a finding that the requested **variance**, for the property located at **6388 E 78th Avenue** contained in case **AV25-00101**, fails to meet the criteria of the Land Development Code and based upon such finding, deny the **variance**.*

- i. The physical character of the property, including dimensions, topography or other extraordinary situation or condition of the property, creates a situation where the strict enforcement of the standards in this land development code will deprive the property of privileges generally enjoyed by property of the same classification in the same zoning district (hardship)*
- ii. The hardship is not self-imposed;*

Figure 1. Zoning Map

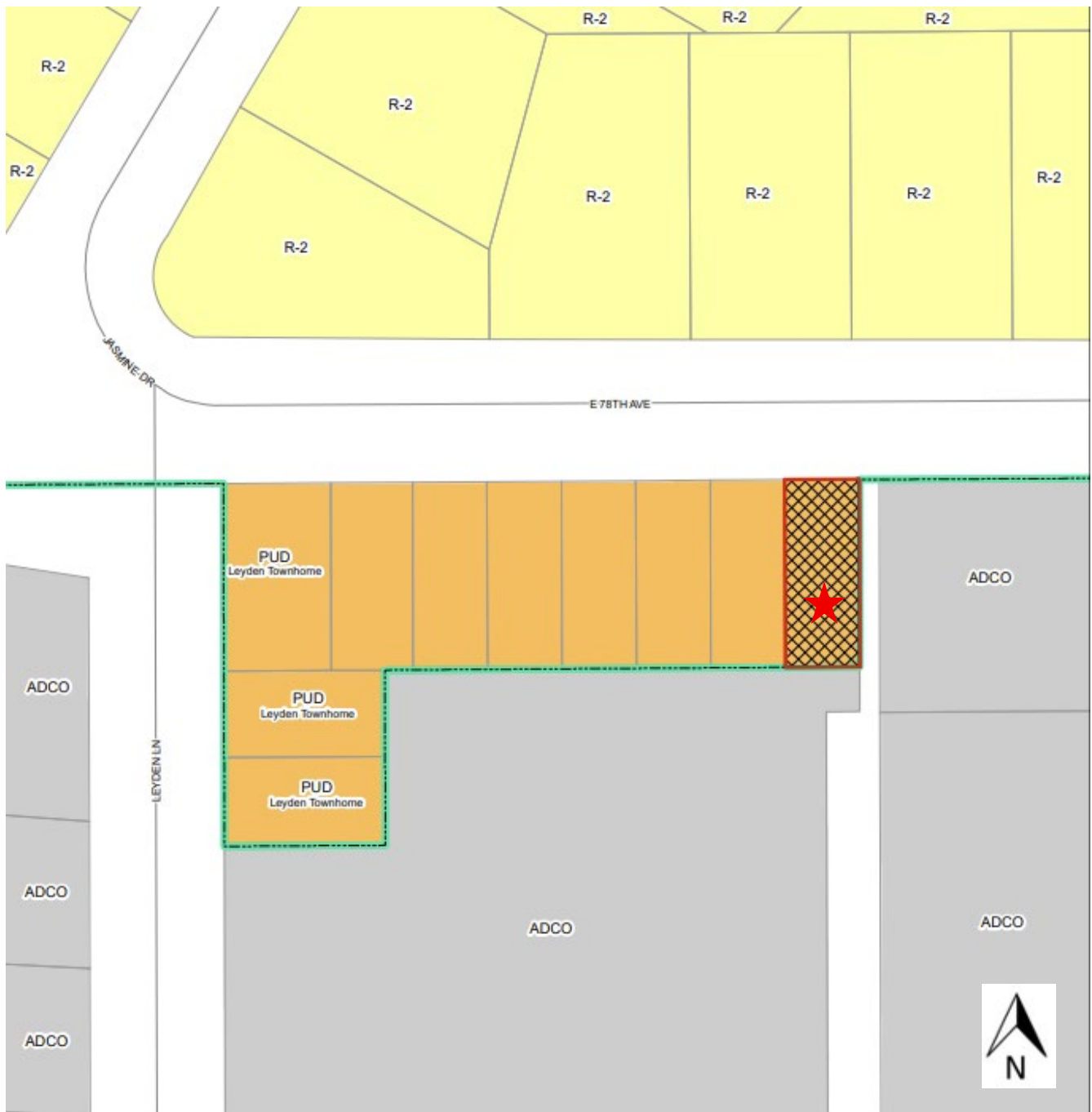


Figure 2. Aerial Map

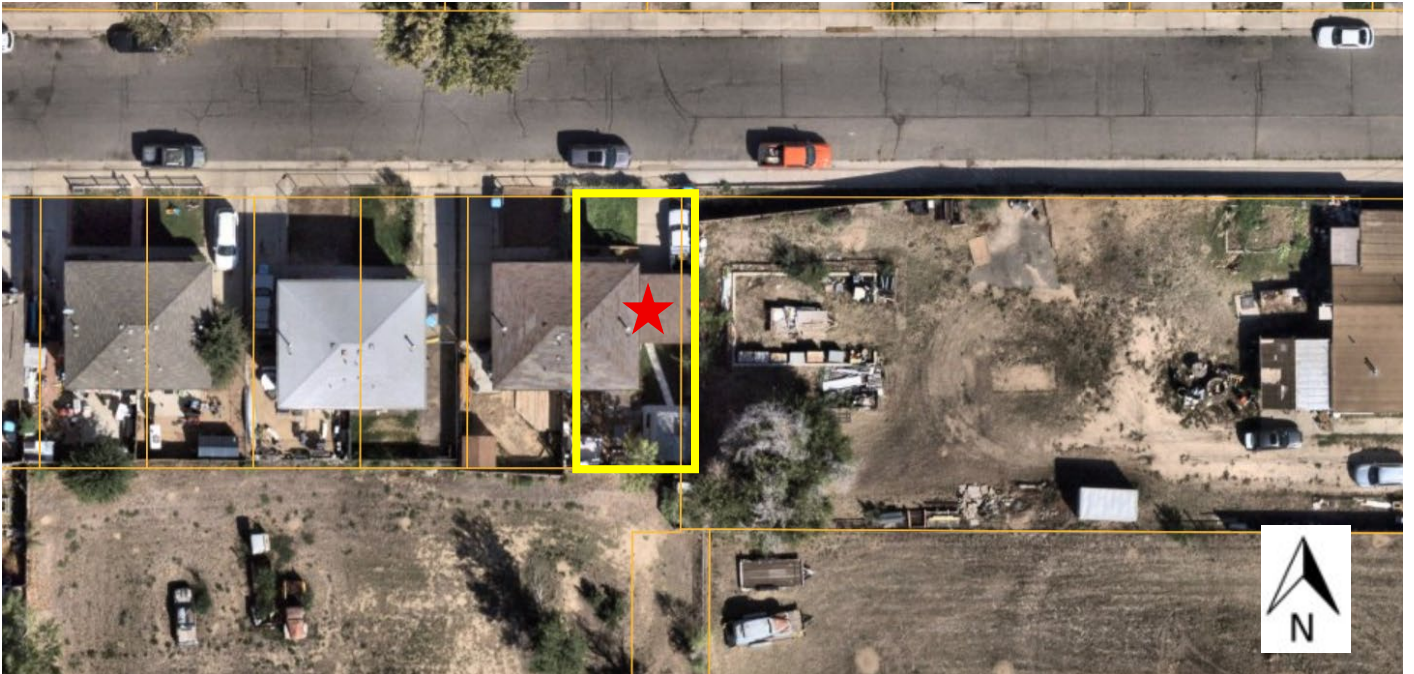
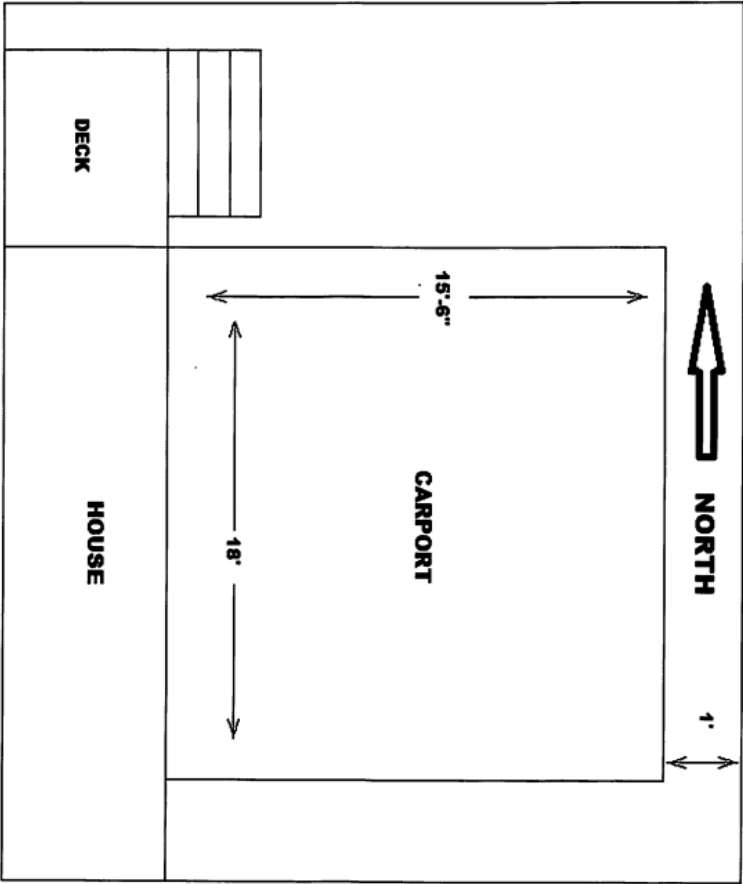


Figure 3. Site Plan



- LIST OF MATERIALS
- 15 - 2X6 RAFTERS
 - 30 - 2X6 HANGERS
 - 4 - 4X4 TREATED WOOD
 - 11 - 6'X8' SIDING SHEETS
 - 30 - 5/16X 5" LAG BOLTS
 - 9 - WATER RESISTANT DRYWALL
 - 2 - BOXES 1-1/4 DECK SCREWS
 - 1- 5" X 16' GUTTER (EAST SIDE)
 - 14 - 6" X 16' ROLLS OF INSULATION
 - 4- SQUARES OF SHINGLES
 - 6 - 2" X1" X10' FLASHING
 - 2 - 4"X4" X 10' FLASHING
 - 5 - 4X4 POSTS 24" DEEP WITH CONCRETE

Figure 4. Carport Elevations

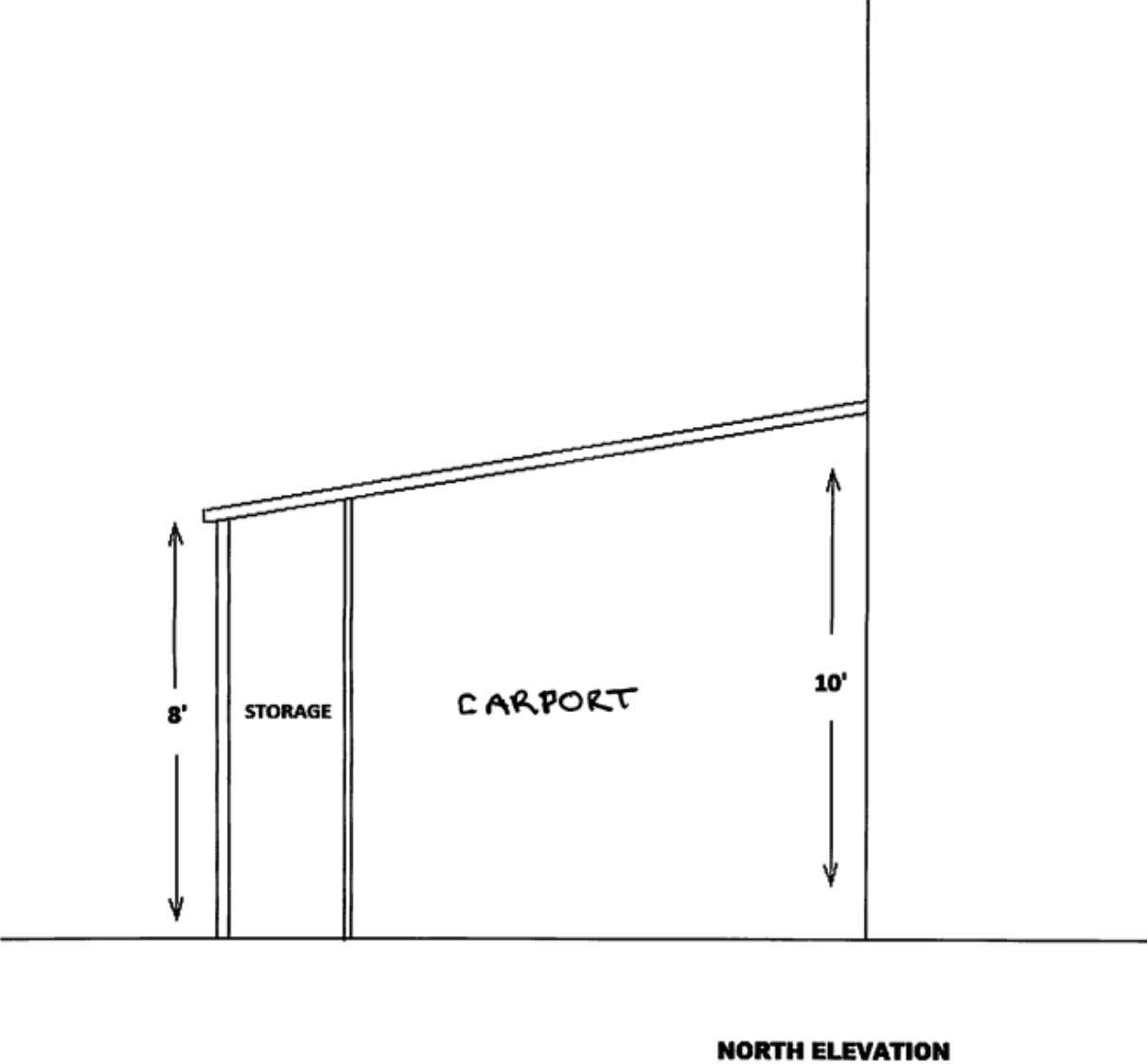


Figure 5. Existing Conditions



Facing North